



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1120 TDD/TTY: (617) 796-1089 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

To: Zoning Board of Appeals Members

From: Heather Zaring, Interim Clerk

Date: November 5, 2021

Subject: Materials for **November 17, 2021** Public Hearing

Packet 1

Hello,

Please see the following supplemental materials for the upcoming hearing on November 17, 2021 Public Hearing. The following board members are scheduled to sit: *Brooke Lipsitt (Chair), Michael Quinn, Treff LaFleche, Michael Rossi, Stuart Snyder and Lei Reilley (Alternate)*.

1. November 17, 2021 Agenda
2. 15 Keefe Avenue Variance Application
3. 15 Keefe Avenue Decision #17-63
4. Extension Letter from 39 Herrick Road Appellants Attorney dated October 14, 2021
5. 158 Parmenter Road Variance Application
6. 158 Parmenter Road Special Permit Decision #298-21
7. 229 Bellevue Street Variance Application
8. Draft minutes from August 8, 2021
9. Draft minutes from September 22, 2021

Thank you,

Heather Zaring

hzaring@newtonma.gov |

Item 1



Ruthanne Fuller
Mayor

CITY OF NEWTON, MASSACHUSETTS

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

ZONING BOARD OF APPEALS

Heather Zaring, Interim Board Clerk

The Zoning Board of Appeals will hold this meeting as a virtual meeting on Wednesday, November 17, 2021 at 7:00 pm.

To view and participate in this meeting using Zoom, click this link: <https://us02web.zoom.us/j/86813580801> or call 1-646-558-8656 and use the Meeting ID: 868 1358 0801

AGENDA

A public hearing of the Newton Zoning Board of Appeals will be held virtually via Zoom on Wednesday, November 17, 2021 at 7:00 p.m. on the following petitions:

- #07-21** Brenda Arduino of 15 Keefe Avenue, Newton, Massachusetts, requesting to amend a previously granted variance (#17-63) which created the subject property in 1963 by allowing for a reduced frontage of 50.13 feet where 80 feet was the requirement. The Petitioner seeks to remove two conditions placed on variance #17-63 that limited the use of the property to a single-family home and that required the dwelling be located at least 60 feet from the front lot line. The subject property is located at 15 Keefe Avenue within a Multi-Residence 1 (MR-1) zoning district and consists of a 10,640 square foot lot improved with a single-family dwelling.
- #04-19** Terrence P. Morris of 57 Elm Road, Newton, Massachusetts, requesting an extension of time to exercise variance decision (#04-19) to construct a three-story, nine-unit residential building at 39 Herrick Road. The subject property is located at 39 Herrick Road within a Business 1 (BU1) zoning district and consists of a 12,979 square foot lot.
- #08-21** Rachel and Marko Rosenfeldt of 158 Parmenter Road, Newton, Massachusetts, requesting a variance from Section 3.1.3 of the Newton Zoning Ordinance to allow a 5.4 foot side setback and a 4.9 rear setback. The petitioner seeks to construct an attached garage with a home office above. The subject property is located at 158 Parmenter Road within a Single-Residence 3 (SR-3) zoning district and consists of a 4,990 square foot lot improved with a single family dwelling.
- #09-21** David and Suzanne Wakefield of 229 Bellevue Street, Newton, Massachusetts, requesting to amend two previously granted variances (#87291 and #9-11) to allow a 3.6 foot front setback for a detached structure. The petitioner seeks to raze and reconstruct a detached garage. The subject property is located at 229 Bellevue Street within a Multi-Residence 1 (MR-1) zoning district and consists of a 9,700 square foot lot improved with a single family dwelling.
- Review and approval of minutes for August 9, 2021, September 9, 2021, and September 22, 2021 meetings.

The location of this meeting/event 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/Section 504 Coordinator, Jini Fairley, at least two business days in advance (2 weeks for ASL or CART) of the meeting/event: 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.

RECEIVED

By City Clerk at 12:29 pm, Oct 14, 2021

RECEIVED

By Interim ZBA Clerk at 12:22 pm, Oct 14, 2021

CITY OF NEWTON
ZONING BOARD OF APPEALS

Item 2

CHECKLIST COVER PAGE
FOR VARIANCE PETITION

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

PROPERTY LOCATION: 15 Keefe Avenue DATE: 10/13/21

PETITIONER: Brenda Arduino

ADDRESS: 521 Elm Street Mansfield, MA 02048

PHONE: 508.272.0044 EMAIL: bmarduino@gmail.com

POINT OF CONTACT: Brenda or agent - Erica Chamberlain

PLEASE CONFIRM THAT YOU HAVE INCLUDED THE FOLLOWING WITH YOUR VARIANCE PETITION. THIS CHECKLIST MUST BE INCLUDED WITH YOUR PETITION THE FIRST PAGE.

VARIANCE PETITIONS WILL NOT BE ACCEPTED FOR PROCESSING & SCHEDULING UNLESS ALL REQUIRED DOCUMENTS ARE PROVIDED.

<u>DOCUMENTS</u>	<u>ENCLOSED</u> (checked by Petitioner)	<u>CONFIRMED</u> (checked by Clerk)
Variance Petition Form (15 copies)	<u>✓</u>	_____
Application Fee	<u>✓</u>	_____
Zoning Review Memorandum	<u>✓</u>	_____
Evidence of Legal Interest	<u>✓</u>	_____
Corporate Interest List	<u>n/a</u>	_____
Supporting Statements	<u>✓</u>	_____
Reference to Zoning Ordinance	<u>✓</u>	_____
Required Site Plans	<u>✓</u>	_____
Electronic Copy	<u>✓</u>	_____

CITY OF NEWTON
ZONING BOARD OF APPEALS

PETITION FOR VARIANCE

IMPORTANT: APPLICANTS MUST COMPLETE ALL ITEMS ON THIS FORM

PETITIONER INFORMATION

NAME: Brenda Arduino

ADDRESS: 521 Elm Street Mansfield, MA 02048

PHONE: 508.272.0044 EMAIL: bmarduino1@gmail.com

If the petitioner and/or property owner is a company, corporation or other entity, a list of the names and addresses of the principals, officers and/or managers must be attached to this form.

SUBJECT PROPERTY INFORMATION

LOCATION OF PROPERTY: 15 Keele Avenue Newton 02464

ZONING DISTRICT: MRI PROPERTY SBL NO.: 51044 0002A

OWNER OF RECORD: Antonina Bilski, Brenda Arduino, Carol Kreutzer

DEED RECORDED AT MIDDLESEX SOUTH REGISTRY OF DEEDS AT:
BOOK: 31362 PAGE 95 OR CERTIFICATE NO.: _____

RELATIONSHIP TO SUBJECT PROPERTY (i.e. owner, abutter, etc.):
owner

CURRENT USE: single family

PROPOSED USE: multi resident

PREVIOUS VARIANCE GRANTED: YES NO DECISION NO./DATE: 1964

OTHER REGULATORY REVIEW: YES NO IF YES, DESCRIBE STATUS:

EXISTING CONDITIONS DESCRIPTION:
MRI lot created in 1964 with additional variance
restricting to single family with front setback of 60 feet.

PROPOSAL DESCRIPTION

1. Briefly describe all proposed changes to the structure(s) and/or use(s):

We seek to amend the Variance to remove the 2 conditions which limit the use of the parcel to a single family dwelling.

This is a neighborhood of MR1 2-family/2-townhouse structures and property is zoned MR1.

Original owner is in nursing care and family wants to sell property without the variance.

2. State all sections of the Newton Zoning Ordinance implicated in this variance petition:

Seeking to amend the Variance that was added to the property at time of creation.

3. State the specific relief being sought from the Newton Zoning Ordinance, including all ordinance dimensional requirements and proposed dimensional conditions:

Removal of 2 conditions that limits the use of the parcel and allow the property to be unrestricted MR1 new lot and fit in with the neighborhood.

4. Identify and describe all plans and supporting documents being submitted with this variance petition:

1. Deed
2. Map of street showing property on a street of mostly multi resident properties
3. Plot Plan - from city of Newton
4. Site Plan - from city of Newton

SUPPORTING STATEMENT

EACH OF FOLLOWING REQUIREMENTS FOR A VARIANCE MUST BE ESTABLISHED AND SET FORTH IN COMPLETE DETAIL BY THE APPLICANT IN ACCORDANCE WITH G.L. C. 40A, § 10.

1. Explain the special circumstances related to soil conditions, the shape or the topography of the land or structure that are unusual and that do not generally affect other properties in the zoning district:

n/a

2. Explain how the literal enforcement of the Newton Zoning Ordinance will result in a substantial hardship to the owner and that the proposed variance is the minimum change that is necessary to allow the reasonable use of the land or structure.

Property value is significantly decreased by restrictions from the variance.

Family has owned property since creation in 1964 and seeks to sell.

3. Explain why granting the proposed variance will be in harmony with the purpose and intent of the Newton Zoning Ordinance and will not be detrimental to the neighborhood or the public welfare.

Property is zoned MR1 and is located in a neighborhood of multi-family homes.

As it exists as an 1,100 square-foot single family home on a 10,640 square-foot lot, it is an outlier in the neighborhood.

PROPERTY OWNER CONSENT, CERTIFICATION & SIGNATURE

(Signatures of Petitioner(s) are 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 DocuSigned by:
Brenda Arduino _____ 10/13/2021
(Petitioner Signature) (Date)

X _____
(Petitioner Signature) (Date)

If Applicable:

Name of Attorney/Agent for Applicant: Erica Chamberlain

Address of Attorney/Agent: 25 Bonad Rd. Newton 02465

Phone Number of Attorney/Agent: 781 405 2333

Email Address of Attorney/Agent: erica.s.chamberlain@gmail.com



Ruthanne Fuller
Mayor

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

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: October 4, 2021

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Antonina Bilski, Applicant
Erica Chamberlain, Agent
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: Request to amend Variance #17-63 to remove conditions

Applicant: Antonina Bilski	
Site: 15 Keefe Avenue	SBL: 51044 0002A
Zoning: MR1	Lot Area: 10,640 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 15 Keefe Avenue consists of a 10,640 square foot lot improved with a single-family residence constructed in 1965. The lot was created by variance in 1963, when the adjacent parcel was subdivided. The petitioner seeks to amend the variance to remove two conditions which limit the use of the parcel to a single-family dwelling.

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

- Zoning Review Application, prepared by Erica Chamberlain, agent, dated 9/22/2021
- Variance #17-63

ADMINISTRATIVE DETERMINATIONS:

1. The property was created by Variance #17-63 in 1963, which allowed for a reduced frontage of 50.13 feet where 80 feet was the requirement. Two conditions were placed on the variance: the first limited the use of the parcel to a single-family dwelling; and the second required the dwelling to be located at least 60 feet from the front lot line. The petitioner seeks to remove the conditions to allow for construction of a two-family dwelling.

1. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
	Request to amend variance #17-63	Variance

I, Antonina M. Bilski
of Newton Upper Falls, Middlesex County, Massachusetts,

being unmarried, for consideration paid, and in full consideration of \$1.00 and other valuable consideration grant to Carol D. Kreutzer of 147 Bare Hill Road, Boxford, MA and Brenda M. Arduino* of 521 Elm Street, Marshfield, MA, an estate in fee simple, reserving a life estate to myself, Antonina M. Bilski, without the right to partition with quitclaim covenants

the land with the buildings thereon situated in that part of said Newton called Newton Upper Falls, being now known as and numbered 15 Keefe Avenue, and being shown as Lot B on a plan entitled "Plan of ~~XXXXXXXXXXXXXXXXXXXX~~ Land in Newton, Mass., April 18, 1964, John J. Regan, Surveyor, Newton Highlands, Mass.", which said plan is filed in Middlesex South District Registry of Deeds as Plan No. 549 of 1964 at the end of Book 10526.

Said Lot B is bounded and described according to said plan as follows:

- EASTERLY by said Keefe Avenue, 50.13 feet;
- NORTHERLY by Lot A on said plan, 209.00 feet more or less;
- WESTERLY by the Charles River, 52.13 feet;
- SOUTHERLY by Lot 3 on said plan, 148.50 feet;
- EASTERLY by said Lot 3 on said plan, 4.00 feet; and
- SOUTHERLY again by said Lot 3, 50.00 feet.

Said Lot B contains 10,640 square feet of land according to said plan.

Said premises are conveyed subject to a taking and easement by the Metropolitan District Commission for flood control purposes, recorded said Deeds, Book 9146, Page 3, as shown on Plan No. 561, A of 6 of 1958, all as shown on the above mentioned plan, insofar as any of the same is now in force and applicable.

Said premises are conveyed subject to the City of Newton drain easement as shown on the first above mentioned plan, and to takings by the City of Newton recorded with said Deeds Book 5778, Page 72; and Book 6463, Page 546.

For title see deed dated July 12, 1946 and recorded with said Deeds, Book 7017, Page 33; said premises being a part of said premises conveyed by said deed. See also Estate of Edward J. Bilski, deceased February 12, 1985.

Witness my hand and seal this 25 day of April, 2000

Antonina M. Bilski
Antonina M. Bilski

The Commonwealth of Massachusetts

Middlesex ss.

April 25 2000

Then personally appeared the above named Antonina M. Bilski
and acknowledged the foregoing instrument to be her free act and deed before me

John M. Carr
Notary Public - ~~XXXXXXXXXXXX~~

My commission expires

2-16-2001

(*Individual - Joint Tenants - Tenants in Common.)

15 KEEFE AVENUE, NEWTON, MA



(http://www.mapgeo.io) Report a map error (https://www.google.com/maps/@42.3112662,-71.2262165,19z/data=!1m1!1e1!1f12b1?source=api&hl=en&auth=92031)

Current Owner

Owner Information
 BILSKI ANTONINA M L/E
 KREUTZER CAROL D
 15 KEEFE AVE

Sale History

Owner
 BILSKI ANTONINA M L/E
 Co Owner
 KREUTZER CAROL D
 Sale Date
 2000-04-01

Assessment History 31

Assessed Value
 \$670,100
 \$632,200
 Fiscal Year
 2022
 2021

MAY 8 1964

CITY OF NEWTON

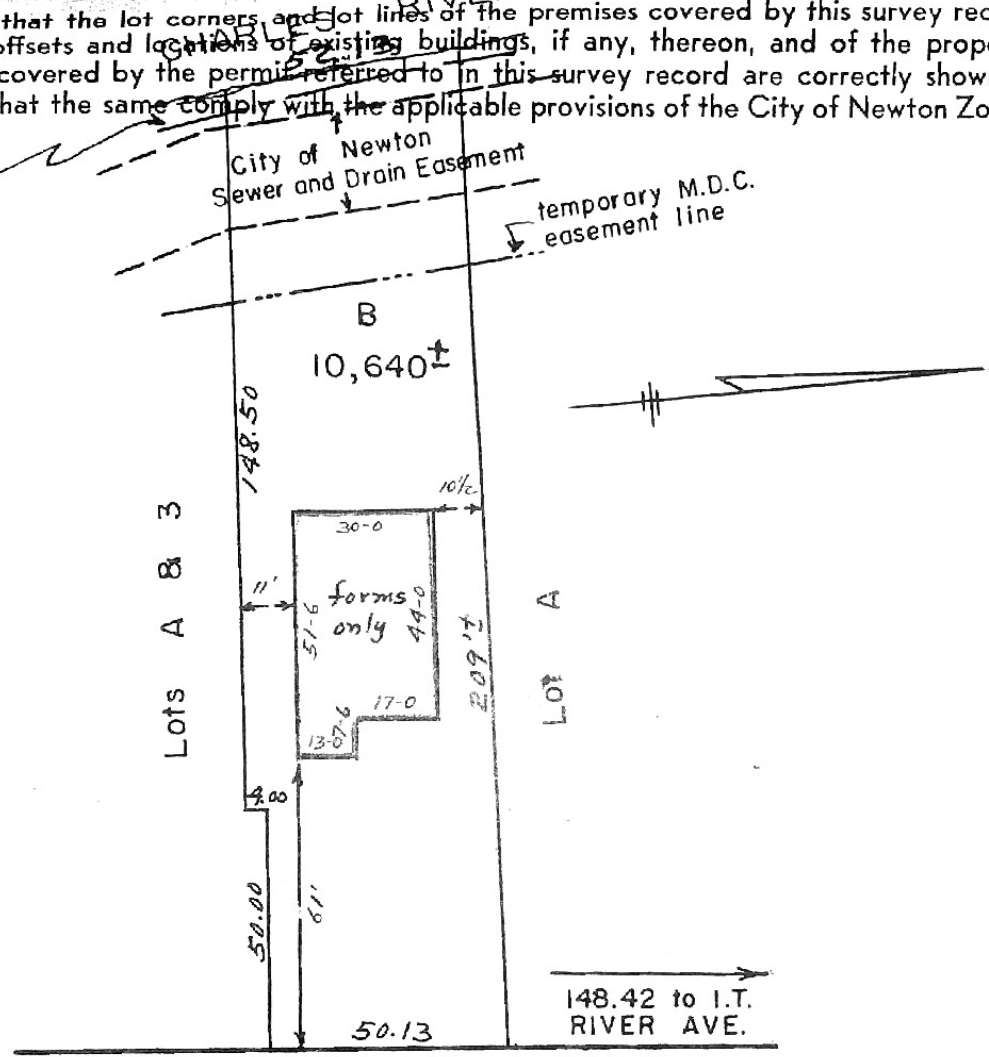
PUBLIC BUILDINGS DEPARTMENT

I hereby certify that the lot corners and lot lines of the premises covered by this survey record, and the dimensions, offsets and locations of existing buildings, if any, thereon, and of the proposed building or buildings covered by the permit referred to in this survey record are correctly shown on the plan below, and that the same comply with the applicable provisions of the City of Newton Zoning Ordinance.

permanent M.D.C. easement line

City of Newton Sewer and Drain Easement

temporary M.D.C. easement line



KEEFE AVE.
PLOT PLAN

Scale — 1 in. = 40 Feet.

SURVEYOR'S AFFIDAVIT

The above statement is made and subscribed to under the penalties of perjury.

(Signed) Land Surveyor: John J. Regan Registration No. 7931

Print } Land Surveyor, JOHN J. REGAN
 Address, 25 ABERDEEN STREET
 City or Town, NEWTON HIGHLANDS, 61, MASS.

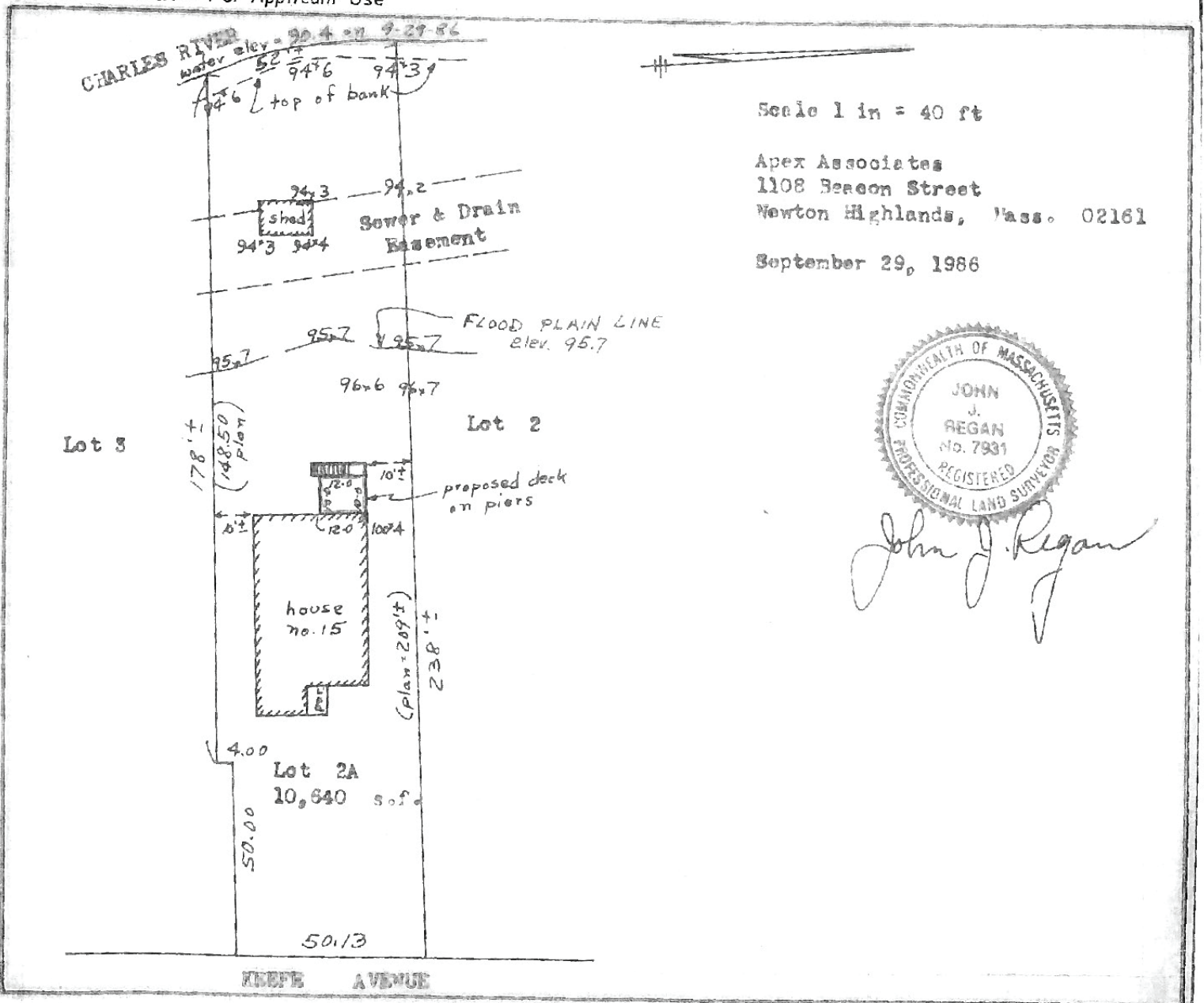
DATE RECEIVED. 6-8-64

BY. Victor J. Tagliente

VIII. ZONING PLAN EXAMINERS NOTES

DISTRICT	
USE	
FRONT YARD	
SIDE YARD	SIDE YARD
REAR YARD	
NOTES	

IX. SITE PLAN - For Applicant Use



Scale 1 in = 40 ft
 Apex Associates
 1108 Beacon Street
 Newton Highlands, Mass. 02161
 September 29, 1986



John J. Regan

Handwritten note: Res. and Ord.



City of Newton, Massachusetts
Founded 1630 Incorporated as City 1873
City Hall
1000 Commonwealth Avenue, Newton Centre 59

ZONING BOARD OF APPEALS

Item 3

Detailed Record of Proceedings and Decision 17-63

Petition of Edward J. Bilski and Antonina Bilski

For variance in frontage and side line requirements at
9 Keefe Avenue, Newton Upper Falls

The Zoning Board of Appeals for the City of Newton held a public hearing on the above entitled proceeding on Tuesday, Sept. 24, 1963 at 8:45 p.m. in the Aldermanic Chamber at City Hall, Newton, Massachusetts.

The following members of the board were present:

- Maurice A. Reidy, Jr., Chairman
- V. Stoddard Bigelow, Member
- Edward B. Murphy, Member
- Hirsh Sharf, Member
- W. Cornell Appleton, Associate Member

The petition was filed with the board on August 26, 1963.

Due notice of the hearing was given by mail, postage pre-paid, to all persons deemed to be affected thereby as shown on the most recent tax list and by publication in the Newton Villager a newspaper of general circulation in Newton, Massachusetts.

Edward J. Bilski appeared and spoke in his own behalf. The owners of 1 Keefe Avenue and 31 River Avenue also appeared and spoke in favor. There was no opposition.

The petitioners own the house and land at 9 Keefe Avenue, Newton Upper Falls, having acquired title thereto in 1946. The property is in a private residence district.

It appears from the petition that the petitioners desire to subdivide their property into two lots, as shown on the plan accompanying the petition; namely, lot A with

Handwritten note: Billie East

a frontage of 50.12 feet on Keefe Avenue and an area of 10,385 square feet, with dwelling thereon; and lot B having a frontage of 50.13 feet on Keefe Avenue and an area of 11,195 square feet. They also seek a side yard of 9 feet on the southerly side of lot B. To legally accomplish all of the foregoing, variances are necessary. [Rev. Ords., Newton, secs. 23.8 (a), 23.17 (b)].

A previous petition (No. 46-62) was denied by the board on February 15, 1963. The instant petition differs but slightly from the prior one, but its way to this board was cleared by unanimous vote of the Planning Board on August 12, 1963. [Rev. Ords., Newton, sec. 23.21 (d)]

At the hearing, the board was informed that the petitioners proposed to build a single family residence on lot B if the variances sought were granted. The petitioners also brought out that for a period of time after their purchase of 9 Keefe Avenue, they received separate tax bills from the City on lot A and lot B. Further, the petitioners advised the board that the house which they proposed to build on lot B would be set back at least 60 feet from Keefe Avenue. The board took a view.

On all the evidence, a majority of the board finds that owing to conditions specially affecting the petitioners' property but not affecting generally the zoning district in which it is located, a literal enforcement of the applicable provisions of the Zoning Ordinances would involve substantial hardship. While the case is close, the additional evidence received by the board at the hearing, in the opinion of the majority of the board, reasonably warrants the foregoing finding. A majority of the board further finds on all the evidence, that to grant the petitioners the variances requested would not be detrimental to the public good, nor would it substantially derogate from the intent and purpose of the Zoning Ordinances, as amended, in view of the set back condition hereinafter imposed by the board.

A majority of the board have voted to grant the variances requested, thereby establishing lot A with an area of 10,385 square feet and a frontage of 50.12 feet on Keefe Avenue with dwelling house and garage thereon, as shown on the plan accompanying the petition; and lot B with an area of 11,195 square feet and a frontage of 50.13 feet on Keefe Avenue, as shown on the said plan, subject, however, to the following conditions:

1. A single family dwelling house only may be erected on lot B.
 - a. Said single family dwelling house shall be set back at least 60 feet from the street line of Keefe Avenue.

ZONING BOARD OF APPEALS

By Maurice A. Reidy, Jr.
Chairman

JOHN J. FOSTER
EDWARD W. FOSTER
JOHN J. FOSTER, JR.

Tel. TWinbrook 4-3309
" " 3-7928

FOSTER & FOSTER
ATTORNEYS AT LAW
679 MAIN STREET
WALTHAM 54, MASS.

November 2, 1962

Zoning Board of Appeals
Newton City Hall
Newton, Massachusetts

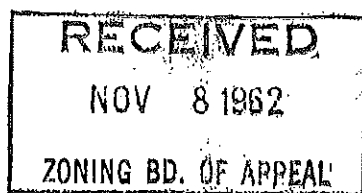
Gentlemen:

We, Edward J. Bilski and Antonina M. Bilski, residing at 9 Keefe Avenue, Newton, request a variance of the zoning laws for permission to subdivide lot as shown on plan of land accompanying this petition, said lot is known as 9 Keefe Avenue, Newton and contains 21,580 square feet of land.

I propose to subdivide said property so that there will be two parcels of land, one parcel to be known as 9 Keefe Avenue upon which my present residence is located and will contain 10,385 square feet of land as shown on said plan accompanying this petition. The other parcel will contain 11,195 square feet of land as shown on this petition. The lot containing 10,385 square feet of land will be retained by myself and continued as my private residence. The lot has been so divided as shown on the plan as best to comply with the zoning regulations. I own no other land contiguous to this property. My reasons for requesting this permission is to enable me to make productive use of this land.

We also request that this board grant a variance on both lots proposed to be subdivided concerning sideyards, namely, that Lot A where the existing house is, is to have a sideyard of nine (9) feet on the southerly side as shown on said plan filed herewith and that there be a sideyard variance on proposed Lot B on the northerly side to allow a side yard of $7\frac{1}{2}$ feet.

Because of my health and the health of my wife the burden of upkeep and taxes demands a better use of this property. If this permission is granted a single private residence will be built on the lot. The construction of that private residence will be in keeping with the character of the neighborhood where several other house lots have similar square foot areas. We acquired this property in 1946 from Anthony Gervalis and hold this property as husband and wife as tenants by the entirety. Thank you for your consideration of this petition.



Very truly yours,

Edward J. & Antonina M. Bilski

By their attorneys,

Foster & Foster

CITY OF NEWTON
ZONING BOARD OF APPEALS

Notice is hereby given that the petition of Edward J. and Antonia M. Bilski for variance in frontage and side-line requirements at 9 Keefe Avenue, Newton Upper Falls, has been denied.

The decision No. 46-62 will be found in detail record of proceedings of the Zoning Board of Appeals, copy of which was filed on February 15, 1963 in the City Clerk's office.

V. Stoddard Bigelow
Edward B. Murphy
Robert B. Proctor
Hirsh Sharf
Maurice A. Heidy, Jr.,
Chairman

Members, Zoning Board
of Appeals

February 15, 1963

Copy

THE COMMONWEALTH OF MASSACHUSETTS

NEWTON
CITY OR TOWN

BOARD OF APPEALS

November 22, 1963

NOTICE OF VARIANCE

Conditional or Limited Variance or Special Permit

(General Laws Chapter 40A, Section 18 as amended)

Notice is hereby given that a Conditional or Limited Variance or Special Permit has been granted

To Edward J. Bilski and Antonina Bilski
Owner or Petitioner

Address 9 Keefe Ave., Newton Upper Falls

City or Town ~~Town~~ Newton

9 Keefe Ave., Newton Upper Falls
Identify Land Affected

City
by the ~~Town~~ of Newton Board of Appeals affecting the
rights of the owner with respect to the use of premises on

9 Keefe Ave., Newton Upper Falls Newton
Street City or Town
the record title standing in the name of

whose address is
Street City or Town State

by a deed duly recorded in the Middlesex County Registry of Deeds in Book
Page Registry District of the Land Court
Certificate No. Book 9016 Page 119

The decision of said Board is on file with the papers in Decision or Case No. 17-63
City
in the office of the ~~Town~~ Clerk Newton

Signed this 22 day of November 1963
and certified Board of Appeals

Janice A. Reidy Chairman
Board of Appeals
Clerk
Board of Appeals

June 17, 1964 at 11 o'clock and 22 minutes M.

Received and entered with the Register of Deeds in the County of Middlesex
Book 10446 Page 206

ATTEST
Edward C. Buckley
Register of Deeds

Notice to be recorded by City or Town Clerk.

Terrence P. Morris, Esq.
Law Offices of Terrence P. Morris LLC
57 Elm Road
Newton, MA 02460
617 202-9132

Item 4

October 14, 2021

By electronic transmission: chenriquez@newtonma.gov

Heather Zaring, Clerk
Newton Zoning Board of Appeals
1000 Commonwealth Avenue
Newton, MA 02459

Re: Variance #04-19: 39 Herrick Road
Request For Continuance

Dear Ms. Zaring:

The above-referenced variance states that it must be exercised within one year from the date the decision is filed with the clerk's office. The decision was filed with the city clerk on 8/28/19 and therefore was to be exercised by 8/29/21. However, on March 10, 2020, Governor Baker issued an emergency order effectively tolling the time period for conditions such as the one found in variances and/or special permits. The emergency order was ended on June 15, 2021.

As applied to the subject variance on March 10, 2020, 203 of the 365 days had run, leaving 162 days before the variance would expire on August 19, 2020. However, the emergency order tolled the running of those 162 days until the order was lifted on June 15, 2021. Counting 162 days from June 15, 2021, means the variance would need to be exercised before November 24, 2021.

M. G. L., c.40A, §10 states in relevant part, “*the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period.*” Accordingly, please accept this letter as a timely request for a continuance of the above-referenced variance for a period of six (6) months and kindly confirm receipt.

Thank you for your attention to this matter.

Sincerely,

Terrence P. Morris

Terrence P. Morris

Cc: *via email*

Stuart Rothman, Trustee

Herrick Road Realty Trust

Andrew S. Lee, Assistant City Solicitor

Jonah Temple, Assistant City Solicitor

RECEIVED

By Interim ZBA Clerk at 11:52 am, Oct 20, 2021

City Clerk Date Time Stamp

ZBA Date Time Stamp

RECEIVED

By City Clerk at 4:53 pm, Oct 20, 2021

CITY OF NEWTON
ZONING BOARD OF APPEALS

Item 5

CHECKLIST COVER PAGE
FOR VARIANCE PETITION

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

PROPERTY LOCATION: 158 Parmenter Road, Newton DATE: October 19 2021

PETITIONER: Rachel Rosenfeldt and Marko Rosenfeldt

ADDRESS: 158 Parmenter Road, Newton, MA

PHONE: c/o Laurance Lee, Esq. 617-964-7000 EMAIL: llee@rfl-law.com

POINT OF CONTACT: Laurance Lee, Esq., Rosenberg, Freedman & Lee LLP

PLEASE CONFIRM THAT YOU HAVE INCLUDED THE FOLLOWING WITH YOUR VARIANCE PETITION. THIS CHECKLIST MUST BE INCLUDED WITH YOUR PETITION THE FIRST PAGE.

VARIANCE PETITIONS WILL NOT BE ACCEPTED FOR PROCESSING & SCHEDULING UNLESS ALL REQUIRED DOCUMENTS ARE PROVIDED.

<u>DOCUMENTS</u>	<u>ENCLOSED</u> (checked by Petitioner)	<u>CONFIRMED</u> (checked by Clerk)
Variance Petition Form (15 copies)	X (extra copies not req. per ZBA clerk)	_____
Application Fee	X	_____
Zoning Review Memorandum	X	_____
Evidence of Legal Interest	X	_____
Corporate Interest List	NA	_____
Supporting Statements	X	_____
Reference to Zoning Ordinance	X	_____
Required Site Plans	X	_____
Electronic Copy	X	_____

CITY OF NEWTON
ZONING BOARD OF APPEALS

INSTRUCTIONS FOR FILING VARIANCE PETITIONS

PLEASE READ THESE INSTRUCTIONS BEFORE SUBMISSION

1. The first step in seeking a variance is to schedule a Development Review Team ("DRT") meeting, which is required to take place to submitting a variance petition. During a DRT meeting, City staff from several departments meet with the prospective petitioner to evaluate the proposal and assist in determining the required zoning relief. No statements by the DRT are binding upon the Board. You should contact the Planning Department to schedule a DRT meeting.
2. Before seeking a variance, you are also required to request and receive a completed Zoning Review Memorandum, generated by the Chief Zoning Code Official ("CZCO"). Petitioner's should request a Zoning Review Memorandum well in advance of submission of a variance petition. The CZCO shall issue a final Zoning Review Memorandum detailing the zoning relief required for the proposed project within forty-five (45) days after receipt of all plans and information needed for such zoning review. If the final Zoning Review Memorandum is not issued within 45 days, a petitioner may file a variance petition without the Zoning Review Memorandum.
3. In order to file a variance petition, you must complete the Checklist Cover Page and Variance Petition form included with these instructions. These two forms must be fully and correctly completed and the Variance Petition must be signed by the petitioner(s). If the Variance Petition does not provide adequate space for your response, please attached additional sheets of paper. All documents must be typed or written legibly. You must include all supporting documentation with your Variance Petition. All materials (other than plans, as set forth below) must be on 8 1/2" x 11" paper. The variance petition package must be submitted in a format that clearly labels all required documents and any other supporting documents.
4. In instances where the petitioner or property owner is a company, corporation or any other entity, a list of the names and addresses of the principals, officers and/or managers must be included with the Variance Petition.
5. Evidence of proof of direct legal interest in or control of the property that is the subject of the petition must also be included with the Variance Petition. This evidence may be in the form of a property deed, purchase option, purchase and sales agreement, lease, written statement by a duly authorized agent or other party with present legal interest or other legally sufficient documentation that establishes a property right or interest by the applicant. If the petitioner is not the owner, they must explain the relationship between the petitioner and the owner.
6. The Variance Petition must include a detailed account or narrative describing the project, the relief being requested and all facts and circumstances that support a finding of the three conditions legal required for the granting of a variance (set forth on page 3 of the Variance Petition form).
7. The following plans must be included with the Variance Petition: Plan of Land, Area Plan, Plot Plan and Architectural Plan. All plans must be signed, stamped, dated, clearly labeled, drawn to a scale where all notes and dimensions are legible and include a scale bar. For projects that consist of a lot that is one acre or greater or a structure that is 20,000 square feet or greater, fifteen (15) sets of full size plans must be submitted. For all other projects, fifteen (15) sets of plans printed on 11 x 17 paper, plus one (1) full size set must be submitted. Please see the "Instructions for Required Plans" included with the Petition for Variance form for more specific information relating to the plans required.

CITY OF NEWTON
ZONING BOARD OF APPEALS

PETITION FOR VARIANCE

IMPORTANT: APPLICANTS MUST COMPLETE ALL ITEMS ON THIS FORM

PETITIONER INFORMATION

NAME: Rachel and Marko Rosenfeldt

ADDRESS: 158 Parmenter Road, Newton

PHONE: c/o Laurance Lee, Esq. EMAIL: llee@rfl-law.com
617-964-7000

If the petitioner and/or property owner is a company, corporation or other entity, a list of the names and addresses of the principals, officers and/or managers must be attached to this form.

SUBJECT PROPERTY INFORMATION

LOCATION OF PROPERTY: 158 Parmenter Road, Newton

ZONING DISTRICT: SR3 PROPERTY SBL NO.: 34047 0001

OWNER OF RECORD: Rachel Rosenfeldt and Marko Rosenfeldt

DEED RECORDED AT MIDDLESEX SOUTH REGISTRY OF DEEDS AT:
BOOK: 64643 PAGE 96 OR CERTIFICATE NO.:

RELATIONSHIP TO SUBJECT PROPERTY (i.e. owner, abutter, etc.):
Owner

CURRENT USE: Single-family house

PROPOSED USE: Single-family house

PREVIOUS VARIANCE GRANTED: YES ___ NO DECISION NO./DATE:

OTHER REGULATORY REVIEW: YES NO ___ IF YES, DESCRIBE STATUS:
A special permit was recently granted by the Newton City Council (#298-21),
appeal period is pending.

EXISTING CONDITIONS DESCRIPTION:
Single-family house with detached garage.

8. Failure to submit all required information is grounds for denial of the petition and/or delay of the public hearing. Petitioners should contact the Board Clerk at least 48 hours before filing to schedule a time to file their appeal with the Clerk in person. It is also recommended that petitioners contact the Clerk to schedule a preliminary review prior to your intended filing date to ensure your Variance Petition is complete. The Board Clerk may be reached at the Planning Department in City Hall, 1000 Commonwealth Avenue and by telephone at 617-769-1120.
9. In total, you will need an original and fifteen(15) copies of your Variance Petition, as well as an electronic copy. As set forth below, the original will be filed with the City Clerk and fifteen copies and the electronic copy will be filed with the Board Clerk.
10. When you are ready to file your petition, the first step is to bring your completed Checklist Cover Page and your original completed Variance Petition to the City Clerk's Office for filing. The City Clerk will date time-stamp the Checklist Cover Page and provide you with a stamped copy. Next, you will need to file fifteen (15) copies of your Variance Petition, plans and Checklist Cover Page (bearing the date time-stamp of the City Clerk) with the Clerk of the Board. Upon receipt of the filing, the Board Clerk will also date time-stamp the Checklist Cover Page. The date of filing is the date time-stamped on the Checklist Cover Page by the Board Clerk.
11. At the time of filing the variance petition with the Clerk of the Board, you must also submit the required filing fee of \$500.00. All filing fee checks must be made payable to the "City of Newton." Petitions that are not accompanied with the filing fee will not be accepted.
12. An electronic copy of the Variance Petition (in identical form to the paper filed version) must also be submitted the same day in PDF format, via email to the Board's Clerk or on a USB flash drive.
13. The petition will be heard by the Board in accordance with the applicable provisions of the Newton Zoning Ordinance, G.L. c. 40A and the Board's Rules and Procedures.

IMPORTANT: THESE INSTRUCTIONS ARE INFORMAL IN NATURE AND ARE NOT INTENDED TO BE COMPLETE. IT IS THE RESPONSIBILITY OF ALL PETITIONERS TO REVIEW AND FOLLOW ALL APPLICABLE LEGAL REQUIREMENTS SET FORTH IN THE BOARD'S RULES & PROCEDURES AND GENERAL LAWS CHAPTER 40A.

PROPOSAL DESCRIPTION

1. Briefly describe all proposed changes to the structure(s) and/or use(s):
Proposed demolition of existing detached garage; replace with attached single-car garage with office above; mudroom/hallway connection between main house and garage/office. Single-family use.

2. State all sections of the Newton Zoning Ordinance implicated in this variance petition:
Sec. 3.1.3 - Request to allow a 5.4 foot side setback
Sec. 3.1.3 - Request to allow a 4.9 foot rear setback

3. State the specific relief being sought from the Newton Zoning Ordinance, including all ordinance dimensional requirements and proposed dimensional conditions:
Sec. 3.1.3 - Request to allow a 5.4 foot side setback
Sec. 3.1.3 - Request to allow a 4.9 foot rear setback
Sec. 3.1.3, 3.1.9, 7.8.2.C.2 - Request to further increase nonconforming FAR (this was granted via the special permit)
Sec. 3.1.3 and 7.8.2.C.2 - Request to further increase nonconforming Lot Coverage (this was granted via the special permit)

4. Identify and describe all plans and supporting documents being submitted with this variance petition:
Existing and proposed conditions site plans prepared by Verne T. Porter, Jr.PLS
Area Plan prepared by Verne T. Porter, Jr., PLS
Architectural floor plans and elevations prepared by Elizabeth Marcoulier, Registered Architect.
3D rendering of proposed building with improvements
Special Permit granted by Newton City Council
Zoning Review Memorandum by Jane Santosuosso, Chief Zoning Code Official
Public Hearing Memorandum by Katie Whewell, Senior Planner, Newton Planning & Development Department.

SUPPORTING STATEMENT

EACH OF FOLLOWING REQUIREMENTS FOR A VARIANCE MUST BE ESTABLISHED AND SET FORTH IN COMPLETE DETAIL BY THE APPLICANT IN ACCORDANCE WITH G.L. C. 40A, § 10.

1. Explain the special circumstances related to soil conditions, the shape or the topography of the land or structure that are unusual and that do not generally affect other properties in the zoning district:

Please see Attachment A.

2. Explain how the literal enforcement of the Newton Zoning Ordinance will result in a substantial hardship to the owner and that the proposed variance is the minimum change that is necessary to allow the reasonable use of the land or structure.

Please see Attachment A.

3. Explain why granting the proposed variance will be in harmony with the purpose and intent of the Newton Zoning Ordinance and will not be detrimental to the neighborhood or the public welfare.

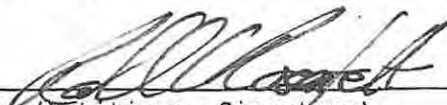
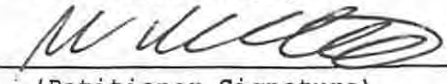
Please see Attachment A.

PROPERTY OWNER CONSENT, CERTIFICATION & SIGNATURE

(Signatures of Petitioner(s) are 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	 _____ (Petitioner Signature)	<u>10/15/2021</u> (Date)
X	 _____ (Petitioner Signature)	<u>10/15/2021</u> (Date)

If Applicable:

Name of Attorney/Agent for Applicant: Laurance Lee, Esq.
Rosenberg, Freedman & Lee LLP
Address of Attorney/Agent: 246 Walnut Street, Suite 201, Newton, MA 02460
Phone Number of Attorney/Agent: 617-964-7000
Email Address of Attorney/Agent: llee@rfl-law.com

**Attachment A to Variance Petition
Property: 158 Parmenter Road, Newton, MA**

- 1. Explain the special circumstances related to soil conditions, the shape or the topography of the land or structure that are unusual and that do not generally affect other properties in the zoning district:**

The subject property is located in a SR-3 zoning district and is the only sub-5,000 SF (at 4,990 SF) corner lot in the immediate area that limits the size and shape of its building envelope. It is the smallest of the four corner lots in the intersection. Being a corner lot, the property has two onerous front setback requirements of 25 feet or the average of two immediate abutting properties (along Parmenter Road and along Falmouth Road). The existing front setback along Parmenter Road is conforming at 18.6 feet where the average is 18.4 feet. However, the front setback along Falmouth Road is existing non-conforming at 15.9 feet where 25 feet is required (as there are no available averaging).

Because the subject property is substandard in size and subject to two front setbacks, there already exists several non-conformities – a) Lot Coverage; b) Floor Area Ratio; and c) Front Setback. In essence, any minor expansion of the building on the property requires some form of special relief from the City, which is unique and is also a hardship.

- 1. Explain how the literal enforcement of the Newton Zoning Ordinance will result in a substantial hardship to the owner and that the proposed variance is the minimum change that is necessary to allow the reasonable use of the land or structure.**

The homeowners will suffer hardship if they are unable to make this improvement to accommodate the changing needs of their family and to adjust to their need to work from home. There is no other place or area within the property to attach the garage to the house without requiring a variance. This is the least disruptive change to the structure without requiring the family to relocate and while keeping the project financially feasible. Housing costs are on the rise and the family is trying to make the most of their existing property without having to face the high costs of relocation/purchasing a new house.

This project is essential to the family because: a) address the need to have a private home office space separated from the main house so working from home remains a viable option during the pandemic and into the future; b) will help address the family's housing needs as they grow and evolve over time; c) provide a singular/attached/connected space protected from weather; and d) allow direct interior access to the garage, which helps the family to age-in-place as physical needs change over time.

Rachel and Marko work full-time from home and the separated private office space above the garage is a critical and needed addition to their house in order to maintain a functional work environment.

2. Explain why granting the proposed variance will be in harmony with the purpose and intent of the Newton Zoning Ordinance and will not be detrimental to the neighborhood or public welfare.

The subject property is currently improved with a single-family house and a detached single-car garage. The proposed project is simply to attach a new single-car garage via a small one-story mudroom/hallway and to add a small office above the garage. The Newton Zoning Ordinances have different setback requirements for attached and detached garages, where attached garages' setbacks are more restrictive. The mudroom/hallway attachment is critical to provide a weatherproof connection between the garage and the main living space. The impact of the project to the neighborhood, and particularly the direct abutters, is negligible. The mudroom/hallway is single-story, which is shielded by fencing, the main house, and the proposed garage/office.

The two most impacted direct neighbors at 154 Parmenter Road and 125 Falmouth Road expressed their support of the project.

One of the listed purposes of the City of Newton Zoning Ordinances is, “[e]ncouraging the most appropriate use of land, including the consideration of the comprehensive plan adopted by the Planning Board and the City Council.” This project is a good example of the best use of this small corner of land the Rosenfeldt family owns. This is a very well-designed project aimed to maximize the use of the land while keeping the structure minimal, simple, and in keeping with the existing house and surrounding properties. The Newton Planning Department noted in its memorandum that it does not believe the resulting structure will be in derogation of the size, scale, and design of other structures in the neighborhood. The Newton City Council agreed by granting the special permit for the project with a 24-0 vote.



Ruthanne Fuller
Mayor

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

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: September 16, 2021

To: John Lojek, Commissioner of Inspectional Services

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

CC: Rachel and Marko Rosenfeldt, Applicants
Laurance Lee, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: Request for a special permit to further extend nonconforming FAR and lot coverage and variances from the side and rear setback requirements

Applicant: Rachel and Marko Rosenfeldt	
Site: 158 Parmenter Road	SBL: 34047 0001
Zoning: SR3	Lot Area: 4,990 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 158 Parmenter Road consists of a 4,990 square foot lot improved with a single-family dwelling constructed in 1928 and a detached garage in the Single Residence 3 zoning district. The petitioner intends to demolish the existing detached garage and replace it with an attached garage with a home office above.

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

- Zoning Review Application, prepared by Laurance Lee, attorney, submitted 2/23/2021
- Existing Condition Plan, signed and stamped by Verne T. Porter Jr, surveyor, dated 6/16/2020
- Proposed Condition Plan, signed and stamped by Verne T. Porter Jr, surveyor, dated 6/16/2020
- FAR worksheet, signed and stamped by Elizabeth D. Marcoulier, architect, submitted 2/23/2021
- Floor Plan and Elevations, prepared by Elizabeth D. Marcoulier, architect, dated 2/12/2021

ADMINISTRATIVE DETERMINATIONS:

1. The petitioners propose to raze the existing detached garage and replace it with an attached single-car garage with a home office above. The existing detached garage meets the required five-foot setbacks from the side and rear lot lines, per section 3.4.3.A.2 for detached accessory buildings. The proposed garage is similarly situated but is attached and therefore required to meet the setbacks for the principal structure. The petitioner proposes a 5.4-foot side setback where 7.5 feet is required per section 3.1.3. A variance per section 7.6 to allow for two feet of relief from the side setback is required.
 2. The proposed attached garage has a 4.9-foot rear setback, where 15 is required per section 3.1.3. A variance is required per section 7.6 to allow for 10.1 feet of relief from the rear setback requirement.
 3. Per section 3.1.9 the allowable FAR for the parcel is .48. The proposed 667 square foot two-story attached garage addition results in a total of 3,226 square feet, further increasing the nonconforming FAR from .51 to .65. A special permit per sections 3.1.3, 3.1.9 and 7.8.2.C.2 is required to further increase the nonconforming FAR.
 4. Per section 3.1.3, the maximum allowable lot coverage is 30%. The proposed addition increases the nonconforming lot coverage from 32.4% to 38.01%, requiring a special permit per sections 3.1.3 and 7.8.2.C.2
1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3	Request to allow a 5.4-foot side setback	Variance per §7.6
§3.1.3	Request to allow a 4.9-foot rear setback	Variance per §7.6
§3.1.3 §3.1.9 §7.8.2.C.2	Request to further increase nonconforming FAR	S.P. per §7.3.3
§3.1.3 §7.8.2.C.2	Request to further increase nonconforming lot coverage	S.P. per §7.3.3

Southern Middlesex - 20/20 Perfect Vision i2 Document Detail Report

Current datetime: 1/3/2020 2:49:40 PM

Doc#	Document Type	Town	Book/Page	File Date	Consideration
190630	DEED		64643/96	12/11/2014	560000.00
Property-Street Address and/or Description					
158 PARMENTER RD					
Grantors					
MCCARTHY MARY LOUISE					
Grantees					
ROSENFELDT RACHEL LOVERME, ROSENFELDT MARKO					
References-Book/Pg Description Recorded Year					
Registered Land Certificate(s)-Cert# Book/Pg					

Property Address: 158 Parmenter Road, West Newton, MA

QUITCLAIM DEED

I, MARY LOUISE MCCARTHY, of 285 Commonwealth Road, Wayland, Massachusetts for consideration paid of Five Hundred Sixty Thousand and 00/100 (\$560,000.00) Dollars

grant to RACHEL LOVERME ROSENFELDT and MARKO ROSENFELDT, husband and wife as tenants by the entirety, hereinafter of 158 Parmenter Road, Newton, Massachusetts

WITH QUITCLAIM COVENANTS,

A certain parcel of land with the buildings thereon being at present Number 158 Parmenter Road, in the West Newton Section of Newton, being shown as Lot 194 on a plan recorded with Middlesex South District Deeds as Filed Plan 731, bounded:

- WESTERLY by Parmenter Road, thirty-nine and 75/100 (39.75) feet;
- NORTHERLY by Lot 195 on said plan, ninety-three and 71/100 (93.71) feet;
- EASTERLY by Lot 212 on said plan, fifty-five (55) feet;
- SOUTHERLY by Falmouth Road, seventy-four and 94/100 (74.94) feet;
- SOUTHWESTERLY by the curved intersection of Falmouth Road and Parmenter Road, twenty-three and 66/100 (23.66) feet.


Containing 4,990 square feet. Be all said measurements more or less or however otherwise bounded or described.

Subject to restrictions of record if any in force.

For title see deed dated April 22, 2014 recorded with Middlesex South Registry of Deeds in Book 63604, Page 472.

The Grantor releases and waives any and all rights of homestead in the property and further states that no other person, beneficiary or entity is entitled to an Estate of Homestead in the premises.

Witness my hand and seal this 28th day of November, 2014.



Mary Louise McCarthy

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

November 28, 2014

Then personally appeared the above-named Mary Louise McCarthy before me who is personally known to me, and acknowledged to me that she signed it voluntarily for its stated purpose.



Notary Public Jay J. Lander
My Commission Expires: March 21, 2019



NO.	DESCRIPTION	BY	DATE



EXISTING ELEVATION - FALMOUTH ROAD
WITH LANDSCAPING

SHEET TITLE:
Elevation with
Fence & Landscaping

PROJECT DESCRIPTION:
158 Parmenter Rd
WEST NEWTON

DRAWINGS PROVIDED BY:
Rachel L Rosenfeldt

DATE:
2/8/2021

SCALE:
1/5" = 1'

SHEET:
A-1



PROPOSED ELEVATION - FALMOUTH ROAD
WITH LANDSCAPING



NO.	DESCRIPTION	BY	DATE

SHEET TITLE:
Proposed Elevation
w/ Fence & Landscaping

PROJECT DESCRIPTION:
158 Parmenter Rd
WEST NEWTON

DRAWINGS PROVIDED BY:
Rachel L Rosenfeldt

DATE:

2/8/2021

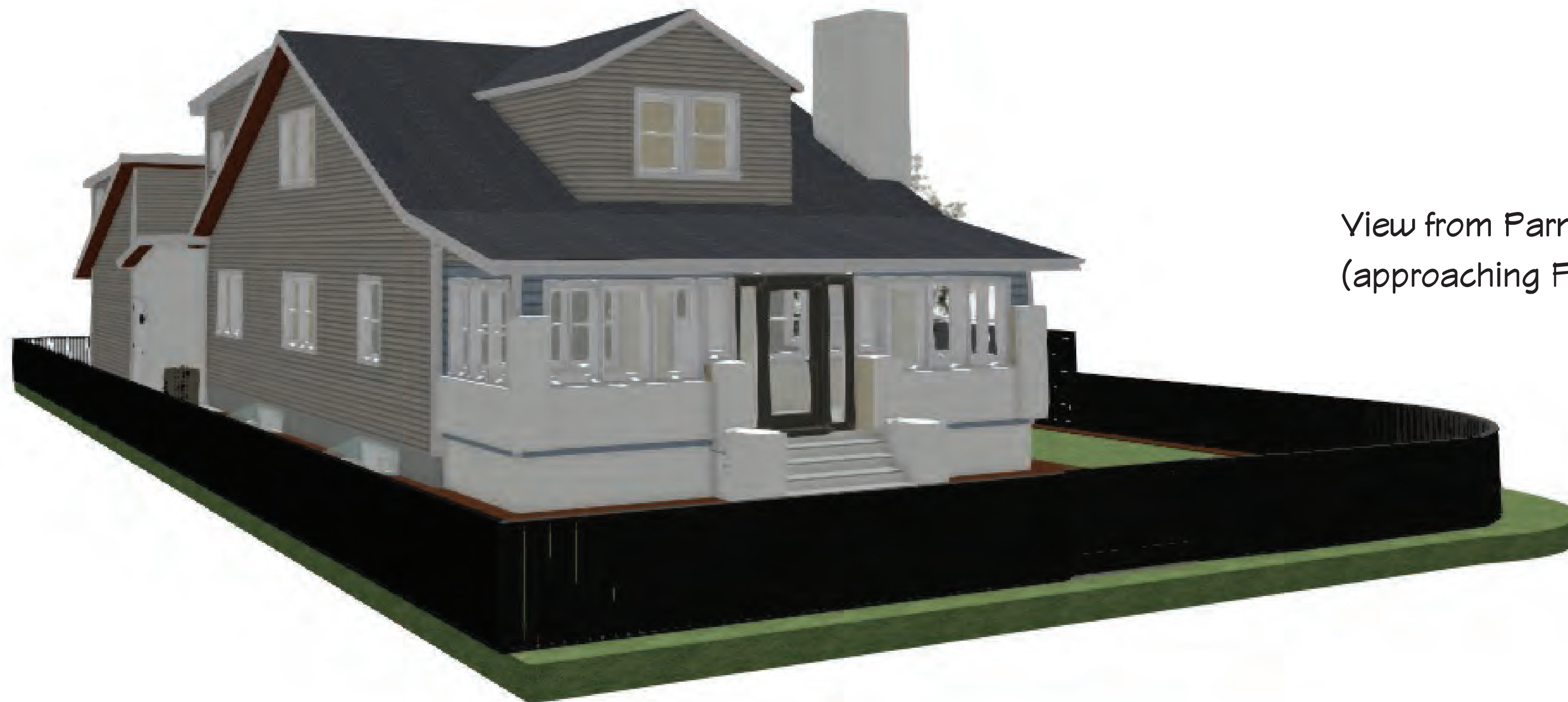
SCALE:

SHEET:

A-2

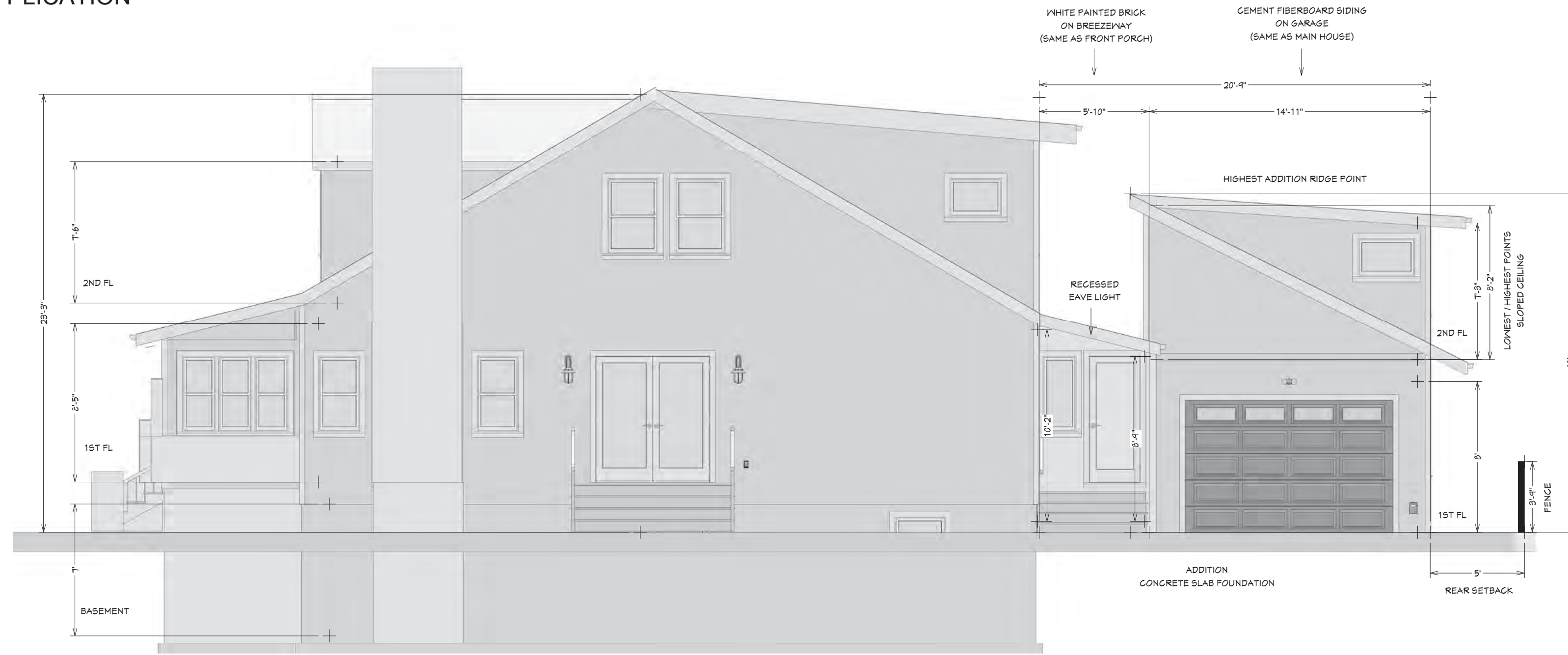


View from Falmouth
(approaching Parmenter)



View from Parmenter
(approaching Falmouth from Elsworth)

FOR VARIANCE APPLICATION



**RIGHT ELEVATION
FALMOUTH ROAD**



LEFT ELEVATION

NO.	DESCRIPTION	BY	DATE

SHEET TITLE:
ELEVATIONS

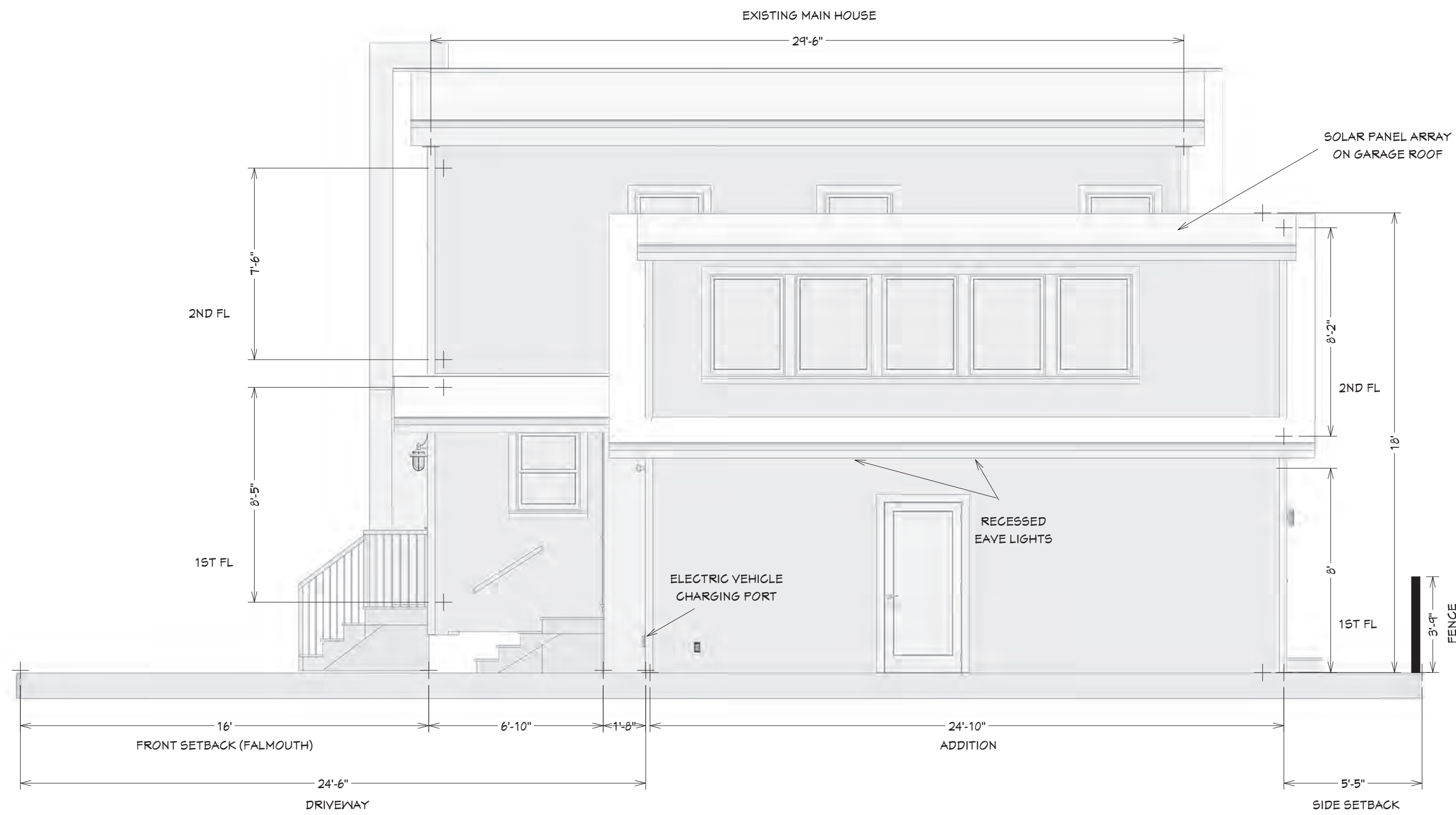
PROJECT DESCRIPTION:
**158 PARMENTER RD
WEST NEWTON**

DRAWINGS PROVIDED BY:
R. ROSENFELDT

DATE:
2/8/2021

SCALE:
1/5" = 1'

SHEET:
A-3



REAR ELEVATION

NO.	DESCRIPTION	BY	DATE

SHEET TITLE:
ELEVATIONS

PROJECT DESCRIPTION:
**158 PARMENTER RD
WEST NEWTON**

DRAWINGS PROVIDED BY:
R. ROSENFELDT

DATE:

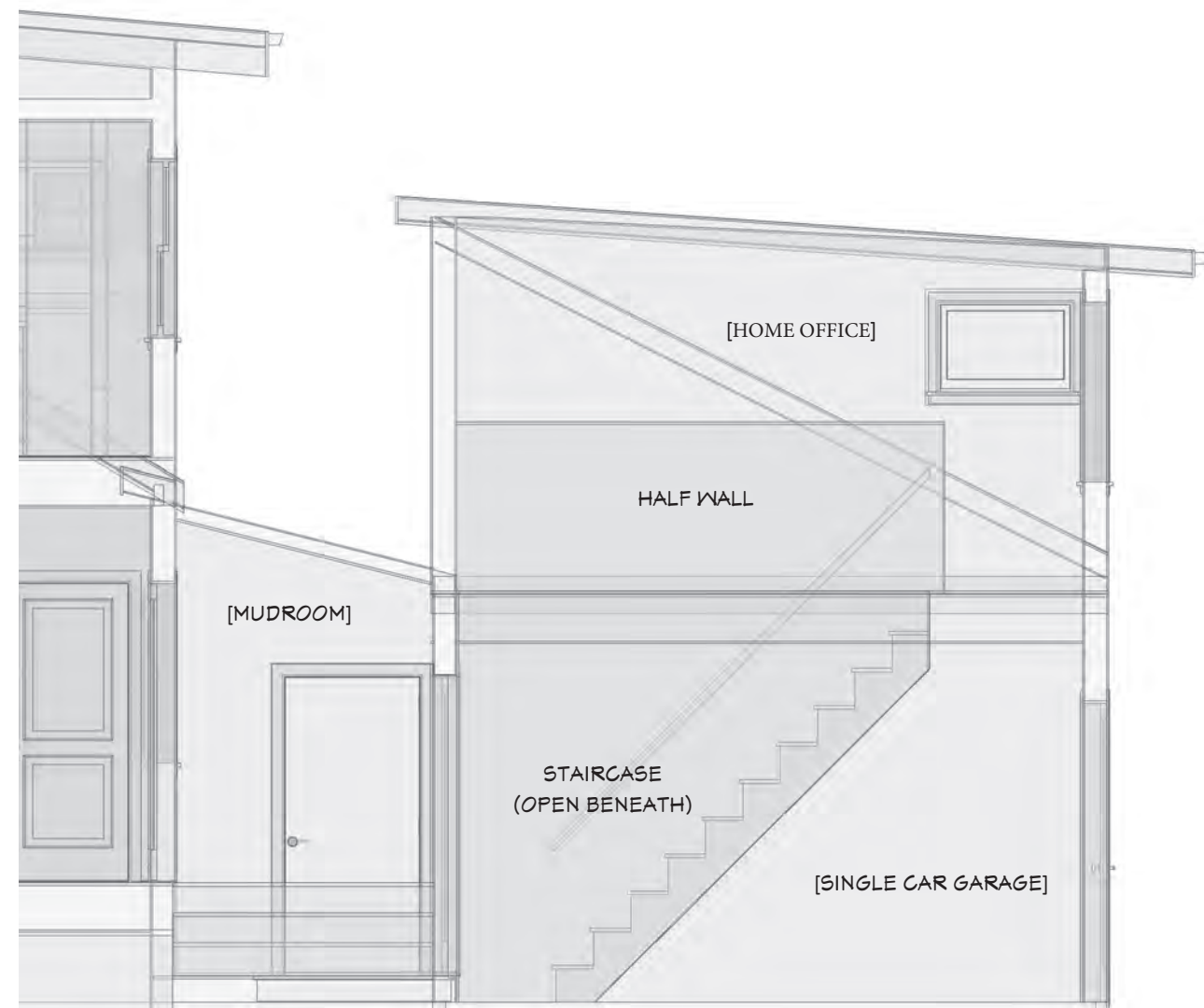
2/8/2020

SCALE:

1/4" = 1'

SHEET:

A-4



RIGHT SECTION
FALMOUTH ROAD



REAR SECTION

NO.	DESCRIPTION	BY	DATE

SHEET TITLE:
ELEVATIONS

PROJECT DESCRIPTION:
**158 PARMENTER RD
WEST NEWTON**

DRAWINGS PROVIDED BY:
R. ROSENFELDT

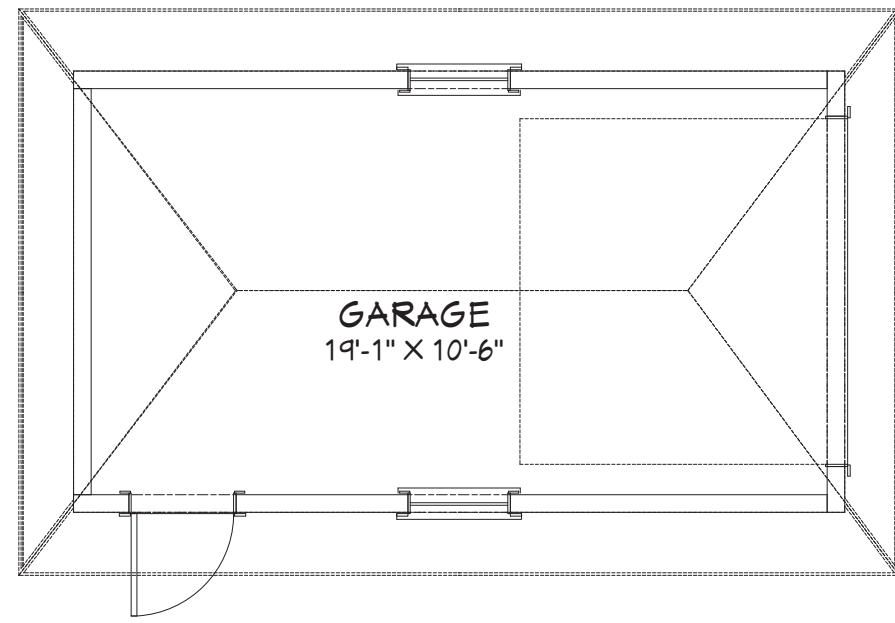
DATE:
2/8/2021

SCALE:
1/5" = 1'

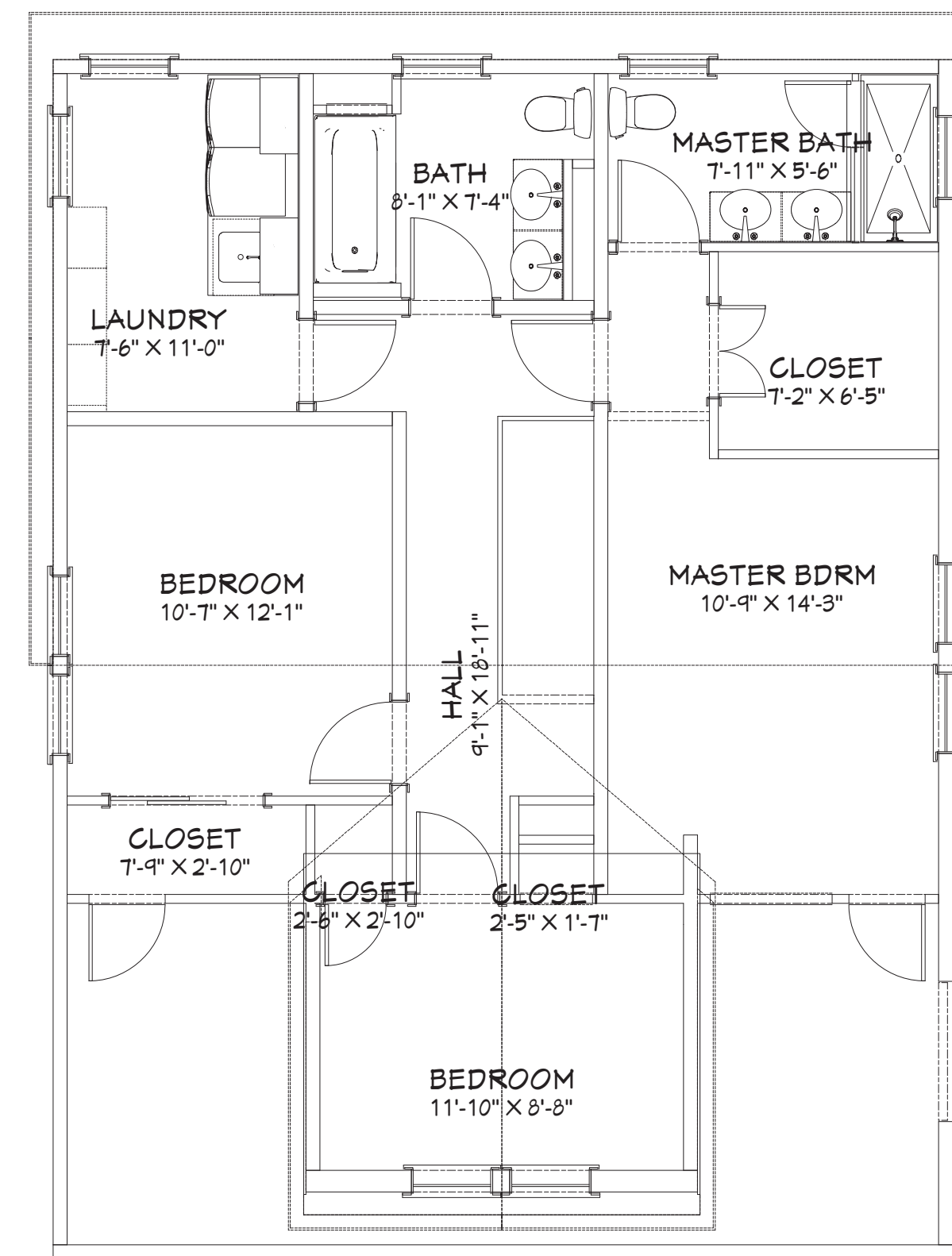
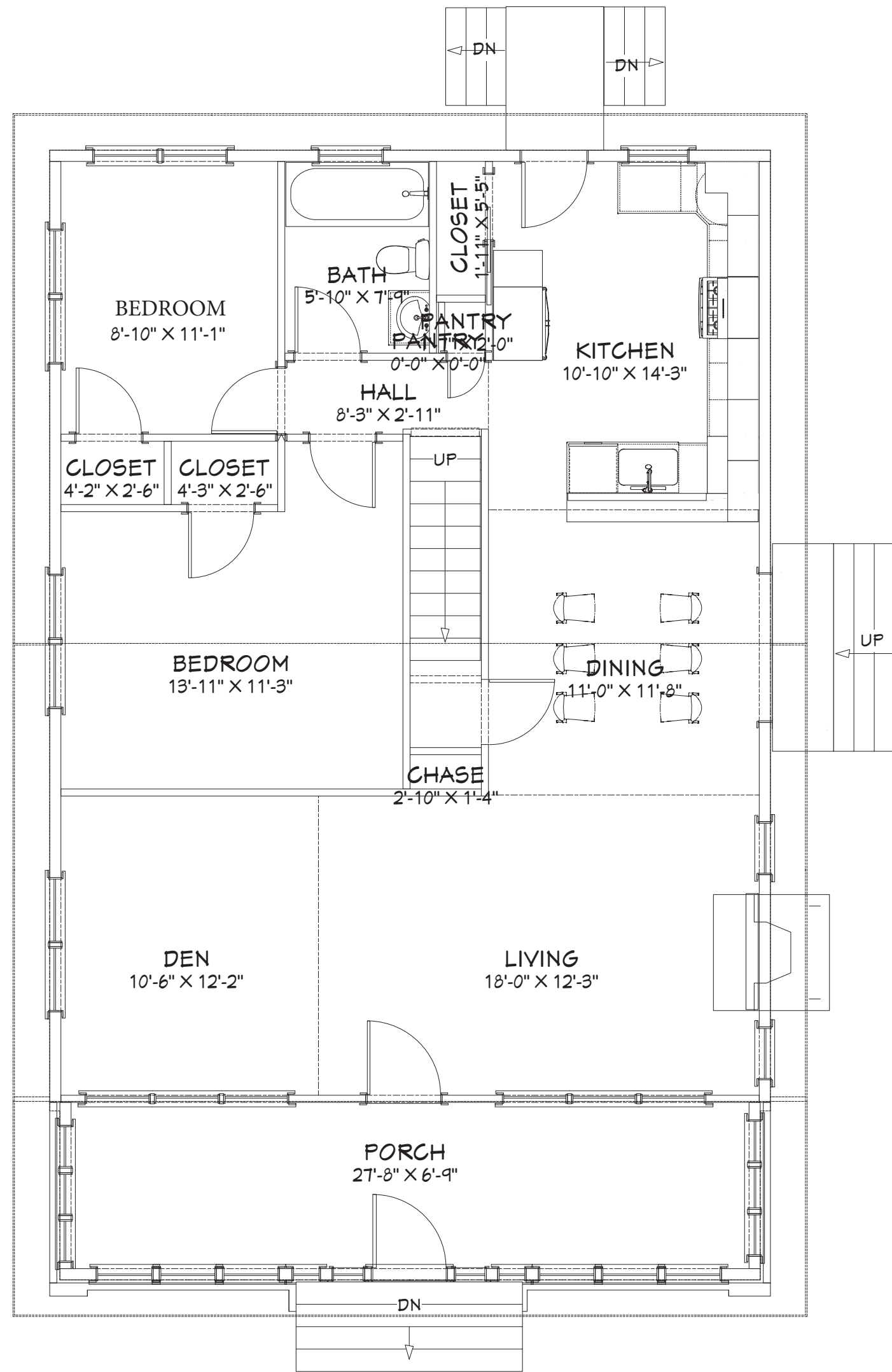
SHEET:
A-5



NO.	DESCRIPTION	BY	DATE



FIRST FLOOR - EXISTING



SECOND FLOOR - EXISTING

SHEET TITLE:
Existing

PROJECT DESCRIPTION:
**158 Parmenter Rd
WEST NEWTON**

DRAWINGS PROVIDED BY:
Rachel L Rosenfeldt

DATE:

2/8/2021

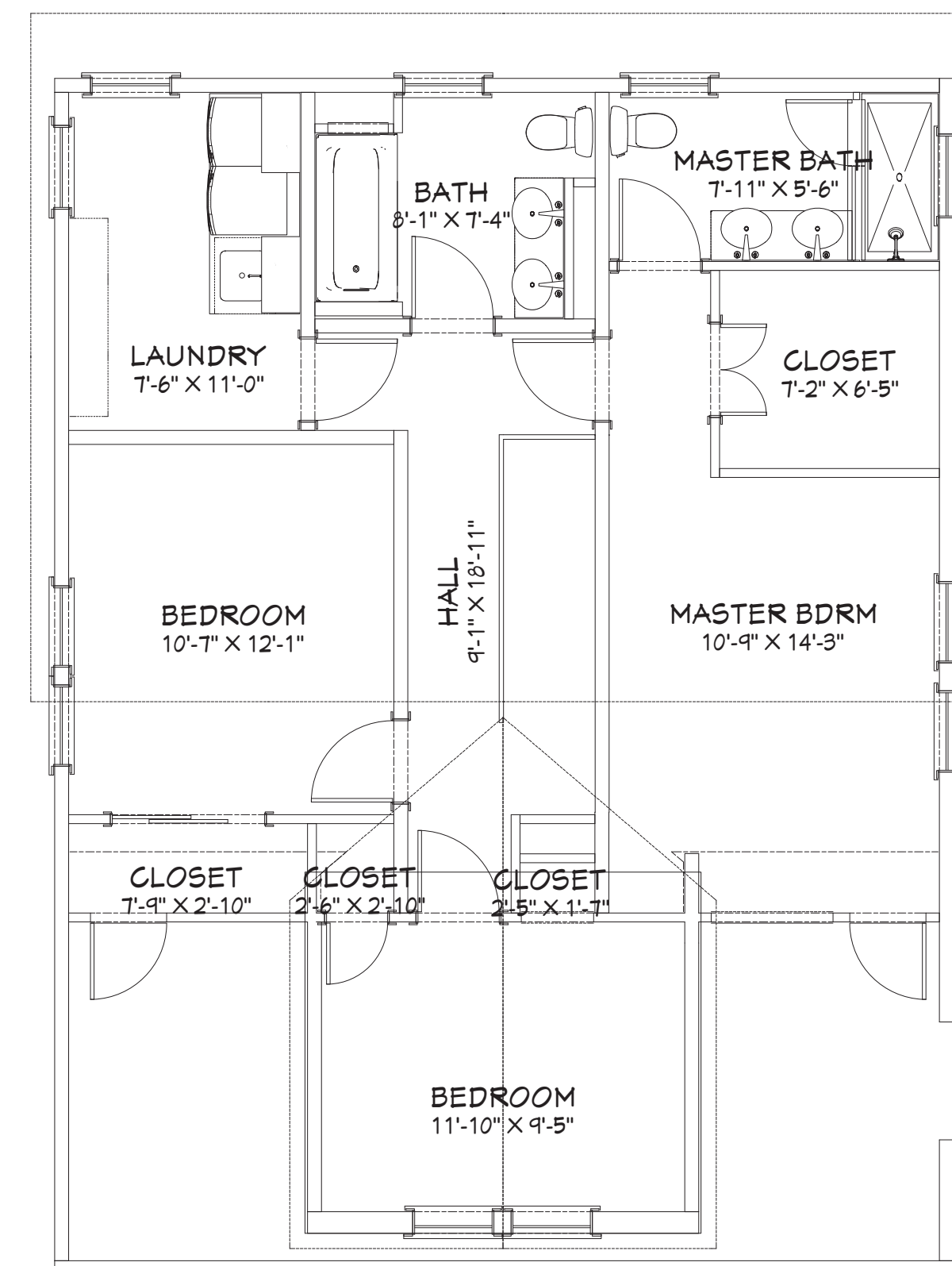
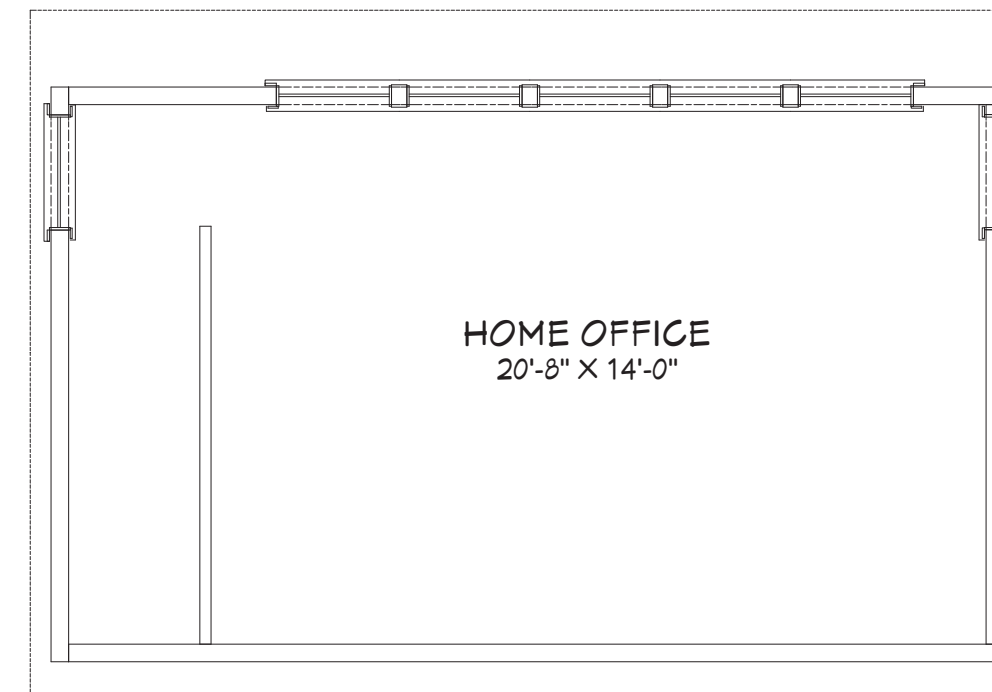
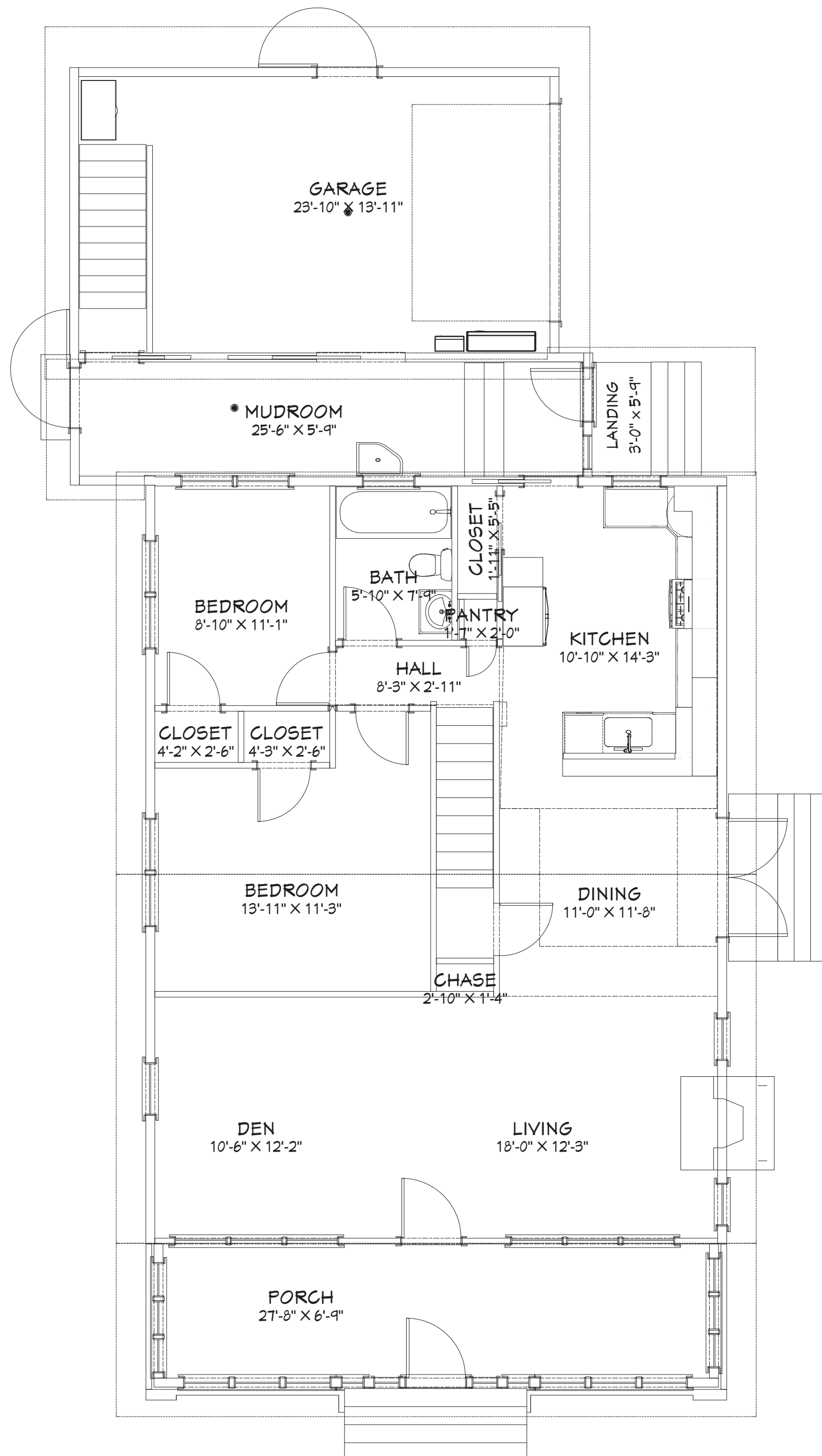
SCALE:

1/5" = 1'

SHEET:

A-6

FIRST FLOOR - PROPOSED



SECOND FLOOR - PROPOSED



NO.	DESCRIPTION	BY	DATE

SHEET TITLE:
Proposed Addition

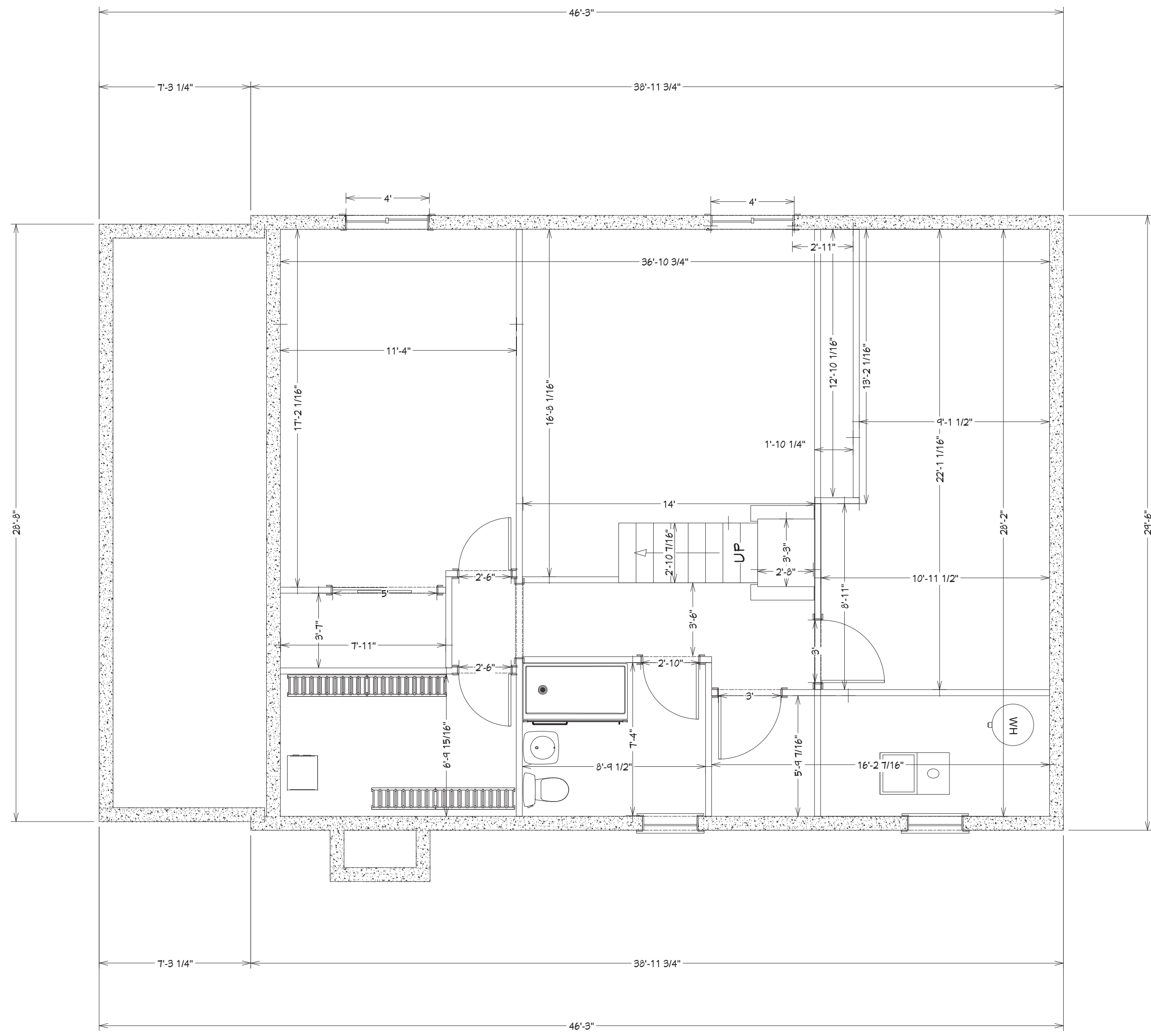
PROJECT DESCRIPTION:
**158 PARMENTER RD
WEST NEWTON**

DRAWINGS PROVIDED BY:
R. ROSENFELDT

DATE:
2/8/2021

SCALE:
1/5" = 1'

SHEET:
A-7



FOUNDATION PLAN



NO.	DESCRIPTION	BY	DATE

SHEET TITLE:
Foundation Dimensions

PROJECT DESCRIPTION:
**158 PARMENTER ROAD
WEST NEWTON**

DRAWINGS PROVIDED BY:
R. ROSENFELDT

DATE:

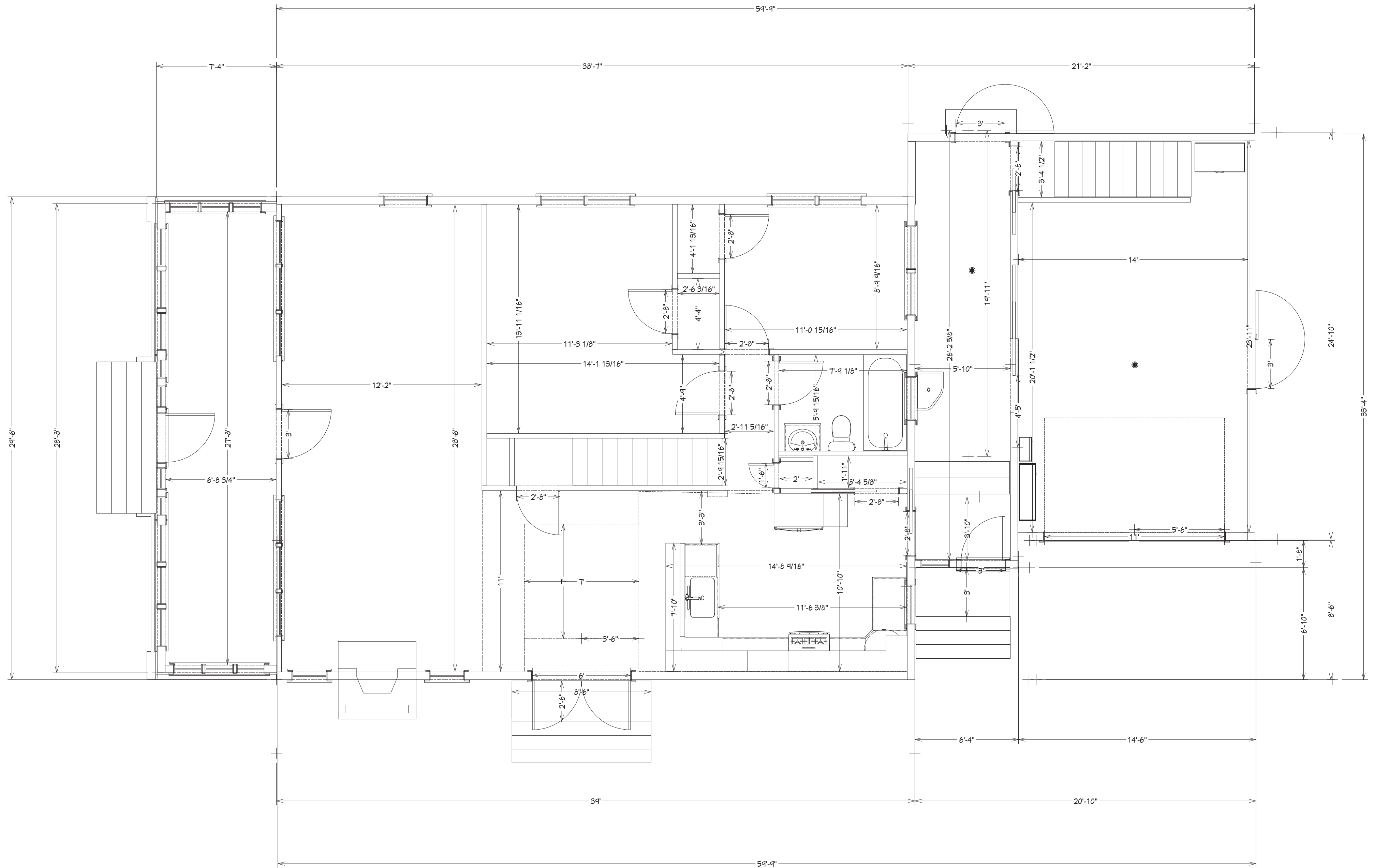
2/8/2021

SCALE:

1/4" = 1'

SHEET:

A-8



PROPOSED FIRST FLOOR PLAN



NO.	DESCRIPTION	BY	DATE

SHEET TITLE:
First Floor Dimensions

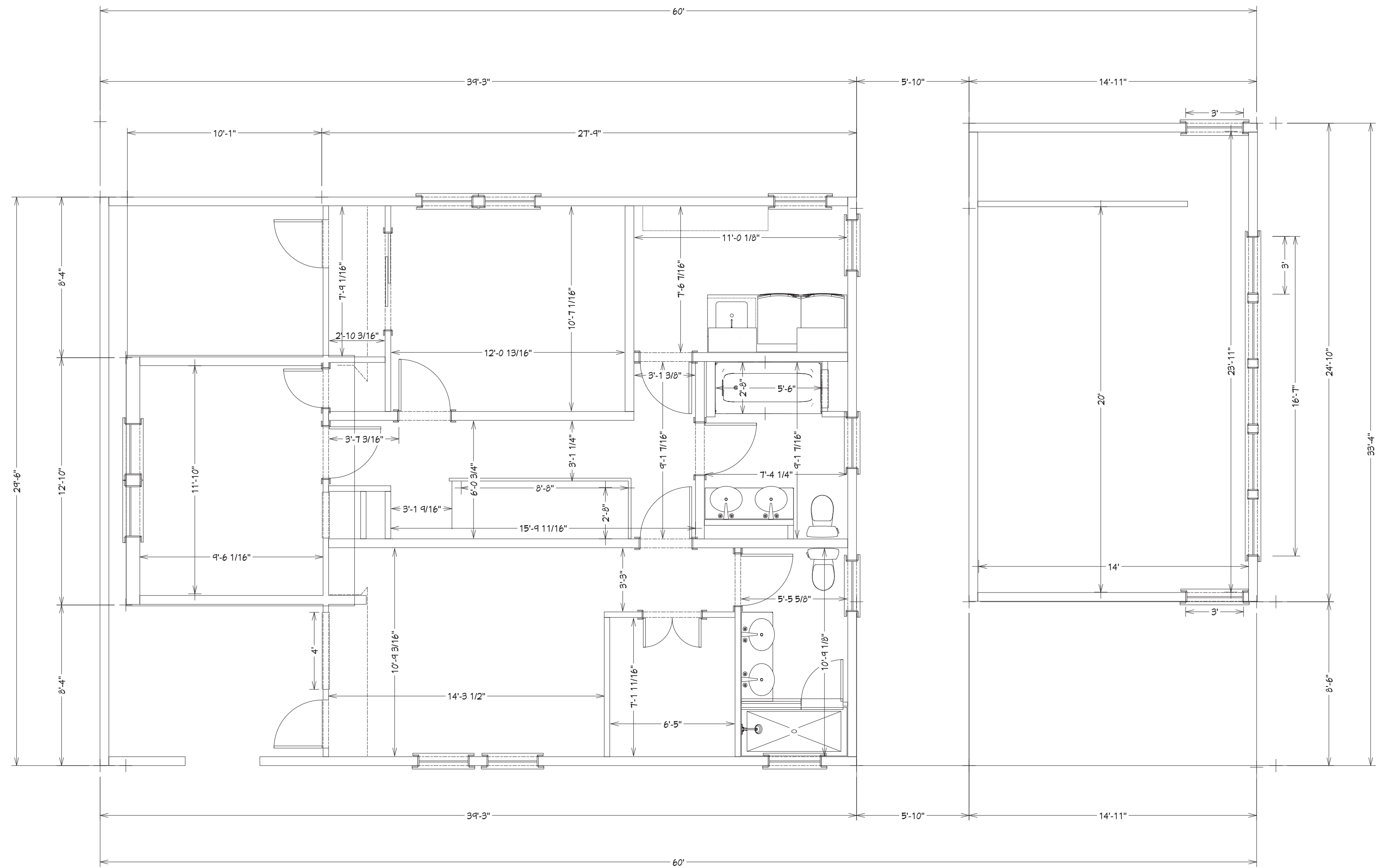
PROJECT DESCRIPTION:
**158 PARMENTER ROAD
 WEST NEWTON**

DRAWINGS PROVIDED BY:
R. ROSENFELDT

DATE:
2/8/2021

SCALE:
1/4" = 1'

SHEET:
A-9



PROPOSED SECOND FLOOR PLAN

NO.	DESCRIPTION	BY	DATE

SHEET TITLE:
Second Floor Dimensions

PROJECT DESCRIPTION:
**158 PARMENTER ROAD
 WEST NEWTON**

DRAWINGS PROVIDED BY:
R. ROSENFELDT

DATE:
2/8/2021

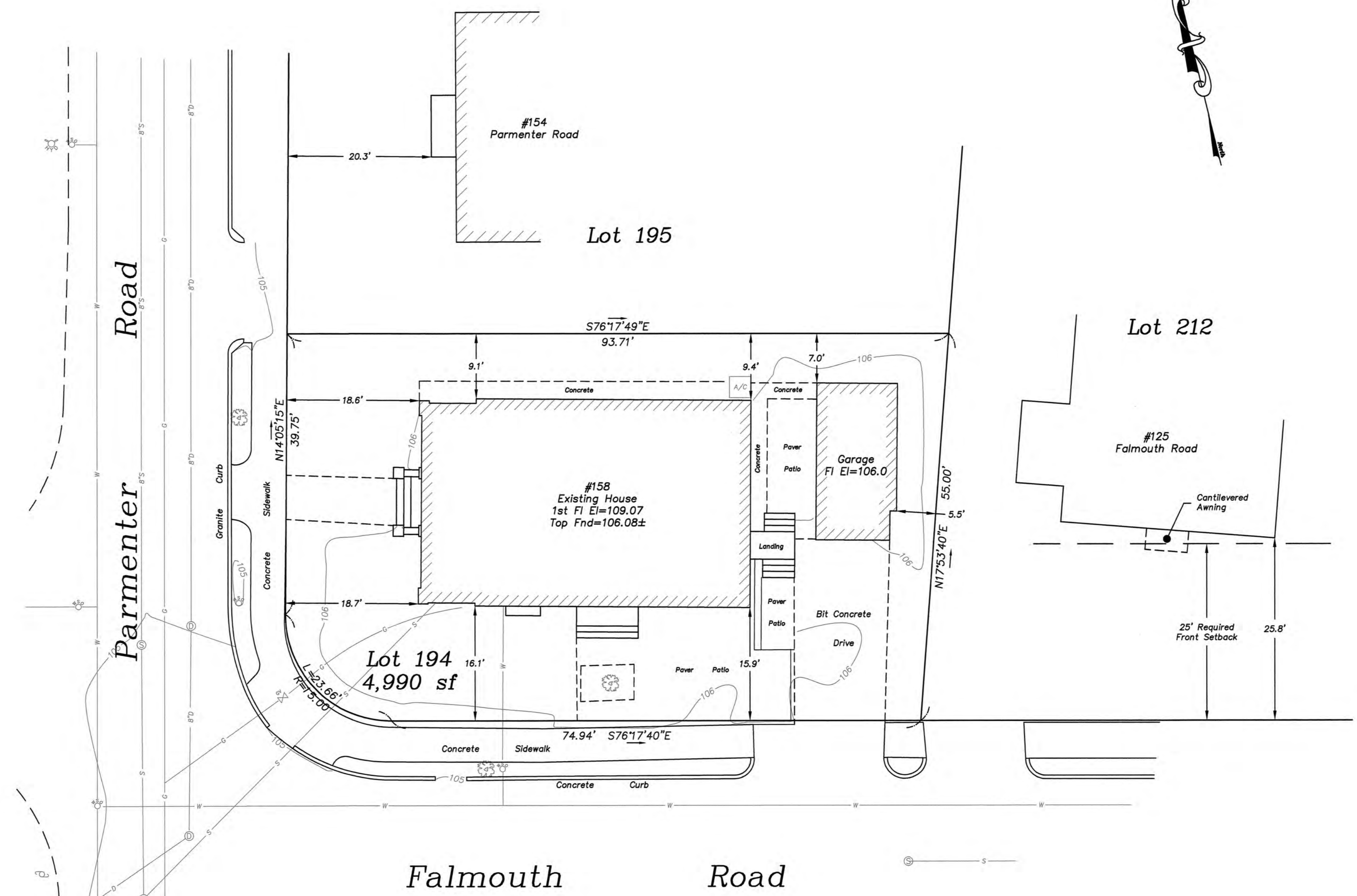
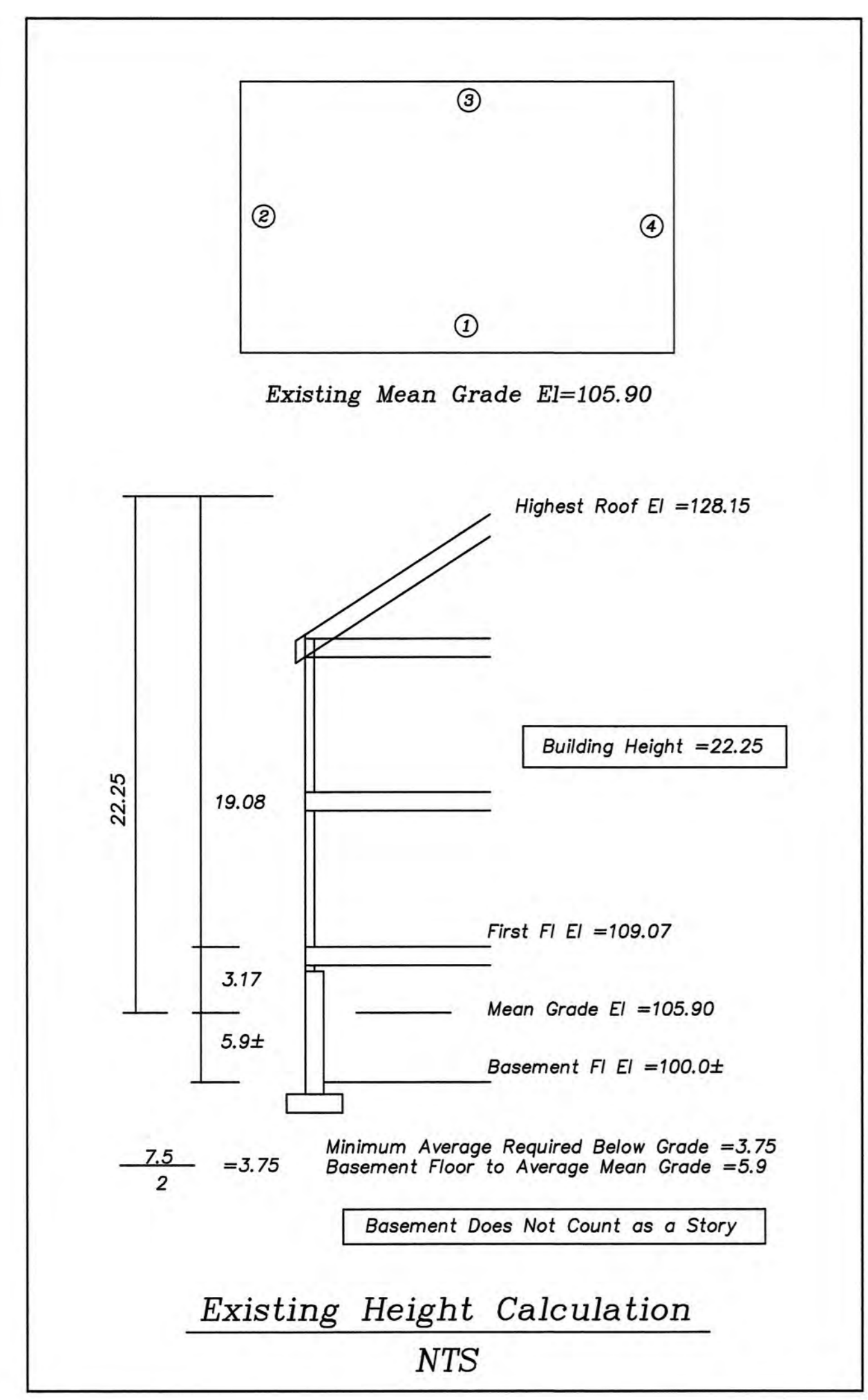
SCALE:
1/4" = 1'

SHEET:
A-10

Dig Safe
 Excavators
 Before you dig contact the Dig Safe Center.
 To prevent damage to telephone, gas or electric underground facilities of member utilities, call toll free
 Massachusetts state law requires notification at least three business days before you start digging operations. In an emergency, call immediately.



- Notes:**
- The utilities shown are from field locations and available plans of record and may or may not be correct. Contractor is to contact Dig Safe and all local utility companies as required and field verify all locations prior to any excavation.
 - Upon City of Newton Special Permit/Variance approval the Applicant will need to apply for a separate Building Permit with Inspectional Services and Engineer Division review.
 - In association with the proposed addition, and after City of Newton Engineering Division review, it may be determined that the Applicant install an on-site drainage system that meets City of Newton requirements. If required, the applicant must contact the Engineer of record to schedule soil testing and design.
 - In association with the proposed addition, and after City of Newton Engineering Division review, it may be determined that the Applicant update/replace the existing water and sewer services.
 - The utilities shown are from field locations and available plans of utility companies and may or may not be correct. Contractor is to contact Dig Safe, all local utility companies and field verify all locations as required prior to any excavation.
 - An erosion control barrier shall be in place prior to any construction and all materials must be contained on site.
 - No excavation is allowed within any City right of way between November 15th and April 15th. If an emergency exists or there are extenuating circumstances, Applicant may seek permission for such work from the City DPW Commissioner via City Engineer. If permission is granted, special construction standards will be applied. Applicant or Applicant's representative must contact the City Engineering Department prior to start of work for clarification.
 - As of January 1, 2009, all trench excavation contractors shall comply with M.G.L. Chapter 82A, Trench Excavation Safety Requirements, to protect the general public from unauthorized access to unattended trenches. Trench Excavation Permit required. This applies to all trenches on public and private property.
 - Any tree removed from site must comply with City of Newton Tree Ordinance.
 - An erosion control barrier shall be in place prior to any construction and all materials must be contained on site.



Zoning District: SR-3
 Old Lot Status

Note: Existing zoning district information and lot status is based on information obtained from the City of Newton on-line data base and property deeds and plans obtained from Middlesex South District Registry of Deeds. Final zoning district and lot status to be determined by the City of Newton Inspectional Services

Allowed/Required
 Lot Coverage=30.0%
 Open Space=50.0%

Existing
 Lot Coverage=32.40%
 Open Space=59.11%

Existing Impervious Surface=2940±sf

Average Front Setback Calculation
 Parmenter Road (18.4')
 Existing Front Setback #154 Parmenter Rd=20.3'
 Existing Front Setback #166 Parmenter Rd=16.5'
 $20.3' + 16.5' = 36.8' / 2 = 18.4'$
 Average Front Setback=18.4'

Note: Falmouth Road Front Setback Requirement is 25'
 There is No Average Front Setback For Falmouth Road

Existing utilities shown are from field locations and available plans of record and may or may not be correct. Field verify all locations prior to any excavation.

REVISIONS	
DATE	DESCRIPTION
2-12-21	PLAN UPDATE

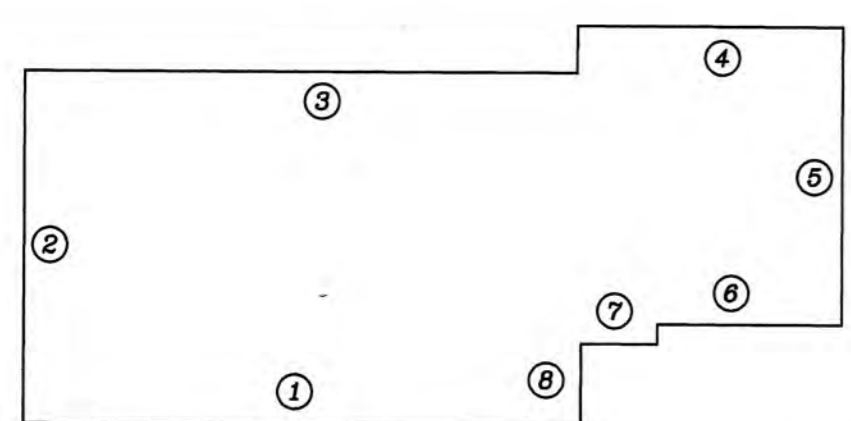
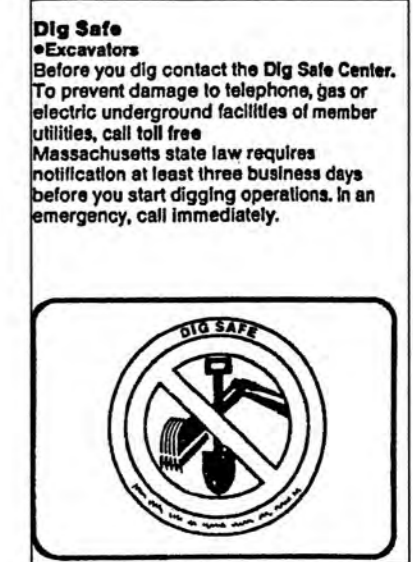


158 Parmenter Road – Newton, MA
 Section 34 – Block 47 – Lot 1
 Existing Condition Plan

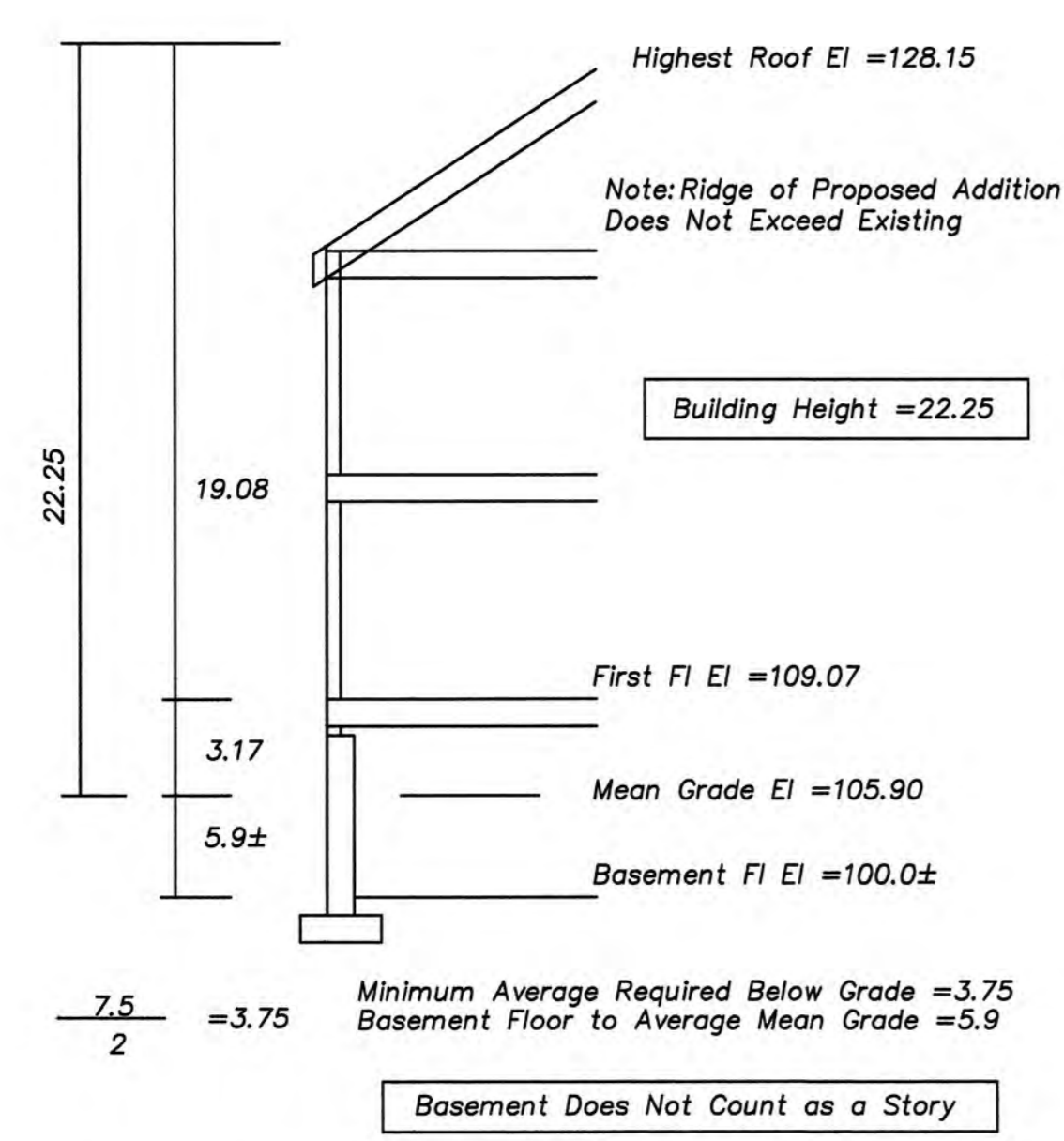
Scale: 1"=10' June 16, 2020
VERNE T. PORTER Jr., PLS
 Land Surveyors – Civil Engineers
 354 Elliot Street Newton, Massachusetts 02464

Project: 20004
 Checked By: V. Porter Jr.
 Drawn By: R. Jardine Jr.

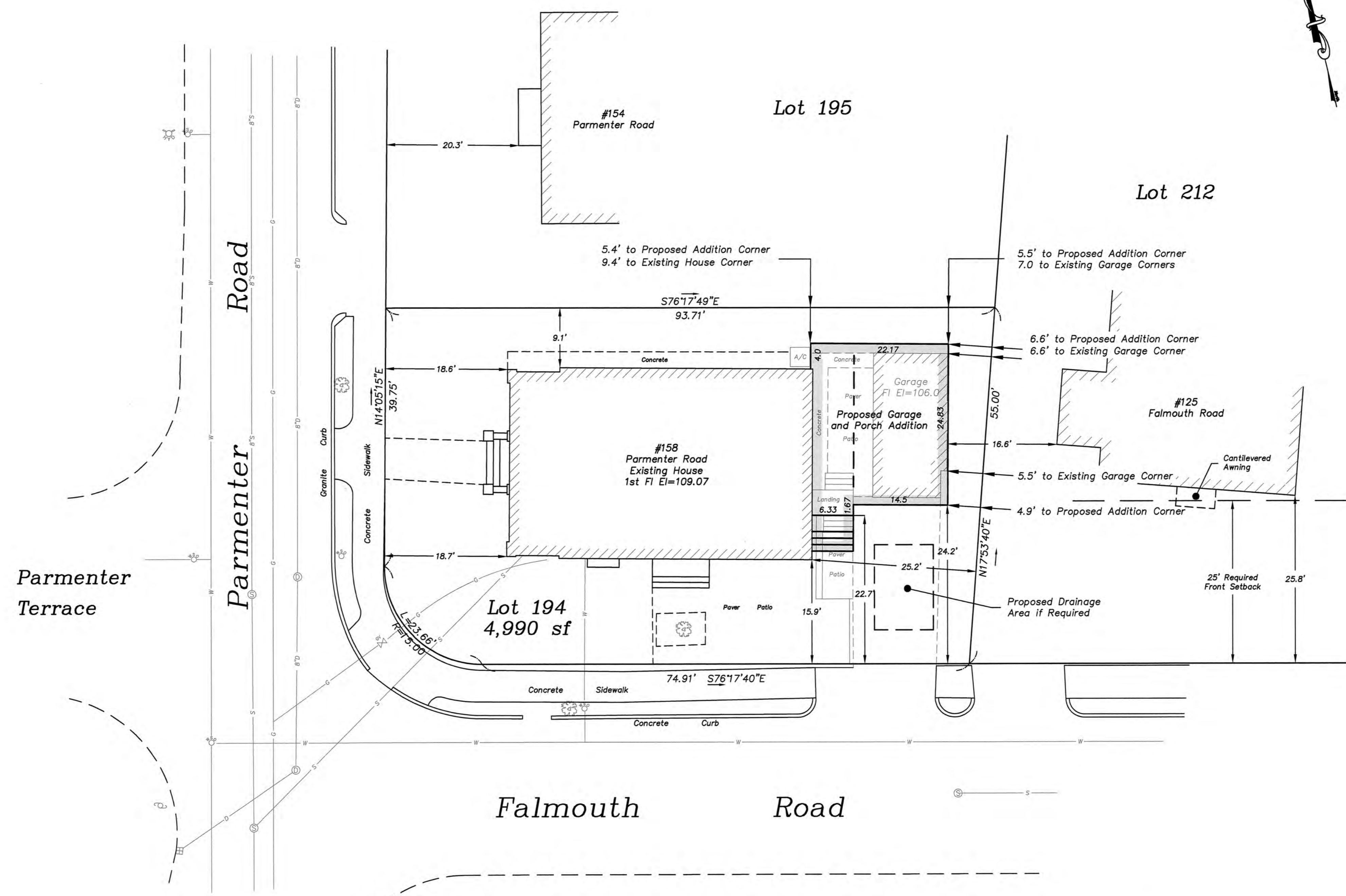
Sheet 1 of 3



Existing/Proposed Mean Grade El=105.90



Existing/Proposed Height Calculation
NTS



- Notes:
- The utilities shown are from field locations and available plans of record and may or may not be correct. Contractor is to contact Dig Safe and all local utility companies as required and field verify all locations prior to any excavation.
 - Upon City of Newton Special Permit/Variance approval the Applicant will need to apply for a separate Building Permit with Inspectional Services and Engineer Division review.
 - In association with the proposed addition, and after City of Newton Engineering Division review, it may be determined that the Applicant install an on-site drainage system that meets City of Newton requirements. If required, the applicant must contact the Engineer of record to schedule soil testing and design.
 - In association with the proposed addition, and after City of Newton Engineering Division review, it may be determined that the Applicant update/replace the existing water and sewer services.
 - The utilities shown are from field locations and available plans of utility companies and may or may not be correct. Contractor is to contact Dig Safe, all local utility companies and field verify all locations as required prior to any excavation.
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 - No excavation is allowed within any City right of way between November 15th and April 15th. If an emergency exists or there are extenuating circumstances, Applicant may seek permission for such work from the City DPW Commissioner via City Engineer. If permission is granted, special construction standards will be applied. Applicant or Applicant's representative must contact the City Engineering Department prior to start of work for clarification.
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 - Any tree removed from site must comply with City of Newton Tree Ordinance.
 - An erosion control barrier shall be in place prior to any construction and all materials must be contained on site.

Zoning District: SR-3
Old Lot Status

Note: Existing zoning district information and lot status is based on information obtained from the City of Newton on-line data base and property deeds and plans obtained from Middlesex South District Registry of Deeds. Final zoning district and lot status to be determined by the City of Newton Inspectional Services

Allowed/Required
Lot Coverage=30.0%
Open Space=50.0%

Existing
Lot Coverage=32.40%
Open Space=59.11%

Proposed
Lot Coverage=38.01%
Open Space=54.36%

Existing Area of Impervious Surface=2940±sf
Proposed Area of Impervious Surface=3005±sf
Increased Area of Impervious Surface=65±sf or 1.3% of Existing Lot Area

Average Front Setback Calculation
Parmenter Road (18.4')
Existing Front Setback #154 Parmenter Rd=20.3'
Existing Front Setback #166 Parmenter Rd=16.5'
20.3'+16.5'=36.8'/2=18.4'
Average Front Setback=18.4'

Note: Falmouth Road Front Setback Requirement is 25'
There is No Average Front Setback on Falmouth Road

Existing utilities shown are from field locations and available plans of record and may or may not be correct. Field verify all locations prior to any excavation.

Zoning	Required	Existing	Proposed
SR-3 Old			
Min. Lot Area	7,000 sf	4,990 sf	
Setbacks			
Front			
Parmenter Rd	*18.4' (Avg)	18.6'	18.6'
Falmouth Rd	25.0'	16.0'	16.0'
Side	7.5'	9.1'	5.4'
Rear	15.0'	25.2'	4.9'
	%	%	%
Lot Coverage	30.0%	32.40%	38.01%
Open Space	50.0%	59.11%	54.36%
Bld Height	35'	22.25'	22.25'

*Average Front Setback Calculation - Parmenter Road
20.3'+16.5'=36.8'/2=18.4'
Parmenter Road Average front Setback=18.4'
-There is No Average Front Setback on Falmouth Road

REVISIONS	
DATE	DESCRIPTION
2-12-21	PLAN UPDATE



158 Parmenter Road - Newton, MA
Section 34 - Block 47 - Lot 1
Proposed Addition Plan

Scale: 1"=10' June 15, 2020
VERNE T. PORTER Jr., PLS
Land Surveyors - Civil Engineers
354 Elliot Street Newton, Massachusetts 02464

Project: 20004
Checked By: V. Porter Jr.
Drawn By: R. Jardine Jr.

Sheet 2 of 3

Item 6

#298-21
158 Parmenter Road

CITY OF NEWTON

IN CITY COUNCIL

October 4, 2021

RECEIVED
Newton City Clerk
2021 OCT -6 PM 1:44

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, 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, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to increase the nonconforming floor area ratio ("FAR") and to increase the nonconforming lot coverage, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The proposed addition which increases the nonconforming lot coverage will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood because it will only increase the lot coverage by 300 square feet and lots in the neighborhood are uniformly sized. (§4.1.3, §4.4.1, §7.8.2.C.2)
2. The proposed addition which increases the nonconforming FAR from .51 to .65, where .48 is the maximum allowed as of right, is not substantially more detrimental than the existing nonconforming structure is to the neighborhood because the addition is designed to be subordinate to the existing house. (§4.1.3, §4.4.1, §7.8.2.C.2)
3. The proposed increase in the FAR from .51 to .65, where .48 is the maximum allowed by-right, is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood because the neighborhood consists of similar two-story structures on uniformly sized lots. (§3.1.3, §3.1.9, and §7.3.3)

PETITION NUMBER: #298-21

PETITIONER: Rachel and Marko Rosenfeldt

LOCATION: 158 Parmenter Road, on land known as Section 34, Block 47, Lot 01, containing approximately 4,990 square feet of land

OWNER: Rachel and Marko Rosenfeldt

ADDRESS OF OWNER: 158 Parmenter Road
Newton, MA 02465

TO BE USED FOR: Single-Family Dwelling with attached garage

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: Special Permit per §7.3.3 to increase the nonconforming floor area ratio and increase the nonconforming lot coverage (§3.1.3, §3.1.9, §7.8.2.C.2)

ZONING: Single Residence 3 district

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
 - a. Proposed Addition Plan, signed and stamped by Verne T. Porter, Professional Land Surveyor, dated June 15, 2020
 - b. Architectural Plans, signed and stamped by Elizabeth Marcoulier, consisting of three (3) sheets:
 - i. Proposed Elevation, Falmouth Road, A-1
 - ii. Proposed Right and Left Elevations, A-3
 - iii. Proposed Rear Elevation, A-4
2. Prior to the issuance of any building permit, the petitioner shall obtain a variance from the Zoning Board of Appeals to reduce the side and rear yard setbacks.
3. Prior to the issuance of any building permit, the petitioner shall provide a final site plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works, and Fire Department.
4. The Petitioner shall do the following to remediate pest and rodent activity:
 - a. Prior to issuance of any demolition or building permit, the petitioner shall hire a licensed pest control operator (the "Operator") to assess the property for pest and rodent activity and develop and implement a pest remediation action plan (the "Plan") to eliminate the activity and prevent off-site migration. The Plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.
 - b. A copy of the Plan shall be submitted to the Inspectional Services Department, and the Health and Human Services Department for review and approval prior to issuance

- of any demolition or building permit. A copy of such approvals shall be provided to the Department of Planning and Development.
- c. The Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action the Operator deems necessary to control pest infestation and migration. The Operator shall maintain a written record of all pest control measures performed within the subject property and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.
 - d. Prior to issuance of the certificate of occupancy, the Operator shall file a final report with the Department of Planning and Development, Inspectional Services Department and the Health and Human Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site assessment.
5. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
- a. Recorded a certified copy of this board order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
 - d. Provided a copy of the recorded variance from the Zoning Board of Appeals to the Commissioner of Inspectional Services and Director of Planning and Development in accordance with Condition #2 above.
 - e. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
6. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioner has:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by an architect or land surveyor certifying compliance with Condition #1 as well as the as-built floor area ratio of the structure.
 - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a professional land surveyor.
 - c. Filed with the Clerk of the Council, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.

Under Suspension of Rules
Readings Waived and Approved
24 Yeas 0 Nays

The undersigned hereby certifies that the foregoing copy of the decision of the Newton City Council granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the City Clerk on October 6, 2021. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:



(SGD) NADIA H KHAN
Acting City Clerk for the Council

I, Nadia Khan, as the Acting City Clerk of the City Council and keeper of its records and as the Acting City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that twenty days have elapsed since the filing of the foregoing decision of the Newton City Council in the Office of the City Clerk on October 6, 2021 and that NO APPEAL of said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:

(SGD) NADIA H KHAN
Acting City Clerk for the Council

City Clerk Date/Time Stamp

RECEIVED
By Interim ZBA Clerk at 10:15 am, Oct 26, 2021

CITY OF NEWTON
ZONING BOARD OF APPEALS

RECEIVED
By City Clerk at 3:33 pm, Oct 26, 2021

CHECKLIST COVER PAGE
FOR VARIANCE PETITION

Item 7

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

PROPERTY LOCATION: 229 Bellevue St _____ **DATE:** 10/25/2021 _____

PETITIONER: David & Suzanne Wakefield _____

ADDRESS: 229 Bellevue St Newton, MA 02458 _____

PHONE: 617-549-5056 _____ **EMAIL:** diwakefeld@gmail.com _____

POINT OF CONTACT: David I Wakefield | 617-549-5056 | diwakefeld@gmail.com _____

PLEASE CONFIRM THAT YOU HAVE INCLUDED THE FOLLOWING WITH YOUR VARIANCE PETITION. THIS CHECKLIST MUST BE INCLUDED WITH YOUR PETITION THE FIRST PAGE.

VARIANCE PETITIONS WILL NOT BE ACCEPTED FOR PROCESSING & SCHEDULING UNLESS ALL REQUIRED DOCUMENTS ARE PROVIDED.

DOCUMENTS

ENCLOSED
(checked by Petitioner)

CONFIRMED
(checked by Clerk)

Variance Petition Form (15 copies)	✓ _____	_____
Application Fee	✓ _____	_____
Zoning Review Memorandum	✓ _____	_____
Evidence of Legal Interest	✓ _____	_____
Corporate Interest List	N/A _____	_____
Supporting Statements	✓ _____	_____
Reference to Zoning Ordinance	✓ _____	_____
Required Site Plans	✓ _____	_____
Electronic Copy	✓ _____	_____

CITY OF NEWTON
ZONING BOARD OF APPEALS

PETITION FOR VARIANCE

IMPORTANT: APPLICANTS MUST COMPLETE ALL ITEMS ON THIS FORM

PETITIONER INFORMATION

NAME: David & Suzanne Wakefield

ADDRESS: 229 Bellevue St Newton, MA 02458

PHONE: 617-549-5056 EMAIL: diwakefield@gmail.com

If the petitioner and/or property owner is a company, corporation or other entity, a list of the names and addresses of the principals, officers and/or managers must be attached to this form.

SUBJECT PROPERTY INFORMATION

LOCATION OF PROPERTY: 229 Bellevue St

ZONING DISTRICT: MR1 PROPERTY SBL NO.: 12017 0029

OWNER OF RECORD: The Suzanne E Wakefield Trust | The David I Wakefield Trust

DEED RECORDED AT MIDDLESEX SOUTH REGISTRY OF DEEDS AT:
BOOK: 73921 PAGE 504 OR CERTIFICATE NO.: _____

RELATIONSHIP TO SUBJECT PROPERTY (i.e. owner, abutter, etc.):
Owners and inhabitants of property

CURRENT USE: Single family residence

PROPOSED USE: Single family residence

PREVIOUS VARIANCE GRANTED: **YES** ___ NO ___ DECISION NO./DATE: 799; 10/26/1945 | 2011 0011837; 6/20/2011

OTHER REGULATORY REVIEW: YES ___ **NO** ___ IF YES, DESCRIBE STATUS:

EXISTING CONDITIONS DESCRIPTION:
See attached on following page.

EXISTING CONDITIONS DESCRIPTION

The property at 229 Bellevue Street is approximately 9,700 square feet in size; and is a corner lot, bounded by Bellevue Street and Newtonville Avenue improved with a single-family dwelling constructed around 1880. A single-story two-car detached garage located along the front property line was built in 1945 under Variance #87291 (1945) to extend a nonconforming structure to accommodate existing topography where residence is 17 feet above street level. The existing detached two car garage built in 1945 does not accommodate modern vehicles and is enclosed with a flat roof. The property is located in MR-1 District and is subject to the pre-1953-dimensional controls set out in Table1, Sec 30-15 of Newton Zoning Ordinance. The property contains a Victorian single-family dwelling which faces Bellevue Street.

PROPOSAL DESCRIPTION

1. Briefly describe all proposed changes to the structure(s) and/or use(s):

See attached on following pages.

2. State all sections of the Newton Zoning Ordinance implicated in this variance petition:

See attached on following pages.

3. State the specific relief being sought from the Newton Zoning Ordinance, including all ordinance dimensional requirements and proposed dimensional conditions:

See attached on following pages.

4. Identify and describe all plans and supporting documents being submitted with this variance petition:

See attached on following pages.

PROPOSAL DESCRIPTION

1) Briefly describe all proposed changes to the structure(s) and/or use(s):

Request for a Special Permit/Site Plan Approval with an Amendment to Variance #87291 (1945) to extend a nonconforming structure. Special Permit/Site Plan Approval and amendment to Variance #87291 (1945) is to demolish the existing garage and rebuild a 1½ story garage. The proposed structure will accommodate four cars below grade (2 X 2 tandem) without materially increasing visible garage door size or decreasing the green space by excavating deeper into the slope. The petitioner intends to maintain the single-family status of the home.

The proposed 1½ story garage will include space above which will provide a landing for an interior stairway from the garage level to lawn level for safer and easier access to the front door of the home. The space above will also provide storage that can be accessed from the lawn level and allow the removal of the existing shed from the property.

The petitioner's plan does not make any changes to the existing setback for entry into the garage from Bellevue Street nor does the project reduce the existing green space of the lawn. The building above the front portion of the underground garage will cover the same area as the existing flat, black rubber coated roof.

The plan will rebuild the existing 7-foot garage walls with standard 9-foot garage walls. Due to the existing topography, this height change provides an enhancement to the view by bringing the ceiling of the garage to the same level as the existing lawn, now held back with a cement block retaining wall. Existing natural stone retaining wall along the property line on Bellevue Street will be retained. The current location of the existing garage doors will be retained. The existing exterior steps to the home will be moved easterly, towards Newtonville Avenue, approximately 15 feet taking advantage of the topography and reduce the number of steps required to access the front door of the home. The proposed structure will not materially increase the Floor Area Ratio (FAR) and remain sufficiently within the allowable FAR standards. The petitioner believes this is consistent with other properties in the City, especially those along Newtonville Avenue, and design of the new garage will be an improvement over the existing structure and benefit the neighborhood.

Additionally, the petitioner proposes to work with the city to replace the curb with granite curbing from the curb cut to the corner of Bellevue Street and Newtonville Avenue on the petitioner's side of the street. As part of this work, the petitioner also proposes to work with the city to reset the sidewalk slope entering Bellevue Street to provide a safer passage. Several years ago, the City of Newton installed an ADA Truncated Dome Pad at the northeast corner of Bellevue Street and Newtonville Avenue. As a result, the sidewalk slope leading to the corner was increased to over 18%, or more than 10 degrees, significantly steeper than the roadway itself. The petitioner proposes to work with the city to create a safer grade.

2) State all sections of the Newton Zoning Ordinance implicated in this variance petition:

§3.4.3.A.1 | §7.8.2.C.2 | §3.4.3.A.4 | §3.4.4.E | §3.4.4.H | §5.4.2

3) State the specific relief being sought from the Newton Zoning Ordinance, including all ordinance dimensional requirements and proposed dimensional conditions:

Request to amend Variances #87291 (1945) and to allow a garage accommodating more than three vehicles and with a ground floor area exceeding 700 square feet, to extend a nonconforming side setback and to allow a system of retaining walls exceeding four feet within the front setback.

4) Identify and describe all plans and supporting documents being submitted with this variance petition:

- a) Special Permit Application
- b) Zoning Review Memorandum
- c) Architectural Plan
- d) FAR Worksheet
- e) Preliminary Survey Plan
- f) Variance #87291 (1945)
- g) Variance #9-11 (2011)
- h) City of Newton Planning Memorandum re 158 Newtonville Avenue

SUPPORTING STATEMENT

EACH OF FOLLOWING REQUIREMENTS FOR A VARIANCE MUST BE ESTABLISHED AND SET FORTH IN COMPLETE DETAIL BY THE APPLICANT IN ACCORDANCE WITH G.L. C. 40A, § 10.

1. Explain the special circumstances related to soil conditions, the shape or the topography of the land or structure that are unusual and that do not generally affect other properties in the zoning district:

Please see attached on following pages

2. Explain how the literal enforcement of the Newton Zoning Ordinance will result in a substantial hardship to the owner and that the proposed variance is the minimum change that is necessary to allow the reasonable use of the land or structure.

Please see attached on following pages.

3. Explain why granting the proposed variance will be in harmony with the purpose and intent of the Newton Zoning Ordinance and will not be detrimental to the neighborhood or the public welfare.

Please see attached on following pages.

SUPPORTING STATEMENT

- 1) Explain the special circumstances related to soil conditions, the shape or topography of the land or structure that are unusual and that do not generally affect other properties in the zoning district:

The property site is a corner lot in a residential neighborhood surrounded by single family and multifamily dwellings. Due to the existing topography the location, size, width, depth, shape and property grade for the homes in the area many have garages that do not meet today's parking garage requirements. The petitioner believes the request is in keeping with the intent of Newton Zoning Ordinance. The project would not introduce any new safety or environmental concerns and will be more visually appealing than the existing structure.

The City has recently approved several Special Permits and Variance Amendments for similar garage projects in the area, such as 150 Newtonville Avenue, and 158 Newtonville Avenue.



- 2) Explain how the literal enforcement of the Newton Zoning Ordinance will result in substantial hardship to the owner and that the proposed variance is the minimum change that is necessary to allow the reasonable use of the land or structure.

Literal compliance with the parking requirements of the Newton Zoning Ordinance (NZO) is impractical due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest or in the interest of safety or protection of environmental features.

The topography is descending along Bellevue Street and has a steep decline from the intersection of Bellevue Street and Newtonville Avenue to its termination. Due to the declining slope of Bellevue Street the elevation of the house is 17 feet higher than the roadway and existing garage entrance. There is limited on-street and off-street parking. The subject property does not have a driveway. Due to the topography of the north end of Bellevue and the surrounding streets, many lots have located parking in the front setback and utilized retaining walls.



- 3) Explain why granting the proposed variance will be in harmony with the purpose and intent of the Newton Zoning Ordinance and will not be detrimental to the neighborhood or public welfare.

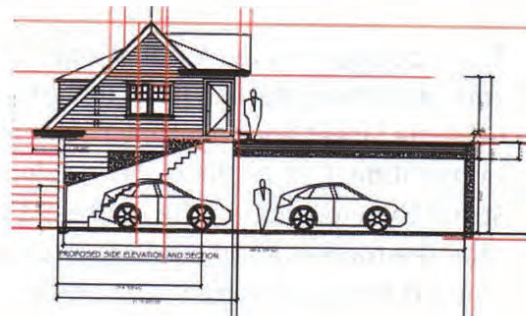
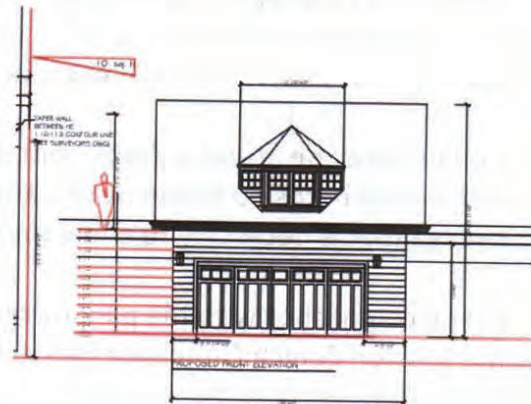
The design of the new garage will be an improvement over the existing structure and a benefit to the neighborhood. This project is not out of character with the neighborhood and the unique topography of the lot supports the requested relief.

The proposed underground tandem parking will ensure no additional open space is sacrificed and is less detrimental to the neighborhood than other alternatives. The creation of tandem underground parking stalls is appropriate considering that the petitioner does not have a driveway, and this portion of Bellevue Street is relatively narrow, often overcrowded with street parking, and does not easily accommodate guest parking. Leveraging the existing space ensures the specific site is an appropriate location for the proposed garage. The proposed project as developed and operated will not adversely affect the neighborhood. There will be no nuisance or serious hazard to vehicles or pedestrians.

EXISTING



PROPOSED

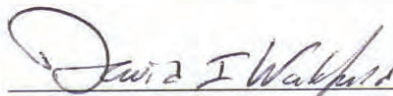


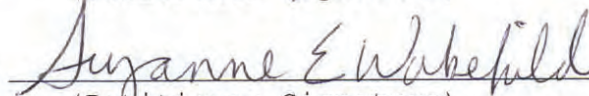
PROPERTY OWNER CONSENT, CERTIFICATION & SIGNATURE

(Signatures of Petitioner(s) are 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  10/25/2021
(Petitioner Signature) (Date)

X  10/25/2021
(Petitioner Signature) (Date)

If Applicable:

Name of Attorney/Agent for Applicant: _____

Address of Attorney/Agent: _____

Phone Number of Attorney/Agent: _____

Email Address of Attorney/Agent: _____



Ruthanne Fuller
Mayor

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

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: June 23, 2021

To: John Lojek, Commissioner of Inspectional Services

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

Cc: David and Suzanne Wakefield, Applicants
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: Request to amend Variances #87291 (1945) and #9-11 (2011) and to allow a garage accommodating more than three vehicles and with a ground floor area exceeding 700 square feet, to extend a nonconforming side setback and to allow a system of retaining walls exceeding four feet within the front setback

Applicant: David and Suzanne Wakefield	
Site: 229 Bellevue Street	SBL: 12017 0029
Zoning: MR1	Lot Area: 9,700 square feet
Current use: Single-family dwelling	Proposed use: No change

BACKGROUND:

The property at 229 Bellevue Street consists of a 9,700 square foot lot improved with a single-family residence constructed in 1890 and a detached garage. A variance was granted in 1945 allowing for a front setback of two feet for the garage. A second variance from the rear setback for the principal dwelling was granted in 2011. The petitioners intend to raze the existing detached garage and construct a new garage with accommodation for four vehicles, requiring amendments to the existing variances and a special permit.

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

- Zoning Review Application, prepared by David Wakefield, applicant, dated 3/24/2021
- Proposed Site Plan, prepared by Everett M. Brooks, surveyor, dated 1/28/2021
- Architectural Plans and Elevations, submitted 3/24/2021

ADMINISTRATIVE DETERMINATIONS:

1. The property was granted a variance in 1945 from the front setback requirement to allow a garage within 2 feet of the front lot line. The petitioners seek to amend the Variance #87291, and to the extent necessary Variance #9-11, to allow for the garage to be razed and reconstructed with a 3.6-foot front setback where 25 feet is required per section 3.4.3.A.1.
2. The existing one-story garage has a side setback of 4.3 feet where 5 feet is required per section 3.4.3.A.1. The proposed garage maintains the existing nonconforming side setback and extends it vertically to accommodate a half story. To vertically extend the nonconforming side setback requires a special permit per sections 3.4.3.A.1 and 7.8.2.C.2.
3. The petitioners intend to raze the existing detached two-car garage and construct an enlarged garage built into the slope. The ground level of the proposed garage is 1,250 square feet, exceeding the 700 square foot by right maximum prescribed in sections 3.4.3.A.4 and 3.4.4.E. Per section 3.4.4.H, a special permit is required to allow a detached garage structure with a ground floor area of 1,250 square feet.
4. Section 3.4.4.E requires that a garage may provide for no more than three vehicles unless by special permit. The petitioners propose a garage that accommodates four vehicles, requiring a special permit per section 3.4.4.H.
5. The petitioner proposes to relocate stairs and retaining walls within the front setback of 25 feet per section 3.2.3. The system of walls results in an overall height of 5.4 feet. Per section 5.4.2, retaining walls exceeding four feet in height within a setback require a special permit.

MR1 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	3,906 square feet	No change
Frontage	70 feet	51 feet	No change
Setbacks – Principal			
• Front	25 feet		No change
• Side	7.5 feet		No change
• Side	7.5 feet		No change
• Rear	15 feet		No change
Setbacks – Accessory			
• Front	2 feet*	2 feet	3.6 feet
• Side	5 feet	4.3 feet	No change
• Side	5 feet	>50 feet	>50 feet
• Rear	5 feet	>50 feet	>50 feet
Height – Accessory	22 feet	NA	20.5 feet
Stories – Accessory	1.5	1	1.5
Max Lot Coverage	30%	23.1%	27.2%
Min. Open Space	50%	76%	66%

*Per Variance #87291

1. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
	Request to amend variances #87291 and #9-11	
§3.4.3.A.1 §7.8.2.C.2	Request to vertically extend a nonconforming side setback	S.P. per §7.3.3
§3.4.3.A.4 §3.4.4.E §3.4.4.H	Request to allow an accessory building with a ground floor area greater than 700 square feet	S.P. per §7.3.3
§3.4.4.E §3.4.4.H	Request to allow a garage with provision for more than three vehicles	S.P. per §7.3.3
§5.4.2	Request to allow a system of retaining walls exceeding four feet in height	S.P. per §7.3.3

PLEASE RETURN TO:
Patricia C. D'Agostino, Esq.
Margolis & Bloom, LLP
100 William Street, Ste. 220
Wellesley, MA 02481

QUITCLAIM DEED

We, Suzanne E. Wakefield and David I. Wakefield, husband and wife, as tenants by the entirety, both of 229 Bellevue Street, Newton, Middlesex County, Massachusetts, for consideration paid of One Dollar (\$1.00), grant a one-half undivided interest to Suzanne E. Wakefield and David I. Wakefield, not individually, but as trustees of The Suzanne E. Wakefield Trust, under a declaration of trust dated December 18, 2019, with a trust address of 229 Bellevue Street, Newton, Middlesex County, Massachusetts, and a one-half undivided interest to Suzanne E. Wakefield and David I. Wakefield, not individually, but as trustees of The David I. Wakefield Trust, under a declaration of trust dated December 18, 2019, with a trust address of 229 Bellevue Street, Newton, Middlesex County, Massachusetts, for which Trustee Certificates under M.G.L. Ch. 184, Sec. 35 are filed herewith,

WITH QUITCLAIM COVENANTS

the land with the buildings thereon, situated in Newton, Middlesex County, Massachusetts, being Lot 12 on a plan entitled, "Plan of Real Estate situated on Mount Ida, Newton Corner, belonging to Langdon Coffin" drawn by Marshall S. Rice, Surveyor, dated October 1, 1872, and recorded with Middlesex South District Deeds, in Plan Book 21, Plan 35, bounded and described as follows:

Beginning at the southwesterly corner of said lot 12 at the junction of Newtonville Avenue and Bowditch Street, now called Bellevue Street, thence running

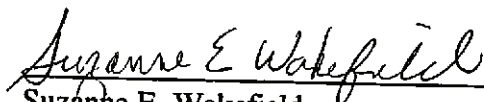
- NORTHERLY by said Bellevue Street, one hundred (100) feet to lot 13 as shown on said plan; thence running
- EASTERLY by said lot 13, one hundred and two (102) feet; thence running
- SOUTHERLY by lot 11 as shown on said plan, ninety-two and 50/100 (92.50) feet to said Newtonville Avenue; thence running
- WESTERLY by said Newtonville Avenue, ninety-five (95) feet to the point of beginning.

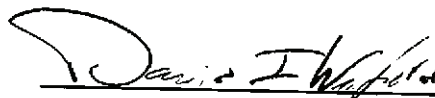
Containing 9,700 square feet, more or less, and subject to all liens and encumbrances of record.

Meaning and intending to convey all of our right, title and interest in our property included in deed from John D. Wakefield, Maria T. Wakefield, David I. Wakefield and Suzanne E. Wakefield, to Suzanne E. Wakefield and David I. Wakefield as tenants by the entirety. For reference to title, see deed dated August 12, 2015, and recorded with the Middlesex South Registry of Deeds at Book 65967, Page 121.

Property Address: 229 Bellevue Street, Newton, MA

WITNESS our hands and seals 18th day of December, 2019.

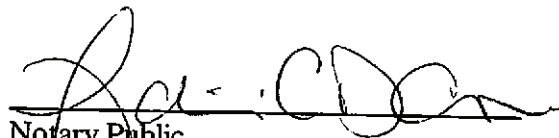

Suzanne E. Wakefield

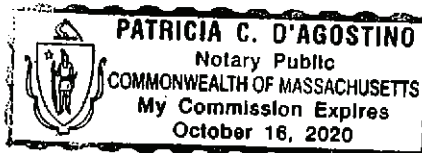

David I. Wakefield

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

On this 18th day of December, 2019, before me appeared Suzanne E. Wakefield and David I. Wakefield, as Grantors, who proved to me through government-issued photo identification to be the above-named persons, in my presence executed the foregoing instrument, and acknowledged that they voluntarily executed the same for its stated purpose.


Notary Public
My commission expires:



CITY OF NEWTON
PUBLIC BUILDINGS DEPARTMENT



Application for Permit to Build

(GARAGE)

Ser. No... 385...
No..... 799..

Newton, Mass.,.....10/26....., 1945

To the
PUBLIC BUILDINGS COMMISSIONER:—

The undersigned hereby applies for a permit to build, according to the following specifications:

1. Street and No.? 229 Bellview St..... Ward? 1.....
2. What is the nearest street? Newtonville Ave.....
3. Material of Garage? Concrete..... No. of Cars? 2.....
4. Name of Owner? Adolph Genovese Address? 229 Bellview St.....
5. Name of Architect?..... Address?.....
6. Name of Builder? Nardone Bros Address? Newton.....
7. Size of Lot, No. of feet front? 100..... No. of feet rear? 90.; No. of feet deep? 98..
8. Size of Garage, No. of feet front? 20..... No. of feet rear? 20.; No. of feet deep? 21..
9. Height of Garage? 9'..... Distance from street line? 2'0".....
10. Distance of the proposed Garage from the adjoining lot lines? 5'0".....
11. Distance from adjoining buildings? front...feet; side 10.feet; side...feet; rear...feet
12. When was House erected?.....

IF OF FRAME

13. Size of sills?.....; posts.....; rafters.....; Distance on centres.....

OTHER THAN FRAME

14. Thickness of walls? 12"..... Size of girder? 12"..... Material of girder?.....
15. Thickness of slab? 5"..... Size and spacing of steel? 1/2-8"-OC.....
16. Size of rafters?..... Distance on centres?.....

IN GENERAL

17. Material of floor? Conc.....
18. Foundation, material of? Conc.....; height of? 4'.....; thickness of? 12".....
19. Will the roof be flat, pitch, gambrel or hip? Flat.....; Material of roofing? Conc.....
20. Heating, Steam?..... Hot Water?..... Gas?.....
21. Estimated cost? \$1,000.....

Plans in duplicate must be submitted to and approved by this department
before a permit for erection will be granted.

**NO WORK TO BE STARTED UNTIL PERMIT CARD IS DISPLAYED
ALL MEASUREMENTS TAKEN FROM OVERHANGS**

The above is subscribed to and executed by me under the penalties of perjury in accordance with Chapter 187, Acts of 1926.

Approved.....193..

Signature Adolph Genovese
Address.....

OCT 26 1945

APPLICATION FOR PERMIT TO BUILD
GARAGE

St. & No. 229, Bellevue

Permit No. 799, Ser. No. 385

Owner, Adolph Genevese

Architect,

Builder, Nardone Brothers

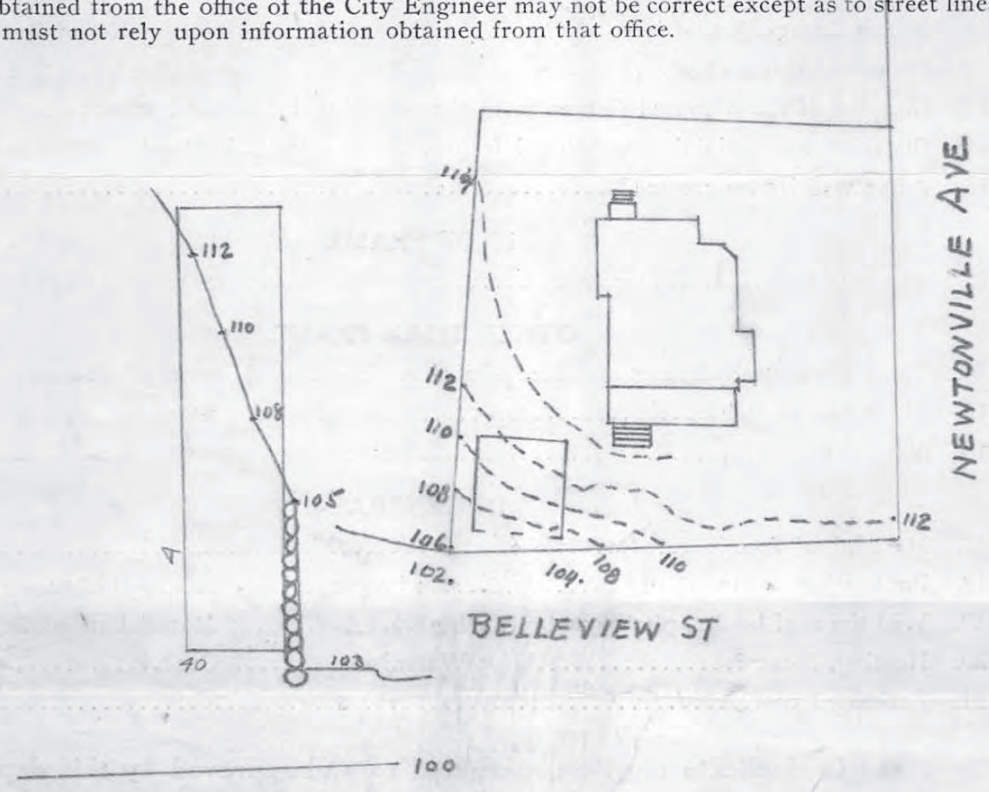
PERMIT GRANTED

October 26, 1945 193

PLOT PLAN

The Applicant for a building permit shall draw in ink to a scale of 40 ft. to an inch a plan of their lot and all adjoining lots, all buildings erected and all proposed buildings giving size of all buildings, including all overhangs, projections, and distances.

Data obtained from the office of the City Engineer may not be correct except as to street lines. Applicants must not rely upon information obtained from that office.



I hereby certify that the dimensions and other information on this plot plan are correct. The above is subscribed to and executed by me under the penalties of perjury in accordance with Chapter 187 Acts of 1926.

House No.

Signature, *Adolfo Genevese*

By

Address,



ORDERED

City of Newton
IN BOARD OF ALDERMEN

October 22, 1945

Blodg. Sept

87425

33

That Petition #87291 with plan accompanying, of Adolfo Genovea, for variance of application of the Zoning Ordinance, under the provisions of Section 590, for waiver of setback line from twenty-five feet to two feet from street line, in connection with the construction of a two-car fireproof garage on lot with existing dwelling at 229 Bellevue Street, Ward 1 in Private Residence District, be and is hereby granted subject to the provisions of the Zoning Ordinance.

Read twice and adopted,

Yeas Absent

Executive Department

Approved October 24, 1945.

FRANK M. GRANT,

Clerk

PAUL M. GODDARD,

Mayor

A true copy

Attest

CITY CLERK

A TRUE COPY
ATTEST:
Frank Grant
CITY CLERK OF NEWTON, MASS.

33



CITY OF NEWTON, MASSACHUSETTS

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

Setti D. Warren
Mayor

ZONING BOARD OF APPEALS

Sherri A. Lougee, Board Clerk

05-74



Bk: 57119 Pg: 15 Doc: DECIS
Page: 1 of 4 07/11/2011 11:44 AM

11 JUN 20 P 1:10
#9-11
CITY CLERK
NEWTON, MA. 02159

Detailed Record of Proceeding and Decision

Petition of David and Suzanne Wakefield, 229 Bellevue Street, Newton, MA 02458.

For a variance of 6.1 feet from the rear yard setback requirement of 15 feet in order to construct a two and one-half story addition for the property located at 229 Bellevue Street (the "Subject Property"), Newton, MA 02458.

The Zoning Board of Appeals for the City of Newton held a public hearing on the above entitled proceeding on Tuesday, April 26, 2011 at 7:00 p.m. in the Aldermanic Chambers at City Hall, Newton, Massachusetts.

BK 46524 PG 314

The following members of the Board were present:

- Harvey A. Creem, Chairman
- Vincent Farina
- William M. McLaughlin
- James H. Mitchell, Esq.
- Selma H. Urman, Esq.

The petition was filed on March 11, 2011.

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 April 5 and 12, 2011.

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

"Plan of Land in Newton MA, 229 Bellevue Street, Existing Conditions," dated February 3, 2011;

"Plan of Land in Newton MA, 229 Bellevue Street, Proposed Additions," dated March 22, 2011; and

"Plan of Land in Newton MA," dated March 22, 2011 which shows an area of roughly 300' radius around the 229 Bellevue Street property. All Survey Plans were prepared by Bruce Bradford of Everett M. Brooks Co., of West Newton, MA.

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

¼" scale Architectural drawings of both existing and proposed floor plans, as well as Exterior Elevations (all sides) dated April 26, 2011. All plans and elevations were prepared by the Project Architect Patricia Welbourn of Fantuzzi Welbourn Design, Waban, MA.

Copy of Quitclaim Deed dated November 22, 2005, conveying the Subject Property to David and Suzanne Wakefield (the "Petitioners") and a copy of the deed dated July 13, 1979, conveying the Subject Property to the Petitioners' predecessors in title; and

Letter to the Zoning Board of Appeals from David and Paula Schleifer (residents of 203 Newtonville Avenue), Robert Crooks and Kalpana Seshardri (residents of 233 Bellevue Street), and Vivek and Heather Mehra (residents of 217 Bellevue Street), dated March 22, 2011, offered in support of the Request for Variance.

The Petitioners were represented at the hearing by the Project Architect, Patricia Wellbourn. Only the Petitioners testified at the hearing.

SUMMARY AND REQUEST FOR RELIEF

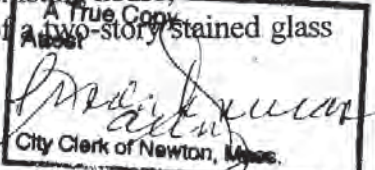
The Subject Property is located at 229 Bellevue Street Newton, MA, Ward 1, Section 12, Block 17, Lot 29; is approximately 9,700 square feet in size; and is a corner lot, bounded by Bellevue Street and Newtonville Avenue. The Subject Property is located in a MR-1 District and is subject to the pre-1953 dimensional controls set out in Table 1, sec. 30-15 of the Newton Zoning Ordinance. The Subject Property contains a Victorian single family dwelling, which faces Bellevue Street. Under the Newton Zoning Ordinance, the rear lot line on a corner lot is the lot line opposite the street on which the front door of a residential structure is located. Hence, the Subject Property's rear lot line abuts 201-203 Newtonville Avenue.

The Petitioners are requesting a 6.1 foot variance from the 15 foot rear yard setback requirement applicable to pre-1953 lots in the MR-1 District in order to construct a two and one-half story addition. As proposed, the addition will extend into the 15 foot rear year setback, and will be set back 8.9 feet from the lot line between the Subject Property and 201-203 Newtonville Avenue. If the Subject Property were not a corner lot, the lot line between this property and 201-203 Newtonville Avenue would be considered a side lot line subject to a 7.5 foot setback requirement, and the proposed addition would comply with the side yard setback requirements.

ARGUMENT IN SUPPORT OF VARIANCE

Petitioners state that in designing the proposed addition, they attempted to both respect the abutting neighbor's side setback rights while working to create an addition that respects the historical architecture of the home, which is over 130 years old. The house was constructed in 1890, and has inadequate bath and kitchen facilities for a modern family. The proposed addition will update the dwelling's kitchen and bathrooms, making the house much more livable, and a fundamentally better home.

Petitioner stated the addition was designed to look as if it was *always* part of the original planning, and not to look like an "addition". Placing the addition on the north side of the existing house, which has a side setback requirement of only 7.5 feet, would have resulted in the loss of a two-story stained glass

A True Copy
Attest

City Clerk of Newton, Mass.

window and would negatively impact the architectural integrity of this historic home. The proposed addition has been administratively reviewed and approved by the City's Senior Preservation Planner.

Petitioners state that the hardship presented is that the Subject Property is a corner lot, with an existing structure fronting on Bellevue Street. This results in the lot line abutting 201-203 Newtonville Avenue to be considered a rear, rather than a side, lot line. Additionally, the existing house is pushed back from Bellevue Street, closer to the rear lot line, due to the grade of the lot which slopes up from Bellevue Street

Petitioners state that the character of the neighborhood, once grand with turn of the century Victorians, was dramatically altered by the building of the Massachusetts Turnpike in the late 1950's. The Turnpike essentially dissected this neighborhood. 229 Bellevue is on the side of Newtonville Avenue roughly 200' from the chain link fence that now overlooks the Turnpike. The Turnpike made this area somewhat undesirable. The areas between Newtonville Avenue to the Turnpike overlook has become a buffer zone for the rest of the Neighborhood as evidenced by it being zoned "Multi-Family" as opposed to "Single Residence." Some of the houses in the buffer zone have been demolished and reconstructed, or enhanced in the past several years.

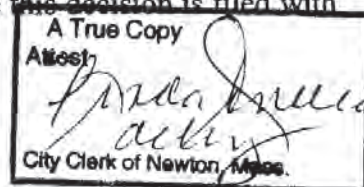
Petitioners state that they believe their addition is consistent with the architectural context of this classic Victorian, and will only serve to further the overall improvements to the neighborhood.

FINDINGS AND DETERMINATION:


1. The Subject Property is a corner lot which results in a hardship not shared by other lots surrounding the Subject Property because the lot line separating this property from 201-203 Newtonville Avenue is treated as a rear, rather than side, lot line. This lot line is considered a rear lot line under the Zoning Ordinance based on the location of the front door of the existing house, which location could be changed so that this lot line would then be considered a side, rather than rear, lot line. Additionally, the grade of the lot results in the existing structure being pushed closer to the rear lot line. Literal enforcement of the 15 foot rear yard setback will impose a substantial hardship on the Petitioners by preventing them from locating the proposed addition on the rear of the existing structure.
2. Granting a 6.1 foot variance from the rear yard setback so that the addition may be located 8.9 feet from the rear lot line will not result in a detriment to the public good or derogate from the spirit and intent of the Zoning Ordinance because the 8.9 foot setback exceeds the side setback requirement and will not change the character of the surrounding area.

Accordingly, a motion was made by Mr. Mitchell and duly seconded, to grant the petition, which motion passed, four in favor, with Mr. Farina voting in the negative. Therefore, a variance of 6.1 feet from the 15 foot rear yard setback is granted subject to the following conditions:

1. That this variance must be recorded with the Middlesex Registry of Deeds within one year from the date this decision is filed with the City Clerk or the variance lapses.
2. That this variance must be exercised within one year from the date this decision is filed with the City Clerk or the variance lapses.



- 3. That the north lot line separating the Subject Property from 233 Bellevue Street be treated as the rear lot line with a 15 foot rear yard setback requirement.



 Harvey A. Creem, Chairman

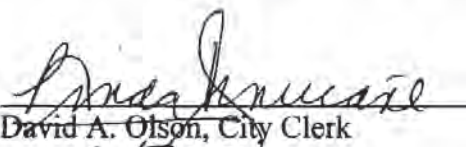
AYES: Harvey A. Creem, Chairman
 William M. McLaughlin
 James H. Mitchell, Esq.
 Selma H. Urman, Esq.

NAYES : Vincent Farina

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 *June 20, 2011.*

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.

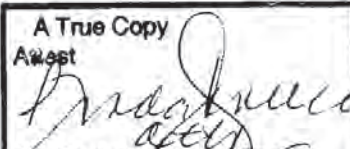


 David A. Olson, City Clerk
acting

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, Miss.

ESTABLISHED 1916
EMB
 EVERETT M. BROOKS CO.
 SURVEYORS & ENGINEERS
 49 LEXINGTON STREET
 WEST NEWTON, MA 02465
 (617) 527-8750
 info@everettbrooks.com

PRELIMINARY PLAN

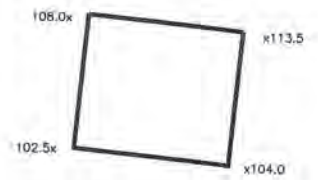
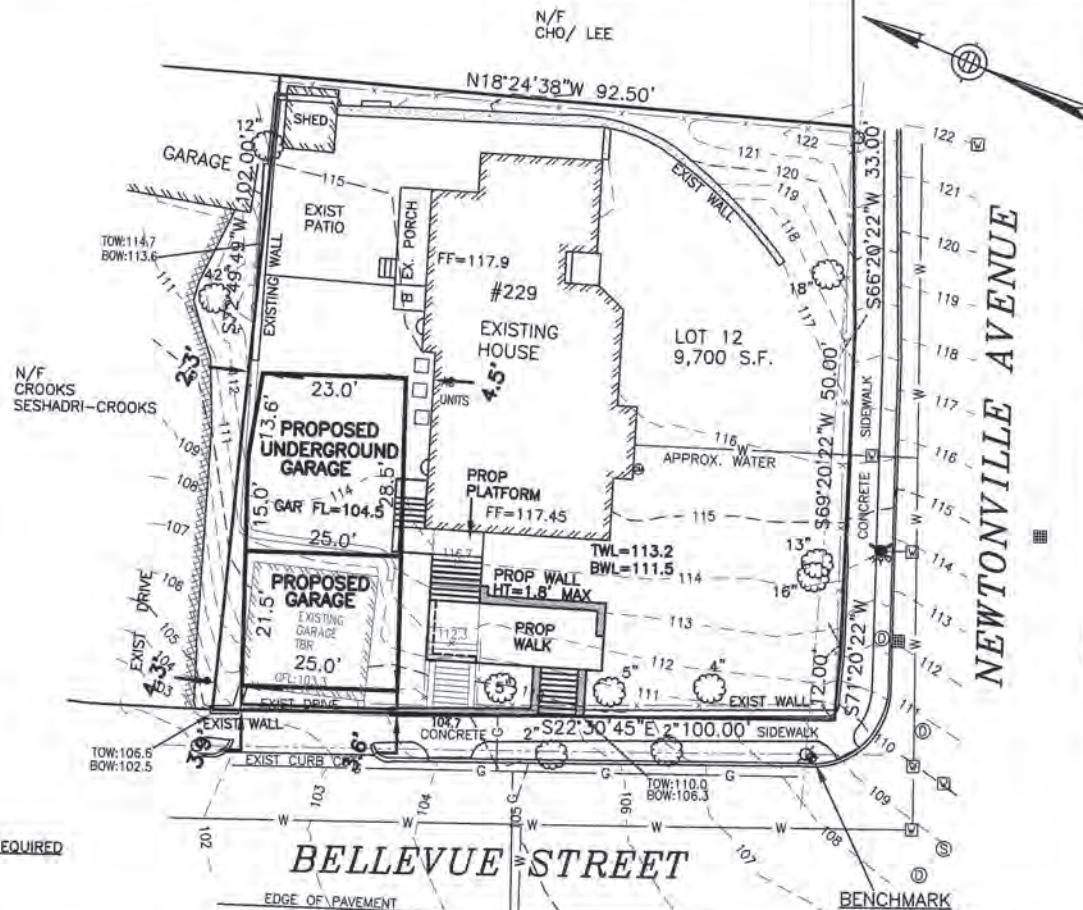
PLAN OF LAND IN
 NEWTON, MA

229 BELLEVUE STREET
 PROPOSED GARAGE & DRIVE

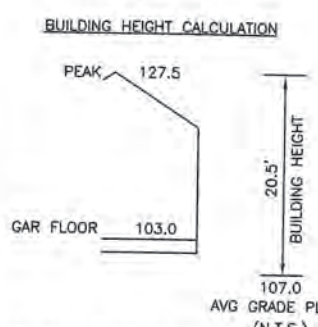
SCALE: 1 IN. = 20 FT.
 DATE: JANUARY 28, 2021
 DRAWN: GAR/ES
 CHECK: BB

REVISIONS:

PROJECT NO. 23687



AVERAGE GRADE CALCULATION:
 [SEC 1.5.4(F)]
 $AVG = \frac{\Sigma[(E1+E2)]}{2} / P$
 $AVG = 9951 / 93 = 107.0$

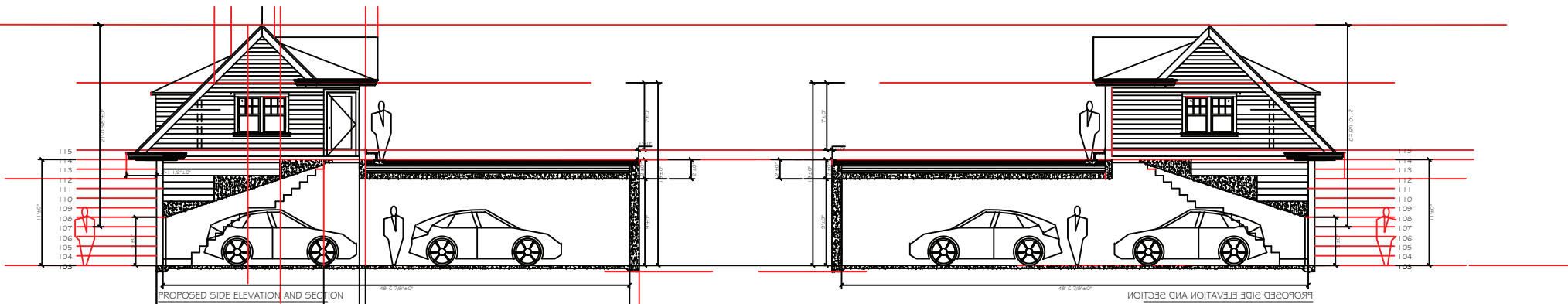


ZONING INFORMATION

ZONE: MR-1
 PLAN DATED: OCTOBER 1, 1872
 DEED REFERENCE: BOOK 46524 PAGE 314

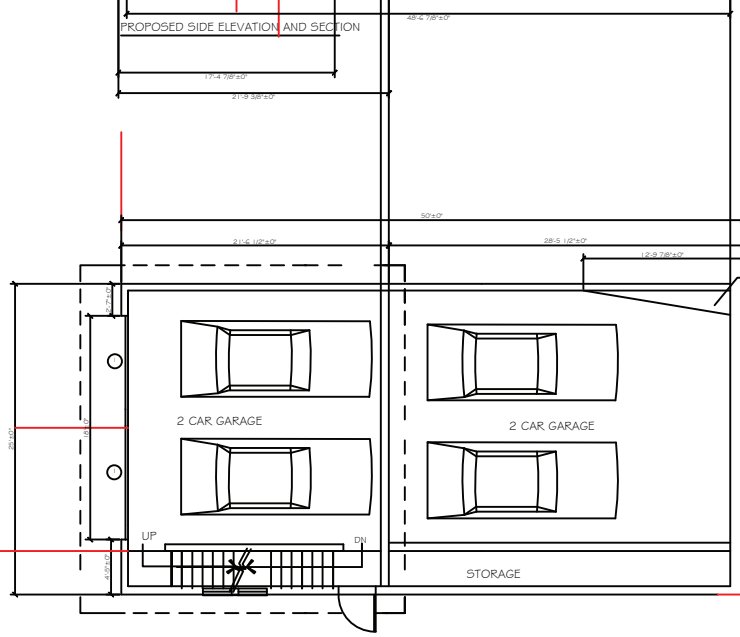
	EXISTING	PROPOSED	REQUIRED
BUILDINGS	2,232 S.F.	2,641 S.F.	
STRUCTURES	2,270 S.F.	2,699 S.F.	
DRIVE	60 S.F. ±	582 S.F. ±	
	2,330 S.F. ±	3,281 S.F. ±	
LOT COVERAGE	23.1%	27.2%	(30% MAX.)
OPEN SPACE	76% ±	66% ±	(50% MIN.)

ZONING COMPLIANCE DETERMINED BY MUNICIPALITY.
 AREAS FOR F.A.R. CALCULATION PROVIDED BY ARCHITECT.



PROPOSED SIDE ELEVATION AND SECTION

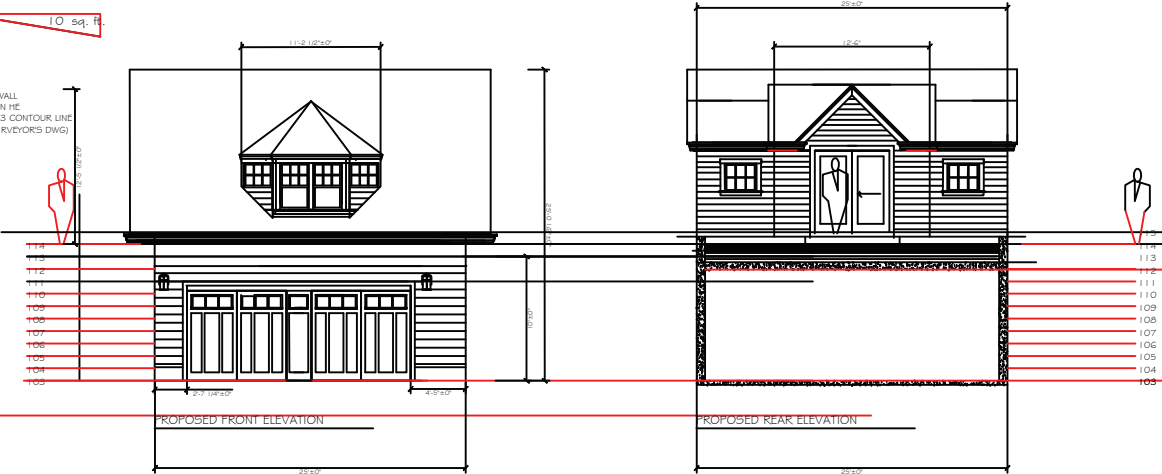
PROPOSED SIDE ELEVATION AND SECTION



PROPOSED FLOOR PLAN

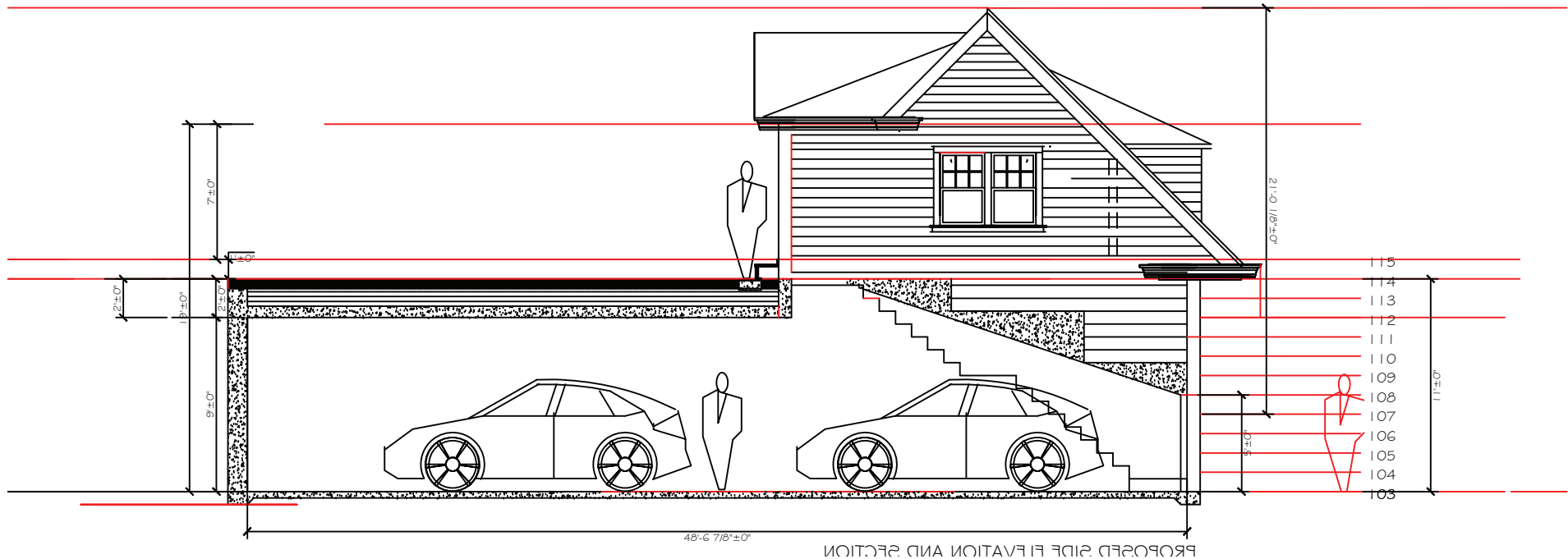
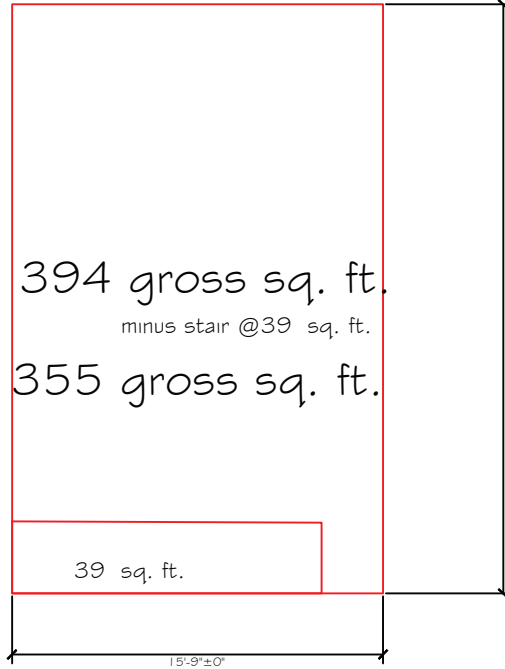
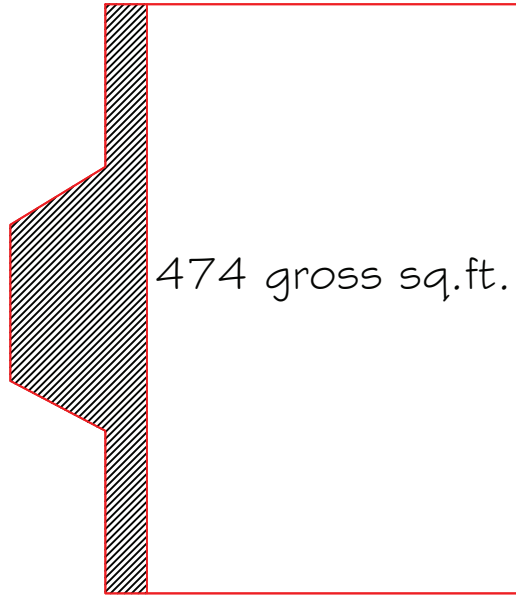
10.54 ft

TAPER WALL BETWEEN HE 112/113 CONTOUR LINE (SEE SURVEYORS DWG)



PROPOSED FRONT ELEVATION

PROPOSED REAR ELEVATION





Ruthanne Fuller
Mayor

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

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

John Lojek
Commissioner

FLOOR AREA RATIO WORKSHEET

For Residential Single and Two Family Structures

Property address: 229 BELLEVUE STREET NEWTON

FAR Calculations for Regulations Effective As Of October 15, 2011		
Inputs (square feet)		
	EXISTING	PROPOSED
1. First story	1,498	1,498
2. Attached garage	0	0
3. Second story	1,423	1,423
4. Atria, open wells, and other vertical spaces (if not counted in first/second story)	0	0
5. Certain floor area above the second story ^{1b}	97	97
6. Enclosed porches ^{2b}	238	238
7. Mass below first story ^{3b}	0	0
8. Detached garage	200	624
9. Area above detached garages with a ceiling height of 7' or greater	0	355
10. Other detached accessory buildings (one detached building up to 120 sq. ft. is exempt)	120	0
FAR of Proposed Structure(s)		
A Total gross floor area (sum of rows 1-9 above)	3,456	4,235
B Lot size	9,700	9,700
C FAR = A/B	.36	.44
Allowed FAR		
Allowable FAR	.48	.48
Bonus of .02 if eligible ^{4b}	0	0
TOTAL Allowed FAR	.48	.48

FISHER ASSOCIATES, INC
Architects / Engineers
35 Fisher Road
Weymouth, Massachusetts 02190
617-733-8404 (cell)
fisherassociates@comcast.net





CITY OF NEWTON, MASSACHUSETTS

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

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS
Adrianna Henriquez, Board Clerk

Item 8

MEETING MINUTES

Monday, August 9, 2021

7:00 p.m.

Virtually via Zoom

Board Members Present: Brooke Lipsitt (Chair), William McLaughlin, Michael Rossi, Stuart Snyder, Treff LaFleche and Elizabeth Sweet (All participated remotely)

Staff Present: Adrianna Henriquez Olmsted, ZBA Clerk; Jonah Temple, Assistant City Solicitor; Barney Heath, Director of Planning and Development; Neil Cronin, Chief Planner; Michael Gleba, Planner

A public hearing of the Newton Zoning Board of Appeals will be held virtually via Zoom on Monday, August 9, 2021 at 7:00 p.m. on the following petitions:

1. #04-21 Bryan Gary and Pamela Stephenson of 81 Old Orchard Road, Newton, Massachusetts, pursuant to M.G.L. c. 40A, § 8, and 15, appealing the May 26, 2021 issuance of a building permit by the Commissioner of Inspectional Services for the construction of a structure within the rear and side setbacks at 45 Old England Road, Newton, Massachusetts. The subject property is located at 45 Old England Road and is located in a Single-Residence 1 (SR-1) District.
2. #09-19(2) Dunstan East, LLC, applying to the Zoning Board of Appeals, pursuant to Massachusetts General Laws Chapter 40B, to amend and make substantial changes to the Comprehensive Permit previously granted to the applicant on July 8, 2020 for a



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project located in the Business 2 Zoning District at 1149, 1151, 1169, 1171-1173, 1179, and 1185 Washington Street, 12, 18, 24, and 25 Kempton Place, and 32 and 34 Dunstan Street in Newton, Massachusetts containing approximately 3.58 acres. The applicant proposes to incorporate the 6,983 square foot parcel located at 1157 Washington Street into the development parcel, demolish the building located at 1149 Washington Street, and increase the height of Building 3. The revised project will contain a 302-unit residential development, which includes 64 new units in Building 3, and 76 of the total number of units will be affordable. The revised project will contain approximately 5,821 square feet of retail space, and 338 parking stalls (42 of which are new).

3. Review and approval of minutes for April 28, 2021 meeting

Agenda Item 1: #04-21 45 Old England Road

Documents Submitted:

1. 45 Old England Road Appeal

Deliberation:

Attorney Robert Nislick, Attorney at Law, 188 Oaks Road, Framingham spoke on behalf of the Appellants. Attorney Nislick explained that the Appellants are appealing an amendment to a previously granted building permit for construction of a single-family home located at 45 Old England Road (the "Subject Property"). The amendment permitted the construction of a four-post structure with a copper roof situated around an electrical transformer and within the rear and side yard setbacks of the Subject Property (the "Structure").



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Attorney Nislick stated that the location of the Structure violates the Newton Zoning Ordinance because it is located within the setbacks. He acknowledged that structures that meet the Zoning Ordinance's definition of a "Building" may be located within the setback but that the Structure at issue here is not a building. He explained that the transformer also constitutes a structure, that it was not allowed by the original building permit and cannot be located in the setback. He argued that placing a four-post structure over the transformer does not remedy the zoning violation because it still does not constitute a "Building" as defined by the Zoning Ordinance. He stated that a "Building" must be used for the storage of property and that here it is an aberration to say that property is being stored in the Structure at issue because the sole purpose of enclosing the Structure is to evade the zoning requirement that the transformer cannot be located within the setback. He also contended that the Structure is a prohibited use under the Zoning Ordinance.

Attorney Nislick also stated that the Appellants are contesting the issuance of the building permit for the Structure on the basis that it violates the maximum lot coverage allowed under the Zoning Ordinance. He explained that this is based on the stated lot coverage of 15% on the building permit plans, which is the maximum allowed, meaning that the additional lot coverage created by the Structure must put the property over the maximum.

John Lojek, Commissioner of Inspectional Services, explained his determination that the Structure meets the definition of a "Building" and therefore does not violate zoning. He stated that a structure is a building if it has a roof and is used for the storage of property and that here the structure at issue meets those requirements. He said that the transformer constitutes property and will be contained within the approved Structure. He noted that what goes inside accessory buildings is not relevant so long as it is property and that the Structure here could have been a much larger shed or garage in the same location storing the transformer. He stated that by the strict definition of



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a “Building” in the Zoning Ordinance, the Structure constitutes an accessory building and is allowed within the setback as long as it is five feet from the lot line, which it is here. He noted that this is not an unusual practice as pool equipment and air condensers are often contained within a shed in a similar manner so that they can be located within setbacks and, like those examples, there is property being contained within the Structure here for its protection which makes the Structure a “Building.”

Commissioner Lojek next addressed the lot coverage argument. He explained that it is premature to determine the final lot coverage of the Subject Property. Construction of the project has not been completed and lot coverage will be confirmed when the final as-built plans are submitted prior to issuance of a certificate of occupancy. The final lot coverage calculation will be done by a land surveyor and shown on plans that are certified and stamped showing all zoning calculations. The Commissioner stated that when those plans are submitted, he will determine whether the property is in violation of the maximum lot coverage and will require that any violation be remedied immediately and would not issue a certificate of occupancy if a zoning violation exists. He also noted that the proposed lot coverage shown on building permit plans often changes slightly and that the approved Structure, at about 25 square feet, is adding very little coverage which could easily be made up by reducing other paved areas. Commissioner Lojek assured the Board that, as with all projects, he will look very closely at the final project to ensure it complies with the Zoning Ordinance.

Attorney Laurance Lee of Rosenberg, Freedman & Lee, 246 Walnut St, Newton spoke on behalf of the property owners of the Subject Property. He explained that the Zoning Ordinance clearly defines a “Building”, and that Commissioner Lojek has properly interpreted the ordinance in determining that the structure constitutes a building. He noted that the structure here is similar to a carport in that it is open on three sides with a roof. He also stated that the structure is 10 feet from



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the side setback and 7.5 feet from the rear setback, so that it is not right up against the minimum 5 feet setback. He also stated that the final lot coverage will be confirmed after construction is complete, that the lot will comply, and that it is standard procedure for the Commissioner not to issue a certificate of occupancy if the final plans show any zoning violations. In response to a question from the Board, Attorney Lee stated that his clients are open to adding additional screening along the property line and speaking further with the Appellants about a resolution to this dispute.

Public Comment:

No members of the public spoke at the hearing.

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

The Board reviewed the merits of the appeal. Board members acknowledged that the placement of the Structure over the transformer was a creative design workaround or loophole, but all agreed that the Commissioner's technical interpretation of the Zoning Ordinance was correct. Board members also implored the two sets of property owners to work with each other to resolve the issue and that an agreement on additional screening and plantings may be a simple compromise.

The Board also concluded that the appellants have not met their burden of proving that the approval of the enclosing Structure creates a violation of the maximum lot coverage. The



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appellants have not presented any evidence that the lot coverage is in excess of the maximum allowed. Given that construction has not been completed, the final lot coverage is not yet known, making this challenge premature. Based on the assurances of Commissioner Lojek, the Board is satisfied that the Subject Property will ultimately comply with the Zoning Ordinance's lot coverage requirements.

A motion was made by Mr. Rossi to uphold the decision of the Commissioner of Inspectional Services, seconded by Mr. McLaughlin. The motion passed five in favor and none opposed.

Agenda Item 2: #09-19(2) 1149, 1151, 1169, 1171-1173, 1179, and 1185 Washington Street, 12, 18, 24, and 25 Kempton Place, and 32 and 34 Dunstan Street

Documents Submitted:

1. Memorandum from VHB regarding Dunstan East dated July 15, 2021
2. Memorandum from VHB regarding Dunstan East dated July 16, 2021
3. July 21, 2021 Dunstan East Submission containing the following documents:
 1. Documents prepared by Elkus Manfredi Architects including the following:
 - a. Floodplain Diagram (dated June 21, 2021).
 - b. Eastern Façade Elevations (dated July 19, 2021).
 - c. Dunstan Street Sections (dated June 10, 2021).
 - d. Washington Street Armory View (dated July 8, 2021); and



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- e. Dunstan East Parking Stall Dimensions (dated July 19, 2021).
2. Documents prepared by VHB including the following:
 - a. Revised Civil Plan Set consisting of nine sheets, dated July 20, 2021.
 - b. Complete Revised Stormwater Narrative dated July 19, 2021.
 - c. Figure 4, Proposed Drainage Conditions, dated July 2021.
 - d. Table 4, Incremental Flood Storage Calculations (undated).
 - e. Table 5, Existing Flood Plain, dated July 2021; and
 - f. Sheet C-6.3 Sand Filter Details dated July 20, 2021.
3. Updated Commercial Parking Calculation dated July 21, 2021. Please note that our waiver request has decreased to 114 stalls from the waiver of 115 stalls granted in the July 8, 2020 Comprehensive Permit.
4. Flood Plane and Street Furnishings Location Plan dated April 8, 2021 and prepared by Halverson
4. Letter from U-Chan dated July 18, 2021
5. Planning and Development Department Memorandum dated August 2, 2021
6. August 2, 2021 Dunstan East Submission containing the following documents:
 1. Documents prepared by Elkus Manfredi Architects including the following:
 - a. Eastern Façade Elevations (dated July 29, 2021)
 - b. Washington Street Armory View (dated July 29, 2021)

Deliberation:



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Jeff Maxtutis, Senior Associate of Beta Group, 315 Norwood Park South, Norwood, gave an overview of the remaining outstanding issues. Mr. Maxtutis noted that the number of bicycle parking spaces did not match the number listed on the site plan. The project proposes 44 outdoor bike parking spaces for visitors along Washington Street. Mr. Maxtutis noted that these spaces should be weatherproof and secure. One of the outstanding questions Beta Group had for the applicant was whether the applicant commits to the construction of a protected bicycle lane if the City's Washington Street design is approved before construction of the proposed project.

Mr. Maxtutis noted that the applicant should provide all accessible spaces and loading areas on their site to ensure that sufficient accessible spaces and loading areas will be provided on site regardless of the Washington Street design. He notes that Beta Group recommends the 38 commercial/visitor spaces be combined for shared use parking. The applicant should provide shared parking information based on other comparable site(s) that demonstrate the amount of proposed parking for commercial and visitors is adequate. Mr. Maxtutis explained that the applicant has proposed 16 on-street spaces on Kempton Place. The other 22 spaces will need to be designated in the garage for commercial/visitor use. Mr. Maxtutis noted that the locations will need to be indicated and there should be access/management of these spaces. There will also need to be wayfinding signage. All employee parking should be marked by signs and they should be shown in the plans. Mr. Maxtutis noted that the proposed pick-up/drop-off zone should not be shared with parking during off-hours and should not be included as part of the parking supply. The areas on the plan should indicate where residents would park during move-in/move-out. Mr. Maxtutis explained that the revised site plan shows two proposed accessible spaces on Washington Street which would ideally remain no matter what design changes may happen in the future on Washington Street since the revised design plans provide space for the ADA compliant spaces and extra space that could potentially be utilized in the future if needed. Beta Group



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recommends that the applicant should provide all accessible spaces and loading areas on their site. The accessible spaces should be located on Kempton Place.

Board member Michael Rossi asked for clarification regarding visitor spaces and the commercial spaces. Mr. Maxtutis clarified that the 38 allocated commercial spaces would also include 11 visitor spaces.

Board member Treff LaFleche asked Mr. Maxtutis to elaborate more on parking. Mr. Maxtutis confirmed that the total number of parking spaces would be 340. Damien Chaviano, Principal of Mark Development, 57 River Street, Wellesley, explained that any parking spaces that would be unclaimed by residents, would go into a queue for other residents or businesses to request use of as additional guest or company parking to help utilize all the parking spaces efficiently.

Damien Chaviano responded to Beta Group's questions. Mr. Chaviano confirmed that the project will provide no less than one bicycle parking space per residential unit. All of the residential bicycle parking spaces will be covered and secured within the garages. The exact locations of the bicycle parking will be determined based on final construction drawings. Mr. Chaviano noted that there will be 44 street-level bicycle parking spaces for commercial users. He explained that the project will provide funding for one Blue Bike docking station to be located on premise, or at a mutually agreed upon location with the City.

Mr. Chaviano explained that the project will provide enough power to allow for 100% charging stations for electric vehicles if and when necessary. He noted that 10% of the parking spots will have charging stations with another 10% of parking spaces charging-station ready. All of the EV charging stations will be located within the building 1, 2 and 3 garages. The exact locations will be determined during the development of the construction documents and



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submitted with building permit documents.

Michael Rossi asked whether there was alternative comparative data other than the data received regarding Trio. Mr. Chaviano explained that although they are 97% leased for retail, many of the retailers have not opened up so there is not accurate data to reflect on the commercial end. He explained that guest parking is very limited.

Using visuals, Janet Bernardo, Senior Engineer at Horsley Witten, 112 Water Street, Boston gave an overview of Horsley Witten Group's review of the project. Ms. Bernardo explained that the site plan, the massing, and building heights are generally consistent with the Washington Street Vision Plan principles. She noted that the project is within "Medium Heights Village Character" on the Vision Plan. Ms. Bernardo explained that the proposed buildings generate a sense of enclosure and comfortable pedestrian environment.

Ms. Bernardo noted that the design includes public passage between buildings 1 and 2 and via Kempton Place and Brook Drive which promotes small blocks. The changes to building 3 shift massing from the Washington Street edge down to Kempton Place. She noted that it strategically incorporates setbacks to reduce building height at street level. Ms. Bernardo explained that this is consistent with Vision Plan and an improvement over previous design.

Regarding the shadow study, Janet Bernardo explained that the impacts of new shadows are minimal to adjacent properties. She explained that the Cheesecake Brook open space is in shadow for most of the day. The impacts on adjacent properties are within accepted tolerances. The building 3 courtyard is in full shadow for the majority of day.

Public Comment:

- Former City Councilor Jim Cote, 934 Watertown Street



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- John Spack, 58 Henshaw Street
- Josephine McNeil, 53B Taft Avenue

The next hearing on this item will take place on September 9, 2021

Agenda Item 3: Review and approval of minutes for April 28, 2021 meeting

A motion was made by Betsy Sweet to approve the minutes as circulated. This motion was duly seconded by Stuart Snyder. This motion carried 5-0.

Adjourned 9:44 p.m.

ZBA DECISIONS can be found at:

<https://www.newtonma.gov/government/planning/zoning-board-of-appeals/2021>



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Item 9

MEETING MINUTES

Wednesday, September 22, 2021

7:00 p.m.

Virtually via Zoom

Board Members Present: Brooke Lipsitt (Chair), Michael Quinn, Michael Rossi, Stuart Snyder, Treff LaFleche (all participated remotely)

Staff Present: Adrianna Henriquez Olmsted, ZBA Clerk; Jonah Temple, Assistant City Solicitor; Barney Heath, Director of Planning and Development

A public hearing of the Newton Zoning Board of Appeals was held virtually via Zoom on Wednesday, September 22, 2021 at 7:00 p.m. on the following petitions:

1. #03-83(2) and #17-96(2) 2Life Coleman Limited Partnership applying to the Zoning Board of Appeals, pursuant to Massachusetts General Laws Chapter 40B, to amend and make substantial changes to the Comprehensive Permits previously granted for construction of a two building, 146-unit project, collectively known as Coleman House, located at 677 Winchester Street, Newton Massachusetts. The applicant is seeking amendments to the prior Comprehensive Permits to permit the transfer of a 36,955 square foot portion of the Coleman House land, relocation of certain surface parking spaces, construction of a new building connector, and related dimensional relief in order to facilitate construction of a new development comprising 174 units of congregate housing.



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2. #01-20 CPC Land Acquisition Company, LLC requesting to change the details of the Comprehensive Permit previously granted to the applicant on June 17, 2020, for a project located at 15 Riverdale Avenue in Newton, Massachusetts that consists of 51 affordable housing units. The applicant proposes to decrease the parking count by two stalls, replace the 53 undersized parking stalls with 51 larger parking spaces, expansion of two parking stalls, neighborhood and tenant amenity space relocation and alteration of the bicycle parking layout. Pursuant to 760 CMR 56.05(11), this item will be heard for the purpose of determining whether the proposed change is substantial or insubstantial.
3. #06-21 Marjorie S. Kern of 43 Philmore Road, Newton, Massachusetts, requesting to amend a previously granted variance (#12-02) to further exceed the maximum lot coverage required by Section 3.1.3 of the Newton Zoning Ordinance for the purpose of constructing a rear porch addition. The subject property consists of a 7,407 square foot lot located at 43 Philmore Road, Newton, Massachusetts within a Single-Residence 2 (SR-2) zoning district.
4. #05-21 Daniel L. Jackson and Martina T. Jackson of 115 Lowell Avenue, Newton, Massachusetts, pursuant to M.G.L. c. 40A, § 8, and 15, appealing the June 28, 2021 Notice of Violation issued by the Commissioner of Inspectional Services for a sign in violation of Section 5.2.6.7 of the Newton Zoning Ordinance at 115 Lowell Avenue, Newton, Massachusetts. The subject property consists of a 7,651 square foot lot located at 115 Lowell Avenue, Newton, Massachusetts within a Multi-Residence 1 (MR-1) zoning district.
5. Review and approval of minutes for June 28, 2021 meeting.



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Agenda Item 1: #03-83(2) and #17-96(2)

Documents Submitted:

1. Revised Site Plan -Coleman House dated September 1, 2021
2. Site Plans -Opus dated September 1, 2021 (5 sheets) including existing and proposed conditions site plans, planting plan, drainage plan, and utility plan
3. Aerial model of Opus (8 sheets)
4. Elevations and Floor Plans prepared by Stantec and Perkins Eastman dated September 1, 2021, consisting of 4 sheets
5. Stantec Parking Study with exhibits dated December 5, 2019
6. List of amendments to relief
7. List of Opus-Newton Outreach Efforts
8. Opus Project Description
9. Copies of Comprehensive Permits # 3-83 and #17-96
10. May 5, 2021 Zoning Review Memorandum

Testimony:

Representing 2Life Coleman Limited Partnership, attorney Alan Schlesinger of Schlesinger and Buchbinder, LLP, with offices located at 1200 Walnut St, Newton gave a brief history of the Coleman House and Opus projects. He then gave an overview using visuals noting the transfer of 36,955 square feet from the Coleman House site to the Opus Newton site resulting in changing the



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lot lines, to make appropriate space to construct a 174-unit congregate housing connector building between Coleman House and Opus Newton building, changes to the existing parking layout, and requested dimensional relief. Attorney Schlesinger stated that 2Life Coleman Limited Partnership is in the process of purchasing land from the Leventhal-Sidman Jewish Community Center (JCC) in order to make these proposed changes possible. He explained that there will be a new driveway entry for the new connector building, 30 surface parking spaces will be relocated to the Opus garage and discussed the dimensional relief required to facilitate the construction of the new connector building. He illustrated the proposed appearance of the site with the new connector building from the front and rear and stated that the new building will be used to unite the tenants of Opus and the Coleman House by featuring spaces for functions like dining, fitness, and social events. 2Life hopes that incremental services can be provided on an *a la carte* basis with savings from a collective purchasing agreement for the low-income tenants and the market rate units will have a community share buy in that will provide a backstop for each tenant's potential future needs. Attorney Schlesinger closed out his comments by providing an overview of the Opus project that is not in the purview of the Board as it is a special permit project that has been approved recently by the City Council.

Chair Lipsitt commented that a similar proposal was heard previously by the Board for an insubstantial change to allow for the connector building. Attorney Schlesinger clarified that the current proposal was limited to the lot line adjustment and other minor changes to make the site more viable. The minor changes could have been done as an insubstantial change request, but he believed it was best to get the proposed requests recorded.

Board Member Rossi inquired how far along are negotiations between Opus Newton and Coleman House regarding the transfer of land. Attorney Schlesinger replied that the transfer is well on its



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way and they both have agreements in place with the JCC.

In response to a question from Board Member Quinn, Attorney Schlesinger stated that there is a fixed entry fee for the units, which can be used to support a person's stay at the facility. There is no entry fee for the inclusionary units.

Board Member LaFleche asked whether the substance of the request is only the transfer of land. Attorney Schlesinger replied that is correct but noted that when you transfer land, the square footage per unit goes down and, in this case, the parking is relocated. Board Member LaFleche stated that this is an amendment to an existing 40B project and that the dimensional changes should fall under that relief. Attorney Schlesinger stated that the Board can grant it under the 40B provisions. Attorney Temple confirmed that tonight's change would fall under the 40B provisions in terms of zoning.

Public Comment:

No public comment was made.

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

A motion was made by Michael Rossi to approve the amendment. This motion was duly seconded by Stuart Snyder. This motion passed five in favor, and none opposed.

Agenda Item 2: #01-20



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Documents Submitted:

1. 15 Riverdale Avenue Insubstantial Change Request with Attached Plan

Testimony:

Representing CPC Land Acquisition Company, LLC, attorney Katherine Adams of Schlesinger and Buchbinder, LLP, with offices located at 1200 Walnut Street, Newton gave an overview noting that this request is for a determination by the Board of insubstantial change relative to the approved plans for the project. She then stated that the City of Newton Engineering Department had assigned an address for the site, 2-4 Los Angeles Street.

She illustrated the request for an insubstantial change via visuals, showing the decrease to the overall parking count of two stalls (one in Building 1A and one in Building 1B), an increase to the size of 51 parking stalls, an expansion of the waiver of minimum aisle maneuvering space for two stalls, neighborhood and tenant amenity space relocation, and alterations to the bicycle parking provisions.

Chair Lipsitt commented on the café space increasing in size from 627 square feet to 867 square feet and how that may increase the demand for parking and asked whether the increase has been vetted by the Planning Department in terms of parking requirements.

Planning Director Barney Heath explained that the Planning Department is aware of the slight increase in the café space and the Department has no issue as it is not a substantial increase and does not believe it will result in more parking demand.

Board Member LaFleche inquired about the changes in the parking count and asked if the two



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additional tandem spaces in Building 1A are tabulated in the net decrease of two parking spaces or, if the two tandem spaces are approved, there will be no net decrease in the total number of spaces. Attorney Adams answered that they are proposing taking what amounted to a double-depth stall and treating it as two tandem spaces and treating a loading stall as overnight visitor parking, so the net number of stalls is only down by one in total.

Public Comment:

No public comment was made.

A motion was made by Stuart Snyder to determine the requested change an insubstantial change. This motion was duly seconded by Michael Quinn. This motion passed five in favor, and none opposed.

Agenda Item 3: #06-21

Documents Submitted:

1. 43 Philmore Road Variance Application
2. 43 Philmore Road Variance Decision #12-02

Testimony:

Representing Marjorie Kern, architect Mark Landsberg of 72 Pearl Street, Newton gave an overview of the requested amendment to Variance #12-02, to construct a 11' x 17' three-season porch, resulting in an increase of 1.7% above the previously approved lot coverage of 30.7%. He



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then used various visuals consisting of site plans, architectural plans, and photographs to illustrate applicant Kern's request. He stated that the parcel is the smallest lot in the surrounding area and that the contours of the lot have created drainage issues. The rear of the home is the only viable place for the proposed three-season porch, in his opinion. He also stated that twelve of the neighbors are in support of this project. The applicant has lived at the property for approximately thirty years and has plans to age in place so the screen porch would allow for same-grade utilization of space. Architect Landsberg and Applicant Kern both spoke, saying that the drainage issues are a big reason why a porch is ideal compared to a patio, which would not increase the lot coverage.

Board Member LaFleche stated that the drainage issue does not necessarily create a hardship as outlined in the Zoning Board of Appeals ordinance and that constructing a porch does not ameliorate the drainage issue. He stated that there are other options to utilize the rear of the home. He did remark that there is some uniqueness to the site and that the applicant meets other zoning requirements such as setbacks, density, height, and open space.

Board Member Rossi inquired as to what has changed recently to create a hardship that would necessitate the construction of a porch after the Applicant has been living in the home for 30 years. Applicant Kern spoke of wanting to age in place and not having the funds available when she came before the Board for the original variance from the front yard setback and lot coverage requirements.

Chair Lipsitt commented that there are other ways to use the backyard space like building vertically or installing a patio, which could be done without having to increase the lot coverage beyond what was previously approved in the original variance and could be done as the applicant is



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below the maximum floor area ratio for the property and patios do not increase lot coverage.

Applicant Kern and Architect Landsberg addressed Chair Lipsitt's comments, saying that those are not viable options due to the drainage issues on the site and they are trying to give more access to the first floor, so it is more viable to age in place instead of doing something on the second floor.

Board Member LaFleche again stated that the drainage issue on the site is not a hardship in terms of the definition in the ordinance.

Public Comment:

No public comment was made.

A motion was made by Michael Quinn to close the public hearing. This motion was duly seconded by Treff LaFleche. The motion passed five in favor, and none opposed.

Deliberation:

Board Member Quinn made comments about the uniqueness of the site in terms of size and topography and thought the amendment should be granted. Board Member Rossi struggled with seeing what the hardship was since the basis of the request stemmed from a drainage issue, which does not meet the criteria for a hardship. Board Member LaFleche echoed Board Member Rossi's comments and stated that the applicant could potentially build a three-season porch on the rear by right if the size were reduced and the front porch the applicant got the original variance for was reconstructed smaller or the applicant built vertically. Board Member Snyder commented on the cumulative nature of the applicant's case making him more inclined to support the petition. Chair Lipsitt commented that the original variance to permit increasing the lot coverage to construct the



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front porch was granted, but that finding a hardship for building essentially another room, especially after residing in the home for the past thirty years with no issues, was a different matter, so she cannot support the applicant's request to increase the lot coverage to construct a rear three season porch. She also mentioned that the hardship needs to be related to the land and she does not find the wish to age in place rises to a level of hardship that she can support.

A motion was made by Michael Quinn to approve the Variance request. This motion was duly seconded by Stuart Snyder. This motion failed two in favor (Michael Quinn & Stuart Snyder), and three opposed (Brooke Lipsitt, Treff LaFleche & Michael Rossi).

Agenda Item 4: #05-21

Documents Submitted:

1. 115 Lowell Avenue Appeal
2. August 6, 2021 Letter from Commissioner John Lojek regarding 115 Lowell Avenue
3. August 12, 2021 Letter from 115 Lowell Avenue Appellants Attorney

Testimony:

Representing Daniel L. Jackson and Martina T. Jackson, attorney Peter Harrington, of Harrington & Martins, Attorneys at Law, with offices located at 505 Waltham Street, Newton identified himself.

Charmain Lipsitt stated that the violation notice from Inspectional Services was rescinded after



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further review of the sign ordinance that was cited in the violation notice and that the appeal is now moot. Chairman Lipsitt read a portion of the rescind notice to everyone in attendance.

Attorney Harrington commented that the Commissioner of Inspectional Service, John Lojek, does not have the authority to drop the appeal. He went on to say, Commissioner Lojek made a decision and he found them guilty, and the applicants have a right to appeal. He also stated that Commissioner Lojek either needs to say they are not guilty, and the case is dismissed, or let the appeal be heard. Furthermore, he remarked that sending a rescind notice is Commissioner Lojek's asking for a temporary suspension of what is going on and if something happened to Commissioner Lojek, someone else could come in and decide to move forward with the violation notice. Attorney Harrington concluded his remarks by stating that the Jacksons have a right to have their names cleared as not being violators and that is what they are here for.

Jonah Temple, Assistant City Solicitor, stated that he agreed with Chair Lipsitt's interpretation of the rescind notice and the applicants have nothing to appeal. He noted that there is no longer any violation notice for the Board to either uphold or reverse and that Mr. and Mrs. Jackson do not appear to have any standing as a result.

Board Member Rossi echoed Chair Lipsitt and Attorney Temple's statements and added that the Board cannot do anything because there is no longer any relief needed.

Attorney Harrington respectfully disagreed with the Board members' prior statements and opined that this appeal should be dismissed with prejudice against the City so the City cannot renew the charges later.



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Board Members Quinn, Snyder, and LaFleche agreed with the other Board Members' statements that the applicant does not have standing and the case is moot.

Public Comment:

No public comment was made.

A motion was made by Michael Rossi that the applicant has no standing. Stuart Snyder duly seconded the motion. The motion passed five in favor, and none opposed. Case was dismissed.

Agenda Item 5:

A motion was made by Treff LaFleche to approve the minutes as circulated. This motion was duly seconded by Michael Quinn. This motion carried 5-0.

Adjourned 9:09 p.m.

ZBA DECISIONS can be found at:

<https://www.newtonma.gov/government/planning/zoning-board-of-appeals/2021>