



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

**Official Use :**

Date Received : \_\_\_\_\_ City Clerk's # \_\_\_\_\_ ZBA Case # \_\_\_\_\_

**Request for :**

Variance       Appeal

**Information :**

Property Address 21 Patten Drive      Zoning District A-3    Map# 5    Parcel# 80

Applicant is:  Owner     Tenant     Prospective Purchaser     Other \_\_\_\_\_

I am the owner of the property and I have knowledge of, and consent to, this application.

Owner's signature *Thomas Coder*      Date 1/29/20

Owner's name Thomas Coder      Address 2 Atwood Street, Southborough

State MA    Zip 01772    Phone# 508-929-1678 E-mail bfalk@mirickoconnell.com

Attorney Brian R. Falk

Applicant name Thomas Coder      Address 2 Atwood Street, Southborough

State MA    Zip 01772    Phone# 508-929-1678    E-mail bfalk@mirickoconnell.com

Attorney Brian R. Falk

Representative Name: Attorney Brian R. Falk      Company Mirick, O'Connell, DeMallie & Lougee, LLP

Address 100 Front Street, Worcester

State MA    Zip 01608    Phone# 508-929-1678 E-mail bfalk@mirickoconnell.com

Describe below what is being requested, such as what is the proposed action, relief, or construction on the property.

See attached Memorandum.

Provide below all sections of the Zoning Ordinance (Chapter 650, Article(s), Section(s), Paragraph(s), Subsection(s)) which are pertinent to the Variance (see denial letter).

Section 650-41, Table of Lot Area, Yards, and Height of Structures.

Section 650-58.B(2); Section 650-58.B(3)(c)

**Variance**

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 Memorandum.  
\_\_\_\_\_  
\_\_\_\_\_

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 Memorandum.  
\_\_\_\_\_  
\_\_\_\_\_

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 Memorandum.  
\_\_\_\_\_  
\_\_\_\_\_

4. State how the variance you are requesting, if granted, will not diminish the public welfare or well-being.

\_\_\_\_\_  
See attached Memorandum.  
\_\_\_\_\_  
\_\_\_\_\_

**Appeal**

State the specifics of the Appeal (use additional sheet if necessary).

\_\_\_\_\_  
See attached Memorandum.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Application Packet:**

The applicant shall submit ten (8) copies of the application packet which shall contain sufficient information to illustrate and defend the applicant's case and as a minimum shall consist of the following:

- 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 Land Surveyor. A mortgage plan is NOT a certified plot plan. The certified plot plan shall include:
  - 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
  - Location of driveways, parking areas and other impervious surfaces on subject property
  - Location of walls, curbing, major landscaping, fences on subject property
  - Location of easements, wetlands and floodplains on subject property, if applicable
  - Dimensions and property line setbacks of all proposed work
  - Lot Coverage (area covered by all impervious surfaces) existing and proposed
  - Location and property line setbacks of structures, fences, driveways etc. on abutting lots that are within fifteen (15) feet of subject property lines
- Site plans of subject property showing topography and drainage structures, if regrading of the site or rerouting of runoff is proposed or if property is in Floodplain and Wetland Protection 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 Non--revenue bearing ..... \$130.00
- Residential Revenue bearing ..... \$250.00
- Business, Commercial or Automotive ..... \$375.00
- Industrial, Limited or Full ..... \$500.00
- Special Permit (Flood Plain and Wetland Protection District)..... \$450.00

**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 # \_\_\_\_\_

Applicant's signature: 

Date: 1/28/20

Print name: Thomas Coder

and/or

Representative's signature: 

Date: 1/28/20

Print Name: Attorney Brian R. Falk

**Official Use Only:**

Received from applicant, the sum of \$ \_\_\_\_\_ Check # \_\_\_\_\_

Signature of the agent of the Zoning Board of Appeals:

Date: \_\_\_\_\_

\_\_\_\_\_  
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

### NOTICE OF ORDER

### VIOLATION OF SPECIAL PERMIT

**Certified Mail #7001 0320 0006 1624 9588 and USPS First Class Mail**

January 12, 2021

To: Thomas Coder  
3 Atwood Street  
Southborough, MA 01772

21 Patten Drive  
Marlborough, MA 01752

RE 21 Patten Drive, Marlborough, MA

Mr. Coder:

According to the Assessors records and South Middlesex County Registry of Deeds, Bk/Pg. 71802/461 you are the owner of the above referenced property.

You received a Special Permit (SP) on June 19, 2019 for demolition and reconstruction of a Single-Family Dwelling located at 21 Patten Drive, Marlborough, MA Parcel ID #5-80, located in the Residence A-3 zoning district (A3). The SP was recorded with the South Middlesex Registry of Deeds on July 15, 2019, 2019 00099784, Bk: 72922 Pg: 142

A demolition permit #BP-2019-001755 was issued on October 22, 2019 to remove the existing SFD structure. Thereafter a permit to reconstruct an SFD, permit #BP-2019-001756 was issued on October 30, 2019

The reconstruction of the SFD was subject to three conditions of the Special Permit issued by the City Council, the SPGA.

**Condition #1 Construction in Accordance with Applicable Laws.** Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts and **shall be built according to the Site Plan and Architectural Drawings as may be subject to minor modifications with approval of the Building Commissioner.**

After a careful review of the AS-BUILT SITE PLAN dated December 28, 2020 compiled by Connorstone Engineering, Inc., I find the following violations of the Special Permit:

- The structure is larger than approved, on all four sides.
  - Front building setback approved at 21.0 feet ..... actual 20.9 feet
  - Left building setback approved at 9.5 feet .....actual 9.3 feet
  - Right building setback approved at 9.5 feet .....actual 9.3 feet
  - Rear building setback approved at 22.0 feet .....actual 21.9 feet



- The structure is higher than approved by the SP.  
Building height approved 229.8 feet .....actual 231.09 feet
- Lot coverage increased beyond approved by the SP.  
Lot coverage approved 34.5 (30% max allowed) .... Increase to 38.9%
- Concrete pavers were installed for approximately 10 feet of the City's right of way  
650-49B (4) Paving materials (a) Within street. All driveways openings shall be paved with a minimum of three inches of bituminous concrete between the traveled way and the side line of the street.
- Driveway width expanded without prior approval.  
650-49 B. (1) Road opening/curb cut permit required (a) in part..... "shall first obtain site plan approval followed by a road opening/curb cut permit from the City Department of Public Works."

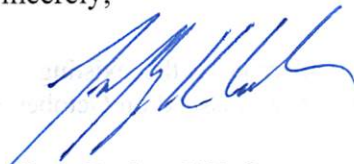
As Building Commissioner, I received no prior requests from you for any modification to what was approved in the SP.

**You are hereby ordered to abate these violations immediately.** A certificate of Occupancy (CO) will not be issued until such time that the building is compliance with the approved Special Permit. Please contact this office to set up a time schedule that is mutually agreeable to abate the above violation(s).

If you are aggrieved by this order, you have the right to appeal this decision to the Marlborough Zoning Board of Appeals as per section 650-58.

The code in its entirety may be found at [www.ecode360.com/MA1056](http://www.ecode360.com/MA1056)

Sincerely,



Jeffrey Cooke, C.B.O.  
Building Commissioner  
Zoning Enforcement Officer

Certified mail Mr. Coder request pick up at City Hall  
First Class USPS 3 Atwood, Southborough & 21 Patten Drive, Marlborough

CC  
Files  
City Council

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

February 4, 2021

Zoning Board of Appeals  
City Hall  
Marlborough, MA 01752

Re: Variance Application – 21 Patten Drive (Thomas Coder)

Dear Board Members:

On behalf of my client Thomas Coder, I respectfully submit an application for a variance for the home located at 21 Patten Drive, in accordance with Section 650-58.B(2) Section 650-58.B(3)(c) of the Marlborough Zoning Ordinance. This application accompanies an application to amend a special permit authorizing the reconstruction of the preexisting nonconforming single family dwelling at the property.

The property is a preexisting nonconforming lot, with 50 feet of frontage and an area of 5,000 square feet. A single family home located on the property was preexisting nonconforming with respect to side yard setbacks. In 2019, the City Council issued a special permit authorizing a new single family home at the property, and Mr. Coder is seeking an amendment to that special permit from the Zoning Board of Appeals.<sup>1</sup>

In addition to extending the preexisting nonconformities of the former home at the property, the new home added new nonconformities: (i) a rear setback of 21.9 feet (a 30-foot setback is required), and (ii) lot coverage of 34.9% (30% is the maximum allowed). These new nonconformities require a variance from the ZBA, as the City Council and the ZBA do not have jurisdiction to allow these deviations by special permit.

The property has a narrow shape, being 50 feet wide on the front and rear lot lines and 100 feet deep along the side lines. The property also has a very steep slope, rising in elevation by 24 feet from front to back. The lot's unusual shape and topography conditions are not shared by other lots in the neighborhood and the zoning district. Based upon the lot's narrow shape and steep topography, a literal enforcement of the rear setback and lot coverage requirements would present a substantial financial hardship in that the lot could not accommodate a home of the size acceptable to modern homebuyers, significantly diminishing the value and viability of the property.

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<sup>1</sup> The City Council's special permit was issued on June 17, 2019, and recorded at the Middlesex South District Registry of Deeds in Book 72922, Page 142. Since the issuance of that decision, the ZBA assumed jurisdiction over special permits for preexisting nonconforming residential structures.

MIRICK O'CONNELL

Zoning Board of Appeals  
February 4, 2021  
Page 2

Granting a variance from the rear yard and lot coverage requirements of the Zoning Ordinance to accommodate the new home would not cause a substantial detriment to the public good or a substantial derogation from the intent and purpose of the Zoning Ordinance. First, the rear yard encroachment is buffered by the steep slope of the property such that structures on abutting lots to the rear of the property are situated at a higher elevation with views extending over the property. Second, the lot coverage deviation is less than 450 square feet in total, and impervious areas are all concentrated in the middle of the lot, providing front, rear, and side yards along all lot lines to the maximum extent feasible for this style of narrow home design.

Overall, the new home is a significant upgrade compared to the prior structure, and was built in keeping with other homes in the neighborhood. With the new home's improvement in value and aesthetics, its deviations from the Zoning Ordinance's dimensional controls are reasonable given the property's unique narrow shape and steep topography.

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

Sincerely,



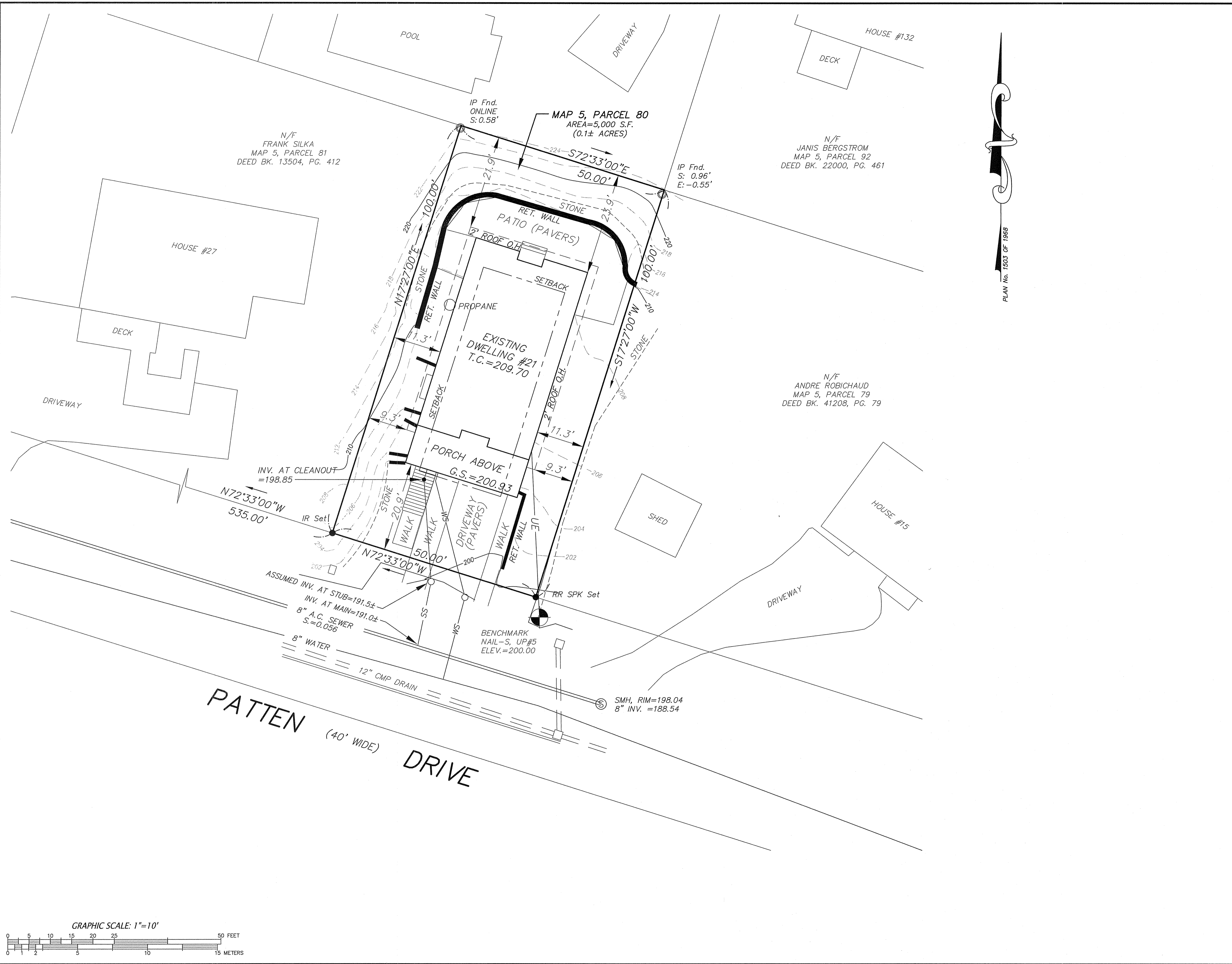
Brian R. Falk

BRF/ljk

cc: Client

Encl.





- GENERAL NOTES:**
- EXISTING TOPOGRAPHY IS BASED UPON A FIELD SURVEY BY CONNORSTONE ENGINEERING, INC. ON 8/1/2017. ELEVATIONS REFER TO AN ASSUMED DATUM. SEE BENCHMARK, NAIL SET IN UTILITY POLE #5. ABUTTING LOT INFORMATION: HOUSES, DRIVEWAYS, ETC. TAKEN FROM CITY OF MARLBOROUGH GIS DATA. PROPERTY LINES ARE BASED UPON EXISTING PLANS AND DEEDS OF RECORD.
  - AS-BUILT INFORMATION SHOWN HEREON IS BASED UPON AN ON THE GROUND SURVEY PERFORMED ON DECEMBER 22, 2020.
  - THE PARCEL IS SHOWN ON ASSESSORS MAP 5, PARCEL 80.
  - THE LOT SHOWN AND THE DWELLING THEREON ARE NOT LOCATED WITHIN THE 100 YEAR FEDERAL FLOOD HAZARD AREA AS SHOWN ON THE FLOOD INSURANCE RATE MAPS FOR THE CITY OF MARLBOROUGH, PANEL 481 OF 656, MAP NUMBER 25017C0481F, DATED JULY 7, 2014.

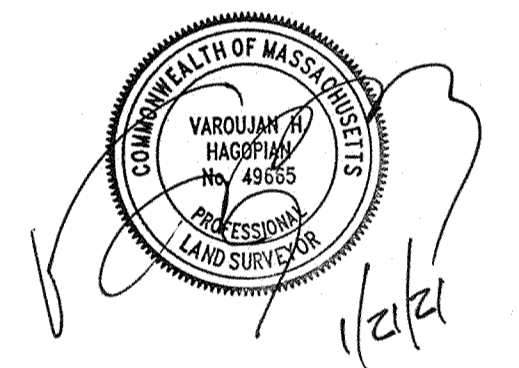
ZONED: RESIDENCE A3 - AS-BUILT DWELLING

	REQUIRED	PROPOSED HOUSE*	AS-BUILT HOUSE*
AREA	12,500 sf	5,000 sf	5,000 sf
FRONTAGE	100 feet	50 feet	50 feet
FRONT	20 feet	21.0'	20.9'
SIDE	15 feet	11.5' (VARIANCE)	11.3'
REAR	30 feet	24.0' (VARIANCE)	23.9'
ACCESSORY	5 feet	N/A	N/A

ORIGINAL IMPERVIOUS LOT COVERAGE = 1,211 S.F.± (24.2%)  
 PROPOSED IMPERVIOUS LOT COVERAGE = 1,723 S.F.± (34.5%); 30% MAX (VARIANCE REQ.)  
 AS-BUILT IMPERVIOUS LOT COVERAGE = 1,748 S.F.± (34.9%)  
 (INCLUDES STRUCTURE AND PARKING PER ZONING)  
 \*BUILDING PER ZONING DEFINITION

RIDGE HEIGHT, ORIGINAL DWELLING = 225.2'  
 RIDGE HEIGHT, PROPOSED DWELLING = 225.8'  
 PROPOSED HEIGHT BASED UPON SPECIAL PERMIT DECISION. THE OWNER SHALL CONFIRM BUILDING AND FOUNDATION HEIGHTS WITH THE ARCHITECTURAL PLANS PRIOR TO CONSTRUCTION.  
 RIDGE HEIGHT, AS-BUILT DWELLING = 231.09'

PROPERTY IS SUBJECT TO A SPECIAL PERMIT FROM CITY COUNCIL RECORDED IN THE WORCESTER REGISTRY OF DEEDS BOOK 72922, PAGE 142.

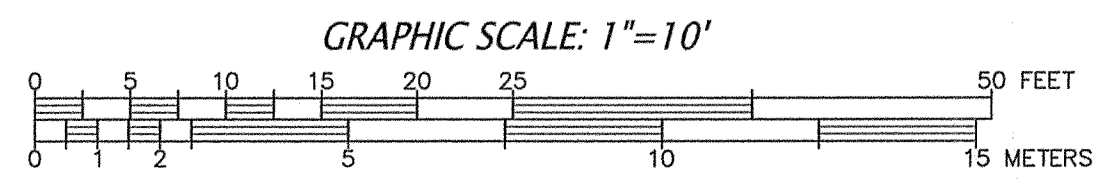


PREPARED FOR:  
 THOMAS CODER  
 21 PATTEN DRIVE  
 MARLBOROUGH, MA 01752

**CONNORSTONE ENGINEERING INC.**  
 CIVIL ENGINEERS AND LAND SURVEYORS  
 10 SOUTHWEST CUTOFF, SUITE 7  
 NORTHBOROUGH, MASSACHUSETTS 01532  
 PHONE: 508-393-9727 FAX: 508-393-5242

AS-BUILT SITE PLAN  
 OF  
 21 PATTEN DRIVE  
 IN  
 MARLBOROUGH, MA

REVISED:	DESCRIPTION:
DRAWN BY: VHH	CHECK BY: REM
DATE: JAN. 21, 2021	
SCALE: 1"=10'	SHEET 1 OF 1.



PLAN No. 1503 OF 1868

PLAN No. 1503 OF 1968

N/F  
LAURIE & ARTHUR ZOUHARIS  
MAP 5, PARCEL 101  
DEED BK. 23035, PG. 10

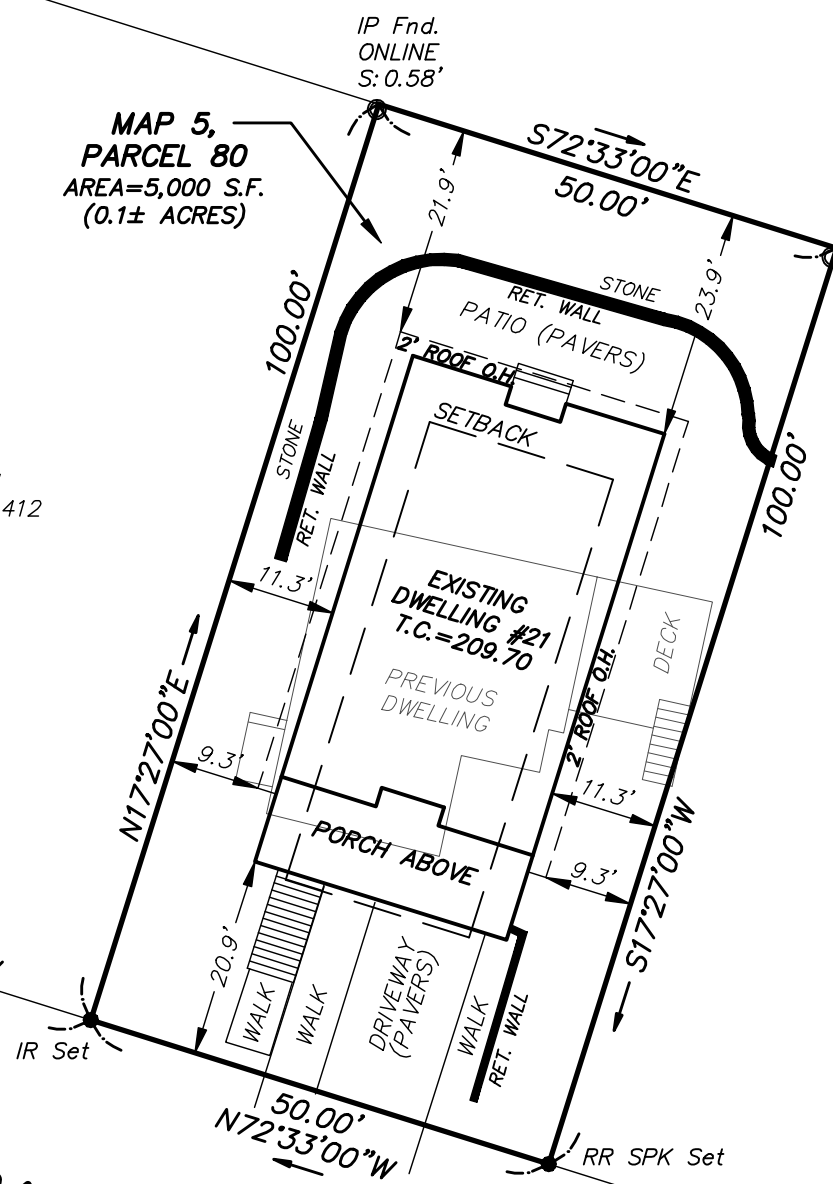
N/F  
JANIS BERGSTROM  
MAP 5, PARCEL 92  
DEED BK. 22000, PG. 461

N/F  
FRANK SILKA  
MAP 5, PARCEL 81  
DEED BK. 13504, PG. 412

N/F  
ANDRE ROBICHAUD  
MAP 5, PARCEL 79  
DEED BK. 41208, PG. 79

MAP 5,  
PARCEL 80  
AREA=5,000 S.F.  
(0.1± ACRES)

PATTEN  
(40' WIDE)  
DRIVE



ZONED: RESIDENCE A3 - AS-BUILT DWELLING

	REQUIRED	PROPOSED HOUSE*	AS-BUILT HOUSE*
AREA	12,500 sf	5,000 sf	5,000 sf
FRONTAGE	100 feet	50 feet	50 feet
FRONT	20 feet	21.0'	20.9'
SIDE	15 feet	11.5' (VARIANCE)	11.3'
REAR	30 feet	24.0' (VARIANCE)	23.9'
ACCESSORY	5 feet	N/A	N/A

ORIGINAL IMPERVIOUS LOT COVERAGE = 1,211 S.F.± (24.2%)  
 PROPOSED IMPERVIOUS LOT COVERAGE = 1,723 S.F.± (34.5%): 30% MAX (VARIANCE REQD.)

AS-BUILT IMPERVIOUS LOT COVERAGE = 1,748 S.F.± (34.9%)  
 (INCLUDES STRUCTURE AND PARKING PER ZONING)

\*BUILDING PER ZONING DEFINITION

RIDGE HEIGHT, ORIGINAL DWELLING = 225.2'  
 RIDGE HEIGHT, PROPOSED DWELLING = 229.8'  
 PROPOSED HEIGHT BASED UPON SPECIAL PERMIT DECISION. THE OWNER SHALL CONFIRM BUILDING AND FOUNDATION HEIGHTS WITH THE ARCHITECTURAL PLANS PRIOR TO CONSTRUCTION.

RIDGE HEIGHT, AS-BUILT DWELLING = 231.09'

PROPERTY IS SUBJECT TO A SPECIAL PERMIT FROM CITY COUNCIL  
 RECORDED IN THE WORCESTER REGISTRY OF DEEDS BOOK 72922, PAGE 142.

**PREPARED FOR:**  
**THOMAS CODER**  
**21 PATTEN DRIVE**  
**MARLBOROUGH, MA 01752**

DATE: FEB. 17, 2021 SCALE: 1"=20'

**EXHIBIT PLAN**

**21 PATTEN DRIVE**

**MARLBOROUGH, MA**

**CONNORSTONE ENGINEERING**  
**CONSULTING CIVIL ENGINEERS**  
**AND LAND SURVEYORS**  
**10 SOUTHWEST CUTOFF, SUITE 7**  
**NORTHBOROUGH, MASSACHUSETTS 01532**

17-A



# IN CITY COUNCIL

Marlborough, Mass., JUNE 17, 2019

**ORDERED:**

## DECISION FOR SPECIAL PERMIT IN CITY COUNCIL

### NOTICE OF DECISION GRANT OF SPECIAL PERMIT

Special Permit Application of:

Thomas Coder *See reference 71802-461*  
3 Atwood Street  
Southborough, MA 01772  
Order No. 19-1007612C



2019 00099784

Bk: 72922 Pg: 142 Doc: DECIS  
Page: 1 of 17 07/15/2019 11:13 AM

Locus:

21 Patten Drive  
Assessors Map 5, Parcel 80

### DECISION

The City Council of the City of Marlborough hereby **GRANTS** Thomas Coder, having a mailing address of 3 Atwood Street, Southborough, MA 01772, authorization to demolish the existing one-story single-family dwelling and construct a new two-story single-family dwelling on a new poured concrete foundation footprint based on the Procedural Findings and Findings of Facts and Conditions attached hereto as provided in the DECISION.

Decision date: June 17, 2019.

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 19<sup>th</sup> of June, 2019.

This is to certify that twenty (20) days have passed since the filing of the within decision and no appeal has been filed with this office.

Given at Marlborough this 11<sup>th</sup> day of July, 2019.

Given under Chapter 40A Section 17 of the General Laws.

A TRUE COPY  
ATTEST

City Clerk

*Thomas Paul Coder  
3 Atwood St.  
Southborough Mass  
01772*



# IN CITY COUNCIL

Marlborough, Mass., JUNE 17, 2019

PAGE 1

ORDERED:

## DECISION FOR SPECIAL PERMIT

**THOMAS CODER**  
**21 Patten Drive, Marlborough, MA**

**CITY OF MARLBOROUGH**  
**CITY COUNCIL ORDER NO. 19-1007612C**

### DECISION ON AN APPLICATION FOR SPECIAL PERMIT

The City Council of the City of Marlborough hereby **GRANTS** the application for a Special Permit to Thomas P. Coder of 21 Patten Drive, Marlborough MA 01752, as provided in this Decision and subject to the following Findings of Fact and Conditions:

#### PROCEDURAL FINDINGS

1. Thomas Coder, with an address of 21 Patten Drive, Marlborough, MA 01752, is the owner of real property located at 21 Patten Drive, Marlborough, MA 01752 (the "Applicant").
2. The Applicant is the owner of said real property which is described in a deed recorded with the Middlesex South District Registry of Deeds at Book 71802, Page 461, and identified on the City of Marlborough Assessor's Maps as Map 5, Parcel 80 (the "Site").
3. The Applicant, on or about March 11, 2019 filed with the City Clerk of the City of Marlborough an Application to City Council for Issuance of Special Permit (the "Application") under Section 12, Paragraph B. of Chapter 650 (Zoning) of the Code of the City of Marlborough to demolish the existing one story single-family dwelling located on the Site and to construct a new two story single-family dwelling on a new poured concrete foundation footprint (the "Project").
4. The Application consisted of an original and two copies of the following: (a) Application to the City Council for Issuance of Special Permit, (b) Special Permit-Summary Impact Statement, (c) Filing Fee check in the amount of \$300.00, (d) Plan Delivery Certification, (e) Tax Payment Certification, (f) Abutters List, (g) Existing and Preliminary Site Plans, (h) Architectural Drawings, (i) Certificate of Completeness of Application, and (j) Zoning Denial Letter (dated March 4th, 2019), (collectively the "Documents"), which Documents are incorporated herein and become a part of this Decision. Eleven sets of documents were delivered to the City Council and one set each to the Police Chief, the Fire Chief, the City Planner (Building Commissioner), the City Engineer, and the Conservation Officer, all in accordance with Section 59 of Chapter 650 of the Zoning Code of the City of Marlborough.



# IN CITY COUNCIL

Marlborough, Mass.,                      JUNE 17, 2019

PAGE 2

## ORDERED:

5. In accordance with the Rules and Regulations of the City Council and Massachusetts General Laws Chapter 40A, Sections 9 and 11, the City Council established a date for a public hearing on the Application, caused to be advertised notice of said hearing and the date thereof in the Marlborough Enterprise. All necessary abutters, as certified by the Office of the Marlborough Assessors, were provided notice as required by law.
6. The Marlborough City Council held a public hearing on the Application on April 29<sup>th</sup>, 2019 in accordance with the published notice (the "Public Hearing"). The time for the City Council to take final action on the Application is July 29<sup>th</sup>, 2019.
7. The Applicant presented testimony at the Public Hearing detailing the Project, its impact upon the neighborhood, and such issues as the City Council and members of the public deemed appropriate. Members of the public had the opportunity to testify at the Public Hearing. Subjects of concern were the deteriorated condition of the existing single-family dwelling, the proposed new two-story single-family dwelling, on a new concrete foundation.
8. The Site, located in the A-3 zoning district, has side setback of 11.5' to the foundation and 9.5' to the roof. With a rear setback reduced to 22 feet and is comprised of approximately 1,767 SF of land. Chapter 650-41 of the Zoning Code of the City of Marlborough requires 15' side setback and a lot size of 5,000 SF.
9. The Building Commissioner has determined that the existing single-story single-family dwelling is a legal pre-existing nonconforming structure with respect to lot size and setbacks, and that the proposed two-story single-family dwelling would increase or intensify the nonconformities of said structure. The proposed single-family dwelling would conform to requirements of the City of Marlborough Zoning Code in all respects except for the side yard, back yard setback requirements. Thus, the proposed reconstruction of the dwelling with an additional second floor within setback area intensifies the pre-existing legally non-conformity structure and requires a special permit from the City Council. The Zoning Denial Letter of the Building Commissioner, dated March 4<sup>th</sup>, 2019, is attached hereto as "**Attachment A.**"
10. The existing site plan submitted with the Application (as thereafter revised to its current attached version, if applicable) is entitled, "ZBA Petition Plan, 21 Patten Drive, Marlborough MA; Prepared for Thomas Coder" by Connorstone Engineering, 10 Southwest Cutoff, Suite 7, Northborough, MA 01532, graphic scale 1" = 20', dated March 7, 2019, attached hereto as "**Attachment B.**"



# IN CITY COUNCIL

Marlborough, Mass., JUNE 17, 2019

PAGE 3

## ORDERED:

11. The architectural drawings submitted with the Application are entitled "Coder Residence, 21 Patten Drive, Marlborough, MA," by Silver Street Architects. Daniel Wezniak, AIA, dated February 5, 2019 (the "Architectural Drawings" A-0, A-1, A-2, A-3, A-4, A-5) and are attached hereto as "Attachment C".

## BASED ON THE ABOVE, THE MARLBOROUGH CITY COUNCIL MAKES THE FOLLOWING FINDING OF FACT AND TAKES THE FOLLOWING ACTIONS:

- A. The City Council finds that it may grant a Special Permit subject to such terms and conditions as it deems necessary and reasonable to protect the citizens of the City of Marlborough (also referenced herein as the "City").
- B. The City Council finds the Application for the Special Permit does not derogate from the intent or purpose of the Zoning Ordinance of the City of Marlborough.
- C. The Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.
- D. The City Council makes these findings subject to the completion and adherence by the Applicant, his successors and/or assigns to the conditions more fully set forth herein.
- E. The City Council finds that the expansion or alteration of the existing legally nonconforming one story single-family structure, by demolition thereof and construction of the proposed new two story single-family dwelling, is not substantially more detrimental to the neighborhood than the existing non-conforming structure, that it is an appropriate use, and that is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions as provided herein.
- F. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough hereby **GRANTS** the Applicant a Special Permit to build a single-family dwelling as shown on the Plans filed, **SUBJECT TO THE FOLLOWING CONDITIONS**, which conditions shall be binding on the Applicant, his successors and/or assigns:
  1. Construction in Accordance with Applicable Laws. Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts and shall be built according to the Site Plan and Architectural Drawings as may be subject to minor modifications with approval of the Building Commissioner.





## IN CITY COUNCIL

Marlborough, Mass.,

JUNE 17, 2019

PAGE 4

**ORDERED:**

2. No additional decks. No deck(s) shall be constructed or permitted beyond what is expressly shown on the Plan in Attachment B.
3. Recording of Special Permit. In accordance with the provisions of Massachusetts General Laws c. 40A, Section 11, the Applicant at his expense shall record this Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing the Special Permit has elapsed with no appeal having been filed, and before the Applicant shall apply to the Building Commissioner for a building permit concerning the proposed expansion. Applicant shall provide a copy of the recorded Special Permit to the City Council's office, to the Building Department and to the City Solicitor's office.



# IN CITY COUNCIL

Marlborough, Mass., JUNE 17, 2019  
PAGE 5

ORDERED:

# ATTACHMENT A



*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

RICHARD DESIMONE  
 PLUMBING & GAS INSPECTOR

JOHN CAIN  
 WIRING INSPECTOR

**ZONING DENIAL**

March 4, 2019

To: Thomas P. Coder  
 3 Atwood Street  
 Southborough, MA 01772

RE: 21 Patten Drive, Marlborough, MA

Mr. Coder:

Your application to demolish the existing single story SFD and construct a two story SFD at 21 Patten Drive, Marlborough, MA Parcel ID #5-80, located in the Residence A-3 zoning district (A-3) is denied as it does not comply with Chapter 650-41 of City Code of Marlborough. The "Table of Lot Area, Yards, and Height of Structures" state that your use requires 100' of frontage and 12,500 SF of area. Your existing lot contains 50' frontage and 5,000 SF of area. As a pre-existing, non-conforming lot, the construction of a new larger SFD that increases the non-conformity requires a "Special Permit" (SP) issued by the Marlborough City Council.

I have determined that the proposed structure is increasing intensifying the non-conformity.

- The existing structure is approximately 733 square feet (SF) of area the proposed is approximately 1767 SF.
- In the required yard setback area, the building increases in height from 1 story to 2 stories.

Please note that the supplied proposed plot plan is incorrect regarding the proposed structure. The plot plan appears to be based on the proposed basement size of 27' wide x 55' deep, while the plans show a proposed structure of 31' x 57', 1767 lot coverage (2' eaves overhang). The plot plan submitted shows a proposed side setback of 11.5 feet when in actuality, the side setbacks will be 9.5 feet, with a rear setback reduced to 22 feet. You will need to provide a plot plan that accurately reflects what is proposed.

Your use requested requires a Zoning relief issued by the Marlborough City Council.

You have the right to continue to the Marlborough City Council (SPGA) for a Special Permit as stated in the City Code section 650-12B or you have the right to appeal this decision to the Zoning Board of Appeals as per section 650-58.

An appeal from this denial for a SP may be taken to the Marlborough City Council by filling 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 Marlborough City Council.

The code in its entirety may be found at [www.ecode360.com/MA1056](http://www.ecode360.com/MA1056)

Sincerely,

Jeffrey Cooke, C.B.O., Building Commissioner, Zoning Enforcement Officer



# IN CITY COUNCIL

Marlborough, Mass., JUNE 17, 2019  
PAGE 6

ORDERED:

# ATTACHMENT B

THE TIES TO THE LOT LINES SHOWN HEREON ARE NOT TO BE USED IN THE SETTING OF FENCES, HEDGES, ETC.

THE PROPOSED DWELLING SHOWN HEREON WILL REQUIRE A VARIANCE FROM THE CITY OF MARLBOROUGH ZONING BOARD OF APPEALS.

THE LOT SHOWN AND THE DWELLING THEREON ARE NOT LOCATED WITHIN THE 100 YEAR FEDERAL FLOOD HAZARD AREA AS SHOWN ON THE FLOOD INSURANCE RATE MAPS FOR THE CITY OF MARLBOROUGH, PANEL 481 OF 656, MAP NUMBER 25017C0481F, DATED JULY 7, 2014.

ZONED: RESIDENCE A3 - PROPOSED DWELLING

	REQUIRED	EXISTING HOUSE	PROPOSED HOUSE*
AREA	12,900 sf	8,000 sf	8,000 sf
FRONTAGE	100 feet	50 feet	50 feet
DEPTH	20 feet	28.0'	28.0'
SIDE	15 feet	8.5'	11.5' (VARIANCE)
REAR	30 feet	40.1'	24.0' (VARIANCE)
ACCESSORY	3 feet	N/A	N/A

EXISTING IMPERVIOUS LOT COVERAGE = 1,211 S.F.± (9.2%)  
 PROPOSED IMPERVIOUS LOT COVERAGE = 1,723 S.F.± (13.3%) (36.5% MAX (VARIANCE REQ.))

\*BUILDING PER ZONING DEFINITION

ADJUTING LOT INFORMATION: HOUSES, DRIVEWAYS, ETC. TAKEN FROM CITY OF MARLBOROUGH GIS DATA.

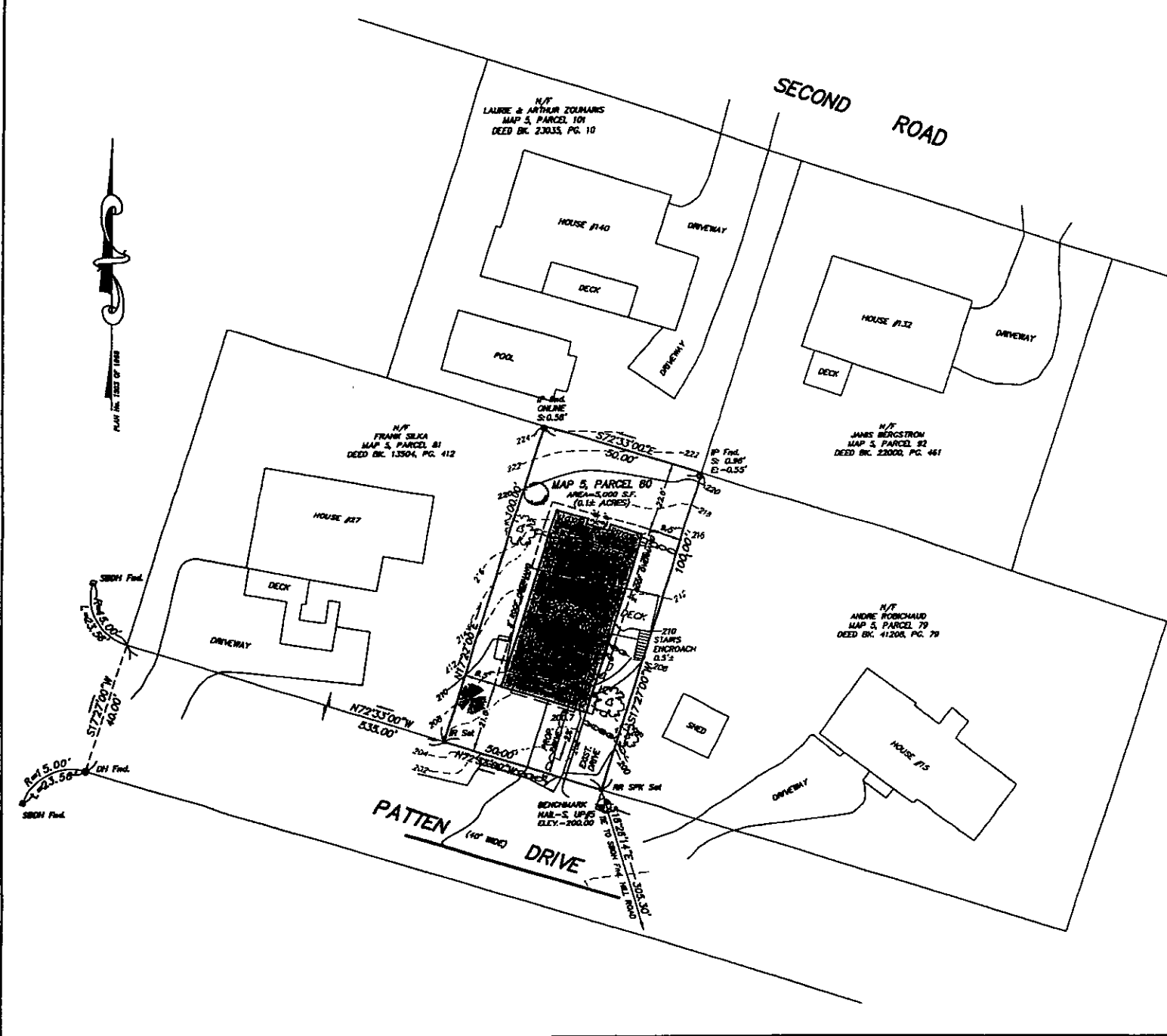
RIDGE HEIGHT, EXISTING DWELLING = 225.1'  
 RIDGE HEIGHT, PROPOSED DWELLING = 228.8'



PREPARED FOR:  
 THOMAS CODER  
 21 PATTEN DRIVE  
 MARLBOROUGH, MA 01752

REVISED: MARCH 7, 2019  
 REVISED: FEBRUARY 11, 2019  
 REVISED: AUGUST 1, 2018  
 DATE: AUGUST 2, 2017 SCALE: 1"=20'

ZBA PETITION PLAN  
 21 PATTEN DRIVE  
 MARLBOROUGH, MA  
 CONNORSTONE ENGINEERING  
 CONSULTING CIVIL ENGINEERS  
 AND LAND SURVEYORS  
 10 SOUTHWEST CUTOFF, SUITE 7  
 NORTHBOROUGH, MASSACHUSETTS 01532





IN CITY COUNCIL

Marlborough, Mass.,

JUNE 17, 2019

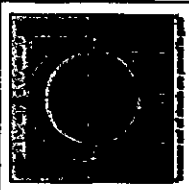
PAGE 7

ORDERED:

# ATTACHMENT C







**DANIEL J. PRIDEMAK, AIA**  
 800 West Main Street, Building A,  
 Northborough, Massachusetts 01545  
 Tel: 508-875-1111  
 Fax: 508-875-1112

**GENERAL NOTES**

**REVISIONS**

1		
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4		

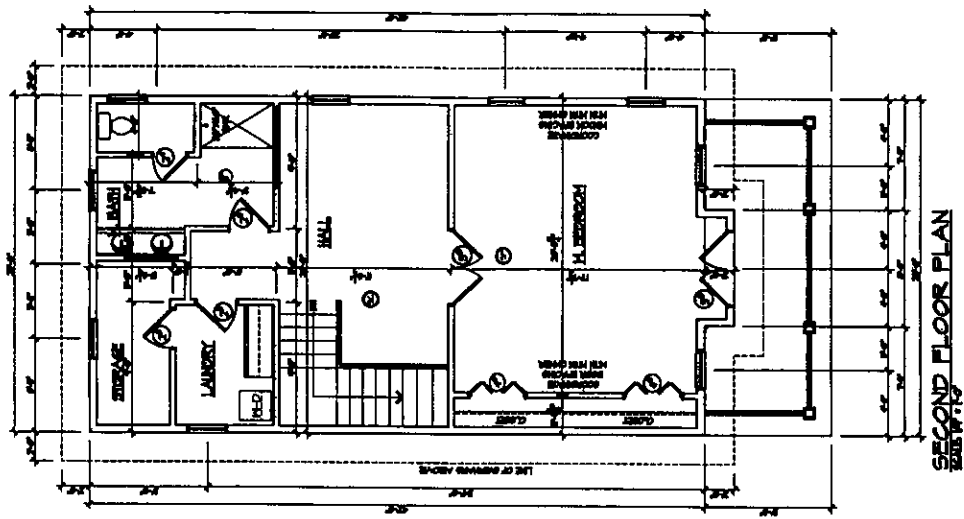
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**FLOOR PLANS  
 CROSS SECTION**

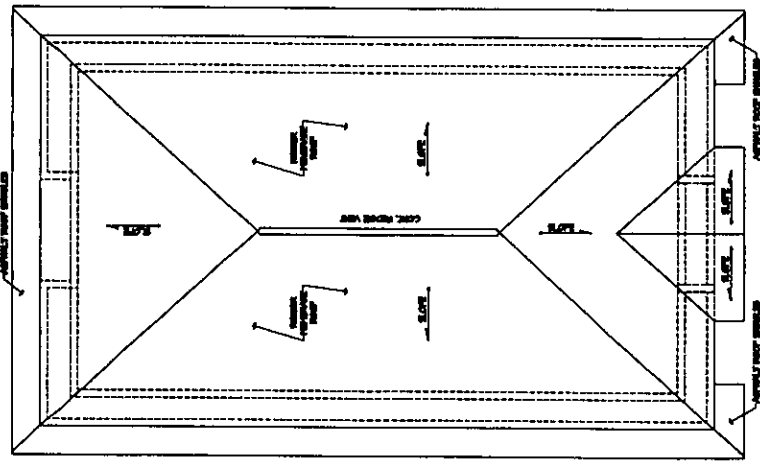
**CODER RESIDENCE**

**3 PINEY DRIVE  
 NORTHBOROUGH, MA**

DATE: 01/14/10  
 DRAWN BY: J.P.  
 CHECKED BY: J.P.  
 PROJECT NO: A1.1



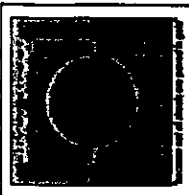
**SECOND FLOOR PLAN**



**ROOF PLAN**

Silver Street Architects LLC





**DANIEL J. FREDRICK, AIA**  
 1000 West Main Street, Building A  
 Harrisburg, Pennsylvania 17102  
 Tel: 717/633-1111  
 Fax: 717/633-1112  
 www.djfredrick.com

**GENERAL NOTES**



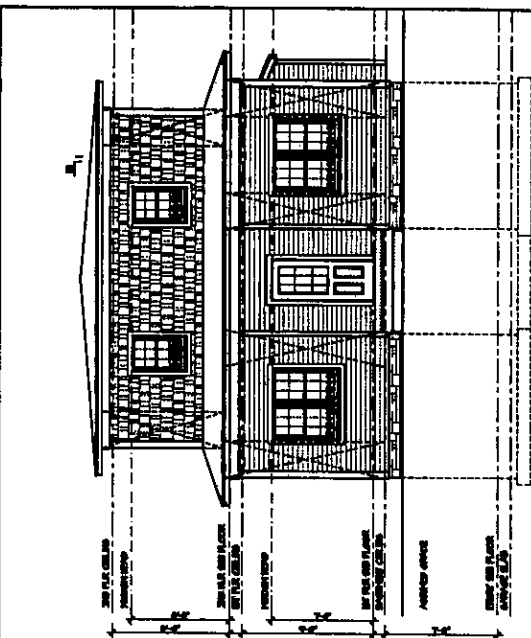
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**REAR & LEFT SIDE ELEVATIONS**

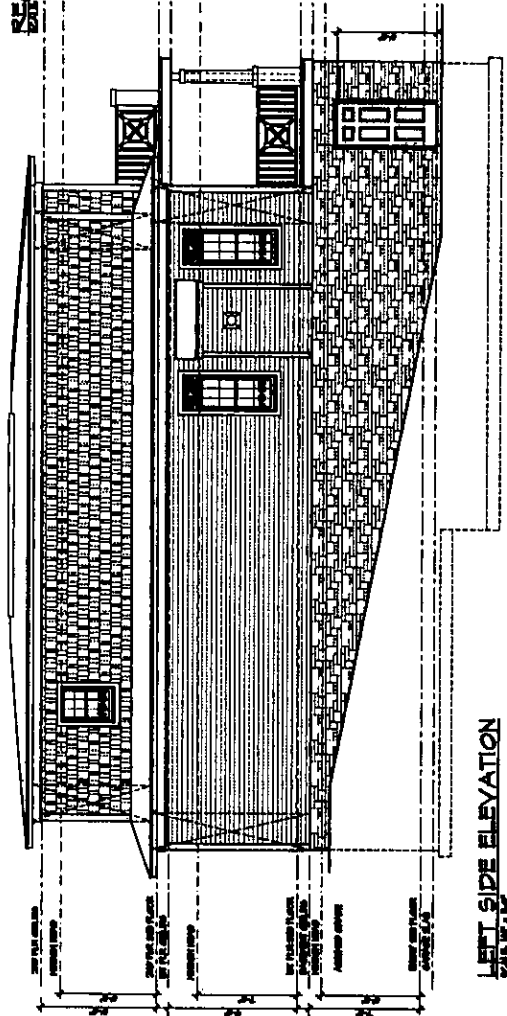
**COOKER RESIDENCE**

**3 PINEY GROVE**  
 HANOVER, PA

DATE: 11/10/10  
 DRAWN BY: DJF  
 CHECKED BY: DJF  
 SCALE: A1.3



**SEARS ELEVATION**



**LEFT SIDE ELEVATION**

**GENERAL NOTES**

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES, AS APPLICABLE TO THIS PROJECT.

2. ALL MATERIALS SHALL BE OF THE BEST QUALITY AND SHALL BE APPROVED BY THE ARCHITECT PRIOR TO INSTALLATION.

3. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES, AS APPLICABLE TO THIS PROJECT.

4. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES, AS APPLICABLE TO THIS PROJECT.

5. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES, AS APPLICABLE TO THIS PROJECT.

6. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES, AS APPLICABLE TO THIS PROJECT.

7. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES, AS APPLICABLE TO THIS PROJECT.

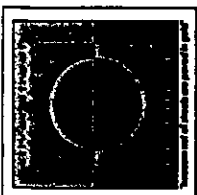
8. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES, AS APPLICABLE TO THIS PROJECT.

9. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES, AS APPLICABLE TO THIS PROJECT.

10. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES, AS APPLICABLE TO THIS PROJECT.

Silver Street Architects LLC





**DANIEL J. MEDNIAK AIA**  
 505 First Main Street, Building A  
 Northampton, Massachusetts 01060  
 Tel: 413-253-1111  
 Fax: 413-253-1112  
 www.danieljmedniak.com

**GENERAL NOTES**

**REVISIONS**

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DATE	DESCRIPTION

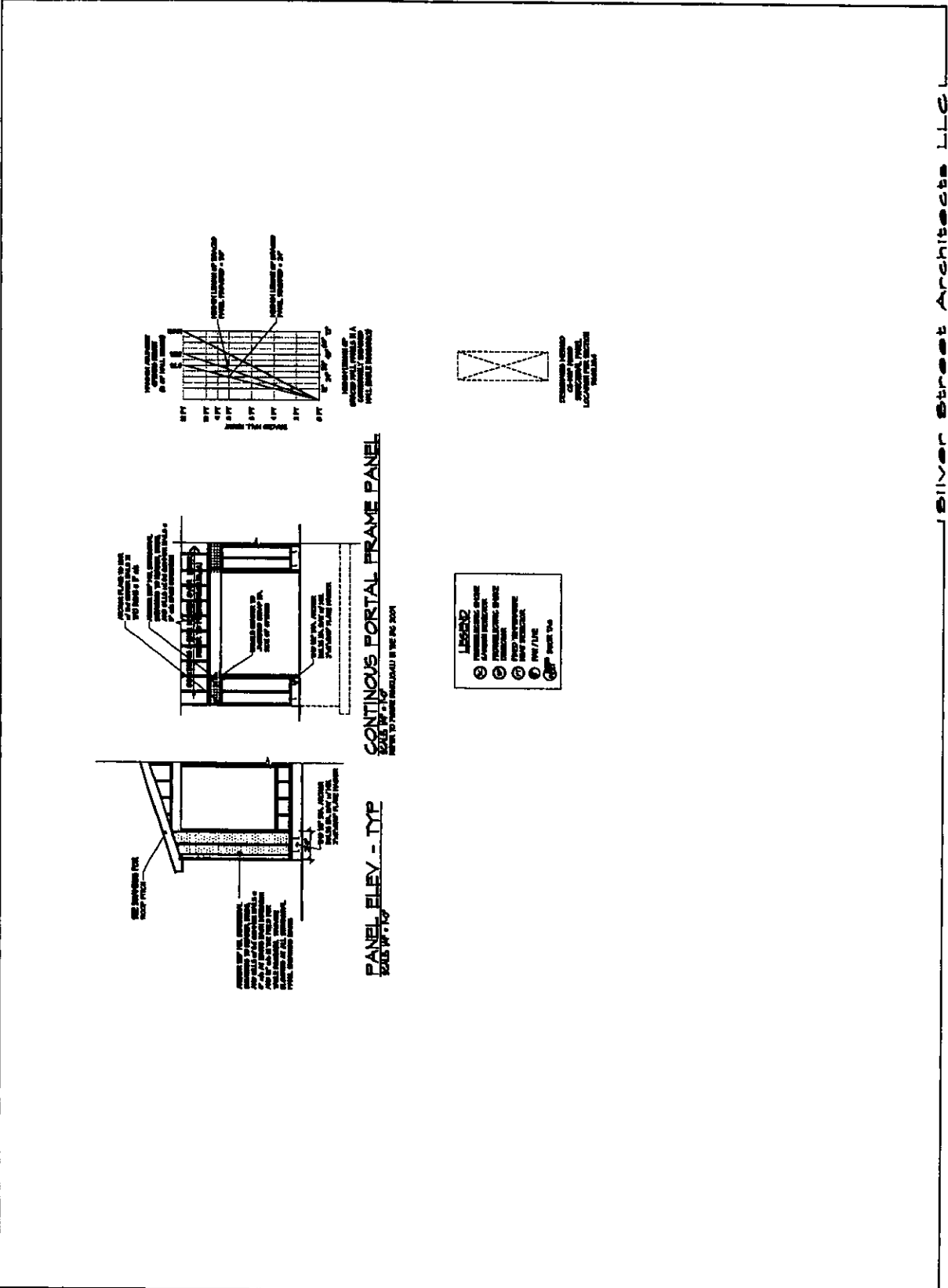
**DETAILS**

**OWNER**  
 COOPER RESIDENCE

**PROJECT**  
 51 RANTON DRIVE  
 NORTHAMPTON, MA

**DATE**  
 10/14/10

**SCALE**  
 A1.5



Silver Street Architects LLC





# IN CITY COUNCIL

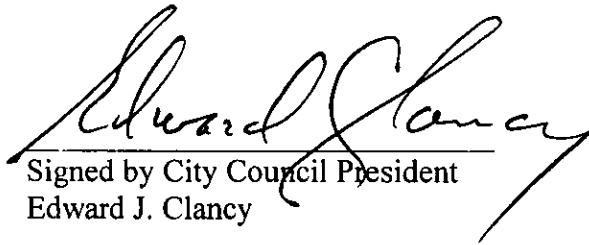
Marlborough, Mass., JUNE 17, 2019  
PAGE 8

ORDERED:

Yea: 10 – Nay: 0 – Abstain: 1

Yea: Doucette, Dumais, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing & Robey.

Abstain: Delano

  
Signed by City Council President  
Edward J. Clancy

ADOPTED  
In City Council  
19-1007612C

ABUTTERS 21 PATTEN DR (5-80) 400 FT

Parcel Number	GIS Number	Camera Number	Property Address	Owner Name	Co-Owner Name	Owner Address	Owner Address	Owner City	Owner State	Owner Zip
17-19	M_195765_902 248	17-19	73 LAKESHORE DR	GAUCHER NANCY B		ATTN VICTORIA GAUCHER	73 LAKESHORE DR	MARLBOROUGH MA	MA	01752
17-20	M_195783_902 240	17-20	75 LAKESHORE DR	SHARON HEATHER		75 LAKESHORE DR		MARLBOROUGH MA	MA	01752
17-21	M_195797_902 234	17-21	79 LAKESHORE DR	MATTA LALITA TR		79 LAKESHORE DR		MARLBOROUGH MA	MA	01752
17-22	M_195811_902 228	17-22	LAKESHORE DR	FORT MEADOW ASSOCIATION		C/O MIKE SEGAL RD	17 DANIELS RD	MARLBOROUGH MA	MA	01752
17-23	M_195825_902 221	17-23	95 LAKESHORE DR	SHARON PETER L		136 ANDREWS RD		MARLBOROUGH MA	MA	01752
17-24	M_195839_902 213	17-24	97 LAKESHORE DR	ALLEN HEATHER A		97 LAKESHORE DR		MARLBOROUGH MA	MA	01752
17-33	M_195891_902 248	17-33	100 LAKESHORE DR	KURANDA MATTHEW G		100 LAKESHORE DR		MARLBOROUGH MA	MA	01752
17-34	M_195868_902 255	17-34	98 LAKESHORE DR	HAMILTON SCOTT C		98 LAKESHORE DR		MARLBOROUGH MA	MA	01752
17-35	M_195852_902 260	17-35	96 LAKESHORE DR	PAYAO JASON		96 LAKESHORE DR		MARLBOROUGH MA	MA	01752
5-100	M_195907_902 474	5-100	SECOND RD	UNKNOWN OWNER		UNKNOWN				
5-101	M_195799_902 366	5-101	140 SECOND RD	ZOUHARIS ARTHUR		140 SECOND RD		MARLBOROUGH MA	MA	01752
5-102	M_195857_902 377	5-102	124 SECOND RD	ALLEN DAVID		124 SECOND RD		MARLBOROUGH MA	MA	01752
5-25	M_195682_902 270	5-25	47 LAKESHORE DR	LAGE FERNANDA G		16 MARLBORO ST		HUDSON MA	MA	01749
5-26	M_195697_902 268	5-26	51 LAKESHORE DR	DAIGLE DEIDRE		51 LAKESHORE DR		MARLBOROUGH MA	MA	01752
5-27	M_195713_902 265	5-27	55 LAKESHORE DR	WILLIAMS NANCY M LI EST		55 LAKESHORE DR		MARLBOROUGH MA	MA	01752
5-28	M_195727_902 261	5-28	57 LAKESHORE DR	STOCK SUSAN		57 LAKESHORE DR		MARLBOROUGH MA	MA	01752
5-29	M_195744_902 256	5-29	65 LAKESHORE DR	KELLEY RICHARD H TR		65 LAKESHORE DR		MARLBOROUGH MA	MA	01752
5-31	M_195823_902 278	5-31	2 HILL RD	AGHADAIL NIMA		2 HILL RD		MARLBOROUGH MA	MA	01752
5-33	M_195793_902 284	5-33	76 LAKESHORE DR	TRUDEAU DENNIS G TR		76 LAKESHORE DR		MARLBOROUGH MA	MA	01752

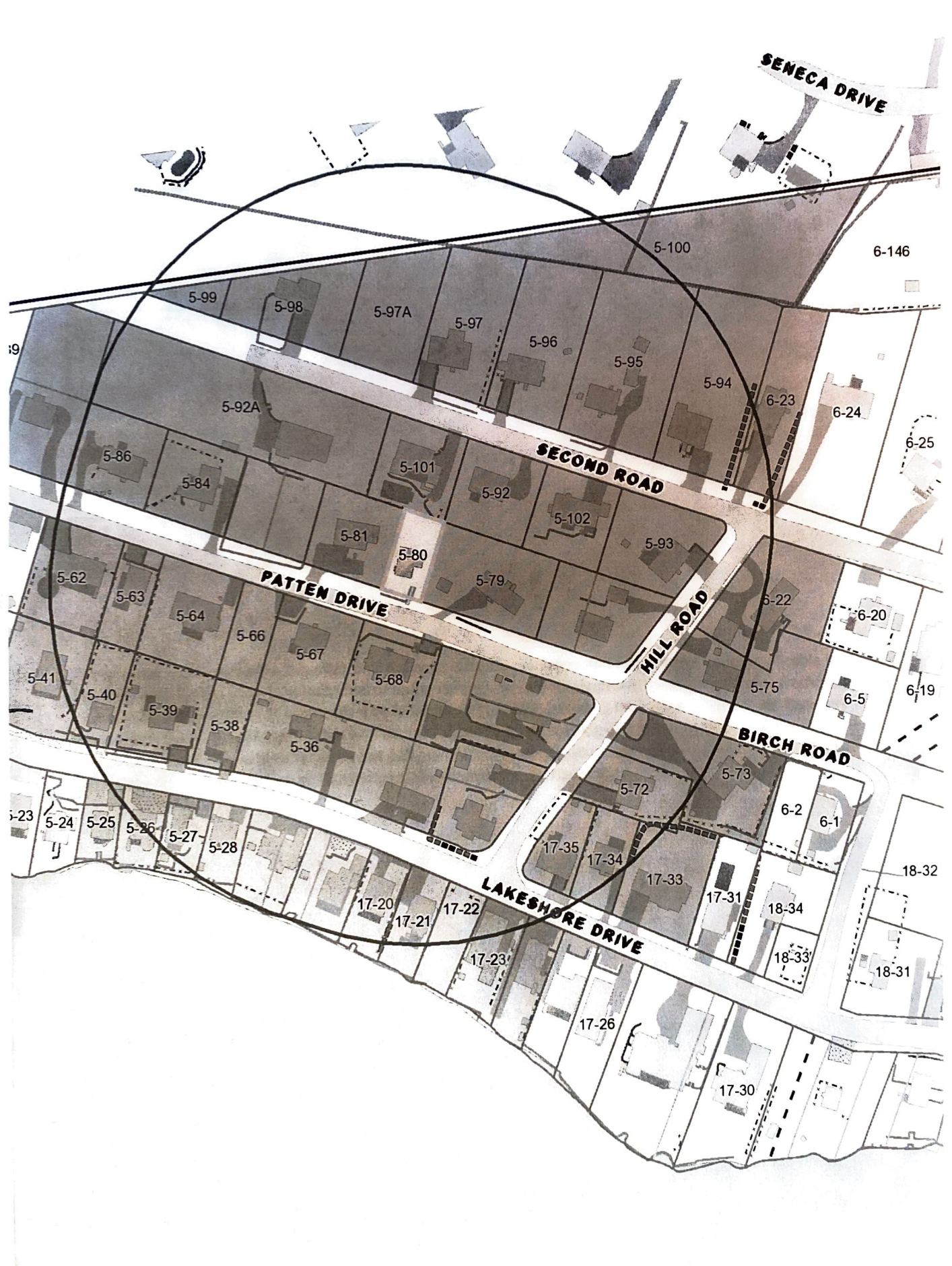
MARLBOROUGH ASSESSORS

*Anthony C. Dimas*  
*William K. Silverstein*  
*Janet May*

5-36	M_195757_902 296	5-36	64 LAKESHORE DR	GARCEAU DAVID A	64 LAKESHORE DR	MARLBOROUGH MA H	01752
5-38	M_195727_902 304	5-38	56 LAKESHORE DR	PALMER BRIAN D	294 PLEASANT ST	MARLBOROUGH MA H	01752
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5-70	M_195830_902 309	5-70	14 HILL RD	CARDER JORDAN	14 HILL RD	MARLBOROUGH MA H	01752
5-72	M_195880_902 280	5-72	11 HILL RD	CARROLL MICHAEL P	11 HILL RD	MARLBOROUGH MA H	01752
5-73	M_195919_902 279	5-73	17 HILL RD	OLIVEIRA MARCELLO F	17 HILL RD	MARLBOROUGH MA H	01752
5-75	M_195921_902 318	5-75	25 HILL RD	25 HILL ROAD LLC	1 BUSH RD	HUDSON MA H	01749
5-77	M_195867_902 343	5-77	5 PATTEN DR	MCAVOY ANDREW	5 PATTEN DR	MARLBOROUGH MA H	01752
5-79	M_195826_902 355	5-79	15 PATTEN DR	ROBICHAUD ANDRE J	15 PATTEN DR	MARLBOROUGH MA H	01752
5-81	M_195775_902 372	5-81	27 PATTEN DR	SILKA FRANK W	27 PATTEN DR	MARLBOROUGH MA H	01752
5-83	M_195746_902 381	5-83	39 PATTEN DR	PARK CHARLES L JR	150 SECOND RD	MARLBOROUGH MA H	01752
5-84	M_195717_902 390	5-84	43 PATTEN DR	SUTER DAVID R	43 PATTEN DR	MARLBOROUGH MA H	01752
5-86	M_195688_902 400	5-86	53 PATTEN DR	BUONOMO ERIN	53 PATTEN DR	MARLBOROUGH MA H	01752



5-88	M_195665_902 423	5-88	61 PATTEN DR	LAUDARES ANNA PAULA	61 PATTEN DR	MARLBOROUGH MA	01752
5-92	M_195828_902 387	5-92	132 SECOND RD	BERGSTROM JANIS A TR	132 SECOND RD	MARLBOROUGH MA	01752
5-92A	M_195762_902 408	5-92A	150 SECOND RD	PARK CHARLES L JR	150 SECOND RD	MARLBOROUGH MA	01752
5-93	M_195889_902 368	5-93	36 HILL RD	THEBADO KRIS	36 HILL RD	MARLBOROUGH MA	01752
5-94	M_195911_902 425	5-94	111 SECOND RD	RENAUD MAURICE P	111 SECOND RD	MARLBOROUGH MA	01752
5-95	M_195878_902 433	5-95	117 SECOND RD	ELYSEE JACKSON	117 SECOND RD	MARLBOROUGH MA	01752
5-96	M_195846_902 440	5-96	125 SECOND RD	GIANCOLA FRANCIS W	125 SECOND RD	MARLBOROUGH MA	01752
5-97	M_195819_902 447	5-97	137 SECOND RD	GOLDMAN PAUL D	137 SECOND RD	MARLBOROUGH MA	01752
5-97A	M_195791_902 451	5-97A	147 SECOND RD	PARK MARJORIE A	157 SECOND RD	MARLBOROUGH MA	01752
5-98	M_195756_902 453	5-98	157 SECOND RD	PARK MARJORIE A	157 SECOND RD	MARLBOROUGH MA	01752
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6-23	M_195934_902 419	6-23	105 SECOND RD	BELLIDO MARCELO	105 SECOND RD	MARLBOROUGH MA	01752



SENECA DRIVE

5-100

6-146

5-99

5-98

5-97A

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5-95

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5-92A

6-23

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6-5

6-19

BIRCH ROAD

HILL ROAD

PATTEN DRIVE

SECOND ROAD

5-23

5-24

5-25

5-26

5-27

5-28

5-72

5-73

6-2

6-1

18-32

LAKESHORE DRIVE

17-20

17-21

17-22

17-23

17-35

17-34

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17-26

17-30