EXHIBIT B

TOWN OF BROOKLINE BOARD OF APPEALS
APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION

(See M.G.L. c. 40A §8, BOA Rules and Regulations, and Zoning By-laws §7.03.2.e)

Date: 5 / 4 / 2016

Applicant(s): Edward J. Bartlett, Trustee **Address:** 292 Warren Street
Brookline, MA 02445

Owner(s) of Record: Kargman Family Brookline Residence Trust **Address:** 292 Warren Street
Brookline, MA 02445

Address of Premises: 246 Dudley Street **Brookline, MA**

Deed recorded in Registry of Deeds, Book 30876 **Page** 479

or registered in the Land Registration Office under Certificate No. _____

Tax Assessor's Property ID No.: **Map:** 350 **Block:** 05 **Lot:** 00

1. What are you appealing and why? Is it an inability to obtain a building permit, enforcement action, order or decision of the Building Commissioner/Building Official? (Please attach copy)

   This is an appeal from a determination by the Deputy Building Commissioner that a portion of a planned second story addition to the Premises is subject to a 50' setback requirement pursuant to Section 5.55 of the Zoning By-Law because it is in "the front yard of a rear lot." The Deputy Building Commissioner therefore refused to issue a Building Permit.

2. Are you within the 30-day appeal period (M.G.L. c. 40A, §15)? Yes XX No ____

3. Provide the grounds for the appeal and legal reasons why you assert that the order or decision is legally not valid. (Please attach copy)

   The Deputy Building Commissioner's determination is inconsistent with the express language of the Zoning By-Law, specifically Section 5.55 (Front Yard for Rear Lot). A supplemental memorandum of law will be filed prior to the public hearing.

4. What outcome do you request if your appeal is upheld?

   Issuance of Building Permit authorizing proposed second floor construction between existing residence and existing attached garage.

Certification and Signatures

(Signatures of Appellant(s) and Owner(s) of Record (if different than the appellant) are required.)

The original Application with ten (10) complete copies of the application and supporting documentation to include: ***a copy of correspondence requesting action by the Building Commissioner/Building Official, his response (if applicable) and copies of all other pertinent information must be filed with the Zoning Coordinator in the Planning and Community Development Department. Once the application is deemed complete and the appropriate fee is paid, the Zoning Coordinator will transmit to and file with the Office of the Town Clerk four (4) copies of said complete application. Note:*** *You are encouraged to discuss your application with Building Department Staff and thoroughly familiarize yourself with the Board of Appeals Rules and Regulations before submittal to insure the thoroughness of your application. Copies of the Rules and Regulations are available at the Office of the Town Clerk and also on-line at both the Town Clerk and Board of Appeals links on the town website.* ***After the Board of Appeals hearing is set, the Planning Board (if applicable) may hold a meeting prior to the Board of Appeals hearing to consider the case and make a recommendation to the Board of Appeals. Contact the Building Department (617-730-2100) with any questions about the appeal process and/or meeting schedules. Also see meeting calendar on Town website at: www.brooklinema.gov.***

I (We) hereby certify that I (we) have read the Board of Appeals Rules and Regulations and that the statements within my (our) Appeal and attachments are true and accurate to the best of my (our) knowledge and belief.

Edward J. Bartlett, Jr. 5-3-16
Signature(s) of Appellant — Date

see below
Daytime Telephone Number and/or Cell

see below
Fax Number

see below
E-Mail Address

Edward J. Bartlett, Jr. 5-3-16
Signature(s) of Owner of Record — Date

see below
Daytime Telephone Number and/or Cell

see below
Fax Number

see below
E-Mail Address

If Applicable:

Wayne F. Dennison
Name of Attorney for Applicant

Brown Rudnick LLP, One Financial Ctr, Boston, MA 02111
Address of Attorney

617-856-8247
Phone Number of Attorney

wdennison@gmail.com
E-Mail Address and Fax # of Attorney

SUBMIT THIS FORM (original) WITH TEN (10) COPIES OF THE APPLICATION, FILING FEE AND SUPPORTING DOCUMENTATION TO THE ZONING COORDINATOR

ATTACHMENT 1

COPY OF APRIL 4, 2016 DECISION OF THE DEPUTY BUILDING INSPECTOR

TOWN of BROOKLINE

Massachusetts

BUILDING DEPARTMENT

Attorney Wayne F. Dennison
Brown Rudnick LLP
One Financial Center
Boston, MA 02111

April 4, 2016

Dear Attorney Dennison,

We are in receipt of your letter and exhibits dated March 31, 2016. We have taken the time to review the letter as well as the exhibits and the following is our finding.

It is your contention that the proposed front addition on your client's home at 246 Dudley Street is an as of right proposal. Our interpretation is the proposed second story addition is subject to section 5.55 of the Town of Brookline Zoning Bylaw making this the front yard of a rear lot. The structure is pre-existing non-conforming. The required relief can be obtained through section 8.02 (Alteration or Extension) and section 5.43(Exceptions to Yard and Setback Regulations) of the Town of Brookline Zoning Bylaw as this would be an extension of the non-conforming setback.

The exhibits you have furnished provide further evidence of consistent and reasonable interpretation of this section of the bylaw. The 1987 application for relief, Planning Board report and Zoning Board decision (case # 2845) clearly state relief is required from section 5.55. The 1998 denial letter, Planning Board Report and Zoning Board decision (case#3464) also cite the relief needed as front yard rear lot section 5.55. The reversal of the Building Commissioner's decision that you refer to from July 9, 2002 is in reference to the need for a variance to replace a non-conforming structure. The reversal comes by way of section 10.3 of the zoning bylaw thus allowing your client to replace the non-conforming portion of the structure based on the fact it was unsafe.

Lastly, it is your contention because section 5.55 utilizes two different words or phrases; "lot" and "site thereof" the words have different intents. We believe the word "lot" and the phrase "site thereof" is of the same definition and is interchangeable. In closing we believe the 5.55 section of the bylaw has been correctly applied. This leaves you with the following options: 1. Apply for relief 2. File an administrative appeal and let the Board be the arbiter on the interpretation 3. Adjust the addition to comply with the required 50 foot setback.

Michael Yanovitch
Deputy Building Commissioner

333 Washington Street, Brookline, Massachusetts 02445
Tel: (617) 730-2100 Fax: (617) 739-7542
www.brooklinema.gov

ATTACHMENT 2

COPY OF REFERENCED MARCH 31, 2016 LETTER TO BUILDING DEPARTMENT

62466114 v1-WorkSiteUS-018656/0007

BROWNRUDNICK

One
Financial
Center
Boston
Massachusetts
02111
tel 617.856.8200
fax 617.856.8201

WAYNE F. DENNISON
CO-CHAIR, LITIGATION
(617) 856-8247
wdennison@brownrudnick.com

March 31, 2016

By Hand

Building Department
Town of Brookline
333 Washington Street
Brookline, MA 02445

Attn: Michael Yanovitch, Building Inspector

RE: 246 Dudley Street (a/k/a 292 Warren Street) Renovations

Dear Mr. Yanovitch:

As you may remember, this office represents Robert and Marjie Kargman (the "Kargmans"), who, along with their construction and design professionals, have planned modest additions to their home at 246 Dudley Street, also known as 292 Warren Street.[1] I understand that on Thursday, March 24, 2016, Anthony Martucci of JK Scanlan Company, LLC met with you to discuss this project and to provide a copy of the approved and stamped life safety plans.

I am told that that during the course of this discussion, you suggested that the yard between the Kargmans' home and the lot lines shared with 274 Dudley Street and 248 Dudley Street may be considered a rear yard under the Zoning By-Law. If so, a 50' setback applies (pursuant to Table 5.01). You therefore suggested that additional zoning relief may be needed with respect to the second floor addition between the main structure (built in 1908) and the subsequently permitted attached garage (built in 1987), because a portion of the planned work would be within the 50' setback.

The Kargmans greatly appreciate your guidance and preliminary input with respect to this matter, and therefore asked that this office conduct a close analysis of the permitting history of their property and of the language of the Zoning By-Law. We have now concluded that analysis. As detailed herein, the planned renovations are "as of right;" no additional zoning relief is required.

I have attached (as Exhibit A) copies of the 1987 application and subsequent approvals by the Board of Appeals and Planning Board authorizing, among other things, the construction of the Kargmans' garage within the "Front Yard" setback between the Kargmans' home and the lot lines shared with 274 Dudley Street and 248 Dudley Street. In addition, I have attached (as Exhibit B) a March 12, 1998 letter from the Building

[1] Each of the prior permits and approvals with respect to this property referred to it as 246 Dudley Street. Although the Kargmans now use 292 Warren Street as their legal address, they are prepared to make the change back to 246 Dudley Street, if necessary to secure their building permit. The Town's Engineering Department has indicated that this change may be accomplished within a matter of minutes.

brownrudnick.com

Commissioner at that time, James F. Nickerson, referencing "Front Yard Requirements" for this same area. Also attached (as Exhibit C) is a December 9, 1999 memorandum from the Planning Board to the Board of Appeals again referencing the "front" lot line as located along the Kargmans' western property boundary.

It is therefore clear that for nearly 30 years, the area to the west of the Kargmans' home has been explicitly and repeatedly deemed by the Town, its Building Department, its Planning Board and its Board of Appeals to be the Kargmans' front yard (and not a rear yard) for zoning purposes. Pursuant to Table 5.01 of the Zoning By-Law, the front yard setback for a detached dwelling (not in a cluster subdivision) in the S-40 District is 30 feet. Here, because no construction is contemplated within 30' of the Kargman's western property line, no additional zoning relief is required.

The location of the Kargmans' home relative to those of their neighbors does not alter the analysis (or change this conclusion). Under §5.55 of the Zoning By-law, where a dwelling is located on a "rear lot", the front yard depth cannot be less than the minimum rear yard specified in Table 5.01. However, a lot will be considered to be a rear lot only "if a straight line drawn from any part of the proposed building, to and perpendicular to the street providing required access to the lot, passes through any part of a conforming main building . . . on another lot." As the plot plans (attached as Exhibit D) explicitly depict, the Kargmans' property cannot be deemed a "rear lot" for purposes of the Zoning By-Law. A straight line from their home (and its proposed modifications) and perpendicular to Dudley Street passes through no portion of any main building on another lot. Accordingly, the 30' front yard setback (not the 50' rear yard setback) applies in this case.[2]

As the enclosed plot plans confirm, no construction is contemplated within the 30' setback. In fact, no alteration of the Kargmans' home is intended within more than 38' of the nearest lot line. The Kargmans therefore require no zoning relief for their proposed modifications at 246 Dudley Street and the building permits should now issue "as of right."

We thank you for your prompt assistance with this matter.

Sincerely,

BROWN RUDNICK LLP

Wayne F. Dennison

cc: Daniel F. Bennett, Building Commissioner

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[2] Although the 1987 approvals analyze the relief then requested in terms of a 50' "rear lot" setback, this analysis is irrelevant to the approvals then granted (and provided the Kargmans with no basis for appeal). There was no question that a garage constructed within 5' of the nearest lot line was within a setback, irrespective of whether the setback applied was a front, side or rear yard setback. The relief requested was deemed appropriate even when the most onerous setback was considered. Here, however, the Kargmans are proposing nothing that brings their home closer to their western lot line. Instead, they are simply planning second floor renovations to an existing structure, which, at their closest point are more than 38' from the lot line.

TOWN OF BROOKLINE
Board of Appeals

COPY

APPLICATION FOR A VARIANCE FROM THE ZONING BY-LAW
(File in Triplicate)

Date January 16, 1987

1. Name of record owner(s) Marjie B. Kargman
Address 246 Dudley Street, Brookline, Mass. Telephone No. 731-0696

2. Deed recorded in the Registry of Deeds, Book _____ Page _____
or registered in the Land Registration Office under Cert. No. _____
Document No. 128759, dated November 3, 1986 - Norfolk Registry of Deeds

3. Location of property 246 Dudley Street, Brookline Lot 5 Block 350
(Street No., Lot and Block No. from current Town Atlas)

4. Present use of property (give no. of dwelling units, if any) _____
Single Family House

5. Provision(s) of the Zoning By-Law from which a variance is requested (give Article & Section) Sections 5.50; 5.55; and 8.1(b)

6. Nature of variance requested (describe how the proposed use or building does not meet the requirements of the Zoning By-Law. Provide plans drawn to scale* where necessary for full explanation.) Front yard set back requirements are 30 ft. and 50 ft. verses a proposed front yard set back of 4 ft; the proposed extension is inhibited by the same front yard set back requirement. Section 5.43 by way of Special Permit if granted will eliminate the need for all of the said Variances.

7. What are the special conditions affecting the land or building for which the variance is requested which do not affect generally the Zoning District in which the land or building is located? This is a single family occupancy located in a S-40 zone and the lot size is actually 2½ times the required minimum or 101,467 sq. ft. thus compensating set backs, open space and excess land area which more than compensate for the slight deficiency in addition to which the alteration calls for the removal of a shed which actually is closer to the front yard lot line than the proposed addition.

8. What is the substantial hardship which would result from a literal enforcement of the provisions of the Zoning By-Law? The present residential structure is laid out inefficiently from a residential use view point and the modest proposal is to replace a garage stall with a back entrance to the house which is more workable.

9. Why does the appellant believe that the variance requested may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the Zoning By-Law?
This lot and the residence on the lot are all far removed from any neighboring buildings and from the street and the proposed modest addition will not be visible or in any way detrimental to any neighboring properties.

(Signature of record owner or appellant acting for record owner)
Charles J. Kickham, Jr., Esq.
1318 Beacon Street
Brookline, Mass. 02146

(Address)

566-5990

(Telephone No.)

*Suggested scale is 1" = 20'

To: Brookline Board of Appeals

From: Brookline Planning Board

Date: February 12, 1987

Subject: Construct addition within required front yard

Location: 246 Dudley Street

Atlas Sheet: 91
Block: 350
Lot: 5

Case #: 2845
Zoning: S-40
Lot Area: 101,467 sq. ft.

Received 2/21/87

Hearing: February 26 1987 at 7:00 p.m.

SITE AND NEIGHBORHOOD

246 Dudley Street is a large 2-story stucco house situated on a rear lot half way between Warren Street and Sears Road and connected by means of a long driveway on a private right-of-way to Dudley Street. The west end of the house which is a single story garage, is located only 15 ft. from the front lot line closest to Dudley Street, and approximately 100 ft. from the nearest neighbor (274 Dudley Street). A wooden shed, currently within that 15 ft. front yard, is only 2 feet from the lot line. A 6 ft. wood stake fence aligns that lot line and most of the driveway. The neighborhood consists entirely of large single-family residences on large lots.

APPLICANT'S PROPOSAL

Applicant proposes to add an 11 ft. one-story extension to the garage end of the house, bringing it to within 4 ft. of the lot line. The wooden shed, only 2 ft. from the lot line, will be removed.

FINDINGS

Section 5.43 Exceptions to Yard and Setback Regulations
Section 5.50 Front Yard Requirements
Section 5.55 Front Yard for Rear Lot
Section 8.1(b) alteration or Extension

	Required	Existing	Proposed	Finding
Front Yard for Rear Lot	50'	15'	4'	variance*

*If counterbalancing amenities can be provided, the Board could substitute other dimensional requirements by special permit.

PLANNING BOARD COMMENTS

The Board is concerned about the proposed increase in encroachment which results when bringing an already nonconforming structure from 15 ft. to only 4 ft. from the lot line. However, there are compensating amenities such as removal of the existing unsightly wooden shed located close to the lot line. In addition, the applicant's lot is endowed with extra large yards: 73' to the left side and 194' to the right. Finally, the impact on the nearest neighbor is diminished not only by an existing solid stake fence, but by the actual distance from the proposal to that neighbor's house: 100 feet. Therefore, the Planning Board recommends approval on condition that a landscaping plan be submitted subject to approval by the Planning Director.

File: 246 Dudley Special Permit

TOWN of BROOKLINE

Massachusetts

PLANNING DEPARTMENT
TOWN HALL
333 WASHINGTON STREET
BROOKLINE, MASSACHUSETTS 02146
(617) 730-2130

JOHN E WOODWARD, JR AICP
Planning Director

TO: Royce E. Beatty, Building Commissioner

FROM: John E Woodward, Jr., Planning Director

DATE: April 21, 1987

SUBJECT: Approval of Landscaping Plan, 246 Dudley Street, Board of Appeals Case #2845

The staff has reviewed the landscaping plan dated 4/14/87 and approves it with no conditions.

JEW

cc: Robert Kargman
170 Lake Avenue
Newton, MA 02159

TOWN of BROOKLINE

Massachusetts

10 -

BOARD OF APPEALS

TOWN OF BROOKLINE

BOARD OF APPEALS

NO. 2845 -

Petitioner, Robert and Marjie Kargman, applied to the Building Commissioner for permission to add an 11 ft. one-story extension to the garage end of the house at 246 Dudley Street, bringing it to within 4 ft. of the lot line. The wooden shed, only 2 ft. from the lot line, will be removed. The application was denied and an appeal was taken to this Board.

On January 29, 1987 the Board met and determined that the properties affected were those shown on the 1980 Town Atlas as:

Plate 91	Block 350	Lots 1 to 17 inclusive
Plate 92	Block 35	Lots 1 to 11 inclusive
Plate 90	Block 349	Lots 1 to 18 inclusive
Plate 89	Block 347	Lots 11 to 16 inclusive

Town Meeting Members Precinct 14

and fixed Thursday, February 26, 1987 at 7:00 P.M., in the Selectmen's Hearing Room on the sixth floor of Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the petitioner, to his attorney (if any of record), to the owners of properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing

was published February 5, 1987 and February 12, 1987 in the Brookline Citizen, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

PETITIONER: Robert and Marjie Kargman
LOCATION OF PREMISES: 246 Dudley Street-Precinct 14
DATE AND PLACE OF HEARING: February 26, 1987 at 7:00 P.M., in the Selectmen's Hearing Room on the sixth floor of Town Hall, 333 Washington Street, Brookline.

A public hearing will be held for a variance from Section 5.50-Front Yard Requirements; 5.55-Front Yard for Rear Lot; 8.1(b)-Alteration or Extension; and special permit under Section 5.43-Exceptions to Yard and Setback Regulations of the Zoning Bylaw, to construct an addition, as per plans, at 246 Dudley Street, said premises being located in an S-40 (Single-Family) Residence district.

Kenneth B. Hoffman
Bailey S. Silbert
Diane R. Gordon
Board of Appeals

At the time and place specified in the notice a public hearing was held by this Board. Present were Kenneth B. Hoffman, Bailey S. Silbert and Diane R. Gordon.

Applicant was represented by Attorney Charles Kickham of Brookline who described the applicant's proposal to add an 11 ft. one-story extension to the garage end of the house, bringing it to within the 4 ft. of the lot line. The wood shed, only 2 ft. from the lot line, will be removed.

Mr. Kickham described the plans submitted with the application and described the relief as a special permit where there are compensating amenities, in this case the compensating

amenities being described below in the Planning Board comments. Mr. Kickham indicated no objection to the submission of a landscape plan to be approved by the Planning Director.

246 Dudley Street is a large 2-story stucco house situated on a rear lot half way between Warren Street and Sears Road and connected by means of a long driveway on a private right-of-way to Dudley Street. The west end of the house which is a single story garage, is located only 15 ft. from the front lot line closest to Dudley Street, and approximately 100 ft. from the nearest neighbor (274 Dudley Street). A wooden shed, currently within that 15 ft. front yard, is only 2 feet from the lot line. A 6 ft. wood stake fence aligns that lot line and most of the driveway. The neighborhood consists entirely of large single-family residences on large lot.

Section 5.43 Exceptions to Yard and Setback Regulations
Section 5.50 Front Yard Requirements
Section 5.55 Front Yard for Rear Lot
Section 8.1(b) alteration or Extension

	Required	Existing	Proposed	Finding
Front Yard for Rear Lot	50'	15'	4'	variance*

*If counterbalancing amenities can be provided, the Board could substitute other dimensional requirements by special permit.

The Planning Board report to this Board of February 12, 1987 made the following observations:

> "The Board is concerned about the proposed increase in encroachment which results when bringing an already nonconforming structure from 15 ft. to only 4 ft. from the the lot line. However, there are compensating amenities such as removal of the existing unsightly wooden shed located close to the lot line. In addition, the applicant's lot is endowed with extra large yards: 73' to the left side

and 194' to the right. Finally, the impact on the nearest neighbor is diminished not only by an existing solid stake fence, but by the actual distance from the proposal to that neighbor's house: 100 feet. Therefore, the Planning Board recommends approval on condition that a landscaping plan be submitted subject to approval by the Planning Director."

Jim White of the Planning Department presented the Planning Board's comments as reflected above. The Building Commissioner indicated that the Building Department had no objection and that relief could be granted by special permit.

Accordingly, no persons having spoken in opposition to the petition, the Board by unanimous decision agrees to grant a special permit under Section 5.43 and incorporates in its findings the foregoing comments of the Planning Board. The special permit is conditioned on a landscaping plan being submitted and approved by the Planning Director of the Town of Brookline.

Unanimous Decision of the
Board of Appeals.

Kenneth B. Hoffman, Chairman

Date of Filing: March 4, 1987
A True Copy.

ATTEST:
Frances Halpern

Frances Halpern, Clerk-
Board of Appeals

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
'87 MAR -4 PM 3 29

TOWN of BROOKLINE
Massachusetts

BUILDING DEPARTMENT

James J. Nickerson
Building Commissioner

March 12, 1998

Mrs. Margie B. Kargman
246 Dudley Street
Brookline, MA 02146

Re: 246 Dudley Street

Dear Mrs. Kargman,

Your request to construct an addition per plans at 246 Dudley Street is denied.

The premises are located in a S-40 (single family) Residence District.

The plans titled "246 Dudley Street" by Sharon Dell Mitchell, Architect and dated February 23, 1998 submitted by you do not conform to the following requirements of the Town of Brookline Zoning By-Law.

1. *Section 5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.*
2. *Section 5.50; Front Yard Requirements; Variance Required*
3. *Section 5.55; Front Yard for Rear Lot; Variance Required.*
4. *Section 8.1(b); Alteration or Extension; Special Permit Required.*
5. *Board of Appeals Decision Case #2845 dated March 4, 1987; Modifications Required.*

In accordance with the provisions of the Zoning By-Law, you may apply to the Board of Appeals for the above noted special permits and variances.

Yours very truly,

James J. Nickerson
Building Commissioner

cc: Board of Appeals
Planning Department

333 Washington Street, Brookline, Massachusetts 02146
Tel: (617) 730-2100 Fax: (617) 739-7542

3464

Town of Brookline
Massachusetts

PLANNING BOARD
Town Hall, 4th Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2130 Fax (617) 730-2442

Jerome Kampler, Chairman
Kenneth Goldstein Clerk
Linda K. Hamlin
Martin Sokoloff
Mark J. Zarrillo

To: Brookline Board of Appeals

From: Brookline Planning Board

Date: December 9, 1999

Subject: Construct addition in front yard of rear lot

Location: 246 Dudley Street

Atlas Sheet: 91	Case #: 3464
Block: 350	Zoning: S - 40
Lot: 5	Lot Area (sq. ft.): 104,917

Hearing: December 9, 1999 at 8:00 p.m., continued to February 10, 2000 at 7:30 p.m.

BACKGROUND

March 4, 1987, Case # 2845 - Board of Appeals granted a special permit for an 11 foot extension of the garage toward the same lot line as in the current case, reducing the yard from 15 to 4.9 feet from the "front" lot line.

SITE AND NEIGHBORHOOD

246 Dudley Street is a large 2-story stucco house situated on a rear lot half way between Warren and Sears Road and connected by a long right-of-way to Dudley Street. The west end of the house, a single story 2-car garage, is only 4.9 feet from the front lot line, i.e., the line closest to Dudley Street, and approximately 100 feet from its nearest neighbor (274 Dudley St.). A 6 foot wood stake fence aligns that front lot line and most of the driveway. The neighborhood consists of large single family residences on large lots.

APPLICANT'S PROPOSAL

The applicants, Robert and Margie Kargman, are proposing to add an addition above the existing garage at the second floor level and behind the garage on the ground level as a west wing to the house. The additions are within the front yard setback of this rear lot. As a counterbalancing amenity, the applicants are proposing to install an evergreen screen of eleven trees along the property line where the yard relief is required.

The applicant originally submitted an initial proposal in May of 1998 but requested a continuance before going to the Planning Board or Board of Appeals to address a neighbor's concern. This plan is revised and provides a landscaped screen on the affected property line, a slightly larger "front yard" setback (1 foot) to save more existing landscaping and a modified roof line to blend better with the existing roof.

FINDINGS

Section 5.43 Exceptions to Yard and Setback Regulations
Section 5.50 Front Yard Requirements
Section 5.55 Front Yard for Rear Lot
Section 8.1(b) Alteration or Extension

	Required	Existing	Proposed	Finding
Front yard for rear lot	50 feet	5 ft.	5 to 7ft.	var./s.p.

Under Section 5.43, Exceptions to Yard and Setbacks, the Board of Appeals, by special permit, may substitute other dimensional requirements if counterbalancing amenities are provided. In this case, the applicants are proposing an evergreen screen of eleven trees along the property line where the yard relief is required.

Modification, Case #2845, March 4, 1987
The Board of Appeals allowed the extension of the petitioner's garage within the front yard setback. This proposal will extend the nonconforming setback.

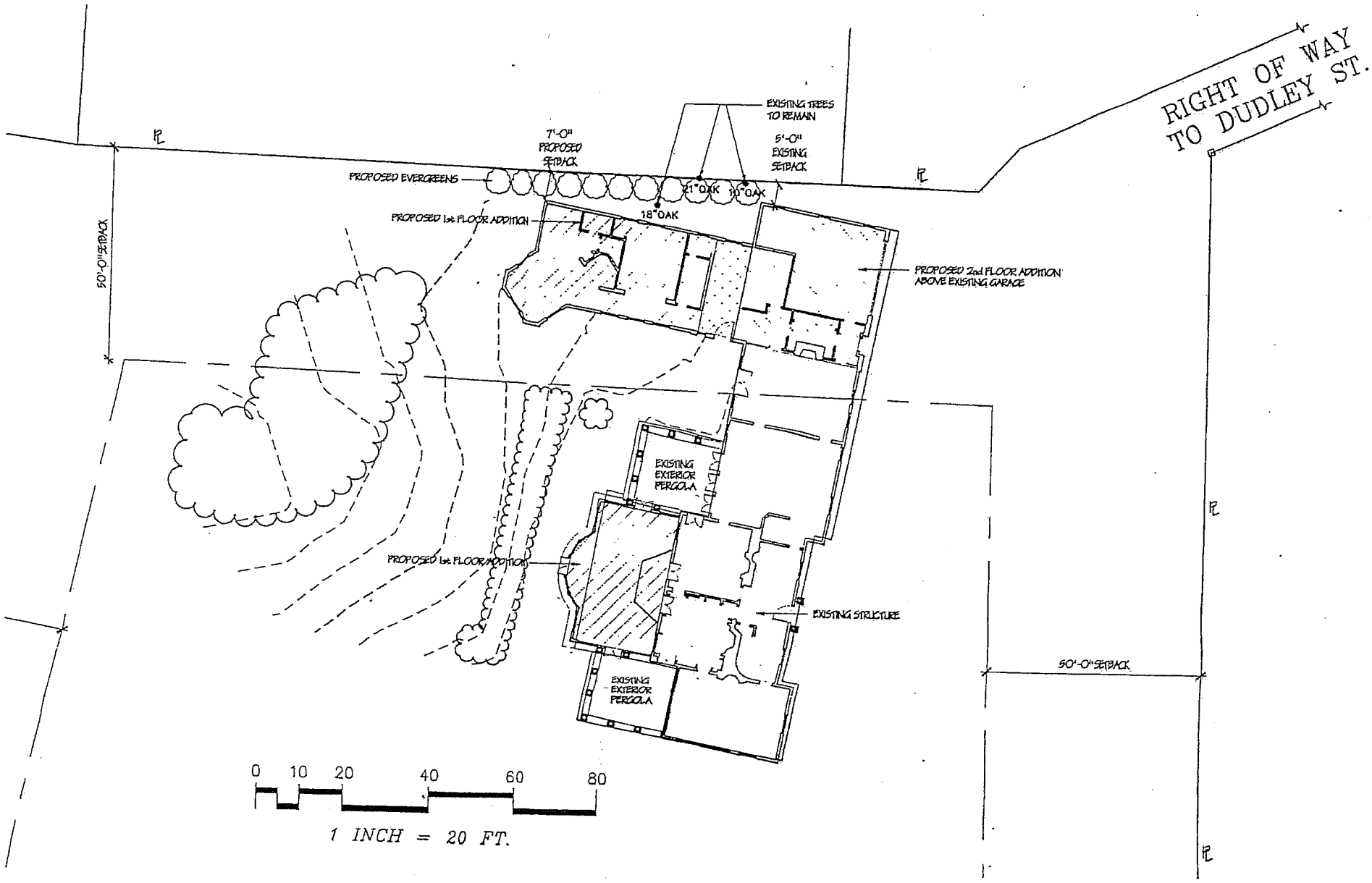
PLANNING BOARD COMMENTS

The Planning Board believes that providing a landscape screen of evergreen trees is an appropriate counterbalancing amenity for the requested special permit relief. Although the setback deficiency is significant, the closest home is over 100 feet away. Therefore, subject to a detailed landscaping plan being submitted that shows an effective landscape screen, the Planning Board recommends approval if the following conditions are attached:

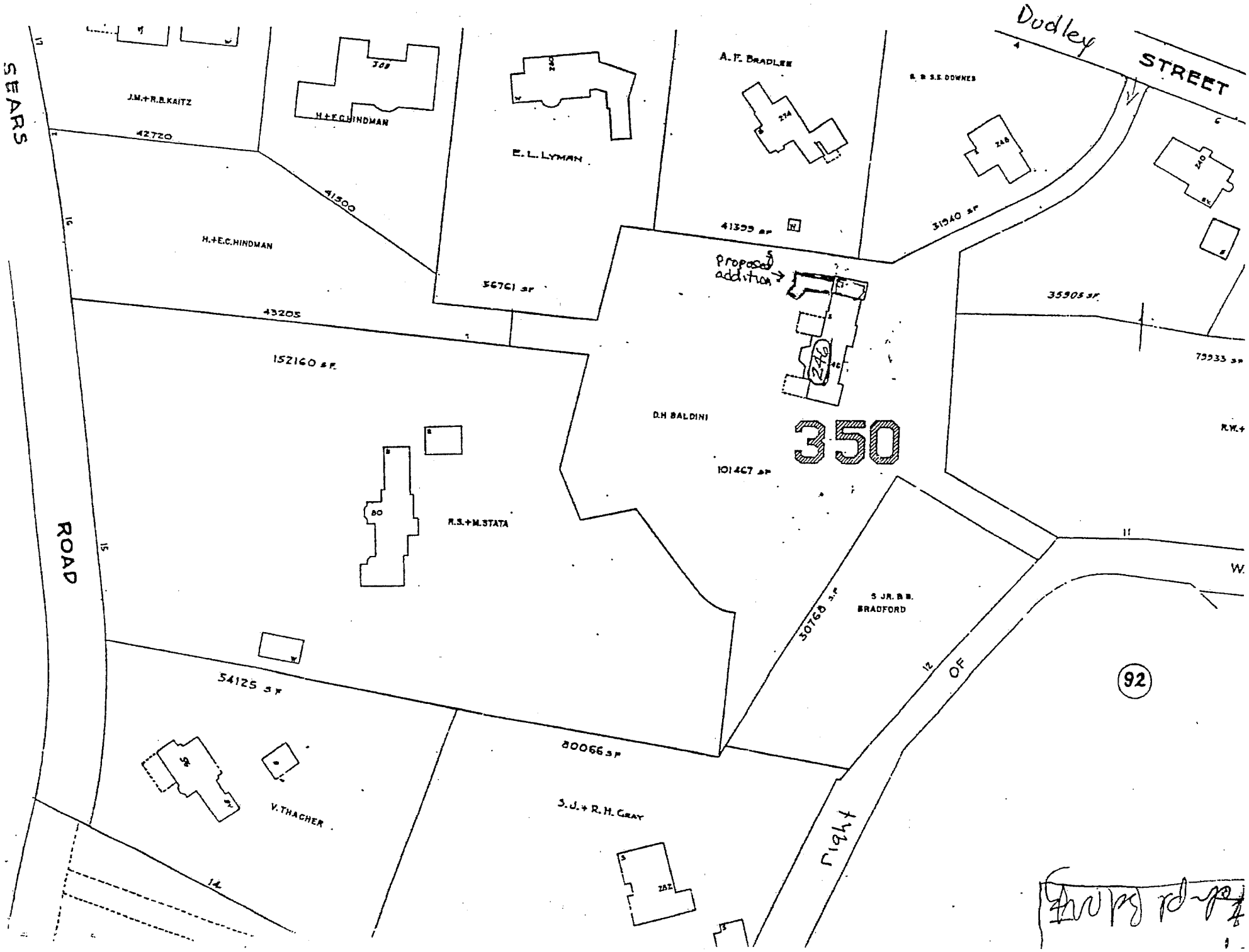
1. Detailed landscaping plans, including new plantings and removal of existing vegetation, shall be submitted for review and approval by the Planning Board.

2. As much as possible, construction vehicles shall be parked on site.

pss



DATE October 1, 1999



Dudley
STREET
SEARS
ROAD
J.M.+R.B.KAITZ
42720
H+E.C.HINDMAN
41500
H.+E.C.HINDMAN
E. L. LYMAN
56761 SF
A. F. BRADLEE
41399 SF
S. & S.S. DOWNES
31940 SF
Proposed addition
246
35905 SF
79933 SF
43205
152160 SF
D.H BALDINI
350
101467 SF
R.S.+M.STATA
80
30768 SF
S JR. B.B. BRADFORD
54125 SF
80066 SF
V. THACHER
S. J. + R. H. GRAY
right
OF
W.
92

TOWN of BROOKLINE

Massachusetts

BOARD OF APPEALS

TOWN OF BROOKLINE
BOARD OF APPEALS
246 DUDLEY STREET

Petitioners, Grenville Byford and Orit Gadiesh, filed a letter with the Building Commissioner on July 9, 2002 seeking enforcement of the Zoning By-laws and requesting (1) revocation of the building permits issued for the structure where the original garage was located and (2) issuance of a Cease and Desist Order barring any further site alterations or construction, both with respect to the premises at 246 Dudley Street. On July 19, 2002, the Building Commissioner denied the petitioners' requests, from which denial the petitioners appealed to this Board on August 13, 2002.

A hearing on this matter was duly noticed in the *Brookline Tab*, a newspaper published n Brookline and notice was sent to all parties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law.

On October 10, 2002 at 7:30 p.m. in the Selectmen's Hearing Room at 333 Washington Street, being the appointed time and place for the hearing set forth in the notice, the public hearing was opened.

Roy Cramer, attorney for the petitioners, spoke first. After giving a brief history of construction at the property, he stated that the original garage was to be only renovated. However, it was eventually demolished and a new structure created in its place. Noting that the demolished garage was a lawfully non-conforming structure, it is Mr. Cramer's contention that once it was demolished, only a variance or other zoning relief from this Board could have authorized the replacement structure that was built. He also noted that the demolished garage was built on a slab on grade, while the replacement structure had a partial basement to be used for storage and other non-habitable purposes. Mr. Cramer concluded by stating that all of his arguments, both legal and factual, are set forth in his August 13, 2002 letter which the Board has a copy of.

One of the petitioners, Grenille Byford, then spoke and he explained why the new structure should be treated differently than the garage it replaced. He concluded by stating that the Board would be setting a bad precedent if it did not overturn the Building Commissioner's denial.

Brian Levey, attorney for Marjorie and Robert Kargman, who own 246 Dudley Street, then spoke. He addressed all of the issues raised by Mr. Cramer and submitted his legal and factual memorandum addressed to the Board dated October 10, 2002.

Steven Doucette, President of S.J.D. Enterprises, Inc., the General Contractor for the Kargmans, then explained that during interior demolition of the garage, serious structural defects were discovered in the structural walls and other parts of the building and that the garage posed a

hazard as it was in danger of collapsing. This was confirmed at the hearing by Rene Mugnier, P.E. of Rene Mugnier Associates, Inc., the Structural Engineer hired by the Kargmans. No testimony was presented by the petitioners in contradiction of what was presented regarding the structural integrity of the original garage, or the need to have it demolished.

Upon presentations of the Structural Engineer's written opinion and photographs of existing conditions of the unsafe status of the original garage, the Building Commissioner issued a Remove and Replace Permit which is the principal basis of petitioners' appeal.

Frank Hitchcock then spoke on behalf of the Building Department. He reviewed the history of construction at the property and the circumstances which prompted issuance of the Remove and Replace Permit. He concluded by stating his opinion that Section 10.3 of the Zoning By-Law supports the Building Department's issuance of the Remove and Replace Permit.

Section 10.3 states "Nothing in this By-law shall prevent the restoration of a wall declared unsafe by the Building Commissioner...."

This Board finds the evidence presented by the Kargmans' consultants to be convincing regarding the condition of the garage, as well as the fact that the condition of at least one of the walls of the garage necessitated its demolition. This Board also finds that the partial uninhabitable basement of the replacement structure is not inconsistent with the Remove and Replace Permit. Therefore, this Board, by a vote of 3-0, supports the Building Commissioner and denies petitioners' appeal, relying on Section 10.3 of the Zoning By-law.

Unanimous decision of the Board of Appeals.

Lawrence E. Kaplan

Lawrence E. Kaplan, Chairman

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Date Filed: December 5, 2002

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Board of Appeals

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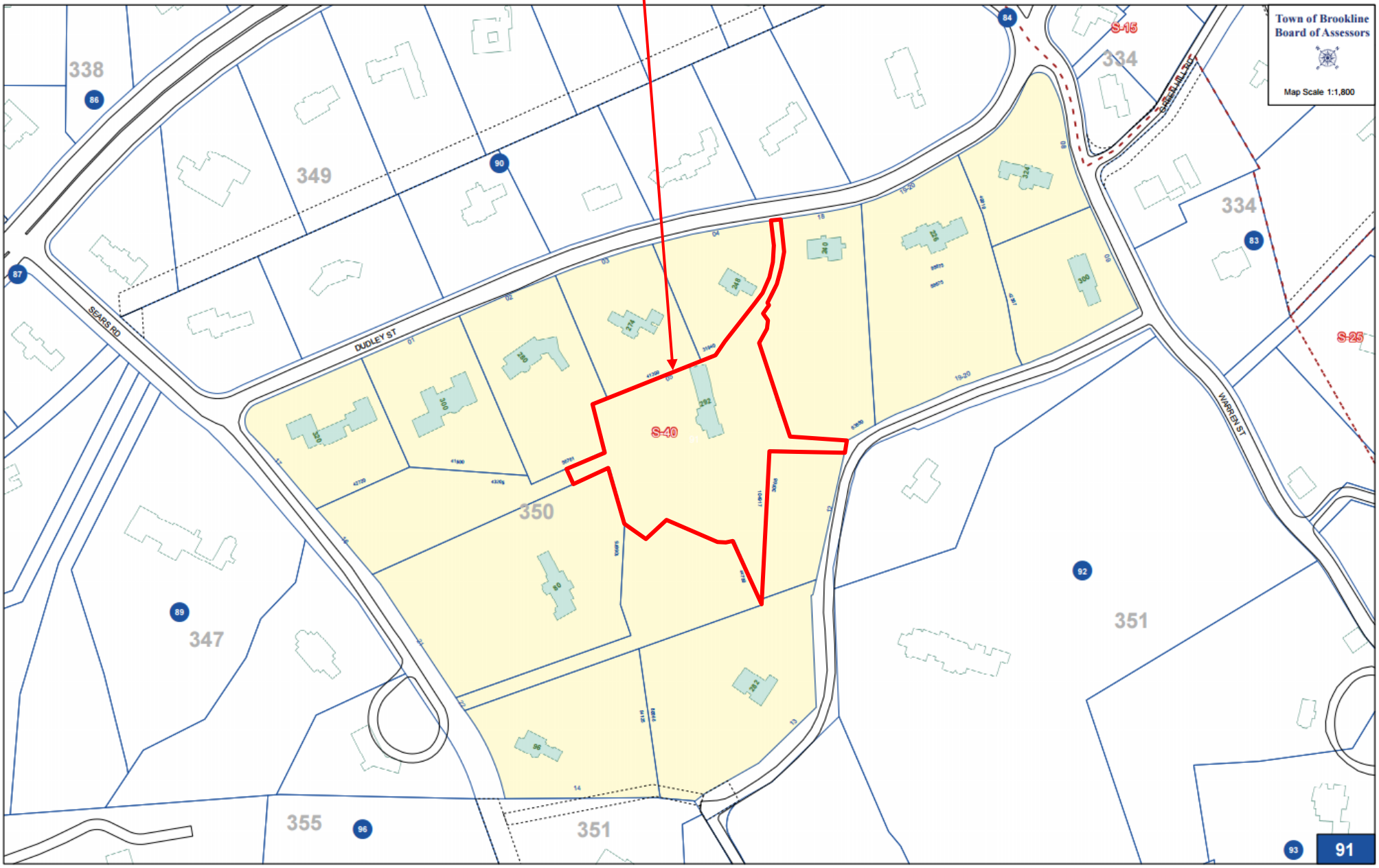
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