

**B Baker, Braverman
& Barbadoro, P.C.**

ATTORNEYS AND COUNSELORS AT LAW
300 CROWN COLONY DRIVE
SUITE 500
QUINCY, MASSACHUSETTS 02169-0904

TELEPHONE
(781) 848-9610

TELECOPIER
(781) 848-9790

INTERNET ADDRESS
WWW.BBB-LAWFIRM.COM

JONATHAN BRAVERMAN (Retired)

OF COUNSEL
DUANE G. SULLIVAN
DOUGLAS C. PURDY (1943-2016)

WARREN F. BAKER
PAUL N. BARBADORO
GENE J. GUIMOND
CHRISTOPHER J. SULLIVAN
THERESA BARBADORO KOPPANATI*
KIMBERLY K. KROHA**
LISA BOND
GARY M. HOGAN***

LAWRENCE A. DINARDO
SUSAN M. MOLINARI

RICHARD C. ASH
KASSANDRA C. TAT
ALEXANDER N. MENDEZ
PAVLI PERMETI****
JOHANNA M. P. WARD*****

*ALSO ADMITTED IN NY & CA
**ALSO ADMITTED IN FL
***ALSO ADMITTED IN RI
**** ALSO ADMITTED IN NY & CT
*****ALSO ADMITTED IN CT

March 1, 2023

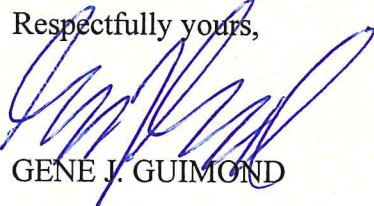
Robert Rosa, Chairman
Rockland Zoning Board of Appeals
242 Union Street
Rockland, MA 02370

RE: 15 Webster Street

Dear Chairman Rosa,

I apologize for the late filing; however, I believe that the enclosed additional materials would be of assistance to the Board in following my presentation in support of my requested findings at the upcoming hearing. I understand that the Board may not have time to review the materials in advance of the hearing.

Respectfully yours,


GENE J. GUIMOND

Enclosures

I. **Background.**

1922 Plan – Exhibit A

1930 Deed – Exhibit B

Pre-2007 Assessor Map (reflecting connection between the buildings at 15 & 19 Webster as one structure) - Exhibit C

Endorsed (ANR) Form A Plans - Exhibits D and E

2007 Assessor Letter – Exhibit F

II. **Owing to Circumstances Related to Soil Conditions, Shape or Topography of the Land or Structures and Especially Affecting Such Land and Structures but Not Affecting Generally the Zoning District in Which it is Located.**

Merriam-Webster Dictionary Definition of Topography

a. the art or practice of graphic delineation in detail usually on maps or charts of natural and **man-made features** of a place or region especially in a way to show their relative positions and elevations;

b. the configuration of a surface including its relief and the position of its natural and **man-made features**

Johnson v. Bd of Appeals of Wareham – Exhibit G

III. **A Literal Enforcement of the Provisions of the Ordinance or By-Law Would Involve Substantial Hardship, Financial or Otherwise to the Petitioner.**

Property burdened by numerous easements.

Payment of real estate taxes, percentage of condominium association fees, insurance obligations, and liability risk for land not under owner's control.

Lot shape more conforming to 1922 configuration.

IV. **Desirable Relief May be Granted Without Substantial Detriment to the Public Good and Without Nullifying or Substantially Derogating from the Intent of Purpose of Such Ordinance or By-Law.**

Transfer of +/- 479 square footage poses no detriment to adjacent properties.

Provision of off-street parking relieves traffic and parking congestion on Webster Street.

EXHIBIT A

NOV 14 1922

PLAN OF LAND
IN
ROCKLAND, MASS.
OWNED BY
C. L. RICE HEIRS
SCALE, 80 FT. = 1 IN.
W. T. MERRY SURVEYOR
AUG 14, 1922

H.O. PERRY

EMILY E. FAULKNER

A.W. PERRY

VICTOR R. MORRIS

LOT #15

LOT #19

LOT #14

LOT #20

LOT #22

LOT #24

RIGHT OF WAY

PARK STREET

EXHIBIT B

to said point of beginning. Being the same premises which were conveyed to me the within grantor by deed of Francis H. Arnold of even date to be recorded herewith. This mortgage is given subject to a prior mortgage of fifteen hundred dollars to Rockland Co-operative Bank. This mortgage is upon the statutory condition, for any breach of which the mortgagee shall have the statutory power of sale. WITNESS my hand and seal this thirtieth day of December 1930.

Theresa R. Gilmartin Seal

THE COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss. December 30, 1930. Then personally appeared the above named Theresa R. Gilmartin and acknowledged the foregoing instrument to be her free act and deed, before me-

Francis J. Geogan Justice of the Peace.

My commission expires March 2, 1934.

Rec'd Dec. 31, 1930 at 11:10 A. M. & recorded.

I, CLARENCE E. RICE, of Rockland, Plymouth County, Massachusetts, for consideration paid, grant to C.L.RICE & SON, INC., a corporation duly established by law and having its usual place of business in said Rockland, with QUIT-CLAIM COVENANTS, the land in said Rockland, with buildings thereon situate on the southerly side of Webster Street, bounded and described as follows: Beginning on said street, at the northwesterly corner of the lot, thence by said street, N. 80° 19' E., eighty-six (86) feet; thence S. 4° 25' E. by land of Faulkner, seventy-six and five-tenths (76.5) feet; thence S. 8° 26' E. thirty and five-tenths (30.5) feet; thence about southerly, four and eight-tenths (4.8) feet to a corner; thence S. 89° 23' W. forty-six and one-tenth (46.1) feet to a corner; thence nearly south, eight and seven tenths (8.7) feet to a corner; thence S. 85° 48' W. forty (40) feet to a corner; thence N. 4° 55' W. one hundred three and five tenths (103.5) feet to the point of beginning. Also a right of way from the southeast corner of said premises to Park Street, and measuring twelve feet on said Park Street, and also the right of drainage from said premises, by way of said right of way to drains on said Park Street. Said premises and said right of way are shown on Plan recorded with said Plymouth County Deeds. Being the same premises conveyed to me, the within grantor, by deed of Julia P. Wakefield, et al., dated October 9, 1922, and recorded with Plymouth Deeds, Book 1423, Page 252. Also a certain parcel of land with the buildings thereon, situate on the northerly side of Park Street in said Rockland, bounded and described as follows: Beginning at a stake on said street, thence S. 86° 40' W. forty-nine and one-tenth (49.1) feet to a right of way; thence north 3° 18' W. eighty-three (83) feet to land of Faulkner; thence north 85° 32' E. forty-three and five-tenths (43.5) feet to a stone post; thence south 7° 10' E. eighty-four (84) feet by land, now or formerly of Hallet to the bound first mentioned. Said lot being the easterly lot on said Park Street delineated on Plan of Land in Rockland, Massachusetts, owned by C.L.Rice heirs, which said Plan is recorded with said Plymouth County Deeds. Together with a right to pass in and out over the right of way adjoining the granted premises on the west. This conveyance is made subject to the right of Clarence E. Rice to use the drain on the granted premises and the right to maintain and repair it and to connect it with the drain now in Park Street. Being the same premises which were conveyed to me, the within grantor, by deed of Lawrence E. Blanchard, dated July 5, 1927, recorded with Plymouth County Deeds, Book 1539, Page 166. Also the land in Rockland between Webster and Park Streets, bounded and described as follows: Westerly by land of the grantor, thirty and five-tenths (30.5) feet; northerly by land formerly of Emily F. Faulkner, eight (8) inches, more or less; easterly by land formerly of Emily F. Faulkner, thirty and five-tenths (30.5) feet; southerly by land formerly of Charles L. Rice heirs, eight (8) inches, more or less. The premises are shown on "Plan of land in Rockland, Mass. owned by C.L.Rice heirs, W.A.Torrey, Surveyor, August 14, 1922." Also interest in any land lying between

Rice
to
C.L.Rice
& Son,
Inc.

the lot of Clarence E. Rice (the grantor) known as the "Rice Funeral Home" on the southerly side of Webster Street and the land which was owned and occupied as a residence by D. Perry Rice at the time of his death. Being the same premises which were conveyed to me, the within grantor, by deed of Julia P. Wakefield, et al., dated September 26, 1930, recorded with Plymouth County Deeds, Book 1598, Page 583. Also a certain parcel of land with the buildings thereon, located on the southerly side of Webster Street in said Rockland, said parcel being bounded and described as follows: Beginning on said street at the northeasterly corner of the premises, thence southerly by land now or formerly of one Hallet about one hundred and five (105) feet to land now or formerly of Charles L. Rice; thence westerly by land now or formerly of said Rice about forty-nine and one-half (49½) feet to a corner of land now or formerly of said Rice; thence northerly by land now or formerly of the grantor about one hundred and three (103) feet to said Webster Street; thence easterly by said Webster Street about forty-nine and one-half (49.5) feet to the point of beginning. Being the same premises which were conveyed to me, the within grantor, by deed of D. Perry Rice by mortgagee, dated January 22, 1930, recorded with Plymouth County Deeds, Book 1588, Page 112. IN WITNESS WHEREOF I, Clarence E. Rice, being unmarried, hereunto set my hand and seal this thirtieth day of December, 1930.

Clarence E. Rice Seal

COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss. December 30, 1930. Then personally appeared the above named Clarence E. Rice and acknowledged the foregoing instrument to be his free act and deed, before me-

Francis J. Geogan Justice of the Peace.

My commission expires March 2, 1934.

Rec'd Dec. 31, 1930 at 11:10 A. M. & recorded.

I, FRANCIS J. GEOGAN, Executor of the Will of CLARENCE W. BURGESS late of Rockland, Plymouth County, Massachusetts, by the power conferred by license of the Probate Court for said County dated December 8, 1930, and every other power, me hereto enabling for TEN THOUSAND DOLLARS (\$10,000) paid, grant to JACOB WAINSHALBAUM, sometimes known as JACOB WAYNSHALBUM of said Rockland, certain real estate situate in Rockland in the County of Plymouth, bounded and described as follows, viz: Easterly by Union Street, forty-two (42) feet, northeasterly by a curved line at the corner of Union and Linden Streets, thirteen and five tenths (13.5) feet; northerly by Linden Street, ninety-three and one-half (93.50) feet; westerly by land devised by Clarence W. Burgess to Ethelbert Keene, forty-nine and one tenth (49.1) feet; southerly by land of John M. Young et al, ninety-three and sixty-five one hundredths (93.65) feet. Being the lot marked "Burgess" on plan of land of Clarence W. Burgess, survey by Giles W. Howland, to be recorded with Plymouth Deeds. WITNESS my hand and seal this 30th day of December, 1930.

Francis J. Geogan Seal
Executor of the Will of
Clarence W. Burgess

COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss. December 30, 1930. Then personally appeared the above named Francis J. Geogan Executor as aforesaid, and acknowledged the foregoing instrument to be his free act and deed, before me-

Hilda J. Condon Notary Public

My commission expires June 24, 1932.

Rec'd Dec. 31, 1930 at 11:10 A. M. & recorded.

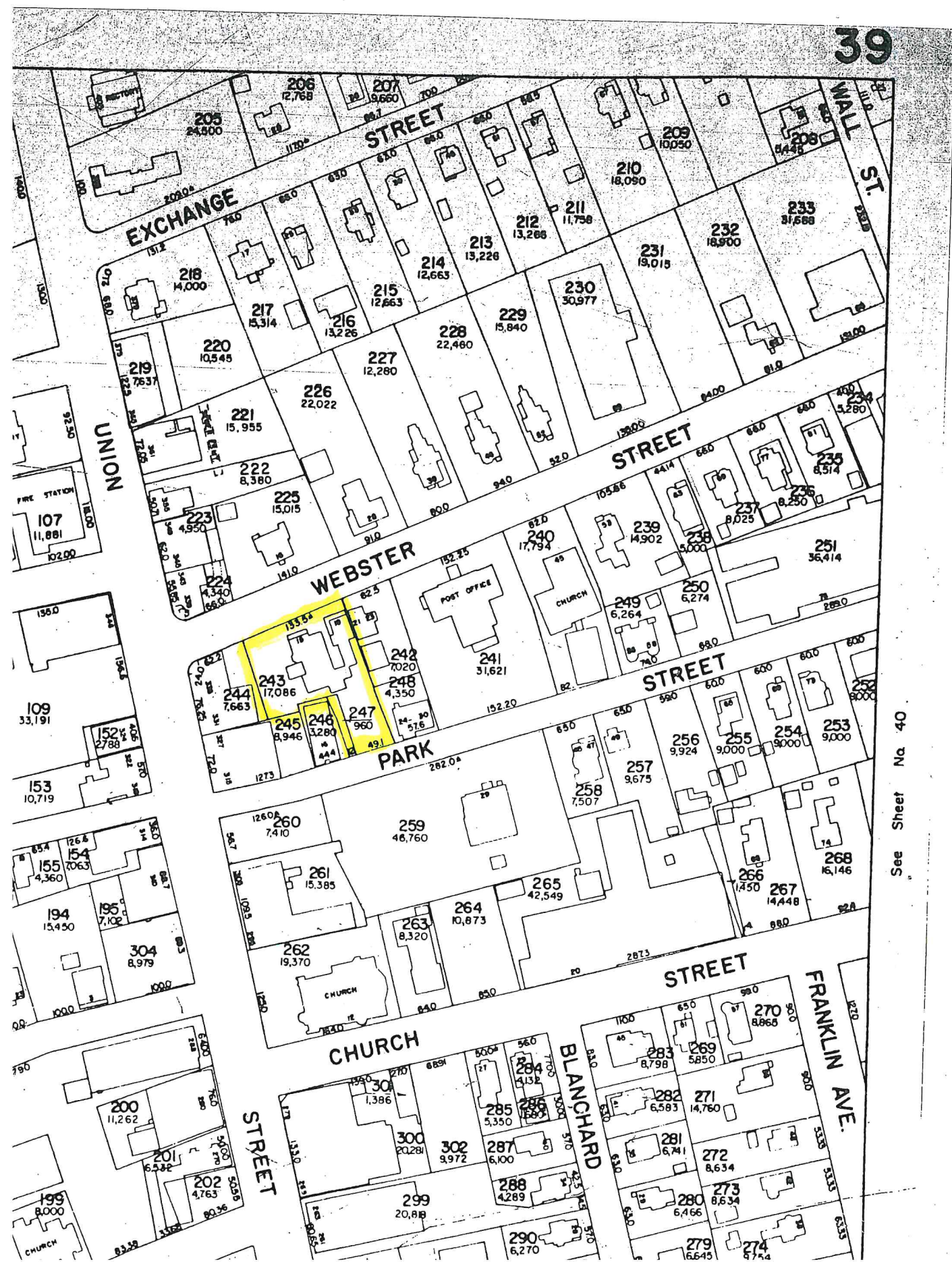
I, JACOB WAINSHALBAUM of Rockland, Plymouth County, Massachusetts, for consideration paid, grant to ROCKLAND TRUST COMPANY, a corporation organized under the laws of Mas-

Burgess
by Exr.
to
Wain-
shalbaum

See Plan Book No. 5 Page 126

Wain-
shalbaum
to
Rockland
Tr. Co.

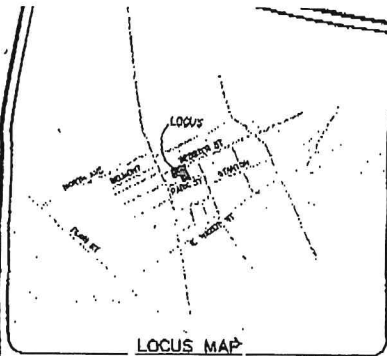
EXHIBIT C



See Sheet No. 40

EXHIBIT D

8

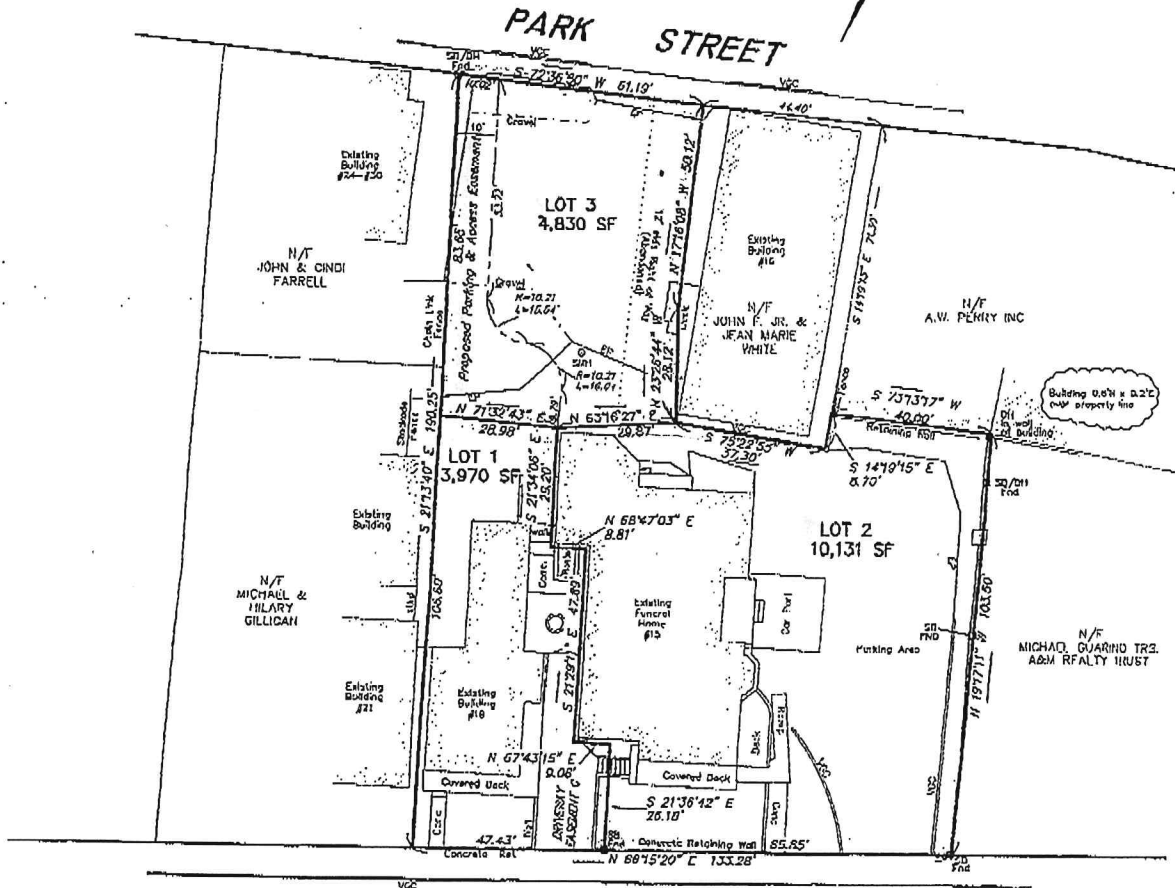


- NOTES**
1. Zoning Classification: R-1
Setback Dimensions: FY - 0'
RY - 0'
SY - 0'
 2. Locus lies in F.I.R.M. Zone C as shown on Community Pond No. 250281 00038 dated July 12, 1982.
 3. Planning Board Endorsement of this plan is not a determination as to conformance with the town of Rockland Zoning By Laws.
 4. Plan Reference:
"Plan of Land in Rockland, Mass. owned by C.L. Rice heirs", dated Aug. 14, 1922 by W.A. Torrey recorded in Plan book 3, Page 293.
 5. This plan is a division of parcels I through IV described in deed book 4895, page 318 and shown on the above referenced plan.

STANDARD CO. REC. 14-1000
MAY 21 2007
5-21-07
RECORDED

07-322

FOR REGISTRY USE ONLY



PLANNING BOARD ENDORSEMENT OF THIS PLAN INDICATES ONLY THAT THE PLAN IS NOT A SUBDIVISION UNDER M.G.L. Ch. 41, Sec 87I, AND DOES NOT INDICATE THAT THIS LOT IS BUILDABLE OR THAT IT MEETS ZONING, HEALTH, CONSERVATION OR GENERAL BY-LAW REQUIREMENTS.

WEBSTER STREET
(40 wide - County Layout)

OWNER
Philip M., Edyth M. and Joseph V. O'Donnell
Deed Book 4895, Page 318
Assessor's Parcel: 39-2636747



Plymouth County Registry of Deeds
PLANBOOK **53** PAGE **131**

APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED

DATE ENDORSED: 5/2/07

[Signatures]

ROCKLAND PLANNING BOARD

I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

[Signature] 4/10/07
PROFESSIONAL LAND SURVEYOR DATE

0' 20' 40' 60'

PLAN OF LAND

15-19 WEBSTER STREET

IN

ROCKLAND, MA

SCALE: 1"=20' DATE: APRIL 10, 2007

AABERG ASSOCIATES INC.
Professional Land Surveyors
10 Washington St., Unit C-117, North Andover, MA 01861
Phone (978) 872-9111 Fax (978) 872-9111

Drawn By: RLS	Checked By: DLA
File Name: 023.DWG	Job No.: 7.025

ck ALONE
75
07-322

EXHIBIT E

2022 00000318
Bk: 69 Pg: 447 Page: 1 of 1
Recorded: 08/04/2022 01:07 PM
ATTEST: John R. Buckley, Jr., Register
Plymouth County Registry of Deeds

PLYMOUTH CO. REG. OF DEEDS
AUG 04 2022
8-4-22
RECORDED

22-316

I certify that I have conformed with the rules and regulations of the Registers of Deeds in preparing this plan.
Claudio Sala 4/29/2022
Professional Land Surveyor



RECEIVED
MAY 09 2022
Rockland Planning Board

Notes:

- Assessors Reference: Map 39, Parcel 243
- OWNED BY: Webster Common Condominium
Master Deed: Book 51249, Page 85
Record Plan: Pl. Bk 53, Plan 131
- This plan being a subdivision of Lot 2 as shown on Plan Recorded in Plan Book 53, Page 131.
- Lot 2B is not a buildable lot and will be merged with and become part of land of Robert J. Jr. & Renee L. Bergeron at #19 Webster Street. Lot 2B will not merge with other land of Bergeron fronting on Park Street.

Plymouth County Registry of Deeds
PLAN BOOK 66 PAGE 447

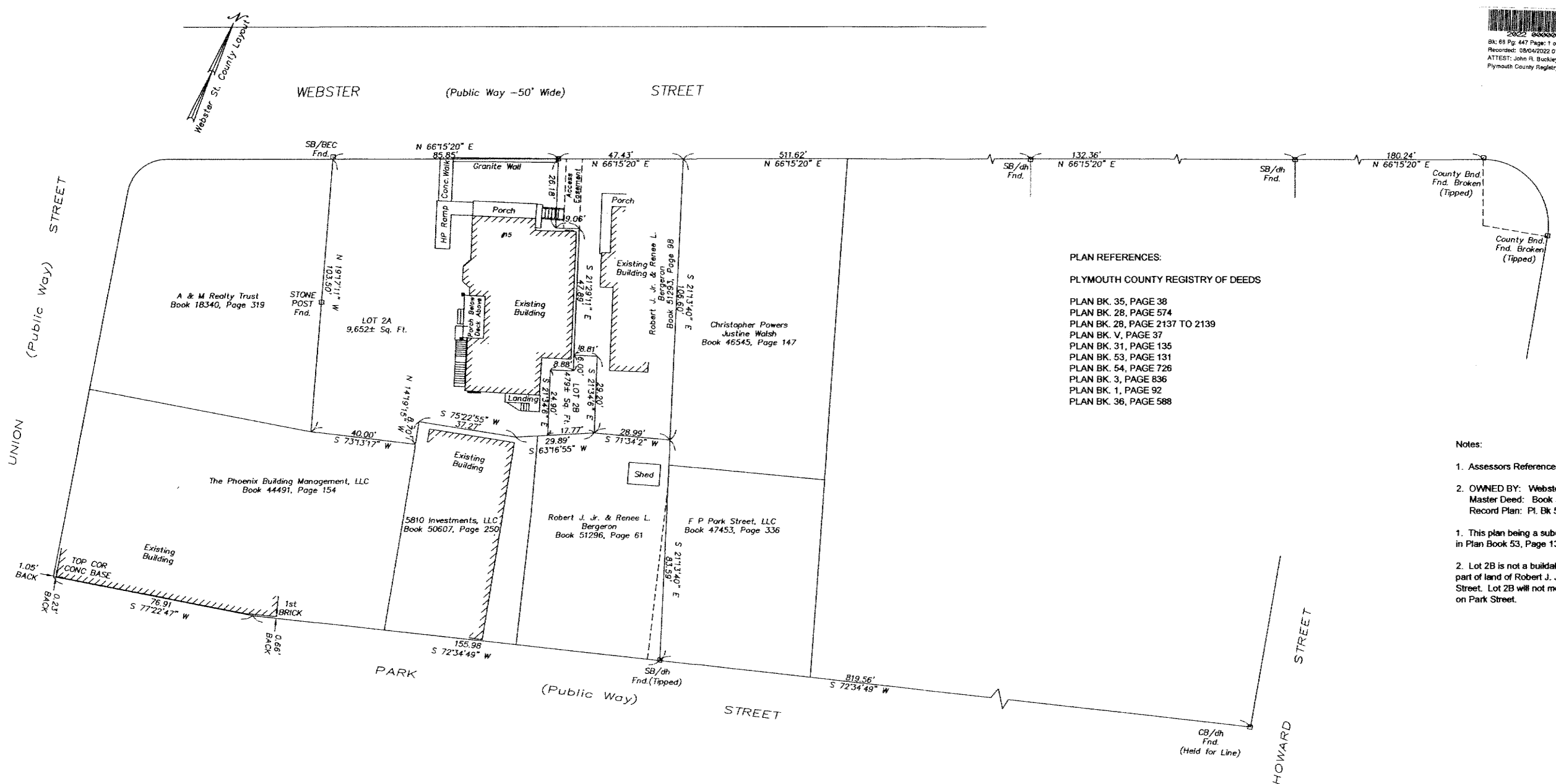
PREPARED FOR:
WEBSTER COMMON CONDOMINIUM
15 WEBSTER STREET
ROCKLAND, MA 02370

A.N.R. SUBDIVISION PLAN
15-19 WEBSTER STREET
ROCKLAND, MASS.

PREPARED BY:
CLAUDIO SALA, P.L.S.
REGISTERED LAND SURVEYOR
145 WHITWELL STREET
QUINCY, MA 02169
claudio_sala@msn.com

SCALE: 1" = 20' DATE: January 10, 2022 REVISIONS: March 23, 2022

FILE # 103408 DWG. L-3

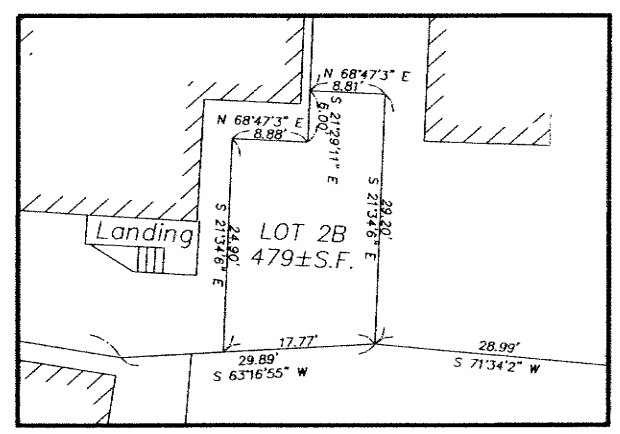


APPROVAL UNDER SUBDIVISION
CONTROL LAW NOT REQUIRED

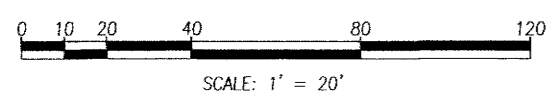
DATE: 6/28/2022

Robert J. Jr. & Renee L. Bergeron
Christopher Powers
Justine Walsh
F P Park Street, LLC
5810 Investments, LLC
The Phoenix Building Management, LLC
A & M Realty Trust

PLANNING BOARD ENDORSEMENT SHALL NOT BE DEEMED
TO CONSTITUTE ANY DETERMINATION OF COMPLIANCE WITH
REQUIREMENTS OF THE ZONING BY-LAW



DETAIL
Scale: 1" = 10'



Along \$105-

22-316

#316
8H

PLAN
447
60

EXHIBIT F



TOWN OF ROCKLAND

Board of Assessors

Town Hall
242 Union Street
Rockland, Massachusetts 02370

Chairman:

Harvey J. Smith

Jillene M. Smith
Dennis M. Robson

Assessor/Appraiser:

Joseph A. Gibbons, M.A.A.

Telephone: 781-871-0137
Fax: 781-871-2241

August 25, 2007

To whom it may concern:

The property located at 15 Webster Street (Map 39 Lot 243) will be subdivided for the Actual F.Y. 2009 tax billing. The original Lot (39-243) will remain on the tax commitment roll as the former funeral home. The two new lots will be 39-312 (the existing residential building) and 39-313 (the vacant lot with Park Street frontage).

Sincerely,

Joseph A. Gibbons,
Assessor/Appraiser

EXHIBIT G

Johnson v. Board of Appeals

Supreme Judicial Court of Massachusetts

January 5, 1972

No Number in Original

Reporter

360 Mass. 872 *; 277 N.E.2d 695 **; 1972 Mass. LEXIS 1111 ***

Alton Johnson & another v. Board of Appeals of
Wareham & others

Opinion

Disposition: [***1] *Decree affirmed.*

Case Summary

Procedural Posture

Plaintiff homeowners in a residential zone appealed the decision of the trial court (Massachusetts), which affirmed the variance granted by defendant city zoning board to defendant applicants to convert a church located in the same residential zone into office suites.

Overview

The older houses in the residential zone were there before the zoning by-law was adopted. One of the applicants, a church, owned the existing building to be converted into office suites. The other applicant was the prospective purchaser of the church's building. One reason for abandoning the church's building was the heavy traffic on the road where it was situated. The land on the opposite side of the road was zoned commercial. The trial court concluded that the variance could be granted without substantial detriment to the public good or substantial derogation from the purpose of the zoning by-law. The trial court's decision was affirmed. The court found that the evidence supported the trial court's findings. The conditions affecting the old church building created a hardship not applicable to the zoning district generally. The hardship was not being able reasonably to use the unusual, if not unique, and substantial existing building for any permitted purpose other than residential.

Outcome

The court affirmed the trial court's decree.

Counsel: *Chris Byron* for the plaintiffs.

William J. Cantelmo for Daniel Nyman.

[*872] [**696] Owners of houses in a residential A zone in Wareham seek (G. L. c. 40A, § 21) to overturn a variance given to Daniel C. Nyman and the People's Church of the Nazarene (which had merged with another congregation) to convert its forty-year old solid frame church (locus) on Route 6, in the same residential zone, into office suites. One reason for abandoning [*873] the church was the heavy traffic on Route 6, where a church member's child had been killed recently. The land on the opposite side of Route 6 is zoned commercial D for about 1,500 feet, and contains a warehouse and a business enterprise. Other old houses in the residential zone have been there since before the zoning by-law was adopted in 1952. The trial judge found that "it is unrealistic to consider that the . . . [locus] could be used . . . for either single or multiple residence[s]." To demolish the church would cost about \$ 1,500. The vacant lot then would be worth about \$ 3,000. The approximate cost of renovating the church for dwelling use (exclusive of land cost) would [***2] be \$ 20,000 for a single residence and \$ 42,000 for two apartments. Three office suites could be put in the building for about \$ 26,000. There was evidence that the locus would then be worth about \$ 45,000. The judge's subsidiary findings are justified by the reported evidence. The judge reasonably concluded that the variance could "be granted without substantial detriment to the public good" or substantial derogation from the purpose of the by-law. In the opinion of a majority of the court, he also reasonably concluded that, in the circumstances, conditions especially affecting the locus and the old church building created a hardship not applicable to the zoning district generally. The judge correctly ruled that naming, in the notice given under G. L. c. 40A, § 17, the record owner as applicant, without mentioning another applicant (a prospective purchaser of the locus for \$ 15,000) did not invalidate the board's action. The purchaser's name was made known at the public hearing. Evidence strongly suggested that he

360 Mass. 872, *873; 277 N.E.2d 695, **696; 1972 Mass. LEXIS 1111, ***2

would not be forced to purchase if the variance was not granted. The hardship in not being able reasonably to use this unusual, if not unique, and substantial [***3] "existing building" (see G. L. c. 40A, § 15, as amended through St. 1958, c. 381) for any permitted purpose brings the case within authorities like Dion v. Board of Appeals of Waltham, 344 Mass. 547, 551-552, and Sherman v. Board of Appeals of Worcester, 346 Mass. 423, 426, McLaughlin v. Rockland Zoning Bd. of Appeals, 351 Mass. 678, 683, and Garfield v. Board of Appeals of Rockport, 356 Mass. 37, 40-41.

Decree affirmed.

End of Document