

Passcode: 432601



Special Permit Application  
for  
Philip Cedar & Meryl Newman-Cedar

56 Mahkeenac Road  
Stockbridge, MA 01262

September 2022



White Engineering, Inc.  
55 South Merriam Street  
Pittsfield, MA 01201  
(P) 413-443-8011  
(F) 413-443-8012  
[bwhite@whiteeng.com](mailto:bwhite@whiteeng.com)



**Town of Stockbridge  
Special Permit Application (6.1.2)**

(\$200 Application Fee plus the cost of publication of notice of public hearing and postage costs paid by applicant prior to hearing)

**Application for: Extension, Alteration, Reconstruction, or Change of Use of Nonconforming Structures, Uses and Lots per zoning bylaw section 6.1.2:**

Application is hereby made to the **Board of Selectmen** by:

Applicant (name): Philip Cedar & Meryl Newman-Cedar

Applicant Signature: Philip Cedar & Meryl Newman-Cedar /mce

Applicant Mailing Address: 40 Brite Avenue, Scarsdale, NY 10583

Applicant phone and email: (914) 725-4869; pcedar@gmail.com

On the 14th day of September, 2 022 for property shown on the Stockbridge

Assessors Map # 102, Lot # 40 Book 5633, Page 271, Zoning District R4

Owner of property: Philip Cedar & Meryl Newman-Cedar

Owner's signature: Philip Cedar & Meryl Newman-Cedar /mce

Address of property: 56 Mahkeenac Road

Mailing Address: 40 Brite Avenue, Scarsdale, NY 10583

Description of property: 2.258 acres with single-family home

Present use of property: Residential

Project Description: Addition to accommodate entryway and additional storage/recreational space

Appropriate Section of Zoning Bylaw: 6.1.2

Describe the reason you believe that the lot and/or structure to be in nonconformance with the current Zoning Bylaw: i.e. lacks frontage, lacks area square footage, height of structure, infringement on setbacks:

This property is non-conforming in lot size and rear and side setbacks.

1. Attach six sets of scale drawings or prepared site plan with measurements showing the existing conditions and proposed changes, including location, size and height of proposed building.
2. Also attach six plot plans showing the locations of all structures and buildings with scaled measurements to all lot lines and between all structures,
3. along with a total of five copies of this application, **six complete sets of documents.**
4. Submit **digital plans** and application to: [selectmen@stockbridge-ma.gov](mailto:selectmen@stockbridge-ma.gov)

**All applications must be accompanied by seven complete sets of documents, all areas of the above form must be completed and submitted to the Town Clerk with the proper fee paid, or the application will be deemed to be incomplete and returned to the applicant.**



**WHITE ENGINEERING INC.**  
55 S MERRIAM ST  
PITTSFIELD, MA 01201

**BERKSHIRE BANK**  
PITTSFIELD, MA 01201  
53-7169/2118

2036

9/13/2022

PAY TO THE ORDER OF Town of Stockbridge \$\*\*200.00

Two Hundred and 00/100\*\*\*\*\* DOLLARS

PROTECTED AGAINST FRAUD

Town of Stockbridge



*[Signature]*



MEMO

⑈002036⑈ ⑆211871691⑆ 413596474⑈

WHITE ENGINEERING INC.			2036
Town of Stockbridge		9/13/2022	200.00
	Cedar		

Berkshire Bank Check	200.00
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WHITE ENGINEERING INC.			2036
Town of Stockbridge		9/13/2022	200.00
	Cedar		

PAYMENT  
RECORD

Berkshire Bank Check	200.00
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Town of Stockbridge  
Special Permit Application  
Narrative for 56 Mahkeenac Road

The subject property owned by Philip Cedar and Meryl Newman-Cedar contains 2.258 acres as noted as Parcel #1 on a plan entitled "Plan of Land in Stockbridge, Mass., Owners: Elton A/ Drummond, Jr. & Julia C. Drummond Scale 1"=100', October 1980" prepared by Charles J. Liston, Registered Land Surveyor and filed with Berkshire Middle District Registry of Deeds in Book 417-H, Page 108. The property lies in the R-4 District and is pre-existing non-conforming due to the existing structure encroaching into the side and rear setbacks. This pre-existing non-conformity entitles the applicant to seek permission to alter that structure per Section 6.1.2 of the Stockbridge Zoning Bylaw.

The property is pre-existing non-conforming as the lot only contains 2.258 acres, less than the required 4 acres. The existing single-family home including deck that has approximately 2.51% lot coverage, well beneath the maximum allowable 10%. The front setback of 525' far exceeds the minimum 50' setback requirement. The existing side setback is non-conforming with the North side having the greatest encroachment to the setback with a 25.66' to the boundary and the required setback is 50'. The rear setback is 45.66' and less than the required 50' setback.

The applicant proposes to construct an addition to the front of the home that will accommodate a new entryway from the garage level, an elevator, mechanical room to accommodate the elevator, as well as an additional closet and recreational space on the lowest level. On the main floor level there will be an addition that accommodates the elevator providing access to that level from the lower level. Due to the placement of the house on the site and location of the driveway, this requires that portions of the new addition remain within the 50' setback to the North side property boundary. In this location the existing home is 44.01' from the side boundary and the proposed addition 41.87'. As a result, the proposal will not result in a greater non-conformity than what exists in that specific location of the house let alone the greatest non-conforming side setback of 25.66'. The final buildout will see the lot coverage increase to 2.94%, well below the allowable 10%. The maximum habitable space will be 3.86%, well beneath the maximum allowable 20%.

REQUIRED FINDINGS FOR ISSUANCE OF A SPECIAL PERMIT UNDER SECTION 6.2

Pursuant to Section 6.1 of the Bylaw, the Select Board may grant a special permit for a change, extension, alteration or reconstruction of a pre-existing nonconforming structure or use to a substantially greater extent if such change, extension, alteration or reconstruction will not be in greater nonconformity with open space, yard and off-street parking requirements subject to a finding that in accordance with Chapter 40A of the General Laws, such change, extension, alteration or reconstruction will not be substantially more detrimental than the pre-existing nonconforming structure or use to the neighborhood.

1. The proposed house will not be in greater non-conformity with open space, yard and off-street parking requirements. As shown in the table above, the proposed house will conform with lot coverage requirements and provide greater setbacks to the side yard than the pre-existing non-conforming setback. There are no off-street parking requirements for single family homes and the site plan shows ample parking for the proposed house.

2. The proposed house will not be substantially more detrimental to the neighborhood than the existing non-conforming structure or use. Construction of a single-family house is a by right use in the R-4 District and is in keeping with the neighborhood; the addition will be no more non-conforming than the existing home. The house will continue to be served by the existing well and municipal sewer connection. The proposed addition will not increase the design flow rate from the home.

#### FINDINGS UNDER SECTION 6.2.6

Under Section 6.3.6 of the Bylaw, the Select Board shall make findings that the proposed use meets the following general special permit criteria:

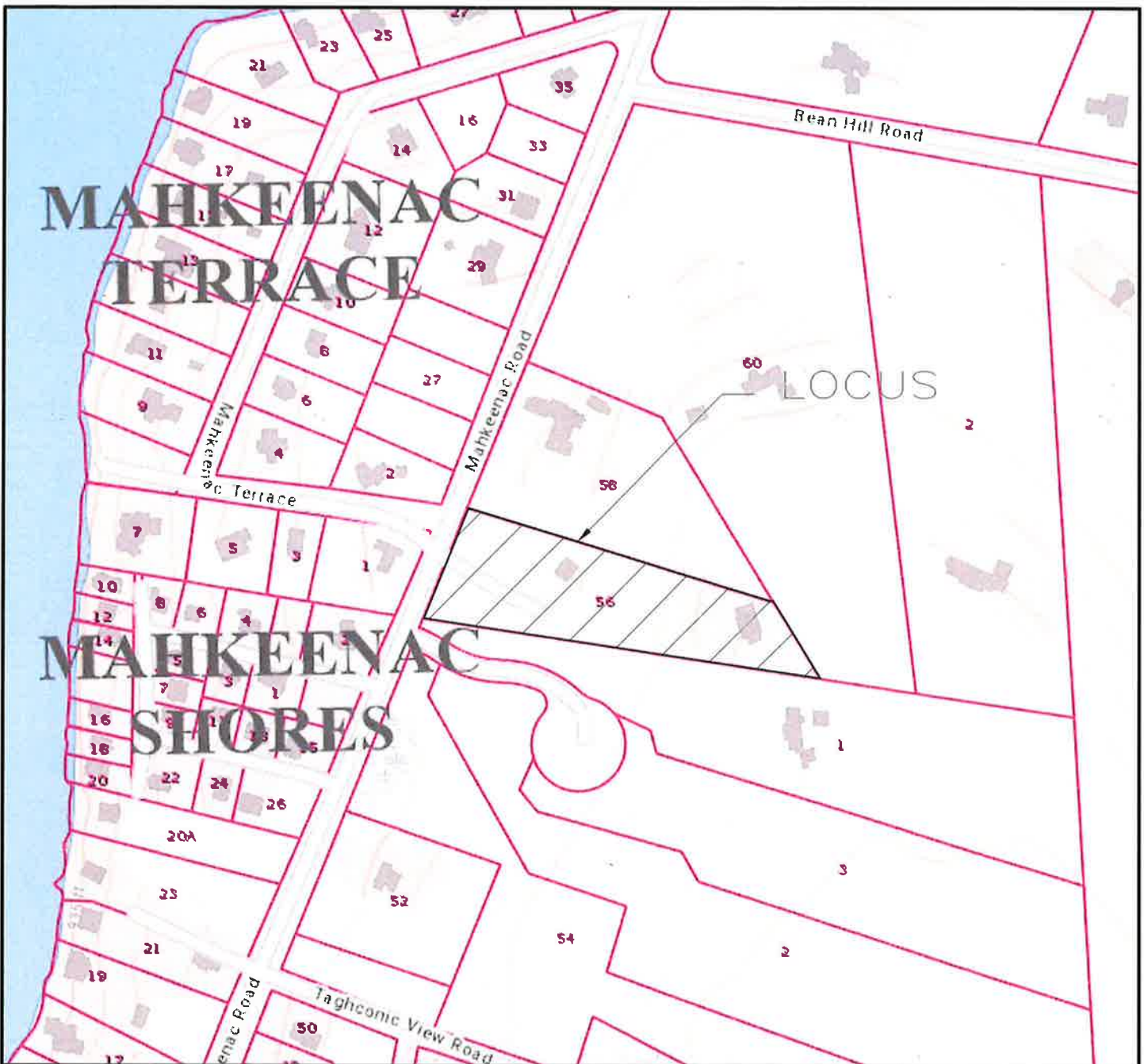
- a. *Is in compliance with all provision and requirements of the Bylaw, and in harmony with its general intent and purpose.*
- b. *Is essential or desirable to the public convenience or welfare at the proposed location;*
- c. *Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;*
- d. *Will not create undue traffic congestion or unduly impair pedestrian safety;*
- e. *Will not overload any public water, drainage, or sewer system or any other municipal facility to such an extent that the proposed use of any existing use in the immediate areas or in any other areas of the town will be unduly subjected to the hazards affecting public health, safety or general welfare.*

As stated above and as shown on the Site Plans, construction of the addition to the house is consistent with the uses in the neighborhood and will allow the applicant to continue to enjoy the home through the use of an elevator. The proposed construction will not obstruct an abutter's view, nor will it detract from the scenic qualities visible from Stockbridge Bowl. The use as a single-family house will not be detrimental to the adjacent residential uses and will be in keeping with the character of the neighborhood. Further, it will not create any undue traffic or impair pedestrian safety.

#### CONCLUSION

For the foregoing reasons, the Applicant respectfully requests this Board grant the special permit to allow the construction of two small additions to a single-family house on the Premises as shown on the plans as submitted.





# TOWN ASSESSORS MAP FOR PHILIP & MERYL CEDAR

56 MAHKEENAC ROAD

STOCKBRIDGE, MA



**WHITE ENGINEERING INC.**

CIVIL & ENVIRONMENTAL

55 SOUTH MERRIAM STREET, PITTSFIELD, MA 01201

PHONE (413) 443-8011

E-MAIL: [SBOOMSMA@WHITEENG.COM](mailto:SBOOMSMA@WHITEENG.COM)

FAX (413) 443-8012

DATE: **SEPTEMBER 13, 2022**

DRN: TJR

APVD: **SDB/BMW**

DWG NO:

DS'GN: SDB

CK'D: SDB/BMW

SCALE: N.T.S

**21-08-13**





# ORTHO PHOTO FOR PHILIP & MERYL CEDAR

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NO CERTIFIED VERNAL  
POOLS



# CERTIFIED VERNAL POOLS FOR PHILIP & MERYL CEDAR

56 MAHKEENAC ROAD

STOCKBRIDGE, MA



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**21-08-13**



NO POTENTIAL VERNAL  
POOLS



# NHESP POTENTIAL VERNAL POOLS FOR PHILIP & MERYL CEDAR

56 MAHKEENAC ROAD

STOCKBRIDGE, MA



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SCALE: N.T.S

**21-08-13**



NO NHESP  
ESTIMATED HABITAT



LEGEND:

— NHESP ESTIMATED  
HABITATS OF RARE  
WILDLIFE

NHESP ESTIMATED HABITATS  
FOR  
PHILIP & MERYL CEDAR

56 MAHKEENAC ROAD

STOCKBRIDGE, MA



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DATE: **SEPTEMBER 13, 2022**

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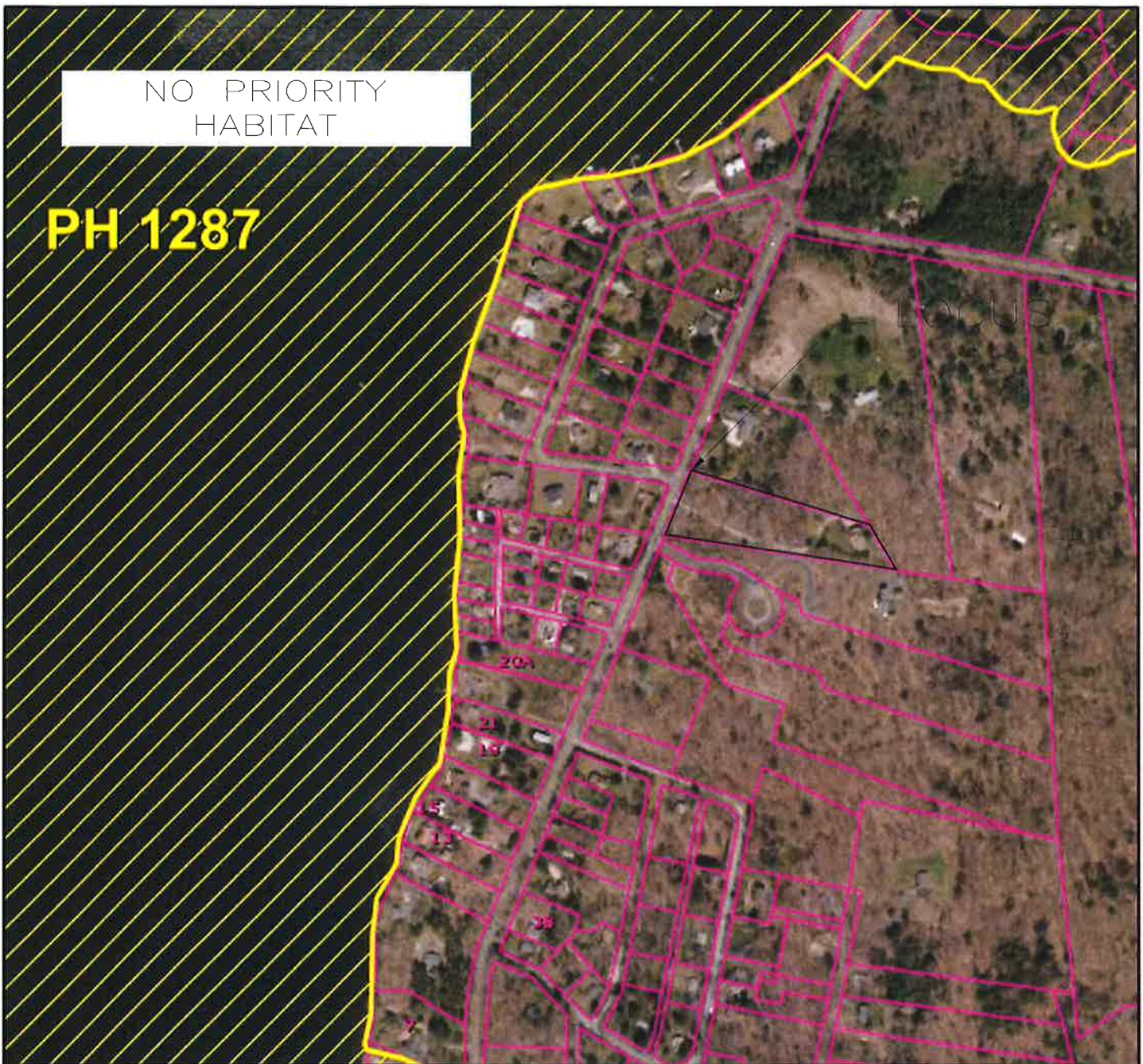
SCALE: N.T.S.

**21-08-13**



NO PRIORITY  
HABITAT

PH 1287



LEGEND:

— NHESP PRIORITY  
HABITATS FOR  
STATE PROTECTED  
RARE SPECIES

NHESP PRIORITY HABITATS  
FOR  
PHILIP & MERYL CEDAR

56 MAHKEENAC ROAD

STOCKBRIDGE, MA



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DRN: TJR

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DWG NO:

DS'GN: SDB

CK'D: SDB/BMW

SCALE: N.T.S

**21-08-13**





LEGEND:

-  A
-  AE
-  AE Floodway
-  AH
-  AO
-  D
-  VE
-  Area Not Included
-  X500

# FEMA FLOOD ZONES FOR PHILIP & MERYL CEDAR

56 MAHKEENAC ROAD

STOCKBRIDGE, MA



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FAX (413) 443-8012

DATE: **SEPTEMBER 13, 2022**

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DWG NO:

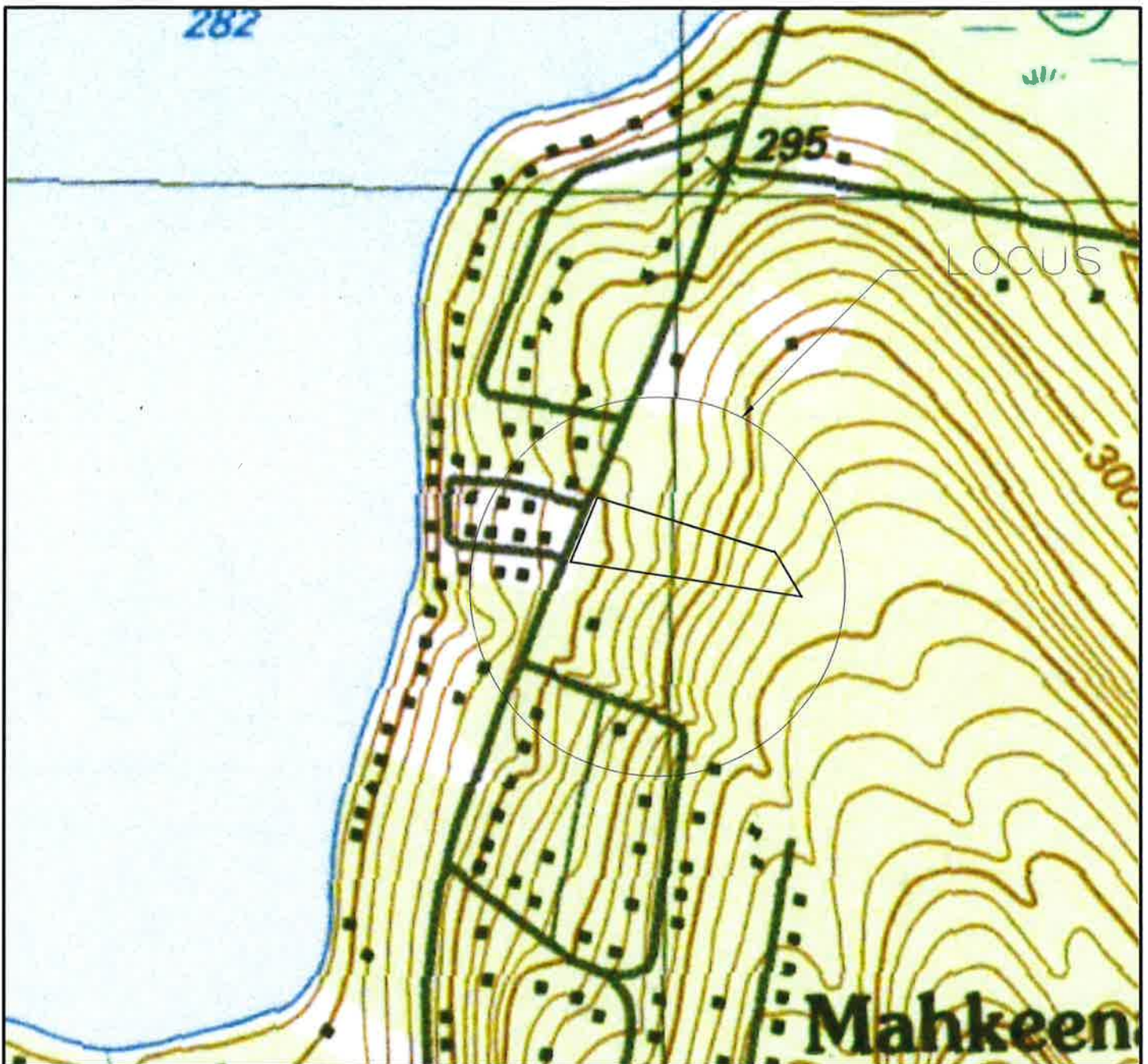
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CK'D: SDB/BMW

SCALE: N.T.S

21-08-13





USGS MAP  
FOR  
PHILIP & MERYL CEDAR

56 MAHKEENAC ROAD

STOCKBRIDGE, MA



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55 SOUTH MERRIAM STREET, PITTSFIELD, MA 01201

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DS'GN: SDB	CK'D: SDB/BMW	SCALE: N.T.S	





LEGEND:

- |  |                             |
|--|-----------------------------|
| Barrier Beach System                   | Coastal Dune                |
| Barrier Beach-Deep Marsh               | Cranberry Bog               |
| Barrier Beach-Wooded Swamp Mixed Trees | Deep Marsh                  |
| Barrier Beach-Coastal Beach            | Barrier Beach-Open Water    |
| Barrier Beach-Coastal Dune             | Open Water                  |
| Barrier Beach-Marsh                    | Rocky Intertidal Shore      |
| Barrier Beach-Salt Marsh               | Salt Marsh                  |
| Barrier Beach-Shrub Swamp              | Shallow Marsh Meadow or Fen |
| Barrier Beach-Wooded Swamp Coniferous  | Shrub Swamp                 |
| Barrier Beach-Wooded Swamp Deciduous   | Tidal Flat                  |
| Bog                                    | Wooded Swamp Coniferous     |
| Coastal Bank Bluff or Sea Cliff        | Wooded Swamp Deciduous      |
| Coastal Beach                          | Wooded Swamp Mixed Trees    |

# WETLANDS 12 K MAP FOR PHILIP & MERYL CEDAR

56 MAHKEENAC ROAD

STOCKBRIDGE, MA



## WHITE ENGINEERING INC.

CIVIL & ENVIRONMENTAL

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E-MAIL: SBOOMSMA@WHITEENG.COM

FAX (413) 443-8012

DATE: <b>SEPTEMBER 13, 2022</b>	DRN: TJR	APVD: SDB/BMW	DWG NO:
DS'GN: SDB	CKD: SDB/BMW	SCALE: N.T.S	<b>21-08-13</b>








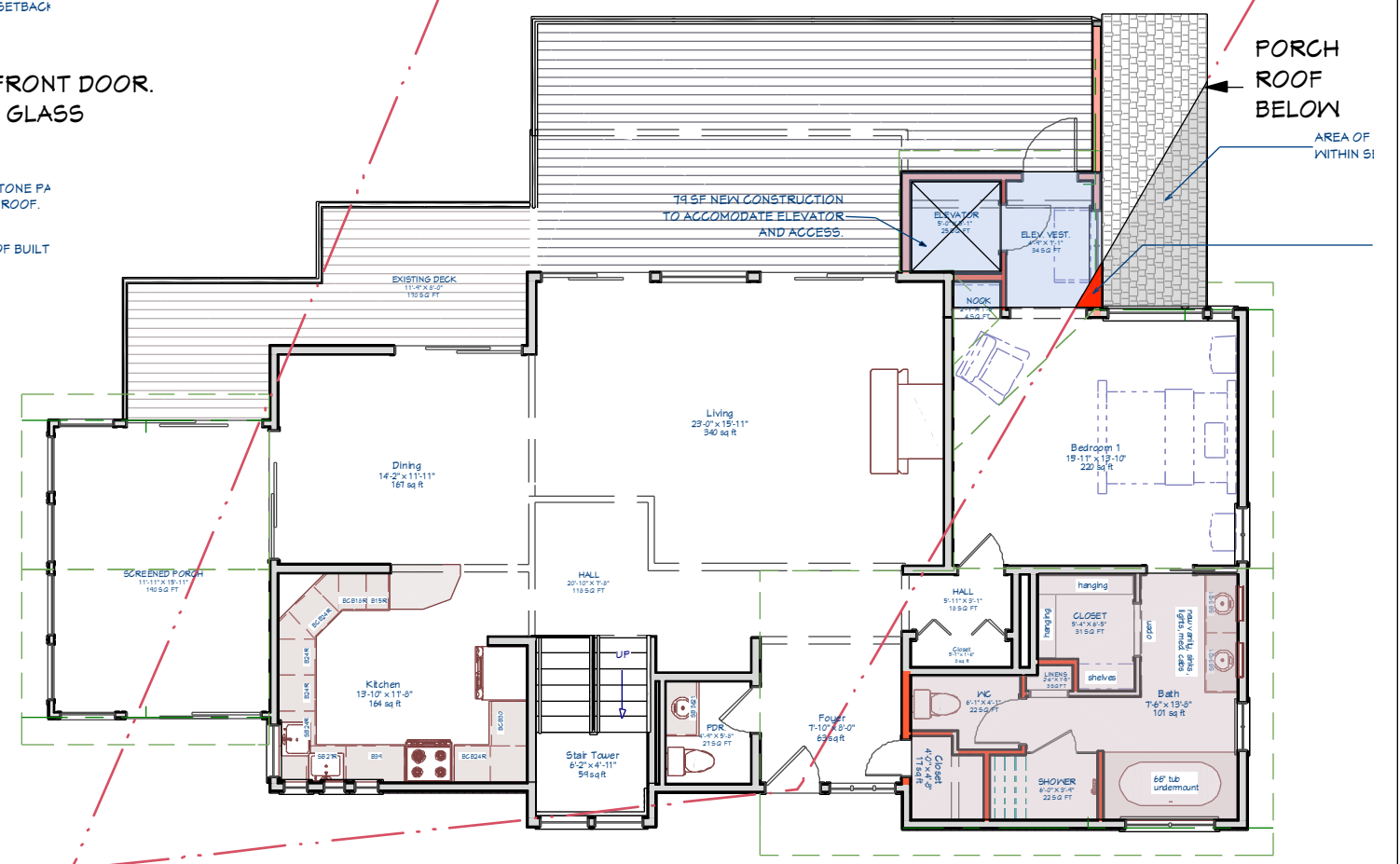


79 SF. UPPER FLOOR ADDITION  
TO HOUSE ELEVATOR AND ENTRY ONLY.  
LARGER LOWER LEVEL ONE STORY  
ADDITION TO HOUSE ELEVATOR, MECH RM,  
ENLARGED FAMILY ROOM, ENTRY AND CLOSETS


ADDED ELEVATOR  
SHAFT AND ACCESS

ADD STILL VISIBLE  
BUT SMALLER

EXISTING LIVING ROOM VIEW TO SHOW IMPACT OF ELEVATOR ADDITION



LOWER LEVEL PLAN  
1/10" = 1'-0"



MAIN LEVEL PLAN  
1/10" = 1'-0"

REVISION TABLE	
NUMBER	DATE

ADDRESS  
CEDAR RESIDENCE  
56 Mahkeenac Road  
Stockbridge, MA

**RhDesign llc.**  
RITCH HOLBEN  
230 NORFOLK ROAD  
SOUTHFIELD MA 01259  
413.854.8923

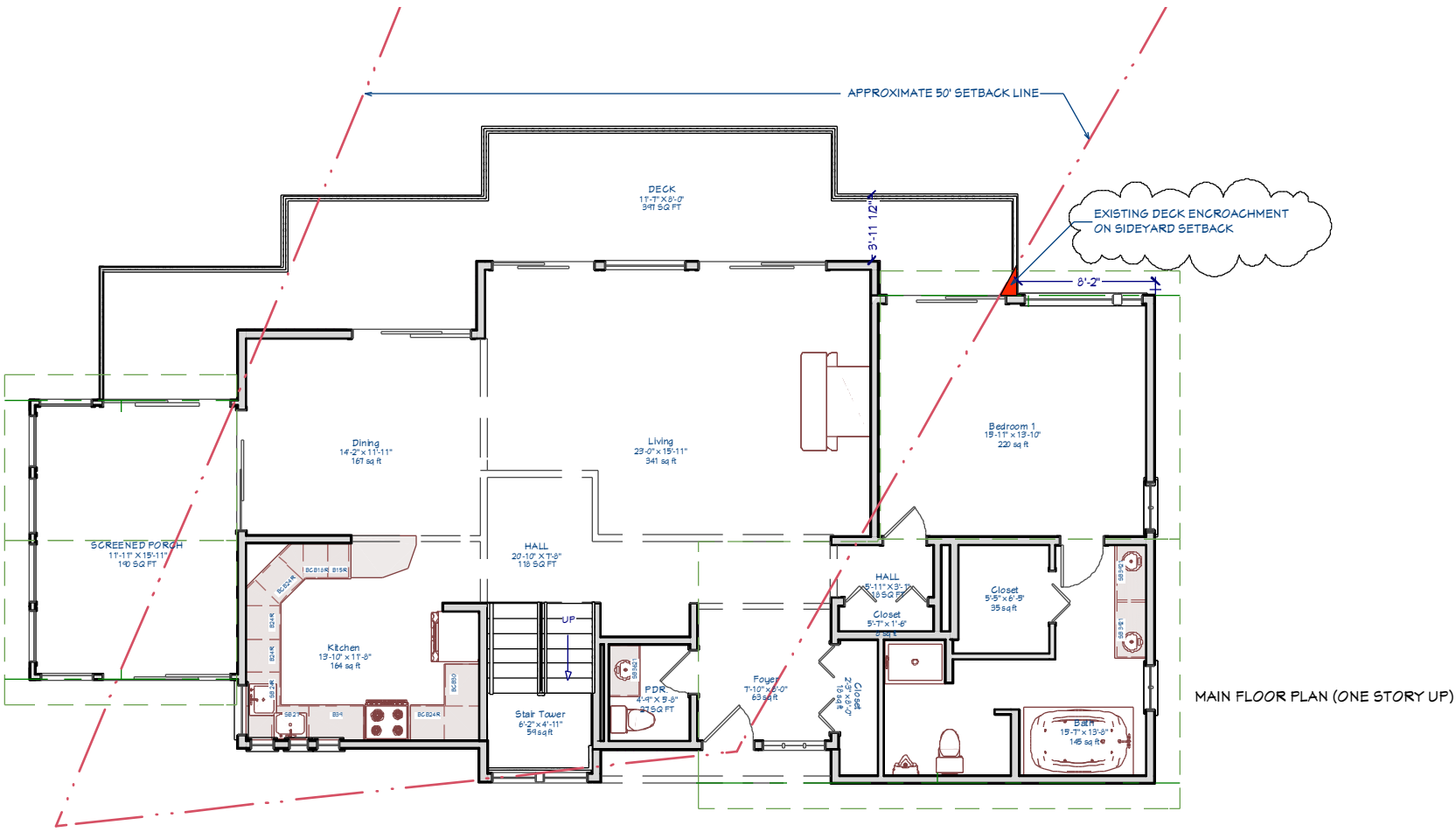
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3/9/22

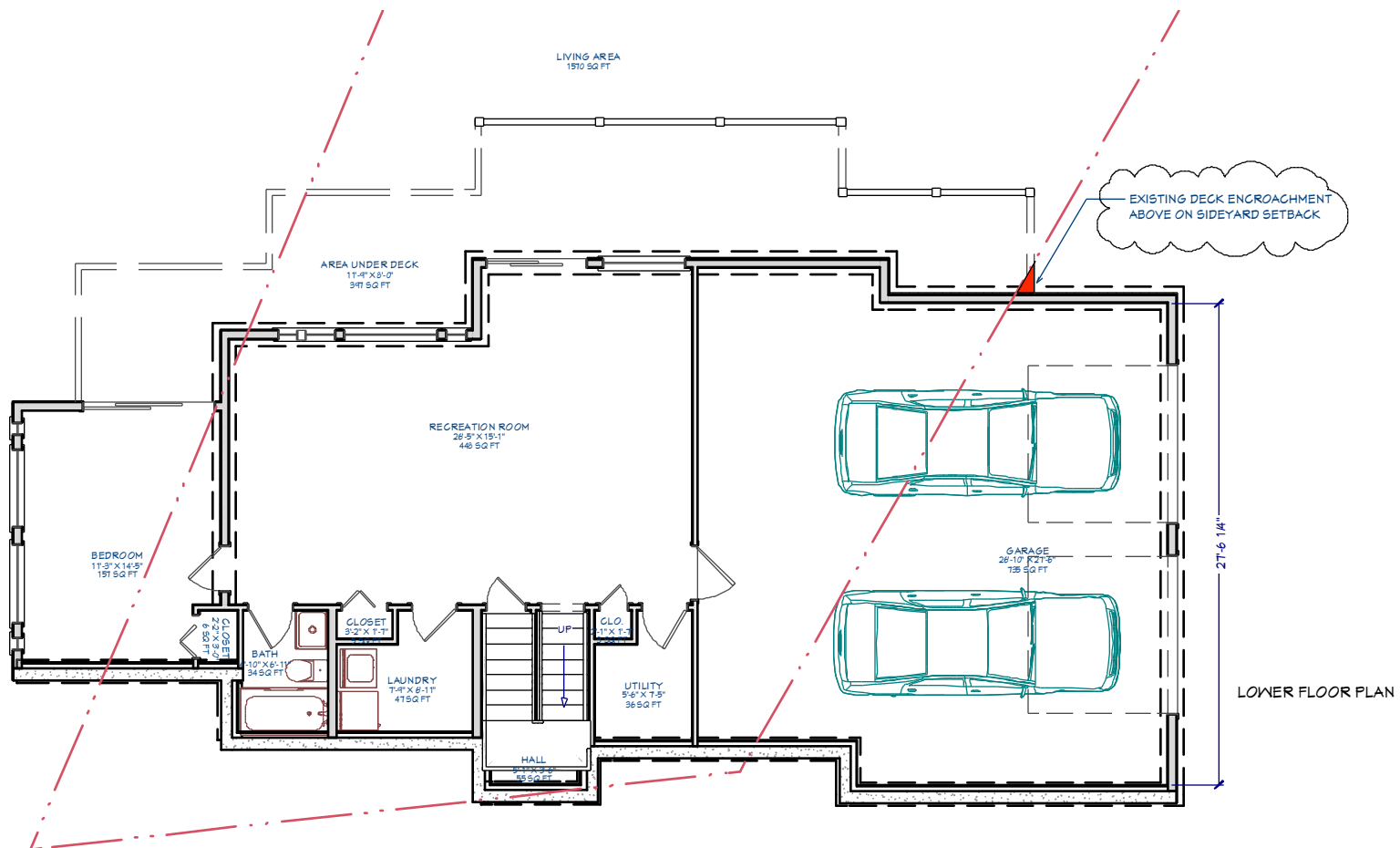
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A-4



MAIN FLOOR PLAN (ONE STORY UP)



LOWER FLOOR PLAN



EXISTING HOUSE PLAN  
1/10" = 1'-0"

REVISION TABLE	
NUMBER	DATE

ADDRESS  
**CEDAR RESIDENCE**  
56 Mahkeenac Road  
Stockbridge, MA

**RhDesign llc.**  
RITCH HOLBEN  
230 NORFOLK ROAD  
SOUTHFIELD MA 01259  
413.854.8923

DATE:

8/9/22

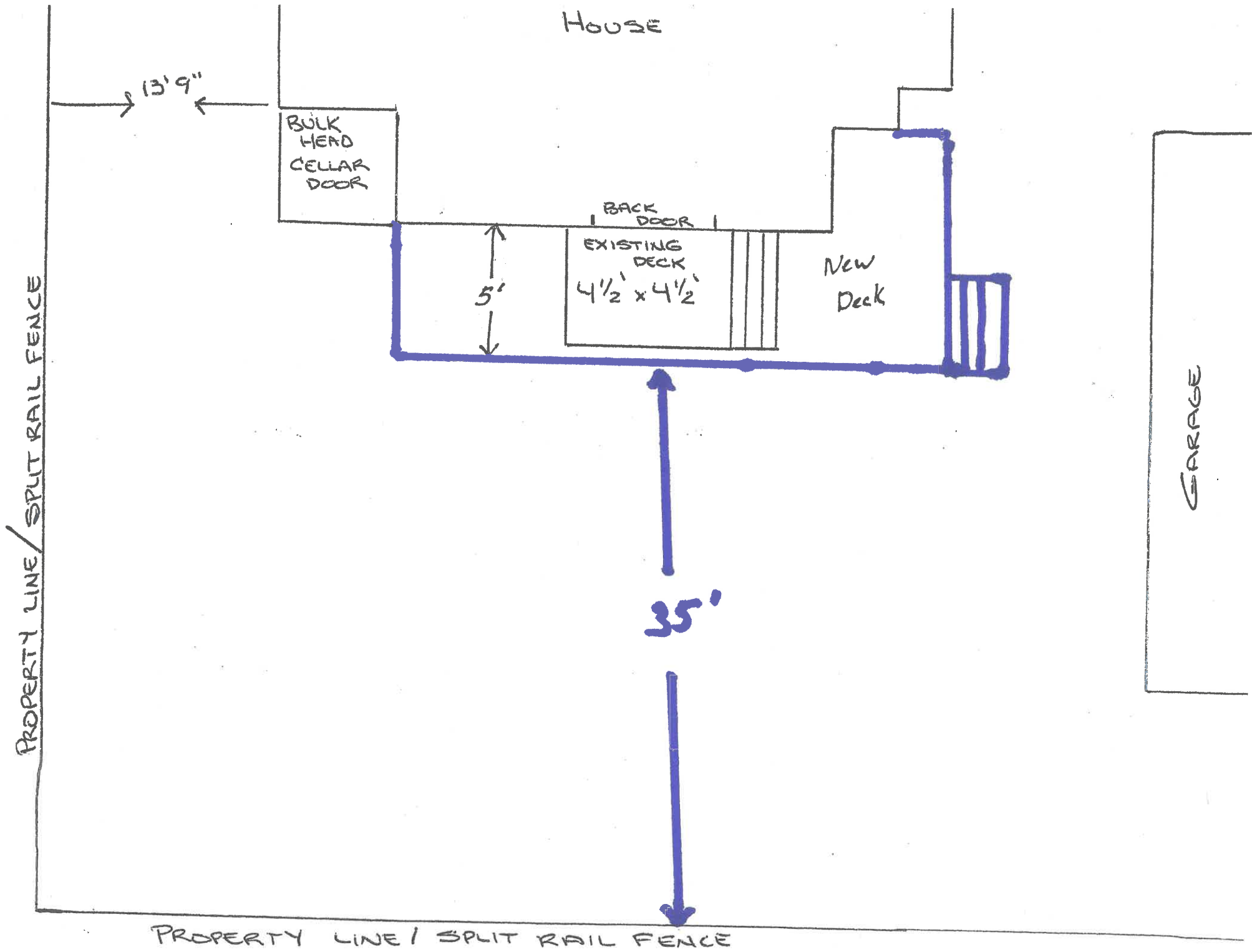
SCALE:

SHEET:

**A-5**







# MARTIN & OLIVEIRA

JOHN J. MARTIN, JR. \*  
WILLIAM E. MARTIN  
THOMAS J. MARTIN  
MICHAEL J. MARTIN  
ANTHONY G. MASSIMIANO  
JOHN R. GOBEL ◇

DAVID R. CIANFLONE +  
DANIEL J. MARTIN ^  
JOSEPH R. MARTIN ^

JOHN J. MARTIN, SR. ~  
RONALD E. OLIVEIRA †

A Professional Limited Liability Partnership  
Attorneys and Counselors at Law  
THE CLOCKTOWER  
75 SOUTH CHURCH STREET, SUITE 550  
PITTSFIELD, MASSACHUSETTS 01201-6145

33 MAIN ST., STE. 3, NORTH ADAMS, MASSACHUSETTS 01247  
36 CLIFFWOOD ST., 2 FLOOR, LENOX, MASSACHUSETTS 01240

TELEPHONE (413) 443-6455  
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**WILLIAM E. MARTIN**  
Direct: (413) 347-8962  
Cell: (413) 441-3317  
wem@martinoliveira.com

\* Also a CPA  
~ (1933–2017)  
† (1935–2009)  
◇ Sole Member LLC  
+ Sole Stockholder PC  
^ Associate

October 11, 2022

**BY EMAIL @ [selectmen@stockbridge-ma.gov](mailto:selectmen@stockbridge-ma.gov)**

Stockbridge Board of Selectmen  
Town of Stockbridge  
50 Main Street, P.O. Box 417  
Stockbridge, MA 01262-0417

RE: White Pines Condominium

Dear Selectboard:

I represent the White Pines Condominium Association. As you may be aware, various Unit Owners have expressed an interest in adding decks or small additions to their units. Ordinarily, a Condominium Association could allow such additions by granting the unit owner a Limited Common Area Agreement that would permit exclusive use that addition area.

However, because the White Pines was constructed pursuant to Special Permits granted by the Stockbridge Planning Board and the Board of Selectmen, the question has arisen of whether an amendment to the Special Permit would be required to expand the units in any respect. I am enclosing a copy of the Special Permit Decisions, notices of which are recorded with the Berkshire County (Middle District) Registry of Deeds in Book 1061, Page 27 (Planning Board) and Book 1061, Page 33 (Board of Selectmen).

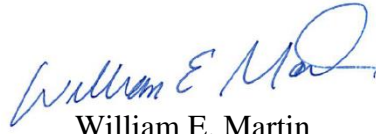
We have reviewed this matter with Building Inspector Ned Baldwin and your Town Council. We have proposed that the Building Inspector has the authority to grant building permits where the permit reflects a de minimis modification in the Special Permit site plan. In this case, we propose that the Select Board agree that a single addition (enclosed or deck) of 500 s.f or less, per unit, meet that standard.

I ask that you place this matter on your agenda for the October 27, 2022 Meeting at 6:30 p.m., so that we may present our request and have you provide the guidance requested.

Stockbridge Board of Selectmen  
Town of Stockbridge  
October 11, 2022  
Page 2

Thank you in advance for your attention to this matter.

Cordially yours,

A handwritten signature in blue ink, appearing to read "William E. Martin", is positioned above the printed name.

William E. Martin

WEM/tlr  
Enclosures

cc: Ned Baldwin, Stockbridge Building Commissioner  
Michael Canales, Stockbridge Town Administrator  
Christopher H. Heep, Esq., Stockbridge Town Council  
Peter Ticconi, Scarafoni Associates

245110  
TOWN OF STOCKBRIDGE, MASSACHUSETTS

BOOK 1061 PG 27

## THE PLANNING BOARD

NOTICE FOR RECORDING IN THE REGISTRYDate May 28, 1982

DECISION TO GRANT A SPECIAL PERMIT OR ANY EXTENSION, MODIFICATION OR RENEWAL  
OF A SPECIAL PERMIT.

(A copy to the applicant, and for filing with Town Clerk together with the Record  
of Proceedings and plans.)

Notice is hereby given that a special permit has been granted in compliance with  
the Statutory requirements as set forth in Chapter 40A as amended

TO MONUMENT INN, INC. David S. Rothstein, President  
(Owner or Petitioner)

ADDRESS Mailing: P. O. Box 476, Lenox, MA. 01240

by the Planning Board, affecting the rights of the owner with respect to the use  
of premises on east side of Mahkeenac Road  
(Identify Land Affected)

The record title standing in the name of

whose address is \_\_\_\_\_  
(Street) (Town) (State)

by a deed duly received in the Berkshire Middle District, Berkshire County  
Registry of Deeds in Book 885, Page 322cc.

Registry District of Land Court, Certification No. \_\_\_\_\_ Book \_\_\_\_\_ Page \_\_\_\_\_

The decision of said Board is on file with the papers and plans in the Office of  
the Town Clerk.

Signed and certified this 28th day of May 1982

THE PLANNING BOARD

Chairman

Clerk

## CERTIFICATE BY THE TOWN CLERK FOR FILING OF THE DECISION IN THE REGISTRY

This is to certify that twenty (20) days have elapsed since filing of the above  
decision with this office and no appeal has been filed, or appeal has been filed  
and denied in the case.

Lelia C. Rothstein  
Signature and Seal of the Town Clerk



1982 00245110

Bk: 1061 Pg: 0027 Doc:NOT  
Page 1 of 5 07/22/1982



BOOK 1061 PG 28

TOWN OF STOCKBRIDGE, MASSACHUSETTS  
NOTICE OF DECISION  
THE PLANNING BOARD

(To be mailed forthwith to the petitioner, abutters, and owners of land within 300 feet of the property line, the Board of Selectmen, Building Inspector, the Planning Boards of every abutting municipality and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent, as provided in Section 15, Chapter 40A as amended.)

Applicant MONUMENT INN, INC. Date May 28, 1982  
Premises Affected East side of Mahkeenac Road, Stockbridge

Special Permit Applicant

Referring to the above application so as to permit the construction of a maximum of 34 new dwelling units on Area B of the plan submitted for the property known as Music Inn.

After a Public Hearing given on TUESDAY, MAY 25, 1982  
(Date)

the Planning Board at its meeting on May 25, 1982  
(Date)

VOTED TO GRANT a special permit under Section 4.9 A 2 of the Protective Bylaws subject to the following conditions, safeguards and limitations on time or use, if any:

- 1) Both Phase A & B be limited to 34 units each.
  - 2) Time-sharing concept not be permitted in this development.
  - 3) Any health or recreational facilities be restricted to owner and not open to public.
  - 4) At request of applicant, West Westleigh Drive remain an approved legal way and not become a Town way.
- ~~VOTED TO DENY the application for special permit.~~

The decision of the Board, together with detailed record of its proceedings stating the reasons for the decision, shall be filed within 14 days after hearing in the Office of the Town Clerk.

**IMPORTANT**

Any appeal from the decision of the Planning Board can be made only to the Court and must be made pursuant to Section 17, Chapter 40A, G. L. as amended, and must be filed within twenty (20) days after the date of filing of the decision with the Town Clerk.

THE PLANNING BOARD

Martin Cooperman, M. D.  
Clerk





## TOWN OF STOCKBRIDGE, MASSACHUSETTS

BOOK 1061 PG 29

## THE PLANNING BOARD

RECORD OF PROCEEDINGSDate Filed May 28, 1982

(Copies of this Record of Proceedings with all attachments must be filed within 14 days in the Office of the Town Clerk.)

I, Martin Cooperman, M. D. Clerk of the Planning Board, hereby certify

that the following is a detailed record of all its proceedings relative to the application of MONUMENT INN, INC. (David S. Rothstein, President)  
(Name of Applicant)

Mahkeenac Road, Stockbridge

(Address of Applicant)

for a special permit under Section 4.9 A 2. of the Zoning By-Law.

The Applicant desires to: construct a maximum of 34 new dwelling units on Area B of the plan submitted for his property located on the east side of Mahkeenac Road.

The premises affected are located at east side of Mahkeenac Road being in Zoning District, in which the above-mentioned use requires a special permit from the Planning Board.

1. On April 28, 1982 an application of which a true copy marked "A" is made a part of this record, was presented to the Planning Board.

2. Thereupon, an advertisement, a true copy of which marked "B" is made a part of this record, was published in the Berkshire Eagle, a newspaper published in Berkshire County on Tuesday, May 11, 1982 and on Tuesday, May 18, 1982.  
(Date) (Date)

3. Notices of the hearing, a copy of which marked "C" is made a part of this record, were mailed postpaid to the petitioner, abutters, and owners of land within 300 feet of the property line, being the same persons named in the Assessors' certificate which was a part of the petition heretofore referred to and marked "A", and to the Board of Selectmen, Building Inspector, and the Planning Boards of every abutting municipality.



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## RECORD OF PROCEEDINGS - 2.

4. On TUESDAY, MAY 25, 1982, a hearing was held at the Town Hall at which opportunity was given to all those interested to be heard in favor or opposition to said petition, application or appeal at which hearing

the following members were present: A. Schuler, J. H. Spencer, C. Beautyman, A. Henderson, E. Ochtman, and M. Cooperman.

Application to construct 34 new dwelling units on Area "B" as shown on attached map, and extend West Wheatleigh Dr. legal way status to include the remaining portion of West Wheatleigh Drive within Monument Inn, Inc. property lines. There were no comments pro or con from the floor nor by mail.

Members Present A. Schuler, J. H. Spencer, C. Beautyman, A. Henderson, E. Ochtman, and M. Cooperman

5. Following the hearing the Board made the following specific findings regarding the land in question and the proposed use:

Approved the application with the following conditions:

- 1) Both Phase A & B be limited to 34 units each.
- 2) Time-sharing concept not be permitted in this development.
- 3) Any health or recreational facilities be restricted to owner and not open to public.
- 4) At request of applicant, West Wheatleigh Drive remain an approved legal way and not become a Town way.

NOTE: Restatement of mandatory provisions and requirements are not to be taken as findings.

6. The Board voted at its meeting on May 26, 1982,  
as detailed below, to

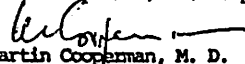
~~DENY the application based on findings as recorded under  
FEAR OF PROSECUTION~~

GRANT the application subject to the following conditions,  
safeguards and limitations on time or use, if any:

- 1) Both Phase A & B be limited to 34 units each.
- 2) Time-sharing concept not be permitted in this development.
- 3) Any health or recreational facilities be restricted to owner and not open to public.
- 4) At request of applicant, West Wheatleigh Drive remain an approved legal way and not become a Town way.

NOTE: Show the vote of each member upon each question or, if absent or failing to vote, indicate such fact, and set forth clearly the reason or reasons for its decision, and of its other official actions.

Members present: A. Schuler, J. H. Spencer, C. Beautyman, A. Henderson, E. Ochtman, and M. Cooperman. Five members voted to grant the permit; Dr. Cooperman abstained from voting.

  
Martin Cooperman, M. D.  
Clerk

RECEIVED & ENTERED FOR RECORD JULY 22, 1982 AT 2:05 P.M.





BOOK 1061 PG 33

## TOWN OF STOCKBRIDGE, MASSACHUSETTS

## BOARD OF SELECTMEN

NOTICE OF DECISION

(To be mailed forthwith to the petitioner, abutters, and owners of land within 300 feet of the property line, the Planning Board, Building Inspector, Board of Health, and the Planning Boards of every abutting municipality and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent, as provided in Section 15, Chapter 40A as amended.)

APPLICANT: Monument Inn, Inc.  
David S. Rothstein, President

Amended  
Special Permit Application

PREMISES AFFECTED:

DATE: June 11, 1982

East side of Mahkeenac Road, Stockbridge, in Residence Low Density Zone.

Referring to the above application so as to permit development of a residential condominium community of 68 living units on a 95-acre property, which application was then informally amended for permission to rehabilitate the existing buildings and convert them to a maximum of 34 housing units plus the support facilities—health club, swimming pool, tennis courts.

After a public hearing given on January 25, 1982, the Board of Selectmen at its meeting on Monday, June 1, 1982,

VOTED TO GRANT a special permit so as to permit the rehabilitation of the existing buildings to a maximum of 34 housing units with the following conditions:

1. Both Phase A and B be limited to 34 units each.
2. Time-sharing concept not be permitted in this development.
3. Any health or recreational facilities be restricted to owner and not open to public.
4. At request of applicant, West Wheatleigh Drive remain an approved legal way and not become a Town way.

The decision of the Board together with detailed record of its proceedings stating the reasons for the decision shall be filed within 14 days after hearing in the Office of the Town Clerk.

IMPORTANT: Any appeal from the decision of the Board of Selectmen can be made only to the County and must be made pursuant to Section 17, Chapter 40A (G.L.) as amended, and must be filed within twenty (20) days after the date of filing of the decision with the Town Clerk.

BOARD OF SELECTMEN

*Mary H. Flynn*  
Clerk



BOOK 1061 Pg 34

## TOWN OF STOCKBRIDGE

BOARD OF SELECTMEN  
(Special Permit)

PETITIONER'S NAME: MONUMENT INN, INC.

I, Helen K. Pigott, Secretary to the Board of Selectmen, under the Zoning Bylaws of the Town of Stockbridge, hereby certify that the following is a detailed record of all its proceedings relative to the application of MONUMENT INN, INC. for permission to develop a residential condominium community of 68 living units on a 95-acre property (Music Inn) located on the east side of Mahkeenac Road. Application is made under Section 6.1 of the Zoning Bylaws (Non-conforming Uses).

1) On January 4, 1982, an application of which a true copy marked "A" is made a part of this record was presented to the Board of Selectmen.

2) Thereupon, an advertisement, a true copy of which is marked "B" and made a part of this record, was published in the Berkshire Eagle, a newspaper of general circulation in this town, on Monday, January 11, and on Monday, January 18, 1982.

3) Notices of the hearing, a copy of which is marked "C" and made a part of this record, were mailed postpaid to the petitioner, abutters, and owners of land within 300 feet of the property line, being the same persons named in the Assessors' certificate included with the application marked "A", which is a part of this record, and to the Planning Board, Board of Health, Building Inspector, Conservation Commission, and the Planning Boards of every abutting municipality.

4) On Monday, January 25, 1982, at 7:30 P. M., a hearing was held at the Selectmen's Office, Town Hall, at which opportunity was given to all those interested to be heard in favor or opposition to said application.

Those present at the hearing were: John A. Beacco, Jr., Mary V. Flynn, John W. Plant (Board of Selectmen); Albert P. Schuler, John H. Spencer, Jr. (Planning Board); David S. Rothstein (Applicant) and Hugh C. Cowhig (his attorney); Ann, Jane and Nancy Fitzpatrick; Mr. and Mrs. L. Linfield Simon; Brian Quinn; Mr. and Mrs. Walter Schumm; James Hatch (interested persons and/or abutters); Philip Heller (Attorney representing Morton Weiss, Abutter); Mrs. Hugh C. Cowhig; Steve Moore and Jennifer Browdy (news media); and Helen Pigott (Recorder). (Verbatim transcript in hearing file.)

Large maps, drawings and a model were used to familiarize those present with the premises and were referred to in the presentation. Mr. Cowhig spoke on behalf of Mr. Rothstein and explained their plans. Basically, they intend to take the existing buildings and rehabilitate them to 24 housing units. In back of the existing buildings and as a "wing" out on both sides there will be an additional 27 units. This will total 51 units in a very concentrated area. They would like to spread out over the remainder of the property 17 units consisting of single and duplex units. The plan includes a tennis court area, maintenance area, a possible garden and farm area should any prospective purchasers wish to keep horses, cattle, etc. The total property or acreage will be dedicated under the condominium concept. He indicated a swampy area near the lower road on which they would like to create a pond (after appropriate hearings with the Conservation Commission). They have had tests done by Robert Brown Associates of Pittsfield for on-site septic systems and one area has very good percolation. The tentative design is for percolating cisterns rather than leach fields. They would also need to drill wells on the property for a self-contained water supply. Mr. Cowhig



further stated that they don't expect that the total number of units would be built within a year. If they can arrange adequate financing and backing, they are looking at the project being spread over a five-year period. Their best estimate of unit cost at this time is somewhere between \$125 to \$150,000. If the permit is granted for the total number of units asked for, it will be around a \$10 million dollar project.

In a preliminary discussion they had mentioned putting some land in conservancy and Miss Flynn questioned where this land was located. Mr. Cowhig indicated it as the land along the stream on the southern end of the property and they had thought initially rather than placing it under the condominium deed that were the Conservation Commission or the Berkshire Natural Resources Council interested in a conservation easement, they would have no objection to it. However, he stressed that as the presentation is made now all the land is tied up in the permit they are seeking so that they couldn't come back in and look for individual lots on Mahkeenac Road, for instance, that they had frontage on.

He also mentioned that there would be a pool, tennis courts, and a physical fitness type health club which would be available to the condominium owners. He doubted with the cost of units that owners would be willing to have the club go public although a limited membership might be agreed upon. He stressed that the roads would be privately maintained as private roads.

Mr. Beacco asked about construction materials. Mr. Rothstein pointed out on the model that the units have been designed to take advantage of the south facing slopes so that they will be passive-solar houses. The north side of the building which will be masonry will be cut into the earth with an earth berm; the south sides of the units will be glass. Rothstein said that the sites were chosen keeping in mind all the existing white pine trees as they offer a great deal of wind-breaking from the northwest. He also pointed out that the masonry shells are fireproof and sound-proof.

When questioned whether there would be a time-sharing concept planned, Mr. Rothstein felt there would not be because of the investment on the owner's part. He felt it might be likely that an owner might rent his residence if he were to be away for a year but it seemed unlikely that anyone would rent their homes out on a weekly basis.

Mr. Simon inquired when the utilities would be put in. Mr. Rothstein said they obviously had to have wells to prove they had water and, of course, the sewerlines would also have to be in.

Attorney Weller brought out three concerns of his client, Morton Weiss. They are seeking the support of the Board in the relocation of one of the duplexes which is located near his back property line. Mr. Weiss owns approximately six or seven acres and conceivably the back portion of this land could become an additional building lot since it has frontage on the road. It would be less desirable if the duplex was built as indicated in the plans. The second concern was the location of three or four duplexes to the south of his property which he felt he couldn't ask Rothstein to relocate but would like to request that they be screened from his property. Mr. Weiss' last concern was with respect to the pool and/or health club, should it become open to the public since it would increase the traffic on the road which goes past his house. He would favor the permit being granted for the condominium concept and the health club and pool a use that would run with the project but that if in the future, the owners decided they wanted to open it up to the public, that they come back to the Selectmen again and have a public hearing for such a use. With those exceptions Mr. Weiss thinks it is a positive use of the property and he is in support of it.



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Monument Inn, Inc. - 3.

Brian Quinn questioned the phasing of the project. Rothstein said that ideally it would be wonderful if they could build ten units a year, design them and have clients and owners, but to have the necessary financing and because it is a condominium, you have to tell the potential owner what he is getting in the entire project before you can even sell one unit. Quinn countered that it is quite possible to divide a project arbitrarily into four or five zones: build, complete and sell one zone at a time and move to build, complete and sell the next, etc. This would preclude having 50 foundations and the project going bankrupt. Rothstein felt this wasn't possible because all the units are not going to be the same. Quinn cited the Rolling Hills project in Lenox as an example although Mr. Cowhig countered that even though the original developer went bankrupt, the terms of the permit granted by the Town never changed.

When Simon questioned the time-range for building the health club, for instance, Rothstein said that it is like the utilities, that if you are going to present a good image and sell these properties, that landscaping and the facilities have to be there from the start and that they would be built from the start.

Schuler inquired if the stage building was not acceptable, would he consider bonding the project. Rothstein said he couldn't answer that because bonding is usually used in subdivision projects wherein the roads are to meet town specifications and in this instance all the property will remain privately owned.

Jim Hatch, a former resident, spoke on Rothstein's behalf saying that he had worked with him on a similar project in Lenox and that David has the credentials to plan and design such a project.

George Wislocki also made the observation that if the land has the carrying capacity for the number of units planned, that it is an appropriate piece of land to be developed. The fact that it is visually without impact to the community and off the road lends itself to development. He said the town would be well rewarded from the taxes which would be provided by such a parcel as this.

In answer to Mrs. Simon's question whether he had ever considered single-family dwellings, Mr. Rothstein said that from the start he wished to keep the property intact and not have it subdivided and have streets laid throughout, that the condominium concept was more a conservation plan in his opinion because the buildings are concentrated. He had never considered subdividing.

Mr. Beacco said that they would look for Planning Board recommendations and reach a decision in a couple of weeks. The hearing was adjourned at 8:10 p.m.

On February 9, 1982, the Planning Board sent a memorandum to the Board which stated: "It is the opinion of the Planning Board that the proposed plan applied for under Section 6.12 by David Rothstein exceeds the intent of the Zoning Bylaws. Modification of the existing structure is in our opinion permitted. The proposed cluster housing units are contrary to the intent of this Bylaw. This is not meant as a criticism of the over-all plan. We would suggest the applicant propose at Town Meeting a change in the Bylaw thereby giving the town residents the opportunity to consider cluster zoning."

Mr. Rothstein met again with the Board of Selectmen on February 16 to show them revised plans for his property. The Planning Board had ruled that the alteration of the existing buildings would be permitted under Section 6.12 of the Zoning Bylaws but that the proposed cluster housing units are contrary to the intent of the Bylaw. Therefore, Mr. Rothstein is proposing that if the Planning Board under the Subdivision Regulations would approve the extension of the existing driveway through the property to meet the Wheatleigh Drive, this would allow him to build 13 duplex

units and three single family units for a total of 29 units on accepted legal frontage. Then 35 dwelling units would be planned in the existing buildings as an expansion of a non-conforming use. The 35 units would have a total of 37,000 square feet in three buildings. Although Mr. Rothstein feels the original plan was more exciting architecturally, the new plan is more financially independent. Although the Planning Board suggested Rothstein seek a change at Town Meeting in the Bylaw to give the residents an opportunity to consider cluster zoning, both Rothstein and the Selectmen felt a town meeting might be opposed to adopting a new policy on cluster zoning for all areas of the town. It was suggested the Board along with Rothstein meet with the Planning Board at their next meeting.

The Planning Board met on February 23 (Miss Flynn and Mr. Rothstein also present) and sent the following communication to the Board:

"Our recommendations on Mr. Rothstein's plans as submitted at our February 23, 1982, meeting are as follows:

- a) We accept a conversion in the existing structure to 35 units and require that the Board of Selectmen obtain opinion of Town Counsel as to how much acreage be assigned to this use.
- b) That the time-sharing concept not be permitted.
- c) That the health club be limited to project residents."

Following this meeting Monument Inn, Inc., informally amended its original proposal in response to the Planning Board comments to provide for 34 units of condominiums on approximately 10 acres at the main "Music Inn" building complex with the balance of the acreage being subdivided into 5-acre lots on which would be constructed duplex houses. Each lot so subdivided would have frontage on a private way to be approved by the Planning Board pursuant to the Subdivision Control Regulations of Stockbridge.

On April 28, 1982, Monument Inn, Inc., made application to the Planning Board for a public hearing for a special permit under Section 4.9 A. 2. of the Zoning Bylaws so as to permit the construction of a maximum of 34 new dwelling units on Area B of the plan submitted for the property. After the public hearing on May 25, 1982, the Planning Board voted to grant the special permit with the following conditions:

- 1) Both Phase A and B be limited to 34 units each.
- 2) Time-sharing concept not be permitted in this development.
- 3) Any health or recreational facilities be restricted to owner and not open to public.
- 4) At request of applicant, West Wheatleigh Drive remain an approved legal way and not become a Town way.

On June 1, 1982, the hearing was reopened with the Board of Selectmen, David Rothstein and Hugh Cowhig. Mr. Cowhig briefly summarized what has taken place: After the Planning Board's comments, Monument Inn, Inc., informally amended its original proposal (to the Selectmen) and made application to the Planning Board for a public hearing for a special permit under Section 4.9 A. 2. to permit the construction of a maximum of 34 new dwelling units on Area B of the plan submitted for the property. This was granted by the Planning Board with four conditions.

The application now before the Board is for a maximum of 34 units in the rehab (Area A) plus the support facilities--health club, tennis courts, swimming pool. Mr. Cowhig said they are willing to accept the same restrictions/conditions on this permit as they have on the Planning Board permit.





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Monument Inn, Inc. - 5.

The Board unanimously voted to grant the amended permit with the following restrictions:

1. Both Phase A and B be limited to 34 units each.
2. Time-sharing concept not be permitted in this development.
3. Any health or recreational facilities be restricted to owner and not open to public.
4. At request of applicant, West Wheatleigh Drive remain an approved legal way and not become a Town way.

*Helen K. Pigott*  
Helen K. Pigott  
Secretary to the Board of Selectmen

RECEIVED & ENTERED FOR RECORD JULY 22, 1982 AT 2:05 P.M.

