

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.



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- 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 29th, 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 29th, 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 4th, 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."



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 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. <u>Construction in Accordance with Applicable Laws</u>. 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.



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- 2. <u>No additional decks</u>. No deck(s) shall be constructed or permitted beyond what is expressly shown on the Plan in Attachment B.
- 3. <u>Recording of Special Permit</u>. 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.



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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

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

Sincerely,

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

JEFFREY COOKE, C.B.O BUILDING COMMISSIONER

> PATRICK DAHLGREN ASSISTANT BUILDING COMMISSIONER

WILLIAM PAYNTON LOCAL BUILDING INSPECTOR

RICHARD DESIMONE PLUMBING & GAS INSPECTOR

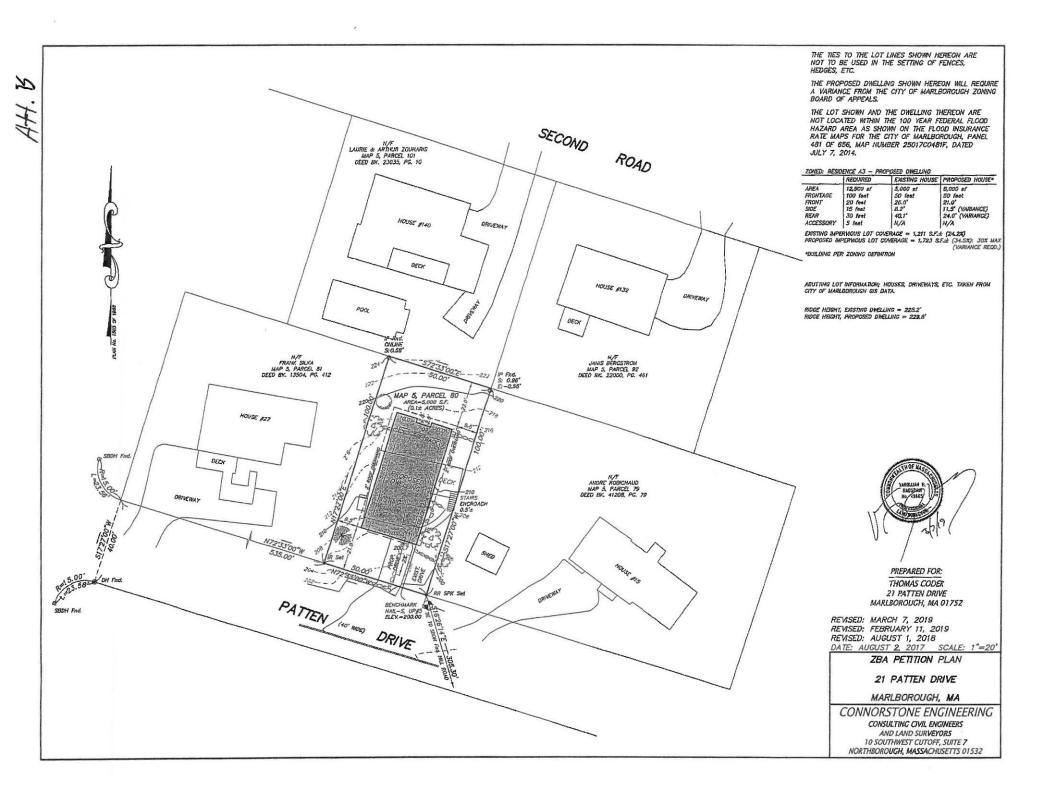
> JOHN CAIN WIRING INSPECTOR



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ATTACHMENT B



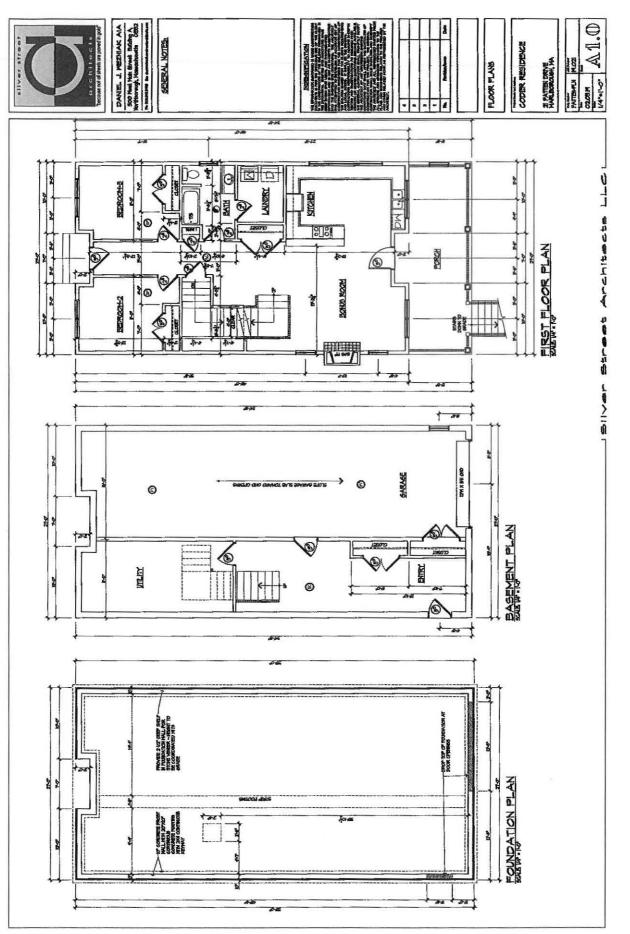


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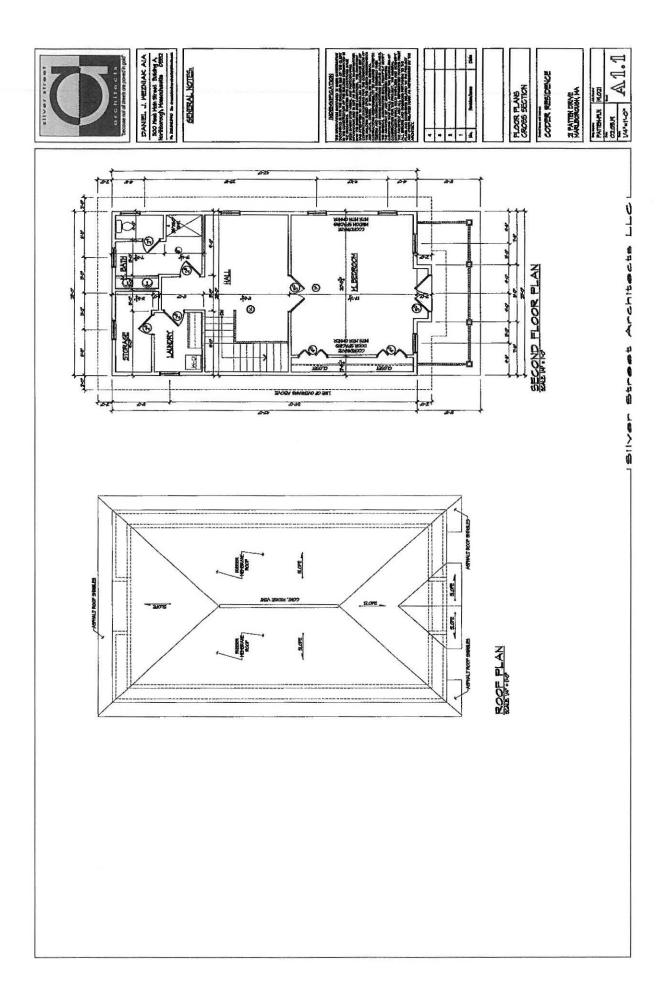
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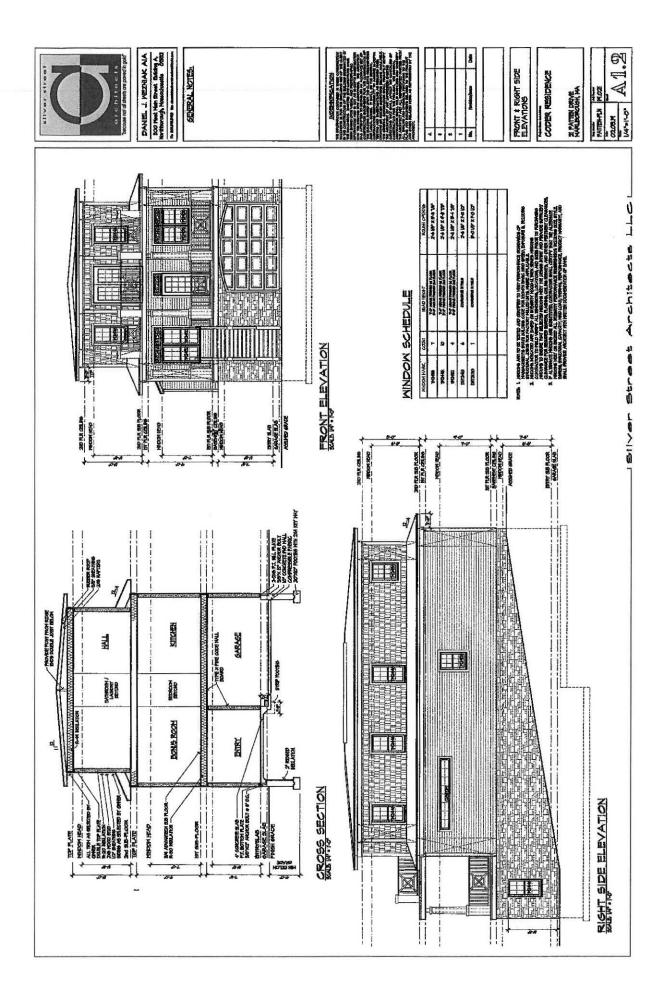
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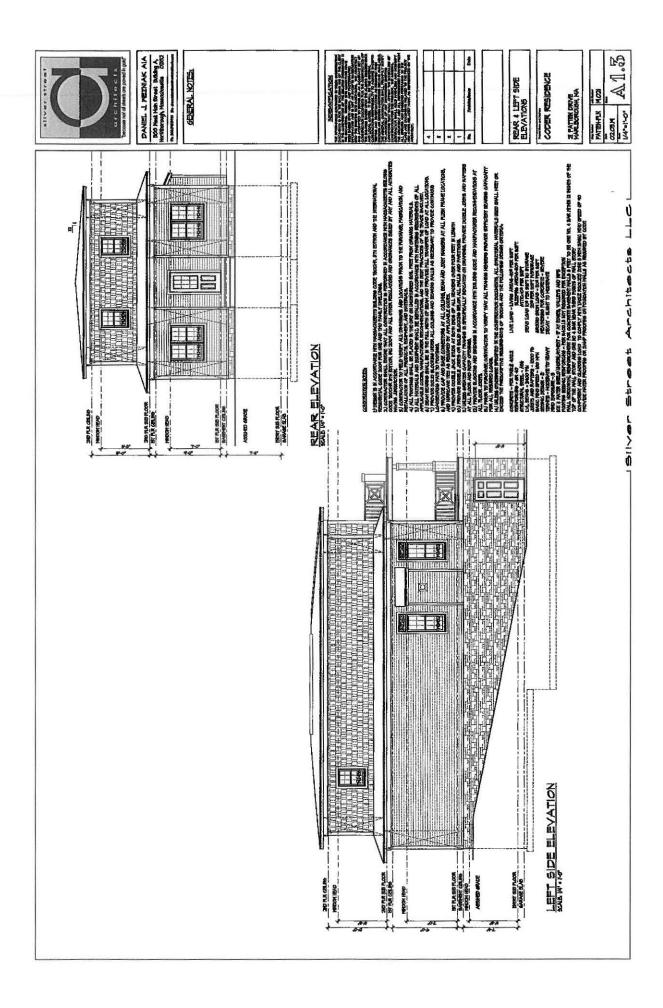
ATTACHMENT C

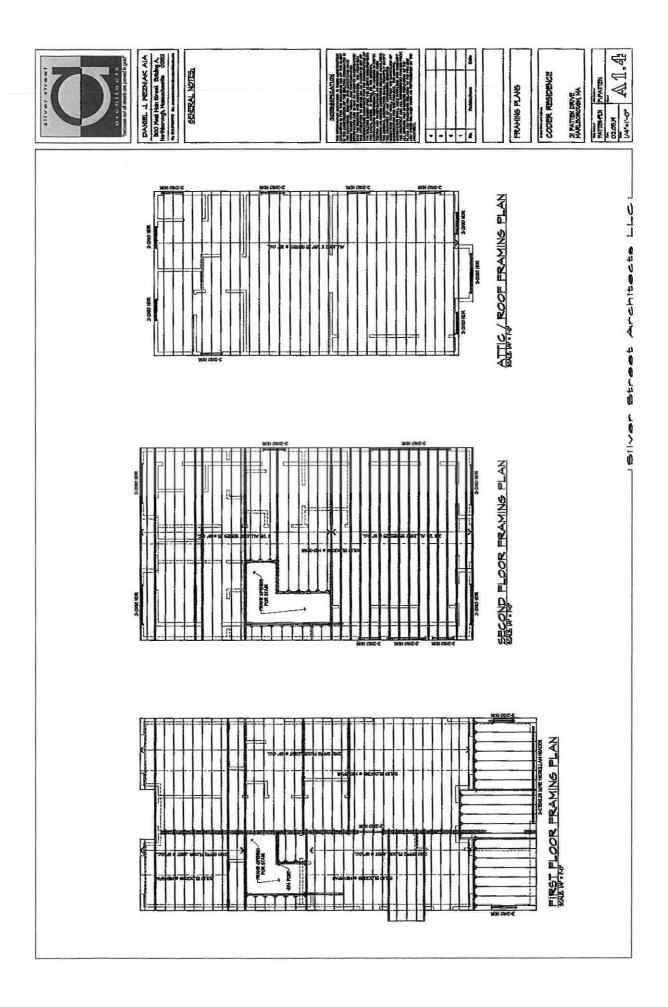


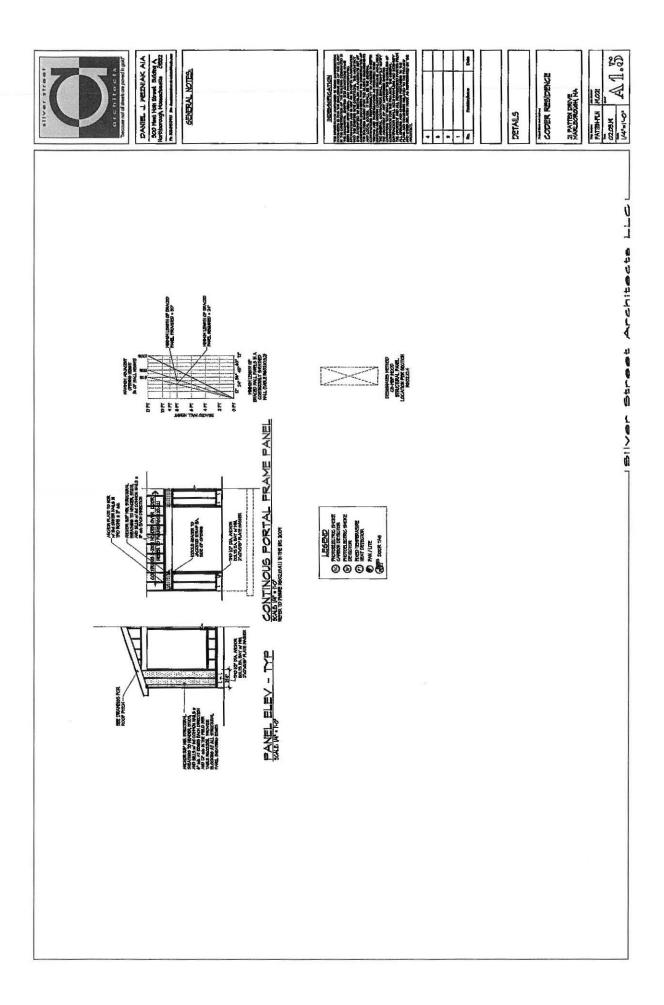
AH. C













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Yea: 10 – Nay: 0 – Abstain: 1 Yea: Doucette, Dumais, Tunnera, Irish, Clancy, Landers, Juaire, Oram, Ossing & Robey. Abstain: Delano

an 1 CI

Signed by City Council President Edward J. Clancy

ADOPTED In City Council 19-1007612C