

RECEIVED  
SEP - 5 2013

Ord# 122298  
\$10,000

Application #

TOWN OF ACTON  
HISTORIC DISTRICT COMMISSION  
472 Main Street, Acton, MA 01720

TOWN CLERK, ACTON

APPLICATION FOR CERTIFICATE

This information will be publicly posted on the Town of Acton website docushare.

Applicant : Michael Joseph  
c/o Riemer & Braunstein LLP

Telephone 617-880-3405

E-mail [wproia@riemerlaw.com](mailto:wproia@riemerlaw.com)

Address 7 New England Executive Park  
Burlington, MA 01803

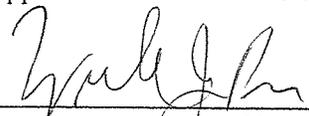
Property owner and address Pamela Stevens, et al.  
(if different from applicant) c/o Seder & Chandler  
339 Main Street, Worcester, MA 01608

Location of Work No. 108 Street : School Street (see attached letter) District: Center West South

Pursuant to Ch. 40C of the General Laws of Massachusetts, application is hereby made for issuance of a Certificate for work within a Local Historic District. (see reservation of rights on attached letter)

Description of Proposed work: (See instructions for additional information required)  
Relocation of segment of wall (approximately 10') to existing gap in wall to provide access driveway to buildable area of lot. See attached letter for further description.

The undersigned hereby certifies that the information on this application and that any plans submitted herewith are correct, and constitute a complete description of the work proposed. I acknowledge, by my signature below, that this application and all its data will be publically posted on the Town of Acton website docushare.

Signature of applicant  Date September 5, 2013  
William J. Proia, Attorney for Applicant

Application received by \_\_\_\_\_ for HDC. Date \_\_\_\_\_

Certificate approved by \_\_\_\_\_ Date \_\_\_\_\_  
for Historic District Commission

Certificate of appropriateness not required (Certificate of Non-Applicability issued)

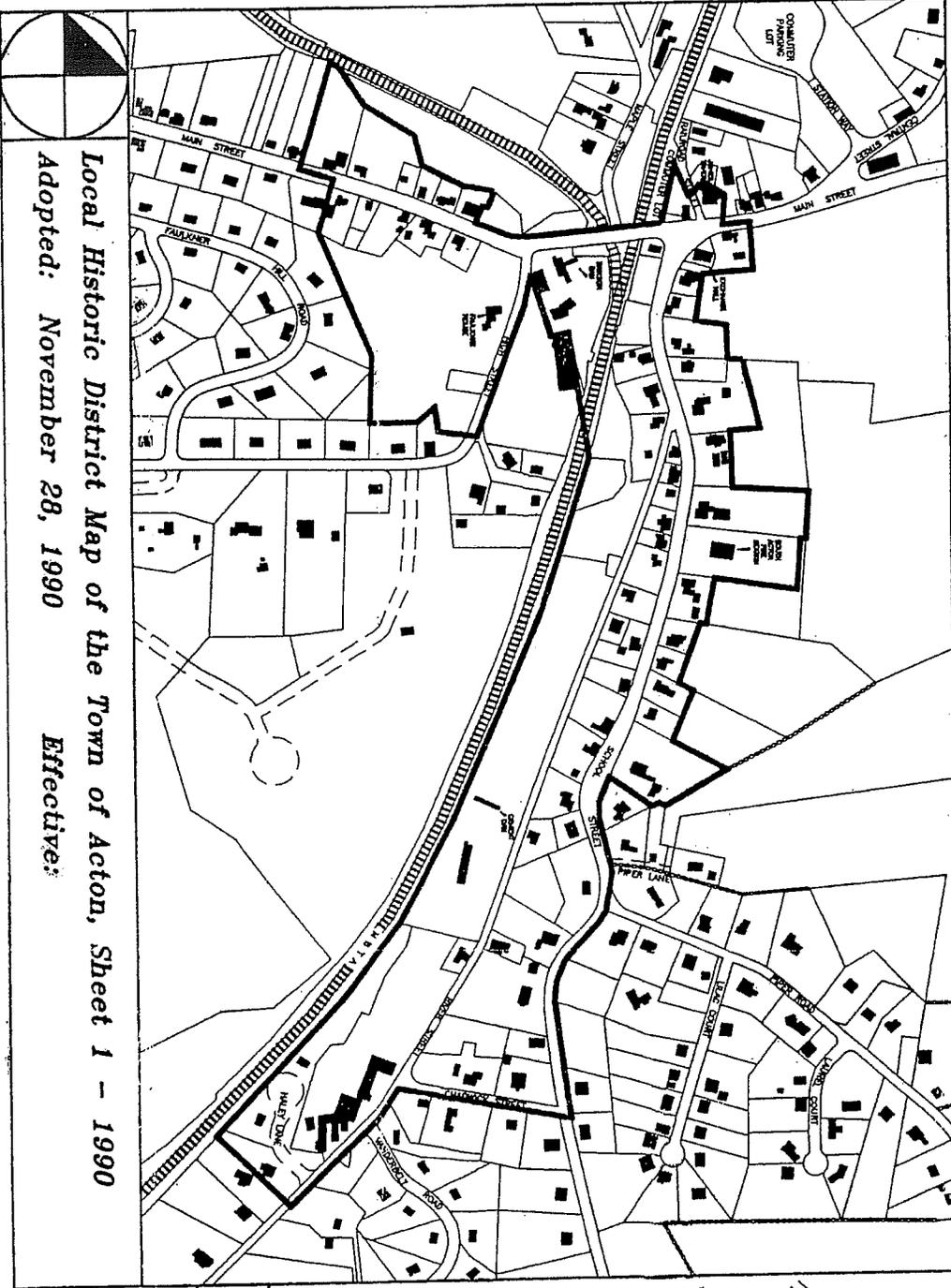


Attachment A

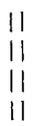
South Acton Historic District Map



# South Acton Historic District



Local Historic District Map of the Town of Acton, Sheet 1 - 1990  
 Adopted: November 28, 1990      Effective:

 Buildings
 Streets
 Lot Lines
 Stone Walls
 Private Ways
 South Acton Local Historic District Boundary
Scale: 1" = 375' Town of Acton Planning Department 1992



Attachment B

Project Plan



September 5, 2013

By Hand

Historic District Commission  
Town Clerk  
Town of Acton  
Acton Town Hall - 472 Main Street  
Acton, Massachusetts 01720

Re: Application for Certificate of Non-Applicability, Appropriateness, or Hardship  
Chapter P, Local Historic District Bylaw, Acton General Bylaw

Good Day:

Please note the undersigned and this firm represent Michael Joseph (Applicant) respecting this Application for a Certificate under the captioned Bylaw (HD Bylaw) in connection with the alteration of a certain stone retaining wall (Wall) (Project, further described below), located partly on and partly adjacent to the real property known and numbered as 108 School Street (Premises).

A. Reservation of Rights

As a preliminary matter, because the Applicant avers that the HD Bylaw does not apply to the Project, as further discussed below, the Applicant expressly reserves, and does not waive, its right and privilege to contest the applicability of the HD Bylaw to the Project, together with the Historic District Commission's authority and jurisdiction in that context, as well as any other right and privilege.

B. Facts

1. As depicted on the official SA District Map, Attachment A, the Premises, highlighted in yellow on the SA District Map, is not within the SA District nor any other District established under the HD Bylaw.
2. As depicted on the plan, Attachment B (Project Plan), the Wall is located partly on the Premises and partly within the layout of School Street. The portion of the Wall located on the Premises is not within any District under the HD Bylaw and is not subject to the HD Bylaw.
3. Public streets and ways that are included within any District under the HD Bylaw are included for the purpose of creating a viewpoint from which to assess "construction" or "alteration" on an "underlying



lot or property.” HD Bylaw § 6.1. Such streets and ways are not included for the purpose of subjecting work taking place within such streets or ways to the HD Bylaw.

4. As depicted on the Project Plan and the photos, Attachment C (Photographs A - D), the Wall extends along the entire front boundary of the Premises except for a small opening in the Wall (approximately 8 feet wide) located at an existing gate on the Premises.

5. As depicted on the Project Plan, the Project entails the removal of a segment of the Wall (approximately 10 feet wide) to accommodate a proposed driveway (Driveway), and the rebuilding of that removed segment of the Wall in the location of the existing Wall opening at the existing gate, as noted above in Section B.5. The balance of the Wall will be left intact, the final condition of the Project being a relocation of the existing Wall opening from its location at the existing gate to the Driveway location.

6. As depicted on the Project Plan and the SA District Map, the Wall segment to be removed is within the School Street layout, but not on the Premises.

7. As depicted on the Project Plan and the SA District Map, the Wall segment to be reconstructed at the current Wall opening is not within the School Street layout, nor within any District under the HD Bylaw. Accordingly, the rebuilding of the Wall at the location of the existing Wall opening is not subject to the HD Bylaw.

8. According to the Project engineer and the Town’s engineering department locating an active driveway at the location of the existing Wall opening would create an unsafe condition compared to the proposed Driveway location. Those engineers recommend the Driveway location.

9. As depicted on the Project Plan, the existing Wall location is directly adjacent to wetland resource areas located on the Premises. Accordingly, constructing and operating an active driveway in that location would impact the wetland resource areas far greater than would the Driveway as proposed.

10. Because the existing Wall opening cannot be used reasonably as a driveway location as set forth above, and because the Wall extends along the entire front boundary of the Premises, the Wall must be altered to accommodate access and use of the Premises, which is otherwise a compliant lot for zoning purposes.

C. Questions Presented

1. Question Presented

Whether under the applicable Facts as recited above, the Project is subject to the HD Bylaw?

Short Answer:

For the reasons set forth below, the Project is not subject to the HD Bylaw and so is entitled to a Certificate of Non-Applicability.



2. Question Presented

Whether under the applicable Facts as recited above, if the HDC rules the Project is subject to the HD Bylaw, should the Project be granted a Certificate of Appropriateness?

Short Answer:

For the reasons set forth below, the Project should be granted a Certificate of Appropriateness.

3. Question Presented

Whether under the applicable Facts as recited above, if the HDC rules the Project is subject to the HD Bylaw but should not be granted a Certificate of Appropriateness, should the Project be granted a Certificate of Hardship?

Short Answer:

For the reasons set forth below, the Project should be granted a Certificate of Hardship

D. Discussion

Based on the Facts, we provide the following discussion.

1. The Project is not subject to the HD Bylaw and so is entitle to a Certificate of Non-Applicability

*Statutory Construction*

To answer the Question Presented I is a matter of determining the town meeting's intent in enacting the HD Bylaw and the SA District Map by applying traditional rules of statutory construction.

Faced with such a question the HD Bylaw and SA District Map must be interpreted

[a]ccording to the intent of the legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment . . . and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.<sup>1</sup>

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<sup>1</sup> 81 Spooner Road LLC v. Town of Brookline, 452 Mass. 109, 113 (2008).



Further, terms used in a bylaw or ordinance should be interpreted in the context of the bylaw or ordinance as a whole, and to the extent consistent with common sense and practicality, they should be given their ordinary meaning.<sup>2</sup>

In applying these interpretative rules here it is plain that the Project is not subject to the HD Bylaw.

*HD Bylaw and SA District Map Intent*

The HD Bylaw is clearly drafted to apply to construction and alterations occurring on an “underlying lot or property” that is located within a District under the HD Bylaw, and is visible from a public way adjacent to the underlying lot or property. By its plan terms and illustrations, the HD Bylaw does not purport to apply to activities within the layouts of public ways. HD Bylaw §§ 6.1, 6.1.1.

Because the Premises is not within any District under the HD Bylaw, the HD Bylaw does not apply to any portion of the Project occurring on the Premises. It would be anomalous, illogical and inconsistent with the rules of statutory construction to interpret the HD Bylaw to apply to work within the public way as a method to subject the Premises to the HD Bylaw, but otherwise exempt the Premises from the HD Bylaw by excluding it from the SA District. If town meeting wanted to affect work done on the Premises it would have done so by expressly including the Premises within the SA District, but it did not.

Under the applicable rules of statutory interpretation, town meeting did not intend the Premises to be subject to the HD Bylaw. If town meeting wanted to affect work done on the Premises it would have included the Premises within the SA District, but it did not. Similarly, if the Wall were such an important historic structure, town meeting would have included the Premises in the SA District to ensure that the entire Wall was subject to jurisdiction, but it did not. Accordingly, the Project is entitled to a Certificate of Non-Applicability pursuant to applicable law and HD Bylaw § 7.8. M.G.L. c. 40C, §§ 6, 7. Springfield Preservation Trust, Inc. v. Springfield Library and Museum Ass’n, 447 Mass. 408 (2006).

2. The Project should be granted to a Certificate of Appropriateness

Based on the Facts, the limited scope and effect of the Project, the Project should be granted a Certificate of Appropriateness under HD Bylaw §§ P1 and P8. M.G.L. c. 40C, §§ 6, 7.

2. The Project should be granted a Certificate of Hardship

Based on the Facts, the Project is necessary to the reasonable development of the Premises, the failure to approve the Project will result in a hardship to the Applicant, and the Project can be approved as

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<sup>2</sup> Hall v. Zoning Bd. of Appeals of Edgartown, 28 Mass. App. Ct. 249 (1990). See also, Haynes v. Grasso, 353 Mass. 731 (1968) (the ordinance must be construed reasonably with regard both to the objects sought to be obtained and to the general structure of the ordinance as a whole).



September 5, 2013

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proposed without derogating from the intent and purpose of the HD Bylaw. Accordingly, the Project should be granted a Certificate of Hardship under HD Bylaw § 7.6.1. M.G.L. c. 40C, §§ 6, 7.

For these reasons, the Project should be granted a Certificate of Non-Applicability, or in the alternative either a Certificate of Appropriateness or a Certificate of Hardship.

Thank you for your consideration. We look forward to appearing before the Historic District Commission to further discuss this Application.

Very truly yours,



William J. Proia

WJP/jk

Attachments

- A South Acton Historic District Map
- B Project Plan
- C Photographs A - D

51903/2  
1599970.1



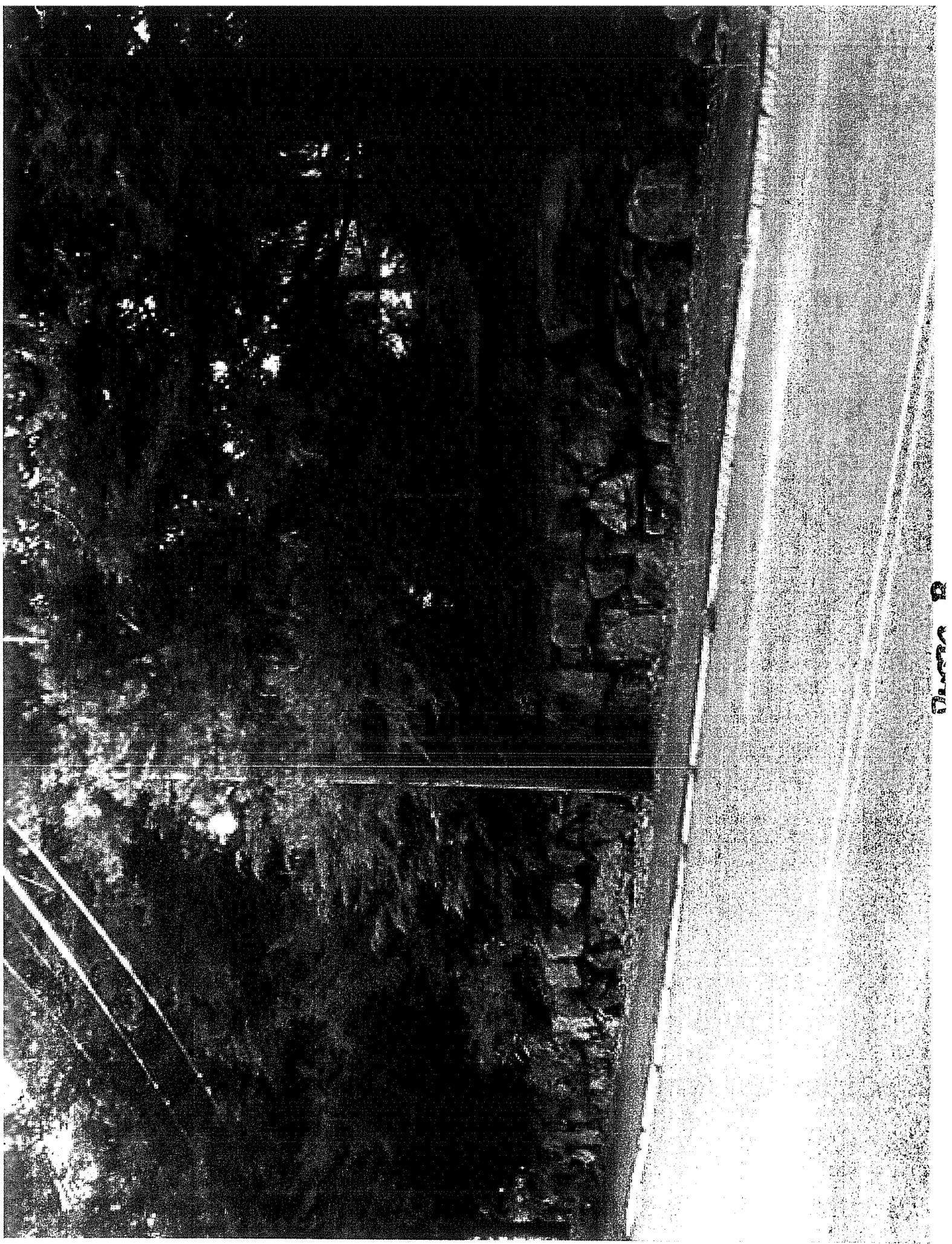
Attachment C

Photographs A - D









View B





PLATE C





DATA D



CURRENT OWNER		TOPO.	UTILITIES	STRT./ROAD	LOCATION	CURRENT ASSESSMENT	
STEVENS PAMELA S, BEAUDOIN JA C/O PAMELA STEVENS 92 HEATHER CIR						Description	Assessed Value
JEFFERSON, MA 01522 Additional Owners:						RESIDENTL RES LAND RESIDENTL	168,700 253,300 9,800
Other ID: 000H3 00058 00000						1010 1010 1010	168,700 253,300 9,800
Occ Perm							
Photo							
Ward							
Prec							
Sew Zone							
GIS ID:							
SUPPLEMENTAL DATA							
SBU							
Hist Dist							
BSStat							
P.Plan#							
Lot#							
527 OF 2009							
A							
ASSOC PID#							

RECORD OF OWNERSHIP		BK-VOL/PAGE	SALE DATE	q/u	v/i	SALE PRICE	V.C.
STEVENS PAMELA S, BEAUDOIN JANICE E		58642/297	03/08/2012	U	I	100 IA	100 IA
SAWYER HERBERT F		53404/534	08/18/2009	U	I	100 IA	100 IA
SAWYER HERBERT F		52937/200	06/08/2009	U	I	100 IA	100 IA
SAWYER HERBERT F + LA VERLA V		09280/0599				0	0
<b>Total:</b>							

EXEMPTIONS		Code	Description	Number	Amount	Comm. Int.
<b>Total:</b>						

ASSESSING NEIGHBORHOOD		STREET INDEX NAME	TRACING	BATCH
0001/A				

**NOTES**  
 INTERIOR REFUSED/SPL-IRR  
 ANGLE=SQRD FOR SK BROWN  
 09=WOULD NOT ANSWER DOOR (HOME)  
 FY '11 ABSORBED H3A-21

BUILDING PERMIT RECORD		Permit ID	Issue Date	Type	Description	Amount	Insp. Date	% Comp.	Date Comp.	Comments
<b>Total:</b>										

LAND LINE VALUATION SECTION															
B #	Use Description	Zone	D	Frontage	Depth	Units	Unit Price	I. Factor	Acre Disc	C. Factor	ST. Idx	Notes- Adj.	Special Pricing	Adj. Unit Price	Land Value
1	1010 Single Fam MDL-01	R-2	80			65,628 SF	3.36	1.15	5	1.0000	1.00	0.00		3.86	253,300
<b>Total Card Land Units: 1.51 AC Parcel Total Land Area: 65,628 SF</b>															

**VISION**

**PREVIOUS ASSESSMENTS (HISTORY)**

Yr.	Code	Assessed Value	Yr.	Code	Assessed Value
2013	1010	173,900	2011	1010	162,800
2013	1010	253,300	2011	1010	253,300
2013	1010	9,800	2011	1010	9,800
<b>Total:</b>		459,900	<b>Total:</b>		431,800

This signature acknowledges a visit by a Data Collector or Assessor

**APPRAISED VALUE SUMMARY**

Appraised Bldg. Value (Card)	167,500
Appraised XF (B) Value (Bldg)	1,200
Appraised OB (L) Value (Bldg)	9,800
Appraised Land Value (Bldg)	253,300
Special Land Value	0
Total Appraised Parcel Value	431,800
Valuation Method:	C
Adjustment:	0
<b>Net Total Appraised Parcel Value</b>	<b>431,800</b>

**VISIT/CHANGE HISTORY**

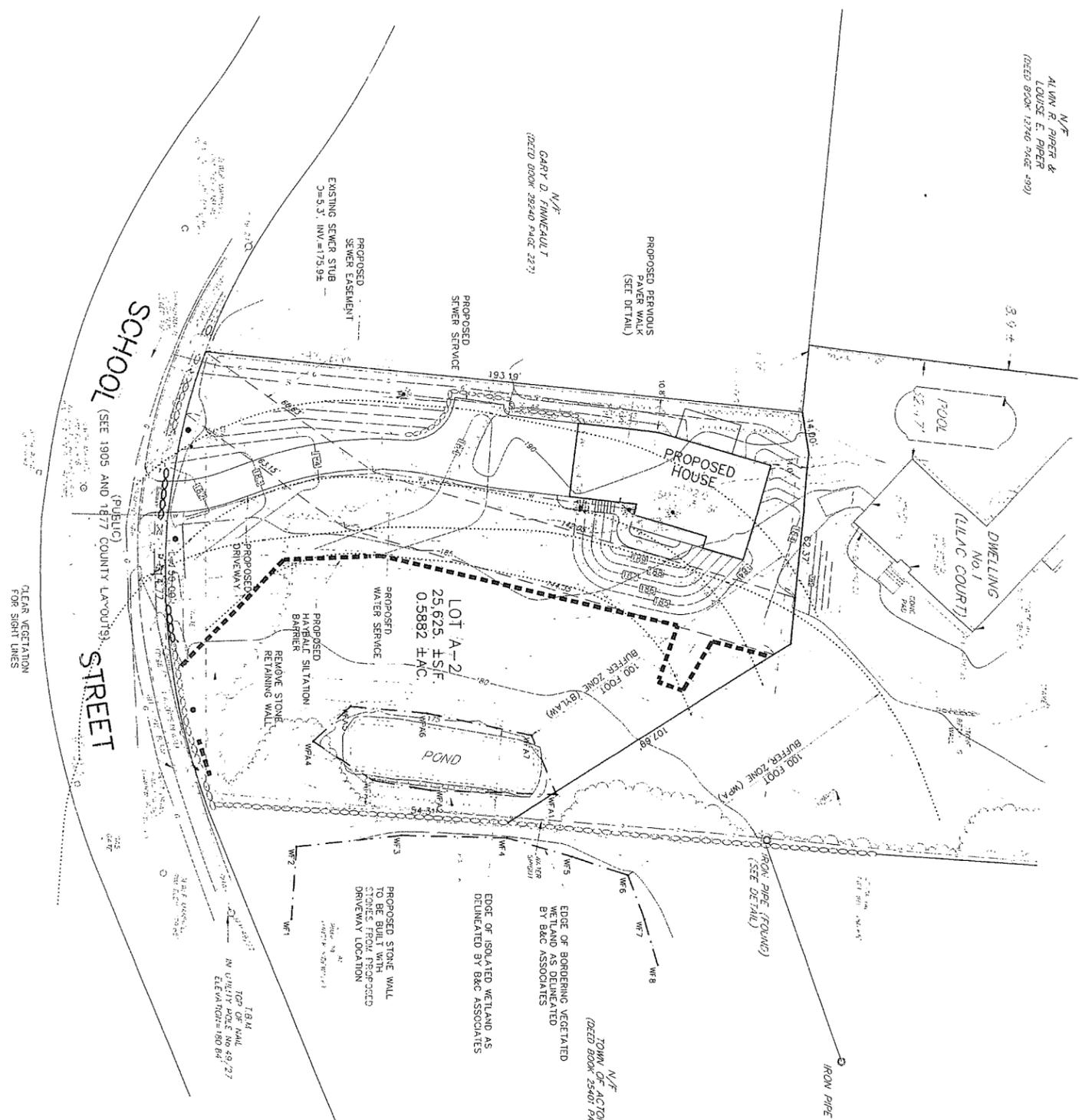
Date	Type	IS	ID	Cd.	Purpose/Result
8/27/2012	SS		SS	14	Field Review
8/19/2009	WH		WH	14	Field Review
10/24/2006	RK		RK	17	Comm Field Review
9/27/2006	WH		WH	09	Measur Estmt
10/5/2000	SS		SS	01	Measur+IVisit



- NOTES:**
1. ALL DISTURBED AREAS SHALL BE LOAMED AND SEEDED.
  2. ALL UNDERGROUND UTILITIES SHOWN HERE WERE COMPILED ACCORDING TO AVAILABLE RECORD PLANS FROM VARIOUS UTILITY COMPANIES AND FIELD SURVEY. THE LOCATION OF ALL ACTUAL UTILITIES MUST BE DETERMINED IN THE FIELD BEFORE DESIGNING, EXCAVATING, BLASTING, INSTALLING, BACKFILLING, GRADING, PAVEMENT RESTORATION OR REPAIRING. ALL UTILITY COMPANIES, PUBLIC AND PRIVATE, MUST BE CONTACTED INCLUDING THOSE IN CONTROL OF UTILITIES NOT SHOWN ON THIS PLAN. SEE THE PLAN FOR THE LOCATION OF ALL UTILITIES. ANY LIABILITY FOR DAMAGES INCURRED AS A RESULT OF UTILITIES OMITTED OR INACCURATELY SHOWN, BEFORE PLANNING FUTURE CONNECTIONS, THE APPROPRIATE PUBLIC UTILITY ENGINEERING DEPARTMENT MUST BE CONSULTED. DIG SAFE TELE. NO. 1-888-344-7233.

N/F  
ALVIN R. PAPER &  
LOUISE E. PAPER  
(DEED BOOK 13740 PAGE 499)

N/F  
GARY D. FINNEFALL I  
(DEED BOOK 28540 PAGE 227)



LOT A-2  
25,625 ± SF  
0.5882 ± AC

SCHOOL STREET  
(PUBLIC)  
(SEE 1905 AND 1877 COUNTY LAYOUTS)  
CLEAR VEGETATION  
FOR SIGN LIGHTS

**ZONING DISTRICT:**  
R-2 (RESIDENCE 2)  
GENERAL WATER PROTECTION DISTRICT  
ZONE 4

PLAN No. 813 OF 1952



**ACTON, MASSACHUSETTS**  
(MIDDLESEX COUNTY)

**FOR: STEVENS**

SCALE: 1"=20' MARCH 29, 2013

RET: AUGUST 29, 2013 (HOUSE 50X)  
STAMSKI AND MCNARY, INC.  
1000 MAIN STREET ACTON, MASSACHUSETTS  
ENGINEERING - PLANNING - SURVEYING



(4466B-WPP.dwg) SCHOOL STREET SM-4466B

