

**TOWN OF HINGHAM**

**FORM 2**



**BOARD OF APPEALS**  
781-741-1494

**PLANNING BOARD**  
781-741-1419

**APPLICATION FOR  
ZONING HEARING**

RECEIVED  
APR 21 2023  
Town Clerk  
Hingham, MA

Application Date April 21st 2023

The undersigned hereby petitions the Board of Appeals and/or the Planning Board for the following:

- Appeal                       Variance                       Special Permit A1
- Special Permit A2             Site Plan Review             Special Permit A3

Subject Property 58 Main Street, Map 61, Lot 126                      Zoning District Residence "A"

Petitioner's Name Benedict D. Wilcox                      Address 6B Green Street, Hingham MA

Name \_\_\_\_\_ Address \_\_\_\_\_

Name \_\_\_\_\_ Address \_\_\_\_\_

**Brief Description of Work:**

Reconstruct former dwelling. New 24'x30' 2 1/2 story dwelling to conform to all set-backs and height requirements.

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- Applicants for an **Appeal** must complete **Form 2A**
- Applicants for a **Variance** must complete **Form 2B**
- Applicants for a **Special Permit A1** must complete **Form 2C**
- Applicants for a **Special Permit A2** must complete **Form 2D**
- Applicants for a **Special Permit A3** must complete **Form 2E**

**Form 2**

The undersigned is the the owner of the subject property, ~~or \_\_\_\_\_ the holder of a written option to purchase the subject property, or \_\_\_\_\_ the holder of a valid lease to the subject property.~~ (In this last instance written authorization from the property owner must be submitted with the other application documents.)

Record title to the subject property stands in the name(s) Benedict D. Wilcox

Address of owner of record 36 North Street, Hingham MA

Title Reference:

(Unregistered land) Plymouth County Registry of Deeds, Book 57845, Page 135

(Registered land) Land Court Certificate of Title No. \_\_\_\_\_, Book \_\_\_\_\_, Page \_\_\_\_\_

State briefly what is currently on the premises:

Lot with former garage foundation and driveway and no other buildings.

Attorney, agent, or other representative acting for petitioner:

Name None Address \_\_\_\_\_

Name \_\_\_\_\_ Address \_\_\_\_\_

Written evidence of agent's standing to represent petitioner may be requested.

Signed as a statement of fact under the pains and penalties of perjury, this 21st day of April 21st, 20023.

SIGNATURE Benedict D. Wilcox

(Petitioner/Agent)

Print Name Benedict D. Wilcox

Address 6B Green Street, Hingham MA

Tel. No. 781 749-2500

check all that apply:

- Property Owner(s)
- Applicant
- Owner's Agent
- Applicant's Agent

**Note: Do not attempt to discuss the merits of your case with any member of the Board of Appeals and/or the Planning Board at any time after filing this application and prior to the hearing thereon.**

**TOWN OF HINGHAM**



**SUPPORTING STATEMENT –  
REQUESTED FINDINGS**

**FORM 2A  
APPEAL**

**BOARD OF APPEALS**



Petitioner Benedict D. Wilcox is aggrieved:

by an order or decision of an administrative official, dated March 22, 2023 and March 24, 2023  
(Please attach a copy hereto.)

by reason of his/her inability to obtain enforcement action,

by reason of his/her inability to obtain a building or occupancy permit,

pertaining to the property at 58 Main Street,

and asks the Board of Appeals to:

reverse the order or decision for the following reasons:

**Please see additional sheets marked "Form 2A - 58 Main Street"**


modify the order or decision for the following reasons:

Form 2A

\_\_\_\_\_ direct the issuance of a building/occupancy permit for the following reasons:

\_\_\_\_\_ direct the enforcement of Section \_\_\_\_\_ of the Zoning By-Law for the following reasons:

Date April 21st, 2023

SIGNATURE   
(Petitioner/Agent)

Address 6B Green Street, Hingham MA

Tel. No. 781 749-2500

***Please attach additional sheets if space provided is insufficient.***

## **Form 2A – 58 Main Street, “Exempted Lots”**

Appeal of Building Commissioner’s letter of determination date 03/22/23 stating that 58 Main Street is unbuildable and not entitled to “Single lot Protection”.

### **Hingham Zoning by-law: IV-C, General Intensity Provisions, 6. Exempted Lots, a. residential.**

States generally; lots in residential districts for single family use are exempt from area or frontage requirements if the “...parcel complies with the specific exemptions of Section 6 of Chapter 40A..” This bylaw exemption has been in effect for over forty years, the specific exemption that applies to single lots can be found in paragraph four of Ch. 40A, Sec. 6 noted below.

#### **MGL Chapter 40A, Section 6, paragraph four.**

“Any increase in area, frontage, width, yard, or depth requirements of a zoning ordinance or by-law shall not apply to a lot for single and two-family residential use...[with] at least five thousand square feet of area and fifty feet of frontage.”. Fifty-eight Main Street has 63’ of frontage, 8,000sf of area and the lot was recorded prior to zoning with no changes since the adoption of zoning in 1941.

Although many courts (“Willard”) and legal experts (“Brobrowski, Mass. DHCD”) have weighed in on the subject as to whether the lot has to have always been vacant and when, a simple reading of both our by-law and the statute would show that neither mentions vacant lots, just lots and parcels.

#### **Local Zoning By-law may be More Protective than the Statute:**

The courts have given great weight on the wording of local zoning by-laws over the more general wording of the statutes. An often stated reason for this is that overall purpose of the Ch. 40A, “The [Newest] Zoning Act”, was intended to be a protective statute and more protective than its 1954 predecessor Ch40A, giving enhanced minimum protections to property owners, and even greater protections to residential uses. For this reason any zoning by-law can only be interpreted as equal to or more protective (less restrictive) than “The Zoning Act”. The legislature was well aware of the previous statute language that required the lot to be vacant or applying only to “original construction” but chose not to include that language in the most recent statute

Under this reasoning, the strongest weight should be given first to the clear meaning of our zoning by-law, then the clear meaning of the relevant paragraph four of the statute, and then lastly, and only if there is any question of the meaning of the two, to court decisions that are directly on point that nullifies the clear meaning and intent of our local zoning by-law.

#### **Example of local zoning giving greater protection than the relevant statute:**

The Zoning Act of 1978, gives specific exemptions to any municipal zoning by-laws, sometime referred to as the “except clauses”. Our bylaw when written and adopted in 1978 didn’t acknowledge the second except clause allowing extensions of existing non-conformities. Then the “Hatfield Amendment” was voted in at 1984 Annual Town Meeting allowing the extensions noted in the second except clause, but as a matter of right. In 2008 the courts in “Bjorkland” determined that any increase in building size on an undersized lot was an increase in intensity and required relief. However, in Hingham our “Hatfield Amendment” protects owners from that court decision because our by-law is more protective (or less restrictive).

The above example relates to our “exempted lots”, IV-C 6, this exemption was specifically voted in at the 1978 ATM as a continuation of our 1955 small lot exemption, with the same language then as now (width was changed to frontage); a residential lot may be developed if it existed prior to zoning and complies with the “... specific exemptions of Section 6”. The language for the so called “single lot protection” can be found in paragraph four of section six, “[had] at least five thousand square feet and fifty feet of frontage.” Note that this was the only protective provision of the “new” Ch. 40A, Sec 6 that was specifically adopted by the Town.

At that time in 1978 there was no mention in our by-law or the statute (or case law) as to whether the lot had to be vacant or had a building on it or when. Reviewing the Planning Board reports for 1977-78, the warrant article and the ATM transcripts none make mention of those criteria either – meaning, the voters had no expectation of a continuously vacant lot since the adoption of zoning (as some courts have suggested years later).

### **Protections for the Town:**

Towns have legitimate concerns interpreting zoning provisions, as it might set a precedent or create unintended consequences. Zoning provisions in this situation would apply to very few other lots, if any. Only lots between 5,000 and 20,000 square feet and frontages between 50’ and 125’, with a dwelling that has been completely demolished sometime after the inception of our zoning by-law in 1941 and exceeded any time limits for reconstruction under our zoning by-law would be affected.

Any zoning decision can be written narrowly and could take the position that only the portion of the previous structure inside current setbacks could be rebuilt, i.e.; 800SF footprint and 2 ½ stories (the applicant would have the burden of proof of prior conditions). Since the dwelling would be a conforming structure, “Hatfield” would no longer apply and “Bjorkland” would now require zoning relief for any future expansion on an undersized lot. Further, this interpretation could be limited to residence “A” as zoning “uniformity” only applies to each district.

## **Form 2A – 58 Main Street, “Reconstruction”**

Appeal of Building Commissioner’s letter of determination date 03/24/23 stating that 58 Main Street is unbuildable and not entitled to “Reconstruction”.

### **Hingham Zoning by-law: III-I, 1 (iii) exception (A).**

Generally this exception allows continued use or reconstruction of abandoned or discontinued single (or two-family) dwellings beyond the statutory two-year limit. The Commissioner’s letter states that this exception “... applies only to existing structures.” and “...the term ‘reconstruction’ is intended to allow demolition and reconstruction as one continuous process,...”. However, nothing in the by-law requires a structure to meet that criteria for “reconstruction”, to the contrary; a building destroyed by natural causes can be demolished immediately and reconstructed two-years later, a single family structure that has been abandoned is “grandfathered” forever. As to voluntary demolition and reconstruction under III-I 2., again there is no written time limit between the demolition and reconstruction.

Mr. Clancy kindly provided a copy of the Comment to the Town Warrant article 33 from 2020 Annual Town Meeting when this “exception” was passed. Minutes from the Planning Board note that this warrant article was proposed by the Zoning Board of Appeal to specifically address the issue of properties that may or may not have lost their “grandfathered” status; there was no mention that the ZBA was looking for or was requiring a time limit.

After public hearings by the Planning Board the proposed Article “DDD” was sent to the Advisory Committee without any language of a time limit between demolition and reconstruction. The subject of, “demolition and reconstruction as one continuous process” was discussed. The writers of the “Recommended Motion” that modified the original version from the Planning Board were fully aware of that discussion and chose not to include it in the Motion that was voted on by the Town.

### **Benefits to the Town:**

Unique to this lot, is the fact it has been an eyesore and blight in the heart of our historic downtown for decades. The dilapidated condition of the previous structure caused endless controversy between the previous owner and abutters, many Town Board members and officials. Although the necessary demolition was a relief to most, we lost one of our few pre-revolutionary war dwellings and now leaves neighbors, residents and visitors to the Town with a vacant lot. A historical reproduction of what was there would be the best end result of this unfortunate loss to the Town and its historic streetscape. Hopefully the “Lot” won’t be blamed for the actions of the previous owner.

### **Closing Thoughts:**

There has been much conversation regard the intent of statutes and by-laws concerning “grandfathered” rights. The Supreme Judicial Court noted the on the subject of grandfathered residential lots (Sturges),

“Section 6 is concerned with protecting a once valid lot from being rendered unbuildable for residential purposes, assuming the lot meets modest minimum area (at 5,000 square feet) and frontage (at least fifty feet) requirements.”

Clearly the highest court has determined what the intent of the statute is and local by-laws should follow that decision.

TOWN OF HINGHAM  
BUILDING DEPARTMENT



Michael J. Clancy, C.B.O.  
Building Commissioner  
Zoning Enforcement Officer

March 22, 2023

Mr. Benedict D. Wilcox  
36 North Street  
Hingham, MA 02043

Re: **58 Main Street, Hingham**

Dear Mr. Wilcox:

This letter is in response to your letter received on March 3, 2023. You assert in your letter that a single-family home may be constructed on the vacant non-conforming lot located at 58 Main Street pursuant to the exempt lot provisions of Section IV-C of the Hingham Zoning By-Law which you believe are less restrictive than the applicable provisions of MGL Chapter 40A, Section 6. Your letter further argues that, notwithstanding existing Massachusetts common law, the applicable provisions of Section IV-C and the fourth paragraph of Chapter 40A do not apply only to vacant lots.

Section IV-C.6.a clearly states that a lot is exempt if it complies with the specific exemptions of Chapter 40A, Section 6 and therefore, by its express terms, is not less restrictive than Section 6:

A lot or parcel of land in a residential district having an area or frontage less than that required by this section may be developed for a single residential use provided that such lot or parcel complies with the specific exemptions of Section 6 of Chapter 40A of the Massachusetts General Laws. (Emphasis added)

Massachusetts case law interpreting the fourth paragraph of Chapter 40A, Section 6 is clear and has consistently held that the exemption only applies to vacant lots that have never been built upon.

The lot at 58 Main Street has not always been a vacant lot. The single-family home that was previously existing at 58 Main Street was abandoned decades ago and razed over four years ago due to the neglect of the pre-foreclosure owner who allowed the home to become a public safety nuisance and hazard as determined in accordance with Massachusetts law.

Based on the foregoing, I have determined that a single-family home may not be constructed at 58 Main Street pursuant to the fourth paragraph of Chapter 40A, Section 6 nor the provisions of Section IV-C of the Hingham Zoning By-Law. This letter responds to the specific assertions raised in your letter and does not in any way limit any additional basis under applicable law in support of my determination concerning 58 Main Street.

Sincerely,

A handwritten signature in blue ink that reads "Michael J. Clancy".

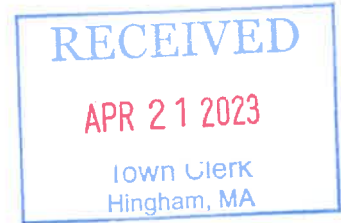
Michael J. Clancy C.B.O.  
Building Commissioner/  
Zoning Enforcement Officer

C: Select Board, Town Administrators, Planning, Zoning, Historic, Town Counsel



TOWN OF HINGHAM  
BUILDING DEPARTMENT

Michael J. Clancy, C.B.O.  
Building Commissioner  
Zoning Enforcement Officer



March 24, 2023

Mr. Benedict D. Wilcox  
36 North Street  
Hingham, MA 02043

**Re: 58 Main Street, Hingham**

Dear Mr. Wilcox:

On March 23, 2023, I issued my response to your letter of March 3, 2023, and I have no further response. The decision set forth in my March 23, 2023 letter may be appealed within thirty days of March 23, 2023, in accordance with MGL Chapter 40A, Section 15.

In your email you also assert a right to reconstruction pursuant to Section III-I.1 (iii) (A) [sic] of the Zoning By-Law. Section III-I.1.d (iii) (A) applies only to existing structures. This is supported by the legislative intent of the Section set forth in the Comment to Warrant Article 33 of the Hingham 2020 Annual Town Meeting (copy enclosed) which states:

Finally, this amendment is not intended to permit an abandoned or discontinued nonconforming Single-Family and Two-Family Dwelling to be demolished and reconstructed at a later date. The use of the term "reconstruction" is intended to allow demolition and reconstruction as one continuous process, not two separate processes separated by an extended period of time.

This letter responds to the specific assertions raised in your correspondence and does not in any way limit any additional basis under applicable law in support of my determination concerning 58 Main Street.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Clancy".

Michael J. Clancy C.B.O.  
Building Commissioner/  
Zoning Enforcement Officer

C; Select Board, Town Administrators, Planning, Zoning, Historic, Town Counsel

# Proposed Reproduction of The Thomas Barker House, 58 Main Street, Hingham



LEFT: Cropped section of The Hancock-Clarke House in Lexington, Mass. c.1737



The former parsonage is named after Rev. John Hancock, grandfather of John Hancock of revolutionary fame and Rev. Jonas Clarke, the next owner.

John Hancock, signer of the Declaration of Independence, lived here with his grandfather as a child for a few years.

During the battle of Lexington, John Hancock and Samuel Adams were housed here by new owner, Rev. Clarke.

The house was moved across the street to its original location in 1974 by a crew of Hingham workers (including myself) by Hingham's own Don Gordon.



LEFT: last known Assessor photo of 58 Main Street, The Thomas Barker House, before demolition in Nov. of 2018. c.1757

Notice the similarity of the two houses, both built within 20 years of each other. The Barker House is a classic half-colonial, three bays wide and a highly embellished front door enframement; both houses have small rearward additions to compliment the main house façade.

The Hancock house would be the perfect model for reproducing the now missing Barker House.

Benedict Wilcox  
02/18/23



**SECTION IV.**

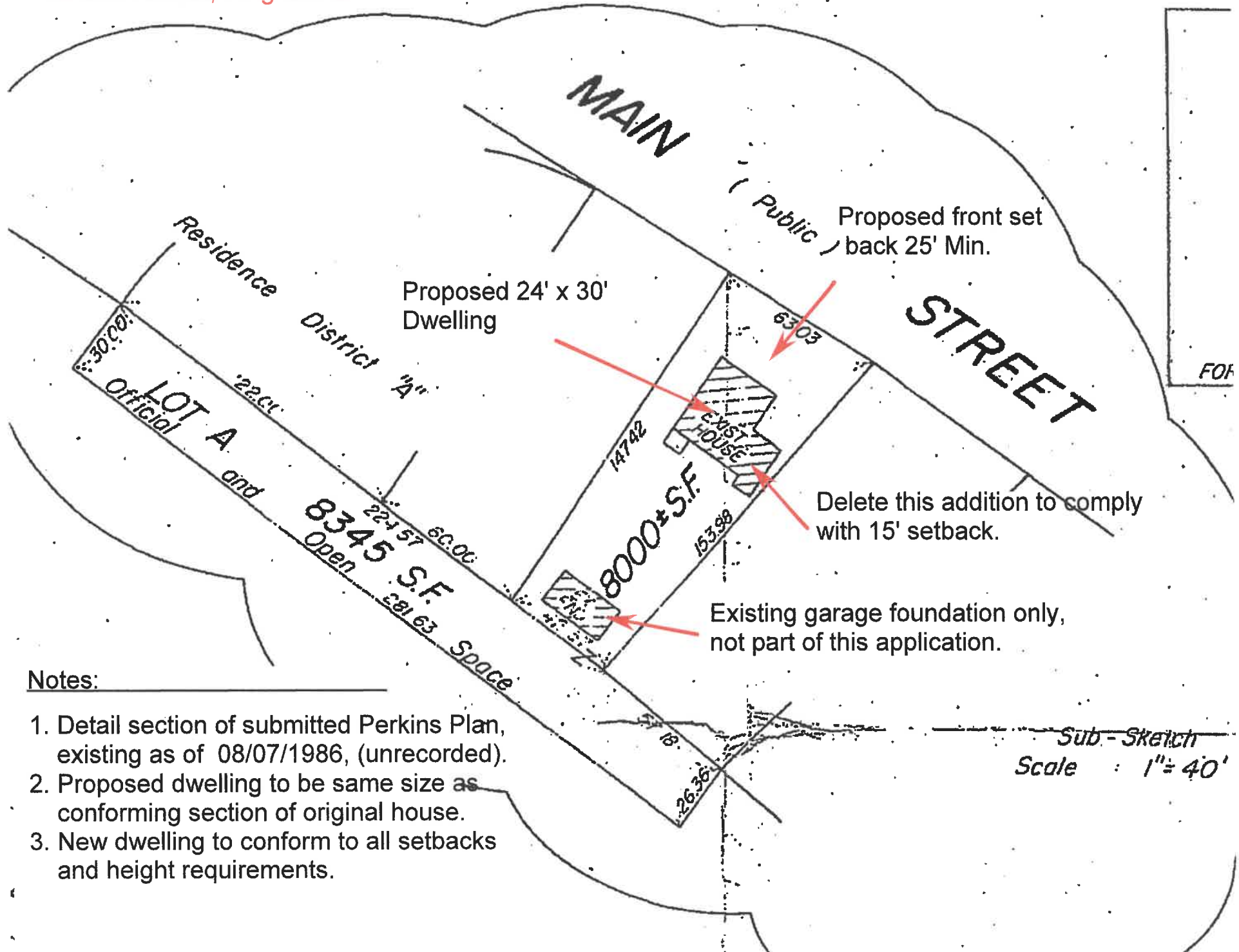
**Intensity Regulations**

**IV-A. Schedule of Dimensional Requirements**

No lot shall be created or subdivided and no building or structure shall be built, enlarged or located in such manner as does not conform to the requirements set forth in Sections IV-A, IV-B and IV-C of this By-Law.

minimum lot size		maximum height		maximum percentage which may be covered by all buildings	minimum yard dimensions			special requirements applicable to each district
area	frontage	feet	stories		front	side	rear	
<b>RESIDENCE DISTRICT A</b>								
20,000 sq. ft.	125'	35'	2½		25'	15'	15'	6, 9, 10, 13, 16
<b>RESIDENCE DISTRICT B</b>								
30,000 sq. ft.	150'	35'	2½		35'	20'	20'	6, 9, 13, 16
<b>RESIDENCE DISTRICT C</b>								
40,000 sq. ft.	150'	35'	2½		50'	20'	20'	6, 9, 13, 16
<b>FLEXIBLE RESIDENTIAL DEVELOPMENT IN RESIDENCE DISTRICTS A THROUGH C</b>								
All dimensional requirements for projects in Residence Districts A through C authorized by a Flexible Residential Development Special Permit under Section IV-D are set forth in Section IV-D.								
<b>TOWN HOUSE IN RESIDENCE DISTRICT D</b>								
5,000* sq. ft.	30' per dwelling unit	35'	2½	20%	50'	20'	20'	6, 9, 10, 11, 12, 16
*Per dwelling unit of one bedroom. For each additional bedroom, an additional 1,000 square feet of lot area is required.								
<b>RESIDENCE DISTRICT E</b>								
30,000 sq. ft.	150'	35'	2½		35'	20'	20'	6, 9, 10, 16

58 Main Street, Hingham MA



Notes:

1. Detail section of submitted Perkins Plan, existing as of 08/07/1986, (unrecorded).
2. Proposed dwelling to be same size as conforming section of original house.
3. New dwelling to conform to all setbacks and height requirements.

Sub-Sketch  
Scale : 1" = 40'