

Subject Property: 79 Hartford Ave East, Mendon, MA

**CLERK COPY**  
TOWN CLERK'S STAMP

TOWN OF MENDON  
BOARD OF APPEALS

P.O. Box 2  
Mendon, MA 01756

**Petition for Zoning Variance**

under M.G.L. Ch. 40A, § 10 and Mendon Zoning By-Laws Section IX, item 2

20 MAR 8 PM 12:27:15  
RECEIVED TOWN CLERK

*This application form must be completed, signed and submitted with the filing fee by the petitioner or his/her representative in accordance with the Board's rules and regulations as supplied with this application by the Town Clerk.*

1. **PETITIONER:** includes Equitable Owner (purchaser on a purchase and sales agreement)

Name: Pine Brook Computer, Inc. / David L. Gorbey, President

Address: 6 Green Street, Franklin, MA 02038

Telephone #: Days: 508-212-5205 Evenings: 508-212-5205

Petitioner is Owner  Tenant  Agent/Attorney

Purchaser on a purchase and sales agreement.

2. **OWNER:** if other than petitioner:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: Days: \_\_\_\_\_ Evenings: \_\_\_\_\_

\*\*\*\*\*  
3. **REPRESENTATIVE AUTHORIZATION:**

If someone other than owner or equitable owner (purchaser on a purchase and sales agreement) is the petitioner, the owner or equitable owner must designate such representative below:

Name of Representative: \_\_\_\_\_

Address of Representative: \_\_\_\_\_

Telephone #: Days: \_\_\_\_\_ Evenings: \_\_\_\_\_

Relationship of representative to owner or equitable owner \_\_\_\_\_

I /we hereby authorize \_\_\_\_\_ to represent my /our interests before the Board of Appeals with regards to this Petition

\_\_\_\_\_  
Must be signed by Owner or Equitable Owner

**3. SUBJECT PROPERTY:**

Street Address 79 Hartford Ave East, Mendon, MA

Assessor's Map: 13 Lot # 140-79 Zoning District GR/RR

Registry of Deeds where deed, plan, or both are recorded:  
Worcester District Registry of Deeds

Deed Recording: Book 36548 Page 198

This parcel was originally laid out and recorded on August 17, 1966

**4. NATURE OF RELIEF REQUESTED:**

Variance from article/section Article II, sec. 2.01(a) of the Mendon Zoning By-Laws,  
Which requires \_\_\_\_\_  
frontage for a residential single-family lot to be a minimum of 200 feet.

The specific relief I/we request is described as follows: \_\_\_\_\_

The Petitioner requests a variance from Article II section 2.01 from the minimum dimensional requirement of 200 feet of frontage to allow construction of a single family residence. See also attached letter.

**5. EVIDENCE TO SUPPORT GRANT OF VARIANCE**

(ref: M.G.L. Chap. 40A, § 10):

A. Describe/demonstrate *unique /peculiar soil conditions, shape, or topography of subject property*. Describe how these unique/peculiar conditions *especially affect only the land or structure(s) in question, how they are unique to the subject property, and do not affect generally the zoning district in which it is located.*

Please see attached letter.

B. Describe how you believe a hardship is caused by the unique/peculiar attributes of the soil conditions, shape, or topography of this subject property under a literal enforcement of the Zoning By-Laws? The hardship you describe must be related to the unique or peculiar attributes you have described above.

Please see attached letter.

I/we hereby certify under the pains and penalty of perjury that the information contained in this Application is true and complete and that the Town of Mendon will be held harmless by the undersigned from any claims or judgements resulting from any misinformation given herein.

I/we have received a copy of the Rules and Regulations of Mendon Zoning Board of Appeals.

David L. Torrey FEB 27, 2020  
Signature of Applicant Date

\_\_\_\_\_  
Signature of Co-Applicant Date

\_\_\_\_\_  
Signature of Owner if other than Applicant Date

\_\_\_\_\_  
Signature of Equitable Owner Date

\*\*\*\*\*

OFFICE OF TOWN CLERK

MENDON, MASSACHUSETTS

Exhibits submitted:

- Variance Application completed
- Owner authorizations completed.
- 11 Copies of Site Plan (per Board Rules & Regulations)
- Certified Abutters List from Assessors' Office(s)
- Copy of Deed for subject Property
- Copy of Building Permit Application and/or any correspondence from Building Dept.
- Copy of any previous decisions on Special Permits or Variances for the subject property
- Soil / geological studies, topographical maps, other documentation to support petition

Petition, Application, or Appeal herein, including required documents listed under the Rules and Regulations of the Mendon Zoning Board of Appeals, and filing fee of \$250. received this date.

M. Stewart 2-3-20  
Town Clerk Date

**LAW OFFICE OF W. ROBERT KNAPIK, P.C.**

1279 Providence Road  
Whitinsville, MA 01588

(508) 234-3301  
(508) 234-2201 (facsimile)

frank@knapiklaw.com  
www.knapiklaw.com

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February 27, 2020

**BY HAND DELIVERY**

James Carty, Chairman  
Mendon Zoning Board of Appeals  
20 Main Street  
Mendon, MA 01756

**Re: *Petition for Zoning Variance***  
***Petitioner/Owner: Pine Brook Computer, Inc.***  
***David L. Gorbey, President***  
***Locus: 79 Hartford Ave. East***  
***Mendon, Massachusetts (the "Property")***

Dear Chairman Carty:

This office represents Pine Brook Computer, Inc./David L. Gorbey, President (together, the "Petitioner" and/or "Owner"), the owner of a vacant parcel of land situated 79 Hartford Avenue East, Mendon, Massachusetts. I am pleased to submit the enclosed Petition and supporting materials to the Board on behalf of Pine Brook Computer, Inc.

A variance from the minimum dimensional requirements of the Zoning Bylaw of the Town of Mendon as amended through November 21, 2018 (the "Bylaw") is requested to allow construction of a single-family dwelling and related improvements on the Property. For the reasons discussed herein, the Petitioner seeks the issuance of a variance.

**The Property.**

79 Hartford Ave. East comprises approximately 4.67 acres of land as shown on the Plan, and is shown on Mendon Assessors Tax Map 13 ("Map 13") as Parcel 79 (Parcel ID 13-140-79-0).

Zoning District, Purpose, and Dimensional Regulations.

According to the Zoning Map of the Town of Mendon as updated, the Property is situated within both the General Residential (“GR”) and Rural Residential (“RR”) Zoning District. According to Section 1.03 of the Zoning By-Laws, the purpose of the zoning districts are as follows:

*(i) Rural Residential District - The purpose of the Rural Residential District is to preserve and protect the rural character of the Town; to provide for low density single and two family residential uses; and to promote agricultural activities.*

*(ii) General Residential District - The purpose of the General Residential District is to provide for a mix of Rural Residential District uses with recreational uses and compatible small-scale, low intensity and impact, municipal and business uses. It is the intent of this district to provide a broad range of low density uses while also limiting the potential negative impact of mixed uses on abutting residential properties. Uses should be developed on one or more lots in a carefully planned manner to meet the residential and small- scale business needs of the Town.*

According to Table A (Table of Uses) of the Bylaw, single family dwellings are permitted by right in the GR/RR Zoning District. According to Article II, section 2.01(a) and Table I of the Bylaw (Dimensional Regulations), the relevant dimensional requirements for single family dwellings within the Rural Residential “RR” and General Residential “GR” Zoning Districts, are as follows:

Dimensional Requirements

	<u>Required</u>
Minimum Lot Area	60,000 sq. ft.
Minimum Lot Frontage	200 feet
Minimum Lot Width	200 feet

Pursuant to Article II, Section 2.01(a) of the Bylaw (Dimensional Regulations):  
*“No lot shall be used or occupied and no structure or building shall hereafter be erected, constructed, altered, changed, moved, used, or occupied unless it complies with the Table of Dimensional Regulations set forth at the end of this Section below as Table 1 (which*

*shall include all endnotes).*

Requested Relief.

For the reasons discussed herein, the Petitioner respectfully requests that the Board grant the requested Variance relief. Upon the Board's grant of the requested relief, the Owner intends to construct a single-family dwelling and driveway on the Property.

The Variance Will Alleviate a Substantial Hardship Not Affecting Generally Other Parcels Within the Zoning District.

The Property is unique because of its topography, shape and soil conditions. Access to the Property is limited to an approximately 50 foot wide, 195 foot long strip of land that has 117.22 feet of frontage on Hartford Avenue East according to the Plan. A literal enforcement of the minimum frontage, width, and driveway requirements of the Bylaw would restrict the Owner from constructing virtually any dwelling on the Property without zoning relief, thus preventing the Owner from the full use of its property in the GR/RR zone in the Hartford Avenue East neighborhood.

It is well settled in Massachusetts that "statutory hardship is usually present when a landowner cannot reasonably make use of his property for the purposes, or in the manner, allowed by the zoning ordinance." *See, e.g., Kirkwood v. Board of Appeals of Rockport*, 17 Mass. App. Ct. 423, 429 (1984) (citations omitted). As has been documented, due to the Property's shape, topography and soil conditions, the Property can never be made conforming. As a result of the unique shape, topography and soil conditions of the Property, a literal enforcement of the Bylaw would render the Property virtually unbuildable in a manner appropriate to the neighborhood and the district.

The unique and constrained development potential of the Property stems from its shape, topography and soil conditions, and constitutes a substantial hardship to the Owner. Moreover, such hardship is not personal to the Owner, and would apply to any owner of the Property, because it especially affects the Property; such hardship does not affect generally the Rural Residential "RR" Zoning District. It is clear that the shape, topography and soil conditions of the land render it virtually unbuildable for single family use in the absence of zoning relief, thus depriving the Owner of the most appropriate use of the Property, and satisfying the statutory requirement of substantial hardship.

Without Substantial Detriment to the Public Good.

The grant of the requested variance will not result in a detriment to the public good, as many nearby properties in the neighborhood are of similar size, frontage and width, all without detriment to the public. Particularly 32 Hartford Ave. East and 63A Hartford Ave. East share similar characteristics as the subject parcel.

Without Derogation from the Intent and Purpose of the Zoning Bylaw.

The grant of the variances will not nullify or substantially derogate from the intent or purpose of the Bylaw. The minimum frontage and width and driveway requirements are presumably intended to protect homeowners from encroaching structures and regulate the distance between structures and abutting streets so as to protect the health, safety and welfare of Mendon residents. Where, as here, the Property will be configured to maximize the distance between the proposed dwelling and existing dwellings, there is little threat of encroaching on neighboring homeowners. Because the distance between the proposed dwelling and Hartford Avenue East will be approximately the same as that between abutting dwellings and Hartford Avenue East, there is no derogation from the intent and purpose of the Bylaw, nor from the presumed intent of the frontage, depth and driveway requirements.

In this part of the Town of Mendon, as shown on Map 13, several "flag lots" or back lots are connected to Hartford Avenue East by a driveway that has less than the normally required frontage and width. Based on the existing development of such back lots in the vicinity of the Property, the grant of the requested variance will not change the character of the neighborhood, encroach on neighboring homeowners, or adversely affect public safety.

Further, because the Bylaw as a whole is intended to encourage the most appropriate use of land throughout the Town, the grant of the requested variance will ensure that the Property is used for its highest and best use, consistent with the highest and best use of the abutting properties in the neighborhood. In the absence of a variance, the Property has essentially no appropriate use, as discussed above.

Standard of Review.



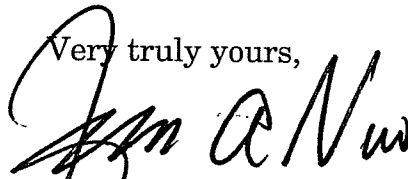
G.L. c. 40A, §10 states, in relevant part:

The [Board] shall have the power . . . to grant . . . a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

As discussed above, literal enforcement of the Bylaw would involve substantial hardship owing to the soil conditions, shape and topography of the Property. Accordingly, for the reasons discussed above, the Petitioner respectfully requests that the Board grant a Variance as set forth in the enclosed variance Petition and supporting materials.

I look forward to your favorable review of the enclosed Petition.

Very truly yours,



Francis A. Niro

Enclosures  
cc: file

Key: 2699

Town of MENDON - Fiscal Year 2020

11/27/2019 4:52 pm SEQ #: 2.510

LEGAL LAND

CURRENT OWNER		PARCEL ID	LOCATION		CLASS	CLASS%	DESCRIPTION	BN ID	BN	CARD					
PINE BROOK COMPUTER INC 6 GREENE STREET FRANKLIN, MA 02038		13-140-79-0	79 HARTFORD AVE EAST		1320	100	RES VAC UNDEV.			1 of 1					
TRANSFER HISTORY		DOS	T	SALE PRICE	BK-PG (Cert)		PMT NO	PMT DT	TY	DESC	AMOUNT	INSP	BY	1st	%
PINE BROOK COMPUTER INC		06/14/2005	N	10,000	36548-198										
HASTIE JAMES E JR		06/02/2000	G	5,000	22650-335										
HAMILTON DAISY		07/03/1964	XX		4478-166										

LEGAL LAND

CD	T	AC/SF/UN	Nbhd	Inf1	Inf2	ADJ BASE	SAF	Inf3	Lpl	VC	CREDIT AMT	ADJ VALUE
300	A	4.670 1	1.00 A	1.00 A	1.00	3,200	0.92 A	1.00	ELP	1.00		13,750

TOTAL	4.670 Acres	ZONING	1	FRNT	50	ASSESSED	CURRENT	PREVIOUS
Nbhd	NEIGH 1	NOTE				LAND	13,800	13,300
Inf1	AVERAGE		BUILDING	0	0			
Inf2	AVERAGE		DETACHED	0	0			
			OTHER	0	0			
						TOTAL	13,800	13,300

DETACH

TY	QUAL	COND	DIM/NOTE	YB	UNITS	ADJ PRICE	RCNLD	PHOTO

BUILDING

BUILDING	CD	ADJ	DESC	MEASURE
MODEL				LIST
STYLE				REVIEW
QUALITY				
FRAME				

YEAR BLT	SIZE ADJ	ELEMENT	CD	DESCRIPTION	ADJ	S	BAT	T	DESCRIPTION	UNITS	YB	ADJ PRICE	RCN	TOTAL RCN
NET AREA	DETAIL ADJ													
\$NLA(RCN)	OVERALL													
CAPACITY	UNITS													

CONDITION ELEM	CD	EFF.YR/AGE
COND		
FUNC		
ECON		
DEPR		% GD
RCNLD		

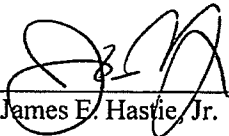
### MASSACHUSETTS QUITCLAIM DEED

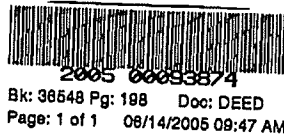
I, James E. Hastie, Jr. of Woonsocket, Rhode Island, for consideration paid, and in full consideration of TEN THOUSAND AND 00/100 Dollars (U.S. \$10,000.00) grant to Pine Brook Computer, Inc., Franklin, Massachusetts with *quitclaim covenants* the following property in Worcester County, Massachusetts.

A certain parcel of unimproved land located on the southeasterly side of Hartford Avenue East, Mendon, being the same premises shown as Remaining Land - 4.67+/- acres on plan of land entitled "Condominium Site Plan 79 and 81 Hartford Avenue East Condominium, Mendon, Mass. Owned by James E. Hastie, Jr., July 5, 2000 Scale 1" = 20' Heritage Design Group, Civil Engineers, Uxbridge, Massachusetts" which said plan is filed with Worcester District Registry of Deeds in Plan Book 759, Plan 122. See also Plan Book 302, Plan 46.

Being the same premises conveyed to the herein named grantor(s) by deed recorded with Worcester District Registry of Deeds in Book 22650, Page 335.

Witness my/our hand(s) and seal(s) this 9 day of June, 2005.

  
James E. Hastie, Jr.




Property Address: Hartford Avenue East, Mendon, MA  
Grantee Address: 6 Greene Street, Franklin, MA 02038

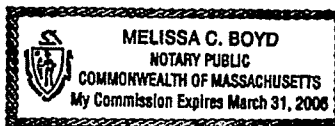
### COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

June 9, 2005

On this 9 day of June, 2005 before me, the undersigned notary public, personally appeared James E. Hastie, Jr., proved to me through satisfactory evidence of identification, which was/were  Mass. driver's license(s) or [ ] \_\_\_\_\_, to be the person(s) whose name(s) is/are signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

  
Notary Public:  
My Commission Expires:



PROPERTY ADDRESS: Hartford Avenue East Mendon, Massachusetts 01756

MASSACHUSETTS EXCISE TAX  
Worcester District ROD #20 001  
Date: 06/14/2005 09:47 AM  
Ctrl# 037192 29366 Doc# 00093874  
Fee: \$45.80 Cons: \$10,000.00

Return  
TO:  
JOSEPH M. ANTONELLIS  
ATTORNEY AT LAW  
288 MAIN STREET  
MILFORD, MA 01757



**TOWN OF MENDON**  
**BOARD OF ASSESSORS**

20 MAIN STREET  
MENDON, MA 01756  
508-473-2738  
508-478-8241 (Fax)  
e-mail: [jberthold@mendonma.gov](mailto:jberthold@mendonma.gov)

*February 27, 2020*

*PROPERTY LOCATION(S): 79 Hartford Avenue East  
Mendon, Massachusetts  
Assessor's Map #13-140-79*

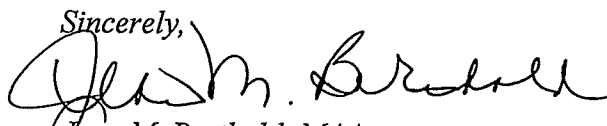
*PROPERTY OWNER(S): Pine Brook Computer, Inc.*

*OWNER(S) ADDRESS: 6 Greene Street  
Franklin, MA 02038*

*RECORDED: Worcester Registry of Deeds  
June 14, 2005  
Book #36548  
Page #198*

*The attached 300' abutter's list is true and accurate to the best of our knowledge.*

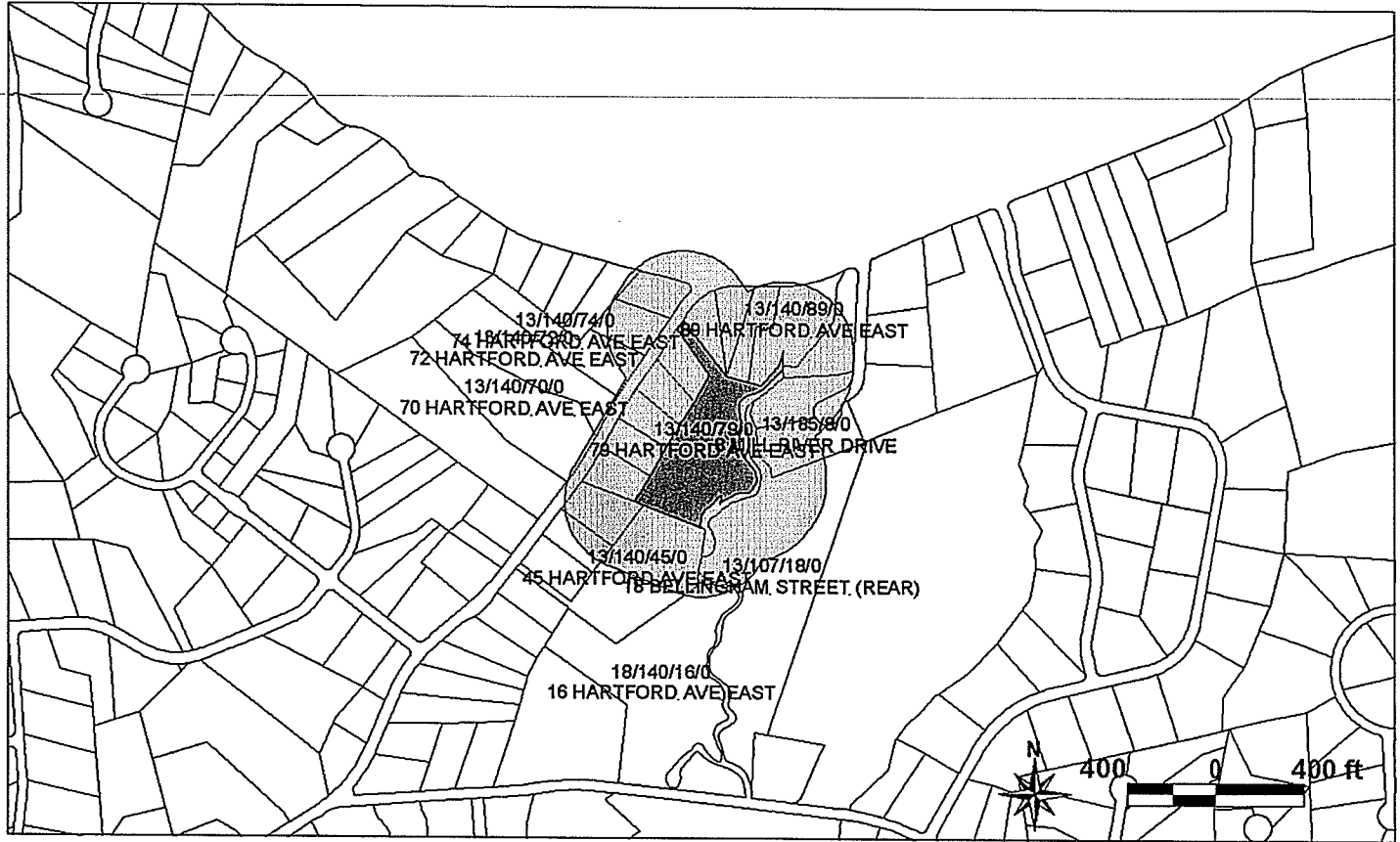
*Sincerely,*

  
*Jean M. Berthold, MAA  
Principal Assessor*

*Attachment*

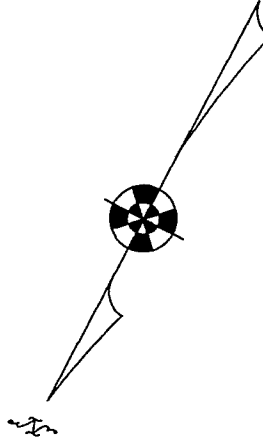
TOWN OF MENDON, MA  
 BOARD OF ASSESSORS  
 20 Main Street, Mendon, MA 01756

Abutters List Within 300 feet of Parcel 13/140/79/0



Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	ZipCd/Country
1146	13-107-18-0-R	YOUNG GEORGIA c/o CYNTHIA MARNIK	18 BELLINGHAM STREET (REAR)	28 BELLINGHAM STREET	MENDON	MA	01756
1153	13-140-45-0-R	FLECK STEPHEN H & KATHERINE M	45 HARTFORD AVE EAST	63A HARTFORD AVE EAST	MENDON	MA	01756
1163	13-140-65-0-R	NEMIRI HAKIM & DOUDJA TAIBI-NEMIRI	65 HARTFORD AVE EAST	65 HARTFORD AVE EAST	MENDON	MA	01756
1164	13-140-67-0-R	FRAGA STEPHEN	67 HARTFORD AVE EAST	67 HARTFORD AVE EAST	MENDON	MA	01756
1166	13-140-69-0-R	COMOLLI STEPHEN L & CYNTHIA E	69 HARTFORD AVE EAST	69 HARTFORD AVE EAST	MENDON	MA	01756
1167	13-140-70-0-R	CAMPBELL SCOTT A & ROSEANN M	70 HARTFORD AVE EAST	70 HARTFORD AVE EAST	MENDON	MA	01756
1168	13-140-71-0-R	HAYES VICTORIA K & MATTHEW R BOVENZI	71 HARTFORD AVE EAST	71 HARTFORD AVE EAST	MENDON	MA	01756
1169	13-140-72-0-R	KOSSUTH JOHN J	72 HARTFORD AVE EAST	72 HARTFORD AVE EAST	MENDON	MA	01756
1170	13-140-73-0-R	BYRNE ALLAN J JR & DANNIELLE L	73 HARTFORD AVE EAST	73 HARTFORD AVE EAST	MENDON	MA	01756
1171	13-140-74-0-R	SMALL BRYAN J & JESSICA	74 HARTFORD AVE EAST	74 HARTFORD AVE EAST	MENDON	MA	01756
1172	13-140-75-0-R	LAWSON KEVIN M & ERICA F	75 HARTFORD AVE EAST	75 HARTFORD AVE EAST	MENDON	MA	01756
1173	13-140-77-0-R	BRENNICK STEVEN M & MELISSA D	77 HARTFORD AVE EAST	77 HARTFORD AVE EAST	MENDON	MA	01756
1174	13-140-78-0-R	MARCET JAMES & CHERYL	78 HARTFORD AVE EAST	78 HARTFORD AVE EAST	MENDON	MA	01756
2699	13-140-79-0-R	PINE BROOK COMPUTER INC	79 HARTFORD AVE EAST	6 GREENE STREET	FRANKLIN	MA	02038
2698	13-140-81-A-R	DESJARDINS RONALD A & BEVERLY	81-A HARTFORD AVE EAST	79 HARTFORD AVENUE EAST	MENDON	MA	01756

Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	ZipCd/Country
2729	13-140-81-B-R	LANGEVIN CHRISTINE	81-B HARTFORD AVE EAST	81-B HARTFORD AVE EAST	MENDON	MA	01756
1175	13-140-83-A-R	PALOMBO PAUL L	83-A HARTFORD AVE EAST	48 CRESTVIEW DRIVE	MENDON	MA	01756
2730	13-140-83-B-R	HILL ROBERT	83-B HARTFORD AVE EAST	85 HARTFORD AVENUE EAST	MENDON	MA	01756
1176	13-140-87-0-R	GORBEY DAVID L TRUSTEE OAK KNOLL REALTY TRUST	87 HARTFORD AVE EAST	6 GREEN STREET	FRANKLIN	MA	02038
1177	13-140-89-0-R	GORBEY DAVID L TRUSTEE OAK KNOLL REALTY TRUST	89 HARTFORD AVE EAST	6 GREEN STREET	FRANKLIN	MA	02038
1191	13-185-3-0-R	DEBOER STEPHEN & LAUREN	3 MILL RIVER DRIVE	3 MILL RIVER DRIVE	MENDON	MA	01756
1193	13-185-5-0-R	KENT ALLAN & PATRICIA ANN VANDENBERG	5 MILL RIVER DRIVE	5 MILL RIVER DRIVE	MENDON	MA	01756
1195	13-185-8-0-R	RANAUDO RANDAL A	8 MILL RIVER DRIVE	8 MILL RIVER DRIVE	MENDON	MA	01756
1214	13-187-79-0-R	SHEA EDWARD A & JAYNA C.	79 NECK HILL ROAD	79 NECK HILL ROAD	MENDON	MA	01756
1215	13-187-81-0-R	WALLACE ROBERT E TRUSTEE WALLACE FAMILY IRR TRUST	81 NECK HILL ROAD	81 NECK HILL ROAD	MENDON	MA	01756
1693	18-140-16-0-R	HANSCOM JAMES M & JEANNINE C	16 HARTFORD AVE EAST	63B HARTFORD AVENUE EAST	MENDON	MA	01756



WORCESTER DISTRICT REGISTRY  
 OFFICE - WORCESTER, MA  
 PLAN BOOK 302, PL. 416  
 Received Aug. 12, 1966  
 Sheet 1 of 1  
 ATTEST: *[Signature]*  
 Registrar

Robert W. & Eileen M. Burnand

Robert W. & Eileen M. Burnand

RIVER

Area ~ 4.67 Acres

Edge of Swamp

Public Variable Widths

HARTFORD

AVENUE

M/F Thayer

SUBDIVISION PLAN

of land in  
 MENDON, MASS.

owned by  
 DAVID F. & DAISY M.  
 HAMILTON

May 17, 1966 Scale = 1" = 40'

Eastman & Corbett, Inc.  
 Civil Engineers  
 Milford, Massachusetts  
 Charles L. Goucher  
 Registered Land Surveyor



Approval Under the Subdivision  
 Control Law Not Required

*[Signature]*  
*[Signature]*  
 Benjamin Barney

Being a Majority of the  
 Mendon, Mass. Planning Board  
 Date: July 3, 1966

