

Kaci A Fullerton-Willis, Town Clerk, Town of Truro / 11.8.22 pg 1-5



Zoning Board of Appeals

Town of Truro

24 Town Hall Road
Truro, MA 02666
(508) 349-7004

DECISION OF THE ZONING BOARD OF APPEALS

Special Permit

Case Reference No.: 2022-008/ZBA

Atlas Map 53, Parcel 24

Address: 49 Fisher Road

Title Reference: Barnstable County Registry of Deeds Book 21922 / 32678, Page 177 / 75

Owners and Applicants: Douglas W. Ambrose

Hearing Dates: May 23, 2022; June 27, 2022; July 25, 2022; August 22, 2022;
September 26, 2022

Decision Date: September 26, 2022

Demolition/Reconstruct Dwelling on Non-Conforming Lot Special Permit Vote: 5-0

Withdraw Variance Request without Prejudice Vote: 5-0

Sitting: Chris Lucy, Vice Chair; Darrell Shedd; Heidi Townsend; Virginia Frazier;
Curtis Hartman

Demolition/Reconstruct Dwelling on Non-Conforming Lot Special Permit Motion (by M. Shedd, seconded by M. Lucy), and Withdraw Variance Request without Prejudice Motion (by M. Lucy, seconded by M. Shedd). In the matter of 2022-008/ZBA, Application of Douglas W. Ambrose, applicant seeks a Special Permit under M.G.L. Ch. 40A §6 and §30.7 of the Truro Zoning Bylaw for demolition and reconstructing of a dwelling on a non-conforming lot (lot area), based upon the following materials filed with this Board:

- Cover Letter from Benjamin E. Zehnder, Esq. dated April 20, 2022
- Application for Hearing, Special Permit and Variance, dated April 20, 2022
- Certified Abutters List for Special Permit and Variance
- Town of Truro Fiscal Year 2022 Property Card for 49 Fisher Rd, Parcel ID 53-24-0
- CAI AxisGIS
- Quitclaim Deed Book 32678, Page 75-77 (3 pages)
- Quitclaim Deed Book 21922, Page 177-181 (5 pages)
- Town of Truro Building Permit #20-322 dated 10-27-2020 (1 page)
- "Plan of Land in Truro owned by Emma Ambrose", Plan Book 206, Page 69, prepared by Francis J. Alves, CE, dated October 18, 1966, Scale 1" = 40'

A true copy, attest:

- “Certified Plot Plan, 49 Fisher Road, Truro MA”, Plan Book 206, Page 69, prepared for Douglas Ambrose, prepared by Felco, Inc., dated June 22, 2021, Scale 1” = 40’
- Google Earth Imagery dated October 23, 2021
- “Site & Sewage Plan, 49 Fisher Road, Truro MA”, prepared for Douglas Ambrose, prepared by Felco, Inc., dated February 7, 2020, Revised March 30, 2020 and April 23, 2020, Scale 1” = 40’
- “Site & Sewage Plan, 49 Fisher Road, Truro MA”, prepared for Douglas Ambrose, prepared by Felco, Inc., dated February 7, 2020, Revised March 30, 2020, April 23, 2020, and November 30, 2020, Scale 1” = 40’
- “Front Elevation (East), Proposed Reconstructed Dwelling, Douglas Ambrose, 49 Fisher Road Truro, MA” prepared by ARC Designs, LLC, dated September 6, 2020, Revised September 30, 2020 and December 3, 2020, Scale 1/4” = 1’, Sheet 1 of 7
- “Right Side Elevation (North), Proposed Reconstructed Dwelling, Douglas Ambrose, 49 Fisher Road Truro, MA” prepared by ARC Designs, LLC, dated September 6, 2020, Revised September 30, 2020, Scale 1/4” = 1’, Sheet 2 of 7
- “Left Side Elevation (South), Proposed Reconstructed Dwelling, Douglas Ambrose, 49 Fisher Road Truro, MA” prepared by ARC Designs, LLC, dated September 6, 2020, Revised September 30, 2020, Scale 1/4” = 1’, Sheet 3 of 7
- “Rear Elevation (West), Proposed Reconstructed Dwelling, Douglas Ambrose, 49 Fisher Road Truro, MA” prepared by ARC Designs, LLC, dated September 6, 2020, Revised September 30, 2020, Scale 1/4” = 1’, Sheet 4 of 7
- “First Floor Plan, Proposed Reconstructed Dwelling, Douglas Ambrose, 49 Fisher Road Truro, MA” prepared by ARC Designs, LLC, dated September 6, 2020, Revised September 30, 2020, Scale 1/4” = 1’, Sheet 5 of 7
- “Second Floor Plan, Proposed Reconstructed Dwelling, Douglas Ambrose, 49 Fisher Road Truro, MA” prepared by ARC Designs, LLC, dated September 6, 2020, Revised September 30, 2020, Scale 1/4” = 1’, Sheet 6 of 7
- “Framing Section “M” and Framing Section “N” Plans, Proposed Reconstructed Dwelling, Douglas Ambrose, 49 Fisher Road Truro, MA” prepared by ARC Designs, LLC, dated September 6, 2020, Revised September 30, 2020, Scale 1/4” = 1’, Sheet 7 of 7
- “Front Elevation (East), Proposed Reconstructed Dwelling, Douglas Ambrose, 49 Fisher Road Truro, MA” prepared by ARC Designs, LLC, dated September 6, 2020, Revised September 30, 2020 and December 3, 2020, Scale 1/4” = 1’, Sheet 1 of 7
- “Right Side Elevation (North), Proposed Reconstructed Dwelling, Douglas Ambrose, 49 Fisher Road Truro, MA” prepared by ARC Designs, LLC, dated September 6, 2020, Revised September 30, 2020 and December 3, 2020, Scale 1/4” = 1’, Sheet 2 of 7
- “Left Side Elevation (South), Proposed Reconstructed Dwelling, Douglas Ambrose, 49 Fisher Road Truro, MA” prepared by ARC Designs, LLC, dated September 6, 2020, Revised September 30, 2020 and December 3, 2020, Scale 1/4” = 1’, Sheet 3 of 7

- “Rear Elevation (West), Proposed Reconstructed Dwelling, Douglas Ambrose, 49 Fisher Road Truro, MA” prepared by ARC Designs, LLC, dated September 6, 2020, Revised September 30, 2020 and December 3, 2020, Scale 1/4” = 1’, Sheet 4 of 7
- “First Floor Plan, Proposed Reconstructed Dwelling, Douglas Ambrose, 49 Fisher Road Truro, MA” prepared by ARC Designs, LLC, dated September 6, 2020, Revised September 30, 2020 and December 3, 2020, Scale 1/4” = 1’, Sheet 5 of 7
- “Second Floor Plan, Proposed Reconstructed Dwelling, Douglas Ambrose, 49 Fisher Road Truro, MA” prepared by ARC Designs, LLC, dated September 6, 2020, Revised September 30, 2020 and December 3, 2020, Scale 1/4” = 1’, Sheet 6 of 7
- “Framing Section “M” and Framing Section “N” Plans, Proposed Reconstructed Dwelling, Douglas Ambrose, 49 Fisher Road Truro, MA” prepared by ARC Designs, LLC, dated September 6, 2020, Revised September 30, 2020 and December 3, 2020, Scale 1/4” = 1’, Sheet 7 of 7
- “Plan of Land in Truro, MA, Being a Reconfiguration of Lots 2 & 3 as shown on Plan Book 206 Page 69”, prepared for Douglas Ambrose & 47 Fisher Road Realty Trust, by Demarest Land Surveying, dated March 31, 2022, Scale 1” = 30’
- Extension Agreement through September 26, 2022
- “Site Plan, Truro, MA, Plan Book 206 Page 69”, prepared for Douglas Ambrose, by Demarest Land Surveying, dated September 26, 2022, Scale 1” = 30’

The Board also received:

- Email dated May 16, 2022 from Tobin Gerhart
- Email dated May 23, 2022 from Lucy Clark
- Email dated June 20, 2022 from Jack Riemer with attachments
- Email dated July 19, 2022 from Jack Riemer with additional comments/attachments
- Email dated June 29, 2022 between Benjamin E. Zehnder, Esq. and the Building Commissioner
- Email dated July 21, 2022 between Benjamin E. Zehnder, Esq. and the Building Commissioner with attachments
- Email dated September 20, 2022 between Benjamin E. Zehnder, Esq. and the Building Commissioner
- Email dated September 26, 2022 from Benjamin E. Zehnder, Esq. with attachment

This Special Permit Decision is based on the following findings of fact:

1. 49 Fisher Road is a nonconforming lot, containing 22,651 square feet where 33,750 are required (Residential District).
2. A building permit issued on October 27, 2020 for construction of a new dwelling, replacing an existing one. Construction proceeded and a final inspection took place on August 25, 2021. It was determined that a portion of the structure – exterior stairs and landings – had been constructed within the side setback to lot adjacent to the east (to 18.1 feet of lot line).

It was also determined that a special permit was required for the construction, due to the nonconformity of the lot. Applications for relief were filed with the Board.

3. Over the course of public hearing, the Applicant proposed various modifications to the structure to bring it closer to conformity with the Zoning Bylaw. Finally, the Applicant proposed an alternative that moved the stairs and landing out of the side yard setback and into conformity with the Bylaw. The requirement of a special permit remained, due to the lot's nonconformity.
4. To address an encroachment by the structure into a different setback, the Applicant will be required to adjust that lot line through an Approval Not Required (ANR) plan endorsement by the Planning Board.

Findings under Zoning Bylaw §30.7 and §30.8 and G.L. Chapter 40A, §6

1. The lot is nonconforming as to area. Alteration, extension, or reconstruction of a dwelling on a nonconforming lot increases the intensity of the existing nonconformity and requires a special permit under G.L. c. 40A, s. 6. Bjorklund v. Zoning Board of Appeals of Norwell, 450 Mass. 357 (2008).
2. The Board finds that the constructed residence, as modified to eliminate the encroachment into the side setback, generally conforms in style with neighboring properties. Although elevated so as to comply with Building Code requirement for floodplain construction, the residence is not unreasonably out of conformity with dimensions of neighboring properties.
3. Based on the above, the Board finds under G.L. c. 40A, s. 6 and under Section 30.7 of the Zoning Bylaw that the reconstructed dwelling is not substantially more detrimental than the preexisting nonconforming structure and use to the neighborhood.
4. Based on the above, the Board further finds under Section 30.7.A of the Zoning Bylaw that the existing nonconforming use or structure and that the alternation or extension will exist in harmony with the general purpose and intent of this bylaw.”

Conditions

This Special Permit is granted subject to the following conditions:

1. The Applicant shall remove the stairs and landing from within the side setback and reconstruct them so as to conform to the setback requirement. Any additional construction shall conform to the Zoning Bylaw in all respects.
2. Prior to issuance of a final Occupancy Permit, the Building Commissioner shall inspect the structure and property to confirm compliance with this Decision and the Zoning Bylaw.
3. Prior to the issuance of a final Occupancy Permit, the Applicant shall obtain the endorsement of the Planning Board on an Approval Not Required (ANR) plan altering the lot line with 47 Fisher Road, and thereby eliminating the encroachment into the setback from that property.

4. The applicants shall obtain and comply with any necessary permits or other approvals required from the Town, including but not limited to the Conservation Commission and Board of Health.
5. The use of the Property shall be in strict conformance with the Town of Truro Zoning Bylaws.
6. The use of the Property shall be in strict conformance with the Town of Truro General Bylaws, including but not limited to Chapter IV, §6 (Outdoor Lighting).

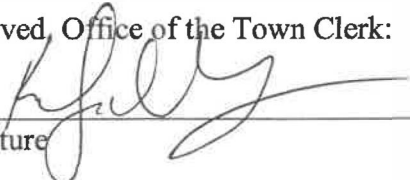
This Special Permit shall lapse after one year if substantial use is not commenced with that time. See Zoning Bylaw §30.8.



 Art Hultin, Chair

10/19/2022

 Date

Received, Office of the Town Clerk:


 Signature

10/19/2022

 Date

I hereby certify that this decision was filed with the Office of the Town Clerk on 10.19.2022 and 20 (twenty) days have elapsed since the date of filing, and:

- No Appeal has been filed.
- An Appeal has been filed and received in this office on: _____



 Signature

11.8.2022

 Date

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

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



Town of Truro Planning Board

P.O. Box 2030, Truro, MA 02666

FORM A

APPLICATION FOR DETERMINATION THAT PLAN DOES NOT REQUIRE APPROVAL (ANR)

To the Planning Board of the Town of Truro, MA

Date 2/15/24

The undersigned owners of all the land described herein submitted the accompanying plan entitled: PLAN OF LAND IN TRURO, MA PREPARED FOR DOUGLAS AMBROSE & 47 FISHER ROAD REALTY TRUSTAND dated FEBRUARY 15, 2024, requests a determination and endorsement by said Board that approval by it under the Subdivision Control Law is not required.

Property Location: 47 & 49 FISHER ROAD Map(s) and Parcel(s): MAP 53 PCL 24 & 25

Number of Lots Created: 4 Total Land Area: 46,399 ± ± (1.07 ± AC.)

The owner's title to said land is derived under deed from MARCIA S. AMBROSE (32678/75) dated JANUARY 23, 2020 and recorded in the Barnstable Registry of Deeds Book and Page 32678/75 or 22241/112 Land Court Certificate of Title No. _____ registered in Barnstable County.

The undersigned believes that such approval is not required for the following reasons: (check as appropriate)

- The accompanying plan is not a subdivision because the plan does not show a division of land.
- The division of the tract of land shown on the accompanying plan is not a subdivision because every lot shown on the plan has frontage of at least such distance as is presently required by the Truro Zoning Bylaw under Section 50.1(A) which requires 150 feet for erection of a building on such lot; and every lot shown on the plan has such frontage on:
 - a public way or way which the Town Clerk certifies is maintained and used as a public way, namely _____, or
 - a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, namely _____ on _____ and subject to the following conditions _____; or
 - a private way in existence on December 8, 1955, the date when the subdivision control law became effective in the Town of Truro having, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon, namely _____.
- The division of the tract of land shown on the accompanying plan is not a "subdivision" because it shows a proposed conveyance/other instrument, namely LOTS 2B & 3B (LAND SWAP) which adds to/takes away from/changes the size and shape of, lots in such a manner that no lot affected is left without frontage as required by the Truro Zoning Bylaw under Section 50.1(A), which requires 150 feet.

The division of the tract of land shown on the accompanying plan is not a subdivision because two or more buildings, specifically _____ buildings were standing on the property prior to December 8, 1955, the date when the subdivision control law went into effect in the Town of Truro and one of such buildings remains standing on each of the lots/said buildings as shown and located on the accompanying plan. Evidence of the existence of such buildings prior to the effective date of the subdivision control law as follows:

Other reasons or comments: (See M.G. L., c.41, §81-L)

All other information as required in the Rules and Regulations Governing Subdivisions of Land shall be submitted as part of the application.

(Printed Name of Owner)

(Signature)

(Printed Name of Owner)

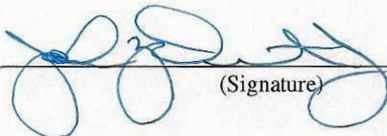
(Signature)

(Address of Owner(s))

(Address of Owner(s))

JOHN Z. DEMAREST JR. (AGENT)

(Printed Name of Agent)



(Signature)

DEMAREST LAND SURVEYING
338 MAYFAIR ROAD, SOUTH DENNIS, MA 02660

(Address of Agent)

File twelve (12) copies each of this form and applicable plan(s) with the Town Clerk; and a complete copy, including all plans and attachments, submitted electronically to the Town Planner at planner1@truro-ma.gov

2.2 - APPROVAL NOT REQUIRED (ANR) PLAN ENDORSEMENT REVIEW CHECKLIST - Applicant

Address: <u>47 & 49 FISHER ROAD</u> Applicant Name: <u>DOUGLAS AMBROSE & 47 FISHER ROAD REALTY TRUST</u> Date: <u>2/15/24</u>				
No.	Requirement	Included	Not Included	Explanation, if needed
2.2.2 Submission Requirements				
Any person may submit a plan seeking endorsement that the plan does not require approval under the Subdivision Control Law by providing the Board with the following:				
a.	A properly executed application for Approval Not Required Endorsement (Form A).	✓		
b.	Ten (10) paper prints of the plan. Said plan shall be prepared in such a manner as to meet the Registry of Deeds and/or Land Court requirements for recording and shall contain the following information:	✓		
b.1	The boundaries, area, frontage and dimensions of the lot or lots for which ANR endorsement is sought.	✓		
b.2	The date of the plan, scale, north arrow and assessor's map and parcel number of all land shown on the plan and directly abutting the land shown on the plan.	✓		
b.3	The name(s) of the owner(s) of record of the lots shown on the plan and of the applicant, together with the name, address seal and signature of the land surveyor who prepared the plan.	✓		
b.4	Relevant zoning classification data.	.		
b.5	A locus plan containing sufficient information to locate the land and showing streets bounding or providing access to the property.	✓		
b.6	The name(s) of the way(s) on which the lots front, information as to ownership of the way(s) and the physical condition of the way(s) including actual width, surface type and condition.	✓		
b.7	The location and dimension of any natural features which might affect the use of the frontage for access.	✓		
b.8	The location, including setbacks to all lot lines, of all buildings and other structures on the proposed ANR lots shown on the plan.	✓		
b.9	The location of any wetland on the land shown on the plan or within one hundred (100) feet of its boundaries.		✓	WETLAND EXCEEDS THE AREA OF THE LAND SURF
b.10	The location of all bounds and easements on the proposed ANR lots shown on the plan.	✓		

2.2 - APPROVAL NOT REQUIRED (ANR) PLAN ENDORSEMENT REVIEW CHECKLIST - Applicant

Address: 47 & 49 FISHER ROAD Applicant Name: ^{DOUGLAS AMBROSE}47 FISHER ROAD REATY TRUST Date: 2/15/24

No.	Requirement	Included	Not Included	Explanation, if needed
b.11	The statement "Approval under the Subdivision Control Law Not Required", and sufficient space for the date of the application submittal and the date of endorsement, docket number and the signatures of all Board members.	✓		
b.12	The statement "Planning Board endorsement of this plan indicates only that the plan is not a subdivision under MGL, Chapter 41, Section 81-L and does not indicate that a lot is buildable or that it meets Zoning, Health or General Bylaw requirements."	✓		

OWNERS OF RECORD:
 DOUGLAS W. AMBROSE
 7 ROWAYTON AVENUE
 ROWAYTON, CT 06853
 47 FISHER ROAD REALTY TRUST
 C/O JANET DUGAN CPA
 PO BOX 668
 CHATHAM, MA 02633

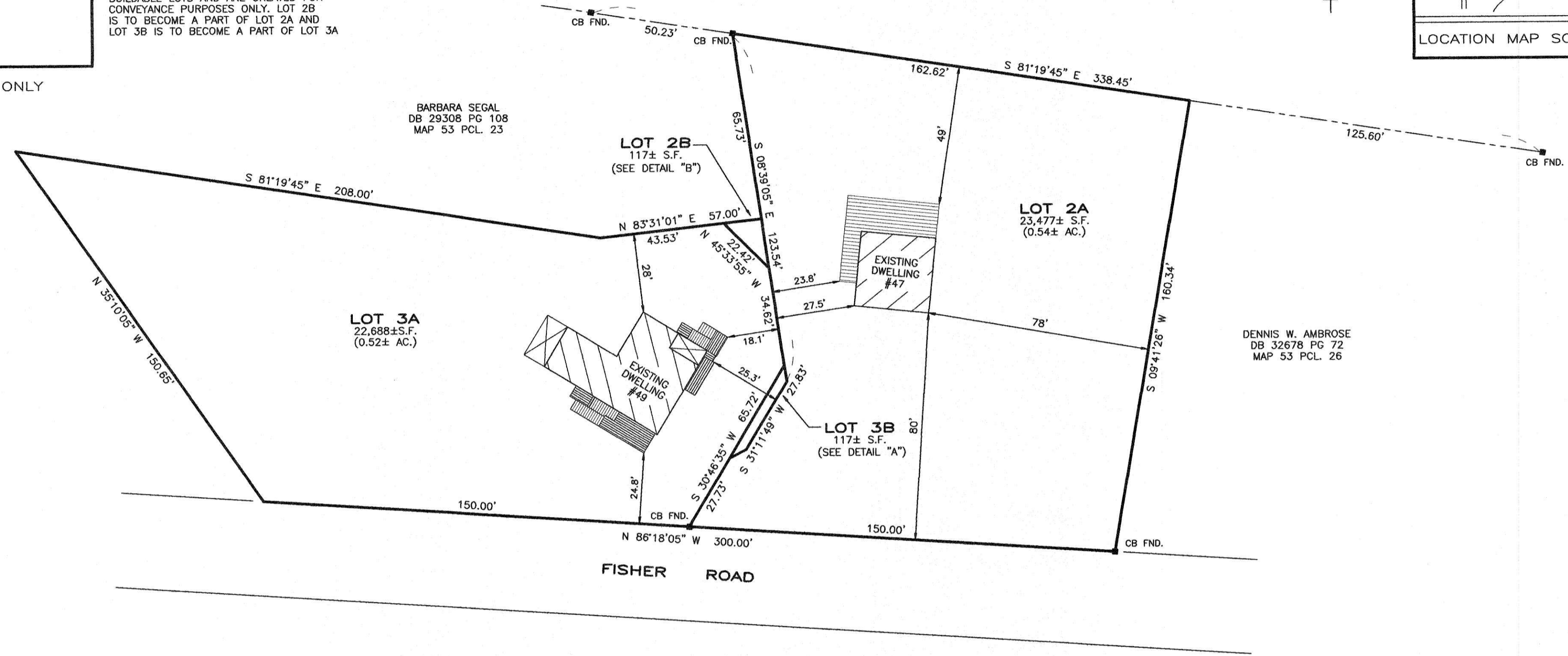
REFERENCES:
 DEED BOOK 32678 PAGE 75
 DEED BOOK 22241 PAGE 112
 PLAN BOOK 206 PAGE 69

ASSESSORS MAP 53 PARCELS 24 & 25
 TOTAL AREA: 46,399± S.F. (1.07± AC.)
 LOTS 2B AND 3B ARE NOT CONSIDERED
 BUILDABLE LOTS AND ARE CREATED FOR
 CONVEYANCE PURPOSES ONLY. LOT 2B
 IS TO BECOME A PART OF LOT 2A AND
 LOT 3B IS TO BECOME A PART OF LOT 3A

TRURO CONSERVATION TRUST
 DB 29307 PG 226
 MAP 53 PCL. 19

LOCATION MAP SCALE: 1"=2000'±

FOR REGISTRY USE ONLY

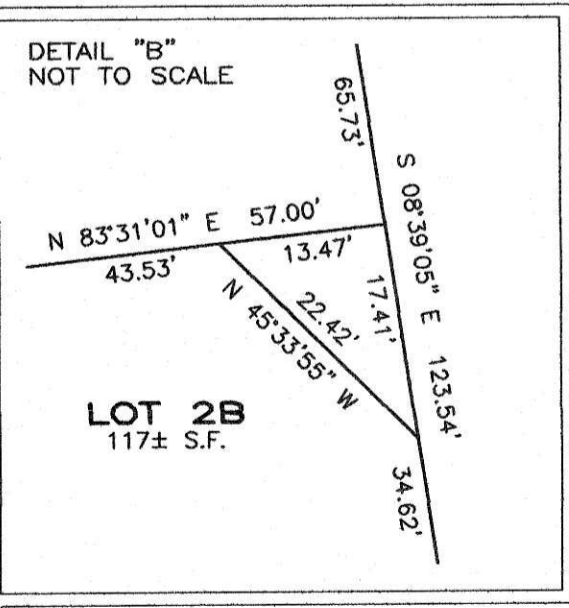
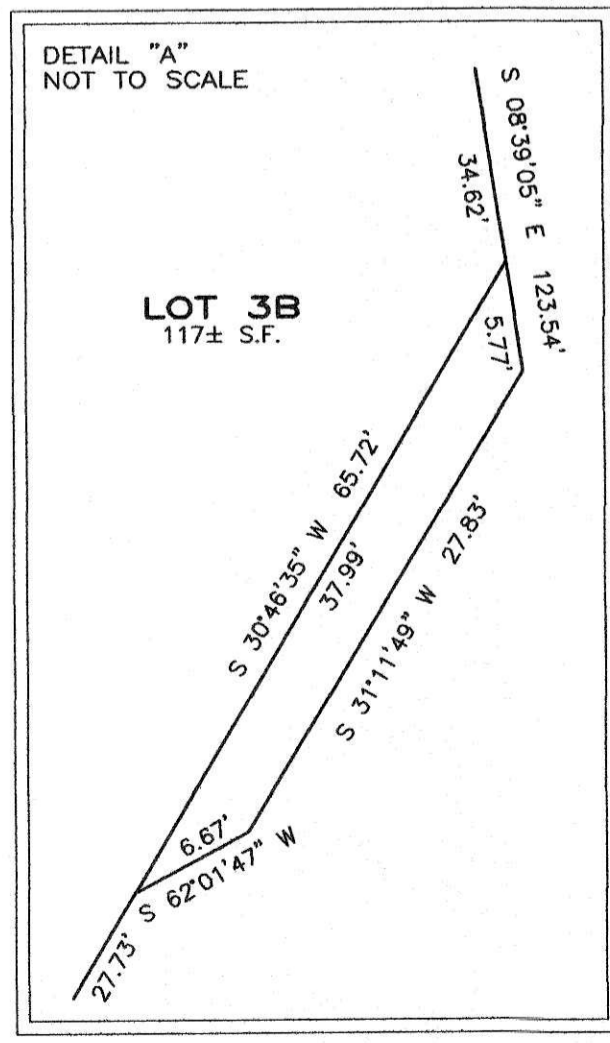


TRURO PLANNING BOARD

PLANNING BOARD APPROVAL UNDER
 SUBDIVISION CONTROL LAW NOT REQUIRED

DATE: _____

PLANNING BOARD ENDORSEMENT OF THIS PLAN INDICATES
 ONLY THAT THE PLAN IS NOT A SUBDIVISION UNDER MGL,
 CHAPTER 41, SECTION 81-L AND DOES NOT INDICATE THAT
 A LOT IS BUILDABLE OR THAT IT MEETS ZONING, HEALTH
 OR GENERAL BYLAW REQUIREMENTS.



I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED
 IN ACCORDANCE WITH THE RULES AND REGULATIONS
 OF THE REGISTRY OF DEEDS EFFECTIVE JANUARY 1,
 1976 AND AMENDED JANUARY 7, 1988.

2/15/24
 DATE

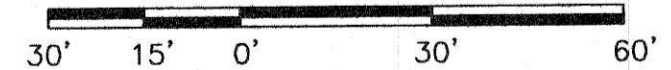
JOHN Z. DEMAREST JR., P.L.S.
 LAND SURVEYOR

**PLAN OF LAND IN
 TRURO, MA**

BEING A RECONFIGURATION OF
 LOTS 2 & 3 AS SHOWN ON
 PLAN BOOK 206 PAGE 69

PREPARED FOR:
**DOUGLAS AMBROSE &
 47 FISHER ROAD
 REALTY TRUST**

SCALE: 1" = 30' FEBRUARY 15, 2024
 GRAPHIC SCALE IN FEET



DEMAREST LAND SURVEYING
 338 MAYFAIR ROAD
 SOUTH DENNIS, MA 02660
 508-364-9049