

IMQLAW, LLC
15 NORTHFIELD DRIVE
ROCKLAND, MA 02370

July 20, 2022

Via Overnight Mail

Town Clerk
Town of Truro
PO Box 2012
24 Town Hall Road
Truro, MA 02666

Re: Variance Application to the Zoning Board of Appeals
4 Phats Valley Road, Truro, MA (Assessing Map 54, Parcel 6)

Dear Madam Clerk,

As set forth under G.L. c.40A, §15, enclosed please find a variance application to the Truro Zoning Board of Appeals, which I request that you please certify a copy of and then transmit to the Zoning Board of Appeals, together with the required packets which are enclosed. The ten packets enclosed contain one packet with original materials and 9 with copies of the following:

1. The \$200 application fee;
2. The Variance Application;
3. The Variance Application Narrative;
4. The Variance Application Exhibits
 - i. An Existing Conditions Plan
 - ii. June 5, 1991 Subdivision Certificate of Approval
 - iii. July 10, 1991 Subdivision Covenant and Vote
 - iv. July 10, 1991 Endorsed Subdivision Plan
 - v. July 26, 1991 Deed for Parcel 6
 - vi. January 1, 1989 through 1991 Planning Board Subdivision Regulations
5. The Certified Abutters List

Please note that an electronic copy of the materials will be forwarded to the Planning Department Administrator at esturdy@truro-ma.gov.

As always, thank you very much for your assistance.

Sincerely,


Ilana M. Quirk

Enclosures



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 July 19, 2022

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

1. GENERAL INFORMATION

NOTICE OF APPEAL

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

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

SEE ATTACHED NARRATIVE.

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 4 Phats Valley Road Map(s) and Parcel(s) Map 54, Parcel 6-0

Registry of Deeds title reference: Book 7626, Page 110, or Certificate of Title Number _____ and Land Ct. Lot # _____ and Plan # 25187-C

Applicant's Name Patrick Rice

Applicant's Legal Mailing Address 223 1/2 38th Street, Pittsburgh, PA 15201

Applicant's Phone(s), Fax and Email _____

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

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

- Owner Prospective Buyer* Other*

Owner's Name and Address Marilyn Albert, Trustee, 6526 Montrose Ave., Baltimore, MD 21212

Representative's Name and Address Ivana M. Quirk, Esq., IMQLAW, LLC, 15 Northfield Dr., Rockland, MA 02370

Representative's Phone(s), Fax and Email (617) 755-0674 imq@imqlaw.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)

Patrick Rice
Applicant(s)/Prospective Buyer Printed Name(s)

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

Ivana M. Quirk
Applicant(s)/Representative Signature *Ivana M. Quirk* 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

Marilyn Albert
6526 Montrose Avenue
Baltimore, MD 21212

July 25, 2022

Truro Zoning Board of Appeals
24 Town Hall Road
Truro, MA 0266

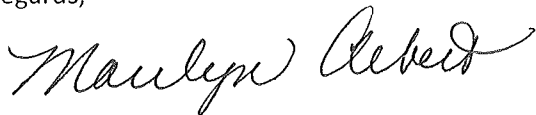
Re: 4 Phats Valley Road Variance Application

Dear Members of the Zoning Board of Appeals,

This is to confirm my written permission, as the Trustee of the Truro Old County Road Trust, the owner of the subject property, to allow the above-referenced variance application to go forward.

I thank the Board and its members and staff for their attention to this matter.

Regards,

A handwritten signature in cursive script that reads "Marilyn Albert".

Marilyn Albert, Trustee
4 Phats Valley Road
Truro, MA



TRURO ASSESSORS OFFICE

PO Box 2012 Truro, MA 02666

Telephone: (508) 214-0921

Fax: (508) 349-5506

Date: July 14, 2022

To: Ilana M. Quirk, Esq., Agent for Patrick Rice

From: Assessors Department

Certified Abutters List: 4 Phats Valley Road (Map 54, Parcel 6)

ZBA/Variance

Attached is a combined list of abutters for the property located at 4 Phats Valley Road.

The current owner is Truro Old County Road Trust, Marilyn Albert, Trustee.

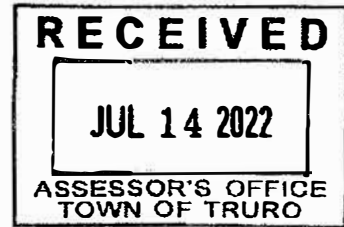
The names and addresses of the abutters are as of July 8, 2022 according to the most recent documents received from the Barnstable County Registry of Deeds.

Certified by: _____

Olga Farrell
Assessing Clerk



TOWN OF TRURO
Assessors Office
Certified Abutters List
Request Form



DATE: July 11, 2022

NAME OF APPLICANT: Patrick Rice

NAME OF AGENT (if any): Ilana M. Quirk, Esq.

MAILING ADDRESS: IMQLAW, LLC 15 Northfield Drive, Rockland MA 02370

CONTACT: HOME/CELL 617 755-0674 EMAIL imq@imqlaw.com

PROPERTY LOCATION: 4 Phats Valley Road (street address)

PROPERTY IDENTIFICATION NUMBER: MAP 54 PARCEL 6-0 EXT. (if condominium)

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

- Board of Health, Cape Cod Commission, Conservation Commission, Licensing, Type, Other
Planning Board (PB), Special Permit, Site Plan, Preliminary Subdivision, Definitive Subdivision, Accessory Dwelling Unit (ADU)
Zoning Board of Appeals (ZBA), Special Permit, Variance
(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

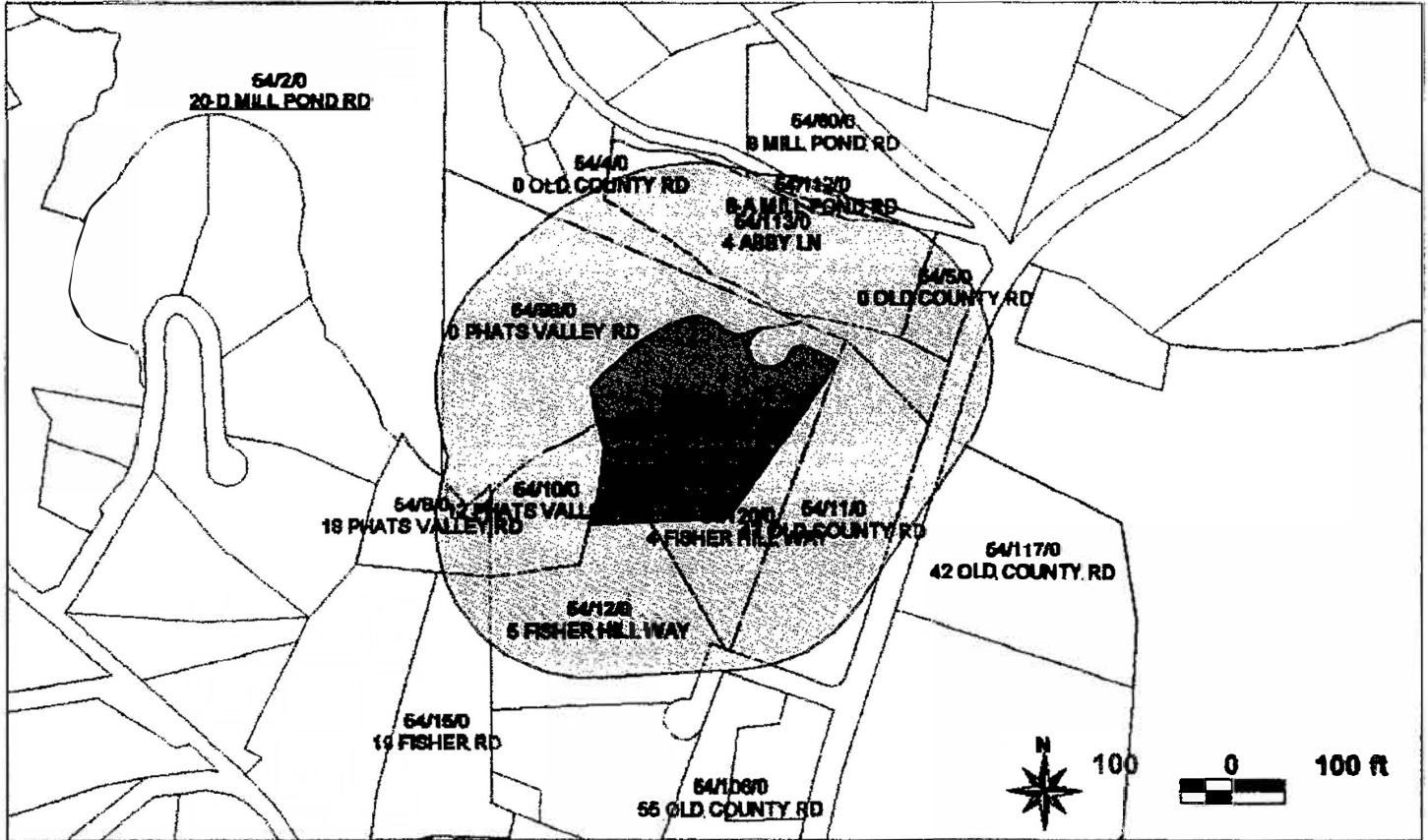
Date request received by Assessors: 7/14/2022 Date completed: 8/19/2022
List completed by: [Signature] Date paid: 7/11/2022 Cash/Check # 1691

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.

4 Phats Valley Road
 Map 54, Parcel 6
 ZBA/Variance

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

Abutters List Within 300 feet of Parcel 54/6/0



Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	ZipCd/Country
7292	40-939-0-E	USA-DEPT OF INTERIOR Cape Cod National Seashore	0 CAPE COD NATIONAL SEASHORE	89 Marconi Site Rd	Wellfleet	MA	02667
3239	54-2-0-R	OWNER UNKNOWN	20-D MILL POND RD	20 D MILL POND RD	TRURO	MA	02668
3241	54-4-0-E	TRURO CONSERVATION TRUST TRS: BETSEY BROWN ET AL	0 OLD COUNTY RD	PO BOX 327	NO TRURO	MA	02652-0327
3242	54-5-0-E	TOWN OF TRURO	0 OLD COUNTY RD	PO BOX 2030	TRURO	MA	02668-2030
3243	54-6-0-R	TRURO OLD COUNTY ROAD TRUST TRS: ALBERT MARILYN	4 PHATS VALLEY RD	6526 MONTROSE AVE	BALTIMORE	MD	21212
3245	54-8-0-R	JOHN FIELD REVOC TRUST & JANE KATZ FIELD REVOC TRUST	18 PHATS VALLEY RD	care of: PETER FIELD 371 MADISON ST, APT 508	NEW YORK	NY	10002
3246	54-10-0-R	JOHN FIELD REVOC TRUST & JANE KATZ FIELD REVOC TRUST	12 PHATS VALLEY RD	care of: PETER FIELD 371 MADISON ST, APT 508	NEW YORK	NY	10002
3247	54-11-0-R	RUSSIANOFF SYLVIA	47 OLD COUNTY RD	128 ROCHELLE AVE	PHILADELPHIA	PA	19128
3248	54-12-0-R	ROSS D AIN REVOCABLE TRUST TRS; ROSS D & JUDITH STONE AIN	5 FISHER HILL WAY	3512 NEWARK ST NW	WASHINGTON	DC	20016
3251	54-15-0-R	FULOP JOHN	19 FISHER RD	103 EAST ALFORD RD	WEST STOCKBRIDGE	MA	02166
3293	54-60-0-R	TRACEY DENNIS H III & C/O MAUREEN P MANNING TRUST	8 MILL POND RD	28 ARLINGTON ST	CAMBRIDGE	MA	02140
3329	64-98-0-E	TRURO CONSERVATION TRUST TRS: BETSEY BROWN ET AL	0 PHATS VALLEY RD	PO BOX 327	NO TRURO	MA	02652-0327
3335	64-106-0-R	AIN ROSS D & JUDITH S	55 OLD COUNTY RD	3512 NEWARK ST NW	WASHINGTON	DC	20016-3168
5750	64-112-0-R	TRACEY DENNIS H III & C/O MAUREEN P MANNING TRUST	8 A MILL POND RD	28 ARLINGTON ST	CAMBRIDGE	MA	02140
5774	64-113-0-R	REICHELHELM GEORGE & CAROLE	4 ABBY LN	127 HARBOR RD	WESTPORT	CT	06880

7/14/2022
 Page 1

Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	ZipCd/Country
5775	54-114-0-E	TOWN OF TRURO	10-A ABBY LN	PO BOX 2030	TRURO	MA	02666-2030
6296	54-117-0-E	U S A DEPT OF THE INTERIOR	42 OLD COUNTY RD	CAPE COD NATIONAL SEASHORE 99 MARCONI SITE RD	WELLFLEET	MA	02667
7308	54-120-0-R	RUSSIANOFF SYLVIA	4 FISHER HILL WAY	128 ROCHELLE AVE	PHILADELPHIA	PA	19128

40-998-0-E

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

54-2-0-R

OWNER UNKNOWN
20 D MILL POND RD
TRURO, MA 02666

54-4-0-E

TRURO CONSERVATION TRUST
TRS: BETSEY BROWN ET AL
PO BOX 327
NO TRURO, MA 02652-0327

54-5-0-E

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

54-6-0-R

TRURO OLD COUNTY ROAD TRUST
TRS: ALBERT MARILYN
6526 MONTROSE AVE
BALTIMORE, MD 21212

54-8-0-R

JOHN FIELD REVOC TRUST &
JANE KATZ FIELD REVOC TRUST
care of: PETER FIELD
371 MADISON ST, APT 508
NEW YORK, NY 10002

54-10-0-R

JOHN FIELD REVOC TRUST &
JANE KATZ FIELD REVOC TRUST
care of: PETER FIELD
371 MADISON ST, APT 508
NEW YORK, NY 10002

54-11-0-R

RUSSIANOFF SYLVIA
128 ROCHELLE AVE
PHILADELPHIA, PA 19128

54-12-0-R

ROSS D AIN REVOCABLE TRUST
TRS: ROSS D & JUDITH STONE AIN
3512 NEWARK ST NW
WASHINGTON, DC 20016

54-15-0-R

FULOP JOHN
103 EAST ALFORD RD
WEST STOCKBRIDGE, MA 02166

54-60-0-R

TRACEY DENNIS H III &
C/O MAUREEN P MANNING TRUST
26 ARLINGTON ST
CAMBRIDGE, MA 02140

54-98-0-E

TRURO CONSERVATION TRUST
TRS: BETSEY BROWN ET AL
PO BOX 327
NO TRURO, MA 02652-0327

54-106-0-R

AIN ROSS D & JUDITH S
3512 NEWARK ST NW
WASHINGTON, DC 20016-3168

54-112-0-R

TRACEY DENNIS H III &
C/O MAUREEN P MANNING TRUST
26 ARLINGTON ST
CAMBRIDGE, MA 02140

54-113-0-R

REICHHELM GEORGE & CAROLE
127 HARBOR RD
WESTPORT, CT 06880

54-114-0-E

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

54-117-0-E

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

54-120-0-R

RUSSIANOFF SYLVIA
128 ROCHELLE AVE
PHILADELPHIA, PA 19128

VARIANCE NARRATIVE

**4 PHATS VALLEY ROAD
(Map 54, Parcel 6-0)**

A. The Property for which relief is sought.

The Property for which relief is sought from the Zoning Board of Appeals (“ZBA”) is:

- A 3+ acre parcel of land known as 4 Phats Valley Road shown on Assessing Map 54, as Parcel 6-0) (“Parcel 6”).
- Parcel 6 was created under a definitive subdivision plan that was approved and endorsed in 1991 by the Truro Planning Board (the “1991 Subdivision Plan”).
- The 1991 Subdivision created frontage for Parcel 6, with an express vote by the Planning Board, on July 10, 1991, under Section IV(g) of the Planning Board’s Subdivision Regulations, that:

We the undersigned, being a majority of the members of the Truro Planning Board present at a meeting held July 10, 1991, hereby agree to waive the [subdivision way] construction requirements, as set forth in Section IV, Design Standards, of our regulations for the way as shown the aforementioned plan [i.e., for Parcel 6]. This waiver is granted in accordance with Section IV(g) of our regulations.

Parcel 6 is owned by the Marilyn Albert, Trustee (“Owner”) and the applicant is Patrick Rice, a prospective purchaser of Parcel 6 (“Applicant”).

B. Relief sought for Parcel 6.

The Applicant seeks a variance relief from the ZBA from any zoning provision in the Truro Zoning Bylaw and Sign Code (“ZBL”), to the extent necessary, in order to allow Parcel 6 to be developed for one single-family dwelling that will use the frontage shown on the 1991 Subdivision Plan (i.e., the physical 9-feet of access that existed in 1991 and exists today).

The same physical access that is in place today was determined by the Planning Board in 1991 to provide safe and adequate access for a single-family dwelling for Parcel 6 and it still provides safe and adequate access for that purpose today.

More specifically, to the extent necessary, variance relief is sought to waive any interpretation of the terms “Lot Frontage” and/or or “Street” in the ZBL that could be construed as requiring Parcel 6 to have 14 feet of constructed width, rather than the 9 feet of width as approved by the Planning Board in 1991 and that still exists today.

The frontage approved and endorsed by the Planning Board in 1991 for Parcel 6 is the 9 feet of width that was in existence at the subject property in 1991 and that is in existence today and is as shown on the Existing Conditions Plan as submitted herewith and as enumerated below.

The current physical access conforms to all of the current ZBL requirements for frontage for a Type A Road (a road that serves 1-4 lots) (with construction waived) and conforms to all of the current Planning Board Subdivision Requirements, except with the current requirement that was added after the 1991 subdivision approval, that now requires a Type A Road (serving 1-4 lots, but in this case only a single lot) to be constructed to a width of 14 feet, rather than 9 feet.

So, to the extent necessary, the Applicant seeks a 5-foot variance from the 14-foot width requirement; however, as appropriate the ZBA may determine, of course, that the variance relief is not necessary.

C. Documents/Exhibits Provided for Review.

Exhibit 1. March 2022 Existing Conditions Plan for Parcel 6.

The Parcel 6 Plan is entitled, "Existing Conditions Plan, 4 Phats Valley Road, Truro, MA," and is dated March 25, 2022, as revised through July 15, 2022. The Parcel 6 Plan was prepared by J.M. O'Reilly & Associates, Inc. of Brewster, MA and is duly signed, stamped and sealed by Professional Land Surveyor John M. Reilly.

Exhibit 2. June 5, 1991 Subdivision Certificate of Approval for Parcel 6.

The Subdivision Certificate of Approval by the Truro Planning Board voted by the Planning Board on June 5, 1991 and filed by the Planning Board with the Truro Town Clerk on June 6, 1991, which approved the definitive subdivision plan that was submitted by Jenny Kaufman to the Planning Board to create frontage for Parcel 6 on March 26, 1991.

Exhibit 3. July 10, 1991 Subdivision Covenant and Vote for Parcel 6.

Exhibit 3. Page 1. The Subdivision Form D Covenant for Parcel 6.

The Covenant was duly executed by the owner of Parcel 6 on July 5, 1991 and was duly executed by the Planning Board on July 10, 1991. The July 1991 Covenant is recorded at the Barnstable Registry of Deeds at Book 7626, Page 113.

Exhibit 3. Page 2. PB Vote to waive subdivision way construction for Parcel 6.

The Planning Board's vote to waive construction of the approved subdivision way shown on the approved subdivision plan for Parcel C was duly voted on July 10, 1991 and is recorded at the Barnstable Registry of Deeds at Book 7626, Page 114.

The July 10, 1991 Vote provides that:

We the undersigned, being a majority of the members of the Truro Planning Board present at a meeting held July 10, 1991, hereby agree to waive the construction requirements, as set forth in Section IV, Design Standards, of our regulations for the way as shown the aforementioned plan. This waiver is granted in accordance with Section IV(g) of our regulations.

Exhibit 4. July 10, 1991 Endorsed Subdivision Plan for Parcel 6.

The Approved Subdivision Plan for Parcel 6 was duly endorsed by the Planning Board on July 10, 1991 (after the Planning Board voted to waive construction of the subdivision way) and is duly recorded at the Barnstable Registry of Deeds at Book 481, Page 12.

Exhibit 5. July 26, 1991. Deed for Parcel 6 in reliance on the endorsed plan.

The Deed from Jenny Kaufman to the Truro Old County Road Trust for \$230,000 for Parcel 6, in reliance upon the approved and endorsed subdivision plan recorded at Book 481, Page 12. The Deed was duly recorded on July 26, 1991 at the Barnstable Registry of Deeds at Book 726, Pages 110-111.

Exhibit 6. January 1989-1991 Truro Planning Board Subdivision Regulations, as in effect on January 1, 1989 through 1991 (the "1989-1991 Subdivision Regulations").

The Truro Planning Board Subdivision Regulations, as produced by the Truro Town Clerk as being in effect on January 1, 1989 through 1991.

D. Explanation for the Relief Sought.

The subdivision way known as Phats Valley Road was approved as a definitive subdivision way during 1991 by the Truro Planning Board and the Board waived construction of the way so as to allow Parcel 6 to be developed for one single-family dwelling while using physical access that was on the ground in 1991, the access that is still in place today.

The 1991 subdivision way that was approved in 1991 satisfied all applicable subdivision requirements in 1991; however, construction of the way itself as shown and approved was waived.

The 1989-1991 Subdivision Regulations (Exhibit 6) expressly allowed the Planning Board to waive construction of the subdivision way under Section IV(g) to allow one lot to be built using the area for which construction was waived as legal frontage.

The area where the approved cul-de-sac and frontage created for Parcel 6 in 1991 is located over a long-standing right of way that existed on the ground and that was and is located in very close proximity to wetland resources (See Exhibit 1) that will be preserved through not requiring the cul-de-sac to be physically constructed. The Existing Conditions Plan depicts that the edge of bordering vegetated wetland is directly adjacent to the 9-foot wide way that is in place.

In addition, the 9-foot existing way on the ground that was approved in 1991 as frontage is located along an existing bank that also will be preserved – by not requiring the cul-de-sac to be physically constructed. The on the ground access that was approved in 1991 as frontage is part of way that has been on the ground for many years and is known as a proprietor’s road and its approximate 9 feet in width was determined in 1991 by the Planning Board to be sufficient to provide access to the one lot shown on the approved subdivision plan and still is sufficient for that purpose today..

Under the Truro ZBL, in order for a way to provide legal frontage for a building lot, the way must conform to the current definition of “Lot Frontage,” as set forth under ZBL §10.4. Under that definition, for a right-of- way to constitute “Lot Frontage,” the lot must front upon and have access to a “street.” (See ZBL 10.4, Definition of Lot Frontage.) The term “Street” is defined, under ZBL §10.4, as a “public or private way which affords access to abutting property” and the term “Street” is defined as including a “road,” way,” and “road right-of-way.” In order for a “Street” to be used as “Lot Frontage,” however, the “Street” must conform to the requirements of the Town of Truro Subdivision Regulations, Section IV, Design Standards, (b), (c) & (d) as they existed on January 1, 1989. (ZBL §10.4.)

On January 1, 1989, the Town of Truro Subdivision Regulations, Section IV, Design Standards, (b), (c) & (d) (See Exhibit 6) provided (in bold below) as follows:

- (b) **The minimum width of street right-of-ways shall be 40 feet.**
[Note: The right-of-way width is 50 feet as shown on the 1991 Subdivision Plan.]
- (c) **Property lines at streets intersections shall be rounded to provide for a curb radius of not less than 20 feet.**
[Note: As approved, the 1991 Subdivision Plan satisfied this requirement.]
- (d) **Dead-end streets shall be provided at the closed end with a turnaround having a property line diameter of at least 80 feet.**
When ways requiring turnarounds may be extended in future

subdivision, the Board may require only an area equal to the above requirement to be shown and marked “Reserved for Turning.” Upon extension of the way through this turning Area, the portions not included in the way shall revert to their respective lots.

[Note: The cul-de-sac as approved satisfied this requirement, but with construction waived, there is no dead-end.]

On January 1, 1989 and through 1991, the Truro Subdivision Rules and Regulations (See Exhibit 6) provided at Section IV, Design Standards (g), that:

- (g) On land of single ownership where the intent is to subdivide into no more than two lots of legal area and a way is required for one lot, this [way] may be exempt[ed] from any or all of the requirements of the design standards, excepting for those requirements specified in the by-laws. It shall be at the discretion of the Board to grant these waivers and to set requirements for the way. Any such way established shall not be used to provide access to any lot other than the lot established by approval of the way. There shall be no further subdivision of the lot serviced by the way established. Any way established under this provision of waiver of design standards shall not be subject to acceptance by the Town as a public way.

Today, the Truro Subdivision Rules and Regulations still allow for a “Rural Road Alternative” under Regulation §3.7; however, under §3.8, if a right-of-way is to be used for access to a lot, then the road surface of the right-of-way is to be “constructed according to Appendix 2 Table 1 of the Rules which provides that the minimum constructed roadway width for a “Type A” Road or Street (which services only 1-4 lots) is 14 feet.

So, the current frontage, with construction waived, satisfies all of the current applicable ZBL requirements noted above and the current requirements do not incorporate the new requirement of Subdivision Regulation §3.8 for a 14-foot constructed width for a right-of-way. The Applicant, however, has been told by the Building Official that a frontage variance is needed from the ZBL’s provisions.

As a result, the Applicant respectfully requests that the ZBA please issue a variance decision that allows Parcel 6 to use the existing approximate 9-foot access as allowed under the 1991 Subdivision (Exhibits 2-4) and as shown on the Existing Conditions Plan (Exhibit 1) as lawful frontage for a single-family dwelling.

The Applicant understands that variance relief is sparingly granted and that the conditions set forth under G.L. c.40A, §10 for the grant of variance relief are rarely satisfied. However, the Applicant notes that it satisfies the technical language of the ZBL and only a strained interpretation that current Subdivision Regulation §3.8 applies and requires that the constructed width of the right-of-way shall be 14 feet would prevent an as of right permit from issuing. The Applicant requests that the ZBA determine either the requirements of §3.8 of the current Subdivision Regulations do not apply or that a variance from that requirement because each of the requirements of G.L.c.40A, §10 have been satisfied for the reasons set forth below.

The G.L.c.40A, §10 Variance Requirements.

1. The requested variance is needed and warranted “owing to circumstances relating to soil conditions, shape, or topography of such land.”

Response:

The physical access located on the ground has been there for many decades and was approved and endorsed under the Subdivision Control Law process as sufficient to constitute lawful frontage in 1991. The location of the physical access was created in an approximate 9-foot width in order to accommodate the wetland resources on one side of the access (which relates directly to the soil conditions at the property) and to accommodate the steep bank on the other side of the property (which relates directly to the topography of the land).

The statutory requirement noted above is satisfied because both soil conditions and topography of the land at the property dictate the location of the physical access.

2. The requested variance is needed and warranted due to circumstances relating to soil conditions, shape or topography that ‘especially affect’ the land involved - but do not affect, generally, the zoning district in which the property is located.

Response:

The physical conditions at the subject property, with wetlands on one side and a bank on the other side of long-existing access way which was found in 1991 by the Planning Board to satisfy the requirements for frontage under the Subdivision Control Law process are extremely unusual and likely even unique in nature, but, certainly, they are not circumstances that exist “generally” throughout the zoning district.

The statutory requirement noted above is satisfied.

3. A literal enforcement of the 14-foot width requirement of current Subdivision Regulation §3.8 would involve a substantial financial hardship to the Owner of Parcel 6.

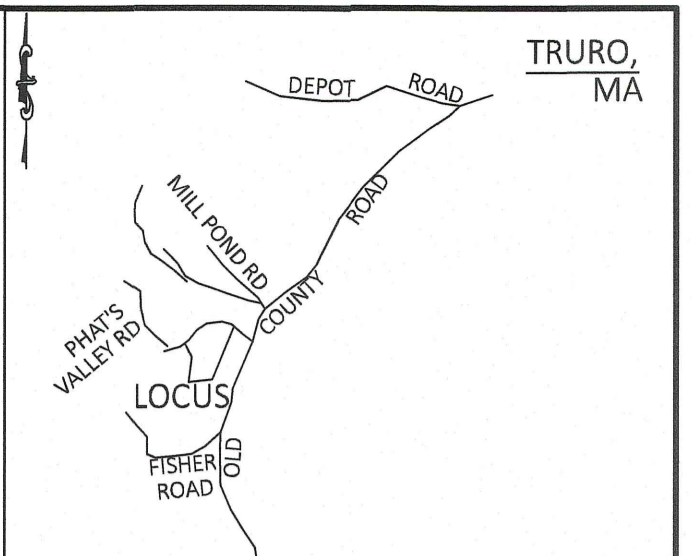
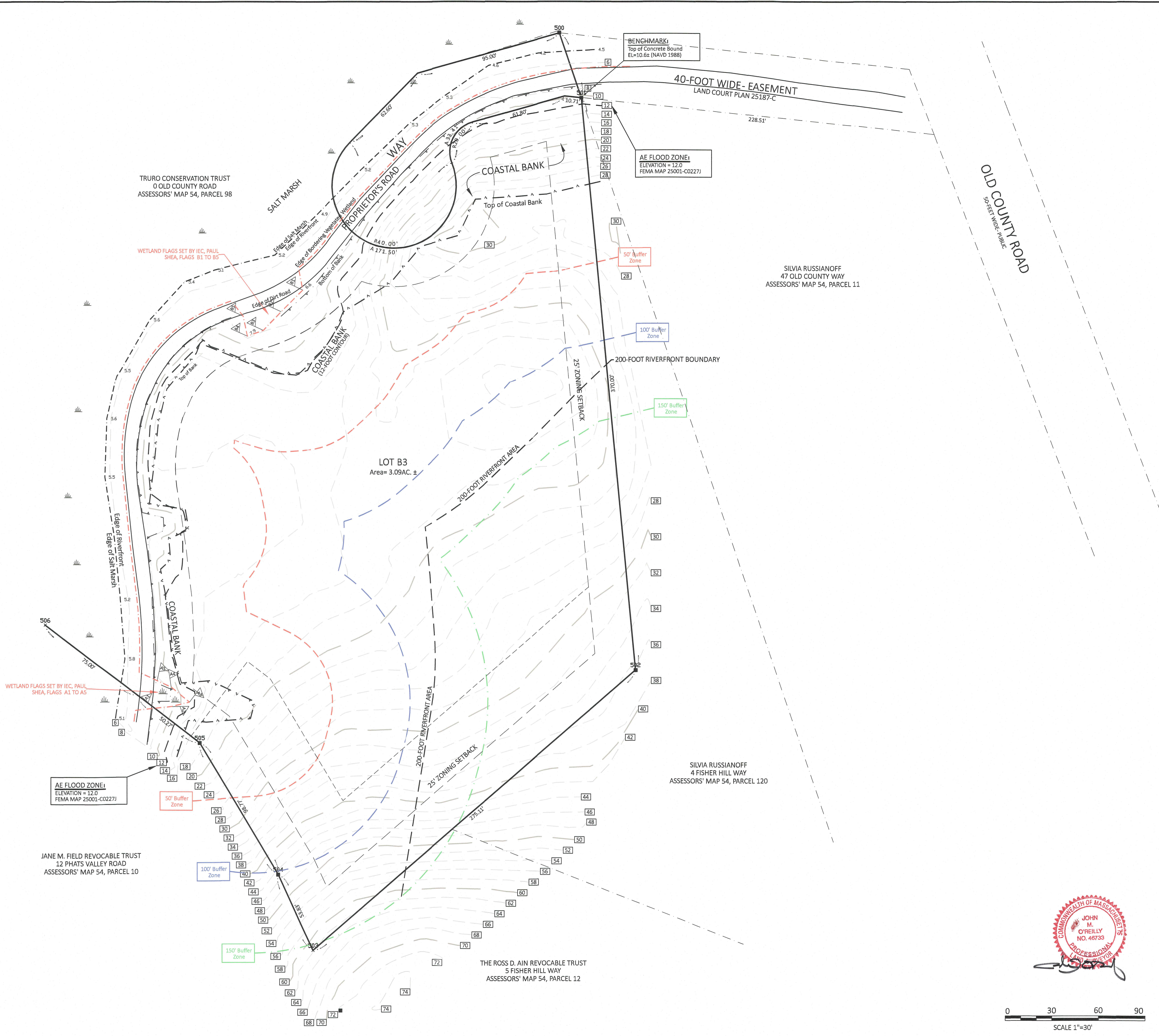
Response:

The Owner paid \$230,000 in 1991 for Parcel 6 based upon the 1991 Subdivision Plan that waived construction of a full subdivision way and determined that the existing physical access was adequate frontage to allow access to Parcel 6 for a single-family dwelling. Not granting the requested relief will render the Parcel 6 almost valueless and cause the Owner to suffer a financial hardship.

This statutory requirement is satisfied.

In summary, all the of the statutory requirements for variance relief are satisfied and the Applicant (and the Owner) respectfully request the ZBA to please vote to grant the necessary relief to allow the existing physical access shown on the Existing Conditions Plan (Exhibit 1) to be used as lawful frontage for a single-family dwelling on Parcel 6.

The Applicant and the Owner thank the ZBA and its staff for its time and consideration of this Application.



NOT TO SCALE

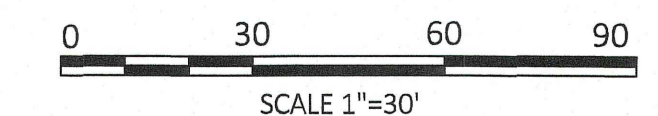
L.C. PLAN # 25187-C
DEED BOOK 7626 PAGE 110
ASSESSORS' MAP 54 PARCEL 6

LEGEND

- 32 — EXISTING CONTOUR
- - - 32 - - - PROPOSED CONTOUR
- x 12.34 EXISTING SPOT GRADE
- 24x5 PROPOSED SPOT GRADE
- W — WATER SERVICE LINE
- O — OVERHEAD UTILITY SERVICE
- U — UNDERGROUND UTILITY SERVICE
- G — GAS SERVICE LINE
- ⊙ TEST HOLE / BORING LOCATION
- ST SEPTIC TANK
- DB DISTRIBUTION BOX
- SAS SOIL ABSORPTION SYSTEM
- Reserve RESERVED FOR FUTURE
- UPO UTILITY POLE
- ⊕ CATCH BASIN
- ⊕ FIRE HYDRANT
- ⊕ WELL
- ⊕ DRAINAGE MANHOLE
- ⊕ CONCRETE BOUND, FOUND
- ⊕ TOP OF BANK
- LIMIT OF WORK
- FENCE
- EDGE OF CLEARING

ZONING TABLE

ZONE R (RESIDENTIAL)	PROPOSED
SETBACKS, MINIMUM	
FRONT 25 FEET	NA
SIDE 25 FEET	NA
REAR 25 FEET	NA
MINIMUM LOT FRONTAGE 150 FEET	EXISTING: 553 FEET
MINIMUM LOT SIZE 33,750 SQ. FT.	134,600 ±
BUILDING HEIGHT 30 FEET (AVG. MEAN GROUND LEVEL+30+MAX EL.)	NA



REVISED 7-15-2022: ADDED ABUTTING PROPERTY AND OWNER INFORMATION.

REVISED 4-1-2022: ADDED WETLAND FLAGS A1 TO A5 AND B1 TO B5. ALSO ADDED BORDERING VEGETATED WETLAND ADJACENT TO THE DIRT ROAD.

Marilyn Albert
6526 MONTROSE AVE., BALTIMORE, MD, 21212

EXISTING CONDITIONS PLAN
4 PHATS VALLEY ROAD, TRURO, MA

J.M. O'REILLY & ASSOCIATES, INC.
Professional Engineering & Land Surveying Services

1573 Main Street - Route 6A
P.O. Box 1773
Brewster, MA 02631 (508)898-6602 Fax

(508)898-6601 Office (508)898-6602 Fax

DATE: 3-25-2022 SCALE: As Noted BY: JMO/gb CHECK: JMO JOB NUMBER: JMO-9193



Truro Planning Board

TRURO, MASSACHUSETTS

**Office of Town Clerk
Treasurer - Tax Collector**

JUN - 6, 1991

Received TOWN OF TRURO

By *[Signature]*

Certificate of Approval
of
Definitive Subdivision Plan

*Subject to review
July 10, 1991
[Signature]*

Date: *6/6/91*

1. Name of Applicant: *Jenny Kaufman*
Address: *Off County Road, Truro*

2. Name of Surveyor or Engineer: *Slade Assoc Inc*
Address: *Rt 6 Wellfleet*

3. Deed of property recorded in the Truro Assessors' Atlas
Sheet: *54* Parcel: *6*

4. Location of property:
Off Old County Rd, Truro

This notice is to inform you that your subdivision plan submitted to this

Board on: *3/26/91*

has been approved on: *6/5/91*

subject to the following conditions:

- ✓ 1. An appeal period of 20 days.
- ✓ 2. Covenant to be filed with the Planning Board before endorsement of the plan.

3.

Betsy A. Brown
Secretary,
for Truro Planning Board

Copy to Town Clerk

The undersigned Stephen Albert
 of 56 Valentine St., Newton, MA 02465, Middlesex County, Massachusetts,
 hereinafter called the "Covenanter", having submitted to the Truro
 Planning Board, a definitive plan of a subdivision, entitled "Plan of Land in
 Truro, Made For Jenny Kaufmann"
 dated Feb., 1991 made by Slade Associates, Inc., Reg. Land Surveyors,
 does hereby covenant and agree with said Planning Board and the successors in office of
 said Board, pursuant to G. L. (Ter. Ed.) C. 41, Sec. 81U, as amended, that:-

See Plan Book 482 Page 113

1. The covenantor is to be owner of record of the premises shown on said plan before said plan is recorded.
2. This covenant shall run with the land and be binding upon the executors, administrators, heirs, assigns of the covenantor, and their successors in title to the premises shown on said plan;
3. The construction of ways and the installation of municipal services shall be provided to serve any lot in accordance with the applicable Rules and Regulations of said Board before such lot may be built upon or conveyed, other than by mortgage deed; provided that a mortgagee who acquires title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of the mortgaged premises or part thereof may sell any such lot, subject only to that portion of this Covenant which provides that no lot so sold shall be built upon until such ways and services have been provided to serve such lot;
4. Nothing herein shall be deemed to prohibit a conveyance subject to this covenant by a single deed of the entire parcel of land shown on the subdivision plan or of all lots not previously released by the Planning Board without first providing such ways and services;
5. This covenant shall take effect upon the approval of said plan;
6. Reference to this covenant shall be entered upon said plan and this covenant shall be recorded when said plan is recorded.
7. See Attachment, Page 2.

The undersigned Marilyn Albert *Marilyn Albert*
 wife husband,
 of the covenantor hereby agree that such interest as I, we, may have in said premises shall be subject to the provisions of this covenant and insofar as is necessary release all rights of tenancy by the courtesy, dower, homestead and other interest therein.

EXECUTED as a sealed instrument this 5th ~~day~~ July 1991.

[Signature]

COMMONWEALTH OF MASSACHUSETTS

Barnstable July 5th 1991

When personally appeared Stephen Albert
 and acknowledged the foregoing instrument to be his, free act and deed.



[Signature]
 Notary Public Edward A. Oswalt

My Commission Expires: 7/7/92
 My Commission Expires August 7, 1992

-Truro Planning Board-

ATTACHMENT TO STEPHEN ALBERT COVENANT
(Plan made for Jenny Kaufmann)

We the undersigned, being a majority of the members of the Truro Planning Board present at a meeting held July 10, 1991, hereby agree to waive the construction requirements, as set forth in Section IV, Design Standards, of our regulations for the way as shown on the aforementioned plan. This waiver is granted in accordance with Section IV (g) of our regulations. The purpose of this covenant is to secure the installation of underground utilities before Lot B³ is built upon.


[Handwritten Signature]
[Handwritten Signature]
[Handwritten Signature]
[Handwritten Signature]
Date: 7/10/91

-COMMONWEALTH OF MASSACHUSETTS-

Barnstable ss.

July 10, 1991

Then personally appeared KENNETH BROCK, one of the above-signed members of the Truro Planning Board and acknowledged the foregoing instrument to be his free act and deed, before me

[Handwritten Signature]
Notary Public
My Commission Expires: Nov. 9, 1995


RECORDED JUL 26 91

35516

DEED

I, JENNY KAUFMANN, of 470 West 24th Street, #18F, New York, New York 10011

in consideration of Two Hundred Thirty Thousand and 00/100 Dollars (\$230,000.00) paid

grant to Stephen Albert, Trustee of Truro Old County Road Trust, under Declaration of Trust dated July 23 1991, to be recorded herewith, having a mailing address of 56 Valentine Street, Newton, MA 02165

with quitclaim covenants

the vacant land situated in Truro in the County of Barnstable and Commonwealth of Massachusetts, bounded and described as follows:

Commencing at a concrete monument at the northeast corner of the premises, said monument being the northwest corner of Lot 5 as shown on Land Court Plan No. 25187C; thence

S 20°-08'-05" W by Lot 5, (by land now or formerly of Penelope P. Russianoff), a distance of forty-four and 01/100 (44.01) feet, to a concrete monument; thence

S 33°-27'-14" W still by land now or formerly of Russianoff, a distance of three hundred seventy and 00/100 (370.00) feet, to a concrete monument; thence

S 87°-52'-20" W by land now or formerly of Russianoff, a distance of two hundred seventy-five and 11/100 (275.11) feet, to a concrete monument at land now or formerly of Harold C. Field; thence

N 14°-15'-50" E by land of said Field, a distance of fifty-three and 83/100 (53.83) feet, to a concrete monument; thence

N 08°-04'-46" E by land of said Field, a distance of ninety-eight and 77/100 (98.77) feet, to a concrete monument thence

N 13°-50'-04" W by land of said Field, a distance of one hundred twenty-five and 00/100 (125) feet, more or less, to Lot B1, as shown on the hereafter mentioned plan; thence

Northeasterly and easterly by Lot B1 and by the edge of the marsh, a distance of five hundred seven and 00/100 (507) feet, more or less, thence;

N 83°-04'-42" E by said marsh a distance of sixty-two and 60/100 (62.60) feet; thence

PROPERTY ADDRESS: Lot B3, Truro, Barnstable County, Massachusetts 02666

HARVEY J. HOBBS
ATTORNEY AT LAW
HOBBS & BENNETT
3 FREDMAN STREET
PROVINCETOWN, MA 02697
(508) 487-6000

S 66°-51'-39" E by said marsh a distance of ninety-five and 00/100 (95.00) feet, to the point of commencement.

Said land contains an area of 3.09 acres, more or less, and is shown as Lot B3 on a plan entitled "Plan of Land in Truro, made for Jenny Kaufmann, Scale: 1 in. = 80 ft., Feb., 1991, Slade Associates, Inc., Registered Land Surveyors, Rte. 6 and Pine Pt. Rd., Wellfleet, MA 02667.", recorded herewith in the Barnstable Registry of Deeds. *Plan B. 24*

4th page 12

Together with an appurtenant easement dated July 2, 1991 and recorded herewith, from Penelope P. Russianoff as shown on the aforesaid Plan, being an easement in the 40-foot-wide easement shown at the northerly end of Lot 5 on Land Court Plan 25187C filed in the Land Court Registration Office in Boston, a copy of which is filed with the Barnstable Registry of Deeds, Land Court Division, and being for all purposes for which public ways are to be used in the Town of Truro, both now and hereafter.

Said land is subject to a sixty (60) foot setback restriction as shown on the aforesaid Plan recorded herewith and also has the benefit of a setback restriction as set forth in the deed of Harry Kahn and Penelope P. Russianoff to Harry Kahn dated August 11, 1977 recorded with said Registry in Book 2577 Page 305.

Being the same premises as set forth in my Deed from Harry Kahn recorded with said Registry in Book 5506 Page 212, to which reference should be made for my title, and as shown as Lot B2 on a prior plan of land entitled, "Division of Plan of Land in Truro made for Harry Kahn, Scale: 1 in. = 80 ft., June 1982, Slade Associates, Inc., Registered Land Surveyors, East Main Street at Route 6, Main Street at Route 6, Wellfleet, Massachusetts 02667" recorded with said Registry in Plan Book 365 Page 1.

Executed as a sealed instrument this 11th day of July, 1991.

Jenny Kaufmann
JENNY KAUFMANN

STATE OF NEW YORK

County: NEW YORK

July 11, 1991

Then personally appeared the above named JENNY KAUFMANN and acknowledged the foregoing instrument to be her free act and deed, before me,

David M. Phillips
Notary Public:
My Commission Expires: 4/30/93

SEAL:

DAVID M. PHILLIPS
Notary Public, State of New York
No. 31-4814377
Qualified in New York County
Commission Expires April 30, 1993

HARVEY J. MORSE
ATTORNEY AT LAW
MORSE & BENNETT
3 FLEEMAN STREET
PROVINCETOWN, MA 02667
(508) 487-4200

RECEIVED & RECORDED
JUL 26 3 05 PM '91
BARNSTABLE COUNTY
REGISTRY DEEDS
JOHN F. WEADE

DEEDS REG. 01
CANCELED
726791
TAX
CHD
780.60
108.60
0698000
EXCISE TAX
145.14

DEEDS EXCISE
CANCELED
JUL 26
524.40

Rtn Gtee 5/5/91

RECORDED JUL 26 91

DAVID M. ORLANDO
Notary Public, State of New York
No. 31-08187
Qualified in New York County
Commission Expires April 30, 1991

**TRURO PLANNING BOARD
TRURO, MASSACHUSETTS
SUBDIVISION REGULATIONS**

Section I. Authority

Under the authority vested in the Planning Board of the Town of Truro by Section 81-Q of Chapter 41 of the General Laws, said Board hereby adopts these regulations governing the subdivision of land in the Town of Truro. Such regulations shall be effective October 18, 1978 as amended on December 20, 1983. (12/55,9/71,6/78,12/83,3/88)

Section II. General

A. Definitions:

For the purpose of these regulations terms and words shall have the meaning as defined in the Truro Zoning By-Law. Terms and words not defined therein but defined in the General Laws, Chapter 41, "The Subdivision Control Law," and amendments thereto, shall have the meaning given therein, unless a contrary intention clearly appears. Words not defined in either place shall have the meaning given in Webster's Unabridged Dictionary, Third Edition. (12/55,9/71,6/78)

"Board" shall mean the Planning Board of the Town of Truro. (9/71)

B. Plan Believed Not to Require Approval:

Any person who wishes to cause to be recorded in the Registry of Deeds or to be filed with the Land Court a plan of land and who believes that his plan does not require approval under the Subdivision Control Law may submit his plan to the Planning Board accompanied by the necessary evidence to show that the plan does not require approval.

If the Board determines that the plan does not require approval, it shall without a public hearing and within twenty-one days of submission endorse on the plan the words "Planning Board Approval Under Subdivision Control Law Not Required." Said plan shall be returned to the applicant, and the Board shall notify the Town Clerk of its action. (9/71,3/88)

If the Board determines that the Plan does require approval under the Subdivision Control Law, it shall within twenty-one days of submission of said plan so inform the applicant and return the plan. The Board shall also notify the Town Clerk of its determination. The fee for plans not requiring approval under the subdivision law shall be fifty (50) dollars for the first lot and twenty-five (25) for each additional lot. (9/71,8/72,6/78,3/82,3/88)

C. Subdivision:

No person shall make a subdivision within the meaning of the Subdivision Control Law of any land within this Town, or proceed with the improvement or sale of lots in a subdivision, or the construction of ways, or the installation of municipal services therein, unless and until a

Definitive Plan of such subdivision has been submitted to and approved by the Board as hereinafter provided.

D. Acceptance of private roads:

(9/71,3/88)

(a) Existing unimproved private way:

An existing unimproved private way shall be a way established prior to the adoption of this amendment which is not cleared, graded, drained, hardened or surfaced. Before the Board of Selectmen shall act on a petition for the acceptance by the Town of such a way, the petitioners shall have prepared by a registered engineer or a registered land surveyor, a clear and legibly drawn plan, to a suitable scale, in black India ink on tracing cloth. This plan shall contain the following information:

Location of road in respect to all adjacent or intersecting roads, public and private.

Layout of road showing all necessary dimensions to reproduce the road on the ground.

Drainage facilities and/or drainage easements.

Names and addresses of all abutters.

The petitioners shall install sufficient permanent concrete bounds to define the road. The petitioners shall also be required to post a performance bond with the Town of Truro assuring that if the road should be accepted by the voters of the Town of Truro, all the requirements specified by the design standards would be met. All costs of preparing plans, procurement of bonds and construction of road or way to meet the design standards shall be borne by the petitioners.

Design standards shall be those shown under Subdivision Regulations, Section IV. Design Standards.

(b) Existing improved private way:

An existing improved private way shall be a way established prior to the adoption of this amendment which has been constructed in accordance with Town of Truro standards existing at the time of construction including grading, clearing, hardening, black-topping and drainage. The Board of Selectmen may act on petition for the acceptance of such a way without requiring any or all of the requirements listed in paragraph (a) if the petition is approved by the Planning Board.

(c) New, improved private way shall be a way which was established after the adoption of (b) above and which was constructed in accordance with all contemporaneous Town of Truro standards for such matters as grading, clearing, hardening, black-topping, and drainage. If the petition for public takeover is the first approved by the Planning Board, then the Board of Selectmen may act on the petition for acceptance without requiring satisfaction of any or all of the requirements listed in paragraph (a).

(3/88)

(d) Approval and acceptance:

Upon approval by the Board of Selectmen of a petition for Town acceptance of a private

way under the conditions stated in either (b) or (c), the Selectmen shall submit an article to the next annual Town Meeting to the voters of the Town for their action on the petition. (9/71,3/88)

(e) **Waiver:**

The Board of Selectmen may waive any requirements of the Design Standards listed in paragraph (a) or any deviation from Town Standards listed in paragraph (b) or (c) which, in their opinion, would not be detrimental to the Town of Truro, excepting requirements specified by by-law. If any such waiver will result in an expenditure of public monies to accomplish the requirements waived, the Board of Selectmen must present this cost to Town Meeting acting on the petition for acceptance of the private way. (9/71,12/83,3/88)

Section III. Procedure for the Submission and Approval of Plans:

A. Preliminary Plan:

- 1) **General:** A preliminary plan of a subdivision shall be submitted by the subdivider for the discussion and tentative approval by the Board.

Submission of the preliminary plan will enable the subdivider, the Board, other municipal agencies and owners of properties abutting the subdivision to discuss and clarify the problems of such subdivision before a Definitive Plan is prepared.

- 2) **Contents:** The Preliminary Plan shall be drawn on tracing paper at suitable scale. Five prints shall be filed at the office of the Board. The Preliminary Plan should show sufficient information about the subdivision to form a clear basis for discussion of the problems and for the preparation of the Definitive Plan. Such information will include major site features such as existing stone walls, fences, buildings, large trees, rock ridges, and outcroppings, swamps and water bodies and existing topography as required, together with the information required for the Definitive Plan (Section III, B, 2, items (a) to (d) inclusive). During discussion of the Preliminary Plan, complete information required for the Definitive Plan (Section III, B, 2, Contents) will be developed. (9/71,12/83)
- 3) **Tentative Approval:** The Board may give the Preliminary Plan its tentative approval, with or without modification. Such tentative approval does not constitute approval of a subdivision, but does facilitate the procedure for review of the Definitive Plan.
- 4) **Fee:** The fee for submission of preliminary subdivision plans shall be \$25.00, payable on filing of the preliminary subdivision plan with the Planning Board.

(7/90)

B. Definitive Plan:

- 1) General: Any person who submits a Definitive Plan of a subdivision to the Board for approval shall file with the Board the following:
 - (a) An original drawing of the Definitive Plan and five contact prints thereof, dark line on white background. The original drawing will be returned after approval or disapproval. (9/71,12/83)
 - (b) A properly executed Application Form to be secured from the Town Clerk.
 - (c) A deposit of \$50.00 plus \$25.00 for each additional lot, to cover the cost of advertising and legal notices for all subdivision plans requiring a public hearing. (12/55,9/71,11/77,6/78,3/88)

The applicant shall file by Certified Mail, a notice with the Town Clerk stating the date of submission for such approval and accompanied by a copy of the completed Application Form. (9/71,12/83)

- 2) Contents:

The Definitive Plan shall be prepared by an engineer or surveyor and shall be clearly and legibly drawn in black India ink upon tracing cloth. The plan shall be a scale of one inch equals forty feet or other such scale as the Board may accept, to show details clearly and adequately. Sheet size shall preferably not exceed 24" by 36". If multiple sheets are used, they shall be accompanied by an index sheet showing the entire subdivision. The Definitive Plan shall contain the following information:

 - (a) Subdivision name, boundaries, north point, date and scale.
 - (b) Name and address of record owner, subdivider and engineer or surveyor.
 - (c) Names and addresses of all abutters as they appear in the most recent tax list.
 - (d) The applicant shall furnish the Board with a separate plan showing profiles of the proposed ways or streets. This plan shall be in such form as to provide full information satisfactory to the Board, but need not be in the same form as the Definitive Plan. It should include proposed street names.
 - (e) Sufficient data to determine the location, direction and length of every street and way line, lot line and boundary line, and to establish these lines on the ground. All bearings shall refer to Massachusetts prime meridian.
 - (f) Location of all permanent monuments properly identified as to whether existing or proposed.
 - (g) Location, names and present widths of streets bounding, or approaching or within reasonable proximity of the subdivision.
 - (h) Suitable space to record the action of the Board and the signatures of the members of the Board (or officially authorized person).
 - (i) Existing and proposed topography at a suitable contour interval as required by the Board.
 - (j) All surveys to be made with accuracy resulting in a minimum error of closure 1 to 10,000.

- 3) Review by Board of Health as to Suitability of Land: The Board shall within ten

days after submission of a plan consult with the Board of Health. If the Board of Health is in doubt as to whether any of the land in the subdivision can be used as building sites without injury to the public health, it shall so notify the Planning Board in writing within forty-five days. Any approval of the plan by the Board shall then only be given on condition that the lots of land as to which such doubt exists shall not be built upon without the prior consent of the Board of Health, and shall endorse on the plan such conditions, specifying the lots of land to which said condition applies. (9/71,3/88)

4) Public Hearings:

Before approval, modifications and approval, or disapproval of the Definitive Plan is given, a public hearing shall be held by the Board. Notice of the time and place of such hearing and of the subject matter, sufficient for identification, shall be given by the Board at the expense of the applicant by advertisement in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication being not less than fourteen days before the day of such hearing. A copy of said notice shall be mailed by certified mail to the applicant and to all owners of land abutting upon the subdivision as appearing in the most recent tax list. (9/71,12/83)

5) Certificate of Approval:

The action of the Board in respect to such plan shall be by vote, copies of which shall be certified and filed with the Town Clerk and sent by certified mail to the applicant. If the Board modifies or disapproves such plan, it shall state in its vote the reasons for its action. Final approval, if granted, shall be endorsed on the original drawing of the Definitive Plan by the signature of the majority of the Board (or by the signature of the person officially authorized by the Board), but not until the statutory, twenty-day appeal period has elapsed following the filing of the Certificate of the Action of the Board with the Town Clerk and said Clerk has notified the Board that no appeal has been filed. After the Definitive Plan has been approved and endorsed, the applicant shall furnish the Board with two prints thereof. Final approval of the Definitive Plan does not constitute the laying out or acceptance by the Town of streets within a subdivision. (9/71,12/83,3/88)

Section IV. Design Standards.

(As amended by the Planning Board on November 12, 1986 by adoption of Sections (h) through (m))

- (a) The Board shall require a minimum lot size of 33,750 square feet, minimum frontage of 150 feet on a way and a 25 foot setback from all lot lines. (12/55,8/72)

The area of a lot when used for building purposes shall not be less than the minimum required herein. Said lot shall not be interpreted to include any areas below mean water on tidal water, areas of exposed ground water, or within the limits of any defined way. No less than 100% of the minimum area required shall consist of contiguous upland

exclusive of marsh, bog, swamp, beach, dune or wet meadows. (6/78,3/88)

The lot frontage shall be the distance along a straight line connecting the points of intersection of the side lot lines with the front lot line. (6/78,12/83,11/86)

(b) The minimum width of street right-of-ways shall be 40 feet. (12/55,9/71)

(c) Property lines at street intersections shall be rounded to provide for a curb radius of not less than 20 feet. (9/71)

(d) Dead-end streets shall be provided at the closed end with a turnaround having a property line diameter of at least 80 feet. When ways requiring turnarounds may be extended in future subdivision, the Board may require only an area equal to the above requirement to be shown and marked "Reserved For Turning." Upon extension of the way through this turning area, the portions not included in the way shall revert to their respective lots. (12/55,9/71)

(e) All streets in the subdivision shall be continuous wherever practicable. (12/55,9/71)

(f) 1. Provisions satisfactory to the Board shall be made for the proper projection of streets, or for access to adjoining property not yet subdivided. (12/55,9/71,6/78)
At least one street in the new subdivision will connect with a road which will provide access to the new subdivision, and said road shall in the opinion of the Board be adequate to reduce the danger to persons and property and to secure safety in the case of emergency. (9/91,3/88)

2. The Board may disapprove a plan if it determines the access road to the subdivision is inadequate. (6/78,12/83,11/86)

3. Subdivisions of 30 or more lots will be required to have more than one access from an existing major street. This requirement for more than one access may be waived by the Board when in its opinion it is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law. (6/78,3/88)

(g) On land of single ownership where the intent is to subdivide into no more than two lots of legal area and a way is required for one lot, this may be exempt from any or all of the requirements of the design standards, excepting for those requirements specified in the by-laws. It shall be at the discretion of the Board to grant these waivers and to set requirements for the way. Any such way established shall not be used to provide access to any lot other than the lot established by approval of the way. There shall be no further subdivision of the lot serviced by the way established. Any way established under this provision of waiver of design standards shall not be subject to acceptance by the Town as a public way. (9/71,12/83,11/86)

(h) No street shall intersect any other street at less than sixty (60) degrees. (11/86)

(i) Street construction

1. The width of the pavement and the shoulders (four (4) feet from each side of the pavement) shall be cleared of all stumps, brush, roots, boulders, trees and like material. All such material shall be disposed of outside the subdivision unless authorized by the Planning Board.
2. All materials not suitable for foundation shall be removed from an area eight (8) feet wider than the paved width (four (4) feet from each side of the pavement) and to a depth of at least six (6) inches below finished grade. Peat, silt, loam or similar yielding materials shall be removed to a firm foundation for the same width.
3. Grades of streets shall be a reasonable minimum, but not less than five tenths (0.5) of a percent nor more than ten (10) percent except that the Planning Board may grant approval of grades up to twelve (12) percent for a distance of less than one hundred (100) feet. The roadway is to be constructed in true cross section with a crown of one quarter (1/4) inch per foot from the center line.
4. No side slopes resulting from grading of the street shall exceed one (1) foot vertical to two (2) feet horizontal in fill and in cut. Land between the outside of the layout and the pavement shall be graded so as to prevent surface water on the street from draining on to private land except into designated areas.
5. Traveled ways and shoulders shall be provided with a foundation consisting either of at least six (6) inches compacted thickness of good binding gravel satisfactory to the Project Engineer, clean, free of organic matter, and without stones over three (3) inches in diameter, or of six (6) inches of clay hardening or the equivalent. Any depressions that occur, either during or after rolling, must be filled with additional gravel or hardening and rolled until the surface is true and even.
6. The wearing surface of the roadways within the right of ways shall be two (2) course Type I bituminous concrete pavement (native stone aggregate allowed), applied with a two (2) inch (after compaction) base course and a one (1) inch finished course, in accordance with Massachusetts Department of Public Works Standard Specification 460. Pavement shall be centered in the roadway layout, unless the Planning Board approves a variation.
7. The minimum pavement width, exclusive of curbing or berms, shall be as follows: for roads that will never be able to serve more than ten (10) lots: eighteen (18) feet; more than fifteen (15) lots: twenty (20) feet; all other roads: twenty-two (22) feet.
8. Molded bituminous berms, sixteen (16) inches in width, or paved gutters shall be installed wherever pavement grades exceed three (3) percent, and shall be installed over the same bituminous base as the paved surface.
9. Road drainage, including lines and structures, shall be constructed to meet storm characteristics acceptable to current engineering standards. Grates and frames shall be of Massachusetts Standard grate type and shall conform with Massachusetts Department of Public Works specifications. Catch basins, leaching basins or leaching fields shall be adequate for the conditions encountered. Catch basins shall be of a solid construction (masonry or precast concrete) with sump, overflow and grate located in the road to receive surface water. Leaching basins shall be of a masonry or pre-cast concrete construction, located off the road

a minimum of two (2) feet and connected to catch basins with concrete, asphalt-coated, corrugated aluminum or steel pipe with a minimum diameter of ten (10) inches. All leaching basins shall have a two (2) foot minimum width of one and a half (1 and 1/2) inch stone around the circumference and for the full depth of the leaching portion of the basin. Covers shall be precast concrete.

Swales shall be constructed of the same material and specifications as the road surface and shall direct surface water away from the road pavement a minimum distance of five (5) feet to an area of suitable drainage so as not to cause erosion or puddling.

10. All utility lines and cables shall be underground.
 11. Topsoil removed during the course of construction shall be redistributed so as to provide at least four (4) inches of cover to all areas of the subdivision and shall be stabilized by seeding and planting. At no time shall topsoil be removed from the site or tract without obtaining the required permit.
 12. The subdivider shall clean up all debris caused by street construction and installation of utilities, drainage or other services; prior to release of security, the street right of way shall be similarly cleaned.
 13. Street signs of a design and material approved by the Planning Board shall be furnished and installed to identify each street at each intersection.
 14. Guard rails of a design and material approved by the Planning Board shall be required at points along the roads where necessary for safety in the opinion of the Board.
- (11/86)*
- (j) Monuments shall be installed at all angle points and points of curvature of all lot lines and all ways, and at other points, where, in the opinion of the Board, permanent monuments are necessary. Such monuments shall be at least five (5) inches by five (5) inches by thirty (30) inches of concrete or granite. No permanent monuments shall be installed until all construction which would disturb the monuments is completed. This rule shall not apply to any corner, as herein defined, which is permanently marked as a result of proceedings in the Land Court. *(9/71,11/86)*
- (k) The project engineer or surveyor shall inspect each step in the construction of the roads, drainage, monuments and installation of utilities and upon completion of same shall submit an affidavit to the Planning Board, signed and sealed by him, certifying that the work has been done, in accordance with the subdivision design standards of the Town of Truro. *(11/86)*
- (l) Road construction and drainage shall be completed within two (2) years of plan approval or shall be required to meet the standards in place at the time of completion. *(11/86)*
- (m) Prior to the issuance by the Building Commissioner of an occupancy certificate for any structure in any subdivision approved subsequent to the adoption of this By-law, streets serving the lot, or lots, for which the permit is desired must meet all requirements of subdivision design standards. *(11/86)*

- (n) 1. Performance guarantee: Before endorsement of the Board's approval of a Definitive Plan of a subdivision the applicant shall secure the completion of the required improvements specified in Section IV for all of the lots in the subdivision by one, or in part by one and in part by the other, of the methods described in a. and b. below, which method may be selected by the applicant.
- a. Approval with bonds or surety: The applicant shall either file a surety company performance bond or a deposit of money or negotiable securities in an amount determined by the Board to be sufficient to cover the cost of all or any part of the improvements specified in Section IV. In case of negotiable securities, the value required shall be 100 percent greater than a bond. Such bond or security shall be approved as to form and manner of execution by the Town Counsel and sureties approved by the Town Treasurer, and shall be contingent upon completion of such improvements within two years of the date of endorsement of the plan.
 - b. Approval with covenant: The applicant shall file with the Planning Board, and properly record along with the plan, a properly executed covenant running with the land whereby such ways and services shall be provided to serve any lot before such lot may be built upon or conveyed other than by mortgage deed. Such covenant shall be executed in the form provided by the Planning Board and approved by Town Counsel, and shall be contingent upon the completion of all required improvements within two years of the date of endorsement of the plan. At the discretion of the Board a time extension may be granted.
2. Later alternate method of guaranteeing performance: After sufficient improvements have been made by the applicant to give the Board reason to release one or more lots from a performance guarantee and following the recording of a mortgage or mortgages on a lot or lots in the subdivision given as security for advances to the subdivider by a lender, the Board may, at its option, release lots from the operation guarantee without receipt of a bond or deposit of money upon delivery to the Board of an agreement with the Board, which agreement shall be executed by the applicant and the lender and shall provide for the retention by the lender of sufficient funds otherwise due the applicant to secure the construction of ways and installation of utilities. Said agreement shall provide for a schedule of disbursements which may be made to the applicant upon completion of various stages of the work and shall further provide that in the event the work is not completed within the time set forth by the applicant, any funds remaining undisbursed shall be available for completion.
3. Release of performance guarantee: Upon the completion of improvements required under Section IV, security for the performance of which was given by bond, deposit, or upon the performance guarantee with respect to any lot, the applicant shall send by registered or certified mail to the Town Clerk and to the Board a written statement in duplicate that the said construction or installation in connection with which such bond, or deposit has been given has been completed in accordance with requirements contained under Section IV, such statement to contain the address of the applicant. If the Board determines that said

construction or installation has not been completed, it shall specify to the applicant in writing the details wherein said construction and installation fails to comply with the requirements contained under Section IV. Upon failure of the Board to act on such application within 45 days after the receipt of the application by the Town Clerk, all obligations under the bond shall cease and terminate by operation of law, and any deposit shall be returned. In the event that said 45 day period expires without such specifications, or without the release and return of the bond or return of the deposit as aforesaid, the Town Clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded. (9/71,6/78,11/86)
In the event the developer fails to perform satisfactorily, the requirements set forth in the bond within the specified period of time, if any, the then outstanding principal amount (penal sum) of the bond shall be payable to the Town as provided by law, to the extent of the reasonable cost to the Town of the completion of the improvements required under the bond. (9/71,11/86)
In such case the approval of the Board of the Definitive Plan of the subdivision may be rescinded. (9/71,11/86)

- (o) No permit will be issued for building on any lot for which a plan is required until such plan has been recorded at the Registry of Deeds (Plan Book and page numbers are evidence of recording). In the case of registered land evidence must be presented to the Board that such plan has been duly recorded with the Massachusetts Land Court and approved. (9/71,6/78,11/86)
- (p) All lots established under the provisions of the Subdivision Code must be of sufficient depth to permit the erection of a building thereon. This requirement shall not apply to a lot which, after approval of the subdivision plan, will be conveyed to the owner of an adjoining lot and thence become an integral part of said adjoining lot. This intention of conveyance shall be noted on the Definitive Plan. (9/71,12/83,11/86)
- (q) Protection of natural features. Due regard shall be shown for all natural features such as large trees, water courses, scenic points, historic points and similar community assets which, if preserved, will add attractiveness and value to the subdivision.

To the fullest extent possible, existing trees shall be preserved by the developer. Special consideration shall be given to the layout of lots and the position of dwellings on the lots to insure that existing trees shall be preserved during the process of grading. Where there is a question as to the desirability of removing trees or a group of trees which serve to add interest and variety to the proposed subdivision, in order to allow for use of the land for a lot or lots, the Planning Board may impose such conditions and terms which in the opinion of the Board are necessary to insure compliance herewith. (6/78,12/83,11/86,3/88)

Section V. Administration:

- A. Waiver:
Strict compliance with the requirements of these rules and regulations may be waived,

when in the judgment of the Board, such action is in the public interest and not inconsistent with the Subdivision Control Law.

B. Notice of Waiver:

Notice of waiver of any of these laws or regulations by the Board shall be made in writing to the Board of Selectmen and to the Board of Appeals.

C. Reference:

For matters not covered by these rules and regulations, reference is made to Section 81K to 81GG inclusive of Chapter 41 of the General Laws. (12/55, 9/71, 6/78)