TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS

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ZBA 2010-77
Petition of Perdoni Brothers, LLC,
the successor in interest to
139 Linden Street Realty Trust
139 & 139R Linden Street

On September 8, 2010, Perdoni Brothers, LLC, the successor in interest to 139 Linden Street Realty Trust, (referred to herein as the "Applicant" or "Petitioner") filed a petition for a Comprehensive Permit for a Local Initiative Project (LIP), pursuant to the provisions of MGL Chapter 40B, Sections 20-23 for the redevelopment of the property to a mixed use by adding two new rental dwelling units on the second floor and attic space of the existing commercial building located at the rear of 139 LINDEN STREET (referred to herein as 139R Linden Street), in an Industrial District. One unit will be affordable in perpetuity in accordance with the affordability and local preference requirements of the Wellesley Housing Development Corporation. 800 square feet of the basement in the existing building located at 139 LINDEN STREET, in a General Residence District and a Business District will be finished to be used as a beauty salon owned and operated by Eugenio Perdoni. The project will be developed pursuant to the Local Initiative Program established by the Massachusetts Department of Housing and Community Development.

The Board received evidence of the Applicant's status as a limited dividend organization. Perdoni Brothers, LLC is a limited liability company formed under Massachusetts State Law. Pursuant to the conditions of this Comprehensive Permit, Perdoni Brothers LLC must enter into a Regulatory Agreement in a form approved by Town Counsel, which provides limits on the dividend on owner's equity and return on investment equity to 10 percent.

The Board has received written communication from the Commonwealth of Massachusetts Department of Housing & Community Development (DCHD), dated October 3, 2008 and letter of extension dated January 6, 2011, indicating that the project is acceptable.

On December 17, 2007, the Town of Wellesley, acting through its Board of Selectmen and Eugenio Perdoni, Joseph Perdoni, and Renso Perdoni, Trustees of 139 Linden Street Realty Trust, entered into a Local Initiative Program Partnership Agreement.

The Board conducted public hearings on the petition on October 5, 2010, December 9, 2010, May 12, 2011, June 20, 2011, July 18, 2011, September 14, 2011 and October 13, 2011. The Board moved to close the public hearing and began deliberations on October 13, 2011. The Board conducted deliberations on October 13, 2011 and voted to approve the Comprehensive Permit under the Local Initiative Program and continue the Public Meeting to November 3, 2011.

October 5, 2010

Presenting the case at the hearing was Laurence Shind, Esq. Also present were Renso, Eugenio and Joseph Perdoni, and Charles Crevo.

Mr. Shind said that the Petitioner has been working for many years to find a development plan for the entire property. He said that the property is just over 17,000 square feet and is divided into three different Zoning Districts; Residential, Business and Industrial.

Mr. Shind said that the plan was developed in accordance with the Town's Comprehensive Plan and the Linden Street Corridor Study, which support the "Smart Growth" concept of a mix of residential and commercial use at a location that is near to the Town center and is adjacent to public transit. He said that under the LIP agreement with the Board of Selectmen (BOS), the BOS are given control over future retail tenants on the ground floor at 139R Linden Street.

Mr. Shind said that the project consists of renovation of the two existing buildings. He said that the front building currently contains two rental units on the first and second floors. He said that the basement is used for tenant storage. He said that the proposal is to use 800 square feet in the basement for Eugenio Perdoni's beauty salon, which has been located across the street for many years.

Mr. Shind said that the building at the rear, 139R, is a brick building with two and one-half stories. He said that currently there is a ground floor tenant, C & T Paint and Wallpaper. He said that the tenant occupies the entire first floor, which is approximately 2,400 square feet. He said that above that is unfinished second floor space and a third floor attic. He said that the proposal is to make the upper floors into two rental units, one of which will be affordable in perpetuity. He said that the smaller 1,500 square foot, two bedroom/two bathroom unit will be the market rate unit. He said that the larger 1,750 square foot unit will have three bedrooms and three baths. He said that the units will be duplex with both having space on two floors.

Mr. Shind said that there is parking on the plan for 23 vehicles. He said that 17 spaces are on the surface and six are in the underground garage at 139R Linden Street. The Board said that there is a requirement for Site Plans that the dimensions of all parking spaces be shown and numbered and that the maneuvering aisles, landscaping and open space be shown. The Board said that the plans must be signed, stamped and dated by a registered professional.

The Board questioned whether there will be enough room to park six cars in the underground garage. Joseph Perdoni said that Wellesley's Traffic Consultant, BETA, approved parking for six cars in the underground garage.

The Board said that the Department of Public Works (DPW) recommended installation of some kind of warning device such as a mirror or lighting to prevent cars from below proceeding if a car is entering the garage.

The Board said that the plans should show the area calculations. The Board said that there should be a chart that shows the square footage of the building, the parking requirements and the lot coverage.

The Board said that the Proposed Basement Plan on page 37 of the application should be coordinated with Plan C-2.

The Board said that the handicapped parking space should be moved closer to the door to the beauty salon.

The Board said that it was concerned about the dumpster being located so close to the stairs to the residential units at 139R Linden Street. The Board said that there is an opportunity to improve the look around the building at 139R Linden Street for the residents by creating open space.

Mr. Shind said that TD Bank will be financing the project. He said that a letter dated September 15, 2010 was submitted.

Mr. Shind said that the Wellesley Housing Development Corporation (WHDC) will be the Monitoring Agent.

The Board said that there seemed to be some inconsistency between the list of Requested Waivers in the LIP application and the Comprehensive Permit application. The Board said that a request for waivers for lot coverage and for exceeding the F.A.R. should be included in the application.

The Board said that three permanent benchmarks must be shown on the plans.

The Board said that evidence that the drywell at the base of the driveway that goes down to the underground garage can handle a 10-year storm event should be submitted.

The Board said that the greasetrap, catch basins and drywells should be shown on the Site Development Plans.

Mr. Perdoni said that the floor drains in the underground garage go to a separator and then to a sewer manhole. The Board said that the DPW should review the floor drains.

The Board said that there is a description of buildings attached to the LIP Application. The Board said that the square footage did not match up with the Official Development Prospectus and the Drainage Report.

The Board said that the bollards and raised pedestrian walkway should be included in the Landscape Plans.

The Board said that a Construction Management Plan (CMP) should be submitted, describing the materials laydown areas, parking for construction workers and how construction traffic will be managed.

The Board said that the commercial unit at the back is currently being used as a paint and wallpaper store. Renso Perdoni said that a 21E Assessment was done and will be submitted. He said that he would ask the owner of the paint and wallpaper store about storage and disposal of materials.

The Board asked where the HVAC intakes and exhausts at 139R Linden Street will be located. The Board said that it was concerned about health risks to the residents from paints emitting Volatile Organic Compounds (VOC's).

The Board asked about discharge of the products at the beauty salon. Eugenio Perdoni said that the products will go down the drain.

The Board said that on Page 6 of the LIP application, the estimated percentage of the site used for buildings is 40 percent. The Board said that would be in excess of the lot coverage allowed. Mr. Shind said that the Department of Housing and Community Development (DHCD) approved the application. The Board said that the DHCD approval letter expired on October 3, 2010.

The Board said that the LIP Agreement with the Selectmen required a payment of $40,000 payable upon the earlier to occur of (i) thirty days after the rental of the last of the four (4) residential units, or (ii) two (2) years from the date of this Agreement. Mr. Shind said that payment has not been made. He said that the Petitioner would ask for an extension. The Board said that the dates on page 7 of the LIP Application should be updated.

The Board said that an updated pro forma should be submitted.

The Board said that the section in the Development Prospectus that deals with Fire Protection should be filled out.

Joseph Perdoni said that the whole building is sprinklered. He said that F & F Sprinkler Company comes every couple of months to check the system.

The Board said that there are unshielded fluorescent lights at C & T Paint that are left on late into the night. The Board said that its intent is to protect residential uses from harsh commercial lighting. The Board said that information on lighting should be submitted.

The Board said that information about commercial use of the site should be submitted, including what C & T requires for storage, how that is provided and where they park their trucks. The Board said that C & T is currently stacking pallets near the areas that are used as residential entrances.

The Board said that it had concerns about sound levels at the hair salon. The Board said that there should be sufficient sound insulation in the ceiling to protect the residents above. The Board said that a plan should be submitted. The Board said that the R factors information that was requested in Section IV H of the Development Prospectus should be submitted.

The Board asked about access to the upstairs from the garage at 139R Linden Street. Joseph Perdoni said that there is a set of stairs on the east side of the building. The Board said that area is labeled "Mechanical". Mr. Perdoni said that the mechanical room is located underneath the stairs. The Board said that the door is not shown on the plans.

The Board said that it appears that there is not enough area on the site for snow storage. The Board said that snow will probably have to be trucked off-site.

The Board said that a revised Site Plan, Landscape Plan and Hardscape Plan should be submitted.

December 9, 2010

Presenting the case at the hearing was Laurence Shind, Esq. Also present were Eugenio, Renso and Joseph Perdoni, Charles Crevo and Peter Ditto, Project Engineers, Timothy Sheehan, Landscape Architect and Stephen Burtt, Chapter 40B Consultant.

Mr. Shind said that at the last meeting there was confusion over which plans are the current plans. He said that the initial plans presented to the Selectmen three years ago are out of date. He said that the development team has changed and new plans were submitted.

Mr. Shind said that information was added to the Site Plan to address Board concerns. He said that the area calculations are now shown. He said that catch basins and greasetraps are shown on Sheet #2. He said that all parking space dimensions are shown and numbered on Sheet 2. He said that the number of parking spaces was reduced by one to accommodate additional landscaping and open space. He said that there are now 22 parking spaces, six of which are in the garage and 16 at grade.

Mr. Shind said that the Board had requested that one of the handicapped spaces be moved adjacent to the entrance of 139 Linden Street. He said that one of the spaces was moved to the front of the building at 139 Linden Street. He said that, in order to accommodate the handicapped space, the adjacent space, #16, that is closest to the street has been changed to a compact space.

Mr. Shind said that a letter from JFJ Electric was submitted regarding a warning system for the garage entrance.

Mr. Shind said that all entrances, exits and stairs in the garage are labeled on Sheet 2.

Mr. Shind said that the architectural plans show the detail of the stair configuration at the back of the garage.

Mr. Shind said that on the Existing Conditions Plan, Sheet 1, the permanent benchmarks and the water sewer services lines are now shown. The Board said that the benchmarks were only noted in the notes. The Board said that the benchmarks should be shown on the plan.

Mr. Shind said that landscaping was added to the front, sides and rear of the front building. He said that screening was increased between the street and the parking lot. He said that on the east side of the exit drive they added plantings to provide separation from cars exiting the property and the pedestrian walkway.

Mr. Shind said that landscaping was added at the front and on the west side of the rear building. He said that the new areas were identified with brick pavers that match the pavers on the pedestrian walkway along the eastern edge of the property. He said that the dumpster was moved and turned to accommodate more landscaping and more space for the stairway.

Mr. Shind said that the only change to the salon plans was to show the specs for sound insulation in the ceiling. He said that is shown on Plan A1.

Mr. Shind said that a front entrance canopy was added at the residents' entrance at 139R Linden Street.

Mr. Crevo said that they bumped out the doors for each of the apartments at 139R Linden Street to break up the long hallway space. He said that the plans include decorative beams and three skylights.

The Board asked if there is a garage plan. Mr. Shind said that it is not a separate plan. He said that it is shown on Sheet 2, Site Development Plan. He said that he would submit a new Sheet A1. The Board said that the dimensions, including the driving aisle in the garage, should be added to Sheet 2. The Board said that the original C-2 Plan that was submitted showed the driving aisle at 18.7 feet. The Board said that plan was not stamped and was not included in the new package.

The Board said that the dimensions are not shown for the new handicapped parking space.

Mr. Shind said that a new Maintenance Agreement for the easement with the owners at 141 Linden Street and 2 Hollis Street was submitted. He said that they discussed the possibility of a recorded easement but the adjacent owner was not interested.

Mr. Shind said that a Construction Management Plan (CMP) was submitted.

Mr. Shind said that the owner of C & T Paint submitted a letter regarding the handling of their products. He said that they have no specific ventilation needs. He said that there is no external exhaust intake. He said that it is a closed system with no fumes escaping into the residential units. He said that there will be a typical HVAC system with outside compressors. Joseph Perdoni said that the compressors will be on the flat roof over the stairs. He said that there is an existing compressor for C & T Paint that is located by the west door, approximately 12 feet from the building.

Mr. Shind submitted the 21E Report.

Mr. Shind said that a letter from a fire engineer at JB Engineering, dated December 2, 2010 that addressed fire flow was submitted.

Mr. Shind said that a revised Request for Zoning Waivers was submitted.

Mr. Shind said that a newly executed deed from the previous owner to the LLC was submitted. He said that it will be recorded subject to the final decision of the Zoning Board of Appeals.

Mr. Shind said that a revised Certificate of Organization was submitted. He said that the Certificate of Organization has not been filed with the State.

Mr. Shind said that the Executive Director confirmed that the requirement of a $40,000 payment from the original LIP Agreement would be extended to the requested date of June 30, 2011. The Board said that there should be something in writing to confirm that.

Mr. Shind said that the approval from the State has expired. He said that the Selectmen have asked for an extension. He said that a copy of that letter was submitted.

Mr. Burtt said that he will be supervising the marketing and lottery for the project. He said that the Wellesley Housing Development Corporation (WHDC) will be the Monitoring Agent.

Mr. Burtt said that a revised pro forma would not be necessary. He said that even though this is a two year old project, there would be no need for the numbers to change, due to the downturn in the economy. He said that they are confident that the numbers will work. He said that the Monitoring Agreement will be drawn up after the Zoning Board of Appeals (ZBA) decision is finalized. The Board said that it will need to see a Monitoring Agreement that is acceptable to WHDC.

Mr. Burtt said that an Affirmative Marketing Plan, dated April 8, 2008, was submitted.

Mr. Burtt said that he should have a signed Project Eligibility Letter from DCHD soon. The Board said that letter should be submitted to the Board.

Mr. Shind said that he will submit the letter of financing source from TD Bank.

The Board said that the Regulatory Agreement must be submitted.

The Board asked if the Applicant had considered having the hair salon in the commercial building. Mr. Shind said that the space requirement for the hair salon is easily met in the basement of the front building. He said that the size of the residential unit was not as easily met and would not be as desirable. He said that they would need an elevator for an elderly tenant. Eugenio Perdoni said that it would be cost prohibitive to put an elevator on the back building.

The Board said that the curb cut for the exit from the site is much larger than the one for the entrance to the site. The Board said that it would be more logical to have the curb cut reduced so that it is not wider than what is required. The Board said that there is a landscaped area to the right of the exit and painted pavement on the left side. The Board said that adding landscaping to that area would create a much nicer appearance of the site from the street.

The Board said that the Department of Public Works (DPW) commented that the curb cut should not be in excess of 25 feet and may flare out to a width of 55 feet at the curb line. The Board said that the plan shows 22 feet at the one-way exit between the granite curb stones. Mr. Sheehan said that they can reduce the curb cut to the travel lane.

The Board questioned if six cars can fit in the garage. The Board said that the 18.7 foot dimension that is shown for the aisle is less than the 24 feet that the code requires. The Board said that the code requires that no cars have to be moved to get access to a space. The Board said that for the spaces against the wall, #22 and #17, it is not clear that with an 18.7 foot aisle width how vehicles could turn in and out without having to move the cars adjacent to them. The Board said that there is a column involved. The Board said that the space should be laid out so that it complies with the parking code. Joseph Perdoni said that the plan was approved by the Town's parking consultant. He said that BETA visited the site with the BOS several times and they all agreed how the parking would work. The Board said that approval should be submitted to the Board.

The Board said that the Building Inspector was concerned that the combination of the steep driveway and the height of the entrance of the garage would restrict the types of vehicles that could park under there. Renso Perdoni said that they have had four wheel drive pickup trucks and a one ton truck in the garage. He said that the height has not been an issue. The Board said that dimensions of the entrance to the garage should be submitted.

The Board said that the Building Inspector said that the garage parking area is currently being used by C & T Paint to store paint and solvents. The Board said that a condition of approval would be that there be no storage of paint and solvents in the garage. Mr. Shind said that C & T Paint has sufficient storage capacity on the site and at another location as well.

Mr. Shind said that lighting was added at the residents' entrance and to the stairway on the rear building. He said that they determined that there is no light spillage from the existing C & T Paint operation. The Board said that a detail of the lighting cutoff should be submitted.

The Board said that there will be a condition in the decision that snow must be removed from the site.

Mr. Sheehan said that the approach to the garage is 13 feet wide by the dumpster. The Board said that dimension should be shown on the plans.

The Board said that on Sheet 3, the square footage of the buildings must be shown.

The Board said that the sound transmission is greater than 50 for the front building for the floor between the hair salon and the residences, shown on Sheet A1. The Board said that is the minimum that is required to comply with the Uniform Building Code for a residential building. The Board said that, for this situation, where there will be a potentially noisy use on the ground floor with the residences above, more than 50 will be needed for the sound transmission. The Board said that the STC should be at least 60.

The Board said that the door swing on the front building is shown one way on the architectural plan and the other way on the site plan. The Board said that both plans should match.

The Board said that the EPA VOC requirements that were discussed in the C & T letter of November 2, 2010 are to reduce VOC contributions to Ozone. The Board said that those requirements were not intended to reduce occupational or residential exposure to paints in a store. The Board said that tinting and mixing is done in the store. The Board said that the ventilation system does not seem to be up to date. The Board said that more detail of the ventilation systems should be submitted.

The Board said that some of the numbers in the revised prospectus do not match the Drainage Report. The Board said that the prospectus shows that 89.3% of the site will be covered with buildings, drives and parking. The Board said that is shown as 93.2% in the Drainage Report, which would make the Drainage Report conservative. The Board said that the numbers should be corrected.

The Board said that it is a residential site. The Board said that if there are going to be staging areas for construction materials, they should be fenced off. The Board said that there should be a site plan showing any materials or equipment storage during construction and that the area will be fenced.

The Board said that contact information should be provided for residents to call if they have any complaints about dust or noise.

The Board said that the finding in the 21E Report was that the off-site sources of contamination at 1 Hollis Street and 141 Linden Street result in this site be rated as a moderate risk. The Board said that, for the record, it would need to know if the DEP file is closed and that the site has been encapsulated to their satisfaction.

The Board said that most of the Planning Board's issues with the previous Landscape Plan have been addressed. Mr. Sheehan said that they will work on screening the dumpster. The Board said that a revised Landscape Plan should be submitted to the Planning Board for their comments.

The Board said that the LIP Agreement has a note that states that the agreement is between the Trust and the property and binds its successors. The Board said that it states that any conveyance of the property should incorporate by reference the obligations pursuant to the Agreement. The Board said that should be noted in the deed.

May 12, 2011

Presenting the case at the hearing was Laurence Shind, Esq. Also present was Eugenio Perdoni, Charles Crevo, Sr., Charles Crevo, Jr., Timothy Sheehan, Landscape Architect and Stephen Burtt, Chapter 40B consultant.

Mr. Shind said that he has been involved with this project since the Spring of 2006. He said that tonight is the tenth official hearing before a Town Board. He said that the history of the project goes back much

further to 1989, when the applicant brought their first request to Town Meeting for re-zoning of the site. He said that the site is located in three zones, Business, Industrial and Residential. He said that the proposal was to change the entire site to a Business Zone to allow for a comprehensive development plan to take place. He said that re-zoning petition was unsuccessful. He said that the proposal for re-zoning was brought back again in 1998 and was not successful. He said that the Planning Board's opposition was that the Applicant had not put together a full comprehensive plan.

Mr. Shind said that when he became involved with the project, the Petitioner was considering bringing another re-zoning request to Town Meeting. He said that the Planning Board expressed concerns about the lack of a full comprehensive vision of site development. The Planning Board was asked if they would consider a partnership with the Selectmen to allow either the zoning restriction for the site or consider a Comprehensive Permit.

Mr. Shind said that the Petitioner and the BOS negotiated a LIP Partnership Agreement in December, 2007. He said that the Petitioner then brought in the engineers for design work that resulted in the application that is before the Board.

Mr. Shind submitted a revised site plan and plot plan. He said that there were three areas that were corrected, as requested by the Board. He said that each building footprint square footage is now labeled. He said that the dimensions of the handicapped parking space at the front of 139 Linden Street is now labeled. He said that the door swing direction to the salon was taken off of the plans to eliminate confusion. He said that the swing direction will be determined during construction.

Mr. Shind said that the parking spaces will all be full sized. The Board said that a requirement for Site Plan Approval is that the dimensions for all of the parking spaces be shown or a space be labeled with typical dimensions.

The Board discussed assigned parking spaces.

The Board discussed parking in the garage. Mr. Crevo said that there is a 24 foot aisle and the spaces are standard size. The Board said that the columns are shown but are not located by dimension front to back.

The Board said that schematic drawings dated May 10, 2011 regarding the exhaust system had been submitted. The Board said that locating the duct work on the side of the building would be unacceptable. The Board said that having it on the back of the building would be acceptable. The Board said that a Certified Hygienist should approve the final design of the exhaust system. The Board said that the Certified Hygienist should look at fan size, location and air exchanges.

The Board said that if the project goes ahead as a mixed use on the premises, more effort needs to be made to identify the salon entrance at the side of the building. The Board said that it is supposed to be a handicapped entrance. The Board said that there needs to be a canopy or cover over that door. The Board said that there has been nothing submitted to show what kind of signage will be there.

The Board said that the sign for the Paint Store should be moved because there will be an entrance to the second floor apartments at 139R Linden Street.

The Board said that because this will be mixed use, the light fixtures should be shielded and there should be no direct glare.

Mr. Shind said that the impervious surface calculations were corrected on the revised Development Prospectus. He said that the building footprint update was emailed but not included in the revised Development Prospectus. The Board confirmed that the correct building footprint page was dated 5/12/11.

Mr. Shind said that a full sized copy of the garage with interior dimensions would be submitted.

The Board discussed the CMP. The Board said that construction will be restricted to 7 a.m. to 5 p.m. on Monday through Friday.

The Board said that more thought should be put into Construction Noise, given that construction will occur in a mixed use zone. Mr. Shind said that outside construction will involve the stairway at the rear building and landscaping. He said that he thought that the Engineer's idea was to not have landscaping happen on the same day as the stairway work. The Board said that should be made more specific in the CMP.

The Board said that the CMP should have some contact information for residents if there is noise during construction.

The Board asked if the stairway to the apartment could be improved. The Board said that an effort should be made to make it a pleasant experience for the residents going up the stairs. The Board said that could be achieved with a combination of lighting and colors.

The Board discussed the Regulatory Agreement. Mr. Burtt said that it was his understanding that the DHCD is presently re-drafting a boilerplate Regulatory Agreement to cover the foreclosure issues that have become rampant throughout the State. He said that as soon as that is available the Applicant will send it to the Board. The Board said that it should have an opportunity to review the Agreement before granting its approval.

The Board discussed the Monitoring Agreement. Mr. Burtt said that it is a standard agreement from DHCD. He said that he could provide that.

The Board said that employee parking in the Tailby Lot is part of the Partnership Agreement with the BOS.

June 20, 2011

Present at the Public Hearing were Laurence Shind, Esq., Eugenio and Joseph Perdoni, Charles Crevo, Sr., Charles Crevo, Jr., Peter Ditto, Project Engineer, Stephen Burtt, Housing Consultant, Timothy Sheehan, Landscape Architect, Jonathan Cosco, Esq., Mintz Levin, and Dick Cussen, Senior Industrial Hygiene & Safety Consultant.

Mr. Shind said that the Board had asked for two minor corrections on the Site Plan. He said that on outside parking space #8, the length was labeled as "typical". He said that all of the spaces were shown at the same length. He said that the chimney servicing C&T Paint is now shown on the plan. Charles Crevo, Jr. said that the chimney is three feet higher than the highest point ten feet away, which is required for a Certificate of Occupancy.

The Board discussed parking spaces and the LIP Agreement. The Board said that if the garage parking spaces are not open to the public, the Board does not have to be concerned about maneuvering spaces. The Board said that there is a requirement of four spaces available for the residents. The Board said that the original intent was that the employees park off-site so that the maximum number of spaces will be available on-site.

Mr. Shind said that the BOS approved certain types of commercial tenants. He said that the LIP Agreement specifically approved the salon and C&T Paint. He said that the Petitioner would have to go back before the BOS for any new tenant.

Mr. Shind said that the language regarding construction noise was revised in the CMP. The Board said that contact information should be posted somewhere and made readily available to the residents.

Mr. Shind said that there were three additions to the Landscape Plan. He said that an entrance canopy with signage was added over the salon entrance. He said that they added screening to the front of 139 Linden Street to screen the HVAC. He said that the C&T Paint sign was moved to be centered on the building.

The Board discussed the entry to the residential units at 139 Linden Street. The Board said that the residents pass by a lot of hardware on the side of the building. The Board said that it should be made to look more residential. Mr. Sheehan said that the area to the right has been designated for trash receptacles. He said that they need to keep that area open. He said that they could probably extend the bed that comes from the right of the walk to the telephone pole. Joseph Perdoni said that the telephone is going to be removed.

The Board discussed an item on Page 19 of the draft Regulatory Agreement concerning foreclosure. The Board said that it appears that foreclosure could wipe out the affordability restriction. Mr. Cosco said that a few years ago MassHousing went through an elaborate exercise to change their agreement for condominium projects so that if a condominium unit was foreclosed upon that action would not wipe out the affordability restriction on the homeownership unit. He said that it was his experience that it is not

uncommon to negotiate that kind of provision for rental projects. The Board said that it would prefer to have the affordable unit designated as "in perpetuity".

The Board said that the affordable unit must be identified in the Regulatory Agreement. Mr. Shind said that in the LIP Agreement they designated the larger of the two units at 139R Linden Street to be the affordable unit. He said that they did not give it a unit number.

The Board said that it usually requires a local preference in the Monitoring Agreement. Mr. Burtt said that WHDC will try for that.

The Board discussed the Ventilation Plan. Mr. Cussen said that it is a paint store and there is the potential for migration and intermittent odors that might be considered nuisance. He said that there is a Building Code requirement for the amount of outdoor air coming into the commercial zone. The Board said that it would like to see the calculations and a plan showing where the intakes and exhausts are going to be, especially that the exhausts will not be near where residents would open a window.

Mr. Cussen said that he could not access the existing air handler. He said that the Petitioner is going to have someone come in and measure the outdoor air intake. The Board asked for a brief report containing a recommendation and the basis for the recommendation. The Board said that it would be interested in seeing recommendations for the hair salon as well. Mr. Cussen said that there are different criteria for hair salons and outdoor air. He said that he would review that and make recommendations.

July 18, 2011

Present at the hearing were Laurence Shind, Esq., Charles Crevo, Sr., Peter Ditto, Stephen Burtt, and Jonathan Cosco, Esq.

Mr. Shind said that a Ventilation Plan from Cashin & Associates was submitted.

Mr. Shind said that the Regulatory Agreement was revised to not allow a foreclosing lender to trump the requirement for the affordable unit to remain in perpetuity. The Board said that there was a requirement that the affordable unit be designated in the Regulatory Agreement.

The Board said that a condition would be that the Monitoring and Regulatory Agreements be acceptable to Town Counsel.

Mr. Shind said that in accordance with one of the definitions in the Regulations, the project fosters a vibrant neighborhood. He said that it fits in with the whole concept of smart growth. He said that there will be residential use adjacent to public transportation. He said that the project has the advantage of adding an affordable housing unit to the Town and all four units will qualify.

The Board said that it is mindful that this is a LIP Agreement and the BOS have signed off on it. The Board discussed adding a condition that provided for the salon unit reverting back to an affordable

residential unit when the Perdoni hair salon use ceases. Mr. Shind said that the Petitioner would like to have the flexibility for another family member to continue the business.

The Board said that an updated Site Plan should be submitted.

September 14, 2011

Presenting the case at the hearing was Laurence Shind, Esq.

The Board said that it had asked that the drawings be coordinated with each other. The Board said that there are still discrepancies between the landscape drawings and the layout plan.

Mr. Shind said that he believed that the amended and restated Certificate of Organization has been filed with the Secretary of State. He said that he did not want to record the deed until the Board had granted approval.

The Board said that a Maintenance Agreement between the Perdoni's and the Grignaffini's for the purpose of maintaining the westerly façade at 141 Linden Street and the southerly and easterly facades of 139R Linden Street was submitted. Mr. Shind said that the neighbor did not want to have it recorded. The Board said that it will not run with the land and will not bind future owners beyond the current owners.

Mr. Shind said that the Petitioner will have to apply for a further extension for the $40,000 payment required under paragraph 13 of the LIP Agreement that will expire on September 30, 2011. The Board said that extension agreement should be in conformance and coordinated with the Comprehensive Permit for the time when construction will begin.

The Board asked Mr. Shind to submit clarification that the Site Eligibility Approval Letter from DHCD that was extended on January 6, 2011 was intended to be for an additional two years.

The Board reviewed the materials needed for a complete Comprehensive Permit application. The Board discussed required waivers.

The Board said that it may be reasonable to have sprinklers installed in the salon.

October 13, 2011

Presenting the case at the hearing was Laurence Shind, Esq. Also present were Eugenio and Joseph Perdoni.

The Board said that it received a Site Development Plan, a revised Landscape Plan, and a copy of the recorded deed.

Mr. Shind said that a new full set of plans consisting of an Existing Conditions Plan, a Site Development Plan, a Plot Plan, a Grading and Drainage Plan and a Utilities Site Plan, dated 9/23/11 was submitted. He

said that the changes that the Board requested at the previous hearing were shown on the Site Development Plan. He said that a revised Landscape Plan, revised 9/23/11 was submitted. He said that the extension from DHCD was included in the submittal.

Mr. Shind said that there had been a question about removal of the telephone pole that is still shown on the plan. He said that it is the Town's intent to remove that pole. Joseph Perdoni said that the pole belongs to Verizon. He said that the Perdoni's have laid the conduits for their property and the property behind them. He said that the conduits are currently empty. He said that the power will come from the sidewalk. He said that the only thing that they are getting off of the lines is Verizon.

The Board discussed the relocated curb cut at the exit onto Linden Street. Joseph Perdoni said that they are waiting for the Town to redo this end of Linden Street. He said that they went to the BOS for a new curb cut. He said that there will be granite curbing. He said that the Perdoni's would like to have a concrete sidewalk across the driveway. He said that when they did the water and sewer work, they removed the concrete and put in hot top. He said that if the Board chooses to impose a condition for a concrete sidewalk, the Perdoni's are willing to pay for it if the Town is not.

The Board said that there should be low plantings on the West side of the exit drive at Linden Street to not obscure view line of exiting traffic.

The Board discussed the pier that sticks onto the property from the adjacent property. Joseph Perdoni said that half of the pier is on their property. He said that he would like to reduce the height of it. He said that it can block the sight of pedestrians for vehicles exiting the site. He said that any work that they do to the pier would have to be approved by the neighbor.

Mr. Shind said that the letter height for the "Eugenio's" sign was reduced to 8 inches.

The Board said that it received a letter from JB Engineering, Inc. saying that the 139 Linden Street building is too small to have a sprinkler system required. The Board said that the Engineer stated in the letter that State Fire Code requires a fire barrier, a two-hour fire separation and fire-resistance rating.

<u>Submittals from the Applicant</u>

- Application for Site Plan Approval, dated 7/30/10
- Site Plan Approval Plans and Submittal Checklist
- Project Overview and Property Description
- Determination of Site Eligibility and Preliminary Approval under LIP, dated 10/3/08, signed by Catherine Racer, Associate Director, DHCD
- Certificate of Organization of a Limited Liability Company, dated 5/25/10, signed by William F. Galvin, Secretary of the Commonwealth, affirmed 3/30/11
- Local Initiative Program Partnership Agreement, dated 12/17/07, including:

- Application
- Copy of April 8 letter to Marilyn Contreas
- Sustainable Development Principles
- Community Letter of Support
- Map of Wellesley
- Directions to Site
- Affordable Rental Figure (Calculation)
- Deed (Site Control)
- Appraisal Waiver Request, revised 12/1/10
- Cover Sheet for Drawings
- Site Plan Copies
- Drawings, Floor Plans
- Affirmative Marketing Plan
- Resident Selection Plan (Lottery)
- L.I.P. Partnership Agreement

- Development Prospectus, dated 7/30/10, revised 5/1/11
- Stormwater Report, dated 2/9/10, prepared by Connorstone Engineering
- Letter to Laurence D. Shind, Esq., dated 11/6/08, from Adam Bossi, Conservation Administrator, re: Wetlands Inquiry for Zoning Comprehensive Permit
- Requested Waivers from Local Bylaws and Regulations, revised 12/1/10
- Letter to Laurence Shind, dated 12/17/08, from Rock Perdoni, re: List of Projects Similar in Nature to Propose Work at 139 Linden Street
- Letter from Eastern Bank, dated 6/30/08
- Revised Section II of the Development Prospectus, submitted 12/2/10 & 6/10/11
- Amended and Restated Certificate of Organization, dated 11/12/10, filed 3/30/11
- Quitclaim Deed, dated 11/12/10, recorded 9/16/11
- Construction Management Plan, dated 12/1/10, revised 2/18/11 & 6/14/11
- Maintenance Agreement, dated 12/1/10
- Letter to Town of Wellesley, dated 11/2/10, from C&T Paint & Wallpaper Co., re: Product Hazards
- Letter to Eugenio Perdoni, dated 12/1/10, from JFG Electric LLC, re: Garage Vehicle Warning System
- Letter to Board of Selectmen, dated 10/27/10, from Laurence D. Shind, re: Extension of $40,000 Payment Requirement
- Letter to Toni Coyne Hall, Director, Local Initiative Program/DHCD, dated 11/22/10, from Katherine L. Babson, Jr.
- ZBA Decision, 98-61, Petition of Eugenio, Joseph and Renso Perdoni
- Letter to Anthony Cipriani, dated 6/8/98, from Arthur LaConte, Inspector of Buildings
- Letter to Renso Perdoni, dated 12/2/10, from J B Engineering, Inc., re: Fire Protection
- TD Bank Term Sheet, dated 9/15/10, 5/5/11
- Letter to Eugenio, Joseph & Renso Perdoni, dated 1/6/11, from Catherine Racer, Associate Director, DHCD, re: Request for Extension of Site Eligibility Letter

- Minutes – WHDC Board of Directors meeting – 1/19/11, re: Monitoring Agent
- Email from Hans Larsen, dated 9/15/11, re: extension of $40,000 payment to the Town to 9/30/12
- Email from Toni Coyne, DHCD, dated 9/28/11, re: extension of site approval to 10/3/12
- ASTM Screen/Limited Assessment, 139 Linden Street, IES Project #799-193, 5/4/99
- Revised Quitclaim Deed, to be executed upon issuance of Comprehensive Permit
- Letter to 139 Linden Street Realty Trust, dated 5/10/11, from Over C Properties, Inc., re: elevator
- Letter to Zoning Board of Appeals, dated 5/23/11, from Jonathan M. Cosco, Esq.
- Letter to Zoning Board of Appeals, dated 6/6/11, from Charles C. Crevo, Ph.D., P.E.
- Draft Regulatory Agreement, dated 2/2011
- Opinion Letter, dated 7/14/11, from Jonathan M. Cosco, Esq.
- Letter of Ventilation Plan, from Cashins & Associates, Inc.
- Letter to Kertzman & Weil, LLP, dated 10/7/11, from J B Engineering, Inc., re: sprinkler system
- Jepson v ZBA of Ipswich, 450 Mass. 81, 876 N.E. 2d 820 (2007)

Sheet No.	Title	Date	Prepared By	Revised
	Cover Sheet		Albert Costa, R.A., C3 Consulting Group	
A1	Perdoni Salon – Floor Plan	4/7/09	Albert Costa, R.A., C3 Consulting Group	11/27/10
A2	Perdoni Salon – Front Elevation - Existing	4/7/09	Albert Costa, R.A. C3 Consulting Group	11/27/10
A3	Perdoni Salon – Right Elevation – Existing	4/7/09	Albert Costa, R.A. C3 Consulting Group Revised by Charles Crevo	11/27/10 5/26/11
A4	Perdoni Salon – Left Elevation – Existing	4/7/09	Albert Costa, R.A. C3 Consulting Group	11/27/10
A5	Perdoni Salon – Rear Elevation – Existing	4/7/09	Albert Costa, R.A. C3 Consulting Group	11/27/10
A1	Perdoni 139R – Apartments – 1st Floor Plan	4/8/09	Albert Costa, R.A. C3 Consulting Group	11/27/10
A1-1	Perdoni 139R – Apartments – 1st Floor Layout	4/8/09	Albert Costa, R.A. C3 Consulting Group	
A2	Perdoni 139R – Apartments – 2nd Floor Plan	4/8/09	Albert Costa, R.A. C3 Consulting Group	11/27/10
A2-1	Perdoni 139R – Apartments – 2nd Floor Layout	4/8/09	Albert Costa, R.A., C3 Consulting Group	
A3	Perdoni 139R – Front Elevation – Existing	4/8/09	Albert Costa, R.A., C3 Consulting Group	11/27/10

A4	Perdoni 139R – Left Elevation – Existing	4/9/09	Albert Costa, R.A. C3 Consulting Group	11/27/10
A5	Perdoni 39R – Right Elevation – Existing	4/9/09	Albert Costa, R.A. C3 Consulting Group	11/16/10
A6	Perdoni 139R – Rear Elevation – Existing	4/9/09	Albert Costa, R.A., C3 Consulting Group	11/16/10
A7	Perdoni 139R – Parking Plan – Lower Level	12/10/10	Charles Crevo, P.E.	
	Title		Peter M. Ditto	11/29/10
1	Existing Conditions Plan	4/24/09	Peter M. Ditto, P.E.	6/15/09 & 11/29/10, 7/18/11, 9/23/11
2	Site Development Plan	4/29/09	Peter M. Ditto, P.E.	6/15/09, 11/29/10, 2/25/11, 6/14/11, 7/18/11, 9/23/11
3	Plot Plan	4/29/09	Peter M. Ditto, P.E.	6/15/09, 11/29/10, 7/18/11, 9/23/11
4	Grading & Drainage Plan	4/29/09	Peter M. Ditto, P.E.	6/15/09, 11/29/10, 7/18/11, 9/23/11
5	Utilities Site Plan	4/24/09	Peter M. Ditto, P.E.	6/15/09, 11/29/10, 7/18/11, 9/23/11
6	Landscaping Plan	4/29/09	Peter M. Ditto, P.E. Timothy Sheehan, L.A.	6/15/09, 7/1/09
C-2	Layout Plan	2/14/06	Rizzo Associates	3/20/06, 11/28/06, 3/2/07, 5/3/07
	Landscape Plan	11/29/10	Timothy Sheehan, L.A.	5/1/11, 6/13/11, 7/18/11, 9/23/11
A3	Parking Plan – Lower Level 139R Linden Street	5/26/11	Charles Crevo, P.E.	7/18/11
	Exterior Light Fixtures	5/4/11		
	CT Paint Store Exhaust System	5/10/11		

On September 22, 2010, the Conservation Administrator reviewed the project and determined that the proposed project is located outside of areas subject to the Massachusetts Wetlands Protection Act, MGL Chapter 131, Section 40 and/or the Town of Wellesley Wetlands Protection Bylaw, Article 44.

On September 28, 2010, the Planning Board reviewed the project and submitted recommendations.

On September 29, 2010, the Municipal Light Plant reviewed the project and stated that electrical infrastructure around the project's location appears not to be affected by any of the tasks needed to complete the project. It further stated that although electrical load information was not provided in the document, there is enough electrical capacity available for the remodeling and the type of expansion that will take place at the site.

On October 14, 2010, the Design Review Board reviewed the project and submitted recommendations.

On October 1, 2010, George Saraceno, Senior Civil Engineer, reviewed the project and submitted comments.

On October 5, 2010, the Captain Fitzpatrick, Fire Department, reviewed the project with the addition that the existing sprinkler system be extended into any new area. The fire department reserves the right for final approval at time of issuing permits with a complete set of building documents.

Findings

The Board finds that: (i) the Applicant is a limited liability company; (ii) the Applicant has site control; and (iii) that the Project is financed by a subsidizing agency under a qualified subsidy program.

After reviewing the evidence and extensive testimony, the Board, mindful of the Town's need for affordable housing, voted to approve the Comprehensive Permit, subject to conditions. The Board considered conditions it felt would best ameliorate the issues raised by the construction and operation of the Project, including concerns regarding health and safety of the occupants of the Project and of occupants of neighboring properties. The Board finds that the conditions as approved strike the appropriate balance between protecting health, safety, and welfare of the residents of the Town, the Project, and the abutters and encouraging the development of affordable housing in the Town outside the parameters of what local Wellesley bylaws would ordinarily permit.

Decision

The Board therefore on motion duly made and seconded hereby grants a Comprehensive Permit to the Applicant under the provisions of G.L. c. 40B §§ 20-23 for the redevelopment of the property to a mixed use by adding two new rental dwelling units on the second floor and attic space of the existing commercial building located at 139R Linden Street, and construction of 800 square feet in the basement of the existing building located at 139 Linden Street to be used as a beauty salon, substantially in accordance with the plans listed above, subject to and conditioned upon the following requirements

captioned "Conditions to the Comprehensive Permit." The Board further approves exceptions to the Zoning Bylaw as described below in the section entitled "Exceptions Granted."

The Board's approval of the Amended Comprehensive Permit for the Project is premised on the Applicant's and Project's compliance with the following conditions. All requirements imposed by these conditions or this Permit shall be applicable to the entity responsible for the administration of the Project regardless of whether the condition specifically identifies the Applicant or no entity as having responsibility for a particular condition.

CONDITIONS TO THE COMPREHENSIVE PERMIT

The Board's approval of the Comprehensive Permit for the Project is premised on the Applicant's and Project's compliance with the following conditions. All requirements imposed by these conditions or this Permit shall be applicable to the building owners and tenants or other entity responsible for the administration of the Project, regardless of whether the condition specifically identifies the Applicant or no entity as having responsibility for a particular condition.

General

(1) The Applicant submitted an application to the Board for the redevelopment of the Property into a mixed-use Chapter 40B project, by adding two new rental dwelling units (one of which would be affordable) in the building at 139R Linden Street, and adding a beauty salon to the basement of the building at 139 Linden Street, as shown in the plans listed in Section II of this Comprehensive Permit. The Project shall be comprised of no fewer than one unit designated as an affordable unit (the "Affordable Unit"), with the remainder of the units, one at 139R Linden Street and two at 139 Linden Street designated as market units (the "Market Units").

(2) The Project shall be built and maintained by the Applicant, which shall at all times be a limited dividend organization in good standing and otherwise in accordance with applicable requirements of Chapter 40B and the applicable standards of the DHCD. Except as provided in this paragraph, this Comprehensive Permit is not assignable (including the transfer of any legal or beneficial interest in the Applicant or the properties) without prior written consent of the Board. Notwithstanding the foregoing, the transfer of this Comprehensive Permit to the Applicant's construction lender (the "Lender") or to any acquirer pursuant to the mortgage granted to the Lender shall not be a prohibited assignment, provided that the Lender or such other acquirer delivers to the Board a written agreement to be bound by all of the provisions of this Comprehensive Permit. Any material change in the composition or control of Perdoni Brothers LLC shall be subject to approval by the Board.

(3) Except for the relief granted by the Board as listed in the section below entitled Exceptions Granted, the Applicant shall comply with all provisions of the Zoning Bylaw, general bylaws, and all the rules and regulations of the Planning Board and the Board of Health generally applicable to

a project. No fees are waived in connection with the Project. Fees shall be those then in effect at the time of application for the permit or approval subject to the fee.

(4) The Applicant shall execute or cause to be executed: (i) a Monitoring Agreement; and (ii) a Regulatory Agreement (collectively, the "Project Agreements"). The Project Agreements shall be consistent with the requirements and conditions of this Comprehensive Permit. Prior to execution, each of the Project Agreements shall be approved by Town Counsel and the Board. The requirements of the Project Agreements are incorporated into this Comprehensive Permit by reference. All documents required to be filed under this Permit shall be submitted to Town Counsel and this Board prior to execution for review to ensure consistency with the conditions contained herein

(5) The Regulatory Agreement shall be in the form required by DHCD. The Regulatory Agreement shall be recorded with the Norfolk County Registry of Deeds, and a copy of the recorded document shall be submitted to the Board.

(6) This Comprehensive Permit shall not be effective until it and the plans sheets dated July 18, 2011, (revised Sept. 23, 2011) are recorded with the Norfolk County Registry of Deeds, a certified copy of which shall be provided to the Board in the chain of title of the Property and shall not be subject to any mortgages, liens or other matters of record superior in title thereto which could jeopardize or adversely affect the provisions therein. This Comprehensive Permit shall expire two years from the date hereof unless prior to that time a building permit has issued for the Project and construction has commenced. The Applicant may apply to the Board for reasonable extensions to this Comprehensive Permit for good cause.

(7) Compliance with all terms and conditions contained in the LIP Partnership Agreement with Selectmen dated 12/17/07 is required. Copies of all plans and written material required under this Agreement and the LIP Agreement shall be submitted to the Board. In any case where the terms of this Comprehensive Permit Decision and the LIP Partnership Agreement differ, the terms of this Comprehensive Permit shall govern. A copy of the LIP Agreement is attached hereto as an Exhibit.

Affordability

(8) Without limiting the rights of the Applicant granted under this Comprehensive Permit, the Affordable and Market Units allowed under this Comprehensive Permit shall count toward the Town's quota of affordable housing units pursuant to M.G.L. Chapter 40B, Sections 20-22. However, in the event that a third party State agency or other interested party takes the position that only the Affordable Unit should so qualify, and should such a position prevail in a decision rendered by a court of final jurisdiction, such decision shall not affect the validity of this Comprehensive Permit.

(9) The Applicant in conjunction with the Monitoring Agent shall establish the rental price for the Affordable Unit. The Affordable Unit shall be made available at a rental price that is affordable to households earning not more than 80% of the household median income of the Boston Primary Metropolitan Statistical Area (as defined by HUD on an annual basis) adjusted for household size which is based on one person per bedroom for the Affordable Unit, all as more particularly described in the Regulatory Agreement described in Condition 5

(10) Prior to the advertisement of the Affordable Unit for rent, the Applicant shall develop a marketing and resident selection plan for the Affordable Unit, and submit such plan to the WHDC for review and approval. The marketing and resident selection plan shall conform to: (i) all affirmative action requirements or other requirements imposed by federal or state regulation; (ii) the "Guidelines for Housing Programs in Which Funding is Provided Through a Non-Governmental Entity" adopted by the DHCD; and (iii) the local preference requirements set forth below. The marketing and resident selection plan shall require timely notice to the Board and to the WHDC of the availability for rent of the Affordable Unit.

(11) The Local preference Criteria set forth in the LIP Agreement shall govern.

(12) The affordable unit(s) shall be made subject to a perpetual affordable housing restriction, enforceable by the Town of Wellesley, and meeting the requirements of M.G.L. Ch. 184, §§31 and 32, which shall restrict occupancy to households of Low or Moderate Income as the term is defined in M.G.L. Ch. 40B ("Affordable Housing Restriction"). Prior to making application for an occupancy permit for the dwelling, Petitioner shall execute such an Affordable Housing Restriction, in a form approved by DHCD and the Board, and shall provide the Board with evidence of the recording of the executed Affordable Housing Restriction at the Norfolk County Registry of Deeds. The Affordable Housing Restriction shall provide that affordability shall continue in perpetuity, or for the longest period allowed by law, and shall survive foreclosure.

(13) The Monitoring Agent shall be responsible for (a) annual monitoring and certification to DHCD and the Town of Wellesley that the tenants in the affordable dwelling meet the applicable income limits and that the Development Project has been maintained in a safe and sanitary condition, consistent with the LIP Guidelines and the recorded Regulatory Agreement; (b) review of the Project's Certified Cost and Income Statement prepared once the Project has received its certificate of occupancy; and (c) annual review of the Development Project's Certified Income and Expense Statement, to determine if any excess profits have been earned and are owed to the Town. The Petitioner shall cooperate with the Monitoring Agent in regard to its execution of these responsibilities.

(14) All cost certifications and reporting and requirements shall be prepared in conformance with DHCD's regulations and guidelines, and copies of the same are to be filed with this Board and the Board of Selectmen in a timely manner. All final certification documents must be filed with the Board no later than six months after occupancy of the dwelling.

(15) The Petitioner shall not take any action, or fail to take action, such that the Development Project would be brought out of compliance with M.G.L. Ch.40B, this Comprehensive Permit, or the applicable DHCD LIP Regulations and Guidelines.

Design

(16) Design and construction of the Project shall fully comply with all applicable federal and state laws and regulations, including, but not limited to, the Massachusetts State Building Code (CMR 780), and with the regulations of the Department of Public Works with respect to a Water Supply Protection District. This Project shall be designed and constructed on the Site in accordance with the Plans, except as provided in the Comprehensive Permit, including the Conditions. Any requirement of consistency with the Plans means as those Plans are modified by the Conditions.

(17) A two-bedroom dwelling unit and a three-bedroom dwelling unit shall be constructed in the building at 139R Linden Street identified in the Plans. The unit types, sizes and mix of units will be in accordance with the Plans. Construction of all dwelling units, commercial space, utilities, pedestrian and vehicle areas, drainage structures and all related appurtenances shall be in accordance with the Plans. The exterior and interior appearance and fixtures of the Affordable Unit shall be indistinguishable from the Market Units. The location of the Affordable Unit shall be as shown on Sheets A-1 and A-2 of the Tenant Fit-Up Construction Plans, with the three-bedroom unit, Apartment B, comprising the Affordable Unit.

(18) Contract documents, including working drawings and specifications for any building renovations, modifications, additions, or removals shall undergo the usual and customary review and approvals of the Building Inspector, the Board of Health, the Fire Chief, the Town Engineer, or any other applicable local inspector or board. In addition, to assure that contract documents are consistent with the preliminary plans submitted in support of this Comprehensive Permit, concurrent with the application for a building permit, the Applicant shall submit contract documents to the Building Inspector for approval. Construction of the Project shall be subject to on-site compliance inspections by the Building Department in the customary manner.

(19) Ventilation of the first-floor commercial spaces in both the 139 and 139R Linden Street buildings shall be in accordance with the ventilation system design recommendations contained in the report from Cashins & Associates, Inc., submitted to Board on July 14, 2011. The exhaust stack shall be 10 feet above the building roof, and sufficiently separated from windows and air intakes for the residential units at 139 and 139R Linden so as not to cause odors in the residential units. The active ventilation system for both commercial spaces shall maintain a negative pressure of at least 0.02 inches H2O at all times in the commercial spaces relative to the residential spaces. This shall be accomplished by providing at least 330 cubic feet per minute (cfm) of fresh outside air to the Beauty Salon, and exhausting a higher volume than the intake; and by providing at least 335 cfm of fresh outside air to C&T Paint, and exhausting a higher volume.

(20) Ventilation of the Beauty Salon in the 139 Linden Street building shall be in accordance with the ventilation system design recommendations contained in the report from Cashins & Associates, Inc., submitted to the Board on July 14, 2011.

(21) Sound insulation for the Beauty Salon in the 139 Linden Street building shall be at least STC 60.

(22) Landscaping shall be in conformance with the Landscaping Plan prepared by Tim Sheehan Landscape Architecture, dated July 18, 2011, (revised September 23, 2011) and shall be maintained, repaired, or replaced as needed by Perdoni Brothers LLC.

(23) The exterior lighting design shall be in conformance with the Exterior Light Fixtures Plan, dated May 4, 2011, and shall prevent any light spillover to abutting residential properties. Exterior lighting associated with commercial uses shall be on only during normal business hours, and off at all other times. (Exterior Security lighting is exempted from time limitations.)

(24) All project construction documents must be coordinated to match prior to issuance of any building permit.

(25) The following conditions and revisions are required to be made to the plans sheets dated September 23, 2011, prior to registering the Comprehensive Permit with the Norfolk County Registry of Deeds (see Condition 6). The revised plans must be show "revised" dates.

a) Site Development Plan, Sheets 2,3,4,5:

- Applicant will use best efforts to have Verizon utility pole, at south side of 139 Linden Street building at AC units, removed, and to have telephone lines and other wire services placed in the existing and available underground conduits.
- Applicant will use best efforts to work with Town of Wellesley to continue concrete sidewalk and granite curbing across 139 Linden driveways. Applicant will also work with neighbor on north side to reduce the height of the pier at the driveway exit to no more than three feet.

b) Site Development Plan, Sheets 2,3,4,and 5; AND Planting Plan prepared by Tim Sheehan, July 18, 2011, revised September 23, 2011:

- Add low plantings at West side of the exit that shall not obscure view lines of exiting Eastbound traffic on Linden Street.
- Applicant will work with owner of 141 Linden Street to resolve (remove and replace) the existing brick/concrete pier with a new brick pier to match the similar piers at 141 Linden street. The new pier shall be located entirely on 141 Linden Street and shall be limited in height so as to not obscure view lines of West bound traffic on Linden Street.

Fire Protection

(26) The Applicant shall design and install a fire detection and fire protection system meeting the requirements of the Massachusetts Building Code in 139R Linden Street. The Applicant shall also install carbon monoxide detectors in both 139 and 139R Linden Street buildings.

(27) The fire detection system shall have visual indicators of a fire alarm condition in each unit sufficient to warn occupants without the ability to hear of a fire alarm.

(28) The fire detection system shall be connected to a third-party monitoring service, the costs of which shall be paid by Perdoni Brothers LLC. Perdoni Brothers LLC shall retain a qualified entity to make a yearly inspection of the fire and carbon monoxide detection and protection systems and shall make a yearly certification to the fire department that the fire and carbon monoxide detection and protection system is fully functional and continues to be connected to a third-party monitoring service.

(29) The 139 Linden Street Building shall have a two-hour rated construction fire barrier separation between the Beauty Salon and residential uses, as described in the JB Engineering Letter, dated October 7, 2011.

Stormwater Run-Off and Drainage

(30) Snow shall not be stockpiled on the site, and shall not be plowed or stockpiled onto abutting properties.

(31) The Applicant retains responsibility for any required remediation of site contamination.

Traffic and Parking

(32) During the post-construction period, all parking for residents, guests, and customers of the Beauty Salon and C&T Paint shall be within the spaces provided on the Property. Parking in the garage of 139R Linden shall be reserved primarily for residents, per parking plan by C3 Consulting, dated July 18, 2011. At least one parking space must be provided for each unit in this garage. Remaining spaces may be used by employees. Any additional employee parking shall be provided in off-site spaces in the Town's Tailby Lot, in accordance with the LIP Agreement with the Board of Selectmen. The Project shall include 22 parking spaces in accordance with the Plans and sketches submitted, and the final Plans shall have two parking spaces large enough to be classified as handicapped spaces.

(33) The surface parking layout and pedestrian walkway design shall be as shown in the Site Development Plan by Peter Ditto, dated July 18, 2011, revised September 23, 2011.

(34) The garage vehicle warning system described in the letter from JFG Electric LLC, dated December 1, 2010, shall be installed in the garage in the building at 139R Linden Street.

(35) The residential and business lease documents shall include a provision that no vehicle shall park along Linden Street, except in designated parking areas.

Signage

(36) The current C&T Paint Store identification sign shall be moved to be over the entrance to the Paint Store. The Beauty Salon shall be limited to one canopy sign that conforms with the Sign Bylaw.

(37) The Applicant may display a temporary marketing sign stating appropriate marketing information. The temporary sign shall be displayed for no longer than one year, which term shall be renewable at the Board's discretion. The temporary sign shall be made of high-quality materials and be consistent with the neighborhood.

Construction

(38) Construction Management shall be per Construction Management Plan by Peter Ditto revised June 14, 2011.

(39) Construction contractor shall post contact information for residents to call with noise complaints or questions during the construction period.

(40) During the period of construction, no vehicles of construction workers and no construction equipment shall be parked on Linden Street, or any other public way of the Town.

(41) During the period of construction, all deliveries of construction materials and equipment shall be made only on Monday through Friday no earlier than 7:00 a.m. and no later than 5:00 p.m. Construction operations shall be limited to the hours of 7:00 a.m. through 5:00 p.m. Monday through Friday. Except for emergency conditions, no construction work shall be allowed on Saturdays or Sundays.

(42) During construction the Property shall be secured in a manner approved by the Building Inspector so as to prevent personal injury or property damage.

(43) During the construction period, between May 1st and September 30th, no construction activity shall create any areas of standing water that could become potential mosquito breeding areas.

(44) During construction, any mobile food vendors/trucks that service this Property must be permitted by the Wellesley Health Department.

(45) The Applicant shall provide as-built plans of the Project to the Board and the Building Inspector as soon as practicable after completion of construction, but before the issuance of a certificate of occupancy.

Rental Restrictions

(46) The residential unit leases shall apply to the entire unit and not a portion thereof.

(47) The owner shall enter into a lease with each tenant for a minimum term of one (1) year. The lease shall provide that the tenant shall not be evicted for any reason other than a substantial violation of a material provision of the lease. The lease shall be subject to approval by the Local Project Administrator and should include the following:

- Tenant shall be given a minimum of 60 days' written notice that a lease will not be renewed.
- Tenant shall furnish annual information sufficient to determine and document continued compliance with income eligibility requirements.
- Tenant shall furnish the names and the number of people in the household and their relationship to one another annually and whenever a change of household occurs.

(48) The occupancy of any rental unit shall be for not more than the number of unrelated persons as provided in the Wellesley Zoning Bylaw or three (3) persons, whichever is less.

(49) Sub-leasing or assigning of the Affordable Unit is prohibited.

Miscellaneous

(50) With the consent of the Applicant, the Beauty Salon in the building at 139 Linden Street shall be a permitted use in the residential zoned district, only as long as the business is personally owned, managed and operated by Eugenio Perdoni or one of his children, or when the 20-year period expires (whichever occurs first), the Salon space shall be converted to an affordable residential unit and otherwise subject to the terms and conditions of this Permit. In the event Wellesley Town Meeting rezones the 139 Linden Street Parcel to commercial zone, this condition shall become moot, as commercial use of 139 Linden Street would be by right.

(51) Any change in the commercial tenant at 139R Linden Street (currently C&T Paint) must be approved in advance by the Board of Selectmen.

(52) The Applicant agrees to (1) limit his financial return to the payment of development fees from the initial construction of the Project which is limited to a reasonable percentage (to be set forth in the Regulatory Agreement) relative to the total development costs and commencing upon the Project's initial occupancy, distributions from operations in an amount not to exceed a reasonable return (to be set forth in the Regulatory Agreement) relative to the Developer's equity in the Project; and (2) to remit all “profit” in excess of the developers fee and distributions from operations to the Town. To monitor these obligations, prior to receiving its building permit, the Applicant shall file with the Board for its approval a pro forma showing the expected total development rentals, development costs (including developers fee) and resultant profit. Prior to receiving its first Certificate of Occupancy, the Applicant shall file with the Board and Wellesley Housing Development Corporation ("WHDC") for their approval a final, but not yet audited budget

showing the expected total rentals, the actual development costs (including developer's fee) and the expected profit. Upon the rental of the last unit to be rented, and an audit of the project's financials shall be conducted by DHCD, or failing DHCD to conduct such audit, an audit by a firm designated by the WHDC. All profit in excess of the developers fee and permitted distributions for operations profit shall be paid to the Town. The Town shall hold, manage and disburse all payments received by it under this provision in a separate account, dedicated to establishing affordable housing in the Town, under the jurisdiction of the Board of Selectmen or its appointees for said purpose, to be expended in consultation with the WHDC in order to fulfill its goals.

(53) This permit is subject to the grant to the Applicant of the Subsidy from the Subsidy Agency.

(54) Any conveyance of the Property shall incorporate by reference the terms and conditions of this Permit

WAIVERS GRANTED

The Board grants the following waivers to the Zoning Bylaw in accordance with the conditions of this Permit.

Zoning Bylaws

a.	Section XIIID.	Floor Area Ratio waiver.
b.	Section XVIA.	Requirement for Project Approval.
c.	Section XVIC.	Requirement for Drainage Review.
d.	Section XVII.B.2.	Requirement for a Special Permit/Findings for changes to non-conforming structures (one and two family dwellings and other than one and two family dwellings).
e.	Section XIX.B.	Requirement for not more than one dwelling unit on any lot; requirements for front, side and rear-yard setbacks.
f.	Section XXI.D.	Specific regulations and restrictions for off-site parking.
g.	Section XXI.E.	Requirement for administrative review of parking plan by Building Inspector.
h.	Section XXII.	Design Review requirements.
Special Permit		Waiver/revision of Conditions 2, 3, and 4 of Special Permit granted December 5, 1996 (ZBA 96-81) relating to non-conforming structure located at 139 Linden Street.

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

Cynthia S. Hibbard, Acting Chairman

Robert W. Levy

David G. Sheffield

cc: Planning Board
Inspector of Buildings
lrm

TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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DAVID G. SHEFFIELD

LENORE R. MAHONEY
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ZBA 2010-77 - Modified
Petition of Perdoni Brothers, LLC
139 & 139R Linden Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, February 7, 2013, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of PERDONI BROTHERS, LLC, requesting modification of a Comprehensive Permit pursuant to the provisions of MGL Chapter 40B, Sections 20-23 for changes to the exit staircase on the west side of the building, changes to the stairway on the east side of the building, addition of windows along the rear corridor, changes to the stairs between floors of the residential units, and correction of the second bedroom in Unit A, at 139R LINDEN STREET, in an Industrial District. The Petitioner is requesting approval to allow Eugenio's Salon to open for business at 139 LINDEN STREET prior to the occupancy date of the new residential units.

On January 23, 2013, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Laurence Shind, Esq. Also present were Constantine Cacos, Architect, Eugenio and Joe Perdoni, (the "Petitioner"), and Peter Ditto, Project Engineer.

Mr. Shind said that the request is to modify a previously issued Comprehensive Permit. He said that there are a couple of architectural changes that they are looking to make to the rear building at 139R Linden Street, which will house two residential units, one of which will be affordable. He said that another issue that is part of the request is for the Board's approval to adjust the timing of occupancy of the residential units and the beauty salon.

Mr. Shind said that, in response to the Board's questions about the plans, they have brought revised architectural plans, prepared by Mr. Cacos. He said that, in addition, there are a couple of changes to the Site Plan that Mr. Ditto will address. He said that Tim Sheehan, Landscape Architect, has made changes that are in line with the architectural changes. He said that the hope is that, if the Board is inclined to otherwise approve the changes, they will follow up with the required changes to the plans.

Mr. Shind said that Mr. Cacos was hired as the review Architect for the project. He said that Mr. Cacos will also act as Project Manager. He said that, as part of his review of the plans and after discussion with the Building Inspector, it was determined that the second means of egress stairway on the west end of the 139R building on the exterior had to move into the interior because of the residential component of the building. He said that Building Code required that the second means of egress be enclosed. He said that is shown on the revised Architectural Plans.

Mr. Shind said that it was determined that it made sense to have the enclosed stairway continue down to the garage level. He said that, in making that change, the existing stairway on the east side of the 139R building was cut off at ground level. He said that it was easier to get at the garage on the other side.

Mr. Shind said that the corridor along the first floor of the residential units always had the issue of having enough light. He said that it had been previously handled by the addition of skylights. He said that Mr. Cacos thought that putting windows on the back side would be a better treatment to get more light and would be more user friendly for the residents.

Mr. Shind said that, looking at the building from an engineering standpoint, the interior stairway between the floors of the units on the original design did not fit with the construction of the building. He said that Mr. Cacos moved those stairs and turned them into circular stairs.

Mr. Shind said that in Unit A the second bedroom was not accurately depicted in the original plans. He said that the plans have been revised to show it correctly.

Mr. Shind said that Eugenio Perdoni would like to be able to start construction on the salon prior to starting construction on the rear residential units. He said that the salon design is pretty straight forward. He said that the changes to the rear units will cause delays. He said that the current salon lease has run out. He said that he is a tenant at will. He said that Mr. Perdoni is trying to preserve the business and try to get over to the new salon space as soon as possible. He said that Mr. Perdoni is willing to provide any additional security to ensure that the rest of project will move along as quickly as possible. He said that they were informed by the Building Inspector that a Building Permit could not be issued to work on the salon first unless the Zoning Board authorizes it.

Mr. Cacos said that what disturbed him when he was brought on board the project was the trip up to the units and the long dark hallway. He said that the first thing that he set out to do was to introduce the windows along the back. He said that he thought that instead of having a roundabout dark stairway, it would be better to put it on the other end and bring it down to the garage. He said that he spoke with the Building Inspectors to see if they would be okay with the changes. He said that they told him that the changes would meet Code if the hallway was sprinklered and the windows were fire rated. He said that the building is located at the property line

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Mr. Cacos said that the enclosed stairway will have windows and will be nicely lit.

Mr. Cacos said that having the windows at the back and the stairs relocated allows additional glazing that will allow for more light into the units.

Mr. Cacos said that the knee walls in Unit A on the original plans were not in place. He said that the revised plan is accurate.

Mr. Cacos said that the original location of the stairs would not provide adequate headroom because of the sloped portion of the roof. He said that the steel joists that are two feet in depth run from bearing wall to bearing wall. He said that, in order to create stairs going up as shown on the original plans, they would have to cut every joist and create a new bearing wall. He said that what had already been framed in was a

78 foot by 78 foot square that appears to have been intended for some sort of stairway. He said that it made sense to put in spiral staircases because of the existing framing. He said that the spiral staircases made room for closets and freed up bedroom space.

Mr. Cacos said that putting in sloped windows in the front and the back instead of skylights will allow for ventilation and can be seen through.

Mr. Cacos said that Mr. Sheehan revised the Site Plan to create additional brick paving to the new opening into the stairway and some additional vegetation and a fence around the dumpster enclosure.

Mr. Cacos said that he took Mr. Ditto's original plans and cut and pasted them to put them in a smaller format. He said that he changed what had been the open stairway to an enclosed stairway. He said that was the only change to Mr. Ditto's plans. He said that the enclosed stairway structure adds 21 square feet to the building, which is an increase of 1/10 of 1 percent in lot coverage.

Mr. Cacos said that the unit sizes will not be changing.

Mr. Cacos said that it is approximately 1.5 feet from the property line to the back wall. The Board said that under Building Code they would not be allowed to have any openings in that back wall. Mr. Cacos said that he spoke with the Building Inspectors and was told that as long as there are fire rated windows and sprinklers, the Code would allow it. The Board said that the Building Code says that with three feet or less, no openings are permitted.

The Board said that now the plan is to have extra windows going in. The Board said that there is some glazing available that is actually designed and tested as a wall system. The Board said that is different than a rated window. The Board said that rated windows are tested differently from rated walls.

The Board said that it was concerned about the windows in the stairs. The Board said that stair enclosures are supposed to be enclosed. The Board said that there are not supposed to be windows on egress stairs. The Board said that is also a Building Code issue.

The Board said that it was troubled with the fact that the original plan was prepared and could not be constructed. The Board said that the project has been ongoing for five or six years.

The Board asked if Mr. Cacos had considered the difficulty of moving furniture up and down spiral staircases, even with the generous six foot diameter. Mr. Cacos said that the structural implications for installing a straight run stair are huge. He questioned if they could get adequate beams in there. He said that the load would have to be transferred from the joists. He said that he could not figure out how to get the length of steel in there to do the work.

The Board asked if Mr. Cacos had tried to have a try straight run stair running perpendicular to the original location. Mr. Cacos said that he did and it seemed to have major implications, especially as you came up to the rooms and how you would navigate to get to them. He said that the circular stairs are less than ideal but they take up less space. He said that they worked best because of the framing. He said that the Building Code does allow them.

The Board said that having the stair at the west end does enhance the property. The Board said that it is a better solution.

The Board said that it was concerned about the request for early occupancy in the hair salon. The Board said that it was concerned about site circulation and the safety of having salon open while the rest of property is under construction, even though most of the construction will be interior. The Board asked about having the site work accomplished first. The Board said that, with the exception of the exterior stairway, the rest of the work would be confined to the interior and the customers for Eugenio's and the Paint Store would have a better experience and would be safer.

The Board said that this is a LIP project that was endorsed by the Selectmen. The Board said that it has been ongoing for several years. The Board said that it was disconcerting that, after several meeting, the Board is getting plans that do not work five years later. The Board said that the intent of LIP and 40B is to create affordable housing not to create the hair salon. The Board asked what assurance could be given that the affordable and other residential units will be completed. The Board said that under Chapter 40B, the Board is giving substantial relief for the project. The Board said that the Comprehensive Permit was issued two years ago and no work has been done. Mr. Shind said general economic conditions have lead to the delay.

Mr. Shind said that issuing a temporary Certificate of Occupancy (CO) for the salon would probably make the most sense to ensure that the work will be done on the residential units. The Board said that, if the affordable unit is not done by a certain date, the temporary CO will expire. The Board said that the Zoning Enforcement Officer would enforce that.

Mr. Shind said that the salon plans are ready to go. Mr. Cacos said that the construction documents have already been submitted to the Building Department. He said that they anticipate construction to start when the Building Permit issues.

The Board asked when the Applicant anticipated pulling a permit for the residential units. Mr. Cacos said that it is in progress. He said that Mr. Costa submitted a Chapter 34 Report to the Building Department. He said that the drawings are set to go. He said that they are hoping to get a Building Permit within the next three weeks and start construction. He said that will the residential units will take longer to complete than the hair salon.

Mr. Cacos said that work on the hair salon can start immediately, weather permitting. He said that the plantings may have to be delayed. The Board confirmed that striping and curbing will be complete so that customers can be safe on the property. The Board said that, given the timing of the project, the planting could follow closely.

The Board discussed having a condition that it must be four months from CO for the hair salon to CO for the residential units, and that the temporary CO for the salon will expire unless the CO's have issued for the residential units.

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Dennis Dischino, 37 Linden Street said that the addition of the windows is an improvement. He said that it will be good to see the project finished. He said that having retail on the first floor and residential units on the second floor balances out the project. He said that if the Board does impose a four month deadline

for completion of the residential units, as long the project is substantially underway, the Perdoni's should have the right to extend it for an additional 60 days without having to come back before the Board.

The Board asked if the Perdoni's could provide any other security than a temporary CO. Mr. Shind said that the only other thing that they had considered was money. He said that they did not really think that this was a money issue but more of a performance issue.

The Board said that it would like to see that the work is being pursued diligently and continuously.

The Board confirmed that the signage shown on the Landscape Plan is what was shown on the previously approved plan and is not subject to approval with the petition to modify the Comprehensive Permit. Mr. Cacos said that the only change that he made to the original plans was the enclosed stairway.

The Board said that the Building Department may issue a Building Permit for 139 Linden Street, the Site Work, and the enclosed stair of 139R Linden Street, prior to issuing a Building Permit for 139R Linden Street.

Submittals from the Applicant

Request for Modification to Comprehensive Permit, 139-139R Linden Street, ZBA File No. 2010-77 (the "Project"), dated January 16, 2013, from Laurence D. Shind, Esq.
Application for modification to Comprehensive Permit, dated January 15, 2013
Revisions to Zoning Board Plans, dated December 12, 2013, from Constantine Cacos, Architect

Sheet No.	Title	Date	Prepared By	Revised
	Title Sheet	12/12/12	Constantine Cacos, R.A.	
1	Lower Level Floor Plan	12/12/12	Constantine Cacos, R.A.	
2	Upper Level Floor Plan	12/12/12	Constantine Cacos, R.A.	2/4/13
3	Garage Level Plan	12/12/12	Constantine Cacos, R.A.	
4	Rear Elevation	12/12/12	Constantine Cacos, R.A.	2/4/13
5	Stairway Elevation & Plan	12/12/12	Constantine Cacos, R.A.	
6	Front Elevation	12/12/12	Constantine Cacos, R.A.	2/4/13
7	Existing Left Elevation	12/12/12	Constantine Cacos, R.A.	
	Title Sheet	12/12/12	Constantine Cacos, R.A.	
1	Existing Conditions Plan	12/12/12	Constantine Cacos, R.A.	
2	Site Development Plan	12/12/12	Constantine Cacos, R.A.	
3	Plot Plan	12/12/12	Constantine Cacos, R.A.	
4	Grading & Drainage Plan	12/12/12	Constantine Cacos, R.A.	
5	Utilities Plan	12/12/12	Constantine Cacos, R.A.	
	Landscape Plan	2/7/13	Tim Sheehan, Landscape Architect	

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On February 6, 2013, the Planning Board reviewed the project and submitted recommendations.

On January 24, 2013, Deputy Fitzpatrick, Fire Department, reviewed and approved the project with the first review request for the sprinkler system to be extended into all new areas.

Findings

The Board finds that: (i) the Applicant is a limited liability company; (ii) the Applicant has site control; and (iii) that the Project is financed by a subsidizing agency under a qualified subsidy program.

After reviewing the evidence and extensive testimony, the Board, mindful of the Town's need for affordable housing, voted to approve modification of the Comprehensive Permit, subject to conditions. The Board considered conditions it felt would best ameliorate the issues raised by the construction and operation of the Project, including concerns regarding health and safety of the occupants of the Project and of occupants of neighboring properties. The Board finds that the conditions as approved strike the appropriate balance between protecting health, safety, and welfare of the residents of the Town, the Project, and the abutters and encouraging the development of affordable housing in the Town outside the parameters of what local Wellesley bylaws would ordinarily permit.

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Decision

The Board therefore on motion duly made and seconded hereby grants modification of the Comprehensive Permit to the Applicant under the provisions of G.L. c. 40B §§ 20-23 for the redevelopment of the property to a mixed use by adding two new rental dwelling units on the second floor and attic space of the existing commercial building located at 139R Linden Street, and construction of 800 square feet in the basement of the existing building located at 139 Linden Street to be used as a beauty salon, substantially in accordance with the plans listed above, subject to and conditioned upon the following requirements captioned "Conditions to the Comprehensive Permit."

The Board, on motion duly made and seconded hereby grants modification of the Comprehensive Permit to allow the Building Department to issue a Building Permit for the salon at 139 Linden Street, and the Site Work, and a Building Permit for the enclosed stair at 139R Linden Street, prior to issuing a Building Permit for the two residential units at 139R Linden Street.

The Board's approval of the Amended Comprehensive Permit for the Project is premised on the Applicant's and Project's compliance with the following conditions. All requirements imposed by these conditions or this Permit shall be applicable to the entity responsible for the administration of the Project regardless of whether the condition specifically identifies the Applicant or no entity as having responsibility for a particular condition.

CONDITIONS TO THE AMENDED COMPREHENSIVE PERMIT

1. Prior to a Certificate of Occupancy for the hair salon, all site work shall be completed, including construction of the new stairway on the southwest side of 139R Linden Street and a Building Permit has issued for the residential units at 139R Linden Street.

2. The Applicant shall continuously and diligently pursue the Building Permit and construction of the residential units at 139R Linden Street.

3. The Certificate of Occupancy for the hair salon shall be temporary and shall expire five months from its issuance unless the Certificates of Occupancy for the residential units at 139R Linden Street have been issued.

4. These conditions are in addition to the previously approved conditions for the Comprehensive Permit that was granted on November 22, 2011.

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ZBA 2010-77 - Modified
Petition of Perdoni Brothers, LLC
139 & 139R Linden Street

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APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

David G. Sheffield, Acting Chairman

Robert W. Levy

Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm

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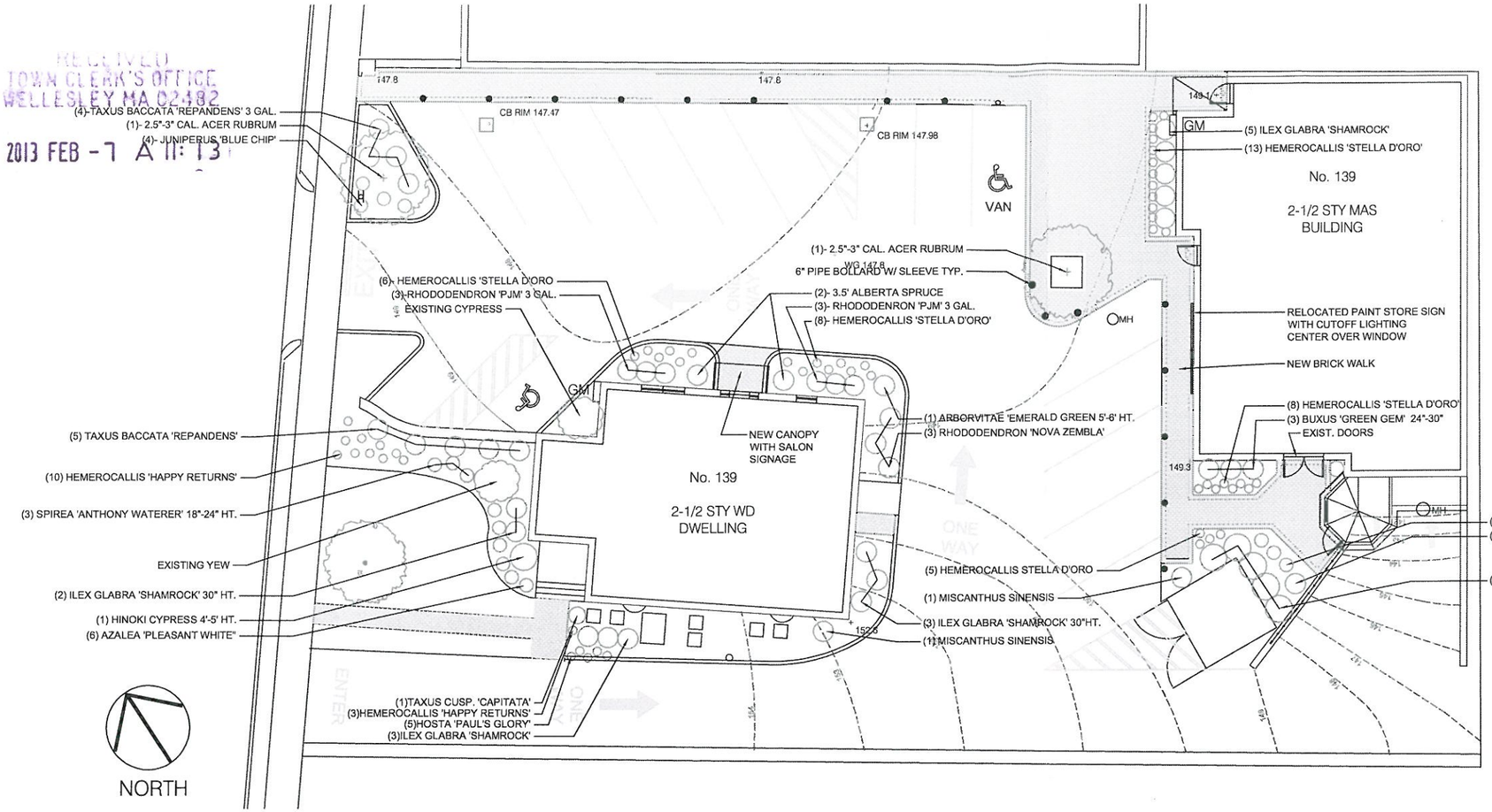


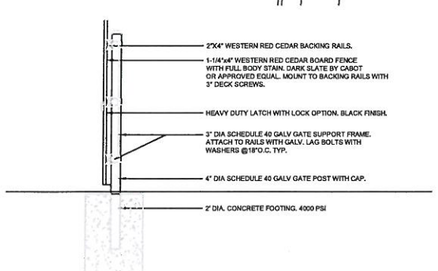
LEGEND

- Existing Tree
- Proposed Tree
- Existing Shrub
- Proposed Shrub

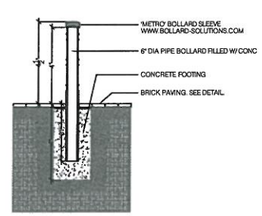
PLANT LIST

139 Linden Street, Wellesley, MA
Plant List

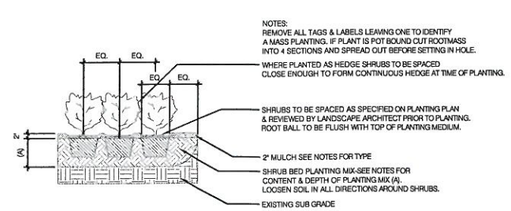
QTY	Scientific	Common	Size
TREES			
3	Acer rubrum	Red Maple	2.5"-3"
1	Chamaecyparis obtusa 'Gracilis Compacta'	Hinoki Falsacypress	4'-5'
5	Thuja occidentalis 'Emerald Green'	Emerald Green Arborvitae	7'-8'
1	Thuja occidentalis 'Emerald Green'	Emerald Green Arborvitae	5'-6'
2	Picea glauca 'Conica'	Dwarf Alberta Spruce	3' ht.
SHRUBS			
6	Azalea spp 'Girards Pleasant White'	White Evergreen Azalea	15"-18"
3	Buxus spp Green Gem	Green Gem Boxwood	2.5-3'
2	Ilex glabra 'Shamrock'	Shamrock Dwarf Inkberry	30" ht.
4	Juniperus 'Blue Chip'	Blue Chip Juniper	2 gal.
5	Rhododendron 'PJM'	PJM Rhododendron	3 gal.
4	Rhododendron 'Nova Zembla'	Nova Zembla Rhododendron	3' B&B
4	Spirea bumalda 'Anthony Waterer'	Anthony Waterer Spirea	2 gal.
9	Taxus baccata 'Repandens'	Weeping Yew	18"-24"
1	Taxus cuspidata 'capitata'	Upright Yew	3' ht.
Perennials			
2	Miscanthus sinensis gracillimus	Maidenhair Grass	3 gal
4	Sedum 'Autumn Joy'	Autumn Joy Sedum	8" pots



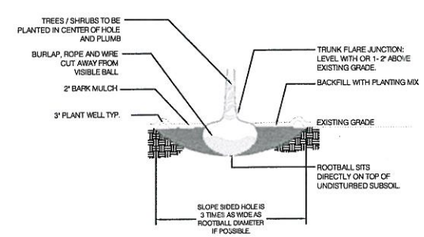
DUMPSTER FENCE GATE



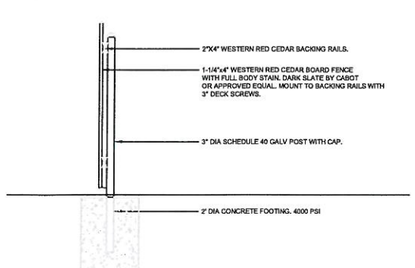
BOLLARD



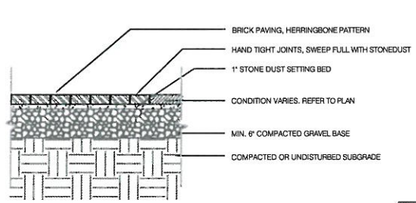
SHRUB PLANTING



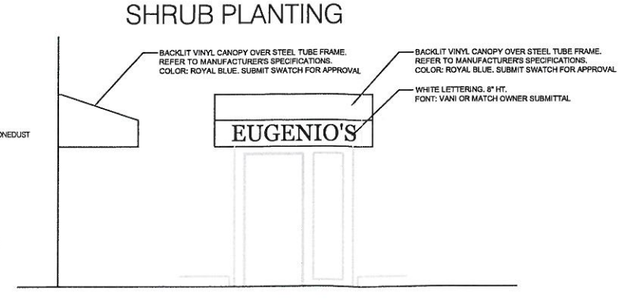
TREE PLANTING



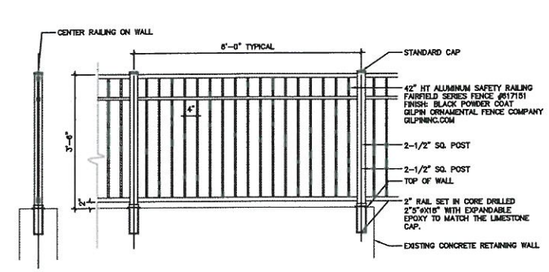
DUMPSTER ENCLOSURE FENCE



BRICK PAVING



CANOPY WITH SIGNAGE AT SALON

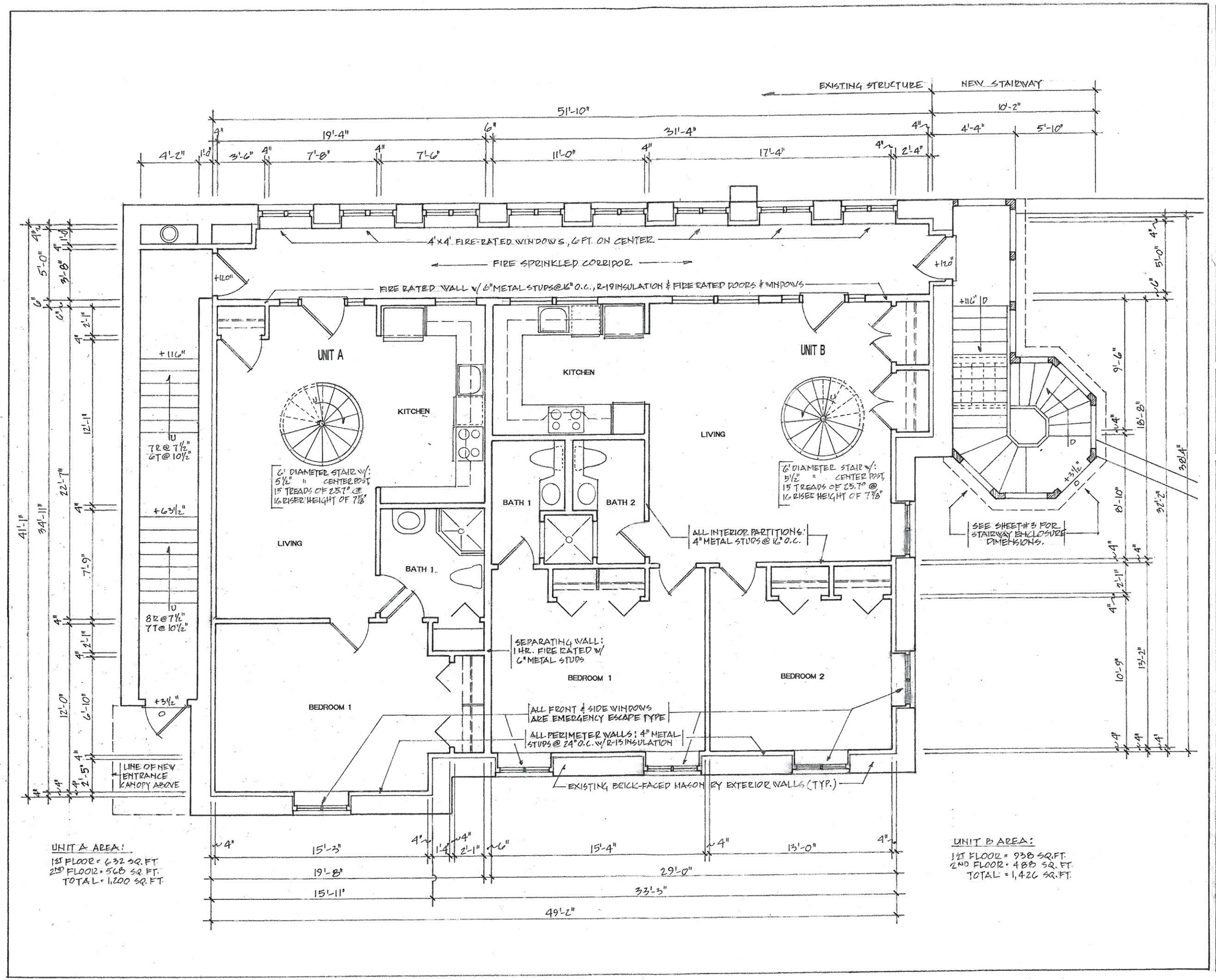


RAILING AT WALL

139 Linden Street
Wellesley, MA
Landscape Plan

Scale:1"=20'-0"
Date: February 7, 2013

TIM SHEEHAN ASLA
LANDSCAPE ARCHITECTURE
508-561-5307 tsheehanla@verizon.net



UNIT A AREA:
1ST FLOOR = 632 SQ. FT.
2ND FLOOR = 568 SQ. FT.
TOTAL = 1,200 SQ. FT.

UNIT B AREA:
1ST FLOOR = 938 SQ. FT.
2ND FLOOR = 488 SQ. FT.
TOTAL = 1,426 SQ. FT.

1

LOWER LEVEL FLOOR PLAN
SCALE: 1/4" = 1'0"
DATE: DECEMBER 12, 2012

CONSTANTINE CACOS, ARCHITECT
75 WASHINGTON STREET
NATICK, MA 01760 508.655.6244

PERDONI RESIDENTIAL UNITS
139R LINDEN STREET
WELLESLEY, MA 02482

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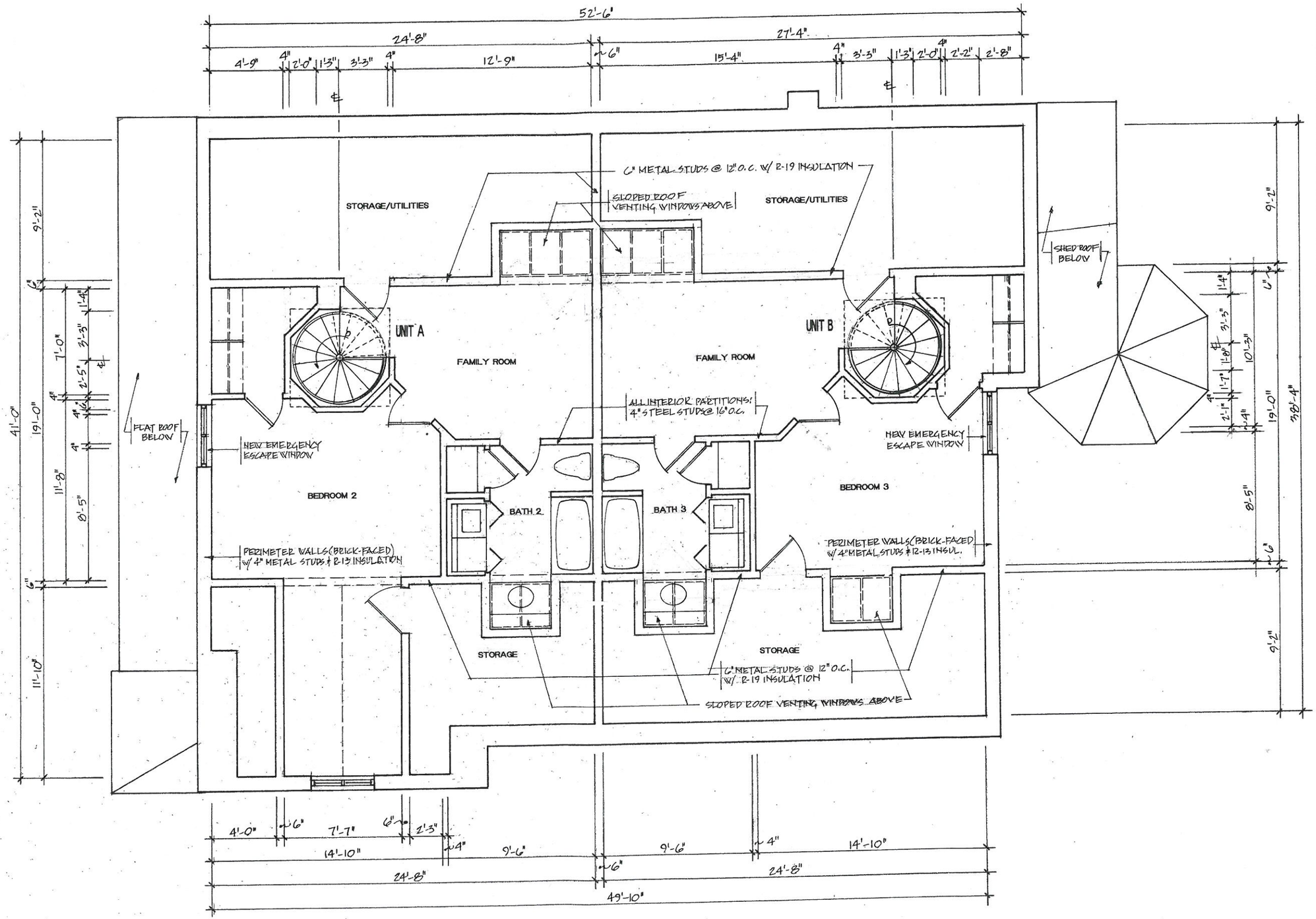
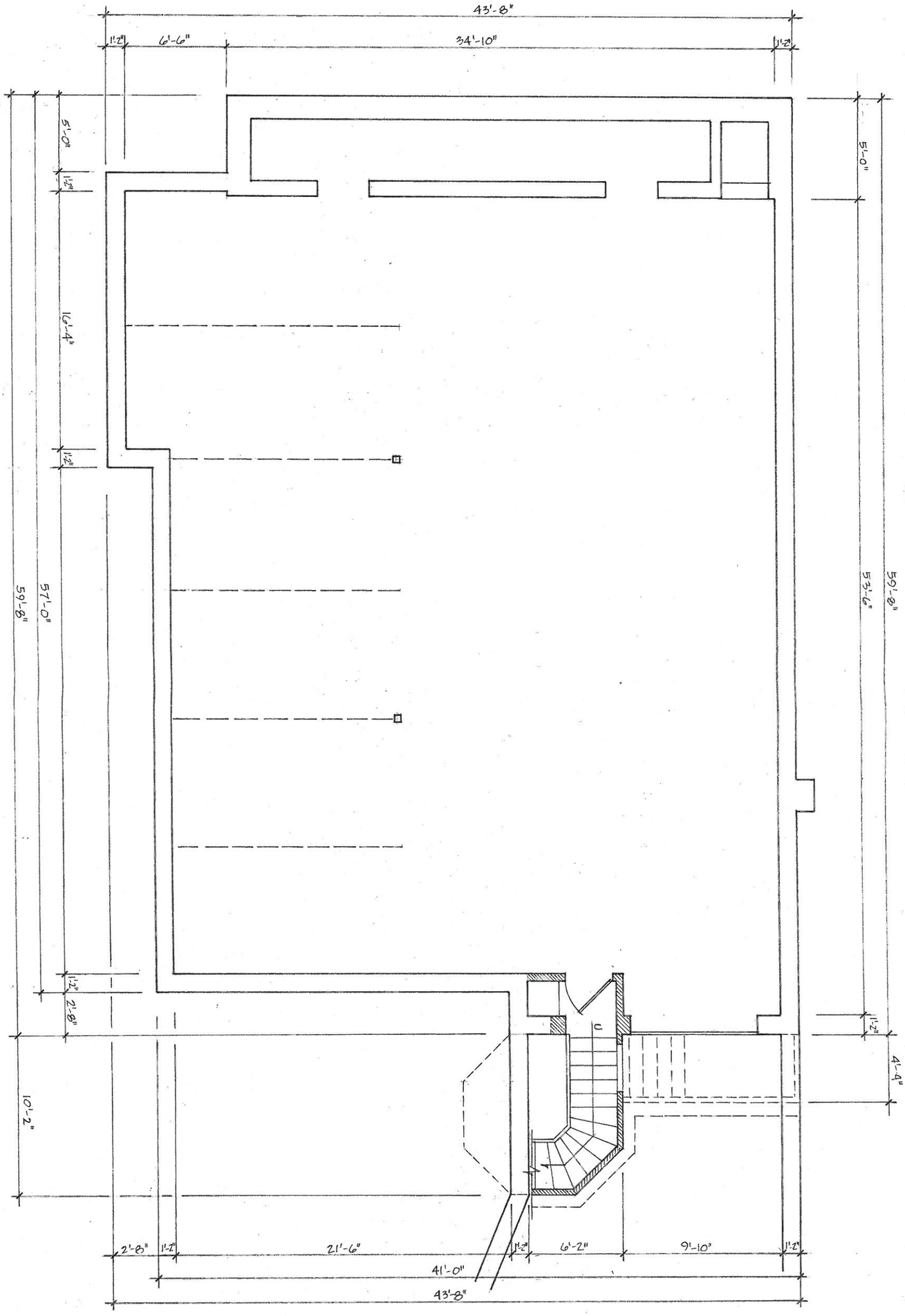


UPPER LEVEL FLOOR PLAN
SCALE: 1/4" = 1'0"
DATE: DECEMBER 12, 2012
REV.: 2/4/13

CONSTANTINE CACOS, ARCHITECT
75 WASHINGTON STREET
NATICK, MA 01760 508.655.6244

PERDONI RESIDENTIAL UNITS
139R LINDEN STREET
WELLESLEY, MA 02482



PERDONI RESIDENTIAL UNITS 139R LINDEN STREET WELLESLEY, MA 02482	CONSTANTINE CACOS, ARCHITECT 75 WASHINGTON STREET NATICK, MA 01760 508.655.6244	REGISTERED ARCHITECT CONSTANTINE CACOS No. 5390 COMMONWEALTH OF MASSACHUSETTS	GARAGE LEVEL PLAN SCALE: 1/4" = 1'0" DATE: DECEMBER 12, 2012

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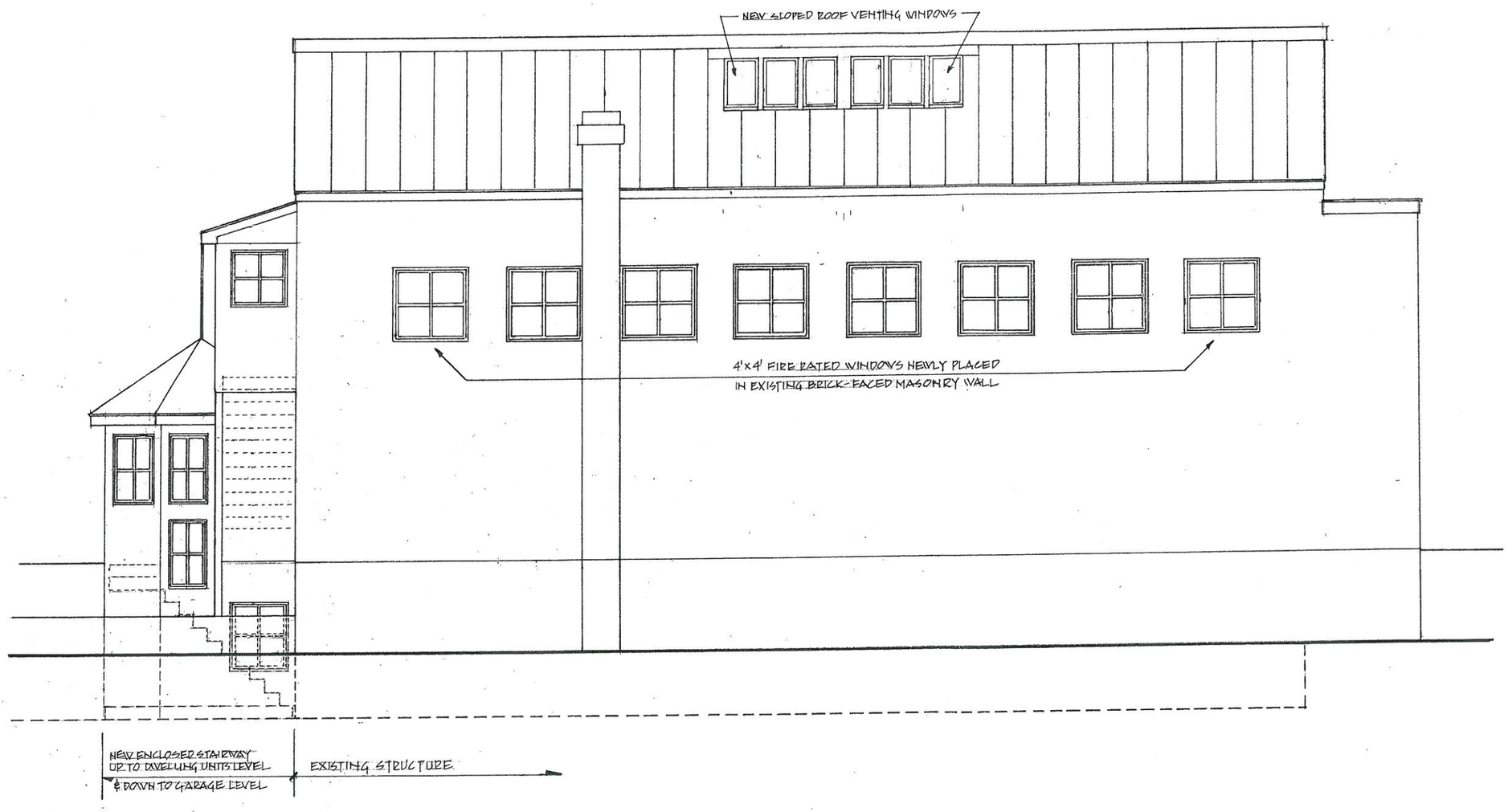
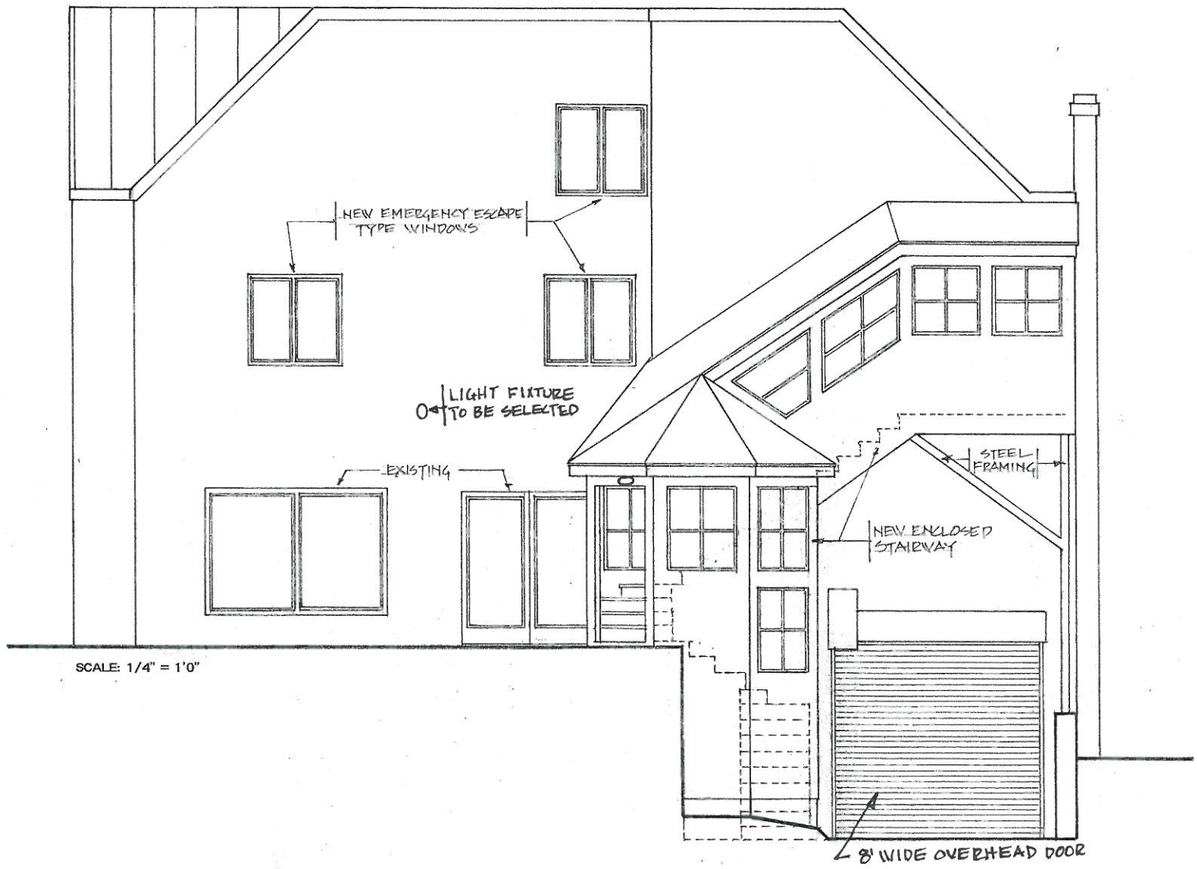


REAR ELEVATION
SCALE: 1/4" = 1'0"
DATE: DECEMBER 12, 2012
REV.: 2/4/13

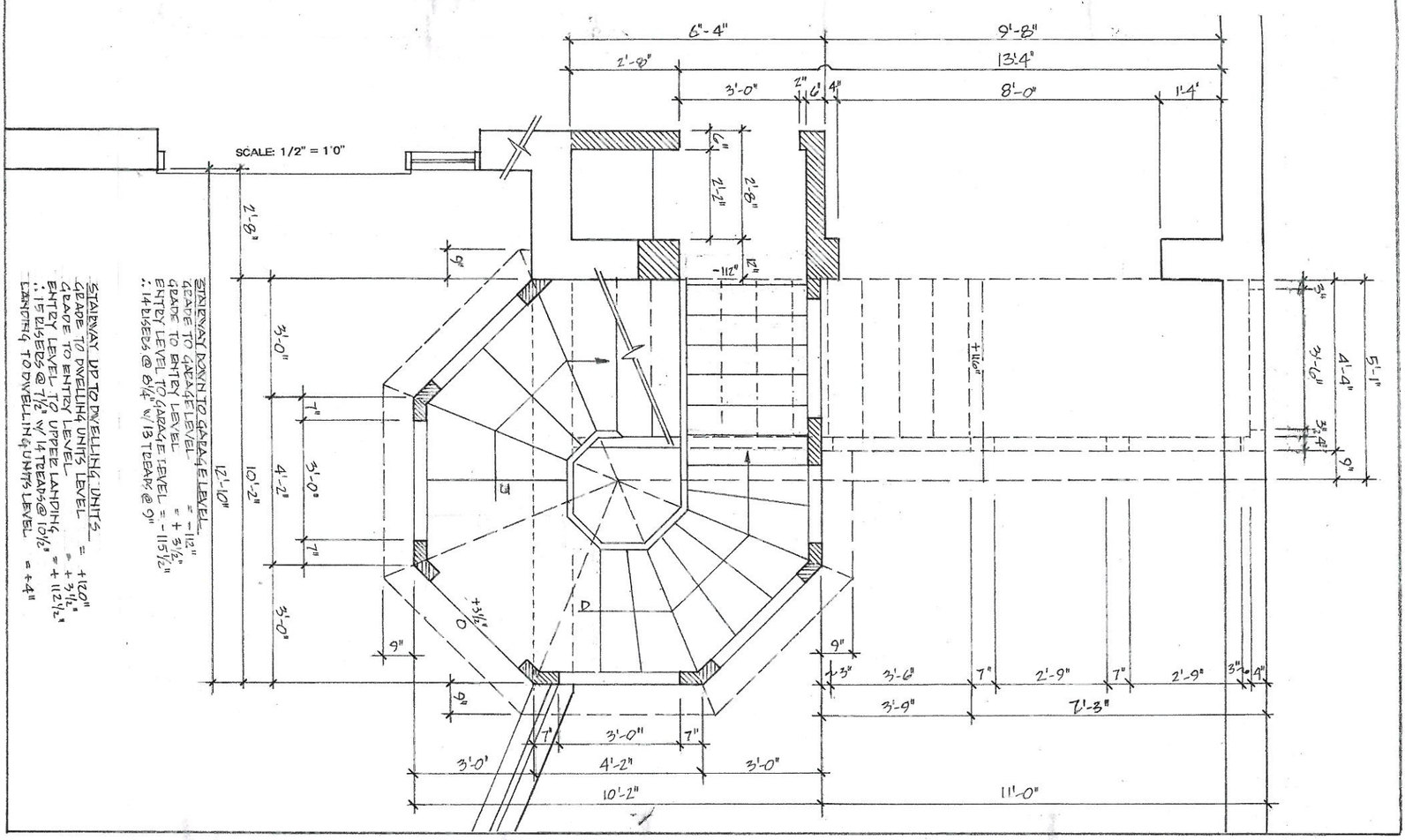
REGISTERED ARCHITECT
CONSTANTINE CACOS
No. 5392
COMMONWEALTH OF MASSACHUSETTS

CONSTANTINE CACOS, ARCHITECT
75 WASHINGTON STREET
NATICK, MA01760 508.655.6244

PERDONI RESIDENTIAL UNITS
139R LINDEN STREET
WELLESLEY, MA 02482



SCALE: 1/4" = 1'0"



SCALE: 1/2" = 1'0"

STAIRWAY UP TO DWELLING UNITS
GRADE TO DWELLING UNITS LEVEL = +12"
GRADE TO GARAGE LEVEL = + 5½"
GRADE TO ENTRY LEVEL = - 11 5½"
ENTRY LEVEL TO GARAGE LEVEL
∴ 14 RISERS @ 8¼" W/ 13 TREADS @ 9"

STAIRWAY DOWN TO GARAGE LEVEL
GRADE TO ENTRY LEVEL = +120"
GRADE TO GARAGE LEVEL = + 5½"
ENTRY LEVEL TO UPPER LANDING = + 112½"
∴ 15 RISERS @ 7½" W/ 14 TREADS @ 10½"
LANDING TO DWELLING UNITS LEVEL = +4"

PERDONI RESIDENTIAL UNITS 139R LINDEN STREET WELLESLEY, MA 02482	CONSTANTINE CACOS, ARCHITECT 75 WASHINGTON STREET NATICK, MA01760 508.655.6244	REGISTERED ARCHITECT CONSTANTINE CACOS No. 5398 STATE OF MASSACHUSETTS	STAIRWAY ELEVATION & PLAN SCALE: AS INDICATED DATE: DECEMBER 12, 2012

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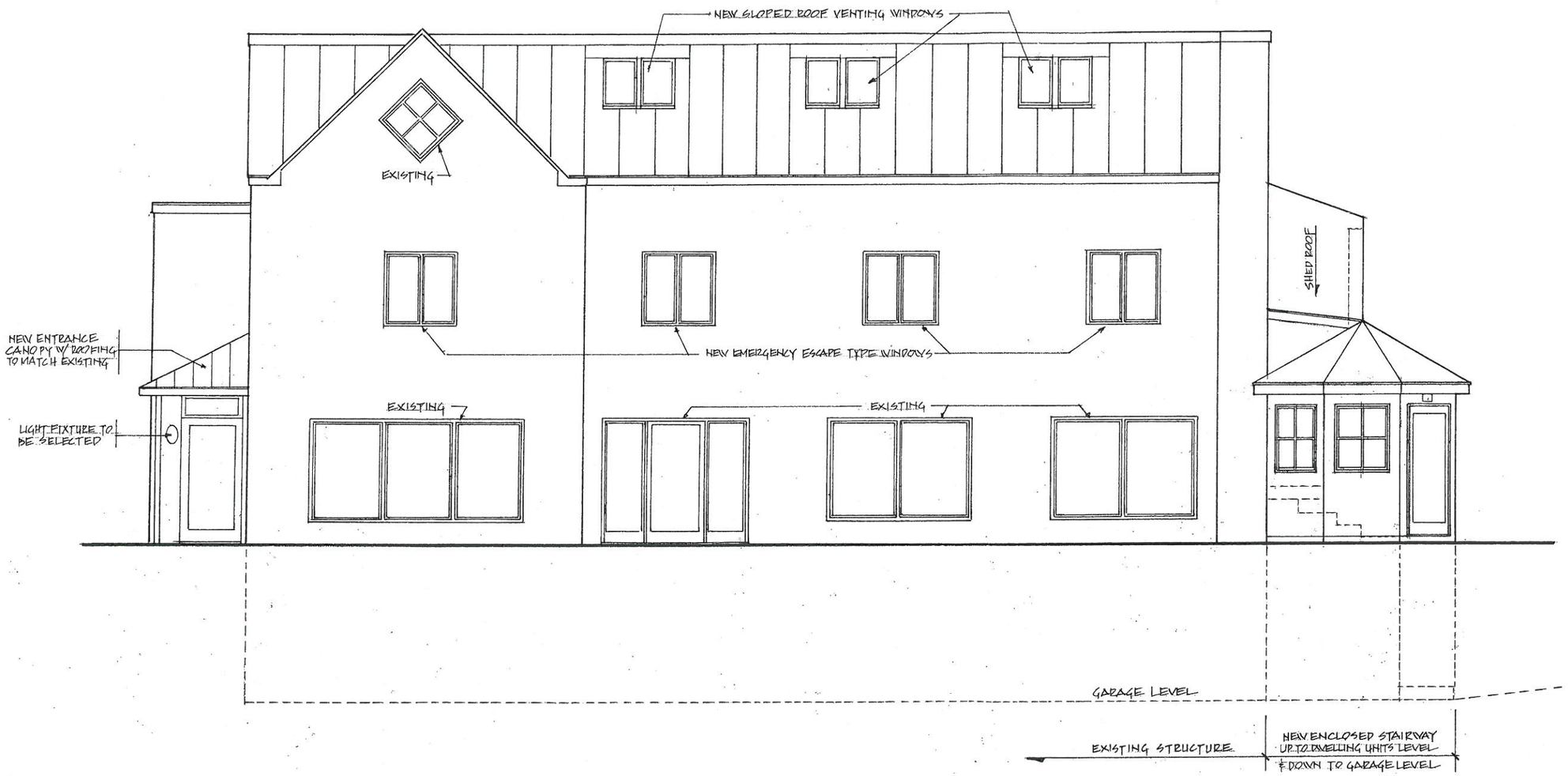
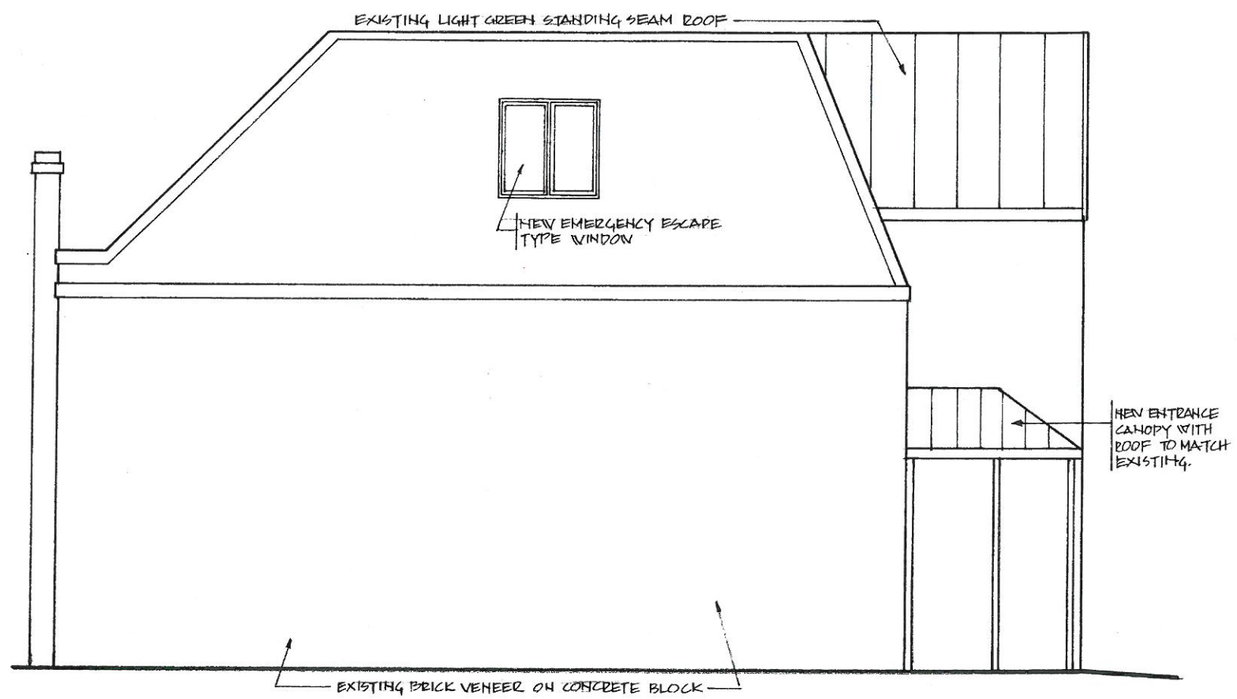


FRONT ELEVATION
SCALE: 1/4" = 1'0"
DATE: DECEMBER 12, 2012
(REV.: 2/4/13)

REGISTERED ARCHITECT
CONSTANTINE CACOS
No. 5309
COMMONWEALTH OF MASSACHUSETTS

CONSTANTINE CACOS, ARCHITECT
75 WASHINGTON STREET
NATICK, MA 01760 508.655.6244

PERDONI RESIDENTIAL UNITS
139R LINDEN STREET
WELLESLEY, MA 02482



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EXISTING LEFT ELEVATION
SCALE: 1/4" = 1'0"
DATE: DECEMBER 12, 2012

REGISTERED ARCHITECT CONSTANTINE CACOS No. 7598 COMMONWEALTH OF MASSACHUSETTS

CONSTANTINE CACOS, ARCHITECT
75 WASHINGTON STREET
NATICK,MA 01760 508.655.6244

PERDONI RESIDENTIAL UNITS
139R LINDEN STREET
WELLESLEY, MA 02482

TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

RICHARD L. SEEGEL, CHAIRMAN
J. RANDOLPH BECKER, VICE CHAIRMAN
DAVID G. SHEFFIELD

LENORE R. MAHONEY
EXECUTIVE SECRETARY
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web: www.wellesleyma.gov

ROBERT W. LEVY
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DEREK B. REDGATE

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ZBA 2010-77 - Modified
Petition of Perdoni Brothers, LLC
139 & 139R Linden Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, February 7, 2013, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of PERDONI BROTHERS, LLC, requesting modification of a Comprehensive Permit pursuant to the provisions of MGL Chapter 40B, Sections 20-23 for changes to the exit staircase on the west side of the building, changes to the stairway on the east side of the building, addition of windows along the rear corridor, changes to the stairs between floors of the residential units, and correction of the second bedroom in Unit A, at 139R LINDEN STREET, in an Industrial District. The Petitioner is requesting approval to allow Eugenio's Salon to open for business at 139 LINDEN STREET prior to the occupancy date of the new residential units.

On January 23, 2013, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Laurence Shind, Esq. Also present were Constantine Cacos, Architect, Eugenio and Joe Perdoni, (the "Petitioner"), and Peter Ditto, Project Engineer.

Mr. Shind said that the request is to modify a previously issued Comprehensive Permit. He said that there are a couple of architectural changes that they are looking to make to the rear building at 139R Linden Street, which will house two residential units, one of which will be affordable. He said that another issue that is part of the request is for the Board's approval to adjust the timing of occupancy of the residential units and the beauty salon.

Mr. Shind said that, in response to the Board's questions about the plans, they have brought revised architectural plans, prepared by Mr. Cacos. He said that, in addition, there are a couple of changes to the Site Plan that Mr. Ditto will address. He said that Tim Sheehan, Landscape Architect, has made changes that are in line with the architectural changes. He said that the hope is that, if the Board is inclined to otherwise approve the changes, they will follow up with the required changes to the plans.

Mr. Shind said that Mr. Cacos was hired as the review Architect for the project. He said that Mr. Cacos will also act as Project Manager. He said that, as part of his review of the plans and after discussion with the Building Inspector, it was determined that the second means of egress stairway on the west end of the 139R building on the exterior had to move into the interior because of the residential component of the building. He said that Building Code required that the second means of egress be enclosed. He said that is shown on the revised Architectural Plans.

Mr. Shind said that it was determined that it made sense to have the enclosed stairway continue down to the garage level. He said that, in making that change, the existing stairway on the east side of the 139R building was cut off at ground level. He said that it was easier to get at the garage on the other side.

Mr. Shind said that the corridor along the first floor of the residential units always had the issue of having enough light. He said that it had been previously handled by the addition of skylights. He said that Mr. Cacos thought that putting windows on the back side would be a better treatment to get more light and would be more user friendly for the residents.

Mr. Shind said that, looking at the building from an engineering standpoint, the interior stairway between the floors of the units on the original design did not fit with the construction of the building. He said that Mr. Cacos moved those stairs and turned them into circular stairs.

Mr. Shind said that in Unit A the second bedroom was not accurately depicted in the original plans. He said that the plans have been revised to show it correctly.

Mr. Shind said that Eugenio Perdoni would like to be able to start construction on the salon prior to starting construction on the rear residential units. He said that the salon design is pretty straight forward. He said that the changes to the rear units will cause delays. He said that the current salon lease has run out. He said that he is a tenant at will. He said that Mr. Perdoni is trying to preserve the business and try to get over to the new salon space as soon as possible. He said that Mr. Perdoni is willing to provide any additional security to ensure that the rest of project will move along as quickly as possible. He said that they were informed by the Building Inspector that a Building Permit could not be issued to work on the salon first unless the Zoning Board authorizes it.

Mr. Cacos said that what disturbed him when he was brought on board the project was the trip up to the units and the long dark hallway. He said that the first thing that he set out to do was to introduce the windows along the back. He said that he thought that instead of having a roundabout dark stairway, it would be better to put it on the other end and bring it down to the garage. He said that he spoke with the Building Inspectors to see if they would be okay with the changes. He said that they told him that the changes would meet Code if the hallway was sprinklered and the windows were fire rated. He said that the building is located at the property line

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Mr. Cacos said that the enclosed stairway will have windows and will be nicely lit.

Mr. Cacos said that having the windows at the back and the stairs relocated allows additional glazing that will allow for more light into the units.

Mr. Cacos said that the knee walls in Unit A on the original plans were not in place. He said that the revised plan is accurate.

Mr. Cacos said that the original location of the stairs would not provide adequate headroom because of the sloped portion of the roof. He said that the steel joists that are two feet in depth run from bearing wall to bearing wall. He said that, in order to create stairs going up as shown on the original plans, they would have to cut every joist and create a new bearing wall. He said that what had already been framed in was a

78 foot by 78 foot square that appears to have been intended for some sort of stairway. He said that it made sense to put in spiral staircases because of the existing framing. He said that the spiral staircases made room for closets and freed up bedroom space.

Mr. Cacos said that putting in sloped windows in the front and the back instead of skylights will allow for ventilation and can be seen through.

Mr. Cacos said that Mr. Sheehan revised the Site Plan to create additional brick paving to the new opening into the stairway and some additional vegetation and a fence around the dumpster enclosure.

Mr. Cacos said that he took Mr. Ditto's original plans and cut and pasted them to put them in a smaller format. He said that he changed what had been the open stairway to an enclosed stairway. He said that was the only change to Mr. Ditto's plans. He said that the enclosed stairway structure adds 21 square feet to the building, which is an increase of 1/10 of 1 percent in lot coverage.

Mr. Cacos said that the unit sizes will not be changing.

Mr. Cacos said that it is approximately 1.5 feet from the property line to the back wall. The Board said that under Building Code they would not be allowed to have any openings in that back wall. Mr. Cacos said that he spoke with the Building Inspectors and was told that as long as there are fire rated windows and sprinklers, the Code would allow it. The Board said that the Building Code says that with three feet or less, no openings are permitted.

The Board said that now the plan is to have extra windows going in. The Board said that there is some glazing available that is actually designed and tested as a wall system. The Board said that is different than a rated window. The Board said that rated windows are tested differently from rated walls.

The Board said that it was concerned about the windows in the stairs. The Board said that stair enclosures are supposed to be enclosed. The Board said that there are not supposed to be windows on egress stairs. The Board said that is also a Building Code issue.

The Board said that it was troubled with the fact that the original plan was prepared and could not be constructed. The Board said that the project has been ongoing for five or six years.

The Board asked if Mr. Cacos had considered the difficulty of moving furniture up and down spiral staircases, even with the generous six foot diameter. Mr. Cacos said that the structural implications for installing a straight run stair are huge. He questioned if they could get adequate beams in there. He said that the load would have to be transferred from the joists. He said that he could not figure out how to get the length of steel in there to do the work.

The Board asked if Mr. Cacos had tried to have a try straight run stair running perpendicular to the original location. Mr. Cacos said that he did and it seemed to have major implications, especially as you came up to the rooms and how you would navigate to get to them. He said that the circular stairs are less than ideal but they take up less space. He said that they worked best because of the framing. He said that the Building Code does allow them.

The Board said that having the stair at the west end does enhance the property. The Board said that it is a better solution.

The Board said that it was concerned about the request for early occupancy in the hair salon. The Board said that it was concerned about site circulation and the safety of having salon open while the rest of property is under construction, even though most of the construction will be interior. The Board asked about having the site work accomplished first. The Board said that, with the exception of the exterior stairway, the rest of the work would be confined to the interior and the customers for Eugenio's and the Paint Store would have a better experience and would be safer.

The Board said that this is a LIP project that was endorsed by the Selectmen. The Board said that it has been ongoing for several years. The Board said that it was disconcerting that, after several meeting, the Board is getting plans that do not work five years later. The Board said that the intent of LIP and 40B is to create affordable housing not to create the hair salon. The Board asked what assurance could be given that the affordable and other residential units will be completed. The Board said that under Chapter 40B, the Board is giving substantial relief for the project. The Board said that the Comprehensive Permit was issued two years ago and no work has been done. Mr. Shind said general economic conditions have lead to the delay.

Mr. Shind said that issuing a temporary Certificate of Occupancy (CO) for the salon would probably make the most sense to ensure that the work will be done on the residential units. The Board said that, if the affordable unit is not done by a certain date, the temporary CO will expire. The Board said that the Zoning Enforcement Officer would enforce that.

Mr. Shind said that the salon plans are ready to go. Mr. Cacos said that the construction documents have already been submitted to the Building Department. He said that they anticipate construction to start when the Building Permit issues.

The Board asked when the Applicant anticipated pulling a permit for the residential units. Mr. Cacos said that it is in progress. He said that Mr. Costa submitted a Chapter 34 Report to the Building Department. He said that the drawings are set to go. He said that they are hoping to get a Building Permit within the next three weeks and start construction. He said that will the residential units will take longer to complete than the hair salon.

Mr. Cacos said that work on the hair salon can start immediately, weather permitting. He said that the plantings may have to be delayed. The Board confirmed that striping and curbing will be complete so that customers can be safe on the property. The Board said that, given the timing of the project, the planting could follow closely.

The Board discussed having a condition that it must be four months from CO for the hair salon to CO for the residential units, and that the temporary CO for the salon will expire unless the CO's have issued for the residential units.

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Dennis Dischino, 37 Linden Street said that the addition of the windows is an improvement. He said that it will be good to see the project finished. He said that having retail on the first floor and residential units on the second floor balances out the project. He said that if the Board does impose a four month deadline

for completion of the residential units, as long the project is substantially underway, the Perdoni's should have the right to extend it for an additional 60 days without having to come back before the Board.

The Board asked if the Perdoni's could provide any other security than a temporary CO. Mr. Shind said that the only other thing that they had considered was money. He said that they did not really think that this was a money issue but more of a performance issue.

The Board said that it would like to see that the work is being pursued diligently and continuously.

The Board confirmed that the signage shown on the Landscape Plan is what was shown on the previously approved plan and is not subject to approval with the petition to modify the Comprehensive Permit. Mr. Cacos said that the only change that he made to the original plans was the enclosed stairway.

The Board said that the Building Department may issue a Building Permit for 139 Linden Street, the Site Work, and the enclosed stair of 139R Linden Street, prior to issuing a Building Permit for 139R Linden Street.

Submittals from the Applicant

Request for Modification to Comprehensive Permit, 139-139R Linden Street, ZBA File No. 2010-77 (the "Project"), dated January 16, 2013, from Laurence D. Shind, Esq.
Application for modification to Comprehensive Permit, dated January 15, 2013
Revisions to Zoning Board Plans, dated December 12, 2013, from Constantine Cacos, Architect

Sheet No.	Title	Date	Prepared By	Revised
	Title Sheet	12/12/12	Constantine Cacos, R.A.	
1	Lower Level Floor Plan	12/12/12	Constantine Cacos, R.A.	
2	Upper Level Floor Plan	12/12/12	Constantine Cacos, R.A.	2/4/13
3	Garage Level Plan	12/12/12	Constantine Cacos, R.A.	
4	Rear Elevation	12/12/12	Constantine Cacos, R.A.	2/4/13
5	Stairway Elevation & Plan	12/12/12	Constantine Cacos, R.A.	
6	Front Elevation	12/12/12	Constantine Cacos, R.A.	2/4/13
7	Existing Left Elevation	12/12/12	Constantine Cacos, R.A.	
	Title Sheet	12/12/12	Constantine Cacos, R.A.	
1	Existing Conditions Plan	12/12/12	Constantine Cacos, R.A.	
2	Site Development Plan	12/12/12	Constantine Cacos, R.A.	
3	Plot Plan	12/12/12	Constantine Cacos, R.A.	
4	Grading & Drainage Plan	12/12/12	Constantine Cacos, R.A.	
5	Utilities Plan	12/12/12	Constantine Cacos, R.A.	
	Landscape Plan	2/7/13	Tim Sheehan, Landscape Architect	

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On February 6, 2013, the Planning Board reviewed the project and submitted recommendations.

On January 24, 2013, Deputy Fitzpatrick, Fire Department, reviewed and approved the project with the first review request for the sprinkler system to be extended into all new areas.

Findings

The Board finds that: (i) the Applicant is a limited liability company; (ii) the Applicant has site control; and (iii) that the Project is financed by a subsidizing agency under a qualified subsidy program.

After reviewing the evidence and extensive testimony, the Board, mindful of the Town's need for affordable housing, voted to approve modification of the Comprehensive Permit, subject to conditions. The Board considered conditions it felt would best ameliorate the issues raised by the construction and operation of the Project, including concerns regarding health and safety of the occupants of the Project and of occupants of neighboring properties. The Board finds that the conditions as approved strike the appropriate balance between protecting health, safety, and welfare of the residents of the Town, the Project, and the abutters and encouraging the development of affordable housing in the Town outside the parameters of what local Wellesley bylaws would ordinarily permit.

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Decision

The Board therefore on motion duly made and seconded hereby grants modification of the Comprehensive Permit to the Applicant under the provisions of G.L. c. 40B §§ 20-23 for the redevelopment of the property to a mixed use by adding two new rental dwelling units on the second floor and attic space of the existing commercial building located at 139R Linden Street, and construction of 800 square feet in the basement of the existing building located at 139 Linden Street to be used as a beauty salon, substantially in accordance with the plans listed above, subject to and conditioned upon the following requirements captioned "Conditions to the Comprehensive Permit."

The Board, on motion duly made and seconded hereby grants modification of the Comprehensive Permit to allow the Building Department to issue a Building Permit for the salon at 139 Linden Street, and the Site Work, and a Building Permit for the enclosed stair at 139R Linden Street, prior to issuing a Building Permit for the two residential units at 139R Linden Street.

The Board's approval of the Amended Comprehensive Permit for the Project is premised on the Applicant's and Project's compliance with the following conditions. All requirements imposed by these conditions or this Permit shall be applicable to the entity responsible for the administration of the Project regardless of whether the condition specifically identifies the Applicant or no entity as having responsibility for a particular condition.

CONDITIONS TO THE AMENDED COMPREHENSIVE PERMIT

1. Prior to a Certificate of Occupancy for the hair salon, all site work shall be completed, including construction of the new stairway on the southwest side of 139R Linden Street and a Building Permit has issued for the residential units at 139R Linden Street.

2. The Applicant shall continuously and diligently pursue the Building Permit and construction of the residential units at 139R Linden Street.

3. The Certificate of Occupancy for the hair salon shall be temporary and shall expire five months from its issuance unless the Certificates of Occupancy for the residential units at 139R Linden Street have been issued.

4. These conditions are in addition to the previously approved conditions for the Comprehensive Permit that was granted on November 22, 2011.

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ZBA 2010-77 - Modified
Petition of Perdoni Brothers, LLC
139 & 139R Linden Street

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APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

David G. Sheffield, Acting Chairman

Robert W. Levy

Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm

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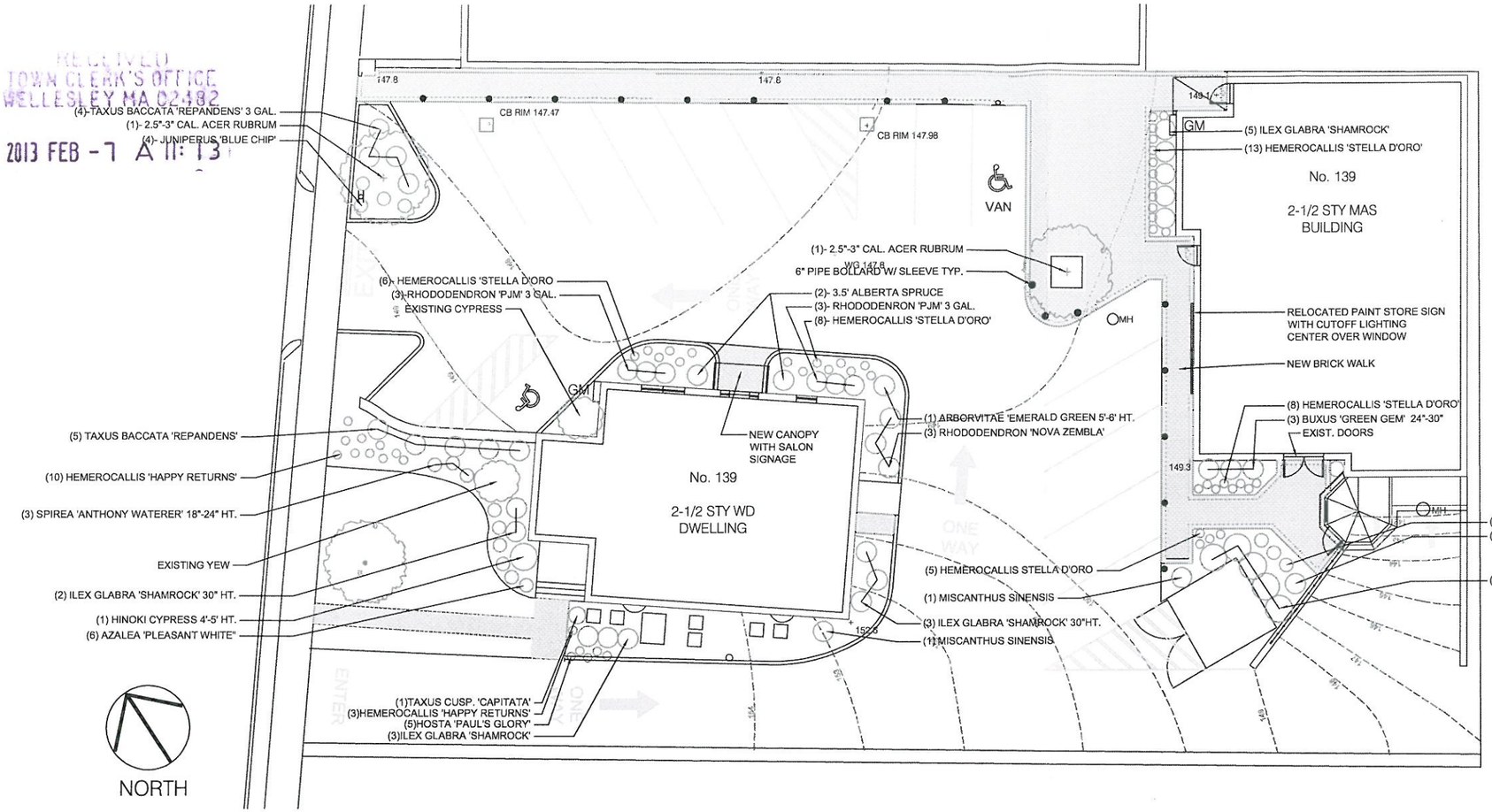


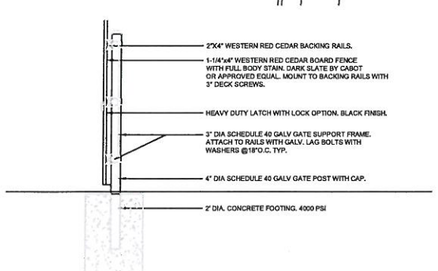
LEGEND

- Existing Tree
- Proposed Tree
- Existing Shrub
- Proposed Shrub

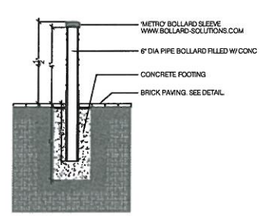
PLANT LIST

139 Linden Street, Wellesley, MA
Plant List

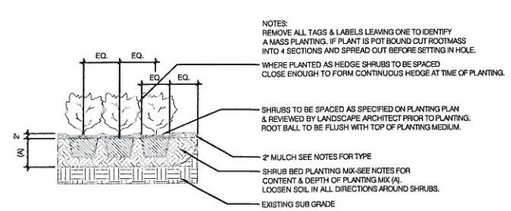
QTY	Scientific	Common	Size
TREES			
3	Acer rubrum	Red Maple	2.5"-3"
1	Chamaecyparis obtusa 'Gracilis Compacta'	Hinoki Falsacypress	4'-5'
5	Thuja occidentalis 'Emerald Green'	Emerald Green Arborvitae	7'-8'
1	Thuja occidentalis 'Emerald Green'	Emerald Green Arborvitae	5'-6'
2	Picea glauca 'Conica'	Dwarf Alberta Spruce	3' ht.
SHRUBS			
6	Azalea spp 'Girards Pleasant White'	White Evergreen Azalea	15"-18"
3	Buxus spp Green Gem	Green Gem Boxwood	2.5-3'
2	Ilex glabra 'Shamrock'	Shamrock Dwarf Inkberry	30" ht.
4	Juniperus 'Blue Chip'	Blue Chip Juniper	2 gal.
5	Rhododendron 'PJM'	PJM Rhododendron	3 gal.
4	Rhododendron 'Nova Zembla'	Nova Zembla Rhododendron	3' B&B
4	Spirea bumalda 'Anthony Waterer'	Anthony Waterer Spirea	2 gal.
9	Taxus baccata 'Repandens'	Weeping Yew	18"-24"
1	Taxus cuspidata 'capitata'	Upright Yew	3' ht.
Perennials			
2	Miscanthus sinensis gracillimus	Maidenhair Grass	3 gal
4	Sedum 'Autumn Joy'	Autumn Joy Sedum	8" pots



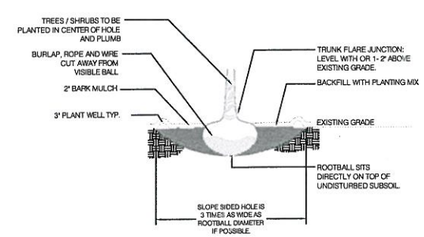
DUMPSTER FENCE GATE



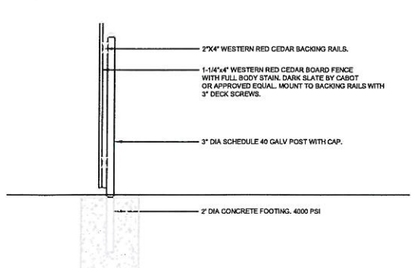
BOLLARD



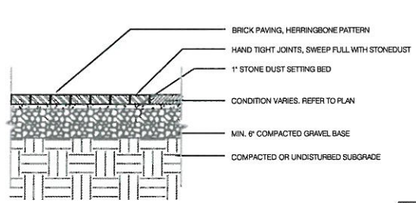
SHRUB PLANTING



TREE PLANTING



DUMPSTER ENCLOSURE FENCE



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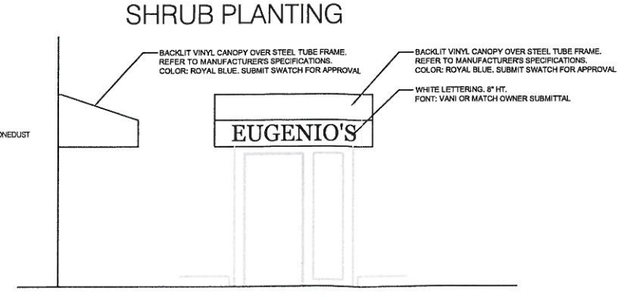
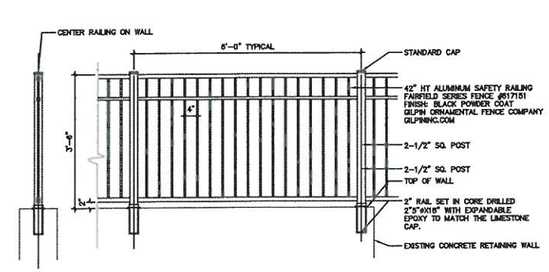


CANOPY WITH SIGNAGE AT SALON



RAILING AT WALL

139 Linden Street
Wellesley, MA
Landscape Plan

Scale:1"=20'-0"
Date: February 7, 2013

TIM SHEEHAN ASLA
LANDSCAPE ARCHITECTURE
508-561-5307 tsheehanla@verizon.net

TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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DAVID G. SHEFFIELD

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ROBERT W. LEVY
WALTER B. ADAMS
DEREK B. REDGATE

2013 OCT 24 A 11:55
WELLESLEY MA 02482

ZBA 2010-77 - Modified
Petition of Perdoni Brothers, LLC
139 Linden Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, September 12, 2013, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of PERDONI BROTHERS, LLC requesting modification of a Comprehensive Permit pursuant to the provisions of MGL Chapter 40B, Sections 20-23 for changes to the exterior façade and for a 4 foot by 12 foot gabled entrance canopy, at 139 LINDEN STREET, in a General Residence District.

On August 26, 2013, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Constantine Cacos, Architect and Construction Manager for 139 and 139R Linden Street.

The Board said that the petition would be heard de novo because one of the members of the previous panel was unable to attend the hearing.

The Board said that the request is to modify the statement in the Comprehensive Permit that the beauty salon shall be limited to one canopy sign that conforms with the sign bylaw and to allow a change from vinyl siding to synthetic stucco and a gabled entrance canopy.

Mr. Cacos said that he removed the gabled look and gave the entrance canopy an arched look. He said that he brought the signage to the face of the canopy rather than on the building. He said that the strong architectural brace element was softened with curved bracing to carry the canopy.

The Board said that the revised plans are a big improvement over the previously proposed plans.

There was no one present at the Public Hearing who wished to speak to the petition.

Mr. Cacos discussed progress on the project.

Submittals from the Applicant

- Landscape Plan, dated 2/7/13, prepared by Tim Sheehan, ASLA
- Proposed Exterior Front Elevation and Proposed Exterior Side Elevation, dated 9/13/13, prepared by Constantine Cacos, Architect

On September 10, 2013, the Planning Board reviewed the project and recommended that the modification be granted with a condition.

On September 26, 2013, the Design Review Board reviewed the project and recommended approval of the project.

Decision

The Board therefore on motion duly made and seconded hereby grants modification of the Comprehensive Permit to the Applicant under the provisions of G.L. c. 40B §§ 20-23 for changes to the exterior façade and for a 4 foot by 12 foot gabled entrance canopy, at 139 Linden Street, in a General Residence District.

The Board's approval of the Modified Comprehensive Permit for the Project is premised on the Applicant's and Project's compliance with the following conditions. All requirements imposed by these conditions or this Permit shall be applicable to the entity responsible for the administration of the Project regardless of whether the condition specifically identifies the Applicant or no entity as having responsibility for a particular condition.

All of the conditions of the original Comprehensive Permit, dated November 22, 2011 and the modified Comprehensive Permit, dated February 21, 2013, are still in effect.

CONDITIONS

1. The project shall comply with Section XXIIA (Signs) of the Zoning Bylaw.

2. Lighting shall be during business hours only.

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ZBA 2010-77 - Modified
Petition of Perdoni Brothers LLC
139 Linden Street

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WELLESLEY MA 02482

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

Richard L. Seegel, Chairman

David G. Sheffield

Robert W. Levy

cc: Planning Board
Inspector of Buildings
lrm

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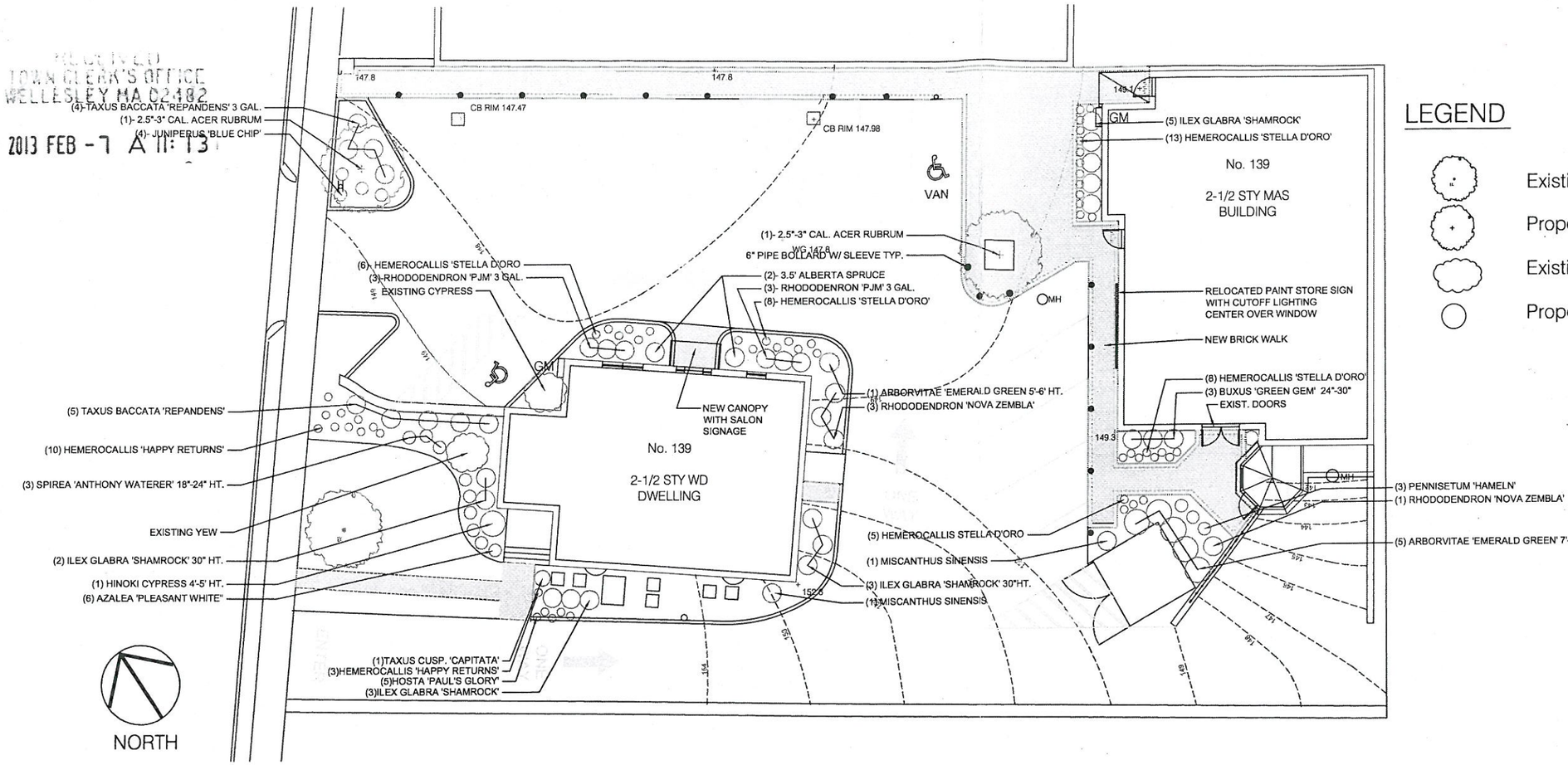

LEGEND

- Existing Tree
- Proposed Tree
- Existing Shrub
- Proposed Shrub

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WELLESLEY MA 02482
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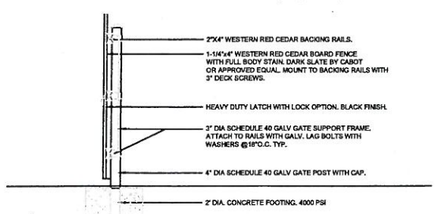
MASSACHUSETTS REGISTERED LANDSCAPE ARCHITECT NO. 1385

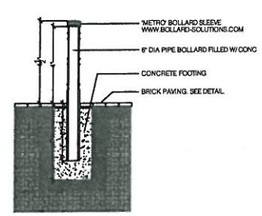
PLANT LIST

139 Linden Street, Wellesley, MA
Plant List

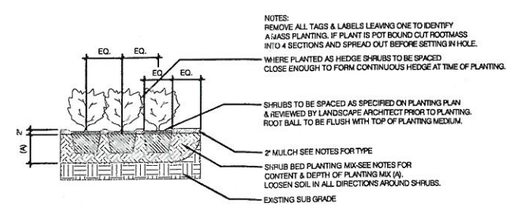
QTY	Scientific	Common	Size
TREES			
3	Acer rubrum	Red Maple	2.5"-3"
1	Chamaecyparis obtusa 'Gracilis Compacta'	Hinoki Falsecypress	4'-5'
5	Thuja occidentalis 'Emerald Green'	Emerald Green Arborvitae	7'-8'
1	Thuja occidentalis 'Emerald Green'	Emerald Green Arborvitae	5'-6'
2	Picea glauca 'Conica'	Dwarf Alberta Spruce	3' ht.
SHRUBS			
6	Azalea spp. 'Girards Pleasant White'	White Evergreen Azalea	15"-18"
3	Buxus spp Green Gem	Green Gem Boxwood	2.5-3'
2	Ilex glabra 'Shamrock'	Shamrock Dwarf Inkberry	30" ht.
4	Juniperus 'Blue Chip	Blue Chip Juniper	2 gal.
6	Rhododendron 'PJM'	PJM Rhododendron	3 gal.
4	Rhododendron 'Nova Zembla'	Nova Zembla Rhododendron	3' B&B
4	Spirea bumalda 'Anthony Waterer'	Anthony Waterer Spirea	2 gal
9	Taxus baccata 'Repandens'	Weeping Yew	18"-24"
1	Taxus cuspidata 'capitata'	Upright Yew	3' ht.
Perennials			
2	Miscanthus sinensis gracillimus	Maidenhair Grass	3 gal
4	Sedum 'Autumn Joy'	Autumn Joy Sedum	8" pots



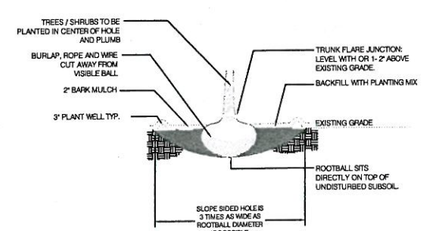
DUMPSTER FENCE GATE



BOLLARD



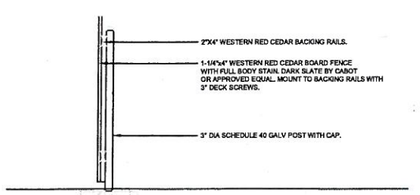
SHRUB PLANTING



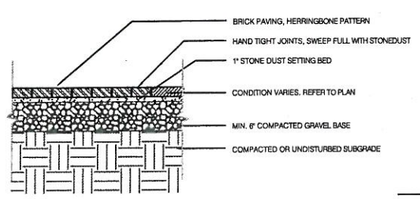
TREE PLANTING

139 Linden Street
Wellesley, MA
Landscape Plan

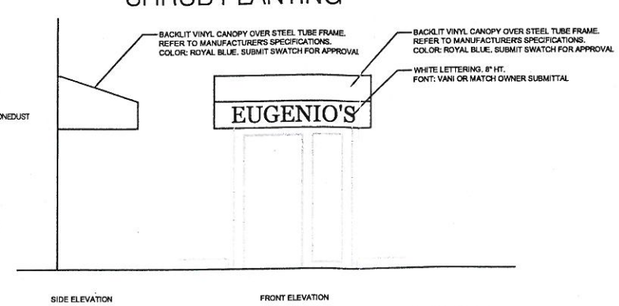
Scale: 1"=20'-0"
Date: February 7, 2013



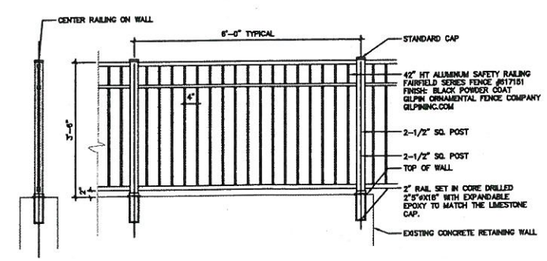
DUMPSTER ENCLOSURE FENCE



BRICK PAVING



CANOPY WITH SIGNAGE AT SALON



RAILING AT WALL

TIM SHEEHAN ASLA
LANDSCAPE ARCHITECTURE
508-561-5307
tsheehanla@verizon.net

NOTE:

1. New Salon Exterior Surface- EIFS (Exterior Insulation Finishing System) i.e, synthetic stucco.
2. Window & Entrance Canopy Trim- AZEK (PVC cellular/agrifiber material).
3. Canopy Roof- standing seam metal roof to match 139R roofing.

2

PROPOSED
EXTERIOR FRONT ELEVATION
SCALE: 1/4" = 1'0"
DATE: SEPTEMBER 13, 2013

EUGENIO'S HAIR SALON
139 LINDEN STREET
WELLESLEY, MA 02481

REGISTERED ARCHITECT
CONSTANTINE CACOS
No. 5398
MASS.
COMMONWEALTH OF MASSACHUSETTS

CONSTANTINE CACOS
ARCHITECT
75 WASHINGTON ST.
NATICK
MASSACHUSETTS
01760-3344
TEL: 508 655-6244
FAX: 508 655-5630

PROPOSED
EXTERIOR SIDE ELEVATION
SCALE: 1/4" = 1'0"
DATE: SEPTEMBER 13, 2013

EUGENIO'S HAIR SALON
139 LINDEN STREET
WELLESLEY, MA 02481

REGISTERED ARCHITECT
CONSTANTINE CACOS
No. 3998
COMMONWEALTH OF MASSACHUSETTS

CONSTANTINE
CACOS
ARCHITECT
75 WASHINGTON ST.
NATICK
MASSACHUSETTS
01760-3944
TEL: 508 653-6244
FAX: 508 653-5630

TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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ZBA 2010-77 - Modified
Petition of Perdoni Brothers, LLC
139 Linden Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, March 6, 2014, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of PERDONI BROTHERS LLC requesting amendment of a Comprehensive Permit that was modified on February 21, 2013, pursuant to the provisions of MGL Chapter 40B, Sections 20-23, to modify Condition #1, to allow the Building Department to issue a Certificate of Occupancy for Eugenio's Salon at 139 LINDEN STREET, due to construction progress for the project at 139R LINDEN STREET.

On February 18, 2014, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were Joseph Curtin, Esq., Constantine Cacos, Architect, and Renso Perdoni, Project Manager.

Mr. Curtin said that back in November, the Petitioner withdrew a petition before the Board seeking relief from a condition of the Comprehensive Permit that required full completion of the stairway at the residential units at 139R Linden Street because there was concern that substantial work had not been performed there. He said that there were some other issues concerning what type of stairway would be built there. He said that the Building Inspector had not, at that point, approved of the proposed stairway. He said that the Building Inspector required that the Petitioner file with the State Appellate Board. He said that the proposed plan was approved on February 13, 2014.

Mr. Curtin said that waiting for the State approval caused a delay in the fabrication of the stairway. He said that put a delay in the proceedings.

Mr. Curtin said that a condition of the amended Comprehensive Permit has a provision that the stairwell be completed. He said that it is now in the process of being fabricated.

Mr. Curtin said that what is at issue is Eugenio's Salon, which is his livelihood. He said that they are looking to get that occupancy permit in place so that people can get back to work. He said that it is also a source of income to fund the completion of the residential units on-site. He said that there are sufficient funds for the project.

Mr. Curtin said that they are asking that the provision for the completion of the work be removed from the Comprehensive Permit. He said that, with respect to the Eugenio's site, there were some remaining issues

with sheet metal. He said that the sheet metal has been approved. He said that there was still some concern about odors from hair coloring. He said that has been approved. He said that they are waiting for numbers from the State for the lift elevator so that it can be installed with a placard. He said that will fulfill all of the conditions for getting a Temporary Occupancy Permit for Eugenio's Salon.

The Board said that a previous application was to do some façade and signage work. The Board said that work has not been done. Mr. Curtin displayed pictures of the work that has been performed on-site to date (retained by proponent).

Mr. Curtin said that the rough plumbing, rough electrical and rough framing have been done.

Mr. Cacos said that they are just about to start the insulation. He said that the gas was withheld because the Building Inspector wanted evidence that the venting for the gas dryers was in place. He said that is about to happen with the HVAC work.

Mr. Cacos said that a significant amount of work has been done to show that this project is going forward. He said that the interior framing of the two floors is done and the rough plumbing and rough electrical are done to show that the Perdoni's are committed to having this project happen.

Mr. Cacos said that they are asking for relief from the clause concerning the stairs by showing evidence that work was being done.

A Board member said that he did not sit on the original Comprehensive Permit that was issued in 2011. He said that he was present at numerous public hearings for more and more approvals for changes. He said that he is opposed to granting the relief that the Petitioner is seeking because so much of this could have been accomplished a year or two ago. He said that they could have had decision from the Building Inspector long before last November. He said that the Petitioner was granted a Comprehensive Permit and it was close as to whether it could be granted. He said that the Petitioner keeps coming back.

The Board said that the Planning Board is opposed to granting any relief. The Board said that the Planning Board wanted to say that, "Prior to a Certificate of Occupancy for the hair salon, all site work shall be completed, including construction of the new stairway on the southwest side of 139R Linden Street and a Building Permit has issued for the residential units at 139 Linden Street."

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The Board said that it agreed that the residential units should be completed because that was the only reason that the Comprehensive Permit was granted. The Board said that the appropriate thing to do is to show the Board a Certificate of Occupancy for the residential units and get the project finished.

Another Board member said that he sat on the original Comprehensive Permit. He said that this project has always been the tail wagging the dog. He said that it has always been about the hair salon and not so much about the affordable unit. He said that has been what was driving this project from the beginning. He said that the property is located in a split zone and the only way that they could build this was with relief under Chapter 40B. He said that was the only way to do anything on the site. He said that it was a LIP Project with the support of the Board of Selectmen, which went a long way at the time for considering this proposal. He said that it was a very close decision from a legal standpoint as to whether they could have a commercial operation in a residential zone under a Comprehensive Permit. He said that

the Board found that it could. He said that this project has come back before the Board five or six times. He said that it is time to get it done and move on.

A third Board member said that this is the third hearing for this project that he has sat at. He said that he did not sit at the original Comprehensive Permit hearing. He said that he has been aware of this project since two hearings ago. He said that this week was the first time he saw some work being done. He said that there is a hole in the side of the building indicating that some progress is being made on building the stairway. He said that it was great to hear about them moving forward on the interior work as well. He said that it appears that all of the work has been done in the past month.

The Board asked when the project is expected to be finished. Mr. Cacos said that they have been meeting with so much resistance from the Building Department and the Board purely on bureaucratic stuff that prolongs it. He said that the Board then holds it against them that the project is taking so long, ignoring the fact that there are so many stumbling blocks. He said that the project should be completed within five to six months. He said that, in the meantime, to hold the salon to not open does not seem right.

The Board said that this was all within the Applicant's control. The Board said that this permit has been out there for four years. The Board said that it was also very mindful of the Cease & Desist Order from the Building Inspector because the Applicant ignored the conditions by opening the salon surreptitiously and tried to hide it by blacking out the windows so that no one could see that he was in there. The Board said that is not a demonstration of good faith to the Town.

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The Board said that the Town has a very reasonable Building Inspector. The Board said that no one has ever come to the Board about how the Building Inspector administers a project.

Mr. Cacos said that, as an example, the plans were accepted and stamped by the Building Department for the stair enclosure. He said that they proceeded to pour the foundation for it and were ready to start erecting it. He said that he sat down with the Building Inspector to show him the plan and it was at that time, prior to the pre-fabrication, that the Building Inspector said that he would not accept the stair and that the Applicant would be required to go before the State.

Mr. Cacos said that at the outset of when the Comprehensive Permit plans were accepted, he went to the Building Department and was told that the plans were not acceptable to the Building Department because it was a mixed use building that had a whole different set of requirements than what were approved by the Zoning Board. He said that the Applicant was forced to draw up a new set of plans to be presented to the Zoning Board.

The Board said that Zoning requirements and Building Code requirements are not necessarily the same. The Board said that it is the design professional's responsibility to ensure that both sets of requirements are complied with.

The Board said that even though the Building Official may have said that a certain set of plans was okay and then on further review realized that he could not approve it because it violated Building Code, does not give him the right to waive the Building Code. The Board said that the only legal way to vary from the Building Code is to go to the State as the Appeal Authority, which is what was ultimately done. The

Board said that the fact that the Building Inspector approved something that later turned out to be something that he could not approve, does not grant the Applicant the right to violate the Code.

The Board said that the hardships that the Applicant is suffering are self-imposed. The Board said that, at the time, the Petitioner agreed to the scheme of putting two units on the second floor of the commercial building and building out the other structure's basement for a commercial use.

The Board said that it does not take four years to do the work that is being done here. The Board said that there has been a lot of doing nothing that has resulted in the present situation. The Board said that the solution to this problem is to get the units complete, get the stair fabricated and installed, and get the finish work done on the inside. The Board said that given the history of this project and the failure to proceed in good faith is such that the Applicant will need to have the occupancy permits in order to open the salon up.

The Board said that the ground rules were set a long time ago that the Board wanted to see the affordable unit online before the salon opened. The Board said that the Planning Board requested that the Comprehensive Permit be amended to reflect a new condition that required the occupancy permits for the residential units. The Board said that was not the petition that was before it. Mr. Curtin said that the request to modify the Comprehensive Permit condition in paragraph 1.

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2014 MAR 20 P 12: 50

There was no one present at the Public Hearing who wished to speak to the petition.

Submittals from the Applicant

- Application, dated February 7, 2014

On February 25, 2014, the Planning Board reviewed the petition and recommended that the Board uphold its Conditions to the Amended Comprehensive Permit and amend Condition #1 to read:

> Prior to a Certificate of Occupancy for the hair salon, all site work shall be completed, including construction of the new stairway on the southwest side of 139R Linden Street and a Certificate of Occupancy has been issued for the residential units at 139R Linden Street.

Decision

The Board, on motion duly made and seconded, hereby opposed granting modification of the Comprehensive Permit to the Applicant under the provisions of G.L. c. 40B §§ 20-23 to modify Condition #1, to allow the Building Department to issue a Certificate of Occupancy for Eugenio's Salon at 139 LINDEN STREET, due to construction progress for the project at 139R Linden Street.

The petition is denied.

All of the conditions of the original Comprehensive Permit, dated November 22, 2011 and the modified Comprehensive Permits, dated February 21, 2013 and October 24, 2013, are still in effect.

ZBA 2010-77 - Amended
Petition of Perdoni Brothers LLC
139 & 139R Linden Street

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2014 MAR 20 P 12: 50

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

Richard L. Seegel, Chairman

Robert W Levy

Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm