



Town of Burlington
 Planning Board
 25 Center Street, Burlington MA 01803
 Phone: 781-270-1645

http://www.burlington.org/community_development/planning.php

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TOWN CLERK
 BURLINGTON, MA

FORM A
APPLICATION FOR ENDORSEMENT OF A PLAN BELIEVED
NOT TO REQUIRE APPROVAL

To: The Planning Board
 Town of Burlington, Massachusetts

Date: April 26, 2017

The undersigned wishes to record the accompanying plan and requests a determination and endorsement by said Board that approval by it under the Subdivision Control Law is not required. The undersigned applicant believe that such approval is not required for the following reasons:

(Check off applicable statements and fill in blanks to complete the applicable as well as the required statements.)

- 1. The accompanying plan is not a subdivision because the plan does not show a division of land.
- 2. The division of the tract of land on the accompany plan is not a subdivision because every lot shown on the plan has frontage of a least such distance as is presently required by the Burlington Zoning Bylaw under Section 5.2.0, "Density Regulation Schedule" which requires _____ feet of continuous, uninterrupted frontage for erection of a building on such lot in the _____ Zoning District; and every lot shown on the plan has frontage on:
 - 2.1 A public way or way which the Town Clerk certifies is maintained and used as a public way, namely:
 _____ OR:
 (name of way)
 - 2.2 A way shown on a plan thereto approved and endorsed in accordance with the Subdivision Control Law, namely:
 _____ OR:
 (name of way)
 - 2.3 A private way in existence on July 19, 1960, the date when the Subdivision Control Law became effective in the Town of Burlington, which has sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed uses of the land abutting the way and for the installation of municipal services to serve the lot(s) and the building(s) erected or to be erected thereon, namely:

 (name of private way)
- 3. The division of a tract of land on the accompanying plan is not a subdivision because it show a proposed conveyance which changes the size and/or shape of the lot(s) in such a manner that frontage is not affected.

4. The division of the tract of land shown on the accompanying plan is not a subdivision because two or more buildings were standing on the land prior to July 19, 1960, the date when the Subdivision Control Law went into effect in the Town of Burlington and one of such buildings remains standing on each of the lots as shown and located on the accompanying plan. Evidence of the Subdivision Control Law is submitted as follows (attach documentation and list items included in that documentation below):

5. Other reasons or comments (See M.G.L., Chapter 41, Section 81-L and 81-P):

See Attached

6. The owner's title to the land is derived under deed -

from Brian Harmon et ux, dated October 17, 2002,

recorded in Middlesex South Registry of Deeds,

Book 36756, Page 88. OR

Land Court Certificate of Title No. _____,

registered in _____ Registry District of Land Court,

Book _____, Page _____ and

on the Town of Burlington Assessor's Map (s) _____, as Parcel (s) _____.

7. The undersigned certifies that he/she does not own in whole or in part any land contiguous to this parcel except as shown on the following plans:

8. The undersigned further certifies that neither this parcel nor the above described contiguous land has been previously submitted to any Planning Board or Board of Survey for approval as a subdivision or determination as a "Non-Approval", except as follows:

Planning Board approval of the Hilltop Drive subdivision on 1/19/1955

(Please PRINT)

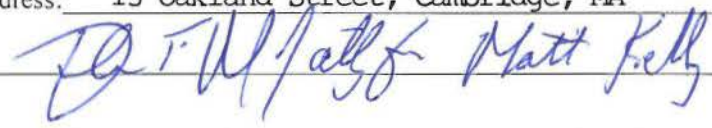
9. **Applicant**

EMAIL mattcompliance@gmail.com

Name: Matt Kelly Tel: 617-642-1107

Company: Personal Representative of the Estate of John Kelly

Mailing Address: 13 Oakland Street, Cambridge, MA

Signature:  Matt Kelly


10. **Property Owner** (if same as applicant, write "same")

EMAIL: _____

Name: SAME Tel: _____

Company: _____

Mailing Address: _____

Signature:  _____

11. **Attorney or Legal Representative**

EMAIL: tmurphy@sheamurphygulde.com

Name: Thomas F. Murphy, Jr. Tel: 781-272-0900

Company: Shea, Murphy & Gulde

Mailing Address: 35 Center Street, Burlington, MA 01803

12. **Engineer, Designer or Architect**

EMAIL: ess-greg@comcast.net

Name: Stephen Desroche Tel: 978-556-0284

Company: Engineering & Surveying Services

Mailing Address: 76 Bailey Court, Haverhill, MA

FILING INSTRUCTIONS

It is recommended that you call 781-270-1645 prior to filing an application to arrange a submission appointment with the Senior Planner

Upon completion of the application, file the following with the Planning Department:

- Completed original application and one copy (all pages)
- Original mylar or reproducible linen and six folded paper copies of the plan
- One set of submittal material and plans must also be in electronic pdf format
- Application Fee (Check or Money Order made payable to The Town of Burlington)

The Planning Department will stamp the application and the copy "received" and issue a receipt for the fee. The stamped copy and original application will be returned to you for filing with the Town Clerk as required by these regulations. The Town Clerk will stamp the copy and the original application "received" and return the original application to you which you will bring back to the Planning Department.

Planning Department:
Application & Fee Received By (Stamp/Initial):

Amount: \$1100.00

Receipt#: 77514

RECEIVED
APR 26 2017
J. Gelman
PLANNING DEPARTMENT

Town Clerk:
Received By (Stamp/Initial):

JMA

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2017 APR 27 AM 12:23
TOWN CLERK
BURLINGTON, MA

ADDENDUM TO KELLY ANR APPLICATION

Section 5 other reasons or comments:

MGL chapter 41, section 81P provides that an ANR endorsement on a submitted plan shall not be denied by the planning board “unless said plan shows a subdivision”.

MGL ch. 41, section 81L defines a subdivision as a “division of a tract of land into two or more lots”.

MGL ch. 41, section 81L defines a lot as “an area of land in one ownership, with definite boundaries, used or available for use as the site of one or more buildings.

In the present case Mr. John Kelly and his wife purchased the house at 24 Hilltop Drive in 2002. Both Mr. and Mrs. Kelly have passed away and their son, Matt Kelly, has been appointed as Personal Representative of his father's estate. He is attempting to sell the house as part of his duty to complete the probate of the estate. He had the house under agreement but the Buyer had a survey done of the property and it was discovered that a portion of the neighbor's house, and all of the neighbor's driveway, encroaches onto his father's land. When the encroachment was discovered the Buyer backed out of the deal and Matt Kelly cannot sell the house until the encroachment issue is resolved.

In an effort to avoid litigation with the neighbor Matt agreed to convey the disputed area to the neighbor, thus resolving the encroachment as the neighbor will now own the land on which his house and driveway sit. This transfer would result in the Kelly lot becoming non-conforming in area and frontage so we appeared before the Board of Appeals and received a frontage and area Variance.

The submitted plan creates an area labelled as Parcel A which will be conveyed to the neighbor and become part of the neighbor's lot. Parcel A consists of 2,900 square feet of land with 29' of frontage on Hilltop Drive.

Applying the above referenced statutes, in order for this plan to be considered a subdivision it must divide a tract of land into two or more lots, each lot being available for use as the site of one or more buildings.

The submitted plan divides the existing Lot 20 into a revised Lot 20 and Parcel A. It does not create "two lots available for use as the site of a building" as Parcel A is not available for use as the site of a building given its area and frontage. The plan specifically notes that Parcel A will be combined with the neighboring lot.

Both the Kelly house and the neighbor's house have been existence for over 50 years in their current locations. Due to an error made by either the builder or the surveyor over 50 years ago there is an encroachment issue that has just been recently discovered. Neither the Kellys nor the neighbors are the original owners of either house, thus this problem is not their fault nor were they aware of it until recently. The intent of this plan is not to create a new buildable lot, rather it is to cure a problem in a way that allows two residents to avoid the time and expense of a legal proceeding.

Since the plan does not create two lots available for the site of a building then, by law, the plan is not a subdivision. Since it is not a subdivision MGL c. 41 section 81P provides that an ANR endorsement "shall not be denied".