



Date Received
TOWN CLERK

By: _____

Date Received
BOARD OF APPEALS

By: _____

Town of Acton
Massachusetts

Board of Appeals
(Form 1) Petition for Finding Pursuant to
Petition for Review G. L. c. 40A, §6

_____ 20____
(See (1) Below)

I/We hereby petition the Board of Appeals for a public hearing under Section 11.1.1 of the Zoning By-law to review (a) the refusal of the Zoning Enforcement Officer to grant a permit under Section _____ of the Zoning By-law to allow: (b) the refusal of the Zoning Enforcement Officer to enforce the provisions of Section _____ of the Zoning By-law as follows: (Strike out inapplicable language)

Pursuant to Paragraph No. 2 of Decision of Zoning Enforcement Officer that
the proposed dwelling may be constructed pursuant to G. L. c. 40A, §6, first
paragraph, as reconstruction does not increase any non-conformity.

Date of Zoning Enforcement Officer's Action _____

(1) Petition must be filed within 30 days of refusal date with copy of decision or order attached.

OFFICE USE ONLY

Seven copies of petition? _____

Location Map? _____

Plot plans? _____

Additional briefs? _____

List of abutters and other interested parties? _____

Fee - \$100.00/1-25 abutters?
\$125.00/26 + abutters? _____

Next Hearing Date? _____ # _____

Respectfully submitted,

Signed Mark McCarthy and Claire McCarthy
(Petitioner)

Name Mark McCarthy and Claire McCarthy

Address 6 Abel Jones Place, Acton, MA

Phone # (978) 929-9864

Signed Mark McCarthy and Claire McCarthy
(Owner of Record)

Name Mark McCarthy and Claire McCarthy

Address 6 Abel Jones Place, Acton, MA

Phone # (978) 929-9864

The Board of Appeals has the power and duty to hear and decide appeals (Section 11.1.1) from a decision of the Zoning Enforcement Officer



TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 264-9632
Fax (978) 264-9630

Cheryl Frazier
Board of Appeals Secretary

TO: Beacon Community Newspapers
Legal Notice Department

I hereby authorize Beacon Community Newspapers to bill me directly for the Legal Notice to be placed in connection with my permit/application on _____ in the Beacon.

X Signed: 
F. Alex Parra
X Address: D'Agostine, Levine, Parra & Netburn, P.C.
268 Main Street, Acton, MA 01720
X Phone: (978) 263-7777

Note: This release is to be signed and submitted by the applicant to the Town at the time of initial submittal of every Permit/Application that requires Public Notice by Newspaper. Please leave the day on which date it will appear blank.



Town of Acton
 472 Main Street
 Acton, MA 01720
 Telephone (978) 929-6621
 Fax (978) 929-6340

Brian McMullen
 Assistant Assessor

Parcel Location 191 Nagog Hill Road
 Parcel I.D.: D4-37

Location	Parcel ID	Owner	Co-Owner	Mailing Address	City	ST	Zip
221 NAGOG HILL RD	D4-6	TOWN OF ACTON		472 MAIN STREET	ACTON	MA	01720
566 MAIN ST REAR	D4-20	CONANT BREWSTER		562 MAIN STREET	ACTON	MA	01720
588 MAIN ST REAR	D4-21	TOWN OF ACTON		472 MAIN ST	ACTON	MA	01720
7 LONG RIDGE RD	D4-26-1	ARRUDA JOHN B &	DOLORES	7 LONG RIDGE ROAD	ACTON	MA	01720
200 NAGOG HILL RD	D4-26-4	PETILLO KATHERINE E	PETILLO JOHN J	200 NAGOG HILL RD	ACTON	MA	01720
5 LONG RIDGE RD	D4-26-6	STONE CHARLES W	MARGARET S	5 LONG RIDGE RD	ACTON	MA	01720
3 LONG RIDGE RD	D4-26-7	WEIGEL ERIC J		3 LONG RIDGE RD	ACTON	MA	01720
4 LONG RIDGE RD	D4-26-13	DONAHUE ROBERT S	DONAHUE BEVERLY A	4 LONG RIDGE RD	ACTON	MA	01720
2 LONG RIDGE RD	D4-26-14	ODONNELL DANIEL J	ODONNELL DEANNA	2 LONG RIDGE RD	ACTON	MA	01720
179 NAGOG HILL RD	D4-32	VAUGHAN LAWRENCE M	GAIL T	179 NAGOG HILL RD	ACTON	MA	01720
179 NAGOG HILL RD	D4-32-4	VAUGHAN LAWRENCE M	GAIL T	179 NAGOG HILL RD	ACTON	MA	01720
203 NAGOG HILL RD	D4-37-1	DEVITA THOMAS R	DONNA H	203 NAGOG HILL RD	ACTON	MA	01720
199 NAGOG HILL RD	D4-37-2	DONELAN JOHN K		199 NAGOG HILL ROAD	ACTON	MA	01720
195 NAGOG HILL RD	D4-37-3	MONTELLA LOUIS	MONTELLA KIMBERLY L	195 NAGOG HILL RD	ACTON	MA	01720
183 NAGOG HILL RD	D4-37-4	RENDISH MIMI A	RENDISH MARC A	183 NAGOG HILL RD	ACTON	MA	01720
187 NAGOG HILL RD	D4-37-5	MACDONALD DAVID	MACDONALD CHRISTINE	187 NAGOG HILL RD	ACTON	MA	01720
163 NAGOG HILL RD	E4-2-1	HAAN BERNARD J	STACK CYNTHIA L	163 NAGOG HILL RD	ACTON	MA	01720
554 MAIN ST	E4-9	CONANT BREWSTER		562 MAIN STREET	ACTON	MA	01720

Abutters and owners of land directly opposite on any public or private street or way and abutters to the abutters within three hundred feet of the property line all as they appear on the most recent applicable tax list.

HEARING NOTICES FOR ALL SPECIAL PERMITS MUST BE SENT TO THE PLANNING BOARD, TOWN HALL IN THE FOLLOWING TOWNS:

Boxborough, MA 01729 Maynard, MA 01754 Concord, MA 01742 Littleton, MA 01460
 Carlisle, MA 01741 Stow, MA 01775 Westford, MA 01886 Sudbury, MA 01776

Daryl Powell
 Daryl Powell
 Property Lister
 Acton Assessors Office
 3/10/2011



Zoning Enforcement Officer

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 929-6631
Fax (978) 264-9630
planning@acton-ma.gov
www.acton-ma.gov

INTERDEPARTMENTAL COMMUNICATION

**REVISED MEMO (Recinds and Replaces Original Memo
dated February 14, 2011)**

To: Town of Acton Building Department/Applicant

Date: March 11, 2011

From: Scott A. Mutch, Zoning Enforcement Officer & Assistant Town Planner

Subject: 191 Nagog Hill Road – Construct New Single Family Residence with 7 Bedrooms, 7 Full Bathrooms, 2 Half Baths, 4 Car Garage

Dear Applicant,

Please accept this communication as a replacement for the previously-issued memo dated February 14, 2011. That memo is null and void as of the date of this memo. This communication supersedes all information contained in the February 14th memo, and includes additional information and determinations from this Office.

The Planning Department has reviewed your proposed building permit application and CAN NOT approve it at this time. The pending building permit application is seeking approval to construct a new single family residential dwelling structure in excess of 10,000 square feet in size.

Under the Town of Acton's Zoning Bylaw, the subject property is deemed to be a non-conforming hammerhead lot. The property does not have the minimum 50'-0" lot width as required under Section 5.3.4.1 and is therefore non-conforming in that respect. The information provided on the Plot of Land submitted as part of the building permit application indicates that the lot width (at its narrowest point) is only 20'-0", creating a non-conformity.

Section 8.3.6 of the Zoning Bylaw sets forth the requirements for the Replacement of Single Family Dwellings. Simply stated, if a structure exists on a non-conforming lot, that structure is permitted to be demolished, but the replacement structure CAN NOT exceed the Net Floor Area of the previous structure prior to its demolition. The footprint of the new dwelling structure is not restricted to having to match the previous dwelling's footprint, but the Net Floor Area's of past and proposed dwelling structures must be the same, if not less. In addition, if approved, once the new structure is completed and a Certificate of Occupancy is issued by the Building Commissioner, a minimum of two years must elapse before any additions or new square footage is permitted to be added to the dwelling structure.

In this particular instance, a total demolition permit for the previous structure was applied for December 13, 2010 and issued on December 17, 2010. The complete section of the Bylaw pertaining to this issue is as follows:

- 8.3.6 Replacement of Single- and Two-Family Dwellings – A STRUCTURE in single family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for single family residential USE, or rebuilt for single family residential USE after damage from fire or natural disaster except flood, regardless of the degree of damage; and a STRUCTURE in two-family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for two-family residential USE, or rebuilt for two-family residential USE after damage from fire or natural disaster except flood, regardless of the degree of damage; in both cases subject to the following conditions and limitations:
- 8.3.6.1 The replacement STRUCTURE shall not exceed the FLOOR AREA RATIO on the LOT of the STRUCTURE that existed on the LOT before it was razed or damaged.
- 8.3.6.2 The replacement STRUCTURE shall meet all minimum yard and maximum height requirements of this Bylaw.
- 8.3.6.3 In the absence of architectural and plot plans for the existing structure to be razed, the FLOOR AREA RATIO shall be determined by using the information on record at the Town of Acton Assessor's office.
- 8.3.6.4 Additions to the replacement STRUCTURE may be made after two years following the date of initial occupancy of the replacement STRUCTURE, if otherwise permissible and subject to any permits and special permits that may be required.

I am aware that there has been some confusion regarding the application of Zoning Bylaw Section 8.3.6 to the proposed building plans, instead of Section 8.1. I have reviewed your counsel's materials regarding the application of Section 8.1 and, in consultation with Town Counsel, have confirmed that Section 8.3.6 was intended for precisely the circumstances proposed by this building permit. Specifically, Town Meeting approved Section 8.3.6 based on the following Summary of the Warrant Article from Town Meeting:

The zoning bylaw currently allows the restoration of structures after fire, flood, or similar disaster on lots that are nonconforming due to insufficient frontage or area, either by right if the damage amounts to 50% or less of the structure's value, or by special permit if damage exceeds 50% of the value. **The zoning bylaw does not currently allow the intentional demolition and rebuilding of structures on such nonconforming lots. This article would change this for single and two-family homes on such lots.**

It would allow their tear-down and replacement in kind. Since 2000, the Board of Appeals heard six variance petitions to allow such replacements. The cases varied. Five variances were granted. The statutory criteria for variances – hardship due to soil conditions, shape or topography – do not strictly apply to replacements after demolitions. Insufficient frontage or area by themselves cannot be considered hardship. This article would remove the zoning bylaw's barrier against demolition and replacement of single- and two-family residences on nonconforming lots, some of which may fall into disrepair after years of estate ownership and abandonment, become an eyesore in the neighborhood, pose a safety hazard, and may be cheaper to replace than to renovate. **As proposed in the article, a replacement residence would be allowed by right if it complies with applicable setback and height requirements of the zoning bylaw and, as a barrier against speculative tear-downs, if it initially is not larger than the residence it replaces.** Additions can be made later on by a home owner, just like additions can be made to existing homes on non-conforming lots. Looking only at smaller single family homes (less than 1,500 square feet in living area) as the more likely candidates for potential speculative replacements, and evaluating their lots only for area, the Planning Department found 237

such small homes on undersized lots. This represents approximately 4% of Acton's single family housing stock.

This article would also allow by right the replacement in kind of single and two-family homes after fire or natural disaster except flood, regardless of the degree of damage that occurred. (Emphasis added)

According to the Summary, Town Meeting specifically intended to regulate tear-downs on non-conforming lots under Section 8.3.6, not Section 8.1. Under this reading, Section 8.1 applies to original construction on a vacant lot but not to demolition and reconstruction of an existing structure which had become nonconforming. See *Dial Away Co., Inc. v. Zoning Bd. of Appeals of Auburn*, 41 Mass.App.Ct. 165, 170. (1996) ("Considering the eventual elimination of non-conforming uses as an objective underlying zoning regulations, ... and, in particular, that of Auburn's [zoning bylaw involved in that case], we interpret § 8.1 [of the Auburn bylaw] to apply only to original construction [on a non-conforming lot].").

ADDITIONAL ZONING BYLAW NON-COMPLIANCE ITEMS

1. The building permit plans currently submitted for review, propose the creation of two (2) separate and independent garages. The plans identify a three (3) car garage proposed on the south side of the home and another single (1 car) garage on the north side of the dwelling. Accessory Uses permitted under Section 3.8.1.1 of the Zoning Bylaw allows for a "private garage or carport for not more than four motor vehicles...". The Zoning Bylaw indicates the term "garage" to be singular in nature and therefore, I am determining that only one (1) garage structure is permitted on the property. I CAN NOT allow or permit 2 separate and independent garage structures to exist on a single residential lot.

2. The submitted building permit plans call for the creation of a space that may function as an accessory apartment unit located on the northern side of the home where the single car garage is situated. I have determined that the proposed plans create the accessory apartment due to the following manner in which the space is configured:
 - Two (2) separate and private direct exterior entrances into the space. One labeled as "Entry" which acts as the "main entrance" and has a covered porch as part of the entrance space. and another exterior entrance door providing direct access to a rear outdoor patio and backyard space;
 - The placement of a door which can be closed so as to completely separate and keep private the accessory apartment unit from the rest of the main dwelling unit;
 - Separate direct access into the single car garage from inside the accessory apartment;
 - Private single car garage;
 - Two separate bedrooms each with private ensuite bathrooms;
 - Private washing and drying machines and;
 - An area consisting of a countertop with base and upper cabinets, a sink, dishwasher and a full height refrigerator.

All of these design elements configured as is currently depicted on the submitted building permit plans, suggest the creation of an accessory apartment unit. The Town of Acton's Zoning Bylaw permits a single family dwelling to have an accessory apartment unit provided that the accessory apartment unit satisfies very specific requirements. In this particular instance, the most restrictive requirement is the fact that a single family dwelling must have been in existence prior to January 1, 1990 in order to be permitted to have an accessory apartment unit. The specific Zoning Bylaw language of Section 3.3.2 states "A single FAMILY Dwelling, the

BUILDING of which was in existence on or before January 1, 1990, to be altered and used for not more than two DWELLING UNITS, the Principal Unit plus one Apartment....". Clearly, this building permit application which seeks approval to construct an entirely new dwelling unit does not satisfy the requirement of the "*BUILDING of which was in existence on or before January 1, 1990*".

Based upon the above noted information, I am determining herewith that the new proposed dwelling which is to be located at 191 Nagog Hill Road, Acton, MA does not comply with the Acton Zoning Bylaw. Accordingly, I will not sign-off on or approve any building permits.

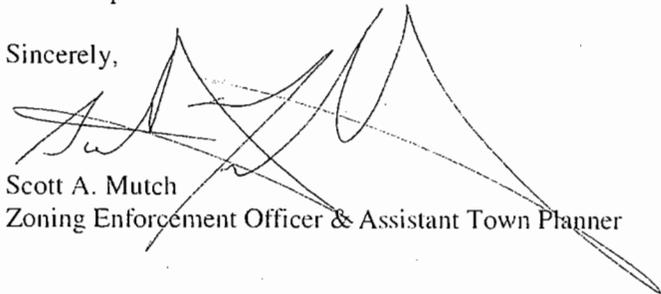
You may, of course, modify your building plans to conform to the requirements and concerns listed in this memo. I would be happy to review such plans with you at any point. In addition, if you disagree with and wish to seek relief from any of the determinations made in this memo, you may pursue any or all of the following three avenues (at your discretion):

1. Submit an application for a Petition for Review to the Zoning Board of Appeals challenging the administrative decisions of the Zoning Enforcement Officer regarding the interpretations of the Zoning Bylaw included in this memo;
2. Seek a finding from the Zoning Board of Appeals that the proposed dwelling may be built upon the non-conforming lot despite Section 8.3.6 pursuant to M.G.L. c. 40A, § 6, first paragraph, or;
3. Submit a variance application to the Zoning Board of Appeals seeking relief from the above noted Zoning Bylaw requirements.

Should you wish to exercise any one of these options, Zoning Board of Appeals information can be obtained by contacting Cheryl Frazier, Secretary to the Zoning Board of Appeals at (978) 929-6633 during regular business hours.

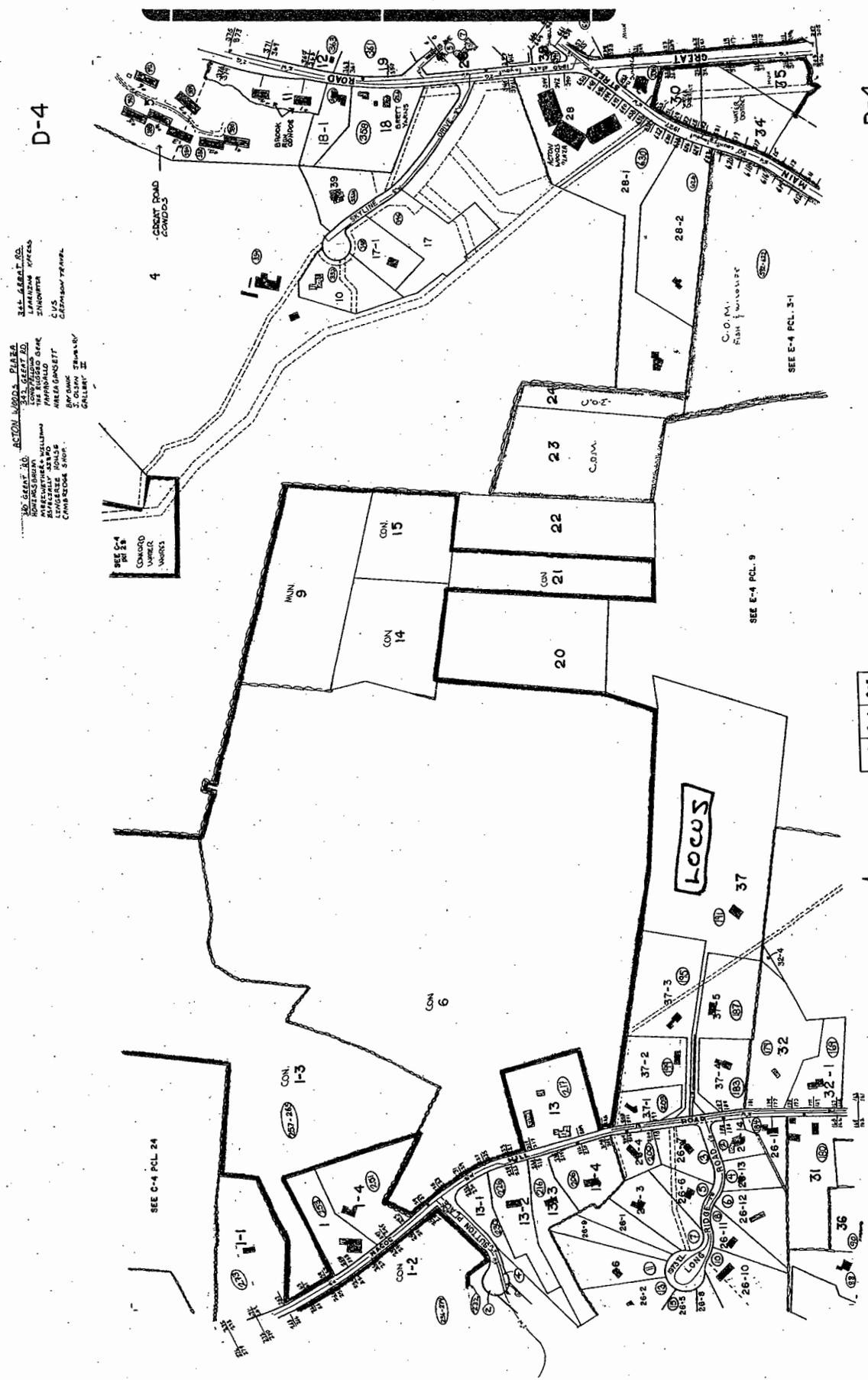
If you have any questions, comments or concerns regarding this matter, please feel free to contact our office at (978) 929-6631, Monday through Friday (except for holidays) between the hours of 8:00 am and 5:00 pm.

Sincerely,



Scott A. Mutch
Zoning Enforcement Officer & Assistant Town Planner

LOCATION MAP - 191 Nagog Hill Road



D-4

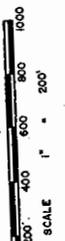
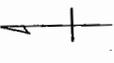
D-4

- 30. GENT 30. ACTON WOODS PLAZA
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- 32. GENT 32. ACTON WOODS PLAZA
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- 50. GENT 50. ACTON WOODS PLAZA

TOWN of ACTON

C-3	C-4	C-5
D-3	D-4	D-5
E-3	E-4	E-5

PHOTOGRAPH SERVICE (1978)

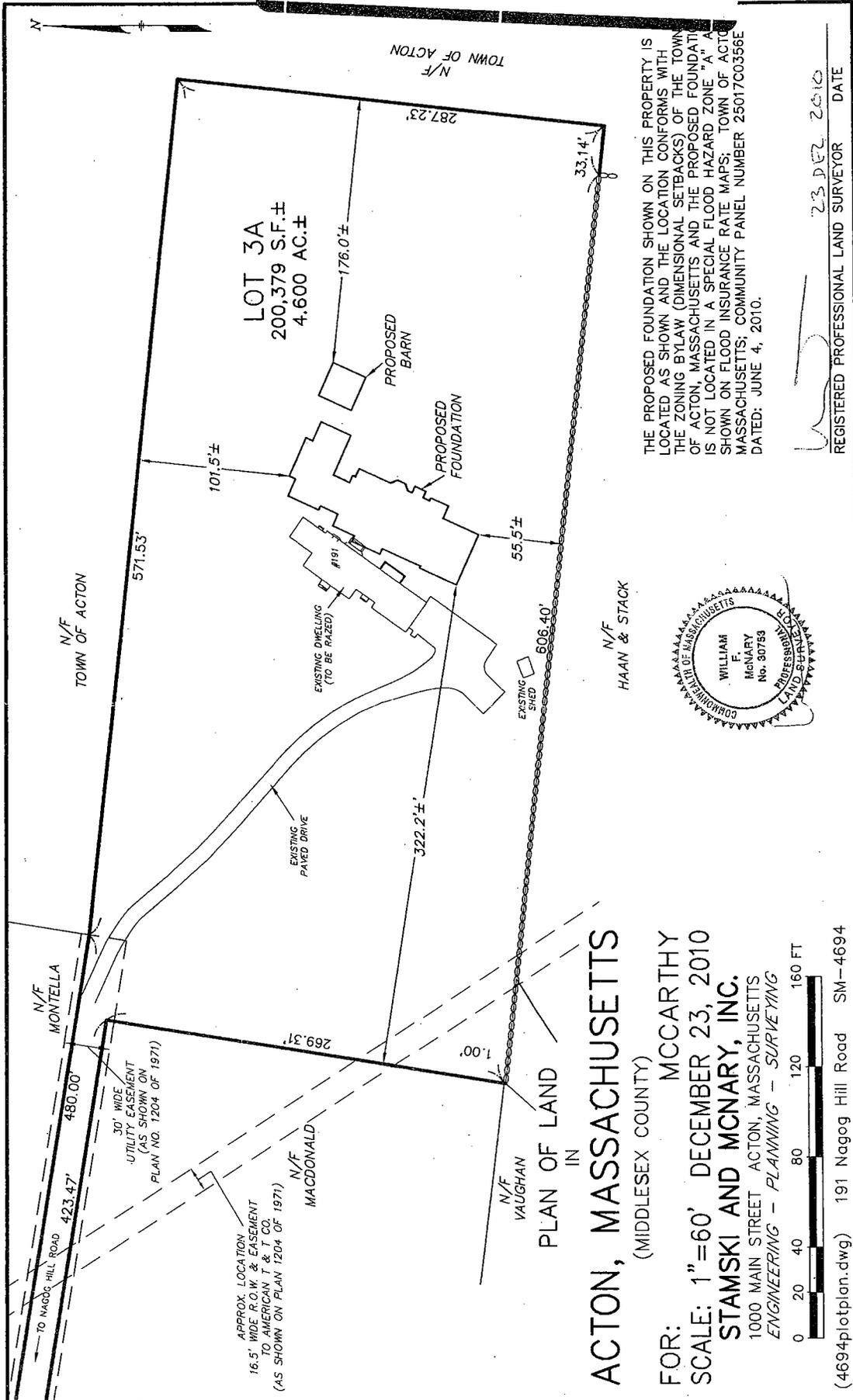


SEE C-4 PCL 24

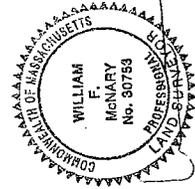
SEE E-4 PCL. 9

SEE E-4 PCL. 3-1

Plot Plan

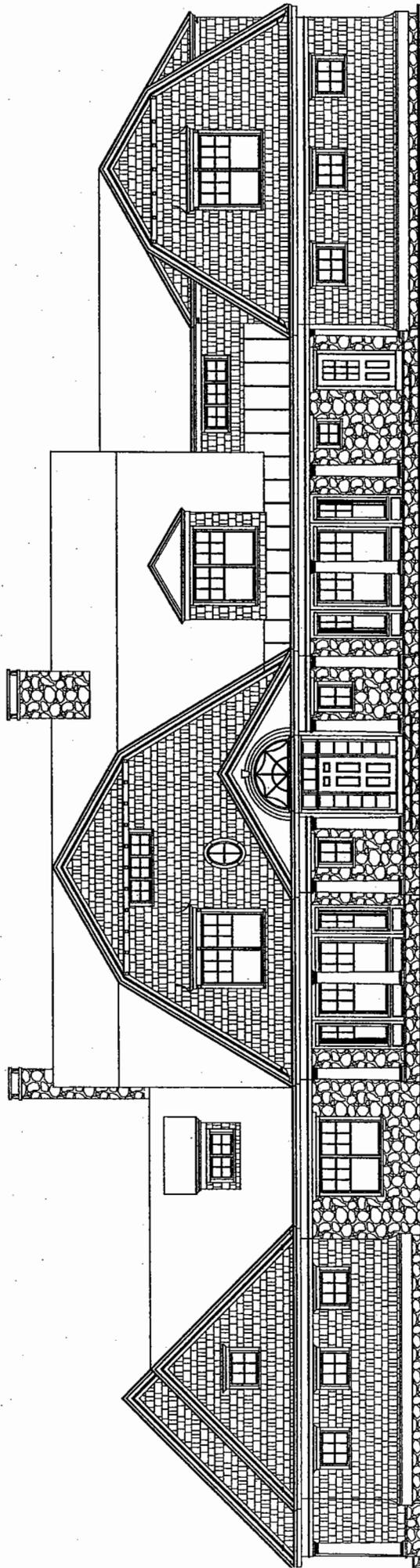


THE PROPOSED FOUNDATION SHOWN ON THIS PROPERTY IS LOCATED AS SHOWN AND THE LOCATION CONFORMS WITH THE ZONING BYLAW (DIMENSIONAL SETBACKS) OF THE TOWN OF ACTON, MASSACHUSETTS AND THE PROPOSED FOUNDATION IS NOT LOCATED IN A SPECIAL FLOOD HAZARD ZONE "A" AS SHOWN ON FLOOD INSURANCE RATE MAPS: TOWN OF ACTON MASSACHUSETTS; COMMUNITY PANEL NUMBER 25017C0356E DATED: JUNE 4, 2010.



23 DEC 2010
 REGISTERED PROFESSIONAL LAND SURVEYOR DATE

ACTON, MASSACHUSETTS
 (MIDDLESEX COUNTY)
 FOR: MCCARTHY
 SCALE: 1"=60' DECEMBER 23, 2010
 STAMSKI AND McNARY, INC.
 1000 MAIN STREET ACTON, MASSACHUSETTS
 ENGINEERING - PLANNING - SURVEYING
 0 20 40 80 120 160 FT
 (4694plotplan.dwg) 191 Nagog Hill Road SM-4694



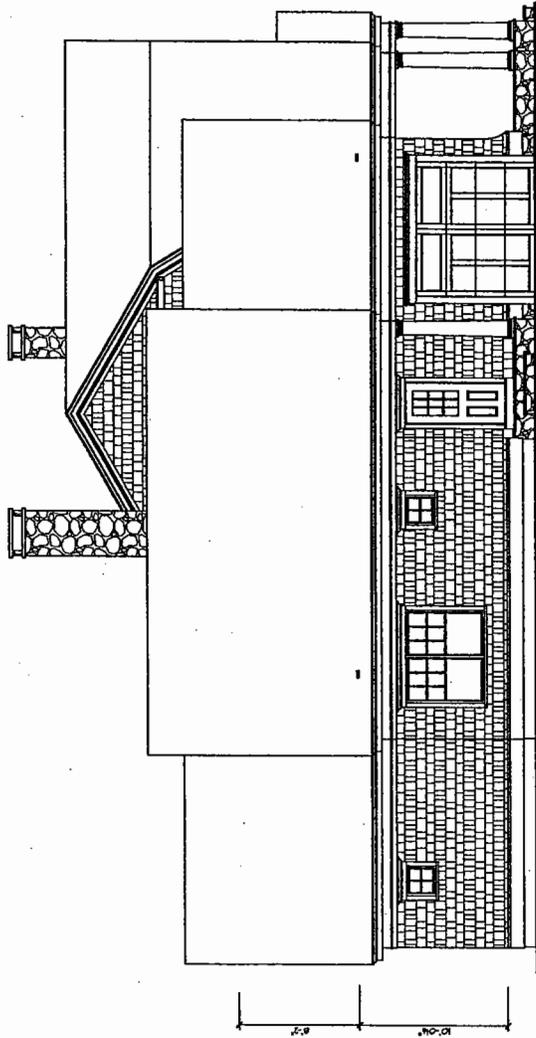
FRONT ELEVATION
 MARKO SCALE: 1/8" = 1'-0"
 SHEET 1 OF 8

CLAIRE & MARK MCCARTHY
 191 NAGOG HILL ROAD
 ACTON, MA

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CALL (617) 452-1111
 FAX (617) 452-1111



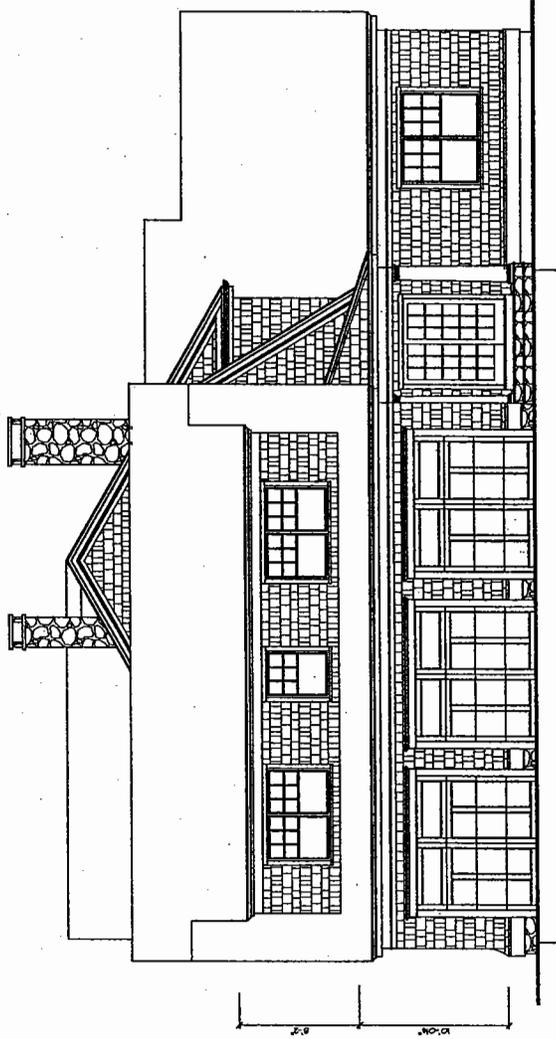
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LEFT ELEVATION
 DWG 000 SCALE 1/8" = 1'-0"
 SHEET 2 OF 8

CLAIRE & MARK MCCARTHY
 191 NAGOG HILL ROAD
 ACTON, MA



1000 STATE STREET
 SUITE 1000
 ACTON, MA 01701

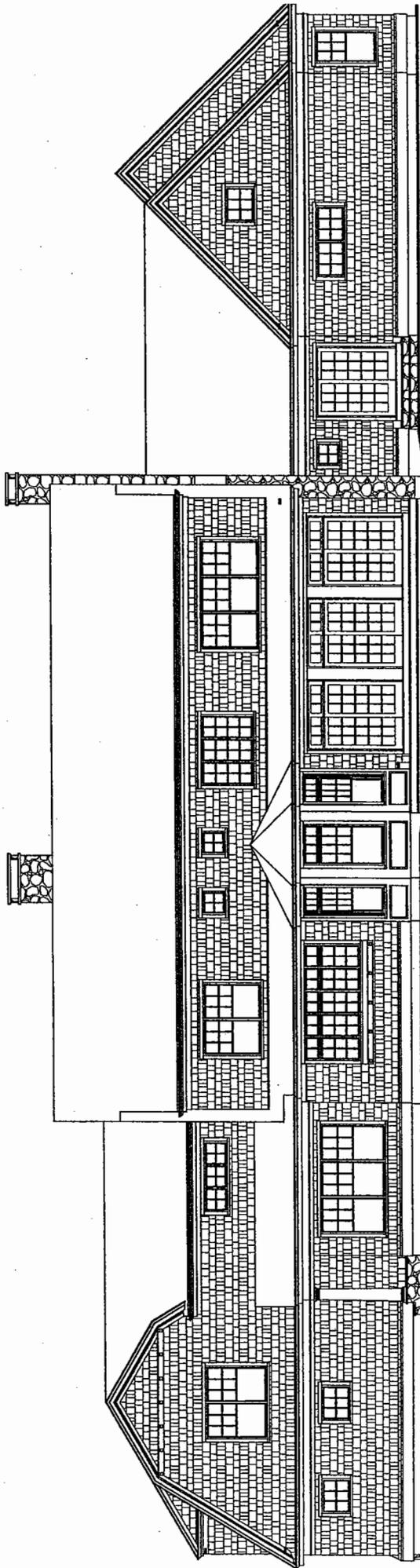


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RIGHT ELEVATION
 202310 SCALE: 1/8" = 1'-0"
 SHEET 3 OF 8

CLAIRE & MARK MCCARTHY
 151 NAGOG HILL ROAD
 ACTON, MA





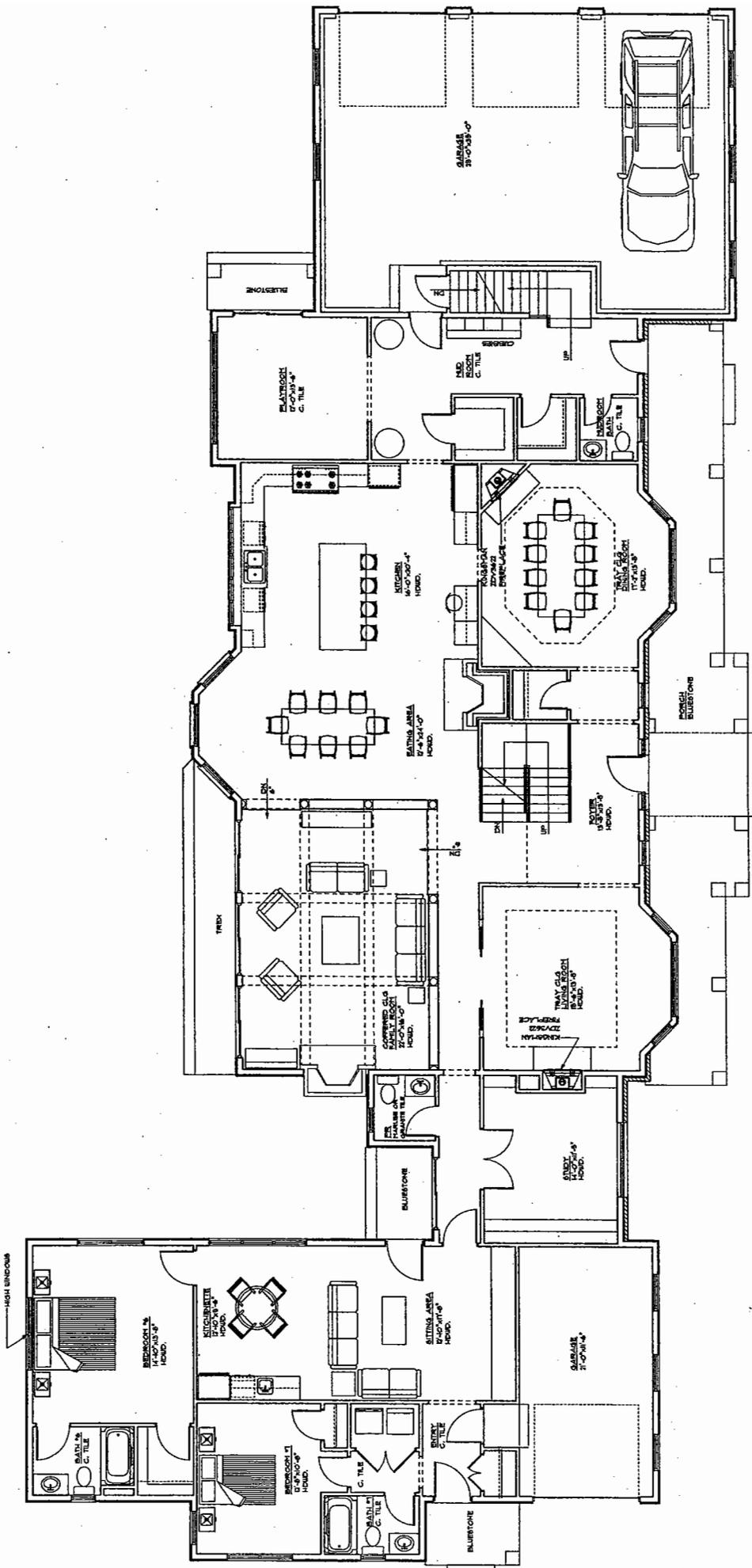
REAR ELEVATION
DRAWING NO. 80-0000
SHEET 4 OF 8

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CLAIRE & MARK MCCARTHY
191 NAGOG HILL ROAD
ACTON, MA



TEL: 978-264-6644
FAX: 978-264-6645

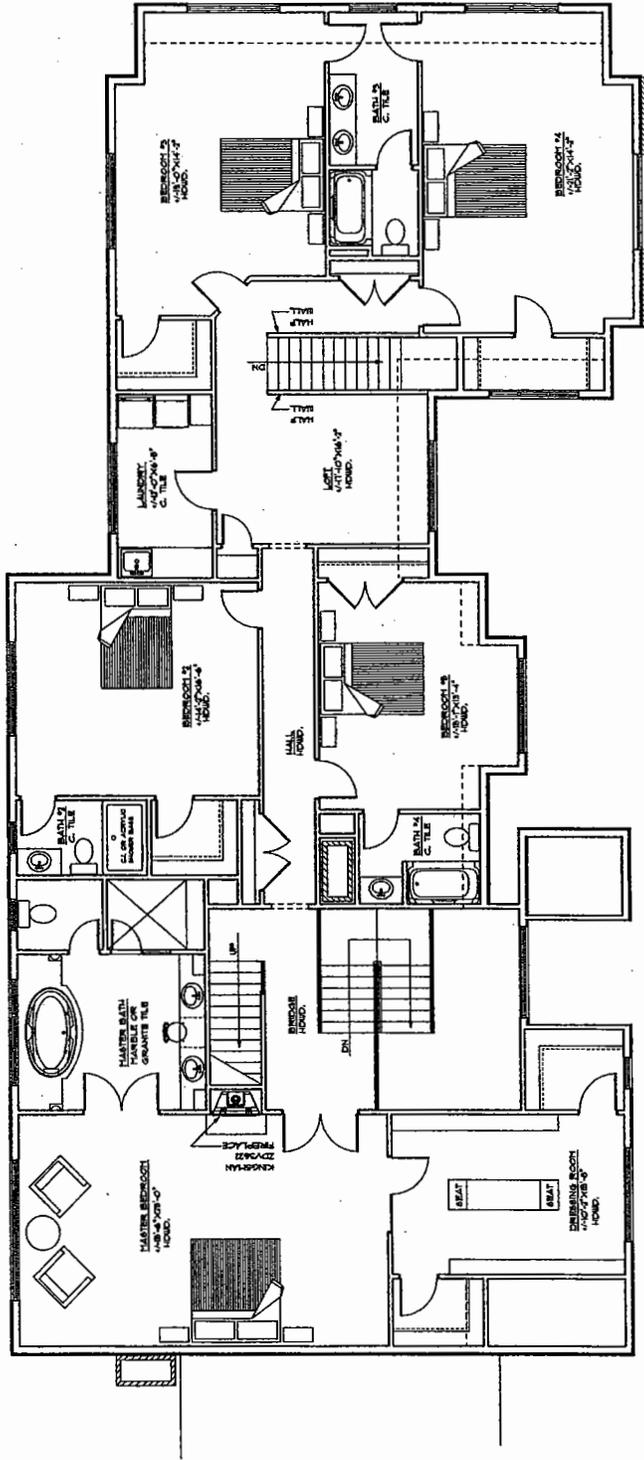


FIRST FLOOR PLAN
 SCALE: 1/8" = 1'-0"
 SHEET 1 OF 4
 50% M.P. MAIN HOUSE
 100% M.P. QUART HOUSE

CLAIRE & MARK MCCARTHY
 181 NAGOG HILL ROAD
 ACTON, MA

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NASH ARCHITECTURE, INCORPORATED
 215 BENTLEY AVENUE
 BOSTON, MA 02118
 TEL: 617-552-1100
 FAX: 617-552-1101

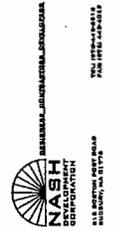


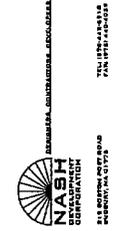
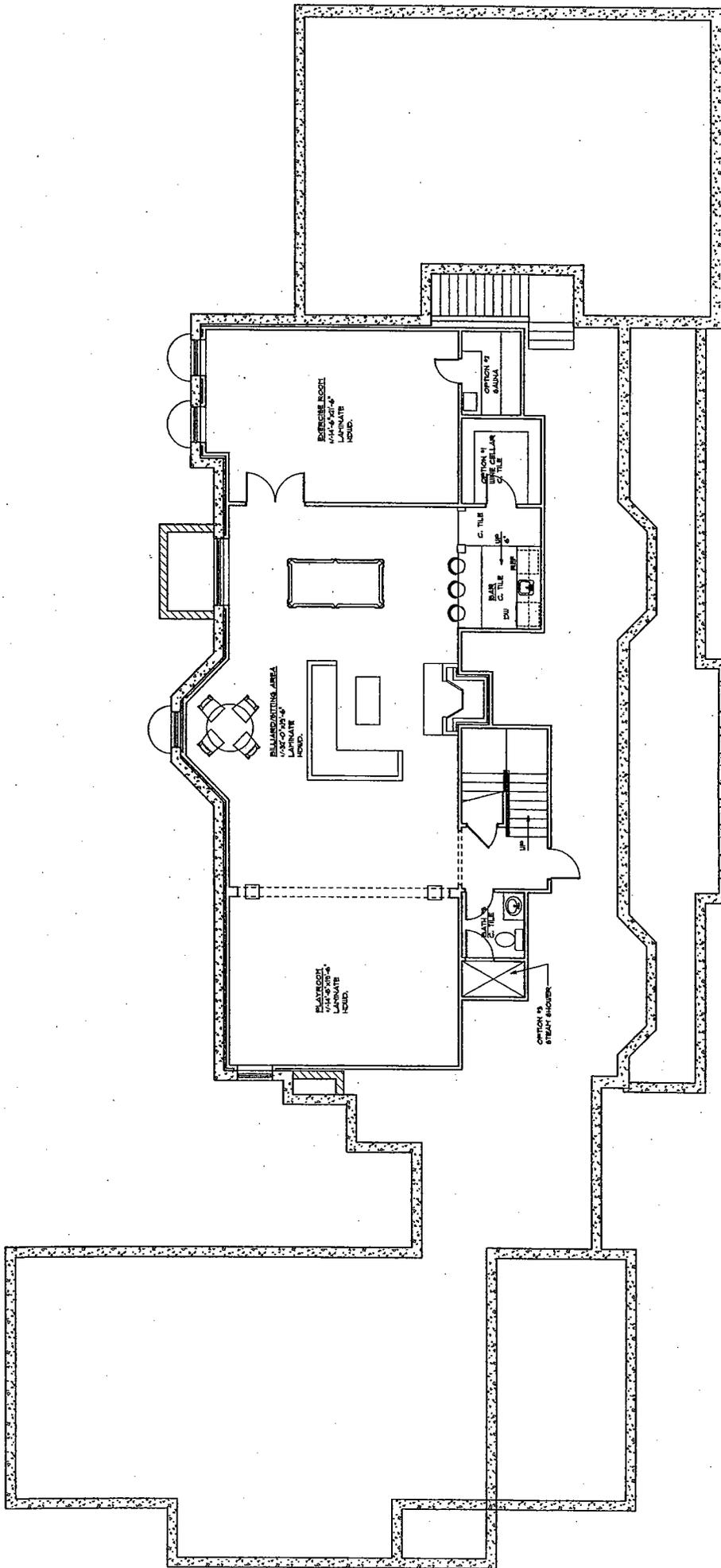
SECOND FLOOR PLAN
 SCALE: 1/8" = 1'-0"

SHEET 8 OF 8
 3108 sq. ft. MAIN HOME

CLAIRE & MARK MCCARTHY
 191 NAGOG HILL ROAD
 ACTON, MA

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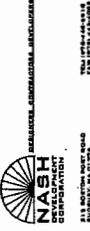
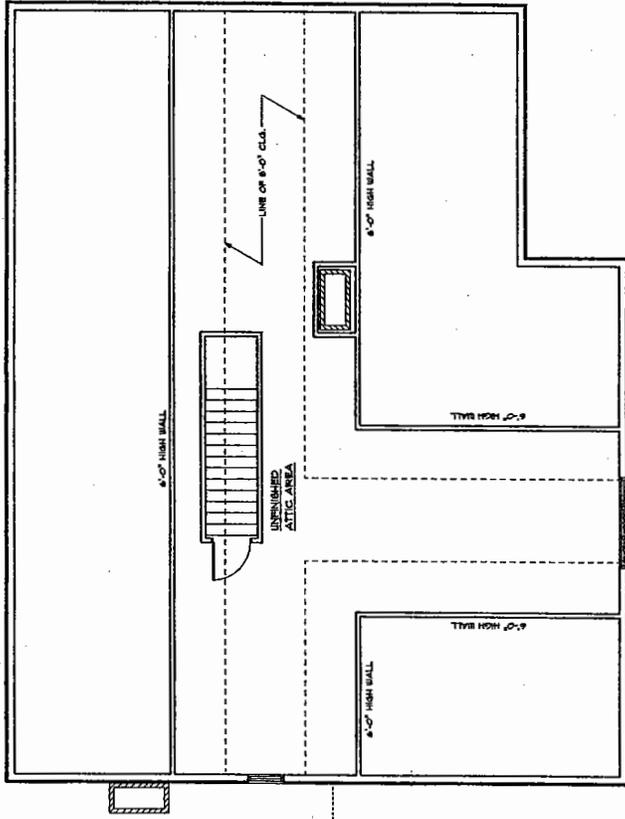




LOWER LEVEL PLAN
 DWG NO. 1000
 SHEET 1 OF 8
 SCALE 1/8" = 1'-0"
 146 sq. ft. LIVING AREA

CLAIRE & MARK McMARTHY
 181 NAGOG HILL ROAD
 ACTON, MA

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ATTIC PLAN
 DRAWING NO. 102-1088-1-0
 SHEET 8 OF 8

CLAIRE & MARK McARTHRY
 181 NAGOG HILL ROAD
 ACTON, MA

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