

22-8



BOARD OF APPEALS
TOWN OF FOXBOROUGH
40 SOUTH STREET
MASSACHUSETTS
02035

APPLICATION FOR BOARD OF APPEALS HEARING

Name of Applicant: Massachusetts Electric Company Tel #. 508-926-3464

Mailing Address: 40 Sylvan Road, Waltham, MA 02451 Email: jsmith@bowditch.com

Location of Property Subject of the Hearing: 63 Elm Street

Assessors Map #: 107 Parcel #: 20 Zoning District: LI

Is the property located in any zoning overlay district? No Yes If yes, please identify overlay district _____.

Owner of Subject Property (if different than applicant): Same as applicant.

Address of Owner (if different than applicant's address): Same as applicant.

Were previous decisions rendered on the subject property?: No Yes . If yes, please Provide copy of decision(s).

***NATURE OF APPLICATION (complete appropriate hearing request):**

1. Request for a **SPECIAL PERMIT** under Section _____ of the Zoning By-Laws to allow _____

2. Request for a **VARIANCE** from Section 4.1, Table 4-2 of the Zoning By-Laws to allow construction and/or installation of substation-related equipment and facilities to be located as much as 17 feet within the 50-foot minimum rear yard setback.

3. An **ADMINISTRATIVE APPEAL** in accordance with Section 10.2.2 of the Zoning By-Laws (explain): _____

4. **OTHER** (i.e. Comprehensive Permit, Finding or Sign Bylaw - Chapter 213 Signs) Explain: _____

*If necessary, attach additional description page(s).

I, Massachusetts Electric Company as applicant, hereby request a hearing before the Foxborough Zoning Board of Appeals as referenced in the above application.

Applicant's Signature: By: Michael E. Guerin Date: 4/25/22
Michael E. Guerin, Authorized Signatory

***If applicant is other than owner of subject property, owner must sign authorization below.**

I, _____ as owner of subject property, hereby authorize the applicant, _____, to act on matters before the Foxborough Zoning Board of Appeals as referenced in the above application.

Subject Property Owner's Signature: _____ Date: _____

Official Use Only

Tax Collector's Release

The above referenced applicant is applying for a permit from the Zoning Board of Appeals and is in good standing with respect to any taxes, fees, assessments, betterments or other municipal charges as recorded with the Treasurer's Office.

Tax Collector or Agent's Signature: Henry H. Lamm Date: 4/25/22

Town Clerk Receipt

The above referenced application has been received and recorded with the Town Clerk.

Town Clerk or Agent's Signature: _____ Date: _____

INSTRUCTIONS FOR APPLICATION FILING: INCLUDE EIGHT (8) COPIES EACH.

1. Completed application with all signatures affixed.
2. Copy of assessor's map showing parcel subject to hearing.
3. Plot Plan, certified by land surveyor or civil engineer showing proposed work (Mortgage survey plans will not be accepted).
4. Construction plans showing building elevations with dimensions (if applicable).
5. If an administrative appeal, include denial letter or zoning determination from the Building Commissioner or other Town Official (if applicable).
6. Abutter's List (within 300 feet of subject property), certified by the Town Assessor.
7. Any additional documentation relevant to the hearing.
8. Appropriate fees (See Fee Schedule)

FILING AND ADVERTISING FEES

(a) A filing fee shall be made payable to the "Town of Foxborough" as follows:

Application Type	Filing Fee*
(i) Single and Two-Family Special Permits (including home occupations), Variances and Findings	\$150
(ii) Multi-Family Special Permits, Variances and Findings	\$200 plus \$75 for each unit in excess of 2
(iii) Non-Residential Special Permits, Variances and Findings	\$300
(iv) Signs	\$200
(v) Appeals of Building Commissioner/ Zoning Enforcement Officer	\$150
(vi) Comprehensive Permits	As determined in accordance with Section 5.03 of the Foxborough Zoning Board of Appeals Rules and Regulations

** Each request within an application is subject to and requires payment of the filing fee that is applicable thereto. For example, an application requesting both a special permit and a variance for a non-residential use would require payment of a \$600 filing fee.*

(b) An advertising fee shall be made payable directly to The Sun Chronicle (or such other locally-distributed newspaper in which the Board designates the required hearing notice to be advertised) in such amount as is required thereby.

April 28, 2022

BY FEDERAL EXPRESS – 7767 1533 7148 and E-MAIL

Town of Foxborough Zoning Board of Appeals
40 South Street
Foxborough, MA 02035
Attn: Barnett Ovrut, Chairman
Email: dgray@town.foxborough.ma.us

**Re: Massachusetts Electric Company – Application for Variance for
Electric Substation Improvement Project at 63 Elm Street,
Foxborough, Massachusetts**

Dear Chairman Ovrut and Members of the Zoning Board of Appeals:

This firm represents Massachusetts Electric Company (“MEC”) in connection with its application to the Town of Foxborough Zoning Board of Appeals (the “Board”) for a rear yard setback variance with respect to the proposed construction and installation of certain substation-related equipment and facilities (the “Project”) at MEC’s existing 13 kV/23 kV electric substation known as Foxborough Substation #2 (the “Substation”) located at 63 Elm Street, Foxborough, Massachusetts.

We hereby submit the following items for filing with the Board (8 copies provided unless otherwise specified):

1. Application for Board of Appeals Hearing with Statement in Support;
2. Assessor’s map;
3. Plan set (one full-sized and seven 11”x17” copies sent separately by Burns & McDonnell);
4. Certified abutters list;
5. Filing fee in the amount of **\$300.00** payable to the Town of Foxborough; and
6. Advertising fee payable to The Sun Chronicle to be provided once fee is confirmed.

A digital copy of this Application package (including all submitted materials) is also being filed with the Board today. Please let me know if you should have any questions concerning the enclosed.

Kindly file this Application with the Town Clerk, and schedule this Application for the Board's meeting which is scheduled to occur on or before **May 19, 2022**.

Thank you for your assistance with this matter.

Yours truly,



Joshua Lee Smith

JLS:sf
Enclosures

cc: Scott Shippey, Building Commissioner
Project Team

Statement in Support of Massachusetts Electric Company
Application to Town of Foxborough Zoning Board of Appeals for Grant of
Variance for Electric Substation Improvement Project
at 63 Elm Street, Foxborough, Massachusetts

Massachusetts Electric Company (“MEC”) seeks a grant of a dimensional variance under Section 10.2.2 of the Foxborough Zoning Bylaw from the Foxborough Zoning Board of Appeals (the “Board”) in connection with the proposed construction and installation of certain substation-related equipment and facilities (the “Project”) at MEC’s existing 13 kV/23 kV electric substation known as Foxborough Substation #2 (the “Substation”) located at 63 Elm Street, Foxborough, Massachusetts.

I. Background, Purpose and Project Scope.

The Substation is located on an approximately 22,500 square feet parcel of land that is owned and operated by MEC (the “Substation Property”).¹ The Substation Property is located in the Limited Industrial (LI) zoning district and no overlay zoning districts, and is surrounded by vacant land owned by the Town and a photovoltaic power station. Nearby properties include a mix of manufacturing, distribution, warehouse and other industrial and municipal properties. The closest residential property is located over 230 feet from the Substation Property and separated by an intervening property used by the Town for outdoor materials storage.

The Substation has been in operation for over 65 years, and is currently comprised of a control house and various substation-related equipment and facilities (e.g., transformers, circuit breakers, switches, dead-end structures, etc.), and which is secured by a chain link fence that is 7 feet tall topped with 1 foot of barbed wire. MEC has determined that the replacement, installation and/or construction of certain substation-related equipment and facilities is necessary to improve capacity and reliability of electric service in the Town.

In order to accomplish this, MEC must obtain the grant of a variance from the Board for noncompliance of the Equipment Encroachments (hereinafter defined) within the minimum rear yard setback. MEC is also seeking site plan review approval from the Foxborough Planning Board and an earth removal special permit from the Foxborough Board of Selectmen.

The Project involves the replacement, installation and/or construction of certain substation-related equipment and facilities, which include the following primary components: 1. an approximately 33’ x 101’ (i.e., 3,333 square feet)² expansion of the substation yard in the rear/northerly portion of the lot to accommodate the construction and/or installation of new substation-related equipment and facilities, including, but not limited to, transformers, circuit breakers, feeders, switches and associated support structures and foundations; 2. replacement of all fencing and expansion with chain link fencing having a height of 8 feet plus 1 foot of barbed wire with gates and shifted approximately 20 feet from the street; 3. installation of crushed stone fill, duct banks, ground grid and lighting fixtures; 4. planting of trees and other landscaping; 5.

¹ The Substation Property has a parcel identification of 107-020-000.

² Includes substation yard, fence, buffer outside of fence, but not other areas necessary for site grading.

removal of existing equipment and facilities; and 6. excavation, grading and clearing of trees and other vegetation.

II. Requirement for Variance.

Table 4-2 of the Zoning Bylaw requires a minimum rear yard setback of 50 feet for structures in the LI zoning district. Certain new equipment and facilities will be as close as approximately 33 feet to the rear lot line, and, therefore, requires a 17-foot variance from the Board pursuant to Section 10.2.2 of the Zoning Bylaw.

III. Reasons for Approval of Variance.

The Board should grant the requested variance for the reasons set forth below.

A. Unique circumstances relating to lot shape, environmental conditions, safety and security; type of hardship.

Unlike other properties and uses in the zoning district and elsewhere, MEC and the Project must comply with electrical safety, security and clearance requirements (among buildings, equipment, facilities, fencing and property lines),³ standards and codes, including, but not limited to, the National Electric Safety Code, which substantially limits the developable area for the Project equipment and facilities, including the Equipment Encroachments. The Substation Lot is relatively small in size as compared to other lots in the LI zoning district, and is constrained by existing equipment, the driveway, overhead lines and structures and environmentally sensitive soil conditions. There is no room within the existing Substation yard to accommodate the Project equipment and facilities. There is no room to expand the northeasterly side yard for the Project, and the existing driveway, overhead distribution lines and structures and contaminated soils with monitoring wells prohibit expansion of the southwesterly side yard, and, even if installed in that location, would also not comply with the 25-foot minimum side yard setback requirement. Expansion of the rear yard will result in significantly less earth disturbance as compared to an expansion of the southwesterly side yard and reconstruction of the driveway. For safety and security reasons and to avoid potential harm, the Equipment Encroachments must be located within the minimum 50-foot rear yard setback.

Based on the uniqueness of these substation facilities and the size, shape and environmentally sensitive soil conditions of the Substation Property, there is very limited space available to properly and safely arrange all of the required equipment, structures and facilities at the Property, which results in the proposed Equipment Encroachments being closer to the rear lot line and within the minimum rear yard setback. In addition, in order to avoid outages, the existing facilities cannot be removed, de-energized and/or de-commissioned until the Project is fully-constructed and new equipment installed and energized, which substantially reduces the total area that would otherwise be available for the Equipment Encroachments.

³ See *Furlong v. Zoning Board of Appeals of Salem*, 90 Mass. App. Ct. 737 (2016)(where variance diminishes risk of existing harm or prevents greater risk of harm that would result from compliance with zoning ordinance, such hardship may merit a variance).

These circumstances and features of the Substation Property especially affect the Substation Property and not surrounding properties. The proposed Project layout is necessary to accommodate the Project facilities within such challenging conditions. Therefore, due to reasons pertaining to the location of the existing facilities, lot size and shape and environmental conditions, safety, security and operations, the Equipment Encroachments must be located within the minimum rear yard setback as shown on the submitted plans.

MEC would suffer substantial hardship if literal enforcement of the rear yard setback requirement was to be enforced, as there would not be sufficient clearances between and among the new Project equipment and facilities. The Project equipment and facilities cannot be safely redesigned or reconfigured in a manner that will comply with the minimum rear yard setback requirement. Additional impacts to environmentally sensitive areas would likely result in increased tree clearing impacts if the existing driveway and/or overhead infrastructure were to be relocated. Therefore, if the requested variance is not granted, MEC would have to acquire rights to expand the lot area or a new site at which to construct a new substation or expand another existing substation site. There are no such alternative sites available in close proximity to the Substation Property and the distribution line corridor, and, even if a reasonably alternative site became available, it would be cost prohibitive to perform due diligence on, acquire rights to and design and construct facilities at such an alternative site. Moreover, the Project is highly time-sensitive and development at an alternative site is not feasible as it would significantly delay energizing necessary electric infrastructure improvements, and, therefore, put at risk the reliability of electric service in the Town.

B. Proposed use not detrimental to the neighborhood.

The proposed substation-related equipment and facilities will continue to be surrounded mostly by unimproved woodlands and in an industrial area of the Town and far from away from residences. The Project will be located a significant and safe distance from the public way and property lines and visually screened from the to the extent practicable by the existing substation facilities, existing dense vegetation and proposed new landscape buffers along the front and side yards and new taller security fencing along the side and rear yards.

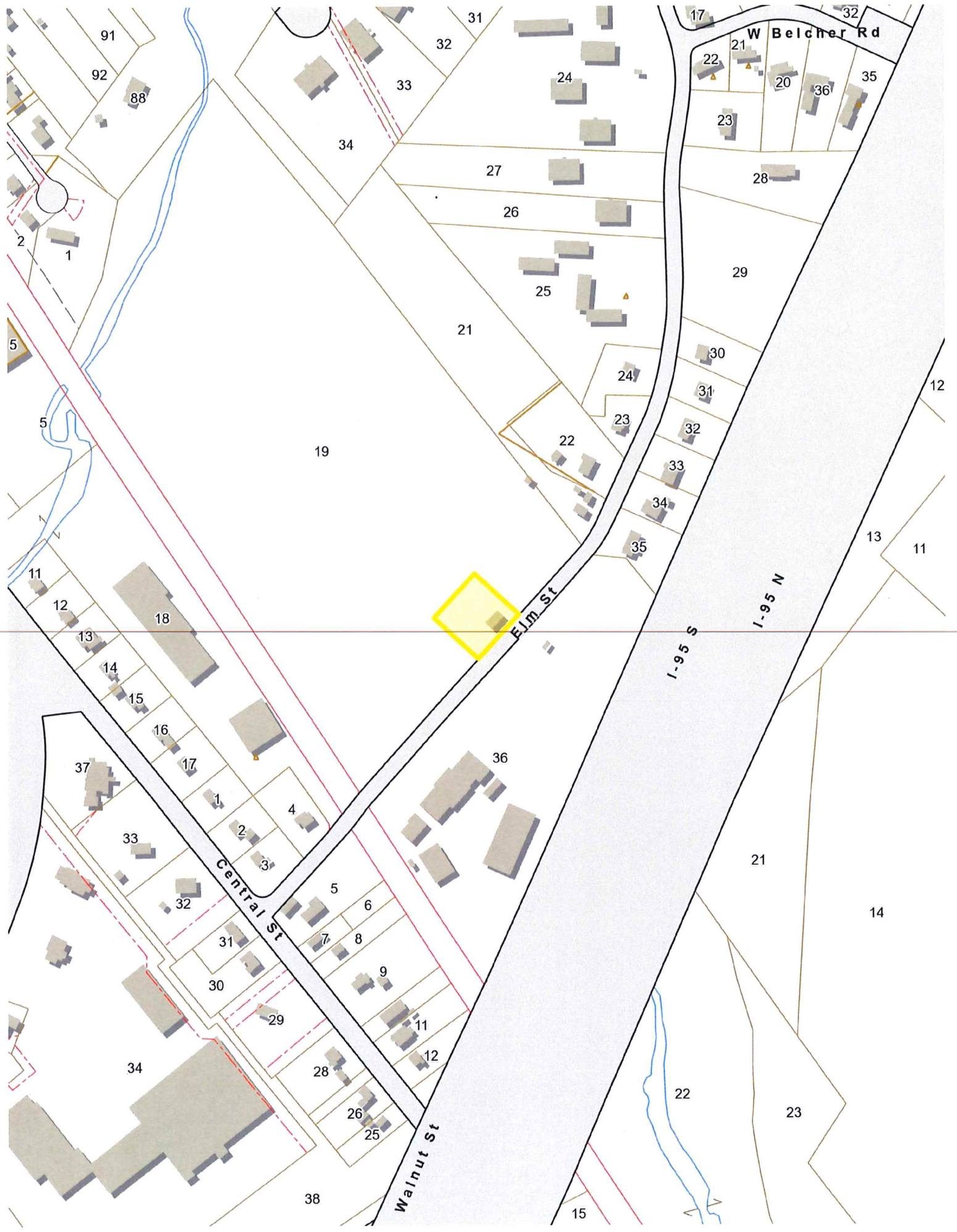
Granting this relief will promote the highest and best use of the Substation Property, as such property has been used as an electric substation for over 65 years, and the Project use, structures and facilities are consistent and compatible with the surrounding industrial properties in the neighborhood, along with the distribution line corridor and lines that currently run through the Substation Property and nearby properties. The kind, size, height and nature of the Project improvements will have minimal impacts on, and will not be detrimental to or adversely affect, adjoining properties or the neighborhood. Rather, the Project will enhance the aesthetic appeal by the addition of new landscaping and the replacement of old and outdated equipment and facilities.

C. Proposed use will not derogate from the intent and purpose of the Zoning Bylaw.

The Project will be in harmony with the general purpose and intent of the Zoning Bylaw, and will not create a nuisance, hazard, congestion or concerns pertaining to health, safety or

general welfare. Because the Substation currently exists at the Property, there will not be substantial harm to the neighborhood or derogation from the purpose and intent of the Zoning Bylaw as a result of the Project. The substation use constitutes essential services use, which is permitted by right in the LI zoning district pursuant to the Zoning Bylaw.

The nature and purpose of the substation use under the Project is directly for the public good and benefit. The Project will encourage the most appropriate use of the land and will support, enhance and promote the health, welfare, safety, economic vitality and growth of the Town by providing necessary and critical electric infrastructure to ensure reliable electric service to its residents, businesses and institutions. The Substation Property will continue to generate significant real estate and personal property tax revenues for the Town. The Substation is in an industrial area of the Town surrounded by industrial and vacant land and far away from any residential properties, and screened by existing and new vegetative screening. Given that the Substation will continue to be an unmanned facility, there will be no increases in traffic congestion, strains on parking or undue concentrations of the population. Except for the approvals referenced herein, no other zoning-related permits or approvals are required for the Project. Except for the non-compliance of the Equipment Encroachments with the 50-foot minimum rear yard setback requirement, the Project will comply with all dimensional requirements of the Zoning Bylaw.



RECEIVED
BOARD OF ASSESSORS
APR 19 2022
TOWN OF FOXBOROUGH



BOARD OF ASSESSORS
TOWN OF FOXBOROUGH
40 SOUTH STREET
FOXBOROUGH MASSACHUSETTS 02035

(508) 543-1215

Fax: (508) 543-6278

CERTIFICATION OF ABUTTERS

PROPERTY OWNER: Worcester County Electric Company/Massachusetts Electric Company
Bowditch & Dewey, LLP
MAILING ADDRESS: 311 Main Street, P.O. Box 15156, Worcester, MA 01615
PROPERTY LOCATION: 63 Elm Street, Foxborough
ASSESSORS MAP/PARCEL: 107 / 020/000 000/000
APPLICANT: Massachusetts Electric Company PHONE: 508-926-3464
AUTHORITY REQUESTING LIST: Joshua Lee Smith, Attorney
DATE SUBMITTED: 4/13/22

LIST REQUESTED: 500 FT 300 FT 100FT ABUTTER TO ABUTTER

I, Sara Savelli, acting as a custodian of assessment records, do hereby certify that the attached documents contain true and complete information from the most recent tax list of the Town of Foxborough, Massachusetts.

I further state that these documents include the names and addresses of abutters to the abutters 63 Elm Street, Map: 107 Parcel: 020

Date: 4/19/2022

BOARD OF ASSESSORS
FOXBOROUGH MASSACHUSETTS

Massachusetts General Law c. 40A, s. 11, "The assessors maintaining any applicable tax list shall certify to the permit granting authority or special permit granting authority the names and addresses of parties in interest and such certification shall be conclusive for all purposes."

The Assessors Office will complete the abutters list within 7-10 business days. There is a \$25.00 fee for an abutters list.

"The applicant is solely responsible for requesting the appropriate abutters list required by the applicable Mass General Law."

4/19/2022

63 Elm Street. Map 107, Parcel 020, 300 Feet

Owner Name	Owner Address	Owner City	Owner State	Owner Zip
CARTER MICHAEL J & DARLENE E	52 ELM ST	FOXBORO	MA	02035-0000
KELLEHER MARK F & KATHERINE F	53 ELM STREET	FOXBOROUGH	MA	02035-0000