

Truro Board of Health

Tuesday April 19, 2022
Regular Meeting- 4:30 PM

REGULAR MEETING

Remote Meeting Access Instructions

This will be a remote meeting. Citizens in Truro can view the meeting on Channel 18 and on the homepage of the Town of Truro website on the "Truro TV Channel 18" button found under "Helpful Links". To view, click on the green "Watch" button in the upper right of the page. To provide comment during the meeting, please call in toll free at 1-866-899-4679 and enter the following access code when prompted: 972-302-709; or access the meeting from your computer, tablet or smartphone. <https://global.gotomeeting.com/join/972302709> There may be a slight delay (15-30 seconds) between the meeting and the live-stream and television broadcast. If you are watching the meeting and calling in, please lower the volume on your computer or television during public comment so that you may be heard clearly. We ask that you identify yourself when calling in to help us manage multiple callers effectively. Citizens may also provide public comment for this meeting by emailing the Health Agent Emily Beebe at ebecbe@truro-ma.gov with your comments.

I. PUBLIC COMMENT

Please note that 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

II. AGENDA ITEMS

1. **Change of Manager:** Ebb Tide Condominiums, 538 Shore Road
2. **Addition of co-Manager:** Beach Point Co-Op, 169 Shore Road
3. **Change of Manager:** Sladeville Condominiums, 2 Meetinghouse Road
4. **Farmers Market:** New Applicant – Ellery Althaus/Bagel Hound

5. **Variance Requests/Local Upgrade Approval:** 127 & 133 South Pamet Road, Dennis/Whitelaw
(continued from the 4/5/2022 meeting)(The applicant has requested a continuance until May 3,2022)
6. **Variance Request:** 51 South Pamet Road, map 51, parcel 49

7. **Discussion on Annual Town Meeting 2022- April 30 and outdoors**

8. **Groundwater Resources Discussion**

III. MINUTES:

IV. REPORTS

- o Report of the Chair
- o Health Agent's Report



TOWN OF TRURO

HEALTH DEPARTMENT
TOWN OF TRURO

Health Department
P.O. Box 2030, Truro, MA 02666
PH: 508-349-7004, Ext. 131 Fax: 508-349-5508
Email: ebeebe@truro-ma.gov or adavis@truro-ma.gov

FEB 09 2022

RECEIVED BY:

PAID
10/3

APPLICATION TO NAME A MANAGER

This application is used for a Change of Manager, Add Co-Managers or to Name a Property Management Company as Manager with the Board of Health

Section 1 - Business Information

Date: 2/9/2022

Print Name of Applicant: EBB TIDE ON THE BAY

Business Name or DBA to be managed: EBB TIDE ON THE BAY Number of Units: 6

Street Address of Business: 538 Shore Rd Business Email:

info@rkmpropertymanagement.com

Mailing Address of Business: (Check if New Address) 74 Shank Painter Rd, Provincetown
02657

Section 2 - Manager Information

Name of Previous Manager: Peters Property Mgmt On-Site Manager Unit #: _____

Name of New Onsite Manager: N/A On-Site Manager Unit #: _____

Name of Property Management (10 Units or less): RKM Property Management

Mailing Address of New Manager and/or Property Management Company: 74 Shank Painter Rd

Provincetown 02657 Phone (24 hours/day): 508-487-1621 Email: _____

Name of Co-Managers: _____ Unit # _____ Phone (24hrs/day): _____
info@rkmpropertymanagement.com

Unit # _____ Phone (24hrs/day): _____

Unit # _____ Phone (24hrs/day): _____

I have read & understand the Board of Health Manager Regulation, Section III, Article 4. Signature of New Manager, Co-Managers or Contact Person for Property Management is required.

Pussilla Silva
SIGNATURE

Pussilla Silva
PRINT NAME

2/9/22
DATE

SIGNATURE

PRINT NAME

DATE

SIGNATURE

PRINT NAME

DATE

Section 3 - **Office Use Only**

Team Inspection
(If over 3yrs since last one)

Scheduled

Date 4/12/22 12:30pm

Fee

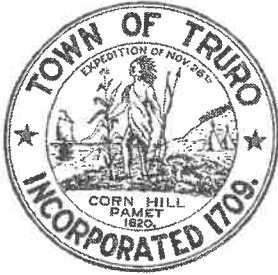
\$5.00

Paid

Board of Health Hearing

4/19/22

\$75.00



TOWN OF TRURO

Health Department

P.O. Box 2030, Truro, MA 02666

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

Email: ebeebe@truro-ma.gov or adavis@truro-ma.gov

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APPLICATION TO NAME A MANAGER

This application is used for a Change of Manager, Add Co-Managers or Property Management Company as Manager with the Board of Health

Section 1 - Business Information

Date: 03/29/2022

Print Name of Applicant: Emil J. Kudryk

Business Name or DBA to be managed: Beach Point Pagodas Number of Units: 24

Street Address of Business: 169 Shore Rd Business Email: info@pagodas.com **781**

Mailing Address of Business: (Check if New Address) PO Box 371 N Truro MA 02666

Section 2 - Manager Information

Name of Primary Manager: Frank Mita On-Site Manager Unit #: 3 & 4

Name of CO-Onsite Manager: Emil J Kudryk On-Site Manager Unit #: 19

Name of Property Management (10 Units or less): _____

Mailing Address of New Manager and/or Property Management Company: PO Box 371 N Truro MA

_____ Phone (24 hours/day): 5087762117 Email: beachpointpagodas@gmail.com

Name of Co-Managers:

Emil J Kudryk Unit # 19 Phone (24hrs/day): 7818447083

Bill & Kathy Dunn Unit # 10 & 11 Phone (24hrs/day): 5082771346

Rich & Pat Small Unit # 25 Phone (24hrs/day): on file

Katherine Buck Unit # 7 Phone (24hrs/day): 9174035023

I have read & understand the Board of Health Manager Regulation, Section III, Article 4. Signature of Manager, Co-Managers or Contact Person for Property Management is required.

Emil J. Kudryk Emil J. Kudryk 4/2/2022
SIGNATURE PRINT NAME DATE

SIGNATURE PRINT NAME DATE

SIGNATURE PRINT NAME DATE

SIGNATURE PRINT NAME DATE



TOWN OF TRURO

HEALTH DEPARTMENT
TOWN OF TRURO

Health Department
P.O. Box 2030, Truro, MA 02666
PH: 508-349-7004, Ext. 131 Fax: 508-349-5508
Email: ebeebe@truro-ma.gov or adavis@truro-ma.gov **MAR 23 2022**
RECEIVED BY:

APPLICATION TO NAME A MANAGER

This application is used for a Change of Manager, Add Co-Managers or to Name a Property Management Company as Manager with the Board of Health

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300

Section 1 - Business Information

Date: _____
Print Name of Applicant: Sladeville Cottages Condominium Trust
Business Name or DBA to be managed: _____ Number of Units: 9
Street Address of Business: 2 Meetinghouse Rd, Truro Business Email: info@rkmpropertymanagement.com
Mailing Address of Business: (Check if New Address) c/o RKM, 74 Shank Painter Rd, Provincetown, MA 02657

Section 2 - Manager Information

Name of Previous Manager: Breon Dunnigan On-Site Manager Unit #: _____
Name of New Onsite Manager: _____ On-Site Manager Unit #: _____
Name of Property Management (10 Units or less): RKM Property Management
Mailing Address of New Manager and/or Property Management Company: 74 Shank Painter Rd
Provincetown, MA 02657 Phone (24 hours/day): 508-487-1621 Email: _____
Name of Co-Managers: _____ info@rkmpropertymanagement.com

Unit # _____ Phone (24hrs/day): _____

Unit # _____ Phone (24hrs/day): _____

Unit # _____ Phone (24hrs/day): _____

I have read & understand the Board of Health Manager Regulation, Section III, Article 4. Signature of New Manager, Co-Managers or Contact Person for Property Management is required.

Priscilla Silva
SIGNATURE

Priscilla Silva
PRINT NAME

3/10/22
DATE

SIGNATURE

PRINT NAME

DATE

SIGNATURE

PRINT NAME

DATE

Section 3 - **Office Use Only**

Team Inspection
(If over 3yrs since last one)

Scheduled

Date 4/19/22 12:30pm

Fee \$45.00

Paid

Board of Health Hearing

875.00



2022-001

HEALTH DEPARTMENT
TOWN OF TRURO

SUBMIT COMPLETED FORM TO THE HEALTH DEPARTMENT

APR 05 2022

Town of Truro

Farmers Market/Ag Fair/Temporary Food Service Permit

RECEIVED BY:

PAID

Applicant (check one) private individual, organization or business non-profit organization
[must attach copy of Form 501(3)(c)]

Name of Business/Organization: Bagel Hound
Address: 955 State Highway Wellfleet MA 02667

Authorized Representative or Contact:

Name: Ellery Althaus Email: ellkmu@gmail.com
Address: P.O. Box 992

Telephone Days: (508) 6815969 Evenings: () Fax _____

Requested Location/Facility Truro Farmers Market

Requested Dates 5/11

Requested Times _____ Rain Dates/Times (Must be completed) _____

Before completing this application, read the temporary food service "Are You Ready?" Checklist. Have you read this material?
 YES NO

FARMERS MARKET: FOODS TO BE SOLD/SERVED

Foods to be Sold/Served

Packaged Baked Goods (breads, pies, cookies, cakes and confectionaries). Cream filled pastries, cheese cake or custard type pastries prohibited.

- Seed sprouts
- Jams or Jellies
- Shellfish: Lobster, Crab, Oysters, Clams
- Finfish
- Vinegar with or without herbs

Dairy: Milk or milk products such as cheese.

Meat or Poultry (processed in a federal/state licensed inspected facility)

Other: _____

Food Sampling: Y or N If yes, attach sampling protocol.

Base of Operations

Foods prepared/processed at a Truro licensed facility. Name of licensed facility: _____

Foods prepared/processed outside Truro. Please attach a copy of your state or local food processing facility license, food establishment permit, food manufacturing license or residential kitchen permit and copy of your most recent inspection report.

I agree to any conditions specified by the Board of Health, Board of Health Farmer's Market Policy, 105 CMR 590.000 Minimum Sanitation Standards for Food Establishments - Chapter X, and the Federal 1999 Food Code.

PLEASE ATTACH COPY OF YOUR FOOD MANAGER CERTIFICATION AND ALLERGY AWARENESS TRAINING CERTIFICATE WITH THIS APPLICATION

[Signature]
APPLICANT'S SIGNATURE

DATE 02/16/22

Market Manager Approval

As the Market Manager for the Truro Farmer's Market, I have authorized the applicant to participate as a vendor.

[Signature] 03/29/2022
Market Manager Signature Date

AGRICULTURAL FAIR/TEMPORARY FOOD SERVICE

Menu: Attach or list all items. Any changes must be submitted and approved by the Health Department prior to the event.

Organizations Conducting Food Preparation:

List Names of all staff with a Food Manager Certification: (non-profit organizations, school events, church suppers and fairs exempt).

- 1. Ellery Althaus Exp. Date: 1/15/24
- 2. _____ Exp. Date: / /

List Names of all staff with an Allergen Awareness Certification: (non-profit organizations, school events, church suppers and fairs exempt).

- 1. Ellery Althaus Exp. Date: 11/25/24
- 2. _____ Exp. Date: / /

Base of Operation: (licensed fixed food establishment): _____

List each potentially hazardous food item, and for each item check which preparation procedure will occur.

Menu Items	Thaw	Cut/ Assemble	Cook	Cool	Cold Holding	Reheat	Hot Holding	Portion Package
1. Bagels			cook	cool				Package
2.								
3. Cream cheese		Mix				cool		
4.								
5.								

SECTION B: At the booth:

Menu Items	Thaw	Cut/ Assemble	Cook	Cool	Cold Holding	Reheat	Hot Holding	Portion Package
1. Bagels								
2.								
3. Cream cheese								
4.								
5.								

Note: If your food preparation procedures cannot fit these charts, please list all of the steps in preparing each menu item on an attached sheet.

Food Sampling: Y or (N) If yes, attach sampling protocol.

I agree to any conditions specified by the Board of Health, 105 CMR 590.000 Minimum Sanitation Standards for Food Establishments - Chapter X, and the Federal 1999 Food Code. The above described establishment will be operated and maintained in accordance with the regulations.

[Signature]
APPLICANT'S SIGNATURE

02/16/22
DATE

HEALTH DEPARTMENT APPROVAL

Board of Health Comments or Conditions:

Approved _____ Not Approved _____

BOH or Health Agent

Date

ServSafe
National Restaurant Association

ServSafe® CERTIFICATION

ELLERY ALTHAUS

for successfully completing the standards set forth for the ServSafe® Food Protection Manager Certification Examination, which is accredited by the American National Standards Institute (ANSI)-Conference for Food Protection (CFP).



#0655

CERTIFICATION NUMBER

1/15/2019

DATE OF EXAMINATION

Local laws apply. Check with your local regulatory agency for recertification requirements.

Sherman Brown
Executive Vice President, National Restaurant Association Solutions

5405

EXAM FORM NUMBER

1/15/2024

DATE OF EXPIRATION



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Contact us with questions at 233 S. Wacker Drive, Suite 3600, Chicago, IL 60606-6383 or ServSafe@restaurant.org.

CERTIFICATE OF ALLERGEN AWARENESS TRAINING

Name of Recipient: ELLERY ALTHAUS

Certificate Number: [REDACTED]

Date of Completion: 11/25/2019

Date of Expiration: 11/25/2024



The above-named person is hereby issued this certificate for completing an allergen awareness training program recognized by the Massachusetts Department of Public Health in accordance with 105 CMR 590.009(G)(3)(a).

This certificate will be valid for five (5) years from date of completion.

Issued By:

Massachusetts Restaurant Association
333 Turnpike Road, Suite 102
Southborough, MA 01772
508-303-9905
www.marestaurantassoc.org

800.765.2122
www.restaurant.org

Arozana Davis

From: Benjamin Zehnder <bzehnder@zehnderllc.com>
Sent: Thursday, April 14, 2022 9:55 AM
To: Emily Beebe; Arozana Davis
Cc: Dave Michniewicz; Tom Dennis; David Michniewicz
Subject: 127 South Pamet Road BOH review

Hello Emily:

I am requesting that the Board of Health review for 127 South Pamet Road be continued until the Board's May 3, 2022 meeting.

My thanks and regards to you and the Board.

Ben

Please note new email and contact information below and update your address book:

Benjamin E. Zehnder
Benjamin E. Zehnder, LLC
62 Route 6A, Unit B
Orleans, MA 02653
508.255.7766 – Office
508.246.4064 – Mobile
bzehnder@zehnderllc.com

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United States Department of the Interior

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

IN REPLY REFER TO:

A90

Tract No. 12-2760 and 2761

April 5, 2022

Tracey Rose, Chair
Truro Board of Health
24 Town Hall Road, P.O. Box 2030
Truro, MA 02666

Dear Ms. Rose:

We are writing with great concern about relocation of a single-family residence formerly at 133 South Pamet Road in Truro, MA. The house at 133 South Pamet Road should not be allowed to be constructed on 127 South Pamet Road enabled by multiple variances. There are numerous reasons for this position: 1) inappropriate issuance of a new foundation building permit on a non-conforming lot, 2) an existing zoning violation in the Seashore District, and 3) the detriment of adding a house with additional bedrooms and expanding a septic system in close proximity to sensitive regulated resource areas.

The building permit for the foundation location that was issued given incomplete and inaccurate information is under appeal by an abutter; the validity of the permit is directly contradicted by the March 25, 2022, staff report written by Truro Planner-Land Use Counsel Barbara Carboni (see attached). Ms. Carboni refutes the lot area rationale used by the applicants, which is germane to the Board of Health and affects the total proposed bedroom count.

The septic system is proposed to accommodate three houses on a single-family property in the single-family Seashore District. As we have seen repeatedly it is not enough to say that a studio will not have a kitchen or to remove a kitchen. "Accessory dwellings" have been routinely rented out separately from a single-family residence. Please see the property's rental website <https://www.ballstonbeachgetaway.com/> that describes that there is a kitchen in what they call the studio / cottage on 127 South Pamet already located on the property and separately rented; the existence of this house as a second single-family dwelling is a zoning violation. Since the applicants have a kitchen in the second house as per the house rental website despite assurances, the house to be moved could potentially become a third single-family residence rented out separately in a single-family zone, the Seashore District.

This request for additional bedrooms and septic system alterations further adversely impacts

sensitive regulated resource areas, including floodplain, coastal bank, and wetland and riverfront buffer zones, so the proposed siting of the house and expanded septic system is in a very vulnerable area that is not all upland; the floodplain here is routinely changing as the property is greatly impacted by the Ballston Beach overwash, so approval of state and local variances is not prudent public policy.

The Seashore District is a single-family residential conservation district, and we urge that high standards for special permits and variances be exercised. We hope that you will deny the variance application.

Sincerely,

/s/ Brian Carlstrom



Brian T. Carlstrom
Superintendent

cc:

Town Administrator
Town Planner

MEMORANDUM

To: Truro Zoning Board of Appeals

From: Barbara Carboni, Town Planner and Land Use Counsel

Date: March 25, 2022

Re: March 28, 2022 meeting

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

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

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

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

I. Chronology

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

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

¹ Terms included:

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

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

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

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

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

² In the Project Narrative, applicants identified lot area as 73,200 square feet and stated that the lot is "non-conforming as to minimum lot size."

³ Assessor's records contain a comment "Has kitch[en] but no stove"; Building Department records do not authorize a kitchen in the second structure.

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

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

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

Analysis of each request for relief follows.

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

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

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

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

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

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

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

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

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

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

[2] a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, *and*

[3] that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.”

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

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

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

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

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

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

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

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

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

III. Building Permit Application and 2nd application to ZBA

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

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

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

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

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

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

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

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

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

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

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

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

⁷ As counsel further stated:

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

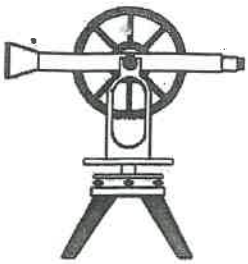
the combined lot area of 127 and 133 South Pamet – now claimed to be 4.68 acres - is sufficient to allow a Seashore District Total Gross Floor Area of 3,936 square feet.⁸ The square footage of the three structures were provided as 725 sq.ft (existing studio); 1,659 sq.ft (existing dwelling); and 1,540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

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

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

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

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



J.C. ELLIS DESIGN COMPANY, INC.

SEPTIC SYSTEM DESIGN & ENGINEERING – SEPTIC INSPECTION –
SITE PLANNING – WETLAND CONSULTATION & PERMITTING
P.O. BOX 81, NORTH EASTHAM, MA 02651 PHONE 508-240-2220 FAX 508-240-2221
EMAIL jcellisdesign@verizon.net

April 8, 2022

Truro Board of Health
24 Town Hall Road
P.O. Box 2030
Truro, MA 02666

HEALTH DEPARTMENT
TOWN OF TRURO

APR 08 2022

RECEIVED BY:

**Re: Variance Requests – Septic System Upgrade
Denton Family Revoc. Trust, c/o Jeffrey Denton
51 South Pamet Road, Truro, MA
Assessor's Map 51 Parcel 49**

Dear Board,

The Denton Family Revoc. Trust (c/o Jeffrey Denton) is proposing an upgrade of the existing cesspools at 51 South Pamet Road. Due to the proximity to wetland resource areas (flood zone), variances are required to install the new septic system:

Specifically, the following 3 variances are sought to install the new septic system.

Truro Board of Health Regulations – Section VI, Article 9

1. 83' from proposed soil absorption system to flood zone
(150' required, 67' provided, 83' variance requested)
2. 34' from proposed septic tank to flood zone
(100' required, 66' provided, 34' variance requested)

310 CMR 15.248

3. No reserve area provided.

Thank you for your attention to this matter.

Sincerely,


Jason C. Ellis, R.S., L.S.I.T.
J.C. Ellis Design Co., Inc.

Cc: file

Fee: \$75.00



APPLICATION FOR BOARD OF HEALTH VARIANCES

Date: 4-8-2022

Property Owner's Name: Denton Family Revoc. Trust

Mailing Address: 8010 Mount Huron Trail, Colorado Springs, CO 80924

Address of Property: 51 South Pamet Road

Map and Parcel Number: Map # 51 Parcel # 49

Design Engineer/Sanitarian Jason C. Ellis, R.S.

Firm/Company Name: J.C. Ellis Design Co Inc Phone #: 508-240-2220

Address: P.O. Box 81, N. Eastham MA 02651

Please check type of variance requested:

Title 5 Variance Request: Section 310 CMR 15.248

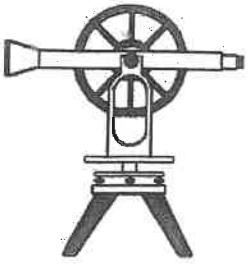
Board of Health Variance Request: Section/Article Section VI Article 9

Signature (Representative)

4-8-2022

Date

Signature (Property Owner)



J.C. ELLIS DESIGN COMPANY, INC.

SEPTIC SYSTEM DESIGN & ENGINEERING – SEPTIC INSPECTION –
SITE PLANNING – WETLAND CONSULTATION & PERMITTING
P.O. BOX 81, NORTH EASTHAM, MA 02651 PHONE 508-240-2220 FAX 508-240-2221
EMAIL jcellisdesign@verizon.net

April 8, 2022

**Re: Variance Requests – Septic System Upgrade
Denton Family Revoc. Trust, c/o Jeffrey Denton
51 South Pamet Road, Truro, MA
Assessor's Map 51 Parcel 49**

Dear Abutter,

The Denton Family Revoc. Trust (c/o Jeffrey Denton) is proposing an upgrade of the existing cesspools at 51 South Pamet Road. Due to the proximity to wetland resource areas (flood zone), variances are required to install the new septic system:

Specifically, the following 3 variances are sought to install the new septic system.

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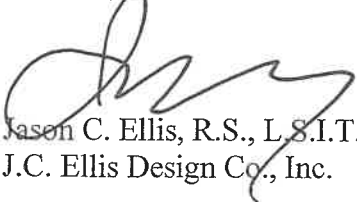
310 CMR 15.248

3. No reserve area provided.

The Truro Board of Health will hold a public hearing to consider these variance requests on Tuesday, April 19, 2022, at 4:30 p.m. in the Selectmen's meeting room in Truro Town Hall, located at 24 Town Hall Road. If you are interested in attending the hearing, please confirm the hearing date, time and location with the Truro Health Department at 508-349-7004, ext. 32.

Thank you for your attention to this matter.

Sincerely,

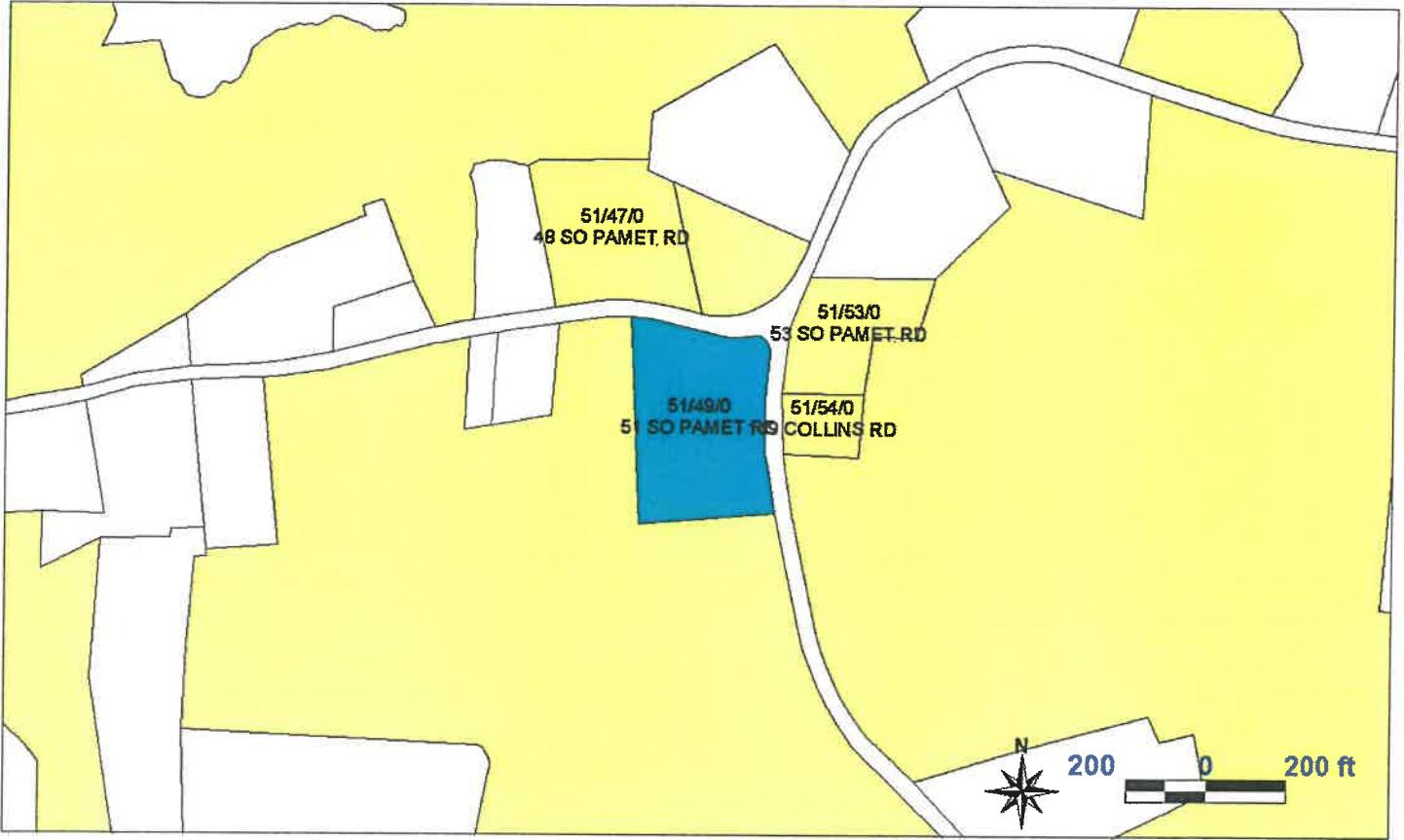


Jason C. Ellis, R.S., L.S.I.T.
J.C. Ellis Design Co., Inc.

Cc: file

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

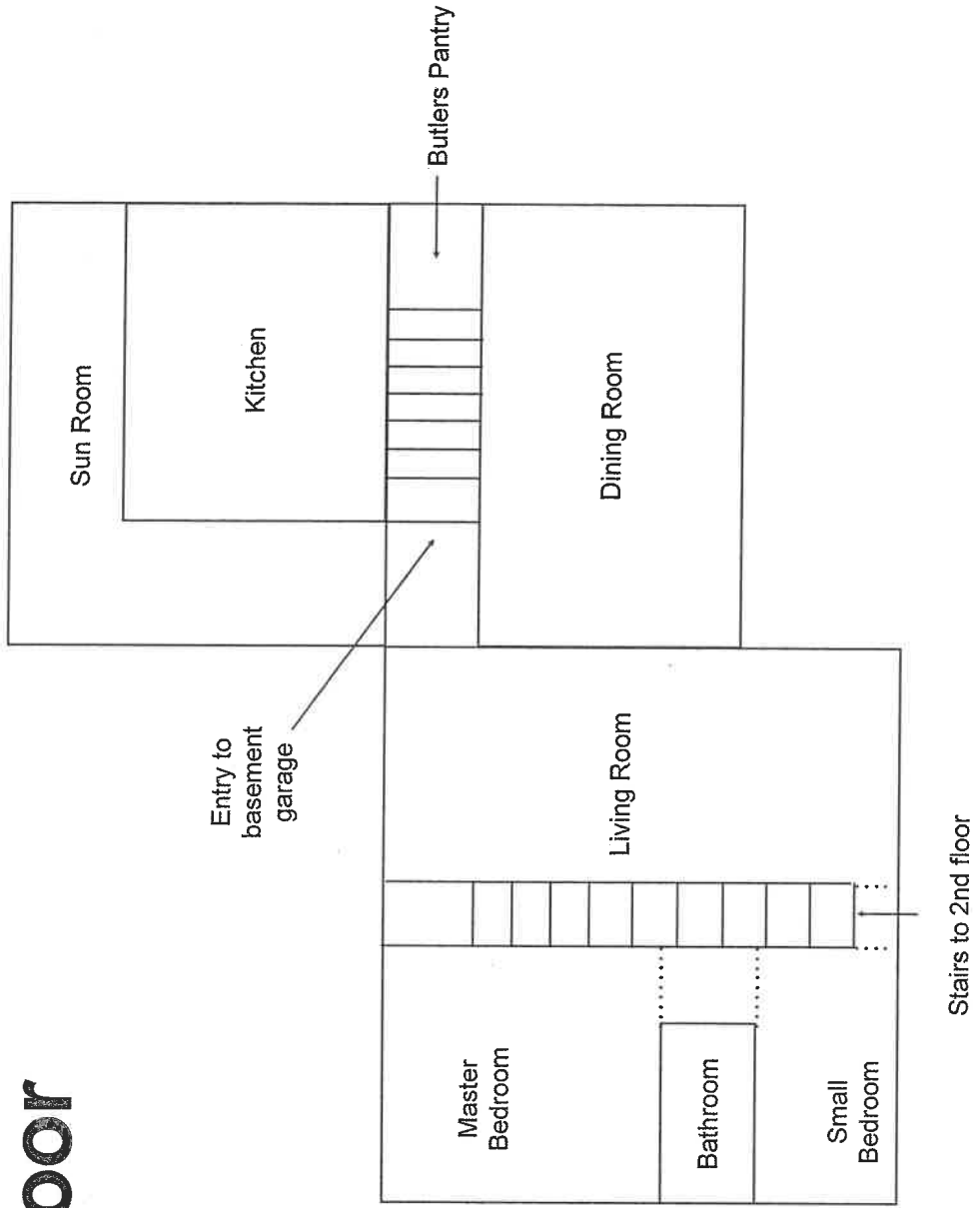
Custom Abutters List



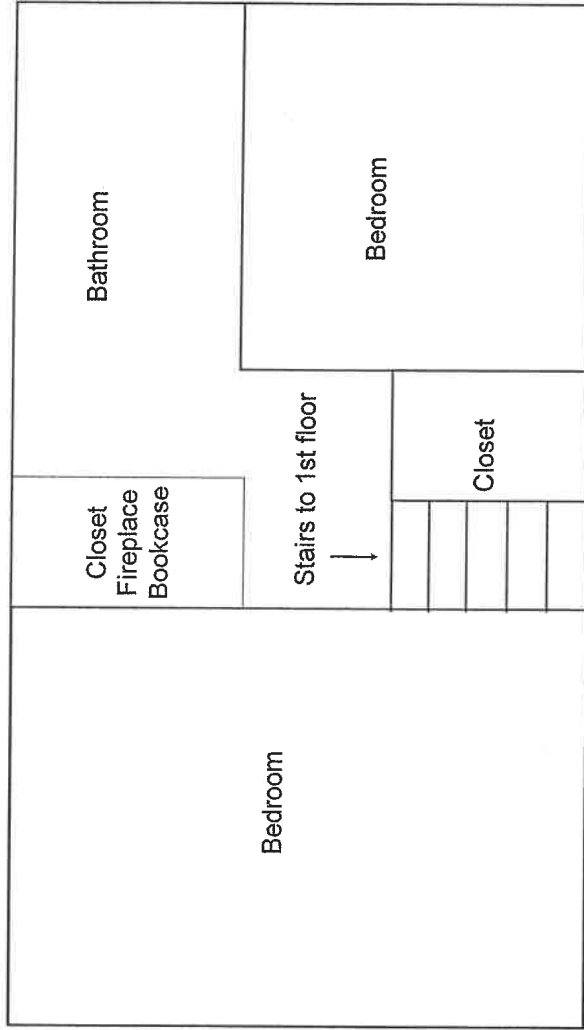
Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	ZipCd/Country
7292	40-999-0-E	USA-DEPT OF INTERIOR Cape Cod National Seashore	0 CAPE COD NATIONAL SEASHORE	99 Marconi Site Rd	Wellfleet	MA	02667
3093	51-47-0-R	ANTHONY ELLEN ROE & PETER DEAN	48 SO PAMET RD	PO BOX 712	TRURO	MA	02666
3099	51-53-0-R	KOCH JOHN & SHARON	53 SO PAMET RD	PO BOX 1192	TRURO	MA	02666
3100	51-54-0-R	PAISNER DANIEL & MEDOFF NANCY	149 COLLINS RD	16 WARWICK RD, UNIT 1	BROOKLINE	MA	02445

LG 3/24/2022

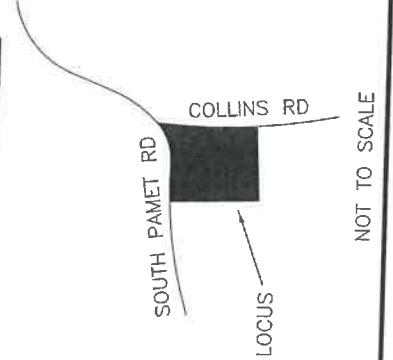
First Floor



Second Floor



LOCUS MAP



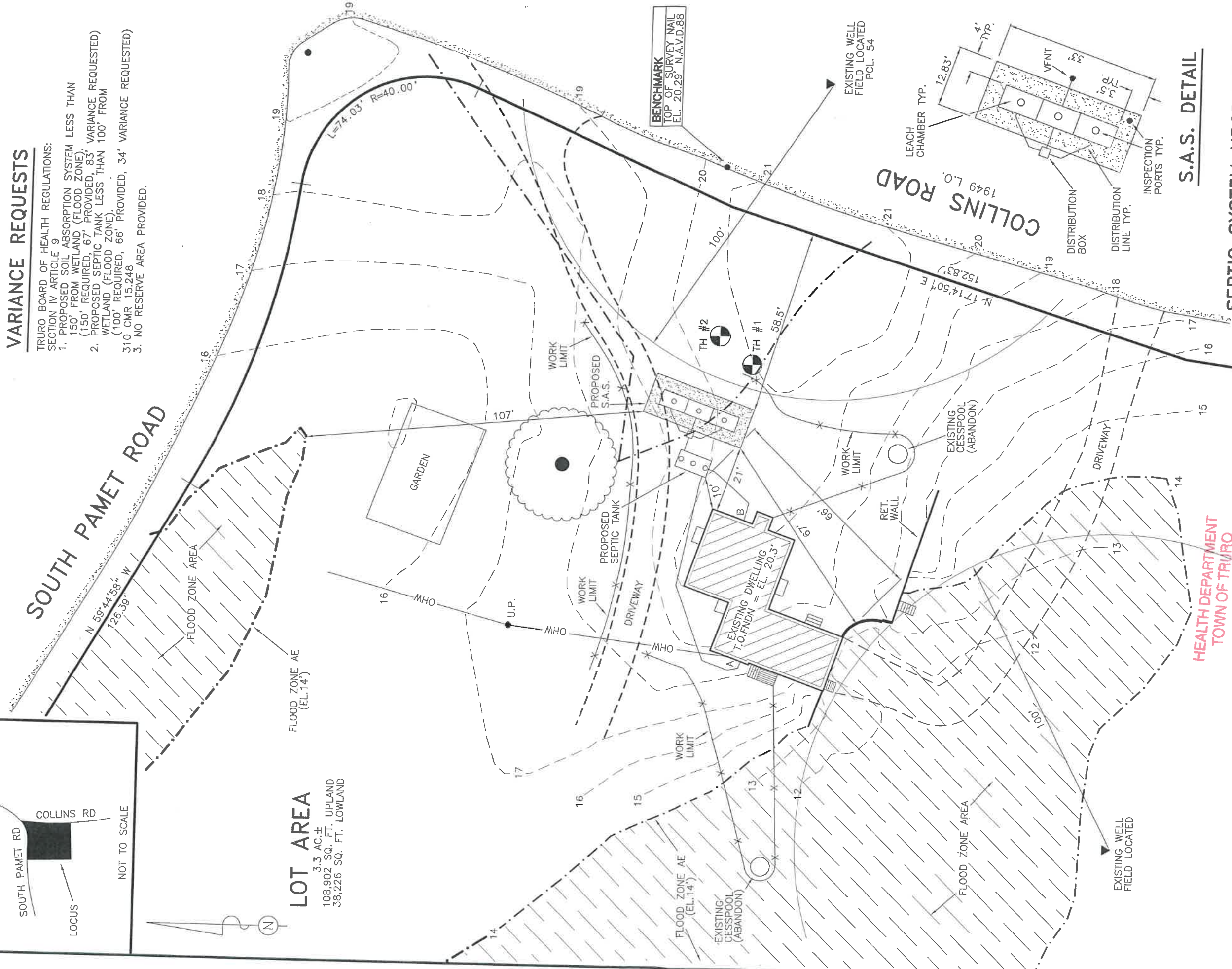
NOT TO SCALE

THIS PLAN REQUIRES CONSERVATION COMMISSION APPROVAL.
 WORK LIMIT TO BE STAKED SILT FENCE.
 ALL DISTURBED AREAS TO BE REVEGETATED WITH CONSERVATION GRASS SEED MIX.

VARIANCE REQUESTS

TRURO BOARD OF HEALTH REGULATIONS:
 SECTION IV ARTICLE 9

1. PROPOSED SOIL ABSORPTION SYSTEM LESS THAN 150' FROM WETLAND (FLOOD ZONE); (150' REQUIRED, 67' PROVIDED, 83' VARIANCE REQUESTED)
2. PROPOSED SEPTIC TANK LESS THAN 100' FROM WETLAND (FLOOD ZONE); (100' REQUIRED, 66' PROVIDED, 34' VARIANCE REQUESTED)
3. NO RESERVE AREA PROVIDED.



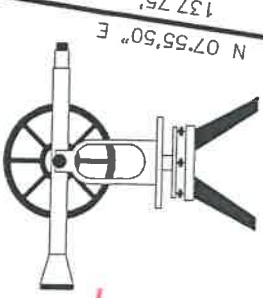
LOT AREA

3.3 AC. ±
 108,902 SQ. FT. UPLAND
 38,226 SQ. FT. LOWLAND

HEALTH DEPARTMENT
 TOWN OF TRURO

APR 08 2022
 RECEIVED BY:

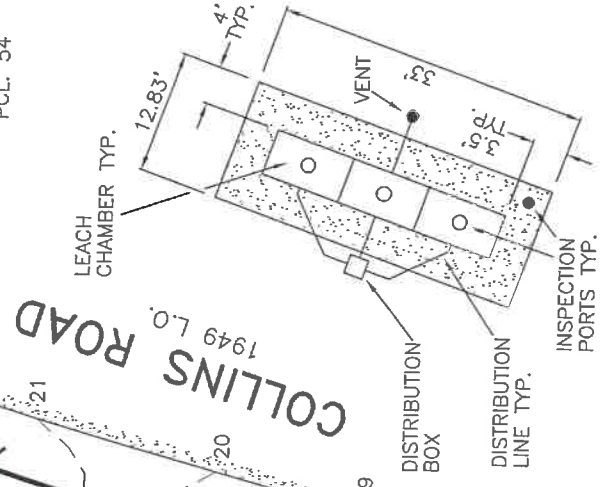
J.C. ELLIS DESIGN



SURVEY PLAN REFERENCE:
 PLAN BOOK 215 PAGE 3
 PLAN BOOK 86 PAGE 65 F2
 SOUTH PAMET ROAD LAYOUT
 THIS PLAN IS FOR SEPTIC SYSTEM
 DESIGN PURPOSES ONLY.
 THIS PLAN IS NOT FOR BOUNDARY
 DETERMINATION.
 PROPERTY OWNER AND
 CONTRACTORS TO VERIFY
 ALL WATER LINES AND GAS
 UTILITIES ON PROPERTY.

JASON C. ELLIS, R.S.

S.A.S. DETAIL

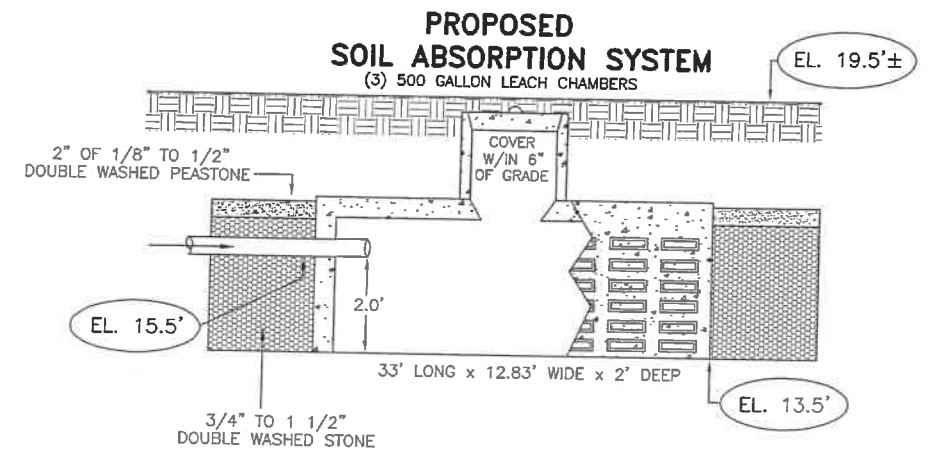
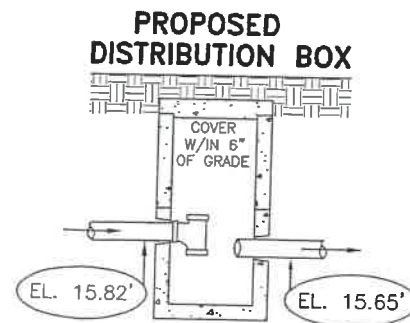
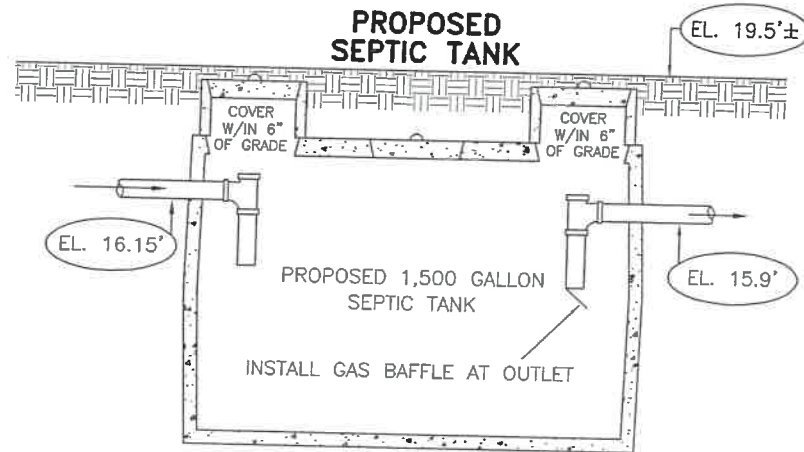
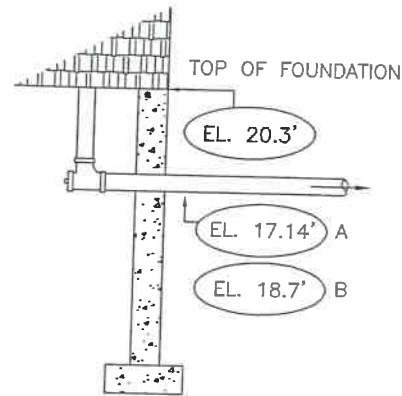


SEPTIC SYSTEM UPGRADE PLAN

SUBJECT: 51 SOUTH PAMET ROAD TRURO, MA	
PREPARED FOR: DENTON FAMILY REVOC. TRUST 8018 MOUNT HURON TRAIL COLORADO SPRINGS, CO 80924-8000	ASSESSOR'S MAP 51 PARCEL 49
DATE: MARCH 1, 2022	
SCALE: 1"=30'	
SHEET 1 OF 2	

SECTION DETAIL – COMPONENTS

NOT TO SCALE



DESIGN CALCULATIONS

FLOW RATE:

4 BEDROOM DWELLING = 440 G/P/D REQUIRED
 (110 G/P/D PER BEDROOM x 4 BEDROOMS)
 NO GARBAGE GRINDER ALLOWED

PROPOSED SEPTIC TANK:

440 G/P/D x 2 = 880 G/P/D REQUIRED
 USE 1500 GALLON SEPTIC TANK

PROPOSED SOIL ABSORPTION SYSTEM:

PERC RATE = <2 MIN/IN – CLASS I SOIL
 SIDEWALL = (33 + 12.83)(2)(2) = 183.32 S.F.
 BOTTOM: (33)(12.83) = 423.39 S.F.
 (183.32 + 423.39)(0.74) = 448.96 G/P/D PROVIDED
 USE: (3) 500 GALLON LEACH CHAMBERS W/ STONE
 AS SHOWN IN DETAIL.

NOTES

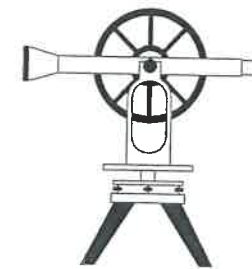
1. ALL PRECAST COMPONENTS TO BE H-20 RATED.
2. ELEVATION DATUM IS N.A.V.D. 1988.
3. MUNICIPAL WATER IS NOT AVAILABLE.
4. ALL CONSTRUCTION TO CONFORM WITH 310 CMR 15.000 AND ALL OTHER APPLICABLE LOCAL, STATE AND FEDERAL CODES AND REGULATIONS.
5. INSTALLER/CONTRACTOR TO REVIEW & VERIFY ALL ELEVATIONS AND DETAILS AND REPORT ANY DISCREPANCIES TO DESIGNER PRIOR TO CONSTRUCTION OR ASSUME ALL RESPONSIBILITY.
6. INSTALLER/CONTRACTOR IS RESPONSIBLE FOR MAINTAINING SAFE WORK AREA, VERIFYING ALL UTILITIES AND NOTIFYING DIG SAFE PRIOR TO CONSTRUCTION.
7. ANY CHANGES TO OR DEVIATIONS FROM THIS PLAN MUST BE APPROVED IN WRITING BY J.C. ELLIS DESIGN CO. AND BOARD OF HEALTH.
8. FINISH COVER OVER COMPONENTS IS NOT TO EXCEED 3' PER 310 CMR 15.000.
9. ALL ABANDONED SEPTIC SYSTEM COMPONENTS TO BE PUMPED DRY AND FILLED WITH CLEAN SAND OR REMOVED AND REPLACED WITH CLEAN SAND.
10. ALL COMPONENTS TO BE PROVIDED WITH WATERTIGHT ACCESS PORTS WITHIN 6" OF FINISH GRADE.
11. ALL SEPTIC TANKS, DISTRIBUTION BOXES AND PIPING TO BE INSTALLED WATERTIGHT.
12. NO KNOWN WELLS EXIST WITHIN 100' OF PROPOSED LEACH AREA.
13. THIS IS NOT A CERTIFIED PLOT PLAN AND UNDER NO CIRCUMSTANCES IS THIS PLAN TO BE USED FOR BUILDING OR ZONING PURPOSES.
14. LEACH AREA TO BE PROVIDED WITH AT LEAST ONE INSPECTION PORT CONSISTING OF A PERFORATED FOUR INCH PIPE PLACED VERTICALLY DOWN INTO THE STONE TO THE NATURALLY OCCURRING SOIL OR SAND FILL BELOW THE STONE. THE PIPE SHALL BE CAPPED WITH A SCREW TYPE CAP AND ACCESSIBLE WITHIN 3' OF GRADE.
15. CONTRACTOR TO LOCATE AND VERIFY ELEVATIONS OF ALL BUILDING SEWER INVERT ELEVATIONS PRIOR TO CONSTRUCTION. CONTRACTOR TO TAKE ALL MEANS NECESSARY (FLUSH TESTS ETC.) TO LOCATE ALL EXISTING BUILDING SEWERS PRIOR TO CONSTRUCTION.
16. CONTRACTOR TO INSTALL CLEANOUTS ALONG SEWER LINES BETWEEN BUILDING AND SEPTIC TANK AT ALL BENDS, JUNCTIONS AND 50' INCREMENTS.
17. INSTALL VENT WITH CHARCOAL FILTER ON S.A.S.

DEEP HOLE DATA

PERFORMED BY: JASON C. ELLIS, R.S., S.E.
 WITNESSED BY: AROZANA DAVIS, TRURO BOH
 TEST DATE: FEBRUARY 28, 2022

#1		#2	
DEPTH	ELEV.	DEPTH	ELEV.
0.00'	20.63'	0.00'	20.64'
0.5'	20.13'	0.5'	20.14'
2.16'	18.47'	2.33'	18.31'
11.33'	9.3'	10.16'	10.48'
NO WATER ENCOUNTERED		NO WATER ENCOUNTERED	

J.C. ELLIS DESIGN



P.O. BOX 81
 NORTH EASTHAM, MA 02651
 (508)240-2220
 Email: jason@jcellisdesign.com

SEPTIC SYSTEM UPGRADE PLAN

SUBJECT:
51 SOUTH PAMET ROAD
 TRURO, MA

PREPARED FOR:
DENTON FAMILY REVOC. TRUST
 8018 MOUNT HURON TRAIL
 COLORADO SPRINGS, CO 80924-8000

ASSESSOR'S
 MAP 51 PARCEL 49

DATE: MARCH 1, 2022

SHEET 2 OF 2



JASON C. ELLIS, R.S.