

TOWN OF HOLLISTON
ZONING BOARD OF APPEALS

TOWN HALL

HOLLISTON, MASSACHUSETTS 01746

2021 MAY 18 AM 10:08

APPLICATION FOR ADMINISTRATIVE APPEAL (Ch. 40A, s. 15)

Date Filed: May 18, 2021

Applicant's Name: Meaghan Hammer, Tr., JMH Trust

Applicant's Address: 2 Wild Turkey Run, Medway, MA 02053

Attorney: (508) 881 4950

Applicant's Phone Number: Meaghan Hammer: (508) 641-6468

Owner's Name: Meaghan Hammer, Tr., JMH Trust

Owner's Address: 16 Pearl Street, Holliston, MA

The Owner hereby appoints Neal J. Bingham, Esq. to act as his/her/its agent for the purposes of submitting and processing this application for a special permit. *

The Owner's title to the land that is the subject matter of this application is derived

under deed from Benjamin Cornish, Personal Representative of the, dated July 17, 2018

Estate of Gail Cornish

And recorded in Middlesex South Registry of Deeds, Book 1531, Page 83

Or Land Court Certificate of Title No. _____, registered in

District Book _____, Page _____

The land is shown in the Assessor's records as Lot 54 on Map 8E, Block 2

And has an address of or is located at 16 Pearl Street

in the Residential (R-1) zoning district

Applicant's Signature: [Signature]

Owner's Signature: [Signature]

*See Attached Memorandum in Support of Appeal Application, filed herewith.

TOWN OF HOLLISTON BOARD OF APPEALS

TRUSTEES OF JMH TRUST'S SUPPLEMENT TO APPEAL OF ADMINISTRATIVE DECISION

INTRODUCTION

The Applicant, Meagan Hammer, as she is a Trustee of the JMH Trust, ("Applicant"), submits this Supplemental Memorandum in support of its Application for Administrative Appeal (the "Application") pursuant to G.L. c. 40A, § 15, by which the Applicant requests that the Board of Appeals overturn the May 5, 2021 decision of the Building Commissioner (the "Denial") denying the Applicant's request for a Certificate of Occupancy for the single-family residence located at 16 Pearl Street (the "Premises"). (*A copy of the Denial is attached as Exhibit A.*)

BACKGROUND

The subject Premises consists of a lot comprising 7,751 S.F. +/- (Lot 54 on Map 8E, Block 2) improved by one principal structure – a newly constructed single-family home. The Premises is located entirely in an R-1 Zoning District and has frontage on Pearl Street. (*Deed attached as Exhibit B; Radius Plan, attached as Exhibit C.*)

The Applicant filed Applications for a special permits and dimensional variances with the Holliston Zoning Board of Appeals (the "Board") on August 23, 2018, under which the Applicant sought to demolish an existing non-conforming structure (a single-family home) located at 16 Pearl Street (the "Premises") and build a new single-family home (the "New House") that increased both the volume and area non-conformities. (*See Plot Plan depicting pre-construction existing conditions, dated October 23, 2018, attached as Exhibit D; Plot Plan depicting the then proposed New House, dated November 30, 2018, attached as Exhibit E.*)

The hearing on the Applications was opened and closed in one day, after which the Board deliberated and voted unanimously to approve the Special Permit (the "Special Permit Decision") and Dimensional Variance (the "First Variance Decision") (together the "Decisions"). (*Special Permit Decision and First Variance Decision, both dated Septembers 19, 2018 and attached respectively as Exhibit F and Exhibit G.*) Significantly, both the Special Permit Decision and the Variance Decision authorized the New House to be constructed subject to the following regarding setbacks:

- Front yard setback: "no closer than 6' to the front line along Pearl Street."
- Side yard setback: "shall not encroach into the required side yard setback any further than the existing dwelling."
- Rear yard setback: "The dwelling shall be no closer than 8' to the southwesterly lot line." (Emphasis added.)

(*See Exhibit F, p.2, Conditions of Approval, ¶ 3; Exhibit G, p.2, Conditions of Approval, ¶ 3; See also Septic System Construction 16 Pearl Street, revised through September 17, 2018, attached as Exhibit H*)

Prior to any construction of the New House, a comment by the then Holliston Building Commissioner set in motion a slight alteration to the siting of the structure. After seeing Plaintiffs' building plans, the Building Commissioner mentioned that the plans submitted to the Board in September 2018 did not include front stairs, but the construction set of plans did. The Building Commissioner advised Plaintiffs that this was a problem because he interpreted the Holliston Zoning Bylaw as requiring him to count the stairs in his front setback calculation, which would have encroached into the 6' authorized for the front yard setback by the Decisions. (See Exhibit F and Exhibit G.)

In accordance with the Building Commissioner's directive, the Applicant revised their building plans by shifting the entire New House back by three (3) feet to accommodate the front stairs and the Building Commissioner. (See Certified Plot Plan, dated September 10, 2019, attached as Exhibit I.) The revised plans were submitted to the Building Department and received without further comment or objection. While this change had no impact on the side setbacks, the result is that the New House is sited three (3) feet closer to the rear, southwesterly lot line. This should not have been a problem because that change placed the New House nineteen (19) feet from the rear lot line, which is well outside of the 8-foot rear setback authorized by the Original Variance Decision. (See Exhibit F, p.2; and Exhibit G, p.2.) Construction proceeded in accordance with the Building Commissioner's directives and revised plans and was completed in 2019.

On April 22, 2021, undersigned counsel notified the Building Commissioner that the Applicant's were requesting a certificate of occupancy for the Premises. On April 27, 2021, the Building Commissioner conducted and completed the inspection. Following the inspection, the Building Commissioner identified eight (8) items that he wanted addressed before making a decision on the request. After the Applicant addressed each of the 8 items to the Building Commissioner's satisfaction, the Building Commissioner issued the Denial on May 5, 2021.

DISCUSSION

II. The Existing Structure is a Legal and Permitted Three Family Residence.

This Denial should be overturned, and the Building Commissioner directed to immediately issue a Certificate of Occupancy for the Premises because the single-family residence constructed on the Premises by the Applicant complies in all respects with the Town of Holliston Zoning Bylaw, the Special Permit Decision and the Variance Decision. Notably, in support of the Denial, the Building Commissioner wrote the following:

I am unable to issue a Certificate of Occupancy at this time due to zoning noncompliance. It appears from the as- built you do not comply with the Special Permit and Variance issued in 2018, and the plan approved in those decisions. You have increased the nonconformity as it pertains to the rear yard setback. You have the right to appeal this determination in accordance with G.L. c. 40A, G.L. c. 143 and 780 CMR. (Exhibit A.)

The error of the Denial is now manifestly clear. It recently came to the attention of the Applicant and their counsel that someone in the Town of Holliston had misread the unambiguous language of the Decisions, specifically as it relates to which lot line at the Premises is the

southwesterly. Specifically, the Applicant has been advised by Town Counsel that the Record Plan (Exhibit H) establishes that the leftmost lot line is southwesterly because it contains the following information entered along that lot line on the plan:

s 45'54'30" w

When they became aware of this position, the Applicant asked their engineer, Joseph Marquedant, to consider the issue and prepare a letter to the Building Commission. (*See April 30, 2021 letter from Applicant's engineer.*) As is set forth in Mr. Marquedant's letter, the leftmost lot line is in fact the southeasterly lot line. As is shown on the Certified Plot Plan and the Record Plan, the new House is in conformity with both Decisions on its leftmost lot line because it "does not encroach into the required side yard setback any further than the existing dwelling." (Exhibit F and Exhibit G.) Mr. Marquedant further opines that the Town's interpretation is incorrect because the reference to the Record Plan above is not a reference to a particular lot line, but instead a general directional reference to a portion of the parcel. In other words, this reference means that the leftmost lot line runs in a southwesterly direction from Pearl Street to the rear of the Property. It does not describe the location of the leftmost, side lot line.

CONCLUSION

The denial is based solely on a misinterpretation of the word "southwesterly" in the Decisions. In short, the word "southwesterly" can only mean one thing, the rear lot line of the Premises. The Premises and in particular the single-family residence constructed by the Applicants, is in conformity with the dimensional requirements of the Holliston Zoning Bylaw and the Decisions. The Building Commission's Denial is in error as a matter of law and should be overturned and the Board should therefore direct the Building Commissioner to issue a Certificate of Occupancy for the Premises without delay.

TRUSTEE OF THE JMH TRUST

By its Attorneys,



Jerry C. Effren BBO# 151830

Neal J. Bingham BBO#652029

Law Offices of Jerry C. Effren

25 West Union Street

Ashland, MA 01721

508-881-4950

Dated: May 18, 2021

EXHIBIT A

Adrianne Cormier

From: Kaferlein, Mark <kaferleinm@holliston.k12.ma.us>
Sent: Wednesday, May 5, 2021 12:32 PM
To: Neal Bingham
Subject: Fwd: FW: Pearl st

----- Forwarded message -----

From: **Kaferlein, Mark** <kaferleinm@holliston.k12.ma.us>
Date: Wed, May 5, 2021 at 12:19 PM
Subject: Re: FW: Pearl st
To: Meaghan Hammer <meaghanhammer@gmail.com>

Hi Meaghan and Brian

I am unable to issue a Certificate of Occupancy at this time due to zoning noncompliance. It appears from the as-built you do not comply with the Special Permit and Variance issued in 2018, and the plan approved in those decisions. You have increased the nonconformity as it pertains to the rear yard setback. You have the right to appeal this determination in accordance with G.L. c. 40A, G.L. c. 143 and 780 CMR.

MK

EXHIBIT B



2018 01793877
 Bk: 1531 Pg: 83 Cert#: 268360
 Doc: DEED 08/01/2018 12:41 PM

QUITCLAIM DEED

I, Benjamin Cornish, Personal Representative of the Estate of Gail Cornish, Middlesex Probate Court Docket No. MI 18P2970 EA, Holliston, Middlesex County, Massachusetts pursuant to the power of sale conferred by the will of said Gail Cornish.

For consideration of One Hundred Seventy Four Thousand (\$174,000.00) Dollars

Grant to Meaghan Hammer, Trustee of JMH Trust of ^{2 WILD Turkey Run} Medway, Norfolk County, Massachusetts

with Quitclaim Covenants

the land in Holliston, Middlesex County, Massachusetts, with the buildings thereon, bounded and described as follows:

EASTERLY and
 NORTHEASTERLY by Pearl Street, seventy-two and 60/100 (72.60) feet;
 SOUTHEASTERLY eighty-two (82) feet, and
 SOUTHWESTERLY one hundred four and 88/100 (104.88) feet, by land now or formerly of Frances L. Inches; and
 NORTHWESTERLY by land now or formerly of S. Maria Rice, one hundred five and 79/100 (105.79) feet.

All of said boundaries are determined by the Court to be located as shown on a plan, as modified and approved by the Court, filed in the Land Registration Office, a copy of a portion of which is filed in the Registry of Deeds for the South Registry District of Middlesex County in Registration Book 207, Page 481, with Certificate 32404, (Plan No. 14484A).

Unnumb. Lot

For title reference see deed dated October 30, 1973 and recorded the Middlesex South District as Document No. 517114.

MASSACHUSETTS EXCISE TAX
 South Middlesex District ROD # 0000000000
 Date 08/01/2018 12:41 PM
 Ctr# 276630 27046 Doc# 01793877
 Fee: \$793.44 Cons: \$174,000.00

THOMAS G. WALDSTEIN, ESQ.
 24 Union Ave., Suite 22
 Framingham, MA 01702

142492-842-142

WGH

16 Pearl St., Holliston, MA

Witness my hand and seal this 17 day of July, 2018.

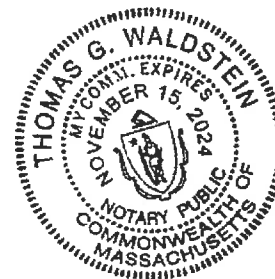
Benjamin Cornish
Benjamin Cornish,
Personal Representative of the
Estate of Gail Cornish

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this 17th of July, 2018, before me, the undersigned notary public, personally appeared **Benjamin Cornish, Personal Representative of the Estate of Gail Cornish** proved to me through satisfactory evidence of identification, being a driver's license, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.

Thomas G. Waldstein
Notary Public: Thomas G. Waldstein
My Commission Expires: 11/15/2024



Tgw Real Estate Folder Cornish deed to Pearl Street July 2018

7.31.18
APPROVED FOR REGISTRATION
BY THE COURT

Mamad G. Egan
TITLE EXAMINER

as to fiduciary authority
w/initials to me

DOCUMENT 01793877

Southern Middlesex LAND COURT

REGISTRY DISTRICT

RECEIVED FOR REGISTRATION

On: Aug 01, 2018 at 12:41P

Document Fee: 125.00
Receipt Total: \$1,208.44

NEW: CERT 268360 BK 01531 PG 83

OLD: CERT 142492 BK 842 PG 142



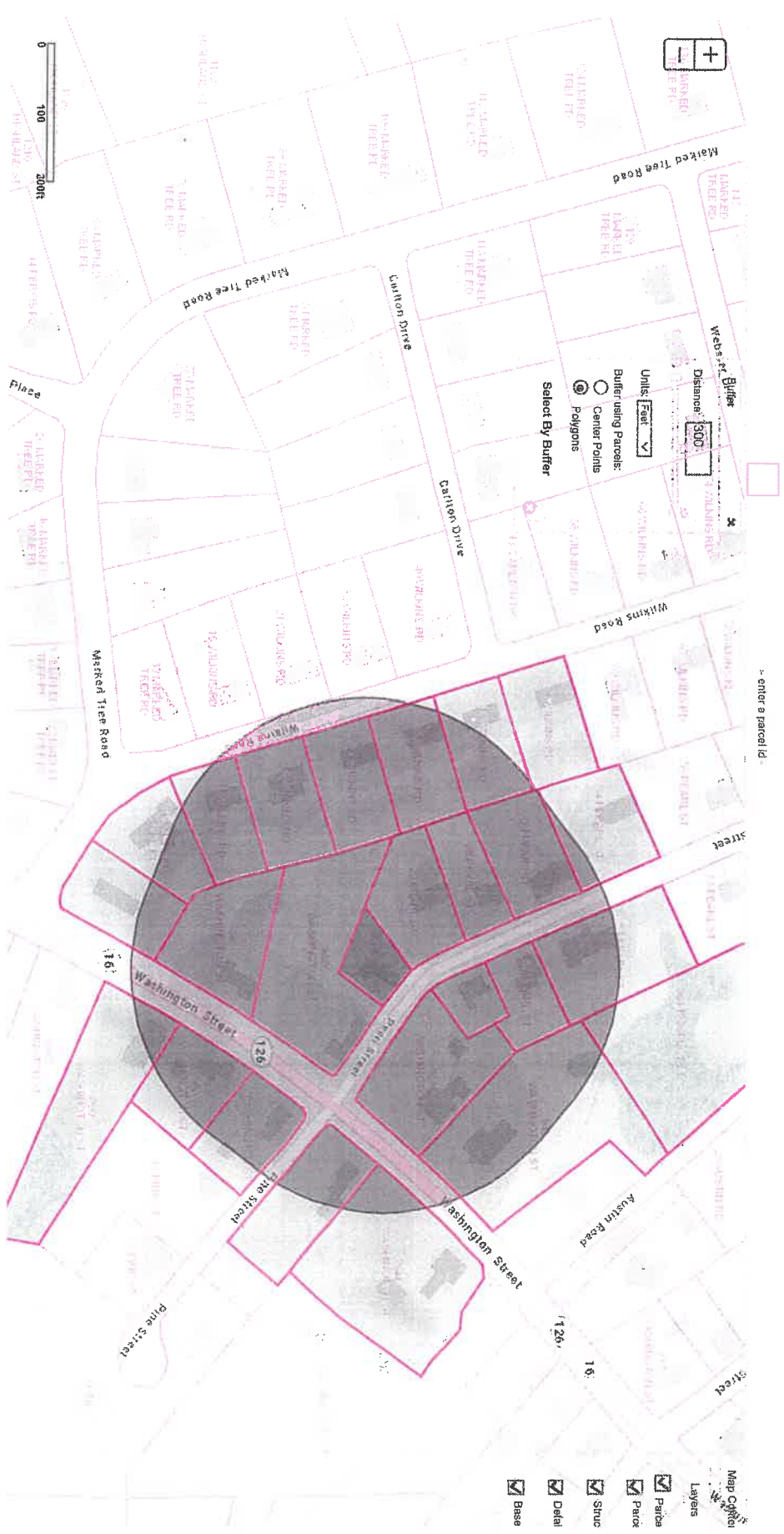
73681

EXHIBIT C



State of Massachusetts - **PROD**

- Dashboard
- Maintain
- Property Records
- Inquire
- Admin
- Map Search
- Assessor Admin



Opacity	Transparent
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50%	100%
100%	Transparent

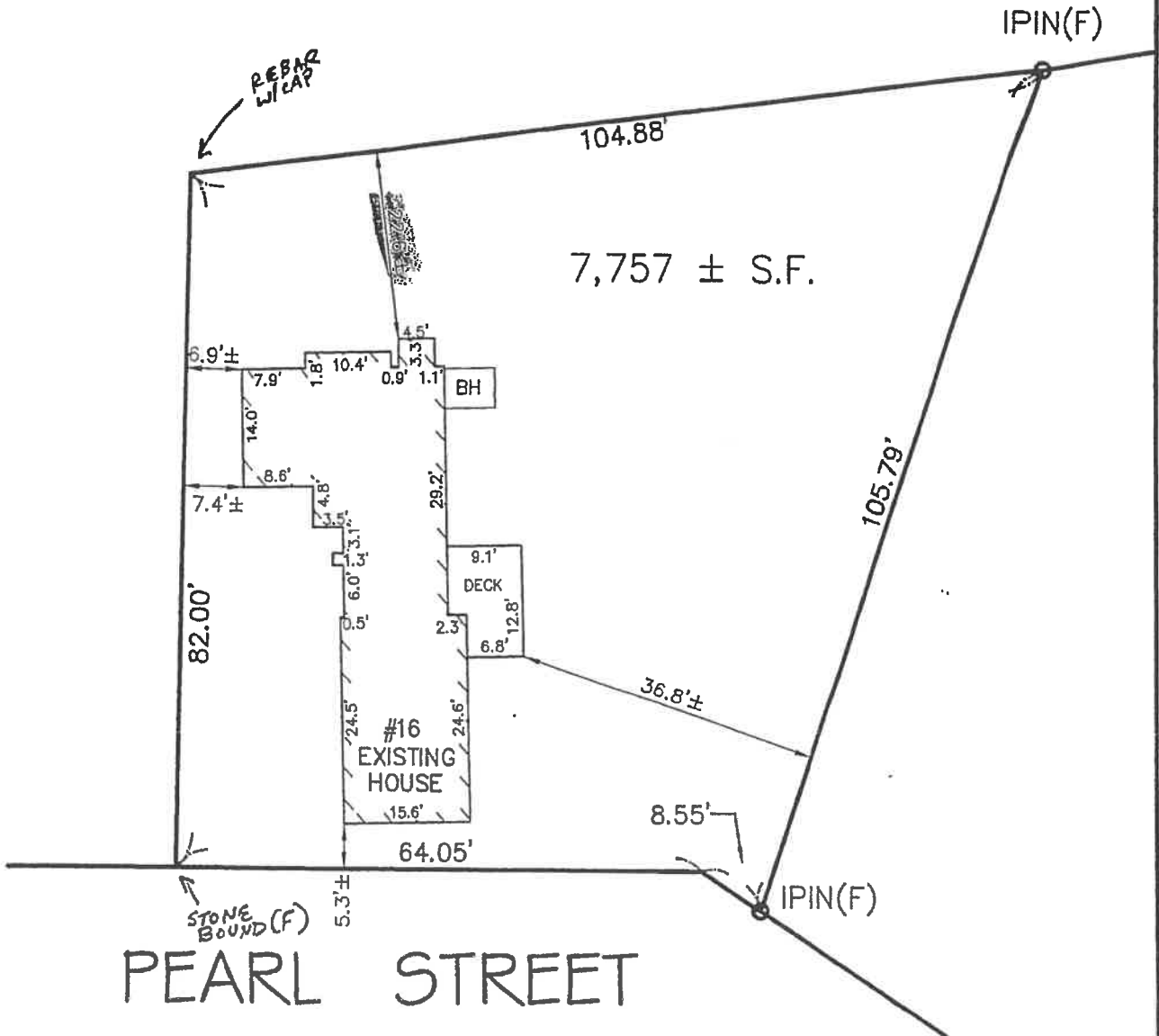
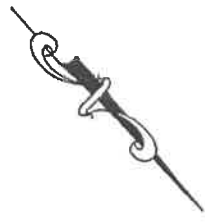
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50%	100%
100%	Transparent

Opacity	Transparent
0%	50%
50%	100%
100%	Transparent

EXHIBIT D

PLAN VIEW

SCALE: 1"=20'



I certify that the building on this property is located as shown.



GLM Engineering Consultants, Inc.

19 EXCHANGE STREET
HOLLISTON, MA 01746

P: 508-429-1100

www.GLMengineering.com

**PLOT PLAN OF LAND
16 PEARL STREET
HOLLISTON MA**

OCTOBER 23, 2018

JOB #16436

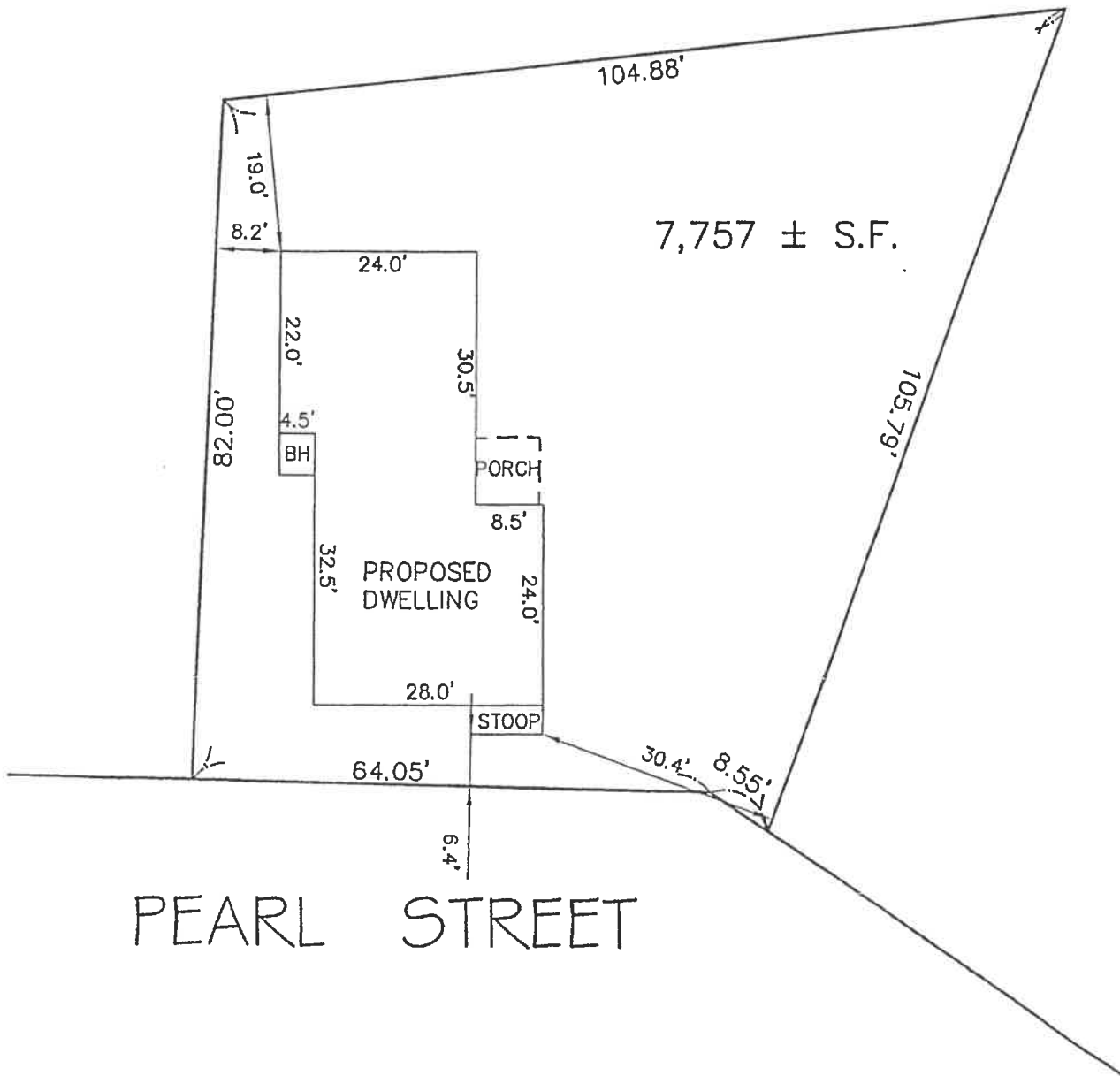


FORMER HOUSE AS-BUILT

EXHIBIT E

PLAN VIEW

SCALE: 1"=20'



PEARL STREET



J. Hastings 11/30/18



19 EXCHANGE STREET
HOLLISTON, MA 01746
P: 508-429-1100
www.GLMengineering.com

PROPOSED HOUSE
PLAN

16 PEARL STREET
HOLLISTON, MA

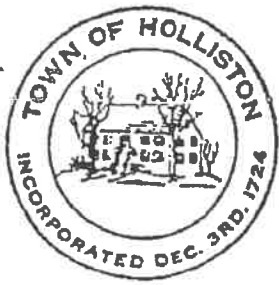
NOV. 30, 2018

JOB # 16,436

EXHIBIT F

10

11



**TOWN OF HOLLISTON
ZONING BOARD OF APPEALS**

Town Hall – 703 Washington Street
Holliston, MA 01746
(508)429-0635

**SPECIAL PERMIT CERTIFICATE OF ACTION
16 Pearl Street**

Date of Decision: September 19, 2018
Applicant(s): Meaghan Hammer
Applicant's Address: 2 Wild Turkey Run, Medway, MA 02053
Owner: Meaghan Hammer, Tr., JMH Trust
Subject Property: 16 Pearl Street
Assessor's Identification: Map 8E Block 2 Lot 54
Zoning District: Residential (R-1)

UNNUNB LOT

ADMINISTRATIVE RECORD

Hearing notice under the requirements of MGL, c. 40A and the Holliston Zoning By-Laws included the following:

1. Publication of the hearing notice in the Metrowest Daily News on September 4, 2018 and September 11, 2018,
2. Posting of the hearing notice in the Town Clerk's Office on August 23, 2018,
3. Notification to parties of interest (including the Petitioner) by mail on August 23, 2018.

The Petitioner filed an application with the Town Clerk on August 23, 2018. The public hearing was opened and closed on September 19, 2018. The Board deliberated on the matter on September 19, 2018.

Project Description

The Petitioner is seeking a Special Permit under Sections I-C(3.1)(1), (3.5.1)(3), Pre-Existing, Non-Conforming Uses, structures and Lots, to demolish and rebuild the existing house and the proposed reconstruction would cause the structure to exceed the volume and area of the non-conforming structure within the minimum front and side yard setbacks. The locus is 16 Pearl Street in the Residential (R-1) zoning district.

Findings of Fact

The Board reviewed the application materials and testimony provided by the Petitioner including the supplemental record plans prepared by Civilized Solutions entitled "Septic System Construction 16 Pearl Street" dated July 30, 2018 with revisions through September 19, 2018. In accordance with the provisions of Sections I-C(3.1)(1) and (3.5.1)(3) of the Town of Holliston Zoning By-Laws and MGL c. 40A, the Board finds the following: The

MS

proposed demolition and reconstruction of this single-family dwelling and increase in the gross floor area by more than 50% may be accomplished without being substantially more detrimental than the existing nonconforming structure to the neighborhood as conditioned below.

Zoning Board Vote

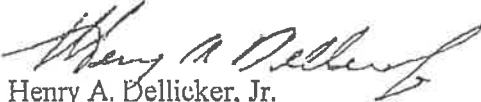
The Board's vote to approve the Petitioner's Special Permit application for relief under Sections I-C (3.1)(1) and (3.5.1)(3) Pre-Existing, Non-Conforming Uses, Structures and Lots for property described and located at 16 Pearl Street was as follows on a motion by Mr. Peabody, seconded by Mr. Bush:

Mr. Dellicker	Aye
Mr. Peabody	Aye
Mr. Bush	Aye

Conditions of Approval

1. This Special Permit is not valid until recorded and indexed at the Registry of Deeds in accordance with the provisions of MGL, c. 40A, s.11 and shall lapse in two (2) year unless exercised per MGL, c. 40A, s. 9. The copy of the decision to be filed must contain a certification by the Town Clerk that twenty (20) days have elapsed since after the decision was filed and that appeal has been filed or if such appeal been filed, that it has been dismissed or denied.
2. Prior to demolition, the lot shall be surveyed and lot corners shall be marked with permanent monuments.
3. Per the record plan (prepared by Civilized Solutions entitled "Septic System Construction 16 Pearl Street" dated July 30, 2018 and revised through September 19, 2018), the new dwelling shall be limited to three bedrooms and shall not encroach into the required side yard setback any further than the existing dwelling. The dwelling shall be no closer than 8' to the southwesterly lot line and no closer than 6' to the front lot line along Pearl Street. The building envelope shall in no way increase the conformity dimensionally, just volumetrically.
4. Final building plans and elevations shall be substantially in compliance with the materials reviewed at the public hearing with regard to building placement, design and construction materials.
5. Fencing or dense vegetative screening shall be installed on the rear lot prior to issuance of an Occupancy Permit in accordance with the abutter at 969 Washington Street.

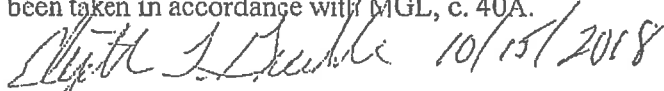
HOLLISTON ZONING BOARD OF APPEALS



Henry A. Dellicker, Jr.
Chairman

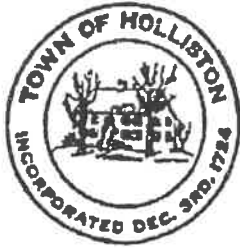
TOWN CLERK'S CERTIFICATION OF NO APPEAL

I hereby certify that 20 days has passed since this decision has been filed and no appeals have been taken in accordance with MGL, c. 40A.

 10/15/2018

Elizabeth Greendale, Town Clerk

EXHIBIT G



2670



2018 01799554
Bk: 01691 Pg: 83 Cert#: 288380
Doc: DEC18 10/16/2018 11:22 AM

2018 SEP 21 AM 10:27
TOWN CLERK
HOLLISTON MASS.

**TOWN OF HOLLISTON
ZONING BOARD OF APPEALS**

Town Hall - 703 Washington Street
Holliston, MA 01746
(508)429-0635

**DIMENSIONAL VARIANCE CERTIFICATE OF ACTION
16 Pearl Street**

UNNUMBERED LOT

Date of Decision: September 19, 2018
Applicant(s): Meaghan Hammer
Applicant's Address: 2 Wild Turkey Run, Medway, MA 02053
Owner(s): Meaghan Hammer, Tr., JMH Trust
Subject Property: 16 Pearl Street
Assessor's Identification: Map 8E Block 2 Lot 54
Zoning District: Residential (R-1)

ADMINISTRATIVE RECORD

Hearing notice under the requirements of MGL, c. 40A and the Holliston Zoning By-Laws included the following:

1. Publication of the hearing notice in the Metrowest Daily News on September 4, 2018 and September 11, 2018,
2. Posting of the hearing notice in the Town Clerk's Office on August 23, 2018,
3. Notification to parties of interest (including the Petitioners) by mail on August 23, 2018.

The Petitioners filed an application with the Town Clerk on August 23, 2018. The public hearing was opened and closed on September 19, 2018. The Board deliberated on the matter on September 19, 2018.

Project Description

The Petitioner is seeking a Dimensional Variance from the provisions of Section I-C (3.2), Pre-Existing, Non-Conforming Uses, Structures and Lots to demolish and rebuild the existing house and the proposed reconstruction would cause the structure to exceed the volume and area of the non-conforming structure within the minimum front and side yard setbacks. The locus is 16 Pearl Street in the Residential (R-1) zoning district.

SK

Findings of Fact

The Board reviewed the application materials and testimony provided by the Petitioner. In accordance with the provisions of Sections I-C(3.2) of the Town of Holliston Zoning By-Laws and MGL c. 40A, the Board finds the following: Desired relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the by-law. Literal enforcement of the provisions of this by-law with regard to the minimum front and side yard setbacks would involve substantial hardship to the Petitioner owing to unique circumstances related to the lot shape and structure's placement on the lot in addition to the limited septic system construction options given the high groundwater conditions.


Zoning Board Vote

The Board's vote to approve the Petitioner's Dimensional Variance application for relief under Sections I-C(3.2) Pre-Existing, Non-Conforming Uses, Structures and Lots for property described and located at 16 Pearl Street was as follows on a motion by Mr. Peabody, seconded by Mr. Bush:

Mr. Dellicker	Aye
Mr. Peabody	Aye
Mr. Bush	Aye

Conditions of Approval

1. This Dimensional Variance is not valid until recorded and indexed at the Registry of Deeds in accordance with the provisions of MGL, c. 40A, s.11 and shall lapse in one (1) year unless exercised per MGL, c. 40A, s. 10. The copy of the decision to be filed must contain a certification by the Town Clerk that twenty (20) days have elapsed since after the decision was filed and that no appeal has been filed or if such an appeal has been filed, that it has been dismissed or denied.
2. Prior to demolition, the lot shall be surveyed and lot corners shall be marked with permanent monuments.
3. Per the record plan (prepared by Civilized Solutions entitled "Septic System Construction 16 Pearl Street" dated July 30, 2018 and revised through September 19, 2018), the new dwelling shall be limited to three bedrooms and shall not encroach into the required side yard setback any further than the existing dwelling. The dwelling shall be no closer than 8' to the southwesterly lot line and no closer than 6' to the front lot line along Pearl Street. The building envelope shall in no way increase the conformity dimensionally, just volumetrically.
4. Final building plans and elevations shall be substantially in compliance with the materials reviewed at the public hearing with regard to building placement, design and construction materials.
5. Fencing or dense vegetative screening shall be installed on the rear lot prior to issuance of an Occupancy Permit in accordance with the abutter at 969 Washington Street.

HOLLISTON ZONING BOARD OF APPEALS


Henry A. Dellicker, Jr.
Chairman

TOWN CLERK'S CERTIFICATION OF NO APPEAL

I hereby certify that 20 days has passed since this decision has been filed and no appeals have been taken in accordance with MGL, c. 40A.

Elizabeth S. Greendale 10/15/2018

Elizabeth Greendale, Town Clerk

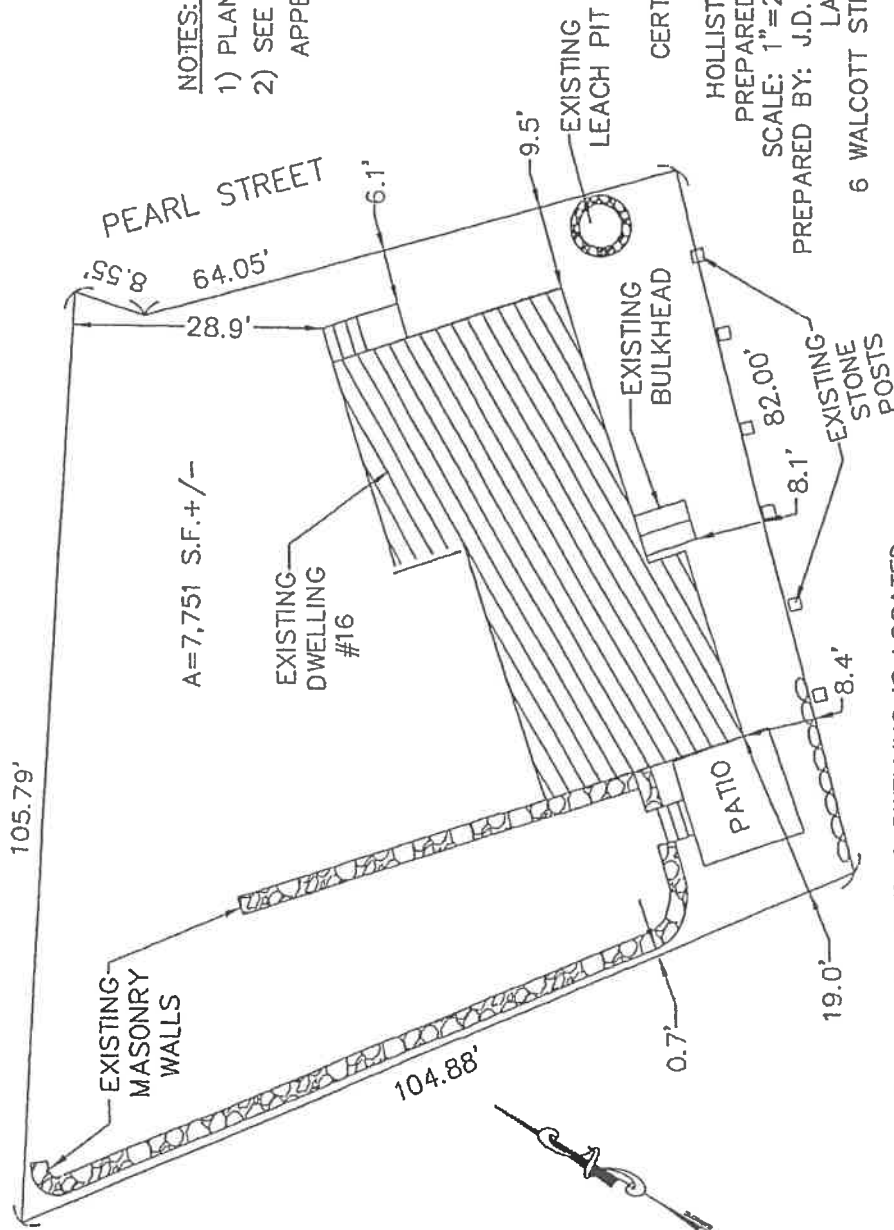
EXHIBIT H

OFFSETS FROM THE DWELLING ARE NOT TO BE USED TO ESTABLISH LOT LINES OR CORNERS

ZONE DISTRICT: "R-1"
30' FRONT SETBACK
20' SIDE SETBACK
30' REAR SETBACK
120' FRONTAGE
30,000 S.F.

NOTES:

- 1) PLAN REFERENCE: L.C. PLAN 14484A
- 2) SEE HOLLISTON ZONING BOARD OF APPEALS DECISION DATED 1/16/19



Joseph D. Marquedant
CERTIFIED PLOT PLAN

IN
HOLLISTON, MASSACHUSETTS
PREPARED FOR: BRIAN CHEEVER
SCALE: 1"=20' DATE: SEPT. 10, 2019
PREPARED BY: J.D. MARQUEDANT & ASSOCIATES INC.
LAND SURVEYING
6 WALCOTT STREET HOPKINTON, MA. 01748
(508) 435-4145

I CERTIFY THAT THE EXISTING DWELLING IS LOCATED ON THE LOT AS SHOWN AND THAT IT CONFORMS TO THE DIMENSIONAL REQUIREMENTS OF THE ZONING BYLAWS OF THE TOWN OF HOLLISTON
ALSO THAT THE LOT FALLS WITHIN AN AREA DETERMINED TO BE OUTSIDE THE 0.2% CHANCE ANNUAL FLOOD PLAIN (COMMUNITY PANEL #25017C0633E DATED 6/4/2010)

REVISION:

NO.	DATE	DESCRIPTION	BY
1	12/6/19	WALLS, STOOP, PATIO, L.PIT	

EXHIBIT I

