



# CITY OF CAMBRIDGE

BOARD OF ZONING APPEAL

831 Massachusetts Avenue, Cambridge MA 02139

617-349-6100

2023 JAN 26 PM 2:16  
OFFICE OF THE CITY CLERK  
CAMBRIDGE, MASSACHUSETTS

## BZA Application Form

**BZA Number: 208873**

### General Information

The undersigned hereby petitions the Board of Zoning Appeal for the following:

Special Permit:   X                        Variance:   X                        Appeal:       

**PETITIONER:** Daniel P Anderson C/O Anderson Porter Design Inc

**PETITIONER'S ADDRESS:** 1972 Massachusetts Avenue, Cambridge, MA 02140

**LOCATION OF PROPERTY:** 231-235 Third Street, Cambridge, MA

**TYPE OF OCCUPANCY:** Business/Residential                      **ZONING DISTRICT:** Industrial A-1 Zone

**REASON FOR PETITION:**

/Additions/ /New Structure/

**DESCRIPTION OF PETITIONER'S PROPOSAL:**

To construct an addition to the non-conforming structure that is increased more then 25%.

Reduction in minimum required side/rear yard setback to an allowed 10' minimum.

**SECTIONS OF ZONING ORDINANCE CITED:**

Article: 5.000            Section: 5.34 (Table of Dimensional Requirements)

Article: 8.000            Section: 8.22.3 (Nonconforming Structure)

Article: 10.000          Section: 10.30 (Variance). & 10.40 (Special Permit).

Original  
Signature(s):

(Petitioner (s) / Owner)

DANIEL P ANDERSON

(Print Name)

Address:

1972 MASS AVE. CAMBRIDGE

Tel. No.

617 354 2501

E-Mail Address:

dan@andersonporter.com

**Date:** \_\_\_\_\_

BZA APPLICATION FORM - OWNERSHIP INFORMATION

(To be completed by OWNER, signed before a notary, and returned to Secretary of Board of Appeal).

I/We Ozan DOKMECIOGLU (OWNER).

Address: C/O DND Homes, One Garfield Circle Unit 6, Burlington, MA 01803

State that I/We own the property located at 233-235 Third Street, Cambridge, MA which is the subject of this zoning application.

The record title of this property is in the name of 231 THIRD STREET LLC

\*Pursuant to a deed of duly recorded in the date \_\_\_\_\_, Middlesex South County Registry of Deeds at Book 80181, Page 309 ; or

Middlesex Registry District of Land Court, Certificate No. \_\_\_\_\_

Book \_\_\_\_\_ Page \_\_\_\_\_

*[Handwritten Signature]*

SIGNATURE BY LAND OWNER OR AUTHORIZED TRUSTEE, OFFICER OR AGENT\*

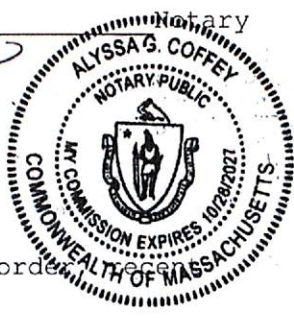
\*Written evidence of Agent's standing to represent petitioner may be requested.

Commonwealth of Massachusetts, County of Middlesex

The above-name Ozan Dokmecioglu personally appeared before me, this 24 of Jan ~~2004~~ 2023, and made oath that the above statement is true.

*[Handwritten Signature]*

My commission expires 10-28-2027 (Notary Seal).



- If ownership is not shown in recorded deed, e.g. if by court order, deed, or inheritance, please include documentation.



**BZA Application Form****SUPPORTING STATEMENT FOR A VARIANCE**

**EACH OF THE FOLLOWING REQUIREMENTS FOR A VARIANCE MUST BE ESTABLISHED AND SET FORTH IN COMPLETE DETAIL BY THE APPLICANT IN ACCORDANCE WITH MGL 40A, SECTION 10.**

**A)** A literal enforcement of the provisions of this Ordinance would involve a substantial hardship, financial or otherwise, to the petitioner or appellant for the following reasons:

The literal enforcement of the provisions of this ordinance would involve a substantial hardship for the following reasons; one of the two existing nonconforming structures is considered historic and preferably preserved, removing it would be a substantial detriment.

**B)** The hardship is owing to the following 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 for the following reasons:

The hardship is owing to the following circumstances relating to the shape and location of the existing structure on the lot. The intent of the project is to keep this historic structure intact. The nonconforming building location does not affect generally the zoning district in which it is located.

**C) DESIRABLE RELIEF MAY BE GRANTED WITHOUT EITHER:**

**1)** Desirable relief may be granted without substantial detriment to the public good for the following reasons:

Desirable relief may be granted without substantial detriment to the public good as the proposed development creates an overall project conforming with all dimensional requirements and preserves a historic structure that contributes to the overall scale and massing of the building and streetscape. The project is an Inclusionary Housing Project located within the East Cambridge Housing Overlay District which specifically promotes new housing development in this area for the benefit of the public. The project is seeking desirable relief to reconcile the limits imposed by Article 8 with the public benefits offered by Article 20.40 East Cambridge Housing Overlay District and Article 11.200 Incentive Zoning and Inclusionary Housing.

**2)** Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of this Ordinance for the following reasons:

Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the Ordinance in that the project provides needed residential housing units with affordable components as an Inclusionary Housing Project. The development complies with the City's urban design objectives and combines two existing nonconforming lots into a single conforming lot. The project otherwise complies with all dimensional requirements of Article 5 pending special permit allowed for a suitably landscaped side yard.

**\*If you have any questions as to whether you can establish all of the applicable legal requirements, you should consult with an attorney.**

## **BZA Application Form**

### **SUPPORTING STATEMENT FOR A SPECIAL PERMIT**

**Please describe in complete detail how you meet each of the following criteria referring to the property and proposed changes or uses which are requested in your application. Attach sheets with additional information for special permits which have additional criteria, e.g.; fast food permits, comprehensive permits, etc., which must be met.**

**Granting the Special Permit requested for 231-235 Third Street, Cambridge, MA (location) would not be a detriment to the public interest because:**

**A)** Requirements of the Ordinance can or will be met for the following reasons:

The requirements of the Ordinance can or will be met by creating a suitably landscaped side yard as an appropriate buffer to adjacent lots.

**B)** Traffic generated or patterns of access or egress would not cause congestion hazard, or substantial change in established neighborhood character for the following reasons:

Traffic generated or patterns of access or egress would not cause congestion hazard, or substantial change in established neighborhood character as there will be no off street parking provided. No increased congestion from a parking exit will be created. The neighborhood is zoned industrial and has a mix of uses but not densely populated. The amount of on street parking generated by the addition of 19 residential unit should not substantially impact the area.

**C)** The continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use for the following reasons:

The continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed residential use. The existing commercial and industrial uses adjacent to the property will be generally unaffected as the hours of operation typically have limited overlap with the hours of primary residential use. The proposed landscape area will provide an appropriate buffer between the various uses.

**D)** Nuisance or hazard would not be created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use or the citizens of the City for the following reasons:

Nuisance or hazard would not be created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use or the citizens of the City. The project will improve the safety and livability of the immediate area by increasing the residential use and vitality of street life. The existing structures have been vacant for some time. The proposed landscape intervention and project generally will increase the vitality and overall attractiveness of the property for the citizens of the City.

**E)** For other reasons, the proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of this ordinance for the following reasons:

The proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of this ordinance. The proposed landscape buffer at the side edges of the property will improve the livability and use of the residential project and protects adjacent properties. The project preserves an existing historic structure, reduces the extent of encroachment of the nonconforming side yard, and creates a scale and massing at the street corner appropriate to the district.

**\*If you have any questions as to whether you can establish all of the applicable legal requirements, you should consult with an attorney.**



## BZA Application Form

### DIMENSIONAL INFORMATION

**Applicant:** Daniel P Anderson  
**Location:** 231-235 Third Street, Cambridge, MA  
**Phone:** 617 354 2501

**Present Use/Occupancy:** Business/Residential  
**Zone:** Industrial A-1 Zone  
**Requested Use/Occupancy:** Residential

		<u>Existing Conditions</u>	<u>Requested Conditions</u>	<u>Ordinance Requirements</u>	
<u>TOTAL GROSS FLOOR AREA:</u>		4,794	18,080	18,080	(max.)
<u>LOT AREA:</u>		5563	5563	5000	(min.)
<u>RATIO OF GROSS FLOOR AREA TO LOT AREA: <sup>2</sup></u>		0.86	3.25	3.25	
<u>LOT AREA OF EACH DWELLING UNIT</u>		5563	293	300 + IHP bonus	
<u>SIZE OF LOT:</u>	WIDTH	63.39	63.39	50	
	DEPTH	100.01	100.01	NA	
<u>SETBACKS IN FEET:</u>	FRONT	0.4 Third St	0.0	0.0	
	REAR	39.0	10.0	14.1 min 10.0 (SP)	
	LEFT SIDE	5.3 Bent St (Front)	0.0	0.0	
	RIGHT SIDE	1.3	1.3	17.5 min 10.0 (SP)	
<u>SIZE OF BUILDING:</u>	HEIGHT	24.2	45	45	
	WIDTH	48.2	77.2	NA	
	LENGTH	23.7	62.0	NA	
<u>RATIO OF USABLE OPEN SPACE TO LOT AREA:</u>		0.18	0.24	0	
<u>NO. OF DWELLING UNITS:</u>		1	19	19	
<u>NO. OF PARKING SPACES:</u>		4	0	0	
<u>NO. OF LOADING AREAS:</u>		0	0	0	
<u>DISTANCE TO NEAREST BLDG. ON SAME LOT</u>		3.2	0	min 10	

Describe where applicable, other occupancies on the same lot, the size of adjacent buildings on same lot, and type of construction proposed, e.g; wood frame, concrete, brick, steel, etc.:

three structures exist on the lot (combined lots) a garage and two wood frame structures. Garage and one structure are to be demolished.

1. SEE CAMBRIDGE ZONING ORDINANCE ARTICLE 5.000, SECTION 5.30 (DISTRICT OF DIMENSIONAL REGULATIONS).
2. TOTAL GROSS FLOOR AREA (INCLUDING BASEMENT 7'-0" IN HEIGHT AND ATTIC AREAS GREATER THAN 5') DIVIDED BY LOT AREA.
3. OPEN SPACE SHALL NOT INCLUDE PARKING AREAS, WALKWAYS OR DRIVEWAYS AND SHALL HAVE A MINIMUM DIMENSION OF 15'.

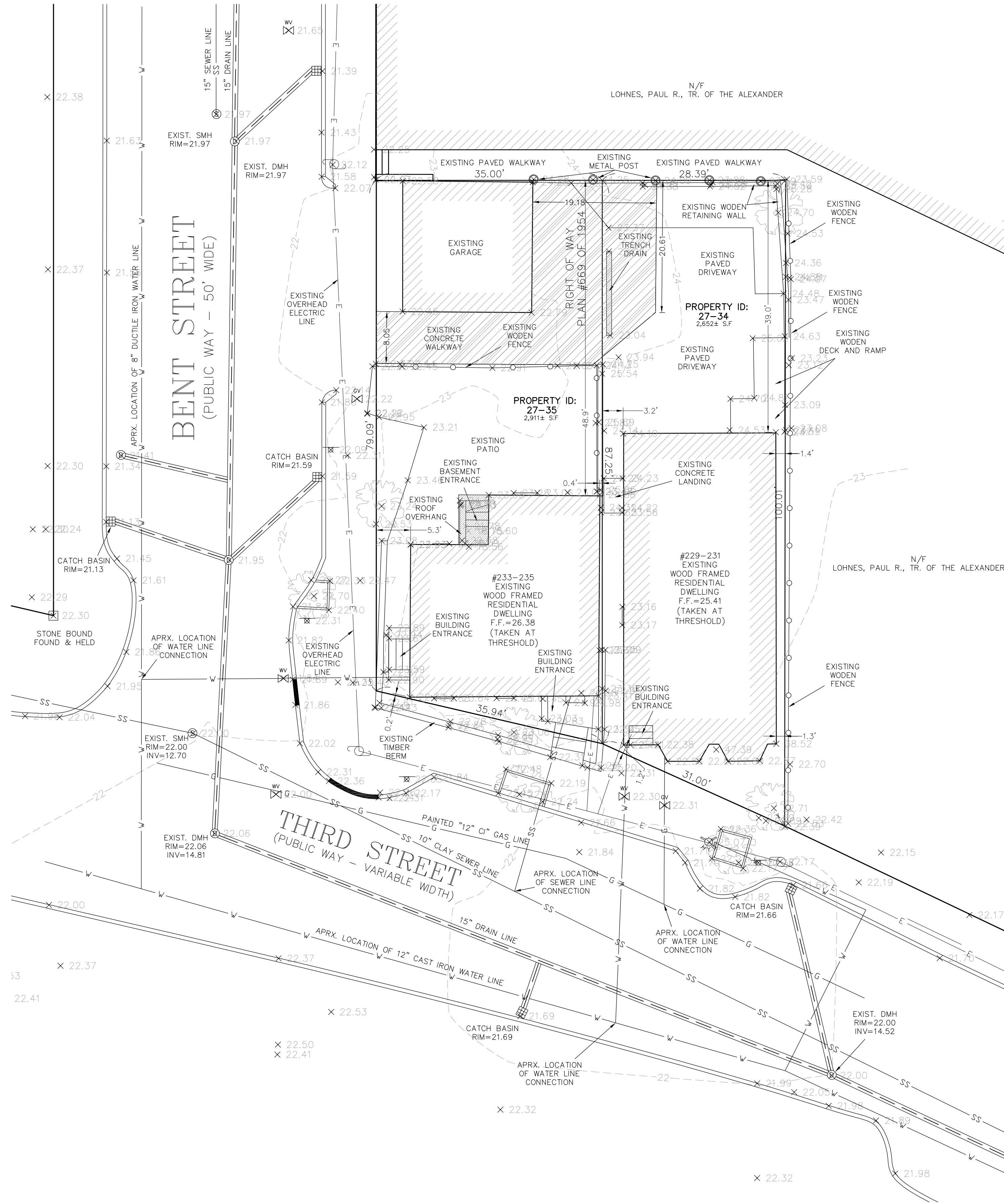
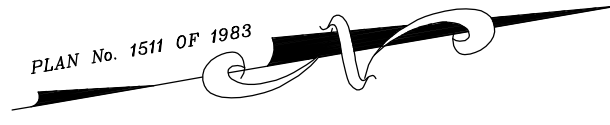






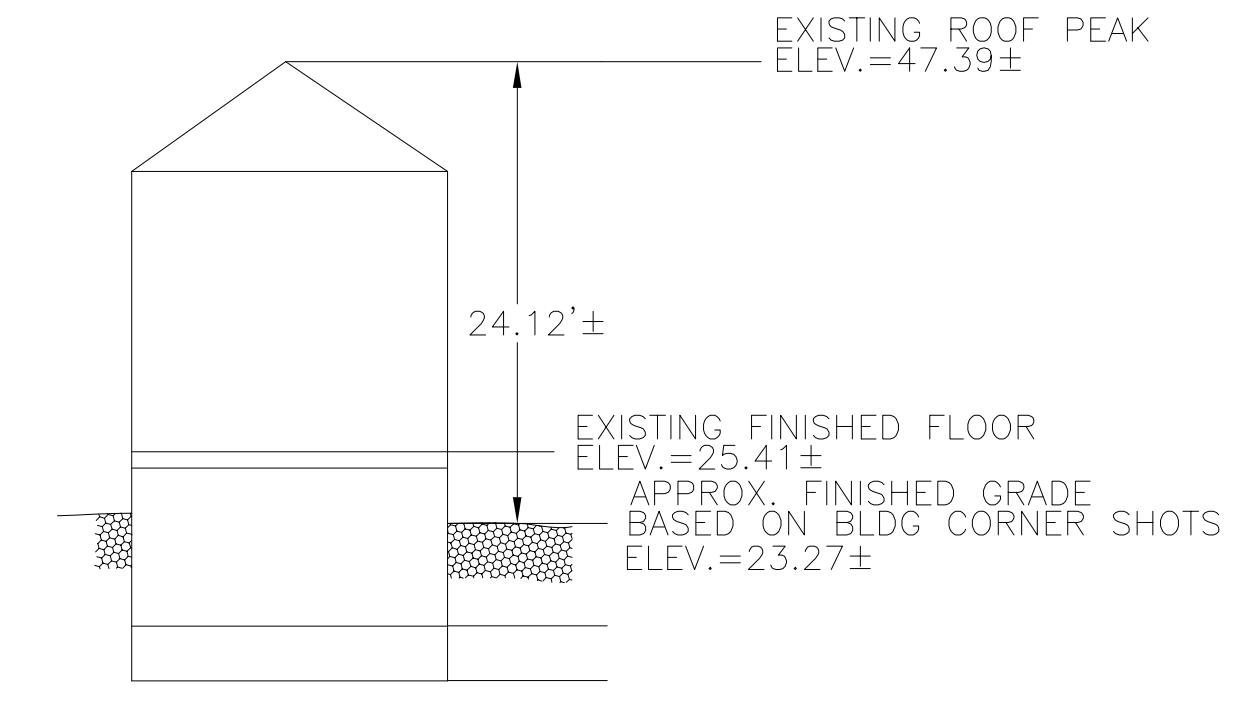
# LEGEND

	BOUND
	IRON PIN/PIPE
	STONE POST
	TREE
	TREE STUMP
	SHRUBS/FLOWERS
	SIGN
	BOLLARD
	SEWER MANHOLE
	DRAIN MANHOLE
	CATCH BASIN
	WATER MANHOLE
	WATER VALVE
	HYDRANT
	GAS VALVE
	ELECTRIC MANHOLE
	ELECTRIC HANDHOLE
	UTILITY POLE
	LIGHT POLE
	MANHOLE
	SPOT GRADE
	TOP OF WALL
	BOTTOM OF WALL
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	RETAINING WALL
	STONE WALL
	FENCE
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	SEWER LINE
	DRAIN LINE
	WATER LINE
	GAS LINE
	UNDERGROUND ELECTRIC LINE
	OVERHEAD WIRES
	CONTOUR LINE (MJR)
	CONTOUR LINE (MNR)

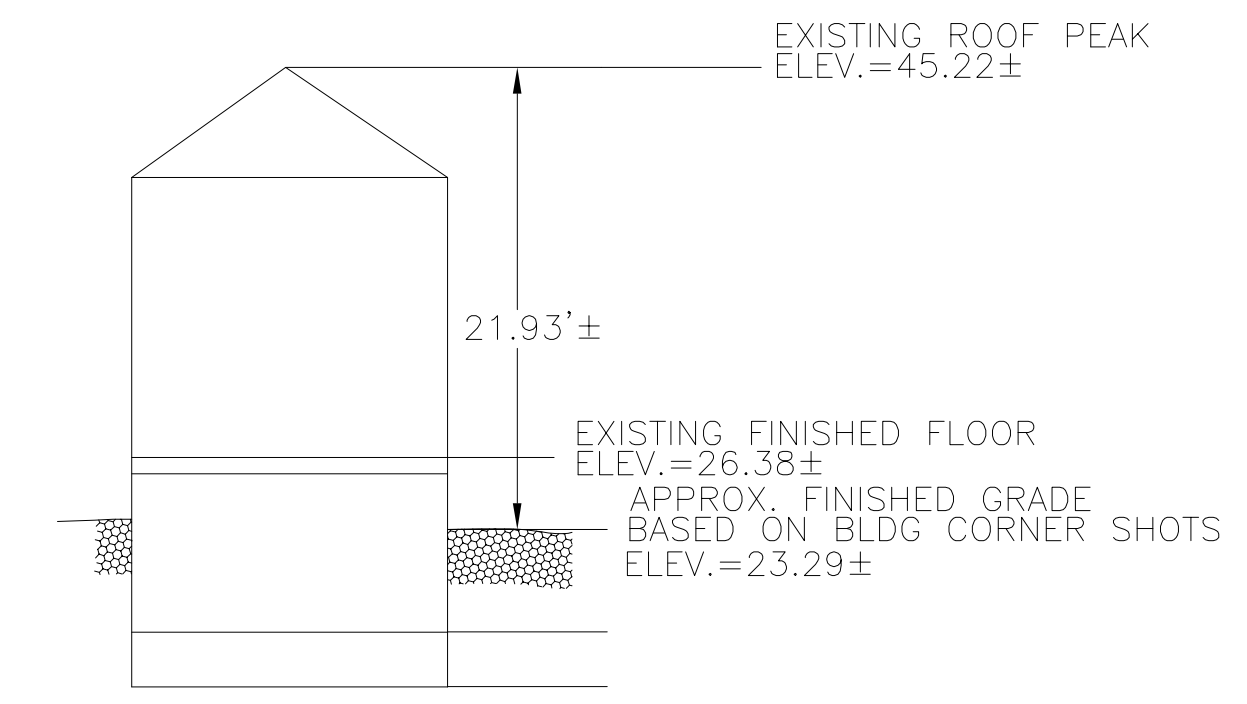


### NOTES:

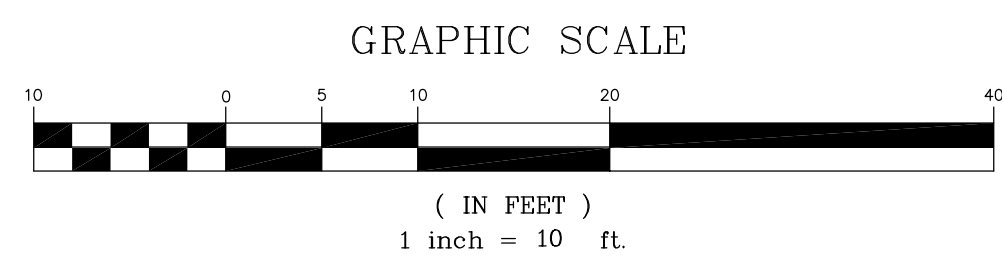
- INFORMATION SHOWN ON THIS PLAN IS THE RESULT OF A FIELD SURVEY PERFORMED BY PETER NOLAN & ASSOCIATES LLC AS OF 12/30/2021.
- DEED REFERENCE: BOOK 50410, PAGE 470  
DEED REFERENCE: BOOK 54778 PAGE 343  
PLAN REFERENCE 1: PLAN No. 669 OF 1954  
PLAN REFERENCE 2: PLAN No. 108 OF 1983  
PLAN REFERENCE 3: PLAN No. 1511 OF 1983  
PLAN REFERENCE 4: PLAN No. 507 OF 2007  
PLAN REFERENCE 5: LAND COURT PLAN No. 9830-A  
PLAN REFERENCE 6: LAND COURT PLAN No. 13781-A
- THIS PLAN IS NOT INTENDED TO BE RECORDED.
- I CERTIFY THAT THE DWELLING SHOWN IS NOT LOCATED WITHIN A SPECIAL FLOOD HAZARD ZONE. IT IS LOCATED IN ZONE X, ON FLOOD HAZARD BOUNDARY MAP NUMBER 25017C0577E, IN COMMUNITY NUMBER: 2501866, DATED 6/4/2010.
- THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO OBSERVE ANY APPARENT USES OF THE LAND; HOWEVER THIS NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.
- FIRST FLOOR ELEVATIONS ARE TAKEN AT THRESHOLD.
- NO RESPONSIBILITY IS TAKEN FOR ZONING TABLE AS PETER NOLAN & ASSOCIATES LLC ARE NOT ZONING EXPERTS. TABLE IS TAKEN FROM TABLE PROVIDED BY LOCAL ZONING ORDINANCE. CLIENT AND/OR ARCHITECT TO VERIFY THE ACCURACY OF ZONING ANALYSIS.
- THE ELEVATIONS SHOWN ARE BASED ON CITY OF CAMBRIDGE DATUM.



EXISTING PROFILE #229-231  
NOT TO SCALE



EXISTING PROFILE #233-235  
NOT TO SCALE



SCALE	1"=10'		
DATE	1/19/2022		
REV	DATE	REVISION	BY
SHEET	229-231 & 233-235 THIRD STREET CAMBRIDGE MASSACHUSETTS		
PLAN NO.	1 OF 1		
CLIENT:	EXISTING CONDITIONS PLAN		
DRAWN BY	KK		
CHKD BY	ETS		
APPD BY	P.J.N		
<b>PETER NOLAN &amp; ASSOCIATES LLC</b> LAND SURVEYORS/CIVIL ENGINEERING CONSULTANTS 80 JEWETT STREET, SUITE 2 NEWTON, MA 02458 PHONE: 857 891 7478/617 782 1533 FAX: 617 202 5691 EMAIL: pnolan@pnasurveyors.com			
SHEET NO.	1		





















NOT FOR CONSTRUCTION



LEVEL	GROSS SQUARE FOOTAGE	NET SQUARE FOOTAGE			
		UNIT 1	UNIT 2	UNIT 3	UNIT 4
LEVEL 1 (3 UNITS)	4,189 GSF	600 SF	1128 SF	616 SF	456 SF
LEVEL 2 (4 UNITS)	3,909 GSF	838 SF	1012 SF	616 SF	582 SF
LEVEL 3 (4 UNITS)	3,301 GSF	515 SF	770 SF	616 SF	582 SF
LEVEL 4 (4 UNITS)	3,301 GSF	515 SF	770 SF	616 SF	582 SF
LEVEL 5 (4 UNITS)	3,301 GSF	515 SF	770 SF	608 SF	590 SF
<b>TOTAL (19 UNITS)</b>	<b>18,000 GSF</b>	<b>13,297 NSF</b>			

AFFORDABLE UNIT  
 20% NET SF AFFORDABLE  
 13,297 X .20 = 2,660 RSF  
 4 UNITS = 2,660 RSF

SPECIAL PERMIT

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
 1972 Massachusetts Ave, 4th Floor  
 Cambridge, MA 02140  
 Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
 Address: 231-235 THIRD STREET,  
 CAMBRIDGE MA 02142

Title:  
 PROPOSED FLOOR PLANS (NET)

Drawing Issued By: ANDERSON PORTER DESIGN  
 Project #: 2106  
 Date: 2023.01.13  
 Scale: As indicated  
 Drawn by: DS























NOT FOR CONSTRUCTION

SPECIAL PERMIT

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET

Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: PROPOSED ELEVATIONS

Drawing Issued By: ANDERSON PORTER DESIGN

Project #: 2106  
Date: 2023.01.13  
Scale: 3/16" = 1'-0"  
Drawn by: DS

A-2.0



① THIRD STREET ELEVATION  
3/16" = 1'-0"



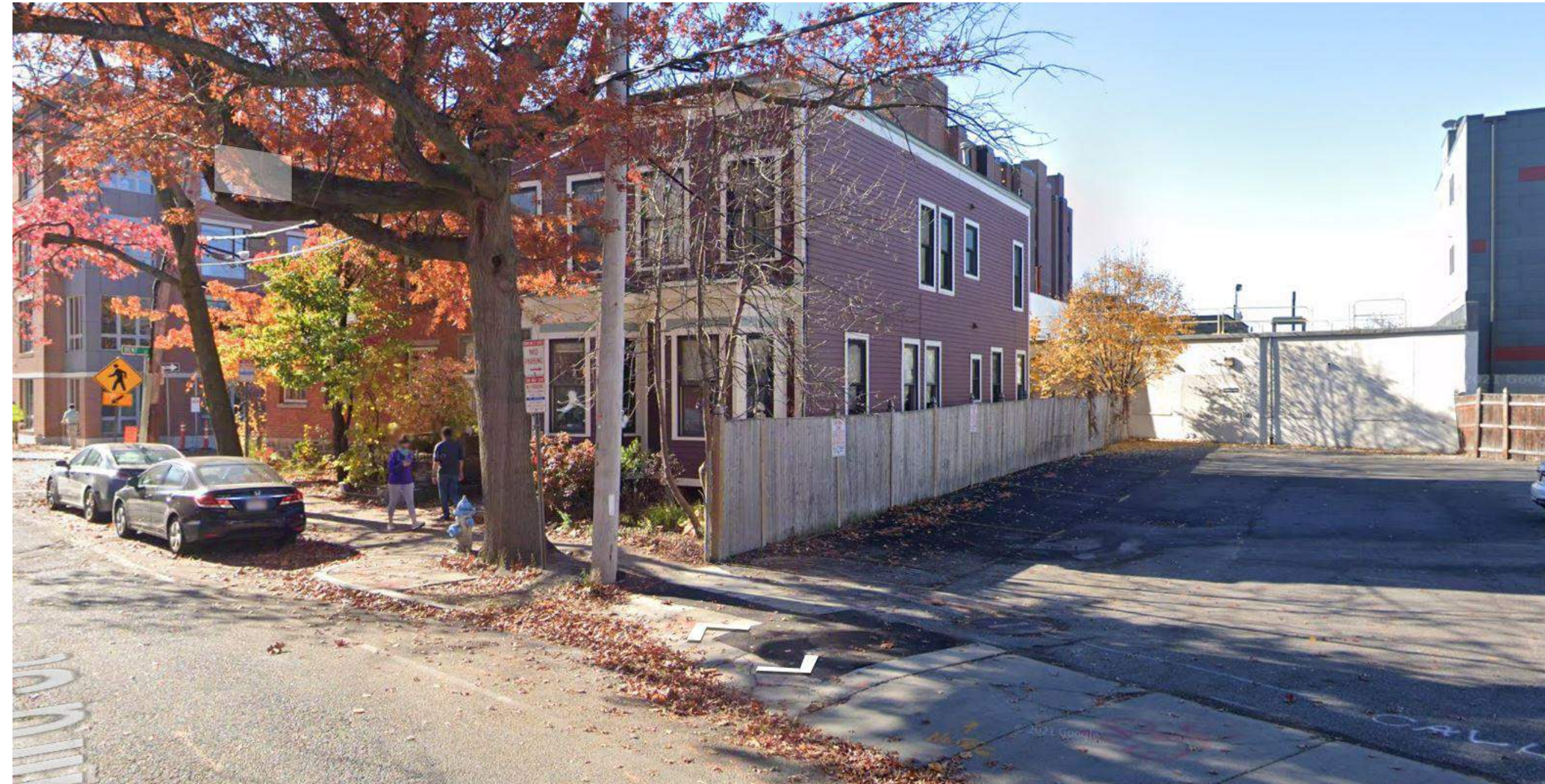
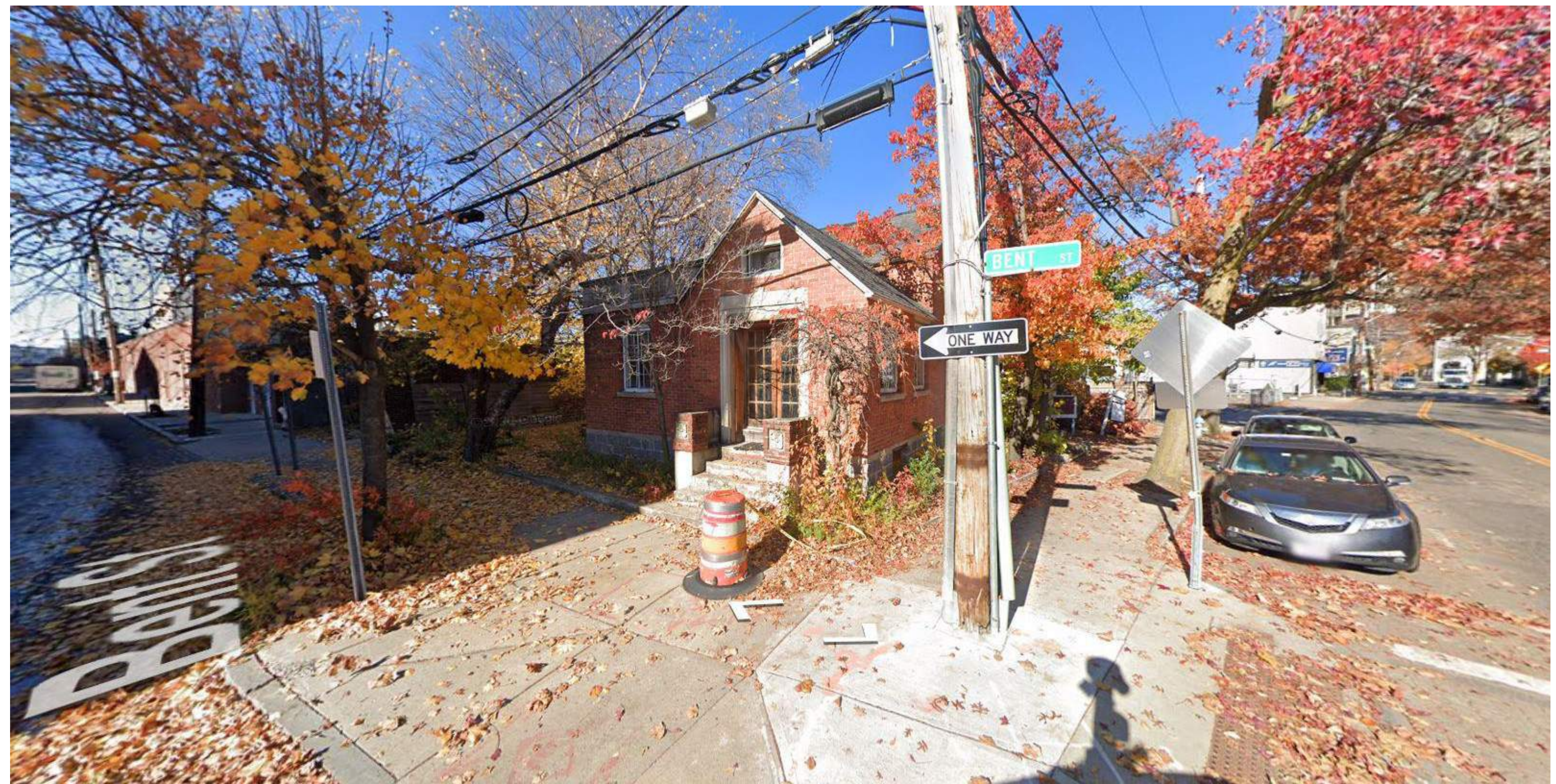
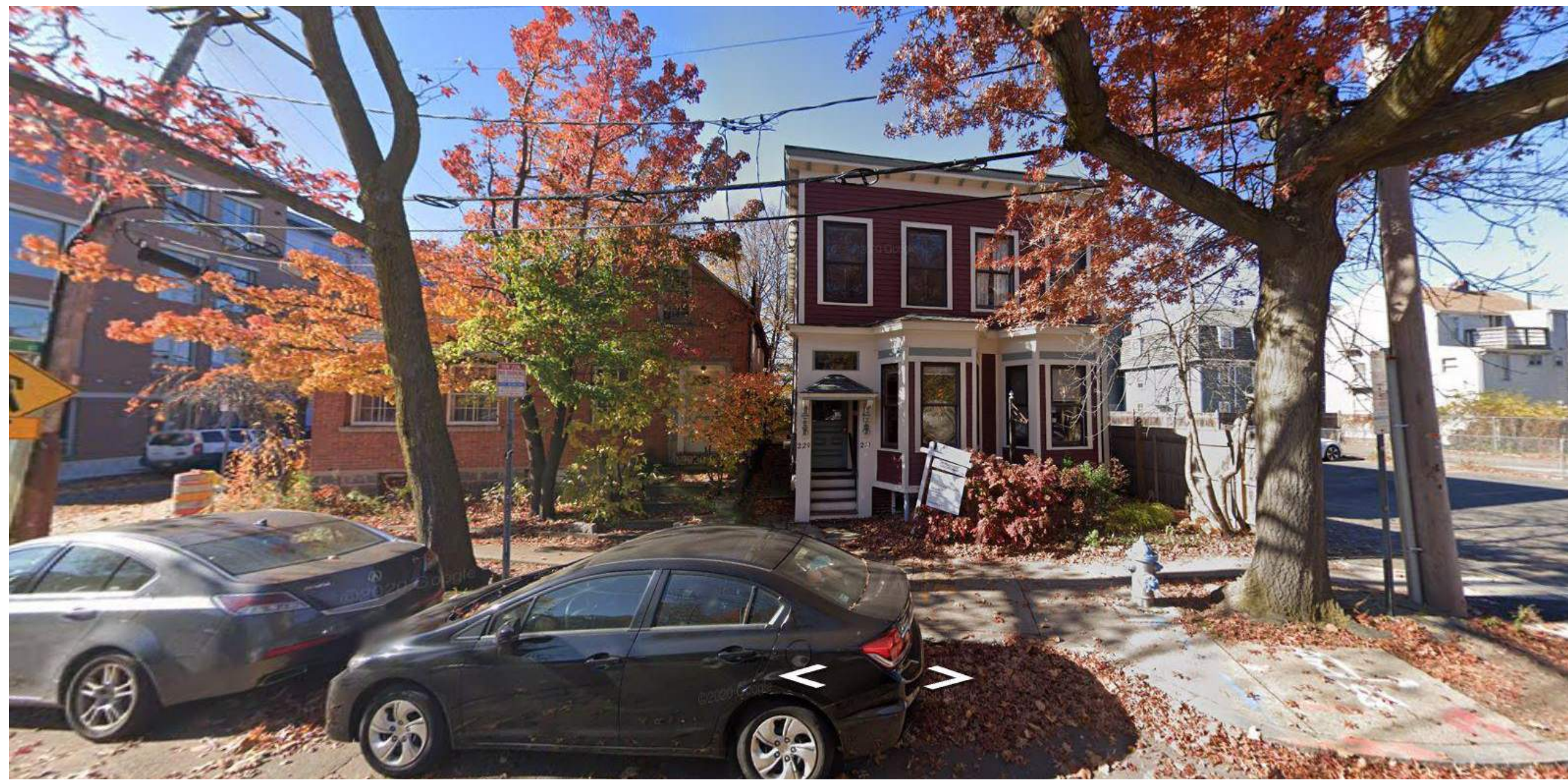
② BENT STREET ELEVATION  
3/16" = 1'-0"







NOT FOR CONSTRUCTION



**SPECIAL PERMIT**

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET

Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: EXISTING SITE PHOTOS

Drawing Issued By: ANDERSON PORTER DESIGN  
Project #: 2106  
Date: 2023.01.13  
Scale: A-9.1  
Drawn by: DA/DS







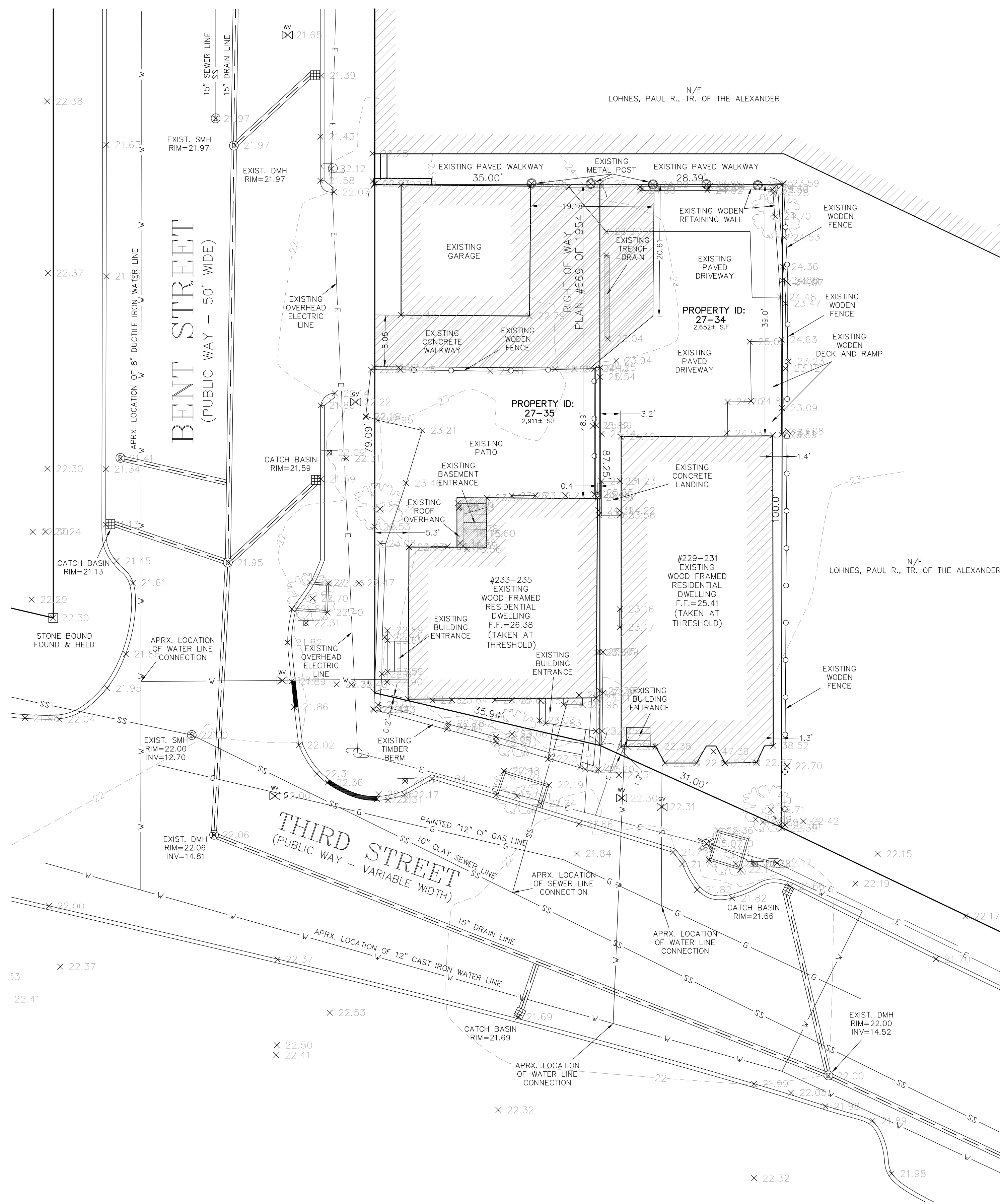




# LEGEND

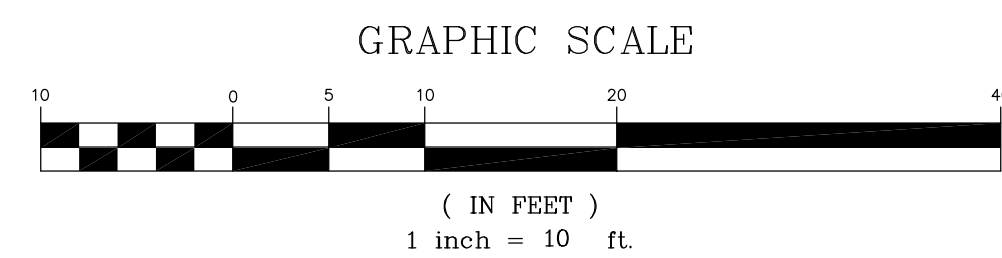
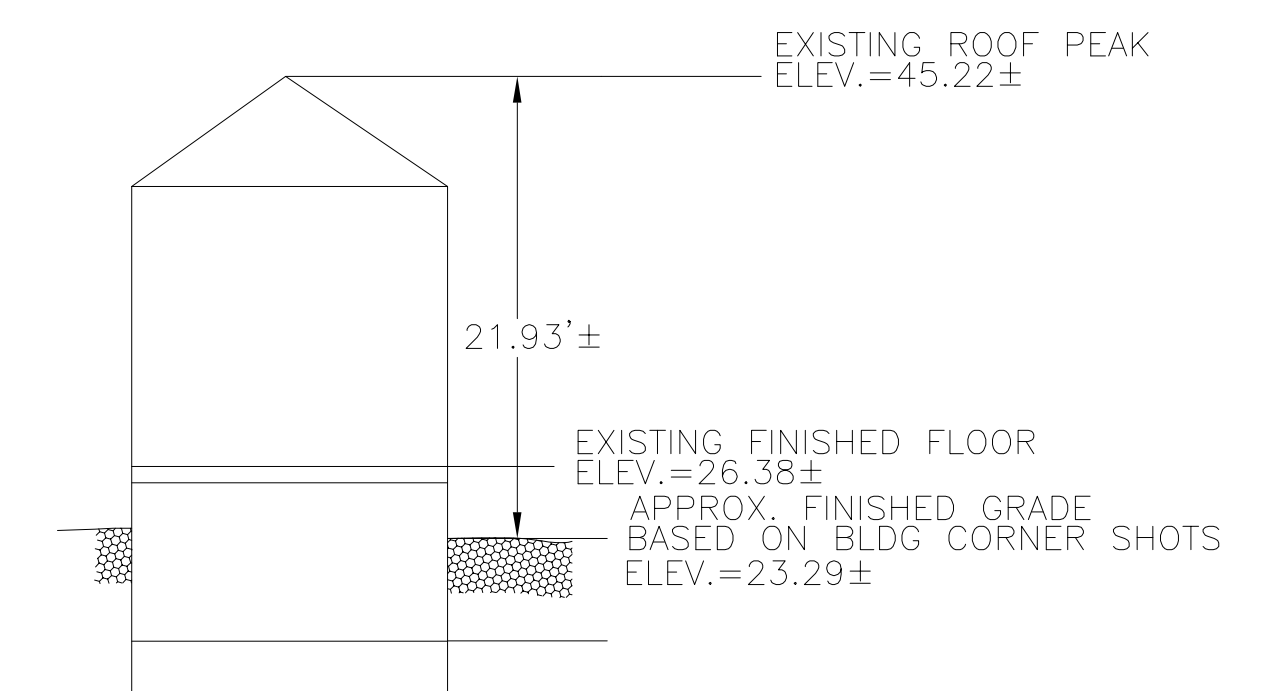
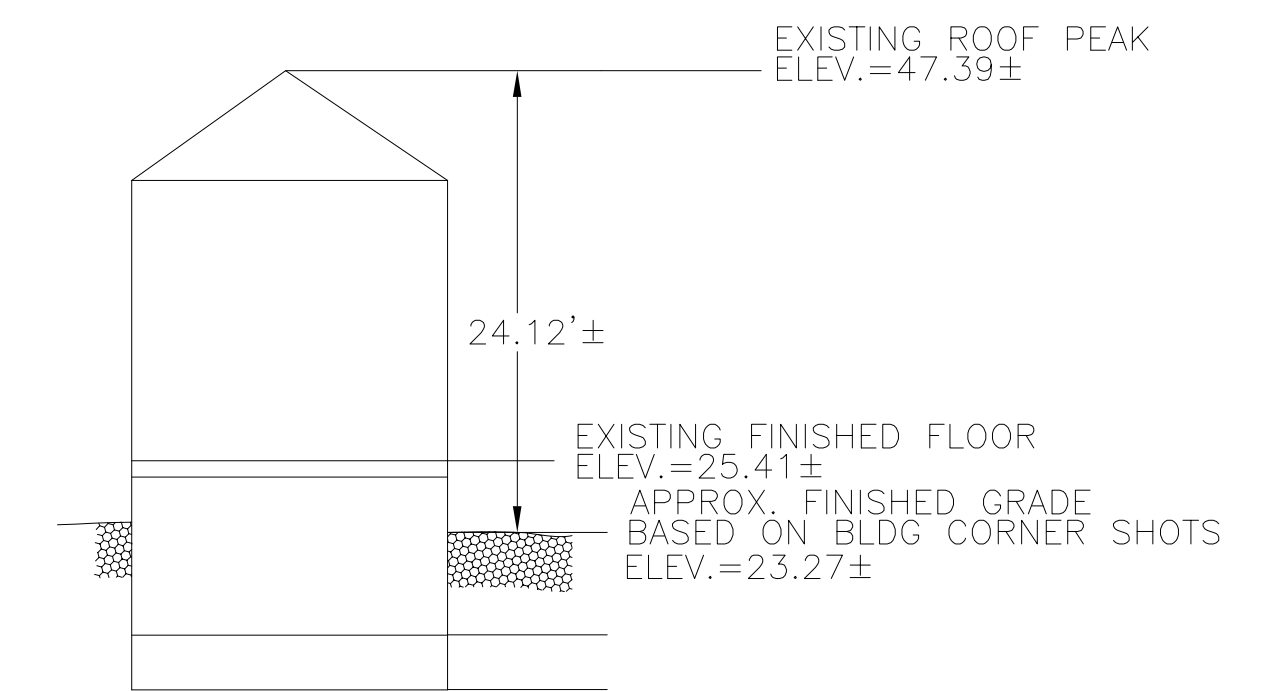
	BOUND
	IRON PIN/PIPE
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	TREE
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	SHRUBS/FLOWERS
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	BOLLARD
	SEWER MANHOLE
	DRAIN MANHOLE
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	SEWER LINE
	DRAIN LINE
	WATER LINE
	GAS LINE
	UNDERGROUND ELECTRIC LINE
	OVERHEAD WIRES
	CONTOUR LINE (MJR)
	CONTOUR LINE (MNR)

PLAN No. 1511 OF 1983



## NOTES:

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SCALE	1"=10'		
DATE	1/19/2022		
REV	DATE	REVISION	BY
SHEET	229-231 & 233-235 THIRD STREET CAMBRIDGE MASSACHUSETTS		
PLAN NO.	1 OF 1		
CLIENT:	EXISTING CONDITIONS PLAN		SHEET NO.
DRAWN BY	KK		
CHKD BY	ETS		
APPD BY	P.J.N		
<b>PETER NOLAN &amp; ASSOCIATES LLC</b> LAND SURVEYORS/CIVIL ENGINEERING CONSULTANTS 80 JEWETT STREET, SUITE 2 NEWTON, MA 02458 PHONE: 857 891 7478/617 782 1533 FAX: 617 202 5691 EMAIL: pnolan@pnasurveyors.com			

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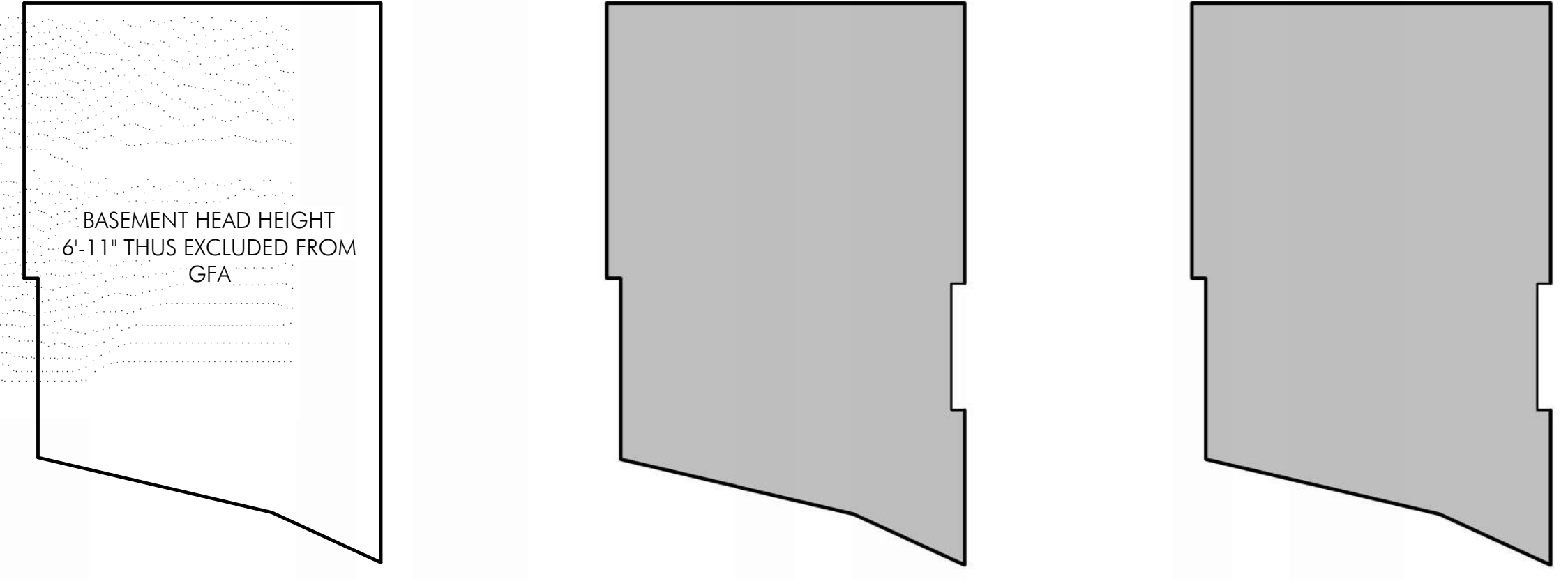
ZONING CHART - CAMBRIDGE

LOT SIZE:	ALLOWED / REQUIRED	EXISTING	PROPOSED	COMPLIANCE
ZONE	1A-1	1A-1 ZONE	1A-1 ZONE	COMPLIES
USE	RESIDENTIAL	RESIDENTIAL	RESIDENTIAL	COMPLIES
MIN LOT SIZE	5,000 SF	±5,563 SF	±5,563 SF	COMPLIES
MIN LOT AREA PER DWELLING UNIT	300 SF/DU PER ECHO (PLUS INCREASE BY IHP)	±292.8 SF	±2,781.5 SF	COMPLIES
MAX FLOOR AREA RATIO (FAR)	1.25/1.50	1.9	2.25 (1.25 X 2 PER ECHO) X (1.3 PER 11.2) = 3.25 5563 x 3.25 = 18,079.75 GSF	COMPLIES
MAX BUILDING HEIGHT	45'	25.3'	27/45, AVG HEIGHT 36'	COMPLIES
MIN. YARD SETBACKS FRONT (THIRD ST) FRONT SIDE (BENT ST) SIDE 1 (THIRD ST) SIDE 2 (BENT ST)	0.0' 0.0' H+L/7 OR 10' BY SPECIAL PERMIT H+L/7 OR 10' BY SPECIAL PERMIT	0.2' 5.3' 1.3' 39'	Calculated N/A N/A 45' + 53.5/7 = 14.1' 36' (AVG H) + 84/7 = 17.1'	Actual 1.4' 0.0' 10.0' 10.0'
MIN LOT WIDTH	50'	63.4'	63.4'	COMPLIES
PRIVATE OPEN SPACE, MIN % OF LOT	0% REQUIRED	544 SF	1,680 SF Not including balconies or roof decks	COMPLIES
BICYCLE PARKING	1/DWELLING UNIT	N/A	20 LONG TERM SPACES + 6 short TERM	COMPLIES

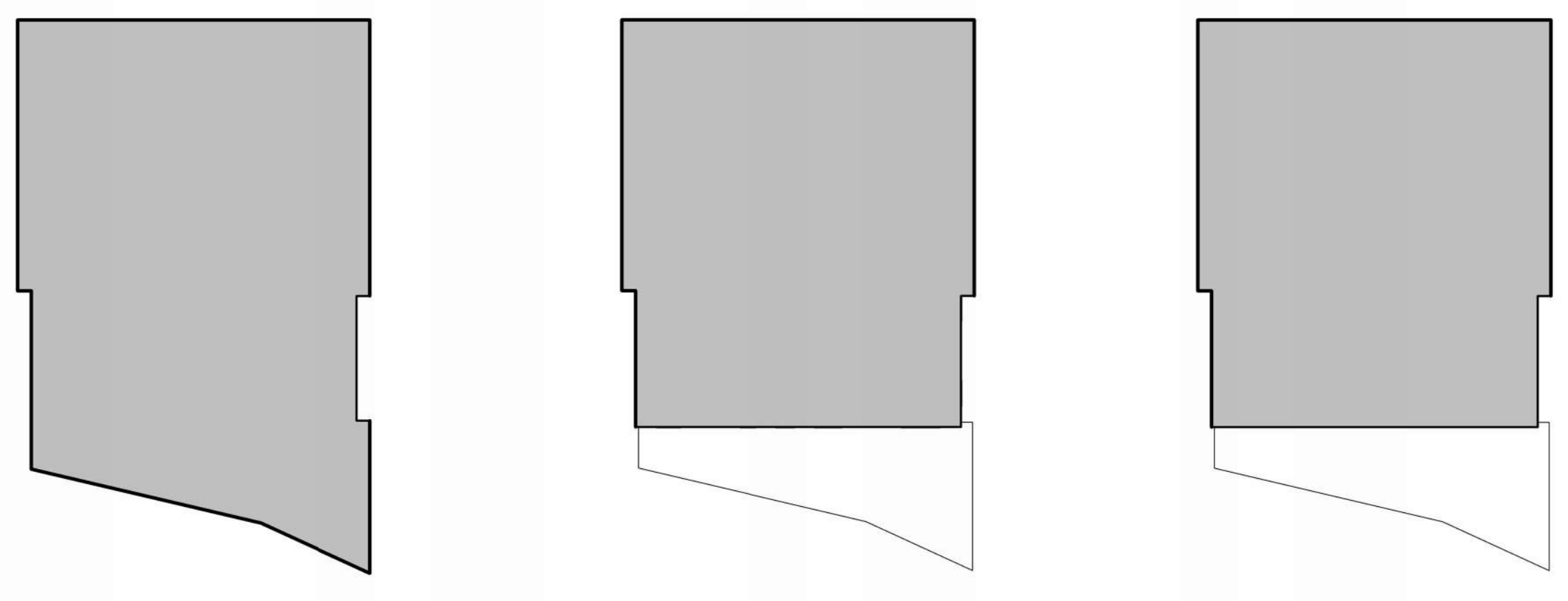
GROSS FLOOR AREA	
Level	Area
PROPOSED LEVEL 1	3884 SF
PROPOSED LEVEL 2	3884 SF
PROPOSED LEVEL 3	3884 SF
PROPOSED LEVEL 4	3214 SF
PROPOSED LEVEL 5	3214 SF
	18079 SF

ZONING CHART  
12" = 1'-0"

NOT FOR CONSTRUCTION



① LOWER LEVEL = 3,694 GFA (EXCLUDED FROM FAR) 1" = 20'-0"  
 ② PROPOSED LEVEL 1 = 3,884 GFA 1" = 20'-0"  
 ③ PROPOSED LEVEL 2 = 3,884 GFA 1" = 20'-0"



⑤ PROPOSED LEVEL 3 = 3,884 GFA 1" = 20'-0"  
 ④ PROPOSED LEVEL 4 = 3,214 GFA 1" = 20'-0"  
 ⑥ PROPOSED LEVEL 5 = 3,214 GFA 1" = 20'-0"



⑦ PROPOSED SOUTH ELEVATION Copy 1  
1/8" = 1'-0"

SPECIAL PERMIT

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave., 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET, CAMBRIDGE MA 02142

Title: ZONING COMPLIANCE

Drawing Issued By:	ANDERSON PORTER DESIGN
Project #:	2106
Date:	2023.09.21
Scale:	As indicated
Drawn by:	DS

Z1.1

8/22/2023 10:39:38 AM



# CITY INITIATIVES



## ARTICLE 20:

East Cambridge Housing Overlay District

*"intent to provide an incentive for residential development - increased FAR and unit density for residential use"*

*Industrial A-1 Zoning District with ECHO*







	BASE ZONING	ECHO OVERLAY	INCLUSIONARY HOUSING
Height	45'	45'	45'
FAR	1.25	2.5	3.25
Lot Area/ Dwelling Unit	600	300	230

## ARTICLE 22:

### Sustainable Design and Development

*"intent to encourage the use of public transportation, support bicycle use, pedestrian activity and other forms of alternative transportation."*



Provide 19+ dedicated bicycle parking spaces, including protected long-term spaces in the basement, and short-term outside at Third Street.

The recent zoning repeal of minimum off-street parking requirements further encourages occupants to rely on public transportation and alternative forms of transportation.

[https://www.cambridgema.gov/-/media/Files/Traffic/factsheet\\_cambridgetransportationfinal edits91515as.pdf](https://www.cambridgema.gov/-/media/Files/Traffic/factsheet_cambridgetransportationfinal edits91515as.pdf)

[https://res.cloudinary.com/tmxfoc/images/f\\_auto,q\\_auto/v1639070494/titlemax/1fa483bf-us-cities-highest-lowest-vehicle-ownership-3\\_65per/1fa483bf-us-cities-highest-lowest-vehicle-ownership-3\\_65per.png?\\_i=AA](https://res.cloudinary.com/tmxfoc/images/f_auto,q_auto/v1639070494/titlemax/1fa483bf-us-cities-highest-lowest-vehicle-ownership-3_65per/1fa483bf-us-cities-highest-lowest-vehicle-ownership-3_65per.png?_i=AA)



# Travel Distance and Time from project site to public transportation (MBTA)

0.4 miles / 9 - 15 minute walk

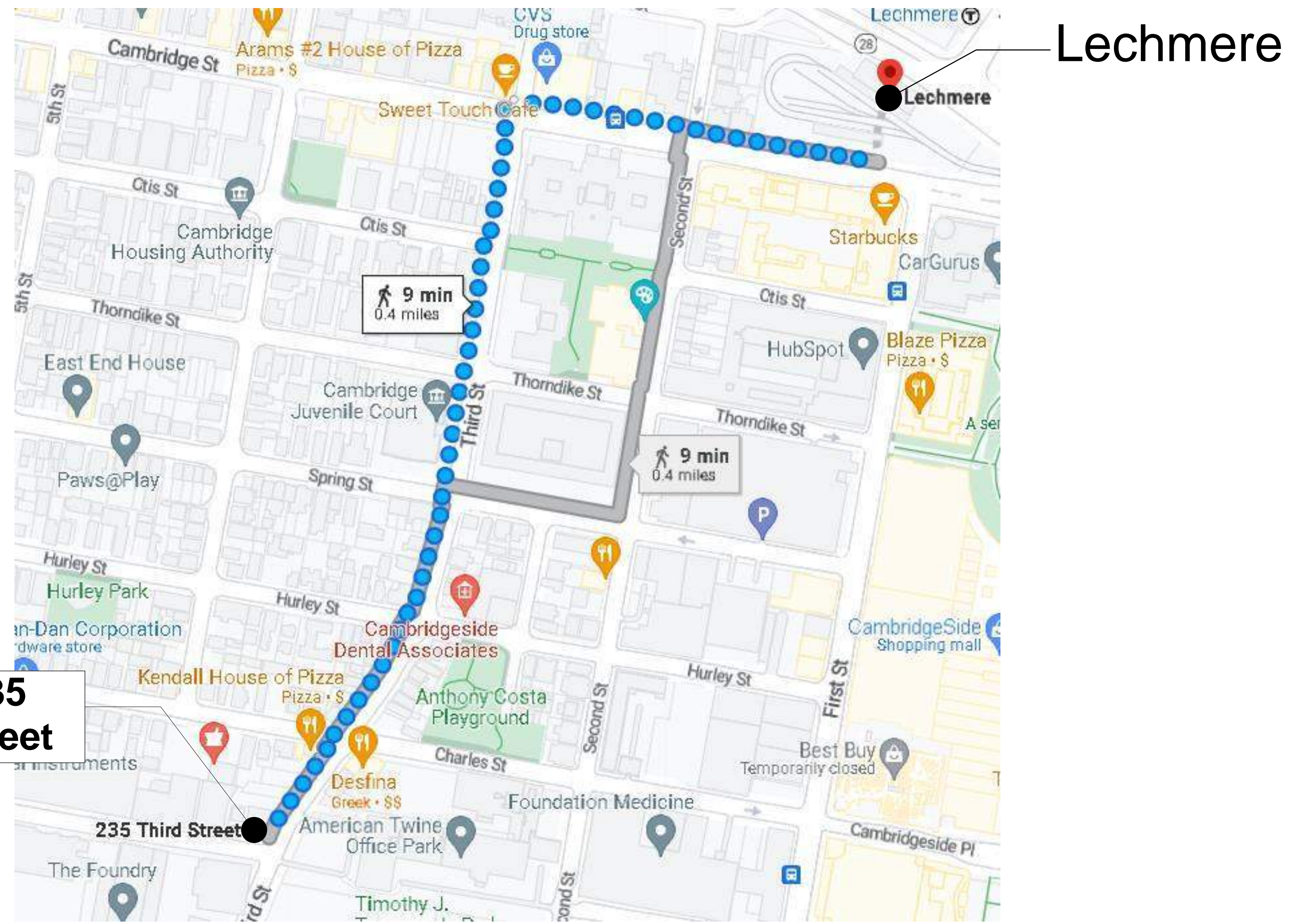


Exhibit B – Walking Distance to Lechmere Station

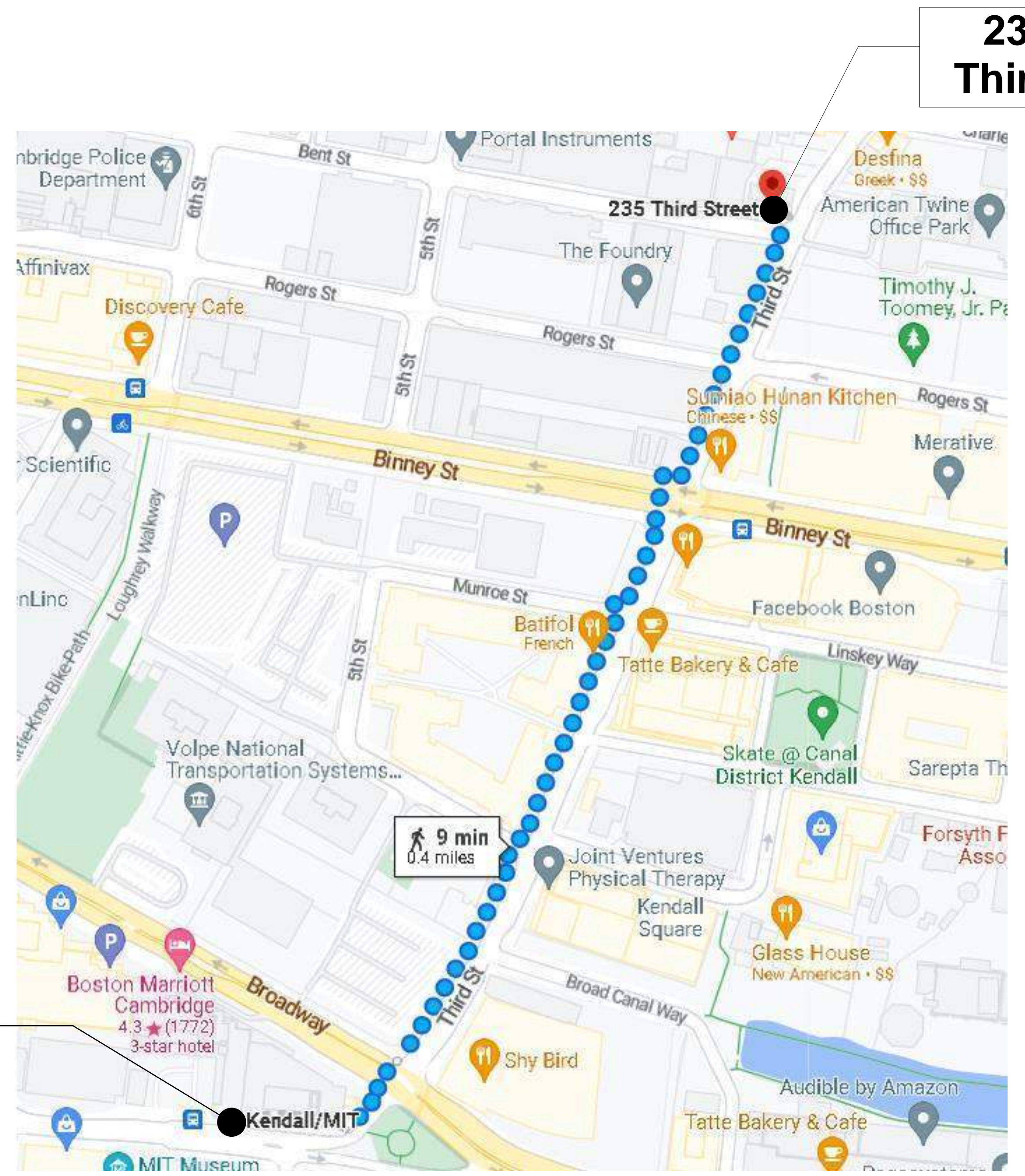


Exhibit A – Walking Distance to Kendall MIT

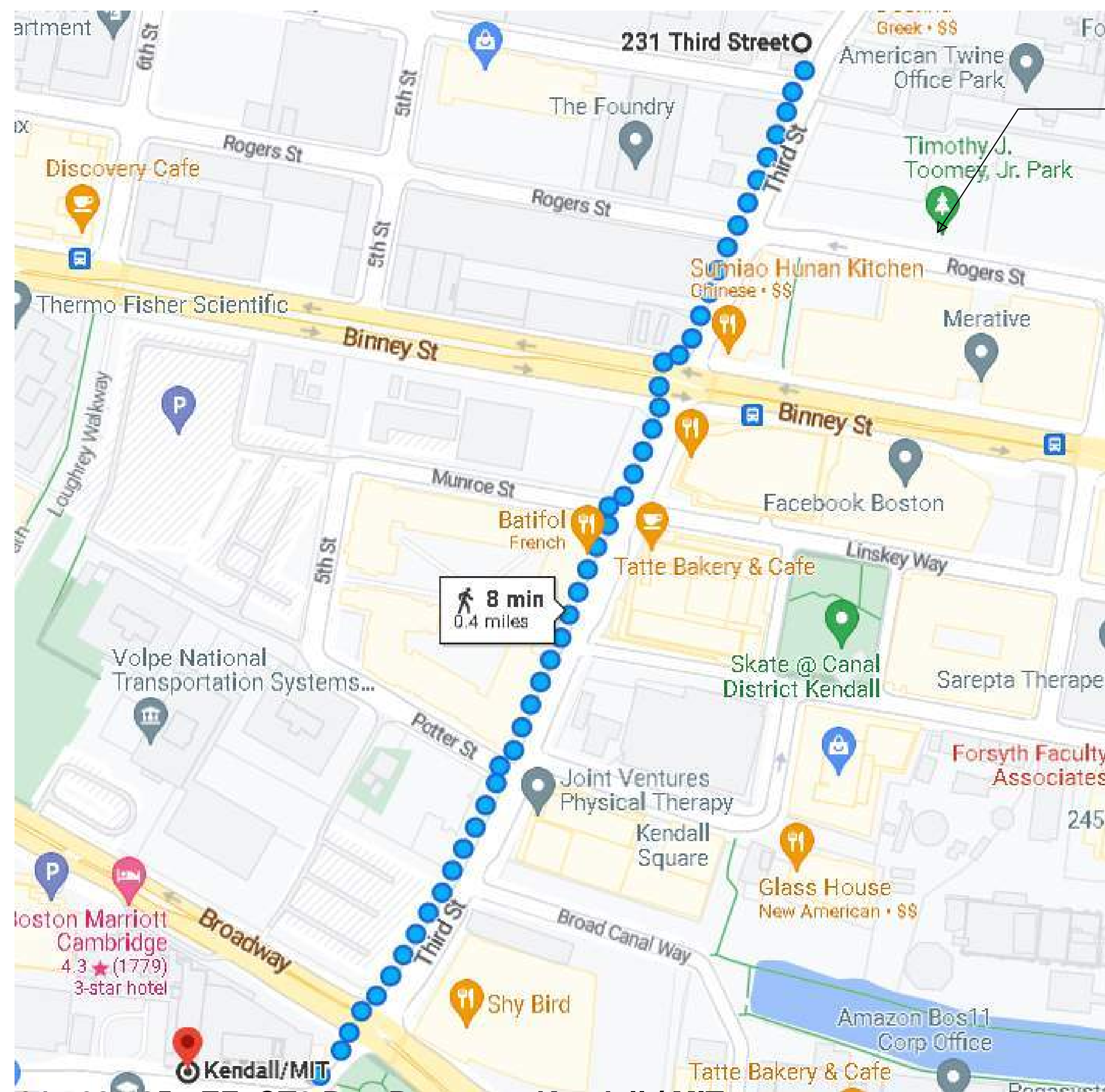
Kendall/  
MIT

# WALKING TO MBTA

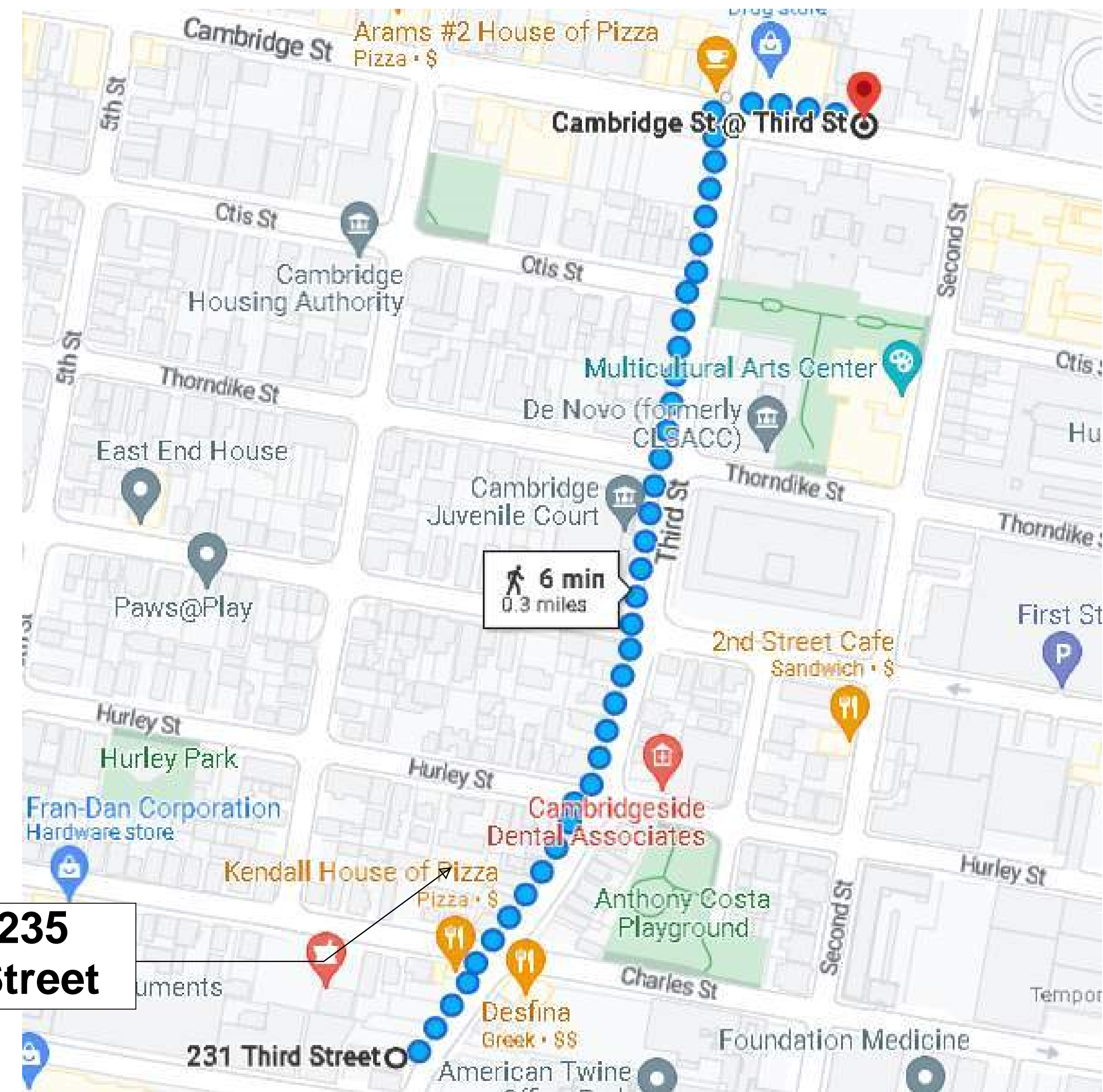


# Travel Distance and Time from Project Site to local Bus Routes 64, 68, 69, 80, 85, 87, 88, EZ, CT2

0.4 miles / 9 - 15 minute walk



64 - 68 - 85 - EZ, CT2 Bus Routes at Kendall / MIT



231 - 235 Third Street

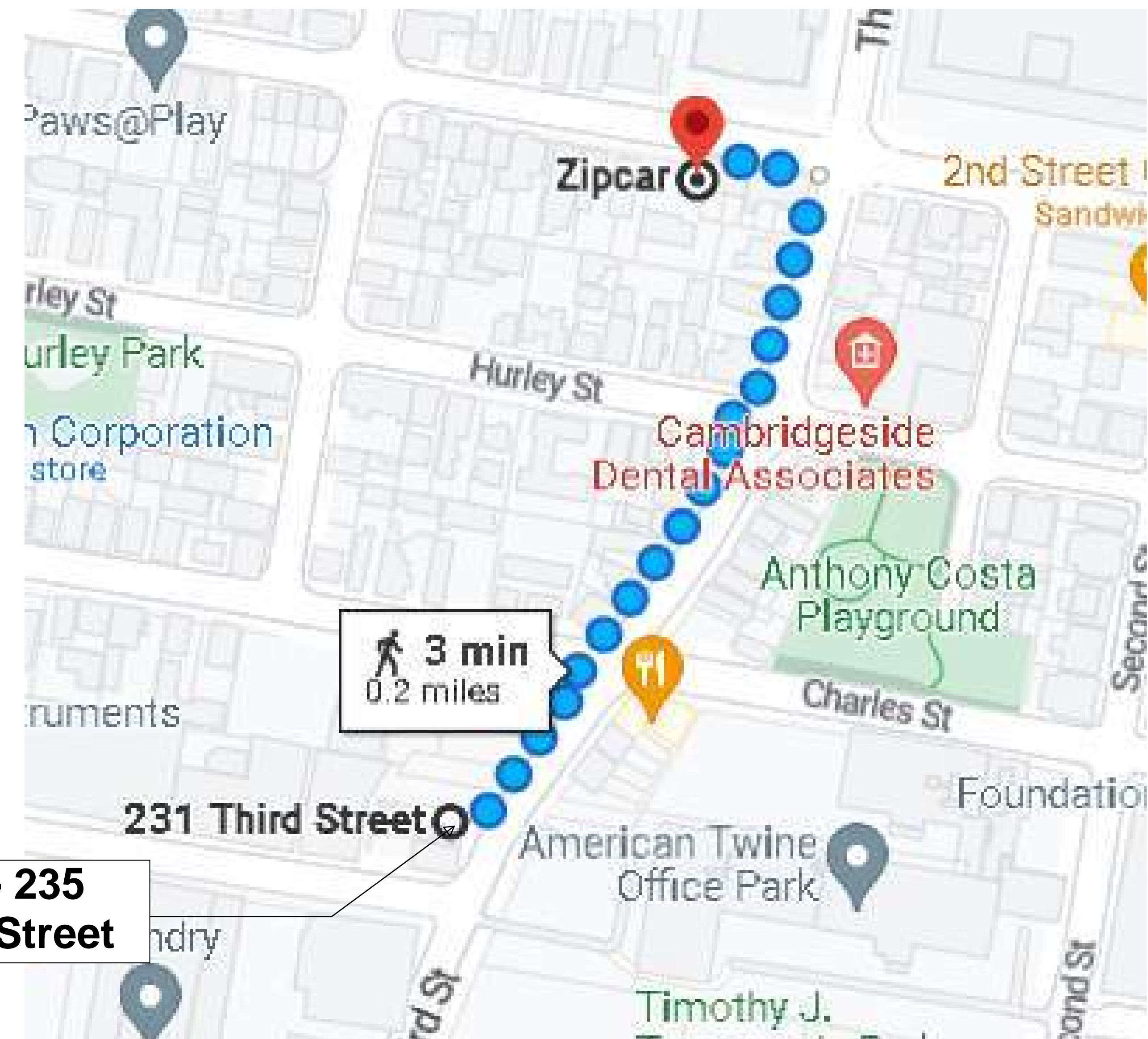
69 Bus to Harvard Sq at Cambridge and Third Street  
80,87,88 Bus Routes at Lechmere Station

# WALKING TO BUS

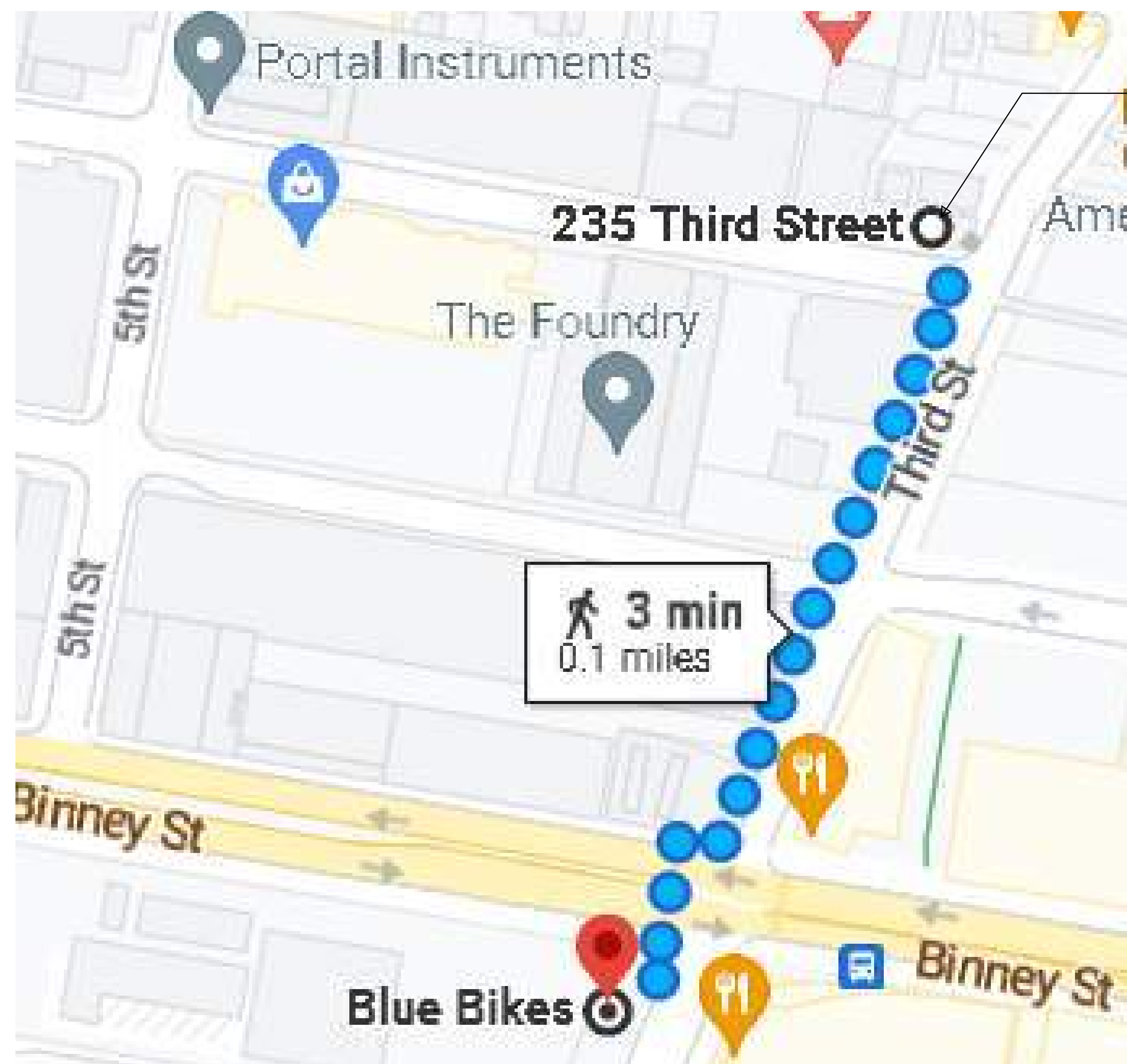


# Travel Distance and Time from Project Site to Zipcar and Blue Bike Stations

0.2 miles / 3 - 5 minute walk



Zipcar location at 62 Spring Street



Blue Bike location on At Binney and Third Street

# WALKING TO ZIPCAR - BLUE BIKES



REQUESTED  
RELIEF



## Special Permit under Article 5

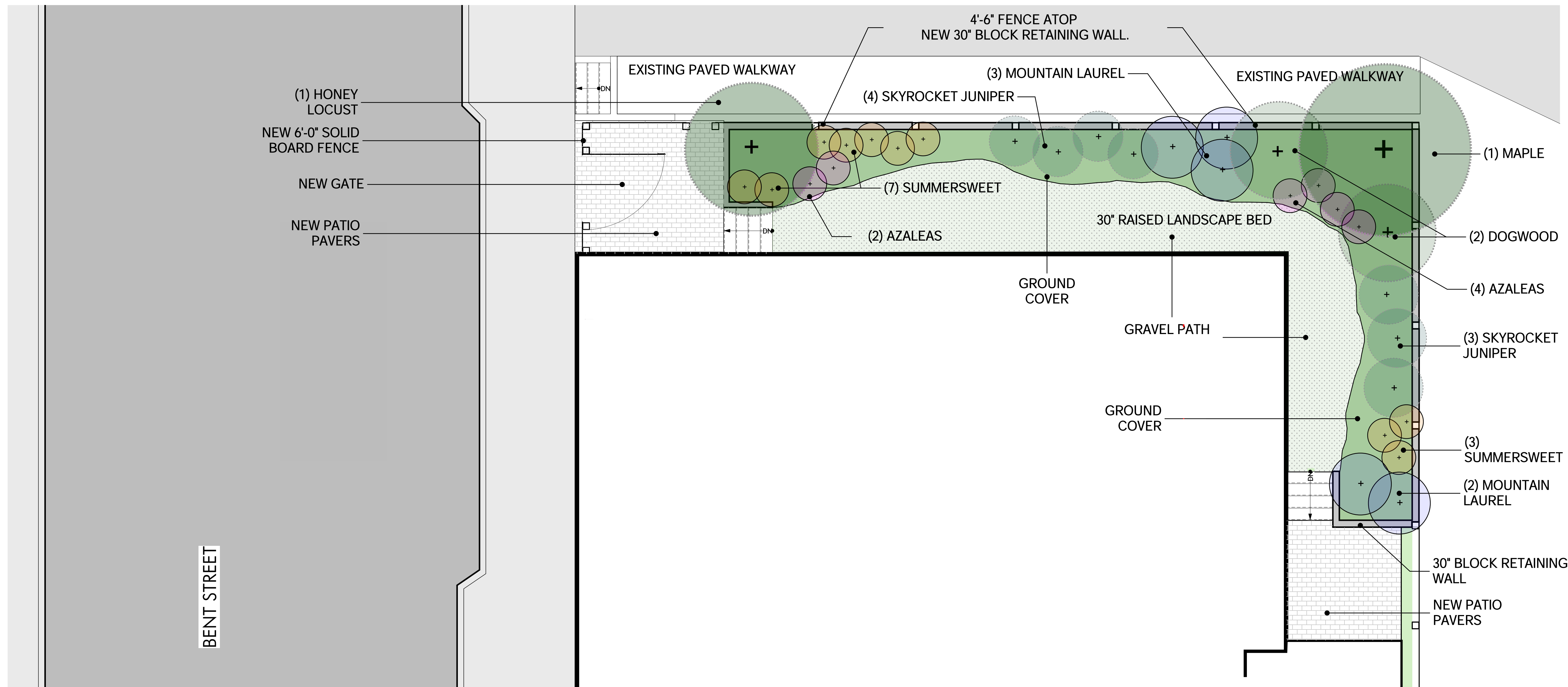
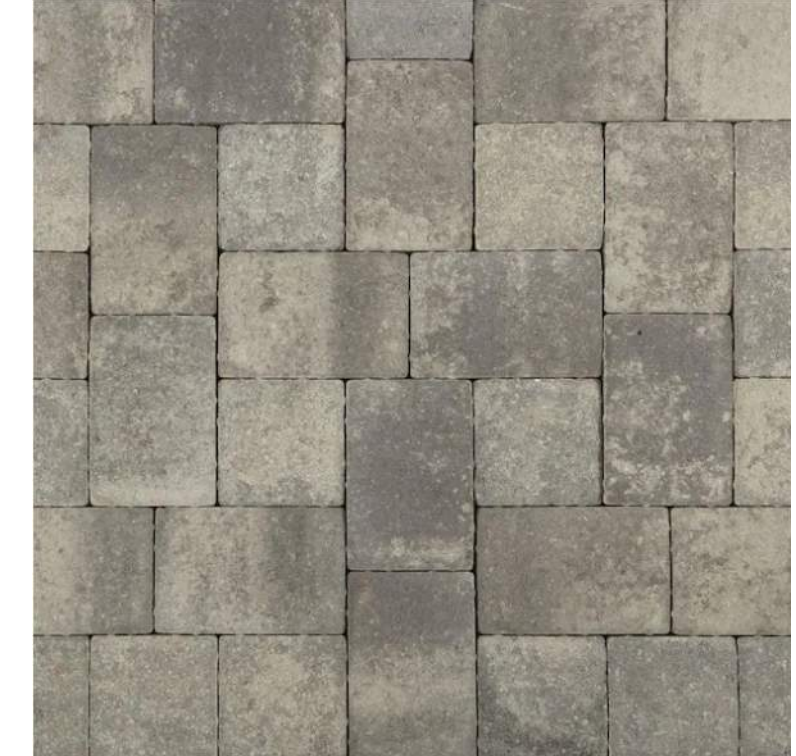
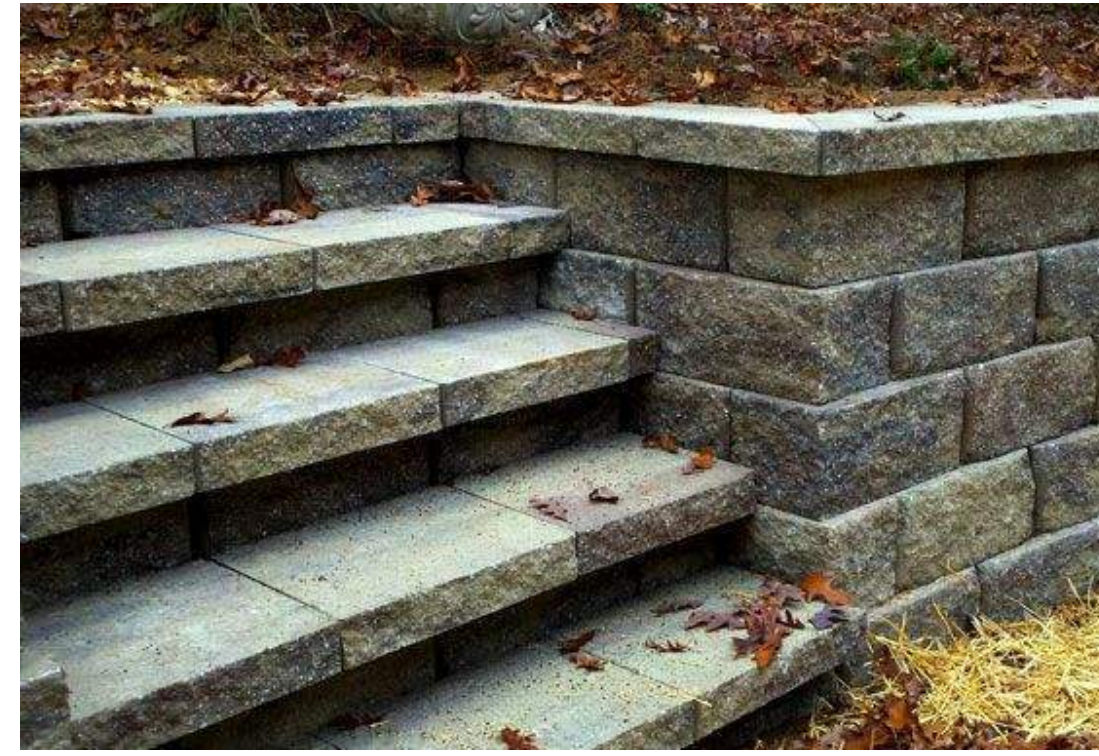
A reduction in side yard setbacks to 10 feet by including a suitably landscaped buffer







NOT FOR CONSTRUCTION



SPECIAL PERMIT

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: PROPOSED LANDSCAPE PLAN

Drawing Issued By: ANDERSON PORTER DESIGN  
Project #: 2106  
Date: 2023.09.13  
Scale: 1/4" = 1'-0"  
Drawn by: Author



## ARTICLE 11:

### Incentive Zoning and Inclusionary Housing

*"intent to provide an incentive for residential development - increased FAR and unit density for residential use"*



NOT FOR CONSTRUCTION

UNIT BREAKDOWNS		CITY DEFINED NET SQUARE FOOTAGE			
LEVEL	GROSS SQUARE FOOTAGE	UNIT 1	UNIT 2	UNIT 3	UNIT 4
LEVEL 1 (3 UNITS)	3,879 GSF	400 SF	1037 SF	1095 SF	
LEVEL 2 (4 UNITS)	3,879 GSF	798 SF	1037 SF	506 SF	712 SF
LEVEL 3 (4 UNITS)	3,879 GSF	798 SF	1037 SF	506 SF	712 SF
LEVEL 4 (4 UNITS)	3,210 GSF	538 SF	661 SF	506 SF	712 SF
LEVEL 5 (4 UNITS)	3,210 GSF	538 SF	661 SF	506 SF	712 SF
<b>TOTAL (19 UNITS)</b>	<b>18,056 GSF</b>	<b>13,469 NSF</b>			

   AFFORDABLE UNIT  
 20% NET SF AFFORDABLE  
 13,469 X .20 = 2,694 RSF

The Proposed Project includes a 30% increase in FAR and unit count per Article 11 resulting in 19 total units with 3 affordable units (20%)

*(d) Affordable Dwelling Units shall be dispersed throughout the project rather than concentrated on particular floors, within sections of a building, or within particular buildings in a project with multiple buildings.*



1 PROPOSED LEVEL 1  
3/16" = 1'-0"

SPECIAL PERMIT

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave., 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET

Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: PROPOSED FLOOR PLANS

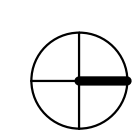
Drawing Issued By: ANDERSON PORTER DESIGN

Project #: 2106 Drawn No.

Date: 2023.09.13

Scale: As indicated


Drawn by: DS





NOT FOR CONSTRUCTION

LEVEL	GROSS SQUARE FOOTAGE	CITY DEFINED NET SQUARE FOOTAGE			
		UNIT 1	UNIT 2	UNIT 3	UNIT 4
LEVEL 1 (3 UNITS)	3,879 GSF	400 SF	1037SF	1095 SF	
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LEVEL 5 (4 UNITS)	3,210 GSF	538 SF	661 SF	506 SF	712 SF
<b>TOTAL (19 UNITS)</b>	<b>18,056 GSF</b>	<b>13,469 NSF</b>			

 AFFORDABLE UNIT  
20% NET SF AFFORDABLE  
13,469 X .20 = 2,694 RSF



1 PROPOSED LEVEL 2  
3/16" = 1'-0"

5/17/2023 3:52:58 PM

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REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave., 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET

Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: PROPOSED FLOOR PLANS

Drawing Issued By: ANDERSON PORTER DESIGN

Project #: 2106  
Date: 2023.09.13

Scale: As indicated  
Drawn by: DS



NOT FOR CONSTRUCTION



LEVEL	GROSS SQUARE FOOTAGE	CITY DEFINED NET SQUARE FOOTAGE			
		UNIT 1	UNIT 2	UNIT 3	UNIT 4
LEVEL 1 (3 UNITS)	3,879 GSF	400 SF	1037 SF	1095 SF	
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LEVEL 5 (4 UNITS)	3,210 GSF	538 SF	661 SF	506 SF	712 SF
<b>TOTAL (19 UNITS)</b>	<b>18,056 GSF</b>	<b>13,469 NSF</b>			

AFFORDABLE UNIT  
 20% NET SF AFFORDABLE  
 $13,469 \times .20 = 2,694$  RSF

SPECIAL PERMIT

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
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 Cambridge, MA 02140  
 Tel. 617.354.2501 Fax. 617.354.2509

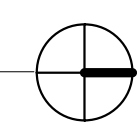
Project: 231-235 THIRD STREET  
 Address: 231-235 THIRD STREET,  
 CAMBRIDGE MA 02142

Title: PROPOSED FLOOR PLANS

Drawing Issued By: ANDERSON PORTER DESIGN


Project #: 2106  
 Date: 2023.09.13  
 Scale: As indicated

Drawn by: G.A. **A1.3**





LEVEL	GROSS SQUARE FOOTAGE	CITY DEFINED NET SQUARE FOOTAGE			
		UNIT 1	UNIT 2	UNIT 3	UNIT 4
LEVEL 1 (3 UNITS)	3,879 GSF	400 SF	1037 SF	1095 SF	
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LEVEL 5 (4 UNITS)	3,210 GSF	538 SF	661 SF	506 SF	712 SF
<b>TOTAL (19 UNITS)</b>	<b>18,056 GSF</b>	<b>13,469 NSF</b>			

 AFFORDABLE UNIT  
 20% NET SF AFFORDABLE  
 13,469 X .20 = 2,694 RSF



NOT FOR CONSTRUCTION

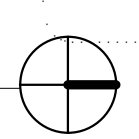
SPECIAL PERMIT

REVISIONS		
No.	Description	Date

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 Cambridge, MA 02140  
 Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
 Address: 231-235 THIRD STREET,  
 CAMBRIDGE MA 02142  
 Title: PROPOSED FLOOR PLANS

Drawing Issued By: ANDERSON PORTER DESIGN  
 Project #: 2106  
 Date: 2023.09.13  
 Scale: As indicated  
 Drawn by: G.A.





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UNIT BREAKDOWNS					
LEVEL	GROSS SQUARE FOOTAGE	CITY DEFINED NET SQUARE FOOTAGE			
		UNIT 1	UNIT 2	UNIT 3	UNIT 4
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<b>TOTAL (19 UNITS)</b>	<b>18,056 GSF</b>	<b>13,469 NSF</b>			

AFFORDABLE UNIT  
20% NET SF AFFORDABLE  
 $13,469 \times .20 = 2,694$  RSF

**SPECIAL PERMIT**

REVISIONS		
No.	Description	Date

**AndersonPorterDesign**  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: **231-235 THIRD STREET**  
Address: **231-235 THIRD STREET,  
CAMBRIDGE MA 02142**  
Title: **PROPOSED FLOOR PLANS**

Drawing Issued By: ANDERSON PORTER DESIGN  
Project #: 2106  
Date: 2023.09.13  
Scale: As indicated  
Drawn by: G.A.

1 PROPOSED LEVEL 5  
3/16" = 1'-0"

5/17/2023 3:54:31 PM







NOT FOR CONSTRUCTION

# THIRD STREET - ELEVATION SHOWING COMPARATIVE HEIGHTS



HISTORIC APP.

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET

Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: THIRD AND BENT STREET  
ELEVATIONS

Drawing Issued By: ANDERSON PORTER DESIGN

Project #: 2106

Date: 2023.07.20

Scale: 1/16" = 1'-0"

Drawn by: GA/DS

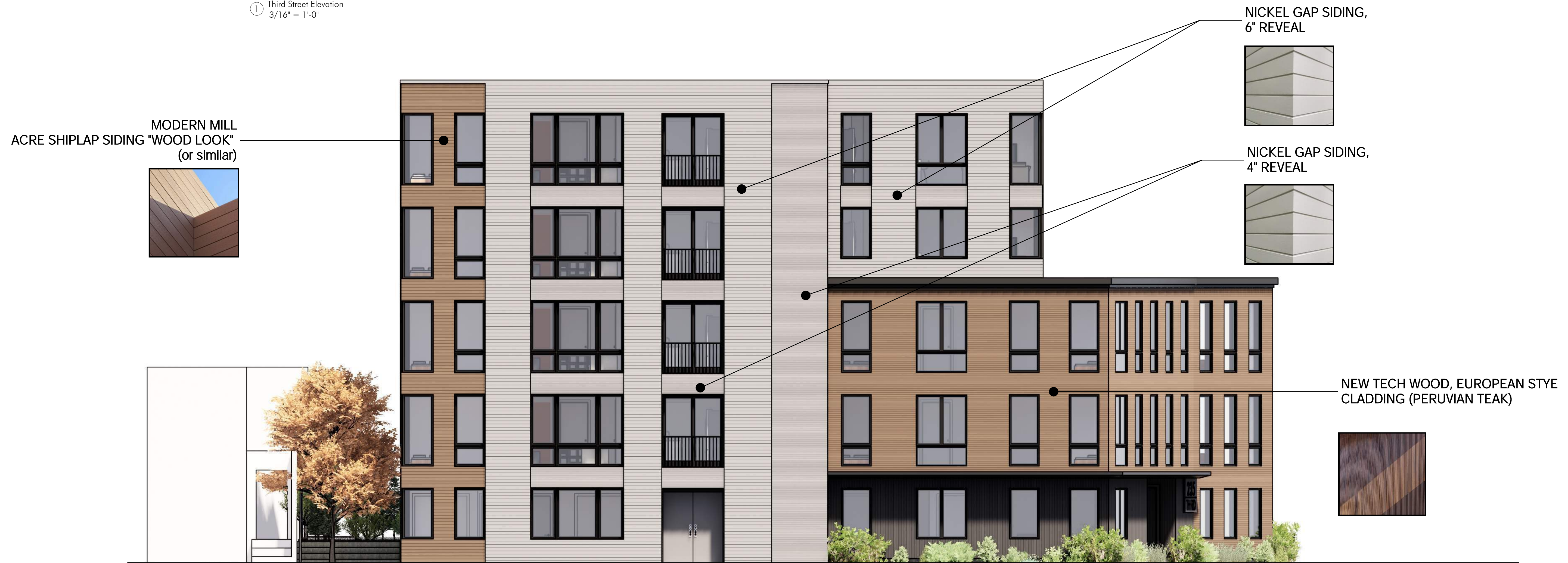
A2.3



NOT FOR CONSTRUCTION



① Third Street Elevation  
3/16" = 1'-0"



② Bent Street Elevation  
3/16" = 1'-0"

SPECIAL PERMIT

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: PROPOSED ELEVATIONS

Drawing Issued By: ANDERSON PORTER DESIGN  
Project #: 2106  
Date: 2023.09.13  
Scale: 3/16" = 1'-0"  
Drawn by: DS

A2.1



NOT FOR CONSTRUCTION

NICKEL GAP SIDING,  
6" REVEAL



NICKEL GAP SIDING,  
4" REVEAL



MODERN MILL  
ACRE SHIPLAP SIDING "WOOD LOOK"  
(or similar)



① Rear Yard Elevation  
3/16" = 1'-0"

NICKEL GAP SIDING,  
4" REVEAL



MODERN MILL  
ACRE SHIPLAP SIDING "WOOD LOOK"  
(or similar)



NEW TECH WOOD, EUROPEAN STYE  
CLADDING (PERUVIAN TEAK)



NICKEL GAP SIDING,  
6" REVEAL



② Side Yard Elevation  
3/16" = 1'-0"

SPECIAL PERMIT

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave., 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: PROPOSED ELEVATIONS

Drawing Issued By: ANDERSON PORTER DESIGN  
Project #: 2106  
Date: 2023.09.13  
Scale: 3/16" = 1'-0"  
Drawn by: DS

A2.2



NOT FOR CONSTRUCTION



1 VIEW FROM THIRD STREET  
12" = 1'-0"

SPECIAL PERMIT

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: 3D VIEWS

Drawing Issued By: ANDERSON PORTER DESIGN  
Project #: 2106  
Date: 2023.09.13  
Scale: 12" = 1'-0"  
Drawn by: Author

A9.1



NOT FOR CONSTRUCTION



1 BIRDS EYE VIEW  
12" = 1'-0"

SPECIAL PERMIT

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No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: 3D VIEWS

Drawing Issued By: ANDERSON PORTER DESIGN  
Project #: 2106  
Date: 2023.09.13  
Scale: 12" = 1'-0"  
Drawn by: DS

A9.3



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1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET

Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: 3D VIEWS

Drawing Issued By: ANDERSON PORTER DESIGN

Project #: 2106 Drawn No.

Date: 2023.09.13

Scale: 1/2" = 1'-0" A9.4

Drawn by: DS



NOT FOR CONSTRUCTION



① Entry Way View  
12" = 1'-0"

SPECIAL PERMIT

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

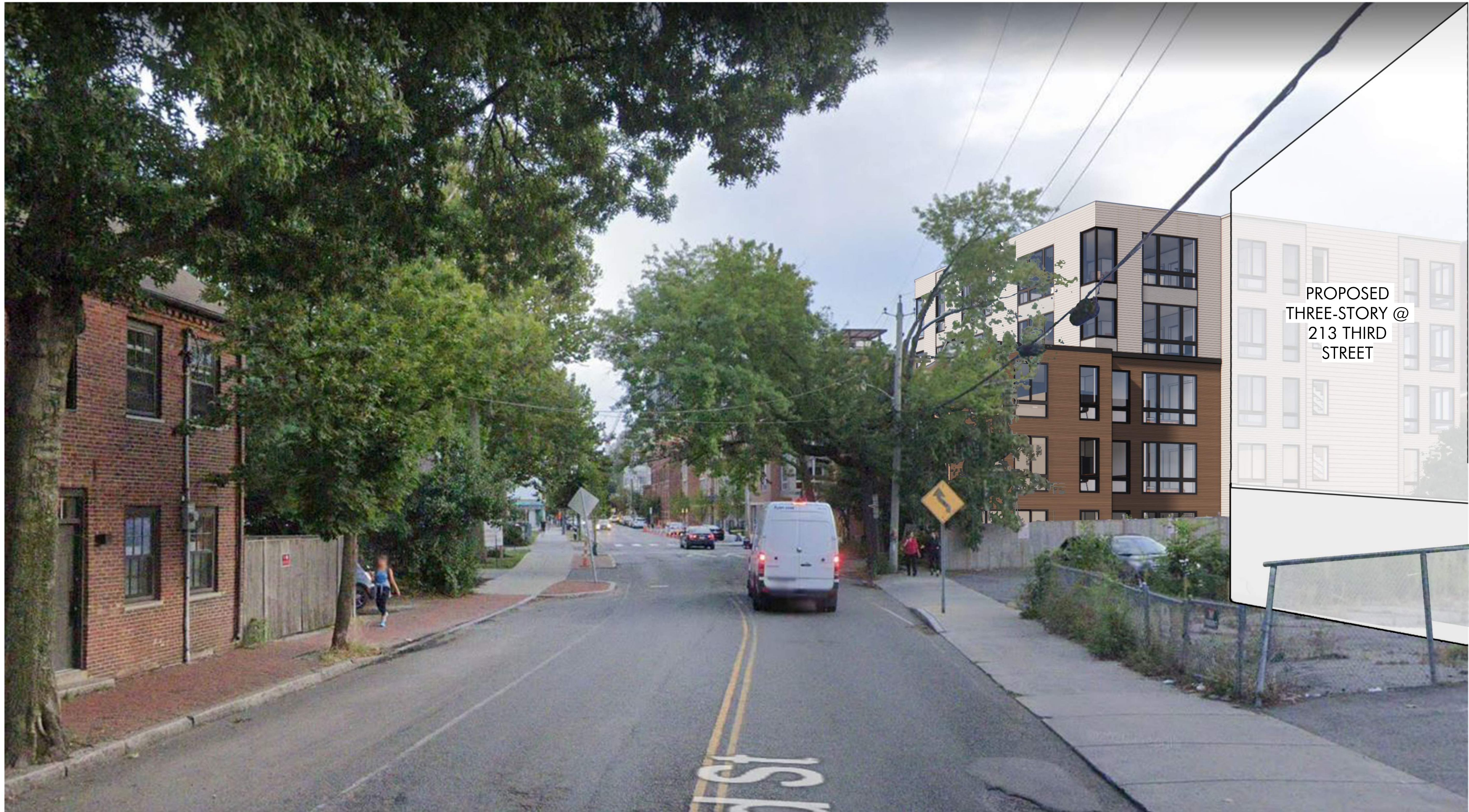
Title: 3D VIEWS

Drawing Issued By: ANDERSON PORTER DESIGN  
Project #: 2106  
Date: 2023.09.13  
Scale: 12" = 1'-0"  
Drawn by: DS

A9.5



NOT FOR CONSTRUCTION



PROPOSED  
THREE-STORY @  
213 THIRD  
STREET

① VIEW FROM BOTTLE HOUSE BLOCK  
12" = 1'-0"

HISTORIC APP.

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave., 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: 3D VIEWS

Drawing Issued By: ANDERSON PORTER DESIGN  
Project #: 2106  
Date: 2023.06.01  
Scale: 12" = 1'-0"  
Drawn by: DS



NOT FOR CONSTRUCTION



① VIEW FROM THIRD STREET  
12" = 1'-0"

HISTORIC APP.

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave., 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

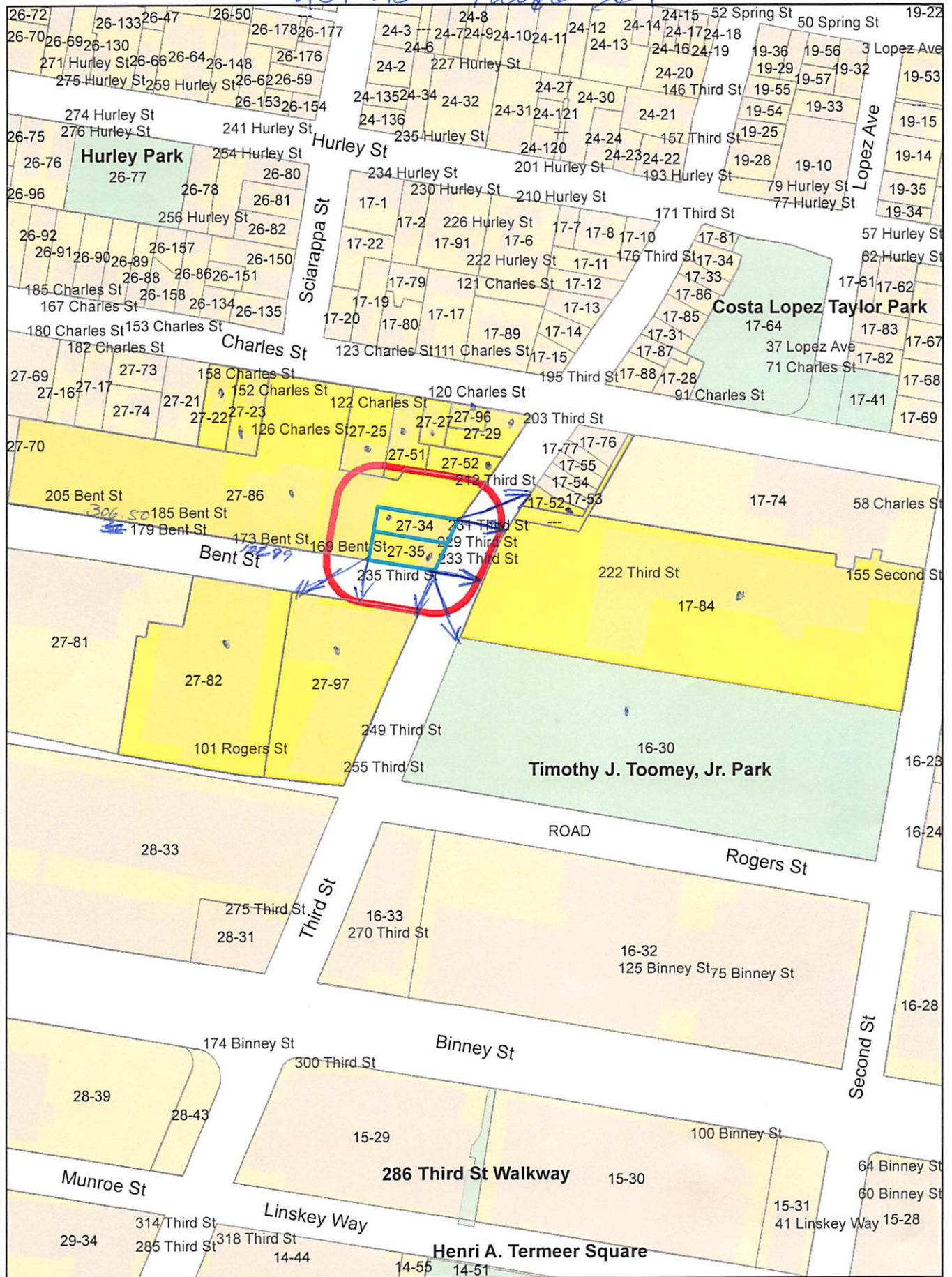
Title: 3D VIEWS

Drawing Issued By: ANDERSON PORTER DESIGN  
Project #: 2106  
Date: 2023.06.01  
Scale: 12" = 1'-0"  
Drawn by: DS

A9.5



231-235 Third St.





231-235 Third St.

*Petitioner*

17-52  
DUNN, CHRISTINE & FABIO J. FERNANDEZ  
214 THIRD ST  
CAMBRIDGE, MA 02141

27-96  
BATMASIAN, JAMES H. & MARTA T. BATMASIAN  
215 NORTH FEDERAL HIGHWAY  
BACO RATON, FL 33432

ANDERSON PORTER DESIGN, INC.  
C/O DANIEL P. ANDERSON, ARCHITECT  
1972 MASS AVENUE  
CAMBRIDGE, MA 02140

27-97  
EQR-249 THIRD ST LLC  
TWO NORTH RIVERSIDE PLAZA, SUITE 400  
CHICAGO, IL 60606

27-25  
1ST CHARLES STREET LLC,  
C/O GLANZ PROPERTIES, INC.  
1018 BEACON ST  
BROOKLINE, MA 02446

27-29  
MALLAKIS, PARASKEVAS,  
TR. OF MARPAR REAL  
211 THIRD STREET  
CAMBRIDGE, MA 02141

27-82  
CITY OF CAMBRIDGE  
C/O HEMA KAILASAM  
255 MAIN ST. 8TH FLOOR  
CAMBRIDGE, MA 02142

27-86  
LOHNES, PAUL R.,  
TR. OF THE ALEXANDER GRAHAM BELL TRUST  
C/O LAVERTY LOHNES PROP,  
75 CAMBRIDGE PARKWAY, SUITE 100  
CAMBRIDGE, MA 02142

27-51  
ADAMOWICZ, ALEX  
122 CHARLES ST., #1  
CAMBRIDGE, MA 02141

27-51  
PETPRAYOON, PATCHANEE  
124 CHARLES ST., #3  
CAMBRIDGE, MA 02141

27-51  
JEN, SHANG  
124 CHARLES ST., #2  
CAMBRIDGE, MA 02141

27-51  
ZHANG, QIAN  
122-124 CHARLES ST., #124/1  
CAMBRIDGE, MA 02141

27-35  
231 THIRD STREET LLC  
ONE GARFIELD CIR - UNIT 6  
BURLINGTON, MA 01803

27-23  
ESPOSITO, GERARDO & ADRIANA  
TRS OF THE ESPOSITO REALTY TRUST  
146 CHARLES ST UNIT #1  
CAMBRIDGE, MA 02141

17-84  
AMERICAN TWINE OWNER LLC  
C/O NEW ENGLAND DEVELOPMENT  
75 PARK PLAZA  
BOSTON, MA 02116

27-22  
152 CHARLES ST LLC  
10 OVERLOOK RIDGE DR - #330  
MALDEN, MA 02148

27-34  
231 THIRD STREET LLC  
C/O DND HOMES LLC  
271 LINCOLN ST. SUITE 10  
LEXINGTON, MA 02421

27-27  
HAN YONGKUI MA LINNA  
61 VALLEY RD  
LEXINGTON, MA 02421

27-51  
FEI YUNSI  
110 HAWTHORN AVE  
NEEDHAM, MA 02492

27-23  
DEFABIO, GRAZIA E. TRUSTEE  
33 BAY VIEW TERRACE  
DANVERS, MA 01923

27-52  
THIRD STREET CAMBRIDGE LLC  
152 VASSAL LN  
CAMBRIDGE, MA 02138

16-30  
CITY OF CAMBRIDGE  
C/O NANCY GLOWA  
CITY SOLICITOR

16-30  
CITY OF CAMBRIDGE  
C/O YI-AN HUANG  
CITY MANAGER





## CAMBRIDGE HISTORICAL COMMISSION

831 Massachusetts Avenue, 2<sup>nd</sup> Fl., Cambridge, Massachusetts 02139  
Telephone: 617 349 4683 Fax: 617 349 3116 TTY: 617 349 6112  
E-mail: [histcomm@cambridgema.gov](mailto:histcomm@cambridgema.gov) URL: <http://www.cambridgema.gov/Historic>



Bruce A. Irving, *Chair*; Susannah Barton Tobin, *Vice Chair*; Charles M. Sullivan, *Executive Director*  
Joseph V. Ferrara, Chandra Harrington, Elizabeth Lyster, Jo M. Solet, Yuting Zhang, *Members*  
Gavin W. Kleespies, Paula A. Paris, Kyle Sheffield, *Alternates*

September 27, 2023

Trina Murphy  
DND Homes  
1 Garfield Circle, #6  
Burlington, Massachusetts 01803

re: Cases D-1642 and D-1643: 231 + 235 Third Street, Cambridge

Dear Ms. Murphy,

On May 4, 2023, the Cambridge Historical Commission voted to find the two buildings at 231 and 235 Third Street to be significant, as defined in the city's demolition delay ordinance, Chapter 2.78, Article II of the City Code. Over several subsequent meetings, it considered the design for the proposed replacement building and took public questions and comments. At the continued hearing on September 7, 2023, the Commission found that the existing buildings were not preferably preserved in the context of the proposed replacement project titled, "231-235 Third Street Cambridge, MA 02142," by Anderson Porter Design dated July 20, 2023. No demolition delay was imposed.

As you know, the Commission received a petition of registered Cambridge voters requesting that it initiate a landmark designation study of the two properties. Consideration of that petition was scheduled for a hearing on October 5. If you have any questions, please let me know.

Sincerely,

A handwritten signature in blue ink that reads "Sarah Burks".

Sarah Burks  
Preservation Planner

cc: Peter McLaughlin, Inspectional Services Commissioner



**CITY OF CAMBRIDGE  
INSPECTORAL SERVICES DEPARTMENT  
831 Massachusetts Avenue  
Cambridge, Ma 02139  
617-349-6100**

*Ranjit Singanayagam, Commissioner*

**DEMOLITION PERMIT APPLICATION**

Project start date: 3/1/2023 Project end date: 4/15/2023  
 Permit No: \_\_\_\_\_ Fee: \_\_\_\_\_  
 Date: 1/30/2023  
 Building location: 231 Third Street  
 Description of proposed work: Building Demolition

Property Owner: 231 Third Street LLC c/o DND-Homes LLC  
 Address: 1 Garfield Circle Unit 6 Burlington, MA 01803  
 Telephone Number: 857 207 6254 Email Address: ender.saricay@dnd-homes.com  
 Contractor: DND Homes LLC

Address: 1 Garfield Circle Unit 6 Burlington, MA 01803  
 Telephone number: 857 207 6254 Email Address: ender.saricay@dnd-homes.com  
 Material of building: wood frame with clapboard siding  
 Type of building construction (wood, concrete, steel, etc.): two story wood frame  
 How is building occupied: office No. of stories: two story  
 Number of residential units demolished: none

Is a Street Occupy permit (DPW) necessary?: Yes  
 Is a Sidewalk Obstruction permit required?: No  
 Estimated cost of demolition (copy of contract must be attached): \$15,000

A copy of the plot plan showing extent of demolition is required with the filing of this application.  
 READ BEFORE SIGNING: A 24 hour notice prior to commencement of any work shall be given to applicable agencies. The undersigned hereby certifies that he/she has read and examined this application and that the proposed work subject to the provision of the Massachusetts State Building Code and the other applicable laws and ordinances is accurately represented in the statements made in this application and that the work shall be carried out in accordance with the foregoing statements and in compliance with the provisions of law and ordinance in force on the date of this application to the best of his/her ability.



**PLEASE NOTE:**

- a. Site will be inspected by the building official prior to demolition .
  - b. A copy of any environmental assessments for the site may be required by this Department before the work is allowed to start.
  - c. As a minimum, a narrative description of the demolition plan is required prior to issuance of the demolition permit.
  - d. Applicant is required to submit evidence that demolition has been coordinated with abutting property owners. In addition, abutting property owners and the building inspector are to be notified 24 hours prior to start of demolition.
  - e. Certification that the structure does not contain asbestos must be provided from a licensed contractor. Asbestos removal and disposal must be performed by a licensed asbestos removal contractor. Permits are required by this Department and the State prior to asbestos removal.
  - f. Certification must be provided by a licensed exterminator that the premises are free from rodent infestation.
  - g. If the fire hydrant is used for dust control during demolition, a separate permit from the Water Department is required.
- The following sections, quoted directly from the Massachusetts State Building Code 8th Edition, are requirements of this permit.

**105.5 Expiration of Permit:**

Any permit issued shall be deemed abandoned and invalid unless the work authorized by it shall have been commenced within 6 months after it's issuance.

**105.6 Revocation of Permits:**

The Building Commissioner shall evoke a permit or approval issued under the provisions of this code in the case of any false statements or misrepresentation of fact in the application or the plan on which the permit or approval was based.

**3303.4 Vacant Lot**

Where a structure has been demolished or removed, the vacant lot shall be filled and maintained to the existing grade or in accordance with the ordinances of the jurisdiction having authority.

**3303.6 Utility Connections:**

Service utility connections shall be disconnected and capped in accordance with the approved rules and the requirements of the applicable governing authority

**Construction Debris Affidavit (MGL c 40 § 54)**

As result of the provisions of MGL c § 54, I acknowledge that as a condition of the Demolition permit, all debris resulting from the construction activity governed by this Demolition permit shall be disposed of in a properly licensed waste disposal facility, as defined by MGL c § 150A.

The debris will be disposed at/by

**EZ Disposal**

Roll-off dumpster or container?

Yes

No

Dumpster License#

14069

Date

1/30/2023

Signature



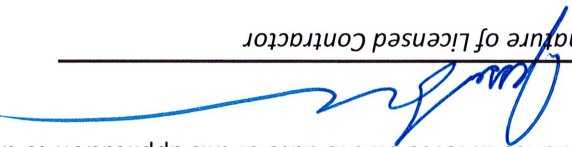


**Hold Harmless Clause:**

The Permittee(s) by acceptance of this permit agree(s) to indemnify and hold harmless the City of Cambridge, and its employees from and against any and all claims, demands and actions for damages, and to assume the defense of the City of Cambridge, and its employees, against all such claims, demands and actions.

**Read Before Signing:**

The undersigned hereby certifies that he/she has read and examined this application and that the proposed work subjected to the provisions of Massachusetts State building Code and other applicable laws and ordinances is accurately represented in the statements made in this application and that the work shall be carried out in accordance with the foregoing statements and in compliance with the provisions of law and ordinance in force on the date of this application to the best of his/her ability.

  
Signature of Licensed Contractor

Jesse Germain  
Print Name of Licensed Contractor

C/O DND Homes, One Garfield Circle, Unit 6  
Contractor's Address

Burlington, MA 01803  
Contractor's City, State, ZipCode

857-207-6254  
Contractor's Telephone Number

107114  
License Number

CS  
Class

07/02/2023  
Expiration Date:

Boyiston  
City

Ozan Dokmecioğlu  
Print Name of owner

C/O DND Homes, One Garfield Circle, Unit 6  
Owner's Address

Burlington, MA 01803  
Owner's City, State, ZipCode

857-207-6254  
Owner's Telephone Number



It is the responsibility of the applicant to secure signatures as listed below. Because of the possibility that a Public Hearing may be required prior to Historical Commission sign-off, it is suggested that they be contacted as early as possible in the process in order to minimize delay.

**SIGNATURES AND CHECK POINTS**

AGENCY	ADDRESS	SIGNATURE	DATE
Historical Commission	831 Massachusetts Avenue	_____	_____
Police Department	125 6th Street	_____	_____
Water Department	250 Freshpond Parkway	_____	_____
Fire Department	491 Broadway	_____	_____
Nstar Electric	101 Lindwood Avenue Somerville, MA	_____	_____
Nstar Gas	101 Lindwood Avenue Somerville, MA	_____	_____
Dig Safe	888-344-7233	_____	_____
Dept. of Public Works	617-349-4800 147 Hampshire Street	_____	_____
Control #.		_____	_____

**INSPECTIONAL SERVICES DEPARTMENT**

Inspector	Signature	Date
Environmental Health Inspector *	_____	_____
Plumbing and Gas Inspector **	_____	_____
Wiring Inspector ***	_____	_____
Building Inspector	_____	_____
ISD Commissioner	_____	_____
ISD Zoning	_____	_____

\* Environmental Health Inspector will require certification from a licensed pest control contractor that the premises are free from rodent infestation and extermination has been done.

\*\* Plumbing and Gas Inspector will require certification from a licensed plumber that plumbing connections to structure(s) being demolished are properly separated and capped.

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**CITY OF CAMBRIDGE  
INSPECTORAL SERVICES DEPARTMENT  
831 Massachusetts Avenue  
Cambridge, Ma 02139  
617-349-6100**

*Ranjit Singanayagam, Commissioner*

**DEMOLITION PERMIT APPLICATION**

Project start date: 3/1/2023 Project end date: 4/15/2023  
 Permit No: \_\_\_\_\_ Fee: \_\_\_\_\_  
 Date: 1/30/2023  
 Building location: 235 Third Street  
 Description of proposed work: Building Demolition

Property Owner: 235 Third Street LLC c/o DND-Homes LLC  
 Address: 1 Garfield Circle Unit 6 Burlington, MA 01803  
 Telephone Number: 857 207 6254 Email Address: ender.saricay@dnd-homes.com  
 Contractor: DND Homes LLC

Address: 1 Garfield Circle Unit 6 Burlington, MA 01803  
 Telephone number: 857 207 6254 Email Address: ender.saricay@dnd-homes.com  
 Material of building: wood frame with brick siding  
 Type of building construction (wood, concrete, steel, etc.): one and a half story wood frame  
 How is building occupied: office/residential No. of stories: one and a half  
 Number of residential units demolished: one

Is a Street Occupy permit (DPW) necessary?: Yes \_\_\_\_\_ No X  
 Is a Sidewalk Obstruction permit required?: Yes \_\_\_\_\_ No X  
 Estimated cost of demolition (copy of contract must be attached): \$15,000

A copy of the plot plan showing extent of demolition is required with the filing of this application.  
 READ BEFORE SIGNING: A 24 hour notice prior to commencement of any work shall be given to applicable agencies. The undersigned hereby certifies that he/she has read and examined this application and that the proposed work subject to the provision of the Massachusetts State Building Code and the other applicable laws and ordinances is accurately represented in the statements made in this application and that the work shall be carried out in accordance with the foregoing statements and in compliance with the provisions of law and ordinance in force on the date of this application to the best of his/her ability.



Signature

Date 1/30/2023

Roll-off dumpster or container?

Yes

No

Dumpster License# 14069

The debris will be disposed at/by

Ez Disposal

As result of the provisions of MGL c § 54, I acknowledge that as a condition of the Demolition permit, all debris resulting from the construction activity governed by this Demolition permit shall be disposed of in a properly licensed waste disposal facility, as defined by MGL c § 150A.

**Construction Debris Affidavit (MGL c 40 § 54)**

Service utility connections shall be disconnected and capped in accordance with the approved rules and the requirements of the applicable governing authority

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Where a structure has been demolished or removed, the vacant lot shall be filled and maintained to the existing grade or in accordance with the ordinances of the jurisdiction having authority.

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The Building Commissioner shall evoke a permit or approval issued under the provisions of this code in the case of any false statements or misrepresentation of fact in the application or the plan on which the permit or approval was based.

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*Jesse Germain*  
Signature of Licensed Contractor  
**Jesse Germain**  
Print Name of Licensed Contractor  
C/O DND Homes, One Garfield Circle, Unit 6  
Contractor's Address  
Burlington, MA 01803  
Contractor's City, State, ZipCode  
857-207-6254  
Contractor's Telephone Number  
107114  
License Number  
CS  
Class  
07/02/2023  
Expiration Date:  
Boylston  
City

*Ozan Dokmecioğlu*  
Signature of Owner  
**Ozan Dokmecioğlu**  
Print Name of owner  
C/O DND Homes, One Garfield Circle, Unit 6  
Owner's Address  
Burlington, MA 01803  
Owner's City, State, ZipCode  
857-207-6254  
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Inspector	Signature	Date
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Plumbing and Gas Inspector **	_____	_____
Wiring Inspector ***	_____	_____
Building Inspector	_____	_____
ISD Commissioner	_____	_____
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Signature of Licensed Contractor  
**Jesse Germain**  
Print Name of Licensed Contractor  
C/O DND Homes, One Garfield Circle, Unit 6  
Contractor's Address  
Burlington, MA 01803  
Contractor's City, State, ZipCode  
857-207-6254  
Contractor's Telephone Number  
107114  
License Number  
CS  
Class  
07/02/2023  
Expiration Date:  
Boylston  
City

*Ozan Dokmecioğlu*  
Signature of Owner  
**Ozan Dokmecioğlu**  
Print Name of owner  
C/O DND Homes, One Garfield Circle, Unit 6  
Owner's Address  
Burlington, MA 01803  
Owner's City, State, ZipCode  
857-207-6254  
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Dept. of Public Works	617-349-4800 147 Hampshire Street	_____	_____
Control #.		_____	_____

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Plumbing and Gas Inspector **	_____	_____
Wiring Inspector ***	_____	_____
Building Inspector	_____	_____
ISD Commissioner	_____	_____
ISD Zoning	_____	_____

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# SPECIAL PERMIT - 231-235 THIRD STREET

231-235 Third Street, Cambridge MA 02142

ANDERSON  
PORTER  
DESIGN



NOT FOR CONSTRUCTION

**SPECIAL PERMIT**

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: COVER SHEET

Drawing Issued By: ANDERSON PORTER DESIGN  
Project #: 2106  
Date: 2023.02.17  
Scale: 1/2" = 1'-0"  
Drawn by: DAVS

G1.0

**SITE LOCATION**



**CONTACTS**

**ARCHITECT**  
Anderson Porter Design  
1972 Massachusetts Ave, 4th Floor  
Cambridge MA 02139  
Dan Anderson  
617.354.2501

**OWNER**  
DND Homes LLC  
1 Gorfield Circle, Unit 6  
Burlington, MA 01803  
Trina Murphy  
781.460.8437

**DRAWING LIST**

- GENERAL**  
G1.0 COVER SHEET  
SHEET 01 EXISTING CONDITIONS PLAN  
SHEET 02 GIS MAP
- ZONING**  
Z0.1 ZONING COMPLIANCE  
Z1.1 ZONING COMPLIANCE
- LANDSCAPE**  
L1.1 PROPOSED LANDSCAPE PLAN  
L1.2 PROPOSED LANDSCAPE PLAN
- ARCHITECTURAL**  
A1.0 PROPOSED BASEMENT PLAN  
A1.1 PROPOSED FLOOR PLANS  
A1.2 PROPOSED FLOOR PLANS  
A1.3 PROPOSED FLOOR PLANS  
A1.4 PROPOSED FLOOR PLANS  
A1.5 PROPOSED FLOOR PLANS  
A2.0 PROPOSED ELEVATIONS  
A2.1 PROPOSED ELEVATIONS  
A9.1 EXISTING SITE PHOTOS  
A9.2 3D VIEWS

**ZONING SUMMARY**

PROPERTY ADDRESS:	231-235 THIRD STREET, CAMBRIDGE MA 02142
ZONING DISTRICT:	Ind. A-1
PROJECT DESCRIPTION:	RENOVATION OF EXISTING AND NEW ADDITION - 19 RESIDENTIAL UNITS

CITY OF CAMBRIDGE  
INSPECTIONAL SERVICES

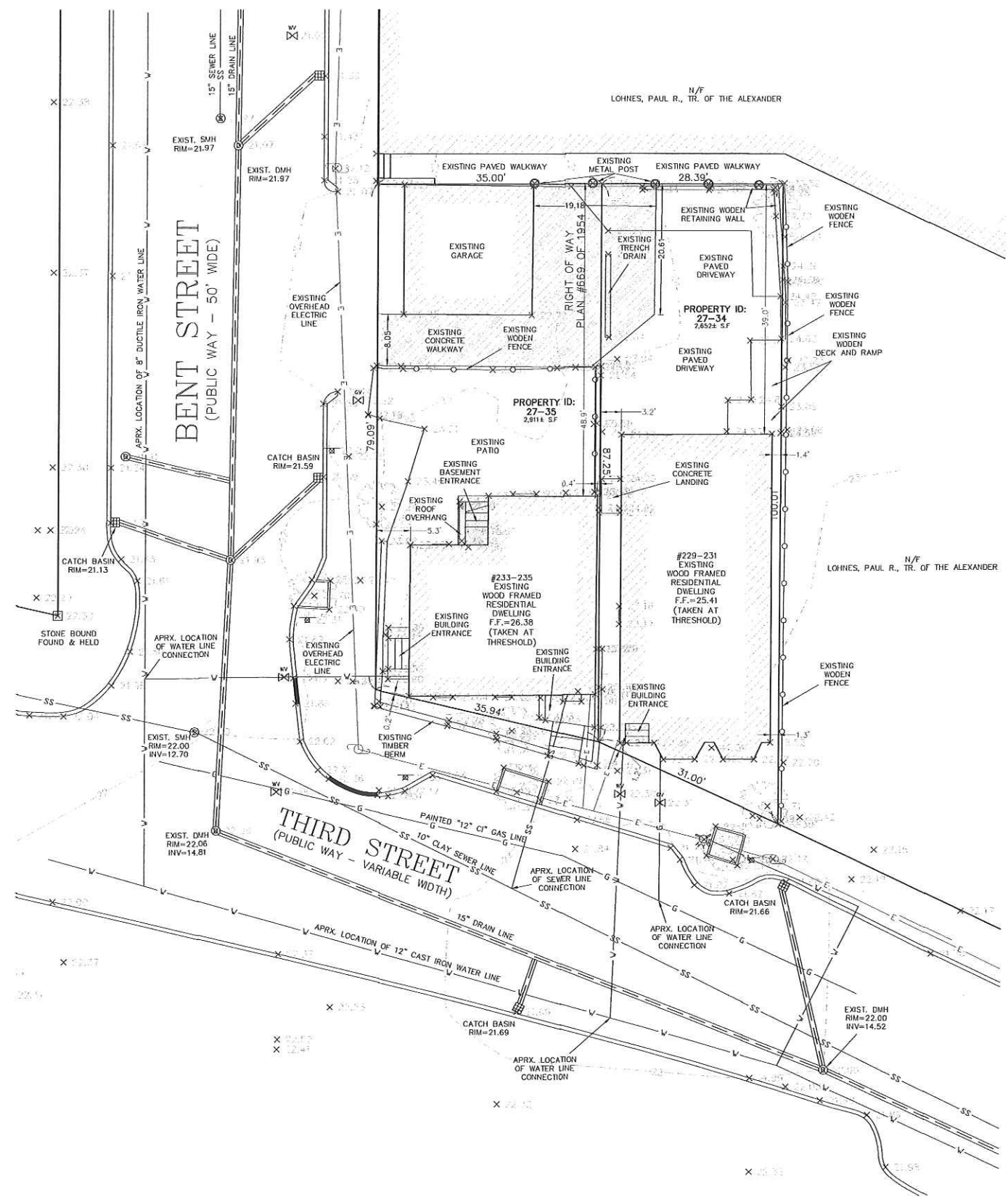
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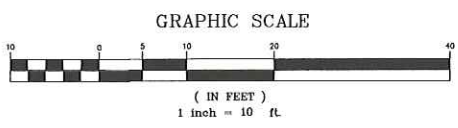
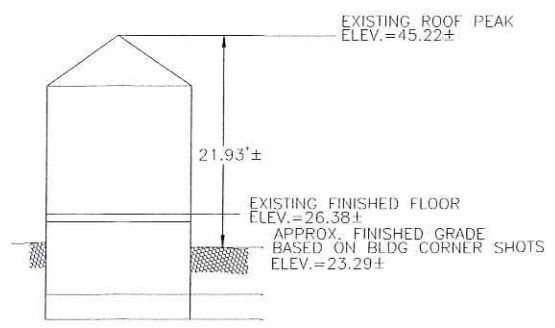
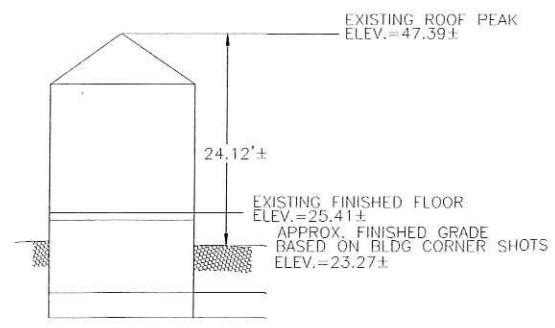


LEGEND	
□	BOUND
○	IRON PIN/PIPE
⊙	STONE POST
●	TREE
⌵	TREE STUMP
⊗	SHRUBS/FLOWERS
⊕	SIGN
⊙	BOLLARD
⊙	SEWER MANHOLE
⊙	DRAIN MANHOLE
⊙	CATCH BASIN
⊙	WATER MANHOLE
⊙	WATER VALVE
⊙	HYDRANT
⊙	GAS VALVE
⊙	ELECTRIC MANHOLE
⊙	ELECTRIC HANDHOLE
⊙	UTILITY POLE
⊙	LIGHT POLE
⊙	MANHOLE
X	SPOT GRADE
—	TOP OF WALL
—	BOTTOM OF WALL
—	EXISTING BUILDING
—	RETAINING WALL
—	STONE WALL
—	FENCE
—	TREE LINE
—	SEWER LINE
—	DRAIN LINE
—	WATER LINE
—	GAS LINE
—	UNDERGROUND ELECTRIC LINE
—	OVERHEAD WIRES
—	CONTOUR LINE (MJR)
—	CONTOUR LINE (MNR)

PLAN No. 1511 OF 1983



- NOTES:
1. INFORMATION SHOWN ON THIS PLAN IS THE RESULT OF A FIELD SURVEY PERFORMED BY PETER NOLAN & ASSOCIATES LLC AS OF 12/30/2021.
  2. DEED REFERENCE: BOOK 50410, PAGE 470  
DEED REFERENCE: BOOK 54778, PAGE 343  
PLAN REFERENCE 1: PLAN No. 669 OF 1954  
PLAN REFERENCE 2: PLAN No. 108 OF 1983  
PLAN REFERENCE 3: PLAN No. 1511 OF 1983  
PLAN REFERENCE 4: PLAN No. 507 OF 2007  
PLAN REFERENCE 5: LAND COURT PLAN No. 9830-A  
PLAN REFERENCE 6: LAND COURT PLAN No. 13781-A
  3. THIS PLAN IS NOT INTENDED TO BE RECORDED.
  4. I CERTIFY THAT THE DWELLING SHOWN IS NOT LOCATED WITHIN A SPECIAL FLOOD HAZARD ZONE. IT IS LOCATED IN ZONE X, ON FLOOD HAZARD BOUNDARY MAP NUMBER 25017C0577E, IN COMMUNITY NUMBER: 250186, DATED 6/4/2010.
  5. THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO OBSERVE ANY APPARENT USES OF THE LAND; HOWEVER THIS NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.
  6. FIRST FLOOR ELEVATIONS ARE TAKEN AT THRESHOLD.
  7. NO RESPONSIBILITY IS TAKEN FOR ZONING TABLE AS PETER NOLAN & ASSOCIATES LLC ARE NOT ZONING EXPERTS. TABLE IS TAKEN FROM TABLE PROVIDED BY LOCAL ZONING ORDINANCE. CLIENT AND/OR ARCHITECT TO VERIFY THE ACCURACY OF ZONING ANALYSIS.
  8. THE ELEVATIONS SHOWN ARE BASED ON CITY OF CAMBRIDGE DATUM.



SCALE	1"=10'			
DATE	1/19/2022			
SHEET	1			
PLAN NO.	1 OF 1			
CLIENT:	229-231 & 233-235 THIRD STREET CAMBRIDGE MASSACHUSETTS			
DRAWN BY	KK			
CHKD BY	ETS			
APPD BY	PJN			
				SHEET NO. <b>1</b>
	<b>PETER NOLAN &amp; ASSOCIATES LLC</b> LAND SURVEYORS/CIVIL ENGINEERING CONSULTANTS 80 JEWETT STREET, SUITE 2 NEWTON, MA 02458 PHONE: 857 891 7478/617 782 1533 FAX: 617 202 5691 EMAIL: pnolan@pnasurveyors.com			











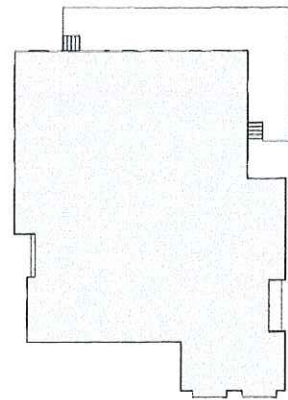
ZONING CHART - CAMBRIDGE

LOT SIZE:	ALLOWED / REQUIRED	EXISTING	PROPOSED	COMPLIANCE
ZONE	IA-1	IA-1 ZONE	IA-1 ZONE	COMPLIES
USE	RESIDENTIAL	RESIDENTIAL	RESIDENTIAL	COMPLIES
MIN LOT SIZE	5,000 SF	±5,563 SF	±5,563 SF	COMPLIES
MIN LOT AREA PER DWELLING UNIT	300 SF PER ECHO + 30% IHP BONUS 230	±2,781.5 SF	±292.8 SF	COMPLIES
MAX FLOOR AREA RATIO (FAR)	1.25 x 2.0 PER ECHO + 30% IHP BONUS 3.25	1.9	3.25	COMPLIES
MAX BUILDING HEIGHT	45'	24.2	45'	COMPLIES
MIN. YARD SETBACKS			Calculated	
FRONT (THIRD ST)	0.0'	0.2'	-	Actual 1.4'
FRONT (BENT ST)	0.0'	5.3'	-	0.0'
SIDE 1 (THIRD ST)	H+L/5 OR 10' BY SPECIAL PERMIT	1.3'	45' + 53.5/7 = 14.1'	10.0'
SIDE 2 (BENT ST)	H+L/5 OR 10' BY SPECIAL PERMIT	39'	45' + 77.2/7 = 17.5'	10.0'
MIN LOT WIDTH	50'	63.4'	63.4'	COMPLIES
PRIVATE OPEN SPACE, MIN % OF LOT	0% OPEN SPACE REQUIRED	544 SF	1348 SF	COMPLIES
BICYCLE PARKING	1/DWELLING UNIT	N/A	19 PARKING SPACES (1/DU) LONG TERM	COMPLIES

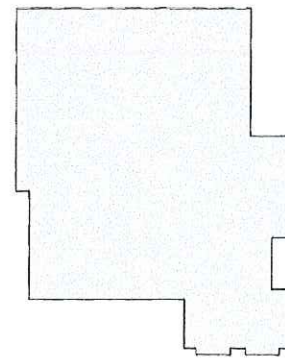
Level	Area
PROPOSED LEVEL 1	4045 SF
PROPOSED LEVEL 2	4015 SF
PROPOSED LEVEL 3	3340 SF
PROPOSED LEVEL 4	3340 SF
PROPOSED LEVEL 5	3340 SF
18080 SF	

FOOTNOTES:

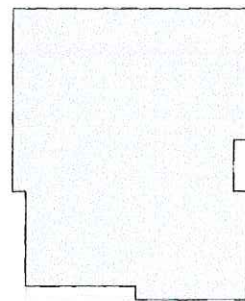
ZONING CHART  
12" = 1'-0"



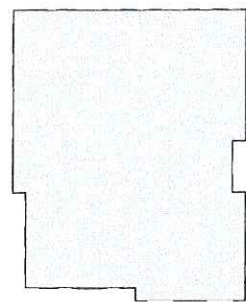
1 PROPOSED LEVEL 1 = 4045 GFA  
1" = 20'-0"



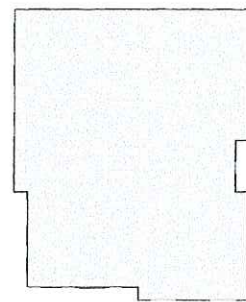
2 PROPOSED LEVEL 2 = 4015 GFA  
1" = 20'-0"



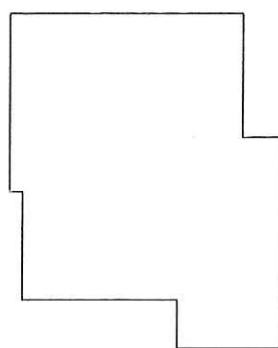
3 PROPOSED LEVEL 3 = 3340 GFA  
1" = 20'-0"



4 PROPOSED LEVEL 4 = 3340 GFA  
1" = 20'-0"



5 PROPOSED LEVEL 5 = 3340 GFA  
1" = 20'-0"



7 PROPOSED BASEMENT LEVEL - EXEMPT FROM GFA (CEILING HEIGHT 6'-11")  
1" = 20'-0"



6 PROPOSED BUILDING HEIGHT  
1/8" = 1'-0"

NOT FOR CONSTRUCTION

SPECIAL PERMIT

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: ZONING COMPLIANCE

Drawing Issued By: ANDERSON PORTER DESIGN  
Project #: 2106 Drawn No.:  
Date: 2023.02.17  
Scale: As indicated  
Drawn by: DS Z0.1



















NOT FOR CONSTRUCTION

SPECIAL PERMIT

REVISIONS		
No.	Description	Date

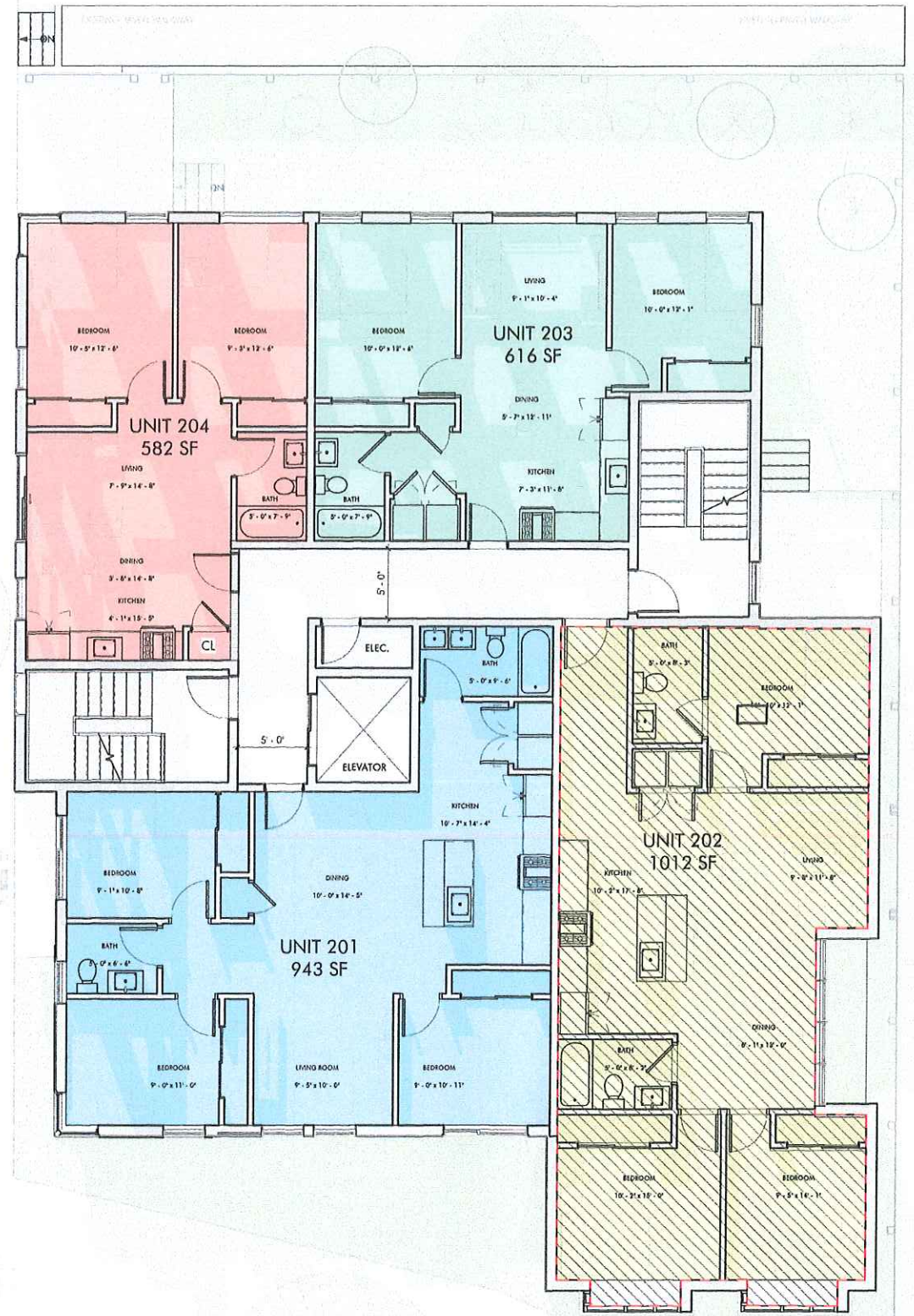
AndersonPorterDesign  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: PROPOSED FLOOR PLANS

Drawing Issued By: ANDERSON PORTER DESIGN  
Project #: 2106  
Date: 2023.02.17  
Scale: As indicated  
Drawn by: DS

A1.2



UNIT BREAKDOWNS					
LEVEL	GROSS SQUARE FOOTAGE	NET SQUARE FOOTAGE			
		UNIT 1	UNIT 2	UNIT 3	UNIT 4
LEVEL 1 (3 UNITS)	4,044 GSF	567 SF	1126 SF	1085 SF	
LEVEL 2 (4 UNITS)	4,015 GSF	943 SF	1012 SF	616 SF	582 SF
LEVEL 3 (4 UNITS)	3,340 GSF	515 SF	803 SF	616 SF	582 SF
LEVEL 4 (4 UNITS)	3,340 GSF	515 SF	803 SF	616 SF	582 SF
LEVEL 5 (4 UNITS)	3,340 GSF	515 SF	803 SF	588 SF	619 SF
<b>TOTAL (19 UNITS)</b>	<b>18,080 GSF</b>	<b>13,484 NSF</b>			

AFFORDABLE UNIT  
 20% NET SF AFFORDABLE  
 13,484 X .20 = 2,697 RSF  
 4 UNITS = 2,697 RSF

BENT STREET

THIRD STREET

2/17/2023 10:42:57 AM  
 1 PROPOSED LANDSCAPE - LEVEL 2  
 3/16" = 1'-0"



NOT FOR CONSTRUCTION

SPECIAL PERMIT

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

PROPOSED FLOOR PLANS

Drawing based by: ANDERSON PORTER DESIGN  
Project #: 2106 Draw No.  
Date: 2023.02.17  
Scale: As indicated A1.3  
Drawn by: G.A.



UNIT BREAKDOWNS					
LEVEL	GROSS SQUARE FOOTAGE	NET SQUARE FOOTAGE			
		UNIT 1	UNIT 2	UNIT 3	UNIT 4
LEVEL 1 (3 UNITS)	4,044 GSF	567 SF	1126 SF	1085 SF	
LEVEL 2 (4 UNITS)	4,015 GSF	943 SF	1012 SF	616 SF	582 SF
LEVEL 3 (4 UNITS)	3,340 GSF	515 SF	803 SF	616 SF	582 SF
LEVEL 4 (4 UNITS)	3,340 GSF	515 SF	803 SF	616 SF	582 SF
LEVEL 5 (4 UNITS)	3,340 GSF	515 SF	803 SF	588 SF	619 SF
<b>TOTAL (19 UNITS)</b>	<b>18,080 GSF</b>	<b>13,484 NSF</b>			

AFFORDABLE UNIT  
 20% NET SF AFFORDABLE  
 13,484 X .20 = 2,697 RSF  
 4 UNITS = 2,697 RSF





NOT FOR CONSTRUCTION

SPECIAL PERMIT

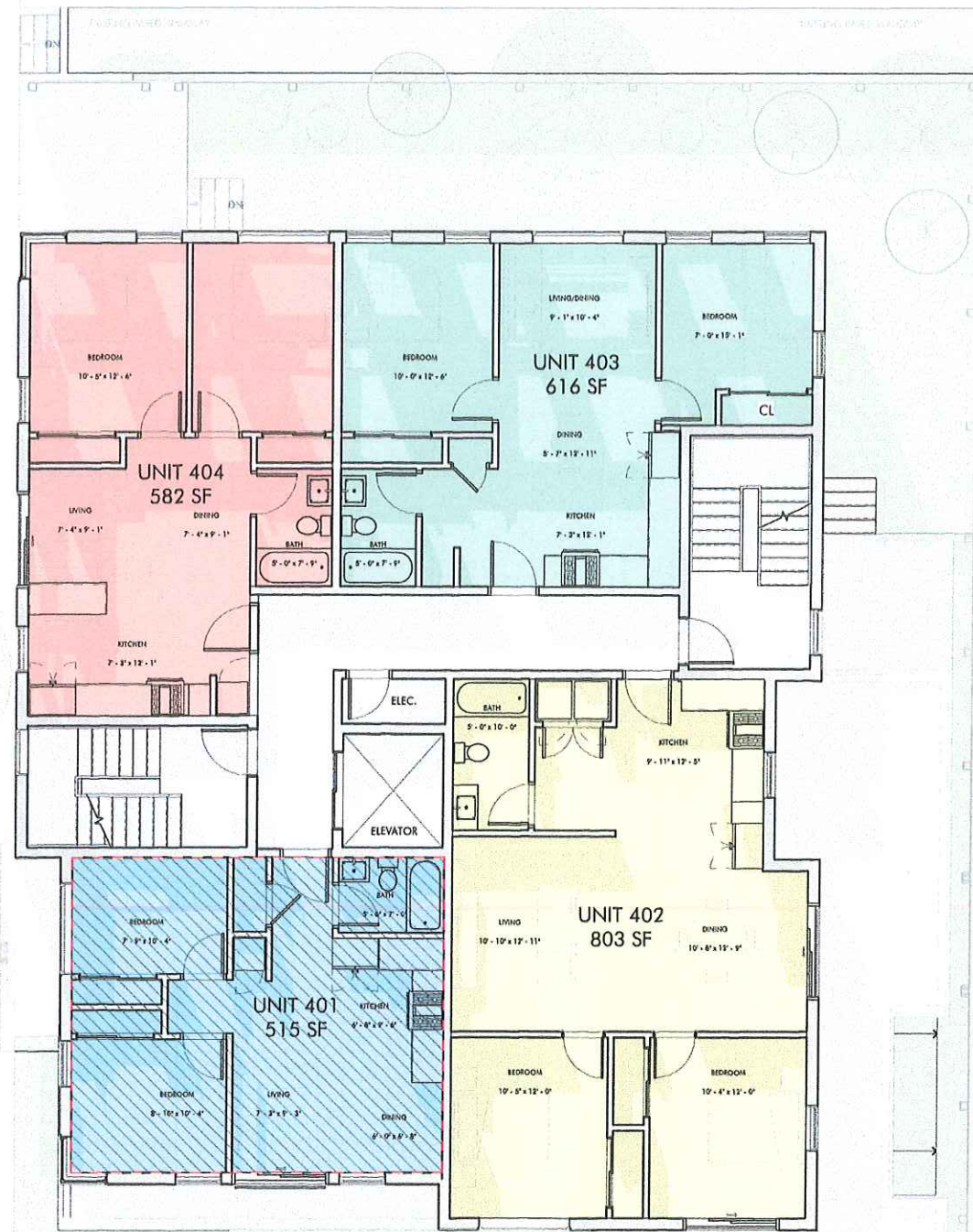
REVISIONS		
No.	Description	Date

**AndersonPorterDesign**  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: PROPOSED FLOOR PLANS

Drawing Record By: ANDERSON PORTER DESIGN  
Project #: 2106 Draw No.:  
Date: 2023.02.17  
Scale: As Indicated  
Drawn by: G.A. **A1.4**



UNIT BREAKDOWNS					
LEVEL	GROSS SQUARE FOOTAGE	NET SQUARE FOOTAGE			
		UNIT 1	UNIT 2	UNIT 3	UNIT 4
LEVEL 1 (3 UNITS)	4,044 GSF	567 SF	1126 SF	1085 SF	
LEVEL 2 (4 UNITS)	4,015 GSF	943 SF	1012 SF	616 SF	582 SF
LEVEL 3 (4 UNITS)	3,340 GSF	515 SF	803 SF	616 SF	582 SF
LEVEL 4 (4 UNITS)	3,340 GSF	515 SF	803 SF	616 SF	582 SF
LEVEL 5 (4 UNITS)	3,340 GSF	515 SF	803 SF	588 SF	619 SF
<b>TOTAL (19 UNITS)</b>	<b>18,080 GSF</b>	<b>13,484 NSF</b>			

AFFORDABLE UNIT  
 20% NET SF AFFORDABLE  
 13,484 X .20 = 2,697 RSF  
 4 UNITS = 2,697 RSF

BENT STREET

THIRD STREET

2/17/2023 10:41:16 AM

1 PROPOSED LANDSCAPE - LEVEL 4  
3/16" = 1'-0"









NOT FOR CONSTRUCTION



① THIRD STREET ELEVATION  
3/16" = 1'-0"



② BENT STREET ELEVATION  
3/16" = 1'-0"

SPECIAL PERMIT

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: PROPOSED ELEVATIONS

Drawing Issued By: ANDERSON PORTER DESIGN	Project #: 2106	Drawn No.:
Date: 2023.02.17	Scale: 3/16" = 1'-0"	A-2.0
Drawn by: DS		

2/17/2023 10:45:26 AM









① VIEW FROM CORNER OF BENT AND THIRD



② VIEW FROM THIRD STREET



③ BIRDS EYE VIEW



④ VIEW FROM BENT STREET

NOT FOR CONSTRUCTION

SPECIAL PERMIT

REVISIONS		
No.	Description	Date

AndersonPorterDesign  
1972 Massachusetts Ave, 4th Floor  
Cambridge, MA 02140  
Tel. 617.354.2501 Fax. 617.354.2509

Project: 231-235 THIRD STREET  
Address: 231-235 THIRD STREET,  
CAMBRIDGE MA 02142

Title: 3D VIEWS

Drawing Issued By: ANDERSON PORTER DESIGN  
Project #: 2106 Drawn No.:  
Date: 2023.02.17  
Scale: A-9.2  
Drawn By: G.A.

2/17/2023 10:46:22 AM



**Pacheco, Maria**

---

**From:** Victoria <octoryrose@yahoo.com>  
**Sent:** Tuesday, February 7, 2023 12:13 PM  
**To:** Pacheco, Maria  
**Subject:** 231-235 THIRD STREET

Isn't 235 Third Street a historic building? That should not be raised! Do we really need MORE ugly apartment boxes in this city? That beautiful building as well as the building next door should not be demolished. Please don't let it happen!

**Victoria Ruff, 617-710-0136**  
**30 Sciarappa St., Cambridge**



## **Pacheco, Maria**

---

**From:** Joseph Rose <cambridgemoxie@yahoo.com>  
**Sent:** Tuesday, February 14, 2023 9:56 AM  
**To:** Pacheco, Maria  
**Subject:** Opposition Letter for BZA-208873

To the Board of Zoning Appeals,

With regards to the proposal (BZA-208873)

These parcels provide an amazing gateway into the neighborhood and undoubtedly promote the historic character of the neighborhood.

The proposal razes the historic, one story brick building (235 Third St) and guts the historic character of the second building (231 Third St) in order to construct a looming 5 story, 20 unit apartment building with no retail component (one of the properties had previously been a law office.)

From what I can tell, there is no demonstrable hardship that is met by this proposal. As proposed, it:

- removes the historic nature of the existing buildings
- lacks any retail component
- lacks sufficient set back requirements for neighbors
- seems daunting in a high visibility corridor into the neighborhood

I oppose this petition and hope the board votes accordingly.

Sincerely,

Joe Rose  
Spring St



## **Pacheco, Maria**

---

**From:** Elizabeth Doyle <eliz.chandler17@gmail.com>  
**Sent:** Friday, February 17, 2023 10:54 AM  
**To:** Pacheco, Maria  
**Subject:** BZA-208873

Dear Ms. Pacheco and Board Members

I am writing to express my strong opposition to proposal BZA 208873. The two currently existing buildings, a one-story brick building (235 Third St) and a two-story building (231 Third St) formerly a law office, offer residents and visitors a unique gateway into historic East Cambridge. To permit their demolition and the construction of a 5 story, 20 unit apartment building would deprive the neighborhood of a small oasis of historic charm, violate set-back requirements for neighbors and would forego the opportunity for a retail component on any future development.

From what I can tell, there is no demonstrable hardship that is met by this proposal.

I oppose this petition and hope the board votes accordingly.

Sincerely,

Elizabeth Doyle  
Hurley St.





# City of Cambridge

MASSACHUSETTS

BOARD OF ZONING APPEAL

831 Mass Avenue, Cambridge, MA.  
(617) 349-6100

*2 Bds*

BZA

## POSTING NOTICE – PICK UP SHEET

The undersigned picked up the notice board for the Board of Zoning Appeals Hearing.

Name: ENDER GARLICK DND HOMES LLC Date: 2/3/23  
(Print)

Address: 231-235 Third St

Case No. BZA-208873

Hearing Date: 2/23/23

Thank you,  
Bza Members



TO: Cambridge Community Development  
344 Broadway  
Cambridge, MA 02138

FROM: Dan Anderson  
ANDERSON PORTER DESIGN  
1972 Massachusetts Avenue, 4<sup>th</sup> Floor  
Cambridge, MA 02140

RE: 231-235 Third Street – Parking Requirements Report

Tuesday, February 7, 2023

Cambridge Community Development,

The proposed residential project is an Inclusionary Housing Project which will contain 19 residential units with 20% of its net square footage designated as affordable and contains 0 off-street parking spaces. The reduced amount of parking will provide positive environmental or other benefits to the users of the lot and the neighborhood, including specifically, among other benefits, assisting in the provision of affordable housing units in keeping with the intent of Article 6.35.1 The project location is 0.4 miles from both Kendall/MIT Station on the MBTA Red Line and Lechmere Station on the MBTA Green Line. This is an approximately 9-minute walk to either stop or 5 minutes or less by bicycle. See attached Exhibits A and B which illustrate the travel distance from the project to each of the public transportation locations.

The following is a description of the parking quantity requirements outlined in Article 6.30. The proposed residential development at 231-235 Third Street contains more than 4 units of housing and requires this written report as per 6.31 (a)

While no formal traffic studies have been performed, informal observations suggest that there is sufficient on-street parking available to meet any increase in parking load generated by this project, especially during evening hours. The daytime availability is less due to the working hours demand created by the industrial and business uses in the immediately surrounding area. The intent is to create a development project that has a reduced parking demand load, is more pedestrian friendly and favors alternative transportation. The proposed development project is in keeping with the intent and purposes of Article 22.000 Sustainable



Design and Development, particularly in the reuse of existing building structures, and the encouragement of pedestrian, bicycle and public transit use within the city.

We anticipate that the project will favor residents who prefer alternative forms of transportation, by encouraging the use of public transportation, and by supporting bicycle use by providing both long- and short-term bicycle parking. We believe that the potential parking generated by this project will not cause excessive congestion, endanger public safety, substantially reduce parking availability for other uses or otherwise adversely impact the neighborhood. Additionally, the provision of off-street parking for this development containing affordable housing units, and especially as a development employing the increased FAR and Dwelling unit density provisions of Section 11.200, will increase the cost of the development, will require variance relief from other zoning requirements applicable to the development because of limitations of space on the lot, or will significantly diminish the environmental quality for all residents of the development.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "D. Anderson", with a long horizontal flourish extending to the right.

Daniel P. Anderson, Partner  
Anderson Porter Design, Inc.



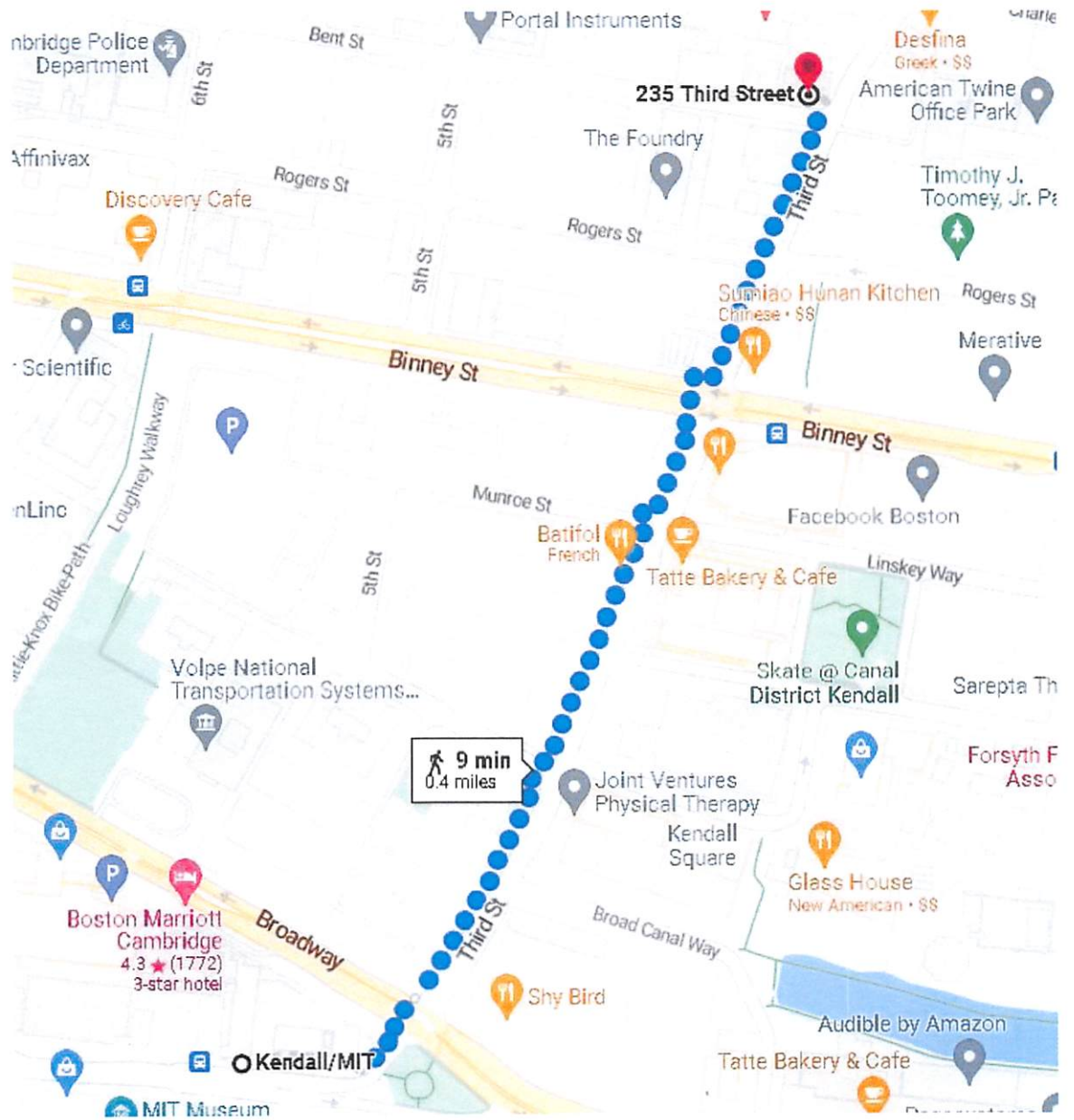
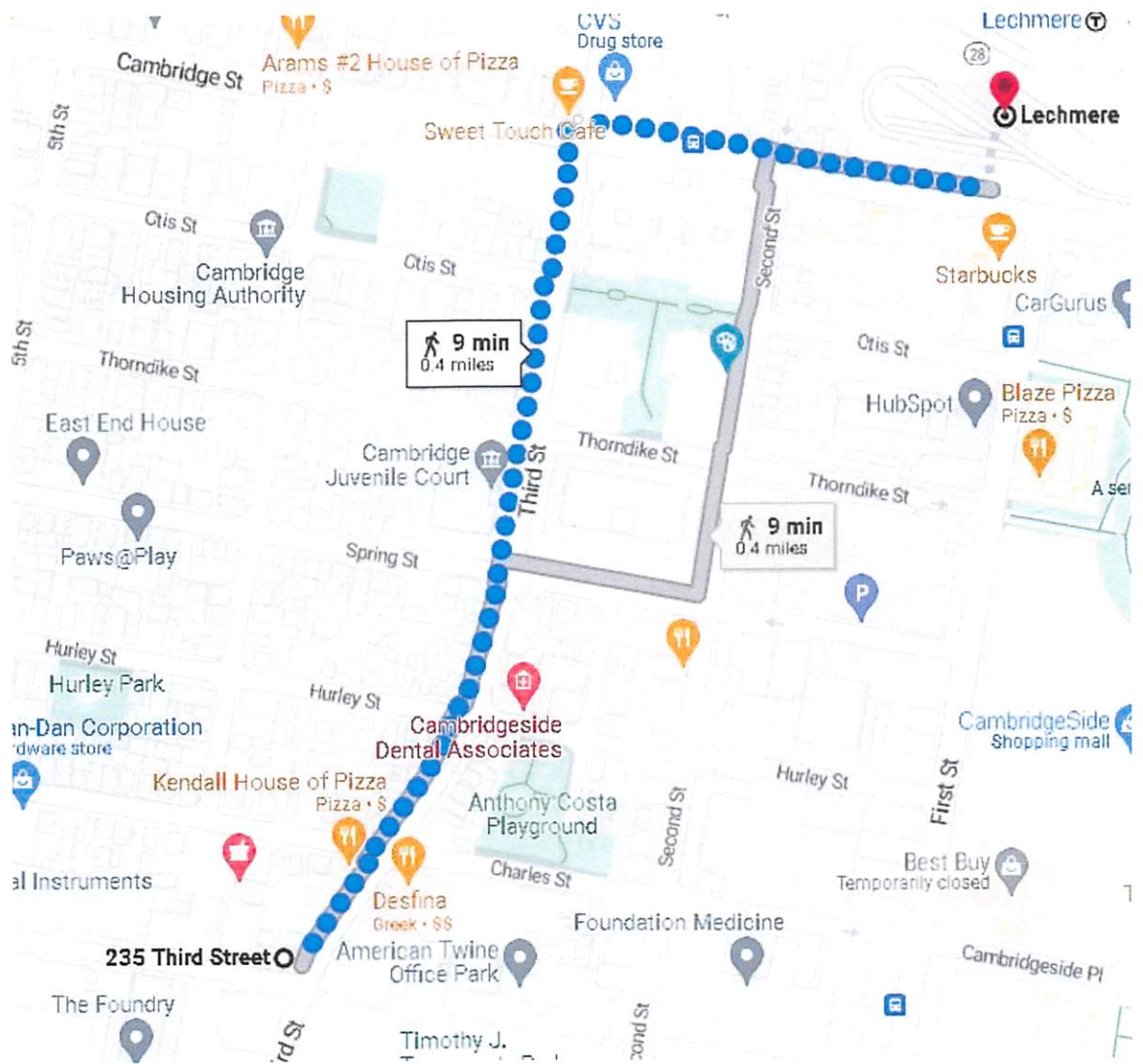


Exhibit A – Walking Distance to Kendall MIT





**Exhibit B – Walking Distance to Lechmere Station**



1 \* \* \* \* \*

2 (8:09 p.m.)

3 Sitting Members: Brendan Sullivan, Andrea A. Hickey,  
4 Jim Monteverde, Laura Wernick, and Matina Williams

5 BRENDAN SULLIVAN: The next case I'm going to call  
6 will be 231-235 Third Street. That's 208873. That would be  
7 -- Mr. Anderson, are you still on the line?

8 DAN ANDERSON: Hello, Mr. Sullivan. I am here.

9 BRENDAN SULLIVAN: Okay. Let me -- I think we can  
10 dispose of this very quickly, and then I don't need to have  
11 you hanging around.

12 DAN ANDERSON: I appreciate it. It's always  
13 interesting and engaging to hear you guys. So not a  
14 hardship here.

15 BRENDAN SULLIVAN: Okay. So let me call the case  
16 then. The Board will now hear Case No. 208873 -- 231-235  
17 Third Street. So you are requesting a continuance?

18 DAN ANDERSON: Yes, sir. So Dan Anderson, a  
19 Partner at Anderson Porter Design. So on request from my  
20 clients to have time to further engage the neighborhood, we  
21 would like to request a continuance.

22 BRENDAN SULLIVAN: All right. Any -- and it's a



1 case not heard? We're into April 13? I'm sorry, could I  
2 have that sheet? Either April -- or April 27?

3 DAN ANDERSON: Is it a choice between the two?  
4 Because I'll take the thirteenth if it's available.

5 BRENDAN SULLIVAN: I'm sorry? Yeah, so we have  
6 four and three. Yeah. Okay. And that one of them is going  
7 to go away anyhow, so -- I know that one's going away. All  
8 right, sorry.

9 April -- April 13, Dan?

10 DAN ANDERSON: That would be outstanding. Thank  
11 you.

12 BRENDAN SULLIVAN: Okay. Let me make a motion,  
13 then, to continue this matter to April 13, 2023 at 6:00 p.m.  
14 on the condition that you sign a waiver to the statutory  
15 requirement for a hearing and a decision to be rendered  
16 thereof. That such waiver should be in the file by 5:00  
17 p.m. or one week from tonight.

18 That any new submittals be in the file -- plans,  
19 dimensional forms, supporting statements, by 5:00 p.m. on  
20 the Monday prior to the April 13 hearing.

21 And that you change the posting sign to reflect  
22 the new date of April 13, 2023 and the new time of 6:00 p.m.



1           On the motion, then, to continue this matter, Jim  
2 Monteverde?

3           JIM MONTEVERDE: In favor of the continuance.

4           BRENDAN SULLIVAN: Andrea Hickey?

5           ANDREA HICKEY: Mr. Chair, I'm going to abstain.

6 But I don't think you need me anyway in order for the  
7 continuance to carry.

8           BRENDAN SULLIVAN: Great. Laura Wernick?

9           LAURA WERNICK: In favor.

10          BRENDAN SULLIVAN: Matina Williams?

11          MATINA WILLIAMS: In favor.

12          BRENDAN SULLIVAN: Brendan Sullivan yes.

13          [FOUR vote YES, ONE abstains]

14          BRENDAN SULLIVAN: On the four affirmative votes,  
15 this matter is continued to April 13, 2023 at 6:00 p.m.

16          DAN ANDERSON: Thank you very much. Have a good  
17 evening.

18

19

20

21

22



## Pacheco, Maria

---

**From:** Dan Anderson <dan@andersonporter.com>  
**Sent:** Friday, April 7, 2023 10:13 AM  
**To:** Pacheco, Maria  
**Subject:** 231-235 Third Street 208873

Dear Board of Zoning Appeal;

We are writing to request a continuance for the special permit/variance application 208873 for 231-235 Third St. The project will be reviewed by the Cambridge Historic Commission on May 4. The outcome will bear on the current application.

Regards,  
Dan

Daniel P. Anderson

**AndersonPorterDesign**  
1972 Massachusetts Avenue, 4th Floor  
Cambridge, MA 02140

o. 617 354 2501 ext. 111  
m.617 794 2371

[www.andersonporter.com](http://www.andersonporter.com)



*"Always design a thing by considering it in its larger context - a chair in a room, a room in a house, a house in an environment, an environment in a city plan."*

Eliel Saarinen



## **Pacheco, Maria**

---

**From:** Ted Moore <ted.moore3@gmail.com>  
**Sent:** Tuesday, February 21, 2023 1:45 PM  
**To:** Pacheco, Maria  
**Subject:** Comments for Board of Zoning Appeal Meeting regarding BZA-208873

Hello! East Cambridge resident here, I walk with my child on Third Street quite often and go by these properties (231-235 Third Street). I think they are beautiful homes and think it's a shame that no one is living in them. However, I don't want to see them torn down and replaced with another boxy condo building. I'm concerned we're losing our city's character to uncontrolled real-estate growth that is being encouraged by otherwise well-intentioned residents concerned with the price of housing. I support an overhaul of them to make them livable to new residents but we should not destroy our history.

Best,  
-Ted Moore



## **Pacheco, Maria**

---

**From:** Bill McAvinney <bmcavinney@earthlink.net>  
**Sent:** Tuesday, February 21, 2023 2:35 PM  
**To:** Pacheco, Maria  
**Cc:** Bill McAvinney  
**Subject:** In support of Case #BZA-208873

Dear BZA Board Members,

Cambridge has moved on from having a housing crisis to having a housing famine. Many of my friends and my son have been driven out of Cambridge by the lack of available housing. This project is asking for minimal zoning relief, and will create homes for 18 more families, not a lot, but we need all we can get. I strongly encourage you to approve the variance and special permit for this project.

Sincerely,  
William McAvinney  
12 Douglass St



## **Pacheco, Maria**

---

**From:** Danielle <daniellemishkin@yahoo.com>  
**Sent:** Wednesday, February 22, 2023 5:01 PM  
**To:** Pacheco, Maria  
**Subject:** Proposal BZA-208873

To the Board of Zoning Appeals,

With regards to the proposal (BZA-208873)

This proposal does not meet the necessary requirements for a hardship. Ideally the developer would incorporate existing structures into their design for this parcel. The massing as presented is out of scale for the surrounding 2-3 story buildings. Even the adjacent development across Bent street tapers down to 4 stories as it approaches the residential neighborhood. In keeping with that design principle and to avoid encroaching on the 2-3 story neighboring building, a 3-4 story building that maintains the historic structures and steps down would be more proportionate for the area.

I oppose this petition and hope the board votes accordingly.

Sincerely,

Danielle Mishkin  
Spring St

Sent from my iPhone



## **Pacheco, Maria**

---

**From:** Victoria <octoryrose@yahoo.com>  
**Sent:** Thursday, February 23, 2023 9:55 AM  
**To:** Pacheco, Maria; HistComm; chuckhinds@msn.com  
**Subject:** Re: 231-235 THIRD STREET

I sent my email before (below) but sending again with a couple other addresses on the day of the Zoom meeting tonight.

**Please don't demolish the two buildings at 231-235 Third Street!** The little brick house is gorgeous and should never be demolished! Why can't they make their units within the two buildings without tearing them down? It would have so much more character than the cookie cutter buildings everywhere! Probably could charge more rent too! Come on people! Work hard for these buildings as well as the beautiful trees surrounding them! Victoria Ruff, 30 Sciarappa St., # 2, Cambridge, MA 02141

On Tuesday, February 7, 2023 at 12:13:09 PM EST, Victoria <octoryrose@yahoo.com> wrote:

Isn't 235 Third Street a historic building? That should not be raised! Do we really need MORE ugly apartment boxes in this city? That beautiful building as well as the building next door should not be demolished. Please don't let it happen!

**Victoria Ruff, 617-710-0136**  
**30 Sciarappa St., Cambridge**



East Cambridge



Planning Team

*A Neighborhood Organization for the Betterment of East Cambridge*

February 22, 2023

Cambridge Board of Zoning Appeal  
831 Mass Ave  
Cambridge, MA 02139

**RE: 231-235 Third St. (BZA #208873)**

Dear Chair Brendan Sullivan; Vice Chair Jim Monteverde; Members Alexander, Wernick, Hickey; and Associate Members Anderson, Leiserson, Williams, Marshall:

At the February 22, 2023 East Cambridge Planning Team (ECPT) regular meeting, architect Daniel Anderson presented a proposal to demolish an 1870s brick building and garage at 233-235 Third Street and construct an 18,080-sf building which incorporates the two-story residential structure at 229-231 Third Street. The resulting building would contain 19 residential units and no parking.

We understand the project needs significant zoning relief including a variance to construct an addition to a non-conforming structure that is increased more than 25% and a special permit to reduce side and rear yard setbacks.

After discussing the merits and details of the proposed project, ECPT voted unanimously to oppose the project as presented for the following reasons:

- The developer has not adequately involved the community in the proposal for its feedback and input. Only one abutter came to the first project outreach meeting.
- The proposed scale of the building would overwhelm the site.
- Bent Street is a transition area to the 2 and 3 story buildings in the core of East Cambridge. This building is a story higher than the adjacent building which is closer to Kendall Square.
- The addition of 19 units at this location with no parking would further burden the already crowded parking situation.
- The two buildings on the site have historical significance and their scale is more in keeping with the adjacent neighborhood. The loss of the character of these buildings, both architecturally and historically would be greatly felt.

Given the points above and that we believe the proponent did not demonstrate the required hardship for zoning relief, we ask that the Board of Zoning Appeal not grant the requested variances, nor special permit.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. Hinds', written in a cursive style.

Charles T. Hinds  
President, ECPT



## **Pacheco, Maria**

---

**From:** Tal Seiberg <tal.seiberg@gmail.com>  
**Sent:** Thursday, February 23, 2023 10:33 PM  
**To:** Pacheco, Maria  
**Subject:** Support for building more housing

Hello,

I live in Cambridge and own an apartment here. I heard that the buildings at 231-235 Third Street are being rebuilt into a 5 story apartment building. I support this, and am excited to see more housing added to the city.

-Tal Seiberg



## Pacheco, Maria

---

**From:** Dan Anderson <dan@andersonporter.com>  
**Sent:** Monday, May 22, 2023 5:35 PM  
**To:** Pacheco, Maria  
**Subject:** 231-235 Third St - continuance request

Hi Maria;  
I'd like to request a continuance for the following case scheduled for Thursday.  
208873 – 231-235 Third St  
Please send any documents that may need to be signed for continuance.  
Best,  
Dan

Daniel P. Anderson

**AndersonPorterDesign**  
1972 Massachusetts Avenue, 4th Floor  
Cambridge, MA 02140

o. 617 354 2501 ext. 111  
m.617 794 2371

[www.andersonporter.com](http://www.andersonporter.com)



*"Always design a thing by considering it in its larger context - a chair in a room, a room in a house, a house in an environment, an environment in a city plan."*

Eliel Saarinen



1 \* \* \* \* \*

2 (6:08 p.m.)

3 Sitting Members: Brendan Sullivan, Jim Monteverde, Andrea  
4 Wendy Leiserson, and Laura Wernick

5 BRENDAN SULLIVAN: Now I will call the next case,  
6 which will be 231-235 Third Street, <sup>BZA-208873</sup> which is a request to  
7 continue this matter. And reading your letter, we go to  
8 Historical after May 4. So we have May 25 that's available.  
9 It is a case not heard.

10 Are you available on May 25?

11 DAN ANDERSON: I believe that we would like to  
12 have a little bit longer. If we go into -- actually --

13 BRENDAN SULLIVAN: No.

14 DAN ANDERSON: No, May 25 will work.

15 BRENDAN SULLIVAN: Okay. All right. So on the  
16 motion, then, to continue this matter, Case No. 208873 --  
17 231-235 Third Street, Jim Monteverde?

18 JIM MONTEVERDE: Accepts.

19 BRENDAN SULLIVAN: Laura Wernick?

20 LAURA WERNICK: Yes.

21 BRENDAN SULLIVAN: Wendy Leiserson?

22 WENDY LEISERSON: Yes.



1 BRENDAN SULLIVAN: And Matina Williams?

2 [Pause]

3 Brendan Sullivan in favor of the continuance.

4 [All vote YES]

5 BRENDAN SULLIVAN: Four affirmative votes; this  
6 matter is continued until May 25, 2023 at 6:00 p.m. on the  
7 condition that the petitioner change the posting sign to  
8 reflect the new date of May 25, 2023 and the time at 6:00  
9 p.m.

10 That any further changes to the documents that are  
11 in the file now be submitted and in the file be submitted by  
12 5:00 p.m. on the Monday prior to the May 25, 2023 hearing.  
13 Anything else, I guess? No? Okay. So --

14 LAURA WERNICK: Mr. Chair?

15 BRENDAN SULLIVAN: Yes.

16 LAURA WERNICK: I don't think I'm on any of the  
17 other continuing cases, and I wasn't going to sit for -- and  
18 I'm not planning -- I can't sit this evening. But I  
19 understand that you have a -- you're short a member for the  
20 continuing cases, at least? Should I stay on for --

21 BRENDAN SULLIVAN: Yeah. I -- are you, your  
22 scheduled for the evening anyhow, Laura, are you not?



1           LAURA WERNICK: No, I'm not.

2           BRENDAN SULLIVAN: You are not?

3           LAURA WERNICK: No. Just for the continuing  
4 cases. And I think -- I didn't hear any of the other -- I  
5 wasn't in on any of the continuing cases, in all honesty.  
6 So I really shouldn't be hearing those now.

7           BRENDAN SULLIVAN: All right. I'm having  
8 difficulty understanding. What's she saying?

9           Yeah. All right. So Laura, what we have is  
10 myself, Jim, Andrea, yourself, and Wendy sitting for the  
11 rest of the evening. Is that --

12           LAURA WERNICK: I had said that I cannot -- I had  
13 said that I could not make this evening.

14           BRENDAN SULLIVAN: Oh.

15           LAURA WERNICK: That is Jim -- be on the  
16 continuing case.

17           BRENDAN SULLIVAN: Oh. We maybe have a problem.

18           WENDY LEISERSON: Yeah, Laura, you're on the 401  
19 Concord, right?

20           LAURA WERNICK: The 401 Concord was the continuing  
21 case that I -- I thought, yeah. I'm sorry, that's the one I  
22 need to be on.



1           WENDY LEISERSON: Yeah. We're still -- all right,  
2           which one are we on? We're doing this out of order. I  
3           think that's what's causing the confusion; it's out of order  
4           of the docket.

5           LAURA WERNICK: Yeah.

6           WENDY LEISERSON: Yeah.

7           BRENDAN SULLIVAN: All right. Let me just dispose  
8           of Third Street. So having received four affirmative votes,  
9           Third Street is continued until May 25, 2023.

10          LAURA WERNICK: Okay.

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## Pacheco, Maria

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**From:** Dan Anderson <dan@andersonporter.com>  
**Sent:** Monday, July 10, 2023 4:19 PM  
**To:** Pacheco, Maria  
**Subject:** 231-235 Third Street - Continuance Request

Dear Chair and BZA Members;

We are requesting a continuance of the application for 231-235 Third Street.

The project has applied for demolition of existing structures and is still in progress with the Cambridge Historic Commission.

We are working with CHC staff and a CHC architectural review committee to address comments on design appropriateness.

We respectfully request a continuance to complete this process.

Regards,

Daniel P. Anderson

### **AndersonPorterDesign**

1972 Massachusetts Avenue, 4th Floor  
Cambridge, MA 02140

o. 617 354 2501 ext. 111  
m.617 794 2371

[www.andersonporter.com](http://www.andersonporter.com)



*"Always design a thing by considering it in its larger context - a chair in a room, a room in a house, a house in an environment, an environment in a city plan."*

Eliel Saarinen



## **Pacheco, Maria**

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**From:** Chelsea Payne <noreply-webcontactform@cambridgema.gov>  
**Sent:** Wednesday, May 24, 2023 12:07 AM  
**To:** Pacheco, Maria  
**Subject:** Opposition Letter Against BZA-208873

Sender's Email: chelsea0payne@gmail.com

Sender's Name: Chelsea Payne

Sent from a web contact form at <https://www.cambridgema.gov/inspection/contactforms/zoningdivision/mariapacheco>

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To the Board of Zoning Appeals:

Regarding proposal (BZA-208873)

The currently existing buildings are historic and add to the character of the neighborhood. It would be a disservice to the community for either to be demolished and replaced with a towering five story building.

If this proposal is to go through, this will be yet another historical street corner of Cambridge razed and converted to modern luxury apartments lacking any of the character or charm that makes Cambridge unique. It will also increase local parking demands and add further traffic to an already congested area.

We strongly oppose this petition and hope the board votes accordingly.

Thank you,  
Chelsea Payne & Eric Hagman; Cambridge St



# Alexander Graham Bell Trust

June 14, 2023

City of Cambridge  
Board of Zoning Appeal  
831 Massachusetts Ave  
Cambridge, MA 02139

Re: 231-235 Third Street (BZA Number 208873)

To The Board of Zoning Appeal,

I am writing on the behalf of Alexandra Graham Bell Trust (140 Charles St/227 Third St), in relation to the proposed development of 231-235 Third Street.

The tenants of this building have expressed concerns as to the magnitude of this construction project in relation to their work and lab space. Large scale vibrations and disruptions are detrimental to the tenant's work and research. If the vibration is big enough, an entire vivarium can be disrupted resulting in the research being contaminated and eventually destroyed.

With such a large project on a relatively small parcel, Alexandra Graham Bell wants to know what the City of Cambridge and developer plan to do to mitigate any damages and lost revenue caused by this potential construction hardship.

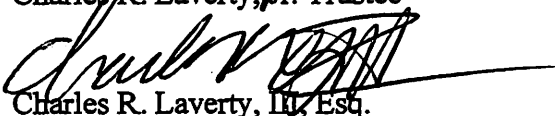
East Cambridge has become a center for research and development for many companies moving into this area of Cambridge. Several of these companies have become alarmed at what this construction project could have on their scientific research.

In addition to the disruption caused by this construction to the tenants, the back alleyway connecting the Third Street parking lot to the front entrances on Bent Street could also be harmed and damaged. As renderings show from the applicant, the archway to this alleyway is connected to the existing garage located at 235 Third Street.

If you could provide further details to the owners of Alexandra Graham Bell Trust and the tenants of this building that proper safeguards will be put in place if the variance and special permit are approved it would be appreciated.

Sincerely,

  
Charles R. Lavery, Jr. Trustee

  
Charles R. Lavery, III, Esq.



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2 (6:53 p.m.)

3 Sitting Members: Jim Monteverde, Wendy Leiserson, Matina  
4 Williams, Stephen Ng, and Zarya Miranda

5 JIM MONTEVERDE: Then we have two cases that will  
6 be continued, and the first is Case No. 208873 -- 231-235  
7 Third Street. No one here? Should we just continue it and  
8 -- so let's pick one. 7:13. Okay. Then continuance.

9 We have a letter -- correspondence from Dan  
10 Anderson from Anderson Porter Design stating that, "I'd like  
11 to request a continuance for the case and send any documents  
12 that may need to be signed for continuance."

13 So on the matter of the continuance, I'll make a  
14 motion, then, to continue this matter to July 15, 2023 on  
15 the condition that the petitioner change the posting sign to  
16 reflect the new date of June 29, 2023 and the time at 6:00  
17 p.m.

18 Also, in furtherance that the petitioner sign a  
19 waiver of the statutory requirements for a hearing. Said  
20 waiver can be obtained from Maria Pacheco or Olivia Ratay  
21 with the Inspectional Services Department.

22 Also sign it and return it to us by a week from



1 the Monday prior.

2 Failure to do so will de facto cause this Board to  
3 give an adverse ruling on this particular case. We would  
4 ask that you sign it and get it back to us. This will allow  
5 us to hear the case on July 13.

6 Also, if there are any new submittals or changes  
7 to the drawings, that those be on file by 5:00 p.m. on the  
8 Monday prior to the July 13 date.

9 Also, if there are any changes to the dimensional  
10 form and potentially the supporting statement also be  
11 changed and submitted along with the new documents.

12 On the motion, then, to continue this matter,  
13 Zarya?

14 ZARAYA MIRANDA: In favor.

15 JIM MONTEVERDE: Wendy?

16 WENDY LEISERSON: In favor.

17 JIM MONTEVERDE: Matina?

18 MATINA WILLIAMS: In favor.

19 JIM MONTEVERDE: Steven?

20 STEVEN NG: In favor.

21 [All vote YES]

22 JIM MONTEVERDE: Thank you. Four in favor (sic).



1 Continued. We have one more.

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2 (6:15 p.m.)

3 Sitting Members: Jim Monteverde, Steven Ng, Virginia

4 Keesler, Daniel Hidalgo, and Bill Boehm

5 JIM MONTEVERDE: The next case is BZA-208873 --

6 231-235 Third Street. Is there anyone here who wishes to be  
7 heard on this matter?

8 DANIEL ANDERSON: Yes. Dan Anderson, 1972 Mass  
9 Ave, Cambridge, a Partner at Anderson Porter Design.

10 Mr. Chair and members of the Board, yes regarding  
11 this case, we are requesting a continuance.

12 We are making good progress with the Cambridge  
13 Historic Commission and neighbors but have not yet reached a  
14 resolution on the demolition application that's in place.  
15 They are considered significant, and we're looking at their  
16 decision to say not preferably preserved in light of the  
17 proposed project. So we're making good progress but are not  
18 yet in a position to have cleared the approvals with the  
19 Historic Commission.

20 So if possible, if September 28 is workable for  
21 members of the Board, I would very much appreciate that that  
22 continuance.



1           JIM MONTEVERDE: Yeah. We can do September 28 if  
2 that works for you.

3           ADAM DASH: Absolutely.

4           JIM MONTEVERDE: All right. Okay. Let me make a  
5 motion, then, to continue this matter -- and this is Case  
6 208873 -- 231-235 Third Street -- to continue this matter to  
7 September 28, 2023, on the condition that the petitioner  
8 change the posting sign to reflect the new date of September  
9 28, 2023, and the time of 6:00 p.m.

10           Also, in furtherance that the petitioner sign a  
11 waiver of the statutory requirement for a hearing. Said  
12 waiver can be obtained from Maria Pacheco or Olivia Ratay at  
13 the Inspectional Services Department.

14           We ask that you sign it and return it to us by a  
15 week from this coming Monday. Failure to do so will de  
16 facto cause this Board to give an adverse ruling on this  
17 particular case.

18           Also, if there are any new submittals or changes  
19 to the drawings, or changes to the dimensional form or  
20 potentially any supporting statements, that they all be  
21 changed and submitted along with the new documents and filed  
22 by 5:00 p.m. on the Monday prior to the September 28, 2023



1 hearing.

2 On the motion, then, to continue this matter,  
3 Steven?

4 STEVEN NG: In favor.

5 JIM MONTEVERDE: Virginia?

6 VIRGINIA KEESLER: In favor.

7 JIM MONTEVERDE: Daniel?

8 DANIEL HIDALGO: In favor.

9 BILL BOEHM: In favor.

10 JIM MONTEVERDE: And Jim Monteverde in favor.

11 [All vote YES]

12 JIM MONTEVERDE: It's unanimous. The case is  
13 continued.

14 DAN ANDERSON: Thank you very much.

15 JIM MONTEVERDE: You're welcome. Don't go too  
16 far.

17 DAN ANDERSON: I will not.

18 JIM MONTEVERDE: Now.

19 DAN ANDERSON: Mr. Chair?

20 JIM MONTEVERDE: Yes, sir.

21 DAN ANDERSON: If I might request, the next case,  
22 we would prefer if it's possible to hear the subsequent



## Pacheco, Maria

---

**From:** Dan Anderson <dan@andersonporter.com>  
**Sent:** Monday, October 2, 2023 10:28 AM  
**To:** Pacheco, Maria  
**Subject:** FW: BZA for 231 & 235 Third Street  
**Attachments:** IMG\_5140.jpg; IMG\_5141.jpg

Hi Maria;  
See attached photos of the updated sign board from last week.  
Dan

Daniel P. Anderson

**AndersonPorterDesign**  
1972 Massachusetts Avenue, 4th Floor  
Cambridge, MA 02140

o. 617 354 2501 ext. 111  
m.617 794 2371

[www.andersonporter.com](http://www.andersonporter.com)



*"Always design a thing by considering it in its larger context - a chair in a room, a room in a house, a house in an environment, an environment in a city plan."*

Eliel Saarinen

---

**From:** ender.saricay@dnd-homes.com <ender.saricay@dnd-homes.com>  
**Sent:** Friday, September 29, 2023 10:00 AM  
**To:** Dan Anderson <dan@andersonporter.com>; 'Trina Murphy' <trina.murphy@dnd-homes.com>  
**Cc:** 'Mahir Yuz' <mahir.yuz@dnd-homes.com>  
**Subject:** RE: BZA for 231 & 235 Third Street

Hi All,

Please see the attached pictures for Third Street.

---

**From:** Dan Anderson <[dan@andersonporter.com](mailto:dan@andersonporter.com)>  
**Sent:** Friday, September 29, 2023 9:51 AM  
**To:** Ender Saricay <[ender.saricay@dnd-homes.com](mailto:ender.saricay@dnd-homes.com)>; Trina Murphy <[trina.murphy@dnd-homes.com](mailto:trina.murphy@dnd-homes.com)>  
**Cc:** 'Mahir Yuz' <[mahir.yuz@dnd-homes.com](mailto:mahir.yuz@dnd-homes.com)>  
**Subject:** RE: BZA for 231 & 235 Third Street

Thanks Ender!

Daniel P. Anderson



**AndersonPorterDesign**

1972 Massachusetts Avenue, 4th Floor  
Cambridge, MA 02140

o. 617 354 2501 ext. 111  
m.617 794 2371

[www.andersonporter.com](http://www.andersonporter.com)



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Eliel Saarinen

---

**From:** Ender Saricay <[ender.saricay@dnd-homes.com](mailto:ender.saricay@dnd-homes.com)>  
**Sent:** Thursday, September 28, 2023 10:31 PM  
**To:** Trina Murphy <[trina.murphy@dnd-homes.com](mailto:trina.murphy@dnd-homes.com)>  
**Cc:** Dan Anderson <[dan@andersonporter.com](mailto:dan@andersonporter.com)>; 'Mahir Yuz' <[mahir.yuz@dnd-homes.com](mailto:mahir.yuz@dnd-homes.com)>  
**Subject:** Re: BZA for 231 & 235 Third Street

Hi,  
I will do that.

Best  
Ender

Get [Outlook for iOS](#)

---

**From:** Trina Murphy <[trina.murphy@dnd-homes.com](mailto:trina.murphy@dnd-homes.com)>  
**Sent:** Thursday, September 28, 2023 6:24 PM  
**To:** 'Ender Saricay' <[ender.saricay@dnd-homes.com](mailto:ender.saricay@dnd-homes.com)>  
**Cc:** 'Dan Anderson' <[dan@andersonporter.com](mailto:dan@andersonporter.com)>; 'Mahir Yuz' <[mahir.yuz@dnd-homes.com](mailto:mahir.yuz@dnd-homes.com)>  
**Subject:** BZA for 231 & 235 Third Street

Hi Ender,

The BZA meeting for third Street is continued to October 12 at 6pm. Can you please update the signage at Third Street? Dan already swung by and updated the one on 231 Third but missed 235.

Thanks!  
Trina



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### Notice of Public Hearing

A Petition has been presented to the Board of Zoning Appeal (BZA) on the following matter. If you wish to express your views in favor of or in opposition to the petition, you are invited to attend the public hearing here virtually or submit a written statement to the Board of Zoning Appeal, 811 Mass Avenue, Cambridge, MA, or email your comments to Maria Pacheco [mpacheco@cambridge.gov](mailto:mpacheco@cambridge.gov). If you would like further information, please contact the Zoning Department at 349-6100 or visit our office at Inspectional Services Department. Please be advised that documents may be submitted, including revisions to plans or documents previously submitted, by the petitioner or any interested party for the BZA's consideration at the hearing if the documents are submitted prior to 5:00 p.m. on the Monday before the public hearing. It is within the BZA's sole discretion whether to accept further revisions to plans or documents at the public hearing.

Members of the public can participate or view the meeting remotely using the Zoom Webinar link: <https://cambridge.zoom.us/j/85702655817>  
Or join by phone: Dial +1 929 436 2888 or +1 301 708 9274 Meeting ID: 857 026 55817

**VIRTUAL HEARING - THURSDAY** *Oct 12, 2023 at 6:00 PM*

**CASE NO:** BZA-208873 *OCTOBER 12, 2023 at 6:00 PM*

**LOCATION:** 235 THIRD STREET  
CAMBRIDGE, MA

**PETITIONER:** OZAN DOKMECIOGLU - c/o DANIEL P. ANDERSON, ARCHITECT

**ZONING DISTRICT:** INDUSTRIAL A-1 ZONE

**PETITION:** Variance: To construct an addition to the non-conforming structure that is increased more than 25%.  
Special Permit: Reduction in minimum required side/rear yard setback to an allowed 10' minimum.

**VIOLATIONS:** Art. 5.000, Sec. 5.34 (Table of Dimensional Requirements).  
Art. 8.000, Sec. 8.22.3 (Non-Conforming Structure).  
Art. 5.000, Sec. 5.34 (Table of Dimensional Requirements).  
Art. 10.000, Sec. 10.30 (Variance), & Sec. 10.40 (Special Permit).

Copies of the application are on file at the City Clerk's Office, City Hall, 795 Massachusetts Avenue, and at the Inspectional Services Department, Lombard Building, 831 Massachusetts Avenue, Cambridge, Massachusetts.

Address written comments to the Board of Zoning Appeal, 831 Massachusetts Avenue, Cambridge, MA 02139

For more information please call 349-6100. TTY: 349-6112



### Notice of PROPOSED DEMOLITION

An application has been made to the Cambridge Historical Commission to demolish all or a significant portion of one or more buildings at

**SUBJECT PROPERTY:** 235 Third Street, Cambridge

**APPLICANT:** 235 Third Street LLC c/o DND Homes LLC

**DATE & TIME OF HEARING:** Thur., Sep 7, 2023, 5:00 PM

**LOCATION OF HEARING:** Zoom online webinar. To register: <https://tinyurl.com/CHCsep7-2023>

**DESCRIPTION:** Case D-1643: Demolish 1 1/2-story house (1872).

APPLICATION MATERIALS ARE POSTED ONLINE: [www.cambridge.gov/permits](http://www.cambridge.gov/permits)  
CONTACT THE STAFF FOR ASSISTANCE OR MORE INFORMATION: 617-349-6627 (phone) 617-349-6112 (TTY)



**PROPOSED DEMOLITION**  
 As required by the Massachusetts Department of Public Safety, the following information is being provided to the public:  
 APPLICANT: J11 Third Street LLC  
 DATE & TIME OF HEARING: Thursday, October 12, 2023, 6:00 PM  
 LOCATION OF HEARING: 795 Massachusetts Avenue, Cambridge, MA 02139  
 DEMOLITION: 231-235 Third Street, Cambridge, MA 02139

231

**Notice of Public Hearing**

A Petition has been presented to the Board of Zoning Appeals (BZA) on the following matter. If you wish to express your views in favor of or in opposition to the petition, you are invited to attend the public hearing held virtually, or submit a written submission to the Board of Zoning Appeals, 831 Main Avenue, Cambridge, Mass. or email your comments to Maria Pacheco [mpacheco@cityofcambridge.gov](mailto:mpacheco@cityofcambridge.gov). If you would like further information, please contact the Zoning Department at 349-6100 or visit our Office of Inspection Services Department. Please be advised that documents may be submitted, including revisions to plans or documents previously submitted, by the petitioner or any interested party for the BZA's consideration at the hearing if the documents are submitted prior to 5:00 p.m. on the Monday before the public hearing. It is within the BZA's sole discretion whether to accept further revisions to plans or documents at the public hearing.

Members of the public can participate or view the meeting remotely using the Zoom Webinar link: <https://cambridge.zoom.us/j/92767165517>  
 Or join by phone: Dial +1 828 436 2486 or +1 888 375 4634

**VIRTUAL HEARING - THUR** **OCT 12, 2023 at 6:00 PM**

*Please Note:* If at this hearing, the BZA's decision requires the petitioner to show that the proposed use is a substantial benefit to the neighborhood, the petitioner must provide evidence to the public board at the time of the hearing. However, copies for the board of ZFA cases are posted on the public board at the City Clerk's Office, 795 Massachusetts Avenue, Cambridge, MA 02139.

CASE NO.: BZA-2023-0087  
 LOCATION: 231-235 THIRD STREET, CAMBRIDGE, MA  
 TELEPHONE: OZAN BOKSARCI GELI - C/O DANIEL P. ANDERSON, ARCHITECT  
 ZONING DISTRICT: INDUSTRIAL A1 ZONE  
 PETITION: Variance - To construct an addition to the main existing structure, that is increased more than 25%  
Special Permit - Reduction in minimum required side rear yard setback to an allowed 10' minimum.  
 VIOLATIONS: Act 800B, Sec. 8.34 (Table of Discussion Requirements), Act 800B, Sec. 8.22.3 (Non-Conforming Structures), Act 800B, Sec. 8.34 (Table of Discussion Requirements), Act 1000B, Sec. 10.39 (Variances) & Sec. 10.40 (Special Permit)

Copies of the application are on file at the City Clerk's Office, City Hall, 795 Massachusetts Avenue, and at the Inspection Services Department, Lombard Building, 831 Massachusetts Avenue, Cambridge, Massachusetts.

Address written comments to the Board of Zoning Appeals, 831 Massachusetts Avenue, Cambridge, MA 02139

For more information, please call 349-6100 TTY: 349-6112

OCT 12 6PM



# Ratay, Olivia

**From:** marie saccoccio <saccocciom@yahoo.com>  
**Sent:** Thursday, September 28, 2023 4:01 PM  
**To:** Ratay, Olivia  
**Subject:** Faulty public notice for demo of 231-235 Third Street

These photos were taken today!!







**Notice of Public Hearing**

A Zoning Appeal has been submitted to the Board of Zoning Appeals (BZA) on the following matter. It is a zoning appeal and unless a notice of appeal is filed by the applicant, you are invited to attend the public hearing and provide your comments to the BZA. The Board of Zoning Appeals (BZA) will hold a public hearing on the appeal on the date and time indicated below. The hearing will be held at the City Clerk's Office, City Hall, 790 Massachusetts Avenue, Cambridge, MA 02139. The hearing will be held on the date and time indicated below. The hearing will be held at the City Clerk's Office, City Hall, 790 Massachusetts Avenue, Cambridge, MA 02139. The hearing will be held on the date and time indicated below. The hearing will be held at the City Clerk's Office, City Hall, 790 Massachusetts Avenue, Cambridge, MA 02139.

**Virtual Hearing - In-person** July 13, 2021 at 6:00 PM

**Case No.** ZEA-2021-0001  
**Location** 225 The Strand Street  
Cambridge, MA

**Applicant** 225 The Strand LLC, d/b/a DND Homes LLC  
**Project** 225 The Strand Street, Cambridge, MA 02139

**Project Description** The project is a proposed demolition of the existing structure at the subject property. The project is a proposed demolition of the existing structure at the subject property. The project is a proposed demolition of the existing structure at the subject property. The project is a proposed demolition of the existing structure at the subject property.

**Legal Authority** The project is proposed under the authority of the following provisions of the Zoning Ordinance: Art. 12B, Sec. 3.12 (Use of Existing Structures); Art. 12B, Sec. 3.14 (Use of Existing Structures); Art. 12B, Sec. 3.15 (Use of Existing Structures); Art. 12B, Sec. 3.16 (Use of Existing Structures).

Copies of the application are on file at the City Clerk's Office, City Hall, 790 Massachusetts Avenue, and at the Inspection Services Department, Lombard Building, 731 Massachusetts Avenue, Cambridge, Massachusetts. Address written comments to the Board of Zoning Appeals, 821 Massachusetts Avenue, Cambridge, MA 02139. For more information please call 349-6100, TTY: 349-6112

**Notice of PROPOSED DEMOLITION**  
The applicant has been notified by the Cambridge Historical Commission that the proposed demolition of the subject property is in violation of the Cambridge Historical Commission's regulations. The applicant is required to submit a plan of preservation to the Commission for review and approval. The applicant is required to submit a plan of preservation to the Commission for review and approval. The applicant is required to submit a plan of preservation to the Commission for review and approval.

Sent from my iPhone



## Ratay, Olivia

---

**From:** jmspera@comcast.net  
**Sent:** Thursday, September 28, 2023 4:28 PM  
**To:** Pacheco, Maria  
**Cc:** Ratay, Olivia  
**Subject:** Case No. BZA-208873

Dear Members of the Board of Zoning Appeals.

I am writing in opposition to the demolition of 231 and 235 Third Street which is on your Agenda for this evening. It appears that there was not sufficient notice to the community regarding the owners intent to seek approval for demolition of the two properties. In addition, members of the East Cambridge community have put in a petition to the Cambridge Historical Commission to secure Landmark status for these historical properties.

I am requesting that the Board of Zoning Appeals does not approve demolition of these buildings at this time. There are too many loose ends as well as the need to fully assess the historical merits of the two buildings.

Sincerely,

Jean Spera  
12 Sciarappa Street  
Cambridge, MA 02141

Sent from [Mail](#) for Windows



## Ratay, Olivia

---

**From:** Heather Hoffman <[heather.m.hoffman.1957@gmail.com](mailto:heather.m.hoffman.1957@gmail.com)>  
**Sent:** Thursday, September 28, 2023 3:29 PM  
**To:** Ratay, Olivia  
**Cc:** Pacheco, Maria  
**Subject:** Re: 231 and 235 Third Street  
**Attachments:** 231ThirdStntc9-28-23.jpg; 233-235ThirdStntc9-28-23.jpg

I resized these for email. I can text the originals from my phone if needed.

Heather

On Thu, Sep 28, 2023 at 3:01 PM Ratay, Olivia <[oratay@cambridgema.gov](mailto:oratay@cambridgema.gov)> wrote:

Heather,

Please provide the pictures and I will attach this email and those pictures to the file for the board members.

Regards,

Olivia Ratay

Zoning Specialist

Inspectional Services

617-349-6110

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**From:** Heather Hoffman <[heather.m.hoffman.1957@gmail.com](mailto:heather.m.hoffman.1957@gmail.com)>  
**Sent:** Thursday, September 28, 2023 1:56 PM  
**To:** Ratay, Olivia <[oratay@cambridgema.gov](mailto:oratay@cambridgema.gov)>  
**Subject:** Fwd: 231 and 235 Third Street

----- Forwarded message -----

**From:** Heather Hoffman <[heather.m.hoffman.1957@gmail.com](mailto:heather.m.hoffman.1957@gmail.com)>  
**Date:** Thu, Sep 28, 2023 at 1:53 PM  
**Subject:** 231 and 235 Third Street  
**To:** Pacheco, Maria <[mpacheco@cambridgema.gov](mailto:mpacheco@cambridgema.gov)>



The notice on both buildings still says the hearing is on July 13, 2023. I took pictures a few minutes ago. Ask if you need to see them.

Heather Hoffman



2  
3  
3



### Notice of Public Hearing

A petition has been presented to the Board of Zoning Appeal (BZA) on the following matter. If you wish to express your views on this application in opposition to the petition, you are invited to attend the public hearing held virtually on July 14, 2023 at 6:00 PM. The hearing will be held at the Board of Zoning Appeal, 531 Massachusetts Avenue, Cambridge, MA 02139. Please contact the Zoning Department at 349-6100 or visit the office at Inspections Services Department, Lombard Building, 531 Massachusetts Avenue, Cambridge, MA 02139. Please be advised that documents may be submitted, including by email to the Inspections Services Department, identified by the petitioner or any interested party for the BZA's consideration at the hearing. If the documents are submitted prior to 5:00 pm, on the Monday before the public hearing, it is within the BZA's sole discretion whether to accept further reviews to plans or documents at the public hearing.

Members of the public can participate or view the meeting virtually using the Zoom Webex link: <https://zoom.us/j/9876543210>  
Or join by phone: Dial +1 609 436 2555 or +1 301 715 8634  
**VIRTUAL HEARING - THURSDAY, JULY 14, 2023 at 6:00 PM**

Please Note: If at the hearing, the BZA Commission concludes the proposed application does not meet the requirements of the Zoning Ordinance, the Board may recommend that the applicant appeal the BZA's decision to the City Council.

CASE NO. BZA-18075  
LOCATION: 235 THIRD STREET  
CAMBRIDGE, MA  
PETITIONER: OLAN DOWNHILL LLC - C/O DANIEL E. ANDERSON, ARCHITECT  
ZONING DISTRICT: INDUSTRIAL-A-3 ZONE  
PETITION: **Extension:** To construct an addition to the existing structure that is located over the 27th Street Drive. **Restriction:** Reduction in minimum required side rear yard setback to as allowed for minimum.  
VIOLATIONS: Art. 12B, Sec. 5.14 (Federal Historical Requirements);  
Art. 12B, Sec. 5.21.5 (New Development);  
Art. 12B, Sec. 5.14 (Table of Historical Requirements);  
Art. 12B, Sec. 10.18 (Variations & Sec. 10.40 (Special Provisions)).

Copies of the application are on file at the City Clerk's Office, City Hall, 795 Massachusetts Avenue, and at the Inspection Services Department, Lombard Building, 531 Massachusetts Avenue, Cambridge, Massachusetts.

Address written comments to the Board of Zoning Appeal, 531 Massachusetts Avenue, Cambridge, MA 02139

For more information please call 349-6100. TTY: 349-6112



### Notice of PROPOSED DEMOLITION

As a precaution has been made to the Cambridge Historical Commission to demolish a or a significant portion of one or more buildings at  
SUBJECT PROPERTY: 235 Third Street, Cambridge  
APPLICANT: 235 Third Street LLC, c/o DND Home LLC





231



# Notice of Public Hearing

A Petition has been presented to the Board of Zoning Appeal (BZA) on the following matter. If you wish to express your views in favor of or in opposition to the petition, you are invited to attend the public hearing held virtually, or submit a written statement to the Board of Zoning Appeal, 831 Mass Avenue, Cambridge, Mass. or email your comments to Maria Pacheco [mpacheco@cambridgema.gov](mailto:mpacheco@cambridgema.gov). If you would like further information, please contact the Zoning department at 349-6100 or visit our office at Inspectional Services Department. Please be advised that documents may be submitted, including revisions to plans or documents previously submitted, by the petitioner or any interested party for the BZA's consideration at the hearing if the documents are submitted prior to 5:00 p.m. on the Monday before the public hearing. It is within the BZA's sole discretion whether to accept further revisions to plans or documents at the public hearing.

Members of the public can participate or view the meeting remotely using the Zoom Webinar

link: <https://cambridgema.zoom.us/j/8570265517>

Or join by phone: Dial +1 929 436 2866 or +1 301 707 6557

**VIRTUAL HEARING - THURSDAY - July 13, 2023 at 6:00 PM**

Please Note: If at this hearing, the BZA Chairperson continues the case to a later date, you will receive a separate notice. However, dates for continued BZA cases are posted on the notice board at the City Clerk's office, City Hall, or The City's Website.

CASE NO: BZA-208873

LOCATION: 231-235 THIRD STREET  
CAMBRIDGE, MA

PETITIONER: OZAN DOKMECIOGLU - C/O DANIEL P. ANDERSON, ARCHITECT

ZONING DISTRICT: INDUSTRIAL A-1 ZONE

PETITION: Variance: To construct an addition to the non-conforming structure that is increased more than 25%.  
Special Permit: Reduction in minimum required side/rear yard setback to an allowed 10' minimum.

VIOLATIONS: Art. 5.000, Sec. 5.34 (Table of Dimensional Requirements).  
Art. 8.000, Sec. 8.22.3 (Non-Conforming Structure).  
Art. 5.000, Sec. 5.34 (Table of Dimensional Requirements).  
Art. 10.000, Sec. 10.30 (Variance), & Sec. 10.40 (Special Permit).

Copies of the application are on file at the City Clerk's Office, City Hall, 795 Massachusetts Avenue, and at the Inspectional Services Department, Lombard Building, 831 Massachusetts Avenue, Cambridge, Massachusetts.

Address written comments to the Board of Zoning Appeal, 831 Massachusetts Avenue, Cambridge, MA 02139

For more information, please call 349-6100 TTY: 349-6112



## Pacheco, Maria

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**From:** marie elena saccoccio <saccocciom@yahoo.com>  
**Sent:** Thursday, September 28, 2023 9:33 AM  
**To:** Pacheco, Maria  
**Subject:** Fw: Objection to Demolition of 231 to 235 Third Street/Case No. BZA-208873  
**Attachments:** East Cambridge Land Company 9-2023.docx; Munroe v. Worthington Pump Mach. Corp.pdf; Third Street Attorneys.pdf

Maria, Could you kindly enter this email and attachments into the packet for BZA-208873 scheduled as part of the continued cases for this evening? The signatures for landmarking have been certified by the Election Commission and the Landmarking has been duly advertised. Any further deliberation spent by BZA would be futile at best. Also, please note that the petition before BZA has not been amended and the plan now is complete demo of the two buildings which is different from what is in their petition to BZA. Their present petition contains relief to construct an addition to a nonconforming structure. That is no longer the plan at all.

Thank you for your anticipated assistance.

Marie Elena Saccoccio, Esquire  
55 Otis Street  
Cambridge, MA 02141  
BBO#552854  
On Behalf of signatories on Landmarking Petition

----- Forwarded Message -----

**From:** marie elena saccoccio <saccocciom@yahoo.com>  
**To:** "csullivan@cambridgema.gov" <csullivan@cambridgema.gov>; "ehill@cambridgema.gov" <ehill@cambridgema.gov>; Sarah Burks <sburks@cambridgema.gov>  
**Sent:** Wednesday, September 6, 2023 at 01:11:38 PM EDT  
**Subject:** Objection to Demolition of 231 to 235 Third Street

:

Members of the Commission: Could you kindly consider the attached letter and documents submitted in support of my opposition?



Cambridge Historic Commission in opposition to demolition of 235 Third Street as well as 231 Third Street.

Members of the Historic Commission:

I am submitting this raw research in opposition to the demolition sought for 231 and 235 Third Street. The lots and buildings were part of the holdings of East Cambridge Land Company, as specifically authorized and formed by our legislature under a Special Act to lay out the streets and grids and canals so as to encourage development of what was really our marshland. To be sure, this was an incredible responsibility and one that to this day has benefited and supported Cambridge. Who can doubt the incredible industrial development that fed this city for over a century or even today with the new biotech center?

235 Third Street was the site of critical development of East Cambridge street pattern concentrating and controlling street grids and even Broad Canal for one of the most productive industrial complexes on the East Coast. These buildings are our only visible remnants of that great enterprise.

Here is the Act:

Chap. 0062 An Act to incorporate the east Cambridge land company.

Be it enacted, fyc, as follows:

Section 1. James C. Dunn, Estes Howe, Henry Potter, Joseph H. Converse, and Edmund Munroe, their associates and successors, are hereby made a corporation, by the name of the East Cambridge Land Company, with all the powers and privileges, and subject to the duties, liabilities and restrictions, set forth in the sixtieth and sixty-eighth chapters of the General Statutes, with power to purchase and hold, in fee simple or otherwise, all or any part of that tract of land and flats situated in Cambridge, and bounded westerly by Portland Street, southerly by Hampshire Street and Broadway, easterly by the commissioners' line on Charles River, and northerly by Bridge and Cambridge Streets; with all the privileges and appurtenances thereto belonging.

Section 2. Said corporation shall have power to sell and convey, lease, mortgage or otherwise dispose of said corporate property or any part thereof, and to manage and improve the same, with authority to construct dams, docks, wharves and buildings, and to lay out streets and passage-ways and otherwise



improve the same, as it shall be deemed expedient: provided, that nothing herein contained shall give said corporation any right not belonging to the riparian proprietors, to extend their wharves or otherwise improve said premises.

Section 3. The capital stock of said corporation shall not exceed three hundred thousand dollars, and shall be divided into shares of one hundred dollars each.

Section 4. This act shall be in force for a term of twenty years, unless sooner repealed by the legislature.

Approved March 1, 1861.

The Act and the East Cambridge Land Company are memorialized today in a wonderfully descriptive opinion of the Massachusetts Supreme Judicial Court, Munroe v. Worthington Pump, 245 Mass. 474 (1923) and is attached herewith in this email submission:

[314] flourishing industries already established, are still to be occupied. This territory is distant less than one mile from the State House in Boston, and it can be purchased for a lower figure than that quoted for desirable locations in either East Boston, South Boston, or Charlestown.

Woodward Emery, Esq., chairman of the Massachusetts Harbor and Land Commission, referring to this section of Cambridge, says:—

The East Cambridge Land Co. was established under a charter from the Commonwealth more than quarter of a century ago, for the purpose of improving the vacant marsh lands in East Cambridge lying between Third and Portland streets, Broad, Canal, and Charles streets, and including about three million square feet of land. It was organized by Gardiner G. Hubbard, who may fairly be called the father of three great enterprises which have greatly benefited the city, to wit: the horse railroad, the gas company, and the water-works; the late Estes Howe, a name associated with many Cambridge enterprises of public interest and character; Charles W. Munroe, whose father owned and improved a considerable amount of real estate in the city; and their associates. The improvement of this property, by the laying out and building of streets, adapted it for manufacturing industries and mechanical enterprises. The Grand Junction branch runs through the property from north to south, with a spur track to the eastward, so located as to offer ready facilities to works which may become established upon its line. Since the development of this property, the company has sold more than two million feet of its land. The George F. Blake Manufacturing Co., The Boston Bridge Co., The Boston Woven Hose Co., The American Rubber Co., and others, have purchased, erected plants, and established large businesses in these lands. Many of these manufacturing plants were located in this locality after a thorough examination and exhaustive study; as the proprietor of one of them said: "Of the suburbs of Boston beginning at East Boston, and following the Boston and Albany Railroad through East Boston, Chelsea, Everett, Charlestown, Somerville, and Cambridge, and examining all vacant lands on railroads entering Boston not too remote for our purpose, the result of this



careful examination was the choice of the present location of the works. The price was found very reasonable compared with any other ”

<https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A2001.05.0185%3Achapter%3D45%3Apage%3D314>

*The Cambridge of eighteen hundred and ninety-six: a picture of the city and its industries fifty years after its incorporation*

*Arthur Gilman, Ed.*

....1924 garage permit 24696 [razed by 2000] 231 (o) McElroy Alice (b) Ryan Martin W

•235 house 1½-st 1872

.....1872 land deed 1494,413 nwc court+bent 35x79 (o) McElroy Rosana / Francis G from (o) East Cambridge Land co

.....house tax; thru 87 w3 third : 135 (o) McElroy Francis G.

.....1886 Hopkins atlas

.....1924? •garage [1930 atlas; like garage for 231 but separate permit not found]

Christopher Hail Survey of Cambridge Streets and Buildings.

The incorporation of the city and the projection of the railroad, promising a new era of prosperity and growth, encouraged certain merchants, in 1847, to undertake the improvement of the overflowed lands in this quarter. Corporate powers were secured by them from the General Court, with authority to buy and develop lands between the highlands of East Cambridge and the River Charles and north of West Boston Bridge; and the Cambridge Wharf Company was organized. Beyond the purchase of a tract along the river front and the conception of a plan of improvement, this company did little, and finally released its entire holdings to an individual purchaser in 1890. A second corporation was created by the legislature in 1861, under the name of the East Cambridge Land Company, to attempt the work of reclamation in the territory covered by its predecessor. A large district covering some seventy-five acres, lying between Portland Street and Third (formerly Court) Street and the Broad Canal came into the possession of this company. On these lands a number of manufacturing structures and workshops, some of notable character, have been erected; but after thirty-five years of effort, and despite the strong and steady growth of the old districts of the city during that period, quite one third of the available holdings of this company still remain to be built upon. In 1874, a third charter was granted by the legislature to other citizens desirous of solving the utilitarian problems in this section. The Cambridge Improvement Company was thus formed, and became possessed of between fifty and sixty acres of lowlands, mostly flats, between Third Street and the river. The interposition of [Broad Canal](#) between these lands and Main Street, always a seemingly insurmountable obstacle to the use of these lands, effectually closed them from advantageous connection with [Boston](#). With the aid of the authorities of the municipality, this barrier was, however, about to be removed, when the disastrous financial panic following the [\[110\]](#) initiation



of this enterprise, which paralyzed all energies, effectually put an end to the efforts of this company. A short section of stone wall on the river front, ragged from neglect, remained as a forlorn monument of the fallen fortunes of this enterprise until 1889, when a citizen of [Boston](#), convinced of the possibilities of these barren lands, situated as they were in the heart of a great community, and within a trifling distance of the commercial centres of his city, acquired nearly fifty acres of this territory, including the entire water front, half a mile in length, lying between the canal and either bridge.

The effort to recover this land was at once renewed, and this time with effect. First Street was at once filled, from its terminus at Binney Street to the line of [Broad Canal](#), a thousand feet in length, and the sea-wall along the river extended easterly. By a wise cooperation of the city authorities and the courageous investor, the Broad Canal was at length bridged, and entrance gained to Main Street at its junction with West Boston bridge. Since that time, the work of recovering the waste lands of this part of [Cambridge](#) has been rapid. Already about fifteen acres of original flat-lands have been filled. First Street has been recognized by the city authorities as a thoroughfare of such importance as to warrant a pavement of granite blocks. Its sidewalks, ten feet in width, will be asphalted. On this street stands, finished but yesterday, one of the noblest monuments of industry yet erected in [Cambridge](#), a great structure, whose purposes are proclaimed by [Athena](#), goddess of letters, whose heroic effigy proudly crowns its pediment.

Of the ancient marshes and flats in this quarter of the city, between the highlands and the river's line, over one hundred acres still await reclamation. It is to this district that [Cambridge](#) must largely look in the future for its prosperity. For here, under wise encouragement, should grow up a great manufacturing quarter second to none other in or near the capital city. All elements necessary for the creation of a commercial district of this character seem to be here in happy conspiracy. It is almost at the gates of [Boston](#). First Street is only a mile distant from the City Hall of [Boston](#), and, accordingly, nearer to that accepted centre than the Hotel [Vendome](#), than the new Union station now proposed on the Back Bay, than Dover Street, than all [South Boston](#), except a small portion of the newly made lands, than all [East Boston](#), than all [Charlestown](#) [111] but a small fraction. Barges of the largest size may be moored at its wharves, and, by spur from the main line of steel track, the products of its factories may find direct land transportation over the continent. Two main thoroughfares lead from this quarter straight to the heart of the great city over the narrow waters in one direction, and out into the cities and towns beyond in the other. Here wide streets will afford ample room for traffic, and preserve the play of sunshine and the freedom of air. A dense population is at hand to supply the artisans of the coming industries. A river park on the one side and a land park on the other will furnish the toilers and their children with refreshment and recreation. The policy of the city in encouraging the private reclamation of its lowlands, now long since established, will favor the proper improvement of this quarter with increased generosity as its possibilities become more fully appreciated. For with its appropriation by the great hives of industry will come an increased prosperity to the community. As a purely residential city, [Cambridge](#) cannot hope to be more than an annex to [Boston](#). The presence within her borders of large commercial interests will give her the importance of a self-sufficing entity, and a hardy independence of her neighbors, great or small. To the spread of the quarters of business more than to those of habitation will be due that happy increase of financial resource which is so necessary for the pressing wants of a growing community. Long before [Cambridge](#) celebrates a centennial anniversary of urban existence, these lands, every inch reclaimed from the deep, and filled with workshops and warehouses, will



be pointed out with pride as a distinctive quarter of the city, its past nakedness and desolation buried and forgotten.

Thus, in this memorial year, the results of the work of the last few years in solving the grave problems affecting the Cambridge littoral sum up largely. It is only thirteen years since the first stone of a sea-wall facing the bay of the Charles as the outwork of a public promenade was laid in the solid gravel of its bed. To-day, the wall stretches out far from either side of the Harvard bridge, in front of it an always open basin, and behind it the promised esplanade, two hundred feet wide, and thirty-five hundred feet in length, ready for the decoration of trees and plants to justify its exceeding value to the Cambridge of the future and its further extension along the river banks. [112] To-day, the wall of the Charlesbank of East Cambridge is built, and a beautiful section of river park will at no distant time be there open to the people. To-day, with the exception of a few hundred feet, the entire littoral is in the hands of the people. The progressive improvement of the river's banks under public control will force the wholesome recovery of all the abutting lowlands at private initiative. In the commercial district to the north of Main Street the Binney marshes have given way to a health-giving common, and the obnoxious flats are fast disappearing. Since 1892, the bridge at First Street has been built, and fifteen acres of the adjacent lands have already been reclaimed for settlement; it will be but a short time before the tide is finally driven from this entire quarter. To the south of Main Street, a great section of the ancient shallows, one hundred and twenty acres in extent, has given place to clean uplands, inviting the builders of houses. Beyond, to the west of the railroad, a million feet of the marshes have been raised, and a site for a great athletic campus is made. If all but a tithe of this great work has been done during the past five or six years, what may not be accomplished in its active prosecution within the next decade? There can be now no retrograde action in the treatment of the shores of the beautiful river. The transformation of the desolation that threatened the well-being of the people, that mortally offended the sense of the beautiful, that foreboded a staggering burden of public debt, has so far progressed that the quick consummation of the hopes of the past may be confidently anticipated. Nor will [Cambridge](#) be long alone in the labor. Her example must stimulate the great sister city to happy imitation on the south shore of the bay, and hasten the park scheme, covering the upper reaches of the Charles, to completion. When the work is finally completed of devoting this river and its banks far up the stream to the pleasures of the people, and all the menacing lowlands are things of an unhappy past, a great pride will fill the hearts of the people in the possession of so beautiful a spot, and the stranger will come from afar to admire. And Blaxton, could he climb again the high peak of his hermitage, and gaze on the splendid panorama about him, would indeed marvel at the mighty works of those who have come after him.

Cambridge, 1896.

*The Cambridge of eighteen hundred and ninety-six: a picture of the city and its industries fifty years after its incorporation*

*Arthur Gilman, Ed.*

The Cambridge Littoral

Frederick H. Viaux.



With respect to 231 Third Street, early same sex adoption pleadings were authored right from that law office. It was described merely as a "women's law practice" by one of the abutters. To be sure, our same sex adoption litigation was the seminal case in the country. Copy of the Brief is attached to this email as well. Fascinating that when built this was the home and business of a woman restaurateur and her daughter, with daughter and mother running restaurant and both living upstairs. This distinctive building is a mere steps from the Foundry, the seat of the first minimum wage law in the country. Interesting "Women's Quarter" for East Cambridge.



## Munroe v. Worthington Pump Mach. Corp.

245 Mass. 474 (Mass. 1923) · 139 N.E. 828

Decided May 31, 1923

November 15, 1922.

May 31, 1923.

Present: RUGG, C.J., DeCOURCY, CROSBY,  
CARROLL, JJ.

*Way*, Public: establishment; Private:  
extinguishment by adverse use. *Adverse Use*.

Provisions in St. 1861, c. 62, the charter of East Cambridge Land Company, and in St. 1874, c. 99, the charter of Cambridge Improvement Company, giving to those corporations, respectively, authority "to lay out streets and passageways" upon land to be improved by them, did not give them authority to lay out public ways, but only the power, possessed by individuals, to build streets on their own land.

The provisions of R. L. c. 53, § 1 (see now G.L.c. 86, § 2), relate only to public ways or to statutory private ways laid out under public authority, which are "private only in name but are in all other respects public;" and do not apply to streets laid out by the corporations under the charters above described.

A petition for the registration of title to a parcel of land bounded by a certain way, together with a right of way over the way extended through land of a respondent, cannot be maintained where, upon findings of fact by the trial judge, it appears that, even if such a right of way appurtenant to the land of the petitioner ever existed, it was a private way and was extinguished by adverse use by the respondent for more than twenty years.

PETITION, filed in the Land Court on January 22, 1921, for registration of the title to land in that part of Cambridge known as East Cambridge, bounded by Second Street, by Binney Street, by Third Street and by Rogers Street, with a right of way appurtenant thereto on the course of Rogers 475 \*475 Street extended westerly through land of the respondent to Ninth Street.

The petition was heard by *Davis*, J. Material findings by the trial judge are described in the opinion. His conclusions were as follows:

"I find no easement in Rogers Street over land of the respondent Worthington Company appurtenant to land of the petitioners by grant, express or implied, by estoppel, layout or prescription; and if there ever was any easement as claimed I find that it has been extinguished by adverse use and occupation. I am unable to see that the forty year statute is in any way pertinent to the present case.

"From Fifth Street west to Ninth Street the Rogers Street strip is occupied by tracks and various other obstructions. It would be possible to get through on foot, but not with a team. There is no evidence of user as appurtenant to land of the petitioners.

"There may be a decree for the petitioners, with an appurtenant right of way over Rogers Street easterly to Commercial Avenue in common with others entitled thereto."

The petitioners alleged exceptions.

*H.R. Bailey*, ( *E.B. Church* with him,) for the petitioners.



*C.N. Barney*, ( *W.A. Dane* with him,) for the respondent.

CARROLL, J.

This is a petition for the registration of land in East Cambridge, bounded by Second, Binney, Third and Rogers streets. The Land Court found that the petitioners have title to the tract of land claimed by them on Rogers Street east of Third Street, and a right of way over this street easterly from Third Street. The petitioners also claim that they have a right of way in common with others over Rogers Street west of Third Street. The Land Court found that there was no easement in Rogers Street west of Third Street over the land of the respondent appurtenant to the land of the petitioners; that if an easement as claimed ever existed, it has been extinguished by adverse use and occupation, and that the forty year statute was in no way pertinent to the case. The case is before us on the petitioners' exceptions.

The respondent, The Worthington Pump and  
476 Machinery \*476 Corporation, owns the land through which the petitioners claim Rogers Street runs to the west of Third Street. Prior to 1889 the title to the entire tract owned by the respondent, was acquired by its predecessor in title, through the East Cambridge Land Company the owner of land west of Third Street, including the tract over which the petitioners assert that Rogers Street existed. The petitioners show no claim of title under the East Cambridge Land Company. By St. 1861, c. 62, the East Cambridge Land Company, hereinafter called the Land Company, was incorporated with the power to purchase, hold and sell certain land in Cambridge, with authority to construct dams, docks, wharves, and buildings, and to lay out streets and passageways and otherwise to improve the land. A plan belonging to the Land Company, made in 1869, recorded in registry of deeds, showing the land between Court and Ninth streets, divided into blocks by crosswise streets, including Rogers, Bent and Binney streets, was in evidence. The Munroe heirs were

stockholders in the Land Company. They conveyed in 1872 to one Woodbury land between Court (now Third) and Second streets, shown on the plan drawn on the deed and recorded therewith, which shows Rogers Street and indicates it as continuing westerly from Court Street. The petitioners claim title under Woodbury. Rogers Street continued to be shown on plans of the Land Company and its successors in title, and deeds of the several tracts now owned by the respondent were drawn with reference thereto and bounding on Rogers Street. Title to all these lots, "conveyed at various times by different parties by deeds under which easements in Rogers Street unquestionably existed as between the parties, was . . . eventually acquired, so far as the block between Third, Binney, Fifth and Bent streets is concerned, by the respondent Worthington Company." Woodbury, after acquiring title from the Munroe heirs to all but two lots within the limits of the lots now owned by the petitioners, gave a mortgage to Charles W. Munroe; and the petitioners' title comes under a foreclosure of this mortgage in 1879. The title to the two lots above referred to do not affect the question in  
477 controversy. \*477

The Cambridge Improvement Company, hereinafter called the Improvement Company, incorporated by St. 1874, c. 99, took title from Woodbury after the mortgage to Munroe had been given. It acquired a large tract of land easterly of Third Street. The foreclosure of the mortgage, according to the ruling of the Land Court, "racked the title of the Improvement Company;" but the existence of Rogers Street easterly from Second Street as shown in the deeds and plans of the Improvement Company, was not controverted.

In 1880 railroad tracks ran through Rogers Street from Ninth Street to Third Street. In 1891 and 1893 the respondent's predecessors built a fence along the westerly line of Third Street, barring all access to their property from Third Street except through Second and through gates on Rogers Street. The fence has been maintained from that



time to the present. Twenty-five years ago a covered passageway between the respondent's buildings was erected across the Rogers Street strip and has since been maintained. The space between the respondent's buildings on either side of Rogers Street has been used as a yard for temporary storage purposes and their occupation of Rogers Street west of Third Street for over twenty years has been open, exclusive and adverse to any other interests, and "has been not only inconsistent with the existence of any easement, but absolutely preventive of the exercise of any easement," and so open that the petitioners ought to have known of it.

As stated in the decision by the Land Court, "The petitioners contend that Rogers Street was laid out under the provisions of the statute; that it was therefore subject to be used by the public; and that the public easement could not be extinguished by less than forty years of adverse use." R. L. c. 53, § 1. See G.L.c. 82, § 2.

The strip called Rogers Street was never in fact a public way. The Land Company, under the statute by which it became a corporation, had authority to lay out streets and passageways, as did also the Improvement Company. In granting these charters the Legislature did not intend to give to a private  
 478 land company the right to act for the \*478 public to lay out public highways and impose on the city the care and maintenance of them. Rogers Street had never been laid out, established or accepted by the city, as required by law, and it never became a public way. *Morse v. Stocker*, 1 Allen, 150, 154. *Hayden v. Stone*, 112 Mass. 346, 351. *Guild v. Shedd*, 150 Mass. 255. See *Denham v. County Commissioners*, 108 Mass. 202. The Legislature in granting the Land Company the right to lay out streets and passageways, intended to give to that corporation the power possessed by an individual to build streets on his own land. The intention was to designate and describe the powers of the corporation and to grant it powers it might not possess if not specially named. But it was not intended to delegate to this private corporation the

authority to lay out and establish public highways. The power residing in the public authorities was not taken away and given to the corporation by the special statute incorporating it. See *Attorney General v. Old Colony Newport Railway*, 12 Allen, 404, 406; *Peabody v. Boston Providence Railroad*, 181 Mass. 76, 81. The statute, R. L. c. 53 (see now G.L.c. 86) providing for the removal of fences and buildings on highways and other public places, unless the obstruction was continued for more than forty years, has no application. The purpose of this statute was to prevent encroachment on public places and ways which were laid out for the public under public authority. It refers to "a highway, town way, private way . . . street, lane or alley, or other land appropriated for the general use or convenience of the inhabitants of the Commonwealth, or of a county, city, town or parish." The private ways referred to are the statutory private ways laid out under public authority, which are "private only in name, but are in all other respects public." *Denham v. County Commissioners*, *supra*, page 208. The word "way" in the statute has been interpreted as meaning a way laid out by public authority, as required by the statute. *Boston Gas Light Co. v. Old Colony Newport Railway*, 14 Allen, 444, 447.

The forty year statute does not apply to private rights of way as distinguished from statutory  
 479 private ways, and \*479 the uninterrupted, continuous and adverse use of the land designated as Rogers Street west of Third Street by the respondent under a claim of right for a period of more than twenty years was sufficient to establish its right to the land. *Emerson v. Wiley*, 10 Pick. 310. *Jennison v. Walker*, 11 Gray, 423. *Ball v. Allen*, 216 Mass. 469, 473. Even if it be assumed that the petitioners had an easement in Rogers Street west of Third Street, which we do not decide, *Regan v. Boston Gas Light Co.* 137 Mass. 37, *Downey v. H. P. Hood Sons*, 203 Mass. 4, *Prentiss v. Gloucester*, 236 Mass. 36, the finding of the Land Court that "if there ever was any



easement as claimed I find that it has been extinguished by adverse use and occupation," disposes of the petitioners' claim. *Ball v. Allen, supra. Jennison v. Walker, supra.*

As the petitioners had no right of way over Rogers Street west of Third Street, their exceptions must be overruled for the reasons given. Even if Rogers Street west of Third Street were in fact a public way or a private way laid out under the statute by public authority, the petitioners' land did not abut

on this part of the street and we have not found it necessary to consider the question whether it was within the jurisdiction of the Land Court to register the petitioners' right in a public street upon which its land did not abut.

*Exceptions overruled.*



COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

Essex County

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No. SJC-11010

---

**AMY E. HUNTER,**  
Plaintiff-Appellee

v.

**MIKO ROSE,**  
Defendant-Appellant

---

Appeal From The Probate And Family Court,  
Essex County

---

**BRIEF OF PLAINTIFF-APPELLEE**

---

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**STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

1. Whether the trial court properly recognized the legal spousal relationship between the parties?
2. Whether the trial court properly concluded that both parties are legal parents to each child?
3. Whether the trial court properly granted physical custody of J [REDACTED] to Plaintiff in light of Defendant's inability to prioritize J [REDACTED]'s best interests, maintain a stable environment for J [REDACTED], and support J [REDACTED]'s relationships with her other parent and sister, and Plaintiff's emotionally attuned parenting and stability?
4. Whether the trial court properly awarded reasonable attorney's fees to the Plaintiff when the Defendant disregarded court orders and discovery rules, withheld and obscured evidence, and prolonged litigation?

**STATEMENT OF THE CASE**

**PRIOR PROCEEDINGS**

This action began on Nov. 20, 2008, when the Plaintiff, Amy E. Hunter ("Plaintiff" or "Hunter"), filed a complaint and motion for temporary orders seeking custody of her child, J [REDACTED]. Plaintiff



sought to establish an appropriate parenting plan after J [REDACTED]'s other mother, Miko Rose ("Defendant" or "Rose"), took J [REDACTED] to Oregon and severed all communications. A.21-30. In December 2008, after it became known that Rose sought to retain J [REDACTED] in Oregon, Plaintiff filed (1) a complaint for divorce; (2) a complaint in equity to dissolve the parties' California registered domestic partnership ("RDP"), to address the custody and support of J [REDACTED], and to order her return to Massachusetts; and (3) an amended motion for temporary orders. A.34-42, 47-56, 97-110.

Defendant answered the custody and equity complaints and moved to dismiss the custody and divorce complaints. A.43-46, 63-86, 111-32. Having consolidated the complaints, on Feb. 2, 2009, the court (Cronin, J.) denied the motions to dismiss and issued a Memorandum of Decision recognizing the legal spousal status of the parties created by their RDP and recognizing their joint parentage of J [REDACTED]. The court also issued temporary orders establishing a parenting plan to reconnect J [REDACTED] and Hunter, whom Rose had prevented from seeing or speaking to each other in over three months. A.133-45. Defendant sought a stay pending appeal, as well as a protocol



to, inter alia, prevent Hunter from referring to herself as "Mommy" during visitation. A.146, 175-84. These were denied. A.185-87, 202-05.

Defendant sought relief under G.L. c. 231, § 118. The Single Justice of the Appeals Court (Duffly, J.) denied that relief on Mar. 16, 2009, finding support for the ruling that it was in J [REDACTED]'s best interest to restore the status quo prior to Rose's termination of contact between J [REDACTED] and Hunter based, in part, on the spousal relationship of the parties and its attendant rights of parentage. A.271-80.

Despite these two rulings on the legal status and parentage of the parties, Defendant persisted in treating these issues as open legal questions. To resolve this, the parties re-briefed them and on Aug. 10, 2009, the court (Manzi, J.)<sup>1</sup> issued a Memorandum of Decision re-confirming that both parties are the legal parents of both J [REDACTED] and M [REDACTED], the parties' second child, who was born on Jan. 16, 2009. The

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<sup>1</sup> Judge Cronin recused himself on Feb. 23, 2009. While concluding that Defendant's claims of his bias were unfounded, he wanted to prevent Defendant and her counsel from distracting the court from its proper focus on J [REDACTED]'s best interests. A.211-14. Judge Manzi was appointed on Mar. 5, 2009 and presided over the remainder of the case. A.7.



court also appointed attorney Judith Cowan as GAL/next friend to represent the children. A.452-54, 458.<sup>2</sup>

In light of the court's affirmation of joint parentage and Rose's continuing refusal to extend any additional parenting time to Hunter, on Oct. 16, 2009, the court issued further temporary orders, granting joint legal custody of J [REDACTED], significantly increasing parenting time for Hunter, including overnights and vacations, and ordering Rose to pay for Hunter's trips to Oregon through July 2010.<sup>3</sup> A.541.

Trial took place on Nov. 4, 5, 8, 9, and 19, 2010, and on Jan. 28 and 31, 2011. On Apr. 11, 2011, Plaintiff filed a motion to preclude Rose from moving J [REDACTED] again before the court had issued its final custody decision, having learned that Rose decided to move J [REDACTED] to Michigan the first week of May without her consent or the court's permission. A.4. The court issued its findings, rationale, and judgment on Apr. 19, 2011. The court dissolved the parties' legal spousal relationship; declared the parties to have

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<sup>2</sup> Concluding that, though parallel to marriage, the RDP was not a marriage within the meaning of G.L. c. 208, the court dismissed the divorce complaint on July 22, 2009. A.449-51.

<sup>3</sup> Trial was originally scheduled for July 12-15, 2010, but was postponed due to a trial in progress. A.1-2.



been legal parents of both children from their births; ordered revision of J [REDACTED]'s birth certificate to list both parents; granted joint legal custody of J [REDACTED], sole legal and physical custody of M [REDACTED] to Hunter, and primary physical custody of J [REDACTED] to Hunter with parenting time for Rose; ordered J [REDACTED] returned to Massachusetts; and allowed the parties to request attorney's fees. A.797-922.

On May 26, 2011, after reviewing the parties' submissions and considering the conduct of the parties and their counsel throughout the litigation, the court issued further judgments, reiterating that "[t]he evidence was clear and convincing that the best interests of this very young child could only be served by her being placed in the physical custody of" Hunter, and awarding Hunter \$180,000 in attorney's fees. A.947-51. Defendant appealed. A.923, 952.

#### **STATEMENT OF FACTS**

This case involves the family formed by Hunter and Rose over the course of their romantic relationship. At the time of trial, Hunter was 42 years old, and lived in Byfield, Massachusetts. She has worked as an attorney for the U.S. Department of Education Office of Civil Rights ("OCR") since 2001.



She is part of a large, supportive extended family, and is very close with her parents, siblings, nieces and nephews. A.819, 1095-97, 1109-15. Rose was 38 years old, and lived in Corvallis, Oregon. She earned her Doctor of Osteopathic Medicine degree in June 2009 and completed one year of a residency in internal medicine until she was terminated from the program for failing her board examinations. Rose has lived on the East Coast for most of her adult life. Her mother and stepfather -- the only family with whom she has any contact -- moved to Oregon in recent years. A.820, 1878-80, 1922-24, 1931.

**Hunter and Rose Were A Committed Couple Who Formalized Their Relationship In Law.**

Hunter and Rose began dating in Feb. 2001. Their romance grew, and they soon became a committed couple. In spring 2002, the parties moved to San Francisco, California for Rose to prepare for medical school, which she began in Fall 2005. Hunter transferred to OCR's San Francisco office so that they could be together. A.821-22, 1115-17, 1932.

Their commitment to each other continued to grow. They joined together legally by executing a



Declaration of Domestic Partnership on Sept. 20, 2003.<sup>4</sup>  
A.822, 2669. They exchanged rings that same fall.  
They bought a house together in Nov. 2004, shared  
financial resources and bank accounts, named each  
other as beneficiaries of life insurance and  
retirement accounts, and held themselves out as a  
committed couple in every way. As parties to an RDP,  
their legal rights expanded on Jan. 1, 2005 to  
parallel those available to married couples. See 2003  
Cal. Legis. Serv. c. 421. The parties were aware of  
these changes to the RDP law -- indeed they had been  
passed but not yet implemented at the time the parties  
registered -- and never terminated their RDP when the  
changes went into effect. A.823, 1119-21, 1312-14,  
1464-65, 1577.

**Hunter and Rose Planned To Start a Family Together.**

From the beginning of their relationship, Rose  
knew of and supported Hunter's desire to have  
children. They jointly began efforts for Hunter to  
get pregnant in spring/summer 2003. Over the course  
of three years, they endured multiple unsuccessful

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<sup>4</sup> The California Secretary of State registered their  
RDP on Oct. 3, 2003, and they received a certificate  
declaring their legal status. A.822, 2671. (The  
Appendix has a numbering error, using A.2669-88 twice.  
This references the first occurrence of A.2671.)



inseminations and medical procedures to conceive. By spring 2006, it became clear that Hunter needed in vitro fertilization ("IVF") to conceive, but the parties could not afford it. A.824-25, 1125-32, 1981.

At that point, the couple agreed that Rose would try to conceive their child. Hunter was present at and supportive of Rose's efforts to conceive. They chose a donor together and shared equally the costs of inseminations. A.825-27, 1133-46, 2487. The parties intended to jointly parent the child they were working to bring into their family. A.827, 1135, 1145, 1147, 2027-28, 2675-79. Specifically, on Oct. 13, 2006, both parties consented to Rose's insemination and agreed, "from the moment of conception, [to] accept all legal and moral responsibility for any child born" as a result.<sup>5</sup> A.825-26, 2969-72. In Nov. 2006, Rose became pregnant with J [REDACTED] as a result of the inseminations at PRS. A.827, 2029. The couple and their family and friends celebrated the pregnancy with two baby showers. Hunter was supportive of Rose throughout, taking care of housework and meals and

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<sup>5</sup> This consent was set forth in the Pacific Reproductive Services Agreement for Administration of Donor Sperm, which Rose signed as "recipient" and Hunter signed as "Partner or Spouse." A.826, 2969-72.



attending doctor's appointments. A.828, 1147-48, 1152-53, 1402-03, 2959.

In May 2007, the parties moved to the East Coast in order for Rose to perform medical school rotations and for Hunter to obtain insurance coverage for IVF so that she could bear the parties' second child. They first moved to Rhode Island, but upon learning that the insurance coverage available to them there would not cover IVF for Hunter or the delivery costs for J█████, they settled in Attleboro, Massachusetts in July 2007. A.829, 856, 1155-57.

At the same time, the parties followed through with plans for Hunter to bear their second child. A.856, 1158-59. In June 2007, both parties signed Reproductive Science Center's consent forms for Hunter's IVF. A.2680-87.<sup>6</sup>

**Hunter and Rose Welcomed J█████ Into Their Family And Parented Her Together.**

On August 6, 2007, J█████ was born in Providence, Rhode Island. Hunter supported Rose through labor and delivery, was the first non-medical person to hold J█████, and was involved in her care throughout their time in the hospital. The parties tried to give

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<sup>6</sup> This cites the first occurrence of A.2680-87. See n.4, supra.



J [REDACTED] the last name "Hunter" on her birth certificate, but were told that Rhode Island law required it to be "Rose." A.830, 1166-71, 2688-2720, 2973. From the time of J [REDACTED]'s birth through Rose's departure for Oregon, both parties recognized themselves and each other as J [REDACTED]'s mothers. The couple's family and friends, as well as J [REDACTED]'s medical and child care providers, saw Hunter and Rose as equal parents to J [REDACTED]. Many of them provided affidavits in support of Hunter's adoption of J [REDACTED], an effort the parties began in January 2008 to confirm and secure Hunter's legal status regarding J [REDACTED]. A.831-34, 841-42, 1054, 1201, 1205, 1212-13, 1409, 1606-07, 2263-69, 2288-90, 2641-42, 2763-68, 2964, 2976-83, 3026, 3032, 3329.

Before Rose took J [REDACTED] to Oregon, Hunter was central to J [REDACTED]'s care and upbringing. She jointly made decisions with Rose about J [REDACTED]'s care and "did the majority of parenting other than nursing as well as the majority of the household tasks." A.868. Hunter bathed, clothed, fed, soothed, entertained, and cared for J [REDACTED], woke up with her in the night, located and shared the costs for her day care, took her to the doctor and stayed home from work when she



was ill. A.833-36, 868, 1198-1204, 1237-39, 2264-65, 3032. Hunter was J [REDACTED]'s parent in every regard.

**Hunter and Rose Worked Together To Conceive M [REDACTED].**

In April 2008, after several unsuccessful attempts at conception, Hunter conceived the couple's second child, M [REDACTED], using sperm from the same donor as conceived J [REDACTED]. A.857, 1163-66, 3468-93, 3584-3603. Rose supported Hunter's efforts to conceive M [REDACTED], taking her to and from IVF procedures, attending an ultrasound and accompanying Hunter to genetic counseling. A.857, 1164, 1298. Rose was excited for the pregnancy, rearranging a medical school rotation to accommodate it and attending a baby shower in Vermont celebrating M [REDACTED]'s impending arrival. A.856-57, 3305-08.

**Rose Ended Her Relationship With Hunter, Left for Oregon Under False Pretenses, Cut Off All Contact Between Hunter and J [REDACTED], And Rejected M [REDACTED].**

In May 2008, Hunter, Rose, and J [REDACTED] moved to Haverhill, Massachusetts. After the move, the adult relationship began to deteriorate. A.836-38. Rose promised to proceed with Hunter's adoption of J [REDACTED] regardless, but when the lawyer they had been working with was appointed to the bench and Hunter sought a new lawyer, Rose began to delay. A.843, 1216-18,



3387. They attended couples' counseling in the summer of 2008 to work on relationship issues and Rose's delaying of the adoption, but by August, when Hunter was four months pregnant with M [REDACTED], Rose ended the relationship. A.838. They continued to co-parent J [REDACTED] for the next two months, with Hunter taking on an even greater parenting role. From late August through most of September, Hunter parented J [REDACTED] almost exclusively due to Rose's rotation in Augusta, Maine, exams, and residency applications, and when Rose returned, Hunter continued to provide primary care for J [REDACTED]. A.838-39, 841, 1233-38.

In early October 2008, Rose informed Hunter that she planned to take J [REDACTED] with her to do a four-to-six week rotation in Oregon, returning in time for a rotation in Lawrence, Mass. the second week of December. A.840, 1240-45, 2993-94, 3006. Hunter was nearing her third trimester of pregnancy and could not fly. Hunter expressed her extreme distress at being apart from J [REDACTED] for so long, but Rose promised to provide regular updates and set up a webcam so that Hunter could see J [REDACTED] daily. A.840, 1244, 2993-94.

On Oct. 27, 2008, Hunter drove Rose and J [REDACTED] to the airport for their trip to Oregon. A.843, 1247.



Rose initially provided Hunter with updates about J [REDACTED] via e-mail, detailing that J [REDACTED] was having a hard time transitioning to being in Oregon, but thirteen days later, on Nov. 9, Rose cut off all communication with Hunter, then terminated her cell phone service, and refused to respond to any of Hunter's requests for information about J [REDACTED]. A.844, 1248-51. Rose denied Hunter any contact with or information about J [REDACTED] for over three months, until she was required to do so by the court's first temporary order in Feb. 2009. A.843-45, 1251-54.

On Jan. 16, 2009, M [REDACTED] was born in Cambridge, Massachusetts. A.857, 1296, 3371. Because of their RDP, the Commonwealth listed both parties as M [REDACTED]'s parents on her birth certificate. A.857, 1298. Rose was not present at M [REDACTED]'s birth, and did not inquire about her in any way until Sept. 2009, when she was eight months old. Rose has demonstrated no real interest in developing a relationship with M [REDACTED], admitted that she does not love her or want custody of her, refuses to acknowledge that M [REDACTED] and J [REDACTED] are sisters, and actively discourages their relationship. A.857-59, 1299-1304, 2421-26.



Rose Undermined Hunter And J [REDACTED]'s Relationship And Created An Unstable And Harmful Environment For J [REDACTED], While Hunter Worked To Maintain Their Bond And Provide J [REDACTED] With Consistency And Care.

From the time Rose left for Oregon and persisting through trial, Rose did everything she could to eliminate Hunter from J [REDACTED]'s life and undermine their relationship.<sup>7</sup> Rose disrupted and altered the course of her medical training purposefully to keep J [REDACTED] and Hunter geographically distant,<sup>8</sup> and made every effort to disrupt their parent-child bond. Rose's attempted disruption of J [REDACTED]'s attachment to Hunter and her relentless efforts to alienate Hunter from J [REDACTED] were harmful to J [REDACTED] and contrary to her best interests. A.862-63; Br. App. at 12 (admitting

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<sup>7</sup> Rose made decisions about medical and child care without consulting Hunter, refused any contact for over three months, demanded that Hunter not refer to herself as "Mommy" once contact was re-established, precluded Hunter from having overnight parenting time with J [REDACTED] for almost a year, undermined webcams between Hunter and J [REDACTED], refused to provide Hunter with her address or cell phone number, and disparaged and yelled at Hunter in front of J [REDACTED]. A.844-47, 850-51, 854-55, 1271, 1280, 2353, 2355-56, 2359-60, 2367, 2381; Brief of Defendant-Appellant ("Br. App.") at 10.

<sup>8</sup> Rose abandoned her plans to pursue a family practice and avoided the established residency placement system to preclude her placement on the East Coast, instead preemptively signing contracts for residencies far from Massachusetts -- first in Oregon, and later in Michigan. A.820-21, 852-54, 869; Br. App. at 10-11.



J [REDACTED] had a "strong bond[]" with and "an 'attachment' to" Hunter when Rose took J [REDACTED] from her).<sup>9</sup> Hunter, by contrast, did everything within her power to restore and maintain that bond. As soon as the court issued the first temporary orders, Hunter tried to see J [REDACTED] as often as possible, including repeated cross-country trips for parenting time while M [REDACTED] was still a very young infant.<sup>10</sup> She made the most of regular webcams and phone calls given J [REDACTED]'s age, and sent J [REDACTED] mail and monthly packages. Hunter also tried to communicate constructively with Rose about J [REDACTED], and has supported J [REDACTED]'s relationship with Rose. A.849-51, 1251-56, 1281-89.

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<sup>9</sup> The trial court relied on the expert testimony of Dr. Joanna Rohrbaugh, which addressed the harms to a child of J [REDACTED]'s age at the time Rose took her to Oregon from disrupting that child's attachment to a parent, as well as the harms from one parent engaging in parental alienation behaviors. A.860-64, 1717-29. The court found that J [REDACTED] engaged in those behaviors exhibited by children who are harmed by the disruption of their attachment to a parent. A.844, 862-63.

<sup>10</sup> Hunter's first trip to Oregon was mid-Feb. 2009, when M [REDACTED] was about one month old. They traveled to Oregon in Feb., Apr., May, June, July, and Aug. 2009, though Rose would only allow Hunter to spend five hours per day with J [REDACTED]. A.846-47, 849. Hunter had expected Rose would bring J [REDACTED] when she came to Massachusetts for six days in March 2009, but Rose refused, "ostensibly because Ms. Hunter called herself 'Mommy.'" A.849. J [REDACTED] finally came to Massachusetts in Sept., Oct., and Nov. 2009. *Id.* In 2010, monthly visitation alternated between the two states. *Id.*



While in Rose's custody, J█████'s young life was marked by volatility, including four different homes, six different care providers, and three different doctors within two-and-a-half years. A.854, 856, 2330-39; Br. App. at 10-12. As the court found, Rose was "unable to manage J█████'s care without significant, daily support from third parties in the home." A.855. This was true both when Rose was working the sixty to eighty hour a week shifts her medical residency required and when she was unemployed, traveled, or took vacation. A.855, 1658-61, 2329-34, 2930-50. In the midst of trial, Rose made plans to uproot J█████ yet again, accepting a residency in Michigan, where she would work the same type of demanding schedule, but without family, friends, or a support system. A.820, 856, 869, 2340. By contrast, J█████'s parenting time with Hunter was characterized by consistency, attention to J█████'s needs, and age-appropriate, child-centered activities and environments. A.847-48, 1097-1111. Hunter has worked to foster J█████ and M█████'s relationship as sisters, as well as J█████'s connection to her extended family, and has created a home with clear and



appropriate rules and values. A.847-48, 858-59, 1103-04, 1114-15.

As a result, the court found that (1) "Ms. Hunter has been and is better able in the present and the foreseeable future to be the parent who is mindful of the emotional and physical needs of J [REDACTED]," A.918; (2) "Ms. Rose has created an unstable living environment for J [REDACTED]," A.869; (3) "Ms. Rose is unable to act in J [REDACTED]'s best interests and unable to put J [REDACTED]'s needs above her own needs," A.869 (4) "the harm to J [REDACTED] would be substantial if J [REDACTED] were to remain in Ms. Rose's physical care," A.870; and (5) "it is in the best interests of J [REDACTED] that Ms. Hunter have physical custody[.]" A.918.

#### SUMMARY OF ARGUMENT

The trial court appropriately recognized the legal spousal relationship between the parties. The parties had a Registered Domestic Partnership ("RDP") from California, a relationship parallel to marriage for all purposes. The trial court properly extended comity to the RDP, just as Massachusetts has always extended comity to spousal relationships validly entered in other states, regardless of whether the same relationship could have been contracted here.



Recognizing the RDP does not undermine public policy. Rather, respecting the parties' relationship furthers the Commonwealth's commitment to equal treatment for same-sex couples, as well as the underlying purposes of comity of mutual respect among states, honoring the parties' intent, and protecting children. [p. 21-28].

The trial court properly concluded that both parties are legal parents to both children. Because the children were born into their parents' RDP via insemination to which each spouse consented, both parties are conclusively parents to both children under G.L. c. 46, § 4B and G.L. c. 209C, § 6. The same conclusion results from extending comity to the parentage protections of California law, which establish legal parentage for children born into an RDP. [p. 28-33]. Recognizing the joint parentage of J [REDACTED] and M [REDACTED] gives them the support and security of having two parents from their births, and furthers the Commonwealth's commitment to equal treatment for the children of legally united same-sex couples. The parties' parentage cannot be undercut by their not having duplicated the protections secured by their RDP through adoption or marriage. [p. 33-37].



The trial court properly addressed the children's custody as a straightforward matter of their best interests. The court weighed all relevant factors, including J [REDACTED]'s relationship with Rose and Rose's wrongful removal of J [REDACTED] from Massachusetts. Having concluded that that Hunter provided J [REDACTED] with stable, attentive, appropriate care while supporting her relationships with Rose and M [REDACTED], and that Rose's inability to place J [REDACTED]'s needs above her own, unstable environment, and efforts to alienate J [REDACTED] from Hunter and M [REDACTED] were harmful, the court correctly awarded Hunter physical custody of J [REDACTED]. [p. 37-46].

Finally, the trial court properly awarded Plaintiff attorney's fees. Defendant repeatedly re-litigated issues, disregarded court orders and discovery rules, withheld and obscured evidence, and unreasonably delayed the litigation. The award considered all relevant factors and was well within the court's discretion. [p. 46-49].

#### ARGUMENT

This case centers on two children, J [REDACTED] and M [REDACTED], born during the legal spousal relationship of their parents, Hunter and Rose, and the custodial



arrangements that serve those children's best interests now that the parents' spousal relationship has ended. It is about how those best interests are served by recognizing and honoring the legal commitment made by the parties and the spousal protections flowing from that legal commitment, as well as the host of other steps the parties took to create and protect their family. Finally, this case is about ensuring that legally-bound same-sex couples like the parties are afforded the same principles of comity, parentage, and custody as other couples to best protect their children.

Over the course of two and a half years of litigation, including seven days of trial, the trial court exhaustively considered the legal status of the parties vis-à-vis each other and the children, and the allocation of parental rights and responsibilities in accord with the children's best interests. Under established principles of comity, that court properly recognized the legal spousal relationship created by the parties' Registered Domestic Partnership ("RDP") as parallel to marriage for all purposes, including the protections of joint parentage for children born during a spousal relationship from birth. As in any



custody dispute, the court's findings thoroughly addressed the best interests of the children, J [REDACTED] and M [REDACTED]. Based on the overwhelming evidence, the court properly found that (1) J [REDACTED] would be harmed by remaining in Rose's physical custody because of Rose's inability to prioritize J [REDACTED]'s needs and her continuing instability; and (2) Hunter is the parent who can best provide both children with stability, nurturing, and care, and also support J [REDACTED]'s relationship with Rose. The judgments should stand.

**I. THE TRIAL COURT PROPERLY RECOGNIZED THE PARTIES AS LEGAL SPOUSES.**

The trial court correctly recognized the parties' RDP as establishing a legal status parallel to marriage for all purposes, and as such, granted them the full range of spousal protections available under Massachusetts law. Extending comity to the parties' RDP fulfills that doctrine's animating principles, honors the settled expectations of the parties, protects the children born into their relationship, and furthers Massachusetts public policy.

**A. An RDP Is A Legal Spousal Relationship Parallel To Marriage For All Purposes.**

By establishing and remaining in an RDP in California, the parties created a legal spousal



relationship. All the rights and obligations of marriage under California law attach to the parties' legal status. See Cal. Fam. Code § 297.5 (RDPS "shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other sources of law, as are granted to and imposed upon spouses."); Koebke v. Bernardo Heights Country Club, 115 P.3d 1212, 1219 (Cal. 2005) ("a chief goal of the Domestic Partner Act is to equalize the status of registered domestic partners and married couples.").

Significantly, Defendant does not dispute the parties' rights and responsibilities under California law. She instead tries to avoid recognition of their relationship by Massachusetts. Her efforts fail.

**B. Comity Applies To The Parties' Legal Spousal Status.**

The trial court properly recognized the spousal status of the parties under established comity law.

Interstate comity . . . is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of



other persons who are under the protection of its laws.

Cote-Whitacre v. Dep't of Pub. Health, 446 Mass. 350, 368 (2006) (Spina, J., concurring) (quotations omitted). Massachusetts has long applied comity to recognize a spousal relationship so long as it was valid where entered. See id., at 359; Comm. v. Graham, 157 Mass. 73, 75 (1892); Comm. v. Lane, 113 Mass. 458, 463 (1873). The parties' RDP is a spousal status valid in California where it was entered; thus, comity applies to recognize the RDP.

Extending comity to the parties' RDP furthers -- rather than undermines -- the Commonwealth's public policy and constitutional commitments. See Pacific Wool Growers v. Comm'r of Corps. & Tax., 305 Mass. 197, 209 (1940) (comity may only extend if Massachusetts public policy "is in no way contravened or impaired."). Defendant's position -- that the parties' legal relationship cannot be recognized because it falls short of the full marriage equality required by the Massachusetts Constitution -- ignores both the basic contours of marriage recognition law and the policy commitments of the Commonwealth. While Defendant is correct that this Court has ruled that



establishing a separate, parallel spousal status for same-sex couples under Massachusetts law would not remedy the constitutional infirmity of excluding same-sex couples from marriage, see Opinions of the Justices to the Senate, 440 Mass. 1201 (2004), that in no way suggests that recognizing an existing legal spousal relationship validly entered into in another state would run afoul of Massachusetts public policy.<sup>11</sup>

First, that Massachusetts does not certify the spousal status of RDP is irrelevant to comity's application. Massachusetts has regularly extended comity to spousal statuses that could not have been contracted in the Commonwealth. See Boltz v. Boltz, 325 Mass. 726 (1950) (validating out-of-state common law marriage); Lane, 113 Mass. at 463 (validating out-of-state marriage of adulterer barred from remarrying here). As this Court made clear, "marriages celebrated in other States or countries, if valid by the law of the country where they are celebrated, are

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<sup>11</sup> Defendant seemingly had no objection to the trial court's recognizing the RDP in order to dissolve it. Having made no argument in this regard, Defendant has waived any objection to the RDP's dissolution. See Mass. R. App. Pro. 16(a)(4); Boston Hous. Auth. v. Guirola, 410, Mass. 820, 824 n.6 (1991). Regardless, the trial court's analysis of its authority to dissolve the RDP was proper. See A.899-900.



of binding obligation within this Commonwealth, although the same might, by force of our laws, be held invalid, if contracted here." Sutton v. Warren, 51 Mass. 451, 452 (1845).<sup>12</sup> California has established RDPs as a valid spousal status for same-sex couples, and given the clear constitutional mandate that the Commonwealth extend equal respect to the relationships of same-sex couples, Goodridge v. Dep't of Pub. Health, 440 Mass. 309 (2003), these same comity principles apply to the parties' RDP despite that it could not have been entered in the Commonwealth.<sup>13</sup>

Second, extending comity to a legal relationship that secures for same-sex couples the full panoply of spousal protections and obligations advances the

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<sup>12</sup> Defendant's use of the dissent in Cote-Whitacre glosses over the distinction between licensing and recognition. Br. App. at 37 (citing 446 Mass. at 401, 405). That dissent argued that importing other states' bans on same-sex couples marrying into this state's decisions about who could marry was improper - a point bolstered by Opinions of the Justices, 440 Mass. at 1208. Neither that dissent nor the majority in Opinions of the Justices addressed the comity due a parallel spousal status created by another state.

<sup>13</sup> Other courts have reached the same conclusion. See Christiansen v. Christiansen, 253 P.3d 153 (Wyo. 2011) (recognizing Canadian marriage of same-sex couple for purposes of divorce despite explicit statutory ban); Dickerson v. Thompson, 897 N.Y.S.2d 298 (N.Y. Super. Ct. App. Div. 2010) (extending comity to Vermont civil union for purposes of dissolution).



Commonwealth's commitment to equal respect for the legal unions of same-sex couples. Indeed, the result Defendant seeks is the outcome that would offend the Massachusetts Constitution. Disregarding the RDP would result in a legally united same-sex couple being "barred access to the protections, benefits, and obligations of civil marriage," -- a result proscribed by Goodridge, 440 Mass. at 313.<sup>14</sup>

Furthermore, extending comity to the parties' RDP furthers comity's animating principles, including mutual respect among states. See Cote-Whitacre, 446 Mass. at 368-69 (Spina, J., concurring). Defendant's assertion that California does not extend comity to the marriages of same-sex couples from Massachusetts, Br. App. at 37-39, is both wrong and legally irrelevant. California extends to all out-of-state marriages the full range of spousal protections. Because of Proposition 8, which amended the California constitution to prohibit marriage for same-sex

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<sup>14</sup> It bears noting that at the time the parties entered into the RDP, the Commonwealth had not yet ended the exclusion of same-sex couples from marriage. California offered the parties vastly greater protection than Massachusetts, thus making Defendant's suggestion that Massachusetts should disregard those protections as discriminatory even more absurd.



couples,<sup>15</sup> marriages entered by same-sex couples after Nov. 5, 2008 receive those protections without the designation of "marriage," while marriages entered before then receive those protections with the designation of "marriage." See Cal. Fam. Code § 308; Strauss v. Horton, 207 P.3d 48, 61 (Cal. 2009).

California treats Massachusetts marriages as "legally binding and not merely aspirational." Cote-Whitacre, 446 Mass. at 390 (Marshall, C.J., concurring).

Moreover, even if Defendant were correct, this Court's response to another state's discrimination against same-sex couples should not be to join in the discrimination by disregarding the parties' spousal relationship.

Finally, extending comity to the RDP honors the settled expectations of Hunter and Rose, who took on the status, and protects J [REDACTED] and M [REDACTED], who were born into the relationship. See, e.g., Richardson v. Richardson, 246 Mass. 353, 355 (1923) (recognizing spousal relationships entered into in good faith would "secure the existence and permanence of the family

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<sup>15</sup> Prop. 8 has been held unconstitutional. See Perry v. Schwarzenegger, 704 F. Supp. 2d 921 (N.D. Cal. 2010), appeal pending, Docket No. 10-16696 (9<sup>th</sup> Cir.), certifying questions to Cal. Sup. Ct., 628 F.3d 1191 (9<sup>th</sup> Cir. 2011).



relation"); Milliken v. Pratt, 125 Mass. 374, 381 (1877) (recognizing spousal relationship warranted because it "permanently affects the relations and the rights of two citizens and of others to be born"). In light of all these principles, the trial court properly recognized the parties' spousal relationship.

**II. THE TRIAL COURT PROPERLY CONCLUDED THAT BOTH PARTIES ARE LEGAL PARENTS TO THE TWO CHILDREN BORN INTO THEIR LEGAL SPOUSAL RELATIONSHIP.**

Because the parties had a legal spousal relationship, the trial court appropriately affirmed that both Hunter and Rose are legal parents to their children.<sup>16</sup> Having recognized the RDP status, that court correctly applied Massachusetts law to include joint parentage of children among the incidents of that spousal relationship. See G.L. c. 46, § 4B; G.L. c. 209C, § 6. Even if, arguendo, the Court were to extend comity only to the parentage protections of the RDP under California law, the same result would occur.

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<sup>16</sup> Defendant does not and cannot question the trial court's jurisdiction over the children or their custody. It is undisputed that Massachusetts is the children's home state. G.L. c. 209B, §§ 1, 2. Thus, whether directly applying G.L. c. 208 or proceeding in equity, the trial court had ample authority to address the children's parentage and determine their best interests. See G.L. c. 208, §§ 28, 31, 33; G.L. c. 215, § 6; A.R. v. C.R., 411 Mass. 570, 573 (1992); Matter of Moe, 385 Mass. 555, 561 (1982).



See Cal. Fam. Code §§ 297.5; 7540; 7611(a); 7613.

J [REDACTED] and M [REDACTED] have two legal parents, and have since their births.

A. **Under Massachusetts Law, Children Born Into A Legal Spousal Relationship Have Two Legal Parents.**

Having recognized the parties' RDP, Massachusetts law makes clear that both parties are the legal parents of J [REDACTED] and M [REDACTED]. Once a state extends comity to a spousal relationship, it applies its own law to determine the incidents of that relationship as they apply to Massachusetts residents.<sup>17</sup> See, e.g., Ex Parte Suzanna, 295 F. 713, 714-15 (D. Mass. 1924) (law of place of celebration applies to determine valid existence of the marriage, but law of domicile applies to the resulting status); see generally Restatement (Second) of Conflict of Laws § 284 (1971).<sup>18</sup>

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<sup>17</sup> Given that no conflict exists with California law, see Part II(B), infra, and Defendant does not argue one, Massachusetts applies to the question of parentage. See Kaufman v. Richmond, 442 Mass. 1010, 1011 (2004) ("only actual conflicts between the laws of different jurisdictions must be resolved").

<sup>18</sup> Even if the Court determines that the full range of Massachusetts spousal protections does not attach to the parties' RDP, the Court should still recognize that relationship solely for confirming the children's parentage. See Cote-Whitacre, 446 Mass. at 403 n.11 (Ireland, J., dissenting) ("where failure to recognize a same-sex marriage affects the best interests of a



Under Massachusetts law, when the spouse of a woman consents to her conception via assisted insemination, "that spouse is considered the legitimate parent of a resulting child[.]" T.F. v. B.L., 442 Mass. 522, 532 (2004). See G.L. c. 46, § 4B. Children born into a legal spousal relationship are presumed to be the children of both spouses, see G.L. c. 209C, § 6, and G.L. c. 46, § 4B establishes that this may be the case even without a biological tie between the child and parent.<sup>19</sup>

Under these provisions, both parties are plainly legal parents to these children. Rose conceived using donor sperm, with Hunter's consent, and J [REDACTED] was born during their spousal relationship.<sup>20</sup> A.824-30, 1139-47, 2217-21, 2969-72, 3468-93. Hunter conceived using donor sperm, with Rose's consent, and M [REDACTED] was born during their spousal relationship.<sup>21</sup> A.856-

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child born within the marriage ..., the reviewing court may determine that recognition is necessary.").

<sup>19</sup> As Defendant correctly noted, Br. App. at 33, these provisions apply equally to same-sex couples and must be read in a gender-neutral manner. See Goodridge, 440 Mass. at 324, 343 n.34 (citing G.L. c. 4, § 6).

<sup>20</sup> Though Hunter's consent was written, Massachusetts law does not require a writing. See G.L. c. 46, § 4B.

<sup>21</sup> Although legally irrelevant, J [REDACTED] and M [REDACTED] were conceived using sperm from the same donor. A.858, 2680-87, 3468-93, 3584-3603. As the trial



57, 1298, 2404-09, 2680-87, 3305-08, 3584-3603. Thus, both parties are legal parents to both children.<sup>22</sup>

**B. Under California Law, Children Born Into A Legal Spousal Relationship Have Two Legal Parents.**

Even if, arguendo, the Court determined that the full range of spousal protections under Massachusetts law cannot apply to the RDP status created by California, comity would still apply to the protections of parentage California provides to children born into an RDP.<sup>23</sup> California law extends to RDPs the rights and obligations of the spouses with respect to a child of either partner. See Cal. Fam. Code § 297.5 (d). This includes the establishment of legal parentage for the spouse of a woman who

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court found, "Legally, they are sisters. Biologically, they are half-sisters." A.858.

<sup>22</sup> Defendant's reliance on A.Z. v. B.Z., 431 Mass. 150 (2000) to avoid her parentage of M [REDACTED] is wholly misplaced. First, the parties are parents by operation of law, not the ruling of the court. The inclusion of Rose's name on M [REDACTED]'s birth certificate reflects that law. Second, this is not a matter of "forced procreation," 431 Mass. at 160, but of holding Rose to her "duty ... to support, provide for and protect the children [she and her spouse brought] forth[.]" L.M. v. R.L.R., 451 Mass. 682, 685 (2008).

<sup>23</sup> New York applied this analysis, extending comity to the parentage protections of a parallel spousal status. See, e.g., Debra H. v. Janice R., 930 N.E.2d 184 (N.Y. 2010) (extending comity to Vermont parentage protections attendant to civil unions).



conceives a child through assisted insemination under the care of a medical professional with that spouse's written consent, see Cal. Fam. Code § 7613, and the general presumption of parentage for children born during a spousal relationship. See Cal. Fam. Code §§ 7611(a), 7540; see also Elisa B. v. Super. Ct., 117 P.3d 660, 666 (Cal. 2005) (protections of RDP include that both women would be parents to child born to one of them).<sup>24</sup> Because both children were conceived through insemination to which the other spouse consented in writing,<sup>25</sup> and because they were born into the parties' RDP, under these provisions, both parties are parents to both children.

Recognizing these California parentage protections would further the same animating principles of comity discussed above: honoring the

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<sup>24</sup> These parentage protections had been in effect for nearly two years by the time of J [REDACTED]'s conception. See 2003 Cal. Legis. Serv. c. 421 (eff. Jan. 1, 2005).

<sup>25</sup> The evidence plainly demonstrates Hunter's written consent to Rose's insemination. A.826, 2969-72, 3468-93. That consent meets the requirements of Cal. Fam. Code § 7613. Thus, Rose's claims regarding the trial court's exclusion of a different form are irrelevant. Br. App. at 39 n.19. Moreover, given that no one could authenticate the excluded form, as both parties admit they did not receive it, its exclusion was not error. A.826, 1185-86, 2017-26. See Comm. v. Hubbard, 371 Mass. 160, 175-76 (1976).



expectations of the parties and securing the legal position of the children. See Putnam v. Putnam, 25 Mass. 433, 448-49 (1829) (extending comity to evasive marriage because of "the effect upon their innocent offspring"); Inhabitants of Medway v. Inhabitants of Needham, 16 Mass. 157, 160-61 (1819) (extending comity "to prevent the disastrous consequences to the issue of such marriages").

**C. Failure To Recognize Joint Parentage Would Harm The Children And Violate Public Policy.**

Like all other children born into a legal spousal relationship, J [REDACTED] and M [REDACTED] deserve the certainty of having two legal parents from birth. See Culliton v. Beth Israel Deaconess Med. Ctr., 435 Mass. 285, 292 (2001) (noting "importance of establishing the rights and responsibilities of parents as soon as is practically possible"); Adoption of Mariano, 77 Mass. App. Ct. 656, 661 (2010) (child's financial and filial best interests favor having two parents rather than one). These children should not be deprived of this security just because their parents' spousal relationship was an RDP. See Woodward v. Comm'r of Soc. Sec., 435 Mass. 536, 546 (2002) (children "entitled to the same rights and protections of the



law regardless of the accidents of their birth.") (citations omitted); Goodridge, 440 Mass. at 348 (Greaney, J., concurring) (failing to treat the children of same-sex couples the same as children of different-sex couples "is irreconcilable with, indeed, totally repugnant to, the State's strong interest in the welfare of all children and its primary focus, in the context of family law where children are concerned, on 'the best interests of the child.'").

Defendant's assertion that extending comity to the parental rights flowing from the parties' legal spousal relationship would be harmful to children like J [REDACTED] and M [REDACTED] defies both logic and law. In essence, Defendant argues that the way to protect the children of RDPs is to deny them the "legal, financial, and social benefits" and the "family stability and economic security" flowing from their parents' spousal relationship -- the very problems she recognized this Court sought to address in Goodridge. Br. App. at 30.<sup>26</sup> Such a result flies in the face of Massachusetts law and public policy.

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<sup>26</sup> The logical conclusion of Defendant's argument is that the Court should treat the RDP as a marriage, not entirely disregard its existence and significance.



D. That The Parties Did Not Complete An Adoption Of J [REDACTED] Or Marry In Massachusetts Does Not Change Their Joint Parentage.

Defendant's emphasis on the parties' not having completed an adoption or gotten married after they moved back to Massachusetts is misplaced in light of the existence of their legal spousal relationship. The parties appropriately explored both adoption and marriage as additional means of safeguarding their relationships with each other and J [REDACTED] in an attempt to navigate an area of developing law. That they did not complete those efforts did not and could not undermine the existence of the parties' legal relationships to each other and the children.

As to adoption, Hunter did seek to adopt J [REDACTED] as an unassailable way to affirm her parentage separate from the legal relationship of the parties. Married same-sex couples regularly pursue this same practice, not because the spouses are not already legal parents, but because of the discrimination their relationships still face, particularly in other states.<sup>27</sup> The same was true for these parties. That they did not complete this belt-and-suspenders effort

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<sup>27</sup> See Courtney G. Joslin, Travel Insurance: Protecting Lesbian and Gay Parent Families Across State Lines, 4 Harv. L. & Pol'y Rev. 31, 40 (2010).



cannot negate Hunter's legal parentage. Moreover, given Rose's admission that she thwarted the adoption, Br. App. at 8; A.843, its incompleteness cannot be held against Hunter.

As to marriage, it should not be the policy of this Commonwealth that same-sex couples must duplicate the spousal protections they have already secured in another state with a Massachusetts marriage. While that would be a facile bright line, the RDP already provides a bright line for establishing the parties' legal commitment. Requiring marriage would not provide additional clarity given the inconsistent respect for the legal relationships of same-sex couples. Most critically, the federal government treats the parties as "single," despite their RDP, and would do so even if they had married in Massachusetts.<sup>28</sup> Thus the parties confronted Hunter's inability to add Rose to her health insurance through her federal employer and questions about Rose's eligibility for MassHealth, and sought information from a legal hotline about their options. A.829, 1122, 1156-57, 1315-40, 3333-38. That the parties

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<sup>28</sup> See 1 U.S.C. § 7 (defining spouse for federal purposes as "refer[ring] only to a person of the opposite sex who is a husband or wife").



were harmed by, but abided by, a discriminatory federal law in deciding not to marry does not change that they had a spousal status, and a later marriage would not change that legal reality.

**III. THE TRIAL COURT PROPERLY CONCLUDED THAT GRANTING PHYSICAL CUSTODY OF J [REDACTED] TO HUNTER WAS IN J [REDACTED]'S BEST INTERESTS.**

Having affirmed that J [REDACTED] and M [REDACTED] have two legal parents, the trial court appropriately treated this case like any other custody matter, engaging in a standard determination of the children's best interests. As legal parents to both children, Hunter and Rose stand on equal footing with regard to custody. See G.L. c. 208, § 31; Comm. v. Beals, 405 Mass. 550, 554 (1989). Though the court's findings of Hunter's substantial care of and bond with J [REDACTED] prior to Rose's deceptive departure for Oregon would support de facto parent status, A.833-40, 864, 868, 915; Br. App. at 8; A.H. v. M.P., 447 Mass. 828 (2006), this is not a case in which Hunter's parental rights and responsibilities turn on that in-fact parent-child relationship. Hunter and Rose stood as legal equals before the court, and the court correctly applied a straightforward analysis of J [REDACTED] and M [REDACTED]'s best interests.



Defendant recognizes, as she must, that "[t]he determination of which parent will promote a child's best interests rests within the discretion of the judge ... [whose] findings in a custody case must stand unless they are plainly wrong.'" Br. App. at 21; Custody of Kali, 439 Mass. 834, 845 (2003) (citations omitted). See also Mason v. Coleman, 447 Mass. 177, 186 (2006).<sup>29</sup> The court's exhaustive findings, analyzing the parties' histories as parents and respective abilities to meet J [REDACTED] and M [REDACTED]'s physical, emotional, and educational needs, addressed all relevant components of the best interests analysis and its custody awards must be sustained.<sup>30</sup>

In determining that J [REDACTED]'s best interests would best be served by granting primary physical custody to Hunter,<sup>31</sup> the court thoroughly considered the

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<sup>29</sup> Defendant's intimation that the trial judge adopted Plaintiff's findings verbatim, Br. App. at 6 n.4, cannot survive closer scrutiny. Compare A.639-731 and A.797-891. Given the court's additions, edits, omissions, and credibility assessments, "it is clear that the findings are the product of [her] independent judgment." Anthony's Pier Four, Inc. v. HBC Assocs., 411 Mass. 451, 465 (1991).

<sup>30</sup> Defendant does not contest the award of sole legal and physical custody of M [REDACTED] to Hunter.

<sup>31</sup> Despite Rose's claim, Hunter did seek sole physical custody of J [REDACTED]. A.107-09, 703-05. The GAL also advocated granting Hunter custody. A.780-96.



capacities of the parties to care for J [REDACTED]. The record and findings establish the instability and insecurity of J [REDACTED]'s life while in Rose's primary care. After Rose took J [REDACTED] away from Hunter to Oregon, she moved J [REDACTED] to four different homes in three cities, to six different care providers, and to three different pediatricians in under three years.

A.854, 2338. Rose was unable to care for J [REDACTED] "without significant, daily support from third parties in the home," even when she was unemployed, and when working, worked long hours, including overnights, weekends, and holidays.<sup>32</sup> A.855, 1658-61. Rose planned to move J [REDACTED] to Michigan, where she would have a similar schedule but no support. A.856. Most critically, Rose actively denigrated and undermined J [REDACTED]'s relationship with Hunter and M [REDACTED].<sup>33</sup> In virtually every decision, Rose demonstrated an inability to place J [REDACTED]'s needs above her own.<sup>34</sup> The

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<sup>32</sup> See Haas v. Pulchaski, 9 Mass. App. Ct. 555, 557 (1980) (denying custody where child would be cared for by multiple care providers rather than parent).

<sup>33</sup> See Williams v. Massa, 431 Mass. 619, 624 (2000) (criticizing wife's efforts to disrupt husband's relationship with both children).

<sup>34</sup> See Zatsky v. Zatsky, 36 Mass. App. Ct. 7, 13 (1994) (custody based on parent's ability "to subordinate her emotional needs to those of the children").



court's ultimate finding, "that the harm to J [REDACTED] would be substantial if J [REDACTED] were to remain in Ms. Rose's physical care," A.870, is well supported.

In stark contrast, Hunter provides J [REDACTED] with stability,<sup>35</sup> with deep roots in New England, and an established, flexible work schedule affording her ample time to care for the children.<sup>36</sup> A.850-52. Hunter is "a loving and emotionally attuned parent," A.868, who engages J [REDACTED] in age-appropriate activities and also provides structure and discipline. A.848. Hunter supports J [REDACTED]'s relationship with Rose, despite Rose's hostility toward Hunter, A.849, 869, and has fostered J [REDACTED] and M [REDACTED]'s relationship as sisters. A.868.<sup>37</sup> Given the court's findings of Rose's harmful and alienating conduct and of Hunter's stable, child-centered parenting, none of which Rose contests,<sup>38</sup> the custody award was warranted.

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<sup>35</sup> See Custody of Kali, 439 Mass. at 843 ("Stability is itself of enormous benefit to a child[.]").

<sup>36</sup> See id., 439 Mass. at 847 (custody appropriate where parent's "schedule was sufficiently flexible to ensure that Kali's needs ... will be attended to").

<sup>37</sup> See Adoption of Hugo, 428 Mass. 219, 230-31 (1998) (importance of sibling relationships among the factors to be given weight in custody determinations).

<sup>38</sup> Rose offered no evidence and makes no argument that Hunter is not a good parent. She relies solely on her contention that Hunter is not a parent at all.



See Custody of Zia, 50 Mass. App. Ct. 237, 244 (2000) (one parent's "refusal or inability to communicate with the father ... for the benefit of the child," and "poor judgment and worrisome parenting decisions," and other parent's "active, substantial, and constructive involvement in the child's life," and "willingness to respect the mother's role as a parent" among factors relevant to child's best interests).

Defendant fails to undermine the court's findings and judgments. First, Defendant's claim that the trial court assessed J [REDACTED]'s best interests without regard to her relationship with Rose is plain wrong. To the extent J [REDACTED] even has a secure attachment to Rose, the court's judgment safeguards rather than disrupts it.<sup>39</sup> Specifically, based on the testimony of Plaintiff's expert, Dr. Rohrbaugh, makes clear that the court's judgment went farther than necessary to protect J [REDACTED]'s attachment to Rose. Specifically, based on Dr. Rohrbaugh's testimony, the court found that in order to protect the attachment of a child of J [REDACTED]'s age, "parenting time should take place at

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<sup>39</sup> Thus Defendant completely misuses the expert testimony, Br. App. at 22, which addressed the harms of completely severing a parental attachment, as Rose did when she took J [REDACTED] to Oregon.



least once a month for a long weekend, and there should be daily contact by telephone or webcam. The child also needs a picture of the left behind parent." A.864.<sup>40</sup> Having already found that Hunter and J [REDACTED] call Rose every night and that Hunter has a picture of Rose in J [REDACTED]'s bedroom, A.849, the court's order went beyond the parameters explained by Dr. Rohrbaugh, granting joint legal custody and more parenting time for Rose than Hunter had at any point in this case, including thrice weekly webcams and in-person visits every other weekend. The court also gave Rose ample opportunity for greater access to J [REDACTED] if she relocated. A.797-803. The court's order clearly considered J [REDACTED]'s relationship with Rose.

Second, the timing of J [REDACTED]'s move to Hunter's custody was precipitated by Rose's actions. Late in the trial, Rose accepted a residency in Michigan. A.856. With the custody judgments pending, Rose unilaterally attempted to remove J [REDACTED] to Michigan on

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<sup>40</sup> Defendant completely misconstrues Dr. Rohrbaugh's testimony, Br. App. at 22, which addressed the harms of completely severing a parental attachment, as Rose did when she took J [REDACTED] to Oregon. A.1755-56.



or about May 1,<sup>41</sup> prompting Hunter to file a motion to prevent another move for J [REDACTED] prior to the court's ultimate determinations. A.4. The court acted expeditiously to issue its judgments and, in so doing, spared J [REDACTED] from yet another unfamiliar home, care provider, and community. Instead, J [REDACTED] was returned to the stable, familiar home of Hunter and M [REDACTED]. The court carefully considered J [REDACTED]'s interests and needs and issued its judgments accordingly.

Third, there is ample support for the court's findings that J [REDACTED] was negatively affected by Rose's insufficient attention to her needs and no evidence that J [REDACTED] was thriving in Oregon. The court was well within its discretion to reject the self-serving and contradictory testimony of Rose, her mother, and their family friend. See Care & Protection of Three Minors, 392 Mass. 704, 711 (1984). Rose's trial testimony was rife with fabrications and revisionist history. Her credibility was completely undermined after cross examination, which began her impeachment in the third question and continued consistently throughout. A.2216-2426. Moreover, the weight of the

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<sup>41</sup> Given the temporary orders in place, this removal would have been unlawful without Hunter's consent or the permission of the court. G.L. c. 208, § 30.



evidence wholly undercut her testimony. Rose presented no documents and little evidence about J█████'s life in her custody,<sup>42</sup> and the little that was presented suggested that J█████ was not thriving. See A.844 (difficulty transitioning); A.863, 1658 (aggressive behavior, hitting other children).<sup>43</sup>

Furthermore, that the parties, the GAL,<sup>44</sup> and the trial court all agree that J█████ is a bright, verbal child who is loved by both of her parents does not change the trial court's finding of harm to J█████ from remaining in Rose's custody. That finding appropriately focused on Rose's lack of ability to act in J█████'s best interests, patterns of poor parental

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<sup>42</sup> Seemingly, Defendant saw no need to provide any objective evidence, relying on her genetic connection to J█████ to dictate the court's analysis, but biology alone does not equate meeting a child's best interests. See Paternity of Cheryl, 434 Mass. 23, 24, 31 (2001); C.C. v. A.B., 406 Mass. 679, 689-690 (1990).

<sup>43</sup> The evidence refutes Rose's claim that J█████ failed to meet developmental milestones in Massachusetts. See A.2764 (pediatrician stating, "[n]ot only is J█████ healthy and developing normally, she appears to be thriving in her home environment in the Hunter-Rose home"); A. 2581 (Rose's mother stating that J█████ was "a thriving, alert healthy baby" in first 15 months).

<sup>44</sup> The trial court appointed Attorney Cowan as GAL, as per Mass. R. Prob. & Fam. Ct. 5, to represent the children's legal interests in this matter, and not to investigate or evaluate them. See A.458. As such, her report was properly not a source of fact finding.



decision making, and hostility and alienating behaviors regarding J [REDACTED]'s relationship with Hunter and M [REDACTED]. These are entirely appropriate considerations regarding J [REDACTED]'s present and future wellbeing. See Williams v. Massa, 431 Mass. 619, 623-24 (2000); Custody of Zia, 50 Mass. App. Ct. at 244; Custody of a Minor, 5 Mass. App. Ct. 741, 749 (1977).

Finally, the court properly considered Rose's unilateral removal of J [REDACTED] from the Commonwealth as one part of its exhaustive analysis. As with any child born into a spousal relationship, J [REDACTED]'s parentage was established by law from her birth. No judicial determination of parentage was required.<sup>45</sup> As a result, Rose's permanent removal of J [REDACTED] without Hunter's permission was unlawful. See Smith v. McDonald, 458 Mass. 540, 549 (2010). Even if, arguendo, the removal was not unlawful, the court could nonetheless consider the removal as part of its assessment of Rose's inability to place J [REDACTED]'s needs above her own and its finding that Rose "stymied deliberately any attempts by [Hunter] to participate in [J [REDACTED]'s] life," as "such a finding may support an

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<sup>45</sup> That the court was forced three times to declare the parties' parentage was a matter of Rose's denying that status, not the need for it to be established.



award of sole custody to the other parent...." Smith, 458 Mass. at 553-54 (citation omitted). Rose's wrongful removal, joined with the other best interests factors, justified the custody award to Hunter, "not as punishment, but... because [Rose] did not act in the best interests of her [child]." Hernandez v. Branciforte, 55 Mass. App. Ct. 212, 221 (2002).

**IV. THE TRIAL COURT PROPERLY AWARDED PLAINTIFF ATTORNEY'S FEES BECAUSE DEFENDANT DISREGARDED COURT ORDERS AND DISCOVERY RULES, PROLONGED LITIGATION, AND WITHHELD AND OBSCURED EVIDENCE.**

An award of attorney's fees "is within the sound discretion of the judge and will not ordinarily be disturbed." DeMatteo v. DeMatteo, 436 Mass. 18, 38-39 (2002). See also G.L. c. 208, § 38. Here, the trial court's fees award was plainly authorized.<sup>46</sup>

First, the court's award appropriately focused on Rose's refusal to accept the rulings of three different judges on the issue of parentage. The award did not turn on the substance of her position, but on her repeated re-litigation of this issue, which forced the need for extensive discovery and trial. When a party ignores previous court decisions and continues

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<sup>46</sup> The trial court did not specify the basis for the award. Plaintiff argued fees were appropriate under G.L. c. 208, § 38 and G.L. c. 231, § 6F. A.925-26.



to make arguments that have already been rejected, an award of attorney's fees is proper. Cf. City of Worcester v. AME Realty Corp., 77 Mass. App. Ct. 64, 71 (2010), review denied, 460 Mass. 1104 (2011).

Second, the fees award was proper given Defendant's discovery abuses, obstructionist conduct, and delay tactics. See J.S. v. C.C., 454 Mass. 652, 666 (2009); Downey v. Downey, 55 Mass. App. Ct. 812, 819 (2002). The trial court credited Plaintiff's counsel's "thorough[] and accurate[]" submissions in support of the fees, which detailed Defendant's litigation misconduct. A.950.

For example, Defendant filed numerous redundant motions to re-litigate decided issues without any new facts or arguments.<sup>47</sup> Defendant flouted or ignored several court orders, requiring the expense of enforcing them.<sup>48</sup> Defendant failed to obey basic discovery rules,<sup>49</sup> withheld and refused to cooperate in

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<sup>47</sup> See Motions to Dismiss Custody Complaint, A.66-86, 111, 806 and 628-31, 634, 817; Motions to Prevent Hunter from calling herself "Mommy," A.175-84, 185-87, 807 and 188-89, 202-03, 808-09; Motions to Amend Answer, A.283-307, 455, 811, 813 and 817.

<sup>48</sup> See, e.g., A.807, 812-13, 815-16, 854-55, 937.

<sup>49</sup> See, e.g., A.311-84, 807, 809-12, 936-37.



obtaining documents,<sup>50</sup> and refused to provide a financial statement.<sup>51</sup> In short, Rose unnecessarily prolonged discovery, J.S., 454 Mass. at 652, and forced Hunter "to engage in extraordinary discovery efforts." Downey, 55 Mass. App. Ct. at 819.

Even more egregious, Defendant complicated and prolonged the litigation by burning relevant documents<sup>52</sup> and by her counsel's tampering with the court's docket.<sup>53</sup> The trial court properly recognized the litigation misconduct of Defendant and the extraordinary amount of work caused thereby, stating, "Clearly the plaintiff was assigned the laboring oar by the defendant." A.951.

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<sup>50</sup> For example, Defendant refused to produce or sign releases for documents relating to her medical education, requiring Plaintiff's counsel to secure out-of-state counsel and file a motion before Defendant relented. See A.936.

<sup>51</sup> Having ignored Rule 401, two formal requests, four letters to her counsel, and a motion to compel, Rose did not file a financial statement until two days after the court-ordered deadline, and ten months after the case began. A.311-12, 324-25, 349-53, 814, 936.

<sup>52</sup> Rose admitted to burning all of her journals from the time period of her relationship with Hunter on the eve of leaving for Oregon, knowing that litigation was likely. A. 840-41, 2257-58. See Kippenham v. Chaulk Serv., Inc., 428 Mass. 124, 127 (1998) (sanctions for spoliation of evidence "if a litigant ... knows or reasonably should know that the evidence might be relevant to a possible action").

<sup>53</sup> See A.220-30, 281, 810.



Finally, the court had first hand view of counsel's skill, and detailed submissions, including contemporaneous time records, affidavits, and bills, documenting Plaintiff's litigation expenses. See J.S., 454 Mass. at 666. The court reviewed the financial positions of the parties through the litigation and the submissions related to the motion for fees. The court's comparisons of the parties' positions,<sup>54</sup> including Rose's ability to pay her own counsel fees of approximately \$237,000, and assessment of Rose's ability to earn sufficient income to pay the fees were within the court's discretion.<sup>55</sup> See Cooper v. Cooper, 62 Mass. App. Ct. 130, 141 (2004). The court awarded only part of Plaintiff's actual fees and spread the payments over multiple years. The award was well within the court's discretion and should stand.

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<sup>54</sup> It bears mentioning that Rose began the litigation in a better financial position. On the day she was served with the initial complaint, Rose took approximately \$18,000 from the parties' joint account, leaving Hunter with no financial cushion. A.867.

<sup>55</sup> Given the extensive submissions, the evidence at trial of the parties' financial circumstances, and the judge's vast knowledge of the case, the denial of an evidentiary hearing was not error. See Edinburg v. Edinburg, 22 Mass. App. Ct. 192, 198 (1986).



CONCLUSION

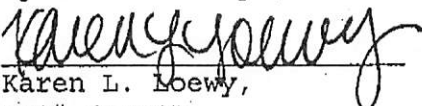
For all the reasons herein, this Court should affirm the judgments of the Probate & Family Court.

RULE 16(k) CERTIFICATION

The undersigned certify that this brief complies with the Massachusetts Rules of Appellate Procedure.

Respectfully submitted,

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