

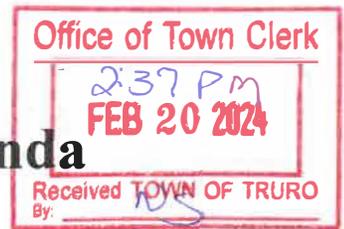


Truro Zoning Board of Appeals Agenda

Remote Zoom Meeting

Monday, February 26, 2024 – 5:30 pm

www.truro-ma.gov



Join the meeting from your computer, tablet or smartphone:

<https://us02web.zoom.us/j/88099031902>

Dial in: +1-646-931-3860 or +1-305-224-1968

Meeting ID: 880 9903 1902 Passcode: 158454

Open Meeting

This will be a remote public meeting. Citizens can view the meeting on Channel 8 in Truro and on the web on the "Truro TV Channel 8" button under "Helpful Links" on the homepage of the Town of Truro website (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. 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 Liz Sturdy, Planning Department Assistant, at esturdy@truro-ma.gov.

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.

Minutes

- ◆ November 20, 2023
- ◆ December 18, 2023
- ◆ January 22, 2024

Public Hearing – Continued

2022-017/ZBA (VAR/SP) – Ebb Tide on the Bay Condominiums for property located at 538 Shore Road (Atlas Map 7, Parcel 7, Registry of Deeds title reference: Book 5671, Page 232). Applicant seeks a Special Permit under M.G.L. Ch. 40A §6 and §30.7.A of the Truro Zoning Bylaw for the relocation of three non-conforming structures on a lot in the Beach Point Limited Business District. [Original material in 9/26/2022, 10/24/2022, 2/27/2023, 5/22/2023, 10/23/2023, and November 20, 2023 packets] {New material included in this packet}

Public Hearings – New

2023-012/ZBA Robert J. Martin II and 100 Route 6 LLC for property located at 100 Route 6 (Atlas Map 55, Parcel 12). Applicant appeals a Cease and Desist Order issued by Building Commissioner on November 29, 2023, with respect to property located in the Seashore District.

2024-002/ZBA – Jennifer Cabral (Nearen & Cubberly Nominee Trust, Christopher Snow, Trustee), for property located at 491 Shore Road (Atlas Map 7, Parcel 4, Registry of Deeds Book 8309 and Page 131). Applicant seeks a special permit or variance for alteration/reconstruction of pre-existing nonconforming use/structure in the Beach Point Limited Business District.

- ◆ Comment Letters

Board Discussion

- ◆ Compliance with Filing Deadlines (see attached 2024 meeting schedule).

Next Meetings Monday, March 25, 2024 at 5:30 p.m.

Adjourn



STAFF MEMORANDUM

To: Truro Zoning Board of Appeals

From: Barbara Carboni, Town Planner and Land Use Counsel

Date: February 22, 2024

Re: Meeting February 26, 2024

Continued public hearing:

202-017/ZBA (VAR/SP) **Ebb Tide on the Bay Condominiums for property located at 538 Shore Road** (Map 7, Parcel 7). Applicant seeks a special permit for reconstruction of three nonconforming structures on property in Beach Point Limited Business District.

The special permit remains pending pursuant to a continuance granted by the Board at its last meeting. Amended plans have been filed for Buildings 1 and 2. The following discussion is adapted from earlier memos.

Existing Conditions

Building 1 is single story, contains one unit and has a nonconforming setback of 7.16 feet from the eastern (side) lot line. **Building 2** is single story and contains one unit. **Building 3** is two stories, contains four units and has a nonconforming setback of 1.91 feet from the western (side) lot line. See Existing Site Plan SE.1. In this portion of the District, the minimum side yard setback is 5 feet per story. The front setback of Building 1 is 22.24 feet (nonconforming); of Building 2 is 37.6 feet; and Building 3 is 40.06 feet.

Building 1 is proposed to increase from 1 to 1 ½ stories. *In the original proposal*, the increase in Gross Floor Area was from 883 square feet to 1681 square feet.¹ *In the revised proposal*, the Gross Floor Area is increased to 1568 square feet. That is, the proposed Gross Floor Area of Building 1 has been reduced from the original proposal by 113 square feet.

The height of Building 1 will increase from 16.76 feet to 29 feet 10.49 inches.² The side yard setback will be increased from 7.16 feet to 8 feet. Although an increase, this will create a new nonconformity. Because the building is increasing to 1 1/2 stories, the side yard setback

¹ The revised plans for Building 1 incorrectly identify 1631.25 square feet as the “Existing Floor Area.” The existing floor area is 883 square feet; the original *proposal* was 1631 square feet.

² The three structures must be elevated to meet requirements for building in the Flood Zone; see peak heights in tables on SP-2. Based on the average grade for each, it appears that the structures will not exceed the 30-foot height limit.

requirement will increase as well. The Bylaw requires "five (5) feet per story" (see n. 4 to Table 50.1), but does not specify the required setback per half-story. The applicant suggests that the setback for 1-1/2 stories is 7.5 feet, but the Building Commissioner's interpretation is that the required setback is 10 feet (i.e., the additional half story requires an additional 5 feet).³ The front yard setback will increase from 22.24 feet to a conforming 25 feet.

Building 2 is proposed to increase from 1 to 1 ½ stories. *In the original proposal*, the increase in Gross Floor Area was from 578 square feet to 1040 square feet.. *In the revised proposal*, the Gross Floor Area is increased to 967.42 square feet. That is, the proposed Gross Floor Area of Building 1 has been reduced from the original proposal by 72.58 square feet.

The height of Building 2 will increase from 13 feet to 29 feet. The front setback will be reduced but to a conforming 25 feet.

Building 3 is proposed to remain a 2-story structure, decreasing in Gross Floor Area from 2016 square feet to 1917 square feet. The side yard setback will be increased from 1.91 feet to 3.3 feet, slightly more conforming to the 10 feet required. The front setback will be reduced but to a conforming 25 feet. The height of **Building 3** will increase from 24.23 feet to 29.95 feet. *There are no changes to the plans for Building 3.*

Other increased nonconformity: The distance between proposed Building 2 and Building 3 appears to be 8 feet. See Addendum to Site Plan, AD-1 (indicating 8 foot wide easement running between buildings and to the shore). This is narrower than the existing configuration. See 1986 Plan of Land (in recent submission) The distance between Buildings 1 and 2 appears to be approximately 2 or 3 feet at its narrowest, where covered porches and stairs on the buildings meet a narrow boardwalk. This is also narrower than the existing configuration. Both the existing and proposed configurations are nonconforming with a Bylaw requirement of 30 feet between "units in cottage colonies or motor courts" (see Bylaw s. 50.1.D); the new configuration is more nonconforming.

³ Since the existing structure has a conforming setback (7.16 feet where 5 feet required), this project will create a new nonconformity. Under G.L. c. 40A, s. 6, a new nonconformity requires a variance rather than a special permit, but Bylaw section 30.7.A is more forgiving – the Board may grant relief under the special permit standard:

"Lawful, pre-existing, nonconforming uses and structures may, *when a variance would otherwise be required*, be altered or extended with a special permit if the Board of Appeals 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." [emphasis added]

The Board may therefore, as part of any special permit granted, include this relief (that is, allowing the new setback nonconformity).

Standard for Special Permit under G.L. c. 40A, s. 6 and Section 30.7 of the Zoning Bylaw

The lot is nonconforming as to area and frontage; the structures are nonconforming as they are within side setbacks. Alteration, extension, or reconstruction of a dwelling on a nonconforming lot increases the intensity of 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).

The Board may grant a special permit under G.L. c. 40A, s. 6 if it finds that the proposed alternation and 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.”

In this case, the structures as proposed – all three elevated and two closer to Shore Road – will have a different impact on the streetscape and neighboring properties 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).

New Public Hearings

2023-012/ZBA Robert J. Martin II and 100 Route 6 LLC for property located at 100 Route 6. Applicants appeal a Cease and Desist Order issued by the Building Commissioner on November 29, 2023 with respect to property in the Seashore District.

Procedural History

As the Board is aware, a cease and desist order was issued by the Building Commissioner with respect to this property on May 3, 2023 (“original order”). The original order directed cessation of activity unlawful under the Zoning Bylaw. This activity included storage and sale of landscape materials, which is not permitted in the Seashore District. This order was upheld by the Board in a decision filed with the Town Clerk on November 22, 2023, directing removal of materials and equipment, and restoration of the site. That decision has been appealed to Land Court.

On November 29, 2023 the Building Commissioner issued a second cease and desist order (“second order”). The purpose of this order was twofold. First, applicant’s counsel had suggested at the Board’s November 6, 2024 meeting (at which the Board voted to uphold the original cease and desist) that the Board lacked authority to enforce the order - and, by implication, the Board’s decision upholding it. To alleviate any doubt as to whether the applicants were, in fact, obliged to cease unlawful operations and restore the site as required by the Board’s decision, the Building Commissioner issued the November 29, 2023 order (the

subject of this appeal). Second, the applicants had alleged in a filing dated November 21, 2023, that their appeal had been constructively granted. To the extent this allegation called into question the validity of the original cease and desist order and/or the Board's decision, the second order issued, specifying the zoning violations on the property and requiring removal of materials and equipment, and restoration of the site.

The second order tracks the findings of the Board's decision with respect to zoning violations, and requires the same actions to be taken to remove materials and equipment, and to restore the site as contained in the Board's decision. Such actions were required to be completed by January 15, 2024.

Appeal

The applicants have submitted no materials in support of their appeal of the second cease and desist order. The basis or merits of the appeal are therefore unknown. It is possible that the appeal was taken in order to preserve the applicants' rights, and/or to preserve their rights with respect to the pending trial court cases.

The applicants may argue that the second cease and desist order is "moot" because the site now appears in a condition consistent with the requirements of that order (removal of materials and equipment; restoration of the site), with the implication that the Board need not uphold the second order. This argument should be rejected. While the site might *currently* be in a condition consistent with the requirements of the second order, that does not obviate the need for an effective order requiring ongoing compliance with the Zoning Bylaw. Where the applicants continue to dispute the validity of the *original* cease and desist order - as well as the Board's decision upholding it - the second order is needed to ensure zoning compliance and to preserve the Board's rights (including with respect to pending litigation). In short, as long as the applicants maintain their appeal of the Board's decision and continue to press their constructive grant claim, the second cease and desist order is not moot.

Board Action

The same essential factual and legal basis for upholding the first order exists with respect to the second order. The site conditions and activity were in violation of the Bylaw at the time the second order issued. The site conditions and activity cited by the Building Commissioner remain prohibited under the Zoning Bylaw. (As discussed above, the fact that the site may not currently be in violation of the Zoning Bylaw does not mean that the second order is moot, nor that it need not be upheld).

In upholding the second order, the Board may make essentially the same factual and legal findings contained in its original decision. (I will determine what, if any materials need to be placed in the record in order to have a legally sufficient basis for the Board's decision). The decision may note current conditions on the property, but will also note that the factual and legal basis for upholding the second order remains valid, and that the applicants should remain subject to a prohibition of unlawful activity.

2024-002/ZBA Jennifer Cabral (Nearen & Cubberly Nominee Trust, Christopher Snow, Trustee for property located at 491 Shore Road. Applicant seeks a special permit or variance for alteration/reconstruction of pre-existing nonconforming structure in Beach Point Limited Business District.

Existing Conditions and Proposed Project

The lot at 491 Shore Road lies between Route 6 and Shore Road; it contains 200.01 feet of frontage (conforming) and 20,038 square feet – per applicant, conforming (see discussion below). A garage is located 14.85 feet from Shore Road (nonconforming); it is roughly 20’3” by 26’31”, 1-½ stories, with a gable roof and peak elevation of 24.24 feet above grade. See plan sheets Ex. 1-3 The property is otherwise unimproved.

The applicant proposes to demolish the existing structure and construct a wood workshop in the same location. See sheet A.0. The proposed structure is roughly 20’ by 26’; above the first story is a gable roof with dormers on each side. See plan sheets A1-A3. The first floor of the structure is identified as the wood workshop; there is a “storage loft” above and an area open to the first floor. See sheet A.4.

Zoning Relief Required: Issues of Dimension and Use

There are several zoning issues to address, some raised by the applicant and others by owners or representatives of neighboring properties

Dimensional nonconformities

The existing structure is nonconforming, being located within the 25-foot required front setback. The applicant has submitted evidence that the structure was built prior to the adoption of zoning, in which case it is lawfully nonconforming. Under G.L. c. 40A, s. 6 and Section 30.7 of the Zoning Bylaw, any reconstruction on the lot requires a special permit. The Board is familiar with the finding required for the grant of a special permit: that the proposed structure is “not 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 th[e] bylaw.”

The lot contains 20,038 square feet, which is below the minimum of 33,750 square feet in Bylaw Section 50.1 (Table). Applicant points the Board to Note 1 to the Table, which provides “[e]xcept buildings for accessory use and cottage.” *To the extent* the Board finds that an accessory use and structure are permitted on this property in the absence of a principal use and structure – a question that must be resolved by the Board – the lot is conforming as to lot area. If the Board finds otherwise, then the lot is nonconforming as to area.

Use

The applicant states that the wood workshop is a “Working Studio” as that term is defined in the Bylaw:

“A working studio shall consist of a room(s) in a building detached from the principal residence, which is incidental and accessory to the principal residence whose use is primarily for work. A working studio may include a toilet and work-related sinks, but shall not include a shower or bathtub or residential kitchen facilities or sleeping accommodations.”

Bylaw section 10.4. The applicant notes that a working studio is a use permitted in the Beach Point District in the Table of Uses. The physical characteristic and function of the proposed structure may well meet this definition, but a question remains: where there is (and will be) no “principal residence” on the lot as contemplated by the definition, can the proposed woodworking shop be considered to fall within this definition? A related question is whether an accessory use is permitted on a lot in the absence of a principal use.

The answer to the latter question is generally no. However, the applicant argues that accessory structures and uses on small lots are both historically present in Truro, and contemplated by the Bylaw Dimensional Table Note 1, which excepts “buildings for accessory use.” (see above). The applicant draws attention to this particular development pattern on Beach Point, and states that the lot in this case was previously owned and used by the owners of the Crow’s Nest motel across the street. The applicant concedes that the Bylaw definition of “Accessory Use” defines such as use as “[a] use incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.” However, the applicant argues that the “clear intent” of 50.1 Note 1 is to allow an accessory use and structure on a small lot overrides this Bylaw definition.

If the Board agrees with the applicant that the Bylaw allows an accessory use absent a principal use on this lot, then the proposed use is lawful and does not require any zoning relief independent of the special permit necessitated by the other dimensional nonconformity (front setback).

If the Board does *not* believe that an accessory use is permitted absent a principal use, then the garage use may be considered lawfully nonconforming (subject to the question of abandonment, discussed below). The applicant suggests that under Section 30.7 of the Zoning Bylaw, the nonconforming garage use may be converted to a different use (woodworking studio) by special permit. That section provides:

“Lawful, pre-existing, nonconforming uses and structures may, where a variance would otherwise be required, be altered or extended with a special permit if the Board of Appeals finds that the alteration or extension will not be substantially more detrimental than the existing use or structure and that the alteration or extension will exist in harmony with the general purpose and intent of th[e] bylaw.”

This is tricky. Arguably, if the Board has found that an accessory use is *not* permitted on a lot absent a principal use (see above), then it would seem to follow that there could be no conversion to a workshop use, because the workshop use would *also* be an accessory use untethered to a principal use. But the applicant argues that a variance would cure this issue, and since Section 30.7 allows for the Board to grant a special permit “where a variance would otherwise be

required,” the Board may permissibly grant a special permit for conversion to the workshop use. Note further that section 60.2 does not allow the Board to hear “variances as to use.” This merits further discussion.

Abandonment

The issue of abandonment has been raised by owners of neighboring properties. The Bylaw defines Abandonment:

“The visible or otherwise apparent intention of an owner to discontinue a nonconforming use of a building or premises; or the removal of the characteristic equipment or furnishing used in the performance of the nonconforming use, without its replacement by similar equipment or furnishing; or the replacement of the nonconforming use or building by a conforming use or building.”

Section 30.7.C provides:

“Abandonment. Nonconforming uses which have been abandoned for a period of 2 years or more shall not be re-established, and any future use shall conform to the then current bylaw.”

This memo is already lengthy and so will simply reference the discussion of the legal and factual issues of abandonment in the applicant’s memo (pages 4-5; nonconforming use and structure not abandoned) and the comment memo submitted on behalf of the Crow’s Nest Condominium Trust (pages 3-4; nonconforming use and structure abandoned).

Note that if the Board finds that the workshop is a “Working Studio” and that this accessory use is permitted on the lot in the absence of a principal use, then the Board does not reach the issue of abandonment. It is only if the Board finds that the accessory use is not permitted as of right that the issues of pre-existing nonconforming use (and conversion to another use) arise.



TOWN OF TRURO

ZONING BOARD OF APPEALS

Meeting Minutes

November 20, 2023 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING

Members Present (Quorum): Chris Lucy (Chair); Darrell Shedd (Vice Chair); Art Hultin; Nancy Medoff; Dave Crocker (Alt.); Joe McKinnon (Alt.)

Members Absent:

Other Participants: Barbara Carboni – Town Planner/Land Use Counsel; Emily Beebe – Health and Conservation Agent; Christopher J. Snow (Attorney and Applicant); William Rogers (Representative for Christopher J. Snow – Applicant); Gary Locke (Project Engineer for Christopher J. Snow – Applicant); Paul Shea (Environmental Consultant and Representative for Christopher J. Snow – Applicant); ; Sally McSween (Condominium Association Representative); Ben Zehnder (Attorney for Abutters – Marie Belding and Pat Callinan); Marie Belding (Abutter to 538 Shore Road-Ebb Tide); Pat Callinan (Abutter to 538 Shore Road-Ebb Tide); Ronald Slowek (Representative for Highland Builders and J. Michael Roffi - Applicant); Elizabeth Gracia (Truro Resident); Paul Silvernail (Truro Resident)

Remote meeting convened at 5:30 pm, Monday, November 20, 2023, by Town Planner/Land Use Counsel Carboni who announced that this was a remote meeting which is being broadcast live on Truro TV Channel 8 and is being recorded. Chair Lucy introduced the Members of the ZBA.

Public Comment Period

Chair Lucy invited the members of the public to offer public comments and there were none.

Chair Lucy then announced that the review and vote on the ZBA minutes would occur at the end of the meeting.

Public Hearing (Continued)

2022-017/ZBA (VAR/SP) - Ebb Tide on the Bay Condominiums for property located at 538 Shore Road (Atlas Map 7, Parcel 7, Registry of Deeds title reference: Book 5671, Page 232). Applicant seeks an Amended Variance under M.G.L. Ch. 40A §10 and §40.3.B.2/§30.9.C of the Truro Zoning Bylaw for a reduction in number of parking spaces (from 12 spaces to 8); Special Permit under M.G.L. Ch. 40A §6 and §30.7.A of the Truro Zoning Bylaw for the relocation of three non-conforming structures on a lot in the Beach Point Limited Business District.

Chair Lucy announced that included in the Members' packets were comments from the Abutters.

Attorney Snow provided background information and an update on the proposed project regarding the amended Variance. Attorney Snow noted that the Planning Board, Board of Health, and the Conservation Commission had approved the project.

Town Planner/Land Use Counsel Carboni confirmed with Attorney Snow that the date of the revised plans were submitted on October 23, 2023, and were included in this evening's packet for the Members.

Attorney Snow then addressed the need for a requested amended Variance and provided additional background information. Attorney Snow noted that this request was driven to protect the property due to the soil conditions and topography of the land. Attorney Snow said there were no dangers identified in the parking lot area and that the right of way to the beach cannot be obstructed. Attorney Snow added that all of the parking required by the Zoning Bylaw can be accommodated without incident or danger to public safety. Attorney Snow concluded that if the variance was not granted that it could result in adversely impact the erosion of the shoreline. Attorney Snow implored the Members to grant the requested variance in order to meet the Conservation Commission's order of conditions and to prevent a loss of this property as well as the abutting properties along Beach Point.

Members commented and discussed with the Applicant's representatives and Health and Conservation Agent Beebe the following highlighted topics: the proposed project appears to have substantially increased the size of each condominium instead of living with what existed, the project would increase the nonconformity of the property, the issue of reducing the number of parking spaces from 12 to 8, what is deeded with each unit in terms of parking, the previously denied request for a seawall and the lack of a retaining wall around the property to preserve the sand and stop the erosion, what is the trigger that results in the sand being replaced, the need to reconstruct the coastal dune to protect this property and the neighborhood, the previous proposal of a seawall on a coastal dune was unpopular and would not be permitted by regulation, and the granting of the variance would reduce financial hardship of all parties.

Chair Lucy recognized the following members of the public who commented on this topic: Ms. Belding, Ms. Callinan, Ms. Gracia, Mr. Silvernail, and Ms. McSween.

Chair Lucy recognized Attorney Zehnder who noted that the presentation by Attorney Snow suggested that this variance was necessary to provide environmental protection of the property. The additional square footage of the living area and reducing the number of parking spots were not necessary for the environmental protection of the property. Attorney Snow responded that the variance was necessary.

Attorney Snow provided background information and an update on the proposed project regarding the Special Permit. Attorney Snow noted that granting this Special Permit would result in a project that would be more environmentally sensitive, conform to environmental requirements, and the project would promote the health, safety, and welfare of the inhabitants residing on the waterfront property. Attorney Snow reminded the Members that the Planning Board, Board of Health, and the Conservation Commission had approved the project. Attorney Snow said that Police Chief Jamie Calise and Fire Chief Tim Collins supported the project.

Members commented and discussed with the Applicant's representatives, Town Planner/Land Use Counsel Carboni, and Health and Conservation Agent Beebe the following highlighted topics: the project's detriment to the neighborhood specifically in regard to pile driving and the associated vibration impact, the demolition of existing structures, the project is not considered new construction, cross-bracing under Building 1 does not allow parking under the building, and the plan to repeatedly rebuild the dune in the same way as the dune still erodes.

Attorney Zehnder commented that this case was about the Applicant increasing the nonconforming nature of the structures to add second floors to two of the three buildings and almost doubling the size of those buildings. Attorney Zehnder noted that it was not necessary to add these second floors and it intensified the scale and massing of Beach Point which was more detrimental to the neighborhood. Attorney Zehnder also asked that the Applicant provide data regarding the impact of using helios screws instead of pile driving and the impact of vibrations on the soil. In a previous case, Attorney Zehnder noted that the Planning Board did not provide a comparison report with such requested information. Attorney Snow said that the information was provided in the previous case and that there is no provision in the Zoning bylaw in regard to the theory of intensification.

Chair Lucy recognized Ms. Callinan who commented on this topic.

Chair Lucy stated that he would entertain a motion to close the public comment on this hearing and announced that the five Members voting on this matter would be Chair Lucy, Vice Chair Shedd, Member Hultin, Member Medoff, and Member Crocker.

Vice Chair Shedd made a motion to close the public comment in this hearing and move into deliberations.

Member Medoff seconded the motion.

ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Hultin – Aye

Member Crocker - Aye

Member Medoff - Aye

Chair Lucy - Aye

So voted, 5-0-0, motion carries.

Following the vote, the Members deliberated on the matter with input from Town Planner/Land Use Counsel Member Carboni.

Member Hultin made a motion that in the matter of 2022-017/ZBA (VAR/SP) - Ebb Tide on the Bay Condominiums located at 538 Shore Road (Atlas Map 7, Parcel 7, Registry of Deeds title reference: Book 5671, Page 232), the Applicant seeks an Amended Variance under M.G.L. Ch. 40A §10 and §40.3.B.2/§30.9.C of the Truro Zoning Bylaw for a reduction in number of parking spaces (from 12 spaces to 8), and approve the Variance to include the following findings in accordance with M.G.L. Chapter 40A, Section 10, [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.

Member Medoff seconded the motion.

Chair Lucy and the Members reviewed the findings of this matter as required in M.G.L. Ch. 40A §10

ROLL CALL VOTE:

Vice Chair Shedd – Nay

Member Hultin – Aye

Member Crocker - Aye

Member Medoff - Aye

Chair Lucy - Aye

So voted, 4-1-0, motion carries.

Member Hultin made a motion that in the matter of 2022-017/ZBA (VAR/SP) - Ebb Tide on the Bay Condominiums that seeks a Special Permit under M.G.L. Ch. 40A §6 and §30.7.A of the Truro Zoning Bylaw for the relocation of three non-conforming structures on a lot in the Beach Point Limited Business District and that a Special Permit be granted with the included findings that the proposed alteration or extension will not be substantially more detrimental than the existing nonconforming use or structure to the neighborhood and 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. Member Crocker seconded the motion.

Chair Lucy and the Members further discussed factors which may have been detrimental to the neighborhood and factors as to why they may oppose the Special Permit such as an increase in the gross floor area of Building 1 (from 883 square feet to 1,681 square feet) and Building 2 (from 578 square feet to 1,040 square feet) and a decrease in the gross floor area in Building 3 (from 2,016 square feet to 1,917 square feet).

NOTE: No full vote was taken on this motion.

After this discussion referenced above, Chair Lucy, after a legal opinion from Town Planner/Land Use Counsel Carboni, asked Attorney Snow if he would like to return at another date after hearing the comments from the Members. Attorney Snow said that he was dismayed by the comments of the Members and that his clients have spent \$300,000 in permit fees over the last five years. Attorney Snow asked the Members for compassion as this will create an additional financial hardship for his clients and some will likely declare bankruptcy. Attorney Snow said that he was able to come to the next meeting on December 18, 2023 and report back if the clients were willing to change anything to the proposed project. Attorney Zehnder asked to comment on the comments made by Attorney Snow and Chair Lucy ruled that the public comment portion of the hearing was closed.

Member Hultin made a motion to continue the matter of 2022-017/ZBA (SP) to December 18, 2023.

Vice Chair Shedd seconded the motion.

ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Hultin – Aye

Member Crocker - Aye

Member Medoff - Aye

Chair Lucy - Aye

So voted, 5-0-0, motion carries.

Public Hearing (New)

2023-010/ZBA - J. Michael Roffi for property located at 5 Highland Avenue (Atlas Map 22, Parcel 33). Applicant seeks a Special Permit and/or Variance for construction of an addition to a dwelling on a nonconforming lot in the residential district.

Chair Lucy recognized Mr. Slowek who provided background information and the proposed project. There were no objections stated by the Members to the proposed project.

Chair Lucy asked if any members of the public wanted to comment on the project and there were none.

Vice Chair Shedd made a motion that in the matter of 2023-010/ZBA that a Special Permit be granted with the included findings that the proposed alteration or extension will not be substantially more detrimental than the existing nonconforming use or structure to the neighborhood and 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.

Member Medoff seconded the motion.

ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Hultin – Aye

Member McKinnon - Aye

Member Medoff - Aye

Chair Lucy - Aye

So voted, 5-0-0, motion carries.

Minutes

Chair Lucy led the review of the minutes of September 25, 2023, for corrections and there were none.

Vice Chair Shedd made a motion to approve the minutes of September 25, 2023 as written.

Member Hultin seconded the motion.

ROLL CALL VOTE

Vice Chair Shedd – Aye

Member Hultin – Aye

Member McKinnon – Aye

Chair Lucy – Aye

So voted, 4-0-0, motion carries.

Chair Lucy led the review of the minutes of October 23, 2023, for corrections and there were none.

Vice Chair Shedd made a motion to approve the minutes of October 23, 2023 as written.

Member Medoff seconded the motion.

ROLL CALL VOTE

Vice Chair Shedd – Aye

Member Medoff – Aye

Member Hultin – Aye

Member Crocker – Aye

Chair Lucy – Aye

So voted, 5-0-0, motion carries.

Chair Lucy reviewed the agenda with the Members and Town Planner/Land Use Counsel Carboni for the next meeting on December 18, 2023 at 5:30 pm.

Member Hultin made a motion to adjourn at 8:30 pm.

Member Medoff seconded the motion.

ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Hultin – Aye

Member Crocker – Aye

Member Medoff – Aye

Member McKinnon - Aye

Chair Lucy - Aye

So voted, 6-0-0, 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 initial "A" and a long horizontal stroke extending to the right.

Alexander O. Powers

Board/Committee/Commission Support Staff



TOWN OF TRURO

ZONING BOARD OF APPEALS

Meeting Minutes

December 18, 2023 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING

Members Present (Quorum): Chris Lucy (Chair); Darrell Shedd (Vice Chair); Art Hultin; Nancy Medoff; Dave Crocker (Alt.)

Members Absent: Joseph McKinnon (Alt.)

Other Participants: Barbara Carboni – Town Planner/Land Use Counsel; Catherine Ware – Representative from SBA Communications (Applicant); Chris Stouffer – Representative from SBA Communications (Applicant)

Remote meeting convened at 5:30 pm, Monday, December 18, 2023, by Town Planner/Land Use Counsel Carboni who announced that this was a remote meeting which is being broadcast live on Truro TV Channel 18 and is being recorded. Chair Lucy introduced the Members of the ZBA.

Public Comment Period

Chair Lucy invited the members of the public to offer public comments and there were none.

Minutes

Chair Lucy led the review of the minutes of the meeting on November 6, 2023, for edits and there were none.

Vice Chair Shedd made a motion to approve the minutes from November 6, 2023 as written.

Member Hultin seconded the motion.

ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Medoff - Aye

Member Hultin – Aye

Member Crocker - Aye

Chair Lucy - Aye

So voted, 5-0-0, motion carries.

Public Hearing (Continued)

2022-017/ZBA (VAR/SP) - Ebb Tide on the Bay Condominiums for property located at 538 Shore Road (Atlas Map 7, Parcel 7, Registry of Deeds title reference: Book 5671, Page 232). Applicant seeks an Amended Variance under M.G.L. Ch. 40A §10 and §40.3.B.2 and §30.9.C of the Truro Zoning Bylaw for a reduction in number of parking spaces (from 12 spaces to 8); a Special Permit under M.G.L. Ch. 40A §6

and §30.7.A of the Truro Zoning Bylaw for the relocation of three non-conforming structures on a lot in the Beach Point Limited Business District.

Chair Lucy announced that a request for a continuance in this matter was received from Attorney and Applicant Christopher Snow. The Applicant requested a continuance until January 22, 2024.

Vice Chair Shedd made a motion to continue 2022-017/ZBA (VAR/SP) until January 22, 2024.

Member Hultin seconded the motion.

ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Medoff - Aye

Member Hultin – Aye

Member Crocker - Aye

Chair Lucy - Aye

So voted, 5-0-0, motion carries.

Public Hearing (New)

2023-011/ZBA SBA Communications for DISH Wireless-5 Town Dump Road (Atlas Map 55, Parcel 2A).

Applicant seeks a Special Permit to modify a telecommunication structure of nonconforming height.

Chair Lucy recognized Ms. Ware and Mr. Stouffer who presented the project and technical data.

Members, Town Planner/Land Use Counsel Carboni, Ms. Ware, and Mr. Stoffer discussed the following highlighted topics: Tower Engineering Solutions' analysis results which showed a maximum structural usage at 104.8%, any cracks or stress points on the current structure by a visible inspection which require attention, and the regularity of a visible inspection of the structure by SBA Communications.

Vice Chair Shedd made a motion that in the matter of 2023-011/ZBA SBA Communications for DISH Wireless for property located at 5 Town Dump Road be granted a Special Permit to modify a telecommunication structure of nonconforming height and that the alteration will not be substantially 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.

Member Medoff seconded the motion.

ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Medoff - Aye

Member Hultin – Aye

Member Crocker - Aye

Chair Lucy - Aye

So voted, 5-0-0, motion carries.

After the vote, Chair Lucy announced that the Applicant's hearing with the Planning Board would be Tuesday, December 19, 2023.

Topics of Discussion

Report of Ad Hoc Housing Committee: Member Medoff provided a report from last week's Ad Hoc Housing Committee and the creation of an Ad Hoc Zoning Task Force identifying unclear, outdated, or inconsistent zoning bylaws, exploring and evaluating zoning bylaws as it related to the economic development strategy, and exploring, evaluating zoning bylaws as it related to the Housing Production Plan and the Local Comprehensive Plan (LCP) and then reports its findings and recommendations to the Select Board. The group approved draft language for suggestion on the charge for the task force. As an ad hoc committee it would have a start date and an end date.

Town Planner/Land Use Counsel Carboni noted that an Ad Hoc Zoning Task Force was successful in Eastham, MA. The Select Board had recently endorsed the concept and the next step is for the Select Board to review the charge. Member Medoff noted that the Planning Board did not have the capacity to put in the time and effort into the Ad Hoc Zoning Task Force but it will work with the task force to move the initiatives forward.

Town Planner/Land Use Counsel Carboni confirmed that the Ad Hoc Zoning Task Force should it propose amendments to the zoning bylaw will be referred by the Select Board to the Planning Board for an open hearing.

Member Medoff commented that the members of the task force would meet with the Select Board four times a year instead of two times a year. Member Medoff cautioned that the task force should not operate in silos but through inclusive collaboration.

Members and Town Planner/Land Use Counsel Carboni discussed the suggested composition of the task force, the Select Board appointment of 7 individuals to the task force, the establishment of committee rules for actions that it takes, and the need for a housing coordinator and how it may be proposed at Town Meeting.

Deadline for Submission of Documents: Member Medoff provided background for her request to add the discussion to tonight's agenda in regard to the deadline for submission of documents. Member Medoff reviewed the process for the submission of an application and asked the Members to comment on the enforcement of the submission of requested supplemental documents in order to avoid last minute submissions.

Chair Lucy noted that there is a written deadline for documents to be submitted the Monday prior to the ZBA's Monday scheduled meeting. Vice Chair Shedd commented that he supported that deadline for documents.

A brief discussion followed with Town Planner/Land Use Counsel Carboni regarding the way the court would review an appeal from an Applicant or Opponent to an application. Town Planner/Land Use Counsel Carboni noted that the goal was to change behavior and set the tone for timely submission by any party.

Member Medoff suggested a meeting with all parties which routinely interact with the ZBA, in early 2024, to review the deadlines for submissions and guidelines in a friendly and informative environment. Town Planner/Land Use Counsel Carboni agreed that there could be an opportunity for such an event as it would change behavior.

Member Hultin suggested that there should be consideration for clerical or administrative errors which may affect any party.

Town Planner/Land Use Counsel Carboni will meet with Planning Department Assistant Liz Sturdy tomorrow to review Planning Department forms to ensure that deadlines are more prominent on the forms so it is clear that late submissions will not be accepted.

Vice Chair Shedd made a motion to adjourn at 6:14 pm.

Member Hultin seconded the motion.

ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Hultin – Aye

Member Crocker – Aye

Member Medoff - Aye

Chair Lucy - Aye

So voted, 5-0-0, motion carries.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alexander O. Powers", written over a horizontal line.

Alexander O. Powers

Board/Committee/Commission Support Staff



TOWN OF TRURO

ZONING BOARD OF APPEALS

Meeting Minutes

January 22, 2024 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING

Members Present (Quorum): Chris Lucy (Chair); Darrell Shedd (Vice Chair); Dave Crocker; Art Hultin; Nancy Medoff; Joe McKinnon (Alt.)

Members Absent:

Other Participants: Barbara Carboni – Town Planner/Land Use Counsel; Bob Weinstein – Select Board Liaison; Christopher J. Snow (Attorney and Applicant); Ben Zehnder (Attorney for Abutters – Marie Belding and Pat Callinan); Pat Callinan (Abutter); Ted Malone (Community Housing Resource – Applicant); Peter Freeman (Attorney for Community Housing Resource – Applicant); John O’Reilly (Engineer for Community Housing Resource – Applicant); Karen Ruymann (Truro Voter); Lauren Anderson; Russ Braun

Remote meeting convened at 5:30 pm, Monday, January 22, 2024, by Town Planner/Land Use Counsel Carboni who announced that this was a remote meeting which is being broadcast live on Truro TV Channel 8 and is being recorded. Chair Lucy introduced the Members of the ZBA.

Public Comment Period

Chair Lucy invited the members of the public to offer public comments and there were none.

Public Hearing (Continued)

2022-017/ZBA (VAR/SP) - Ebb Tide on the Bay Condominiums for property located at 538 Shore Road (Atlas Map 7, Parcel 7, Registry of Deeds title reference: Book 5671, Page 232). Applicant seeks an Amended Variance under M.G.L. Ch. 40A §10 and §40.3.B.2 and §30.9.C of the Truro Zoning Bylaw for a reduction in number of parking spaces (from 12 spaces to 8); a Special Permit under M.G.L. Ch. 40A §6 and §30.7.A of the Truro Zoning Bylaw for the relocation of three non-conforming structures on a lot in the Beach Point Limited Business District.

Chair Lucy announced that a request for a continuance until February 26, 2024 in this matter was received from Attorney Snow.

Chair Lucy recognized Attorney Snow who explained the reason for the continuance is to give the Applicant time to explore the execution of a modest slight reduction in Unit 1 and Unit 2 in order to satisfy the objections from the two Members who previously voted in opposition of the special permit.

Vice Chair Shedd made a motion to continue 2022-017/ZBA (VAR/SP) until February 26, 2024. Member Medoff seconded the motion.

ROLL CALL VOTE:

Member McKinnon – Aye

Member Crocker – Aye

Member Medoff - Aye

Vice Chair Shedd – Aye

Member Hultin – Aye

Member Braun - Abstained

Chair Lucy - Aye

So voted, 6-0-1, motion carries.

Board Action/Review

2024-001/ZBA (40B) - Community Housing Resource, Inc. for property located at 22 Highland Road (Cloverleaf) (Atlas Map 36, Parcel 238; Registry of Deeds title reference Book 30796, Page 289; Plan Book 672, Page 31). Notice of Project Change, 22 Highland Road, Cloverleaf Truro Rental Housing.

Chair Lucy recognized Attorney Freeman who introduced the Applicants' representatives who were present and then provided a brief overview of this matter.

Attorney Freeman reviewed the following insubstantial proposed changes to the original approved plan: the approved number of units was 39 and now proposed to 43 units, the number of bedrooms remain at 68, the number of buildings was 13 and now proposed to 12, and the approved number of parking spaces was 83 and now proposed to 87 due to the proposed 4 additional units.

Attorney Freeman noted that there would be no change in the wastewater treatment system as the proposed number of bedrooms remains the same and the stormwater drainage system. The lot coverage area and total square footage of the new building (Building 22) is the same as what was originally approved. There are no additional waivers needed and a previously approved waiver for a walk out basement that is now no longer needed.

Attorney Freeman then reviewed the newly submitted documents along with the proposed changes with the Members. After Attorney Freeman's presentation, Mr. Malone provided a more detailed review of the site plan and an overview of the proposed changes to the Members.

After Mr. Malone's presentation, Members commented and discussed the following highlighted topics with Mr. Malone and Attorney Freeman: the insubstantial changes and the Applicant's perseverance to start the project; the project's importance to the residents of Truro by providing additional affordable housing; the amount of previous public input regarding the project but not no public input regarding the proposed changes; concern about the distribution of affordability; rental income rates at Cloverleaf compared to Sally's Way; the collection and review of yearly income surveys which would determine whether a previously qualified renter remains in a current unit or transitions to a unit approved for the new income level; increase in rent as a renter's income increases; reviewed the Area Median Income (AMI) for Barnstable County; and any limitations on assets for a renter of any of these units.

Chair Lucy opened up the discussion to members of the public and recognized the following individuals who commented on or asked questions on this topic: Ms. Ruymann and Ms. Anderson.

Chair Lucy asked Town Planner/Land Use Counsel Carboni for the language that would be used in a motion for this matter. Attorney Freeman agreed with the language suggested by Town Planner/Land Use Counsel Carboni with the addition of the Notice of Project Change.

A discussion then ensued among the Members and Mr. Malone about the potential timeline and consequences affecting funding should the ZBA find that this proposed plan is substantial and would result in the scheduling of a new public hearing. This process could take six months and the ZBA would have an additional 45 days to render its decision.

Vice Chair Shedd made a motion that in the matter of 2024-001/ZBA (40B) - Community Housing Resource, Inc., that the Board find that the changes as proposed are insubstantial including the change from 39 units to 43 units, including changes in the Site Plan, and as described in the Notice of Project Change dated 1/12/2024.

Member Crocker seconded the motion.

Member Medoff expressed concern about the absence of workforce housing in this proposal. Member Braun commented on workforce housing and also noted that he was not yet sworn in as a Member of the ZBA. Member Hultin commented that he was unsure of the benefit of additional public hearings.

ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Crocker - Aye

Member Hultin – Aye

Member Medoff - Aye

Chair Lucy - Aye

So voted, 5-0-0, motion carries.

Chair Lucy announced that the next ZBA meeting would be held on February 26, 2024 at 5:30 pm.

Vice Chair Shedd made a motion to adjourn at 6:57 pm.

Member Hultin seconded the motion.

ROLL CALL VOTE:

Member Crocker - Aye

Member Medoff - Aye

Vice Chair Shedd – Aye

Member McKinnon - Aye

Member Hultin - Aye

Chair Lucy - Aye

So voted, 6-0-0, motion carries.

Respectfully submitted,



Alexander O. Powers

Board/Committee/Commission Support Staff



April 10, 2023

CEC Project Number: C23035.01

William N. Rogers Professional Civil Engineers & Land Surveyors
Attn: Billy Rogers, P.E., P.L.S.
41 Off Cemetery Road
Provincetown, MA 02657
VIA EMAIL: billsier@verizon.net

**RE: Vibrations Analysis Report
Ebb Tide on the Bay Condominium
538 Shore Road, Truro, MA**

Dear Mr. Rogers:

Pursuant to your request and subsequent authorization, Coastal Engineering Company, Inc. (CEC) has conducted a review of the proposed construction at the above referenced property relative to the potential impact on the neighboring structures. Per the plans provided to CEC by William N. Rogers Professional Civil Engineers & Land Surveyors (Rogers), the proposed project includes the replacement of the three (3) existing residential building structures onsite with three (3) new structures. The plans made available for CEC review include:

- *"Existing Site Plan of Land in (North) Truro"*, dated September 2020 (revised December 2022), sheet "SE.1"
- *"Proposed Site Plan of Land in (North) Truro"*, dated September 2020 (latest revision April 2022), sheets "SP.1" and "SP.2"
- *"Building #1"*, dated December 2019, sheets "1-A.1" through "1-A.5"
- *"Building #2"*, dated December 2019, sheets "2-A.1" through "2-A.5"
- *"Building #3"*, dated December 2019, sheets "3-A.1" through "3-A.6"

As shown on the drawings provided noted above, Building 1 will be reconstructed approximately 8 feet back towards Shore Road compared to its current location. Building 2 and 3 will be reconstructed approximately 12 and 15 feet, respectively, towards Shore Road, from their current locations. The new structures will be supported by a timber pile foundation, with piles embedded into the subgrade protruding approximately six to nine feet above the subgrade depending on the elevation of the grade below. The superstructure of these buildings will be conventionally wood framed, set on timber pile caps.

Timber piles are generally installed with a pile driving hammer attached to an excavator, crane, or other type of heavy machinery used to "blow" the top of the pile to drive it into the subgrade. The number of blows and time it takes to install a timber pile to the proper (designed) depth below the subgrade is dependent on the required minimum embedment length, the load carried by the piles, and the composition of the soil amongst other factors.

CEC did not conduct a complete soil investigation as part of this report, however, due to our knowledge of the project site and the surrounding area, the soils are assumed to loose sand (ranging from loamy to coarse as the depth increases).

CEC visited the site on March 27, 2022, to review the existing building positions, the general site layout, and the composition of the top layer of the soil. CEC did not review the interior of the existing building structures onsite, nor the neighboring structures.

The overall purpose of this report is to review the potential impact of the proposed construction on the immediate neighboring structure located at 542 Shore Road. Per the provided site plan, the existing residential dwelling at 542 Shore Road will be located approximately 14 feet from the proposed location of Building 3. This assessment was completed with reference to Ninth Edition of the Massachusetts State Building Code, Residential Volume (780 CMR 51.00) amendments to the 2015 International Residential Code for One- and Two-Family Dwellings [Code].

This report does not include an exhaustive investigation of the neighboring existing building structure in question, nor a review of the building drawings provided. It is beyond the scope of this report to evaluate the impact of the installation of every timber pile may have on every surrounding building, therefore the piles for which the installation is assumed to have the greatest impact on the adjacent buildings will be reviewed.

Analysis

The potential impact of construction activities to a given entity is determined by the force (known as attenuation) of vibrations caused by the installation of the structural elements. The attenuation of ground vibrations from construction equipment/operations can be measured as the peak particle velocity (PPV) which is presented in inches per second. The PPV varies based on the distance from the cause of the vibration to the element in question. The closer the target object is to the source, the greater the impact. This impact varies logarithmically between the source and the target.

Given the site plan, the source (pile driving activities) is shown to be approximately 14 feet away from the target (the residential structure located at 542 Shore Road). The installation of other piles onsite may still have an impact, but potentially far less than the installation of the immediate adjacent piles.

Equation 1 (*Assumed Vibration – Pile Driving*) shown below, describes the PPV as a function of the distance (D) in feet, "n" which is a function of the soil class, and the load rating of the equipment used. The equation is as derived and described in a paper by Andrews, Buehler, Gill and Bender titled, "*Transportation and Construction Vibration Guidance Manual*".

$$PPV_{IPD} = 0.65 * \left(\frac{25}{D}\right)^n * \left(\frac{E_{IPDEquip}}{36,000}\right)^{0.5}$$

Equation 1: Assumed Vibration – Pile Driving

The value " $E_{IPDEquip}$ " in Equation 1 is meant to be the rated energy of the impact pile in foot-pounds. The equipment of construction is not known at this time, but it can be assumed that a pile driver with a rated energy of 9,000 foot-pounds. This value is assumed to be an appropriate load rating for pile installation of this type. The value "n" noted above can be taken from Figure 1 "Soil Class for PPV" below based on the presumed composition of the soil.

Soil Class	Description of Soil Material	"n"
I	Weak or soft soils: loose soils, dry or partially saturated peat and muck, loose beach sand, and dune sand, recently plowed ground, soft spongy forest or jungle floor, organic soils, top soil. (shovel penetrates easily)	1.4
II	Competent soils: most sands, sandy clays, silty clays, gravel, silts, weathered rock. (can dig with shovel)	1.3
III	Hard soils: dense compacted sand, dry consolidated clay, consolidated glacial till, some exposed rock. (cannot dig with shovel, need pick to break up)	1.1
IV	Hard, competent rock: bedrock, freshly exposed rock. (difficult to break with hammer)	1.0

Figure 1: Soil Class for PPV

Since the soil is loose beach sand, n can be taken to be equal to 1.4. Given this information, the PPV for the pile installation for the piles closest to the existing structure at 542 Shore Road can be calculated to approximately $PPV_{IPD} = 0.73$ inches per second.

The impact to building structures and humans occupying those building structures can be summarized in the below chart (Figure 2) prepared by the U.S. Department of Transportation (USDOT). The effect varies based on the Peak Particle Velocity.

Peak Particle Velocity (in/sec)	Effects on Humans	Effects on Buildings
<0.005	Imperceptible	No effect on buildings
0.005 to 0.015	Barely perceptible	No effect on buildings
0.02 to 0.05	Level at which continuous vibrations begin to annoy in buildings	No effect on buildings
0.1 to 0.5	Vibrations considered unacceptable for people exposed to continuous or long-term vibration	Minimal potential for damage to weak or sensitive structures
0.5 to 1.0	Vibrations considered bothersome by most people, however tolerable if short-term in length	Threshold at which there is a risk of architectural damage to buildings with plastered ceilings and walls. Some risk to ancient monuments and ruins.
1.0 to 2.0	Vibrations considered unpleasant by most people	U.S. Bureau of Mines data indicates that blasting vibration in this range will not harm most buildings. Most construction vibration limits are in this range.
>3.0	Vibration is unpleasant	Potential for architectural damage and possible minor structural damage

Figure 2: Effects of Construction Vibration

Based on the above chart and the calculated PPV of 0.73 inches per second, the effect of the pile driving felt could be considered bothersome by most people, however it may be tolerable if the construction activities are short-term in length. The piles directly adjacent to the building structure will likely be placed in a single day and therefore may not be considered long term. The USDOT states that the level at which vibrations become annoying to people is approximately 0.64 inches per second. The calculated PPV is above this number and therefore the vibrations may be annoying to people, but tolerable given the short-term nature of the installation.

The calculated PPV is within the range which there is a risk of architectural damage to a building with plastered ceilings or walls (per Figure 2). Generally, this is taken as a 5% chance that the target structure will show any potential damage. Given the age of the adjacent structure CEC assumes that plastered walls and/or ceilings exist in the structure.

Based on the drawings provided, there will likely be nine (9) piles that will be installed approximately 14 feet from the structure which will produce the above calculated PPV in the area of the existing structure closest to the pile installation. The next "row" of piles (grid line D) will be approximately 23 feet from the structure at 542 Shore Road. The PPV at the existing building from the installation of these piles would be approximately 0.37 inches per second. The installation of piles along grid lines C and B would have PPV of approximately 0.23 and 0.16 inches per second, respectively. Per Figure 2, the installation of these piles carries minimal potential for damage to weak or sensitive structures.

The above calculations assume a consistent soil classification through the pile embedded depth (i.e. the source) and through the cross section to the adjacent structure (i.e. the target) and that equipment with a rated energy of the impact pile of 9000 foot-lbs or less is used for installation. If these assumptions are found to be incorrect, the calculations above must be revisited for potential further impact to the existing adjacent building structure(s).

Recommendations and Conclusion

The calculations shown above show that there is a low potential for damage to the plastered finishes inside the structure at 542 Shore Road (or any other further structures). This does not mean that there is *no* potential for damage to these structures. Given the unknown parameters of construction it is still possible that damage can occur as a result of construction activities if the PPV would increase to 1.8 inches per second or above at the target (the existing building structure). There is a potential risk of minor architectural/structural damages (loosening plaster, hairline cracks in foundations, lengthening of old cracks). As stated above, this can be taken as 5% chance that any damage would be done. Structural damage generally occurs with PPV numbers above 3.0.

Since most pile driving activities are generally in the mid- to upper-frequency range, they are unlikely to cause any structural damage as opposed to earthquakes which produce vibrations at a (very) low frequency which bring a greater chance of architectural and/or structural damage.

Given slight potential for architectural damage in the structure, and the potential for annoyance during some of the pile installation activities, CEC would recommend the following steps to limit potential damage or impact felt by the adjacent properties:

1. Document the existing building structure at 542 Shore Road before and after construction (with permission from the owner). Existing cracks in plaster should be noted and measured to ensure they are not worsened by the pile driving operations.
2. Coordinate with the owners of the adjacent properties the optimal date and time to conduct pile driving activities closest to the existing structure.
3. Take steps to limit vibrations (use a small pile driving hammer, provide a pile cushion, etc.). These steps to limit vibrations may reduce the PPV felt on the adjacent buildings.
4. Monitor and record ground vibrations onsite during pile driving operations. Cease pile driving operations if the field measured PPV exceeds 1.8 inches per second.

Based on the assumed means and methods of construction, the pile driving activities onsite will likely be the greatest source of vibrations throughout the project. As stated above, while damage from these vibrations is unlikely, the above recommendations should be followed to ensure that negative impact is realized in the neighboring structures.

Please do not hesitate to call our office if you have any questions concerning this report.

Very truly yours,

COASTAL ENGINEERING CO., INC.



Marshall H. Puffer, P.E.
Structural Division Manager



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CHRISTOPHER J. SNOW
RONALD E. FRIESE

TELEPHONE
(508) 487-1160
487-1080
FAX: 487-2694
REFER TO FILE NO.

4130

February 20, 2024

Hand Delivery and Copy Via Email

Elizabeth Sturdy, Planning Department Assistant
Town of Truro
24 Town Hall Road
Truro, Massachusetts 02666

**Re: Truro Zoning Board of Appeals Application No. 2022-17/ZBA
Ebb Tide on The Bay
538 Shore Road**

Dear Liz:

Enclosed regarding the above referenced pending zoning application, please find the ten (10) copies of the amended plans for 538 Shore Road – Building #1 and ten (10) copies of the amended plans for 538 Shore Road – Building #2 for the ZBA consideration at its February 26, 2024 meeting on this Petition

Please advise if you have any questions or if any further information is required. We digitally filed the plans on Friday, February 16, 2024..

Very truly yours,

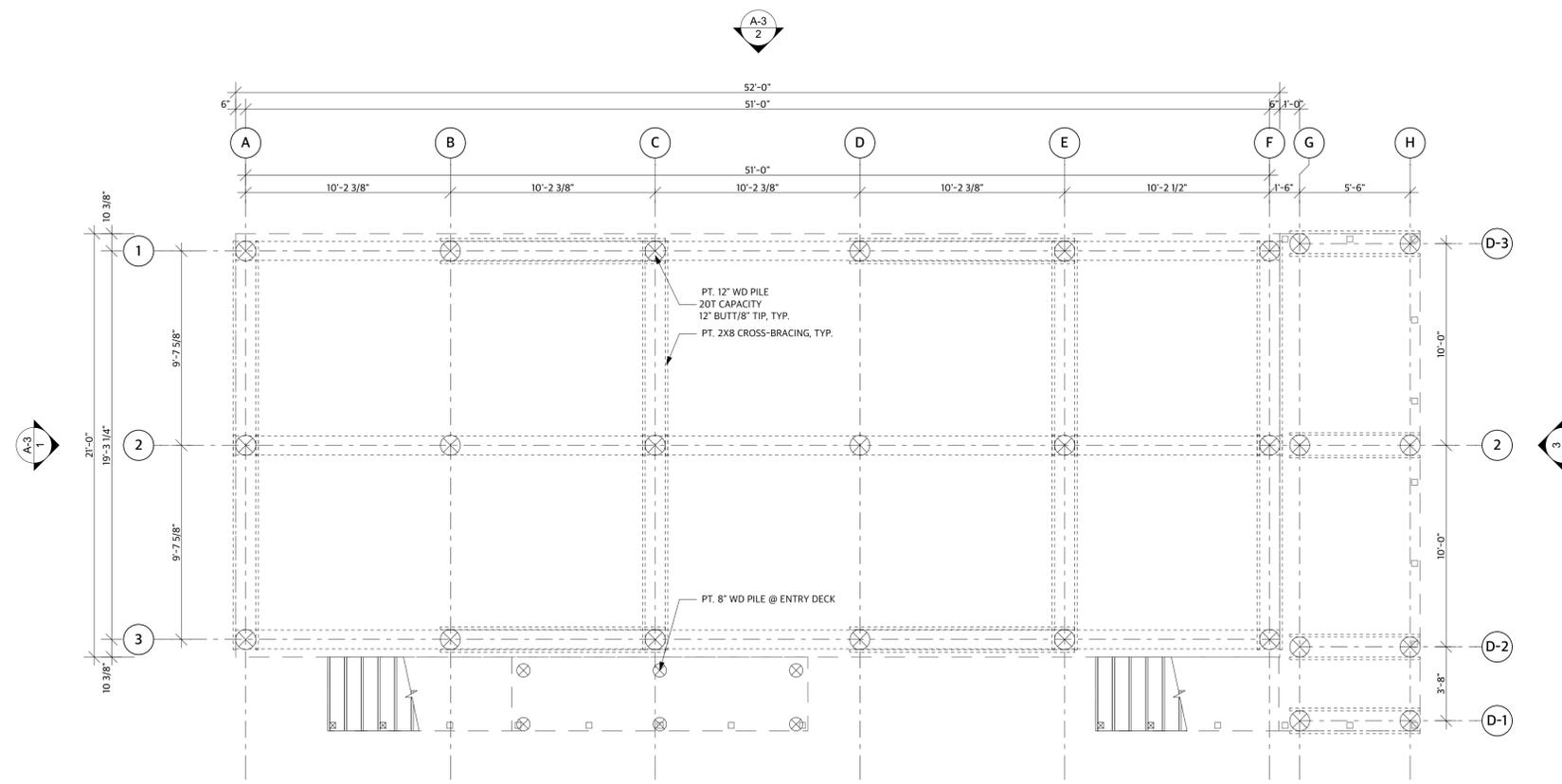


Christopher J. Snow

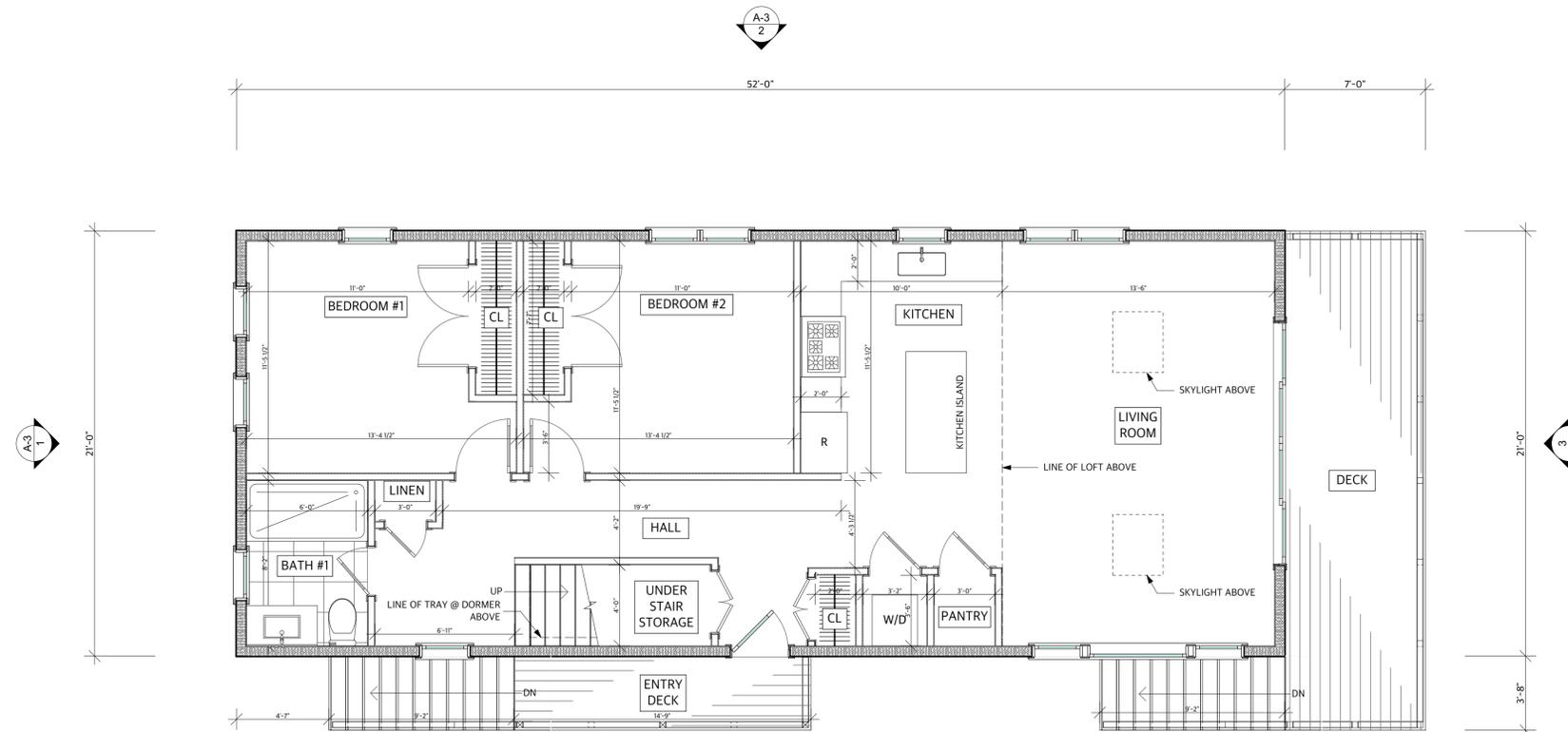
CJS:lk
Enclosures
Cc: Ms. Sally McSween
William N. Rogers, II, P.E., P.L.S.
Barbara Carboni, Esq.
Truro Town Planner/Land Use Counsel (All via Email only)

EXISTING FLOOR AREAS	
FIRST FLOOR AREA	1020 SQ. FT.
SECOND FLOOR AREA	611.25 SQ. FT.
TOTAL FLOOR AREA	1631.25 SQ. FT.

3 FOUNDATION/GRADE LEVEL BUILDING #1 EXISTING
SCALE: 1/4" = 1'-0"



1 FIRST FLOOR BUILDING #1 EXISTING
SCALE: 1/4" = 1'-0"



EXISTING DRAWINGS BASED ON DESIGN FROM WILLIAM N. ROGERS. DATED DECEMBER 2019

REVISION DATES:

Leif Hammquist Architects
 info@lha.design 617.365.0130
 www.lha.design

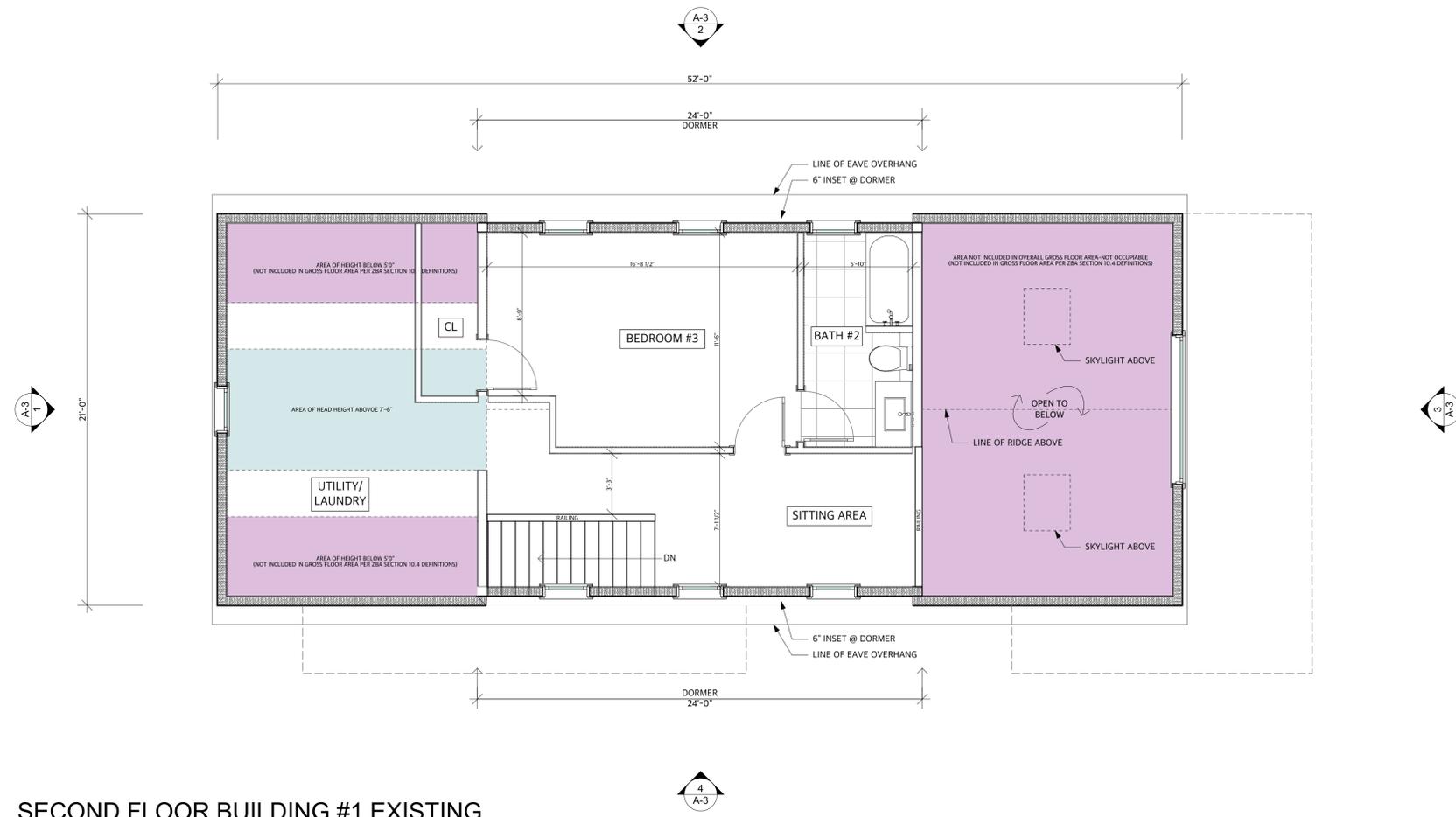
Title: FLOOR PLANS BUILDING #1 EXISTING
 Scale: As Noted
 Date: 02.09.24 NOT FOR CONSTRUCTION

Ebb on the Bay Condominium Building #1
 538 Shore Road
 Truro, MA

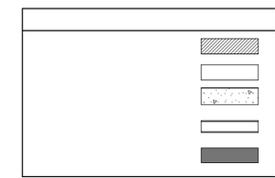
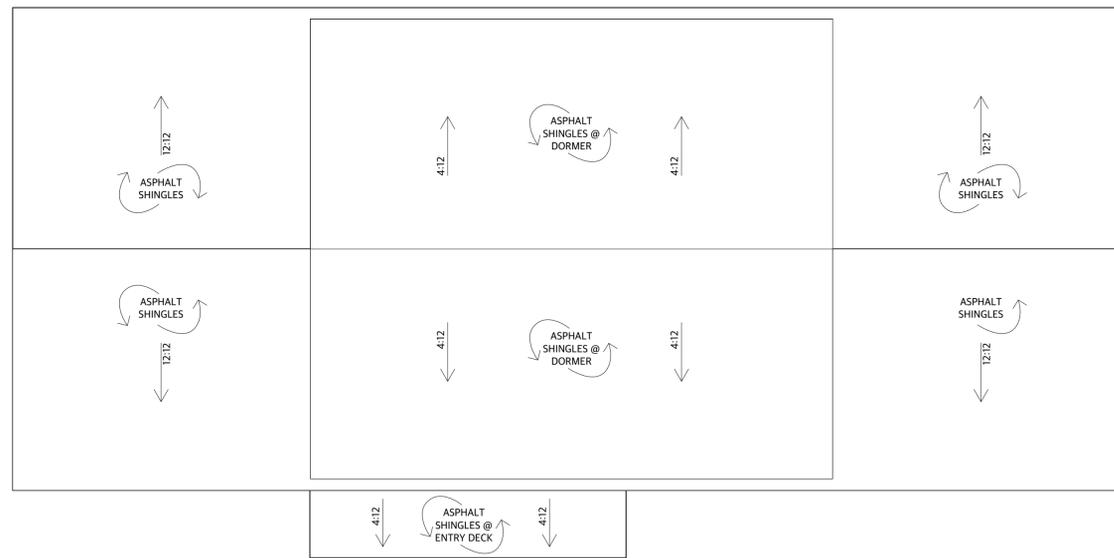
A-1

EXISTING FLOOR AREAS	
FIRST FLOOR AREA	1020 SQ. FT.
SECOND FLOOR AREA	611.25 SQ. FT.
TOTAL FLOOR AREA	1631.25 SQ. FT.

3 SECOND FLOOR BUILDING #1 EXISTING
SCALE: 1/4" = 1'-0"

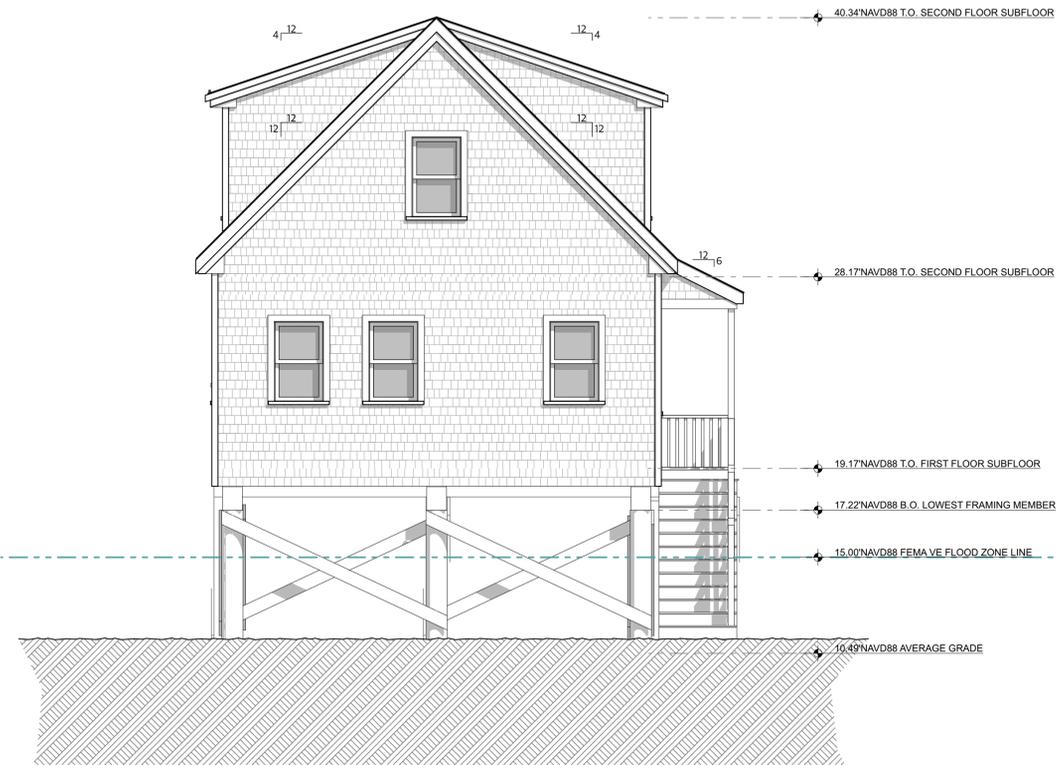


1 ROOF PLAN BUILDING #1 EXISTING
SCALE: 1/4" = 1'-0"



EXISTING DRAWINGS BASED ON DESIGN FROM WILLIAM N. ROGERS. DATED DECEMBER 2019

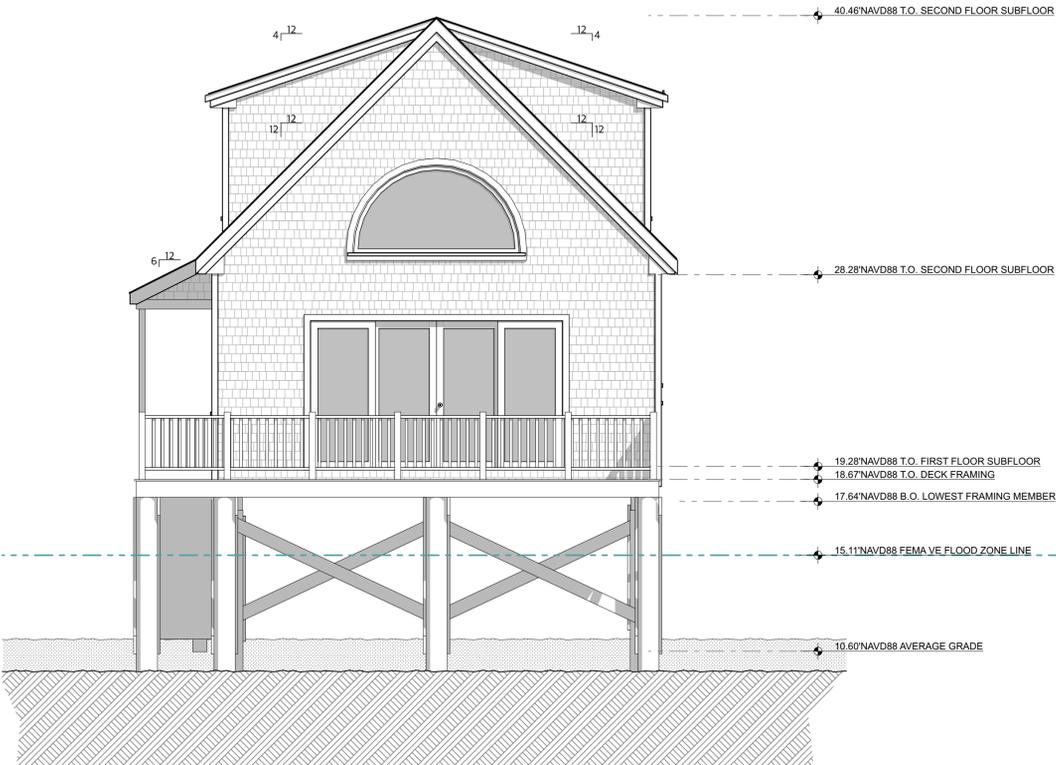
REVISION DATES:
 Leif Hammquist Architects
 info@lha.design 617.365.0130
 www.lha.design
 Title: FLOOR PLANS BUILDING #1 EXISTING
 Scale: As Noted
 Date: 02.09.24 NOT FOR CONSTRUCTION
 Ebb on the Bay Condominium Building #1
 538 Shore Road
 Truro, MA
 A-2



1 NORTH ELEVATION BUILDING #1 EXISTING (FACING SHORE ROAD)
SCALE: 1/4" = 1'-0"



2 EAST ELEVATION BUILDING #1 EXISTING
SCALE: 1/4" = 1'-0"



3 SOUTH ELEVATION BUILDING #1 EXISTING
SCALE: 1/4" = 1'-0"



4 WEST ELEVATION BUILDING #1 EXISTING
SCALE: 1/4" = 1'-0"

EXISTING DRAWINGS BASED ON DESIGN FROM WILLIAM N. ROGERS. DATED DECEMBER 2019

REVISION DATES:

Leif Hammquist Architects
info@lha.design 617.365.0130
www.lha.design

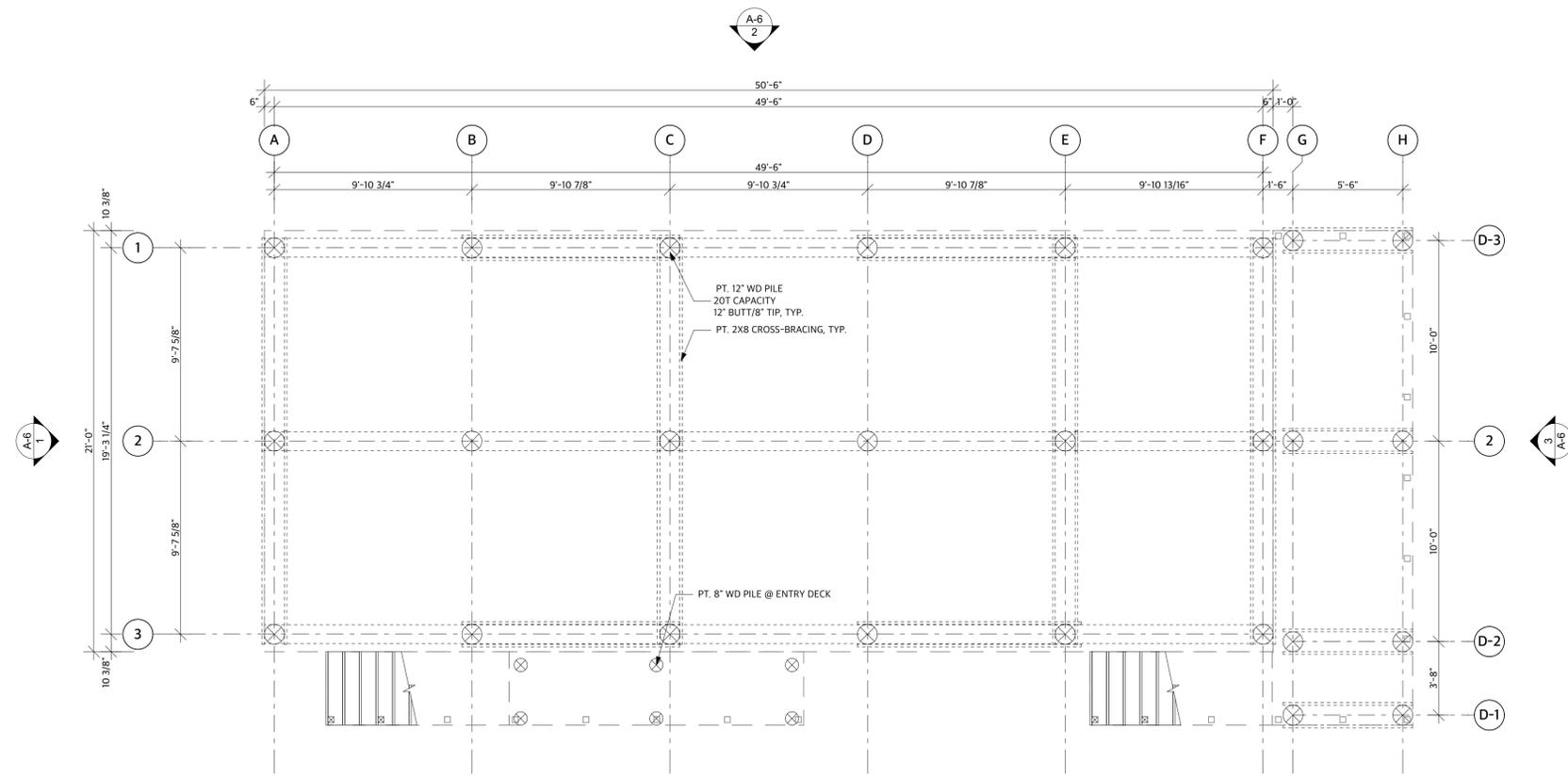
ELEVATIONS BUILDING #1 EXISTING
Title: As Noted
Scale: 02.09.24 NOT FOR CONSTRUCTION
Date:

Ebb on the Bay Condominium Building #1
538 Shore Road
Truro, MA

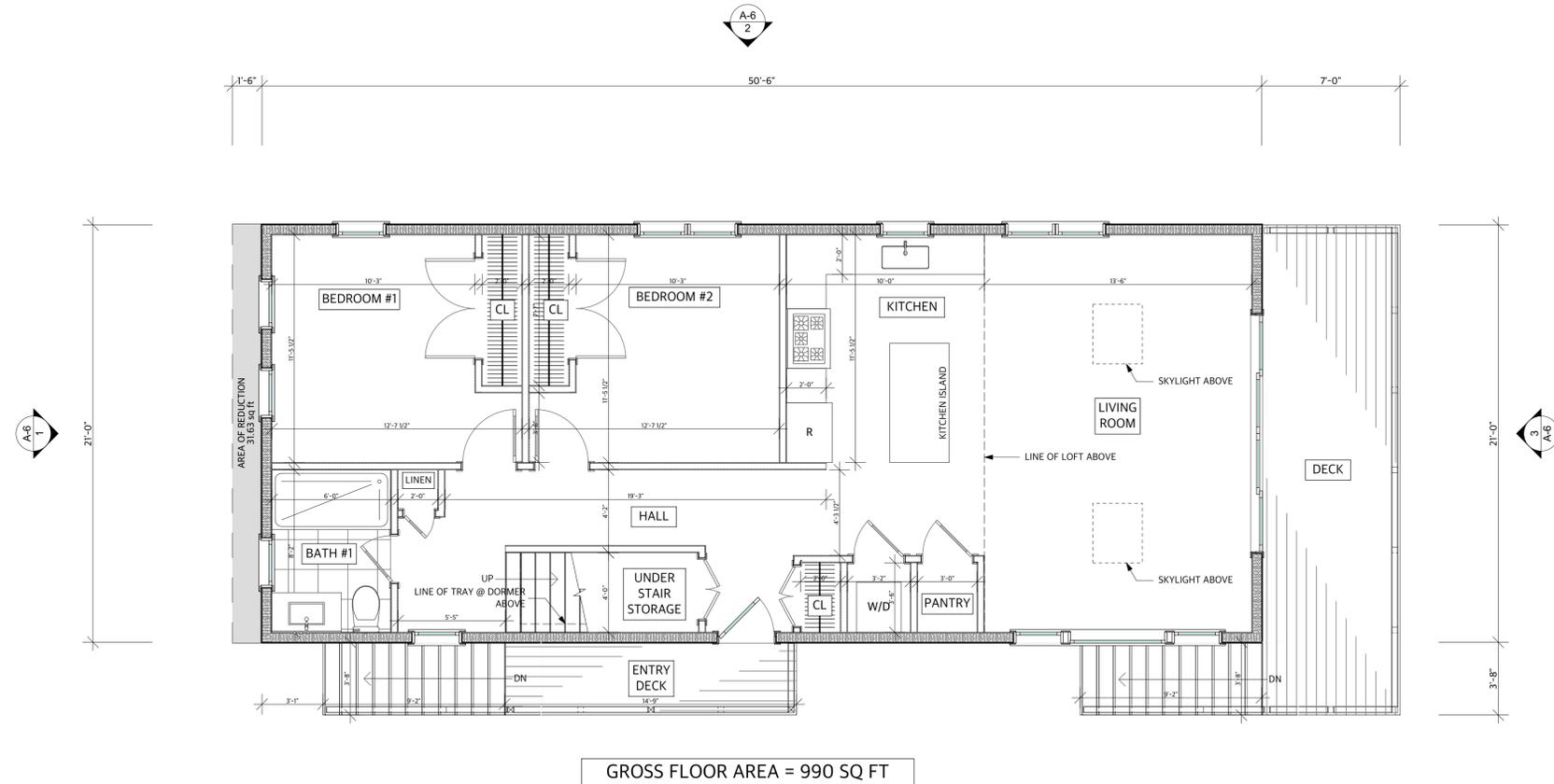
A-3

PROPOSED FLOOR AREAS	
FIRST FLOOR AREA	988.64 SQ. FT.
SECOND FLOOR AREA	579.62.46 SQ. FT.
TOTAL FLOOR AREA	1568.26 SQ. FT.
FLOOR AREA REDUCTION	62.99 SQ. FT.

3 FOUNDATION/GRADE LEVEL BUILDING #1 PROPOSED
SCALE: 1/4" = 1'-0"



1 FIRST FLOOR BUILDING #1 PROPOSED
SCALE: 1/4" = 1'-0"

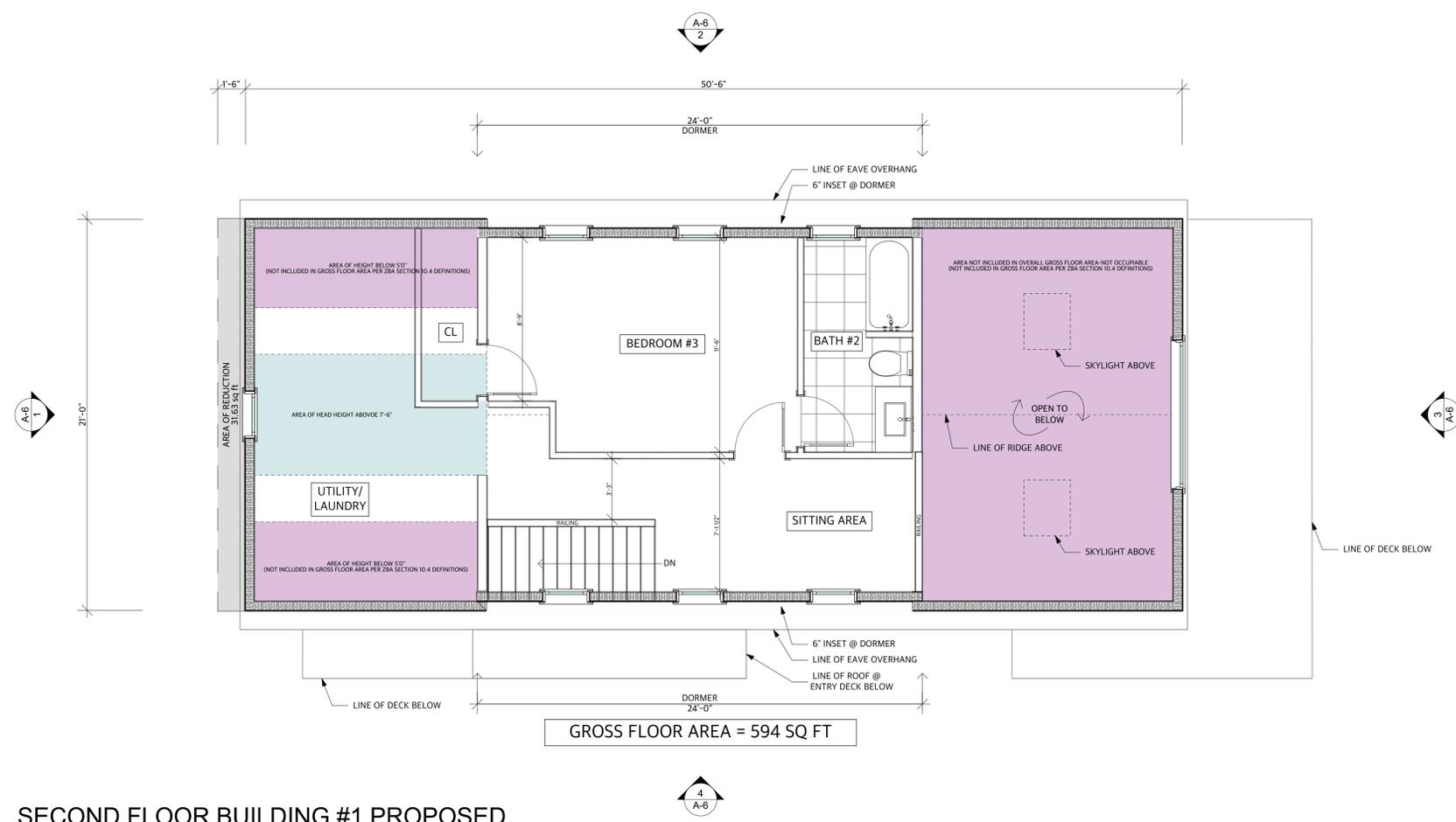


WALL LEGEND

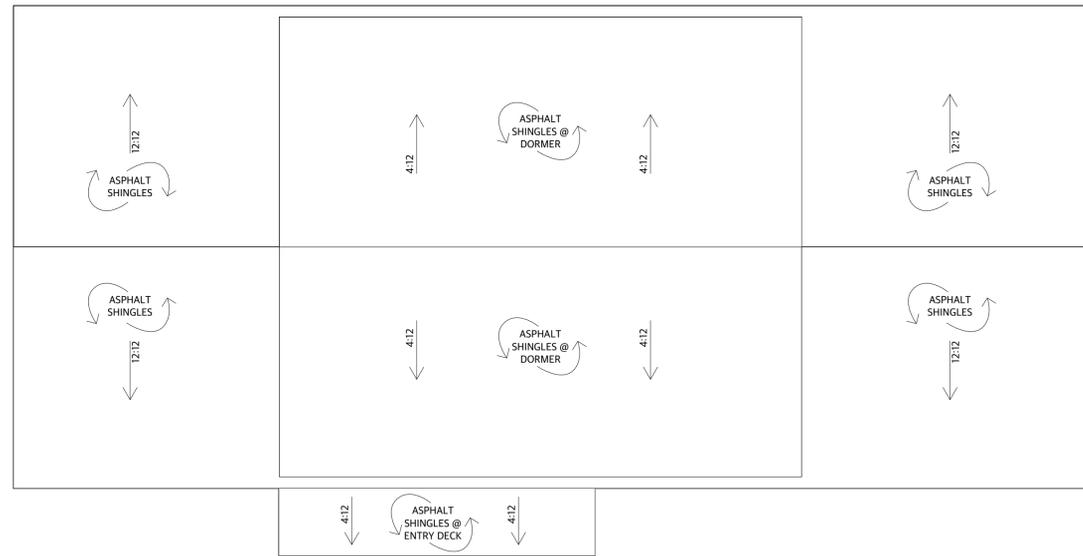
DEMO	
EXISTING FOUNDATION	
NEW FOUNDATION	
EXISTING CONSTRUCTION	
NEW CONSTRUCTION	

REVISION DATES:

Leif Hammquist Architects info@lha.design 617.365.0130 www.lha.design	
Title: FLOOR PLANS BUILDING #1 PROPOSED	Scale: As Noted
Date: 02.09.24 NOT FOR CONSTRUCTION	
Ebb on the Bay Condominium Building #1 538 Shore Road Truro, MA	
A-4	



PROPOSED FLOOR AREAS	
FIRST FLOOR AREA	988.64 SQ. FT.
SECOND FLOOR AREA	579.62.46 SQ. FT.
TOTAL FLOOR AREA	1568.26 SQ. FT.
FLOOR AREA REDUCTION	62.99 SQ. FT.



WALL LEGEND

DEMO	
EXISTING FOUNDATION	
NEW FOUNDATION	
EXISTING CONSTRUCTION	
NEW CONSTRUCTION	

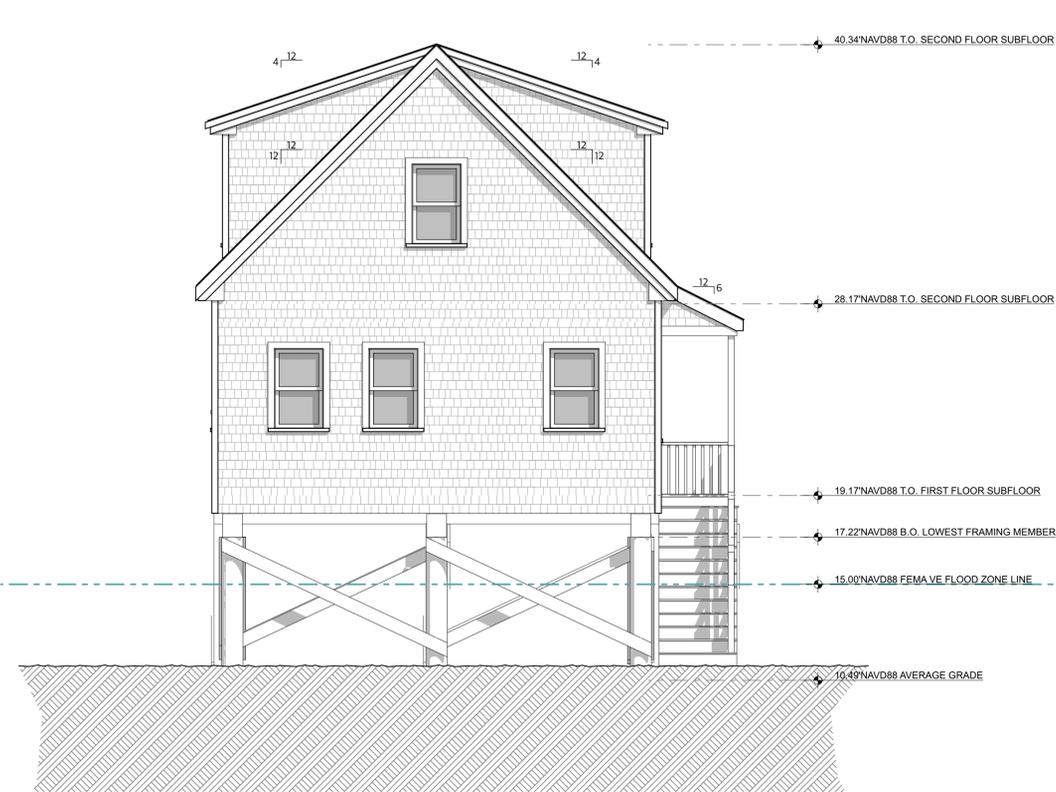
REVISION DATES:

Leif Hammquist Architects
info@lha.design 617.365.0130 www.lha.design

FLOOR PLANS BUILDING #1 PROPOSED
As Noted
02.09.24 NOT FOR CONSTRUCTION

Ebb on the Bay Condominium Building #1
538 Shore Road
Truro, MA

A-5



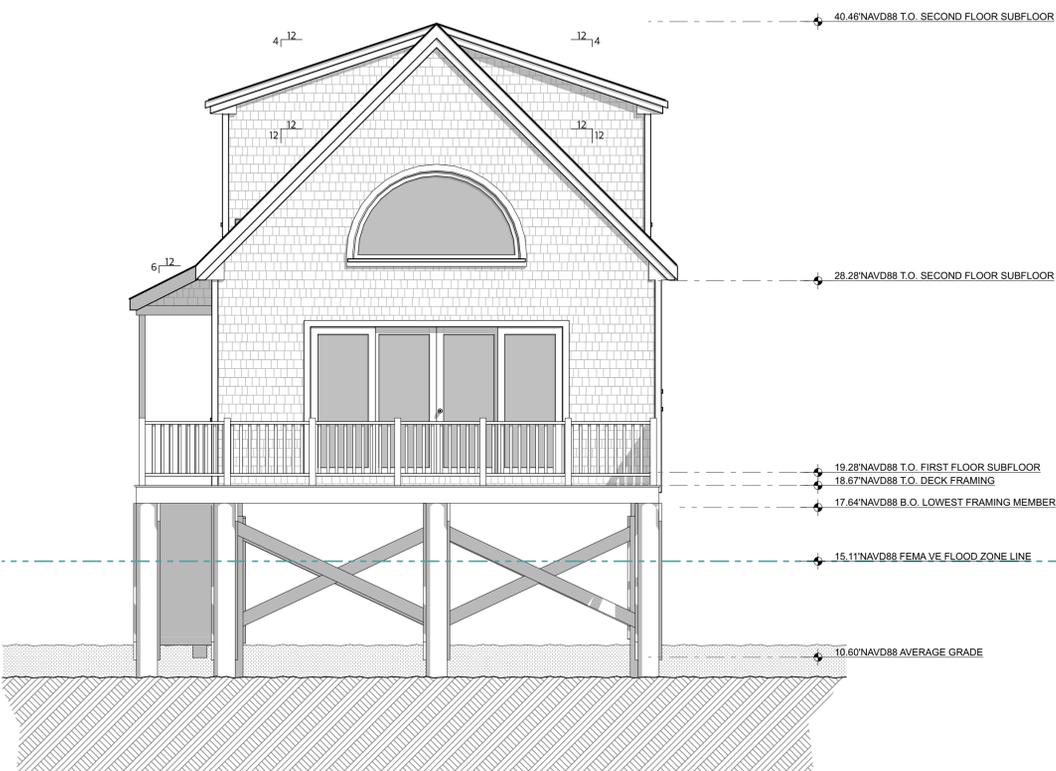
1 NORTH ELEVATION BUILDING #1 (FACING SHORE ROAD)

SCALE: 1/4" = 1'-0"



2 EAST ELEVATION BUILDING #1 PROPOSED

SCALE: 1/4" = 1'-0"



3 SOUTH ELEVATION BUILDING #1 PROPOSED

SCALE: 1/4" = 1'-0"



4 WEST ELEVATION BUILDING #1 PROPOSED

SCALE: 1/4" = 1'-0"

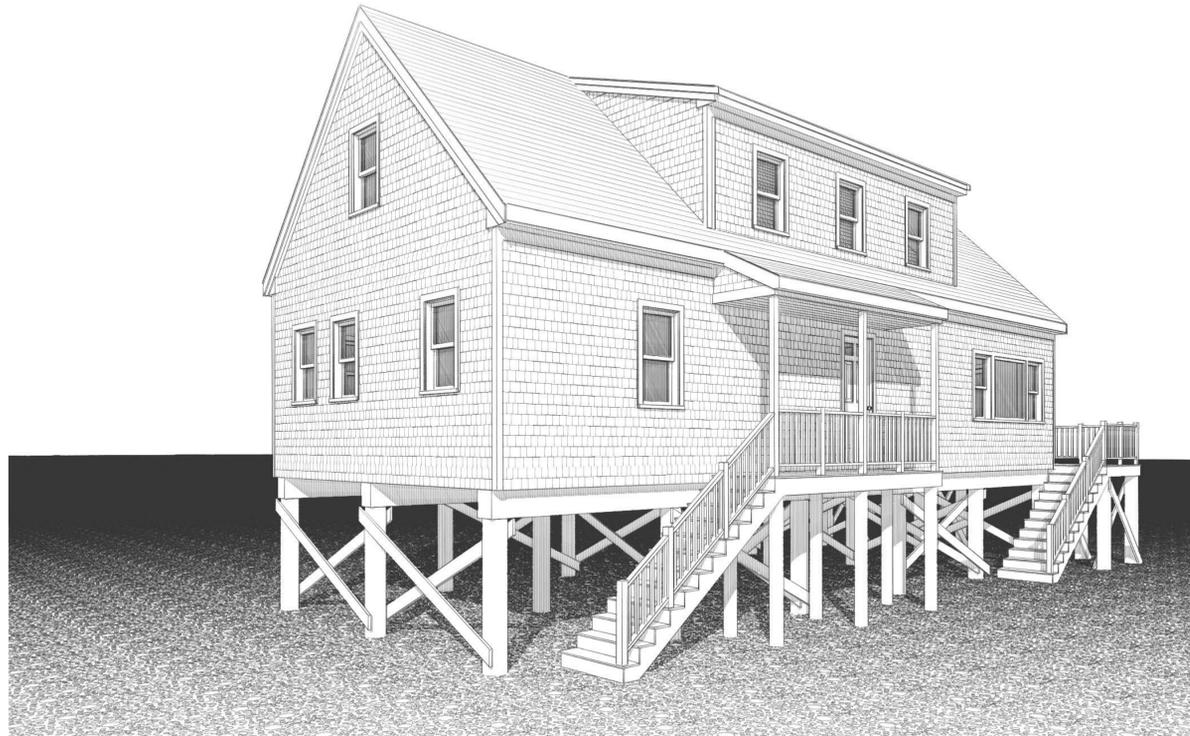
REVISION DATES:

Leif Hammquist Architects
 info@lha.design 617.365.0130
 www.lha.design

ELEVATIONS BUILDING #1
 Title: As Noted
 Scale: 02.09.24 NOT FOR CONSTRUCTION
 Date:

Ebb on the Bay Condominium Building #1
 538 Shore Road
 Truro, MA

A-6



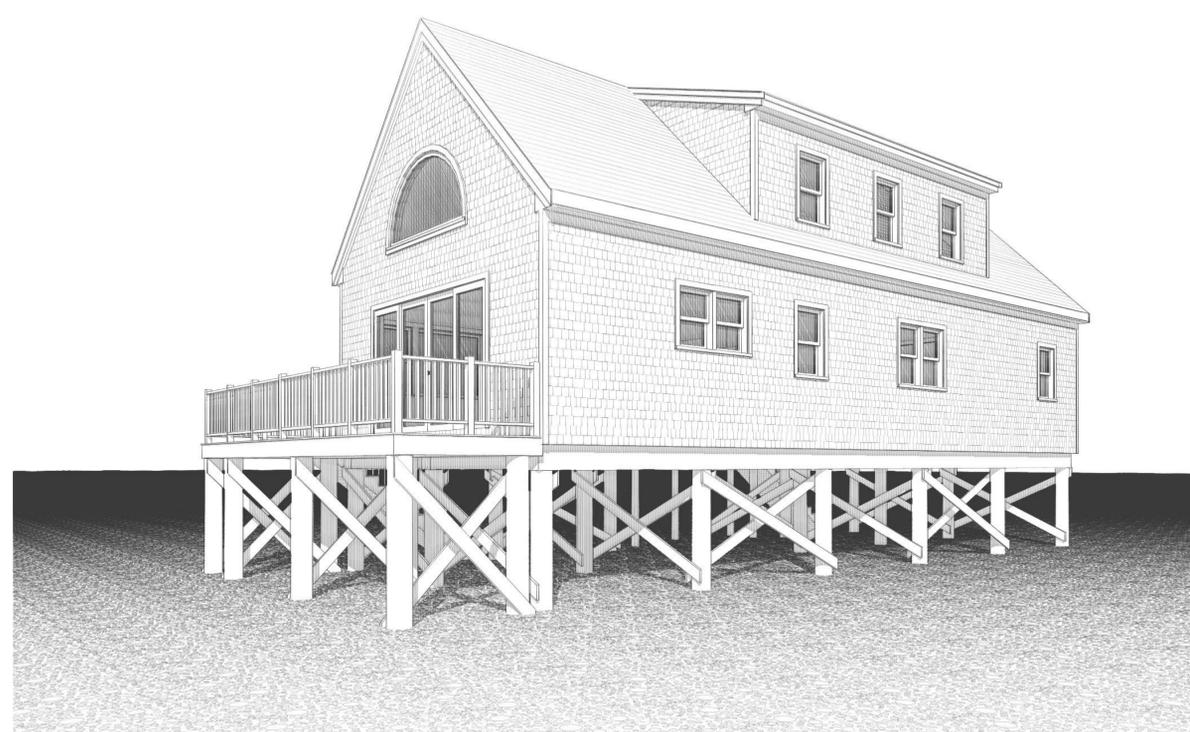
1 NORTHWEST VIEW BUILDING #1
SCALE: 1" = 1'-0"



2 NORTHEAST VIEW BUILDING #1
SCALE: 1" = 1'-0"



3 SOUTHWEST VIEW BUILDING #1
SCALE: 1:1.14



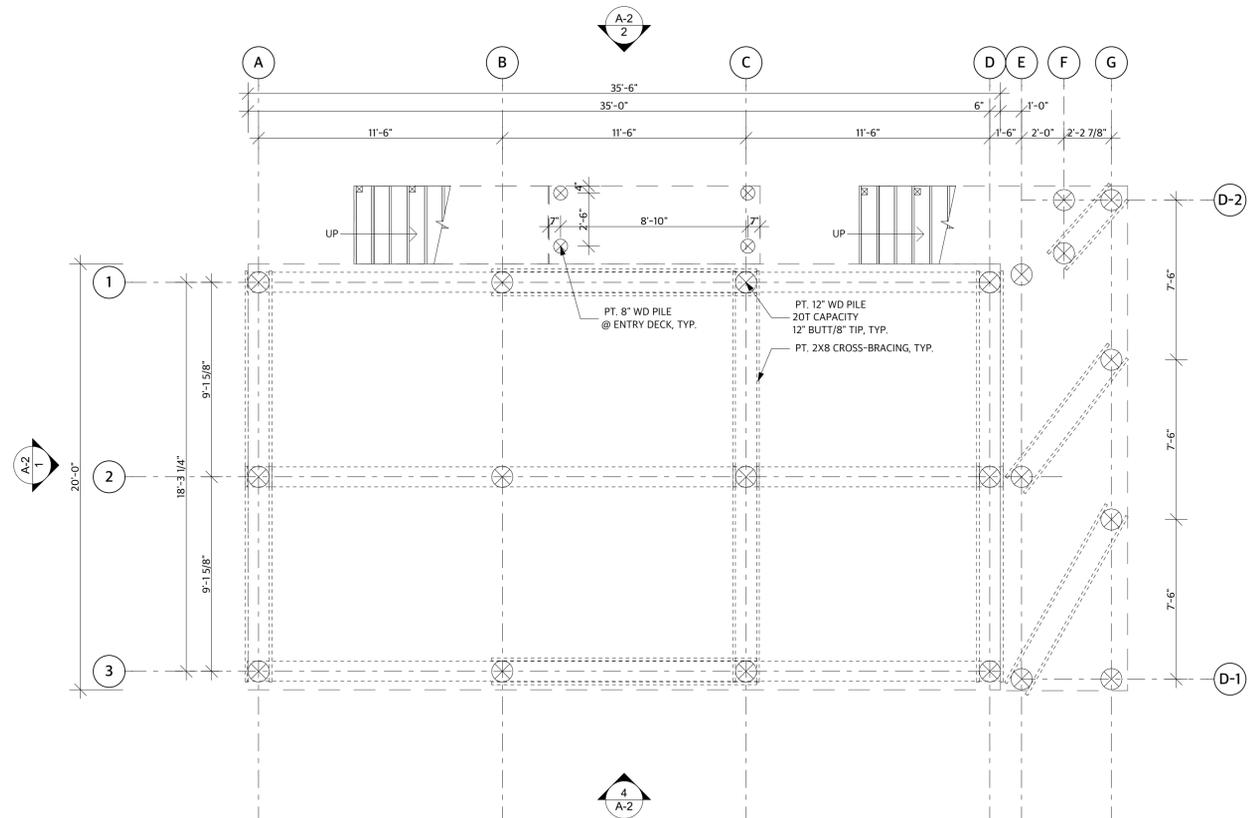
4 SOUTHEAST VIEW BUILDING #1
SCALE: 1" = 1'-0"

REVISION DATES:

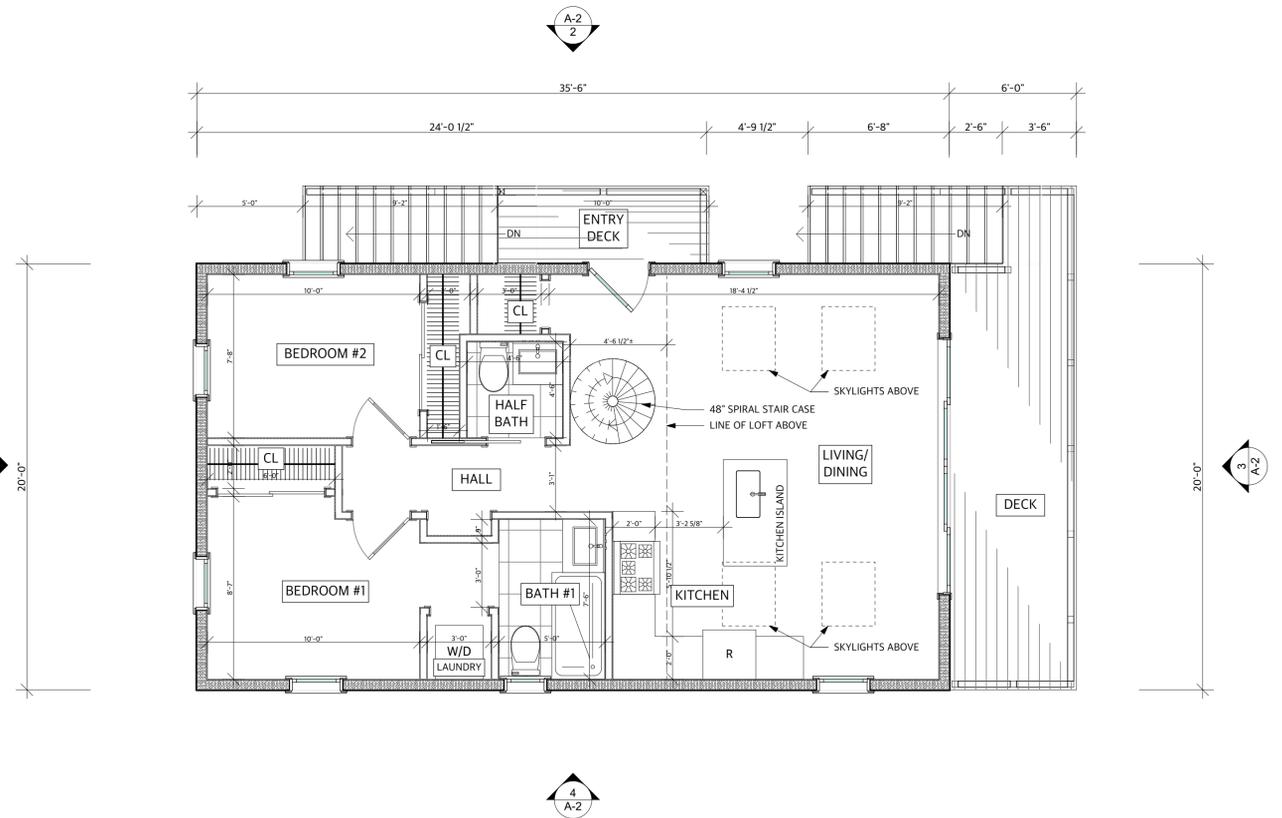
Leif Hamquist Architects
info@lha.design 617.365.0130
www.lha.design

Title: 3D RENDERINGS BUILDING #1
PROPOSED
Scale: As Noted
Date: 02.09.24 NOT FOR CONSTRUCTION

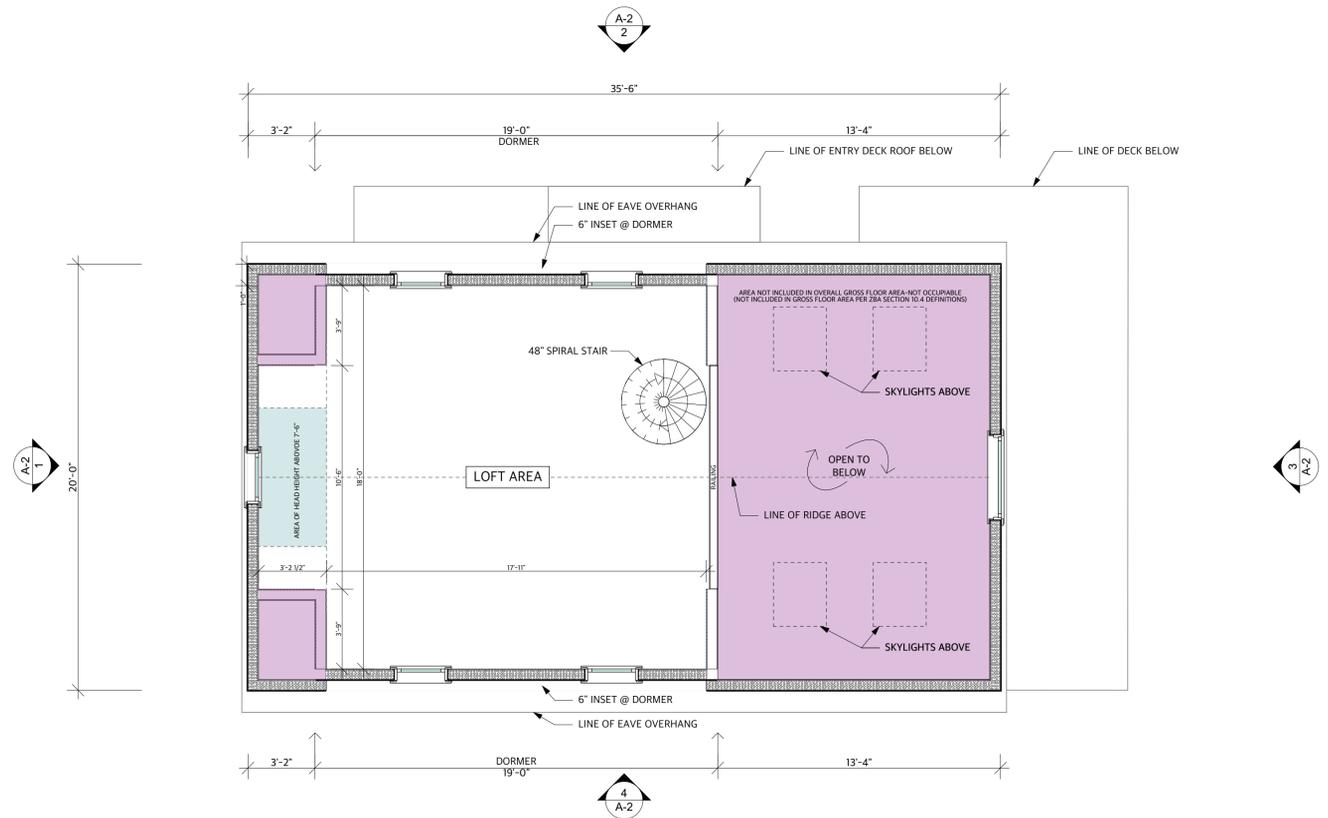
Ebb on the Bay Condominium Building #1
538 Shore Road
Truro, MA



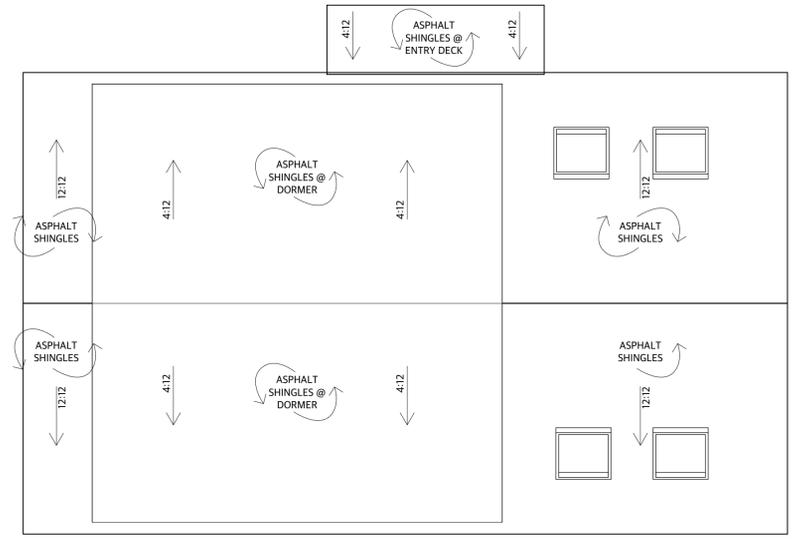
1 FOUNDATION/GRADE LEVEL BUILDING #2 EXISTING
SCALE: 1/4" = 1'-0"



2 FIRST FLOOR BUILDING #2 EXISTING
SCALE: 1/4" = 1'-0"



3 SECOND FLOOR BUILDING #2 EXISTING
SCALE: 1/4" = 1'-0"



4 FIRST FLOOR BUILDING #2 EXISTING
SCALE: 1/4" = 1'-0"

WALL LEGEND

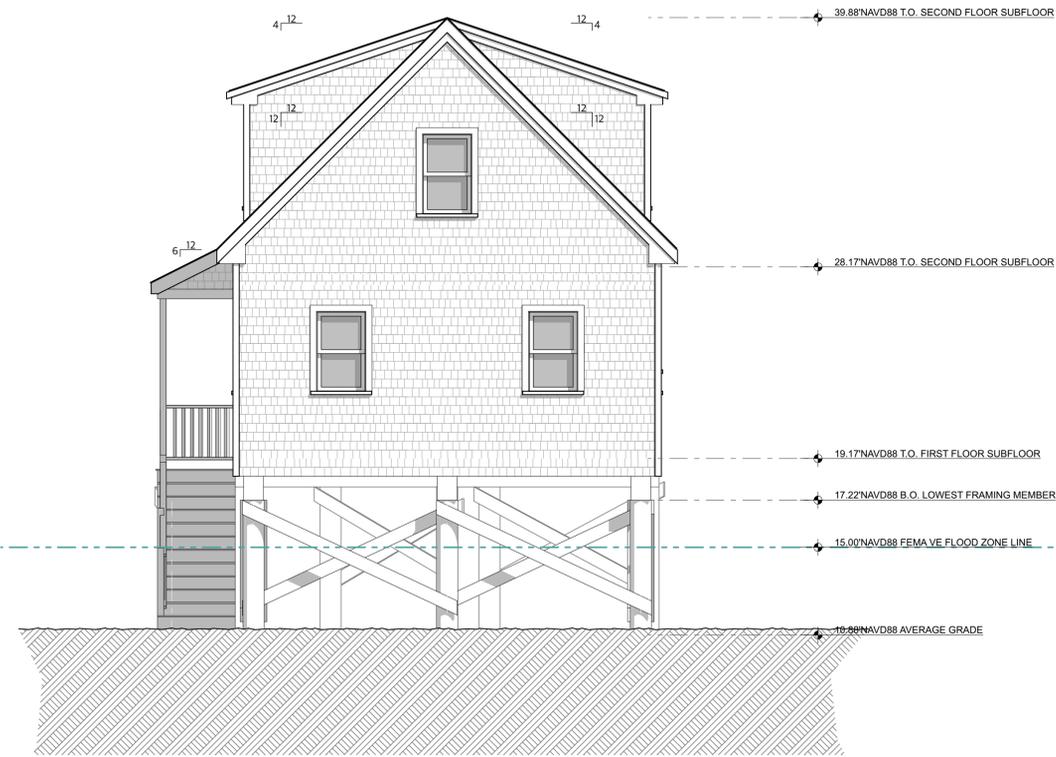
DEMO	
EXISTING FOUNDATION	
NEW FOUNDATION	
EXISTING CONSTRUCTION	
NEW CONSTRUCTION	

EXISTING FLOOR AREAS

FIRST FLOOR AREA	655.5 SQ. FT.
SECOND FLOOR AREA	365.92 SQ. FT.
TOTAL FLOOR AREA	1021.42 SQ. FT.

*EXISTING DRAWINGS BASED ON DESIGN FROM WILLIAM N. ROGERS, DATED DECEMBER 2019

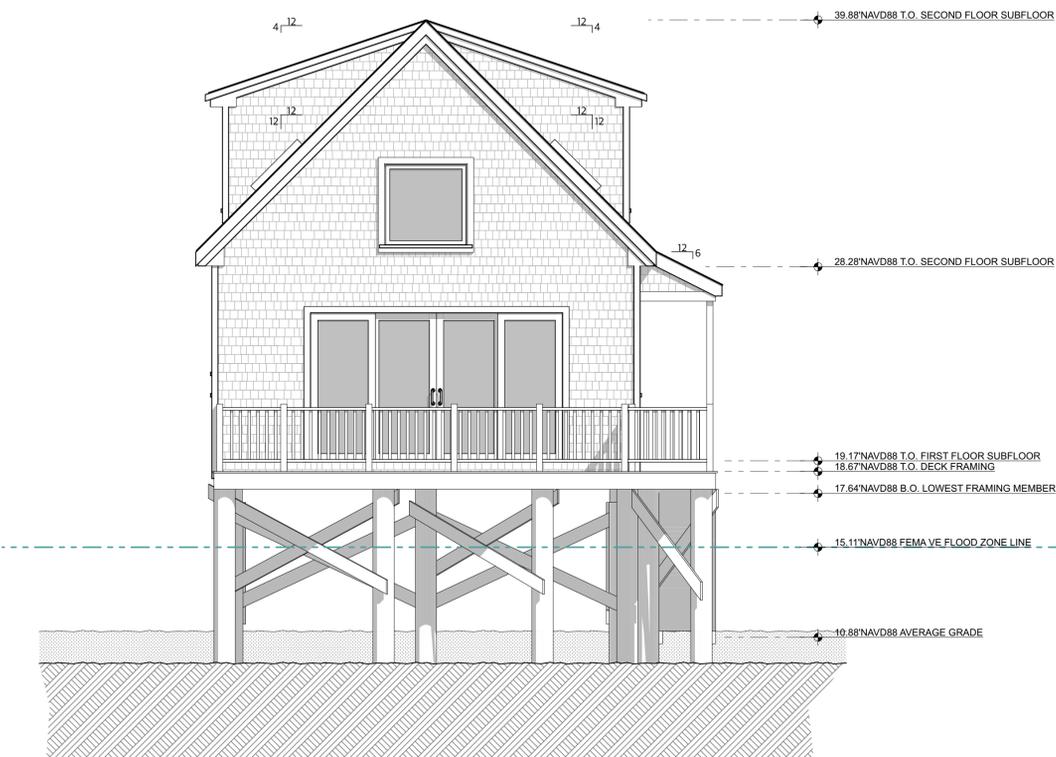
REVISION DATES:
 Title: FLOOR PLANS BUILDING #2 EXISTING
 Scale: As Noted
 Date: 02.12.23 NOT FOR CONSTRUCTION
 Ebb on the Bay Condominium Building #2
 538 Shore Road
 Truro, MA
 Leif Hammquist Architects
 info@lha.design 617.365.0130
 www.lha.design
 A-1



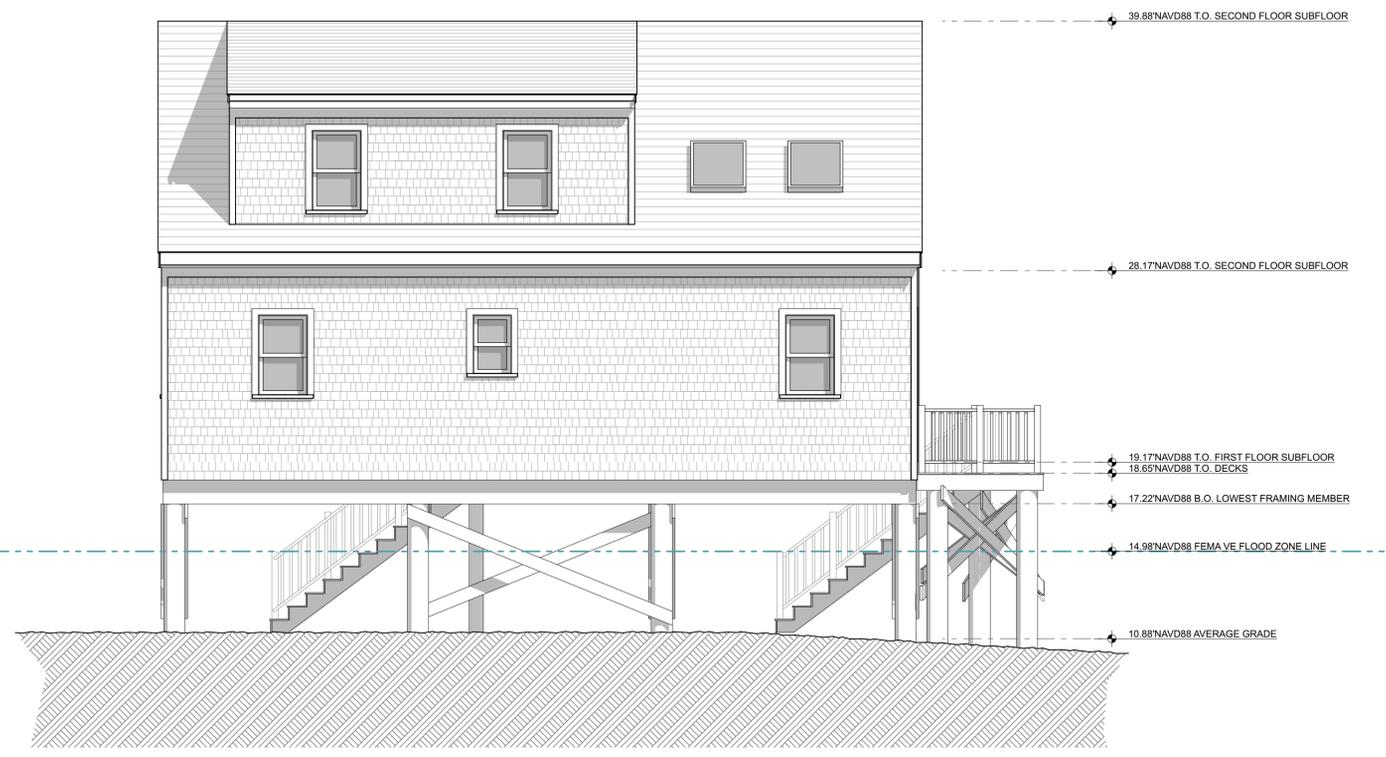
1 NORTH ELEVATION BUILDING #2 EXISTING (FACING SHORE ROAD)
SCALE: 1/4" = 1'-0"



2 EAST ELEVATION BUILDING #2 EXISTING
SCALE: 1/4" = 1'-0"



3 SOUTH ELEVATION BUILDING #2 EXISTING
SCALE: 1/4" = 1'-0"



4 WEST ELEVATION BUILDING #2 EXISTING
SCALE: 1/4" = 1'-0"

EXISTING DRAWINGS BASED ON DESIGN FROM WILLIAM N. ROGERS. DATED DECEMBER 2019

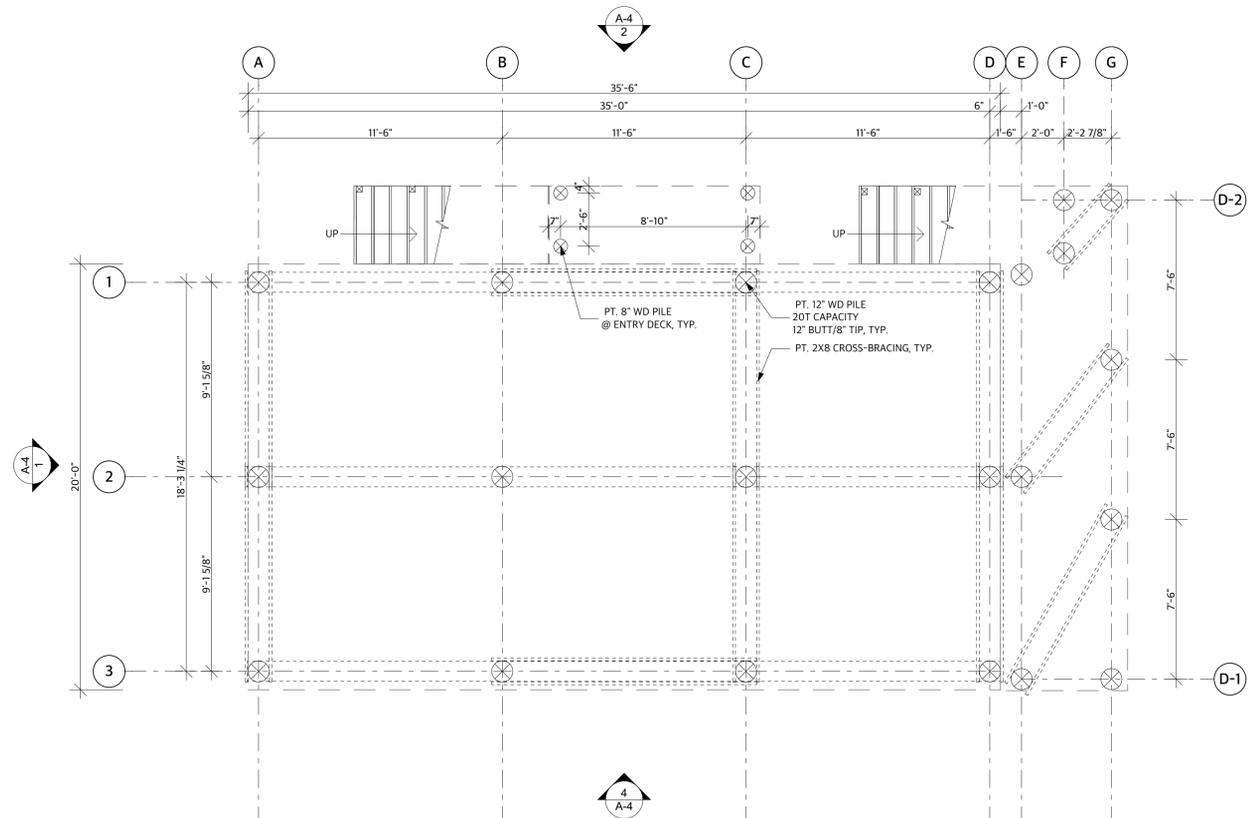
REVISION DATES:

Leif Hammquist Architects
info@lha.design 617.365.0130
www.lha.design

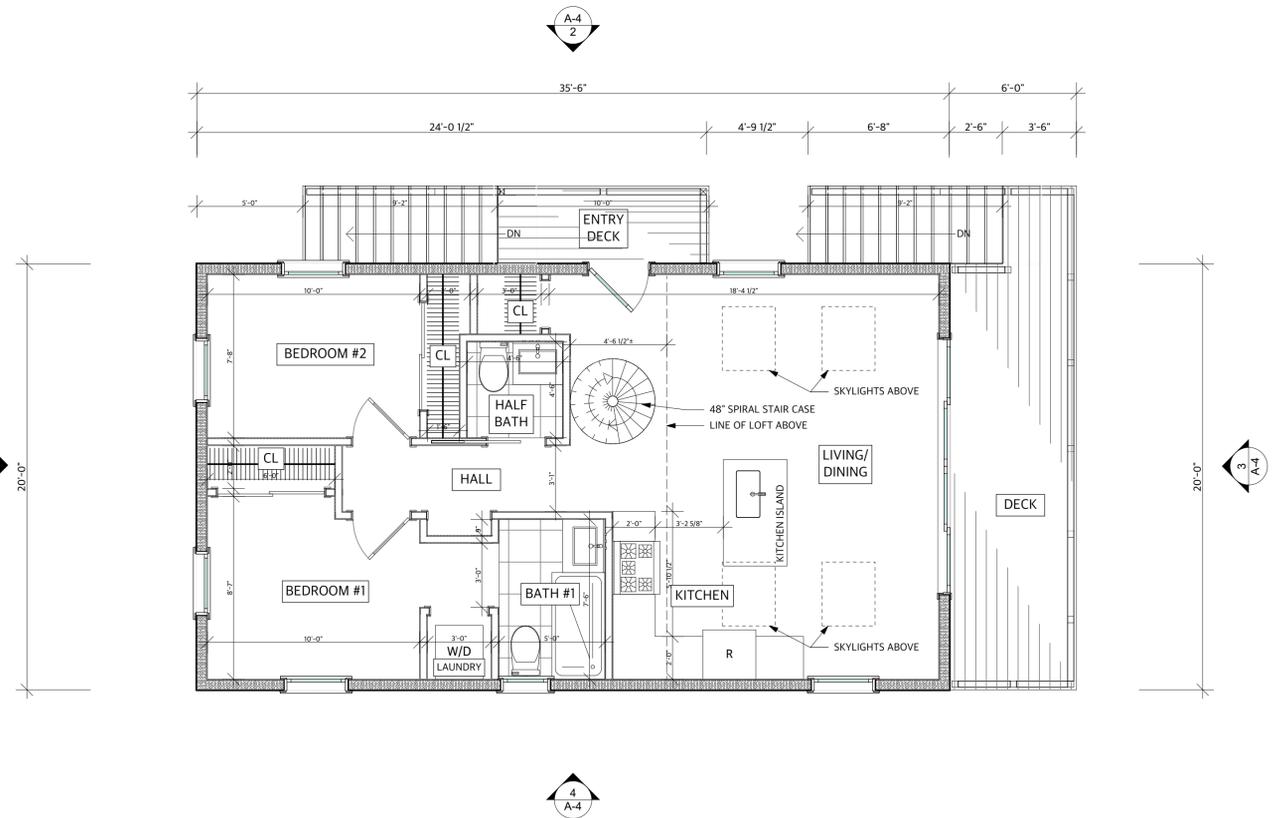
ELEVATIONS BUILDING #2 EXISTING
As Noted
02.12.23 NOT FOR CONSTRUCTION

Ebb on the Bay Condominium Building #2
538 Shore Road
Truro, MA

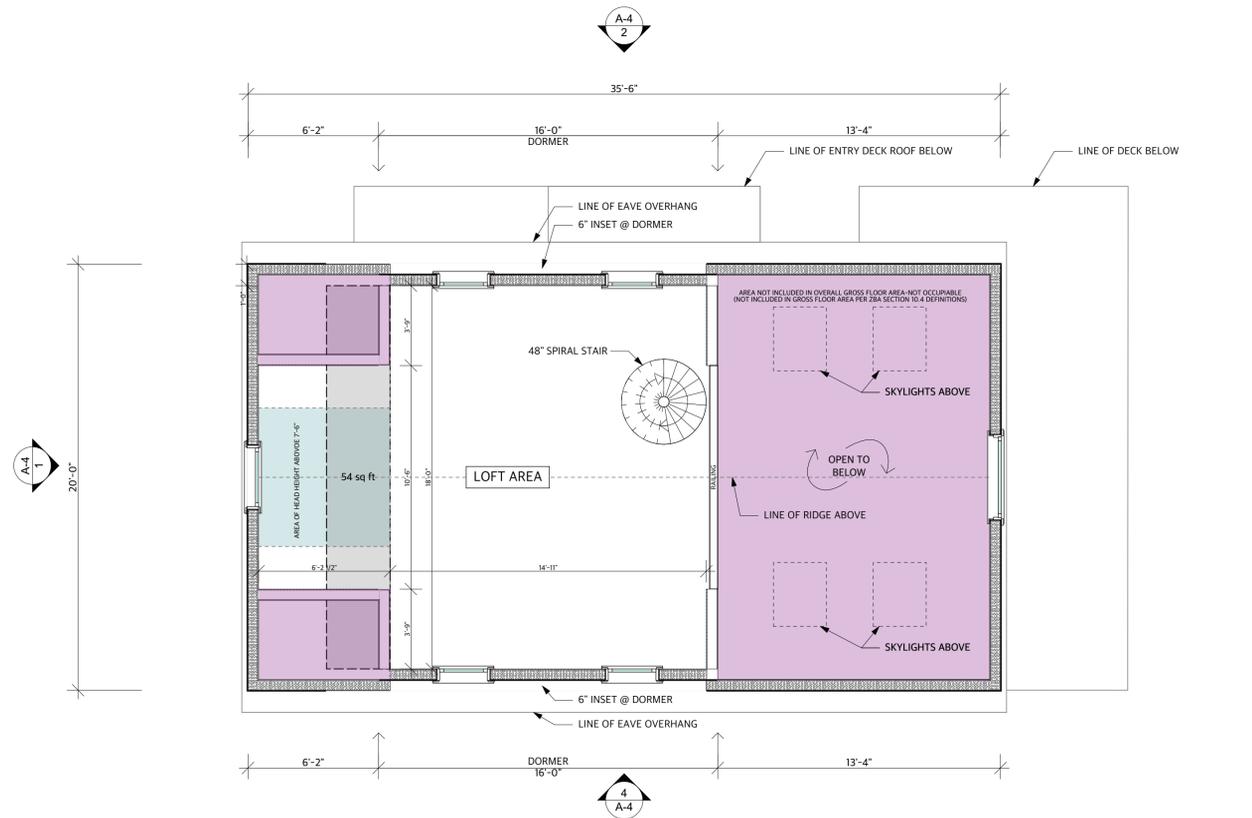
A-2



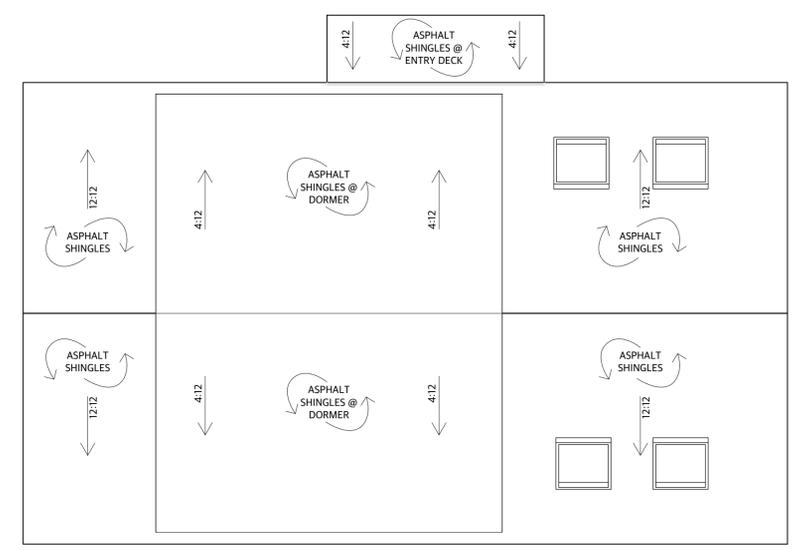
1 FOUNDATION/GRADE LEVEL BUILDING #2 PROPOSED
SCALE: 1/4" = 1'-0"



2 FIRST FLOOR BUILDING #2 PROPOSED
SCALE: 1/4" = 1'-0"



3 SECOND FLOOR BUILDING #2 PROPOSED
SCALE: 1/4" = 1'-0"



4 ROOF PLAN BUILDING #2 PROPOSED
SCALE: 1/4" = 1'-0"

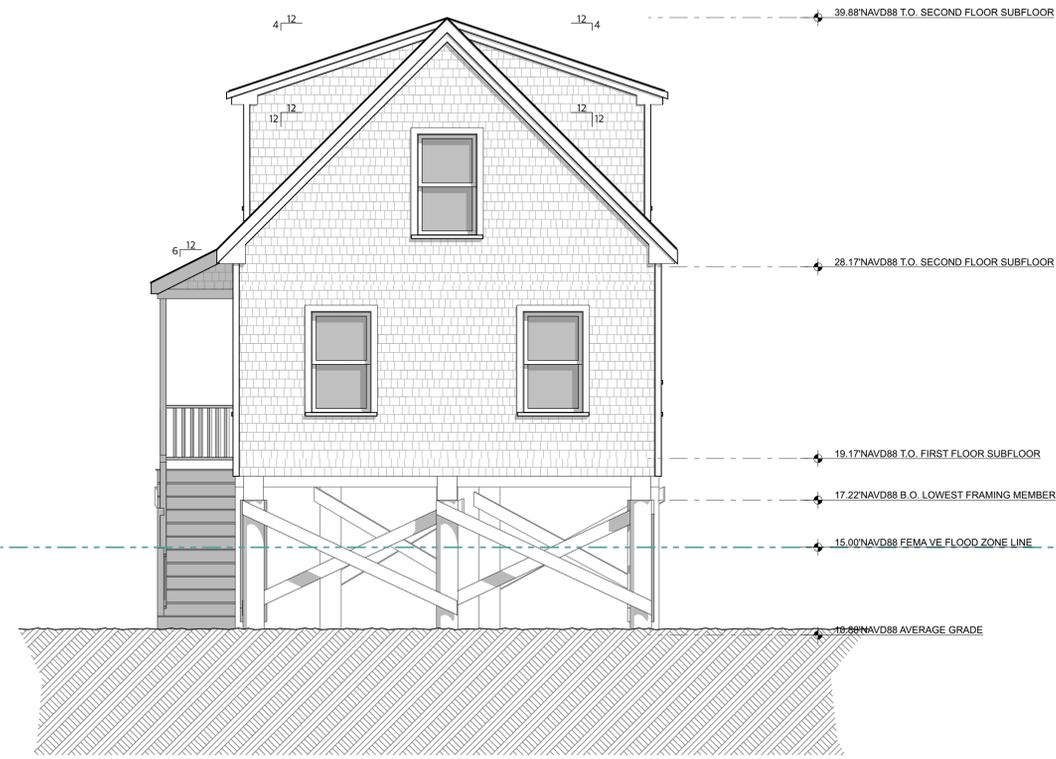
WALL LEGEND

DEMO	
EXISTING FOUNDATION	
NEW FOUNDATION	
EXISTING CONSTRUCTION	
NEW CONSTRUCTION	

PROPOSED FLOOR AREAS

FIRST FLOOR AREA	655.5 SQ. FT.
SECOND FLOOR AREA	311.92 SQ. FT.
TOTAL FLOOR AREA	967.42 SQ. FT.
TOTAL FLOOR REDUCTION	54 SQ. FT.

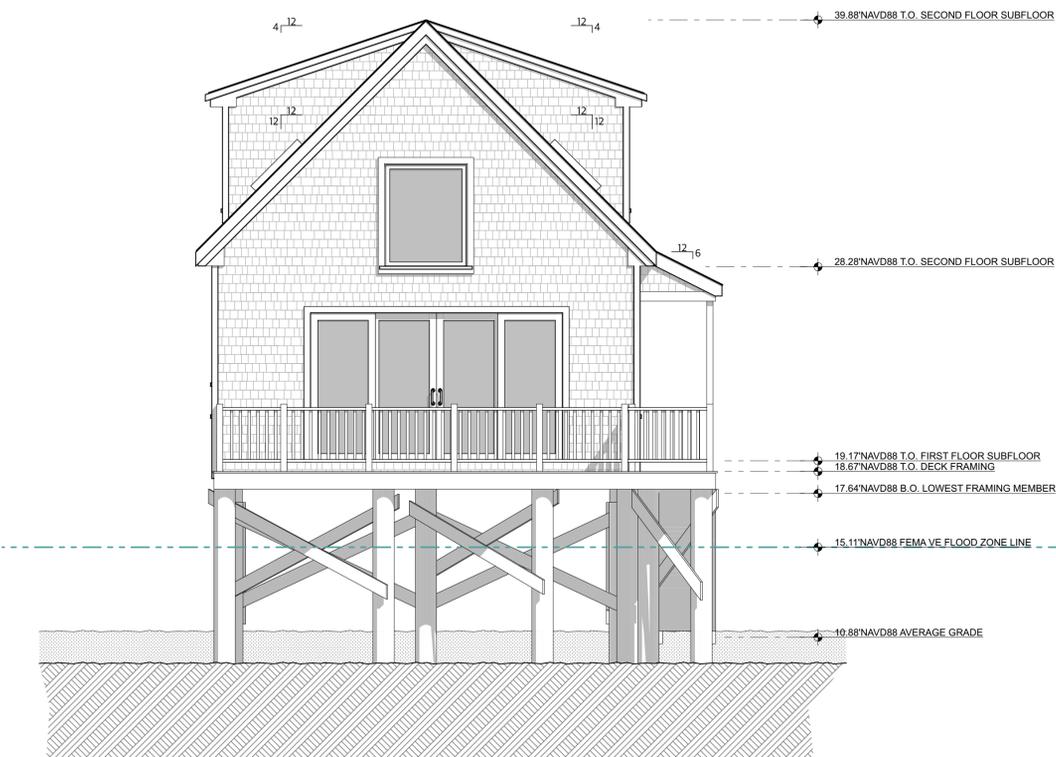
REVISION DATES:
 Leif Hammquist Architects
 info@lha.design 617.365.0130 www.lha.design
 FLOOR PLANS BUILDING #2 PROPOSED
 Title: As Noted
 Scale: 02.12.23 NOT FOR CONSTRUCTION
 Date:
 Ebb on the Bay Condominium Building #2
 538 Shore Road
 Truro, MA
 A-3



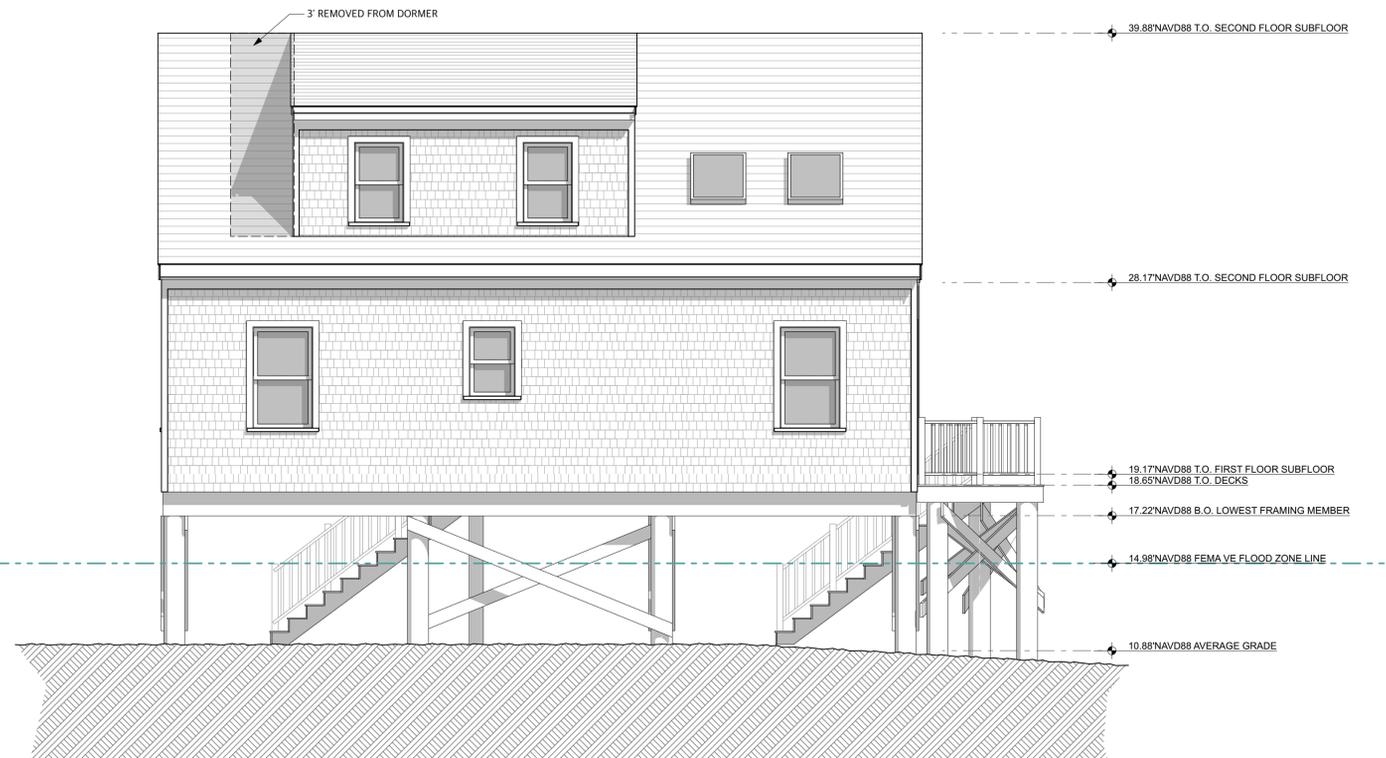
1 NORTH ELEVATION BUILDING #2 PROPOSED (FACING SHORE ROAD)
SCALE: 1/4" = 1'-0"



2 EAST ELEVATION BUILDING #2 PROPOSED
SCALE: 1/4" = 1'-0"



3 SOUTH ELEVATION BUILDING #2 PROPOSED
SCALE: 1/4" = 1'-0"



4 WEST ELEVATION BUILDING #2 PROPOSED
SCALE: 1/4" = 1'-0"

REVISION DATES:

Leif Hammquist Architects
info@lha.design 617.365.0130
www.lha.design

ELEVATIONS BUILDING #2 PROPOSED
As Noted
02.12.23 NOT FOR CONSTRUCTION

Ebb on the Bay Condominium Building #2
538 Shore Road
Truro, MA

A-4



United States Department of the Interior

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

IN REPLY REFER TO:
C3815
Tract No. 14-3516

February 21, 2024

Chris Lucy, Chair
Truro Zoning Board of Appeals
Town of Truro
P.O. Box 2030
Truro, MA 02666

Dear Mr. Lucy,

I am writing concerning the Truro Zoning Board of Appeals hearing for the 100 Route 6 property within the Seashore District. The hearing concerns appeal of a Cease-and-Desist Order of the Truro Building Commissioner issued by the Building Commissioner on November 29, 2023. While the site has been cleaned up, we are aware that the appeals are ongoing so the activities and proposals warrant further comment. We continue to oppose a change in use to commercial sales of landscaping materials within Cape Cod National Seashore because this is not simply an intensification of use that can be authorized by special permit.

Cape Cod National Seashore's Federal Zoning Standards Regulation 36 CFR Part 27.1 (b) states "The standards hereby established for approval of zoning bylaws or amendments of zoning bylaws—are intended: (1) To contribute to the effect of prohibiting the commercial and industrial use, other than existing commercial or industrial use not inconsistent with the purposes of the Act of August 7, 1961 (75 Stat. 284, 291), of all property within the boundaries of the Cape Cod National Seashore." The Truro zoning provisions at issue are intended to fulfill this obligation by prohibiting all commercial and industrial uses in the Seashore District, except those lawfully pre-existing non-conforming uses. *See* Bylaw §30.3.

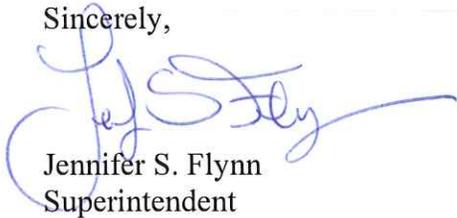
We believe that this current appeal should be denied because the proposed changes in use are not "lawfully pre-existing non-conforming commercial uses." This would be consistent with prior Town of Truro legal counsel findings for commercial properties within the town's Seashore District of 1993 and 2000 (see enclosure).

Moreover, Massachusetts General Laws Chapter 40A, Section 10 provides that “no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located” unless expressly allowed under local ordinance or by-law. The Town of Truro Bylaws do not have provisions that expressly authorize a use variance. In fact, Section 30.3.B.12 specifies that “[l]awfully pre-existing non-conforming commercial uses and structures may continue, but **in no case shall the use be altered or converted to another commercial use.**”

We have attached our prior July 21, 2023 and April 12, 2023 letters and Town of Truro legal counsel findings for commercial properties within the town’s Seashore District of 1993 and 2000 that we had provided for both a prior ZBA appeal case and commercial site plan deliberations for additional context (see enclosure).

The NPS respectfully requests that the Zoning Board of Appeal deny the appeal to uphold the Building Commissioner’s order to be consistent with town zoning bylaws that do not authorize new commercial uses.

Sincerely,



Jennifer S. Flynn
Superintendent

Enclosures

cc: Barbara Carboni
Darrin Tangeman
Bill Henchy



United States Department of the Interior

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

IN REPLY REFER TO:

C3815

Tract No. 14-3516

July 21, 2023

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

Dear Mr. Hultin,

This letter concerns the Truro Zoning Board of Appeals hearing regarding the former Jack's Gas site at 100 Route 6 in Truro, MA. A Cease-and-Desist order is appropriate in this instance, and we are aware of the order issued by the Building Commissioner on May 3, 2023.

We are opposed to a change in use to commercial sales of landscaping materials within Cape Cod National Seashore (National Seashore). This is not an intensification of use that can be authorized by special permit. The NPS respectfully requests that the Zoning Board of Appeal deny the appeal to be consistent with town zoning bylaws that do not authorize new commercial uses and with prior Town of Truro legal counsel findings for commercial properties within the town's Seashore District of 1993 and 2000 (see enclosure).

The Cape Cod National Seashore is supported by Federal Zoning Standards Regulation 36 CFR Part 27.1 (b) which states "The standards hereby established for approval of zoning bylaws or amendments of zoning bylaws—are intended: (1) To contribute to the effect of prohibiting the commercial and industrial use, other than existing commercial or industrial use not inconsistent with the purposes of the Act of August 7, 1961 (75 Stat. 284, 291), of all property within the boundaries of the Cape Cod National Seashore...." The Truro zoning provisions at issue are intended to fulfill this obligation by prohibiting all commercial and industrial uses in the Seashore District, except those lawfully pre-existing non-conforming uses. *See* Bylaw §30.3.

In spring 2023, we previously commented on commercial site plan deliberations and provide that letter for additional context (see enclosure).

The ongoing site modifications and proposed changes in use are not "lawfully pre-existing non-conforming commercial uses." Moreover, Massachusetts General Laws Chapter 40A, Section 10 provides that "no variance may authorize a use or activity not otherwise permitted in the district

in which the land or structure is located” unless expressly allowed under local ordinance or by-law. We are unaware of any provisions in the Town of Truro Bylaw that expressly authorizes a use variance. In fact, Section 30.3.B.12 specifies that “[l]awfully pre-existing non-conforming commercial uses and structures may continue, but **in no case shall the use be altered or converted to another commercial use.**” Accordingly, the NPS is seeking consistency with town zoning and denial of this appeal.

Sincerely,

Brian T. Carlstrom
Superintendent

Enclosures

cc: Barbara Carboni
Darrin Tangeman
Bill Henchy
Bobby Martin
Andrew Aiken



United States Department of the Interior

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

IN REPLY REFER TO:

C3815
Tract No. 14-3516

April 12, 2023

Anne Greenbaum, Chairman
Truro Planning Board
Town of Truro
P.O. Box 2030
Truro, MA 02666

Dear Ms. Greenbaum:

This letter concerns the Truro Planning Board 2023-002 SPR hearing of April 12, 2023 for Commercial Site Plan Review (SPR) approval at the former Jack's Gas site. We oppose authorization of the proposal to sell "firewood and other materials" at 100 Route 6 in Truro, MA, within Cape Cod National Seashore (National Seashore). When providing for establishment of the National Seashore, Congress set forth that commercial and industrial uses were prohibited within its boundaries except and unless permitted by the Secretary. The federal Zoning Standards Regulation for the National Seashore at 36 C.F.R. § 27.1 implements this directive by prohibiting commercial and industrial uses that were not in existence in 1961. The Town Zoning Bylaw incorporated the prohibition in Section 30.2 and 30.3. Notably, Section 30.3.B.12 specifies that "[l]awfully pre-existing non-conforming commercial uses and structures may continue, but **in no case shall the use be altered or converted to another commercial use.**" (emphasis added).

The lawfully pre-existing commercial use at the time of National Seashore establishment was solely as a gasoline station. This use was originally authorized to continue; however, the use was abandoned on or about February 1998. Counsel for the former owner of the property represented to the Zoning Board of Appeals in 2004 that the sale of firewood at the site began in 1981. The National Seashore explained and clarified with both the owner and the Town of Truro in 2004 that the ancillary sale of firewood at the gasoline station is not a lawfully pre-existing, non-conforming commercial use within the Seashore District under the town zoning bylaw, nor under the park's enabling legislation.

The gasoline station commercial use ceased in approximately February 1998, and the tanks and pumps were subsequently removed. The Certificate of Suspension of Condemnation of Commercial and Industrial Property (CSC) for the commercial gasoline operation has not been

renewed since March 2000. Under the Town of Truro's Zoning Bylaw, Section 30.7.C, a use cannot be reestablished that has been abandoned for more than two years, and any future use must be in conformance with the current zoning bylaw. As a condition of the former gasoline station spill settlement, the applicant agreed never to operate a gasoline station in the state. The pre-existing, non-conforming use for a commercial gasoline station has been abandoned and no new commercial use can lawfully be established in the Seashore District.

In 2004, we made clear to Mr. Aiken that although he had been selling firewood from the gas station for a time, because that commercial use was not in existence in 1961, it was not a lawfully pre-existing non-conforming use. Nevertheless, in order to support clean-up of the site, the seashore did not object to temporary firewood sales from the property provided proceeds were used to support the state government's cost of clean-up. It now appears that authorization of continued temporary firewood sales activity to fund the gasoline spill cleanup is no longer needed as the Aiken family is no longer operating the site. Approving a Commercial Site Plan or issuing a variance and/or special permit to allow this non-conforming commercial use (a business selling firewood and other materials) in the absence of National Seashore approval, would be unlawful.

Moreover, the site has been altered and developed for expanded non-conforming commercial use in the absence of authorization or permit, which is in direct contravention of Section 30.1.A. This and any other commercial activity should cease, and the materials be promptly removed. Furthermore, unintentional introduction of invasive non-native insects through firewood and landscaping materials distribution and sales is a significant concern for the National Seashore.

In summary, we are opposed to Site Plan Review approval of commercial uses of this property that were not lawfully pre-existing in 1961 and are therefore unlawful. This "new" commercial use would be substantially detrimental to the Seashore District. We recommend referral of this matter to Town Land Use Counsel.

Sincerely,



Brian Carlstrom
Superintendent

Enclosures

cc:

Truro Town Administrator
Truro Select Board Chair
Truro Town Planner/Land Use Counsel
Cape Cod Commission
Cape Cod County Commissioners

ZISSON AND VEARA
ATTORNEYS AT LAW

RICHARD L. ZISSON
EDWARD E. VEARA
PAUL V. BENATTI
JILL M. BROPSKY
E. JAMES VEARA

DAVID H. TATELY
OF COUNSEL

AT WELLESLEY OFFICE PARK
48 WILLIAM STREET
WELLESLEY, MASSACHUSETTS 02181
TEL (617) 431-2100
FAX (617) 237-0766

828 MAIN STREET-BOX 2031
OLD KINGS HIGHWAY
DENNIS, MASSACHUSETTS 02638-1530
TEL (508) 385-6031
FAX (508) 385-6914

August 16, 1993

Victor Verdina, Chairman
Board of Appeals
P. O. Box 2030
Truro, Massachusetts 02666

Re: Noons Gas Station Property.

Dear Mr. Verdina:

In accordance with your request, I am writing once again about the lot located at the juncture of Route 6 and Route 6A. This is the Truro lot owned presently or formerly by Mr. Noons, and it is the lot operated formerly as a gasoline service station.

I apologize for FAXing this opinion letter (a "hard" copy will follow). Unfortunately, I have been involved in several appellate matters, and when I received the latest opinion request, I was unaware that the Board was facing a deadline. To furnish a response in time, I have had to shorten it, but please be assured that considerable research was undertaken before anything was written.

Essentially, the Board of Appeals is confronted with numerous questions concerning whether the lot may be developed as most recently proposed. Among other matters, it must determine if a lawful, preexisting, nonconforming use has been perpetuated and, if so, whether the nonconforming use (gasoline service station) may be supplanted by another use (real estate office) which is not permitted in the lot's residential zoning district. As I indicated previously, it is my opinion that a new use cannot by special permit be created for the lot.

To be certain I am answering appropriately, let me state my understanding of the primary issue raised in Attorney Campbell's letter. It is agreed that enough of a use modification will occur that the change is not something which may proceed without

Mr. Verdina
August 16, 1993
Page 2

permission. On the contrary, the need for a special permit being conceded, the question is whether the Board can properly grant it.

I agree that these are two distinct issues, and my research indicates that most of the cases I had in mind relate to the first one. The remaining cases are supportive, but certainly, they could be clearer. In any event, I believe recent appellate opinions require a different approach to the subject, and therefore, I shall allude entirely to them.

Initially, I should remark that the governing law is lodged in the very enigmatic first paragraph of Massachusetts General Laws Chapter 40A, Section 6. That paragraph reads as follows:

Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply [1] to any change or substantial extension of such use, [2] to a building or special permit issued after the first notice of said public hearing, [3] to any reconstruction, extension or structural change of such structure and [4] to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure. 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. This section shall not apply to billboards, signs and other advertising

devices subject to the provisions of sections twenty-nine through thirty-three, inclusive, of chapter ninety-three, and to chapter ninety-three D. [emphasis added; bracketed numbers added]

As you know, until recently, the conventional view of this statute held that, except for trivial changes, preexisting, nonconforming uses could be altered only by special permit but that a special permit would suffice even if the alteration involved an augmented infraction of current zoning proscriptions. That has now changed.

In Rockwood v. Snow Inn Corporation, 409 Mass. 361, 566 N.E.2d 608 (1991), the Supreme Judicial Court was required to interpret the first two sentences in the paragraph quoted above. The Court held as follows:

We conclude, apparently differently from the trial judge, that the first sentence of the quoted portion of §6 requires that, in the absence of a variance, any extension or structural change of a nonconforming structure must comply with the applicable zoning ordinance or by-law. Then, if the proposed extension or change conforms to the by-law, the second quoted statutory sentence requires for project approval a finding that the extension or change will not be substantially more detrimental to the neighborhood than the existing nonconforming structures. If the first and second sentences are read together, the statute permits extensions and changes to nonconforming structures if (1) the extensions or changes themselves comply with the ordinance or by-law, and (2) the structures as extended or changed are found to be not substantially more detrimental to the neighborhood than the preexisting nonconforming structure or structures. [emphasis added] Id. at 566 N.E.2d 610.

In other words, before a nonconforming structure can be changed, the change must comply with current zoning requirements, and the change cannot be substantially more detrimental to the neighborhood. If both conditions are not satisfied, then the change, if it occurs at all, can only be allowed by a variance.

Rockwood, of course, happened to deal with a nonconforming structure, not a nonconforming use. Nevertheless, the Court's rationale applies with equal logic and force to nonconforming structures and nonconforming uses. Moreover, since Willard v. Board of Appeals of Orleans, 25 Mass. App. Ct. 15, 514 N.E.2d 369 (1987), nothing in the text of the statute itself impels a different treatment for nonconforming uses and structures. At least for the issue now before the Board, it is my opinion that alterations of nonconforming structures and nonconforming uses should be treated the same.

Because a real estate office is not permitted in a residential district, Rockwood v. Snow Inn Corp., *supra*, would not permit a gasoline service station to be converted to a real estate office without a variance. The difficulty there, of course, is that Truro's Zoning Bylaw does not permit use variances. See Section X.B.

The Rockwood opinion briefly mentioned Section X(J) of the Harwich Zoning By-law. Although a local zoning by-law may be more generous than the pertinent statute, the by-law largely tracked the language of the statute, and therefore, it was imbued with the same meaning, not a more generous one.

Truro's Zoning Bylaw contained a comparable provision which would undoubtedly have been interpreted in the same fashion, but this was not the manner in which it had been construed before. Thus, it was necessary to decide whether to leave it with the new restrictive meaning or to replace it with a provision closer to the practice which had previously existed. On the one hand, it seems fair to let matters lie. Why should the owner of a nonconforming property, already in violation of current zoning, be allowed with only a special permit to violate zoning even more when the owner of a conforming property, fully in compliance with zoning, not be allowed to do the same thing without a variance? This seemed unfair, and yet, it did not seem altogether right to abandon years of well accepted practice. Therefore, I was asked to draft a somewhat guarded provision which would accommodate a more generous response than the Rockwood case would allow.

That new provision now appears as Section VIII.B.1. of the Zoning Bylaw, and it reads thus:

B. Continuation of Nonconforming Uses

1. So long as buildings were constructed, uses were begun, and lots were created lawfully, they may continue to be used in the same manner and for the same purposes despite contrary provisions of this bylaw. Lawful, preexisting,

nonconforming structures and uses may, when a variance would otherwise be required, be altered, or extended with a special permit if the Board of Appeals finds that the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use and that the alteration or extension will exist in harmony with the general purpose and intent of the bylaw. [emphasis added]

If the lot involved in this case is to be rescued, assistance must be found in this paragraph.

In my opinion, Section VIII.B.1. is more generous than Rockwood, but I do not believe it extends far enough to save the service station lot. In Blasco v. Board of Appeals of Winchendon, 31 Mass. App. Ct. 32, 574 N.E.2d 424 (1991), review denied, 411 Mass. 1101, 579 N.E.2d 1360 (1991) (decided after Rockwood), the owner of a commercial pit (which had become a nonconforming use) wished to change its use from a gravel pit to a demolition pit. The company sought a special permit from the Board of Appeals, and the Board granted it. The Land Court annulled the special permit, and the annulment was affirmed on appeal. The change in nonconforming uses was considered to be beyond the enabling authority of both Massachusetts General Laws Chapter 40A, Section 6 and the local by-law. The Appeals Court's analysis of the local by-law is informative.

Like Section VIII.B.1. of the Truro Zoning Bylaw, Article 3.43 of the Winchendon Zoning By-law does not utilize the word change. Instead, it restricts itself to alteration and extension - words which the Appeals Court discussed as follows:

A landfill is not on the list of permitted uses, and Article 3.1 of the by-law provides that any use not listed "shall be construed to be prohibited." As a landfill could not be a "conforming use," Article 3.41 provides no authority for the proposed change. The only other relevant provision, Article 3.43, provides that the board may authorize by special permit "alteration" of a nonconforming use of a building or structure. The provision does not mention changes in nonconforming uses of land.... A change of use, however, is not an extension of a nonconforming use. Id. at 574 N.E.2d 426.

ZISSON AND VEARA

Mr. Verdina
August 16, 1993
Page 6

Although it is not altogether clear that the simple addition of change would have led to a different result (earlier cases required by-laws to indicate certainly that such an expansive meaning was intended), it does seem to be the teaching of the case that, within the context of zoning, the local by-law's use of alteration and extension is not enough to permit a new nonconforming use to be substituted for an older nonconforming use. Perhaps, in part, this result was encouraged by the general philosophy of "minimum tolerance" for nonconforming uses. In any event, the decision appears to control this case because, as I have mentioned, Section VIII.B.1. of the Truro Zoning Bylaw utilizes only alteration and extension, not change.

In view of the foregoing analysis, it is my opinion that neither Massachusetts General Laws Chapter 40A, Section 9 nor Truro Zoning Bylaw, Section VIII.B.1. would allow a special permit to authorize a real estate office to be substituted for a gasoline service station on the lot in question.

I hope I have now responded to your questions. If I have not done so or if you should have other questions, please feel free to contact me.

Cordially,



Edward E. Veara
Town Counsel

PVB/ja
VIA FACSIMILE & 1ST CLASS MAIL

cc: Stephen Williams, Building Commissioner
Board of Selectmen

ZISSON AND VEARA
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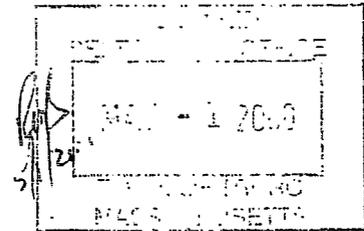
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FAX (508) 385-6914

April 28, 2000

Truro Zoning Board of Appeals
Attn: Susan Kelly
P. O. Box 2030
Truro, MA 02666

Re: **Michael Tasha/Ka-Hur Enterprises, Inc.**

Dear Ms. Kelly:



I am writing in response to your April 26, 2000 letter concerning your request for an opinion about Ka-Hur Enterprises, Inc.'s most recent request for its property located in the Seashore District and on Route 6 in North Truro.

You referred to my earlier, January 1992 opinion when I addressed a similar request for the extension or alteration of a preexisting, nonconforming structure and use. In the earlier, 1992 request, there was an additional parameter not present at this time; namely, a physical addition to the existing building itself. The present request, as I understand it, eliminates that proposal, and the existing building's size will not be increased. Instead, one element of the preexisting, nonconforming use within the building - namely the repair bays - will be eliminated, and in their place, there will be a new use - namely, a convenience store.

After reviewing the material you provided me, as well as reviewing my research and earlier letter of June 12, 1992, my opinion remains the same. The project needs a use variance, and there is no provision for such a variance in the Truro Zoning Bylaws. This also means that a special permit will not suffice to furnish the requested relief.

For your reference, I have also enclosed a copy of another opinion letter which relates to the same subject matter. This August 16, 1993 opinion was written about the former Noons gas station property which was at that time the subject of a request to change its preexisting, nonconforming building and use from a gasoline station to a real estate office. I rely on the law as set forth in that opinion, for I believe it is extremely germane and controlling. I particularly direct your attention to page 5 and the discussion of the Appeals Court's opinion when it considered a situation arising under

ZISSON AND VEARA

Ms Kelly
April 23, 2000
Page 2

a bylaw of the Town of Winchendon - one which is almost identical to the bylaw in the Town of Truro. The Court's opinion addressed the interpretation and construction of the words "alteration and extension." I have highlighted the Appeals Court's discussion and holding for your reference.

In view of the enclosed, it is my opinion at this time that the proposed project - namely, the change of one preexisting, nonconforming use (an automobile repair bay) to a new, nonpermitted and nonconforming use (namely, a convenience store or market) - is not permissible through the issuance of a special permit. A use variance is required, but it is not authorized by the Truro Zoning Bylaws, as they are presently written. It was my opinion then and is my opinion now that this change may not be undertaken without a change in the Zoning Bylaw of the Town of Truro either to make convenience stores or markets a permitted use in this district or to provide for the granting of use variances.

I trust this answers your inquiry, but should you require anything further, please do not hesitate to contact me.

Cordially,



Edward E. Veara
Town Counsel

EEV/ja
Enclosures

cc(w:enc.): Board of Selectmen



TOWN OF TRURO

Building Department

24 Town Hall Road

P.O. Box 2030, Truro MA 02666

Tel: 508-349-7004, Ext. 131 Fax: 508-349-5508

May 3, 2023

Mr. Robert Martin
P.O. Box 891
North Truro, Ma. 02652

RE; 100 Route 6

By: REGULAR MAIL and by CERTIFIED MAIL # 7022 2410 0000 0167 9098

Mr. Martin,

Regrettably,

I am issuing a CEASE and DESIST order for the business that you are currently operating at 100 Route 6 Truro, Ma.. commonly referred to as " Jack's Garage " .

This operation is in violation of the Town of Truro Zoning Bylaws paragraph 30.3 Seashore District item 12 which states, " Lawfully pre-existing non-conforming commercial uses and structures may continue, but in no case shall the use be altered or converted to another commercial use " . The current use is an alteration and intensification of the prior use and therefore NOT ALLOWED.

This CEASE and DESIST order is effective immediately.

You have the right appeal this decision and if this office can assist you in that endeavor please do not hesitate to contact us.

Regards,

Richard Stevens
Building Commissioner



Zoning Board of Appeals

Town of Truro

24 Town Hall Road

Truro, MA 02666

(508) 349-7004

DECISION OF THE ZONING BOARD OF APPEALS

Appeal of Cease and Desist Order

Case Reference No.: 2023-006/ZBA

Atlas Map 55, Parcel 12

Address: 100 Route 6

Title Reference: Barnstable County Registry of Deeds Book 34899 Page 326

Owner: 100 Route 6 LLC

Applicant: Robert J. Martin II

Hearing Dates: October 23, 2023 and November 6, 2023

Decision Date: November 6, 2023

Motion to uphold the Cease and Desist Order issued by the Building Commissioner on May 5, 2023.

Vote:

5-0

Sitting: Chris Lucy, Chair; Darrell Shedd, Vice Chair; Art Hultin; Nancy Medoff;
Dave Crocker

Board Vote at the November 6, 2023 Hearing:

Motion by Darrell Shedd, Second by Art Hultin. Vote was 5-0 in favor.

In Favor of the Motion: Chris Lucy, Chair; Darrell Shedd, Vice Chair; Art Hultin;
Nancy Medoff; Dave Crocker

Following duly posted and noticed Truro Zoning Board of Appeals hearing held on October 23, 2023 and November 6, 2023, the Board voted to uphold the Cease and Desist Order issued by the Building Commissioner on May 5, 2023.

The Board's Decision is based on the following findings of fact:

1. The property located 100 Route 6 is within in the Seashore Zoning District and contains 1.7 acres. The property was site of Jack's Esso Station (later Jack's Gas), which commenced operation in the late 1940s. The property was purchased by Richard Aiken in 1978, who continued to operate Jack's Gas.
2. Jack's Gas was in operation prior to the creation of the Cape Cod National Seashore in 1961, and prior to creation of the Town's corresponding Seashore Zoning District in 1963.

3. Commercial uses (other than commercial fishing activity and food trucks, by special permit) are prohibited in the Seashore District. See Zoning Bylaw s. 30.2, Use Table.
4. In addition, the "continuous storage of materials or equipment" is prohibited in the Seashore District. See Zoning Bylaw s. 30.3(C)(7).
5. The property's use as a gas station became nonconforming in 1963, at the time the Seashore Zoning District was adopted.
6. Evidence indicates that the sale of firewood had commenced in the 1980s in approximately 1981.
7. The sale of gas on the property ceased in March 1998, following the discovery of a gas leak from an underground tank. All underground gasoline tanks were removed at that time. Remediation commenced and gas station operations ceased as of March 1998.
8. As determined by the Department of Environmental Protection (DEP), there are currently no imminent health risks associated with the contamination, and mechanical remediation has ceased. Monitoring wells are sampled annually and continue to show concentrations of hydrocarbons exceeding drinking water standards. The site is currently mapped by DEP as a "closed site," but final closure will not occur until hydrocarbons levels decrease to conforming levels.
9. At the time gas sales ceased in 1998, firewood was also sold on the site, as were other items including frozen candy bars.
10. Mr. Aiken continued to sell firewood on the site following cessation of gas sales. Proceeds from the sale of firewood were paid into an escrow account for site remediation purposes.
11. Mr. Aiken began leasing out the property in 2005; both the sale of firewood (by tenants) and payment of proceeds into the escrow account continued.
12. The station building itself succumbed to fire on November 14, 2003.
13. On November 4, 2004, Mr. Aiken was granted a special permit by the ZBA "to rebuild a pre-existing, nonconforming structure on its original location. . . . [and] a Condition to said Grant is the Special Permit shall extend for thirty (30) years from the date of approval." According to ZBA meeting minutes of September 27, 2004, Mr. Aiken's stated intent was not to re-establish a gas station; he stated that "he did not intend to expand beyond the sale of firewood." A building permit issued on February 1, 2006, but the building was never constructed.
14. The property is currently owned by 100 Route 6 LLC, an entity related to the Aiken family.
15. The property is currently leased to Robert Martin. In early 2023, Mr. Martin cleared portions of the site; installed additional storage structures for the firewood and signs for

the business; and placed additional materials on the site in separate storage areas contained by concrete block walls. Mr. Martin stores and sells firewood, loam, gravel, shells, and other landscaping-related materials on the site. Equipment is also stored on the property.

16. Such activities require prior Commercial Site Plan Approval by the Planning Board, which had not been obtained. See Zoning Bylaw s. 70.4.
17. On March 15, 2023, at the direction of the Building Commissioner, Mr. Martin filed an application with the Planning Board for Commercial Site Plan Review. Hearing opened on April 12, 2023. Following issuance of the Cease and Desist Order on May 3, 2023, hearing has been continued without further testimony pending resolution of these proceedings.
18. On May 3, 2023, the Building Commissioner issued a cease and desist order to Mr. Martin, stating:

"This operation is in violation of the Town of Truro Zoning Bylaws paragraph 30.3 Seashore District item 12 which states, 'Lawfully pre-existing non-conforming commercial uses and structures may continue, but in no case shall the use be altered or converted to another commercial use.' The current use is an alteration and intensification of the prior use and therefore NOT ALLOWED."

This CEASE and DESIST order is effective immediately. . . ."

19. Mr. Martin timely appealed the cease and desist order. The Board reviews this order pursuant to G.L. c. 40A, s. 8 and s. 15, and Zoning Bylaw Section 60.2.

Discussion and Further Findings

Section 30.3(B)(12) of the Seashore District Bylaw provides that:

"Lawfully pre-existing non-conforming commercial uses and structures may continue, but in no case shall the use be altered or converted to another commercial use."

A zoning bylaw or ordinance may permissibly provide for such strict regulation of nonconforming uses. See Blasco v. Board of Appeals of Winchendon, 31 Mass.App.Ct. 32, 39 (1991)(recognizing "the continuing right of a municipality through its zoning by-law to regulate *or forbid changes* in nonconforming uses")(emphasis added); Almeida v. Arruda, 89 Mass.App.Ct. 241 at n.5 (same). In this case, the Building Commissioner found that Mr. Martin's use of the property "is an alteration and intensification of the prior use and therefore not allowed." See Order dated May 3, 2023.

In determining whether to uphold the Building Commissioner's Order, the Board must first establish the "lawfully pre-existing nonconforming commercial use" of the property, against which the current use is measured to determine whether there has been an "alteration" of that that pre-existing use, or "conversion to another commercial use." See Zoning Bylaw s. 30.3(B)(12).

Commercial use of the property became nonconforming in 1963, when the Town adopted the Seashore Zoning District. At that time, the property's use was as a gas station. The Board therefore finds that the "lawfully pre-existing nonconforming commercial use" of the property was as a gas station. There is no evidence that firewood or any other materials were sold on the property at the

time the Seashore Zoning was adopted. The "lawfully pre-existing commercial use" of the property therefore does not include the sale of firewood or other materials.¹

Further, use of the property as a gas station ceased in 1998 following the tank leak and removal. Under Section 30.7 of the Zoning Bylaw, preexisting nonconforming uses lose their lawful status if abandoned for a period of two years or more:

“Abandonment. Nonconforming uses which have been abandoned for a period of 2 years or more shall not be re-established, and any future use shall conform to the then-current bylaw.”

Zoning Bylaw s. 30.7(C).² As of March 2000 or at latest May 2000 - two years following the cessation of gas sales and the removal of tanks - the nonconforming gas station use had been abandoned or discontinued for a period of two years. As a result, at that time, gas station use of the property lost its status as a lawful preexisting nonconforming use. Such use could not (and cannot) be reestablished. See Zoning Bylaw s. 30.7(C).³

Having determined that the "lawfully pre-existing nonconforming commercial use" of the property was as a gas station, the Board must next consider whether the current use of the property for sale of firewood and landscaping materials is an unlawful "alteration" of that nonconforming use, as found by the Building Commissioner in the Cease and Desist Order. See Zoning Bylaw s. 30.3(B)(12)(prohibiting the "alteration" of a nonconforming commercial use or its "conver[sion] to another commercial use"). To determine whether there has been such a change in use, the Board here applies the three-part "Chuckran" or "Powers" test, applied in cases where the protections of

¹Nevertheless, there is evidence in the record that the Town has tolerated the sale of firewood on the property following closure of the gas station. This evidence includes the 2004 ZBA special permit and related meeting minutes, which reference firewood sales. However, the Town is not constrained from enforcing a provision of its zoning bylaw by any prior failure to do so. See Building Commissioner of Franklin v. Dispatch Communications of New England, Inc., 48 Mass.App.Ct. 709, 715 (2000)(“The building commissioner's original conclusion that the tower did fall under the definition of public utility does not preclude the board's later enforcement of a contrary position.”)

² This provision is consistent with G.L. c. 40A, s. 6, which provides that "[a] zoning ordinance or by-law may define and regulate nonconforming uses and structures abandoned or not used for a period of two years or more.”

³ The sale of firewood, arguably a use accessory to the principal gas station use, continued on the property following cessation of the gas station use. However, an accessory use cannot exist on a property except in relation to a principal use. “An incidental or accessory use under a zoning law is a use which *is dependent on or pertains to the principal or main use.*” Town of Needham v. Winslow Nurseries, Inc., 330 Mass. 95, 101(1953)(emphasis added). After the principal gas station use was extinguished in 2000 (two years after operation of the gas station ceased), there was no principal use on the property on which firewood sales were “dependent.” At that time, such sales no longer had any claim to being a *lawful* accessory use. Such sales became simply an unlawful nonconforming use of the property.

G.L. c. 40A, s. 6 are claimed for a nonconforming use that has changed over time, or is proposed to change:⁴

(1) Does the current nonconforming use reflect the nature and purpose of the original lawful pre-existing nonconforming use?

The Board finds that the current nonconforming use is the sale of landscape materials to the public and to contractors. This use does not reflect the nature and purpose of the original lawful pre-existing nonconforming use, which was a gas station. The gas station no longer exists.

(2) Is there a difference in the quality, character, or degree of use between the current nonconforming use and the original nonconforming use?

The Board finds that there is a difference in the quality, character and degree of use between the original gas station use and the current landscape materials business. The gas station occupied a limited portion of the site at the front of the property. The business operated out of a small building. To accommodate the landscaping materials now sold, additional areas of the property were cleared. Concrete structures containing substantial stores of various landscaping materials have been installed, occupying a wide area across the frontage of the property. Additional materials are stored in piles behind, extending further into property.

(3) Is the current nonconforming use different in kind in its effect on the neighborhood than the original nonconforming use?

The Board finds that the current nonconforming use of the property as a landscaping materials business has an effect on the neighborhood that is different in kind than the effect of the gas station use. The current landscape materials business entails heavier trucks delivering materials onto and off the site. Other equipment stored on site is used to move materials into different areas of the property, and to load these materials for sale and delivery to customers and landscape contractors. In addition, the structures, materials, and equipment occupy a broader area of the property, and a portion of the property was cleared to provide additional area for substantial piles of materials. These factors combine to create a different atmosphere on the property, with different effect on the neighborhood.

Having applied the Chuckran/Powers test, the Board finds that there has been a change in use from the original nonconforming use of the property as a gas station, and its current nonconforming use for sale of landscape materials. The gas station use has been "altered or converted to another commercial use," in violation of Zoning Bylaw section 30.3(B)(12).

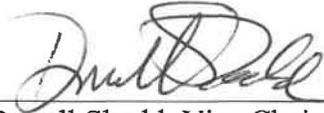
The Board further finds that the ongoing storage of firewood, landscaping materials and equipment on the property violates Zoning Bylaw s. 30.3(C)(7), which prohibits the "continuous storage of materials or equipment" in the Seashore District.⁵

⁴ See Bridgewater v. Chuckran, 351 Mass. 20 (1966), and Powers v. Building Inspector of Barnstable, 363 Mass. 648 (1972).

⁵Under Section 30.7(C) of the Zoning Bylaw, once a nonconforming use is lost, any subsequent use of property must conform to the then-current Bylaw. The nonconforming gas station use of the property was extinguished in 2000. Where the nonconforming gas station use of the property was

Conclusion

The Board concludes that the current use of the property for storage and sale of landscape materials is a commercial use prohibited in the Seashore District, and not protected as a preexisting nonconforming use. The Board accordingly upholds the Cease and Desist Order issued by the Building Commissioner on May 3, 2023. All materials, structures and equipment must be removed from the site by January 15, 2024, with fines for noncompliance to accrue daily thereafter as provided Zoning Bylaw s. 60.1.B.



Darrell Shedd, Vice Chair

11/22/2023

Date

Received, Office of the Town Clerk:



Signature

11/22/23

Date

I hereby certify that this decision was filed with the Office of the Town Clerk on _____ and 20 (twenty) days have elapsed since the date of filing, and:

No Appeal has been filed.

An Appeal has been filed and received in this office on: _____

Signature

Date

NOTE: Any person aggrieved by a decision of the Zoning Board of Appeals may appeal to the Superior or Land Court by bringing action within twenty days after the decision has been filed with the Town Clerk of Truro. (Massachusetts General Laws, Chapter 40A, §17)

THE COPY OF THIS DECISION PROVIDED BY THE TOWN CLERK MUST BE FILED WITH THE REGISTER OF DEEDS OF BARNSTABLE COUNTY BY THE APPLICANT.

extinguished in 2000, the property must comply with current Bylaw requirements, including the prohibition on storage of materials and equipment contained in s. 30.3(C)(7).

LAW OFFICES OF
WILLIAM C. HENCHY, LLC

165 CRANBERRY HIGHWAY
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ORLEANS, MA 02653

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INTERNET: whenchy@alumni.tufts.edu
www.henchylaw.com

December 28, 2023

By Hand Delivery

Ms. Elisabeth Verde
Town Clerk
Town of Truro
24 Town Hall Road
Truro, MA 02666

RE: 100 ROUTE 6; Appeal of Building Commissioner Order November 29, 2023

Dear Ms. Verde:

Please find enclosed for filing the following:

1. Appeal from Building Commissioner Order of November 29, 2023;
2. Ten copies
3. Filing Fee in the amount of \$200.00

Kindly file the same.

Thank you for your courtesy and attention to this matter.

Very truly yours,



William C. Henchy

Enc.

cc. Robert Martin II
Andrew Aiken
Richard Stevens, Building Commissioner
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 December 28, 2023

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)* _____.

XX

Applicant is aggrieved by order or decision of the Building Commissioner on *(date)* November 29, 2023 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 _____ of the Truro Zoning Bylaw and M.G.L. Ch. 40A, §6 concerning *(describe)* _____

Property Address 100 Route 6 Truro, MA

Map 055-013-000

Registry of Deeds title reference: Book 34899, Page 326.

Applicant's Name Robert J Martin II and 100 Route 6 LLC are applicants

Applicant's Legal Mailing Address Robert Martin – P.O. Box 891, North Truro, MA 02652; 100 Route 6 LLC, c/o Andrew Aiken, 81 North Pamet Road, Truro MA 02666

Applicant's Phone(s), Fax and Email c/o William C. Henchy 165 Rte 6A Orleans MA 02653 508-255-1636 whenchy@henchy.com

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

Owner Prospective Buyer* Other*

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

Robert J. Martin II is the lessee in possession of 100 Route 6

100 Route 6 LLC is the owner of 100 Route 6

Owner's Name and Address 100 Route 6 LLC c/o Andrew Aiken 81 North Pamet Road Truro, MA 02666

Representative's Name and Address William C. Henchy Esq. 165 Route 6A Orleans MA 02653

Representative's Phone(s), Fax and Email 508-255-1636 / 508-246-6776 (cell) whenchy@henchy.com

2. The completed application shall also be submitted electronically to the Planning Department Administrator at esturdy@truro-ma.gov in its entirety (including all plans and attachments).

i 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)

William C. Hendry

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

100 W. 6 LLC

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

W. C. Hendry
Applicant(s)/Representative Signature

W. C. Hendry
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



TOWN OF TRURO

Building Department

24 Town Hall Road

P.O. Box 2030, Truro MA 02666

Tel: 508-349-7004, Ext. 131 Fax: 508-349-5508

November 29, 2023

Mr. Robert J. Martin III
P.O. Box 891
North Truro, MA 02652

Andrew M. Aiken, Manager
100 Route 6 LLC
54 Four Mile Road
West Hartford, CT 06197

Mr. Martin and Mr. Aiken,

I am issuing a Cease and Desist Order, subject to the conditions below, with respect to the business and related activity currently operating at 100 Route 6, Truro, MA, commonly referred to as "Jack's Garage."

The current use of the property is the sale of landscape materials to the public and to contractors. This operation is a commercial use, which is prohibited in the Seashore District. See Zoning Bylaw s. 30.2, Use Table.

This use is not protected as a lawful pre-existing nonconforming use under the Zoning Bylaw. Section 30.3.B.12 provides that "[l]awfully pre-existing nonconforming commercial uses and structures may continue, but in no case shall the use be altered or converted to another commercial use." The lawful pre-existing nonconforming commercial use of the property was a gas station. The current use is an alteration of this original nonconforming use and/or a conversion to another commercial use (sale of landscape materials). The current use violates Zoning Bylaw Section 30.3.B.12.

The current use of the property includes ongoing storage of firewood, Landscaping materials and equipment on the property. This violates Zoning

Bylaw s. 30.3(C)(7), which prohibits the “continuous storage of materials or equipment” in the Seashore District.

In addition, clearing and other site work was conducted; structures were placed; and materials and equipment were delivered to the property, all without Site Plan Approval by the Planning Board, in violation of Zoning Bylaw s. 70.1.D.

Mr. Martin (tenant) and Mr. Aiken (owner) are jointly and severally responsible for compliance with the following Orders:

1. All landscape and other materials shall be removed from the site by January 15, 2024, through sale or other disposition. No additional materials shall be brought onto the site or stored on the site.
2. All concrete blocks and other storage structures shall be removed from the site by January 15, 2024. No additional storage or other structures shall be brought onto the site.
3. All machinery and equipment shall be removed from the site by January 15, 2024. Equipment may be operated on the property to facilitate sale or other removal of materials prior to that date.
4. The disturbed area within the required 50-foot setback from the front lot line shall be restored by January 15, 2024.

Failure to comply with the above Orders as of January 15, 2024, shall result in the imposition of fines commencing January 16, 2024, in the amount of \$300.00 per day, with each day that the violation continues constituting a separate offense pursuant to Zoning Bylaw s. 60.1.A.

You have the right to appeal this decision to the Zoning Board of Appeals. If this office can assist you in that endeavor, please do not hesitate to contact us.

Regards,

Richard Stevens
Building Commissioner

cc: William C. Henchy, Esq.



TOWN OF TRURO

Assessors Office

Certified Abutters List

Request Form

DATE: 12/28/23

NAME OF APPLICANT: Robert Martin II and 100 Route 6 LLC

NAME OF AGENT (if any): William C. Henchy

MAILING ADDRESS: 165 Route 6 Orleans MA 02653

CONTACT: HOME/CELL 508-255-1636 EMAIL wchenchy@henchy.law.com

PROPERTY LOCATION: 100 Route 6 Truro MA
(street address)

PROPERTY IDENTIFICATION NUMBER: MAP 055 PARCEL 12 EXT. 000
(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 ⁵ | <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 ¹ | <input type="checkbox"/> Special Permit ¹ |
| <input type="checkbox"/> Conservation Commission ⁴ | <input type="checkbox"/> Site Plan ² | <input type="checkbox"/> Variance ¹ |
| <input type="checkbox"/> Licensing | <input type="checkbox"/> Preliminary Subdivision ³ | |
| Type: _____ | <input type="checkbox"/> Definitive Subdivision ³ | |
| | <input type="checkbox"/> Accessory Dwelling Unit (ADU) ² | |

Other 2 BIA - appeal of Bldg Inspector Order (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: 12/28/2023

Date completed: 12/28/2023

List completed by: [Signature]

Date paid: 12/28/2023 Cash/Check #1884

¹ 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.

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

³ 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.

⁴ 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.

⁵ 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: December 28, 2023

To: William C. Henchy, Agent for Robert Martin

From: Assessors Department

Certified Abutters List: 100 Route 6 (Map 55, Parcel 12)

ZBA/ Appeal of Building Inspection Order

Attached is a combined list of abutters for 100 Route 6.

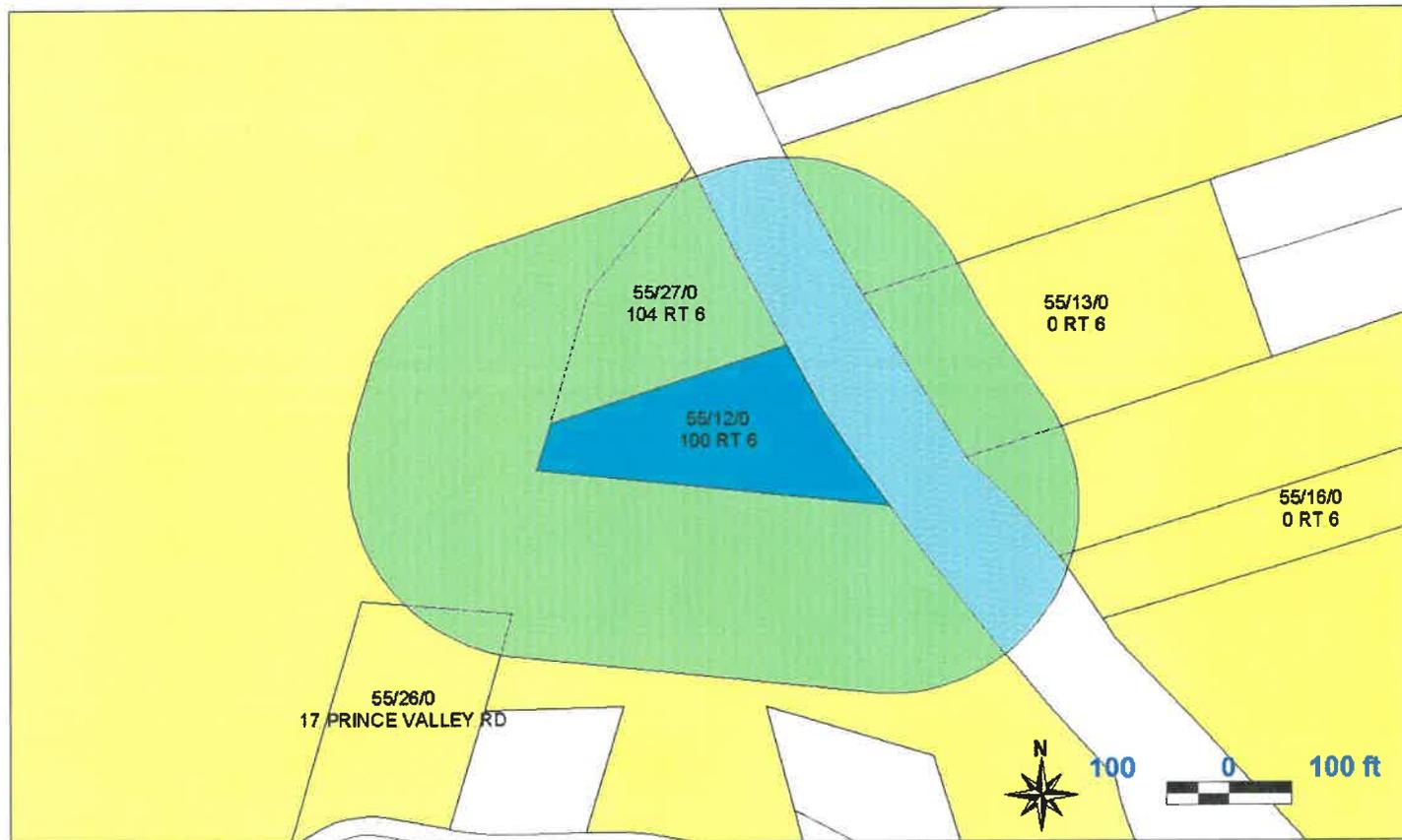
The current owner is 100 Route Six LLC, Andrew M. Aiken, Manager.

The names and addresses of the abutters are as of December 22, 2023 according to the most recent documents received from the Barnstable County Registry of Deeds.

Certified by: _____

Olga Farrell
Assessing Clerk

Abutters List Within 300 feet of Parcel 55/12/0



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
3351	55-12-0-R	100 ROUTE 6 LLC MGR: ANDREW M AIKEN	100 RT 6	54 FOUR MILE RD	WEST HARTFORD	CT	06107
3352	55-13-0-E	U S A DEPT OF THE INTERIOR	0 RT 6	CAPE COD NATIONAL SEASHORE 99 MARCONI SITE RD	WELLFLEET	MA	02667
3355	55-16-0-E	U S A DEPT OF THE INTERIOR	0 RT 6	CAPE COD NATIONAL SEASHORE 99 MARCONI SITE RD	WELLFLEET	MA	02667
3365	55-26-0-R	RICHARDSON ALBERT/JUDITH TR & BENNETT FREDERICK & JANE ET AL	17 PRINCE VALLEY RD	C/O CHRISTOPHER WHARFF 32 COVESIDE RD UNIT 3	BEAVER COVE	ME	04441
3366	55-27-0-E	COMMONWEALTH OF MASS EXEC OFFICE OF TRANSPORTATION	104 RT 6	10 PARK PLAZA SUITE 3170	BOSTON	MA	02116

Handwritten signature/initials

40-999-0-E

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

55-12-0-R

100 ROUTE 6 LLC
MGR: ANDREW M AIKEN
54 FOUR MILE RD
WEST HARTFORD, CT 06107

55-13-0-E

U S A
DEPT OF THE INTERIOR
CAPE COD NATIONAL SEASHORE
99 MARCONI SITE RD
WELLFLEET, MA 02667

55-16-0-E

U S A
DEPT OF THE INTERIOR
CAPE COD NATIONAL SEASHORE
99 MARCONI SITE RD
WELLFLEET, MA 02667

55-26-0-R

RICHARDSON ALBERT/JUDITH TR &
BENNETT FREDERICK & JANE ET AL
C/O CHRISTOPHER WHARFF
32 COVESIDE RD UNIT 3
BEAVER COVE, ME 04441

55-27-0-E

COMMONWEALTH OF MASS
EXEC OFFICE OF TRANSPORTATION
10 PARK PLAZA
SUITE 3170
BOSTON, MA 02116

From: [Rich Stevens](#)
To: [Elizabeth Sturdy](#)
Cc: [Lynne Budnick](#); [Barbara Carboni](#); [Ben Zehnder](#)
Subject: RE: 2024-002/ZBA - 491 Shore Road
Date: Monday, February 5, 2024 8:27:51 AM

Good Morning,
Hope all are well.

Only comment is if property is in a flood zone it must comply with code provisions regarding requirements for construction in same.

Thank You,
Rich

From: Elizabeth Sturdy <ESturdy@truro-ma.gov>
Sent: Tuesday, January 30, 2024 2:09 PM
To: Emily Beebe <EBeeBe@truro-ma.gov>; Rich Stevens <rstevens@truro-ma.gov>; Arozana Davis <ADavis@truro-ma.gov>; Jarrod Cabral <jcabral@truro-ma.gov>
Cc: Barbara Carboni <bcarboni@truro-ma.gov>; Chris Lucy <CLucy@truro-ma.gov>; Darrell Shedd <dshedd@truro-ma.gov>
Subject: 2024-002/ZBA - 491 Shore Road

Emily, Rich, Zana, Jarrod:

The attached ZBA Application will be reviewed at the February 26, 2024 ZBA meeting at 5:30 pm.

Please respond with any comments you may have, **or not**. Appreciate any and all input.

Let me know if you have any questions. Thanks,

Elizabeth A. Sturdy (Liz)

Planning Department Assistant
Truro Town Hall
24 Town Hall Road, P.O. Box 2030
Truro, MA 02666
Direct: (508) 214-0935
Fax: (508) 349-5505
esturdy@truro-ma.gov



Christopher R. Agostino, Esq.
Direct: 617-570-3501
E-mail: cra@riw.com

February 20, 2024

Via Email Only esturdy@truro-ma.gov

Truro Zoning Board of Appeals
c/o Liz Sturdy, Planning Director
24 Town Hall Road
Truro, MA 02666

Re: 491 Shore Road – Opposition to Renewed Special Permit Application 2024-002/ZBA

Dear Chairman Lucy:

As you may recall, this firm represents Crow's Nest Condominium Trust in its opposition to the proposed redevelopment of 491 Shore Road (the "Property"). Crow's Nest Condominium opposes Jennifer Cabral's renewed Application for Special Permit, dated January 26, 2024, which seeks permission to demolish the abandoned garage structure at the Property and replace it with a woodworking studio that does not comply with current requirements of the Truro Zoning Bylaw. Ms. Cabral withdrew her prior attempt to permit this very same project on February 27, 2023 in response to Crow's Nest's opposition.

Ms. Cabral's repetitive proposal to build a 31-foot-high, two-level woodworking studio at the Property would substantially and specifically affect the Crow's Nest Condominium located directly across Shore Road, only a few yards away. As further described herein, Crow's Nest Condominium respectfully requests that this Zoning Board deny Ms. Cabral's application, with prejudice. Crow's Nest also requests that this Board determine that the structure at 491 Shore Road is "abandoned" pursuant to applicable law and that any new proposal to develop the site must comply with all dimensional and use limitations under current Truro Zoning.

1. The Special Permit Application Does Not Qualify Under Section 30.7(A) or 30.7(B).

Ms. Cabral incorrectly suggests that her proposal, "will not increase the nature or extent of the nonconformity" and therefore qualifies for a permit under Section 30.7(B) of the Bylaw. Contrary to the Applicant's assertion, Section 30.7(B) of the Bylaw is not relevant to her application because Section 30.7(B) only applies to single- and two-family residential buildings. Regardless, this Board cannot make the required findings under Section 30.7(B) where the Applicant proposes to more than double the height of the structure from 14 to 31-feet, increase the gross floor area by 20%, increase the footprint of the structure with a new staircase, add a second level loft space, and introduce an intensive commercial use to Beach Point. The proposed structure is dimensionally more imposing than the existing structure and would otherwise require several dimensional variances, including a height variance where the top of the structure exceeds the 30-

foot height limitation in this district. Notably the Applicant fails to mention any of these critical non-conformities in her request for relief.

By the Applicant's own admission, the existing structure was nothing more than a storage shed for its entire useful life before it was abandoned. Storage is a decidedly passive, silent, low-intensity use, that is no more invasive than a sand dune. On the other hand, "woodworking" would fall within the definition of a "trade shop" which is expressly prohibited in the Beach Point Limited Business District. *See* Truro Bylaw, § 30.2, Note 7. Carpentry work necessarily brings with it piercing noise from electric saws, drills, planers, routers, and other loud woodworking equipment. There is no way to adequately condition or mitigate the harm caused by such an intense, noise-generating use, in an area where people go to enjoy the natural beauty of an otherwise quiet, scenic, beachfront landscape. The open landscape is devoid of trees, dense buildings, or other obstacles that might absorb offensive noise, which causes any sound in this area to travel without attenuation over long distances. For this and other reasons the Zoning Bylaw strictly limits intense, noise making, commercial uses in the Beach Point district.

This proposal will be substantially more detrimental than the present use of the Property and therefore the Board cannot make required findings under Section 30.7. Putting aside the dimensions of the proposed structure and the intensity of the proposed use, it is unreasonable to suggest that a woodworking shop could be maintained at this location without access to water or sanitary sewer. Woodworking involves sawdust, solvents, glues, paint and other liquids that will need to be managed and cleaned, which is impossible without water and appropriate commercial-grade sewer service. Groundwater protection is an interest expressly protected under the Zoning Bylaw and is a very real problem for this proposal where for convenience or in an emergency occupants of the woodworking shop might dump out excess liquid or effluent. *See* Section 10.2. Safety considerations also require a sink and bathroom on site, which would not be allowed. All of these practical concerns prevent a finding that the Applicant's proposal is "in harmony" with the Bylaw or "no more detrimental" to the surrounding neighborhood. Therefore, Section 30.7(A) is not applicable and the petition must be denied.

2. The Applicant Cannot, As a Matter of Law, Claim Woodworking as an Accessory Use

Contrary to Ms. Cabral's suggestion, the Truro Zoning Bylaw does not suffer from any technical defect that would allow a "Working Studio" to qualify as an accessory use on a property without any primary use. It is well established under Massachusetts law that every lot must have an established primary use for zoning purposes and any accessory use, "must not be [a] primary use of the property but rather one which is subordinate and minor in significance." *See Town of Harvard v. Maxant*, 360 Mass. 432, 438 (1971). The Truro Zoning Bylaw adopts and affirms this general rule under Section 10.4, which defines Accessory Use as "customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building." *See* Truro Zoning Bylaw § 10.4; *See also Henry v. Board of Appeals of Dunstable*, 418 Mass. 841, 844-45 (1994) (accessory use subordinate to primary use); *Simmons v. Zoning Bd. of Appeals*, 60 Mass. App. Ct. 5, 8 (2003) (incidental means "subordinate and minor" in significance). The accessory use must also be related to the primary use. *Id.*

Ms. Cabral seeks to use 491 Shore Road as a woodworking or carpentry studio, which cannot, as a matter of law, qualify as an accessory use when it is proposed as the *only use* of the Property. A “trade shop,” including carpentry and woodworking, is a prohibited use in the Beach Point Limited Business District. Ms. Cabral claims that Truro’s dimensional requirements under Section 50.1 provide an exception to the minimum lot size requirement for “buildings for an ancillary use or cottage.” Ms. Cabral’s opportunistic interpretation of Note 1 under Section 50.1 is flawed. First, to qualify for the exemption under Note 1 the building in question must meet the definition of “accessory use or cottage,” neither of which apply for the reasons described above. Second, the minimum lot size and frontage exemption provided under Note 1 is clearly intended to allow accessory structures and uses, i.e. structures and uses that are *minor in significance and subordinate* to the primary structure and use, to be built and maintained incidental to a primary use without regard to lot size or frontage. Note 1 to Section 50.1 does not apply where Ms. Cabral proposes a Working Studio that is by no means “subordinate and minor” to the overall proposed use of 491 Shore Road or any other property for that matter.

Courts have made clear that the “incidental” requirement for accessory uses is necessary to minimize harm to surrounding landowners. *See Cunha v. New Bedford*, 47 Mass. App. Ct. 407, 411 (1999), *quoting Rohan, Zoning and Land Use Controls*, § 40A.03[1] (1999) (“purpose behind the incidental requirement is that... ‘it will presumably not harm—or inflict only minimal harm upon—other residential users.’”). Ms. Cabral’s interpretation of the Bylaw directly contradicts longstanding case law about the nature and regulation of accessory uses that is intended to prevent the very harm that Crow’s Nest Condominium seeks to avoid. If the Board adopts Ms. Cabral’s interpretation of Section 50.1, Note 1, Truro’s minimum lot size, frontage, and use restrictions would be meaningless as any applicant could claim that their proposed structure and use is an accessory use exempt from regulation no matter how much harm the use might cause.

3. The Structure and its Historic Use Have Been Abandoned.

The fact that Ms. Cabral is forced to offer farfetched arguments as grounds for approval (i.e. “Working Studio” as accessory use) only serves to highlight the fatal flaw in her proposal, which is that uncontroverted evidence demonstrates that the structure and prior use of 491 Shore Road have been *irrevocably abandoned*. An examination of the history of 491 Shore Road, its present condition, and Section 30.7 of the Bylaw reveals that the Property is not eligible for protections afforded to pre-existing, non-conforming uses and structures. As such, any future use of the Property must comply with current zoning in all respects. Trade shops, including carpentry and furniture repair, are expressly prohibited in the Beach Point Limited Business District; therefore, Ms. Cabral’s proposal must be denied.

Section 30.7(C) of the Bylaw provides that “Nonconforming uses which have been abandoned for a period of 2 years or more shall not be re-established, and any future use shall conform to the then current bylaw.” Any protected non-conforming use of 491 Shore Road was abandoned as early as 1965 when the New York, New Haven & Hartford Railroad Company discontinued its use of the Property. The deed for the Property includes language which indicates an *intent to abandon* the use insofar as the chain of title recites that:

“[B]y acceptance of this Deed the Grantees acknowledge that this conveyance is also subject to... the existing zoning laws of the Town of Truro.”

The chain of title indicates an intent to abandon any protection for pre-existing non-conforming uses and expressly requires that the Property comply with current zoning.

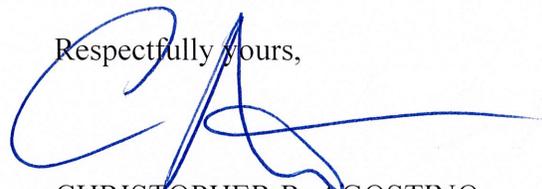
Even if the Property was not abandoned back in 1965 based on restrictions in the chain of title, the affidavits before the Board and anticipated testimony demonstrate that the Property has rarely been accessed for any purpose over the last two decades. *See Exhibit A*. The affidavits offered in support of Ms. Cabral’s application actually serve to confirm abandonment at least as far back as 2003 when they acknowledge separation of the Property from Crow’s Nest Condominium and cessation of regular storage activity. The Applicant’s affidavits claim no knowledge of any use after 2018 – *six years ago* – well past the strict two-year abandonment threshold under application law. Any access to the property since 2003 has been extremely sparse and insufficient to support any continuous, pre-existing, non-conforming use that might be protected under G.L. c. 40A, § 6. If the period of non-use is prolonged, abandonment will be established regardless of whether there was any intent to abandon. *See Dial Away Co. v. Zoning Bd. of Appeals of Auburn*, 41 Mass. App. Ct. 165 (1996). Without continuous occupancy and use there can be no pre-existing and nonconforming use for Ms. Cabral to continue or parlay into a new more intensive use such as woodworking.

4. Conclusion

For the reasons described herein, Ms. Cabral’s application must be denied. The Zoning Act does not favor protection of pre-existing non-conforming uses. Instead, the ultimate goal of the Act is to bring properties into conformity with current zoning over time. Thus, the party who claims protection of a pre-existing non-conforming use bears the burden of proof. Ms. Cabral’s proposal does not qualify for protection under Section 30.7 and does not meet applicable burdens of proof and therefore fails.

This letter is not intended to serve as an exhaustive critique of the 491 Shore Road proposal and therefore Crow’s Nest reserves its right to raise additional shortcomings. I look forward to answering any questions the Board may have at its hearing on February 26th.

Respectfully yours,



CHRISTOPHER R. AGOSTINO

Enclosures

cc: Chris Snow, Esq. (via email only)
Benjamin E. Zehnder, Esq. (via email only)

EXHIBIT A

Letter dated January 23, 2023 Regarding Abandonment of 491 Shore Road



Christopher R. Agostino, Esq.
Direct: 617-570-3501
E-mail: cra@riw.com

January 23, 2023

Via Email Only esturdy@truro-ma.gov

Truro Zoning Board of Appeals
c/o Liz Sturdy, Planning Director
24 Town Hall Road
Truro, MA 02666

Re: 491 Shore Road – 2022-020/ZBA – Opposition to Special Permit Application

Dear Chairman Hultin:

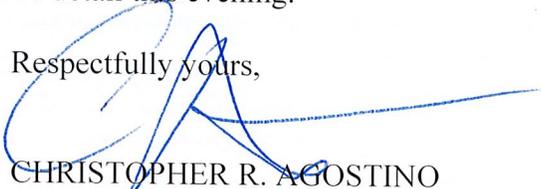
As you may recall, this firm represents Crow's Nest Condominium Trust ("Crow's Nest") in opposition to the application of Jennifer Cabral and the Nearen & Cubberly Nominee Trust with respect to 491 Shore Road in Truro. I write in follow-up to my correspondence dated December 19, 2022. Enclosed please find the following in support of Crow's Nest's opposition to the 491 Shore Road application for a special permit:

1. Affidavit of James T. McCusker;
2. Affidavit of Stephen M. McHugh;
3. Affidavit of Jeffrey S. Wade;
4. Deed of Record for 491 Shore Road, Truro.

As explained in my correspondence dated December 19th, any proposal to alter 491 Shore Road must comply with current requirements of the Truro Zoning Bylaw because any prior use of the property has long since been abandoned. The affidavits submitted herewith further confirm the extended period of abandonment. Additionally, the deed for the property expresses an intent to abandon any protection that might be afforded to pre-existing non-confirming uses or structures in that it requires compliance with current zoning dating back to abandonment by the railroad in 1965.

For these reasons and for the reasons recited in my December 19th correspondence, the Board need not reach an inquiry into whether the proposed use is substantially more detrimental than any prior use because there is no prior use that can be referenced under Section 30.7 of the Zoning Bylaw. I look forward to discussing this matter in more detail this evening.

Respectfully yours,



CHRISTOPHER R. AGOSTINO

cc: Client (via email only)
Barbara Carboni, Esq. (via email only)

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

IN RE 491 SHORE ROAD, TRURO
SPECIAL PERMIT APPLICATION

**AFFIDAVIT OF JAMES T. MCCUSKER IN OPPOSITION TO SPECIAL PERMIT
APPLICATION FOR 491 SHORE ROAD, TRURO, MASSACHUSETTS**

I, James T. McCusker, hereby depose and state as follows under the penalties of perjury:

1. I have personal knowledge of and I am competent to testify regarding the facts set forth herein.
2. I own the property known and numbered as 496 Shore Road, Unit #21 located in North Truro, Massachusetts (“my Property”).
3. I have owned my Property since approximately 2003.
4. My Property is located across from 491 Shore Road on the west side of Route 6A, approximately 110 feet from 491 Shore Road.
5. Since I have owned my Property I have actually resided at my Property full-time for an average of 3 months during any given year.
6. When I first purchased my Property in approximately 2003 I would stay at my Property for at least 5-6 nights per week for almost an entire year.
7. Additionally, I would also reside nearby at 596 Shore Road, which is approximately one-half mile away from 491 Shore Road.

8. Overall, while not actually residing at my Property full-time, I am actually at my property visiting, completing shores, staying for leisure or otherwise around for over 100 days per year.

9. While at my Property I am able to clearly observe the condition of 491 Shore Road and any activity that may occur at 491 Shore Road.

10. Since I purchased my Property in approximately 2003 I can state with certainty that 491 Shore Road has appeared abandoned during that entire time.

11. The only activity that I ever observed at 491 Shore Road was people looking in windows and more recently real estate agents and surveyors in or about.

12. I believe that 491 Shore Road has been abandoned since at least 2003.

Signed under the pains and penalties of perjury on 1/23/2023.

DocuSigned by:

22213D90A84646C...
James T. McCusker

*[Signature Page to Affidavit of James T. McCusker
in Opposition to 491 Shore Road Special Permit]*

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

IN RE 491 SHORE ROAD, TRURO
SPECIAL PERMIT APPLICATION

**AFFIDAVIT OF STEPHEN M. MCHUGH IN OPPOSITION TO SPECIAL PERMIT
APPLICATION FOR 491 SHORE ROAD, TRURO, MASSACHUSETTS**

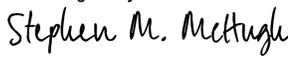
I, Stephen M. McHugh, hereby depose and state as follows under the penalties of perjury:

1. I have personal knowledge of and I am competent to testify regarding the facts set forth herein.
2. I own the property known and numbered as 496 Shore Road, Unit #10 located in North Truro, Massachusetts (“my Property”).
3. I have owned my Property for approximately 12 years.
4. My Property is located across from 491 Shore Road on the west side of Route 6A, approximately 110 feet from 491 Shore Road.
5. Since I have owned my Property I have actually resided at my Property full-time for an average of 2 months during any given year.
6. While not residing at my Property I visit to complete repairs, chores, management tasks and other activities at my Property.
7. While at my Property and visiting to complete tasks I am able to clearly observe the condition of 491 Shore Road and any activity that may occur at 491 Shore Road.
8. Since I purchased my Property in 2011 I can state with certainty that 491 Shore Road has appeared abandoned during that entire time.

9. The only activity that I ever observed at 491 Shore Road was occasional visitors looking in windows out of curiosity is my guess.

10. I believe that 491 Shore Road has been abandoned since at least as long as I have owned my unit.

Signed under the pains and penalties of perjury on 1/23/2023.

DocuSigned by:

622D377EC94C40E...

Stephen M. McHugh

*[Signature Page to Affidavit of Stephen M. McHugh
in Opposition to 491 Shore Road Special Permit]*

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

IN RE 491 SHORE ROAD, TRURO
SPECIAL PERMIT APPLICATION

**AFFIDAVIT OF JEFFREY S. WADE IN OPPOSITION TO SPECIAL PERMIT
APPLICATION FOR 491 SHORE ROAD, TRURO, MASSACHUSETTS**

I, Jeffrey S. Wade, hereby depose and state as follows under the penalties of perjury:

1. I have personal knowledge of and I am competent to testify regarding the facts set forth herein.
2. I own the property known and numbered as 496 Shore Road , Unit #2, located in North Truro, Massachusetts (“my Property”).
3. I have owned my Property since approximately 2003.
4. My Property is located across from 491 Shore Road on the west side of Route 6A, approximately 110 feet from 491 Shore Road.
5. Since I have owned my Property I have actually resided at my Property full-time an average of 2 months during any given year.
6. While not residing at my Property, from 2002 to 2015 I would frequently drive by my Property on a weekly basis as part of my job for Allied Waste and Cavossa Disposal.
7. While not residing at my Property I would also frequently visit to complete repairs, chores, management tasks and other activities at my Property.
8. While at my Property I am able to clearly observe the condition of 491 Shore Road and any activity that may occur at 491 Shore Road.

9. Since I purchased my Property in approximately 2003 I can state with certainty that 491 Shore Road has appeared abandoned during that entire time.

10. The only activity that I ever observed at 491 Shore Road was the occasional visitor looking at the property.

11. I believe that 491 Shore Road has been abandoned since at least as early as 2002.

Signed under the pains and penalties of perjury on 1/23/2023.

DocuSigned by:

8A69D347EE2446F...

Jeffrey S. Wade

*[Signature Page to Affidavit of Jeffrey S. Wade
in Opposition to 491 Shore Road Special Permit]*

DOROTHY M. NEAREN and MARILYN CUBBERLEY OFFICIAL COPY

of Box 254, North Truro, Barnstable County, Massachusetts

being unmarried, for consideration paid, and in full consideration of ONE DOLLAR (\$1.00)

grant to DOROTHY M. NEAREN and MARILYN CUBBERLEY, Trustees of the Nearen and Cubberley Minnie Trust, OFFICIAL COPY

of Box 254, North Truro, Massachusetts 02652 with quitclaim covenants

the land in Truro, Barnstable County, Massachusetts, as follows:

[Description and encumbrances, if any]

PARCEL I:

The land in Truro, in the County of Barnstable, with any buildings thereon, shown on a plan made a part hereof and recorded in Plan Book 354, Page 90 entitled: "New York, New Haven And Hartford Railroad Office Of Engineer - Real Estate Land in Truro, Mass. To Be Conveyed To Albert And Frances Annone Scale 1" = 40' Sept. 1964", and bounded and described as follows:

Beginning at the southeasterly corner of the herein described premises at a point distant 41.25 feet southwesterly, measured at right angles from Station 4343 + 21.88 of the monumented base line of the Grantors' railroad leading from Middleboro to Provincetown,

Thence northwesterly, bounding southwesterly on land of the Grantees, 200.04 feet to a point distant 41.25 feet southwesterly, measured at right angles from Station 4345 + 21.92 of said base line;

Thence northeasterly bounding northwesterly on remaining land of the Grantors, 82.51 feet to a point distant 41.25 feet northeasterly, measured at right angles from Station 4345 + 23.45 of said base line;

Thence southeasterly bounding northeasterly on State Highway Route 6, 200.04 feet to a point distant 41.25 feet northeasterly measured at right angles from Station 4343 + 23.41 of said base line, and

Thence southwesterly, bounding southeasterly on remaining land of the Grantors, 82.51 feet to the point of beginning; containing 16,503 square feet; or however otherwise said premises may be bounded and described; and be all or any of said measurements or distances more or less.

By the Acceptance of this Deed the Grantees acknowledge and agree that this conveyance is also subject to the following: 1) the existing zoning laws of the Town of Truro; and 2) the fact that this conveyance creates no access to the within premises either as a crossing or a right of way over remaining land now or formerly of Richard Joyce Smith, et ali, Trustee of the New York, New Haven, and Hartford Railroad Company either as a way of necessity or otherwise;

See also plan of land recorded in the Barnstable County Registry of Deeds, Plan Book 33, Page 127.

PARCEL II:

O F F I C I A L
C O P Y

O F F I C I A L
C O P Y

A certain lot of land with any buildings thereon, located on the North side of Route 6A (County Road) in said Truro having a frontage on said road of fifty-five (55) feet and extending easterly to the land of the Old Colony Railroad Co., the North and South lines of said parcel being extensions of the North and South lines of Lot 1, Section B on a plan of land hereinafter referred to.

PARCEL III:

A certain lot of land, with any buildings thereon, being a narrow strip of land in said Truro on the East side of the State Highway formerly known as the County Road and now known as Route 6A lying between land of New York, New Haven & Hartford Railroad Company and said Route 6A being fifty (50) feet wide and located directly opposite Lot Two (2), Section B as shown on Plan of Land recorded in Plan Book 33, Page 127.

PARCEL IV:

A lot of land, with any buildings thereon, located in said Truro, situated on the Eastern side of the State Highway known as Route 6A directly opposite Lot One (1), Section A on a Plan of Land hereinafter bounded and described as follows:

Beginning at a stake directly opposite to the first mentioned bound of Lot No. I, Section A on the line of said highway; thence running Easterly seventeen and 63/100 feet to land of the N.Y., N.H. & H.R.R. Company; thence Northerly along the line of said Railroad; thence in a westerly direction to the State Highway; thence along said Highway fifty-five feet to the point of beginning.

Also meaning and intending to convey any right, title and interest we may have in and to any way abutting the parcels herein expressly conveyed.

The Plan of Land referred to in Parcels II, III and IV above are recorded in Barnstable County Registry of Deeds Plan Book 33, Page 127.

For our title see Deed from Albert Annone and Frances Annone to us dated September 15, 1981, recorded with the Barnstable County Registry of Deeds on September 15, 1981, in Book 3360, Page 089.

NOT
AN
OFFICIAL
COPY

BOOK 8309 PAGE 133
NOT
AN
OFFICIAL
COPY

Witness our hands and seals this 5th day of November, 19 92

NOT
AN
OFFICIAL
COPY

Dorothy M. Nearen
Marilyn Cubberley
DOROTHY M. NEAREN
MARILYN CUBBERLEY

The Commonwealth of Massachusetts

BARNSTABLE, ss.

November 5, 19 92

Then personally appeared the above named Dorothy M. Nearen and Marilyn Cubberley

and acknowledged the foregoing instrument to be their free act and deed, before me

Christopher J. Snow
Notary Public — Justice of the Peace
CHRISTOPHER J. SNOW
My commission expires October 16, 19 98



CHAPTER 183 SEC. 6 AS AMENDED BY CHAPTER 497 OF 1969

Every deed presented for record shall contain or have endorsed upon it the full name, residence and post office address of the grantee and a recital of the amount of the full consideration thereof in dollars or the nature of the other consideration thereof, if not delivered for a specific monetary sum. The full consideration shall mean the total price for the conveyance without deduction for any liens or encumbrances assumed by the grantee or remaining thereon. All such endorsements and recitals shall be recorded as part of the deed. Failure to comply with this section shall not affect the validity of any deed. No register of deeds shall accept a deed for recording unless it is in compliance with the requirements of this section.

RECORDED NOV 17 92

William Bibeau - Anthony Ferreira
59 River Street
Bristol, RI 02809
401-297-9869 - 401-347-3814
wbibeau72@gmail.com - ems4059@gmail.com

February 18, 2024

Liz Sturdy, Planning Director
Truro Zoning Board of Appeals
24 Town Hall Road
Truro, MA 02666
esturdy@truro-ma.gov

Re: Opposition to Special Permit Application for 491 Shore Rd, Truro, MA

Dear Ms. Sturdy and Members of the Truro Zoning Board of Appeals:

We, Anthony Ferreira & William Bibeau write to express our strong opposition to the Special Permit Application for 491 Shore Rd, Truro, MA, and submit this affidavit outlining our concerns under the penalties of perjury.

- **Ownership and Proximity:** We have been the owners of Unit 20, 496 Shore Rd. since 2023, which directly faces the property in question.
- **Visibility of Property:** The dilapidated dwelling at 491 Shore Rd is directly in the line of sight from our unit's windows.
- **Observations of Property Activity:** In the 30+ years that we have been coming to Truro & Provincetown and renting various properties, as well as since our purchase of Unit 20 at 496 Shore Road in Truro in 2023, we have never seen activity at this location.

Concerns Regarding Proposed Woodworking Facility:

- **Noise Pollution:** Based on prior experience with woodworking activities/tools, we anticipate significant noise levels which will negatively impact all of the abutters.
- **Chemical Odors and Health Hazards:** Woodworking generally utilizes adhesives, coatings, and wood finishing products. These products have noxious odors, and potential health hazards which will be exacerbated by prevailing winds.
- **Fire and Explosion Hazards:** The use of flammable materials in unventilated or enclosed areas poses substantial risks of fire and explosion.
- **Toxic Chemicals:** Many woodworking adhesives and coatings contain hazardous chemicals, such as methylene chloride, which can have carcinogenic and dermatological effects.
- **Impact on Property Value:** The aforementioned concerns will likely negatively impact the value of our property.
- **Negative Social and Economic Implications:** The presence of a commercial woodworking enterprise may lead to negative reviews on social media platforms, adversely affecting tourism and property perception.

We purchased this property in 2023 as a vacation spot for its peace and tranquility. We both have very stressful jobs - William in Healthcare Finance and Anthony as a first responder as well as small business owner. The potential impact this will have on the area/our property would have potentially had us think twice about purchasing here.

Taking into consideration the items bulleted out above, we would request that the Truro Zoning Board reject the special permit application for 491 Shore Road, Truro with prejudice.

Thank you in advance for your consideration of this request:



William E Bibeau/Anthony Ferreira
Owners: 496 Shore Road, Unit 20 – Truro, MA 02852

Date: February 16, 2024

To:
esturdy@truro-ma.gov
Truro Zoning Board of Appeals
c/o Liz Sturdy, Planning Director
24 Town Hall Road
Truro, MA 02666

Re: Opposition to Special Permit Application for 491 Shore Rd, Truro, MA

Dear Ms. Sturdy and Members of the Truro Zoning Board of Appeals,

I, Leonard A. Dubois, write to express my strong opposition to the Special Permit Application for 491 Shore Rd, Truro, MA, and submit this affidavit outlining my concerns under the penalties of perjury.

Ownership and Proximity: I have been the owner of unit 17, 496 Shore Rd., since at least 2009, which directly faces the property in question.

Visibility of Property: The dilapidated dwelling at 491 Shore Rd is directly in my line of sight from my unit's windows.

Observations of Property Activity: In the 13+ years of my ownership, I have never observed any activity or visitors to the property.

Concerns Regarding Proposed Woodworking Facility:

1. **Noise Pollution:** I anticipate significant noise levels associated with woodworking activities, based on my son's prior woodworking shop experience.
2. **Chemical Odors and Health Hazards:** I am concerned about the noxious odors and potential health hazards from adhesives, coatings, and wood finishing products, exacerbated by prevailing winds.
3. **Fire and Explosion Hazards:** The use of flammable materials in unventilated or enclosed areas poses substantial risks of fire and explosion.
4. **Toxic Chemicals:** Many woodworking adhesives and coatings contain hazardous chemicals, such as methylene chloride, which can have carcinogenic and dermatological effects.
5. **Impact on Property Value:** The aforementioned concerns will likely depreciate the value of my property.
6. **Negative Social and Economic Implications:** The presence of a commercial woodworking enterprise may lead to negative reviews on social media platforms, adversely affecting tourism and property perception.

Considering the above, I vehemently oppose the Special Permit Application for 491 Shore Rd, Truro, MA.

Sincerely,


Leonard A. Dubois

Therese Featherstone
603 Sanders Avenue
Scotia, NY 12302
February 17, 2024

Truro Zoning Board of Appeals
c/o Liz Sturdy, Planning Director
24 Town Hall Road
Truro, MA 02666
esturdy@truro-ma.gov

Dear Ms. Sturdy and Members of the Truro Zoning Board of Appeals,

The purpose of this letter is to express my opposition to the Special Permit Application for 491 Shore Road, Truro, MA. I submit this affidavit expressing my concerns under the penalties of perjury.

I have been the owner of Unit 7, 496 Shore Road, since February 2022. I have never observed any visitors or activity at the abandoned structure across the street at 491 Shore Road.

I purchased Unit 7 at 496 Shore Road because I need a quiet place to rest and decompress on a regular basis. As a middle school teacher in a New York public school, I suffer from high anxiety, high blood pressure, headaches, and chronic job strain. Dealing with students with mental illness, daily fights, constant screaming, and weapons being brought into school, I am working under duress and I am constantly overwhelmed and immersed in a loud, chaotic, and dangerous work environment. Taking frequent short, mini vacations at 496 Shore Road is essential to my physical and psychological health. Having to listen to a contractor working or ear-piercing saws running in a wood-working shop would cause a loss of concentration, increased headaches, sleep disturbance, and have a detrimental effect on my health and mental well being. 496 Shore Road would no longer be a place of respite for me, and I would have no choice but to sell and find a quieter, more peaceful environment where I can rest and recharge.

Noise from a wood-working shop would deter renters from renting again. People come to vacation at 496 Shore Road for the vast beauty of the Cape Cod Bay and its uninterrupted peace and tranquility.

Again, I am in strong opposition to the Special Permit Application for 491 Shore Rd, Truro, MA. Thank you.

Sincerely,

Therese Featherstone

Therese Featherstone

Truro Zoning Board of Appeals
c/o Liz Studry, Planning Director
24 Town Hall Road
Truro, MA 02666

February 17, 2024

Re: Opposition to Special Permit Application for 491 Shore Rd. Truro, MA

Dear Ms. Sturdy and Members of the Truro Zoning Board of Appeals,

I, Matthew J McCaffrey, am writing to express my strong opposition to the special permit application for 491 Shore Road, Truro, MA. As the owner of Unit 19, 496 Shore Road, since 2004, I have a vested interest in the preservation of the area's tranquility and appeal.

My unit boasts a veranda with a serene view of Pilgrim Lake, which unfortunately also overlooks the abandoned garage at 491 Shore Road. In my twenty years staying in Truro, the activity I've witnessed from my veranda has been minimal, with only the occasional sighting of fox puppies playing around the west side of the garage. Needless to say, the area has remained relatively peaceful and undisturbed.

My primary concern regarding the proposed development of this abandoned property is the potential noise pollution stemming from the operation of a woodworking facility. Such establishments typically utilize equipment such as jointers, planers, radial arm saws, table saws, and various sanders. Additionally, the regular deliveries of wood, accompanied by the associated noise of trucks' reverse alarms, skid loaders, and forklifts, would significantly disrupt the tranquility of the area.

Truro prides itself on its status as a popular summer destination, with tourism playing a vital role in the town's economy. It's evident that paying tourists visiting the area do not wish to contend with the intrusive sounds of a commercial woodworking shop during their vacations. The approval of this special permit could adversely impact surrounding hotels, condos, and cottages, leading to a decline in tourism revenue and potentially harming the local economy.

I implore you to oppose the special permit application for 491 Shore Rd. Truro, Massachusetts. My sentiments are echoed by numerous neighbors and community members who, although unable to attend town meetings or submit written correspondence, share my concerns about the detrimental effects this development could have on our community's character and livelihood.

Thank you for your unwavering dedication to serving our community's best interests.

Sincerely,
Matthew J McCaffrey

To: Whom It May Concern

From: Robert & Michele Vannelli

1152 Poquonock Ave

Windsor, CT 06095

Re: Intended sale/use of garage for wood shop

We received notice from the town of N. Truro that the garage on Shore Road opposite Crows Nest that abuts our parcel, is under consideration for sale/conversion for wood shop purposes. We are not in favor of a wood operation that will entail the noise of saws and possibly other equipment. Folks come to the cape for peace and relation. As of now, our parcel does not have a building but who knows what the future holds. In the event someday we would want to sell our parcel, we would not desire an abutting property to lower the cost of our parcel in any way, be it noise.

Thank you.

Sincerely,

Robert Vannelli

Michele Vannelli

From: [Pamela Wade](#)
To: [Elizabeth Sturdy](#)
Subject: Affidavit in Opposition Permit 491 Shore Rd.: Jeffrey S. Wade
Date: Sunday, February 18, 2024 4:00:05 PM

Dear Ms. Sturdy and Members of the Truro Zoning Board of Appeals:

My wife and I have been owners at the Crow's Nest since 2003. Our unit #2 directly faces 419 Shore Road garage. Unfortunately, #419 is an eyesore and has been

abandoned since I have purchased my condo.

The Crow's Nest is a pristine destination that we and our renters go to for the peace and solitude quinessential Truro is know for. We can not ever imagine having any type

of construction (on a daily basis)within eye site and earshot . The smell of chemicals and the sound of power tools will overwhelm the sound of surf and ocean breeze.

Not withstanding any economic implications and the negativity associated with a woodworking facility directly across the street.

As stated my wife and I oppose the special permit for 491 Shore Road, Truro, MA.

Regards,

Jeffrey and Pamela Wade

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.

From: [Donna Fay](#)
To: [Elizabeth Sturdy](#)
Subject: Concerns Regarding Proposed Woodworking Facility
Date: Tuesday, February 20, 2024 4:42:57 PM

Date: February 20, 2024

To:
Truro Zoning Board of Appeals
c/o Liz Sturdy, Planning Director
24 Town Hall Road
Truro, MA 02666

Re: Opposition to Special Permit Application for 491 Shore Rd, Truro, MA

Dear Ms. Sturdy and Members of the Truro Zoning Board of Appeals,

I, Donna Fay and my wife Sharon Santangelo are writing to express our extreme objections to the Special Permit Application for 491 Shore Rd, Truro, MA. We reside at 494 Shore road diagonally across from the dwelling at 491 shore Rd. We totally oppose having a woodworking shop across from our home that would be creating noise pollution and odors from chemicals that will be used in the woodworking shop. To even think that this would be considered is rather shocking. Somehow looking over at the sand dunes and hearing loud saws all day with blowing fumes in the air is not where this workshop belongs on our beautiful Seashore. Not to mention the environment and health hazards this will bring to the residents. This woodworking shop belongs in an industrial, commercial zoned area not on our beautiful coast at Beachpoint. People come to Beachpoint for its peacefulness, beauty and tranquility; not to hear loud saws and the smell of toxic fumes blowing in the environment. This will not only decrease our property values, but make Beachpoint highly undesirable to enjoy and cherish as we so do now.

Sincerely,

Donna Fay&Sharon Santangelo

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.

From: [Cape Resort](#)
To: [Elizabeth Sturdy](#)
Subject: Opposition to Special Permit Application for 491 Shore Rd, Truro, MA
Date: Tuesday, February 20, 2024 3:52:28 PM

Date: February 20, 2024

To: The Truro ZBA

esturdy@truro-ma.gov

Truro Zoning Board of Appeals

c/o Liz Sturdy, Planning Director

24 Town Hall Road

Truro, MA 02666

Re: Opposition to Special Permit Application for 491 Shore Rd, Truro, MA

Dear Ms. Sturdy and Members of the Truro Zoning Board of Appeals,

I, James T. McCusker am writing to express my strong opposition to the Special Permit Application for 491 Shore Rd, Truro, MA.

I have been the owner of units 1,12,13,14,18 & 21 since I purchased the property from the prior owners in 2003. As the developer of this property I can confidently say I have never seen anyone enter the abandoned structure at 491 Shore Road since 2003.

As a developer I am all too familiar with the noise generated by power tools not to mention safety concerns. The use of chemicals from an environmental standpoint are of grave concern to me as well. Hazardous spills and airborne solvents, their vapors and mists have various effects on human health. Many of them have a narcotic effect, causing fatigue, dizziness and intoxication. High doses may lead to unconsciousness and death.

I am also the owner of the corporation that manages the Crow's Nest (Coastal Cape Development, Inc.) and facilitates the rentals for all of the unit owners. I have been doing so since 2003. I believe the woodworking shop will devastate the peace and tranquility here and adversely affect the thousands of guest who enjoy this very special spot on Beach Point every year. I can only imagine what just a small handful of social media posts could do to our

occupancy as guests comment on the tremendous amount of noise emanating from the building especially with most of the bedrooms on that side of the building and parents trying to get children down for a mid-day nap.

For these and many other reasons I violently oppose this special permit.

Sincerely,

James T. McCusker

--



Virus-free www.avg.com

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.

From: [Stephen Mc](#)
To: [Elizabeth Sturdy](#); [Stephen Mc](#)
Subject: Oppose 491 Shore rd Special Permit
Date: Tuesday, February 20, 2024 2:09:32 PM

To:
esturdy@truro-ma.gov
Truro Zoning Board of Appeals
c/o Liz Sturdy, Planning Director
24 Town Hall Road
Truro, MA 02666

Re: Opposition to Special Permit Application for 491 Shore Rd, Truro, MA

To Ms. Sturdy and Members of the Truro Zoning Board of Appeals,

I, Stephen M. McHugh, write to express my strong opposition to the Special Permit Application for 491 Shore Rd, Truro, MA, and submit this affidavit outlining my concerns under the penalties of perjury.

Ownership and Proximity: I have been the owner of 496 Shore Rd. Unit 10 for the last 13 plus years and is directly across the property in question.

Visibility of Property: The dilapidated dwelling at 491 Shore Rd is directly in my line of sight from my unit's windows. It has been falling apart from day one of my ownership. It gets worse, year after year and now has begun to sag on the roofs support beam for year and is highly visible to all who pass by.

Observations of Property Activity: In the 13+ years of my ownership, I have never observed any activity or visitors to the property.

Concerns Regarding Proposed Woodworking Facility:

1. **Noise Pollution:** I anticipate significant noise levels associated with woodworking activities as with any woodshop.
2. **Chemical Odors** I am concerned about the noxious odors and potential health hazards from adhesives, coatings, and wood finishing products, exacerbated by prevailing winds.
3. **Fire and Explosion Hazards:** The use of flammable materials in unventilated or enclosed areas poses substantial risks of fire and explosion. Being neglected for some many years, I am worried about a lightning strike.
4. **Toxic Chemicals:** Many woodworking adhesives and coatings contain hazardous chemicals, such as methylene chloride, which can have carcinogenic and dermatological effects.
5. **Impact on Property Value:** My concerns, that it will likely depreciate the value of my property.
6. **Sight change:** The change in look by having a business would surely turn people away. The sounds of machinery, cars coming and going and the sounds of trucks backing up and destroying the

quaintness people have come to expect and enjoy, will be gone forever.

I am adamant the Special Permit Application for 491 Shore Rd, Truro, MA. if granted would not be conducive to the Crows Nest Resort history of quietness and peacefulness its' customers have enjoyed for years. I oppose this permit.

Sincerely,

Stephen M. McHugh

2/20/24

617-680-4789

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.

Amy L. Reed Covais, Esq.
190 Highlands Drive
Pawling, New York 12564
(845)855-5459
Amy.Covais@gmail.com

February 26, 2024

Subject: [491 Shore Road, Truro](#)

Dear Members of the Truro Zoning Board of Appeals

My name is Amy Covais. My husband, Joe, and I own condo unit 16 at Crow's Nest Resort directly across the street from the proposed wood working shop. We vehemently oppose the so-called "improvement" which will only serve to bring a nuisance to an otherwise peaceful neighborhood.

We have been vacationing at Beach Point for nearly forty years. We have always been drawn to Beach Point for its tranquility, peacefulness and views of the water and dunes. That inspired us to purchase a condo at Crow's Nest Resort this past summer. We were impressed with the views of the water and dunes. We were told, rightfully, that the garage directly across the way was an abandoned structure which could not be developed. We absolutely would not have purchased the condo there if we knew that a two-story wood-working shop, or anything else, was going to be interfering with our enjoyment of the view of the dunes or creating such an auditory nuisance.

Further, the applicant claims that a wood-working shop is permitted as an accessory structure, but at the same time, admits that it must be accessory to the primary residence. There is no primary residence.

The applicant claims that the proposed use will "not be more detrimental to the neighborhood than the existing, non-conforming garage/storage use." In actuality, the machinery used to mill wood would seriously impact the peaceful, quiet neighborhood and I ask you, would you rather listen to waves and a bay breeze, or the loud machinery that will plague our peace and our tenants' enjoyment?

Further, the abandoned garage/storage structure is a passive use, while the proposed structure will be an active use producing loud sounds, movement and some commercial activity.

We will undoubtedly lose tenants and our property will become seriously devalued.

In sum, the proposed special use would bring a nuisance and be a detriment to our property. We vehemently oppose its approval.

Thank you for your time,

Amy L. Reed Covais, Esq.



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 January 26, 2024

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 of the Truro Zoning Bylaw and M.G.L. Ch. 40A, §6 concerning *(describe)* _____ alter & change pre-existing non-conforming accessory garage/storage bldg. by demolition & construction of accessory workshop bldg.

Property Address 491 Shore Road Map(s) and Parcel(s) 7-4

Registry of Deeds title reference: Book 8309, Page 131, or Certificate of Title Number N/A and Land Ct. Lot # N/A and Plan # N/A

Applicant's Name Jennifer Cabral

Applicant's Legal Mailing Address 160 Commercial Street, Provincetown, MA 02657

Applicant's Phone(s), Fax and Email (508) 240-4469; jencabral@yahoo.com

Applicant is one of the following: *(please check appropriate box)* Owner Prospective Buyer* Other* *Written Permission of the owner is required for submittal of this application.

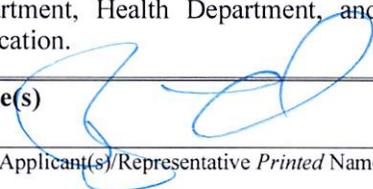
Owner's Name and Address Nearen & Cubberly Nominee Trust, Christopher Snow, Trustee

Representative's Name and Address Benjamin E. Zehnder 62 Rte. 6A, Suite 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 Planning Department Administrator at esturdy@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) 

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



TOWN OF TRURO

Assessors Office

Certified Abutters List

Request Form



DATE: December 14, 2023 *01/26/2024*

NAME OF APPLICANT: Jennifer Cabral

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

MAILING ADDRESS: 62 Route 6A, Suite B, Orleans, MA 02653

CONTACT: HOME/CELL (508) 255-7766 EMAIL bzehnder@zehnderllc.com

PROPERTY LOCATION: 491 Shore Road
(street address)

PROPERTY IDENTIFICATION NUMBER: MAP 7 PARCEL 4 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 ⁵ | <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 ¹ | <input checked="" type="checkbox"/> Special Permit ¹ |
| <input type="checkbox"/> Conservation Commission ⁴ | <input type="checkbox"/> Site Plan ² | <input type="checkbox"/> Variance ¹ |
| <input type="checkbox"/> Licensing | <input type="checkbox"/> Preliminary Subdivision ³ | |
| Type: _____ | <input type="checkbox"/> Definitive Subdivision ³ | |
| | <input type="checkbox"/> Accessory Dwelling Unit (ADU) ² | |
| <input type="checkbox"/> Other _____ | | |
- (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: Jan 26, 2024 Date completed: 1/26/24
List completed by: Olga Farrell Date paid: 1/26/24 Cash/Check #436

¹Abutters, 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.
²Abutters to the subject property, abutters to the abutters, and owners of properties across the street from the subject property.
³Landowners 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.
⁴All 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.
⁵Abutters 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: January 26, 2024

To: Ben Zehnder, Esq.

From: Assessors Department

Certified Abutters List: 491 Shore Rd (Map 7, Parcel 4)

Zoning Board of Appeals

Attached is a combined list of abutters for 491 Shore Road.

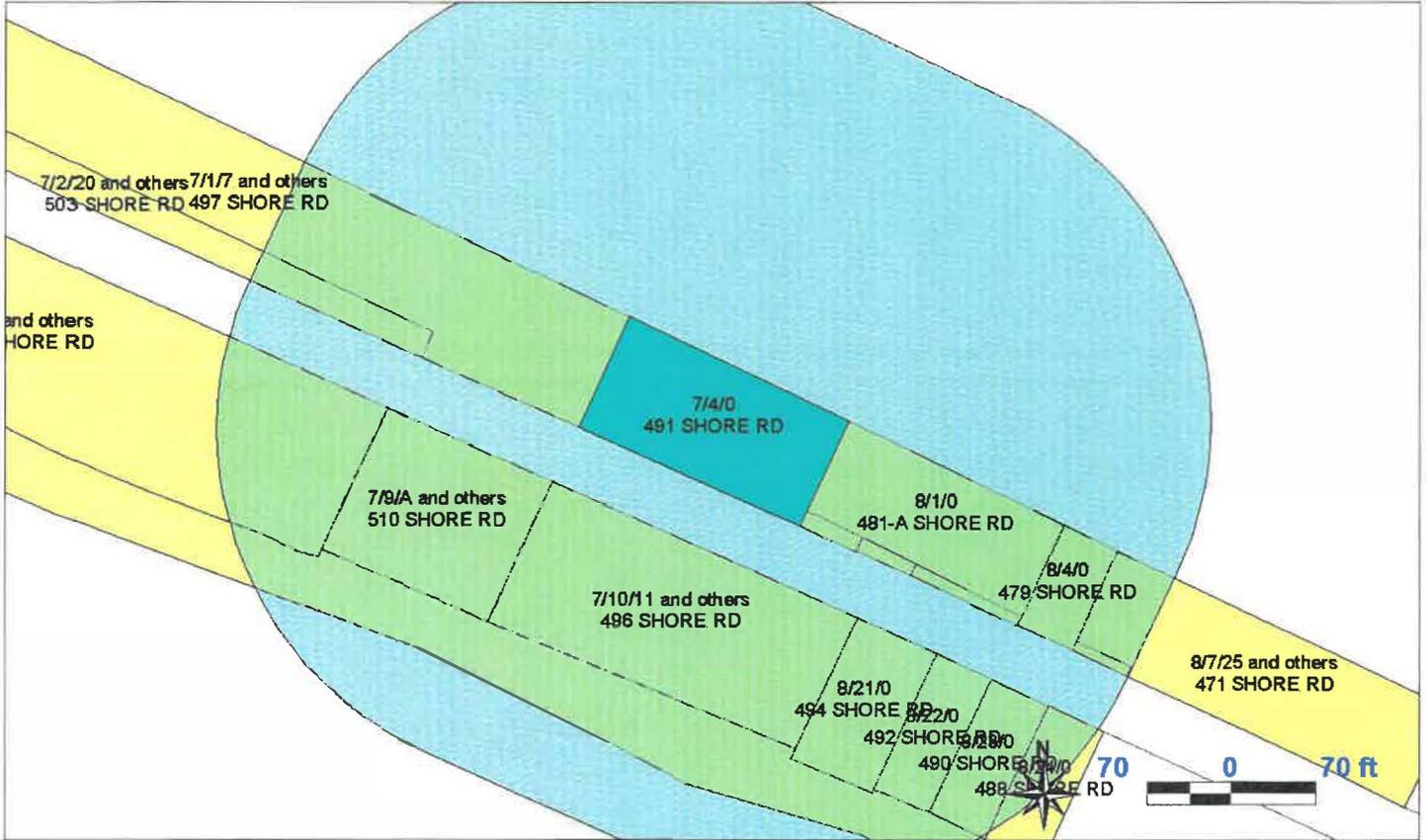
The current owner is Nearen & Cubberly Nominee Trust.

The names and addresses of the abutters are as of January 19, 2024 according to the most recent documents received from the Barnstable County Registry of Deeds.

Certified by: _____

Olga Farrell
Assessing Clerk

Abutters List Within 300 feet of Parcel 7/4/0



Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	ZipCd/Country
6322	7-1-1-R	ODONNELL HENRY J IRREV TR ETAL TRS: O'DONNELL HENRY J & DIANE M	497 SHORE RD	4 ASHLAND AVE	WEST ROXBURY	MA	02132
6323	7-1-2-R	MULLIGAN JAMES M & MULLIGAN JANICE L	497 SHORE RD	186 BROOKBEND ROAD	HANSON	MA	02351
6324	7-1-3-R	HEBERT IRENE M & ABBOTT CAROL L	497 SHORE RD	PO BOX 269	NO TRURO	MA	02652
6325	7-1-4-R	PEARCE KATHLEEN M & KUEBLER DAVID S	497 SHORE RD	40 TUNXIS ST	FARMINGTON	CT	06032
6326	7-1-5-R	PERRY CHRISTOPHER J & DEBORAH M	497 SHORE RD	322 NASHUA RD	GROTON	MA	01450
6327	7-1-5-R	WESTCREEK VISIONS, LLC MEMBER: STEVEN A PALMER	497 SHORE RD	PO BOX 1713	COTTONWOOD	AZ	86326
6328	7-1-7-R	VERVE DEVELOPMENT LLC MGR: RUSSELL BRAUN	497 SHORE RD	PO BOX 272	NO TRURO	MA	02652-0272
6969	7-1-9-E	SUNRISE COTTAGES CONDO TRUST	497 SHORE RD	497 SHORE RD	NO TRURO	MA	02652
6776	7-2-19-R	ARNOLD A BROWN 2003 REV TRST TRS: ARNOLD A BROWN	503 SHORE RD	7601 E INDIAN BEND RD APT 1009	SCOTTSDALE	AZ	85250
6777	7-2-20-R	PEEREBOOM WAYNE H & ANN M	503 SHORE RD	11 VILLONE DR	LEEDS	MA	01053
6778	7-2-21-R	MARZILLI JEAN M	503 SHORE RD	34 WORCESTER SQUARE, UNIT 3	BOSTON	MA	02118
6779	7-2-22-R	AZULAY JANET A & RICHARD A	503 SHORE RD	12 COBB AVE	KINGSTON	MA	02364
6780	7-2-23-R	KEARNEY BARBARA ANNE	503 SHORE RD	PO BOX 977	N TRURO	MA	02652
6781	7-2-24-R	ROBERTS JENNIFER J	503 SHORE RD	1831 DUFFIELD LN	ALEXANDRIA	VA	22307
6782	7-2-25-R	LEE STANLEY W & HAYES PETER J	503 SHORE RD	55B BROOKLINE ST	CAMBRIDGE	MA	02139

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Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	Zip/Cd/Country
6783	7-2-26-R	DE ANDRADE PETER	503 SHORE RD	PO BOX 210	NO TRURO	MA	02652
6784	7-2-27-R	DORIO JEFFREY & KLOCK JENNIFER	503 SHORE RD	409 HAMSHER AVE	TOPTON	PA	19562
6785	7-2-28-R	LISA G LOVELAND REV TRUST TRS: LISA G LOVELAND	503 SHORE RD	2 WORCESTER SQUARE #A	BOSTON	MA	02118
6786	7-2-29-R	SERVEDIO CHRISTINE	503 SHORE RD	98 OSTEND RD	ISLAND PARK	NY	11558
6972	7-2-30-E	SUTTON PLACE CONDO TRUST	503 SHORE RD	503 SHORE RD	NO TRURO	MA	02652
236	7-4-0-R	NEAREN & CUBBERLEY NOMINEE TR TRS: CHRISTOPHER SNOW	491 SHORE RD	PO BOX 291	PROVINCETOWN	MA	02657
6759	7-8-1-R	WAYSIDE ONE REALTY TRUST TRS: AGIN WARREN	522 SHORE RD	1 DEVONSHIRE PLACE, APT 2913	BOSTON	MA	02109
6760	7-8-2-R	BOYNTON EMILY & AN G HINDS REVOCABLE TRUST	522 SHORE RD	PO BOX 339	PROVINCETOWN	MA	02657
6761	7-8-3-R	JANE M LONGDEN REVOC TRUST TRS: JANE LONGDEN	522 SHORE RD	4 BRIDGEVIEW TERRACE	KITTERY	ME	03904
6762	7-8-4-R	SCOUTS LLC	522 SHORE RD	PO BOX 1107	SO ORLEANS	MA	02662
6763	7-8-5-R	COZAD JOSEPH	522 SHORE RD	319 WITTENBERG RD	BEARVILLE	NY	12409
6764	7-8-6-R	GALLAGHER REALTY TRUST TRS:GALLAGHER JOSEPH M & DIANE	522 SHORE RD	120 PAGE ROAD	BEDFORD	MA	01730
6765	7-8-7-R	SHAPIRO ERIC D & JULIE ANN	522 SHORE RD	PO BOX 608	LEXINGTON	MA	02420
6766	7-8-8-R	SHAPIRO ERIC D & JULIE ANN	522 SHORE RD	PO BOX 608	LEXINGTON	MA	02420
6758	7-8-9-R	SHAPIRO ERIC D & JULIE ANN	522 SHORE RD	PO BOX 608	LEXINGTON	MA	02420
6767	7-8-10-R	PASCALE LISA A & BISESI JOANN	522 SHORE RD	8 CHASE LN	LINCOLN	RI	02865
6768	7-8-11-R	ALBERGHETTI PAUL G	522 SHORE RD	4046 WOKING WAY	LOS ANGELES	CA	90027
6769	7-8-12-R	MALER WILLIAM STEVEN & LIQUORI ANTHONY	522 SHORE RD	7 THISTLEMORE RD	PROVINCETOWN	MA	02657
6770	7-8-13-R	MALER WILLIAM S & LIQUORI ANTHONY P	522 SHORE RD	7 THISTLEMORE RD	PROVINCETOWN	MA	02657
6771	7-8-14-R	SULLIVAN EDWARD & PAMELA	522 SHORE RD	110 FIRST AVE#601	CHARLESTOWN	MA	02129
6772	7-8-15-R	SHEA DENNIS M & SCHNELLER KAREN K	522 SHORE RD	218 LOWELL ST	READING	MA	01867
6773	7-8-16-R	GONSALVES LISA M	522 SHORE RD	69 SHERIDAN ST	JAMAICA PLAIN	MA	02130
6774	7-8-17-R	SEA GLASS WATERVIEW, LLC RES AGT: MARYANN TAORMINA	522 SHORE RD	1148 HIGHLAND GREENS DR	VENICE	FL	34285
6775	7-8-18-R	STUART S FAY TRUST & BEATRICE M FAY TRUST	522 SHORE RD	580 PEARL HILL ROAD	FITCHBURG	MA	01420
6973	7-8-19-E	SUTTON PLACE CONDO TRUST	522 SHORE RD	522 SHORE RD	NO TRURO	MA	02652
5901	7-9-A-R	SMITH SUZANNE & BOTTEGARO CRISTINA	510 SHORE RD	254 WOODROW AVE	SOUTHPORT	CT	06890
5902	7-9-B-R	MARY H WELLS TRUST TRS: MARY H WELLS	510 SHORE RD	406 MAPLE DR	FAYETTEVILLE	NY	13066
5903	7-9-C-R	BRAUN RUSSELL J	510 SHORE RD	PO BOX 272	NO TRURO	MA	02652
6961	7-9-D-E	SEA HAVEN CONDO TRUST	510 SHORE RD	510 SHORE RD	NO TRURO	MA	02652
5915	7-10-1-R	MCCUSKER JAMES T	496 SHORE RD	71 LOUNSBURY DR	RAYNHAM	MA	02767
5916	7-10-2-R	WADE JEFFREY S & PAMELA J	496 SHORE RD	5 JANS PATH	HARWICH	MA	02645
5917	7-10-3-R	MCHUGH STEPHEN M	496 SHORE RD	15 DESERT WIND LN	ROCHESTER	NH	03867
5918	7-10-4-R	MCHUGH STEPHEN M	496 SHORE RD	15 DESERT WIND LN	ROCHESTER	NH	03867
5919	7-10-5-R	MEDAGLIA JANE E	496 SHORE RD	700 QUINOBEQUIN RD	WABAN	MA	02468
5920	7-10-6-R	SUSAN SHEPHERD&MARCIA HAMS LE RMNDR:HAMS SHEPHERD IRREV TRST	496 SHORE RD	95 CLIFTON ST	CAMBRIDGE	MA	02140
5921	7-10-7-R	FEATHERSTONE THERESA I	496 SHORE RD	603 SANDERS AVE	SCOTIA	NY	12302
5922	7-10-8-R	MCHUGH STEPHEN	496 SHORE RD	15 DESERT WIND LN	ROCHESTER	NH	03867
5923	7-10-9-R	DUNCAN BAILEY PROPERTIES LLC MGR: THOMAS PFLEPSEN	496 SHORE RD	2601 NE 14TH AVE, FLAGLER#303	WILTON MANORS	FL	33334
5924	7-10-10-R	MCHUGH STEPHEN	496 SHORE RD	15 DESERT WIND LN	ROCHESTER	NH	03867
5925	7-10-11-R	MCHUGH STEPHEN	496 SHORE RD	15 DESERT WIND LANE	ROCHESTER	NH	03069
5926	7-10-12-R	MCCUSKER JAMES T	496 SHORE RD	71 LOUNSBURY DR	RAYNHAM	MA	02767-1767



 1/26/2024

Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	ZipCd/Country
5927	7-10-13-R	MCCUSKER JAMES T	496 SHORE RD	71 LOUNSBURY DR	RAYNHAM	MA	02767-1767
5928	7-10-14-R	MCCUSKER JAMES T	496 SHORE RD	71 LOUNSBURY DR	RAYNHAM	MA	02767-1767
5929	7-10-15-R	JOAN THOMPSON LIVING TRUST TRS: JOAN F THOMPSON	496 SHORE RD	126 PARKER ST	NEWTON	MA	02459
5930	7-10-16-R	COVAIS JOSEPH & AMY L	496 SHORE RD	190 HIGHLANDS DR	PAWLING	NY	12564
5931	7-10-17-R	DUBOIS REALTY TRUST TRS: DUBOIS LEONARD A ET AL	496 SHORE RD	975 FOREST ST	NO ANDOVER	MA	01845-3346
5932	7-10-18-R	MCCUSKER JAMES T	496 SHORE RD	71 LOUNSBURY DR	RAYNHAM	MA	02767
5933	7-10-19-R	MCCAFFREY MATTHEW J & LEE	496 SHORE RD	201 BAY STREET	TAUNTON	MA	02780
5934	7-10-20-R	BIBEAU WILLIAM E & FERREIRA ANTHONY S	496 SHORE RD	59 RIVER STREET	BRISTOL	RI	02809
5935	7-10-21-R	MCCUSKER JAMES T	496 SHORE RD	71 LOUNSBURY DR	RAYNHAM	MA	02767
6947	7-10-22-E	CROWS NEST CONDO TRUST c/o James McCusker	496 SHORE RD	804 BROADWAY	RAYNHAM	MA	02767
248	8-1-0-R	VANNELLI ROBERT L & MICHELE E	481-A SHORE RD	1152 POQUONOCK AVE	WINDSOR	CT	06095
249	8-2-0-R	BEARCE WILLIAM C III	487 SHORE RD	670 PLEASANT ST	BROCKTON	MA	02301
250	8-3-0-R	ALKIRE DOROTHEA DALY	485 SHORE RD	5 AUDUBON RD	LEXINGTON	MA	02421-6802
251	8-4-0-R	SILVA CHARLES W	479 SHORE RD	39 SHIPS WAY RD	PROVINCETOWN	MA	02657
252	8-6-0-R	FERRI HENRY J	477 SHORE RD	234 WILD HARBOR RD	NO FALMOUTH	MA	02556-2306
6455	8-7-24-R	BETH N WOOD 2016 LIVING TRUST TRS: RICHARD B & BETH N WOOD	471 SHORE RD	PO BOX 1175	TRURO	MA	02666
6456	8-7-25-R	SHERLOCK SUSAN M TRUST TRS: SHERLOCK SUSAN M	471 SHORE RD	PO BOX 483	CAPTIVA	FL	33924
6457	8-7-26-R	NEILY HILDA & SHEARER NEILY CATHERINE	471 SHORE RD	PO BOX 1402	PROVINCETOWN	MA	02657
6962	8-7-27-E	SEASIDE INN ON CC BAY CONDO TR	471 SHORE RD	471 SHORE RD	NO TRURO	MA	02652
266	8-21-0-R	SANTANGELO SHARON M & FAY DONNA M	494 SHORE RD	80 NEW RD	SOUTH NEWFANE	VT	05351
267	8-22-0-R	KEEGAN LAURA	492 SHORE RD	8 MILLIKEN DR	KINGSTON	MA	02364
268	8-23-0-R	490 SHORE ROAD REALTY TRUST TRS: SILVA CHARLES W & HELEN T	490 SHORE RD	39 SHIPS WAY RD	PROVINCETOWN	MA	02657
269	8-24-0-R	SHAPIRO JORDAN L	488 SHORE RD	C/O DOROTHY SHAPIRO 127 MARLBOROUGH ST	BOSTON	MA	02116
279	8-34-0-R	OWNER UNKNOWN	481 SHORE RD	481 SHORE RD	TRURO	MA	02666

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1/26/2024

<p>7-1-1-R</p> <p>ODONNELL HENRY J IRREV TR ETAL TRS: ODONNELL HENRY J &DIANE M 4 ASHLAND AVE WEST ROXBURY, MA 02132</p>	<p>7-1-2-R</p> <p>MULLIGAN JAMES M & MULLIGAN JANICE L 186 BROOKBEND ROAD HANSON, MA 02351</p>	<p>7-1-3-R</p> <p>HEBERT IRENE M & ABBOTT CAROL L PO BOX 269 NO TRURO, MA 02652</p>
<p>7-1-4-R</p> <p>PEARCE KATHLEEN M & KUEBLER DAVID S 40 TUNXIS ST FARMINGTON, CT 06032</p>	<p>7-1-5-R</p> <p>PERRY CHRISTOPHER J& DEBORAH M 322 NASHUA RD GROTON, MA 01450</p>	<p>7-1-6-R</p> <p>WESTCREEK VISIONS, LLC MEMBER: STEVEN A PALMER PO BOX 1713 COTTONWOOD, AZ 86326</p>
<p>7-1-7-R</p> <p>VERVE DEVELOPMENT LLC MGR: RUSSELL BRAUN PO BOX 272 NO TRURO, MA 02652-0272</p>	<p>7-1-9-E</p> <p>SUNRISE COTTAGES CONDO TRUST 497 SHORE RD NO TRURO, MA 02652</p>	<p>7-2-19-R</p> <p>ARNOLD A BROWN 2003 REV TRST TRS: ARNOLD A BROWN 7601 E INDIAN BEND RD APT 1009 SCOTTSDALE, AZ 85250</p>
<p>7-2-20-R</p> <p>PEEREBOOM WAYNE H & ANN M 11 VILLONE DR LEEDS, MA 01053</p>	<p>7-2-21-R</p> <p>MARZILLI JEAN M 34 WORCESTER SQUARE, UNIT 3 BOSTON, MA 02118</p>	<p>7-2-22-R</p> <p>AZULAY JANET A & RICHARD A 12 COBB AVE KINGSTON, MA 02364</p>
<p>7-2-23-R</p> <p>KEARNEY BARBARA ANNE PO BOX 977 N TRURO, MA 02652</p>	<p>7-2-24-R</p> <p>ROBERTS JENNIFER J 1831 DUFFIELD LN ALEXANDRIA, VA 22307</p>	<p>7-2-25-R</p> <p>LEE STANLEY W & HAYES PETER J 55B BROOKLINE ST CAMBRIDGE, MA 02139</p>
<p>7-2-26-R</p> <p>DE ANDRADE PETER PO BOX 210 NO TRURO, MA 02652</p>	<p>7-2-27-R</p> <p>DORIO JEFFREY & KLOCK JENNIFER 409 HAMSHER AVE TOPTON, PA 19562</p>	<p>7-2-28-R</p> <p>LISA G LOVELAND REV TRUST TRS: LISA G LOVELAND 2 WORCESTER SQUARE #A BOSTON, MA 02118</p>
<p>7-2-29-R</p> <p>SERVEDIO CHRISTINE 98 OSTEND RD ISLAND PARK, NY 11558</p>	<p>7-2-30-E</p> <p>SUTTON PLACE CONDO TRUST 503 SHORE RD NO TRURO, MA 02652</p>	<p>7-4-0-R</p> <p>NEAREN & CUBBERLEY NOMINEE TR TRS: CHRISTOPHER SNOW PO BOX 291 PROVINCETOWN, MA 02657</p>
<p>7-8-1-R</p> <p>WAYSIDE ONE REALTY TRUST TRS: AGIN WARREN 1 DEVONSHIRE PLACE, APT 2913 BOSTON, MA 02109</p>	<p>7-8-2-R</p> <p>BOYNTON EMILY & AN G HINDS REVOCABLE TRUST PO BOX 339 PROVINCETOWN, MA 02657</p>	<p>7-8-3-R</p> <p>JANE M LONGDEN REVOC TRUST TRS: JANE LONGDEN 4 BRIDGEVIEW TERRACE KITTERY, ME 03904</p>
<p>7-8-4-R</p> <p>SCOUTS LLC PO BOX 1107 SO ORLEANS, MA 02662</p>	<p>7-8-5-R</p> <p>COZAD JOSEPH 319 WITTENBERG RD BEARSVILLE, NY 12409</p>	<p>7-8-6-R</p> <p>GALLAGHER REALTY TRUST TRS:GALLAGHER JOSEPH M & DIANE 120 PAGE ROAD BEDFORD, MA 01730</p>
<p>7-8-7-R</p> <p>SHAPIRO ERIC D & JULIE ANN PO BOX 608 LEXINGTON, MA 02420</p>	<p>7-8-8-R</p> <p>SHAPIRO ERIC D & JULIE ANN PO BOX 608 LEXINGTON, MA 02420</p>	<p>7-8-9-R</p> <p>SHAPIRO ERIC D & JULIE ANN PO BOX 608 LEXINGTON, MA 02420</p>

	7-8-10-R		7-8-11-R		7-8-12-R
PASCALÉ LISA A & BISESI JOANN 8 CHASE LN LINCOLN, RI 02865		ALBERGHETTI PAUL G 4046 WOKING WAY LOS ANGELES, CA 90027		MALER WILLIAM STEVEN & LIQUORI ANTHONY 7 THISTLEMORE RD PROVINCETOWN, MA 02657	
	7-8-13-R		7-8-14-R		7-8-15-R
MALER WILLIAM S & LIQUORI ANTHONY P 7 THISTLEMORE RD PROVINCETOWN, MA 02657		SULLIVAN EDWARD & PAMELA 110 FIRST AVE#601 CHARLESTOWN, MA 02129		SHEA DENNIS M & SCHNELLER KAREN K 218 LOWELL ST READING, MA 01867	
	7-8-16-R		7-8-17-R		7-8-18-R
GONSALVES LISA M 69 SHERIDAN ST JAMAICA PLAIN, MA 02130		SEA GLASS WATERVIEW, LLC RES AGT: MARYANN TAORMINA 1148 HIGHLAND GREENS DR VENICE, FL 34285		STUART S FAY TRUST & BEATRICE M FAY TRUST 580 PEARL HILL ROAD FITCHBURG, MA 01420	
	7-8-19-E		7-9-A-R		7-9-B-R
SUTTON PLACE CONDO TRUST 522 SHORE RD NO TRURO, MA 02652		SMITH SUZANNE & BOTTEGARO CRISTINA 254 WOODROW AVE SOUTHPORT, CT 06890		MARY H WELLS TRUST TRS: MARY H WELLS 406 MAPLE DR FAYETTEVILLE, NY 13066	
	7-9-C-R		7-9-D-E		7-10-1-R
BRAUN RUSSELL J PO BOX 272 NO TRURO, MA 02652		SEA HAVEN CONDO TRUST 510 SHORE RD NO TRURO, MA 02652		MCCUSKER JAMES T 71 LOUNSBURY DR RAYNHAM, MA 02767	
	7-10-2-R		7-10-3-R		7-10-4-R
WADE JEFFREY S & PAMELA J 5 JANS PATH HARWICH, MA 02645		MCHUGH STEPHEN M 15 DESERT WIND LN ROCHESTER, NH 03867		MCHUGH STEPHEN M 15 DESERT WIND LN ROCHESTER, NH 03867	
	7-10-5-R		7-10-6-R		7-10-7-R
MEDAGLIA JANE E 700 QUINOBEQUIN RD WABAN, MA 02468		SUSAN SHEPHERD&MARCIA HAMS LE RMNDR:HAMS SHEPHERD IRREV TRST 95 CLIFTON ST CAMBRIDGE, MA 02140		FEATHERSTONE THERESA I 603 SANDERS AVE SCOTIA, NY 12302	
	7-10-8-R		7-10-9-R		7-10-10-R
MCHUGH STEPHEN 15 DESERT WIND LN ROCHESTER, NH 03867		DUNCAN BAILEY PROPERTIES LLC MGR: THOMAS PFLEPSEN 2601 NE 14TH AVE, FLAGLER #303 WILTON MANORS, FL 33334		MCHUGH STEPHEN 15 DESERT WIND LN ROCHESTER, NH 03867	
	7-10-11-R		7-10-12-R		7-10-13-R
MCHUGH STEPHEN 15 DESERT WIND LANE ROCHESTER, NH 03069		MCCUSKER JAMES T 71 LOUNSBURY DR RAYNHAM, MA 02767-1767		MCCUSKER JAMES T 71 LOUNSBURY DR RAYNHAM, MA 02767-1767	
	7-10-14-R		7-10-15-R		7-10-16-R
MCCUSKER JAMES T 71 LOUNSBURY DR RAYNHAM, MA 02767-1767		JOAN THOMPSON LIVING TRUST TRS: JOAN F THOMPSON 126 PARKER ST NEWTON, MA 02459		COVAIS JOSEPH & AMY L 190 HIGHLANDS DR PAWLING, NY 12564	

<p>7-10-17-R</p> <p>DUBOIS REALTY TRUST TRS: DUBOIS LEONARD A ET AL 975 FOREST ST NO ANDOVER, MA 01845-3346</p>	<p>7-10-18-R</p> <p>MCCUSKER JAMES T 71 LOUNSBURY DR RAYNHAM, MA 02767</p>	<p>7-10-19-R</p> <p>MCCAFFREY MATTHEW J & LEE 201 BAY STREET TAUNTON, MA 02780</p>
<p>7-10-20-R</p> <p>BIBEAU WILLIAM E & FERREIRA ANTHONY S 59 RIVER STREET BRISTOL, RI 02809</p>	<p>7-10-21-R</p> <p>MCCUSKER JAMES T 71 LOUNSBURY DR RAYNHAM, MA 02767</p>	<p>7-10-22-E</p> <p>CROWS NEST CONDO TRUST c/o James McCusker 804 BROADWAY RAYNHAM, MA 02767</p>
<p>8-1-0-R</p> <p>VANNELLI ROBERT L & MICHELE E 1152 POQUONOCK AVE WINDSOR, CT 06095</p>	<p>8-2-0-R</p> <p>BEARCE WILLIAM C III 670 PLEASANT ST BROCKTON, MA 02301</p>	<p>8-3-0-R</p> <p>ALKIRE DOROTHEA DALY 5 AUDUBON RD LEXINGTON, MA 02421-6802</p>
<p>8-4-0-R</p> <p>SILVA CHARLES W 39 SHIPS WAY RD PROVINCETOWN, MA 02657</p>	<p>8-6-0-R</p> <p>FERRI HENRY J 234 WILD HARBOR RD NO FALMOUTH, MA 02556-2306</p>	<p>8-7-24-R</p> <p>BETH N WOOD 2016 LIVING TRUST TRS: RICHARD B & BETH N WOOD PO BOX 1175 TRURO, MA 02666</p>
<p>8-7-25-R</p> <p>SHERLOCK SUSAN M TRUST TRS: SHERLOCK SUSAN M PO BOX 483 CAPTIVA, FL 33924</p>	<p>8-7-26-R</p> <p>NEILY HILDA & SHEARER NEILY CATHERINE PO BOX 1402 PROVINCETOWN, MA 02657</p>	<p>8-7-27-E</p> <p>SEASIDE INN ON CC BAY CONDO TR 471 SHORE RD NO TRURO, MA 02652</p>
<p>8-21-0-R</p> <p>SANTANGELO SHARON M & FAY DONNA M 80 NEW RD SOUTH NEWFANE, VT 05351</p>	<p>8-22-0-R</p> <p>KEEGAN LAURA 8 MILLIKEN DR KINGSTON, MA 02364</p>	<p>8-23-0-R</p> <p>490 SHORE ROAD REALTY TRUST TRS: SILVA CHARLES W & HELEN T 39 SHIPS WAY RD PROVINCETOWN, MA 02657</p>
<p>8-24-0-R</p> <p>SHAPIRO JORDAN L C/O DOROTHY SHAPIRO 127 MARLBOROUGH ST BOSTON, MA 02116</p>	<p>8-34-0-R</p> <p>OWNER UNKNOWN 481 SHORE RD TRURO, MA 02666</p>	

Benjamin E. Zehnder LLC

62 Route 6A Suite B
Orleans, Massachusetts 02653

Tel: (508) 255-7766

Benjamin E. Zehnder, Esq.
bzehnder@zehnderllc.com

MEMO



To: Truro Zoning Board of Appeals

From: Benjamin E. Zehnder

Date: January 26, 2024

Re: Application of Jennifer Cabral for Special Permits / 491 Shore Road, Truro (Map 7, Parcel 4)

This Memorandum is submitted in support of the above-referenced Special Permit Application. All cited documents are contained in the attached Record.

A. Requested Relief

Applicant Jennifer Cabral (the “Applicant”) is the hopeful purchaser under contract with property owner Christopher Snow, Trustee of the Nearen & Cubberly Nominee Trust for the improved land at 491 Shore Road (the “Property”). The Applicant would like to demolish the existing garage/storage structure and construct a new non-habitable structure in the same location for use by the Applicant’s husband for personal wood working activities (a “Working Studio” as defined by Truro Zoning Bylaw – hereinafter the “Bylaw”). Construction of the proposed structure has been approved by the Truro Conservation Commission (Record, p.21). The structure does not require approval by the Board of Health since it is not habitable and will not be serviced with water or sanitary facilities.

Based on the location of the Property in a wetland resource (Land Subject to Coastal Storm Flowage), none of its land area is available for design or installation of a septic system. Therefore the Property is usable only for those uses which do not involve human habitation.

Applicant is requesting that the Board:

1. To the extent required, grant a special permit pursuant to Bylaw Section 30.7(A) for the removal and reconstruction of the dimensionally nonconforming garage/storage structure (14.85 feet from Shore Road where 25 feet is required) in essentially the same location and configuration; **AND**
2. Determine that an accessory structure noncommercial Working Studio may be used on the Property by right pursuant to Truro Zoning Bylaw Section 50.1, Note 1 which requires no minimum lot area for accessory buildings, and therefore necessarily contemplates that such accessory buildings may be used absent a primary residence; **OR**
3. If the Board determines that a special permit is required, determine under Bylaw Section 30.8(C) that the change of use from a nonconforming accessory garage/storage building to a

noncommercial Working Studio is in harmony with the general public good and intent of the Bylaw since Working Studios are permitted as of right in the Beach Point Limited Business district when co-located with a residence, and grant a Special Permit therefor; **OR**

4. If the Board determines that a variance is required, determine under Truro Zoning Bylaw Section 30.7(A) that the Working Studio use will not be substantially more detrimental to the neighborhood than the existing nonconforming garage/storage use, and that such use will be in harmony with the general purpose and intent of the Bylaw, since Working Studios are permitted as of right in the district when co-located with a residence, and thus issue a Special Permit therefor.

B. Property Description

The land at 491 Shore Road (the "Property") consists of approximately 19,876 square feet of land with 200.01 linear feet of frontage on Shore Road in the Beach Point Limited Business zoning district. The Property is located between the Route 6A and Route 6 road layouts. The Property is owned by the Nearen and Cubberley Nominee Trust under a 1992 deed recorded with the Barnstable Registry of Deeds in Book 8309, Page 131.

The Property meets the minimum lot frontage requirement of 150 feet. It does not conform to the standard minimum lot area requirement of 33,750 square feet in the zoning district for most construction and uses under Bylaw Section 50.1A. However, Section 50.1A, Note 1 specifically exempts "*Buildings for Accessory Use and Cottages*" from the minimum lot area requirements and the minimum frontage requirements of Section 50.1A. Therefore, the Property is lawfully conforming as to both area and frontage requirements for construction and use of an accessory building as contemplated here.

The Property is improved with an approximately 472 s.f. single-story two bay storage/garage structure. The Truro Assessor's field card for the property does not state what year the structure was built, however Google Earth aerial imagery dated 1952 shows the existence of the structure (Record, p.16). Additionally, Building Department records indicate an addition being permitted on the back of the structure in 1958 (Record, pp.31-32). Therefore it appears that the structure has been in existence on the Property since prior to the adoption of zoning in Truro in 1960.

The structure is located 14.85 feet from the front lot line (Record, p.1) and is therefore nonconforming where the required front yard setback is 25 feet.

C. Analysis

1. *The replacement of the structure in essentially the same location and configuration use is in harmony with the general public good and intent of the Bylaw, and therefore the Applicant has demonstrated compliance with the requirements for the grant of a dimensional special permit under Bylaw Section 30.7(A).*

The Applicant is proposing the replacement of the existing dilapidated structure with a new workshop building in the same location (14.85 feet from the front lot line) and with the same size, floor area and

configuration. (See plan comparisons, Record pp.1-10). The structure will not have water or sanitary facilities, and is constructed to meet building flood zone construction elevation requirements. The Applicant believes that there is no increase in the nature or extent of the front yard setback nonconformity, and therefore the structure may be replaced upon a determination of this condition by the Building Commissioner pursuant to Bylaw Section 30.7(B).

To the extent that the Board determines that there will be an increase in the nature or extent of the nonconformity, the Applicant is requesting and believes she is entitled to a dimensional special permit under Bylaw Section 30.7(A). The design is similar to other structures in the immediate area and it is significantly smaller than many nearby structures. The lot size of 19,876 square feet is ample for the use and there is plenty of room for parking off-street. Therefore, the Applicant believes that the structure is in harmony with the Bylaw and may be granted a dimensional special permit.

2. *The Working Studio may be constructed and used by right*

Bylaw Section 10.4 defines a "Working Studio" as follows:

"A working studio shall consist of a room(s), in a building detached from the principal residence, which is incidental and accessory to the principal residence whose use is primarily for work. A working studio may include a toilet and work-related sinks, but shall not include a shower or bathtub or residential kitchen facilities or sleeping accommodations."

Bylaw Section 30.2, the Use Table, Accessory Uses section, identifies a Working Studio as a Permitted use in the Beach Point Limited Business District.

Bylaw Section 50.1, the Area and Height Regulations Table, provides that the minimum lot size in all zoning districts is 33,750 square feet. Note 1 in the minimum lot size section provides: *"Except buildings for accessory use and cottage."*

The only possible reading of this section is that buildings for accessory uses may be located on lots absent a principal use or structure. If a principal use or structure, such as a residence, were to be located on a lot, the minimum lot size would have to be 33,750 square feet. This is consistent with two important concepts, one theoretical and the other practical. First, that there may be lots in Truro that are not large enough for more intensive uses such as residences, but should be able to be used for more limited uses, such as parking, gardening, storage etc. The second more practical consideration is the Beach Point area itself. Based on the existence and later abandonment of the railroad right of way, many smaller lots were created on the other side of Shore Road from the residences on the water side. Historically, these lots have been used for garages, parking, seasonal storage of lobster traps and even small cottages. It is common in this area that such smaller lots are owned by the owners of the residences on the water side of Shore Road.

This is exactly what happened in connection with the Property. It was purchased by Dorothy Nearen and Marilyn Cubberly for parking and vehicle and equipment storage in connection with their Crow's Nest motel across the street. (Record p.22-25).

The Bylaw defines an Accessory Use in relevant part as “*A use incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.*” This definition certainly explains and defines that an incidental and subordinate use on the same lot with a principal use or building is an accessory use. It cannot however be reconciled with the clear language and intent of Section 50.1 Note 1. Also, nowhere in the Bylaw is there a specific prohibition on locating an accessory use on a lot without a principal structure or use. The vagueness in the definition must give way to the clear intent of Section 50.1. To interpret the Bylaw otherwise renders small lots incapable of supporting residences or primary uses and structure unusable.

3. ***If not permitted by right, the garage/storage accessory use is pre-existing and nonconforming and not abandoned.***

Section 10.4 Definitions of the Bylaw define Abandonment as:

The visible or otherwise apparent intention of an owner to discontinue a nonconforming use of a building or premises; or the removal of the characteristic equipment or furnishing used in the performance of the nonconforming use, without its replacement by similar equipment or furnishing; or the replacement of the nonconforming use or building by a conforming use or building.

Similarly, Massachusetts case law defines abandonment by visible, affirmative actions evidencing an intent not to maintain the nonconforming use or structure. In Chiaraluce v. Zoning Board of Appeals of Wareham, the Appeals Court, in finding that demolition of a nonconforming residential structure and failure to rebuild for nine and half years constituted abandonment, stated as follows:

Generally, abandonment requires ‘the concurrence of two factors, (1) the intent to abandon and (2) voluntary conduct, whether affirmative or negative, which carries the implication of abandonment.’ However, where the lapse of time following the razing of a nonconforming structure is so significant that abandonment exists as matter of law ... , the ‘evidence of things done or not done ... carries the implication of abandonment

Chiaraluce v. Zoning Board of Appeals of Wareham, 89 Mass. App. Ct. 290 (2016).

The attached materials demonstrate the existence of the structure at least as early as 1958, prior to the adoption of zoning in Truro. The affidavits of Janice Nearen-Bell and Christopher J. Snow (Record, pp.22-30) establish that the structure was used by Dorothy Nearen and Marilyn Cubberly from their purchase in 1980 until Dorothy’s death in 2017, first for motel and cottage equipment and supplies storage and maintenance work in connection with the operation of the Crow’s Nest Motel and Sunnyside Cottages, and later for their personal storage of their and others’ vehicles in the garage. Dorothy Nearen maintained the property by installing a new garage door in 1999 (Record, p.26). Dorothy also installed a fence in 2004-5 to manage unpermitted parking on the Property. The structure had electrical service until approximately five years ago when a transformer failed. In 2014 Marilyn informed Janice that she and Marilyn contemplated building a house on the Property in their retirement.

The attached printout from the Truro Tax Collector (Record, p.29) demonstrates that real estate taxes have been paid on the Property as a fully buildable lot since at least 2002 (the furthest back I could obtain a printout). Attorney Snow has prosecuted two real estate tax abatement applications and the Board of Assessors have denied the same and continue to assess the Property as fully buildable. Finally, Attorney Snow and Ms. Nearen-Bell have been actively engaged since Dorothy Nearen's death in 2017 in attempting to sell the Property, including working with real estate brokers and assisting with the prosecution of this and prior zoning applications.

All of these actions demonstrate not only there was no intent to abandon the structure or any protected use, but also that there is and has been no external affirmative evidence of an intent to abandon.

Finally, I must note that if a derelict appearance itself constitutes an abandonment of nonconforming structures or uses, a significant minority of the properties in Truro would be in jeopardy of losing protected rights. There is no statute or local regulation that requires structural or aesthetic upkeep. Property owners elect to maintain, or not maintain their structures to suit their own future plans and their pocketbooks. Electing not to maintain, or providing minimal maintenance of, a structure that will be sold in the near future is not in itself any evidence of abandonment, just sensible planning.

- 4. The Applicant has demonstrated that the change from a garage/storage accessory use to Working Studio use is in harmony with the general public good and intent of the Bylaw, and thus has demonstrated compliance with the requirements for the grant of a special permit.***

The proposed Working Studio is not a special permit use in the Beach Point district, it is permitted by right. This means that the general effects of a working studio have been determined by the voters to be appropriate for the neighborhood. In fact, if located on the same lot as a residence, these effects would be cumulative with the general effects of a residence with its attendant parking, noise, lights and other effects and more intensive than the proposal. The proposal locates only the working studio which will be necessarily less intensive than when combined with the residence. As the use is permitted as of right, it is by definition in harmony with the general public good and intent of the Bylaw.

As a factual matter, the proposed use involves no commercial activity and no public invitation or access to the Property. This is the same private workshop use that any person in Truro is entitled to undertake in their garage or studio. Any person can undertake wood-working, metal working, mechanical repair of their own machinery and vehicles, and other uses without any permission from the Town. They can operate air compressors, power generators, yard equipment, air conditioners etc. subject only to the same general bylaw noise regulations that will apply to the Applicant. The lack of an attendant residence can only diminish the overall intensity of the use of the Property.

For these reasons the Applicant has demonstrated compliance with the requirements for the grant of a special permit.

- 5. If not allowable primarily by special permit, the Applicant has demonstrated the requirements for the grant of a special permit in lieu of a use variance pursuant to Bylaw Section 30.7A.***

Bylaw Section 30.7A in relevant part states:

Lawful, pre-existing, nonconforming uses and structures may, when a variance would otherwise be required, be altered or extended with a special permit if the Board of Appeals 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.

To the extent that the Board determines that the Applicant is not entitled to a special permit as a primary form of relief, it is empowered to grant a special permit in lieu of a use variance for alteration of extension of the nonconforming use. As stated above, the proposed use is permitted as of right in the Beach Point district when coupled with a primary use. Therefore, the proposed use without a residence on the property will not be substantially more detrimental to the neighborhood than the existing nonconforming storage/garage use. The proposed use as stated above will exist in harmony with the general purpose and intent of the Bylaw. For these reasons the Applicant requests a special permit.

END

APPENDIX A – Permit History

Attached are copies of relevant records from the Truro building file for the Property. The file included five historic building permits, from 1958 (#143), 1964 (#541), 1964 (#629), 1968 (#68-94 and #69), All of the permits are in the name of Albert Annone, the property owner between 1956 and 1981

The 1958 permit (Record pp.31-32) was issued to alter a residence with an addition, shown on the application sketch as 20' from the nearest street and 50' from the nearest adjoining lot. Based on the location and description it does not appear that the structure was the same structure as the current garage, which is a different use and is less than 15' from Route 6A (unless the building's use was changed and it moved).

1964 Permit #541 (Record pp. 33-34 – attached in its original format and with my clarifying notations) was issued for an addition on the end of the garage. This dates the garage to at least 1964 in its current configuration.

1964 Permit #629 (Record p. 35) proposes according to the Estimated Cost section “[t]he moving & erecting of two buildings is estimated at \$2,500.00” The Builder’s Name and Address section states “Bldg. to be moved on property” The permit sketch shows three buildings on the property: a garage 25' from Route 6A and two cottages. The Remarks notes that the structures are “[a]ll one story bldg. under 23 ft.” A note at the top of the permit states “moving of 2 cottages” while a note at the bottom states “[p]ermit issued contingent on conditions stated in letter of 9/30/64 fr. Mr. Annone based on RR letter of 9/9/64”

Attached to the 1964 permit is the letter from Albert Annone to the Truro Planning Board (Record p. 36), which quotes the New Haven Railroad letter of September 6, 1964 to Annone’s attorney, S. Osborn Ball, however, the actual railroad letter is not included. Also attached to the permit is a September 29, 1964 letter from Attorney Ball to a member of the Planning Board (Record p. 37).

The 1964 permit and attachments suggest that George Barnes, who owned land next to the railroad layout beginning in 1936 [see title history] at some point entered into a lease with the railroad for use of its land, through Attorney Ball. As shown on the 1952 aerials, Barnes built one or more structures on his land and the railroad land, presumably under his lease agreement. The lease was transferred to Annone when he bought Barnes’ land, and Attorney Ball subsequently arranged a sale of the fee interest in the formerly leased land to Annone, concurrent with the 1964 permit, which I assume relocated the existing structure(s) onto the to-be-combined railroad and Annone parcels.

Permit #69 is dated Oct. 15, 1968 (Record pp.38-39). It is to “move house from Beach Point to Rt. 6A North Truro and use [?] as dwelling.” It includes a property sketch of the structure on a 164' x 200' x 170' x 200' lot abutting Rt. 6A; I do not know whether this is supposed to be locus, as although the 200' bounds are correct the side line distances are not.

APPENDIX B - Title History

A. The Property

The Property is described in the chain of title as Parcels I – IV. Parcel I is the 16,503 s.f. parcel of land shown on a 1964 survey plan recorded in Barnstable Deeds Plan Book (“PB”) 354, Page 90 and is a section of the former Old Colony Railroad Company railroad layout. Parcels II, III, and IV describe areas of land by reference to a 1907 subdivision plan recorded in PB 33, Page 127, but are not shown on the plan as separate lots. Parcel II is a 55' wide section of that sliver directly opposite from Lot 1 in Section B shown on PB 33-127, with the side lines being the extensions of the side lines of Lot 1 / Section B, and the rear line being the railroad layout. Parcel III is a 50' side section of the sliver directly opposite from Lot 2 / Section B on PB 33-127, with the side lines the extensions of the side lines of Lot 2 / Section B, and the rear line also being the railroad layout. Parcel IV is a 55' wide section of the sliver directly opposite from Lot 1 / Section A on PB 33-127, with the side lines the extensions of the side lines of Lot 1 / Section A, and the rear line also being the railroad layout.

The approximately 690 square feet of road area immediately between Parcel II (on the east) and Parcel IV (on the west) is not explicitly described in deeds. I have construed the deeds conveying Parcel II and Parcel IV as including the fee interest in that section of road pursuant to G.L. c. 183, § 58, the so-called derelict fee statute.

A sketch showing the locations of the parcels is at Record, p. 15.

Record title of the Property in reverse chronological order is as follows:

Barnstable Deeds Book 8309, Page 131 dated November 5, 1992
Dorothy M. Nearen and Marilyn Cubberly to the Nearen and Cubberly Nominee Trust,
Parcels I-IV

Barnstable Deeds Book 3360, Page 89 dated September 15, 1981
Albert Annone & Frances Annone to Dorothy M. Nearen and Marilyn Cubberly
Parcels I-IV

Barnstable Deeds Book 1300, Page 442 dated January 20, 1965
Release deed from Trustees in the Matter of The New York, New Haven and Hartford Railroad Company,
Debtor, to Albert Annone and Frances Annone
Parcel I (land shown on PB 354-90)

*Note: Assume prior title to Parcel I in NY, NH & H RR and its predecessors back to the late 1800s,
Parcel I is a portion of the former railroad layout*

Barnstable Deeds Book 939, Page 557 dated May 1, 1956
George G. Barnes & Jane Barnes to Albert Annone and Francis Annone
Parcels II, III and IV (Described in that deed as Parcels II, IV and VI)

Note – This deed in Parcels I, III and V conveyed also a portion of the Crow’s Nest property directly across the street on the water side of Route 6A

B. Crows Nest Property (across from Property on water side of Route 6A and included to show period of common ownership by Nearen and Cubberly):

Land Court Document 910,374 dated March 10, 2003

Crows Nest Nominee Trust to Coastal Cape Development Inc.

Lot 2 shown on Plan Book 347, Page 95, combining the land shown on Land Court Plan 32258-A and Lot 3, Section B and Northwesterly Portion of Lot 4, Section B shown on Plan Book 33, Page 127

NOTE – First deed of Crow’s Nest out of control of Dorothy Nearen and Marilyn Cubberly and other owners.

Land Court Document 817,754 dated June 26, 2000

Crows Nest Realty Trust to Crows Nest Nominee Trust

Lot 2 shown on Plan Book 347, Page 95, combining the land shown on Land Court Plan 32258-A and Lot 3, Section B and Northwesterly Portion of Lot 4, Section B shown on Plan Book 33, Page 127.

NOTE – Crows Nest Nominee Trust was owned by Dorothy Nearen and Marilyn Cubberly and other owners.

Barnstable Deeds Book 4499, Page 222 dated December 31, 1984

Crows Nest, Inc. to Crows Nest Realty Trust

Lot 2 shown on Plan Book 347, Page 95, combining the land shown on Land Court Plan 32258-A and Lot 3, Section B and Northwesterly Portion of Lot 4, Section B shown on Plan Book 33, Page 127.

NOTE – Crows Realty Trust was owned by Dorothy Nearen and Marilyn Cubberly and other owners.

Land Court Deed Document 273794 dated November 24, 1980

Coventry Investments, Inc. to Crows Nest Inc.

Lot 2 shown on Plan Book 347, Page 95, combining the land shown on Land Court Plan 32258-A and Lot 3, Section B and Northwesterly Portion of Lot 4, Section B shown on Plan Book 33, Page 127.

NOTE – Crows Nest Inc. owned by Dorothy Nearen and Marilyn Cubberly and other owners.

Land Court Deed Document 273789 dated November 24, 1980

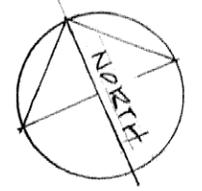
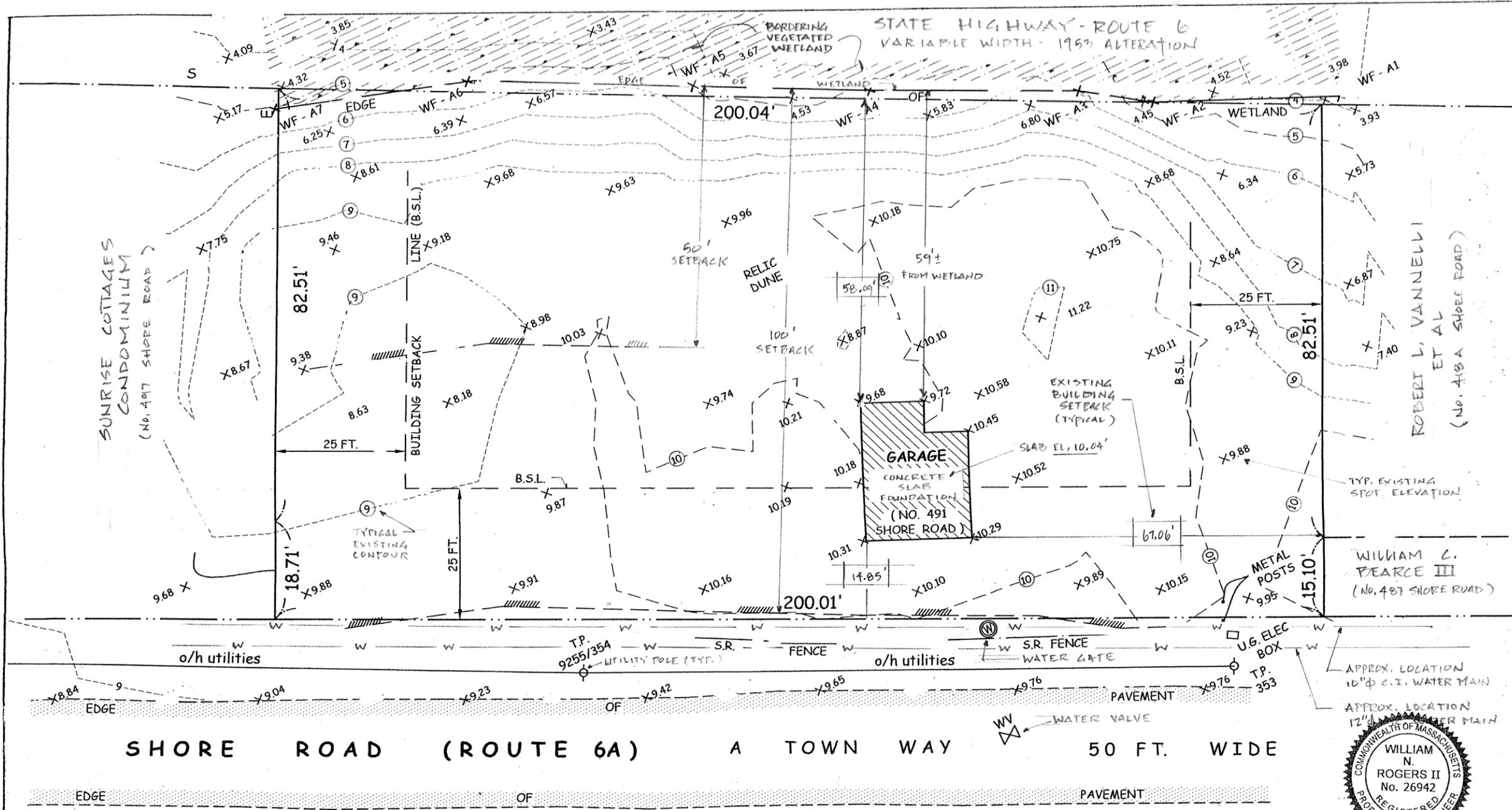
Albert Annone and Frances Annone to Coventry Investments, Inc.

Lot 2 shown on Plan Book 347, Page 95, combining the land shown on Land Court Plan 32258-A and Lot 3, Section B and Northwesterly Portion of Lot 4, Section B shown on Plan Book 33, Page 127.

Barnstable Deeds Book 939, Page 557 dated May 1, 1956

George G. Barnes & Jane Barnes to Albert Annone and Francis Annone
Parcels I, III and V,

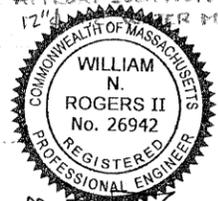
END



Proposed Workshop
 No. 491 Shore Road
 No. Truro, Ma. 02652
 Prepared For:
 Ian S. Leahy & Jennifer E. Cabral
 Assessor's Map 7, Parcel 4

William N. Rogers II
 Civil Engineers & Land Surveyors
 Building and Structural Design
 Planning
 41 Off Cemetery Road
 Provincetown MA 02657
 (508) 487-1565 / (508) 487-5809 fax
 Email: wnr Rogers2@verizon.net

Existing Site Plan



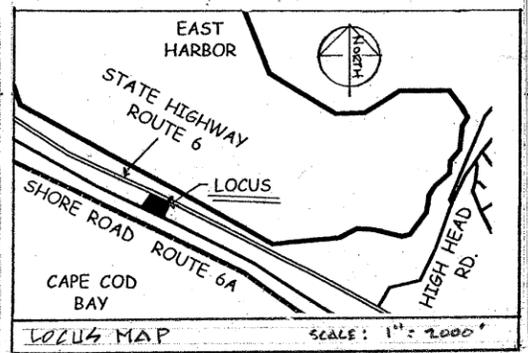
MARCH 29, 2022



SCALE: 1" = 20'-0"
 DATE: MARCH, 2022
 DRAWN: SK/AL
 JOB NO.: T-22-2073A
 REVISION:

NOTE: FLOOD ZONES AS SHOWN ON FLOOD INSURANCE RATE MAP NO. 25001C0117J THE TOWN OF TRURO COMMUNITY NO. 255222 DATED JULY 16, 2014.

NOTE: BOUNDARY OF THE WETLAND RESOURCE AREAS WERE DETERMINED IN THE FIELD WITH THE ASSISTANCE OF PAUL J. SHEA, P.W.S., INDEPENDENT ENVIRONMENTAL CONSULTANTS ON DECEMBER 4, 2021.

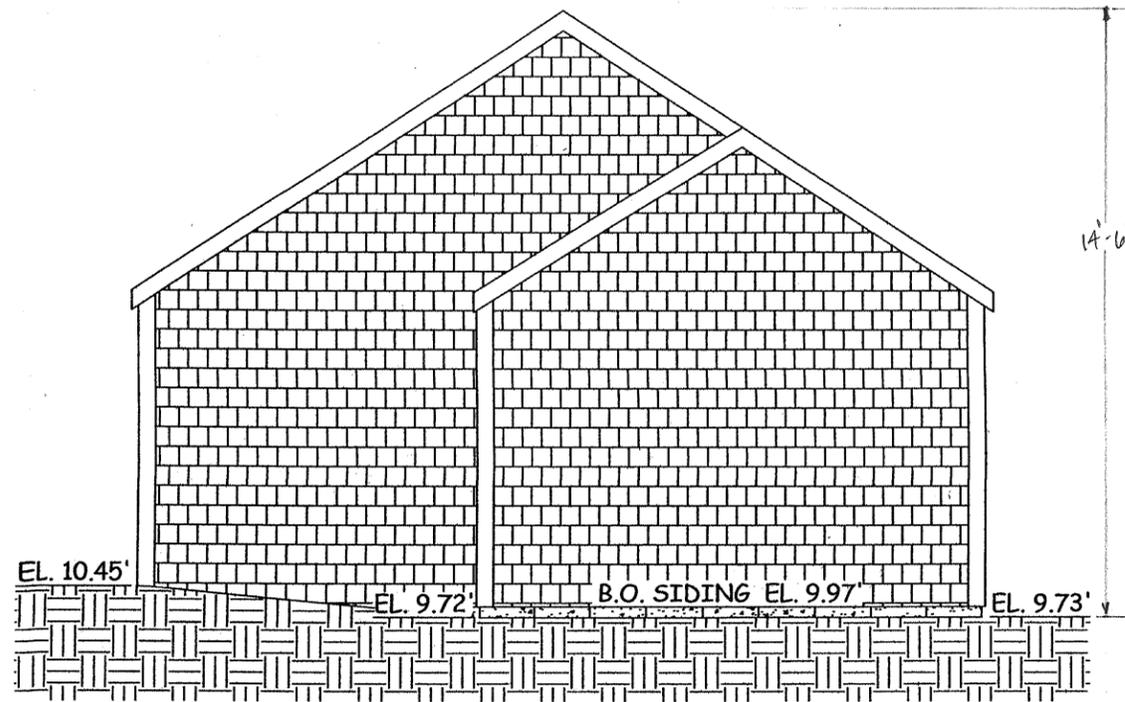


NOTE: DATUM = 1988 NAVD

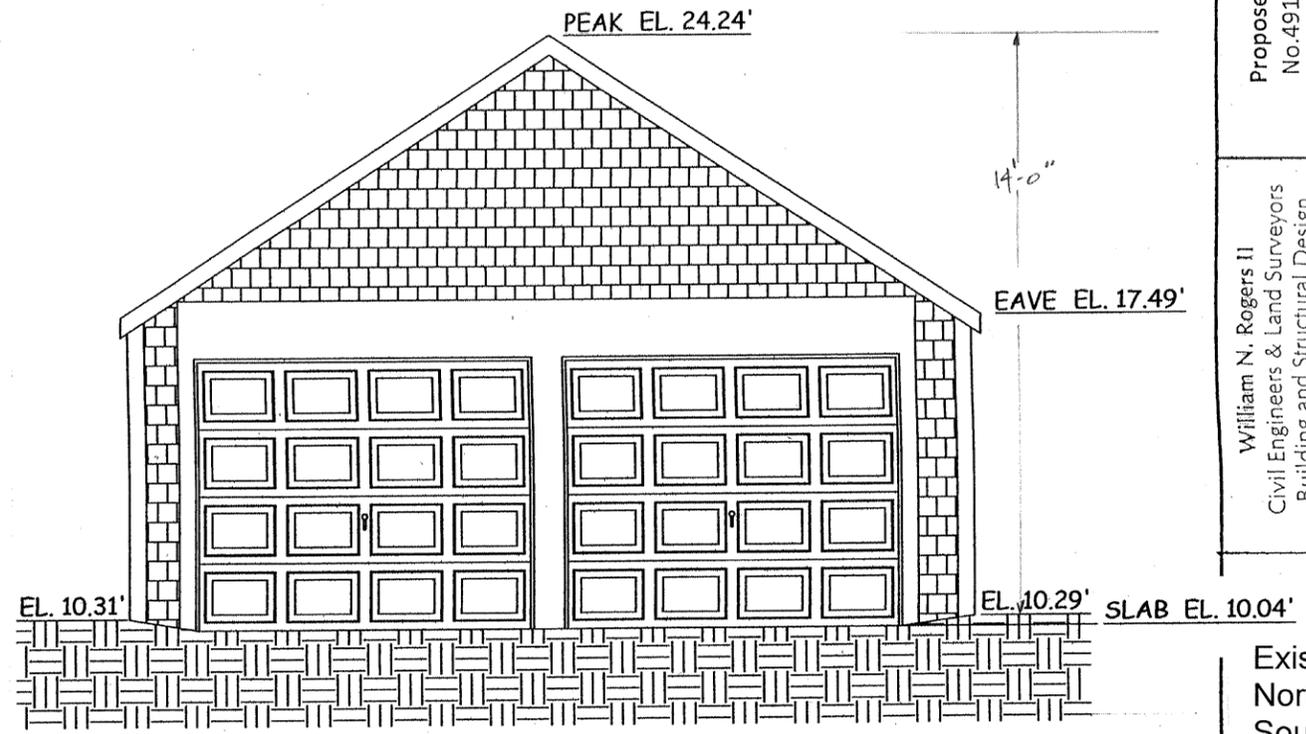
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- S.R. = SPUR RAIL
 - o/h = OVERHEAD
 - WF = WETLAND FLAG
 - T.P. = TELEPHONE POLE (UTILITY)
 - B.S.L. = BUILDING SETBACK LINE
 - WV = WATER VALVE
 - U.A. = UNDERGROUND

OWNER: NEAREN AND CUBBERLY NOMINEE TRUST
 CHRISTOPHER J. SNOW, TRUSTEE

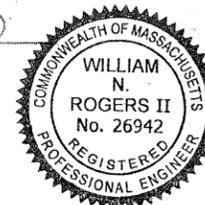
Ex.0



NORTH ELEVATION
SCALE: 1/4" = 1'-0"



SOUTH ELEVATION (FRONT)
SCALE: 1/4" = 1'-0"



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Assessor's Map 7, Parcel 4

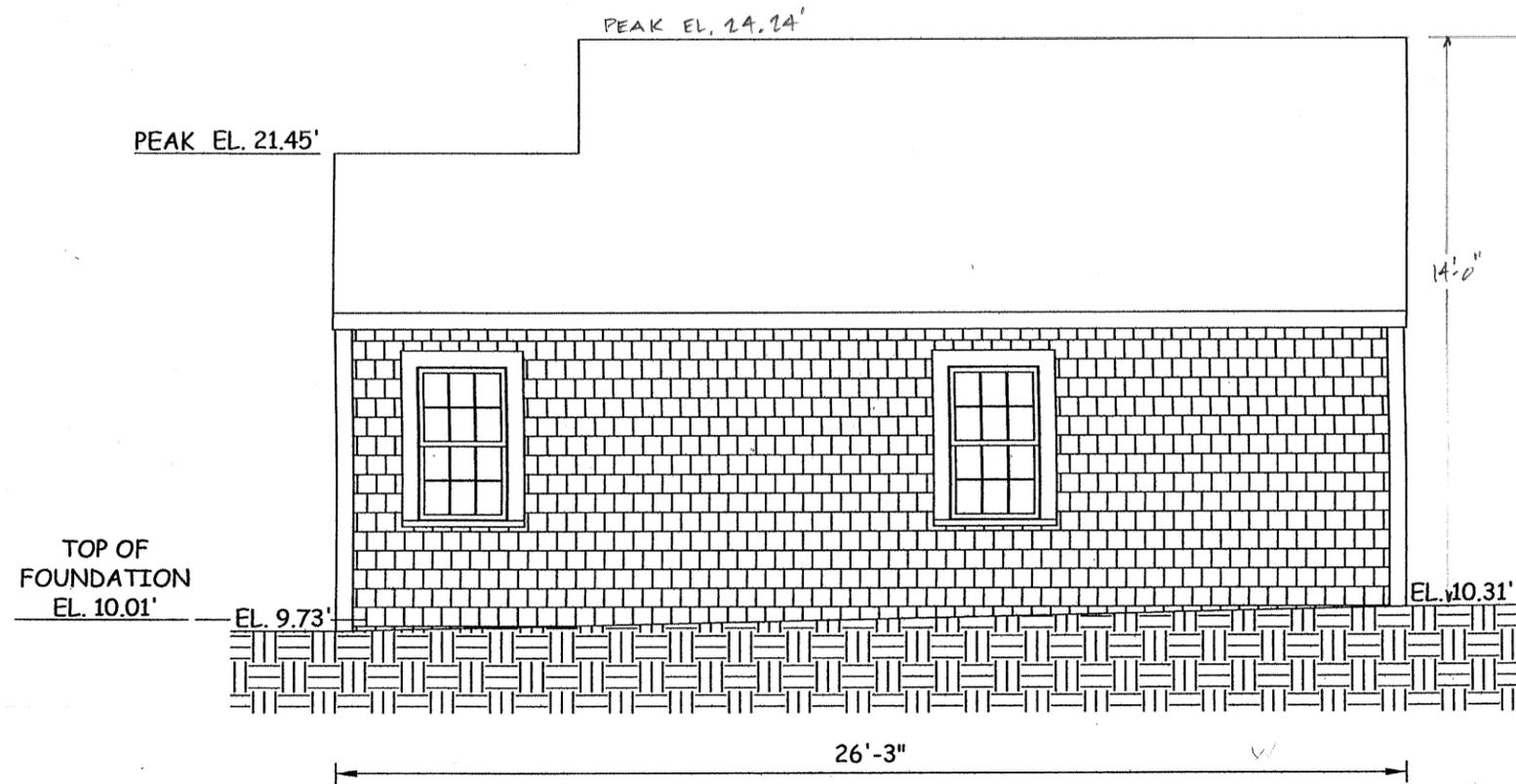
William N. Rogers II
Civil Engineers & Land Surveyors
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41 Off Cemetery Road
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(508) 487-1565 / (508) 487-5809 fax
Email: wnr Rogers2@verizon.net

Existing
North &
South
Elevations

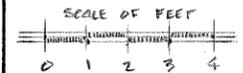
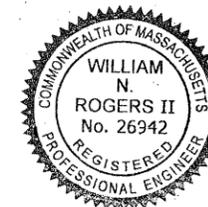
SCALE OF FEET
0 1 2 3 4

SCALE: 1/4" = 1'-0"
DATE: MARCH, 2022
DRAWN: LEZ/AL
JOB NO.: T-22-2073A
REVISION:

Ex.1



WEST ELEVATION
SCALE: 1/4" = 1'-0"



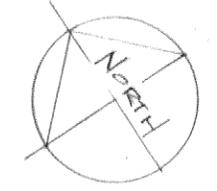
SCALE: 1/4" = 1'-0"
DATE: MARCH, 2022
DRAWN: LEZ/AL
JOB NO.: T-22-2073A
REVISION:

Existing
West
Elevation

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Ex.2



Proposed Workshop
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 Ian S. Leahy & Jennifer E. Cabral
 Assessor's Map 7, Parcel 4

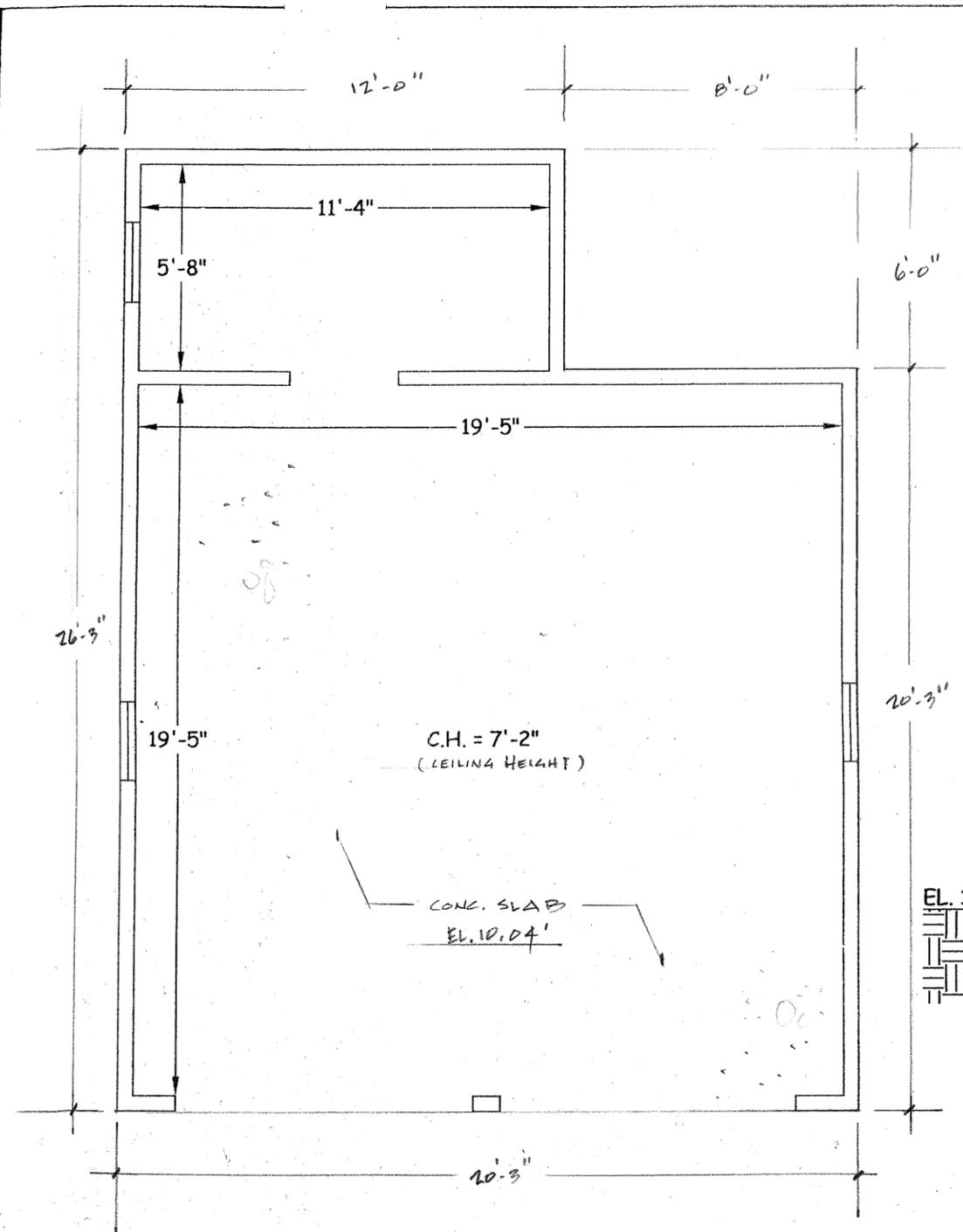
William N. Rogers II
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 Email: wnrrogers2@verizon.net

Existing
 East
 Elevation
 & Floor
 Plan

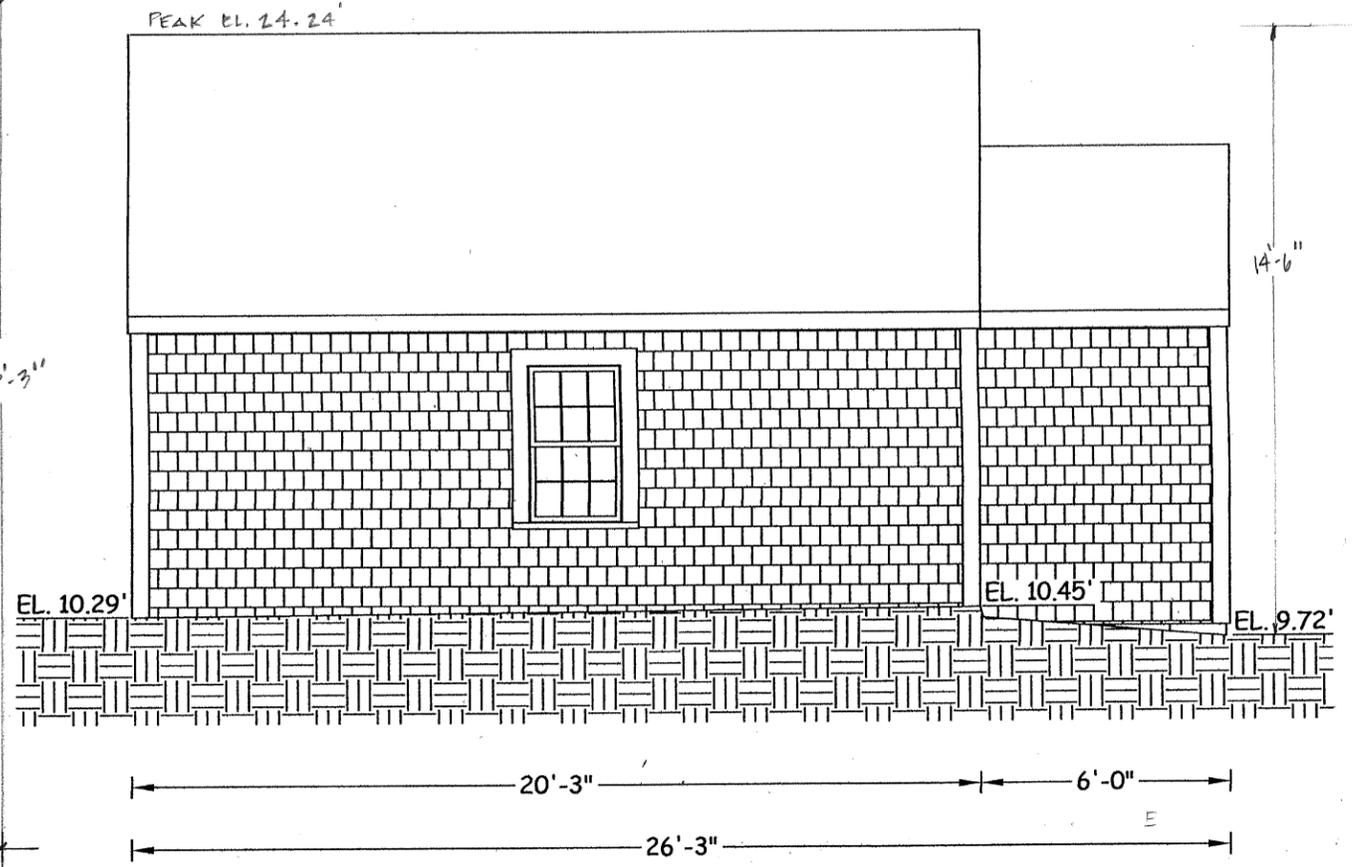


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 REVISION:

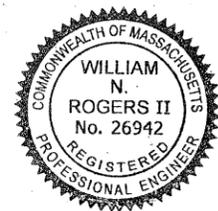
Ex.3

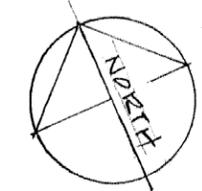


FLOOR PLAN
 SCALE: 1/4" = 1'-0"



EAST ELEVATION
 SCALE: 1/4" = 1'-0"





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 No. 491 Shore Road
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 Ian S. Leahy & Jennifer E. Cabral
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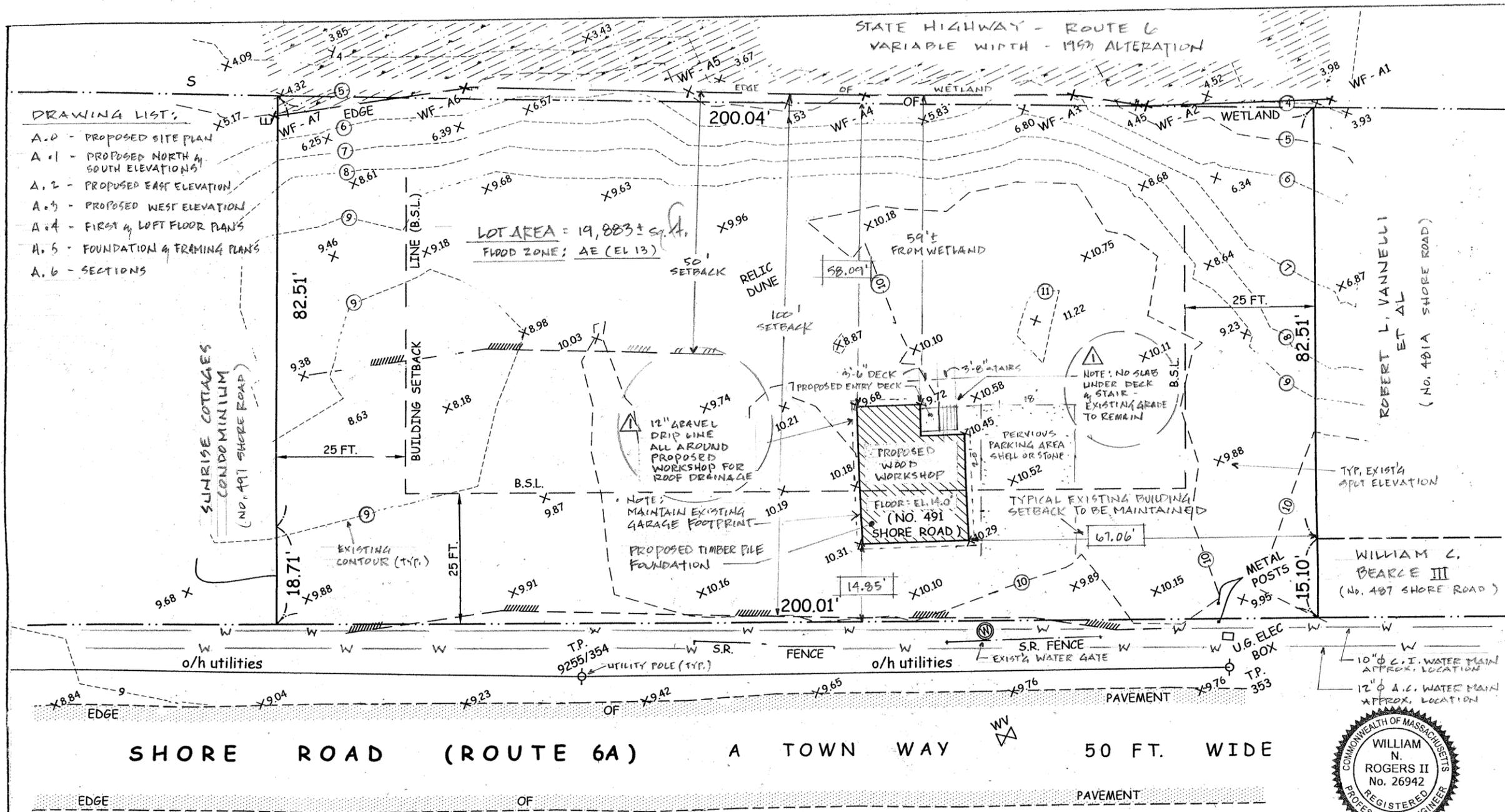
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Proposed Site Plan

SCALE OF FEET
 0 5 10 20

SCALE: 1" = 10'-0"
 DATE: MARCH, 2022
 DRAWN: SK/AL
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 • ADD NOTE FOR STAIRS
 • REMOVE BATH

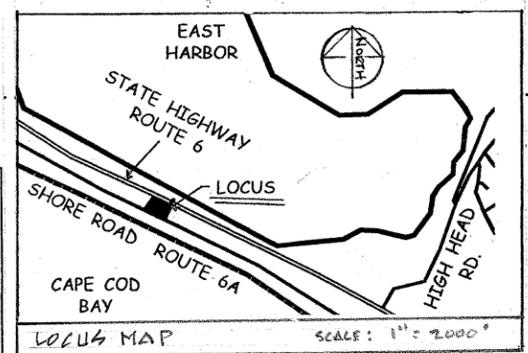
A.0



- DRAWING LIST:**
- A.0 - PROPOSED SITE PLAN
 - A.1 - PROPOSED NORTH & SOUTH ELEVATIONS
 - A.2 - PROPOSED EAST ELEVATION
 - A.3 - PROPOSED WEST ELEVATION
 - A.4 - FIRST & LOFT FLOOR PLANS
 - A.5 - FOUNDATION & FRAMING PLANS
 - A.6 - SECTIONS

NOTE: FLOOD ZONES AS SHOWN ON FLOOD INSURANCE RATE MAP NO. 25001C0117J THE TOWN OF TRURO COMMUNITY NO. 255222 DATED JULY 16, 2014.

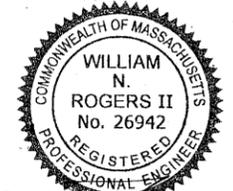
NOTE: BOUNDARY OF THE WETLAND RESOURCE AREAS WERE DETERMINED IN THE FIELD WITH THE ASSISTANCE OF PAUL J. SHEA, P.W.S., INDEPENDENT ENVIRONMENTAL CONSULTANTS ON DECEMBER 4, 2021.



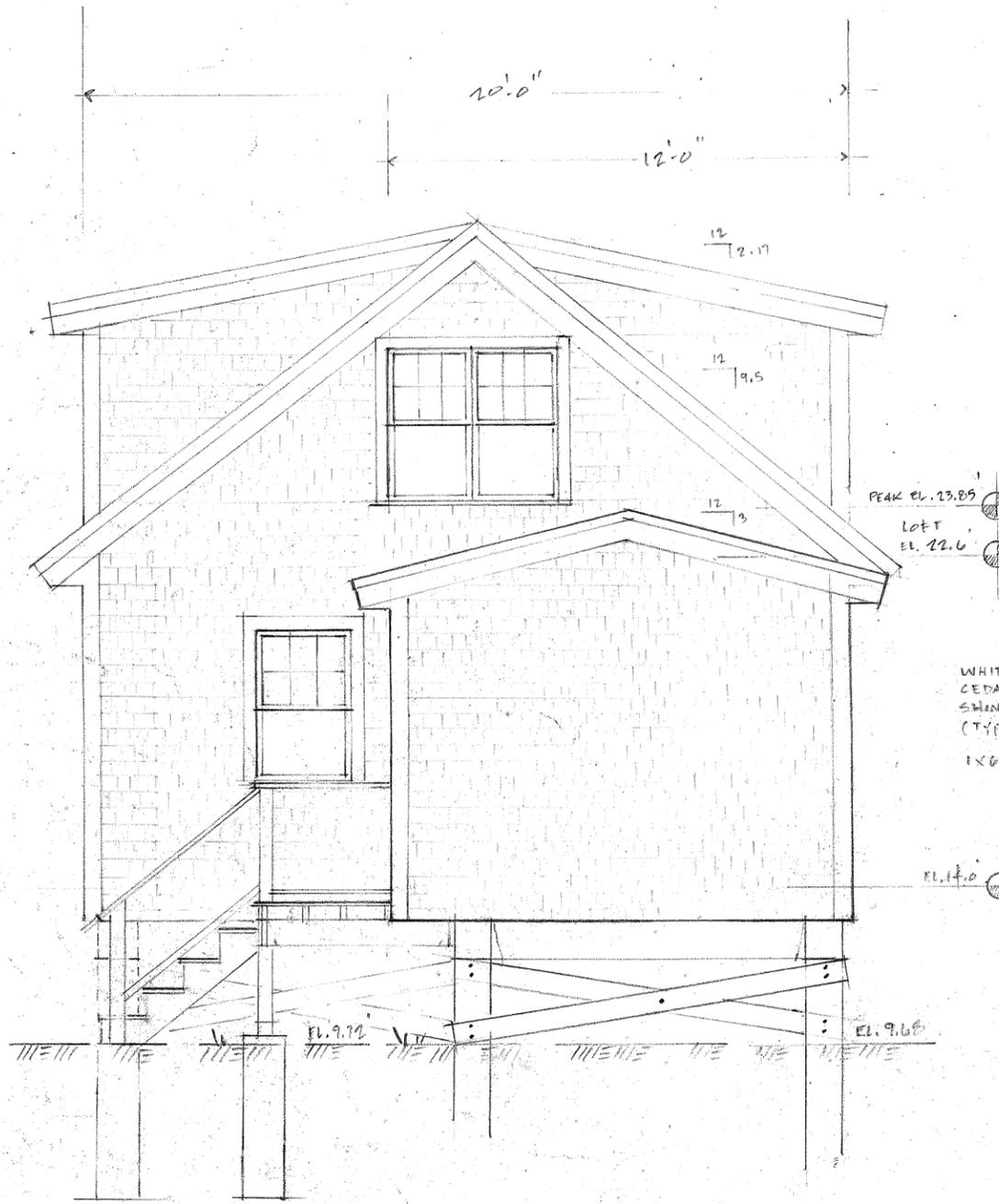
NOTE: DATUM = 1988 NAVD

- LEGEND:**
- S.R. = SPLIT RAIL
 - O/H = OVERHEAD
 - WF = WETLAND FLAG
 - T.P. = TELEPHONE POLE (UTILITY)
 - B.S.L. = BUILDING SETBACK LINE
 - W.V. = WATER VALVE
 - U.A. = UNDERGROUND

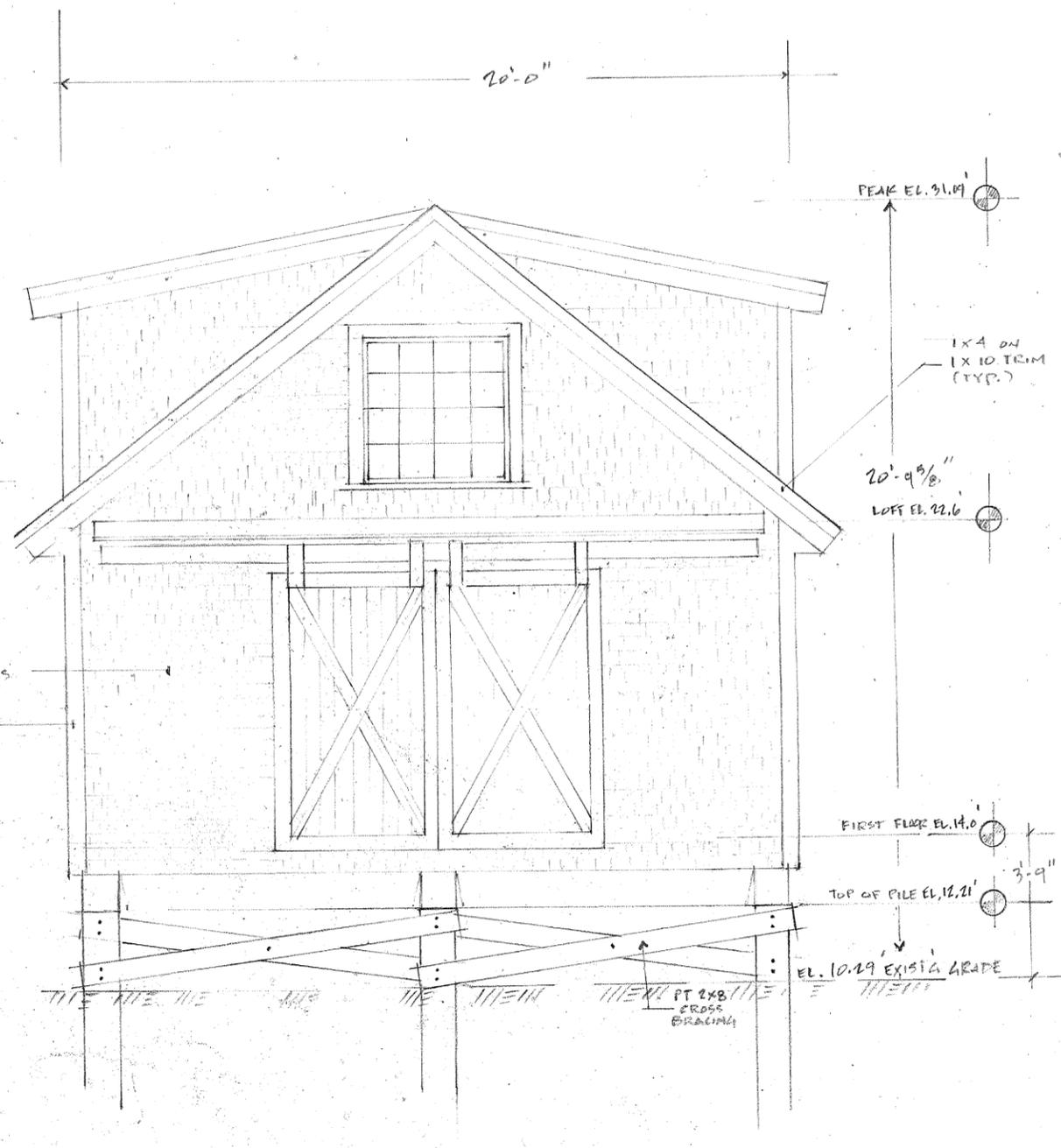
OWNER: NEAREN AND CUBBERLY NOMINEE TRUST
 CHRISTOPHER J. SNOW, TRUSTEE



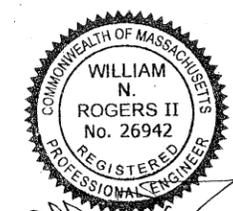
WILLIAM N. ROGERS II, PE
 MARCH 29, 2022



NORTH ELEVATION
SCALE: 1/4" = 1'-0"



SOUTH ELEVATION (FRONT)
SCALE: 1/4" = 1'-0"
NOTE: DATUM = 1988 NAVD

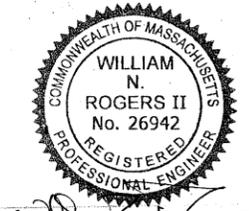


William N. Rogers II, PE
MARCH 29, 2022

<p>Proposed Workshop No. 491 Shore Road No. Truro, Ma. 02652 Prepared For: Ian S. Leahy & Jennifer E. Cabral Assessor's Map 7, Parcel 4</p>
<p>William N. Rogers II Civil Engineers & Land Surveyors Building and Structural Design Planning 41 Off Cemetery Road Provincetown MA 02657 (508) 487-1565 / (508) 487-5809 fax Email: wnr Rogers2@verizon.net</p>
<p>Proposed North & South Elevations</p>
<p>SCALE: 1/4" = 1'-0" DATE: MARCH, 2022 DRAWN: AL JOB NO.: T-22-2073A REVISION:</p>
<p>A.1</p>



EAST ELEVATION
 SCALE: 1/4" = 1'-0"
 NOTE: DATUM = 1988 NAVD



William N. Rogers II
 MARCH 29, 2022

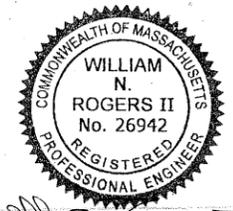
	<p>Proposed Workshop No. 491 Shore Road No. Truro, Ma. 02652 Prepared For: Ian S. Leahy & Jennifer E. Cabral Assessor's Map 7, Parcel 4</p>
<p>William N. Rogers II Civil Engineers & Land Surveyors Building and Structural Design Planning 41 Off Cemetery Road Provincetown MA 02657 (508) 487-1565 / (508) 487-5809 fax Email : wmr Rogers2@verizon.net</p>	<p>Proposed East Elevation</p> <p>SCALE OF FEET </p> <p>SCALE: 1/4" = 1'-0" DATE: MARCH, 2022 DRAWN: AL JOB NO.: T-22-2013A REVISION:</p>
<p>A.2</p>	



WINDOW & DOOR SCHEDULE					
MARK	TYPE	QTY.	MODEL #	R.O. (W x H)	COMMENTS
(A)	DOUBLE-HUNG	2	TW 2432	2'-6 1/8" x 3'-4 1/8"	PROVIDE SCREEN
(B)		5	TW 24310	2'-6 1/8" x 4'-0 7/8"	
(C)	↓	1	TW 20310-2	2'-2 1/8" x 4'-0 7/8"	
(D)	PICTURE	1	DHP 310310	3'-11 7/8" x 4'-0 7/8"	↓
1	ENTRY DOOR	1	F-37944U	3'-0" x 6'-8"	BROSS/SIMPSON MANUFACTURER
2	BARN DOOR	2	PER OWNER	4'-6" x 7'-6"	PROVIDE FLASHING & WEATHERSTRIPPING

• MANUFACTURER: ANDERSEN - 400 SERIES
 • COLOR: WHITE

WEST ELEVATION
 SCALE: 1/4" = 1'-0"
 NOTE: DATUM = 1988 NAVD



WILLIAM N. ROGERS II
 MARCH 29, 2022

Proposed Workshop
 No. 491 Shore Road
 No. Truro, Ma. 02652

Prepared For:
 Ian S. Leahy & Jennifer E. Cabral
 Assessor's Map 7, Parcel 4

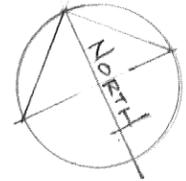
William N. Rogers II
 Civil Engineers & Land Surveyors
 Building and Structural Design
 Planning
 41 Off Cemetery Road
 Provincetown MA 02657
 (508) 487-1565 / (508) 487-5809 fax
 Email: wnmrogers2@verizon.net

Proposed West Elevation



SCALE: 1/4" = 1'-0"
 DATE: MARCH, 2022
 DRAWN: AL
 JOB NO.: T-22-2013A
 REVISION:

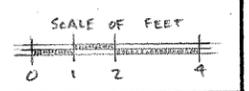
A.3



Proposed Workshop
 No. 491 Shore Road
 No. Truro, Ma. 02652
 Prepared For:
 Ian S. Leahy & Jennifer E. Cabral
 Assessor's Map 7, Parcel 4

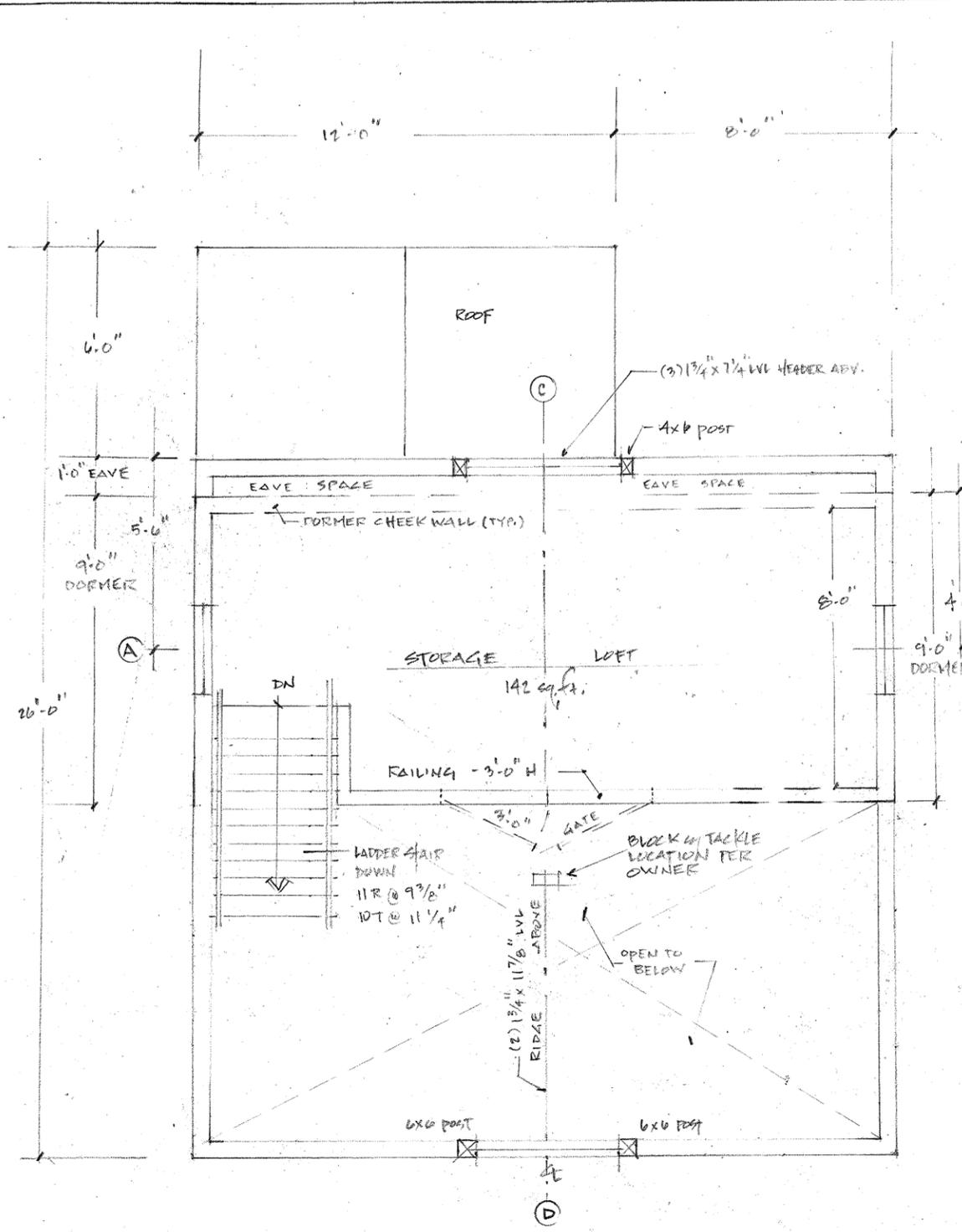
William N. Rogers II
 Civil Engineers & Land Surveyors
 Building and Structural Design
 Planning
 41 Off Cemetery Road
 Provincetown MA 02657
 (508) 487-1565 / (508) 487-5809 fax
 Email: wnr Rogers2@verizon.net

First & Loft Floor Plans

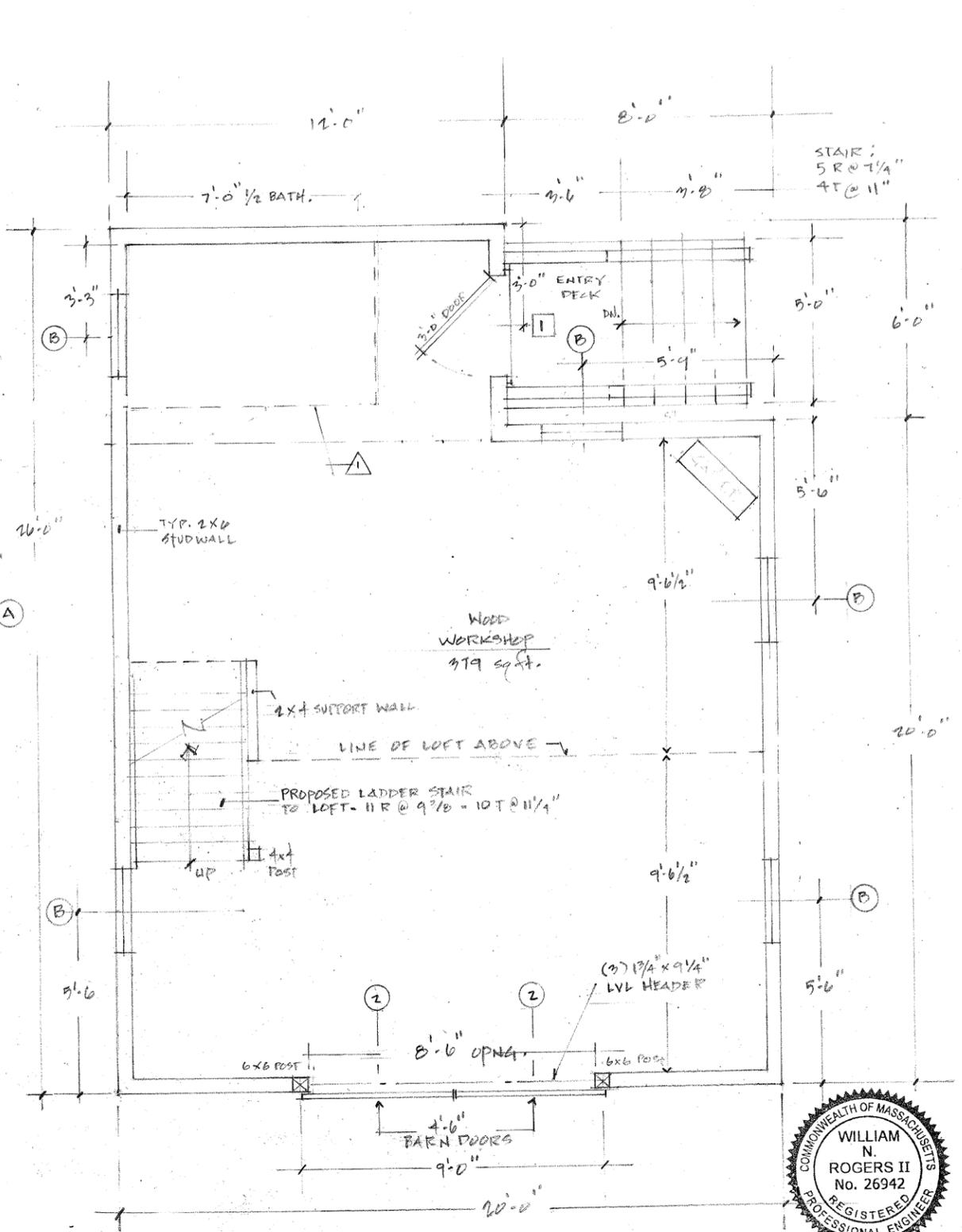


SCALE: 1/4" = 1'-0"
 DATE: MARCH, 2022
 DRAWN: AL
 JOB NO.: T-22-2073A
 REVISION: 1 07-21-22
 REMOVE BATH

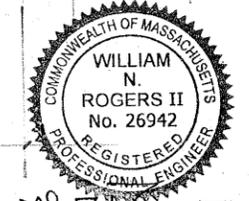
A.4



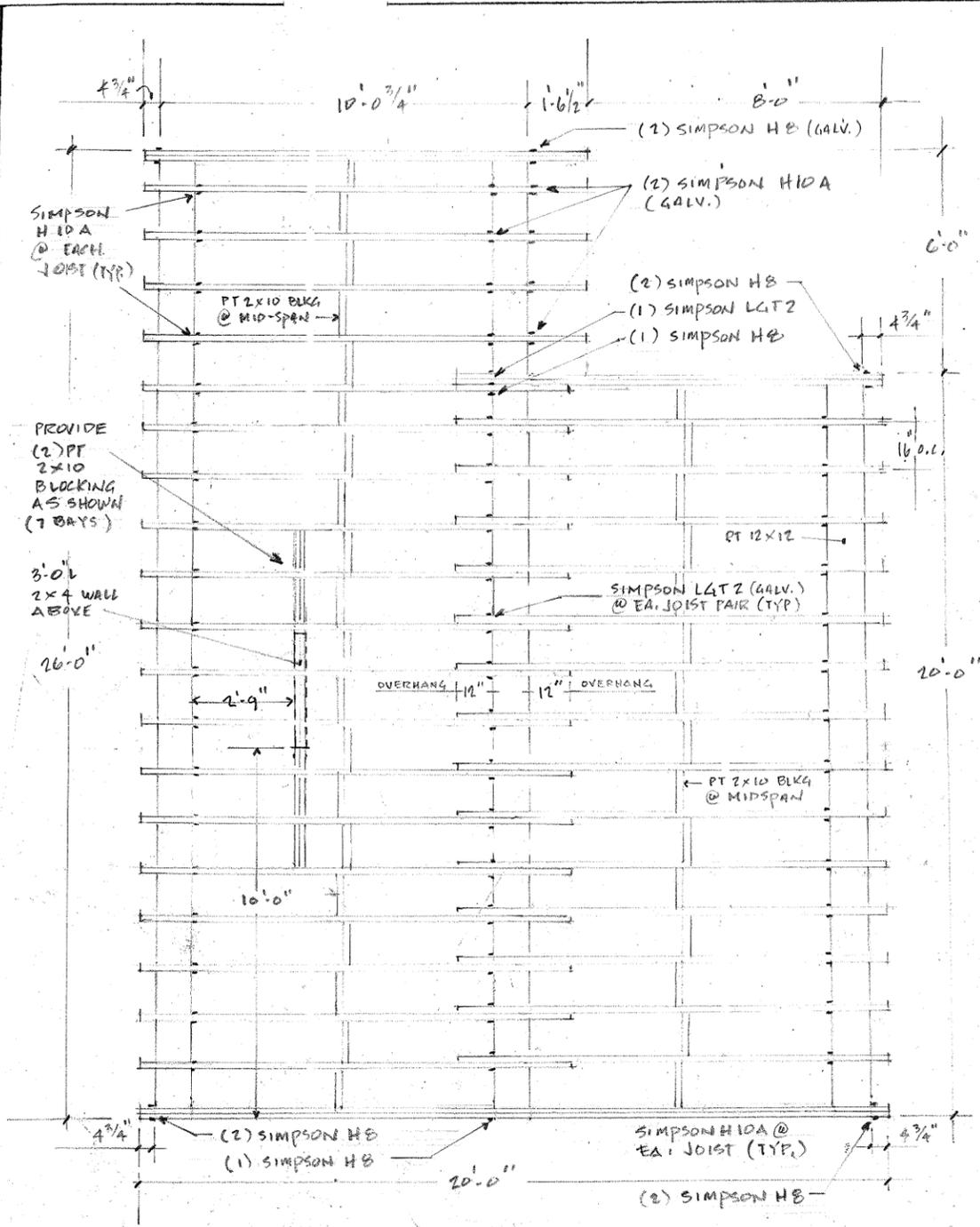
LOFT PLAN
 SCALE: 1/4" = 1'-0"



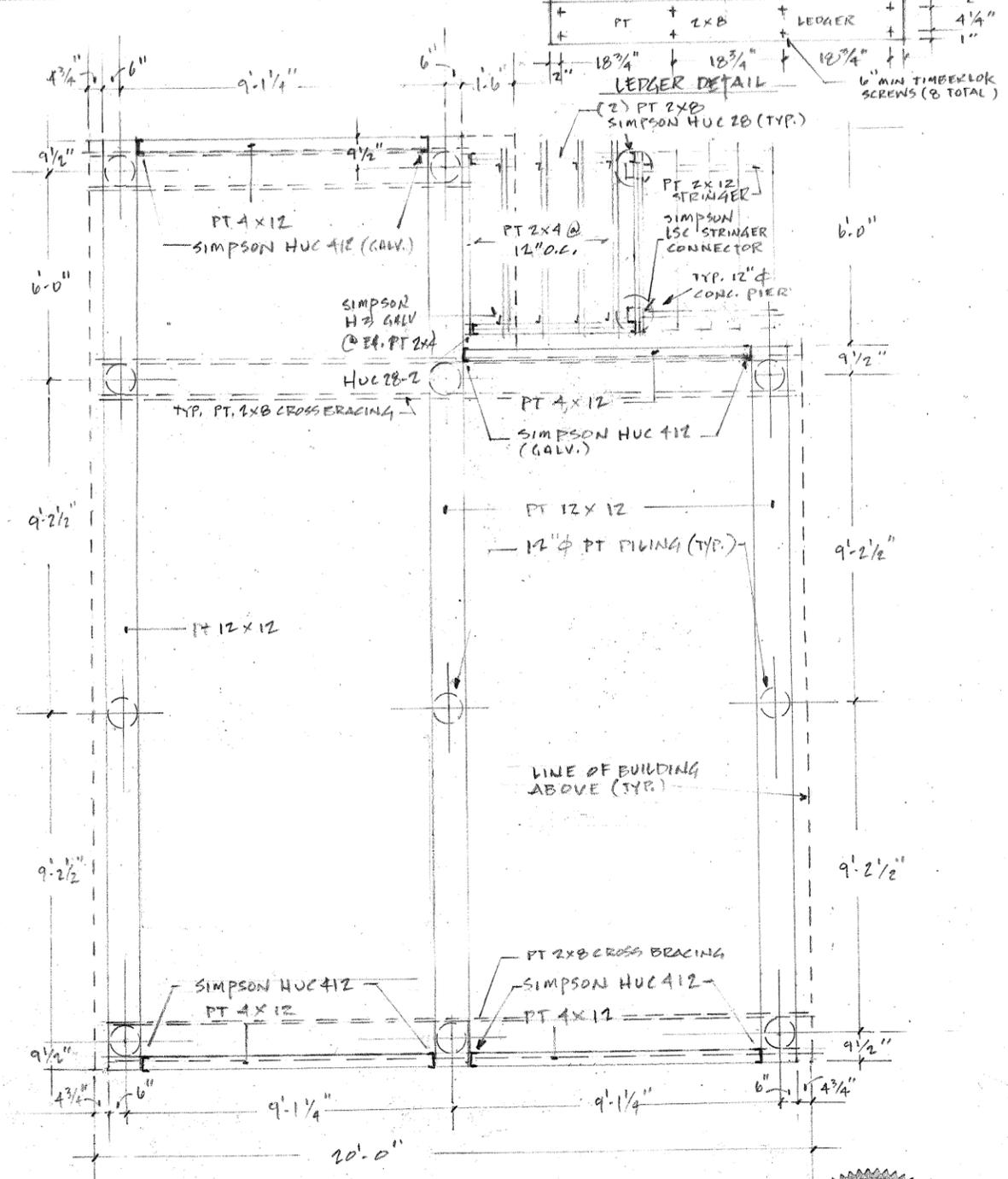
FIRST FLOOR PLAN
 SCALE: 1/4" = 1'-0"



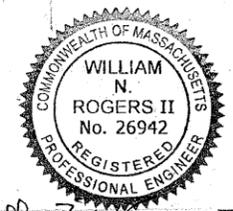
William N. Rogers II, PE
 MARCH 29, 2022



FIRST FLOOR FRAMING PLAN
SCALE: 1/4" = 1'-0"



TIMBER PILE FOUNDATION PLAN
SCALE: 1/4" = 1'-0"



William N. Rogers II, PE
MARCH 29, 2022

<p>Proposed Workshop No. 491 Shore Road No. Truro, Ma. 02652</p> <p>Prepared For: Ian S. Leahy & Jennifer E. Cabral Assessor's Map 7, Parcel 4</p>
<p>William N. Rogers II Civil Engineers & Land Surveyors Building and Structural Design Planning</p> <p>41 Off Cemetery Road Provincetown MA 02657 (508) 487-1565 / (508) 487-5809 fax Email: wnrorgs2@verizon.net</p>
<p>Foundation & Framing Plans</p> <p>SCALE OF FEET 0 1 2 4</p> <p>SCALE: 1/4" = 1'-0" DATE: MARCH, 2022 DRAWN: GL JOB NO.: T-22-2073 REVISION:</p>
<p>A.5</p>

Key: 236

Town of TRURO - Fiscal Year 2024

9/27/2023 7:11 pm SEQ #: 171

LEGALS

CURRENT OWNER				PARCEL ID				LOCATION			
NEAREN & CUBBERLEY NOMINEE TR TRS: CHRISTOPHER SNOW PO BOX 291 PROVINCETOWN, MA 02657				7-4-0				491 SHORE RD			
TRANSFER HISTORY				DOS	T	SALE PRICE		BK-PG (Cert)			
NEAREN & CUBBERLEY NOMINE				11/17/1992	99			8309-131			

CLASS	CLASS%	DESCRIPTION			BN ID	BN	CARD	
1060	100	ACC IMP					1 of 1	
PMT NO	PMT DT	TY	DESC	AMOUNT	INSP	BY	1st	%
		30	CHECK DATA		12/06/2018	JN	0	0

LAND

CD	T	AC/SF/UN	Nbhd	Inf1	Inf2	ADJ BASE	SAF	Inf3	Lpi	VC	CREDIT AMT	ADJ VALUE
100	A	0.460	10	1.00	SZ3 0.75 1 1.00	472,631	1.44 1	1.00	V1	1.75		311,980

TOTAL	20,038 SF	ZONING	LBP	FRNT	0	ASSESSED	CURRENT	PREVIOUS
Nbhd	BEACH POINT	NOTE			LAND	312,000	271,300	
Inf1	SIZE		BUILDING	0	0			
Inf2	NO ADJ		DETACHED	6,800	6,400			
			OTHER	0	0			
			TOTAL	318,800	277,700			

DETACHED

TY	QUAL	COND	DIM/NOTE	YB	UNITS	ADJ PRICE	RCNLD
DGF	A	1.00 F 0.60	20*20+12*6	1960	472	23.89	6,800



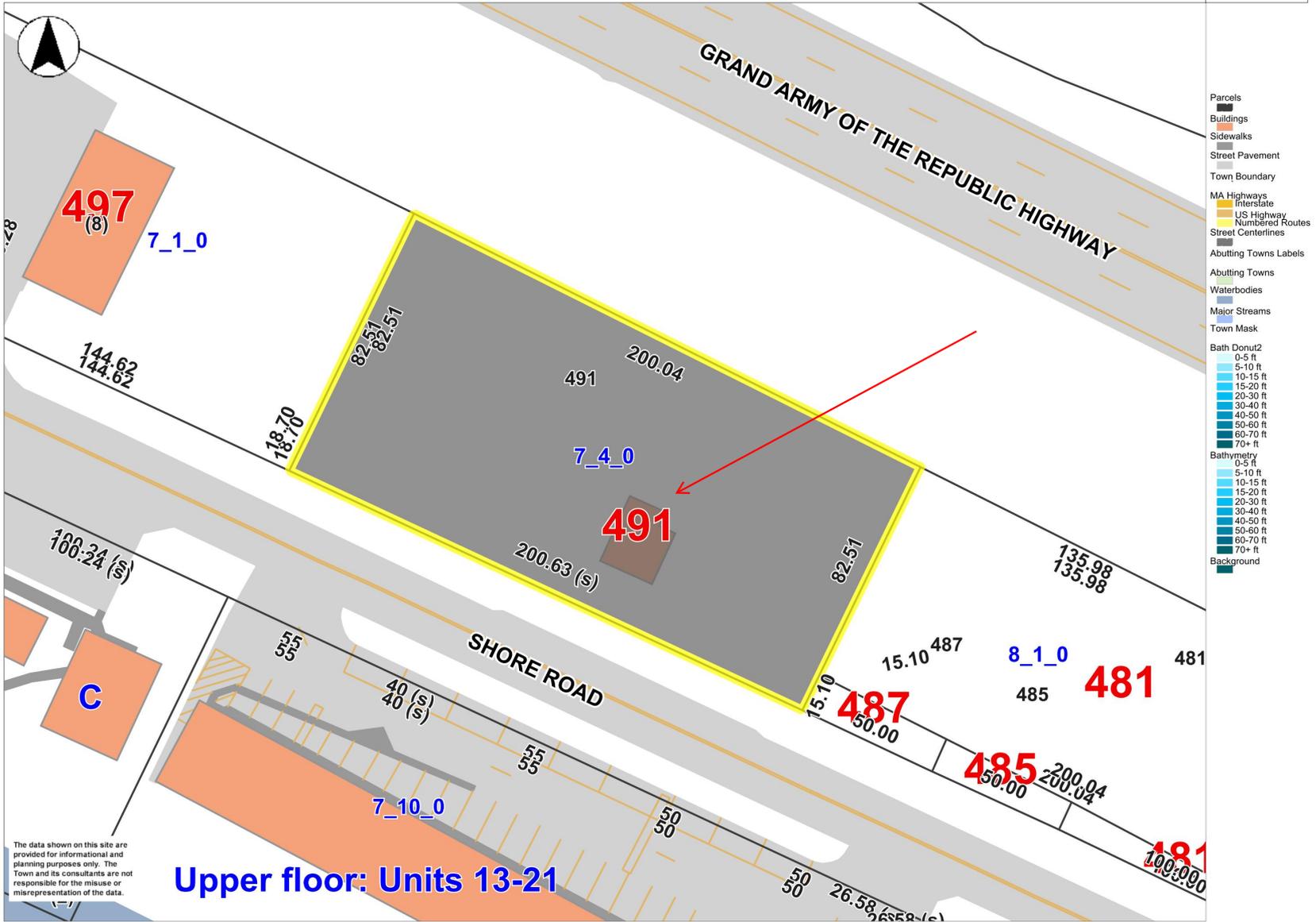
BLDG COMMENTS

BUILDING

BUILDING	CD	ADJ	DESC	MEASURE
MODEL STYLE QUALITY FRAME				LIST REVIEW

YEAR BLT	NET AREA	\$NLA(RCN)	SIZE ADJ	DETAIL ADJ	OVERALL	ELEMENT	CD	DESCRIPTION	ADJ	S	BAT	T	DESCRIPTION	UNITS	YB	ADJ PRICE	RCN
CAPACITY			UNITS	ADJ													

TOTAL RCN	
CONDITION ELEM	CD
EFF.YR/AGE	
COND	
FUNC	
ECON	
DEPR	% GD
RCNLD	



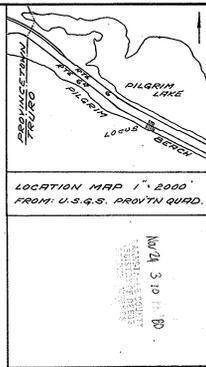
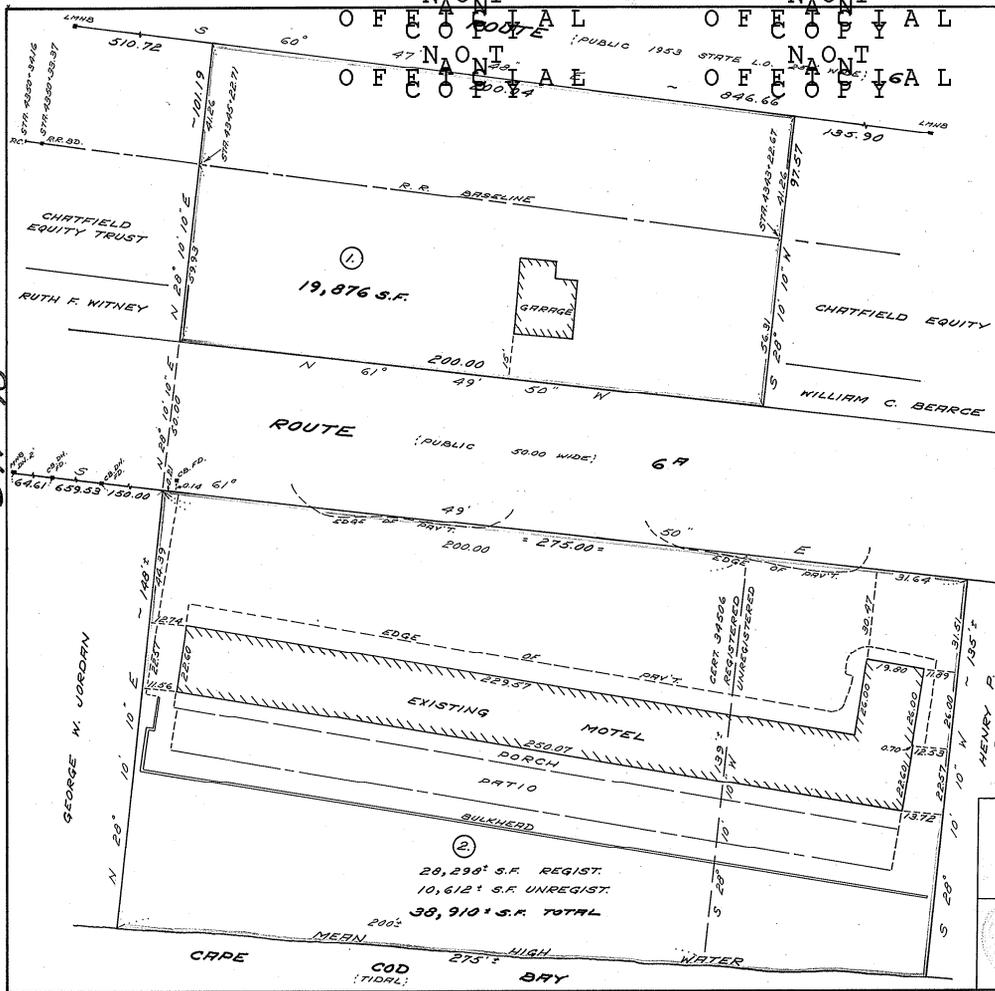
Upper floor: Units 13-21

0 61 122 ft

Printed on 12/14/2023 at 10:10 AM

MapsOnline - Truro, MA

347-95



APPROVAL NOT REQUIRED UNDER SUBDIVISION CONTROL LAW TRURO PLANNING BOARD

DATE: *David C. Sanicki* OCT. 13, 1980

"I CERTIFY THAT THIS PLAN CONFORMS TO THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS."

OCT. 3, 1980 *David C. Sanicki*

"I CERTIFY THAT THIS ACTUAL SURVEY WAS MADE ON THE GROUND IN ACCORDANCE WITH THE LAND COURT INSTRUCTIONS OF 1971 ON OCT. 1, 1980"

OCT. 3, 1980 *David C. Sanicki*



PLAN OF LAND LOCATED IN TRURO - MASS. A PORTION OF WHICH IS SHOWN ON LAND COURT PLAN 32258 FOR CRAW'S 16591 FILE.

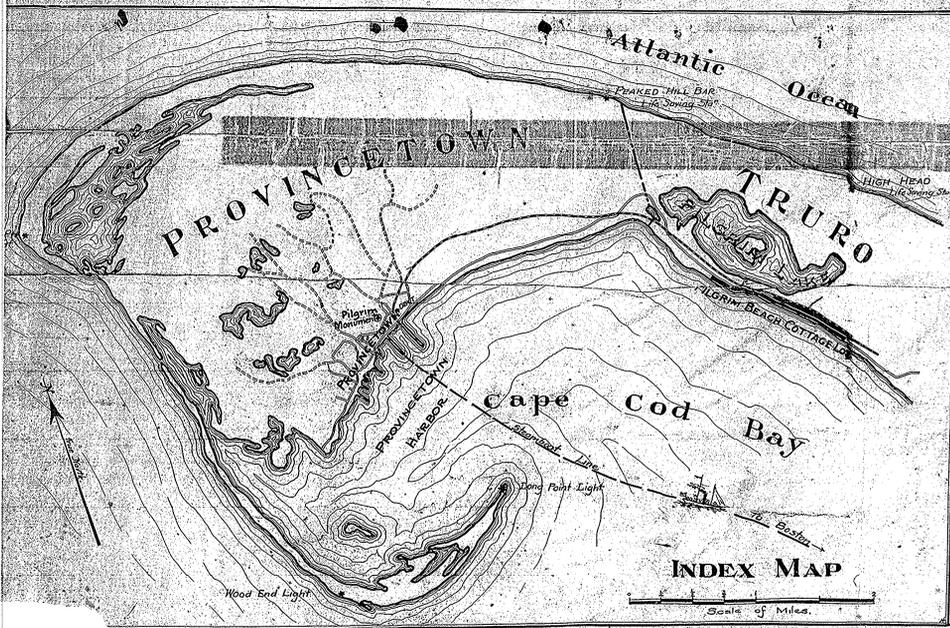
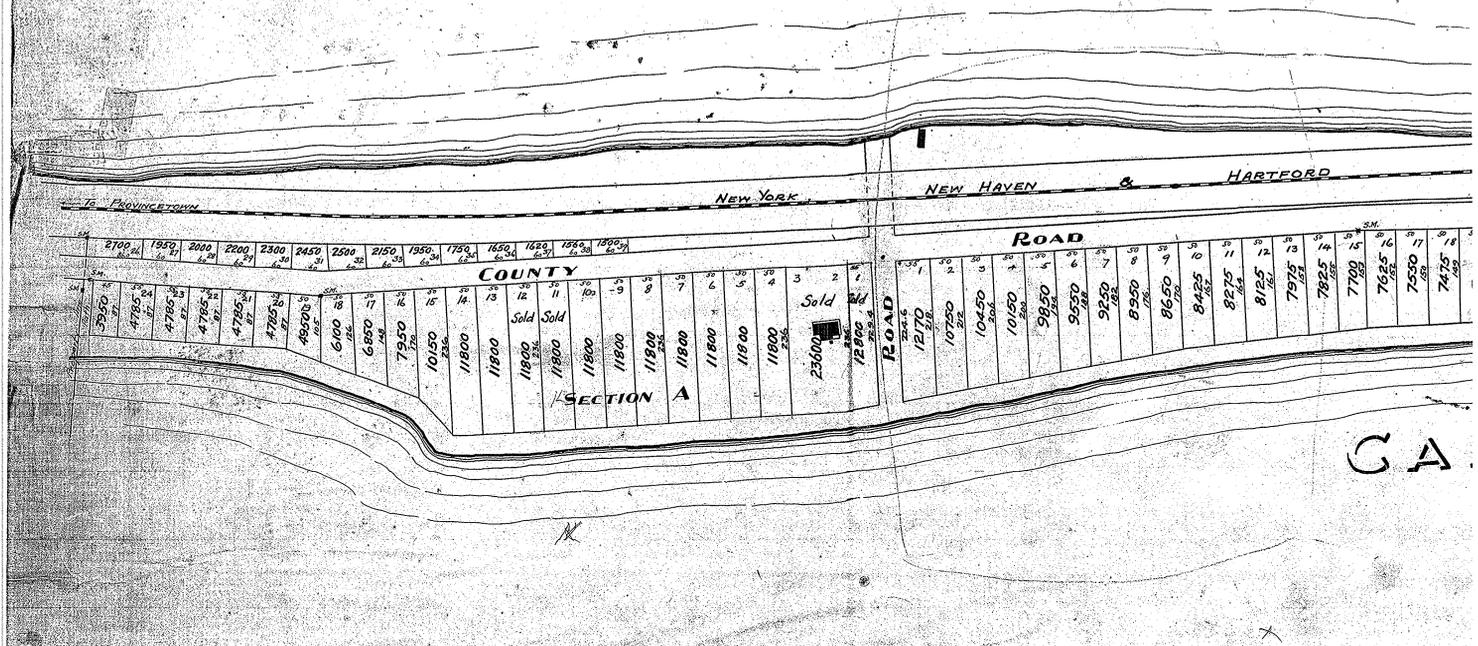
OCT. 3, 1980 FILE NO. 105 TR

SCALE: TWENTY FT. TO AN INCH

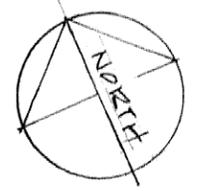
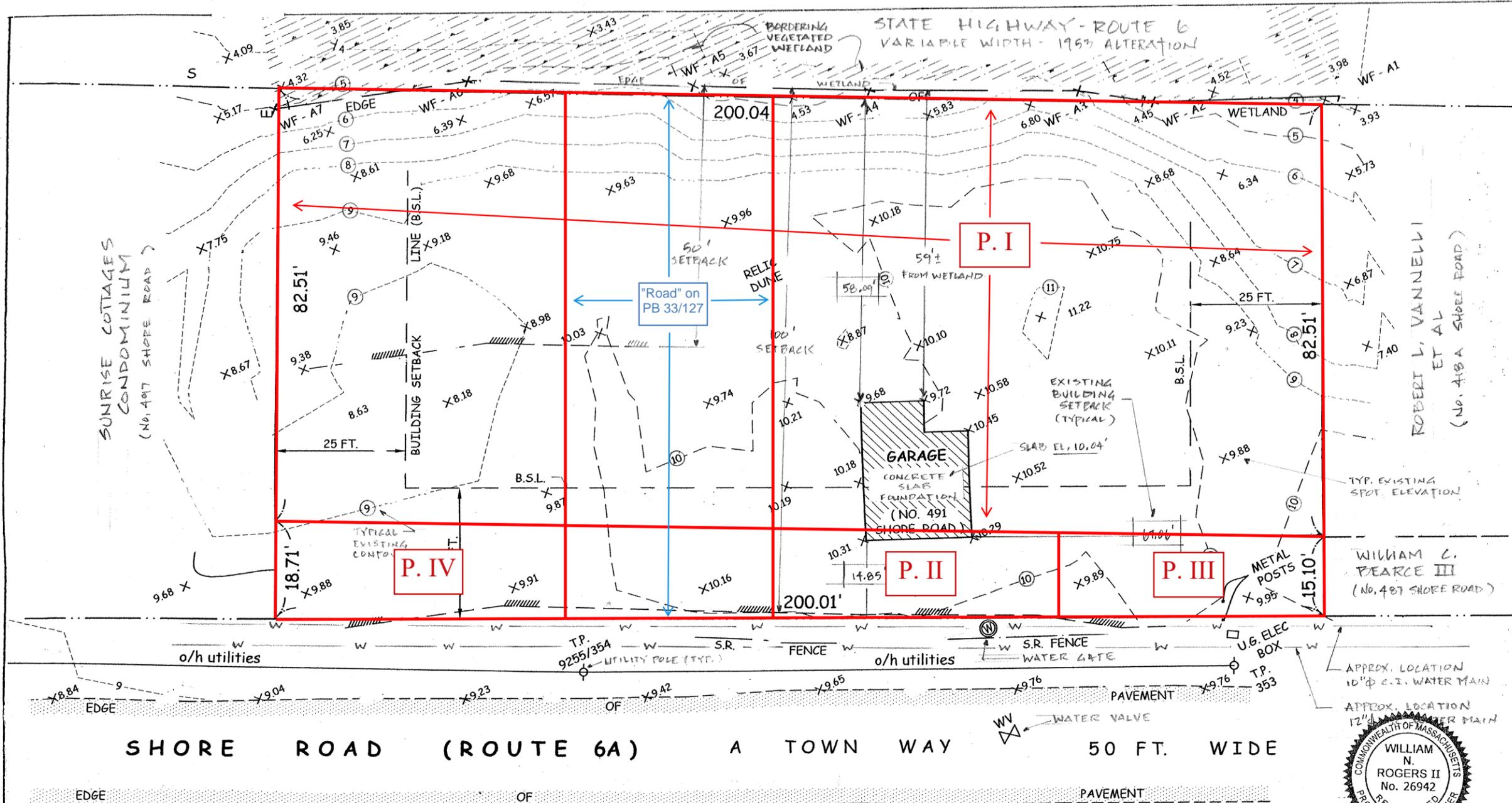
DRAWN BY: U.S. N.B. - 130

CAPE & ISLANDS SURVEYING P.O. BOX 394 TERTICNET - MASS.

PILGRIM



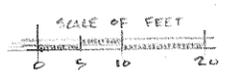
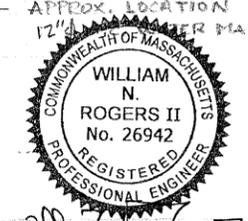
33-127 F1



Proposed Workshop
 No.491 Shore Road
 No. Truro, Ma. 02652
 Prepared For:
 Ian S. Leahy & Jennifer E. Cabral
 Assessor's Map 7, Parcel 4

William N. Rogers II
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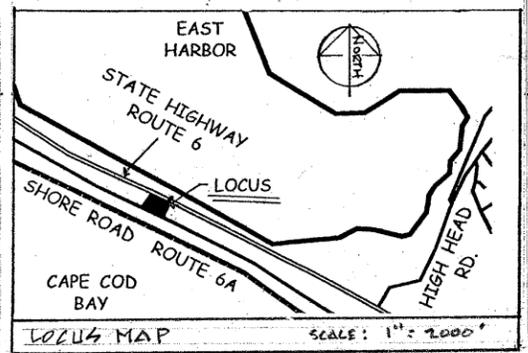
Existing Site Plan



SCALE: 1" = 20'-0"
 DATE: MARCH, 2022
 DRAWN: SK/AL
 JOB NO.: T-22-2073A
 REVISION:

NOTE: FLOOD ZONES AS SHOWN ON FLOOD INSURANCE RATE MAP NO. 25001C0117J THE TOWN OF TRURO COMMUNITY NO. 255222 DATED JULY 16, 2014.

NOTE: BOUNDARY OF THE WETLAND RESOURCE AREAS WERE DETERMINED IN THE FIELD WITH THE ASSISTANCE OF PAUL J. SHEA, P.W.S., INDEPENDENT ENVIRONMENTAL CONSULTANTS ON DECEMBER 4, 2021.



NOTE: DATUM = 1988 NAVD

- LEGEND:**
 S.R. = SPUR RAIL
 o/h = OVERHEAD
 WF = WETLAND FLAG
 T.P. = TELEPHONE POLE (UTILITY)
 B.S.L. = BUILDING SETBACK LINE
 W.V. = WATER VALVE
 U.A. = UNDERGROUND

OWNER: NEAREN AND CUBBERLY NOMINEE TRUST
 CHRISTOPHER J. SNOW, TRUSTEE

Ex.0



Find address or place



Layer List



952



200ft

42.055 Degrees

Esri Community Maps Contributors, MassGIS, © OpenStreetMap, Microsoft, Esri, HERE,...



Find address or place

Layer List



1971



200ft
42.055 Degrees





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774.722.1929
LAND

02/09/2021

TOWN OF TRURO ZONING BOARD OF APPEALS

APPLICANT PROJECT DESCRIPTION STATEMENT – 491 Shore Road, Map 7, Parcel 4, North Truro, MA

Proposed construction of a small workshop structure within the same footprint of the existing two-door garage structure located at 491 Shore Drive. The proposed structure is modest in design and in harmony with both the site's built history and the intent of the town bylaw.

Proposed structure is intended for private use as a personal woodworking space for cabinet making, house repair projects, and minor carpentry, as well as storage of tools and carpentry supplies. (My husband is a retired master carpenter; he and I are long-term, year-round residents of Provincetown.) The proposed structure remains within the existing footprint, only slightly elevated to accommodate stormwater overflow as demanded by FEMA and requested by the Truro Conservation Commission. We have already received board approval from the Truro Conservation Commission.

Site access will continue to be located off Shore Road. The majority of this property will remain in the current native conditions and the proposed structure will have limited site impacts. All proposed building construction will be within an area of past building construction within this property and within the existing building footprint located within the property. The visual presentation of the property will be greatly improved from its current dilapidated state and will not look out of place among the smaller buildings on Shore Road.

We have designed this project in good faith and in harmony with local bylaws. I hope the Zoning Board will approve our request for a continuance of this lawful, pre-existing, non-conforming structure.

Sincerely,
Jennifer Cabral



**TOWN OF TRURO
CONSERVATION COMMISSION**
P.O. Box 2030
Truro MA 02666-0630

TOWN OF TRURO
9:27 AM
NOV 08 2022

RECEIVED
TOWN CLERK

NS

Conservation Commission Meeting Minutes: August 1, 2022

Commissioners Present: Chair Commissioner Carol Girard-Irwin, Commissioners Bob White, Mark Adams, Diane Messinger, Larry Lown, & Clint Kershaw

Absent: Vice Chair Commissioner Linda Noons-Rose; Also Present: Emily Beebe, Conservation Agent, Courtney Warren, Assistant Conservation Agent.

The Chair, Carol Girard-Irwin, called the meeting and public hearings to order at 5:00 PM and provided virtual instructions.

Public Comment: There was no public comment.

Notice of Intent: 491 Shore Road, Jennifer E. Cabral, SE# 75-1150:*(Continued from 7/11/2022)* Jennifer Cabral was on the call to represent the project, and noted that the original plans had been revised to show the access stairway and landing; the proposed incinerating toilet and sink have been removed from the plan. The impermeable sections of the driveway will be removed, and a system will be installed to deal with roof runoff. Commissioner Lown asked if the public would be coming to the workshop and the answer was no. Commissioner Girard-Irwin asked about any paints or stains that would be used in the shop. Ms. Cabral described their standard process for handling both water-based and oil-based substances. **Motion: Commissioner Larry Lown moved to approve the filing. Second: Commissioner Bob White; Vote: 5-0-0; the motion passed.**

Notice of Intent: 39 Bayview Road, Lawrence Gottesdiener; SE# 75-1140:*(Continued from 7/11/2022)*

The applicants requested a continuance until the September 12th, 2022, meeting.

Motion: Commissioner Bob White moved to continue the matter until September 12th, 2022 Second: Commissioner Mark Adams; Vote: 5-0-0; The motion passed.

Request for Determination of Applicability: 13 Depot Road, Christine & Ernie Sanders: Christine and Ernie Sanders were on the call to represent the project. The proposed 16x8 garden shed will be on blocks, and they are proposing to plant bearberry in any disturbed areas after construction is complete. Commissioner Lown asked about the square footage of the proposed shed and whether there would be any windows, doors, plumbing, or electricity in the structure. The shed is proposed to be 128 square feet with a door and a window for ventilation but no electricity or plumbing. Commissioner White asked about mitigation for roof runoff. Ms. Sanders stated there would be permeable gravel around the shed to naturally deal with runoff. Commissioner Adams suggested mimicking the natural heathland on the Coastal Bank incorporating ferns, bayberry, and native grasses as well as bearberry in the planting plan. **Motion: Commissioner Bob**

Affidavit

I, Janice Nearen-Bell, make this affidavit based on my own personal knowledge and observation and upon penalties of perjury.

1. My name is Janice Nearen-Bell and I reside in Hilton Head, South Carolina;
2. I am making these statements concerning the property at 491 Shore Road in Truro, MA (the "Property");
3. From the age of 4 until present at age 64, I spent large amounts of time with my aunts both in Provincetown and Truro giving me personal knowledge and observation of their businesses;
4. The Property is currently owned by the Nearen and Cubberley Nominee Trust (the "Trust");
5. The Trust was created by my aunt Dorothy Nearen and her 60-year business partner Marilyn Cubberley to hold title to the Property;
6. My aunt Dorothy died on July 20, 2017; Marilyn Cubberley predeceased her in September, 2015;
7. Dorothy Nearen and Marilyn Cubberley were part owners of the Crow's Nest Motel in Truro, which is across Route 6A from the Property at 496 Shore Road;
8. Dorothy and Marilyn, together with other individuals, purchased the Crow's Nest on November 24, 1980;
9. Dorothy and Marilyn and the other individuals operated the Crow's Nest Motel until they and the other owners sold it on March 10, 2003;
10. Dorothy and Marilyn also owned and operated Sunnyside Cottages at 640 Shore Road in Truro, MA;
11. They purchased the Sunnyside Cottages property on March 22, 1976, and it was sold by Dorothy and Marilyn's Trust on June 25, 2018;
12. In this sworn statement I am not including the ownership entities for these properties in

various corporations and trusts. Rather, I am stating the beginning and ending periods that they owned and controlled the properties and their usages;

13. Dorothy and Marilyn purchased the Property on September 15, 1981, for the price of \$22,000 to acquire and use the garage on the Property for storage of equipment and materials in connection with operation of the Crow's Nest Motel and Sunnyside Cottages;
14. Dorothy as I recall also paid herself a manager's salary on Crow's Nest and was the only lower Cape resident of the owners of Crow's Nest and handled the majority of business dealings for the motel including payroll, staff, repairs, purchases, and maintenance;
15. The garage was used between 1981 and 2003 for storing Crow's Nest motel materials and supplies;
16. The garage was used between 1981 and 2018 for storing Sunnyside Cottages materials and supplies;
17. Materials for both Crow's Nest and Sunnyside Cottages stored in the garage during these periods included ladders, air conditioning units, televisions light bulbs and other items. To further this point in 2002 Marilyn called me and asked, due to Dorothy being ill, could my husband Stephen Bell come and run Crow's Nest for 3 weeks. He did so as night manager, sleeping on the property. During that period and over the years he recalls and would attest to 25-35 visits to the garage to get necessary supplies for both Crow's Nest and Sunnyside operations;
18. After the Crow's Nest Motel was sold in 2003, Dorothy and Marilyn continued to use the garage on the Property for storage of items for Sunnyside Cottages. I recall a day in 2015 driving up Shore Road noticing a broken window in the side of garage. My husband and I went to Conwell Lumber and bought plywood and supplies to cover the window and inspect inside;
19. Dorothy and Marilyn also permitted two Jamaican brothers, who worked for both the

- motel and cottages to store their vehicle in the garage over the winters when they went back to Jamaica, between about 1990 to 2000;
20. Dorothy and Marilyn had three vehicles. They would drive either their Audi or Toyota to South Carolina each off-Season and would store the other vehicle, Marilyn's white Ford in the garage each winter from 2000 to 2005/2006;
 21. I have examined certain of Dorothy's records and found the attached Overhead Door Company quotation for replacement of the garage door at the Property. I recall it being installed as it was necessary for safety and much whiter than the rest of the garage;
 22. Until approximately five years ago, there was electrical service to the garage. It was necessary to provide light when Dorothy and Marilyn and their employees went to the garage after dark. Approximately five years ago there was a transformer fire at the Property and we did not repair the electrical service since we were attempting to sell the Property;
 23. I also recall around 2004/2005 Dorothy having issues with Crow's Nest renters parking on the Property, it was at that time she installed the post and rail fence that is on the property today;
 24. Dorothy and Marilyn, and later the Trust, have paid real estate taxes on the Property from 1981 to the present. Attached is a copy of their Trust's 2021 application to the Truro Board of Assessors for an abatement; This application shows that the Trust has been attempting to market and sell the Property for over 5 years. This five-year period goes back to the ownership of Sunnyside Cottages. The attempts to sell the Property evidence an intent not to abandon the Property;
 25. After the sale of Crow's Nest in 2003, Dorothy and Marilyn received several offers to sell the Property. Dorothy told me of an offer from the new owner of the Crow's Nest Motel shortly after his purchase, she told me that her dealings with the new owner of the motel during the motel negotiations and transfer were not favorable. She said that she and Marilyn might sell the Property in the future, but not to that individual;

26. I recall and observed a real estate broker submitting to Marilyn an offer to purchase the Property in or about 2014. Marilyn instructed me not to respond to the offer as it was too low saying "I know what it's worth." Marilyn told me at that time that she and Dorothy might build a house for themselves on the Property if and when they sold Sunnyside Cottages and possibly their home at 627 Shore Road; and
27. Since Dorothy's death in 2017 to date I have worked actively with Attorney Christopher Snow, Executor of her Estate in attempting to sell the Property, along with other estate holdings.

Sworn to as of this 1st day January 2024,


Janice Nearen-Bell



SINCE 1921

NATIONWIDE SALES - INSTALLATION - SERVICE

OVERHEAD DOOR COMPANY

OF CAPE COD AND SOUTHEASTERN MASSACHUSETTS

14 BROOKS ROAD, HYANNIS, MA 02601 FAX 508-778-6253

PHONE 508-778-6251 *ACROSS FROM CROWS NEST MOTEL*

QUOTATION

SOLD TO	DOROTHY NEARREN	SHIP TO	2 CAR DETACHED
	SUNNYSIDE COTTAGES		491 SHORE RD (BEACH POINT)
	Box 254		N. TRURO
	N. TRURO, MA 02652		

DATE	FAX NUMBER	HOME TELEPHONE	OFFICE TELEPHONE	INSTALLER	SALESMAN	DATE INSTALLED
8-24-99			487-9198		SS	

Door Style: 188
Quantity: 2
Size: 8' x 6'-6"
Operator: NO New / Hook-up,
Head Room: 14'
Flush Jamb: YES/NO
Trim: Square / Arch
Power: YES/NO
Floor: YES/NO
Track: Existing / New
Passage Door: YES/NO
Lock: ALIKE Key / Slide
Stops: Wood / W.T. / All Vinyl
Outside Lift: YES/NO
Footings: _____
Payment: Bill Out Pick-up Check
Photo Pre-Wired: YES/NO
Photo Call Mount: J/T/E

We Propose to Furnish & Install:
(2) 8' x 6'-6" SERIES 188
RAISED PANEL, WHITE, NO GLASS

(2) UNI-LOCKS - KEYED ALIKE
TAX

TAKE DOWN + DISPOSE OLD DOORS
ZZ TRAVEL

1273.20

WE NEED A CLEAR WORK AREA

673.20 1780 9/16
#1762 8/25

ALLOW 2 WKS DELIVERY

dollars (\$)

Payment to be made as follows:

600 DEPOSIT, BAL. UPON COMPLETION

Painting, electric wiring, preparation of the opening, jamba or pads not included unless mentioned above.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control.

OVERHEAD DOOR CO. OF CAPE COD, INC.

Authorized Signature: BOB BISHOP

TERMS: Payment of the total amount, less deposit, as shown, is due to Overhead Door Co. of Cape Cod after delivery of items listed. A delinquency charge of 1.5% per month will be charged on all unpaid balances after due date. This sale is made in reliance upon the joint and several liability of the corporation(s) and/or individual(s) signing. In the event a receiver of property be applied for or appointed, or a petition in bankruptcy be filed by or against, or a general assignment for the benefit of creditors be made by any of the said corporation(s) and/or individual(s), the entire unpaid balance, together with interest due thereon, shall become immediately due and payable at the option of Overhead Door Co. of Cape Cod, Inc.

BUYER - The prices, specifications and conditions are satisfactory and are hereby accepted. Payment will be made as outlined, unless otherwise noted.

Buyer: _____
Authorized Signature: _____

Date of Acceptance: _____

In the event this obligation is referred to an attorney for collection, a reasonable attorney's fee shall be added to the principal and delinquency charge due hereon.

Affidavit

I, Christopher J. Snow, make this affidavit based on my own personal knowledge and observation and upon penalties of perjury.

1. My name is Christopher J. Snow. I am an attorney licensed in Massachusetts and reside in Provincetown, MA;
2. I am making these statements concerning the property at 491 Shore Road in Truro, MA (the "Property");
3. I am the current Trustee of the Nearen and Cubberley Nominee Trust (the "Trust"), the record owner of the Property;
4. I have represented the late Dorothy Nearen and Marilyn Cubberley for approximately 32 years, and have also represented their estates;
5. Dorothy died on July 20, 2017. Marilyn predeceased her in September, 2015;
6. Since Dorothy's death in I have as Trustee of the Trust and as attorney for the estates, undertaken to maintain and sell the Property.
7. In connection with my work I filed a real estate tax abatement with the Truro Board of Assessors in November, 2018 and another in October 2021 since the Property could not be used for a residence and other accessory uses contrary to the tax assessment for which Real Estate taxes were assessed and paid for considering those uses as permissible in past and to date .
8. The Board denied both applications, and the Town has continued to assess the Property as a fully buildable parcel capable of containing a residence and accessory buildings.
9. I have also undertaken to market and sell the Property during the period since 2017. These efforts included listing the Property with agent Mary Cabral on June 1, 2017, and then (and currently) with agent Philip Scholl on November 12, 2018. I have also been working with the agent and Dorothy's family to

get the Property under contract and through the zoning approval process to be able to permit the Property for accessory use.

10. Throughout the years of my representing Dorothy and Marilyn, and now their Trust, maintaining the use and value of the Property has been of the utmost importance.

Sworn to as of this __25th day of January_____, 2024,

A handwritten signature in blue ink, appearing to read "Christopher J. Show Trustee", written over a horizontal line.

Christopher J. Show, Trustee

TOWN OF TRURO



Real Estate Paid Tax Statement

Parcel: 07-004.0

Location: 491 SHORE RD

Owner:
 NEAREN & CUBBERLEY
 TRS: CHRISTOPHER SNOW
 PO BOX 291
 PROVINCETOWN MA 02657

Status: Square 0
 Land Valuation: 312,000
 Building Valuation: 6,800
 Exemptions: 0
 Taxable Valuation: 318,800

Deed Date: 11/17/1992

Book/Page: 8309/131

Year	Type	Due Date	Principal Due	Int/Pen	Date	Type	Amount
2024	RE-R	1 11/14/2023	983.46	0.00	10/17/2023	PD	983.46
		2 04/01/2024	983.44	0.00			0.00
Bill #	102333		1,966.90	0.00			983.46
2023	RE-R	1 10/01/2022	935.32	0.00	10/12/2022	PD	935.32
		2 04/01/2023	935.32	0.00			0.00
					04/03/2023	PD	935.32
Bill #	102325		1,870.64	0.00			1,870.64
2022	RE-R	1 10/01/2021	875.42	0.00	10/12/2021	PD	875.42
		2 04/01/2022	875.40	0.00			0.00
					03/29/2022	PD	875.40
Bill #	102337		1,750.82	0.00			1,750.82
2021	RE-R	1 10/09/2020	835.78	0.00	10/20/2020	PD	835.78
		2 04/01/2021	835.77	0.00			0.00
					04/02/2021	PD	835.77
Bill #	102352		1,671.55	0.00			1,671.55
2020	RE-R	1 10/04/2019	743.67	0.00	10/10/2019	PD	743.67
		2 04/01/2020	743.66	0.00			0.00
					05/26/2020	PD	743.66
Bill #	102328		1,487.33	0.00			1,487.33
2019	RE-R	1 11/16/2018	755.85	0.00	10/26/2018	PD	1,001.40
		2 04/01/2019	755.83	0.00			0.00
					03/11/2019	PD	0.00
					03/21/2019	PD	510.28
Bill #	100283		1,511.68	0.00			1,511.68
2018	RE-R	1 11/17/2017	990.26	101.41	08/10/2018	PD	2,137.88
		2 05/02/2018	1,000.25	45.96			0.00
Bill #	102283		1,990.51	147.37			2,137.88
2017	RE-R	1 10/03/2016	937.86	0.00	10/11/2016	PD	937.86
		2 04/01/2017	937.85	0.00			0.00
					04/18/2017	PD	937.85
Bill #	102273		1,875.71	0.00			1,875.71
2016	RE-R	1 10/01/2015	900.58	0.00	10/09/2015	PD	900.58
		2 04/01/2016	900.57	0.00			0.00
					04/21/2016	PD	900.57
Bill #	102279		1,801.15	0.00			1,801.15
2015	RE-R	1 10/09/2014	873.42	0.00	11/10/2014	PD	873.42
		2 04/01/2015	873.41	0.00			0.00
					04/13/2015	PD	873.41
Bill #	102214		1,746.83	0.00			1,746.83
2014	RE-R	1 10/01/2013	834.49	30.09	01/02/2014	PD	834.49
		2 04/01/2014	844.48	40.81			0.00
					05/08/2014	PD	865.94
					06/24/2014	WO	-865.94
					07/22/2014	WO	0.00
					07/22/2014	PD	915.38
Bill #	102197		1,678.97	70.90			1,749.87
2013	RE-R	1 10/05/2012	791.20	20.63	12/12/2012	PD	791.20
		2 04/01/2013	791.19	1.11			0.00
					04/01/2013	PD	812.93
Bill #	102165		1,582.39	21.74			1,604.13
2012	RE-R	1 10/03/2011	784.63	0.00	10/27/2011	PD	784.63
		2 04/02/2012	784.62	0.00			0.00

Report generated: 12/15/2023 11:15:15
 User: Ordania Reynolds (9625orey)
 Program ID: txtaxstm

TOWN OF TRURO



Real Estate Paid Tax Statement

Parcel: 07-004.0

Location: 491 SHORE RD

Owner:
 NEAREN & CUBBERLEY
 TRS: CHRISTOPHER SNOW
 PO BOX 291
 PROVINCETOWN MA 02657

Status: Square 0
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 Exemptions: 0
 Taxable Valuation: 318,800

Deed Date: 11/17/1992

Book/Page: 8309/131

Year	Type	Due Date	Principal Due	Int/Pen	Date	Type	Amount
					04/09/2012	PD	784.62
Bill #	102156		1,569.25	0.00			1,569.25
2011	RE-R	1 11/19/2010	771.97	0.00	12/13/2010	PD	771.97
		2 04/20/2011	690.28	0.00			0.00
					05/02/2011	PD	690.28
Bill #	102139		1,462.25	0.00			1,462.25
2010	RE-R	1 12/04/2009	771.97	0.00	12/29/2009	PD	771.97
		2 04/01/2010	771.96	0.00			0.00
					05/03/2010	PD	771.96
Bill #	1002119		1,543.93	0.00			1,543.93
2009	RE-R	1 10/01/2008	739.17	0.00	10/27/2008	PD	739.17
		2 04/01/2009	739.16	0.00			0.00
					04/13/2009	PD	739.16
Bill #	102100		1,478.33	0.00			1,478.33
2008	RE-R	1 01/04/2008	656.78	0.00	01/28/2008	PD	656.78
		2 04/22/2008	788.44	0.00			0.00
					05/12/2008	PD	788.44
Bill #	101984		1,445.22	0.00			1,445.22
2007	RE-R	1 11/28/2006	656.78	0.00	12/18/2006	PD	656.78
		2 04/01/2007	656.78	0.00			0.00
					04/26/2007	PD	656.78
Bill #	101942		1,313.56	0.00			1,313.56
2006	RE-R	1 01/25/2006	669.83	0.00	02/22/2006	PD	669.83
		2 04/01/2006	669.83	0.00			0.00
					05/22/2006	PD	669.83
Bill #	101926		1,339.66	0.00			1,339.66
2005	RE-R	1 12/21/2004	594.68	0.00	01/07/2005	PD	594.68
		2 04/01/2005	594.68	0.00			0.00
					04/29/2005	PD	594.68
Bill #	2112		1,189.36	0.00			1,189.36
2004	RE-R	1 11/21/2003	408.26	0.00	12/11/2003	PD	408.26
		2 04/01/2004	408.26	0.00			0.00
					04/20/2004	PD	408.26
Bill #	2111		816.52	0.00			816.52
2003	RE-R	1 04/18/2003	793.09	0.00	05/16/2003	PD	793.09
Bill #	2110		793.09	0.00			793.09
2002	RE-R	1 01/25/2002	359.15	9.97	02/19/2002	PD	354.15
		2 09/09/2002	387.92	0.00			0.00
					11/04/2002	PD	14.97
					11/04/2002	PD	387.92
Bill #	2109		747.07	9.97			757.04
Grand Totals			34,632.72	249.98			33,899.26

** End of Report - Generated by Ordania Reynolds **

en
No 143

7-4
Town of Truro
PLANNING BOARD
BUILDING PERMIT

Fee 1.00

rd 6 19*58*

This is to certify that a permit is hereby granted to:

Albert Amos Owner *Rt. 64, Beady Point* Location

To build..... Alter Repair.....

Type of building..... *Residence*

Subject to the condition that the person accepting this permit shall conform to the terms of his application on file in this office; and subject to any other rules and regulations of the Town of Truro relating to planning. This permit is further conditioned on the fact that work shall begin on said building within ninety days from the date hereof, and shall proceed with reasonable speed.

Any violation of the conditions of this permit shall be considered a violation thereof and the rights hereunder shall be terminated.

PLANNING BOARD by *[Signature]* Clerk

TOWN OF TRURO

APPLICATION FOR PERMIT

Planning Board

Board of Health

Fire Dept.

Date Nov. 6, 1958

The undersigned hereby applies for a permit to Build Alter.

Owner's Name Albert Annone

Location of Property Rt. 6 A, No. Truro -

Owner's Address —

Non-resident Address —

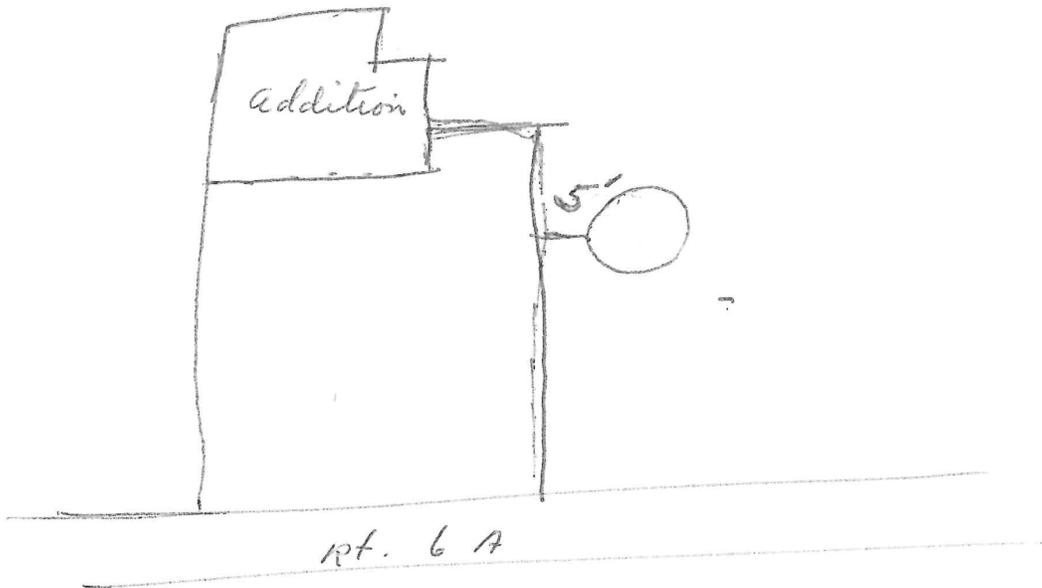
Builder's Name and Address Self —

Type of Building Residence Business

Size and Material of Cesspool or Septic Tank 6' cement

Type of Chimney none Fire Stops wood

Draw a sketch showing Size of Lot, location of building on lot giving distances from sidelines. Also draw location of cesspool giving distances from nearest dwelling 5', nearest adjoining lot, 50', nearest street 20', and nearest water supply —



I certify that the above statements are correct and that all work done will comply with all By-Laws and Board of Health regulations of the Town of Truro.

FEE New Building \$2.50
Alteration \$1.00

Albert Annone
Signature of Applicant or Agent

Approved by [Signature]

Inspected by John O. Stott

Date Inspected Dec 8-1958

see over
#200

TOWN OF TRURO BUILDING PERMIT

110
Nº

Anna
 Planning Board Board of Health Fire Department
 Owner's Name *Crowsnest Cottages* Date *April 1, 19*
 Location of Property *Route 6A* Adjacent to *F. Hill*
 Non-resident Address
 Builder's Name and Address *Ralph Honey*
 Type of Building New Alteration Residence Business
 Distance of Building from Street (25' min), from nearest lotline (25'
 Estimated Cost *\$3000.00*
 Remarks *Addition to end of garage*
 Type of Cesspool *None*

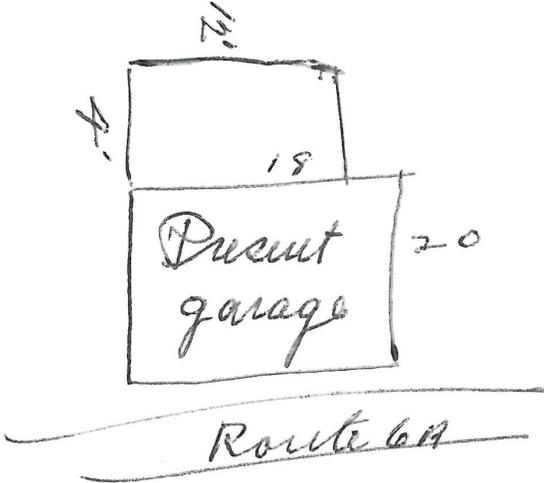
Distance from Cesspool to

}	nearest lotline (1)
	water supply (5)
	nearest bldg (2)
	nearest street (2)

Remarks
 Type of Chimney *None* Type of Fire Stops *Wood*

Draw a diagram below showing Lot Size, Streets, Building on lot, Water Supply, Cessp

This Permit is issued by the Town of Truro in accordance with the Truro By-Laws. However if the lot is within the boundaries of the Cape Cod National Seashore Park, the applicant is advised to clear this permit with the National Park Service in Eastham before starting construction.



I certify that the above statements are correct and that all work done will comply with above information and with all By-Laws, Board of Health Regulations, and Fire En Regulations of the Town of Truro.

Albert Annone Signature of Applicant or Agent
A. S. Bettencourt ~~Clerk~~ of Planning Board
A. S. Bettencourt Planning Board Inspector Date *April*

See V card #200

**TOWN OF TRURO
BUILDING PERMIT**

7-10

No *541*

Planning Board Board of Health Fire Department
Owner's Name *Crowsnest Cottages* Date *April 1, 1964*
Location of Property *Route 6A* Adjacent to *F. Henry*

Non-resident Address

Builder's Name and Address *Ralph Harvey*

Type of Building New Alteration Residence Business

Distance of Building from Street (25' min), from nearest lotline (25')

Estimated Cost *\$3000.00*

Remarks *Addition to end of garage*

Type of Cesspool *None*

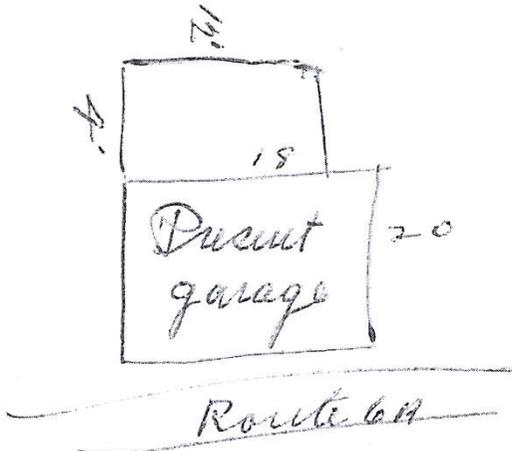
Distance from Cesspool to	}	nearest lotline	(1)
		water supply	(5)
		nearest bldg	(2)
		nearest street	(2)

Remarks

Type of Chimney *None* Type of Fire Stops *Wood*

Draw a diagram below showing Lot Size, Streets, Building on lot, Water Supply, Cessp

This Permit is issued by the Town of Truro in accordance with the Truro By-Laws. However if the lot is within the boundaries of the Cape Cod National Seashore Park, the applicant is advised to clear this permit with the National Park Service in Eastham before starting construction.



I certify that the above statements are correct and that all work done will comply w above information and with all By-Laws, Board of Health Regulations, and Fire En Regulations of the Town of Truro.

Robert Amone Signature of Applicant or Agent
A. S. Bittencourt Clerk of Planning Board
A. S. Bittencourt Planning Board Inspector Date *April 25, 1964*

By *Truro*
Sept 30
Pd 2.00

(moving of 2 encages)

TOWN OF TRURO

BUILDING PERMIT

No 629

Planning Board Board of Health Fire Department
 Owner's Name *Albert Annone* Date *Sept 25 1964*
 Location of Property *Rt. 6A Beach Pt. No. Truro* Adjacent to
 Non-resident Address *Permanent Resident*
 Builder's Name and Address *Bldg. to be moved on property*
 Type of Building New Alteration Residence Business
 Distance of Building from Street *30'* (25' min), from nearest lotline (25' min)
 Estimated Cost *The moving + erecting of two buildings is estimated*
 Remarks *at 2,500.*

Type of Cesspool

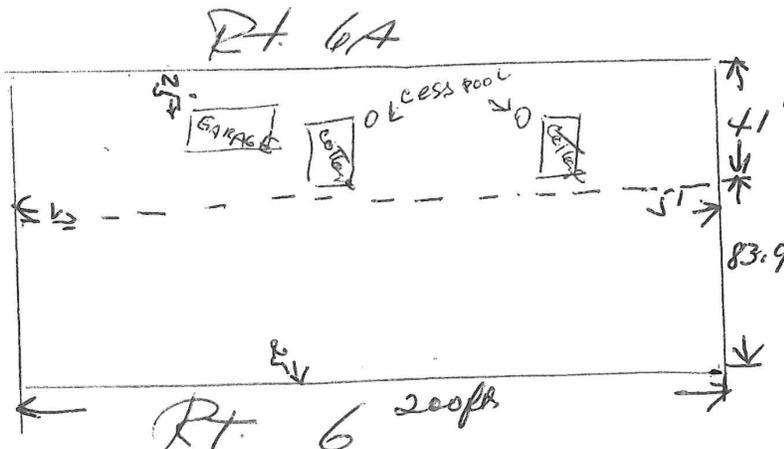
Distance from Cesspool to	}	nearest lotline (10' min) ✓
		water supply (50' min) ✓
		nearest bldg (20' min) ✓
		nearest street (20' min) ✓

Remarks *All one story bldg. under 23ft.*

Type of Chimney Type of Fire Stops

Draw a diagram below showing Lot Size, Streets, Building on lot, Water Supply, Cesspool.

This Permit is issued by the Town of Truro in accordance with the Truro By-Laws. However if the lot is within the boundaries of the Cape Cod National Seashore Park, the applicant is advised to clear this permit with the National Park Service in Eastham before starting construction.



I certify that the above statements are correct and that all work done will comply with the above information and with all By-Laws, Board of Health Regulations, and Fire Engineers Regulations of the Town of Truro.

Albert Annone Signature of Applicant or Agent
Catherine L. Murphy Clerk of Planning Board
 Planning Board Inspector Date

Permit issued contingent on conditions stated in letter of 9/30/64 fr. Mr. Annone based on RR letter of 9/9/64

Truro, Mass.
September 30, 1964

Truro Planning Board
Truro, Mass.

Gentlemen:

This letter is written in connection with my Application No. 629 for building permit.

I realize that the issuance of such permit is contingent upon the transfer by the New Haven Railroad to me of sufficient land to create, together with land I now own, a lot size of at least 22,500 square feet, and upon completion of the transfer in sufficient time to permit start of construction under the building permit within 90 days from today's date, and that action taken by me in contemplation of such timely transfer is at my own risk.

Any temporary placement of cottages on the property will conform to the Truro Zoning by-law requirements of 25' setback from front lotline, 5' per story sideline setback, and 30' separation between cottages. The 25' setback requirement from the rear lotline is considered to be temporarily resolved by the letter of September 9, 1964 from the Real Estate Agent of the New Haven Railroad to ~~your~~ attorney, *MY* Mr. S. Osborn Ball as follows:

"I am pleased to advise that we now have authority of our Trustees for the execution and delivery of a deed to your clients, Albert and Frances Annone, releasing any and all railroad right, title and interest in and to a parcel of land located in Truro, Massachusetts.

"The matter is being processed with all possible promptness for the transferring of title to the property."

Very truly yours,


Albert Annone

S. Osborn Ball

Attorney-at-Law

PROVINCETOWN, MASSACHUSETTS

Sept. 29, 1964

Re: Annone and removal of cottages

Dear Laurel:

Before bringing up the Annone matter, I wish to say that I wish we had had in Provincetown, and had had sooner in Truro a member of the Planning Board like yourself who takes it real conscantously. One may not be liked but I am sick of small town official who simply haven't the guts to say "no" and to follow the law.

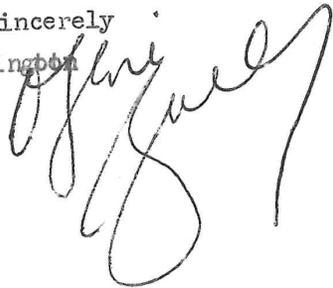
I had a run-in with Daisy about this but I guess he is like them all.

Now as to Annone, please do not consider me as interfering. I think that if you take up the matter of Annone's legal right with that lawyer across the bay whom you said was tops, he would agree with this:

Our Supreme Court has ruled that a lease of land gives the applicant as much a right as does it if the applicant either owns the land or has a life use in it.** In short, all that is necessary is a legal interest.

Years ago I arranged for George Barnes to lease the land from the railroad and then when the sale to Annone took place, the lease was assigned to Annone. I have also arranged for the sale of the land by the RR to Annone. I enclose a letter to this effect. Thus I believe that unless there is some other reason to preclude this matter, it is lawful to grant it.

Sincerely



*
erson v Appeals Board, Lexington
'5NE 2nd ll6 proves this.

enc.1 re sale
" 1 the lease

7-4

68-94

THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF TRURO
APPLICATION FOR BUILDING PERMIT

Date Oct 15 1968 Board of Health Permit No. 69 Paid 2.00

OWNER'S NAME _____ NON RESIDENT ADDRESS _____

LOCATION OF PROPERTY _____ ADJACENT TO: _____

BUILDER'S NAME AND ADDRESS _____

Explain in detail work being done. Small addition to existing building

Is there any change of use _____

Estimated Cost _____ Type Chimney _____ Firestops _____

If this is a public building with over 35,000 cubic feet a Registered Architect's plan must accompany this application.

Number of stories (exclusive of attic, basement, cellar) _____ Is there an attic _____

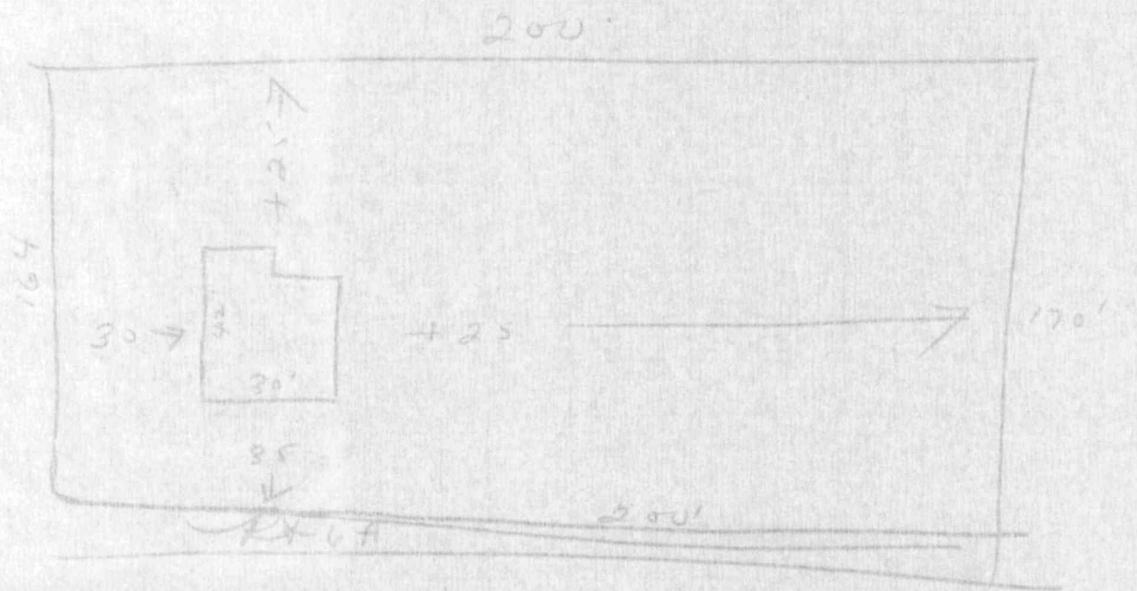
basement _____ cellar _____ Height from mean ground level to: Coping of flat roof _____

decline of mansard roof _____ Mean height level between eaves and ridge of

gable, hip, or gambrel roof (max all 23 feet.) Height from mean ground level to highest point gable, hip,

or gambrel roof 'max 30 _____

Draw a diagram showing—1. Shape and dimensions of lot and area (in square feet). 2. Streets. 3. Existing buildings—if any and any new building or addition. 4. Distance of new or existing building to all lines of lot.



I certify that the above statements are correct and that all work done will comply with all By-Laws, Board of Health Regulations, and Fire Engineers Regulations of the Town of Truro. The Applicant agrees to give the Building Inspector notice before enclosing the studding on this building.

This permit is issued by the Town of Truro in accordance with the Truro By-Laws. However if property is within the boundaries of the Cape Cod National Seashore Park, the applicant is advised to clear this permit with the National Park Service, Eastham, Massachusetts before starting construction.

Signature of Applicant or Agent

Signature Planning Board

Signature Building Inspector

Accepted X Refused _____ Reason _____ DATE _____

BE E
OVERWRITE
12/15/23

7-4

THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF TRURO
APPLICATION FOR BUILDING PERMIT

Date Oct 15 1968 Board of Health Permit No. 69 Paid 2.00

Albert Hanson
OWNER'S NAME Route 6A North Truro Mass LOCATION OF PROPERTY Non Resident Address ADJACENT TO: Van Coms durs

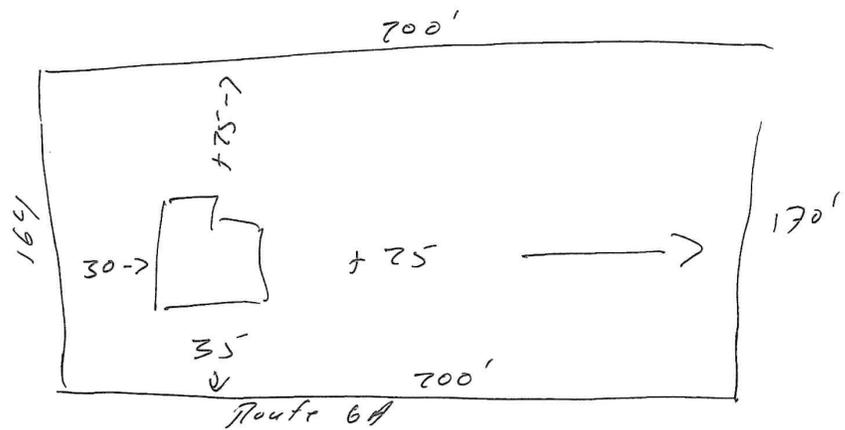
Explain in detail work being done Move house from Beach Point to Route 6A No Truro and use as dwelling

Is there any change of use no
Estimated Cost (?) Type Chimney Brick Firestops wood

If this is a public building with over 35,000 cubic feet a Registered Architect's plan must accompany this application.

Number of stories (exclusive of attic, basement, cellar) 1 Is there an attic yes
basement yes cellar _____ Height from mean ground level to: Coping of flat roof _____, decline of mansard roof _____ Mean height level between eaves and ridge of gable, hip, or gambrel roof (max all 23 feet.) Height from mean ground level to highest point (gable, hip, or gambrel roof 'max 30) 17

Draw a diagram showing—1. Shape and dimensions of lot and area (in square feet). 2. Streets. 3. Existing buildings—if any and any new building or addition. 4. Distance of new or existing building to all lines of lot.



I certify that the above statements are correct and that all work done will comply with all By-Laws, Board of Health Regulations, and Fire Engineers Regulations of the Town of Truro. The Applicant agrees to give the Building Inspector notice before enclosing the studding on this building.

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Albert Hanson Signature of Applicant or Agent
Pauline H. Sawyer Signature Planning Board

Signature Building Inspector

Accepted X Refused _____ Reason _____ DATE _____

Truro Zoning Board of Appeals

2024 Hearing/Meeting Schedule

HEARING/MEETING (Monday at 5:30 pm)	FILING OF NEW APPLICATIONS <i>Electronic and Paper</i> (Due by Noon)	SUPPLEMENTAL FILING <i>Electronic and Paper</i> (Due by Monday Noon of the <i>prior</i> week) (Unless otherwise noted*)
January 22	December 22, 2023	January 16*
February 26	January 26	February 20*
March 25	February 23	March 18
April 29	March 29	April 22
May 20	April 19	May 13
June 24	May 24	June 17
July 22	June 21	July 15
August 19	July 19	August 12
September 23	August 23	September 16
October 21	September 20	October 15*
November 18	October 18	November 12*
December 16	November 15	December 9

MEETING DATES AND TIMES ARE SUBJECT TO CHANGE

Please check the Town Website www.truro-ma.gov for any changes in the schedule