



Ruthanne Fuller  
Mayor

# 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](http://www.newtonma.gov)

## ZONING BOARD OF APPEALS

**To:** Zoning Board of Appeals Members  
**From:** Brenda Belsanti, ZBA Clerk  
**Date:** April 6, 2022  
**Subject:** Materials for **April 27, 2022** Public Hearing

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### Packet 1

Hello,

Please see the following supplemental materials for the upcoming hearing on April 27, 2022 Public Hearing. The following board members are scheduled to sit: *Brooke Lipsitt (Chair), William McLaughlin, Treff LaFleche, Michael Quinn, Lei Reilley (alternate) and Stuart Snyder.*

1. April 27, 2022 Agenda
2. 9 Day Street Variance Application
3. Draft minutes for 02-23-22

Thank you,

Brenda Belsanti

**bbelsanti@newtonma.gov** |



# CITY OF NEWTON, MASSACHUSETTS

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Ruthanne Fuller  
Mayor

**ZONING BOARD OF APPEALS**  
Brenda Belsanti, Zoning Board Clerk

**The Zoning Board of Appeals will hold this meeting as a virtual meeting on Wednesday, April 27, 2022 at 7:00 pm.**

**To view and participate in this meeting using Zoom, click this link: <https://us02web.zoom.us/j/86549476802> or call 1-646-558-8656 and use the Meeting ID: 865 4947 6802**

## **AGENDA** **4/27/22**

**A public hearing of the Newton Zoning Board of Appeals will be held virtually via Zoom on Wednesday, April 27, 2022 at 7:00 p.m. on the following petitions:**

1. Elections – Zoning Board of Appeals Clerk
2. **#03-22** James Smith and Maxine Hart of 9 Day Street, Newton, Massachusetts, requesting to amend a previous variance (#19-05) to allow for a six foot setback and second story addition. The petitioner seeks to construct a second story addition on the existing footprint. The subject property is located at 9 Day Street within a Single-Residence 3 (SR-3) zoning district and consists of a 6,671 square foot lot improved with a single family dwelling.
3. Review and approval of minutes for February 23, 2022 meeting.

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](mailto:jfairley@newtonma.gov) or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

**RECEIVED**

By City Clerk at 3:37 pm, Mar 29, 2022

**RECEIVED**

By Brenda Belsanti, ZBA Clerk at 2:29 pm, Mar 29, 2022

CITY OF NEWTON  
ZONING BOARD OF APPEALS

CHECKLIST COVER PAGE  
FOR VARIANCE PETITION

Petition No.:

PROPERTY LOCATION: 9 Day St. DATE: 3-25-22

ADDRESS: 9 Day St. Auburndale, MA 02466

PHONE: 617 750 5584 EMAIL: smithglobe@gmail.com

POINT OF CONTACT: James F. Smith (owner)

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: James F. Smith Jr. + Maxine S. Harb  
ADDRESS: 9 Day St. Auburndale, MA 02466  
PHONE: 617-750-5584 EMAIL: smithglobe@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: 9 Day St. Auburndale, MA 02466  
ZONING DISTRICT: SR3 - Old lot PROPERTY SBL NO.: Sec. 43, Block 40, Lot 5  
OWNER OF RECORD: James F. Smith Jr + Maxine S. Harb  
DEED RECORDED AT MIDDLESEX SOUTH REGISTRY OF DEEDS AT:  
BOOK: 1252 PAGE 80 OR CERTIFICATE NO.: \_\_\_\_\_  
RELATIONSHIP TO SUBJECT PROPERTY (i.e. owner, abutter, etc.):  
owner  
CURRENT USE: primary residence for owner  
PROPOSED USE: primary residence for owner  
PREVIOUS VARIANCE GRANTED: YES  NO  DECISION NO./DATE: #19-05 11-23-2005  
OTHER REGULATORY REVIEW: YES  NO  IF YES, DESCRIBE STATUS:  
\_\_\_\_\_  
\_\_\_\_\_

**EXISTING CONDITIONS DESCRIPTION:**

Single family house built in 1929. Three bedroom, one bath upstairs. Renovated kitchen and guest bedroom added in 2006-7, in basement under kitchen addition.

PROPOSAL DESCRIPTION:

1. *Briefly describe all proposed changes to the structure and/or use:*

We have lived in this house for 20 years, and we hope to stay another 20 years. We obtained a variance in November 2005 that allowed us to build an addition that made this house, built in 1929, more livable. We expanded the galley kitchen and added a guest bedroom in the basement below the kitchen addition. We now request permission to renovate the upstairs. We propose converting one existing bedroom into a master bath with walk-in shower, an upstairs laundry, and a walk-in closet. To retain three bedrooms upstairs, we propose adding a new 162-square-foot third bedroom in what is now just an attic space above the kitchen addition. This second-floor bedroom would be within the same footprint as the previous kitchen addition on the first floor.

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

The relevant Zoning Ordinance section is the 7.5 foot side setback for houses in our zoning section.

3. *State the specific relief from the Zoning ordinance:*

The 2005 variance application, approved on a 5-0 vote, enabled us to go 1.4 feet into the 7.5 foot side setback for the kitchen addition on the back corner of the house. We now request permission to build an additional room above that same addition for a new third bedroom upstairs – within the same footprint. The primary reason for the original variance was that the house is built on an unusual angle and slope that meant the kitchen addition was only feasible if we went into that side setback. Now, to enable the upstairs renovation, we request a similar variance to allow us to build above that kitchen addition.

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

We are submitting:

- variance petition checklist
- Chief Zoning Officer zoning review memorandum
- motivation for variance
- the 2005 variance decision
- architect plans, plan of land, area plan, and plot plan from Everett Brooks
- neighbors' and abutters' statements of support
- evidence of proof of ownership (mortgage payoff plus original deed)

## SUPPORTING STATEMENT

1. *Explain the special circumstances on soil conditions, shape or topography of land or structure that are unusual and not common to other properties:*

As we pointed out in the 2005 variance application, the house was built at a sharp angle and downward slope so that the rear corner of the original small galley kitchen was already close to the side setback. To make that modest addition feasible in order to make the kitchen reasonably modern and functional, we needed to build slightly into that setback. The Zoning Appeals Board agreed. Now, in order to renovate the upstairs so it is suitable for us to age in in our home, we ask permission to create an upstairs laundry, a walk-in shower, and decent closets.

2. *Explain how enforcement of the ordinance will result in substantial hardship and how this is minimal change needed for reasonable use.*

While the downstairs renovation transformed the family living space, the upstairs is unchanged from the original 1929 house with its 3-bedroom/one bathroom design. That layout has minimal closets (none for hanging clothes in the main bedroom). This renovation will create adequate closets for the first time. Currently the only bathroom upstairs has a traditional bathtub, which is becoming difficult for James to access as he ages due to spinal issues. A walk-in shower will alleviate that. Similarly, adding a washer-dryer upstairs will eliminate the need to carry laundry up and down to the basement. In short, the upstairs renovation will allow us to age in our home.

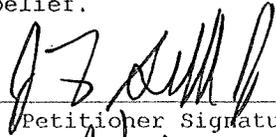
3. *Explain why granting the variance will be in harmony with the purpose and intent of the zoning ordinance and will not be detrimental to the neighborhood or public welfare.*

Most the surrounding homes have three bedrooms and most have two baths upstairs. We cannot add a second-floor laundry, decent closets, and walk-in shower without converting one of the three existing bedrooms. Yet to maintain this as a three-bedroom house – in keeping with the neighborhood – while also making those reasonable improvements is feasible only by adding a new third bedroom above the existing kitchen. This will not change the current footprint of the house. Our improvements over the years have included stripping off the aluminum siding and restoring the original 1929 eight-inch exposure clapboard. We have added classic wood shutters and made other first-floor historic renovations. In short, we have restored much of the house to its original condition, all in keeping with the neighborhood. As the neighbors and abutters have attested, we are not changing the street-facing structure at all, even as we are improving the second-floor interior in ways that will minimize the risk of this ever becoming just another teardown.

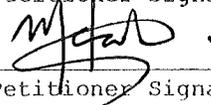
**PROPERTY OWNER CONSENT, CERTIFICATION & SIGNATURE**  
*(Signatures of Petitioner(s) are required)*

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)

3-26-22  
(Date)

X  \_\_\_\_\_  
(Petitioner Signature)

3-26-2022  
(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

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(617) 796-1120  
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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: March 29, 2022

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official

Cc: James Smith, Applicant  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Associate City Solicitor

**RE: Request to amend Variance #19-05 to allow for a second-story rear addition**

Applicant: James Smith	
Site: 9 Day Street	SBL: 43040 0005
Zoning: SR3	Lot Area: 6,671 square feet
Current use: Single-family dwelling	Proposed use: No change

### **BACKGROUND:**

The property at 9 Day Street consists of a 6,671 square foot lot improved with a single-family dwelling constructed in 1929. The petitioners received a variance in 2005 from the side yard setback 1.5-story rear addition. They now seek to amend the variance to construct a second-story rear addition over the existing footprint.

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

- Zoning Review Application, prepared by James Smith, applicant, submitted 2/17/2022
- Plan of Land existing, signed and stamped by Bruce Bradford, surveyor, dated 2/11/2022
- Plan of Land Proposed Addition, signed and stamped by Bruce Bradford, surveyor, dated 2/11/2022
- FAR worksheet, submitted 2/17/2022
- Floor plans and elevations, prepared by Leslie Saul & Associates, architect, dated 1/26/2022
- Variance decision #19-05

**ADMINISTRATIVE DETERMINATIONS:**

1. Variance #19-05 allowed for a reduction in the required side yard setback from 7.5 feet per section 3.1.3 to 6.1 feet to construct a 1.5-story rear addition. While the as-built side setback is not conforming with the variance at 6.0 feet, it was constructed with a building permit and has existed as such for longer than ten years without enforcement action and is thus protected. The petitioners intend to construct a second-story addition within the footprint of the existing space, requiring an amendment to the variance to allow for the second story and the 6-foot setback.

<b>SR3 Zone</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
Lot Size	7,000 square feet	<b>6,761 square feet</b>	<b>No change</b>
Frontage	80 feet	<b>49 feet</b>	<b>No change</b>
Setbacks			
• Front	25 feet	<b>24 feet</b>	<b>No change</b>
• Side	7.5 feet	10 feet	No change
• Side	6.1 feet	<b>6 feet</b>	<b>No change</b>
• Rear	15 feet	38.1 feet	No change
Max Number of Stories	2.5	2.5	No change
FAR	.48	.42	.44
Max Lot Coverage	30%	23.3%	No change
Min. Open Space	50%	61%	No change

1. See “Zoning Relief Summary” below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
	Request to amend Variance #19-05	
§3.1.3	Request to further reduce side setback	Variance per §7.6



David B. Cohen  
Mayor

# CITY OF NEWTON, MASSACHUSETTS

436-05

City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459-1449  
Telephone: (617) 796-1060  
Fax: (617) 796-1086  
www.ci.newton.ma.us

2005 NOV 23 PM 3: 35

CITY CLERK  
NEWTON, MA. 02159

## ZONING BOARD OF APPEALS Sherri Boivin, Board Secretary

#19-05

### Detailed Record of Proceeding and Decision

Petition of James Smith & Maxine Hart of 9 Day Street, Newton, MA

*(AKA JAMES F. SMITH, JR.)*  
For a variance of 1.4 feet from the easterly side yard setback requirement for "Old Lots" of 7.5 feet for residential structures in order to construct a 1 1/2 story addition to the rear of an existing single family dwelling.

The Zoning Board of Appeals for the City of Newton held a public hearing on the above entitled proceeding on Tuesday, October 25, 2005 at 6:30 p.m. in the Aldermanic Chambers at City Hall, Newton, Massachusetts.

The following members of the Board were present:

- Catherine Clement, Chairman
- Bernard Shadrawy
- Joseph Cosgrove
- Trudy Ernst
- Anthony Summers



2006 01408573  
Bk: 1262 Pg: 80 Cert#: 224430  
Doc: DEC18 04/26/2006 01:08 PM

The petition was filed on September 23, 2005.

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.

Accompanying the petition were plans entitled "Plan to Accompany the Petition of James F. Smith" dated September 20, 2005 by Bruce Bradford, Land Surveyor, Everett M. Brooks Co., 49 Lexington Street, West Newton, MA, and floor and facade plans entitled "Hart/Smith Residence" sheets A-1, A-2, A-3, A-4, A-5, A-6 and A-7 dated September 20, 2005 by Architect Harriett Christina Chu, 113 Chestnut Street, West Newton, MA.

A True Copy  
Attest  
*David B. Cohen*  
City Clerk of Newton, Mass.

224430-1252-80-

FACTS:

The petitioners represented themselves,

*LOT 32 16' x P. 345.*

The subject site is located at 9 Day Street, Newton, MA, Ward 4, Section 43, Block 40, Lot 5 containing approximately 6,671 square feet of lot area in a Single Residence 3 District.

The petitioners requested a variance of 1.4 feet from the northerly side yard setback requirement of 7.5 feet (Old Lot), under Section 30-15 Table I within a Single Residence 3 District in order to construct a 1 ½ story addition to the rear of an existing single family dwelling.

The petitioners stated that the site is unique due to the location of the existing single family dwelling which is angled sharply towards the side lot line combined with small narrow lot and curved street frontage creates a unique circumstance that does not exist elsewhere in the neighborhood.

The petitioners stated that a hardship exists due to the need for additional space in a cramped first floor kitchen, which is so small that the refrigerator is kept on the back porch. Secondly, the proposed basement guestroom would not have adequate space for a bed. The existing design of these small rooms creates a hardship when combined with the existing location of the house with its sharp angle towards the side lot line.

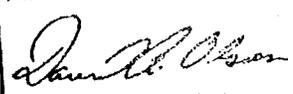
The petitioner stated that the small addition would maintain the character of the residence and the surrounding neighborhood.

The petitioner stated the abutter most effected by the variance was in favor of the proposed addition.

No one spoke in opposition.

FINDINGS AND DETERMINATION

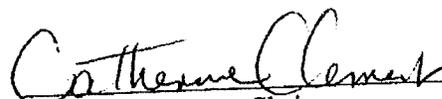
1. The site is unique due to the location of the existing single family dwelling which is angled sharply towards the side lot line and when combined with small, narrow, and irregular lot and curved street frontage is unique in the neighborhood.
2. A hardship exists in that the need for additional space in a cramped first floor kitchen, along with the proposed basement guestroom creates a hardship when combined with the existing location of the house and the sharp angle to the side lot line.

A True Copy  
Attest  
  
City Clerk of Newton, Mass.

3. No substantial detriment to the public would occur since the proposed addition would be in conformity with the neighborhood.
4. Granting the variance would not derogate from the spirit and intent of the Zoning Ordinance in that the departure from the Zoning Ordinance requirement would not change the character of the surrounding area.

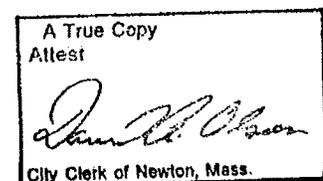
Accordingly, a motion was made by Mr. Shadrawy and duly seconded by Mr. Cosgrove to grant the petition, which motion passed five in favor and none opposed. Therefore, the side yard variance of 1.4 feet for the proposed 1 ½ story addition is granted subject to the following conditions:

1. That the proposed basement guestroom shall not be used as an apartment for rent.
2. That the basement guestroom shall not contain a kitchen, and the single family dwelling, in its entirety, shall not contain a second kitchen.
3. That the petitioner shall submit a revised landscape plan for review and approval of the Planning and Development Department that shall, at a minimum, provide a year round vegetative screen along the (northern) side lot line.
4. That this variance must be exercised within one year from the date of its filing with the City Clerk or the variance lapses.
5. That this variance must be recorded with the Middlesex Registry of Deeds within one year from the date of its filing with the City Clerk or the variance lapses.

  
Catherine Clement, Chairman

AYES: Catherine Clement  
Bernard Shadrawy  
Joseph Cosgrove  
Trudy Ernst  
Anthony Summers

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



The decision was filed with the City Clerk on November 23, 2005.

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

Linda Finucane  
Edward English, City Clerk  
*acting* LINDA FINUCANE

I, Sherri Boivin, am the Acting Clerk of the Zoning Board of Appeals and the Keeper of its records. This is a true copy of its decision.

Sherri A. Boivin  
Sherri Boivin, Clerk

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





September 8, 2020

Maxine Hart  
James F. Smith Jr.  
9 Day Street  
Auburndale, MA 02466

RE: Mortgage: 2600172099

Dear Maxine Hart:

Please accept this letter as confirmation that the above referenced loan was paid in full and closed on August 10, 2020. The discharge of mortgage has been forwarded to the Middlesex South County Registry of Deeds to be recorded.

It has been our pleasure servicing your mortgage. We hope that you will consider Reading Cooperative Bank for all your banking transactions. If you have any questions, please do not hesitate to contact me at (781) 942-5000.

Sincerely,

A handwritten signature in black ink that reads "Maria Martins".

Maria Martins  
Loan Servicing Specialist





2020 01856880  
Bk: 01252 Pg: 80 Cert#: 224430  
Doc: DIS 10/18/2020 03:30 PM

**KNOW ALL MEN BY THESE PRESENTS**

**9 DAY STREET, NEWTON, MA 02466**

That the Reading Cooperative Bank, the holder of a certain mortgage from Maxine Hart and James F. Smith Jr. dated September 20, 2016 and recorded with the Middlesex South Registry of Deeds on September 26, 2016, Document # 01741817, Cert # 224430, acknowledges satisfaction of the same.

1252-80

**IN WITNESS WHEREOF** the said Reading Cooperative Bank has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Lisa DiGregorio, Vice President Loan Servicing , this 8<sup>th</sup> day of September, 2020.

READING COOPERATIVE BANK,

*Lisa DiGregorio*  
.....  
Lisa DiGregorio  
Vice President Loan Servicing

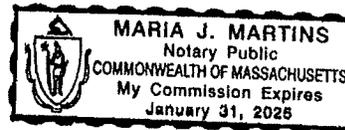
**Commonwealth of Massachusetts**

Middlesex, SS

September 8, 2020

On this 8<sup>th</sup> day of September, 2020, before me, the undersigned notary public, personally appeared Lisa DiGregorio, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose, Vice President Loan Servicing for Reading Cooperative Bank.

*Maria J. Martins*  
.....  
Maria J. Martins, Notary Public  
My Commission Expires: 01/31/2025



224430 1252-80

Doc 01856880

①

Southern Middlesex Land Court  
Registry District

RECEIVED FOR REGISTRATION

On: Oct 16, 2020 at 03:30P

Document Fee 105.00

Receipt Total: \$315.00

NOTED ON: CERT 224430 BK 01252 PG 80

ALSO NOTED ON:

DEED

ROBERT S. ROSEN (also known as Robert Rosen) and STEPHEN GROSS, as Temporary Guardian for JENNIFER S. ROSEN (also known as Jennifer Rosen) under Temporary Decree of Guardianship noted at Middlesex Probate Docket 02P1290GI, for consideration paid, and in full consideration of FIVE HUNDRED THIRTY-NINE THOUSAND AND 00/100 (\$539,000.00) Dollars

Grant to JAMES F. SMITH, JR and MAXINE HART, as husband and wife, tenants by the entirety,

That certain parcel of land in Newton with the buildings thereon, commonly known and numbered as 9 Day Street, Newton, Middlesex County, Massachusetts described as follows:

9 Day Street  
Newton

- SOUTHEASTERLY by Day Street, sixty-five (65) feet;
- SOUTHWESTERLY by lot 31 as shown on plan hereinafter mentioned; ninety-six and 20/100 (96.20) feet;
- NORTHWESTERLY by lot 30 on said plan, thirty-six and 76/100 (36.76) feet;
- NORTHEASTERLY ten (10) feet; and
- NORTHWESTERLY thirty (30) feet, by land now or formerly of John M. Walsh et al; and
- NORTHEASTERLY by lot 33 on said plan, one hundred fifteen and 37/100 (115.37) feet.

Containing approximately 15/100 (0.15) acres of land.

Said parcel is shown as Lot 32 on said plan, (Plan No. 9868 c).

All of said boundaries are determined by the Court to be located as shown on a subdivision plan, as approved by the Court, filed in the Land Registration Office, a copy of which is filed in the Registry of Deeds for the South Registry District of Middlesex County in Registration Book 167, Page 345, with Certificate 25028.

For Grantor's title see Deed of Carol Muzay dated July 25, 2001, recorded on May 9, 2002 and Certificate of Title No. 1209288, in Book 1252, Page 8. For Temporary Guardianship and License to Sell see Middlesex Probate Court Docket # 02P1290.

See Certificate of Title 224358 Book 1252 Page 8.

Feb. 1, 2022

Newton Zoning Appeals Board

Re: Abutter comment on proposed addition to 9 Day Street, Auburndale

To whom it may concern:

We own the home at 1728 Commonwealth Ave, West Newton, adjacent to James Smith and Maxine Hart's home at 9 Day Street. Jim and Maxine have shown us the architect drawings for the proposed addition to add a second-floor bedroom above their kitchen and renovate their upstairs.

We have no objection to this construction project. The project will be in keeping with the character of the neighborhood. I believe this addition and the upstairs renovation will help them remain in the home for many years to come.

Kind regards,

Handwritten signature in blue ink, appearing to be "Karen Madruga" and "Mark Ruane".

Karen Madruga and Mark Ruane  
1728 Commonwealth Ave,  
West Newton 02465

Feb. 1, 2022

Newton Zoning Appeals Board

Re: proposed addition to 9 Day Street, Auburndale

To whom it may concern:

I own the home at 15 Day Street, Auburndale, next door to James Smith and Maxine Hart at 9 Day Street. Jim and Maxine have shown me the architect drawings for the proposed addition to add a second-floor bedroom above their kitchen and renovate their upstairs.

I have no objection to this construction project. The project will only change the back side of the house and it will be in keeping with the character of the neighborhood. I believe this addition and the upstairs renovation will help them remain in the home for many years.

Yours truly,



Harriet Finck  
15 Day Street  
Auburndale, Ma 02466

Feb. 1, 2022

To: Newton Zoning Appeals Board  
Subject: proposed addition to 9 Day Street Auburndale

Dear Sir/Madam,

We live at 1720 Commonwealth Ave., at the corner of Day Street. Our next-door neighbors, James Smith and Maxine Hart at 9 Day Street, have shown us the architect drawings for the proposed addition that would add a second-floor bedroom above their kitchen.

Our home is closest to theirs of the several abutters. We have no objection to this construction project. We understand that would build 1.4 feet into the setback between our two homes, while staying in the footprint of the previous addition. This proposed addition is on the back side of our house and will not interfere with us.

We feel the project will be in keeping with the character of the neighborhood and will blend in well. We understand the needs for this and support their request to proceed.

Yours truly,

Handwritten signatures of Michaela Tolman and Cho Low. The signature on the left is a stylized cursive 'MT' for Michaela Tolman, and the signature on the right is 'Cho Low' in a cursive script.

Michaela Tolman and Cho Low  
Owners  
1720 Commonwealth Ave, West Newton, MA 02465

Feb. 1, 2022

Newton Zoning Appeals Board

Re: Abutter comment on proposed addition to 9 Day Street, Auburndale

To whom it may concern:

I own the home at 21 Angier Circle, Auburndale, and am an abutter to James Smith and Maxine Hart's home at 9 Day Street (behind their garage). Jim and Maxine have shown me the architect drawings for the proposed addition to add a second-floor bedroom above their kitchen and renovate their upstairs.

I have no objection to this construction project. It will be consistent with the houses in the neighborhood, and the upstairs renovation will help them stay in their home well into the future.

Thank you.



Camil Toma  
21 Angier Circle  
Auburndale, MA 02466

Feb 2, 2022

March 20, 2022

Newton Zoning Appeals Board

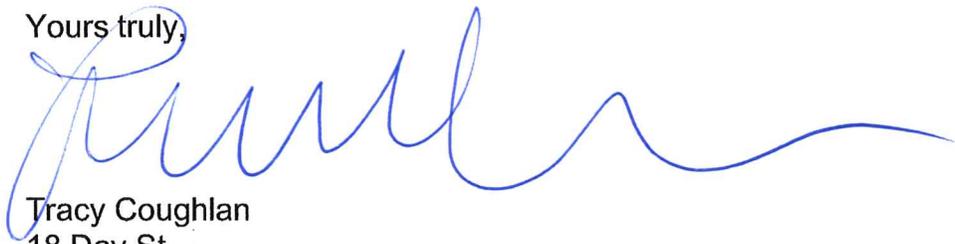
Re: Abutter comment on proposed addition to 9 Day Street, Auburndale

To whom it may concern:

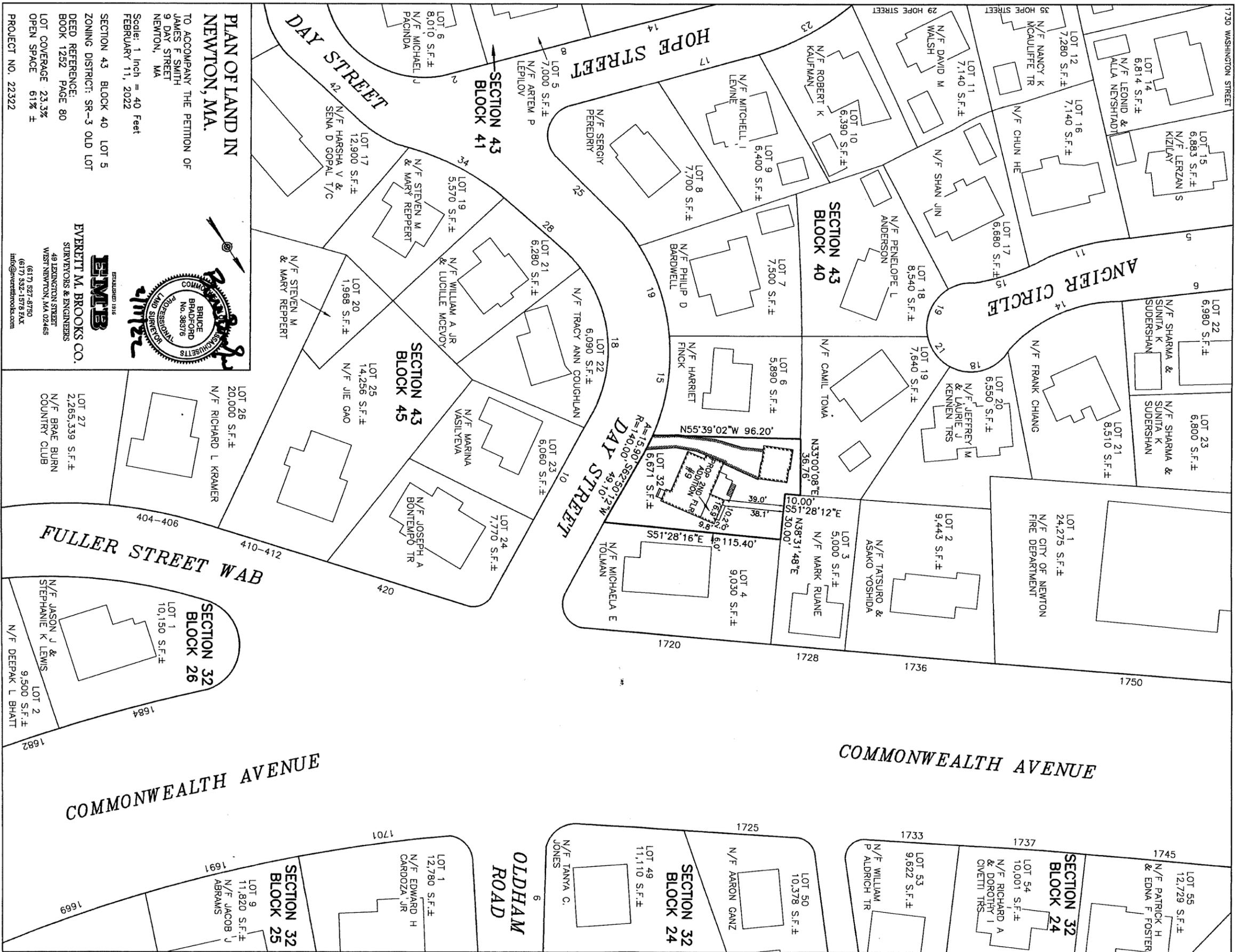
I own the home at 18 Day Street, Auburndale, across the street from James Smith and Maxine Hart's home at 9 Day Street. Jim and Maxine have shown me the architect drawings for the proposed addition to add a second-floor bedroom above their kitchen and renovate their upstairs.

I have no objection to this construction project. It will be consistent with the houses in the neighborhood, and the upstairs renovation will help them stay in their home well into the future.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Tracy Coughlan', with a large, stylized initial 'T' and a long, sweeping horizontal stroke at the end.

Tracy Coughlan  
18 Day St.  
Auburndale, MA 02466



**PLAN OF LAND IN  
NEWTON, MA.**

TO ACCOMPANY THE PETITION OF  
JAMES F SMITH  
9 DAY STREET  
NEWTON, MA

Scale: 1 inch = 40 Feet  
FEBRUARY 11, 2022

SECTION 43 BLOCK 40 LOT 5  
ZONING DISTRICT: SR-3 OLD LOT

DEED REFERENCE:  
BOOK 1252 PAGE 80

LOT COVERAGE 23.3%  
OPEN SPACE 61% ±

PROJECT NO. 22322



**EVERETT M. BROOKS CO.**  
SURVEYORS & ENGINEERS  
49 LENOXINGTON STREET  
WEST NEWTON, MA 02465  
(617) 527-8790  
(617) 332-1578 FAX  
info@everettbrooks.com

**FULLER STREET WAB**

**COMMONWEALTH AVENUE**

**COMMONWEALTH AVENUE**

**OLDHAM ROAD**

**SECTION 32  
BLOCK 26**

**SECTION 32  
BLOCK 25**

**SECTION 32  
BLOCK 24**

**SECTION 32  
BLOCK 24**

**SECTION 43  
BLOCK 45**

**SECTION 43  
BLOCK 40**

**SECTION 43  
BLOCK 41**

LOT 27  
2,265,339 S.F. ±  
N/F BRAE BURN  
COUNTRY CLUB

LOT 26  
20,000 S.F. ±  
N/F RICHARD L KRAMER

LOT 25  
14,256 S.F. ±  
N/F JIE GAO

N/F MARINA  
VASILYEVA

LOT 23  
6,060 S.F. ±

N/F MICHAELA E  
TOLMAN

LOT 4  
9,030 S.F. ±

LOT 3  
5,000 S.F. ±  
N/F MARK RUANE

N/F TATSURO &  
ASAKO YOSHIDA

LOT 2  
9,443 S.F. ±

LOT 1  
24,275 S.F. ±  
N/F CITY OF NEWTON  
FIRE DEPARTMENT

LOT 21  
8,510 S.F. ±

N/F SHARMA &  
SUNITA K  
SUDERSHAN

N/F SHARMA &  
SUNITA K  
SUDERSHAN

LOT 22  
6,980 S.F. ±

N/F SHARMA &  
SUNITA K  
SUDERSHAN

LOT 20  
6,350 S.F. ±  
N/F JEFFREY M  
& LAURIE J  
KENNEN TRS

N/F FRANK CHIANG

LOT 19  
7,640 S.F. ±

N/F CAMIL TOMA

LOT 6  
5,890 S.F. ±

N/F HARRIET  
FINCK

N/F PHILIP D  
BARDWELL

LOT 7  
7,500 S.F. ±

N/F PENELOPE L  
ANDERSON

LOT 8  
7,700 S.F. ±

N/F MITCHELL I  
LEVINE

LOT 9  
6,400 S.F. ±

N/F ROBERT K  
KAUFMAN

LOT 10  
6,390 S.F. ±

N/F DAVID M  
WALSH

LOT 11  
7,140 S.F. ±

N/F NANCY K  
MCAULIFFE TR

LOT 12  
7,280 S.F. ±

N/F CHUN HE

LOT 17  
6,680 S.F. ±

N/F LEONID &  
ALLA NEVSHADTI

LOT 15  
6,883 S.F. ±  
N/F LERZAN S  
KIZILAY

LOT 14  
6,814 S.F. ±

N/F LEONID &  
ALLA NEVSHADTI

LOT 55  
12,729 S.F. ±

N/F PATRICK H  
& EDNA F FOSTER

LOT 54  
10,001 S.F. ±  
N/F RICHARD A  
& DOROTHY I  
CIVETTI TRS

LOT 53  
9,622 S.F. ±  
N/F WILLIAM  
P ALDRICH TR

LOT 50  
10,378 S.F. ±  
N/F AARON GANZ

LOT 49  
11,110 S.F. ±  
N/F TANYA C.  
JONES

LOT 1  
12,780 S.F. ±  
N/F EDWARD H  
CARDOZA JR

LOT 9  
11,820 S.F. ±  
N/F JACOB J  
ABRAMS

N/F JOSEPH A  
BONTEMPO TR

LOT 24  
7,770 S.F. ±

LOT 23  
6,060 S.F. ±

LOT 22  
6,090 S.F. ±  
N/F TRACY ANN COUGHLAN

LOT 21  
6,280 S.F. ±

N/F WILLIAM A JR  
& LUCILLE MCEVOY

LOT 19  
5,570 S.F. ±

N/F STEVEN M  
& MARY REPERT

LOT 17  
12,900 S.F. ±

N/F HARSHA V &  
SENA D GOPAL T/C

LOT 20  
1,968 S.F. ±

N/F STEVEN M  
& MARY REPERT

LOT 2  
9,500 S.F. ±  
N/F DEEPAK L BHATT

LOT 1  
10,150 S.F. ±  
N/F JASON J &  
STEPHANIE K LEWIS

ESTABLISHED 1916

**EMB**

**EVERETT M. BROOKS CO.**  
SURVEYORS & ENGINEERS

49 LEXINGTON STREET  
WEST NEWTON, MA 02465

(617) 527-8750  
info@everettbrooks.com



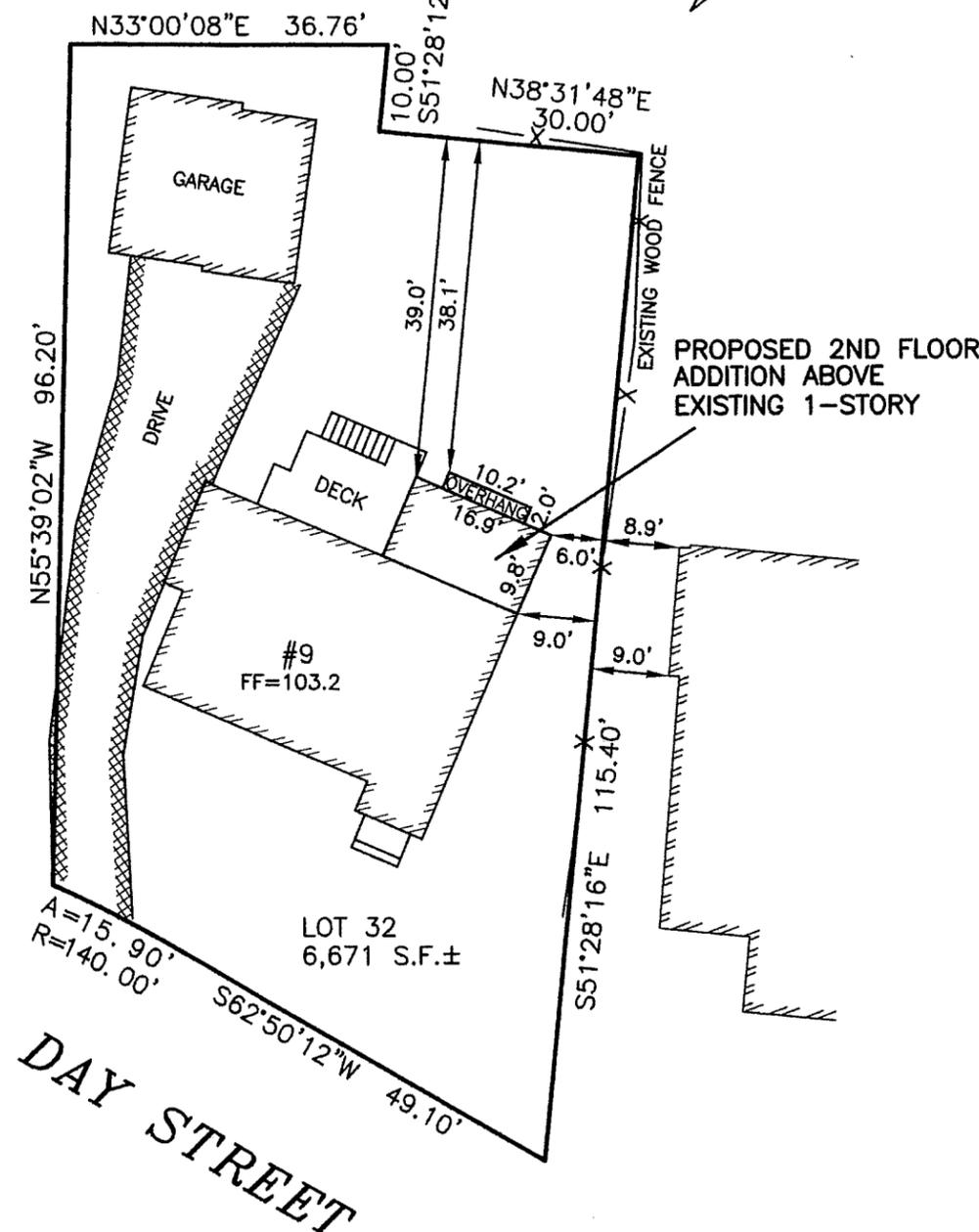
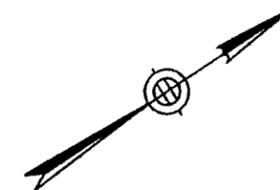
**PLAN OF LAND IN  
NEWTON, MA**

9 DAY STREET  
PROPOSED ADDITIONS

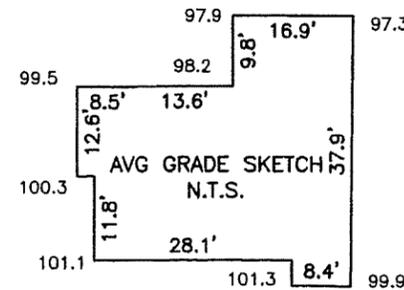
SCALE: 1 IN. = 20 FT.  
DATE: FEBRUARY 11, 2022  
DRAWN: LNS  
CHECK: BB

REVISIONS:


PROJECT NO. 26543



GRADES REFER TO LOWEST  
POINT WITHIN 6' OF BUILDING  
NOT INTENDED FOR  
F.A.R. CALCULATION

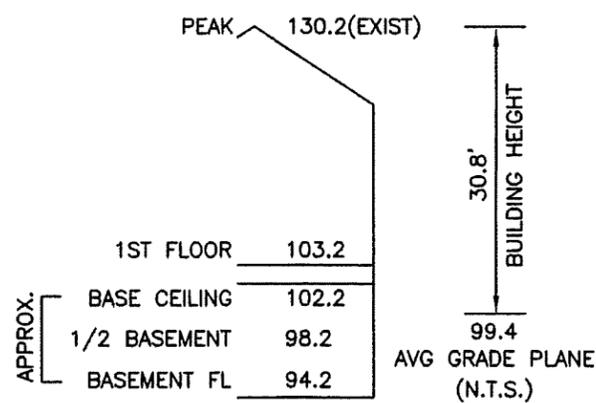


AVERAGE GRADE CALCULATION:  
[SEC 1.5.4(F)]

$$AVG = \frac{\sum[L(E1+E2)]}{2P}$$

$$AVG = 14667.615 / 147.6 = 99.4$$

BUILDING HEIGHT CALCULATION



**ZONING INFORMATION**

ZONE: SR-3  
PLAN DATED: OCTOBER 13, 1926  
DEED REFERENCE: BOOK 1252 PAGE 80

	EXISTING	PROPOSED	REQUIRED
BUILDINGS	1,552 S.F.	1,552 S.F.	
STRUCTURES	1,725 S.F.	1,725 S.F.	
DRIVE	886 S.F. ±	886 S.F. ±	
	2,610 S.F. ±	2,610 S.F. ±	
LOT COVERAGE	23.3%	23.3%	(30% MAX.)
OPEN SPACE	61% ±	61% ±	(50% MIN.)

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

ESTABLISHED 1916



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SURVEYORS & ENGINEERS

49 LEXINGTON STREET  
WEST NEWTON, MA 02465

(617) 527-8750

info@everettbrooks.com



THIS SURVEY SHOWS EXISTING  
CONDITIONS ONLY AND DOES NOT  
SHOW ANY PROPOSED CONSTRUCTION

**PLAN OF LAND IN  
NEWTON, MA**

9 DAY STREET  
EXISTING CONDITIONS

SCALE: 1 IN. = 20 FT.

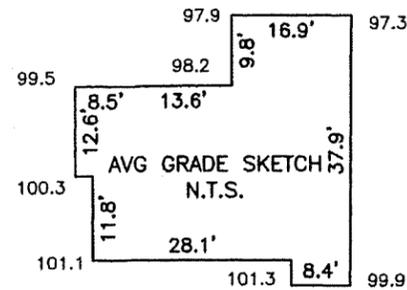
DATE: FEBRUARY 11, 2022

DRAWN: LNS

CHECK: BB

REVISIONS:


PROJECT NO. 26543



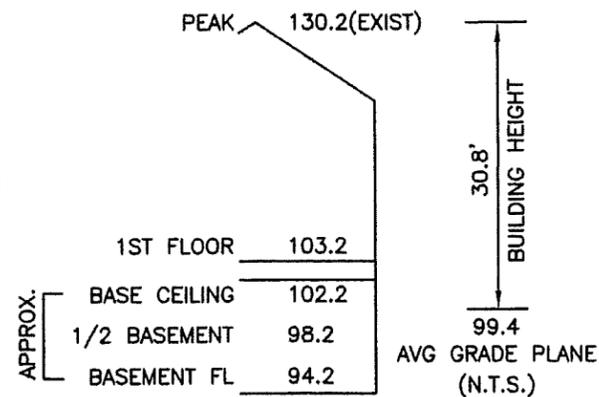
GRADES REFER TO LOWEST  
POINT WITHIN 6' OF BUILDING  
NOT INTENDED FOR  
F.A.R. CALCULATION

AVERAGE GRADE CALCULATION:  
[SEC 1.5.4(F)]

$$AVG = \frac{\sum[L(E1+E2)/2]}{P}$$

$$AVG = 14667.615 / 147.6 = 99.4$$

BUILDING HEIGHT CALCULATION

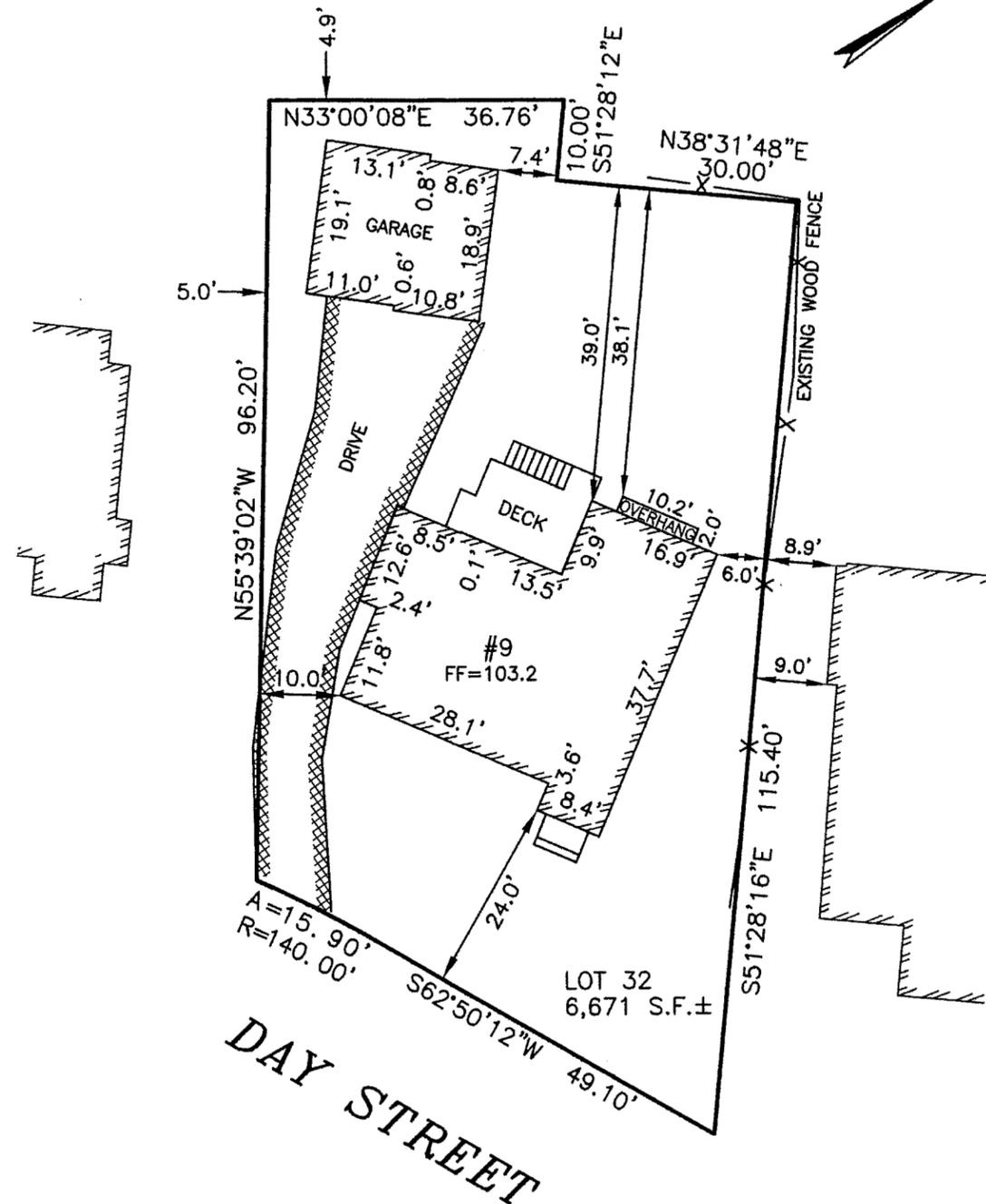


**ZONING INFORMATION**

ZONE: SR-3  
PLAN DATED: OCTOBER 13, 1926  
DEED REFERENCE: BOOK 1252 PAGE 80

	EXISTING	REQUIRED
BUILDINGS	1,552 S.F.	
STRUCTURES	1,725 S.F.	
DRIVE	886 S.F. ±	
	2,610 S.F. ±	
LOT COVERAGE	23.3%	(30% MAX.)
OPEN SPACE	61% ±	(50% MIN.)

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





# SMITH - HART RENOVATION

9 Day St.  
Auburndale, MA 02466

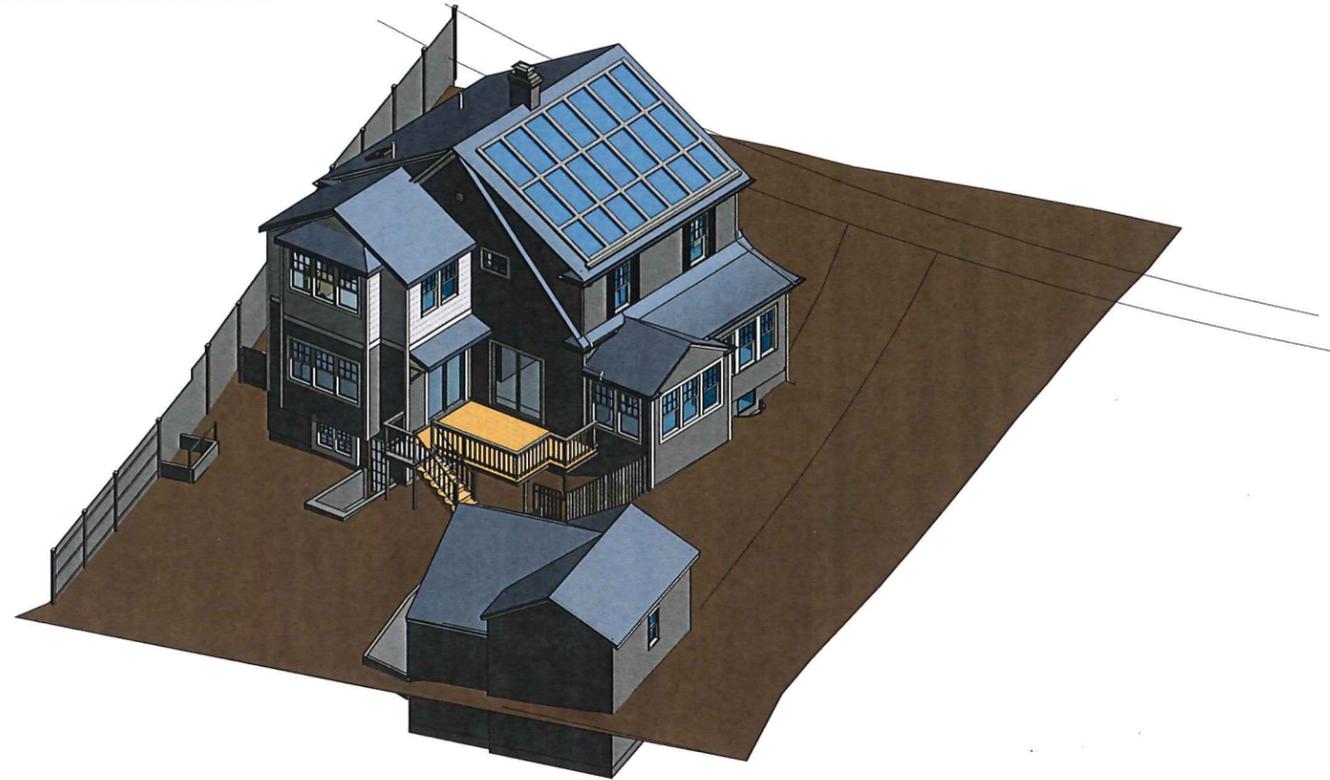
PROGRESS SET  
January 26, 2022

ARCHITECT  
Leslie Saul & Associates, Inc.

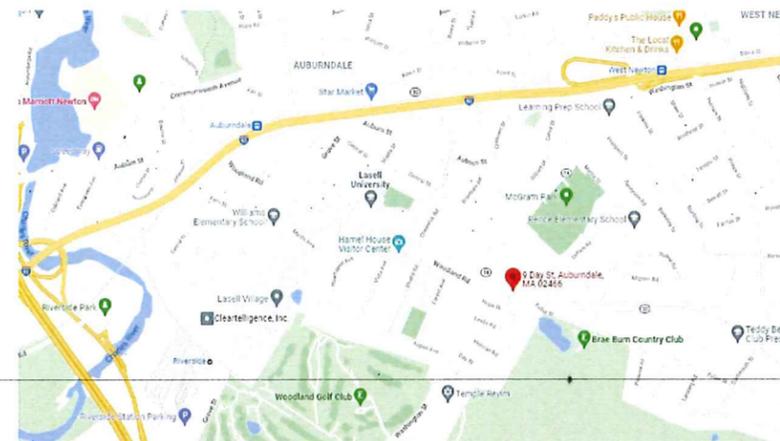
1972 Mass Ave.  
Cambridge, MA 02140

Project Manager:  
Monique Jankowski  
monique@lesliesaul.com  
cell: 857-998-7938

- GENERAL NOTES:
1. Contractor to verify all existing construction and dimensions.
  2. Contractor to provide all mechanical, electrical and life safety calculations and details.
  3. Construction is zoned rural residential.
  4. All building codes applicable to construction type shall be accommodated by Contractor.
  5. Contractor to patch and repair all areas of transition between existing work and new work.



1 TITLESHEET VIEW



LOCATION MAP

Sheet List	
Sheet Number	Sheet Name
A0.0	TITLESHEET
A1.0	SITE PLAN
A2.0	EXISTING / DEMO- 2ND FLOOR
A3.1	CONSTRUCTION PLAN- 1ST FLOOR
A3.2	CONSTRUCTION PLAN- 2ND FLOOR
A4.0	REFLECTED CEILING PLAN- 2ND FLOOR
A5.0	EXTERIOR ELEVATIONS
A6.0	SECTIONS
A7.0	ELEVATIONS
A8.0	VIEWS
TOTAL SHEETS: 10	

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Seal

Revision Schedule

Revision Number	Revision Description	Revision Date

Consultant



Project Name:  
**SMITH - HART RENOVATION**  
  
9 Day St.  
Auburndale, MA 02466  
  
-PROGRESS SET-

Drawing Title:  
TITLESHEET

Revision No.

Issued Date: 01-13-2022

Printed Date: 1/26/2022 6:39:13 PM

Scale:

Drawn By: MJ

Drawing No.

# A0.0



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Revision Schedule

Revision Number	Revision Description	Revision Date
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Consultant



**Leslie Saul & Associates, Inc.**  
 architecture and interior

172 Massachusetts Ave.  
 Cambridge, MA 02140

Phone: 617.234.5300  
 Fax: 617.234.5303  
 www.lesliesaul.com

Project Name:  
**SMITH - HART  
 RENOVATION**

9 Day St.  
 Auburndale, MA 02466

-PROGRESS SET-

Drawing Title:  
**SITE PLAN**

Revision No.

Issued Date: 01-13-2022

Printed Date: 1/26/2022 6:37:29 PM

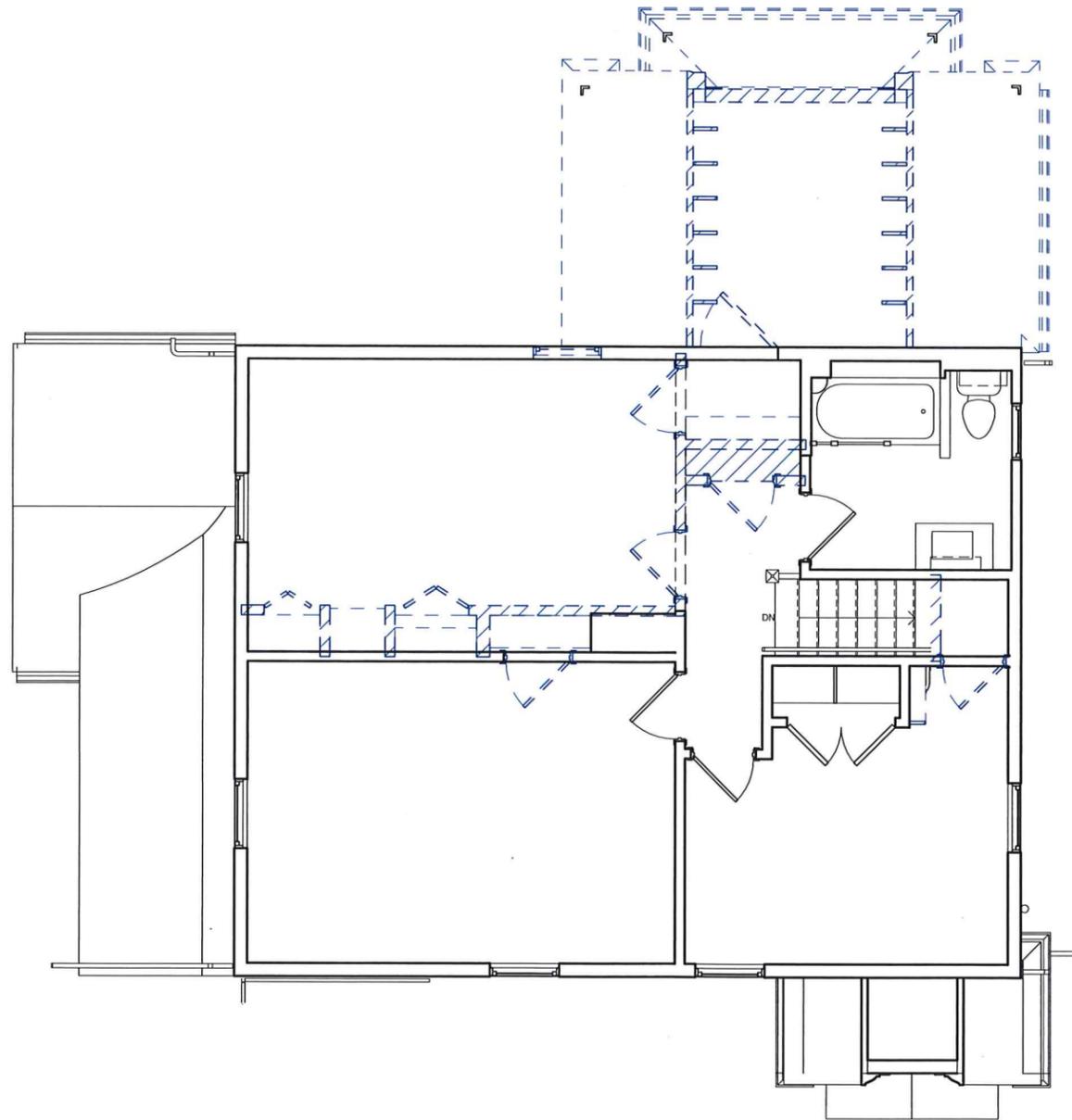
Scale: 1/8" = 1'-0"

Drawn By: MJ

Drawing No.

**A1.0**

① Site Plan  
 1/8" = 1'-0"



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Revision Schedule

Revision Number	Revision Description	Revision Date
-----------------	----------------------	---------------

Revision Number	Revision Description	Revision Date

Consultant



**Leslie Saul & Associates, Inc.**  
 architecture and interior  
 872 Massachusetts Ave.  
 Cambridge, MA 02140  
 Phone: 617.234.6300  
 Fax: 617.234.5301  
 www.lesliesaul.com

Project Name:  
**SMITH - HART  
 RENOVATION**  
 9 Day St.  
 Auburndale, MA 02466  
 -PROGRESS SET-

Drawing Title:  
**EXISTING / DEMO- 2ND FLOOR**

Revision No.

Issued Date: 01-13-2022

Printed Date: 1/26/2022 6:37:33 PM

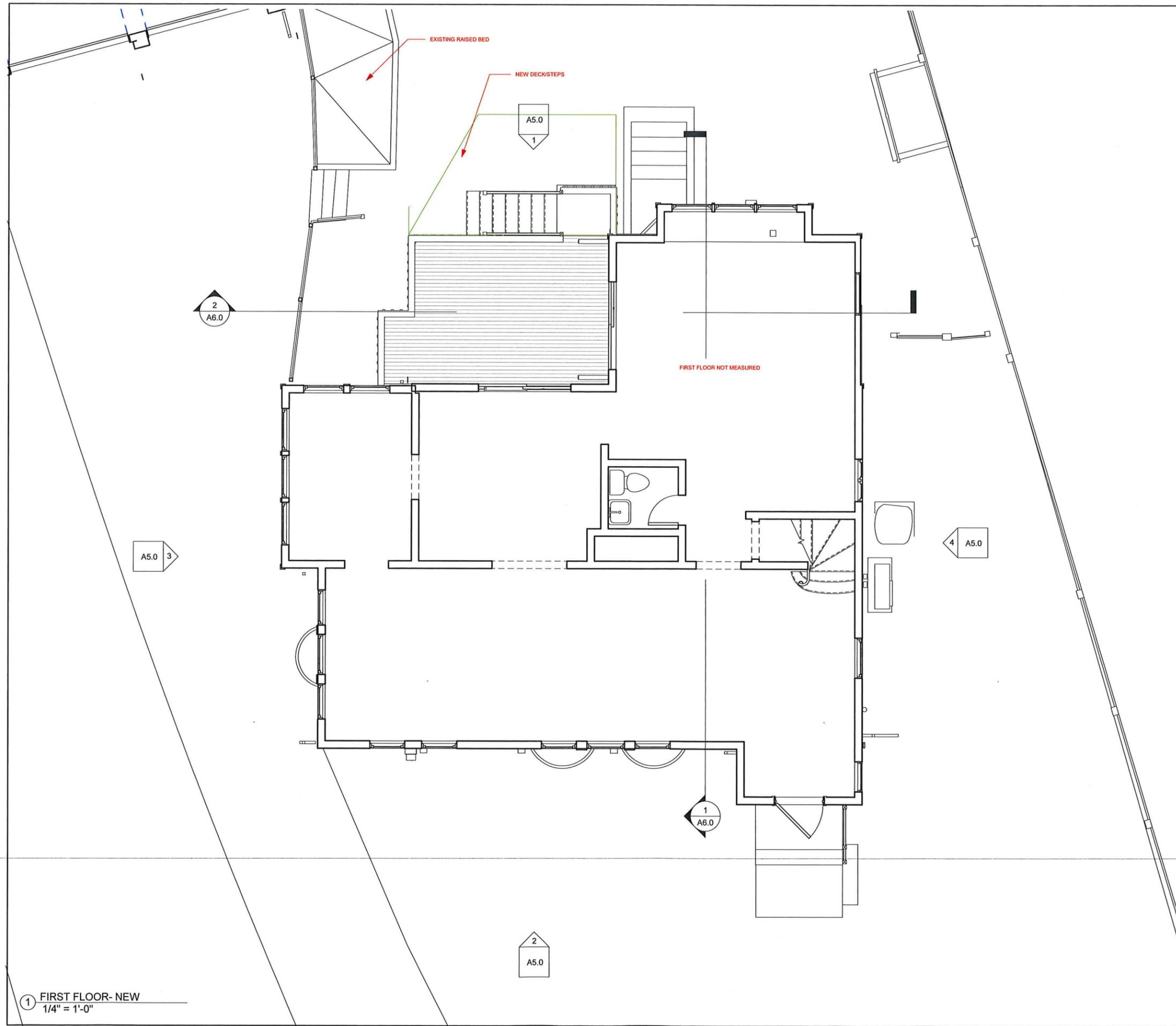
Scale: 1/4" = 1'-0"

Drawn By: MJ

Drawing No.

**A2.0**

① SECOND FLOOR- EXISTING/ DEMO  
 1/4" = 1'-0"



① FIRST FLOOR- NEW  
1/4" = 1'-0"

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Revision Schedule

Revision Number	Revision Description	Revision Date

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architecture and interior

872 Massachusetts Ave.  
Cambridge, MA 02140

Phone: 617.234.5300  
Fax: 617.234.5301  
www.lesliesaul.com

Project Name:

**SMITH - HART  
RENOVATION**

9 Day St.  
Auburndale, MA 02466

-PROGRESS SET-

Drawing Title:

**CONSTRUCTION PLAN- 1ST  
FLOOR**

Revision No.

Issued Date: 01-13-2022

Printed Date: 1/26/2022 6:37:36 PM

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

Drawn By: MJ

Drawing No.

**A3.1**

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Seal

Revision Schedule

Revision Number	Revision Description	Revision Date
-----------------	----------------------	---------------

Consultant



Project Name:  
**SMITH - HART RENOVATION**  
 9 Day St.  
 Auburndale, MA 02466  
 -PROGRESS SET-

Drawing Title:  
**CONSTRUCTION PLAN- 2ND FLOOR**

Revision No.

Issued Date: 01-13-2022

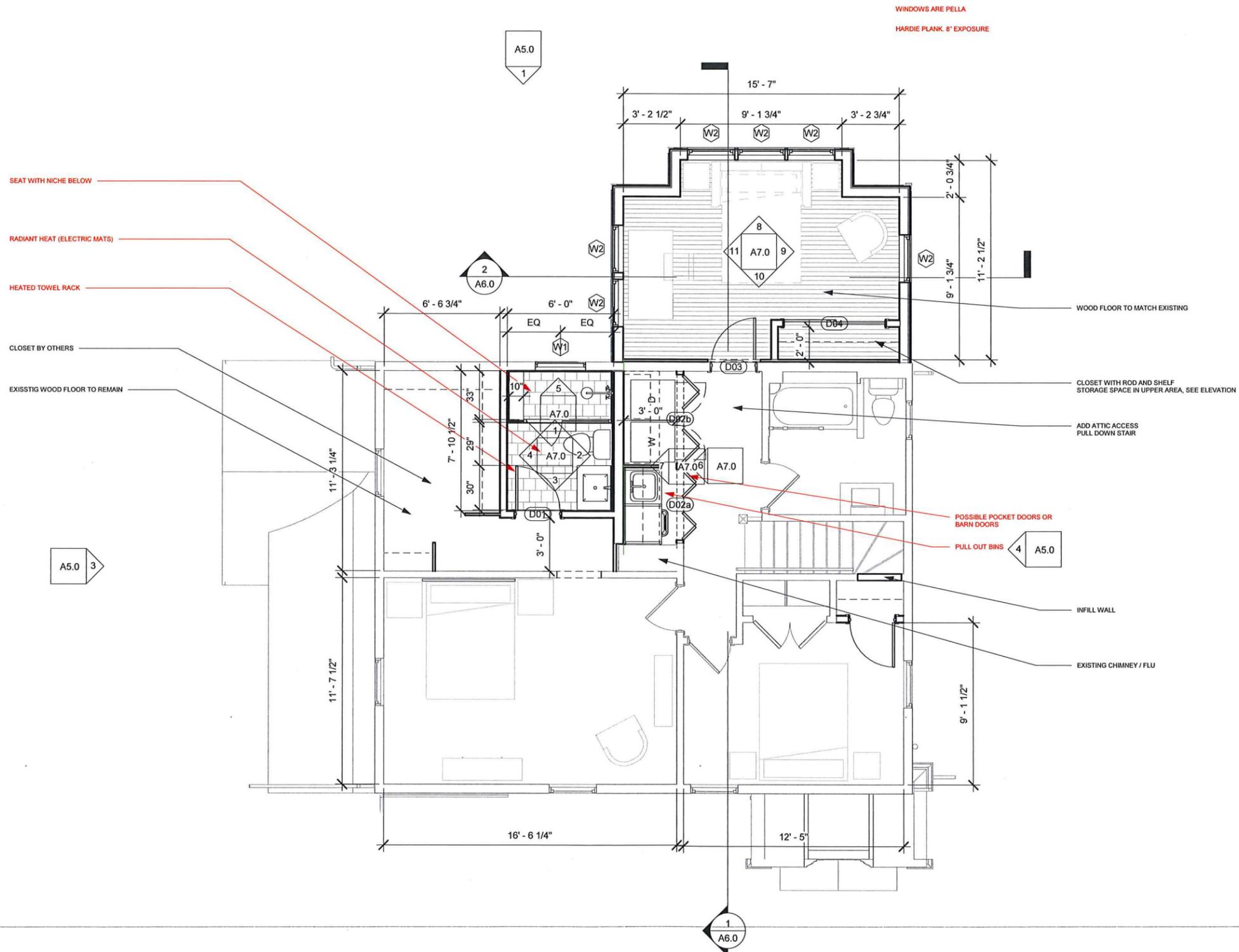
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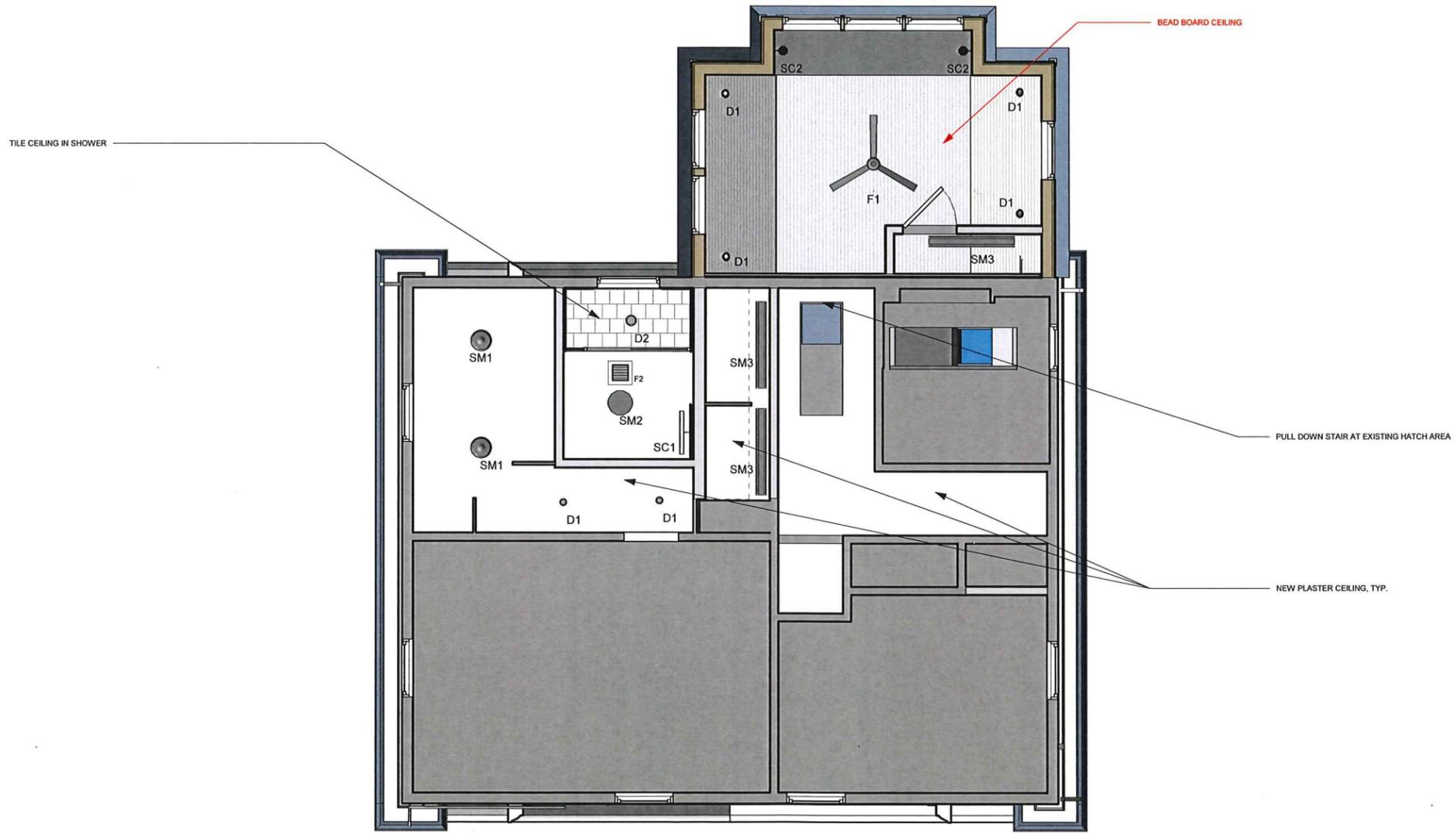
Drawn By: MJ

Drawing No.

**A3.2**



① SECOND FLOOR- NEW  
 1/4" = 1'-0"



Lighting Fixture Schedule		
Type Mark	Comments	Count
D1	RECESSED DOWNLIGHT	6
D2	RECESSED DOWNLIGHT- SHOWER	1
SC1	SCONCE- VANITY	1
SC2	SCONCE	2
SM1	SURFACE MOUNT	2
SM2	SURFACE MOUNT	1
SM3	SURFACE MOUNT- CLOSET	3

① Second Floor  
1/4" = 1'-0"

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Revision Schedule		
Revision Number	Revision Description	Revision Date

Consultant

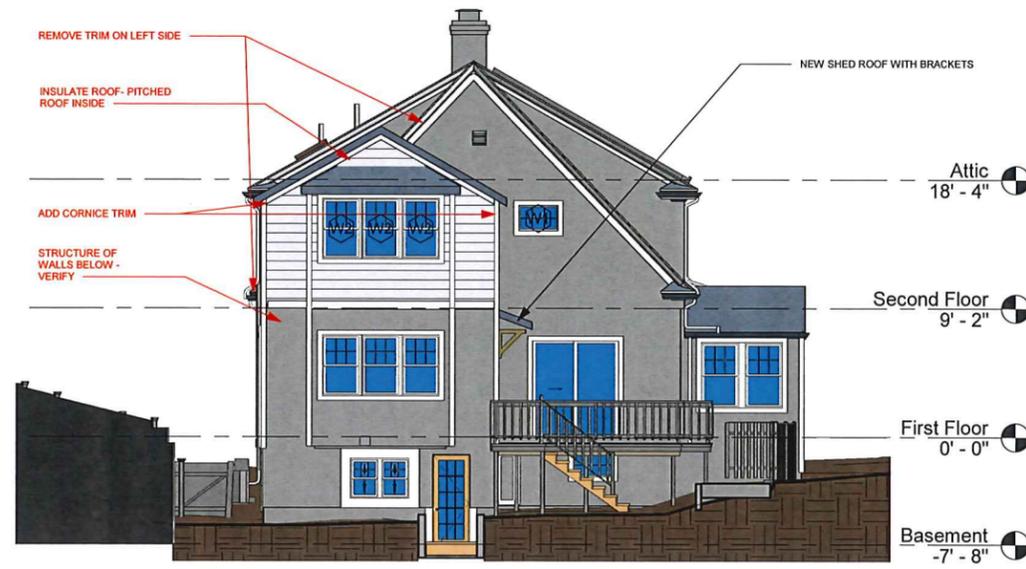
**Leslie Saul & Associates, Inc.**  
architecture and interior  
372 Massachusetts Ave.  
Cambridge, MA 02140  
Phone: 617.234.5300  
Fax: 617.234.5301  
www.lesliesaul.com

Project Name:  
**SMITH - HART RENOVATION**  
  
9 Day St.  
Auburndale, MA 02466  
  
-PROGRESS SET-

Drawing Title:  
**REFLECTED CEILING PLAN-  
2ND FLOOR**

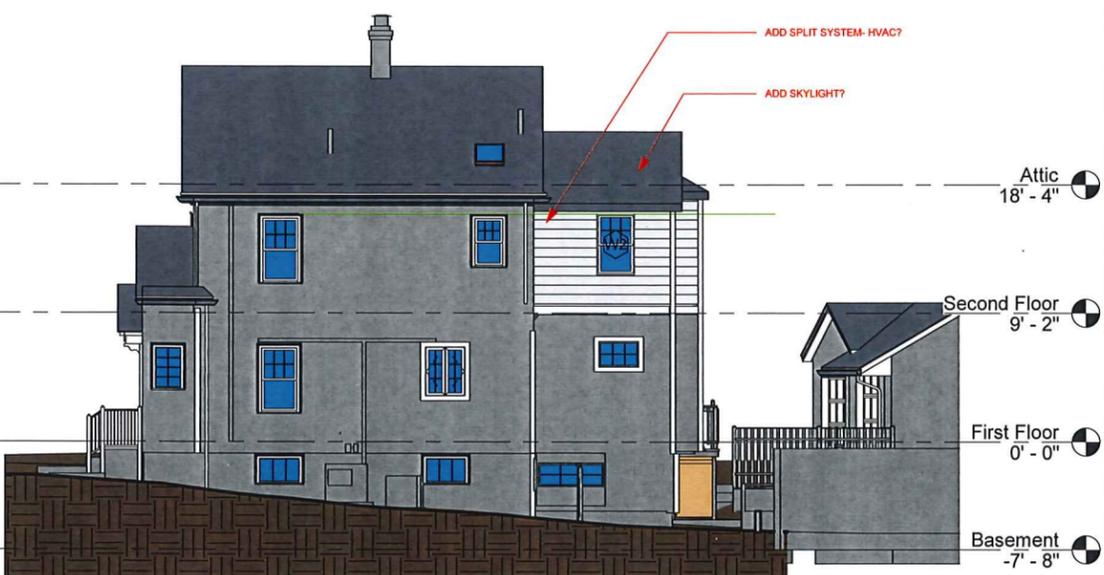
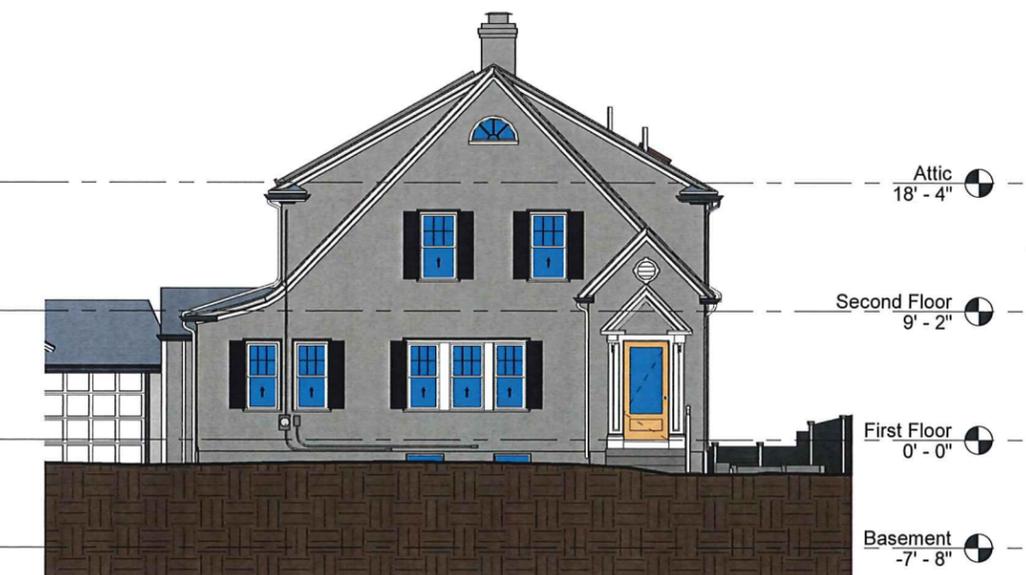
Revision No.  
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Printed Date: 1/26/2022 8:37:44 PM  
Scale: 1/4" = 1'-0"  
Drawn By: MJ

Drawing No.  
**A4.0**



① NORTH-BACK  
1/8" = 1'-0"

③ WEST- DRIVEWAY SIDE  
1/8" = 1'-0"



② SOUTH-FRONT  
1/8" = 1'-0"

④ EAST- SIDE  
1/8" = 1'-0"

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Seal

Revision Schedule		
Revision Number	Revision Description	Revision Date

Consultant

**Leslie Saul & Associates, Inc.**  
architecture and interior  
772 Massachusetts Ave.  
Cambridge, MA 02140  
Phone: 617.234.5300  
Fax: 617.234.5301  
www.lesliesaul.com

Project Name:  
**SMITH - HART RENOVATION**  
9 Day St.  
Auburndale, MA 02466  
-PROGRESS SET-

Drawing Title:  
**EXTERIOR ELEVATIONS**

Revision No.  
Issued Date: 01-13-2022  
Printed Date: 1/26/2022 6:37:51 PM  
Scale: 1/8" = 1'-0"  
Drawn By: Author

Drawing No.  
**A5.0**



① LONG SECTION  
1/4" = 1'-0"

② CROSS SECTION  
1/4" = 1'-0"

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Seal

Revision Schedule

Revision Number	Revision Description	Revision Date
-----------------	----------------------	---------------

Consultant

**Leslie Saul & Associates, Inc.**  
architecture and interior  
372 Massachusetts Ave.  
Cambridge, MA 02140  
Phone: 617.234.5300  
Fax: 617.234.5301  
www.lesliesaul.com

Project Name:

**SMITH - HART  
RENOVATION**

9 Day St.  
Auburndale, MA 02466

-PROGRESS SET-

Drawing Title:

SECTIONS

Revision No.

Issued Date: 01-13-2022

Printed Date: 1/26/2022 6:37:55 PM

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

Drawn By: MJ

Drawing No.

**A6.0**

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Seal

Revision Schedule

Revision Number	Revision Description	Revision Date

Consultant



Project Name:  
**SMITH - HART  
 RENOVATION**  
 9 Day St.  
 Auburndale, MA 02466  
 -PROGRESS SET-

Drawing Title:  
**ELEVATIONS**

Revision No.

Issued Date: 01-13-2022

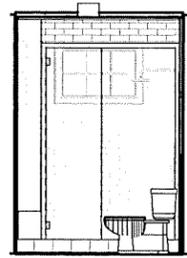
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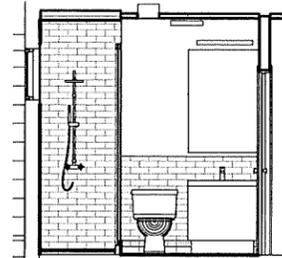
Drawn By: MJ

Drawing No.

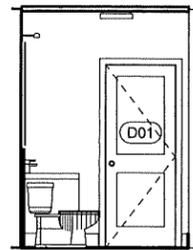
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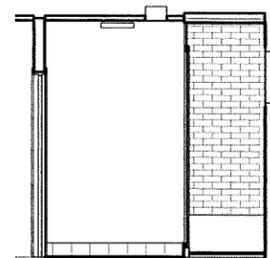
① BATHROOM  
 1/4" = 1'-0"



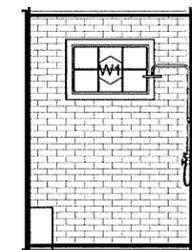
② BATHROOM  
 1/4" = 1'-0"



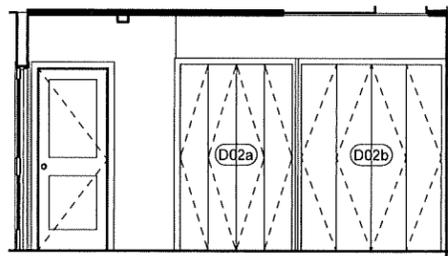
③ BATHROOM  
 1/4" = 1'-0"



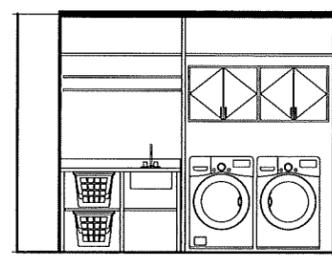
④ BATHROOM  
 1/4" = 1'-0"



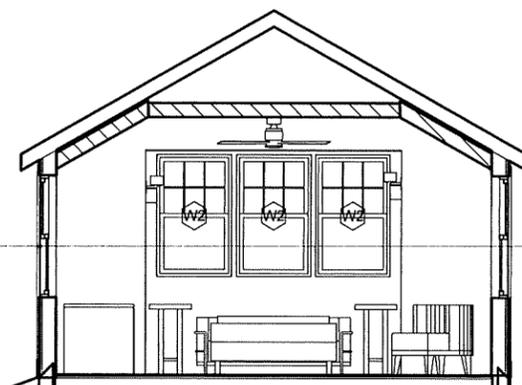
⑤ BATHROOM  
 1/4" = 1'-0"



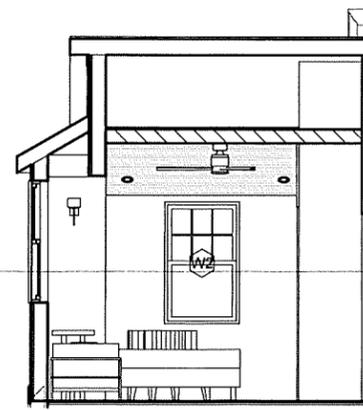
⑥ LAUNDRY CLOSET  
 1/4" = 1'-0"



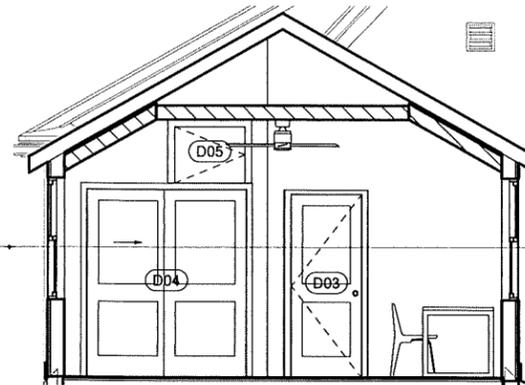
⑦ LAUNDRY CLOSET  
 1/4" = 1'-0"



⑧ BEDROOM  
 1/4" = 1'-0"



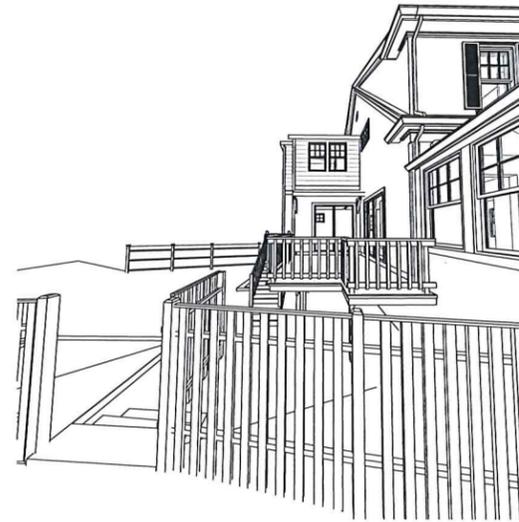
⑨ BEDROOM  
 1/4" = 1'-0"



⑩ BEDROOM  
 1/4" = 1'-0"



⑪ BEDROOM  
 1/4" = 1'-0"



① 3D View EXTERIOR 1



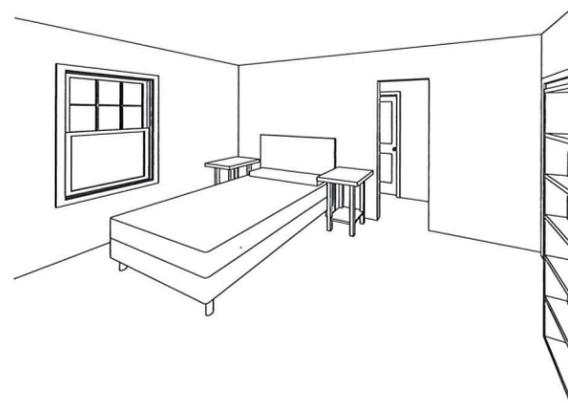
② 3D View EXTERIOR 2



③ 3D View EXTERIOR 3



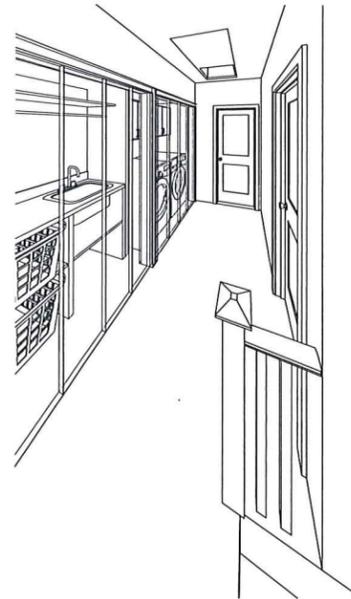
④ 3D View EXTERIOR 4



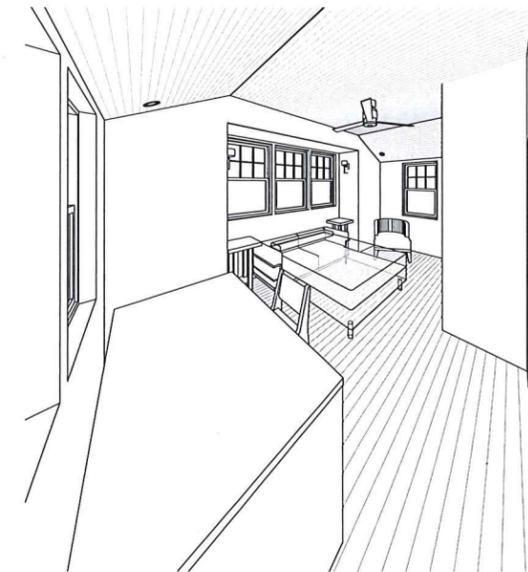
⑤ 3D View BEDROOM



⑥ 3D View BATHROOM



⑦ 3D View HALLWAY



⑧ 3D View NEW BEDROOM

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Seal

Revision Schedule

Revision Number	Revision Description	Revision Date

Consultant



Project Name:  
**SMITH - HART  
 RENOVATION**  
 9 Day St.  
 Auburndale, MA 02466  
 -PROGRESS SET-

Drawing Title:  
**VIEWS**

Revision No.

Issued Date: 01-13-2022

Printed Date: 1/26/2022 6:38:06 PM

Scale:

Drawn By: MJ

Drawing No.

**A8.0**



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**ZONING BOARD OF APPEALS**  
Heather Zaring, Interim Board Clerk

## **MEETING MINUTES**

**Wednesday, February 23, 2022**

**7:00 p.m.**

**Virtually via Zoom**

**Board Members Present:** Brooke Lipsitt (Chair), Stuart Snyder, Denise Chicoine, Treff LaFleche, William McLaughlin (all participated remotely)

**Staff Present:** Heather Zaring, Interim ZBA Clerk; Jaclyn Zawada, Assistant City Solicitor, Andrew Mavrelis, Zoning Code Enforcement Agent, Barney Heath, Director of Planning & Development

**A public hearing of the Newton Zoning Board of Appeals was held virtually via Zoom on Wednesday, February 23, 2022, at 7:00 p.m. on the following petitions:**

- #10-21** Jeff and Jane Freedman of 14 Crystal Street, Newton, Massachusetts, requesting a variance from Section 3.1.3 & Section 3.4.4.C.3 of the Newton Zoning Ordinance to reduce the required side setback to 3.4 feet where 7.5 feet is required and to allow an 18-foot wide double garage door on a front facing garage. The petitioner seeks to raze and reconstruct an existing attached garage. The subject property is located at 14 Crystal Street within a Single-Residence 2 (SR-2) zoning district and consists of a 11,640 square foot lot improved with a single family dwelling.
- #02-22** Tarun and Anuradha Bhalla of 943 Boylston Street, Newton, Massachusetts, pursuant to M.G.L. c. 40A, § 8, and 15, appealing the December 14, 2021 Notice of Violation issued by the Commissioner of Inspectional Services for operating an illegal lodging house in violation of Section 3.4.1 and 6.2.7.B of the Newton Zoning Ordinance at 64 Brooks Avenue, Newton, Massachusetts. The subject property is located at 64 Brooks Avenue within a Multi-Residence 1 (MR-1) zoning district and consists of 6,336 square foot lot.
- #09-19(2)** Dunstan East, LLC requesting to change the details of the Comprehensive Permit previously granted on July 8, 2020, as amended by an Amended and Restated Comprehensive Permit granted on September 9, 2021, for a mixed-use project located in the Business 2 Zoning District at 1149, 1151, 1157, 1169, 1171-1173, 1179, and



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1185 Washington Street, 12, 18, 24, and 25 Kempton Place, and 32 and 34 Dunstan Street in Newton, Massachusetts consisting of three buildings containing 302 residential units, 7,771 square feet of commercial space, and 338 parking stalls. The applicant proposes a reduction of 10 units and 4 parking stalls, an increase of 138 square feet of commercial space, and a change to the infiltration and inflow fee calculation. Pursuant to 760 CMR 56.05 (11), this item will be heard for the purpose of determining whether the proposed changes constitute substantial or insubstantial changes.

#### 4. Review and approval of minutes for January 26, 2022 meeting.

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**Agenda Item 1:** #10-21—14 Crystal Street. Sitting Members: Brooke Lipsitt (Chair), Stuart Snyder, Treff LaFleche, Denise Chicoine, and William McLaughlin

#### **Documents Submitted:**

1. 14 Crystal Street Variance Application
2. 14 Crystal Street Withdrawal Letter dated 02/10/22

#### **Testimony:**

Chair Lipsitt stated that the applicants submitted a letter requesting the withdrawal of their petition on February 10, 2022 as they have adjusted their plans to comply with the Newton Zoning Ordinance and no longer need a variance.

A motion was made by William McLaughlin to accept the withdrawal notice. The motion was duly seconded by Treff LaFleche. The motion passed 5-0.

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**Agenda Item 2:** #02-22—64 Brooks Avenue. Sitting Members: Brooke Lipsitt (Chair), Stuart Snyder, Treff LaFleche, Denise Chicoine, and William McLaughlin

#### **Documents Submitted:**

1. 64 Brooks Avenue Appeal Application (submitted 01/13/22)
2. Testimonials for 64 Brooks Avenue (submitted 01/14/22)
3. Materials from Inspectional Services Zoning Code Enforcement Agent regarding 64 Brooks Avenue



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### Testimony:

Daniel Skrip, Tempus Fugit Law LLC, 185 Devonshire Street, Boston, represented the property owners. He provided some background on when the subject property was purchased and that his clients believed that the property could be used by renters on a month-to-month basis based on how they interpreted information on the City of Newton website. The property owners were trying to avoid the lodging house procedure and having to go through the special permit process for operating a lodging house within the City and thought eight unrelated people could rent the two-family home, when fewer than four unrelated is the maximum allowed by Section 6.2.7.B of the Newton Zoning Ordinance. Mr. Skrip mentioned that when he and his clients reviewed the ordinance after Inspectional Services and neighbors complained, they found discrepancies between the City's website and the ordinance. He concluded his comments by stating that his clients are before the Board to try and remedy the situation, have the Board find that the property is not an illegal lodging house, rescind the fines, or at least rescind the fines and give the property owners until the end of the month to have the renters vacate the property.

Chair Lipsitt inquired if Mr. Skrip's clients were prepared to file for a special permit if the Board deemed that a special permit was the appropriate action to take to resolve the matter.

Mr. Skrip stated that the option of a special permit is on the table, but he cannot provide that answer without conferring with his clients and assessing the situation after the outcome of the hearing.

Chair Lipsitt remarked that comments on the City's website are superseded by the City's ordinances and Mr. Skrip as an attorney should be aware of that.

Andrew Mavrelis, Zoning Code Enforcement Agent, stated that he was the one who issued the Notice of Violation that the property owners are appealing and provided some background as to why he issued the violation after a complaint was filed on November 24, 2021, that the subject property was being operated as a lodging house. He discussed numerous advertisements that were found online after the initial zoning enforcement request was made that stated that the property had eight rooms to rent that were the rooms illustrated by photographs that he took when he conducted



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a site inspection on December 13, 2021, which led to the notice of violation being issued as it was clear the rooms were being rented as individual rooms. He also pointed out that the advertisements mentioned all the amenities available including keyless access to every bedroom and even the foyer to get into both units, cleaning service, and discounts available for stays longer than a month, which further supported his initial observations that these rooms were for rent and the building was operating as a lodging house.

The site inspection was done in the presence of the property owner who stated that the rooms were not being used for short term rentals but more like medium term rentals, i.e., more than thirty days. The owner provided a copy of a lease agreement that showed a month-to-month tenancy with a thirty-day notice, which further supported Mr. Mavrelis' initial suspicion that the home was operating as a lodging house. Mr. Mavrelis continued, reporting that when the home was for sale in April 2021 the listing stated that the home was a two family with two bedrooms and a bath on the first floor and a four-bedroom two bath unit on the second and third floor. Some of the living spaces have been converted into bedrooms. He remarked that none of the bedrooms had personal effects in them and all were oriented and decorated similarly as one would do at a hotel. Mr. Mavrelis concluded his comments by stating that all the people he spoke to at the property during his visit to the site stated that they were renting a room and were not part of the housekeeping unit, which by default made them lodgers in the home and led to the notice of violation being issued to the property owner.

Mr. McLaughlin inquired about how many rooms had more than one bed/occupant.

Mr. Mavrelis replied that out of all the rooms he was able to inspect (one room was locked and he was unable to get into during his site inspection) only one room had two beds in it.

Ms. Chicoine inquired whether all the bedrooms had a second means of egress or if there was a safety issue that the Board needed to be concerned about.

Mr. Mavrelis stated that yes, as far as emergency egress is concerned, it is something that needs to be considered. He stated that most of the bedrooms had appropriate egress but if one looked at the original building plans for the home one would see that some of the rooms were illegally converted



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into bedrooms as they did not have permits along with not having the appropriate emergency egress and smoke detectors that are required by code.

Mr. LaFleche asked if all the rooms had keypad access or did the kitchen and dining spaces just have doors/open.

Mr. Mavrelis stated that every room except the kitchen and dining space had keypads and that the kitchen and dining space did not have doors at all.

Mr. LaFleche asked whether Mr. Mavrelis had requested a written rental history from the owners and how long has the current property owners owned the subject property.

Mr. Mavrelis replied that he did not but did have a rental history from the past month or two that was provided by the property owners and that they have owned the property for around six months.

### **Public Comment:**

Christopher Coy, 54 Brooks Avenue, stated that he lives two houses down from the subject property and numerous renters staying at the property have come to his home asking if they can park in front of his home and he would inquire as to why they would want to do that and discovered that they were staying at the "Airbnb" at 64 Brooks Avenue. He commented that he has heard similar stories from some of his other neighbors. There has also been trash piling up at the property from the renters. Mr. Coy also remarked that numerous calls to the Police and Fire Departments have been made in response to situations at the subject property, some as recent as the week prior due to the actions of some of the renters. He concluded his comments by stating that the home is clearly being used as a lodging house, that he is sure the appropriate decision will be made by the Board but shared his concern that the property may need some sort of monitoring to ensure the property owners comply.

Peter & Mary Lewitt, 41 Brooks Avenue, echoed Mr. Coy's remarks. Mr. Lewitt stated that he and his wife have seen as many as sixteen people at one time at the subject property. He also stated that there has been no management of the property for numerous months and the neighbors have had to deal with the less-than-ideal situation that the property owners have made. Mr. Lewitt ended his



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remarks by stating that the neighbors are law abiding and are offended by the property owners trying to sidestep the rules of the city and not get a special permit for the illegal lodging house that has been affecting their neighborhood.

Mr. Skrip retorted that the notion that his clients tried to sidestep the ordinances was not true and that they are trying to work with the city to remedy the situation so both the City and his clients are happy. Furthermore, he does recognize the binding nature of the City's ordinances versus the advisory nature of information on the City's website but wanted to illustrate what his clients' thoughts were when they purchased the property and how it was a misunderstanding. In addition, he stated that having locks on doors and having a cleaning service is irrelevant as it does not define a dwelling. His clients do not dispute the advertisements but the situation at hand is merely an interpretation of the ordinance and depending on how one interprets the ordinance the advertisements are appropriate. Mr. Skrip ended his comments by stating that the bedroom on the third floor that Mr. Mavrelis said did not have proper egress is no longer able to be rented in direct response to Mr. Mavrelis' comments.

A motion was made by Stuart Snyder to close the public hearing. The motion was duly seconded by Treff LaFleche. The motion passed 5-0 to close the public hearing

### **Deliberation:**

Chair Lipsitt remarked that there is not a great deal of dispute as the issue of whether the Board interprets information on the City website versus the ordinance has been straightened out. She stated that the subject property can have six unrelated people in the home by right but the rental history for the previous month that was provided in Mr. Mavrelis' narrative from the property owner clearly shows that ten bedrooms were available to be rented out and that is not allowed.

Mr. Snyder inquired whether it is within the Board's role to advise the property owners on what to do next as it was his understanding that the Board's role is purely to either vote to uphold or overturn the decision of Inspectional Services.

Chair Lipsitt commended Mr. Snyder for describing the Board's role perfectly and added that it is appropriate to have a discussion with Inspectional Services if the Board upholds their decision on



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whether or not to possibly withhold penalties for a certain period while a special permit might be filed.

Mr. LaFleche asked if the property owner or the property manager lived at the subject property and if it was clear in definition of a lodging house that three unrelated renters can live there whether or not the dwelling is owner occupied.

Mr. Skrip stated that neither the property owner nor the property manager live at the subject property.

Attorney Zawada remarked that the definition of a lodging house refers to any dwelling that is designed, occupied, or intended for occupancy by four or more lodgers. She continued to define a lodger as a person who occupies a space for living and sleeping without separate cooking facilities, paying rent which may include an allowance for meals, and who is not a member of the housekeeping unit.

Mr. LaFleche asked for further clarification on what a member of the housekeeping unit truly was.

Attorney Zawada stated that in this case that there has been evidence provided by Mr. Mavrelis proving that housekeeping is done by people who do not reside at the subject property.

Chair Lipsitt added to the discussion by explaining her understanding of the ordinance and that was that dwelling can have no more than three unrelated people in addition to the property owner if it is owner occupied but can only have three unrelated people residing there in total if the dwelling is not owner occupied.

Mr. Mavrelis agreed with Chair Lipsitt's understanding of the ordinance and remarked that if the property owner lives at the property renting rooms to up to three people is allowed by right as an accessory use.

Mr. LaFleche commented that he was trying to determine if four people could be allowed to reside at the dwelling if one of them was a member of the housekeeping unit or if it was only allowed if



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the fourth person was the property owner as he has heard the ordinance interpreted in different ways over the years.

Mr. Mavrelis provided a more detailed explanation of his interpretation of the ordinance describing the difference between renting a dwelling and renting dwelling units. A dwelling is the home as a whole and if it is rented to a group of four unrelated people, they would be considered roommates as everyone would share the housekeeping responsibilities, would choose between themselves who got which room, and there would not be locks on individual doors unlike renting rooms where each room is used as a separate dwelling unit and there is no shared responsibility for housekeeping.

Mr. McLaughlin added that the renters of a dwelling would be coterminous as the leases would start and end at the same time unlike renters of separate dwelling units that have varying tenancy lengths as is clearly the case with the subject property. He concluded that the renters have no correlation to each other and are not roommates in terms of the definition.

A motion was made by Stuart Snyder to uphold Inspectional Services Notice of Violation. The motion was duly seconded by Denise Chicoine.

Chair Lipsitt posed a question to Mr. Skrip regarding if his clients were willing in pursuing a special permit if the Board voted against his client's appeal.

Mr. Skrip stated that it is a possibility, but he would need to confer with his clients after the Board votes as that will influence what steps they would take after the hearing.

Chair Lipsitt remarked that if Mr. Skrip agreed to file for a special permit that she would on behalf of the Board ask Mr. Mavrelis to hold off on imposing any fines for a finite period until his clients file for a special permit but if his clients were not willing to file a special permit, she would leave it to Mr. Mavrelis and the Appellant to negotiate among themselves.

Mr. Snyder interjected that he does not support holding off on imposing fines to try and get the petitioner to file for a special permit. There is a reason that the ordinance is written the way it is, and he does not support the idea of giving someone a pass simply because they say they will try and get it right the second time.



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Mr. Mavrelis asked that the Board uphold the notice of violation and that the Board support the proposed remediation, which is stated in the ordinance, and that the operation of a lodging house ceases and desists immediately.

Mr. McLaughlin commented that he would be open to delaying any fines provided that the property owners cease and desist but he does not want the property owner saying that they will submit for a special permit, which can take some time but continue to operate the dwelling as a lodging house.

Mr. Mavrelis mentioned that there are safety concerns when operating a lodging house because there are certain building code, inspections, licensing, registrations, and ordinances that need to be completed and/or adhered to so it is imperative that the operation of the lodging house ceases immediately. He also mentioned that if the property owners had initially ceased and desisted when the violation notice was issued, they would not be before the Board asking for an appeal or be concerned over the fines.

Mr. Snyder opined that the other reason that fining the property owners while the violations continue is important is that the abutting neighbors that own their properties have a certain expectation that zoning applies to everyone and those who do not adhere to zoning should be penalized.

The motion passed 5-0 to uphold Inspectional Services Notice of Violation.

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**Agenda Item 3:** #09-19(2)—Dunstan East. Sitting Members: Brooke Lipsitt (Chair), Stuart Snyder, Treff LaFleche, Denise Chicoine, and William McLaughlin

### **Documents Submitted:**

1. Dunstan East-Letter to Chairman Lipsitt dated 02/11/22
2. Dunstan East- EXHIBIT A - Recorded Zoning Decisions
3. Dunstan East-EXHIBIT B1 - Insubstantial Change (Buildings 1 and 2)
4. Dunstan East-EXHIBIT B2 - Insubstantial Change (Building 3)



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5. Dunstan East-EXHIBIT C - Civil Plan
6. Dunstan East-EXHIBIT D - Redlined Waiver List
7. Dunstan East-EXHIBIT E - Redlined Commercial Parking Calculation
8. Dunstan East-EXHIBIT F - Affordable Housing Matrix
9. Dunstan East-EXHIBIT G - Revised I&I Calculation
10. Mead, Talerman, & Costa, LLC Memo regarding Dunstan East Proposed Modifications dated 02/23/22

### Testimony:

Stephen Buchbinder, Schlesinger & Buchbinder LLP, 1200 Walnut Street represented Dunstan East, LLC and provided a general overview of the history of the project and of the proposed changes that his clients were requesting be deemed insubstantial by the Board. He stated that the original decision for the project was appealed by several abutters, litigation ensued in Land Court, and a settlement was reached on March 11, 2021. The terms of the settlement agreement would change the originally approved project; hence, the applicant was before the Board asking for the proposed changes to be deemed insubstantial. He concluded his comments by introducing Michael Scott, the Co-Managing Partner at Nutter McClennen & Fish, who represented Dunstan East, LLC in the litigation with the abutters.

Attorney Michael Scott, Nutter McClennen & Fish LLP, 155 Seaport Boulevard, Boston provided a general overview of the terms of the settlement agreement. When the settlement was entered into with the abutters, Mark Development had numerous conversations with the City and the plaintiff to discuss a two-step process to effectuate the settlement. The first settlement step included seeking the Board's approval for substantial changes to building 3, incorporating another parcel, and seeking to construct an enlarged building 3 on the new parcel of land. The substantial change request was purposely done that way in case someone appealed the substantial changes to building 3 so the developer could elect to move forward with buildings 1 and 2 as originally approved in the initial comprehensive permit as modified in February 2021. Step two of the process to effectuate the settlement was, if the Board approved the substantial change request for building 3, Mark Development agreed that they would come back to the Board with an insubstantial change request to eliminate the sixth story on building 1 and make the other proposed changes to the rear of



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buildings 1, 2 and 3 in accordance with the settlement agreement. The developer was now before the Board seeking approval of the changes that are required as their last step to fulfill their obligations pursuant to the terms of the settlement agreement. He concluded his comments by mentioning that unless the sixth story is removed from building 1, the developer cannot construct the sixth story on building 3 and the abutters would prefer to see the additional building height and density on building 3 as opposed to on building 1.

Attorney Buchbinder remarked that his clients have a legal obligation to pursue the proposed changes especially because his clients have been working with the neighborhood liaison committee that was established pursuant to the approval of the initial comprehensive permit and they feel that they have a moral obligation to create the project that was proposed to the abutters. He explained that his clients are proposing a reduction in the number of housing units by 10 from 302 bringing the total down to 292, which is a reduction of 3.3%. The proposed changes will further mitigate the impacts to the abutters by reducing the height of building 1, increasing the setbacks from Cheesecake Brook, and increasing the lot area per dwelling. Attorney Buchbinder also added that attorney Jason Talerman, who represents the abutters who appealed the original decision, provided a letter earlier in the day stating that his clients support the proposed changes before the Board. He added that under the Department of Housing and Community Development (DHCD) regulations a reduction in dwelling units, which is the main proposed change, is typically considered insubstantial and the other proposed changes are minor in comparison so they should be deemed insubstantial as well. He cited a decision from the Massachusetts Housing Appeals Court (VIF II/JMV Riverview Commons Investment Partners, LLC vs. Andover Zoning Board of Appeals No. 12-02 dated February 27, 2013). He stated that his clients' proposed changes would have no adverse impacts on the community and in fact, to the contrary, would be beneficial as it would reduce the density and height along with increasing the setbacks. Attorney Buchbinder explained that the reduction in 10 units meant 3 fewer inclusionary units but none of the deeply affordable units would be reduced as his clients believed in keeping the commitment to the community that they made when the initial project was approved. Since there was going to be a reduction in 10 units and ultimately reducing the density of the project, the City's Engineering Department had revised the inflow and infiltration (I&I) calculation by around \$31,000. He concluded his comments by stating that, after a conversation with Attorney Temple prior to the hearing, his clients have agreed not to request the lower I&I payment, as projects change from time to time, and



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they should not keep changing this figure. In the context of the entire project it made sense not to change the fee.

Chair Lipsitt remarked that she was troubled by the fact that when Attorney Buchbinder's clients were before the Board in September it had been at least six months after a settlement had been reached with the abutters and the Board was just finding out what the settlement entailed. She also remarked that she was not happy with the fact that Attorney Buchbinder's clients came to the Board to ask for changes, then came back and asked for more changes that they had already agreed to do per the settlement with the abutters. It seemed like a less than forthright way to get things approved.

Mr. McLaughlin remarked that he did not share Chair Lipsitt's viewpoint as he understood the logic behind how the petitioner, Board, and abutters have arrived at the junction that they all are at in terms of the changes. It has been a multi-front war between adhering to what the Board approved, what the abutters wanted, and what the petitioner envisioned. Mr. McLaughlin commented that he is not a fan of losing housing units, but he did believe that the changes before the Board are insubstantial and is the best outcome overall for all parties.

Ms. Chicoine commented that she was unfamiliar with the history of the changes but in her personal experience litigating land use matters, she understood that there are always moving parts that are constantly in flux. She ended by mentioning that she believed that in the matter before the Board, she believed the changes to be insubstantial.

Mr. LaFleche echoed Mr. McLaughlin's and Ms. Chicoine's comments about understanding how things are constantly in flux with comprehensive permits and litigation and agreed that the proposed changes are insubstantial. He did inquire whether all the direct abutters along the rear of the project participated in the negotiations of the settlement that resulted in a reduction in housing units.

Attorney Buchbinder commented that he believed that it was three direct abutters who appealed the project that were involved in the negotiations, but they were in touch with their neighbors.



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Mr. Scott confirmed that Attorney Buchbinder's statement and added that they were the ones who felt the most aggrieved, but others shared their sentiments regarding the building heights.

Mr. LaFleche asked if the abutters who filed the appeal of the original comprehensive permit filed the appeal after the approval of the original design of all three buildings.

Mr. Scott remarked that yes, the abutters filed the appeal after the approval of the original design of all three buildings, which initially had building 3 as a smaller building.

Attorney Buchbinder commented that his clients came back before the Board after they acquired an adjacent parcel of land that led to an amendment of the original comprehensive permit which enabled them to enlarge building 3.

Mr. LaFleche inquired if the abutters that filed the appeal are direct abutters to building 1.

Attorney Buchbinder and Mr. Scott both confirmed that yes, the abutters that filed the appeal are direct abutters of building 1.

Mr. LaFleche inquired if the abutters that filed the appeal were regularly in contact with all the other abutters that are directly behind the three buildings.

Attorney Buchbinder stated that he was unable to confidently answer Mr. LaFleche's question as he knows that the abutters that filed the appeal were in contact with the other abutters, but he did not know which other abutters specifically or if they lived behind or adjacent to building 3. He was able to confirm that there was no appeal of the approval of building 3 though.

Damien Chaviano, Principal at Mark Development, with residence at 1428 Commonwealth Avenue, commented that one of the three abutters involved in the appeal does reside directly behind building 3.

Mr. Snyder commented that he agreed with parts of what Chair Lipsitt and parts of what the other Board members have said but he felt like the changes were insubstantial even though a vast amount



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of material was submitted. In addition, he believed that the parties involved were all acting in good faith even though the process has been complicated. He appreciated getting the last minute material from Attorney Talerman that stated that the litigants seem to support the proposed changes.

### **Public Comment:**

No public comment was made as the item as it was not a public hearing.

### **Deliberation:**

Treff LaFleche motioned to determine the proposed changes as insubstantial. William McLaughlin duly seconded the motion.

Chair Lipsitt commented that she will not be voting that the proposed changes are insubstantial as she did not support the process that occurred. She added that she was deeply concerned that the petitioner was reducing the number of inclusionary units as she believes the primary role of the Board when it comes to comprehensive permits is to ensure that the city has the maximum amount of affordable housing. Chair Lipsitt stated that the petitioner could have removed just 2 affordable units instead of the 3 that were proposed, and she was uncomfortable losing 3 affordable units that are badly needed without having a public hearing on the item. She also believed that just because the abutters and the petitioner have come to an agreement on proposed changes does not mean that the changes are automatically supportable no matter how substantial they may be or else the petitioner would not be before the Board. She ended by stating that the Board should not agree to losing 3 affordable housing units without a public hearing and she did not support the proposed motion to find the proposed changes as insubstantial.

Mr. LaFleche inquired as to what percentage of the resulting 292 units were affordable.

Attorney Buchbinder remarked that 25% of the units, i.e., 73 units would be affordable with 10 of the 73 affordable units deeply affordable. He concluded by stating that the project has the third largest number of inclusionary units in the city after the Northland and Riverside projects.

The motion passed 4 in favor (McLaughlin, LaFleche, Snyder, and Chicoine) and 1 opposed



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(Lipsitt).

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**Agenda Item 4:** Review and approval of minutes for January 26, 2022 meeting.

A motion was made by Treff LaFleche to approve the minutes as circulated. This motion was duly seconded by Denise Chicoine. The motion passed 5-0.

Adjourned 8:30 p.m.

**ZBA DECISIONS can be found at [www.newtonma.gov/ZBA](http://www.newtonma.gov/ZBA)**