

## CITY OF MARLBOROUGH ZONING BOARD OF APPEALS Application for Variance or Appeal Hearing

Official Use: 3-30-2021 Date Received: City Clerk's #	ZBA Case # <u>1477-7021</u>
Request for:  X Variance	
Information: Property Address 2 South Bolton Street	Zoning District MVD Map# 70 Parcel# 218
Applicant is: Owner Tenant X Prospective Pu	rchaser Other
I am the owner of the property and I have knowledge of, an Owner's signature  Owner's name Sem Aykanian, Trustee A  State MA Zip 01752 Phone# 508-485-48821	Date 7.23.21
Johannah Realty & Management Applicant name Co., Inc. A  State MA Zip 01608 Phone# 508-929-1678 A  Atty. Brian R. Fall	ddress 446 Main Street, Worcester 8-mail bfalk@mirickoconnell.com
Representative Name: <u>Brian R. Falk, Esq.</u> C Address 100 Front Street, Worcester	ompany <u>Mirick O'Connell</u>
State MA Zip 01608 Phone# 508-929-1678	E-mail bfalk@mirickoconnell.com
Describe below what is being requested, such as what is the property.  See attached memo.	e proposed action, relief, or construction on the
Provide below all sections of the Zoning Ordinance (Chap Subsection(s)) which are pertinent to the Variance (see de	ter 650, Article(s), Section(s), Paragraph(s), mial letter).
Section 650-41. Table of Lot Area, Yards, and Hei	ght of Structures
Section 650-56.B(2)	

	ZBA Case #
t_	
1.	what is the soil condition, shape or topography of YOUR lot or structure which DISTINCTLY affects your lot, as distinguished from other lots in the zoning district which it is located.
	See attached memo.
2.	What is the HARDSHIP that is CAUSED by the soil condition, shape or topography of your lot or structure stated above. PERSONAL INCONVIENCE is NOT a hardship. A hardship imposes a substantial financial penalty or directly affects your use of the land or structure as it is zoned.
	See attached memo.
3.	State how the variance you are requesting, if granted, will not nullify or detract from the intent or purpose of the Zoning Ordinance.
-	See attached memo.
4.	State how the variance you are requesting, if granted, will not diminish the public welfare or well-being.
_	See attached memo.
_	
	eal tate the specifics of the Appeal (use additional sheet if necessary).
÷	See attached memo.

ZBA Case #	
Application Packet:	
The applicant shall submit ten (8) copies of the application packet which shall contain sufficient in illustrate and defend the applicant's case and as a minimum shall consist of the following:	iformation to
Completed Zoning Board of Appeals Application Form	
Abutters List certified by the Assessor's Office	
Copy of denial letter from City Official	
Certified Plot Plan prepared and stamped by a Massachusetts Registered Professional A mortgage plan is <b>NOT</b> a certified plot plan. The certified plot plan shall include:	Land Surveyor.
Plan Size 8 1/2" x 11" or 11" x 17"	
Plans drawn to accurate scale with north arrow	
Owner names and street addresses of directly abutting lots	
☐ Name of streets and zoning districts.	
Bearing and distances of subject property	
Dimensions and property line setbacks of all structures on subject property	ronerty
Location of driveways, parking areas and other impervious surfaces on subject property	operty
Location of walls, curbing, major landscaping, fences on subject property	la.
Location of easements, wetlands and floodplains on subject property, if applicab	ic
Dimensions and property line setbacks of all proposed work	
Lot Coverage (area covered by all impervious surfaces) existing and proposed	tin - 1 see that one
Location and property line setbacks of structures, fences, driveways etc. on abutt within fifteen (15) feet of subject property lines	
Site plans of subject property showing topography and drainage structures, if regradi rerouting of runoff is proposed or if property is in Floodplain and Wetland Protection	ng of the site or District.
Architectural plans of new or modified building structure, if applicable.	
Filing Fee: Filing fees are based upon the proposed USE of the property:	
Residential Nonrevenue bearing	\$130.00
	\$250.00
Business, Commercial or Automotive	\$375.00
Industrial, Limited or Full	\$500.00
Special Lettine (1 1000 1 tain and 11 october 2 tables	\$450.00
Hearing Request: I hereby request a hearing before the Zoning Board of Appeals regarding this packet and I am aware that two (2) legal ads will be placed in the MetroWest Daily News or the Enterprise Weekly newspaper which will be billed directly to me or my representative. I am furt	Mariborough
Enterprise weekly newspaper which will be billed directly to his or my representative. I shall be shuttere on the certified list	at least fourteen

Hearing Request: I hereby request a hearing before the Zoning Board of Appeals regarding this application packet and I am aware that two (2) legal ads will be placed in the MetroWest Daily News or the Marlborough Enterprise Weekly newspaper which will be billed directly to me or my representative. I am further aware that I am responsible for sending copies of the Notice of Hearing to all the abutters on the certified list at least fourteen (14) days prior to the hearing date and that I will submit the receipts confirming this mailing to the zoning office seven (7) days prior to the hearing. Finally, I am aware that I am required to record the board's certified decision and the certified plot plan with the Registry of Deeds in order for it to take effect.

ZBA Case#	
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Applicant's signature:	Date:
Print name:	
and/or 3	317017021
Representative's signature:	Date: 3/29/2024
Print Name: Brian R. Falk, Esq.	•
Official Use Only:  Received from applicant, the sum of \$ 3 / 5 Check #	
Signature of the agent of the Zoning Board of Appeals:	2-21-7021

Susan Brown - Board Secretary

Department - Zoning Board of Appeals

140 Main Street

Marlborough, MA 01752

Tel# 508-460-3768 E-mail: sbrown@marlborough-ma.gov

The date and signature of the agent of the Zoning Board of Appeals will serve as certification as to when the COMPLETE application packet accompanied by the proper filing fee was filed with this office.



# City of Marlborough BUILDING DEPARTMENT

140 Main Street

Marlborough, Massachusetts 01752 Tel. (508) 460-3776 Facsimile (508) 460-3736 building dept@marlborough-ma.gov

### JEFFREY COOKE, C.B.O BUILDING COMMISSIONER

PATRICK DAHLGREN ASSISTANT BUILDING COMMISSIONER

WILLIAM PAYNTON LOCAL BUILDING INSPECTOR

LAURENT LEMIEUX
PLUMBING & GAS INSPECTOR

JOHN CAIN WIRING INSPECTOR

### **ZONING DENIAL**

March 23, 2021

TO
<u>Applicant</u>
Burns & Farrey, P.C.
446 Main Street
Worcester, MA 01608
C/O Atty. Brian Falk

Owner
John Cotting Realty Trust
Sem Aykanian, Trustee
74 Main Street
Marlborough, MA 01752

Mr. Falk:

Your application to consider a 3,675 S.F. portion of land located at 74 Main Street, Mariborough, MA Parcel ID Map 70 Parcel 218 (70-218), located in the Marlborough Village zoning district (MV) as a separate lot is denied as it does not comply with Chapter 650-41 Table of Area, Yards, and Height of Structures of City Code of Marlborough. The zoning code states that your use requested is a "not permitted" as a stand-alone building lot in the "MV" zoning district.

On, about or prior to 1982, there was a taking of land to realign South Bolton Street. The remaining parcel of land was identified as Map 70 parcel 215. On or about 1985 this parcel was divided to three parcels known as Map 70 parcel 22A, 22B, and 22C. Parcel 22B contains approximately 3,675 S.F. of area.

On or about December 01, 1987, Lot 22B was conveyed to Sem Aykanian, Trustee of the John Cotting Realty Trust, recorded at the Middlesex South District Registry of Deeds, Book 18725 Page 238. The Deed contained the following clauses:

"Said lot 22B shall be used to erect an accessory building or addition to the Grantee's other property located on Main Street, Marlborough, and described in Deed recorded at Middlesex So. District Deeds in Book 14124, page 518 through page 520."

"Said Parcel 22B cannot be transferred as a single parcel"

"In the event of a violation of this agreement, the property shall revert to the City of Marlborough Community Development Authority."

I find no intent of the landowner to keep the two lots separate. In support of that finding, I note that there was no wall or fence installed on the property line, or any other attempt to keep the lots separate. The property is assessed on one field card, as two buildings on one parcel, map 70 parcel 218. In addition, there above referenced clause on the deed at the time that the second structure was built that stated,, "Said Parcel 22B cannot be transferred as a single parcel." In 1987, there was never intent to keep parcel 22B as its own identity and in fact at that time parcel 22B merged with 74 Main Street as one lot in common ownership. I

find no record of zoning relief being granted for construction of a building on a separate lot with insufficient area.

Furthermore MGL 40A section 6 paragraph 4 states "Any increase in area, frontage, with, yard, or depth requirements of a zoning ordinance or by-law shall not apply to a lot for single and two-family residential use which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than proposed requirements but at least five thousand square feet of area and fifty feet of frontage."

Findings – Under 40A the merge of the two parcels has occurred, due to the facts that the use of the structure built was not of a one and/or two family structure, the lot contained less than five thousand square feet of area, and the two parcels were held in common ownership.

In reading the "Handbook of Massachusetts Land Use and Planning Law" by Mark Bobrowski,

### Section 503 [A] in part

"The general rule discernible from these decisions is stated on Seltzer v. Board of Orleans: "adjacent lots in common ownership will normally be treated as a single lot for zoning purposes so as to minimize nonconformities with the dimensional requirements of the zoning by-law or ordinance. Note that the Seltzer general rule has been consistently applied before and after the enactment of 1975 Mass. Acts 808."

"The Court may further explore whether the owner has an intent to keep the lots separate. Several decisions highlight factors for the Court to consider. First, the mere reference to multiple lots on a deed does not suffice to preserve the lots designated therein. Second, the walling or fencing of the adjoining lots may be evidence of an intent to keep the lots separate. Third, the fact that the lots is separately assessed is a factor to be considered in determining the status of the lots. Fourth, the placement of structures, particularly where the structures straddle the lot line, may indicate an intent to separate or merge the lots."

### Marlborough Zoning

Marlborough zoning ordinance allows for multiple principal commercial buildings on the same lot. The zoning ordinance does restrict to one principal building per lot when the structure is a Single or Two Family.

650-42 A(1) (c) Single or two family dwellings. In all districts in which single-or two-family dwellings are allowed, only one principal building containing said one or two-family dwelling shall be permitted on any one lot, no matter what the lot area, unless said lot is located in a district where more than one of said principal buildings is specifically permitted by other provisions of this chapter.

Whereas, Map 70 parcel 218 contains two commercial buildings on this lot, there is no violation of the zoning ordinance. The second building on this lot known as 2 South Bolton was allowed by right to be constructed per the zoning ordinance for more than one principal building per lot. I find no record of zoning relief being granted for construction of a building on a lot with insufficient area on its own lot.

<u>Fire Separation Distance</u> 780 CMR, the State Building Code requires a fire-resistance rating for the exterior wall based on fire separation distance per table 602

780 CMR section 202 definitions defines fire separation distance as:

The distance measured from the face of one building to one of the following:

1. The closest interior lot line.

- 2. To the centerline of a street, an alley, or public way.
- 3. To an imaginary line between two buildings on the same lot.

#### 780 CMR Table 602

- For a wood framed building (Construction type VB) with a fire separation distance
  of less than five feet requires a fire-resistance rating of 1 hour for Use Group B.
- For a wood framed building (Construction type VB) with a fire separation distance
  of ten feet (10") or greater, however less than thirty feet (30') requires a fireresistance rating of 0 hour for Use Group B.

The historical lot line on the side "C" of the building known as 2 South Bolton, per the plot plan prepared by Bruce Saluk & Associates, Inc. dated February 21, 2021, is 0.9 feet from the face of the building. On side "C" of 2 South Bolton there are numerous window openings and an entrance door (means of egress door) these opening will require a minimum fire protection ratings if installed in a rated wall assembly of one hour.

However, if the two buildings were constructed on one lot, then the fire separation distance would be measured "to an imaginary line between two buildings on the same lot. Using the measuring features of the GIS program, the distance between the two buildings is approximately 22 feet, for a fire separation distance of 11 feet. The 11 foot fire separation distance will require a ZERO (0) fire-resistance rating for building side "C".

As two buildings constructed on the same lot, these building comply with 780CMR, the State Building Code in regards to the fire-resistance rating of the exterior wall. If 2 South Bolton was considered to be constructed on its own lot, the building would not meet the minimum requirements or the State Building Code.

### Conclusion

- The structure complies with Marlborough Zoning code, provided that the two structures are on the same lot.
- The structure complies with the State Building code, provided that the two structures are on the same lot.
- MGL 40A confirms that the two lots have merged, and are to be considered as one lot for zoning purposes.
- The Deed, Book 18725 page 238 states that the lot cannot be transferred as a single lot.

I therefore have determined that the two buildings constructed on map 70 parcel 218 conform to the Zoning and Building codes as one lot.

The act of separating the lot known as 22B containing 3,675 S.F. of area from 74 Main Street parcel ID 70-218, on its own does not conform to zoning and therefore is not a stand-alone building lot.

Your use requested requires zoning relief issued by the Zoning Board of Appeals.

I make no determination whether separating the lot known as 22B requires additional relief from the Planning Board.

You have the right to appeal this decision to the Zoning Board of Appeals as stated in the City Code section 650-58.

An appeal from this denial may be taken to the Zoning Board of Appeals by filing a Notice of Appeal with the City Clerk within 30 days of the date of this denial letter. Further information should be obtained from the Board of Appeals secretary, Susan Brown at 508-460-3768.

The code in its entirety may be found at www.ecode360.com/MA1056

Sincerely,

Tin Htway, CBO Interim Building Commissioner Zoning Enforcement Officer

CC: Jeffrey Cooke, CBO

### MIRICK O'CONNELL

ATTORNEYS AT LAW

Brian R. Falk
Mirick O'Connell
100 Front Street
Worcester, MA 01608-1477
bfalk@mirickoconnell.com
t 508.929.1678
f 508.983.6256

March 29, 2021

Zoning Board of Appeals City Hall Marlborough, MA 01752

Re: <u>Variance Application – 2 South Bolton Street</u>

Dear Board Members:

On behalf of my clients Johannah Realty and Management Co., Inc. and the law firm Burns & Farrey, P.C., I respectfully submit an application for a variance for the property located at 2 South Bolton Street (the "Property"), in accordance with Section 650-56.B(2) of the Marlborough Zoning Ordinance.

Through Johanna, Burns & Farrey is under agreement to purchase the Property so that the existing office building may be used as the new Marlborough location of the law firm. The Property is merged for zoning purposes with the adjacent lot known as 74 Main Street, home to the Law Office of Sem Aykanian. In order for the two lots to be held by separate owners, the Property requires a dimensional variance as its area of 3,675 square feet is less than the required minimum of 5,000 square feet in the Marlborough Village District.

We respectfully request that the Board grant this variance so that the sale may go forward.

#### **Background:**

The Property is shown on a plot plan dated February 21, 2021 by Bruce Saluk & Associates, Inc. (the "New Plan", enclosed), and is a portion of Assessors Parcel 70-218. The Property is also shown as Parcel 22B on a plan of land entitled "Plan of Land in Marlborough, Massachusetts" dated March 1, 1985, prepared by the City of Marlborough Department of Public Works, Engineering Division, and recorded with the Middlesex South Registry of Deeds (the "Registry") as Plan No. 528 of 1985 (the "Original Plan", enclosed).

The lot division would reestablish the Property's boundaries as shown on the Original Plan, with a reestablished side lot line between the Property and 74 Main Street.

### MIRICK O'CONNELL

Zoning Board of Appeals March 29, 2021 Page 2

### Merger with 74 Main Street:

The Property was created as part of the redevelopment of downtown Marlborough and the construction of South Bolton Street in the late 1970s and early 1980s. The Property was essentially a left over parcel owned the Marlborough Community Development Authority, and conveyed as a vacant parcel in 1985 to Richard R. Wagner, Jr., owner of the adjacent 74 Main Street, in a deed recorded with the Registry in Book 16524, Page 387.<sup>1</sup>

Following the merger, the Property was improved with the existing office building within the boundaries of Parcel 22B as shown on the New Plan. The Property has an entrance for the building off of the adjacent parking lot owned by the Marlborough Community Development Authority on South Bolton Street, and access to parking areas located at 74 Main Street. Following the sale, the Property will have easement rights to parking spaces at 74 Main Street.

### **Zoning Requirements:**

If treated as a separate lot for zoning purposes, the Property would comply with all applicable dimensional controls in the Marlborough Village District, set forth in the Table of Lot Area, Yards, and Height of Structures, Section 650-41, Attachment 2, and Section 650-34 of the Zoning Ordinance, with the sole exception of lot area.

The Property has an area of 3,675 square feet, which is 1,325 square feet less than the minimum required lot area of 5,000 square feet in the Marlborough Village District. This nonconformity requires a variance from the Zoning Board of Appeals before the Property may be separated from 74 Main Street, reintroducing the side lot line shown on the Original Plan and the New Plan.

### **Variance Petition:**

The Property provides 73.5% of the lot area required by the Marlborough Zoning Ordinance. But even with a reduced lot area, the Property and the existing building meet all other dimensional requirements (frontage, setbacks, impervious coverage, height, etc.) The reintroduction of the lot line shown on the Original Plan would have zero impact on the neighborhood. The building at 2 South Bolton has functioned independent of 74 Main Street for decades as leased space. Aside from significant interior renovations and a new name on the building's sign, the separation of the lots would go completely unnoticed.

<sup>&</sup>lt;sup>1</sup> The deed from the Marlborough Community Development Authority contained a restriction that the Property "cannot be transferred as a single parcel" and that the Property must "be used to erect an accessory building or addition to [74 Main]". This deed restriction was released by the Marlborough Community Development Authority in 2020.

### MIRICK O'CONNELL

Zoning Board of Appeals March 29, 2021 Page 3

Due to the Property's uniquely small size and narrow shape, compared to other lots in the Marlborough Village District, and its configuration on a corner with developed properties on all other sides, a literal enforcement of the Zoning Ordinance with respect to lot area would present a substantial financial hardship in that the lot could never be sold separate from 74 Main, depriving the owner of 74 Main of significant value. In addition, there would be less incentive to invest in 2 South Bolton with respect to capital improvements if the building remains as a commercial rental property rather than being owner-occupied, as proposed.

Granting a variance from the lot area requirement of the Zoning Ordinance to accommodate the lot separation would not cause a substantial detriment to the public good or a substantial derogation from the intent and purpose of the Zoning Ordinance. First, as mentioned previously, the separation of 2 South Bolton from 74 Main will result in no noticeable difference to the neighborhood. The buildings and lots would continue to function as they have for decades. Second, as a separate lot, the Property would comply with all other dimensional requirements of the Marlborough Zoning Ordinance, and would provide close to three-quarters of the required lot area.

We look forward to the public hearing before the Board, and thank you for your time and attention to this matter.

Sincerely,

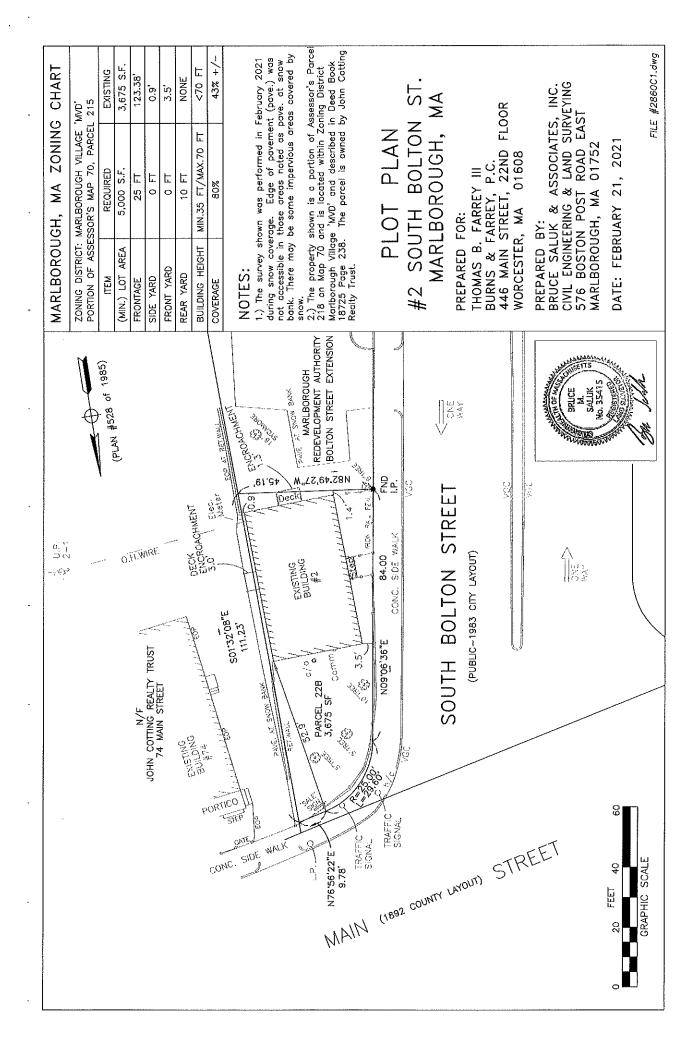
Brian R. Falk

BRF/

cc: Client

Sem Aykanian, Esq.

Encl.



APPROVAL UNDER THE SUBDIVISION CONTROL, LAW NOT REQUIRED. NOTE: PARCEL 22B NOT TO BE CONSIDERED A BUILDING LOT.
TO BE DEEDET TO AND USED IN CONJUNCTION WITH ADJONANG
LAND OF MAR BOROUGH KNIGHTS OF COLUMBUS BUILDING CORP,
NOW OR FORMIRLY INCHES FEET MARLBOROUGH, MASSACHUSETTS MAR\_BOROUGH PLANNING BOARD CLASSIFICATION SCALE:1"=30' DATE: MARCH 1,1985 Natalie Poule PLAN OF LAND DISTRICT: 8 PLAN REFERENCE: 637 OF 1982 CITY OF WARL BOROUGH DEPT OF PUBLIC WORKS ENGINEERING DIVISION 3-12-85 ZONING MEMBER DATE STREET 9.78 N.76°-56".22"E LAYOUT) N76°-56'-22"E MARLEOROUGH KNIGHTS OF COLUMBUS BLDG. CORP. COUNTY MAIN (1892 PARCEL 228 367550.FT. 84.00 **EXTENSION** I CERTIFY THAT I HAVE CONFORMED WITH THE RULES AND REGULATIONS N82°-49'-27 45,19 CHRISTOPHER J. FERRIS et als OF THE REGISTERS OF DEED IN PREPARING THIS PLAN. SGUTH BOLTON STREET | REALTY TRUST PAUL A SHAMON PROISTERED LAND SURVEYOR N89°-52'-08' W 36.792-8508-W W 36.792-8508-W W 74 YT PARCEL 22A 14,940 SQ.FT. 86.96°-06.36°E W.95-90-608 (1983 CITY LAYOUT) STREET WILLIAM W. B. MARILYN J. COTTING N/F 68.00 CBS REALTY TRUST 8 MASSACHUSETTS N/F BOLTON COMMONWEALTH OF Plan No., 5,28 of 1985 Rectd., 5,78 19,85 at 8, 102n, 2, 10,00 No., 2, ... Middlesev Registry of Deeds South Tolsmid A. 10 COMMONWEALTH OF MASSACHUSETTS Rec'd, Bk. 161 Fee 16 Cambridge Ϋ́ Attest

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100 FELTON	ST STE 201					107 AUDUBON WAKEFIELD RD STE 2-301		
C/O THE	BEANTOWN	181 GARDEN ST #1	26 AMES PL	30 AMES PL	10 PARK PLAZA STE 4160	C/O EASTPORT 107 AUDUBOR REAL ESTATE SERV RD STE 2-301	206 AYER RD	37 HIGH ST
RESNICK	MARC TR	TAVAREZ ANDREA REYNOSO	WALSH	POWER COLLEEN M	COMMONWEA LTH OF MASSACHUSE TTS	KARIFF INC TR	MARLBOROUG H TOTG LLC	FIRST CHURCH OF MARLBORO CONGREGATI
32-38 MAIN ST		10 AMES PL	26 AMES PL	30 AMES PL	GRANGER BLVD COMMONWEA LTH OF MASSACHUSE TTS	31-35 MAIN ST	57 MAIN ST	MAIN ST
70-258		70-259	70-268	70-271	70-277A	70-289	70-291	70-292
M_196370_899_70-258	770	M_196370_899 608	M_196367_899 70-268 542	M_196384_899 70-271 521	M_196371_899 70-277A 597	M_196359_899 70-289 698	M_196303_899 70-291 704	M_196264_899_70-292 695
70-258		70-259	70-268	70-271	70-277A	70-289	70-291	70-292