

2019 FEB 20 PM 3:42

CASE NO. 19-12

NOTICE OF PUBLIC HEARING BY THE
BELMONT ZONING BOARD OF APPEALS

ON APPLICATION FOR NINE VARIANCES

Notice is hereby given that the Belmont Zoning Board of Appeals will hold a public hearing on Monday, March 4, 2019 at 7:00 PM in the Art Gallery, 3rd floor, Homer Municipal Building, 19 Moore St. to consider the application of Owens Real Estate Trust, Christopher Owens, Trustee for Five (5) Variances under Section 1.5 of the Zoning By-Law to subdivide an existing non-conforming lot at 7-11 Sunnyside Place located in a Single Residence A (SRA) Zoning District to Two (2) non-conforming Buildable lots. §4.2 of the By-Laws require a minimum lot area of 25,000square feet, lot frontage 125.0', front setback 30.0', rear setback 40.0' and side setback of 15.0'. The existing lot area is 12329.7 square feet, the existing lot frontage is 193.23' and the side setbacks for both existing structure are greater than 15.0'. 1.- The proposed lot D will have a lot area of 6403.3 square feet, a frontage of 117.7', the front setback at 9.28', the rear setback 8.60' and the side setback from the existing structure to the newly created lot line 10.06'. 2.- The proposed Lot E will have a lot area of 5899.4', lot frontage of 75.53', a front setback of 9.53' and a rear setback of 15.90'. Exiting structures will remain at their current locations.

ZONING BOARD OF APPEALS



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BELMONT, MA

2019 FEB 20 PM 3:43

Town of Belmont
Zoning Board of Appeals

APPLICATION FOR A VARIANCE

Date: January 7, 2019

Zoning Board of Appeals
Homer Municipal Building
19 Moore Street
Belmont, MA 02478

To Whom It May Concern:

Pursuant to the provisions of the Massachusetts General Laws, Chapter 40A, Section 10, as amended, I/we, the undersigned, being the owner(s) of a certain parcel of land (with the buildings thereon) situated on 7 and 11 Sunnyside Place ~~Street/Road~~, petition your Board to vary the terms of the Zoning By-Laws of the Town ~~insofar as the same applies to the proposed erection of a~~ XXXXXXXXXXXXXXXXXXXX in accordance with the plan attached hereto, on the ground that (submit a written statement addressing each of these criteria):

1. Owing to circumstances relating to soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the Zoning District in which it is located, a literal enforcement of the Provisions of this By-Law would involve substantial hardship, financial or otherwise, to the petitioner;
2. Desirable relief may be granted without substantial detriment to the public good, (i.e., surrounding neighborhood), and;
3. Without nullifying or substantially derogating from the intent and purpose of this By-Law.

The petitioner(s) seek permission to ~~construct~~: (brief description and violation)

divide Lots D and E and the plan of land recorded in Middlesex

South Registry of Deeds, Book 13916, Page 84.

Signature of Petitioner

Christopher Owens (Jmn)

Print Name

Christopher Owens

Address

395 Russell Street

Roston, MA 02114

Daytime Telephone Number

(617) 413-3734

By his attorneys,

Joseph M. Noone
Joseph M. Noone, Esquire
AVERY, DOOLEY & NOONE, LLP
3 Brighton Street
Belmont, MA 02478
(617) 489-5300

December 6, 2005

AVERY DOOLEY & NOONE, LLP

ATTORNEYS AT LAW SINCE 1921

3 Brighton Street
Belmont, MA 02478
www.averydooley.com

(617) 489-5300 *main number*
(617) 993-3604 *direct dial*
(617) 489-0085 *fax*
jnoone@averydooley.com

January 7, 2019

Belmont Zoning Board of Appeals
Home Municipal Building, Second Floor
19 Moore Street
Belmont, MA 02478

Re: Application for Variance at 7 and 11 Sunnyside Place

STATEMENT OF APPLICANT

The Applicant, Christopher Owens, Trustee of the Owens Real Estate Trust, is the owner of the parcels of land with the residential dwellings thereon numbered 7 and 11 Sunnyside Place, shown as lots D and E on the plan entitled, "Plan of Land in Belmont, Mass. Owner: Hatch Trust," dated February 2, 1980, drawn by Frederick R. Joyce Co., recorded in Middlesex South Registry of Deeds, Book 13916, Page 84. The parcels are located within the SR-A zoning district.

Mr. Owens seeks zoning relief to divide the parcels upon which the residential dwellings are situated. In order to accomplish the division of the parcels, Mr. Owens respectfully requests the Board grant a variance of the Zoning By-Law requirements as follows:

1. Lot D – 11 Sunnyside Place
 - a. To vary the requirements of Section 4.2.1, Minimum Lot Size of 25,000 square feet to permit a lot size of 6,430.3 square feet;
 - b. To vary the requirements of Section 4.2.1, Minimum Lot Frontage of 125 feet to permit a frontage on Sunnyside Place of 117.7 feet
 - c. To continue the pre-existing non-conformance of the requirements of Section 4.2.2, Minimum Front Set-back of 30 feet to permit a front setback of 9 feet;

- d. To continue the pre-existing non-conformance of the requirements of Section 4.2.2, Minimum Side Set-back of 15 feet to permit a side setback of 9.5 feet;
- e. To continue the pre-existing non-conformance of the requirements of Section 4.2.2., Minimum Rear Set-back of 40 feet to permit a rear setback of 8.7 feet.

2. Lot E- 7 Sunnyside Place

- a. To vary the requirements of Section 4.2.1, Minimum Lot Size of 25,000 square feet to permit a lot size of 5,899.4 square feet;
- b. To vary the requirements of Section 4.2.1, Minimum Lot Frontage of 125 feet to permit a frontage on Sunnyside Place of 68.97 feet;
- c. To continue the pre-existing non-conformance of the requirements of Section 4.2.2, Minimum Front Set-back of 30 feet to permit a front setback of 9 feet;
- d. To continue the pre-existing non-conformance of the requirements of Section 4.2.2., Minimum Rear Set-back of 40 feet to permit a rear setback of 10 feet.

The requested variances are warranted for the following reasons:

The dwellings on the parcels are shown on the 1898 town atlas (Exhibit “A”), which indicates they were in existence at least by that time, and pre-exist the enactment of the Zoning By-Law. As such, the buildings are legal, prior-existing, non-conforming structures.

The Applicant’s property is an irregularly shaped parcel and there is an extreme variation in grade from its Easterly boundary to the Westerly boundary.

Since approximately 1913, the dwellings located at 7 and 11 Sunnyside Place have been occupied by separate families as independent dwellings. The Belmont property assessor’s data base identifies the dwellings as two separate parcels and assesses them separately for tax purposes. (See Exhibits “B” and “C”).

The lot sizes (5,899 sq. ft. for 7 Sunnyside and 6,430 sq. ft. for 11 Sunnyside) are similar to nearby lot sizes. For example, 5 Sunnyside consists of 4,775 sq. ft; 21 Sunnyside consists of 4,400 sq. ft.; 486 Concord Ave. consists of 5,209 sq. ft, and 26 Centre Ave. consists of 3,590 sq. ft. These nearby properties are owned separately.

In 1979, the dwellings were added to the National Register of Historic Places, located in District number 79000353. The historic designation forbids the demolishing, changing the exterior, or the footprint of the structures.

The marketability of the Applicant's property is severely impacted by the two dwellings on the parcel. The Applicant provides herewith an opinion from a well-respected and duly qualified real estate broker that states the Applicant's ability to sell the property is significantly impaired because of the two dwellings and their designation as historical. (*See* Exhibit "D"). The number of potential buyers interested in purchasing a non-conforming lot, with two historical dwellings, is extremely limited.

Massachusetts courts have ruled on several occasions that where the hardship resulted from local regulatory controls or other government actions, the board of appeals could appropriately conclude that the required connection exists and a variance could be lawfully granted. *See Marashalina v. Zoning Board of Appeals of Newburyport*, 421 Mass. 719, 660 N.E. 2nd 369 (1996) (holding that the historical designation of the property rendered the property unique and appropriate for a variance); see also, *Johnson v. Board of Appeals*, 360 Mass 872; 277 N.E.2d (1972), where the granting of variance was upheld due to the unique historical nature of the existing building).

Because the surrounding properties are similarly sized and individually owned, the granting of a variance to the Applicant will not result in a substantial detriment to the public good, nor will it nullify or substantially derogate from the intent or purpose of such ordinance or bylaw. The granting of the variance will not change the use or character of the premises. The variance will not be apparent as one views the premises since the dwellings will remain separate and cannot be altered. The granting of the variances will simply create separate lots that are already shown on the plan recorded at the Middlesex South Registry of Deeds and the Belmont

Assessor's records. The separate ownership will have the beneficial benefit of improving the buildings' value so as to generate additional tax revenue for the Town.

Given that the conditions affecting the locus create a hardship to the Applicant that is not applicable to the zoning district generally, the Board is warranted in the granting of the requested variance.

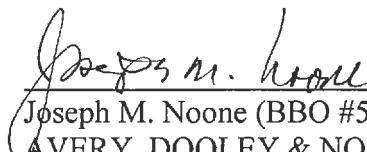
The Applicant has contacted neighbors by telephone, e-mail, and in person. To date, no neighbor has opposed the proposed relief, four have signed a statement of support, and two have verbally indicated support. The Applicant expects to submit additional signatures or letters of support in time for the Zoning Board of Appeal meeting.

In conclusion, the Applicant requests the Zoning Board of Appeal grant the requested variances for the reasons set forth herein and as shown on the attached plan labeled Exhibit "E".

Respectfully submitted

APPLICANT, CHRISTOPHER OWENS

By his attorneys,



Joseph M. Noone (BBO #559644)
AVERY, DOOLEY & NOONE, LLP
3 Brighton Street
Belmont, MA 02478
(617) 489-5300
jnoone@averydooley.com

Dated: January 7, 2019

EXHIBIT A



EXHIBIT B

Assessment Date: January 1, 2017

Parcel Information:

Location: 7 SUNNYSIDE PL

Parcel ID: 57-24-A-

Class: 101 1-Family

Type: Residential

Lot Size: 5,899

Census: 0

Zoning: SA

Survey #: 0

Print This Page

FY 2018 Tax Rate for Belmont, MA: \$12.15

Assessed Values

2018 Market Value	
Land	\$434,000
Building	\$333,000
Other	\$0
Total	\$767,000

Assessment History

Year	Total Value
2018	\$767,000
2017	\$821,000
2016	\$769,000
2015	\$735,000
2014	\$684,000
2013	\$642,000
2012	\$635,000
2011	\$606,000
2010	\$633,000
2009	\$629,000
2008	\$645,000
2007	\$707,000
2006	\$675,000
2005	\$639,000
2004	\$608,000
2003	\$526,000
2002	\$490,000
2001	\$412,000
2000	\$373,000
1999	\$349,000
1998	\$344,000
1996	\$354,000
1995	\$269,000
1994	\$274,000
1993	\$258,000
1992	\$268,000
1991	\$260,000

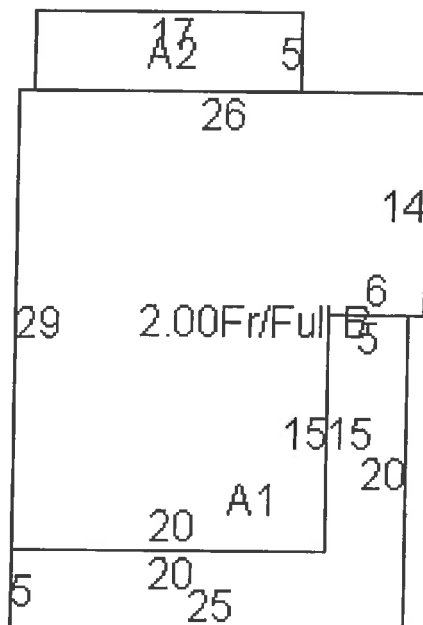
Owner Information

Name: OWENS TRS JOHN & MARY FRANCES
OWENS REAL ESTATE TRUST

Address: 39 SOUTH RUSSELL ST
BOSTON, MA 02114

Notes:

Building Information



Frame	Wood	Basement	Full
Style	Colonial	Heating	Basic
Stories	2.00	Heat Sys	Hot Water
Ext Walls	Frame	Fuel Type	Gas
Rooms	8	Attic	Full Finish/wh
Beds	4	Condition	Good
Full Bath	2	Grade	A-
Half Bath	1	Traffic	Average Traffic
Extra Fix		Fireplaces	
Rec Room	none		
Fin Bsmt	none	Year Built	1885
Bsmt Gar	none	Year Remod	1885
Stacks	0	TLA	1,636

Area	Lower	First	Second	Third	Area
Main	None	None	None	None	644
A1	None	Open Frame	Porch	None	182
A2	None	1s Frame		None	90

Other Improvements

Code	Type	Qty	Year	Length	Width	Grade	Condition	Adj
1			0	0	0	0		1

Notes:

Bldg Nbhd @18 & Land Nbhd @16. Both changed to Nbhd 16 for consistency FY08. 5/27/08 changed Style from "Old Style" to "Colonial Old".

Land Description

Topography	Utilities	Street	Paved	Landlocked	No View	Average
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Level	Public	Road	Public	Sidewalk	Yes	Landscaping
				Gas	No	

Market Type	Description	Zone	Nhbd	Area	Infl	Traffic
1	Primary Site	SA	16	5899	1	Average Traffic

Inspection Information			Permit Information			
Date	Inspector	Entry	Date	% Comp	Value	Notes
5/18/2017	GS	Entrance Gained				kitch remodel & misc reprs throughout
6/5/2010	RJG	Occupant Not At Home				"furnish & install new kitch cabinets,
4/2/2003		Occupant Not At Home				countertops & backsplash, furnish &
11/30/1995	MO	Entrance Gained	7/16/2012	100	\$26,111.00	install new toilets & showerheads &
6/1/1984	TWN	Occupant Not At Home				faucets @ select locations, misc paint & minor repairs throughout"

Sales Information					
Date	Price	Vol	Page	Seller	Valid Code
7/14/1995	\$1	25485	380	OWENS TE JOHN	F. convenience
1/1/1900	\$0	14166	0136		none

Disclaimer

EXHIBIT C

Assessment Date: January 1, 2017

Parcel Information:

Print This Page

FY 2018 Tax Rate for Belmont, MA: \$12.15

Location: 11 SUNNYSIDE PL

Parcel ID: 57-24- -

Class: 101 1-Family

Type: Residential

Lot Size: 6,430

Census: 0

Zoning: SA

Survey #: 0

Assessed Values

Assessment History

2018 Market Value		Year	Total Value
Land	\$443,000	2018	\$873,000
Building	\$429,000	2017	\$757,000
Other	\$1,000	2016	\$709,000
Total	\$873,000	2015	\$630,000
		2014	\$599,000
		2013	\$599,000
		2012	\$592,000
		2011	\$566,000
		2010	\$590,000
		2009	\$587,000
		2008	\$601,000
		2007	\$659,000
		2006	\$629,000
		2005	\$594,000
		2004	\$567,000
		2003	\$548,000
		2002	\$511,000
		2001	\$429,000
		2000	\$389,000
		1999	\$364,000
		1998	\$357,000
		1996	\$369,000
		1995	\$260,000
		1994	\$264,000
		1993	\$248,000
		1992	\$258,000
		1991	\$279,900

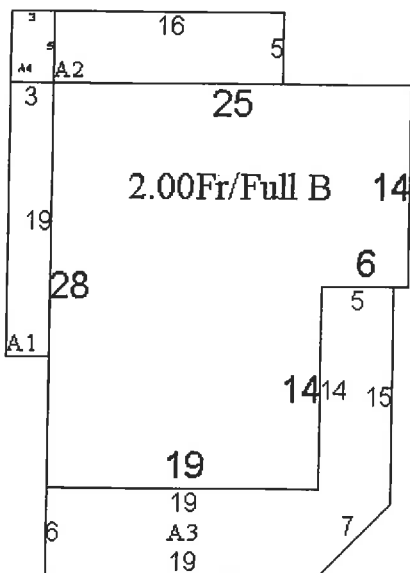
Owner Information

Name: OWENS TRS JOHN & MARY FRANCES
OWENS REAL ESTATE TRUST

Address: 39 SOUTH RUSSELL ST
BOSTON, MA 02114

Notes:

Building Information



Frame	Wood	Basement	Full
Style	Old Style	Heating	Basic
Stories	2.00	Heat Sys	Hot Water
Ext Walls	Frame	Fuel Type	Gas
Rooms	8	Attic	Full Finish/wh
Beds	3	Condition	Good
Full Bath	2	Grade	B+
Half Bath	1	Traffic	Average Traffic
Extra Fix		Fireplaces	
Rec Room	none		
Fin Bsmt	none	Year Built	1885
Bsmt Gar	none	Year Remod	1885
Stacks	0	TLA	1,695

Area	Lower First	Second	Third	Area
Main	None	None	None	616
A1	None	None	Frame Overhang	57
A2	None	1s Frame	None	80
A3	None	Open Frame Porch	None	202
A4	None	Canopy	None	15

Other Improvements

Code	Type	Qty	Year	Length	Width	Grade	Condition	Adj
1	Shed - Frame	1	1940	8	6	C	Average	1

Notes:

Bldg Nbhd @18 & Land Nbhd @16. Both changed to Nbhd 16 for consistency FY08. 5/27/08 changed Style from "Old Style" to "Colonial Old".

Land Description

Topography	Utilities	Street	Paved	Landlocked	No	View	Average
Level	Public	Road	Public	Sidewalk	Yes	Landscaping	
				Gas	No		

Market

Type	Description	Zone	Nhbd	Area	Infl	Traffic
1	Primary Site	SA	16	6430	1	Average Traffic

Inspection Information

Date	Inspector	Entry
5/18/2017		Occupant Not At Home
5/5/2010	RJG	Entrance & Signature Gained
6/12/2003	RJG	Entrance & Signature Gained
11/30/1995	MO	Entrance Gained
8/1/1984	TWN	Entrance & Signature Gained

Permit Information

Date	% Comp	Value	Notes
6/4/2010	100	\$6,900.00	reblid chimney

Sales Information

Date	Price	Vol	Page	Seller	Valid Code
7/14/1995	\$1	25485	380	OWENS TE JOHN	F. convenience
1/1/1900	\$0	14166	0136		none

Disclaimer

EXHIBIT D

Belmont Zoning Board

December 12, 2018

To whom it may concern,

My name is Barbara Nolan I am a realtor with Coldwell Banker Residential Brokerage, I am writing on behalf of my client Christopher Owens who is the current owner of 7 Sunnyside Place and 11 Sunnyside Place, Belmont, MA. The Town of Belmont has both of these properties listed under the same *Map Ref: yet in public records each home is listed as a Colonial with separate land, building and tax valuations. We are planning to sell these properties in 2019 but know it will pose a hardship to my client to market it simultaneously, there would be a significant decrease in market value. The buyer pool is considerably diminished when they are purchasing two homes instead of one. Given the town records having listed two structures on one parcel, it is incumbent on the town of Belmont to rectify this error.

*7 Sunnyside Place Map Ref: M: 57 P: 000024 S:A

*11 Sunnyside Place Map Ref: M: 57 P: 00004 S:

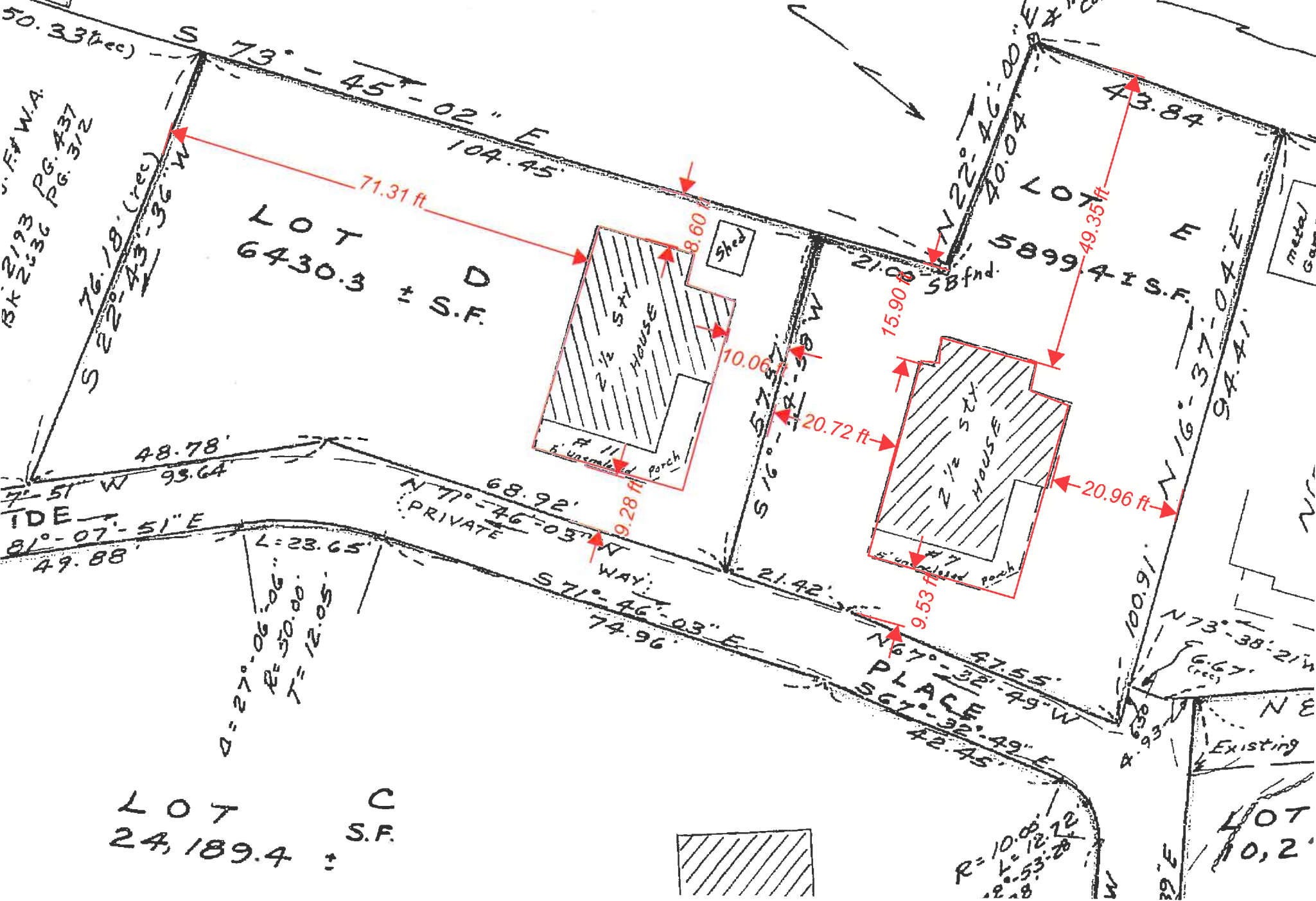
Sincerely,

Barbara Nolan

EXHIBIT E

BK. 6640 PG. 121 E. B.

Shed

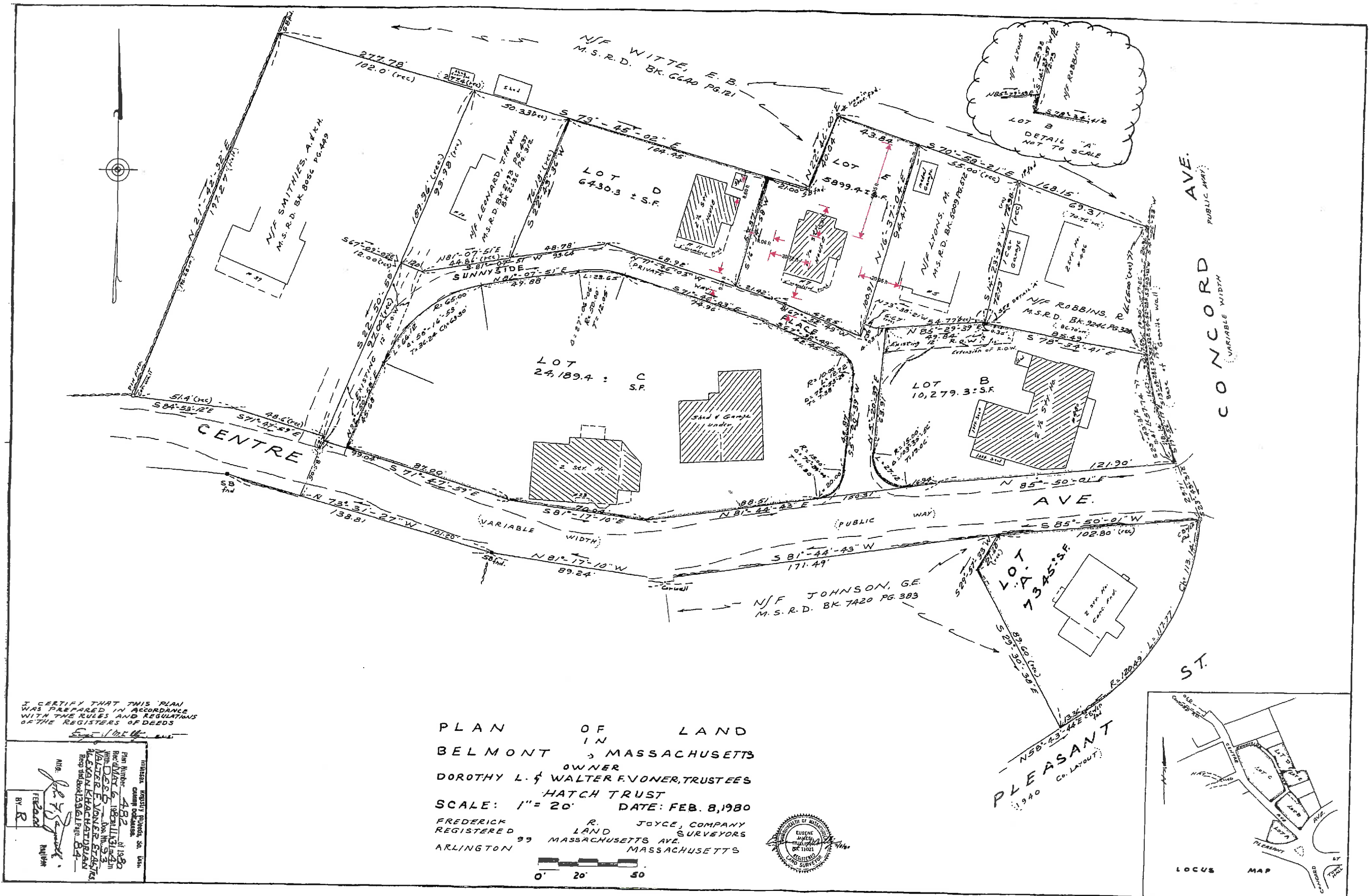


BK. 2193 PG. 437
BK. 2236 PG. 312

TIDE
81° - 07' - 51" E
49.88'

L = 23.65'
R = 30.00'
T = 12.05'

R = 10.00'
L = 12.72'
T = 53.28'



I CERTIFY THAT THIS PLAN
WAS PREPARED IN ACCORDANCE
WITH THE RULES AND REGULATIONS
OF THE REGISTER OF DEEDS

Plan Number 482 of 1980
Recorded in 1801131-4 in
with DEED 1801131-4 in
WALTER F. VONER, TRUSTEES
ALAN KACHATIAN, TRUSTEES
Reg. 1801131-4 in 04

PLAN OF LAND
IN
BELMONT, MASSACHUSETTS
OWNER
DOROTHY L. & WALTER F. VONER, TRUSTEES
HATCH TRUST
SCALE: 1" = 20' DATE: FEB. 8, 1980
FREDERICK R. JOYCE, COMPANY
REGISTERED LAND SURVEYORS
99 MASSACHUSETTS AVE.
ARLINGTON, MASSACHUSETTS

