

Administrative Record - 995 West Road, Ashfield

Date		Type
1/10/2022	Letter Requesting Enforcement	Corr
2/22/2022	Determination Letter to Brian Dickinson	Corr
11/7/2025	Reconsideration Letter to Jason Dickinson	Corr
11/26/2025	Email from Randy G to Jim Hawkins and Response	Corr
1/14/2026	Determination Letter to Jason Dickinson and Sabra Billings with Proof of Service	Corr
1/14/2026	Email courtesy copy of 1/14 Determination letter to Selectboard and town boards	Corr
1/15/2026	Email Response from Randy G regarding 1/14 Determination letter	Corr
1/19/2026	Letter from Randy G to James Hawkins	Corr
1/29/2026	Letter from Jim Hawkins to Randy G	Corr
2/2/2026	Email from Randy G to Jim H RE: reconsideration	Corr
2/6/2026	Letter from Jim Hawkins to Randy G RE: Reconsideration	Corr
12/12/2025	Email from Phil Lussier RE: site imagery	email
1/2/2026	Email from WRC Ashfield to town re: environmental concerns; forward to Mark Stinson	email
1/3/2026	Email from Alexandra Bell and Lynn Graham to BOH re: complaint; forward from Randy G to Darlene L	email
1/3/2026	Email from Arlan Wise to ZBA re: complaint; forward from Randy G to Darlene L	email
1/3/2026	Email from Jay Ayer to ZBA re: complaint; forward from Randy G to Darlene L	email
1/3/2026	Email from Rebecca Bradshaw to ZBA re: complaint; forward from Randy G to Darlene L	email
1/16/2026	Email from Sabra Billings to James Hawkins	email
1/21/2026	Email from Mary Johnson to Jim Hawkins	email
1/29/2026	Email from Sabra Billings to Neighbors and Town Officials	email
Fall 2026	Communication from Randy; RE: 995 West Rd Junkyard Timeline	email
1987	Building Permit file	fccip
6/14/1905	Aerial Imagery of 995 West Road 1992-2025 compiled from Mass GIS and Google Earth	fccip
1/1/1995	Assessor records for 995 West Road (1995 - 2025)	fccip
2/2/2022	Selectboard Meeting Minutes of Complaints (Feb-June 2022)	FCCIP
11/13/2025	Affidavit of Francis Dufresne	fccip
11/13/2025	Affidavit of Edward Purinton	fccip
11/21/2025	Affidavit of Leonard Roberts	fccip
11/23/2025	Affidavit of Barry L. Nye	fccip
11/24/2025	Affidavit of Thomas S. Carter	fccip
1/5/2026	Disclosure of Conflicit of Interest	fccip
1/22/2026	Letter from Joseph S. Rae to James Hawkins	FCCIP
5/16/1968	Town of Ashfield Protective Bylaws (1968)	Reference
3/15/1978	Town of Ashfield Protective Bylaws (1978)	Reference
1995	Town of Ashfield Zoning Bylaws (1995)	Reference
2024	Town of Ashfield Zoning Bylaws (2024)	Reference
NA	Deed history	Reference
NA	Case law	Reference
NA	Mass GIS Information	Reference

Jim Hawkins
Franklin County Cooperative Inspection Program
Zoning and Building Department
Franklin Regional Council of Governments
John Olver Transit Center
12 Olive Street, Suite 2 (Second Floor)
Greenfield, MA 01301

January 10, 2022

Dear Mr. Hawkins:

We the undersigned, residents of West Road in Ashfield, MA, hereby register our request for zoning enforcement regarding several violations of the Town of Ashfield's by-laws, as detailed below. The property in question, 995 West Road, is legally registered to Jason Dickinson of 416 Huckle Hill Road in Bernardston, MA, (source: Massachusetts Interactive Property Maps (massgis.maps.arcgis.com)), but the person who would appear to be running the illegal operation at this address is Brian C. Dickinson, whose primary address is 331 Main Street, Ashfield, MA.

Mr. Dickinson has apparently weathered several complaints over the years and has made minor modifications to the property to screen unregistered vehicles from the view of abutters, but over the past 12-24 months he has increased activity significantly, adding many vehicles and other scrap metal, etc. and would even appear to have excavated a portion of the property in order to accommodate more vehicles. By our recent count from an abutting property, there are something like 45 complete vehicles, as well as several other partial vehicles and riding lawnmowers, snowmobiles, boats, trailers, etc. There are also several piles of various scrap metals on the property.

An uptick in local traffic and activity would suggest that this is operating as an illegal junkyard/scrapyard, but we have yet to obtain proof that Mr. Dickinson is in fact operating an illegal, unlicensed operation (the Town of Ashfield Town Clerk has confirmed that the site is unlicensed—what we can't yet show is whether or not Mr. Dickinson is earning income from the operation. We suspect strongly that he is). At very least, the property is in violation of the Ashfield By-law regarding unregistered vehicles on page 49 of the Town of Ashfield by-laws, cited below, but we strongly believe that it also is in violation of both the Public Nuisance section (p. 10, by-laws) and the Prohibited Uses section (p. 11).

We have excerpted from the by-laws the sections that we consider to be relevant and have provided brief comments for each, but we will happily provide more detail about any or all of these sections if you need more information about any given item (we also have photos if you'd like us to provide them). We've kept our comments to a minimum for the sake of brevity, but if

providing more detail creates a stronger case, please let us know that and we'll respond promptly.

SECTION I: PURPOSE

The primary purposes of these by-laws are to promote and enhance the Town's rural atmosphere and character and to protect the health, safety, and general welfare of the inhabitants of the Town of Ashfield. Additional purposes are: to encourage agricultural activity; to reduce the hazard from fire, flood, and other hazards by regulating the location and use of buildings and the area around them; to encourage the appropriate use of land; to minimize congestion in the streets; to conserve the physical characteristics of neighborhoods; to promote the conservation of natural resources and to prevent pollution of the environment.

Response:

- Current use clearly does not constitute appropriate use of the land.
- Current use contributes to congestion on West Road as materials and vehicles are brought to and taken from the property, often in loud trucks.
- Current use clearly does not conserve the physical characteristics of the neighborhood, which is otherwise in keeping with the residential/agricultural designation of the Town of Ashfield.
- Most urgently, the current use is to the detriment of abutting wetlands and soil and ultimately to the groundwater on which the neighborhood depends for its drinking water.

page 9:

SECTION V: DISTRICTS

A. The entire Town of Ashfield is a rural residential and agricultural district.

Response:

- Current use is clearly neither residential nor agricultural.

page 10:

B. Public Nuisances

1. Accumulated or scattered junk, trash, debris, scrap materials or any other objectionable objects shall be stored safely and screened from view of public ways by natural evergreen barriers or fencing or being within buildings.
2. Any item, which constitutes a hazard to safety, shall be adequately fenced, covered, marked or otherwise secured to prevent injury. This includes, but is not limited to, such things as old refrigerators, machinery, swimming pools and wells (in use, or abandoned).

Response:

- Under the language of this section, this property clearly constitutes a multi-faceted public nuisance.

page 11:

E. Prohibited Uses

The following uses are prohibited: non-municipal landfills, and junkyards

- This property violates one of the prohibited uses listed. Mr. Dickinson is accumulating both motor vehicles and stockpiling other common household and industrial waste (scrap metal, etc.).

page 43:

SECTION VII: SPECIAL PERMIT

A. Intent

1. Special Permits are intended to provide detailed review of certain uses, structures, or development, which may have substantial impact upon traffic, municipal services and the community character, among other considerations. The Special Permit review process is intended to insure that the proposed use, structure or development is consistent with the purpose and intent of these bylaws.

2. Special Permits shall be issued, denied, or issued with conditions by the Special Permit Granting Authority according to the provisions of Chapter 40A of the Massachusetts General Laws.

Response:

- Town of Ashfield has confirmed that no Special Permit been granted for this property.

page 45:

SECTION VIII: ADMINISTRATION

A. Enforcement

The Building Inspector shall administer and enforce these bylaws. If the Building Inspector ceases to serve, the Board of Selectmen shall administer or enforce these bylaws. Applicants who wish to construct, alter, or change a use or structure are urged to consult with the Building Inspector to insure that all necessary permits have been received from those local, state, and federal agencies from which approval is required.

B. Penalty

Any person violating any of the provisions of these bylaws may be fined not more than three

hundred dollars (\$300) for each offense. Each day that such violation continues shall constitute a separate offense.

page 49:

Bylaws relating to the keeping of UNREGISTERED MOTOR VEHICLES and STRIPPING LAND OF SOIL AND LOAM adopted in Town Meeting, December 12, 1967 and approved by the Attorney General on May 2, 1968.

UNREGISTERED MOTOR VEHICLES

SECTION 1. The keeping of more than one unregistered motor vehicle, assembled or disassembled, except by a person licensed under General Laws, Chapter 140, Section 59, on any premises shall not be permitted unless said motor vehicle is stored within an enclosed building.

Response:

- On January 6, 2022, we counted 45 complete unregistered vehicles. In addition to these, there are many more partial, disassembled vehicles, trailers, snowmobiles, boats, etc. There are also numerous piles of various scrap metals on the property.
1. **SECTION 2.** A special permit to keep more than one unregistered motor vehicle on any premises not within an enclosed building, after a duly held public hearing to which all abutters to the premises have received notice, may be granted by the Board of Selectmen, if it finds that such keeping (1) is in harmony with the purposes and intent of this By-Law; (2) will not adversely affect the neighborhood; and (3) will not be a nuisance.
 2. **SECTION 3.** All such special permits granted shall limit the number of unregistered motor vehicles to be kept on the premises by the permit holder, shall not run with the land, and shall be limited to a reasonable length of time.
 3. **SECTION 4.** This article shall not apply to motor vehicles which are designed and used for farming purposes, nor shall this article apply to landowners or tenants who store motor vehicles out of sight of both abutters and public ways.

Response:

- The great majority of these vehicles are not out of sight of the public way or of abutters.
- No special permit has been granted by the Town.

SECTION 5. Whoever violates any provisions of this Article of the By Laws shall be liable to a penalty of Five Dollars (\$5.00) per day for each day of violations, commencing ten days following date of receipt of written notice from the Board of Selectmen.

We look forward to hearing from you regarding next steps and to working with you to begin what we expect will be a timely mitigation of this neighborhood nuisance. We expect the Town of Ashfield to demand that Mr. Dickinson cease and desist from adding any more vehicles or materials to the property (and to implement fines and other penalties promptly) while steps are taken to restore the property to a compliant residential/agricultural footprint, to reduce its impact on the surrounding wetlands and neighborhood water wells, and to restore what has been inevitably lost to the market value of nearby homes owing to the proximity of this sprawling eyesore and environmental hazard.

Yours,

West Road Neighborhood Alliance

1/3

We the undersigned hereby join in the Request for Code Enforcement for the property at 995 West Road, Ashfield, MA, 01330 registered to Jason Dickinson of 416 Huckle Hill Road, Bernardston, MA, 01337 and operated by Brian C. Dickinson, 331 Main Street/PO Box 53, Ashfield, MA 01330.

NAME (Print)	NAME (signature)	STREET ADDRESS	Abutter? Y/N
TICIA KANE	<i>Ticia Kane</i>	89 TOWN FARM ROAD	YES
Peter Healey	<i>Peter Healey</i>	89 Town Farm Road	yes
Dennis Nolan	<i>Dennis Nolan</i>	537 West Road	No
Laura Mills	<i>Laura Mills</i>	537 West Rd	NO
Mary Johnson	<i>Mary S. Johnson</i>	1230 west Rd., Ashfield MA 01330	No
Frank Derrig	<i>Frank Derrig</i>	250 West Rd. Ashfield, MA 01330	No
Fish Vorigemma	<i>Fish Vorigemma</i>	392 West Rd. Ashfield MA 01330	NO
TOM KUTSEMMA	<i>Tom Kutsemma</i>	392 WEST RD ASHFIELD MASS 01330	NO
RANDY GOBEL	<i>Randy Gobel</i>	1637 WEST RD	NO
MICHAEL SVELNIS	<i>Michael Svelnis</i>	1637 WEST RD	NO
JOSEPH RAKIAN	<i>Joseph Rakian</i>	467 West Rd.	No
Trey Bacon	<i>Trey Bacon</i>	467 West Road	No
Ron D. Donato	<i>Ron D. Donato</i>	298 Briar Hill Rd	NO

2/3

We the undersigned hereby join in the Request for Code Enforcement for the property at 995 West Road, Ashfield, MA, 01330 registered to Jason Dickinson of 416 Huckle Hill Road, Bernardston, MA, 01337 and operated by Brian C. Dickinson, 331 Main Street/PO Box 53, Ashfield, MA 01330.

NAME (Print)	NAME (signature)	STREET ADDRESS	Abutter? Y/N
Sarah Jetson	<i>Sarah Jetson</i>	1453 West Rd	N
Jeremy Jetson	<i>Jeremy Jetson</i>	1453 West Rd.	N
Brad Craig	<i>Brad Craig</i>	1070B West Rd	N
Kathy Georgiann	<i>Kathy Georgiann</i>	2020B West Rd	N
Susan Chase	<i>Susan Chase</i>	1070A West Rd	N
Manfred Gabriel	<i>Manfred Gabriel</i>	62 Brier Hill Rd	N
Christina Gabriel	<i>Christina Gabriel</i>	602 Brier Hill Rd	N
Robert E GRAVELINE	<i>Robert E Graveline</i>	1069 West Rd	Y
Mardi Summers	<i>Mardi Summers</i>	1010 West Rd	Y
Tom Moore	<i>Tom Moore</i>	1016 West Rd	Y
Rebecca Bradshaw	<i>Rebecca Bradshaw</i>	846 West Rd	N
Bob Barber	<i>Bob Barber</i>	846 West Rd.	N

We the undersigned hereby join in the Request for Code Enforcement for the property at 995 West Road, Ashfield, MA, 01330 registered to Jason Dickinson of 416 Huckle Hill Road, Bernardston, MA, 01337 and operated by Brian C. Dickinson, 331 Main Street/PO Box 53, Ashfield, MA 01330.

NAME (Print)	NAME (signature)	STREET ADDRESS	Abutter? Y/N
STEPHEN WORTH	<i>Stephen Worth</i>	457 Steady Lane, Ashfield	N
Victoria Trent Worth	<i>Victoria Trent Worth</i>	457 Steady Lane, Ashfield	N
Lynn Graham	<i>Lynn Graham</i>	1676 West Rd Ashfield	N
Alexandra Bell	<i>Alexandra Bell</i>	1676 West Rd, Ashfield MA	N
ROBERT F. FERGUSON	<i>Robert F. Ferguson</i>	90 CREAMERY Road, Ashfield, MA	N
MARGARET J. FERGUSON	<i>Margaret J. Ferguson</i>	90 CREAMERY ROAD, ASHFIELD, MA	N
MICHAEL McDONNELL	<i>Michael McDonnell</i>	812 WEST ROAD, ASHFIELD MA	N
Cindy Burch	<i>Cindy Burch</i>	1538 West Road, Ashfield, MA	N
Dinda Darlene Monds	<i>Dinda Darlene Monds</i>	1538 West Rd Ashfield, MA	N
Timothy Parker	<i>Timothy Parker</i>	1430 west Rd, Ashfield MA	N
Erika Parker	<i>Erika Z. Parker</i>	1430 West Rd, Ashfield MA	N
Barbara RISE	<i>Colay wise</i>	1379 west rd., Ashfield MA	N
JAY AYER	<i>Jay Ayer</i>	1379 WEST RD. ASHFIELD, MA	N



Franklin Regional Council of Governments

February 22, 2022

Brian Dickinson
PO Box 53
Ashfield MA 01330

Dear Mr. Dickinson:

Enclosed, please find the letter of complaint regarding your junkyard at 995 West Road, Ashfield MA, which we have discussed in two recent phone calls.

In those phone calls you said you were proactively cleaning up the property, and would continue to do so, despite the winter weather issues. My drive-by inspections confirm this is the case.

It is my opinion that you have been operating a junkyard/scrap yard at this location, and that this use is prohibited per the Ashfield Zoning Bylaws, Section VI B 1 and Section VI E. Therefore, this use is not allowed and cannot continue once you have cleaned up the property.

Please continue your cleanup until it is complete and call me with any questions you may have.

I can be reached at 413-774-3167 x113 or at jhawkins@frcog.org.

Sincerely,

A handwritten signature in black ink, appearing to read "James Hawkins", is written over the typed name and title.

James Hawkins
Building Commissioner

JH/pl

cc: Select Board
Town Administrator

Enclosure



**Franklin Regional
Council of Governments**

November 7, 2025

Jason Dickinson
416 Huckle Hill Road
Bernardston, MA 01337

RE: 995 West Road, Ashfield

Dear Mr. Dickinson:

In our phone discussion, I told you I would research the use of your lot at 995 West Road, Ashfield, which you feel is a "grandfathered" use.

A review of Massachusetts General Law, Section 59A, defines a junkyard as "a place where vehicles are dismantled or scrapped for their parts or materials". Additionally, junkyards must be screened from view by natural objects and well-constructed fences. Therefore, it is my opinion that your use is a junkyard.

A review of the Ashfield Zoning Bylaws shows that the current bylaws clearly prohibit junkyards, Section 6E. However, the Zoning Bylaws from 1995 did not prohibit this use. In 2011, the bylaws changed to prohibit junkyards.

There was a building permit for a house at this address on 11/27/1987 and a permit to remove the house on 11/30/1990. Therefore, I am requesting some proof that you operated the junkyard from 1990 to 2011. This information will determine if you are indeed a "grandfathered" use, correctly stated, a preexisting non-conforming use. I look forward to receiving your information.

If you have additional questions, please contact me at jhawkins@frcog.org or 413-774-3167 x 113.

Sincerely,

A handwritten signature in black ink, appearing to read "James Hawkins", is written over a printed name and title.

James Hawkins
Building Commissioner

cc: Planning Board

Zoning Board of Appeals

Selectboard

Town Counsel

From: Jim Hawkins <jhawkins@frcog.org>
Date: November 26, 2025 at 10:26:23 AM EST
To: Randy&Mike Gobeil&Svelnis <mikeandrandy@gmail.com>
Subject: RE: 995 West Rd., Ashfield

I have requested both boards to weigh in on this issue. My declaration that it is a junk yard, by mass regulations, and agreed on with town counsel, is a move forward.

From: Randy&Mike Gobeil&Svelnis <mikeandrandy@gmail.com>
Sent: Wednesday, November 26, 2025 8:55 AM
To: Jim Hawkins <jhawkins@frcog.org>
Subject: Re: 995 West Rd., Ashfield

Dear Commissioner Hawkins,

I'm following up on my last e-mail. Wondering how long the property owner has to respond to the letter you sent. I understand this topic will be on the agenda at the next BoH meeting (09DEC25) and the next ZBA meeting (11DEC25) so having an up-to-date overview from FRCoG would be very helpful.

Thank you and Happy Thanksgiving.

Randy Gobeil

randy gobeil



**Franklin Regional
Council of Governments**

January 14, 2026

Jason Dickinson and Sabra Billings
416 Huckle Hill Road
Bernardston, MA 01337

RE: 995 West Road, Ashfield

Dear Mr. and Mrs. Dickinson:

I am writing to notify you of a recent inspection of your premises at 995 West Road, Ashfield, MA and to enforce the Town of Ashfield Zoning Bylaws.

An inspection conducted on January 5, 2026, found junk vehicles, loose scrap metal and debris visible from the public way. A bulk waste container has been brought on the property to store loose scrap metal. Other loose scrap metal objects are stored outside in stacked piles. Information from the Local Building Inspector confirms that junk automobiles on the property have been registered.

In consultation with Town Counsel, Donna MacNicol, I have determined that the premises are currently being used as a junkyard and have been continually used as a junkyard prior to April 19, 1995, being the date the Town amended its zoning bylaws to prohibit junkyard uses. I find that the character and use of the property has not substantially changed since my last inspection. Accordingly, I have determined that use of the lot as a junkyard remains a pre-existing non-conforming use allowed by right subject to reasonable regulation and applicable health, safety and welfare regulations and environmental laws.

You are hereby ordered to build and maintain adequate fencing and/or screening of the property in accordance with town zoning bylaws and all applicable state and local regulations. In accordance with Ashfield Zoning Bylaws, Section VI.B, scrap materials must be safely stored and screened from view from public ways by natural barriers, fencing or storage.

You may appeal this determination in writing to the Ashfield Zoning Board of Appeals within thirty (30) days of this letter.

If you have additional questions, please contact me at jhawkins@frcog.org or 413-774-3167 x 113.

Sincerely,

A handwritten signature in black ink, appearing to read "James Hawkins", written over a light blue circular background.

James Hawkins
Building Commissioner

cc: Zoning Board of Appeals, Planning Board, Board of Health, Conservation Commission, Selectboard, Town Counsel

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Jason Dickinson
 416 Huckie Hill Road
 Bernardston, MA 01337



9590 9402 8708 3310 6395 49

2. Article Number (Transfer from service label)

9589 0710 5270 2523 5518 44

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Deane Billings*

Agent

Addressee

B. Received by (Printed Name)

DEANE BILLINGS

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

red Mail
 red Mail Restricted Delivery
 (\$500)

Paul Payer

From: Randy&Mike Gobeil&Svelnis <mikeandrandy@gmail.com>
Sent: Thursday, January 15, 2026 9:14 PM
To: Paul Payer
Cc: selectboard@ashfield.org; zba@ashfield.org; agent@hilltownconcom.org; planning_brd@ashfield.org; boh@ashfield.org; Jim Hawkins; Gabriella Grise
Subject: Re: 995 West Road, Ashfield MA

Dear colleagues,

Something doesn't square with this. How did we get from Hawkins order in 2022 to "clean it up and keep it clean" to "just put a fence around it" in 2026 without one single discussion in an open meeting of any town board in the past four years?

The owners of 995 West Rd had 30 days to appeal the order in '22 but didn't. Then they sent a letter in 2025 claiming "grandfathered" status when there has never been a business registered at this address, ever. Besides, MassGIS satellite images over the years show a pristine lot until 2015/16 — well after the current bylaws went into effect.

There must have been some discussions with Hawkins OUTSIDE open meetings to achieve this much more favorable result for Dickinson. Worrisome behavior.

I fear we're making a costly mistake for the environment, the many concerned neighbors, and our town.

Trust in our governance requires transparency!

Sincerely,

Randy Gobeil

randy gobeil

On Jan 14, 2026, at 11:48 AM, Paul Payer <PPayer@frcog.org> wrote:

Hello,

Please see attached a courtesy copy of a zoning enforcement letter issued by Building Commissioner James Hawkins regarding property at 995 West Road, Ashfield, MA.

Paul Payer
Zoning Enforcement Coordinator
Franklin Regional Council of Governments
12 Olive Street, Suite 2, Greenfield MA 01301
Tel: (413) 774-3167 Ext 109
www.FCCIP.org

<20260114-995 West Road Ashfield-Determination Letter.pdf>



**Franklin Regional
Council of Governments**

January 29, 2026

Randy Gobeil
1637 West Road
Ashfield, MA 01330

Dear Randy:

You are receiving this letter because you were a signatory to a letter requesting enforcement of zoning bylaws at 995 West Road in Ashfield. An initial zoning determination was made in 2022 declaring the lot constituted a junkyard prohibited under the town's current zoning bylaws. Subsequently, the owner claimed grandfathered use of land lawfully begun prior to adoption of the bylaw prohibiting the use. On November 7, 2025, I requested and subsequently received information in support of the owner's contention of non-conforming use.

A non-conforming use is a use of land lawfully begun prior to adoption of a zoning bylaw prohibiting such use. Non-conforming uses are exempt from the operation of subsequently enacted zoning provisions. However, non-conforming uses are subject to reasonable regulations including health, safety, and welfare regulations and environmental laws. On April 19, 1995, the town approved amendments to its zoning bylaws including a provision prohibiting junkyards throughout the town. *See Ashfield Zoning Bylaws, §VI.E (1995).*

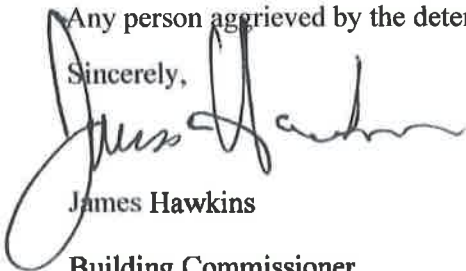
Having reviewed evidence available to me, I determined it was more likely than not that the present junkyard operations began prior to April 1995. I found that the degree of operations has increased significantly, particularly during the past few years, however, the nature and character of the use had not substantially changed in the manner sufficient to meet the threshold for change of use under the applicable zoning laws. *See generally Powers v. Building Inspector of Barnstable, 363 Mass. 648, 653 (1973).*

On January 14, 2026, I made the determination that the lot is being used as a junkyard and that such use is non-conforming. As a result of this non-conforming status, the lot is not subject to enforcement under Section VI.E as a prohibited use in the district, however, the lot remains subject to reasonable health, safety and welfare regulations and environmental laws. Accordingly, I ordered the property owner to comply with Section VI.B of the zoning bylaws requiring proper storage and screening of scrap metals from view of public ways.

As stated above, this decision pertains to the determination of non-conforming use for purposes of enforcing Section VI.E. of the zoning bylaws prohibiting junkyard uses. This decision does not address—nor does a town's Zoning Enforcement Agent possess the authority to address—alleged and potential violations of sanitary code, general bylaws, occupational licensing requirements, or environmental regulation. I restate the above observation that nonconforming uses remain subject to these reasonable regulations and have shared that observation with officials authorized to enforce such regulations.

Any person aggrieved by the determination may appeal in writing to the Ashfield Zoning Board of Appeals.

Sincerely,



James Hawkins

Building Commissioner

Randy Gobeil
1637 West Road
Ashfield, Massachusetts 01330
Mikeandrandy@gmail.com
413-625-0069

January 19, 2025

Jim Hawkins, Building Commissioner
FRCOG
12 Olive Street
Greenfield, Mass. 01301

Re: Junkyard, 995 West Road, Ashfield

Dear Jim:

This letter supplements my formal records request for copies of the materials upon which you based your determination that the premises have been used as a junkyard continuously since April, 1995.

As a matter of courtesy and transparency, I would appreciate your sharing these materials with me informally and amicably, whereupon I will withdraw the formal request. I'm happy to come to your office to pick them up. Please let me know.

Thanks for your courtesy.

Very truly yours,

Randy Gobeil

Jim Hawkins

From: Randy&Mike Gobeil&Svelnis <mikeandrandy@gmail.com>
Sent: Monday, February 2, 2026 8:33 AM
To: Jim Hawkins; Paul Payer; Bob Dean
Subject: Please Reconsider, 995 West Rd, Ashfield

Building Commissioner James Hawkins
Franklin Regional Council of Governments
12 Olive St, Suite 2
Greenfield, MA 01301

02FEB26

Dear Commissioner Hawkins,

We, the undersigned, are asking you to reconsider your recent finding on 14JAN26 that the property located at 995 West Rd in Ashfield is a grandfathered junkyard. We believe you have arrived at this decision erroneously and without relevant facts. Please consider the following:

— Town bylaws from 1967 prohibit more than one junk vehicle without a special permit and a permit was never granted. The affidavits supplied to you by Philip Lussier, Barry Nye, Leonard Roberts, Thomas Carter, Francis Dufresne, and Edward Purinton all confirm the property owner was engaged in this activity without permits from the beginning (they site different dates but confirm multiple junk vehicles on the property). If the property owner(s) never complied with the bylaws in effect since 1967, how can this illegal business be grandfathered?

— The primary purpose of the bylaws are to promote and enhance the town's rural atmosphere and character and to protect the health, safety, and general welfare of the inhabitants of the Town of Ashfield.

— The owners had 30 Days to appeal your decision from 2022. They appealed in 2025, more than three years too late.

— The Building Inspector's statement that all vehicles in the junkyard are registered is inaccurate.

— Prior to 2015 Mass GIS satellite images show 995 West Rd with two cars and a bus. The images from 2015-on show junk appearing and proliferating year by year. If you are basing an existing junkyard determination on 3+/- junk vehicles and comparing it to the size and scope of the operation now in existence, unlicensed and unregulated, with increased traffic and noise, we urge you to reconsider.

— The Town of Ashfield has no record of a junkyard business or special permit ever being registered at 995 West Rd. The reversal of your previous decision from 2022 ordering the owner to clean up the property effectively retroactively legitimizes an illegal enterprise started at this location contrary to town bylaws.

We hope a reconsideration in light of these facts will produce a determination that upholds the purposes of the Ashfield bylaws. Thank you for your time and attention in this very serious matter involving our health, the health of our neighbors, the environment, and the character of our neighborhood.

Sincerely,

Randy Gobeil
Joseph Ragan
Darlene Monds
Michael Svelnis
West Rd, Ashfield



**Franklin Regional
Council of Governments**

February 6, 2026

Via email delivery

Randy Gobeil, Joseph Ragan,
Darlene Monds and Michael Svelnis
West Road, Ashfield, MA

I am writing in response to your request to reconsider my determination and order regarding 995 West Road dated January 14, 2026. I considered the information you raised and find no grounds to modify the determination.

I read your first, fifth and sixth points as arguing that the presence of unregistered vehicles on the lots negates a finding that use of a junkyard was lawfully in existence at the time the zoning bylaws were amended to prohibit junkyards. I do not find any basis to conclude that the property was in violation of the general bylaws at such time. Section 4 of the Unregistered Motor Vehicle general bylaw states that the article does not apply "to landowners or tenants who store motor vehicles out of sight of both abutters and public ways." The available GIS imagery from the 1990s shows the vehicles setback from the street and in the woods. There is no evidence to suggest that junk vehicles were visible from the public way such that an unregistered vehicle permit was required at the relevant time in 1995. Accordingly, the reference to the general bylaw does not alter the determination of lawful use at the time of zoning bylaw amendment in 1995.

As stated in my letter dated January 29, 2026, I did not find that the enlargement of junkyard operations met the threshold for change of use from the junkyard operations lawfully commenced prior to 1995. However, I did find that those operations must be kept out of view in accordance with Ashfield Zoning Bylaws §VI.B. ("Public Nuisances"), just as they would have been required to be in 1995.

The property remains subject to general bylaws, including the Unregistered Motor Vehicle bylaw. However, these provisions are under the jurisdiction of the selectboard, and not the Building Commissioner.

The request for reconsideration does not raise new facts or clear error. The issues in this matter may be appealed to the Zoning Board of Appeals in accordance with Ashfield Zoning Bylaws § VIII.D and Mass. Gen. Laws ch. 40A, §8.

Sincerely,

A handwritten signature in black ink, appearing to read "James Hawkins", is written over a faint, larger version of the same signature.

James Hawkins
Building Commissioner

cc: Selectboard
Town Counsel
ZBA

DEP wetlands circuit rider: Hazardous waste at undermined dump on West Rd

1 message

Fri, Jan 2, 2026 at 12:40 PM

Mary Johnson <wrcinashfield@yahoo.com>
Reply-To: Mary Johnson <wrcinashfield@yahoo.com>
To: darmonds@gmail.com
Cc: "mark.stinson@state.ma.us" <mark.stinson@state.ma.us>

➔ mark.stinson@state.ma.us

Yahoo Mail: Search, Organize, Conquer

On Fri, Jan 2, 2026 at 12:16 PM, L. Darlene <darmonds@gmail.com> wrote:

Thank you!

On Fri, Jan 2, 2026 at 11:40 AM Mary Johnson <wrcinashfield@yahoo.com> wrote:

Yahoo Mail: Search, Organize, Conquer

----- Forwarded Message -----

From: <wrcinashfield@yahoo.com>
To: "Board of Health" <boh@ashfield.org>, "boh@ashfield.org" <boh@ashfield.org>
Sent: Thu, Nov 13, 2025 at 10:05 AM
Subject: Hazardous waste at undermined dump on West Rd

I am extremely concerned about the dump that has grown to huge proportions over the last month on West Rd. Why is the town not stopping this? Batteries and petroleum products from old vehicles and rusty 55 gallon drums with unknown contents threaten the health of local residents who depend on well water. The dump is right down to the edge of wetlands and surface water contamination is highly likely. This land owner has a relationship taking metal and batteries from the town and town officials seem to be doing nothing about years of complaints by neighbors. That leaves the town liable for environmental contamination and harm to residents health. Please tell me what steps you and the other town officials are taking to stop this dump and clean up the site to protect our health. I will take this to the state and Federal authorities if not addressed immediately.

Yahoo Mail: Search, Organize, Conquer

Letter

Randy&Mike Gobeil&Svelnis <mikeandrandy@gmail.com>
To: "Darlene L." <darmonds@gmail.com>

Sat, Jan 3, 2026 at 6:01 PM

From: Alexandra Bell <belgram@icloud.com>
Date: December 8, 2025 at 8:01:33 PM EST
To: boh@ashfield.org
Subject: Support for enforcing town bylaws regarding junkyard at 995 West Rd

To Ashfield Board of Health:

We are residents of Ashfield and reside on West Road. We understand that at the upcoming BOH meeting on December 9, 2025, the board will address the "West Road dump/landfill situation." We have observed that the junkyard at 995 West Road continues to operate, with items being removed from the area as well as new items entering the area. The operation of the junkyard violates the Ashfield zoning bylaws, specifically Section VI, E. Use Regulation prohibiting "non municipal landfills and junkyards," yet we are contacting the BOH because we are concerned about the many health hazards associated with unauthorized storage of junk, particularly old vehicles and appliances which can leach hazardous chemicals into the groundwater.

We hope that the BOH together with the Building Inspector responsible for administering and enforcing zoning bylaws will take action that results in the termination and any necessary clean up of the junkyard operation at 995 West Road.

Thank you for your consideration.

Alexandra Bell and Lynn Graham
1676 West Road
Ashfield

randy gobeil

Letter

Randy&Mike Gobeil&Svelnis <mikeandrandy@gmail.com>
To: "Darlene L." <darmonds@gmail.com>

Sat, Jan 3, 2026 at 6:02 PM

From: Arlan Wise <wisearlan@gmail.com>
Date: December 9, 2025 at 6:27:19 PM EST
To: zba@ashfield.org
Subject: 955 West Rd

I live at 1379 West Rd. I drive by the cars dumped on the property on West Rd and wonder why they are there. I signed a petition years ago to request their removal. Besides being an eyesore, the cars on the property have a great potential for polluting the land and ground water. Cars rust, and oil leaks. Please require the owner of the property to clean it up.

Thank you
Arlan Wise

Arlan Wise
Www.arlanwise.com
508.981.1440- text, Venmo

Letter

Randy&Mike Gobeil&Svelnis <mikeandrandy@gmail.com>
To: "Darlene L." <darmonds@gmail.com>

Sat, Jan 3, 2026 at 6:03 PM

From: Jay Ayer <jayayer@verizon.net>
Date: December 9, 2025 at 7:46:56 AM EST
To: zba@ashfield.org
Subject: 995 West Road, Ashfield

Good morning,

I share a property at 1379 West Road in Ashfield. The junk yard located 995 West Road is an unfortunate eyesore in a residential neighborhood. I know it's been there for some time but it may be time to request a cleanup.

Please do what you can to urge the owner to remove the vehicles and debris. I am not in favor of causing the owner undue financial harm. Can you arrange a schedule that gives them time to absorb the cost of any removals?

Best regards

Jay Ayer
1379 West Road

508-560-7814



L. Darlene <darmonds@gmail.com>

Fwd: Junkyard on West Rd

1 message

Randy&Mike Gobeil&Svelnis <mikeandrandy@gmail.com>
To: "Darlene L." <darmonds@gmail.com>

Sat, Jan 3, 2026 at 6:02 PM

randy gobeil

Begin forwarded message:

From: Rebecca Bradshaw <rebecca.mary.bradshaw@gmail.com>
Date: December 7, 2025 at 4:02:39 PM EST
To: zba@ashfield.org
Subject: Junkyard on West Rd

Hello friends,

I live at 846 West Rd, a couple houses down from Brian Dickenson's junkyard. I've been thinking about this situation lately as it's just gotten worse, and now is about as bad as I've seen it. The last failed attempt to get the situation under control may have left him feeling that it doesn't matter what he does. I stopped and talked to him one day and we had a lovely conversation and he seems like a decent guy so I have been tempted to just tolerate the mess. I dislike feeling the need to add my complaint, but it feels important to do so.

I worry on two fronts. One, his land borders a wetland and with all the old cars and machinery I am concerned about groundwater pollution. (And our own drinking water well.) And second, when there is one such eyesore on a road, it can lead others to do the same. This area is not zoned as a junkyard/ industrial zone and that should be respected.

Lastly, I have seen a number of cycles where Mr. Dickenson is convinced that he needs to clean up and he does (his intentions seem good), only to again, months later, revert to the same amount of junk, if not more. Any intervention will need to be monitored to assure that compliance is ongoing.

Thank you for addressing this matter,
Rebecca Bradshaw

Jim Hawkins

From: Sabra Billings <sabraeliza@gmail.com>
Sent: Tuesday, January 20, 2026 5:47 PM
To: Jim Hawkins
Subject: Re: 995 West Road, Ashfield

Okay, got it.

On Tue, Jan 20, 2026, 5:38 PM Jim Hawkins <jhawkins@frcog.org> wrote:

Hi Sabra.

Might want to hold off for 30 days to see if my order is appealed by those who are most unhappy about it

Jim

Sent from my iPhone

> On Jan 16, 2026, at 4:23 PM, Sabra Billings <sabraeliza@gmail.com> wrote:

>

>

> Hello Jim,

>

> If we have compliant fencing/screening up by late spring, will that be adequate? I have too much on my plate till then to get directly involved in a project.

>

> I have a plan that I would like to work towards with Brian, and, if given that time, I am certain the outcome will be one that all of the West Road neighbors would prefer over options Brian has offered up - which would also be compliant but not nearly as aesthetically pleasing (in other words, if allowed till late spring, the final outcome will be much more aligned with the spirit of the bylaws re: appearance from the outside).

>

> Please let me know as soon as possible

>

>

> Thank you,

> Sabra

>

>

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Jim Hawkins

From: Mary Johnson <wrcinashfield@yahoo.com>
Sent: Wednesday, January 21, 2026 2:35 AM
To: Jim Hawkins
Subject: Illegal Junk yard growing threat to public healthAshfield MA West Rd.

Dear Mr. HAWKINS,

I AM A CONCERNED CITIZEN AND NEIGHBOR TO THE ILLEGAL JUNK YARD ON WEST RD.

I want to inform you I drive by the junk yard multiple times a day as I go to and from dropping my children at school. Contrary to your recent drive by assessment, the land owner has not been cleaning up the junk yard. All fall he was substantially amplifying the scope adding huge new amounts of material with tractor trailer size dumpster loads being offloaded by bucket loader on a nearly daily basis. This threatens the health of my children and the long term water we could sumer here as the water table is connected and the junk which I saw included many rusting 54 gallon drums contains potentially hazardous waste from car batteries, vehicle motor oil and petroleum. I have noticed MA DEP on multiple occasions over the past few years. Soon I will escalate and hire an attorney who to sue sue th town and county government if this isn't taken more seriously. I have already contacted Attorney Michael Pill an experienced environmental litigator who would take on this case since the town knowing allows this resident to continue taking the towns waste and dumping it illegally on this site despite neighbors unleaded complaints.

Stronger action must be taken right away or permanent harm may result.

Mary Johnson
1230 West Rd,
Ashfield, MA

[Yahoo Mail: Search, Organize, Conquer](#)

Paul Payer

From: Jim Hawkins
Sent: Thursday, January 29, 2026 1:19 PM
To: Paul Payer
Subject: FW: Introduction, catch-up and clarity on 995 West Road

From: Sabra Billings <sabraeliza@gmail.com>
Sent: Thursday, January 29, 2026 10:34 AM
To: soashneighbors@gmail.com; wrcinashfield@yahoo.com; darmonds@gmail.com; raganbuilders@gmail.com; rebecca.mary.bradshaw@gmail.com; belgram@icloud.com; jayayer@verizon.net
Cc: Jim Hawkins <jhawkins@frcog.org>; zba@ashfield.org; selectboard@ashfield.org; agent@hilltownconcom.org
Subject: Introduction, catch-up and clarity on 995 West Road

Dear West Road Neighborhood Alliance,

I have gone back and forth on whether I would reach out to your group, but have decided that it was the right thing to do, 1) in the spirit of communication that has so far not been present in a "neighborly" way, from my perspective, and the golden rule, 2) because things are what they are from my side of the table, and 3) because, if roles were reversed, I would certainly like to know where the other side stood.

My husband and I are formally the owners of 995 West Road. We have been for years, and many, if not most of you, know this. I won't get into details regarding the complaints and conditions at the property between when we purchased the land and now, even if it is clear based on the public records I have received, which included your complaints, petitions, letters, emails, etc., and my own direct and personal knowledge that things have not been exactly as they have been perceived.

I would like to note, however, that last November was the first time we have been contacted by any official about the property, and, for the few of you who may not be aware, we have never been contacted by anyone in your "Alliance."

About me: I am a lifelong resident of Franklin County. I have worked at multiple local businesses and organizations, including as director of Food Operations for the Food Bank of Western MA and a handful of local manufacturers. I was a prior owner of Adams Donuts in Greenfield, and donated regularly to the Friday Elmers breakfasts when they were occurring. I currently am self-employed, I am a long-time volunteer with Big Brothers Big Sisters, I am a pen pal through a small organization that connects people with elderly in their community to write letters through the winter. I am a former single mother, a past board member for Just Roots in Greenfield, and I volunteer at an emergency overnight homeless shelter 2-3x per week. I am an avid baker, and am in the process of having my home kitchen licensed. I love to travel, ride a Harley Davidson, I drove in several demolition derbies when I was younger. I have a dog, 3 cats, and four laying hens, who are named Blackie, Midnight, Hairstyle and Pookie. I am fairly crafty and artistic and I have recently taken up free-handed wood burning art. I am a pretend General Contractor and an amateur gardener. **It seems appropriate for you to know a bit about me, given how involved you all are with mine and my husband's property and how impactful you have all very suddenly become to my life.** In fact, it seems appropriate to increase alignment with all of the many players I've

just come to understand exist in this game, so I'll go ahead and throw FRCOG, the select board, the ZBA and the conservation commission on this letter too - for once at least, we can all be included and on the same page about at least one thing.

At this point, even though only recently, I understand clearly that there exists a current violation of bylaws at our West road property, and upon receiving notification of that finding from FRCOG earlier this month, I reached out to them right away with questions about the timeline for compliance.

I also understand that what I believe to be the primary issue, and what FRCOG believes to be the primary issue - which is lack of screening, does not align with what at least some of you see as the issue, even after FRCOG's official January decision/determination. I have looked into the legalities myself independently and in detail, including the fluctuations in activity over the years, with consideration of the drivers of any ups and downs, and neither I nor any of my resources have found issues with or holes in the logic of the FRCOG finding that the current usage is a legal pre-existing non-conforming use.

Here is what I would like to share - what I would want to know if the shoe were on the other foot, so to speak:

I dislike junk. *That is actually an understatement.* We purchased the land partially because it has a measure of sentimentality to my husband but largely because I love Ashfield and it offered us a beautiful place to eventually downsize to. I drafted a very sweet, small house a couple of years ago and spent a lot of time thinking about potential floor plans, small gardens, trails, etc. at 995 West Road. I literally have a Pinterest board titled "Ashfield Mini Farm."

When we first bought the land, we had several friends and family express excitement about firearms target practice - "60 acres in the woods!" My answer was always no, I don't want to upset the neighbors, even though I support property licensed, registered gun use. We have been asked countless times, with my answer remaining the same. My husband and stepdaughter are both avid ATV/UTV riders. My husband used to race dirtbikes and he was interested in sharing that activity with his daughter and has many friends who still ride. They would love to put trails in. Because of the complication of the wetland portion of the property, it would be a project, and my position has been basically negative on that as well - which is almost the same as "no", as I am the planner in our family and projects like that don't tend to happen unless I am on board. One of the primary reasons I gave for not being excited about it is that my husband's preferred type of dirt bike is a two -stroke, the loud, higher-pitched engine type. I don't like the sound of them myself so I felt quite sure many or most of the neighbors would also find the sounds of hours of off-roading to be annoying (with 2 stroke engines sometimes audible for a mile or more). Both my husband and step-daughter have also expressed interest in starting to work a bit with Brian and potentially continue on with recycling at West Road. However, they are both very aware that I dislike junk. I put my foot down hard on very little, but they know that having scrapping activity at my home residence would not be negotiable, and relocation to West road was the plan, so they let that go.

But more recently, I have begun to completely rethink downsizing to Ashfield. A year or so ago, we decided firmly that we would build a small cottage, to provide flexibility for housing for our family and options for our future. Ideally in Ashfield, the build would have been preceded by a significant cleanup of the vehicles/scrap, including my requiring Brian to locate things completely out of sight of the front of the lot. Even though that would make things more difficult for him, having myself and my husband in Ashfield more often to help him with recycling if we forced the location of scrap to a less convenient spot on the property felt like a good compromise within our family. While I completely dislike junk, I love my

father in law. He is 72 and has not been ready to completely cut out that part of his life and I have not been willing to push him to do so. Keep in mind that the reality is there has been disagreement for a very long time about whether he had a right to use his land the way he has, regardless of individual opinions or determinations. This is not a man who has simply been being difficult for the sake of being difficult - he has always believed he was within his rights. He does have a living estate at 995 West Road. He has contributed so much to his town and to so many residents over the years. His reactions have come from a place of defensiveness of his (understandable) position that people want to take his rights away.

Unfortunately, my increasing awareness of the number of disgruntled neighbors from conversations with Brian completely dampened my desire to make such a commitment to the West road property - especially what I'd heard about the way a couple of people in particular had been approaching things. I have had a difficult two years personally, with a lot of loss and change. Even though we were not close to aware of the full extent of the complaints, the idea of being more directly involved in potential conflict was a complete deterrent for me from building in Ashfield right now. So where otherwise there would very likely be a beautiful little cottage sitting framed, enclosed and house-wrapped at 995 West road right now, right where the cellar hole is, awaiting a plumber and surrounded by nothing, especially not junk, instead - because of how all of this has been going down, that little cottage is an ADU in Bernardston waiting for the plumber here. Too bad, maybe for all of us.

In addition to FRCOG's determination that there is a legal right based on pre-existing non-conforming usage, I have spoken directly with the conservation commission about other complaints directed their way when folks didn't agree with the actions of their other town officials and FRCOG. They found zero evidence of any potential contamination. Even if you still believe FRCOG is wrong, AND you believe the good people of the Ashfield conservation commission are either incompetent or willfully neglectful, I myself believe most reasonable people would at least acknowledge that other reasonable people may see things differently given the most recent findings of both organizations.

I fully believe, as FRCOG has determined, that with screening and maintenance of the 100ft distance from the pond, the recycling is within Brian's (and our) legal right. And the same with the creation and usage of a personal dirt bike track as well as a personal target practice range, even if none of these align with the West Road Neighborhood Alliance's vision of a rural residential/ agricultural property. **Here is something I feel is key to understand:** the amount of energy I am willing to expend negotiating all of the potential, legal usages of our own property, with my own family, out of consideration for "neighbors" is very close to being exhausted. I am sad, hurt, incredibly frustrated, and, after reading through the extent of public records, angry. That is the lens through which I am writing this letter.

The unfortunate reality is that if there is one new complaint or any new escalation, I will throw in the towel. My stepdaughter graduated last year from the Technical School. She operates heavy equipment. She is strong and smart and has much more motivation and a higher comfort level with navigating the legalities of setting up a more formal recycling business than my husband does (not to mention a ton of motivation to have a large space for off-road riding, as she owns multiple offroad vehicles). If it comes to the end of my direct involvement in deciding how our family uses the property we bought and pay taxes for, she and her father will get a lawyer involved quickly to help outline and implement a formal plan that includes their direct involvement in recycling. They will establish their own permitted/licensed partnership with Brian. In fact, because of the threats of lawsuits I discovered via the public records request, I am starting today to ensure I have clarity on that side of things to be sure they mitigate all risk and are fully set up for success. In the meantime, I will refer friend and family requests for target practice to my husband - he is deaf, the sounds of gunfire don't bother him. I myself will just

maintain Ashfield as an occasional hiking and snowshoeing getaway for my dog and I, and a place to explore and collect nature for art and greenery for holiday wreaths, etc... and instead of a potential home site, I imagine you and I together will collectively be quite sorry as it will become something entirely different for a very long time to come.

That is where "the other side" stands. You can do with this what you will, it is what I believe I would like to know if I were any of you folks.

Sincerely,
Sabra Billings

P.S.
Joe: I began dating Jason in 2008 and myself and others can easily testify to the scrap/recycling usage of West Road well before Fritzie passed away - his passing was not even close to the start of the activity at West road.

Randy: yes, Brian is getting older but he is not yet experiencing "cognitive decline" FYI. Your comments re: people caring while acknowledging Brian's age and your suggestion that he may be experiencing reduced mental capacity come across as pretty disingenuous given that you in particular certainly understood that my husband and I own 995 West road, yet you have continued to hammer Brian regarding the issue, having not one time reached out to myself or my husband to discuss how you might possibly "help" him.

Mary: very contrary to your most recent email, there has, in fact, NOT been a "significant increase" in the net recycling activity in recent months. What is being perceived as such is primarily an exodus of material that was out of sight of the road, with my husband assisting his father filling many, MANY containers and taking it with him for recycling - material that was to a large degree previously sitting other Ashfield residents' yards before Brian picked it up. The activity has simply been more visible because the containers were dropped in the front of the property and that is where he and my husband brought up material and loaded them. We are easily able to prove this. I found your email noting your intention to potentially cause "permanent harm" overwhelmingly horrifying, particularly because you also have never reached out to me, not once.

(Jay Ayer - you are included in this letter only because you sent an email to the town, but I wanted you to know that my assumption from the words and tone of your email is that you, maybe alone, inserted yourself with a caring and cooperative spirit and likely were not aware that my husband and I owned the property and were never once contacted by the "Alliance")

P.P.S. as I am just finishing up prepping a couple of loaves of sourdough bread that will go into the oven shortly and planning to finalize an order of seeds for a new microgreens setup I recently put in place, the absolute irony is very thick in the air in my kitchen... that this "Neighborhood Alliance" that I just found out existed, even though they knew well that I existed, has unknowingly yet effectively been putting roadblocks onto my path to a small Ashfield homestead and created instead a new path that may lead more permanently to the very thing you all oppose.

995 West Rd Junkyard Timeline

- 1.) Request for zoning enforcement signed by 38 neighbors. January 2022
- 2.) Building Commissioner order to clean up and keep clean. February 2022
- 3.) Owner never appealed order and there are no ZBA discussions in 2022.
- 4.) Select Board Meeting junkyard discussions from 2022.
- 5.) New neighborhood requests for enforcement and Building Commissioner discussions.
- 6.) Board of Health discussion. ⇒ DEC. MEETING MINUTES PENDING APPROVAL
- 7.) ZBA discussion. ⇒ DEC. MEETING MINUTES PENDING APPROVAL

Conclusions, next steps. ?

Previous Assessments							
Year	Code	Building	Yard Items	Land Value	Acres	Special Land	Total
2026	130 - LAND	0	0	163,200	60.50	0.00	163,200
2025	130 - LAND	0	0	163,200	60.50	0.00	163,200
2024	130 - LAND	0	0	163,200	60.50	0.00	163,200
2023	130 - LAND	0	0	137,000	60.50	0.00	137,000
2022	130 - LAND	0	0	133,500	60.50	0.00	133,500
2021	130 - LAND	0	0	133,500	60.50	0.00	133,500
2020	130 - LAND	0	0	133,500	60.50	0.00	133,500
2019	130 - LAND	0	0	132,800	60.50	0.00	132,800
2018	130 - LAND	0	0	132,800	60.50	0.00	132,800
2017	101 - ONE FAM	0	0	131,900	60.50	0.00	131,900
2016	101 - ONE FAM	0	0	131,900	60.50	0.00	131,900
2015	101 - ONE FAM	0	0	131,900	60.50	0.00	131,900
2014	101 - ONE FAM	0	0	93,000	60.50	0.00	93,000
2013	101 - ONE FAM	0	0	117,200	60.50	0.00	117,200
2012	101 - ONE FAM	0	0	117,200	60.50	0.00	117,200
2011	101 - ONE FAM	0	0	117,200	60.50	0.00	117,200
2010	101 - ONE FAM	0	0	117,200	60.50	0.00	117,200
2009	101 - ONE FAM	0	9,400	117,200	60.50	0.00	126,600
2008	101 - ONE FAM	0	13,700	117,800	60.50	0.00	131,500
2007	101 - ONE FAM	0	13,700	113,900	60.50	0.00	127,600
2006	101 - ONE FAM	0	13,700	113,900	60.50	0.00	127,600
2005	101 - ONE FAM	0	11,700	78,800	60.50	0.00	90,500
2004	101 - ONE FAM	0	9,600	65,600	60.50	0.00	75,200
2003	101 - ONE FAM	0	10,500	65,600	60.50	0.00	76,100
2002	101 - ONE FAM	0	9,400	65,600	60.50	0.00	75,000
2001	101 - ONE FAM	0	9,400	65,600	60.50	0.00	75,000
2000	101 - ONE FAM	0	9,400	69,200	60.50	0.00	78,600
1999	101 - ONE FAM	0	9,400	69,800	60.50	0.00	79,200
1998	101 - ONE FAM	0	9,400	68,400	60.50	0.00	77,800
1997	101 - ONE FAM	0	9,900	74,900	60.50	0.00	84,800
1996	101 - ONE FAM	0	9,900	74,900	60.50	0.00	84,800
1995	101 - ONE FAM	0	9,900	74,900	60.50	0.00	84,800

Jim Hawkins

From: Philip Lussier <plussier@whitneyacres.com>
Sent: Friday, December 12, 2025 11:43 AM
To: Jim Hawkins
Subject: Dickinson property 995 West Rd., Ashfield
Attachments: 1990s Ortho Photo of Dickinson lot.jpg; Cropped image of school bus.jpg

Mr. Hawkins,

As a friend of Brian Dickinson, whose son Jason is the listed owner of the property referred to in the subject heading, I am offering you, at Brian's request, two images I collected from MassGIS MassMapper aerials. The larger is a B&W image from the 1990s data layer. There are a number of circles on that image showing what appear to be salvage items that were being stored on the property at the time. Most of those particular items were either removed or moved elsewhere on the property, with other items taking their place at various times, but one constant in all of the images was a school bus that is visible in the 1990s and continues to be visible in later images through sometime between 2021 and 23 when, it too, was removed.

The second image is cropped from the 2008/9 data layer to show that the item is, in all likelihood, a school bus from the size and bright yellow color of the roof. Brian confirms that it was indeed a school bus.

I hope this information can help bolster claims about the presence of salvage items that existed on the property over an extended period predating the adoption of the junkyard prohibition in the town's zoning bylaws.

Sincerely,
Philip Lussier
535 Main St.
Ashfield, MA 01330
413-628-3279

silhouette?

Auto silhouette?

House
foundation with
cap

at Rd.

School bus

???

???

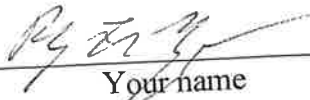
-72.787851, 42.493555 LON LAT



GENERAL AFFIDAVIT

STATE OF: Massachusetts
COUNTY OF: Franklin

AFFIDAVIT OF


Your name


I, Barry L Nye, swear that the following statements are true:

I am a friend of Brian Dickinson. I am providing this statement and affidavit regarding his property at 995 West Road in Ashfield, MA.

I can confirm that the property was affiliated with his work with vehicles as far back as 1986, moving cars and other vehicles and metal in and out, right through the current time.

Signed under the pains and penalties of perjury,

11-23-25
date


signature

GENERAL AFFIDAVIT

STATE OF: Massachusetts

COUNTY OF: Franklin

AFFIDAVIT OF

Leonard Roberts
Your name

I, Leonard Roberts, swear that the following statements are true:

I am a friend of Brian Dickinson. I am providing this statement and affidavit regarding his property at 995 West Road in Ashfield, MA.

I can confirm that the property was affiliated with his work with vehicles as far back as 1986, moving cars and other vehicles and metal in and out, right through the current time.

Signed under the pains and penalties of perjury,

11-21-20
date

Leonard H Roberts
signature

GENERAL AFFIDAVIT

STATE OF: Massachusetts

COUNTY OF: Franklin

AFFIDAVIT OF

FRANCIS DUFRESNE
Your name

I, FRANCIS DUFRESNE, swear that the following statements are true:

I live in Ashfield, Massachusetts. I have known Brian Dickinson for decades. I understand that there is a question as to how long he has been using his land at 995 West road for his scrap business. I can attest to witnessing his usage of the land for this purpose for several years prior to 2011.

Signed under the pains and penalties of perjury,

11/13/25
date

[Signature]
signature

GENERAL AFFIDAVIT

STATE OF: Massachusetts

COUNTY OF: Franklin

AFFIDAVIT OF

EDWARD PURINTON
Your name

I, EDWARD PURINTON, swear that the following statements are true:

I am submitting this affidavit as testimony that Brian Dickinson was engaged in receiving, sorting and recycling scrap metal and junk vehicles during the early 2000s, up to and including 2010-2011. I witnessed Brian performing these activities on many occasions during this timeframe.

Signed under the pains and penalties of perjury,

11-13-25

date

Edward Purinton

signature

GENERAL AFFIDAVIT

STATE OF: Massachusetts

COUNTY OF: Franklin

AFFIDAVIT OF

Thomas S. Carter

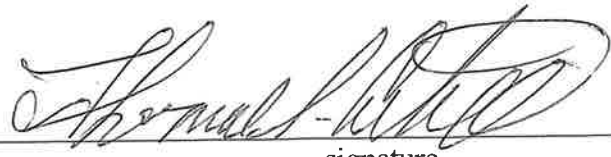
Your name

I, Thomas S. Carter, swear that the following statements are true:

I am submitting this affidavit as testimony that Brian Dickinson was engaged in receiving, sorting and recycling scrap metal and junk vehicles during the early 2000s, up to and including 2010-2011. I witnessed Brian performing these activities on many occasions during this timeframe.

Signed under the pains and penalties of perjury,

11/24/25
date


signature



January 22, 2026

Jim Hawkins, Program Manager/Building Commissioner

Franklin County Cooperative Inspection Program

12 Olive Street

Greenfield, MA 01301

Dear Mr. Hawkins,

This letter is to confirm that I have been doing business with Brian Dickerson of Ashfield Massachusetts since the mid-1990's. Brian has been collecting a variety of metals and other construction-related materials from my business properties and took them to his West Road property in Ashfield for sorting and disposal.

If you have any questions or need further information, please contact me .

Sincerely,

Joseph S. Rae,

Managing Partner

Joseph S. Rae, LLC

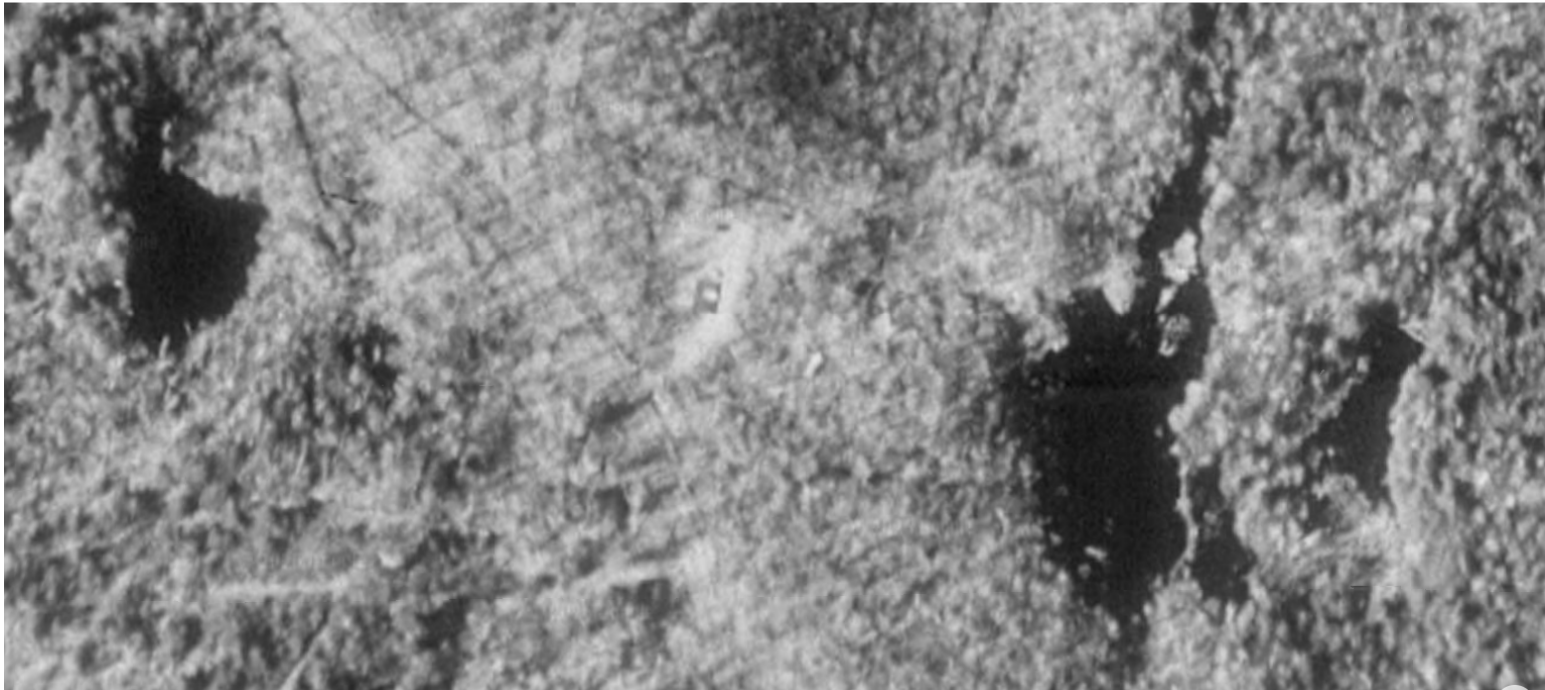
Aerial Imagery of 995 West Road, Ashfield 1992-2025

Sources: MassMapper; Google Earth

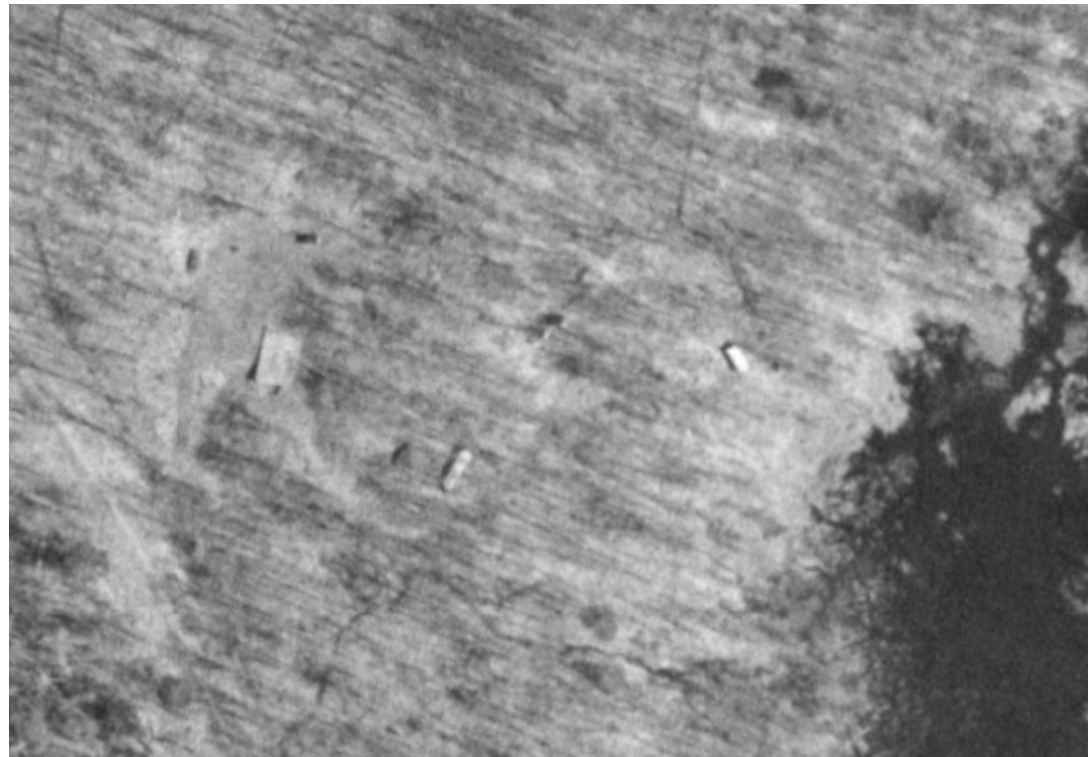
April 1992

Historical Imagery < Apr 28, 1992 > >|

1985 1992 2001 2003 2004 2005 2006 2008 2010 2011 2014 2018 2025



1997



2001



December 2001

< Dec 31, 2001 > >|



August 2003



April 2005



2008/2009



September 2010



September 2011



2011/2012



May 2014



Spring 2015



October 2018



Spring 2019



Spring 2021



Spring 2023

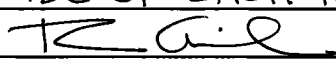


June 2025



**DISCLOSURE BY NON-ELECTED MUNICIPAL EMPLOYEE OF FINANCIAL INTEREST
AND DETERMINATION BY APPOINTING AUTHORITY
AS REQUIRED BY G. L. c. 268A, § 19**

MUNICIPAL EMPLOYEE INFORMATION	
Name:	RANDY GOBEL
Title or Position:	ZBA ALTERNATE
Municipal Agency:	Town of Ashfield
Agency Address:	
Office Phone:	
Office E-mail:	
	My duties require me to participate in a particular matter, and I may not participate because of a financial interest that I am disclosing here. I request a determination from my appointing authority about how I should proceed.
PARTICULAR MATTER	
Particular matter E.g., a judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, or finding.	Please describe the particular matter. RE: JUNKYARD - 995 WEST RD. I WAS ONE OF 38 SIGNERS ON A LETTER TO BUILDING COMMISSIONER ASKING FOR ZONING ENFORCEMENT AT 995 WEST RD. IN 2022 (BEFORE BEING APPOINTED TO THE ZBA). I LIVE ABOUT 1 MILE AWAY FROM THIS SITE.
Your required participation in the particular matter: E.g., approval, disapproval, decision, recommendation, rendering advice, investigation, other.	Please describe the task you are required to perform with respect to the particular matter. DISCUSSION AT MEETINGS.
FINANCIAL INTEREST IN THE PARTICULAR MATTER	
Write an X by all that apply.	<input checked="" type="checkbox"/> I have a financial interest in the matter. <input type="checkbox"/> My immediate family member has a financial interest in the matter. <input type="checkbox"/> My business partner has a financial interest in the matter. <input type="checkbox"/> I am an officer, director, trustee, partner or employee of a business organization, and the business organization has a financial interest in the matter. <input type="checkbox"/> I am negotiating or have made an arrangement concerning future employment with a person or organization, and the person or organization has a financial interest in the matter.

Financial interest in the matter	Please explain the financial interest and include a dollar amount if you know it. UNCLEAR IF THERE'S ANY FINANCIAL INTEREST. STUDIES SHOW JUNKYARDS NEGATIVELY AFFECT PROPERTY VALUES. MA ETHICS COMMISSION SUGGESTED / RECOMMENDED I FILL THIS FORM OUT TO ERR ON THE SIDE OF CAUTION.
Employee signature:	
Date:	05 JAN 26

(413) 625-0069

DETERMINATION BY APPOINTING OFFICIAL

APPOINTING AUTHORITY INFORMATION	
Name of Appointing Authority:	
Title or Position:	
Agency/Department:	
Agency Address:	
Office Phone:	
Office E-mail	
DETERMINATION	
Determination by appointing authority:	As appointing official, as required by G.L. c. 268A, § 19, I have reviewed the particular matter and the financial interest identified above by a municipal employee. I have determined that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.
Appointing Authority signature:	
Date:	
Comment:	

Attach additional pages if necessary.

The appointing authority shall keep this Disclosure and Determination as a public record.

from 02FEB22 SB Minutes

West Road “Junk Yard” Complaint: A letter was received from the building commissioner regarding his investigation of the property on West Road owned by Brian Dickinson. He noted in his letter that it appeared Mr. Dickinson *was* operating a junkyard against town bylaws, but also noted that Mr. Dickinson had made progress in cleaning up the property. The letter seemed to imply that if Mr. Dickinson continues to make progress on cleaning up the property, there would be no fines or action taken.

Administrator McLatchy will send a copy of the letter to the individual who originally brought this concern forward (but wished to remain anonymous).

from 14FEB22 SB Minutes

West Road “Junk Yard” Complaint: No updates have been received from Building Commissioner Hawkins on this matter. Brian Dickinson has been working on trying to clear some of the items off his property.

from 14MAR22 SB Minutes

Complaint Email: An anonymous email was sent to the Board from the South Ashfield Neighborhood Alliance, which is the group that filed a formal complaint with the Building Inspector regarding a junk yard operating on West Road. The letter stated that they felt like they were not listened to in a serious manner by the Board. Chair Gougeon had responded to the email on his own, saying that the Board had little involvement in the matter to begin with, and apologized if they felt like they were not taken seriously. Vice-Chair Carter commented that this is the first complaint that he can remember where no one was willing to put their name to it, which makes it difficult to respond to. Mr. Olanyk agreed, and also said that the Board had no prior knowledge or time to react to it, and that any solution would not be instantaneous. Vice-Chair Carter and Mr. Olanyk felt that Chair Gougeon’s response was perfect and that the matter is being addressed.

from 06JUN22 SB Minutes

West Road Complaint: Another complaint has been made by a group of residents indicating dissatisfaction with the rate of progress on the property owned by Brian Dickinson on West Road. Chair Carter said he reached out to Mr. Dickinson yesterday, who had been in touch with Zoning Enforcement Officer James Hawkins. Mr. Hawkins will be coming out in the next two weeks to do a site visit, which Chair Carter and Mr. Gougeon said they would be willing to join. Vice-Chair Olanyk commented that the steps that have been taken by Mr. Dickinson have been good, but they can’t stop, either. There must be continued progress. Chair Carter agreed but noted that there has been “considerable improvement” in his eyes since the cleanup started.

- 11/18/87 - Found. ^{To} "Add 6" stone over pipe.
33" found wall TD
- 11/19/7 - Tel. w/ Mr. Dickman - Septer design (approved)
and plans to come 11/20/7 TD
- 11/20/7 - Tel w/ Doug Pease from Pellex home - plans +
septic plan to come TD
- 1 PM 1/28/88 - C.O. Insp. see letter dtd 1/29/88
- 10 AM 2/9/88 - Meeting w/ William Douglas Corp (Doug Pease, Doug Blumens, Bill Casey,
Joe Selms, Brian Dickman + Richard Stewart.)
- 4/7/88 - Tel w/ B.D. - ASI has until 4/22/88 to make corrections - TD

Owner wants complete removal of home.

7-29-88 ^{not} Wealth tight -
contact D.A. / (Call Lic.) } some violation sent us note by
previous inspector (both state & local) this issue is a consumer
problem. suggested to owner he proceed his legal action
through private sector. Not ready for occupancy.

FRANKLIN COUNTY COOPERATIVE BUILDING INSPECTOR PROGRAM

COUNTY COURT HOUSE - 425 MAIN STREET
GREENFIELD, MASSACHUSETTS 01301
(413) 772-2026

TO Mr. Douglas Blowers
Roaring Brook Rd.
Conway, MA 01341

DATE November 30, 1990

SUBJECT Permit #13997

Your application to move a 1-family dwelling off the West Road site belonging to Phyllis Dickinson has been reviewed and approved. The permit will be mailed on Nov. 30th to the Ashfield Selectmen; you may pick the permit up at the Ashfield Town Office any weekday following Dec. 3rd (except Thursday), at which time the permit fee of \$20 should be paid. Please make your check payable to the Town of Ashfield.

After the permit fee has been paid, your project may commence.

Sincerely,

Michael L. Harrington
Building Commissioner

cc: Board of Selectmen

information have given
foundation

FOR ALL NEW RESIDENTIAL STRUCTURES:

Is there a source of potable water on the site? _____ Source? _____

Will the sewage disposal system be

PUBLIC PRIVATE

Will the residence or commercial structure use or generate hazardous material?

YES Source? _____ NO

The owner of this building and the undersigned agree to conform to all applicable laws of the town & state.

SIGNATURE OF OWNER OR AUTH'D AGENT:

Douglas Blowers

Address: Roaring Brook Rd.

RECEIVED NOV 30 1980

BUILDING PERMIT APPLICATION
F.C.C.B.I.P.

FEE

LOCATION OF BLDG: TOWN Ashfield STREET & NUMBER West Rd.

Circle Side of Street: N S E (W) Nearest Intersecting Street Formerly Phyllis Dickenson owner of lot

CHECK APPROPRIATE DESCRIPTION OF STRUCTURE OR USE:

- ONE-FAMILY RESIDENCE
- TWO-FAMILY MULTI-FAMILY
- ADDITION
- GARAGE
- BARN STOR. SHED
- POOL ABV-GRND INGROUND
- SOLAR HEAT SUNROOM
- INT/EXT STRUCTURAL RENOVATIONS
- DEMOLITION
- CHG OF USE OR OCCUPANCY/EXPLAIN:

OTHER: EXPLAIN Remove Modular house from foundation

FOR ALL NEW RESIDENTIAL STRUCTURES:

Is there a source of potable water on the site? _____ Source? _____

Will the sewage disposal system be
 PUBLIC PRIVATE

Will the residence or commercial structure use or generate hazardous material?

YES Source? _____ NO

IS STRUCTURE TO BE RESIDENTIAL, COMMERCIAL OR INDUSTRIAL?

EST. COST \$ 3,000

1358 Sq.Ft. FLOOR SPACE - LIVING
 _____ Sq.Ft. FLOOR SPACE - OTHER
 _____ TOTAL HEIGHT OF STRUCTURE
 _____ # OF OCCUPANTS
 _____ # OF PARKING SPACES PROVIDED

OWNER'S MAILING ADDRESS (Please Print) PHONE # 369-4051

Name: Douglas Blowers
 Street: Roaring Brook Rd
 Town/Zip: Conway, MA, 01341

BUILDER'S NAME: Douglas Blowers
 Address: Roaring Brook Rd
 License # 021087 Phone: 369-4759

The owner of this building and the undersigned agree to conform to all applicable laws of the town & state.

SIGNATURE OF OWNER OR AUTH'D AGENT:

Douglas Blowers
 Address: Roaring Brook Rd.

PROVIDE AN INFORMAL PLOT PLAN IN THE ~~SQUARE~~ SQUARE BELOW INDICATING THE FOLLOWING:

- 1) Location of existing structures on the lot.
- 2) Proposed location of the new structure, addition, etc., and its distance from lot lines.
- 3) Location of all wetlands or streams and their distance from the new structure, addition, etc.

Name of Street: _____

Frontage: _____

Building Lot Size (Acres or Sq.Ft.) _____

Building will be how near the street line? _____

Building will be how near the line of adjoining lots?

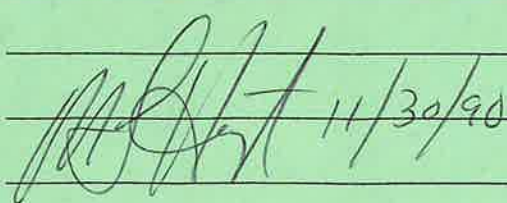
(From street looking at lot) Right _____ Left _____ Rear _____

Are you building in a flood plain? _____ If so, indicate flood zone and elevation data _____

Will any portion of the construction be taking place within 100' of a wetland or stream (includes excavation or other earthwork)? _____ If so, or if you are not sure, contact your local Conservation Commission.

SIGNATURES OF LOCAL COMPLIANCE

TITLE

- | | | |
|--|--|---------------|
| 1. Smoke Detection System Approved | | Fire Chief |
| 2. Approval of Perk Test, Septic Design, and water test, if required | | Bd. of Health |
| 3. Complies with Local Zoning Bylaws |  | Bldg. Com'r. |
| 4. Approval of FCCBIP | | Bldg. Com'r. |
| 5. Approval of Highway Superintendent | | |
| 6. Conservation Commission, if required | | |

Franklin County Cooperative Building Inspector Program

County Court House
425 Main Street
Greenfield, Mass. 01301
(413) 774 - 3806

Member Towns

Ashfield
Bernardston
Buckland
Charlemont
Conway
Erving
Gill
Hawley
Heath
Leverett
Leyden
Monroe
Shelburne
Shutesbury



Ms. Phyllis Dickinson
Main Street
Ashfield, MA 01330

August 3, 1988

Dear Ms. Dickinson:

As you requested, an inspector from this office, Elbert Ulshoeffter, inspected your dwelling under construction on West Road in Ashfield on July 27, 1988. As I understand the situation, the inspection was requested to see if the dwelling was fit for occupancy.

I have reviewed your file and noticed that two previous inspections were done by the local inspector, John Dougherty, and a state inspector, Paul A. Fredette. As of this date, after Mr. Ulshoeffter's inspection, the violations noted by these inspectors have not been corrected.

Until such time as these violations are corrected, no occupancy of the structure is permitted. In order to receive an occupancy permit you will need all inspectors to sign off on your permit card (plumbing, electrical, fire chief, and building inspector.)

It would appear from your file that your problems are of a contractual nature and may require private legal action. If this is your course of action, this office will do all that it legally can to assist you.

Sincerely,

Steven A. Judge
Building Commissioner

SAJ/jb

cc: Paul Fredette

August 2, 1988

Ms. Phylis Dickinson
Main Street
Ashfield, MA 01330

Dear Ms. Dickinson:

As you requested, I inspected your dwelling under construction on West Road in Ashfield on July 27, 1988. As I understand the situation, the inspection was requested to see if the dwelling was fit for occupancy.

I have reviewed your file and noticed that two previous inspections were done by the local inspector, John Dougherty, and a State Inspector, Paul A. Fredette. As of this date, it is my opinion that the violations noted by these inspectors have not been corrected. Until such time as these violations are corrected, no occupancy of the structure is permitted. In order to receive an occupancy permit you will need all inspectors (plumbing, electrical, fire, and building) to sign off on your inspection card.

It would appear (from your file) that your problems are of a contractual nature and may require private legal action. If this is your course of action this office will do all that it legally can to assist you.

Sincerely,

Elbert C. Ulshoeffter, Jr.
Building Inspector

ECU/jb

cc: Paul Fredette
Division of Inspection



The Commonwealth of Massachusetts

Department of Public Safety

Division of Inspection
One Ashburton Place - Room 1301
McCormack State Office Building
Boston, Massachusetts 02108

(617) 727-3200

March 28, 1988

Deluxe Homes of Pa, Inc.
P.O. Box 323
Berwick, PA 18603

Subject: Dickinson's Deluxe Home
Ashfield, MA
Mass Label #23673/23674

Gentlemen:

A consumer complaint relative to the above subject premises was investigated on March 4, 1988.

It was determined that several items of concern dealing with doors, windows, electric service location, floor layout and room sizes can be attributed to the fact that the home delivered is not the one that the owner originally ordered.

Other conditions observed that need attention are:

1. Flashing and/or caulking around exterior doors & windows and horizontal joint of T1-11 exterior siding was improperly installed or missing.
2. Some of the bridging between the 2 x 10 floor joists extend from the bottom of one joist to mid depth of the next joist instead of top to bottom.
3. Landing between front door and stairs to 2nd floor did not allow door to swing 90 degrees. Field installer cut one inch off step nosing, making step non-conforming to code.
4. Drip trim for base of exterior siding was not installed allowing water to drip on top of foundation wall and wet the foundation sill.
5. Basement floor elevation was not kept as specified by manufacturer, therefore manufacturer's basement steps were substituted with field cut non-conforming 8 1/2" stairs run & 2 x 4 handrail.

March 28, 1988

Page - 2 -

6. Five basement window frames were installed inside out in foundation wall allowing rain water to shed into basement.
7. A lally column was installed to mating wall girder and without top bearing plate.
8. Several of the short blocks used to form a hinge at the eave plate for the roof section were sheared apparently in transit and not repaired.
9. Gable panel walls did not fit properly and required an unusual amount of shims.
10. In general, the building was not left fully protected from the weather and without proper thermal envelope in basement and ceiling or attic area above first floor.

It is apparent that most of these problems were created by improper field installation and the lack of proper communication between your dealer/builder and the consumer.

Since the installation of modular units is an important part of the Modular Manufactured building program, you are responsible to see that your builder/dealers maintain your credibility by providing good public relations and proper supervision of field installations that assures code compliance and satisfied customers.

You are hereby directed to have all shortcomings corrected and submit a report by April 22, 1988 addressing corrective measures taken, and policy changes that will preclude a repeat of these violations.

Sincerely yours,

DIVISION OF INSPECTION



Paul A. Fredette
Enforcement Officer
Supervisor

cc: Senator John Parker
Mr. B. Dickinson, Owner
T. R. Arnold, Third Party Inspection Agency
D. C. Macartney, State Board of Building Regulations and Standards

Franklin County Cooperative Building Inspector Program

County Court House
425 Main Street
Greenfield, Mass. 01301
(413) 774 - 3806

Member Towns

Ashfield
Bernardston
Buckland
Charlemont
Conway
Erving
Gill
Hawley
Heath
Leverett
Leyden
Monroe
Shelburne
Shutesbury

February 16, 1988



Ms. Phyllis Dickinson
Main Street
Ashfield, MA 01330

Dear Ms. Dickinson:

As a result of my inspection of your 1-family dwelling located on West Road in Ashfield, conducted on February 9, 1988, I found the following problems with regard to the Mass. Bldg. Code:

CELLAR:

- 1) Lolly column at the clearstory needs a steel plate to distribute the load. (Mass. Bldg. Code Section 2103)
- 2) An unsecured joist hanger at the right side of the cellar stairs needs to be attached. (Mass. Bldg. Code Section 2103)
- 3) The fourth tread from the bottom of the cellar stairs is checked and needs to be replaced. (Mass. Bldg. Code Section 2101)
- 4) Unused chimney chase at left side of cellar stairs needs to be sealed. (Mass. Bldg. Code Section 919)

FIRST FLOOR:

- 1) The joint between the two halves of this manufactured home needs to be joined and sealed. (Mass. Bldg. Code Section 919)
- 2) The variation in tread width (more than 3/16") needs correction at the lowest tread at front entry. (Mass. Bldg. Code Section 616)
- 3) Cellar to kitchen door to fit tight to floor finish to prevent infiltration of air from uninsulated cellar area. (Mass. Bldg. Code Section 2009)

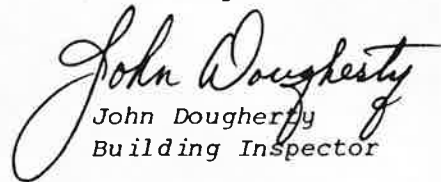
ATTIC:

- 1) Joints in double top plate at the kneewalls to be staggered or otherwise supported satisfactorily. (Mass. Bldg. Code Section 2103)

Ms. Phyllis Dickinson
Page 2
February 16, 1988

- 2) Kneewall to be completed. (Mass. Bldg. Code Section 2103)
- 3) Final layer of flooring to be added to attic. (Joint between boxes to be covered.) (Mass. Bldg. Code Section 919)
- 4) East gable end wall joint to be tied together and covered with weatherproof siding. (Mass. Bldg. Code Section 824)

Sincerely,


John Dougherty
Building Inspector

JD/jb

cc: William Douglas Corporation



RECEIVED MAR 2 1988

PLANNING BOARD
ASHFIELD, MASSACHUSETTS

Date February 18, 1988

Case _____

NOTICE OF DECISION ON APPLICATION FOR A SPECIAL PERMIT

In regard to the application of Phyllis D. Dickinson
for a Special Permit, so as to permit a Non Conforming Lot
to become more non conforming

on premises located at Main Street Ashfield MA.

the record title standing in the name of Phyllis Dickinson
whose address is Main Street, Ashfield MA.

by a deed duly recorded in the Franklin County Registry of
Deeds in Book #962, Page #115.

NOTICE IS HEREBY GIVEN THAT, after a public hearing held on
February 2, 1988 the Planning Board voted:

(x) to grant a Special Permit, subject to the follow-
ing conditions:

Restricted to applicants use

() to deny the application for a Special Permit

The decision of the Planning Board, with the supporting
record, is on file at the office of the Ashfield Town Clerk.

Certified this Feb day of 28 198 .

Eugene Pousan
Chairman, Planning Board

Anne Murray
Clerk, Planning Board

*4/7/88 - Tel conversation w/ Brian - This is about a small strip
of land on P.D.'s Main St., property.*

January 29, 1988

Ms. Phyllis Dickinson
Main Street
Ashfield, MA 01330

Dear Ms. Dickinson:

On January 28, 1988, I performed a cursory inspection of your new home on West Road in Ashfield.

The violations of the Mass. Bldg. Code start in the cellar and continue through the attic and are too numerous to list. As an example of the kinds of problems that exist -- the house was delivered with a landing inside the front door that was not wide enough to allow the front entry door to open fully. To solve the problem, the first (lowest) tread on the stairway to the second floor was shortened by cutting the tread nosing off in direct violation of Article 616.411 of the Mass. Bldg. Code, which allows a maximum variation in tread width of three sixteenths of an inch.

As I mentioned, the problems with this house are far too numerous for me to go into at this point. If I can be of further assistance, please contact me in writing.

Sincerely,

John Dougherty
Building Inspector

JD/jb

cc: Douglas Blowers

BUILDING PERMIT

AMOUNT PAID

VALIDATION

APPLICANT PHYLLIS DICKINSON DATE NOVEMBER 27, 19 87 PERMIT NO. 11638
 ADDRESS WEST ROAD (CONTR'S LICENSE) 021087
(NO.) (STREET)

PERMIT TO CONSTRUCT (TYPE OF IMPROVEMENT) (2) NO. STORY DWELLING (PROPOSED USE) NUMBER OF DWELLING UNITS ONE

AT (LOCATION) WEST ROAD, ASHFIELD (NO.) (STREET) ZONING DISTRICT _____
 BETWEEN BRIER HILL RD. (CROSS STREET) AND _____ (CROSS STREET)

SUBDIVISION _____ LOT _____ BLOCK _____ LOT SIZE _____

BUILDING IS TO BE 26 FT. WIDE BY 30 FT. LONG BY 28 FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION

TO TYPE 4-B USE GROUP R-4 BASEMENT WALLS OR FOUNDATION CONCRETE (TYPE)

REMARKS: _____

AREA OR VOLUME 1,488 (CUBIC/SQUARE FEET) ESTIMATED COST \$ 59,250 PERMIT FEE \$ 246.00

OWNER PHYLLIS DICKINSON BUILDING DEPT BY John Dougherty
 ADDRESS MAIN STREET, ASHFIELD, MA

(Affidavit on reverse side of application to be completed by authorized agent of owner)

FORM NO. BOCA - BP 1969

John Dougherty
 John Dougherty
 Assistant Building Inspector

cc: Ashfield Selectmen

FOR ALL NEW RESIDENTIAL STRUCTURES:

Is there a source of potable water on the site? X Source? deep well

Will the sewage disposal system be

PUBLIC PRIVATE

undersigned agree to conform to all applicable laws of the town & state.

SIGNATURE OF OWNER OR AUTH'D AGENT:

Phyllis D. Dickinson
 Address: Main St Ashfield

LOCATION OF BLDG: TOWN Ashfield STREET & NUMBER West Rd.
Circle Side of Street: N S E W Nearest Intersecting Street Brewster St

CHECK APPROPRIATE DESCRIPTION OF STRUCTURE OR USE:

- ONE-FAMILY RESIDENCE
- TWO-FAMILY MULTI-FAMILY
- ADDITION
- GARAGE
- BARN STOR. SHED
- POOL ABV-GRND INGROUND
- SOLAR HEAT SUNROOM
- INT/EXT STRUCTURAL RENOVATIONS
- DEMOLITION
- CHG OF USE OR OCCUPANCY/EXPLAIN:

OTHER: EXPLAIN _____

FOR ALL NEW RESIDENTIAL STRUCTURES:

Is there a source of potable water on the site? X Source? deep well

Will the sewage disposal system be
 PUBLIC PRIVATE

IS STRUCTURE TO BE RESIDENTIAL, COMMERCIAL OR INDUSTRIAL?

EST. COST \$ \$ 60,000.00
\$ 59,250.-
1488 Sq.Ft. FLOOR SPACE - LIVING
 Sq.Ft. FLOOR SPACE - OTHER
28' TOTAL HEIGHT OF STRUCTURE
1 # OF OCCUPANTS
401 # OF PARKING SPACES PROVIDED
more *****

OWNER'S MAILING ADDRESS (Please Print) PHONE

Name: Phyllis Dickerson
Street: Main St
Town/Zip: Ashfield Mass.

BUILDER'S NAME: William Dwyer
Address: 117 Kessel St. HA
License # 021087 Phone: 584-9

The owner of this building and the undersigned agree to conform to all applicable laws of the town & state.

SIGNATURE OF OWNER OR AUTH'D AGENT:
X Phyllis D. Dickerson
Address: Main St Ashfield

HOWARD RESEARCH LABORATORIES
HARLAN A. HOWARD, M.S.

MEMBER OF
AMERICAN CHEMICAL SOCIETY
AMERICAN PUBLIC HEALTH ASSOC.
AMERICAN ASSOC. CLINICAL CHEMISTS

750 NORTH PLEASANT STREET
AMHERST, MASSACHUSETTS 01002
TELEPHONE (413) 549-0643

Suzanne M. Corbett
Box 127 Main Street
Ashfield, Ma. 01330

July 30, 1987

Dear Miss Corbett:

The water sample which you brought here July 24, 1987
has been analyzed bacteriologically according to the Official American Public Health
Standard Methods.

WATER ANALYSIS REPORT

Results of tests indicate good bacteriological quality. As tested,
this water sample would be considered suitable * for drinking purposes.

→ * The request was for bacteriological quality only.

0 Coli type bacteria in 100 ml of your water sample.
0 Coli required in 100ml of water for good drinking quality.

If you have questions, please phone me at your convenience.

As we say in all our reports: prospective buyers of property should always taste the
well water and make any and all other observations about the well, water, locations,
etc. to their complete satisfaction...before buying.

Sample marked: Phyllis D. Dickinson, West Rd., Ashfield, Ma. is the owner.
No Lot number or Street number.

Very truly yours, Thank you for the opportunity to be of service.



Paid by Check No. 197# Corbett

Harlan A. Howard, B.S., M.S.
Director of Laboratories

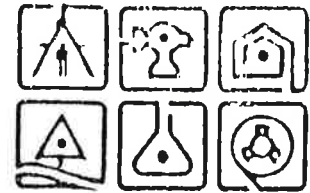
Laboratories Certified by Mass. Dept. of Public Health ----

Medicare No. 22-8026

C.T. MALE ASSOCIATES, INC.
Formerly Gordon F. Anisworth & Associates

393 Main Street
P.O. Box 1555
Greenfield, MA 01302
(413) 774-7248

Engineering
Surveying
Planning
Landscape Architecture
Laboratory Services
Computer Services



July 1, 1987

RECEIVED NOV 23 1987

Ashfield Board of Health
Town Hall
Ashfield, MA 01330

Att: Fritz Graves

Dear Fritz:

Enclosed are the test pit logs and percolation test results for the Ashfield properties tested on June 2nd and June 4th by C.T. Male Associates, Inc., and witnessed by yourself.

June 2, 1987

- Lot 7, Watson Road for Edmund Arruda. The percolation rate for the lot was 20 min/inch which satisfies the State Sanitary Code (Title V). Mr. Arruda has contracted with us for design and that should be completed late summer.
- Lot off of Brown Road for Richard Turner. A leach bed is recommended for the disposal system on this property since the percolation rate is 25 min/inch.
- Re-perc of Ellison property due to change in house location. This property had a percolation rate of 25 min/inch.
- 3 lots on John March Road for Gerald Ralston. Only two of the three lots passed the requirements of the State Sanitary Code (Title V). The third lot (northern most), did not have sufficient depth of permeable soil above ledge. The southern most lot had a percolation rate of less than 1 min/inch. The middle lot also had a percolation rate of less than 1 min/inch. The design percolation rate for both lots should be 2 min/inch. Design of a disposal system on the center lot will have to take into consideration the slope and drainage conditions existing on the lot.

June 4, 1987

- Lot on West Road for Brian Dickinson. This lot passed the State Sanitary Code (Title V) requirements for percolation rate (2 min/inch) and depth of permeable soil above ledge. Due to the shallow ledge, a leach bed is the recommended

Ashfield Board of Health
Att: Fritz Graves

- 2 -

July 1, 1987

method of disposal.

- Failed system on Creamery Road for Marion Kirsch. A new location was tested for a repair system. The percolation rate was 10 min/inch and leach pits are recommended if there is sufficient depth.
- 2 lots on Rt. 116 for Robert Fleming. The percolation rate for both lots is less than 2 min/inch. The first site needs a design for an existing commercial establishment, with no proper existing system. The second site needs a design for a residential dwelling. The water supply for both sites is a well and the required distance must be maintained. The second lot may need additional land for a disposal facility and should be dealt with legally before design. Both sites should be able to accommodate leach pits for disposal.

If you have any questions, do not hesitate to contact us.

Very truly yours,

C.T. MALE ASSOCIATES, INC.

Kathryn H. Bridges

Kathryn H. Bridges
Design Engineer

KHB:ws
Enclosures

Copies to: Arruda
Turner
C.E. Roberts/Ellison
Ralston
Dickinson
Kirsch
Fleming

SITE EVALUATION/TEST PIT DATA

JUNE 1987

Evaluator K.H. BRIDGES

Town ASHFIELD

SCS Soil Name _____

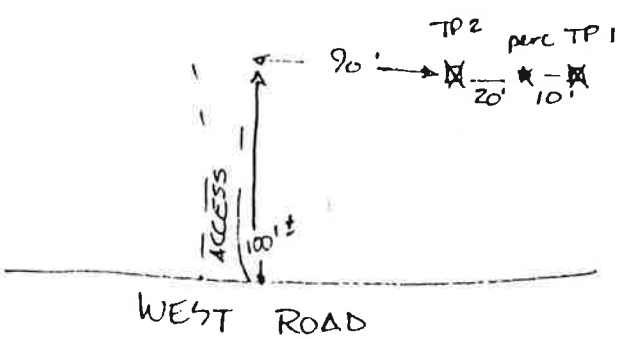
Client DICKINSON

Texture	Color	Consistency	Structure	Mottling
0-5" TOP SOIL ORGANIC WOODLAND DUFF	BLK.	SOFT	LOOSE	
6" SUBSOIL				
12-16" SILTY LOAM W/ROOTS	DR. BEN			
18				
24				
30				
36 MED. COARSE	ORANGE/			
42 SAND W/	BEN			
48 SOME GRAVEL				
54				
60				
66				
72-72" BOTTOM				
84 LEDGE				
96 NO WATER				
108				
120				

TP# 1 ESHWT _____ DPTH TO BEDROCK 72" RESTRICTIVE LAYER 72" DPTH TO ROOTS 16"
OBSERVED WATER _____

WITNESS: F. GRAVES

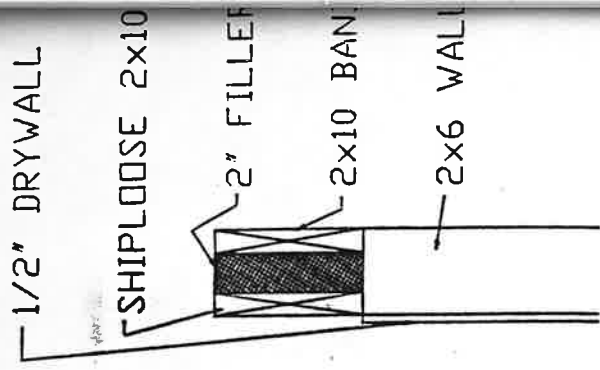
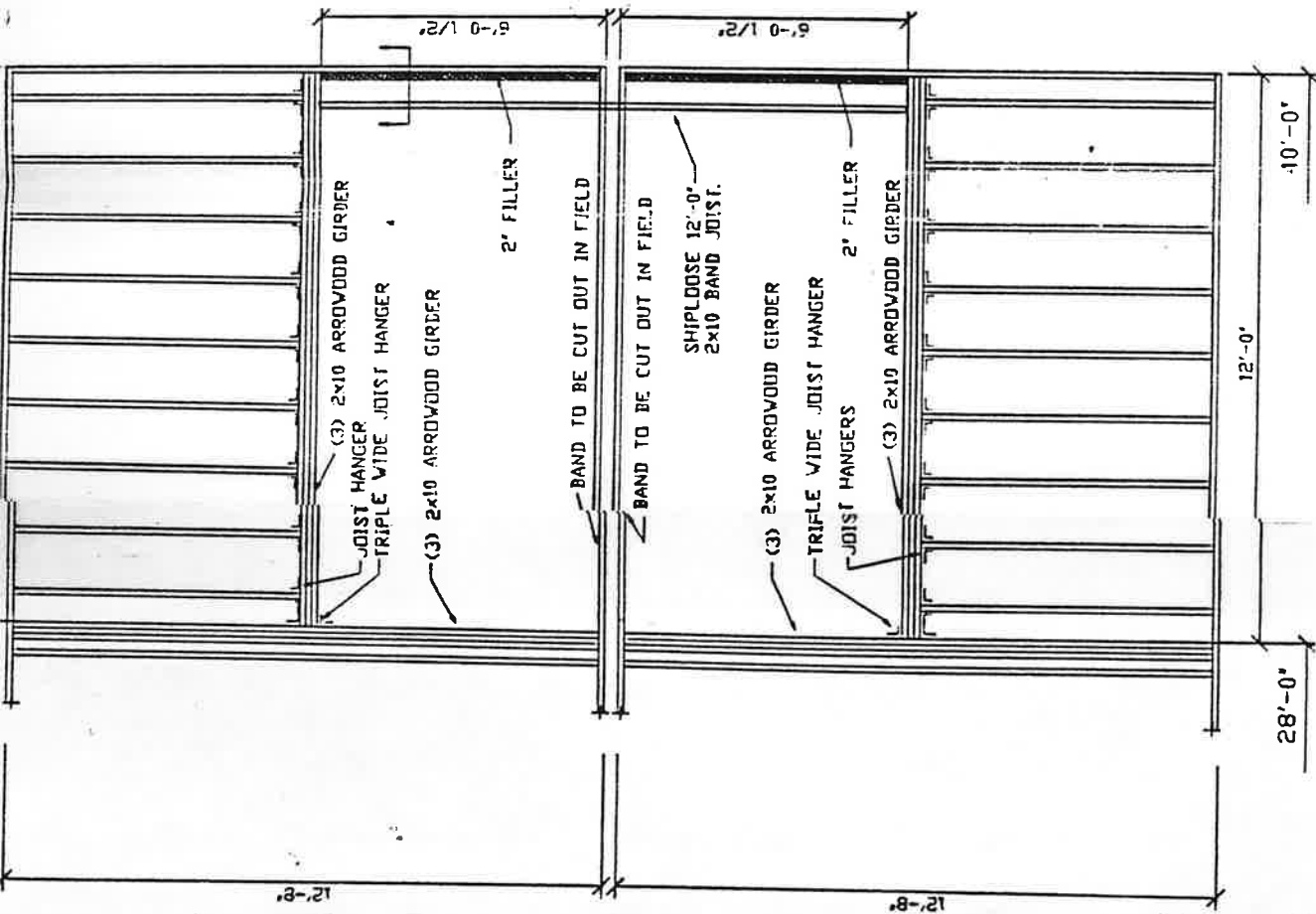
Location of Test Pit on Lot



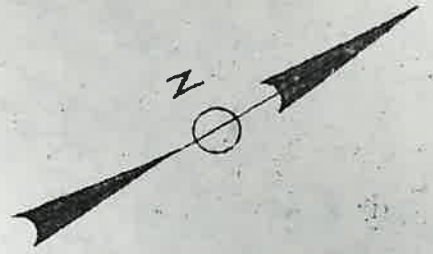
Notes

perc @ 48"
pre-soak 11⁴⁵ - 12⁰⁰
Perc Rate: 2 MIN/INCH

<u>TIME</u>	<u>DEPTH</u>
12:00	12
:02	11
:04	10
:06	9
:08	8
:10	7
:12	6

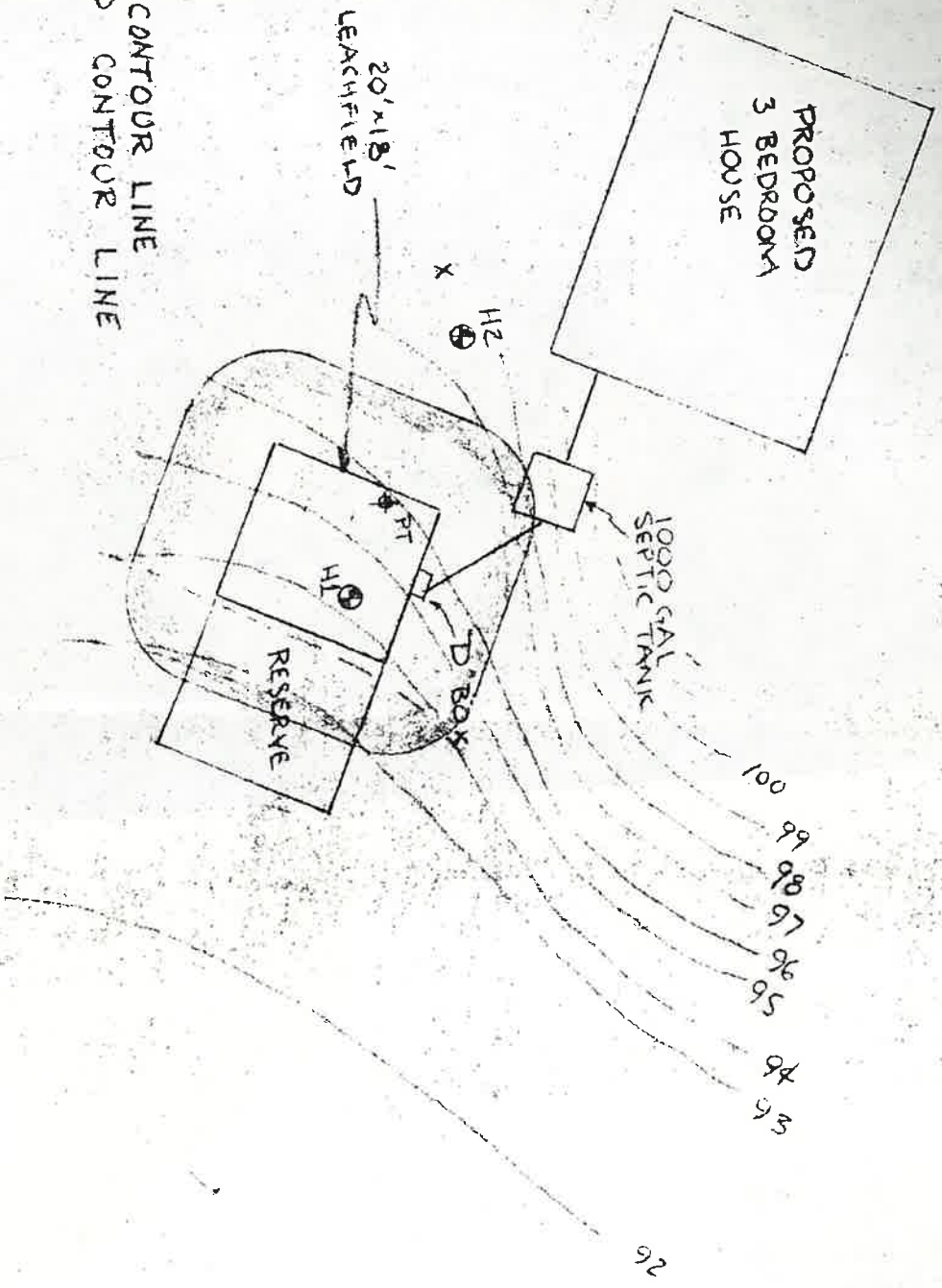


DETAIL: CEILING/FLOOR FRAMING



LOT 40

— EXISTING CONTOUR LINE
- - - PROPOSED CONTOUR LINE



516
DOON
M. I.
DE PI
RESER
48"
IELD
SED

PROTECTIVE BY-LAWS

TOWN OF ASHFIELD

MASSACHUSETTS



EFFECTIVE DATE

MAY 16, 1968

INCLUDING AMENDMENTS

THROUGH

SEPTEMBER 1973

PROTECTIVE BY-LAWS - TOWN OF ASHFIELD, MASSACHUSETTS

Section I

Purpose:

The purpose of this By-Law is to promote the general welfare of the Town of Ashfield, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land within the Town, to increase the amenities of the Town, to reduce the hazard from fire by regulating the location and use of buildings and the area of open spaces about them, to minimize confusion or congestion, and to protect, conserve and increase the value of property within the Town.

For the purpose of this By-Law, the Town of Ashfield, under the authority granted by the Zoning Enabling Act, General Laws, Chapter 40A does hereby make this By-Law to be hereafter known and designated as the Zoning By-Law of the Town of Ashfield.

Section II

Districts:

The entire town of Ashfield is hereby designated as a Primarily Rural-Residential and Agricultural District. Permission for Industrial, Commercial and business enterprises to be located, expanded or constructed in any given area of the Town may be allowed by the Board of Appeals after a public hearing and subject to the following regulations if determined to be neither offensive or detrimental to a residential or agricultural neighborhood nor injurious to the health or safety of the persons within the town.

Section III

General Regulations:

A. Presently Existing Uses

1. This By-Law shall not apply to existing buildings or structures nor to the existing use of any building or structure or land to the extent of that use at the time of adoption of this By-Law.

2. A non-conforming use is the use of any building or structure or land lawfully occupied at the time of the adoption of this By-Law which does not conform to the requirements of this By-Law.

3. Any building or structure or part of a building or structure or land which at the time of adoption of this By-Law is being put to a non-conforming use may be:

- a. Externally altered or enlarged in that use but only after the granting of a permit therefore by the Board of Appeals.
- b. Changed to a conforming use but shall not revert to a non-conforming use.
- c. Rebuilt or restored at the same location and again used as previously in the case of a building destroyed or damaged by fire, explosion or other catastrophe. Such building or structure so restored shall not exceed in volume or area the original non-conforming building or structure and shall be at least equal in appearance and character to the original structure. Such rebuilding or restoration shall be commenced within six months after such catastrophe.

B. Restrictions:

No building or structure or parcel, tract, or lot of land shall be used for any purpose harmful to public health, safety or comfort, by reason of the emission of odor, fumes, dust, gas, smoke, chemicals, poisonous fluids or substances, or by reason of vibration, noise, fire, explosion or hazard.

C. Public Nuisances:

1. As determined necessary by the selectmen, accumulated or scattered junk, trash, debris, scrap materials or any other objectionable objects shall be kept out of view.

2. Any item which constitutes a hazard to safety shall be adequately fenced, covered, marked, or otherwise secured to prevent injury. This includes such things as dilapidated buildings, old refrigerators, machinery and wells (in use or abandoned).

de at least 576 square feet of living area
a firm and continuous masonry foundation,
suitable sewage disposal system.
ises may be occupied by the owner and his
residence for a period of no longer than
commenced, provided construction starts
Laws.
d provided that adequate provision is made
sewage disposal and a firm substrata
l not be inhabited for more than eight

portable dwellings will be permitted to
than six months in any calendar year
ellings named above shall be equipped with
his does not apply to storage of camping

building may be used as a dwelling if it is
ilding used as a residence except for an
requirements for a permanent dwelling.
n 2 dwelling units.

ments:
ities on premises where located. The
es shall not exceed 32 square feet with no
gn shall have flashing or moving lights.
elated to activities conducted upon the

usinesses in the Town of Ashfield and may
on with public, charitable, political or
for a period not to exceed 6 weeks unless

IV

age and area, and open spaces adjacent to

80 square feet ($\frac{1}{2}$ acre).
ng the public way.

etween the front lot line and any building

etween the side lot line and any building

etween the rear lot line and any building

y intersects at an angle of less than 135
maintained within horizontal distance of
e extending from three feet to eight feet
ard by such structure, fence or vegetation.

V

e use is incidental and accessory to the
lot.

r portion thereof, which is occupied in
boarding or sleeping place of one or more

dimensions of a dwelling commonly used as
ng attached garage, porches and breezeways.

D. Dwelling unit - Living quarters for a single family with cooking, living,
sanitary and sleeping facilities for the exclusive use of those occupying the unit.
E. Mobile home, house trailer or portable dwelling - A movable or portable
dwelling unit (for year round living) built on a chassis or originally designed to
be independent of a permanent foundation, whether or not subsequently connected to
a foundation or utilities.

F. Lot - A continuous parcel of land in one ownership with legally definable
boundaries.

G. Sign - Any permanent or temporary structure, device, letter, word, display,
pennant, insignia or trade flag which is used as an announcement or advertisement
and which is visible from any public street or from abutting property.

Section VI

Administrations:

A. Enforcement
This By-Law shall be enforced by the selectmen or a building inspector appointed by
them. No building shall be built or externally altered at a cost in excess of \$ 500.00
and no use of land or building shall be begun or changed, without a permit having been
issued by them, and such permit is in conformance with this By-Law. Such cost shall
include labor and materials at reasonable rates. Likewise, no building shall be
occupied until a certificate of occupancy has been issued by the selectmen. Any person
violating any of the provisions of this By-Law may be fined not more than \$ 20.00 for
each offense. Each day that such violation continues shall constitute a separate
offense.

B. Board of Appeals
There is hereby established a Board of Appeals of three members and two associate
members, to be appointed by the selectmen which Board of Appeals shall act on all
matters within its jurisdiction under this By-Law and Chapter 40-A of the General
Laws in the manner prescribed by the said Law and by this By-Law.

C. Amendment
This By-Law may be amended from time to time at an annual or special Town meeting
in accordance with the provisions of Section 6 of Chapter 40-A, G. L.

D. Validity
The invalidity of any section or provision of this By-Law shall not invalidate any
other section or provision thereof.

The above Protective By-Law was adopted in Town Meeting, December twelve,
A.D. one thousand nine hundred and sixty-seven.

ATTEST: Walter A. Whitney,
Town Clerk

Boston, Mass. May 2, 1968

The foregoing Zoning By-Laws adopted by the Town of Ashfield are approved.

Elliot L. Richardson
Attorney General

The foregoing Amendments to the Protective By-Law were adopted in Town Meeting,
June sixth, A.D. one thousand nine hundred and seventy-three.

ATTEST: Eleanor M. Ward,
Town Clerk

Boston, Mass. September 24, 1973

The foregoing amendments to Zoning By-Laws adopted by the Town of Ashfield
are approved.

Robert H. Quinn
Attorney General

D. Building Requirements:

1. A permanent dwelling shall provide at least 576 square feet of living area on the first floor. It will be built on a firm and continuous masonry foundation, contain running water, flush toilet and a suitable sewage disposal system.

2. A temporary dwelling on the premises may be occupied by the owner and his family during construction of a permanent residence for a period of no longer than three years from the date construction is commenced, provided construction starts within one year and conforms to these By-Laws.

3. Seasonal dwellings may be erected provided that adequate provision is made for water supply, flush toilet, suitable sewage disposal and a firm substrata foundation. Such seasonal dwellings shall not be inhabited for more than eight months in any 12 month period.

4. Mobile homes, house trailers or portable dwellings will be permitted to rest in the Town of Ashfield for not more than six months in any calendar year unless qualified under D-2 above. All dwellings named above shall be equipped with a toilet and water storage facilities. This does not apply to storage of camping trailers.

5. To promote safety, no accessory building may be used as a dwelling if it is located on the same lot as a principal building used as a residence except for an attached accessory building which meets requirements for a permanent dwelling.

6. No dwelling may contain more than 2 dwelling units.

E. Signs - Types of signs and requirements:

1. Business sign - Limited to activities on premises where located. The aggregate size of any signs on any premises shall not exceed 32 square feet with no one sign to exceed 16 square feet. No sign shall have flashing or moving lights.

2. Advertising sign - (A sign not related to activities conducted upon the premises) Not permitted.

3. Directional sign - Limited to businesses in the Town of Ashfield and may be no larger than 4 square feet in size.

4. Other signs - Signs in connection with public, charitable, political or religious organizations shall be allowed for a period not to exceed 6 weeks unless permitted by the Board of Selectmen.

Section IV

Lot and Yard Measurements:

A. Minimum Requirements for lot frontage and area, and open spaces adjacent to buildings, are as follows:

Area: The minimum lot shall be 21,780 square feet ($\frac{1}{2}$ acre).

Lot Frontage: 150 feet measured along the public way.

Front Yard: The minimum distance between the front lot line and any building or structure shall be 25 feet.

Side Yard: The minimum distance between the side lot line and any building or structure shall be 25 feet.

Rear Yard: The minimum distance between the rear lot line and any building or structure shall be 25 feet.

Corner Clearance: Where a public way intersects at an angle of less than 135 degrees no structure or vegetation may be maintained within horizontal distance of 20 feet from corner for a vertical height extending from three feet to eight feet above road level, or create a traffic hazard by such structure, fence or vegetation.

Section V

Definitions:

A. Accessory use - Any building whose use is incidental and accessory to the use of the principal building on the same lot.

B. Dwelling - Any house or building or portion thereof, which is occupied in whole or in part as the home, residence, boarding or sleeping place of one or more persons.

C. Living area - Shall be the outside dimensions of a dwelling commonly used as living quarters by the occupants, excluding attached garage, porches and breezeways.

UNREGISTERED MOTOR VEHICLES

SECTION 1. The keeping of more than one unregistered motor vehicle, assembled or disassembled, except by a person licensed under General Laws, Chapter 140, Section 59, on any premises shall not be permitted unless said motor vehicle is stored within an enclosed building.

SECTION 2. A special permit to keep more than one unregistered motor vehicle on any premises not within an enclosed building, after a duly called public hearing to which all abutters to the premises have received notice, may be granted by the Board of Selectmen, if it finds that such keeping (1) is in harmony with the general purposes and intent of this By-Law; (2) will not adversely affect the neighborhood; and (3) will not be a nuisance.

SECTION 3. All such special permits granted shall limit the number of unregistered motor vehicles to be kept on the premises by the permit holder, shall not run with the land, and shall be limited to a reasonable length of time.

SECTION 4. This article shall not apply to motor vehicles which are designed and used for farming purposes, nor shall this article apply to landowners or tenants who store motor vehicles out of sight of both abutters and public ways.

SECTION 5. Whoever violates any provisions of this Article of the By-Laws shall be liable to a penalty of Five Dollars (\$5.00) per day for each day of violation, commencing ten days following date of receipt of written notice from the Board of Selectmen.

STRIPPING LAND OF SOIL AND LOAM

SECTION 1. No person, firm or corporation shall strip, sever, remove or convey away any soil, loam, sand or gravel from any land in the Town not in public use, unless and until such stripping, severance, removal or conveyance away, is first authorized by a permit issued by the Selectmen of Ashfield, except in conjunction with construction or a building on the parcel or except in conjunction with the development, improvement, or landscaping of said land, or except for the continued operation of an existing sand and gravel pit. No such permit shall be issued unless and until an application therefor has been filed with the Board. Said Board shall then hold a public hearing on the application, and notice of the filing of the application and the date and the time of holding of the public hearing thereon, shall be advertised, forthwith, at the expense of the applicant, in a newspaper, published in the County, seven days, at least, before the meeting.

SECTION 2. The penalty for violation of this By-Law shall be as follows: For the first offense, fifty dollars (\$50.00); for the second offense, one hundred dollars (\$100.00); and for each subsequent offense, two hundred dollars (\$200.00).

The above By-Laws were adopted in Town Meeting, December twelve, A.D. one thousand nine hundred and sixty-seven.

ATTEST: Walter A. Whitney
Town Clerk

Boston, Mass. May 2, 1968

The foregoing amendments to By-Laws adopted by the Town of Ashfield are approved.

Elliot L. Richardson
Attorney General

PROTECTIVE BY-LAWS
TOWN OF ASHFIELD, MASSACHUSETTS

SECTION I

PURPOSE

The purpose of this By-Law is to promote the general welfare of the Town of Ashfield, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land within the Town, to increase the amenities of the Town, to reduce the hazard from fire by regulating the location and use of buildings and the area of open space about them, to minimize confusion or congestion, to protect the environment, to preserve the Town's rural atmosphere, and to protect, conserve and increase the value of property within the Town.

For the purpose of this By-Law, the Town of Ashfield, under the authority granted by the Zoning Act, General Laws, Chapter 40-A, does hereby make this By-Law to be hereafter known and designated as the Protective By-Law of the Town of Ashfield.

SECTION II

DISTRICTS AND SPECIAL PERMITS

A. The entire Town of Ashfield is hereby designated as rural-residential and agricultural district.

B. Industrial, commercial and business enterprises, and their related facilities may be located, expanded or constructed within the Town by special permit which may be granted only by the Planning Board. The Planning Board shall not consider the granting of such a special permit until after a public hearing, which hearing must be held within sixty-five (65) days of the filing of a Special Permit application with the Planning Board.

C. Application for a Special Permit must include:

1. A plot plan drawn to suitable scale that clearly illustrates the location, expansion or construction of the proposed enterprise with provisions for sufficient off-street parking. The plan must also show all boundaries with abutters noted and located, public roads and all wet-lands, waterways and other conservation areas within or abutting the proposed site.

*Current as of
3-15-78*

-1-

*This current as of
10-19-94*

2. Evidence of consultation with the Conservation Commission, if any wetlands, waterways, or other conservation areas are within the proposed site, abutting it, or likely to be affected by the proposed enterprise.

3. Evidence that the proposed enterprise will not cause visual, audible or physical pollution, and that adequate plans have been made for the disposal or removal of waste material.

4. Evidence that the proposed enterprise will not otherwise be injurious to the health and safety of the persons of the Town.

D. If construction or operations have not begun within six (6) months after issuance of a Special Permit, or if construction or operations are not continuing towards completion in a continuous and expeditious manner as is reasonable, after the required time period, the construction or operations must conform to any subsequent amendment of the By-Laws.

E. If substantial use or construction has not commenced without good cause within one (1) year of issuance of a Special Permit, said Special Permit shall lapse.

SECTION III

GENERAL REGULATIONS

A. Presently Existing Use

1. This By-Law shall not apply to existing buildings or structures, nor to the existing use of any building or structure or land to the extent of that use at the time of the adoption of this By-Law.

2. A non-conforming use is the use of any building or structure or land lawfully occupied at the time of the adoption of this By-Law which does not conform to the requirements of this By-Law.

3. Any building or structure or part of a building or structure, or land which, at the time of the adoption of this By-Law, is being put to a non-conforming use may be:

a. externally altered or enlarged in that use, but only after the granting of a Special Permit therefor by the Planning Board.

b. changed to a conforming use, but shall not revert to a non-conforming use.

c. rebuilt or restored at the same location and again used as previously, in the case of a building destroyed or damaged by fire, explosion or other catastrophe. Such building or structure so restored shall not exceed in volume or area the original non-conforming

building or structure, and shall be at least equal in appearance and character to the original structure. Such re-building or restoration shall be commenced within six (6) months after such catastrophe.

B. Use Variances

1. Variances for the non-conforming use of any building, structure or land may be granted only by the Board of Appeals, provided that such variances do not involve the external alteration of such building or structure or land.

C. Restrictions

1. No buildings, or structure or parcel, tract or lot of land, shall be used for any purpose harmful to public health, safety or comfort by reason of the emission of odor, fumes, dust, gas, smoke chemicals, poisonous fluids or substances, or by reason of vibration, noise, fire, explosion or hazard.

2. Any non-conforming building, structure, or land, or use thereof, abandoned for more than two (2) years may not again be put to that non-conforming use, without application to, and approval by, the Board of Appeals.

D. Public Nuisances

1. As determined necessary by the Board of Selectmen, accumulated or scattered junk, trash, debris, scrap materials or any other objectionable objects shall be kept out of view.

2. Any item which constitutes a hazard to safety shall be adequately fenced, covered, marked or otherwise secured to prevent injury. This includes such things as dilapidated buildings, old refrigerators, machinery, swimming pools and wells (in use, or abandoned).

E. Building Requirements

1. All dwellings shall meet the requirements of the State Building Code.

2. A temporary dwelling on the premises may be occupied by the owner and his family during construction of a permanent residence for a period of no longer than three (3) years from the date construction is commenced, provided construction starts within one (1) year of the granting of a building permit, and conforms to these By-Laws.

3. Mobile Homes, house trailers or portable dwellings will be permitted to rest in the Town of Ashfield for not more than six (6) months in any calendar year, unless qualified under E2 above. All dwellings named above shall be equipped with a toilet and water storage facilities. This does not apply to storage of camping trailers.

4. To promote safety, no accessory building may be used as a dwelling if it is located on the same lot as a principal building used as a residence except for an attached accessory building which meets requirements for a permanent dwelling.

5. No dwelling may contain more than two (2) dwelling units.

F. Signs-Types of Signs and Requirements

1. Business sign-limited to activities on premises where located. The aggregate size of any signs on any premises shall not exceed thirty-two (32) square feet with no one sign to exceed sixteen (16) square feet. No sign shall have flashing or moving lights.

2. Advertising sign - (A sign not related to activities conducted upon the premises) not permitted.

3. Directional sign - limited to businesses in the Town of Ashfield and may be no larger than four (4) square feet in size.

4. Other signs - signs in connection with public, charitable, political or religious organizations shall be allowed for a period not to exceed six (6) weeks unless permitted by the Board of Selectmen.

SECTION IV

LOT AND YARD REQUIREMENTS

A. No dwelling shall be located on a lot having less than the following minimum requirements:

Area: The minimum lot shall be two (2) acres.

Lot Frontage: Two Hundred (200) feet measured along of public way.

Front Yard: The minimum distance between the front lot line and any building or structure shall be twenty-five (25) feet.

Side Yard: The minimum distance between the side lot line and any building or structure shall be twenty-five (25) feet.

Rear Yard: The minimum distance between the rear lot line and any building or structure shall be twenty-five (25) feet.

Corner Clearance: Where a public way intersects at any angle of less than one hundred and thirty-five (135) degrees, no structure or vegetation may be maintained within horizontal distance of twenty (20) feet from the corner for a vertical height extending from three (3) feet to eight (8) feet above road level, or create a traffic hazard by such structure or vegetation.

B. Only one dwelling shall be located on a lot.

C. No existing lot with a dwelling on it shall be changed as to size or shape so as to result in a violation of the requirements set forth in Section IV, A.

D. The owner of a lot with less than the minimum two hundred (200) foot frontage on a public way, may request the Planning Board to waive such requirement.

DEFINITIONS

SECTION V.

A. Accessory use - Any building whose use is incidental and accessory to the use of the principal building on the same lot.

B. Dwelling - Any house or building or portion thereof, which is occupied in whole or in part as the home, residence, boarding or sleeping place of one or more persons.

C. Dwelling Unit - Living quarters for a single family with cooking, living, sanitary and sleeping facilities for the exclusive use of those occupying the unit.

D. Mobile Home, House Trailer or Portable Dwelling. A movable or portable dwelling unit (for year-round living) built on a chassis or originally designed to be independent of a permanent foundation, whether or not subsequently connected to a foundation or utilities.

E. Lot - A continuous parcel of land in one ownership with legally-definable boundaries.

F. Sign - Any permanent or temporary structure, device letter, word, display, pennant, insignia or trade flag which is used as an announcement or advertisement and which is visible from any public street or from abutting property.

G. Use Variance - The authorized non-conforming use of any dwelling, structure or land that does not involve the external alteration of said dwelling, structure or land.

H. Special Permit - A permit issued only by the Planning Board, authorizing the locating, expanding or construction of any industrial, commercial or business enterprise and their related facilities.

SECTION VI

ADMINISTRATION

A. Enforcement

1. This By-Law shall be enforced by the Building Inspector appointed by the Selectmen. In the absence of a Building Inspector, this By-Law shall be enforced by the Selectmen.

2. No building shall be built or externally altered at a cost in excess of \$500.00 and no use of land or building shall be begun or changed without a permit having been issued by the Building Inspector, and such permit is in conformance with this By-Law. Such cost shall include labor and materials at reasonable rates.

3. Likewise, no building shall be occupied until a certificate of occupancy has been issued by the Building Inspector.

4. Any person violating any provision of the By-Law may be fined not more than \$20.00 for each offense. Each day that such violation continues shall constitute a separate offense.

B. Board of Appeals

1. There is hereby established a Board of Appeals of three members and two associate members, to be appointed by the Selectmen, which Board of Appeals shall act on all matters within its jurisdiction under this By-Law and Chapter 40-A of the General Laws in the manner prescribed by the said Law and by this By-Law.

C. Appeals

1. Appeals may be made to the Board of Appeals by:

a.) any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of this By-Law. b.) by the Regional Planning Agency in whose area the Town is situated, or by any person including an officer or Board of the Town, or of an abutting Town, aggrieved by an order or decision of the Building Inspector, or other administrative official, believed to be in violation of any provision of this By-Law.

D. Amendment

1. This By-Law may be amended from time to time at an annual or special Town meeting in accordance with the provisions of Section 5 of Chapter 40-A, General Laws.

E. Validity

1. The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision thereof.

UNREGISTERED MOTOR VEHICLES

SECTION 1. The keeping of more than one unregistered motor vehicle, assembled or disassembled, except by a person licensed under General Laws, Chapter 140, Section 59, on any premises shall not be permitted unless said motor vehicle is stored within an enclosed building.

SECTION 2. A special permit to keep more than one unregistered motor vehicle on any premises not within an enclosed building, after a duly called public hearing to which all abutters to the premises have received notice, may be granted by the Board of Selectmen, if it finds that such keeping (1) is in harmony with the general purposes and intent of this By-Law; (2) will not adversely affect the neighborhood; and (3) will not be a nuisance.

SECTION 3. All such special permits granted shall limit the number of unregistered motor vehicles to be kept on the premises by the permit holder, shall not run with the land, and shall be limited to a reasonable length of time.

SECTION 4. This article shall not apply to motor vehicles which are designed and used for farming purposes, nor shall this article apply to landowners or tenants who store motor vehicles out of sight of both abutters and public ways.

SECTION 5. Whoever violates any provisions of this Article of the By-Laws shall be liable to a penalty of Five Dollars (\$5.00) per day for each day of violations, commencing ten days following date of receipt of written notice from the Board of Selectmen.

STRIPPING LAND OF SOIL AND LOAM

SECTION 1. No person, firm or corporation shall strip, sever, remove or convey away any soil, loam, sand or gravel from any land in the Town not in public use, unless and until such stripping, severance, removal or conveyance away, is first authorized by a permit issued by the Selectmen of Ashfield, except in conjunction with construction or a building on the parcel or except in conjunction with the development, improvement or landscaping of said land, or except for the continued operation of an existing sand and gravel pit. No such permit shall be issued unless and until an application therefor has been filed with the Board. Said Board shall then hold a public hearing on the application, and notice of the filing of the application and the date and the time of holding of the public hearing thereon, shall be advertised, forthwith, at the expense of the applicant, in a newspaper, published in the County, seven days, at least, before the meeting.

SECTION 2. The penalty for violation of this By-Law shall be as follows; For the first offense, fifty dollars (\$50.00); for the second offense, one hundred dollars (\$100.00); and for each subsequent offense, two hundred dollars (\$200.00).

HISTORICAL NOTES

1. Zoning By-Laws and By-Laws relating to keeping of UNREGISTERED MOTOR VEHICLES and STRIPPING LAND OF SOIL AND LOAM adopted in Town Meeting, December 12, 1967 and approved by the Attorney General May 2, 1968.
2. Amendments to Section III, D; Section V, D,E,F and G; and Section VI, A; adopted in Town Meeting, June 6, 1973, and approved by the Attorney General September 24, 1973.
3. Amendment to Section IV adopted in Town Meeting, June 26, 1974 and approved by the Attorney General July 3, 1974.
4. Amendments to Section I; Section II, A,B,C,D and E; Section III, A,B,C,D,E and F; Section IV, D; Section V, C,G and H; and Section VI, A,C and D adopted in Town Meeting, March 15, 1978 and approved by the Attorney General May 1, 1978.

June 6, 1979

Published by:

The Planning Board
 Town of Ashfield, Ma. **
 Edward W. Pepyne, Chairman
 Mary L. Tilley, Clerk
 Douglas M. Angleman
 Pauline J. Nye
 Edward A. Zagrubski

ATTEST:

Eleanor M. Ward
 Town Clerk

** With acknowledgement to past Chairman, Raymond T. Cassidy under whose leadership and direction this document was prepared.

TOWN OF ASHFIELD
ZONING BYLAWS

RECEIVED
DEC 12 1997
FRANKLIN COUNTY COOP.
INSPECTION PROGRAM



These zoning bylaws passed unanimously under Article 1 at a Special Town Meeting held in the Town of Ashfield on April 19, 1995.

Approved by the Attorney General's Office on May 19, 1995.

The previous zoning bylaws, also known as the protective bylaws, were repealed at the same Special Town Meeting under Article 2 on April 19, 1995.

Attest:

Anne Yuryan
Anne Yuryan, Town Clerk

ASHFIELD ZONING BYLAWS

5	Section I	Purpose
	Section II	Definitions
	Section III	General Regulations
	Section IV	Dimensional Requirements
	Section V	Districts
	Section VI	Use Regulations
10	Section VII	Special Permits
	Section VIII	Administration

15 SECTION I: PURPOSE

20 The primary purposes of these bylaws are to promote and enhance the Town's rural atmosphere and character and to protect the health, safety, and general welfare of the inhabitants of the Town of Ashfield. Additional purposes are: to encourage agricultural activity; to reduce the hazard from fire, flood, and other hazards by regulating the location and use of buildings and the area around them; to encourage the appropriate use of land; to minimize congestion in the streets; to conserve the physical characteristics of neighborhoods; to promote the conservation of natural resources and to prevent pollution of the environment.

25 SECTION II: DEFINITIONS

30 **General:** As used in these bylaws, and unless the context of usage clearly indicates another meaning, the following terms and words shall have the meaning given herein. Words used in the present tense include the future; the singular number includes the plural, and the plural the singular; the words "used" or "occupied" include the words "designed," "arranged," "intended," or "offered," to be used or occupied; the words "buildings," "structure," "lot," "land," or "premises" shall be construed as though followed by the words "or any portion thereof"; and the word
35 "shall" is always mandatory and not merely directory. The masculine gender shall include the feminine.

Abandonment: The voluntary relinquishment or cessation for a period of two (2) years of a use of property, unless the owner demonstrates by physical evidence

40 during that period the intent either to transfer rights to another owner or resume that use.

Accessory: Any use, structure, or building which is customarily associated with or enhances the function of or extends the amenities of a principal use, structure or building, but is incidental to and subordinate to said principal use, structure, or building. If the accessory use, structure or building is residential or agricultural in nature, it need not exist on the same premises as its principal use, structure, or building.

50 **Acre:** a unit of land measure equal to 43,560 square feet.

Agriculture: A use, whether principal or accessory, which has as a primary purpose the raising of agricultural products or their byproducts.

55 **Alteration:** Any construction, rearrangement, reconstruction or other similar action resulting in a change in the structural parts, heights, number of stories, exits, size, use or location of a building or other structure.

60 **Building:** A structure having a combination of any materials making an enclosure within exterior walls and roof for the shelter of persons, animals, or property.

Building Lot: Any lot, or combination of adjacent lots, which meets the requirements of these bylaws together with other state and local regulations for constructing a dwelling or other principal building thereupon.

65 **Common Driveway:** A driveway serving two (2) or more adjoining lots.

Cottage Industry: Any incidental occupational use conducted by a resident of the premises in a detached structure accessory to a dwelling.

70 **Driveway:** A private way providing vehicular access for a lot.

Dwelling: A privately or publicly owned permanent structure which is occupied in whole or part as the residence of one (1) or more persons. The terms "one family", "two family," "three family" or "multi family" dwelling shall not include hotel, lodging house, hospital, membership club, mobile home, or dormitory.

Dwelling, One Family: A detached building containing one dwelling unit, also referred to as a "single family dwelling."

80 **Dwelling, Two Family:** A detached building containing two (2) dwelling units.

Dwelling Unit: One (1) or more living and sleeping rooms providing complete living facilities for the use of one (1) or more individuals constituting a single housekeeping unit, with permanent provision for living, sleeping, eating, cooking, and sanitation.

Hazardous Material: Any chemical substances or mixture of substances which is listed in the Massachusetts substance list compiled in compliance with the provisions of the state Right to Know Law, M.G.L. Chapter 111F, Section 4, and which is manufactured, processed, used or stored in the workplace, but which shall not include alcoholic beverages, or articles intended for the personal consumption of employees in the workplace, or consumer articles packaged for distribution to, and used by, the general public, or articles sold or used in retail food establishments and all other retail trade establishments, exclusive of articles used in processing and repair areas, or substances being transported in interstate commerce.

Hazardous Waste: A waste which is hazardous to human health or the environment as designated either by the U.S. Environmental Protection Agency under 40 CFR 250 or the Regulations of the Massachusetts Hazardous Waste Management Act, MGL, Chapter 21C. This includes, but is not limited to, inorganic mineral acids of sulfur, fluorine, chlorine, nitrogen, chromium, phosphorous, selenium and arsenic and their common salts; lead, nickel, and mercury and their inorganic salts or metallic-organic derivatives; coal, tar acids such as phenol and cresols and their salts and all radioactive materials.

Home Occupation: Any incidental occupational use conducted entirely within the principal dwelling by a resident thereof.

Lot: An area or parcel of land, or any part thereof, with definite boundaries recorded with the Registry of Deeds.

Lot Frontage: The uninterrupted length of the front lot line, as defined herein, whether straight or not.

Lot Line, Front: One property line dividing a lot from a single public way.

Lot Line, Rear: Property line most nearly opposite from the front lot line.

Lot Line, Side: Any property line not a front or rear lot line.

120 **Mobile Home:** Manufactured housing with at least one dwelling unit and built in
accordance with the National Housing Construction and Safety act (Title VI of
Public Law 93-383, 88 Stat. 700, 42 U.S.C. 5401 et seq.) as regulated by the United
States Department of Housing and Urban Development (HUD) and not otherwise
regulated by the state building code.

125 **Outward Manifestations:** Any conspicuous feature of a lot or use of a lot that in
the opinion of the Planning Board identifies the premises as having an occupational
use.

130 **Owner:** The duly authorized agent or any person having vested or equitable
interest in the use, structure or lot in question.

135 **Physical Characteristics:** Attributes that include views, cleared land, land
contours, historical and cultural resources, wildlife habitats, locally prevalent
architecture style and structure density, road style and locations, traffic densities,
patterns and speeds, audible noise levels and types, uses (such as income producing,
common land, bedroom, recreational, religious, public, and educational), pathways,
trails, and features of interest such as stone walls, exposed rocks and waterfalls.

140 **Pollution:** The introduction of any hazardous material or waste into the air, soil, or
water of Ashfield.

145 **Pre-Existing Lawfully Nonconforming Lot:** Any lot created before December 12,
1967 with at least 50 feet of frontage, 5000 square feet of area and not contiguous
with another commonly owned lot, or any lot created since that date in conformance
with the then existing zoning regulations and which does not now conform in all
respects to present zoning requirements.

150 **Pre-Existing Lawfully Nonconforming Structure:** Any structure under
construction before December 12, 1967 or any structure created since that date in
conformance with the then existing zoning regulations and which does not now
conform in all respects to present zoning requirements.

155 **Principal (use, building, or structure):** The main or primary purpose for which a
use, building or structure is designed or customarily designed that is neither
incidental to nor subordinate to another use, building or structure.

Public Way: A State, County, or Town road that has not been abandoned by vote
or law.

160 **Receipt:** for the purposes of these bylaws, receipt shall be the specific time when a board or agency or duly authorized agent has possession, as evidenced by an official signature, of properly and fully completed documents together with any required fees and supporting documents.

165 **Setback:** The minimum distance from a lot line to a building placed thereon, or feature thereof as measured in a straight line perpendicular to a lot line.

Setback, Front: Setback required from a front lot line and from any side lot line along a public way.

170

Setback, Rear: Setback required from a rear lot line.

Setback, Side: Setback required from a side lot line.

175 **Sign:** Anything deliberately placed to advertise or inform, visible from a public way.

180 **Sign, Surface Area:** For a sign, either free-standing or attached, the area shall be considered to include all letters, designs, symbols and background, whether open or enclosed, but not including any supporting framework and bracing, which are incidental to the display itself. For a sign consisting of individual letters, designs and symbols attached to or painted directly on the surface of a building, wall, window, awning/canopy or other surfaces, with no other background, the area shall be considered to be that of the smallest rectangle which encompasses all of the

185 letters, designs, and symbols.

190 **Special Permit Granting Authority (hereinafter SPGA):** That board empowered to grant Special Permits which may be the Zoning Board of Appeals, or the Planning Board. Where no specific board is named, the Planning Board shall have jurisdiction.

195 **Special Permit:** An authorization by the SPGA for an applicant to conduct a particular use or extend, alter or change a non-conforming lot or structure, subject to the Section authorizing the Special Permit as intended by MGL Chapter 40A, Sections 6 and 9.

Structure: A combination of materials for permanent or temporary occupancy or use with a vertical dimension of at least 2 feet and at least one dimension over six (6) feet, such as, but not limited to, a building, tower, tank, tunnel, platform,

200 swimming pool, shelters, piers, wharfs, bins, recreational courts, satellite dishes.
Fences shall be excluded.

Use: The purpose for which a structure or lot is arranged, designed, or intended, or maintained.

205

Use, Accessory: see Accessory.

210

Use, Nonconforming: A use lawfully existing at the effective date of these bylaws, or any subsequent amendment thereto, which does not conform to one (1) or more provisions of these bylaws.

Use, Principal: see Principal.

215

Variance: An exemption from the terms of these bylaws as the Zoning Board of Appeals, upon petition or appeal, is empowered to grant under the terms of these bylaws and MGL, chap. 40A, Section 10.

SECTION III: GENERAL REGULATIONS

220

A. Pre-Existing Uses, Structures, and Lots

1. Continuation and Restoration

225

Any use or structure, whether conforming to these bylaws or not, may be continued and maintained if that use or structure was lawfully existing or begun at the time these or previous bylaws made it nonconforming. Necessary repairs and rebuilding of nonconforming structures after damage by fire, storm, or similar disaster are permitted provided that a building permit for construction or restoration is obtained within 12 months and the construction or restoration is completed within 24 months of the disaster, and does not substantially change the character, size or use of the structures.

230

2. Alteration (as intended by MGL C. 40A, Sec. 6)

235

Lawful nonconforming structures or lots or use of structures or land may be extended, altered, or changed, provided that no such extension, alteration or change shall be permitted unless

- in the Building Inspector's written opinion such change is trivial, or
- a Special Permit from the Zoning Board of Appeals is granted.

240 A Special Permit may be granted if the extension, alteration or change will not be substantially more detrimental to the neighborhood than the existing nonconforming use, lot or structure. To determine whether or not a given extension, alteration or change is substantially more detrimental, the Board shall consider the following factors in conjunction with criteria listed herein under "Special Permits":

245 - Dimensional Non-Conformity: Whether or not the extension, alteration or change of the lot or structure significantly increases the degree to which it is nonconforming, or

250 - Use Non-Conformity: Whether or not the use shall be extended, altered or changed so as to increase the objectionable quality of the original non-conforming use. The Board shall consider impacts on traffic, parking, noise, light, hours of operation, unsightly storage or conditions, objectionable odors, neighborhood character, safety, overcrowding, and pollution.

255 3. Abandonment

A nonconforming use which has been abandoned shall not be reestablished and any future use shall conform with these bylaws.

B. Conformance

260 Construction or operations under a Building Permit or Special Permit shall conform to any subsequent amendment of these bylaws unless the use or construction is commenced within a period of six months after the issuance of the Permit, and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

265 C. Sign Regulations

1. General Sign Regulations

270 a. Lighting shall be arranged so that light visible from any public way is diffused. No sign or its source of illumination shall be mechanically or electronically driven to flash or move.

b. No sign, except those customarily associated with mailboxes, temporary routing directions, and posted warnings, shall be placed within a public right-of-way, nor shall be placed within any side or rear lot setback, except by Special Permit issued by the Planning Board after good cause is shown. No sign, other than warning signs as barricades, shall impair pedestrian or vehicular traffic flow or sight.

c. Double-sided signs with equal and parallel faces, shall be measured on one side only in determining square footage.

d. Free standing signs may be no more than ten (10) feet in height above

280 the road measured from the average road grade within twenty-five (25) feet of the sign.

e. A sign may be affixed to, suspended from or incorporated as part of a building providing it meets all other pertinent criteria. Signs attached perpendicular to a building shall not project above the roof line or more than three (3) feet from the vertical wall plane.

285

D. Driveways

1. Each building lot shall have a frontage suitable for a driveway, in the opinion of the Planning Board, adequate for use by emergency vehicles whether or not said frontage is actually used for a driveway.

290

2. A common driveway may be allowed by Special Permit from the Planning Board. This subsection shall apply only to shared driveways constructed after (date of adoption), and to lawfully existing driveways changed after that date to connect with or serve one or more additional lots. It must conform as follows.

295

a. Up to three (3) lots may be connected to or otherwise share the same driveway.

b. The part of a driveway considered to be common driveway shall begin at the public way and extend to the final boundary entering the last lot served and otherwise to points on the driveway where it serves only one lot.

300

c. Common driveways shall have a maximum grade of fifteen (15) per cent, and shall have a minimum cleared width of twelve (12) feet.

d. Maintenance of a common driveway shall be assured by a recorded deed covenant, or landowner's association or other lawful agreement binding upon those served by the common driveway.

305

3. Driveways shall not obstruct or defeat existing drainage ditches and drainage features along public and private ways. Slopes and drainage features of driveways shall be designed, built and maintained such that washed and eroded materials and flooding from driveways will not enter travel lanes of public ways.

310

SECTION IV: DIMENSIONAL REQUIREMENTS

A. Lot size

315 Only one (1) dwelling or other principal building or structure or use shall be located on a lot. No dwelling or other principal building or structure shall be located on a lot having less than the requirements for a minimum lot unless the lot qualifies as a Pre-existing Lawfully Nonconforming Lot.

320 A minimum lot shall have
 1. an area of at least two (2) acres within the Town of Ashfield and shall not
include land under permanent water bodies, and land within public ways, and
 2. a lot frontage of at least two hundred (200) continuous feet within the
Town of Ashfield.

325 **B. Setbacks**

- 330 1. The minimum distance between the front lot line and any building shall be
twenty-five (25) feet;
 2. the minimum distance between the side lot line and any building shall be
twenty-five (25) feet; and
 3. the minimum distance between the rear lot line and any building shall be
335 twenty-five (25) feet.

340 C. No existing lot with a dwelling or other principal building on it shall be
changed as to size or shape so as to result in violation of the requirements set forth
in the above regulations for lot size and setbacks except as allowed by MGL c. 41
sec. 81L.

 D. No building or structure shall exceed fifty (50) feet in height above the average
grade within twenty-five (25) feet of the building or structure.

345 **SECTION V: DISTRICTS**

 The entire Town of Ashfield is a rural residential and agricultural district.

350 **SECTION VI: USE REGULATIONS**

A. Uses

- 355 1. Single family and two family dwellings and their accessory buildings, uses
and structures are allowed by right.
 2. Buildings existing prior to 1975 may be altered for additional dwelling
units by Special Permit from the ZBA. In addition to hereinafter listed Special

Permit Criteria, a Special Permit for additional dwelling units shall require:

360 a. that the perimeter and height of the building not be substantially altered
to incorporate the additional apartments and shall be as existing prior to (date of
passage),

b. that each dwelling unit have separate sanitary facilities, and

c. that at least two off street parking places be available for each dwelling
unit. Said parking places shall not be within the required frontage setback.

365

3. Industrial, Commercial and Business Enterprises, including political and
government purposes, and their related facilities may be located, expanded or
constructed within the Town by Special Permit granted by the Planning Board
except as hereinafter provided.

370

4. Land used for religious purposes and educational purposes protected by
c.40A of the General Laws and their related facilities may be located, expanded or
constructed within Town provided

a. compliance is maintained with beforestated Dimensional Requirements,

375

b. buildings and paved areas shall not cover more than 50% of the lot area,
and

c. off street parking shall be provided for all patrons.

B. Public Nuisances

380

1. Accumulated or scattered junk, trash, debris, scrap materials or any other
objectionable objects shall be stored safely and screened from view of public ways
by natural evergreen barriers or fencing or being within buildings.

385

2. Any item which constitutes a hazard to safety shall be adequately fenced,
covered, marked or otherwise secured to prevent injury. This includes, but is not
limited to, such things as old refrigerators, machinery, swimming pools and wells
(in use, or abandoned).

390

C. Building Requirements

395

1. A temporary dwelling, or mobile home, may be used during construction
of a permanent residence in Ashfield, whether new or on the site of a residence
which has been destroyed by fire or other natural holocaust, for a period of no
longer than three (3) years from the date construction is commenced, provided
construction starts within six (6) months of the granting of a building permit, and
conforms to these bylaws. Any such temporary mobile home shall be subject to

provisions of the State Sanitary Code.

400 2. Mobile homes will be otherwise permitted to rest in the Town of Ashfield for not more than six (6) months in any calendar year.

D. Cottage Industries and Home Occupations

405 1. Ashfield residents who intend to operate a Cottage Industry or Home Occupation shall file a notice with the planning board.

410 2. Cottage Industries and Home Occupations may be conducted within the Town of Ashfield, but if the use has any outward manifestations that suggest occupational use, the following requirements apply and a permit must be obtained from the Building Inspector prior to the commencement of the activity. The Building Inspector shall adopt rules, with the approval of the Planning Board, for the size, form, and content of the plans, drawings, and procedures for the submission and approval of such permit. These rules shall not be inconsistent with the General Laws or the provision of these bylaws. The Building Inspector may from time to time, with the approval of the Planning Board, amend these submission rules. Copies of the rules and application forms shall be on file and available for review at the office of the Town Clerk. For a permit:

420 *not* a. a Home Occupation shall have not more than two (2) non-resident employees, shall be characterized by outward manifestations, such as, but not limited to, traffic generation, noise, odor, public service and utility demand, not unlike those of a dwelling in the neighborhood, shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes, and shall not change the character thereof,

425 b. a Cottage Industry shall not have more than four (4) non-resident employees and shall require no significant exterior changes to the buildings or structures,

c. there shall be no display visible from public ways other than an identification sign pursuant to the sign regulations of these bylaws,

d. adequate off street parking shall be available, and

430 e. if the Building Inspector rejects the application on the above criteria or for any other reason, the applicant may apply for a Special Permit from the Planning Board.

435 3. Before permit approval, any workplace to be doing tasks which may generate hazardous wastes or use hazardous materials shall have a handling, storage and disposal plan deemed satisfactory by the Hazardous Waste Coordinator, and the Building Inspector shall be provided sufficient evidence of such plan.

E. Prohibited Uses

The following uses are prohibited: non-municipal landfills, and junkyards.

440

SECTION VII: SPECIAL PERMIT

A. Intent

1. Special Permits are intended to provide detailed review of certain uses, structures, or development which may have substantial impact upon traffic, municipal services, and the community character, among other considerations. The Special Permit review process is intended to insure that the proposed use, structure or development, is consistent with the purpose and intent of these bylaws.

445

450

2. Special Permits shall be issued, denied, or issued with conditions by the Special Permit Granting Authority according to the provisions of Chapter 40A of the Massachusetts General Laws.

B. Special Permit Granting Authority (SPGA)

Pursuant to Section 9 of Chapter 40A of the Massachusetts General Laws, the SPGA shall adopt rules relative to issuing Special Permits. These rules and regulations may relate to the size, form, content and style of the plans and procedures for submission and approval of such Special Permits, and shall not be inconsistent with the General Laws or with provisions of this bylaw. The SPGA may from time to time amend these rules. Copies of the rules shall be on file and available for review at the office of the Town Clerk.

455

460

C. Receipt of Application

The time periods specified in MGL Chapter 40A Section 9 shall commence upon receipt of the application. See definition of receipt.

465

D. Waiver

Upon written request from the applicant prior to the filing of an application, the SPGA may waive the submission of such materials, plans, studies, and analysis or parts thereof, as may not be needed for, or germane to, consideration of the application, if, in the opinion of the SPGA, the potential impact of the proposed use, structure, or development is minimal.

470

E. Impact Statement/Site Plan

Unless waived, the Special Permit application must be accompanied by an impact statement and a site plan which conform to the Rules and Regulations of the SPGA.

475

F. Review by SPGA

480 The SPGA will review both the site plan and the impact statement, giving
weight to the criteria outlined below as they affect the future of the Town and of
the neighborhood adjacent to the project site. It may ask for further information
where necessary to review the application adequately, and may make
recommendations for modifications to the proposed project as it thinks proper to
protect Town interests and physical characteristics.

485

G. Public Hearing

The SPGA shall hold a hearing under this section, in conformity with the
provisions of G.L. Chapter 40A. The decision of the Board, and any extension,
modification, or renewal of a decision, shall be filed in conformity with MGL,
Chapter 40A.

490

H. Criteria

Before granting a Special Permit, the SPGA shall review the activity, traffic,
site plan, and building design and shall find all of the following general conditions
to be fulfilled:

495

1. the proposal will not overload any public water, drainage or sewer system
or any other municipal services to such an extent that the Town will be unduly
subjected to hazards affecting health, safety, or general welfare;
2. the impact on adjoining premises of sound, light, odor, noise, and other
disturbances is avoided or minimized;
3. the proposal will avoid or minimize topographic change, unnecessary
removal of mature trees, shrubs, or other botanical assets, erosion or siltation,
storm water runoff, or displacement of rare or natural wildlife habitats;
4. the proposal will not cause surface or groundwater pollution, surface or
subsurface drainage detrimental to abutting properties, or other adverse effects upon
the natural environment in the area where the use is located;
5. there is adequate traffic safety at entrances to public ways;
6. the proposal is compatible with the neighborhood character; and
7. additional requirements beforelisted under General Regulations for
Alterations, Off Premises Signs, and Driveways, and under Use Regulations for
Residential Uses and for Cottage Industries and Home Occupations are met.

500

505

510

I. Lapse of Special Permit

515 Except for good cause, if substantial use or construction under a Special
Permit has not commenced within one (1) year of the date of issuance of the
Special Permit, that Permit shall lapse.

SECTION VIII: ADMINISTRATION

520 A. Enforcement

The Building Inspector shall administer and enforce these bylaws. If the Building Inspector ceases to serve, the Board of Selectmen shall administer or enforce these bylaws. Applicants who wish to construct, alter, or change a use or structure are urged to consult with the Building Inspector to insure that all necessary permits have been received from those local, state, and federal agencies from which approval is required.

B. Penalty

530 Any person violating any of the provisions of these bylaws may be fined not more than three hundred dollars (\$300) for each offense. Each day that such violation continues shall constitute a separate offense.

C. Zoning Board of Appeals (ZBA)

535 1. There is hereby established a Zoning Board of Appeals consisting of three members and two associate members, to be appointed by the Selectmen for a term of three (3) years in the manner specified by MGL chapter 40A.

2. The Zoning Board of Appeals shall have the following powers:

540 a. to hear and decide appeals as provided in MGL, Chapter 40A, Sections 8 and 13, and these bylaws;

b. to hear and decide on the granting of variances including use variances, from the requirements of these bylaws as provided in MGL, Chapter 40A, Section 10, and these bylaws;

545 c. to hear and decide upon the granting of Special Permits as provided in Chapter 40A, Section 9, and these bylaws; and

d. in exercising these powers, the Board may impose such limitations and conditions as it deems appropriate.

550 3. The Zoning Board of Appeals shall adopt rules not inconsistent with these bylaws for the conducting of its business and otherwise carrying out its responsibilities and shall file a copy of such rules with the Town Clerk.

D. Appeals

555 Appeals may be made to the Zoning Board of Appeals by any person aggrieved by reason of his or her inability to obtain a permit or enforcement action from any administrative officer under the provisions of MGL, Chapter 40A, or the provisions of these bylaws.

E. Special Permit Granting Authority

560 The Special Permit Granting Authorities (SPGA) shall be the Planning Board
and the Zoning Board of Appeals. Special Permits shall be granted only for
proposals in compliance with the provisions of these bylaws, and of MGL, Chapter
40A, and upon written determination by the SPGA that the proposal will not have
adverse effects which outweigh its beneficial effects on the Town, as measured by
the purposes of these bylaws. In acting on Special Permits, the SPGA shall apply
565 the Special Permit Criteria listed herein and any additional criteria contained in the
Section under which a Special Permit is sought.

F. Withdrawal of Application

570 Any application for a Special Permit or petition for a variance may be
withdrawn without prejudice by the applicant prior to the publication of the public
hearing notice, but thereafter may be withdrawn without prejudice only with SPGA
or permit granting authority approval.

G. Validity

575 The invalidity of any section or provision of these bylaws shall not invalidate
any other section or provision thereof.

H. Applicability

580 Where the application of these bylaws imposes greater restrictions than those
imposed by any other governmental regulations, permits, restrictions, easements,
covenants, or agreements, the provisions of these bylaws shall control.

I. Amendments

585 These bylaws may be amended from time to time in the manner prescribed in
MGL, Chapter 40A. Page numbers, line numbers, section numbers and paragraph
numbers are reference only and may be changed at the convenience of the Planning
Board.

ASHFIELD TOWN BYLAWS

Bylaws relating to the keeping of UNREGISTERED MOTOR VEHICLES and STRIPPING LAND OF SOIL AND LOAM adopted in Town Meeting, December 12, 1967 and approved by the Attorney General on May 2, 1968.

UNREGISTERED MOTOR VEHICLES

SECTION 1. The keeping of more than one unregistered motor vehicle, assembled or disassembled, except by a person licensed under General Laws, Chapter 140, Section 59, on any premises shall not be permitted unless said motor vehicle is stored within an enclosed building.

SECTION 2. A special permit to keep more than one unregistered motor vehicle on any premises not within an enclosed building, after a duly held public hearing to which all abutters to the premises have received notice, may be granted by the Board of Selectmen, if it finds that such keeping (1) is in harmony with the purposes and intent of this By-Law; (2) will not adversely affect the neighborhood; and (3) will not be a nuisance.

SECTION 3. All such special permits granted shall limit the number of unregistered motor vehicles to be kept on the premises by the permit holder, shall not run with the land, and shall be limited to a reasonable length of time.

SECTION 4. This article shall not apply to motor vehicles which are designed and used for farming purposes, nor shall this article apply to landowners or tenants who store motor vehicles out of sight of both abutters and public ways.

SECTION 5. Whoever violates any provisions of this Article of the By-Laws shall be liable to a penalty of Five Dollars (\$5.00) per day for each day of violations, commencing ten days following date of receipt of written notice from the Board of Selectmen.

STRIPPING LAND OF SOIL AND LOAM

SECTION 1. No person, firm or corporation shall strip, sever, remove or convey away any soil, loam, sand or gravel from any land in the Town not in public use, unless and until such stripping, severance, removal or conveyance away, is first authorized by a permit issued by the Selectmen of Ashfield, except in conjunction with construction or a building on the parcel or except in conjunction with the development, improvement or landscaping of said land, or except for the continued operation of an existing sand and gravel pit. No such permit shall be issued unless and until an application therefor has been filed with the Board. Said Board shall then hold a public hearing on the application, and notice of the filing of the application and the date and the time of the holding of the public hearing thereon, shall be advertised, forthwith, at the expense of the applicant, in a newspaper, published in the County, seven days, at least, before the meeting.

SECTION 2. The penalty for violation of this By-Law shall be as follows; For the first offense, fifty (\$50.00); for the second offense, one hundred dollars (\$100.00); and for each subsequent offense, two hundred dollars (\$200.00).

In 1972, a property including present day 995 West Roa (Parcel #11-0-40) is laid out in a County Highway Relocation

In 1974, Georgiana Gorman conveys the property to herself and her daughter, Phyllis D. Dickinson (bk1378 pg22).

In 1980, a portion of the property is conveyed to John Dickinson (bk328, pg1611).

In 1987, a portion of the property is conveyed to Katherine Georgioanna and Bradford Craig which expressly excepts the lot currently known as 995 West Road and designated at Parcel 11-0-40.

On October 24, 2002, Phyllis Dickinson died and left the remaining property including present day 995 West Road (Parcel 11-0-40) to her children, John, Bruce, Brian and Paul.


On September 9, 2020, the Parcel 11-0-40 is conveyed from John, Bruce, Brian and Paul Dickinson to Jason Dickinson and Sabra Billings (bk7604, pg 233).

None of the deed references include any reference to a structure or demolition.

No mortgages

Probate docket 03P0012EP1

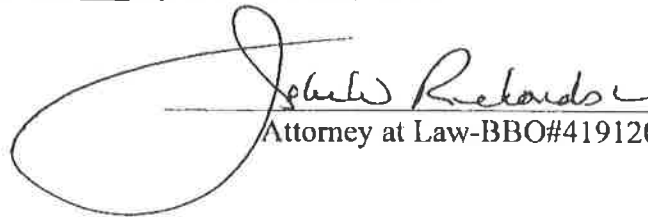
SCRIVENERS AFFIDAVIT
Re: 995 West Road
Ashfield, Massachusetts 01330


2022 00013171
Bk: 8104 Pg: 11 Franklin County
Page: 1 of 1 11/29/2022 10:43 AM

I, John W. Richardson of 32 Bridge Street, Shelburne Falls, Massachusetts, an attorney licensed to practice law in the Commonwealth of Massachusetts did prepare and record a deed from John C. Dickinson, Bruce C. Dickinson, Brian C. Dickinson and Paul D. Dickinson to Jason C. Dickinson and Sabra E. Billings and recorded on September 9, 2020 with Franklin County Registry of Deeds at Book 7604, Page 233.

The affected premises on the deed was erroneously stated as being 95 West Road in Ashfield, Massachusetts when the correct address of the affected premises should be 995 West Road in said Ashfield, Massachusetts.

Witness my hand and seal this 29th day of November, 2022.



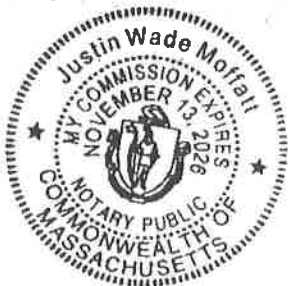
Attorney at Law-BBO#419120

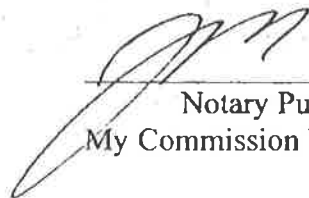
Commonwealth of Massachusetts

County of Franklin

November 29, 2022

On this 29th day of November, 2022 before me, the undersigned Notary Public, personally appeared John W. Richardson and proved to me through satisfactory evidence of identity, which was personal knowledge, to be the person whose name is signed on this document and acknowledged to me that he signed it voluntarily for its stated purpose. And that is true to the best of his knowledge and belief.





Notary Public
My Commission Expires: 11/13/26

ATTEST: FRANKLIN, Scott A. Cote Register



2020 00009202

Bk: 7604 Pg: 233 Franklin County
Page: 1 of 6 09/09/2020 09:39 AM

**Affected Premises: 95 West Road
Ashfield, Massachusetts**

Quitclaim Deed

MASSACHUSETTS EXCISE TAX
Franklin District ROD #11 001
Date: 09/09/2020 09:39 AM
Ctrl# 021443 19010 Doc# 00009202
Fee: \$173.28 Cons: \$38,000.00

We, **John C. Dickinson** of Ashfield, Massachusetts, **Bruce C. Dickinson** of Greenfield, Massachusetts, **Brian C. Dickinson** of Ashfield Massachusetts and **Paul D. Dickinson** of South Deerfield, Massachusetts

For consideration paid of \$38,000.00

Grant to **Jason C. Dickinson** and **Sabra E. Billings**, husband and wife as Tenants by the Entirety of 416 Huckle Hill Road in Bernardston, Massachusetts 01337

With Quitclaim Covenants

The land in Ashfield, Franklin County, Massachusetts, bounded and described as follows:

Being all and the same premises as are located on the easterly side of West Road, so-called, as laid out by the 1972 County Highway Relocation and being the same premises excepted from deed of Phyllis Dickinson to Katherine M. Georgioanna and Bradford S. Craig dated May 22, 1987 and recorded with Franklin County Registry of Deeds at Book 2102, Page 112 less those premises conveyed to John C. Dickinson by deed of Phyllis D. Dickinson and Georgianna M. Gorman dated March 10, 1980 and recorded with Franklin County Registry of Deeds at Book 1611, Page 328. The premises are shown on the assessors maps of the Town of Ashfield on Map 11, Parcel 40 and are described as follows:

Beginning on the easterly side of where West Road meets the property held in irrevocable trust in the names of Helen Furman III, Frank Furman and John Furman (see Book 7215, Page 1) and heading roughly West for 70 feet; thence continuing roughly West for an additional 1852 feet along the property owned by Peter Healey and Ticia Kane (see Book 2215, Page 147); thence turning roughly North for 710 feet and thence roughly East for an additional 591feet.; thence continuing roughly South for 680 feet. along the property owned by Marie-Claire Courmand (see Book 1248, Page 496); thence continuing another 1350 feet roughly South along the property owned by Gary Gemme and Joan Gemme (see Book 6761, Page 220); thence turning roughly West along the property of Patricia D. Libby and Kim L. Reardon (see Book 2091, Page 147) for 1386 feet.; thence continuing roughly Northwest for 210 feet. along the property owned by John C. Dickinson (see Book 1611, Page 328) and thence continuing roughly West for 460 feet.; thence continuing Northwest for 160 feet along the property owned by Jan B. Freeman (sae Book 4389, Page 209), which was formerly known as Old West Road; thence turning roughly Northeast for 63 feet along the property owned by Robert E. Graveline and Pamela M. Paton (see Book 4546, Page 47) and thence continuing roughly North for 121 feet. thence turning roughly Northwest for 827 feet; thence continuing roughly 86 feet West to join West Road; thence turning roughly Northwest along West Road for 560 feet to join back with the property held in

irrevocable trust in the names of Helen Furman III, Fran Furman and John Furman at the point of beginning. All distances herein are estimated.

It is the intention of the Grantors herein to convey the remaining real estate located on the easterly side of West Road as described in deed of Georgianna M. Gorman to Georgianna M. Gorman and Phyllis D. Dickinson, as Joint Tenants dated January 17, 1974 and recorded with Franklin County Registry of Deeds at Book 1378, Page 22. Georgianna M. Gorman died on April 2, 1986. Phyllis D. Dickinson died on October 24, 2002 leaving this real estate to her children, they being John C. Dickinson, Bruce C. Dickinson, Brain C. Dickinson and Paul D. Dickinson. See Franklin County Probate Docket #03P0012EP1.

There are no new boundaries created by this conveyance.

Reserving to Brian C Dickinson a life estate in the premises hereby conveyed.

Reserving to John C. Dickinson for and during his life the right to harvest cord wood for his personal use on the premises hereby conveyed, the cord wood to be harvested shall be marked by the land owner prior to harvesting.

For title of the Grantors to the premises hereby conveyed see estate of Phyllis D. Dickinson, Franklin County Probate Court docket #03P0012EP1.

The premises hereby conveyed are not the homestead premises of the Grantors.

irrevocable trust in the names of Helen Furman III, Fran Furman and John Furman at the point of beginning. All distances herein are estimated.

It is the intention of the Grantors herein to convey the remaining real estate located on the easterly side of West Road as described in deed of Georgianna M. Gorman to Georgianna M. Gorman and Phyllis D. Dickinson, as Joint Tenants dated January 17, 1974 and recorded with Franklin County Registry of Deeds at Book 1378, Page 22. Georgianna M. Gorman died on April 2, 1986. Phyllis D. Dickinson died on October 24, 2002 leaving this real estate to her children, they being John C. Dickinson, Bruce C. Dickinson, Brain C. Dickinson and Paul D. Dickinson. See Franklin County Probate Docket #03P0012EP1.

There are no new boundaries created by this conveyance.

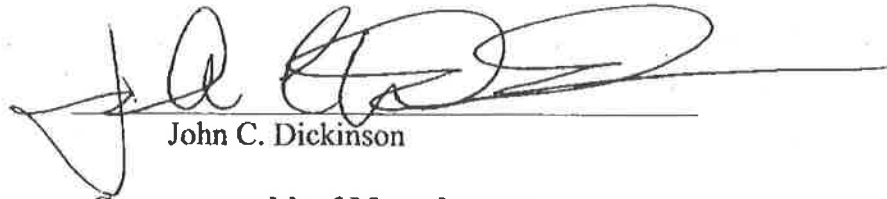
Reserving to Brian C Dickinson a life estate in the premises hereby conveyed.

Reserving to John C. Dickinson for and during his life the right to harvest cord wood for his person use on the premises hereby conveyed, the cord wood to be harvested shall be marked by the land owner prior to harvesting.

For title of the Grantors to the premsies hereby conveyed see estate of Phyllis D. Dickinson, Franklin County Probate Court docket #03P0012EP1.

The premises hereby conveyed are not the homestead premsies of the Grantors.

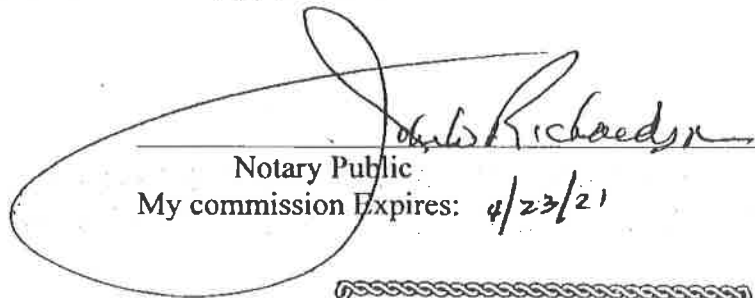
Witness my hand and seal this 2nd day of September, 2020.

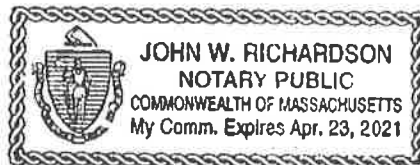

John C. Dickinson

Commonwealth of Massachusetts

Franklin, SS:

On this 2nd day of September, 2020, appeared John C. Dickinson who proved his identity to me by personal knowledge and acknowledged the foregoing instrument to be his free act and deed, before me:


Notary Public
My commission Expires: 4/23/21



Witness my hand and seal this 4th day of September, 2020.

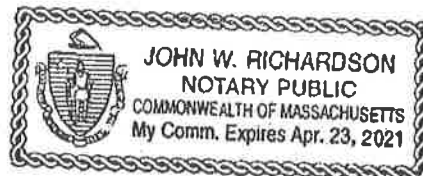
Bruce C. Dickinson
Bruce C. Dickinson

Commonwealth of Massachusetts

Franklin, SS:

On this 4th day of September, 2020, appeared Bruce C. Dickinson who proved his identity to me by personal knowledge and acknowledged the foregoing instrument to be his free act and deed, before me:

John W. Richardson
Notary Public
My commission Expires: 4/23/21



Witness my hand and seal this 2nd day of September, 2020.

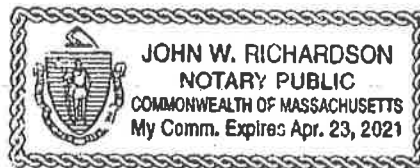
Brian C Dickinson
Brian C. Dickinson

Commonwealth of Massachusetts

Franklin, SS:

On this 2nd day of September, 2020, appeared Brian C. Dickinson who proved his identity to me by personal knowledge and acknowledged the foregoing instrument to be his free act and deed, before me:

John W. Richardson
Notary Public
My commission Expires: 4/23/21



Witness my hand and seal this 2nd day of September, 2020.

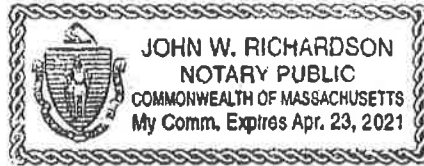
Paul D. Dickinson
Paul D. Dickinson

Commonwealth of Massachusetts

Franklin, SS:

On this 2nd day of September, 2020, appeared Paul D. Dickinson who proved his identity to me by personal knowledge and acknowledged the foregoing instrument to be his free act and deed, before me:

John W. Richardson
Notary Public
My commission Expires: 4/23/21



ATTEST: FRANKLIN, Scott A. Cote Register

KNOW ALL MEN BY THESE PRESENTS, that we PHYLLIS D. DICKINSON and GEORGANNA M. GORMAN, both of the Town of Ashfield

, for the full consideration of one and zero one-hundredths (\$1.00) dollars paid

grant to JOHN C. DICKINSON

of Main Street, Ashfield, Franklin County, Massachusetts

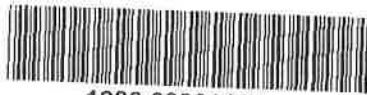
with quitclaim warrants the land is situated on West Road in said Ashfield more particularly bounded and described as follows:

Beginning at a point on the easterly boundary line of West Road at land now or formerly of one Russell Loomis; thence running easterly along a stone wall along the land of said Loomis a distance of four hundred sixty (460') feet to a steel pipe; thence, running northerly on a line more or less parallel to the easterly boundary line of said West Road a distance of two hundred ten (210') feet to a steel pipe; thence running westerly, on a line more or less parallel to the first course described above a distance of four hundred sixty (460') feet more or less to a steel pipe at the easterly boundary line of the said West Road; and thence running southerly along the easterly boundary line of the said West Road a distance of two hundred ten (210') feet to the point of beginning. Containing two and two-tenths (2.2) acres more or less.

Being the southwesterly portion of land conveyed to the grantors herein by the deed of Georganna M. Gorman dated January 17, 1974, and recorded in the Franklin County Registry of Deeds, Book 1378, Page 22.

GRANTEE(S) ADDRESS: MAIN STREET, ASHFIELD, MA 01330

LOCATION OF PROPERTY: WEST ROAD, ASHFIELD, MA



1980 00001168

Bk: 1611 Pg: 328 Doc:DEED Page 1 of 1 03/11/1980 12:45PM

Executed as a sealed instrument this _____ tenth

day of March 19 80
Phyllis D. Dickinson
PHYLLIS D. DICKINSON

Georganna M. Gorman
GEORGANNA M. GORMAN

The Commonwealth of Massachusetts

FRANKLIN ss.

March 10, 1980

Then personally appeared the above named PHYLLIS D. DICKINSON and GEORGANNA M. GORMAN



and acknowledged the foregoing instrument to be their free act and deed

Before me, *Carol J. Pepyne*
CAROL J. PEPLYNE Notary Public

My commission expires February 13 19 87

Franklin ss. Rec'd for record 12 Hr. 45 Min. P.M. March 11, 1980

22

I, GEORGINNA M. GORMAN,

of Ashfield,
in consideration of One Dollar

Franklin County, Massachusetts

grant to my daughter, PHYLLIS D. DICKINSON, of said Ashfield, and myself,
GEORGINNA M. GORMAN, as joint tenants,
Post Office Addresses of both grantees being Main Street, Ashfield, Massachusetts,

of

with quitclaim covenants

~~the husband~~

All my right, title and interest in and to a certain tract of land situated in
the Town of Ashfield, in the County of Franklin, and Commonwealth of Massachusetts,
and being the same premises conveyed to me by deed of John Dickinson dated
September 25, 1946, and recorded in Franklin Registry of Deeds in Book 895, Page
339, to which deed and the references mentioned therein reference may be had.

Subject to the highway which passes through the said parcel of land, and to the
recorded rights of any public utility companies.

Excepting therefrom, however, the portion conveyed by the grantor to Paul Blasdale
and Nora M. Blasdale by deed dated November 1, 1948, duly recorded in said Registry,
Book 930, Page 480, to which deed reference may be had concerning spring and aqueduct
rights and rights of way.



1974 00000378

Bk: 1378 Pg: 022 Doc:DEED
Page 1 of 1 01/22/1974 10:43AM

Executed as a sealed instrument this 17th day of January, 19 74.

Georganna M. Gorman

The Commonwealth of Massachusetts

Franklin, ss. January 17th 19 74.

Then personally appeared the above named Georganna M. Gorman

and acknowledged the foregoing instrument to be her free act and deed,



Before me,

Nancy Pinella Howe

Notary Public
In and for the State of Massachusetts

My commission expires

January 13th 1978

Every deed presented for record shall contain or have endorsed upon it the full name, residence and post office address of the grantee and a recital of the amount of the full consideration thereof in dollars or the nature of the other consideration therefor, if not delivered for a specific monetary sum. The full consideration shall mean the total price for the conveyance deduction for any liens or encumbrances assumed by the grantee or remaining thereon. All such endorsements and recitals shall be recorded as part of the deed.

SEE
2131
AGE 42

FR03P0012EP1 In the matter of: Dickinson, Phyllis D

- Case Type:
Estates and Administration
- Case Status:
Closed
- File Date
01/13/2003
- DCM Track:
- Initiating Action:
Probate of will with executor
- Status Date:
02/12/2003
- Case Judge:
Rainaud, Hon. Stephen M
- Next Event:

Property Information

01330

All Information Party Docket Disposition

Party Information

Dickinson, Phyllis D.
- Decedent

- DOD
- 10/24/2002
- Disposition
-
- Disp Date
-

Alias

Party Attorney

[More Party Information](#)

Dickinson, Brian C.
- Petitioner

- DOD
-
- Disposition
-
- Disp Date
-

Alias

Party Attorney

- Attorney
- Viehmann, Esq., Carol E
- Bar Code
- 629342
- Address
- Carol E. Viehmann, Attorney at Law
- 3501 Townsend Ave Apt 153
- Jacksonville, FL 32277
- Phone Number
- (904)891-3896

[More Party Information](#)

Dickinson, Brian C.
- Executor/trix

- DOD
-
- Disposition
-
- Disp Date
-

Alias

Party Attorney

[More Party Information](#)

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/13/2003	PETITION FOR PROBATE OF WILL WITH APPOINTMENT OF EXECUTOR	1	
01/13/2003	BOND WITHOUT SURETIES, BRIAN C. DICKINSON RE: \$75,000.00 PE: \$10,000.00	2	
01/13/2003	ASSENT OF PAUL DICKINSON TO APPOINTMENT OF EXECUTOR	3	
01/13/2003	ASSENT OF BRUCE C. DICKINSON TO APPOINTMENT OF EXECUTOR	4	
01/13/2003	ASSENT OF JOHN C. DICKINSON TO APPOINTMENT OF EXECUTOR	5	
01/13/2003	ASSENT OF BRIAN C. DICKINSON TO APPOINTMENT OF EXECUTOR	6	
01/13/2003	AFFIDAVIT OF NOTICE TO DEVISEES AND LEGATEES	7	
01/13/2003	INFORMATION AND RIGHTS OF INTERESTED PARTIES (G.L. C. 215, S. 30B)	8	
01/13/2003	AFFIDAVIT AS.TO MILITARY SERVICE	9	
01/13/2003	CERTIFICATE OF DEATH	10	
01/13/2003	WILL DATED 08/27/1988 , 3 PAGES	11	
01/15/2003	CITATION ISSUED, RETURNABLE 02/11/2003	12	
02/11/2003	CITATION FILED; SERVICE MADE 01/25/2003	13	
02/12/2003	BOND APPROVED; BRIAN C. DICKINSON , EXECUTOR . Stephen M. Rainaud , J.	14	
02/12/2003	DECREE APPOINTING BRIAN C. DICKINSON EXECUTOR. Stephen M. Rainaud , J.	15	
02/12/2003	INVENTORY ISSUED	16	
10/08/2003	INVENTORY OF EXECUTOR FILED: PE = \$ 10,474.19 ; RE = \$ 65,600.00	17	
12/13/2008	Informational docket entry: Converted Case from BasCOT - P&F on 12/13/2008		
12/13/2008	Case disposed at conversion on 12/13/2008		

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Disposed	02/12/2003	Rainaud, Hon. Stephen M

indistinguishable.⁵² Indeed, the first two tests apparently represent both sides of the same coin.

The first two *Powers* tests have inspired several specific rules and exceptions. First, a nonconforming use may be enlarged, as long as the increased use is attributable to the growth of the original nonconforming use.⁵³

Second, a nonconforming use may be improved and made more efficient as long as the changes are "ordinarily and reasonably adapted to the original use and do not constitute a change in the original nature and purpose of the undertaking."⁵⁴

Regardless whether the use is enlarged or improved, many decisions indicate that the existence of a lawful nonconforming use does not permit the erection of additional buildings for the expansion of the use, unless permitted by the local regulations.⁵⁵

Finally, temporal changes to nonconforming uses are measured by a unique test. The question is "the degree of specificity with which the zoning by-law prohibits the particular extension and, absent specific mention therein, on the general permissiveness of the by-law towards extensions of nonconforming uses."⁵⁶ Thus, in *McAlee v. Board of Appeals of Barnstable*,⁵⁷ the court held that a seasonal restaurant could properly be converted to year-round use where the local by-law authorized alterations to nonconformities.⁵⁸ On the other hand, in *Goldman v. Den-*

⁵² See *Jasper v. Michael A. Dolan, Inc.*, 355 Mass. 17, 24 (1968). The court applied only the language of the second test in holding that the proposed change violated the first two tests.

⁵³ See, e.g., *Cape Resort Hotels v. Alcoholic Licensing Bd. of Falmouth*, 385 Mass. 205, 214 (1982); *Powers v. Building Inspector of Barnstable*, 363 Mass. 648 (1973); *Kreger v. Public Bldgs. Comm'r of Newton*, 353 Mass. 622, 627 (1968); *Building Comm'r of Medford v. McGrath*, 312 Mass. 461, 462 (1942); *Tamerlane Realty Trust v. Board of Appeals of Provincetown*, 23 Mass. App. Ct. 450 (1987); *Building Inspector of Seekonk v. Amaral*, 9 Mass. App. Ct. 869 (1980); *Board of Selectmen of Blackstone v. Tellestone*, 4 Mass. App. Ct. 311 (1976).

⁵⁴ *Derby Refining Co. v. City of Chelsea*, 407 Mass. 703, 712 (1990); *Berliner v. Feldman*, 363 Mass. 767, 775 (1973). See also *Cape Resort Hotels v. Alcoholic Licensing Bd. of Falmouth*, 385 Mass. 205, 215 (1982); *Morin v. Board of Appeals of Leominster*, 352 Mass. 620, 623-624 (1967); *Chilson v. Zoning Bd. of Appeal of Attleboro*, 344 Mass. 406, 413-414 (1962); *Town of Wayland v. Lee*, 325 Mass. 637, 643 (1950); *Barron Chevrolet, Inc. v. Town of Danvers*, 419 Mass. 404, 411 (1995).

⁵⁵ See, e.g., *Powers v. Board of Appeals of Barnstable*, 363 Mass. 648, 658 n.4 (1973); *Garfield v. Board of Appeals of Rockport*, 356 Mass. 37, 40 (1969); *Bowes v. Inspector of Bldgs. of Brockton*, 347 Mass. 295, 297-298 (1964); *Simeone Stone Corp. v. Board of Appeals of Bourne*, 345 Mass. 188, 192-193 (1962); *Planning Bd. of Reading v. Board of Appeals of Reading*, 333 Mass. 657, 660 (1956); *Connors v. Town of Burlington*, 325 Mass. 494, 495-496 (1950); *Inspector of Bldgs. of Burlington v. Murphy*, 320 Mass. 207, 210 (1946); *Wilbur v. City of Newton*, 302 Mass. 38, 43 (1938); *Tamerlane Realty Trust v. Board of Appeals of Provincetown*, 23 Mass. App. Ct. 450 (1987); *Vokes v. Avery W. Lovell, Inc.*, 18 Mass. App. Ct. 471, 484 n.21 (1983).

⁵⁶ *Sullivan v. Board of Appeals of Harwich*, 15 Mass. App. Ct. 286, 289 (1983).

⁵⁷ 361 Mass. 317, 323-324 (1972).

⁵⁸ See also *Walker v. Board of Appeals of Harwich*, 388 Mass. 42 (1983); *Berliner v. Feldman*, 363 Mass. 767, 775 (1973); *Morin v. Board of Appeals of Leominster*, 352 Mass. 620, 623 (1967).

JUSTIA

CHARLES A. POWERS & others vs. BUILDING INSPECTOR OF BARNSTABLE.

CHARLES A. POWERS & others vs. BUILDING INSPECTOR OF BARNSTABLE.

363 Mass. 648

October 6, 1972 - May 17, 1973

Barnstable County

Present: TAURO, C.J., QUIRICO, BRAUCHER, & KAPLAN, JJ.

Review of cases dealing with nonconforming uses under zoning ordinances or by-laws. [651-658] On a petition for a writ of mandamus to compel the building inspector of a town to enforce its zoning by-law and so to prohibit alleged unauthorized use being made of two parcels of land, a refusal of the trial judge to issue the writ as to one parcel was proper where its use as a candle factory and store was but a continuation, although to a greater degree, of a use prevailing at the time of adoption of the zoning by-law, and the issuance of the writ as to the second parcel was proper as to a building which since the passage of the zoning by-law had been converted from primarily "dead" storage to active merchandise processing, but should be modified as to another building to reflect that while the use of the second floor for administrative offices did not constitute a continuation of a nonconforming use, the use of the first floor for miscellaneous storage was valid. [658-663, 664-665]

PETITION for a writ of mandamus filed in the Superior Court on June 21, 1968.

The case was heard by Bennett, J.

C. Michael Sheridan (John P. Garrahan with him) for the petitioners; Harold L. Hayes, Jr., for the interveners Ann Stevens Atlee & others, also with him.

Stephen C. Jones for the interveners Old Harbor Candle Company & others.

QUIRICO, J. This is a petition for a writ of mandamus to compel the respondent building inspector to enforce the zoning by-law of the town of Barnstable and thereby to prohibit the alleged unauthorized use being made of two parcels of land, with buildings thereon, located on Scudder Avenue in the Hyannisport district of the town.

Page 649

The petition was originally brought by nine persons owning land located adjacent to or in the vicinity of the two parcels in question. Later twenty-seven additional persons owning property in the same vicinity were allowed to intervene as parties petitioner. All thirty-six of these persons will be referred to collectively as the petitioners.

The owners of the two parcels in question are Marvin Blank and Harold Perkins, Trustees of Old Harbor Realty Trust (Realty Trust), and the lessee of both parcels is the Old Harbor Candle Co. (Candle Co.). Both the Realty Trust and the Candle Co. were allowed to intervene.

After a hearing on the petition the judge filed a document entitled "Findings, Rulings, and Judgment," which concluded with an order that judgment enter (a) denying the petition as to the parcel on which there was a building used for the manufacture and sale of candles (herein referred to as "Parcel 1") and (b) for issuance of the writ as to the other lot on which two buildings described as the Warehouse and the Schoolhouse were located (herein referred to as "Parcel 2"). [Note 1]

The case is now before us on the appeals of thirty-four petitioners, the Realty Trust and the Candle Co. from the judge's "Findings, Rulings, and Judgment." (G. L. c. 213, Section 1D, inserted by St. 1943, c. 374, Section 4, as amended by St. 1957, c. 155.) The building inspector did not appeal, and no brief was filed by him or in his behalf in this court.

General Laws c. 213, Section 1D, as amended, provides that

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an appeal from an order of the Superior Court decisive of the issues on a petition for a writ of mandamus shall be governed by the statutes applicable to appeals in equity. It provides further that "[u]pon such appeal all questions, whether of fact, of law or of discretion,

which were open at the hearing before . . . the superior court . . . shall be open to the same extent as before such . . . court." The evidence is reported. It includes certain photographic and documentary exhibits but consists in large part of oral testimony. The judge found facts and reported them at the request of the Realty Trust and the Candle Co. G. L. c. 214, Section 23, as appearing in St. 1947, c. 365, Section 2. "We are bound to examine the evidence. The findings of fact made by the trial judge, however, including inferences of fact when dependent upon credibility, are to stand unless plainly wrong." *Chartrand v. Registrar of Motor Vehicles*, 347 Mass. 470 , 473. *Crawford v. Building Inspector of Barnstable*, 356 Mass. 174 , 175. *Ouellette v. Building Inspector of Quincy*, 362 Mass. 272 , 273.

A brief summary of certain facts common to both parcels of land in question will be helpful in presenting the legal issues raised by these appeals. The town adopted its first zoning by-law in 1949 and thereby placed both parcels in a Residence A district. A major revision of the by-law in 1956 changed the classification of both parcels to a Residence C district. Both the 1949 and 1956 by-law included the provision that any lawful building or lawful use of a building or premises or part thereof existing at the time the by-law was adopted might be continued, although such building or use did not conform to the provisions hereof. This saving clause for nonconforming buildings and uses was in accord with the statutory provision (G. L. c. 40, Section 26, as appearing in St. 1933, c. 269, Section 1, and as amended by St. 1952, c. 438, all repealed by St. 1954, c. 368, Section 1, and superseded by G. L. c. 40A, Section 5, inserted by St. 1954, c. 368, Section 2) that a zoning "ordinance or by-law or any amendment thereof shall not apply to existing buildings or structures, nor

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to the existing use of any building or structure, or of land to the extent to which it is used at the time of adoption of the ordinance or by-law, but it shall apply to any change of use thereof and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change, and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration, or for its use for the same purpose to a substantially greater extent."

The uses made of the two parcels by the present occupant, the Candle Co., and by its predecessor occupants at times material to the decision of this case will be discussed in more detail later in this opinion. It is sufficient at this point to state that none of the uses being made of the two parcels and the buildings thereon when this case was started and which are continuing were included in the various uses expressly permitted in residential

districts under either the 1949 original zoning by-law or the 1956 revision thereof which is still in effect. Nevertheless, the Realty Trust and the Candle Co. contend that the present uses are lawful because they come within the protection of the statutory and by-law provisions excluding from the application of the by-law any lawful nonconforming uses existing when the by-law was adopted or amended. [Note 2]

The first statute enabling cities and towns of this Commonwealth to adopt zoning ordinances or by-law was St. 1920, c. 601 (see now G. L. c. 40A), and Section 7 of that statute provided that "[t]his act shall not apply to existing

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structures nor to the existing use of any building, but it shall apply to any alteration of a building to provide for its use for a purpose, or in a manner, substantially different from the use to which it was put before the alteration." All of the zoning enabling statutes since that time have included a provision in substantially the same language protecting the right to continue nonconforming uses. G. L. c. 40, Section 26, repealed by St. 1954, c. 368, Section 1, and superseded by G. L. c. 40A, Section 5, inserted by St. 1954, c. 368, Section 2.

During this period of more than a half century in which municipalities have been permitted to adopt zoning ordinances and by-laws, this court has been required to decide a large number of cases involving the question whether a use being made of premises which was not expressly authorized under the applicable zoning ordinance or by-law was nevertheless protected as a lawful nonconforming use. Each case involved and required a determination and consideration of the facts of the particular case measured against the language of the statute and ordinance or by-law and, ultimately, a decision that there was or was not a protected nonconforming use. By this process there has developed a body of case law which gives guidance and suggests tests to be applied in deciding such cases. A review of some of these decided cases may be helpful.

Cochran v. Roemer, 287 Mass. 500 , 507-508, is one of the first to suggest a test to be applied. That test was whether the use under attack was "different in kind" from the nonconforming use in existence when the zoning ordinance was adopted. We said, at 508, that it "is not different in kind . . . simply because it is bigger." [Note 3] In

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Building Commr. of Medford v. McGrath, 312 Mass. 461 , at 462, we said that "a nonconforming use of the same premises may be not only continued but also increased in volume." In *Medford v. Marinucci Bros. & Co. Inc.* 344 Mass. 50 , at 60, we said: "The

distinction is between an increase in the amount of business, even a great increase, which does not work a change in use, and an enlargement of a nonconforming business so as to be different in kind in its effect on the neighborhood." Finally, in *Bridgewater v. Chuckran*, 351 Mass. 20 , we said, at 23: "Recent cases have emphasized three tests for determining whether current use of property fits within the exemption granted to nonconforming uses. (1) Whether the use reflects the `nature and purpose' of the use prevailing when the zoning by-law took effect. . . . [citations omitted.] (2) Whether there is a difference in the quality or character, as well as the degree, of use. . . . [citations omitted.] (3) Whether the current use is `different in kind in its effect on the neighborhood.'" . . . [citation omitted.]

It is inevitable that the development and application of a rule of law governing nonconforming uses on a case by case basis, with the result depending almost entirely on the particular facts of each case, should produce two separate and distinct lines of cases, one holding that the disputed use, often despite some changes therein after the adoption or amendment of the zoning ordinance or by-law, is protected as a lawful nonconforming use, and the other holding that the use, although lawful when the zoning ordinance or by-law was adopted or amended, has so changed that it is no longer protected. The following are some of our decisions most frequently cited for each conclusion.

(a) Cases Upholding the Nonconforming Use. In *Cochran v. Roemer*, 287 Mass. 500 , 507-508, a small fuel business "conducted by an old system . . . at retail with comparatively few sales to other dealers," was changed to "a very large business [conducted] by the most modern appliances for the most part by sales to the ultimate consumer

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but to a considerable extent to other dealers for resale." In *Medford v. Marinucci Bros. & Co. Inc.* 344 Mass. 50 , 51-53, the disputed use consisted of the laying of a new fifty-car side track parallel to a railroad's existing and allegedly nonconforming tracks, and the use of the siding for the unloading of large quantities of fill transported from New Hampshire for use in highway construction in this Commonwealth. In *Morin v. Board of Appeals of Leominster*, 352 Mass. 620 , a nonconforming one-man printing business was conducted in a barn during the summer months and moved into a dwelling house on the same lot during the winter months. The use of the barn for the nonconforming printing business the year round, after insulation and interior improvements of the building, was upheld. In *Crawford v. Building Inspector of Barnstable*, 356 Mass. 174 , we held a part of a disputed use lawful and a part unlawful. We upheld the alteration of a nonconforming small hotel building by enclosing an open porch thereby increasing the ground floor area of the building by no more than three to four per cent. The use held unlawful is described below. In *McAlee v.*

Board of Appeals of Barnstable, 361 Mass. 317 , 322-324, we held that a lawful nonconforming use of property in a "Residence" district for the operation of an inn during the summer months permitted the inn to be operated during the entire year.

(b) Cases Limiting the Nonconforming Use. In *Lexington v. Bean*, 272 Mass. 547 , 553, we held that the use of a building by the defendant "for the commercial purpose of repairing motor vehicles for hire is `substantially different' from a use of it by a person residing on the premises for the purpose of repairing motor vehicles belonging to him as incidental to his trucking and express business." In *Marblehead v. Rosenthal*, 316 Mass. 124 , we held that a lawful nonconforming use consisting of the operation, on a small scale, of the business of a tailor and furrier in one store, with some hand sponging and cleaning of clothes by the members of a family and two employees, did not permit its change and expansion to

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three stores with complete mechanical equipment for a dry cleaning establishment employing sixteen or seventeen people, only one of whom was a tailor. In *Everpure Ice Mfg. Co. Inc. v. Board of Appeals of Lawrence*, 324 Mass. 433 , we held that a fuel oil business was not so intrinsically and inherently related to an existing nonconforming ice manufacturing business as to be fairly construed as included within the latter use. *Lynn v. Deam*, 324 Mass. 607 , involved a change in the use of a building from a dance hall to a restaurant or store in which food was served or sold. *Seekonk v. Anthony*, 339 Mass. 49 , involved a change from "a makeshift set of arrangements for furnishing to dump trucks in one place all the ingredients of concrete" to "a modern plant using more elaborate fixed facilities for use in connection with more complicated vehicles . . . [and to] a substantial supply terminal for cement mixer trucks." We held this to be more than "a permitted increase in the volume of business done in an existing plant," and that it amounted to a "change in and enlargement of the plant which made it `different in kind in its effect upon the neighborhood.'" *Hinves v. Commissioner of Pub. Works of Fall River*, 342 Mass. 54 , involved the attempted enlargement of a nonconforming grocery store business by the addition of a commercial catering service involving the cooking of food. In *Massachusetts Broken Stone Co. v. Weston*, 346 Mass. 657 , where the nonconforming use included the sale of crushed stone produced entirely from a quarry on the premises, we held, at 662-663, "that the importation of stone to be processed and sold on the premises as stone would be a change in use, and the petitioner has no right thereto." In *Brady v. Board of Appeals of Westport*, 348 Mass. 515 , we held that a nonconforming use consisting of four or five boats associated with the premises moored or tied to a twelve foot pier could not be

changed to a new structure consisting of two piers, one extending out into the water a distance of eighty feet and the other a distance of ninety feet, a barge measuring twenty-eight by ninety feet in size permanently affixed to

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the shore, and commercial boat repair and service facilities. In *Building Inspector of Malden v. Werlin Realty, Inc.* 349 Mass. 623 , we held that the use of premises for the manufacture and incidental storage of oxygen could not be justified on the basis of a prior lawful nonconforming use of the premises for the storage of ice cream cones and straws. In *Bridgewater v. Chuckran*, 351 Mass. 20 , we held that the use of premises as a ready mixed concrete manufactory and center for supply to others could not be justified on the basis of the prior lawful nonconforming use of the premises as a house builder's main yard in which the mixing of concrete was merely incidental to his general business. In *Kreger v. Public Bldgs. Commr. of Newton*, 353 Mass. 622 , there was a lawful nonconforming use of premises by the Luther Paul Co. (Paul) for the storage and sale of fuel oil and service to consumer customers. The use involved three fuel storage tanks having a total effective capacity of 56,000 gallons and an average monthly sale of less than 200,000 gallons. Paul then made an arrangement with another company, Northeast Petroleum Company (Northeast) which sold fuel oil to a number of retail distributors whereby Northeast would supply oil at Paul's tanks for delivery to the tank trucks of Paul and of Northeast's customers. Without increasing the tank storage capacity, the total monthly distribution from Paul's tanks increased six or seven times to as much as 1.4 million gallons in one month, thus increasing the frequency with which the tanks had to be refilled. Almost ninety per cent of the oil distributed from the tanks thereafter was to Northeast's customers. We held, at 627: "For zoning purposes, there was a change in the kind of use. . . . The new wholesale use predominates. . . . We need not decide whether every addition to a retail operation of some wholesale business would overload a nonconforming or other legal use. Here the businesses are different in an aspect with which the use regulations in the zoning ordinance are directly concerned, and there has resulted a significant increase in use. . . . It is beside the point

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that under our many cases this [increase in volume of business] would have been protected had it resulted merely from the growth of Paul's retail business without expansion of plant. The increased activity with the change to a wholesale business shows that the change has been substantive." *Cullen v. Building Inspector of No. Attleborough*, 353 Mass. 671 , 676, involved an increase in milk production coupled with a tenfold increase in the dairy herd

and other "extensive activities" which we held "compel the conclusion that there was a change" and that "[f]or purposes of the zoning laws the aggregate of all these operations amounts to a difference in quality rather than in degree alone." In *Jasper v. Michael A. Dolan, Inc.* 355 Mass. 17 , at 24, we said: "The present case involves the addition of a product (hard liquor) sold by a store previously licensed to sell only beer and wine. We are of opinion that this addition does not satisfy the first and second tests laid down in *Bridgewater v. Chuckran* . . . [351 Mass. 20 , 23]. In other words, the sale of hard liquor (1) does not reflect the nature and purpose of the pre%oexisting nonconforming use and (2) differs in the quality or character, as well as the degree, from the prior use. . . . Similarly, the operation of a separately conducted all-alcoholic package store is substantially different from the sale of beer and wine in connection with a food store. Accordingly we hold that the sale of all-alcoholic beverages at the . . . premises constitutes a new use and is in violation of the zoning ordinance." In *Crawford v. Building Inspector of Barnstable*, 356 Mass. 174 , the owners of a small hotel or club had a lawful nonconforming use which included the beaching or mooring of boats in the bay on which the hotel property fronted. They then built a pier eight feet wide extending out into the water a distance of 285 feet, with a deck fifteen by forty-eight feet in size forming a "T" at the outer end of the pier. The pier was for commercial, not residential purposes. In rejecting the contention that the pier was a lawful continuation of the nonconforming use, we said, at 179-180: "The pier . . . makes a use of the water side

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of the premises which is different in quality, character and kind as well as degree from that which was made of it before." [Note 4]

Having noted the principal cases comprising the two lines of decisions on the status of nonconforming uses, particularly with reference to changes or extension in such uses after the adoption of zoning regulations, we must apply the results of those decisions to this case. We shall do so separately as to each of the two parcels of land and the three buildings.

1. Parcel 1. This is the parcel on which the building presently used for the manufacture and sale of candles and other merchandise is located. The building, having one story and a basement, has been in existence in its present location and size since an undetermined date, but prior to 1950. The individuals who formerly owned this parcel (the Johnson family), and the Candle Co. which they caused to be formed in 1946, used most of the first floor of the building for the manufacture and sale, at wholesale and retail, of candles and accessories, and used a small "L" at the front of the building as the administrative office for

that business. They used part of the basement for storage and rented part of it out to others for storage. These uses continued to 1954.

In 1954 a new group of persons (the Stein family) became stockholders of the Candle Co. The Candle Co. continued to use the building for the same general purposes as before 1954 except for a substantial increase in

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the volume of the business which was conducted on or from the premises. The Stein family added to the line of merchandise other than candles. They increased the number of wholesale accounts, thus increasing the volume of candles manufactured on the premises and the volume of merchandise purchased for resale, and they also increased the volume of merchandise shipped out to wholesalers both by parcel post and by truck. The candle manufacturing operations occasionally extended beyond the daylight hours into the evening. The retail sale business was operated on the premises from the spring to early December of each year, and in the summer months it was operated seven days a week from morning until nine or ten in the evening.

In 1957 the Realty Trust purchased Parcel 1, and the interveners Blank and Perkins became the sole stockholders and officers of the Candle Co. Under their management the Candle Co. increased the variety of the merchandise which it sold both at wholesale and retail, adding a variety of "gift shop" and other noncandle related items. It also sold at wholesale a greater variety of candles not of its own manufacture. There has been a large increase in traffic on the street where the Candle Co. is located and in the number of persons stopping at its retail store which is now open seven days a week throughout the year. Although the Company provides forty offstreet parking places, the number is not adequate on certain occasions. Commercial buses bring groups to the store and occasionally the buses park there with their motors running for more than a half hour.

The Realty Trust purchased Parcel 2 in 1962. Thereafter two types of activity were moved out of the building on Parcel 1. The administrative office for the business was moved from the "L" of that building to the second floor of the Schoolhouse building on Parcel 2, and the shipping of merchandise to wholesale customers was moved to the Warehouse building on Parcel 2.

The judge found that the present use being made of Parcel 1 and the building thereon "represents a continuation

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of the use prevailing at the time of adoption of the . . . [zoning] By-Law; that . . . such use was lawful at the time of said adoption; [and] that there is a difference in degree of such use, but not in the quality or character thereof." We agree with those conclusions. There was no error in that part of the order which denied a writ of mandamus as to Parcel 1.

2. Parcel 2. There are two buildings located on this parcel, one being identified as the "Schoolhouse" and the other as the "Warehouse." This parcel was owned by members of a family named Phinney from at least 1912 until 1962 when it was sold to the Realty Trust. On the latter date there was a third small wooden building, commonly called the "Shack" located on the parcel but it has since been torn down and is not involved in this decision. The relevant descriptions and uses of the Schoolhouse and the Warehouse follow.

(a) The Schoolhouse. This is a two-story wooden building resembling a dwelling house. During the 1950's the first floor was used for miscellaneous storage in connection with a business conducted by the Phinney family in the Warehouse; and this floor is still used for miscellaneous storage.

From 1953 to 1959, and perhaps during other years in the 1950's, the second floor was occupied as living quarters by two employees of the Candle Co. These two persons also engaged in what is sometimes referred to as "Home industry" in their living quarters, using their spare time to make costume jewelry, rubber stamps and wooden foot stools and to do printing of business cards and notices on a three inch by five inch press. There is no evidence which would permit a finding of the volume of the production of this "Home industry."

Sometime after the Realty Trust purchased Parcel 2, the second floor of the Schoolhouse was converted into administrative offices of the Candle Co. business, and now contains a variety of office and business equipment. It is no longer used as a residence by anyone. There is no evidence or finding by the judge of any prior use of the

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second floor which can serve as the basis for a claim that the present use is permitted as the continuation of a lawful nonconforming use.

We hold with reference to the Schoolhouse building (a) that the present use of the first floor thereof for miscellaneous storage is lawful as a continuation of a nonconforming use; and (b) that the present use of the second floor thereof for the administrative office of the business conducted by the Candle Co. is not entitled to any protection as a nonconforming use and it violates the zoning by-law of the town.

(b) The Warehouse. The Warehouse is a corrugated metal building of one story, sixty feet by one hundred feet in size, erected in 1912. It was thereafter used by members of the Phinney family for a variety of purposes including the following: the storage and packaging of coal and wood for sale and delivery to customers, the storage of ice boxes (not electric refrigerators) for sale, the storage of coal trucks, oil trucks, pumps and drums used in a retail fuel oil business, the winter storage of fishing and marine paraphernalia, the rental of space for the storage of vehicles, including trucks, and the storage of second-hand furniture. Some aspects of the coal and fuel oil business were conducted in portions of the Warehouse from about 1920 until the Phinney family sold this business in 1959. The furniture storage occurred in about 1960 and lasted for about two years. The storage of ice boxes occurred between 1930 and 1950. The storage of fishing gear occurred during the winters from about 1938 or 1939 until 1959. The evidence does not permit a finding of more exact dates for the several uses of the Warehouse than those given above. Neither does it permit more detailed findings of the extent to which the Warehouse was used for the several purposes described above or the areas or parts of that building used therefor.

After the Warehouse was purchased by the Realty Trust in 1962, it was used increasingly by the Candle Co. as a place for receiving, storing, packaging and shipping

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items involved in the wholesale aspect of its business. The Candle Co. in effect moved that part of its total business operations from its former location in the building on Parcel 1 to the Warehouse building on Parcel 2. To adapt the Warehouse for this move, a new floor, two toilets, heating and lighting equipment, shelving, bins and shipping doors were installed, and later the building was also insulated and sheathed.

The Candle Co.'s gross sales for the year 1960 were \$111,027, and they increased each year thereafter. Its use of the Warehouse after 1962 permitted the expansion of its wholesale operations. At the time of trial of this case in 1968 the Candle Co. had fifty-two employees. Its gross sales for 1967 amounted to \$569,512, consisting of \$57,740 received from sales "made on the premises," and \$511,772 received from sales "made off the premises." All of the merchandise sold "off the premises" was processed in the Warehouse. This included the receiving, sorting, checking, placing in stock or taking from stock, counting, wrapping, packaging, labeling, boxing and addressing of merchandise for shipment to about 4,000 to 5,000 customers throughout the country. The merchandise was delivered to and shipped from the Warehouse principally by trucks or trailer trucks. In 1968 an average of three or four trucks or trailer trucks drove to and from the premises each day for this purpose. No manufacturing or retail sales operations have been conducted at the Warehouse.

The judge found and ruled "that the current use of . . . [the Warehouse] is different in quality and character from that use prevailing before 1957, the difference being that what was a warehouse and distribution facility used for the purpose of serving customers within physical reach of one day delivery by truck is now such a facility for serving customers nationwide." We reach the same result but not for the sole reason stated by the judge.

We hold that the present use of the Warehouse is barred as an alleged nonconforming use when tested by

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the standards suggested by our opinion in *Bridgewater v. Chuckran*, 351 Mass. 20 , 23. The first test is whether the present use reflects the nature and use prevailing when the zoning by-law took effect. We hold that it does not. The second test is whether there is a difference in the quality or character, as well as the degree, of the present use. We hold that there is. The third test is whether the current use is different in kind in its effect on the neighborhood. There is no question that the combined use of the two parcels and the three buildings for the conduct of a single business enterprise is different in kind in its effect on the neighborhood by reason of the increased traffic. However, it is difficult to determine to what extent this is attributable to the use of Parcel 2, except for the effect of the truck and trailer-truck deliveries and shipments.

Our decision that the present use of the Warehouse is not a protected nonconforming use is based on a consideration of the combined effect of all of the differences between that use and the use which existed at the time of the 1956 amendment to the zoning by-law, and it is not limited to the narrow ground stated by the judge, viz., that the area to which merchandise is distributed from the Warehouse is now much larger than that serviced in 1956. The Warehouse building which formerly housed a rather dormant operation involving primarily what might be termed "dead" storage has now become a veritable beehive of activity essential to the operation of the Candle Co.'s wholesale business described above. What the Phinney family did in the Warehouse prior to the time the property became classified for residential purposes by the zoning by-law cannot and does not authorize or protect the use now being made of that building by the Candle Co. Of the many cases previously decided by this court on this subject and which are listed above, those involving facts which more nearly resemble those of the present case are *Marblehead v. Rosenthal*, 316 Mass. 124 , and *Kreger v. Public Bldgs. Commr. of Newton*, 353 Mass. 622 , but we do not rely solely on these two cases.

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3. Advertising Signs. The permissibility of four signs advertising the business of the Candle Co. was put in issue in the trial in the Superior Court, and the judge made findings and rulings thereon. Two of the signs were located on Parcel 1, and the other two were directional signs maintained on premises other than Parcels 1 and 2. None of the briefs includes any discussion or argument on the issue of the permissibility of the signs. We therefore treat this issue as waived by all parties. S.J.C. Rule 1:13, 351 Mass. 738 .

4. Laches. At the trial in the Superior Court the Realty Trust and the Candle Co. claimed that the petitioners were barred by reason of laches in seeking relief and the judge found against them thereon. While there is an argument against this claim in the brief of the original petitioners, the issue is not argued in the brief of the parties who raised it. They are therefore deemed to have waived it. S.J.C. Rule 1:13, 351 Mass. 738 . In any event, for reasons stated in *McAleer v. Board of Appeals of Barnstable*, 361 Mass. 317 , 322, laches may not be a defence to this type of petition.

5. Modification of Order for Judgment. The judge of the Superior Court entered an order for judgment in effect denying the petition for a writ of mandamus as to Parcel 1 and ordering issuance of the writ as to Parcel 2. On the basis of what we have said above, the only change required in that order is that relief should have been denied as to the first floor of the Schoolhouse building on Parcel 2. Accordingly the order for judgment is to be modified in that respect with the result that as modified it will order as follows:

(a) The petition for a writ of mandamus is denied as to Parcel 1, and as to the first floor of the Schoolhouse building on Parcel 2; and

(b) A writ of mandamus shall issue against the building inspector ordering him to take whatever action is required under Section Q (5) of the zoning by-law or under any other provision of law for the enforcement of the zoning by-law as to the Warehouse building and the second floor

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of the Schoolhouse building, both located on Parcel 2. The order as to these two buildings shall not contain the provision for a stay of the issuance of the writ which was contained in the original order entered in the Superior Court.

So ordered.

FOOTNOTES

[Note 1] As to Parcel 2 the order provided that "issuance of writ to be stayed, however, for such length of time not exceeding ninety days from entry hereof as may be necessary for application to the Zoning Board of Appeals for such relief as such Board may see fit to grant." The order was entered on August 28, 1968. On January 15, 1969, the Realty Trust applied to the Board of Appeals for a permit authorizing them to use Parcel 2 for the purposes which the judge had held were not authorized by the zoning by-law. The board denied the petition on July 8, 1969. On motion of the petitioners the judge, on June 22, 1971, ordered the board's decision incorporated in the exhibits to be filed with this court. There is no appeal from the board's decision before us.

[Note 2] Ordinarily this claim of justification would require a determination of the nature and extent of any lawful nonconforming use in existence when the zoning by-law was first adopted in 1949, but for reasons not entirely clear from the record the judge and most of the parties seem to have concentrated on the situation existing at the time of the comprehensive by-law revision in 1956. The judge stated in his written decision: "It was stated in open court by counsel for the petitioners that no evidence relating to the years before 1957 was offered or claimed to show any violation of Zoning By-laws and, therefore, the Court confines itself to a consideration of the violations, if any, of the Zoning By-laws as adopted and applicable to the whole town after 1956."

[Note 3] This language should be considered subject to the following cautions about the zoning statutes peculiar to Boston which were involved in *Cochran v. Roemer*, *supra*. In *Inspector of Bldgs. of Burlington v. Murphy*, 320 Mass. 207, at 209, we said: "But that case was decided under the zoning statutes applicable to the city of Boston, which have always been more liberal toward nonconforming uses than the general statutes applicable elsewhere." This caution was repeated in *Seekonk v. Anthony*, 339 Mass. 49, 54, and in *Kreger v. Public Bldgs. Commr. of Newton*, 353 Mass. 622, 626.

[Note 4] There are additional cases limiting the extension of nonconforming uses which are frequently cited but which have no application to the present case because they involve removal of loam or gravel for sale, or other earth removal operations. See *Burlington v. Dunn*, 318 Mass. 216; *Billerica v. Quinn*, 320 Mass. 687; *Wayland v. Lee*, 325 Mass. 637. Other cases, frequently cited but not applicable here, hold that the existence of a lawful nonconforming use does not permit the erection of additional buildings for the extension or enlargement of that use. See *Wilbur v. Newton*, 302 Mass. 38, 43; *Inspector of Bldgs. of Burlington v. Murphy*, 320 Mass. 207, 210; *Connors v. Burlington*, 325 Mass. 494; *Planning Bd. of Reading v. Board of Appeals of Reading*, 333 Mass. 657; *Chilson v. Zoning Bd. of Appeal of Attleboro*, 344 Mass. 406; *Garfield v. Board of Appeals of Rockport*, 356

Mass. 37 . See also *Simeone Stone Corp. v. Board of Appeals of Bourne*, 345 Mass. 188 , 192-193.

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BOARD OF SELECTMEN OF BLACKSTONE & another [Note 1] vs. CLAYTON TELLESTONE.

4 Mass. App. Ct. 311

April 15, 1976 - May 17, 1976

Worcester County

Present: HALE, C.J., GOODMAN, & GRANT, JJ.

*Increase in welding
activity & volume @
junkyard
change in character
of non-conforming use*

In a suit in equity under G. L. c. 40A, Section 22, as in effect prior to St. 1975, c. 808, Section 3, by a town to enforce its zoning by-law, it was held that certain increases, after the adoption of the by-law, in nonconforming uses of the defendant's premises antedating its adoption did not constitute improper extensions of such uses, and that the judge was in error in limiting the extent to which such uses could be continued to the "level" existing at the time of adoption of the by-law. [313-316]

BILL IN EQUITY filed in the Superior Court on April 11, 1973.

The suit was heard by Travers, J.

Jacob Oppewal (Oscar J. Ryan with him) for the defendant.

Stephen P. Weitz for the intervener, David Morin.

HALE, C.J. This is an appeal from a final decree of the Superior Court entered on a bill in equity brought by the town of Blackstone (town) to enforce its zoning by-law. G. L. c. 40A, Section 22, as in effect prior to St. 1975, c. 808, Section 3.

The defendant operates various businesses on a three acre lot on Mendon Street in the town. The lot contains a 30' x 50' garage erected in 1963 or 1964 and is located in an area zoned for residential use. Prior to September 12, 1968, the effective date of the town's first zoning by-law, the defendant had used his premises for the storage of school buses, trucks, and snowplows; welding and some

limited metal fabrication; truck repairs; the storage of junk cars; and the sale of used cars. The premises had also been used for the cutting and retail sale of cordwood. Since those activities antedated the town's first zoning by-law, both the by-law and G. L. c. 40A, Section 5 (as in effect prior to St. 1975, c. 808, Section 3), [Note 2] allow the defendant's activities to be continued as nonconforming uses.

After the effective date of the by-law the defendant erected a 12' x 50' corrugated steel "lean-to" along one side of the existing garage as an adjunct to it. That structure was subsequently removed. On September 23, 1972, the defendant obtained a building permit to construct an addition to the garage. While construction was underway the defendant was notified that the selectmen had voted to order the building inspector to revoke the permit. On November 30, 1972, the defendant was informed by the selectmen that he was in violation of the town's zoning by-law and was ordered by them to restore the property to its pre-September 12, 1968, condition. The defendant did not comply with the order; instead, he completed the addition. [Note 3]

On April 11, 1973, the town brought a bill in equity seeking an injunction prohibiting the defendant from conducting business activities on the lot in question not protected as nonconforming uses and an order for the removal of the addition erected in violation of the town's zoning by-law. One David Morin, whose property abuts the lot in question, was allowed to intervene as a party plaintiff.

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After a hearing the trial judge made "Findings, Ruling and Order" and later adopted his findings as a report of material facts. On March 18, 1974, a final decree was entered which ordered the removal of the addition to the garage. The court also enjoined the defendant from conducting upon the premises any business use not allowed by the zoning by-law of the town except for the following activities which he held to be nonconforming uses: the maintenance, repair, and storage of not more than three school buses; the maintenance, repair, and storage of not more than four trucks and snowplows used with them; storage and pumping of gasoline for use in the trucks and buses; conduct of a used car business; conduct of a handyman business (excluding metal fabrication work) within certain hours by not

more than one person; and the storage of junk metal, pieces of machines, parts of trucks and autos. From that decree the defendant appeals. [Note 4]

1. In its final decree the court placed specific limitations on the numbers of buses, trucks and employees which could be stored or employed on the premises. The defendant contends that the court was without authority to limit the volume, quantity or extent of the nonconforming uses to the levels of use before September 12, 1968.

In *Powers v. Building Inspector of Barnstable*, 363 Mass. 648 (1973), the Supreme Judicial Court summarized previous decisions concerning the scope of protection provided by G. L. c. 40A, Section 5. It also set forth a three-part test for determining whether or not a use of property is permissible as a nonconforming use: "(1) Whether the use reflects the `nature and purpose' of the use prevailing when the zoning by-law took effect . . . [citations omitted]. (2) Whether there is a difference in the quality or character, as well as the degree, of use . . . [citations omitted]. (3) Whether the current use is `different in kind in its effect on the neighborhood' . . . [citation omitted]." 363

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Mass. at 653, quoting from *Bridgewater v. Chuckran*, 351 Mass. 20 , 23 (1966).

The judge erred when he failed to apply this three-part test to the facts but instead made a general finding that "the defendant greatly expanded his business at Mendon Street -- both in character, intensity and area." He ruled that "all nonconforming uses which presently exceed in volume, quantity, intensity or extent that which was found to have been carried on up to September 12, 1968, . . . [are] ordered to be reduced and restored to . . . [their] previous level."

We must now apply the three-part test to the facts found by the trial judge in this case. See *Powers v. Building Inspector of Barnstable*, 363 Mass. at 662-663; *First Crestwood Corp. v. Building Inspector of Middleton*, 3 Mass. App. Ct. 234 , 236 (1975). We discuss only those nonconforming uses which the parties have argued.

We have before us certain photographic and documentary exhibits as well as the significant portions of the transcript which have been designated by the parties. On

appeal the judge's findings of fact, including inferences of fact based on credibility, will be upheld unless clearly erroneous. Mass.R.Civ.P. 52 (a), 365 Mass. 816 (1974). *Marlow v. New Bedford*, 369 Mass. 501 , 508 (1976). We think that the judge's general finding is without support in the record and thus clearly erroneous. Applying the test enunciated in *Powers* to the facts, we hold that the increases in the defendant's operations did not constitute improper extensions of the existing non-conforming uses.

First, we must consider whether the current uses which are in dispute reflect the nature and purpose of such uses as they obtained when the zoning by-law became effective. The trial judge found that the premises are currently being used for the storage, maintenance and repair of trucks and buses and for the conduct of the defendant's handyman business (including welding). Those are the same uses to which the premises were put prior to the enactment of zoning. There has been no change in the nature or purpose

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of any of those nonconforming uses. See *Building Commr. of Medford v. McGrath*, 312 Mass. 461 , 462 (1942); contrast *First Crestwood Corp. v. Building Inspector of Middleton*, 3 Mass. App. Ct. at 236.

Second, we consider whether there is a difference in the quality or character, as well as in the degree of each of the disputed uses. The judge found an increase in the numbers of trucks and buses on the premises. But his ultimate finding that the defendant "expanded his business . . . in character" does not find support in the record. Both before and after the enactment of the zoning by-law, the defendant had contracts with the town to provide school buses and to plow snow with his own trucks and equipment. The trucks and buses have been stored and maintained on the premises at all material times. This does not represent a change in character of any use. Nor does the increase in welding activity constitute a change in the character of a use, because both before and after the enactment of the zoning by-law, the defendant welded and fabricated on a job-by-job basis. [Note 5] The character of a use does not change solely by reason of an increase in its volume (*Medford v. Marinucci Bros. & Co. Inc.* 344 Mass. 50 , 60 [1962]), or because the hours of operation have expanded (*Powers v. Building Inspector of Barnstable*, 363

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Mass. at 659-660; cf. *McAleer v. Board of Appeals of Barnstable*, 361 Mass. 317 , 323-324 [1972]), or because improved equipment is used (*Wayland v. Lee*, 325 Mass. 637 , 643 [1950]; *Morin v. Board of Appeals of Leominster*, 352 Mass. 620 , 623-624 [1967]; *Berliner v. Feldman*, 363 Mass. 767 , 775 [1973]). [Note 6]

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The third part of the test is whether a present use is different in kind in its effect on the neighborhood. The judge made no finding on the effect of the defendant's activities on the neighborhood. Even assuming, as the intervener suggests, that an increase in use can be so large as to constitute a change in kind (compare *Cullen v. Building Inspector of North Attleborough*, 353 Mass. 671 , 676 [1968]), we conclude on the record before us that the effect of any use on the neighborhood is not different in kind. [Note 7]

2. The defendant also disputes that part of the final decree which ordered the removal of the addition to the garage. He contends that the extreme remedy of a mandatory injunction ordering removal was not appropriate. When a structure has been erected in violation of a zoning ordinance or by-law, relief has normally taken the form of a simple injunction against the continuation of the unlawful use. *Sterling v. Poulin*, 2 Mass. App. Ct. 562 , 564 (1974), and cases cited. However, where it is clear that no portion of the structure in question can be used for any permitted purpose, a court may order its removal. *Id.* at 564. In each case it must be determined whether the structure may legally be used (or modified and legally used) for a use permitted by the applicable ordinance or by-law. *Stow v. Pugsley*, 349 Mass. 329 , 334, 335 (1965). *Sterling v. Poulin*, 2 Mass. App. Ct. at 965.

The trial judge did not address himself to that question in his findings and rulings, and we are unable to conclude from the record before us whether the existing structure (or the structure as modified) may be put to any permitted use. It is doubtful whether the defendant can demonstrate that the structure can be so used, because the addition would either have to be used for residential

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purposes or a special permit would have to be obtained from the board of appeals pursuant to Section 2330 of the zoning by-law, [Note 8] for the extension of a

nonconforming use. It does not appear that the defendant would currently be eligible for a special permit since the floor area of the addition is greater than fifty per cent of the floor area of the garage. However, a question of fact is presented, and it should initially be considered and decided by the trial judge. *Building Inspector of Falmouth v. Haddad*, 369 Mass. 452 , 459-460 (1976). Therefore, the case must be remanded to the Superior Court for further proceedings.

The trial court is to hold such further hearings as it may deem necessary to enable it to determine whether all or some part of the addition may be used for any use or uses permitted by the zoning by-law. If the court determines that it may be so used, it shall allow the defendant a reasonable amount of time within which to apply for and obtain any permits or authorizations necessary to bring the structure (or the structure as modified) into compliance with the zoning by-law. If the defendant fails to proceed, within such reasonable time as may be set by the Superior Court, to file any appropriate applications or to take whatever steps may be necessary to alter the structure pursuant to such permits or authorizations, the court may, after a hearing, order the removal of the addition. *Building Inspector of Falmouth v. Haddad*, 369 Mass. at 459-460.

The final decree is reversed, and the case is remanded to the Superior Court for further proceedings consistent with this opinion. So ordered.

FOOTNOTES

[Note 1] David Morin, intervener.

[Note 2] General Laws c. 40A, Section 5, read in pertinent part:

"Except as provided in section eleven, a zoning ordinance or by-law or any amendment thereof shall not apply to existing buildings or structures, nor to the existing use of any building or structure, or of land to the extent to which it is used at the time of adoption of the ordinance or by-law, but it shall apply to any change of use thereof and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change, and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration, or for its use for the same purpose to a substantially greater extent."

[Note 3] The addition has a floor area equal to that of the garage.

[[Note 4](#)] The defendant's appeal from the denial of his plea in abatement is not argued and hence is considered waived. Mass. R.A.P. 16(a) (4), as amended effective February 24, 1975, 367 Mass. 921 .

[[Note 5](#)] Although the judge found that the defendant's welding activities increased to include, among other things, extensive fabricating of fire escapes and truck bodies, there was no change in the character of the business. He continued to do jobs to order and did not engage in an assembly-line production of fire escapes. In fact, at the time of trial, the welding activity had subsided.

[[Note 6](#)] We also think that the judge's finding that the defendant's business expanded in area is without support in the record. The only evidence with regard to the portion of the three acre lot used for the defendant's business activities prior to 1968 was that there had been enough junk cars accumulated "to fill up the majority of the area."

[[Note 7](#)] The judge found that "[t]he welding work and trucks and equipment present have caused some noise, fumes and dust, and flashing of the arcs." He did not find, however, that such conditions increased in severity, had an effect different in kind upon the neighborhood, or constituted a nuisance. Nor would the evidence have permitted such a finding.

[[Note 8](#)] Section 2330 reads: "Extension -- An increase in the area or extent of the nonconforming use of a structure or land may be made on Special Permit from the Board of Appeals, up to a fifty per cent increase in the non-conforming [sic] floor area or land used at the time the use became nonconforming."

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BUILDING INSPECTOR OF SEEKONK vs. GEORGE D. AMARAL & another.

9 Mass. App. Ct. 869

March 10, 1980

1. The master's findings established that the use made of the specified portion of lot 134 in 1958 was not different in nature, purpose, quality, character, or effect on the neighborhood (see *Selectmen of Blackstone v. Tellestone*, [4 Mass. App. Ct. 311](#), 313-315 [1976]) from the use made of the same portion in 1942, the year Seekonk's first zoning by-law was adopted. As in *Powers v. Building Inspector of Barnstable*, [363 Mass. 648](#), 659-660 (1973), there was "a difference in degree of such use, but not in the quality or character thereof." The use to which that portion was put in 1958 was thus a lawful use under the 1942 by-law. It therefore became a protected nonconforming use under the 1958 by-law, which superseded the earlier by-law and provided that ". . . any lawful use of land . . . which is not an authorized use in the district in which it is located by virtue of the adoption or subsequent amendment of this by-law is a non-conforming use and may be continued." It follows that the judgment is erroneous in limiting the lawful capacity of the defendants' junkyard to "four or five cars," the highest number in process of disassembly in 1942. 2. No other error in the judgment has been shown. The defendants' assertion that their post-1973 use "is of the same nature except that it is quieter and involves no burning" is at variance with the master's findings concerning the expansion of the use, both in terms of area and in terms of commercial activity. 3. The judgment is modified by striking the words "four or five" in the paragraph numbered two, and, as so modified, the judgment is affirmed. No party is to have costs of appeal.

So ordered.

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Overview

These medium resolution images provide a high-quality "basemap" for the Commonwealth. As of March 31, 2000, the entire state is available. The imagery was captured during the spring from 1992 through 1999. View the [Status Map \(/doc/stoqpdf/download\)](#).



[Click to open full size image \(/files/images/massgis/datalayers/ortho.jpg\)](#)

There are five kinds of data associated with this project. The first is the digital black and white orthophotos themselves, available in four resolutions (half-, 1-, 2- and 5-meter). The second is **3 meter contours** ([/info-details/massgis-data-elevation-contours-15000](#)) generated from **Digital Terrain Models (DTMs)** ([/info-details/massgis-data-digital-terrain-model-dtm-from-1990s-aerial-imagery](#)) developed as part of the production process for the orthophotos. The third and fourth are **point elevation coverages** ([/info-details/massgis-data-digital-elevation-points-from-1990s-aerial-imagery](#)) and **breaklines** ([/info-details/massgis-data-digital-orthophoto-topographic-breaklines-from-1990s-aerial-imagery](#)), produced during the 3 meter contour generation process. The fifth is annotation based on the USGS GEONAMES datalayer (see individual description pages for details regarding these four data layers). All of these layers are tiled with the 4000 x 4000 meter NAD83 **Orthophoto Index Grid** ([/info-details/massgis-data-digital-orthophoto-index](#)). The naming convention for these layers as exported includes the ID of the index grid sheet prefixed by an "hp" for contour, a "p" for points, an "l" for breaklines, or an "a" for annotation. The half-meter images use only the ID of the index grid sheet for a file name; the other resolutions use "1_", "2_", and "5_" followed by the index ID. The Grid ID is the first 3 digits of the xy coordinate pair for the lower right corner of each cell.

Production

Stereoscopic aerial photography with 80% forward and 40% side overlap was collected along flight lines running approximately north/south during spring "leaves off" periods at a flying height of 15,000 ft. with a 6 inch mapping camera with forward motion compensation. The scale of the photography is therefore 1:30,000.



OFFERED BY MassGIS (Bureau of Geographic Information)

MassGIS Data: 1990's Aerial Imagery

March 2000

These black and white orthophotos were captured over the course of the 1990's and represent the earliest orthophoto that MassGIS has.

- Downloads
- Overview
- Production
- Maintenance

Downloads

Download these images from an interactive map

(https://maps.massgis.digital.mass.gov/MassMapper/MassMapper.html?bl=MassGIS%20Basemap_100&l=massgis%3AGISDATA.I)

Download a few tiles for multiple years at any location from an interactive map

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Info for developers

(https://tiles.arcgis.com/tiles/hGdibHYSP059RG1h/arcgis/rest/services/BW_Orthos_Tile_Package/MapServer)

Ground control targets were set out prior to the flight and photo recognizable points were substituted for targets that were lost. Horizontal control (referenced to NAD83) conforms to the **Federal Geodetic Control Committee** (https://geodesy.noaa.gov/datasheets/ngs_map/) specifications for Second Order Class 2 GPS surveys. Vertical control (referenced to NAVD88) is within 10 cm. It is tied to second order Class II NGRS benchmarks. In addition the latitude, longitude and ellipsoidal heights of continuously operating GPS reference stations were incorporated into the control adjustment. Orthometric heights were directly measured or estimated from GPS derived ellipsoidal heights.

Aerial Triangulation (AT) block models were developed and tested for accuracy. Adjacent blocks are tied to new ones to insure a "seamless" image. These reports are on file at the State Archives.

DTM data points were collected on analytical stereoplotters at a sufficient density to support generation of 3 meter contours conforming to the National Map Accuracy Standards (+ or - 1.5 meters). Mass points were collected along parallel scan lines 75 meters apart at variable density as a function of the topography and other ground features. Spot elevations at summits and in depressions and breaklines along significant linear features were also collected. Distinctions between "hard" and "soft" breaklines were established and standardized to facilitate the generation of contours.

The photography was scanned at 15 microns and the images were differentially rectified using the DTMs and the AT block models. The histogram for tonal adjustment provides for a range of gray shades from 30 to 225 (out of 256), thus allowing pure black and white to be legible when over plotted on the images. Accuracy of the image was given precedence over tonal consistency at the edges of the images. The final digital images were clipped with the Orthophoto Index Grid, thus the tiles do not overlap. The images meet or exceed the National Map Accuracy Standards to the extent that 90% of the well defined features fall within 0.5mm of their true position on the ground at the nominal output scale of 1:5,000 (2.5m on the ground). Additionally, the maximum displacement of well defined features is less than 5 meters. Each pixel in the digital orthophoto image represents 0.5 meters on the ground.

Each tile contains 8,000 x 8,000 pixels which equates with a file of 64 megabytes (mb). These images have been resampled at 1 (16 mb), 2 (4 mb) and 5 (640 kb) meter resolutions. The half-meter images are stored in .BIL format with associated .HDR files. The resampled images are in tiff format with an associated .tfw world file for georeferencing. The resampling process was performed in the ARC/INFO GRID module.

Maintenance

Please note that MassGIS does not have any old aerial photographs (pre-1992).

The MassDOT Survey Section maintains an [archive of aerial photographs](/info-details/aerial-photographs-archive) (/info-details/aerial-photographs-archive) dating back to the 1930's

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