BZA APPLICATION FORM

GENERAL INFORMATION

The undersigned here	by petitions the Board	d of Zoning Appeal f	for the following:
Special Permit:	Variance:	Appeal	:X
PETITIONER: Lennart E	Braberg and Katherine Perls		
PETITIONER'S ADDRESS	: 4 Kennedy Road, Cambridge	, MA	
LOCATION OF PROPERTY	: 16 Kennedy Road, Cambridg	ge, MA	
TYPE OF OCCUPANCY: _	Single-family residence	ZONING DISTRICT:	Residence A-1
REASON FOR PETITION:			CAP
Additio	ns		New Structure
Change	in Use/Occupancy		Parking Parking
Convers	ion to Addi'l Dwelling	g Unit's	Sign SSC
Dormer			Subdivision ACH
X Other:	Appeal of building permit BLDF	R-070019-2018	SET
			75
DESCRIPTION OF PETIT	IONER'S PROPOSAL: ce of Building Permit #BLDR-070	0010 0010 the the	
dwelling violates the minimum	rear yard requirement.		
STATE OF THE PARTY			
SECTIONS OF ZONING O	RDINANCE CITED:		
Article Secti	on10.21		
Article Secti	on5.31, Table 5-1		
Article Secti	on G.L.C. 40A, Section 8		
Applicants for a Spe Applicants for an	iance must complete Pacial Permit must complete Appeal to the BZA s Department must atta	lete Pages 1-4 and 6 of a Zoning det	ermination by the
Or	riginal Signature(s):	(Petitioner)	(s)/Owner)
			i, Attorney for the Petitioners
	* * * * * * * * * * * * * * * * * * * *	(Print Lennart Braberg and Katl	122 M 200 M
	Address:	4 Kennedy Road, Cambr	
	Tel. No.:		
		ttwardowski@rc.co	m
	E-Mail Addr	*One Boston Place	
Date: 4/4/2018		Boston, MA 02108 (617)557-5965	

Robinson+Cole

TIMOTHY C. TWARDOWSKI

One Boston Place 25th Floor Boston, MA 02108-4404 Main (617) 557-5900 Fax (617) 557-5999 ttwardowski@rc.com Direct (617) 557-5965

Also admitted in Rhode Island

April 18, 2018

Via Hand Delivery

City of Cambridge City Clerk and Board of Zoning Appeal Attn: Secretary of the Board of Zoning Appeal 831 Massachusetts Avenue Cambridge, Massachusetts 02139

Re: Appeal of Building Permit #BLDR-070019-2018

Petitioners: Lennart Braberg and Katherine Perls, 4 Kennedy Road, Cambridge, MA

Property: 16 Kennedy Road, Cambridge, MA

Honorable Members of Board of Zoning Appeal:

The enclosed appeal is filed on behalf of petitioners Lennart Braberg and Katherine Perls, who reside at 4 Kennedy Road, Cambridge, Massachusetts and are direct abutters to the property located at 16 Kennedy Road, Cambridge, Massachusetts (the "Property"). This is an appeal of the decision of Commissioner of Inspectional Services approving Permit #BLDR-070019-2018 for the construction of a single-family dwelling on the Property.

Four (4) copies of the application form containing original signatures, along with associated documents, are enclosed with this appeal. Also enclosed is a check for \$100.00 payable to the City of Cambridge to satisfy the required filing fee.

Please acknowledge receipt of the application materials and filing fee by returning the enclosed extra copy of this letter and application to the undersigned after it has been date-stamped by the Office of the City Clerk.

This appeal is submitted with a full reservation of the petitioner's rights under all applicable state and local laws and regulations.

Robinson+Cole

Honorable Members of the Board of Zoning Appeal April 18, 2018 Page 2

If you have any questions or concerns regarding this matter, please do not hesitate to contact me directly.

Sincerely,

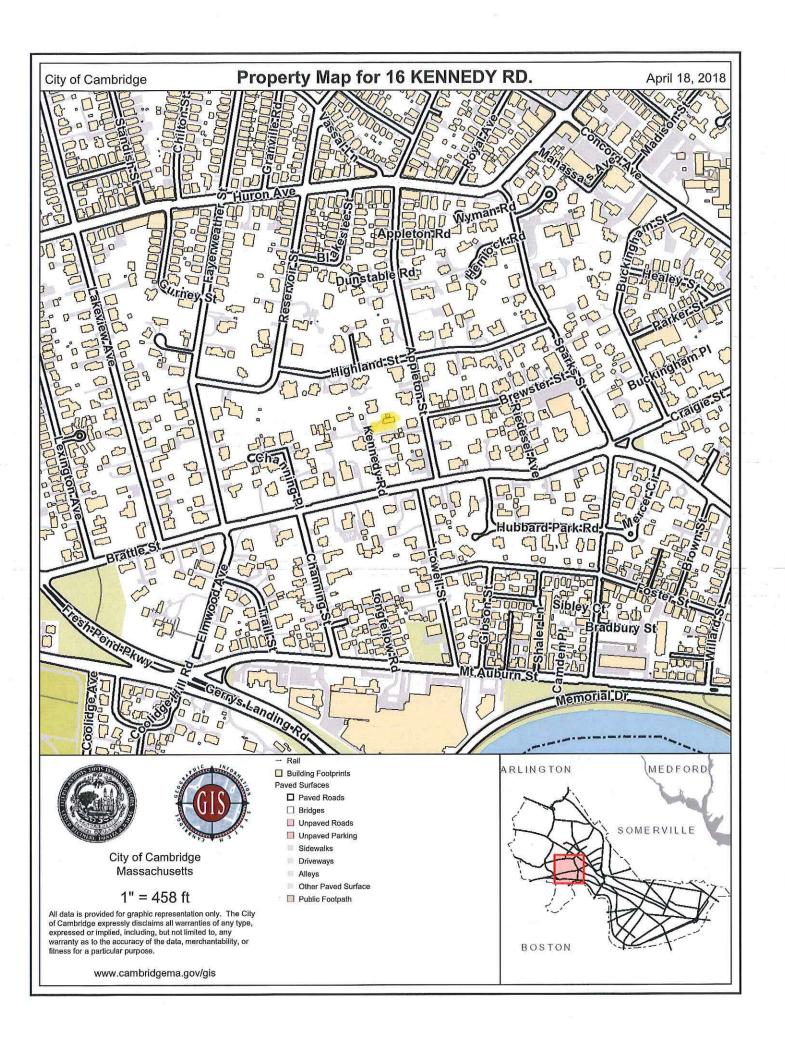
Timothy C. Twardowski

Enclosures

cc: Lennart Braberg and Katherine Perls

Kendra L. Berardi, Esq.

Ranjit Singanayagam, Commissioner of Inspectional Services





CITY OF CAMBRIDGE, MASSACHUSETTS BOARD OF ZONING APPEAL

STATEMENT IN SUPPORT OF APPEAL BY LENNART BRABERG AND KATHERINE PERLS

RE: APPEAL OF PERMIT #BLDR-070019-2018 (16 KENNEDY ROAD)

This is an appeal of the decision of Ranjit Singanayagam, Commissioner of Inspectional Services (the "Commissioner"), approving Permit #BLDR-070019-2018 (the "Building Permit") for the construction of a single-family dwelling on the property located at 16 Kennedy Road, Cambridge, Massachusetts (the "Property"). A copy of the Building Permit is attached as **Exhibit A**. Also attached hereto are copies of the following plans and drawings that were filed with the Inspectional Services Department ("ISD"), by or on behalf of the owner of the Property, in connection with the application for the Building Permit:

- A drawing titled "Moskowitz-Farmer Residence Proposed Site Diagram, dated February 8, 2018, by Foley Fiore Architecture, 316 Cambridge Street, Cambridge, MA 02141 (the "Site Diagram"), a copy of which is attached as Exhibit B; and
- Plans titled "Moskowitz-Farmer Residence at 16 Kennedy Road, Cambridge, MA 02138," dated January 12, 2018, with revisions through March 7, 2018, by Foley Fiore Architecture, 316 Cambridge Street, Cambridge, MA 02141, consisting of 17 sheets (the "Plans"), a copy of which is attached as Exhibit C.

The Board of Zoning Appeal (the "Board") has jurisdiction to hear this appeal under G.L. c. 40A, § 8 and Section 10.21 of the Zoning Ordinance of the City of Cambridge (the "Zoning Ordinance").

Ground for Appeal

The ground for this appeal is that the Commissioner improperly applied the dimensional standards of Section 5.31 and Table 5-1 of the Zoning Ordinance in granting the Building Permit, which authorizes the construction of a single-family dwelling that violates the minimum rear yard requirement. As shown on the "Zoning Information" table included on the Site Diagram, the minimum rear yard requirement for the Property is 35 feet. However, the Site Diagram incorrectly shows the proposed single-family dwelling has having a proposed rear yard of 52.3 feet. In fact, the southeast corner of the proposed dwelling is located just 32' 9½" from the rear lot line, and the northeasterly corner of the proposed dwelling also appears, based on a visual inspection of the Site Diagram, to be located closer than 35 feet from a rear lot line. Because the proposed single-family dwelling has a rear yard of less than the minimum requirement of 35 feet, the Building Permit should not have been issued.

17865635-2

¹ The Site Diagram does not show a measurement from the northeast corner of the proposed dwelling to the nearest rear lot line.

The Location of Rear Lot Lines on the Property

The Site Diagram shows a purported "Rear Lot Line" measuring ten feet that does not follow any actual lot line of the Property. This purported "rear lot line" appears to be drawn based on an improper interpretation of the following definition of "rear lot line" contained in Article 2 of the Zoning Ordinance:

Lot Line, Rear. A line most distant and opposite from the front lot line; where the lot is irregular, a line perpendicular to the mean direction of the side lot lines, and at least ten (10) feet in length within the lot.

<u>Note</u>: In order to facilitate the discussion of the rear lot lines of the Property for the purposes of this appeal, a "marked up" copy of the Site Diagram on which certain lot lines are marked A, B, C, or D (the "Markup") is attached hereto as **Exhibit D**.

The Site Diagram incorrectly interprets this definition of rear lot line to mean that, because the Property is irregularly shaped, the existence of actual lot lines A, B, C, and D should be ignored and an imaginary rear lot line should be drawn "perpendicular to the mean direction of the side lot lines, and at least ten feet in length within the lot." It also improperly interprets the definition to mean that a lot can only have one rear lot line. As explained below, and as will be further demonstrated at the hearing on this appeal, these interpretations are incorrect and unreasonable.

The Commissioner's Interpretation of "Rear Lot Line" is Not Reasonable

As a general rule, a zoning board's interpretation of its zoning ordinance or bylaw is entitled to deference where its interpretation is a reasonable one. See Wendy's Old Fashioned Hamburgers of N.Y., Inc. v. Board of Appeal of Billerica, 454 Mass. 374, 381 (2009) (citing Mellendick v. Zoning Bd. of Appeals of Edgartown, 69 Mass. App. Ct. 852, 857, 872 N.E.2d 1125 (2007)). However, a zoning board is not entitled to deference where a decision is "based on an 'unreasonable, whimsical, capricious or arbitrary' exercise of its judgment in applying land use regulation to the facts." Id. at 381-82 (quoting Roberts v. Southwestern Bell Mobile Sys., Inc., 429 Mass. 478, 487, 709 N.E.2d 798 (1999), quoting MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 639, 255 N.E.2d 347 (1970); Zaltman v. Board of Appeals of Stoneham, 357 Mass. 482, 485, 258 N.E.2d 565 (1970)).

In approving the Building Permit, the Commissioner apparently determined that lines A, B, and C as shown on the Markup are not rear lot lines. This conclusion was affirmed by Commissioner of ISD, in an email dated April 2, 2018, which quoted the Zoning Ordinance definition of rear lot line and stated: "Items marked A, B, and C are not rear lot lines." This interpretation is not reasonable.

While the Property may be irregular, there is nothing about the shape of the lot that requires the drawing of an imaginary rear lot line. As measured from certain points on the front lot line, lines B, C, and D are all "most distant and opposite from the front lot line." Lines A, B, C, and D are all opposite from the front lot line and located to the rear of both the existing structure and the proposed single-family dwelling. In addition, lines A, C, and D all are roughly parallel to the front lot line.

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Moreover, there is nothing in the definition of rear lot line that requires that a lot have only one rear lot line. Importantly, the definition begins with the phrase "A lot line most distant and opposite;" not with the phrase "The lot line most distant and opposite." It is not unusual for a lot to have more than one property line that is opposite from and most distant from the front lot line. The idea that in cases where the rear of a lot is defined by more than one lot line, only one of those lines can be considered the rear lot line, strains credulity. Put simply, there is no basis for lines B, C, and D to be considered anything other than rear lot lines.

That the lines marked A, B, C, and D on the Markup are, in fact, rear lot lines is further evidenced by a drawing submitted by representatives of the owner of the Property in connection with a 2016 variance/special permit application for redevelopment of the Property.² The drawing, titled "Moskowitz-Farmer Residence – Existing Site Plan," dated January 26, 2017, by Foley-Fiore Architecture (the "2016 Setback Drawing"), showed the buildable area of the Property as a cross-hatched area labeled "Potential Footprint Within Minimal Setbacks." A copy of the 2016 Setback Drawing is attached hereto as **Exhibit E**. In depicting the buildable area, it is evident that the 2016 Setback Drawing treated lines A, B, C, and D (as depicted on the Markup) as rear lot lines for the purpose of determining the required rear yard. In addition, it appears that representatives of the owner of the Property relied the 2016 Setback Drawing in arguing that a setback variance should be granted because "[d]ue to the shape of this site ... a hardship is created making it difficult to adhere to setback requirements."

The fact that the Chair of the Board initialed a copy of the 2016 Setback Drawing in BZA Case No. BZA-012246-2016 suggests that this Board agreed with and relied on the 2016 Setback Drawing's depiction of the minimum yard rear yard requirement—which treated lines A, B, C, and D (as depicted on the Markup) as rear lot lines—in granting the requested relief. In effect, this appeal simply requests that the Board reach the same conclusion that it did in 2016, namely that lines A, B, C, and D are rear lot lines.

Conclusion

For all of the foregoing reasons, the Commissioner's interpretation that the lines marked A, B, C, and D on the Markup are not rear lot lines is not reasonable. Under the Zoning Ordinance, lot lines A, B, C, and D are rear lot lines. Therefore, Petitioner respectfully requests that the Board reverse the Commissioner's decision and determine the Building Permit to be invalid on the ground that the proposed single-family dwelling is located less than 35 feet from the rear lot lines in violation of Section 5.31 and Table 5-1 of the Zoning Ordinance.

Respectfully Submitted,

Timothy C. Twardowski, Robinson & Cole LLP

Attorney for Petitioners

² See BZA Case No. BZA-012246-2016.

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CITY OF CAMBRIDGE

INSPECTIONAL SERVICES DEPARTMENT 831 Massachusetts Avenue Cambridge, MA 02139 Tel: 617-349-6100

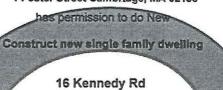
Permit #: BLDR-070019-2018

Date: 03/23/2018

BUILDING PERMIT

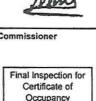
Jacob Farmer

1 Foster Street Cambridge, MA 02138



provided that the person accepting this permit adhere to regulations governing the Inspectional Services Department. Approved plans must be retained on the job site and this permit kept posted until the final inspection has been made. Building shall not be occupied until a final inspection has been made and a Certificate of Use and Occupancy has been issued. Work shall not proceed until inspectors approve various stages of construction. Code violations are subject to fines.

IF THE ORIGINAL ESTIMATED COST OF JOB IS 50K OF MORE, THEN A FINAL COST AFFADAVIT IS REQUIRED PRIOR TO FINAL SIGN OFF ON

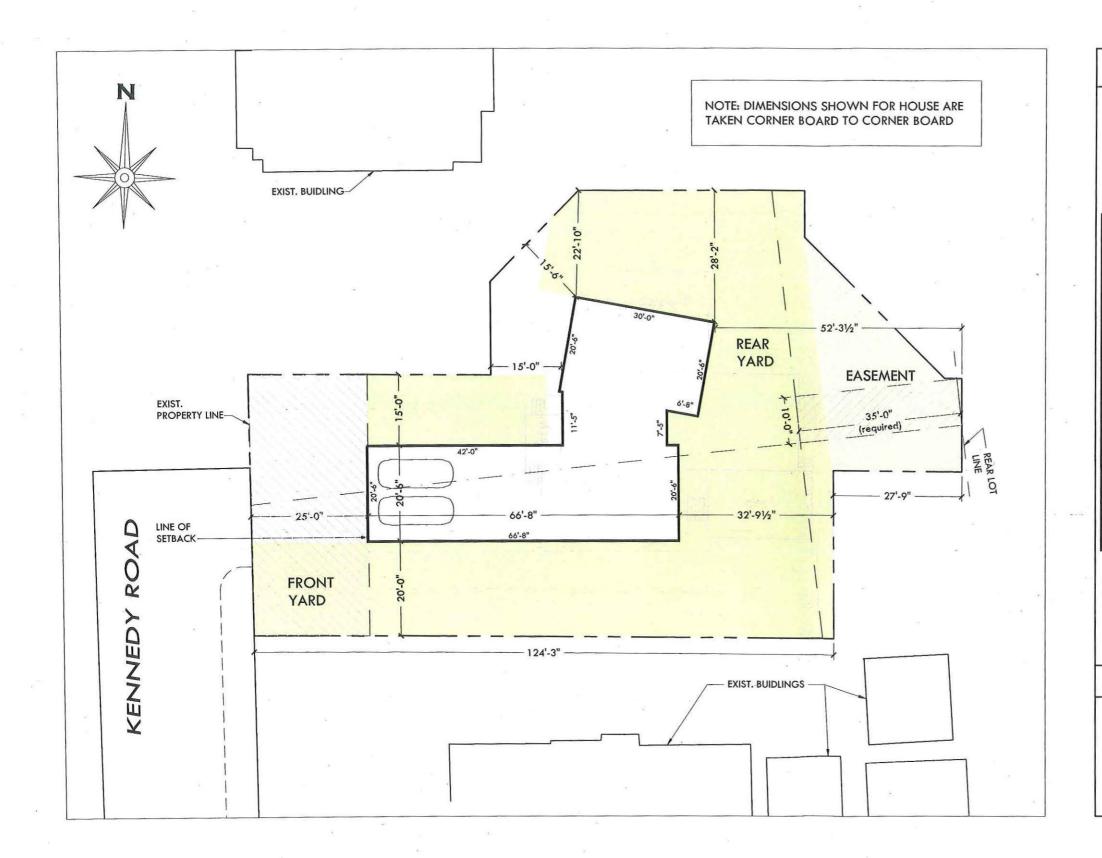


Ranjit Singanayagam, Commissioner Excavation Rough Frame HVAC Above Ceiling Insulation Footings **Duct Work** Foundation Depth Soil Condition Date Date Date Date Inspector Inspect Inspector Inspector Inspector Inspector Sanitary HVAC Equipment Sprinkler Cambridge Plumbing Fire Dept. Rough Final Rough Final Date Date Date Date Date Date Inspector Inspector Inspector Inspector Inspector Inspector Inspector

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ZONING INFORMATION

16 Kennedy Cambridge MA 02138

> DISTRICT Residence A-1 Lot size 10,459 Max. FAR 0.50

	REQUIRED (min /max)	Proposed
Basement	NIC	NIC
First Floor (includes 1 garage space)		1955
1 Space Garage (Not included in FAR)		220
Second Floor		1985
Attic		862
TOTAL GFA (Max 5,229 sq. ft.)	5229	4802
FAR .50 max	0.50	0.46
	31 +	9
Front Setback -Kennedy (25' min.)	25'-0"	25'-0"
Rear (35' min)	35'	52.3' (note 1)
South side (15' min. sum of 35')	20'(sum of 35)	20'
North Side (15' min. sum of 35')	15'(sum of 35)	15' - 22.4'
Building Height (35' max.)	35'	34'-8"
Open Space (min. 50%)	50%	57%
Open Space Including Easement		66%

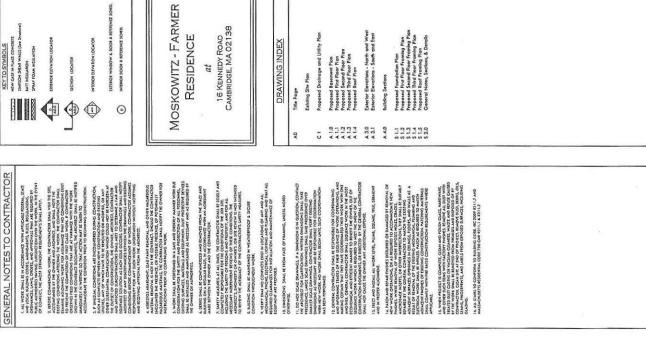
note 1: rear lot line is determined as per article 2.0 of the Cambridge Zoning Ordinance "A line most distant and opposite from the front lot line; where the lot is irregular, a line perpendicular to the mean direction of the side lot lines, at least ten (10) feet in length within the lot."

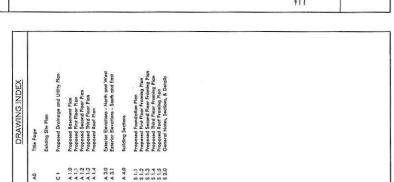
OPEN	SPAC	EKEY

Area counted towards open space = 5,949 sf (57% open space)

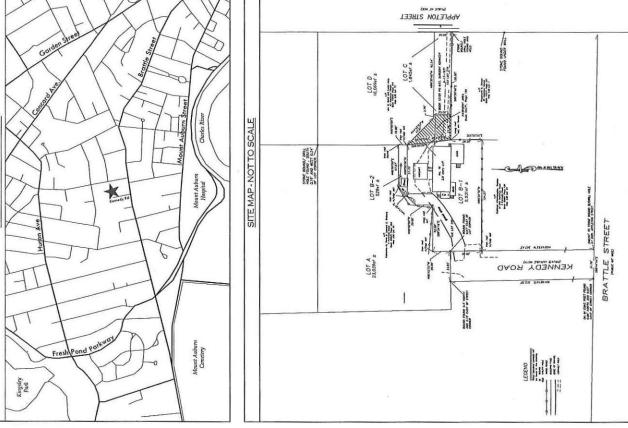
Area of easement= 972 sf (66% open space with easement)

Area not counted towards open space=1363 sf





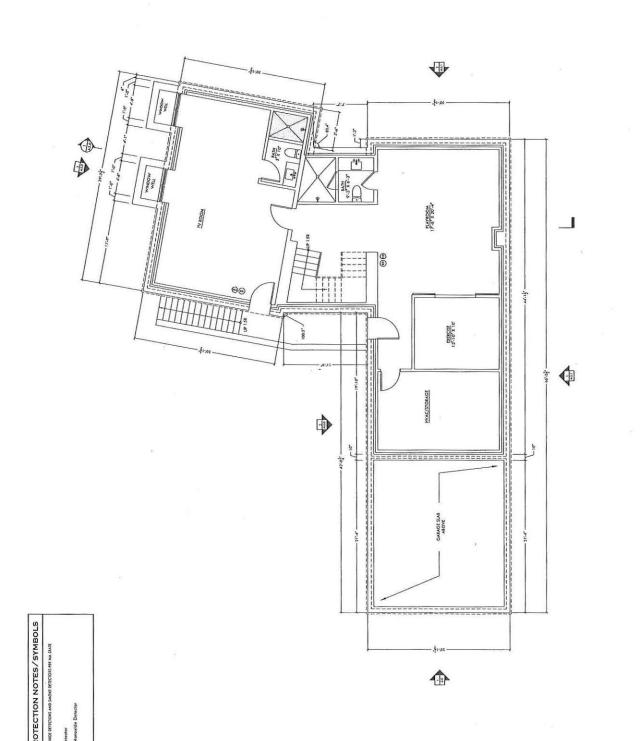
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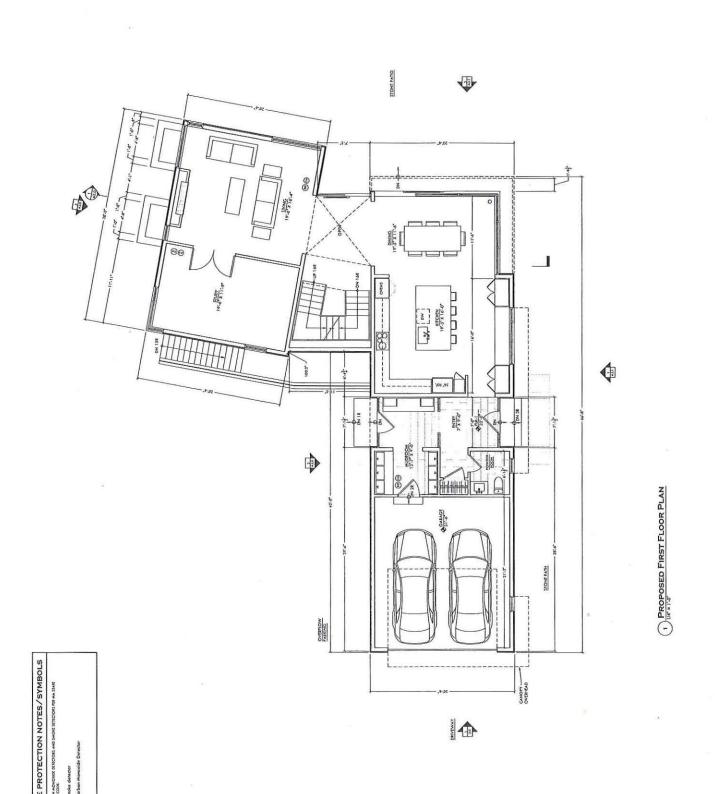


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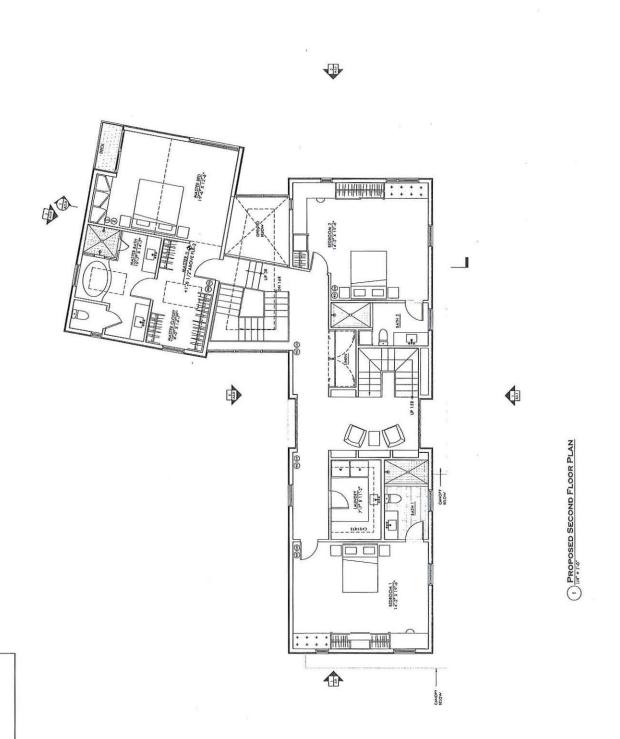
FOLEY FLORE ARCHITECTURE









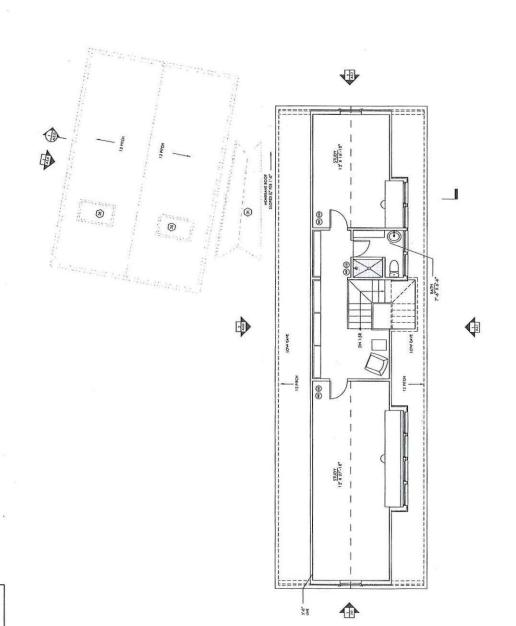












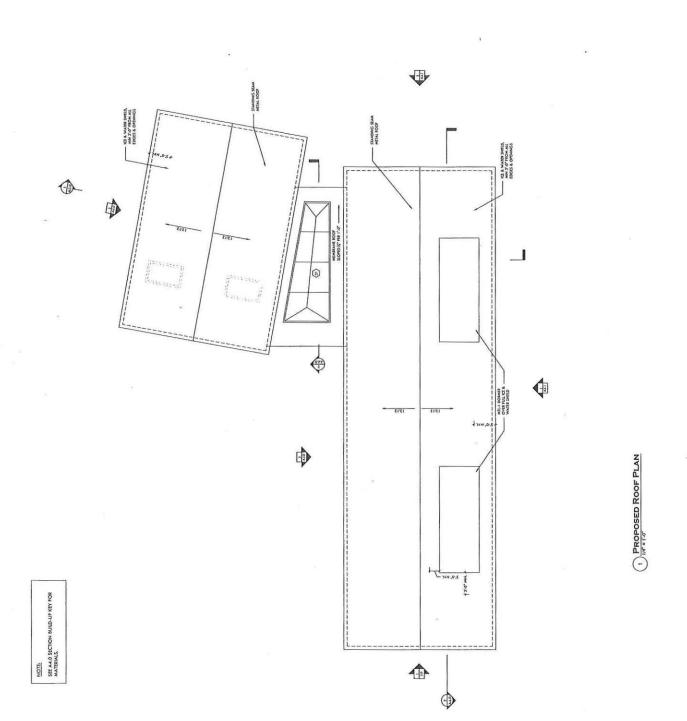
OSED THIRD FLOOR PLAN

FOLEY FIORE ARCHITECTURE











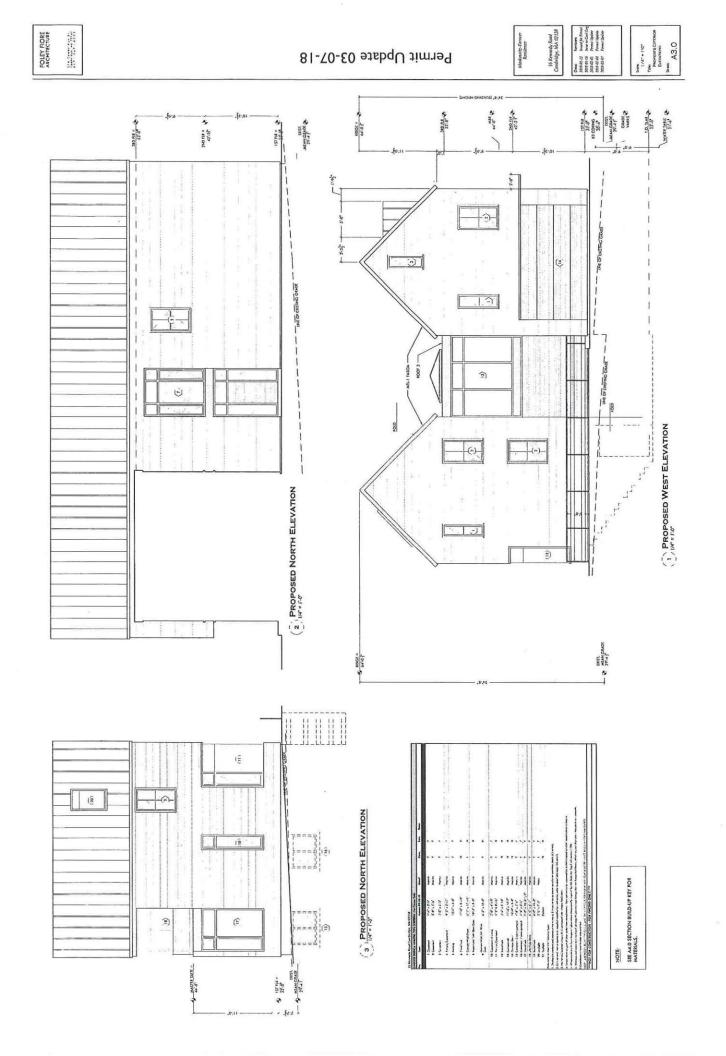


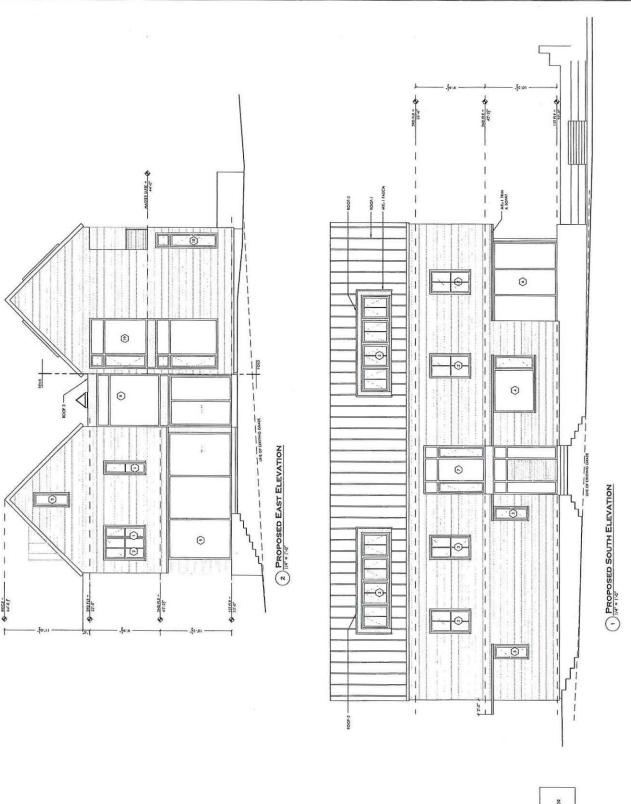


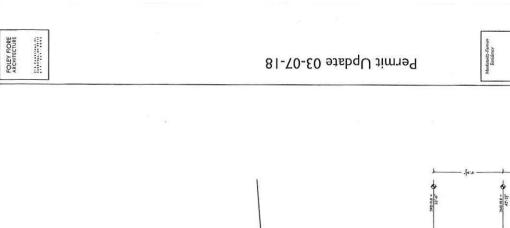


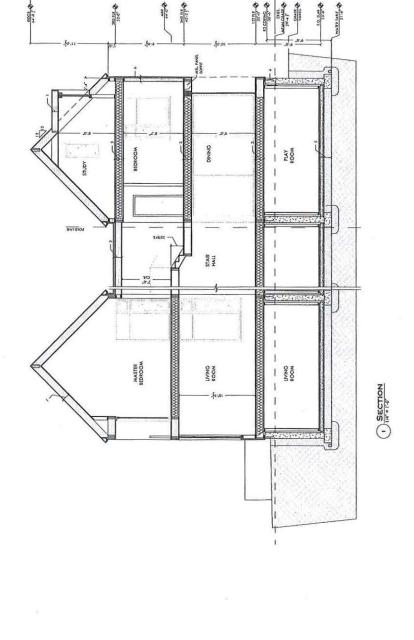




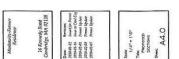




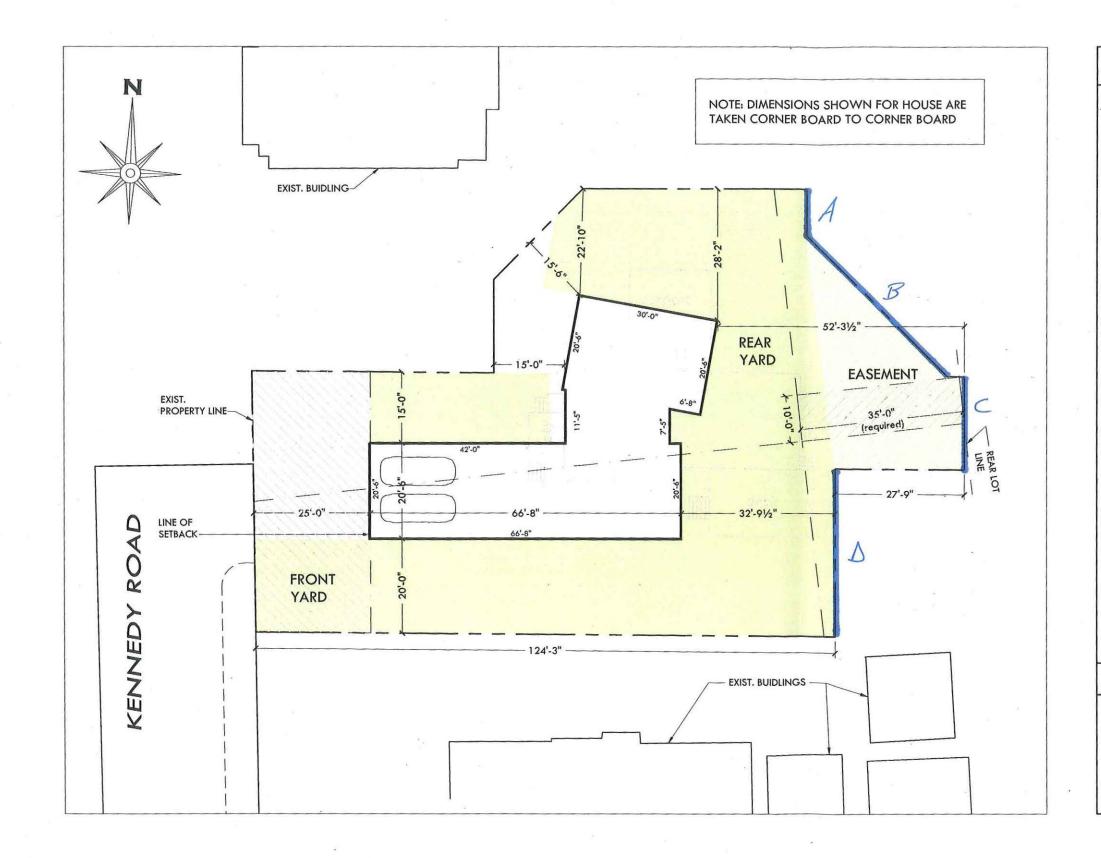




SECTION BUILD-UP KEY:



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ZONING INFORMATION

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OPEN SPACE KEY

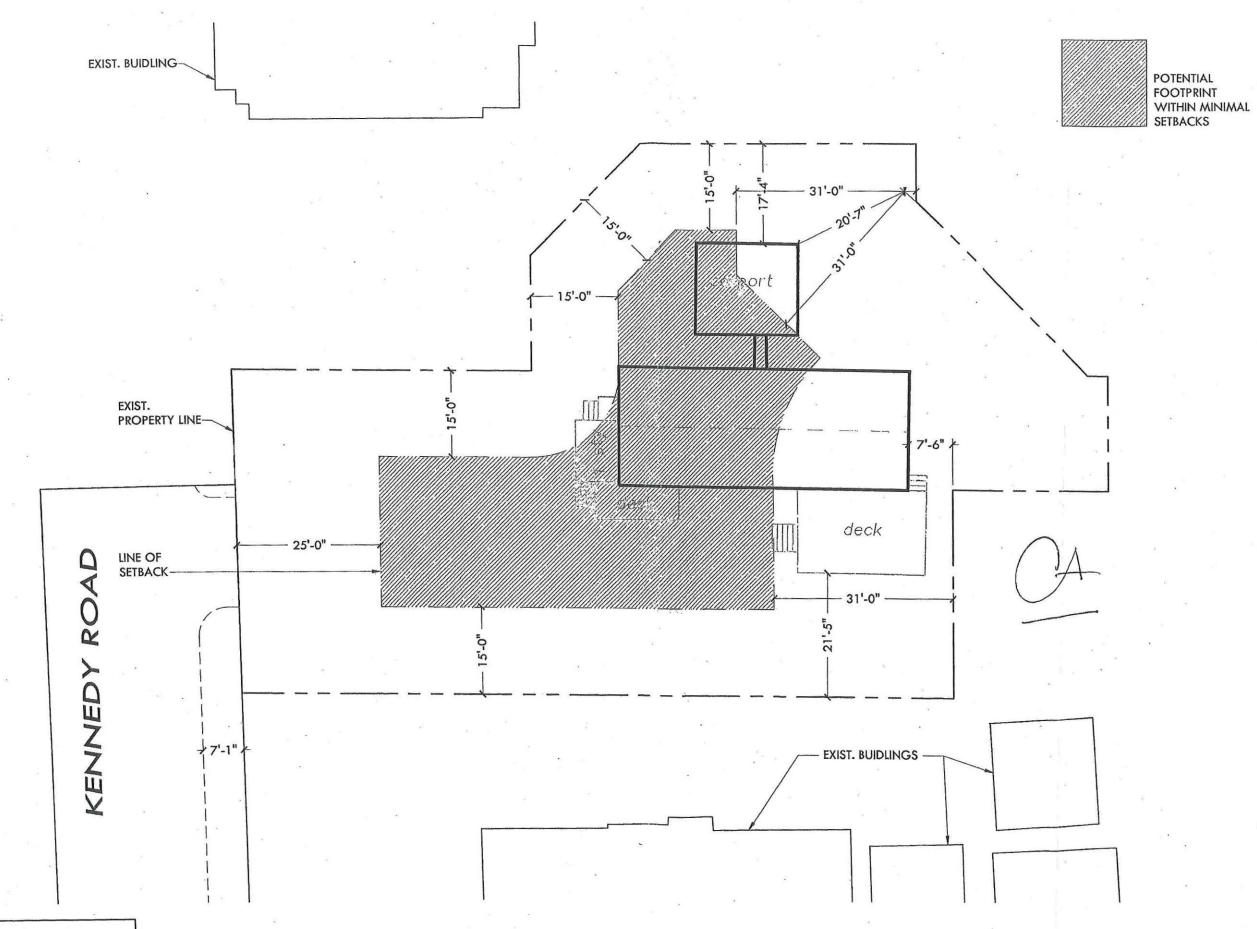
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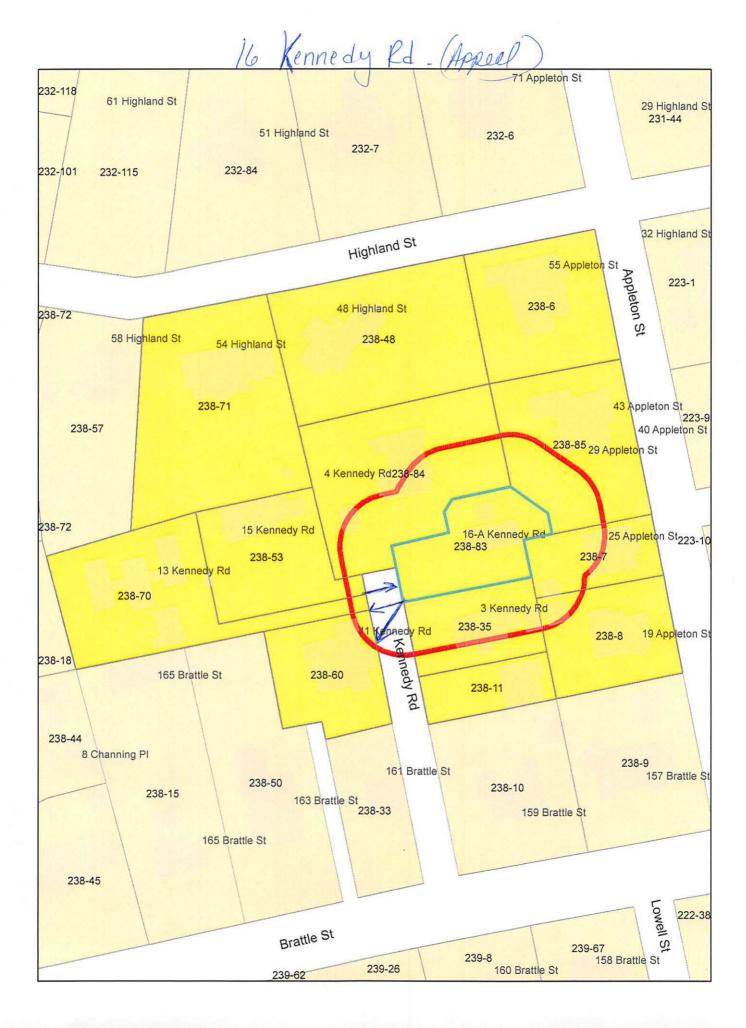
Area not counted towards open space=1363 sf

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26 January 2017 BZA Submission 1/16" = 1'-0"



16 Kennedy Ld.

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

238-7 ZANDER, ROSAMUND S. 25 APPLETON ST CAMBRIDGE, MA 02138

ROBINSON+COLE C/O TIMOTHY C. TWARDOWSKI, ESQ. ONE BOSTON PLACE, 25TH FLOOR BOSTON, MA 02108

238-11 BELL, PETER, TR. RESIDENT KENNEDY ONE REALTY TR. 8 KENNEDY RD CAMBRIDGE, MA 02138 238-35 ATLAMAZOGLOU, STYLIANOS. TRUSTEE OF ANA NOMINEE TRUST 3 KENNEDY RD CAMBRIDGE, MA 02138 238-48 EDMONDS, HELEN M. & ANDREW F. PESEK 48 HIGHLAND STREET CAMBRIDGE, MA 02138

238-53 TODD, EVA ANDENAES 15 KENNEDY RD. CAMBRIDGE, MA 02138 238-60 JACOBSEN, VIRGINIA 11 KENNEDY RD CAMBRIDGE, MA 02138 238-70
MANUS, DEBORAH J.,
TRUSTEE THE 13 KENNEDY RD NOMINEE TR.
163 BRATTLE ST
CAMBRIDGE, MA 02138

238-71 HORNOR, JILL ALISON TR. JENY REALTY TRUST 54 HIGHLAND ST. CAMBRIDGE, MA 02138 238-85 BIOTTI, JON M. & LESLIE JENG 43 APPLETON ST CAMBRIDGE, MA 02138 238-84
PERLS, KATHERINE M. & LENNART C. BRABERG
4 KENNEDY RD
CAMBRIDGE, MA 02138

238-83
FARMER, JACOB A. & JENNA R. MOSKOWITZ
16 KENNEDY RD
CAMBRIDGE, MA 02139

238-8 SIMONS, HUGH 19 APPLETON ST CAMBRIDGE, MA 02138