



BOARD OF APPEALS  
Jonathon Book, Co-Chair  
Co-Chair Jesse Geller  
Christopher Hussey

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*Town of Brookline*  
TOWN OF BROOKLINE  
BROOKLINE MASSACHUSETTS  
*Massachusetts*

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
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(617) 730-2010 Fax (617) 730-2043  
Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2013-0012

Petitioner, Martina McPherson, applied to the Building Commissioner for permission to convert the structure at 157 Babcock Street from a two-family to a three-family dwelling. The application was denied and an appeal was taken to this Board.

On March 21, 2013 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed March 21, 2013 at 7:00 p.m. in the Selectmen's hearing room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to their attorney (if any) of record, to the owners of the 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 on March 7, 2013 and March 14, 2013 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

#### NOTICE OF HEARING

**Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

**Petitioner: Martina McPherson**

**Owner: Martina McPherson**

**Location of Premises: 157 Babcock Street**

Date of Hearing: **March 21, 2013**

Time of Hearing: **7:00 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup> Floor**

A public hearing will be held for a variance and/or special permit from:

1. **4.07 – Table of Use Regulations, Use #4A**
2. **5.43 – Exceptions to Yard and Setback Regulations**
3. **5.55 – Front Yard Requirements**
4. **5.60 – Side Yard Requirements**
5. **8.02.2 -- Alteration or Extension**

of the Zoning By-Law to construct a parking area to convert the structure at 157 Babcock Street from a two-family to a three-family dwelling

Said premise located in a **T-5 Residential district**.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

**Enid Starr  
Jesse Geller  
Christopher Hussey**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jonathan Book, and Board Members Christopher Hussey and Johanna Schneider. The case was presented by the attorney for the petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance were Martina McPherson and Mya McPherson, the owners of 157 Babcock Street, and Leah Greenwald, the petitioner's architect.

Chairman Book called the hearing to order at 7:00pm. Attorney Allen stated that the petitioners propose to change the use of 157 Babcock Street from a two-family to a three-family dwelling. Attorney Allen detailed prior administrative decisions relative to 157 Babcock Street. On July 27, 1978, the Board of Appeals approved a use variance to convert the two-family dwelling into a three-family dwelling, subject to conditions. However, property was never converted. On January 15, 2013, the Brookline Preservation Commission voted unanimously to approve proposed exterior changes needed to convert the two-family dwelling into a three-family dwelling, subject only to the condition that the proposed skylights on the front of the dwelling be eliminated.

Attorney Allen presented to the Board a background of the petitioners and the property, stating the following: Martina and Mya McPherson are sisters and current owners of the two-family home at 157 Babcock Street. The home was originally purchased by their parents in 1979. At the time of 1979 purchase the property was in disarray and significant amount of money was needed to renovate. The Board authorized the conversion to a three-family home, however, for a number of personal reasons the conversation was never able to take place. After the Petitioner's mother died, the Petitioners inherited the house and have been the legal owners since 2010. This house is located on the very edge of the Graffam-McKay Historic District and is a very large house at 7,417 square feet. It is a two-family colonial revival-style dwelling that was built in 1925 and is located on a lot that is substantially larger than those in the immediate neighborhood and zoning district. Neighboring properties include both single- and two-family dwellings, as well as a multi-family condominium complex. The property borders the M-1.5 zoning district to the south. The home is in need of some attention and the biggest problem for Martina and Maya has been the constant maintenance and upkeep of this property. The first floor is a rental unit at 2,900 square feet, but the second floor is a 4,500 square foot unit which Martina McPherson currently lives in with three roommates, which are necessary to carry the financial burden of this unit. The taxes alone are over \$21,000.00 and it is on a 33,000 square foot lot that has to be

regularly maintained. The proposal would allow a third unit of 1,600 square feet to be added to the property by splitting the larger unit into two smaller units.

Attorney Allen stated that, in addition to the unanimous support from the Preservation Commission, the Planning Board voted unanimously in support taking the position that this is a huge house on a huge lot and the preservation of the structure should be paramount, the exterior modifications are minor; and there is adequate parking.

Counsel for the petitioner then discussed zoning relief required from the Board. The applicant was cited under Section 4.07 (Table of Use Regulations, Use #4A). The property's zoning district, T-5, allows for two-family dwellings, but not three-families, therefore the proposal requires a use variance. Section 9.09 (Conditions for Approval of Use Variance) describes the four conditions under which the Board may grant a use variance, provided statutory variance requirements are met. The most applicable condition for a use variance for this proposal, 9.09.1.d, is as follows:

“Existence on the lot in question of a structure(s) of appearance compatible with its vicinity which is either of historical or architectural significance which shall be preserved or restored in a manner sufficient to justify the relief granted herein, and/or contains gross floor area excessive for the use permitted in the district wherein the structure is located, and which can reasonably be maintained as a visual and taxable asset only if a nonconformity of use is permitted. A special permit under §5.09 shall be required in conjunction with every variance request pursuant to this subparagraph. “

The applicant was also cited under Section 5.09 (Design Review). Any structure for which a use variance is requested under Section 9.09.1.d, a special permit subject to the community and environmental impact and design standards under Section 5.09 is also required. The following design standards are most applicable to this proposal:

Preservation of Trees and Landscape: The subject property has a significant amount of landscaped open space that would continue to remain unchanged with this proposal.

Relation of Buildings to Environment: The proposed changes to the structure are in harmony with the surrounding landscape.

Relation of Buildings to the Form of the Streetscape and Neighborhood: The exterior alterations for the conversion are relatively minor, with the most significant, a new deck, being located at the rear and minimally visible from Babcock Street.

Open Space: There is a significant amount of open space on the property. This is clearly an amenity, and would not be altered with this proposal. However, at this point, there is nothing preventing the subdivision, sale and transfer of much of this space for future development.

Circulation: There would be no change in the existing parking facilities for this proposal. The applicant has submitted a parking plan indicating 7 parking spaces, 4 in the existing garage, for the three dwelling units.

Heritage: In January, the Preservation Commission reviewed and approved all of the proposed exterior modifications to the structure, except for the new skylights on the front dormer.

The petitioner was cited under Regarding the Use Variance: In this case, if it is demonstrated that the building is architecturally or historically significant, it could be argued that the building is being saved from demolition-by-neglect through its rehabilitation and use as a three family. Further, thanks to the financial assistance from their father, the renovation will include a fully sprinklered building as required by the building code - Further ensuring the preservation of this historic building.

Attorney Allen further added that based on the economic hardship created by the preservation and upkeep of this historic structure, and the reasonableness of this proposal, with relatively minor exterior changes, meets the variance requirements under 9.09 and the front and side yard setback relief is a pre-existing non-conforming condition. Attorney Allen detailed the requirements for finding a variance under M.G.L., C.40A, section 10, which states, in relevant part:

“The permit granting authority shall have the power . . . to grant upon appeal. . . a variance . . . where such permit granting authority specifically finds that owing to circumstances relating to the 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 the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.”

Attorney Allen stated that the lot is significantly larger than others in the area, and there is more than enough land to subdivide. The Planning Board has requested and the petitioner has agreed to essentially waive any ANR rights and require Board approval for any future subdivision, and it is an appropriate condition in exchange for approval as an ANR would allow for an increase in the intensity of use for this property. It was also a condition in the 1979 approval. In this zoning district, this is a significantly larger home on a significantly larger lot, the conversion to a three family, which had already previously been allowed by a predecessor Board, may be done with very little exterior modification, zero change to the streetscape without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. The denial of such a grant will surely cause economic hardship to the petitioner causing an inability to maintain the property.

Finally, Attorney Allen discussed relief under Section 8.02.2, where a special permit is required under Section 9.05 to alter and/or extend this non-conforming structure. As for 9.05, in looking at this conversion, (1) the specific site is an appropriate location; (2) there will be no adversely affect the neighborhood; (3) no nuisance or serious hazard to vehicles or pedestrians exists; (4) adequate and appropriate facilities will be provided for the proper operation; and (5) development will not have a significant adverse effect on the supply on housing available for low and moderate income people

The Board then asked several questions of the petitioner. Zoning Board of Appeals Member Christopher Hussey asked where the additional square footage is located on the plans. Architect Leah A. Greenwald, whose professional address is 4 Blueberry Lane, Lexington, Massachusetts, stated that the only additional square footage is located under the eaves of the top floor. She noted that is where a bathroom and small laundry area are being added. Zoning Board of Appeals Member Christopher Hussey asked if there were estimates on the cost hardships. Attorney Allen admitted that he did not have them but he stated that he would confer with his clients. Zoning Board of Appeals Member Johanna

Schneider asked if there was another building on the property. Attorney Allen stated that it was the garage and it will stay as is. Zoning Board of Appeals Chairman Jonathan Book asked if Attorney Allen would speak to the relief being sought on the front and side yard requirements. Attorney Allen stated that they are pre-existing non-con-forming and that there will be no changes to them. Chairman Book asked if they were being triggered by the deck on the third-floor unit. Attorney Allen stated yes and that there will be no change to those dimensions.

Zoning Board of Appeals Chairman Jonathan Book asked Attorney Allen to address the counter-balancing amenities that will be provided for granting the special permits. Attorney Allen stated that one would be the historic preservation of this property and the applicants will be presenting a landscaping plan. He noted that they are in conversations with Planning as to what type of landscaping plan would be appropriate. He added that the applicants are fine if that is added as a condition to the decision.

Zoning Board of Appeals Member Christopher Hussey asked if Section 5.54, which is the alignment of the front yard, supersede the need for a special permit for the front-yard setback. Chief Building Inspector Michael Yanovitch stated that it would still have to come under Section 5.43 for dimensional relief. Senior Planner Lara Curtis Hayes added that Section 5.54 doesn't grant the relief for the setback but it can under be obtained Section 5.43. Attorney Allen stated that his clients estimate that the costs for the renovations would be between \$150,000 and \$200,000 dollars.

Zoning Board of Appeals Member Christopher Hussey inquired about the creation of the third unit increasing the value of the property and thus, offsetting that cost. Attorney Allen suggested that the ANR condition is what actually reduces the value of the property. Mr. Hussey asked then if his clients objected to such a condition. Attorney Allen stated that they had no objection to it.

Zoning Board of Appeals Chairman Jonathan Book asked if there was anyone present who wished to speak in favor of this application. Sheri Flagler, whose residential address is 143 Beaconsfield Road, Brookline, Massachusetts, and a former Chair of the Preservation Commission,

stated that she was pleased that the McPherson's will be fixing up this beautiful home. She noted that it is an unusually large lot which could have been sub-divided. Ms. Flagler stated that she believes it is a very good thing for the neighborhood. She added that the Preservation Commission voted unanimously in favor of this proposal.

Zoning Board of Appeals Chairman Jonathan Book asked if there was anyone present who wished to speak in opposition to this application. Clara C. Batchelor, whose residence is 29 Manchester Road, Brookline, Massachusetts, stated she was not really here this evening to speak against this application. She stated that she wanted to see something done to ensure that the lot remains open space since that is a buildable lot. Ms. Batchelor added that she would like to see the applicant place a deed restriction on that lot. She added that the fact that they would have to come back before the Zoning Board of Appeals is not enough. She stated that it is better protection for the neighborhood if a deed restriction is in place. Ms. Batchelor noted that the Preservation Commission only looks at architecture. She urged the Board to place a deed restriction as a condition for relief. Zoning Board of Appeals Chairman Jonathan Book asked if Ms. Batchelor was recommending that an approximately 33,000 square foot lot be deed restricted to have no further building on that lot. Ms. Batchelor stated that it is more complicated than that. She stated that the applicants have the ability to sub-divide and build on that lot in a two-family district. Ms. Batchelor stated that she wants a deed restriction to limit the total number of units on that lot at three and failing that then a maximum of four in order to protect density and to preserve open space. The Board had a brief discussion about the lot and the possibility of its subdivision. Wilson Lau, whose residence is 128 Sewall Avenue, Brookline, Massachusetts, stated that he had received an improper and intimidating letter for the applicant's attorney that threatened him with lawsuits after expressing his opinions over the conversion of this property. Mr. Lau stated that he has lived in this town for five years and he takes the look and the feel of the town very seriously. He stated that he has a right to express his views without fear of retribution. Mr. Lau stated that he is fearful of his

well-being. In rebuttal, Attorney Allen stated that imposing a deed restriction is well beyond the scope of the Board. Since 1979, the applicant's family has done nothing but try to preserve this property. He stated that it's the interior that needs the work now. Attorney Allen also stated that the Preservation Commission understood that the intent of this proposal was to construct a third unit and that the Commission approved the construction of the rear porch.

Lara Curtis Hayes, Planner for the Town of Brookline, delivered the findings of the Planning Board:

**FINDINGS:**

**Section 4.07 – Table of Use Regulations, Use #4A**

The property's zoning district, T-5, allows for two-family dwellings, but not three-families, therefore the proposal requires a use variance. **Section 9.09, Conditions for Approval of Use Variance**, describes the four conditions under which the Board of Appeals may grant a use variance, provided statutory variance requirements are met. The most applicable condition for a use variance for this proposal, **9.09.1.d**, is as follows:

Existence on the lot in question of a structure(s) of appearance compatible with its vicinity which is either of historical or architectural significance which shall be preserved or restored in a manner sufficient to justify the relief granted herein, and/or contains gross floor area excessive for the use permitted in the district wherein the structure is located, and which can reasonably be maintained as a visual and taxable asset only if a nonconformity of use is permitted. A special permit under **§5.09** shall be required in conjunction with every variance request pursuant to this subparagraph.

In this case, if it is demonstrated that the building is architecturally or historically significant, it could be argued that the building is being saved from demolition-by-neglect through its rehabilitation and use as a three family.

**Section 5.09 – Design Review**

Any structure for which a use variance is requested under **Section 9.09.1.d**, a special permit subject to the community and environmental impact and design standards under **Section 5.09** is also required. The following design standards are most applicable to this proposal:

*Preservation of Trees and Landscape:* The subject property has a significant amount of landscaped open space that would continue to remain unchanged with this proposal.

*Relation of Buildings to Environment:* The proposed changes to the structure are in harmony with the surrounding landscape.

*Relation of Buildings to the Form of the Streetscape and Neighborhood:* The exterior alterations for the conversion are relatively minor, with the most significant, a new deck, being located at the rear and minimally visible from Babcock Street.

*Open Space:* There is a significant amount of open space on the property. This is clearly an amenity, and would not be altered with this proposal. However, at this point, there is nothing preventing the subdivision, sale and transfer of much of this space for future development.

*Circulation:* There would be no change in the existing parking facilities for this proposal. The applicant has submitted a parking plan indicating 7 parking spaces, 4 in the existing garage, for the three dwelling units.

*Heritage:* In January, the Preservation Commission reviewed and approved all of the proposed exterior modifications to the structure, except for the new skylights on the front dormer.

**Section 5.43 – Exceptions to Yard and Setback Regulations**

**Section 5.55 – Front Yard Requirements**

**Section 5.60 – Side Yard Requirements**

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
Front Yard Setback	25'	17.86'	17.86'	Special Permit*/ Variance
Side Yard Setback	20'	15.06'	15.06'	Special Permit*/ Variance

\* Under Section 5.43, the Board of Appeals may waive setback requirements if a counterbalancing amenity is provided.

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter a non-conforming structure.

Ms. Curtis stated that the Planning Board is supportive of the conversion from a two- to a three-family dwelling. The proposed exterior modifications are minor; however, the plans should be revised to remove the proposed skylights from the front dormer to be in compliance with the decision of the Preservation Commission. The property has sufficient parking for three units, and there is a significant amount of open space on the property. The dwelling is quite large for only two units, so the conversion should make property maintenance more financially feasible. The lot is significantly larger than others in the area, and there is more than enough land to subdivide. Even though the property is located in a local historic district, the Planning Board recommends a condition limiting future subdivision of the property without the prior review and approval of the Board of Appeals, particularly since this application allows for an increase in the intensity of use for this property. Therefore, should the Board of Appeals find that the applicant meets the statutory requirements for a variance and a use variance, the

Planning Board recommends approval of the plans by Leah Greenwald, Architect, dated 12/27/2012 subject to the following conditions:

1. Prior to issuance of a building permit, final elevations, indicating all exterior alterations and proposed materials (including the elimination of the proposed sky lights on the front of the dwelling shown on the 12/27/12 plans), shall be submitted to the Preservation Commission for review and approval, in consultation with the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit an updated final site plan and a final landscaping plan, indicating all counterbalancing amenities, setbacks and parking areas, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. The lot shall not be subdivided without the prior review and approval by the Board of Appeals.
4. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Yanovich, Chief Building Inspector for the Building Department, to deliver the comments of the Building Department. Chief Building Inspector Michael Yanovitch, for the Building Department, stated that the Building Department had no objections to the relief sought under this application. He stated that the special permit relief is minimal and it is mostly pre-existing non-conforming. He noted that while they are adding a third unit it does not increase the footprint of the building. Mr. Yanovitch stated that from a Building Department standpoint we are getting a safer building with a new fire alarm and suppression system. He stated that should the Board grant the requested relief the Building Department will work with the applicants to ensure their work is up to code and that they conform to any conditions in the Board's decision.

In deliberation, Zoning Board of Appeals Member Christopher Hussey stated that he was in support of the relief requested. He noted that if financial hardship is an element for the granting of variances, he would like to have the Board receive supporting backup in the future. Mr. Hussey also noted that this is a unique lot with a distinctive building located on it within the district. He stated that it

surrounded by a number of multi-family districts. He stated that the condition requiring the approval of the Board of Appeals to any subdivision of the property, as recommended by the Planning Board, is appropriate and because of the lot size you could possibly have a total of three buildable lots.

Zoning Board of Appeals Member Johanna Schneider stated that she is in support of the relief because the lot is unique and it should have no problem supporting the additional unit. She stated that if she has any concern it's the showing of financial hardship. She noted that, while the cost of the renovations may be considerable, they are creating a third rental unit and she is confident that they will receive a high rent for it in such a desirable neighborhood.

Zoning Board of Appeals Chairman Jonathan Book stated that he can appreciate that the maintenance of an historic house in an historic neighborhood as a financial hardship. He noted that this Board has in numerous cases over numerous years supported use variances under Section 9.09. Chairman Book stated that he thinks the relief is appropriate. He noted that the applicants have made a case for a use variance and a variance under the general requirements of Chapter 40A, section 10, where the uniqueness of the lot and the financial hardship applies. He stated that converting this house from a two-family to a three-family is not adverse to the neighborhood. He added that since it is such a large lot he was uncomfortable of completely prohibiting the applicants from any subdivision down the road. He added the condition requiring them to come back to the Board for any subdivision proposal was more than sufficient. Chairman Book then added that the special permits are appropriate under Section 8.02 and meet the requirements of Section 9.05.

Zoning Board of Appeals Member Christopher Hussey stated, rather than landscaping, he believes the preservation of the historic structure and the large lot as a counter-balancing amenity to support the front and side yard setback relief. Zoning Board of Appeals Chairman Jonathan Book stated that the preservation of the structure is the basis for the grant of the use variance, it would be double counting to use it as a counter-balancing amenity. He agreed that the restriction on subdividing the lot

and the proposed landscaping could serve as counter-balancing amenities. Zoning Board of Appeals Member Johanna Schneider inquired if the language of the ANR condition was too restrictive. Zoning Board of Appeals Chairman Jonathan Book stated that the applicant express a willingness to come back before the Board if they wished to subdivide. Zoning Board of Appeals Member Christopher Hussey stated that what he is trying to accomplish is to remove landscaping as a counter-balancing amenity because it is so transient.

The Board then determined, by unanimous vote that the requirements for a variance and for **Sections 4.07; 5.43; 5.55; 5.60;** and **Section 8.02.2** were met. The Board made the following specific findings pursuant to said **Section 9.05:**

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

Upon motion made and duly seconded, it was UNANIMOUSLY

VOTED: That the relief sought under BOA#2013-0012 – 157 Babcock Street, as proposed in the plans by Leah Greenwald, Architect, dated 12/27/12 subject to the following conditions:

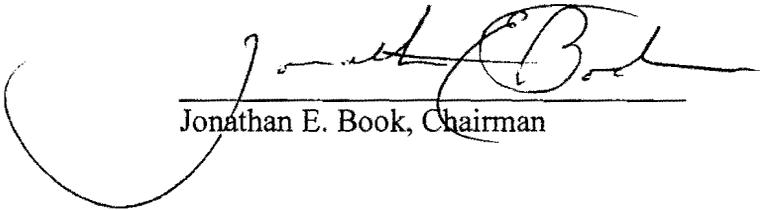
1. Prior to issuance of a building permit, final elevations, indicating all exterior alterations and proposed materials (including the elimination of the proposed sky lights on the front of the dwelling shown on the 12/27/12 plans), shall be submitted to the Preservation Commission for review and approval, in consultation with the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit an updated final site plan and a final landscaping plan, indicating all counterbalancing amenities, setbacks and parking areas, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. The lot shall not be subdivided without prior review and approval by the Board of Appeals.

4. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

Filing Date: 2013 May 10, 2013

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 Jonathan E. Book, Chairman

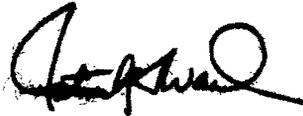
Twenty days have elapsed and no appeal has been filed.

A True Copy  
ATTEST:



\_\_\_\_\_  
Patrick J. Ward  
Clerk, Board of Appeals

A True Copy:  
ATTEST:



\_\_\_\_\_  
Patrick J. Ward  
Town Clerk

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