



# TOWN OF TRURO

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## ZONING BOARD OF APPEALS

### Agenda

**DATE OF MEETING:** Monday, March 28, 2022  
**TIME OF MEETING:** 5:30 pm  
**LOCATION OF MEETING:** Remote Meeting  
[www.truro-ma.gov](http://www.truro-ma.gov)

Office of Town Clerk Treasurer – Tax Collector
3:30 pm MAR 21 2022
Received TOWN OF TRURO By <i>[Signature]</i>

#### Open Meeting

This will be a remote public meeting. Citizens can view the meeting on Channel 18 in Truro and on the web on the "Truro TV Channel 18" button under "Helpful Links" on the homepage of the Town of Truro website ([www.truro-ma.gov](http://www.truro-ma.gov)). Click on the green "Watch" button in the upper right corner of the page. Please note that there may be a slight delay (approx. 15-30 seconds) between the meeting and the television broadcast/live stream.

Citizens can join the meeting to listen and provide public comment by entering the meeting link; clicking on the Agenda's highlighted link; clicking on the meeting date in the Event Calendar; or by calling in toll free at **1-877-309-2073** and entering the access code **426-828-237#** when prompted. Citizens will be muted upon entering the meeting until the public comment portion of the hearing. If you are joining the meeting while watching the television broadcast/live stream, please lower or mute the volume on your computer or television during public comment so that you may be heard clearly. Citizens may also provide written comment via postal mail or by emailing Barbara Carboni, Town Planner and Land Use Counsel, at [bcarboni@truro-ma.gov](mailto:bcarboni@truro-ma.gov).

Meeting link: <https://meet.goto.com/426828237>

#### Public Comment Period

The Commonwealth's Open Meeting Law limits any discussion by members of the Board of an issue raised to whether that issue should be placed on a future agenda. Speakers are limited to no more than 5 minutes.

**Public Hearings**

**2022-001/ZBA (SP, VAR) – Regan McCarthy** for property located at 35A Higgins Hollow Road (Atlas Map 47, Parcel 2, Registry of Deeds title reference: Book 20807, Page 42, Plans #665-80 and 689-59). Applicant seeks a Special Permit or Variance under M.G.L. Ch. 40A §6 or §10, and §30.8 and §50.1 of the Truro Zoning Bylaws concerning frontage in the Seashore District.

- ◆ Comment from Building Commissioner
- ◆ Comment from Dianne Schermerhorn
- ◆ Comment from Kelli and Adam Thomas

**2022-002/ZBA (VAR) – Andrea Gulan** for property located at 2 Highview Lane (Atlas Map 40, Parcel 97, Registry of Deeds title reference: Book 10816, Page 158). Applicant seeks Variance under M.G.L. Ch. 40A §10 and §50.1 of the Truro Zoning Bylaw concerning a detached saltbox garage 23.26’ from the side yard setback where 25’ is required in the Residential District.

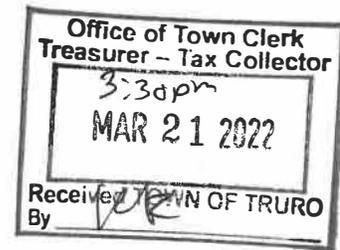
- ◆ Comment from Building Commissioner

**2022-003/ZBA (SP) – Thomas P., Jr. and Kathleen C. Dennis, Individually and as Trustees** for property located at 127 South Pamet Road (Atlas Map 48, Parcel 12; Certificate of Title Number: 228604, Land Ct. Lot #1C, Plan #16182-E and Land Ct. Lot #1D, Plan #16182-F) and 133 South Pamet Road (Atlas Map 48, Parcel 8, Registry of Deeds title reference: Book 33550, Page 123). The Applicant seeks a Special Permit under M.G.L. Ch. 40A, §6 and §30.7(A) of the Truro Zoning Bylaws to relocate structures on non-conforming lot and under 30.3.1.A.2 to exceed by right Seashore District total Gross Floor Area.

- ◆ Comment from Thomas Watson

**Approval of Minutes**

- ◆ January 22, 2018
- ◆ May 21, 2018
- ◆ July 23, 2018
- ◆ December 17, 2018
- ◆ January 24, 2022



**Next Meeting**

- ◆ Monday, April 25, 2022 at 5:30 p.m.

**Adjourn**

MEMORANDUM

To: Truro Zoning Board of Appeals

From: Barbara Carboni, Town Planner and Land Use Counsel

Date: March 24, 2022

Re: March 28, 2022 meeting

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**2022-001/ZBA (SP, VAR) – Regan McCarthy for property located at 35A Higgins Hollow Road** (Map 47, Parcel 2). Applicant seeks a special permit or variance under G.L. c. 40A, s. 6 or G.L. c. 40A, s. 10, and s. 38.8 and s. 50.1 of the Zoning Bylaw, concerning required frontage in Seashore District.

**Existing conditions and procedural history**

The applicant owns property near, but not on Higgins Hollow Road, notwithstanding the property address of 35A Higgins Hollow Road. A strip of land, owned by the National Seashore, lies between the applicant’s property and Higgins Hollow Road. The applicant’s property is accessed by a dirt path over the National Seashore property, with the qualified permission of the Seashore under a 2007 recorded Boundary Line Agreement.<sup>1</sup>

The applicant’s property contains approximately 5.38 acres, 3.85 in the Seashore District and 1.53 in the Residential District. In February 2021, the owner applied to the Planning Board for endorsement of a plan of land as “Approval Not Required.” As endorsed by the Planning Board, the division of land created two lots: Lot 1 (2.77 acres in the Seashore District; .23 acres in the Residential District, total 3 acres); and Lot 2 (1.07 acres in the Seashore District; 1.31 acres in the Residential District, total of 2.38 acres), both of which are depicted on the plan as having frontage on a Proprietor’s Road. The Planning Board endorsed the ANR plan on March

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<sup>1</sup> The “Dirt Path Extension” is not an easement. The Boundary Line Agreement, signed by the applicant and the National Park Service, provides in part:

“McCarthy does hereby release, remise, and forever QUITCLAIM unto the USA, its successors and assigns any claim she may now have against the USA to an easement over the said Dirt Path Extension. The USA acknowledges that it has no objection to the use of the pedestrian access and egress from the McCarthy Parcel, provided that McCarthy and subsequent owners shall not have any right to change, alter, relocate or improve the Dirt Path Extension without written approval from the Superintendent of the Cape Cod National Seashore.”

Boundary Line Agreement recorded April 4, 2007, Book 21913 Page 183 at p. 3. A 2019 Right-of-Way permit for installation of utilities within the Dirt Path Extension describes the Extension as being “8 feet wide on average.”

31, 2021 under G.L. c. 1, s. 81P.<sup>2</sup> **This endorsement signifies *only* that the plan is not a subdivision under the Subdivision Control Law, and neither the ANR plan nor its endorsement carries any implication that the lots comply with Zoning Bylaw requirements.**<sup>3</sup> See Corrigan v. Board of Appeals of Brewster, 35 Mass.App.Ct.514 (“81P [ANR] endorsement does not give a lot any standing under the zoning bylaw.”) and further discussion below.

On or about February 14, 2022, the applicant applied to the Building Department for a permit to construct dwellings on the property. According to the plan submitted by the applicant for this hearing, two “possible dwelling locations” were indicated on a copy of the ANR plan, one on each lot. In a Permit Denial Memo, the Building Commissioner stated that “the Proposed Structure/Use does not conform to the following Section(s) of the Building Code/Zoning Bylaw: 10.2 Definitions – Street; 50.1.A Dimensional Requirements.” The Permit Denial further stated that the proposed structure/use “requires a Special Permit/Variance” under these Bylaw sections.<sup>4</sup>

**Relief required: Variance**

**Neither lot proposed as a dwelling site (i.e., a buildable lot) has frontage on a “street” satisfying the Zoning Bylaw definition of that term.** The Bylaw defines “street” as:

“Street. A public or private way which affords access to abutting property. For the purposes of this bylaw, the terms “street”, “road”, “way”, and “road right-of-way” bear the same meaning. When a street(s) is to be used for lot frontage, the street(s) shall conform to the requirements of the Town of Truro Subdivision Regulations, Section IV, Design Standards, (b), (c), & (d) as they existed on January 1, 1989. . .”

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<sup>2</sup> The applicant asserted, and the Planning Board agreed, that the Proprietors Road satisfied the criteria of G.L. c. 41, s. 81L (c) as providing frontage on “a private way *in existence on December 8, 1955*. . . having, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services. . . .” (emphasis supplied). Notwithstanding the current condition of the Proprietors Road, the Planning Board concluded that the Proprietors Road was in existence as of December 8, 1955, and otherwise met the statutory criteria. Such conclusions were questions of fact for the Planning Board.

<sup>3</sup> The ANR bears a standard notation stating that “Planning Board endorsement of this Plan indicates only that the Plan is not a Subdivision under M.G.L., Chapter 41, Section 81-L and does not indicate a lot is buildable or that it meets Zoning, Health, or General Bylaw requirements.”

<sup>4</sup> The applicant applied to the ZBA for a special permit only. Hearing was advertised for both a variance and special permit, as that is what the Building Commissioner’s Permit Denial indicated. The Building Commissioner subsequently stated that a variance, not a special permit, is required. See email dated March 14, 2022.

Bylaw Section 10.2 (partial). The referenced Design Standards require the following:

- “1) The minimum width of street right-of-ways shall be 40 feet.
- 2) Property lines at street intersections shall be rounded to provide for a curb radius of not less than 20 feet.
- 3) Dead-end streets shall be provided at the closed end with a turnaround having a property line diameter of at least 80 feet . . .”

Truro Subdivision Regulations, Design Standards (superseded).

The Bylaw definition of “Street” contains several exemptions from the above standards, none of which apply to the Proprietors Road on the subject property.<sup>5</sup> **Where the Proprietors Road neither meets the Bylaw definition of Street, nor qualifies for any exemption from those standards, the lots in question do not have any frontage within the meaning of the Zoning Bylaw. Accordingly, no dwelling may be constructed on either lot absent a variance from the Zoning Bylaw requirement of 150 feet of frontage on a street meeting the Zoning Bylaw definition of “Street.”** See Area and Height Regulations Table, Section 50.1.A; Definitions, Section 10.2.

**Note: the ANR plan does not establish frontage for purposes of the Zoning Bylaw**

The applicant suggests that the endorsed ANR plan “establishes adequate frontage & access.” See submitted plan title (“Frontage on Proprietor’s Road after ANR establishes adequate frontage & access (Plan 689-59).” This is legally incorrect. Under a substantial body of case law, the Planning Board’s ANR endorsement could not establish any *zoning* compliance. “The cases are legion which recognize that an 81P [ANR] endorsement of a plan . . . gives a lot shown on that plan no standing under the zoning by-law.” Arrigo v. Planning Bd. of Franklin, 12 Mass.App.Ct. 802 (1981); see also Corrigan Board of Appeals of Brewster, 35 Mass.App.Ct. at 517; Smalley v. Planning Bd. of Harwich, 10 Mass.App.Ct. 599 (1980).

In this case, the Planning Board’s ANR endorsement did not – and could not – establish compliance with the Zoning Bylaw requirement of frontage on a street meeting the Zoning Bylaw definition of “Street.” See Morway v. Town Oxford Zoning Bd. of Appeals, 1996 WL 465191 Superior Court (August 9, 1996) (building permit properly denied; while lots on endorsed ANR plan showed sufficient length of frontage on the depicted Town Beach Access Road, this road, being a one-lane and twelve feet wide was not a “street” as defined by the Town’s Zoning Bylaws).

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<sup>5</sup> “Town of Truro paved street(s) that: (1) have a minimum layout width of 20 feet, (2) were created prior to January 1, 1989 and (3) were accepted by Truro Town Meeting, are exempt from the width requirements of the Town of Truro Subdivision Regulations, Section IV, Design Standards. These accepted public paved ways shall be deemed adequate as lot frontage for the issuance of building permits. . . .”

Requirements for a Variance

Under G.L. Chapter 40A, Section 10, a variance may be granted where a Board “specifically finds that:

[1] owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located,

[2] 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*

[3] 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.”

**The Board must find all three of the above to grant a variance.** In this case, the Applicant requests a variance of the Bylaw’s requirement of frontage on a “street” meeting the Bylaw definition of that term.

[1] “Soil conditions, shape or topography”

The applicant does not cite to any soil conditions, shape or topography of the lot distinguishing it from other lots in the district, and/or providing a causal basis for the variance needed.

[2] “Substantial hardship, financial or otherwise”

The narrative does not cite to substantial financial or other hardship as the basis for the variance request. The landlocked nature of the property predates the applicant’s acquisition of title.

[3] “relief may be granted without substantial detriment to the public good. . and without substantially derogating from the intent or purpose of [the] bylaw”

As always, the Board’s determination on this factor is a matter entrusted to the Board’s ”intimate understanding of the immediate circumstances, of local conditions, and of the background and purposes of the entire by-law.” Fitzsimonds v. Board of Appeals of Chatham, 21 Mass.App.Ct. at 55.

**2022-003/ZBA (SP) Thomas P., Jr. and Kathleen C. Dennis, Individually and as Trustees** for property located at 127 South Pamet Road (Map 48, Parcel 12)

*[memo to follow]*

**2022-002/ZBA (VAR) –Andrea Gulan for property located at 2 Highview Lane,** (Map 40, Parcel 97). Applicants seeks a variance under G.L. c. 40A, s. 10 and Section and 50.1 of the Truro Zoning Bylaw for a garage located 23.26 feet from the side lot line where 25 feet required under Zoning Bylaw.

Existing conditions and project

The subject lot, conforming in area (.776 acres), has frontage on lot at Highview Lane, and in addition has frontage on the intersecting Hillbourne Terrace. The lot line with Hillbourne Terrace is considered a side lot line. The lot is in the Residential District and has a required side yard setback of 25 feet. It contains a dwelling.

On September 13, 2021, the applicant applied for a Building Permit to construct a 24' x 32' detached garage with a setback of 25.3 feet from Hillbourne Terrace, as shown on a stamped plan. The building permit was granted on November 10, 2021. The foundation was constructed. **Upon inspection on January 26, 2022, it was determined that a portion of the foundation had been constructed within the side yard setback. The applicant filed this application for a variance. The stamped foundation plan shows that the northern corner of the foundation lies 23.26 feet from the lot line.**

The applicant states that the garage foundation's encroachment into the setback is a result of "turn[ing] the building to move it closer to the house," without knowledge that this would result in such encroachment.

Requirements for a Variance

Under G.L. Chapter 40A, Section 10, a variance may be granted where a Board "specifically finds that:

- [1] owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located,
- [2] 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*
- [3] 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."

**The Board must find all three of the above to grant a variance.** In this case, the Applicant requests a variance of the Bylaw's 25-foot front setback to accommodate the garage's encroachment into the side setback at 23.26 feet from the lot line.

[1] "Soil conditions, shape or topography"

The narrative does not cite to any soil conditions, shape or topography of the lot distinguishing it from other lots in the district. The lot is unusually narrow and elongated, but it does not appear that the shape of the lot contributed to the location of the structure within the setback.

[2] “Substantial hardship, financial or otherwise”

The narrative does not cite to substantial financial or other hardship as the basis for the variance request.

[3] “relief may be granted without substantial detriment to the public good. . and without substantially derogating from the intent or purpose of [the] bylaw”

As always, the Board’s determination on this factor is a matter entrusted to the Board’s “intimate understanding of the immediate circumstances, of local conditions, and of the background and purposes of the entire by-law.” Fitzsimonds v. Board of Appeals of Chatham, 21 Mass.App.Ct. at 55.

MEMORANDUM

To: Truro Zoning Board of Appeals

From: Barbara Carboni, Town Planner and Land Use Counsel

Date: March 25, 2022

Re: March 28, 2022 meeting

**2022-003/ZBA (SP) Thomas P., Jr. and Kathleen C. Dennis, Individually and as Trustees** for property located at 127 South Pamet Road (Map 48, Parcel 12) for special permits to 1) relocate a structure on a nonconforming lot under G.L. c. 40A, s. 6 and s. 30.7.A of the Zoning Bylaw; and 2) to exceed maximum Seashore District Total Gross Floor Area under Bylaw section 30.3.1.A.2.

This is a second application to the ZBA for zoning relief to relocate the dwelling previously located on 133 South Pamet Road onto 127 South Pamet Road. On January 24, 2022, hearing on the first application was continued, for 90 days at the applicant’s request.

Since January 24, 2022, the dwelling has been moved to a temporary location (not on 127 South Pamet Road) following substantial erosion; the applicant has filed a building permit application claiming no zoning relief is needed to move the structure; the applicant has filed this second application to the ZBA; a building permit issued which allows the structure to be moved onto 127 South Pamet; and the building permit has been appealed. This memo reviews the prior proceedings; the above events; and the current (second) application for zoning relief.

**Section I** is a chronology with limited notes on dimensional and zoning issues raised. **Section II** discusses the original application to the ZBA and relief requested/required (summarized from earlier memos). **Section III** discusses the current application to the ZBA and the building permit application, as the contents overlap.

**I. Chronology**

- October 22, 2021 Application to ZBA for zoning relief to move house from 133 (Dennis) to 127 South Pamet (then Whitelaw). Application notes that “127 is pre-existing and non-conforming under current zoning as to minimum lot size”; Zoning Table on plan identifies lot area as 73,200 sq ft/ 1.68 acres, where 3 acres required. Relief required included variance for second dwelling on lot and special permit to increase intensity of existing nonconformity (lot area). See discussion below under “Original application to ZBA.”
- November 22, 2021 ZBA hearing opens. Testimony taken; hearing continued to December 20, 2021.
- December 17, 2021 Dennis purchase of 127 South Pamet
- December 20, 2022 Further hearing; continued to January 24, 2022.

January 17, 2022	Storm; erosion at 133 South Pamet.
January 20, 2022	Applicant submits “Request for Amendment of Special Permit and Variance Petitions.” New proposal location partly on 133 and partly on 127. Area indicated on sketch but specific relief not requested or identified.
January 24, 2022	Further hearing. ZBA notes incomplete nature of recent request and declines to act on it. Applicant seeks to withdraw application; Board declines; at Applicant’s request, grants 90 day continuance.
January 29, 2022	Storm; further erosion at 133 South Pamet.
January 31, 2022	Applicant submits request to Town for use of Town-owned property (Ballston Beach parking lot) to stage moving the 133 house away from bank; also application for Emergency Certification from Conservation Commission.
February 2, 2022	Town grants application to use Town property; Conservation Agent grants Emergency Certification; both conditioned on Conditions attached to the Certification. <sup>1</sup>
February 2, 2022	Applicant signs agreement; house is moved away from bank and onto an abutting parcel (not 127) with owner’s permission.
February 23, 2022	Applicant’s counsel submits proposal to Building Department contending house may be moved onto 127 South Pamet without requiring zoning relief, where kitchen will be removed, rendering structure a habitable studio. A new, <i>conforming</i> lot area asserted for 127 South Pamet (4.36 acres) based on Land Court plans from 1940s and inclusion of land “eastward of the coastal bank.” Asserted that 127 and 133 lots will be combined and that based on revised lot areas, Seashore Gross Floor Area limit not exceeded. See discussion below under “Building Permit Application.”

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<sup>1</sup> Terms included:

1. The structure may remain in the temporary location for 12 weeks, during which time the owner must seek approval from the ZBA for any zoning relief necessary for the structure’s siting and use at the permanent location.
2. The owner must submit revised plans and request(s) for zoning relief to the ZBA within 30 days of issuance of this Emergency Certification, including all information necessary for the ZBA to render a decision regarding the proposed permanent location. If the requested relief is not granted, the structure must be relocated and/or modified so as to conform to applicable requirements of the Zoning Bylaw.
3. The structure may not be occupied unless and until all zoning relief required has been granted by the Zoning Board of Appeals and occupancy is formally granted by the Town of Truro Building Commissioner.

- February 24, 2022 Application for building permit filed for 127 South Pamet, work described as “House move and installation of wood pile foundation.” Lot area stated as 4.36 acres. Proposed location with conforming setbacks shown.
- February 24, 2022 Application submitted to ZBA for special permits “to relocate structures on nonconforming lot and under 30.3.1.A.2 to exceed by right Seashore Gross Floor Area.” Counsel’s email states that if Building Commissioner determines no zoning relief required, application will be withdrawn.
- Lot areas asserted: 127 South Pamet, 4.36 acres; 133 South Pamet, .32 acres, for a total of 4.68 acres, “based on the Zoning Bylaw definition that exempts pre 1987 from upland lot area calculation requirements.” (see discussion below under “Building Permit Application”). Permitted Gross Floor Area asserted: 3,936 square feet. Gross Floor Area of structures asserted: Boathouse, 1540 sq.ft; Studio, 725 sq.ft; dwelling, 1659 sq.ft. Total: 3924 sq.ft.
- Includes correspondence to Building Commissioner asserting that with removal of kitchen, relocated structure will be habitable studio, allowed as of right; that with conforming lot area, no special permit required; and that with conforming setbacks, no dimensional variances required.
- March 8, 2022 Building permit issued with notation: “House Relocation Only. Zoning issues (if any) to be resolved prior to any occupancy.”
- March 17, 2022 Clearing and commencement of foundation construction
- March 23, 2022 Appeal of building permit filed with Town Clerk.

**II. Original application to the ZBA** *(summarized from earlier memos)*

On October 22, 2021, the owners of 127 South Pamet Road (Whitelaw) and 133 South Pamet Road (Dennis) applied to the ZBA for zoning relief to allow the relocation of the dwelling on 133 South Pamet onto the property at 127 South Pamet. The lot area of 127 South Pamet is 1.68 acres, nonconforming where 3 acres are required in Seashore District.<sup>2</sup>

Two residential structures existed on the property at that time, a dwelling constructed in 1892 and a second structure built in 2007. The original application referred to the second structure as a dwelling. According to Building Department records, the second structure was permitted as a studio.<sup>3</sup> The 1892 dwelling is located 23 feet from the southern lot line, a nonconformity where 25 feet are required.

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<sup>2</sup> In the Project Narrative, applicants identified lot area as 73,200 square feet and stated that the lot is “non-conforming as to minimum lot size.”

<sup>3</sup> Assessor’s records contain a comment “Has kitch[en] but no stove”; Building Department records do not authorize a kitchen in the second structure.

At that time, there was an agreement between the parties to move the dwelling to a location on 127 South Pamet. The proposed location was 38 feet from the front lot line, where 50 feet are required (Seashore District).

The relief requested at that time was a Special Permit under G.L. c. 40A, s. 6 and Section 30.7 and 30.8 of the Truro Zoning Bylaw to extend a nonconformity (from two to three dwellings on the 127 South Pamet Road lot); in the alternative, a variance for the addition of a second dwelling to the parcel. Applicant's counsel later acknowledged at hearing that the relief required to locate the dwelling onto 127 South Pamet would be a variance, not a special permit. A variance from the front setback requirement was also requested. As proposed at that time, the addition of a dwelling to 127 South Pamet at the proposed location would:

1. Increase the intensity of existing nonconformity of lot (nonconforming area), requiring a special permit
2. Create a new use nonconformity: two dwellings on one lot, requiring a use variance
3. Create a new dimensional nonconformity: front setback of 38 feet where 50 required, requiring a dimensional variance

Analysis of each request for relief follows.

1. Increasing intensity of nonconformity of lot (nonconforming area): special permit required

The lot is nonconforming as to area. Alteration, extension, or reconstruction of a dwelling on a nonconforming lot increases the existing nonconformity and requires a special permit under G.L. c. 40A, s. 6. Bjorklund v. Zoning Board of Appeals of Norwell, 450 Mass. 357 (2008). In this case, the proposal is to *relocate* an existing dwelling onto the lot, rather than to "alter, extend, or reconstruct" a dwelling. However, the impact of moving another existing house on to the property is *at least* the functional equivalent of such actions, if not *more* impactful. Accordingly, the same standard should be applied.<sup>4</sup>

The Board may grant a special permit under G.L. c. 40A, s. 6 if it finds that the proposed reconstruction "shall not be substantially more detrimental than the existing nonconforming [structure and] use to the neighborhood." Likewise, the Board may grant a special permit under Section 30.7.A if it finds that:

"the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use or structure and that the alteration or extension will exist in harmony with the general purpose and intent of this bylaw."

In this case, where the proposed site of the dwelling relocation is approximately the same distance from South Pamet Road as its current location, approximately 50-60 feet to the south, a finding might be made that the relocated structure does not significantly change the streetscape,

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<sup>4</sup> A modest addition to the existing dwelling or studio on 127 South Pamet would require a special permit under G.L. c. 40A, s. 6. Moving an entire two-bedroom house onto the lot would unquestionably have a greater impact and more acutely increase the intensity of the existing lot size nonconformity.

and accordingly that the relocation is “not substantially more detrimental to the neighborhood” than the existing configuration. On the other hand, where the relocation will place a third residential structure on a single lot, approximately one-half the required size, a finding might be made that the relocation crowds the lot and would be “substantially more detrimental” to the neighborhood than the existing configuration. This and other considerations are entrusted to the Board’s judgment, based on its “intimate understanding of the immediate circumstances [and] of local conditions . . . .” Fitzsimonds v. Board of Appeals of Chatham, 21 Mass.App.Ct. 53, 55 (1985).

2. Creating a new setback nonconformity: 38 feet where minimum is 50; variance required

While the expansion of an existing nonconformity on a nonconforming lot requires a special permit, the creation of a *new* nonconformity requires a variance. Deadrick v. Zoning Board of Appeals of Chatham, 85 Mass.App.Ct. 539, 553 (2014). Under G.L. Chapter 40A, Section 10, a variance may be granted where a Board “specifically finds that:

[1] owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located,

[2] 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*

[3] 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.”

The Board must find all three of the above to grant a variance. Here, the variance requested is from the Bylaw’s 50-foot front setback requirement, to allow the dwelling to be located 38 feet from the road. <sup>5</sup>

3. Creating a new use nonconformity: second dwelling unit on lot; variance required

Relocation of the 127 South Pamet residence onto the 127 South Pamet lot would result in two single-family dwellings on a single lot. This is not a permissible use in the Seashore District (except where lawfully preexisting).

G.L. c. 40A, s. 10 allows use variances only where expressly allowed by the municipality’s zoning regulations:

“Except where local ordinances or by-laws shall expressly permit variances for use, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located.”

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<sup>5</sup>Further discussion of the variance standard and its application to this case is found in the Planning Department memo dated November 19, 2021 on page 3-4,<sup>5</sup> and in the Planning Department memo dated December 16, 2021 on pages 2-4.

G.L. c. 40A, s. 5 (partial). The Truro Zoning Bylaw does not expressly permit “variances for use,” or use variances. In fact, the Bylaw expressly *prohibits* the Board from hearing use variances. The Bylaw provides:

§ 60.2 Board of Appeals A Board of Appeals consisting of five members and two associated members shall have the power conferred on it under Chapter 40A of the General Laws of Massachusetts and under this zoning bylaw, which powers shall include the review of Special Permit and Variance applications, *except for Variances as to use*, and the appeal of decisions of the Building Commissioner.”

Bylaw Section 60.2 (emphasis added). Under this section of the Bylaw, the Board has no authority to hear or to grant the use variance sought for location of a second single-family house on 127 South Pamet Road.

### **III. Building Permit Application and 2nd application to ZBA**

*Note: the building permit application and the second application to the ZBA are discussed here together; the filings are not identical but overlap substantially. Applicant’s counsel advised at the time of filing that he would go forward with the second application to the ZBA if the building permit were not granted. The special permit application contains no argument apart from the arguments made in the building permit application. That is, there is no case made as to why special permits should be granted 1) under G.L. c. 40A, s. 6 and Bylaw Section 30.7 to relocate the dwelling; or 2) under Bylaw section 30.3.1.A.2. to exceed maximum Gross Floor Area in the Seashore District.*

At some point, perhaps observing that obtaining ZBA approval to place a second dwelling on 127 South Pamet was unlikely, the applicants altered their proposal. The new proposal entails removal of the dwelling’s kitchen to render it – assuming the Building Commissioner’s agreement - a habitable studio. A studio is an accessory structure not requiring zoning relief. 127 South Pamet already contains a studio (in addition to a dwelling), but the Bylaw contains no express limit on the number of studios permitted on a lot.<sup>6</sup> Assuming the Building Commissioner’s agreement that removal of the kitchen would render the 133 dwelling a studio, and therefore permitted as of right on 127, the variance issue would be resolved.

Although the variance problem might be resolved, where 127 South Pamet is, *as acknowledged in the original application*, nonconforming as to area, addition of the two-bedroom residential structure – even if technically a studio – increases the intensity of the existing nonconformity, requiring a special permit under G.L. c. 40A, s. 6. Bjorklund v. Zoning Board of Appeals of Norwell, 450 Mass. 357 (2008). As discussed above, although G.L. c. 40A, s. 6 speaks of “alteration, extension, or reconstruction of a dwelling” as increasing an existing nonconformity, the impact of moving an existing house onto the lot is *at least* the functional equivalent of these actions, if not more impactful.

**The Building Permit application and related materials submitted do not use the nonconforming lot size of 127 South Pamet stated in the original application to the ZBA (73,200 sq. ft/1.68 acres). Instead, the Building Permit application provide a new, increased lot**

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<sup>6</sup> The Building Commissioner has also opined that there is no limit under the Zoning Bylaw to the number of habitable studios permitted on a lot.

**area for 127 South Pamet** and a lot area for 133 South Pamet with citation to the Zoning Bylaw definition of “Lot Area”:

“Lot calculations show[ ] an area for 127 SPR of 4.36 acres, and for 133 SPR of .32 acres, for a total of 4.68 acres. This is based on the Zoning Bylaw definition that exempts pre 1987 from upland lot area calculation requirements:

Lot Area. The area of a lot when used for building purposes shall not be less than the minimum required by this bylaw for the district in which it is located. Such an area shall not be interpreted to include any portion of a lot below mean water level on fresh water, below mean high water on tidal water or within the limits of any defined way, exclusive of driveways serving only the lot itself. No less than 100% of the minimum lot area required shall consist of contiguous upland exclusive of marsh, bog, swamp, beach, dune or wet meadow. This definition shall apply only to lots created after April 30, 1987.”

Email from counsel to Building Commissioner dated February 23, 2022. In other words, the argument appears to be:

- 1) the 127 and 133 South Pamet lots predate April 30, 1987; therefore, the current definition of “Lot Area” does not apply;
- 2) if the current definition of “Lot Area” does not apply, area other than upland – including area “below mean high water” – may be counted toward calculation of lot area;<sup>7</sup>
- 3) if the lot area of 127 South Pamet is calculated based on plans from the 1940s (prior to substantial loss of land to the ocean), rather than on upland area as it currently exists on the lot, the lot area of 127 South Pamet is 4.36 acres, exceeding the 3-acre minimum;
- 4) where the newly-calculated lot area is conforming under the Bylaw, the dwelling structure may be moved onto the property as of right, without need for a special permit from the ZBA under G.L. c. 40A, s. 6 and Bylaw Section 30.7.

There is no explanation as to why these calculations and arguments were not asserted in the original application to the ZBA for zoning relief, which expressly acknowledged that 127 South Pamet was nonconforming as to area.

The Building Permit application and related materials further proposed to combine lots 127 and 133 South Pamet “by affidavit or Approval Not required Plan per [the Building Commissioner’s] direction.” See counsel’s email of February 23, 2022. It was then asserted that

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<sup>7</sup> As counsel further stated:

“The lot areas include land eastward of the coastal bank, but I believe those areas are included in lot area as the lots are pre-existing pre-1987 lots and therefore the entire land area is included for calculating Total Gross Floor Area permitted.”

the combined lot area of 127 and 133 South Pamet – now claimed to be 4.68 acres - is sufficient to allow a Seashore District Total Gross Floor Area of 3,936 square feet.<sup>8</sup> The square footage of the three structures were provided as 725 sq.ft (existing studio); 1,659 sq.ft (existing dwelling); and 1,540 sq. ft (Boathouse dwelling to be moved onto property), for a total of 3,924 sq.ft. – in other words, falling below the calculated maximum permitted of 3,936 sq. ft., and requiring no zoning relief.

The Building Permit application and related materials further stated that the proposed location of the dwelling conformed to all setback requirements on 127 South Pamet, requiring no dimensional zoning relief. Based on the above calculations and arguments, it was asserted that the Boathouse dwelling “may be moved as shown and used as a habitable accessory structure as of right by issuance of a building permit.” See counsel’s email of February 23, 2022. The building permit issued on March 8, 2022.

It should be noted that if lots 127 and 133 South Pamet are combined, as counsel proposes, the new lot would be one created *after* April 30, 1987, and thus not entitled to the benefit - assuming any exists – of the exemption from the Lot Area definition claimed by counsel so as to count “area” that functionally no longer exists. Neither the 4.36 acres now claimed for 127 South Pamet nor the combined 4.68 acres claimed would be available as the basis upon which to assert a lot conforming to the Seashore required minimum of 3 acres, or a lot area supporting a Gross Floor Area of 3,936 sq. ft. The combined lot area would be 1.68 acres (127 South Pamet) plus the current acreage of 133 South Pamet – *under* the Seashore lot area minimum, and supporting a Gross Floor Area substantially less than 3,936 sq. ft. In other words, if 127 and 133 are combined, the lot area will be *nonconforming*, and a special permit required from the ZBA under G.L c 40A, s. 6 and Bylaw Section 30.7 in order to move the Boathouse dwelling to the proposed location. In addition, a special permit would be required from the ZBA under Section 30.3.1.A.2 to exceed Seashore Gross Floor Area.

Finally, it should be noted that if the current definition of Lot Area is not applicable, as the applicant asserts, because the lots were created prior to 1987, the result is *not* that any/all acreage shown on earlier plans may be counted. Rather, if the current Bylaw definition is not applicable, the *prior* (pre-1987) version of the Bylaw definition of Lot Area is applicable. Under the Bylaw in effect prior to 1987, the definition of Lot Area provided that “no less than 75% of the minimum lot area must be contiguous upland, exclusive of marsh, bog, swamp, beach, dune or wet meadow.” In other words, the consequence of not being governed by the current definition of lot area would not be to eliminate the contiguous upland requirement, but rather to modify it from 100% to 75%.

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<sup>8</sup>Calculated as 3,600 s.f. for 3 acres and 336 for the next 1.68 at 200 sf per acre pro-rated. See email from counsel to Building Commissioner dated February 23, 2022.

## Elizabeth Sturdy

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**From:** McKean, Lauren <Lauren\_McKean@nps.gov>  
**Sent:** Wednesday, March 23, 2022 4:49 PM  
**To:** Barbara Carboni; Jarrod Cabral; Emily Beebe; Arozana Davis; Elizabeth Sturdy; Rich Stevens  
**Cc:** Carlstrom, Brian  
**Subject:** RE: Review of ZBA Application - 35A Higgins Hollow Road - 2022-001/ZBA (SP, VAR)- for property located at 35A Higgins Hollow Road  
**Attachments:** USA-RMcCarthy\_ZBA-Prop Rd\_032020\_Redacted.pdf

Barbara

I am sending this in response to the Zoning Board of Appeals 2022-001/ZBA (SP, VAR) hearing for property located at 35A Higgins Hollow Road applicant seeks a Special Permit or Variance under M.G.L. Ch. 40A §6 or § 10, and §30.8 and §50.1 of the Truro Zoning Bylaws concerning frontage in the Seashore District.

You are correct that the proprietor's road does not provide proper legal road frontage. It also has not been found to be a public way despite prior representations.

NPS does not have authority to grant private use of public property for roads or driveways. The right-of-way permit on the dirt path extension held by the applicant is for utilities **only** and is subject to revocation and non-renewal.

Our letter of March 24, 2020 stating that we did not support a special permit or variance to provide for street frontage and/or access for the property is still appropriate. In summary it states that "Because a building permit for your land is dependent on town relief from zoning bylaw requirements, we cannot support your proposal. We have concluded a thorough review of this matter and do not support a variance or special permit for street frontage and/or access for your property."

Please share this correspondence with the Zoning Board of Appeals members and request it be included in the record.

Regards,  
Lauren

Lauren McKean, AICP  
Park Planner  
Cape Cod National Seashore  
508-957-0731

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**From:** Barbara Carboni <bcarboni@truro-ma.gov>  
**Sent:** Wednesday, March 16, 2022 2:59 PM  
**To:** Jarrod Cabral <jcabral@truro-ma.gov>; Tim Collins <TCollins@truro-ma.gov>; Emily Beebe <EBeeBe@truro-ma.gov>; Rich Stevens <rstevens@truro-ma.gov>; Arozana Davis <ADavis@truro-ma.gov>; Lynne Budnick <LBudnick@truro-ma.gov>; Jamie Calise <JCalise@truro-ma.gov>

**Cc:** McKean, Lauren <Lauren\_McKean@nps.gov>  
**Subject:** [EXTERNAL] RE: Review of ZBA Application - 35A Higgins Hollow Road

Thanks Jarrod.

Note that under a Boundary Line Agreement with the Park Service, the owner has no rights to widen or otherwise improve the area over which the property is accessed from Higgins Hollow.

Barbara Carboni  
Town Planner and Land Use Counsel  
(508) 214 0928

**From:** Jarrod Cabral <jcabral@truro-ma.gov>  
**Sent:** Wednesday, March 16, 2022 2:34 PM  
**To:** Tim Collins <TCollins@truro-ma.gov>; Emily Beebe <EBeeBe@truro-ma.gov>; Rich Stevens <rstevens@truro-ma.gov>; Arozana Davis <ADavis@truro-ma.gov>; Lynne Budnick <LBudnick@truro-ma.gov>; Jamie Calise <JCalise@truro-ma.gov>  
**Cc:** Barbara Carboni <bcarboni@truro-ma.gov>; McKean, Lauren <Lauren\_McKean@nps.gov>  
**Subject:** FW: Review of ZBA Application - 35A Higgins Hollow Road

Good afternoon, if the existing 8'-14' wide dirt path extension from Higgins Hollow Road with utility easement and access is to be widened this will require a curb cut application. If the dirt drives within the proprietors road are to be widened, it should be accomplished in a way to preclude any storm water runoff impacts onto Higgins Hollow Road.

Thanks – Jarrod Cabral

This communication may contain privileged or other confidential information. If you are not the intended recipient, or believe that you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use the information. Also, please indicate that to the sender and delete the copy you received. When writing or responding, please remember that the Secretary of State's Office has determined that email is a public record. Please take notice: All e-mail communications sent or received by persons using the Town of Truro network may be subject to disclosure under the Massachusetts Public Records Law (M.G.L. Chapter 66, Section 10) and the Federal Freedom of Information Act

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

March 24 2022

Zoning Board of Appeals  
Truro, MA. 02666

RCVD 2022MAR25 04:00:34  
ADMINISTRATIVE  
TOWN OF TRURO

Dear Board Members,

We are writing today in reference to the letter we wrote dated March 8, 2022 about the upcoming remote public hearing regarding 2022-001/ZBA (SP, VAR) - Regan McCarthy property 35A Higgins Hollow Road.

We wish to retract paragraph #5 and the last paragraph of our letter as it is based on assumptions and hearsay that we feel in hindsight are not pertinent to the facts of this Board meeting.

We wholeheartedly support a property owners right to build on their property if they meet the legal criteria and zoning conditions spelled out in the towns bylaws. Should this board determine these are met for developing this property as a single family residence, we respect and support that "right" to build. We do however feel that the subdivision of the property does not adequately meet that criteria.

Respectfully,

Adam and Kelli Thomas

March 8, 2022

Zoning Board of Appeals  
Truro MA, 02666

Dear Board Members,

We are writing today in reference to the upcoming remote public hearing regarding 2022-001/ZBA (SP, VAR) - Regan McCarthy property 35A Higgins Hollow Road, as abutters. We would like to express our concerns regarding this upcoming meeting.

1. According to the submitted plans, the lot is to be divided into two parcels. The majority of the original five + acres is zoned seashore district and a smaller portion is zoned residential. Lot 1 claims that it has the required 3 acre minimum for seashore development. Lot 2 has a substantial portion of the acreage which is seashore zoned, we ask, why is this lot not being held to the 3 acre seashore minimum? In this instance like most rules of law, the stricter requirements should supersede the looser requirements. (Seashore minimum acreage should supersede residential) If the subdivided lots are approved, how are the zoning restrictions applied?
2. In the past regarding this property, the National Park Service has expressed its opinion that the lot should not be qualified as buildable and made a point of mentioning that the dirt path access is a revocable license. Does the owner truly have deeded rights to bring the access up to current zoning standards. In addition, shouldn't the dirt path and the proprietors road be required to meet the definitions described in Truro Zoning Bylaw 10.4. (They should not be considered a driveway, they would be this properties "legal" street frontage.)
3. We are wondering how this property is being allowed to be subdivided and an ANR was granted. Other property owners in the past, with fewer issues were denied. This strict standard should be applied to everyone. ( example... Secret property denials).
4. In reference to the ANR decision by Planning Board. Due to the controversial and precedent setting nature of the decisions made regarding this property, many citizens of this town feel Ann Greenbaum and any other friends of Ms. McCarthy on the board, could not be impartial and should have recused themselves.
5. It was well known that this property was purchased at auction as an unbuildable, land locked piece without proper legal frontage.
6. The residents of the town are watching this decision, and if it gains approval, it will be a landmark move, that will set a precedent for development by manipulation of the rules in this town.

This parcel of land was recently listed for sale for 2.1 million dollars. This special permit and subdivision of land is not being sought out of hardship, desire for affordable housing, or maintaining the character of truro, which we all know and love.

Respectfully,

Kelli & Adam Thomas  
67 Old Kings Highway  
Truro, MA

Concerning the petition of R. McCarthy, and the development of 35 A Higgins Hollow Rd, Truro, Mass. 3/18/22

What this issue comes down to, is whether a proprietor road in the town of Truro which may have been intended for cart transport in its day, should be identified as, and compared to a town road. And/or whether it should be modified for a use for which it was never intended.

A use that would require major engineering in order to support the movement of the heavy vehicles needed for excavation, drilling, cement/materials delivery, fire and emergency response.

Does a proprietary road (of which there are many within the town of Truro, whose owners may feel entitled to the same concessions) justify a major destruction of vegetation, a major alteration of water run off, a major disruption of the natural habitat of local species etc etc.?

I would argue that agreeing with this appeal and the alteration of the landscape that it implies, is juxtapose to what Thoreau, Benson, the Kennedys and every person, who makes the effort to cross the bridge is coming to experience.

Sincerely,

Dianne Schermerhorn  
Truro, Mass. 02666

## Elizabeth Sturdy

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**From:** Rich Stevens  
**Sent:** Monday, March 14, 2022 1:46 PM  
**To:** Elizabeth Sturdy  
**Subject:** RE: Review of ZBA Application - 35A Higgins Hollow Road

Hi Liz,  
Only comment is that this should be for a variance as opposed to SP,  
Thanks,

Rich

**From:** Elizabeth Sturdy <ESturdy@truro-ma.gov>  
**Sent:** Monday, March 14, 2022 12:52 PM  
**To:** Tim Collins <TCollins@truro-ma.gov>; Jarrod Cabral <jcabral@truro-ma.gov>; Emily Beebe <EBeeBe@truro-ma.gov>; Rich Stevens <rstevens@truro-ma.gov>; Arozana Davis <ADavis@truro-ma.gov>; Lynne Budnick <LBudnick@truro-ma.gov>  
**Cc:** Barbara Carboni <bcarboni@truro-ma.gov>  
**Subject:** RE: Review of ZBA Application - 35A Higgins Hollow Road

Chief Collins, Jarrod, Emily, Rich, Zana, Lynne:

I would like to incorporate your comments as part of the packet submission to the Zoning Board on the 28<sup>th</sup>. Please get back to me regardless of comments or not.

Let me know if you have any questions. Thank you – appreciate your feedback,

Liz

**From:** Elizabeth Sturdy  
**Sent:** Monday, February 28, 2022 12:12 PM  
**To:** Tim Collins <[TCollins@truro-ma.gov](mailto:TCollins@truro-ma.gov)>; Jarrod Cabral <[jcabral@truro-ma.gov](mailto:jcabral@truro-ma.gov)>; Emily Beebe <[EBeeBe@truro-ma.gov](mailto:EBeeBe@truro-ma.gov)>; Rich Stevens <[rstevens@truro-ma.gov](mailto:rstevens@truro-ma.gov)>; Arozana Davis <[ADavis@truro-ma.gov](mailto:ADavis@truro-ma.gov)>; Lynne Budnick <[LBudnick@truro-ma.gov](mailto:LBudnick@truro-ma.gov)>  
**Cc:** Barbara Carboni <[bcarboni@truro-ma.gov](mailto:bcarboni@truro-ma.gov)>  
**Subject:** Review of ZBA Application - 35A Higgins Hollow Road

Tim, Jarrod, Emily, Rich, Zana, Lynne:

The attached application for ZBA Special Permit will be on the March 28 Zoning Board Agenda. Please get back to me with any comments you may have, or not. Appreciate any and all input.

Let me know if you have any questions. Thanks,

Liz

*Elizabeth Sturdy*





# Town of Truro Zoning Board of Appeals

P.O. Box 2030, Truro, MA 02666

## APPLICATION FOR HEARING

To the Town Clerk of the Town of Truro, MA

Date 2/15/22

The undersigned hereby files with specific grounds for this application: *(check all that apply)*

### 1. GENERAL INFORMATION

**NOTICE OF APPEAL**

Applicant is aggrieved by his/her inability to obtain a permit or enforcement action from the Building Commissioner on *(date)* \_\_\_\_\_.

Applicant is aggrieved by order or decision of the Building Commissioner on *(date)* \_\_\_\_\_ which he/she believes to be a violation of the Truro Zoning Bylaw or the *Massachusetts Zoning Act*.

**PETITION FOR VARIANCE** – Applicant requests a variance from the terms Section \_\_\_\_\_ of the Truro Zoning Bylaw concerning *(describe)* \_\_\_\_\_

**APPLICATION FOR SPECIAL PERMIT**

Applicant seeks approval and authorization of uses under Section **10.2/50.1A** of the Truro Zoning Bylaw concerning *(describe)* Street definition + dimensional requirements of same. Property was deemed to have adequate frontage (and access) as part of ANR endorsement (Plan 689-59).

Applicant seeks approval for a continuation, change, or extension of a nonconforming structure or use under Section \_\_\_\_\_ of the Truro Zoning Bylaw and M.G.L. Ch. 40A, §6 concerning *(describe)* \_\_\_\_\_

Property Address 35A Higgins Hillow Road Map(s) and Parcel(s) 47-002

Registry of Deeds title reference: Book 20807, Page 42, or Certificate of Title Number \_\_\_\_\_ and Land Ct. Lot # \_\_\_\_\_ and Plan # 665-80 and 689-59

Applicant's Name Regan McCarthy

Applicant's Legal Mailing Address local: PO Box 1224, Truro MA 02666; on deed: 42 1/2 Adrian Ave, NY, NY 10463

Applicant's Phone(s), Fax and Email p: 917-575-0169 / f: 508-487-7735 / e: regan.mccarthy@songmasters.org

Applicant is one of the following: *(please check appropriate box)*

\*Written Permission of the owner is required for submittal of this application.

Owner       Prospective Buyer\*       Other\*

Owner's Name and Address same

Representative's Name and Address n/a

Representative's Phone(s), Fax and Email n/a

2. The completed application **shall also** be submitted **electronically** to the Town Planner at [planner1@truro-ma.gov](mailto:planner1@truro-ma.gov) in its entirety (including all plans and attachments).

- The applicant is **advised** to consult with the Building Commissioner, Planning Department, Conservation Department, Health Department, and/or Historic Commission, as applicable, prior to submitting this application.

### Signature(s)

Regan McCarthy

Applicant(s)/Representative Printed Name(s)

*Regan McCarthy*

Applicant(s)/Representative Signature

(same)

Owner(s) Printed Name(s) or written permission

(same)

Owner(s) Signature or written permission

Your signature on this application authorizes the Members of the Zoning Board of Appeals and town staff to visit and enter upon the subject property

# PERMIT DENIAL MEMO

We have reviewed the building permit application documentation for the proposed project referenced below and deny issuance of the building permit for the following reasons:



**Town of Truro  
Building Department**

24 Town Hall Rd.  
PO Box 2030  
Truro, MA 02666

Tel (508) 349-7004 x31 Fax (508) 349-5508

Permit type	<input checked="" type="checkbox"/>	Building Permit and/or Zoning Determination
	<input type="checkbox"/>	Use and Occupancy

Applicant	REGAN McCARTHY	
Property Address	35 A HIGGINS HOLLOW ROAD	
Map 47	Parcel 002	Zoning District S

Date of Review: 02-14-22

Proposed Structure/Use does not conform to the following Section(s) of the Building Code/Zoning Bylaw:

- 10.2 Definitions – Street
- 50.1.A Dimensional Requirements

The Proposed Structure/Use requires a Special Permit / Variance under the following section of the Building Code/Zoning Bylaw:

- 10.2 Definitions – Street
- 50.1.A Dimensional Requirements

Comments  
none

Appeal of any of the above may be made in accordance with MGL Ch. 40A Section 8, by application to the Zoning Board of Appeals.

Richard Stevens, Building Commissioner/Zoning Enforcement Officer

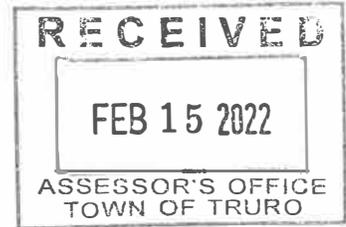


# TOWN OF TRURO

## Assessors Office

### Certified Abutters List

### Request Form



DATE: 2/15/22

NAME OF APPLICANT: Regan McCarthy

NAME OF AGENT (if any): n/a

MAILING ADDRESS: PO Box 1224 / Truro MA 02666

CONTACT: HOME/CELL 917-575-0169 EMAIL regan.mccarthy@songmasters.org

PROPERTY LOCATION: 35A Higgins Hollow Road  
(street address)

PROPERTY IDENTIFICATION NUMBER: MAP 47 PARCEL 002 EXT. \_\_\_\_\_  
(if condominium)

ABUTTERS LIST NEEDED FOR: **FEE: \$15.00 per checked item**  
(please check all applicable) (Fee must accompany the application unless other arrangements are made)

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Board of Health <sup>5</sup>         | <input type="checkbox"/> Planning Board (PB)                        | <input type="checkbox"/> Zoning Board of Appeals (ZBA)          |
| <input type="checkbox"/> Cape Cod Commission                  | <input type="checkbox"/> Special Permit <sup>1</sup>                | <input checked="" type="checkbox"/> Special Permit <sup>1</sup> |
| <input type="checkbox"/> Conservation Commission <sup>4</sup> | <input type="checkbox"/> Site Plan <sup>2</sup>                     | <input type="checkbox"/> Variance <sup>1</sup>                  |
| <input type="checkbox"/> Licensing                            | <input type="checkbox"/> Preliminary Subdivision <sup>3</sup>       |   |
| Type: _____   | <input type="checkbox"/> Definitive Subdivision <sup>3</sup>        |   |
| <input type="checkbox"/> Other _____                          | <input type="checkbox"/> Accessory Dwelling Unit (ADU) <sup>2</sup> |   |
- (Please Specify) (Fee: Inquire with Assessors)

**Note: Per M.G.L., processing may take up to 10 calendar days. Please plan accordingly.**

#### THIS SECTION FOR ASSESSORS OFFICE USE ONLY

Date request received by Assessors: 2/15/2022 Date completed: 2/15/2022  
List completed by: D. Farrell Date paid: 2/15/2022 Cash/Check # 5767

<sup>1</sup>Abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line.  
<sup>2</sup>Abutters to the subject property, abutters to the abutters, and owners of properties across the street from the subject property.  
<sup>3</sup>Landowners immediately bordering the proposed subdivision, landowners immediately bordering the immediate abutters, and landowners located across the streets and ways bordering the proposed subdivision. **Note:** For Definitive Subdivision only, responsibility of applicant to notify abutters and produce evidence as required.  
<sup>4</sup>All abutters within 300 feet of parcel, except Beach Point between Knowles Heights Road and Provincetown border, in which case it is all abutters within 100 feet. **Note:** Responsibility of applicant to notify abutters and produce evidence as required.  
<sup>5</sup>Abutters sharing any boundary or corner in any direction – including land across a street, river or stream. **Note:** Responsibility of applicant to notify abutters and produce evidence as required.



**TRURO ASSESSORS OFFICE**

**PO Box 2012 Truro, MA 02666**

**Telephone: (508) 214-0921**

**Fax: (508) 349-5506**

**Date:** February 15, 2022

**To:** Regan McCarthy

**From:** Assessors Department

**Certified Abutters List:** 35A Higgins Hollow Road (Map 47, Parcel 2)

**ZBA/Special Permit**

Attached is a combined list of abutters for property located at 35A Higgins Hollow Road.

The current owner is Regan McCarthy.

The names and addresses of the abutters are as of February 4, 2022 according to the most recent documents received from the Barnstable County Registry of Deeds.

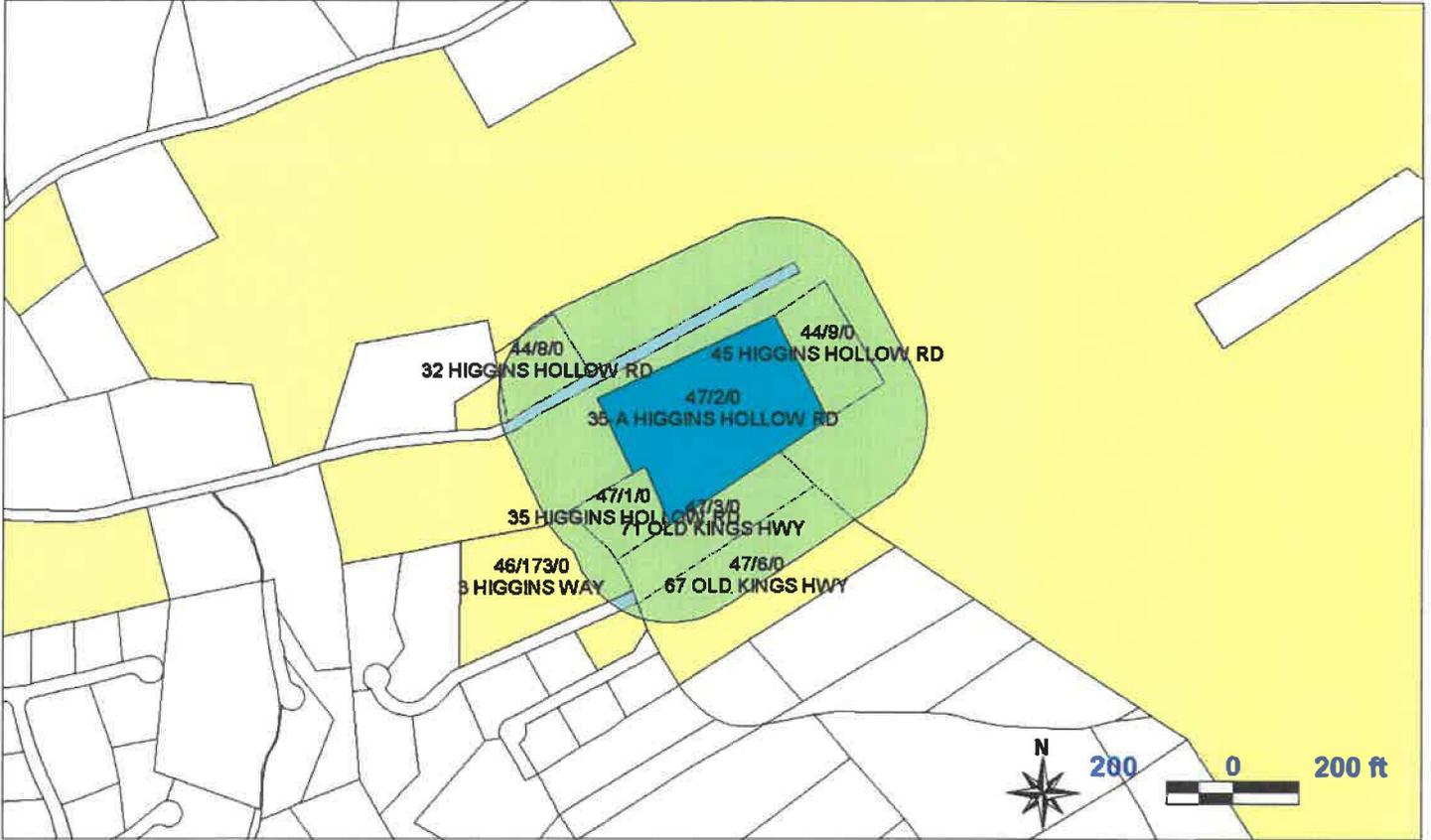
Certified by: \_\_\_\_\_

Olga Farrell  
Assessing Clerk

35A Higgins Hollow Road  
 Map 47, Parcel 2  
 ZBA/Special Permit

TOWN OF TRURO, MA  
 BOARD OF ASSESSORS  
 P.O. BOX 2012, TRURO MA 02666

Abutters List Within 300 feet of Parcel 47/2/0



Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	ZipCd/Country
7292	40-999-0-E	USA-DEPT OF INTERIOR Cape Cod National Seashore	0 CAPE COD NATIONAL SEASHORE	99 Marconi Site Rd	Wellfleet	MA	02667
2084	44-8-0-R	OTTE DARYL & COHEN ARTHUR	32 HIGGINS HOLLOW RD	29 EAST 9TH ST #9	NEW YORK	NY	10003
2085	44-9-0-R	HIGGINS HOLLOW REALTY TRUST TRS: DAVIS SEBASTIAN W	45 HIGGINS HOLLOW RD	PO BOX 42	TRURO	MA	02666-0042
2395	46-173-0-R	ZILLIAX AMY P	3 HIGGINS WAY	107 LINCOLN PLACE	BROOKLYN	NY	11217
2577	47-1-0-R	SIMON BART I & CHRISTINE H	35 HIGGINS HOLLOW RD	90 WAREHAM ST, UNIT 507	BOSTON	MA	02118-2473
2578	47-2-0-R	MCCARTHY REGAN	35-A HIGGINS HOLLOW RD	42-1/2 ADRIAN AVE	NEW YORK	NY	10463
2579	47-3-0-R	SCHERMERHORN DIANNE M RE TR TRS: SCHERMERHORN DIANNE M	71 OLD KINGS HWY	PO BOX 242	TRURO	MA	02666
2581	47-5-0-R	CONTRINO MARIA L & ZALNASKY PAMELA S	1 FOURTH OF JULY RD	PO BOX 564	TRURO	MA	02666
2582	47-6-0-R	THOMAS ADAM & KELLI	67 OLD KINGS HWY	PO BOX 84	TRURO	MA	02666

*Handwritten signature*  
 2/15/2022

40-999-0-E

USA-DEPT OF INTERIOR  
Cape Cod National Seashore  
99 Marconi Site Rd  
Wellfleet, MA 02667

44-8-0-R

OTTE DARYL &  
COHEN ARTHUR  
29 EAST 9TH ST #9  
NEW YORK, NY 10003

44-9-0-R

HIGGINS HOLLOW REALTY TRUST  
TRS: DAVIS SEBASTIAN W  
PO BOX 42  
TRURO, MA 02666-0042

46-173-0-R

ZILLIAX AMY P  
107 LINCOLN PLACE  
BROOKLYN, NY 11217

47-1-0-R

SIMON BART I & CHRISTINE H  
90 WAREHAM ST, UNIT 507  
BOSTON, MA 02118-2473

47-2-0-R

MCCARTHY REGAN  
42-1/2 ADRIAN AVE  
NEW YORK, NY 10463

47-3-0-R

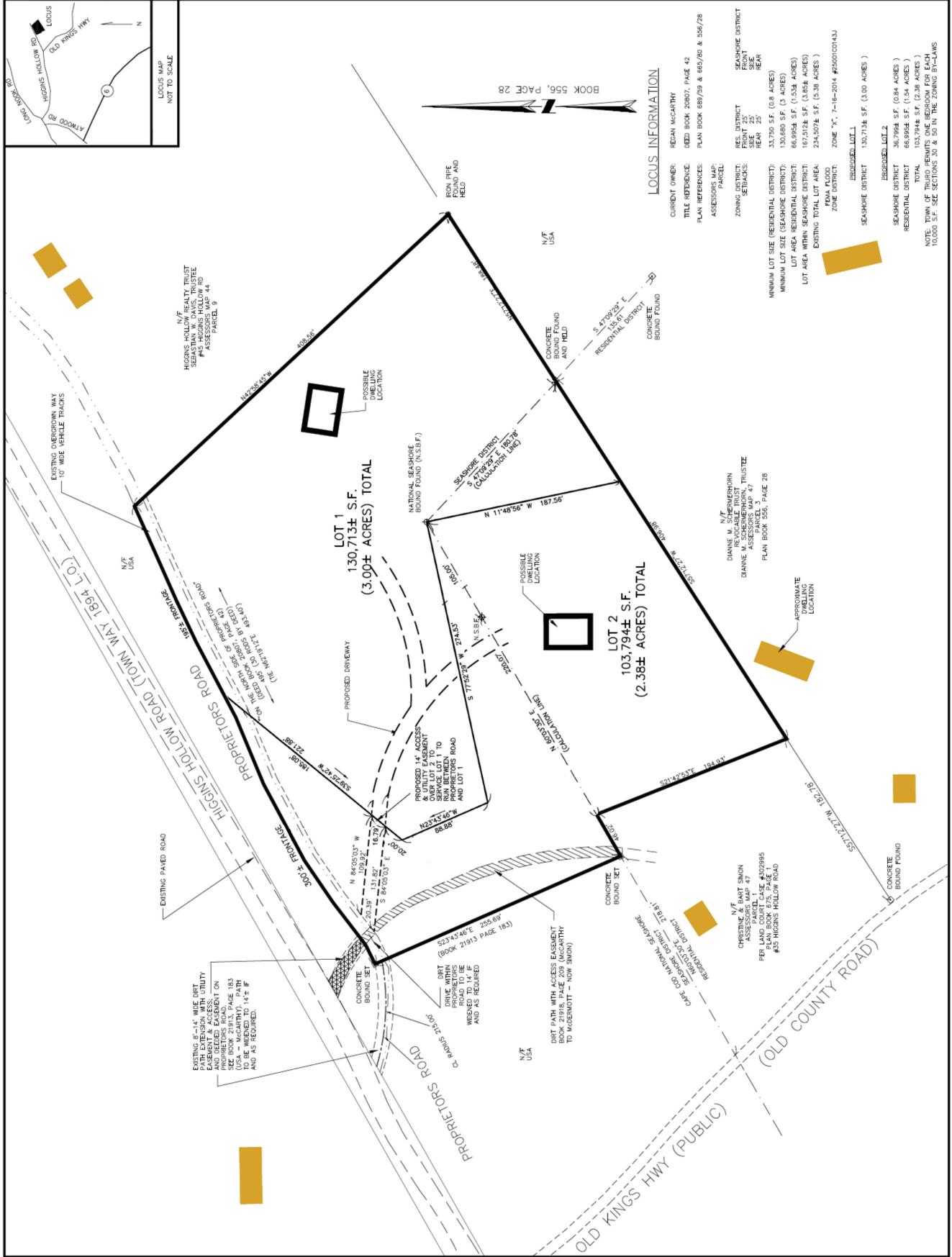
SCHERMERHORN DIANNE M RE TR  
TRS: SCHERMERHORN DIANNE M  
PO BOX 242  
TRURO, MA 02666

47-5-0-R

CONTRINO MARIA L &  
ZALNASKY PAMELA S  
PO BOX 564  
TRURO, MA 02666

47-6-0-R

THOMAS ADAM & KELLI  
PO BOX 84  
TRURO, MA 02666



Solid boxes = Existing structures

Marginal notes added by applicant 2/14/22

PROFESSIONAL LAND SURVEYOR DATE

LAND DEVELOPMENT CONCEPT PLAN

AT #35A HIGGINS HOLLOW RD. IN TRURO MASSACHUSETTS (BARNSTABLE COUNTY) DECEMBER 8, 2021

REVISED PLAN: REAGAN MCARTHY 42 1/2' OLD KINGS AVENUE MARBLE HILL N.Y. 10463

BSC GROUP  
349 Route 28, Unit D  
Ware, Massachusetts 02673  
508.778.8919

SCALE: 1" = 40'

PROJ. MGR.: C. FIELD  
DRA./DESIGN: P. HIGST  
CHECK: C. FIELD  
FILE: 689-59-12-4-2021.DWG  
DWG. NO.: 5634-0  
JOB. NO.: 4-8639.02 SHEET 1 OF 1

689-59

TRURO PLANNING BOARD  
APPROVAL UNDER THE  
SUBDIVISION CONTROL LAW NOT REQUIRED

*Paul Herold*  
*Pete Herold*  
*Sandra Sabin*  
*Stan Solley*

DATE: 3/31/2021

NOTES:  
PLANNING BOARD ENDORSEMENT OF THIS PLAN INDICATES ONLY THAT THE PLAN IS NOT A VIOLATION OF THE SUBDIVISION CONTROL LAW AND DOES NOT INDICATE A LOT IS BUILDABLE OR THAT THE PROPERTY IS ZONED FOR RESIDENTIAL USE. THE INTENT OF THIS PLAN IS TO SUBDIVIDE THE EXISTING LOT AS DEPICTED IN PLAN BOOK 665, PAGE 80 INTO TWO LOTS.  
LOTS 1 AND 2 MEET THE MATHEMATICAL REQUIREMENTS OF THE SUBDIVISION CONTROL LAW AND THERE ARE NO WETLANDS ON THE SITE.

RECEIVED AND RECORDED  
2021 APR -1 PM 3:16  
REGISTERED CLERK OF THE TOWN OF TRURO

EXISTING 8'-14" WIDE DIRT PATH EXTENSION WITH UTILITY AND CEDED EASEMENT ON SEE BOOK 2103, PAGE 183 (USA - MCARTHY), PATH TO BE WIDENED TO 14' IF AND AS REQUIRED.

DRIVE WITHIN PROPERTIES WIDENED TO 14' IF AND AS REQUIRED

DIRT DRIVE WITHIN PROPERTIES WIDENED TO 14' IF AND AS REQUIRED

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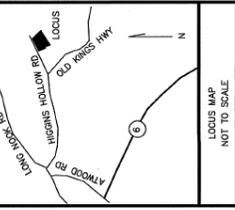
DIRT DRIVE WITHIN PROPERTIES WIDENED TO 14' IF AND AS REQUIRED

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DIRT DRIVE WITHIN PROPERTIES WIDENED TO 14' IF AND AS REQUIRED



LOCUS MAP NOT TO SCALE

HIGGINS HOLLOW REALTY TRUST SEBASTIAN W. DAVIS, TRUSTEE  
#354  
ASSESSORS MAP #44  
PARCEL 9

LOT 1  
130,767± S.F.  
(3.00± ACRES) TOTAL

LOT 2  
103,740± S.F.  
(2.38± ACRES) TOTAL

LOT 3  
103,740± S.F.  
(2.38± ACRES) TOTAL

LOT 4  
103,740± S.F.  
(2.38± ACRES) TOTAL

LOT 5  
103,740± S.F.  
(2.38± ACRES) TOTAL

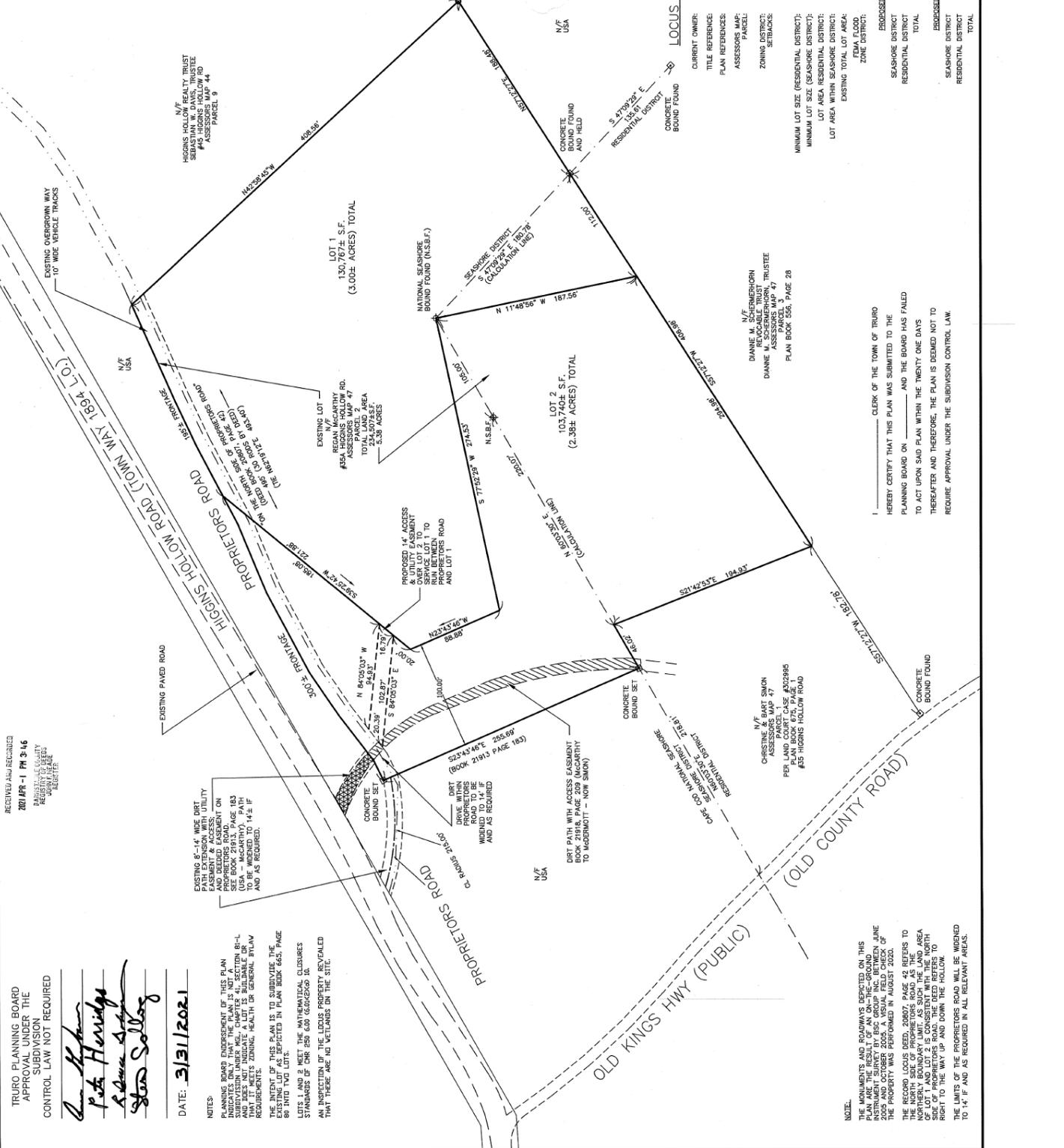
LOT 6  
103,740± S.F.  
(2.38± ACRES) TOTAL

LOT 7  
103,740± S.F.  
(2.38± ACRES) TOTAL

LOT 8  
103,740± S.F.  
(2.38± ACRES) TOTAL

LOT 9  
103,740± S.F.  
(2.38± ACRES) TOTAL

LOT 10  
103,740± S.F.  
(2.38± ACRES) TOTAL



RECEIVED AND RECORDED  
2021 APR -1 PM 3:16  
REGISTERED CLERK OF THE TOWN OF TRURO

TRURO PLANNING BOARD APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED

*Paul Herold*  
*Pete Herold*  
*Sandra Sabin*  
*Stan Solley*

DATE: 3/31/2021

NOTES:  
PLANNING BOARD ENDORSEMENT OF THIS PLAN INDICATES ONLY THAT THE PLAN IS NOT A VIOLATION OF THE SUBDIVISION CONTROL LAW AND DOES NOT INDICATE A LOT IS BUILDABLE OR THAT THE PROPERTY IS ZONED FOR RESIDENTIAL USE. THE INTENT OF THIS PLAN IS TO SUBDIVIDE THE EXISTING LOT AS DEPICTED IN PLAN BOOK 665, PAGE 80 INTO TWO LOTS.  
LOTS 1 AND 2 MEET THE MATHEMATICAL REQUIREMENTS OF THE SUBDIVISION CONTROL LAW AND THERE ARE NO WETLANDS ON THE SITE.

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DIRT DRIVE WITHIN PROPERTIES WIDENED TO 14' IF AND AS REQUIRED

FOR REGISTRY USE ONLY

CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THIS PLAN CONFORMS TO THE RULES AND REGULATIONS OF THE REGISTRY OF LANDS.



PROFESSIONAL LAND SURVEYOR'S DATE: 3/31/2021

### APPROVAL NOT REQUIRED PLAN OF LAND

AT #354 IN TRURO MASSACHUSETTS (BARNSTABLE COUNTY) FEBRUARY 19, 2021

HIGGINS HOLLOW RD.

REASONS: NO. DATE DESC. 1. 3/19/21 MINISTERIAL REQUEST 2. ANR APPROVED 3/10/21

PREPARED FOR: REGAN MCARTHY 42 1/2 ADEBANK AVENUE MARBLE HILL, N.Y. 10463

BSC GROUP 249 Route 28, Unit D Weymouth Massachusetts 02473 508 778 8919

SCALE: 1" = 40' 0 20 40 80 160 feet

PROJ. MGR.: C. FIELD

CALC./DESIGN: F. HANST

DRAWN: K. HULL

FILE: B354-ANR-2-19-2021-BLDWG

DATE: 04-01-2021

JOB. NO.: 4-8839-02

SHEET 1 OF 1

LOCUS INFORMATION

CURRENT OWNER: REGAN MCARTHY

TITLE REFERENCE: DEED BOOK 2087, PAGE 42

PLAN REFERENCES: PLAN BOOK 665/80 & 558/28

ASSESSORS MAP: PARCEL 2

ZONING DISTRICT: RESIDENTIAL DISTRICT

MINIMUM LOT SIZE (RESIDENTIAL DISTRICT): 33,760 S.F. (0.8 ACRES)

LOT AREA (RESIDENTIAL DISTRICT): 103,740 S.F. (2.38 ACRES)

LOT AREA (TOTAL LOT AREA): 207,480 S.F. (4.76 ACRES)

EXISTING TOTAL LOT AREA: 207,480 S.F. (4.76 ACRES)

ZONE: "R", 7-16-2014 #20010143

EMBEDDED LOT 1

SEASHORE DISTRICT 120,868± S.F. (2.77 ACRES)

RESIDENTIAL DISTRICT 86,924± S.F. (2.02 ACRES)

TOTAL 207,792± S.F. (4.76 ACRES)

EMBEDDED LOT 2

SEASHORE DISTRICT 46,538± S.F. (1.07 ACRES)

RESIDENTIAL DISTRICT 57,167± S.F. (1.31 ACRES)

TOTAL 103,705± S.F. (2.38 ACRES)

HEREBY CERTIFY THAT THIS PLAN WAS SUBMITTED TO THE PLANNING BOARD ON \_\_\_\_\_ AND THE BOARD HAS FAILED TO ACT UPON SAID PLAN WITHIN THE TWENTY ONE DAYS THEREAFTER AND THEREFORE, THE PLAN IS DEEMED NOT TO REQUIRE APPROVAL UNDER THE SUBDIVISION CONTROL LAW.

CLERK OF THE TOWN OF TRURO

DIANNE M. SCHERMERHORN, TRUSTEE PLAN BOOK 556, PAGE 28

DIANNE M. SCHERMERHORN, TRUSTEE PLAN BOOK 556, PAGE 28

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DIANNE M. SCHERMERHORN, TRUSTEE PLAN BOOK 556, PAGE 28

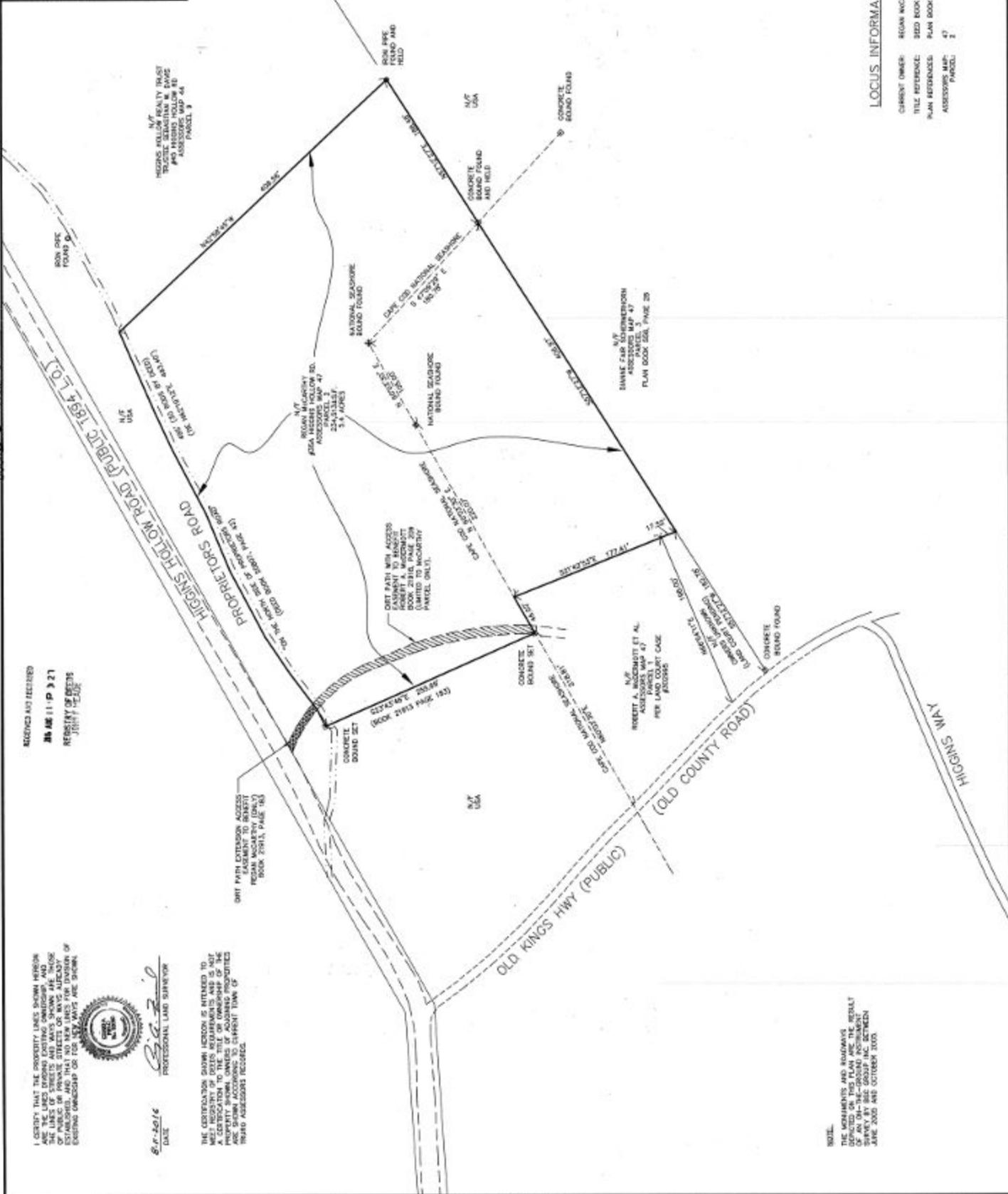
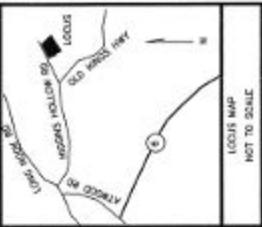
DIANNE M. SCHERMERHORN, TRUSTEE PLAN BOOK 556, PAGE 28

DIANNE M. SCHERMERHORN, TRUSTEE PLAN BOOK 556, PAGE 28

DIANNE M. SCHERMERHORN, TRUSTEE PLAN BOOK 556, PAGE 28

DIANNE M. SCHERMERHORN, TRUSTEE PLAN BOOK 556, PAGE 28

BOOK 665 PAGE 80



I CERTIFY THAT THE PROPERTY LINES SHOWN HEREON ARE THE RESULT OF A SURVEY MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF MASSACHUSETTS. I AM NOT PROVIDING THIS SERVICE AS AN EMPLOYEE OF A PUBLIC OR PRIVATE AGENCY OR AS A CONTRACTOR TO THE TITLE OR OWNERSHIP OF THE PROPERTY. FROM THE DATE OF THIS SURVEY, I AM NOT PROVIDING ANY SERVICE AS AN EMPLOYEE OF A PUBLIC OR PRIVATE AGENCY OR AS A CONTRACTOR TO THE TITLE OR OWNERSHIP OF THE PROPERTY. FROM THE DATE OF THIS SURVEY, I AM NOT PROVIDING ANY SERVICE AS AN EMPLOYEE OF A PUBLIC OR PRIVATE AGENCY OR AS A CONTRACTOR TO THE TITLE OR OWNERSHIP OF THE PROPERTY.

DATE: 8-11-2016  
PROFESSIONAL LAND SURVEYOR: *Regan McCarty*



8-11-2016  
PROFESSIONAL LAND SURVEYOR

THE CONVEYANCE SHOWN HEREON IS A SERVICE TO THE CLIENT AND DOES NOT CONSTITUTE A GUARANTEE OR A CERTIFICATION TO THE TITLE OR OWNERSHIP OF THE PROPERTY. FROM THE DATE OF THIS SURVEY, I AM NOT PROVIDING ANY SERVICE AS AN EMPLOYEE OF A PUBLIC OR PRIVATE AGENCY OR AS A CONTRACTOR TO THE TITLE OR OWNERSHIP OF THE PROPERTY.

RECEIVED AND REQUIRED  
MAY 11 11 30 AM '16  
REGISTRY OF DEEDS  
JULY 15 2016

NAT. SEASORE SAND FOUND  
REGAN MCCARTHY HAS  
TRACED THE BOUNDARY  
AND FOUND IT TO BE  
AS SHOWN ON MAP 44  
PARCEL 4

81-X  
PLAN OF LAND  
AT  
#35A  
HIGGINS HOLLOW RD.  
IN  
TRURO  
MASSACHUSETTS  
(BARNSTABLE COUNTY)  
AUGUST 11, 2016

REVISIONS:  
NO. DATE DESC.

PREPARED FOR:  
REGAN MCCARTHY

**BSC GROUP**  
349 Route 28, Unit D  
W. Yarmouth Massachusetts  
02673  
508 778 8919

SCALE: 1" = 100'  
0 25 50 75 100 feet

PARCEL NO.	C. FIELD
FIELD NO.	D. GAZDOLD / J. P. MAST
CALCULATION	P. MAST
DATE	8/11/16
FILE NO.	10154-1016-113-1042
MAP NO.	665-01
SCALE	1 OF 1

**LOCUS INFORMATION**

CURRENT OWNER: REGAN MCCARTHY  
TITLE REFERENCE: 350 BOOK 20051, PAGE 42  
PLAN REFERENCE: PLAN BOOK 55A, PAGE 28  
ASSESSOR MAP: 47  
PARCEL: 7

08-599

QUITCLAIM DEED

The undersigned JAMES G. WASENIUS, now of 500 Bi-County Boulevard, Suite 202N, Farmingdale, New York 11735 hereby conveys to

REGAN McCARTHY, now of 42 1/2 Adrian Avenue, New York, New York

with QUITCLAIM COVENANTS

a certain piece of land situated in said Truro, on the south side of Higgin's Hollow, so-called, in Long Nook, and bounded and described as follows: Beginning at the northwest corner of said land at a stake and stone on the north side of the proprietor's road; thence southerly in range formerly of the late Benjamin Small twenty-seven rods to a stake and stone; thence easterly in the range of land of heirs of Doane Rich, formerly, now owned by John Oliver, to a stake and stone in range of land formerly owned by the late Benjamin S. Kelley; thence northerly in said Kelley's range to a stone on the north side of the proprietors' road; thence westerly thirty rods in said Kelley's range to the bound first mentioned-reserving the right of proprietors to the way up and down the hollow; being the same premises conveyed to Joseph Morris by Amelia R. Ryder and Samuel Dyer by deed dated March 2, 1905.

Being the same premises conveyed by deed of Joseph F. Morris et al. to James Morris dated July 7, 1911 and recorded with the Barnstable County Registry of Deeds (the "Registry") in Book 314, Page 45.

For grantor's title, see deed of Regan McCarthy recorded together herewith and prior hereto.

The consideration for this deed is less than One Hundred Dollars, and therefore no documentary stamps are required.

Executed as a sealed instrument as of the 24<sup>th</sup> day of February, 2006.

*James G. Wasenius*  
James G. Wasenius

STATE OF NEW YORK

NASSAU County, ss.

On this 24 day of February, 2006, before me, the undersigned notary public, personally appeared James G. Wasenius, [✓] known to me, or [ ] proved to me through satisfactory evidence of identification, which was JAMES G. WASENIUS, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily and for its stated purpose.

KEITH S. SALEGNA  
NOTARY PUBLIC, STATE OF NEW YORK  
REG. #01SA6060499  
QUALIFIED IN NASCAU COUNTY  
COMMISSION EXPIRES 6/25/2007

*Keith S. Salegna*  
Notary Name Printed: KEITH S. SALEGNA  
My Commission expires: 6/25/07

BARNSTABLE REGISTRY OF DEEDS

The street address of the property is 35A Higgins Hollow, Truro.



## Elizabeth Sturdy

---

**From:** Rich Stevens  
**Sent:** Tuesday, March 1, 2022 8:32 AM  
**To:** Elizabeth Sturdy  
**Subject:** RE: Review of ZBA Application - 2 Highview Lane

Good Morning Again,  
No comment other than encroachment is minor and not affecting a neighboring property line but, that is why we have Zoning and the ZBA.

Rich

---

**From:** Elizabeth Sturdy <ESturdy@truro-ma.gov>  
**Sent:** Monday, February 28, 2022 12:15 PM  
**To:** Emily Beebe <EBeeBe@truro-ma.gov>; Rich Stevens <rstevens@truro-ma.gov>; Arozana Davis <ADavis@truro-ma.gov>; Lynne Budnick <LBudnick@truro-ma.gov>  
**Cc:** Barbara Carboni <bcarboni@truro-ma.gov>  
**Subject:** Review of ZBA Application - 2 Highview Lane

Emily, Rich, Zana, Lynne:

The attached application for ZBA Variance will be on the March 28 Zoning Board Agenda. Please get back to me with any comments you may have, or not. Appreciate any and all input.

Let me know if you have any questions. Thanks,

Liz

*Elizabeth Sturdy*

Elizabeth Sturdy, Office Assistant  
Truro Town Hall  
24 Town Hall Road, P.O. Box 2030  
Truro, MA 02666  
Tel: (508) 214-0935  
Fax: (508) 349-5505  
Email: [esturdy@truro-ma.gov](mailto:esturdy@truro-ma.gov)





**TOWN OF TRURO**  
**HEALTH & CONSERVATION DEPARTMENT**  
24 Town Hall Road, Truro 02666  
508-349-7004 x119

Memo to: Barbara Carboni, Town Planner

Date: March 24, 2022

From: Emily Beebe, Health & Conservation Agent 

Re: Plan Review of 2 Highview Lane

This project, to construct a free-standing garage is not located in proximity to wetland resources.

The proposed structure is a garage with unfinished storage. No Habitable area is proposed. No plumbing has been proposed. We see no septic related issues as the system is located south and west of the existing septic system.

## **Elizabeth Sturdy**

---

**From:** cdmatal@aol.com  
**Sent:** Sunday, March 27, 2022 2:49 PM  
**To:** Elizabeth Sturdy  
**Cc:** joannateach76@gmail.com; Barbara Carboni; Rich Stevens; lburdick@truro-ma.gov  
**Subject:** Questions on the A. Gulan's request for Variance

**To the Chair and members of the Board of Appeals:**

**Our questions and concerns regarding A. Gulan's request for a variance (garage) (25' Setback is required).**

- 1. Why was the foundation moved?**
- 2. This would affect Two Roads, Hillbourne Terrace and Highview Lane. Being too close to the road would interfere with road maintenance and improvement.**
- 3. Does the height of the garage meet requirements? (there were restrictions on the height of full two story buildings).**
- 4. The drawings mention that the second floor is uninhabitable. Does that assure us that this will not turn into a rental apartment or used for a business?**
- 5. Any restrictions on the number of buildings per parcel of land?**

**We would greatly appreciate your attention to our questions and concerns.**

**Thank for your time and effort! We are planning to join the meeting on Monday, March 28, 2022.**

**Charlie & Joanna Morrison  
4 Hillbourne Terrace  
North Truro**

**Liz, we would like this copy submitted instead of the 1st copy.  
Liz, thank you.**

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

*Truro Zoning Board of  
Appeals  
Petition for Variance*



*Andrea Gulan  
2 Highview Lane, North Truro  
February 16, 2022*

*Andrea Gulan*  
*2 Highview Lane, North Truro, MA 02652*  
*508-237-0664*

February 16, 2022

Truro Zoning Board of Appeals  
Attn: Arthur Hultin, Chair  
Truro Town Hall  
24 Town Hall Road  
Truro, MA 02666

Re: Request for variance; 2 Highview Lane; Detached pre-fab 2-car garage

Dear Mr. Hultin and Board Members:

I am applying for, and seeking your approval to grant, a variance relating to the minimum side-yard setback regulation of 25'.

I have an approved application and building permit, dated 11/10/2021, for the construction of a 2-car detached (pre-fab) garage on my property located at 2 Highview Lane in North Truro. Based on the original engineered site plans, the structure is situated on the north side-yard adjacent to Hillbourne Terrace, with no direct abutters on that property line.

Upon completion of the foundation slab, the "as-built" site plan was certified and apparently the rear left corner is 23.26' from the bound, resulting in an approximate 18" shortfall.

A combination of events factored into this setback change, of which I take full responsibility.

- Working from the original site plan, I turned the building to move it closer to the house (aesthetically more pleasing), thinking I was still well within the setback regulations. Unfortunately, that slight turn caused the very rear corner (only) to extend over the line!
- While planting trees for a privacy hedge along that northerly boundary of Hillbourne Terrace, the side-yard cornerstone bound may have been disturbed and thereby altering the exact measurements.

For these reasons, as well as my ignorance, I'm asking for leniency. According to Building Commissioner Stevens, in his opinion this constitutes a de minimis encroachment on the boundary, and having no direct abutters or objections from neighbors, I'm hopeful you will vote favorably on this variance.

Thank you in advance for your time and understanding. I anxiously await your decision.

Until then, all the best and be well.



Andrea Gulan

Enc.

*Application for Hearing*

*Petition for Variance*



# Town of Truro Zoning Board of Appeals

P.O. Box 2030, Truro, MA 02666

## APPLICATION FOR HEARING

To the Town Clerk of the Town of Truro, MA

Date February 1, 2022

The undersigned hereby files with specific grounds for this application: *(check all that apply)*

### 1. GENERAL INFORMATION

NOTICE OF APPEAL

- Applicant is aggrieved by his/her inability to obtain a permit or enforcement action from the Building Commissioner on *(date)* \_\_\_\_\_.
- Applicant is aggrieved by order or decision of the Building Commissioner on *(date)* \_\_\_\_\_ which he/she believes to be a violation of the Truro Zoning Bylaw or the *Massachusetts Zoning Act*.

**PETITION FOR VARIANCE** – Applicant requests a variance from the terms Section 50.1 of the Truro Zoning Bylaw concerning *(describe)* a 24' x 32' detached saltbox garage that would be 23.26' from the side yard setback where 25' is required. The 19.4" encroachment applies only to the rear left corner adjacent to Hillbourne Terrace with no direct abutters.

APPLICATION FOR SPECIAL PERMIT

- Applicant seeks approval and authorization of uses under Section \_\_\_\_\_ of the Truro Zoning Bylaw concerning *(describe)* \_\_\_\_\_
- Applicant seeks approval for a continuation, change, or extension of a nonconforming structure or use under Section \_\_\_\_\_ of the Truro Zoning Bylaw and M.G.L. Ch. 40A, §6 concerning *(describe)* The \_\_\_\_\_

Property Address 2 Highview Lane, North Truro, MA Map(s) and Parcel(s) 40-97-0

Registry of Deeds title reference: Book 10816, Page 158, or Certificate of Title Number \_\_\_\_\_ and Land Ct. Lot # \_\_\_\_\_ and Plan # \_\_\_\_\_

Applicant's Name Andrea Gulan

Applicant's Legal Mailing Address PO Box 429, North Truro, MA 02652

Applicant's Phone(s), Fax and Email (508) 237-0664; andigulan@gmail.com

Applicant is one of the following: *(please check appropriate box)*

\*Written Permission of the owner is required for submittal of this application.

- Owner
- Prospective Buyer\*
- Other\*

Owner's Name and Address SAME

Representative's Name and Address SAME

Representative's Phone(s), Fax and Email SAME

2. The completed application shall also be submitted electronically to the Town Planner at [planner1@truro-ma.gov](mailto:planner1@truro-ma.gov) in its entirety (including all plans and attachments).

- The applicant is *advised* to consult with the Building Commissioner, Planning Department, Conservation Department, Health Department, and/or Historic Commission, as applicable, prior to submitting this application.

Signature(s)

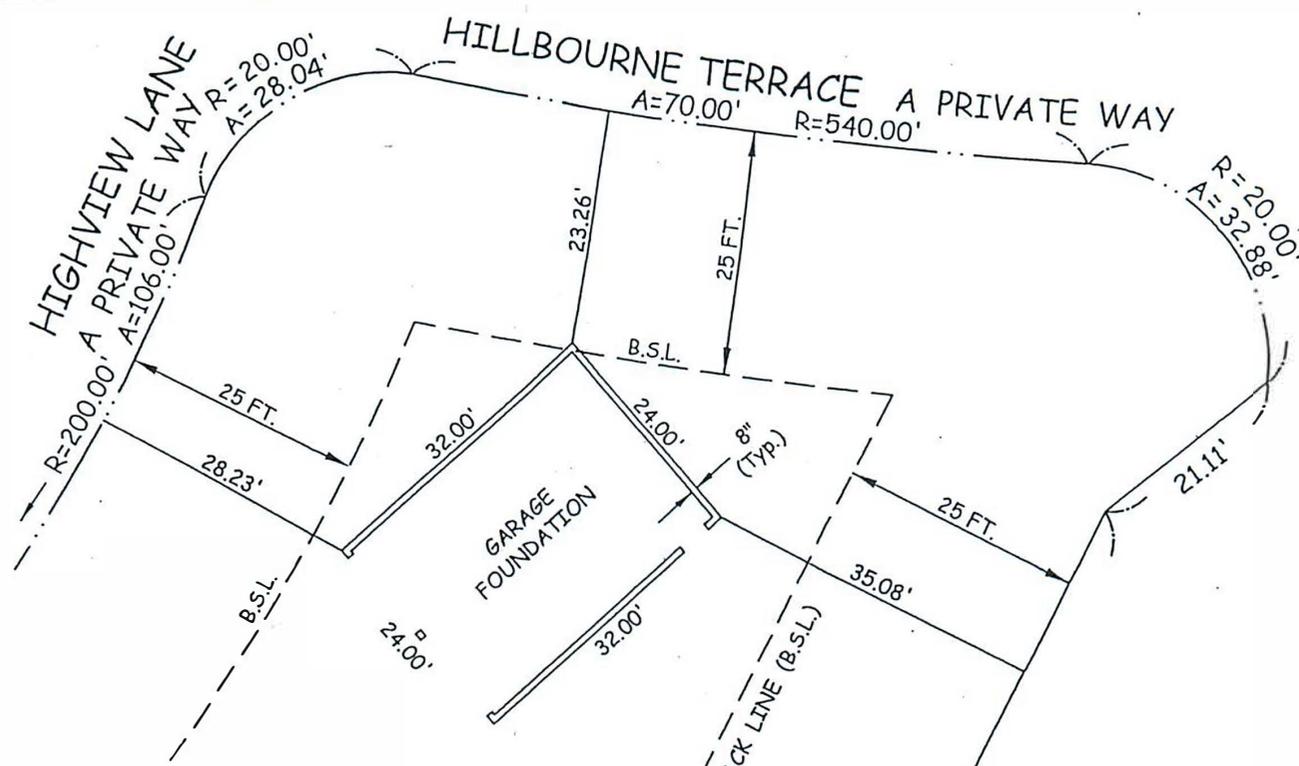
Andrea Gulan  
Applicant(s)/Representative Printed Name(s)

[Signature]  
Applicant(s)/Representative Signature

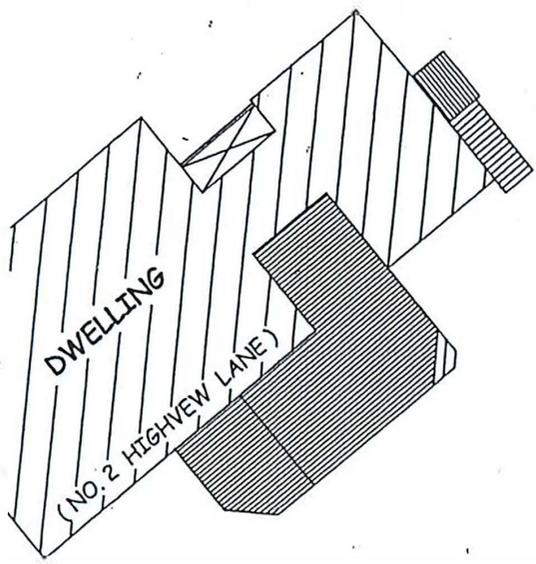
SAME  
Owner(s) Printed Name(s) or written permission

[Signature]  
Owner(s) Signature or written permission

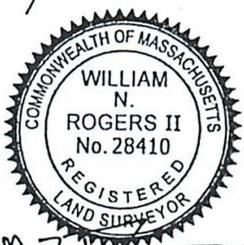
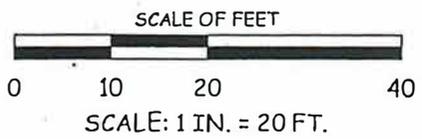
Your signature on this application authorizes the Members of the Zoning Board of Appeals and town staff to visit and enter upon the subject property



**LOT 1**  
 AREA = 33,827 ±  
 SQ. FT.



**JOHN & CLAUDIA COLLEY**  
**REVOCABLE TRUST**  
 LOT 8  
 (NO. 30 SOUTH HIGHLAND ROAD)



*William N. Rogers II*  
 REGISTERED LAND SURVEYOR  
 JANUARY 17, 2022

CERTIFIED FOUNDATION PLAN  
 AS PREPARED FOR

**ANDREA L. GULAN**  
 (NO. 2 HIGHVIEW LANE)  
 TRURO, MASS.

**WILLIAM N. ROGERS**  
 PROFESSIONAL  
 CIVIL ENGINEERS & LAND SURVEYORS  
 41 OFF CEMETERY ROAD, PROVINCETOWN, MASS.  
 508.487.1565 / 508.487.5809 FAX

:JANUARY, 2022

## *Certified Abutters List*



# TOWN OF TRURO

## Assessors Office

### Certified Abutters List

### Request Form

DATE: February 1, 2022

NAME OF APPLICANT: Andrea Gulan

NAME OF AGENT (if any): N/A

MAILING ADDRESS: PO Box 429, North Truro, MA 02652

CONTACT: HOME/CELL (508) 237-0664 EMAIL andigulan@gmail.com

PROPERTY LOCATION: 2 Highview Lane, North Truro, MA 02652  
(street address)

PROPERTY IDENTIFICATION NUMBER: MAP 48 40 PARCEL 122 97 EXT. \_\_\_\_\_  
(if condominium)

ABUTTERS LIST NEEDED FOR: **FEE: \$15.00 per checked item**  
(please check all applicable) (Fee must accompany the application unless other arrangements are made)

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Board of Health <sup>5</sup>         | <input type="checkbox"/> Planning Board (PB)                        | <input type="checkbox"/> Zoning Board of Appeals (ZBA)    |
| <input type="checkbox"/> Cape Cod Commission                  | <input type="checkbox"/> Special Permit <sup>1</sup>                | <input type="checkbox"/> Special Permit <sup>1</sup>      |
| <input type="checkbox"/> Conservation Commission <sup>4</sup> | <input type="checkbox"/> Site Plan <sup>2</sup>                     | <input checked="" type="checkbox"/> Variance <sup>1</sup> |
| <input type="checkbox"/> Licensing                            | <input type="checkbox"/> Preliminary Subdivision <sup>3</sup>       |   |
| Type: _____   | <input type="checkbox"/> Definitive Subdivision <sup>3</sup>        |   |
|   | <input type="checkbox"/> Accessory Dwelling Unit (ADU) <sup>2</sup> |   |
| <input type="checkbox"/> Other _____                          |   | <i>(Fee: Inquire with Assessors)</i>                      |
- (Please Specify)*

**Note: Per M.G.L., processing may take up to 10 calendar days. Please plan accordingly.**

#### THIS SECTION FOR ASSESSORS OFFICE USE ONLY

Date request received by Assessors: 2/1/2022 Date completed: 2/1/2022

List completed by: [Signature] Date paid: 2/1/2022 Cash/Check \_\_\_\_\_

<sup>1</sup>Abutters. owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line.

<sup>2</sup>Abutters to the subject property, abutters to the abutters, and owners of properties across the street from the subject property.

<sup>3</sup>Landowners immediately bordering the proposed subdivision, landowners immediately bordering the immediate abutters, and landowners located across the streets and ways bordering the proposed subdivision. **Note:** For Definitive Subdivision only, responsibility of applicant to notify abutters and produce evidence as required.

<sup>4</sup>All abutters within 300 feet of parcel, except Beach Point between Knowles Heights Road and Provincetown border, in which case it is all abutters within 100 feet. **Note:** Responsibility of applicant to notify abutters and produce evidence as required.

<sup>5</sup>Abutters sharing any boundary or corner in any direction – including land across a street, river or stream. **Note:** Responsibility of applicant to notify abutters and produce evidence as required.



**TRURO ASSESSORS OFFICE**  
PO Box 2012 Truro, MA 02666  
Telephone: (508) 214-0921  
Fax: (508) 349-5506

**Date:** February 1, 2022

**To:** Andrea L. Gulan

**From:** Assessors Department

**Certified Abutters List:** 2 Highview Lane (Map 40, Parcel 97)

**ZBA/ Variance**

Attached is a combined list of abutters for property located at 2 Highview Lane.

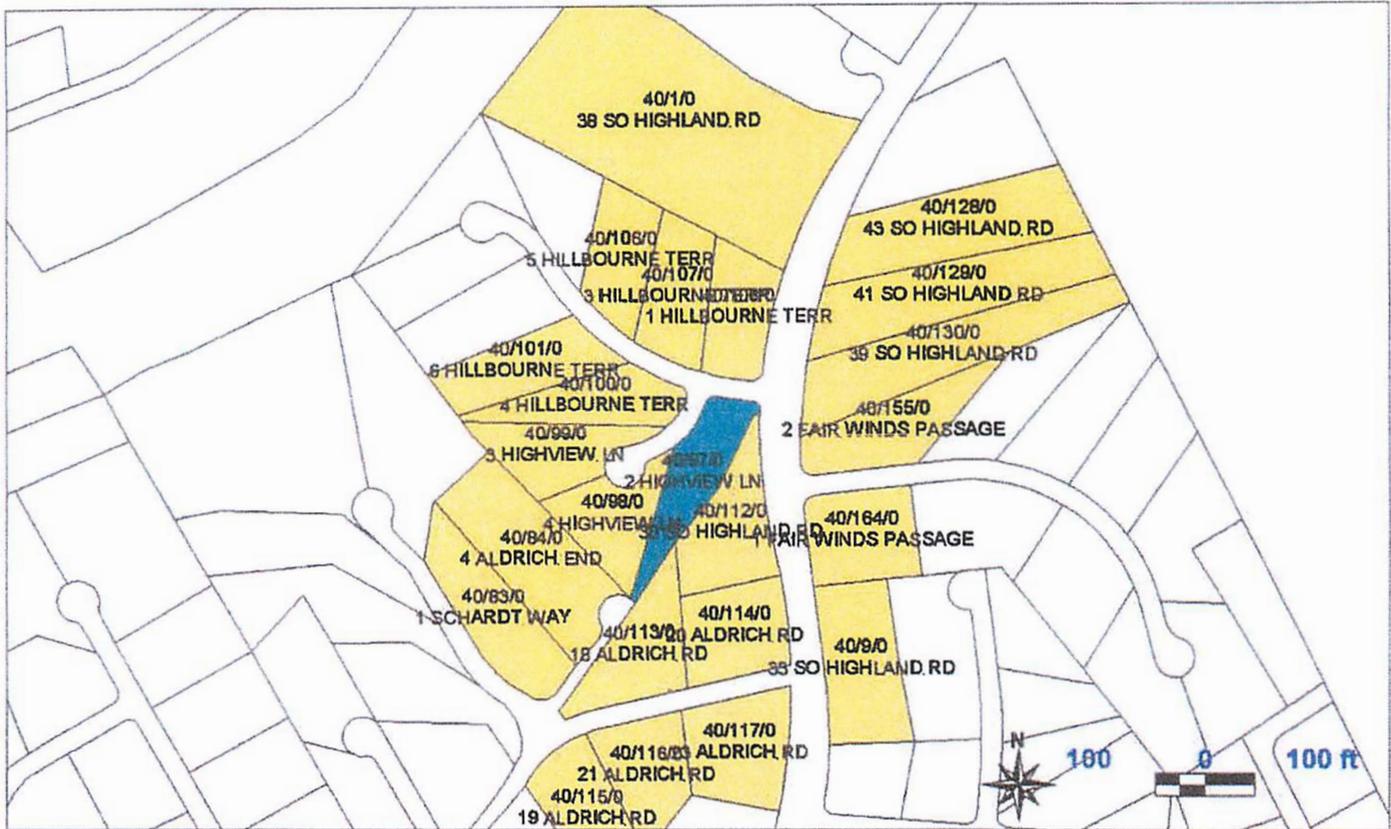
The current owner is Andrea L. Gulan.

The names and addresses of the abutters are as of January 28, 2022 according to the most recent documents received from the Barnstable County Registry of Deeds.

Certified by:

Olga Farrell  
Assessing Clerk

Custom Abutters List



Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	ZipCd/Country
1430	40-1-0-R	CARMIE BEE REVOCABLE TRUST & HARRIET'S BEE REVOCABLE TRUST	38 SO HIGHLAND RD	168 ST JOHN'S PLACE	BROOKLYN	NY	11217-3402
1435	40-9-0-R	THOMAS ROSENKAMPFF 2020 LIV TR KATHLEEN ROSENKAMPFF 2020 LIV	33 SO HIGHLAND RD	PO BOX 12	NO TRURO	MA	02652
1505	40-83-0-R	WHITE LEE W & STACEYA	1 SCHARDT WAY	PO BOX 224	NO TRURO	MA	02652-0224
1506	40-84-0-R	MCQUINN DOROTHY C/O KATHLEEN BERGER	4 ALDRICH END	110 OLD EAGLEVILLE RD	COVENTRY	CT	06239
1520	40-98-0-R	ROBERTS CHRISTOPHER S & MCGEE CHRISTINE	4 HIGHVIEW LN	PO BOX 400	NO TRURO	MA	02652
1521	40-99-0-R	GERASIMOV SERGEY	3 HIGHVIEW LN	310 WEST 106TH ST, APT 3B	NEW YORK	NY	10025
1522	40-100-0-R	MORRISON CHARLES D & JOANNA M	4 HILLBOURNE TERR	PO BOX 409	WEST SAND LAKE	NY	12196
1523	40-101-0-R	VACCARO BARBARA & SALVATORE	6 HILLBOURNE TERR	371 COLUMBUS AVE	VALHALLA	NY	10595
1528	40-106-0-R	TABACHNICK JOAN & FLEISHMAN JANE	5 HILLBOURNE TERR	16 MUNROE STREET	NORTHAMPTON	MA	01060
1529	40-107-0-R	SELIGSON SUSAN V	3 HILLBOURNE TERR	PO BOX 955	NO TRURO	MA	02652
1530	40-108-0-R	ROGERS JOAN R 2012 TRUST TRS. ROGERS JOAN R & CHARLES N	1 HILLBOURNE TERR	PO BOX 150	NO TRURO	MA	02652-0150
1532	40-112-0-R	COLLEY JOHN REVOCABLE TRUST & COLLEY CLAUDIA REVOCABLE TRUST	30 SO HIGHLAND RD	PO BOX 515	NO TRURO	MA	02652-0515
1533	40-113-0-R	SANTOS CAROL D	18 ALDRICH RD	PO BOX 1709	PROVINCETOWN	MA	02657
1534	40-114-0-R	BERRY KAREN R & BARRETT CLARE ANGELA	20 ALDRICH RD	1 ROCK CREEK WOODS DRIVE	LAMBERTVILLE	NJ	08530
1535	40-115-0-R	BIRDWELL&CHANDLER 2020 LIV TRS TRS. GR BIRDWELL & KM CHANDLER	19 ALDRICH RD	PO BOX 601	NO TRURO	MA	02652

*Handwritten signature*  
 2/1/2022

Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	Zip/Cd/Country
1536	40-116-0-R	GAVENDA LAURIE & HESS KAREN K	21 ALDRICH RD	70 BOSTON ST #305	SALEM	MA	01970
1537	40-117-0-R	HALE BRIAN R & MARIA	23 ALDRICH RD	270 HARDSCRABBLE RD	NORTH SALEM	NY	10560
1548	40-128-0-R	LAUGHLIN WILLIAM F III & LAUGHLIN MARY ELLEN	43 SO HIGHLAND RD	771 JOHN RINGLING BLVD, APT F2	SARASOTA	FL	34236
1549	40-129-0-R	ROGERS MICHAEL R & AMY M	41 SO HIGHLAND RD	PO BOX 457	NO TRURO	MA	02652-0457
1550	40-130-0-R	DVORKIN MICHAEL, RUBIN LISA & SHAUL JOHN & HOLLIS	39 SO HIGHLAND RD	118 EAST WALNUT ST	TITUSVILLE	PA	16354
5905	40-155-0-R	LEIBHOLZ DANIEL & FLOYD SHANNON	2 FAIR WINDS PASSAGE	191 VALENTINE ST	NEWTON	MA	02465
5914	40-164-0-R	MARTIN JOAN M & WEAVER BARBARA ANN	1 FAIR WINDS PASSAGE	PO BOX 394	NO TRURO	MA	02652

*Handwritten signature*  
2/1/2022

40-1-0-R	CARMI BEE REVOCABLE TRUST & HARRIET S BEE REVOCABLE TRUST 168 ST JOHN'S PLACE BROOKLYN, NY 11217-3402	40-9-0-R	THOMAS ROSENKAMPFF 2020 LIV TR KATHLEEN ROSENKAMPFF 2020 LIV PO BOX 12 NO TRURO, MA 02652	40-83-0-R	WHITE LEE W & STACEY A PO BOX 224 NO TRURO, MA 02652-0224
40-84-0-R	MCQUINN DOROTHY C/O KATHLEEN BERGER 110 OLD EAGLEVILLE RD COVENTRY, CT 06239	40-98-0-R	ROBERTS CHRISTOPHER S & MCGEE CHRISTINE PO BOX 400 NO TRURO, MA 02652	40-99-0-R	GERASIMOV SERGEY 310 WEST 106TH ST, APT 3B NEW YORK, NY 10025
40-100-0-R	MORRISON CHARLES D & JOANNA M PO BOX 409 WEST SAND LAKE, NY 12196	40-101-0-R	VACCARO BARBARA & SALVATORE 371 COLUMBUS AVE VALHALLA, NY 10595	40-106-0-R	TABACHNICK JOAN & FLEISHMAN JANE 16 MUNROE STREET NORTHAMPTON, MA 01060
40-107-0-R	SELIGSON SUSAN V PO BOX 955 NO TRURO, MA 02652	40-108-0-R	ROGERS JOAN R 2012 TRUST TRS: ROGERS JOAN R & CHARLES N PO BOX 150 NO TRURO, MA 02652-0150	40-112-0-R	COLLEY JOHN REVOCABLE TRUST & COLLEY CLAUDIA REVOCABLE TRUST PO BOX 515 NO TRURO, MA 02652-0515
40-113-0-R	SANTOS CAROL D PO BOX 1709 PROVINCETOWN, MA 02657	40-114-0-R	BERRY KAREN R & BARRETT CLARE ANGELA 1 ROCK CREEK WOODS DRIVE LAMBERTVILLE, NJ 08530	40-115-0-R	BIRDWELL&CHANDLER 2020 LIV TRS TRS: GR BIRDWELL & KM CHANDLER PO BOX 601 NO TRURO, MA 02652
40-116-0-R	GAVENDA LAURIE & HESS KAREN K 70 BOSTON ST #305 SALEM, MA 01970	40-117-0-R	HALE BRIAN R & MARIA 270 HARDSCRABBLE RD NORTH SALEM, NY 10560	40-128-0-R	LAUGHLIN WILLIAM F III & LAUGHLIN MARY ELLEN 771 JOHN RINGLING BLVD, APT F2 SARASOTA, FL 34236
40-129-0-R	ROGERS MICHAEL R & AMY M PO BOX 457 NO TRURO, MA 02652-0457	40-130-0-R	DVORKIN MICHAEL, RUBIN LISA & SHAUL JOHN & HOLLIS 118 EAST WALNUT ST TITUSVILLE, PA 16354	40-155-0-R	LEIBHOLZ DANIEL & FLOYD SHANNON 191 VALENTINE ST NEWTON, MA 02465
40-164-0-R	MARTIN JOAN M & WEAVER BARBARA ANN PO BOX 394 NO TRURO, MA 02652				

## *Property Description*

Key: 1519

Town of TRURO - Fiscal Year 2022

9/15/2021 10:15 am SEQ #: 1,524

CD	T	AC/SF/UN	Nbhd	Inf1	Inf2	Inf3	SAF	VC	Lp1	Lp2	CREDIT AMT	ADJ VALUE
L	100	A	0.775	12	1.00	1.00	1.00	1.00	R06	1.15	240,550	120
G	300	A	0.005	12	1.00	1.00	1.00	1.00	R06	1.15		

CLASS	CLASS%	DESCRIPTION	BN ID	BN	CARD
1010	100	SINGLE FAMILY	1	1	1
PMT NO		DESC	AMOUNT	BY	%
FY2018		35 RES EXEMPT	6,000	MR	0
10-022		90 BP NVC	1,200	MR	100
95-115		09/22/1995 6 SHED	13,000		100
93-84		07/26/1993 70 POOL	110,000		100
89-117		08/01/1989 1 SINGLE FAM R			100

LOCATION	PARCEL ID	DOS	T	SALE PRICE	BK-PG (Cert)
2 HIGHVIEW LN	40-97-0	06/24/1997	H	65,000	10816-158
		03/31/1989	OS	70,000	6681-027
		02/19/1987	QS		5566-097

ASSESSED	CURRENT	PREVIOUS
LAND	240,700	240,700
BUILDING	359,000	322,900
DETACHED	13,100	13,000
OTHER	0	0
TOTAL	612,800	576,600

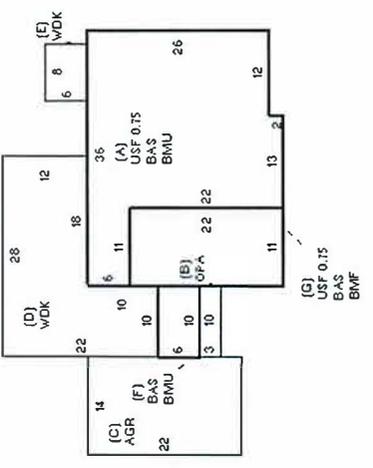
TY	QUAL	COND	DIM/NOTE	YB	UNITS	ADJ PRICE	RCNLD
SHF	A	1.00	G 0.90 8'10"	1993	80	14.91	1,100
SPV	A	1.00	G 0.90 16'34"	1993	544	18.10	8,900
SHF	A	1.00	G 0.90 10'12"	1995	120	14.49	1,600
PTD	G	1.18	G 0.90 18'22" x 10'20"		596	2.48	1,300
PTD	G	1.18	G 0.90 10' DIAM CIR		79	2.48	200

BUILDING	CD	ADJ	DESC	MEASURE	5/18/2018	LG
MODEL	1		RESIDENTIAL	LIST	5/22/2018	LG
STYLE	4	1.10	CAPE 100%	REVIEW	5/25/2011	MR
QUALITY	+	1.10	GOOD+AVE+ [100%]			
FRAME	1	1.00	WOOD FRAME [100%]			

YEAR/BLT	NET AREA	SNLA/RCN	CAPACITY	STORIES(FAR)	ROOMS	BEDROOMS	BATHROOMS	FIXTURES	UNITS
1989	1,782	\$288	1.75	0	0	2	1.5	5	0
1,782	DETAIL ADJ			1.00	1,000				
\$288	OVERALL			1,120					
ADJ				1,010					

ELEMENT	CD	DESCRIPTION	ADJ	S	BAT	T	DESCRIPTION	UNITS	YB	ADJ PRICE	RCN	TOTAL RCN	CONDITION ELEM
FOUNDATION	1	WOOD SHINGLES	1.00	+	BMU	N	BSMT UNFINISHED	802	1989	55.87	44,808	512,849	CD
EXT. COVER	1	GABLE	1.00	+	BAS	L	BAS AREA	1,044	1989	235.57	245,930		
ROOF SHAPE	1	ASPHALT SHINGLE	1.00	+	USF	L	UP-STRY FIN	738	1989	183.53	135,442		
FLOOR COVER	1	1 HARDWOOD	1.00	+	OPA	N	OPEN PORCH	30		87.68	2,631		
INT. FINISH	2	2 DRYWALL	1.00	+	AGR	N	ATTACHED GARAGE	308		78.04	24,038		
HEATING/COOLING	2	2 HOT WATER	1.02	+	WDK	N	ATT WOOD DECK	484		37.23	18,019		
FUEL SOURCE	1	1 OIL	1.00	+	BMF	N	BSMT FINISH	242		110.81	26,816		
					F21	O	FPL 2S 1OP	1		11,665.50	11,666		
					ODS	O	OUT DOOR SHOWER			0.00			

EFF. YR/AGE	COND	FUNC	ECON	DEPR	RCNLD
1989 / 31	30	30	0	0	
	0	0	0	0	
	0	0	0	0	
	30	30	0	30	70
					5359,000



BLDG COMMENTS

# *Building Permit Application*

# Building Permit Application

Massachusetts State Building Code, 780 CMR, 9th Edition



TOWN OF TRURO

Building Department

RECEIVED BY:  
24 Town Hall Rd.

PO Box 2090

Truro, MA 02668

Tel (508) 349-7004 x131 Fax (508) 349-5508

Permit #:

21-403

Fee:

\$1500.00

### SITE INFORMATION

Project Site: 2 Highview Lane, North Truro

Assessors Map & Parcel: 040-097-000

Zoning District: Residential

Outside Flood Zone

Inside Flood Zone - Specify:

Setbacks: Front: 25'

Left Side: 25'

Right Side: 25'

Rear: 25'

Lot Area (sq. ft.) 33,827

Frontage: 25'

Water Supply:  Private

Public

Subject to Policy 28: Curb Cut?  Y  N

If Yes, please attach a copy of the approval to this application.

SUBJECT TO NHESP/MESA REVIEW?  Y  N

\* IF YES, PLEASE ATTACH A COPY OF THE APPROVAL.

### PROPERTY OWNERSHIP

Owner of Record: Andrea L. Gulan

Mailing Address: PO Box 429, North Truro, MA 02652

Phone: 508-237-0664

E-mail: andigulan@gmail.com

### Property Owner Authorization

Signature:

Date: 9/13/2021

### PROJECT INFORMATION

1 & 2 Family Home

Commercial / Other than 1 & 2 Family Home\*

Change of Use

DEMO - Subject to Chapter VI: Historic Properties Bylaw?  Y  N

\* BUILDINGS IN EXCESS OF 35,000 CU. FT. MUST MEET CONTROL CONSTRUCTION REGULATIONS (780 CMR 116). ADDENDUM TO PERMIT APPLICATION AVAILABLE IN BUILDING DEPARTMENT.

New Dwelling: # of units \_\_\_\_\_

Commercial Building

Addition

Alteration

Mechanical

Accessory Structure: (type) Garage

Other: \_\_\_\_\_

Detailed Description of Proposed Work: 32x24 Modular Saltbox single story detached 2-car garage

Estimated Construction Cost: \$86,500		Debris Disposal: (Landfill or Company Name) Sheds Unlimited	
Floor Area: (Proposed Work Only)	Basement: <input type="checkbox"/> unfinished _____ <input type="checkbox"/> finished _____		
1 <sup>st</sup> flr: 768	2 <sup>nd</sup> flr: 0	Porch/Deck:	Other: 0
#fireplaces: 0	#chimneys: 0	#bathrooms: existing _____ proposed _____	
#bedrooms: existing _____ proposed _____			
Type of Heating System: None		Type of Cooling System: None	

**CONTRACTOR INFORMATION\***  
\*HOMEOWNER'S AFFIDAVIT REQUIRED IF OWNERS ARE DOING THEIR OWN WORK (RESIDENTIAL PROJECTS ONLY)

Contractor Name: Andrea L. Gulan

Address: 2 Highview Lane, North Truro, MA 02652

Phone: 508-237-0664      Email: andigulan@gmail.com

CSL#: \_\_\_\_\_      HIC # \_\_\_\_\_

**OFFICE USE**

HEALTH/CONSERVATION AGENT Review no CC jurisdiction; building is being approved as a garage (unfinished) with an unfinished storage area above. This building is not being approved as habitable.

Signature: \_\_\_\_\_      Date: \_\_\_\_\_

Other Comments: \* SEE NOTES ABOVE

BUILDING COMMISSIONER Review & Approval: \_\_\_\_\_

Signature:       Issuance Date: 11.10.21



The Commonwealth of Massachusetts  
 Department of Industrial Accidents  
 1 Congress Street, Suite 100  
 Boston, MA 02114-2017  
 www.mass.gov/dia

Workers' Compensation Insurance Affidavit: Builders/Contractors/Electricians/Plumbers.  
 TO BE FILED WITH THE PERMITTING AUTHORITY.

**Applicant Information**

Please Print Legibly

Name (Business/Organization/Individual): Andrea L. Gulan

Address: 2 Highview Lane, North Truro, MA 02652

City/State/Zip: North Truro, MA 02652 Phone #: 508-237-0664

<p>Are you an employer? Check the appropriate box:</p> <p>1. <input type="checkbox"/> I am an employer with _____ employees (full and/or part-time).*</p> <p>2. <input type="checkbox"/> I am a sole proprietor or partnership and have no employees working for me in any capacity. [No workers' comp. insurance required.]</p> <p>3. <input type="checkbox"/> I am a homeowner doing all work myself. [No workers' comp. insurance required.] †</p> <p>4. <input checked="" type="checkbox"/> I am a homeowner and will be hiring contractors to conduct all work on my property. I will ensure that all contractors either have workers' compensation insurance or are sole proprietors with no employees.</p> <p>5. <input type="checkbox"/> I am a general contractor and I have hired the sub-contractors listed on the attached sheet. These sub-contractors have employees and have workers' comp. insurance. ‡</p> <p>6. <input type="checkbox"/> We are a corporation and its officers have exercised their right of exemption per MGL c. 152, §1(4), and we have no employees. [No workers' comp. insurance required.]</p>	<p>Type of project (required):</p> <p>7. <input type="checkbox"/> New construction</p> <p>8. <input type="checkbox"/> Remodeling</p> <p>9. <input type="checkbox"/> Demolition</p> <p>10. <input type="checkbox"/> Building addition</p> <p>11. <input type="checkbox"/> Electrical repairs or additions</p> <p>12. <input type="checkbox"/> Plumbing repairs or additions</p> <p>13. <input type="checkbox"/> Roof repairs</p> <p>14. <input checked="" type="checkbox"/> Other <u>Detached Garage</u></p>
---	---

\*Any applicant that checks box #1 must also fill out the section below showing their workers' compensation policy information.  
 † Homeowners who submit this affidavit indicating they are doing all work and then hire outside contractors must submit a new affidavit indicating such.  
 ‡ Contractors that check this box must attached an additional sheet showing the name of the sub-contractors and state whether or not those entities have employees. If the sub-contractors have employees, they must provide their workers' comp. policy number.

**I am an employer that is providing workers' compensation insurance for my employees. Below is the policy and job site information.**

Insurance Company Name: \_\_\_\_\_

Policy # or Self-ins. Lic. #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Job Site Address: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_

Attach a copy of the workers' compensation policy declaration page (showing the policy number and expiration date).

Failure to secure coverage as required under MGL c. 152, §25A is a criminal violation punishable by a fine up to \$1,500.00 and/or one-year imprisonment, as well as civil penalties in the form of a STOP WORK ORDER and a fine of up to \$250.00 a day against the violator. A copy of this statement may be forwarded to the Office of Investigations of the DIA for insurance coverage verification.

**I do hereby certify under the pains and penalties of perjury that the information provided above is true and correct.**

Signature: [Handwritten Signature] Date: 9/13/2021

Phone #: 508-237-0664

**Official use only. Do not write in this area, to be completed by city or town official.**

City or Town: \_\_\_\_\_ Permit/License # \_\_\_\_\_

Issuing Authority (circle one):  
 1. Board of Health 2. Building Department 3. City/Town Clerk 4. Electrical Inspector 5. Plumbing Inspector  
 6. Other \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone #: \_\_\_\_\_



# CERTIFICATE OF ANALYSIS

HEALTH DEPARTMENT  
TOWN OF TRURO

## Barnstable County Health Laboratory (M-MA009)

**OCT 19 2021**

**Recipient:** Andrea Gulan  
Andrea Gulan  
2 Highview Lane  
North Truro, MA 02652

**Order No.:** G21129024  
**Report Dated:** 10/13/2021  
**Submitter:** Andrea Gulan  
**Description:** Routine- 2 Highview Lane, North Truro

**RECEIVED BY:**

**Laboratory ID#:** 21129024-01

**Sample #:**  
**Collection Address:** 2 Highview Lane, North Truro  
**Sample Location:** 40-97

**Matrix:** Water - Drinking Water  
**Sampled:** 09/24/2021 8:00 By: AG  
**Received:** 09/24/2021 9:32 By: Notara  
**Turn Around:** Standard

**Routine**

ITEM	RESULT	UNITS	RL	MCL	METHOD #	ANALYST	TESTED	TIME
Nitrate as Nitrogen	2.4	mg/L	0.10	10	EPA 300.0	CL	09/24/2021	
Copper	0.39	mg/L	0.10	1	EPA 200.8	CL	09/29/2021	12:30
Iron	0.11	mg/L	0.10	0.3	EPA 200.8	CL	09/29/2021	12:30
Manganese	ND	mg/L	0.025	0.05	EPA 200.8	CL	09/29/2021	12:30
Sodium	31	mg/L	2.5	20	EPA 200.8	CL	09/29/2021	12:30
Total Coliform	Invalid	P/A	0	0	SM 9222B	RG	09/24/2021	16:30
Conductance	210	umohs/cm	2.0		EPA 120.1	LX	09/24/2021	9:54
pH	6.0	PH AT 25C	NA		SM 4500-H- B	LX	09/24/2021	9:54

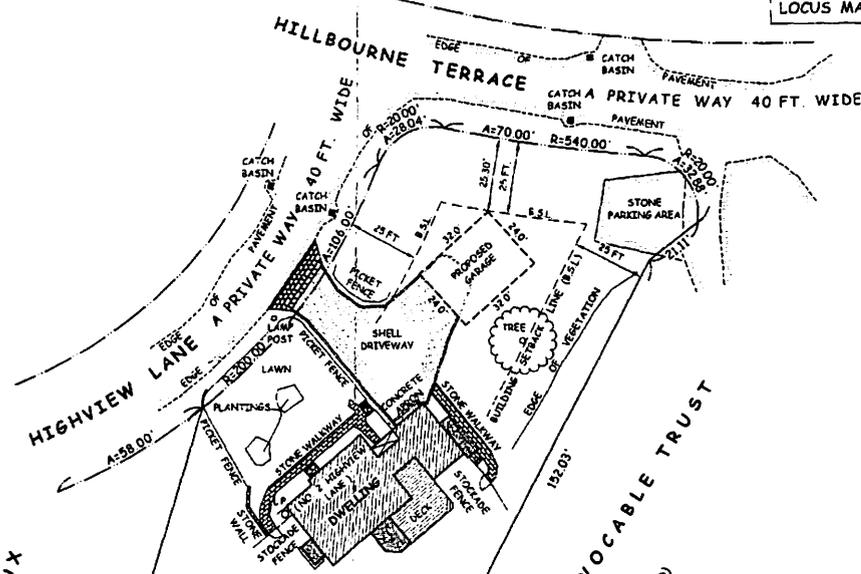
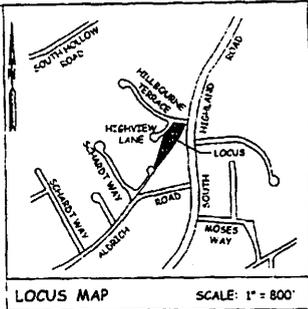
*Bacteria test invalid due to greater than 200 background count of colonies on the plate, retesting for total coliform is recommended. The sodium concentration exceeds the MassDEP guideline limit (ORSG) and those on a low sodium diet may wish to consult a physician.*

Attached please find the laboratory certified parameter list.

**Approved By:**   
(Lab Manager)

# *Engineered Site Plan*

PLAN BOOK 423 PAGE 87



CHRISTOPHER S. ROBERTS ET UX  
 PLAN LOT 2  
 PLAN BOOK 423 PAGE 87  
 (NO. 4 HIGHVIEW LANE)

JOHN & CLAUDIA COLLEY REVOCABLE TRUST  
 PLAN LOT 8  
 PLAN BOOK 457 PAGE 84  
 (NO. 30 SOUTH HIGHLAND ROAD)

LOT 1  
 AREA = 33,827± SQ. FT.

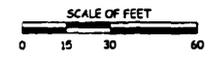
DOROTHY MCQUINN  
 PLAN LOT 3  
 PLAN BOOK 389 PAGE 18  
 (NO. 4 ALDRICH ROAD)

CAROL D. SANTOS  
 PLAN LOT 6  
 PLAN BOOK 457 PAGE 84  
 (NO. 18 ALDRICH ROAD)

NOTE: ALL BUILDING OFFSETS ARE MEASURED PERPENDICULAR TO THE PROPERTY LINES

NOTE: ( ) DENOTES RECORD INFORMATION

REFERENCE: PLAN BOOK 423 PAGE 87  
 DEED BOOK 10816 PAGE 158



SITE PLAN OF LAND  
 IN  
 TRURO  
 AS SURVEYED FOR  
 ANDREA L. GULAN  
 (NO. 2 HIGHVIEW LANE)

SCALE: 1 IN. = 30 FT. AUGUST, 2021

WILLIAM N. ROGERS  
 PROFESSIONAL  
 CIVIL ENGINEERS & LAND SURVEYORS  
 41 OFF CEMETERY ROAD, PROVINCETOWN, MASS.  
 508.487.1565 / 508.487.5809 FAX

I CERTIFY THAT THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES DIVIDING EXISTING OWNERSHIPS, AND THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN



LEGEND:

D.M.H.	: DRAINAGE MANHOLE
M.H.	: MANHOLE
S.M.H.	: SEWER MANHOLE
W.G.	: WATER GATE
U.P.	: UTILITY POLE
U/G.I.	: UNDERGROUND
L.P.	: LIQUID PROPANE

AUGUST 31, 2021

WILLIAM N. ROGERS  
 AUGUST 31, 2021

*Approved Building Permit*



# Town of Truro Building Permit

24 Town Hall Rd, Truro MA 02666  
P: 508-349-7004 x131 F: 508-349-5508

Building Permit #:	21-403	Map:	40	Parcel:	97
Street Location:	2 HIGHVIEW LANE				
Owner:	A. GULAN				
Type of Work:	DETACHED GARAGE		HIC:	N/A	
Builder:	OWNER		CSL:	N/A	
Date of Issue:	11-10-21				

This card shall be posted in a conspicuous place and shall not be covered or removed until all work associated with this permit, is completed. Work shall be in compliance with 780 CMR and all applicable laws and by-laws of the Town of Truro. Approved plans shall be available on the job site. Where a Certificate of Occupancy is required, the building shall not be final inspection and after the Certificate of Occupancy has been issued.

BUILDING OFFICIAL: R. STEVENS

## REQUIRED INSPECTIONS

PHOTOS		Electrical Service		Final Gas	
Footling - Rebar	RBS 11-18-21	Inspector	Date	Inspector	Date
Inspector	Date	Inspector	Date	Inspector	Date
				Smoke/Fire Alarm	
				Inspector	Date
				Oil Furnace	
				Inspector	Date
				Sprinkler System	
				Inspector	Date
				Pressure	Date
				Alarm	Date
				Energy	
Frame		Underground Plumbing		Duct Test	Date
Inspector	Date	Inspector	Date	Inspector	Date
Insulation		Rough Plumbing		Blower Door	Date
Inspector	Date	Inspector	Date	Final Building	
Air Barrier		Final Plumbing		Inspector	Date
Inspector	Date	Inspector	Date	Cert. Of Occupancy	
Chimney/Woodstove		Rough Gas		Inspector	Date
Inspector	Date	Inspector	Date	Special Conditions:	



# ACCEPTED

Type of Inspection: FOUNDATION

Date of Inspection: 1-26-22

Inspector: R. STEVENS

MUST GO TO ZBA

# *Garage Specs*

REVISIONS:	6/15/2021	Job Name: Sales Order #924	Andi Gulan 2 Highview Lane North Truro, MA 02652	Drawn By: KRZ	Sheds Unlimited LLC 2025 Valley Rd Morgantown, PA 19543
	6/17/2021				
	6/31/2021				
	6/3/2021				

DATE: 5/13/2021  
SCALE: 3/16"=1'  
SHEET:

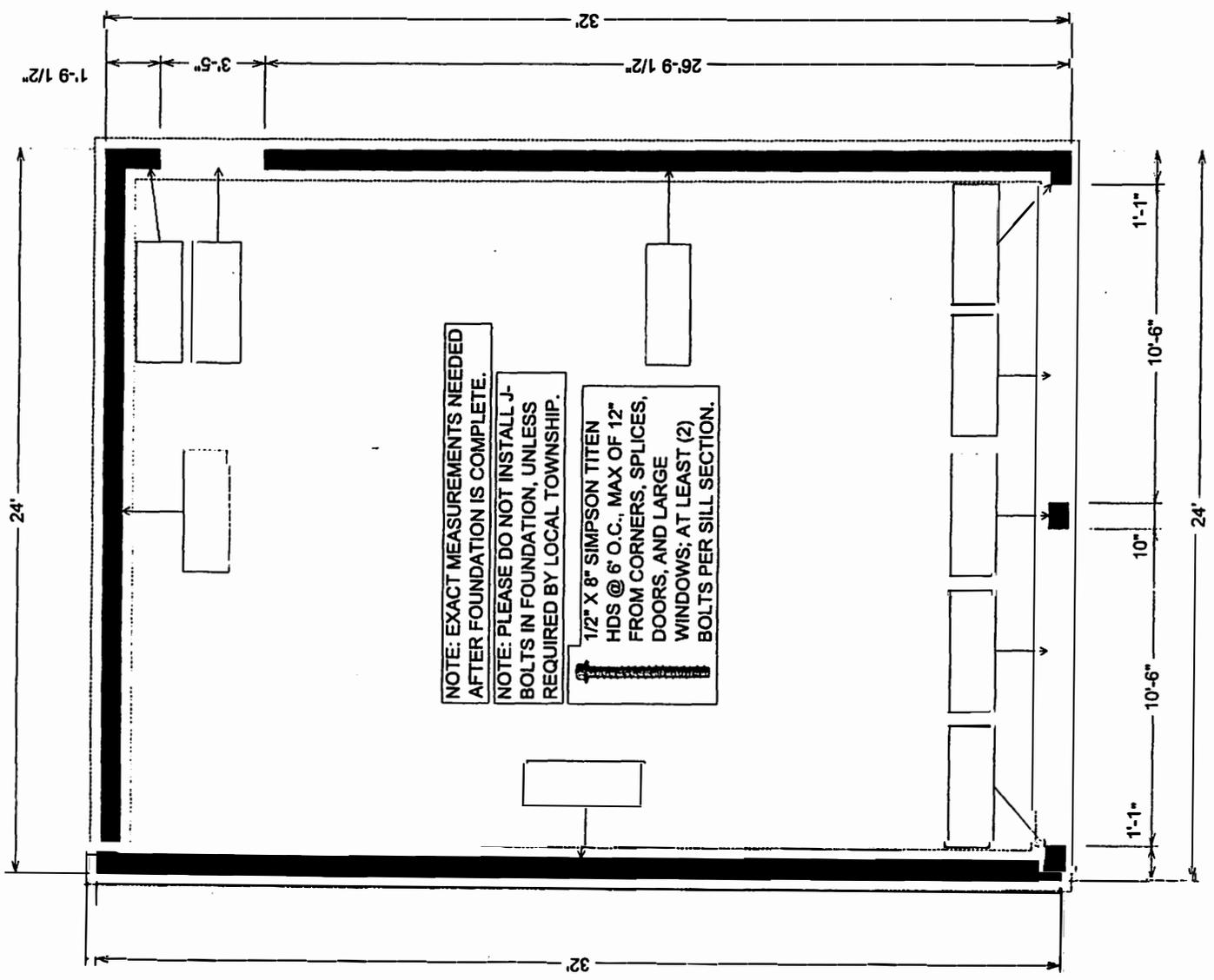
**A1.1**

HEALTH DEPARTMENT  
TOWN OF TRURO

SEP 14 2021

RECEIVED BY: \_\_\_\_\_

seal:



NOTE: EXACT MEASUREMENTS NEEDED AFTER FOUNDATION IS COMPLETE.

NOTE: PLEASE DO NOT INSTALL JOISTS IN FOUNDATION, UNLESS REQUIRED BY LOCAL TOWNSHIP.

1/2" X 8" SIMPSON TITEN HDS @ 6' O.C., MAX OF 12" FROM CORNERS, SPLICES, DOORS, AND LARGE WINDOWS; AT LEAST (2) BOLTS PER SILL SECTION.

# A1.2

SHEET:

SCALE:  
3/16"-1'

DATE:

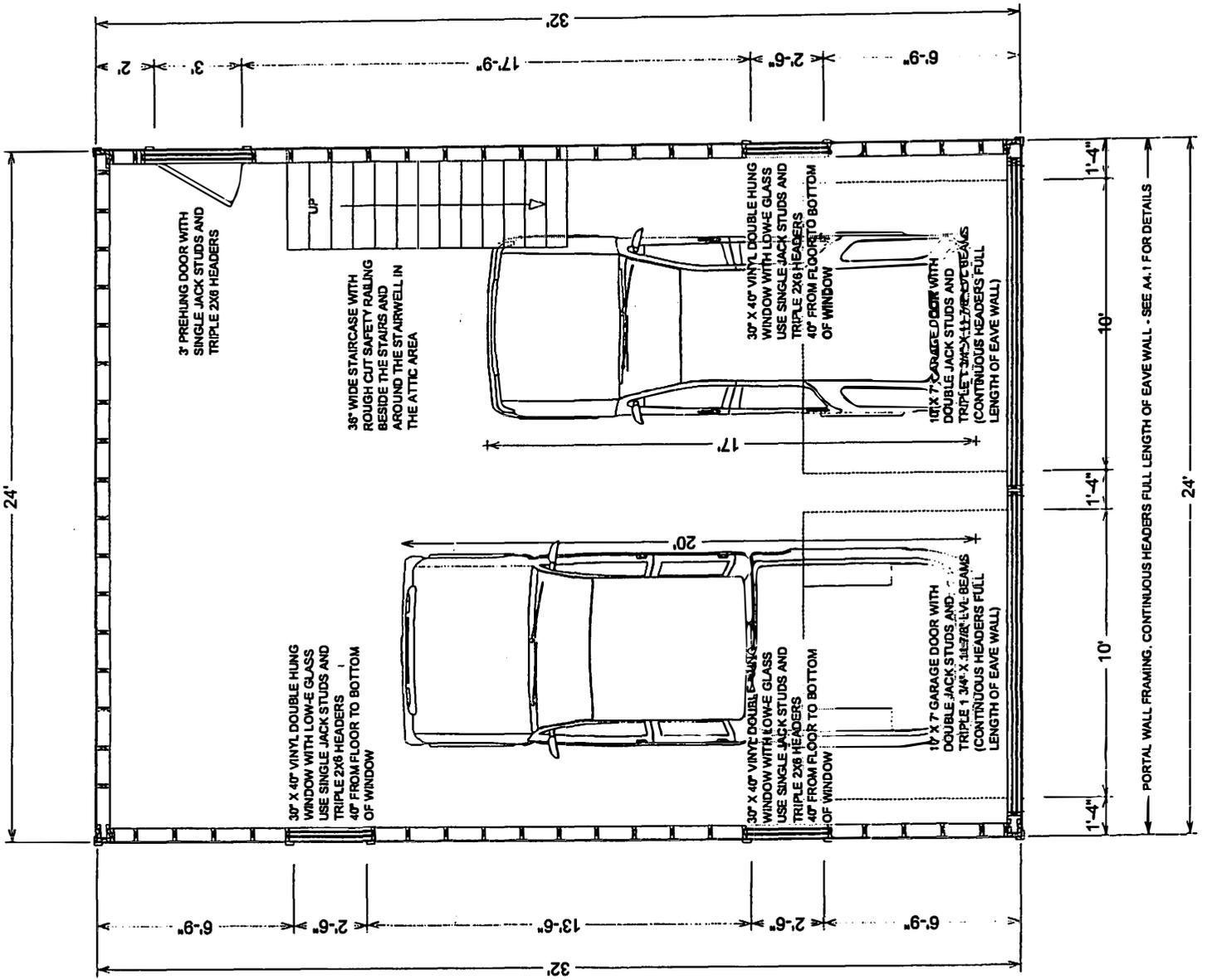
5/13/2021

Sheds Unlimited LLC  
2025 Valley Rd  
Morgantown, PA 19543  
Drawn By: KRZ

Job Name: Andi Gulian  
Sales Order #9924  
2 Highview Lane  
North Truro, MA 02652

REVISIONS:	DATE:
6/16/2021	6/17/2021
6/17/2021	6/17/2021
6/17/2021	6/17/2021
6/17/2021	6/17/2021

scat:



PORTAL WALL FRAMING. CONTINUOUS HEADERS FULL LENGTH OF EAVE WALL - SEE A4.1 FOR DETAILS

# A1.3

SHEET:

3/16"-1'

SCALE:

5/13/2021

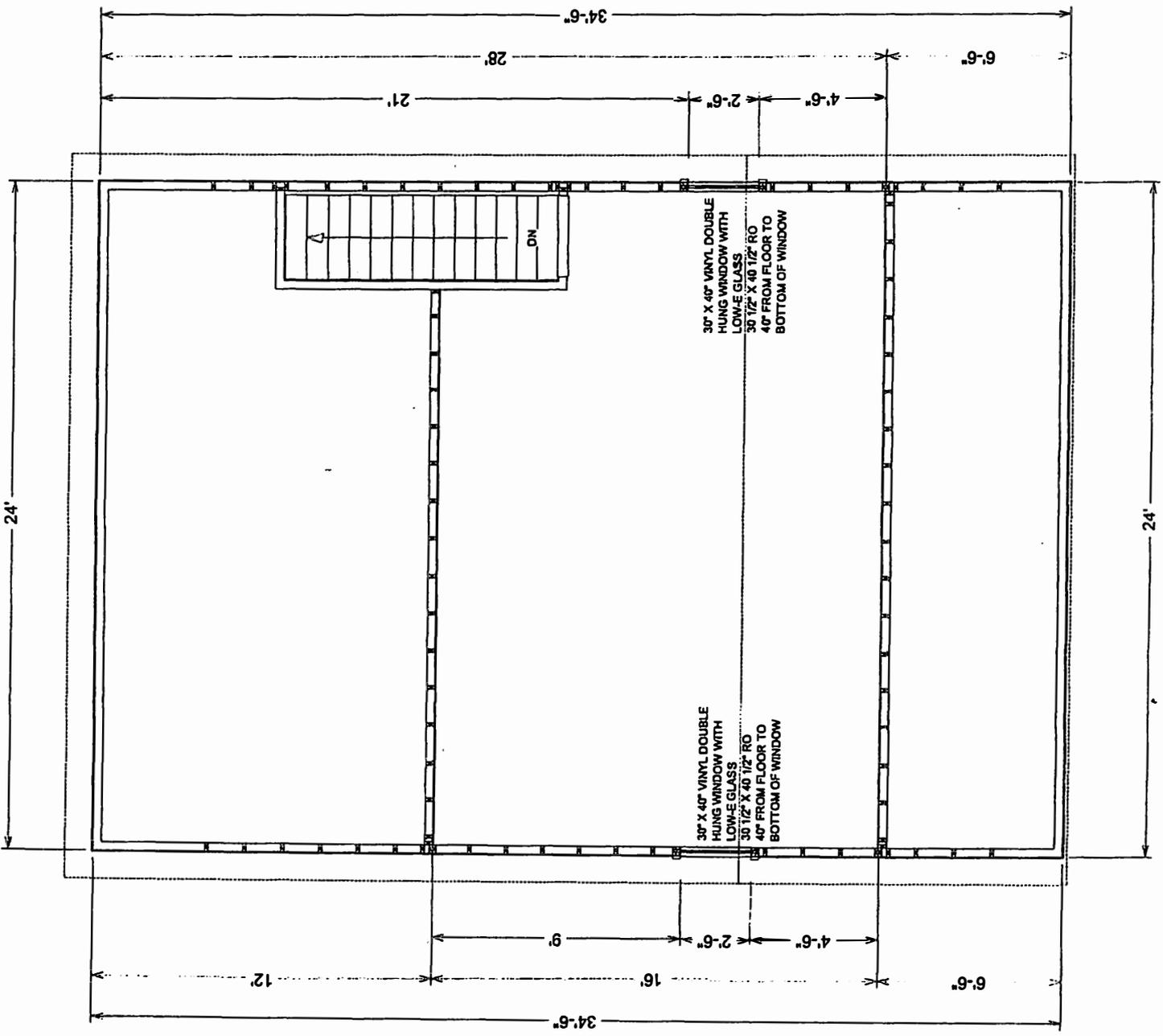
DATE:

Sheds Unlimited LLC  
2025 Valley Rd  
Morgantown, PA 19543  
Drawn By: KRZ

Job Name: Sales Order #924  
Andi Gulian  
2 Highview Lane  
North Truro, MA 02652

REVISIONS:
6/16/2021
6/17/2021
6/31/2021
6/3/2021

see:



A2.1

SHEET

1/8"=1'

SCALE:

5/13/2021

DATE:

Sheds Unlimited LLC  
2025 Valley Rd  
Morgantown, PA 19543

Drawn By: KRZ

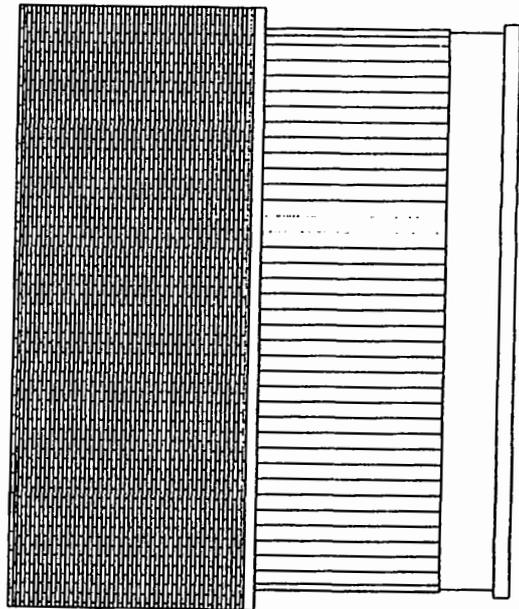
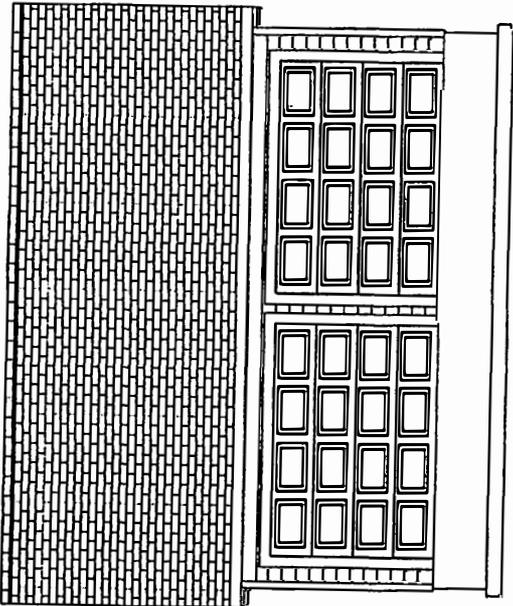
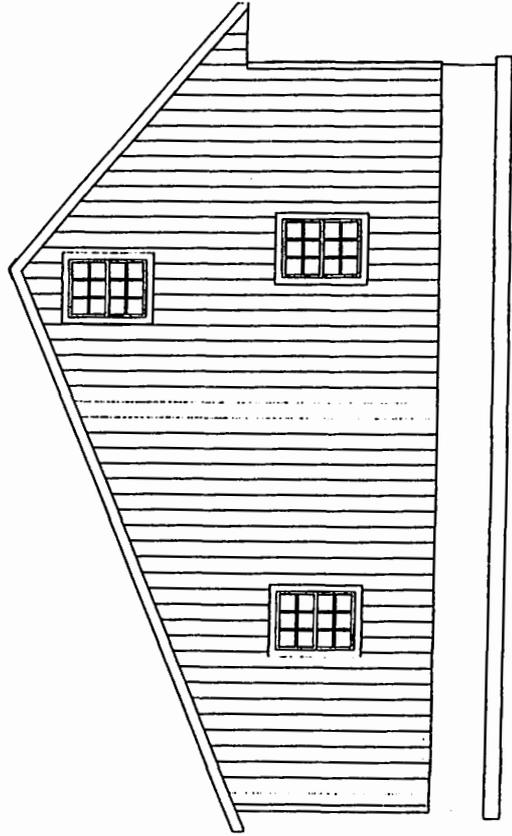
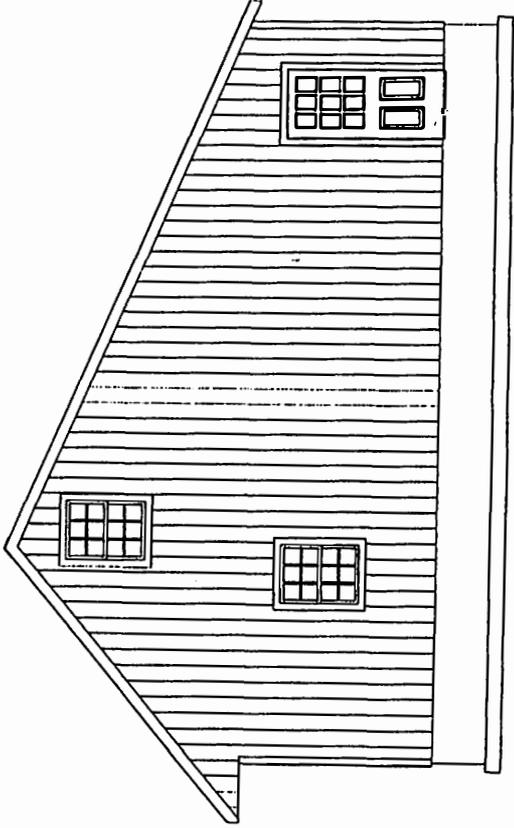
Andi Gulan  
2 Highview Lane  
North Truro, MA 02652

Job Name: Sales Order #9924

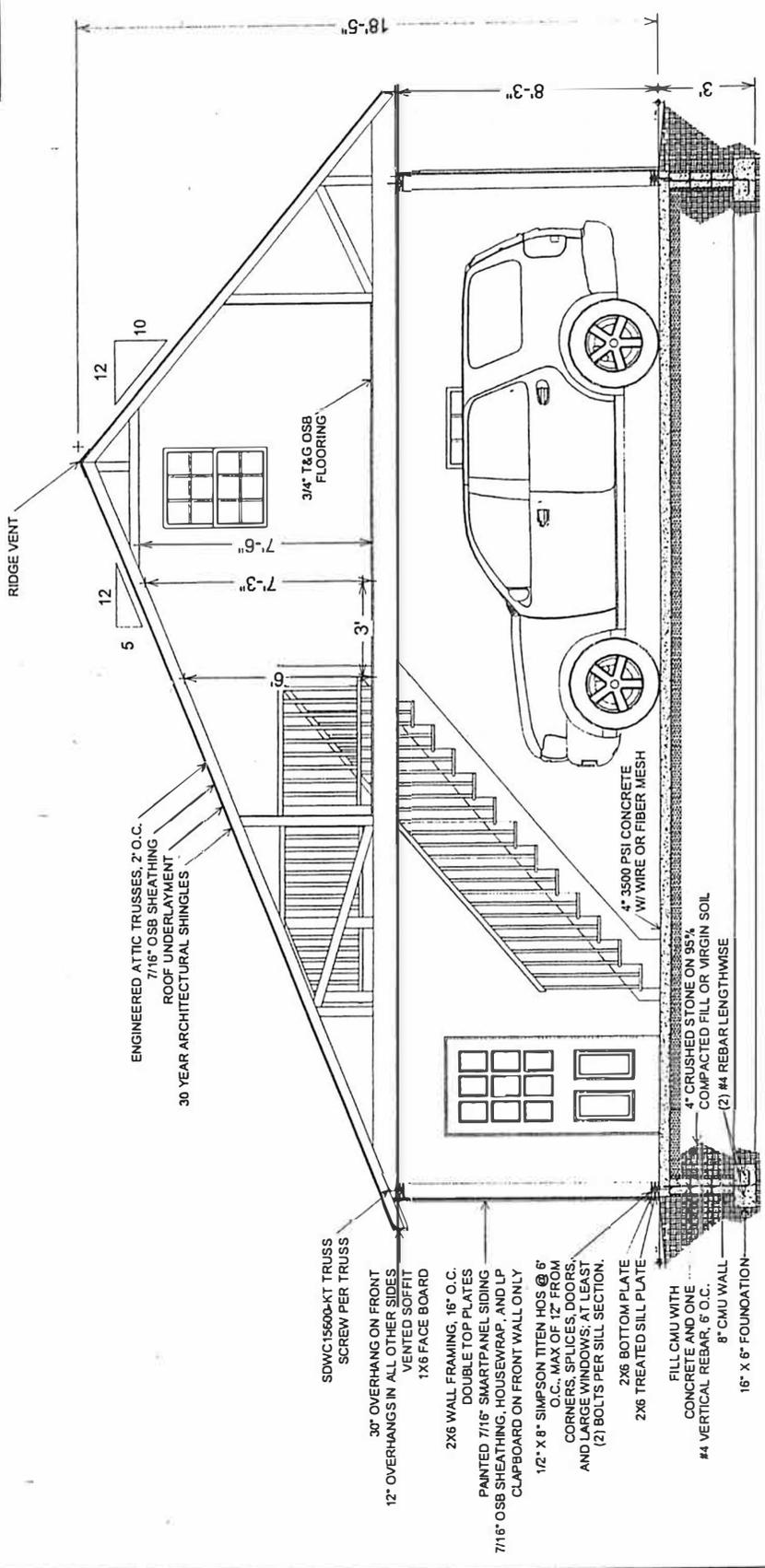
REVISIONS:

6/3/2021
6/31/2021
6/17/2021
6/16/2021

seal:



REVISIONS:	6/15/2021	Andi Gulian	Job Name:	Sales Order #924
	6/17/2021	2 Highview Lane		
	6/31/2021	North Truro, MA 02652		
	6/3/2021			
		Sheds Unlimited LLC		Drawn By: KRZ
		205 Valley Rd		
		Morgantown, PA 19543		
DATE:		5/13/2021		
SCALE:		3/16"=1'		
SHEET:		A3.1		



seal:

- SDWC15600-KT TRUSS SCREW PER TRUSS
- 12" OVERHANG ON FRONT
- 30" OVERHANG ON FRONT
- 12" OVERHANGS IN ALL OTHER SIDES
- VENTED SOFFIT
- 1X6 FACE BOARD
- 2X6 WALL FRAMING, 16" O.C.
- DOUBLE TOP PLATES
- PAINTED 7/16" SMARTPANEL SIDING
- 7/16" OSB SHEATHING, HOUSEWRAP, AND LP CLAPBOARD ON FRONT WALL ONLY
- 1/2" X 8" SIMPSON TITEN HOS @ 5' O.C., MAX OF 12" FROM CORNERS, SPLICES, DOORS, AND LARGE WINDOWS; AT LEAST (2) BOLTS PER SILL SECTION.
- 2X6 BOTTOM PLATE
- 2X6 TREATED SILL PLATE
- FILL CMU WITH CONCRETE AND ONE #4 VERTICAL REBAR, 6" O.C.
- 8" CMU WALL
- 16" X 6" FOUNDATION
- (2) #4 REBAR LENGTHWISE
- 4" CRUSHED STONE ON 95% COMPACTED FILL OR VIRGIN SOIL
- 4" 3500 PSI CONCRETE W/ WIRE OR FIBER MESH
- 30 YEAR ARCHITECTURAL SHINGLES
- 7/16" OSB SHEATHING
- ROOF UNDERLAYMENT
- ENGINEERED ATTIC TRUSSES, 2' O.C.
- 3/4" T&G OSB FLOORING
- 7'-6"
- 7'-3"
- 3'
- 6'
- 12
- 5
- 12
- 10
- RIDGE VENT

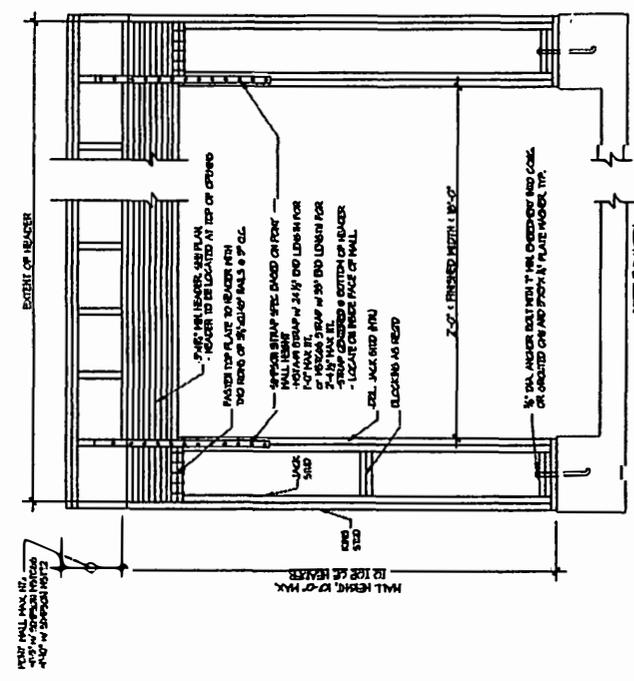
Sheds Unlimited LLC 2025 Valley Rd Morgantown, PA 19543	Drawn By: KRZ
Job Name: Sales Order #9924	Andi Gulian 2 Highview Lane North Truro, MA 02652
REVISIONS:	6/16/2021
	6/17/2021
	6/31/2021
	6/9/2021

DATE: 5/13/2021  
SCALE: NTS  
SHEET: A4.1

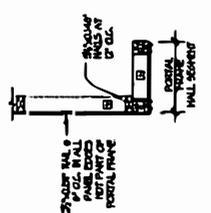
scdt:

# APA PORTAL FRAME DETAIL WITH HOLDDOWNS

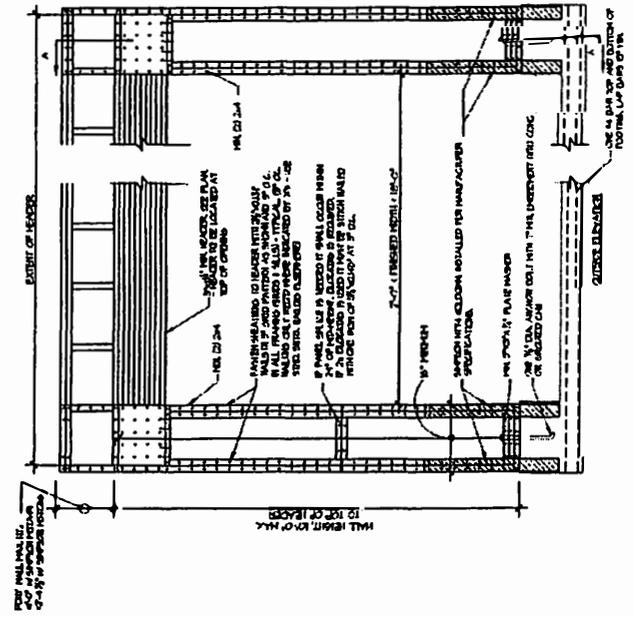
SCALE: NTS.



ALL FINISHES SPECIFIED ON THIS SHEET SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE APPLICABLE BUILDING CODES AND SPECIFICATIONS.



ALL LEVELS OF HOLD-DOWN DETAIL



2\"/>

SEE ALL APA SPECIFICATIONS

*Thank you for your  
consideration!*

*Respectfully,  
Andi*

## Elizabeth Sturdy

---

**From:** McKean, Lauren <Lauren\_McKean@nps.gov>  
**Sent:** Monday, March 28, 2022 9:50 AM  
**To:** Barbara Carboni; Elizabeth Sturdy  
**Cc:** Carlstrom, Brian  
**Subject:** CCNS letter concerning 133 and 127 South Pamet Road ZBA hearing  
**Attachments:** 133 and 127 South Pamet Road ZBA 3rd hearing letter Mar 2022btc.pdf

Barbara and Liz,

Please share with the Truro Zoning Board of Appeals members.

We appreciate the staff review paper, and would appreciate more time for consideration. However, if the ZBA decides to act rather than await our legal review, we request that they issue a denial of any variance or special permit for the proposals.

Thank you and the board for your consideration of the national seashore's comments,  
Lauren

Lauren McKean, AICP  
Park Planner  
Cape Cod National Seashore  
508-957-0731

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.



**PROSODY LAW**

202 Washington Street, Suite 345  
Brookline, MA 02445-7622

phone: 857.600.1956  
fax: 855.825.1540  
ianhenchylaw@gmail.com

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Via Electronic Mail

Town of Truro  
Truro Zoning Board of Appeals  
24 Town Hall Road  
PO Box 2030  
Truro, MA 02666

Re: 2022-003/ZBA Application for Special Permit regarding 127 and 133 South Pamet Road

**MEMORANDUM**

From: Ian F. Henchy, Esq. to the Truro Zoning Board of Appeals

*March 28, 2022*

This office represents Ms. Clyde Watson, an abutter to the application referenced above. Ms. Watson is opposed to the grant of relief requested. She is also opposed to — and aggrieved by — the issuance of Building Permit #22-105, from which she has taken an appeal to this Board. That appeal is attached, and its contents incorporated into this Memorandum.

I apologize in advance for filing this Memorandum on the date of the hearing, but was only very recently engaged by Ms. Watson. For future hearings, this office will conform to the Board's policy of filing written submissions no later than the Friday before the hearing, and I beg the Board's indulgence for the moment, and request that this correspondence be made part of the record in this case. I have sent a copy to Attorney Zehnder.

For purposes of the above-referenced application for a special permit presently before the Zoning Board of Appeals, this memorandum serves as a supplement to the attached appeal of the Building Inspector's decision to issue Building Permit #22-105, and highlights additional issues pertinent to this application for Zoning relief

1.) A use variance would be required to allow two habitable studios to be located on the 127 South Pamet Road receiving lot

First and foremost, the Truro Zoning Bylaw is not, as is suggested by the applicant, silent on the number of habitable studios allowed on a lot. The Bylaw is explicit: one, and only one, habitable studio is allowed.

As an initial matter, there is already one habitable studio and a residence located on the proposed 127 South Pamet Road receiving lot. A habitable studio is defined as follows:

Habitable Studio. A habitable studio shall consist of one or more bedrooms, with or without bathroom facilities, in a building detached from the principal residence, **which is incidental and accessory to the principal residence and which does not include residential kitchen facilities.** A room identified as a bedroom will be included in considerations under the State Environmental Code, Title 5.

(Emphasis added) Town of Truro, Massachusetts Zoning Bylaw, § 10.4.

“Uses not expressly permitted are deemed prohibited”. Town of Truro, Massachusetts Zoning Bylaw, § 30.2. The Bylaw defines “a habitable studio” in the singular — not the plural. More to the point, the use table in Section 30.2 of the Zoning Bylaw similarly permits, as an accessory residential use, “habitable studio” — singular. The Bylaw use table does not say “one or more habitable studios”. It does not say “habitable studios”. It says “habitable studio” — period. The plain language of the Bylaw (both in the use table and in its definitional section) refers to the term “habitable studio” in the singular, not in the plural.

As noted above, under Truro’s Zoning by-law “uses not expressly permitted are deemed prohibited”. *Id.* Accordingly, where the Bylaw does not expressly permit the presence of two habitable studios on one lot, such a use is as a matter of law prohibited in accordance with § 30.2.

Since the use is prohibited by a plain reading of § 30.2 of the bylaw, a use variance would be required to locate two habitable studios on one lot. M.G.L. c. 40A § 10 allows use variances only where expressly allowed by zoning regulation: “[e]xcept where local ordinances or by-laws shall expressly permit variances for use, **no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located.**” (Emphasis added) M.G.L. c. 40A § 10.

The Truro Zoning Bylaw expressly prohibits the Zoning Board of Appeals from hearing use variances:

§ 60.2 Board of Appeals A Board of Appeals consisting of five members and two associated members shall have the power conferred on it under Chapter 40A of the General Laws of Massachusetts and under this zoning bylaw, which powers shall include the review of Special Permit and Variance applications, **except for Variances as to use**, and the appeal of decisions of the Building Commissioner.

(Emphasis added) Zoning Bylaw, § 60.2. Put simply, the Zoning Board has no authority to grant a use variance allowing two habitable studios to be located on the 127 South Pamet Road lot where such a use is not expressly permitted.

It is important to point out that, even if the Board were to agree that the Zoning by-law is silent as to the number of habitable dwellings allowed, **such silence is a prohibition under Section 30.2**. The very purpose of Section 30.2 is to prohibit exactly the argument being made here—that silence in the by-law equals assent to the use. This position is exactly the opposite of what the by-law says. In Truro (and in many other communities with similar provisions), if the Town Meeting has not voted a use as being “expressly permitted”, it is in fact expressly prohibited.

The only way a second habitable studio may exist on the receiving lot here is via a use variance, which the Board is not empowered to grant.

*2.) The Board should not grant a Special Permit to exceed the allowable Gross Floor Area in the Seashore District, where such a use would be inconsistent with the purposes of the Seashore District*

As outlined in § 20.2 of the Zoning Bylaw, the purpose of the Seashore District is as follows:

Seashore. The Seashore District is intended to further the preservation and development of the Cape Cod National Seashore in accordance with the purposes of the Act of Congress of August 7, 1961 (75 Stat. 284, 291); to prohibit commercial and industrial uses therein; to preserve and increase the amenities of the Town; and to conserve natural conditions, wildlife and open spaces for the education, recreation, and general welfare of the public.

Special Permits to allow the allowable gross floor area to be exceeded can only be granted under Section 30.3.1.A.2, which must be granted as provided in the remaining provisions of the

Bylaw. Section 30.8(C) provides that “Special permits may be approved only after a finding by the Board of Appeals or Planning Board (as applicable, see use table) that the proposed use is in the opinion of the Board in harmony with the general public good and intent of this bylaw.”( *See also* M.G.L. c. 40A § 9 (“Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law”).

The purpose of the requested Special Permit is to exceed the allowable gross floor area in order that a second habitable studio may be created upon a lot where there already exists a principal residence and another habitable studio. The Board should not exercise its discretion to grant a Special Permit for such a purpose within the Cape Cod National Seashore, in the Seashore Zoning District. The requested relief is manifestly at odds with the purposes of the District, which do not include the creation of multiple rental homes on a single lot.

Even if the contemplated use is not as a rental property, the creation of multiple habitable units on a single, eroding lot, are plainly inconsistent with the prohibition of “commercial and industrial uses therein; to preserve and increase the amenities of the Town; and to conserve natural conditions, wildlife and open spaces for the education, recreation, and general welfare of the public”. Zoning Bylaw, § 20.2.

The Cape Cod National Seashore is a national treasure. Within the boundaries of Truro, this Board is the guardian of its essence. The Board should, in every instance where it has discretion, exercise that discretion to preserve the purposes of the Seashore District, and not undermine them.

3.) *The Board Cannot Grant the requested relief absent Planning Board Review pursuant to Section 30.3.1.B*

The limitation on Seashore District Total Gross Floor Area established in § 30.3.1.A.1 may be exceeded upon the grant of a special permit. *See* Zoning Bylaw, § 30.3.1.A.2. Section 30.3.1.B provides the procedures for special permit review and approval:

Procedures for Special Permit Review and Approval: Upon receipt of an application for a building permit the Building Commissioner shall make an initial determination as to whether any alteration, construction or reconstruction of a building or structure would result in the Seashore District Total Gross Floor Area exceeding the limitation set out in Section 30.3.1.A.1. **If the Building Commissioner determines that the applicant cannot proceed without a Special**

**Permit, the applicant shall first make an application to the Planning Board for Site Plan Review, and upon approval by the Planning Board of Site Plan review, as defined in Section 70.4, shall then apply to the Zoning Board of Appeals for a Special Permit. No building permit shall be issued hereunder unless the Zoning Board of Appeals has granted a Special Permit according to procedures as defined elsewhere in this Bylaw.**

(Emphasis added) Zoning Bylaw, § 30.3.1.B. The applicant is currently seeking a special permit to exceed the Seashore District Total Gross Floor Area. Further, the applicant acknowledged in his initial application for zoning relief that 127 South Pamet Road is nonconforming as to area (73,200 sq. ft./1.68 acres). Note that — while the applicant says it intends to combine lots — at the present time, no combined lot has been created, and the Board must consider the application based on the square footage of the lot as it exists.

Where a special permit will be required to exceed the Seashore District Total Gross Floor Area, the applicant must first make an application to the Planning Board for site plan review. Only upon approval of site plan review by the Planning Board may the applicant *then* seek a special permit from the Zoning Board of Appeals. *See* Zoning Bylaw, § 30.3.1.B. Absent site plan review approval, in other words, the Board cannot currently grant the special permit the applicant is seeking.

4.) *Multiple Dimensional Nonconformities — see attached memo*

5.) *To the Extent that the Requested Relief will increase existing nonconformities, the proposed application will be substantially more detrimental to the neighborhood than the existing use*

Under M.G.L. c. 40A § 6, “pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration **shall not be**

**substantially more detrimental than the existing nonconforming use to the neighborhood”**. M.G.L. c. 40A § 6.

The relocation of the 133 South Pamet Road property — whether as a single-family residence, accessory dwelling unit, or second habitable studio — onto the 127 South Pamet lot would be substantially more detrimental than the existing nonconformity. It would fundamentally change the character of the Seashore Zoning District by introducing a new set of uses, i.e. multiple residential structures on a single lot. The applicant has pointed to no examples of properties in the Seashore District with multiple habitable studios in addition to a principal residence. The presence of three structures — likely including two rental properties — on one eroding, nonconforming lot is plainly at odds with the purposes of the Seashore District.

Finally, the precedential effect of the grant of the relief requested by the applicant must be considered. As Brian Carlstrom, Superintendent of the Cape Cod National Seashore noted in his letter<sup>1</sup> to the Board, “[u]nfortunately, there are many properties with houses on the ocean and bay waterfront that will face a similar problem when the land they sit on erodes away; a significant exception by the ZBA could create an unfortunate expectation by other landowners, and speculative property purchases with the intent to request similar treatment”. Notwithstanding any technical argument that the grant of any one set of relief does not create any binding precedent, this would establish a new practice plainly at odds with the purposes and intent of the Seashore District. Other landowners will undoubtedly take note, and the Board could reasonably see many more such applications. If so, when does the Board say “no” without being fundamentally arbitrary and capricious? This is one case where it is best to keep the horse in the barn, rather than trying to chase it down and put it back once let loose.

### CONCLUSION

For the above reasons, and for the reasons explored in the attached memorandum, Ms. Watson is opposed to the grant of relief requested, and respectfully requests that the Board denies the application for a special permit.

---

<sup>1</sup> Dated December 17, 2021.

Respectfully submitted,  
For the Appellant,  
Clyde Watson  
By her attorney,

/s/ Ian Henchy  
Ian F. Henchy, Esq.  
Prosody Law, PLLC  
202 Washington St.  
Suite 345  
Brookline, MA 02445  
(857) 600-1956  
ianhenchylaw@gmail.com  
BBO #707284

Dated: March 28, 2022



**PROSODY LAW**

202 Washington Street, Suite 345  
Brookline, MA 02445-7622

phone: 857.600.1956  
fax: 855.825.1540  
ianhenchylaw@gmail.com

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Via Electronic Mail

Town of Truro  
Truro Zoning Board of Appeals  
24 Town Hall Road  
PO Box 2030  
Truro, MA 02666

Re: 2022-003/ZBA Application for Special Permit regarding 127 and 133 South Pamet Road

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From: Ian F. Henchy, Esq. to the Truro Zoning Board of Appeals

*March 28, 2022*

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(Emphasis added) Town of Truro, Massachusetts Zoning Bylaw, § 10.4.

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Since the use is prohibited by a plain reading of § 30.2 of the bylaw, a use variance would be required to locate two habitable studios on one lot. M.G.L. c. 40A § 10 allows use variances only where expressly allowed by zoning regulation: “[e]xcept where local ordinances or by-laws shall expressly permit variances for use, **no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located.**” (Emphasis added) M.G.L. c. 40A § 10.

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(Emphasis added) Zoning Bylaw, § 60.2. Put simply, the Zoning Board has no authority to grant a use variance allowing two habitable studios to be located on the 127 South Pamet Road lot where such a use is not expressly permitted.

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The only way a second habitable studio may exist on the receiving lot here is via a use variance, which the Board is not empowered to grant.

*2.) The Board should not grant a Special Permit to exceed the allowable Gross Floor Area in the Seashore District, where such a use would be inconsistent with the purposes of the Seashore District*

As outlined in § 20.2 of the Zoning Bylaw, the purpose of the Seashore District is as follows:

Seashore. The Seashore District is intended to further the preservation and development of the Cape Cod National Seashore in accordance with the purposes of the Act of Congress of August 7, 1961 (75 Stat. 284, 291); to prohibit commercial and industrial uses therein; to preserve and increase the amenities of the Town; and to conserve natural conditions, wildlife and open spaces for the education, recreation, and general welfare of the public.

Special Permits to allow the allowable gross floor area to be exceeded can only be granted under Section 30.3.1.A.2, which must be granted as provided in the remaining provisions of the

Bylaw. Section 30.8(C) provides that “Special permits may be approved only after a finding by the Board of Appeals or Planning Board (as applicable, see use table) that the proposed use is in the opinion of the Board in harmony with the general public good and intent of this bylaw.”( *See also* M.G.L. c. 40A § 9 (“Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law”).

The purpose of the requested Special Permit is to exceed the allowable gross floor area in order that a second habitable studio may be created upon a lot where there already exists a principal residence and another habitable studio. The Board should not exercise its discretion to grant a Special Permit for such a purpose within the Cape Cod National Seashore, in the Seashore Zoning District. The requested relief is manifestly at odds with the purposes of the District, which do not include the creation of multiple rental homes on a single lot.

Even if the contemplated use is not as a rental property, the creation of multiple habitable units on a single, eroding lot, are plainly inconsistent with the prohibition of “commercial and industrial uses therein; to preserve and increase the amenities of the Town; and to conserve natural conditions, wildlife and open spaces for the education, recreation, and general welfare of the public”. Zoning Bylaw, § 20.2.

The Cape Cod National Seashore is a national treasure. Within the boundaries of Truro, this Board is the guardian of its essence. The Board should, in every instance where it has discretion, exercise that discretion to preserve the purposes of the Seashore District, and not undermine them.

3.) *The Board Cannot Grant the requested relief absent Planning Board Review pursuant to Section 30.3.1.B*

The limitation on Seashore District Total Gross Floor Area established in § 30.3.1.A.1 may be exceeded upon the grant of a special permit. *See* Zoning Bylaw, § 30.3.1.A.2. Section 30.3.1.B provides the procedures for special permit review and approval:

Procedures for Special Permit Review and Approval: Upon receipt of an application for a building permit the Building Commissioner shall make an initial determination as to whether any alteration, construction or reconstruction of a building or structure would result in the Seashore District Total Gross Floor Area exceeding the limitation set out in Section 30.3.1.A.1. **If the Building Commissioner determines that the applicant cannot proceed without a Special**

**Permit, the applicant shall first make an application to the Planning Board for Site Plan Review, and upon approval by the Planning Board of Site Plan review, as defined in Section 70.4, shall then apply to the Zoning Board of Appeals for a Special Permit. No building permit shall be issued hereunder unless the Zoning Board of Appeals has granted a Special Permit according to procedures as defined elsewhere in this Bylaw.**

(Emphasis added) Zoning Bylaw, § 30.3.1.B. The applicant is currently seeking a special permit to exceed the Seashore District Total Gross Floor Area. Further, the applicant acknowledged in his initial application for zoning relief that 127 South Pamet Road is nonconforming as to area (73,200 sq. ft./1.68 acres). Note that — while the applicant says it intends to combine lots — at the present time, no combined lot has been created, and the Board must consider the application based on the square footage of the lot as it exists.

Where a special permit will be required to exceed the Seashore District Total Gross Floor Area, the applicant must first make an application to the Planning Board for site plan review. Only upon approval of site plan review by the Planning Board may the applicant *then* seek a special permit from the Zoning Board of Appeals. *See* Zoning Bylaw, § 30.3.1.B. Absent site plan review approval, in other words, the Board cannot currently grant the special permit the applicant is seeking.

4.) *Multiple Dimensional Nonconformities — see attached memo*

5.) *To the Extent that the Requested Relief will increase existing nonconformities, the proposed application will be substantially more detrimental to the neighborhood than the existing use*

Under M.G.L. c. 40A § 6, “pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration **shall not be**

**substantially more detrimental than the existing nonconforming use to the neighborhood”**. M.G.L. c. 40A § 6.

The relocation of the 133 South Pamet Road property — whether as a single-family residence, accessory dwelling unit, or second habitable studio — onto the 127 South Pamet lot would be substantially more detrimental than the existing nonconformity. It would fundamentally change the character of the Seashore Zoning District by introducing a new set of uses, i.e. multiple residential structures on a single lot. The applicant has pointed to no examples of properties in the Seashore District with multiple habitable studios in addition to a principal residence. The presence of three structures — likely including two rental properties — on one eroding, nonconforming lot is plainly at odds with the purposes of the Seashore District.

Finally, the precedential effect of the grant of the relief requested by the applicant must be considered. As Brian Carlstrom, Superintendent of the Cape Cod National Seashore noted in his letter<sup>1</sup> to the Board, “[u]nfortunately, there are many properties with houses on the ocean and bay waterfront that will face a similar problem when the land they sit on erodes away; a significant exception by the ZBA could create an unfortunate expectation by other landowners, and speculative property purchases with the intent to request similar treatment”. Notwithstanding any technical argument that the grant of any one set of relief does not create any binding precedent, this would establish a new practice plainly at odds with the purposes and intent of the Seashore District. Other landowners will undoubtedly take note, and the Board could reasonably see many more such applications. If so, when does the Board say “no” without being fundamentally arbitrary and capricious? This is one case where it is best to keep the horse in the barn, rather than trying to chase it down and put it back once let loose.

### CONCLUSION

For the above reasons, and for the reasons explored in the attached memorandum, Ms. Watson is opposed to the grant of relief requested, and respectfully requests that the Board denies the application for a special permit.

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<sup>1</sup> Dated December 17, 2021.

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Re: Notice of Appeal of Decision of Building Inspector regarding Building Permit #22-105

**MEMORANDUM**

This memorandum serves as notice of appeal, pursuant to M.G.L. c. 40A §§ 8 and 15, of the inspector of buildings' decision to issue Building Permit #22-105. This appeal is brought by an abutter to the proposed receiving lot, Clyde Watson ("Ms. Watson"), of 119 South Pamet Road in Truro, Massachusetts. Ms. Watson is aggrieved by the issuance of building permit #22-105, issued prior to any determination of compliance with zoning (as required by 780 CMR 105.3.1.2). It is not lawful to issue such a permit, as the Building Inspector did here, leaving to a later date the determination of Zoning compliance. The practical and legal issues raised by this practice are obvious, especially where — as here — there is a history of obvious zoning non-compliance issues that were previously raised with the Board, and where there is pending (at the time of the building permit's issuance) an application for a Special Permit for the proposed use.

As set forth below, there remain a number of zoning issues that require resolution *prior* to any relocation of the 133 South Pamet Road property to the 127 South Pamet Road address. The Board should forthwith reverse the Building Inspector’s imprudent decision to issue Building permit #22-105 and require that no building permit issue until all zoning issues are finally resolved.

*Standing to Appeal*

As an abutter to the proposed receiving lot, 127 South Pamet Road, Ms. Watson has standing to appeal under M.G.L. c. 40A § 8 as a “person aggrieved ... by an order or decision ... in violation of” a zoning provision. M.G.L. c. 40A § 8. *See also* Gallivan v. Zoning Bd. of Appeals of Wellesley, 71 Mass. App. Ct. 850, 854 (2008); Elio v. Zoning Bd. of Appeals of Barnstable, 55 Mass. App. Ct. 424, 427–428 (2002); Lanner v. Board of Appeal of Tewksbury, 348 Mass. 220, 221–223 (1964) (discussing similar language in statutory predecessor to G.L. c. 40A, § 8).

*Applicant’s Prior Applications for Zoning Relief*

On October 22, 2021, the applicant sought zoning relief from the Truro Zoning Board of Appeals (“ZBA”) to move the house located at 133 South Pamet Road to 127 South Pamet Road. That application noted that 127 South Pamet Road is “pre-existing and non-conforming under current zoning as to minimum lot size”, and that lot area was noted to be **1.68 acres**<sup>1</sup> (where 3 acres would be required). The applicant accordingly sought a variance to place a second dwelling on the 127 South Pamet Lot, and a special permit to increase the intensity of the existing nonconformity as to lot area.

On January 20, 2022, the applicant submitted a “Request for Amendment of Special Permit and Variance Petitions”, proposing a new location for the 133 South Pamet Road dwelling.

Despite a number of hearings on the zoning issues, including on November 22, 2021, December 20, 2022, and January 24, 2022 — all of which did not grant the zoning relief requests — the applicant applied for a building permit on February 24, 2022.

Under a new theory, counsel for the applicant determined that, if the kitchen were to be removed from the 133 South Pamet Property, it could be relocated by right (and without

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<sup>1</sup> The Application for Building Permit lists the Lot Area of 127 South Pamet Road as 4.36 acres.

requiring zoning relief) to the 127 South Pamet Road location as what counsel referred to as a “habitable accessory building” in e-mails to the Building Commissioner. On March 8, 2022, the above-referenced building permit was issued, after an apparent determination that the proposed dwelling could be categorized as a “habitable studio”. The building permit notes: “House Relocation Only. **Zoning issues (if any) to be resolved prior to occupancy.**” (emphasis added).

Thus, the Building Inspector has set in motion a series of events that could very conceivably set the stage for the Board ultimately denying the requested zoning relief (see below), the structure being set upon a foundation via a building permit unlawfully obtained, and extensive litigation thereafter to enforce the Zoning by-law and remove the building.

In such a case the landowner will justifiably claim that they relied upon an official act of the Town, claim hardship, place this Board in the unenviable position of requiring the relocation of the structure barely rescued from the sea, drop a difficult enforcement case in Town Counsel’s lap, undermine the Cape Cod National Seashore and the Town’s seashore zoning, and ultimately cause the taxpayers and abutters to expend significant funds on completely unnecessary litigation.

*a.) No Building Permit may Issue for a Structure or Use Not in Compliance with Zoning or other local laws*

The Building Inspector’s action has turned the process for issuance of building permits on its head. It is his duty to first, before any building permit is issued, determine compliance with local zoning or other laws. This principle is enshrined in the Building Code, 780 CMR 105.3.1 provides that:

**105.3.1 Action on application.** The building official shall examine or cause to be examined applications for permits and amendments, and shall issue or deny the permit, within 30 days of filing. If the application or construction documents do not conform to the requirements of 780 CMR and all pertinent laws under the building official’s jurisdiction, the building official shall deny such application in writing, stating the reasons therefore. The building official’s signature shall be attached to every permit. **The following requirements, where applicable, shall be satisfied before a building permit is issued:** 1.) **Zoning**, in accordance with M.G.L. c. 40A or St. 1956, c. 665 . . .

(Emphasis added) 780 CMR 105.3.1. Here, the Building Inspector failed to comply with the condition precedent to the issuance of a building permit. On its face, the building permit specifically “punts” on a central issue to the issuance of such a permit — whether the structure

complies with Zoning. Moreover, there is no evidence that there is compliance with the Wetlands Act, the Truro Wetlands By-law, Title V of the Sanitary Code, or the Truro Board of Health Regulations.

*b.) Failure to comply with 780 CMR 105.3.1 alone should invalidate the Building permit*

Moreover, the Board should consider the grave issues presented for future administration of Truro by-laws presented by this course of action. If the Building Inspector is allowed to issue Building Permits absent compliance with zoning, wetlands, or health regulations, where does the practice end? How many enforcement actions will become necessary? It may be argued that this case presents an unusual circumstance, but this is not true. Truro's beaches — on both the ocean and bay side (Beach Point) — are constantly eroding and placing structures at risk. Is every building that teeters on the edge of an eroding beach going to become the subject of speculative purchases knowing that a building permit can be obtained for the relocation before the Board of Appeals, Conservation Commission, and Board of Health give prior review?

It is one thing to grant emergency relief to a landowner to allow them to attempt to save such a structure. It is quite another to then grant a building permit before the permanent location of the structure complies with zoning, wetlands, and health regulations. The Board truly needs to consider the chaos that will inevitably be created in Truro's land use regulatory programs if this building permit is allowed to stand.

*Categorization of 133 South Pamet Road Dwelling as a Second "Habitable Studio"*

There is already one principal residence and one habitable studio present on the site. "Uses not expressly permitted are deemed prohibited". Town of Truro, Massachusetts Zoning Bylaw, § 30.2. Both an accessory dwelling unit ("ADU") and a habitable studio are permitted in the Seashore District. *See* Zoning Bylaw, § 30.2, "Use Table". An accessory dwelling unit is defined as follows:

Dwelling Unit, Accessory. A dwelling unit either detached from or located within or attached to a principal single family dwelling, or an accessory structure to the principal single family dwelling on the same lot, such as a garage. The Accessory Dwelling Unit (ADU) shall contain at least four hundred (400) square feet **but not more than one thousand (1,000) square feet** of Gross Floor Area. An Accessory Dwelling Unit shall be a complete, separate housekeeping unit **containing both kitchen and sanitary facilities** in conformance with §40.2 of this bylaw.

(Emphasis added) Zoning Bylaw, § 10.4. A habitable studio, on the other hand, is defined as follows:

Habitable Studio. A habitable studio shall consist of one or more bedrooms, with or without bathroom facilities, in a building detached from the principal residence, **which is incidental and accessory to the principal residence and which does not include residential kitchen facilities**. A room identified as a bedroom will be included in considerations under the State Environmental Code, Title 5.

(Emphasis added — note the singular pronoun used in both the definitional section and in the Use Table—the Zoning by-law does not permit multiple habitable studios, only a singular habitable studio, on a residential lot — see below) *Id.*

The dwelling proposed by the applicant cannot be correctly categorized as a habitable studio or an accessory dwelling unit, nor can it be considered a “habitable accessory dwelling”, in the language used by counsel for the applicant.

*a.) The Proposed Dwelling is not an Accessory Dwelling Unit*

As noted in the definition above, an accessory dwelling unit may not contain more than one thousand square feet of Gross Floor Area. Per counsel’s February 23, 2022 email to the Building Commissioner, the proposed dwelling would contain 1,540 square feet of Total Gross Floor Area. This is clearly in excess of the maximum allowable 1,000 square feet of Total Gross Floor Area allowed of an Accessory Dwelling Unit.

To the extent that the applicant proposed removing the kitchen in an attempt to comply with the limitation on allowable Total Gross Floor Area, removal of the kitchen would also take the dwelling outside the definition of an accessory dwelling unit. As noted above, an accessory dwelling unit must “contain[] both **kitchen** and sanitary facilities” (emphasis added). Zoning Bylaw, § 10.4.

Put simply, if the kitchen is removed, in order to comply with the limitation on Total Gross Floor Area of 1,000 square feet, the dwelling cannot be categorized as an accessory dwelling unit. If the kitchen is not removed, the dwelling exceeds the maximum allowable Total Gross Floor Area. Accordingly, the dwelling cannot be an accessory dwelling unit.

*b.) The Proposed Dwelling is not a Habitable Studio*

A habitable studio may “**not** include residential kitchen facilities”. (emphasis added) Zoning Bylaw, § 10.4. As an initial matter, the building permit that was issued does not mandate removal

of the kitchen from the 133 South Pamet home prior to moving it to the 127 South Pamet address. If the kitchen is not removed, then the dwelling may not be categorized as a habitable studio. In addition, a habitable studio must be “**incidental and accessory** to the principal residence” (emphasis added). This is simply not the case here. 133 South Pamet Road was, historically, a US Coast Guard<sup>2</sup> building. It is now a single-family residence. It cannot be said to be incidental and accessory to the residence at 127 South Pamet Road.

Furthermore, the Town of Truro Zoning Bylaws consider the presence of “a habitable studio” (singular), not “habitable studios” (plural). The Building Inspector’s determination that the Bylaws do not limit the number of habitable studios per lot is in error. As counsel for the appellant understands, the Building Inspector’s position was that — since the Zoning Bylaws are silent as to the *number* of allowable habitable studios — this could allow the 133 South Pamet property to be categorized as a habitable studio, despite an already-existing habitable studio on the receiving lot. In other words, there could be **two** habitable studios on one lot.

The Building Commissioner is **not** correct that the Zoning Bylaws are silent as to the *number* of habitable studios allowed per lot. The Use Table says “Habitable Studio”(singular) , not “Habitable Studios” (plural). The Zoning Bylaw is clear and explicit as to whether a use is allowable absent explicit permission: “Uses not expressly permitted are deemed prohibited”. Town of Truro, Massachusetts Zoning Bylaw, § 30.2. Accordingly, since the Bylaws do not **expressly permit** the presence of two or more habitable studios, the presence of two habitable studios on one lot is deemed prohibited under § 30.2.

Further, the Board should again consider the precedential value of a different construction, as implicit in the issuance of the Building Permit. How many habitable studios are permissible? One? Two? Five? In an age of short-term rentals and AirBnB, the incentive to multiply “habitable studios” is obvious. Is the Board ready to re-write the Seashore District by allowing an interpretation not allowed by the plain, singular, language of the Bylaw? Is such an interpretation consistent with the purposes and intent of the Seashore District, as required by M.G.L. c. 40A §

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<sup>2</sup> Known at the time as the U.S. Life-saving Services. See, e.g. <https://www.history.uscg.mil/Research/Bibliography-Collections/History-and-Tradition/Lifesaving-Service/>

9 (“Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law”)? On behalf of my client, I suggest the answers are self-evident and do not favor the Building Inspector’s interpretation.

*c.) The Proposed Dwelling is not a “Habitable Accessory Dwelling”*

Counsel for the applicant referred to the proposed dwelling as a “habitable accessory dwelling” in his email to the Building Commissioner, dated February 23, 2022. As noted above, “uses not expressly permitted are deemed prohibited”. Since the Zoning Bylaws contain no definition of — and do not permit — a “habitable accessory dwelling”, the proposed dwelling cannot be categorized as a “habitable accessory dwelling”. Zoning Bylaw, § 30.2.

*Dimensional Zoning Relief is Required*

In addition to the use issues noted above, the applicant will require dimensional zoning relief prior to the moving of the 133 South Pamet Road dwelling. As acknowledged in the first application for zoning relief, 127 South Pamet Road is nonconforming as to area, and the addition of the 133 South Pamet structure (whether a habitable studio, accessory dwelling unit, or otherwise) would increase the intensity of the existing nonconformity. This would require a special permit pursuant to M.G.L. c. 40A, § 6. *Bjorklund v. Zoning Board of Appeals of Norwell*, 450 Mass. 357 (2008).

The original application for zoning relief notes the lot size of 127 South Pamet to be 73,200 square feet/1.68 acres (where 3 acres would be required). The building permit, however, notes a lot area of 4.32 acres for 127 South Pamet Road, and .32 acres for 133 South Pamet Road. Counsel for the applicant’s argument, as summarized by the Town Planner in the March 24, 2022 memorandum regarding the March 28, 2022 Zoning Board of Appeals hearing is as follows:

- 1.) The 127 and 133 South Pamet lots predate April 30, 1987; therefore, the current definition of “Lot Area”<sup>3</sup> does not apply;

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<sup>3</sup> Lot Area. The area of a lot when used for building purposes shall not be less than the minimum required by this bylaw for the district in which it is located. Such an area shall not be interpreted to include any portion of a lot below mean water level on fresh water, below mean high water on tidal water or within the limits of any defined way, exclusive of driveways serving only the lot itself. No less than 100% of the minimum lot area required shall consist of contiguous upland exclusive of marsh, bog, swamp, beach,

- 2.) If the current definition of “Lot Area” does not apply, area other than upland — including area “below mean high water — may be counted toward calculation of lot area;
- 3.) If the lot area of 127 South Pamet is calculated based on plans from the 1940s (prior to substantial loss of land to the ocean), rather than on upland area as it currently exists on the lot, the lot area of 127 South Pamet is 4.36 acres, exceeding the 3-acre minimum;
- 4.) Where the newly-calculated lot area is **conforming** under the Bylaw, the dwelling structure may be moved onto the property as of right, without need for a special permit from the ZBA under M.G.L. c. 40A § 6 and Bylaw § 30.7.

#### Pre-1987 Lot Area Definition Calculations

For the sake of argument, if the pre-1987 definition of lot area applies (which it will not, for the reasons mentioned below), the result would not be that **all** acreage shown on the earlier plans may be included in the lot area calculation. Rather, the pre-1987 Bylaw definition of Lot Area provides that “no less than 75% of the minimum lot area must be contiguous upland, exclusive of marsh, bog, swamp, **beach, dune**, or wet meadow.” (Emphasis added). If the pre-1987 definition *were* to apply, the contiguous upland requirement is not simply eliminated; it is simply reduced from 100% to 75%. Given the substantial presence of dune soil and beach on the lot, it is unlikely that — under either definition — the lot conforms to the Seashore District required minimum lot area. Moreover, there is no basis for any determination of the lot area, even under the pre-1987 definition, as the site plans fail to distinguish or quantify the area contained within the lots pre-1987 that are “beach” or “dune”.

#### Current Lot Area Definition Calculations

It is doubtful that the pre-1987 Lot Area definition applies, however, in light of the applicant’s proposed combination of the 127 and 133 South Pamet lots. If the lots are combined, they would create a new, 2022 lot, and the current definition of Lot Area will apply to this newly created lot. The acreage of a combined lot would be the current acreage (127 South Pamet Road)

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dune or wet meadow. This definition shall apply only to lots created after April 30, 1987. Zoning Bylaw, § 10.4.

minus any portion of that lot with is beach or dune, plus any **current** acreage of whatever is now left of 133 South Pamet Road less the portion of that lot which is beach or dune. These numbers would be necessarily less than the Seashore lot area minimum, and would support a Gross Floor Area substantially below the 3,936 square feet asserted by counsel for the applicant. This would require a special permit to exceed the Seashore Gross Floor Area, at the Board’s discretion, under § 30.3.1.A.2 of the Zoning Bylaws:

Special Permit to exceed the Seashore District Total Gross Floor Area limit: The Seashore District Total Gross Floor Area limit for a lot established in subsection A.1 may be exceeded, up to the cap established by this subsection, **by special permit**, as provided in the remaining provisions of this Bylaw.

Any such grant of Special Permit must, under G.L. c. 40A sec. 9, be predicated on a finding that the grant of relief is consistent with the purposes of the Seashore District. Given that the relief requested is on its face to allow for the creation of a second “habitable studio” on a lot where there is already a residence and an existing studio, it is far-fetched to square the discretionary grant of such relief with “preservation and development of the Cape Cod National Seashore in accordance with the purposes of the Act of Congress of August 7, 1961 (75 Stat. 284, 291); to prohibit commercial and industrial uses therein; to preserve and increase the amenities of the Town; and to conserve natural conditions, wildlife, and open spaces for the education, recreation and general welfare of the public”.

Moreover, before any such permit can be requested or approved, the applicant must obtain, through the Conservation Commission, a determination of the extent of beach, dune, and upland on the two lots, or any “lot area” calculation is entirely speculative. This is true for the pre-1987 lot areas, and it is true for the present areas—all of which have changed year by year from the same forces that undercut the structure.

*Use Variance Required for Second Dwelling Unit on Lot*

Finally, relocation of the 133 South Pamet Road dwelling onto the 127 South Pamet Road lot would create a new use nonconformity, which would require a use variance. The presence of two single-family dwellings<sup>4</sup> on one lot is not a permissible use in the Seashore District. M.G.L. c.

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<sup>4</sup> See discussion above for why the 133 South Pamet Road dwelling may not be categorized as a habitable studio or accessory dwelling unit.

40A § 10 allows use variances only where expressly allowed by zoning regulation. “Except where local ordinances or by-laws shall expressly permit variances for use, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located.” M.G.L. c. 40A § 10.

The Truro Zoning Bylaw expressly prohibits the Zoning Board of Appeals from hearing use variances:

§ 60.2 Board of Appeals A Board of Appeals consisting of five members and two associated members shall have the power conferred on it under Chapter 40A of the General Laws of Massachusetts and under this zoning bylaw, which powers shall include the review of Special Permit and Variance applications, **except for Variances as to use**, and the appeal of decisions of the Building Commissioner.

(Emphasis added) Zoning Bylaw, § 60.2. In other words, the Zoning Board has no authority to grant a use variance allowing a second single-family home to be located on the 127 South Pamet Road lot.

### CONCLUSION

Due to the presence of significant unresolved zoning issues, conceded by the applicant by the filing of its petition for Zoning Relief, coupled with the absence of required permits from Conservation and Health, the appellant respectfully appeals the decision of the Building Inspector to issue Building Permit #22-105 and requests the Board to revoke said permit. The dwelling at 133 South Pamet Road may not simply be moved as of right to the 127 South Pamet lot, because it is not correctly categorized as an accessory dwelling unit, and the presence of multiple habitable studios is prohibited by the zoning bylaws. In addition, the 133 South Pamet dwelling may not be moved as-is (i.e., as a single-family home), because the required use variance may not be granted by the Zoning Board of Appeals. Finally, where the Lot Area (under the pre-1987 *or* likely applicable current definition) may not support the calculated Gross Floor Area, a special permit would need to be granted by the Board (at its discretion) prior to relocation of the 133 South Pamet structure.

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Re: Notice of Appeal of Decision of Building Inspector regarding Building Permit #22-105

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As set forth below, there remain a number of zoning issues that require resolution *prior* to any relocation of the 133 South Pamet Road property to the 127 South Pamet Road address. The Board should forthwith reverse the Building Inspector’s imprudent decision to issue Building permit #22-105 and require that no building permit issue until all zoning issues are finally resolved.

*Standing to Appeal*

As an abutter to the proposed receiving lot, 127 South Pamet Road, Ms. Watson has standing to appeal under M.G.L. c. 40A § 8 as a “person aggrieved ... by an order or decision ... in violation of” a zoning provision. M.G.L. c. 40A § 8. *See also* Gallivan v. Zoning Bd. of Appeals of Wellesley, 71 Mass. App. Ct. 850, 854 (2008); Elio v. Zoning Bd. of Appeals of Barnstable, 55 Mass. App. Ct. 424, 427–428 (2002); Lanner v. Board of Appeal of Tewksbury, 348 Mass. 220, 221–223 (1964) (discussing similar language in statutory predecessor to G.L. c. 40A, § 8).

*Applicant’s Prior Applications for Zoning Relief*

On October 22, 2021, the applicant sought zoning relief from the Truro Zoning Board of Appeals (“ZBA”) to move the house located at 133 South Pamet Road to 127 South Pamet Road. That application noted that 127 South Pamet Road is “pre-existing and non-conforming under current zoning as to minimum lot size”, and that lot area was noted to be **1.68 acres**<sup>1</sup> (where 3 acres would be required). The applicant accordingly sought a variance to place a second dwelling on the 127 South Pamet Lot, and a special permit to increase the intensity of the existing nonconformity as to lot area.

On January 20, 2022, the applicant submitted a “Request for Amendment of Special Permit and Variance Petitions”, proposing a new location for the 133 South Pamet Road dwelling.

Despite a number of hearings on the zoning issues, including on November 22, 2021, December 20, 2022, and January 24, 2022 — all of which did not grant the zoning relief requests — the applicant applied for a building permit on February 24, 2022.

Under a new theory, counsel for the applicant determined that, if the kitchen were to be removed from the 133 South Pamet Property, it could be relocated by right (and without

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<sup>1</sup> The Application for Building Permit lists the Lot Area of 127 South Pamet Road as 4.36 acres.

requiring zoning relief) to the 127 South Pamet Road location as what counsel referred to as a “habitable accessory building” in e-mails to the Building Commissioner. On March 8, 2022, the above-referenced building permit was issued, after an apparent determination that the proposed dwelling could be categorized as a “habitable studio”. The building permit notes: “House Relocation Only. **Zoning issues (if any) to be resolved prior to occupancy.**” (emphasis added).

Thus, the Building Inspector has set in motion a series of events that could very conceivably set the stage for the Board ultimately denying the requested zoning relief (see below), the structure being set upon a foundation via a building permit unlawfully obtained, and extensive litigation thereafter to enforce the Zoning by-law and remove the building.

In such a case the landowner will justifiably claim that they relied upon an official act of the Town, claim hardship, place this Board in the unenviable position of requiring the relocation of the structure barely rescued from the sea, drop a difficult enforcement case in Town Counsel’s lap, undermine the Cape Cod National Seashore and the Town’s seashore zoning, and ultimately cause the taxpayers and abutters to expend significant funds on completely unnecessary litigation.

*a.) No Building Permit may Issue for a Structure or Use Not in Compliance with Zoning or other local laws*

The Building Inspector’s action has turned the process for issuance of building permits on its head. It is his duty to first, before any building permit is issued, determine compliance with local zoning or other laws. This principle is enshrined in the Building Code, 780 CMR 105.3.1 provides that:

**105.3.1 Action on application.** The building official shall examine or cause to be examined applications for permits and amendments, and shall issue or deny the permit, within 30 days of filing. If the application or construction documents do not conform to the requirements of 780 CMR and all pertinent laws under the building official’s jurisdiction, the building official shall deny such application in writing, stating the reasons therefore. The building official’s signature shall be attached to every permit. **The following requirements, where applicable, shall be satisfied before a building permit is issued:** 1.) **Zoning**, in accordance with M.G.L. c. 40A or St. 1956, c. 665 . . .

(Emphasis added) 780 CMR 105.3.1. Here, the Building Inspector failed to comply with the condition precedent to the issuance of a building permit. On its face, the building permit specifically “punts” on a central issue to the issuance of such a permit — whether the structure

complies with Zoning. Moreover, there is no evidence that there is compliance with the Wetlands Act, the Truro Wetlands By-law, Title V of the Sanitary Code, or the Truro Board of Health Regulations.

*b.) Failure to comply with 780 CMR 105.3.1 alone should invalidate the Building permit*

Moreover, the Board should consider the grave issues presented for future administration of Truro by-laws presented by this course of action. If the Building Inspector is allowed to issue Building Permits absent compliance with zoning, wetlands, or health regulations, where does the practice end? How many enforcement actions will become necessary? It may be argued that this case presents an unusual circumstance, but this is not true. Truro's beaches — on both the ocean and bay side (Beach Point) — are constantly eroding and placing structures at risk. Is every building that teeters on the edge of an eroding beach going to become the subject of speculative purchases knowing that a building permit can be obtained for the relocation before the Board of Appeals, Conservation Commission, and Board of Health give prior review?

It is one thing to grant emergency relief to a landowner to allow them to attempt to save such a structure. It is quite another to then grant a building permit before the permanent location of the structure complies with zoning, wetlands, and health regulations. The Board truly needs to consider the chaos that will inevitably be created in Truro's land use regulatory programs if this building permit is allowed to stand.

*Categorization of 133 South Pamet Road Dwelling as a Second "Habitable Studio"*

There is already one principal residence and one habitable studio present on the site. "Uses not expressly permitted are deemed prohibited". Town of Truro, Massachusetts Zoning Bylaw, § 30.2. Both an accessory dwelling unit ("ADU") and a habitable studio are permitted in the Seashore District. *See* Zoning Bylaw, § 30.2, "Use Table". An accessory dwelling unit is defined as follows:

Dwelling Unit, Accessory. A dwelling unit either detached from or located within or attached to a principal single family dwelling, or an accessory structure to the principal single family dwelling on the same lot, such as a garage. The Accessory Dwelling Unit (ADU) shall contain at least four hundred (400) square feet **but not more than one thousand (1,000) square feet** of Gross Floor Area. An Accessory Dwelling Unit shall be a complete, separate housekeeping unit **containing both kitchen and sanitary facilities** in conformance with §40.2 of this bylaw.

(Emphasis added) Zoning Bylaw, § 10.4. A habitable studio, on the other hand, is defined as follows:

Habitable Studio. A habitable studio shall consist of one or more bedrooms, with or without bathroom facilities, in a building detached from the principal residence, **which is incidental and accessory to the principal residence and which does not include residential kitchen facilities**. A room identified as a bedroom will be included in considerations under the State Environmental Code, Title 5.

(Emphasis added — note the singular pronoun used in both the definitional section and in the Use Table—the Zoning by-law does not permit multiple habitable studios, only a singular habitable studio, on a residential lot — see below) *Id.*

The dwelling proposed by the applicant cannot be correctly categorized as a habitable studio or an accessory dwelling unit, nor can it be considered a “habitable accessory dwelling”, in the language used by counsel for the applicant.

*a.) The Proposed Dwelling is not an Accessory Dwelling Unit*

As noted in the definition above, an accessory dwelling unit may not contain more than one thousand square feet of Gross Floor Area. Per counsel’s February 23, 2022 email to the Building Commissioner, the proposed dwelling would contain 1,540 square feet of Total Gross Floor Area. This is clearly in excess of the maximum allowable 1,000 square feet of Total Gross Floor Area allowed of an Accessory Dwelling Unit.

To the extent that the applicant proposed removing the kitchen in an attempt to comply with the limitation on allowable Total Gross Floor Area, removal of the kitchen would also take the dwelling outside the definition of an accessory dwelling unit. As noted above, an accessory dwelling unit must “contain[] both **kitchen** and sanitary facilities” (emphasis added). Zoning Bylaw, § 10.4.

Put simply, if the kitchen is removed, in order to comply with the limitation on Total Gross Floor Area of 1,000 square feet, the dwelling cannot be categorized as an accessory dwelling unit. If the kitchen is not removed, the dwelling exceeds the maximum allowable Total Gross Floor Area. Accordingly, the dwelling cannot be an accessory dwelling unit.

*b.) The Proposed Dwelling is not a Habitable Studio*

A habitable studio may “**not** include residential kitchen facilities”. (emphasis added) Zoning Bylaw, § 10.4. As an initial matter, the building permit that was issued does not mandate removal

of the kitchen from the 133 South Pamet home prior to moving it to the 127 South Pamet address. If the kitchen is not removed, then the dwelling may not be categorized as a habitable studio. In addition, a habitable studio must be “**incidental and accessory** to the principal residence”. (emphasis added). This is simply not the case here. 133 South Pamet Road was, historically, a US Coast Guard<sup>2</sup> building. It is now a single-family residence. It cannot be said to be incidental and accessory to the residence at 127 South Pamet Road.

Furthermore, the Town of Truro Zoning Bylaws consider the presence of “a habitable studio” (singular), not “habitable studios” (plural). The Building Inspector’s determination that the Bylaws do not limit the number of habitable studios per lot is in error. As counsel for the appellant understands, the Building Inspector’s position was that — since the Zoning Bylaws are silent as to the *number* of allowable habitable studios — this could allow the 133 South Pamet property to be categorized as a habitable studio, despite an already-existing habitable studio on the receiving lot. In other words, there could be **two** habitable studios on one lot.

The Building Commissioner is **not** correct that the Zoning Bylaws are silent as to the *number* of habitable studios allowed per lot. The Use Table says “Habitable Studio”(singular) , not “Habitable Studios” (plural). The Zoning Bylaw is clear and explicit as to whether a use is allowable absent explicit permission: “Uses not expressly permitted are deemed prohibited”. Town of Truro, Massachusetts Zoning Bylaw, § 30.2. Accordingly, since the Bylaws do not **expressly permit** the presence of two or more habitable studios, the presence of two habitable studios on one lot is deemed prohibited under § 30.2.

Further, the Board should again consider the precedential value of a different construction, as implicit in the issuance of the Building Permit. How many habitable studios are permissible? One? Two? Five? In an age of short-term rentals and AirBnB, the incentive to multiply “habitable studios” is obvious. Is the Board ready to re-write the Seashore District by allowing an interpretation not allowed by the plain, singular, language of the Bylaw? Is such an interpretation consistent with the purposes and intent of the Seashore District, as required by M.G.L. c. 40A §

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<sup>2</sup> Known at the time as the U.S. Life-saving Services. See, e.g. <https://www.history.uscg.mil/Research/Bibliography-Collections/History-and-Tradition/Lifesaving-Service/>

9 (“Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law”)? On behalf of my client, I suggest the answers are self-evident and do not favor the Building Inspector’s interpretation.

*c.) The Proposed Dwelling is not a “Habitable Accessory Dwelling”*

Counsel for the applicant referred to the proposed dwelling as a “habitable accessory dwelling” in his email to the Building Commissioner, dated February 23, 2022. As noted above, “uses not expressly permitted are deemed prohibited”. Since the Zoning Bylaws contain no definition of — and do not permit — a “habitable accessory dwelling”, the proposed dwelling cannot be categorized as a “habitable accessory dwelling”. Zoning Bylaw, § 30.2.

*Dimensional Zoning Relief is Required*

In addition to the use issues noted above, the applicant will require dimensional zoning relief prior to the moving of the 133 South Pamet Road dwelling. As acknowledged in the first application for zoning relief, 127 South Pamet Road is nonconforming as to area, and the addition of the 133 South Pamet structure (whether a habitable studio, accessory dwelling unit, or otherwise) would increase the intensity of the existing nonconformity. This would require a special permit pursuant to M.G.L. c. 40A, § 6. *Bjorklund v. Zoning Board of Appeals of Norwell*, 450 Mass. 357 (2008).

The original application for zoning relief notes the lot size of 127 South Pamet to be 73,200 square feet/1.68 acres (where 3 acres would be required). The building permit, however, notes a lot area of 4.32 acres for 127 South Pamet Road, and .32 acres for 133 South Pamet Road. Counsel for the applicant’s argument, as summarized by the Town Planner in the March 24, 2022 memorandum regarding the March 28, 2022 Zoning Board of Appeals hearing is as follows:

- 1.) The 127 and 133 South Pamet lots predate April 30, 1987; therefore, the current definition of “Lot Area”<sup>3</sup> does not apply;

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<sup>3</sup> Lot Area. The area of a lot when used for building purposes shall not be less than the minimum required by this bylaw for the district in which it is located. Such an area shall not be interpreted to include any portion of a lot below mean water level on fresh water, below mean high water on tidal water or within the limits of any defined way, exclusive of driveways serving only the lot itself. No less than 100% of the minimum lot area required shall consist of contiguous upland exclusive of marsh, bog, swamp, beach,

- 2.) If the current definition of “Lot Area” does not apply, area other than upland — including area “below mean high water — may be counted toward calculation of lot area;
- 3.) If the lot area of 127 South Pamet is calculated based on plans from the 1940s (prior to substantial loss of land to the ocean), rather than on upland area as it currently exists on the lot, the lot area of 127 South Pamet is 4.36 acres, exceeding the 3-acre minimum;
- 4.) Where the newly-calculated lot area is **conforming** under the Bylaw, the dwelling structure may be moved onto the property as of right, without need for a special permit from the ZBA under M.G.L. c. 40A § 6 and Bylaw § 30.7.

#### Pre-1987 Lot Area Definition Calculations

For the sake of argument, if the pre-1987 definition of lot area applies (which it will not, for the reasons mentioned below), the result would not be that **all** acreage shown on the earlier plans may be included in the lot area calculation. Rather, the pre-1987 Bylaw definition of Lot Area provides that “no less than 75% of the minimum lot area must be contiguous upland, exclusive of marsh, bog, swamp, **beach, dune**, or wet meadow.” (Emphasis added). If the pre-1987 definition *were* to apply, the contiguous upland requirement is not simply eliminated; it is simply reduced from 100% to 75%. Given the substantial presence of dune soil and beach on the lot, it is unlikely that — under either definition — the lot conforms to the Seashore District required minimum lot area. Moreover, there is no basis for any determination of the lot area, even under the pre-1987 definition, as the site plans fail to distinguish or quantify the area contained within the lots pre-1987 that are “beach” or “dune”.

#### Current Lot Area Definition Calculations

It is doubtful that the pre-1987 Lot Area definition applies, however, in light of the applicant’s proposed combination of the 127 and 133 South Pamet lots. If the lots are combined, they would create a new, 2022 lot, and the current definition of Lot Area will apply to this newly created lot. The acreage of a combined lot would be the current acreage (127 South Pamet Road)

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dune or wet meadow. This definition shall apply only to lots created after April 30, 1987. Zoning Bylaw, § 10.4.

minus any portion of that lot with is beach or dune, plus any **current** acreage of whatever is now left of 133 South Pamet Road less the portion of that lot which is beach or dune. These numbers would be necessarily less than the Seashore lot area minimum, and would support a Gross Floor Area substantially below the 3,936 square feet asserted by counsel for the applicant. This would require a special permit to exceed the Seashore Gross Floor Area, at the Board’s discretion, under § 30.3.1.A.2 of the Zoning Bylaws:

Special Permit to exceed the Seashore District Total Gross Floor Area limit: The Seashore District Total Gross Floor Area limit for a lot established in subsection A.1 may be exceeded, up to the cap established by this subsection, **by special permit**, as provided in the remaining provisions of this Bylaw.

Any such grant of Special Permit must, under G.L. c. 40A sec. 9, be predicated on a finding that the grant of relief is consistent with the purposes of the Seashore District. Given that the relief requested is on its face to allow for the creation of a second “habitable studio” on a lot where there is already a residence and an existing studio, it is far-fetched to square the discretionary grant of such relief with “preservation and development of the Cape Cod National Seashore in accordance with the purposes of the Act of Congress of August 7, 1961 (75 Stat. 284, 291); to prohibit commercial and industrial uses therein; to preserve and increase the amenities of the Town; and to conserve natural conditions, wildlife, and open spaces for the education, recreation and general welfare of the public”.

Moreover, before any such permit can be requested or approved, the applicant must obtain, through the Conservation Commission, a determination of the extent of beach, dune, and upland on the two lots, or any “lot area” calculation is entirely speculative. This is true for the pre-1987 lot areas, and it is true for the present areas—all of which have changed year by year from the same forces that undercut the structure.

*Use Variance Required for Second Dwelling Unit on Lot*

Finally, relocation of the 133 South Pamet Road dwelling onto the 127 South Pamet Road lot would create a new use nonconformity, which would require a use variance. The presence of two single-family dwellings<sup>4</sup> on one lot is not a permissible use in the Seashore District. M.G.L. c.

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<sup>4</sup> See discussion above for why the 133 South Pamet Road dwelling may not be categorized as a habitable studio or accessory dwelling unit.

40A § 10 allows use variances only where expressly allowed by zoning regulation. “Except where local ordinances or by-laws shall expressly permit variances for use, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located.” M.G.L. c. 40A § 10.

The Truro Zoning Bylaw expressly prohibits the Zoning Board of Appeals from hearing use variances:

§ 60.2 Board of Appeals A Board of Appeals consisting of five members and two associated members shall have the power conferred on it under Chapter 40A of the General Laws of Massachusetts and under this zoning bylaw, which powers shall include the review of Special Permit and Variance applications, **except for Variances as to use**, and the appeal of decisions of the Building Commissioner.

(Emphasis added) Zoning Bylaw, § 60.2. In other words, the Zoning Board has no authority to grant a use variance allowing a second single-family home to be located on the 127 South Pamet Road lot.

### CONCLUSION

Due to the presence of significant unresolved zoning issues, conceded by the applicant by the filing of its petition for Zoning Relief, coupled with the absence of required permits from Conservation and Health, the appellant respectfully appeals the decision of the Building Inspector to issue Building Permit #22-105 and requests the Board to revoke said permit. The dwelling at 133 South Pamet Road may not simply be moved as of right to the 127 South Pamet lot, because it is not correctly categorized as an accessory dwelling unit, and the presence of multiple habitable studios is prohibited by the zoning bylaws. In addition, the 133 South Pamet dwelling may not be moved as-is (i.e., as a single-family home), because the required use variance may not be granted by the Zoning Board of Appeals. Finally, where the Lot Area (under the pre-1987 *or* likely applicable current definition) may not support the calculated Gross Floor Area, a special permit would need to be granted by the Board (at its discretion) prior to relocation of the 133 South Pamet structure.

Respectfully submitted,  
For the Appellant,  
Clyde Watson  
By her attorney,

/s/ Ian Henchy  
Ian F. Henchy, Esq.  
Prosody Law, PLLC  
202 Washington St.  
Suite 345  
Brookline, MA 02445  
(857) 600-1956  
ianhenchylaw@gmail.com  
BBO #707284

Dated: March 26, 2022



**TOWN OF TRURO**  
**HEALTH & CONSERVATION DEPARTMENT**  
24 Town Hall Road, Truro 02666  
508-349-7004 x119

Memo to: Barbara Carboni, Town Planner

Date: March 25, 2022

From: Emily Beebe, Conservation Agent

Re: Plan Review for 127-133 South Pamet Road: DEP# SE 75-1128

**CONSERVATION COMMISSION PROCESS:** A project described on plans developed by Coastal Engineering dated 7-14-2021 for the relocation of the dwelling at 133 South Pamet Road to 127 South Pamet Road was reviewed by the Conservation Commission at their hearing of August 2, 2021 and an Order of Conditions for the project was issued on August 25, 2021. The project description included lifting the dwelling, moving it to the new location and resetting it on a new piling foundation, site restoration, beach cleanup as needed, and connection to utilities.

On February 2, the Chair of the Conservation Commission approved an emergency certification to allow immediate removal of the house from the dangerous conditions at 133 South Pamet Road following a Nor'easter in late January that significantly eroded the Coastal Bank. It was moved to a location between its former location and the proposed location, and it was understood that the current location was temporary. This certification was ratified by the full Commission at their meeting on March 7, 2022.

Subsequently, the owner submitted a request to revise the proposed final location for the house with a written request to amend the Order of Conditions that was accompanied by *revised* plans developed by Coastal Engineering dated 3-9-2022 showing a shift in the final building location from the originally approved plans and including adjustments to the septic system at 127 South Pamet Road. The Conservation Commission will hear the amendment request on April 4, 2022.

**BOARD OF HEALTH PROCESS:** In November 2021, Coastal Engineering filed plans with variance requests from both Title 5 and local Board of Health regulations for an upgrade design that included tying the Boathouse building into the existing septic system serving 127 South Pamet Road. The Board had numerous questions about the proposed easements both for the shared use of the well and the septic system prompting a continuation of the matter to a future hearing date. That matter has been continued since November, and the Board of Health expects to hear the matter on April 5, 2022.

In the intervening time period, revised plans were submitted that show proposed changes to the shared 5-bedroom septic system at 127 South Pamet Road (currently shared between the main house and the studio) and revised design flow calculations that reflect the present proposal to connect the Boathouse to the proposed upgraded septic system. The Board of Health Regulations define upland as land area excluding wetland resource areas as defined by the Massachusetts Wetlands Protection Act. Only upland can be used to meet the nitrogen loading requirements of the Truro Board of Health regulations (section 6, article 13) specifying that 10,000 sf of buildable upland is required for every 110 gallons per day of wastewater. A calculation of the upland area at 127 South Pamet Road, as defined by the Truro Board of Health regulations has been requested.



## United States Department of the Interior

NATIONAL PARK SERVICE  
Cape Cod National Seashore  
99 Marconi Site Road  
Wellfleet, MA 02667

IN REPLY REFER TO:

A90

Tract No. 12-2760 and 2761

March 25, 2022

Arthur Hultin, Jr., Chair  
Truro Zoning Board of Appeals  
24 Town Hall Road, P.O. Box 2030  
Truro, MA 02666

Dear Mr. Hultin:

Thank you for the much-anticipated Town Planner/Land Use Counsel's staff report on the continued Zoning Board of Appeals (ZBA) hearing for the relocation of a single-family residence formerly at 133 South Pamet Road to 127 South Pamet Road in Truro, MA. The entirety of the materials submitted prior to and after the detrimental, emergency last-minute move of the house at 133 South Pamet Road and its relocation are complicated and require thorough review from National Park Service Land Use Counsel's expertise for our consideration, that of abutters and interested parties, and for the board.

We request additional time to review this matter with the DOI Solicitor's Office as we believe Land Use Counsel's report is instructive concerning issues related to combining the lots and considering a special permit for relocation of the house. The report became available late Friday, March 25, 2022 with the ZBA hearing scheduled for Monday March 28, 2022, that leaves insufficient time for an in depth review this circumstance requires.

Our initial comments based on a review of the issues are:

The Truro Zoning Bylaw lot definition states, "No less than 100% of the minimum lot area required shall consist of contiguous upland exclusive of marsh, bog, swamp, beach, dune or wet meadow. This definition shall apply only to lots created after April 30, 1987." The applicant lot area calculations for lot size appears to include land classification categories beyond upland.

We presume that the concept of removing a kitchen allows for relocation of a single-family house "by right" should be refuted; the applicant's counsel's statement that this house relocation proposal would be permissible by-right if the two lots are combined do not seem viable given actual lot size, current conditions, and prior representations.

Also, as we have seen repeatedly it is not enough to remove a kitchen. "Accessory dwellings" have been routinely rented out separately from a single-family residence even if it has been purported that the accessory guest house is lacking a kitchen. Any single-family lot seeking special permits for a separate structure that has similarities with a single-family dwelling should be constrained to single-

family use with the restriction that any guest house is not separately rented; whether the second home described as a studio on the 127 South Pamet lot is already separately rented out has not been verified. A third structure would intensify the use and, if not constrained by the town, may be rented separately.

We concur with the letter in the board packet written by Tom Watson. We have similarly stated that the Seashore District is a single-family residential conservation district. We have requested that high standards for variances and special permits be exercised. We urge denial of any special permit as it proposes zoning exceptions that increase intensity of the nonconformity and creates new nonconformities. These nonconformities would add to the detriment of the neighborhood than the existing nonconforming uses or structures and will not exist in harmony with the general purpose and intent of the Seashore District and other town bylaws.

Finally, a building permit was issued for a new foundation based on incomplete representations before this case came back before the ZBA as was instructed. We have submitted two prior letters on this ZBA case, and this third letter should be indicative of the level of concern about the precedent that could be set if a permit is authorized for this variance.

Sincerely,

**BRIAN  
CARLSTROM**

Digitally signed by BRIAN  
CARLSTROM  
Date: 2022.03.27 11:59:09 -04'00'

Brian T. Carlstrom  
Superintendent

cc:  
Town Planner  
Town Administrator

For inclusion in the packet for the March 28 ZBA meeting

To members of the Truro Zoning Board of Appeals and other interested parties:

In reference to the request of the owners to move the boathouse from 127 S. Pamet Road to a permanent location at 133 S. Pamet Road, it seems clear that if the ZBA grants the owner a variance that action would be irresponsible and detrimental to the neighborhood, the Town of Truro, surrounding towns, & the Cape Cod National Seashore for the following reasons:

1) It would only put off the inevitable, and not by much since clearly the structure(s) which would exist on the 127 S. Pamet lot will need to be moved back again in a year or two, maybe sooner. In fact, it would be prudent for the owner to move back the two existing structures at 127 S. Pamet ASAP to avoid another situation like the boathouse on the beach during the storm of Jan 29 2021.

2) As stated in the ZBA packet for 12-20-2021:

“The Board may grant a special permit under G.L. c. 40A, s. 6 if it finds that the proposed reconstruction “shall not be substantially more detrimental than the existing nonconforming [structure and] use to the neighborhood.”

Likewise, the Board may grant a special permit under Section 30.7.A if it finds that: “the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use or structure and that the alternation or extension will exist in harmony with the general purpose and intent of this bylaw.”

Granting a variance in this situation would create an extraordinary precedent within the Seashore Zone. Such action would be advantageous to the desires of one individual property owner, and substantially detrimental to not only the local neighborhood, but also to the Town of Truro, surrounding towns and the Cape Cod National Seashore. It must be clear to all what Truro and the surrounding towns would be like without the Cape Cod National Seashore zoning regulations. Why jeopardize those regulations by setting a precedent that would affect not only the neighborhood of 127 S. Pamet Road, but also the entire Seashore Zone in the town of Truro and all other towns along the ocean shore from Provincetown to Chatham? The existence of the CCNS zoning regulations is an immeasurable factor in making the outer Cape such a desirable destination, and Truro and Ballston Beach in particular one of the historic jewels in its crown.

3) Further excavation and construction would irreparably harm and unnecessarily weaken the coastal bank, further jeopardizing neighboring properties along with the already shrunken and disappearing parking lot for Ballston Beach, which as taxpayers we’ve been told for years provides beneficial revenue and special draw to the town.

4) By granting a variance, ZBA would be guaranteeing that they will revisit this situation in near future when further erosion occurs and buildings (currently three structures) have to be moved back yet again.

If the Town/ZBA is not willing to enforce Truro's own zoning bylaws, why do those bylaws and regulations exist at all? There are obviously other property owners within CCNS, not only within the town of Truro but in other towns as well, who are carefully watching this specific situation to see whether they too might add extra non-conforming dwellings/structures on their properties within the Seashore. In addition this would disregard all those property owners who have dutifully followed the bylaws and regulations, both in spirit and in practice, within the seashore zone since the creation of the CCNS in 1961. By granting a variance in this situation, ZBA would be guaranteeing further imbroglios of this type (and perhaps legal fees) down the road for the Town of Truro and its citizens, future ZBA board members, CCNS, and the neighborhood.

The landowner should not be granted a variance in this situation. The sensible and responsible action is to relocate the boathouse to a safer lot elsewhere where it will no longer be under threat of erosion, thus avoiding future problems for the neighborhood, the town, CCNS, as well as enforcing important bylaws and regulations put in place for very good reasons. In this way the solution "will not be substantially more detrimental to the neighborhood"

Sincerely,

Thomas A. D. Watson

# Benjamin E. Zehnder LLC

62 Route 6A, Unit B  
Orleans, Massachusetts 02653

Benjamin E. Zehnder, Esq.  
[bzehnder@zehnderllc.com](mailto:bzehnder@zehnderllc.com)  
Tel: (508) 255-7766

February 24, 2022

Town Clerk Kaci Fullerton  
Truro Town Hall  
24 Town Hall Road  
P.O. Box 2012  
Truro, MA 02666

Via hand delivery

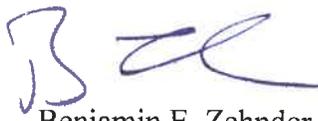
Re: New ZBA Special Permit Application  
127 South Pamet Road (48-12) and 133 South Pamet Road (48-8)

Dear Ms. Fullerton:

Please find enclosed for filing with the Zoning Board of Appeals one original and nine copies of a new application packet for a Special Permit for the properties at 127 and 133 South Pamet Road, as well as payment in the amount of \$50.00 for the filing fee.

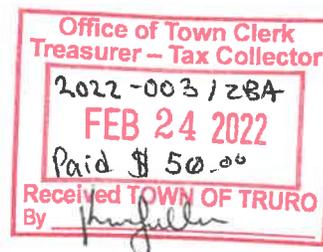
Thank you as always for your assistance. I remain –

Very truly yours,



Benjamin E. Zehnder

Enc.  
cc via email:  
client  
Barbara Carboni  
Brian Carlstrom  
Lauren McKean  
John Schnaible  
Elizabeth Sturdy





# Town of Truro Zoning Board of Appeals

P.O. Box 2030, Truro, MA 02666

## APPLICATION FOR HEARING

To the Town Clerk of the Town of Truro, MA

Date February 24, 2022

The undersigned hereby files with specific grounds for this application: *(check all that apply)*

### 1. GENERAL INFORMATION

NOTICE OF APPEAL

- Applicant is aggrieved by his/her inability to obtain a permit or enforcement action from the Building Commissioner on *(date)* \_\_\_\_\_.
- Applicant is aggrieved by order or decision of the Building Commissioner on *(date)* \_\_\_\_\_ which he/she believes to be a violation of the Truro Zoning Bylaw or the *Massachusetts Zoning Act*.

PETITION FOR VARIANCE – Applicant requests a variance from the terms Section \_\_\_\_\_ of the Truro Zoning Bylaw concerning *(describe)* \_\_\_\_\_

APPLICATION FOR SPECIAL PERMIT

- Applicant seeks approval and authorization of uses under Section \_\_\_\_\_ of the Truro Zoning Bylaw concerning *(describe)* \_\_\_\_\_
- Applicant seeks approval for a continuation, change, or extension of a nonconforming structure or use under Section 30.7(A) of the Truro Zoning Bylaw and M.G.L. Ch. 40A, §6 concerning *(describe)* to relocate structures on non-conforming lot and under 30.3.1.A.2 to exceed by right Seashore District total Gross Floor Area.

Property Address 127 South Pamet Road & 133 South Pamet Road Map(s) and Parcel(s) 48-12 & 48-8

Registry of Deeds title reference: Book 33550, Page 123, or Certificate of Title Number 228604 and Land Ct. Lot # 1C / 1D and Plan # 16182-E / 16182-F

Applicant's Name Thomas P. Dennis, Jr. and Kathleen C. Dennis, individually & as Trustees

Applicant's Legal Mailing Address 30 Colony Road Springfield, MA 01106

Applicant's Phone(s), Fax and Email (413) 246-1096; dennis@dennisgrp.com

Applicant is one of the following: *(please check appropriate box)*

\*Written Permission of the owner is required for submittal of this application.

- Owner     Prospective Buyer\*     Other\*

Owner's Name and Address \_\_\_\_\_

Representative's Name and Address Benjamin E. Zehnder 62 Route 6A, Unit B, Orleans, MA 02653

Representative's Phone(s), Fax and Email (508) 255-7766; bzehnder@zehnderllc.com

2. The completed application **shall also** be submitted **electronically** to the Town Planner at planner1@truro-ma.gov in its entirety (including all plans and attachments).

- The applicant is **advised** to consult with the Building Commissioner, Planning Department, Conservation Department, Health Department, and/or Historic Commission, as applicable, prior to submitting this application.

Signature(s)

*Benjamin Zehnder*

Applicant(s)/Representative *Printed* Name(s)

Owner(s) *Printed* Name(s) or written permission

Applicant(s)/Representative Signature

Owner(s) Signature or written permission

Your signature on this application authorizes the Members of the Zoning Board of Appeals and town staff to visit and enter upon the subject property

**Charles B. Zehnder**

---

**From:** Benjamin E. Zehnder  
**Sent:** Wednesday, February 23, 2022 1:29 PM  
**To:** Rich Stevens (rstevens@truro-ma.gov)  
**Cc:** Barbara Carboni; Charles B. Zehnder  
**Subject:** 127 and 133 South Pamet Road Request for Determination  
**Attachments:** Lot 1-C\_127 South Pamet Rd Truro - Deed Documents.pdf; Lot 1-D\_127 South Pamet Rd Truro - Deed Documents.pdf; S Pamet Road.pdf; C17338-C-SKC-3-2022-02-23-STAMP.pdf

**e2DraftID:** a5d6627975

Hi Rich:

Following up on yesterday's below email. I have attached the following:

1. Site plan showing the 133 SPR dwelling (the "Boathouse") moved back and down on 127 SPR to a location 51' from South Pamet Road and 53' from the easterly sideline. Also showing lot frontage for 127 SPR of 288.24 feet.
2. Lot calculations showing an area for 127 SPR of 4.36 acres, and for 133 SPR of .32 acres, for a total of 4.68 acres. This is based on the Zoning Bylaw definition that exempts pre 1987 from upland lot area calculation requirements:

Lot Area. The area of a lot when used for building purposes shall not be less than the minimum required by this bylaw for the district in which it is located. Such an area shall not be interpreted to include any portion of a lot below mean water level on fresh water, below mean high water on tidal water or within the limits of any defined way, exclusive of driveways serving only the lot itself. No less than 100% of the minimum lot area required shall consist of contiguous upland exclusive of marsh, bog, swamp, beach, dune or wet meadow. This definition shall apply only to lots created after April 30, 1987.

Based on combined lot area of 4.68 acres, the Zoning Bylaw permits a Seashore District Total Gross Floor Area of **3,936 square feet**. (3,600sf for 3 acres and 336 for the next 1.68 at 200 sf per acre pro-rated).

The combined Seashore District Total Gross Floor Area of the three structures is as follows:

a. 133 SPR Boathouse		1 <sup>st</sup> floor 24'x35' = 840 sf	2 <sup>nd</sup>
floor = 700 sf	Total=	1,540 sf	
b. 127 SPR Studio (living area)		One floor	
25'x29'			725 sf





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EMAIL DISCLAIMER: We do not email Non-Public Confidential Information in a non-secure method. Accordingly, such confidential information, including account information and personally identifiable information should not be transmitted by non-encrypted email/email attachments. Use of non-encrypted email is inherently insecure. In no event shall we accept any responsibility for the loss, use or misuse of any information including confidential information, which is sent to us by email or an email attachment, nor can we guarantee receipt, accuracy or response to any email.

---

**From:** Benjamin E. Zehnder  
**Sent:** Tuesday, February 22, 2022 10:41 AM  
**To:** Rich Stevens (rstevens@truro-ma.gov) <rstevens@truro-ma.gov>  
**Cc:** Barbara Carboni <bcarboni@truro-ma.gov>; Charles B. Zehnder <CZehnder@latanzi.com>  
**Subject:** FW: S Pamet Road Analysis

Hi Rich:

Tom Dennis' engineers have calculated the lot areas of 127 and 133 South Pamet Road. Here is a schematic that I can have stamped and file with a proposed site plan for moving the boathouse further rearward onto the 127 property. Also attached are the land court plans. Lots 1-C and 1-D are 127 South Pamet Road, and the land shown as the Coast Guard land next to Lot 1-C on Plan 16182-E is 133 SPR.

The proposal will be to move and locate the structure further back on 127 conforming to dimensional setbacks, and remove the kitchen, making it a second accessory building on the property. The intention is also to combine the lots by the means you determine necessary, either an ANR plan, which would be somewhat complicated given that the land is both registered and unregistered land, or by recorded affidavit of intention to combine, which is what we do in Eastham.

The lot areas include land eastward of the coastal bank, but I believe those areas are included in lot area as the lots are pre-existing pre-1987 lots and therefore the entire land area is included for calculating Total Gross Floor Area permitted.

Based on the land areas, the Whitelaw land alone meets the area and frontage requirements, therefore I do not believe the structure move requires either a dimensional or use special

permit. Assuming the combined structure sizes are below the by right Total Gross Floor Area maximums, I do not believe that the move requires a special permit in that regard.

I will send you a site plan shortly for your review and will give you a call shortly. We are trying to permit the move prior to the start of the season so as to get the house off the neighbor's property and not inconvenience him.

Thanks Rich.

Ben

Benjamin E. Zehnder  
La Tanzi, Spaulding & Landreth  
8 Cardinal Lane; P.O. Box 2300  
Orleans, MA 02653  
(508) 255-2133  
(508) 255-3786 (fax)  
(508) 246-4064 (mobile)  
[bzehnder@latanzi.com](mailto:bzehnder@latanzi.com)  
*Orleans/Provincetown/Barnstable*



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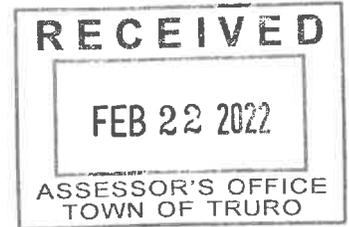


# TOWN OF TRURO

## Assessors Office

### Certified Abutters List

### Request Form



DATE: Feb. 17, 2022

NAME OF APPLICANT: Thomas P. Dennis, Jr., Trustee, and Kathleen C. Westhead-Dennis, Trustee

NAME OF AGENT (if any): Benjamin E. Zehnder

MAILING ADDRESS: P.O. Box 2300 Orleans, MA 02653

CONTACT: HOME/CELL (508) 255-2133 ext. 128 EMAIL bzehnder@latanzi.com

PROPERTY LOCATION: 133 South Pamet Road  
(street address)

PROPERTY IDENTIFICATION NUMBER: MAP 48 PARCEL 8 EXT. \_\_\_\_\_  
(if condominium)

**ABUTTERS LIST NEEDED FOR:**  
(please check all applicable)

**FEE: \$15.00 per checked item**  
(Fee must accompany the application unless other arrangements are made)

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Board of Health <sup>5</sup>         | <input type="checkbox"/> Planning Board (PB)                        | <input type="checkbox"/> Zoning Board of Appeals (ZBA)          |
| <input type="checkbox"/> Cape Cod Commission                  | <input type="checkbox"/> Special Permit <sup>1</sup>                | <input checked="" type="checkbox"/> Special Permit <sup>1</sup> |
| <input type="checkbox"/> Conservation Commission <sup>4</sup> | <input type="checkbox"/> Site Plan <sup>2</sup>                     | <input type="checkbox"/> Variance <sup>1</sup>                  |
| <input type="checkbox"/> Licensing                            | <input type="checkbox"/> Preliminary Subdivision <sup>3</sup>       |   |
| Type: _____   | <input type="checkbox"/> Definitive Subdivision <sup>3</sup>        |   |
|   | <input type="checkbox"/> Accessory Dwelling Unit (ADU) <sup>2</sup> |   |
| <input type="checkbox"/> Other _____                          | (Fee: Inquire with Assessors)                                       |   |

(Please Specify)

**Note: Per M.G.L., processing may take up to 10 calendar days. Please plan accordingly.**

#### THIS SECTION FOR ASSESSORS OFFICE USE ONLY

Date request received by Assessors: 2/22/2022

Date completed: 2/22/2022

List completed by: [Signature]

Date paid: 2/24/22 Cash/Check # 14061

<sup>1</sup>Abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line.

<sup>2</sup>Abutters to the subject property, abutters to the abutters, and owners of properties across the street from the subject property.

<sup>3</sup>Landowners immediately bordering the proposed subdivision, landowners immediately bordering the immediate abutters, and landowners located across the streets and ways bordering the proposed subdivision. **Note:** For Definitive Subdivision only, responsibility of applicant to notify abutters and produce evidence as required.

<sup>4</sup>All abutters within 300 feet of parcel, except Beach Point between Knowles Heights Road and Provincetown border, in which case it is all abutters within 100 feet. **Note:** Responsibility of applicant to notify abutters and produce evidence as required.

<sup>5</sup>Abutters sharing any boundary or corner in any direction – including land across a street, river or stream. **Note:** Responsibility of applicant to notify abutters and produce evidence as required.



**TRURO ASSESSORS OFFICE**

**PO Box 2012 Truro, MA 02666**

**Telephone: (508) 214-0921**

**Fax: (508) 349-5506**

**Date:** February 22, 2022

**To:** Benjamin Zehnder, Agent for Thomas P. Dennis, Jr., Trustee & Kathleen C. Westhead-Dennis, Trustee

**From:** Assessors Department

**Certified Abutters List:** 133 South Pamet Road (Map 48, Parcel 8)

**ZBA/Special Permit**

Attached is a combined list of abutters for property located at 133 South Pamet Road.

The current owners are Thomas P. Dennis, Jr. Revocable Trust of 2020 and Kathleen C. Westhead-Dennis Revocable Trust of 2020.

The names and addresses of the abutters are as of February 11, 2022 according to the most recent documents received from the Barnstable County Registry of Deeds.

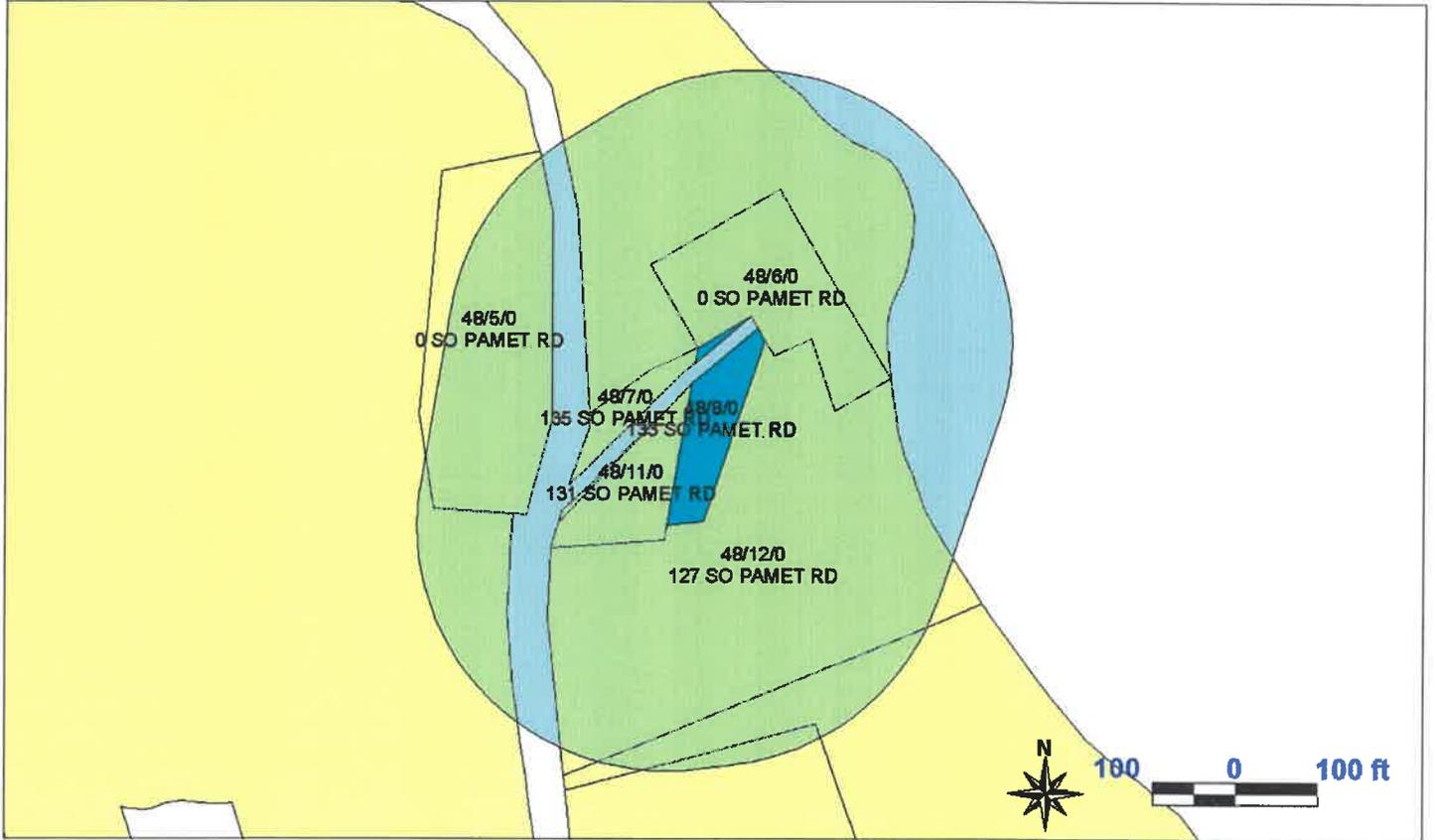
Certified by: \_\_\_\_\_

Olga Farrell  
Assessing Clerk

133 South Pamet Road  
 Map 48, Parcel 8  
 ZBA/Special Permit

TOWN OF TRURO, MA  
 BOARD OF ASSESSORS  
 P.O. BOX 2012, TRURO MA 02666

Abutters List Within 300 feet of Parcel 48/8/0



Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	Zip Cd/Country
7292	40-999-0-E	USA-DEPT OF INTERIOR Cape Cod National Seashore	0 CAPE COD NATIONAL SEASHORE	99 Marconi Site Rd	Wellfleet	MA	02667
2742	48-5-0-E	TOWN OF TRURO	0 SO PAMET RD	PO BOX 2030	TRURO	MA	02666-2030
2743	48-6-0-E	TOWN OF TRURO	0 SO PAMET RD	PO BOX 2030	TRURO	MA	02666-2030
2744	48-7-0-E	TOWN OF TRURO	135 SO PAMET RD	PO BOX 2012	TRURO	MA	02666
2745	48-8-0-R	THOMAS P DENNIS JR REV TRUST & KATHLEEN C WESTHEAD-DENNIS REV	133 SO PAMET RD	C/O DENNIS GROUP 1537 MAIN ST	SPRINGFIELD	MA	01103
2748	48-11-0-R	SEAL OF APPROVAL LLC MGR: THOMAS ROCCO	131 SO PAMET RD	14 HAMMEL COURT	PORTSMOUTH	RI	02871
2749	48-12-0-R	DENNIS THOMAS P JR & KATHLEEN	127 SO PAMET RD	30 COLONY RD	SPRINGFIELD	MA	01106
2750	48-13-0-R	WATSON CLYDE D QPR TRUST TRS: WATSON CLYDE D	119 SO PAMET RD	55 THREE MILE RD	ETNA	NH	03750-3809

40-999-0-E

USA-DEPT OF INTERIOR  
Cape Cod National Seashore  
99 Marconi Site Rd  
Wellfleet, MA 02667

48-5-0-E

TOWN OF TRURO  
PO BOX 2030  
TRURO, MA 02666-2030

48-6-0-E

TOWN OF TRURO  
PO BOX 2030  
TRURO, MA 02666-2030

48-7-0-E

TOWN OF TRURO  
PO BOX 2012  
TRURO, MA 02666

48-8-0-R

THOMAS P DENNIS JR REV TRUST &  
KATHLEEN C WESTHEAD-DENNIS REV  
C/O DENNIS GROUP  
1537 MAIN ST  
SPRINGFIELD, MA 01103

48-11-0-R

SEAL OF APPROVAL LLC  
MGR: THOMAS ROCCO  
14 HAMMEL COURT  
PORTSMOUTH, RI 02871

48-12-0-R

DENNIS THOMAS P JR & KATHLEEN  
30 COLONY RD  
SPRINGFIELD, MA 01106

48-13-0-R

WATSON CLYDE D QPR TRUST  
TRS: WATSON CLYDE D  
55 THREE MILE RD  
ETNA, NH 03750-3809

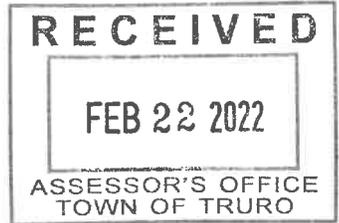


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NAME OF AGENT (if any): Benjamin E. Zehnder

MAILING ADDRESS: P.O. Box 2300 Orleans, MA 02653

CONTACT: HOME/CELL (508) 255-2133 ext. 128 EMAIL bzehnder@latanzi.com

PROPERTY LOCATION: 127 South Pamet Road  
(street address)

PROPERTY IDENTIFICATION NUMBER: MAP 48 PARCEL 12 EXT. \_\_\_\_\_  
(if condominium)

**ABUTTERS LIST NEEDED FOR:**

(please check all applicable)

**FEE: \$15.00 per checked item**

(Fee must accompany the application unless other arrangements are made)

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Board of Health <sup>5</sup>         | <input type="checkbox"/> Planning Board (PB)                        | <input type="checkbox"/> Zoning Board of Appeals (ZBA)          |
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(Fee: Inquire with Assessors)

(Please Specify)

**Note: Per M.G.L., processing may take up to 10 calendar days. Please plan accordingly.**

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Date completed: 2/22/2022

List completed by: [Signature]

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PO Box 2012 Truro, MA 02666  
Telephone: (508) 214-0921  
Fax: (508) 349-5506

**Date:** February 22, 2022

**To:** Benjamin Zehnder, Agent for Thomas P. Dennis, Jr., Trustee & Kathleen C. Westhead-Dennis, Trustee

**From:** Assessors Department

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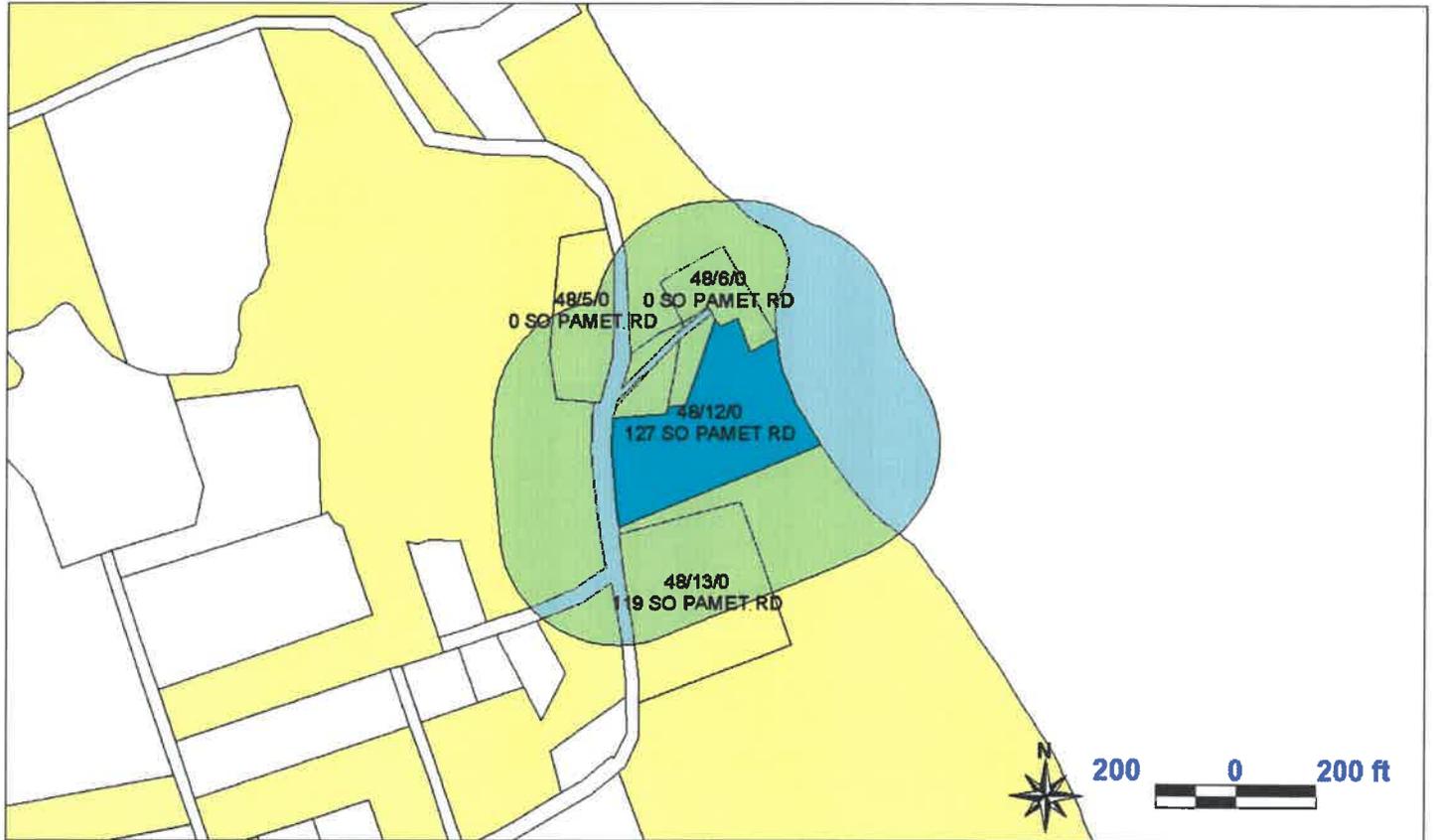
Certified by: \_\_\_\_\_

Olga Farrell  
Assessing Clerk

127 South Pamet Road  
 Map 48, Parcel 12  
 ZBA/Special Permit

TOWN OF TRURO, MA  
 BOARD OF ASSESSORS  
 P.O. BOX 2012, TRURO MA 02666

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*[Handwritten Signature]*  
 2/22/2022 Page 1

40-999-0-E

USA-DEPT OF INTERIOR  
Cape Cod National Seashore  
99 Marconi Site Rd  
Wellfleet, MA 02667

48-5-0-E

TOWN OF TRURO  
PO BOX 2030  
TRURO, MA 02666-2030

48-6-0-E

TOWN OF TRURO  
PO BOX 2030  
TRURO, MA 02666-2030

48-7-0-E

TOWN OF TRURO  
PO BOX 2012  
TRURO, MA 02666

48-8-0-R

THOMAS P DENNIS JR REV TRUST &  
KATHLEEN C WESTHEAD-DENNIS REV  
C/O DENNIS GROUP  
1537 MAIN ST  
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48-11-0-R

SEAL OF APPROVAL LLC  
MGR: THOMAS ROCCO  
14 HAMMEL COURT  
PORTSMOUTH, RI 02871

48-12-0-R

DENNIS THOMAS P JR & KATHLEEN  
30 COLONY RD  
SPRINGFIELD, MA 01106

48-13-0-R

WATSON CLYDE D QPR TRUST  
TRS: WATSON CLYDE D  
55 THREE MILE RD  
ETNA, NH 03750-3809

Key: 2749

Town of TRURO - Fiscal Year 2022

9/15/2021 10:15 am SEQ #: 2.817

LEGALS

CURRENT OWNER		PARCEL ID		LOCATION	
CAPE RENTAL LLC RES AGT: KEVIN WHITELAW 275 JACK BOOT WAY MONUMENT, CO 80132		48-12-0		127 SO PAMET RD	
TRANSFER HISTORY		DOS	T	SALE PRICE	BK-PG (Cert)
CAPE RENTAL LLC		03/19/2020	F	1 (222128)	
WHITELAW KEVIN D		12/04/2018	A	10 (218068)	
WHITELAW JAMES G		05/31/2006	99	1 (180196)	

CLASS	CLASS%	DESCRIPTION		BN ID	BN	CARD	
1010	100	SINGLE FAMILY			1	1 of 2	
PMT NO	PMT DT	TY	DESC	AMOUNT	INSP	BY	1st %
19-069X	03/11/2019	3	REPAIR/REMOD	11,000	05/23/2019	LG	100 100
06-286	12/07/2006	10	ALL OTHERS	140,000	06/05/2008	JH	100 100
06-287	12/07/2006	40	STUDIO	80,000	06/05/2008	JH	100 100
99-078	04/01/1999	10	ALL OTHERS	2,500	07/01/2000		100 100
92-063	06/08/1992	3	REPAIR/REMOD	1,000	06/18/1993		100 100

LAND

CD	T	AC/SF/UN	Nbhd	Infl1	Infl2	ADJ BASE	SAF	Infl3	Lpi	VC	CREDIT AMT	ADJ VALUE	
100	A	0.775 16	1.00	E25	0.75	RW5	0.90	1,366,369	1.00	1	1.00	SW1 7.50	1,058,940
300	A	2.525 16	1.00	1	1.00	1	1.00	154,500	1.00	1	1.00	SW1 7.50	390,110

DETACHED

TOTAL	3.300 Acres		ZONING	NSD	FRNT	0	ASSESSED	CURRENT	PREVIOUS
Nbhd	NAT'L SEASHORE						LAND	1,449,100	1,449,100
Infl1	EROSION						BUILDING	356,200	322,500
Infl2	RIGHT OF WAY						DETACHED	1,800	1,800
							OTHER	179,500	157,400
							<b>TOTAL</b>	<b>1,986,600</b>	<b>1,930,800</b>

ROW ADJ=PUBLIC HAS ACCESS TO BEACH (P/O PCL) GRANTED TO ABUTTER (TOWN OF TRURO PER DOC #113563.)

TY	QUAL	COND	DIM/NOTE	YB	UNITS	ADJ PRICE	RCNLD
UTB	A	1.00	D+ 0.30 12*21		252	17.80	1,300
WDK	A	1.00	A 0.75 6*12		72	10.00	500

BUILDING	CD	ADJ	DESC	MEASURE	9/5/2014	FC
MODEL	1		RESIDENTIAL	LIST	6/25/2010	JH
STYLE	7	1.20	OLD STYLE [100%]	REVIEW	12/15/2010	MR
QUALITY	+	1.10	GOOD-AVE+ [100%]			
FRAME	1	1.00	WOOD FRAME [100%]			

YEAR BLT	1892	SIZE ADJ	1.020	ELEMENT	CD	DESCRIPTION	ADJ	S	BAT	T	DESCRIPTION	UNITS	YB	ADJ PRICE	RCN	TOTAL RCN	565,412
NET AREA	1,644	DETAIL ADJ	1.000	FOUNDATION	4	BSMT WALL	1.00	+	BMU	N	BSMT UNFINISHED	1,344		53.36	71,712		
\$NLA(RCN)	\$344	OVERALL	1.150	EXT. COVER	1	WOOD SHINGLES	1.00	+	BAS	L	BAS AREA	1,644	1892	235.89	387,800		
				ROOF SHAPE	2	HIP	1.00	B	OPA	N	OPEN PORCH	374		53.30	19,935		
				ROOF COVER	1	ASPHALT SHINGLE	1.00	C	WDK	N	ATT WOOD DECK	400		41.02	16,408		
				FLOOR COVER	2	SOFTWOOD	1.00	D	EPA	N	ENCL PORCH	132		111.48	14,716		
				INT. FINISH	3	WOOD PANEL	1.00	E	BGR	N	SF BSMT GARAGE	432		76.60	33,092		
				HEATING/COOLING	5	ELECTRIC	0.95	WDK	N	ATT WOOD DECK	300		43.43	13,029			
				FUEL SOURCE	3	ELECTRIC	1.00	MST	O	MASONRY STACK	1		2,419.30	2,419			
								ODS	O	OUT DOOR SHOWER			0.00				

BUILDING

LAND

BLDG COMMENTS		
PHOTO 05/23/2019		

CONDITION ELEM	CD
EFF.YR/AGE	1972 / 48
COND	37 37 %
FUNC	0
ECON	0
DEPR	37 % GD 63
RCNLD	\$356,200

Key: 2749

Town of TRURO - Fiscal Year 2022

9/15/2021 10:15 am SEQ #: 2.818

LEGAL

CURRENT OWNER		PARCEL ID	LOCATION			
CAPE RENTAL LLC RES AGT: KEVIN WHITELAW 275 JACK BOOT WAY MONUMENT, CO 80132		48-12-0	127 SO PAMET RD			
TRANSFER HISTORY		DOS	T	SALE PRICE	BK-PG (Cert)	

CLASS	CLASS%	DESCRIPTION			BN ID	BN	CARD
1010	100	SINGLE FAMILY				2	2 of 2
PMT NO	PMT DT	TY	DESC	AMOUNT	INSP	BY	1st %

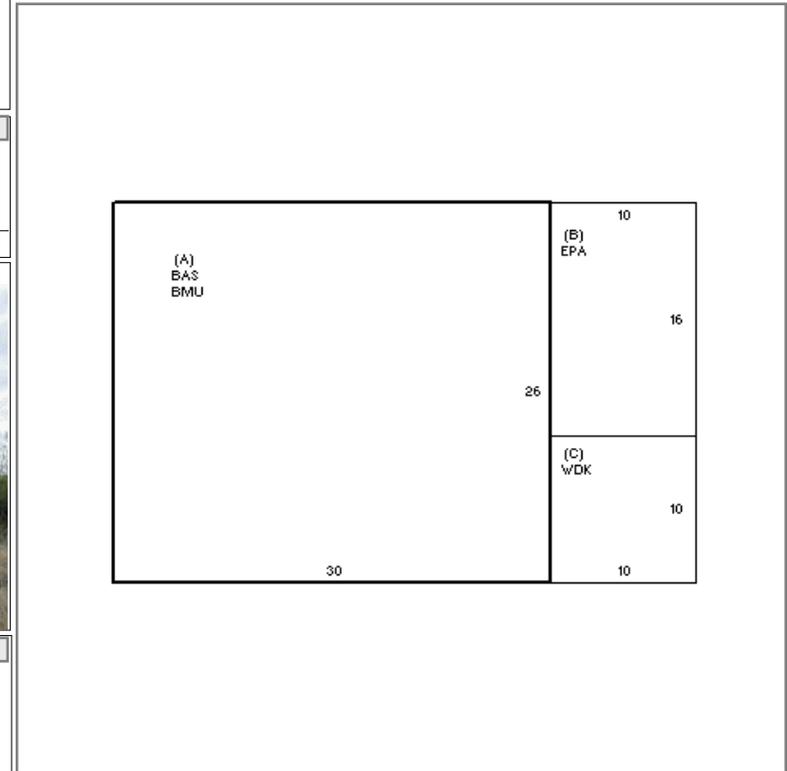
LAND

CD	T	AC/SF/UN	Nbhd	Infl1	Infl2	ADJ BASE	SAF	Infl3	Lpi	VC	CREDIT AMT	ADJ VALUE

TOTAL	ZONING	FRNT	ASSESSED	CURRENT	PREVIOUS
Nbhd	NOTE		LAND	179,500	
Infl1		BUILDING			
Infl2		DETACHED			
			OTHER		
			TOTAL		

DETACHED

TY	QUAL	COND	DIM/NOTE	YB	UNITS	ADJ PRICE	RCNLD



BUILDING

BUILDING	CD	ADJ	DESC	MEASURE	9/15/2014	FC
MODEL	1		RESIDENTIAL	LIST	6/25/2010	JH
STYLE	14	0.90	DET BLDG [100%]	REVIEW	12/15/2010	MR
QUALITY	A	1.00	AVERAGE [100%]			
FRAME	1	1.00	WOOD FRAME [100%]			

BLDG COMMENTS  
HAS KITCH BUT NO STOVE.

LAND

YEAR BLT	2007	SIZE ADJ	1.050	ELEMENT	CD	DESCRIPTION	ADJ	S	BAT	T	DESCRIPTION	UNITS	YB	ADJ PRICE	RCN	TOTAL RCN	206,325		
NET AREA	780	DETAIL ADJ	1.000	FOUNDATION	4	BSMT WALL	1.00	A	BMU	N	BSMT UNFINISHED	780		46.30	36,114	CONDITION ELEM	CD		
\$NLA(RCN)	\$265	OVERALL	0.930	EXT. COVER	1	WOOD SHINGLES	1.00	A	BAS	L	BAS AREA	780	2007	184.86	144,193				
				ROOF SHAPE	1	GABLE	1.00	B	EPA	N	ENCL PORCH	160		80.15	12,824				
				ROOF COVER	1	ASPHALT SHINGLE	1.00	C	WDK	N	ATT WOOD DECK	100		42.00	4,200				
				FLOOR COVER	1	HARDWOOD	1.00	GFP	O	O	GAS FIREPLACE	1		5,493.80	5,494				
				INT. FINISH	2	DRYWALL	1.00												
				HEATING/COOLING	9	WARM/COOL AIR	1.03												
				FUEL SOURCE	2	GAS	1.00												
																		EFF.YR/AGE	2007 / 13
																		COND	13 13 %
																		FUNC	0
																		ECON	0
																		DEPR	13 % GD 87
																		RCNLD	\$179,500

Key: 2745

Town of TRURO - Fiscal Year 2022

9/15/2021 10:15 am SEQ #: 2.812

LEG  
AL  
LAND

CURRENT OWNER		PARCEL ID		LOCATION	
THOMAS P DENNIS JR REV TRUST & KATHLEEN C WESTHEAD-DENNIS REV C/O DENNIS GROUP 1537 MAIN ST SPRINGFIELD, MA 01103		48-8-0		133 SO PAMET RD	
TRANSFER HISTORY		DOS	T	SALE PRICE	BK-PG (Cert)
THOMAS P DENNIS JR REV TR		12/08/2020	F	1 33550-123	
DENNIS THOMAS P JR & LAVIN RICHARD R & LIPMAN		03/25/2014	QS	825,000 28049-220	
		01/22/1996	K	248,140 10022-241	

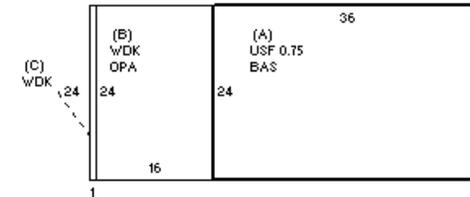
CLASS	CLASS%	DESCRIPTION		BN ID	BN	CARD	
1010	100	SINGLE FAMILY			1	1 of 1	
PMT NO	PMT DT	TY	DESC	AMOUNT	INSP	BY	1st %
15-039	03/16/2015	3	REPAIR/REMOD	250,000	10/06/2015	FC	100 100
15-013	01/29/2015	5	DEMO	50,000	10/06/2015	FC	100 100
11-002	01/04/2011	90	BP NVC	14,000	03/02/2012	FC	100 100
05-157	09/20/2005	2	ADDITION	35,000	05/24/2007	JH	100 100
01-058	04/13/2001	2	ADDITION	25,000	03/14/2003	TG	100 100

CD	T	AC/SF/UN	Nbhd	Inf1	Inf2	ADJ BASE	SAF	Inf3	Lpi	VC	CREDIT AMT	ADJ VALUE
100	A	0.320 16 1.00	E50	0.50	RW5 0.90	910,913	1.85 1	1.00	SW1	7.50		538,330

TOTAL	13,939 SF	ZONING	NSD	FRNT	0	ASSESSED	CURRENT	PREVIOUS
Nbhd	NAT'L SEASHORE	NOTE	LAND	538,300	538,300			
Inf1	EROSION		BUILDING	247,900	224,200			
Inf2	RIGHT OF WAY		DETACHED	0	0			
			OTHER	0	0			
			<b>TOTAL</b>	<b>786,200</b>	<b>762,500</b>			

10/6/15: NO ACCESS TO MEASURE 2ND FLR REAR WDK'S

TY	QUAL	COND	DIM/NOTE	YB	UNITS	ADJ PRICE	RCNLD



BLDG COMMENTS
UC=MEASURE 2ND FLR REAR DECKS+CHECK FOR 1ST FLR FRONT DECK.

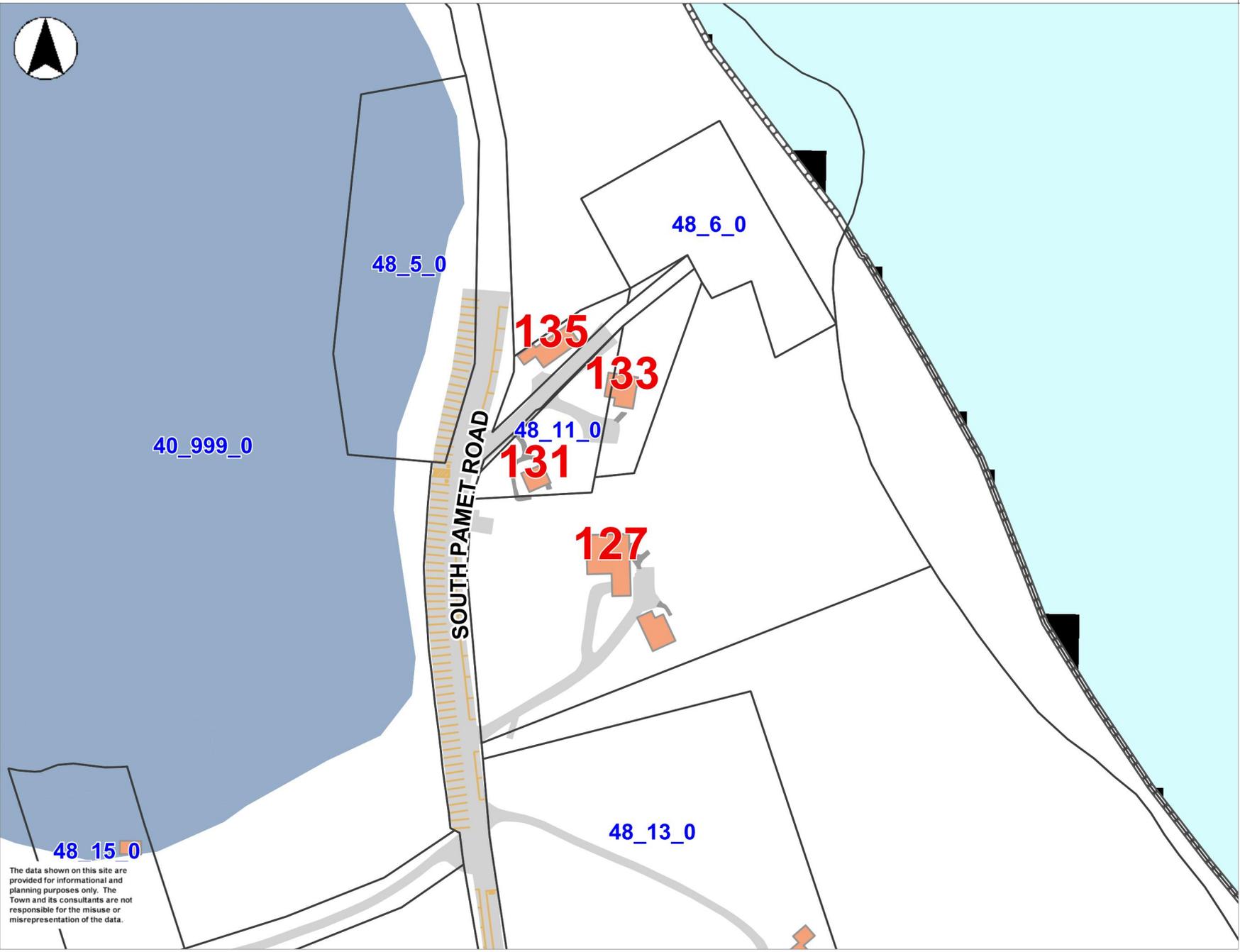
DET  
ACHED

BUILDING	CD	ADJ	DESC	MEASURE	10/1/2013	FC
MODEL	1		RESIDENTIAL	LIST	10/6/2015	EST
STYLE	7	1.20	OLD STYLE [100%]	REVIEW	12/15/2010	MR
QUALITY	A	1.00	AVERAGE [100%]			
FRAME	1	1.00	WOOD FRAME [100%]			

YEAR BLT	1850	SIZE ADJ	1.020	ELEMENT	CD	DESCRIPTION	ADJ	S	BAT	T	DESCRIPTION	UNITS	YB	ADJ PRICE	RCN
NET AREA	1,512	DETAIL ADJ	1.000	FOUNDATION	4	BSMT WALL	1.00	A	BAS	L	BAS AREA	864	1850	237.51	205,210
\$NLA(RCN)	\$241	OVERALL	1.230	EXT. COVER	1	WOOD SHINGLES	1.00	A	USF	L	UP-STRY FIN	648	1850	185.04	119,907
				ROOF SHAPE	1	GABLE	1.00	B	OPA	N	OPEN PORCH	384		51.83	19,902
				ROOF COVER	1	ASPHALT SHINGLE	1.00	+	WDK	N	ATT WOOD DECK	408		37.54	15,315
				FLOOR COVER	1	HARDWOOD	1.00								
				INT. FINISH	1	PLASTER	1.00								
				HEATING/COOLING	9	WARM/COOL AIR	1.03								
				FUEL SOURCE	1	OIL	1.00								

TOTAL RCN	364,534
CONDITION ELEM	CD
EFF.YR/AGE	1980 / 40
COND	32 32 %
FUNC	0 UC
ECON	0
DEPR	32 % GD 68
RCNLD	\$247,900

B  
U  
I  
L  
D  
I  
N  
G



- Parcels
- Buildings
- Sidewalks
- Street Pavement
- Town Boundary
- MA Highways
  - Interstate
  - US Highway
  - Numbered Routes
- Street Centerlines
- Abutting Towns Labels
- Abutting Towns
- Waterbodies
- Major Streams
- Town Mask
- Bath Donut2
  - 0-5 ft
  - 5-10 ft
  - 10-15 ft
  - 15-20 ft
  - 20-30 ft
  - 30-40 ft
  - 40-50 ft
  - 50-60 ft
  - 60-70 ft
  - 70+ ft
- Bathymetry
  - 0-5 ft
  - 5-10 ft
  - 10-15 ft
  - 15-20 ft
  - 20-30 ft
  - 30-40 ft
  - 40-50 ft
  - 50-60 ft
  - 60-70 ft
  - 70+ ft
- Background

The data shown on this site are provided for informational and planning purposes only. The Town and its consultants are not responsible for the misuse or misrepresentation of the data.



Property Address: 127 South Pamet Road, Truro  
Lot 1-C, LCP 16182-E; Lot 1-D, LCP 16182-F

**QUITCLAIM DEED**

**CAPE RENTAL, LLC**, a Colorado Limited Liability Company  
with a usual address of 275 Jack Boot Way, Monument, CO  
80132,

for consideration paid of TWO MILLION THREE HUNDRED  
FORTY THOUSAND AND NO/100 (\$2,340,000.00)  
DOLLARS,

grant to **THOMAS P. DENNIS, JR. and KATHLEEN C.  
DENNIS**, husband and wife as Tenants by the Entirety, both of  
30 Colony Road, Springfield, MA 01106,

with QUITCLAIM COVENANTS

The land, with the buildings and improvements thereon, situated  
in Truro, Barnstable County, Massachusetts, described as  
follows:

**LOT 1-C, LAND COURT PLAN 16182-E**

**and**

**LOT 1-D, LAND COURT PLAN 16182-F**

Said lot is conveyed together with the benefit of and subject to  
all other rights, easements, privileges, restrictions and  
reservations of record, insofar as the same may now be in force  
and applicable.

By signing below Grantor hereby releases all rights of  
homestead, and certifies under the penalties of perjury that no  
persons are entitled to any benefits of an existing estate of  
homestead in the premises.

MASSACHUSETTS STATE EXCISE TAX  
BARNSTABLE LAND COURT REGISTRY  
Date: 12-17-2021 @ 02:39pm  
Ctl#: 714  
Fee: \$8,002.80 Cons: \$2,340,000.00  
BARNSTABLE COUNTY EXCISE TAX  
BARNSTABLE LAND COURT REGISTRY  
Date: 12-17-2021 @ 02:39pm  
Ctl#: 714  
Fee: \$7,160.40 Cons: \$2,340,000.00

For title see Certificate of Title 222128.

Property Address: 127 South Pamet Road, Truro, MA 02666.

EXECUTED as a sealed instrument this 16<sup>th</sup> day of December, 2021.

Cape Rental, LLC



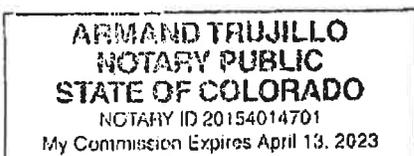
By: Kevin Whitelaw,  
Manager and Real Property  
Signatory

STATE OF COLORADO

County of El Paso, ss.

On this 16 day of December, 2021, before me, the undersigned notary public, personally appeared Kevin Whitelaw, as Manager and Real Property Signatory of Cape Rental, LLC, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, ~~oath or affirmation of a credible witness, personal knowledge of the undersigned,~~ to be the person whose name is signed on the preceding Deed, and acknowledged to me that he signed it voluntarily as his free act and deed on behalf of said Cape Rental, LLC, and who swore or affirmed to me with respect to the homestead certifications in the foregoing deed that they are correct to the best of his information and belief.

\*COLORADO  
DRIVER'S  
LICENSE



Notary Public:   
My Commission Expires: 04/13/2023  
Stamp or Seal:



*The Commonwealth of Massachusetts*  
*Secretary of the Commonwealth*  
*State House, Boston, Massachusetts 02133*

William Francis Galvin  
Secretary of the  
Commonwealth

December 14, 2021

TO WHOM IT MAY CONCERN:

I hereby certify that a certificate of registration of a Foreign Limited Liability Company was filed in this office by

**CAPE RENTAL, LLC**

in accordance with the provisions of Massachusetts General Laws Chapter 156C on **December 10, 2021**.

I further certify that said Limited Liability Company has filed all annual reports due and paid all fees with respect to such reports; that said Limited Liability Company has not filed a certificate of cancellation or withdrawal; that there are no proceedings presently pending under the Massachusetts General Laws Chapter 156C, § 72 for revocation of said Limited Liability Company's authority to transact business in the Commonwealth; and that said Limited Liability Company is in good standing with this office.

I also certify that the names of all managers listed in the most recent filing are: **KEVIN WHITELAW**

I further certify that the name of persons authorized to act with respect to real property instruments listed in the most recent filings are: **KEVIN WHITELAW**



In testimony of which,  
I have hereunto affixed the  
Great Seal of the Commonwealth  
on the date first above written.

A handwritten signature in cursive script that reads "William Francis Galvin".

Secretary of the Commonwealth

Processed By:sam

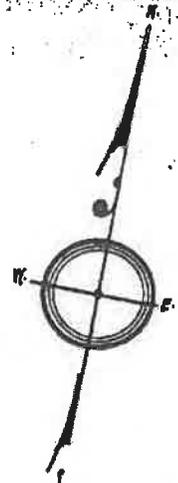
JOHN F. MEADE, ASSISTANT RECORDER  
BARNSTABLE REGISTRY LAND COURT DISTRICT  
RECEIVED & RECORDED ELECTRONICALLY

SUBDIVISION PLAN OF LAND IN TRURO

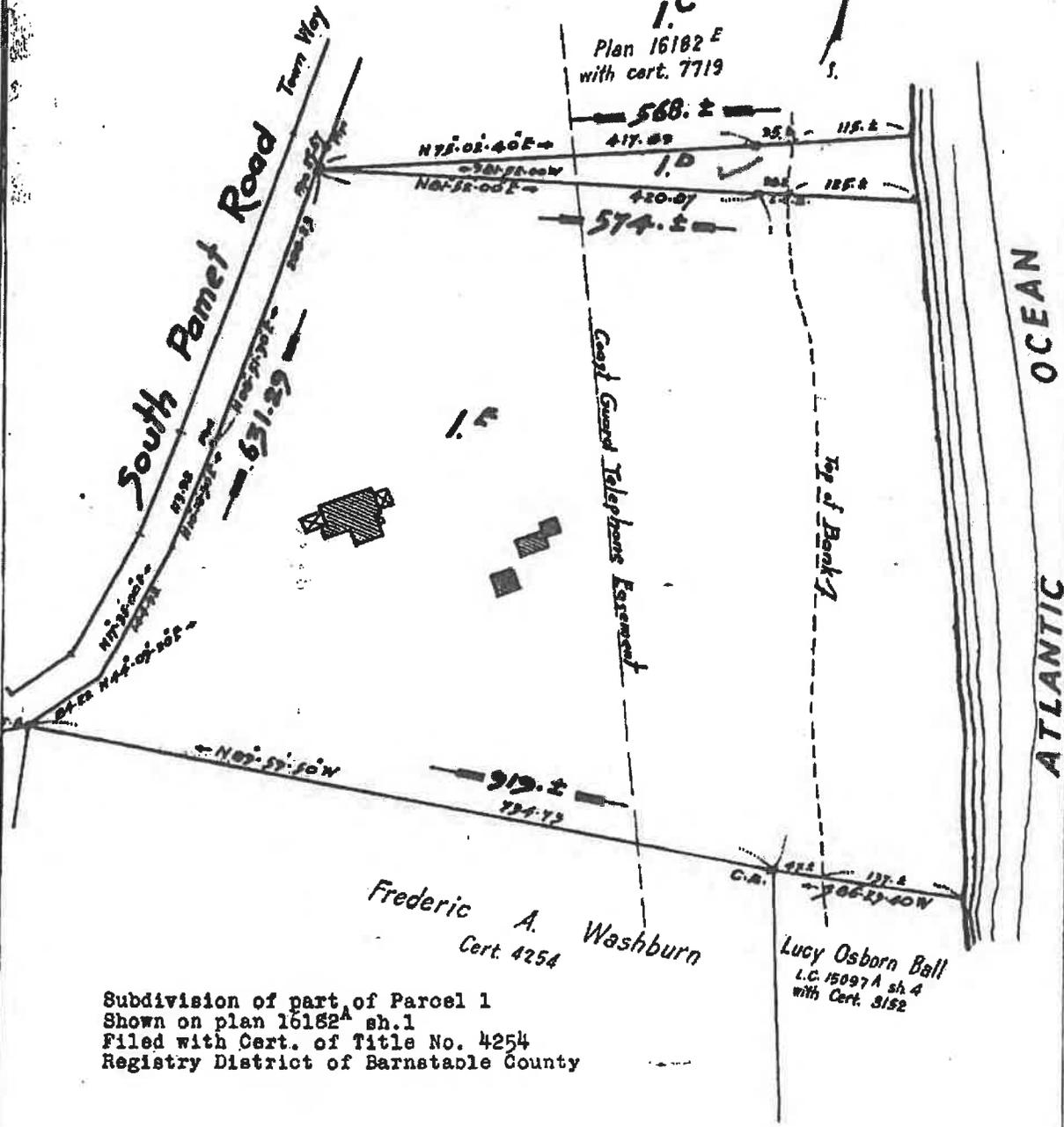
John R. Dyer, O. E.

May - 1949

16182 F



I.C.  
Plan 16182 E  
with cert. 7719



Frederic A. Washburn  
Cert. 4254

Lucy Osborn Ball  
L.C. 15097 A sh. 4  
with Cert. 3152

Subdivision of part of Parcel 1  
Shown on plan 16182<sup>A</sup> sh. 1  
Filed with Cert. of Title No. 4254  
Registry District of Barnstable County

Separate certificates of title may be issued  
for lots 1 and 1E as shown hereon  
By the Court

*John R. Dyer*  
Recorder

Copied part of plan  
filed on  
**LAND REGISTRATION OFFICE**  
JUNE 1, 1949  
Scale of this plan 120 feet to an inch  
W.T. Patricough, Engineer for Court

JUNE 1, 1949



**QUITCLAIM DEED**

THOMAS P. DENNIS, JR. and KATHLEEN C. DENNIS, of Springfield, Massachusetts

for consideration paid and in full consideration of ONE DOLLAR (\$1.00)

grant a one-half (1/2) interest as tenant in common to THOMAS P. DENNIS, JR., not individually but solely as Trustee of THE THOMAS P. DENNIS, JR. REVOCABLE TRUST OF 2020 u/d/t dated of even date herewith, as more particularly described in a Trustee's Certificate recorded herewith and having a mailing address of 30 Colony Road, Springfield, MA 01106, and a one-half interest as tenant in common to KATHLEEN C. WESTHEAD-DENNIS, not individually but solely as Trustee of THE KATHLEEN C. WESTHEAD-DENNIS REVOCABLE TRUST OF 2020 u/d/t dated of even date herewith, as more particularly described in a Trustee's Certificate recorded herewith and having a mailing address of 30 Colony Road, Springfield, MA 01106

With Quitclaim Covenants

That certain parcel of land and the improvements thereon located off South Pamet Road, Truro, Barnstable County, Massachusetts, commonly known as the Boathouse, and being more particularly described as follows:

Starting at a point on South Pamet Road as shown on the Plan hereinafter referenced then proceeding N 84° 37' 24" E for a distance of 140.98 feet to a point:

Then turning and running N 01° 52' 24" E 17.39 feet to the point of beginning;

Then from the point of beginning running N 07° 07' 30" E 203.64 feet;

Then turning and running N 57° 24' 30" E 73.06 feet;

Then turning and running S 34° 49' 56" E 33.69 feet;

Then turning and running S 15° 51' 54" W 216.03 feet to a point;

Then turning and running S 82° 45' 34" W 47.24 feet returning to the point of beginning.

Property Address: 133 South Pamet Road, Truro, Massachusetts

Being the same land as that described in that certain "Plan of Land in Truro, MA made for Access America, Inc. dated September 17, 1993" by Slade Associates, Inc. recorded with the Barnstable Registry of Deeds, Plan Book 519 , Page No. 31.

Together with a right of way over the "Bob White" land for ingress and egress by automobile to and from the property described above. Subject to the public right of way to the beach.

Meaning and intending to convey all the property conveyed by deed of La Jolla University dated October 22, 1991 recorded with the Barnstable Registry of Deeds, Book 7724, Page 63 described as follows:

BOUNDED on the North by land now or formerly of Ball, seventy-two and  $76/100$  (72.76) feet, more or less;

BOUNDED on the East by land now or formerly of the Town of Truro, thirty-three and  $66/100$  (33.66) feet, more or less;

BOUNDED on the Southeast by land now or formerly of Whitelaw, two hundred seventeen and  $14/100$  (217.14) feet, more or less;

BOUNDED on the South by land now or formerly of Whitelaw, forty-seven and  $36/100$  (47.36) feet, more or less;

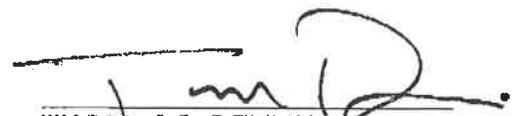
BOUNDED on the West by lands now or formerly of Madelyn E. Strack, executrix under the will of Elsie Strack, and Thatcher, one hundred ninety-eight (198) feet, more or less;

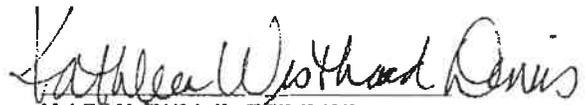
The within conveyance is made with the benefit of and subject to all rights, easements, reservations and restrictions of record in so far as the same are now in force and applicable.

For title see deed recorded with said Deeds in Book 28049, Page 220.

**Signatures on Following Page**

WITNESS our hands and seals this 35 day of NOVEMBER, 2020.

  
THOMAS P. DENNIS, JR.

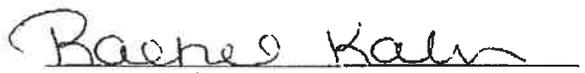
  
KATHLEEN C. DENNIS

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk.

On this 35<sup>th</sup> day of November, 2020, before me, the undersigned notary public, personally appeared THOMAS P. DENNIS, JR. and KATHLEEN C. DENNIS, proved to me through satisfactory evidence of identification, which was  personal knowledge or \_\_\_\_\_, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

 **RACHEL L. KALIN**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
November 4, 2027

  
Notary Public  
Print Name: Rachel Kalin

(affix seal)

**PREPARED BY:**  
Rachel Lynn Kalin, Esq.  
Bass, Doherty & Finks, PC  
40 Soldiers Field Place  
Boston, MA 02135



BARNSTABLE CO. RECEIVED  
 9:25 AM 11/28 1995  
 AND IS RECORDED

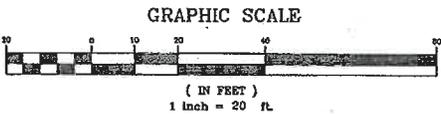
SEE PLAN BOOK  
 109, PAGE 1

TOWN OF  
 TRURO



FOR REGISTRY USE

I HEREBY CERTIFY THAT I HAVE CONFORMED  
 WITH THE RULES AND REGULATIONS OF THE  
 REGISTERS OF DEEDS IN PREPARING THIS PLAN  
*Richard Lay* DATE 9/10/93  
 REGISTERED LAND SURVEYOR



U.S.A.  
 LOT 3  
 L.C.P. #15097A5

JOHN M.  
 MOORE, JR

N.P.S. TRACT 17T-2781

JOHN  
 F.  
 HYLAND

SEE PLAN BOOK  
 76, PAGE 85  
 N.P.S. TRACT 17T-8610



N.P.S. TRACT 17T-2783

LOT 3A  
 L.C.P. #15097B

D.H. IN  
 C.B. SET

A =  
 13,952 SQ. FT. ±  
 =  
 0.320 AC. ±

APPROVAL UNDER THE SUBDIVISION  
 CONTROL LAW NOT REQUIRED

*James G. Whitelaw*  
*Robert & Susan Whitelaw*  
*Betsy Ann Brown*

FOR THE TRURO PLANNING BOARD  
 DATE 10/6/98

JAMES G.  
 &  
 ROBERT & SUSAN  
 WHITELAW

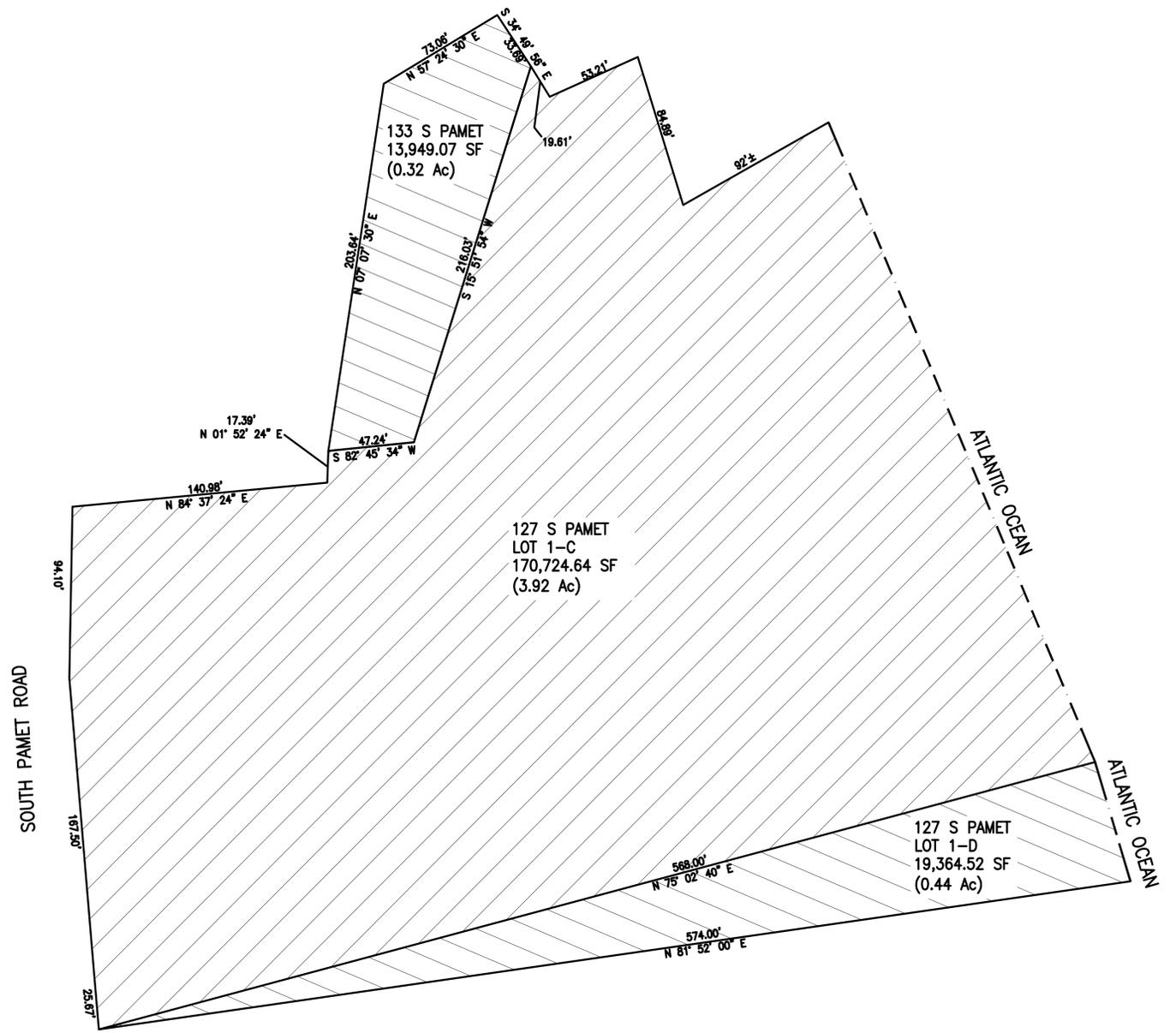
PLAN OF LAND  
 IN  
 TRURO, MA

MADE FOR  
**ACCESS AMERICA, INC.**

SCALE: 1"=20'  
 SLADE ASSOCIATES, INC.,  
 RTE. 6 & PINE POINT RD.,

SEPT. 17, 1993  
 REG. LAND SURVEYORS  
 WELLFLEET, MA 02667

519-31



- NOTES:**
1. ALL DIMENSIONS AND BEARINGS SHOWN FOR 133 SOUTH PAMET ROAD WERE TAKEN FROM QUITCLAIM DEED, DATED 03-25-2014, WITH LEGAL DESCRIPTION DERIVED FROM "PLAN OF LAND IN TRURO, MA MADE FOR ACCESS AMERICA, INC. DATED SEPTEMBER 17, 1993" BY SLADE ASSOCIATES, INC. RECORDED WITH THE BARNSTABLE REGISTRY OF DEEDS, PLAN BOOK 519, PAGE NO. 31.
  2. ALL DIMENSIONS AND BEARINGS SHOWN FOR 127 SOUTH PAMET ROAD WERE TAKEN FROM REGISTRY DISTRICT OF BARNSTABLE COUNTY LAND IN TRURO BOOK OF DEEDS, LAND COURT PLANS 16182-E AND 16182-F, DATED OCTOBER 1945.
  3. BEARINGS MISSING FROM 127 SOUTH PAMET ROAD LOT 1-C WERE ILLEGIBLE ON THE ABOVE REFERENCED DOCUMENTS. THE LOTS WERE LAID OUT USING ALL LEGIBLE INFORMATION FROM THE DOCUMENTS, USING THE SOUTH EAST CORNER WHERE LOTS 1-C AND 1-D INTERSECT AS THE BASIS OF PLOTTING THE PROPERTY LINES.

**AREAS**

127 SOUTH PAMET ROAD LOT 1-C = 170,724.64 SF (3.92 AC)
127 SOUTH PAMET ROAD LOT 1-D = 19,364.52 SF (0.44 AC)
133 SOUTH PAMET ROAD = 13,949.07 SF (0.32 AC)
TOTAL COMBINED AREA = 204,038.23 SF (4.68 AC)





# TOWN OF TRURO

## ZONING BOARD OF APPEALS

Meeting Minutes

January 22, 2018 – 7:00 pm

REMOTE ZONING BOARD OF APPEALS MEETING

**Members Present (Quorum):** Bertram “Buddy” Perkel (Chair); Fred Todd (Vice Chair); Art Hultin (Clerk); John Dundas; John Thornley; Sue Areson (Alt.); Nicholas Brown (Alt.)

**Members Absent:**

**Other Participants:**

The meeting convened at 7:00 pm, Monday, January 22, 2018, by Chair Perkel.

**Public Hearing**

**2017-016/ZBA – Lexvest East Harbour, LLC**, by agent/attorney Lester J. Murphy, Jr., for property located at 618 Shore Road, Truro, MA (Atlas 5, Parcel 13, Certificate of Title # 208141, Plan #40948-A). Applicant is requesting a Special Permit, with reference to Section 30.7.A of the Zoning Bylaw and M.G.L. Chapter 40A §6 for alterations to lawful pre-existing, non-conforming motel building and manager’s building including alteration and reduction of Units as per plans filed.

Chair Perkel read aloud a continuance request to February 26, 2018, from Mr. Murphy.

**Member Thornley made a motion to continue the matter of 2017-016/ZBA to February 26, 2018.**

**Vice Chair Todd seconded the motion.**

**So voted, 7-0, motion carries.**

**Approval of Minutes**

Chair Perkel opened the discussion for the review of the minutes from the ZBA meeting held on October 30, 2017. Members examined the minutes for any additions or corrections. Chair Perkel noted that he had no additions or corrections for the minutes.

**Vice Chair Todd made a motion to approve the minutes from October 30, 2017, as written.**

**Chair Perkel seconded the motion.**

**So voted, 7-0, motion carries.**

**Board Action/Review**

Chair Perkel opened the discussion to schedule future ZBA monthly meetings from 7:00 pm to 5:30 pm. Member Hultin noted that there are merits for meeting earlier as it is during the flow of the workday. Vice Chair Todd commented that it made sense for the applicants and attorneys who appear at a

reasonable time. Member Brown said that he agreed with the earlier time. Member Dundas commented that he was in favor of the earlier meeting time but wondered about the availability of self-employed applicants who may have more irregular work schedules. Chair Perkel commented that the earlier time would reduce the amount of time that attorneys could charge their clients which was beneficial to the applicants. Member Hultin commented that there should be some flexibility in scheduling an attorney who is traveling from Barnstable to appear with an applicant towards the end of the agenda. Member Hultin and Member Thornley noted that once the agenda is published the order cannot be changed.

**Member Hultin made a motion to change the time for all future monthly ZBA meetings to 5:30 pm.**

**Vice Chair Todd seconded the motion.**

**So voted, 7-0, motion carries.**

**Member Thornley made a motion to adjourn at 7:15 pm.**

**Member Hultin seconded the motion.**

**So voted, 7-0, motion carries.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alexander O. Powers". The signature is stylized with a large initial "A" and a long horizontal stroke.

Alexander O. Powers

Board/Committee/Commission Support Staff



# TOWN OF TRURO

## ZONING BOARD OF APPEALS

Meeting Minutes

May 21, 2018 – 5:30 pm

### ZONING BOARD OF APPEALS MEETING

**Members Present (Quorum):** Bertram “Buddy” Perkel (Chair); Fred Todd (Vice Chair); Art Hultin (Clerk); John Dundas; John Thornley; Sue Areson (Alt.); Nicholas Brown (Alt.)

**Members Absent:**

The meeting convened at 5:30 pm, Monday, May 21, 2018, by Chair Perkel.

**Public Hearing – Continued**

**2018-002/ZBA – Timsneck, LLC**, by Attorney Benjamin Zehnder, for property located at 10 Thornley Meadow Road, Truro, MA (Atlas Sheet 53, Parcel 87, title reference: Book 30529, Page 134). Applicants are requesting a Special Permit and/or Variance, whichever the Board deems appropriate, with reference to Sections 10.4 and 30.7B of the Truro Zoning Bylaw for additions to a pre-existing, non-conforming single-family dwelling.

A written continuance was requested by Mr. Zehnder and Chair Perkel requested a motion to continue.

**Member Hultin made a motion to continue this matter to the next ZBA meeting.**

**Member Thornley seconded the motion.**

**So voted, motion carries, 6-0-1.**

**Public Hearing**

Prior to the start of the new Public Hearings, Member Hultin *recused* himself from the next two public hearings and departed.

**2018-004/ZBA – Michael Miller and Sarah Paul**, by Architectural Designer Nick Waldman, for property located at 66 Depot Road, Truro, MA (Atlas Sheet 50, Parcel 28, Certificate of Title #214237, Land Ct. Lot #A-2, Plan #18018-B). Applicant is seeking a Special Permit with reference to Section 30.7A of the Truro Zoning Bylaw to construct an addition to a pre-existing, non-conforming structure.

Chair Perkel invited Mr. Waldman to provide an overview of the project. Mr. Waldman described the project to take the current structure down to the existing foundation, renovate and rebuild on top of the existing foundation by adding a kitchen, a dining room, a mudroom, and adding a screen porch on to half of an existing deck.

Members and Mr. Waldman discussed the following topics after Mr. Waldman’s presentation:

- Height of the new structure
- Second floor layout and no change to square footage
- Property lines and setbacks determined by Coastal Engineering indicated on the Site Plan

Chair Perkel announced that only the permanent Members present, and Member Brown would vote on any motion in this matter.

**Vice Chair Todd made a motion to grant a Special Permit in the matter of 2018-004/ZBA as submitted. Member Thornley seconded the motion. So voted, 5-0, motion carries.**

**2018-003/ZBA – Susan Lewis Solomont**, by Attorney Sarah Turano-Flores, for property located at 37 Stephens Way, Truro, MA (Atlas Sheet 58, Parcel 1, title reference: Book 10986, Page 185). Applicant is seeking to overturn the Building Commissioner’s decision to not issue a permit and is also requesting a Special Permit and/or Variance, whichever the Board deems appropriate, with reference to Section 10.2 and 50.1A of the Truro Zoning Bylaw to construct a single-family dwelling.

Chair Perkel invited Ms. Turano-Flores to present and provide a brief overview of the project. Ms. Turano-Flores noted that the Applicant acquired in 1997. The proposed project is for a 3,000 square foot, 4-bedroom home, that will be nestled in the surrounding topography. Ms. Turano-Flores noted that a building permit for this project was previously denied. Ms. Turano-Flores stated that the home can be built “*by right*”. Ms. Turano-Flores then provided detailed historical information regarding the property and changes to Zoning Bylaw changes over the years dating back to 1970 to the present. Ms. Turano-Flores stated that there are several forms of relief in front of the ZBA: 1. The lot is buildable as it is fully conformed for zoning; 2. As the lawfully created lot, in the Building Commissioner’s denial of the application, was rendered non-conforming under the Klein decision to which the applicant could request to be “*grandfathered*” under the Zoning Bylaw.

Members and Ms. Turano-Flores discussed the following topics after Ms. Turano-Flores’ presentation:

- The Building Commissioner’s denial letter specifying that the Applicant could apply for a Special Permit under 30.7.
- Mr. Peroda’s letter of opposition to the project as the term “*lot*” didn’t appear in the referenced Zoning Bylaw.
- Several Members stated that they want an opinion in this matter by the Town Counsel.
- Additional information regarding the topography of the lot.
- Additional information regarding the access to the lot and extension.

Chair Perkel stated that he would like to have Town Counsel’s advice on several issues in this matter and asked for a motion to continue this matter to the next ZBA meeting.

**Vice Chair Todd made a motion to continue the matter of 2018-003/ZBA to June 25, 2018. Member Thornley seconded the motion. So voted, 6-0, motion carries.**

Ms. Turano-Flores asked Chair Perkel if she should provide the additional information requested by the Members prior to the Members meeting with Town Counsel and Chair Perkel replied in the affirmative.

**Approval of Minutes**

Chair Perkel opened the discussion for the review of the minutes from the April 23, 2018, ZBA meeting. Members examined the minutes for any additions or corrections. Member Areson noted that there was an incorrect number of votes as only 5 Members were present and not 6 Members. The corrections were made for those recorded votes. Vice Chair Todd noted that his name was incorrect. That correction was made.

**Vice Chair Todd made a motion to approve the minutes from April 23, 2018, as amended.**

**Chair Perkel seconded the motion.**

**So voted, 5-0-1, motion carries.**

**Member Thornley made a motion to adjourn at 6:17 pm.**

**Chair Perkel seconded the motion.**

**So voted, 6-0, motion carries.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alexander O. Powers". The signature is written in a cursive style with a large, sweeping initial "A".

Alexander O. Powers

Board/Committee/Commission Support Staff





# TOWN OF TRURO

## ZONING BOARD OF APPEALS

Meeting Minutes

July 23, 2018 – 5:30 pm

ZONING BOARD OF APPEALS MEETING

**Members Present (Quorum):** Bertram “Buddy” Perkel (Chair); Fred Todd (Vice Chair); Art Hultin (Clerk); John Thornley

**Members Absent:** John Dundas; Sue Areson (Alt.); Nicholas Brown (Alt.)

The meeting convened at 5:30 pm, Monday, July 23, 2018, by Chair Perkel.

### **Public Hearing – Continued**

**2018-007/ZBA – Kevin R. Shea and Judith Richland** for property located at 402 Shore Road, Truro, MA (Atlas Sheet 10, Parcel 22, Registry of Deeds title reference: Book 13530, Page 012). Applicants are seeking a Variance or Amendment to the Variance, whichever the Board deems appropriate, with reference to Section 50.1 (lot size) of the Zoning Bylaw that was granted on January 30, 2017 (docket #2016-013/ZBA) to construct a single-family residence as per plans and extended to July 30, 2018. The Applicant is requesting to substitute the previously approved plans and to amend the period to exercise the Variance to January 30, 2019. This matter is continued from June 25, 2018, when the Board and Applicant agreed that the Applicant would submit revised plans for the Board’s consideration and review.

Chair Perkel recognized Mr. Shea and Attorney Ron Friese substituting this evening for Attorney Chris Snow. Chair Perkel then informed Mr. Friese as only four Members were present this evening a unanimous vote would be required for approval of this application and that there could be the potential of risk to the Applicant to proceed. Chair Perkel noted that the Applicant could continue the hearing and Mr. Friese stated that he understood but wanted to continue. Chair Perkel asked Member Hultin, who had raised a concern at the previous hearing in this matter, for comment. Member Hultin noted that the Applicant had submitted the requested information and that he was in favor of granting a Variance in this matter. Chair Perkel commented that he was in favor to amend and extend the previous Variance. Vice Chair Todd asked for clarification from Chair Perkel. Chair Perkel commented that Member Hultin and Vice Chair Todd agreed that relief should be granted in this matter. The Members concurred.

Chair Perkel recognized Attorney David Bennett who represented Ms. Ryback, the to-be-purchaser of the property, and was in support of the Applicant’s request but who wanted comment should the ZBA invalidate a previous ZBA decision which may adversely affect Ms. Ryback.

Member Hultin asked Mr. Bennett what approvals that he would possibly lose if the tolling calculations changed. Mr. Bennett said that it could invalidate a previously agreed upon sale with a buyer if the Variance amended deadline was not extended.

Mr. Shea stated that it was his intention to close on the property within 30 days and that financing was already secured. Chair Perkel told Mr. Shea, that if the ZBA approved this application that both plans couldn't be approved. Mr. Bennett argued that his client, should Mr. Shea back out of the sale or delay it, could incur an additional two-year approval process as it would have been reinitiated in its entirety.

Chair Perkel noted that the original approval for Variance two years ago, that if the ZBA made no decision this evening, would expire in five days. Chair Perkel told Mr. Bennett that he had to come up with a solution for this matter and the ZBA didn't make recommendations or provide legal advice.

Chair Perkel added that Mr. Bennett that the ZBA couldn't solve his client's problem. Chair Perkel told Mr. Bennett that his client could withdraw that application or the ZBA could proceed with a decision that may not be perfect for his client.

Member Hultin commented that he wondered if there was a way to alter the language to indicate that either plan, the original or the one under consideration tonight (if approved), so it would protect the buyer or the seller so they could proceed with the sale.

Members, Mr. Friese, and Mr. Bennett discussed the following application topics and findings:

- Extension of the Variance to July 30, 2019, to obtain approval of the Seawall Plan by the Conservation Commission
- Added specific language for the plan, dated July 11, 2018, to the original plan
- Deletion of Chapter 2 paragraph 4
- Deletion of Chapter 2 paragraph 8
- Review of Chapter 2 paragraph 9
- Review of Chapter 2 paragraph 12 and the language:
  - "either" and "or" plan for the purpose of the variance
  - Added language to limit the height any fence along the street to no more than 3' in height

**Vice Chair Todd made a motion to grant an amendment to a previously approved Variance, with edits, in the matter of 2018-004/ZBA.**

**Chair Perkel seconded the motion.**

**So voted, 4-0, motion carries.**

Chair Perkel announced the decision, and all parties thanked the Members and departed.

**Without a vote, the meeting adjourned at 6:17 pm.**

Respectfully submitted,



Alexander O. Powers  
Board/Committee/Commission Support Staff



# TOWN OF TRURO

## ZONING BOARD OF APPEALS

Meeting Minutes

December 17, 2018 – 5:30 pm

ZONING BOARD OF APPEALS MEETING

**Members Present (Quorum):** Bertram “Buddy” Perkel (Chair); Fred Todd (Vice Chair); Art Hultin (Clerk); John Thornley; John Dundas; Sue Areson (Alt.); Nicholas Brown (Alt.)

**Members Absent:**

The meeting convened at 5:30 pm, Monday, December 17, 2018, by Chair Perkel.

**Public Hearing – Continued**

**2018-013/ZBA – Kenneth Shapiro**, represented by Attorney Ben Zehnder, for property located at 405 Shore Road, Truro, MA (Atlas Sheet 10, Parcel 5, Registry of Deeds title reference: Book 25631, Page 201). Applicant seeks a Special Permit with reference to Section 30.7 of the Truro Zoning Bylaw for the alteration of a pre-existing, non-conforming garage by replacing the existing structure with a new dwelling and garage structure.

Chair Perkel invited Mr. Zehnder to present. Mr. Zehnder noted that at the last hearing Mr. Lucy and Vice Chair Todd were not voting. Mr. Zehnder said that the lot is non-compliant lot, yet it was a developed lot back in the 1920s or 1930s to the best of Mr. Zehnder’s knowledge. Mr. Zehnder interpreted the statute that if there was a structure was on the lot more than ten years, the project should be treated as a Special Permit.

After his last appearance, Mr. Zehnder recommended to the Applicant that he reduce the size of proposed of the structure 6’ in one direction and 2’ in another. The Applicant reduced the gross floor area from 2,400 square feet to 1,300 square feet and reduced the ridge height. In doing that, the Applicant had to remove the garage from the first floor but had to elevate the first floor above the flood plain requirements. The ridge height is 28.95’ and is conforming. The one item that is not correct on the Site Plan is that the garage is to be removed and Mr. Zehnder noted that it would be appropriate for the ZBA to make that a condition to grant the Special Permit or he can submit an updated set of plans. Mr. Zehnder added that the structure is conforming as to setback requirements and lot coverage requirements. Mr. Zehnder stated that the Applicant’s application had to be reviewed by the ZBA first as the Board of Health (BoH) and Conservation Commission (CC) wanted to be assured that the lot was determined to be buildable by the ZBA before the Applicant appeared in front of the BoH and CC for their approval.

Mr. Zehnder commented that it was hope that the ZBA consider this application favorably and that the project architect was also present to answer any questions.

Member and Mr. Zehnder discussed the following topics:

- Member Hultin commented that he was concerned about the original size of the project and the elevation data. He noted that he found the current plan was quite an improvement and more appropriate for the neighborhood.
- Member Areson reconfirmed the ridge height with Mr. Zehnder.
- Member Dundas had no questions.
- Member Thornley commented that the new proposal was also much improved.
- Vice Chair Todd commented that new structure was a more appropriate scale.

Member Areson asked Mr. Zehnder if the Abutters to the property had provided comments and he stated that he was not aware of any. Unidentified individuals present at the hearing requested copies of the plans which Mr. Zehnder immediately hand out copies for their review. Chair Perkel gave the public an opportunity to review the proposed plans.

Members set the following condition:

- Garage must be removed and not replaced.

Member Hultin asked if due to the age of structure if the Historical Commission had to review the application and Mr. Zehnder replied in the affirmative.

Chair Perkel recognized Annie Ditacchio, a neighbor, who was present and asked the Members if there was a minimum lot size requirement to build for Beach Point. Chair Perkel said that the lot was created prior to the enactment of the Bylaw. Ms. Ditacchio said that if that lot was a buildable lot, then she would consider doing the same to her property as precedence would be established. Chair Perkel noted, with chagrin, that the law does not recognize precedence in ZBA decisions but only to courts of record. Chair Perkel informed Ms. Ditacchio that he would provide time for her to review the elevations on the new plan during this evening's next hearing and give her the opportunity to comment afterwards. Ms. Ditacchio expressed frustration that even the proposed structure is smaller it would still adversely affect her view.

Ms. Ditacchio then requested that the letter of opposition (dated October 18, 2017) submitted by Ms. Marcia Brill, a neighbor at 420 Shore Road, be read aloud and entered into the record. Chair Perkel noted that the letter was in opposition to the size of the original plan and not the current one. Chair Perkel asked if there was anyone else from the public who wished to speak and there were none.

Chair Perkel then closed the public participation portion of the hearing and there was no additional discussion among Members on this matter.

**Member Hultin made a motion to grant a Special Permit in the matter of 2018-003/ZBA with the condition that the existing garage be removed and not replaced as per plans filed.**

**Member Areson seconded the motion.**

**So voted, 7-0, motion carries.**

Mr. Zehnder thanked the Members.

### **Public Hearing**

**2018-014/ZBA – John R. Riemer** for property located at 7 Fisher Road, Truro, MA (Atlas Map 54, Parcel 26). Applicant seeks a Special Permit for approval under Section 50.1 of the Truro Zoning Bylaw concerning minimum sideyard setbacks for the construction of a garage.

Chair Perkel recognized Mr. Riemer and Chair Perkel added that he had a certified certification which may not be included in the Members' packets.

Mr. Riemer stated that he had submitted a detailed report, to include exhibits, which supported his application and would allow the Members to issue a Special Permit for this project. Mr. Riemer added that the Building Commissioner and he had a meeting where the Building Commissioner told him that this project could be granted a Special Permit to which Chair Perkel told Mr. Riemer that he could not speak on behalf of the Building Commissioner. Mr. Riemer then said that he had the support professionals in the building trade. Chair Perkel replied that if any of them were present at tonight's meeting he would give them the opportunity to speak. Mr. Riemer did not indicate that any of those building professionals were present and wanted to speak on his behalf.

Members and Mr. Riemer discussed the following topics:

- Member Hultin asked what provisions of the Bylaw allowed a Special Permit in this matter and opined that this required a Variance.
- Vice Chair Todd asked if this is a new building and not a modification.
- Member Areson asked about the siting of the garage and whether the Applicant could meet setback requirements.
- Chair Perkel asked under what provision of Section 50.1.C allows a Special Permit for a new garage.
- Vice Chair Todd opined that Section 50.1.C does not allow for a new structure.
- Member Dundas agreed with Vice Chair Todd.
- Member Brown agreed with Vice Chair Todd.

Chair Perkel asked Mr. Riemer if he wished to proceed with his application and Mr. Riemer said that he had spoken with the Interim Town Planner Barbara Carboni who agreed with him that project could be granted a Special Permit. Mr. Riemer asked if he could read aloud his narrative and Chair Perkel replied that all the Members had read the narrative previously and it was not necessary for him to read his narrative aloud. Mr. Riemer noted that there would be no removal of existing trees to accommodate the new garage, but he would have to remove two trees to allow access to the garage. Based upon topography and shape of the lot, he was limited to the location of the garage. Chair Perkel noted that the garage is larger than the house and Mr. Riemer replied that according to the Assessor's property card that house has a net of 1,290 square feet and the proposed garage (including the first-floor garage and second floor storage) has an area of 1,056 square feet which is smaller than the existing house. Mr. Riemer also had two proposals for solar panel installation on the garage's roof.

At this point, Chair Perkel asked Mr. Riemer how he wanted to proceed. Chair Perkel said that Mr. Riemer could withdraw his application, or the Members could proceed to vote on his Special Permit application. Chair Perkel commented that he polled the Members and it appeared that two Members would be voting against the granting of the Special Permit. Mr. Riemer asked Chair Perkel if the Members felt that this matter qualified for a Variance and Chair Perkel replied that the Members do not

offer advisory opinions to Applicants. Chair Perkel noted that Mr. Riemer could obtain legal advice with a continuance, proceed this evening, or withdraw his application for Special Permit without prejudice.

Chair Perkel asked if there were members of the public in favor or against the proposed project. No one in favor of the application spoke.

Chair Perkel then recognized Attorney Robin Reid, of Provincetown, who represented Scott and Connie Mathers of 1 Fisher Road, Truro, MA. Her clients are the direct abutters to the Applicant's property and who would be most impacted by the intrusion of the setback. Ms. Reid opined that the Applicant is not properly before the Members under 50.1.C. Ms. Reid also opined that the Members should not approve the Special Permit as the setback requirement is for privacy and not in harmony with the public good. Ms. Reid also noted that the Applicant had previously appeared several years ago before the ZBA but withdrew his application. Ms. Reid respectfully requested that the Members deny the Special Permit.

Chair Perkel asked Mr. Riemer twice about a previous ZBA appearance several years ago. Mr. Riemer acknowledged a previous application for a 3-bay garage with a detached studio above it on a different location on the lot. Mr. Riemer noted that Member Hultin was a Member of the ZBA at that time. Mr. Riemer had withdrawn his previous application after opposition from the Mathers as well as by others as the project was too large.

Mr. Riemer said that he was shocked by the comments and objections provided by Ms. Reid. Mr. Riemer stated that he had a verbal handshake agreement with the Mathers that if Mr. Riemer supported an application for a project under consideration by the Mathers that they would do the same for him.

Chair Perkel then asked Mr. Riemer what he would like to do, and Mr. Riemer requested to withdraw his application for a Special Permit without prejudice.

**Chair Perkel made a motion to accept a withdrawal of the Special Permit application without prejudice in this matter.**

**Member Hultin seconded the motion.**

**So voted, 7-0, motion carries.**

Chair Perkel announced the decision and Mr. Riemer departed the meeting.

### **Approval of Minutes**

Chair Perkel initially wanted to review the September 24, 2018, and May 21, 2018, but then decided to review the minutes at the next meeting.

**Member Hultin made a motion to adjourn the meeting at 6:33 pm.**

**Chair Perkel seconded the motion.**

**So voted, 7-0, motion carries.**

Respectfully submitted,



Alexander O. Powers  
Board/Committee/Commission Support Staff



# TOWN OF TRURO

## ZONING BOARD OF APPEALS

Meeting Minutes

January 24, 2022 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING

**Members Present (Quorum):** Chris Lucy (Vice Chair); Fred Todd; Heidi Townsend; Darrell Shedd, Virginia Frazier (Alt.)

**Members Absent:** Art Hultin (Chair)

**Other Participants:** Barbara Carboni – Town Planner/Land Use Counsel; Liz Sturdy – Truro Office Assistant; Select Board Liaison John Dundas; Ben Zehnder (Attorney for Thomas P. and Kathleen Dennis, Jr. - Applicants); Thomas P. Dennis, Jr. (Applicant); Ivan and Kevin Becica (Applicants); Victor Rivera and Laura Bergman (Applicants); Gabriela Rivera; David Bennett (Engineer for Victor Rivera and Laura Bergman – Applicants); Fred Vanderschmidt (Engineer for Victor Rivera and Laura Bergman – Applicants); Todd Schwebel (Builder for Victor Rivera and Laura Bergman – Applicants); Lauren McKean (Planner for the National Seashore District)

Remote meeting convened at 5:30 pm, Monday, January 24, 2022, by Town Planner and Counsel Carboni who announced that this was a remote meeting which is being broadcast live on Truro TV Channel 18 and is being recorded. Town Planner and Counsel Carboni also provided information as to how the public may call into the meeting or provide written comment. Members introduced themselves.

### **Public Comment Period**

The Commonwealth's Open Meeting Law limits any discussion by Members of the Board of an issue raised to whether that issue should be placed on a future agenda. Speakers are limited to no more than 5 minutes.

Vice Chair Lucy recused himself for the matter of **2021-006/ZBA (SP, VAR)** and was not present at the start of the meeting. Member Todd, as **temporary Chair**, asked if there was any member of the public who wanted to make a public comment and there were none.

### **Public Hearing - Continued**

**2021-006/ZBA (SP, VAR) – Cape Rental LLC and Thomas P., Jr. and Kathleen C. Dennis** for property located at 127 South Pamet Road, Truro, MA (Atlas Map 48, Parcel 12; Certificate of Title Number: 222128, Land Ct. Lot #1C, Plan #16182-E and Land Ct. Lot #1D, Plan #16182-F) and 133 South Pamet Road, Truro, MA (Atlas Map 48, Parcel 8, Registry of Deeds title reference: Book 33550, Page 123). (Special Permit and/or Variance Applications) to add a second dwelling unit onto a lot from an adjacent lot.

Member Todd asked Mr. Zehnder to provide an update on this matter. Mr. Zehnder stated that there had been significant coastal erosion from the recent storm that has affected the decision as to how the Applicant wanted to proceed with the application. Mr. Zehnder added that he has submitted a written request to the ZBA to remove the request for a use variance but to keep in place the request for a dimensional variance along with a sketch. Mr. Zehnder emphasized the need for relief for the Applicant in this matter as the Truro Health and Conservation Agent Emily Beebe, with whom he has had several conversations, would grant a permit under emergency circumstances. Members and the Applicant discussed the following topics, questions, and concerns:

- Member Shedd expressed concern over the possible granting of a temporary variance in the Seashore District and setting precedence for two dwellings on one lot.
- Member Townsend asked about what was needed for the Applicant to move the dwelling back 25' away from the dune.
- Member Frazier asked if 25' away from the dune was enough distance.
- Member Todd asked Town Planner/Land Use Counsel Carboni if the ZBA could grant a temporary variance and Town Planner/Land Use Counsel Carboni opined that the ZBA didn't have authority to do so.
- Member Todd asked about the impact of the temporary relocation of the dwelling to the septic system, water, and utilities.
- Member Shedd asked about the legal impact of the removal of the dwelling's kitchen and if the dwelling would remain habitable.

Member Todd invited Ms. McKean to read aloud the email that she sent to the ZBA on behalf of the Cape Cod National Seashore (CCNS) regarding this matter. The CCNS' email expressed concerns over the request for use variance and Ms. McKean stated that Mr. Zehnder was oversimplifying the complexity of this matter. Mr. Zehnder responded that Ms. McKean asked very good questions and Mr. Zehnder expressed concern about the time lapsing quickly as the Applicant awaits a decision by the ZBA.

Member Todd opened the meeting to public comment and several residents, Mr. Robert Shapiro, and Ms. Clyde Watson, expressed procedural concerns over the ZBA deciding on a request that was altered just a couple of days ago before the public had a chance to consider it as well as the potential of three dwellings on one lot in the Seashore District.

Janet Worthington asked to be recognized and she stated that she agreed with Mr. Shapiro and Ms. Watson. All speakers said that the Applicant knew that this situation would eventually happen over time and had time to previously address the relocation of the dwelling well before now, so it is not an emergency.

Mr. Zehnder responded to these concerns and asked the ZBA to permit the Applicant to move the house back to the rear property line and staying within the existing lot. Mr. Zehnder stated that the Applicant would continue to use the home and as well as proceed with permitting for the final location which is yet to be determined.

Mr. Shapiro asked to be recognized and objected to Mr. Zehnder's request. Mr. Shapiro told the Members that the Applicant could move the house back and then resubmit a new application to properly notify abutters and abutters to the abutters to review and comment on the new application. Mr. Zehnder replied that Mr. Shapiro's interpretation of the law was not accurate, and it was not

necessary to notify Mr. Shapiro's client as the requirement, according to the Bylaw, was a notification be sent to the abutters and the abutters to the abutters within 300' of the Applicant's property.

Mr. Zehnder further noted that Mr. Shapiro's client lived well more than 300' from the Applicant's property and doesn't meet the standard of the legal definition of an "**abutter to an abutter**". Mr. Zehnder also added that he didn't believe that the Zoning Bylaw allows one to move a structure to create a dimensional variance just because the home is unoccupied. Mr. Zehnder said that the current application could be amended by the Members.

Tracy Thomas asked to be recognized and expressed concern about whether or not moving the dwelling back 10' was adequate or it would require additional move back in the future. Ms. Thomas also expressed concern about the adequacy of the septic system and the environmental impact to the coastal bank to stabilize the dwelling. Mr. Zehnder asked Vice Chair Todd to ask Ms. Thomas if she is a resident of Truro and Ms. Thomas replied that she is the process of purchasing a property in Truro. Mr. Zehnder told the Members that she attempted unsuccessfully to purchase the Whitelaw property, that is now owned by the Applicant, so Mr. Zehnder asked about her motivation for the comments. Ms. Thomas replied that she was concerned as a future resident about the preservation of Cape Cod and the coastal bank before she left the meeting.

Ms. McKean asked to be recognized and stated that the Applicant can remove the house and put it on cribbage. Ms. McKean also added that she agreed with Mr. Shapiro's objections and that the ZBA didn't have to approve the application this evening.

Member Shedd asked Town Planner/Land Use Counsel Carboni if the ZBA was able to act in accordance established procedures. Town Planner/Land Use Counsel Carboni stated that there is an emergency to move the dwelling to a safe location and request relief from the ZBA. Town Planner/Land Use Counsel Carboni added that there is an emergency in this matter and suggested that there may be temporary relief from the Building Inspector. Mr. Zehnder noted that he already had approval from the Building Inspector, but he would explore that opportunity as Town Planner/Land Use Counsel Carboni suggested. Mr. Shedd asked Mr. Zehnder if he would pursue a solution to this situation bypassing the ZBA and Mr. Zehnder stated that he had to find a solution for his clients as soon as possible.

Ms. McKean asked to be recognized and then asserted that she represented an *undisclosed* Truro landowner. Ms. McKean requested for clarification for what Mr. Zehnder sought from the Building Commissioner.

Mr. Zehnder requested that Member Todd consider a motion to allow a withdrawal of the Applicant's application without prejudice in this matter. Town Planner/Land Use Counsel Carboni expressed concern that in the Building Commissioner's decision it would be necessary to explicitly determine that the relief is temporary. Town Planner/Land Use Counsel Carboni told the Members that they had a couple of options to consider:

- Grant approval of the motion to withdraw the application without prejudice
- Continue the hearing to maintain control of the application until the Members deem the Building Commissioner's temporary relief for the Applicant appropriate with a specific time established and specified "temporary relief". This would also ensure that the Applicant re-appear in front of the ZBA to continue the application process in this matter.

Member Todd and Member Shedd expressed favoring a continuance and Mr. Zehnder requested a continuance for 90 days.

**Member Todd made a motion to continue the hearing of 2021-006/ZBA (SP, VAR) for 90 days to obtain relief from the Town Building Commissioner.**

**Member Townsend seconded the motion.**

**So voted, 4-0, motion carries.**

Vice Chair Todd announced the continuance of **2021-006/ZBA (SP, VAR)** for 90 days, and Mr. Zehnder thanked the Members. Town Planner/Land Use Counsel Carboni will later notify the Applicant and Members of the date for the 90 days or the closest meeting to that date. Mr. Zehnder left the meeting.

Vice Chair Lucy joined the meeting prior to the start of the Public Hearing for **2021-008/ZBA**.

### **Public Hearing**

**2021-008/ZBA – Ivan and Kevin Becica** for property located at 38 Longnook Road, Truro, MA (Atlas Map 43, Parcel 120, Registry of Deeds title reference: Book 33638, Page 171). Applicant seeks Special Permit under M.G.L. Chapter 40 A, §6 and §30.7 and §50.1 of the Truro Zoning Bylaws for reconstruction of a dwelling and garage on a lot nonconforming as to area.

Vice Chair Lucy identified the four Members who would vote on this application prior to the Applicants' presentation: Vice Chair Lucy, Member Todd, Member Shedd, and Member Townsend. Member Frazier will not vote but will have the opportunity to comment or ask questions.

The Applicants then provided background on their application as well as their professional engineering qualifications and licenses. Mr. Becica noted that the land area on the property was 1.06 acres and Vice Chair Lucy commented that since the property was less than 3 acres in the Seashore District the ZBA had jurisdiction.

Mr. Becica stated that they will use the existing septic system which is Title V and Vice Chair Lucy disclosed that he had inspected the system previously during the process of the property purchase by a previous buyer. Vice Chair Lucy asked if anyone if they had any questions or concerns and none were stated. Mr. Becica said that they had appeared in front of the Planning Board and the next hearing with the Planning Board will be on February 9, 2022. The Applicants provided the following information: the proposed project has a 50' setback from Old King's Highway and 25' setback from the abutter; the proposed home is a 2-bedroom structure with a full kitchen; the proposed garage is a 2-car garage, guest studio above and not an ADU; the application is not for an ADU; the total is 4-bedrooms with a septic system for 4-bedrooms; the original design was for a 2-story home but decided to make the home more aligned with the character of homes in the neighborhood, so it is now 1-story and closer to the road.

The Applicants and Members discussed the following topics, questions, and concerns:

- Member Shedd asked if the garage is intended to be a rental unit and Mr. Becica replied that the primary intent will be for family guests but if there is an opportunity to generate income the family would take advantage of that.

- Vice Chair Lucy asked about the length of the current structure along Longnook Road and Mr. Becica replied that as he recalled it was approximately 18’.
- Vice Chair Lucy asked about the length across the entire front of the proposed structure and Mr. Becica replied that it will be 43’.
- Vice Chair Lucy noted the letter from in the packet from the Health Agent that will require an updated septic system. Mr. Becica acknowledged that there has been initial dialogue with the Health Agent in this regard.
- Vice Chair Lucy asked if the Applicants’ plans have been submitted yet to the Building Commissioner and Mr. Becica said they have not.

Vice Chair Lucy opened the hearing to comments from the public and there were none.

Town Planner/Land Use Counsel Carboni noted that a Planning Board’s final decision must be rendered **before** the ZBA makes a final decision based upon her research of precedence in a similar matter.

Vice Chair Lucy asked if, as in this case, a “*pre-existing nonconforming structure*” is torn down and moved back 10’ for the new structure, is the structure still considered “*pre-existing nonconforming structure*” as the structure no longer exists? Town Planner/Land Use Counsel Carboni opined the Applicants have vested rights to reconstruct a dwelling in the same place or in a more conforming fashion but not less than nonconforming fashion.

Member Todd asked Town Planner/Land Use Counsel Carboni if it was necessary to continue this hearing until after the Planning Board’s next meeting and she stated that it was. A review of the Town calendar indicated that February 28, 2022, would be an appropriate date for the continuance.

**Vice Chair Lucy made a motion to continue this matter to February 28, 2022.**

**Member Shedd seconded the motion.**

**So voted, 5-0, motion carries.**

Vice Chair Lucy announced the continuance for **2021-008/ZBA** and thanked the Applicants for their presentation. The Applicants thanked the Members and departed.

**2021-009/ZBA – Victor M. Rivera and Laura W. Bergan, Trs., The Rivera Bergan Family Trust** for property located at 82 South Pamet Road, Truro, MA (Atlas Map 51, Parcel 57, Registry of Deeds title reference: Book 34393, Page 200). Applicant seeks (1) Special Permit under M.G.L. Chapter 40 A, §6 and §30.7.A of the Truro Zoning Bylaw concerning replacement of pre-existing, nonconforming dwelling and new garage on a lot nonconforming as to area; and (2) Special Permit to exceed gross floor area in the Seashore District.

Vice Chair Lucy invited Mr. Zehnder to provide background on this application as well as introduce the Applicants’ team of representatives. Mr. Zehnder noted that the Applicants have already appeared in front of the Planning Board and will appear next on February 9, 2022. Mr. Zehnder said that the application has already received approval from the Conservation Commission and will be considered by the Historical Review Board on January 31, 2022, as the existing dwelling is more than seventy-five years old. The lot is 2.92 acres which is under the 3.0 acres minimum lot size and that requires a Special Permit from the ZBA. The project, at 3,857 square feet, is about 273 square feet over the “**by right**” so it requires approval. Mr. Zehnder then said that he would present and then ask for a continuance until

February 28, 2022 (after the next hearing with the Planning Board). Mr. Zehnder then presented the design and drawings from BrightBuilt Home.

The Applicants and Members discussed the following topics, questions, and concerns:

- Member Shedd asked the Applicants if a new septic system was being installed in the proposed house and Mr. Zehnder replied in the affirmative for 5 bedrooms. Member Shedd added that he was 100% supportive of this project.
- Member Townsend confirmed that the cesspool is being removed from the site and Mr. Zehnder confirmed that it would be removed.
- Member Townsend asked if the photos in the packet reflected what the property looks like currently and Mr. Zehnder confirmed that they do. Member Townsend added that she is very impressed with the BrightBuilt Home plans.
- Member Frazier had no questions but added her admiration of the BrightBuilt Home plans.
- Member Todd had no comments or questions.

Vice Chair Lucy opened the meeting to comments from the public and there were none.

Vice Chair Lucy asked Mr. Zehnder if a Landscaping Plan had been included in the application and Mr. Zehnder replied that they were, and the Landscaping Plan had been approved by the Conservation Commission. Member Shedd asked if this was the Landscaping Plan to remove invasive plants and vegetation and replace them with Cape Cod native plants and vegetation. Mr. Zehnder said that it was and then shared his screen with the Landscaping Plan with the Members and the public.

There were no additional questions from the public or Members of the ZBA.

**Vice Chair Lucy made a motion to continue this matter to February 28, 2022.**

**Member Shedd seconded the motion.**

**So voted, 5-0, motion carries.**

Vice Chair Lucy announced the continuance of **2021-009/ZBA**, and Mr. Zehnder thanked the Members. The Applicants and their representatives departed the meeting.

### **Approval of Minutes**

Town Planner/Land Use Counsel Carboni asked Vice Chair Lucy to review, edit if necessary, and approve the minutes on tonight's agenda.

Members reviewed the minutes for December 14, 2020, and there were no corrections or edits.

**Vice Chair Lucy made a motion to approve the minutes for December 14, 2020, as presented.**

**Member Shedd seconded the motion.**

**So voted, 4-0-1, motion carries.**

Members reviewed the minutes for January 25, 2021, and there were no corrections or edits.

**Member Todd made a motion to approve the minutes for January 25, 2021, as presented.  
Member Shedd seconded the motion.  
So voted, 4-0-1, motion carries.**

Members reviewed the minutes for February 22, 2021, and there were no corrections or edits.

**Member Todd made a motion to approve the minutes for February 22, 2021, as presented.  
Member Shedd seconded the motion.  
So voted, 4-0-1, motion carries.**

Prior to the vote on the minutes for March 22, 2021, Vice Chair Lucy noted that only two members tonight were present at that meeting and Town Planner/Land Counsel Carboni opined that the Members could vote under the Rule of Necessity. Members reviewed the minutes for March 22, 2021, and there were no corrections or edits.

**Vice Chair Lucy made a motion to approve the minutes for March 22, 2021, as presented.  
Member Shedd seconded the motion.  
So voted, 2-0-3, motion carries.**

Members reviewed the minutes for April 26, 2021, and there were no corrections or edits.

**Member Todd made a motion to approve the minutes for April 26, 2021, as presented.  
Member Shedd seconded the motion.  
So voted, 4-0-1, motion carries.**

Members reviewed the minutes for May 24, 2021, and there were no corrections or edits.

**Member Shedd made a motion to approve the minutes for May 24, 2021, as presented.  
Member Todd seconded the motion.  
So voted, 3-0-2, motion carries.**

Town Planner/Land Use Counsel Carboni thanked the Members for their approval of the minutes.

Vice Chair Lucy announced the next meeting on February 28, 2022. Vice Chair Lucy asked if any Members wanted to add anything to the next meeting's agenda and there were none.

**Vice Chair Lucy made a motion to adjourn at 7:45 pm.  
Member Shedd seconded the motion.  
So voted, 5-0, motion carries.**

Respectfully submitted,



Alexander O. Powers  
Board/Committee/Commission Support Staff