



CITY OF CAMBRIDGE
MASSACHUSETTS
BOARD OF ZONING APPEAL
831 MASSACHUSETTS AVENUE
CAMBRIDGE, MA 02139
617 349-6100

2019 SEP 17 PM 3:29

BZA APPLICATION FORM

OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

Plan No: BZA-017174-2019

GENERAL INFORMATION

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

Special Permit : ✓ Variance : _____ Appeal : _____

PETITIONER : David and Janet McCue C/O Shippen L. Page, Esq.,

PETITIONER'S ADDRESS : Page & Powell, P.C., 174 Lakeview Avenue Cambridge, MA 02138

LOCATION OF PROPERTY : 15 Channing St Cambridge, MA 02138

TYPE OF OCCUPANCY : A1 ZONING DISTRICT : Residence A-1 Zone

REASON FOR PETITION :

Additions

DESCRIPTION OF PETITIONER'S PROPOSAL :

The existing deck on the West and South side of the Principal Dwelling will be enclosed to expand the kitchen, a new deck on the West side of the house is proposed. A new trash shed is proposed for the North Side of the Principal Dwelling. The existing playhouse in the front yard and within the front yard setback will be removed. Three (3) new windows are proposed for the northern side of the Principal Dwelling, five (5) new windows on the West side, and three (3) new windows on the South side.

For the Carriage House, the existing entry way will be moved several feet in a Southerly direction and widened. This will increase the FAR by 5 square feet. Existing windows on the north, east and south side will be moved and or modified and existing windows on the west side will be removed.

SECTIONS OF ZONING ORDINANCE CITED :

Article 5.000 Section 5.31 (Table of Dimensional Requirements).

Article 8.000 Section 8.22.2.C (Non-Conforming Structure).

Article 10. § 10.40 Special permit

Original Signature(s) :

Shippen L. Page
(Petitioner(s) / Owner)

SHIPPEN L. PAGE
(Print Name)

Address : Page & Powell P.C.
174 Lakeview Ave, Cambridge 02138

Tel. No. : 617-661-6843

E-Mail Address : Shippen@Shippenpage.com

Date : Sept. 17, 2019

BZA APPLICATION FORM - OWNERSHIP INFORMATION

To be completed by OWNER, signed before a notary and returned to The Secretary of the Board of Zoning Appeals.

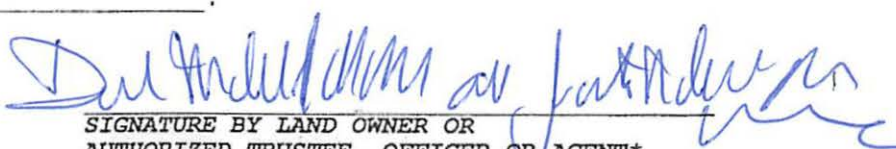
I/We DAVID McCUE AND JANET McCUE
(OWNER)

Address: 15 CHANNING STREET, CAMBRIDGE, MA 02138

State that I/We own the property located at 15 CHANNING STREET,
which is the subject of this zoning application.

The record title of this property is in the name of DAVID McCUE &
JANET McCUE

*Pursuant to a deed of duly recorded in the date 4/3/2019, Middlesex South
County Registry of Deeds at Book 72416, Page 401; or
Middlesex Registry District of Land Court, Certificate No. _____
Book _____ Page _____.


SIGNATURE BY LAND OWNER OR
AUTHORIZED TRUSTEE, OFFICER OR AGENT*

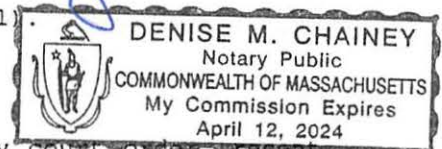
*Written evidence of Agent's standing to represent petitioner may be requested.

Commonwealth of Massachusetts, County of Suffolk

The above-name DAVID McCUE AND JANET McCUE by Wm. Bonaccorso under power
this 20 of August, 2019, and made oath that the above statement is true.


Notary

My commission expires _____ (Notary Seal)



- If ownership is not shown in recorded deed, e.g. if by court order, recent deed, or inheritance, please include documentation.

DURABLE POWER OF ATTORNEY

I, **David S. McCue**, of Manchester, Massachusetts appoint **William S. Bonaccorso**, Esquire or Attorney **Denise M. Chainey** of Boston, MA, my true and lawful attorney (hereinafter “my attorney”), with full power of substitution for me and in my name, place and stead, to execute, acknowledge and deliver all instruments and documents and to do all other acts, as my attorney may deem advisable in connection with the purchase, permitting and development of real estate known and numbered as **15 Channing Street, Cambridge, MA**.

I give my attorney full power and authority to do every necessary or proper act in connection with the foregoing which I may or could do if personally present, hereby ratifying and confirming all that my attorney shall lawfully do or cause to be done by virtue hereof.

This Power of Attorney shall continue to be in effect despite any physical or mental disability or incompetency which might occur to me subsequent to the execution of this Power of Attorney this day and shall continue to be in effect until subsequently revoked by me or by operation of law.

I am not a non-resident alien for purposes of U.S. income taxation as defined by Section 1445 of the Internal Revenue Code. (If I am not clear whether or not I am a non-resident alien for purposes of U.S. income taxation as defined by Section 1445 of the Internal Revenue Code, I have been advised by Bonaccorso & Associates to consult with a certified public accountant).

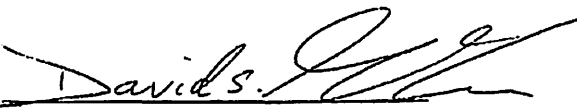
My Social Security Number is: _____

My forwarding address is: _____

The property [] was / [] was not my principal place of residence during two (2) of the five (5) years preceding the date of this sale.

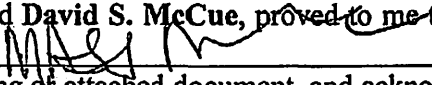
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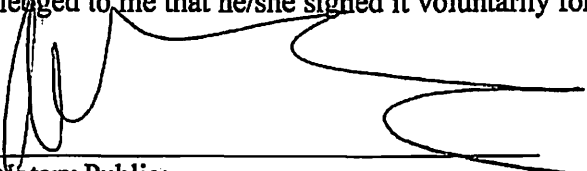
IN WITNESS WHEREOF, I have executed this document on this 16th day July 2019


David S. McCue

COMMONWEALTH OF MASSACHUSETTS

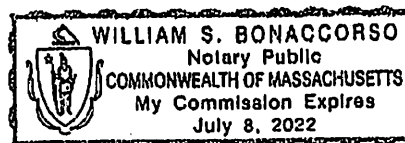
County of Suffolk

On this 16th day of July, 2019, before me, the undersigned notary public, personally appeared **David S. McCue**, ~~proved to me~~ through satisfactory evidence of identification, which was a  , to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



Notary Public:

My Commission Expires:



DURABLE POWER OF ATTORNEY

I, **Janet McCue**, of Manchester, Massachusetts appoint **William S. Bonaccorso**, Esquire or Attorney **Denise M. Chainey** of Boston, MA, my true and lawful attorney (hereinafter "my attorney"), with full power of substitution for me and in my name, place and stead, to execute, acknowledge and deliver all instruments and documents and to do all other acts, as my attorney may deem advisable in connection with the purchase, permitting and development of real estate known and numbered as **15 Channing Street, Cambridge, MA**.

I give my attorney full power and authority to do every necessary or proper act in connection with the foregoing which I may or could do if personally present, hereby ratifying and confirming all that my attorney shall lawfully do or cause to be done by virtue hereof.

This Power of Attorney shall continue to be in effect despite any physical or mental disability or incompetency which might occur to me subsequent to the execution of this Power of Attorney this day and shall continue to be in effect until subsequently revoked by me or by operation of law.

I am not a non-resident alien for purposes of U.S. income taxation as defined by Section 1445 of the Internal Revenue Code. (If I am not clear whether or not I am a non-resident alien for purposes of U.S. income taxation as defined by Section 1445 of the Internal Revenue Code, I have been advised by Bonaccorso & Associates to consult with a certified public accountant).

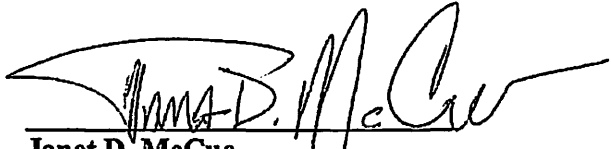
My Social Security Number is: _____

My forwarding address is: _____

The property [] was / [] was not my principal place of residence during two (2) of the five (5) years preceding the date of this sale.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

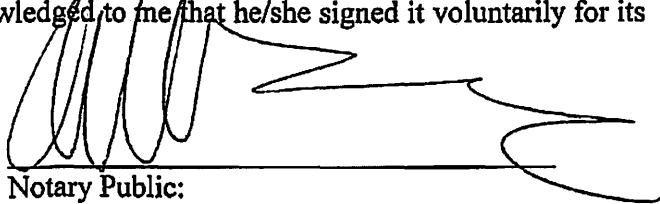
IN WITNESS WHEREOF, I have executed this document on this 16th day July 2019


Janet D. McCue

COMMONWEALTH OF MASSACHUSETTS

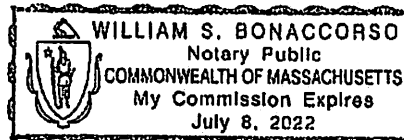
County of Suffolk

On this 16th day of July, 2019, before me, the undersigned notary public, personally appeared Janet D. McCue, proved to me through satisfactory evidence of identification, which was a MASS DRIVER'S LICENSE, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

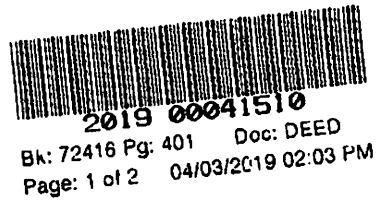


Notary Public:

My Commission Expires:



f2



QUITCLAIM DEED

I, **Lucinda Jewell**, unmarried of Cambridge Massachusetts, for consideration paid of Four Million Nine Hundred Ninety Thousand and 00/100 Dollars (\$4,990,000.00)

Grant to **David McCue** and **Janet McCue**, husband and wife as tenants by the entirety, now of 15 Channing Street, Cambridge MA 02138

With quitclaim covenants

A certain parcel of land with the buildings thereon in Cambridge, Middlesex County, Massachusetts bounded and described as follows:

EASTERLY	by the westerly line of Channing Street, seventy (70.00) feet;
SOUTHERLY	by land of owners unknown, one hundred forty-two and 24/100 (142.24) feet;
WESTERLY	by land of owners unknown, forty-five (45.00) feet; and
NORTHERLY	by land of owners unknown, one hundred forty (140.00) feet;

CONTAINING 8050 square feet more or less.

Being the parcel of land shown on a plan dated May 1899, by J.G. Chase, Civil Engineer, recorded with the Middlesex South District Registry of Deeds, Book 2738, Page 527, plus a five foot (5') strip of land adjacent thereto on the southerly side.

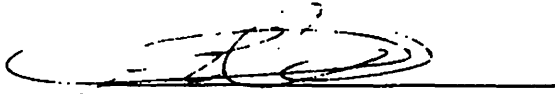
The Grantor releases all rights of homestead and certifies under the pains and penalties of perjury that there are no other persons entitled to rights of homestead in the property.

Meaning and intending to convey the premises conveyed to Grantor by Deed August 14, 2007 and recorded with the Middlesex South District Registry of Deeds on August 17, 2007 in Book 49959, Page 143.

MASSACHUSETTS EXCISE TAX
Southern Middlesex District ROD # 001
Date: 04/03/2019 02:03 PM
Ctil# 297942-00674 Doc# 00041510
Fee: \$22,754.40 Cons: \$4,990,000.00

15 CHANNING STREET, CAMBRIDGE, MA

WITNESS my hand and seal this 1st day of March, 2019

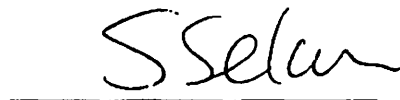


Lucinda Jewell

COMMONWEALTH OF MASSACHUSETTS

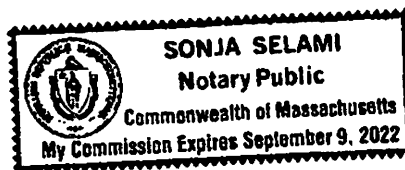
Middlesex, ss.

On this 1st day of March, 2019, appeared before me, the undersigned notary public, the above-named Lucinda Jewell, proved to me through satisfactory evidence of identification, which was DL to be the person whose name is signed on the preceding Quitclaim Deed, who swore or affirmed that the contents related to homestead rights are truthful and accurate to the best of her knowledge and belief and who acknowledged to me that she signed it voluntarily for its stated purpose.



Notary Public: Sonja B. Selami

My commission expires:



BZA APPLICATION FORM

SUPPORTING STATEMENT FOR A SPECIAL PERMIT

Please describe in complete detail how you meet each of the following criteria referring to the property and proposed changes or uses which are requested in your application. Attach sheets with additional information for special permits which have additional criteria, e.g.; fast food permits, comprehensive permits, etc., which must be met.

Granting the Special Permit requested for 15 Channing St Cambridge, MA 02138 (location) would not be a detriment to the public interest because:

- A) Requirements of the Ordinance can or will be met for the following reasons:
- a. The requirements of the Ordinance cannot be met because the Principal Dwelling and the Carriage House already violate the dimensional requirements as set forth above. The Petitioners reserve all rights since the requirements of the present Ordinance are inconsistent with the clear holding of the Supreme Judicial Court of Massachusetts in *Bellalta v. Zoning Board of Brookline*, attached to this application as Exhibit B.
- B) Traffic generated or patterns of access or egress would not cause congestion hazard, or substantial change in established neighborhood character for the following reasons:
- a. The Petitioners intend to occupy this residence as their primary residence. No change in use or intensity of the use is proposed. Thus, there will be no further traffic generated and the patterns of access and egress will remain the same. Thus no congestion, hazard or substantial change in the established neighborhood character will result.
- C) The continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use for the following reasons:
- a. The adjacent uses are residential in nature and will not be affected in any way. All of the abutters have had an opportunity to review in detail the plans and three - at 18-1 Traill, 20 Traill and 16 Channing - have provided support in writing. These and any subsequent letters of support will be presented at the hearing.
- D) Nuisance or hazard would not be created to the detriment of the health, safety and/or welfare of the occupant of the proposed use or the citizens of the City for the following reasons:
- a. An increase by .0239 in the FAR resulting from the improvements sought for the Principal Residence is extremely modest. As set forth in *Bellalta*, this is so as a matter of law. Nonetheless, the petitioner is required to apply for variance under the current Zoning Ordinance of the City of Cambridge. Petitioner respectfully demands that the Board of Zoning Appeal determine this application under the applicable standard set forth in *Bellalta*, namely, as an application for a Special Permit.
- E) For other reasons, the proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of this ordinance for the following reasons:
- a. The proposed use does not differ from the use of this dwelling since 1899. The modest addition of windows, a trash shed and the extension of the kitchen, with the accompanying deck, are all compatible with the surroundings and neighboring dwellings. Open space in excess of that required under the Zoning Ordinance has been preserved. Careful attention has been paid to the historic nature of the dwelling. The proposed changes comply with and support the intent and purpose of the Ordinance and in no way impair the integrity of the district.

Application for a Special Permit

SUPPORTING STATEMENT

Locus: 15 Channing Street (the “Property”)

Petitioners: David McCue and Janet McCue

September 5, 2019

Background: On June 7, 2019, the Petitioners applied to the Commissioner of the Department of Inspectional Services for a building permit for certain changes and additions to the Property (Exhibit A). The Petitioners cited the Supreme Judicial Court decision in *Bellalta v. Zoning Board of Appeals of Brookline* (SJC 12516, Mass. 2019) in support of their application (Exhibit B). On July 10, 2019, the Commissioner denied the application and instructed the Petitioner to apply for a variance pursuant to the Cambridge Zoning Ordinance (Exhibit C). The Supreme Judicial Court clearly stated in *Bellalta* that under the circumstances presented in the Petitioners’ case no more than a Special Permit would be required. The Petitioner thus protests any requirement for a Variance for the scope of work at issue. The Cambridge Zoning Ordinance as presently written is in clear violation of state law as set forth in *Bellalta*.

Scope of Work for which relief is sought: The existing deck on the West and South side of the Principal Dwelling will be enclosed to expand the kitchen, a new deck on the West side of the house is proposed. A new trash shed is proposed for the North Side of the Principal Dwelling . The existing playhouse in the front yard and within the front yard setback will be removed. Three (3) new windows are proposed for the northern side of the Principal Dwelling, five (5) new windows on the West side, and three (3) new windows on the South side.

For the Carriage House, the existing entry way will be moved several feet in a Southerly direction and widened. This will increase the FAR by 5 square feet. Existing windows on the north, east and south side will be moved and or modified and existing windows on the west side will be removed.

Analysis:

§8.22.1 (d) of the Zoning Ordinance requires a special permit where windows are relocated, enlarged or added where these are in the setback and do not face the street. Under §8.22.2, the permit granting authority must find that the change, extension or alteration will not be substantially more detrimental to the neighborhood than the existing nonconforming use. Moreover, by §8.22.2 (c) the permit granting authority may issue a special permit for the alteration or enlargement of a nonconforming structure not otherwise permitted in §8.22.1 but only if such action is not in further violation of the dimensional requirements of Article V and only if the nonconforming structure will not be increased in area or volume by more than twenty five (25%) percent since it first began to be nonconforming.

Context: This is a single family house in a Residential A-1 district. It was built in 1899. The lot area is 8,050 square feet. Under applicable law, .5 of the land area can be used for living area. This is 4,025 square feet. This relief is required under the present Cambridge Zoning Ordinance for three principal reasons: 1) both the Northern and Southern sides of the Principal Dwelling are in violation of the setback required for the district – 15 feet sum of 35 feet; 2) because the Carriage House is in the rear and side setbacks; and 3) the total floor area of the Principal Dwelling at 5,498 square feet (including the basement at 1,180 square feet) and the Carriage House at 836 square feet, for a total of 6,334 square feet, exceed the allowable total of square footage for the lot, for an FAR of .7869. With the proposed modifications and additions totaling 192 square feet, the FAR increases to .8108, an increase of .0239. This is a modest, indeed almost insignificant, addition.

The Petitioners also propose to add three double hung sash windows on the North side of the Principal Dwelling and a trash shed. All are compatible with the historical architecture of the dwelling and do not create a privacy issue for the abutter at 13 Channing Street. The trash shed and the bicycle storage shed are enclosed structures and must be counted towards the FAR. Each is a modest and conventional accessory structure.

The five (5) new windows on the Western side of the Principal Dwelling are also compatible with the historic nature of the dwelling and face the rear of the property without any impact on the privacy of the abutters who live on Traill Street. Joseph Sanborn, who lives at 20 Traill Street, and Malcolm Salter, who lives at 18-1 Traill Street, have been provided with the plans for the proposed work and are fully supportive. The new first floor addition will add 192 square feet to the existing 1,724 square feet of living space in the principal Dwelling for a total of 1,929 square feet, or an increase of .0239. As a matter of law as stated in *Bellalta*, this is modest and should not require a Special Permit. Nonetheless, Petitioner has been denied a building permit and is thus applying now for a Special Permit.

On the Southern side, the addition to the kitchen and the new deck are partially within the side setback requirements. The three (3) new windows on the first floor are architecturally consistent with the historic character of the house. They face the side of the garage at 17 Channing with an 8 foot high fence in between. There is therefore arguably a limited or no privacy concern for the residents at 17 Channing.

Turning to the technical requirements of §10.43 of the Zoning Ordinance,

Granting the permit will not be to the detriment of the public interest because:

1. *It appears that the requirements of the Ordinance cannot or will not be met;*
 - a. The requirements of the Ordinance cannot be met because the Principal Dwelling and the Carriage House already violate the dimensional requirements as set forth above. The Petitioners reserve all rights since the requirements of the present

Ordinance are inconsistent with the clear holding of the Supreme Judicial Court of Massachusetts in *Bellalta v. Zoning Board of Brookline*, attached to this application as Exhibit B.

2. *Traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in established neighborhood character:*

- a. The Petitioners intend to occupy this residence as their primary residence. No change in use or intensity of the use is proposed. Thus, there will be no further traffic generated and the patterns of access and egress will remain the same. Thus no congestion, hazard or substantial change in the established neighborhood character will result.

3. *The continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed uses:*

- a. The adjacent uses are residential in nature and will not be affected in any way. All of the abutters have had an opportunity to review in detail the plans and three – at 18-1 Traill, 20 Traill and 16 Channing - have provided support in writing. These and any subsequent letters of support will be presented at the hearing.

4. *Nuisance or hazard would not be created to the detriment of the health, safety and/or welfare of the occupant of the proposed use or the citizens of the City:*

- a. An increase by .0239 in the FAR resulting from the improvements sought for the Principal Residence is extremely modest. As set forth in *Bellalta*, this is so as a matter of law. Nonetheless, the petitioner is required to apply for variance under the current Zoning Ordinance of the City of Cambridge. Petitioner respectfully demands that the Board of Zoning Appeal determine this application under the applicable standard set forth in *Bellalta*, namely, as an application for a Special Permit.

5. *For other reasons, the proposed use would not impair the integrity of the district or adjoining district, or otherwise derogate from the intent and purpose of this Ordinance:*

- a. The proposed use does not differ from the use of this dwelling since 1899. The modest addition of windows, a trash shed and the extension of the kitchen, with the accompanying deck, are all compatible with the surroundings and neighboring dwellings. Open space in excess of that required under the Zoning Ordinance has been preserved. Careful attention has been paid to the historic nature of the dwelling. The proposed changes comply with and support the intent and purpose of the Ordinance and in no way impair the integrity of the district.

6. *The new use or building construction is not inconsistent with the Urban Design Objectives set forth in Section 19.30.*

a. This is not relevant to the Petitioners' application.

END OF SUPPORTING STATEMENT

BZA APPLICATION FORM
DIMENSIONAL INFORMATION

APPLICANT: Shippen Page PRESENT USE/OCCUPANCY: Single family
 LOCATION: 15 Channing St Cambridge, MA 02138 ZONE: Residence A-1 Zone
 PHONE: _____ REQUESTED USE/OCCUPANCY: Single family

		<u>EXISTING CONDITIONS</u>	<u>REQUESTED CONDITIONS</u>	<u>ORDINANCE REQUIREMENTS</u> ¹	
<u>TOTAL GROSS FLOOR AREA:</u>		<u>6334</u>	<u>6526</u>	<u>4025</u>	(max.)
<u>LOT AREA:</u>		<u>8050</u>	<u>8050</u>	<u>8000</u>	(min.)
<u>RATIO OF GROSS FLOOR AREA TO LOT AREA:</u> ²		<u>.7869</u>	<u>.8018</u>	<u>.5</u>	(max.)
<u>LOT AREA FOR EACH DWELLING UNIT:</u>		<u>8000</u>	<u>8000</u>	<u>6000</u>	(min.)
<u>SIZE OF LOT:</u>	WIDTH	<u>70</u>	<u>70</u>	<u>80</u>	(min.)
	DEPTH	<u>140</u>	<u>140</u>	<u>na</u>	
<u>SETBACKS IN FEET:</u>	FRONT	<u>25.5</u>	<u>25.5</u>	<u>20</u>	(min.)
	REAR	<u>0</u>	<u>0</u>	<u>25</u>	(min.)
	LEFT SIDE	<u>10.8</u>	<u>10.8</u>	<u>15 sum 35</u>	(min.)
	RIGHT SIDE	<u>4.3</u>	<u>4.3</u>	<u>15 sum 35</u>	(min.)
<u>SIZE OF BLDG.:</u>	HEIGHT	<u>35</u>	<u>35</u>	<u>35</u>	(max.)
	LENGTH	<u>60</u>	<u>60</u>	<u>na</u>	
	WIDTH	<u>40</u>	<u>40</u>	<u>na</u>	
<u>RATIO OF USABLE OPEN SPACE TO LOT AREA:</u>		<u>68</u>	<u>65.5</u>	<u>50</u>	(min.)
<u>NO. OF DWELLING UNITS:</u>		<u>1</u>	<u>1</u>	<u>1</u>	(max.)
<u>NO. OF PARKING SPACES:</u>		<u>2</u>	<u>2</u>	<u>na</u>	(min./max)
<u>NO. OF LOADING AREAS:</u>		<u>na</u>	<u>na</u>	<u>na</u>	(min.)
<u>DISTANCE TO NEAREST BLDG. ON SAME LOT:</u>		<u>26.8</u>	<u>26.8</u>	<u>na</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.

The above dimensions include the carriage house which is of wood frame construction

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



CAMBRIDGE HISTORICAL COMMISSION

831 Massachusetts Avenue, 2nd Floor, Cambridge, Massachusetts 02139

Telephone: 617 349 4683 TTY: 617 349 6112

E-mail: histcomm@cambridgema.gov URL: <http://www.cambridgema.gov/Historic>

Bruce A. Irving, *Chair*; Susannah Barton Tobin, *Vice Chair*; Charles M. Sullivan, *Executive Director*
William G. Barry, Jr., Robert G. Crocker, Joseph V. Ferrara, Chandra Harrington, Jo M. Solet, *Members*
Gavin W. Kleespies, Paula A. Paris, Kyle Sheffield, *Alternates*

Jurisdiction Advice

To the Owner of Property at 15 and 15R Channing Street

The above-referenced property is subject to the jurisdiction of the Cambridge Historical Commission (CHC) by reason of the status referenced below:

- ☐ Old Cambridge Historic District
- ☐ Fort Washington Historic District
(M.G.L. Ch. 40C, City Code §2.78.050)
- ☐ Avon Hill Neighborhood Conservation District
- ☐ Half Crown – Marsh Neighborhood Conservation District
- ☐ Harvard Square Conservation District
- ☐ Mid Cambridge Neighborhood Conservation District
- ☐ Designated Landmark
- ☐ Property is being studied for designation: _____
(City Code, Ch. 2.78., Article III, and various City Council Orders)
- ☐ Preservation Restriction or Easement (as recorded)
- ☒ Structure is fifty years or more old and is therefore subject to CHC review of any application for a demolition permit, if one is required by ISD. (City Code, Ch. 2.78, Article II). See the back of this page for definition of demolition.
No demolition permit application anticipated.
- ☐ No jurisdiction: not a designated historic property and the structure is less than fifty years old.
- ☐ No local jurisdiction, but the property is listed on the National Register of Historic Places;
CHC staff is available for consultation, upon request.
Staff comments: _____

The Board of Zoning Appeal advises applicants to complete Historical Commission or Neighborhood Conservation District Commission reviews before appearing before the Board.

If a line indicating possible jurisdiction is checked, the owner needs to consult with the staff of the Historical Commission to determine whether a hearing will be required.

CHC staff initials SLB

Date September 26, 2019

Received by Uploaded to Energov

Date September 26, 2019

Relationship to project BZA 017174-2019

cc: Applicant
Inspectional Services Commissioner

Demolition Delay Ordinance and Application Information

The Demolition Delay Ordinance (Chapter 2.78, Article II of the Cambridge Municipal Code) was adopted by the City Council in 1979 to afford public review of demolition permit applications for potentially significant buildings. When the Historical Commission determines that a building is significant and should be preserved, demolition will be delayed for up to six months so that solutions can be sought to preserve the building indefinitely. The Ordinance covers all buildings over 50 years old, city-wide. The Historical Commission archives provide dates of construction for all properties in the City.

Demolition is defined in the ordinance as "the act of pulling down, destroying, removing or razing a building or commencing the work of total or substantial destruction with the intent of completing the same." The Inspectional Services Commissioner has provided further guidelines to outline what actions require a demolition permit. **In addition to complete demolition of a building, the following actions may require a demolition permit,**

- **removal of a roof,**
- **removal of one side of a building,**
- **gutting of a building's interior to the point where exterior features (windows, etc.) are impacted, and**
- **removal of more than 25% of a structure.**

Please contact the building inspector or a staff member of the Historical Commission if you have questions about whether a demolition permit is required for a particular project.

Demolition permit applications can be obtained from the Inspectional Services Department. The completed application should be submitted to the Historical Commission, where the staff will review the application. If the Executive Director of the Historical Commission makes an initial determination that the building is significant, a public hearing will be scheduled with Historical Commission. If the staff makes an initial determination that the building is not significant, the application is released for further review by the Building Commissioner.

More information about the demolition permit application procedures is available on the Historical Commission's web site or by calling or dropping by the Historical Commission office.

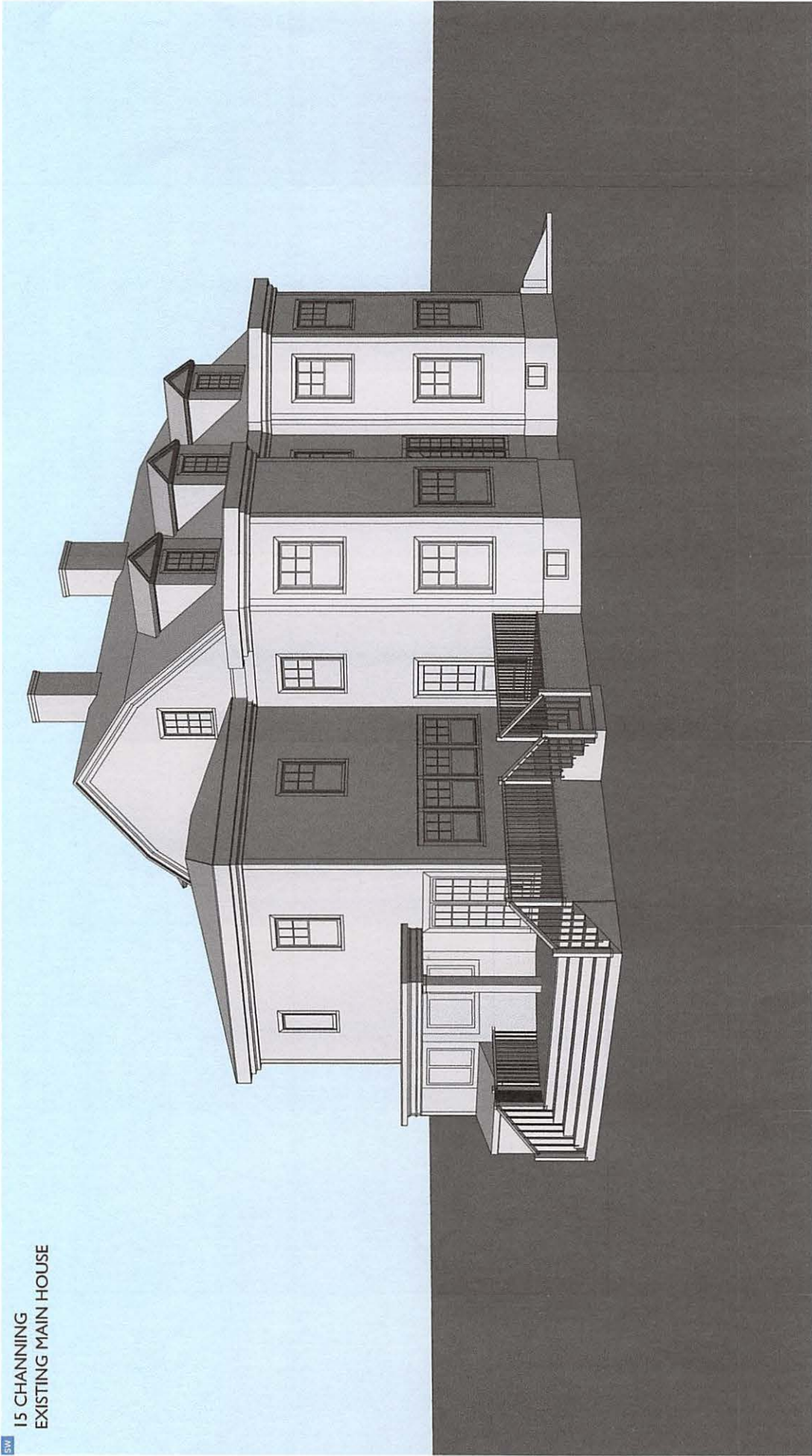
July 2003

Cambridge Historical Commission
831 Massachusetts Ave., 2nd Fl.
Cambridge, MA 02139
Ph: 617/349-4683 or TTY: 617/349-6112
<http://www.cambridgema.gov/Historic>

NW
15 CHANNING
EXISTING MAIN HOUSE



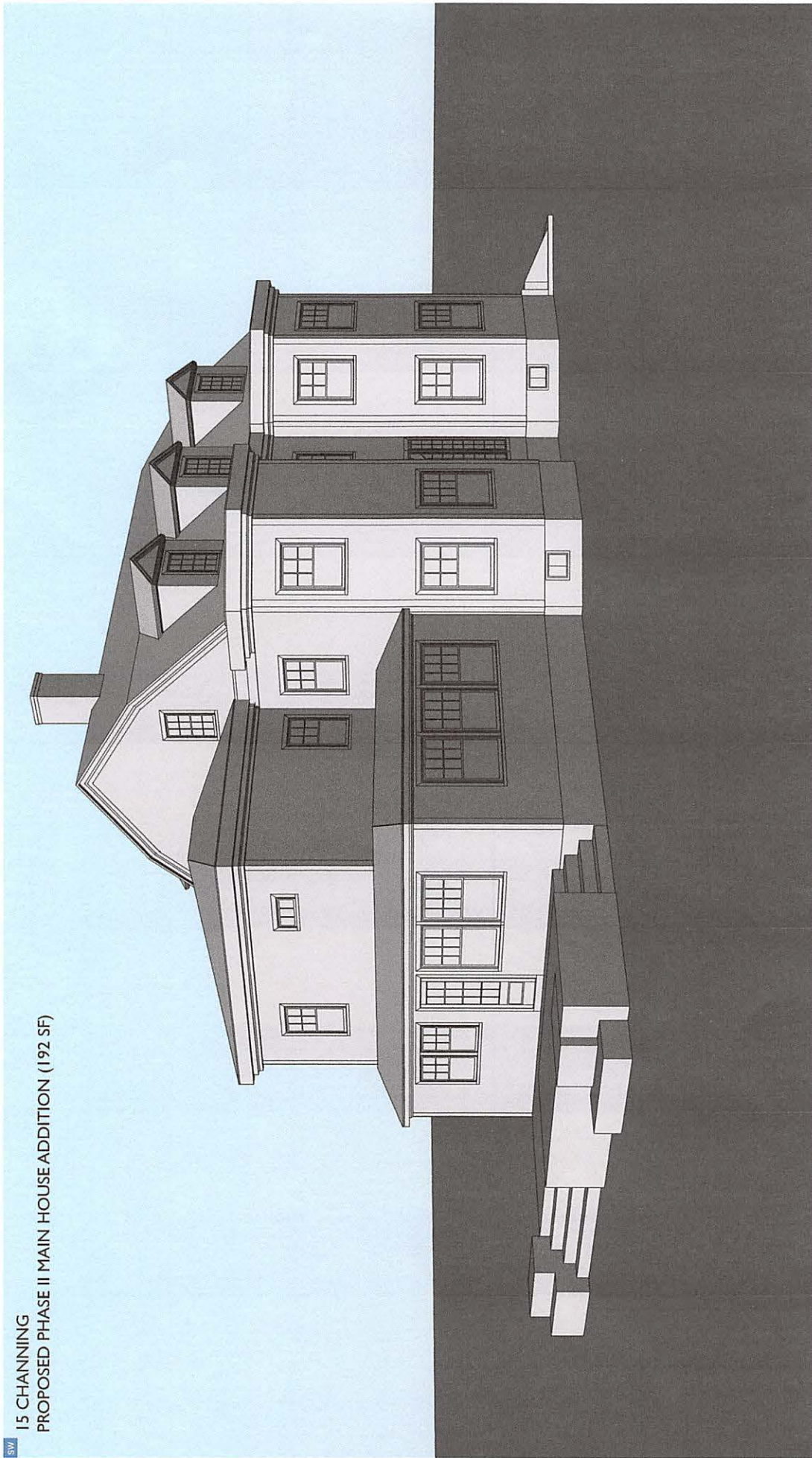
15 CHANNING
EXISTING MAIN HOUSE



15 CHANNING
PROPOSED PHASE II MAIN HOUSE ADDITION (192 SF)



15 CHANNING
PROPOSED PHASE II MAIN HOUSE ADDITION (192 SF)



RENOVATION AND ADDITION TO:

THE MCCUE RESIDENCE

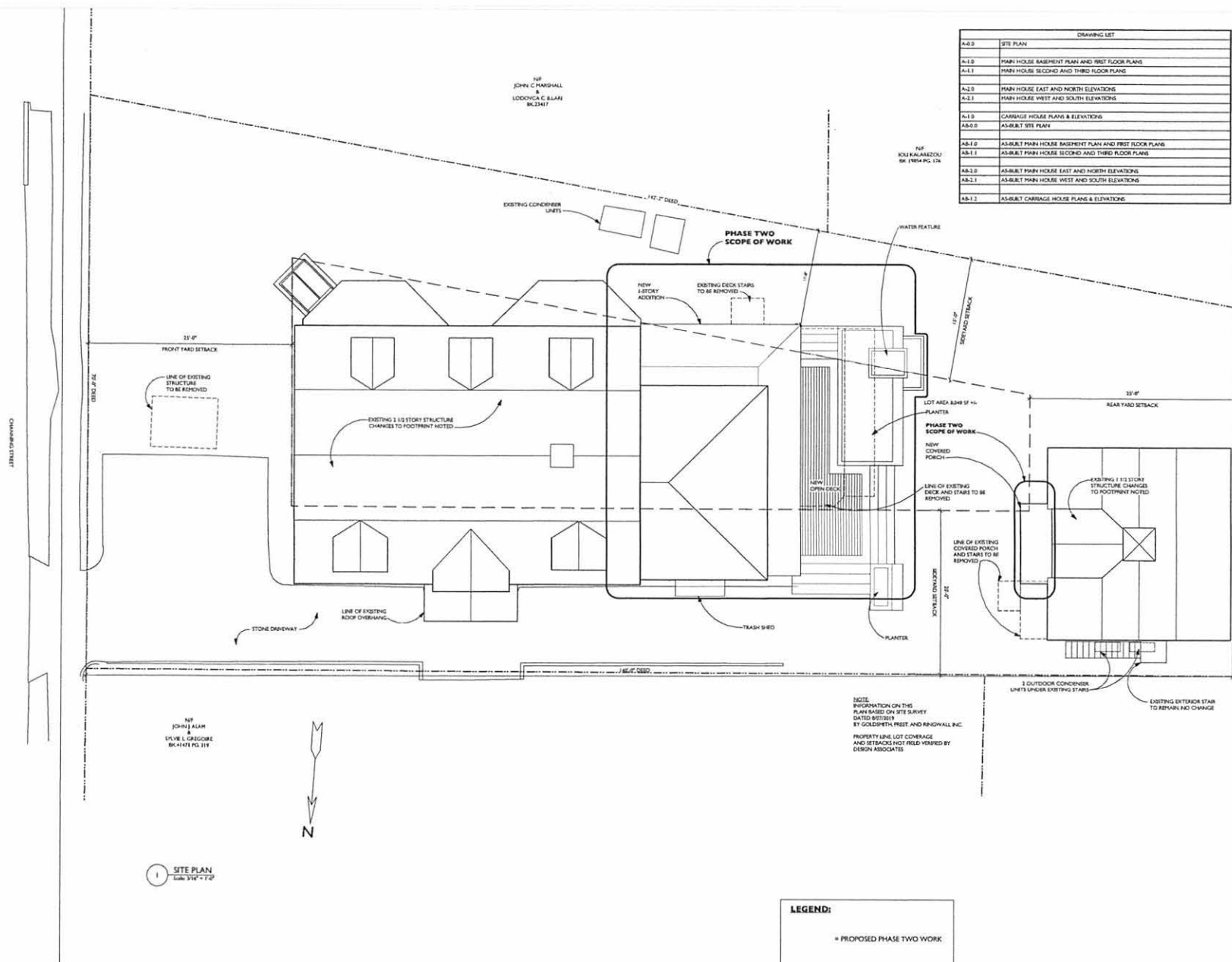
15 CHANNING ST.
CAMBRIDGE, MA 02138

MARK	DATE	REVISIONS
A	4/16/19	ISSUED FOR PRELIMINARY PRICING
B	5/13/19	FOR PERMIT
C	6/3/19	FOR PERMIT
D	7/29/19	FOR PERMIT HEARING
E	9/5/19	FOR SPECIAL PERMIT FILING

Print Date:

SITE PLAN

A-0.0



PO Box 1520
Nantucket MA 02554
☎ 508 228 4342
☎ 508 228 3428

<http://www.design-associates.com>

RENOVATION AND ADDITION TO:

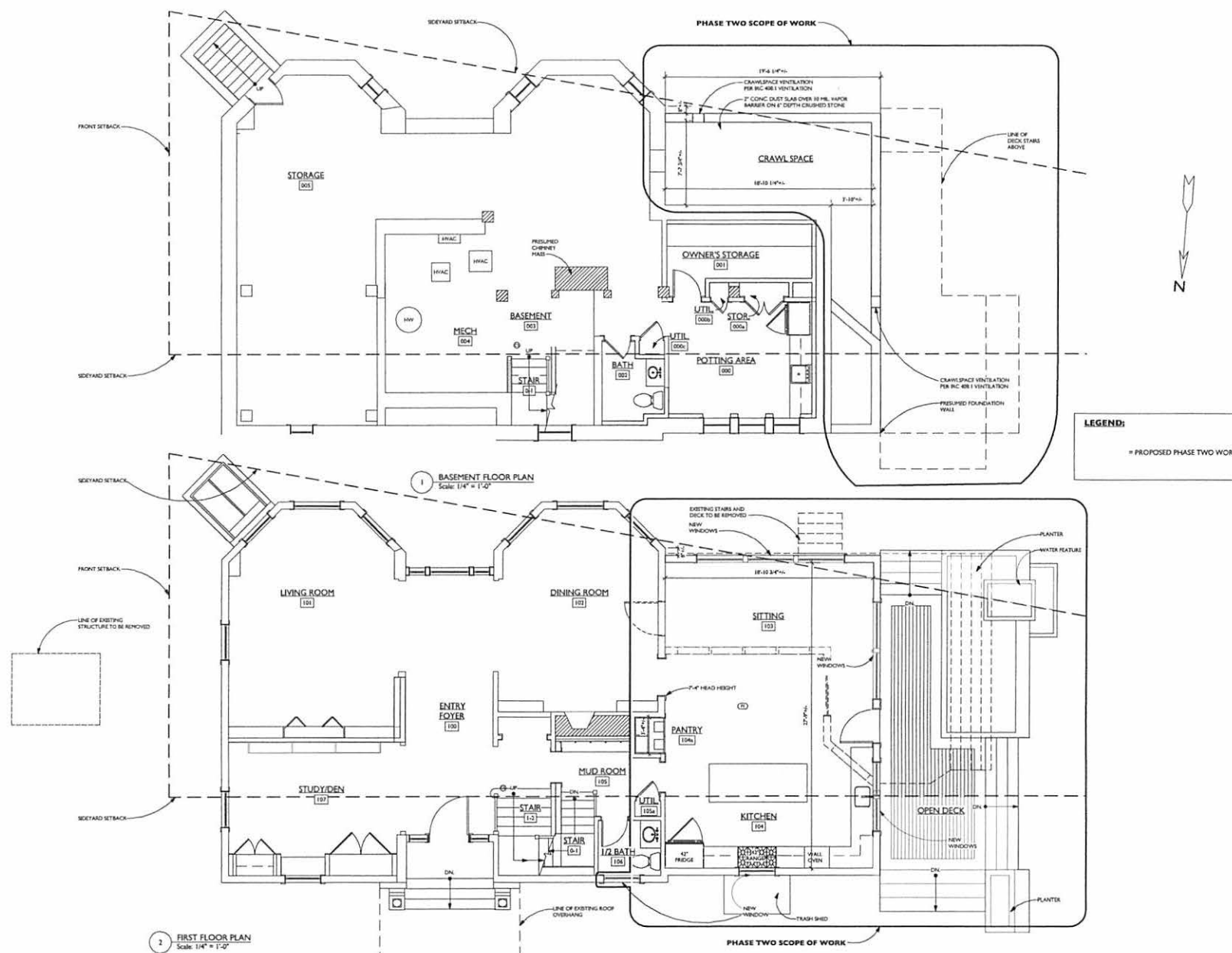
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CAMBRIDGE, MA 02138

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C	6/3/19	FOR PERMIT
D	7/29/19	FOR PERMIT HEARING
E	8/20/19	FOR PERMIT HEARING
F	9/5/19	FOR SPECIAL PERMIT FILING

Print Date:

MAIN HOUSE BASEMENT AND FIRST FLOOR PLANS

A-1.0



RENOVATION AND ADDITION TO:

THE MCCUE RESIDENCE

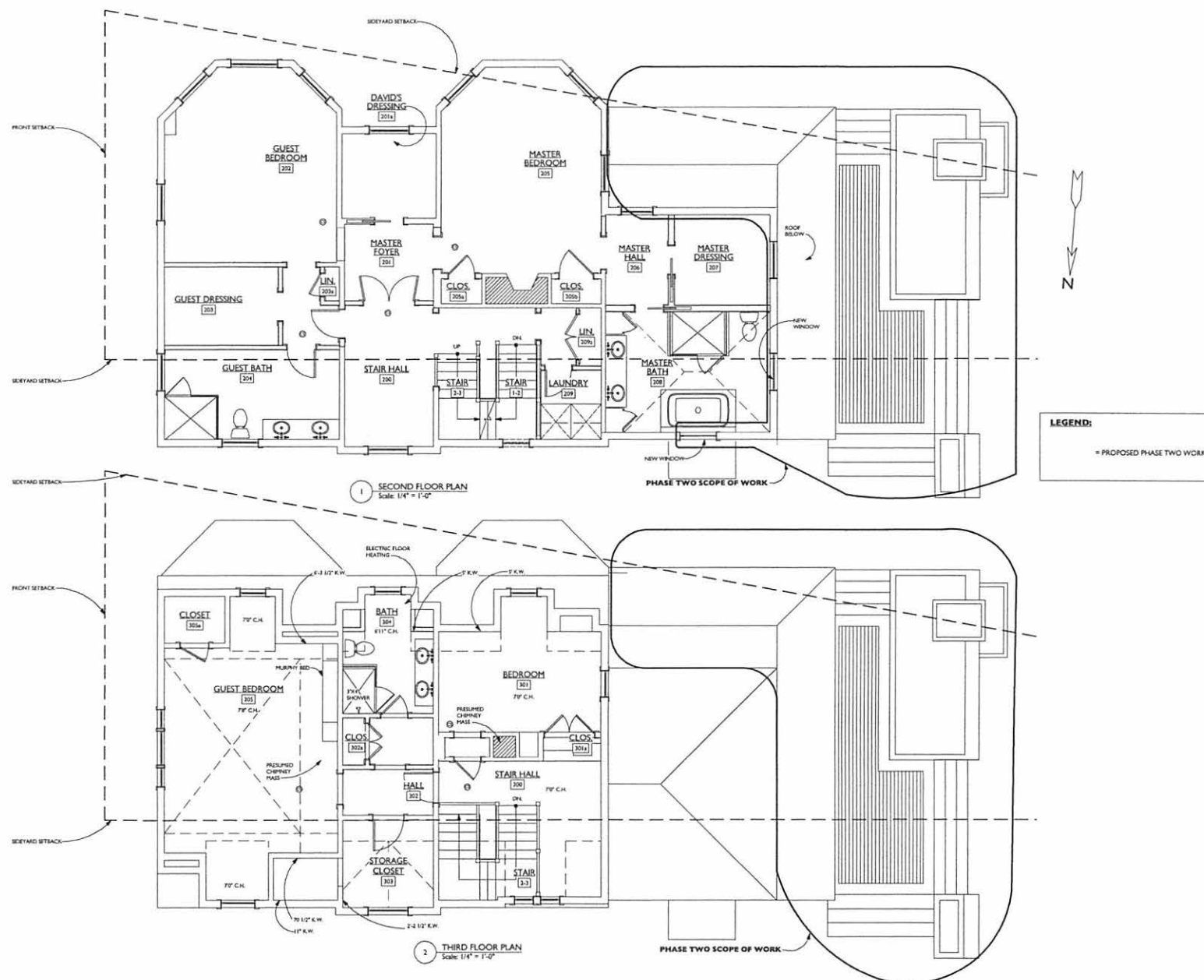
15 CHANNING ST.
CAMBRIDGE, MA 02138

MARK	DATE	REVISIONS
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C	6/3/19	FOR PERMIT
D	7/29/19	FOR PERMIT HEARING
E	8/20/19	FOR PERMIT HEARING
F	9/5/19	FOR SPECIAL PERMIT FILING

Print Date:

MAIN HOUSE SECOND
AND THIRD FLOOR
PLANS

A-1.1



RENOVATION AND ADDITION TO:

THE MCCUE RESIDENCE

15 CHANNING ST.
CAMBRIDGE, MA 02138

MARK	DATE	REVISIONS
A	4/16/19	ISSUED FOR PRELIMINARY PRICING
B	5/13/19	FOR PERMIT
C	6/3/19	FOR PERMIT
D	7/28/19	FOR PERMIT HEARING
E	8/29/19	FOR PERMIT HEARING
F	9/5/19	FOR SPECIAL PERMIT FILING

Print Date:

MAIN HOUSE EAST AND
NORTH ELEVATIONS

A-2.0



LEGEND:
= PROPOSED PHASE TWO WORK



RENOVATION AND ADDITION TO:

THE MCCUE RESIDENCE

15 CHANNING ST.
CAMBRIDGE, MA 02138

MARK	DATE	REVISIONS
A	4/16/19	ISSUED FOR PRELIMINARY PRICING
B	5/13/19	FOR PERMIT
C	6/3/19	FOR PERMIT
D	7/29/19	FOR PERMIT HEARING
E	8/20/19	FOR PERMIT HEARING
F	9/5/19	FOR SPECIAL PERMIT FILING

Print Date:

MAIN HOUSE WEST AND
SOUTH ELEVATIONS

A-2.1



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



2 SOUTH ELEVATION
Scale: 1/4" = 1'-0"

LEGEND:

= PROPOSED PHASE TWO WORK

THE MCCUE RESIDENCE

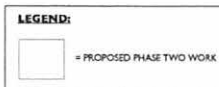
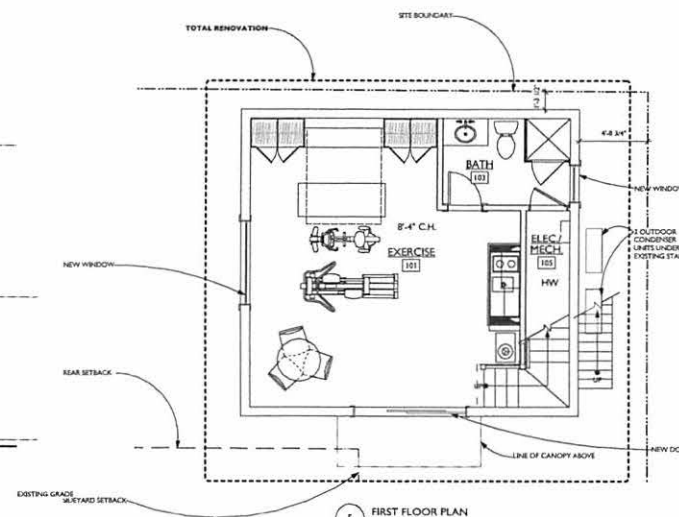
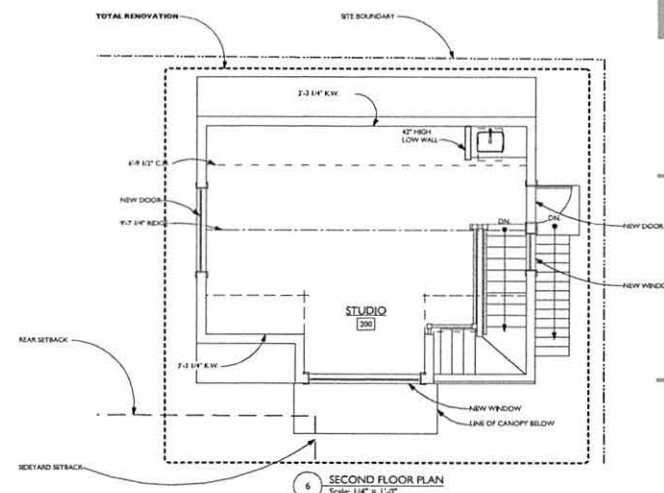
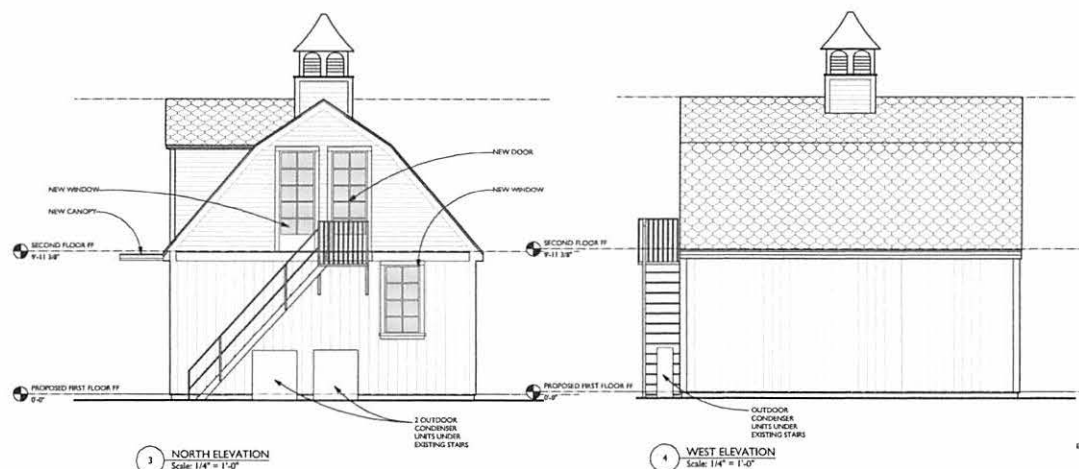
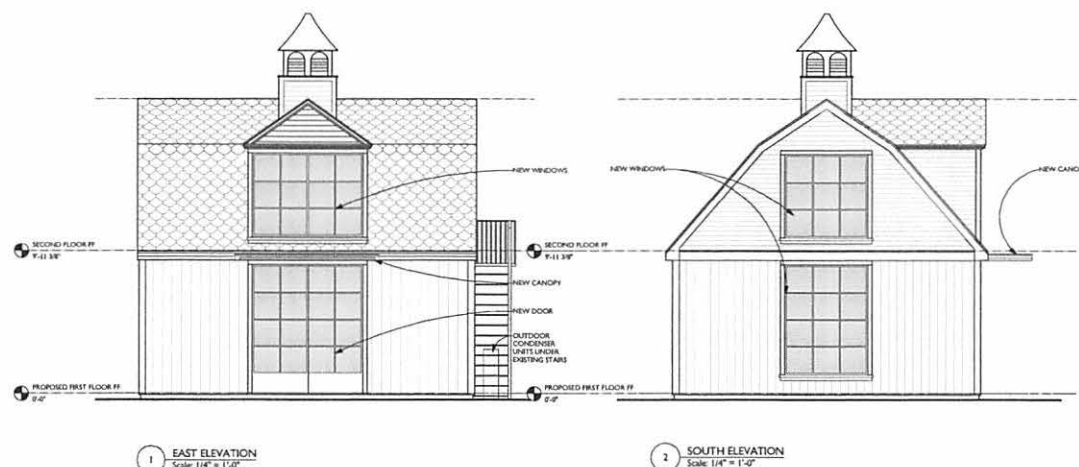
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CAMBRIDGE, MA 02138

MARK	DATE	REVISIONS
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B	5/13/19	FOR PERMIT
C	7/29/19	FOR PERMIT HEARING
D	9/5/19	FOR SPECIAL PERMIT FILING

Print Date:

CARRIAGE HOUSE PLANS
AND ELEVATIONS

A I.0



PO Box 1520
Nantucket MA 02554
① 508 228 4342
② 508 228 3428

<http://www.design-associates.com>

RENOVATION AND ADDITION TO:

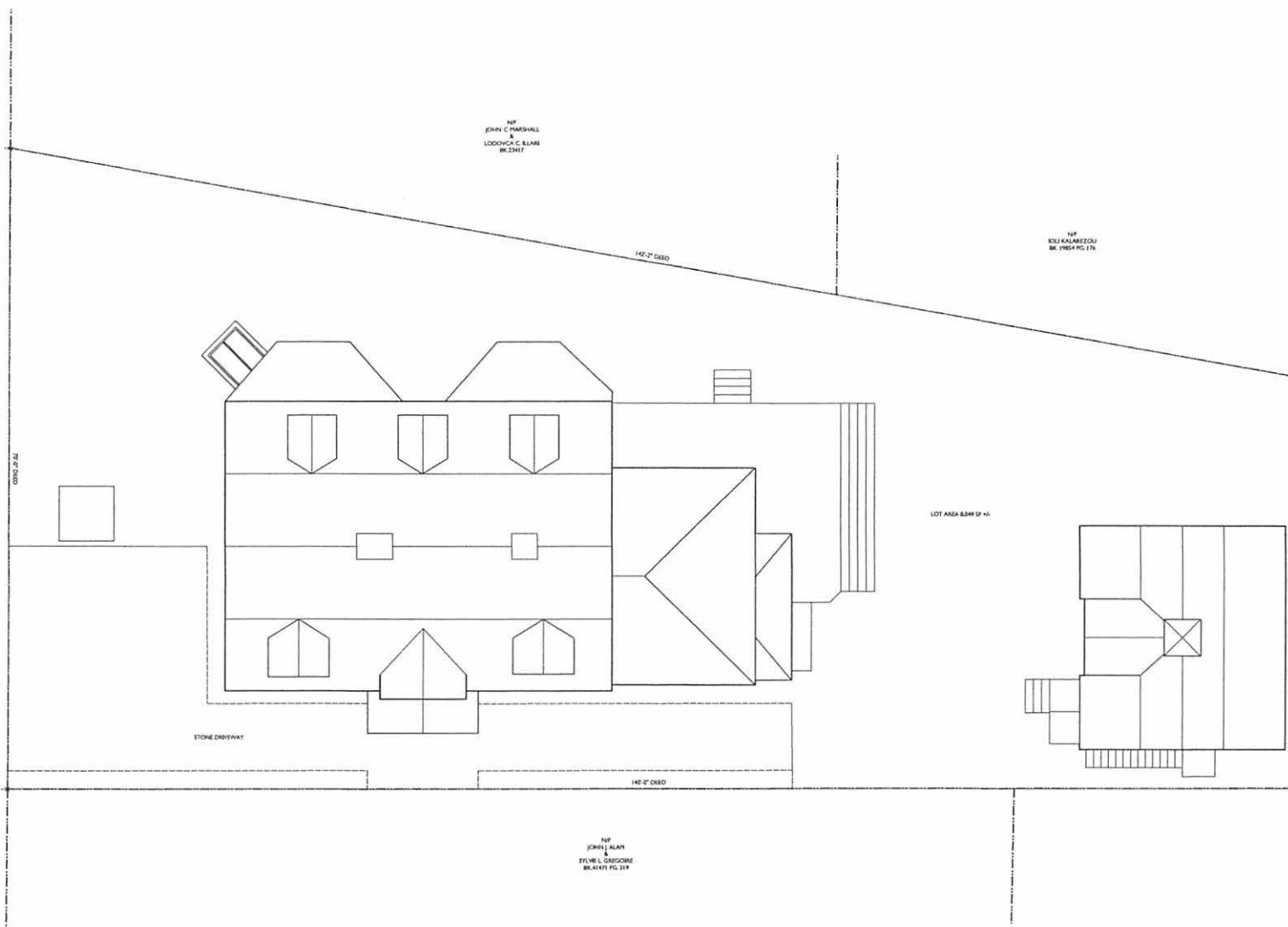
15 CHANNING ST.
CAMBRIDGE, MA 02138

MARK	DATE	REVISIONS
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B	5/13/19	FOR PERMIT
C	6/3/19	FOR PERMIT
D	7/29/19	FOR PERMIT HEARING
E	9/5/19	FOR SPECIAL PERMIT FILING

Print Date:

SITE PLAN

AB- 0.0



1 SITE PLAN
Scale: 3/16" = 1'-0"

NOTE:
INFORMATION ON THIS
PLAN BASED ON SITE PLAN
DATED 8/21/2007
BY SNELLING & HAMEL

PROPERTY LINE LOT COVERAGE
AND SETBACKS NOT FIELD VERIFIED BY
DESIGN ASSOCIATES



DESIGN ASSOCIATES INC

ARCHITECTURE
PLANNING
HISTORIC
PRESERVATION

1035 Cambridge Street
Cambridge MA 02141
617 661 9082
617 661 2550

PO Box 1520
Nantucket MA 02554
508 228 4342
508 228 3428

<http://www.design-associates.com>

RENOVATION AND ADDITION TO:

THE MCCUE RESIDENCE

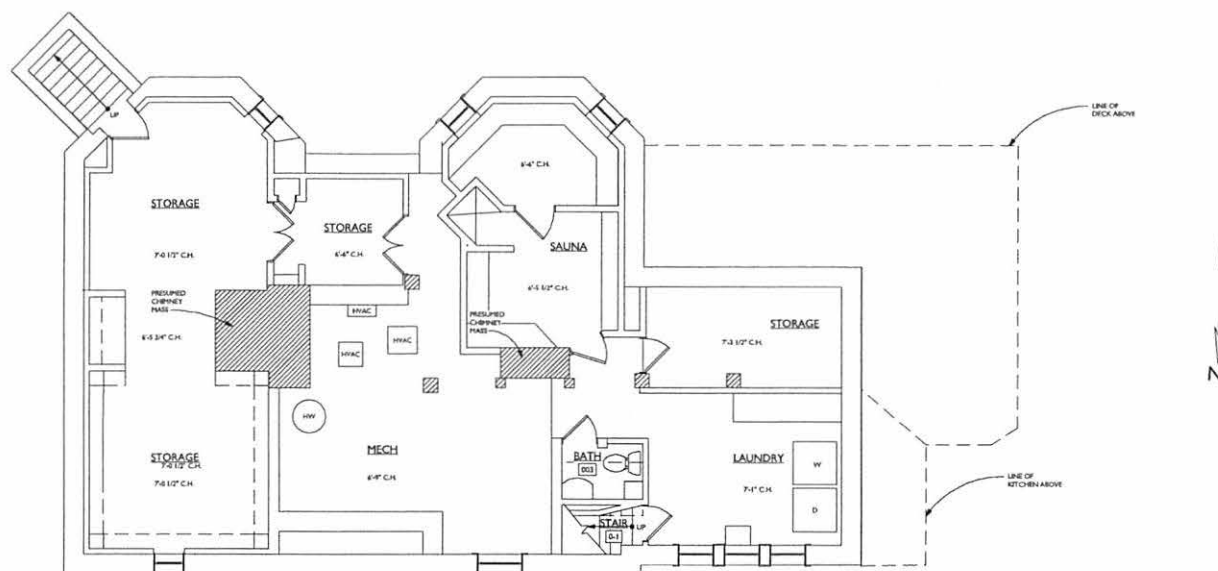
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CAMBRIDGE MA 02138

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E	9/5/19	FOR SPECIAL PERMIT FILING

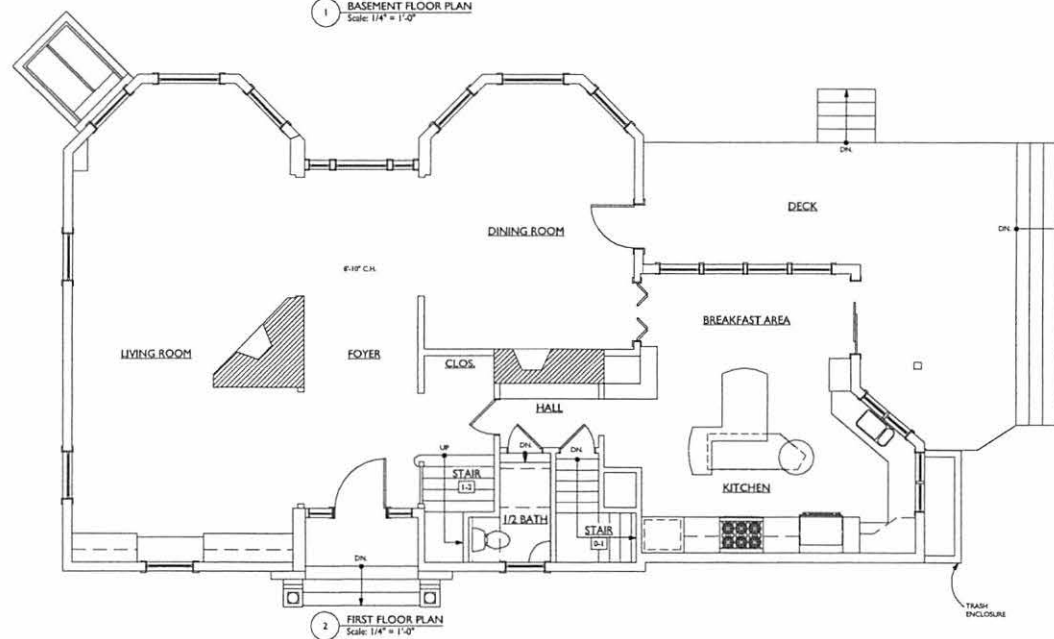
Print Date:

MAIN HOUSE BASEMENT
AND FIRST FLOOR PLANS

AB-1.0



1 BASEMENT FLOOR PLAN
Scale: 1/4\" = 1'-0"



2 FIRST FLOOR PLAN
Scale: 1/4\" = 1'-0"

DESIGN ASSOCIATES INC

ARCHITECTURE
PLANNING
HISTORIC
PRESERVATION

1035 Cambridge Street
Cambridge MA 02141
617 661 9082
617 661 2550

PO Box 1520
Nantucket MA 02554
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<http://www.design-associates.com>

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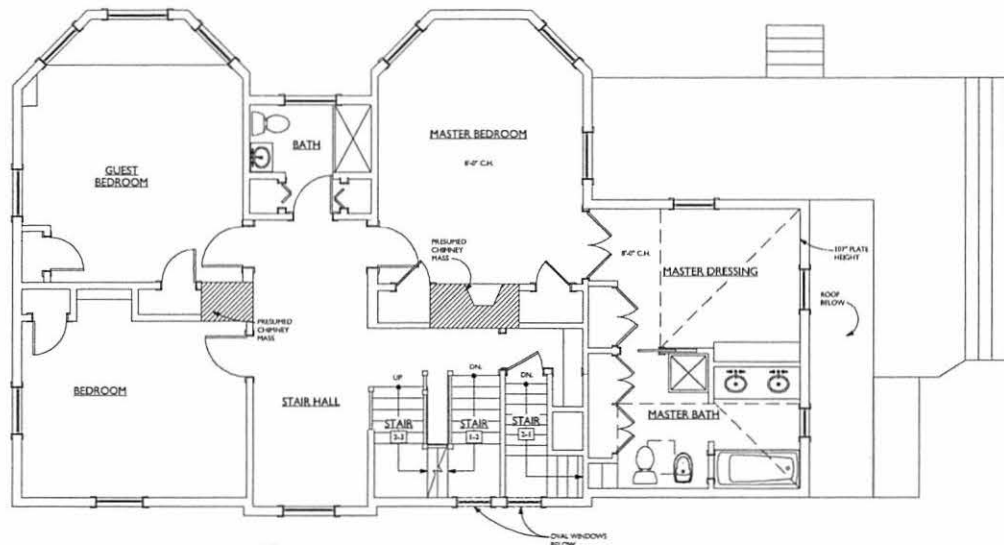
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CAMBRIDGE MA 02138

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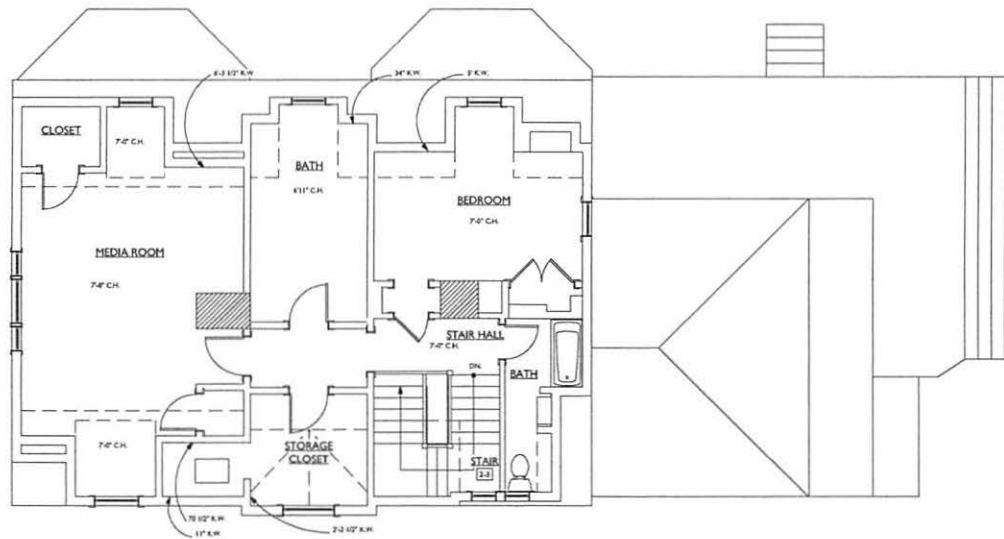
Print Date:

MAIN HOUSE SECOND
AND THIRD FLOOR
PLANS

AB-1.1



1 SECOND FLOOR PLAN
Scale: 1/4" = 1'-0"



2 THIRD FLOOR PLAN
Scale: 1/4" = 1'-0"

RENOVATION AND ADDITION TO:

THE MCCUE RESIDENCE

15 CHANNING ST.
CAMBRIDGE MA 02138

MARK	DATE	REVISIONS
A	4/16/19	ISSUED FOR PRELIMINARY PRICING
B	5/13/19	FOR PERMIT
C	6/3/19	FOR PERMIT
D	7/26/19	FOR PERMIT HEARING
E	9/5/19	FOR SPECIAL PERMIT FILING

Print Date:

MAIN HOUSE EAST AND
NORTH ELEVATIONS

AB- 2.0



RENOVATION AND ADDITION TO:

THE MCCUE RESIDENCE

15 CHANNING ST.
CAMBRIDGE MA 02138

MARK	DATE	REVISIONS
A	4/16/19	ISSUED FOR PRELIMINARY PRICING
B	5/13/19	FOR PERMIT
C	6/3/19	FOR PERMIT
D	7/29/19	FOR PERMIT HEARING
E	9/5/19	FOR SPECIAL PERMIT FILING

Print Date:

MAIN HOUSE WEST AND
SOUTH ELEVATIONS

AB-2.1



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



2 SOUTH ELEVATION
Scale: 1/4" = 1'-0"

THE MCCUE RESIDENCE

15 CHANNING ST.
CAMBRIDGE, MA 02138

MARK	DATE	REVISIONS
A	4/16/19	ISSUED FOR PRELIMINARY PRICING
B	5/15/19	FOR PERMIT
C	6/3/19	FOR PERMIT
D	9/5/19	FOR SPECIAL PERMIT FILING

Print Date:

CARRIAGE HOUSE PLANS
ELEVATIONS

AB-1.0



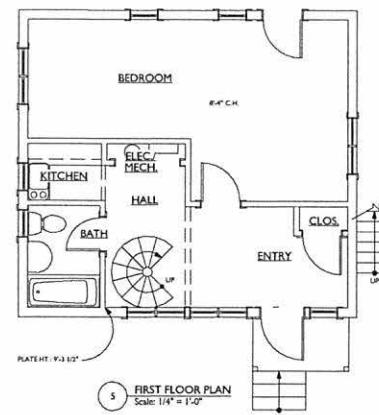
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Scale: 1/4" = 1'-0"

2 SOUTH ELEVATION
Scale: 1/4" = 1'-0"

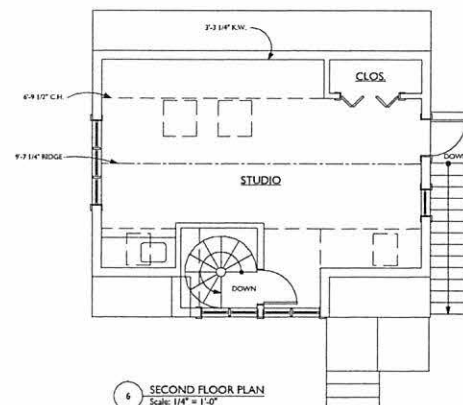


3 NORTH ELEVATION
Scale: 1/4" = 1'-0"

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



5 FIRST FLOOR PLAN
Scale: 1/4" = 1'-0"



6 SECOND FLOOR PLAN
Scale: 1/4" = 1'-0"

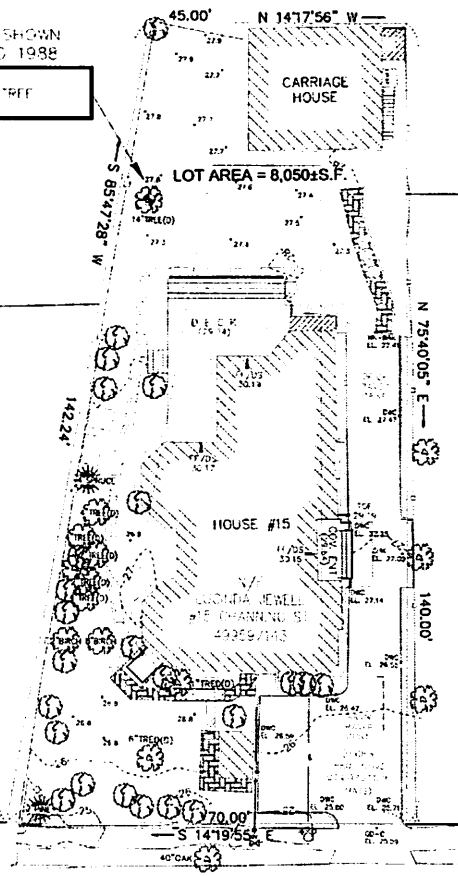
THIS MAP IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS PREPARED. THE PREPARATION OF THIS MAP IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS PREPARED. THE PREPARATION OF THIS MAP IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS PREPARED.

LOCUS MAP - NOT TO SCALE

ELEVATIONS SHOWN
ARE IN NAVD 1988

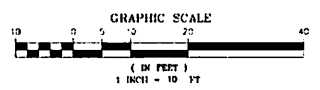
B.V. NO. 1
MAG-NAT. N 141° TREE
EL. 26.16

LOT AREA = 8,050± S.F.



CHANNING STREET

LEGEND	
1/2" (1/4")	NEW OR EXISTING
(1)	LEED BUSH/PAVE
(2)	FOUND
(3)	SET
(4)	IRON/STEEL TIE
(5)	STONE BOUND
(6)	CATCH BASIN
(7)	DRAIN MAN HOLE
(8)	WATER GATE/VALVE
(9)	HYDRANT
(10)	UTILITY HOLE
(11)	HAND HOLE
(12)	CAMERA
(13)	FIRE ALARM
(14)	SS
(15)	LAMP POST/POLE
(16)	ELEC. MAN. HOLE
(17)	TEL. MAN. HOLE
(18)	BOLLARD
(19)	BUILDING LIGHT
(20)	WETLAND MARK
(21)	GUT W/IL / GUT HOLE
(22)	GAS GATE
(23)	PRESSURE INTERRUPT VALVE
(24)	WETLAND FLAG / IDENTIFIER
(25)	CENTER
(26)	DRILL HOLE
(27)	PIPE/POLE
(28)	STONE BOUND
(29)	DRILL HOLE
(30)	STONE WALL
(31)	FRESH FLOOR ELEVATION
(32)	FLOOD LIGHT
(33)	EDGE OF PAVEMENT
(34)	BT CONC. CURB
(35)	CAUL. EOD. BERM (BT)
(36)	VERTICAL GRANITE CURB
(37)	SLOPED GRANITE CURB
(38)	CONCRETE CURB
(39)	SPOT ELEVATION
(40)	GAS METER
(41)	ELEC. METER
(42)	ELEC. TRANSFORMER
(43)	TREE / DECIDUOUS
(44)	TREE / CONIFEROUS
(45)	WALL/DOOR
(46)	WATER SUPPLY WELL
(47)	WELL
(48)	ALTITUDE
(49)	UNDERGROUND TELEPHONE
(50)	UNDERGROUND ELECTRIC
(51)	SANITARY SEWER
(52)	STORM DRAIN
(53)	WATER LINE
(54)	UNDERGROUND CABLE
(55)	CABLE/TELEVISION
(56)	OVERHEAD WIRE
(57)	CONTOUR (MINUS)
(58)	CONTOUR (PLUS)
(59)	100' WETLAND BUFFER
(60)	EDGE OF WATER
(61)	EDGE OF VEGETATION
(62)	ZONING/SETBACK
(63)	C.L.F. / ADJ. L.W. FENCE
(64)	WOOD/STOCKADE FENCE
(65)	WIRE FENCE
(66)	EXISTING BUILDING
(67)	BUILDING OVERHANG



GPR Engineering Solutions
for Land & Structures
GOLDSMITH, PREST & RINGWALL, INC.
38 MAIN STREET, SUITE 301, AVER, MA 01402
CALL: 978.772.1100 FAX: 978.772.1101
WWW.GPR-INC.COM

**EXISTING CONDITIONS
PLAN OF LAND
IN
CAMBRIDGE, MASS.**
PREPARED FOR
D&S ASSOC / G.D.
AT
15 CHANNING ST

BY: GPR/INC	DATE: AUG 15, 2018	JOB: 191079	OF
CHK: BT, ZB			

191079



106









10 e





PAGE & POWELL

Attorneys at Law

SHIPPEN L. PAGE, ESQ.
ALEXANDER F. POWELL, ESQ.*
JULIA S. POWELL, ESQ.

*Also admitted in New York

June 7, 2019

Ranjit Singanayagam
Commissioner
Department of Inspectional Services
City of Cambridge
Lombardi Building
852 Massachusetts Ave.
Cambridge, MA 02139

RE: 15 Channing Street – Application For Building Permit

Dear Commissioner Singanayagam:

My clients, David and Janet McCue, have recently purchased the single family Main Residence and Carriage House at 15 Channing Street, originally constructed in 1899. They have hired Chris Dallmus, the principal of the architectural firm Design Associates of Cambridge, to help them with modest renovations.

For the Main Residence, Mr. Dallmus has proposed enclosing an existing uncovered deck into a single story, first floor sitting area adjoining the existing kitchen, as shown on the plans which the contractor, Kistler & Knapp, is submitting herewith. The structure does not conform to the zoning requirements in the A-1 district because the FAR currently exceeds what is allowed, the lot is 70 feet wide when 80 feet is required and both the north and south sides encroach into the side yard setbacks. Enclosing the side uncovered deck into an interior sitting area will add 184 square feet of living space to the Main Residence. In addition, the McCues propose to add an additional 15 square feet to provide a larger covered porch for the Carriage House, which is largely within the rear yard and side yard setbacks.

These additions will increase the FAR by 2.48%, from 78.28 to 80.76 where .5 is permitted as of right.

As discussed below, none of the proposed changes will increase the non-conforming nature of the applicants' property, and as such we request that the City of Cambridge grant a building permit as of right.

The law is clear that minimal or modest changes such as the ones in the McCues' plans do not require a special permit or variance:

"Concerns over the making of small-scale alterations, extensions, or structural changes to a preexisting house are illusory. Examples of such improvements could include the addition of a dormer; the addition, or enclosure, of a porch or sunroom; the addition of a one-story garage for no more than two motor vehicles; the conversion of a one-story garage for one motor vehicle to a one-story garage for two motor vehicles; and the addition of small-scale, proportional storage structures, such as sheds used to store gardening and lawn equipment, or sheds used to house swimming pool heaters and equipment. Because of their small-scale nature, the improvements mentioned could not reasonably be found to increase the nonconforming nature of a structure, and we conclude, as matter of law, that they would not constitute intensifications."

Bjorklund v. Zoning Bd. of Appeals Norwell, 878 N.E.2d 915, 450 Mass. 357 (Mass. 2008).

Bellalta v. Zoning Board of Appeals of Brookline (SJC 12516, Mass. 2019) recently confirmed and clarified Bjorklund. Supreme Judicial Court Justice Lenk emphasized in the February 8, 2019 decision that "a member of the town's building department described the requested relief as 'minimal' and several members of the planning board described it as 'modest'" and that the Court "previously observed, that certain small-scale extensions, such as the addition of a dormer, a porch, a sunroom or a two car garage, among others, would not, as a matter of law, constitute an intensification of the nonconforming nature of the structure." Notably, the petitioners in Bellalta sought to add 677 square feet which resulted in an increase of .24 FAR from 1.14 to 1.38 where 1.00 was allowed.

As set forth above, the proposed plans of the McCues neither intensify nor increase the nonconforming nature of the property and the structures thereon. Rather, my clients seek merely to enclose a side uncovered deck to create a single story first floor sitting area adjacent to the kitchen.

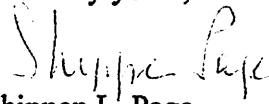
Similarly, moving the entryway to the Carriage House and increasing its size by 15 square feet is also a very modest addition which does not intensify the nonconforming nature of the structure.

Commissioner Singanayagam
June 7, 2019, page 3

Under the instant facts, as well as the law as set forth by the Supreme Judicial Court, my clients David and Janet McCue are entitled to a building permit as of right. I would appreciate your response at your earliest convenience so that my clients can proceed to build their project or take other procedural actions as appropriate.

Thank you for your consideration.

Sincerely yours,


Shippen L. Page

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCRreporter@sjc.state.ma.us

SJC-12516

MARIA BELLALTA & another¹ vs. ZONING BOARD OF APPEALS OF
BROOKLINE & others.²

Suffolk. October 1, 2018. - February 8, 2019.

Present: Gants, C.J., Lenk, Gaziano, Lowy, Budd, Cypher, &
Kafker, JJ.

Zoning, Nonconforming use or structure, Special permit,
Variance, Interior area of residence, Multiple dwelling,
By-law. Statute, Construction.

Civil action commenced in the Land Court Department on
November 18, 2016.

The case was heard by Keith C. Long, J., on motions for
summary judgment.

The Supreme Judicial Court granted an application for
direct appellate review.

Jeffrey P. Allen (Donald J. Gentile also present) for the
plaintiffs.

Jennifer Dopazo Gilbert for Jason Jewhurst & another.

Jonathan Simpson, Associate Town Counsel, for zoning board
of appeals of Brookline.

¹ Damon Burnard.

² Jason Jewhurst and Nurit Zuker.

LENK, J. We once again construe the "difficult and infelicitous" language of the first two sentences of G. L. c. 40A, § 6, insofar as they concern single- or two-family residential structures. See Fitzsimonds v. Board of Appeals of Chatham, 21 Mass. App. Ct. 53, 55-56 (1985). These statutory provisions set forth both the exemption afforded to all legally preexisting nonconforming structures and uses from the application of zoning ordinances and bylaws, as well as how those protections can be forfeited or retained when such nonconforming structures or uses are extended or altered. The statute also accords special protection to single- and two-family residential structures in the event that the nonconformity is altered or extended; it is the extent of that protection in the circumstances here that we clarify.

The defendant homeowners sought to modify the roof of their two-family house and to add a dormer; doing so would increase the preexisting nonconforming floor area ratio. The zoning board of appeals of Brookline (board) allowed the defendant's request for a special permit, after determining that increasing the preexisting nonconforming nature of the structure would not be substantially more detrimental to the neighborhood than the preexisting nonconforming use. The plaintiff abutters, however, challenged the board's action, contending that the statute does

not exempt the defendants from compliance with municipal bylaws, and that to do so here would require the defendants to obtain a variance in addition to the special permit. The plaintiffs appealed; a Land Court judge upheld the board's action.

We conclude that the statute requires an owner of a single- or two-family residential building with a preexisting nonconformity, who proposes a modification that is found to increase the nature of the nonconforming structure, to obtain a finding under G. L. c. 40A, § 6, that "such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood." The statute does not require the homeowner also to obtain a variance in such circumstances. We accordingly affirm the judgment of the Land Court.

1. Background. The material facts are not in dispute. The defendants, Jason Jewhurst and Nurit Zuker, own the second-floor condominium unit of a two-family house on Searle Avenue in Brookline. The plaintiffs, Maria Bellalta and Damon Burnard, own a house on Cypress Street that abuts the defendants' house. The two abutting lots are located in a T-5 residential zoning district that encompasses single-family, two-family, and attached single-family houses. While many of the lots on Searle Avenue are undersized according to the Brookline zoning bylaw, the defendants' lot is the smallest; its 2,773 square feet are

slightly more than one-half the minimum requirement of 5,000 square feet for a lot containing a two-family house in the T-5 zone.

As to the structure itself, the sole legal nonconformity of the defendants' house, which was in existence when they purchased the property, is the floor area ratio (FAR).³ The Town of Brookline (town) bylaw requires a maximum FAR of 1.0 for a two-family house in a T-5 zoning district, and the defendants' house has a FAR of 1.14. The proposed renovation project would convert the roof of the house from a hip roof to a gable roof and would add a dormer to the street-facing façade, thereby creating 677 square feet of additional living space on the third floor of the building.⁴ This project would increase the already

³ A building's floor area ratio (FAR) compares the gross floor area of the building to the area of the lot upon which it is built. See generally Institute for Local Government, Land Use and Planning: Glossary of Land Use and Planning Terms, at 24 (2010). A provision of the town of Brookline's (town's) bylaw entitled "Floor Area Ratio" provides that, "[f]or any building . . . the ratio of gross floor area to lot area shall not exceed the maximum specified in the Table of Dimensional Requirements." See Town of Brookline Planning and Community Development Dep't, Zoning By-Law, Art. V Dimensional Requirements, at § 5.20 (May 24, 2018). The table of dimensional requirements specifies that the maximum FAR for a two-family house in a T-5 residential zoning district is 1.0. Id.

⁴ A hip roof is a structural design in which each side of the roof slopes downward from a central ridge toward the walls of the building. With a gable roof, only two sides slope downward from a central ridge. See C. M. Harris, American Architecture: An Illustrated Encyclopedia, at 142, 174 (1998).

nonconforming FAR from 1.14 to 1.38.

The defendants initially submitted their request for a building permit to the building commissioner; that application was denied.⁵ The defendants then submitted a request for a special permit to the board, and the board conducted a public hearing on the request. The abutting plaintiffs opposed the request for a special permit, both in writing prior to the hearing and orally at the hearing. Fifteen other neighbors submitted statements in support of the project; they viewed the proposed roofline as being consistent with the over-all design and character of the neighborhood.

Members of the town's building department and its planning board spoke at the hearing, and presented reports on their review of the project, as did the defendants' architect, who had conducted shadow studies of the effect of the proposed roof on the abutters' property. Statements and reports from town officials indicated that the majority of the houses on the street have partial or full third stories, and are taller than the defendants' existing building. Those officials also noted

A dormer is a structure, often containing a window, that projects vertically beyond the plane of the roof. See id. at 174.

⁵ The record before us does not reflect the grounds for the denial. We note, however, that section 9.05.1 of the zoning bylaw requires specific findings by the board of appeals in order to increase a nonconformity in a nonconforming structure.

that the proposed project would make the defendant's house appear more consistent, both in height and in design, with the others on the street. The board unanimously determined, inter alia, that, pursuant to the requirements of section 9.05 of the bylaw, "[t]he specific site is an appropriate location for such a use, structure, or condition," and "[t]he use as developed will not adversely affect the neighborhood." Accordingly, the board found that the defendants had satisfied the requirements for issuance of a special permit.⁶ The defendants did not request a variance.⁷

⁶ Although the board's decision does not contain an explicit finding that the project would not be substantially more detrimental to the neighborhood than the existing structure, the Land Court judge appropriately noted that the finding is implied by the board's decision to grant the requested relief for a special permit, as well as its reference to the requirements of G. L. c. 40A, § 6. While the board made a finding under the language of the zoning bylaw that "the use as developed will not adversely affect the neighborhood," the board allowed issuance of the special permit after having heard numerous professional and lay opinions using the language that the project would not result in a "substantial detriment." Further, a finding of "no adverse effect" arguably is a much more stringent standard than a finding of "no substantial detriment." The parties properly do not dispute that the board found that the project would not result in a substantial detriment to the neighborhood.

⁷ A variance is a grant of relief from certain provisions in a municipality's zoning ordinance; such a deviation from the bylaw may be allowed only upon a finding that "owing to circumstances relating to the soil conditions, shape, or topography of such land or structures . . . , a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner" and that "desirable relief may be granted without substantial detriment to the public good and without nullifying

The plaintiffs commenced an action in the Land Court, pursuant to G. L. c. 40A, § 17, to challenge the board's decision. The parties agreed that the material facts were not in dispute, and filed cross motions for summary judgment. A Land Court judge denied the plaintiffs' motion and allowed the joint motion of the defendants and the board. The plaintiffs appealed to the Appeals Court, and we allowed their petition for direct appellate review.

2. Discussion. We review de novo the allowance of a motion for summary judgment, viewing the facts "in the light most favorable to the party against whom judgment entered." 81 Spooner Rd., LLC v. Zoning Bd. of Appeals of Brookline, 461 Mass. 692, 699 (2012), citing Albahari v. Zoning Bd. of Appeals of Brewster, 76 Mass. App. Ct. 245, 248 n.4 (2010). A decision on a motion for summary judgment will be upheld if the judge "ruled on undisputed material facts and the ruling was correct as a matter of law" (citation omitted). M.P.M. Bldrs., LLC v. Dwyer, 442 Mass. 87, 89 (2004).

a. Statutory framework. In order to understand the parties' claims, some background on the statutory framework is necessary.

or substantially derogating from the intent or purpose of such ordinance or by-law." G. L. c. 40A, § 10.

A preexisting nonconformity is a use or structure that lawfully existed prior to the enactment of a zoning restriction that otherwise would prohibit the use or structure. See generally G. L. c. 40A, § 6; Shrewsbury Edgemere Assocs. Ltd. Partnership v. Board of Appeals of Shrewsbury, 409 Mass. 317, 319 (1991). Preexisting nonconformities become protected when zoning laws change, as a result of the long-standing recognition that "rights already acquired by existing use or construction of buildings in general ought not to be interfered with." See Opinion of the Justices, 234 Mass. 597, 606 (1920).

Preexisting non-conforming lots and structures throughout the Commonwealth are protected under G. L. c. 40A, § 6. General Laws c. 40A, § 6, provides, in relevant part:

"[1] Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, . . . but shall apply to any change or substantial extension of such use, . . . to any reconstruction, extension or structural change of such structure and . . . to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent [2] except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure. Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than

the existing nonconforming [structure or⁸] use to the neighborhood" (emphasis added).

The language of G. L. c. 40A, § 6, has been recognized as particularly abstruse. See Willard v. Board of Appeals of Orleans, 25 Mass. App. Ct. 15, 20 (1987) ("The first paragraph of G. L. c. 40A, § 6 . . . contains an obscurity of the type which has come to be recognized as one of the hallmarks of the chapter"). See, e.g., Fitzsimonds, 21 Mass. App. Ct. at 55-56. What has become known as the "first 'except' clause" of that statute affords explicit protection to the continuance of previously compliant structures and uses that are no longer compliant with subsequently enacted zoning bylaws. See G. L. c. 40A, § 6. See Willard, *supra*. Ordinarily, however, an extension or structural change to a preexisting nonconforming structure or use must comply with the applicable municipal bylaw. See Rockwood v. Snow Inn Corp., 409 Mass. 361, 364 (1991). The addition in 1975 of what has become known as the "second 'except' clause, "without accompanying explanation," see Willard, *supra* at 18, citing 1974 House Doc. No.5864, further

⁸ In Willard v. Board of Appeals of Orleans, 25 Mass. App. Ct. 15, 21 (1987), the Appeals Court construed the statutory exception for extensions or alterations to nonconforming uses in G. L. c. 40A, § 6, as including nonconforming structures, in addition to nonconforming uses. Subsequent jurisprudence has continued to construe the statutory language as applicable both to nonconforming uses and structures. See, e.g., Bransford v. Zoning Bd. of Appeals of Edgartown, 444 Mass. 852, 857 (2005) (Greaney, J., concurring).

complicated the statute's already difficult language. See, e.g., Fitzsimonds, 21 Mass. App. Ct. at 56. That clause extends additional protections to single- and two-family nonconforming structures, and allows as of right the "alteration, reconstruction, extension or structural change" of such a structure, so long as the "extended or altered" structure "does not increase" its "nonconforming nature." G. L. c. 40A, § 6. Where a proposed extension, structural change, reconstruction, or alteration would increase the "nonconforming nature" of the structure, a homeowner must obtain a finding from the relevant permit granting authority that the proposed modification would not be "substantially more detrimental" to the neighborhood than is the existing nonconformity. Id.

The plaintiffs contend that, in addition to the requirement of G. L. c. 40A, § 6, that the board find the defendants' proposed project would not be "substantially more detrimental" to the neighborhood, the defendants also are required to obtain approval from the board for a variance from the town's bylaw. Because the defendants obtained only a special permit, the plaintiffs argue that the proposed project does not meet the requirements of G. L. c. 40A, § 6. In the plaintiffs' view, the language of the statute, its legislative history, and our existing jurisprudence do not exempt single- and two-family nonconforming structures from the requirement of obtaining a

variance under the town's bylaws in order to make any change that would intensify the preexisting nonconformity; the plaintiffs contend also that the requirement of a variance is in addition to obtaining a finding of no substantial detriment under G. L. c. 40A, § 6.

b. Statutory construction. "As with all matters of statutory interpretation," Commonwealth v. Mogelinski, 466 Mass. 627, 633 (2013), a court construing a zoning act must "ascertain and effectuate legislative intent," as expressed in the statutory language. See S. Singer, 3C Statutes and Statutory Construction § 77:7, at 659 (8th ed. 2018) (Singer). See also Commonwealth v. Escobar, 479 Mass. 225, 230 (2018). Where, as here, "the meaning of [the] statute is not clear from its plain language, well-established principles of statutory construction guide our interpretation" (citation omitted). Id. at 228. Specific provisions of a statute are to be "understood in the context of the statutory framework as a whole, which includes the preexisting common law, earlier versions of the same act, related enactments and case law, and the Constitution." Singer, supra at § 77:7, at 692-694. A reviewing court's interpretation "must be reasonable and supported by the . . . history of the statute." See Mogelinski, supra at 633, quoting Wright v. Collector & Treas. of Arlington, 422 Mass. 455, 457-458 (1996). Ultimately, we must "avoid any construction of statutory

language which leads to an absurd result," or that otherwise would frustrate the Legislature's intent. See Singer, supra at § 77:7, at 689. See also Worcester v. College Hill Props., LLC, 465 Mass. 134, 138 (2013).

The crux of the issue in this appeal turns on the language of the "second 'except' clause," and the extent of the protections it affords to owners of single- and two-family preexisting nonconforming structures who seek to intensify those nonconformities. As noted, the second "except" clause had "no identifiable ancestor" in earlier versions of the zoning act, before its appearance "without accompanying explanation . . . in 1974 House Doc. No 5864" (citation omitted). Willard, 25 Mass. App. Ct. at 18. The "chief document" in the legislative history of the zoning act is a comprehensive report that was prepared by the Department of Community Affairs, which included its proposed recommendations and amendments to the act. See Bransford v. Zoning Bd. of Appeals of Edgartown, 444 Mass. 852, 867 & n.3 (2005) (Cordy, J., dissenting), citing Report of the Department of Community Affairs Relative to Proposed Changes and Additions to the Zoning Enabling Act, 1972 House Doc. No. 5009 at 35 (DCA report). As concerned the treatment of legally preexisting nonconformities, the DCA report recognized, on the one hand, a goal of effectuating the "eventual elimination of nonconformities in most cases." See DCA Report, supra at 39.

The report also recognized, however, that, "[o]n the other hand, there is increasing awareness that the assumption it is desirable to eliminate non-conforming uses may not always be valid." See id. at 43, 45, 49, 62, 63, 65, 84 (noting constitutional and public policy reasons against eliminating property rights already acquired).

In an effort to reconcile these goals, the DCA report proposed, *inter alia*, a course of action that would have provided extremely limited protections for any modification of a nonconforming structure, such as recognizing only a right to "perform normal maintenance and repair" on such structures. See id. at 44. The Legislature rejected this proposal, without stated reasoning, when it instead inserted the language of the second except clause, thereby creating explicit protections for one- and two-family residential structures, and allowing increases in the nonconforming nature of such structures, upon a finding of no substantial detriment to the neighborhood. See G. L. c. 40A, § 6.⁹

⁹ In support of their proposed reading of the statute, the plaintiffs argue the inequity of requiring, in identical circumstances, a conforming structure such as theirs to obtain a variance when a nonconforming structure need not do so. The inequity is not so apparent when one considers that conforming houses on conforming lots would not require even a special permit to undertake many modifications where, absent the statutory protections afforded one- and two-family nonconforming houses, comparable modifications would require a special permit or variance. More fundamentally, however, and as discussed

To ensure that the protections the Legislature intended to afford single- and two-family residential structures are appropriately enforced by permitting authorities, reviewing courts have employed a long-standing interpretive framework construing the second except clause. This framework was first discussed in 1985 in Fitzsimonds, 21 Mass. App. Ct. at 56, by Judge Benjamin Kaplan, writing for the court; elaborated upon in Willard, 25 Mass. App. Ct. at 18-22; and subsequently adopted by this court in Bjorklund v. Zoning Bd. of Appeals of Norwell, 450 Mass. 357, 358, 362-363 (2008) (adopting reasoning of concurrence in Bransford v. Zoning Bd. of Appeals of Edgartown, 444 Mass. 852, 857-858 [2005] [Greaney, J., concurring]). See Deadrick v. Zoning Bd. of Appeals of Chatham, 85 Mass. App. Ct. 539, 552 (2014) ("a long line of cases, notably including Bransford and Bjorklund, have held that an alteration that intensifies an existing nonconformity in a residential structure may be authorized under the second sentence of G. L. c. 40A, § 6, upon a finding of no substantial detriment" [alteration omitted]).

supra, the Legislature chose to protect certain limited existing housing stock, as it was free to do. Not all housing stock is treated the same by the Legislature, and owners of nonconforming three-family houses, for example, might also find cause to complain in such legislative line-drawing. Perceived inequities resulting from legislative choices do not affect our construction of the statute.

Under this framework, the second except clause first requires the permit granting authority¹⁰ to make "an initial determination whether a proposed alteration of or addition to a nonconforming structure would 'increase the nonconforming nature of said structure'" (citation omitted). Willard, 25 Mass. App. Ct. at 21. This initial determination requires the permitting authority to "identify the particular respect or respects in which the existing structure does not conform to the requirements of the present by-law and then determine whether the proposed alteration or addition would intensify the existing nonconformities or result in additional ones." Id. at 21-22. "If the answer to that question is in the negative, the applicant will be entitled" to a permit to proceed with the proposed alteration.¹¹ See id. at 22. "Only if the answer to

¹⁰ The permit granting authority is statutorily defined as "the board of appeals or zoning administrator." See G. L. c. 40A, § 1A. The concurrence in Bransford pointed out that the initial determination "more appropriately should be conducted by the building inspector or zoning administrator" in the first instance. Bransford v. Zoning Bd. of Appeals of Edgartown, 444 Mass. at 858, nn.8, 9 (Greaney, J., concurring), citing M. Bobrowski, Massachusetts Land Use and Planning Law, § 6.06 (2d ed. 2002).

¹¹ Earlier cases loosely used the term "special permit" to describe the process by which nonconforming one- and two-family homeowners can proceed with modifications or alterations to their nonconforming homes. See, e.g., Bransford, 444 Mass. at 864 n.2 (Cordy, J., dissenting). Our reference to the "permitting procedure" and the "permit granting authority" encompasses any designated process by which municipalities allow

that question is in the affirmative will there be any occasion for consideration of the additional question," id. at 22, that is, whether the proposed modification would be "substantially more detrimental to the neighborhood," see id. at 21. The "Willard test should be read as prescribing an entitlement to a building permit, not a special permit or finding, where no intensification of the nonconformity would result" (citation omitted). Bransford, 444 Mass. at 865 n.2 (Cordy, J., dissenting). See, e.g., Deadrick, 85 Mass. App. Ct. at 550 ("It is important to observe at this juncture that the second 'except' clause is directed to differentiating between those changes to nonconforming residential structures that may be made as of right, and those that require a finding of no substantial detriment under the second sentence of [G. L. c. 40A,] § 6"). Only if a modification, extension, or reconstruction of a single- or two-family house would "increase the nonconforming nature of said structure" must it "be submitted . . . for a determination by the board of the question whether it is 'substantially more detrimental than the existing nonconforming use'" pursuant to the sentence that follows the second except clause G. L. c. 40A, § 6" (citations omitted). Bransford, supra at 857-858 (Greaney, J., concurring).

their residents to proceed with home building renovations in the ordinary course.

c. Relief requested by the defendants. With respect to the defendants' plans to add 677 square feet of living space by adding a dormer to the third floor of their house and modifying the design of the roof, the framework first required a determination whether, and in what respect, the defendants' proposed extension would increase the nonconforming nature of the two-family structure. See Willard, 25 Mass. App. Ct. at 21-22. The board determined that the proposed project would increase the extent of the already nonconforming FAR,¹² a determination that the parties did not dispute, and then proceeded to consider whether the defendants' house after modification would be substantially more detrimental to the neighborhood. Concluding that it would not, the board issued the requested zoning relief.

The board, however, did not consider whether the increase in the nonconforming FAR from 1.14 to 1.38 would increase the "nonconforming nature," G. L. c. 40A, § 6, of the defendants' property, and such a determination is hardly self-evident. At the hearing, a member of the town's building department described the requested relief as "minimal," and several members

¹² As mentioned, although the defendants in this case first sought approval for the project from the town's building commissioner pursuant to the procedures outlined in Bransford, supra at 857-858, the request was denied. As a result, the defendants submitted their application to the town's zoning board of appeals.

of the planning board described it as "modest." We previously observed that certain small-scale extensions, such as the addition of a dormer, a porch, a sunroom, or a two-car garage, among others, would not, as a matter of law, constitute an intensification of the nonconforming nature of a structure. Bjorklund, 450 Mass. at 362-363. "Concerns over the making of small-scale alterations, extensions, or structural changes to a preexisting house are illusory. . . . Because of their small-scale nature, the improvements mentioned could not reasonably be found to increase the nonconforming nature of a structure." Id.

As the parties have stipulated to the material facts, however, we assume, without deciding, that the proposed project, taken as a whole, would have constituted an increase to the nonconforming nature of the structure. Accordingly, we turn to the plaintiffs' contention that, because no provision of the town's zoning bylaw would have allowed the requested increase in the FAR, G. L. c. 40A, § 6, also requires that the defendants obtain a variance from the town's zoning bylaw.

d. Town's bylaw. In Gale v. Zoning Bd. of Appeals of Gloucester, 80 Mass. App. Ct. 331, 337 (2011), the Appeals Court confronted a similar issue. There, the zoning board of appeals had granted relief allowing the proposed reconstruction of a residence that would have increased the nonconforming nature of the structure. Id. at 333. The board in that case determined

that the reconstructed house, which would extend beyond the footprint of the original house, and would increase the preexisting nonconformities in the setback requirements of the city of Gloucester's zoning bylaw, would not result in a substantial detriment to the neighborhood, and allowed the homeowner's request for a special permit. Id. at 332-333. After concluding that "literal enforcement" of the zoning bylaw would create a personal and financial hardship for the property owners due to the size, shape, steep grade, and outcroppings on the property, the Gloucester board also granted the homeowners a variance. Id. at 333. The abutting homeowners challenged the board's decision in the Land Court; they argued that the issuance of the variance was in error because the request did not meet the requirements for issuance of a variance. Id. A Land Court judge held that the determination that the reconstruction would not have resulted in a substantial detriment to the neighborhood was all that was required under G. L. c. 40A, § 6. See Gale, supra at 333-334; id. at 337 (variance is not required "as an additional step when proceeding to the no substantial detriment finding under the second sentence" exception for one- and two-family houses). See also Deadrick, 85 Mass. App. Ct. at 553 (affirming that variance is

not required for owners of one- and two-family properties to increase legally preexisting nonconformity).¹³

We note also that, since its enactment in 1975, see St. 1975, c. 808, § 3, the Legislature has amended G. L. c. 40A, § 6, numerous times. See St. 1977, c. 829, § 3D; St. 1979, c. 106; St. 1982, c. 185; St. 1985, c. 494; St. 1986, c. 557, § 54; St. 1994, c. 60, § 67; St. 1996, c. 345, § 1; St. 2000, c. 29; St. 2000, c. 232; and St. 2016, c. 219, § 29. Presumably, the Legislature therefore has adopted the framework first described in Fitzsimonds, 21 Mass. App. Ct. at 56, and most recently discussed in detail in Gale, 80 Mass. App. Ct. 336-337. Where a statute or provision that has been given a particular construction by the courts is reenacted "without substantial change, it is generally fair to assume the legislature is familiar with that interpretation and adopted it." See Singer, supra at § 77:7, at 711. Indeed, when the Legislature "enacts or amends a statute, courts presume it has knowledge of . . . relevant judicial and administrative decisions, and it passed or preserved cognate laws to serve a useful and consistent purpose." Id. Where, as here, the Legislature has had

¹³ As the parties agree that in this case the question involves an increase in a preexisting nonconformity, we need not address the issue presented in Deadrick v. Zoning Bd. of Appeals of Chatham, 85 Mass. App. Ct. 539, 553 (2014), concerning the creation of a new nonconformity.

considerable occasion to amend G. L. c. 40A, § 6, and repeatedly has amended the statute without changing the language at issue, we presume that it has adopted the construction of the statute upon which Massachusetts courts -- and this class of homeowners -- have relied. We leave that framework undisturbed.

Accordingly, in keeping with the Legislature's intent as it pertains to the special protections afforded one- and two-family residential structures, a variance from the local bylaw is not required by G. L. c. 40A, § 6; obtaining a finding of "no substantial detriment to the neighborhood" is all that is required. See Rockwood, 409 Mass. at 364 (single- and two-family residences are given "special protection" with regard to their existing nonconformities); Gale, 80 Mass. App. Ct. at 337 (outlining "special treatment" explicitly afforded to single- and two-family residential buildings); Dial Away Co. v. Zoning Bd. of Appeals of Auburn, 41 Mass. App. Ct. 165, 170-171 (1996) (if not for "special status" of nonconforming single and two-family residences, "the by-law would probably apply").

Indeed, given the difficulties and expense associated with obtaining a variance, as well as in obtaining a finding of no substantial detriment, construing the statute to mandate both well could render illusory the protections the Legislature

intended to provide these homeowners.¹⁴ See Bransford, 444 Mass. at 870 n.7 (Cordy, J., dissenting) ("without question [the process of obtaining a special permit or variance] renders many home improvements more costly and subject to the discretionary determinations of local zoning boards"). Requiring single- and two-family homeowners to obtain both under these circumstances would render it nearly impossible for the homeowners to renovate, modernize, or make any substantial improvements to an older home, particularly if those improvements would increase the nonconforming nature of the structure. This could, as a practical matter, make it economically infeasible to modify a nonconforming home in any but the most minimal ways, could curtail the ability to sell such a house, and, accordingly, could result in a reduction in the amount of available affordable housing, as well as potentially reducing the town's population and the municipal tax base. Indeed, as noted in

¹⁴ The burdens that an applicant must meet, both to obtain a variance and to retain it on appeal, see Kirkwood v. Board of Appeals of Rockport, 17 Mass. App. Ct. 423, 427 (1984), are significant. See, e.g., Wolfson v. Sun Oil Co., 357 Mass. 87, 89-91 (1970) (where board's findings inadequate, judge on appeal can annul issuance of variance without considering its merits); Gamache v. Acushnet, 14 Mass. App. Ct. 215, 220 (1982) (requirements for findings to support variance are "rigorous"). Although the requirements and expenses of obtaining a special permit or a finding of no substantial detriment certainly are not small hurdles, they are not of the same magnitude. See Mendes v. Board of Appeals of Barnstable, 28 Mass. App. Ct. 527, 531 (1990) (grant of variance is "grudging and restricted," while grant of special permit is "anticipated and flexible").

Bransford, 444 Mass. at 869-870 (Cordy, J., dissenting), "application of the [plaintiffs'] reasoning is not without practical consequence to the multitude of citizens who own homes in cities or towns that, at some recent point, have attempted to limit growth by increasing minimum lot sizes, often dramatically. The need to secure findings or special permits through lengthy, costly, and discretionary local zoning processes for any improvement that might increase the living space or footprint of a house might put such improvements out of reach for many homeowners. Requiring homeowners to run such an administrative gauntlet impedes and burdens the upgrade of a large part of our housing stock."

Given this, we do not think that the Legislature intended to require single- and two-family homeowners to undertake the laborious process of seeking both a special permit and a variance. To construe G. L. c. 40A, § 6, in this way would place an additional burden on this limited class of homeowners, contrary to the clear statutory intent to provide them with special protections under the second except clause. See Flemings v. Contributory Retirement Appeal Bd., 431 Mass. 374, 375-376, (2000), citing Manning v. Boston Redevelopment Auth., 400 Mass. 444, 453 (1987) ("If a sensible construction is available, we shall not construe a statute to make a nullity of pertinent provisions or to produce absurd results").

Finally, the plaintiffs contend that the decisions in both Gale and Deadrick were erroneous, and do not comport with this court's language in Rockwood, 409 Mass. at 364. In Rockwood, supra, the court stated in dictum that "even as to single or two-family residences, structures to which the statute appears to give special protection, the zoning ordinance or bylaw applies to a reconstruction, extension, or change that would intensify the existing nonconformities or result in additional ones" (quotations omitted). Id., quoting Willard, 25 Mass. App. Ct. at 22. Rockwood, however, involved the application of G. L. c. 40A, § 6, to a commercial inn, and accordingly did not involve the special protections from compliance with a local ordinance afforded to one- and two-family houses. Further, consistent with our holding in Bransford, 444 Mass. at 858-859, to the extent that the obiter dictum expressed in Rockwood might suggest otherwise for one- and two-family houses, it is incorrect.

The plaintiffs emphasize that no provision of the town's bylaw would permit the increase in the FAR sought here, and the defendants do not contest this assertion.¹⁵ Our prior

¹⁵ Section 8.02 of the bylaw permits an "alteration or extension" of a nonconforming use, but provides that "any increase in volume, area, or extent of the nonconforming use shall not exceed an aggregate of 25 percent during the life of the nonconformity." Section 5.22 of the bylaw, "Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential

jurisprudence, before Gale, 80 Mass. App. Ct. at 331, involved situations in which the local bylaws at issue were coextensive with the language of G. L. c. 40A, § 6, thus serving as a mere procedural implementation of the statute's requirements. See, e.g., Bjorklund, 450 Mass. at 357-358; Bransford, 444 Mass. at 855; Rockwood, 409 Mass. at 364; Willard, 25 Mass. App. Ct. at 19-20. By contrast, the town's bylaw does not contain a parallel provision implementing the language and requirements of G. L. c. 40A, § 6. Rather, section 8.02(2) of the bylaw provides that any nonconforming structure or use "may be altered, repaired, or enlarged, except that any nonconforming condition may not be increased unless specifically provided for in a section of this By-law." To the extent that no provision of the bylaw would permit the increase in FAR that the defendants seek, a zoning variance would be required, in addition to the requisite finding of no substantial detriment under G. L. c. 40A, § 6, in order to permit a modification that

Units," permits exceptions for additional floor area for buildings where the certificate of occupancy was issued at least ten years previously, and provides that "[e]xterior modifications to accommodate an exterior addition or interior conversion shall include, without limitation the addition of a dormer, penthouse, cupola, windows, doors or the like." The defendants' proposed addition would result in an increase in the extent of the existing nonconforming FAR of 1.14 to an ultimate FAR that would be thirty-eight per cent higher than the permitted FAR of 1.0, and thirteen per cent higher than the maximum exception of twenty-five per cent.

would increase the "nonconforming nature" of the two-family structure.

General Laws c. 40A, § 6, however, creates a statutory requirement that "sets the floor" throughout the Commonwealth for the appropriate protections from local zoning bylaws to be afforded properties and structures protected under that statute. See Rourke v. Rothman, 448 Mass. 190, 191 n.5 (2007). As such, the statute prescribes "the minimum of tolerance that must be accorded to nonconforming uses." (citation omitted). See id. A municipality's bylaws may not afford fewer protections to preexisting nonconforming structures or uses than does the governing statute. See, e.g., Schiffenhaus v. Kline, 79 Mass. App. Ct. 600, 605 (2011), quoting Planning Bd. of Reading v. Board of Appeals of Reading, 333 Mass. 657, 660 (1956) ("It is axiomatic that '[a] by-law cannot conflict with the statute']"). The board determined as much, construing its own bylaw as prescribing only a finding of no substantial detriment in order to issue the requested zoning relief. See Plainville Asphalt Corp. v. Plainville, 83 Mass. App. Ct. 710, 713 (2013) (applying "corollary principle that statutes or bylaws dealing with the same subject should be interpreted harmoniously to effectuate a consistent body of law"). Because the governing statute and its interpretive framework do not require a variance here, a municipality's bylaw may not do so.

Judgment affirmed.



CITY OF CAMBRIDGE

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Ranjit Singanayagam
Commissioner

July 10, 2019

BY EMAIL AND FIRST-CLASS MAIL

Shippen L. Page, Esq.
Page & Powell
174 Lakeview Avenue
Cambridge, MA 02138

Re: 15 Channing Street, Cambridge, MA.

Dear Mr. Page,

I am in receipt of your letter dated June 7, 2019, on behalf of your clients David and Janet McCue concerning the property located at 15 Channing Street (the "Property"). In your letter, you request that the Inspectional Services Department issue a building permit for your clients' proposed renovations at the Property. You state that the Property is preexisting, nonconforming as to FAR, lot width and side yard setbacks. Your clients seek to enclose an existing deck on the house, which will add 184 square feet of living space, and add an additional 15 square feet to the carriage house. You state that your clients will be increasing the FAR by 2.48% from 78.28 to 80.76 where 0.5 is permitted as of right.

In order to construct the proposed renovations, your clients are required to comply with Cambridge Zoning Ordinance ("Zoning Ordinance"), Article 8.000. Pursuant to Zoning Ordinance Section 8.22.3, a variance will be required for the proposed renovations. Accordingly, your clients are not entitled to a building permit as of right.

You have a right to appeal this determination pursuant to G.L. c.40A, §8 and Zoning Ordinance Article 10.00, Section 10.20.

Sincerely,

Ranjit Singanayagam
Commissioner
Inspectional Services Department



BZA APPLICATION FORM
DIMENSIONAL INFORMATION

APPLICANT: David and Janet McCue PRESENT USE/OCCUPANCY: Single Family
LOCATION: 15 Channing Street, Cambridge ZONE: A-1
PHONE: 978-526-1656 REQUESTED USE/OCCUPANCY: SINGLE FAMILY

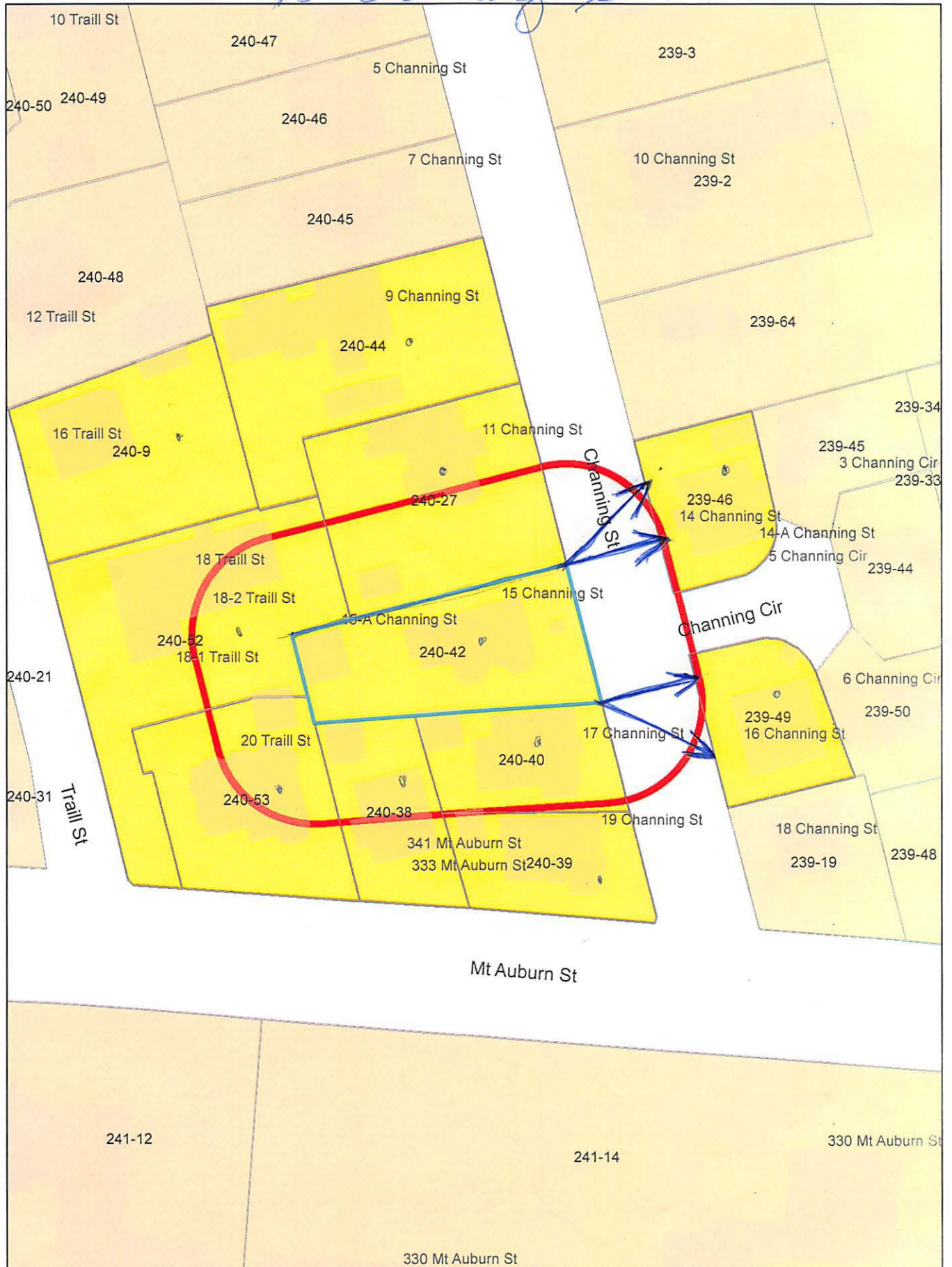
	<u>EXISTING CONDITIONS</u>	<u>REQUESTED CONDITIONS</u>	<u>ORDINANCE REQUIREMENTS</u>	
TOTAL GROSS FLOOR AREA:	<u>6334</u>	<u>6526</u>	<u>4024.5</u>	(max.)
LOT AREA:	<u>8050</u>		<u>8000</u>	(min.)
RATIO OF GROSS FLOOR AREA TO LOT AREA:	<u>.7869</u>	<u>.8108</u>	<u>.5</u>	(max.)
LOT AREA FOR EACH DWELLING UNIT:	<u>8,000</u>	<u>8,000</u>	<u>6,000</u>	(min.)
SIZE OF LOT:				
WIDTH	<u>70'</u>		<u>80'</u>	(min.)
DEPTH	<u>25.5'"</u>	<u>25.5'"</u>	<u>20</u>	(min.)
Setbacks in Feet:				
FRONT	<u>0'</u>	<u>0'</u>	<u>25'</u>	(min.)
REAR	<u>10.8'</u>	<u>10.8</u>	<u>15' sum of 35'</u>	(min.)
LEFT SIDE	<u>4.3'</u>	<u>4.3'</u>	<u>15' sum of 35'</u>	(min.)
RIGHT SIDE	<u>35'</u>	<u>35'</u>	<u>35'</u>	(max.)
SIZE OF BLDG.:				
HEIGHT	<u>35'</u>	<u>35'</u>	<u>35'</u>	(max.)
LENGTH				
WIDTH				
RATIO OF USABLE OPEN SPACE TO LOT AREA:	<u>68%</u>	<u>65.5%</u>	<u>50%</u>	(min.)
NO. OF DWELLING UNITS:	<u>1</u>	<u>1</u>	<u>1</u>	(max.)
NO. OF PARKING SPACES:	<u>2</u>	<u>2</u>		(min./max)
NO. OF LOADING AREAS:				(min.)
DISTANCE TO NEAREST BLDG. ON SAME LOT:	<u>26.8'</u>	<u>26.8'</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.

The site contains an accessory carriage house. The above calculations include the carriage house.

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

15 Channing St.



15 Channing St.

Petitioner

239-46
BROSIO, GIUSTINA M. & GUIDO BROSIO
14 CHANNING ST
CAMBRIDGE, MA 02138

239-49
CAVALLO, ALBERTO FELIPE & MARIA DEL PILAR
IGLESIAS ORDONEZ CAVALLO
16 CHANNING ST
CAMBRIDGE, MA 02138

PAGE & POWELL, P.C.
C/O SHIPPEN I. PAGE, ESQ.
174 LAKEVIEW AVENUE
CAMBRIDGE, MA 02138

240-27
ALAM, JOHN J. & SYLVIE L. GREGOIRE
11 CHANNING ST
CAMBRIDGE, MA 02139

240-38
KALAVREZOU, IOLI
341 MT. AUBURN ST.
CAMBRIDGE, MA 02138

DAVID & JANE McCUE
15 CHANNING STREET
CAMBRIDGE, MA 02138

240-40
MARSHALL, JOHN C. & LODOVICA C. ILLARI
17 CHANNING ST
CAMBRIDGE, MA 02138

240-42
JEWELL, LUCINDA
15 CHANNING ST
CAMBRIDGE, MA 02138

240-44
SZABO-IMREY, DIANE
9 CHANNING ST
CAMBRIDGE, MA 02138

240-53
SANBORN, JOSEPH S.,
TRUSTEE THE REX REALTY TRUST
20 TRAILL ST
CAMBRIDGE, MA 02138

240-52
SALTER, MALCOLM & BARBARA SALTER
18 TRAILL ST 1
CAMBRIDGE, MA 02138

240-52
TRAILL BLAZERS, LLC
24 BOGLE ST.
WESTON, MA 02493

240-9
WITIMANN, FREDERIC E. &
CHRISTINE KONDOLEON
16 TRAILL ST.
CAMBRIDGE, MA 02138

240-39
STOHLMAN, THOMAS J. JR. &
KATHARINE M. STOHLMAN
19 CHANNING ST
CAMBRIDGE, MA 02138

PAGE & POWELL

Attorneys at Law

SHIPPEN L. PAGE, ESQ.
ALEXANDER F. POWELL, ESQ.*
JULIA S. POWELL, ESQ.

*Also admitted in New York

September 5, 2019

Board of Zoning Appeal
City of Cambridge
Lombardi Building
852 Massachusetts Ave.
Cambridge, MA 02139
BY HAND

RE: 15 Channing Street – Application For Special Permit

Dear Board of Zoning Appeal:

I enclose herewith the application for a Special Permit on behalf of my clients, David and Janet McCue. As I emphasize in my supporting statement, the application is for a special permit and not for a variance. The February 2019 decision in *Bellalta et. al. vs. Zoning Board of Appeals of Brookline & others* (SJC-12516, decided February 8, 2019), makes it very clear that under the circumstances in the present matter, only a special permit is required, notwithstanding that the existing Cambridge Zoning Ordinance requires a variance. I have included a copy of the full opinion with this application. As the *Bellalta* decision states, inter alia, “General Laws c. 40A, §6, however, creates a statutory requirement that “sets the floor” throughout the Commonwealth for the appropriate protections from local zoning bylaws to be afforded properties and structures protected under that statute...” (at p. 26).

The enclosed application consists of the following documents:

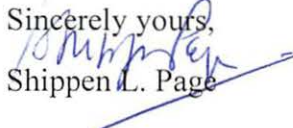
1. BZA Application form checklist;
2. BZA Application form, General information;
3. Supporting statement with Exhibits A (my letter to Commissioner Singanayagam dated June 7, 2019), Exhibit B (the *Bellalta* decision) and Exhibit C (Commissioner Singanayagam’s response to my June 7, 2019 letter dated July 10, 2019);

Board of Zoning Appeal
City of Cambridge
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4. Assessor's GIS Block Map;
5. Dimensional Form;
6. Ownership Information – Three (3) originals, all notarized, with copy of deed from Lucinda Jewell to David McCue and Janet McCue, dated March 1, 2019 and recorded with the Middlesex South Registry of Deeds at Book 72416, Page 401;
7. Floor plans with areas highlighted where relief is sought;
8. Elevations;
9. "Existing conditions, Plan of Land in Cambridge, Mass.", By Goldsmith, Prest & Ringwall, Inc., dated August 15, 2019; and
10. Supporting photographs as follows:
 - a. Full view of the west side of the main house showing the existing side porch;
 - b. Another partial view of the west and south sides of the main house showing the existing side porch in greater detail;
 - c. A second partial view of the west and south sides of the main house showing the existing porch and kitchen sliding door;
 - d. View of the north side of the house showing existing windows and front door;
 - e. View of the front of the Carriage House;
 - f. View of the north side of the main house showing the fence between 15 Channing (the subject property) and the neighbor at 11 Channing; and
 - g. View looking west along the southern border of 15 Channing Street showing the fence.

I understand that you will send me an invoice for the filing fee. Kindly mark this for a hearing at the earliest date available, except for October 10th and kindly advise me if you need further information.

Thank you for your assistance.

Sincerely yours,

Shippen L. Page

Enclosures

Cc: David and Janet McCue
Christopher Dallmus and Patrick Guthrie, Design Associates, Inc.