

This form must be completed and signed by the owner-of-record, their attorney and/or authorized agent. If form is not signed by property owner, please attach a signed letter of authorization designating the authorized agent.



APPEAL
under STATE BUILDING CODE

BOA 845078
6/19/18 filed

Boston, Massachusetts June 19, 2018

To the Board of Appeal in the Inspection Services Department of the City of Boston:

The undersigned, being 84 MT Vernon, LLC, owner of 84 Mt. Vernon Street, Ward 5 and the abutter

of the lot at 82 Mt. Vernon Street5.....Boston (Beacon Hill)
number street ward district

hereby appeal(s) under St. 1956, c. 665, s. 8, to the Board of Appeal in the Inspectional Services Department of the City of Boston the action taken by Inspectional Services Commissioner as outlined below and attached exhibit A.

DESCRIBE IN DETAIL THE REASON(S) FOR THIS APPEAL

This Appeal is filed with the Board of Appeal ("Board") in accordance with and pursuant to Section 8 of Chapter 665 of the Acts of 1956 ("Enabling Act") for reason that the Appellant, 84 MT Vernon, LLC, (John David Corey, Manager) ("Appellant"), owner of the property at 84 Mt. Vernon Street, Boston, MA and a direct abutter of the property at 82 Mt. Vernon Street, Boston, MA ("Premises"), is a person aggrieved by the decision of the Building Commissioner on May 8, 2018

STATE REASONS FOR THIS PROPOSAL

to issue Building Permit No. ALT 807161 to Joe Consalvo, on behalf of Walnut Willow LLC, Steven Young, Manager, the Developer/Owner of the Premises at 82 Mt. Vernon Street, in connection with a building permit application No. ALT 807161, which was filed on March 5, 2018, for the following work, as described in the permit: "Change occupancy from three-family to two-family dwelling. Renovate existing 6-story building. Add new sprinklers, exclusive elevator unit 2, rear decks, rear shed dormer, reframe floors. No exterior work at front façade. Partial cost reflected on \$250,000 SF 734152, and \$10,000 ALT 786473".

PROVIDE REASONS WHY BOARD SHOULD GRANT RELIEF

all in violation of the Building Code, 780 CMR, and the Boston Zoning Code ("Code").

COMMENTS

(See Exhibit A attached hereto).

OWNER 84 MT Vernon, LLC

By its attorney:
AUTHORIZED AGENT *James H. Greene*
James H. Greene, Esq.
Rubin & Rudman LLP

ADDRESS 53 State Street
Boston, MA 02109

TELEPHONE 617-330-7097

FAX 617-330-7550

EXHIBIT A
to the Appeal of
84 MT Vernon, LLC, John David Corey, Manager

This Appeal is filed with the Zoning Board of Appeal (“Board” or “ZBA”) on behalf of 84 MT Vernon, LLC, John David Corey, Manager (“Appellant”), the owner of the property at 84 Mt. Vernon Street, Boston (Beacon Hill), MA, and a direct abutter of the property at 82 Mt. Vernon Street, Boston (Beacon Hill), MA (“Premises”), owned by Walnut Willow LLC (“Developer”).

The Appellant is aggrieved by the Decision of the Building Commissioner (“Commissioner”) of the City of Boston Inspectional Services Department (“ISD”) on May 8, 2018 (“Decision”) to issue Building Permit No. ALT 807161, and in effect rescinding ISD Zoning Code Refusal letter dated March 21, 2018 for the Premises. The Zoning Code Refusal letter dated March 21, 2018 was addressed to Joe Consalvo and cited a violation of Section 13-1, Floor Area Ratio Excessive of the Boston Zoning Code (“Code”). Copies of the Building Permit and Zoning Code Refusal Letter are attached to this Appeal.

With the issuance of Building Permit No. ALT 807161 and the rescission of the March 21, 2018 Zoning Code Refusal letter, ISD has effectively granted Zoning Approval to the Developer to undertake the substantial rehabilitation of the Premises, as described generally on such permit as: “Change occupancy from three-family to two-family dwelling. Renovate existing 6-story building. Add new sprinklers, exclusive elevator unit 2, rear decks, rear shed dormer, reframe floors. No exterior work at front façade. Partial cost reflected on \$250,000 SF734152, and \$10,000 ALT786473” (“Project”), which Project and such Decision are in violation of the State Building Code, 780 CMR, and the Code, in the following respects:

1. **Incomplete Plans and Materials.** The Developer has not fully complied with the requirements of the Code. The Developer has failed to file with Building Permit Application

No. ALT 807161 comprehensive and complete building plans for the Project, including a required “Plot Plan”. Such failure has resulted in the following deficiencies: (i) the plot plan prepared as a Mortgage Plot Plan ((stamped “mortgage lender use only”) and certified by Robert Litchfield, Land Surveyor, fails to indicate the dimensions, area, boundaries, location of structures, etc. on the Lot, as required for Plot Plans, and (ii) the Project plans prepared by Steven Young (Manager of the Developer), as architect, lack the dimensional and area calculations, necessary for the computation of the Project’s compliance with the Code, including Gross Floor Area and Yard Requirements, and inaccurately reflect existing (before demolition and excavation) area and use of the garden/lower level of the Premises. In lieu thereof, the Developer filed inaccurate and incomplete plans of varying dates and relevance and incomplete dimensional calculations for the Project. The incompleteness of the submission and the level of design are not in compliance with the submission requirements for building permit applications under the Code or the State Building Code, 780 CMR 110.0.

2. **Non-conformity with Underlying Zoning.** The Project is located within the Beacon Hill Neighborhood, which is within the H-2-65 residential zoning district. As such, the Project is subject to the underlying zoning of the Code applicable to the H-2-65 district.

Article 13-Dimensional Regulations. The Project is subject to the Code and specifically the dimensional requirements of Article 14 through 23 of the Code, as required by Article 13 of the Code, which states as follows:

SECTION 13-1. Dimensional Regulations. Minimum lot size, minimum lot area per dwelling unit, minimum lot width, maximum height of buildings, minimum usable open space per dwelling unit, minimum front yard depth, minimum side yard width, minimum rear yard depth, minimum setback distance of parapet from any lot line, and maximum percent of rear yard occupied by accessory buildings for each class of use shall, except as otherwise expressly provided by this code and subject to the provisions of this Article and Articles 14 to 23 inclusive, be as specified in the following table. (As amended on February 1 and March 20, 1989 and on April 27, 1990). The Dimensional Regulations applicable to the H-2-65 (residential) district are set forth generally below:

Lot Area	Addl Lot Area	Lot Width	Lot Frontage	FAR	Bldg Hght-feet	Usable open space	Front Yard	Side Yard	Rear Yard	Rear Yard Occ.
None	None	None	None	2.0	65 ft	50	Fn(10)	Fn(4)	Fn(6)	30%

Article 15-Building Bulk, Section 15-1 Floor Area Ratio.

The Appellant requests that the Board find that the calculation of Gross Floor Area of the Project is incorrect, that such calculation includes areas which are pre-existing non-habitable space, and that such calculation does not include additional areas added by construction or renovations to the gross floor area of the Premises. The Article 2 Code definition of “Gross Floor Area” is set forth below:

(21) "Floor area, gross", the sum of areas of the several floors of the structure, as measured by the exterior faces of the walls, including fully enclosed porches and the like as measured by the exterior limits thereof, but excluding (a) garage space which is in the basement of a building or, in the case of garage space accessory to a dwelling, is at grade, (b) basement and cellar areas devoted exclusively to uses accessory to the operation of the structure, and (c) areas elsewhere in the structure devoted to housing mechanical equipment customarily located in the basement or cellar such as heating and air conditioning equipment, plumbing, electrical equipment, laundry facilities and storage facilities, provided, however, that in an H-2-45, H-2-65, H-3-65, L-2-65 or B-3-65 district no area in an existing structure previously included in gross floor area and no area in any addition to an existing structure, except areas not used or designed to be used for human occupancy, such as attics, basements, cellars or space under sloping eaves, shall be excludable from gross floor area as area for storage facilities or laundry facilities.

“Floor area, gross” is also subject to certain adjustments or limitations (parking area) as noted in the determination of FAR under Article 15, Section 15-1 of the Code, which states as follows:.

Section 15-1. Floor Area Ratio. Except as otherwise provided in this Article, the ratio which the gross floor area of all structures on a lot exclusive of floor area required to meet the off-street parking requirements of this code bears to the area of the lot shall not exceed the maximum floor area ratio specified in this code. In calculating the area of the lot for the purpose of this section, the following parts of the lot shall be excluded: (a) every part required by any other structure or use to comply with any requirement of this code, and (b) every part the ownership of which is transferred subsequent to the effective date of this code if such part is required for compliance with the provisions of this code applicable to the lot from which such transfer is made.

The Appellant submits that the Developer has included pre-existing non-habitable areas in the “sub-basement/garden” level of the Premises in its calculation of gross floor area in order to increase a pre-existing nonconforming FAR for the Premises prior to the actual undertaking of the Project and thus utilize such space as improved living space after the renovations.

Specifically, the Appellant contends that the Developer submitted a “Basement Plan” with Building Permit application No. ALT 807161 on March 5, 2018, which identified the floor area as: “rear entry/laundry”, storage/utility” and “bath”. The Appellant submits that as a result of the submission of such plan, ISD correctly issued the Zoning Code Refusal letter dated March 21, 2018 citing Section 13-1, gross floor area excessive. After ISD issued the Zoning Code Refusal letter on March 21, 2018, the Developer filed another plan, entitled: “Garden Plan”, which identified the floor area as: “Unit 1 mud room”, “Unit 1 kitchen” and “bath”. The Appellant submits that the Developer’s resubmittal of the now “Garden Plan” inaccurately shows living area including a “mud room, kitchen & bath” on such level, which was then incorrectly assumed to be included as pre-existing gross floor area. In support of the Appellant’s position, the Appellant has attached to this Appeal the Affidavit of John E. Sutherland (now of 152 Mt. Vernon Street), a former resident of the Premises for 41 years from 1976 to 2017 affirming that such “sub-basement/garden” level has always been used as an accessory storage/utility space with laundry and coal-fired/oil-fired heating system furnace, tool area and without a bathroom,.

The definition in Article 2 of the Code excludes the following areas from gross floor area: “*b) basement and cellar areas devoted exclusively to uses accessory to the operation of the structure, and (c) areas elsewhere in the structure devoted to housing mechanical equipment*”

customarily located in the basement or cellar such as heating and air conditioning equipment, plumbing, electrical equipment, laundry facilities and storage facilities. Such areas are NOT to be included in determining gross floor area, and the Appellant contends that the Developer has included approximately 728 SF of “sub-basement/garden” level area, historically used for *mechanical equipment customarily located in the basement or cellar such as heating and air conditioning equipment, plumbing, electrical equipment, laundry facilities and storage facilities* as habitable area in its FAR calculation in order to establish a greater pre-existing FAR in excess of the underlying FAR limit of 2.0.

Furthermore, the plans submitted to the ISD do not specify the Gross floor Area (“GFA”) or a Floor Area Ratio (“FAR”) calculation. The Appellant has retained an expert architect, Frank McGuire, to prepare an analysis of the GFA and FAR of the Premises, as set forth in the chart below. This information is based upon an examination of the Existing Conditions Plans (prior to work) filed with ISD and the Proposed Floor Plans (proposed work). Additionally, the Appellant has included in the chart a column entitled: “Potential Deck Enclosures” in order to alert the Board that the size of the proposed 5 story steel structure of three (3) decks, of approximately 300 SF each, for use by one (1) condominium unit (Unit 2) are susceptible to future renovations, such as an enclosure at a future time, which would increase the additional living space for Unit 2 by 900 SF. The decks are constructed of steel construction and have a floor and ceiling construction suitable for enclosure.

The Appellant submits the following calculations indicate that the pre-existing FAR of 2.21 of the Premises has increased to an FAR of 2.61 for the Proposed Project with a potential FAR of 3.15, if the decks are constructed and enclosed, all of which are based upon a Lot Area of 1,675 SF, as shown on the Assessor and Mortgage Plan.

<u>Floor</u>	<u>Developer Calculation of GFA</u>	<u>Appellant Calculation of Pre- existing GFA</u>	<u>Appellant Calculation of Proposed Project GFA</u>	<u>Potential Deck Enclosure GFA</u>	<u>Total Potential GFA</u>
5 th Floor (Attic)	None	460 SF	460 SF		460 SF
4 th Floor Plan	None	818 SF	805 SF	300 SF	1,105 SF
3 rd Floor Plan	None	821 SF	753 SF	300 SF	1,053 SF
2 nd Floor Plan	None	823 SF	831 SF	300 SF	1,131 SF
1 st Floor (Basement) Plan	None	786 SF	802 SF		802 SF
Garden/sub- Basement Floor Plan	None	0 SF	728 SF		728 SF
TOTAL & FAR	None	3,708 SF (2.21 FAR)	4,379 SF (2.61 FAR)		5,279 SF (3.15 FAR)

With respect to the calculation of Floor Area Ratio (FAR), the Appellant notes that the FAR limitation for the H-2-65 District is 2.0. Based upon the lot area of 1,675 square feet, the FAR cannot exceed 3,350 square feet (FAR of 2.0). The Premises has an existing FAR of 2.21, which is a pre-existing dimensional nonconformity. Therefore any work on the Premises is

subject to the Section 13-3 of the Code, which restricts an increase in such pre-existing non-conformity. Specifically, Section 13-3 states that a building or use existing on the effective date of the Code and not conforming to the applicable dimensional requirements specified in the Code may nevertheless be altered or enlarged provided that such nonconformity is not increased and that any enlargement itself conforms to the dimensional requirements of the Code. By increasing the GFA within the various floors of the building (6 levels), the Developer has increased the pre-existing FAR of 2.21 to 2.61 (potential 3.15), and thus is in violation of Section 13-3 of the Code. Additionally, the addition of a 5-story steel structure housing three (3) 300 SF decks to the rear of the building, which encroaches upon the Rear Yard and results in a non-conformity of the dimensional requirements of the Code with respect to Rear Yard, Section 20-4 of the Code.

The Appellant requests that the Board accept the Appellant's more comprehensive and complete examination of the determination of GFA and FAR.

Side Yard Requirements under Article 19.

The Code sets forth a specific requirement for the establishment of a side yard in H-2-65 residential district. The Code allows an exception from side yard where a building on the adjoining lot abuts the side lot line, and the establishment of a side yard is impossible. Also, under Section 19-4, the Code allows an exception from the side yard requirements for a distance of 70 feet measured from the required front yard. Although the Plot Plan does not include measurements for front yard, as shown on such plan, the front yard is approximately 4 feet in depth. Based upon the side yard dimension noted in the Premises deed recorded with Suffolk County Registry of Deeds of approximately 74 feet and 76 feet, the Section 19-4 exception eliminates the side yard requirement for the Lot with the exception of approximately 2 feet on the south side lot line within the rear yard area. Therefore, the Lot has no required Side Yard.

Rear Yard Requirements under Article 20.

Notwithstanding the claim by the Developer that the Rear Yard complies with the dimensional requirements of Article 13 of the Code, the Developer fails to note the applicability of footnote #6 in the Table of Dimensional Regulations, which specifically refers to Section 20-4 of the Code for Rear Yard compliance. Section 20-4 of the Code requires that a lot with no Side Yard (which is the case for the Premises-see above) shall have a Rear Yard of at least 30 feet

deep. The Section 20-4 Rear Yard allowance of 20 feet is not applicable, since the Premises does not have a Side Yard conforming to the remaining provisions of Section 19-4 of the Code. Thus, the required Rear Yard is 30 feet.

As shown on the Mortgage Lender Plan (Plot Plan), submitted with the Project plans, the existing Rear Yard is approximately 28.225 feet, which in fact acknowledges the 30 ft. rear yard setback adopted for similar lots within the Beacon Hill district with the adoption of the Code as of December 31, 1964. The lot at 82 Mt. Vernon Street is not dissimilar from other lots along the south side of Mt. Vernon Street in which structures without an “L” provide for a Rear Yard of approximately of 30 feet. In fact, the Appellant’s property at 84 Mt. Vernon Street has a Rear Yard which measures approximately 30 feet.

To the extent that the rear yard requirement under Section 20-4 is 30 feet, the erection of a 5-story steel deck structure, rising 48 feet in height, is not allowed within such rear yard. Although Section 20-3 allows projections into Rear Yards, similar to the Section 19-1 allowed projections, a 5-story steel deck structure is not an allowed projection. Section 19-1 and 20-3 of the Code provide a guide to the potential allowed encroachments into a Side Yard and Rear Yard, but such encroachments are usually fences or walls, steps or terraces and open porches which do not extend more than 3 feet above the floor of the first story or other porches and ground story bays. There is no allowance or exception for the construction of a structure within such yards for a 5-story steel deck as proposed by the Developer.

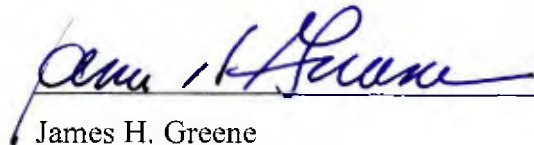
For these reasons and others to be submitted to the Board at a hearing on this matter, it is respectfully requested that the Board exercise its equitable powers granted under the Enabling Act, grant relief to the Appellant by the issuance of an order to the Building Commissioner ordering him: (i) to revoke the Building Permit No. ALT 807161 issued on May 8, 2018 and permits SF 734152 and ALT 786473; (ii) to determine that the Project Plans, Building Permit Application No. ALT 807161 and the statements filed in connection with the Project are deficient and not in compliance with the Code and 780 CMR 110.0; (iii) to issue denial letters to the Developer on Building Permit Application No. ALT 807161, as the same are in violation of the Code with respect to floor area ratio, rear yard, section 13-1 compliance and any other zoning provisions as determined by the Board at a hearing of this matter; (iv) to refrain from issuing any

other permits for the Project until such time as the Developer submits Project plans in compliance with the Code and the State Building Code and receives Zoning Relief from this Board for the variances as directed by the Board; and (v) to rescind any other short form or long form permits for the Project.

Respectfully submitted,

84 MT Vernon, LLC

By its attorney:

A handwritten signature in blue ink, appearing to read "James H. Greene", is written over a horizontal line.

James H. Greene

Rubin and Rudman LLP

53 State Street

Boston, MA 02109

(617) 330-7000

Attachment A-Building Permit ALT 807161, issued May 8, 2018

Attachment B-Zoning Code refusal letter dated March 21, 2018

Attachment C-Affidavit of John E. Sutherland dated June 6, 2018

84 MT Vernon, LLC
c/o John D. Corey, Manager
84 Mt. Vernon Street
Boston, MA 02108

June 13, 2018

Matthew Fitzgerald, Esquire
Board of Appeal
1010 Massachusetts Avenue
Boston, MA 02218

Re: Appeal by 84 MT Vernon, LLC, Owner of 84 Mt. Vernon Street
in connection with the property at 82 Mt. Vernon Street, Ward 5
ISD Application No. ALT-807161, dated March 5, 2018

Dear Mr. Fitzgerald:

Please be advised that James H. Greene of the law firm of Rubin and Rudman is hereby authorized to file on behalf of 84 MT Vernon, LLC, the above captioned appellant and owner of the property at 84 Mt. Vernon Street, Boston, MA, an appeal with the Board of Appeal of the City of Boston seeking relief from the decision issued on May 8, 2018 by the Inspectional Services Department ("ISD") to issue Building Permit No. ALT 807161, and in effect rescinding the Zoning Code refusal dated March 21, 2018, in connection with ISD Application No. ALT 807161 for the property at 82 Mt. Vernon Street, Ward 5, Boston, MA. Copiers of the Building Permit and Zoning Code Refusal Letter are attached to the appeal.

Very truly yours,
84 MT Vernon, LLC

By: 
John D. Corey, Manager

cc: James H. Greene, Esq.

Attachment A



Boston Inspectional Services Department
Building and Structures Division

1010 Massachusetts Avenue Boston, MA 02118 Telephone: (617) 635-5300

Martin J. Walsh
Mayor

Sean Lydon
Inspector of Buildings

ALTERATION PERMIT

To erect, enlarge, alter, substantially repair, move, demolish or change occupancy of building or structure

Name of Applicant: Joe Consalvo

Issue Date: 05/08/2018

Name of Owner:

Fees: \$5,784.00

Location: 82 Mount Vernon ST

Declared Value: \$550,000.00

Neighborhood: Boston Ward: 05

Legal Occupancy: 3 FAMILY
DOC#ALT786473 / 2018

Application/Permit No.: ALT807161

WORK DESCRIPTION: Change occupancy from three-family to two-family dwelling. Renovate existing 6-story building. Add new sprinklers, exclusive elevator unit 2, rear decks, rear shed dormer, reframe floors. No exterior work at front facade. Partial cost reflected on \$250,000 SF734152, and \$10,000 ALT786473.

Requirements:

1. Before any construction commences, this permit must be posted at the front of the street address, affixed to a window and open to public inspection until the completion of work.
2. ~~Rough inspections are required for excavation before concrete is poured; before foundation work is covered; when rough wiring or plumbing is completed; prior to insulating or closing of walls.~~
3. Final inspections for mechanical and/or electrical shall be done prior to obtaining the final approval by the Building Inspector.
4. The holder must call the District Inspector to arrange for all inspections: 617 635-5300.

Date	Building Inspector	Insp Type	Date	Building Inspector	Insp Type
Date	Electrical Inspector	Insp Type	Date	Electrical Inspector	Insp Type
Date	Mech Inspector	Insp Type	Date	Mech Inspector	Insp Type

Construction work is permitted from Mon - Fri, 7am to 6pm, CBC Ord. 15-26A
THIS CARD MUST BE DISPLAYED IN A CONSPICUOUS PLACE ON THE PREMISES

Attachment B



**Boston Inspectional Services Department
Planning and Zoning Division**

1010 Massachusetts Avenue Boston, MA 02118 Telephone: (617) 635-5300

Martin J. Walsh
Mayor

ZONING CODE REFUSAL

Sean Lydon
Inspector of Buildings

JOE CONSALVO
647 BOYLSTON STREET
BOSTON, MA 02116

March 21, 2018

Location: 82 MOUNT VERNON ST BOSTON, MA 02108
Ward: 05
Zoning District: Boston Proper
Zoning Subdistrict: H-2-65
Appl. # : ALT807161
Date Filed: March 05, 2018
Purpose: Change occupancy from three-family to two-family dwelling. Renovate existing 6-story building. Add new sprinklers, exclusive elevator unit 2, rear decks, rear shed dormer, reframe floors. No exterior work at front facade. Partial cost reflected on \$250,000 SF734152, and \$10,000 ALT786473.

YOUR APPLICATION REQUIRES RELIEF FROM THE BOARD OF APPEAL AS SAME WOULD BE IN VIOLATION OF THE BOSTON ZONING CODE TO WIT: CHAPTER 665, ACTS OF 1956 AS AMENDED:

<u>Violation</u>	<u>Violation Description</u>	<u>Violation Comments</u>
Article 13, Section I **	Floor Area Ratio Excessive	
Notes		See Building Code Refusal Letter

THIS DECISION MAY BE APPEALED TO THE BOARD OF APPEAL WITHIN FORTY-FIVE (45) DAYS PURSUANT TO CHAPTER 665 OF THE ACTS OF 1956, AS AMENDED. APPLICATIONS NOT APPEALED WITHIN THAT TIME PERIOD WILL BE DEEMED ABANDONED. IF YOU HAVE INQUIRIES REGARDING THE NEIGHBORHOOD PROCESS AND PUBLIC PARTICIPATION, PLEASE CONTACT THE MAYOR'S OFFICE OF NEIGHBORHOOD SERVICES AT 617-635-3485.

Lisa Hoang
(617)961-3359
for the Commissioner

Refusal of a permit may be appealed to the Board of Appeal within 45 days. Chapter 802, Acts of 1972, and Chapter 656, Acts of 1956, Section 19.

Attachment ©

Affidavit of John E. Sutherland

My name is John E. Sutherland and I depose and say as follows:

1. I moved into 82 Mount Vernon Street, Boston on Beacon Hill on or about September 4, 1976.
2. As a tenant at the property, I initially occupied the lowest of the three apartments.
3. The first floor was then occupied by Mrs. Agrippino, the owner.
4. The top three floors were occupied by her daughter Lisa Trojano and her husband and two young sons, who moved to Norwell shortly thereafter.
5. When Mrs. Agrippino died, my wife and I took over her apartment as well as the lower unit.
6. At all times, we had access to the basement where there was a tool area, a separate room in the rear on the westerly side that I used for file storage and other storage throughout the basement, as well as a washer and dryer.
7. The basement was exactly at ground level to the rear garden, exactly even with it.
8. In or about September 1, 1992, my wife and I took the top apartment which was comprised of three floors and we gave up the other two apartments.
9. By then, we had taken over the basement almost entirely with built in shelves in the file storage room, there were three plant stands with built in lights for my wife's flowers, our washer and dryer and the giant heating unit (originally coal fired), had been replaced with a modern oil fired system that took up substantially less space.
10. I used the additional basement space by adding a table saw to go along with the shelves of hand tools and the work table with vice that (sadly) I left there.
11. We had the essentially exclusive use of the rear garden and had installed a 500 pound granite fountain in the center, with garden beds to the sides and against the building.
12. I forget exactly when we took over the first floor apartment again as well as the upper unit, but it is my estimate that we did this in 1995.
13. I was familiar with all of the building systems and handled most building maintenance and repairs myself.
14. During the 41 years my wife and I lived there, there was never a bathroom in the basement.

15. To the best of my knowledge, there was never a bathroom in the basement.
16. There was most certainly never a kitchen in the basement.
17. The basement was rough with a thin concrete floor.
18. In the front of the building in the basement, there was a thick concrete base that was above the other floor height by about 18 inches that continued all across the front of the building and was approximately five or six feet in width from the wall.
19. The basement area was never occupied as living space, was never finished and was always for systems and storage.
20. I have been a member in good standing of the bar in the Commonwealth since 1978 and have been a principal in the law firm of Brickley / Sears since 1985.
21. My wife and I currently reside at 152 Mount Vernon Street.

Signed under the pains and penalties of perjury this 6th day of June, 2018.



John E. Sutherland