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Town of North Reading
Massachusetts

TOWN CLERK
NORTH READING, MA

Board of Appeals

MINUTES

Zoning Board of Appeals

December 5, 2019

Town Hall, Room 5

Present: Paul O'Leary, Jennifer Platt, Bill Bellavance and Matt D'Angelo

Mr. O'Leary opened the meeting at 7:30 PM

2 Orchard Dr. – Special Permit for a Home Occupation/Consulting

Mr. O'Leary opened the Public Hearing and read the notice. William D'Orlando the homeowner and applicant, was present. Mr. D'Orlando has been helping his elderly parents and their friends with business matters. He would now like to formerly start a consulting business and work out of his home office. He would be visiting clients at their homes. When asked if he is familiar with the Home Occupation standard conditions, he said he was. Ms. Platt did go over them as well. No abutters were present.

Ms. Platt moved to grant a Special Permit for a Home Occupation – Consulting Business. Mr. Bellavance seconded the motion; and it was voted 3-0 in favor.

164 Haverhill St. – Variance for a retaining wall and a fence over 7 feet

Mr. O'Leary opened the Public Hearing and read the notice. Dave DiFraia, the homeowner and applicant, along with his son, were present. Mr. DiSimone, 166 Haverhill St., was also present. Mr. DiSimone presented a package to members of a memo and pictures (copy attached). Mr. DiSimone purchased his home in April of 2019 and assumed that his turnaround driveway was on his property, but after having a survey done, because of this issue, learned that part of his driveway is actually on Mr. DiFraia's property. Mr. DiFraia was building his retaining wall on or adjacent to that part of the driveway to level his yard so that his kids can play basketball. He was also present to get a variance for installing a 10 – 12' fence to keep the ball in his yard

when they play. Mr. DiSimone was upset that Mr. DiFraia didn't pull permits and now that the wall is in place, he has runoff problems.

Mr. Noel, the Building Commissioner, after receiving a complaint from Mr. DiSimone and going out to the site, sent Mr. DiFraia a Cease and Desist (copy attached) citing Zoning Bylaw §200-4, Structure and Mass State Building Code Ninth Edition 780 CMR R404.4 Retaining Walls, which states in part: walls exceeding twenty-four (24) inches in height that resist lateral loads in addition to soil, shall be designed in accordance with accepted engineering practice . . . Mr. O'Leary noted that the wall wouldn't be in violation of zoning unless it was 4 feet high. Subsequent to receiving Mr. Noel's letter, Mr. DiFraia applied for a building permit for the wall. There was some discussion as to whether Mr. DiSimone's retaining wall was permitted and a short recess was called to retrieve his building folder. Mr. DiFraia stated that he wasn't aware that a building permit was required for a retaining wall and was upset when he received notice from Mr. DiSimone that part of his property had or was being taken by adverse possession.

Mr. DiFraia submitted a stamped plan by an engineer. Mr. DiSimone suggested that a timber wall would work better for runoff. He stated that water and dirt are now running through the wall. Mr. O'Leary said that the grading of the wall is positioned so that runoff should run towards Haverhill St. not toward him but away from his property. The grade now is not finished because he was told to stop work. Mr. O'Leary said there should be a 0% increase in runoff when his work is finished. Mr. DiSimone asked what the cease & desist was issued for? He was under the impression that the 2' wall required a variance. Mr. O'Leary said that Mr. DiFraia would like to install a fence at a height greater than 7' which requires a variance.

Mr. DiFraia stated that all he wanted to do was create a play area for his kids; and he did bring Mr. DiSimone in on his plans. He would like to install a 10' fence because his property is on a hill and he wants to have an area for the kids to ride bikes and play ball without the balls getting out onto Haverhill St. Mr. O'Leary stated that Mr. DiFraia has the right to put up a 7 foot fence without a variance. If the Board of Appeals granted a Special Permit to go higher, Mr. DiSimone could appeal the Decision to Superior Court and it could cost both parties a lot of money in court. Mr. O'Leary said if the Board doesn't grant a variance, Mr. DiFraia can do whatever he wants with his 7' fence, but if he gets a variance for a fence higher than 7' the Board can put conditions in place such as screening for privacy. Mr. DiSimone said he doesn't want a 10' fence. He tried to bargain the portion of his driveway on Mr. DiFraia's property to agree to a higher fence; but Mr. O'Leary said they would have to settle that in court. There was some discussion about regulations for a fenced in tennis court or a fenced in basketball court. Also adding a netting above the allowable 7' was also discussed. It was determined that those would be considered an accessory structure and would require a building permit. Mr. DiFraia

said he doesn't have enough land to do a whole basketball court. Mr. DiSimone said that Mr. DiFraia has already cut into his property a few inches to build the wall. Mr. DiFraia said he has already restored the area with loam and seed. Mr. DiSimone would not agree to a fence any higher than the allowed 7 foot. Mr. DiFraia decided to withdraw his application and just install a 7 foot fence and look into netting or some material similar to that for the additional coverage over the 7 feet.

231 Central Street – Special Permit for a Home Occupation

Due to the fact that the applicant didn't get notification out to the abutters, the applicant requested that the Board approve a continuance to the next ZBA meeting on January 9, 2020. No abutters were present.

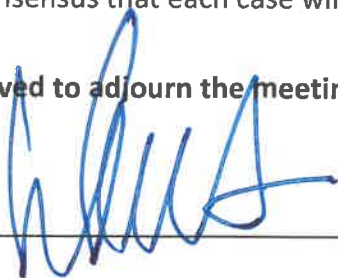
Ms. Platt moved to continue the Public Hearing to January 9, 2020; seconded by Mr. Bellavance. It was voted unanimously in favor 3-0.

New Business:

Mr. O'Leary wanted to discuss Home Occupations and the wording in one of the standard conditions that reads "no employees therein". Mr. O'Leary believes that when applicants state that their business has employees, they are violating that standard and shouldn't get a Special Permit, but should get a place of business other than their home because they have employees and those employees may come to the home frequently for various reasons. Ms. Platt doesn't believe the meaning of "therein" is the business, but the home itself and those employees don't come to the home but meet up at a job site. She feels if the condition is violated and complaints are received by the Building Commissioner, he can then enforce the condition and the Special Permit can be revoked. Ms. Platt wants to look into revoking a permit. Mr. Bellavance said he can understand what Mr. O'Leary is saying but he always thought the condition that reads "therein" refers to no one working at the house. Ms. Platt asked does "therein" mean the house or the business. There may be further discussion on this, but there was some consensus that each case will come before the Board and be conditioned .

Ms. Platt moved to adjourn the meeting, seconded by Mr. Bellavance, and voted 3-0.

Approved



date

11/9/2020

December 5, 2019

Memorandum for Record

To: North Reading Zoning Board of Appeals
From: Michael and Nicole DeSimone
Subject: 164 Haverhill Street's Zoning Violations

References:

- a) Certified Land Survey by Hancock Associates
- b) Pre-Construction Photograph
- c) Three (3) Post-Construction Photographs (NOTE: smaller wooden poles with orange tape are DiFraia's incorrectly opinion of property line before survey; taller wooden poles is the actual/certified property line)

My name is Michael DeSimone, owner of 166 Haverhill Street, and I am writing to express my disapproval of my neighbor, David DiFraia's, recent construction, which violated several zoning codes and infringed upon my property.

Summary of Disapproval:

As a result of DiFraia's failure to obtain building permits, comply with North Reading zoning codes, and adhere to the certified property line, town Zoning Enforcement Officer, Gerry Noel, issued DiFraia a cease and desist letter for his ongoing construction plans. That said, I was recently told by town officials that DiFraia has filed an appeal. As the neighbor adversely affected by DiFraia's unlawful and unpermitted construction, I strongly oppose DiFraia's appeal, and wish that he correct any and all violations. Specifically, I encourage the Zoning Board of Appeals to mandate that DiFraia restore my property to its original state when I bought the property (April 2019), remove both the boulder and timber retaining walls that are directly on the property line (or in some cases, now over the property line into my land), and change the grade/level of his property (10' from property line) back to its original state to prevent unsafe runoff.

Background:

My wife, Nicole, and I bought our first house together, 166 Haverhill Street, in April of 2019. We were excited to start our new married life together in a smaller, close-knit town with great school systems. However, a few months after purchasing our house (roughly 8/6/2019), DiFraia notified me that part of my turnaround driveway is actually his land and he would like to cut it and fill it with dirt/grass. Additionally, he planned on extending his fence roughly 25' towards my house to build a basketball court.

At this time, I asked him to hold construction, so that I could contact my closing attorney, title insurance, and to get a land survey to verify his new property line claims. He agreed to not cover any part of my driveway until my survey was finalized. However, a few days later, I came home to a boulder retaining wall (Reference C) directly on top of 1/3 of my turnaround driveway. Additionally, in the coming days/weeks, he would raise the grade of his property, build a timber retaining wall (directly on the property line), dig into my land to make room for his basketball court, tear up roughly 5'x60' of my grass, and start to install a fence above 6' on or near the property line (References C). All of this recent construction was on land that originally appeared to be mine when I bought the house in April 2019 (based on the natural tree line and change of grade).

DiFraia's unpermitted construction and zoning violations has specifically caused the following harm and/or frustrations for my household:

1. Part of his retaining wall (above 2') goes onto my property or is directly on the property line.
 - o Additionally, with it this close (and not professionally installed), there is a strong chance that the wall falls onto my property or adversely affects my property.
2. His digging went into my property and tore up my well-kept grass.
3. Raising the grade of his land has created runoff, which:
 - o During storms creates an unsafe condition, and
 - o After storms, leaves dirt and rocks on my driveway.
4. Losing part of my turnaround driveway,
 - o Forces my wife and I to back out onto a main road with blind spots, creating a safety hazard.
 - o Prevents a car from parking in the turnaround (without blocking the remainder of my driveway).
5. The neighbor's expansion towards my house has made my land/space more claustrophobic/urban-feeling. His expansion is a stark change from the originally perceived property line - the natural tree line and change of grade (Reference B).

I appreciate you taking the time to read and understand my position, and I am hopeful that the North Reading Zoning Board of Appeals will do the right thing and have DiFraia fix his zoning violations and infringement on my property.

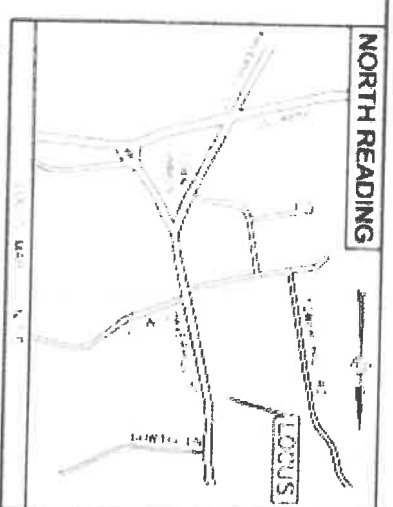
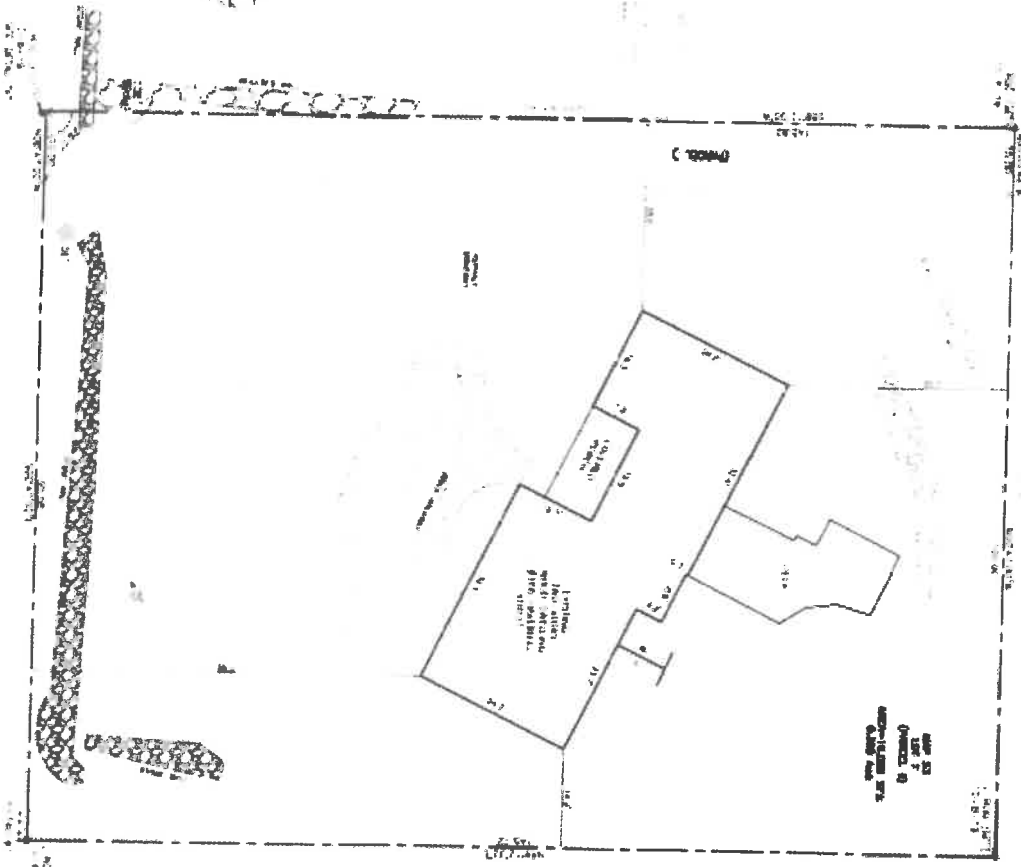
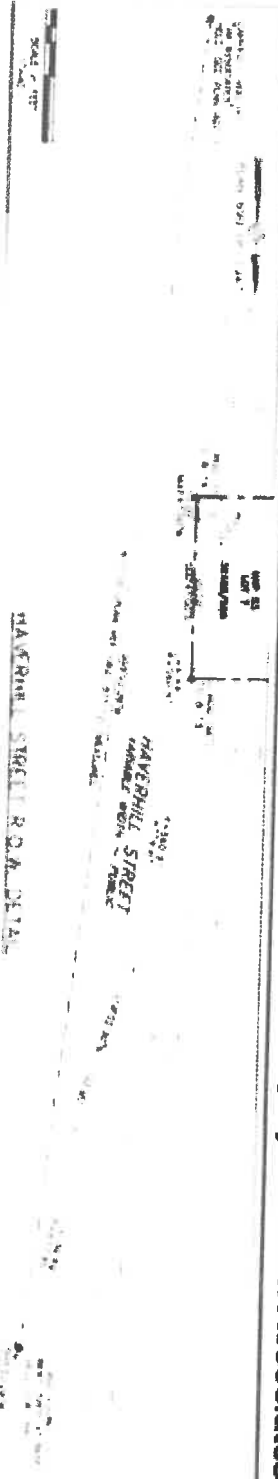
Respectfully,



Michael DeSimone

CC: James Demetri
Paul O'Leary
Joseph Keyes
Jennifer Platt
William C. Bellavance, Jr.
Matthew V. D'Angelo
Gerry Noel
Kathy Morgan

Reference A: Certified Land Survey by Hancock Associates



OWNER/ADJACENT
 HANCOCK ASSOCIATES
 1000 Haverhill Street
 North Reading, MA 01864

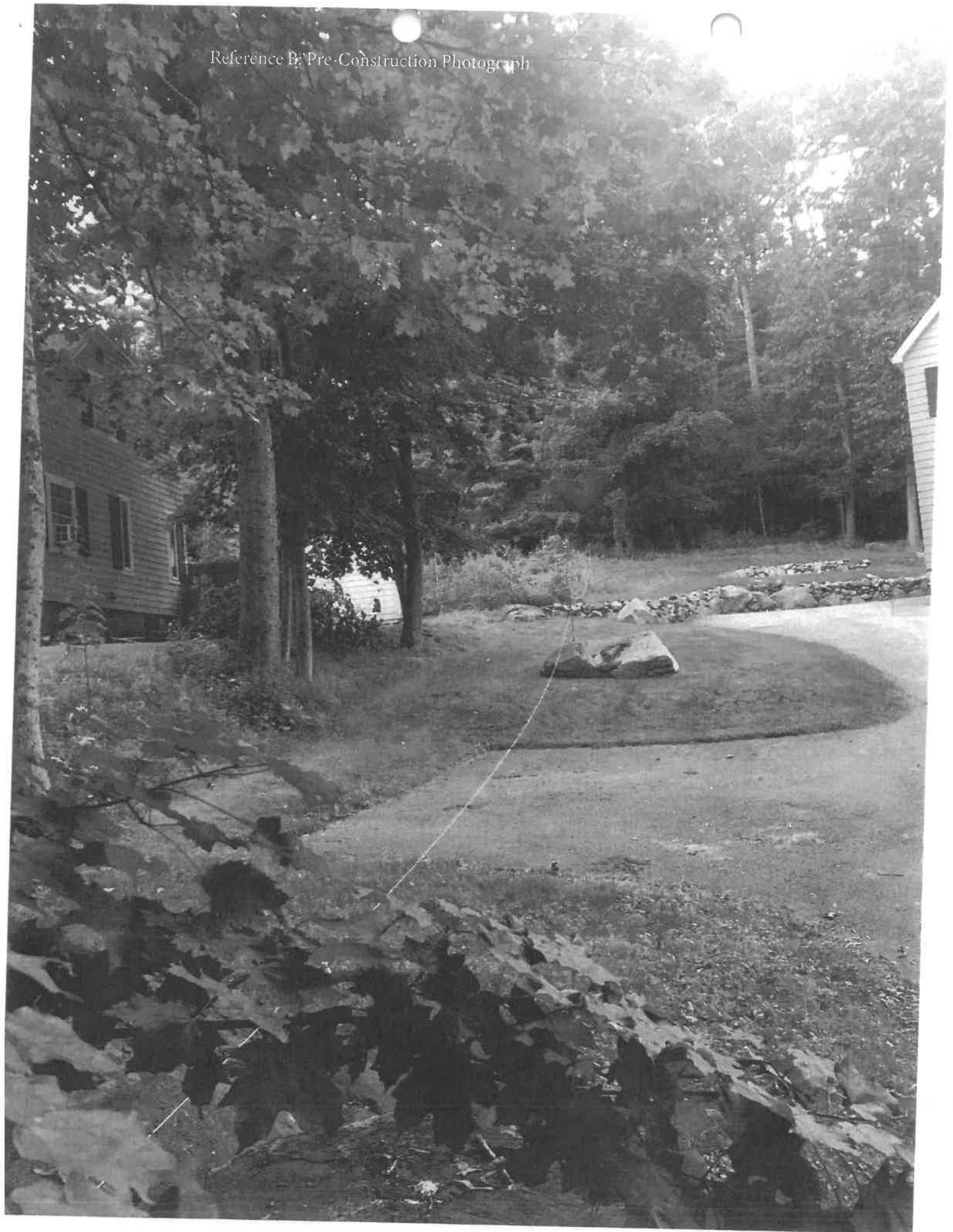
PLAN REFERENCE
 The plan is a true and correct copy of the original plan as shown on the plan. The plan is a true and correct copy of the original plan as shown on the plan. The plan is a true and correct copy of the original plan as shown on the plan.

NOTES
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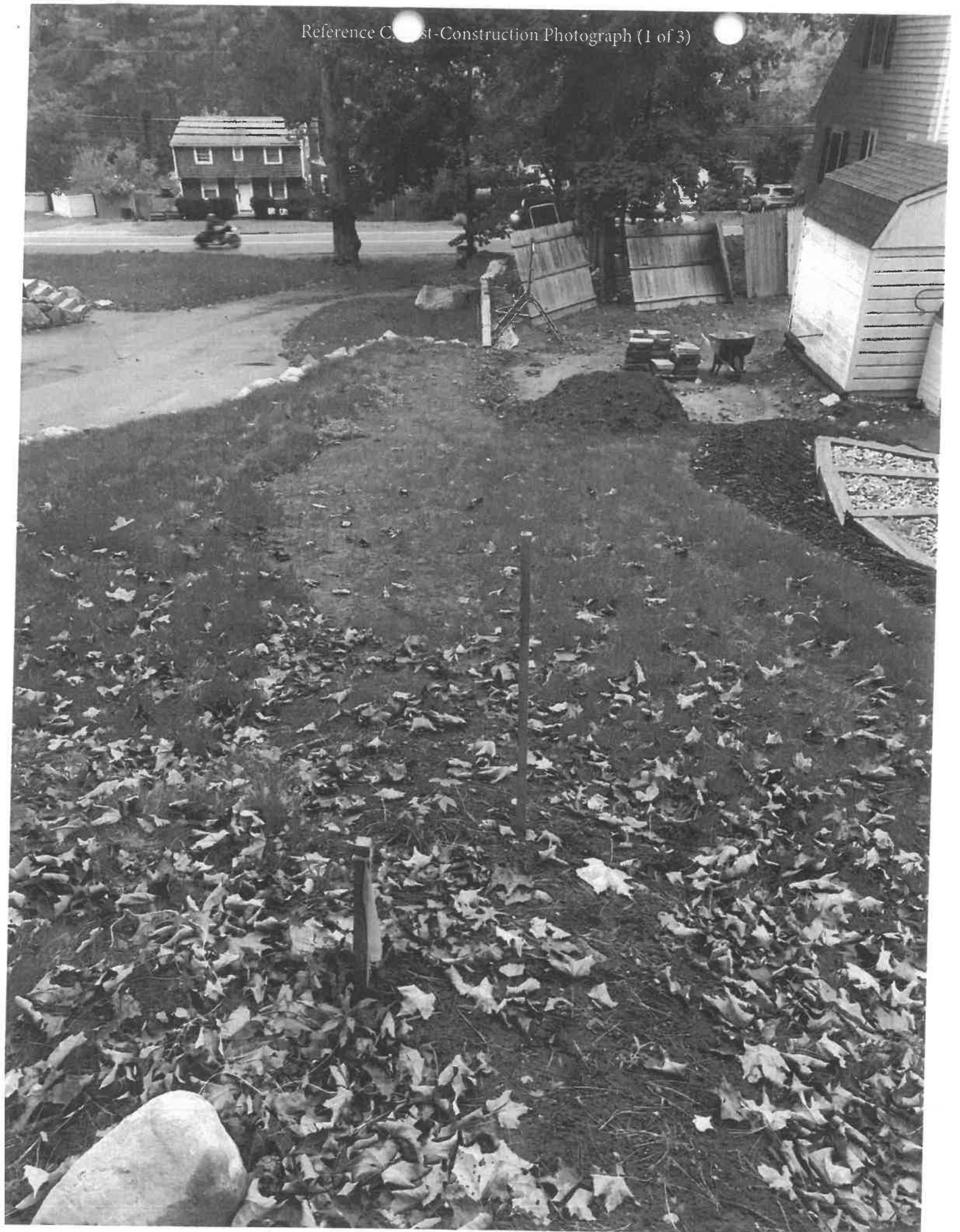
BOUNDARY PLAN OF LAND
 166 Haverhill Street
 North Reading, Massachusetts
 Middlesex County

| | | |
|--|--|----------|
| HANCOCK ASSOCIATES 1000 Haverhill Street North Reading, MA 01864 Michael N. Sullivan | | 10-23-19 |
|--|--|----------|

Reference B: Pre-Construction Photograph



Reference Construction Photograph (1 of 3)





Reference C; Post-Construction Photograph (3 of 3)





Gerry Noel
Building Commissioner
Zoning Enforcement Officer

TOWN OF NORTH READING

BUILDING DEPARTMENT

Massachusetts

October 21, 2019

Cease & Desist

David Difraia
164 Haverhill Street
North Reading, MA 01864

Re: Zoning Violation, Building Code Violation, MA General Law Violation

Dear Mr. Difraia,

It has been brought to my attention through a complaint received from your neighbor that you constructed a retaining wall/structure (see zoning definitions § 200-4, Structure) at the side of your property. Additionally, a fence was to be installed, with post currently in place at a height above the allowable Zoning Bylaw § 200.65. Furthermore, the complainant provided an up to date Draft Plot Plan, from Hancock Associates, and will be affirming with a certified plot plan indicating you installed a natural stone wall on his property (See attached photos). After further review of our files, no permits were issued for this structure. Furthermore, this is in violation of the Towns zoning bylaw § 200-63 which states in part: no structure shall be less than ten (10) feet from any lot line. You are in violation of the Massachusetts State Building Code 9th Edition 780 CMR R404.4 Retaining Walls, which states in part: walls exceeding twenty four (24) inches in height that resist lateral loads in addition to soil, shall be designed in accordance with accepted engineering practice.....

Additionally, you are in violation of Massachusetts State Building Code 9th Edition 780 CMR and MA General Law c. 143 § 94.

You shall immediately cease and desist forthwith and plan to remove this violation within 30 days from the date of this correspondence.

You have thirty days (30) from the date of this correspondence to comply with this order. Failure to comply may result in further action not limited to fines and or court action by the Town of North Reading.

Additionally, section R114.2 Unlawful Continuance States in part the following: Any person who continues to work shall be subject to penalties as described by law. M.G.L. c.143 § 94 which reads in part as follows: Whoever violates any provision of the state building code, except any specialized code as described in section ninety-six, shall be punished by a fine of not more than one thousand dollars or up to a year in jail for each such violation. Each day during which a violation exists shall constitute a

separate offense. If not corrected in the time frames mentioned herein, a complaint shall be filed with the appropriate court and or the Department of Public Safety.

If you feel aggrieved by this compliance order, you have the right to appeal my order of the zoning violation to Zoning Board of Appeals in accordance with MGL Chapter 40A.

If you have any questions please feel free to contact me.

Gerry Noel-CBO

Gerry Noel

Building Commissioner/
Zoning Enforcement Officer

Cc:

Local Inspector
Assistant Inspector
Director of Public Safety
Town Administrator
ZBA
File

[x] Certified Mail 70160750000055633304

[x] First Class