



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

BZA APPLICATION FORM

Plan No: BZA-017267-2020

GENERAL INFORMATION

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

Special Permit : _____ Variance : v Appeal : _____

PETITIONER : Amos Third Corner LLC C/O Sarah Like Rhatigan, Esq.

PETITIONER'S ADDRESS : 12 Marshall Boston, MA 02108

LOCATION OF PROPERTY : 32 Highland St Cambridge, MA

TYPE OF OCCUPANCY : Single Family Residential ZONING DISTRICT : Residence A-1 Zone

REASON FOR PETITION :
 Additions

DESCRIPTION OF PETITIONER'S PROPOSAL :

Renovations and addition to a pre-existing non-conforming single-family structure resulting in an encroachment into a front yard setback and an increase in Gross Floor Area of more than 25%.

SECTIONS OF ZONING ORDINANCE CITED :

Article 5.000 Section 5.31.1 (Table of Dimensional Requirements).
 Article 8.000 Section 8.22.3 (Alteration to Non-Conforming Structure).
 Article 10.000 Section 10.30 (Variance).

Original Signature(s) : 

(Petitioner(s) / Owner)

Sarah Like Rhatigan, Esq. on behalf of
owner, Amos ^(Print Name) Third Corner, LLC

Address : Trilogy Law LLC
12 Marshall Street Boston MA
 Tel. No. : 617-543-7009 02108
 E-Mail Address : Sarah@trilogylaw.com

Date : 3/3/20

BZA APPLICATION FORM - OWNERSHIP INFORMATION

(To be completed by **OWNER**, signed before a notary, and returned to Secretary of Board of Appeal).

I/We **Amos Third Corner LLC**

(**OWNER**)

Address: **32 Highland Street, Cambridge, Massachusetts 02138**


State that I/We own the property located at **32 Highland Street, Cambridge, Massachusetts 02138** which is the subject of this zoning application.

The record title of this property is in the name of
Amos Third Corner LLC

pursuant to a deed dated **December 4, 2018** and duly recorded in the Middlesex South County Registry of Deeds at Book **72010**, Page **491**.

SIGNATURE BY LAND OWNER BY:

Amos Third Corner LLC, a Massachusetts limited liability company



BY: Amelia S. Todd,
ITS: Manager
Duly authorized

Commonwealth of Massachusetts, County of Middlesex

The above-name **Amelia S. Todd, Manager of Amos Third Corner LLC**

personally appeared before me, this 3rd day of **February, 2020**, and made oath that the above statement is true.



Notary
My commission expires (Notary Seal).



JAYDEN DDHIR
Notary Public
Commonwealth of Massachusetts
My Commission Expires
May 16, 2025

STATE OF MASSACHUSETTS

IN SENATE,
January 12, 1908.

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

FOR THE YEAR 1907

AS PASSED BY THE SENATE

AND PRINTED BY THE STATE PRINTER

AT BOSTON, MASSACHUSETTS, 1908

MADE AT THE STATE PRINTING OFFICE

IN 1908

MADE AT THE STATE PRINTING OFFICE

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BZA APPLICATION FORM

SUPPORTING STATEMENT FOR A VARIANCE

EACH OF THE FOLLOWING REQUIREMENTS FOR A VARIANCE MUST BE ESTABLISHED AND SET FORTH IN COMPLETE DETAIL BY THE APPLICANT IN ACCORDANCE WITH MGL 40A, SECTION 10:

A) A Literal enforcement of the provisions of this Ordinance would involve a substantial hardship, financial or otherwise, to the petitioner or appellant for the following reasons:

As part of a complete renovation of this home, the Petitioner proposes changes that are necessary in order to improve conditions within the home, accessibility to and from the house to the garage and yard, and to provide for more efficient design and use of the land. As built today, the configuration of this home and detached garage would pose an extreme challenge for residents with small children, or elderly or physically challenged individuals, due to the difficulty of getting from the house out to the garage or rear yard areas. Additionally, backing out from the existing garage onto Appleton Street is somewhat dangerous under current conditions for pedestrians and vehicles passing by on Appleton Street.

The Petitioner's plans involve demolishing the existing detached two-car garage (with its high-pitched roof, located within 9.2 feet of the front lot line on Appleton Street) and construction an attached two-car garage and in-law/au pair living space that is built into the slope of the rear/side of this corner lot. Plans also include a modest expansion and modernization of the kitchen, resulting in a modest increase in GFA. These changes will improve conditions for future homeowners, as well as this historic neighborhood.

The proposed one-story addition, extending behind the main portion of the house, set into the sloping grade of the lot, is designed so as to maximize efficiency for construction and living purposes, and minimize impacts on the neighborhood. Proposed changes to the on-site parking will also improve safety for vehicles and pedestrians with improved visibility for vehicles entering and existing the site along Appleton Street.

Variance Relief is required in order to permit the following:

1) Increase in Gross Floor Area that amounts to a more than 25% increase in Gross Floor Area. It should be noted that the increase in volume is less than 25% (23% increase in volume);

2) Modes (by 1.9 feet) encroachment for the garage/lower-level addition into the front yard setback along Appleton Street; and

3) Very minor (44 feet) exceeding of the maximum allowable Floor Area Ratio for the District (with FAR requested at .5028 instead of .5000)

A literal enforcement of the Ordinance would result in hardship to the petitioner and future owners of this Property by prohibiting the above described improvements that will provide for: better accessibility for homeowners, demolition of the large, encroaching garage, a more efficient use of land, a more desirable design improving views of this historic home from Appleton Street, and safer vehicular parking and access/egress to the site.

B) The hardship is owing to the following circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located for the following reasons:

The hardships described herein are owing to the unique circumstances relating to the unique constellation of features of the land and the structure including:

a) The topography of the land, which slopes down towards the right, rear of the lot; and

b) The interior structure and layout of the existing Victorian era home, with its relatively small kitchen at the rear and difficult access route from the house out to the garage and rear yard.

The topography and structure of the home together results in difficulties with accessibility for homeowners. The existing detached garage is located at the rear of the house along Appleton Street, at the same (or lower) grade as basement/lower level of the house. The homeowner who wishes to enter or leave her or his home by car must navigate steep and dangerous stairs from the kitchen down to the basement level, exit the rear basement door, walk outside on uneven ground to reach the exterior garage. Similarly, access to the rear/side yard is via this basement egress door, making it difficult for homeowners to access and enjoy the open space on the lot.

c) The shape of the land, a corner lot, and location of the existing structures (house and detached garage) within the front yard setback along Appleton Street, also contributes to the hardship in the following respect. The proposed addition is designed to align as an extension of the existing house for aesthetic and structural reasons. As such, the proposed addition continues the existing non-conformity of the front setback along Appleton Street. The existing structure is 22.8 feet from the front lot line, and the proposed addition is slightly further back, at 23.1 feet from the front lot line.

The combination of these factors creates the hardship for the Petitioner and any future homeowner. The removal of the detached garage and replacement with an attached garage drives the majority of the increase in GFA that arises, as a result of various aspects of the Ordinance definitions of included and excluded GFA, for the reasons described below.

C) DESIRABLE RELIEF MAY BE GRANTED WITHOUT EITHER:

1) Substantial detriment to the public good for the following reasons:

The relief from Section 5.31 may be granted without detriment to the public good. The increase in GFA results in an FAR just barely above the maximum 0.50 for the District, in a neighborhood of homes that are quite substantial in size. The increase in GFA of more than 25% will be less impactful than these GFA numbers may suggest. The following factors (the result of how the ordinance defines certain areas as either included or excluded GFA) contributes to the sizable GFA increase for the project:

a) The existing GFA excludes the floor area within the existing detached two-car garage;

b) The proposed GFA exempts floor area for only one vehicle bay of the proposed attached garage, and includes floor area for the second vehicle bay; and

c) The proposed GFA includes floor area in the lower-level addition which is an extension of the existing basement of the main portion of the house. Due to changes in grade on the lot, the rear portion of the basement/lower level counts as a "story above grade" and thus all floor area (with the exception of one vehicle bay) in the proposed garage/lower level addition is included in the calculation of the proposed GFA.

There will be no impact to the District in terms of street congestion or adequate parking on account of the relief requested herein. As described above, the proposed changes, including demolition of the existing encroaching garage, will result in a net positive effect for those in the neighborhood and passersby. In allowing this zoning relief, the Board will allow for the Petitioners to proceed with plans to make much needed improvements to allow for this historic, single-family to be updated for use by future residents, including those with families, elderly or physically disabled residents who would otherwise be deterred from residing in a home without these necessary improvements. The requested variance will contribute to the improvement of the aging housing stock in a manner that is respectful of the neighborhood and the District.

2) Relief may be granted without nullifying or substantially derogating from the intent or purpose of this Ordinance for the following reasons:

Consistent with the stated intent and purpose of the ordinance, as detailed in Section 1.30 of Article 1.000 Preamble of the Zoning ordinance as well as M.G.L Ch. 40A Zoning Section 10 Variances, the proposed project will:

- Create quality housing with valued open space for the benefit of the Petitioners, abutters, and successor owners.
- Not result in use or activity not otherwise permitted in the ordinance.
- Not result in negative impacts listed in the Section 1.3 regarding traffic, population density, blight and pollution.

*** If You have any questions as to whether you can establish all of the applicable legal requirements, you should consult with your own attorney.**

BZA APPLICATION FORM

DIMENSIONAL INFORMATION

APPLICANT: Trilogy Law LLC **PRESENT USE/OCCUPANCY:** Single Fam Res w Aux Apt
LOCATION: 32 Highland St Cambridge, MA **ZONE:** Residence A-1 Zone
PHONE: _____ **REQUESTED USE/OCCUPANCY:** Single Family Res

	<u>EXISTING CONDITIONS</u>	<u>REQUESTED CONDITIONS</u>	<u>ORDINANCE REQUIREMENTS</u> ¹	
<u>TOTAL GROSS FLOOR AREA:</u>	5,092 sf	7,738 sf	7,694	(max.)
<u>LOT AREA:</u>	15,388 sf	15,388 sf	8,000 sf	(min.)
<u>RATIO OF GROSS FLOOR AREA TO LOT AREA:</u> ²	0.3309	0.5028	0.5000	(max.)
<u>LOT AREA FOR EACH DWELLING UNIT:</u>	15,388 sf	15,388 sf	6,000 sf	(min.)
<u>SIZE OF LOT:</u>	WIDTH	107 ft	107 ft	80 ft (min.)
	DEPTH	143 ft	143 ft	n/a
<u>SETBACKS IN FEET:</u>	FRONT	27.7/22.8	27.7/22.8	25.0 (min.)
	REAR	n/a	n/a	n/a (min.)
	LEFT SIDE	32.9 ft	32.9 ft	15/sum35 (min.)
	RIGHT SIDE	50.8/32.5	32.8 ft	15/sum35 (min.)
<u>SIZE OF BLDG.:</u>	HEIGHT	44.97 ft	44.97 ft	35.00 ft (max.)
	LENGTH	59.24 ft	77.24 ft	n/a
	WIDTH	50.00 ft	50.00 ft	n/a
<u>RATIO OF USABLE OPEN SPACE TO LOT AREA:</u>	0.71	0.66	0.50	(min.)
<u>NO. OF DWELLING UNITS:</u>	1 + aux	1	2	(max.)
<u>NO. OF PARKING SPACES:</u>	5(3+2 gar)	4(2+2 gar)	1 (min)	(min./max)
<u>NO. OF LOADING AREAS:</u>	0	0	0	(min.)
<u>DISTANCE TO NEAREST BLDG. ON SAME LOT:</u>	8.0 ft	n/a	n/a	(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.

Detached garage with high-pitched roof located within the front yard setback, will be demolished. Proposed construction type is conventional and engineered 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'.

CITY OF CAMBRIDGE

Massachusetts
BOARD OF ZONING APPEAL
831 Mass Avenue, Cambridge, MA.
617) 349-6100

April 15, 2020

Trilogy Law LLC
C/o Sarah L. Rhatigan, Esq.
12 Marshall Street
Boston, MA 02108

RE: 32 Highland Street – BZA-017267-2020

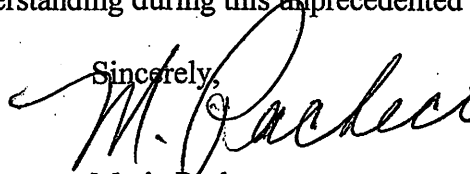
Dear Ms. Rhatigan,

I am writing to you in regard to your above up-coming Board of Zoning Appeal Hearing.

At this time the City will not be holding any non-essential public meetings due to the COVID-19 Pandemic and the City Manager's closure of all City buildings to non-essential business. On April 3, 2020, the Governor signed into law Chapter 53 of the Acts of 2020 ("Act"), which extends all land use permitting deadlines until after the State of Emergency is lifted. In light of the extensions provided for in the Act and the closure of City buildings, at this time the Board of Zoning Appeal will be rescheduling all public hearings in accordance with the extensions permitted under the Act. You will receive notice of the new date, once the hearing is rescheduled.

Thank you for your patience and understanding during this unprecedented time.

Sincerely,



Maria Pacheco
Administrative Assistant

Pacheco, Maria

From: Gordon, Roy G. <gordon@chemistry.harvard.edu>
Sent: Monday, April 27, 2020 4:55 PM
To: Pacheco, Maria
Subject: BZA-017267-2020
Attachments: petition re 32 Highland Street.pdf

Attached please find my attached letter opposing the petition of AMOS Third Corner LLC, regarding proposed changes to property at 32 Highland Street.

Thanks for your attention.

Roy G. Gordon
22 Highland Street

22 Highland Street
Cambridge, MA 02138

April 27, 2020

Board of Zoning Appeal

City of Cambridge, MA

re: BZA-017267-2020

Dear Board Members,

The developer of the property at 32 Highland Street proposes a large addition (representing a more than 25% increase in Gross Floor Area) to form a structure that would exceed the size allowed in this residential A-1 zone. I write to **strongly oppose** the granting of this variance.

This lot is in an area classified as A-1, which is restricted to structures with single-family occupancy. The proposed addition of a **separate “in-law/au pair living space”** (quoted from section A) of the Supporting Statement) would violate the single-family occupancy restrictions of this zone A-1 property. Thus the Board should reject this petition on this ground alone.

The developer also argues that the proposed changes are necessary so that the property might be sold to a new owner who could face “an extreme challenge for residents with small children, or elderly or physically challenged individuals.” (quoted from BZA Application). Actually, one of the previous owners of this property was confined to a wheel chair, but she nevertheless managed to live comfortably on all levels of this house for many years. The previous owners installed an elevator that allowed her full access to all floors of the house.

I strongly recommend that the Zoning Board deny this petition, which goes counter to both the letter and the spirit of the protections provided by the current Zoning Laws.

Sincerely,



Roy G. Gordon

March 11, 2020

Via Hand Delivery & Email

*Via First Class
Mail*

*Resending
4/28/20*

Board of Zoning Appeal
City of Cambridge
831 Massachusetts Avenue
Cambridge, MA 02139

Re: Board of Zoning Appeal Case No. BZA-017267-2020—Application for Variance
for 32 Highland Street, Cambridge, MA

Dear Members of the Board:

In connection with the above-referenced Application for Variance, the Petitioner respectfully submits the enclosed additional items for your review and consideration:

- 1) Existing and Proposed Illustrative Plans
- 2) Existing and Proposed Renderings

Kindly accept these items for filing. Thank you for your consideration.

Sincerely,



Sarah Like Rhatigan, Esq.

Enclosures

CC: Ms. Lori Leland (via email)
Mr. Joseph DiLazzaro (via email)



VIEW 1 - EXISTING CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthea-cunningham.com



VIEW 2 - EXISTING CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020



VIEW 3 - EXISTING CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020



VIEW 4 - EXISTING CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020



VIEW 5 - EXISTING CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020



VIEW 1 - PROPOSED CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 2 - PROPOSED CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 3 - PROPOSED CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 4 - PROPOSED CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 5 - PROPOSED CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 6 - PROPOSED CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 7 - PROPOSED CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 8 - PROPOSED CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 9 - PROPOSED CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 10 - PROPOSED CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 11 - PROPOSED CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



APPLETON STREET

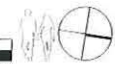
HIGHLAND STREET

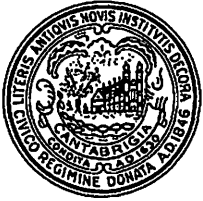
FFE: 59.0

BUILDING SETBACK (TYP.)

PARCEL
2.2 AC
12,387 S.F.

MATTHEW CUNNINGHAM LANDSCAPE DESIGN LLC
 32 HIGHLAND STREET, CAMBRIDGE MA
AMOS RESIDENCE
 ILLUSTRATIVE EXISTING CONDITIONS PLAN
 09 MARCH 2020
 SCALE: 1/8" = 1'-0"





City of Cambridge

MASSACHUSETTS

BOARD OF ZONING APPEAL

831 Mass Avenue, Cambridge, MA.
(617) 349-6100

2 Bds

BZA

POSTING NOTICE – PICK UP SHEET

The undersigned picked up the notice board for the Board of Zoning Appeals Hearing.

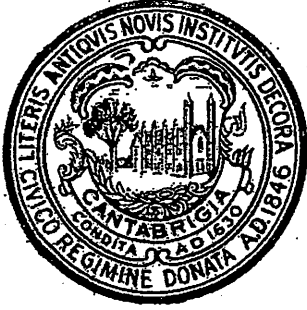
Name: Joseph DiHazzard Date: 7-7-20
(Print)

Address: 32 Highland St.

Case No. BZA-017267-2020

Hearing Date: 7/23/20

Thank you,
Bza Members



CITY OF CAMBRIDGE, MASSACHUSETTS

PLANNING BOARD

CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

July 9, 2020

To: The Board of Zoning Appeal

From: The Planning Board

RE: BZA cases to be heard on July 23, 2020.

The Planning Board have no comments on the cases listed on the BZA agenda.

Pacheco, Maria

From: Myra Gordon <myra.gordon@gmail.com>
Sent: Thursday, July 16, 2020 9:25 AM
To: Pacheco, Maria
Subject: BZA-017267-2020

Zoning board of Cambridge

I am writing with regard to the petition BZA-017267-2020 about 32 Highland Street.

I am strongly opposed to the request for a variance in this matter.

There is not a reason to increase an already large and non conforming house by more than 25%. There is no hardship in using the house and yard as they are configured.

The request which shows proposed plans for removing the current garages and turning them to attach to the house does not show or discuss the number of established trees that would be impacted by this move. There is no way that existing trees would not be damaged or destroyed. . The area of the driveway surface would be large and unsightly.

The proposal alleges hardship in using the property. I have lived on this street for close to fifty years and knew the previous owner . There was not a problem using the property .

This request is coming from Amos Third Corner LLC, developers not the next occupant of the property at #32 . The new occupant will no doubt want other changes. Further these developers have worked in the neighborhood before. We are not impressed with their candor about this project and the impact on the street, the trees, and the neighborhood.

They have on their other projects exhibited little regard for the neighborhood and the neighbors.

There is no hardship here. There is no need to expand an already large and non conforming structure even more, This petition should be denied.

Myra Gordon
neighbor

Pacheco, Maria

BA-017267-2020

From: christian@nolendenny.com
Sent: Friday, July 17, 2020 12:00 PM
To: Pacheco, Maria
Subject: 32 Highland Street Zoning Appeal


Dear Zoning Board of Appeal,

My name is Christian Nolen. I live at 71 Appleton Street, directly across from the property at 32 Highland Street.

I am writing to the Board to voice my opposition to the zoning relief sought by the group developing 32 Highland Street. There is no need for the house at 32 Highland Street to be increased by over 25%. I oppose the removal of large mature trees from the property.

I strongly urge you reject the appeal. This house does not need to be increased by over 25%.

Christian Nolen
71 Appleton Street
Cambridge, MA

From: Joseph DiLazzaro joe@opusmasterbuilders.com 
Subject: Fwd: 32 Highland garage and landscape
Date: July 17, 2020 at 5:47 AM
To: Sarah Rhatigan Sarah@trilogylaw.com
Cc: Joseph DiLazzaro joe@opusmasterbuilders.com



[See support from 43 Appleton](#)



Joseph DiLazzaro
President
OPUS Master Builders, Inc.
29 Church St Winchester, MA 01890
371 Shawmut Ave Boston, MA 02118

T/617-423-3014 F/617-585-3014
C 617-594-5310
opusmasterbuilders.com
joe@opusmasterbuilders.com

Imagination Collaboration Craft

Begin forwarded message:

From: Leslie Jeng <leslie.jeng@gmail.com>
Subject: 32 Highland garage and landscape
Date: April 8, 2020 at 9:31:10 AM EDT
To: joe@opusmasterbuilders.com

Hi Joe:

It was nice to talk to you yesterday. Thank you for sharing the renovation plans for the garage and landscape at 32 Highland Street in Cambridge. My husband, Jon Biotti, and I support the renovations that you propose.

Best of luck, Cheers, Leslie Jeng

43 Appleton Street, Cambridge, MA 0238
617.470.2209

From: Joseph DiLazzaro joe@opusmasterbuilders.com 
Subject: Fwd: 32 Highland-BZA hearing
Date: July 17, 2020 at 5:36 AM
To: Sarah Rhatigan Sarah@trilogylaw.com
Cc: Joseph DiLazzaro joe@opusmasterbuilders.com

JD

Support from 71 Appleton street (see below)



Joseph DiLazzaro
President
OPUS Master Builders, Inc.
29 Church St Winchester, MA 01890
371 Shawmut Ave Boston, MA 02118

T/617-423-3014 F/617-585-3014
C 617-594-5310
opusmasterbuilders.com
joe@opusmasterbuilders.com

Imagination Collaboration Craft

Begin forwarded message:

From: "sue@nolendenny.com" <sue@nolendenny.com>
Subject: Re: 32 Highland-BZA hearing
Date: April 11, 2020 at 2:18:56 PM EDT
To: Joseph DiLazzaro <joe@opusmasterbuilders.com>
Cc: "christian@nolendenny.com" <christian@nolendenny.com>

Hi Joe:
It looks nice. Thanks for sharing. Good luck.
Sue

On Apr 11, 2020, at 1:09 PM, Joseph DiLazzaro <joe@opusmasterbuilders.com> wrote:

Hi Sue,

Here are before and after renderings.

Let me know if you have any questions?

Joe

<image001.jpg>

Joseph DiLazzaro
President
OPUS Master Builders, Inc.
29 Church St Winchester, MA 01890

371 Shawmut Ave Boston, MA 02118

T/617-423-3014 F/617-585-3014

C 617-594-5310

opusmasterbuilders.com

joe@opusmasterbuilders.com

Imagination Collaboration Craft

On Apr 11, 2020, at 10:52 AM, sue@nolendenny.com wrote:

Hi Joe:

Please forward the plan electronically and we will get back to you if we have questions .

Thanks!

Sent from my iPad

On Apr 8, 2020, at 11:18 AM, Joseph DiLazzaro <joe@opusmasterbuilders.com> wrote:

Hi Chris and Susan,

I hope that you and your family are safe and healthy.

I stopped by the house the other day and dropped off a letter to see if you were interested in looking at the proposed plans for 32 Highland that we will be presenting to the BZA.

If you want to set up a VC call or get together then I can walk you through the changes that are being proposed, which is primarily the garage and landscaping relating to the garage.

Yours,

Joe

<image001.jpg>

Joseph DiLazzaro

President

OPUS Master Builders, Inc.

29 Church St Winchester, MA 01890

371 Shawmut Ave Boston, MA 02118

T/617-423-3014 F/617-585-3014

C 617-594-5310

opusmasterbuilders.com

joe@opusmasterbuilders.com

Imagination Collaboration Craft

<image001.jpg>

<030920-Amos - 32 Highland - existing and proposed views .pdf>

Pacheco, Maria

From: Annette LaMond <annettelamond@gmail.com>
Sent: Monday, July 20, 2020 2:24 PM
To: Pacheco, Maria
Subject: BZA-017267-2020 (Neighbor Comment)

To the Members of the Board of Zoning Appeal:

I am writing to express my concern about the developer's proposal for 32 Highland Street. The plans, which would involve a lengthy construction period, were conceived before the coronavirus pandemic. Since then, homeowners have begun to look at their properties from the perspective of maximizing the potential enjoyment of their backyards. The newspapers have been full of such stories.

The proposed new garage at 32 Highland Street takes space from the current backyard, thereby reducing the area available for seating, children's play structures, etc. It is possible that the the potential buyer would decide to have the "new" garage removed, and even restore the original back of the house, which is quite attractive. The neighbors would then be subjected to a further period of construction.

I also would like to point out that the proposed garage addition has an institutional look (viewed from inside the property). To me, it recalls the kind of mortuary extension that one sees on the backs of Victorian houses that have been turned into funeral homes.

The plans also appear to specify considerable paved area. This paving is undesirable from an environmental perspective (contribution to the heat-island effect, impact on the health of the tree canopy, and stormwater runoff). A better plan would look for a way to minimize paving at 32 Highland.

I hope that the developer will reassess the proposal in light of a changed real estate market as well as environmental concerns.

As a 42-year resident of the Reservoir Hill neighborhood, I can say that it had been a pleasure to see the renovation of many houses on our streets. I am not opposed to change, but I feel that the plans at 32 Highland Street are not in the best interest of the neighborhood.

Sincerely,

Annette LaMond
7 Riedesel Avenue
Cambridge, MA 02138

July 22, 2020

Re: 32 Highland Street

Dear Zoning Board:

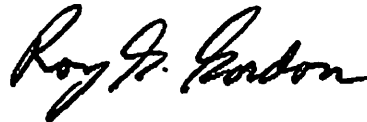
I still remain strongly opposed to the proposal for the expansion of the residence at 32 Highland Street. The developer questioned whether I had reviewed their proposal. Of course I had reviewed their proposal.

After reviewing the proposal again, I still find no argument justifying why a house that is **already** much larger than allowed by current zoning laws should be allowed to expand still more.

I bought my property with the firm assurance that zoning laws would always protect the green and spacious character of the neighborhood. Cutting down mature trees to enlarge a parking lot is not acceptable. Paving over a large portion of this property will increase storm runoff and worsen heat islanding. It is your duty to enforce the zoning laws. This house has already expanded beyond the reasonable limits allowed by zoning.

Please do your duty to enforce the zoning laws.

Sincerely,

A handwritten signature in black ink that reads "Roy G. Gordon". The signature is written in a cursive style with a large, prominent initial "R".

Roy G. Gordon

Tel: 617-495-4017

Fax: 617-495-4723

e-mail:Gordon@chemistry.Harvard.edu



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

2020 MAR 25 PH 3:35
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

BZA APPLICATION FORM

Plan No: BZA-017267-2020

GENERAL INFORMATION

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

Special Permit : _____ Variance : ✓ Appeal : _____

PETITIONER : Amos Third Corner LLC C/O Sarah Like Rhatigan, Esq.

PETITIONER'S ADDRESS : 12 Marshall Boston, MA 02108

LOCATION OF PROPERTY : 32 Highland St Cambridge, MA


TYPE OF OCCUPANCY : Single Family Residential ZONING DISTRICT : Residence A-1 Zone

REASON FOR PETITION :
Additions

DESCRIPTION OF PETITIONER'S PROPOSAL :
Renovations and addition to a pre-existing non-conforming single-family structure resulting in an encroachment into a front yard setback and an increase in Gross Floor Area of more than 25%.

SECTIONS OF ZONING ORDINANCE CITED :

Article <u>5.000</u>	Section <u>5.31.1 (Table of Dimensional Requirements).</u>
Article <u>8.000</u>	Section <u>8.22.3 (Alteration to Non-Conforming Structure).</u>
Article <u>10.000</u>	Section <u>10.30 (Variance).</u>

Original Signature(s) : 
(Petitioner(s) / Owner)
Sarah Like Rhatigan, Esq., on
behalf of (Print Name) Petitioner
 Address : Trilogy Law LLC
12 Marshall St. Boston MA 02108
 Tel. No. : 617-543-7009
 E-Mail Address : Sarah@trilogylaw.com

Date : 3/3/20



City of Cambridge

MASSACHUSETTS

BOARD OF ZONING APPEAL

831 Mass Avenue, Cambridge, MA.
(617) 349-6100

2020 JUL 28 AM 11:40
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

Board of Zoning Appeal Waiver Form

The Board of Zoning Appeal
831 Mass Avenue
Cambridge, MA 02139

RE: Case # BZA-0172607-2020

Address: 32 Highland St.

Owner, Petitioner, or Representative: Sarah Like Rhatigan, Esq.
(Print Name)

hereby waives the required time limits for holding a public hearing as required by Section 9 or Section 15 of the Zoning Act of the Commonwealth of Massachusetts, Massachusetts General Laws, Chapter 40A. The Owner, Petitioner, or Representative further hereby waives the Petitioner's and/or Owner's right to a Decision by the Board of Zoning Appeal on the above referenced case within the time period as required by Section 9 or Section 15 of the Zoning Act of the Commonwealth of Massachusetts, Massachusetts General Laws, Chapter 40A, and/or Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, codified as 47 U.S.C. §1455(a), or any other relevant state or federal regulation or law.

Date: 7/28/20

[Signature]
Signature

* * * * *

(10:29 p.m.)

Sitting Members: Constantine Alexander, Brendan Sullivan,
Janet Green, Jim Monteverde, Slater W.
Anderson

CONSTANTINE ALEXANDER: And last, and certainly
(sic) least, we have Case 017267 -- 32 Highland Street.

SARAH RHATIGAN: Good evening. My name is Sarah
Rhatigan from Trilogy Law, LLC. And I am here representing
the petitioners. I'm not sure if you can hear me.

CONSTANTINE ALEXANDER: We can hear you.

SARAH RHATIGAN: Excellent, thank you. The --
thank you very much for the opportunity to present to you.
And I wish that we had an adorable baby in a video. That
was a great job by the Kemps. I love Zoom meetings for that
reason.

I'm here representing the petitioners. The
company name is Amos Third Corner, LLC. It is -- the
Principals are three developer women from Cambridge with
deep roots here who have done some stunning historic
renovation rehab projects -- actually on the other two
corners of this neighborhood.

1 I do believe that they did not need zoning relief
2 for those. So this Board may not be familiar with them.
3 But we are here before you today. This is a project
4 involving a home that -- Sisia, if you don't mind share the
5 slide deck that we forwarded to the city --

6 SISIA DAGLIAN: Yeah, just a second.

7 SARAH RHATIGAN: Oh, yeah, I'll keep talking. So
8 this is an old, historic home that is in a really beautiful
9 neighborhood of Cambridge on the corner of Highland Street
10 and Appleton Street. And -- just waiting to see if we can
11 get a visual here.

12 Okay so I failed to take a real photo of the front
13 of the house. There's actually not a lot of change that's
14 happening at the front. So the first slide here is actually
15 rendering, obviously.

16 Sisia, next slide, please?

17 I just gave a couple of overview photos -- sorry,
18 this isn't coming through exactly how I expected it. Here
19 we go. We can just see from the top down. So this is the
20 home that's situated on the corner of Highland and Appleton.
21 So folks would drive up Appleton up and over the hill. You
22 may have noticed the home or you may not have.

1 Sisia, if you could move two slides ahead, just
2 another view. Here we go, thank you. If you could stop
3 here for just a minute.

4 This would be the view if you were driving up
5 Appleton of the side of the house. And what's most
6 prominent is the sort of large A-frame to two-bay garage
7 that's right at the front of the street.

8 I don't recall the exact year that this was --
9 that the garage was constructed, but I think that the permit
10 might have been from something in the 1980s or so. It's
11 been there for a long time, but it's large. It's sort of
12 prominently at the front of the street.

13 And functionally, it's very difficult for a couple
14 reasons. One, getting in and out and across the sidewalk
15 and backing out onto Appleton Street, which actually is a
16 pretty well-traveled way, is not great for site lines and
17 for safety.

18 But also in terms of difficulty for the homeowner
19 to get out of the garage, walk in through a gate, and then
20 we'll talk about topography a little bit. But because of
21 the way the yard slopes down, they enter through kind of a
22 labyrinthian set of doors and stairs at a basement level to

1 get up to sort of the kitchen level, if you will. All of
2 this to say it doesn't look lovely, it's very inefficient,
3 and a little outdated.

4 So next slide, please?

5 Just another view of the same. So you get a
6 better sense of the issues in terms of safety. So people
7 are -- pedestrians are walking right along here, as a car is
8 coming out of a garage bay, you know, backing onto a pretty
9 busy road.

10 Next slide, please? We don't need this, the
11 Assessor Page. Next slide?

12 More views of what it looks like walking up the
13 sidewalk.

14 Next slide, please. Sorry. Too many pictures.
15 Next slide. Sorry. I want to be sensitive to your time
16 here. I included plans, because I wasn't sure how much of
17 our discussion would land on this. But if you don't mind,
18 Sisia, if you would just wait on this slide for a minute,
19 the one that you've got -- not this one, the previous slide?

20 SISIA DAGLIAN: What do you want to see

21 SARAH RHATIGAN: I'd like to see the basement
22 level that shows the garage. Okay, great. Thank you. This

1 is kind of where most of the change happens.

2 So essentially, let me step back for a minute.

3 This is, as you can imagine, a historic home. It's
4 preexisting nonconforming in two respects. One is its
5 height is -- I think it's 49 feet. It's not uncommon for
6 this neighborhood, but it is an old home with -- you know,
7 kind of a big, dramatic roof.

8 CONSTANTINE ALEXANDER: 45 feet, Sarah.

9 SARAH RHATIGAN: 45 feet. Thank you, thank you.
10 I'm sorry, I should have that dimensional too in front of
11 me. And the -- and that's also above average grade. And
12 the other nonconformity is that as it's on a corner, there
13 are two front yards.

14 And the front yard that is on the Appleton Street
15 side, there is a portion of the house that is 23 feet from
16 that front line. So that is already, you know,
17 nonconforming.

18 So as a result, we're falling under a section of
19 the ordinance that requires that if we're making a change,
20 even if our FAR would be at the minimum or the -- I'm sorry,
21 the maximum FAR, if it's an increase of more than 25
22 percent, either floor area or volume, that it requires a

1 variance.

2 So in this case, the floor area calculation is
3 increased by more than 25 percent. The volume increase is
4 actually about 23 percent. And I just want to explain some
5 of the -- kind of the technical reasons for the FAR
6 variance, because I think -- you know, we all see a lot of
7 variance cases and you think, "Wow, more than 25 percent of
8 an increase in FAR, that's a lot."

9 In this case, some of it is -- it's not that it's
10 not real, its just that it's a little bit of an artifact of
11 a few things that are going on related to the slope of the
12 land, and also, definitions for square footage in terms of
13 garage space.

14 So what happens is we're demolishing a two-bay
15 garage. And because it's detached, all of the square
16 footage that is in that large structure that's kind of
17 looming on the front of the street is not counted as FAR
18 under definition of the ordinance.

19 And then what we've done is we've attached --
20 we've created an attached garage, which is a much more
21 desirable, efficient, you know sort of modern amenity. But
22 -- and also desirable in a lot of other ways.

1 But in doing that, the ordinance only exempts one
2 bay of the garage when you're calculating FAR. So that's
3 one piece of it.

4 The other piece of this is that the garage is
5 actually existing on what we refer to as the basement level
6 of this building, of this house. Because, you know, the
7 first I would say two-thirds of the house, like when you
8 start at Highland Street, that whole level that we're on is
9 completely underground.

10 And once you get to the back area, as we'll see in
11 the further elevations further along, we're more than 50
12 percent above grade.

13 So under the ordinance and under the state
14 building code, that area at the back that we still see as
15 the basement is kind of tucked under there, it actually is
16 counted as floor area, because it's no longer basement.

17 Sorry for the long description, but I think it's
18 important to the case.

19 So what's planned for the new area that is what's
20 amounting to the increase in floor -- most of the increase
21 in floor area is the garage, the double bay garage, half of
22 which is counted as FAR; a relatively small bedroom with

1 closet amenity for -- I referred to it as like an au pair
2 space, but essentially a separate bedroom for, you know, a
3 visitor with a, you know, door access out.

4 And then a little -- a portion of a mudroom is
5 additional FAR as well. The blue is indicating new space.

6 Now I'll try to speed up my slides here. I'm
7 sorry, Sisia, do you mind advance to the next? So there's
8 some changes at the first floor level.

9 The kitchen is being expanded a bit. Mostly
10 they're taking over sort of a screened in porch area and
11 making it just kitchen. And then there's a little side
12 portion that's also increased floor area. But it's not -- I
13 think it amounts for something like 200 square feet.

14 Sisia, you could skip over the next few slides of
15 the upper levels, unless anybody wants to see a lot of that
16 detail. Because I've already described the bulk of where
17 the FAR is included. So the red hatch is showing what the
18 increase in FAR is attributed to.

19 Next slide, please? Next slide? Next slide?

20 So I'm just going to run through really quickly
21 the elevations. So this is the front of the house as you
22 look at it from Highland Street. So this is the existing.

1 Next slide?

2 SISIA DAGLIAN: It's not loading very well.

3 SARAH RHATIGAN: Okay, yeah. I'll slow down,
4 sorry. This is the proposed. What we missed -- the first
5 one, you can actually see the garage kind of protruding out
6 to the right in the existing, but that's okay.

7 Next slide?

8 There's not much change from the front. And this
9 is the side of the house that you would see if you were sort
10 of standing in the yard looking at the house, or maybe if
11 you were next door and there were no trees, but there are
12 trees. That's the existing view.

13 And next slide, please?

14 And that's the proposed. I don't know that
15 there's much visible -- again, from that neighbor's home.
16 We -- you know, we're able to have access to that, but there
17 is a lot of plantings in the back. But this gives you a
18 good view of what the slope that we're dealing with is like,
19 and how this area at the back, that there's sort of a bubble
20 around.

21 This is the new area that's the FAR. The windows
22 that are bubbled here are just bubbled to show that there

1 were some window changes, but those don't require any zoning
2 relief.

3 Next slide, please?

4 This is a view looking at what we're referring to as the
5 back of the house, but it's actually the right side of the
6 house. And this would be a view from the neighboring lot --
7 but again, with the trees and plantings and such, I don't
8 think anybody can see this as an actual matter.

9 The other thing this perspective doesn't help with
10 is it doesn't actually show the existing garage, which would
11 be a big chunk of the space on the left view.

12 Next slide, please?

13 Here's the rendering of what this would look like
14 with the new garage addition. I'm sorry, in elevation, not
15 a rendering.

16 Next page, next slide?

17 This is the existing view from Appleton Street.

18 Next slide?

19 And here is shown the addition.

20 And then two slides ahead, Sisia?

21 Okay so these are the renderings, if you don't
22 mind expand it out a little bit. Okay. So the existing

1 view of the front.

2 Okay, next slide.

3 I apologize for making you go through all the work
4 here. And there's a lot of -- there are a lot of beautiful
5 trees on this lot, and they are being preserved. I don't
6 believe there are any large trees being removed.

7 And just so you know, with me it's difficult on
8 Zoom, because, you know, we're virtually all here together,
9 but Liz Wipek (phonetic) from the ownership team, the
10 architect, and the landscape designer and the General
11 Contractor are all here to answer questions and participate.

12 Here's the rendering of what this would look like
13 from the corner.

14 Next slide, please?

15 Okay. This one is the -- this is kind of the most
16 operative one. That's the existing situation here, and then
17 here is the proposed. So if you don't mind, I'll just do a
18 little --

19 JANET GREEN: Can you go back one slide first, and
20 then --

21 SARAH RHATIGAN: Yeah.

22 JANET GREEN: -- and then come back to this so we

1 can see?

2 SARAH RHATIGAN: Yeah.

3 JANET GREEN: So that's what's there now? And
4 then the next slide is what you want it to look like?

5 SARAH RHATIGAN: Yep.

6 JANET GREEN: Okay.

7 SARAH RHATIGAN: Okay?

8 JANET GREEN: Yep.

9 SARAH RHATIGAN: So partly, you know, they're
10 partly achieving this in terms of, like, landscape changes.
11 In this view, you can see there's a row of high -- I believe
12 these are holly. And if anybody raise their hand, it's
13 probably our landscape designer, Justin. I'll give him a
14 chance to speak.

15 But those will be moved to this location. I
16 believe they're nearby here, but they're sort of behind the
17 garage. These will offer a very -- this is -- these are
18 very tall, a lot of screening from the neighbor to the
19 right. And there also is some addition of tall pines at the
20 front, as well.

21 Next slide? Okay. You can stop here.

22 So operation in terms of hardship. So -- excuse

1 me, I've described a fair amount the, kind of the issues
2 with accessing the house, the kind of efficiency that we
3 gain by getting rid of the detached garage, putting the
4 garage under.

5 Although we're technically increasing floor area
6 and volume, we're also kind of grooming a big, large
7 impediment and sort of density on the lot in a lot of ways,
8 in terms of how people experience it.

9 The real impact for the owners is that by doing
10 this, they not only have better access to sort of, like,
11 modern living -- you know, there's nowhere to park on
12 Highland Street to access the house, or they could street
13 park, but there's no driveway or curb cut there.

14 So the way people come and go in cars is through
15 this entrance. And it gives them a much more direct access
16 into their home. It also allows for people to go from the
17 main living floor, which is -- you know, at the kitchen
18 level, which is at the sort of terrace level -- down a
19 little set of stairs into the yard.

20 So the yard is quite a bit -- the back yard is
21 quite a bit deeper than the front yard. And there's really
22 no way to access it out of the side of the house. So it

1 kind of makes for this -- there's like a beautiful yard, but
2 nobody can really get to it that easily. And this
3 modification really solves a lot of those issues.

4 So in terms of, like, causes of the hardship that,
5 you know, meet the ordinance, I think you have a very clear
6 combination of the slope of the land and the existing,
7 nonconforming structure being situated such that it's a
8 little bit close to this Appleton Street front yard, so that
9 the existing house is slightly on a skew.

10 The addition is built so that essentially if you
11 think of the front of the house at Highland Street, you are
12 extending the house straight backwards. But because the
13 house is a little askew, as you extend straight back you
14 created a little bit more encroachment into that front yard
15 -- you know, which is one of the dimensional
16 nonconformities.

17 And, you know, the historic structure, I mean I
18 think that it's a hardship in terms of -- you know, some
19 people would say, "Well, you know, who really needs this
20 kind of modern amenity?" But as a practical matter for a
21 developer to be able to take a home like this, which if you
22 look at the inside is just a massive, a massive construction

1 project.

2 And to be able to, you know, fund a really kind of
3 beautiful restoration and renovation to be sold in any kind
4 of realistic market these days, there are -- you know,
5 there's certain, you know, kind of modern amenities that
6 they just really as a practical matter have to have.

7 And so, the whole kind of design pkgs is geared to
8 providing -- you know, something that can be lived in by a
9 family and sort of with what they would expect with a house
10 of this size.

11 Could you advance the next slide? I think that
12 there are just a few more, a few more shots. Sisia, you can
13 just kind of go through slowly. If any of the Board members
14 want me to stop and slow down, I'm happy to.

15 [Pause] That one's a little bit more at street eye
16 level, so you've got a better sense. That one's actually
17 inside. You're inside their, you know, property.

18 [Pause]

19 Same with this shot, obviously.

20 [Pause]

21 And I think that, Sisia, you could pass through
22 the next two.

1 [Pause]

2 That's the view from their back yard, so you can
3 see the access to the yard that I was referring to.

4 And then if you don't mind, if you could land on
5 the two -- yep, so this is the existing sort of landscape
6 plan, if you will. It's just a -- you know, it's kind of
7 showing where the garage is located, where the house is,
8 where the main big trees are. And then this is the kind of
9 master plan for what the landscaping would look like.

10 So, you know, in sum, I know we did see that there
11 was one letter in the file from a neighbor two doors down, I
12 believe, Mr. Gordon, who had expressed some concerns. And
13 if you don't mind me just addressing one of the things that
14 he mentioned that I think maybe would be a helpful
15 clarification. And obviously, I'm sure, you know, if he's
16 here he may want an opportunity to talk.

17 He had referred to the downstairs au pair area,
18 which is what I referred to it as in the application as
19 being an apartment, or -- you know, just another kind of,
20 you know, way for folks to have an apartment.

21 And one thing I wanted to clarify is that that's
22 not actually the intent. There's no plan to have, you know,

1 a kitchen or a separate -- you know, egress for a separate
2 apartment there.

3 But one thing I haven't mentioned in this so far
4 is that the -- before the purchase, and before these folks
5 started to demolish interiors, which they began a while ago,
6 there actually were two apartments in this house. One was
7 in the basement, in the area where this sort of au pair
8 bedroom area is going to be created.

9 And then the other was actually up on the --
10 what's essentially a fourth floor. It's like, a -- I'm
11 trying to remember, it's sort of a loft area, but there was
12 actually a separate apartment up there.

13 I'm not sure if the owners actually use those --
14 honestly rented those as apartments, but they were set up
15 with full -- you know, kitchen facilities. And there's some
16 really kind of unique stuff. In the basement for example,
17 there's a whole swimming pool down there. I guess, like
18 kind of a vintage lap pool, which is not going to be there
19 anymore.

20 But there's not an intention here. There's not
21 really an expectation that this is going to be the type of
22 property that's going to be marketed to folks to try to --

1 you know, rent out rooms.

2 I mean, it would really be a single-family home,
3 you know, sold to presumably a family who's, you know, who
4 wants to live in this quite, you know, stunning neighborhood
5 full of very grand, beautiful homes, all -- you know, quite
6 large.

7 The square footage is just the one last point, and
8 then I'll stop talking and take some questions. But the
9 square footage is almost exactly at 5.0 at the maximum by
10 sort of a -- by a rounding error. If you round out to the
11 thousandths, ten-thousandths, it's slightly over. It's not
12 5.0000, I think it's .5049 or something to that effect.

13 But that type of deviation, we were asking for a
14 variance anyway, but we're essentially within zoning. And
15 again, the other slight deviation from the dimensional is
16 that the extended portion of the garage is within that front
17 yard setback by I think it's something like 1.9 feet but not
18 a lot, but a little bit. So another reason for a variance.

19 Thank you. I'll stop talking and be happy to take
20 questions.

21 CONSTANTINE ALEXANDER: Members of the Board,
22 questions?

1 BRENDAN SULLIVAN: Brendan Sullivan, no. No
2 questions. I was a little perplexed by that bedroom down
3 there, but I guess maybe you have explained in a way.

4 CONSTANTINE ALEXANDER: Jim, any questions?

5 JIM MONTEVERDE: I just have -- I have one. In
6 the rendered views, the proposed rendered views, when the --
7 are they to be taken literally in terms of the materiality?
8 Does the --

9 SARAH RHATIGAN: You know what, that's a good
10 question.

11 JIM MONTEVERDE: -- original structure go of blue-
12 y gray-y, and then the brick base really pops out, as
13 opposed to -- is that literal? And is the house -- what is
14 it? Is it stucco, or is it -- the change in materiality
15 between the two is kind of throwing me.

16 SARAH RHATIGAN: Okay, sure.

17 JIM MONTEVERDE: Between the brick is all --

18 SARAH RHATIGAN: I'm going to ask to see if Liz is
19 available. We were having some technical issues. She was
20 calling in and I think there were, like, thunderstorms.

21 JIM MONTEVERDE: Oh, that's okay. Yeah. I just
22 didn't see --

1 SARAH RHATIGAN: But let me see, I think --

2 JIM MONTEVERDE: -- I didn't see a photo of the
3 existing condition or I guess I could go on Google Maps and
4 find it.

5 SARAH RHATIGAN: Oh, the existing condition photo,
6 it's -- let's see, what page would it be on?

7 BRENDAN SULLIVAN: This is Brendan Sullivan.

8 SARAH RHATIGAN: It's way back. It's dark brown
9 --

10 BRENDAN SULLIVAN: It's a shingled house.

11 SARAH RHATIGAN: -- single. Yeah. It's dark
12 brown shingle.

13 BRENDAN SULLIVAN: Yeah. See the shingled house?

14 JIM MONTEVERDE: Right. So it's a dark brown --

15 SARAH RHATIGAN: -- yeah.

16 JOE DOIRON: -- shingle, yeah.

17 SARAH RHATIGAN: It is, yeah. Sally? I know,
18 Sally, you're on the phone. Sally DeJean -- I'm sorry, I
19 don't know how to pronounce your last name. I know you
20 well, but our architect is on, but I'm not sure if she has
21 the answer on the question of what color they're intending.

22 JIM MONTEVERDE: Well, that's okay, it's certainly

1 not a zoning question, but --

2 SISIA DAGLIAN: Sarah?

3 SARAH RHATIGAN: Yes.

4 SISIA DAGLIAN: Sorry. Liz should be able to
5 talk.

6 JIM MONTEVERDE: Oh, I see the photos.

7 SARAH RHATIGAN: Oh, I do. I see her phone
8 number.

9 JIM MONTEVERDE: Yeah. That's okay. I found the
10 photos.

11 SARAH RHATIGAN: Okay. Liz, are you able to
12 answer the question about color choice?

13 JIM MONTEVERDE: It's really just the materiality
14 and the --

15 SARAH RHATIGAN: I see, yeah.

16 JIM MONTEVERDE: -- what appears as the distinct
17 difference between this new very, you know, heavy, appealing
18 base element in the brick, and then if really it's literally
19 meant to be that, you know, lighter tone on what is in the -
20 - and from the original photo, you know the shingle style
21 house. Is that literal, the rendering?

22 SARAH RHATIGAN: Liz, are you able to respond?

1 SISIA DAGLIAN: I'm going to try disabling and
2 enabling it again. Because it should be able to.

3 JUSTIN CORBETT: I might be able to help with
4 that.

5 SISIA DAGLIAN: Gus, can you read the instructions
6 for phone? I think it's *6 to unmute?

7 SARAH RHATIGAN: Okay, well Liz just texted me.
8 We have a little group text thread and she said, "It won't
9 be that light" in terms of the color. Justin is our --
10 Justin Corbitt is on. Did -- you said that you might be
11 able to provide further information? Justin?

12 JUSTIN CORBETT: Yes, I was just going to say our
13 office helped to provide with the rendering software and
14 capabilities for this. And I think that in terms of the
15 texture on the house, that -- you know, it may not be
16 reading as a shingle, but I believe it's intended to be so.
17 So I'm just speaking purely on the software that was used to
18 achieve the texture on the house.

19 JIM MONTEVERDE: Yep.

20 JUSTIN CORBETT: But I believe it's going to stay
21 a shingle.

22 JIM MONTEVERDE: Yeah, okay. So the only thing

1 I'm seeing in the rendered version is just the strong
2 differentiation between the garage element, that lower
3 level, the deck, and the -- you know, the existing house.
4 It just seems like it's -- although I don't know that there
5 are any zoning issues to it. They just seem like they're
6 from two different worlds. But -- I'll leave it at that.

7 CONSTANTINE ALEXANDER: Anything else, Jim? You
8 want to ask anything else?

9 JIM MONTEVERDE: No, I think that's it. No, thank
10 you.

11 CONSTANTINE ALEXANDER: Slater?

12 SLATER ANDERSON: No, I don't have -- I mean, just
13 to respond to Jim's comment, there's -- to me, there's a
14 little bit of logic to the lower portion being brick, like a
15 foundation, just extend it out and the proportion being
16 shingle style.

17 So from a design standpoint, I find that it's got
18 an efficiency to it, versus the detached garage and the
19 disconnect of the original. So I don't have any issues.

20 CONSTANTINE ALEXANDER: Okay. Janet? Janet, are
21 you on?

22 JANET GREEN: I don't have anything to add to

1 this.

2 CONSTANTINE ALEXANDER: Thank you. Okay. With
3 that, we will go to public testimony. First of all, if
4 there's anyone who wants to speak tonight, you have to call
5 in.

6 And I'm looking for the call in instructions one
7 more time. Yeah. If you want to make a public comment, you
8 have to click the icon at the bottom of your Zoom screen
9 that says, "Raise hand." If you are calling in by phone, you
10 can raise your hand by pressing *9 and unmute or mute by
11 pressing *6.

12 Okay, we'll give people a few minutes to see,
13 because it takes a while to get through if you want to call.
14 And if not, then I'll turn to the written comments. We do
15 have letters, written commentary, which I'll deal with next.

16 SISIA DAGLIAN: Nope, not having anyone here.

17 CONSTANTINE ALEXANDER: I think it's coming up,
18 right?

19 SISIA DAGLIAN: Oh, there's one.

20 CONSTANTINE ALEXANDER: Okay. I'll wait just a
21 few minutes more. Okay. I assume there will be no more.

22 SISIA DAGLIAN: Linda?

1 LINDA KABOOLIAN: Yep.

2 SISIA DAGLIAN: Should be able to talk now.

3 LINDA KABOOLIAN: Yes, Linda Kaboolian.

4 CONSTANTINE ALEXANDER: Oh, Linda Kaboolian?

5 SISIA DAGLIAN: Yeah.

6 LINDA KABOOLIAN: Hi. I live at 23 Highland
7 Street, which is exactly opposite this house and slightly on
8 an angle, but opposite side of Highland Street.

9 And just wanted to let the Board know that my
10 experience going through three constructions with this firm
11 on three separate corners of the street is that they are
12 building on spec.

13 And that means that oftentimes -- in fact in the
14 other two properties, they do the house and then they sell
15 the house, and then they redo the house for the people
16 they've sold it to.

17 So this construction has gone on for quite a
18 while. In fact, this company has been working on these
19 three corners for near up to between four and five years.
20 And it's not clear if we gave a variance for this
21 construction that actually that would be what the ultimate
22 owner would do or use with property.

1 So instead of actually a homeowner like the other
2 petitioners who came this evening, who we could talk to
3 about what their intent was for the use of this space, et
4 cetera, that's not the case here.

5 And it's always been very difficult to me to have
6 any kind of conversation about accommodation when the people
7 who are asking for these changes are not actually going to
8 remain on the property as neighbors. That's all I'd like to
9 say.

10 CONSTANTINE ALEXANDER: Thank you. Thank you for
11 staying up this late and giving us your comments. Anyone
12 else wish -- on the line?

13 SISIA DAGLIAN: No, it doesn't look like it.

14 CONSTANTINE ALEXANDER: I'm sorry?

15 SISIA DAGLIAN: It doesn't look like it, no.
16 That's it. Yeah, that's it.

17 CONSTANTINE ALEXANDER: That's it?

18 SISIA DAGLIAN: That's it, yes.

19 CONSTANTINE ALEXANDER: Okay. As I mentioned, we
20 do have written commentary, some in support, and some not.
21 Sarah made reference to a letter from -- or from a
22 commentary from Roy Gordon, who lives at -- I'm not so sure,

1 that he has an address here, just a phone number.

2 He says he remains strongly opposed to the
3 proposed proposal for the expansion of the residence of 32
4 Highland street. "The developer questions whether I have
5 reviewed their proposal. Of course I've reviewed their
6 proposal. After reviewing the proposal again, I still find
7 no argument justifying why a house that is already much
8 larger than allowed by current zoning laws, should be
9 allowed to expand still more.

10 "I bought my property with the firm assurance that
11 selling laws would always protect the green and spacious
12 character of the neighborhood. Cutting down mature trees to
13 enlarge a parking lot is not acceptable. Paving over a
14 large portion of this property will increase storm runoff
15 and worsen heat islanding.

16 "It is your duty -- [and he's talking to us --] it
17 is your duty to enforce the zoning laws. This house has
18 already expanded beyond the reasonable limits allowed by
19 zoning. Please do your duty to enforce the zoning laws."

20 We have a letter from Annette Lamond, L-a-m-o-n-d,
21 who resides at 7 Riedesel Avenue. "I am writing to express
22 my concern about the developer's proposal for 32 Highland

1 Street.

2 "The plans, which would involve a lengthy
3 construction period, were conceived before the coronavirus
4 pandemic. Since then, homeowners have begun to look at
5 their properties from the perspective of maximizing the
6 potential enjoyment of their back yards. The newspapers
7 have been full of such stories.

8 "The proposed new garage at 32 Highland Street
9 takes space from the current back yard, thereby reducing the
10 area available for seating, children's play structures, et
11 cetera.

12 "It is possible that the potential buyer could
13 decide to have the new garage removed, and even restore the
14 original back of the house, which is quite attractive. The
15 neighbors would then be subjected to a further period of
16 construction.

17 "I would also like to point out that the proposed
18 garage addition has an institutional look, viewed from
19 inside the property. To me, it recalls the kind of mortuary
20 extension that one sees on the backs of Victorian houses
21 that have been turned into funeral homes.

22 "The plans also appear to specify considerable

1 paved area. This paving is undesirable from an
2 environmental perspective, contribution to the heat island
3 effect, impact on the health of the tree canopy, and
4 stormwater runoff. A better plan would look for a way to
5 minimize paving at 32 Highland.

6 I hope the developer will reassess the proposal in
7 light of a changed real estate market, as well as
8 environmental concerns. As a 42 year resident of the
9 Reservoir Hill neighborhood, I can say that it's a pleasure
10 to see the renovation of many houses on our streets. I am
11 not opposed to change. But I feel that the plans at 32
12 Highland Street are not in the best interest of the
13 neighborhood."

14 And we have a communication here from Leslie Jeng,
15 J-e-n-g, 43 Appleton Street. It's addressed to Leslie --
16 well, it says, "It was nice to talk to you yesterday. Thank
17 you for sharing the renovation plans for the garage and
18 landscape at 32 Highland Street in Cambridge. My husband,
19 Jon Biotti and I, support the renovations that you propose."

20 And there's a lot of correspondence in here
21 setting up comments, not on the merits. I have a letter
22 here from Christian Nolan, N-o-l-e-n, who resides at 71

1 Appleton Street.

2 "My name is Christian Nolen. I live at 71
3 Appleton Street, directly across from the property at 32
4 Highland Street. I'm writing to the Board to voice my
5 opposition to the zoning relief sought by the group
6 developing 32 Highland Street. There is no need for the
7 house at 32 Highland Street to be increased by over 25
8 percent. I oppose the removal of large, mature trees from
9 the property. I strongly urge you reject the appeal. The
10 house does not need to be increased by over 25 percent."

11 We have a letter from Myra Gordon. She is
12 strongly opposed to the request for the variance. Again, it
13 deals with damage to trees, the fact that the developers are
14 not going to be the occupants -- who are proposing this are
15 not going to be the next occupant of the property. And
16 that's it.

17 That closes public testimony. Any final comments,
18 Sarah, you want to make?

19 SARAH RHATIGAN: I mean, we would probably respond
20 to some of the negative comments, some of which are maybe
21 inaccurate, but if it's okay, I'd like to hear if the
22 members of the Board are concerned. I mean, I think that I

1 addressed some of these concerns. There aren't large,
2 mature trees that are being demolished.

3 And as you know, there's a Tree Ordinance, and the
4 tree warden, we have to -- you know, even if there were to
5 be, which there's not -- there would be a process for having
6 to apply. There's a lot of pavement now. Are you able to -
7 - Sisia, head back to one of the photographs that are
8 showing -- I'm sorry, head back down -- there we go, right,
9 yep.

10 There's quite a bit -- sorry, I'm trying to get to
11 either a rendering or a photograph that shows the garage
12 with the driveway next to it, with paving next to it.

13 SISIA DAGLIAN: Is that what you want?

14 SARAH RHATIGAN: No, I'm sorry, I'm sorry. The
15 existing -- the existing, so that we can see what the
16 existing conditions are. Thank you. Right there, yeah.

17 There's -- you know, there's a lot of paving to
18 the right here, as well as the garage in terms of -- you
19 know, people being concerned about -- you know, about
20 excessive paving.

21 We've got more than required open space. And the
22 -- you know, as we've talked about removing that garage

1 actually really improves the conditions a lot, in terms of -
2 - you know, permeable surface, et cetera.

3 And it's also it's a stormwater -- I'm sorry, my
4 General Contractor is trying to explain to me there's civil
5 design where the stormwater is contained on the property.
6 So there won't be any concerns about water runoff to
7 affecting neighbors.

8 I'm just trying to think of any other comments.
9 You know, I mean, size is always, you know, a little bit of
10 -- in the eye of the beholder.

11 I think I -- I hope I described pretty well to you
12 that a lot of the sort of square footage increase is a
13 little bit of an artifact, as -- I mean, not that it's not
14 real, I understand definitions under the ordinance, but this
15 is not a situation where somebody's building a massive
16 addition that goes up two floors and it's -- you know, the
17 type of kind of large, intrusive addition that would have
18 some real impacts on these folks.

19 Again, I'll now stop and listen to Board members.

20 CONSTANTINE ALEXANDER: Okay, Board members have
21 any comments? I have comments, but I'll wait. Brendan?

22 BRENDAN SULLIVAN: Yeah. Brendan Sullivan. I

1 just think it's a nice updating.

2 CONSTANTINE ALEXANDER: I'm sorry?

3 BRENDAN SULLIVAN: I think it's a nice updating to
4 the house. I think that the positioning of the existing
5 garage doesn't make sense, either from when it was
6 constructed and the functionality of parking your car and
7 walking all the way around and the topography is up many
8 steps and into the house, and the proposal -- well, it's
9 just a nice updating.

10 CONSTANTINE ALEXANDER: Okay. My view is just
11 different than Brendan's, which is not unusual. I don't see
12 a compelling need. I don't see the substantial hardship
13 that requires the granting of variance for this property.
14 This is a lovely old home.

15 It's probably dated to some extent; all old homes
16 often are. To me, I don't think the garage that they're
17 proposing to do and the paving adds. I think it detracts
18 from the structure.

19 I do think with one of the components that it
20 gives an institutional look to the property. So I do not
21 find the substantial hardship that justifies granting
22 relief. It's another case of developers buying a property,

1 dressing up the pig, and then getting a higher price. And
2 so I'm not overwhelmed by the need for the relief being
3 sought.

4 By the same token, I was singularly unimpressed by
5 the opposition. I think there was -- the people didn't seem
6 to understand what was going on. I -- based on their
7 landscaping plans that were submitted by the petitioner, I
8 don't see a substantial cutting down of mature trees. Yes,
9 there's going to be some landscaping changes. But I think
10 generally the landscaping will stay the same.

11 I think people are complaining -- are worried
12 about more construction. That comes with the territory. If
13 you're going to grant, if you're going to modify a
14 structure, either with zoning relief or not, there's going
15 to be construction and a temporary dislocation.

16 The environmental issues, yes, are there, but as a
17 Board, I'm not sure we're qualified to pass on these kinds
18 of environmental concerns that have been expressed.

19 So I see it I throw the ball up on the left hand,
20 on the right hand, and I come down on the right hand of
21 denying relief -- again, because I don't find any compelling
22 reason why we should grant the relief. That's my view.

1 JIM MONTEVERDE: Yeah. This is Jim Monteverde. I
2 would concur with Gus's sense. I don't sense the compelling
3 nature of the need for the renovation scope.

4 And I do have an issue with -- and I can
5 understand in a way improvement and the easier circulation,
6 or smoother circulation within the house and from the
7 parking.

8 But I do think it -- you know, one of the comments
9 that compared it to the mortuary or institutional -- you
10 know, I have that same issue, that it just is so out of --
11 it feels so out of character to the main house itself. But
12 more importantly, I just don't see the compelling need or
13 the hardship.

14 CONSTANTINE ALEXANDER: Thank you, Jim. We have
15 two more to hear from, if they wish to speak by the way.
16 There's no requirement. We can just go right to the vote.

17 SLATER ANDERSON: I'm happy to weigh in.

18 CONSTANTINE ALEXANDER: Go ahead.

19 SLATER ANDERSON: You know, I hate to differ --
20 well, I don't differ with Brendan, and I think that the
21 design is an improvement, a functional improvement. I think
22 that when you think of the -- you know the winters in New

1 England and maybe multiple generations living in this house
2 and not having to walk out on an icy sidewalk up -- you
3 know, the topography that exists on this property, that is a
4 hardship, the topography.

5 And I think bringing all of that correctional and
6 functionality inside, integration the garage with the house
7 is a more efficient use of the site. I think
8 architecturally it's fine. You only really see it from an
9 oblique angle at this angle right here, you don't see it
10 from the front of the house or the other sides, really.

11 So I'm -- and there's going to be -- as Gus said,
12 there's going to be a project here regardless. And it's
13 going to be a disruptive construction project, regardless of
14 this variance.

15 I do feel like while it's a 25 percent increase, I
16 mean it's -- it is in fact an expansion of the basement
17 across this city with the barren amendment -- you know, you
18 have basements that are exempt from FAR.

19 So, you know, I think that it's, you know, they're
20 burdened by application of the zoning in a way that -- you
21 know, it doesn't feel like a 25 percent increase to the
22 structure from my view, particularly when you subtract the

1 volume of the existing garage from the project.

2 So, you know, I'm -- and all the stormwater stuff
3 and all -- I mean all of that's dealt with otherwise, either
4 through the Tree Ordinance or the, you know building code,
5 you know, stormwater management laws, you know, so that's my
6 two cents on it.

7 CONSTANTINE ALEXANDER: Thank you, Slater. Janet,
8 do you want to say anything or not? It's up to you.

9 JANET GREEN: I -- yes. I'm going to abstain.
10 Because I can't bring myself to feel like they've made a
11 case for renovating this house, what the need was. Well, I
12 can imagine what the need was, but that the need as we
13 define it.

14 On the other hand, I believe that somebody's going
15 to do it. So I have found myself unable to think about
16 whether I can vote yes or no. So I'm going to abstain.

17 CONSTANTINE ALEXANDER: Okay.

18 SARAH RHATIGAN: Chair, Mr. Chairman, would you
19 mind if I just ask a few questions? I'm listening to all of
20 your comments very carefully, and this is --

21 CONSTANTINE ALEXANDER: Okay, I don't think I
22 would be -- I'm sorry, I closed public testimony. I

1 wouldn't be -- it wouldn't be appropriate to debate the
2 comments that you're hearing from the members of the Board,
3 or to -- you know, to probe with them. They are what they
4 are.

5 SARAH RHATIGAN: No, I was just -- no, I was, I
6 was actually just going to try to understand better where
7 to, you know, kind of where to go with this discussion.
8 Because the owners -- the owners are going to need to sort
9 of solve some problems.

10 And if we're going to go back to the drawing board
11 and kind of put our heads around this, we're trying to get a
12 sense of what the most -- what the most -- what you most
13 don't like about it.

14 So for example, talking about the mortuary look,
15 so -- you know, treatment of materials is something that we
16 would be happy to discuss with, we'd be happy to reconsider.

17 CONSTANTINE ALEXANDER: Sarah, if we have this
18 discussion, then you're going to ask to continue the case.
19 And we'll have one more continuance. Enough is enough with
20 the continuances. You've made your proposal. You know this
21 Board. We're going to take a vote --

22 SARAH RHATIGAN: Well, that's actually --

1 CONSTANTINE ALEXANDER: -- and if the vote is
2 unfavorable --

3 SARAH RHATIGAN: -- I -- I --

4 CONSTANTINE ALEXANDER: -- if the vote is
5 unfavorable, you can come back with a different proposal
6 within two years. If it's not, I mean --

7 SARAH RHATIGAN: -- I actually, to be honest with
8 you, Mr. Chairman, I've actually never had a case where you
9 haven't in a situation like this offered the opportunity for
10 a continuance. We've never been before you. We were
11 originally scheduled in March, and then COVID shut us down.
12 But we've never had the chance to present our case to you.

13 CONSTANTINE ALEXANDER: Are you going to -- are
14 you requesting a continuance?

15 SARAH RHATIGAN: I would love to request a
16 continuance.

17 CONSTANTINE ALEXANDER: Other members of the Board
18 have any problems. I have no problem with continuing this
19 case. I don't like it, but, you know, that's a courtesy
20 we've extended to many other petitioners, and I'd be happy
21 to extend it to you as well.

22 So we'll have to find a date in the future. So

1 you want to continue the case, I will make a motion to
2 continue the case. And if members are not in favor of
3 continuing the case, that motion will be defeated, and then
4 we'll go to a vote on the merits of the case before us
5 tonight.

6 Is that okay with other members of the Board?

7 BRENDAN SULLIVAN: That's fine.

8 CONSTANTINE ALEXANDER: Okay. I've got a single
9 from Brendan to my left, and I assume -- I'll give everybody
10 else the chance. Should I make the motion to continue, and
11 we'll vote on that?

12 JANET GREEN: Yes.

13 JIM MONTEVERDE: This is Jim Monteverde. I'd say
14 yes.

15 CONSTANTINE ALEXANDER: Okay.

16 JANET GREEN: Janet Green. I say yes.

17 CONSTANTINE ALEXANDER: Okay. So let's move. The
18 Chair moves that we continue this case as a case heard until
19 7:00 p.m. on -- Sisia?

20 SISIA DAGLIAN: Well --

21 CONSTANTINE ALEXANDER: Earliest day we could do
22 it, and then we'll find out whether it works for the

1 petitioner.

2 SISIA DAGLIAN: I think October 8 was when --

3 CONSTANTINE ALEXANDER: Everyone, October 8?

4 SISIA DAGLIAN: -- everyone here was available,
5 right?

6 CONSTANTINE ALEXANDER: Okay.

7 SLATER ANDERSON: No.

8 CONSTANTINE ALEXANDER: Will October 8 work for
9 you, Sarah?

10 SARAH RHATIGAN: Um--

11 CONSTANTINE ALEXANDER: Or you want a farther date
12 out? We can't do anything earlier.

13 SARAH RHATIGAN: No.

14 CONSTANTINE ALEXANDER: Our business card is full.

15 SARAH RHATIGAN: Yep, I'm just checking with
16 folks. We'll make that work, yes, October 8.

17 CONSTANTINE ALEXANDER: Okay. So go back to the
18 motion to continue this case as a case heard until 7:00 p.m.
19 on October 8, subject to the following conditions, and you
20 know these as well as I do, Sarah.

21 The first is that the petitioner sign a waiver of
22 time for decision. Since we're not all here in person,

1 you'll have to go to the -- or your client will have to go
2 to the ISD.

3 And our condition is that if you that waiver for
4 time for decision must be signed by a week from today. If
5 that is not done, the continuance will be over, and the
6 petition dismissed. In other words, unfavorable relief will
7 be granted.

8 As you know, as you well know, it's a very simple
9 document, and a week should be more than enough time to get
10 someone over there to sign.

11 SARAH RHATIGAN: Okay.

12 CONSTANTINE ALEXANDER: Yes, Sisia.

13 SISIA DAGLIAN: I'm not saying anything.

14 CONSTANTINE ALEXANDER: Oh, sorry, Sisia.

15 SISIA DAGLIAN: I think they've already all signed
16 waivers. Because the original case was continued.

17 CONSTANTINE ALEXANDER: They signed the waiver
18 already. This is the first time we've heard this case.

19 SISIA DAGLIAN: Okay.

20 SARAH RHATIGAN: It was a blank -- Mr. Chairman, I
21 believe that it was a blanket waiver citing the Governors
22 order and the statute of limitation extensions.

1 CONSTANTINE ALEXANDER: Oh, I see what you're
2 saying.

3 SARAH RHATIGAN: Yep. That's -- I've got
4 something in the file. If it doesn't apply, we'll come and
5 sign a new wavier.

6 CONSTANTINE ALEXANDER: It shouldn't be -- it's no
7 big deal to come in and --

8 SARAH RHATIGAN: Yep.

9 CONSTANTINE ALEXANDER: -- sign It next week.

10 SARAH RHATIGAN: Sure.

11 CONSTANTINE ALEXANDER: That's the first
12 condition. Second condition is that a new posting sign must
13 be put up reflecting the new date, October 8; and the new
14 time, 7:00 p.m., and that sign must be maintained for the 14
15 days that it's required by our ordinance. And as your
16 client and you did, with regards to tonight's petition.

17 And lastly, that to the extent that you're going
18 to come by with new plans -- and I would include in that
19 landscaping plans, because they're an important -- I think
20 important part of this case -- that those plans must be in
21 our files no later than 5:00 p.m. on the Monday before
22 October 8, the files being they must be filed with the

1 Inspectional Services Department by that time and date.

2 All those in favor of continuing the case on this
3 basis. Brendan says yes.

4 BRENDAN SULLIVAN: Brendan Sullivan, yes.

5 JANET GREEN: Janet Green, yes.

6 CONSTANTINE ALEXANDER: Slater?

7 SLATER ANDERSON: Slater Anderson, yes.

8 JIM MONTEVERDE: And Jim Monteverde, yes.

9 CONSTANTINE ALEXANDER: And Gus Alexander, yes.

10 [All vote YES]

11 The case is continued to October 8. And that's
12 all she wrote. Thank you.

13 SARAH RHATIGAN: Thank you.

14 CONSTANTINE ALEXANDER: What a night!

15 JIM MONTEVERDE: All right. Goodnight, all.

16 CONSTANTINE ALEXANDER: What a night.

17 BRENDAN SULLIVAN: Is that you waving a paddle?

18 JIM MONTEVERDE: [Laughter]

19 CONSTANTINE ALEXANDER: It's almost 11:30 and we
20 started at 6:00.

21 JIM MONTEVERDE: I'm not allowed to hold a paddle
22 anymore.

1 SLATER ANDERSON: Gus, no more continuances. Come
2 on.

3 SISIA DAGLIAN: I know. We've continued every
4 case, pretty much.

5 [11:21 p.m. End of Proceedings]

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October 5, 2020

Via Hand Delivery & Email

Board of Zoning Appeal
City of Cambridge
831 Massachusetts Avenue
Cambridge, MA 02139

Re: BZA Case No. 017267-2020, 32 Highland Street – Request for Continuance

Dear Members of the Board:

This matter was initially heard by the Board of Zoning Appeal at a hearing on July 23rd. The petitioners are in need of additional time and hereby respectfully request a continuance of this matter until the next available hearing date.

Sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Sarah Like Rhatigan, Esq.

CC: Ms. Lori Leland (via email)
Mr. Joseph DiLazzaro (via email)

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(7:26 p.m.)

Constantine Alexander, Brendan Sullivan,
Janet Green, Andrea A. Hickey, and Jim
Monteverde

CONSTANTINE ALEXANDER: Moving on, the next -- I'm
going to call two quick continued cases now, because they're
going to be continued further. The first I'm going to call
is 32 Highland Street, 017267. Anyone here wishing to be
heard on this matter? I guess not. I didn't know if
Counsel would be present.

SARAH RHATIGAN: Was that -- I'm sorry, I --

CONSTANTINE ALEXANDER: Yes, Sarah?

SARAH RHATIGAN: Sorry. My system blinked out
just as you said the address. Thank you. Sarah Rhatigan.
I'm here from Trilogy Law representing the owners of Amos
Third Corner, LLC. Thank you, Mr. Chairman, for hearing the
continuance request.

I just wanted to give you a little update, which
is that the owners have been working with their
architectural team on a scaled back revision of plans for
the renovation, and the expectation at this time, or the

1 hope, is that they will be able to minimize any zoning
2 relief or potentially avoid requiring zoning relief. But
3 because of the -- you know, the timing of our revisions and
4 our evaluation of that, we're not quite ready to be heard.

5 I wasn't sure about scheduling. I thought it
6 would be helpful if I was here to, you know, discuss when
7 the same panel of hearing members would be available for a
8 continuance.

9 CONSTANTINE ALEXANDER: What date would you like
10 to continue to? First, let's start there.

11 SARAH RHATIGAN: I think that we could use at
12 least two weeks and perhaps a month.

13 CONSTANTINE ALEXANDER: I would suggest, because
14 since you got to put new notices up, and that's -- have to
15 go up tomorrow virtually through the two weeks, so.

16 SARAH RHATIGAN: So a month -- yep, a month seems
17 reasonable, yeah.

18 CONSTANTINE ALEXANDER: Sisia, do we have --

19 SISIA DAGLIAN: We have November 19 or the fifth?

20 CONSTANTINE ALEXANDER: The nineteenth?

21 SISIA DAGLIAN: The fifth we already have three
22 cases.

1 CONSTANTINE ALEXANDER: We have two. That's not
2 that many.

3 SISIA DAGLIAN: Okay.

4 CONSTANTINE ALEXANDER: November 19 work for you,
5 Sarah?

6 SARAH RHATIGAN: November 19 would work, yes.

7 CONSTANTINE ALEXANDER: Okay. The Chair moves
8 that we continue this case as a case heard until 7:00 p.m.
9 on November 19, subject to the following conditions, and
10 it's the same ones that we had for this one.

11 First is -- and the petitioner has already done
12 that -- sign a waiver of time for decision. That's been
13 taken care of.

14 Second, that a new posting sign reflecting the new
15 date, November 19 and the new time, 7:00 p.m., be obtained
16 and posted for the 14 days required by our ordinance.

17 And lastly, that to the extent -- and I guess it
18 will be -- there will be new or revised plans, specs,
19 dimensional forms -- all of those -- all of the above must
20 be in our files no later than 7:00 p.m. -- I'm sorry, 5:00
21 p.m. -- on the Monday before November 19.

22 All those in favor of continuing the case on this

1 basis?

2 BRENDAN SULLIVAN: Brendan Sullivan, yes to
3 continuing the matter.

4 ANDREA HICKEY: Andrea Hickey, yes to the
5 continuance.

6 JANET GREEN: Janet Green, yes to the continuance.

7 JIM MONTEVERDE: And Jim Monteverde, yes to the
8 continuance.

9 CONSTANTINE ALEXANDER: And the Chair votes yes as
10 well.

11 [All vote YES]

12 But let me make a comment, Sarah. This will be
13 the second continuance for this case. Our policy is
14 basically not to continue cases more than twice, absent very
15 special circumstances. So I would hope and/or expect that
16 this case will be decided one way or another on November 19.

17 SARAH RHATIGAN: Thank you.

18 CONSTANTINE ALEXANDER: Moving on, did we take the
19 vote?

20 COLLECTIVE: Yes.

21 CONSTANTINE ALEXANDER: Yeah, we did take the
22 vote. Okay.

Pacheco, Maria

From: Sarah Rhatigan <sarah@trilogylaw.com>
Sent: Monday, November 16, 2020 2:53 PM
To: Pacheco, Maria; Singanayagam, Ranjit
Cc: Lori Leland; Liz Whitbeck; Amelia Todd; Joseph DiLazzaro
Subject: 32 Highland Street, Cambridge BZA Case No. 017267-2020 - Letter of Withdrawal
Attachments: Ltr to BZA Withdrawal - BZA 017267 (11.16.20).pdf

Dear Ms. Pacheco and Mr. Singanayagam—

Attached here please find the petitioner's letter of withdrawal of this variance application, which is currently scheduled for a continued hearing this Thursday evening. If you would kindly file this letter with BZA Case No. 017267-2020 and let the Chairman know that we will not be proceeding this Thursday.

Please reply to confirm your receipt of this letter.

Thank you,

-Sarah

Sarah Like Rhatigan, Esq.
Trilogy Law LLC
12 Marshall Street
Boston, MA 02108
Tel: 617-543-7009
[Email:Sarah@trilogylaw.com](mailto:Sarah@trilogylaw.com)

November 16, 2020

Via Email Only

Members of the Board of Zoning Appeal
City of Cambridge
831 Massachusetts Avenue
Cambridge, MA 02139

Re: BZA Case No. 017267-2020, 32 Highland Street – Withdrawal

Dear Members of the Board:

The Petitioner hereby withdraws its application for a variance with respect to certain renovations at 32 Highland Street, BZA Case No. 017267-2020. This matter was scheduled to be heard as a continued case this Thursday evening, November 19th, 2020.

We thank the Board and staff for their time and consideration.

Sincerely,

Amos Third Corner LLC,

By its Counsel,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Sarah Like Rhatigan, Esq.

CC: Ms. Lori Leland
Mr. Joseph DiLazzaro

FAR

EXISTING

LEVEL	AREA (SF)	NOTES
BASEMENT	1013	Taken from foundation exterior. Includes only area that is more than half below grade as calculated by ratio of the perimeter grade.
FIRST	2061	Taken 6" from interior finish
SECOND	1863	Taken 6" from interior finish
THIRD	1374*	Taken 6" from interior finish. Taken at the 5' mark under a sloping roof. *Modified from previous calculation after demolition
FOURTH	155	Taken 6" from interior finish. Taken at the 5' mark under a sloping roof.
TOTAL	5092	
SITE	15388	
FAR	0.33	

PROPOSED

LEVEL	AREA (SF)	NOTES
BASEMENT	2194	Taken from foundation exterior. Includes only area that is more than half below grade as calculated by ratio of the perimeter grade.
FIRST	2293	Taken 6" from interior finish
SECOND	1877	Taken 6" from interior finish
THIRD	1374	Taken 6" from interior finish. Taken at the 5' mark under a sloping roof.
FOURTH	0	Taken 6" from interior finish. Taken at the 5' mark under a sloping roof.
TOTAL	7738	
SITE	15388	
FAR	0.50	

VOL

EXISTING VOLUME = 70699 FT³

ADDED VOLUME = 16452 FT³

ADDED VOLUME IS 23% OF EXISTING VOLUME

AMOS



32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:

1/4" = 1'

DATE:

- 02/22/20

DRAWN BY:

ETW

CHECKED BY:



32 HIGHLAND ST
VARIANCE APPLICATION

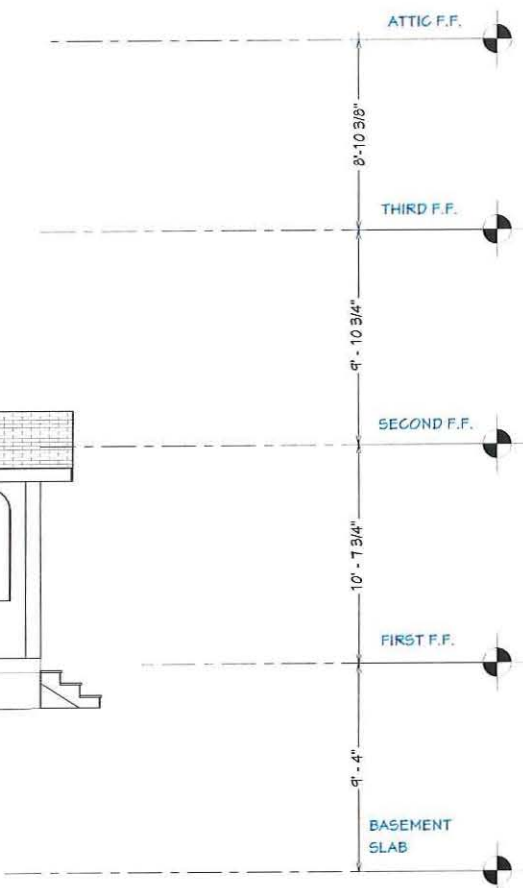
SCALE:
1/4" = 1'
DATE:
02/22/20

DRAWN BY:
ETW
CHECKED BY:

X100



NORTH ELEVATION - EXISTING



E EAST ELEVATION - EXISTING

AMOS



32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

X101



S

SOUTH ELEVATION - EXISTING

AMOS



32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

X102



32 HIGHLAND ST
VARIANCE APPLICATION



WEST ELEVATION EXISTING

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

X103



32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:

1/4" = 1'

DATE:

- 02/22/20

DRAWN BY:

ETW

CHECKED BY:



 NORTH ELEVATION - PROPOSED

A200



32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

A201



E EAST ELEVATION - PROPOSED



S SOUTH ELEVATION - PROPOSED

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

A202



32 HIGHLAND ST
VARIANCE APPLICATION

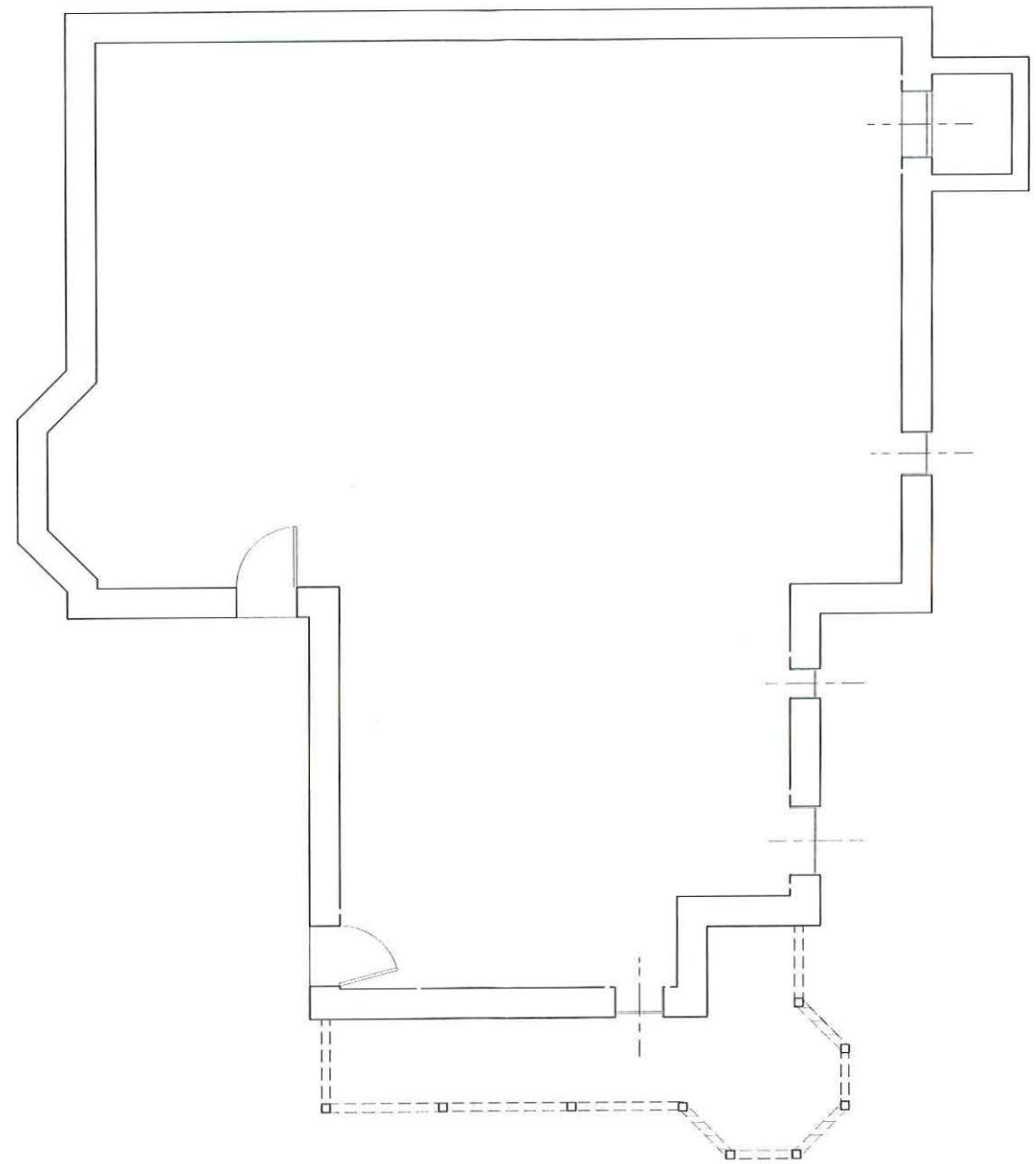


WEST ELEVATION PROPOSED

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

A203



F

EXISTING FOUNDATION



AMOS

32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:

1/4" = 1'

DATE:

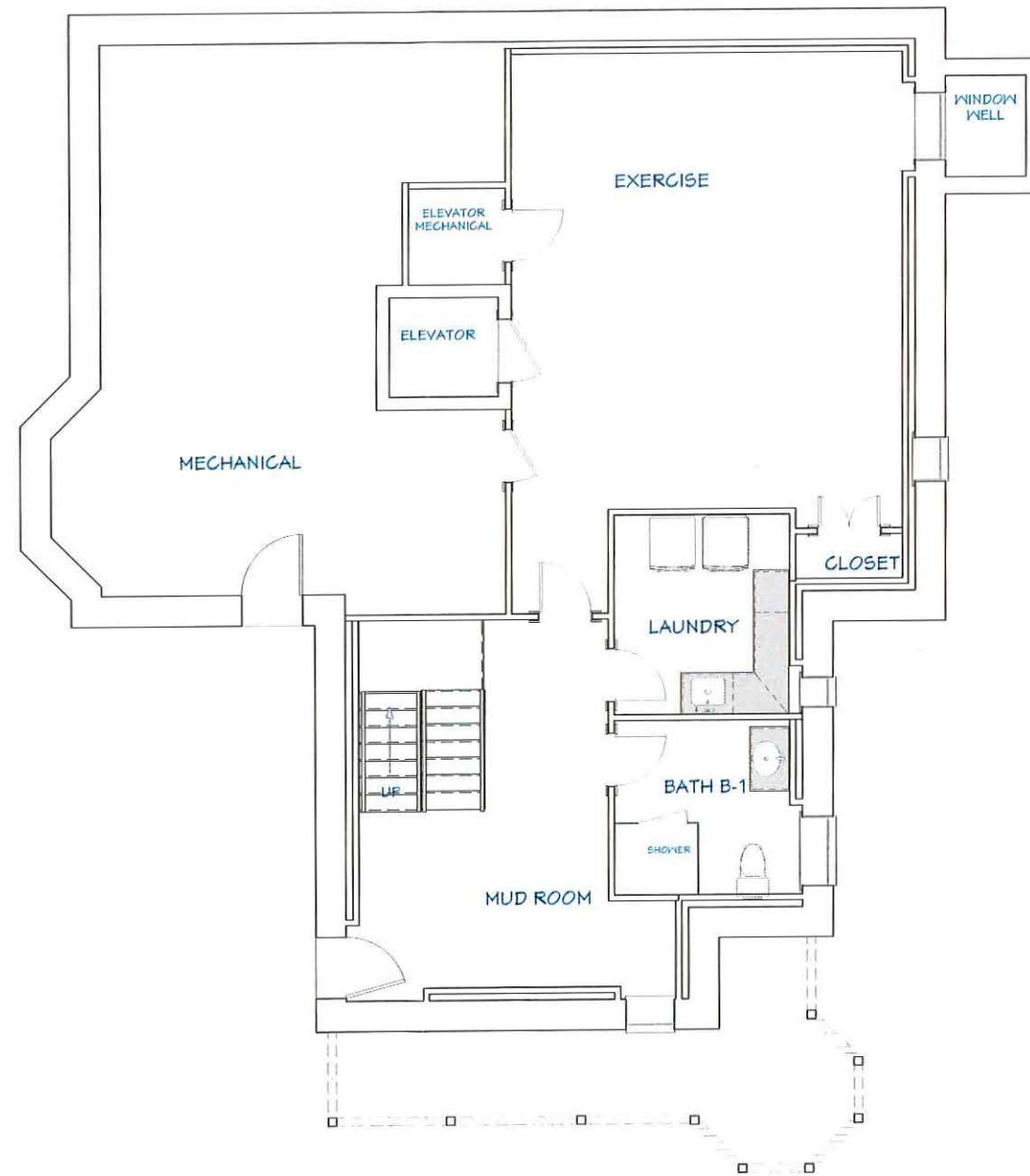
02/22/20

DRAWN BY:

ETW

CHECKED BY:

X104

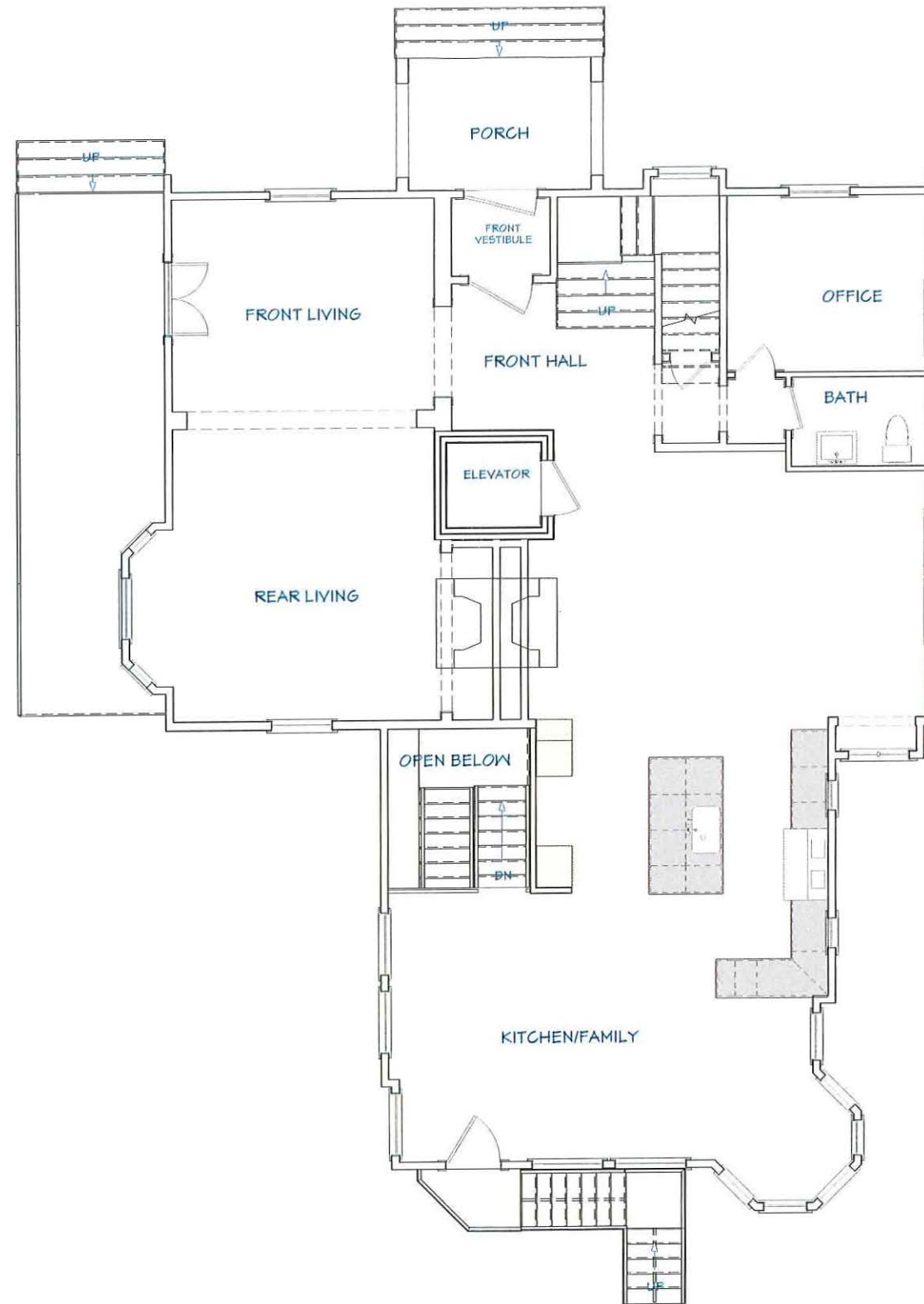


B EXISTING BASEMENT

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

X105



1 EXISTING FIRST FLOOR

AMOS

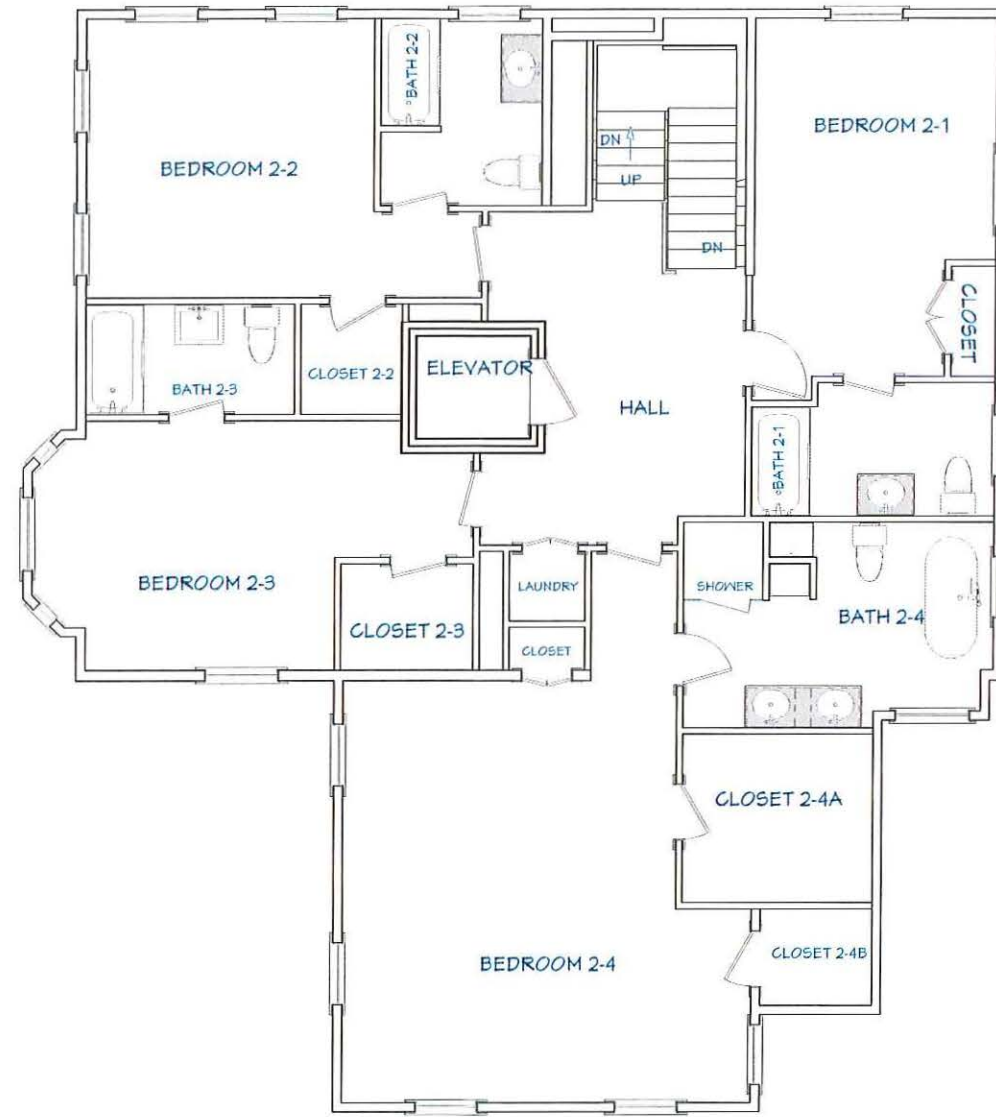


32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

X106



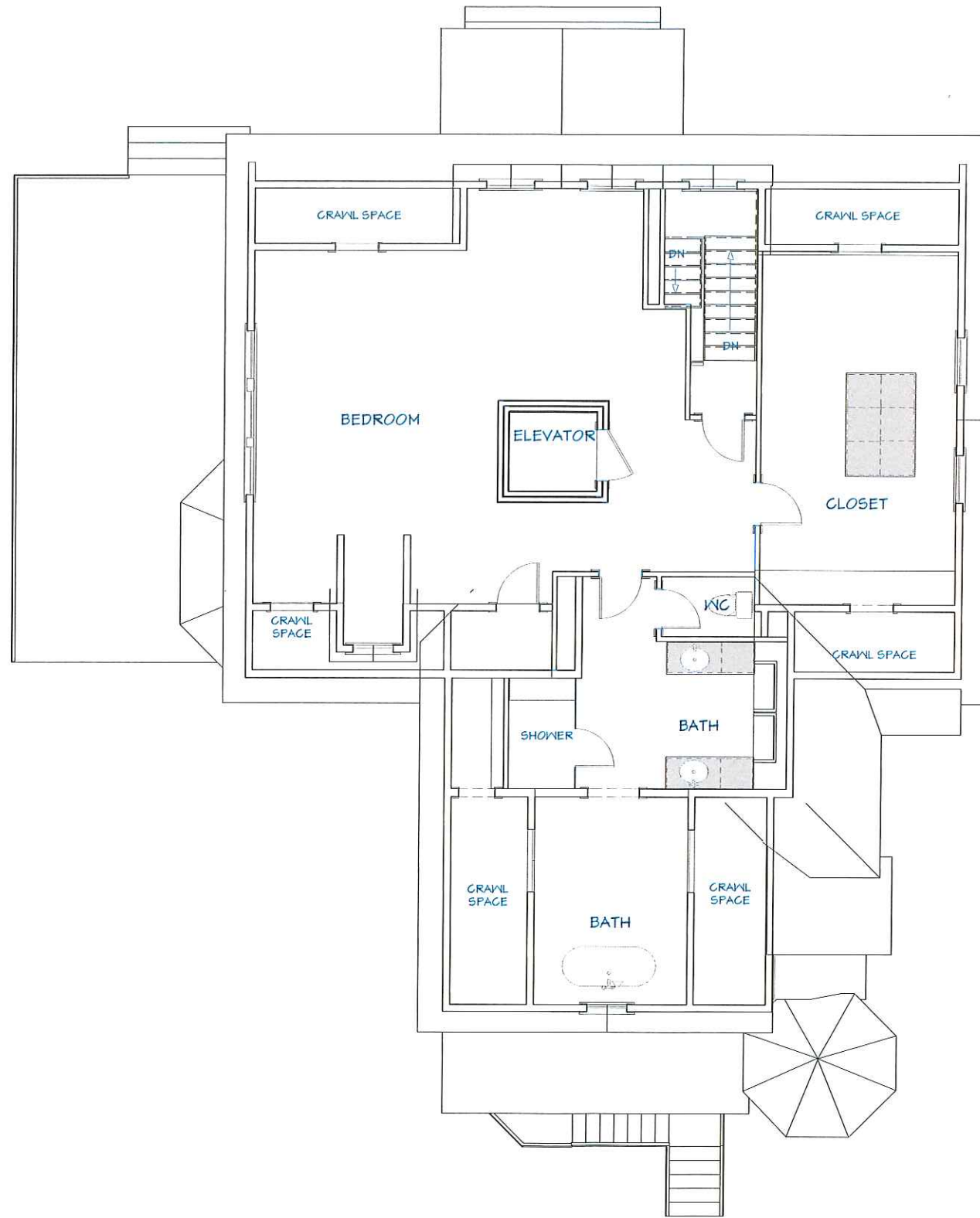
2

EXISTING SECOND FLOOR

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

X107



3

EXISTING THIRD FLOOR

AMOS



32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:

1/4" = 1'

DATE:

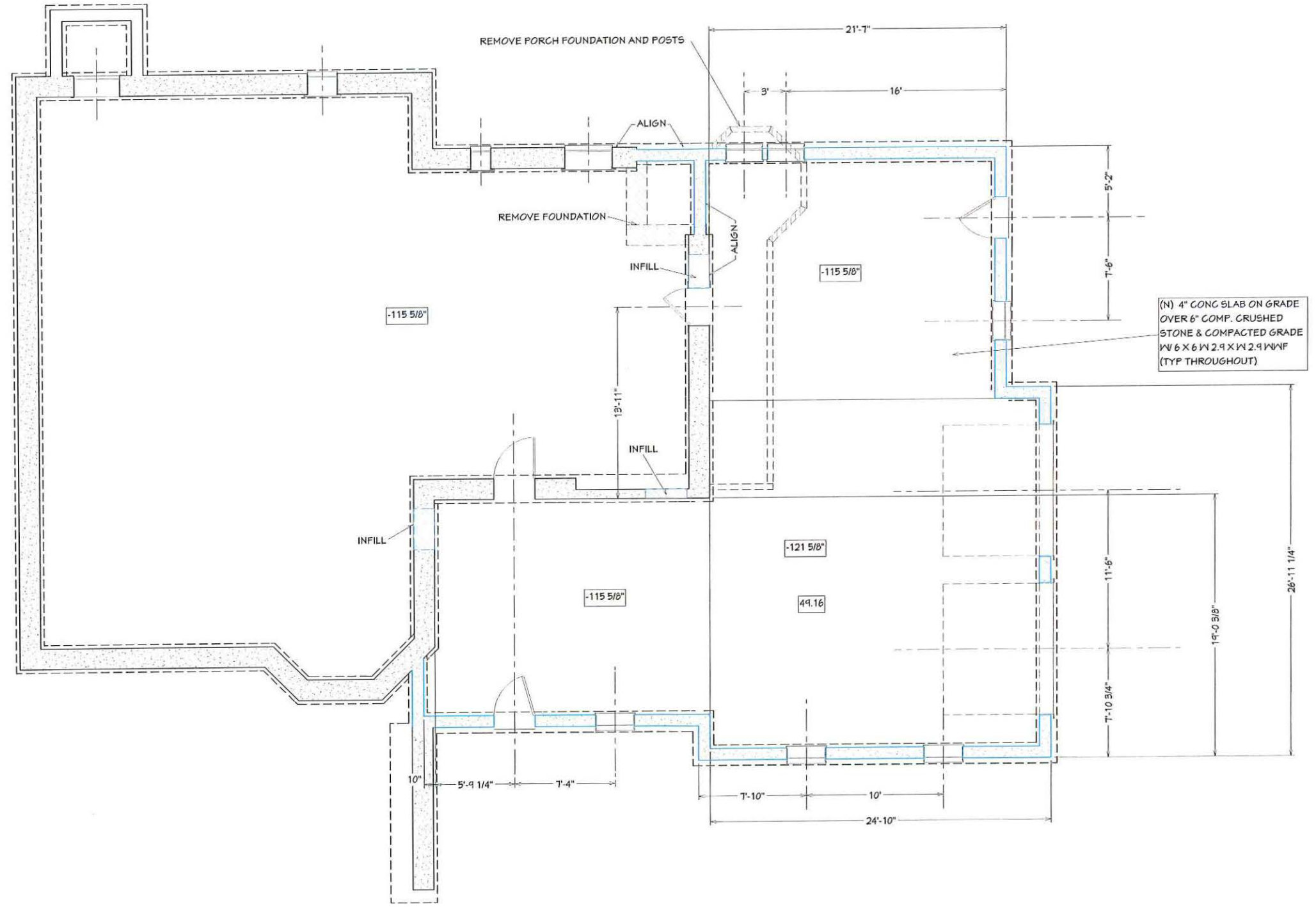
- 02/22/20

DRAWN BY:

ETW

CHECKED BY:

X104



B PROPOSED FOUNDATION PLAN



SCALE:
1/4" = 1'
DATE:
02/22/20

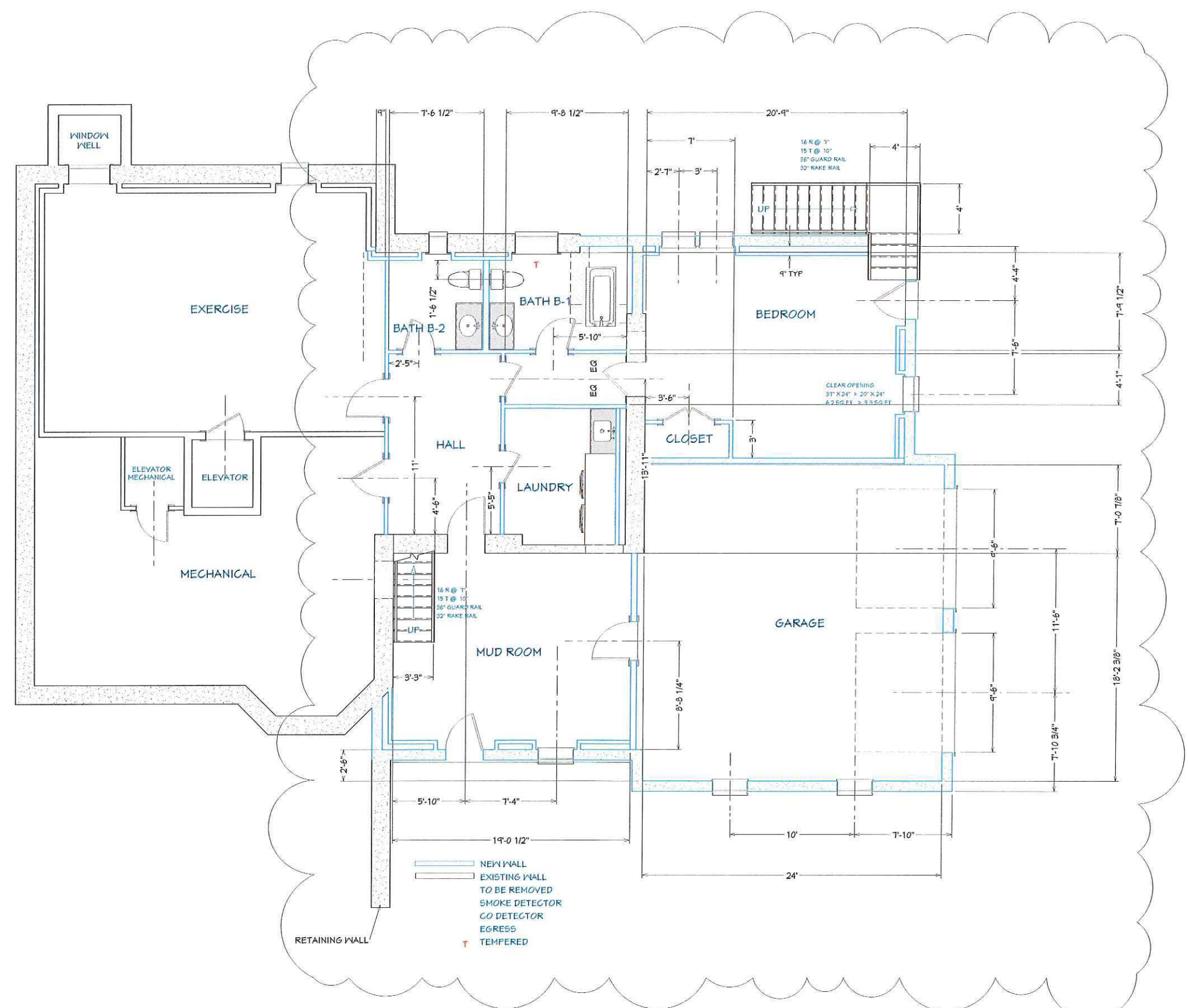
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ETW
CHECKED BY:



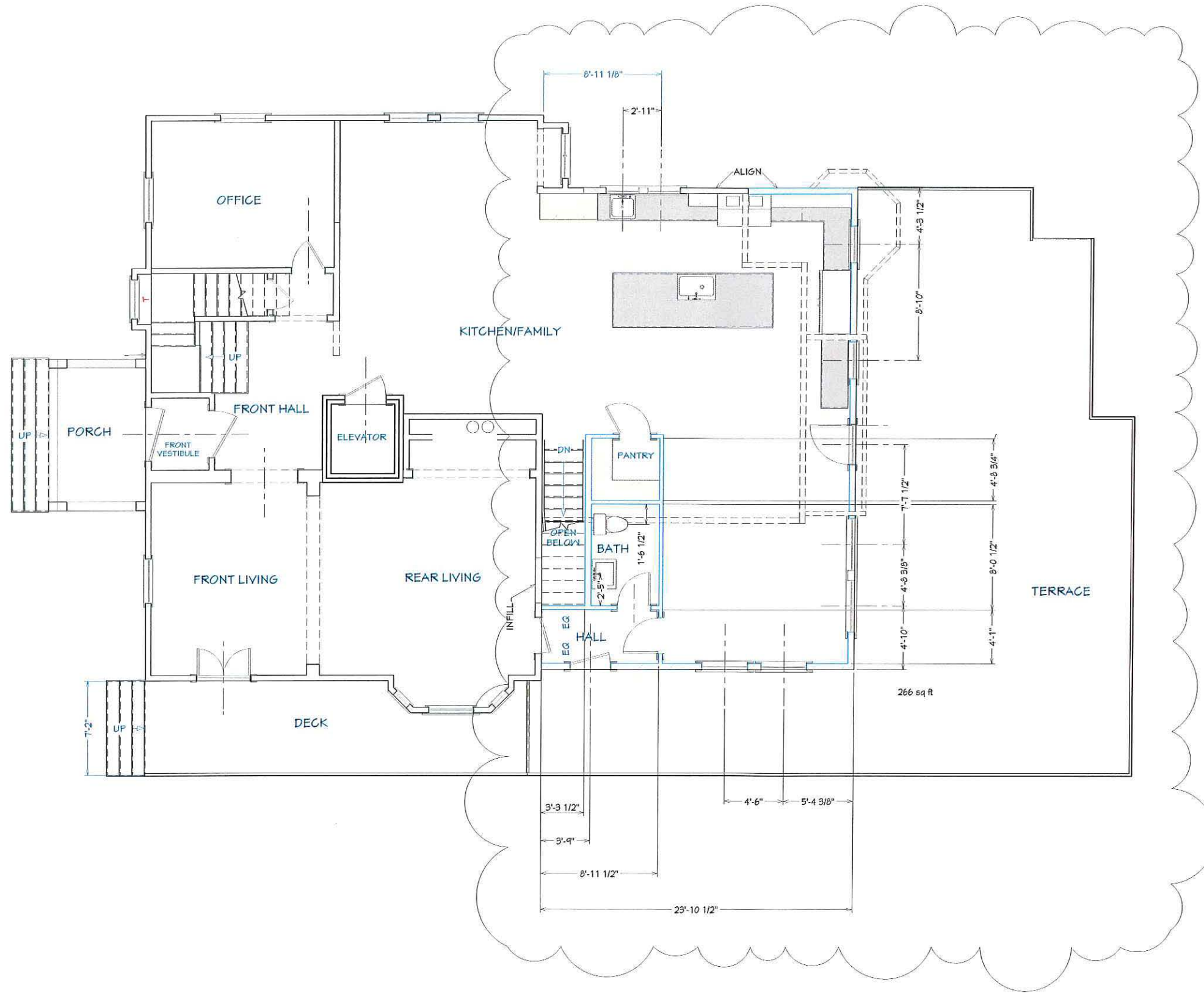
SCALE:
1/4" = 1'
DATE:
02/22/20

DRAWN BY:
ETW
CHECKED BY:

A101



B PROPOSED BASEMENT FLOOR PLAN



- NEW WALL
- EXISTING WALL
- TO BE REMOVED
- SMOKE DETECTOR
- CO DETECTOR
- EGRESS
- T TEMPERED

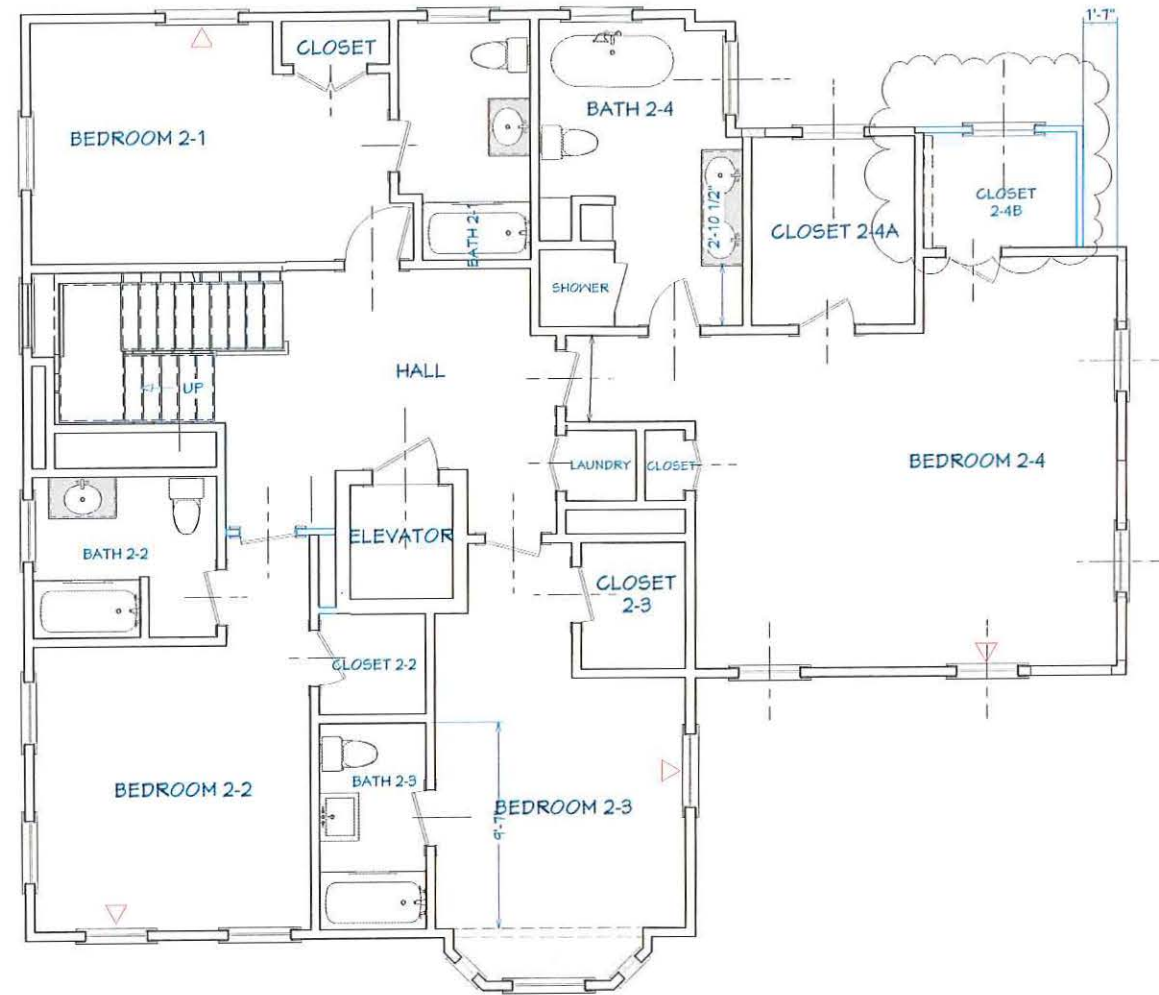
1

PROPOSED FIRST FLOOR PLAN

SCALE:
1/4" = 1'
DATE:
02/22/20

DRAWN BY:
ETW
CHECKED BY:

A102

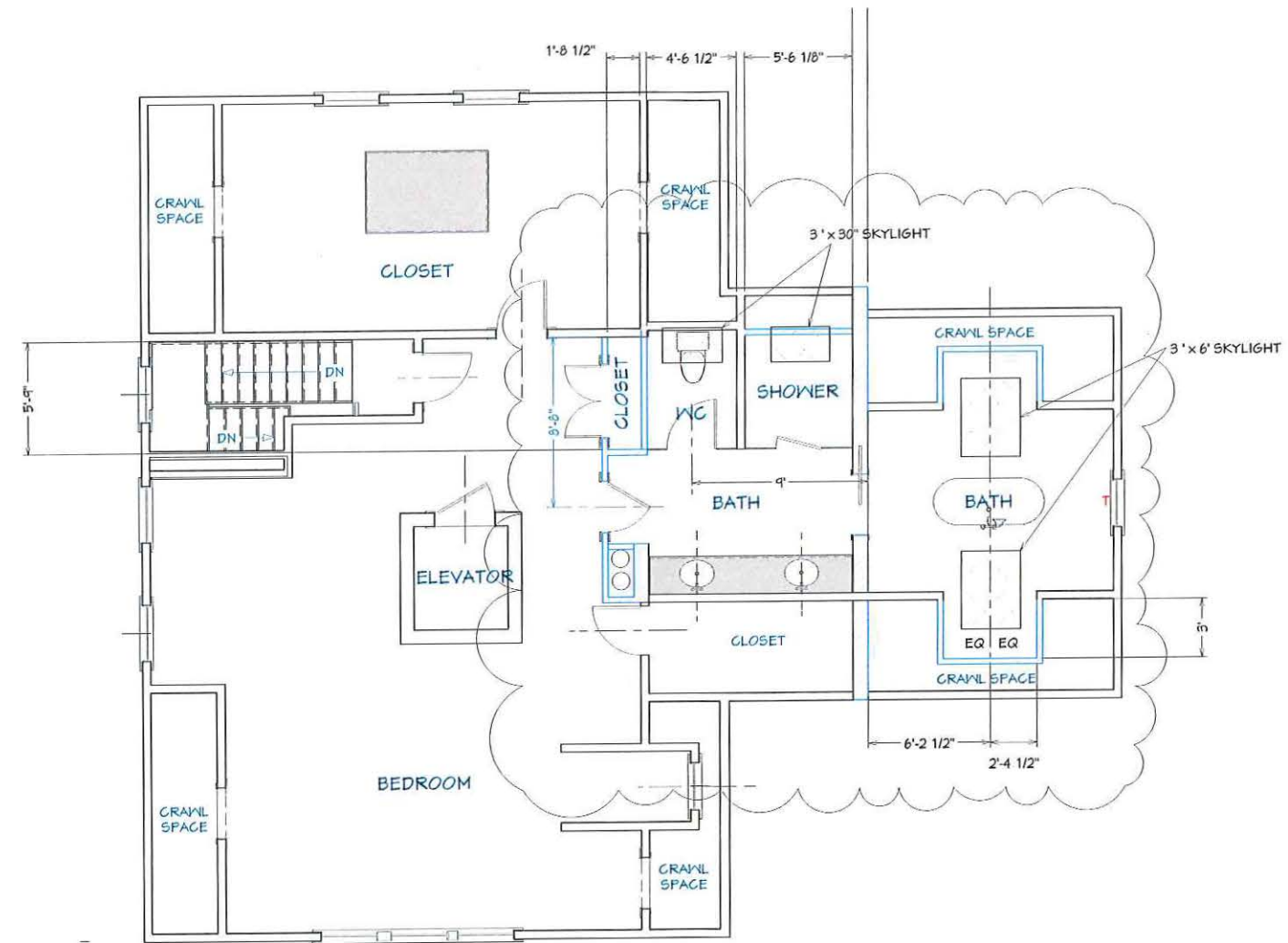


- NEW WALL
- EXISTING WALL
- - - TO BE REMOVED
- SMOKE DETECTOR
- CO DETECTOR
- △ EGRESS
- † TEMPERED

SCALE:
1/4" = 1'
DATE:
- 02/22/20
DRAWN BY:
ETW
CHECKED BY:

2 PROPOSED SECOND FLOOR PLAN

A103



3 PROPOSED THIRD FLOOR PLAN

SCALE:
1/4" = 1'
DATE:
- 02/22/20

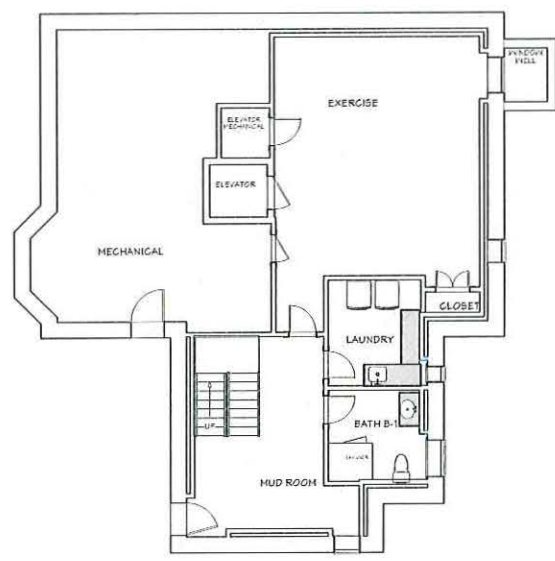
DRAWN BY:
ETW
CHECKED BY:

A104



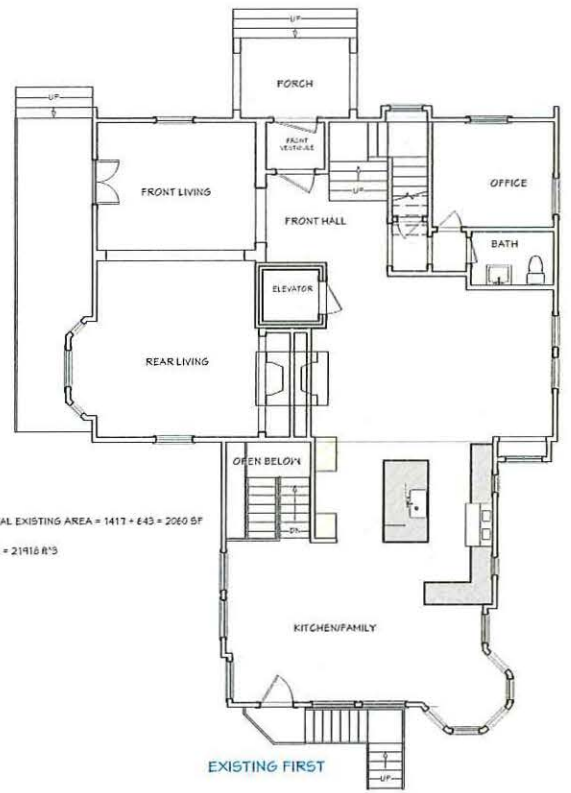
SCALE:
1/4" = 1'
DATE:
02/22/20

DRAWN BY:
ETW
CHECKED BY:



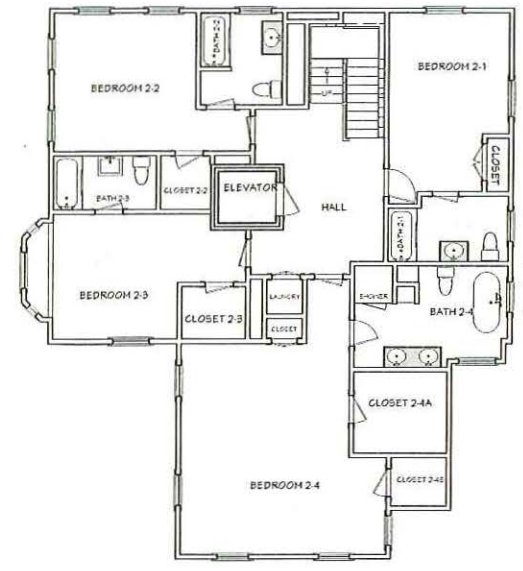
TOTAL EXISTING AREA = 1021 SF
RATIO BY PERCENTAGE OF BASEMENT PERIMETER LESS THAN HALF UNDERGROUND (50%)
1021 X .36 = 1015
VOL = 16570 FT³

EXISTING BASEMENT



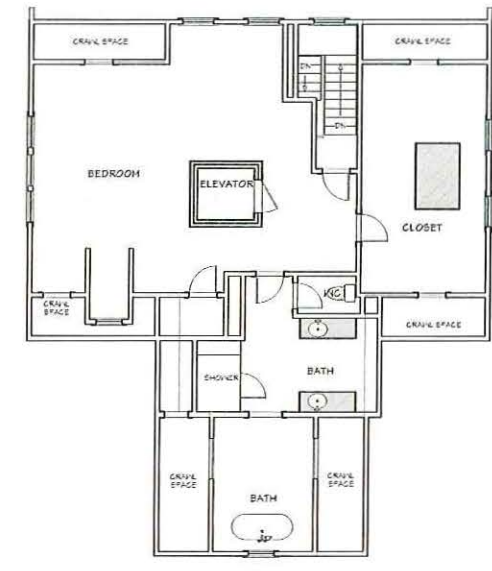
TOTAL EXISTING AREA = 1417 + 443 = 2060 SF
VOL = 21918 FT³

EXISTING FIRST



TOTAL EXISTING AREA = 1063 SF
VOL = 16444 FT³

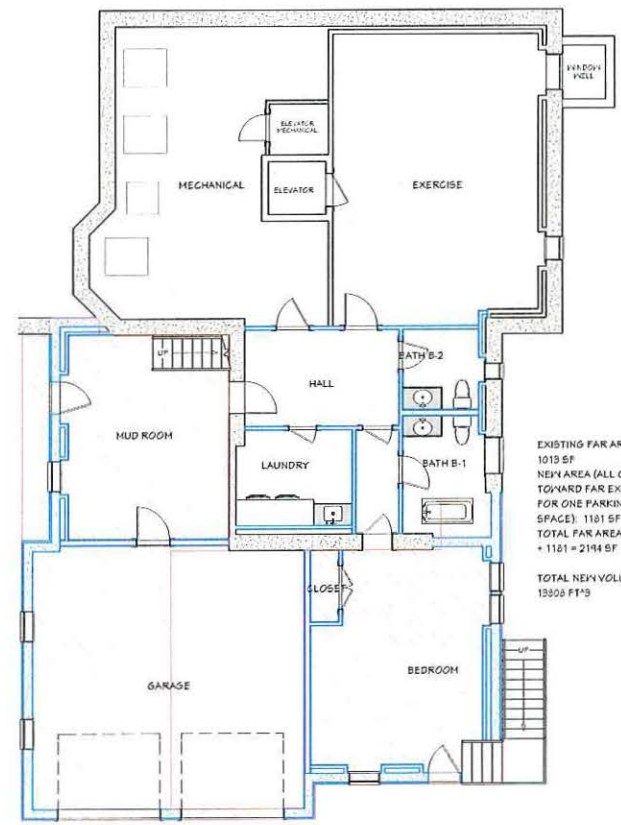
EXISTING SECOND



TOTAL EXISTING AREA = 1345 SF
VOL = 15459 FT³

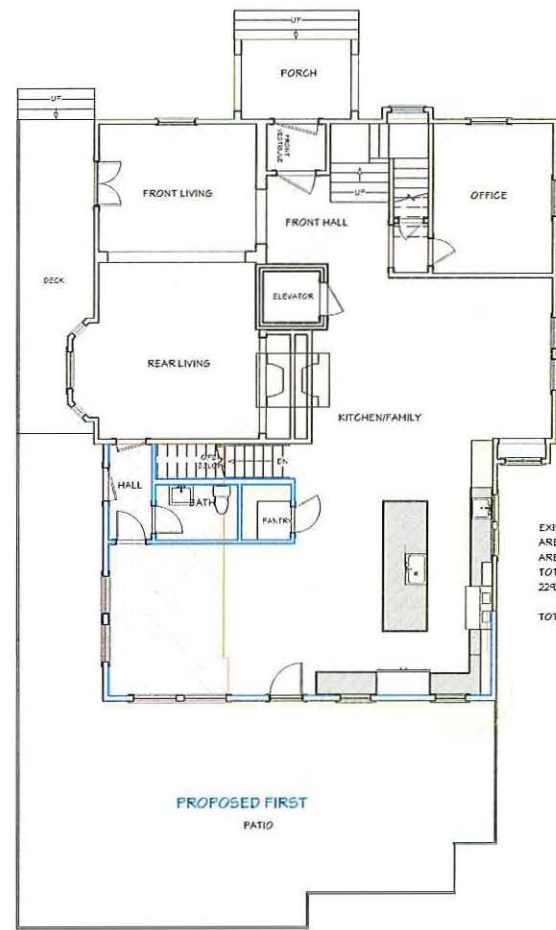
EXISTING THIRD

ATTIC FLOOR AREAS NOT INCLUDED IN FAR CALCULATION HAVE A HEAD HEIGHT OF < 5 FT



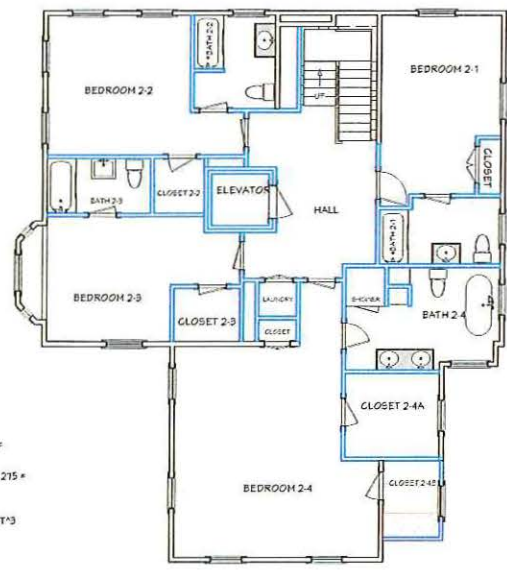
EXISTING FAR AREA: 1015 SF
NEW AREA (ALL COUNTS TOWARD FAR EXCEPT FOR ONE PARKING SPACE): 1181 SF
TOTAL FAR AREA = 1015 + 1181 = 2196 SF
TOTAL NEW VOLUME = 13000 FT³

PROPOSED BASEMENT



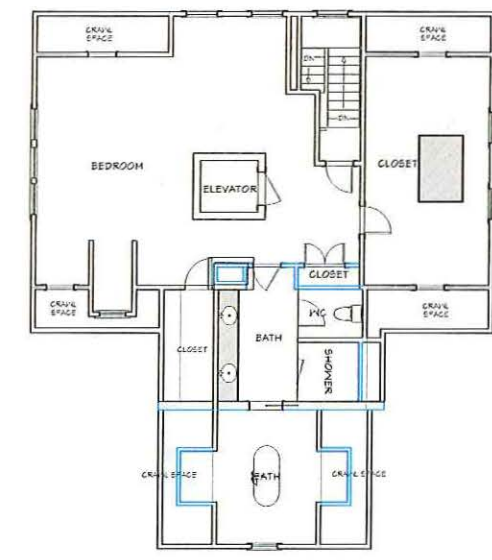
EXISTING AREA: 2050 SF
AREA TO BE REMOVED: 40 SF
AREA TO BE ADDED: 215 SF
TOTAL FAR AREA: 2050 - 40 + 215 = 2225 SF
TOTAL NEW VOLUME = 2600 FT³

PROPOSED FIRST PATIO



TOTAL PROPOSED AREA = 1577 SF

PROPOSED SECOND



TOTAL EXISTING AREA = 1345 SF

PROPOSED THIRD

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; SJCReporter@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

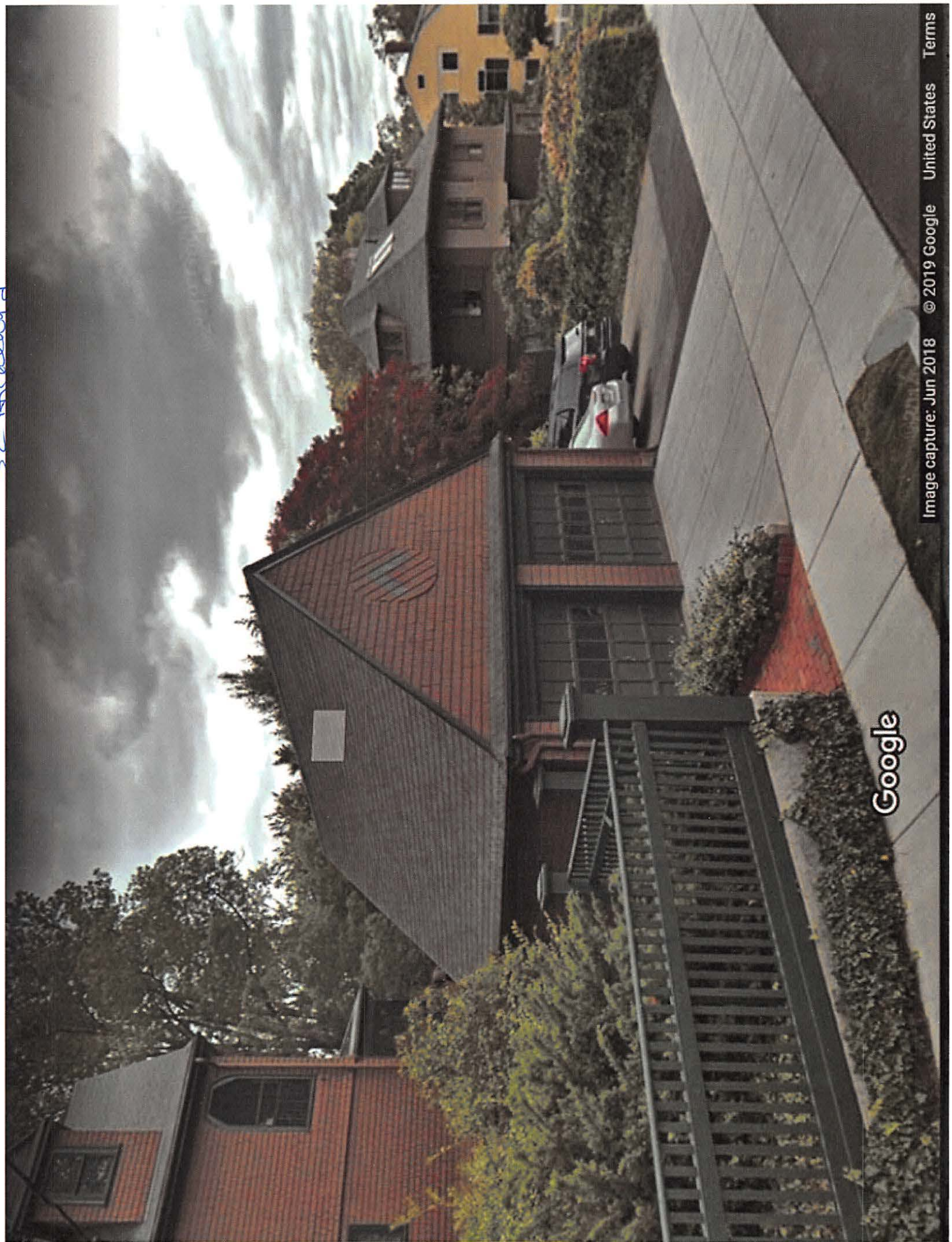
Units," permits exceptions for additional floor area for buildings where the certificate of occupancy was issued at least ten years previously, and provides that "[e]xterior modifications to accommodate an exterior addition or interior conversion shall include, without limitation the addition of a dormer, 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.

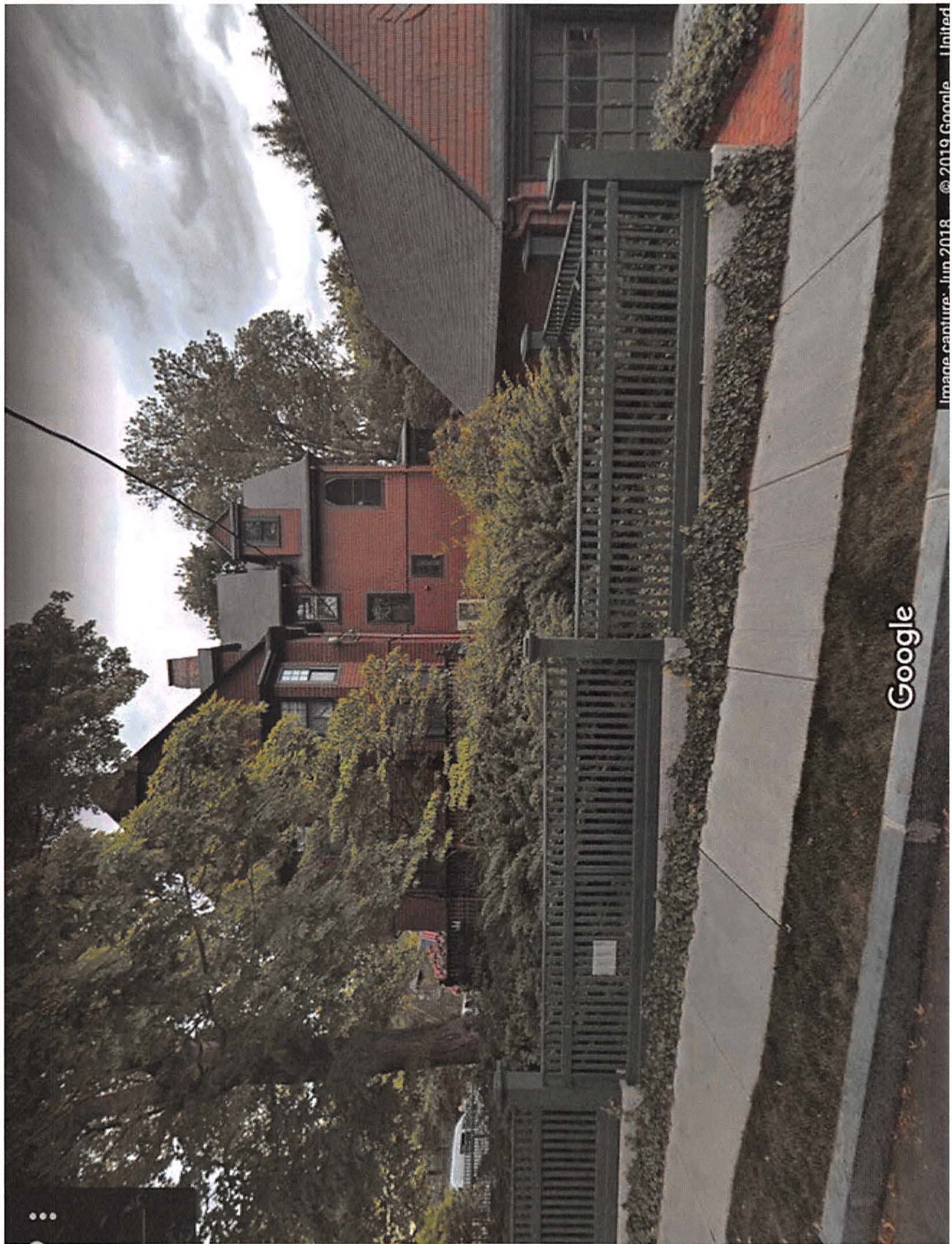
General Laws c. 40A, § 6, however, creates a statutory requirement that "sets the floor" throughout the Commonwealth for the appropriate protections from local zoning bylaws to be afforded properties and structures protected under that statute. See Rourke v. Rothman, 448 Mass. 190, 191 n.5 (2007). As 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.

32 Highland



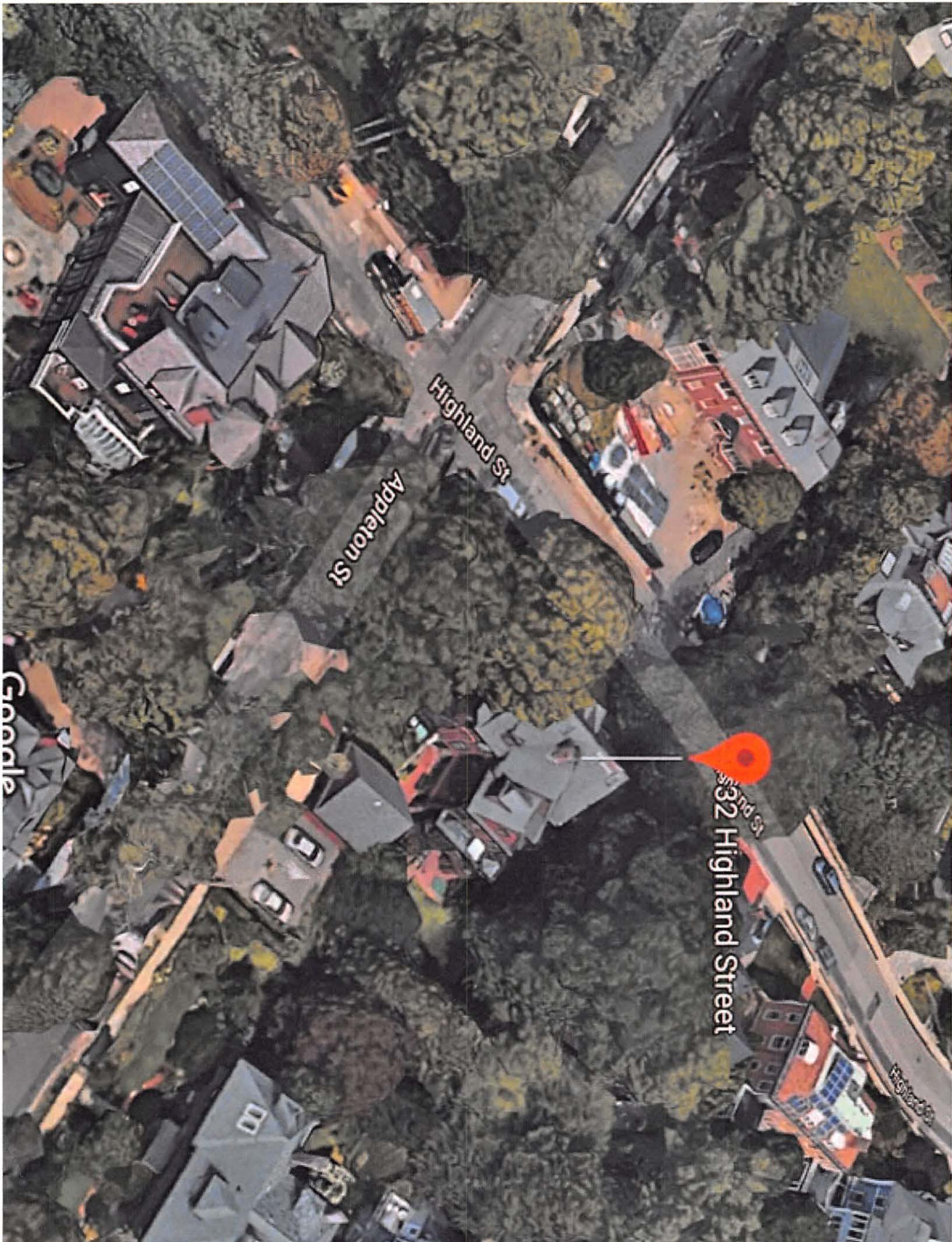
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Appleton St

332 Highland Street

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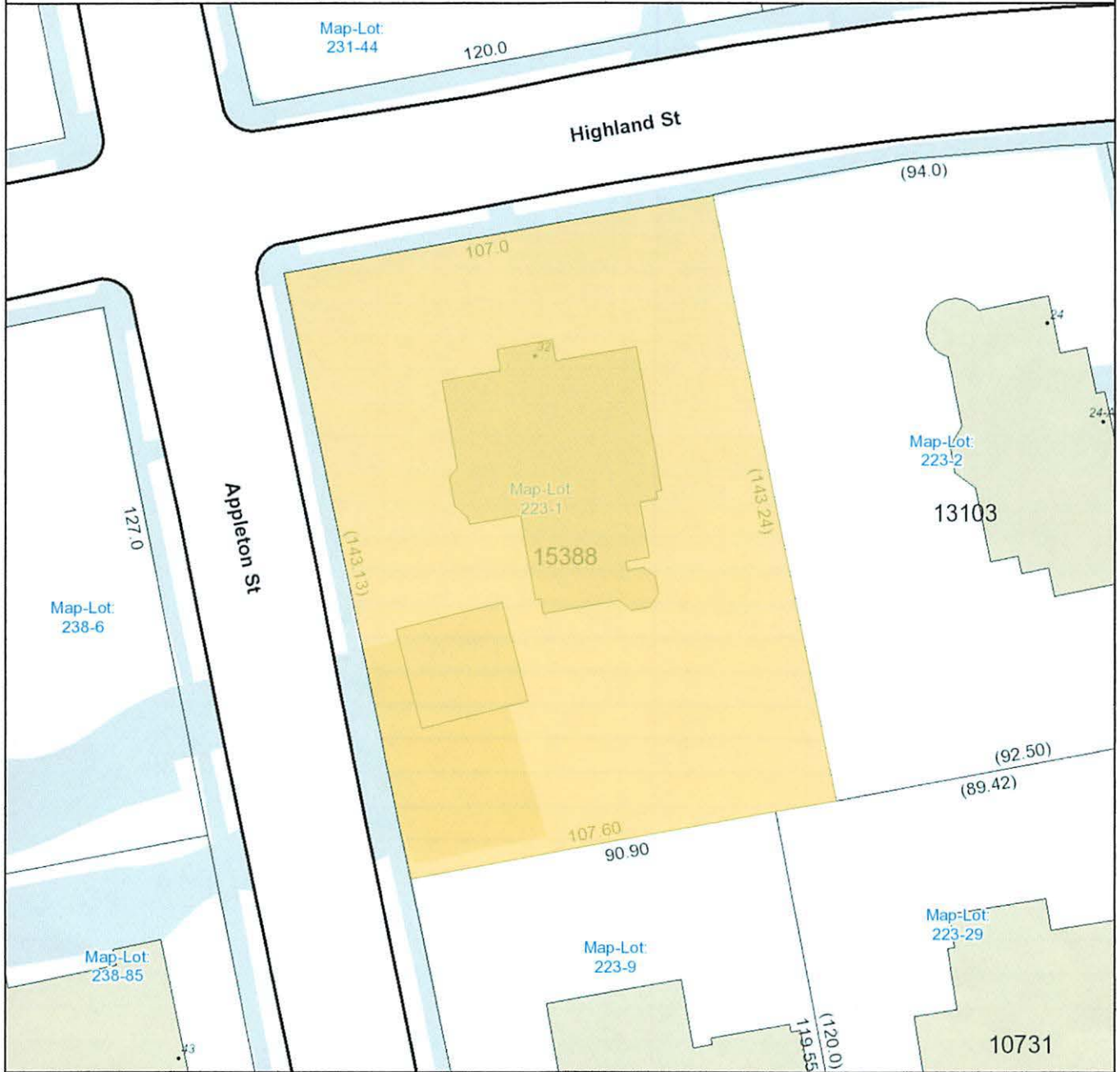
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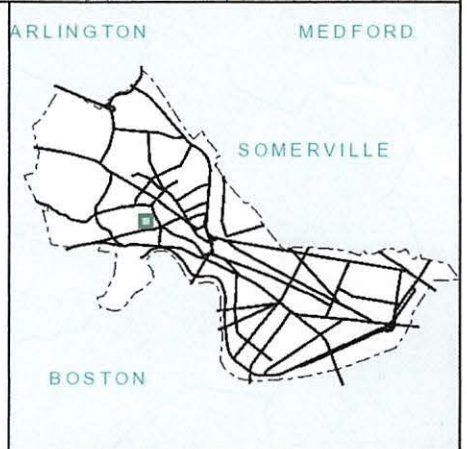
City of Cambridge
Massachusetts

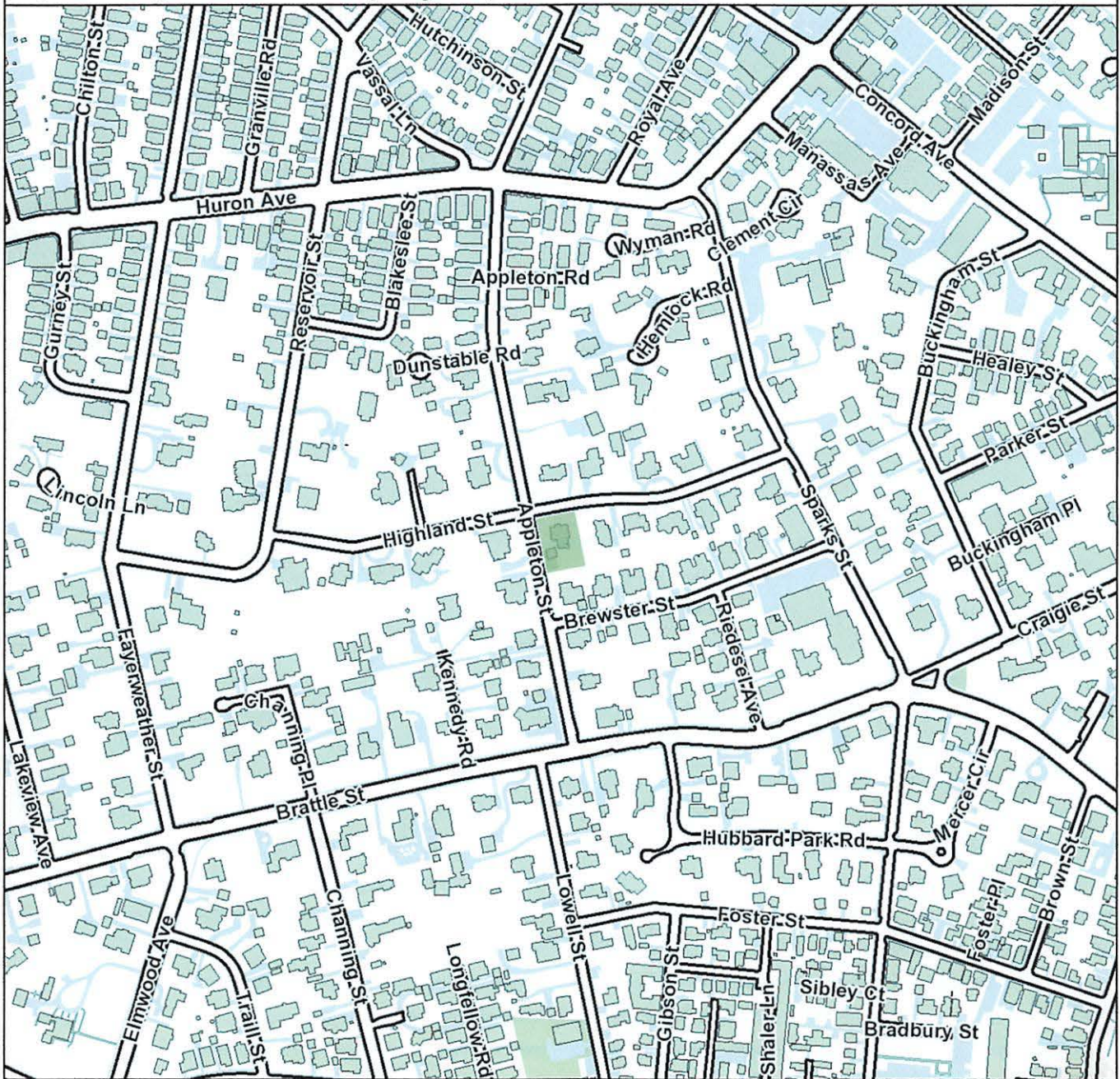
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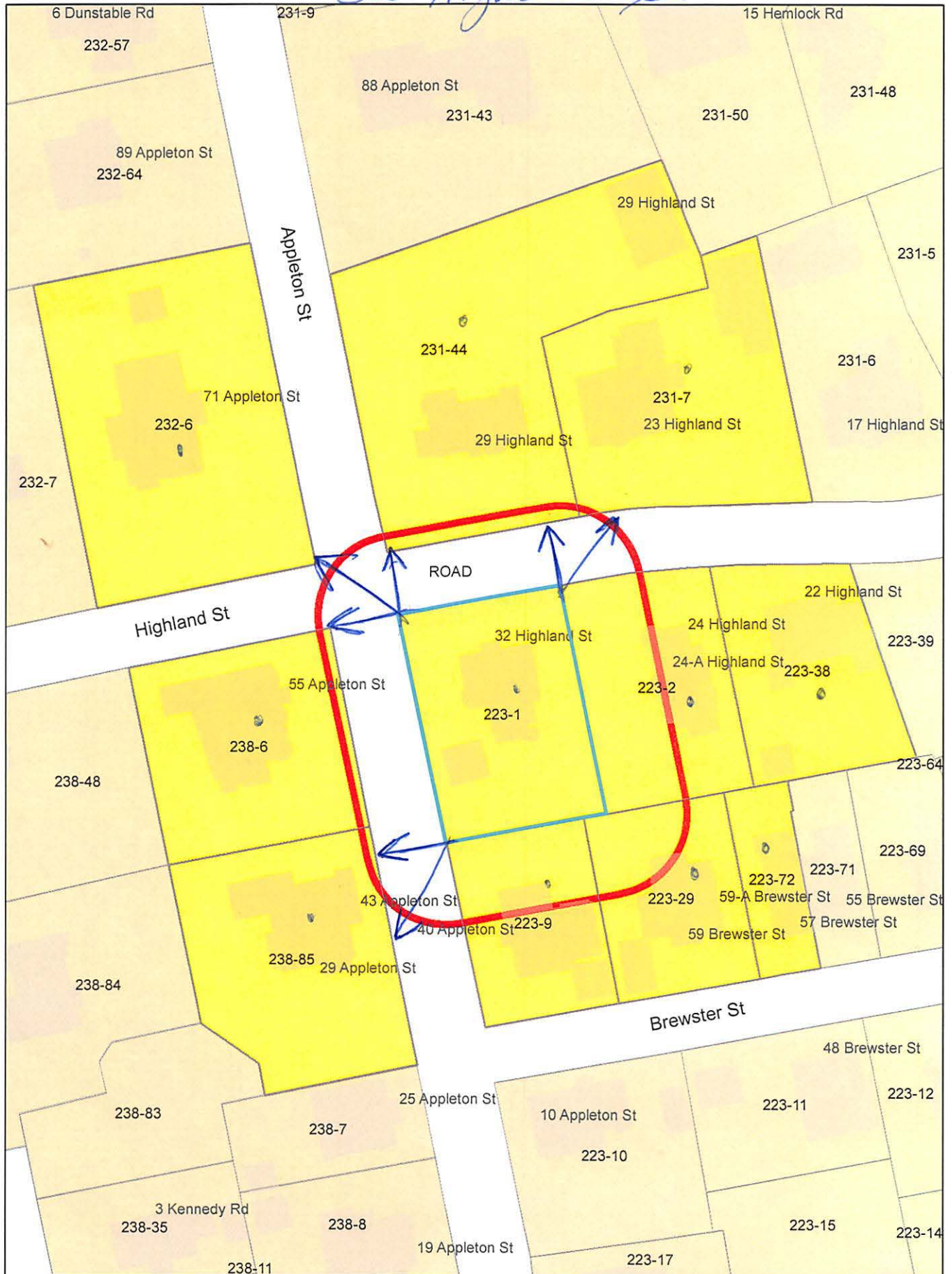
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32 Highland St.



32 Highland St.

Petitioner

223-2
PIEPER, CHARLES P. & CAROLE J. PIEPER
721 OLD POST ROAD
COTUIT, MA 02635

223-38
GORDON, RAY GERALD MYRA GORDON
22 HIGHLAND ST
CAMBRIDGE, MA 02138-2210

TRILOGY LAW LLC
C/O SARAH L. RHATIGAN, ESQ.
12 MARSHALL STREET
BOSTON, MA 02108

223-29
STACEY, ROGER F.
59 BREWSTER ST
CAMBRIDGE, MA 02138

238-6
WILKINS, ANN MARIE & DAVID B. WILKINS
55 APPLETON ST
CAMBRIDGE, MA 02138-3357

223-1
AMOS THIRD CORNER LLC
16 GRAY GARDENS EAST
CAMBRIDGE, MA 02138

231-7
KABOOLIAN, LINDA
23 HIGHLAND ST
CAMBRIDGE, MA 02138-2209

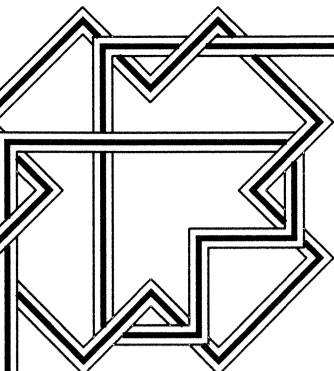
231-44
29 HIGHLAND STREET OWNER, LLC
29 HIGHLAND ST
CAMBRIDGE, MA 02138

232-6
71 APPLETON LLC
71 APPLETON ST
CAMBRIDGE, MA 02138

238-85
BIOTTI, JON M. & LESLIE JENG
43 APPLETON ST
CAMBRIDGE, MA 02138-3357

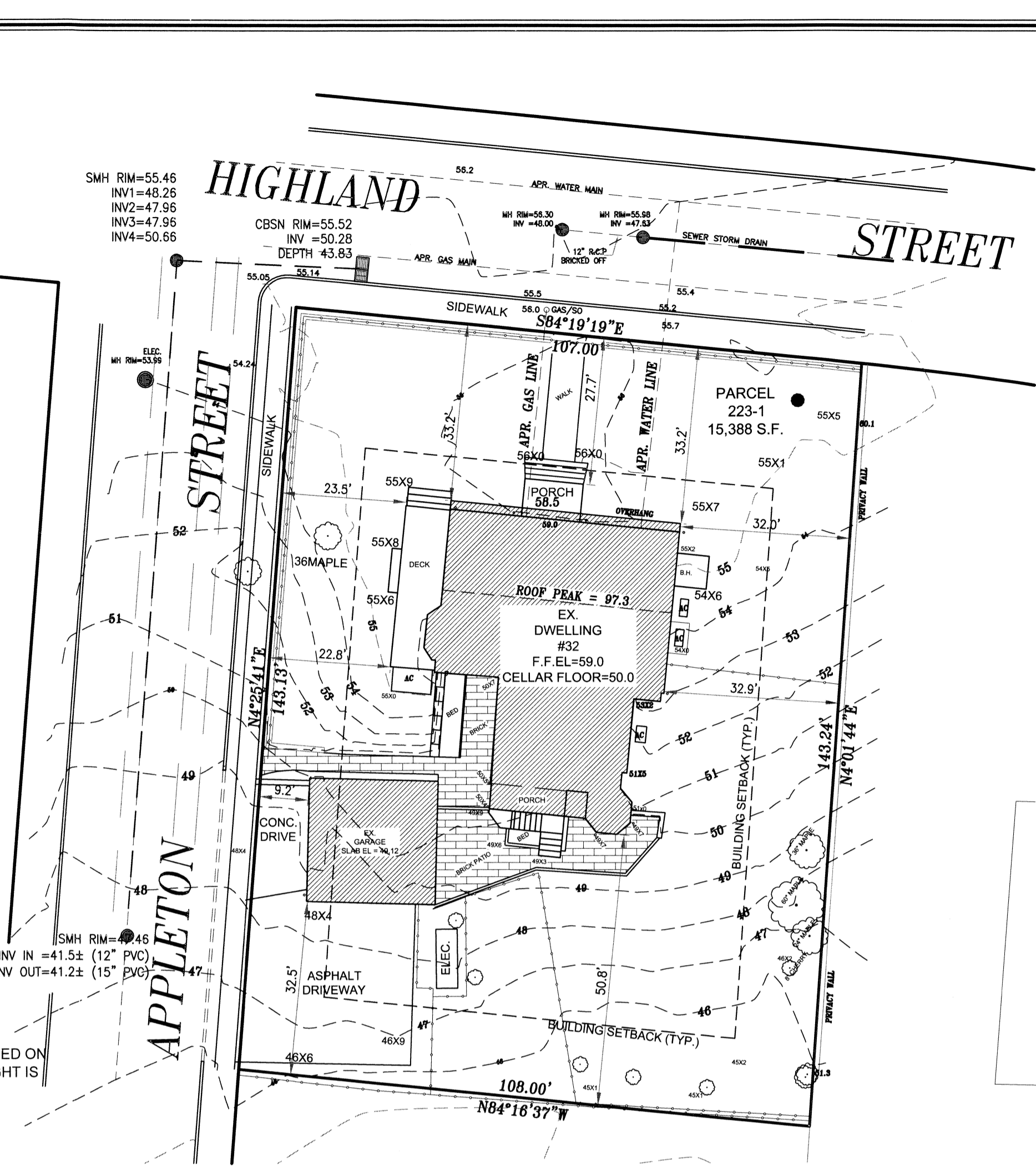
223-72
HINSHAW, FOSTER D. & DONNA L. STONE
TRUSTEES OF 57 BREWSTER REALTY TR.
57 BREWSTER ST
CAMBRIDGE, MA 02138

223-9
WOLFBERG, JUDITH R.
40 APPLETON ST
CAMBRIDGE, MA 02138



RECORD NOTES:
 RECORD DEED: 72010-491
 LOCUS IS ZONED A-1
 REQUIRED LOT AREA = 8,000 S.F. EXISTING LOT AREA = 15,388
 REQUIRED LOT WIDTH = 80' EXISTING = 107'
 MIN. FRONT YARD 25' EXISTING (HIGHLAND) = 27.7'
 EXISTING (APPLETON) = 22.8'
 EXISTING GARAGE (APPLETON) = 9.2'
 PROPOSED FRONT YARD SETBACKS
 APPLETON = 23.1'
 HIGHLAND = 27.7' (NO CHANGE)
 MIN. EAST SIDE YARD 15(SUM 35) EXISTING = 32.9" PROP 32.9"
 MIN. SOUTH SIDE 15(SUM 35) EXISTING (GARAGE) = 32.5' PROP = 32.8'
 EXISTING FAR CALCULATIONS:
 BASEMENT = 1,013 S.F.
 FIRST FLOOR = 2,061 S.F.
 SECOND FLOOR = 1,863 S.F.
 THIRD FLOOR = 1,374 S.F.
 FOURTH = 155 S.F.
 TOTAL 5,092 S.F./15,388 S.F. = 0.33
 PROPOSED FAR CALCULATIONS:
 BASEMENT = 2,194 S.F.
 FIRST FLOOR = 2,293 S.F.
 SECOND FLOOR = 1,877 S.F.
 THIRD FLOOR = 1,374 S.F.
 FOURTH = 0 S.F.
 TOTAL 7,738 S.F./15,388 S.F. = 0.50
 EXISTING RATIO OF PRIVATE OPEN SPACE 10,886 S.F./15,388 = 71%
 9,917 S.F. IS PERMEABLE = 9,917 / 10,886 = 91%
 PROPOSED RATIO OF PRIVATE OPEN SPACE = 10,086 S.F./15,388 = 65.5%
 9,628 S.F. IS PERMEABLE = 9,628/10,086 95%
 AVERAGE GRADE PLANE AROUND THE EX. DWELLING IS ELEVATION 52.32 BASED ON
 PLAN DATUM. HIGHEST POINT OF EXISTING ROOF IS 97.3 EXISTING ROOF HEIGHT IS
 44.97' ABOVE GRADE PLANE
 ELEVATIONS ON THIS PLAN REFER TO
 CAMBRIDGE SEWER BASE (ASSUMED)
 LOCATION OF UTILITIES TO BE CONSIDERED APPROXIMATE
 CALL DIG-SAFE OR APPROPRIATE AUTHORITIES TO VERIFY
 LOCATIONS AS NECESSARY

SEWER, DRAINAGE AND UTILITY NOTES:
 THERE ARE NO PROPOSED CHANGES TO EXISTING UTILITIES
 SERVICING THE DWELLING.
 PRIOR TO CONSTRUCTION
 UTILITY LOCATIONS WILL BE MARKED BY DIG-SAFE OR
 APPROPRIATE AUTHORITIES AND ARE NOT TO BE DISTURBED
 EXISTING SEWERAGE SYSTEM IS EQUIPPED WITH BACKFLOW
 PREVENTERS
 ALL BASEMENT FIXTURES SHALL HAVE A SEWER DRAIN BACKFLOW
 PREVENTER



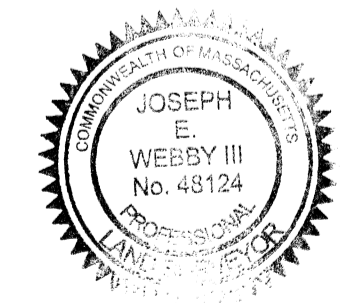
EXISTING CONDITIONS; SCALE :1"=20'
 SCALE:1"=20'

GRADE PLANE CALCULATION

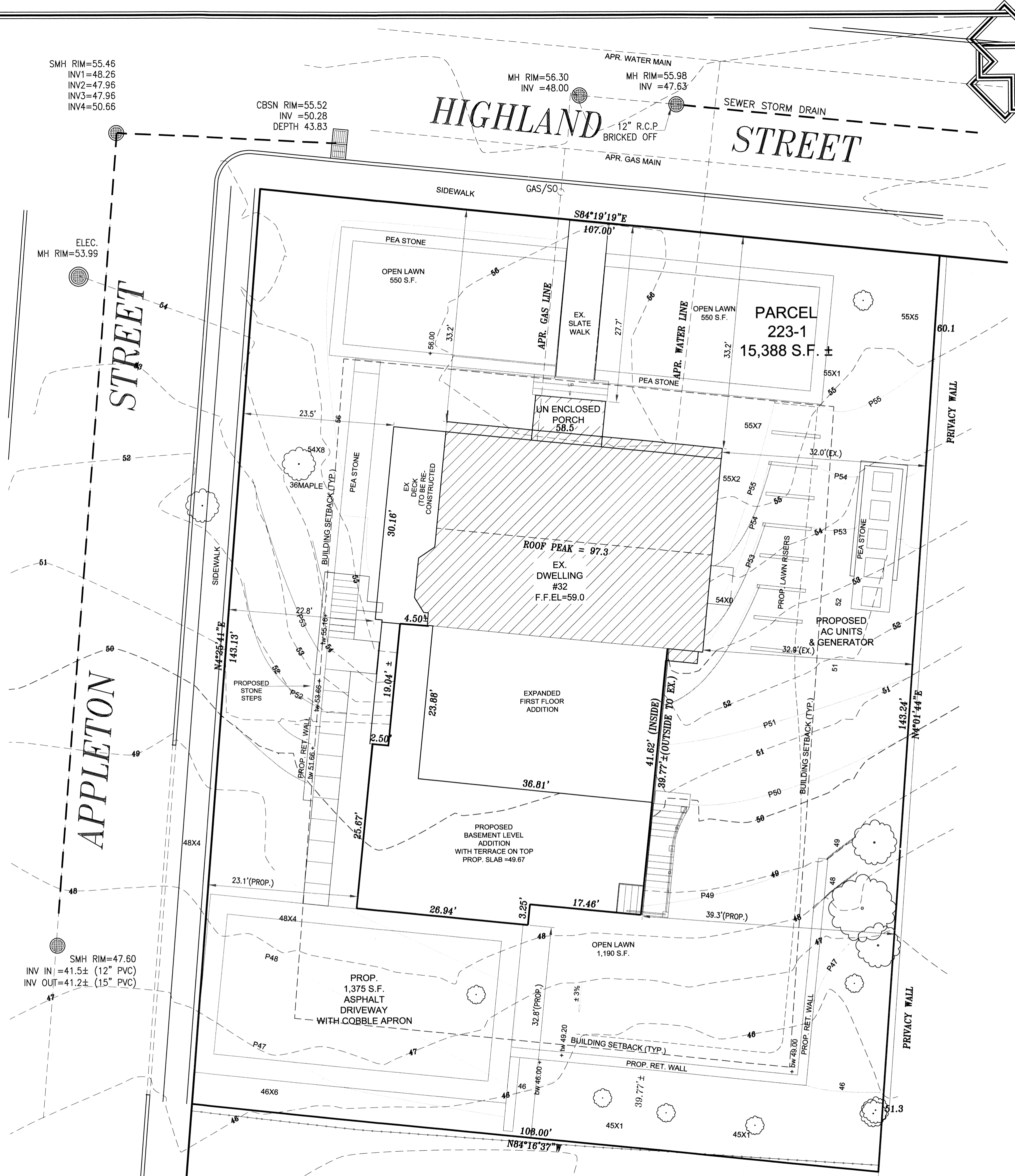
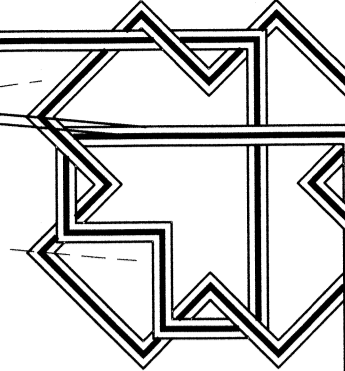
SEGMENT	E1	E2	AVERAGE	LENGTH	TOTAL (L'x")
1-2	55.9	56.0	55.95	43.4	2428.23
2-3	56.0	53.2	54.6	31.9	1,741.74
3-5	53.2	53.2	53.2	5.94	296.73
5-6	53.2	51.5	52.35	14.0	732.9
6-7	51.5	51.5	51.5	3	154.35
7-8	51.5	51.4	51.45	3	154.35
8-9	51.4	51.1	51.25	3.33	170.66
9-10	51.1	49.7	50.4	3.92	197.57
10-11	49.7	49.7	49.7	3.3	166.01
11-12	49.7	49.7	49.7	3.9	193.83
12-13	49.7	49.7	49.7	3.3	164.01
13-14	49.7	49.9	49.8	18.17	904.87
14-15	49.9	50.5	50.2	4.78	239.96
15-16	50.5	50.5	50.5	0.35	17.66
16-17	50.5	50.7	50.6	20.0	1012.0
17-18	50.7	55.0	52.85	12.05	636.84
18-1	55.0	55.6	55.3	33.63	1863.94
TOTAL			202.47	10,663.57	

AVERAGE EXISTING GRADE = 52.32
 EXISTING RIDGE ELEVATION = 97.3 (HEIGHT = 44.97)
 FIRST FLOOR ELEVATION = 59.0

I CERTIFY THAT:
 THE EXISTING DWELLING IS LOCATED AS SHOWN
 ON THIS PLAN, AND THAT THIS PLAT IS THE RESULT
 OF AN INSTRUMENT SURVEY AND DOES NOT LIE IN
 A FLOOD HAZARD ZONE AS DETERMINED BY FEMA

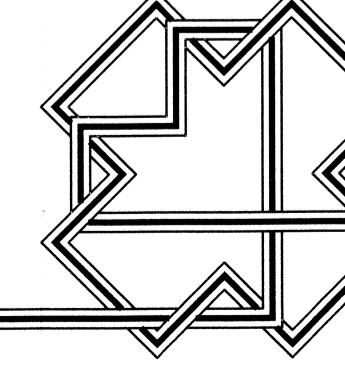
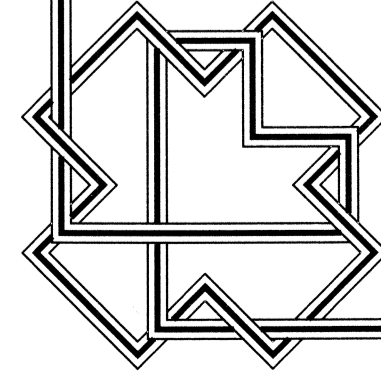


Joseph E. Webby III
 PROFESSIONAL LAND SURVEYOR
 2/13/2020 DATE



PROPOSED CONDITIONS, SCALE 1"=10'
 SCALE:1"=10'

PLAN OF LAND
 AT
 32 HIGHLAND STREET
CAMBRIDGE, MASS.
 PREPARED FOR
 AMOS THIRD CORNER LLC
 SCALE: (AS NOTED) FEBRUARY 13, 2020
 J WEBBY CONSULTING LLC.
 PROFESSIONAL LAND SURVEYORS & PLANNERS
 6 PINE HILL ROAD, KINGSTON, MA.
 02364 TEL. 1-781-983-3715





City of Cambridge

MASSACHUSETTS

BOARD OF ZONING APPEAL

831 Mass Avenue, Cambridge, MA.
(617) 349-6100

2
BZA

BZA

POSTING NOTICE – PICK UP SHEET

The undersigned picked up the notice board for the Board of Zoning Appeals Hearing.

Name: Alex Cohen Date: 4/10/20
(Print)

Address: 32 Highland St.

Case No. BZA-017267-2020

Hearing Date: 4-30-20

Thank you,
Bza Members



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

BZA APPLICATION FORM

Plan No: BZA-017267-2020

GENERAL INFORMATION

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

Special Permit : _____ Variance : v Appeal : _____

PETITIONER : Amos Third Corner LLC C/O Sarah Like Rhatigan, Esq.

PETITIONER'S ADDRESS : 12 Marshall Boston, MA 02108

LOCATION OF PROPERTY : 32 Highland St Cambridge, MA

TYPE OF OCCUPANCY : Single Family Residential ZONING DISTRICT : Residence A-1 Zone

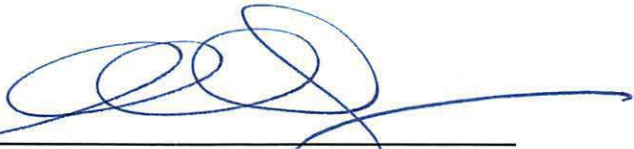
REASON FOR PETITION :
 Additions

DESCRIPTION OF PETITIONER'S PROPOSAL :

Renovations and addition to a pre-existing non-conforming single-family structure resulting in an encroachment into a front yard setback and an increase in Gross Floor Area of more than 25%.

SECTIONS OF ZONING ORDINANCE CITED :

Article 5.000 Section 5.31.1 (Table of Dimensional Requirements).
 Article 8.000 Section 8.22.3 (Alteration to Non-Conforming Structure).
 Article 10.000 Section 10.30 (Variance).

Original Signature(s) : 

(Petitioner(s) / Owner)

Sarah Like Rhatigan, Esq. on behalf of
owner, Amos ^(Print Name) Third Corner, LLC

Address : Trilogy Law LLC
12 Marshall Street Boston MA
 Tel. No. : 617-543-7009 02108
 E-Mail Address : Sarah@trilogylaw.com

Date : 3/3/20

BZA APPLICATION FORM - OWNERSHIP INFORMATION

(To be completed by **OWNER**, signed before a notary, and returned to Secretary of Board of Appeal).

I/We **Amos Third Corner LLC**

(**OWNER**)

Address: **32 Highland Street, Cambridge, Massachusetts 02138**


State that I/We own the property located at **32 Highland Street, Cambridge, Massachusetts 02138** which is the subject of this zoning application.

The record title of this property is in the name of
Amos Third Corner LLC

pursuant to a deed dated **December 4, 2018** and duly recorded in the Middlesex South County Registry of Deeds at Book **72010**, Page **491**.

SIGNATURE BY LAND OWNER BY:

Amos Third Corner LLC, a Massachusetts limited liability company



BY: Amelia S. Todd,
ITS: Manager
Duly authorized

Commonwealth of Massachusetts, County of Middlesex

The above-name **Amelia S. Todd, Manager of Amos Third Corner LLC**

personally appeared before me, this 3rd day of **February, 2020**, and made oath that the above statement is true.



Notary
My commission expires (Notary Seal).



JAYDEN DDHIR
Notary Public
Commonwealth of Massachusetts
My Commission Expires
May 16, 2025

STATE OF MASSACHUSETTS

IN SENATE,
January 15, 1928.

REPORT

OF THE

COMMISSIONERS OF THE DEPARTMENT OF PUBLIC SAFETY

FOR THE YEAR ENDING DECEMBER 31, 1927.

ALBANY, MASSACHUSETTS: STATE PRINTING OFFICE, 1928.

MADE IN MASSACHUSETTS

THE STATE OF MASSACHUSETTS

1928

MASSACHUSETTS

MASSACHUSETTS

MASSACHUSETTS

MASSACHUSETTS

MASSACHUSETTS
1928



BZA APPLICATION FORM

SUPPORTING STATEMENT FOR A VARIANCE

EACH OF THE FOLLOWING REQUIREMENTS FOR A VARIANCE MUST BE ESTABLISHED AND SET FORTH IN COMPLETE DETAIL BY THE APPLICANT IN ACCORDANCE WITH MGL 40A, SECTION 10:

A) A Literal enforcement of the provisions of this Ordinance would involve a substantial hardship, financial or otherwise, to the petitioner or appellant for the following reasons:

As part of a complete renovation of this home, the Petitioner proposes changes that are necessary in order to improve conditions within the home, accessibility to and from the house to the garage and yard, and to provide for more efficient design and use of the land. As built today, the configuration of this home and detached garage would pose an extreme challenge for residents with small children, or dlderly or physically challenged individuals, due to the difficulty of getting from the house out to the garage or rear yard areas. Additionally, backing out from the existing garage onto Appleton Street is somewhat dangerous under current conditions for pedestrians and vehicles passing by on Appleton Street.

The Petitioner's plans involve demolishing the existing detached two-car garage (with its high-pitched roof, located within 9.2 feet of the front lot line on Appleton Street) and construction an attached two-car garage and in-law/au pair living space that is built into the slope of the rear/side of this corner lot. Plans also include a modest expansion and modernization of the kitchen, resulting in a modest increase in GFA. These changes will improve conditions for duture homeowners, as well as this historic neighborhood.

The proposed one-story addition, extending behind the main portion of the house, set into the sloping grade of the lot, is designed so as to maximize efficiency for construction and living purposes, and minimize impacts on the neighborhood. Proposed changes to the on-site parking will also improve safety for veicles and pedestrians with improved visibility for vehicles entering and existing the site along Appleton Street.

Variance Relief is required in order to permit the following:

1) Increase in Gross Floor Area that amounts to a more than 25% increase in Gross Floor Area. It should be noted that the increase in volume is less than 25% (23% increase in volume);

2) Modes (by 1.9 feet) encloachment for the garage/lower-level addition into the front yard setback along Appleton Street; and

3) Very moignor (44 feet) exceeding of the maxium allowable Floor Area Ratio for the District (with FAR requested at .5028 instead of .5000)

A literal enforcent of the Ordinance would result in hardship to the petitioner and future owners of this Property by prohibiting the above described improvements that will provide for: better accessibility for homeowners, demolition of the large, encroaching garage, a more efficient use of land, a more desirable design improving views of this histric home from Appleton Street, and safer vehicular parking and access/egress to the site.

B) The hardship is owing to the following circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located for the following reasons:

The hardships described herein are owing to the unique circumstances relating to the unique constellation of features of the land and the structure including:

a) The topography of the land, which slopes down towards the right, rear of the lot; and

b) The interior structure and layout of the existing Victorian era home, with its relatively small kitchen at the rear and difficult access route from the house out to the garage and rear yard.

The topography and structure of the home together results in difficulties with accessibility for homeowners. The existing detached garage is located at the rear of the house along Appleton Street, at the same (or lower) grade as basement/lower level of the house. The homeowner who wishes to enter or leave her or his home by car must navigate steep and dangerous stairs from the kitchen down to the basement level, exit the rear basement door, walk outside on uneven ground to reach the exterior garage. Similarly, access to the rear/side yard is via this basement egress door, making it difficult for homeowners to access and enjoy the open space on the lot.

c) The shape of the land, a corner lot, and location of the existing structures (house and detached garage) within the front yard setback along Appleton Street, also contributes to the hardship in the following respect. The proposed addition is designed to align as an extension of the existing house for aesthetic and structural reasons. As such, the proposed addition continues the existing non-conformity of the front setback along Appleton Street. The existing structure is 22.8 feet from the front lot line, and the proposed addition is slightly further back, at 23.1 feet from the front lot line.

The combination of these factors creates the hardship for the Petitioner and any future homeowner. The removal of the detached garage and replacement with an attached garage drives the majority of the increase in GFA that arises, as a result of various aspects of the Ordinance definitions of included and excluded GFA, for the reasons described below.

C) DESIRABLE RELIEF MAY BE GRANTED WITHOUT EITHER:

1) Substantial detriment to the public good for the following reasons:

The relief from Section 5.31 may be granted without detriment to the public good. The increase in GFA results in an FAR just barely above the maximum 0.50 for the District, in a neighborhood of homes that are quite substantial in size. The increase in GFA of more than 25% will be less impactful than these GFA numbers may suggest. The following factors (the result of how the ordinance defines certain areas as either included or excluded GFA) contributes to the sizable GFA increase for the project:

a) The existing GFA excludes the floor area within the existing detached two-car garage;

b) The proposed GFA exempts floor area for only one vehicle bay of the proposed attached garage, and includes floor area for the second vehicle bay; and

c) The proposed GFA includes floor area in the lower-level addition which is an extension of the existing basement of the main portion of the house. Due to changes in grade on the lot, the rear portion of the basement/lower level counts as a "story above grade" and thus all floor area (with the exception of one vehicle bay) in the proposed garage/lower level addition is included in the calculation of the proposed GFA.

There will be no impact to the District in terms of street congestion or adequate parking on account of the relief requested herein. As described above, the proposed changes, including demolition of the existing encroaching garage, will result in a net positive effect for those in the neighborhood and passersby. In allowing this zoning relief, the Board will allow for the Petitioners to proceed with plans to make much needed improvements to allow for this historic, single-family to be updated for use by future residents, including those with families, elderly or physically disabled residents who would otherwise be deterred from residing in a home without these necessary improvements. The requested variance will contribute to the improvement of the aging housing stock in a manner that is respectful of the neighborhood and the District.

2) Relief may be granted without nullifying or substantially derogating from the intent or purpose of this Ordinance for the following reasons:

Consistent with the stated intent and purpose of the ordinance, as detailed in Section 1.30 of Article 1.000 Preamble of the Zoning ordinance as well as M.G.L Ch. 40A Zoning Section 10 Variances, the proposed project will:

- Create quality housing with valued open space for the benefit of the Petitioners, abutters, and successor owners.
- Not result in use or activity not otherwise permitted in the ordinance.
- Not result in negative impacts listed in the Section 1.3 regarding traffic, population density, blight and pollution.

*** If You have any questions as to whether you can establish all of the applicable legal requirements, you should consult with your own attorney.**

BZA APPLICATION FORM

DIMENSIONAL INFORMATION

APPLICANT: Trilogy Law LLC **PRESENT USE/OCCUPANCY:** Single Fam Res w Aux Apt
LOCATION: 32 Highland St Cambridge, MA **ZONE:** Residence A-1 Zone
PHONE: _____ **REQUESTED USE/OCCUPANCY:** Single Family Res

	<u>EXISTING CONDITIONS</u>	<u>REQUESTED CONDITIONS</u>	<u>ORDINANCE REQUIREMENTS</u> ¹	
<u>TOTAL GROSS FLOOR AREA:</u>	5,092 sf	7,738 sf	7,694	(max.)
<u>LOT AREA:</u>	15,388 sf	15,388 sf	8,000 sf	(min.)
<u>RATIO OF GROSS FLOOR AREA TO LOT AREA:</u> ²	0.3309	0.5028	0.5000	(max.)
<u>LOT AREA FOR EACH DWELLING UNIT:</u>	15,388 sf	15,388 sf	6,000 sf	(min.)
<u>SIZE OF LOT:</u>				
WIDTH	107 ft	107 ft	80 ft	(min.)
DEPTH	143 ft	143 ft	n/a	
<u>SETBACKS IN FEET:</u>				
FRONT	27.7/22.8	27.7/22.8	25.0	(min.)
REAR	n/a	n/a	n/a	(min.)
LEFT SIDE	32.9 ft	32.9 ft	15/sum35	(min.)
RIGHT SIDE	50.8/32.5	32.8 ft	15/sum35	(min.)
<u>SIZE OF BLDG.:</u>				
HEIGHT	44.97 ft	44.97 ft	35.00 ft	(max.)
LENGTH	59.24 ft	77.24 ft	n/a	
WIDTH	50.00 ft	50.00 ft	n/a	
<u>RATIO OF USABLE OPEN SPACE TO LOT AREA:</u>	0.71	0.66	0.50	(min.)
<u>NO. OF DWELLING UNITS:</u>	1 + aux	1	2	(max.)
<u>NO. OF PARKING SPACES:</u>	5(3+2 gar)	4(2+2 gar)	1 (min)	(min./max)
<u>NO. OF LOADING AREAS:</u>	0	0	0	(min.)
<u>DISTANCE TO NEAREST BLDG. ON SAME LOT:</u>	8.0 ft	n/a	n/a	(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.

Detached garage with high-pitched roof located within the front yard setback, will be demolished. Proposed construction type is conventional and engineered 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'.

CITY OF CAMBRIDGE

Massachusetts
BOARD OF ZONING APPEAL
831 Mass Avenue, Cambridge, MA.
617) 349-6100

April 15, 2020

Trilogy Law LLC
C/o Sarah L. Rhatigan, Esq.
12 Marshall Street
Boston, MA 02108

RE: 32 Highland Street – BZA-017267-2020

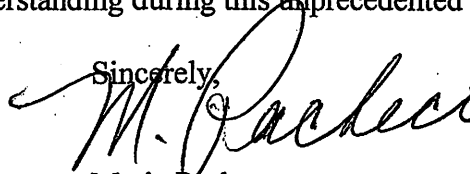
Dear Ms. Rhatigan,

I am writing to you in regard to your above up-coming Board of Zoning Appeal Hearing.

At this time the City will not be holding any non-essential public meetings due to the COVID-19 Pandemic and the City Manager's closure of all City buildings to non-essential business. On April 3, 2020, the Governor signed into law Chapter 53 of the Acts of 2020 ("Act"), which extends all land use permitting deadlines until after the State of Emergency is lifted. In light of the extensions provided for in the Act and the closure of City buildings, at this time the Board of Zoning Appeal will be rescheduling all public hearings in accordance with the extensions permitted under the Act. You will receive notice of the new date, once the hearing is rescheduled.

Thank you for your patience and understanding during this unprecedented time.

Sincerely,



Maria Pacheco
Administrative Assistant

Pacheco, Maria

From: Gordon, Roy G. <gordon@chemistry.harvard.edu>
Sent: Monday, April 27, 2020 4:55 PM
To: Pacheco, Maria
Subject: BZA-017267-2020
Attachments: petition re 32 Highland Street.pdf

Attached please find my attached letter opposing the petition of AMOS Third Corner LLC, regarding proposed changes to property at 32 Highland Street.

Thanks for your attention.

Roy G. Gordon
22 Highland Street

22 Highland Street
Cambridge, MA 02138

April 27, 2020

Board of Zoning Appeal

City of Cambridge, MA

re: BZA-017267-2020

Dear Board Members,

The developer of the property at 32 Highland Street proposes a large addition (representing a more than 25% increase in Gross Floor Area) to form a structure that would exceed the size allowed in this residential A-1 zone. I write to **strongly oppose** the granting of this variance.

This lot is in an area classified as A-1, which is restricted to structures with single-family occupancy. The proposed addition of a **separate “in-law/au pair living space”** (quoted from section A) of the Supporting Statement) would violate the single-family occupancy restrictions of this zone A-1 property. Thus the Board should reject this petition on this ground alone.

The developer also argues that the proposed changes are necessary so that the property might be sold to a new owner who could face “an extreme challenge for residents with small children, or elderly or physically challenged individuals.” (quoted from BZA Application). Actually, one of the previous owners of this property was confined to a wheel chair, but she nevertheless managed to live comfortably on all levels of this house for many years. The previous owners installed an elevator that allowed her full access to all floors of the house.

I strongly recommend that the Zoning Board deny this petition, which goes counter to both the letter and the spirit of the protections provided by the current Zoning Laws.

Sincerely,



Roy G. Gordon

March 11, 2020

Via Hand Delivery & Email

*Via First Class
Mail*

*Resending
4/28/20*

Board of Zoning Appeal
City of Cambridge
831 Massachusetts Avenue
Cambridge, MA 02139

Re: Board of Zoning Appeal Case No. BZA-017267-2020—Application for Variance
for 32 Highland Street, Cambridge, MA

Dear Members of the Board:

In connection with the above-referenced Application for Variance, the Petitioner respectfully submits the enclosed additional items for your review and consideration:

- 1) Existing and Proposed Illustrative Plans
- 2) Existing and Proposed Renderings

Kindly accept these items for filing. Thank you for your consideration.

Sincerely,



Sarah Like Rhatigan, Esq.

Enclosures

CC: Ms. Lori Leland (via email)
Mr. Joseph DiLazzaro (via email)



VIEW 1 - EXISTING CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 2 - EXISTING CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020



VIEW 3 - EXISTING CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020



VIEW 4 - EXISTING CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020



VIEW 5 - EXISTING CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 1 - PROPOSED CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 2 - PROPOSED CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020



VIEW 3 - PROPOSED CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 4 - PROPOSED CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 5 - PROPOSED CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 6 - PROPOSED CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 7 - PROPOSED CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020



VIEW 8 - PROPOSED CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 9 - PROPOSED CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 10 - PROPOSED CONDITIONS

AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com



VIEW 11 - PROPOSED CONDITIONS
AMOS GROUP- 32 Highland Street, Cambridge MA
9 March 2020



APPLETON STREET

HIGHLAND STREET

FFE: 59.0

BUILDING SETBACK (TYP.)

AMOS RESIDENCE
32 HIGHLAND STREET, CAMBRIDGE MA
ILLUSTRATIVE EXISTING CONDITIONS PLAN

09 MARCH 2020
SCALE: 1/8" = 1'-0"

MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC
matthew-cunningham.com





AMOS RESIDENCE

32 HIGHLAND STREET, CAMBRIDGE MA

ILLUSTRATIVE MASTERPLAN - REVISED

21 November 2019

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



MATTHEW
CUNNINGHAM
LANDSCAPE
DESIGN LLC

matthewcunningham.com



City of Cambridge

MASSACHUSETTS

BOARD OF ZONING APPEAL

831 Mass Avenue, Cambridge, MA.
(617) 349-6100

2 Bds

BZA

POSTING NOTICE – PICK UP SHEET

The undersigned picked up the notice board for the Board of Zoning Appeals Hearing.

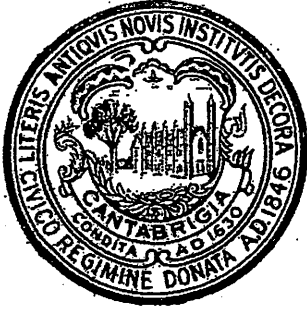
Name: Joseph DiHazzard Date: 7-7-20
(Print)

Address: 32 Highland St.

Case No. BZA-017267-2020

Hearing Date: 7/23/20

Thank you,
Bza Members



CITY OF CAMBRIDGE, MASSACHUSETTS

PLANNING BOARD

CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

July 9, 2020

To: The Board of Zoning Appeal

From: The Planning Board

RE: BZA cases to be heard on July 23, 2020.

The Planning Board have no comments on the cases listed on the BZA agenda.

Pacheco, Maria

From: Myra Gordon <myra.gordon@gmail.com>
Sent: Thursday, July 16, 2020 9:25 AM
To: Pacheco, Maria
Subject: BZA-017267-2020

Zoning board of Cambridge

I am writing with regard to the petition BZA-017267-2020 about 32 Highland Street.

I am strongly opposed to the request for a variance in this matter.

There is not a reason to increase an already large and non conforming house by more than 25%. There is no hardship in using the house and yard as they are configured.

The request which shows proposed plans for removing the current garages and turning them to attach to the house does not show or discuss the number of established trees that would be impacted by this move. There is no way that existing trees would not be damaged or destroyed. . The area of the driveway surface would be large and unsightly.

The proposal alleges hardship in using the property. I have lived on this street for close to fifty years and knew the previous owner . There was not a problem using the property .

This request is coming from Amos Third Corner LLC, developers not the next occupant of the property at #32 . The new occupant will no doubt want other changes. Further these developers have worked in the neighborhood before. We are not impressed with their candor about this project and the impact on the street, the trees, and the neighborhood.

They have on their other projects exhibited little regard for the neighborhood and the neighbors.

There is no hardship here. There is no need to expand an already large and non conforming structure even more, This petition should be denied.

Myra Gordon
neighbor

Pacheco, Maria

BA-017267-2020

From: christian@nolendenny.com
Sent: Friday, July 17, 2020 12:00 PM
To: Pacheco, Maria
Subject: 32 Highland Street Zoning Appeal


Dear Zoning Board of Appeal,

My name is Christian Nolen. I live at 71 Appleton Street, directly across from the property at 32 Highland Street.

I am writing to the Board to voice my opposition to the zoning relief sought by the group developing 32 Highland Street. There is no need for the house at 32 Highland Street to be increased by over 25%. I oppose the removal of large mature trees from the property.

I strongly urge you reject the appeal. This house does not need to be increased by over 25%.

Christian Nolen
71 Appleton Street
Cambridge, MA

From: Joseph DiLazzaro joe@opusmasterbuilders.com 
Subject: Fwd: 32 Highland garage and landscape
Date: July 17, 2020 at 5:47 AM
To: Sarah Rhatigan Sarah@trilogylaw.com
Cc: Joseph DiLazzaro joe@opusmasterbuilders.com



[See support from 43 Appleton](#)



Joseph DiLazzaro
President
OPUS Master Builders, Inc.
29 Church St Winchester, MA 01890
371 Shawmut Ave Boston, MA 02118

T/617-423-3014 F/617-585-3014
C 617-594-5310
opusmasterbuilders.com
joe@opusmasterbuilders.com

Imagination Collaboration Craft

Begin forwarded message:

From: Leslie Jeng <leslie.jeng@gmail.com>
Subject: 32 Highland garage and landscape
Date: April 8, 2020 at 9:31:10 AM EDT
To: joe@opusmasterbuilders.com

Hi Joe:

It was nice to talk to you yesterday. Thank you for sharing the renovation plans for the garage and landscape at 32 Highland Street in Cambridge. My husband, Jon Biotti, and I support the renovations that you propose.

Best of luck, Cheers, Leslie Jeng

43 Appleton Street, Cambridge, MA 0238
617.470.2209

From: Joseph DiLazzaro joe@opusmasterbuilders.com
Subject: Fwd: 32 Highland-BZA hearing
Date: July 17, 2020 at 5:36 AM
To: Sarah Rhatigan Sarah@trilogylaw.com
Cc: Joseph DiLazzaro joe@opusmasterbuilders.com

JD

Support from 71 Appleton street (see below)



Joseph DiLazzaro
President
OPUS Master Builders, Inc.
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C 617-594-5310
opusmasterbuilders.com
joe@opusmasterbuilders.com

Imagination Collaboration Craft

Begin forwarded message:

From: "sue@nolendenny.com" <sue@nolendenny.com>
Subject: Re: 32 Highland-BZA hearing
Date: April 11, 2020 at 2:18:56 PM EDT
To: Joseph DiLazzaro <joe@opusmasterbuilders.com>
Cc: "christian@nolendenny.com" <christian@nolendenny.com>

Hi Joe:
It looks nice. Thanks for sharing. Good luck.
Sue

On Apr 11, 2020, at 1:09 PM, Joseph DiLazzaro <joe@opusmasterbuilders.com> wrote:

Hi Sue,

Here are before and after renderings.

Let me know if you have any questions?

Joe

<image001.jpg>

Joseph DiLazzaro
President
OPUS Master Builders, Inc.
29 Church St Winchester, MA 01890

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C 617-594-5310

opusmasterbuilders.com

joe@opusmasterbuilders.com

Imagination Collaboration Craft

On Apr 11, 2020, at 10:52 AM, sue@nolendenny.com wrote:

Hi Joe:

Please forward the plan electronically and we will get back to you if we have questions .

Thanks!

Sent from my iPad

On Apr 8, 2020, at 11:18 AM, Joseph DiLazzaro <joe@opusmasterbuilders.com> wrote:

Hi Chris and Susan,

I hope that you and your family are safe and healthy.

I stopped by the house the other day and dropped off a letter to see if you were interested in looking at the proposed plans for 32 Highland that we will be presenting to the BZA.

If you want to set up a VC call or get together then I can walk you through the changes that are being proposed, which is primarily the garage and landscaping relating to the garage.

Yours,

Joe

<image001.jpg>

Joseph DiLazzaro

President

OPUS Master Builders, Inc.

29 Church St Winchester, MA 01890

371 Shawmut Ave Boston, MA 02118

T/617-423-3014 F/617-585-3014

C 617-594-5310

opusmasterbuilders.com

joe@opusmasterbuilders.com

Imagination Collaboration Craft

<image001.jpg>

<030920-Amos - 32 Highland - existing and proposed views .pdf>

Pacheco, Maria

From: Annette LaMond <annettelamond@gmail.com>
Sent: Monday, July 20, 2020 2:24 PM
To: Pacheco, Maria
Subject: BZA-017267-2020 (Neighbor Comment)

To the Members of the Board of Zoning Appeal:

I am writing to express my concern about the developer's proposal for 32 Highland Street. The plans, which would involve a lengthy construction period, were conceived before the coronavirus pandemic. Since then, homeowners have begun to look at their properties from the perspective of maximizing the potential enjoyment of their backyards. The newspapers have been full of such stories.

The proposed new garage at 32 Highland Street takes space from the current backyard, thereby reducing the area available for seating, children's play structures, etc. It is possible that the the potential buyer would decide to have the "new" garage removed, and even restore the original back of the house, which is quite attractive. The neighbors would then be subjected to a further period of construction.

I also would like to point out that the proposed garage addition has an institutional look (viewed from inside the property). To me, it recalls the kind of mortuary extension that one sees on the backs of Victorian houses that have been turned into funeral homes.

The plans also appear to specify considerable paved area. This paving is undesirable from an environmental perspective (contribution to the heat-island effect, impact on the health of the tree canopy, and stormwater runoff). A better plan would look for a way to minimize paving at 32 Highland.

I hope that the developer will reassess the proposal in light of a changed real estate market as well as environmental concerns.

As a 42-year resident of the Reservoir Hill neighborhood, I can say that it had been a pleasure to see the renovation of many houses on our streets. I am not opposed to change, but I feel that the plans at 32 Highland Street are not in the best interest of the neighborhood.

Sincerely,

Annette LaMond
7 Riedesel Avenue
Cambridge, MA 02138

July 22, 2020

Re: 32 Highland Street

Dear Zoning Board:

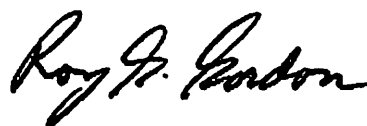
I still remain strongly opposed to the proposal for the expansion of the residence at 32 Highland Street. The developer questioned whether I had reviewed their proposal. Of course I had reviewed their proposal.

After reviewing the proposal again, I still find no argument justifying why a house that is **already** much larger than allowed by current zoning laws should be allowed to expand still more.

I bought my property with the firm assurance that zoning laws would always protect the green and spacious character of the neighborhood. Cutting down mature trees to enlarge a parking lot is not acceptable. Paving over a large portion of this property will increase storm runoff and worsen heat islanding. It is your duty to enforce the zoning laws. This house has already expanded beyond the reasonable limits allowed by zoning.

Please do your duty to enforce the zoning laws.

Sincerely,

A handwritten signature in black ink that reads "Roy G. Gordon". The signature is written in a cursive, flowing style.

Roy G. Gordon

Tel: 617-495-4017

Fax: 617-495-4723

e-mail:Gordon@chemistry.Harvard.edu



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

2020 MAR -5 PH 3:35
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

BZA APPLICATION FORM

Plan No: BZA-017267-2020

GENERAL INFORMATION

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

Special Permit : _____ Variance : ✓ Appeal : _____

PETITIONER : Amos Third Corner LLC C/O Sarah Like Rhatigan, Esq.

PETITIONER'S ADDRESS : 12 Marshall Boston, MA 02108

LOCATION OF PROPERTY : 32 Highland St Cambridge, MA

TYPE OF OCCUPANCY : Single Family Residential ZONING DISTRICT : Residence A-1 Zone

REASON FOR PETITION :
Additions

DESCRIPTION OF PETITIONER'S PROPOSAL :

Renovations and addition to a pre-existing non-conforming single-family structure resulting in an encroachment into a front yard setback and an increase in Gross Floor Area of more than 25%.

SECTIONS OF ZONING ORDINANCE CITED :

Article 5.000 Section 5.31.1 (Table of Dimensional Requirements).

Article 8.000 Section 8.22.3 (Alteration to Non-Conforming Structure).

Article 10.000 Section 10.30 (Variance).

Original Signature(s) :

Sarah Like Rhatigan, Esq., on
behalf of (Print Name) Petitioner

Address : Trilogy Law LLC
12 Marshall St. Boston MA 02108

Tel. No. : 617-543-7009

E-Mail Address : Sarah@trilogylaw.com

Date : 3/3/20



City of Cambridge

MASSACHUSETTS

BOARD OF ZONING APPEAL

831 Mass Avenue, Cambridge, MA.
(617) 349-6100

2020 JUL 28 AM 11:40
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

Board of Zoning Appeal Waiver Form

The Board of Zoning Appeal
831 Mass Avenue
Cambridge, MA 02139

RE: Case # BZA-017267-2020

Address: 32 Highland St.

Owner, Petitioner, or Representative: Sarah Like RNatigan, Esq.
(Print Name)

hereby waives the required time limits for holding a public hearing as required by Section 9 or Section 15 of the Zoning Act of the Commonwealth of Massachusetts, Massachusetts General Laws, Chapter 40A. The Owner, Petitioner, or Representative further hereby waives the Petitioner's and/or Owner's right to a Decision by the Board of Zoning Appeal on the above referenced case within the time period as required by Section 9 or Section 15 of the Zoning Act of the Commonwealth of Massachusetts, Massachusetts General Laws, Chapter 40A, and/or Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, codified as 47 U.S.C. §1455(a), or any other relevant state or federal regulation or law.

Date: 7/28/20

[Handwritten Signature]
Signature

* * * * *

(10:29 p.m.)

Sitting Members: Constantine Alexander, Brendan Sullivan,
Janet Green, Jim Monteverde, Slater W.
Anderson

CONSTANTINE ALEXANDER: And last, and certainly
(sic) least, we have Case 017267 -- 32 Highland Street.

SARAH RHATIGAN: Good evening. My name is Sarah
Rhatigan from Trilogy Law, LLC. And I am here representing
the petitioners. I'm not sure if you can hear me.

CONSTANTINE ALEXANDER: We can hear you.

SARAH RHATIGAN: Excellent, thank you. The --
thank you very much for the opportunity to present to you.
And I wish that we had an adorable baby in a video. That
was a great job by the Kemps. I love Zoom meetings for that
reason.

I'm here representing the petitioners. The
company name is Amos Third Corner, LLC. It is -- the
Principals are three developer women from Cambridge with
deep roots here who have done some stunning historic
renovation rehab projects -- actually on the other two
corners of this neighborhood.

1 I do believe that they did not need zoning relief
2 for those. So this Board may not be familiar with them.
3 But we are here before you today. This is a project
4 involving a home that -- Sisia, if you don't mind share the
5 slide deck that we forwarded to the city --

6 SISIA DAGLIAN: Yeah, just a second.

7 SARAH RHATIGAN: Oh, yeah, I'll keep talking. So
8 this is an old, historic home that is in a really beautiful
9 neighborhood of Cambridge on the corner of Highland Street
10 and Appleton Street. And -- just waiting to see if we can
11 get a visual here.

12 Okay so I failed to take a real photo of the front
13 of the house. There's actually not a lot of change that's
14 happening at the front. So the first slide here is actually
15 rendering, obviously.

16 Sisia, next slide, please?

17 I just gave a couple of overview photos -- sorry,
18 this isn't coming through exactly how I expected it. Here
19 we go. We can just see from the top down. So this is the
20 home that's situated on the corner of Highland and Appleton.
21 So folks would drive up Appleton up and over the hill. You
22 may have noticed the home or you may not have.

1 Sisia, if you could move two slides ahead, just
2 another view. Here we go, thank you. If you could stop
3 here for just a minute.

4 This would be the view if you were driving up
5 Appleton of the side of the house. And what's most
6 prominent is the sort of large A-frame to two-bay garage
7 that's right at the front of the street.

8 I don't recall the exact year that this was --
9 that the garage was constructed, but I think that the permit
10 might have been from something in the 1980s or so. It's
11 been there for a long time, but it's large. It's sort of
12 prominently at the front of the street.

13 And functionally, it's very difficult for a couple
14 reasons. One, getting in and out and across the sidewalk
15 and backing out onto Appleton Street, which actually is a
16 pretty well-traveled way, is not great for site lines and
17 for safety.

18 But also in terms of difficulty for the homeowner
19 to get out of the garage, walk in through a gate, and then
20 we'll talk about topography a little bit. But because of
21 the way the yard slopes down, they enter through kind of a
22 labyrinthian set of doors and stairs at a basement level to

1 get up to sort of the kitchen level, if you will. All of
2 this to say it doesn't look lovely, it's very inefficient,
3 and a little outdated.

4 So next slide, please?

5 Just another view of the same. So you get a
6 better sense of the issues in terms of safety. So people
7 are -- pedestrians are walking right along here, as a car is
8 coming out of a garage bay, you know, backing onto a pretty
9 busy road.

10 Next slide, please? We don't need this, the
11 Assessor Page. Next slide?

12 More views of what it looks like walking up the
13 sidewalk.

14 Next slide, please. Sorry. Too many pictures.
15 Next slide. Sorry. I want to be sensitive to your time
16 here. I included plans, because I wasn't sure how much of
17 our discussion would land on this. But if you don't mind,
18 Sisia, if you would just wait on this slide for a minute,
19 the one that you've got -- not this one, the previous slide?

20 SISIA DAGLIAN: What do you want to see

21 SARAH RHATIGAN: I'd like to see the basement
22 level that shows the garage. Okay, great. Thank you. This

1 is kind of where most of the change happens.

2 So essentially, let me step back for a minute.

3 This is, as you can imagine, a historic home. It's
4 preexisting nonconforming in two respects. One is its
5 height is -- I think it's 49 feet. It's not uncommon for
6 this neighborhood, but it is an old home with -- you know,
7 kind of a big, dramatic roof.

8 CONSTANTINE ALEXANDER: 45 feet, Sarah.

9 SARAH RHATIGAN: 45 feet. Thank you, thank you.
10 I'm sorry, I should have that dimensional too in front of
11 me. And the -- and that's also above average grade. And
12 the other nonconformity is that as it's on a corner, there
13 are two front yards.

14 And the front yard that is on the Appleton Street
15 side, there is a portion of the house that is 23 feet from
16 that front line. So that is already, you know,
17 nonconforming.

18 So as a result, we're falling under a section of
19 the ordinance that requires that if we're making a change,
20 even if our FAR would be at the minimum or the -- I'm sorry,
21 the maximum FAR, if it's an increase of more than 25
22 percent, either floor area or volume, that it requires a

1 variance.

2 So in this case, the floor area calculation is
3 increased by more than 25 percent. The volume increase is
4 actually about 23 percent. And I just want to explain some
5 of the -- kind of the technical reasons for the FAR
6 variance, because I think -- you know, we all see a lot of
7 variance cases and you think, "Wow, more than 25 percent of
8 an increase in FAR, that's a lot."

9 In this case, some of it is -- it's not that it's
10 not real, its just that it's a little bit of an artifact of
11 a few things that are going on related to the slope of the
12 land, and also, definitions for square footage in terms of
13 garage space.

14 So what happens is we're demolishing a two-bay
15 garage. And because it's detached, all of the square
16 footage that is in that large structure that's kind of
17 looming on the front of the street is not counted as FAR
18 under definition of the ordinance.

19 And then what we've done is we've attached --
20 we've created an attached garage, which is a much more
21 desirable, efficient, you know sort of modern amenity. But
22 -- and also desirable in a lot of other ways.

1 But in doing that, the ordinance only exempts one
2 bay of the garage when you're calculating FAR. So that's
3 one piece of it.

4 The other piece of this is that the garage is
5 actually existing on what we refer to as the basement level
6 of this building, of this house. Because, you know, the
7 first I would say two-thirds of the house, like when you
8 start at Highland Street, that whole level that we're on is
9 completely underground.

10 And once you get to the back area, as we'll see in
11 the further elevations further along, we're more than 50
12 percent above grade.

13 So under the ordinance and under the state
14 building code, that area at the back that we still see as
15 the basement is kind of tucked under there, it actually is
16 counted as floor area, because it's no longer basement.

17 Sorry for the long description, but I think it's
18 important to the case.

19 So what's planned for the new area that is what's
20 amounting to the increase in floor -- most of the increase
21 in floor area is the garage, the double bay garage, half of
22 which is counted as FAR; a relatively small bedroom with

1 closet amenity for -- I referred to it as like an au pair
2 space, but essentially a separate bedroom for, you know, a
3 visitor with a, you know, door access out.

4 And then a little -- a portion of a mudroom is
5 additional FAR as well. The blue is indicating new space.

6 Now I'll try to speed up my slides here. I'm
7 sorry, Sisia, do you mind advance to the next? So there's
8 some changes at the first floor level.

9 The kitchen is being expanded a bit. Mostly
10 they're taking over sort of a screened in porch area and
11 making it just kitchen. And then there's a little side
12 portion that's also increased floor area. But it's not -- I
13 think it amounts for something like 200 square feet.

14 Sisia, you could skip over the next few slides of
15 the upper levels, unless anybody wants to see a lot of that
16 detail. Because I've already described the bulk of where
17 the FAR is included. So the red hatch is showing what the
18 increase in FAR is attributed to.

19 Next slide, please? Next slide? Next slide?

20 So I'm just going to run through really quickly
21 the elevations. So this is the front of the house as you
22 look at it from Highland Street. So this is the existing.

1 Next slide?

2 SISIA DAGLIAN: It's not loading very well.

3 SARAH RHATIGAN: Okay, yeah. I'll slow down,
4 sorry. This is the proposed. What we missed -- the first
5 one, you can actually see the garage kind of protruding out
6 to the right in the existing, but that's okay.

7 Next slide?

8 There's not much change from the front. And this
9 is the side of the house that you would see if you were sort
10 of standing in the yard looking at the house, or maybe if
11 you were next door and there were no trees, but there are
12 trees. That's the existing view.

13 And next slide, please?

14 And that's the proposed. I don't know that
15 there's much visible -- again, from that neighbor's home.
16 We -- you know, we're able to have access to that, but there
17 is a lot of plantings in the back. But this gives you a
18 good view of what the slope that we're dealing with is like,
19 and how this area at the back, that there's sort of a bubble
20 around.

21 This is the new area that's the FAR. The windows
22 that are bubbled here are just bubbled to show that there

1 were some window changes, but those don't require any zoning
2 relief.

3 Next slide, please?

4 This is a view looking at what we're referring to as the
5 back of the house, but it's actually the right side of the
6 house. And this would be a view from the neighboring lot --
7 but again, with the trees and plantings and such, I don't
8 think anybody can see this as an actual matter.

9 The other thing this perspective doesn't help with
10 is it doesn't actually show the existing garage, which would
11 be a big chunk of the space on the left view.

12 Next slide, please?

13 Here's the rendering of what this would look like
14 with the new garage addition. I'm sorry, in elevation, not
15 a rendering.

16 Next page, next slide?

17 This is the existing view from Appleton Street.

18 Next slide?

19 And here is shown the addition.

20 And then two slides ahead, Sisia?

21 Okay so these are the renderings, if you don't
22 mind expand it out a little bit. Okay. So the existing

1 view of the front.

2 Okay, next slide.

3 I apologize for making you go through all the work
4 here. And there's a lot of -- there are a lot of beautiful
5 trees on this lot, and they are being preserved. I don't
6 believe there are any large trees being removed.

7 And just so you know, with me it's difficult on
8 Zoom, because, you know, we're virtually all here together,
9 but Liz Wipek (phonetic) from the ownership team, the
10 architect, and the landscape designer and the General
11 Contractor are all here to answer questions and participate.

12 Here's the rendering of what this would look like
13 from the corner.

14 Next slide, please?

15 Okay. This one is the -- this is kind of the most
16 operative one. That's the existing situation here, and then
17 here is the proposed. So if you don't mind, I'll just do a
18 little --

19 JANET GREEN: Can you go back one slide first, and
20 then --

21 SARAH RHATIGAN: Yeah.

22 JANET GREEN: -- and then come back to this so we

1 can see?

2 SARAH RHATIGAN: Yeah.

3 JANET GREEN: So that's what's there now? And
4 then the next slide is what you want it to look like?

5 SARAH RHATIGAN: Yep.

6 JANET GREEN: Okay.

7 SARAH RHATIGAN: Okay?

8 JANET GREEN: Yep.

9 SARAH RHATIGAN: So partly, you know, they're
10 partly achieving this in terms of, like, landscape changes.
11 In this view, you can see there's a row of high -- I believe
12 these are holly. And if anybody raise their hand, it's
13 probably our landscape designer, Justin. I'll give him a
14 chance to speak.

15 But those will be moved to this location. I
16 believe they're nearby here, but they're sort of behind the
17 garage. These will offer a very -- this is -- these are
18 very tall, a lot of screening from the neighbor to the
19 right. And there also is some addition of tall pines at the
20 front, as well.

21 Next slide? Okay. You can stop here.

22 So operation in terms of hardship. So -- excuse

1 me, I've described a fair amount the, kind of the issues
2 with accessing the house, the kind of efficiency that we
3 gain by getting rid of the detached garage, putting the
4 garage under.

5 Although we're technically increasing floor area
6 and volume, we're also kind of grooming a big, large
7 impediment and sort of density on the lot in a lot of ways,
8 in terms of how people experience it.

9 The real impact for the owners is that by doing
10 this, they not only have better access to sort of, like,
11 modern living -- you know, there's nowhere to park on
12 Highland Street to access the house, or they could street
13 park, but there's no driveway or curb cut there.

14 So the way people come and go in cars is through
15 this entrance. And it gives them a much more direct access
16 into their home. It also allows for people to go from the
17 main living floor, which is -- you know, at the kitchen
18 level, which is at the sort of terrace level -- down a
19 little set of stairs into the yard.

20 So the yard is quite a bit -- the back yard is
21 quite a bit deeper than the front yard. And there's really
22 no way to access it out of the side of the house. So it

1 kind of makes for this -- there's like a beautiful yard, but
2 nobody can really get to it that easily. And this
3 modification really solves a lot of those issues.

4 So in terms of, like, causes of the hardship that,
5 you know, meet the ordinance, I think you have a very clear
6 combination of the slope of the land and the existing,
7 nonconforming structure being situated such that it's a
8 little bit close to this Appleton Street front yard, so that
9 the existing house is slightly on a skew.

10 The addition is built so that essentially if you
11 think of the front of the house at Highland Street, you are
12 extending the house straight backwards. But because the
13 house is a little askew, as you extend straight back you
14 created a little bit more encroachment into that front yard
15 -- you know, which is one of the dimensional
16 nonconformities.

17 And, you know, the historic structure, I mean I
18 think that it's a hardship in terms of -- you know, some
19 people would say, "Well, you know, who really needs this
20 kind of modern amenity?" But as a practical matter for a
21 developer to be able to take a home like this, which if you
22 look at the inside is just a massive, a massive construction

1 project.

2 And to be able to, you know, fund a really kind of
3 beautiful restoration and renovation to be sold in any kind
4 of realistic market these days, there are -- you know,
5 there's certain, you know, kind of modern amenities that
6 they just really as a practical matter have to have.

7 And so, the whole kind of design pkgs is geared to
8 providing -- you know, something that can be lived in by a
9 family and sort of with what they would expect with a house
10 of this size.

11 Could you advance the next slide? I think that
12 there are just a few more, a few more shots. Sisia, you can
13 just kind of go through slowly. If any of the Board members
14 want me to stop and slow down, I'm happy to.

15 [Pause] That one's a little bit more at street eye
16 level, so you've got a better sense. That one's actually
17 inside. You're inside their, you know, property.

18 [Pause]

19 Same with this shot, obviously.

20 [Pause]

21 And I think that, Sisia, you could pass through
22 the next two.

1 [Pause]

2 That's the view from their back yard, so you can
3 see the access to the yard that I was referring to.

4 And then if you don't mind, if you could land on
5 the two -- yep, so this is the existing sort of landscape
6 plan, if you will. It's just a -- you know, it's kind of
7 showing where the garage is located, where the house is,
8 where the main big trees are. And then this is the kind of
9 master plan for what the landscaping would look like.

10 So, you know, in sum, I know we did see that there
11 was one letter in the file from a neighbor two doors down, I
12 believe, Mr. Gordon, who had expressed some concerns. And
13 if you don't mind me just addressing one of the things that
14 he mentioned that I think maybe would be a helpful
15 clarification. And obviously, I'm sure, you know, if he's
16 here he may want an opportunity to talk.

17 He had referred to the downstairs au pair area,
18 which is what I referred to it as in the application as
19 being an apartment, or -- you know, just another kind of,
20 you know, way for folks to have an apartment.

21 And one thing I wanted to clarify is that that's
22 not actually the intent. There's no plan to have, you know,

1 a kitchen or a separate -- you know, egress for a separate
2 apartment there.

3 But one thing I haven't mentioned in this so far
4 is that the -- before the purchase, and before these folks
5 started to demolish interiors, which they began a while ago,
6 there actually were two apartments in this house. One was
7 in the basement, in the area where this sort of au pair
8 bedroom area is going to be created.

9 And then the other was actually up on the --
10 what's essentially a fourth floor. It's like, a -- I'm
11 trying to remember, it's sort of a loft area, but there was
12 actually a separate apartment up there.

13 I'm not sure if the owners actually use those --
14 honestly rented those as apartments, but they were set up
15 with full -- you know, kitchen facilities. And there's some
16 really kind of unique stuff. In the basement for example,
17 there's a whole swimming pool down there. I guess, like
18 kind of a vintage lap pool, which is not going to be there
19 anymore.

20 But there's not an intention here. There's not
21 really an expectation that this is going to be the type of
22 property that's going to be marketed to folks to try to --

1 you know, rent out rooms.

2 I mean, it would really be a single-family home,
3 you know, sold to presumably a family who's, you know, who
4 wants to live in this quite, you know, stunning neighborhood
5 full of very grand, beautiful homes, all -- you know, quite
6 large.

7 The square footage is just the one last point, and
8 then I'll stop talking and take some questions. But the
9 square footage is almost exactly at 5.0 at the maximum by
10 sort of a -- by a rounding error. If you round out to the
11 thousandths, ten-thousandths, it's slightly over. It's not
12 5.0000, I think it's .5049 or something to that effect.

13 But that type of deviation, we were asking for a
14 variance anyway, but we're essentially within zoning. And
15 again, the other slight deviation from the dimensional is
16 that the extended portion of the garage is within that front
17 yard setback by I think it's something like 1.9 feet but not
18 a lot, but a little bit. So another reason for a variance.

19 Thank you. I'll stop talking and be happy to take
20 questions.

21 CONSTANTINE ALEXANDER: Members of the Board,
22 questions?

1 BRENDAN SULLIVAN: Brendan Sullivan, no. No
2 questions. I was a little perplexed by that bedroom down
3 there, but I guess maybe you have explained in a way.

4 CONSTANTINE ALEXANDER: Jim, any questions?

5 JIM MONTEVERDE: I just have -- I have one. In
6 the rendered views, the proposed rendered views, when the --
7 are they to be taken literally in terms of the materiality?
8 Does the --

9 SARAH RHATIGAN: You know what, that's a good
10 question.

11 JIM MONTEVERDE: -- original structure go of blue-
12 y gray-y, and then the brick base really pops out, as
13 opposed to -- is that literal? And is the house -- what is
14 it? Is it stucco, or is it -- the change in materiality
15 between the two is kind of throwing me.

16 SARAH RHATIGAN: Okay, sure.

17 JIM MONTEVERDE: Between the brick is all --

18 SARAH RHATIGAN: I'm going to ask to see if Liz is
19 available. We were having some technical issues. She was
20 calling in and I think there were, like, thunderstorms.

21 JIM MONTEVERDE: Oh, that's okay. Yeah. I just
22 didn't see --

1 SARAH RHATIGAN: But let me see, I think --

2 JIM MONTEVERDE: -- I didn't see a photo of the
3 existing condition or I guess I could go on Google Maps and
4 find it.

5 SARAH RHATIGAN: Oh, the existing condition photo,
6 it's -- let's see, what page would it be on?

7 BRENDAN SULLIVAN: This is Brendan Sullivan.

8 SARAH RHATIGAN: It's way back. It's dark brown
9 --

10 BRENDAN SULLIVAN: It's a shingled house.

11 SARAH RHATIGAN: -- single. Yeah. It's dark
12 brown shingle.

13 BRENDAN SULLIVAN: Yeah. See the shingled house?

14 JIM MONTEVERDE: Right. So it's a dark brown --

15 SARAH RHATIGAN: -- yeah.

16 JOE DOIRON: -- shingle, yeah.

17 SARAH RHATIGAN: It is, yeah. Sally? I know,
18 Sally, you're on the phone. Sally DeJean -- I'm sorry, I
19 don't know how to pronounce your last name. I know you
20 well, but our architect is on, but I'm not sure if she has
21 the answer on the question of what color they're intending.

22 JIM MONTEVERDE: Well, that's okay, it's certainly

1 not a zoning question, but --

2 SISIA DAGLIAN: Sarah?

3 SARAH RHATIGAN: Yes.

4 SISIA DAGLIAN: Sorry. Liz should be able to
5 talk.

6 JIM MONTEVERDE: Oh, I see the photos.

7 SARAH RHATIGAN: Oh, I do. I see her phone
8 number.

9 JIM MONTEVERDE: Yeah. That's okay. I found the
10 photos.

11 SARAH RHATIGAN: Okay. Liz, are you able to
12 answer the question about color choice?

13 JIM MONTEVERDE: It's really just the materiality
14 and the --

15 SARAH RHATIGAN: I see, yeah.

16 JIM MONTEVERDE: -- what appears as the distinct
17 difference between this new very, you know, heavy, appealing
18 base element in the brick, and then if really it's literally
19 meant to be that, you know, lighter tone on what is in the -
20 - and from the original photo, you know the shingle style
21 house. Is that literal, the rendering?

22 SARAH RHATIGAN: Liz, are you able to respond?

1 SISIA DAGLIAN: I'm going to try disabling and
2 enabling it again. Because it should be able to.

3 JUSTIN CORBETT: I might be able to help with
4 that.

5 SISIA DAGLIAN: Gus, can you read the instructions
6 for phone? I think it's *6 to unmute?

7 SARAH RHATIGAN: Okay, well Liz just texted me.
8 We have a little group text thread and she said, "It won't
9 be that light" in terms of the color. Justin is our --
10 Justin Corbitt is on. Did -- you said that you might be
11 able to provide further information? Justin?

12 JUSTIN CORBETT: Yes, I was just going to say our
13 office helped to provide with the rendering software and
14 capabilities for this. And I think that in terms of the
15 texture on the house, that -- you know, it may not be
16 reading as a shingle, but I believe it's intended to be so.
17 So I'm just speaking purely on the software that was used to
18 achieve the texture on the house.

19 JIM MONTEVERDE: Yep.

20 JUSTIN CORBETT: But I believe it's going to stay
21 a shingle.

22 JIM MONTEVERDE: Yeah, okay. So the only thing

1 I'm seeing in the rendered version is just the strong
2 differentiation between the garage element, that lower
3 level, the deck, and the -- you know, the existing house.
4 It just seems like it's -- although I don't know that there
5 are any zoning issues to it. They just seem like they're
6 from two different worlds. But -- I'll leave it at that.

7 CONSTANTINE ALEXANDER: Anything else, Jim? You
8 want to ask anything else?

9 JIM MONTEVERDE: No, I think that's it. No, thank
10 you.

11 CONSTANTINE ALEXANDER: Slater?

12 SLATER ANDERSON: No, I don't have -- I mean, just
13 to respond to Jim's comment, there's -- to me, there's a
14 little bit of logic to the lower portion being brick, like a
15 foundation, just extend it out and the proportion being
16 shingle style.

17 So from a design standpoint, I find that it's got
18 an efficiency to it, versus the detached garage and the
19 disconnect of the original. So I don't have any issues.

20 CONSTANTINE ALEXANDER: Okay. Janet? Janet, are
21 you on?

22 JANET GREEN: I don't have anything to add to

1 this.

2 CONSTANTINE ALEXANDER: Thank you. Okay. With
3 that, we will go to public testimony. First of all, if
4 there's anyone who wants to speak tonight, you have to call
5 in.

6 And I'm looking for the call in instructions one
7 more time. Yeah. If you want to make a public comment, you
8 have to click the icon at the bottom of your Zoom screen
9 that says, "Raise hand." If you are calling in by phone, you
10 can raise your hand by pressing *9 and unmute or mute by
11 pressing *6.

12 Okay, we'll give people a few minutes to see,
13 because it takes a while to get through if you want to call.
14 And if not, then I'll turn to the written comments. We do
15 have letters, written commentary, which I'll deal with next.

16 SISIA DAGLIAN: Nope, not having anyone here.

17 CONSTANTINE ALEXANDER: I think it's coming up,
18 right?

19 SISIA DAGLIAN: Oh, there's one.

20 CONSTANTINE ALEXANDER: Okay. I'll wait just a
21 few minutes more. Okay. I assume there will be no more.

22 SISIA DAGLIAN: Linda?

1 LINDA KABOOLIAN: Yep.

2 SISIA DAGLIAN: Should be able to talk now.

3 LINDA KABOOLIAN: Yes, Linda Kaboolian.

4 CONSTANTINE ALEXANDER: Oh, Linda Kaboolian?

5 SISIA DAGLIAN: Yeah.

6 LINDA KABOOLIAN: Hi. I live at 23 Highland
7 Street, which is exactly opposite this house and slightly on
8 an angle, but opposite side of Highland Street.

9 And just wanted to let the Board know that my
10 experience going through three constructions with this firm
11 on three separate corners of the street is that they are
12 building on spec.

13 And that means that oftentimes -- in fact in the
14 other two properties, they do the house and then they sell
15 the house, and then they redo the house for the people
16 they've sold it to.

17 So this construction has gone on for quite a
18 while. In fact, this company has been working on these
19 three corners for near up to between four and five years.
20 And it's not clear if we gave a variance for this
21 construction that actually that would be what the ultimate
22 owner would do or use with property.

1 So instead of actually a homeowner like the other
2 petitioners who came this evening, who we could talk to
3 about what their intent was for the use of this space, et
4 cetera, that's not the case here.

5 And it's always been very difficult to me to have
6 any kind of conversation about accommodation when the people
7 who are asking for these changes are not actually going to
8 remain on the property as neighbors. That's all I'd like to
9 say.

10 CONSTANTINE ALEXANDER: Thank you. Thank you for
11 staying up this late and giving us your comments. Anyone
12 else wish -- on the line?

13 SISIA DAGLIAN: No, it doesn't look like it.

14 CONSTANTINE ALEXANDER: I'm sorry?

15 SISIA DAGLIAN: It doesn't look like it, no.
16 That's it. Yeah, that's it.

17 CONSTANTINE ALEXANDER: That's it?

18 SISIA DAGLIAN: That's it, yes.

19 CONSTANTINE ALEXANDER: Okay. As I mentioned, we
20 do have written commentary, some in support, and some not.
21 Sarah made reference to a letter from -- or from a
22 commentary from Roy Gordon, who lives at -- I'm not so sure,

1 that he has an address here, just a phone number.

2 He says he remains strongly opposed to the
3 proposed proposal for the expansion of the residence of 32
4 Highland street. "The developer questions whether I have
5 reviewed their proposal. Of course I've reviewed their
6 proposal. After reviewing the proposal again, I still find
7 no argument justifying why a house that is already much
8 larger than allowed by current zoning laws, should be
9 allowed to expand still more.

10 "I bought my property with the firm assurance that
11 selling laws would always protect the green and spacious
12 character of the neighborhood. Cutting down mature trees to
13 enlarge a parking lot is not acceptable. Paving over a
14 large portion of this property will increase storm runoff
15 and worsen heat islanding.

16 "It is your duty -- [and he's talking to us --] it
17 is your duty to enforce the zoning laws. This house has
18 already expanded beyond the reasonable limits allowed by
19 zoning. Please do your duty to enforce the zoning laws."

20 We have a letter from Annette Lamond, L-a-m-o-n-d,
21 who resides at 7 Riedesel Avenue. "I am writing to express
22 my concern about the developer's proposal for 32 Highland

1 Street.

2 "The plans, which would involve a lengthy
3 construction period, were conceived before the coronavirus
4 pandemic. Since then, homeowners have begun to look at
5 their properties from the perspective of maximizing the
6 potential enjoyment of their back yards. The newspapers
7 have been full of such stories.

8 "The proposed new garage at 32 Highland Street
9 takes space from the current back yard, thereby reducing the
10 area available for seating, children's play structures, et
11 cetera.

12 "It is possible that the potential buyer could
13 decide to have the new garage removed, and even restore the
14 original back of the house, which is quite attractive. The
15 neighbors would then be subjected to a further period of
16 construction.

17 "I would also like to point out that the proposed
18 garage addition has an institutional look, viewed from
19 inside the property. To me, it recalls the kind of mortuary
20 extension that one sees on the backs of Victorian houses
21 that have been turned into funeral homes.

22 "The plans also appear to specify considerable

1 paved area. This paving is undesirable from an
2 environmental perspective, contribution to the heat island
3 effect, impact on the health of the tree canopy, and
4 stormwater runoff. A better plan would look for a way to
5 minimize paving at 32 Highland.

6 I hope the developer will reassess the proposal in
7 light of a changed real estate market, as well as
8 environmental concerns. As a 42 year resident of the
9 Reservoir Hill neighborhood, I can say that it's a pleasure
10 to see the renovation of many houses on our streets. I am
11 not opposed to change. But I feel that the plans at 32
12 Highland Street are not in the best interest of the
13 neighborhood."

14 And we have a communication here from Leslie Jeng,
15 J-e-n-g, 43 Appleton Street. It's addressed to Leslie --
16 well, it says, "It was nice to talk to you yesterday. Thank
17 you for sharing the renovation plans for the garage and
18 landscape at 32 Highland Street in Cambridge. My husband,
19 Jon Biotti and I, support the renovations that you propose."

20 And there's a lot of correspondence in here
21 setting up comments, not on the merits. I have a letter
22 here from Christian Nolan, N-o-l-e-n, who resides at 71

1 Appleton Street.

2 "My name is Christian Nolen. I live at 71
3 Appleton Street, directly across from the property at 32
4 Highland Street. I'm writing to the Board to voice my
5 opposition to the zoning relief sought by the group
6 developing 32 Highland Street. There is no need for the
7 house at 32 Highland Street to be increased by over 25
8 percent. I oppose the removal of large, mature trees from
9 the property. I strongly urge you reject the appeal. The
10 house does not need to be increased by over 25 percent."

11 We have a letter from Myra Gordon. She is
12 strongly opposed to the request for the variance. Again, it
13 deals with damage to trees, the fact that the developers are
14 not going to be the occupants -- who are proposing this are
15 not going to be the next occupant of the property. And
16 that's it.

17 That closes public testimony. Any final comments,
18 Sarah, you want to make?

19 SARAH RHATIGAN: I mean, we would probably respond
20 to some of the negative comments, some of which are maybe
21 inaccurate, but if it's okay, I'd like to hear if the
22 members of the Board are concerned. I mean, I think that I

1 addressed some of these concerns. There aren't large,
2 mature trees that are being demolished.

3 And as you know, there's a Tree Ordinance, and the
4 tree warden, we have to -- you know, even if there were to
5 be, which there's not -- there would be a process for having
6 to apply. There's a lot of pavement now. Are you able to -
7 - Sisia, head back to one of the photographs that are
8 showing -- I'm sorry, head back down -- there we go, right,
9 yep.

10 There's quite a bit -- sorry, I'm trying to get to
11 either a rendering or a photograph that shows the garage
12 with the driveway next to it, with paving next to it.

13 SISIA DAGLIAN: Is that what you want?

14 SARAH RHATIGAN: No, I'm sorry, I'm sorry. The
15 existing -- the existing, so that we can see what the
16 existing conditions are. Thank you. Right there, yeah.

17 There's -- you know, there's a lot of paving to
18 the right here, as well as the garage in terms of -- you
19 know, people being concerned about -- you know, about
20 excessive paving.

21 We've got more than required open space. And the
22 -- you know, as we've talked about removing that garage

1 actually really improves the conditions a lot, in terms of -
2 - you know, permeable surface, et cetera.

3 And it's also it's a stormwater -- I'm sorry, my
4 General Contractor is trying to explain to me there's civil
5 design where the stormwater is contained on the property.
6 So there won't be any concerns about water runoff to
7 affecting neighbors.

8 I'm just trying to think of any other comments.
9 You know, I mean, size is always, you know, a little bit of
10 -- in the eye of the beholder.

11 I think I -- I hope I described pretty well to you
12 that a lot of the sort of square footage increase is a
13 little bit of an artifact, as -- I mean, not that it's not
14 real, I understand definitions under the ordinance, but this
15 is not a situation where somebody's building a massive
16 addition that goes up two floors and it's -- you know, the
17 type of kind of large, intrusive addition that would have
18 some real impacts on these folks.

19 Again, I'll now stop and listen to Board members.

20 CONSTANTINE ALEXANDER: Okay, Board members have
21 any comments? I have comments, but I'll wait. Brendan?

22 BRENDAN SULLIVAN: Yeah. Brendan Sullivan. I

1 just think it's a nice updating.

2 CONSTANTINE ALEXANDER: I'm sorry?

3 BRENDAN SULLIVAN: I think it's a nice updating to
4 the house. I think that the positioning of the existing
5 garage doesn't make sense, either from when it was
6 constructed and the functionality of parking your car and
7 walking all the way around and the topography is up many
8 steps and into the house, and the proposal -- well, it's
9 just a nice updating.

10 CONSTANTINE ALEXANDER: Okay. My view is just
11 different than Brendan's, which is not unusual. I don't see
12 a compelling need. I don't see the substantial hardship
13 that requires the granting of variance for this property.
14 This is a lovely old home.

15 It's probably dated to some extent; all old homes
16 often are. To me, I don't think the garage that they're
17 proposing to do and the paving adds. I think it detracts
18 from the structure.

19 I do think with one of the components that it
20 gives an institutional look to the property. So I do not
21 find the substantial hardship that justifies granting
22 relief. It's another case of developers buying a property,

1 dressing up the pig, and then getting a higher price. And
2 so I'm not overwhelmed by the need for the relief being
3 sought.

4 By the same token, I was singularly unimpressed by
5 the opposition. I think there was -- the people didn't seem
6 to understand what was going on. I -- based on their
7 landscaping plans that were submitted by the petitioner, I
8 don't see a substantial cutting down of mature trees. Yes,
9 there's going to be some landscaping changes. But I think
10 generally the landscaping will stay the same.

11 I think people are complaining -- are worried
12 about more construction. That comes with the territory. If
13 you're going to grant, if you're going to modify a
14 structure, either with zoning relief or not, there's going
15 to be construction and a temporary dislocation.

16 The environmental issues, yes, are there, but as a
17 Board, I'm not sure we're qualified to pass on these kinds
18 of environmental concerns that have been expressed.

19 So I see it I throw the ball up on the left hand,
20 on the right hand, and I come down on the right hand of
21 denying relief -- again, because I don't find any compelling
22 reason why we should grant the relief. That's my view.

1 JIM MONTEVERDE: Yeah. This is Jim Monteverde. I
2 would concur with Gus's sense. I don't sense the compelling
3 nature of the need for the renovation scope.

4 And I do have an issue with -- and I can
5 understand in a way improvement and the easier circulation,
6 or smoother circulation within the house and from the
7 parking.

8 But I do think it -- you know, one of the comments
9 that compared it to the mortuary or institutional -- you
10 know, I have that same issue, that it just is so out of --
11 it feels so out of character to the main house itself. But
12 more importantly, I just don't see the compelling need or
13 the hardship.

14 CONSTANTINE ALEXANDER: Thank you, Jim. We have
15 two more to hear from, if they wish to speak by the way.
16 There's no requirement. We can just go right to the vote.

17 SLATER ANDERSON: I'm happy to weigh in.

18 CONSTANTINE ALEXANDER: Go ahead.

19 SLATER ANDERSON: You know, I hate to differ --
20 well, I don't differ with Brendan, and I think that the
21 design is an improvement, a functional improvement. I think
22 that when you think of the -- you know the winters in New

1 England and maybe multiple generations living in this house
2 and not having to walk out on an icy sidewalk up -- you
3 know, the topography that exists on this property, that is a
4 hardship, the topography.

5 And I think bringing all of that correctional and
6 functionality inside, integration the garage with the house
7 is a more efficient use of the site. I think
8 architecturally it's fine. You only really see it from an
9 oblique angle at this angle right here, you don't see it
10 from the front of the house or the other sides, really.

11 So I'm -- and there's going to be -- as Gus said,
12 there's going to be a project here regardless. And it's
13 going to be a disruptive construction project, regardless of
14 this variance.

15 I do feel like while it's a 25 percent increase, I
16 mean it's -- it is in fact an expansion of the basement
17 across this city with the barren amendment -- you know, you
18 have basements that are exempt from FAR.

19 So, you know, I think that it's, you know, they're
20 burdened by application of the zoning in a way that -- you
21 know, it doesn't feel like a 25 percent increase to the
22 structure from my view, particularly when you subtract the

1 volume of the existing garage from the project.

2 So, you know, I'm -- and all the stormwater stuff
3 and all -- I mean all of that's dealt with otherwise, either
4 through the Tree Ordinance or the, you know building code,
5 you know, stormwater management laws, you know, so that's my
6 two cents on it.

7 CONSTANTINE ALEXANDER: Thank you, Slater. Janet,
8 do you want to say anything or not? It's up to you.

9 JANET GREEN: I -- yes. I'm going to abstain.
10 Because I can't bring myself to feel like they've made a
11 case for renovating this house, what the need was. Well, I
12 can imagine what the need was, but that the need as we
13 define it.

14 On the other hand, I believe that somebody's going
15 to do it. So I have found myself unable to think about
16 whether I can vote yes or no. So I'm going to abstain.

17 CONSTANTINE ALEXANDER: Okay.

18 SARAH RHATIGAN: Chair, Mr. Chairman, would you
19 mind if I just ask a few questions? I'm listening to all of
20 your comments very carefully, and this is --

21 CONSTANTINE ALEXANDER: Okay, I don't think I
22 would be -- I'm sorry, I closed public testimony. I

1 wouldn't be -- it wouldn't be appropriate to debate the
2 comments that you're hearing from the members of the Board,
3 or to -- you know, to probe with them. They are what they
4 are.

5 SARAH RHATIGAN: No, I was just -- no, I was, I
6 was actually just going to try to understand better where
7 to, you know, kind of where to go with this discussion.
8 Because the owners -- the owners are going to need to sort
9 of solve some problems.

10 And if we're going to go back to the drawing board
11 and kind of put our heads around this, we're trying to get a
12 sense of what the most -- what the most -- what you most
13 don't like about it.

14 So for example, talking about the mortuary look,
15 so -- you know, treatment of materials is something that we
16 would be happy to discuss with, we'd be happy to reconsider.

17 CONSTANTINE ALEXANDER: Sarah, if we have this
18 discussion, then you're going to ask to continue the case.
19 And we'll have one more continuance. Enough is enough with
20 the continuances. You've made your proposal. You know this
21 Board. We're going to take a vote --

22 SARAH RHATIGAN: Well, that's actually --

1 CONSTANTINE ALEXANDER: -- and if the vote is
2 unfavorable --

3 SARAH RHATIGAN: -- I -- I --

4 CONSTANTINE ALEXANDER: -- if the vote is
5 unfavorable, you can come back with a different proposal
6 within two years. If it's not, I mean --

7 SARAH RHATIGAN: -- I actually, to be honest with
8 you, Mr. Chairman, I've actually never had a case where you
9 haven't in a situation like this offered the opportunity for
10 a continuance. We've never been before you. We were
11 originally scheduled in March, and then COVID shut us down.
12 But we've never had the chance to present our case to you.

13 CONSTANTINE ALEXANDER: Are you going to -- are
14 you requesting a continuance?

15 SARAH RHATIGAN: I would love to request a
16 continuance.

17 CONSTANTINE ALEXANDER: Other members of the Board
18 have any problems. I have no problem with continuing this
19 case. I don't like it, but, you know, that's a courtesy
20 we've extended to many other petitioners, and I'd be happy
21 to extend it to you as well.

22 So we'll have to find a date in the future. So

1 you want to continue the case, I will make a motion to
2 continue the case. And if members are not in favor of
3 continuing the case, that motion will be defeated, and then
4 we'll go to a vote on the merits of the case before us
5 tonight.

6 Is that okay with other members of the Board?

7 BRENDAN SULLIVAN: That's fine.

8 CONSTANTINE ALEXANDER: Okay. I've got a single
9 from Brendan to my left, and I assume -- I'll give everybody
10 else the chance. Should I make the motion to continue, and
11 we'll vote on that?

12 JANET GREEN: Yes.

13 JIM MONTEVERDE: This is Jim Monteverde. I'd say
14 yes.

15 CONSTANTINE ALEXANDER: Okay.

16 JANET GREEN: Janet Green. I say yes.

17 CONSTANTINE ALEXANDER: Okay. So let's move. The
18 Chair moves that we continue this case as a case heard until
19 7:00 p.m. on -- Sisia?

20 SISIA DAGLIAN: Well --

21 CONSTANTINE ALEXANDER: Earliest day we could do
22 it, and then we'll find out whether it works for the

1 petitioner.

2 SISIA DAGLIAN: I think October 8 was when --

3 CONSTANTINE ALEXANDER: Everyone, October 8?

4 SISIA DAGLIAN: -- everyone here was available,
5 right?

6 CONSTANTINE ALEXANDER: Okay.

7 SLATER ANDERSON: No.

8 CONSTANTINE ALEXANDER: Will October 8 work for
9 you, Sarah?

10 SARAH RHATIGAN: Um--

11 CONSTANTINE ALEXANDER: Or you want a farther date
12 out? We can't do anything earlier.

13 SARAH RHATIGAN: No.

14 CONSTANTINE ALEXANDER: Our business card is full.

15 SARAH RHATIGAN: Yep, I'm just checking with
16 folks. We'll make that work, yes, October 8.

17 CONSTANTINE ALEXANDER: Okay. So go back to the
18 motion to continue this case as a case heard until 7:00 p.m.
19 on October 8, subject to the following conditions, and you
20 know these as well as I do, Sarah.

21 The first is that the petitioner sign a waiver of
22 time for decision. Since we're not all here in person,

1 you'll have to go to the -- or your client will have to go
2 to the ISD.

3 And our condition is that if you that waiver for
4 time for decision must be signed by a week from today. If
5 that is not done, the continuance will be over, and the
6 petition dismissed. In other words, unfavorable relief will
7 be granted.

8 As you know, as you well know, it's a very simple
9 document, and a week should be more than enough time to get
10 someone over there to sign.

11 SARAH RHATIGAN: Okay.

12 CONSTANTINE ALEXANDER: Yes, Sisia.

13 SISIA DAGLIAN: I'm not saying anything.

14 CONSTANTINE ALEXANDER: Oh, sorry, Sisia.

15 SISIA DAGLIAN: I think they've already all signed
16 waivers. Because the original case was continued.

17 CONSTANTINE ALEXANDER: They signed the waiver
18 already. This is the first time we've heard this case.

19 SISIA DAGLIAN: Okay.

20 SARAH RHATIGAN: It was a blank -- Mr. Chairman, I
21 believe that it was a blanket waiver citing the Governors
22 order and the statute of limitation extensions.

1 CONSTANTINE ALEXANDER: Oh, I see what you're
2 saying.

3 SARAH RHATIGAN: Yep. That's -- I've got
4 something in the file. If it doesn't apply, we'll come and
5 sign a new wavier.

6 CONSTANTINE ALEXANDER: It shouldn't be -- it's no
7 big deal to come in and --

8 SARAH RHATIGAN: Yep.

9 CONSTANTINE ALEXANDER: -- sign It next week.

10 SARAH RHATIGAN: Sure.

11 CONSTANTINE ALEXANDER: That's the first
12 condition. Second condition is that a new posting sign must
13 be put up reflecting the new date, October 8; and the new
14 time, 7:00 p.m., and that sign must be maintained for the 14
15 days that it's required by our ordinance. And as your
16 client and you did, with regards to tonight's petition.

17 And lastly, that to the extent that you're going
18 to come by with new plans -- and I would include in that
19 landscaping plans, because they're an important -- I think
20 important part of this case -- that those plans must be in
21 our files no later than 5:00 p.m. on the Monday before
22 October 8, the files being they must be filed with the

1 Inspectional Services Department by that time and date.

2 All those in favor of continuing the case on this
3 basis. Brendan says yes.

4 BRENDAN SULLIVAN: Brendan Sullivan, yes.

5 JANET GREEN: Janet Green, yes.

6 CONSTANTINE ALEXANDER: Slater?

7 SLATER ANDERSON: Slater Anderson, yes.

8 JIM MONTEVERDE: And Jim Monteverde, yes.

9 CONSTANTINE ALEXANDER: And Gus Alexander, yes.

10 [All vote YES]

11 The case is continued to October 8. And that's
12 all she wrote. Thank you.

13 SARAH RHATIGAN: Thank you.

14 CONSTANTINE ALEXANDER: What a night!

15 JIM MONTEVERDE: All right. Goodnight, all.

16 CONSTANTINE ALEXANDER: What a night.

17 BRENDAN SULLIVAN: Is that you waving a paddle?

18 JIM MONTEVERDE: [Laughter]

19 CONSTANTINE ALEXANDER: It's almost 11:30 and we
20 started at 6:00.

21 JIM MONTEVERDE: I'm not allowed to hold a paddle
22 anymore.

1 SLATER ANDERSON: Gus, no more continuances. Come
2 on.

3 SISIA DAGLIAN: I know. We've continued every
4 case, pretty much.

5 [11:21 p.m. End of Proceedings]

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October 5, 2020

Via Hand Delivery & Email

Board of Zoning Appeal
City of Cambridge
831 Massachusetts Avenue
Cambridge, MA 02139

Re: BZA Case No. 017267-2020, 32 Highland Street – Request for Continuance

Dear Members of the Board:

This matter was initially heard by the Board of Zoning Appeal at a hearing on July 23rd. The petitioners are in need of additional time and hereby respectfully request a continuance of this matter until the next available hearing date.

Sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Sarah Like Rhatigan, Esq.

CC: Ms. Lori Leland (via email)
Mr. Joseph DiLazzaro (via email)

* * * * *

(7:26 p.m.)

Constantine Alexander, Brendan Sullivan,
Janet Green, Andrea A. Hickey, and Jim
Monteverde

CONSTANTINE ALEXANDER: Moving on, the next -- I'm going to call two quick continued cases now, because they're going to be continued further. The first I'm going to call is 32 Highland Street, 017267. Anyone here wishing to be heard on this matter? I guess not. I didn't know if Counsel would be present.

SARAH RHATIGAN: Was that -- I'm sorry, I --

CONSTANTINE ALEXANDER: Yes, Sarah?

SARAH RHATIGAN: Sorry. My system blinked out just as you said the address. Thank you. Sarah Rhatigan. I'm here from Trilogy Law representing the owners of Amos Third Corner, LLC. Thank you, Mr. Chairman, for hearing the continuance request.

I just wanted to give you a little update, which is that the owners have been working with their architectural team on a scaled back revision of plans for the renovation, and the expectation at this time, or the

1 hope, is that they will be able to minimize any zoning
2 relief or potentially avoid requiring zoning relief. But
3 because of the -- you know, the timing of our revisions and
4 our evaluation of that, we're not quite ready to be heard.

5 I wasn't sure about scheduling. I thought it
6 would be helpful if I was here to, you know, discuss when
7 the same panel of hearing members would be available for a
8 continuance.

9 CONSTANTINE ALEXANDER: What date would you like
10 to continue to? First, let's start there.

11 SARAH RHATIGAN: I think that we could use at
12 least two weeks and perhaps a month.

13 CONSTANTINE ALEXANDER: I would suggest, because
14 since you got to put new notices up, and that's -- have to
15 go up tomorrow virtually through the two weeks, so.

16 SARAH RHATIGAN: So a month -- yep, a month seems
17 reasonable, yeah.

18 CONSTANTINE ALEXANDER: Sisia, do we have --

19 SISIA DAGLIAN: We have November 19 or the fifth?

20 CONSTANTINE ALEXANDER: The nineteenth?

21 SISIA DAGLIAN: The fifth we already have three
22 cases.

1 CONSTANTINE ALEXANDER: We have two. That's not
2 that many.

3 SISIA DAGLIAN: Okay.

4 CONSTANTINE ALEXANDER: November 19 work for you,
5 Sarah?

6 SARAH RHATIGAN: November 19 would work, yes.

7 CONSTANTINE ALEXANDER: Okay. The Chair moves
8 that we continue this case as a case heard until 7:00 p.m.
9 on November 19, subject to the following conditions, and
10 it's the same ones that we had for this one.

11 First is -- and the petitioner has already done
12 that -- sign a waiver of time for decision. That's been
13 taken care of.

14 Second, that a new posting sign reflecting the new
15 date, November 19 and the new time, 7:00 p.m., be obtained
16 and posted for the 14 days required by our ordinance.

17 And lastly, that to the extent -- and I guess it
18 will be -- there will be new or revised plans, specs,
19 dimensional forms -- all of those -- all of the above must
20 be in our files no later than 7:00 p.m. -- I'm sorry, 5:00
21 p.m. -- on the Monday before November 19.

22 All those in favor of continuing the case on this

1 basis?

2 BRENDAN SULLIVAN: Brendan Sullivan, yes to
3 continuing the matter.

4 ANDREA HICKEY: Andrea Hickey, yes to the
5 continuance.

6 JANET GREEN: Janet Green, yes to the continuance.

7 JIM MONTEVERDE: And Jim Monteverde, yes to the
8 continuance.

9 CONSTANTINE ALEXANDER: And the Chair votes yes as
10 well.

11 [All vote YES]

12 But let me make a comment, Sarah. This will be
13 the second continuance for this case. Our policy is
14 basically not to continue cases more than twice, absent very
15 special circumstances. So I would hope and/or expect that
16 this case will be decided one way or another on November 19.

17 SARAH RHATIGAN: Thank you.

18 CONSTANTINE ALEXANDER: Moving on, did we take the
19 vote?

20 COLLECTIVE: Yes.

21 CONSTANTINE ALEXANDER: Yeah, we did take the
22 vote. Okay.

Pacheco, Maria

From: Sarah Rhatigan <sarah@trilogylaw.com>
Sent: Monday, November 16, 2020 2:53 PM
To: Pacheco, Maria; Singanayagam, Ranjit
Cc: Lori Leland; Liz Whitbeck; Amelia Todd; Joseph DiLazzaro
Subject: 32 Highland Street, Cambridge BZA Case No. 017267-2020 - Letter of Withdrawal
Attachments: Ltr to BZA Withdrawal - BZA 017267 (11.16.20).pdf

Dear Ms. Pacheco and Mr. Singanayagam—

Attached here please find the petitioner's letter of withdrawal of this variance application, which is currently scheduled for a continued hearing this Thursday evening. If you would kindly file this letter with BZA Case No. 017267-2020 and let the Chairman know that we will not be proceeding this Thursday.

Please reply to confirm your receipt of this letter.

Thank you,

-Sarah

Sarah Like Rhatigan, Esq.
Trilogy Law LLC
12 Marshall Street
Boston, MA 02108
Tel: 617-543-7009
[Email:Sarah@trilogylaw.com](mailto:Sarah@trilogylaw.com)

November 16, 2020

Via Email Only

Members of the Board of Zoning Appeal
City of Cambridge
831 Massachusetts Avenue
Cambridge, MA 02139

Re: BZA Case No. 017267-2020, 32 Highland Street – Withdrawal

Dear Members of the Board:

The Petitioner hereby withdraws its application for a variance with respect to certain renovations at 32 Highland Street, BZA Case No. 017267-2020. This matter was scheduled to be heard as a continued case this Thursday evening, November 19th, 2020.

We thank the Board and staff for their time and consideration.

Sincerely,

Amos Third Corner LLC,

By its Counsel,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Sarah Like Rhatigan, Esq.

CC: Ms. Lori Leland
Mr. Joseph DiLazzaro

FAR

EXISTING

LEVEL	AREA (SF)	NOTES
BASEMENT	1013	Taken from foundation exterior. Includes only area that is more than half below grade as calculated by ratio of the perimeter grade.
FIRST	2061	Taken 6" from interior finish
SECOND	1863	Taken 6" from interior finish
THIRD	1374*	Taken 6" from interior finish. Taken at the 5' mark under a sloping roof. *Modified from previous calculation after demolition
FOURTH	155	Taken 6" from interior finish. Taken at the 5' mark under a sloping roof.
TOTAL	5092	
SITE	15388	
FAR	0.33	

PROPOSED

LEVEL	AREA (SF)	NOTES
BASEMENT	2194	Taken from foundation exterior. Includes only area that is more than half below grade as calculated by ratio of the perimeter grade.
FIRST	2293	Taken 6" from interior finish
SECOND	1877	Taken 6" from interior finish
THIRD	1374	Taken 6" from interior finish. Taken at the 5' mark under a sloping roof.
FOURTH	0	Taken 6" from interior finish. Taken at the 5' mark under a sloping roof.
TOTAL	7738	
SITE	15388	
FAR	0.50	

VOL

EXISTING VOLUME = 70699 FT³

ADDED VOLUME = 16452 FT³

ADDED VOLUME IS 23% OF EXISTING VOLUME

AMOS



32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:

1/4" = 1'

DATE:

- 02/22/20

DRAWN BY:

ETW

CHECKED BY:



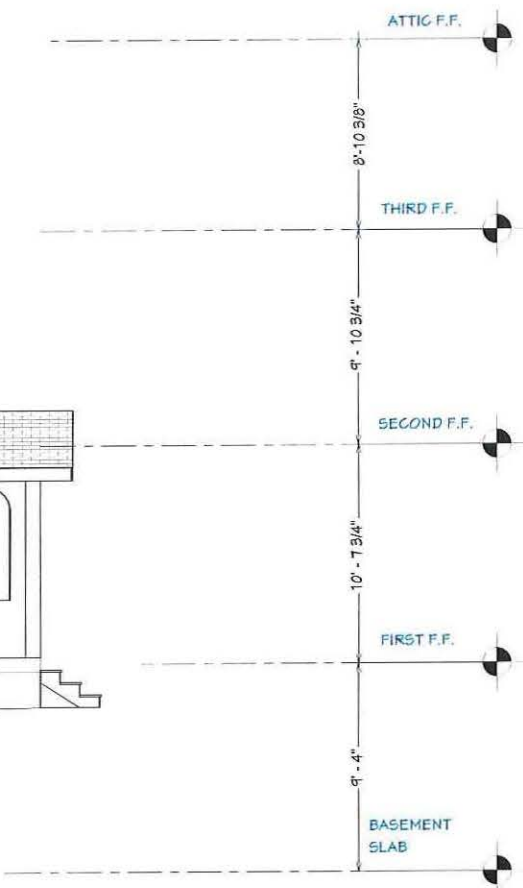
SCALE:
1/4" = 1'
DATE:
02/22/20

DRAWN BY:
ETW
CHECKED BY:

X100



NORTH ELEVATION - EXISTING



E EAST ELEVATION - EXISTING

AMOS



32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

X101



S SOUTH ELEVATION - EXISTING

AMOS



32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

X102



32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

X103



 WEST ELEVATION EXISTING



N NORTH ELEVATION - PROPOSED

AMOS



32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:

1/4" = 1'

DATE:

- 02/22/20

DRAWN BY:

ETW

CHECKED BY:

A200



32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:

1/4" = 1'

DATE:

02/22/20

DRAWN BY:

ETW

CHECKED BY:

A201



E EAST ELEVATION - PROPOSED



32 HIGHLAND ST
VARIANCE APPLICATION



S SOUTH ELEVATION - PROPOSED

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

A202



32 HIGHLAND ST
VARIANCE APPLICATION

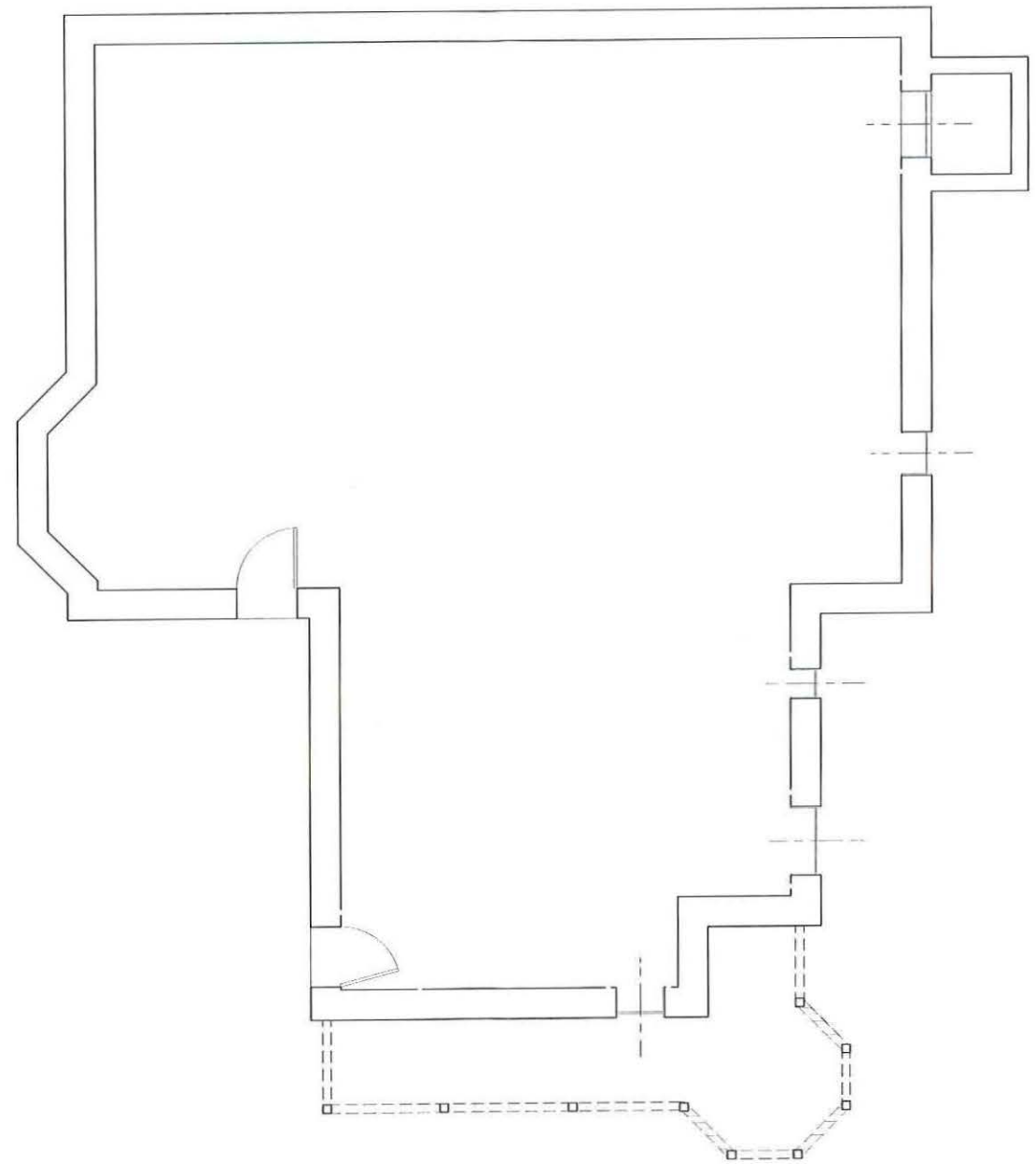


WEST ELEVATION PROPOSED

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

A203



F EXISTING FOUNDATION

AMOS

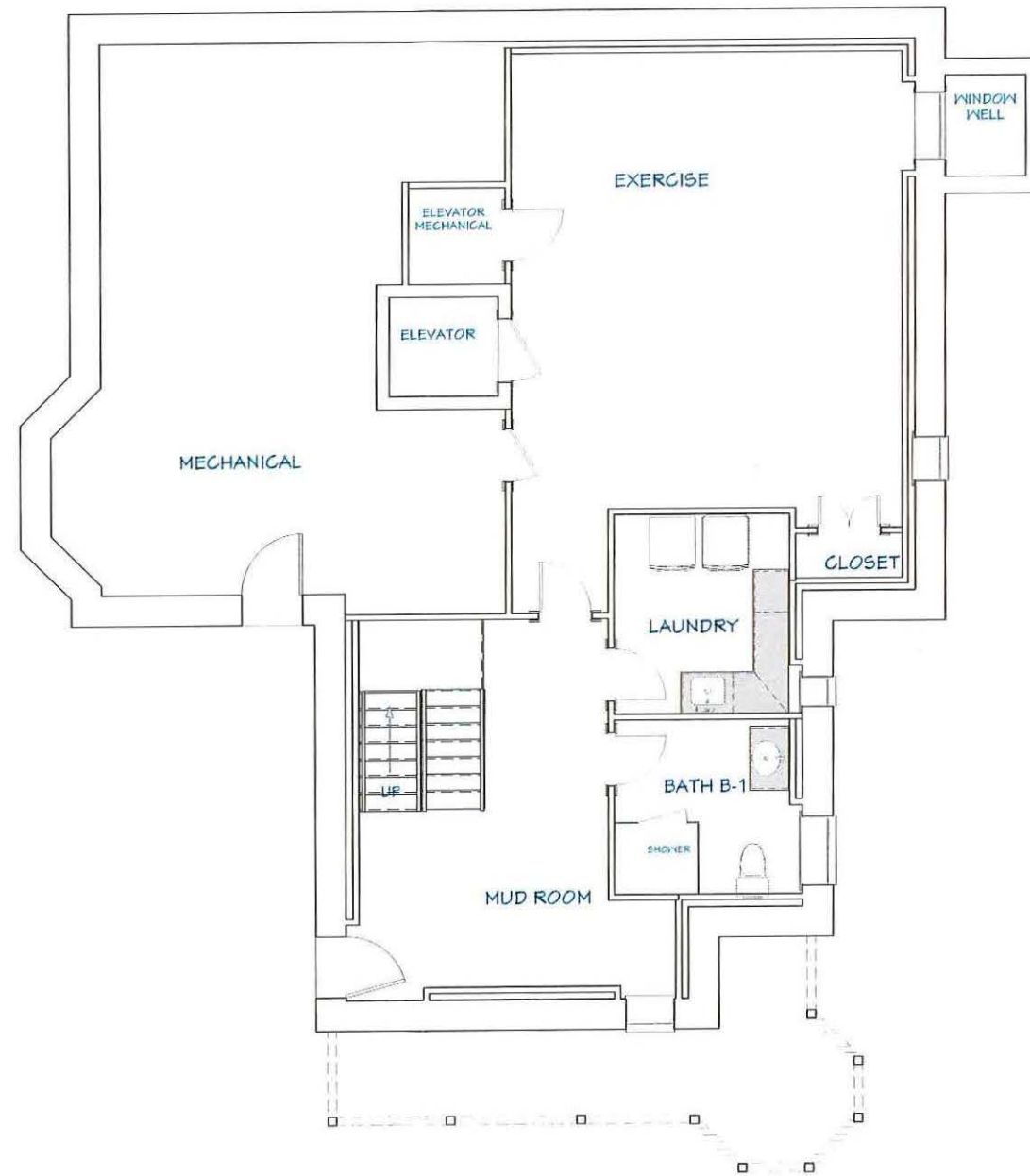


32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

X104

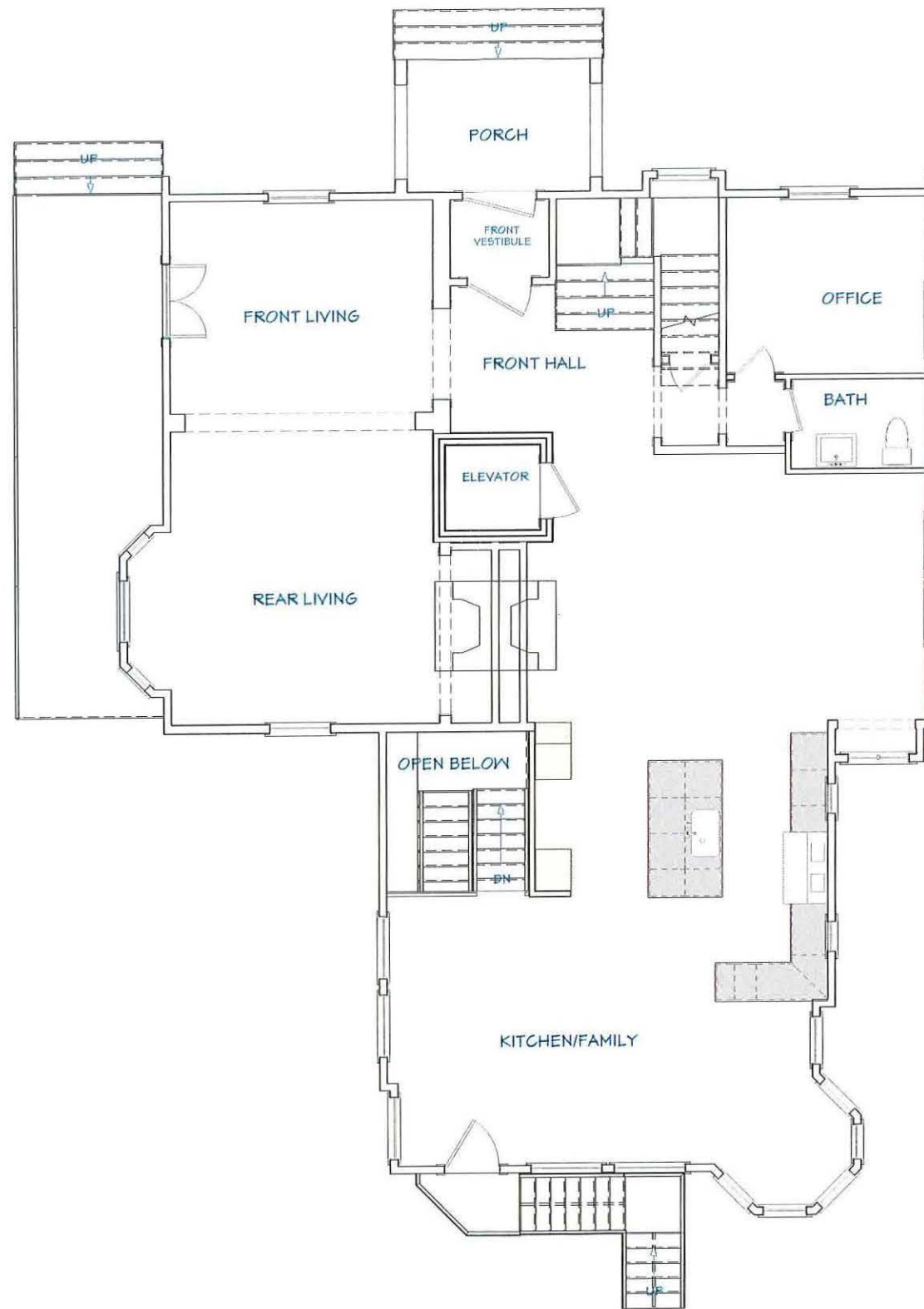


B EXISTING BASEMENT

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

X105



1 EXISTING FIRST FLOOR

AMOS

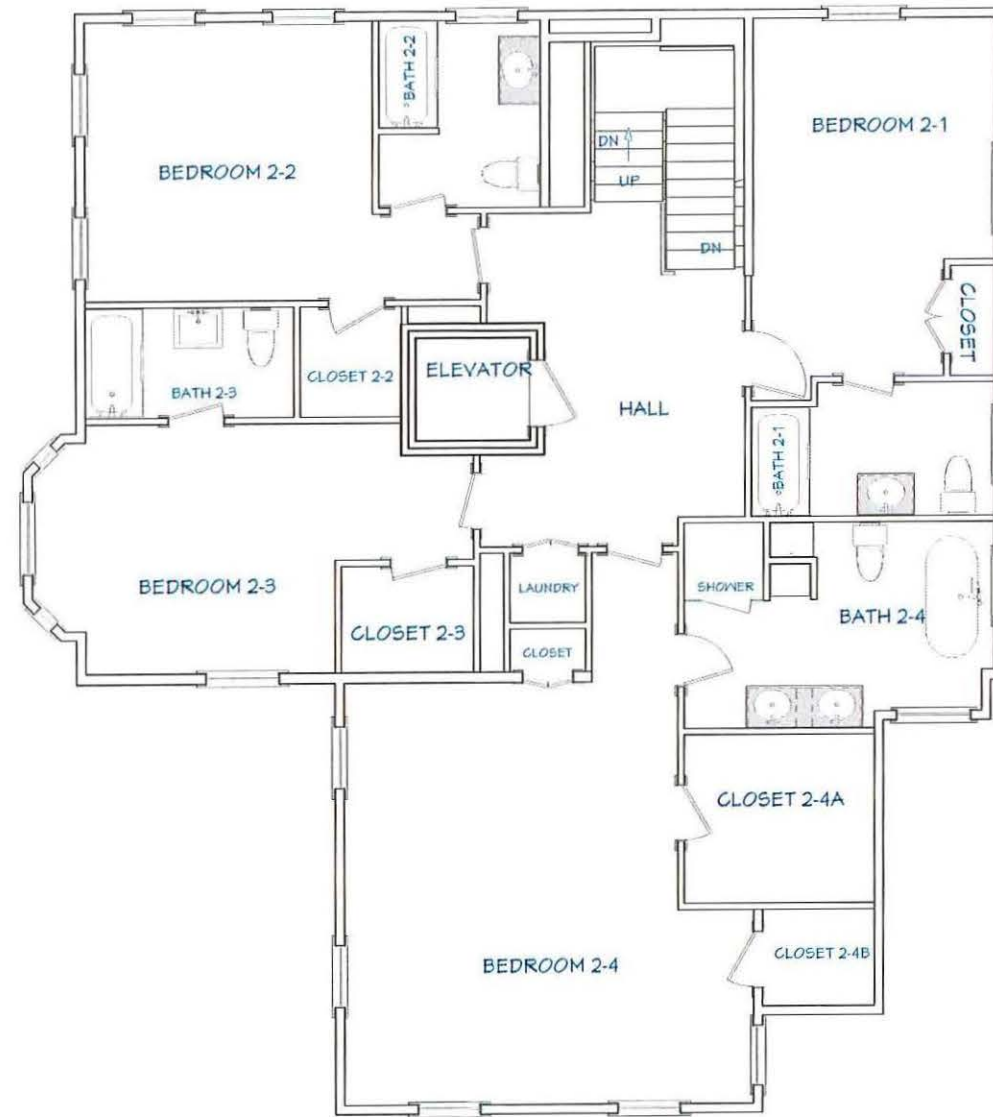


32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

X106

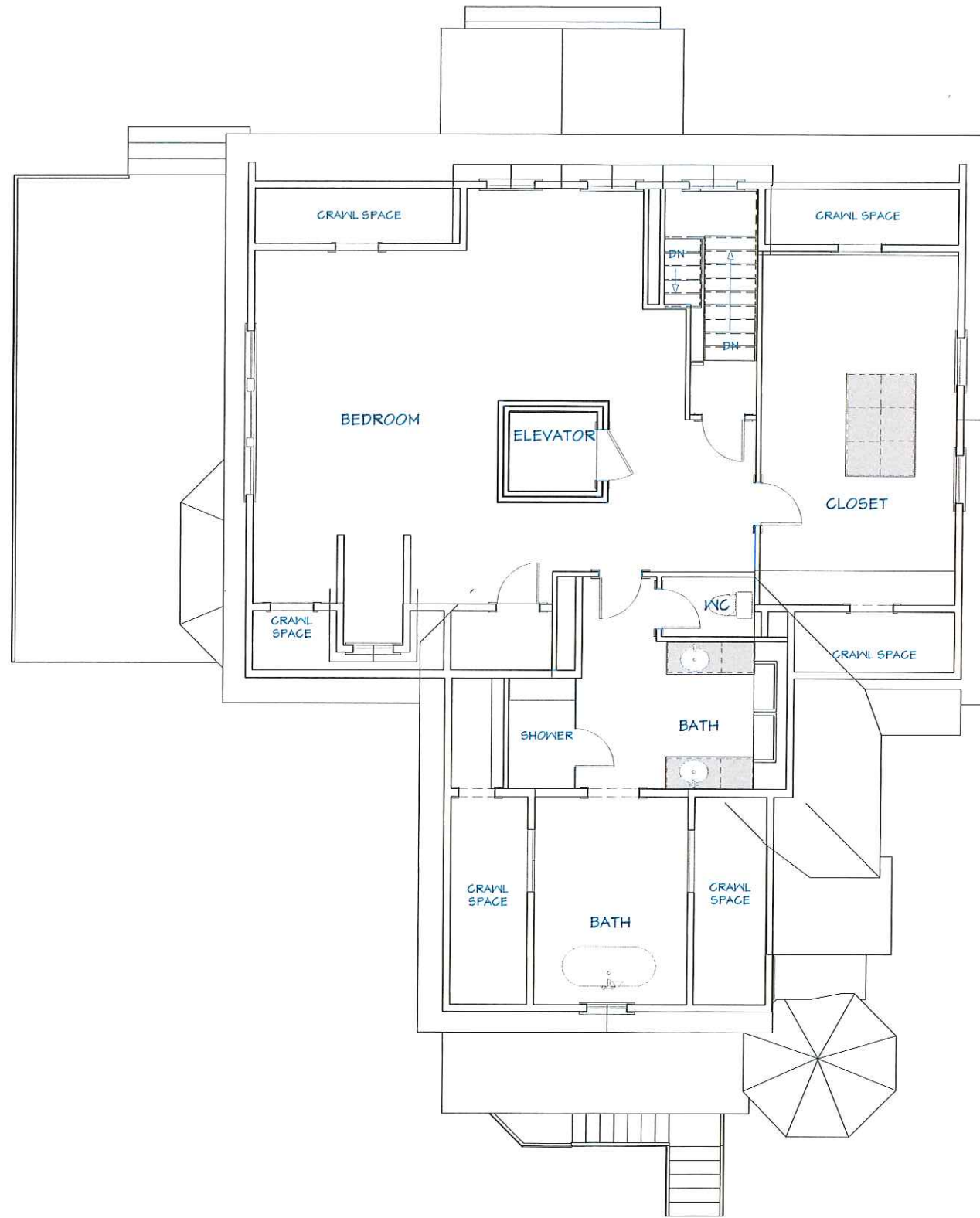


2 EXISTING SECOND FLOOR

SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:

X107



3

EXISTING THIRD FLOOR

AMOS



32 HIGHLAND ST
VARIANCE APPLICATION

SCALE:

1/4" = 1'

DATE:

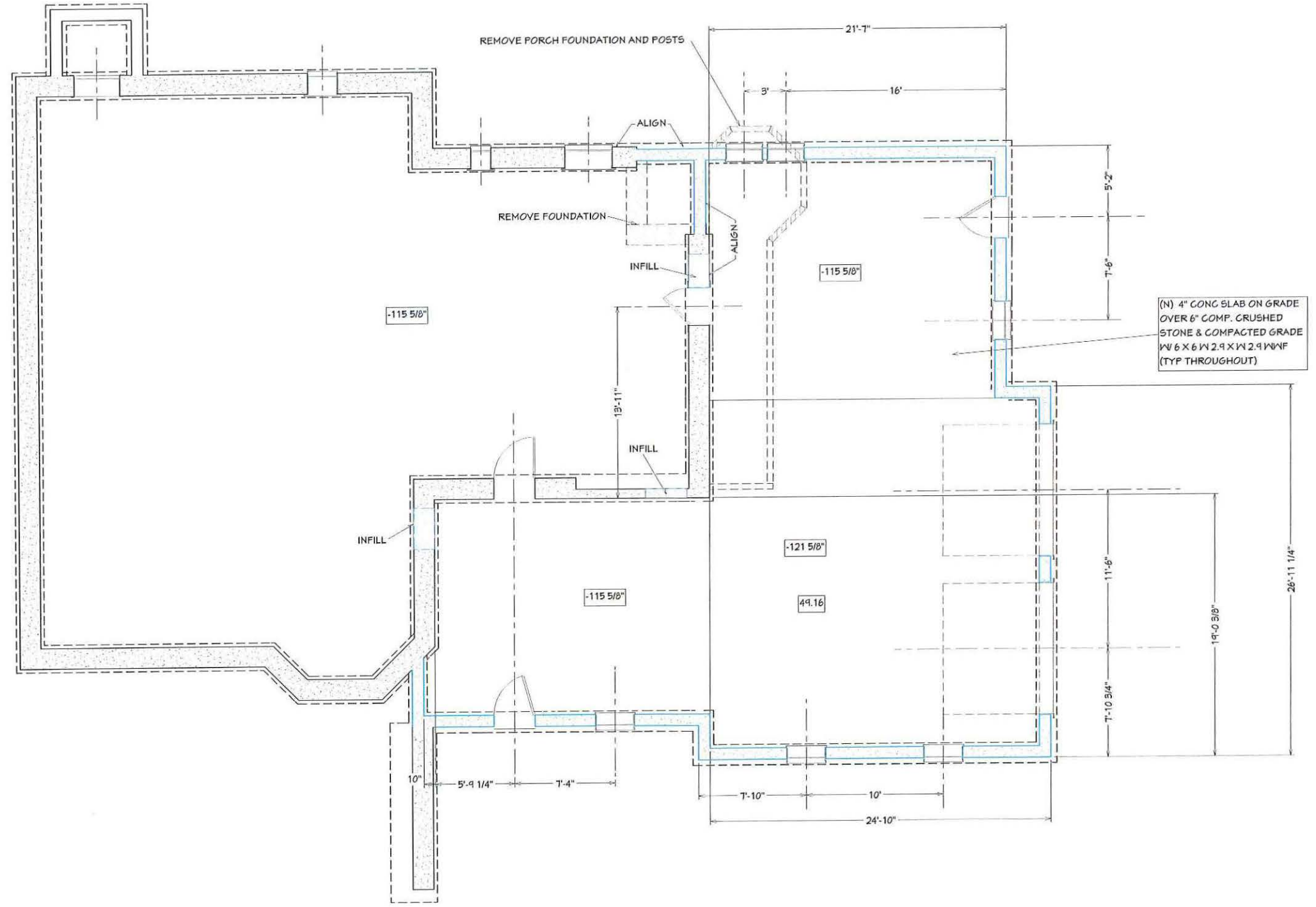
- 02/22/20

DRAWN BY:

ETW

CHECKED BY:

X104



B PROPOSED FOUNDATION PLAN



SCALE:
1/4" = 1'
DATE:
02/22/20

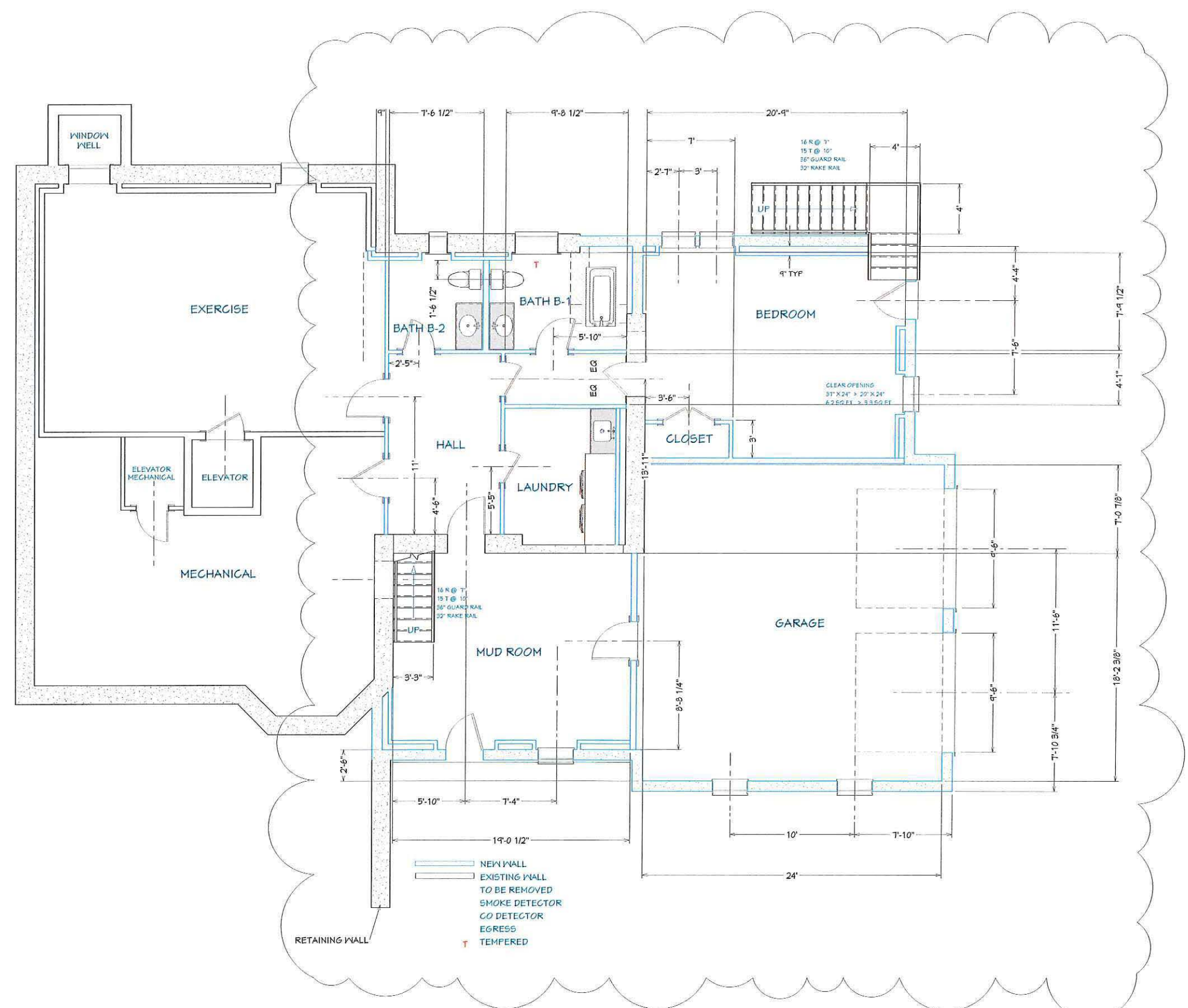
DRAWN BY:
ETW
CHECKED BY:



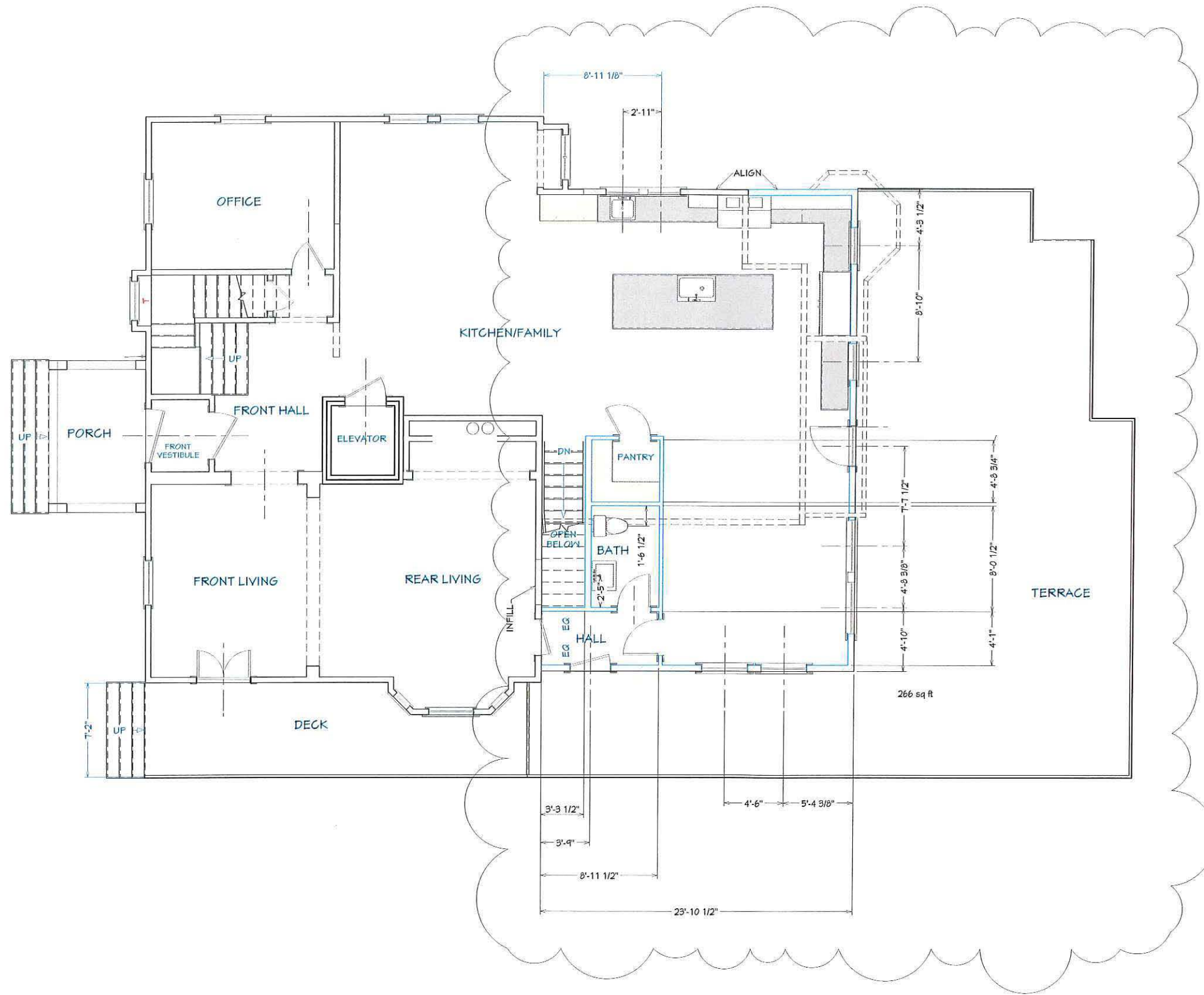
SCALE:
1/4" = 1'
DATE:
02/22/20

DRAWN BY:
ETW
CHECKED BY:

A101



B PROPOSED BASEMENT FLOOR PLAN



- NEW WALL
- EXISTING WALL
- TO BE REMOVED
- SMOKE DETECTOR
- CO DETECTOR
- EGRESS
- TEMPERED

1

PROPOSED FIRST FLOOR PLAN

SCALE:

1/4" = 1'

DATE:

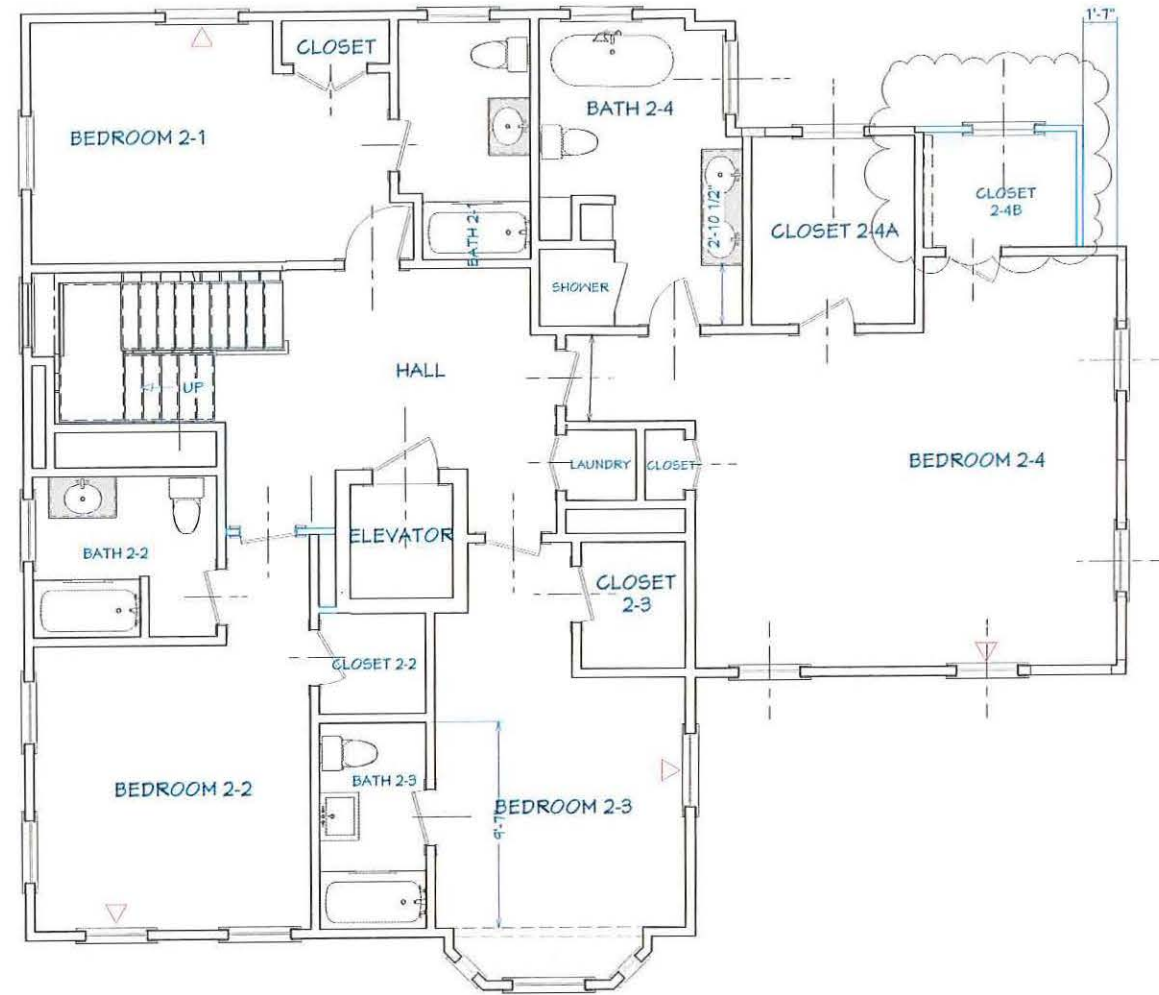
02/22/20

DRAWN BY:

ETW

CHECKED BY:

A102



- NEW WALL
- EXISTING WALL
- TO BE REMOVED
- SMOKE DETECTOR
- CO DETECTOR
- EGRESS
- TEMPERED

SCALE:

1/4" = 1'

DATE:

02/22/20

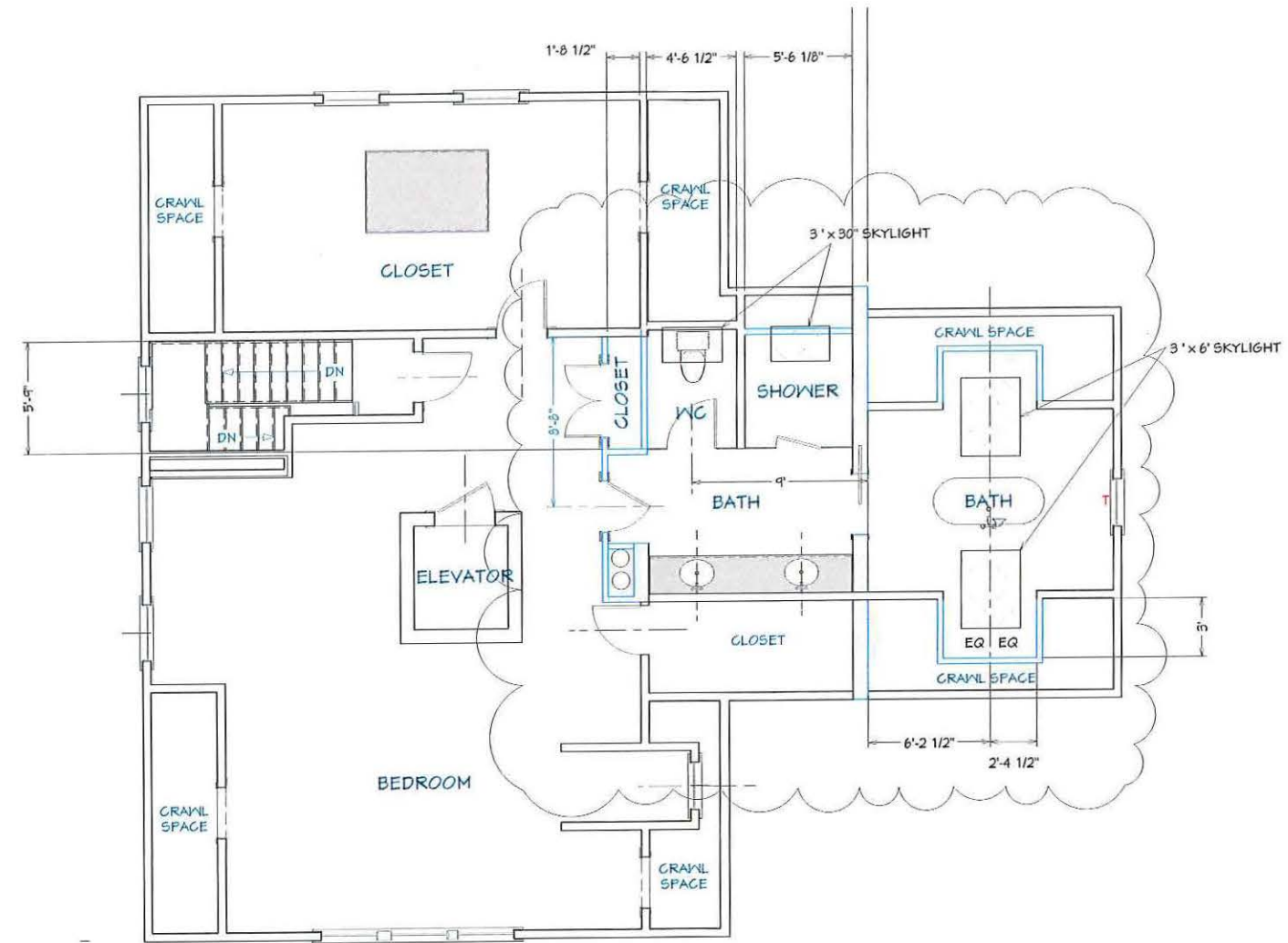
DRAWN BY:

ETW

CHECKED BY:

2 PROPOSED SECOND FLOOR PLAN

A103



3 PROPOSED THIRD FLOOR PLAN

SCALE:
1/4" = 1'
DATE:
- 02/22/20

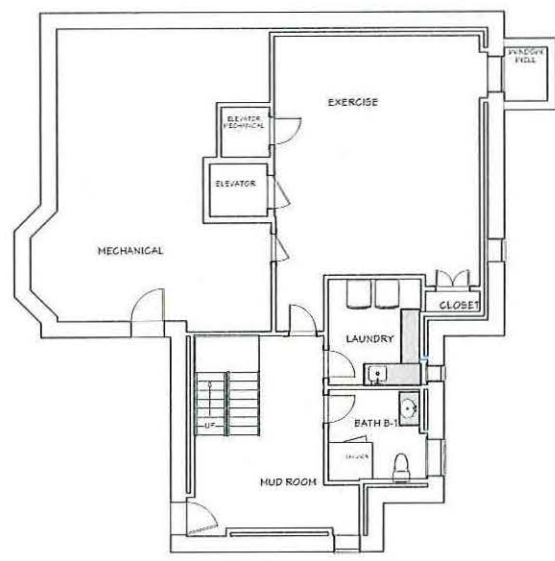
DRAWN BY:
ETW
CHECKED BY:

A104



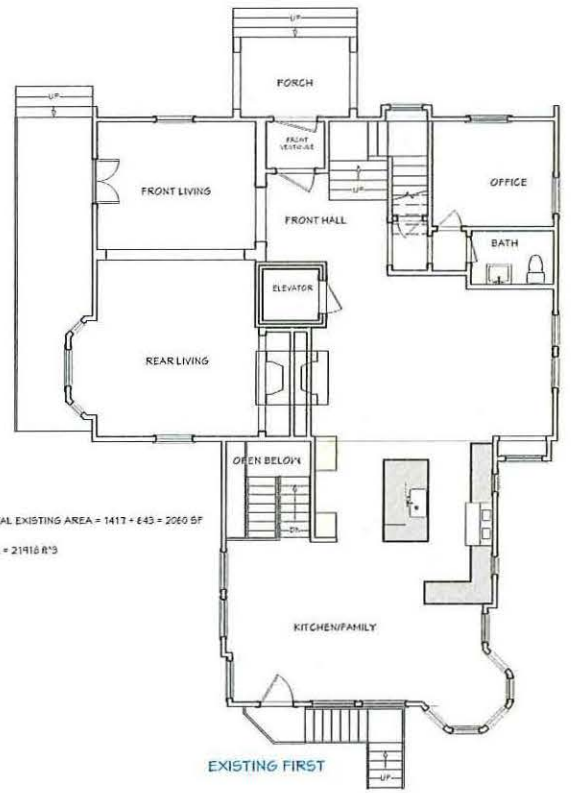
SCALE:
1/4" = 1'
DATE:
- 02/22/20

DRAWN BY:
ETW
CHECKED BY:



TOTAL EXISTING AREA = 1021 SF
RATIO BY PERCENTAGE OF BASEMENT PERIMETER LESS
THAN HALF UNDERGROUND (50%)
1004 X .36 = 1013
VOL = 14510 FT³

EXISTING BASEMENT



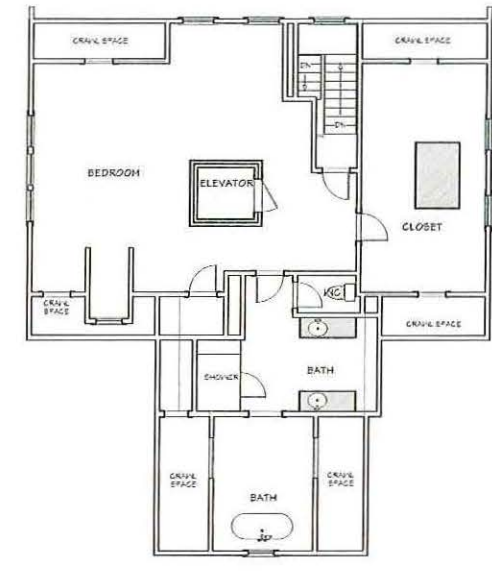
TOTAL EXISTING AREA = 1417 + 443 = 2060 SF
VOL = 21918 FT³

EXISTING FIRST



TOTAL EXISTING AREA = 1063 SF
VOL = 16444 FT³

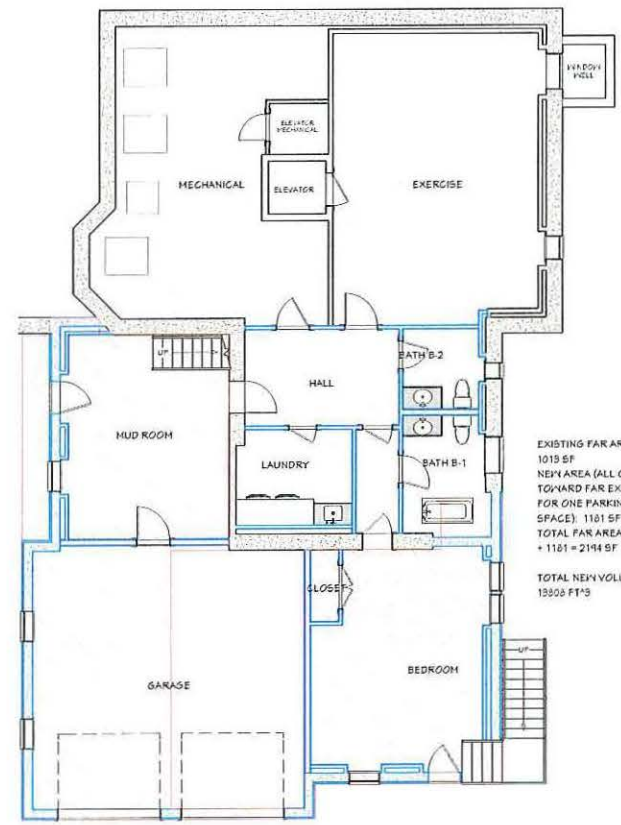
EXISTING SECOND



TOTAL EXISTING AREA = 1345 SF
VOL = 12459 FT³

EXISTING THIRD

ATTIC FLOOR AREAS NOT
INCLUDED IN FAR CALCULATION
HAVE A HEAD HEIGHT OF < 5 FT



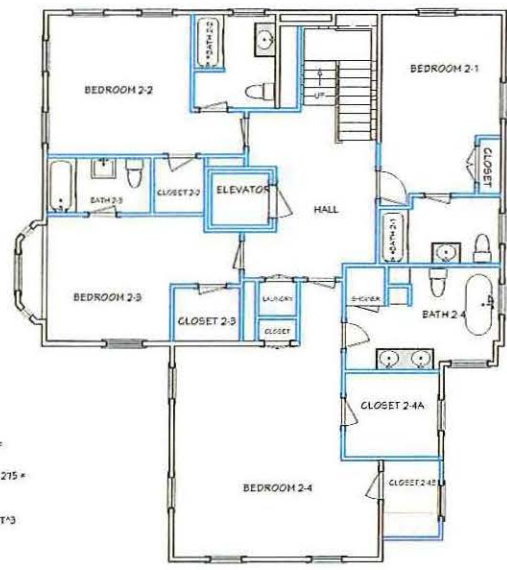
EXISTING FAR AREA: 1019 SF
NEW AREA (ALL COUNTS
TOWARD FAR EXCEPT
FOR ONE PARKING
SPACE): 1181 SF
TOTAL FAR AREA = 1019
+ 1181 = 2198 SF
TOTAL NEW VOLUME =
13903 FT³

PROPOSED BASEMENT



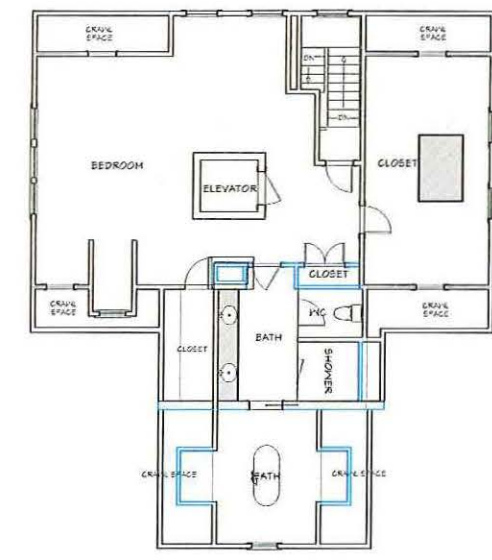
EXISTING AREA: 2050 SF
AREA TO BE REMOVED: 40 SF
AREA TO BE ADDED: 219 SF
TOTAL FAR AREA: 2050 + 219 =
2269 SF
TOTAL NEW VOLUME = 2500 FT³

PROPOSED FIRST
PATIO



TOTAL PROPOSED
AREA = 1877 SF

PROPOSED SECOND



TOTAL EXISTING
AREA = 1345 SF

PROPOSED THIRD

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; SJCReporter@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.

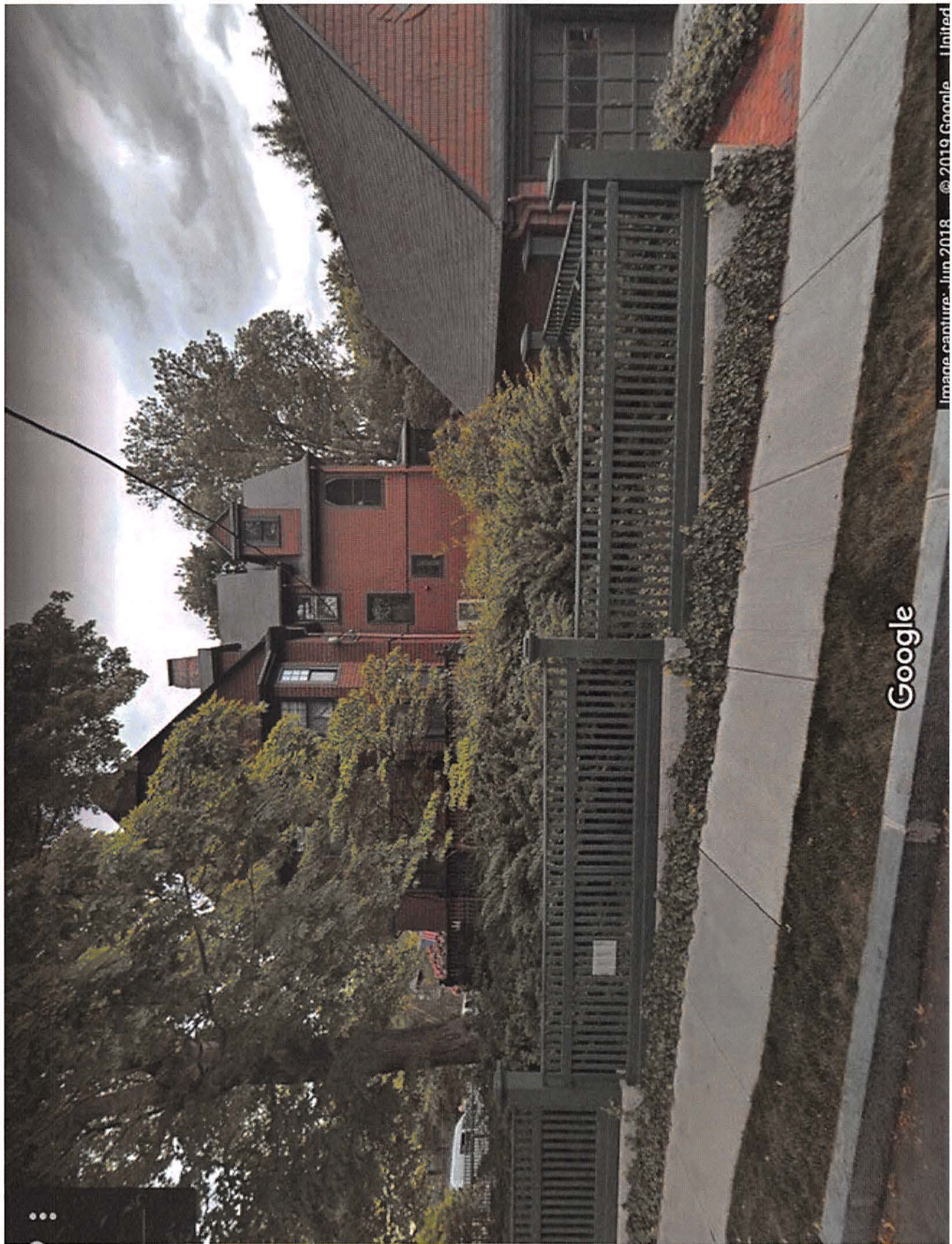
General Laws c. 40A, § 6, however, creates a statutory requirement that "sets the floor" throughout the Commonwealth for the appropriate protections from local zoning bylaws to be afforded properties and structures protected under that statute. See Rourke v. Rothman, 448 Mass. 190, 191 n.5 (2007). As 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.

32 Highland



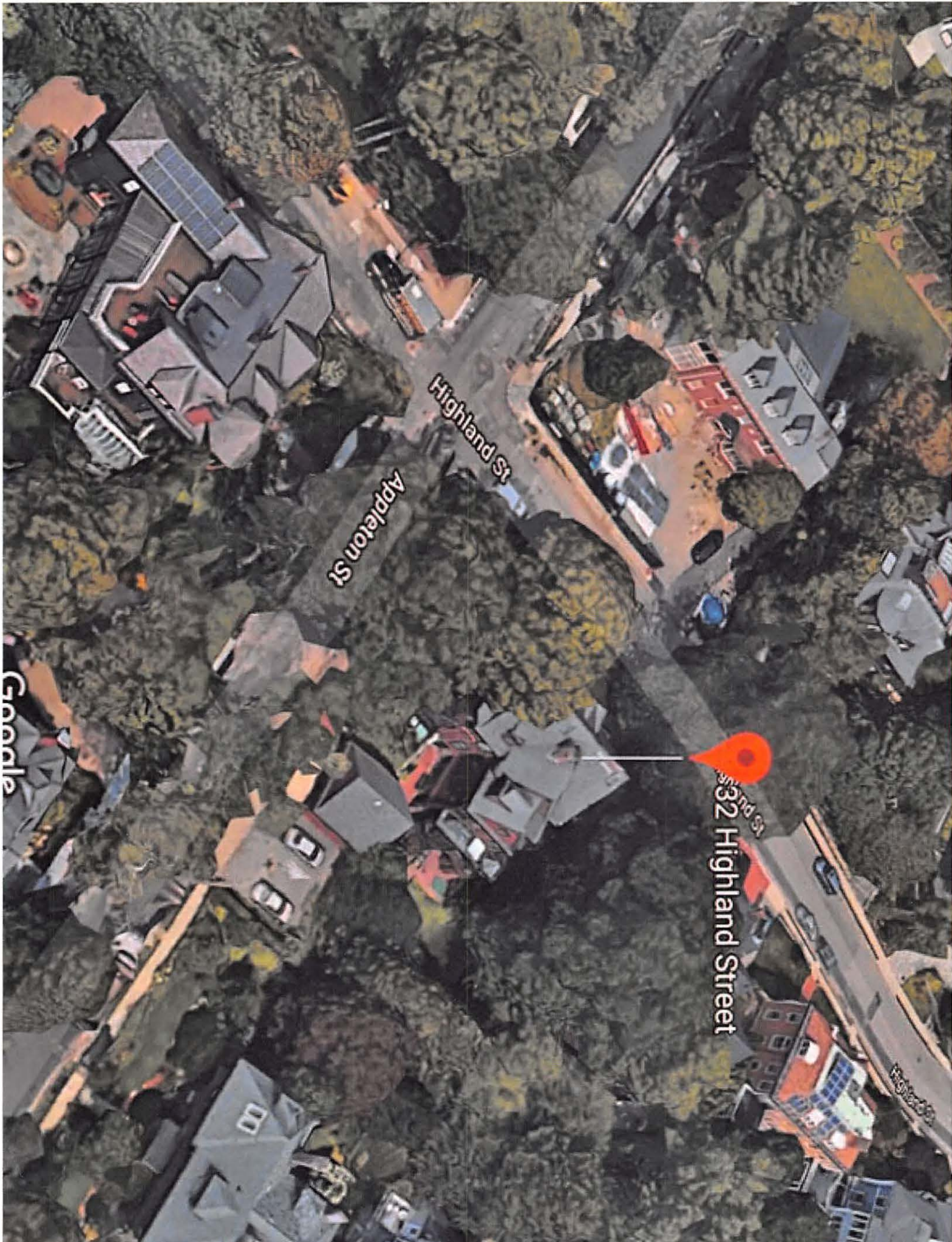
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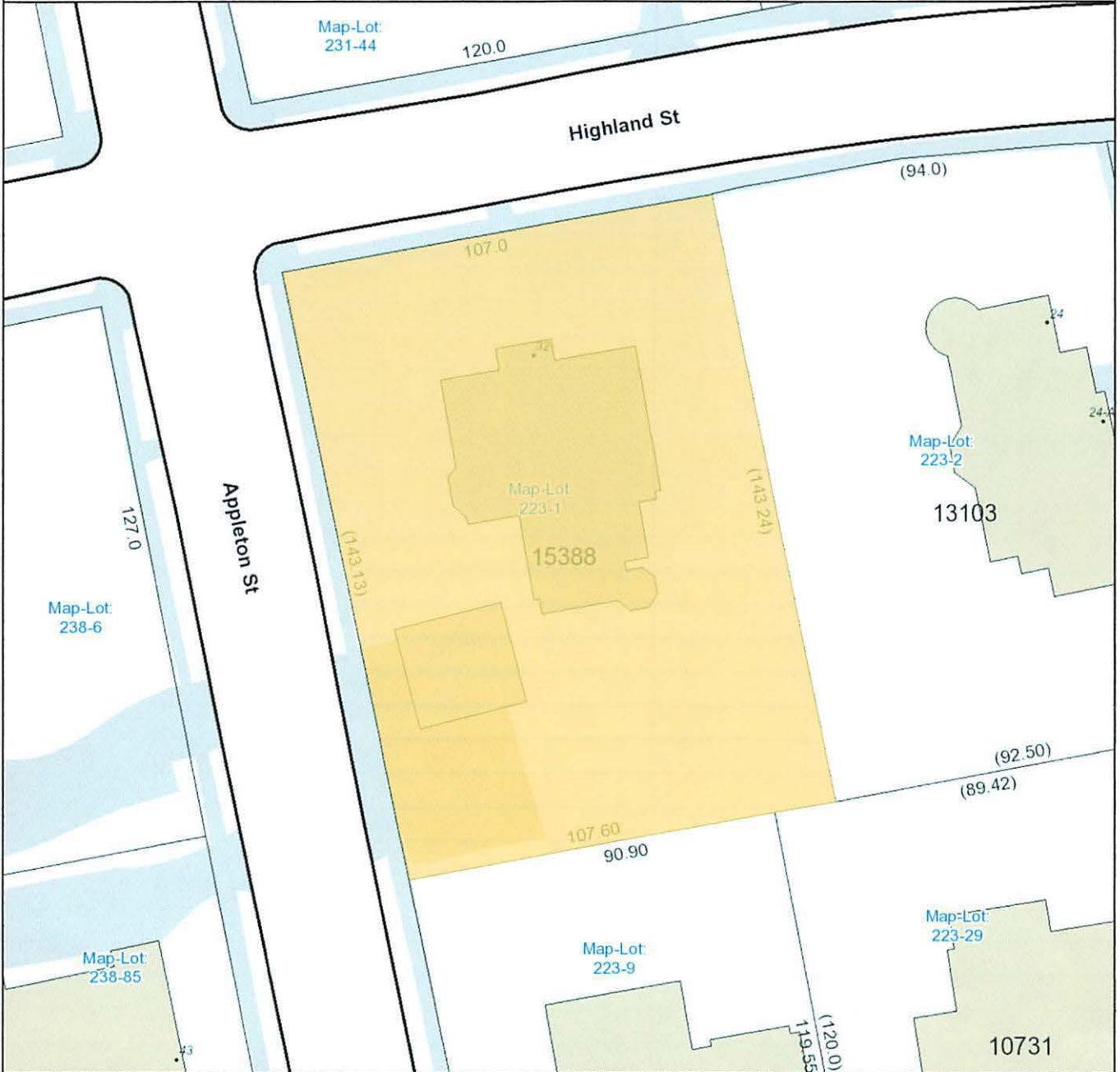
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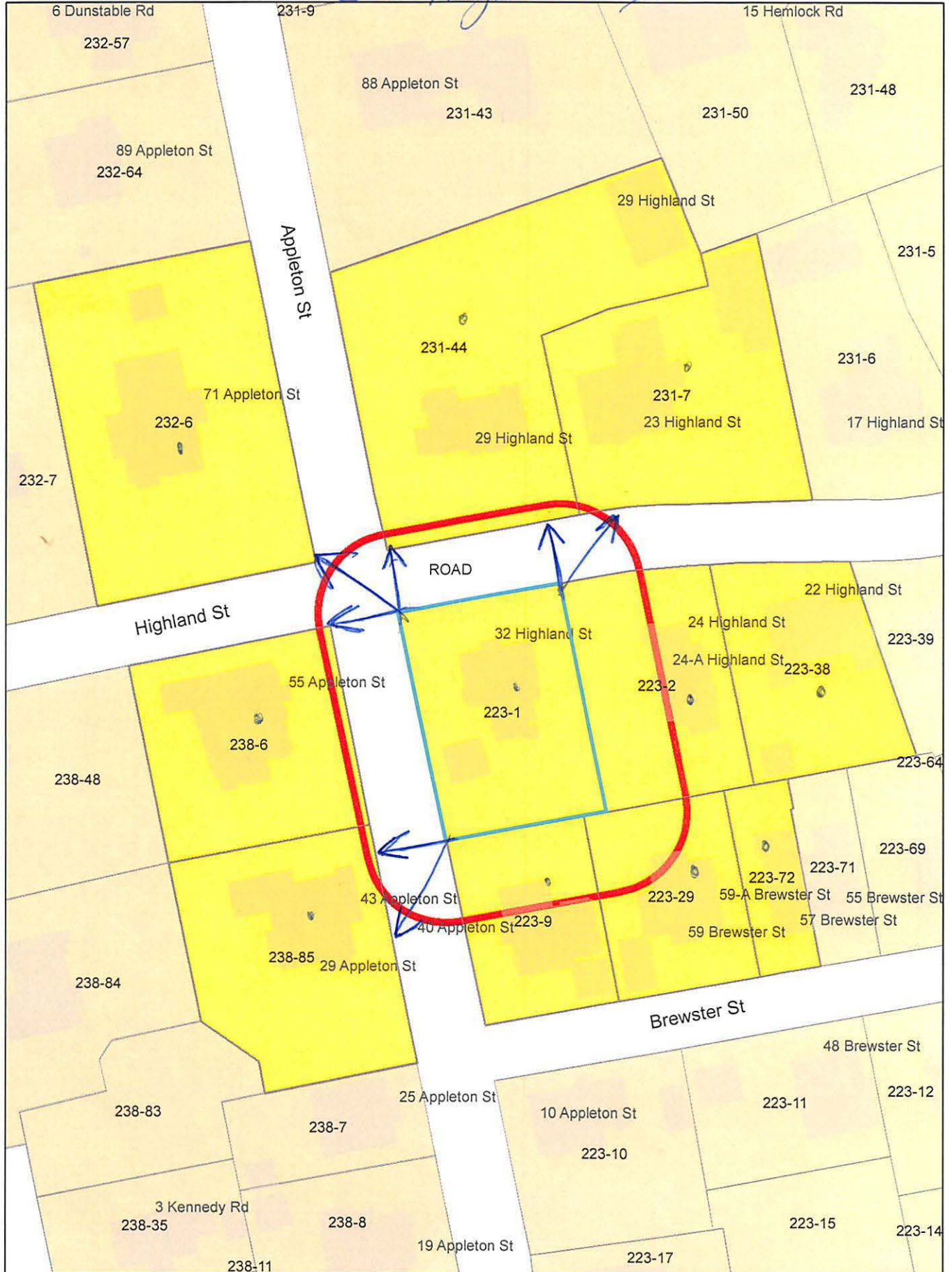
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- Rail
- Building Footprints
- Paved Surfaces
 - Paved Roads
 - Bridges
 - Unpaved Roads
 - Unpaved Parking
 - Sidewalks
 - Driveways
 - Alleys
 - Other Paved Surface
 - Public Footpath



32 Highland St.



32 Highland St.

Petitioner

223-2
PIEPER, CHARLES P. & CAROLE J. PIEPER
721 OLD POST ROAD
COTUIT, MA 02635

223-38
GORDON, RAY GERALD MYRA GORDON
22 HIGHLAND ST
CAMBRIDGE, MA 02138-2210

TRILOGY LAW LLC
C/O SARAH L. RHATIGAN, ESQ.
12 MARSHALL STREET
BOSTON, MA 02108

223-29
STACEY, ROGER F.
59 BREWSTER ST
CAMBRIDGE, MA 02138

238-6
WILKINS, ANN MARIE & DAVID B. WILKINS
55 APPLETON ST
CAMBRIDGE, MA 02138-3357

223-1
AMOS THIRD CORNER LLC
16 GRAY GARDENS EAST
CAMBRIDGE, MA 02138

231-7
KABOOLIAN, LINDA
23 HIGHLAND ST
CAMBRIDGE, MA 02138-2209

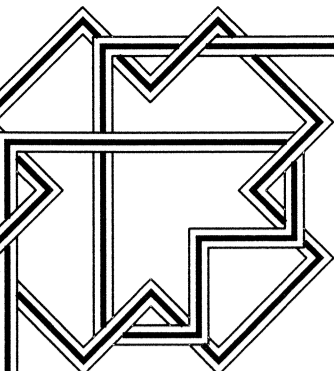
231-44
29 HIGHLAND STREET OWNER, LLC
29 HIGHLAND ST
CAMBRIDGE, MA 02138

232-6
71 APPLETON LLC
71 APPLETON ST
CAMBRIDGE, MA 02138

238-85
BIOTTI, JON M. & LESLIE JENG
43 APPLETON ST
CAMBRIDGE, MA 02138-3357

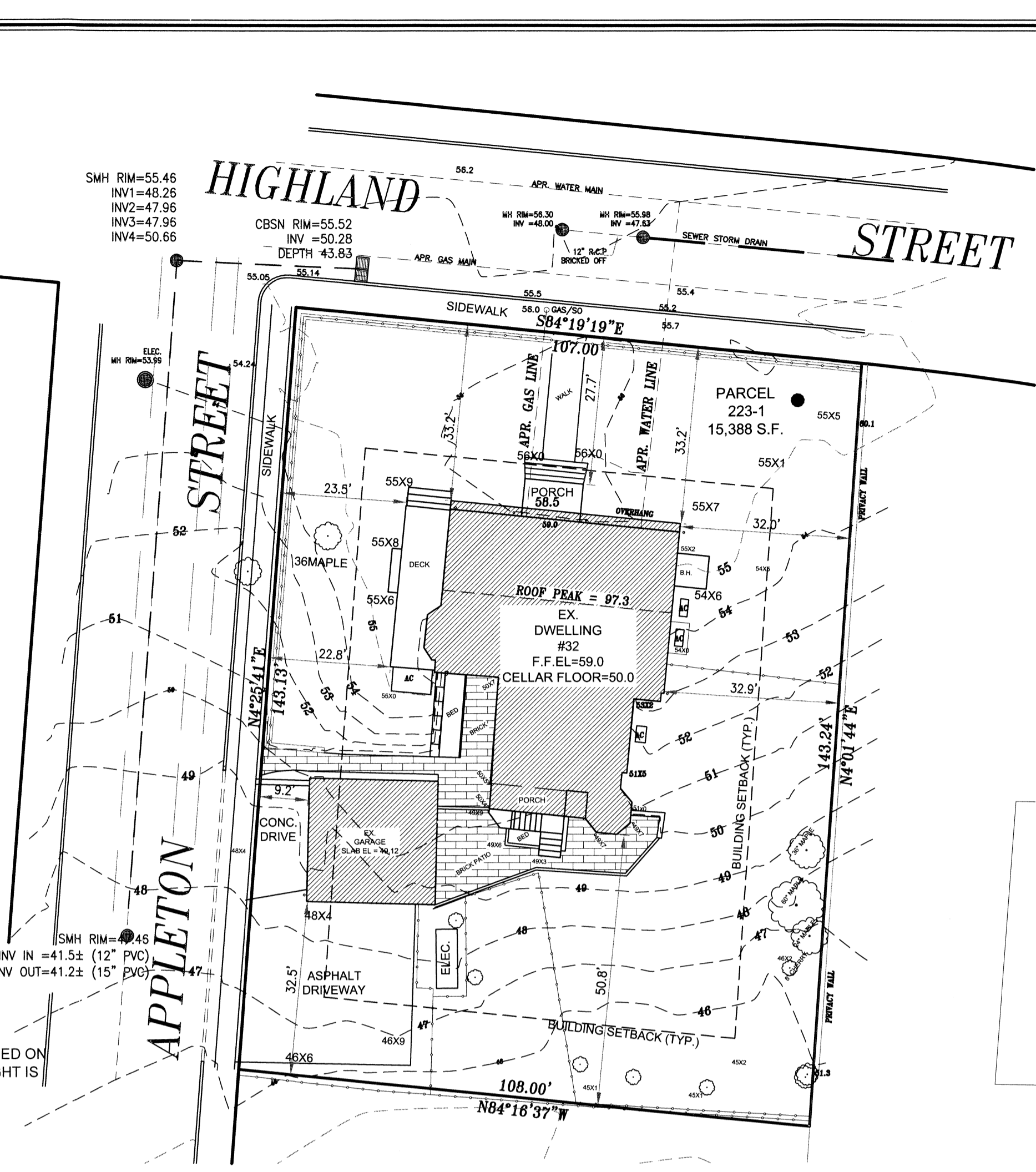
223-72
HINSHAW, FOSTER D. & DONNA L. STONE
TRUSTEES OF 57 BREWSTER REALTY TR.
57 BREWSTER ST
CAMBRIDGE, MA 02138

223-9
WOLFBERG, JUDITH R.
40 APPLETON ST
CAMBRIDGE, MA 02138



RECORD NOTES:
 RECORD DEED: 72010-491
 LOCUS IS ZONED A-1
 REQUIRED LOT AREA = 8,000 S.F. EXISTING LOT AREA = 15,388
 REQUIRED LOT WIDTH = 80' EXISTING = 107'
 MIN. FRONT YARD 25' EXISTING (HIGHLAND) = 27.7'
 EXISTING (APPLETON) = 22.8'
 EXISTING GARAGE (APPLETON) = 9.2'
 PROPOSED FRONT YARD SETBACKS
 APPLETON = 23.1'
 HIGHLAND = 27.7' (NO CHANGE)
 MIN. EAST SIDE YARD 15(SUM 35) EXISTING = 32.9" PROP 32.9"
 MIN. SOUTH SIDE 15(SUM 35) EXISTING (GARAGE) = 32.5' PROP = 32.8'
 EXISTING FAR CALCULATIONS:
 BASEMENT = 1,013 S.F.
 FIRST FLOOR = 2,061 S.F.
 SECOND FLOOR = 1,863 S.F.
 THIRD FLOOR = 1,374 S.F.
 FOURTH 155 S.F.
 TOTAL 5,092 S.F./15,388 S.F. = 0.33
 PROPOSED FAR CALCULATIONS:
 BASEMENT = 2,194 S.F.
 FIRST FLOOR = 2,293 S.F.
 SECOND FLOOR = 1,877 S.F.
 THIRD FLOOR = 1,374 S.F.
 FOURTH = 0 S.F.
 TOTAL 7,738 S.F./15,388 S.F. = 0.50
 EXISTING RATIO OF PRIVATE OPEN SPACE 10,886 S.F./15,388 = 71%
 9,917 S.F. IS PERMEABLE = 9,917 / 10,886 = 91%
 PROPOSED RATIO OF PRIVATE OPEN SPACE = 10,086 S.F./15,388 = 65.5%
 9,628 S.F. IS PERMEABLE = 9,628/10,086 95%
 AVERAGE GRADE PLANE AROUND THE EX. DWELLING IS ELEVATION 52.32 BASED ON
 PLAN DATUM. HIGHEST POINT OF EXISTING ROOF IS 97.3 EXISTING ROOF HEIGHT IS
 44.97' ABOVE GRADE PLANE
 ELEVATIONS ON THIS PLAN REFER TO
 CAMBRIDGE SEWER BASE (ASSUMED)
 LOCATION OF UTILITIES TO BE CONSIDERED APPROXIMATE
 CALL DIG-SAFE OR APPROPRIATE AUTHORITIES TO VERIFY
 LOCATIONS AS NECESSARY

SEWER, DRAINAGE AND UTILITY NOTES:
 THERE ARE NO PROPOSED CHANGES TO EXISTING UTILITIES
 SERVICING THE DWELLING.
 PRIOR TO CONSTRUCTION
 UTILITY LOCATIONS WILL BE MARKED BY DIG-SAFE OR
 APPROPRIATE AUTHORITIES AND ARE NOT TO BE DISTURBED
 EXISTING SEWERAGE SYSTEM IS EQUIPPED WITH BACKFLOW
 PREVENTERS
 ALL BASEMENT FIXTURES SHALL HAVE A SEWER DRAIN BACKFLOW
 PREVENTER



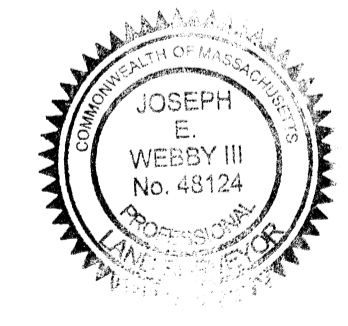
EXISTING CONDITIONS; SCALE :1"=20'

GRADE PLANE CALCULATION

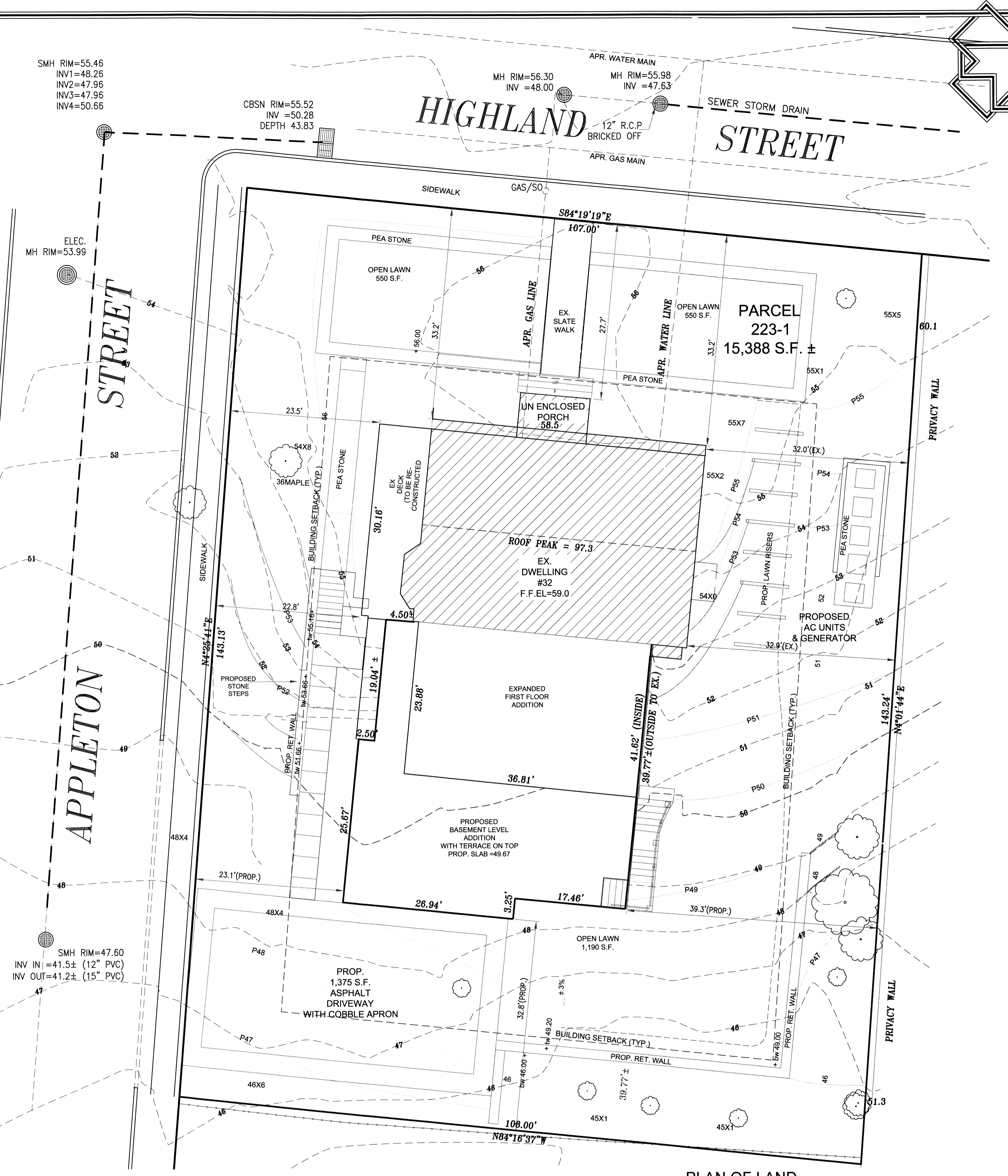
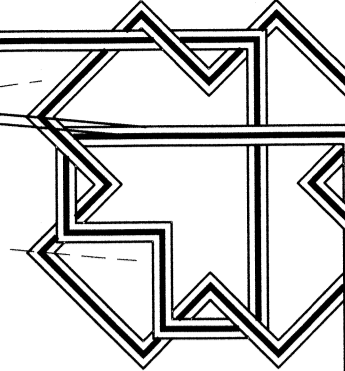
SEGMENT	E1	E2	AVERAGE	LENGTH	TOTAL (L'x")
1-2	55.9	56.0	55.95	43.4	2428.23
2-3	56.0	53.2	54.6	31.9	1,741.74
3-5	53.2	53.2	53.2	5.94	296.73
5-6	53.2	51.5	52.35	14.0	732.9
6-7	51.5	51.5	51.5	3	154.35
7-8	51.5	51.4	51.45	3	154.35
8-9	51.4	51.1	51.25	3.33	170.66
9-10	51.1	49.7	50.4	3.92	197.57
10-11	49.7	49.7	49.7	3.3	166.01
11-12	49.7	49.7	49.7	3.9	193.83
12-13	49.7	49.7	49.7	3.3	166.01
13-14	49.7	49.9	49.8	18.17	904.87
14-15	49.9	50.5	50.2	4.78	239.96
15-16	50.5	50.5	50.5	0.35	17.68
16-17	50.5	50.7	50.6	20.0	1012.0
17-18	50.7	55.0	52.85	12.05	636.84
18-1	55.0	55.8	55.3	33.63	1863.94
TOTAL			202.47	10,863.57	

AVERAGE EXISTING GRADE = 52.32
 EXISTING RIDGE ELEVATION = 97.3 (HEIGHT = 44.97)
 FIRST FLOOR ELEVATION = 59.0

I CERTIFY THAT:
 THE EXISTING DWELLING IS LOCATED AS SHOWN
 ON THIS PLAN, AND THAT THIS PLAT IS THE RESULT
 OF AN INSTRUMENT SURVEY AND DOES NOT LIE IN
 A FLOOD HAZARD ZONE AS DETERMINED BY FEMA

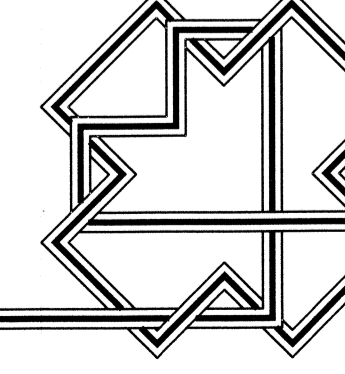
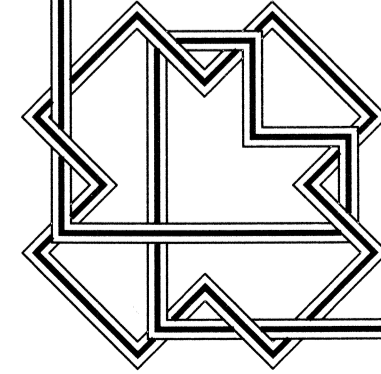


Joseph E. Webby III
 PROFESSIONAL LAND SURVEYOR
 2/13/2020 DATE



PROPOSED CONDITIONS, SCALE 1"=10'

PLAN OF LAND
 AT
 32 HIGHLAND STREET
CAMBRIDGE, MASS.
 PREPARED FOR
 AMOS THIRD CORNER LLC
 SCALE: (AS NOTED) FEBRUARY 13, 2020
 J WEBBY CONSULTING LLC.
 PROFESSIONAL LAND SURVEYORS & PLANNERS
 6 PINE HILL ROAD, KINGSTON, MA.
 02364 TEL. 1-781-983-3715





City of Cambridge

MASSACHUSETTS

BOARD OF ZONING APPEAL

831 Mass Avenue, Cambridge, MA.
(617) 349-6100

2
BZA

BZA

POSTING NOTICE – PICK UP SHEET

The undersigned picked up the notice board for the Board of Zoning Appeals Hearing.

Name: Alex Cohen Date: 4/10/20
(Print)

Address: 32 Highland St.

Case No. BZA-017267-2020

Hearing Date: 4-30-20

Thank you,
Bza Members