

Danielle Justo, Esq.
617.556.3841
djusto@richmaylaw.com

March 31, 2021

VIA FIRST-CLASS MAIL AND EMAIL

Medway Planning Board
155 Village Street
Medway, MA 02053
ATTN: Susan E. Affleck-Childs, Planning and Economic Development Coordinator

Re: 163-165 Main Street – Medway Mill Project (the “Property”)

Dear Members of the Medway Planning Board:

Our firm represents John Greene, Trustee of the 165 Main Street Trust (“Applicant”), who applied for “Revised Site Plan Approval” on December 24, 2020 for a proposed mill redevelopment project (the “Project”) on the 163-165 Main Street parcel, which is the subject of a Site Plan Application originally submitted February 18, 2020. On behalf of the Applicant, we request that the Revised Site Plans be approved so that the Applicant can move forward and implement the plans to provide the required parking and alleviate traffic and safety concerns. In support, we provide the following history of the Property:

1. The Property is shown as Parcel 48-92 on the Medway Assessor’s Map (See attached Exhibit A) and consists of approximately 7.28 acres. The following deeds attached as Exhibit B show the chain of title:
 - a. Applicant purchased the Property by deed from Medway Mill, LLC recorded on January 30, 2007 with Norfolk Registry of Deeds (the “Registry”) in Book 24499, Page 10.
 - b. Medway Mill, LLC acquired the Property by deed from Chicken Brook Realty Corp. recorded on July 1, 2003 with the Registry in Book 19233, Page 373.
 - c. Chicken Brook Realty Corp. acquired the Property by deed from Footwear Associated Products, Inc. recorded on December 30, 1994 with the Registry in Book 10775, Page 116.
 - d. Footwear Associated Products, Inc. acquired the Property by deed from United Shoe Machinery recorded on October 17, 1984 with the Registry in Book 6521, Page 36.
 - e. United Shoe Machinery Corporation acquired the Property by deed from Medway Mills, Inc. recorded on August 14, 1951 with the Registry in Book 3024, Page 23.

Medway Planning Board
March 31, 2021
Page 2

The above-listed deeds contain the same descriptions of the 7.28 acre Property, namely as Parcels 1 and 2 in the legal descriptions. According to M.G.L.c.40A, Sec.6, since Parcels 1 and 2 were contained in the same deeds, they therefore merged in title by common ownership since 1951.

The Town records also accurately reflect the Registry records. According to the Assessor's Records, the Property is shown as one lot, namely, Parcel 48-92 (See Exhibit A). The current Medway Zoning Map dated 11-13-2020 (Exhibit C) also shows the Property as a merged parcel located within Agricultural- Residential II District and the Main Street AUOD and the Mill Conversion Subdistrict.

Therefore, the Town records accurately reflect the merged parcels as one single 7.28 lot. The Supreme Judicial Court has consistently held that adjoining parcels may and, in certain instances, **must** be considered one lot for zoning purposes. Heald v. Zoning Board of Appeals of Greenfield, 7 Mass. App. Ct. 286 (1979). Vetter v. Zoning Board of Appeal of Attleboro, 330 Mass. 628, 630, 116 N.E.2d 277 (1953). Vassalotti v. Board of Appeals of Sudbury, 348 Mass. 658, 661, 204 N.E.2d 924 (1965). Gaudet v. Building Inspector of Dracut, 358 Mass. 807, 808, 265 N.E.2d 375 (1970).

2. The Property contains the "Stone Mill" built in the 1800s which pre-dates the Medway Zoning By-law and which has been used for industrial and commercial uses throughout the last century. Though the Property is located within the Agricultural-Residential II District, it enjoys both the benefits of the AUOD and Subdistrict as well as pre-existing, non-conforming industrial and commercial uses. Further, a prior owner (Chicken Brook Realty Corp. – see above) obtained a Special Permit at an August 2, 1995 hearing which was recorded with the Registry on May 6, 1996 in Book 11340, Page 572 (the "Special Permit"). In a letter dated May 6, 2009, the Building Inspector stated that the Property conformed to the then-current Bylaw, subject to the Special Permit. According to the Special Permit, commercial uses, including, but not limited to light manufacturing, assembly, and storage; as well as office, retail, banking, restaurant and showroom facilities were allowed. However, the Special Permit required the Property to have one parking space for every 300 s.f. of retail space and listed 94 spaces (6 handicapped) at the Property at the time. The current Bylaw, however, requires additional parking spaces for such commercial uses, therefore the parking lot is pre-existing and nonconforming. The initial Site Plan approval was based on the current parking area which contains 83 parking spots. This is insufficient to support the current commercial uses under the By-law. Page 4 of the Revised Site Plan is attached hereto and contains the parking requirement calculation. According to Section 7.1, Table 3 of the current Bylaw, its commercial business uses require 1/300 s.f. According to the Applicant's surveyor, this results in 134 required parking spaces. The purpose of the Applicant's Revised Site Plan Approval is to add the

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March 31, 2021
Page 3

parking spaces required under the current Bylaw. By conforming with the current parking requirements, the Applicant is actually *reducing* the non-conformity of the Project. The additional parking will not increase the nonconforming nature of the Property and will not be substantially more detrimental to the neighborhood, but rather mitigate the parking issue.

3. According to the Applicant, the parking is insufficient to support the Project and the tenants, guests, and invitees are parking along the Lincoln Street entrance. Tenants are parking along the entrance and roadway, for example, last summer, the operator of b.Lux Beauty Salon had her employees parking on Lincoln Street as the parking situation was so dire. In the interest of public safety and to promote the safe flow of traffic for egress and ingress to the Project's structures, the additional parking area must be provided to adequately address these safety concerns.

To expedite this request, I am available to discuss the matter further at your convenience. We appreciate your time and consideration in reviewing this history of the Property and trust it will provide the necessary support for you to approve the proposed Revised Site Plans.

Very truly yours,



Danielle Justo

Cc: John Greene, Trustee

EXHIBIT A

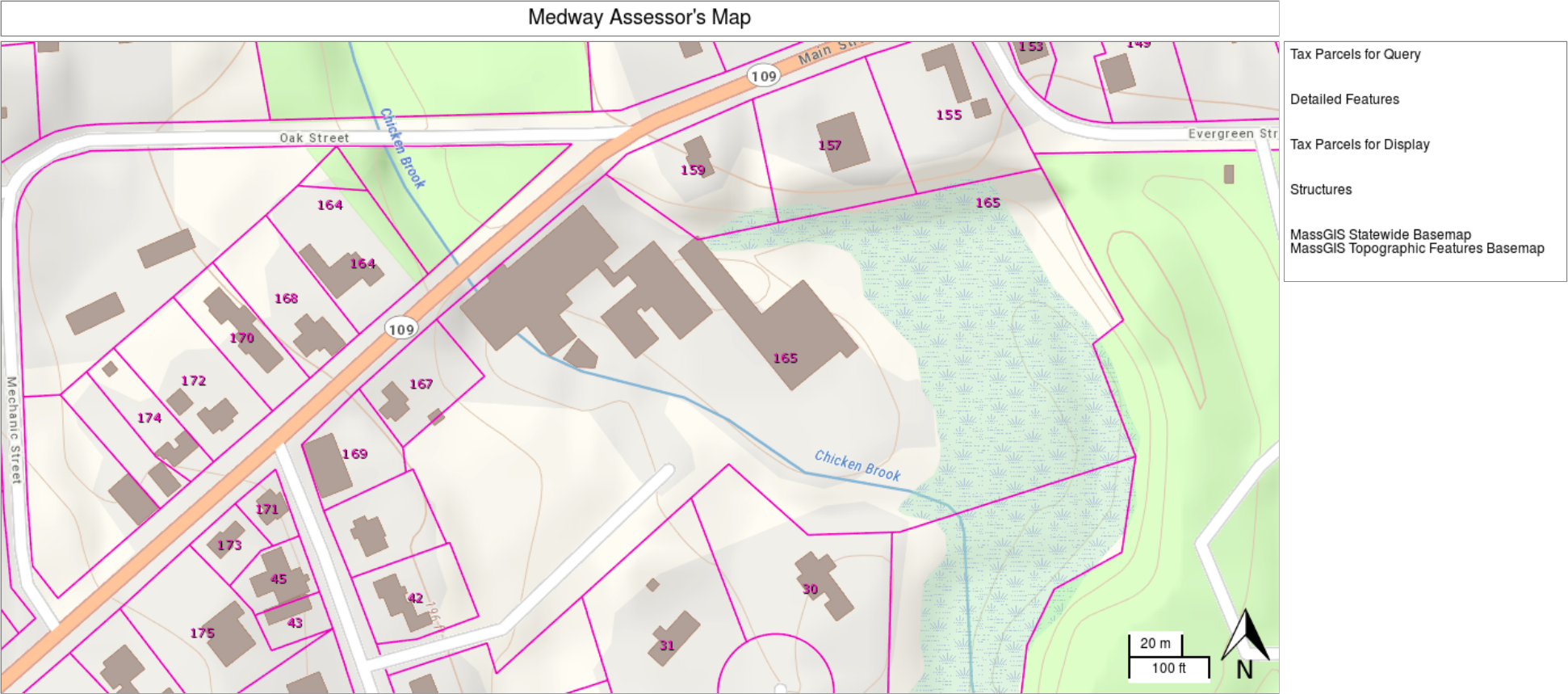


EXHIBIT B

7
Francesco Mercuri
Attorney At Law
73 Lexington Street
Newton, MA 02466

Bk 24499 Pg 10 #10839
01-30-2007 @ 01:33p

DEED

Medway Mill, LLC, a limited liability company duly established under the laws of the Commonwealth of Massachusetts, and having its usual place of business at 163-165 Main Street, Medway, Norfolk County, Massachusetts

for consideration paid, and in full consideration of \$1,465,000.00

grants to John J. Greene, Trustee of 165 Main Street Realty Trust, u/d/t dated January 25, 2007, to be recorded herewith

with quitclaim covenants

PARCEL 1

A certain parcel of land situated on the easterly side of Lincoln Street in that part of Medway, Norfolk County, Massachusetts, known as West Medway, and bounded and described as follows:

Westerly by Lincoln Street thirty-eight and 45/100 (38.45) feet;

Northerly by land now or formerly of Dodge by two lines measuring together one hundred thirty-six and 5/10 (136.5) feet;

Westerly by said land now or formerly of Dodge and by land now or formerly of the Trustees of the Bass River Land Company one hundred ninety-six and 5/10 (196.5) feet;

Southerly by other land of said Bass River Land Company seven (7) feet;

Westerly by land now or formerly of Robbins twenty-eight and 3/10 (28.3) feet;

Northwesterly by land now or formerly of Robbins and by land now or formerly of the grantors two hundred four and 3/10 (204.3) feet;

Northeasterly, northerly and northeasterly again by land now or formerly of the Grantors by several lines measuring together two hundred ninety-nine and 5/10 (299.5) feet;

Southeasterly by land now or formerly of Clark four hundred ten (410) feet;

Westerly forty (40) feet and Southerly one hundred thirty-two (132) feet by land now or formerly of Gierling; by all or any of said measurements more or less.

Said land is subject to a Notice of Variance dated August 3, 1973 and recorded at the Norfolk District Registry of Deeds, Book 4973, Page 239.

PARCEL 2

A certain parcel of land situated on Main Street in that part of Medway in the County of Norfolk and Commonwealth of Massachusetts called West Medway bounded and described as follows:

Northwesterly by said Main Street two hundred eighty-six and 79/100 feet;

Northeasterly one hundred forty-six and 04/100 feet;

Northerly, easterly, southeasterly and easterly again 1436 feet more or less said last two bounds being by land now or formerly of C.E. Lawrence, by land now or formerly of Willis Clark and by the Old Cemetery;

Southeasterly one hundred sixty and 38/100 feet;

Southwesterly two hundred sixty-one and 36/100 feet;

RECEIVED AND RECORDED
NORFOLK COUNTY
REGISTRY OF DEEDS
DEDHAM, MA
CERTIFY
William P. O'Donnell
WILLIAM P. O'DONNELL, REGISTER

SEE PLAN FILED IN 2007
PLAN BOOK 564 PAGE 90-91

Westerly two hundred forty and 90/100 feet;

Southerly one hundred ten and 22/100 feet;

Southwesterly two hundred seventy and 60/100 feet;

Southerly one hundred fourteen and 84/100 feet;

Southwesterly fifty-three and 46/100 feet; and

Southeasterly sixty-two feet, said last eight bounds being by land now or formerly of Hunt and now or late of Collins, now or late of Ollendorff and now or late of Bullard; and

Southwesterly by land now or late of Patterson ninety-one and 88/100 feet.

Said premises are shown as Parcel 2 on a plan of land entitled "Plan of Land in Medway, Massachusetts dated July 7, 1951" and recorded at Norfolk Registry of Deeds in Book 3024, Page 23. Said premises contained 8.09 acres more or less according to said plan.

There is excepted from this conveyance the premises shown as belonging to Anne M. Cox, containing 4.114 acres, on a plan entitled "Plan of Land in Medway, MA.", prepared for Anne M. Cox, date: February 25, 1991, Engineering, Surveying & Planning Associates, recorded with Norfolk Deeds as Plan No. 133 of 1991 in Plan Book 398.

The foregoing exception is required, is necessary and relevant to the title of the said premises and will benefit and be of assistance in clarifying title to the said premises as the description in various deeds and mortgages since July 1951 are based upon a plan of record which is erroneous and depicts more land than was owned by the then owner of the premises in 1951. The said erroneous plan is entitled "Plan of Land in Medway, Mass.", dated July 7, 1951, recorded with Norfolk Deeds as Plan No. 975 of 1951 in Book 3024, Page 23.

Subject to easements granted to the Town of Medway as set forth in Norfolk Deeds, Book 4672, page 713 and Book 11605, Page 569.

Subject to Order for the Taking of Land for sewer construction as set forth in Norfolk Deeds, Book 5475, Page 614.

Being the same and all of the same premises conveyed to the Grantor by deed of Chicken Brook Realty Corp., dated July 1, 2003, recorded with Norfolk Deeds, Book 19233, Page 373.

For further reference, see Plan entitled "Medway Mill Site Plan owned by Medway Mill, LLC located at 161-165 Main Street In the Town of Medway County of Norfolk, Commonwealth of Massachusetts Dated: April 4, 2005, Revised October 7, 2005, Scale: 1" = 40' Surveyed by Sterling D. McCosh, P.L.S." and recorded herewith.

Executed as a sealed instrument this 30th day of January, 2007.

Medway Mill, LLC

BY

Michael G. Kornitzer

Michael G. Kornitzer,
Manager

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 30th day of January, 2007, before me, the undersigned notary public, personally appeared Michael G. Kornitzer, Manager as aforesaid, and proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose.

CANCELLED
JAN 30 2007
DEEDS REG#17
NORFOLK

01
01/30/07 1:33PM
000000 #9925

FEE \$6680.40
CASH \$6680.40

Francesco Mercuri
Francesco Mercuri - Notary Public
My Commission Expires: June 14, 2013



FRANCESCO MERCURI
Notary Public
Commonwealth of Massachusetts
My Commission Expires
June 14, 2013



CERTIFY

William P. O'Donnell
WILLIAM P. O'DONNELL, REGISTER

DEED

Bk 19233 Pg 373 #152514
07-01-2003 @ 02:20p

Chicken Brook Realty Corp., a corporation duly established under the laws of Commonwealth of Massachusetts, and having its usual place of business at 163 Main Street, Medway, Norfolk County, Massachusetts

for consideration paid, and in full consideration of \$900,000.00

grants to Medway Mill, LLC, a Massachusetts limited liability company, duly organized and existing under law with a usual place of business at 163 Main Street in said Medway

with quitclaim covenants

PARCEL 1

A certain parcel of land situated on the easterly side of Lincoln Street in that part of Medway, Norfolk County, Massachusetts, known as West Medway, and bounded and described as follows:

Westerly by Lincoln Street thirty-eight and 45/100 (38.45) feet;

Northerly by land now or formerly of Dodge by two lines measuring together one hundred thirty-six and 5/10 (136.5) feet;

Westerly by said land now or formerly of Dodge and by land now or formerly of the Trustees of the Bass River Land Company one hundred ninety-six and 5/10 (196.5) feet;

Southerly by other land of said Bass River Land Company seven (7) feet;

Westerly by land now or formerly of Robbins twenty-eight and 3/10 (28.3) feet;

Northwesterly by land now or formerly of Robbins and by land now or formerly of the grantors two hundred four and 3/10 (204.3) feet;

Northeasterly, northerly and northeasterly again by land now or formerly of the Grantors by several lines measuring together two hundred ninety-nine and 5/10 (299.5) feet;

Southeasterly by land now or formerly of Clark four hundred ten (410) feet;

Westerly forty (40) feet and Southerly one hundred thirty-two (132) feet by land now or formerly of Gierling; by all or any of said measurements more or less.

Said land is subject to a Notice of Variance dated August 3, 1973 and recorded at the Norfolk District Registry of Deeds, Book 4973, Page 239.

PARCEL 2

A certain parcel of land situated on Main Street in that part of Medway in the County of Norfolk and Commonwealth of Massachusetts called West Medway bounded and described as follows:

Northwesterly by said Main Street two hundred eighty-six and 79/100 feet;

Northeasterly one hundred forty-six and 04/100 feet;

Northerly, easterly, southeasterly and easterly again 1436 feet more or less said last two bounds being by land now or formerly of C.E. Lawrence, by land now or formerly of Willis Clark and by the Old Cemetery;

Southeasterly one hundred sixty and 38/100 feet;

Southwesterly two hundred sixty-one and 36/100 feet;

Property address: 161-163-165 Main Street, Medway, MA

Westerly two hundred forty and 90/100 feet;

Southerly one hundred ten and 22/100 feet;

Southwesterly two hundred seventy and 60/100 feet;

Southerly one hundred fourteen and 84/100 feet;

Southwesterly fifty-three and 46/100 feet; and

Southeasterly sixty-two feet, said last eight bounds being by land now or formerly of Hunt and now or late of Collins, now or late of Ollendorff and now or late of Bullard; and

Southwesterly by land now or late of Patterson ninety-one and 88/100 feet.

Said premises are shown as Parcel 2 on a plan of land entitled "Plan of Land in Medway, Massachusetts dated July 7, 1951" and recorded at Norfolk Registry of Deeds in Book 3024, Page 23. Said premises contained 8.09 acres more or less according to said plan.

There is excepted from this conveyance the premises shown as belonging to Anne M. Cox, containing 4.114 acres, on a plan entitled "Plan of Land in Medway, MA.", prepared for Anne M. Cox, date: February 25, 1991, Engineering, Surveying & Planning Associates, recorded with Norfolk Deeds as Plan No. 133 of 1991 in Plan Book 398.

The foregoing exception is required, is necessary and relevant to the title of the said premises and will benefit and be of assistance in clarifying title to the said premises as the description in various deeds and mortgages since July 1951 are based upon a plan of record which is erroneous and depicts more land than was owned by the then owner of the premises in 1951. The said erroneous plan is entitled "Plan of Land in Medway, Mass.", dated July 7, 1951, recorded with Norfolk Deeds as Plan No. 975 of 1951 in Book 3024, Page 23.

Subject to easements granted to the Town of Medway as set forth in Norfolk Deeds, Book 4672, page 713 and Book 11605, Page 569.

Subject to Order for the Taking of Land for sewer construction as set forth in Norfolk Deeds, Book 5475, Page 614.

Being the same and all of the same premises conveyed to the Grantor by deed of Footwear Associated Products, Incorporated, dated December 28, 1994, recorded with Norfolk Deeds, Book 10775, Page 116.

IN WITNESS WHEREOF, the said Chicken Brook Realty Corp. has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Robert W. Rojee, its President and Michael E. Rojee, its Treasurer, hereto duly authorized this 1st day of JULY in the year two thousand three.

Signed and sealed in
the presence of

Chicken Brook Realty Corp.

R. D. MacIsaac

BY

Robert W. Rojee
Robert W. Rojee, President

Michael E. Rojee
Michael E. Rojee, Treasurer

THE COMMONWEALTH OF MASSACHUSETTS

Norfolk, SS.

July 1, 2003

Then personally appeared the above-named Robert W. Rojee, President and Michael E. Rojee, Treasurer, and acknowledged the foregoing instrument to be the free act and deed of the Chicken Brook Realty Corp., before me

Richard D. Maciolek
Notary Public

My commission expires:

RICHARD D. MACIOLEK
NOTARY PUBLIC
My Commission Expires July 1, 2005

CANCELLED
JUL - PEDHAM
DEEDS REG#17
NORFOLK

07/01/03 2:17PM 01
000000 #0260

FEE \$4104.00

CASH \$4104.00

14558 25

BK 10775 PG 116

Footwear Associated Products, Incorporated

a corporation duly established under the laws of the Commonwealth of Massachusetts and having its usual place of business at 163 Main Street, Medway, Norfolk

County, Massachusetts, in consideration of One Dollar (\$1.00) and assumption of first mortgage

grants to Chicken Brook Realty Corp., a corporation duly established under the Commonwealth of Massachusetts and having its usual place of business at

with quitclaim covenants the land in

See Exhibit "A" attached hereto for description of the property.

RECORDED
NORFOLK COUNTY REGISTRY OF DEEDS
DEDHAM, MA
CERTIFY
Barry L. Farrington
BARRY L. FARRINGTON, REGISTER

94 DEC 30 AM 11:12

RECEIVED
NORFOLK COUNTY
REGISTRY OF DEEDS

In Witness Whereof the said Footwear Associated Products, Incorporated has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Donald H. Hovey and Barbara L. Farrington its President and * hereto duly authorized, this 28th day of December in the year one thousand nine hundred and ninety-four.

Signed and sealed in presence of
*Treasurer
Footwear Associated Products, Incorporated
Donald H. Hovey President
by Donald H. Hovey, President
Barbara L. Farrington Treasurer
By: Barbara L. Farrington, Treasurer

The Commonwealth of Massachusetts

Worcester ss. December 28, 19 94

Then personally appeared the above named Donald H. Hovey, President and Barbara L. Farrington, Treasurer

and acknowledged the foregoing instrument to be the free act and deed of the Footwear Associated Products, Incorporated

before me

George V. Holland
George V. Holland

Notary Public
JAMES C. HOLLAND

My commission expires 6/8/2001 10x

EXHIBIT "A"

PARCEL 1

A certain parcel of land situated on the easterly side of Lincoln Street in that part of Medway, Norfolk County, Massachusetts, known as West Medway, and bounded and described as follows:

Westerly by Lincoln Street thirty-eight and 45/100 (38.45) feet;

Northerly by land now or formerly of Dodge by two lines measuring together one hundred thirty-six and 5/10 (136.5) feet;

Westerly by said land now or formerly of Dodge and by land now or formerly of the Trustees of the Bass River Land Company one hundred ninety-six and 5/10 (196.5) feet;

Southerly by other land of said Bass River Land Company seven (7) feet;

Westerly by land now or formerly of Robbins twenty-eight and 3/10 (28.3) feet;

Northwesterly by said land now or formerly of Robbins and by land now or formerly of the grantors two hundred four and 3/10 (204.3) feet;

Northeasterly, northerly and northeasterly again by land now or formerly of the Grantors by several lines measuring together two hundred ninety-nine and 5/10 (299.5) feet;

Southeasterly by land now or formerly of Clark four hundred ten (410) feet;

Westerly forty (40) feet and Southerly one hundred thirty-two (132) feet by land now or formerly of Gierling; by all or any of said measurements more or less.

Said land is subject to a Notice of Variance dated August 3, 1973 and recorded at the Norfolk District Registry of Deeds, Book 4973, Page 239.

PARCEL 2

A certain parcel of land situated on Main Street in that part of Medway in the County of Norfolk and Commonwealth of Massachusetts called West Medway bounded and described as follows:

Northwesterly by said Main Street two hundred eighty-six and 79/100 feet;

Northeasterly one hundred forty-six and 04/100 feet;

Northerly, easterly, southeasterly and easterly again 1436 feet more or less said last two bounds being by land now or formerly of C.E. Lawrence, by land now or formerly of Willis Clark and by the Old Cemetery;

Southeasterly one hundred sixty and 38/100 feet;

Southwesterly two hundred sixty-one and 36/100 feet;

Westerly two hundred forty and 90/100 feet;

Southerly one hundred ten and 22/100;

Southwesterly two hundred seventy and 60/100 feet;

Southerly one hundred fourteen and 84/100 feet;

Southwesterly fifty-three and 46/100 feet; and

Southeasterly sixty-two feet, said last eight bounds being by land formerly of Hunt and now or late of Collins, now or late of Ollendorff and now or late of Bullard; and

Southwesterly by land now or late of Patterson ninety-one and 88/100 feet.

Being a portion of the premises conveyed to Seller (then named "United Shoe Machinery Company") by deed dated August 13, 1951, and recorded with Norfolk Deeds, Book 3024, Page 23.

Said premises are shown as Parcel 2 on a plan of land entitled "Plan of Land in Medway, Massachusetts dated July 7, 1951" and recorded at Norfolk Registry of Deeds in Book 3024, Page 23. Said premises contained 8.09 acres more or less according to said plan.

Subject to easements granted to the Town of Medway as set forth in Norfolk Deeds, Book 4672, Page 713.

Subject to Order for the Taking of Land for sewer construction as set forth in Norfolk Deeds, Book 5475, Page 614.

For Grantors title for said Parcels 1 and 2, see deed of USM Corporation (f/k/a United Shoe Machinery Corporation) dated October 15, 1984, recorded at Norfolk District Registry of Deeds in Book 6521, Page 36.

Said premises are conveyed subject to a first mortgage and two (2) notes securing same, to the Home National Bank of Milford, which notes and mortgage the grantee assumes and agrees to pay as the full consideration of this transfer; said mortgage is dated October 7, 1988, recorded Norfolk Registry of Deeds in Book 8122, Page 501.

BK 10775 PG 115

Said mortgage was assigned to Collateral Liquidation Corp., 655 Summer Street, Boston, MA 02210, by assignment recorded at Norfolk Registry of Deeds Book 10597, Page 382.

The consideration for this conveyance is such that no transfer stamps are required to be affixed thereto.

USM Corporation (formerly United Shoe Machinery Corporation)

a corporation duly established under the laws of New Jersey
and having its usual place of business at ~~BRIDGE~~ Farmington

at ~~SUSSEX~~ Hartford

County, ~~Massachusetts~~, in consideration of
Connecticut

ONE Hundred & Seventeen Thousand (\$117,000.00) Dollars

grants to Footwear Associated Products, Incorporated, a corporation
duly established under the laws of the Commonwealth of Massachusetts
of 163 Main Street, Medway, Massachusetts

with quitclaim covenants

the land in Medway described as follows:

PARCEL 1 situated on the easterly side of Lincoln Street in that part
of Medway, Norfolk County, Massachusetts, known as West Medway, and
bounded and described as follows:

Westerly by Lincoln Street thirty-eight and 45/100 (38.45) feet;

Northerly by land now or formerly of Dodge by two lines measuring
together one hundred thirty-six and 5/10 (136.5) feet;

Westerly by said land now or formerly of Dodge and by land now or
formerly of the Trustees of the Bass River Land Company one hundred
ninety-six and 5/10 (196.5) feet;

Southerly by other land of said Bass River Land Company seven (7)
feet;

Westerly by land now or formerly of Robbins twenty-eight and 3/10
(28.3) feet;

Northwesterly by said land now or formerly of Robbins and by land
now or formerly of the grantors two hundred four and 3/10 (204.3) feet;

Northeasterly, Northerly, and Northeasterly again by land now or
formerly of the Grantors by several lines measuring together two
hundred ninety-nine and 5/10 (299.5) feet;

Southeasterly by land now or formerly of Clark four hundred ten
(410) feet;

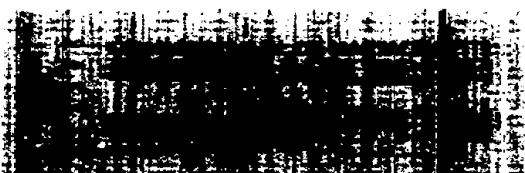
Westerly forty (40) feet and Southerly one hundred thirty-two
(132) feet by land now or formerly of Gierling; be all or any of said
measurements more or less.

Said land is subject to a Notice of Variance dated August 3, 1973
and recorded at the Norfolk District Registry of Deeds, Book 4973,
Page 239.

Being the same premises conveyed to Seller (then named "United Shoe
Machinery Company") by deed dated February 27, 1953, and recorded
with Norfolk Deeds, Book 3153, Page 401.

PROPERTY ADDRESS: 163 Main Street, Medway, MA

RECEIVED RECORDED
1984 OCT 17 PM 12:28



PARCEL 2 situated on Main Street in that part of Medway in the County of Norfolk and Commonwealth of Massachusetts called West Medway bounded and described as follows:

Northwesterly by said Main Street two hundred eighty-six and 79/100 feet;

Northeasterly one hundred forty-six and 04/100 feet and

Northerly, Easterly, Southeasterly and Easterly again 1436 feet more or less said last two bounds being by land now or formerly of C.E. Lawrence, by land now or formerly of Willis Clark and by the Old Cemetery;

Southeasterly one hundred sixty and 38/100 feet;

Southwesterly two hundred sixty-one and 36/100 feet;

Westerly two hundred forty and 90/100 feet;

Southerly one hundred ten and 22/100;

Southwesterly two hundred seventy and 60/100 feet;

Southerly one hundred fourteen and 84/100 feet;

Southwesterly fifty-three and 46/100 feet; and

Southeasterly sixty-two feet, said last eight bounds being by land formerly of Hunt and now or late of Collins, now or late of Ollendorff and now or late of Bullard; and

Southwesterly by land now or late of Patterson ninety-one and 88/100 feet.

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Said premises are shown as Parcel 2 on a plan of land entitled "Plan of Land in Medway, Massachusetts dated July 7, 1951" and recorded at Norfolk Registry of Deeds in Book 3024, Page 23. Said premises contained 8.09 acres more or less according to said plan.

Subject to easements granted to the Town of Medway as set forth in Norfolk Deeds, Book 4672, Page 713.

Subject to Order for the Taking of Land for sewer construction as set forth in Norfolk Deeds, Book 5475, Page 614.

In witness Whereof the said

has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Stephen J. Ruffi and J. Michael Stepp, its Exec. V.P. and ~~and~~ Treasurer, respectively, hereto duly authorized, this 15th day of October in the year one thousand nine hundred and eighty-four.

Signed and sealed in presence of

USM CORPORATION

Stephen J. Ruffi
Assistant Secretary

SJRuffi
by Executive Vice President

J. Michael Stepp
by Treasurer

THE STATE OF CONNECTICUT

~~Secretary of the State~~

Hartford County

at Farmington

October 15 1984

Then personally appeared the above named Stephen J. Ruffi, the Executive Vice President of USM Corporation

and acknowledged the foregoing instrument to be the free act and deed of the USM Corporation

before me

Gail M. Brundage
Gail M. Brundage

My commission expires March 31, 1985

Know all Men by these Presents

The MEDWAY SAVINGS BANK, a corporation under Massachusetts laws, having a place of business in Medway, Norfolk County, Massachusetts, _____, holder of a mortgage from ALICE M. OLLENDORFF to MEDWAY SAVINGS BANK, a corporation of Medway, Massachusetts

dated November 23, 1936

recorded with Norfolk Deeds book 2128, page 231, hereby acknowledges satisfaction of the same.

In Witness Whereof, the said MEDWAY SAVINGS BANK has caused its corporate seal to be hereunto affixed, and these presents to be signed in its name and behalf by its Treasurer this 9th day of August 1951.



MEDWAY SAVINGS BANK,
By Wallace D. Wills Treasurer.

Commonwealth of Massachusetts

NORFOLK ss. August 9, 1951. Then personally appeared the above-named WALLACE D. WILLS Treasurer, and acknowledged the foregoing instrument to be the free act and deed of the MEDWAY SAVINGS BANK.

Before me,
My Commission Expires
August 27, 1954

Sham D. Hobart
Notary Public

Rec'd & entered for record Aug. 14, 1951 at 9h.13m.A.M.

KNOW ALL MEN BY THESE PRESENTS

THAT Medway Mills, Inc., a Massachusetts corporation, FOR CONSIDERATION PAID hereby GRANTS unto United Shoe Machinery Corporation, a New Jersey corporation, with QUITCLAIM COVENANTS, the following two parcels of land with the buildings thereon situated on Main Street in that part of Medway in the County of Norfolk and Commonwealth of Massachusetts called West Medway:

The first parcel is bounded and described as follows:

SOUTHEASTERLY by said Main Street ninety-three feet;
SOUTHWESTERLY by land now or formerly of White and now or formerly of Fairbairn two hundred seven-teen and 60/100 feet;
NORTHERLY by Mechanic Street one hundred nine feet;
and
NORTHEASTERLY by land now or formerly of Medway Park Association one hundred forty-five and 65/100 feet.

Said premises are shown as Parcel 1 on a "Plan of Land in Medway, Mass. dated July 7, 1951 by Everett M. Brooks Co. Civil Engineers" to be recorded herewith, and contain according to said plan 15,865 square feet.

The second parcel is bounded and described as follows:

NORTHWESTERLY by said Main Street two hundred eighty- six and 79/100 feet;
 NORTHEASTERLY one hundred forty-six and 04/100 feet and
 NORTHERLY, EASTERLY, SOUTHEASTERLY AND EASTERLY again
 1436 feet more or less said last two bounds
 being by land now or formerly of C. E.
 Lawrence, by land now or formerly of Willis
 Clark and by the Old Cemetery
 SOUTHEASTERLY one hundred sixty and 38/100 feet;
 SOUTHWESTERLY two hundred sixty-one and 36/100 feet;
 WESTERLY two hundred forty and 90/100 feet;
 SOUTHERLY one hundred ten and 22/100 feet;
 SOUTHWESTERLY two hundred seventy and 60/100 feet;
 SOUTHERLY one hundred fourteen and 84/100 feet;
 SOUTHWESTERLY fifty-three and 46/100 feet; and
 SOUTHEASTERLY sixty-two feet, said last eight bounds
 being by land formerly of Hunt and now
 or late of Collins, now or late of Ollen-
 dorff and now or late of Bullard; and
 SOUTHWESTERLY by land now or late of Patterson ninety-one
 and 88/100 feet.

Said premises are shown as Parcel 2 on said plan and contain according to said plan about eight and 09/100 acres.

Or however otherwise said parcels or either of them may be bounded or described and be all or any of said measurements or contents more or less being the same premises conveyed to the grantor by the following deeds:

-2-

One from Walter O. Detry dated February 1, 1935 and recorded with Norfolk Deeds Book 2059, Page 525, and two from Thomas E. Patterson and Mabel A. Patterson; one dated June 19, 1943 and recorded with said Deeds Book 2446, Page 48, and the other dated June 27, 1946 and recorded with said Deeds Book 2617, Page 105, and the same are now conveyed with the benefit of all water rights, if any, appurtenant to said premises and subject to the taxes assessed thereon as of January 1, 1951.

WITNESS the execution hereof under seal this 13th day of August, 1951, the revenue stamps required by law having been affixed hereto and cancelled.

MEDWAY MILLS, INC.

By Robert J. Hadley
Treasurer



COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

August 13, 1951

Then personally appeared said Robert J. Hodgson and acknowledged the foregoing instrument to be the free act and deed of said Medway Mills, Inc., before me.

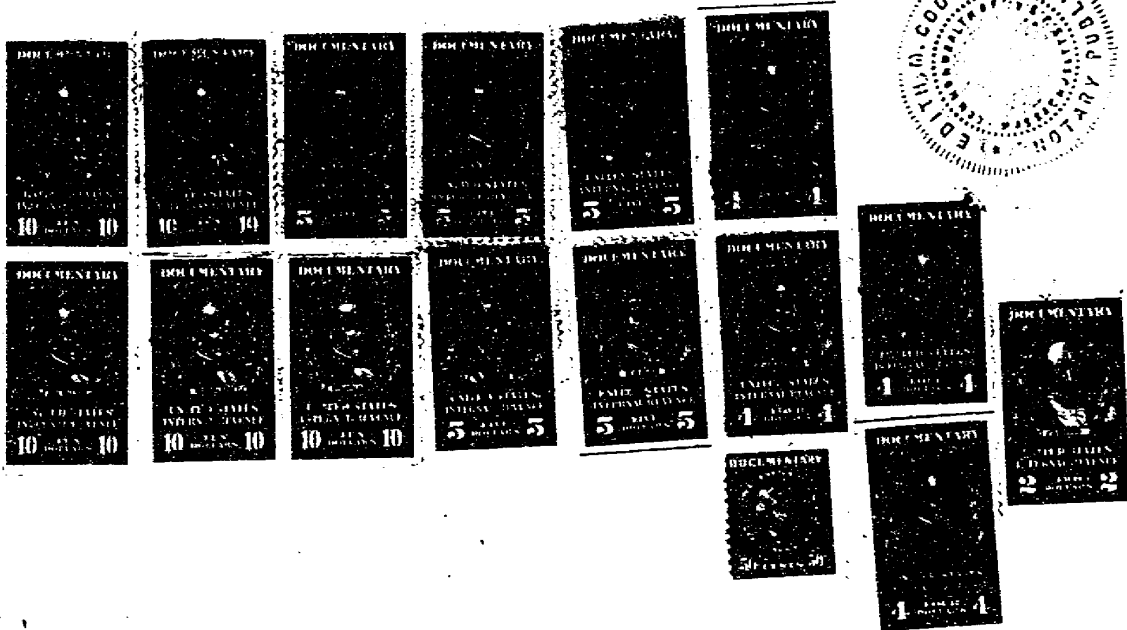
3024

25

Edith M. Cooper
Notary Public

My commission expires March 17, 1955

EDITH M. COOPER



I, Gladys S. Buchold, Clerk of Medway Mills, Inc., a Massachusetts corporation, hereby certify that at a meeting of the Stockholders of said corporation duly held on July 6, 1951, at which meeting the holders of all the outstanding shares of capital stock of the corporation were present and voting, it was unanimously

VOTED: That Robert J. Hodgson, Treasurer of the corporation be and he hereby is authorized in the name and behalf of Medway Mills, Inc. to sign, seal with the corporate seal, acknowledge and deliver a quitclaim deed to United Shoe Machinery Corporation of all the real estate of Medway Mills, Inc. situated in that part of Medway in the County of Norfolk and Commonwealth of Massachusetts known as West Medway, comprising four adjacent parcels of land with the mill and other buildings thereon situated on the Southeasterly side of Main Street and another parcel of land with the buildings, if any, thereon situated on the Northwesterly side of said Main Street and on the Southerly side of Mechanic Street and being all of the premises conveyed to Medway Mills, Inc. by a deed from Walter O. Detry, dated February 1, 1935, recorded with Norfolk Deeds, Book 2059, Page 525 and two deeds from Thomas E. Patterson and another dated June 19, 1943, and June 27, 1946, respectively, and recorded with said Deeds, Book 2446, Page 48, and Book 2317, Page 105, respectively, including all water rights, if any, appurtenant to said

premises; said deed to be in such form as said Treasurer shall approve, his execution thereof to be sufficient evidence of such approval.

A true copy.

Attest:

Gladys S. Buchold.
Clerk



I, GLADYS S. BUCHOLD, Clerk of Medway Mills, Inc., a Massachusetts corporation, hereby certify that at a meeting of the Board of Directors of said corporation duly called and held on July 6, 1951, it was unanimously

VOTED: That Robert J. Hodgson, Treasurer of the corporation be and he hereby is authorized in the name and behalf of Medway Mills, Inc. to sign, seal with the corporate seal, acknowledge, and deliver a quitclaim deed to United Shoe Machinery Corporation of all the real estate of Medway Mills, Inc. situated in that part of Medway in the County of Norfolk and Commonwealth of Massachusetts known as West Medway, comprising four adjacent parcels of land with the mill and other buildings thereon situated on the Southeasterly side of Main Street and another parcel of land with the buildings, if any, thereon situated on the Northwesterly side of said Main Street and on the Southerly side of Mechanic Street and being all of the premises conveyed to Medway Mills, Inc. by a deed from Walter O. Detry, dated February 1, 1935, recorded with Norfolk Deeds, Book 2059, Page 525, and two deeds from Thomas E. Patterson and another dated June 19, 1943, and June 27, 1946, respectively, and recorded with said Deeds, Book 2446, Page 48, and Book 2617, Page 105, respectively, including all water rights, if any, appurtenant to said premises; said deed to be in such form as said Treasurer shall approve, his execution thereof to be sufficient evidence of such approval.

A true copy.

A T T E S T:

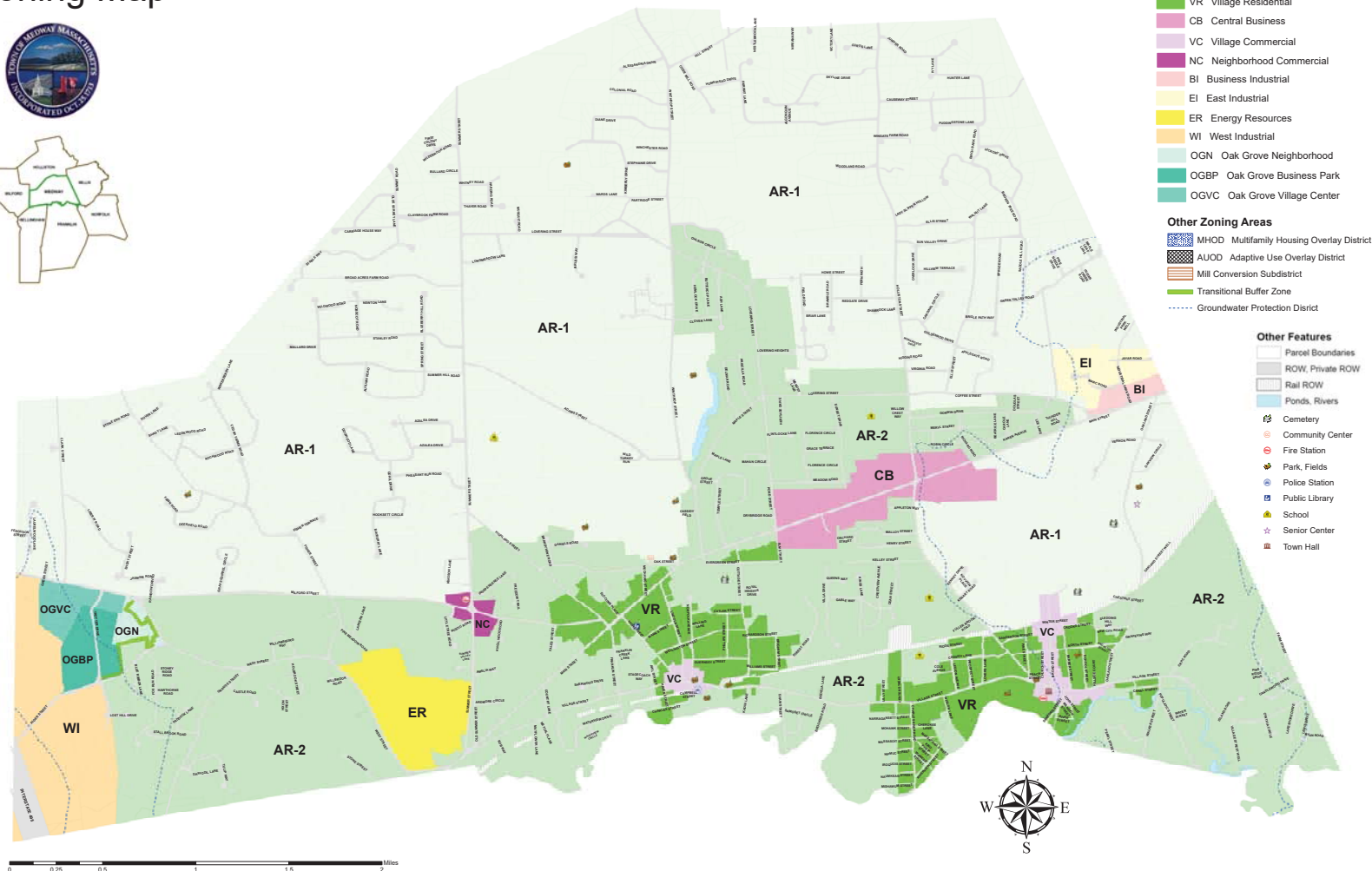
Gladys S. Buchold.
Clerk



EXHIBIT C

Town of Medway, MA

Zoning Map



Underlying Zoning Districts

- AR-1 Agricultural Residential 1
- AR-2 Agricultural Residential 2
- VR Village Residential
- CB Central Business
- VC Village Commercial
- NC Neighborhood Commercial
- BI Business Industrial
- EI East Industrial
- ER Energy Resources
- WI West Industrial
- OGN Oak Grove Neighborhood
- OGBP Oak Grove Business Park
- OGVC Oak Grove Village Center

Other Zoning Areas

- MHOD Multifamily Housing Overlay District
- AUOD Adaptive Use Overlay District
- Mill Conversion Subdistrict
- Transitional Buffer Zone
- Groundwater Protection District

Other Features

- Parcel Boundaries
- ROW, Private ROW
- Rail ROW
- Ponds, Rivers
- Cemetery
- Community Center
- Fire Station
- Park, Fields
- Police Station
- Public Library
- School
- Senior Center
- Town Hall

Zoning District	Minimum Lot Size (sq. ft.)	Minimum Frontage (ft.)	Minimum Setbacks (ft.) Front, Side, Rear
AR-1	44,000	180	35, 15, 15
AR-2	22,500	150	35, 15, 15
VR	22,500	150	20, 10, 10
CB	10,000	NA	10, 10, 25
VC	10,000	NA	20, 10, 10
NC	20,000	NA	35, 15, 15
BI	20,000	75	25, 15, 15
EI	20,000	100	30, 20, 30
ER	20,000	150	30, 20, 30
WI	40,000	100	30, 20, 30

Please be advised that not all Dimensional and Density Regulations are included in the table above. Please refer to the Medway Zoning Bylaw, Section 6.1 Dimensional and Density Regulations, and Section 9 Oak Grove Park Districts.

ADAPTIVE USE OVERLAY DISTRICT (AUOD)

To promote economic development and to preserve community character by encouraging conversion of existing residential buildings in certain older neighborhoods to limited business and mixed uses. Special permit use.

MULTIFAMILY HOUSING OVERLAY DISTRICT (MHOD)

To encourage the provision of a diversity of housing types, to promote pedestrian oriented developments, and to increase the number of affordable housing units in a designated area by authorizing multifamily dwelling units and developments in a designated area. Special permit use.

FLOOD PLAIN DISTRICT

To prevent public emergencies resulting from water quality contamination and pollution, to avoid loss of utility services, to eliminate costs of responding to and cleaning up, and to reduce damage to public and private property all resulting from flooding waters.

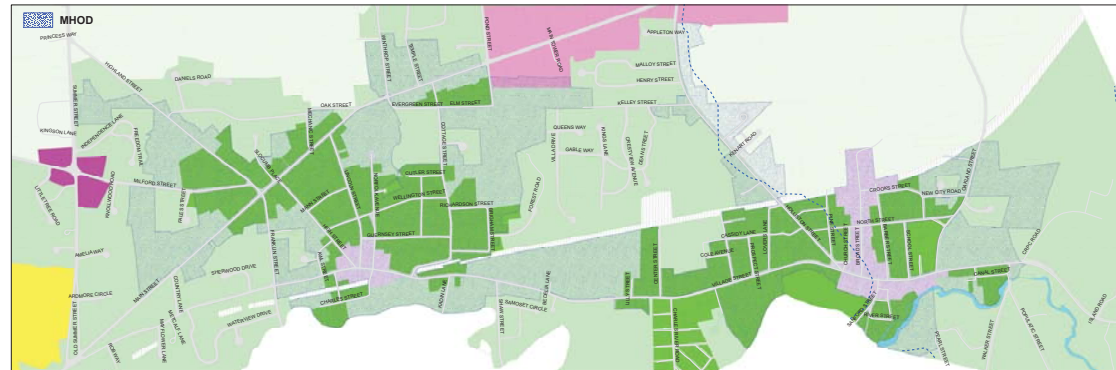
GROUNDWATER PROTECTION DISTRICT

To protect the MA Department of Environmental Protection designated Zone II recharge areas in order to ensure an adequate quantity and quality of drinking water for Medway residents, institutions and businesses and to preserve and protect existing and potential sources of drinking water supplies.

Please also refer to the Medway Zoning Bylaw, Section 5.6, Overlay Districts, and Section 8, Special Regulations.

Prepared for the
Medway Planning and Economic Development Board
155 Village Street, Medway, MA 02053
508-533-3291 planningboard@townofmedway.org
Data provided by Town of Medway and MassGIS

The information on this map is believed to be correct, but errors in data entry or transmission may occur.
The map is not to be used for legal purposes.
The information on this map is subject to change or revision at any time.





Main Street AUOD



Mill Conversion Subdistrict



JX

[Opinion](#) [Case details](#)

From Casetext: Smarter Legal Research

Gaudet v. Building Inspector of Dracut

Supreme Judicial Court of Massachusetts

Dec 3, 1970

265 N.E.2d 375 (Mass. 1970)

[Copy Citations](#)[!\[\]\(9c2e8d1b5bd77cb5c9f83b7a9cff79fd_img.jpg\) Download](#)[!\[\]\(e3275251d0893157c3584e20c81dc3ba_img.jpg\) Treatment](#)

December 3, 1970.

George W. Anthes for the petitioner.*William C. Geary* for the respondent Eva Panagis.*Edward J. Owens*, for the Building Inspector of Dracut, submitted a brief.**A true replacement for LexisNexis for only \$65/month.**[Compare to Lexis >](#)

A plan showing the subdivision of a tract of land in Dracut into many small lots was recorded in the appropriate registry of deeds in 1922. Included in the lots were those numbered 11, 12, 18, 19, 20 and 21. They were contiguous and together they formed a large corner lot having a frontage of 145.54 feet on Freeman Avenue and 86.92 feet on Meadow Road, its two other lines being eighty feet and 111.5 feet in length respectively. The area of the six lots

together was 10,280 square feet. In 1946 Dracut first adopted a zoning by-law which either then or later classified these six lots in a General Residence district and required that lots in such district comply with the following minimum sizes: area, 22,000 square feet; frontage and width, 125 feet; and depth, 100 feet. The by-law also provided that the minimum area and width requirements would not apply to a lot "lawfully laid out and duly recorded by plan or deed prior to the effective date of this by-law." On April 4, 1968, the building inspector issued a building permit to Eva Panagis (owner) to erect a two apartment house on the six lots. Ralph Gaudet, a neighbor, seeks 808 a writ of *808 mandamus to compel the inspector to enforce the by-law and to enjoin the construction which is alleged to be in violation of the by-law. The six contiguous lots are treated as a single lot for the purpose of the zoning by-law. *Vassalotti v. Board of Appeals of Sudbury*, 348 Mass. 659. *Smigliani v. Board of Appeals of Saugus*, 348 Mass. 794. Thus viewed, they meet the minimum frontage requirement on Freeman Avenue, even though they are deficient in depth by twenty feet. The owner has the benefit of the exemption provided in the by-law; and she also has the benefit of the more recent exemption created by G.L.c. 40A, § 5A, as amended through St. 1961, c. 435, § 1, for lots otherwise nonconforming but having a minimum area of 5,000 square feet and a minimum frontage of fifty feet. Considering both exemption, and the limited record before us, we hold that the petition was properly denied.

Order for judgment denying petition affirmed.

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JANET R. HEALD & others [\[Note 1\]](#) vs.
ZONING BOARD OF APPEALS OF
GREENFIELD; JOAN MERRIGAN & others,
interveners.

7 Mass. App. Ct. 286

February 12, 1979 - March 23, 1979

Suffolk County

Present: ARMSTRONG, BROWN, & KASS, JJ.

Under a zoning by-law defining "lot" as "a piece or parcel of land occupied or to be occupied by one main building and its accessory buildings," contiguous parcels held in common ownership constituted a lot even though the parcels were described separately for conveyancing purposes. [289-292]

CIVIL ACTION commenced in the Superior Court on December 6, 1976.

The case was heard by Greaney, J.

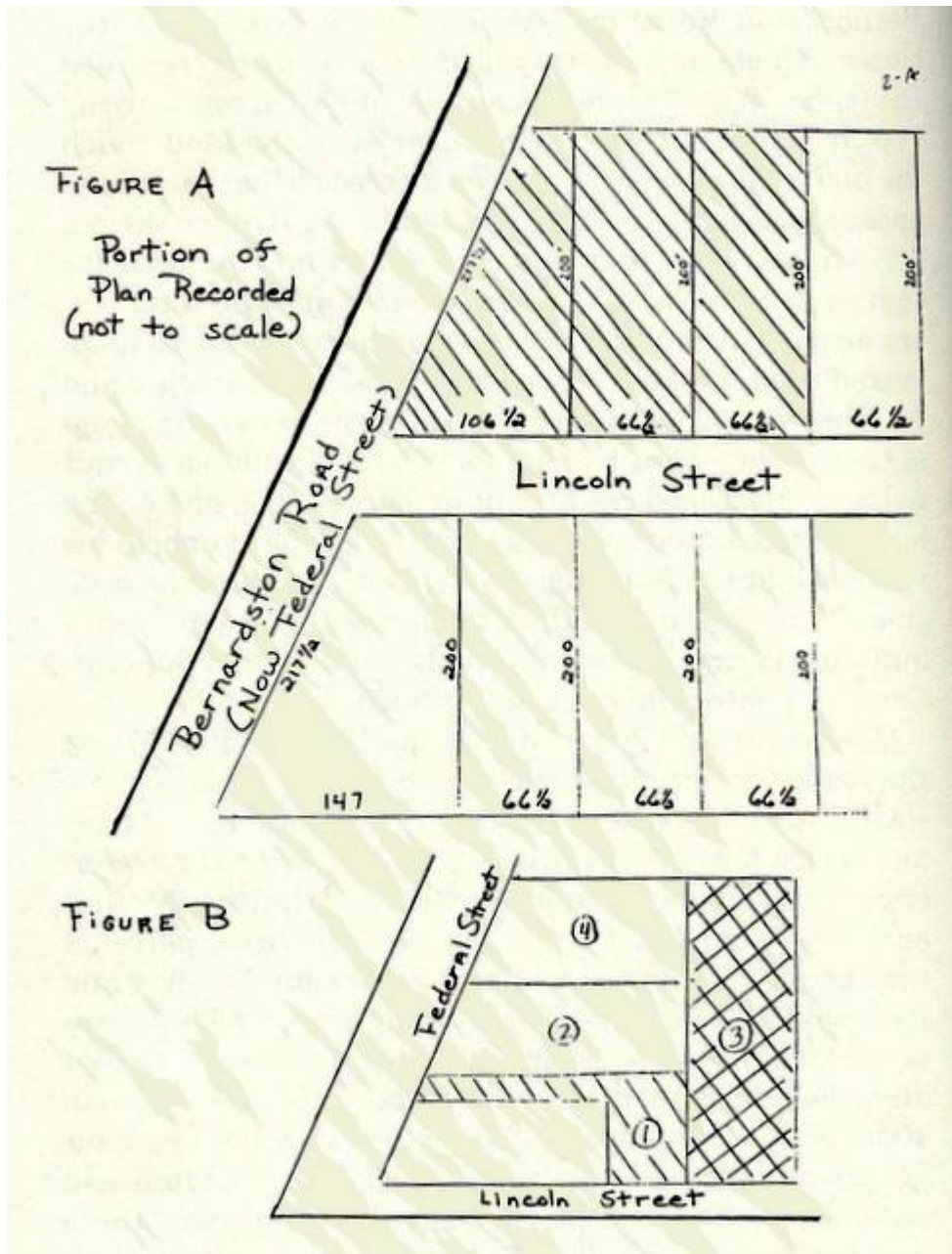
Thomas Lesser (William C. Newman with him) for Joan Merrigan & others.

J. Nicholas Filler (Herbert H. Hodos & Paul A. Trudel with him) for the plaintiffs.

KASS, J. The plaintiffs appealed to the Superior Court under G. L. c. 40A, Section 17 (inserted by St. 1975, c. 808, Section 3), from an adverse interpretation by the board of appeals of Greenfield of that town's zoning by-law. The parties' dispute revolves around whether, for purposes of application of the zoning by-law, the word "lot" should mean a lot as described in a deed, record plan, or other source of title, or should mean contiguous lots held in common ownership. We agree with the Superior Court judge that the latter interpretation is correct.

Anciently, lots easterly of Federal Street (then called Bernardston Road) in Greenfield were arranged in the classic Nineteenth Century grid mode on a plan recorded December 23, 1890. See figure A of the accompanying sketch plan. By 1950, the boundaries of the land which the plaintiffs now own had been altered so that their land appeared as parcels 1, 2, 3, and 4 in figure B of the sketch. All parties agree that parcels 2 and 4 may be used for commercial purposes. The defendants and the interveners dispute that parcel 3 (cross-hatched) may be so used, even if used in conjunction with parcel 2 (or parcels 2 and 4). What we decide as to parcel 3 governs parcel 1 (diagonal lines). The plaintiffs had applied for a building permit to build a fast food restaurant on parcels 2, 3, and 4. The building inspector refused a permit, the board upheld his refusal, and the Superior Court judge annulled the decision of the board, in effect requiring the issuance of a building permit. From this judgment of the Superior Court the interveners have appealed.

Greenfield first adopted a zoning by-law in 1957. At that time parcels 1, 2, and 3 were held in common ownership, although the deed into the common owners, James and Grace Roberts, described the land conveyed by references to three separate prior deed descriptions. As first enacted, the by-law defined "lot" as "a piece or parcel of land occupied or to be occupied by one main building and its accessory buildings." The zoning map which accompanied this by-law established a commercial district along Federal Street "for depth of lot but not greater than 400 feet." In his memorandum of decision and order for judgment (we refer to a substituted memorandum and order filed July 11, 1977), the trial judge found that there was commercial use along Federal Street within one half mile in either direction from the locus. At its 1965 annual town meeting, Greenfield adopted various amendments to its zoning by-law, including a revised definition of "lot" which read:



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"A continuous parcel of land meeting the lot requirement of the By-Law for the district in which the land is situated, and if occupied by a building or buildings, meeting the minimum yard requirements of that district and having the required frontage on a street or on such other means of access as may be determined in accordance with the provisions of the law to be adequate as a condition of the issuance of a building permit."

Because the trial judge in his memorandum of decision and order for judgment concluded that lots in back of lots fronting on Federal Street could not be used for commercial purposes under the 1957 definition of "lot," but that the 1965

amendment did allow back lots joined in common ownership with front lots to be used for commercial purposes, the interveners have labored strenuously in motions below and in their briefs on appeal to establish that the 1965 definition worked no material change in the 1957 definition. All parties agree that we must apply the 1965 by-law and that the only significance of the 1957 by-law is that, coupled with legislative history and the history of layouts of parcels on the locus, the 1957 by-law might serve as a guide to interpreting the applicable provision.

We are of the opinion that, under the 1957 definition of "lot," a common owner of contiguous parcels which were described separately for conveyancing purposes could treat them as one lot for zoning purposes. Such an assembled lot could be the site for one main commercial building. A fortiori, a common owner could treat parcels with separate sources of title as one lot under the 1965 definition.

Even before the advent of zoning laws, our courts have held that where contiguous parcels were conveyed as separate parcels, or designated as such on recorded plans, the whole tract constituted one "lot" of land for purposes of determining to what a mechanic's lien might attach. *Batchelder v. Rand*, 117 Mass. 176 , 178 (1875). *Orr v. Fuller*, 172 Mass. 597 , 600 (1899). In the absence of specific

Page 290

zoning code provisions defining a "lot" in terms of sources of title or assessors' plans, the Supreme Judicial Court has consistently held that adjoining parcels may and, indeed, in certain instances, must be considered one lot for zoning purposes. *Vetter v. Zoning Board of Appeal of Attleboro*, [330 Mass. 628](#) , 630 (1953). *Vassalotti v. Board of Appeals of Sudbury*, [348 Mass. 658](#) , 661 (1965). *Gaudet v. Building Inspector of Dracut*, [358 Mass. 807](#) , 808 (1970). Still more recently, we have had occasion to say that "[t]he usual construction of the word 'lot' in a zoning context ignores the manner in which the components of a total given area have been assembled and concentrates instead on the question whether the sum of the components meets the requirements of the by-law." *Becket v. Building Inspector of Marblehead*, [6 Mass. App. Ct. 96](#) , 104 (1978). Changing patterns of land use frequently require land assembly and realignment of historic lot lines. Garden apartments, office and industrial parks, supermarkets, and shopping centers are among examples of contemporary uses of land which are likely to involve land

assembly. It would be a peculiarly restrictive zoning code which tied owners to descriptions of record. Nor does the rule cut only in favor of assembly. By its application, owners of adjoining record lots have been prevented from artificially dividing them so as to restore old record boundaries for the sake of availing themselves of the grandfather provisions of G. L. c. 40A, Section 6 (inserted by St. 1975, c. 808, Section 3, and appearing as Section 5A of the previous zoning enabling act). *Lindsay v. Board of Appeals of Milton*, [362 Mass. 126](#), 130-131 (1972). It is implicit in the provision of the Greenfield zoning by-law, which provides for potential commercial development on both sides of Federal Street to a depth of 400 feet, that some land assembly must have been contemplated.

Clarke v. Board of Appeals of Nahant, [338 Mass. 473](#) (1959), upon which the defendants rely heavily, does not point to a different conclusion. There is no suggestion in *Clarke* that owners are chained to record descriptions

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and, as the court observed in *Vassalotti v. Board of Appeals of Sudbury*, *supra* at 661, the *Clarke* case dealt "with an unusual by-law and an ambiguous amendment." Nor is it significant that, after the three parcels came into common ownership, the owners of them continued to carry forward old record descriptions. Conveyances frequently show a chain of title by reference to existing descriptions and plans. *Lindsay v. Board of Appeals of Milton*, *supra* at 131.

The defendants argue that such an interpretation of the Greenfield zoning by-law runs the risk of "pork chop" lots off Federal Street, such as parcel 1 on figure B of the sketch above, thus permitting the intrusion of commercial use into an otherwise residential area. As it stood in 1977, and if not amended since, the Greenfield zoning by-law may, indeed, permit this, [\[Note 2\]](#) but the municipality has the simple remedy of amending its zoning regulation to require frontage on Federal Street sufficient to prevent gerrymandered lots.

Because of our view that the text of the 1957 by-law was no more restrictive on the issue of assembly of parcels than the applicable by-law, i.e. that which was enacted in 1965, we need not consider legislative history surrounding adoption of the 1965 amendment tending to show that the town meeting did not intend to effect a change from the 1957 by-law in the ability of an owner to assemble lots. The

defendants have also argued that since, at all times material, parcels 1, 2, and 3 were separately assessed, and at values suggesting residential use, this assessment history determines their status for zoning purposes. At best, assessment practices serve only as "some indication of the status of the property." See fn. 6 in *Lindsay v. Board of Appeals of Milton*, supra at 131. Nothing in G. L. c. 40A

Page 292

substitutes the board of assessors for the zoning administrator or board of appeals of a municipality as the administrator of its zoning code.

Judgment affirmed.

FOOTNOTES

[\[Note 1\]](#) Lois E. Grant, Bessie F. Kingsley, and Martha S. Kingsley.

[\[Note 2\]](#) The by-laws, however, may not be read as permitting the creation of lots that are practically inaccessible. *Gifford v. Planning Board of Nantucket*, [376 Mass. 801](#), 808-809, 810 (1978).

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From Casetext: Smarter Legal Research

Vassalotti v. Board of Appeals of Sudbury

Supreme Judicial Court of Massachusetts. Middlesex

Mar 3, 1965

204 N.E.2d 924 (Mass. 1965)

[Copy Citations](#)[Download](#)[Treatment](#)

February 4, 1965.

March 3, 1965.

Present: WILKINS, C.J., SPALDING, CUTTER, SPIEGEL, REARDON, JJ.

Zoning, "Recorded" lot, Variance.

A landowner entitled as of right under the local zoning by-law and the zoning statute to make a certain use of his land was not entitled to a zoning variance allowing such use since he did not need a variance therefor. [662] Where it appeared that prior to the adoption of a zoning by-law by a town a subdivision plan showing many lots was recorded at the registry of deeds and three of the lots, contiguous and each having an area of about 2500 square feet and a street frontage of about 25 feet, were conveyed by a single deed, that neither the grantee in such deed nor a subsequent grantee of the three lots ever owned any land adjacent thereto, that the zoning by-law, although requiring for lots in a residential district a minimum area of 40,000 square feet and a minimum street frontage of 180 feet, allowed the erection of a dwelling on a lot having less area and frontage if the lot was

"shown on a plan or deed recorded" at the registry, and that the subsequent grantee of the three lots sought to erect one dwelling on the three lots treated as a single lot, he was entitled as of right so to do under the exemption in the zoning by-law and under G.L.c. 40A, § 5A, as amended through St. 1961, c. 435, § 1. [661, 662]

BILL IN EQUITY filed in the Superior Court on August 29, 1962.

The plaintiff appealed from a final decree entered after hearing by *Beaudreau, J.*

Eugene L. Tougas for the plaintiff.

Alan M. Winsor, Town Counsel, for the defendant, submitted a brief.



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CUTTER, J.

A subdivision plan of a substantial tract of land in Sudbury was filed in the registry of deeds in 1927. A sketch of a part of Block B, one of over twenty blocks of lots appearing on that subdivision plan, is reproduced herewith (omitting some detailed measurements which do not affect the present
659 problem). Lots 11, 12, and 13 (referred *659 to in the aggregate as the locus),¹ each about twenty-five feet in width and 100 feet in depth, were conveyed to one McPhee in 1932 by the common owner of all the lots shown on the subdivision plan. The deed was recorded. "Since 1932, neither . . . McPhee nor . . . [McPhee's] sole successor in title . . . [Vassalotti, has] ever owned any . . . interest in any lot contiguous to any part of the" locus.

¹ On the original exhibit from which the attached sketch plan was prepared, the external boundaries of the locus were shown by a heavier line than the other lot lines. On the original recorded plan all the lot lines were alike.

Vassalotti applied in 1962 to the Sudbury board of appeals for a variance for the locus because it "did not comply with the area [40,000 square feet] and frontage [180 feet] requirements of the [Sudbury] zoning by-law." The building proposed by Vassalotti would comply with the side yard, setback, and rear yard requirements of the by-law.² The board on August 10, 1962, denied a variance. Vassalotti then filed a bill in equity (see G.L.c. 40A, § 21, as amended) in the Superior Court, praying that the board's decision be annulled and that the board be ordered to "affirm the use of the . . . [locus] for a single-family dwelling." The case was heard upon a statement of agreed facts. The trial judge declined to annul or modify the board's decision. A final decree was entered accordingly. Vassalotti appealed.

² In 1939, a comprehensive zoning by-law became effective in Sudbury. Section 17, in effect in 1962 and now, reads in part, "Except as hereinafter provided, no dwelling house and accessory building shall be erected in a [s]ingle [r]esidence [d]istrict unless the area and street frontage of the lot . . . shall conform to the following requirements: In [r]esidence [z]ones 'A' 1, 'A' 2, and 'A' 3, the minimum area of the lot shall be 40,000 square feet, and the minimum frontage of the lot on any street or way shall be 180 feet. . . . [A] A dwelling house and any accessory building may be erected on a lot in any residence district, the area and street frontage of which is less than that prescribed . . . provided, that such *lot is shown on a plan or deed recorded* . . . [in the r]egistry of [d]eeds and that the minimum area and street frontages of said lot are at least equal to those which were required by the provisions of this section in force on the date of the . . . [recording] of said plan; and that there shall be a full compliance with all the provisions of these . . . [b]y-laws relative to set backs and yards . . ." (emphasis supplied). The letter [A] inserted in the above quotation is inserted for convenient reference to the next succeeding sentence.

Vassalotti seems no longer to seek, if indeed he ever sought, a variance in
660 the usual sense of that term. Instead, *660

he wishes to obtain, by what would be essentially a form of declaratory relief, board or court approval of the locus (consisting of three lots shown on the 1927 plan) as a single lot which may be used for residential building. Apparently he now contends that the locus comes within (a) the sentence beginning at point [A] in the quoted portion of § 17 of the zoning by-law (fn.

2) and (b) the provisions of G.L.c. 40A, § 5A (as amended through St. 1961, c.
661 435, § 1).³ *661

³ Section 5A, as thus amended, reads in part, "Any lot *lawfully laid out by plan or deed duly recorded*, as defined in . . . [G.L.c. 41, § 81L] . . . which complies at the time of such recording . . . with the minimum area, frontage, width, and depth requirements, if any, of any zoning . . . by-law in effect in the . . . town where the land is situated, notwithstanding the adoption or amendment of provisions of a zoning . . . by-law in such . . . town imposing minimum area, frontage, width, depth, or yard requirements, or more than one such requirement, in excess of those in effect at the time of such recording . . . (1) *may thereafter be built upon for residential use if, at the time of the adoption of such requirements or increased requirements, or while building on such lot was otherwise permitted, whichever occurs later, such lot was held in ownership separate from that of adjoining land located in the same residential district, or (2) may be built upon for residential use for a period of five years from the date of such recording . . . if, at the time of the adoption of such requirements or increased requirements, such lot was held in common ownership with that of adjoining land located in the same residential district; and further provided, in either instance, at the time of building (a) such lot has an area of five thousand square feet or more and a frontage of fifty feet or more, is in a district zoned for residential use, and conforms except as to area, frontage, width, and depth with the applicable provisions of the zoning ordinance or by-law in effect in such . . . town and (b) any proposed structure is to be located on such lot so as to conform with the minimum requirements of front, side, and rear yard setbacks, if any, in effect at the time of such recording . . . and to all other requirements for such structure in effect at the time of building . . .*" (emphasis supplied). In G.L.c. 41, § 81L (inserted by St. 1953, c. 674, § 7, later amended at various times in respects not relevant), "lot" is defined as "an area of land in one ownership, with definite boundaries, used, or available for use, as the site of one or more buildings."

We think that the board incorrectly assumes that the original lots 11, 12, and 13 must be viewed as separate from one another for the purposes of this case. The statement of agreed facts shows that these three lots were conveyed to McPhee by a single deed in 1932 and that McPhee and Vassalotti have never owned any adjacent lots. The outside boundaries of these three lots are determinable from the 1927 plan. These circumstances, in the aggregate, sufficiently establish the three lots together as a single lot for

purposes of § 17 of the Sudbury by-law and of G.L.c. 40A, § 5A. Under § 5A, the locus meets the definition of a "lot lawfully laid out by plan or deed duly recorded," which under the succeeding italicized clause (1) may be built upon, in the circumstances here presented. Clause (2) of § 5A, in the view we take of the locus as a "lot," has no present application. Under § 17 of the by-law, we view the locus as a "lot . . . shown on a plan or deed recorded." See *Vetter v. Zoning Bd. of Appeal of Attleboro*, 330 Mass. 628, 630 (where two lots owned together were treated as a single lot in the somewhat comparable circumstances there described). See also *Sorenti v. Board of Appeals of Wellesley*, 345 Mass. 348, 353; *Chater v. Board of Appeals of Milton*, ante, 237, 241-242, 244, 246. Cf. *Clarke v. Board of Appeals of Nahant*, 338 Mass. 473, 477-480 (dealing with an unusual by-law and an ambiguous amendment). Cf. also *Publico v. Building Inspector of Quincy*, 336 Mass. 152, 154-155. We need not consider or discuss what the situation would have been if Vassalotti or any predecessor in title at any time since the adoption of the zoning by-law in 1939 had owned any land adjoining the locus.

662 In this court, Vassalotti has proceeded essentially as if the proceedings before the board had been an appeal from *662 the denial of a building permit. If under G.L.c. 40A, § 5A, and § 17 of the by-law Vassalotti is entitled to a permit, he is not entitled to a variance (if, indeed, his situation would in all respects meet the requirements for a variance; see *Coolidge v. Zoning Bd. of Appeals of Framingham*, 343 Mass. 742, 744-746) since he does not need one. See the *Publico* case, *supra*, at p. 155, and the *Chater* case, *supra*, at pp. 241-243. His application to the board of appeals does not seem to have been treated (either by the board or by the trial judge) as an appeal from the denial of a permit (G.L.c. 40A, § 13; cf. § 15) but rather as a request that the board either grant a variance or declare that the locus may be regarded as a single lot and be mentioned on the town records as a single lot.

We think that Vassalotti was entitled to a building permit, so far as the provisions of § 17 of the zoning by-law and of § 5A are concerned. We now so state to avoid further litigation. See *Wellesley College v. Attorney Gen.* 313 Mass. 722, 731. The final decree, however, was correct in holding that Vassalotti was not entitled to a variance. That decree is to be modified (a) to provide simply that the board of appeals did not exceed its authority in denying a variance, and (b) that the decree is without prejudice to any

subsequent application for a building permit. As so modified, the final decree is affirmed.

So ordered.

663 *663

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