

RECEIVED  
WORCESTER CITY CLERK

LOT 32

**VARIANCE APPLICATION**

2024 OCT -7 PM 3:24

**CITY OF WORCESTER ZONING BOARD OF APPEALS**  
455 Main Street, Room 404, Worcester, MA 01608  
Phone 508-799-1400 ext. 31440 - Fax 508-799-1406

Fill in information for the Variances (s) you are applying for. Attach additional documentation as necessary.

Address: 37 Greendale Avenue

Parcel ID or MBL: 12-018-03A+4

If more than one structure on the lot, identify relevant structure requiring relief: Existing Single Family

Lot Area		Front Yard Setback		Rear Yard Setback	
Square footage required:	8,000	Setback required:		Setback required:	
Square footage provided:	6,587	Setback provided:		Setback provided:	
Relief requested:	1,413	Relief requested:		Relief requested:	
Frontage		Side Yard Setback		Exterior Side Yard Setback	
Frontage required:	70.00	Setback required:		Setback required:	
Frontage provided:	59.78	Setback provided:		Setback provided:	
Relief requested:	10.22	Relief requested:		Relief requested:	
Off-street Parking		Height		Accessory Structure 5-foot Setback	
Parking required:		Height permitted:		Type of structure:	
Parking provided:		Height provided:		Square footage of structure:	
Relief requested:		Relief requested:		Relief requested:	
Off-street Loading		Other Variances			
Loading required:		Relief requested:			
Loading provided:		Zoning Ordinance Article & Section:			
Relief requested:		Requirement:			
		Provided:			

If you are requesting Variances for more than one structure or lot, provide this sheet for each structure/lot. Only complete the sections pertaining to the Variances (s) you are applying for.



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Phone 508-799-1400 ext. 31440 - Fax 508-799-1406

Fill in information for the Variances (s) you are applying for. Attach additional documentation as necessary.

Address: 37 Greendale Avenue

Parcel ID or MBL: 12-018-03A+4

If more than one structure on the lot, identify relevant structure requiring relief: Existing Single Family

Lot Area		Front Yard Setback		Rear Yard Setback	
Square footage required:	7,000	Setback required:		Setback required:	
Square footage provided:	6,596	Setback provided:		Setback provided:	
Relief requested:	404	Relief requested:		Relief requested:	
Frontage		Side Yard Setback		Exterior Side Yard Setback	
Frontage required:	65.00	Setback required:		Setback required:	
Frontage provided:	59.97	Setback provided:		Setback provided:	
Relief requested:	5.03	Relief requested:		Relief requested:	
Off-street Parking		Height		Accessory Structure 5-foot Setback	
Parking required:		Height permitted:		Type of structure:	
Parking provided:		Height provided:		Square footage of structure:	
Relief requested:		Relief requested:		Relief requested:	
Off-street Loading		Other Variances			
Loading required:		Relief requested:			
Loading provided:		Zoning Ordinance Article & Section:			
Relief requested:		Requirement:			
		Provided:			

If you are requesting Variances for more than one structure or lot, provide this sheet for each structure/lot. Only complete the sections pertaining to the Variances (s) you are applying for.

1. Property Information

a. 37 Greendale Avenue

Address(es) - please list all addresses the subject property is known by

b. 12-018-03A+4

Parcel ID or Map-Block-Lot (MBL) Number

c. Worcester District Registry of Deeds, Book 68573 Page 84

Current Owner(s) Recorded Deed/Title Reference(s)

d. RL-7

Zoning District and all Zoning Overlay Districts (if any)

e. Existing single family dwelling with a detached two car garage.

Describe what is presently located on the property (Use as much detail as possible including all uses and square footage of each use):

f. Existing structure has 3 bedrooms; New structure 6 bedrooms in total.

If residential, describe how many bedrooms are pre-existing and proposed

2. Applicant Information

a. Ihor Lukasevych

Name(s)

b. 419 Burncoat Street, Worcester, MA 01606

Mailing Address(es)


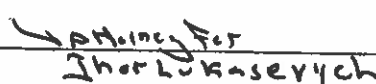
c. c/o djo@oneilbarrister.com; (508) 755-5655

Email and Phone Number(s)

d. Owner

Interest in Property (e.g., Lessee, Purchaser, etc.)

I certify that I am requesting the Worcester Zoning Board of Appeals to grant the Variance as described below

 (Signature)   
  Attorney for Ihor Lukasevych

3. Owner of Record Information (if different from Applicant)


a. \_\_\_\_\_  
Name(s)

b. \_\_\_\_\_  
Mailing Address(es)

c. \_\_\_\_\_  
Email and Phone Number

4. Representative Information

a. Donald J. O'Neil  
Name(s)


b.   
Signature(s)

c. 688 Pleasant Street, Worcester, MA 01602  
Mailing Address(es)

d. djo@oneilbarrister.com; (508) 755-5655  
Email and Phone Number

e. Lawyer  
Relation to Project (Architect/Attorney/Engineer/Contractor, etc.)

5. Owner Authorization

Authorization I,  JAMES J. HOR, Owner of Record of the property listed with the  
Assessing Division of the City of Worcester, Massachusetts as Map 12 Block 018 Lot(s) 03A+4, do hereby  
authorize Donald J. O'Neil to file this application with the Division of Planning &  
Regulatory Services of the City of Worcester on this the 30th day of September, 2024.

6. Proposal Description

a. Re-subdivide lot to create two stand alone lots and build a 2 family dwelling on the extra lot.  
The applicant seeks to (Describe what you want to do on the property in as much detail as possible)

b. Unknown.  
Are you aware if this property has been previously granted approvals from any City Board or Commission? If so, please list (Provide dates of previous approvals, book and page numbers and/or certificate numbers of any recorded decisions and/or recorded/registered land. Also, please provide copies of previous recorded decisions)

d. No.  
Have you applied for or are you aware if other applicants have applied for a Building Permit for this site and been refused for non-compliance with the Zoning Ordinance (e.g., a cease-and-desist order has been issued)?

e. Applicant seeks to re-establish lot lines from 1874 plan of area.  
List any additional information relevant to the Variance (s)

## VARIANCE - FINDINGS OF FACT

In the spaces below, please explain how the adverse effects of the proposed use will not outweigh its beneficial impacts to the City with respect to each of the following considerations per Article II, Section 6(A)(3) of the Zoning Ordinance. *Attach additional supporting documentation as necessary.*

1. Describe how a literal enforcement of the provisions of the City of Worcester Zoning Ordinance would involve a substantial hardship, financial or otherwise, to the petitioner or appellant:

A literal enforcement of the provisions of the Zoning Ordinance would deny the Applicant the ability to utilize excess area to create additional housing in keeping with the original subdivision plan developed for the neighborhood which results in the imposition of a financial hardship for the owner in that he is being denied the right to use the property to its fullest potential.

2. Describe how the hardship is owing to circumstances relating to the soil conditions, shape, and/or topography of the land or structures and how the hardship especially affects said land or structures, but does not affect generally the zoning district in which it is located:

The existing dwelling on the lot is situated in a manner which leaves the second lot under utilized and is being used for garage purposes only notwithstanding the fact that similar sized lots in the surround area support single and two family dwellings. The premises are atypical in this respect in that most of the other lots in the surrounding area have already been developed and the use of same is grandfathered.

3. Describe how desirable relief may be granted without detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the City of Worcester Zoning Ordinance:

The proposed residential use is an allowed use and the lots have adequate area and frontage for the use proposed. The house plans submitted for the new building are consistent in scale with the surrounding neighborhood and comply with applicable set backs. In addition the applicant proposes to provide required off-street parking for both lots to minimize any adverse impacts on existing parking utilization patterns. The plan will create additional housing for City residents.

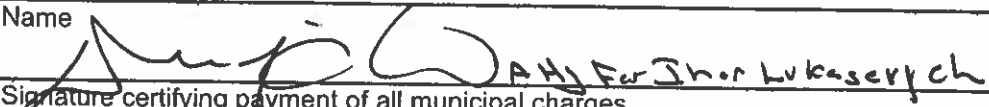
4. Describe how the dimensional variance as it relates to floor space, bulk, number of occupants, or other relevant measures, if granted, shall be no greater than the minimum necessary to provide relief from the statutory hardship:

The relief requested is the minimum necessary to divide the property into two lots and allow the construction of a two family dwelling on the extra lot created through the demolition of the existing garage on the premises. The Applicant has complied with building setback requirements in the placement of the new structure to avoid to the greatest extent possible the need for additional relief from current requirements.

**TAX CERTIFICATION**

This certification must be completed by all applicants and owners of the property, certifying payment of all local taxes, fees, assessments, betterments, or any other municipal charges of any kind. Failure to include a completed certification shall result in the application being deemed incomplete.

**If a Single Owner or Proprietorship:**

- a. Ihor Lukasevych  
Name
- b.   
Signature certifying payment of all municipal charges
- c. 419 Burncoat Street, Worcester, MA 01606  
Mailing Address
- d. c/o djo@oneilbarrister.com; (508) 755-5655  
Email and Phone Number

**If a Partnership or Multiple Owners:**

- e. \_\_\_\_\_  
Names
- f. \_\_\_\_\_  
Signatures certifying payment of all municipal charges
- g. \_\_\_\_\_  
Mailing Address
- h. \_\_\_\_\_  
Email and Phone Number

**Applicant, if different from owner:**

- i. \_\_\_\_\_  
Printed Name & Signature of Applicant, certifying payment of all municipal charges

**If a Corporation or Trust:**

- j. \_\_\_\_\_  
Full Legal Name
- k. \_\_\_\_\_  
State of Incorporation
- \_\_\_\_\_   
Principal Place of Business
- l. \_\_\_\_\_  
Mailing Address or Place of Business in Massachusetts
- m. \_\_\_\_\_  
Printed Name & Signature of Owner or Trustee, certifying payment of all municipal charges
- n. \_\_\_\_\_  
Printed Name & Signature of Owner or Trustee, certifying payment of all municipal charges
- o. \_\_\_\_\_  
Printed Name & Signature of Owner or Trustee, certifying payment of all municipal charges
- p. \_\_\_\_\_  
Printed Name & Signature of Owner or Trustee, certifying payment of all municipal charges



### Certified Abutters List

A list of 'parties in interest' shall be attached to the application form and shall include the names and addresses. All such names and addresses shall be obtained from the most recent applicable tax list maintained by the City's Assessing Department. The Assessing Department certifies the list of names and addresses.

Total Count: 65

Parcel Address: 37 GREENDALE AVE  
 Assessor's Map-Block-Lot(s): 12-018-03A+4  
 Owner: LUKASEVYCH,IHOR  
 Owner Mailing: 419 BURNCOAT ST  
WORCESTER, MA 01606  
 Petitioner (if other than owner): DONALD J ONEIL  
 Petitioner Mailing Address: 688 PLEASANT ST  
WORCESTER, MA 01602  
 Petitioner Phone: 5087555655

Planning: \_\_\_\_\_ Zoning: X License Commission: \_\_\_\_\_ Conservation Commission: \_\_\_\_\_  
 Historical: \_\_\_\_\_ Cannabis: \_\_\_\_\_ Other: \_\_\_\_\_

DEDEK,MICHAEL J + GARNER,AMY J	12-018-00018	0063 AIRLIE ST	WORCESTER, MA 01606
POWELL,MONICK Z + CHRISTOPHER	12-018-00021	0096 LEEDS ST	WORCESTER, MA 01606
LAJOIE,KATHLEEN A	12-019-0014A	0047 GREENDALE AVE	WORCESTER, MA 01606-2229

The City of Worcester  
Administration & Finance

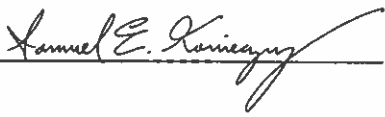
HASTINGS,DIANE K	12-017-00038	0076 FRANCIS ST	WORCESTER, MA 01606
TEARE,ALMAZ	12-017-19+20	0068 FRANCIS ST	WORCESTER, MA 01606-3120
ALMEIDA,EDSON DA COSTA + NAIARA VIA	12-017-00037	0012 LASALLETTE RD	BILLERICA, MA 01821
NUBUOR,ROLAND A	12-017-00018	0060 FRANCIS ST	WORCESTER, MA 01606
GERBER,ROBERT J JR + MICHELLE	12-017-00034	0054 FRANCIS ST	WORCESTER, MA 01606-3120
KRAVITZ,DANIEL TRUSTEE	12-017-00017	0050 FRANCIS ST	WORCESTER, MA 01606
YARL LLC	12-017-01-38	306 E 51ST ST	NEW YORK, NY 10022
PREVILON,FRITZ G + MICHELLE M	12-017-01-40	0040 FRANCIS ST	WORCESTER, MA 01606
KIRIMIRE,BEATRICE + GATHAGE,SIMON	12-017-01-44	0044 FRANCIS ST UNIT 44	WORCESTER, MA 01606
HUNTER,ANGELA J	12-017-01-42	0042 FRANCIS ST	WORCESTER, MA 01606-3120
CITY OF WORCESTER SCHOOL DEPT	12-013-00006	20 IRVING ST	WORCESTER, MA 01609
ALMEIDA,JOAO C	12-017-00024	0085 FAIRHAVEN RD	WORCESTER, MA 01606-3115
QUINLAN,LIAM	12-017-0023A	0081 FAIRHAVEN RD	WORCESTER, MA 01606
BURBA,KAROLIS + GUSTAVAS	12-017-00023	0075 FAIRHAVEN RD	WORCESTER, MA 01606
TOMEN,GUY ROGER KAJEMBEU TRUSTEE	12-017-00036	0012 TAJ DR	WORCESTER, MA 01605
DRISCOLL,MARGARET +	12-017-00022	0047 DEERFIELD AVE	WESTWOOD, MA 02090
DEROSIER,ALAN R	12-017-00042	0065 FAIRHAVEN RD	WORCESTER, MA 01606-3115
HERNANDEZ,JEFF + ROSANA	12-017-00041	0061 FAIRHAVEN RD	WORCESTER, MA 01606
INCUTTO,ANN MARIE	12-017-00043	0080 FAIRHAVEN RD	WORCESTER, MA 01606-3116
76 FAIRHAVEN LLC	12-017-00032	0055 LINDEN ST	WORCESTER, MA 01609
76 FAIRHAVEN LLC	12-017-00031	0055 LINDEN ST	WORCESTER, MA 01609
KONTOS,THOMAS C + LUCILLE	12-017-00030	0070 FAIRHAVEN RD	WORCESTER, MA 01606-3116
FERRISS,JOHN ALDEN IV + NOEMI R	12-017-00029	0066 FAIRHAVEN RD	WORCESTER, MA 01606
HERMAN,RICHARD R + JANICE M	12-017-00028	62 FAIRHAVEN RD	WORCESTER, MA 01606
FAIR HAVEN LLC	12-017-00027	0197 PROSPECT ST	SHREWSBURY, MA 01545
SPURGIN,RICHARD HOWLAND + ZOU,LILI	12-017-00026	0054 FAIRHAVEN RD	WORCESTER, MA 01606
BROSNAHAN,LINDA MARY + PAUL DAVID	12-017-00025	00050 FAIRHAVEN RD	WORCESTER, MA 01606
TOPPIN,RICHARD I + LINDA A	12-013-00018	160 WEST BOYLSTON ST	WEST BOYLSTON, MA 01583
ZAVHARIA,PAUL T + AN T TRUSTEES	12-019-00010	0096 FAIRHAVEN RD	WORCESTER, MA 01606
FAUSTINO,FLAVIO SR +	12-019-0036A	0032 CHEYENN RD	WORCESTER, MA 01606
O'DOHERTY,MICHAEL C +	12-017-00033	0086 FAIRHAVEN RD	WORCESTER, MA 01606-3116
SCUDERI,HEIDI J + ANTHONY J	12-019-0018B	046A GREENDALE AVE	WORCESTER, MA 01606-3218
ANABESTANI,HAMID +	12-018-00010	0046 GREENDALE AVENUE	WORCESTER, MA 01606
DOHERTY,FRANCIS JOSEPH III	12-018-19+20	0024 GREENDALE AVE	WORCESTER, MA 01606-2228
COMEAU,PATRICIA J +	12-035-00014	0109 AIRLIE ST	WORCESTER, MA 01606
MONTROSE INC +	12-013-00036	159 CAMBRIDGE ST 3RD FLOOR	ALLSTON, MA 02134
GLADIS,SAMUEL JAMES + BRITTANY	12-018-00001	0045 GREENDALE AVE	WORCESTER, MA 01606
SEALEY,GAIL I(LIFE ESTATE)	12-018-00002	0043 GREENDALE AVE	WORCESTER, MA 01606
CRUZ,ANDY + ELIZABETH	12-018-03+37	0039 GREENDALE AVE	WORCESTER, MA 01606-2229
LUKASEVYCH,IHOR	12-018-03A+4	0419 BURNCOAT ST	WORCESTER, MA 01606
CASEY,MICHAEL P + ELAINE +	12-018-00005	0033 GREENDALE AVE	WORCESTER, MA 01606-2229
MUJJUMBI,DANIEL + SUSAN ANNETTE	12-018-006-1	0029 GREENDALE AVE	WORCESTER, MA 01606
ALLARD,KAREN D	12-018-00038	0027 GREENDALE AVE	WORCESTER, MA 01606-2229



HALVORSEN, MICHELLE ZAROZNY	12-018-00009	10 LEE ST	WEST BOYLSTON, MA 01583
SEALEY, JERRY D	12-018-00011	44A GREENDALE AVE	WORCESTER, MA 01606-2228
GRANN, KRISTOPHER M	12-018-00012	0044 GREENDALE AVE	WORCESTER, MA 01606
GRANN, KRISTOPHER M + NICOLE A.S.	12-018-00013	0042 GREENDALE AVE	WORCESTER, MA 01606
ROGERS-WRIGHT, CYRIL + ELIZABETH	12-018-00014	0040 GREENDALE AVE	WORCESTER, MA 01606
RICH, ERIC A + RYAN, DENISE A	12-018-00028	0036 GREENDALE AVE	WORCESTER, MA 01606
NYSTEDT, LEAH	12-018-00029	0034 GREENDALE AVE	WORCESTER, MA 01606
CANDILORO, ALEXANDER J	12-018-00030	0032 GREENDALE AVE	WORCESTER, MA 01602
FUSSARO, STEPHEN A +	12-018-00031	0030 GREENDALE AVE	WORCESTER, MA 01606-2228
MANCINI, ROBERT P + EVELYN W	12-018-00016	0378 PLANTATION ST	WORCESTER, MA 01605
SAWYER, MARILYN A	12-018-00017	26 GREENDALE AVE	WORCESTER, MA 01606
MAS-ODD, SHEIBA I + JEMIMA	12-035-10+13	0105 AIRLIE ST	WORCESTER, MA 01606
HOWARD, CAROLYN D	12-018-0014A	0087 AIRLIE ST	WORCESTER, MA 01606
MCKAY, ELAINE T	12-035-00009	0093 AIRLIE ST	WORCESTER, MA 01606-2216
COPELAND, AMANDA MARGARET	12-018-32+33	0079 AIRLIE ST	WORCESTER, MA 01604
WARDELL, ANDREW B + VIOLA F	12-018-00034	0075 AIRLIE ST	WORCESTER, MA 01606-2216
SPRADLEY, WILLIAM +	12-018-00035	0071 AIRLIE ST	WORCESTER, MA 01606
VANCELETTE, THOMAS M + ZANDRA E	12-018-00036	0067 AIRLIE ST	WORCESTER, MA 01606
CARIBO, MATTHEW	12-018-00006	0031 GREENDALE AVE	WORCESTER, MA 01606

This is to certify that the above is a list of abutters to Assessor's Map-Block-Lot's 12-018-03A+4 as cited above.

Certified by:

  
\_\_\_\_\_

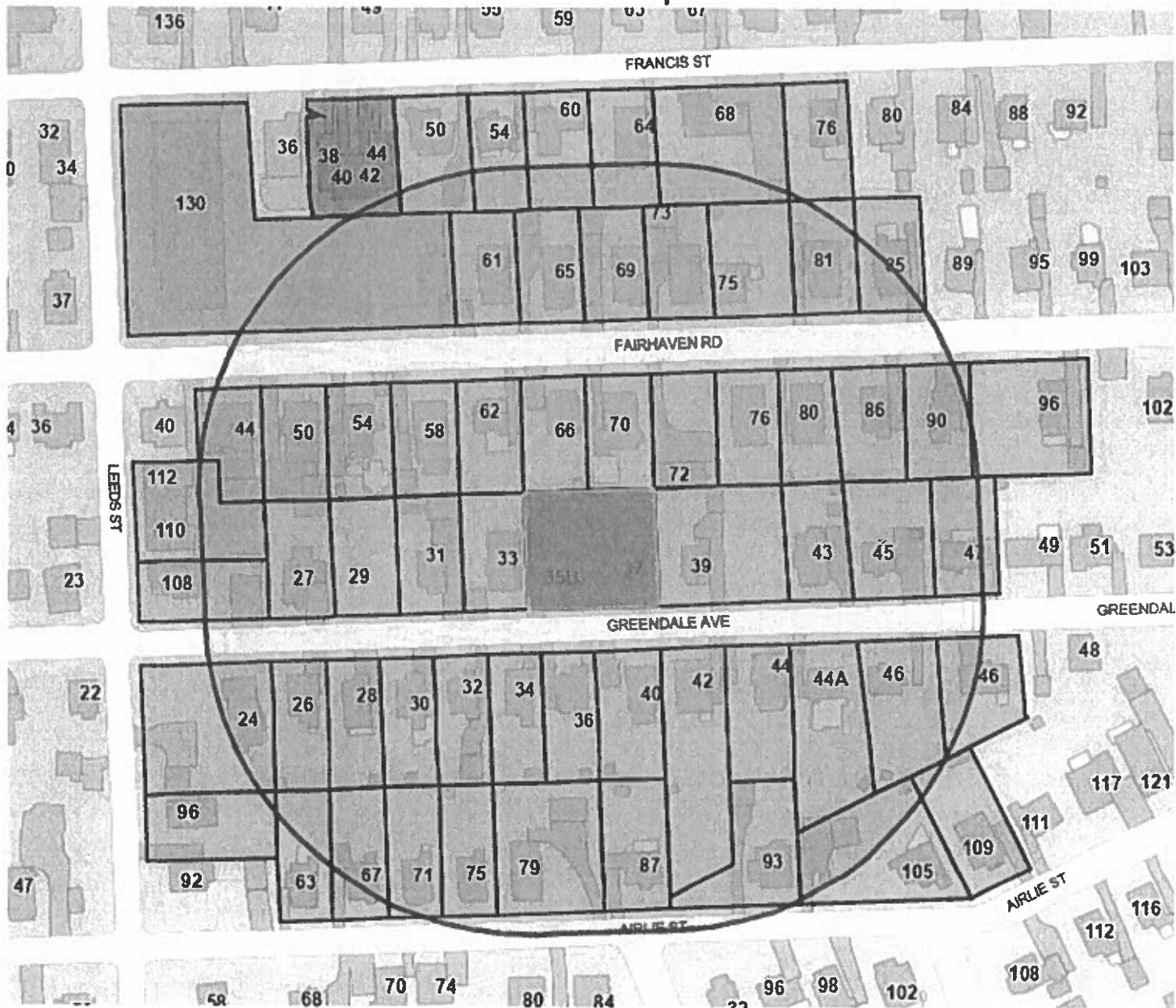
Signature

19/19/2024

Date

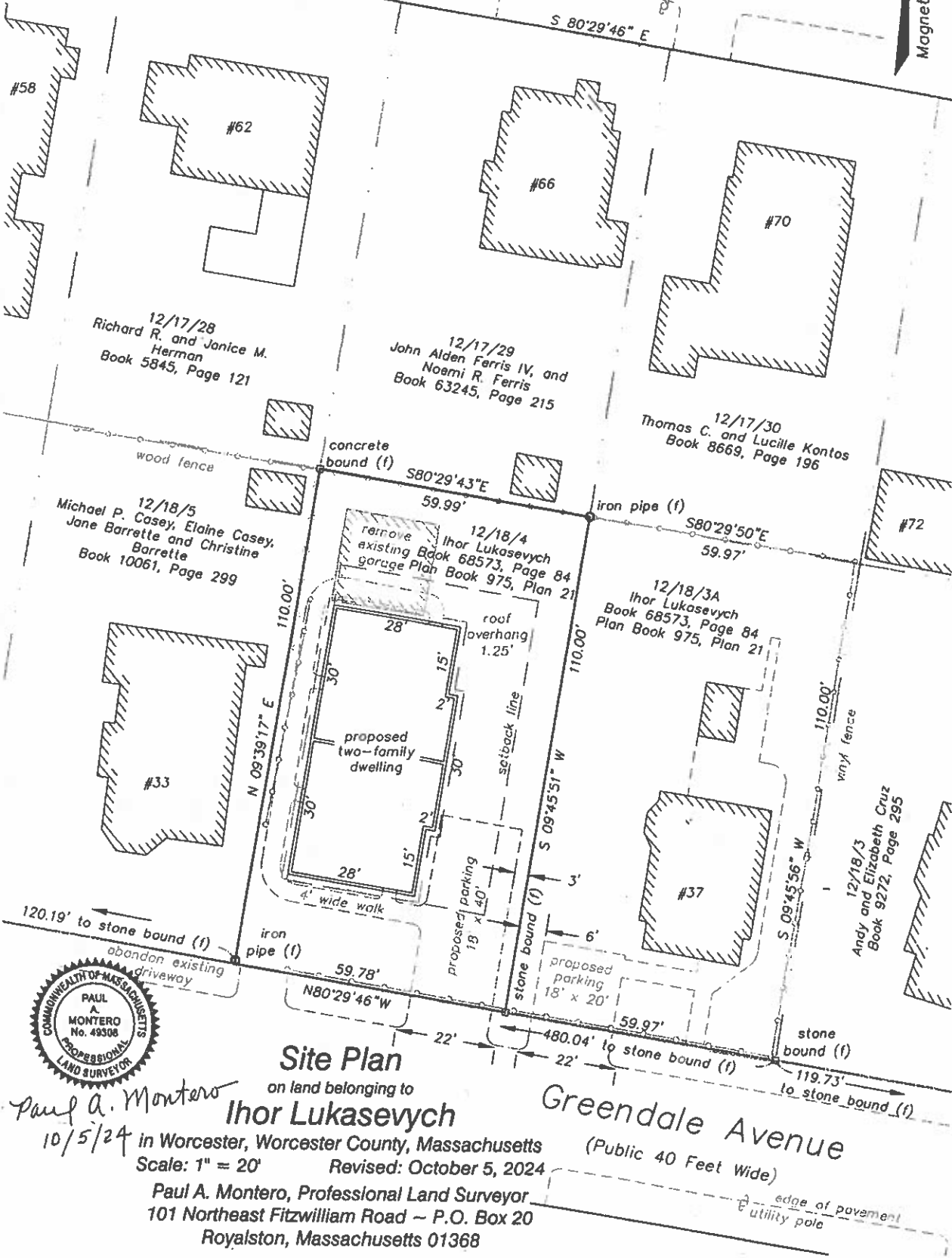


### Abutters Map



Zoning ~ RL-7 (Residential) ~ Amended May 9, 2023						
RL-7	Area (sq. ft.)	Frontage (feet)	Front Yard (feet)	Side Yard (feet)	Rear Yard (feet)	Coverage (percent)
Allowable	7,000	65	20	8	20	50
12/18/4	6,587	59.78	21.4	8.0	28.6	45.3
12/18/3A	6,596	59.97	18.8	9.8	56.5	27.8

Deed Reference: Book 68573, Page 84, belonging to Ihor Lukasevych, and recorded at the Worcester District Registry of Deeds being shown as Lot 32 on a "Plan of Lots at Glendale" drawn in 1874 (Deed Book 934, Page 653) also shown on Plan Book 975, Plan 21 drawn in 2023 recorded at the Worcester District Registry of Deeds.



Paul A. Montero  
10/5/24

**Site Plan**

on land belonging to

**Ihor Lukasevych**

in Worcester, Worcester County, Massachusetts

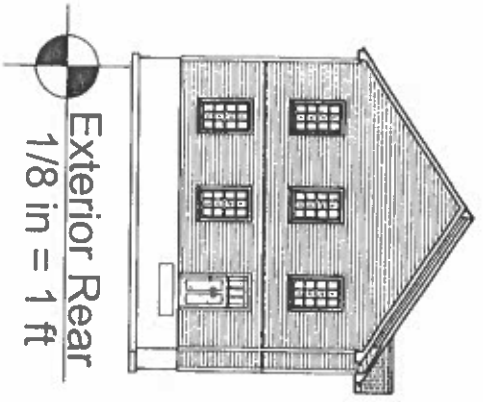
Scale: 1" = 20'

Revised: October 5, 2024

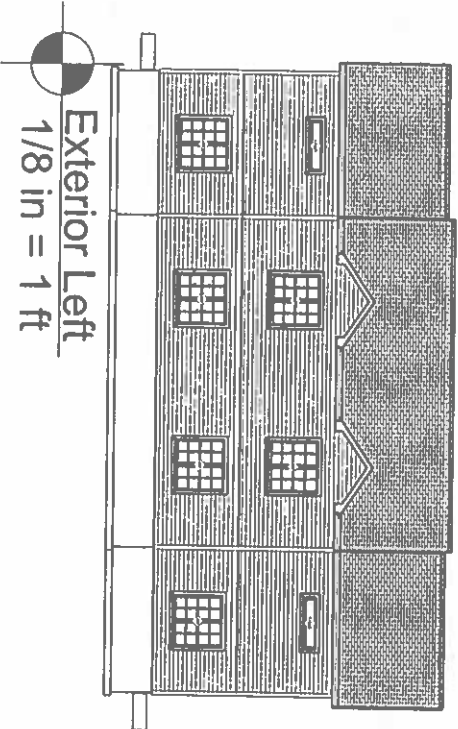
Paul A. Montero, Professional Land Surveyor  
101 Northeast Fitzwilliam Road ~ P.O. Box 20  
Royalston, Massachusetts 01368

**Greendale Avenue**  
(Public 40 Feet Wide)

edge of pavement  
utility pole



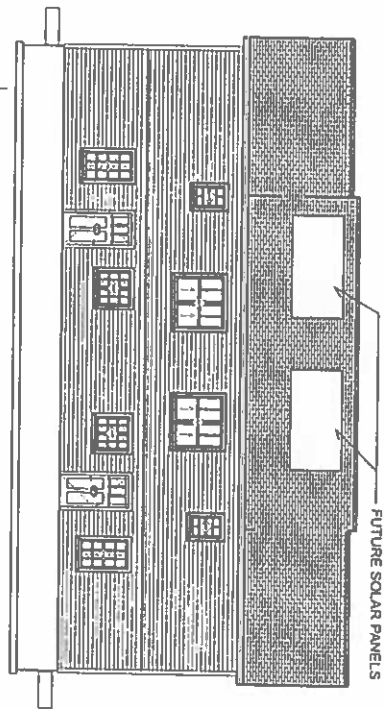
Exterior Rear  
1/8 in = 1 ft



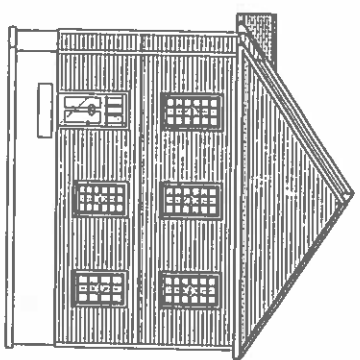
Exterior Left  
1/8 in = 1 ft

LAYOUT PAGE TABLE

LABEL	TITLE
P-1	ELEVATIONS
P-2	PLOT PLAN
P-3	FIRST FLOOR PLAN
P-4	SECOND FLOOR PLAN
P-5	FOUNDATION PLAN
P-6	SECOND FLOOR FRAMING
P-7	CEILING/ROOF FRAMING PLAN
P-8	CROSS SECTION & SCHEDULES
P-9	SECTION 1



Exterior Right  
1/8 in = 1 ft



Exterior Front (Street Side)  
1/8 in = 1 ft

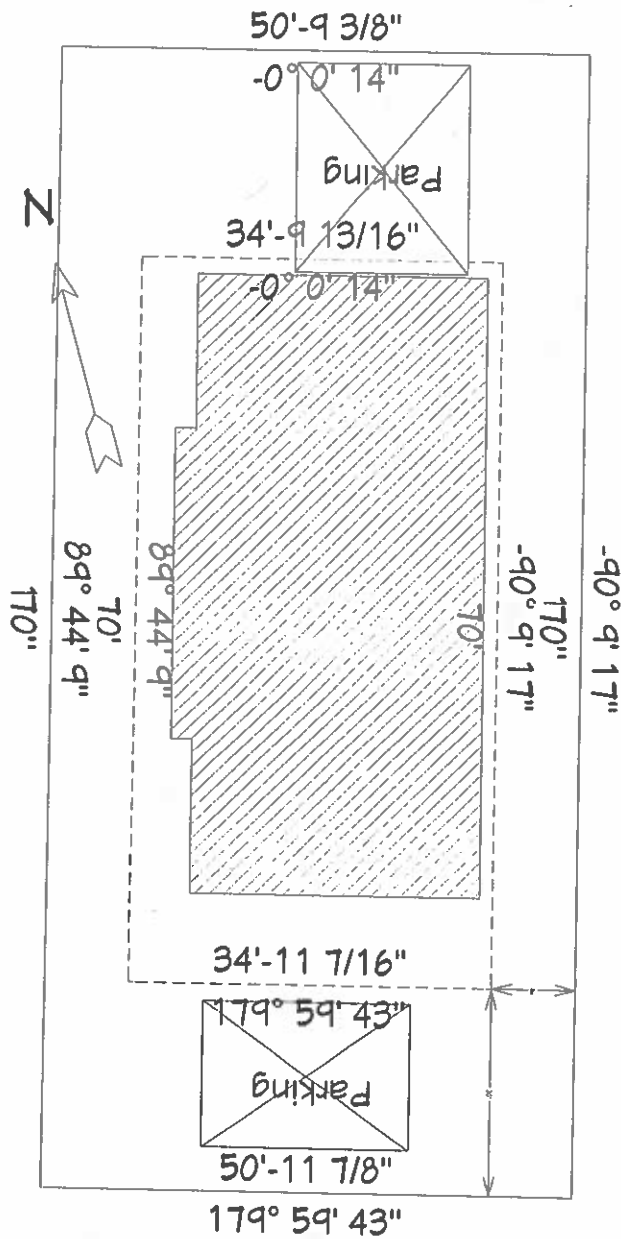
SHEET TITLE  
**Elevations**

PROJECT DESCRIPTION:  
Proposed Two Family -  
35 Greendale Ave Worcester, MA  
Owner: IGOR Construction

DRAWINGS PROVIDED BY:  
Tom Hawkins Building and Design  
505 Plantation St #222, Worcester, MA 01605  
tom@hawkins-builder.com 508-735-7734

DATE: 4/8/2024  
SCALE:  
SHEET: P-1

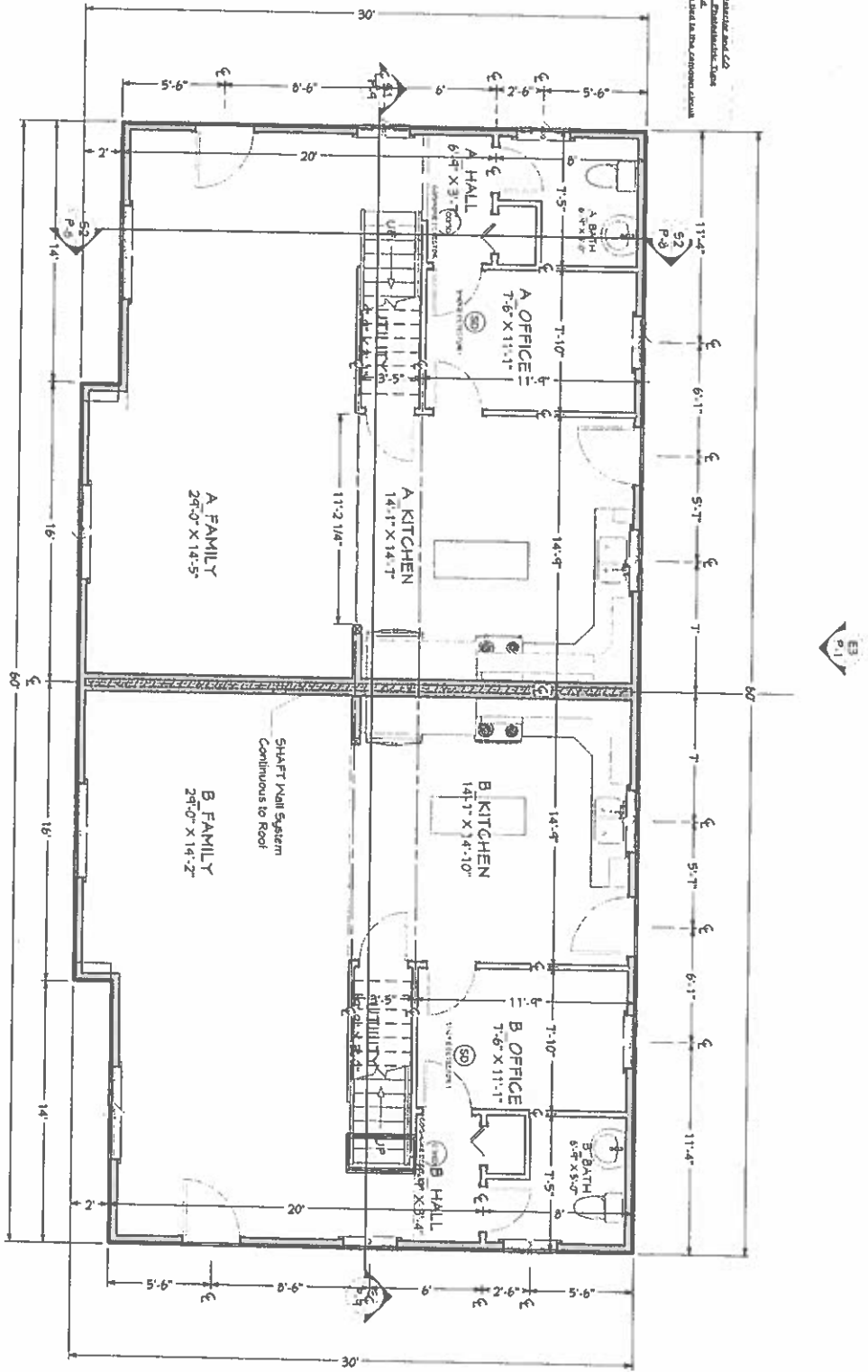
Plot Plan  
 1/8 in = 1 ft



GREENDALE AVE

SHEET: P-2	DATE: 4/8/2024	DRAWINGS PROVIDED BY: Tom Hawkins Building and Design 505 Plantation St #222, Worcester, MA 01605 tom@hawkins-builder.com 508-735-7734	PROJECT DESCRIPTION: Proposed Two Family - 35 Greendale Ave Worcester, MA Owner: IGOR Construction	SHEET TITLE: Plot Plan
	SCALE: 1/8" = 1'			

NOTE: See other drawings and details for dimensions and notes. All dimensions are in feet and inches. Dimensions are shown to the center of the wall unless otherwise noted.

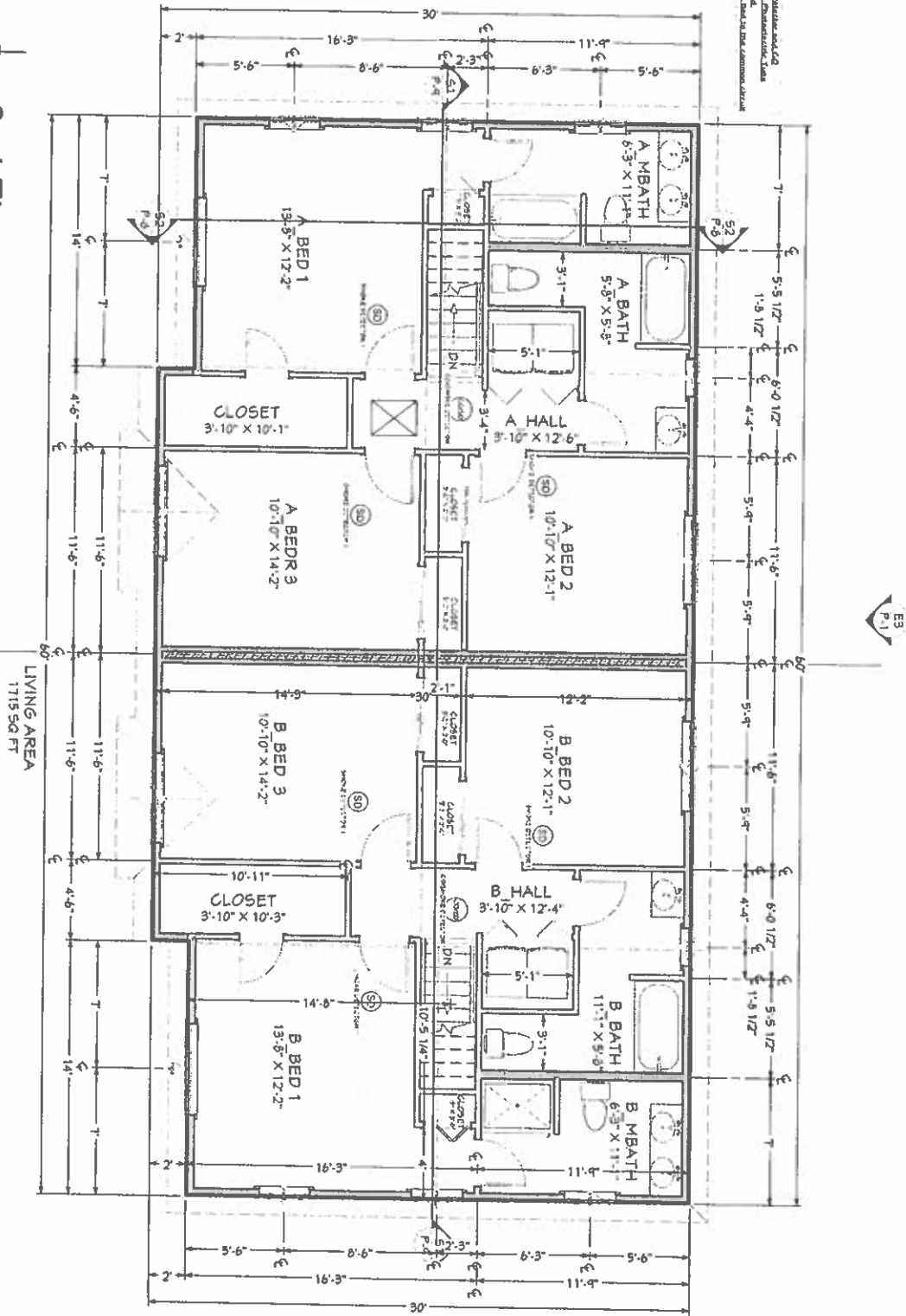


1st Floor  
1/4 in = 1 ft

LIVING AREA  
1744 Sq Ft

SHEET: <b>P-3</b>	DATE: 4/18/2024	DRAWINGS PROVIDED BY: Tom Hawkins Building and Design 505 Plantation St #222, Worcester, MA 01605 tom@hawkins-builder.com 508-735-7734	PROJECT DESCRIPTION: Proposed Two Family - 35 Greendale Ave Worcester, MA Owner: IGOR Construction	SHEET TITLE: <b>First Floor Plan</b>
	SCALE:			

2nd Floor  
1/4 in = 1 ft

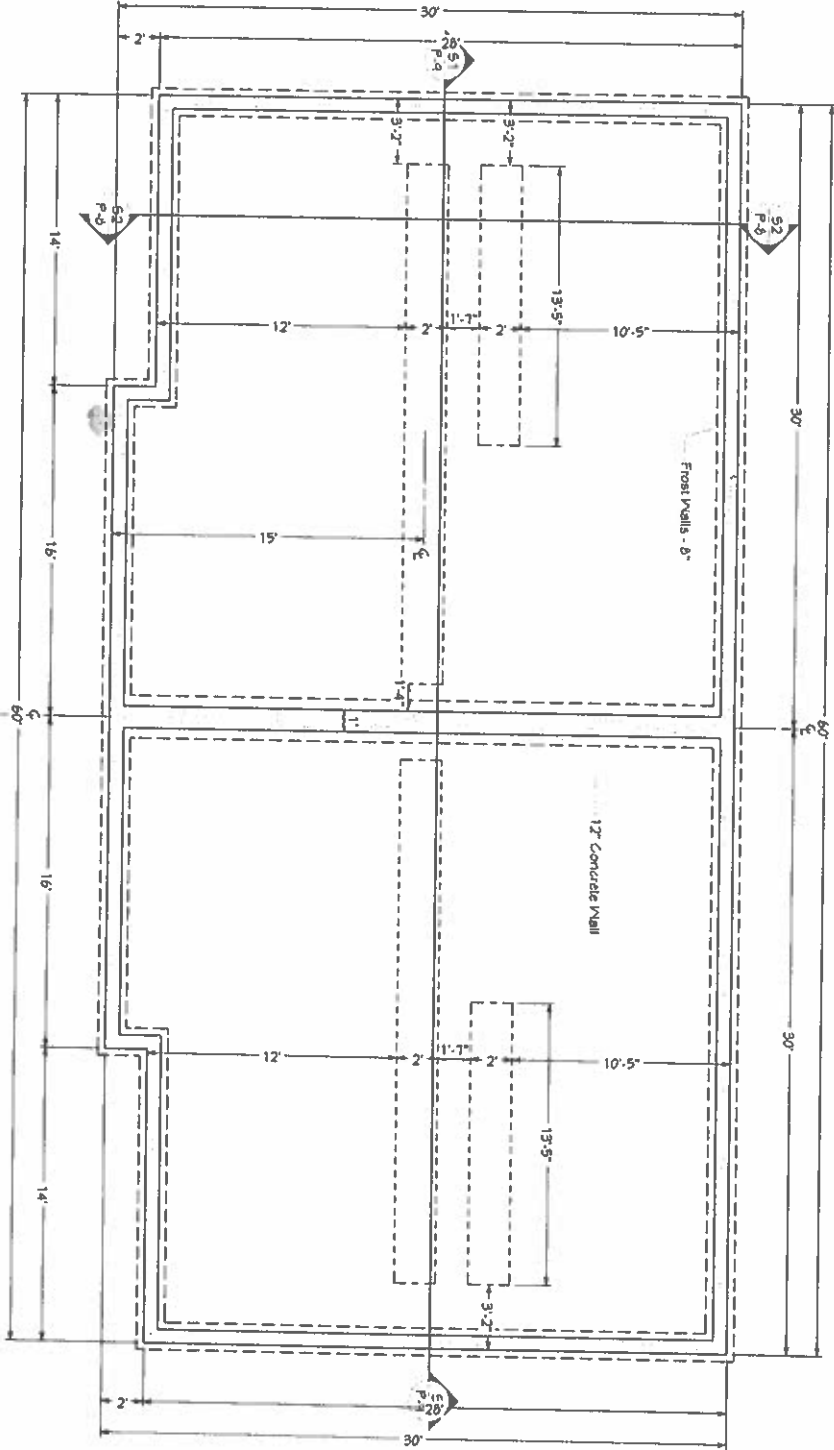


Some dimensions and area of the foundation shall be checked. All dimensions are based on the common exterior walls.



SHEET: <b>P-4</b>	SCALE:	DATE:	DRAWINGS PROVIDED BY:	PROJECT DESCRIPTION:	SHEET TITLE:
	4/10/2024		Tom Hawkins Building and Design 505 Plantation St #222, Worcester, MA 01605 tom@hawkins-builder.com 508-735-7734	Proposed Two Family - 35 Greendale Ave Worcester, MA Owner: IGOR Construction	<b>Second Floor Plan</b>

Foundation Plan  
1/4 in = 1 ft



<b>P-5</b>	SHEET:	SCALE:	DATE: 4/8/2024	DRAWINGS PROVIDED BY: Tom Hawkins Building and Design 505 Plantation St #222, Worcester, MA 01605 tom@hawkins-builder.com 508-735-7734	PROJECT DESCRIPTION: Proposed Two Family - 35 Greendale Ave Worcester, MA Owner: IGOR Construction	SHEET TITLE:	
						Foundation Plan	



ATHORIZATION  
ZONING BOARD OF APPEALS FILING

I, the undersigned, hereby confirm that I have authorized Attorney Donald J. O'Neil of Worcester, Massachusetts to prepare and file an Application for Variance and/or Special Permit, together with any and all supporting documents related thereto, with the Worcester Zoning Board of Appeals for the premises located at 37 Greendale Avenue, Worcester, MA.

Signed this 31<sup>st</sup> day of October, 2024



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Ihor Lukasevych

Text DelSignore Law at 781-686-5924 with your name and what kind of charge you are texting regarding.

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MICHAEL  
DELSIGNORE  
MASSACHUSETTS CRIMINAL & DUI DEFENSE ATTORNEY

## Massachusetts OUI Drugs charge and proving the amount of drugs in your system under Commonwealth v. Shellenberger

May 17, 2020 | by [Michael DelSignore](#)

In a Massachusetts OUI drugs case, the Commonwealth needs to prove the concentration of drugs in your system to be able to prove you were under the influence of a drug like marijuana, heroin or a prescription drug. The Commonwealth can attempt to show you were impaired based on observations, but typically that evidence will not be sufficient to support a conviction.

Often, the Commonwealth will attempt to use medical evidence to prove an OUI drugs charge. However, a Massachusetts OUI Lawyer should object to this evidence. There is a leading case called Commonwealth v. Shellenberger, 64 Mass. App. 70 (2005) that deal with the issue of when a notation of drug use in medical records can come into evidence. In the Shellenberger case, the defendant was charged with motor vehicle homicide by negligent operation. The defendant's medical records contained a reference to amphetamine in her system. The Massachusetts Appeals Court found that the reference to the amphetamine in her system was an error of law. The Appeals Court held that to be properly admitted into evidence there would have to be:

1. reliable evidence as to the amount or concentration of the drug in the defendant's system; and
2. expert testimony indicating that the amount would impair the defendant's ability to drive.

This is an important holding for defense lawyer during an OUI drugs trial. Often, the Commonwealth does not present this type of evidence. If you are charged with OUI drugs, do not assume that your case cannot be won.

Many people believe that because there is a hospital test result that has some indication of drug use that there is not defense to the case. Many hospital results are only screening tests. For example, in a case of OUI alcohol where there is a hospital blood test, that test is only a screening test and should not be considered scientifically reliable by the court.

Here are some tips when facing an OUI drugs charge in Massachusetts. The best thing you can do for yourself is to go to treatment; get records showing that you are clean. Here is why this is very useful. First, it will benefit your life and your relationship with those around you. Second, the Massachusetts Board of Appeals will require three months or negative drugs screens prior to reinstating your license. Third, in some case, getting treatment ahead of time will help us resolve the case either at the clerk magistrate level or in court.

To learn more about current issues in criminal law you can follow Attorney DelSignore on Facebook.

Posted in: [DUI drugs](#)  
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<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title II</b>	EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
<b>Chapter 22C</b>	THE DEPARTMENT OF STATE POLICE
<b>Section 39</b>	CHEMICAL ANALYSIS OF NARCOTIC DRUG OR DRUG SUBSTITUTE, ETC.; CERTIFICATE OF RESULTS; PRIMA FACIE EVIDENCE

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Section 39. (a) The department shall, free of charge, or the University of Massachusetts Medical School shall, under section 36B of chapter 75, make a chemical analysis of any narcotic drug, any synthetic substitute for the same, any preparation containing the same, or any salt or compound thereof, and of any poison, drug, medicine or chemical submitted to it by police authorities, as the department shall approve for this purpose; provided, however, that neither the department nor the medical school shall conduct such analysis unless it is satisfied that the analysis submitted to it is to be used in connection with the enforcement of law.

(b) A certificate by a chemist or analyst or other designated employee of the department or of the University of Massachusetts medical school of the result of the chemist's or analyst's or other designated employee's analysis, signed and sworn to by that chemist or analyst or other

designated employee, shall be prima facie evidence of the composition, quality and, when appropriate, net weight of the substance or any mixture containing the substance.

(c) A signed certificate of drug analysis furnished by an analyst, assistant analyst or other designated employee of the Drug Enforcement Administration of the United States Department of Justice which conforms with the requirements of this section shall be prima facie evidence of the composition, quality and, when appropriate, net weight of the substance or any mixture containing the substance.