

STATE OF RHODE ISLAND
NEWPORT, S.C.

CITY OF NEWPORT
ZONING BOARD OF REVIEW

IN RE: APPEAL OF WELOVENEWPORT, LLC

APPELLEES' BRIEF IN OPPOSITION TO APPEAL

INTRODUCTION

This appeal involves a lot owned by Appellee Clayton G. Deutsch at 2 Harborview Drive (Assessor's Plat 42, Lot 39) ("the property"). According to two subdivision plans filed in the Newport Land Evidence Records, the lot contains 52,082 square feet of land.

On October 24, 2016, Appellee was granted permission by the Zoning Board to construct a detached, 1.5 story, 2 car garage on the property (the "garage"), which would be located 8' from the west property line where 75' was required. The Zoning Board subsequently granted two 12 month extensions of the approval, with the last being granted on May 28, 2019.

The building permit for the garage was issued by the City on or about October 24, 2019 and construction commenced immediately thereafter. Three months later, on January 23, 2020, WELOVENEWPORT, LLC ("Appellant"), appealed the issuance of the permit. The appeal was in response to Mr. Deutsch's objection to Appellant's petition seeking approval for construction of large house on its property across the street at 1 Harbor View Drive (Plat 42, Lot 10).¹

In its appeal, Appellant alleges that the property contains only 47,767 square feet, and that as a result, the construction of the garage exceeds the allowable lot coverage of 8% in the R-120 zone. Appellee submits that the appeal should be denied, as Appellant failed to file its appeal within the required period of time and has failed to establish that the property exceeds the allowable lot coverage.

¹ The Zoning Board denied Appellant's zoning petition on September 27, 2021.

FACTS & TRAVEL

The property is identified as Lot 3 on a Plan entitled “Subdivision of Land, B.B. McCormick, Wellington Avenue, Newport, R.I., Dec. 27/55, Revised July 3/56”, and recorded on July 17, 1956 in the Newport Land Evidence Records. As noted on the plan, which consists of two sheets, the property is part of a 6 lot subdivision to the north of Wellington Avenue. A 40’ wide private right of way (Harbor View Drive)² runs across the lots in the subdivision.²

The December 27, 1955 plan indicates that the property originally contained 49,214 square feet of land. The revised July 3, 1956 plan shows the lot size was later increased to 52,082 square feet of land. A copy of said Plan is attached as Exhibit “A”

A revised subdivision plan was recorded by Curry Associates approximately 10 years later on June 24, 1966, after approval by the Planning Board, entitled “Subdivision of Land, Curry Associates, Inc. Wellington Avenue, Newport, R.I. dated June 9, 1966”. However, that plan made no changes to the configuration of the property and shows the property as continuing to contain 52,082 square feet of land. A copy of said Plan is attached as Exhibit “B”

Curry Associates conveyed the property to John G. and Donna Hoyt on October 31, 1983 by deed recorded in Book 317 at Page 644 of the Newport Land Evidence Records. The deed contained a legal description stating that the property contained “52,082 square feet of land, more or less”, a copy of which is attached as Exhibit “C”. The Hoyts then conveyed the property to Philip J. and Jennifer J. D’Angelo by deed dated January 6, 1997 and recorded in Book 750 at Page 417, with a legal description matching that of the original deed from Curry Associates and stating that the property contained 52,082 square feet of land, more or less.

² The right of way actually runs through the middle of Lot 2 the plan (Assessor’s Plat 42, Lot 38).

The D'Angelos subsequently conveyed the property to John J. and Jacqueline Callanan by deed dated June 12, 2000 and recorded in Book 939 at Page 254. The deed once again had a legal description matching that of the deed from Curry Associates, with a statement that the property contained 52,082 square feet of land, more or less.

The Callanan's subsequently recorded a series of deeds to the property. The first was a deed from John and Jacqueline Callanan to Jacqueline Callanan dated January 14, 2004 and recorded in Book 1448 at Page 48, a copy of which is attached as Exhibit "D". Said deed contained a legal matching that of the original deed from Curry Associates and a statement that the property contained 52,082 square feet of land, more or less. Jacqueline Callanan later conveyed the property back to herself and her husband by deed dated August 11, 2004 and recorded in Book 1523 at Page 259, a copy of which is attached as Exhibit "E". The deed's legal description was identical to that contained in Exhibit "D" stated that the property contained 52,082 square feet of land, more or less.

During their ownership of the property, the Callanan's also recorded a survey plan by Northeast Engineers dated May 30, 2002, a copy of said Plan is attached hereto as Exhibit "F". Said plan states that the property contained 47,767 square feet of land. However, the plan was not recorded in connection with any conveyance, transfer, subdivision or modification of the property. In addition, the Callanan's recorded the deeds attached hereto as Exhibits "D" and "E" *after* the plan was recorded, and each of those deeds state that the property contains 52,082 square feet of land.

On November 15, 2004, the Callanan's conveyed the property to Mr. Deutsch by deed recorded in Book 1558 at Page 159 of said Land Evidence Records, a copy of which is attached

as Exhibit “G”. Said deed contains a legal identical to that contained in the prior deeds, but omits any reference to its size.

On or about September 23, 2016, Mr. Deutsch filed an application for Special Use Permit and Dimensional Variance for the construction of the garage, a copy of which is attached as Exhibit “H”. The application stated the property’s size as 49,371 square feet, which was based on a July, 2016 survey done by National Surveyors, a copy of which is attached as Exhibit “I”. The application also states that the total square footage of the footprint of the existing buildings on the property was 3,263 square feet, and that the addition of the garage would increase that to 3,887 square feet. Based on those figures, the construction of the garage would have increased lot coverage from 6.6% to 7.87%. As a result, Mr. Deutsch did not seek any lot coverage relief.

However, the existing footprint calculation done by National Surveyors was based on measurements of the building foundations and did not include roof overhangs.³ Measurements taken in 2020, after the appeal was filed, included the roof overhangs and produced the following results:

Main House:	3,298 SF
Garage:	526 SF
<u>Shed:</u>	<u>168 SF</u>
Total:	4,090 SF

The building permit for the garage was issued by the City on or about October 24, 2019 and construction commenced immediately thereafter. Appellant filed its appeal three months later on January 23, 2020. At that time, the garage’s foundation had been dug and poured, the building had been fully framed and the walls and roof were sheathed with plywood. In addition, as of December 31, 2017, three weeks *prior* to the appeal being filed, Mr. Deutsch had spent

³ Including roof overhangs in building footprints was not a point of emphasis by the City at that time.

\$283,390 on the project, or 71% of the project total. See, Affidavit of Clayton Deutsch submitted herewith.

Based on the revised footprint calculation, Appellant claims that the construction of the garage exceeded the allowable 8% lot coverage. In response, Appellee submits that the appeal should be denied, as (a) Appellant failed to file its appeal within the required period of time; and, (b) Appellant has failed to establish that the property exceeds the allowable lot coverage. In fact, a close review indicates that the property remains below the 8% lot coverage allowed in the R-120 Zone.

THE LAW

Appeals to zoning boards from then issuance of building permits are governed by RIGL § and Newport Zoning Code § 17.116.010, which provide as follows:

RIGL § 45-24-64: An appeal to the zoning board of review from a decision of any other zoning enforcement agency or officer may be taken by an aggrieved party. The appeal shall be taken within a reasonable time of the date of the recording of the decision by the zoning enforcement officer or agency by filing with the officer or agency from whom the appeal is taken and with the zoning board of review a notice of appeal specifying the ground of the appeal. The officer or agency from whom the appeal is taken shall immediately transmit to the zoning board of review all the papers constituting the record upon which the action appealed from was taken. Notice of the appeal shall also be transmitted to the planning board or commission.

Newport Zoning Code § 17.116.010. - Appeals to the zoning board of review. An appeal to the zoning board of review may be taken by an aggrieved party from the decision of the zoning officer, planning board or the historic district commission. The appellant shall file with the secretary of the zoning board of review and the official or agency from whom the appeal is taken, a statement of the appeal, a copy of his plat, a copy of the list of abutting owners furnished therewith and the reasons for disapproval of the concerned official or agency's action, together with the names and addresses of any other persons who appeared before the official or agency in opposition to his application. Such papers shall be filed with the secretary of the zoning board of review within ten days after the final action of the official or the agency on the application. The official or agency from the appeal is taken shall forthwith transmit to the zoning board of review all the papers constituting the record upon which the action appealed from was taken. Notice of the appeal shall also be transmitted to the planning board.

ARGUMENT

Appellee submits that the appeal should be denied, as (a) Appellant failed to file its appeal within a reasonable period of time; and, (b) has failed to establish that Mr. Deutsch's property exceeds the allowable lot coverage.

1. Appellant failed to file its appeal within a reasonable period of time.

Appeals to the zoning board from administrative decisions of local officials must be filed within a reasonable period of time, and failure to do so deprives the zoning board of authority to hear the appeal. *MacGregor v. Zoning of Review*, 94 R.I. 362, 180 A.2d 811 (1962); RIGL § 45-24-64. Zoning ordinances may specify the length of time considered to be reasonable for taking an appeal, such as a certain number of days. *Hardy v. Zoning Bd. of Review*, 113 R.I. 375, 321 A.2d 289 (1974) (It is essential that there be a definite period of time established within which a claim of appeal from such a decision must be made); *see also Sousa v. Town of Coventry*, 774 A.2d 812, 814 (R.I. 2001) (citing *Potter v. Chettle*, 574 A.2d 1232, 1234 (R.I. 1990)) ("Statutes prescribing the time and the procedure to be followed by a litigant attempting to secure appellate review are to be strictly construed"). The Newport Zoning Code sets the time period for filing an appeal at ten (10) days. Newport Zoning Code § 17.116.010.

A reasonable time for the appeal from the grant of a building permit does not necessarily begin to run the moment the permit is issued or the construction commences. The time to appeal begins run when the appellant has constructive notice and becomes chargeable with knowledge of the decision he seeks to appeal. *Zeilstra v. Barrington Zoning Bd. of Review*, 417 A.2d 303, 308 (R.I. 1980); *Hardy*, 113 R.I. at 379, 321 A.2d at 291.

An unreasonable delay in taking an appeal, particularly where the permittee has proceeded with construction by virtue of the permit, may also result in the appeal being denied

under the doctrine of “laches by analogy”. Laches bars a lawsuit by a party who has negligently sat on their rights to the detriment of another party. *Fitzgerald v. O’Connell*, 120 R.I. 240, 386 A.2d 1384 (1978). A court applying laches must use a two-part test. First, there must be negligence on the part of the first party that leads to a delay in the prosecution of the case. *Id.* Second, this delay must prejudice the other party. *Id.*

The doctrine of “laches by analogy” essentially invokes laches when an appeal to a zoning board has not been taken within a reasonable time after a building permit has been issued, and in good faith, the permittee has begun significant construction and incurred substantial expenses at the time the appeal is finally taken. *Elmcrest Realty Co. v. Zoning Bd. of Rev.*, 78 R.I. 432, 436, 82 A.2d 846, 848 (1951). In *Elmcrest Realty*, the Rhode Island Supreme Court considered equitable principles in denying an appeal which was delayed by three months. Construction had been substantially completed by the date of appeal. The reviewing court stated that the reasonableness of such delay was to be determined by the peculiar facts of each case. *Id.* at 847. In such circumstances, substantial delay in the filing of an appeal is unreasonable. *Id.* at 848; *Pereira v. Zoning Bd. of Appeals of Providence*, No. PC-2014-5234, 2016 R.I. Super. LEXIS 89, at *20 (Super. Ct. July 28, 2016).

The facts of this case are strikingly similar. Appellant delayed filing its appeal for three months while the foundation for the garage was dug, formed and poured, and while the building was fully framed and sheathed. During that delay, Mr. Deutsch incurred substantial expense in proceeding with the construction of the garage. The delay in filing the appeal, which could have and should have been filed much earlier, resulted in substantial prejudice to Mr. Deutsch. As a result, the delay was unreasonable and the appeal should be denied.

2. Appellant has failed to establish that the property exceeds the allowable lot coverage.

The merits of Appellant's appeal comes down to one question – what is the size of the property? If it contains at least 51,125 square feet of land, the building footprint of 4,090 square feet does not exceed the allowable lot coverage of 8%.⁴ There are four survey plans at issue in this case with a wide variety of lot sizes. Exhibits “A” & “B” set the property's size at 52,082 square feet, and it is undisputed that the property has not be subdivided or otherwise modified since 1956. On the other hand, Exhibit “H” sets the lot size at 49,217 square feet, while Exhibit “F” sets it at 47,767 square feet. The wide variance in survey results can be partially explained by the fact that hand-drawn curved lines of the original subdivision plans are difficult to replicate using current computer technology. Regardless, Appellant has not provided any evidence as to which plan is correct, including the testimony of any surveyor or other expert. As a result, Appellant has failed to establish that the property exceeds the allowable lot coverage

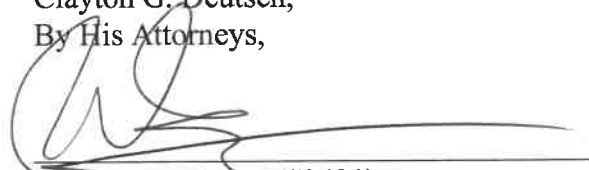
Moreover, the appeal ignores the law regarding the ownership of roads and rights of way. In Rhode Island, in the absence of special circumstances, the owner of land abutting on a road or right of way owns the fee to the middle line of the road. *Newman v. Mayor of Newport*, 73 R.I. 385, 392, 57 A.2d 173, 177 (1948); *Bitting v. Gray*, 897 A.2d 25 (R.I. 2006). A review of the Exhibits “F” and “H” plans make it clear that the calculation of the lot size in those plans does not include any portion of the right of way. Considering that the property has over 500' of frontage on the 40' wide right of way and includes the fee title to the centerline, its actual size is more than sufficient to support the existing footprint without exceeding the allowable lot coverage.

⁴ $4,090 \div .08 = 51,125$.

CONCLUSION

For the reasons set forth above, Appellee respectfully requests that the appeal of WELOVENEWPORT, LLC be denied.

Clayton G. Deutsch,
By His Attorneys,




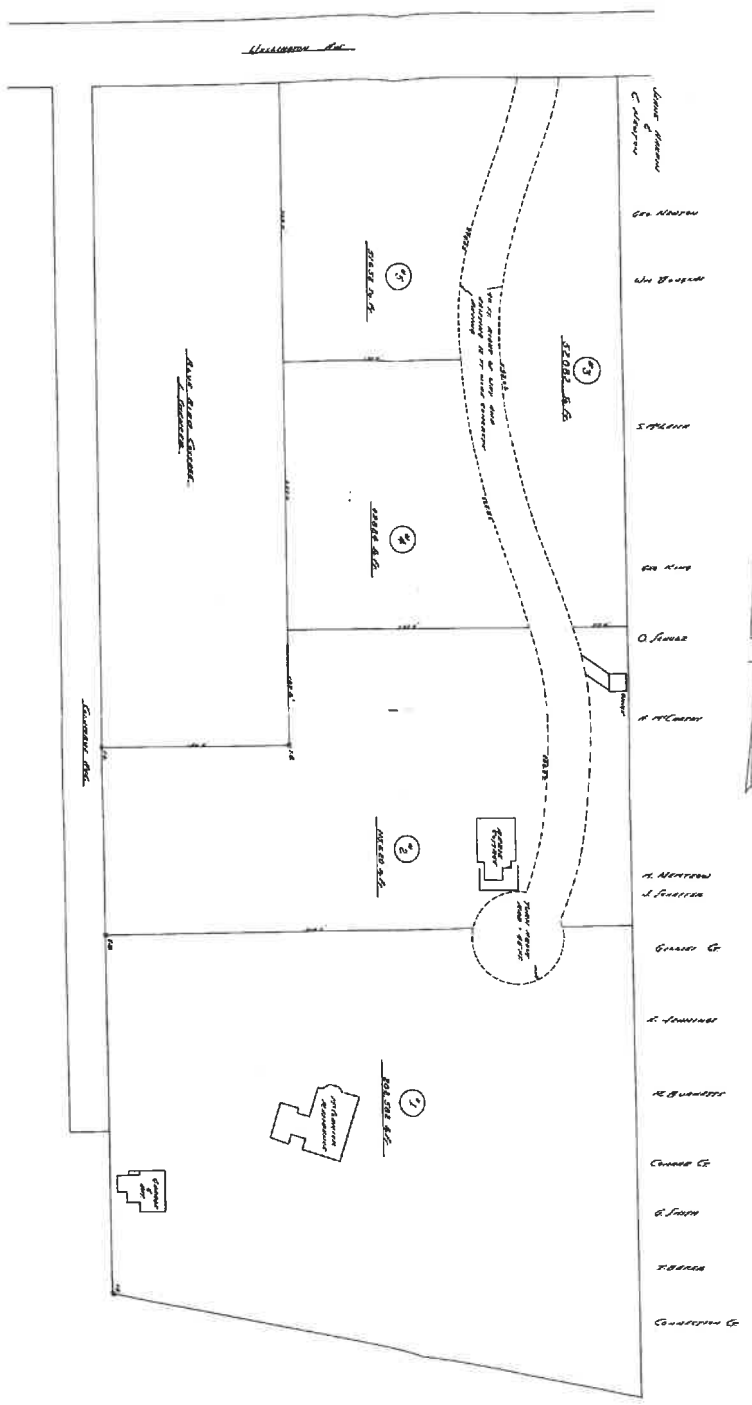
Peter Brent Regan (#3421)
SAYER REGAN & THAYER, LLP
130 Bellevue Avenue
Newport, Rhode Island 02840
(401) 849-3040
pregan@srt-law.com

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2022, a true copy of the within Document was sent via email and first class mail, postage prepaid to the following:

Jeremiah C. Lynch, Esq.
97 John Clarke Road
Middletown RI 02842
jlynch@mvlaw.com

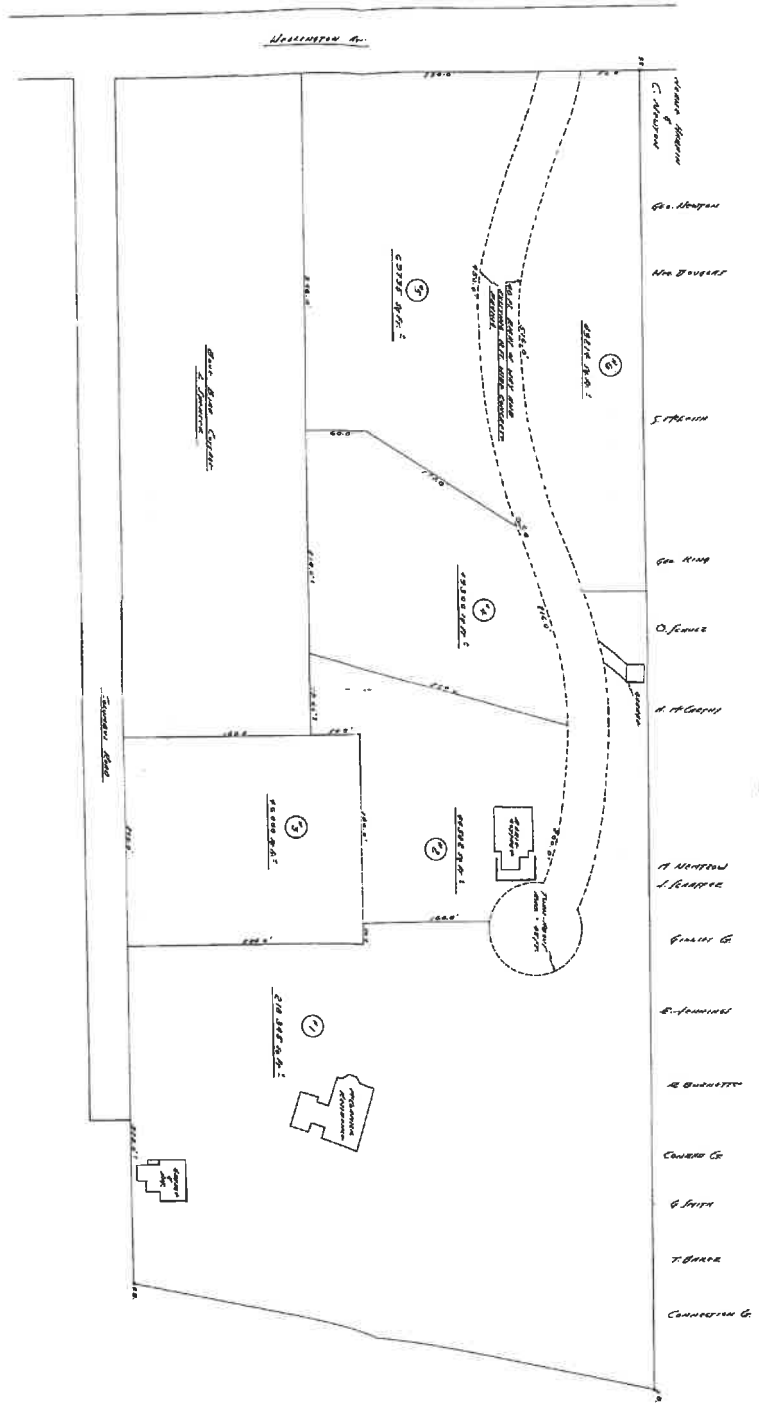

Andrea Richardson, Paralegal



THE OFFICE OF THE
 STATE ENGINEER
 AND ARCHITECT
 HAS REVIEWED THE
 PLANS AND SPECIFICATIONS
 FOR THE
 CONSTRUCTION OF THE
 PROJECT AND HAS
 FOUND THEM TO BE
 IN ACCORDANCE WITH
 THE REQUIREMENTS OF
 THE ACTS OF THE
 LEGISLATURE
 RELATIVE TO THE
 CONSTRUCTION OF
 PUBLIC BUILDINGS
 AND STRUCTURES
 IN THIS STATE
 AND HAS THEREFORE
 ISSUED THIS
 CERTIFICATE OF
 APPROVAL
 THIS 15th DAY OF
 AUGUST 1919
 STATE ENGINEER
 JOHN J. SMITH



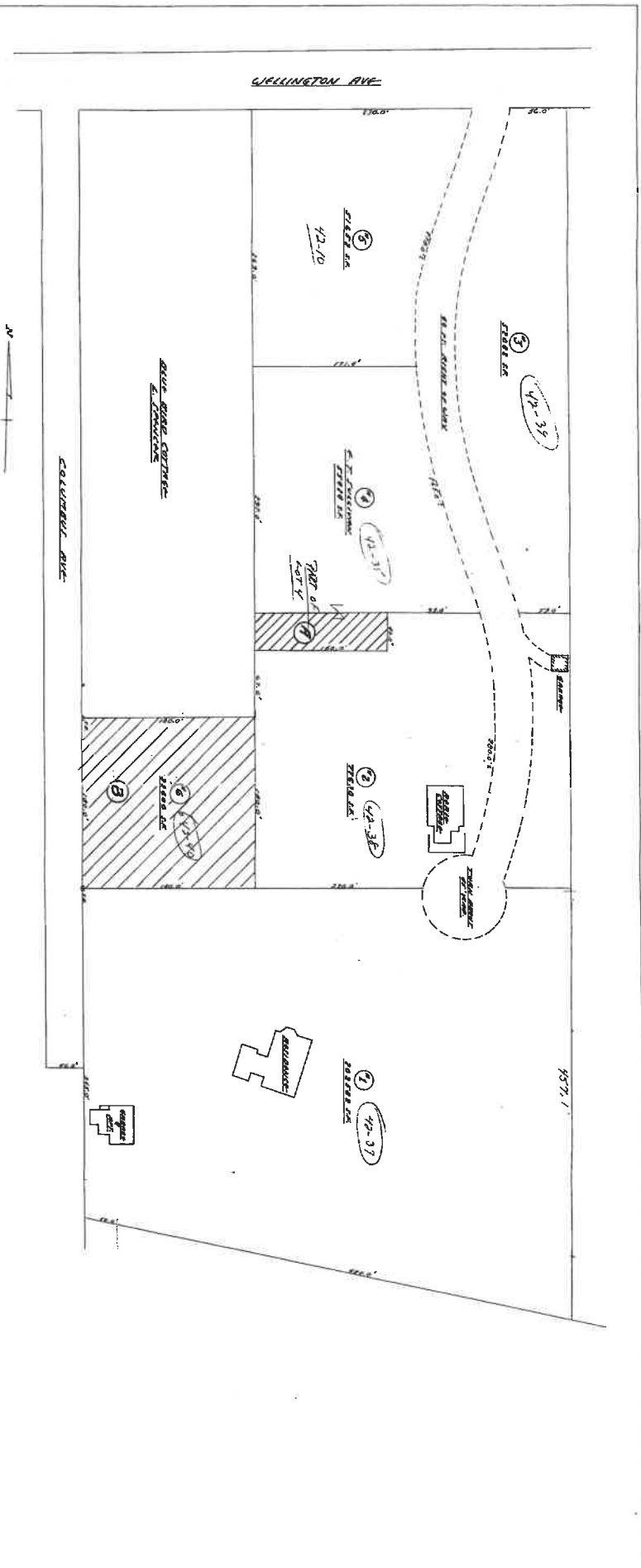
Approved by
 J. B. Smith
 August 15, 1919



DEPARTMENT OF ARMY
 U.S. ENGINEERS
 DISTRICT OF COLUMBIA
 WASHINGTON, D.C.
 1958
 Form 1-58



PLANS APPROVED
 THIS FINAL IS
 9-27-72



- ① MAINWAY AND 75' FROM CORNER LOT 10
- ② AND EQUIVALENT TO AND BECOME A PART OF
- ③ PROPOSED LOT 10 TO BECOME LOT 10
- ④

200' x 100' x 100'



PREPARED BY: [Name]
 CARRIE V. BILLORETTI, INC.
 ARCHITECTS AND ENGINEERS
 100 W. 42ND ST. NEW YORK, N.Y. 10018

WARRANTY DEED

Curry Associates, Inc., a Rhode Island corporation having a location in the City and County of Newport, State of Rhode Island, for consideration paid, grant to John G. Hoyt and Donna Hoyt, his wife, of 49 America's Cup Avenue, Newport, Rhode Island, as tenants by the entirety and not as tenants in common, with WARRANTY COVENANTS, the following described real estate with the buildings and improvements thereon, located in said City of Newport, bounded and described as follows:

- NORTHERLY on Wellington Avenue, fifty-six (56) feet;
- EASTERLY Partly by land of Gertrude M. Vanderveer, partly by land of William M. Douglas, Jr., partly by land of Thomas J. Gough, et ux., partly by land of William M. Douglas, Jr., partly by land of Bruce R. Douglas, et ux., partly by land of H. Robin Morse, Five hundred thirty (530) feet;
- SOUTHERLY by land of Thomas R. Haufe, et ux., fifty-three (53) feet;
- WESTERLY by the curved line of a 40-foot right of way; containing 52,082 square feet of land more or less;

Be all said measurements more or less, or however otherwise the same may be bounded or described.

For grantor's title see deed from Benjamin B. McCormick dated December 27, 1965, recorded in Volume 215 at Page 535 of the Newport Land Evidence Records.

Being Lot 39 on Tax Assessor's Plat 42 of the City of Newport, Rhode Island.

SUBJECT to any covenants and restrictions of record.

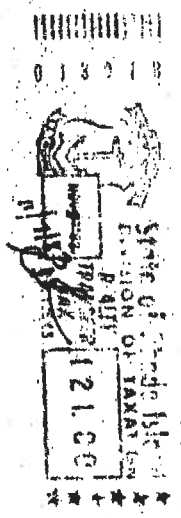
TOGETHER with a right of way for ordinary means of ingress and egress over the road or way in the westerly boundary of said lot.

SUBJECT to taxes assessed by said City of Newport as of December 31, 1982.

IN WITNESS WHEREOF, said Curry Associates, Inc. has caused its name to be signed this 31st day of October 1983.

CURRY ASSOCIATES, INC.

by Charles Sullivan



STATE OF RHODE ISLAND

NEWPORT, Sc.

In Newport, on the 31st day of October 1983,
before me personally appeared Charles Sullivan
to me known and known by me to be the party executing the
foregoing instrument on behalf of said Curry Associates, Inc.
and he acknowledged said instrument so executed to be his free
act and deed in his capacity, and the free act and deed of said
corporation.

Patrick O'N. Hayes
Patrick O'N. Hayes, Notary Public
PATRICK O'N. HAYES

Received in Newport, R.I. For Record November 7, 1988
At 9 H. 53 P.M.

Recorded By: Richard S. [Signature]
Recorder of []

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that We, John J. Callanan and Jacqueline Callanan, husband and wife, of the City and County of Newport (*Grantors*), for consideration paid, grant to said Jacqueline Callanan, with WARRANTY COVENANTS;

All of that certain lot or parcel of land, with the buildings and improvements thereon, located in the City and County of Newport, and State of Rhode Island, bounded and described as follows:

NORTHERLY on Wellington Avenue, fifty-six (56) feet;

EASTERLY partly by land now or formerly of George J. Costawza, et. ux., partly by land now or formerly of Gianluigi Guidetti, partly by land now or formerly of Annmarie Douglas, partly by land now or formerly of Thomas J. Gough, et. ux, partly by land now or formerly of Bruce R. Douglas and partly by land now or formerly of Susan N. Hill, five hundred thirty (530) feet;

SOUTHERLY by land now or formerly of Thomas R. Haufe, et. ux, fifty-three (53) feet; and

WESTERLY by the curved line of a forty (40) foot right of way.

CONTAINING 52,082 square feet of land, more or less.

BE ALL said measurements more or less or however otherwise the same may be bounded and described.

BEING Lot 42 on Newport Tax Assessor's Plat 39, as presently constituted.

BEING the same premises conveyed to these grantors by deed of Philip J. D'Angelo and Jennifer J. D'Angelo, dated June 12, 2000.

TOGETHER with a right of way for ordinary means of ingress and egress over the road or way in the westerly boundary of said lot.

SUBJECT to any covenants and restrictions of record.

SUBJECT to taxes assessed December 31, 2003 and December 31, 2002.

The undersigned Grantors hereby certify that they have complied with the requirements of R.I.G.L. 23-28.35-1 and all other provisions of the smoke detector and carbon monoxide laws.

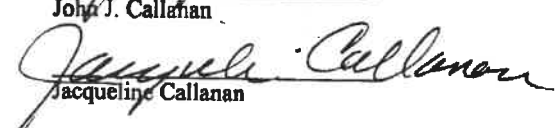
The Grantors herein covenant that they are Rhode Island residents as evidenced by affidavit and that no R.I.G.L. 44-30-71.3 withholding is required.

This consideration is such that no stamps are required.

WITNESS our hand and seal this 13 day of January, 2004.

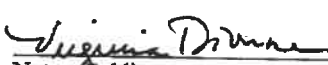
BK: 1448 PG: 49


John J. Callahan


Jacqueline Callanan

State of Rhode Island
County of Newport

In Newport, in said County, on this 13th day of January, 2004, then personally appeared John J. Callanan, to me personally known and personally known to me to be the party executing the foregoing instrument; and he acknowledged the same to be his free act and deed before me.


Notary Public

Print Name: VIRGINIA-D'ONOFRIO

My commission expires: 4-25-07

State of Rhode Island
County of Newport

In Newport, in said County, on this 13th day of January, 2004, then personally appeared Jacqueline Callanan, to me personally known and personally known to me to be the party executing the foregoing instrument; and she acknowledged the same to be her free act and deed before me.


Notary Public

Print Name: VIRGINIA-D'ONOFRIO

My commission expires: 4-25-07

Property Address: Two Harbor View Drive
Newport, RI 02840

KATHLEEN M. SILVIA
CITY OF NEWPORT
CITY CLERK
02/05/2004 03:02:32PM
Inst# 15182

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That, I, JACQUELINE CALLANAN, of the City and County of Newport, State of Rhode Island, ("Grantor"), for one dollar and other good and valuable consideration, grants to JOHN J. CALLANAN and JACQUELINE CALLANAN, husband and wife, as Tenants by the Entirety and not as Tenants in Common, with WARRANTY COVENANTS, all that certain lot or parcel of land, together with the buildings and improvements thereon, located in the City and County of Newport, and State of Rhode Island, bounded and described as follows:

- NORTHERLY: on Wellington Avenue, fifty-six (56) feet;
- EASTERLY: partly by land now or formerly of George J. Costawza, et ux., partly by land now or formerly of Gianluigi Guidetti, partly by land now or formerly of Annmarie Douglas, partly by land now or formerly of Thomas J. Gough, et ux, partly by land now or formerly of Bruce R. Douglas and partly by land now or formerly of Susan N. Hill, five hundred thirty (530) feet;
- SOUTHERLY: by land now or formerly of Thomas R. Haufe, et ux, fifty-Three (53) feet; and
- WESTERLY: by the curved line of a forty (40) foot right of way.

CONTAINING 52,082 square feet of land, more or less.

BE ALL said measurements more or less or however otherwise the same may be bounded and described.

BEING Lot 42 on Newport Tax Assessor's Plat 39, as presently constituted.

BEING the same premises conveyed to this grantor by deed of John J. Callanan and Jacqueline Callanan dated January 13th, 2004 and recorded in Volume 1448 at Pages 48 & 49 of the Newport Land Evidence Records.

TOGETHER with a right of way for ordinary means of ingress and egress over the road or way in the westerly boundary of said lot.

SUBJECT to any covenants and restrictions of record.

SUBJECT to taxes assessed December 31, 2003, not yet due and payable.

THE CONSIDERATION FOR THIS TRANSFER IS SUCH THAT NO DOCUMENTARY STAMPS ARE REQUIRED AND NO WITHHOLDING IS

"The undersigned hereby certifies that this transfer is not a sale, and is therefore exempt from the smoke detector and carbon monoxide laws."

WITNESS our hands and seals this 11 day of August, 2004.

Jacqueline Callanan
JACQUELINE CALLANAN

STATE OF RHODE ISLAND
COUNTY OF NEWPORT

In Newport, in said County on this 11th day of August, 2004, then personally appeared the before named JACQUELINE CALLANAN, to me known and known by me to be the party who executed the foregoing instrument, and she acknowledged the same to be her free act and deed, before me.

Lisa A. Vieira
NOTARY PUBLIC:
My Commission Expires:

Lisa A. Vieira
Notary Public
My Commission Expires 8-3-2005

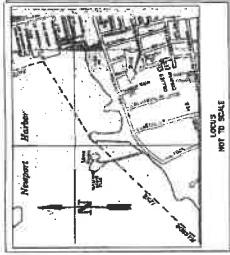
KATHLEEN M. SILVIA
CITY OF NEWPORT
CITY CLERK
08/11/2004 02:36:18PM
Inst# 20596

NORTHEAST ENGINEERS & CONSULTANTS, Inc.

NE & C

CIVIL
ENVIRONMENTAL
SURVEYING
TRANSPORTATION
STRUCTURAL
GEOTECHNICAL
MARINE

A. KNOWLEDGE CORPORATION
45 VALLEY ROAD
MIDDLETOWN, RHODE ISLAND 02842
TEL: (401) 649-0810 FAX: (401) 648-4189



THIS SURVEY AND PLAN CONFORM TO A PLAN AS FILED AND AS ADOPTED BY THE RHODE ISLAND BOARD OF REGISTRATION OF LAND SURVEYORS.
DATE: 5/26/02
BY: [Signature]
REGISTERED PROFESSIONAL LAND SURVEYOR

No.	Revision	Date	By
1	1	5/27/02	JAC

Designed By: [Signature]
Checked By: [Signature]
Scale: 1"=35' Date: 1/20/02

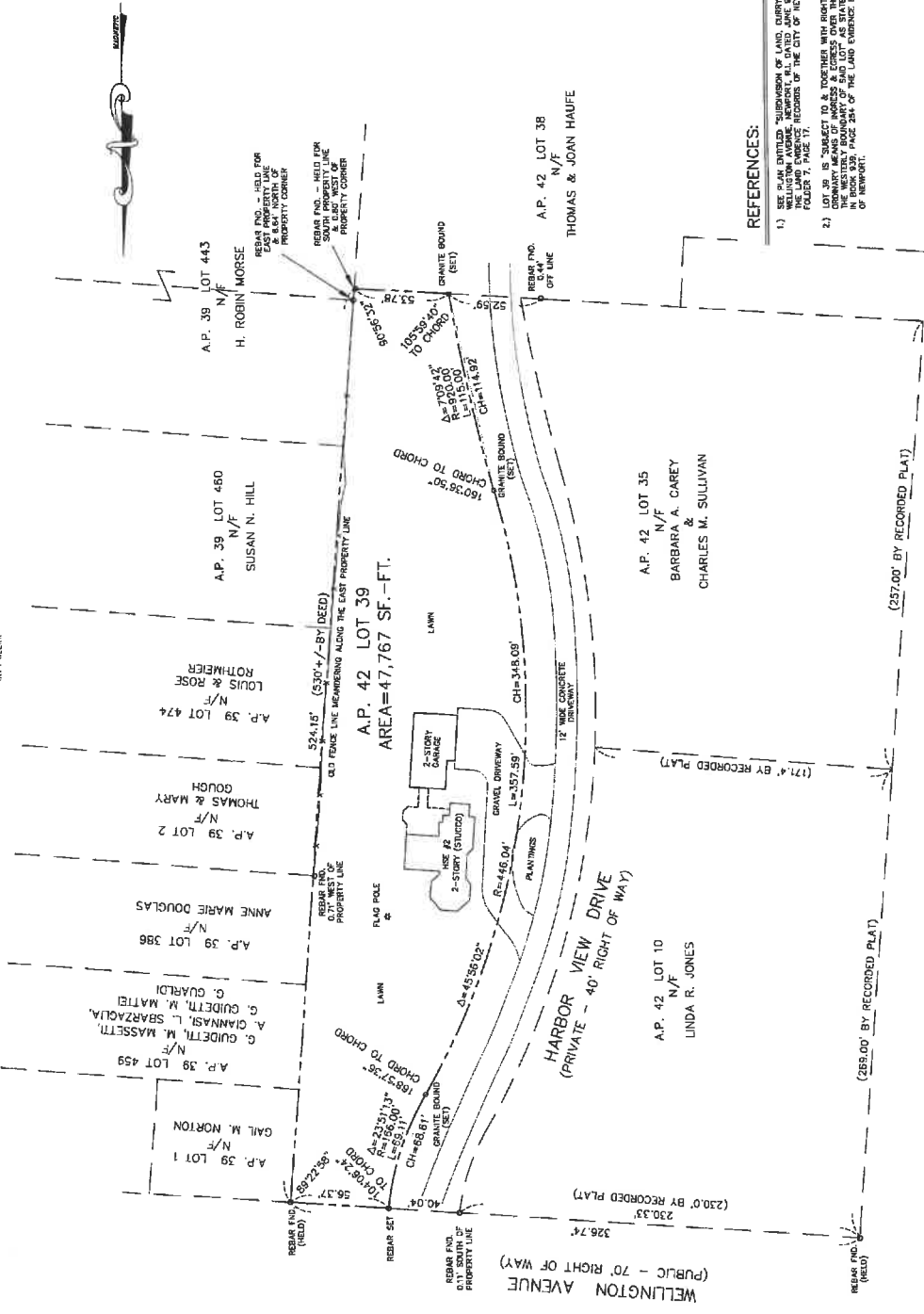
BOUNDARY SURVEY
OF
A.P. 42 LOT 39
NEWPORT, R.I.

Drawn For:
JOHN A. & JACQUELINE
2 HARBOR VIEW DRIVE, NEWPORT

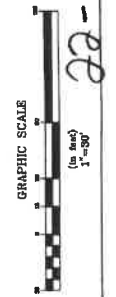
Project Name:
PLAN OF LAND
A.P. 42 LOT 39
2 HARBOR VIEW DRIVE
NEWPORT, R.I.

Drawing Number: LI
Sheet 1 of 1
Project Number: 00841.0
Survey Date: 14-42-39

6502
RECORDED RECORD
JUL - 9 AM 6 38
LARRY CLARK
CITY CLERK



- REFERENCES:**
- SEE PLAN ENTITLED "SUBDIVISION OF LAND, DUBRY ASSOCIATES INC AND THE CITY OF NEWPORT, R.I." RECORDED IN THE LAND EVIDENCE RECORDS OF THE CITY OF NEWPORT IN FOLDER 7, PAGE 11.
 - LOT 39 IS SUBJECT TO AN EASEMENT WITH RIGHT-OF-WAY FOR A 12" WIDE CONCRETE DRIVEWAY LOCATED AT THE WESTERN BOUNDARY OF SAID LOT AS STATED IN BESS RECORDED IN BOOK 838, PAGE 284 OF THE LAND EVIDENCE RECORDS OF THE CITY OF NEWPORT.



221-2

EXHIBIT F

WARRANTY DEED

BK: 1558 PG: 139

KNOW ALL MEN BY THESE PRESENTS, That, we, JACQUELINE CALLANAN and JOHN J. CALLANAN, of the City and County of Newport, State of Rhode Island, ("Grantor"), for good and valuable consideration, grant to CLAYTON G. DEUTSCH, of 295 Harrison Avenue, Newport, Rhode Island 02840, with WARRANTY COVENANTS, all that certain lot or parcel of land, together with the buildings and improvements thereon, located in the City and County of Newport, and State of Rhode Island, bounded and described as follows:

- NORTHERLY: on Wellington Avenue, fifty-six (56) feet;
- EASTERLY: partly by land now or formerly of George J. Costawza, et ux., partly by land now or formerly of Gianluigi Guidetti, partly by land now or formerly of Annmarie Douglas, partly by land now or formerly of Thomas J. Gough, et ux, partly by land now or formerly of Bruce R. Douglas and partly by land now or formerly of Susan N. Hill, five hundred thirty (530) feet;
- SOUTHERLY: by land now or formerly of Thomas R. Haufe, et ux, fifty-Three (53) feet; and
- WESTERLY: by the curved line of a forty (40) foot right of way.

BE ALL said measurements more or less or however otherwise the same may be bounded and described.

BEING Lot 42 on Newport Tax Assessor's Plat 39, as presently constituted.

BEING the same premises conveyed to these grantors by deed recorded in Volume 1523 at Page 259 of the Newport Land Evidence Records.

TOGETHER with a right of way for ordinary means of ingress and egress over the road or way in the westerly boundary of said lot.

SUBJECT to any covenants and restrictions of record.

SUBJECT to taxes assessed December 31, 2003, not yet due and payable.

We, John J. Callanan and Jacqueline Callanan, do hereby covenant that, no R.I.G.L. 44-30-71.3 withholding is required as we are residents of the State of Rhode Island, as evidenced by Affidavits.

"The undersigned hereby certifies that the Grantors have has complied with the provisions of Rhode Island General Laws 23-28.35-1 et seq., Fire Detection System in Existing Residential Occupancies and Rhode Island General Laws 23-28.35-3(a) Carbon Monoxide Detection, as evidenced by the certificate attached hereto."

WITNESS our hands and seals this 15th day of NOVEMBER, 2004.

John J. Callanan
JOHN J. CALLANAN

Jacqueline Callanan
JACQUELINE CALLANAN

STATE OF RHODE ISLAND
COUNTY OF NEWPORT

In Newport, in said County on this 15th day of NOVEMBER, 2004, then personally appeared the before named JOHN J. CALLANAN and JACQUELINE CALLANAN, to me known and known by me to be the parties who executed the foregoing instrument, and they acknowledged the same to be their free act and deed, before me.

Cora R. Mureddon
NOTARY PUBLIC: CORA R. MUREDDON
My Commission Expires: 6-11-2005

AMOUNT 13600.00
DATE 11-15-04
RECORDED BY BATT
CITY OF NEWPORT

007040

REAL ESTATE TRANSFER TAX

KATHLEEN M. SILVIA
CITY OF NEWPORT
CITY CLERK
11/15/2004 01:00:34PM
Inst# 23297

COMBINED APPLICATION FOR SPECIAL USE PERMIT & A
REGULATORY (DIMENSIONAL) VARIANCE
CITY OF NEWPORT, RI
ZONING BOARD OF REVIEW

FILE COPY

DATE: September 23, 2016

Board Members:

The undersigned hereby petition the Zoning Board of Review for a Special Use Permit and a Variance in the application of the provisions or regulations of the Zoning Ordinance affecting the following described premises in the manner and on the grounds hereinafter set forth.

Location of premises

Street & No.: 2 Harbor View Drive

Tax Assessor's Plat 42 Lots 39

Petitioner Information

Applicant: Clayton G. Deutsch

Address: 2 Harbor View Drive
Newport, RI 02840

Owner: Same

Address: Same

Lessee: N/A

Address: N/A

Property Characteristics:

Dimensions of Lot: Frontage: 550' ±; Depth: 116.71'; Area: 49,371 SF

Zoning District in which premises is located: R-120

How long have you owned above premises? 12 Years

Are there buildings on the premises at present? Yes

Total square footage of the footprint of existing/approved buildings: 3,263 SF

Total square footage of the footprint of proposed buildings: 3,887 SF

Present use of premises: Single-Family Dwelling

Proposed use of premises: Single-Family Dwelling

All of the following information and questions must be filled in and answered completely:

Give extent of proposed alterations:

Applicant seeks a special use permit and dimensional variance to permit the construction of a detached two car carriage, which will have a front setback on Harbor View Drive of 8.06', where 75' is required, applying to the property located at 2 Harbor View Drive and identified as Lot 39 on Plat 42 in the R-120 Zone.

Zoning Characteristics Matrix

	Existing/Approved	Required/Allowed	Proposed
Lot Size (sq. ft.)	49,371 SF ±	120,000 SF	No Change
Lot Coverage (%)	6.6%	8%	7.87%
Dwelling Units	1	2	No Change
Parking	>2	2	No Change
Front Setback	17' & 173.56'	75'	8.06' & 173.56'
Side Setbacks	50.12' & 245.67'	50'	50.12' & 211.15'
Rear Setback	N/A	N/A	N/A
Height	<35'	35'	No Change

What provisions of the Comprehensive Land Use Plan are the applicable to this project?

Element 2 – Land Use – Goals 2 & 3

What special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district?

2 Harbor View Drive is an unusual lot in both size and shape. At 49,371 SF, it has less than half the area (41%) required in the R-120 Zone. It is also long and narrow, with a width of only 116.71' at its widest point, which is less than 39% of the minimum width required. It is also a corner lot, with two front setbacks and two side setbacks. As a result, when the R-120 setbacks are applied, the lot has no building envelope and any structure built on the lot requires a dimensional variance.

Explain how the literal interpretation of the provisions of this zoning code deprive the applicant of rights commonly enjoyed by other property owners in the same district under the provisions of this zoning code?

Applicant wishes to convert the existing attached garage into living space and to construct a new, detached two car garage, but is unable to meet the requirements of the zoning code due to the unique characteristics of the lot. As noted above, because the lot has no building envelope, any structure built on the lot requires a dimensional variance. With the exception of the front setback

on Harbor View Drive, the application meets all other requirements of the zoning code, including lot coverage.

Explain why this is the minimum variance that will make possible the reasonable use of the land, building or structure.

The proposed garage measures only 24' x 26'. The proposed placement of the garage will allow the Applicant to use the existing driveway, thereby limiting any increase in impervious surface. With the exception of the front setback on Harbor View Drive, the application meets all other requirements of the zoning code, including lot coverage.

The Zoning Board's Role

Special use permits shall be granted only where the zoning board of review finds that the proposed use or the proposed extension or alteration of an existing use is in accord with the public convenience and welfare, after taking into account, where appropriate:

1. The nature of the proposed site, including its size and shape and the proposed size, shape and arrangement of the structure;
2. The resulting traffic patterns and adequacy of proposed off-street parking and loading;
3. The nature of the surrounding area and the extent to which the proposed use or feature will be in harmony with the surrounding area;
4. The proximity of dwellings, churches, schools, public buildings and other places of public gathering;
5. The fire hazard resulting from the nature of the proposed buildings and uses and the proximity of existing buildings and uses;
6. All standards contained in this zoning code;
7. The comprehensive plan for the city.

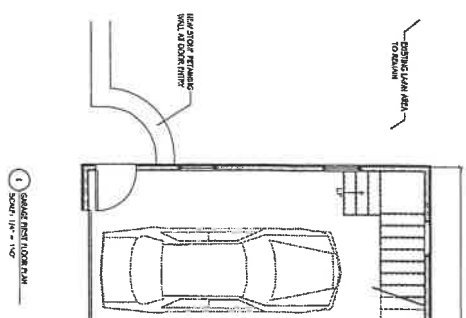
The burden of proof in a special-use permit/variance application is on the applicant. This means that if the applicant fails to present adequate competent evidence to prove the applicable standard for issuing a special-use permit/variance has been met, the board must deny the application.

By signing below, I hereby attest that the information provided is accurate and truthful. I also attest that I have read the section entitled "The Zoning Board's Role".

Clayton G. Deutsch,
By His Attorney,

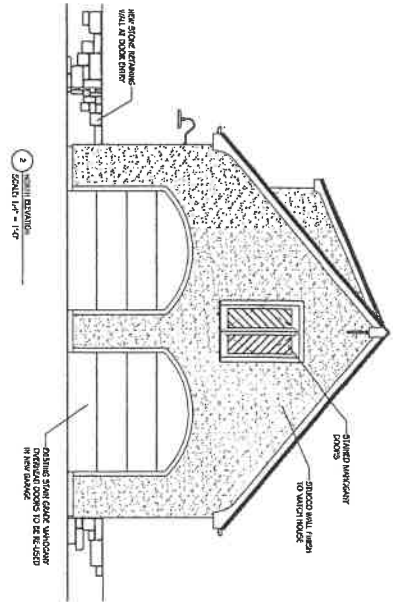


Peter Brent Regan, Esq.
Sayer Regan & Thayer, LLP
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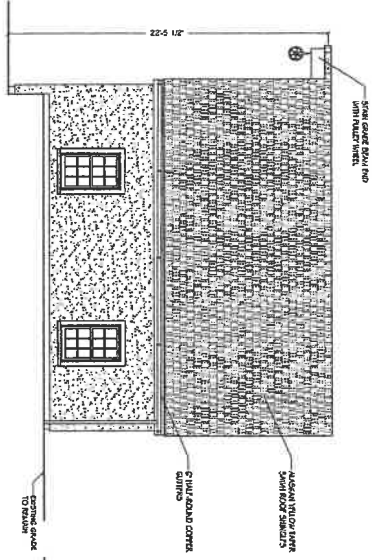


1 GARAGE FIRST FLOOR PLAN
SCALE: 1/4" = 1'-0"

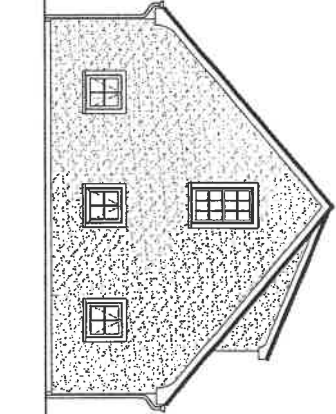
2 EXTERIOR GARAGE WALL TO BE RECONSTRUCTED TO MATCH EXISTING PERFORMING WALL
SCALE: 1/4" = 1'-0"



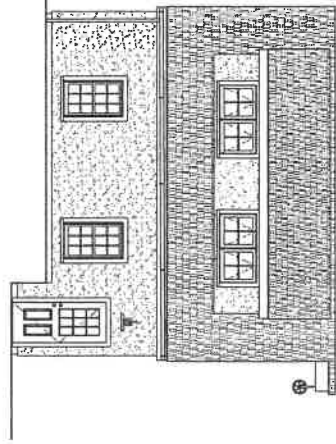
3 SOUTH ELEVATION
SCALE: 1/4" = 1'-0"



4 EAST ELEVATION
SCALE: 1/4" = 1'-0"



5 NORTH ELEVATION
SCALE: 1/4" = 1'-0"



6 WEST ELEVATION
SCALE: 1/4" = 1'-0"

NO.	DATE	BY	CHKD.	APP.
1	10/10/11	JM	HC	
2				
3				
4				
5				
6				
7				
8				
9				
10				

DEUTSCH RESIDENCE
2 HARBOR VIEW DRIVE
NEWPORT, RI 02840
PROPOSED GARAGE PLANS AND ELEVATIONS

HULL COVE
ARCHITECTURAL DESIGN
NEWPORT, RI
WWW.HULLCOVEDESIGN.COM
401-567-0007

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