

MEMORANDUM

FROM : OFFICE OF THE CITY ATTORNEY  
MIDDLETOWN, CONNECTICUT 06457

TO : Stephen T. Gionfriddo, Mayor

DATE : August 12, 1993

RE : Legal Opinion Request

FACTUAL BACKGROUND PROVIDED WITH REQUEST:

Applicant is requesting permission to build a home on one of two lots which he contends is a legal lot of record. The other lot has an existing single family home of which a portion of it has been constructed on the adjacent lot (see map). The two lots are enclosed with a common fence and the two lots have clearly been treated as one. Two surveys have been prepared, one displays the lot as one. This survey was used to construct an addition (see map). The second more recent survey displays two lots. City records indicate the parcels have been taxed as one since 1953. The deed appears to imply that the parcels have been combined and sold as one.

QUESTION PRESENTED:

Pursuant to the relevant provisions of the Zoning Code and the previous treatment of the parcel, does the applicant have the right to construct a single family dwelling?

ANSWER: It depends on whether the two lots have been merged into one. Whether or not the lots have merged depends upon the intent of the property owner. Intent is determined by the way in which the owner has used the property.

ANALYSIS:

Section 16.12.02 of the Zoning Code defines "record lot" and provides in pertinent part, as follows:

The term "record lot" means the land designated as a separate and distinct parcel of land on a legally recorded subdivision plat or in a legally recorded deed filed among the land records of the City of Middletown. A parcel of land in the same ownership or any part

thereof designated by its owner or owners as a separate lot. There is a minimum frontage requirement of fifty (50) feet for single family dwellings in zones which permit single family dwellings, except for authorized rear lots, and for two family dwellings in a RPZ zone as a Special Exception.

Zoning Code of the City of Middletown, §16.12.02, as amended.

Section 13.01.01 provides as follows:

DWELLING ON ANY LOT OF RECORD

In any Zone where dwellings are permitted a single family detached dwelling may be erected on any lot of official record at the effective date of this Code. The lot must have fifty (50) feet of frontage, provided, however, that if any such lot of official record established prior to Middletown's adoption of Subdivision Regulations (November 1, 1941) has less than 50 feet of frontage but more than 25 feet of frontage it may be approved as a building lot upon application for a special exception if it has availability of city water and sewer services or, if not, is found acceptable by the Middletown Department of Health for onsite well and septic system. Other area, yard, and open space requirements must be complied with as nearly as possible required that: (Amended eff. 8/1/89)

Zoning Code of the City of Middletown, §13.01.01, as amended.

The Connecticut Appellate Court has held that the determination of whether two or more lots have merged is one for local zoning boards to make and courts may not substitute their judgment for that of local boards so long as an honest judgment has been reasonably exercised after a full hearing. Molic v. Zoning Board of Appeals, 18 Conn. App. 159, 164 (1989).

The Molic Court further held that "[w]here the board has stated the reasons for its action, a reviewing court may only determine whether the reasons given are supported by the record and are pertinent to the decision." Id. at 165.

In Molic the Court held that merger does not automatically occur "simply because the town taxes [the] land as one tract and [the owner] does not take any action physically to demonstrate that he desires to retain it as separate lots." Molic, supra, at 164.

The Molic Court found that the intent of the property owner with respect to the lot must be ascertained. The Court held that "[a]n owner of contiguous parcels of land may merge those parcels to form one tract if he desires to do so. An intent on the part

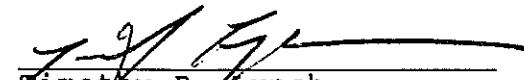
of the owner to do so may be inferred from his conduct with respect to the land and the use which he makes of it .... Intent is a question of fact. Molic, supra, at 164 (citation omitted).

Therefore, the intent of the property owner concerning the lots must be determined. Relevant factors to be considered in making this determination include the enclosure of the two lots by a single fence, the extension of a patio from one lot over onto the other, the deed reference of the two lots as a single parcel and the taxation of the two lots as one parcel for the last forty years.

The Appellate Court has held that no single factor is dispositive of the issue but all must be considered together. Marino v. Zoning Board of Appeals, 22 Conn. App. 606, 610 (1990).

In Marino, the town's zoning enforcement officer denied an application for approval of three nonconforming lots as building lots and the applicant appealed to the zoning board of appeals which upheld this decision.

The Marino Court held that "[t]he record here reasonably supports a finding of merger. It is true that contiguous land owned by the same person does not necessarily constitute a single lot....It is also true that the taxation of multiple parcels of land by the assessor's office as one tract does not compel a finding of merger....This does not mean, however, that such factors may not be considered by the board as part of the evidentiary foundation to support a finding of merger if they are relevant and probative. While the fact that lots are contiguous and owned by the same person does not mandate a finding of merger...it is certainly a relevant factor. Further, the fact that the land was taxed as one parcel is relevant to a finding of merger in this case, where the record disclosed that the parcel in question had been taxed as one lot for the past fifty years." Marino, supra, at 609 (citations omitted).

  
\_\_\_\_\_  
Timothy P. Lynch  
Deputy City Attorney

TPL/dw

cc: William Warner, AICP  
Planning & Zoning Director

City Atty

RECEIVED  
CITY CLERK'S OFFICE  
03 JUN 29 AM 10:25

**REQUEST FOR OPINION, ADVICE OR OTHER LEGAL SERVICE**  
**(Submit to Mayor in Duplicate)**

**TO:** MAYOR'S OFFICE

**FROM:** William Warner, Planning Director

**SUBJECT:** Lot of Record

**FACTS:** (In brief Statement tell WHO, WHAT, WHEN, WHERE, WHY, & HOW.)

Applicant is requesting permission to build a home on one of two lots which he contends is a legal lot of record. The other lot has an existing single family home of which a portion of it has been constructed on the adjacent lot (see map). The two lots are enclosed with a common fence and the two lots have clearly been treated as one. Two surveys has been prepared, one displays the lot as one. This survey was used to construct an addition (see map). The second more recent survey displays two lots. City records indicate the parcels have been taxed as one since 1953. The deed appears to imply that the parcels have been combined and sold as one.

**LAW:** (Cite appropriate ORDINANCE, REGULATION, STATUTE, OR CASE LAW that you think applies to this question.)

See attached.  
Section 13.01.01, Section 16.11.02  
"A guide to the identification of Legal Lots"

**QUESTION:** What, in your own words is the precise question you wish to have answered?)

Pursuant to the above referenced sections and the previous treatment of the parcel, does the applicant have the right to construct a single family dwelling?

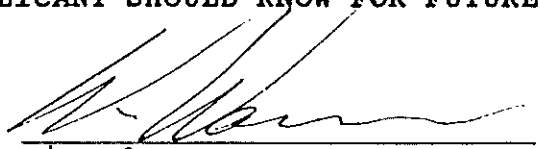
**ESTIMATE OF PRIORITY:** Check One.

Please provide by July 30, 1993.

           **EMERGENCY**            **STANDBY FOR FUTURE ACTION**

           **URGENT**            **APPLICANT SHOULD KNOW FOR FUTURE ACTION**

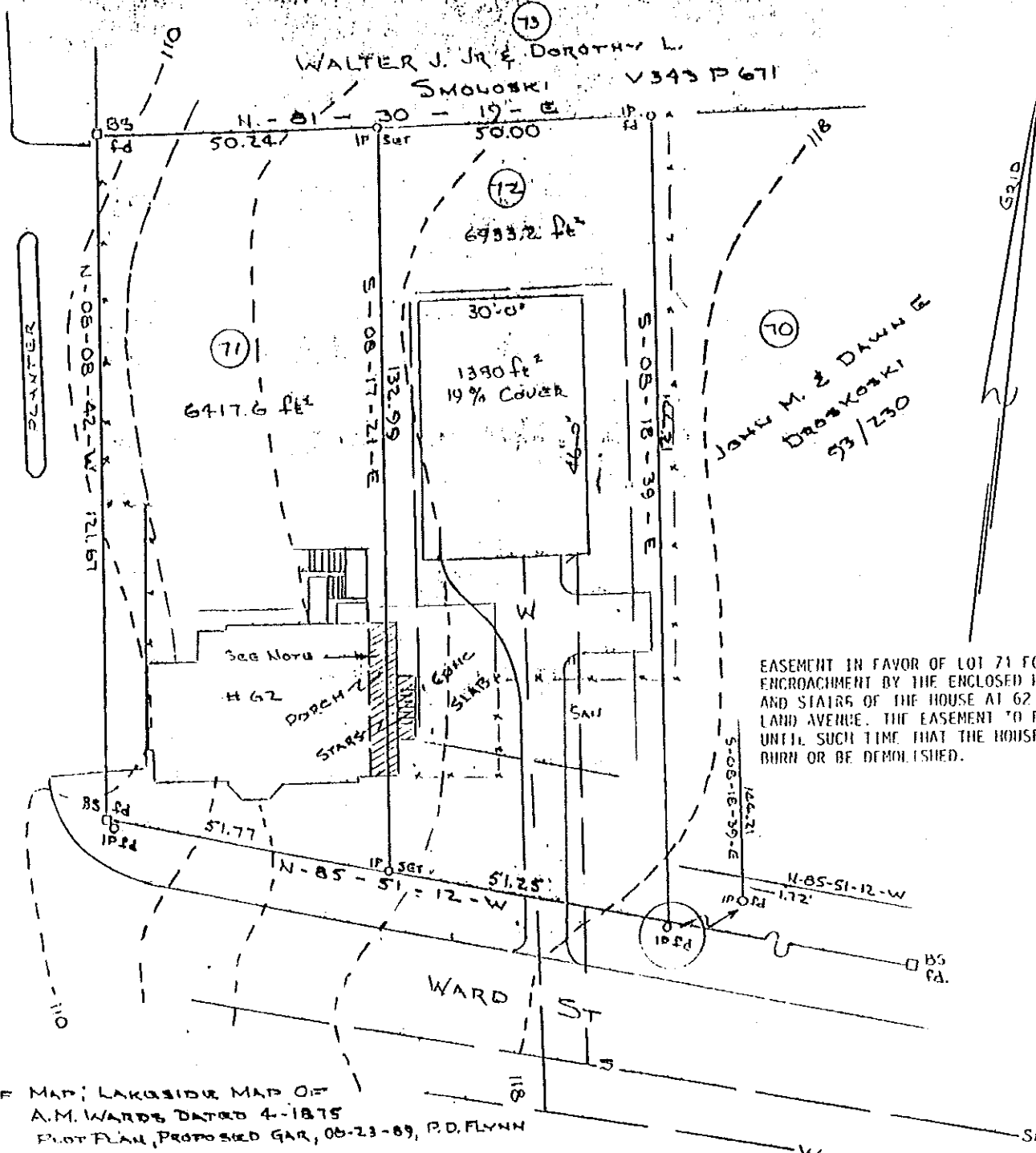
Date: 6-21-93

  
Signed:

WALTER J. JR & DOROTHY L. SMOLOSKI V 343 P 671

HIGHLAND AVE

PLANTER



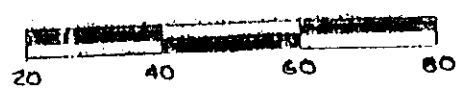
EASEMENT IN FAVOR OF LOT 71 FOR THE ENCROACHMENT BY THE ENCLOSED PORCH AND STAIRS OF THE HOUSE AT 62 HIGH LAND AVENUE. THE EASEMENT TO REMAIN UNTIL SUCH TIME THAT THE HOUSE MIGHT BURN OR BE DEMOLISHED.

REF MAP; LAKESIDE MAP OF A.M. WARDS DATED 4-1875  
 PLOT PLAN, PROPOSED GAR, 08-23-89, P.D. FLYNN

OWNER-APPLICANT  
 MANUEL L. & BELINA M. NUNES  
 62 HIGHLAND AVE  
 MIDDLETOWN, CT  
 V 888 P 271  
 PHONE 347-9329

ASSESSOR MAP 28  
 BL. 29-4C  
 LOT 72, 71  
 TOPOGRAPHIC MAP J12  
 R-15 ZONE  
 REV. 6-4-93  
 NOTE: PORCH & STAIR AREA  
 TO BE REMOVED  
 REV 6-12-93 - BATH ADDITION &  
 STAIRS & LANDINGS

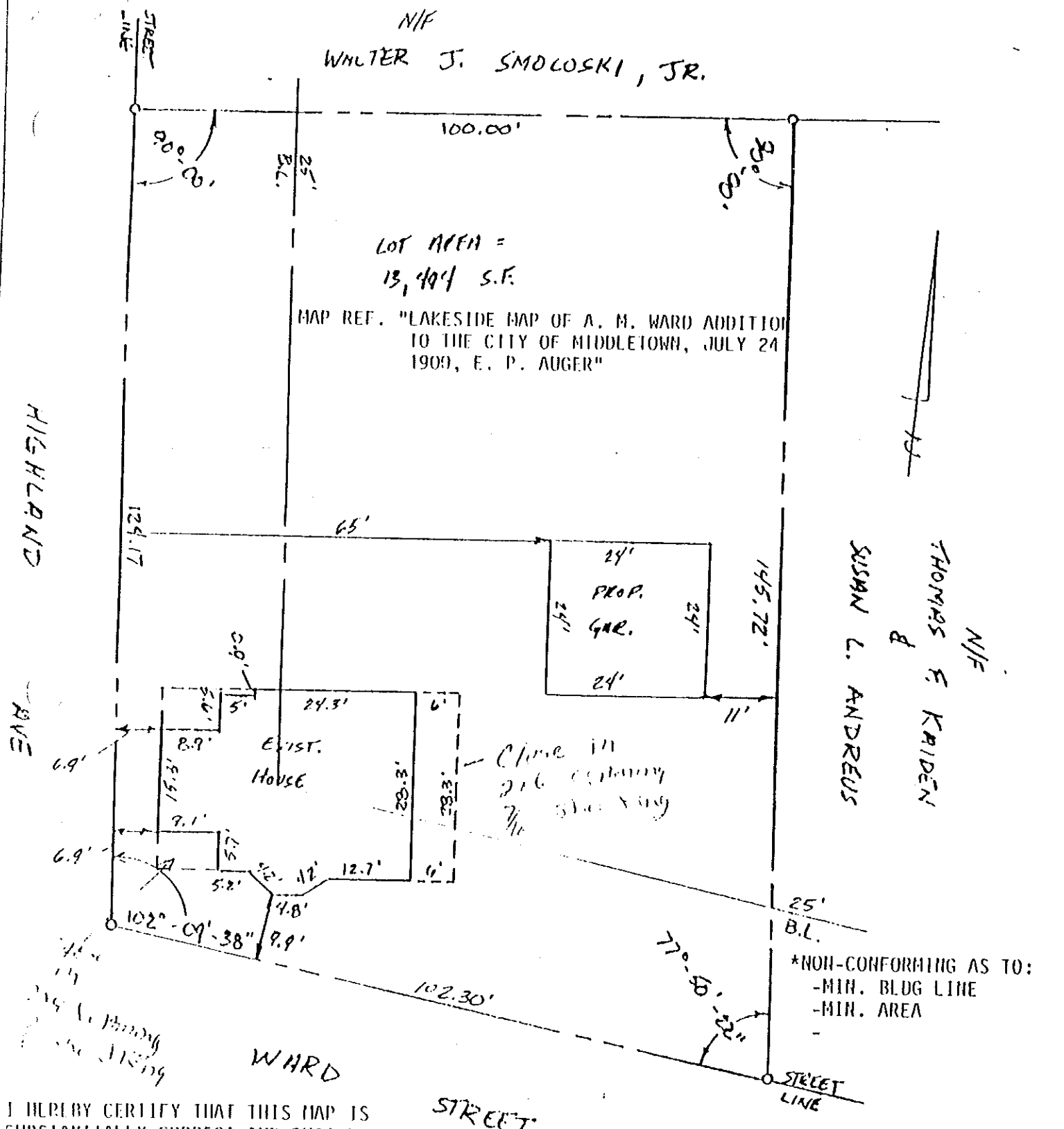
PROPOSED HOUSE  
 LOT # 72  
 WARD STREET  
 MIDDLETOWN, CT  
 SCALE 1" = 20'  
 FEB. 16, 1993



I hereby certify that this map and survey were prepared in accordance with the standards of a Class A2 Survey as defined in the Code of Practice for Standards of Accuracy of Surveys and Maps adopted Dec. 10, 1975 as amended by The Connecticut

JUN 14 1993

N/F  
WALTER J. SMOLOSKI, JR.



LOT AREA =  
13,404 S.F.

MAP REF. "LAKESIDE MAP OF A. M. WARD ADDITION  
TO THE CITY OF MIDDLETOWN, JULY 24  
1909, E. P. AUGER"

N/F  
THOMAS F. KRIDEN  
&  
SUSAN L. ANDREWS

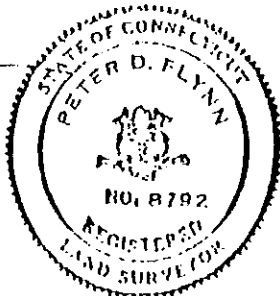
WARD

STREET

\*NON-CONFORMING AS TO:  
-MIN. BLDG LINE  
-MIN. AREA

I HEREBY CERTIFY THAT THIS MAP IS  
SUBSTANTIALLY CORRECT AND THAT NO  
ZONING REGULATIONS HAVE BEEN VIOLATED  
PERTAINING TO THE LOCATION OF THE  
PROPOSED GARAGE.

PETER D. FLYNN, L.S. #8792



PLOT PLAN - PROPOSED GARAGE  
PROPERTY OF  
MANUEL L., & BELINA M. HUNES  
#62 HIGHLAND AVENUE  
MIDDLETOWN, CONNECTICUT  
SCALE: 1"=20' JUNE 23, 1989

JAN 11 1990

Office Copy

SPR 90-2



VOL 888 PAGE 271

**To all People to Whom these Presents shall Come, Greeting:**

**Know Ye, That** WE, EUGENE F. CARLSON, acting herein by DOROTHY C. ANDERSON by a Power of Attorney dated November 3, 1988, JOHN R. CARLSON acting herein by DOROTHY C. ANDERSON by a Power of Attorney dated December 27, 1988, ROLAND J. ANDERSON and DOROTHY C. ANDERSON of the Town of Haddam, County of Middlesex and State of Connecticut

for the consideration of TEN (\$10.00) DOLLARS AND OTHER VALUABLE CONSIDERATIONS

received to our full satisfaction of MANUEL L. NUNES and BELINA M. NUNES of the Town of Middletown, County of Middlesex and State of Connecticut

do give, grant, bargain, sell and confirm unto the said Manuel L. Nunes and Belina M. Nunes, as joint tenants of 62 Highland Avenue in the Town of Middletown, County of Middlesex and State of Connecticut

and unto the survivor of them, and unto such survivor's heirs and assigns forever a certain piece or parcel of land with the buildings and other improvements thereon, situated in the Town of Middletown, County of Middlesex and State of Connecticut, bounded and described as follows:

A certain piece of land situated in Durant District and known as Lots Number 71 and 72 on a Map of A. M. Ward, made by E. P. Auger and on file in the Town Clerk's Office in said Middletown. Said lots adjoin each other and are bounded North by Lot 73; East by Lot 70; South by Ward Street; and West by Highland Avenue and are each 51.25 feet front on Ward Street.

Being the remaining portion of the premises described in a certain Certificate of Devise from the Estate of Minnie A. Carlson recorded in Volume 385 at Page 379 of the Middletown Land Records.

"\$ <sup>184</sup> 184 Conveyance Tax received, ST. TX \$ 750.00  
Anthony Sbona  
 Town Clerk of Middletown"

To Have and to Hold the above granted and bargained premises, with the appurtenances thereof, unto them the said grantees, and unto the survivor of them, and unto such survivor's heirs and assigns forever, to them and their own proper use and behoof.

And also, we the said grantors do for ourselves and our heirs, executors, administrators, and assigns, covenant with the said grantees and with the survivor of them, and with such survivor's heirs and assigns, that at and until the ensembling of these presents that we are well seized of the premises, as a good indefeasible estate in FEE SIMPLE; and have good right to bargain and sell the same in manner and form as is above written; and that the same is free from all incumbrances whatsoever, except as hereinbefore mentioned.

And Furthermore, we the said grantors do by these presents bind ourselves and our heirs, and assigns forever to WARRANT AND DEFEND the above granted and bargained premises to them the said grantees, and to the survivor of them and to such survivor's heirs and assigns, against all claims and demands whatsoever, except as hereinbefore mentioned.

In Witness Whereof, we have hereunto set our hands and seal this 27th day of January in the year of our Lord nineteen hundred and eighty-nine Signed, Sealed and Delivered in presence of

DAVID A. BINGTSON  
Daniel Z. Shapiro

Dorothy C. Anderson  
Eugene F. Carlson  
by Dorothy C. Anderson, attorney in fact  
John R. Carlson  
by Dorothy C. Anderson, attorney in fact  
Roland J. Anderson

State of Connecticut,  
County of Middlesex

SS. Middletown Dorothy C. Anderson

On this the 27th day of January, 1989, before me, Daniel Z. Shapiro, the undersigned officer, personally appeared Roland J. Anderson and Dorothy C. Anderson, individually and as Attorney-in-fact for \*\* known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained, as their free act and deed, and the free act and deed of said principals.

In Witness Whereof, I hereunto set my hand and official seal.  
\*\*Eugene F. Carlson and John R. Carlson.  
Daniel Z. Shapiro  
Commissioner of the Superior Court  
Title of Officer

State of Connecticut,  
County of

SS.

On this the day of 19 before me, the undersigned officer, personally appeared who acknowledged himself to be the a corporation, and that he as such being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as

In Witness Whereof, I hereunto set my hand and official seal.  
Title of Officer

Latest address of Grantee:  
No. and Street  
City

Rec'd for Record Jan 27, 1989 at 3:52 P.M.  
Recorded by Anthony Ebona  
Town Clerk