

City of Newburyport Zoning Board of Appeals
Application for a SPECIAL PERMIT

Petitioner: Phineas Gay, III and Mindi Poston Gay c/o Lisa Mead of Mead, Talerman & Costa

Mailing Address: 30 Green Street Newburyport, MA 01950

Phone: 978-463-7700

Email: lisa@mtclawyers.com

Property Address: 10 Railroad Street, Newburyport, MA 01950

Map and Lot(s): Map 35 Lot 141

Zoning District: R-3

Book and Page(s): Book 15918 Page 174

Owner(s) Name: David A. Strand, Trustee of Railroad Trust

Mailing Address (if different): Same as property

The applicant is requesting a Special Permit under section(s):

- Special Permit for Use (V.D) – Use # 417B
- Spacing (VI.D)
- In-Law Apartment (XIIA)*
- Bonus Provisions for Multifamily Developments (XVI)
- Personal Wireless Communication Services (XX)
- Wind Energy Conversion Facilities (XXVI)
- Other _____


*Include In-Law Apartment Attachment

Description of request:

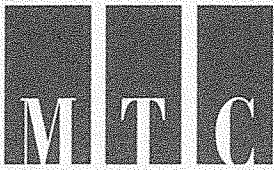
Request to convert existing use of professional/social services office as granted by 1999 use
Variance to single family residential use with home occupation.

Any advice, opinion, or information given by any board member or any other official or employee of the City of Newburyport shall not be binding on the Zoning Board of Appeals. It shall be the responsibility of the petitioner to furnish all supporting documentation with this application. The dated copy of this application received by the City Clerk or Planning Office does not absolve the petitioner from this responsibility. The petitioner shall be responsible for all expenses for the filing, publication, and legal notification. Failure to comply with the application requirements, as cited herein and in the Zoning Board Rules and Regulations may result in a dismissal by the ZBA of this application as incomplete.

Petitioner's and Owner's signature(s):


Mindi Poston Gay





Mead, Talerman & Costa, LLC
Attorneys at Law

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Newburyport, MA 01950
Phone 978.463.7700
Fax 978.463.7747

www.mtclawyers.com

November 14, 2019

Newburyport Zoning Board of Appeals
City Hall
60 Pleasant Street
Newburyport, MA 01950

Re: Special Permit for Use 10 Railroad Street (the "Property")

Dear Chair and Members of the Board:

Reference is made to the above captioned matter. In that connection, my firm represents Phineas Gay, III and Mindi Poston Gay who are the purchasers of the Property (the "Petitioners") in their application for a special permit pursuant to Section V-D of the Newburyport Code of Ordinances (the "Ordinance").

I. Introduction

The Property is located at 10 Railroad Street in the R-3 zoning district. The Petitioner hereby applies for a special permit to allow the change of the existing use of professional/social services office (permitted by prior variance) to Single Family with Home Occupation (Use 417B). Said use is allowed by Special Permit in the R-3 District in accordance with section V-D of the Ordinance. This change of use will not alter the structure or property beyond what has already been allowed by a dimensional variance granted by the Zoning Board of Appeals in 2004.

II Special Permit for Use

An application for a home occupation use carried on in a primary residence as an accessory use must meet the criteria set forth in Section V-E(4) of the Ordinance as well as the Special Permit Criteria of Section X-H(7). Use 417B under Section V-E(4) includes the following criteria:

a. This section shall not be construed to allow uses that are listed in the City of Newburyport's Zoning Code Ordinance and which require appointments or other similar visitations such as lodging homes, bed and breakfast(s), retail uses, offices for medical or dental, barber or beauty shops. Nor shall the section be construed as allowing principal sites for uses that can be considered as manufacturing and or light manufacturing.

The actual home occupation use the Petitioners will be using the property for is their home design business. This type of business will not require appointments or other similar visitations such as the types of businesses listed above. Furthermore, the home design business has no aspects that would make it be considered as manufacturing or light manufacturing.

b. No more than two additional employees not residing in the residential unit may work at any one time on the site.

Millis Office

730 Main Street, Suite 1F
Millis, MA 02054
Phone 508.376.8400

The only employees of the home design business are the Petitioners themselves. They along with their children, intend to reside in the residential part of the structure, on the upper floors.

- c. An [sic] home occupation that is open to the public is prohibited. The zoning board of appeals may allow appointments and other visitation with conditions.

Generally speaking, the Petitioner's home occupation will not be open to the public. The Petitioner's home design business may occasionally involve meetings with clients at the property, but the Petitioners are willing to consider appointment and other visitation conditions this board may assign.

- d. Any and all areas associated with the production, storage, and or conducting in any manner of the home occupation under this section may exceed twenty-five (25) percent of floor area of the primary residence by a special permit, but the maximum percent may not exceed fifty (50) percent.

According to the property record card, the building contains 3,000 square feet of living area. There are three floors with 1,000 square feet. The applicant will use the base floor for their home occupation and the top two floors for their residence. 1,000 out of 3,000 total square feet 33% of the floor area. As a result, the Petitioners meet this criteria.

- e. The use of any show window, display or advertising open to view from outside the lot for the purpose of attracting customers or clients may be allowed, if such approval will not exceed the zoning code requirements for the district in which the signage is proposed.

Petitioners will reuse the existing sign on the side of the structure facing Route One. Said sign complies with the Zoning Ordinance and was permitted via a building permit in 2004. A sample of the sign is shown in the drawings attached.

- f. The home occupation shall not require any exterior addition or alteration to any structure, modification or alteration of the utility services beyond normal capacity needed for a residential structure, or dedicated egress/exit for the home occupation.

As shown in the materials provided, there is no alteration to the structure beyond the normal capacity for a residential structure. Two small windows will be added to the third floor of the structure which will be used for the residence. Also, the changing of the shape of the building façade is also for residential purposes and not for any reasons related to the home occupation¹. Further, the home design business and residential use will likely put less of a strain on utility services than the existing professional office use. The home occupation use is allowed in this district as opposed to the professional office use which exists as a result of a use variance.

- g. The storage of materials, nonresidential waste removal bins and or structures, exterior venting not normally associated with a residential structure, parking areas more extensive than typically developed for a residence are prohibited.

The Petitioner's home design business will not create storage of materials, nonresidential waste removal bins or structures, nor any exterior venting not normally associated with a residential structure. The home design business does not require any storage or additional venting that cannot be accommodated by a residential use. The structure

¹ Please note the existing front façade was added by the current owners in 1999 and is not part of the original building.

and the lot will not be changed. The parking areas will not change from what is existing, but for some landscaping and delineation as shown on the plans. As you can see the Petitioner's proposal shows the western side of the lot, which has been used for parking in the past, including a proposed granite block barrier and Arborvitae trees going into this area.

- h. There shall be no nuisance created by noise, smoke, dust, odor, vibrations, electrical interference, which are discernable from adjoining properties.

As discussed above, the proposed use of the first floor for the Petitioner's home design business is a much less intense use than the existing use of a professional office. There is nothing associated with a home design business that has the potential to create any type of nuisance as described above.

- i. The home occupation must be registered with the building and codes official on the form entitled Home Occupation Use Registration.

The applicant intends to comply with all registration requirements upon the granting of this special permit and their purchase of the property. Prior to beginning their use of the property for home occupation, said use will be registered with the proper official.

- j. All deliveries made by companies and vendors must occur during the hours of 8:00 a.m and 6: 00 p.m., Monday through Saturday.

The Petitioner's home design business will not require frequent deliveries made by companies and vendors. Any deliveries that may occasionally be needed can easily be made within the permissible hours stated above.

- k. The building in which the home occupation is located must meet the minimum dimensional requirements or be construed as pre-existing nonconforming structure as cited in section IX, for the principal residential use.

The current lot and building meet the requirements of the Ordinance as the property was granted a dimensional variance for a residential structure in 2004. The Petitioner's proposal will not change or create any new non-conformities not covered by the variance.

The Applicant must also comply with the general Special Permit criteria under Section X-H(7) of the Ordinance. Section X-H(7) includes the following criteria:

1. The use requested is listed in the table of use regulations or elsewhere in the ordinances [as] requiring a special permit in the district for which application is made or is similar in character to permitted uses in a particular district but is not specifically mentioned.

As noted above, the Property is located in an R-3 zoning district where a home occupation use carried on in a primary residence as an accessory use is allowed by special permit.

2. The requested use is essential and/or desirable to the public convenience or welfare.

The use as a home occupation in a primary residence is allowed by special permit in the R-3 district and therefore, by its very nature, has been determined by the City to be desirable. Compared with the R-1 and R-2 districts, the R-3 district provides for somewhat more dense development, but still recognizes that less tight neighborhood atmosphere. It is also important to contrast this with the current use of the building for professional offices which is

typically not allowed in the R-3 district but for the use variance granted to the current owner in 1999. The change of use to a home occupation is certainly more desirable in this district than its present use as a professional office.

3. The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.

The change of use will not create undue traffic congestion or unduly impair pedestrian safety. The proposed use is a less intense use and will cause less traffic than the current use. As opposed to a professional office where there may be people frequently coming and going, this home occupation use will mostly have only the two Petitioners who will live there entering and exiting the property as its residents. This less intense use will also require less parking. Overall there should be much less traffic in the neighborhood as a result of the change of use and pedestrian safety will be improved as a result.

4. The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the city will be unduly subjected to hazards affecting health, safety or the general welfare.

As previously mentioned, the residential with home occupation use is a less intense use than that of the professional office use that is only allowed in the R-3 District by variance. There will be 3 bedrooms in the renovated residential structure with an estimated water and sewer system usage of 110 gpd per bedroom. There is sufficient capacity in the city systems for both services for this nominal impact. Further, there is no change to the exterior lot or drive and therefore there will be no further impact on the stormwater systems.

5. Any special regulations for the use, set forth in the special permit table are fulfilled.

The special regulations are addressed above and as noted are fulfilled.

6. The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health or welfare.

The new home occupation in a primary residence use is consistent with the integrity and character of the neighborhood. As the board is aware there is a mixture of professional offices and residential uses in the area. The Use of the property as both a residence and home occupation is entirely consistent with the general Railroad Street, Vernon Street, Auburn Street area.

7. The requested use will not, by its addition to a neighborhood, cause an excess of that particular use that could be detrimental to the character of said neighborhood.

As noted above, the home occupation in a primary residence use is consistent in the neighborhood and on Railroad Street particularly. According to the assessor's database, all of the direct abutter's and other houses on Railroad Street are single family. Therefore, the proposed use will not cause an excess of it to an extent that could be detrimental to the neighborhood.

8. The proposed use is in harmony with the purpose and intent of this ordinance.

Once again, the home occupation in a primary residence use is allowed by special permit in the R-3 District. The R-3 district is one of the densest residential districts in the City. Allowing this use where the Petitioner's family will be living at the property and using it as a home office, is in certainly within the purpose and intent of the Ordinance.

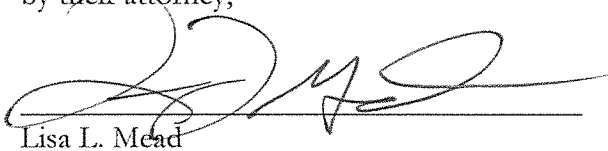
9. The proposed use shall not be conducted in a manner so as to emit any dangerous, noxious, injurious or otherwise objectionable fire, explosion, radioactive or other hazard, noise or vibration, smoke, dust, odor or other form of environmental pollution.

The change of use to a home occupation in a primary residence will not itself create hazardous materials and transmissions. Any work associated with the conversion to this use will be completed in a manner that is not dangerous, noxious or injurious, and it will not emit, noise, vibration, smoke, dust or odor or other form of environmental pollution

III. Conclusion

Wherefore, the Petitioners respectfully request that the Board find that the criteria set forth in in Section V-E(4) Use 417B and Section X-H(7) have been satisfied as set forth above and that a Special Permit for a Single Family with Home Occupation use (Use 417B) shall be granted.

Respectfully submitted,
Phineas Gay, III and Mindi Poston Gay
by their attorney,



A handwritten signature in black ink, appearing to read 'Lisa L. Mead', is written over a horizontal line.

Lisa L. Mead

cc: Client

CITY OF NEWBURYPORT, MA
ZONING DETERMINATION

APR# 2019-082

Name: Phineas and Mindi Poston Gay/Lisa Mead, MTC LLC

Address: 10 Railroad Street Zoning District(s): R3/DCOD

Request: Convert upper floors of existing non conforming structure from professional office use to a single family residence with in home occupation (use 417B) on the lower level. Alter non historic front facade at roof. New sign exceeding allowable size and in R district and 20' max allowable height. Assumed Parking provided-2 per residence, 2 per 417B and 1 per nonresident staff

ZONING BOARD REVIEW REQUIRED

Variance

- Dimensional Controls (VI)
 - Lot Area
 - Lot Frontage
 - Lot Coverage
 - Parking (VII)
 - Modification
- Open Space
- Height
- Lot Width
- Front Yard
- Side Yard
- Rear Yard

Sign Variance

- Signs (VIII)
 - Type
 - Lighting
 - Size
 - Location

Other

Special Permit

- Table of Use Regulations (V.D) #: 417B
- Spacing (VI.D)
- In-Law Apartment (XIIA)
- Bonus for Multifamily Developments (XVI)
- Personal Wireless Communication Services (XX)
- Demolition Control Overlay District (XXVIII)*
- Wind Energy Conversion Facilities (XXVI)
- Other _____

Special Permit for Non-Conformities

- Extension or Alteration (IX.B.2)
 - Parking
 - Upward Extension
 - Open Space
 - Height
 - Lot Area
 - Use
 - Rear Yard
 - Lot Coverage
 - Side Yard
 - Lot Frontage
 - Front Yard
- Over 500 sf. increase (IX.B.3.c)
- Plum Island Overlay District (XXI-G-3)
 - FAR
 - Lot Coverage
 - Height
 - Setbacks
 - Open Space

PLANNING BOARD REVIEW REQUIRED

Special Permit

- Table of Use Regulations (V-D) # _____
- One residential structure per lot (VI.C)
- Open Space Residential Development (XIV)
- Water Resource Protection District (XIX)
- Federal Street Overlay District (XXII)
- Courts and Lanes (XXIII)
- Waterfront West Overlay District (XXIV)
- Towle Complex Redev. Overlay District (XXV)
- Downtown Overlay District (XXVII)*
- Other _____

Special Permit for Non-Conformities

- Extension or Alteration (IX.B.2)
 - Parking
 - Upward Extension
 - Open Space
 - Height
 - Lot Area
 - Use
 - Rear Yard
 - Lot Coverage
 - Side Yard
 - Lot Frontage
 - Front Yard
- Over 500 sf. increase (IX.B.3.c)

Smart Growth District (XXIX)

- Plan Approval

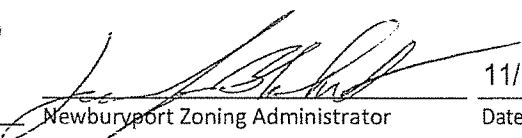
Site Plan Review (XV)

- Major
- Minor

HISTORICAL COMMISSION REVIEW REQUIRED

- Demo. Delay
- *Advisory Review

CONSERVATION COMMISSION REVIEW REQUIRED

_____  11/14/2019
Newburyport Zoning Administrator Date

10 RAILROAD ST

Location 10 RAILROAD ST **MBLU** 35/ 141/ //

Owner STRAND DAVID A TRUSTEE **Assessment** \$344,600

PID 2087 **Building Count** 1

Current Value

Assessment			
Valuation Year	Improvements	Land	Total
2019	\$150,600	\$194,000	\$344,600

Owner of Record

Owner STRAND DAVID A TRUSTEE **Sale Price** \$176,000

Co-Owner RAILROAD TRUST **Certificate**

Address 10 RAILROAD ST **Book & Page** 15918/0174

NEWBURYPORT, MA 01950 **Sale Date** 09/02/1999

Instrument 10

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
STRAND DAVID A TRUSTEE	\$176,000		15918/0174	10	09/02/1999
ARAN TRADING LTD	\$155,000		15406/0323	10	01/15/1999
FLANDERS BENJAMIN W JR	\$1		13032/0213	1F	05/25/1995
FLANDERS BENJAMIN W. Jr.	\$110,000		12978/0555	00	04/07/1995
GALLAGHER SUSANNE F	\$1		09993/0396	1A	05/10/1989

Building Information

Building 1 : Section 1

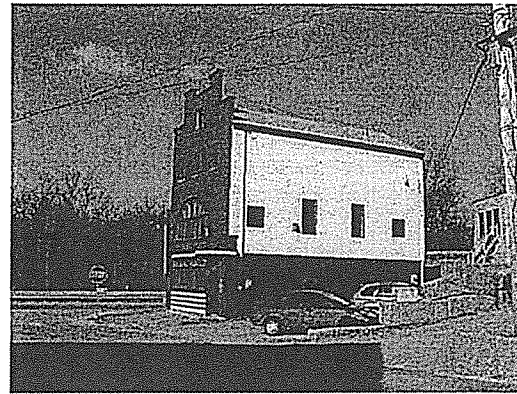
Year Built: 1900

Living Area: 3,000

Building Photo

Building Attributes	
Field	Description
STYLE	Office Bldg
MODEL	Commercial
Stories:	3
Occupancy	1
Exterior Wall 1	Vinyl Siding
Exterior Wall 2	Brick Veneer

Roof Structure	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Minim/Masonry
Interior Wall 2	Drywall/Sheet
Interior Floor 1	Hardwood
Interior Floor 2	Concr-Finished
Heating Fuel	Gas
Heating Type	Forced Air-Duc
AC Type	Central
Bldg Use	OFFICE BLD
Total Rooms	
Total Bedrms	00
Total Baths	3
1st Floor Use:	3400
Heat/AC	HEAT/AC PKGS
Frame Type	WOOD FRAME
Baths/Plumbing	AVERAGE
Ceiling/Wall	CEIL & WALLS
Rooms/Prtns	AVERAGE
Wall Height	10
% Comn Wall	0



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Building Layout



(<http://images.vgsi.com/photos/NewburyportMAPphotos//Sketches>)

Building Sub-Areas (sq ft)		Legend	
Code	Description	Gross Area	Living Area
FUS	Upper Story, Finished	2,000	2,000
BAS	First Floor	1,000	1,000
WDK	Deck, Wood	36	0
		3,036	3,000

< _____ >

Extra Features

Extra Features	Legend
No Data for Extra Features	

Land

Land Use

Use Code 3400
Description OFFICE BLD

Land Line Valuation

Size (Acres) 0.10
Depth 0
Assessed Value \$194,000

Outbuildings

Outbuildings	<u>Legend</u>
No Data for Outbuildings	

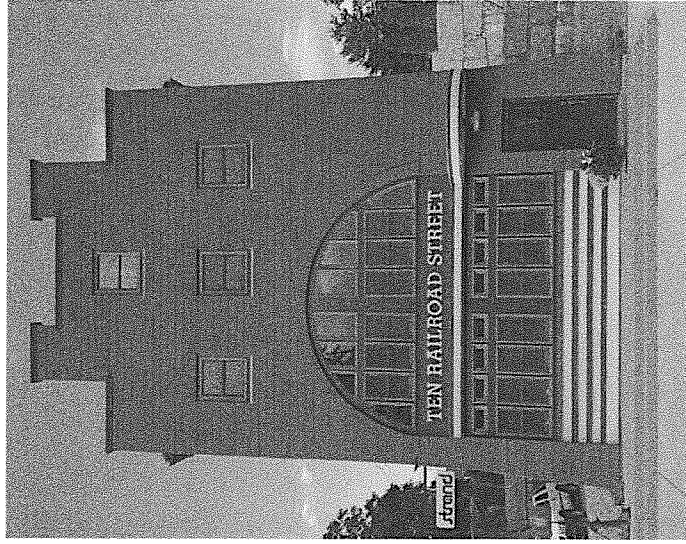
Valuation History

Assessment			
Valuation Year	Improvements	Land	Total
2018	\$145,900	\$184,800	\$330,700

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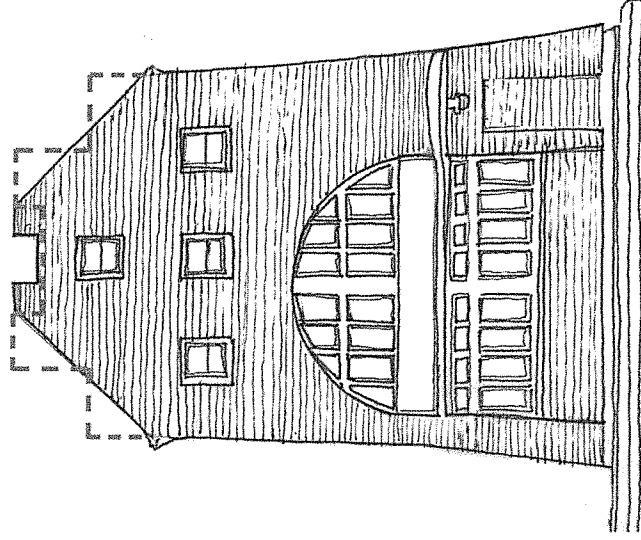
Before

Existing front facade (not consistent with local architecture)

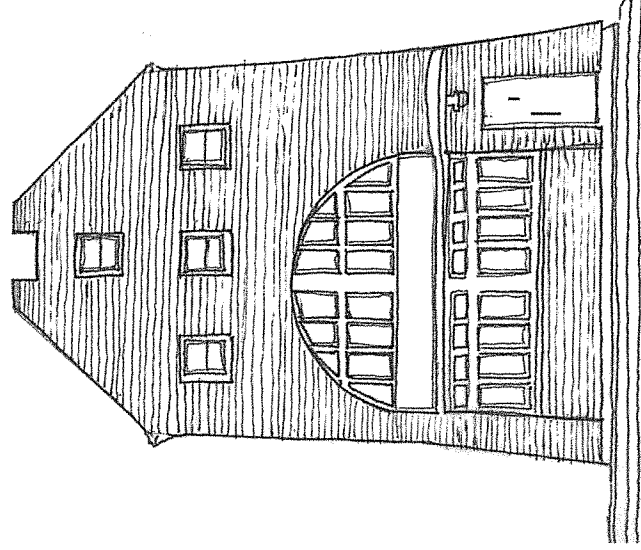


After

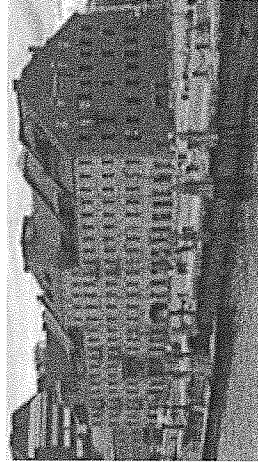
Modify facade diminishing overall mass



Designed to resemble traditional gable roof



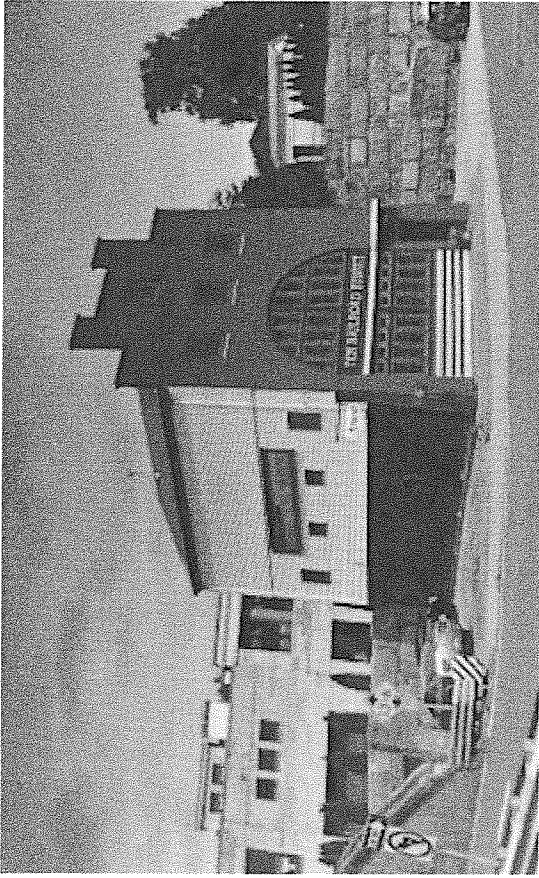
Similar roof line to the historic old Custom House Block on Long Wharf



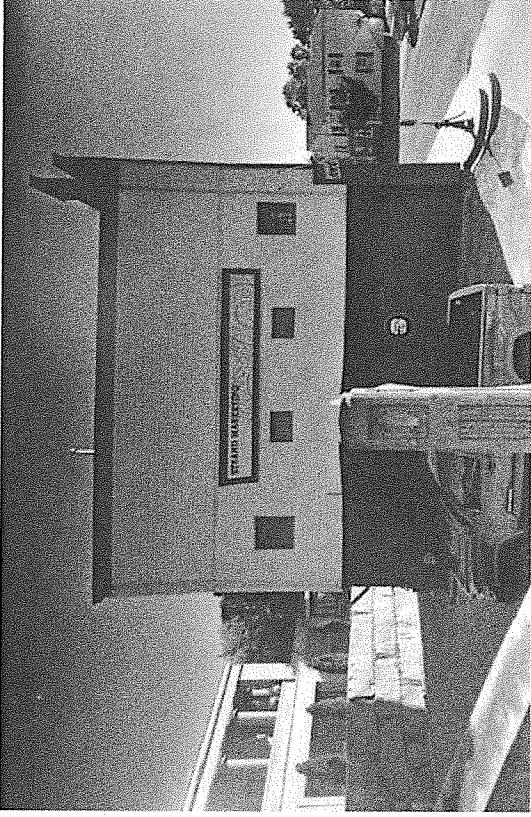
Similar roof line to Boston Long Wharf modeled after the Custom House



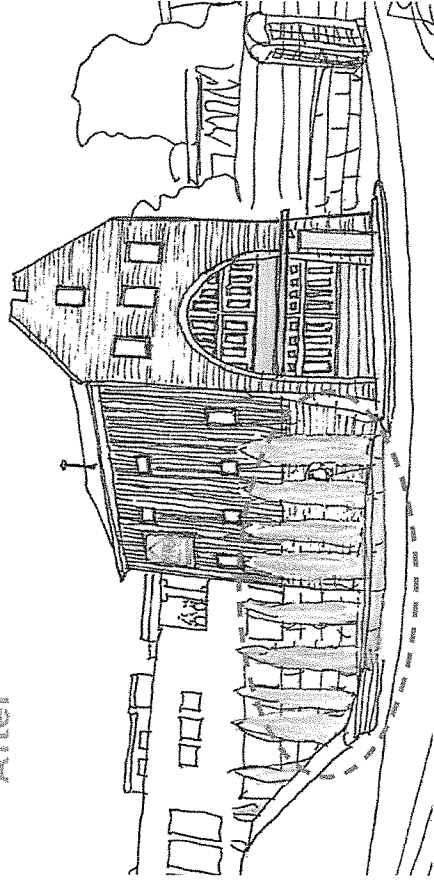
Before



Before



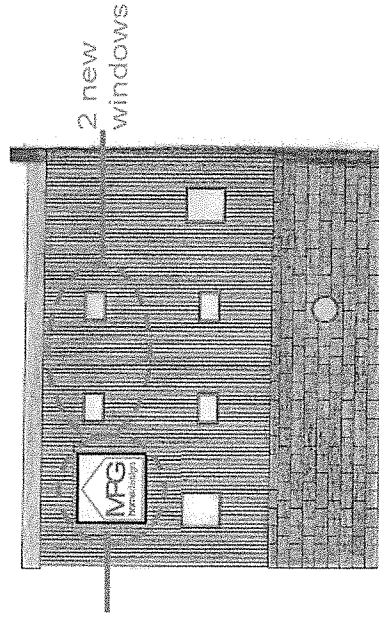
After



Add single layer granite block barrier and Arborvitae trees to match surrounding landscape

After

Replace "Strand" sign with smaller square sign (<70sq ft)



2 new windows

New windows top row aligned with existing lower row



10 Railroad Street: Before and After of Proposed Side Elevation Modifications

