

**BZA APPLICATION FORM**

**GENERAL INFORMATION**

BZA-011167-2016  
2016 AUG 15 PM 3:08

The undersigned hereby petitions the Board of Zoning Appeal for the following:

Special Permit: \_\_\_\_\_ Variance: \_\_\_\_\_ Appeal:  OFFICE OF THE CITY CLERK  
CAMBRIDGE, MASSACHUSETTS

PETITIONER: DAVID RING

PETITIONER'S ADDRESS: 67 JAY ST, CAMBRIDGE MA 02139

LOCATION OF PROPERTY: 69-73 JAY ST. CAMBRIDGE MA 02139

TYPE OF OCCUPANCY: 4-8 UNIT APT ZONING DISTRICT: C-1

**REASON FOR PETITION:**

- Additions \_\_\_\_\_ New Structure
- \_\_\_\_\_ Change in Use/Occupancy \_\_\_\_\_ Parking
- \_\_\_\_\_ Conversion to Addi'l Dwelling Unit's \_\_\_\_\_ Sign
- \_\_\_\_\_ Dormer \_\_\_\_\_ Subdivision
- Other: INCREASED HEIGHT

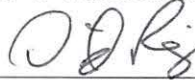
**DESCRIPTION OF PETITIONER'S PROPOSAL:**

WE APPEAL LACK OF ENFORCEMENT OF ORDINANCES IN REGARDS TO INCREASING BUILDING HEIGHT AND BUILDING AN ADDITION TO A NON-CONFORMING PROPERTY WELL PAST THE F.A.R. LIMITS.

**SECTIONS OF ZONING ORDINANCE CITED:**

- Article 5.0 Section 5.3 TABLE OF DIMENSIONAL REQUIREMENTS
- Article 8.0 Section 8.22 NON-CONFORMING STRUCTURE
- Article 10 Section 10.20 Appeal

Applicants for a **Variance** must complete Pages 1-5  
Applicants for a **Special Permit** must complete Pages 1-4 and 6  
Applicants for an **Appeal** to the BZA of a Zoning determination by the Inspectional Services Department must attach a statement concerning the reasons for the appeal

Original Signature(s):   
 (Petitioner(s)/Owner)  
DAVID RING  
 (Print Name)  
 Address: 67 JAY ST  
CAMBRIDGE MA 02139  
 Tel. No.: 617-945-1040  
 E-Mail Address: DPR6000@GMAIL.COM

Date: 8/4/16

DAVID RING  
617-945-1040

BZA - ~~011080-2016~~ 011167-2016

## Appeal for Lack of Ordinance Enforcement on Development at 69-73 Jay St

### Overview

We question how a large project managed by then Vice Mayor Dennis Benzan was originally granted a building permit around October 2015 without a variance hearing when it had at minimum (the now enforced) four ordinance violations. We question why work was nevertheless allowed to continue on the parts of the building in violation. Most importantly, we question why only four violations are being enforced, while two egregious ones are not.

We are petitioning for the enforcement of the two additional ordinance violations – an addition without separate egress identified as a “bicycle storage shed” and the increase in height of a non-conforming building by about two feet, most likely to allow for the development of a new garden apartment.

We will explain later in this letter why each are detrimental to the public interest. We request the BZA review the project in its totality when considering its decision - these two items along with the two items the owners are appealing in CASE BZA-010359-2016, with a rescheduled hearing date of September 15, 2016.

### Bicycle Storage Shed

The owners have approximately doubled the size of an existing side entryway, under the argument that the increased size is allowed without a variance because it is a bicycle storage shed/accessory building. They have also added a deck to the addition, which we will discuss later in this appeal.

In discussions with the Commissioner of Inspectional Services Department, Ranjit Singanayagam, he agreed with their assertion that it was allowed as a “shed” with the stipulation that it be enclosed by a wall to separate it from the rest of the interior space. He added that regardless, a homeowner may increase the size of a non-conforming property ten percent.

- A.) This is clearly not a bicycle storage shed. It has no separate means of egress. Furthermore, construction is now almost completed and no interior wall was built.
- B.) If it is an accessory building (as marked on their plans), then ordinance 4.21(h) applies and it must be a minimum of ten feet from the principal building.

#### **Accessory Building: 4.21 Accessory Uses.**

**h.** In Residence A, B, C, and C-1 Districts an accessory building shall not be located nearer than ten (10) feet to the principal building or nearer than five (5) feet to any side or rear lot line or nearer to the front lot line than the minimum setback in the zoning district.

- C.) If instead Ranjit allows it as an addition because it does not increase the non-conforming building size by more than ten percent, it should be noted the building was well above the allowed FAR prior to construction and thus this exception does not apply per ordinance 8.22.1 (f).

#### **8.22.1 (f)**

Conforming additions, under Article 5.000, to a structure not conforming to the requirements of Article 5.000 provided that no nonconforming element or aspect of the nonconforming structure is extended or increased and further provided that the nonconforming structure is not thereby increased in area or volume by more than ten (10) percent since the structure first became nonconforming.

Image #1: Existing Right Side Elevation Prior to Construction

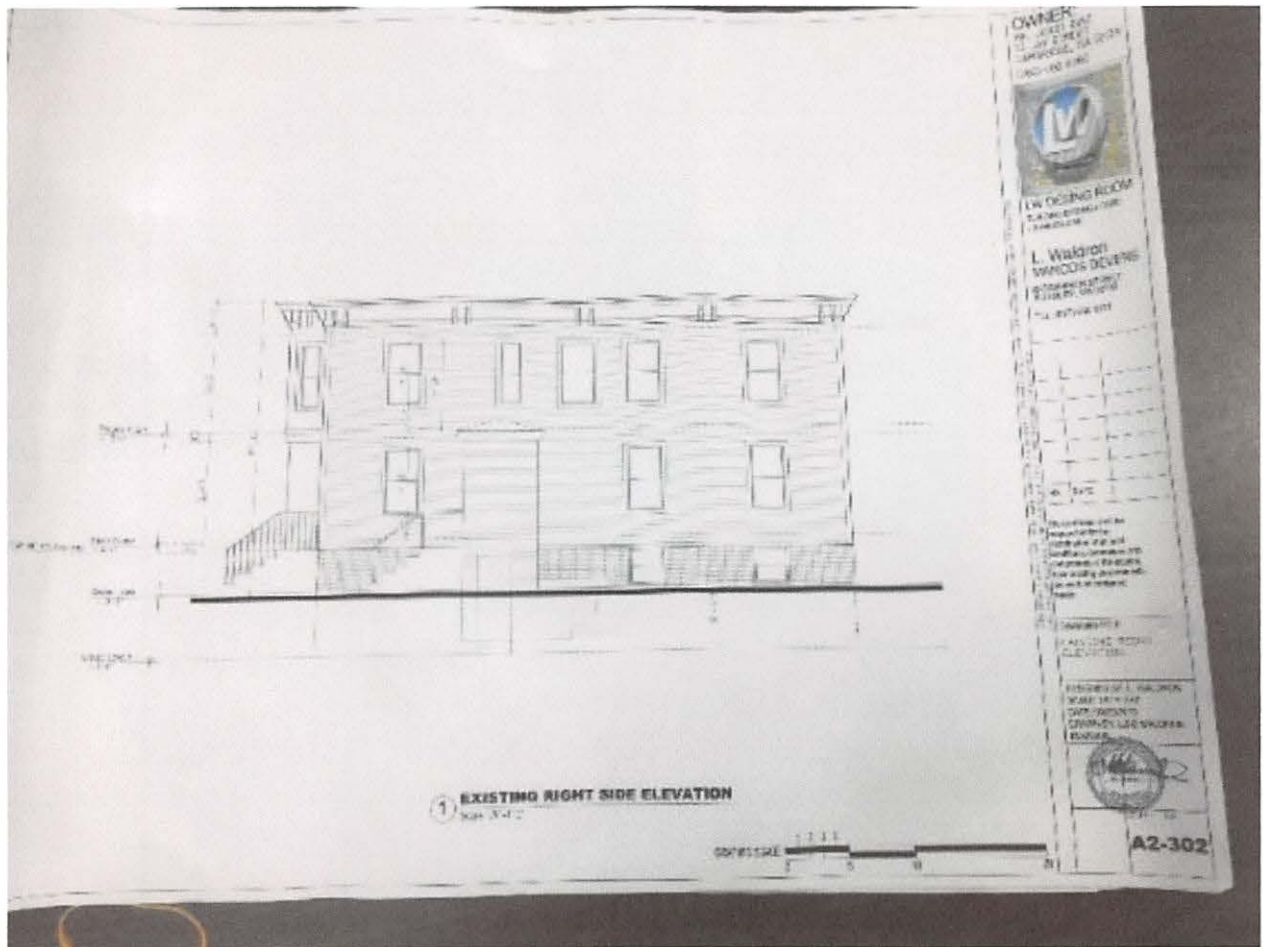
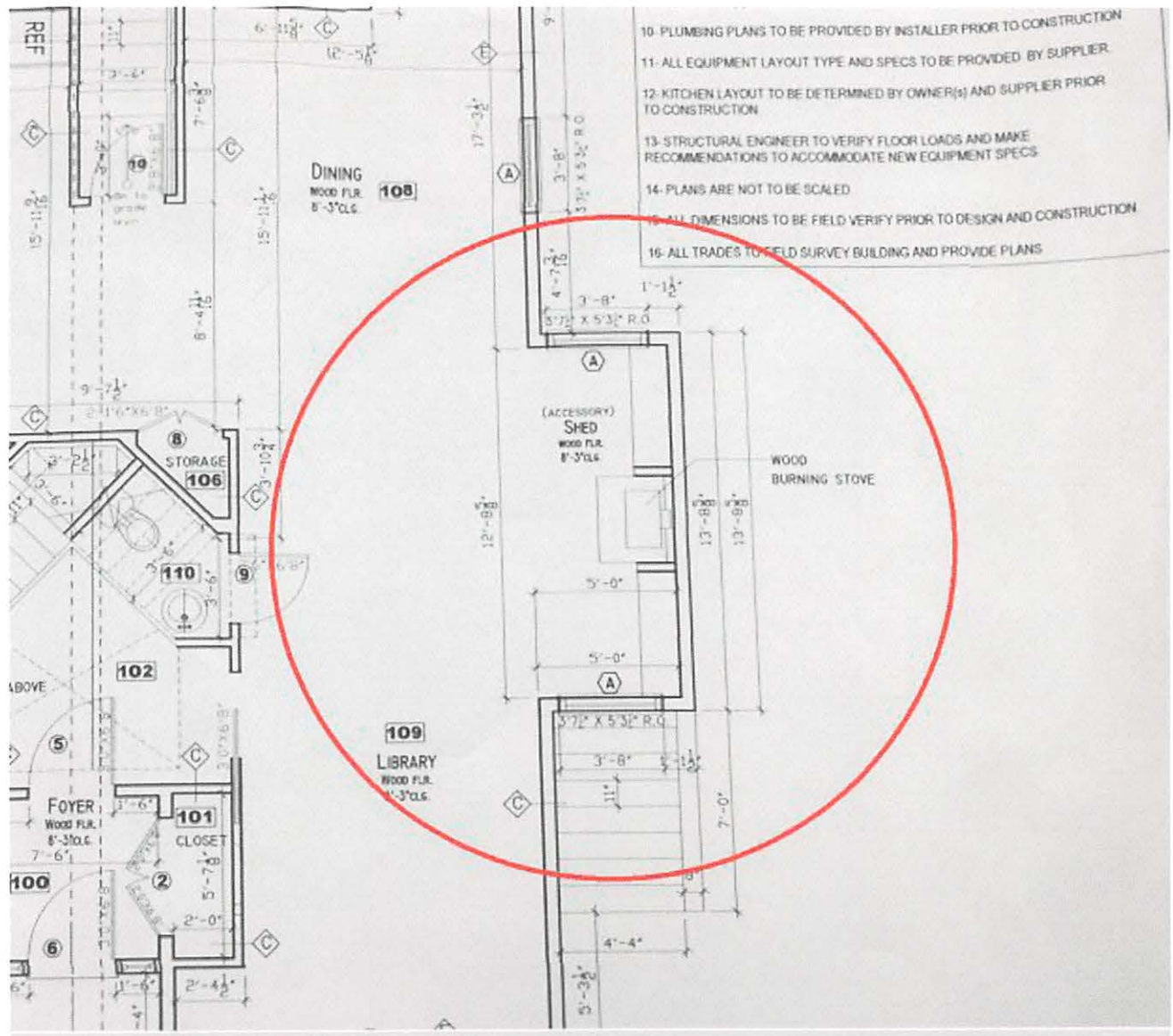


Image #2: Right Side of Building as of August 4, 2016 (Note new deck with doorway access. This is the second deck for this single family unit. The first is the new deck/head house on the roof, also visible in picture.)



Image #3: The building plan identifying addition as an "(accessory) Shed".  
(Note: Staircase shown is to new basement apartment, not to the "Shed".)



## Increased Building Height

At the start of the project, no certified height measurement was required prior to having the entire building jacked up to replace its foundation. This was in spite of Ranjit's statement that raising the height of the building by just one inch would require a variance.

We have lived in our home for over five years and in our opinion, their home is now taller by about two feet. In addition, we have many photographs showing its original height in comparison to its surroundings and it is clearly taller. We also have a petition signed by 15 neighbors stating the building is higher in their opinions.

Upon completion of the new foundation and the lowering of the building down onto it in March 2016, only then did Ranjit order a certified height survey. He said that while he couldn't compare it to an original height survey since none was required prior to construction, he would compare the results to the data they provided on the Dimensions Page of their originally submitted plans. Upon receiving the information from the height survey, Ranjit determined the numbers matched and thus no variance was required.

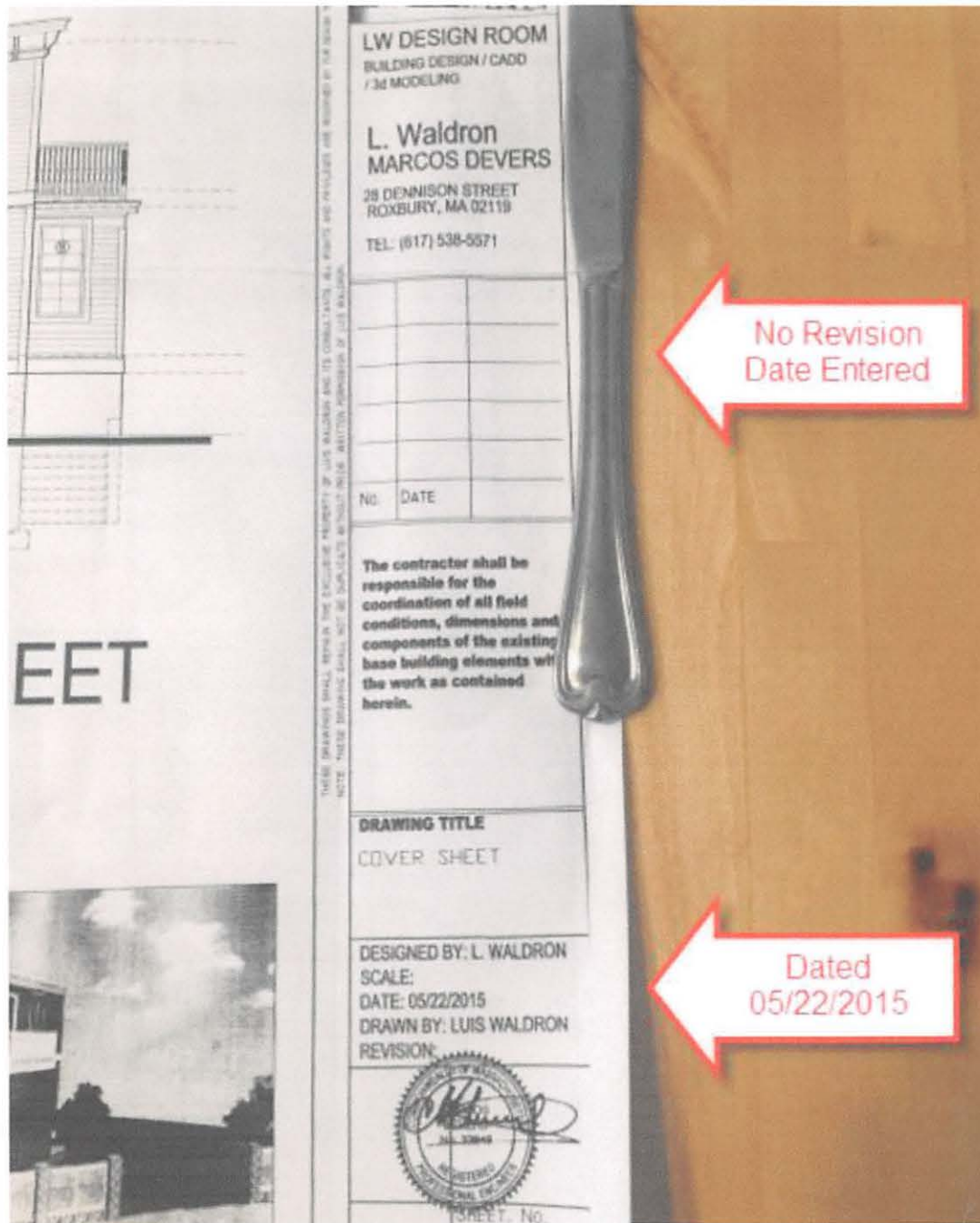
In June 2016, we asked to see the "Original Plans" for which Ranjit was relying upon to make his determination. See screen shot below of the original plans, provided to us by Senior Building Inspector David Byrne. You will note that the image of the house on the Dimensions Page is not the original design, but instead reflects changes ordered by Ranjit in a meeting in March 2016 when he nixed a left side addition and requested they update their plans to reflect it.

Ranjit stated to me that clearly the original Dimensions Page was swapped out with an updated version after the fact and for some reason no 'revision date' was entered on the page. As a result, we assert the certified height survey is irrelevant as proof. Therefore, there is no way to prove the building is the same height except for before and after photographs, and the testimony of the neighbors. We ask you to compare Image #9 to Image #10 below in making your determination.

Image #4 – One of First Pages of Original Building Plans – Note the addition with deck on left side of building



Image #5 – Original Building Plans - Close-Up of Image #4, Note Date 5/22/2015 with no Revision Stamp.  
(This image is provided to show that these are indeed the original building plans.)



Images #6, #7, #8 – “Original Building Plans” for which Ranjit is basing his Decision on – Dimensions Page with Close-Ups. The pre-existing height measurement figures on this page exactly match the results of the Certified Height Measurement. But the image highlighted below shows this page could not have been created prior to the March 2016 meeting with Ranjit.

**69 - 73 JAY STREET, CAMBRIDGE MA**

**BUILDING ZONING ANALYSIS:**

**AREA INFORMATION FOR RESIDENTIAL USE GROUP (R-3), (TWO FAMILY)**

	NET SQUARE FOOTAGE	TOTAL SQ. FT. EXCL. BASEMENT
1. BASEMENT (unpermitted)	1,084 sq. ft.	1,084 sq. ft.
2. FIRST FLOOR	1,084 sq. ft.	1,084 sq. ft.
3. SECOND FLOOR	1,084 sq. ft.	1,084 sq. ft.
<b>TOTAL</b>	<b>3,252 sq. ft.</b>	<b>3,252 sq. ft.</b>

**1 SQ. - FT. ANALYSIS**

	GROSS SQUARE FOOTAGE	TOTAL GSF	TOTAL GSF EXCL. BASEMENT
1. FOOTPRINT (unpermitted)	3,252 sq. ft.	3,252 sq. ft.	3,252 sq. ft.
2. FOOTPRINT (permitted)	1,084 sq. ft.	1,084 sq. ft.	1,084 sq. ft.
3. FOOTPRINT (unpermitted)	1,084 sq. ft.	1,084 sq. ft.	1,084 sq. ft.
<b>TOTAL</b>	<b>5,420 sq. ft.</b>	<b>5,420 sq. ft.</b>	<b>5,420 sq. ft.</b>

**2 ZONING TABLE**

**3 3D VIEWS**

**Left Addition Missing from image**

**No Revision Date Entered**

**Dated 5/22/2015**

**OWNER:**  
69 - 73 JAY STREET  
CAMBRIDGE, MA 02142  
(617) 552-1880

**LW DESIGN WOOD**  
30 DENNING STREET  
ROXBURY, MA 02119  
TEL: (617) 538-5571

**L. Waldron MARCOS DEVER**  
30 DENNING STREET  
ROXBURY, MA 02119  
TEL: (617) 538-5571

**A-00**



**28 DENNING STREET  
ROXBURY, MA 02119  
TEL: (617) 538-5571**

	Existing	Proposed
Area:	732.72 sq-ft	732.72 sq-ft
	1,479.83 sq-ft	1,479.83 sq-ft
		12.35 sq-ft
		1.01 sq-ft

**Close-Up Dimensions Page - No Revision Date Entered**

**Dated 05/22/2015**

**DRAWING TITLE:**  
BUILDING ZONING ANALYSIS

**DESIGNED BY:** L. WALDRON  
**SCALE:**  
**DATE:** 05/22/2015  
**DRAWN BY:** LUIS WALDRON  
**REVISION:**

**SECRET No.**

Image #9 – Home before construction which we offer as proof of height increase. Compare to Image #10. NOTE: This image taken from The City of Cambridge Assessor’s Database.





Image #10 - taken August 4, 2016 - Note Position of Wires in red circle as proof of height increase.

*(Note: Rare Dutch Elm Tree in front left was significantly trimmed by city to allow for height increase. Also note trees behind and beside building were removed.)*



**Substantial Detriment to the Public Good (Why Enforcement Matters to Us)**

We believe the project in its entirety has taken away cherished green space and open space from the neighborhood with its oversized development, which is out of character with the surrounding homes. The increased height only serves to make the loss even greater.

In addition, the owners have built a rooftop deck and large head house just outside our third floor master bedroom. By increasing the height of the building, the loss of our privacy is exacerbated and the head house blocks out even more open space than it would have if the height of the building had not been increased. The increased height also results in a better viewing angle from their deck into our master bedroom, to the extent that the entire room including our bed is CLEARLY and COMPLETELY visible to anyone standing on the part of the deck without a privacy screen, and we can only imagine how loud and disruptive it will be if they host a party up there. And because the owners elected to build their deck at the back of their building so close to our house (in spite of promises to the contrary), the deck also looks directly into both of our second floor bedrooms as well.

As a result, we must keep our shades drawn permanently to have any semblance of privacy. Indeed, we invited Mr. Benzan into our home so he could witness for himself that our complaints were legitimate and he made assurances to our attorney he would add a third panel, yet has failed to do so as of this date.

Image #11 – taken from our bedroom window August 4, 2016 – The new deck and head house.

(NOTE: This is not a zoomed picture. This is actually how close it is to our bedroom.)



Prior to construction, our windows looked out on a row of 50 foot tall trees and open space. If the owners had advised us they planned to build the roof deck and head house, we never would have allowed them to cut down the jointly owned row of mature trees that provided privacy between our two homes (an agreement made after they repeatedly threatened to sue us if we refused.)

After we discovered in March 2016 the extent of ordinance violations not being enforced, we met with Ranjit and Mr. Benzan. In the meeting, Mr. Benzan assured me they would build the deck according to the plan below – a solid six foot tall privacy screen on the deck wall facing our bedroom, and the deck would start at the front bump up, meaning it would be further away from our master bedroom than it is now. In exchange, we agreed we wouldn't complain about their other violations. We weren't happy, but felt we could live with this compromise.

Image #12 – Updated rooftop plan with deck flush against bump up.



Shortly thereafter, they added a row of skylights behind the bump up, pushing the deck closer to us, built a much larger head house and then advised us they decided they would not build a privacy screen across the entire back after all because it would block their light.

We subsequently complained to several city council members (Dennis Carlone, Nadeem Mazen and Jan Devereaux) and the City Manager that the entire process had been unfair from the start and that the entire process should have been reviewed by the BZA prior to construction. If we had been given our rightful opportunity to voice our concerns to the BZA prior to construction, we would have either requested no deck/head house be built at all, or at minimum it be built at the front of the building (in place of the front bump up they are now seeking a variance for) so that it did not invade anyone's privacy. The City Manager urged both sides to renew talks on a compromise, but to no avail.

In response, the owner, Junot Diaz, wrote to the City Manager and City Councilors in an email dated 5/25/16:

“...I won't be blackmailed or pressured. What Mr. Ring seems not to understand is that no one in this city has the power to force a settlement on us. My roof deck is of right. I repeat: my roof deck is of right. I don't need to do anything to it other than to abide by the city laws during its construction.”

In spite of all this, we still hope very much to reach an agreement. But so far there seems to be no reasoning with the owner. Case in point, in preparing for the originally scheduled June 30<sup>th</sup> Variance Hearing, we raised our shades and took photos from our bedroom window (see Image #11) to show how close and intrusive their rooftop deck is and why we are so upset. We showed the photos to neighbors so they may understand our concerns, and received another email from the owner, excerpted below:

6/24/2016

I also saw that you took a picture of my house from your bedroom. Marjorie is deeply creeped out. Will you be taking fotos from your bedroom of our house on the regular? You are invading our privacy. You claim you are fighting for privacy and yet here you are invading ours.

This is our exact point, with which he seems to concur – the placement of the deck and lack of sufficient privacy screen results in loss of privacy for BOTH of us.

In conclusion, we believe if all the ordinances had been enforced prior to construction, the board would have taken steps to mitigate the extensive loss of our privacy from their rooftop deck, particularly since they built another deck on their “bicycle shed”, whose size and location *is* in character with surrounding homes. We base this upon Ordinances 10.34 and 10.44 below:

**10.34** In granting a variance the Board may attach such conditions, safeguards, and limitations of time, use and other development features, such as those listed in Section 10-4 10.44, as are determined necessary to protect the surrounding neighborhood including the continued existence of any particular structure, but excluding any conditions, safeguards or limitations based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.

**10.44 Conditions.** In acting upon special permits the special permit granting authority shall take into account the general purpose and intent of this Ordinance and, in order to preserve community values, may impose conditions and safeguards deemed necessary to protect the surrounding neighborhood, in addition to the applicable requirements of this Ordinance, such as, but not limited to, the following:

(c) Modification of the exterior features or appearance of the structure.

We kindly ask that the board to enforce these two ordinances listed above so they may be considered alongside the application for two other variances in Case BZA-010359-2016. Taken together, all of these violations have had a cumulative and detrimental impact on our privacy and home and we ask that the board consider this impact in determining whether to grant any or all of these variances.

**BZA APPLICATION FORM**

**DIMENSIONAL INFORMATION**

APPLICANT: NEIGHBOR PRESENT USE/OCCUPANCY: RESIDENTIAL

LOCATION: 69-73 JAY ST CAMBRIDGE MA 02139 ZONE: C-1

PHONE: \_\_\_\_\_ REQUESTED USE/OCCUPANCY: 2 FAMILY

		<u>EXISTING CONDITIONS</u>	<u>REQUESTED CONDITIONS</u>	<u>ORDINANCE REQUIREMENTS<sup>1</sup></u>	
TOTAL GROSS FLOOR AREA:		<u>4470</u>	<u>4500</u>	<u>-</u>	(max.)
LOT AREA:		<u>3461</u>	<u>3461</u>	<u>-</u>	(min.)
RATIO OF GROSS FLOOR AREA TO LOT AREA: <sup>2</sup>		<u>1.29</u>	<u>1.30</u>	<u>.75</u>	(max.)
LOT AREA FOR EACH DWELLING UNIT:		<u>-</u>	<u>-</u>	<u>1500</u>	(min.)
SIZE OF LOT:	WIDTH	<u>47.1</u>	<u>47.1</u>	<u>-</u>	(min.)
	DEPTH	<u>54.2</u>	<u>54.2</u>	<u>-</u>	
Setbacks in Feet:	FRONT	<u>6.6</u>	<u>6.6</u>	<u>10</u>	(min.)
	REAR	<u>3.1</u>	<u>3.1</u>	<u>20</u>	(min.)
	LEFT SIDE	<u>2.5</u>	<u>2.5</u>	<u>7.5</u>	(min.)
	RIGHT SIDE	<u>3.1</u>	<u>3.1</u>	<u>7.5</u>	(min.)
SIZE OF BLDG.:	HEIGHT	<u>???</u>	<u>24.4</u>	<u>35</u>	(max.)
	LENGTH	<u>43' 4"</u>	<u>-</u>	<u>-</u>	
	WIDTH	<u>34' 1 1/2"</u>	<u>-</u>	<u>-</u>	
RATIO OF USABLE OPEN SPACE TO LOT AREA: <sup>3</sup>		<u>600' = 17.3%</u>	<u>600' = 17.3%</u>	<u>1083 = 30%</u>	(min.)
NO. OF DWELLING UNITS:		<u>4</u>	<u>2</u>	<u>-</u>	(max.)
NO. OF PARKING SPACES:		<u>2</u>	<u>2</u>	<u>-</u>	(min./max)
NO. OF LOADING AREAS:		<u>-</u>	<u>-</u>	<u>-</u>	(min.)
DISTANCE TO NEAREST BLDG. ON SAME LOT:		<u>-</u>	<u>-</u>	<u>-</u>	(min.)

Describe where applicable, other occupancies on same lot, the size of adjacent buildings on same lot, and type of construction proposed, e.g.; wood frame, concrete, brick, steel, etc.

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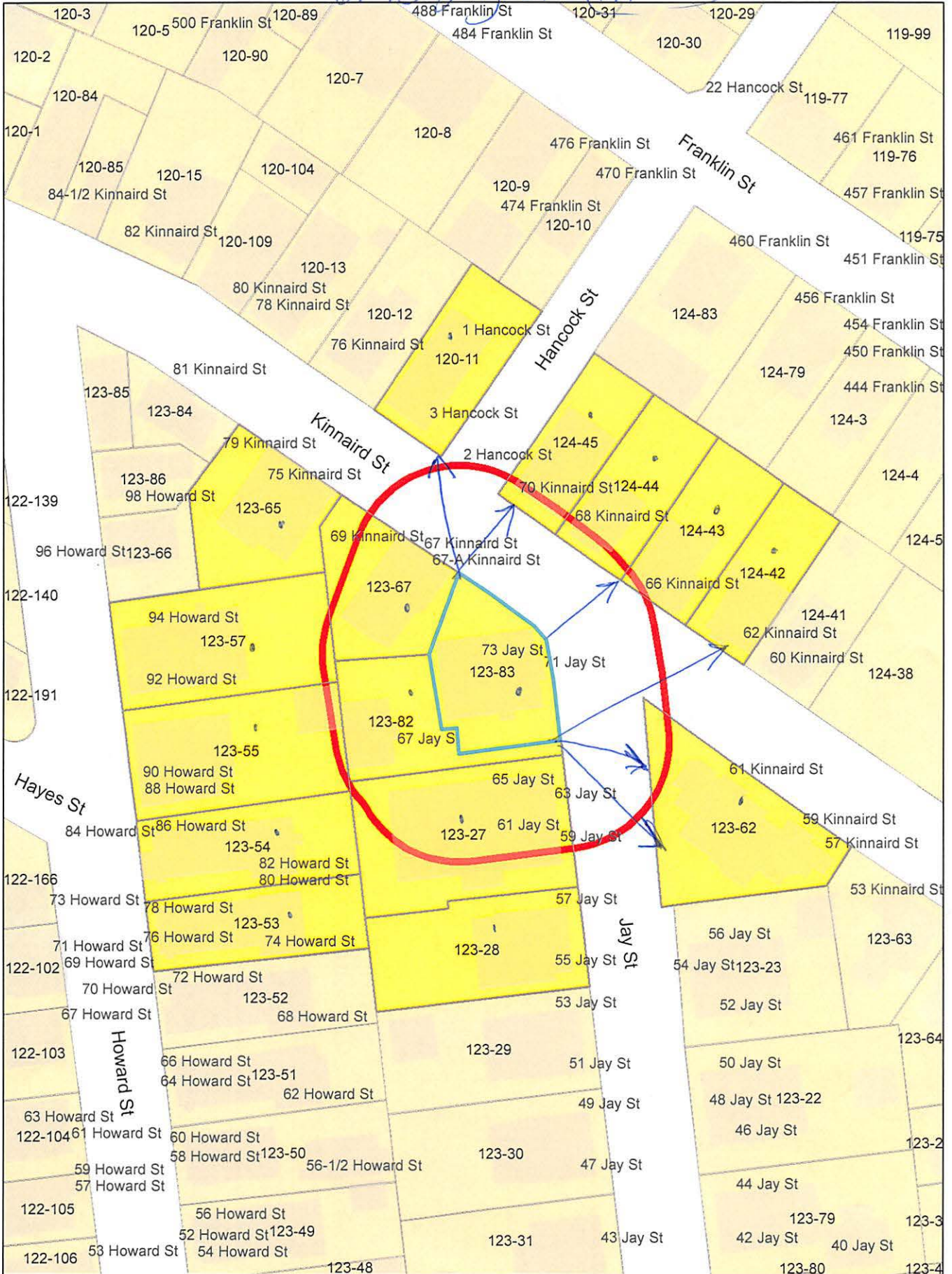
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- SEE CAMBRIDGE ZONING ORDINANCE ARTICLE 5.000, SECTION 5.30 (DISTRICT OF DIMENSIONAL REGULATIONS).
- TOTAL GROSS FLOOR AREA (INCLUDING BASEMENT 7'-0" IN HEIGHT AND ATTIC AREAS GREATER THAN 5') DIVIDED BY LOT AREA.
- OPEN SPACE SHALL NOT INCLUDE PARKING AREAS, WALKWAYS OR DRIVEWAYS AND SHALL HAVE A MINIMUM DIMENSION OF 15'.

69-73 Jay St. (Appeal)



(69-73 Jay St. Appeal) Petitioner

123-54  
SULLIVAN, CHARLES B., ALLEN R. SULLIVIAN BERTRAM  
S. ALLEYNE&THOMAS CONWARD  
CITY OF CAMBRIDGE TAX TITLE  
86 HOWARD ST  
CAMBRIDGE, MA 02139

123-83  
SPENCE, JOHN MICHAEL  
C/O DIAZ, JUNOT  
2 WARE ST  
CAMBRIDGE, MA 02138

123-82  
RING, DAVID P.  
67 JAY ST  
CAMBRIDGE, MA 02139

124-42  
LYSTER, TIMOTHY & ELIZABETH LYSTER  
62 KINNAIRD ST  
CAMBRIDGE, MA 02139

124-44-43  
ALBERGO, VINCENT J. & DOROTHY A. ALBERGO  
68 KINNAIRD ST  
CAMBRIDGE, MA 02139

120-11  
CLARKE, ELIZABETH M. &  
LANCE DARNELL CLARKE  
1-3 HANCOCK ST.  
CAMBRIDGE, MA 02138

123-53  
GAYNOR, JEANNETTE V, CLARENCE R. GAYNOR,  
ANITA L. SCOTT & GERMAINE D. JAMES  
74-78 HOWARD ST  
CAMBRIDGE, MA 02139

124-45  
SPENCER, JAMES E., JR. & LINDA SPENCER  
2 HANCOCK ST  
CAMBRIDGE, MA 02139

123-57  
KENTISH, ROLAND S. A LIFE ESTATE  
94 HOWARD ST  
CAMBRIDGE, MA 02139

123-62  
BROOKS, JUSTIN J. & ANETTE E. HOSOI  
59 KINNAIRD ST  
CAMBRIDGE, MA 02139

123-65  
BOURNE, JOSEPH G. & JOHNNIE L. BOURNE  
75 KINNAIRD ST  
CAMBRIDGE, MA 02139

123-67  
LEE, KATHY Y. & JOHNNY Y. KUI  
30 GARRISON RD.  
CONCORD, MA 01742

123-27  
CORCORAN, BRENDAN &  
SARAH HAINING GOUINLOCK  
59-65 JAY ST., #63  
CAMBRIDGE, MA 02139

123-27  
LANGENTHAL, DANIEL  
59-65 JAY ST., #61  
CAMBRIDGE, MA 02139

123-27  
PIEROG, CAL L. & KATHERINE PERDUE  
59-65 JAY ST. UNIT#59  
CAMBRIDGE, MA 02139

123-27  
HOLZMAN, BENJAMIN MARK &  
BETH SHIRA HOLZMAN  
59-65 JAY ST., #65  
CAMBRIDGE, MA 02139

123-55  
FORTE, DARIEN & LAMAR FORTE  
30 DONNYBROOK RD.  
BRIGHTON, MA 02135

123-28  
THOMPSON, AMY J. &  
CITY OF CAMBRIDGE TAX TITLE  
57 JAY ST  
CAMBRIDGE, MA 02139

123-62  
SADALGI, SHRENIK & SHUBHRA PANDIT  
57-61 KINNAIRD ST., #57  
CAMBRIDGE, MA 02139

123-62  
SHEN, DING FENG & HUI YING YAO SHEN &  
DONG SHEN  
57-61 KINNAIRD ST., #61  
CAMBRIDGE, MA 02139