



City of Springfield

Hearings Meeting

~ Draft ~

36 Court Street
Springfield, MA 01103
<http://www.springfieldcityhall.com>

Linda Fitzpatrick
413-787-6559

Monday, September 29, 2014

7:00 PM

Springfield City Hall -- Council Chambers

I. Hearings

7:00 PM Meeting called to order on September 29, 2014 at Springfield City Hall -- Council Chambers, 36 Court Street, Springfield, MA.

Attendee Name	Title	Status	Arrived
Zaida Luna	Ward 1 Councilor	Present	
Timothy C. Allen	Ward 7 Councilor	Present	
E. Henry Twiggs	Ward 4 Councilor	Absent	
Kenneth E. Shea	Ward 6 Councilor	Present	
Kateri B. Walsh	Vice President - At-Large Councilor	Present	
Melvin A. Edwards	Ward 3 Councilor	Present	
Bud L. Williams	At-Large Councilor	Present	
Orlando Ramos	Ward 8 Councilor	Present	
Timothy J. Rooke	At-Large Councilor	Present	
Clodo Concepcion	Ward 5 Councilor	Present	
Justin Hurst	At Large Councilor	Present	
Thomas M. Ashe	At-Large Councilor	Absent	
Michael A. Fenton	President - Ward 2 Councilor	Present	

Moment of Silence - Pledge of Allegiance

II. Special Permits

1. Petition (ID # 2722)

For a Special Permit for Motor Vehicle Sales at the Property Known as 139 Paramount Street (09480-0057), as Allowed by M.G.L. and the Springfield Zoning Ordinance, Article 4, Table 4-4, Section 12.1.

Request:	See Above
Owner:	Lugrone L. Handford
By:	Lugrone L. Handford
Petitioner:	Lugrone L. Handford
By:	Lugrone L. Handford

COMMENTS - Current Meeting:

Hearing held at which the Petitioner Lugrone Handford and Kathleen Brown of the East Springfield Neighborhood Council appeared and spoke to favor of a request for a special permit to sell cars inside an existing building and no one appeared in opposition and the hearing was closed. Councilor Williams praised the Petitioner as a good business man. Councilor Rooke had a question about unpaid taxes on other properties and made a motion that the special permit be sent to committee but failed for lack of second and the special permit was granted by the following roll call vote.

ATTACHMENTS:

- 139_Paramount_St_Tax_Formal (PDF)
- Paramount_St_139_2014 (PDF)

RESULT:	ADOPTED [10 TO 1]
MOVER:	Bud L. Williams, At-Large Councilor
SECONDER:	Kateri B. Walsh, Vice President - At-Large Councilor
AYES:	Luna, Allen, Shea, Walsh, Edwards, Williams, Ramos, Concepcion, Hurst, Fenton
NAYS:	Timothy J. Rooke
ABSENT:	E. Henry Twiggs, Thomas M. Ashe

2. Petition (ID # 2743)

For a Special Permit for the Exterior Renovation of a Structure(S) Totaling More Than One Thousand (1,000) Square Feet at the Property Known as 401 Dickinson Street (03910-0458) (A.K.A. 520 Sumner Avenue) in Accordance with M.G.L. and the Springfield Zoning Ordinance, Article 8.1, Section 8.1.31.A (Neighborhood Commercial Design Overlay District).

Request:	See Above
Owner:	Chapin Corners, LLC
By:	William Santaniello
Petitioner:	Vincent Santaniello
By:	Vincent Santaniello

COMMENTS - Current Meeting:

Hearing held at which the Petitioner Vincent Santaniello appeared on behalf of Chapin Corners, LLC and spoke to favor of a request for a special permit to make exterior renovations to a building at the X including new windows, facades, doors awnings, lights and signage in the amount of about \$100,000.00 and no one appeared in opposition and the hearing was closed. Councilor Williams, Walsh and Shea praised the Petitioner for investing in the City and how the X would look after the improvements and the special permit was granted by the following roll call vote.

ATTACHMENTS:

- Dickinson_401_Tax_Formal (PDF)
- Dickinson_St_401_2014 (PDF)

RESULT:	ADOPTED [11 TO 0]
MOVER:	Kateri B. Walsh, Vice President - At-Large Councilor
SECONDER:	Kenneth E. Shea, Ward 6 Councilor
AYES:	Luna, Allen, Shea, Walsh, Edwards, Williams, Ramos, Rooke, Concepcion, Hurst, Fenton
ABSENT:	E. Henry Twiggs, Thomas M. Ashe

3. Petition (ID # 2744)

To Amend an Existing Special Permit (Motor Vehicle Service Station-Gas Station), Granted December 27, 2005, by Deleting Condition #5 (Requirement to Make Martone Place a Public Way) at the Property Formally Known as 11-13 Tapley Street and Now Known as SS Tapley Street (11415-0032), as Allowed by M.G.L. and the Springfield Zoning Ordinance, Article 4, Table 4-4, Section 12.3(1).

Request:	See Above
Owner:	HDC Two, LLC
By:	Michael W. Frisbie
Petitioner:	HDC Two, LLC
By:	Michael W. Frisbie

COMMENTS - Current Meeting:

Hearing held at which the Attorney Bart Heemskirt and Petitioner Michael Frisbie appeared on behalf of HDC Four Two, LLC and spoke to favor of a request to amend an existing special permit (drive-up service window) granted December 27, 2005, by deleting condition #5 (requirement to make Martone Place a public way) and that the property is to be used to construct a new 14,300 square foot office building to be leased to the RMV for a new registry office. Attorney Heemskirt explained that the reason for the request to change the special permit is that the Petitioner does not own the land where Martone Place is located and could not legally discontinued because it's registered land still owned by the Martone family. Councilor Walsh asked what would happen if the Council denied the special permit and Attorney Heemskirt said that they would still build the office but it would be a private way and not a public way. Councilor Concepcion asked if the Petitioner had met with the McKnight Neighborhood Council and Mr. Frisbie said yes but they did not vote to approve the plan. Councilors Concepcion and Walsh also asked Chris Cignoli, Director of the City's DPW has they been involved in the planning of the project and they still has concerns about layout. Walter Kroll, President of the McKnight Neighborhood Council appeared in opposition stating that he became aware of the project by hearing it on TV news and he had concerns at child safety, traffic, and the project has 3 schools with a mile of the location and at 3 pm many children are walking along that route and the McKnight Council is opposed to the location.

In rebuttal to the opposition Attorney Heemskirt said that the issues is not about whether it's a good or bad location but whether the Council is going to remove the condition to make Martone Place a public way. Jay Caron an abutter business owner stated that he knows the developers and this would be a good fit for the location and Springfield.

In rebuttal to the proponents Walter Kroll spoke stating that both the McKnight and Bay Area Council are opposed to the project and location.

Councilor Ramos asked City Solicitor Edwards Pikula about the legal aspects of the case and Solicitor Pikula stated that the Petitioner had file suit in SJC to mandate that the Building Commissioner of the City issue a building permit for the project and the SJC and remanded the case to Hampden County Superior Court and after a hearing in Superior Court, the Court ruled that the Petitioner must exhausted its administrative remedies before asking the court to make a decision.

Councilor Allen asked Phil Dromey, Deputy Director of Planning and Economic Development and Chris Cignoli for their takes on the project and Mr. Dromey stated that the 2005 special permit was issued because at the time based on those plans and now the Administrative Reviews found that some of the conditions were not completed and are in violation and need to do what you told us your would do and the Petitioner could buy the

old Martone Place and do ANR plan. Councilor Allen then asked Mr. Cignoli to comment and Mr. Cignoli said that the Petitioner has a lot of work to do because of traffic, wetland, repairs to Martone Place and utilities and the hearing was closed. Councilor Edward stated that he is opposed to the special permit because he has heard from the neighbors in Mcknight and Bay Area. Councilor Concepcion made a motion to refer to the Special Permit Review Committee and was seconded by Councilor Rooke and said motion passed by the following roll call vote.

ATTACHMENTS:

- Tapley_St_11_13_Tax_Formal (PDF)
- Tapley_St_St_James_Ave_2014 (PDF)
- Josephson 09 26 2014 decision -- HDC Four (PDF)

RESULT: REFER TO COMMITTEE

Next: 12/1/2014 7:00 PM

Motion To: A. Motion to Refer to Committee

COMMENTS - Current Meeting:

Councilor Concepcion made a motion to refer to the Special Permit Review Committee and was seconded by Councilor Rooke and said motion passed by the following roll call vote.

RESULT: ADOPTED [9 TO 1]

MOVER: Clodo Concepcion, Ward 5 Councilor

SECONDER: Timothy J. Rooke, At-Large Councilor

AYES: Luna, Allen, Shea, Walsh, Williams, Ramos, Rooke, Concepcion, Hurst

NAYS: Melvin A. Edwards

ABSTAIN: Michael A. Fenton

ABSENT: E. Henry Twiggs, Thomas M. Ashe

4. Petition (ID # 2745)

To Amend an Existing Special Permit (Drive-Up Service Window), Granted December 27, 2005, by Deleting Condition #5 (Requirement to Make Martone Place a Public Way) at the Property Formally Known as 559 St James Avenue and Now Known as 557 St James Avenue (11170-0314), as Allowed by M.G.L. and the Springfield Zoning Ordinance, Article 4, Table 4-4, Section 19.1(2).

Request:	See Above
Owner:	HDC Four, LLC
By:	Michael W. Frisbie
Petitioner:	HDC Four, LLC
By:	Michael W. Frisbie

COMMENTS - Current Meeting:

Hearing held at which the Attorney Bart Heemskirt and Petitioner Michael Frisbe appeared on behalf of HDC Four Two, LLC and spoke to favor of a request to amend an existing special permit (drive-up service window) granted December 27, 2005, by deleting condition #5 (requirement to make Martone Place a public way) and that the property is to be used to construct a new 14,300 square foot office building to be leased to the RMV for a new registry office. Attorney Heemskirt explained that the reason fore the request to change the special permit is that the Petitioner does not own the land where Martone Place is located and could not legally discontinued because it's registered land still owned by the

Martone family. Councilor Walsh asked what would happen if the Council denied the special permit and Attorney Heemskirt said that they would still build the office but if would be a private way and not a public way. Councilor Concepcion asked if the Petitioner had met with the McKnight Neighborhood Council and Mr. Frisbie said yes but they did not vote to approve the plan. Councilors Concepcion and Walsh also asked Chris Cignoli, Director of the City's DPW has they been involved in the planning of the project and they still has concerns about layout. Walter Kroll, President of the McKnight Neighborhood Council appeared in opposition stating that he became aware of the project by hearing it on TV news and he had concerns at child safety, traffic, and the project has 3 schools with a mile of the location and at 3 pm many children are walking along that route and eh McKnight Council is opposed to the location.

In rebuttal to the opposition Attorney Heemskirt said that the issues is not about whether it's a good or bad location but whether the Council is going to remove the condition to make Martone Place a public way. Jay Caron an abutter business owner stated that he knows the developers and this would be a good fit for the location and Springfield.

In rebuttal to the proponents Walter Kroll spoke stating that both the McKnight and Bay Area Council are opposed to the project and location and the hearing was closed.

Councilor Ramos asked City Solicitor Edwards Pikula about the legal aspects of the case and Solicitor Pikula stated that the Petitioner had file suit in SJC to mandate that the Building Commissioner of the City issue a building permit for the project and the SJC and remanded the case to Hampden County Superior Court and after a hearing in Superior Court, the Court ruled that the Petitioner must exhausted its administrative remedies before asking the court to make a decision.

Councilor Allen asked Phil Dromey, Deputy Director of Planning and Economic Development and Chris Cignoli for their takes on the project and Mr. Dromey stated that the 2005 special permit was issued because at the time based on those plans and now the Administrative Reviews found that some of the conditions were not completed and are in violation and need to do what you told us your would do and the Petitioner could buy the old Martone Place and do ANR plan. Councilor Allen then asked Mr. Cignoli to comment and Mr. Cignoli said that the Petitioner has a lot of work to do because of traffic, wetland, repairs to Martone Place and utilities. Councilor Walsh made a motion to refer to the Special Permit Review Committee and was seconded by Councilor Rooke and said motion passed by a majority voice vote with Councilor Edwards voting no and Councilors Twiggs and Ashe absent and Councilor Fenton abstaining.

ATTACHMENTS:

- St_James_Ave_559_Tax_Formal (PDF)
- Tapley_St__St_James_Ave_2014 (PDF)
- Josephson 09 26 2014 decision -- HDC Four (PDF)

RESULT: REFER TO COMMITTEE**Next: 12/1/2014 7:00 PM**

III. Petitions

5. Petition (ID # 2773)

1259 East Columbus Ave - Open Air Parking

COMMENTS - Current Meeting:

Hearing held at which the Petitioner Frank Coleccino appeared on behalf of Colvest Columbus Spfld, LLC and spoke to favor of a request for a license to conduct and maintain open air parking spaces for 58 cars and no one appeared in opposition and the hearing was closed. Councilor Williams praised the Petitioner for investing in the City and the petition for open air-parking was granted by the following roll call vote.

ATTACHMENTS:

- 1259 East Columbus Ave(PDF)

RESULT: ADOPTED [11 TO 0]**MOVER:** Bud L. Williams, At-Large Councilor**SECONDER:** Timothy J. Rooke, At-Large Councilor**AYES:** Luna, Allen, Shea, Walsh, Edwards, Williams, Ramos, Rooke, Concepcion, Hurst, Fenton**ABSENT:** E. Henry Twiggs, Thomas M. Ashe


City of Springfield

 36 Court Street
 Springfield, MA 01103

ADOPTED
PETITION (ID # 2722)

 Meeting: 09/29/14 07:00 PM
 Department: Planning and Economic Development
 Category: Special Permit
 Prepared By: Phil Dromey
 Initiator: Phil Dromey
 Sponsors:
 DOC ID: 2722 A

**For a Special Permit for Motor Vehicle Sales at the Property
 Known as 139 Paramount Street (09480-0057), as Allowed by
 M.G.L. and the Springfield Zoning Ordinance, Article 4, Table
 4-4, Section 12.1.**

Request:	See Above
Owner:	Lugrone L. Handford
By:	Lugrone L. Handford
Petitioner:	Lugrone L. Handford
By:	Lugrone L. Handford

RESULT:	ADOPTED [10 TO 1]
MOVER:	Bud L. Williams, At-Large Councilor
SECONDER:	Kateri B. Walsh, Vice President - At-Large Councilor
AYES:	Luna, Allen, Shea, Walsh, Edwards, Williams, Ramos, Concepcion, Hurst, Fenton
NAYS:	Timothy J. Rooke
ABSENT:	E. Henry Twiggs, Thomas M. Ashe

To The City Council of the City of Springfield:
The undersigned respectfully petition your honorable body

for a special permit for motor vehicle sales at the property known as 139 Paramount Street
(09480-0057), as allowed by M.G.L. and the Springfield Zoning Ordinance, Article 4, Table 4-4,
Section 12.1.

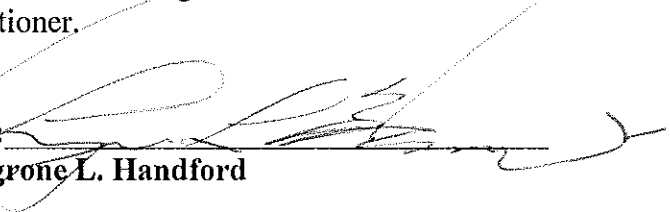
Mailing Address:

49 Shirley Street
Wilbraham, MA 01095

Owner & Petitioner:

Lugrone L. Handford

I hereby certify that I am the owner and
petitioner or acting on behalf of the owner and
petitioner.

BY: 

Lugrone L. Handford

Attachment: 139_Paramount_St_Tax_Form (2722 : 139 Paramount Street)



THE CITY OF
SPRINGFIELD, MASSACHUSETTS

7/18/14

Special Permit Tax Certification

I certify that all identifiable real estate, personal property and excise taxes have been paid by the petitioner and/or landlord associated with the special permit request shown below:

Special Permit: 139 Paramount Street – 09480-0057

Petitioner: LEO HANDFORD

Landlord: LUGRONE L HANDFORD

Stephen J. Lonergan: Treasurer/Collector

Attachment: 139_Paramount_St_Tax_Form (2722 : 139 Paramount Street)

**OFFICE OF PLANNING & ECONOMIC DEVELOPMENT
ANALYSIS FOR A SPECIAL PERMIT**

**139 PARAMOUNT STREET (09480-0057)
MOTOR VEHICLE SALES**

General Information

Petitioner:	Lugrone L. Handford
Request:	Motor vehicle sales.
Proposed use of the property:	Warehouse and used car sales.
Size of Parcel:	244,807 s.f.
Compatibility with current planning documents:	The East Springfield Neighborhood Plan does not show any changes to this area.
Neighborhood council notification:	East Springfield Neighborhood Council: 8-8-14
Tax Status:	SEE ATTACHED
Site Visit:	8-8-13
Hearing Date:	9-29-14

Staff Analysis

Neighborhood characteristics:

The parcel is currently split zoned between Industrial A, Business B and Residence A. The surrounding land uses include:

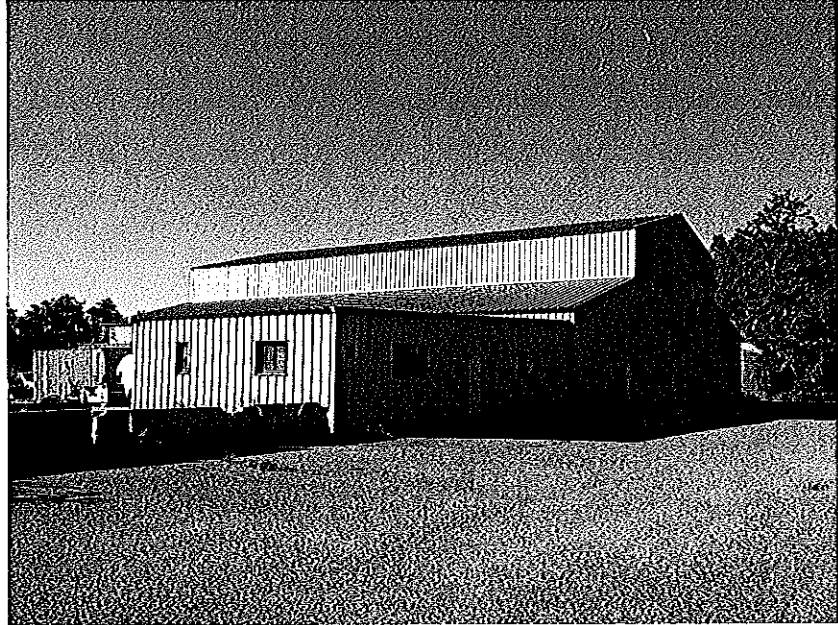
- To the north are single family houses zoned Residence A.
- To the south are the railroad tracks and industrial uses zoned Industrial A.
- To the west is a warehouse facility zoned Industrial A.
- To the east is a mix of residential and business uses zone Residence A and Business B.

Site plan review:

The petitioner has requested a special permit for motor vehicle sales at the property known as 139 Paramount Street. This property is currently the location of the petitioner's construction company.

In reviewing the proposed request and visiting the site, the Staff does not object to the proposed use. The plan submitted indicates that all the cars for sale will be located inside the building. If this special permit is

approved, the staff would recommend that a condition be placed on the approval limiting outside display.



Recommendation

Approve, with conditions.

Recommended Conditions:

1. This special permit is granted to this petitioner only.
2. This special permit is granted for motor vehicle sales at the property known as 139 Paramount Street (09480-0057).
3. The use shall be developed according to the attached site plan with the addition of conditions #4 through #7.
4. There shall be no display of vehicles outside the building.
5. All landscaped areas shall be maintained free of all weeds and debris.
6. The building shall be maintained graffiti free.
7. There shall be no banners, streamers, pennants, or non-accessory signs located on the property or the vehicles.
8. Compliance with these conditions, as well as any and all zoning regulations, is required. Failure to comply may result in enforcement by the Code Enforcement Department punishable by fine of up to \$200 per day for each day a violation exists.

Stephen J. Lonergan
Collector/Treasurer



THE CITY OF
SPRINGFIELD, MASSACHUSETTS

7/18/14

Special Permit Tax Certification

I certify that all identifiable real estate, personal property and excise taxes have been paid by the petitioner and/or landlord associated with the special permit request shown below:

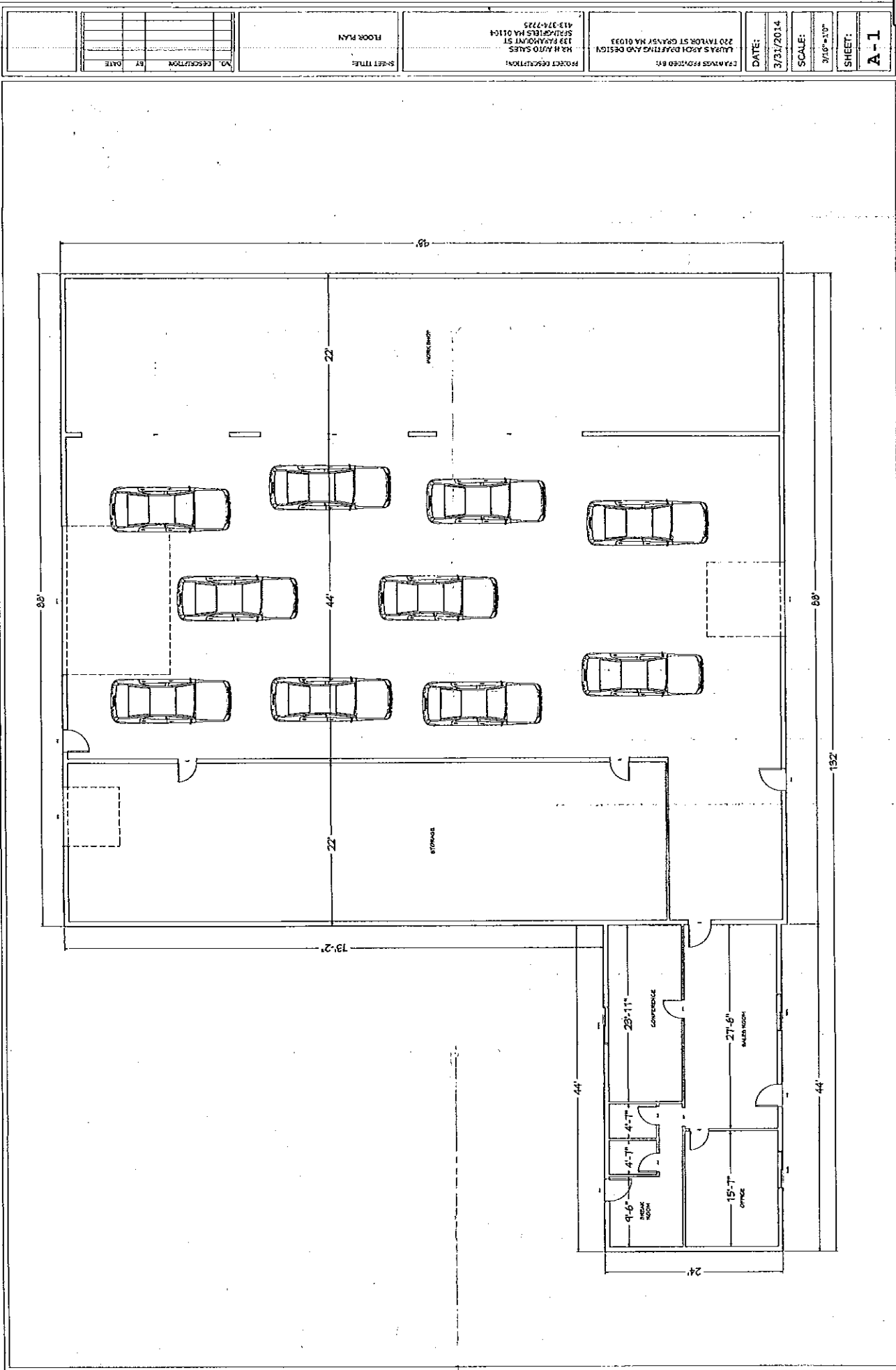
Special Permit: 139 Paramount Street – 09480-0057

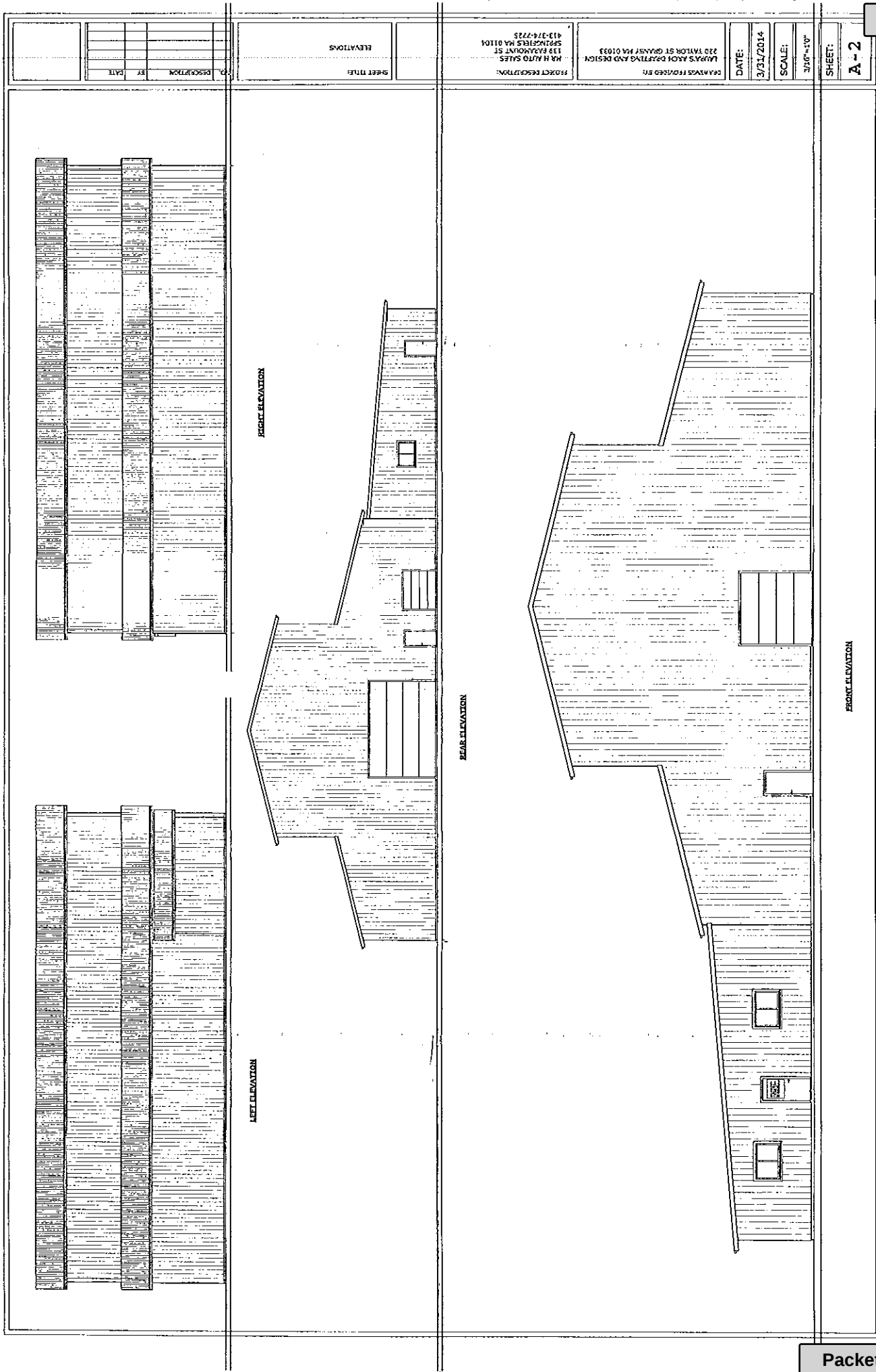
Petitioner: LEO HANDFORD

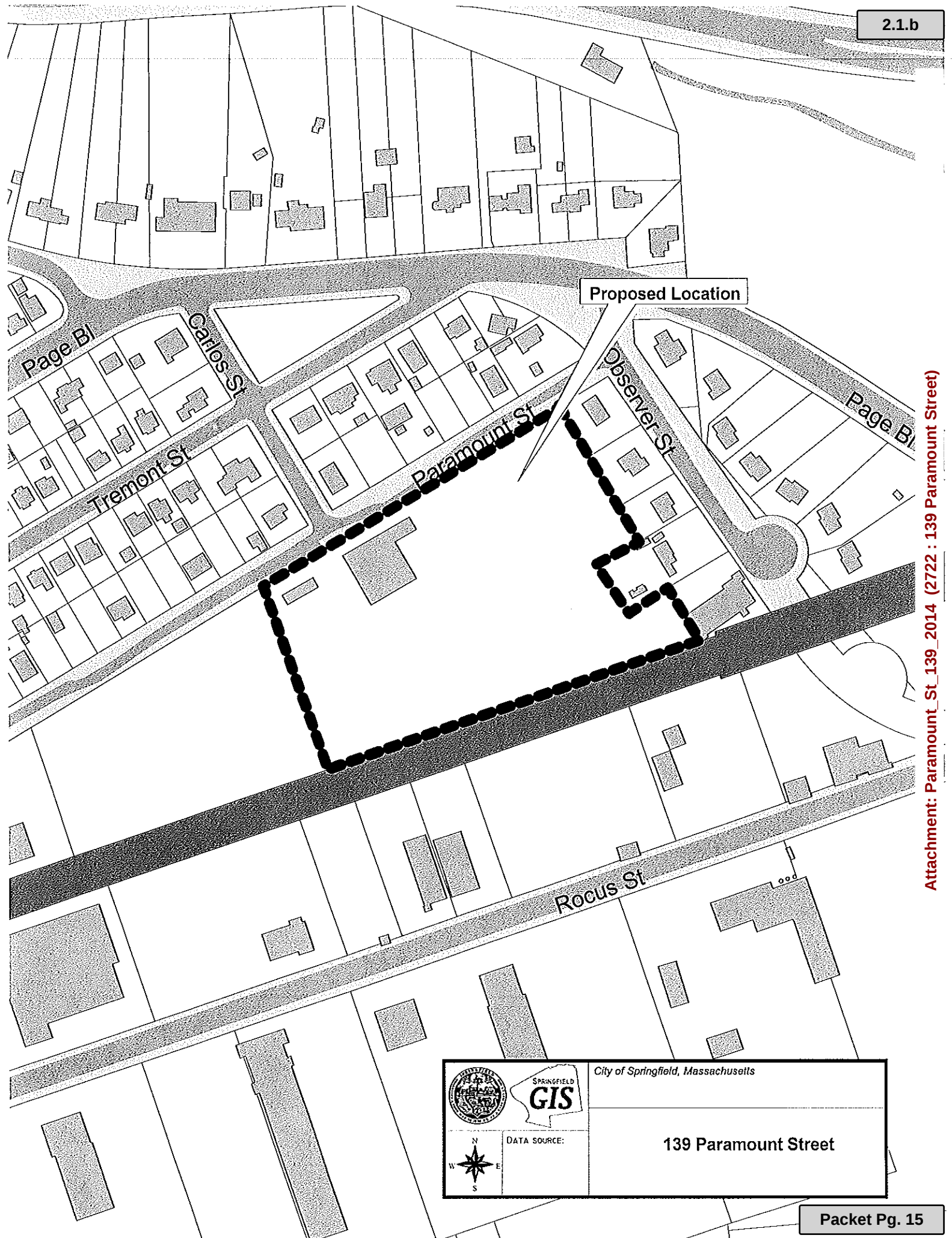
Landlord: LUGRONE L HANDFORD

Stephen J. Lonergan: Treasurer/Collector

Attachment: Paramount St 139 2014 (2722 : 139 Paramount Street)







Attachment: Paramount St 139 2014 (2722 : 139 Paramount Street)


City of Springfield

 36 Court Street
 Springfield, MA 01103

Meeting: 09/29/14 07:00 PM

Department: Planning and Economic Development

Category: Special Permit

Prepared By: Phil Dromey

Initiator: Phil Dromey

Sponsors:

DOC ID: 2743 A

ADOPTED
PETITION (ID # 2743)

For a Special Permit for the Exterior Renovation of a Structure(S) Totaling More Than One Thousand (1,000) Square Feet at the Property Known as 401 Dickinson Street (03910-0458) (A.K.A. 520 Sumner Avenue) in Accordance with M.G.L. and the Springfield Zoning Ordinance, Article 8.1, Section 8.1.31.A (Neighborhood Commercial Design Overlay District).

Request:	See Above
Owner:	Chapin Corners, LLC
By:	William Santaniello
Petitioner:	Vincent Santaniello
By:	Vincent Santaniello

RESULT:	ADOPTED [11 TO 0]
MOVER:	Kateri B. Walsh, Vice President - At-Large Councilor
SECONDER:	Kenneth E. Shea, Ward 6 Councilor
AYES:	Luna, Allen, Shea, Walsh, Edwards, Williams, Ramos, Rooke, Concepcion, Hurst, Fenton
ABSENT:	E. Henry Twiggs, Thomas M. Ashe

To The City Council of the City of Springfield:
The undersigned respectfully petition your honorable body

for a special permit for the exterior renovation of a structure(s) totaling more than one thousand (1,000) square feet at the property known as 401 Dickinson Street (03910-0458) (a.k.a. 520 Sumner Avenue) in accordance with M.G.L. and the Springfield Zoning Ordinance, Article 8.1, Section 8.1.31.A (Neighborhood Commercial Design Overlay District).

Mailing Address:

1036 Williams Street
 Longmeadow, MA 01106

Owner:

Chapin Corners, LLC

I hereby certify that I am the owner or acting on behalf of the owner.

BY: William Santaniello
 William Santaniello

Mailing Address:

963 Williams Street
 Longmeadow, MA 01106

Petitioner:

Vincent Santaniello

I hereby certify that I am the petitioner or acting on behalf of the petitioner.

BY: Vincent Santaniello
 Vincent Santaniello

Attachment: Dickinson_401_Tax_Formal (2743 : 401 Dickinson Street)

Stephen J. Loneragan
Collector/Treasurer



THE CITY OF
SPRINGFIELD, MASSACHUSETTS

August 21, 2014

Special Permit Tax Certification

I certify that all identifiable real estate, personal property and excise taxes have been paid by the petitioner and/or landlord associated with the special permit request shown below:

Special Permit: 401 Dickinson Street – 03910-0458

Petitioner: VINCENT SANTANIELLO

Landlord: CHAPIN CORNER LLC

A handwritten signature in black ink, appearing to read "Stephen J. Loneragan", is written over a horizontal line.

Stephen J. Loneragan: Treasurer/Collector

Attachment: Dickinson_401_Tax_Formal (2743 : 401 Dickinson Street)

**OFFICE OF PLANNING & ECONOMIC DEVELOPMENT
ANALYSIS FOR A SPECIAL PERMIT**

401 DICKINSON STREET (03910-0458) (A.K.A. 520 SUMNER AVENUE)

**NEIGHBORHOOD COMMERCIAL DESIGN OVERLAY DISTRICT
(DEMOLITION/NEW CONSTRUCTION OVER 1,000 S.F.)**

General Information

Petitioner:	Vincent Santaniello
Request:	For a special permit for the exterior renovation of a structure(s) totaling more than one thousand (1,000) square feet within the Neighborhood Commercial Design Overlay District.
Proposed use of the property:	Numerous retail operations.
Parcel Size:	15,410 s.f.
Compatibility with current planning documents:	The property is located with the "X" commercial district in the Forest Park Neighborhood. This area has a mixture of commercial and residential uses.
Neighborhood council notification:	Forest Park Neighborhood Council: 8-22-14
Tax Status:	SEE ATTACHED
Site Visit:	9-22-14
City Council Hearing:	9-29-14

Staff Analysis

Neighborhood characteristics:

The property is zoned Business A and is located within the "X" commercial district. The surrounding land uses include:

- To the north is a laundromat zoned Business A.
- To the south are retail shops zoned Business A.
- To the west are retail shops zoned Business A.
- To the east are retail shops zoned Business A.

Site plan review:

The petitioner has requested a special permit for the exterior renovation to a building located within the Neighborhood Commercial Design Overlay District at the property known as 401 Dickinson Street. This property is known as the "Chapin Building".

As can be seen by the attached plans, significant work will be done to the exterior of this building. This will include a complete re-painting of the building, new storefront window glazing system, new fabric awnings and signage with decorative external lighting.

After a review of the submitted plans and visiting the site, the staff fully supports the proposed renovations. This is a significant building within the "X" and the staff believes strongly that the proposed renovations will have a very beneficial impact on the building and on the Overlay District as a whole.



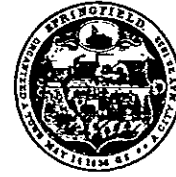
Recommendation

Approve, with conditions.

Recommended Conditions (Neighborhood Commercial Design Overlay District)

1. This special permit is granted to this petitioner only.
2. This special permit is granted solely for a special permit for the exterior renovation of a structure(s) totaling more than one thousand (1,000) square feet at the property known as 401 Dickinson Street (03910-0458) (a.k.a. 520 Sumner Avenue).
3. The use shall be developed according to the plans and elevations, dated August 19, 2014, with the addition of conditions #4 through #8.
4. The building shall be maintained graffiti free.
5. The public sidewalks shall be maintained, including snow removal.
6. There shall be no banners, streamers, pennants, or additional signs located on the property.
7. All wall signs shall be externally illuminated.
8. All new signage shall be reviewed and approved by the Office of Planning & Economic Development as per Article 8 of the Springfield Zoning Ordinance.
9. Compliance with these conditions, as well as any and all zoning regulations, is required. Failure to comply may result in enforcement by the Code Enforcement Department punishable by fine of up to \$50 per day for each day a violation exists.

Stephen J. Lonergan
Collector/Treasurer



THE CITY OF
SPRINGFIELD, MASSACHUSETTS

August 21, 2014

Special Permit Tax Certification

I certify that all identifiable real estate, personal property and excise taxes have been paid by the petitioner and/or landlord associated with the special permit request shown below:

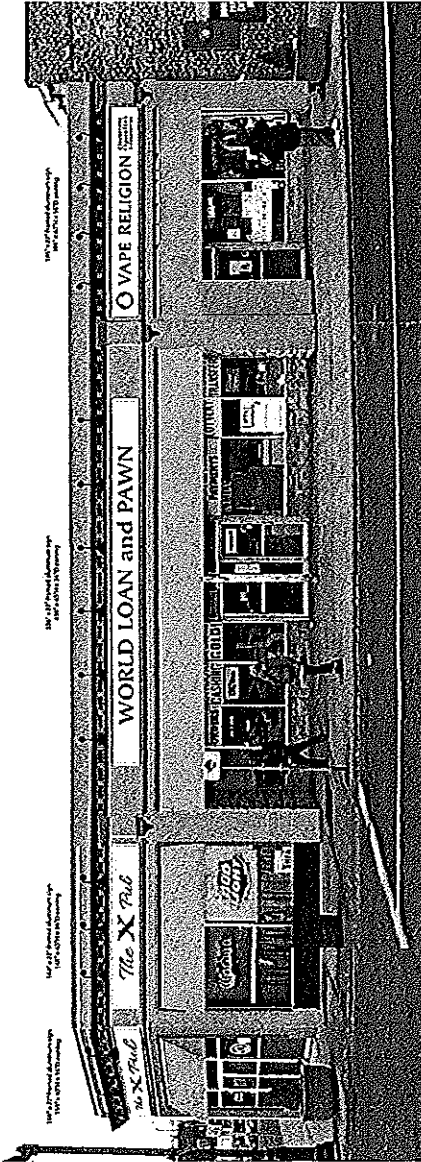
Special Permit: 401 Dickinson Street – 03910-0458

Petitioner: VINCENT SANTANIELLO

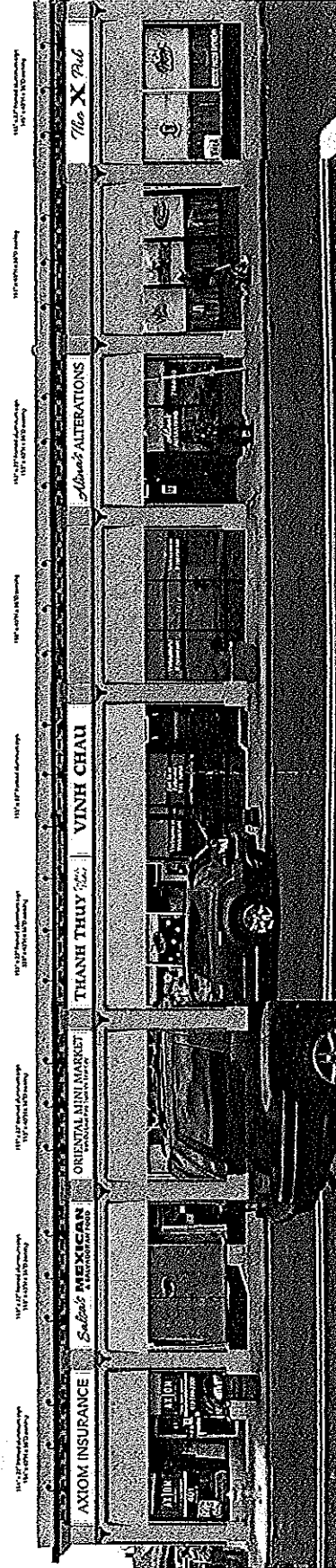
Landlord: CHAPIN CORNER LLC

Stephen J. Lonergan: Treasurer/Collector

Attachment: Dickinson_St_401_2014 (2743 : 401 Dickinson Street)



DESIGN & COLOR COORDINATION - 22" high signs in sign band and Sunbrella awnings to cover all transoms. Add black gooseneck lamps over all signs. All signs are 1" thick framed aluminum with flat vinyl lettering and ivory background color with orange border. All signs use same limited color palette and font choices to provide cohesive look for building.



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Design Workshop, Inc.

This drawing is provided for the purposes of illustrating the proposed project. Unauthorized use of this design is strictly prohibited by law.

413-543-5252
34 Front Street
P.O. Box 51114
Indian Orchard, MA 01151
www.DesignWorkShopInc.com



Chapin Block
Springfield, MA • 8/1914

Dickinson St

Ventura St

Proposed Location

Belmont Av

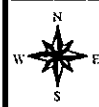
Sumner Av

Belmont Av



SPRINGFIELD
GIS

City of Springfield, Massachusetts



DATA SOURCE:

401 Dickinson Street

Attachment: Dickinson St_401_2014 (2743 : 401 Dickinson Street)


City of Springfield

 36 Court Street
 Springfield, MA 01103

Meeting: 09/29/14 07:00 PM

Department: Planning and Economic Development

Category: Special Permit

Prepared By: Phil Dromey

Initiator: Phil Dromey

Sponsors:

DOC ID: 2744 A

TABLED
PETITION (ID # 2744)

To Amend an Existing Special Permit (Motor Vehicle Service Station-Gas Station), Granted December 27, 2005, by Deleting Condition #5 (Requirement to Make Martone Place a Public Way) at the Property Formally Known as 11-13 Tapley Street and Now Known as SS Tapley Street (11415-0032), as Allowed by M.G.L. and the Springfield Zoning Ordinance, Article 4, Table 4-4, Section 12.3(1).

Request:	See Above
Owner:	HDC Two, LLC
By:	Michael W. Frisbie
Petitioner:	HDC Two, LLC
By:	Michael W. Frisbie

RESULT:
REFER TO COMMITTEE
Next: 12/1/2014 7:00 PM

To The City Council of the City of Springfield:
The undersigned respectfully petition your honorable body

to amend an existing special permit (motor vehicle service station-gas station), granted December 27, 2005, by deleting condition #5 (requirement to make Martone Place a public way) at the property formally known as 11-13 Tapley Street and now known as SS Tapley Street (11415-0032), as allowed by M.G.L. and the Springfield Zoning Ordinance, Article 4, Table 4-4, Section 12.3(1).

Mailing Address:

P.O. Box 366
East Longmeadow, MA 01028

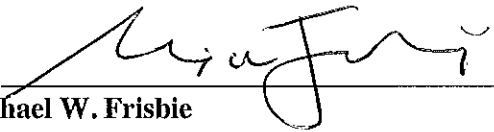
Owner & Petitioner:

HDC Two, LLC.

I hereby certify that I am the owner and petitioner or I that I am acting on behalf of the owner and petitioner.

BY: _____

Michael W. Frisbie



Stephen J. Lonergan
Collector/Treasurer



THE CITY OF
SPRINGFIELD, MASSACHUSETTS

August 25, 2014

Special Permit Tax Certification

I certify that all identifiable real estate, personal property and excise taxes have been paid by the petitioner and/or landlord associated with the special permit request shown below:

Special Permit: 575 Saint James Avenue – 11170-0314
36 Martone Place – 08325-0001
11-13 Tapley Street – 11415-0032

Petitioner: HDC FOUR LLC – Michael Frisbie, Manager
HDC TWO LLC – Michael Frisbie, Manager

Landlord: HDC FOUR LLC – Michael Frisbie, Manager
HDC TWO LLC – Michael Frisbie, Manager

A handwritten signature in black ink, appearing to read "Stephen J. Lonergan", is written over a horizontal line.

Stephen J. Lonergan: Treasurer/Collector

Attachment: Tapley St 11 13 Tax Formal (2744 : 11-13 Tapley Street)

**OFFICE OF PLANNING & ECONOMIC DEVELOPMENT
ANALYSIS FOR A SPECIAL PERMIT**

**SS TAPLEY STREET (FORMALLY KNOWN AS 11-13 TAPLEY STREET) & 557 St JAMES
AVENUE (FORMALLY KNOWN AS 559 St JAMES AVENUE)**

AMEND EXISTING SPECIAL PERMITS (GAS STATION/DRIVE-UP SERVICE WINDOW)

General Information

Petitioner:	HDC Four, LLC and HDC Two, LLC
Request:	To amend two (2) existing special permits, granted December 27, 2005, for the properties formally known as 11-13 Tapley Street and 559 St James Avenue, by allowing the deletion of condition #5 (requirement to make Martone Place a public way).
Proposed use of the property:	Gas station/convenience store with drive-up service window.
Size:	88,769 s.f.
Compatibility with current planning documents:	The Bay Neighborhood Plan shows no changes to this area.
Neighborhood council Notification:	McKnight Neighborhood Council and Bay Area Neighborhood Council: 9-4-14
Tax Status:	SEE ATTACHED
Site Visit:	9-4-14
Urban Renewal Status:	This parcel is not located within an urban renewal area.
Hearing Date:	9-22-14

Staff Analysis

Neighborhood characteristics:

The parcel is currently zoned Business B and is in an area that has a mix of commercial and industrial uses. The surrounding land uses include:

- To the north is an oil distribution facility zoned Business B.
- To the south is a warehouse zoned Business B.
- To the east is are an auto glass company and Oak Grove Cemetery zoned Business B and Residence B.
- To the west is are a warehouse and manufacturing operation zoned Business B and Industrial A.

Attachment: Tapley St St James Ave 2014 (2744 : 11-13 Tapley Street)

Review:

The petitioner has requested to amend two (2) special permits for the properties formally known as 11-13 Tapley Street and 559 St James Avenue. This is the current location of an Irving gas station/convenience store with a Dunkin Donuts drive-up service window. The special permits to be amended were approved by the City Council on December 27, 2005. The specific request is to amend condition #5 on both special permits. Condition #5 states:

- 5. The petitioner shall petition and submit all required materials to the Board of Public Works to make Martone Place a public way upon completion of all construction.**

In order to properly review the proposed request, a review of the history of this site is required and is as follows:

As noted above, the special permits for the current development were approved by the City Council in December 2005. Prior to this development the site consisted of a used car lot, bar, vacant gas station, car wash and a retail store. At that time, the petitioner intended to demolish all the existing structures and construct a new Irving gas station with an accessory convenience store with a drive-up service window. It should be noted that as part of the original plans, a new car wash was also to be constructed on the property formally known as 36 Martone Place, but this was never constructed. Since a building permit was never issued for the car wash, the special permit for that use has lapsed.

An important piece to this overall development was the proposal by the developer to relocate a portion of the existing Martone Place approximately three hundred (300) feet to the south. This was needed as the existing Martone Place was to become part of the parking area for the new convenience store/gas station. It should be noted that Martone Place could not just be discontinued as it still provided access to two (2) existing businesses located at the end of Martone Place. These businesses are still in existence today. Further, it has also now been determined, through information submitted by the developer, that Martone Place is actually privately owned registered land, owned by the heirs of the Martone family. Therefore, a typical discontinuance through the Board of Public Works would not have been allowed.

The plans submitted by the developer in 2005 showed that the "old" Martone Place would be discontinued and the "new" Martone Place would be reconstructed to the south and be accepted by the City as a public way. The proposed plans for this relocation were fully reviewed and approved at that time by the Department of Public Works (DPW). Aerial photos have been attached to this report showing the layout of the site in 2003 as well as the most recent aerial photos taken in 2013. As can be seen by the attached photos, while the "old" Martone Place was relocated, the acceptance of the "new" Martone Place was never completed by the developer.

It should also be noted that in addition to the requirement that the "new" Martone Place become a public way upon completion of the development, an additional condition was also added requiring that an ANR plan be submitted for the reconfiguration of the parcels. This is a very important piece of the proposed development as the proposed convenience store building extended across an existing property line. Building permits were only issued for the development on the condition that the ANR plan was to be filed. However, despite a concerted effort on the part of the City, neither the discontinuance/acceptance plans for the creation of the "new" Martone Place nor the ANR plans were ever submitted by the developer. As such, the development has been in violation of the special permits conditions since they were approved in 2005.

Proposed Request:

With regards to the proposed request to amend the existing special permits, it needs to be stressed that the proposed amendments are tied directly to a new development being proposed on this and the adjacent property.

The petitioner has submitted plans for a new 14,300 square foot office building which is being proposed for the new location of the Massachusetts Registry of Motor Vehicles (RMV). The proposed building is to be located on the parcel formally known as 36 Martone Place. The building that was located on this site has been demolished.



The plans submitted also indicate that the parking for the new RMV will be located on a portion of the property formally known as 559 St James Avenue. This is the parcel in which the existing convenience store and drive-up window are also located. Copies of the proposed RMV plans have been attached as part of this report.

It should be noted that based on the size of the proposed building, this new RMV development triggered an Administrative Site Plan Review under the new Zoning Ordinance. A review was completed by the Office of Planning & Economic Development in July. As part of that review and a further supplemental review, a number of conditions were placed on the approval. These included the need to amend the existing special permits as well as obtaining all approvals from DPW. Although the staff does recognize that these are two (2) separate developments, as noted above, they are directly tied together. Therefore, to the extent possible, conditions need to be placed in this special permit to ensure the proper development of the proposed RMV.

As part of the review for the proposed RMV, the staff, as well as the Director of Public Works, Chris Cignoli, have made it clear to the developer that the City does not hold an opinion on whether the “new” Martone Place becomes a public way or remains private, however, depending on that determination, a number of issues would need to be addressed in order to move the project forward. The city was informed by the developer in writing at the end of July that the “new” Martone Place was to remain private. It is very important to note that due to this decision by the developer, the “new” Martone Place will now not become a “way”. This “new” Martone Place is and will continue to be located completely on privately owned property and will be considered a driveway into this new development beginning at its access point off Saint James Avenue. As such, the DPW will no longer be responsible to maintain this access, as they have been doing for the past nine (9) years. This maintenance included snow plowing. This maintenance requirement, including snow plowing, will now be the full responsibility of the developer. Further, easements across this land by the existing businesses, the City or other utility companies servicing this development will need to be required to ensure that they will continue to have legal access across this property.

Since the determination was made by the developer to keep the “new” Martone Place private, the staff has continued to outline the process which needs to be followed in order to move the proposed RMV project forward. First and foremost, the special permits granted in 2005 need to be amended by the City Council.

Second, since the current proposal is now to abandon plans to complete the public way of the “new” Martone Place, the developer will no longer meet the parking location requirements established by Article 7, Section 7.1.52 of the Springfield Zoning Ordinance. Specifically, under Section 7.1.52, a review is completed to determine the location of the off-street parking for new developments based on the character of the immediate neighborhood (1,000 feet in each direction). In this particular case, a determination has been made by the Office of Planning & Economic Development, confirmed by the Building Commissioner, that the predominate character of the immediate neighborhood are buildings up to the street line with off-street parking located to the side and rear. As such, the proposed development would need to follow this development pattern.

As can be seen by the attached plans, the proposed RMV has the building set back with parking in the front. Therefore, in order for this development to proceed, the building must either be moved forward with parking located to the side or rear or a variance must be obtained from the Springfield Board of Appeals. It should be noted that if the “new” Martone Place was to become a public way, as originally proposed by the developer, the proposed RMV project could move forward as designed as the building would have fronted on Martone Place with the parking to the side. A review of setbacks for the proposed building would need to be completed but the parking location requirements outlined in Section 7.1.52 would have been met.

Further, as noted above, there is still an outstanding issue with regards to the submission of an ANR plan. As per the special permit conditions, an ANR plan was to have been submitted to reconfigure the parcels once the new development was completed. As mentioned earlier, this was needed as the proposed convenience store building was proposed to be constructed over an existing property line. Also, the “old” Martone Place was now going to be incorporated into the new development.

Again, as noted above, the building permits were only issued for this development, back in 2005, based on assurances by the developer that an ANR plan was to be submitted. This step was never completed. Further, due to the fact that an ANR plan was never submitted by the developer, the “old” Martone Place, which is now part of the parking lot for the gas station/convenience store, has never been properly taxed. Therefore, the developer has been utilizing this piece of land for a commercial use but has paid no taxes on this land since 2005 and continues to pay no taxes for the commercial use of this property. The developer indicated that due to the fact that this land is registered land within land court, an ANR plan cannot be completed; however, this is not the case. While the staff agrees that changing property lines for land court registered property is indeed more complicated and time consuming, it is not something that cannot be completed.

Overall, the staff does not object to the amendments to the existing special permits granted in 2005, however, due to the number of issues outlined above as well as this developer’s track record within the City of Springfield, the staff believes that conditions need to be imposed, if the amendments are approved, that will ensure that the developer follows all the proper procedures.

Recommendation

Approve, with conditions.

***Recommended Conditions: SS TAPLEY STREET (FORMALLY KNOWN AS 11-13 TAPLEY STREET)-
GAS STATION***

1. All conditions placed on the original special permit, granted December 27, 2005, shall remain in effect with the exception that Martone Place will now remain private.
2. Since the “new” Martone Place will remain privately owned property, the petitioner shall be fully responsible for all maintenance, including snow removal.
3. An ANR plan shall be submitted, as required under the original special permit, to the Planning Board for review and approval. The ANR plan shall then be filed with either the Registry of Deeds and/or the Massachusetts Land Court Registration Office.
4. Any and all easements, including access rights for the existing business located on Martone Place, shall be filed at the Hampden County Registry of Deeds with copies submitted to the Department of Public Works.
5. Compliance with these conditions, as well as any and all zoning regulations, is required. Failure to comply may result in enforcement by the Code Enforcement Department punishable by fine of up to \$200 per day for each day a violation exists.

***Recommended Conditions: 557 ST JAMES AVENUE (FORMALLY KNOWN AS 559 ST JAMES
AVENUE) - DRIVE-UP SERVICE WINDOW***

1. All conditions placed on the original special permit, granted December 27, 2005, shall remain in effect with the exception that Martone Place will now remain private.
2. Since the “new” Martone Place will remain privately owned property, the petitioner shall be fully responsible for all maintenance, including snow removal.
3. An ANR plan shall be submitted, as required under the original special permit, to the Planning Board for review and approval. The ANR plan shall then be filed with either the Registry of Deeds and/or the Massachusetts Land Court Registration Office.
4. Any and all easements, including access rights for the existing business located on Martone Place, shall be filed at the Hampden County Registry of Deeds with copies submitted to the Department of Public Works.
5. Compliance with these conditions, as well as any and all zoning regulations, is required. Failure to comply may result in enforcement by the Code Enforcement Department punishable by fine of up to \$200 per day for each day a violation exists.

Stephen J. Lonergan
Collector/Treasurer



THE CITY OF
SPRINGFIELD, MASSACHUSETTS

August 25, 2014

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I certify that all identifiable real estate, personal property and excise taxes have been paid by the petitioner and/or landlord associated with the special permit request shown below:

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HDC TWO LLC – Michael Frisbie, Manager

Landlord: HDC FOUR LLC – Michael Frisbie, Manager
HDC TWO LLC – Michael Frisbie, Manager

Stephen J. Lonergan: Treasurer/Collector

Attachment: Tapley St St James Ave 2014 (2744 : 11-13 Tapley Street)



City of Springfield, Massachusetts

2003 Aerial Photo

GIS

DATA SOURCE: 2003 Aerial Photo

North Arrow

Attachment: Tapley St St James Ave 2014 (2744 : 11-13 Tapley Street)



Attachment: Tapley St St James Ave 2014 (2744 : 11-13 Tapley Street)

APPLICATION FOR TIER 1 ADMINISTRATIVE SITE PLAN REVIEW CITY OF SPRINGFIELD

PROPOSED REGISTRY OF MOTOR VEHICLES MARTONE PLACE

APRIL 14, 2014



Project Location

LIST OF DRAWINGS

Survey	
C1.01	General Notes
C1.02	Demolition Plan
C-2.01	Site Layout Plan
C3.01	Site Utility Plan
C3.02	Grading & Drainage Plan
C3.03	Site Lighting Plan
C4.01	Erosion Control Plan
C5.10 - C5.90	Site Details

PRELIMINARY
NOT FOR CONSTRUCTION

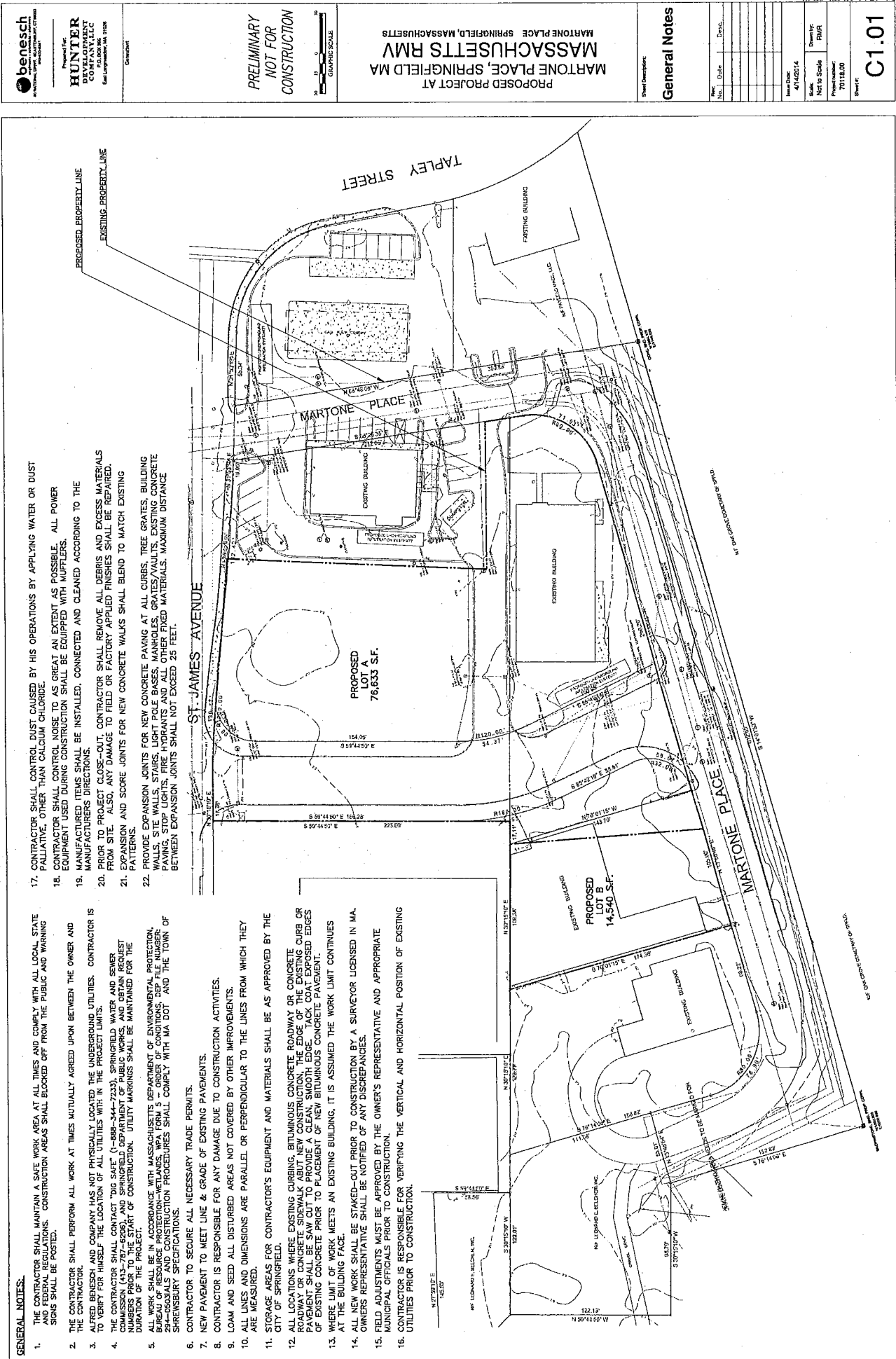
LOCUS
SCALE: 1" = 1000'

Owner/Applicant:
**HUNTER
DEVELOPMENT
CORPORATION, LLC**
1000 Main Street
East Longmeadow, MA 01028

Engineer:



Job No. 70115.00

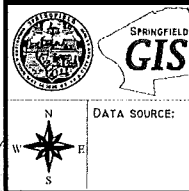


Proposed Location

Tapley St

Saint James Av

Martone Pl



City of Springfield, Massachusetts

DATA SOURCE:

SSTapley Street/
559 St James Avenue

Attachment: Tapley St St James Ave 2014 (2744 : 11-13 Tapley Street)

Commonwealth of Massachusetts
CLERK OF COURTS
Hampden County Superior Court

Laura S. Gentile, Esquire
Clerk of Courts

HALL OF JUSTICE
P.O. BOX 559, 90 STATE STREET
SPRINGFIELD, MASSACHUSETTS 01102-0559



ASSISTANT CLERKS

Lois A. Cignoli
Kevin J. Claffey, Esq.
Mary C. Cullinan
Brian R. Dolaher
William L. Eason
John J. Fitzgerald
Terrence C. Ginley
Daphne G. Moore, Esq.
Stephanie A. Roscoe, Esq.

FAX TRANSMITTAL COVER LETTER

DATE: 9-26-14 TIME: 12:45 PM

PLEASE DELIVER TELEFAX TO THE FOLLOWING:

Atty. Bart Heemskerk - 739-7168

Atty. Edward Pikula - 787-6173

RE: CASE NO. 14-627 PLEADING NO.

FROM: Hampden County Superior Court Clerk's Office - Mary Cullinan

TOTAL NUMBER OF PAGES TRANSMITTED (Including Cover Page) 7

IF YOU DO NOT RECEIVE ALL OF THE PAGES INDICATED, PLEASE CALL
413-748-7629

ADDITIONAL MESSAGE:

enclosed please find a courtesy copy of the
intended decision on the Petition for Mandamus. The
original decision is in the mail from Judge Josephson
in Franklin Superior to the Hampden Superior Clerk's Office. The

PLEASE NOTE: decision will be sent out as soon 413-748-7629
If this message has been received in error by a party to whom it is NOT addressed, please call and destroy the
transmittal material. as it is received in Hampden Superior.
Thank you Thank You.

Office
Civil (413) 735-6016 Criminal (413) 735-6017
Fax (413) 737-1611 TTY (413) 827-9379

Mary

Attachment: Josephson 09 26 2014 decision -- HDC Four (2744 : 11-13 Tapley Street)

2014-09-26 12:26 FROM-

T-446 P.002/007 F-858

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT****HAMPDEN, ss.****SUPERIOR COURT
CIVIL ACTION 14-627****HDC FOUR, LLC
Petitioner****vs.****BUILDING COMMISSIONER OF SPRINGFIELD
Respondent****MEMORANDUM OF DECISION ON
VERIFIED EMERGENCY PETITION FOR MANDAMUS RELIEF**

This action arises out of the Springfield Building Commissioner's non-issuance of a building permit sought by HDC Four, LLC ("HDC Four"), to construct an office building.¹ Before the Court is HDC Four's petition for mandamus relief for an order that the building commissioner issue the building permit. For the reasons set forth below, the petition is *denied*.

BACKGROUND

In 2004, HDC Four purchased property at 36 Martone Place in Springfield. The following year, it obtained a special permit to construct a car wash there. The special permit was conditioned on HDC Four transforming a private way on the site into a public way. HDC Four partially constructed a road but it was not completed and it remains a private way.

HDC Four abandoned the car wash plans, and in 2014 decided to develop the property as an office building for the Registry of Motor Vehicles. The property lies in a zone in which a non-medical office building is a permitted use subject only to administrative site plan review.

¹HDC Four initially sought relief from the Supreme Judicial Court, which transferred this case to the Hampden Superior Court.

2014-09-26 12:26 FROM-

T-448 P.003/007 F-959

On May 6, 2014, HDC Four applied for administrative site plan review. On July 1, 2014, the Office of Planning and Economic Development issued an Administrative Site Plan Review Conditional Approval which imposed over a dozen conditions to be met before the building permit could be issued. Some conditions were dependent upon determinations or approvals by the Department of Public Works (DPW). Those included:

"6. Any and all reviews/approvals required by the Department of Public Works shall be obtained prior to the issuance of a building permit. As part of that review, a final determination shall be made regarding the status of the new Martone Place.

"7. If the final DPW review results in a change to the approved site plan, a revised site plan shall be submitted to the Office of Planning & Economic Development for review and approval prior to issuing a building permit.

"8. If the determination is made that Martone Place is to remain a private way and is approved as such by DPW, the petitioner shall apply to the City Council to amend the existing special permits granted December 27, 2005 . . . requiring that the newly laid out Martone Place become a public way. . . .

"9. If the determination is made that Martone Place is to become a public way and is approved as such by DPW, all required material shall be submitted to the Board of Public Works for the acceptance of Martone Place as a public way prior to issuing a building permit."

The Administrative Site Plan Review Conditional Approval adverted that "Compliance with these conditions, as well as any and all zoning regulations, is required."

HDC Four failed to satisfy the DPW-related conditions. Nonetheless, on July 18, 2014, HDC Four filed an application for a building permit with the Springfield Building Commissioner. While the application was pending, the DPW studied the site and raised several concerns, including traffic and the difficulty of vehicles in entering and exiting. The DPW noted that these challenges would be compounded with the narrower streets during snow season and with the additional traffic generated from the proposed use of the site. The DPW reiterated the

2014-09-26 12:27 FROM-

T-446 P.004/007 F-058

need to address questions about, *inter alia*, (1) the location of the proposed building and the parking in relation to abutting parcels and (2) resolving whether the private way would become public.

On July 29, 2014, a representative from the Springfield Building Department informed HDC Four in a telephonic communication that the building commissioner would not issue a building permit until he received final approval from the DPW.

DISCUSSION

1. Mandamus Relief

HDC Four seeks relief in the nature of mandamus, which is appropriate to compel a public official to perform an act which the official has a legal duty to perform. See *Lutheran Serv. Ass'n of New England, Inc. v. Metro. Dist. Comm'n*, 397 Mass. 341, 344 (1986). Mandamus relief is not a matter of right but of judicial discretion. *Id.* at 345. It "may not be granted except to prevent a failure of justice in instances where there is no other adequate remedy." *Id.* at 344.

HDC Four has not established that the building commissioner has a legal duty, much less authorization, to issue the building permit sought here. The Springfield Zoning Ordinance authorizes the building commissioner to "enforce compliance with . . . the Site Plan . . . , including any conditions in the Site Plan approval." Springfield Zoning Ordinance, Section 12.3.22. Moreover,

"If a proposed structure or use requires Site Plan Review and/or a special permit, after such approval has been issued, the applicant shall submit a building permit application to the Building Commissioner's Office, consistent with all conditions and requirements of such approval. The Building Commissioner, in reviewing the application, shall ensure

2014-09-26 12:27 FROM-

T-446 P.005/007 F-959

that all such conditions and requirements have been satisfied"

Springfield Zoning Ordinance, Section 12.1.21(c).

Until HDC Four satisfies the conditions imposed in the Administrative Site Plan Conditional Approval, the building commissioner lacks authority under the Springfield Zoning Ordinance, Section 12.1.21(c), to issue the building permit. There is no support for HDC Four's argument that the building commissioner's non-issuance of the building permit was due to improper DPW interference or for any other reason than HDC Four's failure to comply with Administrative Site Plan Review Conditional Approval conditions. In this context, there is nothing unjust in the building commissioner's non-issuance of the building permit. Accordingly, the mandamus relief sought is inappropriate. See *Lutheran Serv. Ass'n of New England, Inc. v. Metro. Dist. Comm'n*, 397 Mass. at 344-345.

2. Exhaustion of Administrative Remedies

"The statutorily required submission of zoning disputes to local authority is so central to the architecture of G.L. c. 40A that we have required the exhaustion of administrative remedies as a prerequisite to judicial review. . . . Within the zoning context, therefore, principles of exhaustion require that a person aggrieved by the action of a local zoning administrator (the building inspector in most municipalities) must first attempt to redress the grievance through the local board of appeals before seeking judicial review. See G.L. c. 40A, §§ 8, 13, 14, and 17"

Quincy v. Planning Board of Tewksbury; Sullivan, 39 Mass. App. Ct. 17, 20 (1995). Related to the principle that one must exhaust administrative remedies before seeking relief in the courts is the doctrine of primary jurisdiction.

"The exhaustion doctrine prevents premature judicial interference with pending administrative proceedings, while the primary jurisdiction doctrine denies jurisdiction where agency proceedings have not yet begun. Both doctrines are in theory and practical effect the same and stem from the general principle which ordinarily serves to preclude judicial consideration of a question while there remains any possibility of further

2014-09-26 12:27 FROM-

T-446 P.006/007 F-868

administrative action."

Boston Edison Co. v. Brookline Realty & Investment Corp., 10 Mass. App. Ct. 63, 66 (1980)

(internal quotations and citations omitted).

"The doctrine of primary jurisdiction is founded on the principle which counsels a court to stay its hand when the issue in litigation is within the special competence of an agency. . . . By permitting an agency to apply its expertise to the statutory scheme which it is charged to enforce, courts preserve the integrity of the administrative process while sparing the judiciary the burden of reviewing administrative proceedings in piecemeal fashion."

Leahy v. Local 1526, American Federation of State, County, and Municipal Employees, 399

Mass. 341, 346 (1987) (internal quotations and citations omitted).

HDC Four has not shown that the administrative process has been unavailable or that utilizing it would be futile. Its complaint that it has been unable to obtain a building permit is appealable under G. L. c. 40A, § 8. which reads in relevant part:

"An appeal to the permit granting authority as the zoning ordinance . . . may provide, may be taken by any person aggrieved by reason of his inability to obtain a permit . . . by the regional planning agency in whose area the city . . . is situated, or by any person including an officer or board of the city or town, . . . or other administrative official, in violation of any provision of this chapter or any ordinance or by-law adopted thereunder."

HDC Four's litany of arguments concerning the merits of its application for a building permit, the building commissioner's non-issuance of the building permit, and the DPW's involvement in the application process are all matters first and best addressed through an appeal before the appropriate local administrative agency rather than the courts.

2014-09-26 12:27 FROM-

T-446 P.007/007 F-858

CONCLUSION

For the foregoing reasons, HDC Four, Inc.'s Verified Emergency Petition for Mandamus Relief is **DENIED**.

Bartha D. Josephson
Justice of the Superior Court

Dated: , 2014

SIGNED AND SENT OUT FROM FRANKLIN 9/25/14

Attachment: Josephson 09 26 2014 decision -- HDC Four (2744 : 11-13 Tapley Street)

*** Receive Results ***

Receive job successful.

Job No.	6271
Address	
Name	
Start Time	09/26 12:59 PM
Call Length	01'12
Sheets	7
Result	OK

Attachment: Josephson 09 26 2014 decision -- HDC Four (2744 : 11-13 Tapley Street)


City of Springfield

 36 Court Street
 Springfield, MA 01103

TABLED
PETITION (ID # 2745)

Meeting: 09/29/14 07:00 PM

Department: Planning and Economic Development

Category: Special Permit

Prepared By: Phil Dromey

Initiator: Phil Dromey

Sponsors:

DOC ID: 2745 A

To Amend an Existing Special Permit (Drive-Up Service Window), Granted December 27, 2005, by Deleting Condition #5 (Requirement to Make Martone Place a Public Way) at the Property Formally Known as 559 St James Avenue and Now Known as 557 St James Avenue (11170-0314), as Allowed by M.G.L. and the Springfield Zoning Ordinance, Article 4, Table 4-4, Section 19.1(2).

Request:	See Above
Owner:	HDC Four, LLC
By:	Michael W. Frisbie
Petitioner:	HDC Four, LLC
By:	Michael W. Frisbie

RESULT:
REFER TO COMMITTEE
Next: 12/1/2014 7:00 PM

To The City Council of the City of Springfield:
The undersigned respectfully petition your honorable body

to amend an existing special permit (drive-up service window), granted December 27, 2005, by deleting condition #5 (requirement to make Martone Place a public way) at the property formally known as 559 St James Avenue and now known as 557 St James Avenue (11170-0314), as allowed by M.G.L. and the Springfield Zoning Ordinance, Article 4, Table 4-4, Section 19.1(2).

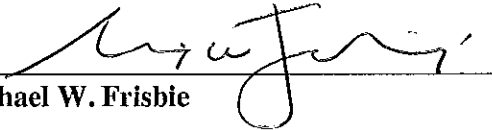
Mailing Address:

P.O. Box 366
East Longmeadow, MA 01028

Owner & Petitioner:

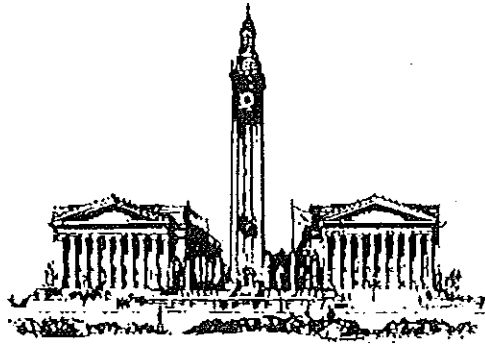
HDC Four, LLC.

I hereby certify that I am the owner and petitioner or I that I am acting on behalf of the owner and petitioner.

BY: 
Michael W. Frisbie

Attachment: St_James_Ave_559_Tax_Form (2745 : 559 St James Avenue)

Stephen J. Loneragan
Collector/Treasurer



THE CITY OF
SPRINGFIELD, MASSACHUSETTS

August 25, 2014

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HDC TWO LLC – Michael Frisbie, Manager

Landlord: HDC FOUR LLC – Michael Frisbie, Manager
HDC TWO LLC – Michael Frisbie, Manager

A handwritten signature in black ink, appearing to read "Stephen J. Loneragan", is written over a horizontal line.

Stephen J. Loneragan: Treasurer/Collector

Attachment: St_James_Ave_559_Tax_Formal (2745 : 559 St James Avenue)

**OFFICE OF PLANNING & ECONOMIC DEVELOPMENT
ANALYSIS FOR A SPECIAL PERMIT**

**SS TAPLEY STREET (FORMALLY KNOWN AS 11-13 TAPLEY STREET) & 557 St JAMES
AVENUE (FORMALLY KNOWN AS 559 St JAMES AVENUE)**

AMEND EXISTING SPECIAL PERMITS (GAS STATION/DRIVE-UP SERVICE WINDOW)

General Information

Petitioner:	HDC Four, LLC and HDC Two, LLC
Request:	To amend two (2) existing special permits, granted December 27, 2005, for the properties formally known as 11-13 Tapley Street and 559 St James Avenue, by allowing the deletion of condition #5 (requirement to make Martone Place a public way).
Proposed use of the property:	Gas station/convenience store with drive-up service window.
Size:	88,769 s.f.
Compatibility with current planning documents:	The Bay Neighborhood Plan shows no changes to this area.
Neighborhood council Notification:	McKnight Neighborhood Council and Bay Area Neighborhood Council: 9-4-14
Tax Status:	SEE ATTACHED
Site Visit:	9-4-14
Urban Renewal Status:	This parcel is not located within an urban renewal area.
Hearing Date:	9-22-14

Staff Analysis

Neighborhood characteristics:

The parcel is currently zoned Business B and is in an area that has a mix of commercial and industrial uses. The surrounding land uses include:

- To the north is an oil distribution facility zoned Business B.
- To the south is a warehouse zoned Business B.
- To the east is are an auto glass company and Oak Grove Cemetery zoned Business B and Residence B.
- To the west is are a warehouse and manufacturing operation zoned Business B and Industrial A.

Review:

The petitioner has requested to amend two (2) special permits for the properties formally known as 11-13 Tapley Street and 559 St James Avenue. This is the current location of an Irving gas station/convenience store with a Dunkin Donuts drive-up service window. The special permits to be amended were approved by the City Council on December 27, 2005. The specific request is to amend condition #5 on both special permits. Condition #5 states:

- 5. The petitioner shall petition and submit all required materials to the Board of Public Works to make Martone Place a public way upon completion of all construction.**

In order to properly review the proposed request, a review of the history of this site is required and is as follows:

As noted above, the special permits for the current development were approved by the City Council in December 2005. Prior to this development the site consisted of a used car lot, bar, vacant gas station, car wash and a retail store. At that time, the petitioner intended to demolish all the existing structures and construct a new Irving gas station with an accessory convenience store with a drive-up service window. It should be noted that as part of the original plans, a new car wash was also to be constructed on the property formally known as 36 Martone Place, but this was never constructed. Since a building permit was never issued for the car wash, the special permit for that use has lapsed.

An important piece to this overall development was the proposal by the developer to relocate a portion of the existing Martone Place approximately three hundred (300) feet to the south. This was needed as the existing Martone Place was to become part of the parking area for the new convenience store/gas station. It should be noted that Martone Place could not just be discontinued as it still provided access to two (2) existing businesses located at the end of Martone Place. These businesses are still in existence today. Further, it has also now been determined, through information submitted by the developer, that Martone Place is actually privately owned registered land, owned by the heirs of the Martone family. Therefore, a typical discontinuance through the Board of Public Works would not have been allowed.

The plans submitted by the developer in 2005 showed that the "old" Martone Place would be discontinued and the "new" Martone Place would be reconstructed to the south and be accepted by the City as a public way. The proposed plans for this relocation were fully reviewed and approved at that time by the Department of Public Works (DPW). Aerial photos have been attached to this report showing the layout of the site in 2003 as well as the most recent aerial photos taken in 2013. As can be seen by the attached photos, while the "old" Martone Place was relocated, the acceptance of the "new" Martone Place was never completed by the developer.

It should also be noted that in addition to the requirement that the "new" Martone Place become a public way upon completion of the development, an additional condition was also added requiring that an ANR plan be submitted for the reconfiguration of the parcels. This is a very important piece of the proposed development as the proposed convenience store building extended across an existing property line. Building permits were only issued for the development on the condition that the ANR plan was to be filed. However, despite a concerted effort on the part of the City, neither the discontinuance/acceptance plans for the creation of the "new" Martone Place nor the ANR plans were ever submitted by the developer. As such, the development has been in violation of the special permits conditions since they were approved in 2005.

Proposed Request:

With regards to the proposed request to amend the existing special permits, it needs to be stressed that the proposed amendments are tied directly to a new development being proposed on this and the adjacent property.

The petitioner has submitted plans for a new 14,300 square foot office building which is being proposed for the new location of the Massachusetts Registry of Motor Vehicles (RMV). The proposed building is to be located on the parcel formally known as 36 Martone Place. The building that was located on this site has been demolished.



The plans submitted also indicate that the parking for the new RMV will be located on a portion of the property formally known as 559 St James Avenue. This is the parcel in which the existing convenience store and drive-up window are also located. Copies of the proposed RMV plans have been attached as part of this report.

It should be noted that based on the size of the proposed building, this new RMV development triggered an Administrative Site Plan Review under the new Zoning Ordinance. A review was completed by the Office of Planning & Economic Development in July. As part of that review and a further supplemental review, a number of conditions were placed on the approval. These included the need to amend the existing special permits as well as obtaining all approvals from DPW. Although the staff does recognize that these are two (2) separate developments, as noted above, they are directly tied together. Therefore, to the extent possible, conditions need to be placed in this special permit to ensure the proper development of the proposed RMV.

As part of the review for the proposed RMV, the staff, as well as the Director of Public Works, Chris Cignoli, have made it clear to the developer that the City does not hold an opinion on whether the “new” Martone Place becomes a public way or remains private, however, depending on that determination, a number of issues would need to be addressed in order to move the project forward. The city was informed by the developer in writing at the end of July that the “new” Martone Place was to remain private. It is very important to note that due to this decision by the developer, the “new” Martone Place will now not become a “way”. This “new” Martone Place is and will continue to be located completely on privately owned property and will be considered a driveway into this new development beginning at its access point off Saint James Avenue. As such, the DPW will no longer be responsible to maintain this access, as they have been doing for the past nine (9) years. This maintenance included snow plowing. This maintenance requirement, including snow plowing, will now be the full responsibility of the developer. Further, easements across this land by the existing businesses, the City or other utility companies servicing this development will need to be required to ensure that they will continue to have legal access across this property.

Since the determination was made by the developer to keep the “new” Martone Place private, the staff has continued to outline the process which needs to be followed in order to move the proposed RMV project forward. First and foremost, the special permits granted in 2005 need to be amended by the City Council.

Second, since the current proposal is now to abandon plans to complete the public way of the “new” Martone Place, the developer will no longer meet the parking location requirements established by Article 7, Section 7.1.52 of the Springfield Zoning Ordinance. Specifically, under Section 7.1.52, a review is completed to determine the location of the off-street parking for new developments based on the character of the immediate neighborhood (1,000 feet in each direction). In this particular case, a determination has been made by the Office of Planning & Economic Development, confirmed by the Building Commissioner, that the predominate character of the immediate neighborhood are buildings up to the street line with off-street parking located to the side and rear. As such, the proposed development would need to follow this development pattern.

As can be seen by the attached plans, the proposed RMV has the building set back with parking in the front. Therefore, in order for this development to proceed, the building must either be moved forward with parking located to the side or rear or a variance must be obtained from the Springfield Board of Appeals. It should be noted that if the “new” Martone Place was to become a public way, as originally proposed by the developer, the proposed RMV project could move forward as designed as the building would have fronted on Martone Place with the parking to the side. A review of setbacks for the proposed building would need to be completed but the parking location requirements outlined in Section 7.1.52 would have been met.

Further, as noted above, there is still an outstanding issue with regards to the submission of an ANR plan. As per the special permit conditions, an ANR plan was to have been submitted to reconfigure the parcels once the new development was completed. As mentioned earlier, this was needed as the proposed convenience store building was proposed to be constructed over an existing property line. Also, the “old” Martone Place was now going to be incorporated into the new development.

Again, as noted above, the building permits were only issued for this development, back in 2005, based on assurances by the developer that an ANR plan was to be submitted. This step was never completed. Further, due to the fact that an ANR plan was never submitted by the developer, the “old” Martone Place, which is now part of the parking lot for the gas station/convenience store, has never been properly taxed. Therefore, the developer has been utilizing this piece of land for a commercial use but has paid no taxes on this land since 2005 and continues to pay no taxes for the commercial use of this property. The developer indicated that due to the fact that this land is registered land within land court, an ANR plan cannot be completed; however, this is not the case. While the staff agrees that changing property lines for land court registered property is indeed more complicated and time consuming, it is not something that cannot be completed.

Overall, the staff does not object to the amendments to the existing special permits granted in 2005, however, due to the number of issues outlined above as well as this developer’s track record within the City of Springfield, the staff believes that conditions need to be imposed, if the amendments are approved, that will ensure that the developer follows all the proper procedures.

Recommendation

Approve, with conditions.

***Recommended Conditions: SS TAPLEY STREET (FORMALLY KNOWN AS 11-13 TAPLEY STREET)-
GAS STATION***

1. All conditions placed on the original special permit, granted December 27, 2005, shall remain in effect with the exception that Martone Place will now remain private.
2. Since the “new” Martone Place will remain privately owned property, the petitioner shall be fully responsible for all maintenance, including snow removal.
3. An ANR plan shall be submitted, as required under the original special permit, to the Planning Board for review and approval. The ANR plan shall then be filed with either the Registry of Deeds and/or the Massachusetts Land Court Registration Office.
4. Any and all easements, including access rights for the existing business located on Martone Place, shall be filed at the Hampden County Registry of Deeds with copies submitted to the Department of Public Works.
5. Compliance with these conditions, as well as any and all zoning regulations, is required. Failure to comply may result in enforcement by the Code Enforcement Department punishable by fine of up to \$200 per day for each day a violation exists.

***Recommended Conditions: 557 ST JAMES AVENUE (FORMALLY KNOWN AS 559 ST JAMES
AVENUE) - DRIVE-UP SERVICE WINDOW***

1. All conditions placed on the original special permit, granted December 27, 2005, shall remain in effect with the exception that Martone Place will now remain private.
2. Since the “new” Martone Place will remain privately owned property, the petitioner shall be fully responsible for all maintenance, including snow removal.
3. An ANR plan shall be submitted, as required under the original special permit, to the Planning Board for review and approval. The ANR plan shall then be filed with either the Registry of Deeds and/or the Massachusetts Land Court Registration Office.
4. Any and all easements, including access rights for the existing business located on Martone Place, shall be filed at the Hampden County Registry of Deeds with copies submitted to the Department of Public Works.
5. Compliance with these conditions, as well as any and all zoning regulations, is required. Failure to comply may result in enforcement by the Code Enforcement Department punishable by fine of up to \$200 per day for each day a violation exists.

Stephen J. Lonergan
Collector/Treasurer



THE CITY OF
SPRINGFIELD, MASSACHUSETTS

August 25, 2014

Special Permit Tax Certification

I certify that all identifiable real estate, personal property and excise taxes have been paid by the petitioner and/or landlord associated with the special permit request shown below:

Special Permit: 575 Saint James Avenue – 11170-0314
36 Martone Place – 08325-0001
11-13 Tapley Street – 11415-0032

Petitioner: HDC FOUR LLC – Michael Frisbie, Manager
HDC TWO LLC – Michael Frisbie, Manager

Landlord: HDC FOUR LLC – Michael Frisbie, Manager
HDC TWO LLC – Michael Frisbie, Manager

Stephen J. Lonergan: Treasurer/Collector

Attachment: Tapley St St James Ave 2014 (2745 : 559 St James Avenue)



Attachment: Tapley St St James Ave 2014 (2745 : 559 St James Avenue)



City of Springfield, Massachusetts

2013 Aerial Photo

GIS

DATA SOURCE: [unintelligible]

N
E
S
W

Attachment: Tapley St St James Ave 2014 (2745 : 559 St James Avenue)

APPLICATION FOR TIER 1 ADMINISTRATIVE SITE PLAN REVIEW CITY OF SPRINGFIELD

PROPOSED REGISTRY OF MOTOR VEHICLES MARTONE PLACE

APRIL 14, 2014



Project Location

LIST OF DRAWINGS

	Survey
C1.01	General Notes
C1.02	Demolition Plan
C-2.01	Site Layout Plan
C3.01	Site Utility Plan
C3.02	Grading & Drainage Plan
C3.03	Site Lighting Plan
C4.01	Erosion Control Plan
C5.10 - C5.90	Site Details

PRELIMINARY
NOT FOR CONSTRUCTION

LOCUS
SCALE: 1" = 1000'

Owner/Applicant:

HUNTER
DEVELOPMENT
COMPANY, LLC
P.O. Box 360
East Longmeadow, MA 01028

Engineer:



Job No. 70115.00

Proposed Location

Tapley St

Saint James Av

Martone Pl

 N W E S	SPRINGFIELD GIS	City of Springfield, Massachusetts
	DATA SOURCE:	SSTapley Street/ 559 St James Avenue

Attachment: Tapley St St James Ave 2014 (2745 : 559 St James Avenue)

Commonwealth of Massachusetts
CLERK OF COURTS
Hampden County Superior Court

Laura S. Gentile, Esquire
Clerk of Courts

HALL OF JUSTICE
P.O. BOX 559, 50 STATE STREET
SPRINGFIELD, MASSACHUSETTS 01102-0559



ASSISTANT CLERKS

Lois A. Cignoli
Kevin J. Claffey, Esq.
Mary C. Cullinan
Brian R. Dolaher
William L. Eason
John J. Fitzgerald
Terrence C. Ginley
Daphne G. Moore, Esq.
Stephanie A. Roscoe, Esq.

FAX TRANSMITTAL COVER LETTER

DATE: 9-26-14 TIME: 12:45 PM

PLEASE DELIVER TELEFAX TO THE FOLLOWING:

Atty. Bart Heemskerk - 739-7168

Atty. Edward Pikula - 787-6173

RE: CASE NO. 14-627 PLEADING NO.

FROM: Hampden County Superior Court Clerk's Office - Mary Cullinan

TOTAL NUMBER OF PAGES TRANSMITTED (Including Cover Page) 7

IF YOU DO NOT RECEIVE ALL OF THE PAGES INDICATED, PLEASE CALL
413-748-7629

ADDITIONAL MESSAGE:

enclosed please find a courtesy copy of the
intended decision on the Petition for Mandamus. The
original decision is in the mail from Judge Josephson
in Franklin Superior to the Hampden Superior Clerk's Office. The

PLEASE NOTE: decision will be sent out as soon 413-748-7629
If this message has been received in error by a party to whom it is NOT addressed, please call and destroy the
transmittal material. as it is received in Hampden Superior.
Thank you Thank You.

Office
Civil (413) 735-6016 Criminal (413) 735-6017
Fax (413) 737-1611 TTY (413) 827-9379

Mary

Attachment: Josephson 09 26 2014 decision -- HDC Four (2745 : 559 St James Avenue)

2014-09-26 12:26 FROM-

T-446 P.002/007 F-858

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT****HAMPDEN, ss.****SUPERIOR COURT
CIVIL ACTION 14-627****HDC FOUR, LLC
Petitioner****vs.****BUILDING COMMISSIONER OF SPRINGFIELD
Respondent****MEMORANDUM OF DECISION ON
VERIFIED EMERGENCY PETITION FOR MANDAMUS RELIEF**

This action arises out of the Springfield Building Commissioner's non-issuance of a building permit sought by HDC Four, LLC ("HDC Four"), to construct an office building.¹ Before the Court is HDC Four's petition for mandamus relief for an order that the building commissioner issue the building permit. For the reasons set forth below, the petition is *denied*.

BACKGROUND

In 2004, HDC Four purchased property at 36 Martone Place in Springfield. The following year, it obtained a special permit to construct a car wash there. The special permit was conditioned on HDC Four transforming a private way on the site into a public way. HDC Four partially constructed a road but it was not completed and it remains a private way.

HDC Four abandoned the car wash plans, and in 2014 decided to develop the property as an office building for the Registry of Motor Vehicles. The property lies in a zone in which a non-medical office building is a permitted use subject only to administrative site plan review.

¹HDC Four initially sought relief from the Supreme Judicial Court, which transferred this case to the Hampden Superior Court.

2014-09-26 12:26 FROM-

T-448 P.003/007 F-959

On May 6, 2014, HDC Four applied for administrative site plan review. On July 1, 2014, the Office of Planning and Economic Development issued an Administrative Site Plan Review Conditional Approval which imposed over a dozen conditions to be met before the building permit could be issued. Some conditions were dependent upon determinations or approvals by the Department of Public Works (DPW). Those included:

"6. Any and all reviews/approvals required by the Department of Public Works shall be obtained prior to the issuance of a building permit. As part of that review, a final determination shall be made regarding the status of the new Martone Place.

"7. If the final DPW review results in a change to the approved site plan, a revised site plan shall be submitted to the Office of Planning & Economic Development for review and approval prior to issuing a building permit.

"8. If the determination is made that Martone Place is to remain a private way and is approved as such by DPW, the petitioner shall apply to the City Council to amend the existing special permits granted December 27, 2005 . . . requiring that the newly laid out Martone Place become a public way. . . .

"9. If the determination is made that Martone Place is to become a public way and is approved as such by DPW, all required material shall be submitted to the Board of Public Works for the acceptance of Martone Place as a public way prior to issuing a building permit."

The Administrative Site Plan Review Conditional Approval adverted that "Compliance with these conditions, as well as any and all zoning regulations, is required."

HDC Four failed to satisfy the DPW-related conditions. Nonetheless, on July 18, 2014, HDC Four filed an application for a building permit with the Springfield Building Commissioner. While the application was pending, the DPW studied the site and raised several concerns, including traffic and the difficulty of vehicles in entering and exiting. The DPW noted that these challenges would be compounded with the narrower streets during snow season and with the additional traffic generated from the proposed use of the site. The DPW reiterated the

2014-09-26 12:27 FROM-

T-446 P.004/007 F-058

need to address questions about, *inter alia*, (1) the location of the proposed building and the parking in relation to abutting parcels and (2) resolving whether the private way would become public.

On July 29, 2014, a representative from the Springfield Building Department informed HDC Four in a telephonic communication that the building commissioner would not issue a building permit until he received final approval from the DPW.

DISCUSSION

1. Mandamus Relief

HDC Four seeks relief in the nature of mandamus, which is appropriate to compel a public official to perform an act which the official has a legal duty to perform. See *Lutheran Serv. Ass'n of New England, Inc. v. Metro. Dist. Comm'n*, 397 Mass. 341, 344 (1986). Mandamus relief is not a matter of right but of judicial discretion. *Id.* at 345. It "may not be granted except to prevent a failure of justice in instances where there is no other adequate remedy." *Id.* at 344.

HDC Four has not established that the building commissioner has a legal duty, much less authorization, to issue the building permit sought here. The Springfield Zoning Ordinance authorizes the building commissioner to "enforce compliance with . . . the Site Plan . . . , including any conditions in the Site Plan approval." Springfield Zoning Ordinance, Section 12.3.22. Moreover,

"If a proposed structure or use requires Site Plan Review and/or a special permit, after such approval has been issued, the applicant shall submit a building permit application to the Building Commissioner's Office, consistent with all conditions and requirements of such approval. The Building Commissioner, in reviewing the application, shall ensure

2014-09-26 12:27 FROM-

T-446 P.005/007 F-959

that all such conditions and requirements have been satisfied"

Springfield Zoning Ordinance, Section 12.1.21(c).

Until HDC Four satisfies the conditions imposed in the Administrative Site Plan Conditional Approval, the building commissioner lacks authority under the Springfield Zoning Ordinance, Section 12.1.21(c), to issue the building permit. There is no support for HDC Four's argument that the building commissioner's non-issuance of the building permit was due to improper DPW interference or for any other reason than HDC Four's failure to comply with Administrative Site Plan Review Conditional Approval conditions. In this context, there is nothing unjust in the building commissioner's non-issuance of the building permit. Accordingly, the mandamus relief sought is inappropriate. See *Lutheran Serv. Ass'n of New England, Inc. v. Metro. Dist. Comm'n*, 397 Mass. at 344-345.

2. Exhaustion of Administrative Remedies

"The statutorily required submission of zoning disputes to local authority is so central to the architecture of G.L. c. 40A that we have required the exhaustion of administrative remedies as a prerequisite to judicial review. . . . Within the zoning context, therefore, principles of exhaustion require that a person aggrieved by the action of a local zoning administrator (the building inspector in most municipalities) must first attempt to redress the grievance through the local board of appeals before seeking judicial review. See G.L. c. 40A, §§ 8, 13, 14, and 17"

Quincy v. Planning Board of Tewksbury; Sullivan, 39 Mass. App. Ct. 17, 20 (1995). Related to the principle that one must exhaust administrative remedies before seeking relief in the courts is the doctrine of primary jurisdiction.

"The exhaustion doctrine prevents premature judicial interference with pending administrative proceedings, while the primary jurisdiction doctrine denies jurisdiction where agency proceedings have not yet begun. Both doctrines are in theory and practical effect the same and stem from the general principle which ordinarily serves to preclude judicial consideration of a question while there remains any possibility of further

2014-09-26 12:27 FROM-

T-448 P.006/007 F-868

administrative action."

Boston Edison Co. v. Brookline Realty & Investment Corp., 10 Mass. App. Ct. 63, 66 (1980)

(internal quotations and citations omitted).

"The doctrine of primary jurisdiction is founded on the principle which counsels a court to stay its hand when the issue in litigation is within the special competence of an agency. . . . By permitting an agency to apply its expertise to the statutory scheme which it is charged to enforce, courts preserve the integrity of the administrative process while sparing the judiciary the burden of reviewing administrative proceedings in piecemeal fashion."

Leahy v. Local 1526, American Federation of State, County, and Municipal Employees, 399

Mass. 341, 346 (1987) (internal quotations and citations omitted).

HDC Four has not shown that the administrative process has been unavailable or that utilizing it would be futile. Its complaint that it has been unable to obtain a building permit is appealable under G. L. c. 40A, § 8. which reads in relevant part:

"An appeal to the permit granting authority as the zoning ordinance . . . may provide, may be taken by any person aggrieved by reason of his inability to obtain a permit . . . by the regional planning agency in whose area the city . . . is situated, or by any person including an officer or board of the city or town, . . . or other administrative official, in violation of any provision of this chapter or any ordinance or by-law adopted thereunder."

HDC Four's litany of arguments concerning the merits of its application for a building permit, the building commissioner's non-issuance of the building permit, and the DPW's involvement in the application process are all matters first and best addressed through an appeal before the appropriate local administrative agency rather than the courts.

2014-09-26 12:27 FROM-

T-446 P.007/007 F-858

CONCLUSION

For the foregoing reasons, HDC Four, Inc.'s Verified Emergency Petition for Mandamus Relief is **DENIED**.

Bartha D. Josephson
Justice of the Superior Court

Dated: , 2014

SIGNED AND SENT OUT FROM FRANKLIN 9/25/14

*** Receive Results ***

Receive job successful.

Job No.	6271
Address	
Name	
Start Time	09/26 12:59 PM
Call Length	01'12
Sheets	7
Result	OK

Attachment: Josephson 09 26 2014 decision -- HDC Four (2745 : 559 St James Avenue)


City of Springfield

 36 Court Street
 Springfield, MA 01103

ADOPTED
PETITION (ID # 2773)

Meeting: 09/29/14 07:00 PM

Department: City Clerk

Category: General

Prepared By: Wayman Lee

Initiator: Camile Nelson Campbell

Sponsors:

DOC ID: 2773

1259 East Columbus Ave - Open Air Parking
C I T Y O F S P R I N G F I E L D

**CITY CLERK'S OFFICE
 MASSACHUSETTS**
SPRINGFIELD,
**TO THE MAYOR AND CITY COUNCIL OF THE CITY OF
 SPRINGFIELD:**

The undersigned respectfully petition your honorable body for a license to conduct and maintain an **open-air parking space** for 58 cars at number **1259**

EAST COLUMBUS AVENUE, Springfield, Massachusetts

Specify total area of space therein to be used for parking or storing vehicles **18,831 SF**

Maximum numbers of vehicles to be parked or stored in such area
58

Colvest Columbus Spfld, LLC

 Signature: Peter LaPointe

 By: Peter LaPointe

Address: 1259 East Columbus Ave

City/State: Springfield, MA Zip 01105

Mailing Address: SAME

City/State: SAME Zip _____

Telephone No.: 413-363-9793

Approved:

Fire Commissioner of the Fire Department

Approved:

Director of the Department of Public Works

Application Fee: \$250.00

License Fee: \$

Advertisement Fee: \$60.00

Total: \$

2/08

RESULT:	ADOPTED [11 TO 0]
MOVER:	Bud L. Williams, At-Large Councilor
SECONDER:	Timothy J. Rooke, At-Large Councilor
AYES:	Luna, Allen, Shea, Walsh, Edwards, Williams, Ramos, Rooke, Concepcion, Hurst, Fenton
ABSENT:	E. Henry Twiggs, Thomas M. Ashe

CITY OF SPRINGFIELD



CITY CLERK'S OFFICE

SPRINGFIELD, MASSACHUSETTS

TO THE MAYOR AND CITY COUNCIL OF THE CITY OF SPRINGFIELD:

The undersigned respectfully petition your honorable body for a license to conduct and maintain an open-air parking space for 58 cars at number 1259

East Columbus Avenue Street, Springfield, Massachusetts

Specify total area of space therein to be used for parking or storing vehicles 18,831 #'

Maximum numbers of vehicles to be parked or stored in such area 58

Signature: Colvast Columbus Spfld, LLC

By: Peter LaPointe

Address: 1259 East Columbus Ave Suite 201

City/State: Springfield, MA Zip 01105

Mailing Address: SAMC

City/State: _____ Zip _____

Telephone No.: 413-363-9793

Approved:

Fire Commissioner of the Fire Department

Approved:

Christopher M. S. O.
Director of the Department of Public Works

Application Fee: \$250.00

License Fee: \$ 58.00

Advertisement Fee: \$60.00

Total: \$ 368.00

2/08

Attachment: 1259 East Columbus Ave (2773 : 1259 East Columbus Ave - Open Air Parking)

CITY OF SPRINGFIELD



CITY CLERK'S OFFICE

SPRINGFIELD, MASSACHUSETTS

TO THE MAYOR AND CITY COUNCIL OF THE CITY OF SPRINGFIELD:

The undersigned respectfully petition your honorable body for a license to conduct and maintain an open-air parking space for 58 cars at number 1259

East Columbus Avenue Street, Springfield, Massachusetts

Specify total area of space therein to be used for parking or storing vehicles 18,831 #

Maximum numbers of vehicles to be parked or stored in such area 58

Signature: Colvest Columbus Spfld, LLC
Peter LaPointe

By: Peter LaPointe

Address: 1259 East Columbus Ave Suite 201

City/State: Springfield, MA Zip 01105

Mailing Address: SAMC

City/State: _____ Zip _____

Telephone No.: 413-363-9793

Approved: Joseph A. Conant

Fire Commissioner of the Fire Department

Approved:

Director of the Department of Public Works

Application Fee: \$250.00

License Fee: \$ 58.00

Advertisement Fee: \$60.00

Total: \$368.00

2/08

Attachment: 1259 East Columbus Ave (2773 : 1259 East Columbus Ave - Open Air Parking)

THE COLVEST GROUP

1259 East Columbus Avenue - Suite 201
Springfield, Massachusetts 01105
P. 413.363.9793 - F. 413.363.2643

LETTER OF TRANSMITTAL

TO: City of Springfield, MA

Fire Marshall's Office

Attention: Fire Marshall, David Rivera

Date: 8-5-14

PROJ. NO.:

Re: Open Air Parking Application

WE ARE SENDING YOU:

- ☒ APPLICATION
- ☐ PLANS
- ☐ CHECK

- ☐ ATTACHED
- ☐ REPORTS
- ☐ INVOICES
- ☐ OTHER

COPIES	DATE	NO.	DESCRIPTION
1	8/5/14		Open Air Parking Application

THESE ARE TRANSMITTED AS CHECKED BELOW:

- ☒ FOR APPROVAL
- ☐ FOR YOUR USE
- ☐ AS REQUESTED
- ☐ FOR REVIEW
- ☐ BIDS DUE

- ☐ APPROVED AS SUBMITTED
- ☐ APPROVED AS NOTED
- ☐ RETURN FOR CORRECTIONS
- ☐ SIGN & RETURN

COMMENTS:

Attached is a signed Open-Air Parking Application for your approval, as well as a print delineating the parking area. This application is in anticipation of the August 18, 2014 City Council Meeting.

COPIES TO:

Peter LaPointe, Vice President



THE COLVEST GROUP

1259 East Columbus Avenue - Suite 201
 Springfield, Massachusetts 01105
 P. 413.363.9793 - F. 413.363.2643

LETTER OF TRANSMITTAL

TO: City of Springfield, MA

Department of Public Works

Attention: Chris Signoli

Date: 8-5-14

PROJ. NO.:

Re: Open Air Parking Application

WE ARE SENDING YOU:

- ☒ APPLICATION
- ☐ PLANS
- ☐ CHECK

- ☐ ATTACHED
- ☐ REPORTS
- ☐ INVOICES
- ☐ OTHER

COPIES	DATE	NO.	DESCRIPTION
1	8/5/14		Open Air Parking Application

THESE ARE TRANSMITTED AS CHECKED BELOW:

- ☒ FOR APPROVAL
- ☐ FOR YOUR USE
- ☐ AS REQUESTED
- ☐ FOR REVIEW
- ☐ BIDS DUE

- ☐ APPROVED AS SUBMITTED
- ☐ APPROVED AS NOTED
- ☐ RETURN FOR CORRECTIONS
- ☐ SIGN & RETURN

COMMENTS:

Attached is a signed Open-Air Parking Application for your approval, as well as a print delineating the parking area. This application is in anticipation of the August 18, 2014 City Council Meeting.

COPIES TO:

Peter LaPointe, Vice President



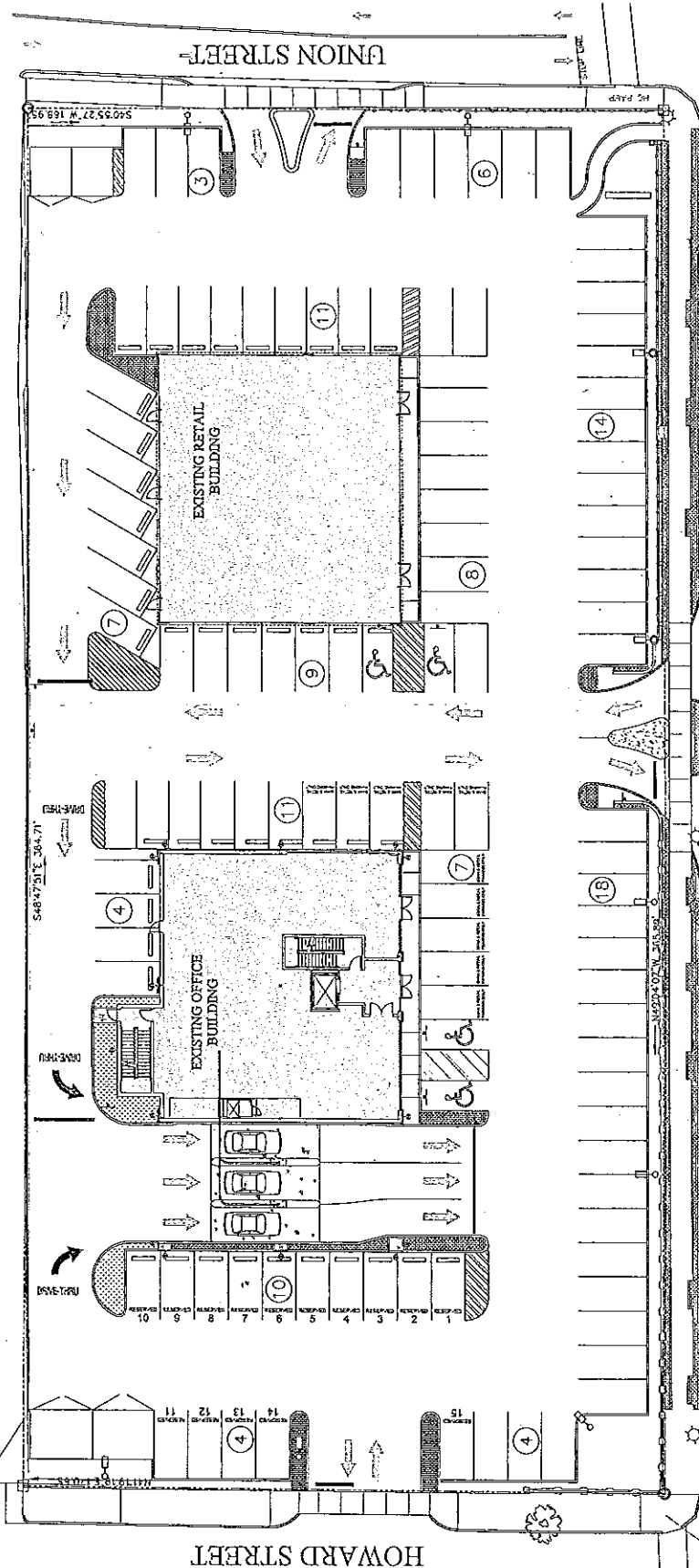
GOLVEST GROUP
 1259 East Columbus Avenue - Suite 201
 Springfield, Massachusetts 01105
 P. 413.363.9793 - F. 413.363.2643

LOCATION: 1259 EAST COLUMBUS AVE
 SPRINGFIELD, MA
 PROPOSED OPEN-AIR PARKING

DATE: 301-1-05-05
 SCALE: 1" = 20'-0"
 DRAWING NO.
 PROJECT NO.
 YEAR: 2005
 DRAWN BY:
 SITE PLAN: Open Air Parking
 PROJECT NO.

58 OPEN-AIR
 PARKING SPACES
 18,831 SF

PARKING CALCULATION	
OFFICE - 2 SPACES PER 1,000 SF	AREA
EXISTING OFFICE	13,200
NEW OFFICE	2,200
TRUCKS - 2 SPACES PER 1,000 SF	AREA
EXISTING TRUCKS	2,200
NEW TRUCKS	2,200
BANK - 2 SPACES PER 1,000 SF	AREA
EXISTING BANK	2,200
NEW BANK	2,200
RETAIL - 4 SPACES PER 1,000 SF	AREA
EXISTING RETAIL	1,200
NEW RETAIL	4,550
VACANT 1	1,200
VACANT 2	1,200
TOTAL PARKING REQUIRED	55,570 SF
TOTAL PARKING ON SITE	112



EAST COLUMBUS AVENUE

CITY CLERK'S OFFICE
SPRINGFIELD, MASSACHUSETTS

****PETITIONER TO OBTAIN ABUTTERS NAMES AND ADDRESSES
FROM THE ASSESSORS OFFICE****

Colvest Columbus Spfld LLC
Peter LaPointe
1259 East Columbus Avenue
Springfield, MA 01105

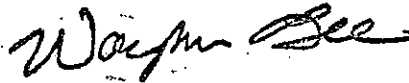
A hearing has been set by the City Council for **Monday, September 22, 2014
7:00 P.M. at City Hall, 36 Court Street** on your petition for an open-air parking lot.

I am enclosing notices which must be filled out and sent by registered mail (be sure to ask for return receipts) to all the abutters (front, back and two sides) of the property mentioned in your petition.

These notices must be sent to the said abutters on or before September 8, 2014 and the return receipts from said registered notices be sent to this office prior to the scheduled hearing., or brought in person the night of the hearing

(See back of notice for full directions.)

Very truly yours,



Wayman Lee, Esq.
City Clerk

Attachment: 1259 East Columbus Ave (2773 : 1259 East Columbus Ave - Open Air Parking)

Notice to Petitioner

In accordance with the requirements of Chapter 148, General Laws, as amended, the applicant for an open air parking license is required to send to the owners of abutting real estate and to the owners of property directly across a public or private street as they appear on the most recent local tax list, a notice similar to the form on the reverse side of this page.

NOTICE MUST BE SENT BY REGISTERED MAIL.

NOTICE MUST BE SENT AT LEAST FOURTEEN (14) DAYS BEFORE THE PUBLIC HEARING.

Demand RETURN RECEIPTS from the post office and bring or send same to the City Clerk's Office.

WAYMAN LEE, ESQUIRE
City Clerk

Fitzpatrick, Linda

From: classified-legals <classified-legals@repub.com>
Sent: Wednesday, August 13, 2014 11:39 AM
To: Fitzpatrick, Linda
Subject: Re: Colvest - OAP - legal ad

Hi Linda,
Notice has been scheduled to run on Sept. 8th, order # 2580573, cost \$ 153.10.
Have a great day!
Thank you, Kathy

On 8/12/2014 4:11 PM, Fitzpatrick, Linda wrote:

Hi Kathy,

Pls adv one time on Sept 8

Thx, Linda

--
Kathy Portier
Legal Advertising
413-788-1297
fax 413-735-1684
classified-legals@repub.com

OPEN-AIR PARKING HEARING

**CITY OF SPRINGFIELD
CITY CLERK'S OFFICE
CITY HALL
36 COURT STREET
413-787-6096**

Sept 8, 2014

Notice is hereby given that the City Council will give a hearing in the Council Chambers, City Hall, 36 Court Street, Springfield, MA., **Monday, September 22, 2014 at 7:00 o'clock P.M.** to all parties interested in the petition of:

Colvest Columbus Spfld LLC for an open-air parking lot license at **1259 East Columbus Avenue** to allow parking for up to 58 vehicles.

By Order of the City Council
Wayman Lee, Esquire
City Clerk

Sept 8, 2014

*Emailed
8/12*

Attachment: 1259 East Columbus Ave (2773 : 1259 East Columbus Ave - Open Air Parking)

OPEN-AIR PARKING HEARING

**CITY OF SPRINGFIELD
CITY CLERK'S OFFICE
CITY HALL
36 COURT STREET
413-787-6096**

****HEARING DATE HAS BEEN CHANGED TO SEPT 29TH****

Notice is hereby given that the City Council will give a hearing in the Council Chambers, City Hall, 36 Court Street, Springfield, MA., **Monday, September 22, 2014 at 7:00 o'clock P.M.** to all parties interested in the petition of:

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By Order of the City Council
Wayman Lee, Esquire
City Clerk

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