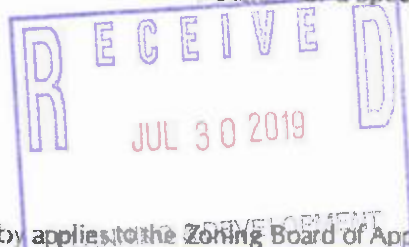


19 JUL 30 P2:50



**Town of Barnstable  
Zoning Board of Appeals  
Petition for a Special Permit**

Date Received  
Town Clerk's Office:



For office use only:  
Appeal # 2019-050  
Hearing Date 09-25-19  
Days Extended \_\_\_\_\_  
Decision Due 11-20-19

The undersigned hereby applies to the Zoning Board of Appeals for a Special Permit, in the manner and for the reasons set forth below:

Petitioner's Name: 1000 Main, LLC Phone: (508) 360-6859  
Petitioner's Address: Box 125 / 164 Beale Way Barnstable, MA 02630

Property Location: 1000 Main Street (off 6A) West Barnstable  
Property Owner: 1000 Main, LLC Phone: (508) 360-6859  
Address of Owner: \_\_\_\_\_

*If applicant differs from owner, state nature of interest:<sup>2</sup>*

Registry of Deeds/Land Court References: Deed 27876/218 Plan \_\_\_\_\_

Assessor's Map/Parcel Number: 179 Zoning District: WBVBD

Number of Years Owned: 5 1/2 (12/2013) Groundwater Overlay District: \_\_\_\_\_

Special Permit Requested: To allow storage of small traditional sail boats  
*Cite Section & Title from the Zoning Ordinance*

Description of Activity/Reason for Request: and to continue pre-existing use of residential units in house,

WBVBD - 240 - 20B sections (3) and (4)  
Attach additional sheet if necessary

Is the property subject to an existing Variance or Special Permit ..... No [ ] Yes []  
Permit# 1987-35

<sup>1</sup> The Petitioner's Name will be the entity to whom the special permit will be issued to.  
<sup>2</sup> If the Applicant differs from owner, the Applicant will be required to submit one original notarized letter from the owner authorizing the application to the Zoning Board, a copy of an executed purchase & sales agreement or lease, or other documents to prove standing and interest in the property.

Petition for a Special Permit - Page 2

Description of Construction Activity (if applicable): None

Attach additional sheet if necessary

Existing Level of Development of the Property- Number of Buildings: Three buildings

Present Use(s): House - Residential Garage - Storage Barn - Small Sailboat Storage

Existing Gross Floor Area: 4,019 sq. ft. Proposed New Gross Floor Area: 0 sq. ft.

Site Plan Review Number: C56-18 Date Approved: 8/29/18 (not required for Single or Two Family use)

Is the property located in a designated Historic District?..... Yes  No

Is this proposal subject to the jurisdiction of the Conservation Commission ..... Yes  No

Is this proposal subject to approval by the Board of Health ..... Yes  No

Is the building a designated Historic Landmark?..... Yes  No

Have you applied for a building permit?..... Yes  No

Have you been refused a building permit?..... Yes  No

The following Required Information, as applicable to application, must be submitted with the application at the time of filing, failure to do so may result in a denial of your request.

- Three (3) copies of the completed application form, each with original signatures.
- Three (3) copies of a 'wet sealed' certified property survey (plot plan) and one (1) reduced copy (8 1/2" x 11" or 11" x 17") showing the dimensions of the land, all wetlands, water bodies, surrounding roadways and the location of the existing improvements on the land.
- Three (3) copies of a proposed site improvement plan, as found approvable by the Site Plan Review Committee (if applicable), and building elevations and layout as may be required plus one (1) reduced copy (8 1/2" x 11" or 11" x 17") of each drawing. These plans must show the exact location of all proposed improvements and alterations on the land and to the structures.
- The applicant may submit any additional supporting documents to assist the Board in making its determination. Twelve copies of all supporting documents must be submitted eight days prior to the public hearing for distribution to the Board Members.

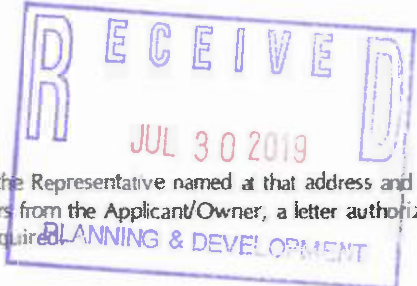
Signature: [Signature] Date: 7/29/19  
Applicant's or Representative's Signature

Print Name: Peter C. Eastman

Address: Bc x 125 Phone: (508) 360-6859

Barnstable, MA 02630 Fax No.: (508) 362-6859

e-mail Address: p.eastman@aol.com



All correspondence on this application will be processed through the Representative named at that address and phone number provided. Except for Attorneys, if the Representative differs from the Applicant/Owner, a letter authorizing the Representative to act on behalf of the Applicant/Owner shall be required.



LEGEND	
99	EXISTING CONTOUR
X 99.7	EXIST. SPOT ELEV.
- [99]	PROPOSED CONTOUR
[98.4]	PROPOSED SPOT EL.
TH1	TEST HOLE
2%	SLOPE OF GROUND
UTILITY POLE	UTILITY POLE
FIRE HYDRANT	FIRE HYDRANT
NOTE: NOT ALL SYMBOLS MAY APPEAR IN DRAWING	
	PINE OR SPRUCE
	CEDAR
	DECIDUOUS

- NOTES**
- DATUM IS NAVD\_88
  - MUNICIPAL WATER IS NOT AVAILABLE
  - THIS PLAN IS FOR PROPOSED WORK ONLY AND NOT TO BE USED FOR LOT LINE STAKING OR ANY OTHER PURPOSE.
  - CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING DIGSAFE (1-888-344-7233) AND VERIFYING THE LOCATION OF ALL UNDERGROUND & OVERHEAD UTILITIES PRIOR TO COMMENCEMENT OF WORK.



**LOCUS MAP**

SCALE 1"=2000' ±  
ASSESSORS MAP 179 PARCEL 2

**ZONING SUMMARY**

ZONING DISTRICT: RF RESIDENTIAL DISTRICT  
 MIN. LOT SIZE 43,560 S.F.  
 MIN. LOT FRONTAGE 150'  
 MIN. FRONT SETBACK 30'  
 MIN. SIDE SETBACK 15'  
 MIN. REAR SETBACK 15'  
 MAX. BUILDING HEIGHT 30'

**ZONING SUMMARY**

ZONING DISTRICT: WBVBD BUSINESS DISTRICT  
 MIN. LOT SIZE 43,560 S.F.  
 MIN. LOT FRONTAGE 160'  
 MIN. FRONT SETBACK 30'  
 MIN. SIDE SETBACK 30'  
 MIN. REAR SETBACK 30'  
 MAX. BUILDING HEIGHT 30'  
 MAX. LOT COVERAGE 10%

**REFERENCES**

DEED BOOK 27876 PAGE 218  
 PLAN BOOK 177 PAGE 43

**SITE PLAN**  
OF

**1000 ROUTE 6A  
WEST BARNSTABLE, MA**

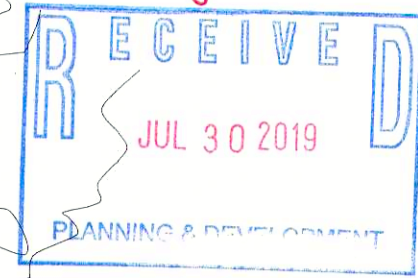
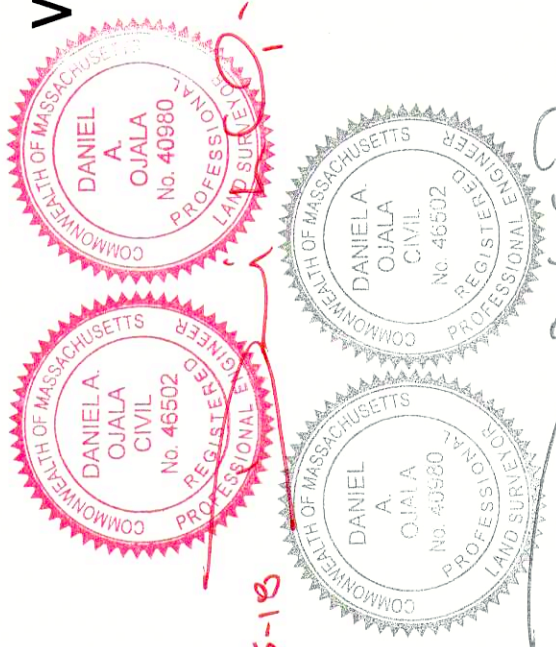
PREPARED FOR  
**PETER EASTMAN**

DATE: APRIL 10, 2018  
 REV.: SEPTEMBER 5, 2018

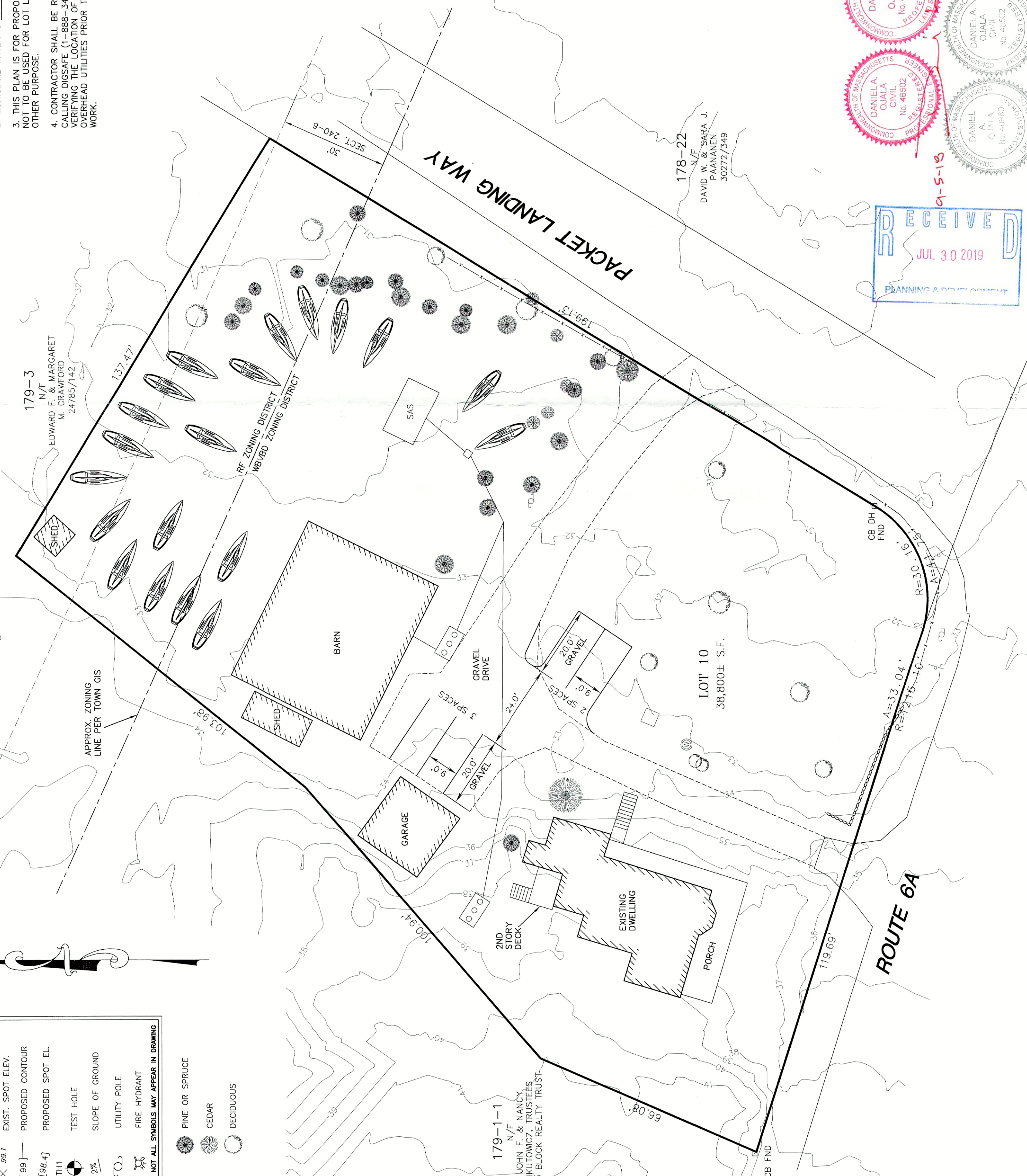
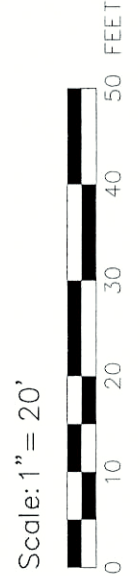
off 508-362-4541  
 fax 508-362-9880  
 downcape.com @

**down cape engineering, inc.**  
 civil engineers  
 land surveyors

939 Main Street (Rte 6A)  
 YARMOUTHPORT MA 02675  
 18-078 EASTMAN.DWG



9-5-18  
 DATE 9-5-18  
 DANIEL A. OJALA, P.E., P.L.S.





TOWN OF BARNSTABLE  
ZONING BOARD OF APPEALS

\*\*\*\*\*

IN RE:

Special Permit Number 2019-050

1000 Main Street

West Barnstable, MA

\*\*\*\*\*

ABUTTER'S MEMORANDUM OF LAW IN  
OPPOSITION TO APPLICATION FOR SPECIAL PERMIT

Now comes Peter Sundelin, abutter to subject property, and submits the following Memorandum of Law in Opposition to Application for Special Permit Number 2019-050

ISSUE PRESENTED:

Petitioner seeks "to continue pre-existing use of residential units in house". The real issue is whether or not any lawful pre-existing non-conforming multi-family use actually exists.

THE PRE-EXISTING NON-CONFORMING MULTI-FAMILY USE WAS ELIMINATED  
BY ISSUANCE OF THE 1987 SPECIAL PERMIT:

The main house had multiple apartments in it prior to the advent of zoning. This multi-family use later became a pre-existing non-conforming use due to the Use Regulations in the VB-B.<sup>1</sup>

The Use Regulation (Section K - 7 (b) ) sets forth the allowed uses:

- a. Detached one family dwelling
- b. Retail store, professional or business office, bank, personal service store or shop.

On March 27, 1987, the prospective new owner (Charles Birdsey) made application to the Board of Appeals for a Special Permit.

---

<sup>1</sup> References are to the 1986 Zoning Ordinance in effect as of March 27, 1987. That, and the other documents mentioned herein, are attached as Exhibits.



The Zoning Section invoked by the Petition was P. A. - 14. This says:

*"A. The Board of Appeals may grant a special permit for the following exceptions to the zoning by-law: ..... 14. In Village Business District A and B, any use permitted in a business district, except hotels and motels."*

Mr. Birdsey's 1987 Petition for Special Permit (paragraph 8) stated that the proposed use of the premises was to be: "Apartment Upstairs, Office Downstairs, boat repair in barn"

The Public Hearing was held on April 30, 1987. Petitioner's lawyer told the Board:

*"There are several apartments that have been in the building since the 1930's - intend to use one apartment, but not all of them."*

The ZBA decided to allow a boat operation in the barn. The Decision says:

*"There are several apartments in the main building since the 1930's. The petitioner intends to use one apartment in the main house, and there is going to be one office used by the petitioner's wife, who runs an adoption agency."*

The Birdsey Petition for Special Permit did not seek to expand a lawful pre-existing non-conforming use of multiple apartments to add a boatbuilding business. This is significant.

An attempt to change the pre-existing non-conforming multi-family use to add a non-conforming boatbuilding business would have run afoul of Zoning Section G - B. That section prohibits: *"the creation of two or more non-conforming uses differing in use"*

This is made clear by the discussion between Mr. Jansson and Attorney. Burling on page 7 of the ZBA Minutes:

*"Ron [Jansson] questions if [the property] has the benefit of a pre-existing non-conforming use. Attorney Burling responded "yes", - Ron Jansson commented his question then is why the petitioner is not before the Board on that particular basis - Mr. Burling commented that he wanted to go under the additional business allowed under [Section P. A. - 14 of ] the zoning by law." (bolded words added for clarity)*

Mr. Jansson further alludes to this issue in the ZBA minutes:

*"now [I] understand if you look at Section G (B) why you probably would not want to come before the board with the pre-existing non-conforming use - because you are talking about two or more [non-conforming] uses." (bolded words added for clarity)*

Eastman, the current petitioner, seeks to resurrect the pre-existing non-conforming multi-family use. Nothing of this sort exists to be resurrected

Had the 1987 petitioner attempted to keep in place the pre-existing non-conforming multi-family use **and** add to it a non-conforming boatbuilding business, the petition would have required denial under Section G (B).

Instead, the 1987 Special Permit had the following results:

Single family dwelling, allowed as of right; and  
Office, allowed as of right; and  
Boat building, allowed by the special permit.

This put the property into full compliance with the ordinance.

The old pre-existing non-conforming multi-family use was eliminated . It did not remain, somehow lurking in the shadows, so that the owner could resurrect it at his or her pleasure. Had the 1987 Petitioner wished for such a result, certainly it would have been appropriate for him to bring it to the Board's attention. This did not occur.

ASSUMING - JUST FOR THE SAKE OF ARGUMENT - THAT THE PRE-EXISTING NON-CONFORMING MULTI-FAMILY USE **WAS NOT** ELIMINATED BY ISSUANCE OF THE 1987 SPECIAL PERMIT: THAT USE WAS ABANDONED AND IS NOT IN THE PICTURE

In the filing, there is an Affidavit of Christopher Birdsey. This gentleman is the son of the 1987 Petitioner. The property was owned by the 1987 Petitioner from April of 1987 until August of 2007. At that time, the property was gifted to Christopher Birdsey.

The Christopher Birdsey Affidavit fails to establish that a multi-family use was continued between April of 1987 and August of 2007.

The affidavit is artfully and ambiguously phrased so as to obscure the point as to multi-family use during the period of ownership by the 1987 Petitioner. It says:

*"During our ownership of the property, we maintained the three residential units as apartments in the house on the property, but at times rotated which apartments were used for residential and which for office space"*

Why is this important?



Assuming, arguendo, that the pre-existing non-conforming multi-family use somehow survived the 1987 grant of special permit, the present petitioner bears the burden of proof that this use was never abandoned. That burden has not been met.

The applicable period for abandonment ended five years after the grant of the 1987 special permit. That was April of 1992. (References: Section P. A. - 5, 1986 Zoning; and Article 8, Annual Town Meeting, November 7, 1987).

There is no proof as to any multi-family use during the period from April of 1987 until April of 1992. It is, however, perfectly clear that Mr. Charles Birdsey discontinued the multi-family use.

In July of 1990, Mr. Birdsey made application to the Board of Health for a Disposal Works Construction Permit. The building is described as a two-bedroom dwelling with an office, two persons. In addition, there is the Affidavit of Marge Keary as to the uses during the Charles Birdsey ownership period. Together, these documents remove any question that the former multi-family use was abandoned.

It does appear from the file that Christopher Birdsey - and later Mr. Eastman - freely indulged themselves in multi-family use from and after 2007.

From a zoning perspective, this avails Petitioner of nothing, except proof of an extended period of unlawful multi-family use.

#### KNOWLEDGE OF UNLAWFUL USE

Both Mr. Christopher Birdsey and Mr. Eastman actually knew that the multi-family use was unlawful, but went ahead and did it anyway.

Mr. Eastman Submitted a "History of 1000 Main Street" to the Site Plan Review Committee. He states: *"When I bought the property in 2013, I was told that ..... there were apartments allowed in the house."*

The information about apartments (plural) is not correct. Moreover, Mr. Eastman knew, or reasonably should have known, that this information was not correct. And he knew it prior to making the purchase.

Ms. Tara Schiffman was both listing broker and selling broker when Mr. Eastman bought the property in December of 2013.

The MLS listing sheet which was current at that time is attached.

This listing sheet states:

*“Permitted uses for the property include residential, Village Business B, AND, according to a Special Permit: offices on the first floor, an apartment on the 2nd and a boat building business in the barn... Buyer to verify all zoning and uses.”*

It is difficult to believe that Mr. Eastman was unaware of the information on the listing sheet. It is even more difficult to believe that Mr. Eastman knew nothing beyond *“there were apartments allowed in the house.”*

Further, Mr. Christopher Birdsey was well aware of the facts. Mr. Birdsey first listed the property with Ms. Schiffman in May of 2010. He claimed that it had “a main building with three separate units”

In order to correct this misinformation, Peter Sundelin wrote a lengthy and detailed letter dated June 10, 2010 to the building inspector. A copy was provided to Mr. Birdsey, and then to Ms. Schiffman.

Ms. Schiffman conferred with Barnstable’s Principal Planner, Mr. Art Tradzyk. As a result, the listing was corrected. Ms. Schiffman’s letter about this matter, dated June 15, 2010, is also attached



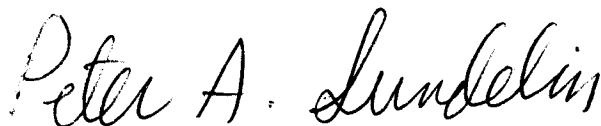
CONCLUSION:

The pre-existing non-conforming multi-family use ceased to exist when the `1987 Special Permit was issued.

Assuming - just for the sake of argument - that the pre-existing non-conforming multi-family use somehow remained in place after issuance of the 1987 Special Permit, that use was abandoned and ceased to exist in April of 1992.

In either event, the Board is respectfully urged to find that there is no pre-existing non-conforming multi-family use available for the Petitioner to "continue".

Respectfully Submitted,



---

Peter A. Sundelin, Attorney-At-Law and an Abutter to 1000 Main Street  
999 Main Street  
West Barnstable, MA 02668  
508-362-6873  
BBO # : 488520

DATED: September 25, 2019

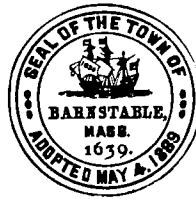
## LIST OF EXHIBITS

- 1) 1986 Zoning
- 2) 1987 Petition for Special Permit
- 3) Minutes of ZBA Public Hearing held on 4/30/1987
- 4) 1987 Special Permit Decision
- 5) Affidavit of Christopher Birdsey dated 8/30/18
- 6) BOH Disposal Works Construction Permit dated July, 1990
- 7) Affidavit of Keary
- 8) MLS Listing Sheet dated December, 2013
- 9) Tara Schiffman Letter dated June 15, 2010



EXHIBIT ONE

# ZONING BY-LAWS



February 1986

TOWN OF BARNSTABLE  
MASSACHUSETTS

PRINTED ON CAPE COD AT THE PATRIOT PRESS, HYANNIS, MASS.

which the trailer is located under a temporary permit from the Building Inspector.

Sub-paragraph (c) amended by 1969 October 23, Sp. 20, approved by the Atty. Gen. Dec. 17, 1969.

#### B. Tents

1. Maintaining or occupying a tent for living or business purposes is prohibited in all zoning districts of the town.

#### C. Noxious or Offensive Uses.

1. Uses which are injurious, noxious or offensive by reason of the emission of odor, fumes, dust smoke, vibration, noise, lighting or other cause are prohibited.

Paragraph C.1 amended 1983 Fall An. B-18, approved by Atty. Gen. Feb. 4, 1984, by adding "noise, lighting."

D. The construction of a new building for, or the conversion of any existing building, whether or not a condominium under Chapter 183A of the general laws to any use known as time-sharing, interval ownership, or otherwise, whereby unit owners are entitled by deed or other recorded instrument to occupancy of the units for only specified, recurring periods of less than a year during the course of a year, is prohibited until June 1, 1984 in all districts. This paragraph D. shall cease to be effective on June 1, 1984. (Unanimous)

Paragraph D added 1982 An A-1, approved by the Atty. Gen. Feb. 16, 1983.

### G. NON-CONFORMING USES

A. Any lawful building, or any lawful use of a building or premises, or part thereof, existing at the time the zoning by-law was originally adopted in the area in which such building or use is located, may be continued, although such building or use does not conform to the provisions hereof.

B. Any change of a non-conforming use, any alteration, relocation or increase in size of an existing non-conforming building or structure to extend the non-conforming use on the same lot, or use of existing or construction of a new building or structure, shall be allowed only by Special Permit of the Board of Appeals. Any of the foregoing shall not result in the creation of any use or structure more objectionable or substantially detrimental to the neighborhood or the creation of two or more non-conforming uses differing in use.

Prior paragraph (B) deleted and new paragraph (B) inserted by 1974 An 112, approved by the Atty. Gen. July 16, 1974.

C. Any such non-conforming building which has been damaged by fire or other cause to any extent, may be repaired or rebuilt, providing the owner shall apply for a building permit and start operations for restoring or rebuilding on said premises within twelve (12) months after such catastrophe.

D. See Special Exceptions Section.

E. Any lot lawfully laid out by a plan or deed duly recorded, as defined in section eighty-one L. of chapter forty-one, or any lot shown on a plan endorsed with the words "approval under the subdivision control law not required" or words of similar import, pursuant to section eighty-one of chapter forty-one, which complies at the time of such recording or such endorsement, whichever is earlier, with the minimum

area, frontage, width, and depth requirements, if any, of the zoning ordinances or by-laws in effect in the Town of Barnstable, notwithstanding the adoption or amendment of provisions of a zoning ordinance or by-law in the town imposing minimum area, frontage, width, depth, or yard requirements, or more than one such requirement, in excess of those in effect at the time of such recording or endorsement (1) may thereafter be built upon for residential use if, at the time of the adoption of such requirements or increased requirements or while building on such lot was otherwise permitted, whichever occurs later, such lot was held in ownership separate from that of adjoining land located in the same residential district, or (2) may be built upon for residential use for a period of five years from the date of such recording or such endorsement, whichever is earlier, if, at the time of the adoption of such requirements or increased requirements, such lot was held in common ownership with that of adjoining land located in the same residential district; and further provided, in either instance, at the time of building (a) such lot has an area of 7,500 (seventy five hundred) square feet or more and a frontage of twenty feet or more, is in a district zoned for residential use, and conforms except as to area, frontage, width and depth with the applicable provisions of the zoning ordinance or by-law in effect in the town and (b) any proposed structure is to be located on such lot so as to conform with the minimum requirements of front, side and rear setbacks, if any, in effect at the time of such recording or such endorsement, whichever is earlier, and to all other requirements for such structure in effect at the time of building.

Paragraph E added 1977 An 21, approved by Atty. Gen. Jan. 12, 1978.

### H. ACCESSORY USES

1. Accessory buildings or uses including the keeping, stabling, and maintenance of horses as specified in Section I located on the same lot as the building to which it is accessory and customarily incidental to any of the uses permitted in a particular residence district and not detrimental to a residential neighborhood, shall be permitted in that particular residence district.

Paragraph 1 amended by adding "including the keeping, stabling, and maintenance of horses as specified in Section I" 1974 An 102, approved by the Atty. Gen. July 16, 1974.

2. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit provided the granting authority finds that the proposed accessory use does not substantially derogate from the public good.

Paragraph 2 added by 1977 An 21, approved by the Atty. Gen. Jan. 12, 1978.

### I. USE REGULATIONS — RESIDENCE DISTRICTS

A. No building shall be erected or altered and no building or premises shall be used for any purpose in the following specified districts other than provided for in this section or in Section P and the maximum height of any building shall be not more than two & one-half (2½) stories, or thirty (30) feet from the ground level to the plate, whichever

**APPENDIX A**

	Area in Sq.Ft.	Frontage in feet	Width in feet	Front Yard Setback in feet	Side Yard in feet	Rear Yard in feet
RESIDENCE B	43,560	20	100	20	10	10
RESIDENCE B-1	43,560	20	100	20	10	10
RESIDENCE C	43,560	20	100	20	10	10
RESIDENCE C-1	43,560	125		30	15	15
RESIDENCE C-2	43,560	20	100	20	10	10
RESIDENCE D	43,560	20	125	30	15	15
RESIDENCE D-1	43,560	20	125	30	10	10
RESIDENCE F	43,560	150		30	15	15
RESIDENCE F-1	43,560	20	125	30	15	15
RESIDENCE F-2	43,560	20	150	30	15	15
RESIDENCE G	65,000	20	200	30	15	15

Residence B-1 area added by An. 1977 25, approved by the Atty. Gen. Jan. 12, 1978.  
 Residence F-2 added by 1977 An 36, approved by Atty. Gen. Jan. 12, 1978.  
 Residence A and Residence A1 deleted by 1973 An 140, approved by the Atty. Gen. June 15, 1973.  
 Appendix A amended by adding the words "Front Yard" and by deleting figures shown as "50 (30)" and inserting therein the figure "30" 1974 An 145, approved by the Atty. Gen. July 16, 1974.  
 Residence C-2 added by 1974, July 30, Sp. 12, approved by the Atty. Gen. September 5, 1974.  
 Residence G added by 1979 An 7, approved by the Atty. Gen. June 20, 1979.  
 Residence D-2, Residence D-3, Residence E, Residence E-1 deleted 1979 An 9, approved by Atty. Gen. Feb. 26, 1980.  
 Frontage in feet "20" added by Jan. 21, 1982 Sp. 4, approved by Atty. Gen. May 20, 1982.  
 Area in sq. ft. "43,560", where less, by Feb. 28, 1985 Sp 1, approved by Atty. Gen. May 31, 1985.

Front yard setback distances shown above mean from sideline of the street. Where a lot abuts on one or more than one street, front yard setback shall be applicable from all streets. Front yard setback in Residence Districts along Route 28 and along Route 132 shall be 100 feet.

Prior Paragraph deleted and new paragraph inserted by 1974 An. 146, approved by the Atty. Gen. July 16, 1974.  
 Paragraph amended 1983 Fall An. B-14, approved by Atty. Gen. Feb. 4, 1984 by adding "Front yard...Route 28....."

Hotels and motels shall not be allowed in Precincts 1, 2, 4, 6 and 7 as existing on the date of adoption of this bylaw. Nothing in this paragraph shall affect the Industrial or Industrial Limited Districts.  
 Paragraph amended 1983 Fall An. B-13, approved by Atty. Gen. Feb. 4, 1984 by adding "Hotels and motels....."

Wetlands as defined in Section C-Definitions shall not be included in the area square foot requirement for zoning compliance, as shown in Appendix A.

Paragraph inserted by 1983 Fall An. B-8, approved by the Atty. Gen. Feb. 4, 1984.

**K. USE REGULATIONS — NON-RESIDENCE DISTRICTS**

A. No building shall be erected or altered, and no building or premises shall be used, for any purpose in the following specified districts other than provided in this section. The maximum height of any building shall be not more than two (2) stories, or thirty (30) feet

from ground level to the plate, whichever is lesser, except that in a Professional Residential District hospitals are excluded from this height limitation.

Paragraph A. amended by 1974 An 108, approved by the Atty. Gen. July 16, 1974 by adding, "The maximum height... from this height limitation."

**1. Business District.**

- a. Wholesale or retail stores or salesrooms.
- b. Retail trade service or shop.
- c. Offices and banks.
- d. Restaurants and other food establishments.
- e. Place of business of baker, barber, blacksmith, builder, carpenter, caterer, clothes cleaner or presser, confectioner, contractor, decorator, dressmaker, dyer, electrician, florist, furrier, hairdresser, hand laundry, manicurist, mason, milliner, newsdealer, optician, painter, paper hanger, photographer, plumber, printer, publisher, roofer, shoemaker, shoe repairer, shoe shiner, tailor, tinsmith, telephone exchange, telegraph office, undertaker, upholsterer, wheelwright.

f. Gasoline and oil filling stations and garages.

g. Apartment houses, subject to Section M.

h. Hotel or motel, subject to Section N.

i. The above listed types of business uses are not intended to be all inclusive and any other ordinary business use of a similar nature may be carried on in a Business District.

**2. Business District A.**

a. The same uses as permitted in the Business District, except that hotels and motels and multi-unit dwellings are excluded and the conversion of any existing multi-unit dwelling, whether or not a condominium under Chapter 183A of the general laws, to any use, known as time-sharing, interval ownership or otherwise, whereby unit owners are entitled by deed or other recorded instrument to occupancy of the units for only a specified period of less than a year during the course of a year, is prohibited.

Prior sub-paragraph 2 deleted by 1982 An A-11 and new sub-paragraph added, approved by Atty. Gen. Feb. 16, 1983.

**3. Business Limited District B.**

- a. Motel, hotel or lodging house.
- b. Building, sale, rental, storage and repair of boats.
- c. Retail sale of marine fishing and boating supplies.
- d. Retail sale of fishing bait, fish and shellfish.
- e. Operation of a commercial fishing business excluding canning or processing of fish.
- f. Restaurants.
- g. Retail stores.
- h. Operation of charter fishing and marine sightseeing and excursion facilities.

a. & f. required to connect to the Town sewer system and subject to Special Permit under Section P.

Prior paragraph deleted and new paragraph added by 1978 Fall An 16, approved by Atty. Gen. Feb. 6, 1979.



#### 4. Business Limited District C.

- a. Professional or home occupation use. See Section I for definition.
- b. Small retail businesses common to a residence district.
- c. Detached one family dwelling.
- d. a. and b: above subject to the grant of a special permit under Section P.

Sub-paragraph (c) added by 1970 An 108, approved by the Atty. Gen. June 19, 1970.

Sub-paragraph (d) inserted by Jan. 21, 1982 Sp. 9, approved by the Atty. Gen. May 20, 1982.

#### 5. Marine Business District A.

- a. Building, sale, rental, storage and repair of boats.
- b. Retail sale of marine fishing and boating supplies.

#### 6. Marine Business District B.

- a. Building, sale, rental, storage and repair of boats.
- b. Retail sale of marine fishing and boating supplies.
- c. Retail sale of fishing bait, fish and shellfish.
- d. Operation of a commercial fishing business excluding commercial canning or processing of fish.
- e. Operation of whale watching facilities.

Sub-paragraph (e) added 1982 An A-4, approved by Atty. Gen. Feb. 16, 1983.

#### 7. Village Business Districts A & B.

- a. Detached one family dwelling.

Prior sub-paragraph (a) deleted and the words "Detached one family dwelling" inserted therein by 1973 An 141, approved by the Atty. Gen. June 15, 1973.

- b. Retail store, professional or business offices, bank, personal service store or shop.

#### 8. Highway Business District.

- a. The same uses as specified in a Business District are allowed by special permit in accordance with Section P.

Prior sub-paragraph 8 deleted by 1983 Fall An. B-1(a) and new sub-paragraph 8 inserted, approved by Atty. Gen. Feb. 8, 1984.

#### 9. Urban Business District.

- a. Same uses specified in a Business District. Except that in Osterville Urban Business District, Hotels and Motels are excluded.

#### 10. Industrial District.

- a. Same uses specified in a Business District.
- b. Lumber, fuel, feed and ice establishments.
- c. Contractors yards.
- d. Manufacturing and industrial uses except as noted in Section P. Special Exceptions.
- e. Same uses specified in a Service and Distribution District.
- f. Specifically prohibited shall be petroleum refineries, land fills, resource recovery facilities, sewerage treatment facilities which process and discharge less than tertiary-treated effluent, and any other use which involves as a principal activity the manufacture, storage, use, transportation or disposal of toxic or hazardous materials, except as allowed by special permit under Section P.

Sub-paragraph (e) added by 1973 An 135, approved by the Atty. Gen. June 15, 1973. Old Sub-paragraph (d) deleted, new sub-paragraph (d) added by Jan. 22, 1982, Sp. 18, approved by Atty. Gen. May 20, 1982.

Sub-paragraph (f) inserted by Jan. 22, 1982, Sp. 18, approved by Atty. Gen. May 20, 1982.

#### 11. Industrial Limited District.

- a. Warehousing and wholesale distribution facilities of non-toxic and non-hazardous materials;
- b. Light manufacturing and assembly facilities;
- c. Research and development facilities;
- d. Professional or business offices, banks, architectural, engineering and drafting firms, computer operations centers, recreation facilities, and such sewerage treatment facilities as may have been allowed by previous zoning bylaw;
- e. Specifically prohibited shall be petroleum refineries, land fills, resource recovery facilities, hotels, motels, restaurants, manufacturing and processing uses, any use involved in the manufacture, storage, transportation, disposal or use of toxic or hazardous materials and any residential use.

Previous paragraph 11 deleted, new paragraph 11 inserted by Dec. 4, 1985 Sp. 17, approved by Atty. Gen. Jan. 24, 1986.

#### 12. Service and Distribution.

- a. Warehousing and distribution facilities.
- b. Servicing, storing and processing of goods in transit.
- c. Facilities for service type trades, including shops and storage yards.
- d. Offices, garages and related facilities for all such enterprises.
- e. Retail store, professional or business offices, bank, personal service stores or shops; by special permit, full service restaurants and delicatessens may be permitted.

Sub-paragraph (e) added by 1974 An 127, approved by the Atty. Gen. July 16, 1974.

#### 13. Professional Residential District.

- a. Detached one or two family dwellings.
- b. Apartments - Subject to provisions of Section M and subject to the modification allowed by Section P.
- c. Renting of rooms to not more than ten persons by a family resident in the dwelling.
- d. Professional Offices and Licensed Real Estate Broker's Offices.
- e. Nursing Homes and Rest Homes.
- f. Medical and Dental clinic, pharmaceutical and therapeutic uses.
- g. Hospitals - (non-veterinarian).

This district added by 1970 An. 105, approved by the Atty. Gen. June 19, 1970.

Sub-paragraph (b-Apartments) amended by adding "and subject to the modification allowed by Section P" An 127, approved by the Atty. Gen. June 22, 1971.

Sub-paragraph 13-d amended by adding "and Licensed..." Fall An 8, November 13, 1984, approved by the Atty. Gen. February 28, 1985.

ture before improvement, or if damaged, before damage occurred) of residential structures shall have the lowest floor (including basement) elevated to not less than base flood elevations. New construction or substantial improvement of nonresidential structures shall either be similarly elevated or, together with attendant utility and sanitary facilities, be flood-proofed to not less than base flood elevations.

2. Where floodproofing is utilized in accordance with Section 1, a registered engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood.

3. Any new construction or substantial improvement to be undertaken within said district shall be in accordance with the Massachusetts Uniform Building Code, Section 748.0. The Building Inspector shall (a) review all proposed development within the flood district to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, U.S.C. 1334. (b) obtain and maintain records of elevation and floodproofing levels for new construction or substantial improvement within the flood district.

4. Any new construction, alteration of structures or other development which is removed from the A. or V. zones by subsequent flood insurance map amendments shall only have to meet the requirements of its new zone designation.

5. All subdivision proposals and other proposed new developments greater than 50 or 5 acres, whichever is the lesser, shall include within such proposals base flood elevation data.

6. Assure that subdivision proposals and proposals for other developments, including their utilities and drainage, are located and designed to be consistent with the need to minimize flood damage.

7. No land within areas designated as V. (velocity) zones on the F.I.A. Flood Insurance Rate Maps shall be developed unless such development is demonstrated by the applicant to be located landward of the reach of the mean high tide. All new construction and substantial improvement within the V. zones shall be (a) elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood elevation; and (b) certified by a registered professional engineer or architect that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash. The following shall be prohibited with

a. Any man-made alteration of sand dunes and salt marshes which might increase the potential for flood damage.

b. Use of fill.

c. Mobile homes.

8. The Zoning Board of Appeals may authorize exceptions from flood regulations by Special Permit within the flood areas in accor-

dance with Section Q, as in any other zoning district within the Town of Barnstable, and may grant Special Permit from these requirements in the case of new structures or substantial improvement to be erected on a lot contiguous to and surrounded by lots with existing structures and constructed below the base flood elevation, provided the following are met:

a. A showing of good and sufficient cause.

b. A determination that failure to grant the Special Permit would result in exceptional hardship to the applicant.

c. A determination that the Special Permit will not result in increased flood heights, additional threats to public safety, or environment, extraordinary public expense, or any conflict with requirements in accordance with Chapter 40A, of the Massachusetts General Laws, and

d. The Zoning Board of Appeals has notified the applicant for the Special Permit, in writing, that the actuarial rates will increase as the first floor elevation decreases, and that such construction below base flood elevation level increases risks to life and property.

e. Favorable recommendation from the Board of Health on all structures requiring sewerage disposal and/or water supply.

9. Upon the granting of such a Special Permit or permits, from Section Q, the Zoning Board of Appeals, shall maintain a record of all such special permits granted by the Board, including justification for their issuance, and report such special permits in its annual report to the Flood Insurance Administrator in accordance with the Department of Housing and Urban Development Guidelines.

10. The Zoning Board of Appeals may grant a Special Permit for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places or the Old King's Highway Regional Historic District, without regard to the procedures set forth in Section 7 above.

11. Where these flood area provisions impose greater or lesser restrictions or requirements than those of other applicable by-laws or regulations, the more restrictive shall apply.

12. The invalidity of any section or provision of this by-law shall not invalidate any other section or provision hereof.

Prior Section O deleted, New Section O inserted by 1977 An 23, approved by Atty. Gen. Jan. 12, 1978.

## **P. SPECIAL EXCEPTIONS**

**A. The Board of Appeals may grant a special permit for the following exceptions to the zoning by-law:**

1. Temporary occupancy of a trailer during construction of a permanent home.

2. Maintenance and occupancy of tents in an organized and supervised recreational camp, subject to compliance with the rules of the Board of Health.

3. Increase in the total floor area of a non-conforming building damaged by fire or other cause.

4. Any change, alteration, relocation or increase in size of an existing non-conforming building or structure on the same lot, or use of

existing or construction of a new building or structure to extend the non-conforming use on the same lot, subject to Section G. Paragraph B.

Prior paragraph 4 deleted and new paragraph 4 inserted by 1974 An 113, approved by the Atty. Gen. July 16, 1974.

5. Re-establishment of a non-conforming use which has been discontinued for two (2) years.

Paragraph 5 amended by deleting the word and figure "one (1) year." and inserting therein the words and figure "two (2) years." 1978 Fall An 1, approved by Atty. Gen. Feb. 6, 1979.

6. Change of a non-conforming use to any specified use not more detrimental to a neighborhood.

7. Accessory use as defined in Section H, on a lot adjacent to the lot having thereon the principal building to which it is accessory.

Prior sub-paragraph deleted by 1973 An 145, and new sub-paragraph inserted therein, approved by the Atty. Gen. June 15, 1973.

8. In a Business District, a yard for storage of coal, oil, junk or lumber, or any business requiring use of a railroad siding.

9. In a Business District a building or place for recreation or amusement, provided that no such special permit shall be granted for a use which is principally the operation of coin operated amusement devices.

Prior paragraph deleted and new paragraph added by 1979 An 11, approved by Atty. Gen. Feb. 26, 1980.

10. In a Business Limited District C, professional or home occupation use as defined in Section I., and small retail businesses common to a residence district.

Recission of old Paragraph 10, new Paragraph 10 inserted by Jan. 21, 1982 Sp. 9. Approved by Atty. Gen. May 20, 1982.

11. In a Business Limited District B, motel, hotel or lodging house and restaurants.

Prior paragraph deleted and new paragraph added by 1978 Fall An 16, approved by Atty. Gen. Feb. 6, 1979.

12. In all districts where renting of rooms is permitted, the same total number of lodgers specified, may be permitted in one (1) multiple unit dwelling.

13. In a Marine Business District B, a restaurant.

14. In Village Business District A and B, any use permitted in a Business District, except motels and hotels.

Former Paragraphs 8 and 17 deleted 1979 An. 9, approved by Atty. Gen. Feb. 26, 1980. Remaining paragraphs renumbered in proper sequence.

15. In a business district, any manufacturing use.

Sub-paragraph added by 1969 October 23, Sp. 19, approved by the Atty. Gen. Dec. 17, 1969.

16. In a Professional Residential District, the area requirements of Section M Apartments, may be modified so that apartment buildings shall cover not more than 50% of the gross land area of the lot or combination of lots.

Sub-paragraph added by 1971 An 127, approved by the Atty. Gen. June 22, 1971.

17. In a Residence C-1 District and Residence F District, professional or home occupation use.

Sub-paragraph added by 1972 An 136, approved by the Atty. Gen. Aug. 3, 1972.

Sub-paragraph amended by deleting the words "Residence D-3 District" at 1972 August 14, Sp. 21, approved by the Atty. Gen. Sept. 20, 1972.

Residence D-2, Residence E deleted from prior paragraph 1979 An 9, approved by Atty. Gen. Feb. 2, 1980.

Prior sub-paragraph 19 deleted by 1984 An 1 and remaining sub-paragraphs renumbered, approved by Atty. Gen. July 31, 1984.

18. On all zoning districts, public or private regulation golf course of a minimum length of 1,000 yards for a 9-hole course, 2,000 yards for an 18-hole course, together with accessory buildings for storage of golf course maintenance equipment and materials including golf carts, a pro shop for the sale of golf related articles, rest room and shower facilities and locker rooms. No other accessory buildings shall be permitted.

Sub-paragraph added by 1973 July 11, Sp. 6, approved by the Atty. Gen. August 24, 1973.

19. The keeping, stabling, and maintenance of horses in excess of the density requirement of Section I and subject to the conditions herein set forth on the same lot as the building to which it is accessory or on a lot adjacent to the lot having thereon the principal building to which such use is accessory.

Sub-paragraph added by 1974 An 103, approved by the Atty. Gen. July 16, 1974.

20. In a Residence C-2 District, Nursing Homes and/or Retirement Homes must meet the following criteria.

(1) The lot area must be at least five (5) acres.

(2) The capacity of the facility shall be limited to ten (10) beds per acre of upland.

Subparagraph amended by An 26 approved by Atty. Gen. Jan. 12, 1978, the words "of upland," added.

(3) Adequate off-street parking shall be provided in compliance with Section S of the Zoning By-Laws.

(4) No building shall be located nearer than 150 feet from an existing public way.

(5) The applicant must be in possession of a Certificate of Need from the Massachusetts Division of Medical Care, Department of Public Health.

(6) The use shall specifically exclude hospitals, sanitoriums, convalescent homes or detached infirmaries or clinics.

(7) Plans required:

(a) Perimeter survey showing entire tract ownership as well as abutting owners, and any existing ways or easements.

(b) A topographic plan of the entire site at five (5) foot contour intervals showing all existing structure locations as well as vegetative cover masses. This plan shall be prepared by a registered land surveyor by means of an on-site survey or by an approved aerial photographic method.

(c) Sketch plan of the proposed development showing the following:

1) Density and disbursement of structures over the parcel.

EXHIBIT TWO





BARNSTABLE, MASS.

APPEAL NO. 1987-35

'87 APR 15 AM 11 26

*Handwritten initials*

TOWN OF BARNSTABLE

PETITION FOR SPECIAL PERMIT UNDER THE ZONING BYLAW

To the Board of Appeals,

Town Hall, Hyannis, MA 02601

Date March 27 19 87

The undersigned petitions the Board of Appeals to vary, in the manner and for the reasons hereinafter set forth, the application of the provisions of the zoning bylaw to the following described premises.

Applicant: CHARLES J. BIRDSEY 362-3142  
(Full Name) (Telephone Number)

Address: 185 Meadow Lane, W. Barnstable, Ma. 02668

Owner: Richard Auclair 362-3076  
(Full Name) (Telephone Number)

Address: 1 Harvard Avenue, Alston, Ma. 02134

Prior Owner of record Robert E. Kennedy, Joseph A. Kennedy, Edward J. Kennedy <sup>E.J. Schank</sup>

Tenant (if any): None  
(Full Name) (Telephone Number)

If Applicant other than Owner of property - state nature of interest Prospective Purchaser.

1. Assessors map and lot number Map 179, Lot 2

2. Location of Premises 1000 Main St. Village W. Barnstable  
(Name of Street) (What section of Town)

3. Dimensions of lot 160 200 38,800  
(Frontage) (Depth) (Square Feet)

4. Zoning district in which premises are located Village B.

5. How long has owner had title to the above premises? since 12/27/85

6. How many buildings are now on the lot? 3

7. Give size of existing buildings \_\_\_\_\_  
Proposed buildings \_\_\_\_\_

8. State present use of premises Apartment Rentals in main house, Antique Shop in Barn.

9. State proposed use of premises Apartment upstairs, office downstairs, boat repair shop

10. Give extent of proposed construction or alterations: None other than upgrading present <sup>in Barn.</sup>  
buildings.

11. Number of living units for which building is to be arranged no change

12. Have you submitted plans for above to the Building Inspector? no

13. Has he refused a permit? no

14. What section of zoning bylaw do you ask to be varied? The USE Regulations  
Section K 7b

15. State reasons for variance or special permit: Applicant wants to renovate the existing structure on the property and operate a small boat repair and construction business in the barn. A similar business was approved in 1983 (Appeal No. 1983-86) for James Kittredge. Mr. Birdsey would operate the same type of business and the operation would be complimentary to Mr. Kittridge's.

(over)

*Handwritten notes and signatures*

The following are the names and mailing addresses of the abutting owners of property and the names and addresses of the owners of property abutting the abutting owners of property and the names and addresses of the owners across the street all with their corresponding map and lot numbers according to the records in the Assessor's Office at the date of this application:

Please type or print only.

Map	Lot #	Name	Address	Zip Code
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see attached list.

Use additional separate sheet and so note if necessary

There must be submitted with the application at the time of filing, a plan of the land, (Five [5] Copies) showing:

1. The dimensions of the land.
2. The location of existing buildings on the land.
3. The exact location of the improvements sought to be placed on the land.

(All three of the above drawn to scale)

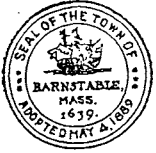
Applications filed without such plans will be returned without action by the Board of Appeals.

Respectfully submitted,  
RICHARD S. BURLING (Signature) Richard S. Burling  
(Address) 3217 MAIN ST. BARNSTABLE  
Tel. No. 362-4584

\* Please submit 5 copies of petition form.

\* Filing fee of \_\_\_\_\_ required with this petition

EXHIBIT THREE



## ZONING BOARD OF APPEALS

MINUTES OF OPEN/PUBLIC HEARINGS - APRIL 30, 1987

MEMBERS PRESIDING:

RICHARD L. BOY, CHAIRMAN  
GAIL NIGHTINGALE, VICE-CHAIRMAN  
RONALD JANSSON, CLERK  
LUKE P. LALLY  
DEXTER BLISS  
JAMES MCGRATH, ALTERNATE

CALENDAR:

1987-32 JACK J. FURMAN  
1987-26 FOX RUN REALTY TRUST  
1987-33 EDWARD & RITA MEUSE  
1987-34 MARSHALL & MARY ANN FARLEY  
1987-35 CHARLES J. BIRDSEY  
1987-36 FIRST FEDERAL SAVINGS & LOAN ASSOCIATION  
1987-37 ROBERT SHIELDS, ET AL  
1987-21 NICHOLAS FRANCO

cc: Board of Selectmen  
Planning & Development

A TRUE COPY ATTEST

*Lucia C. Hildebrand*

Town Clerk  
BARNSTABLE



1987-34 MARSHALL & MARY ANN FARLEY

the character of the house which was a converted garage built during the 1930-40s period merely trying to add bathroom/bedroom on the second floor and to enlarge the kitchen - other end will add a small study. Ron Jansson asks the square footage of the house: 22' x 60 - two story - existing about 2400 square feet with garage - adding two separate wings - 16' x 14 and 27' x 22' - when completed talking of 3200 - 3300 square foot in size - that is correct. Gail Nightingale questions why they do not put the additions elsewhere - preserving the character of the house (architectural). Right hand addition is to be two-story, while the other is single story only. Where the house sits on the back lot line there is a large hill behind - no house behind - no one can actually see the house - not like we are jumping into someones front yard. The Board voted unanimously to grant the variance relief as sought based on the fact that variance conditions do exist at the site - the topography of the land - relief granted per the Plans presented - the motion seconded by Dexter Bliss.

1987-35 CHARLES J. BIRDSEY

Attorney Richard Burling represented the petitioner who has a purchase and sale agreement to purchase the property from Mr. Auclair who has an antique business in the barn located on the property at Lot 10, 1000 Main Street, West Barnstable in a Village Business B zoning district for a parcel containing 38,800 square feet and three structures. The petitioner desires to renovate the existing/barn structure and operate a small boat repair/restoration and sale of same with retail sale of supplies related thereto. The petitioner intends no change in the footprint of the building - this is not a business that is currently allowed under Village Business B without a special permit - it is felt that will not be more detrimental to the neighborhood - would be less so because the nature of the business will not mean additional people coming in and out as has been in the past with the antique business - type of work to be done will be no more involved or noisy than an average home handy man. There are several apartments that have been in the building since the 1930s - intend to use one apartment, but not all of them. Ron Jansson questions whether this is the property that was "Packet Landing & Gift Shop" - that is correct and is currently the "White Elephant" - propose to use large barn - Ron questions if that has the benefit of a pre-existing non-conforming use - Attorney Burling responded "yes", - Ron Jansson commented his question then is why the petitioner is not before the Board on that particular basis - Mr. Burling commented that he wanted to go under the additional business allowed under the zoning by-laws. Additional argument is that it was a pre-existing non-conforming business, but it is also allowable by Special Permit under provision of P, 14. Again, the proposed uses for these three buildings is: main house used for residential purposes, Mr. Burling - that is not totally correct - there is going to be an office - the petitioner's wife operates an adoption agency - the office use allowed in Village Business District - office and residential use and also have a two-car garage - to be only used to store vehicles - now understand if you look at Section G, 1 why you probably would not want to come before the Board with the pre-existing non-conforming use - because you are talking about two or more uses. Mr. Birdsey described to the Board what he would like to do - landscaping, etc. Dexter Bliss questions whether the petitioner would have a boat outside during the summer months - one during the summer time only - otherwise boats will be in the barn - to be no additional employees. Ron Jansson questioned would this be just a repair facility rather than service of other equipment that relates to boating - Mr. Birdsey commented that he would be a dealer but he would be selling antique hardware. Attorney Burling addressed the fact that the Board is in receipt of a letter from Mr. & Mrs. Caton who are

Minutes of Open/Public Hearings - April 30, 1987

1987-35 CHARLES J. BIRDSEY

abutters to the property - they are in opposition to the petition - the letter addressed a deed restriction - second restriction does restrict usage through that entire development which runs down Packet Landing to non-business uses with the exception of an antique shop - Paragraph six further on allows the trustee of the Barnstable Realty Trust to amend those restrictions - the current trustee of this trust is the current owner Mr. Auclair, who has agreed to sign an amendment to be recorded in the Registry of Deeds for Lot 10 only - this will not be a detrimental use in the neighborhood. Several abutters spoke in support of the petition, namely, James Kittridge, D. Ciberowski, Mr. & Mrs. Fisk and Mr. & Mrs. Byrnes and Carey - no objections. Ron Jansson made a motion to grant the special permit on the basis that the proposed renovation would not constitute a use that would be substantially more detrimental than what currently exists - the motion was seconded by James McGrath. The Board voted unanimously to grant a special permit with the restriction that there be no more than one boat to be on display at any one time outside.

1987-36 FIRST FEDERAL SAVINGS & LOAN ASSOCIATION

Attorney Philip Boudreau represented the petitioner who is requesting a Special Permit and Varinace for a proposed addition to the existing bank building located at Route 28, Hyannis in a Highway Business zoning district for a parcel containing 59,575 square feet. The proposed addition to be 3,303 square feet on first floor and 3,421 square feet in basement is to be additional space in which to conduct banking operation - per the <sup>Improved</sup> Plans submitted at the hearing by Attorney Boudreau to replace plans originally submitted with the filing. The upstairs of the existing building is divided with temporary dividers affording little privacy for the employees - in addition people are working in a windowless basement, etc., due to lack of space. This is a narrow lot that opens up at the back. Mr. Boudreau feels that it is necessary to apply for two dimensional variances as well as a special permit under setback requirements in a Highway Business district. The entire property is zoned 300 feet back for business; the petitioner has adequate parking and seeks no relief for parking. When the building was constructed at 45 feet back from Route 28 it was conforming - current setback requirement is 100 feet - a portion of the building to the rear is not quite 100 foot back - in addition the area requirements in the Highway Business zone require 60,000 square foot lot - Mr. Boudreau feels that he cannot build a separate building without coming to the Board for a variance - has to do this by way of an addition - with one acre requirement of a minimum the petitioner would need two acres in order to have a separate free-standing building - where we propose to build we do not have 100 foot setback - Ron Jansson does not understand Mr. Boudreau's rationale - building is going to be occupied by the same tenant and will comply with the setback - there followed a discussion - already have a building that occupies a portion of the locus - consider the locus as one lot - think that to put two buildings up petitioner would need two acres - perhaps Mr. Boudreau is not correct - if that is the case he would be delighted to have the Board rule that all of this is unnecessary, but in any event afraid there is a problem anyway because where they propose to put addition, they would violate the 100 foot setback - due to the curvature southwest of Falmout Road - shape of the lot at that point and the fact that the building was put on at a 90 degree angle - Mr. Boudreau also feels that another variance relief is needed from the width requirement of 160 feet - it is true, that we have 181 feet from point to point, but at the place where we are building we have slightly less than the required 160 width

## EXHIBIT FOUR

TOWN OF BARNSTABLE

TOWN CLERK  
BARNSTABLE, MASS.

Zoning Board of Appeals

MAY 13 PM 3 51

L. Richard Auclair  
Property Owner

Deed duly recorded in the BARNSTABLE

County Registry of Deeds in Book 4759

Charles S. Birdsey  
Petitioner

Page 238 Registry

District of the Land Court Certificate No.

Book Page

Appeal No. 1987-35

MARCH 27 1987

FACTS and DECISION

Petitioner Charles S. Birdsey filed petition on \_\_\_\_\_ 19\_\_\_\_  
requesting a variance-permit for premises at 1000 Main Street  
(Sheet) \_\_\_\_\_, in the village  
of West Barnstable, adjoining premises of \_\_\_\_\_ (see attached list)

Locus under consideration: Barnstable Assessor's Map no. 179 lot no. 2

Petition for Special Permit:

Application for Variance:  made under Sec. K of the Town of Barnstable  
Zoning by-laws and Sec. \_\_\_\_\_ Chapter 40A, Mass. Gen. Laws  
for the purpose of to allow the maintenance, repair and sale of small boats with  
retail sale of supplies related thereto.

Locus is presently zoned in Village Business B

Notice of this hearing was given by mail, postage prepaid, to all persons deemed affected and  
by publishing in Barnstable Patriot newspaper published in Town of Barnstable a copy of  
which is attached to the record of these proceedings filed with Town Clerk.

A public hearing by the Board of Appeals of the Town of Barnstable was held at the Town  
Office Building, Hyannis, Mass., at 8:00 ~~PM~~ P.M. April 30, 1987,  
upon said petition under zoning by-laws.

Present at the hearing were the following members:

Richard L. Boy  
Chairman

Gail Nightingale

Ronald Jansson

Luke P. Lally

Dexter Bliss

At the conclusion of the hearing, the Board took said petition under advisement. A view of the locus was made by the Board.

Appeal No. 1987-35

Page 2 of 2

On April 30, 1987, The Board of Appeals found

Attorney Richard Burling represented the petitioner, Charles J. Birdsey who has a purchase and sale agreement for the property located at Lot 10, 1000 Main St., W. Barnstable in a Village Business zoning district.

Mr. Auclair who is the current owner has an antique business on the locus which contains 38,800 square feet and three structures. The petitioner desires to renovate an existing barn and operate a small boat repair and restoration business with sale of supplies related thereto. There is to be no change in the footprint of the building.

main

There are several apartments in the building since the 1930s; the petitioner intends to use one apartment in the main house and there is going to be one office use by the petitioner's wife who runs an adoption agency. There is an existing two car garage which will be used only for the storage of vehicles.

At the present time, there is a deed restriction. The current owner is the trustee of Barnstable Rlty. Trust <sup>and</sup> <sup>trust</sup> agreed to sign an amendment to be recorded in the Registry of Deeds for Lot 10, to amend the restriction of non-business use with the exception of an antique shop

Ronald Jansson made a motion to grant the Special Permit under P (14) of the Zoning By-Law on the basis that the proposed renovation would not constitute a use that would be substantially more detrimental than what currently exists - the motion was seconded by James McGrath.

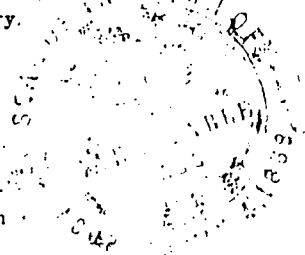
The Board voted unanimously to grant a Special Permit with the restriction that there be no more than one boat on display outside at any one time.

I, AUNE CAHON Asst Clerk of the Town of Barnstable, Barnstable County, Massachusetts, hereby certify that twenty (20) days have elapsed since the Board of Appeals rendered its decision in the above entitled petition and that no appeal of said decision has been filed in the office of the Town Clerk.

Signed and Sealed this 30th day of JUNE 1987 under the pains and penalties of perjury.

*Aune Cahon*

- Distribution:—
- Property Owner
- Town Clerk
- Applicant
- Persons interested
- Building Inspector
- Public Information
- Board of Appeals



Board of Appeals  
Town of Barnstable

By *[Signature]*  
Chairman

RECORDED JUN 4 87



EXHIBIT FIVE

**AFFIDAVIT OF CHRISTOPHER BIRDSEY**

I, Christopher Birdsey, hereby depose and state as follows:

1. I reside in East Dennis, Massachusetts;
2. My family and I owned the property located at 1000 Main Street, West Barnstable from 1987 through December, 2013.
3. During that period of time we ran Speedwell Boatworks out of the barn on the property, building, restoring, and repairing wooden powerboats. We also stored some boats adjacent to the barn.
4. Around 2007-2008, we curtailed some of the boatbuilding activity because my father was sick, but we soon resumed that activity and continued to build boats on the property until we sold it in 2013. At that time I was repairing a Crosby Striper and was building a small powerboat in the barn.
4. During our ownership of the property, we maintained the three residential units as apartments in the house on the property, but at times rotated which apartments were used for residential and which for office space.
5. From 2007 through 2013 we kept the three apartments occupied the majority of time with the exception of occasional tenant-changeover vacancies.

Subscribed and sworn to under the penalties of perjury this 30<sup>th</sup> day of August, 2018.

  
\_\_\_\_\_  
Christopher Birdsey

## EXHIBIT SIX

No. 90-308

FEE 300

THE COMMONWEALTH OF MASSACHUSETTS  
BOARD OF HEALTH

Town OF Barnstable

Application for Disposal Works Construction Permit

Application is hereby made for a Permit to Construct ( ) or Repair (  ) an Individual Sewage Disposal System at:

1000 RT-6A Location - Address West Barnstable or Lot No.

Charles Birdsey Address

Canco <sup>Owner</sup> Forest Canan Address

Type of Building Dwelling - No. of Bedrooms 2 Expansion Attic ( ) Garbage Grinder ( )

Other - Type of Building office No. of persons 2 Showers ( ) - Cafeteria ( )

Other fixtures 1.7 x 2.0

Design Flow \_\_\_\_\_ gallons per person per day, Total daily flow \_\_\_\_\_ gallons.

Septic Tank - Liquid capacity 150 gallons Length \_\_\_\_\_ Width \_\_\_\_\_ Diameter \_\_\_\_\_ Depth \_\_\_\_\_

Disposal Trench 3' x 4' x 11' deep Total Length \_\_\_\_\_ Total leaching area 1200 sq. ft.

Seepage Pit No. \_\_\_\_\_ Diameter \_\_\_\_\_ Depth below inlet \_\_\_\_\_ Total leaching area \_\_\_\_\_ sq. ft.

Other Distribution box (  ) Dosing tank ( ) 4x12' w/3' Stone 211 Sides

Percolation Test Results Performed by \_\_\_\_\_ Date \_\_\_\_\_

Test Pit No. 1 \_\_\_\_\_ minutes per inch Depth of Test Pit \_\_\_\_\_ Depth to ground water \_\_\_\_\_

Test Pit No. 2 \_\_\_\_\_ minutes per inch Depth of Test Pit \_\_\_\_\_ Depth to ground water \_\_\_\_\_

Description of Soil D.19 out 3.0x4.0 - w/ Bank Gravel Refill

Nature of Repairs or Alterations - Answer when applicable, 1,000 gal. Septic - 7' x 11' gal head pit 3 gallons + 2.5' of stone

Agreement: The undersigned agrees to install the aforescribed Individual Sewage Disposal System in accordance with the provisions of TITLE 5 of the State Sanitary Code - The undersigned further agrees not to place the system in operation until a Certificate of Compliance has been issued by the board of health.

Signed [Signature] Date 7/9/90

Application Approved By [Signature] Date 7/10/90

Application Disapproved for the following reasons: \_\_\_\_\_

Permit No. 90 308 Issued 7/10/90 Date

THE COMMONWEALTH OF MASSACHUSETTS  
BOARD OF HEALTH

OF \_\_\_\_\_

Certificate of Compliance

THIS IS TO CERTIFY, That the Individual Sewage Disposal System constructed ( ) by \_\_\_\_\_

at \_\_\_\_\_

has been installed in accordance with the provisions of TITLE 5 of The State Sanitary Code as amended.

application for Disposal Works Construction Permit No. \_\_\_\_\_ dated \_\_\_\_\_

THE ISSUANCE OF THIS CERTIFICATE SHALL NOT BE CONSTRUED AS A GUARANTEE THAT THE SYSTEM WILL FUNCTION SATISFACTORY.

DATE 7-12-90 Inspector Edward F Berry

Attest this is a copy of the Public Health Division Record Signed Sharon Croder Public Health Division 4/27/10  
Town of Barnstable  
200 Main St.  
Hyannis, MA 02601

THE COMMONWEALTH OF MASSACHUSETTS  
BOARD OF HEALTH

No. \_\_\_\_\_ OF \_\_\_\_\_ FEE \_\_\_\_\_

Disposal Works Construction Permit

Permission is hereby granted \_\_\_\_\_

to Construct ( ) or Repair ( \ ) an Individual Sewage Disposal System

at No. \_\_\_\_\_

as shown on the application for Disposal Works Construction Permit No. \_\_\_\_\_ Dated \_\_\_\_\_

DATE \_\_\_\_\_ Board of Health

CHECK OR FILL IN WHERE APPLICABLE

# EXHIBIT 7



26 Packet Landing Way  
West Barnstable, MA 02668

May 24, 2010

To whom it may concern:

I live next door to the property located at 1000 Main Street. I have resided there since 1980.

I made the following observations during the period of time that Dave and Barbara Birdsey owned the property at 1000 Main Street:

There were offices on the first floor. There appeared to be only one apartment, which was located on the second floor. It was occupied by a woman in the employ of the Birdseys and her husband. Dave Birdsey operated a boat shop from the barn.

Sincerely,



Marjorie Keary

*P.S. The Birdseys have always been great neighbors*

# EXHIBIT 8



<b>Prop Type</b>	Residential	<b>Subdivision</b>	
<b>County</b>	Barnstable	<b>Town</b>	Barnstable
<b>Zoning</b>	Village Business D and Partial	<b>Sq. Ft./Source</b>	2,296 / Assessors Records
<b>Rooms</b>		<b>Lot Size/Source</b>	38,768sf / (Assessors Records)
<b>Beds</b>	3	<b>Style/Desc</b>	Victorian /
<b>Baths F/H</b>	2 / 1	<b>Levels</b>	
<b>Year Built</b>	1900 / Approximate	<b>Tax ID</b>	179-2-0-0-BARN

**Remarks:** Wonderful Opportunity to own this unique 1900's Victorian home & Barn on the historic Old King's Highway. This property consists of a main building, one of the largest barns on historic Route 6A, a two car garage, a shed & front and back yards. Located on a prominent corner in the village of West Barnstable, this property offers great flexibility: use the main building as a home or office and use the barn for your workshop or shop. Zoned Village Business D & partial RF (Residential) with quick access to Rte. 6: **Permitted uses for the property include residential, Village Business B, AND according to a Special Permit: offices on the 1st flr., an apartment on the 2nd & a boat building business in the barn.** Both home and barn are in great shape and have had many recent renovations and upgrades. **Buyers to verify all zoning and uses.**

**Directions:** Rte. 149 North to East on 6A, property is on the right on the corner of Packet Landing and Route 6A  
**Showing Instr.:** Appointment Req., Call Listing Office, Tenant, Yard Sign

**General Information**

<b>Garage/#Cars</b>	Yes / 2	<b>Gar Desc</b>	Detached
<b>Basement/Basement Desc</b>	Yes / Cape Cod	<b>Wing Width/Wing Depth</b>	16 / 16
<b>Foundation</b>	37 / 32 / Crawl Space, Stone	<b>Parking</b>	Stone/Gravel
<b>Street Description</b>	Public		

**Interior Amenities**

<b>Interior Features</b>			
<b>Floors</b>	Laminate, Other, Carpet, Wood		
<b>Equipment/Appliances</b>			
<b>Living/Dining Room Combo</b>	<b>Kitchen/Dining Room Combo</b>	<b>Fireplaces/#Fireplaces</b>	No /

**Exterior Amenities**

<b>Pool/Pool Description</b>	No /	<b>Dock/Dock Description</b>	No /
<b>Exterior Features</b>	Outbuilding, Porch, Yard	<b>Roof</b>	Asphalt, Pitched
<b>Siding</b>	Shingle	<b>Assoc/Membership Required</b>	No /
<b>Assoc Fee/Fee Year</b>	/	<b>Waterview/Waterview Desc</b>	No /
<b>Amenities</b>		<b>Water Acc</b>	Salt, Other-See Remarks
<b>Waterfront/Waterfront Desc</b>	No /	<b>Beach Desc</b>	
<b>Miles to Beach</b>	1 to 2		
<b>Beach Own</b>	Public		
<b>Beach/Lake/Pond Name</b>	Sandy Neck Beach		
<b>Convenient to</b>	Conservation Area, Golf Course, Horse Trail, In Town Location, Major Highway, Medical Facility, School, Shopping		

**School District**

**Neighborhood Amenities**

**Mechanical Amenities**

<b>Heating/Cooling</b>			
<b>Water/Sewer/Util</b>			
<b>Hot Water</b>			

**Legal/Tax Information**

<b>Improvement Asmt</b>	\$272,900	<b>Land Asmt</b>	\$199,900	<b>Other Asmt</b>	0	<b>Total Asmt</b>	\$472,800
<b>Annual Taxes/Tax Year</b>	\$5,613 / 2013	<b>Annual Betterment</b>	0	<b>Unpaid Betterment</b>	0		
<b>Title Ref-Book/Page/Cert</b>	22277 / 102 / 0	<b>Plan</b>		<b>To Be Assessed</b>		<b>Spec Assessment</b>	
<b>Mass Use Code/Definition</b>	101-Single Family						
<b>Undergrnd Fuel</b>	Unknown	<b>Asbestos</b>		<b>Lead Paint</b>	Unknown	<b>Flood Zone</b>	Unknown

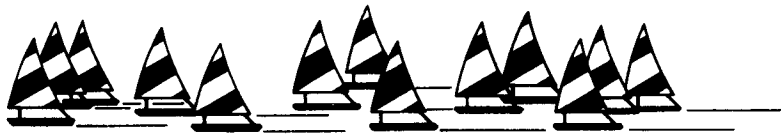
Printed by Buyer Brokers of Cape Cod- on 05/22/16 at 12:46pm

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U.S. Patent 6,910,045 (Residential Client One Page View)

# EXHIBIT 9



# BAYVIEW REAL ESTATE

*"On a clear day you can see forever."*

June 15, 2010

Mr. Peter A. Sundelin, Esq.  
999 Main Street  
P. O. Box 771  
West Barnstable, MA 02668

Dear Attorney Sundelin:

Mr. Christopher Birdsey called me and also provided me with copies of your letter to him, dated June 3, 2010, along with your letter and corresponding exhibits addressed to Mr. Tom Perry, Building Inspector of the Town of Barnstable, dated June 1, 2010 regarding the property located at 1000 Main Street in West Barnstable and its permitted uses. After reviewing them and talking with clerks at the town regarding the permitted uses for the property I have amended the property's listing accordingly to fully reflect its permitted uses which include: Residential, Village Business B, and according to the Special Permit: offices on the first floor, an apartment on the second and a boat building business in the barn. Please find attached a copy of the amended listing which provides full disclosure to prospective buyers of the property.

Thank you!

Sincerely,

Tara Schiffmann Brown  
Listing Agent for 1000 Main Street, West Barnstable  
Bayview Real Estate  
3220 Main Street, PO Box 165  
Barnstable, MA 02630

Cc: Mr. Tom Perry, Building Inspector, Town of Barnstable  
Town of Barnstable, 200 Main Street, Hyannis, MA 02601

Cc: Mr. Chris Birdsey, c/o Packet Landing LLC  
218 Main Street, 3W, Hyannis, MA 02601

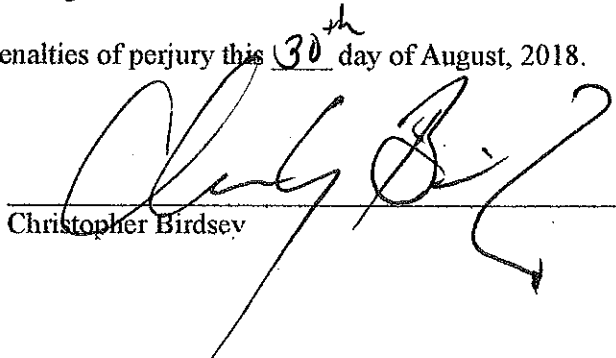


**AFFIDAVIT OF CHRISTOPHER BIRDSEY**

I, Christopher Birdsey, hereby depose and state as follows:

1. I reside in East Dennis, Massachusetts;
2. My family and I owned the property located at 1000 Main Street, West Barnstable from 1987 through December, 2013.
3. During that period of time we ran Speedwell Boatworks out of the barn on the property, building, restoring, and repairing wooden powerboats. We also stored some boats adjacent to the barn.
4. Around 2007-2008, we curtailed some of the boatbuilding activity because my father was sick, but we soon resumed that activity and continued to build boats on the property until we sold it in 2013. At that time I was repairing a Crosby Striper and was building a small powerboat in the barn.
4. During our ownership of the property, we maintained the three residential units as apartments in the house on the property, but at times rotated which apartments were used for residential and which for office space.
5. From 2007 through 2013 we kept the three apartments occupied the majority of time with the exception of occasional tenant-changeover vacancies.

Subscribed and sworn to under the penalties of perjury this 30<sup>th</sup> day of August, 2018.

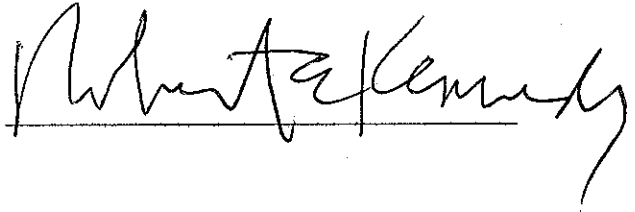
  
\_\_\_\_\_  
Christopher Birdsey

**AFFIDAVIT OF ROBERT KENNEDY**

I, Robert Kennedy, hereby depose and state as follows:

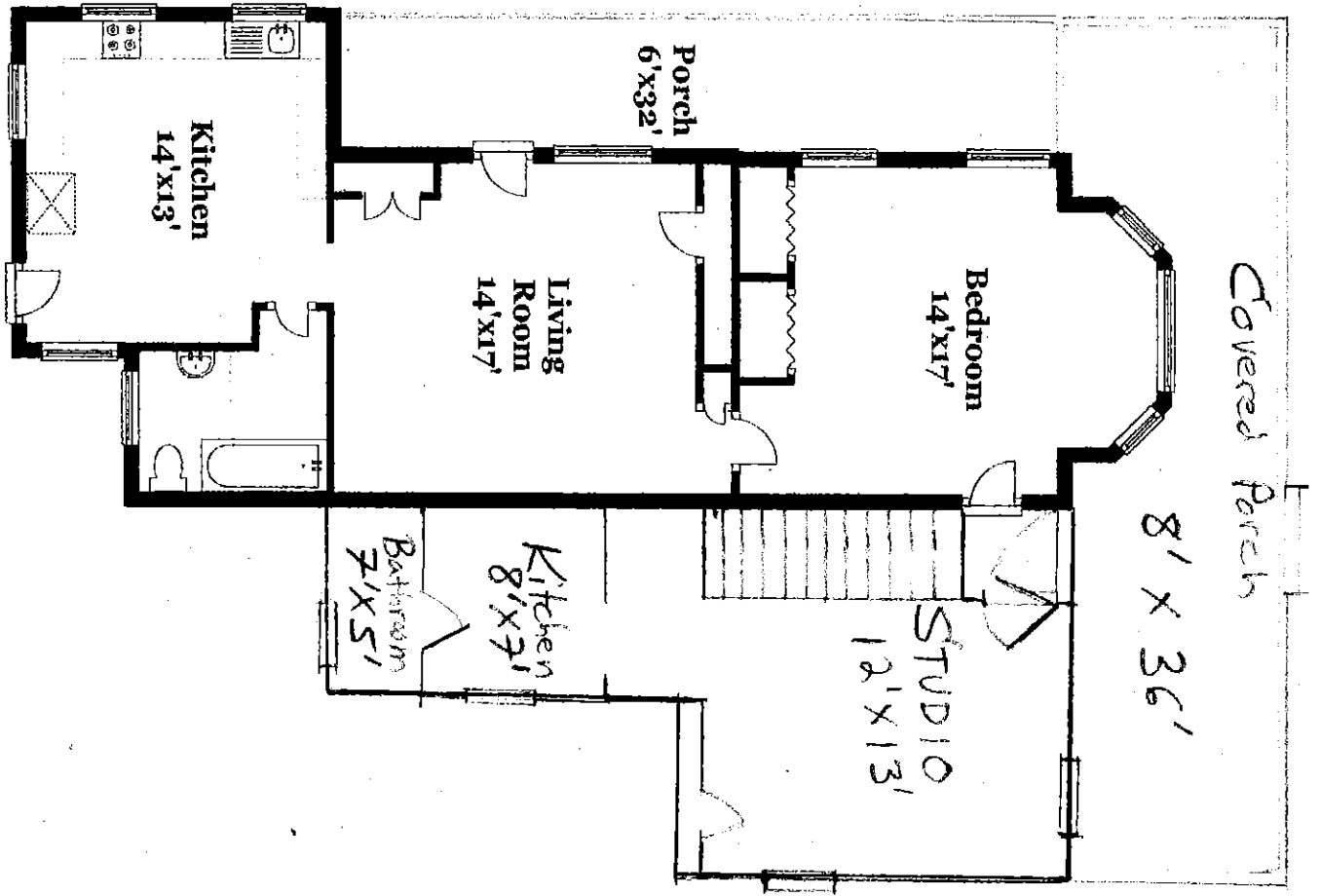
1. I reside in Barnstable, Massachusetts;
2. My partners and I owned the property located at 1000 Main Street, West Barnstable from July 1980 through June 1987.
3. During that period of time an antique store was operated in the barn.
4. The house had been divided into three separate residential units sometime prior to our purchase of the property. During that period of time we would use the apartments to house employees of Kennedy Studios (my business) who would be on the Cape from our Boston store or other off-Cape stores when they filled in on the Cape during the summer months.

Subscribed and sworn to under penalties of perjury this 30<sup>th</sup> day of August, 2019.

  
\_\_\_\_\_

1000 MAIN STREET  
WEST BARNSTABLE  
(HOUSE)

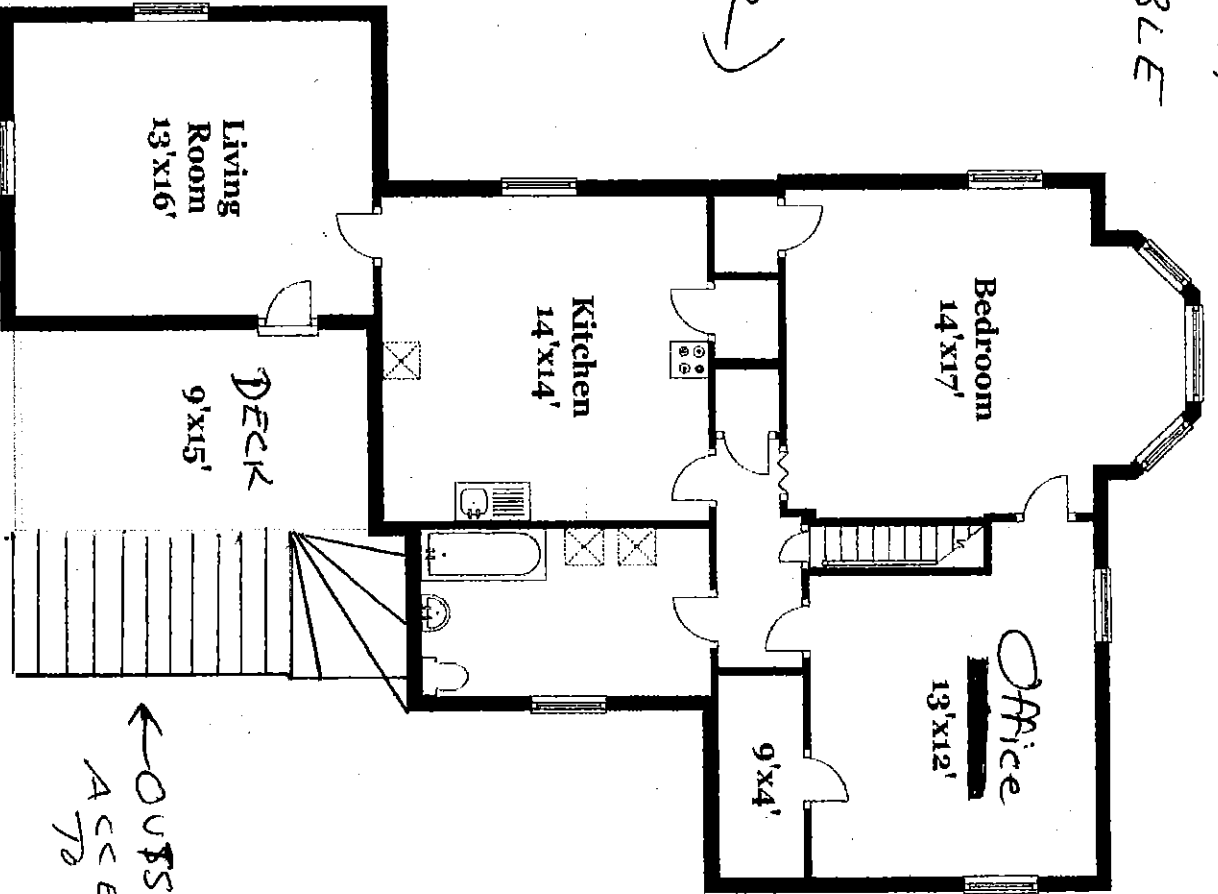
(1ST FLOOR)



All measurements are approximate and not guaranteed. This illustration is provided for marketing and convenience only. All information should be verified independently. © PlanOmatic

1000 MAIN STREET  
WEST BARNSTABLE

(SECOND FLOOR)  
HOUSE

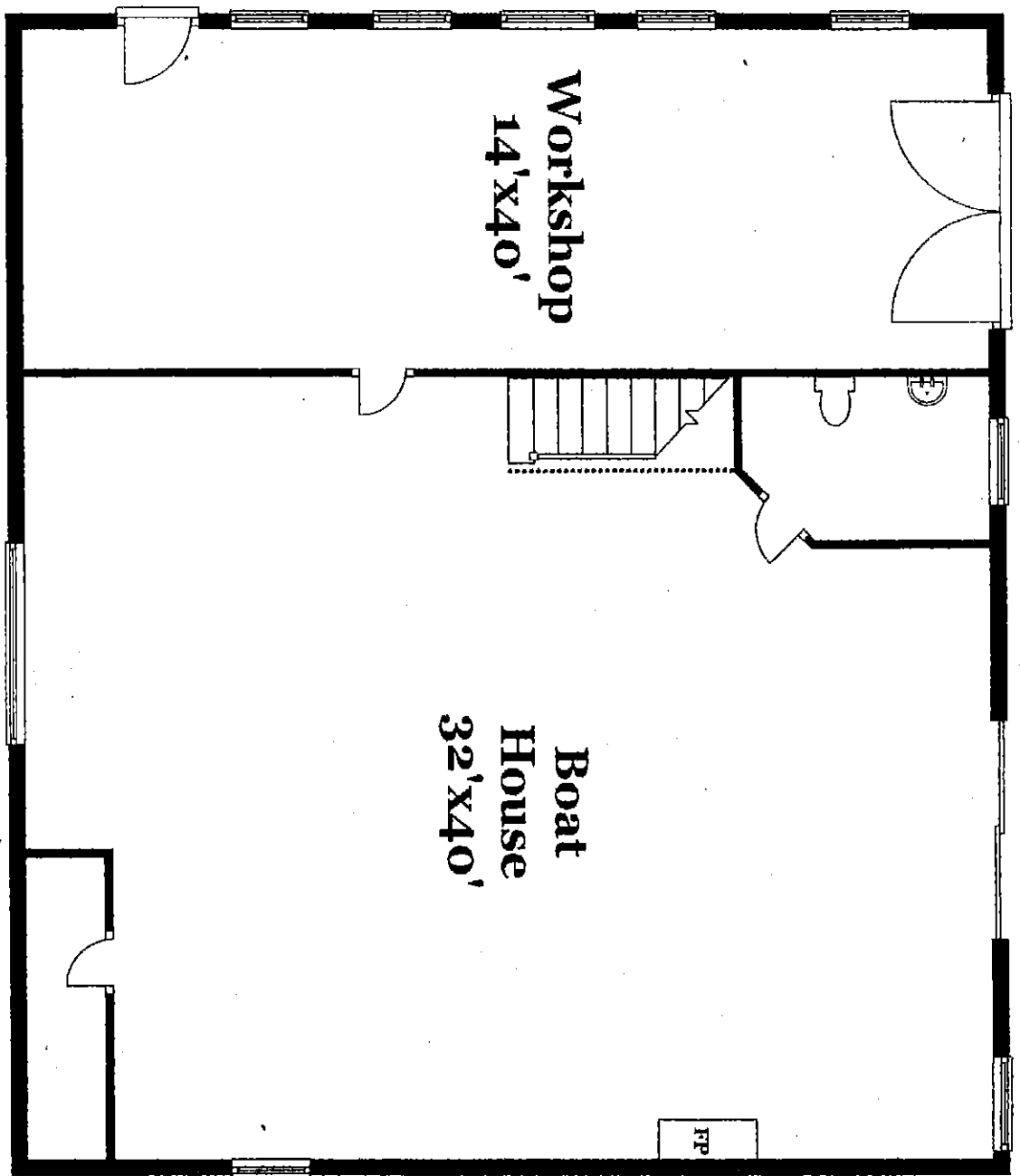


← OUTSIDE STAIR  
ACCESS ENTRANCE  
TO SECOND FLOOR

All measurements are approximate and not guaranteed. This illustration is provided for marketing and convenience only. All information should be verified independently. © PlanOmatic

1000 MAIN STREET  
WEST BARNSTABLE

(BARN)



(FIRST FLOOR)

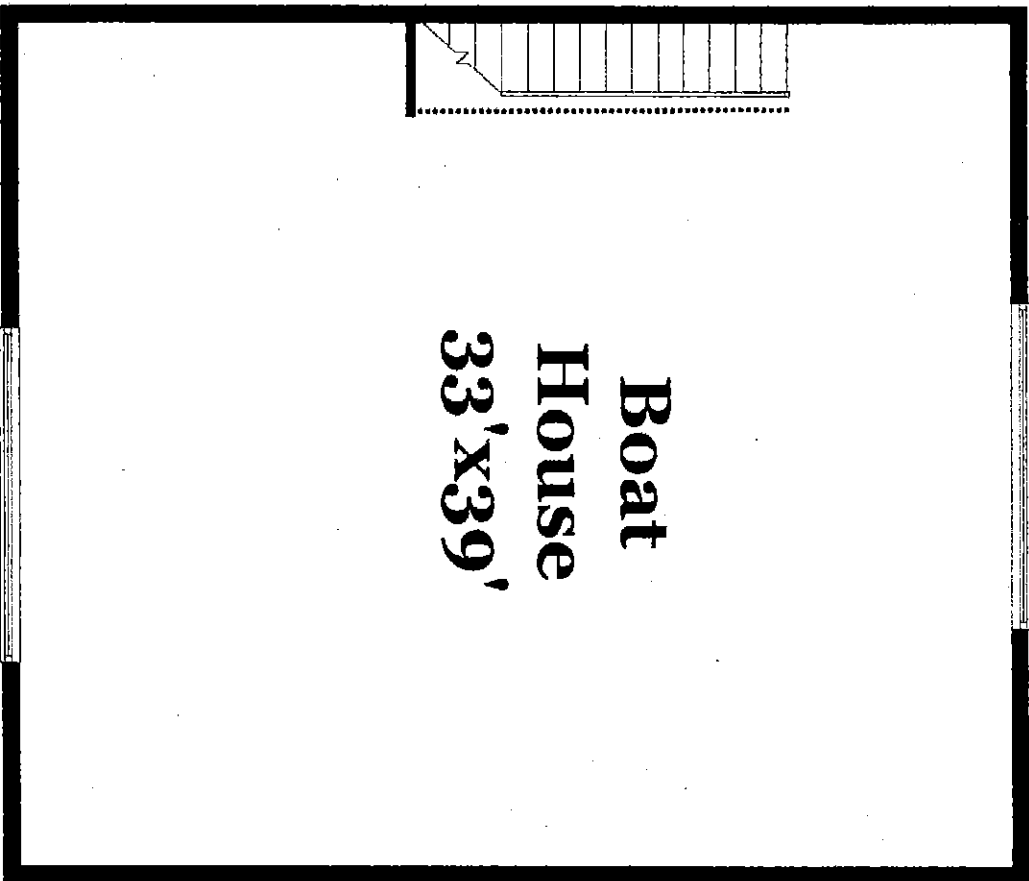
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1000 MAIN STREET

WEST BARNSTABLE

(BARN)



(2ND FLOOR)

All measurements are approximate and not guaranteed. This illustration is provided for marketing and convenience only. All information should be verified independently. © PlanOmatic

### History of 1000 Main Street

- 1640's - 1947 - Howland Family Homestead - John Howland, son of John Howland from the Mayflower was the original owner. When the King's Highway was built in the 1680's it separated the house from his sheep barn on the other side of the street.
- 1947 - 1987 - There were various owners. For most of this period of time there were three apartments in the house and an antique shop operated out of the barn.
- 1987 - 2013 - The Birdsey family operated Speedwell Boatworks out of the barn and had mixed use in the house.
  - When I looked at it in 2007 to buy, the studio and one bedroom on the first floor were being used for residential and the upstairs for offices.
  - When I looked at it and bought it in 2013, the upstairs and one-bedroom on the first floor were occupied residential and the studio vacant.
- 2013 - When I bought it I was told that the use of the barn went with the property and there were apartments allowed in the house.
- \*\*\*There were large powerboats stored inside the barn and in the back barnyard. There had been a long history of powerboats stored where we are storing Small (non-auxiliary) Sailboats.

#### My Rental History and Barn Usage -

2014 - 2015 - Tenants upstairs and one-bedroom with studio vacant. Used the back yard and barn for limited boat storage.

2015 - 2016 - Tenants in all three apartments. Limited to three cars maximum. Used the back yard and barn for limited boat storage.  
Same tenant in studio from 2016-2018.

2016 - 2019 -

**Second Floor Unit One-Bedroom** - Same married tenants upstairs (One Bedroom) since February 2015.

**Scott & Christine Lauterbach Jansson - Both Barnstable High School Grads**

**First Floor One-Bedroom** - Two different tenants during this time-period. Always Single Occupancy in the first floor one-bedroom at a time.  
**Chloe Starr - Grew up on Pilot's Way Barnstable Village. BHS and Tufts Grad**

**Studio Apartment - First Floor** - Rented to One person who is typically there about eight days per month. Travels for work. Wanted a local place.  
**Business owner with West Barnstable roots. Barnstable High School Grad**

Typically zero cars on any average week day. Maximum three cars on weekends. No parties. Hardly ever a sign of life there other than lights on inside.  
**Our immediate abutter to the West is a liquor store and busy commercial plaza at the end of Route 149. Our property is practically abandoned compared to that. 1000 Main Street is the best neighbor one could have.**

Howard Boats stores boats neatly and courteously inside and out without overburdening the property. (Note - Birdsey stored boats commercially in the barn yard from 1987 until 2013. One of their storage customers continued to keep his boat there with me and it never left the property until 2017.)

Property is quiet, professionally landscaped and maintained, with scheduled trash service.

#### Other/Notes

- Had inefficient and unreliable oil-fired boiler when purchased.
- Brought gas service in from street and converted to high-efficiency natural gas heat and hot water in 2014. \$8,000
- When I realized that my tenants' water pressure was low, I had a new modern well drilled in 2015, which eliminated the issue. \$6,000
- Professionally landscaped/mowed.
- Nauset Disposal trash service included.
- I pay the Utilities since it is single-metered.
- Apartments Registered with Town of Barnstable
- Happy long-term tenants.
- I intentionally keep the tenant count at the minimum in order to be a good and responsible neighbor.

Thank you very much for your time and attention.

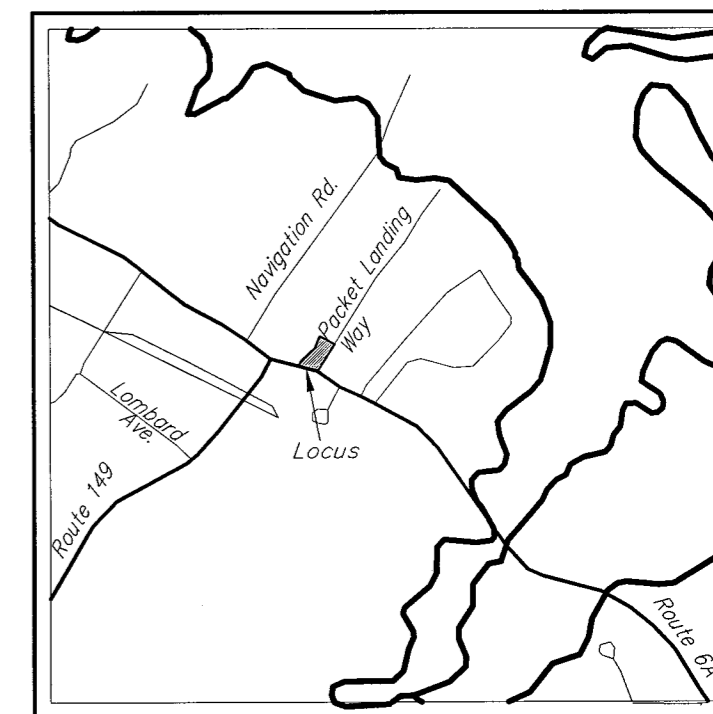
# LEGEND

- 99 — EXISTING CONTOUR
  - × 99.1 EXIST. SPOT ELEV.
  - [ 99 ] - PROPOSED CONTOUR
  - [ 98.4 ] PROPOSED SPOT EL.
  - TH1 TEST HOLE
  - 2% SLOPE OF GROUND
  - UTILITY POLE
  - ⊕ FIRE HYDRANT
- NOTE: NOT ALL SYMBOLS MAY APPEAR IN DRAWING

- PINE OR SPRUCE
- CEDAR
- DECIDUOUS

# NOTES

1. DATUM IS NAVD 88
2. MUNICIPAL WATER IS NOT AVAILABLE
3. THIS PLAN IS FOR PROPOSED WORK ONLY AND NOT TO BE USED FOR LOT LINE STAKING OR ANY OTHER PURPOSE.
4. CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING DIGSAFE (1-888-344-7233) AND VERIFYING THE LOCATION OF ALL UNDERGROUND & OVERHEAD UTILITIES PRIOR TO COMMENCEMENT OF WORK.



## LOCUS MAP

SCALE 1"=2000'±

ASSESSORS MAP 179 PARCEL 2

## ZONING SUMMARY

ZONING DISTRICT: RF RESIDENTIAL DISTRICT

MIN. LOT SIZE	43,560 S.F.
MIN. LOT FRONTAGE	150'
MIN. FRONT SETBACK	30'
MIN. SIDE SETBACK	15'
MIN. REAR SETBACK	15'
MAX. BUILDING HEIGHT	30'

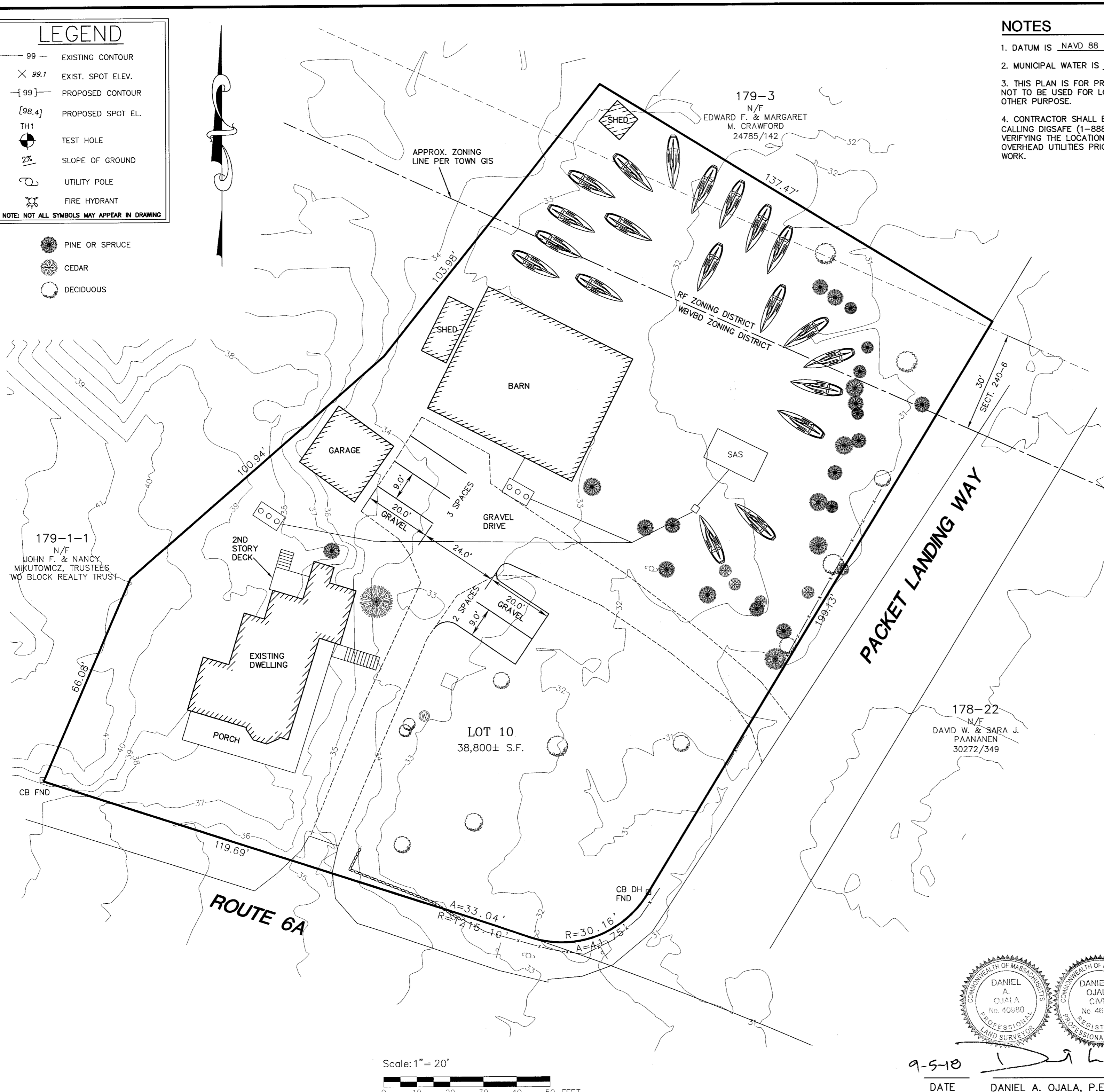
## ZONING SUMMARY

ZONING DISTRICT: WBVBD BUSINESS DISTRICT

MIN. LOT SIZE	43,560 S.F.
MIN. LOT FRONTAGE	160'
MIN. FRONT SETBACK	30'
MIN. SIDE SETBACK	30'
MIN. REAR SETBACK	30'
MAX. BUILDING HEIGHT	30'
MAX. LOT COVERAGE	10%

## REFERENCES

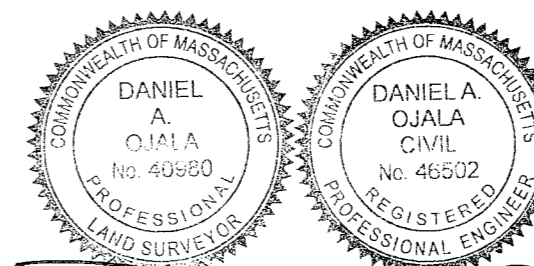
DEED BOOK 27876 PAGE 218  
PLAN BOOK 177 PAGE 43



# SITE PLAN OF 1000 ROUTE 6A WEST BARNSTABLE, MA

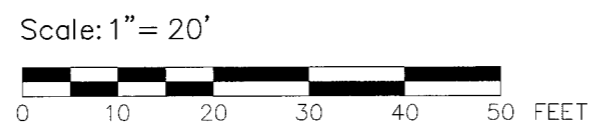
PREPARED FOR  
**PETER EASTMAN**

DATE: APRIL 10, 2018  
REV.: SEPTEMBER 5, 2018



9-5-18  
DATE DANIEL A. OJALA, P.E., P.L.S.

off 508-362-4541  
fax 508-362-9880  
downcape.com @  
**down cape engineering, inc.**  
civil engineers  
land surveyors  
939 Main Street (Rte 6A)  
YARMOUTHPORT MA 02675  
18-078 EASTMAN.DWG





**June Daley**  
**11 Little Pond Road**  
**Marstons Mills, Massachusetts 02648**

September 24, 2019

Mr. Alex Rodolakis, Chairperson  
Town of Barnstable Zoning Board of Appeals  
367 Main Street  
Hyannis, Massachusetts 02601

Re: 1000 Main Street, West Barnstable, Massachusetts, (SP 2019-050)

Dear Mr. Rodolakis:

It was my pleasure to serve the Town of Barnstable as the Precinct 11 Town Councilor from 2011 through 2013.

During that period of time I worked closely with a group of residents that had been charged with updating the West Barnstable Village component of the Cape Cod Commission's Comprehensive Plan.

After completion of the plan, this group worked with then Director of the Town's Growth Management Department, Joanne Miller-Buntich on implementing zoning initiatives consistent with the Comprehensive Plan's goals and objectives.

These initiatives included a rewrite of the zoning in the West Barnstable Business District. The proposed zoning had a lengthy period of input and review at both Board and General Membership meetings of the West Barnstable Civic Association. Prior to the public hearing process through the Planning Board and Town Council, the zoning was presented and approved at a General Membership Meeting. It was unanimously approved by both the Planning Board and the Town Council on September 8, 2011. (TC 2011-138).

Critical to the new zoning change was to preserve and protect the traditional New England Village character. A driving force behind this zoning change was that a location appropriate scale and traditional mix of business, institutional and residential land uses would continue. The goal was also to support a harmonic co-existence of residential and business use.

To this end, the uses allowed by Special Permit include important performance standards. One of these standards under Section B. (4) (g) states that “All outdoor storage associated with artisan or craft use is prohibited “.

Ascribing that one performance standard alone, it is impossible to believe that the storage of twenty shrink wrapped boats in a yard, abutting property both residentially zoned or in residential use is an appropriate action.

Boat storage is best left to where it is allowed under zoning in either Marina Business or Service and Distribution Districts. Boat storage in the WBVBD is completely inconsistent with Section 240-20 A. Purpose and intent numbers 1-8.

The applicant would likely be welcomed in the district by applying for a Special Permit under the current zoning. By meeting the performance standards set forth in the ordinance, 1000 Main Street, LLC’s proposed use would be a welcome addition to the community.

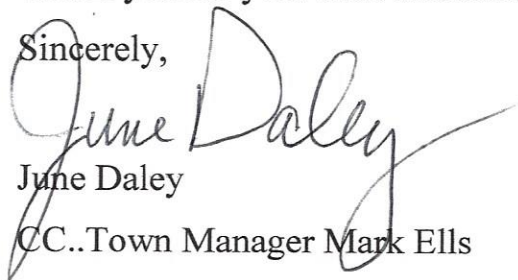
It is also important to note that the WBVBD zoning calls for only one residence to be contained in a structure (Section B. (1) (a).

The community felt so strongly about keeping the bulk of the existing zoning in place, that I along with then Precinct One Town Councilor Ann Canedy sponsored and legislated an ordinance which eliminated all use variances on the Old Kings Highway in the Town of Barnstable, (TC 2013-060).

The application for a special permit before your board for 1000 Main Street, LLC is inconsistent with the Villages Local Comprehensive Plan, West Barnstable Business District Zoning and the Town’s Zoning Ordinance, and Chapter 240, Article XII, Chapter 240 Sec. 240-125B (1) (e) – Use Variance within 300 feet along 6A Scenic Highway.

Thank you for your time and attention to this important matter.

Sincerely,



June Daley

CC..Town Manager Mark Ells

Town Attorney Ruth Weil

Director of Planning Elizabeth Jenkin

Principal Planner Anna Brigham

TOWN OF BARNSTABLE  
ZONING BOARD OF APPEALS

\*\*\*\*\*

IN RE:

Special Permit Number 2019-050

1000 Main Street  
West Barnstable, MA

\*\*\*\*\*



ABUTTER'S AFFIDAVIT IN OPPOSITION TO  
APPLICATION FOR SPECIAL PERMIT

Now comes Nancy Trafton, abutter to subject property, and submits the following Affidavit in Opposition to Application for Special Permit Number 2019-050

ABANDONMENT OF BOATBUILDING BUSINESS USE, CONSEQUENCES

- 1) Mr. Charles Birdsey was granted a Special Permit on April 30, 1987 *to allow the maintenance, repair and sale of small boats with retail sale of supplies related thereto.*
- 2) Application was pursuant to 1986 Zoning Section P.A. - 14.
- 3) This section was eliminated effective 12/3/1987 by a complete recodification of the zoning ordinance. The replacement section was numbered 3-3.5 (3 B) This new section limits special permit uses in the VB-B to windmills only. Boat building and repair were no longer allowed, neither as of right nor by special permit.
- 4) Charles Birdsey built small boats under the name Speedwell Boatworks, Inc. He held all offices of the corporation. He placed a sign in the front yard and often displayed one boat in the front yard.



5) Speedwell Boatworks, Inc. (04-2902663) filed Articles of Dissolution in the Secretary of State's office. on January 2, 2003.

6) My review of the business filings at the Barnstable Town Clerk's office shows no business certificate filings at all, under either Speedwell Boatworks or Charles Birdsey at 1000 Main Street.

7) There is no statement or offer of proof from Mr. Charles Birdsey that he continued to operate the business after he dissolved his corporation in 2003.

8) On October 21, 2008, Cynthia Martin of the Town of Barnstable Board of Health visited Speedwell Boatworks, 1000 Main St. Her report reads as follows:

*"This business filed a Toxic and Hazardous Materials on-Site Inventory on an unspecified date. An inspection of the facility on October 21, 2008 revealed that Speedwell Boat Works is no longer in business. The barn, garage and two sheds contained no hazardous material other than what Mr. Birdsey and his son use for their personnel use. Two boats owned by the Birdseys were stored in the barn.. There were several small boats being stored outdoors on the property but there was no evidence of any maintenance being performed."*

9) Charles and Barbara Birdsey conveyed the property to an LLC managed by their son Christopher Birdsey in August of 2007.

10) Given the dissolution of Speedwell Boatworks, Inc. in 2003, the conveyance of the property to an LLC managed by his son Christopher in 2007, and Mr. Charles Birdsey's statements to Cynthia Martin of the BOH in 2008, it follows that the boat operation at 1000 Main Street was abandoned by the time that Charles Birdsey conveyed the property to his son in 2007.

11) There is no evidence to demonstrate that boatbuilding - as a business - was revived over the course of Mr. Christopher Birdsey's ownership.

12) After Mr. Christopher Birdsey conveyed the property to an LLC managed by Peter Eastman on December 11, 2013, Mr. Eastman placed a sign entitled "Howard Boats West" on the barn and began to store both sail and power shrink wrapped boats in the yard.

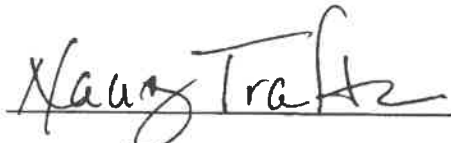
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Nancy Trafton

# West Barnstable pushes zoning change

**Villagers want to preserve character while encouraging (some) growth**

By J. James Joiner  
jjoiner@barnstablepatriot.com

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**ZONE RANGERS** – Nancy Trafton and Town Councilor Hank Farnham hold up a map showing the proposed West Barnstable Village Business District.

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cial permit to make sure they're on a small scale." According to the most recent census, West Barnstable is one of the few villages to report growth, noted West Barnstable Town Councilor Hank Farn-

CONTINUED ON PAGE B:7

## West Barnstable zoning change...

CONTINUED FROM PAGE B-6

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By Susan Vaughn  
svaughn@wickedlocal.com

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Town Councilor Henry Farnham, who sponsored the zoning amendment and served on the village Local Comprehensive Planning Committee, said in recommending the amendment that it "promotes West Barnstable's and the town's planning objectives, protects the character and environment of West Barnstable and promotes locally focused economic development."

The boundaries of the district near the intersection of Meetinghouse Way, (Route 149) and Main Street (Route 6A) are the same, but some new and increased uses are allowed under the new regulations, Nancy Trafton, chairwoman of West Barnstable's Local Comprehensive Planning Committee said in a recent interview. The committee, a subcommittee of the West Barnstable Civic Association, had 50 meetings after getting the original charge to update the West Barnstable component of the town's Local Comprehensive Plan, she said.

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In developing the changes, the committee was intent on preserving the mixed use and historic component of the business district, while planning for a stable future, Trafton said. "We cleaned up ambiguities and attempted to bring our ordinance up to date by utilizing current planning tools, such as corporate branding regulations," she said. These changes came directly from the strategies outlined in the West Barnstable Local Comprehensive Plan.

In addition to renaming the district, Trafton outlined the proposed changes to the VBD-B that included separating the VBD-B from the VBD-A in the zoning ordinance because each district has different uses.

The amendment makes it clear that a residence and a business may be located within the same building, maintains the requirement that only one principal permitted single-family residential dwelling can be contained in any one building and limits principal permitted single-family homes to one per acre of land.

In addition to single-family homes, principal permitted uses in the zone include a small scale retail store, professional, business or medical offices and banks, credit unions and other financial institutions. Allowed accessory uses include bed and breakfast operations, automated banking facilities within a principal building and accessory apartments.

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The amendment creates a corporate branding ordinance to maintain the "sense of place" currently found in the historic business district. All structures and sites must be designed to be consistent with the business district's architectural composition, character and historic context.

Trafton reported that throughout the amendment process the committee sought direction and received unanimous approvals from the West Barnstable Civic Association. Jo Anne Miller Buntich, Department of Growth Management director, assisted the committee.

**June Daley  
11 Little Pond Road  
Marstons Mills, Massachusetts 02648**

September 24, 2019

Mr. Alex Rodolakis, Chairperson  
Town of Barnstable Zoning Board of Appeals  
367 Main Street  
Hyannis, Massachusetts 02601

Re: 1000 Main Street, West Barnstable, Massachusetts, (SP 2019-050)

Dear Mr. Rodolakis:

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During that period of time I worked closely with a group of residents that had been charged with updating the West Barnstable Village component of the Cape Cod Commission's Comprehensive Plan.

After completion of the plan, this group worked with then Director of the Town's Growth Management Department, Joanne Miller-Buntich on implementing zoning initiatives consistent with the Comprehensive Plan's goals and objectives.

These initiatives included a rewrite of the zoning in the West Barnstable Business District. The proposed zoning had a lengthy period of input and review at both Board and General Membership meetings of the West Barnstable Civic Association. Prior to the public hearing process through the Planning Board and Town Council, the zoning was presented and approved at a General Membership Meeting. It was unanimously approved by both the Planning Board and the Town Council on September 8, 2011. (TC 2011-138).

Critical to the new zoning change was to preserve and protect the traditional New England Village character. A driving force behind this zoning change was that a location appropriate scale and traditional mix of business, institutional and residential land uses would continue. The goal was also to support a harmonic co-existence of residential and business use.

To this end, the uses allowed by Special Permit include important performance standards. One of these standards under Section B. (4) (g) states that "All outdoor storage associated with artisan or craft use is prohibited".

Ascribing that one performance standard alone, it is impossible to believe that the storage of twenty shrink wrapped boats in a yard, abutting property both residentially zoned or in residential use is an appropriate action.

Boat storage is best left to where it is allowed under zoning in either Marina Business or Service and Distribution Districts. Boat storage in the WBVBD is completely inconsistent with Section 240-20 A. Purpose and intent numbers 1-8.

The applicant would likely be welcomed in the district by applying for a Special Permit under the current zoning. By meeting the performance standards set forth in the ordinance, 1000 Main Street, LLC's proposed use would be a welcome addition to the community.

It is also important to note that the WBVBD zoning calls for only one residence to be contained in a structure (Section B. (1) (a)).

The community felt so strongly about keeping the bulk of the existing zoning in place, that I along with then Precinct One Town Councilor Ann Canedy sponsored and legislated an ordinance which eliminated all use variances on the Old Kings Highway in the Town of Barnstable, (TC 2013-060).

The application for a special permit before your board for 1000 Main Street, LLC is inconsistent with the Villages Local Comprehensive Plan, West Barnstable Business District Zoning and the Town's Zoning Ordinance, and Chapter 240, Article XII, Chapter 240 Sec. 240-125B (1) (e) – Use Variance within 300 feet along 6A Scenic Highway.

Thank you for your time and attention to this important matter.

Sincerely,



June Daley

CC..Town Manager Mark Ells

Town Attorney Ruth Weil

Director of Planning Elizabeth Jenkin

Principal Planner Anna Brigham



**From:** eileen.elias@comcast.net  
**Sent:** Wednesday, December 11, 2019 7:23 PM  
**To:** Brigham, Anna  
**Cc:** selias001@gmail.com  
**Subject:** Town of Barnstable December 11, 2019 Hearing Regarding Property - 1000 Main Street, West Barnstable 02668

Dear Ms. Brigham,

My husband and I reside at 42 Packet Landing Way, West Barnstable. We are writing to you regarding the proposed intent by the owner of the property at 1000 Main Street, West Barnstable which is located on 6A and Packet Landing Way.

We are opposed to the owner's intent to store shrink-wrapped boats including sail boats on the grounds of his property. Know that the owner, without legal permission, is currently storing these boats on the outside of his property.

Our understanding is the owner intends to store 20 or more shrink-wrapped boats on the grounds of his property. This property is in a residential area. The currently visibly obvious stored boats are negatively affecting this residential area. The 1000 Main Street property's grounds have taken on a 'ship yard' and/or 'industrial' environment, rather than residential. Home values are at risk of diminished sale values. The residential area consists of single homes at values between \$350,000 - \$1.5 million.

The 1000 Main Street property's prior owner did store boats but inside, within the property's barn/large garage. We have no issue with such interior storage. Our concern is with storing boats outside of the barn, visible from both 6A and Packet Landing Way.

We look forward to knowing that the owner of the 1000 Main Street property complies with the legal requirements of owning residential property and that the outside boat storage is stopped/discontinued.

My best,  
Stanley and Eileen Elias  
42 Packet Landing  
West Barnstable, MA  
240 380 0431

**CAUTION:** This email originated from outside of the Town of Barnstable! Do not click links, open attachments or reply, unless you recognize the sender's email address and know the content is safe!

TOWN OF BARNSTABLE  
ZONING BOARD OF APPEALS

\*\*\*\*\*

IN RE:

Special Permit Number 2019-050

1000 Main Street

West Barnstable, MA

\*\*\*\*\*

ABUTTER'S AFFIDAVIT IN OPPOSITION TO  
APPLICATION FOR SPECIAL PERMIT

Now comes Nancy Trafton, abutter to subject property, and submits the following Affidavit in Opposition to Application for Special Permit Number 2019-050

ABANDONMENT OF BOATBUILDING BUSINESS USE, CONSEQUENCES

- 1) Mr. Charles Birdsey was granted a Special Permit on April 30, 1987 *to allow the maintenance, repair and sale of small boats with retail sale of supplies related thereto.*
- 2) Application was pursuant to 1986 Zoning Section P.A. - 14.
- 3) This section was eliminated effective 12/3/1987 by a complete recodification of the zoning ordinance. The replacement section was numbered 3-3.5 (3 B) This new section limits special permit uses in the VB-B to windmills only. Boat building and repair were no longer allowed, neither as of right nor by special permit.
- 4) Charles Birdsey built small boats under the name Speedwell Boatworks, Inc. He held all offices of the corporation. He placed a sign in the front yard and often displayed one boat in the front yard.

5) Speedwell Boatworks, Inc. (04-2902663) filed Articles of Dissolution in the Secretary of State's office. on January 2, 2003.

6) My review of the business filings at the Barnstable Town Clerk's office shows no business certificate filings at all, under either Speedwell Boatworks or Charles Birdsey at 1000 Main Street.

7) There is no statement or offer of proof from Mr. Charles Birdsey that he continued to operate the business after he dissolved his corporation in 2003.

8) On October 21, 2008, Cynthia Martin of the Town of Barnstable Board of Health visited Speedwell Boatworks, 1000 Main St. Her report reads as follows:

*"This business filed a Toxic and Hazardous Materials on-Site Inventory on an unspecified date. An inspection of the facility on October 21, 2008 revealed that Speedwell Boat Works is no longer in business. The barn, garage and two sheds contained no hazardous material other than what Mr. Birdsey and his son use for their personnel use. Two boats owned by the Birdseys were stored in the barn.. There were several small boats being stored outdoors on the property but there was no evidence of any maintenance being performed."*

9) Charles and Barbara Birdsey conveyed the property to an LLC managed by their son Christopher Birdsey in August of 2007.

10) Given the dissolution of Speedwell Boatworks, Inc. in 2003, the conveyance of the property to an LLC managed by his son Christopher in 2007, and Mr. Charles Birdsey's statements to Cynthia Martin of the BOH in 2008, it follows that the boat operation at 1000 Main Street was abandoned by the time that Charles Birdsey conveyed the property to his son in 2007.

11) There is no evidence to demonstrate that boatbuilding - as a business - was revived over the course of Mr. Christopher Birdsey's ownership.

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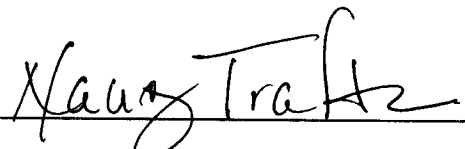
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**June Daley**  
**11 Little Pond Road**  
**Marstons Mills, Massachusetts 02648**

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Town of Barnstable Zoning Board of Appeals  
367 Main Street  
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The application for a special permit before your board for 1000 Main Street, LLC is inconsistent with the Villages Local Comprehensive Plan, West Barnstable Business District Zoning and the Town's Zoning Ordinance, and Chapter 240, Article XII, Chapter 240 Sec. 240-125B (1) (e) – Use Variance within 300 feet along 6A Scenic Highway.

Thank you for your time and attention to this important matter.

Sincerely,



June Daley

CC..Town Manager Mark Ells

Town Attorney Ruth Weil

Director of Planning Elizabeth Jenkin

Principal Planner Anna Brigham

**Town of Barnstable**  
Planning and Development Department  
Elizabeth Jenkins, Director

Staff Report



**Special Permit 2019-050 – 1000 Main LLC/Peter Eastman**  
**Section 240-20 B (3) and (4) – Special Permit for Boat Storage and use of 3 residential units in the WBVB District**

To allow the operation of a small boat storage business and to continue the use of three residential units in the main dwelling

**Date:** September 23, 2019 - **UPDATED**  
**To:** Zoning Board of Appeals  
**From:** Anna Brigham, Principal Planner

**Applicant:** **1000 Main LLC/Peter Eastman**  
Box 125, 124 Beale Way, Barnstable, MA 02630  
**Property Address:** 1000 Main Street (Rte 6A) West Barnstable, MA  
**Assessor's Map/Parcel:** 179/002  
**Zoning:** West Barnstable Village Business District (WBVBD) and Residence F (RF)

Filed: July 30, 2019

Hearing: September 25, 2019

Decision Due: November 20, 2019

**Copy of Public Notice**

1000 Main LLC has applied for a Special Permit pursuant to Section 240-20.B – West Barnstable Village Business District. The Applicant is seeking relief in order to store small traditional sailboats and to continue the pre-existing use of three residential units in the dwelling. The subject property is located at 1000 Main Street, West Barnstable, MA as shown on Assessor's Map 179 as Parcel 002. It is located in the West Barnstable Village Business District (WBVBD) and the Residence F (RF) Zoning Districts.

**Background**

The subject property is located on the corner of Main Street/Route 6A and Packet Landing Way in West Barnstable in the area zoned for business. The lot is 38,800 square feet and according to the Assessors Records contains a dwelling with 2,361 square feet of living area (4,256 gross square feet), 2 bedrooms, and constructed in 1900. There is also a large barn (approx. 3,000 sq.ft), two-car garage, and two sheds on the property. The property is served by a septic system. The main structure and barn are located within the West Barnstable Village Business District while the rear portion of the lot lies within the Residence F District.

In April 1987, Charles J. Birdsey applied to the Zoning Board for a Special Permit to change permitted uses on the property. The use of the property at that time was identified as "apartment rentals in the main house and an antique shop in the barn." (The application also references a 1983 special permit that allowed boat building uses.)

On June 3, 1987 Special Permit No. 1987-35 was granted to Charles Birdsey to allow the following uses:

- ) In the main house, one apartment unit upstairs and an office downstairs.
- ) In the barn, "maintenance, repair and sale of small boats with retail sale of supplies related thereto."

The Board granted the Special Permit subject to the condition that there be no more than one boat on display outside at any one time.



The property was transferred from Mr. Birdsey to an LLC in 2007. A note in the Health Division file dated October 21, 2008, stated that an inspection of the property revealed that the boat maintenance business, Speedwell Boat Works, was no longer in business. The note further states that Mr. Birdsey, who was on site when the inspection occurred, reported that he no longer works on boat building.

In 2013, the property was for sale and records show it was listed as a multi-family with three units, office on the first floor and a boat building business in the barn. A December 2013 fire department inspection shows the property had two units (one first floor, one second), as well as an upstairs office. No permits for the creation of additional residential dwelling units on the property were ever issued.

A Complaint was filed with the Building Division on January 11, 2018 complaining of boat storage in the front yard and using the dwelling as a rental. Two citations were issued on January 23, 2019 (one for boat storage and one for the multifamily use). The citations were paid. A Notice of Zoning Violation dated June 25, 2018 was sent to Mr. Eastman. The violations were for: the creation of a multifamily dwelling and for expansion of the boat repair and restoration use to include boat storage on and off season. Mr. Eastman was instructed to either return the property to modify the conditions of Special Permit No. 1987-35 or seek zoning relief. Mr. Eastman did not appeal the Building Commissioners determination.

In August 2018, the Applicant came before Site Plan Review to seek to modify Special Permit No. 1987-35 to allow the use of the property for boat storage. He also proposed to validate and continue the use of three preexisting nonconforming apartments in the main dwelling. The Application was found approvable subject to many conditions (see letter dated August 22, 2018), prime amongst them relief from the Zoning Board.

In September 2019, the Applicant returned to Site Plan Review, as required, for approval of a revised plan and submittal of septic information, floor plans, affidavits, and property history. There is a concern regarding the septic system and input from the Fire Department was needed but the Committee allowed the Applicant to seek a Special Permit with the condition that he return to Site Plan Review within 10 days of a positive vote to address the outstanding issues.

### **Proposal & Relief Requested**

1000 Main, LLC has applied for a Special Permit to “**store small traditional sailboats and to continue the pre-existing use of three residential units in the dwelling**” at 1000 Main Street, West Barnstable, MA. The Applicant cites that the Special Permit is sought pursuant to Section 240-20 – the **West Barnstable Village Business District, Sections (B)(3) and (B)(4)**, Special Permit Uses and Special Permit Performance Standards.

### **Uses Permitted and Permitted by Special Permit in the WBVBD**

The West Barnstable Village Business District (WBVBD), Section 240-20(B)(1), allows the following principal permitted uses (“by-right”):

- (a) Single-family residential dwelling. A single-family residential dwelling may be freestanding or attached to a building also used for nonresidential uses. More than one single-family residential dwelling per lot is permitted as long as there is a minimum of one acre per single-family dwelling, but in no case will more than one principal permitted single-family residential dwelling be contained in any one building.
- (b) Small-scale retail store.
- (c) Professional, business or medical office.
- (d) Office of a bank, credit union, savings and loan or other financial institution.

**Section B(3)** allows the following uses are permitted with approval of a **Special Permit** from the ZBA:

- (a) Artisans and craftspeople.

- (b) Personal service business.
- (c) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy subject to the provisions of § 240-44.1

**Section (B)(4)** provides specific **performance standards** that must be met for the Board to grant a Special Permit.

The WBVBD defines Artisans and Craftspeople as follows:

**ARTISAN OR CRAFTSPERSON USE** — A small-scale use that typically employs one or two people who practice craft or artisan activities. A key feature of works produced by artisans or craftspeople is the high degree of manual expertise involved. The use must be compatible with abutting and nearby residential and nonresidential uses. The following is included in the definition of "artisan or craftspeople use:"

**ARTISAN OR CRAFTSPERSON** — A person using manual skills to produce, in limited quantities, ornamental or functional works in ceramic, glass, metal, paper, wood or textiles. Examples include, without limitation, the following: drawing, painting, sculpture, pottery, photography, graphic design, interior design, fashion design, jewelry making, wood turning, glass blowing, furniture making, small wooden boat building, upholstering and weaving.

### Staff Comments

#### *Boat Storage*

To grant any Special Permit, the Board must first make a finding that “the application falls within a category specifically excepted in the ordinance for a grant of a special permit.”

The Board should consider if the proposed use by the Applicant, outdoor boat storage, can be shown to meet this first required finding. **Boat storage is not listed as a permitted use, or a special permit use, in the West Barnstable Village Business District.**

*The 1985 Special Permit allowed a boat repair business with the condition that no more than one boat on display outside at any one time. Accessory and incidental storage of one boat was allowed in connection with the boat building business, which appears to have been abandoned by 2008.*

#### *Apartments*

It appears the Applicant seeks three apartment units on the property. Again, the Board must find this request “falls within a category specifically excepted in the ordinance for a grant of a special permit.” **Multi-family residential is not allowed as a special permit use in the WBVBD.**

The 1985 Special Permit granted by the Board allowed for one apartment on the property. This is the last lawfully permitted residential use of the property, and the use (one dwelling unit) is in conformance with the WBVBD zoning. The Board should consider how the Applicant can substantiate that three units were lawfully permitted, as there is no record to show this special permit was modified to allow additional units. *(Prior rights to multiple units on the property would have been relinquished when the Board granted the 1985 Special Permit.)*

Further, the application cites no section of the Zoning Ordinance that would allow the non-conforming use to be reestablished. **The Barnstable Zoning Ordinance does not allow for reestablishment of nonconforming uses and the WBVBD does not allow for a change in a nonconforming use to another nonconforming use.**

Lastly, the Applicant did not appeal the Building Commissioner’s 2018 determination the uses were not permitted. No building permits for multi-family residential use was ever applied for or issued.

### **Additional Considerations**

The Fire Department would require that all boats be placed with a minimum of 3 feet of spacing between boats. All boats must be a minimum of 10 feet from any structure and vegetation. All vegetation within 10 feet will be removed from the area of storage such as grass, trees, shrubs, ext.. This includes the ground cover. Access will be provided to the boat storage area suitable for the access of a fire engine with a GVW of 45,000 pounds. The surface of the storage area will be free of obstructions including inoperable gates /fencing, or snow accumulation. The overhead will be clear of obstructions such as tree branches. No storage will be allowed under overhanging tree branches that would promote the vertical spread of fire. These provisions are being required because the property is immediately situated next to an area determined to be a wildland urban interface zone. All fuel and batteries will need to be removed from boats prior to storage. The use of rack storage would need to comply with the regulations for such. No shrink wrapping of boats on the property without proper hot work permit by a qualified operator meeting all of the requirements for hot work and hot work plan.

Further, the residential units would need to demonstrate compliance with Building, Health and Fire codes.

### **Special Permit Findings**

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit.
2. After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.
3. A Site Plan has been reviewed and found approvable with conditions. (*See letter dated August 22, 2018 and September 17, 2019*).

The Board would also have to make findings that the proposed use met the performance standards required by Section 240-20(B)(4).

### **Proposed Findings and Conditions**

No findings or conditions have been issued by staff at this time based on the need to hear from the Applicant, the public and the Board on this application.

Copies: Applicant  
Attachments: Application  
Site plan  
Site Plan Review approval letters (2018 and 2019)  
Assessor's Record & Aerial Photo  
Copy of Special Permit No. 1987-35  
Affidavits  
Property History



**Town of Barnstable  
Zoning Board of Appeals  
Petition for a Special Permit**

Date Received \_\_\_\_\_  
Town Clerk's Office: \_\_\_\_\_

Modification of \_\_\_\_\_

For office use only:  
Appeal # \_\_\_\_\_  
Hearing Date \_\_\_\_\_  
Days Extended \_\_\_\_\_  
Decision Due \_\_\_\_\_

The undersigned hereby applies to the Zoning Board of Appeals for a Special Permit, in the manner and for the reasons set forth below:

Petitioner's Name<sup>1</sup>: Corrie L. and Kevin Y. Vilsaint, Phone: (508) 827-4495  
Petitioner's Address: 103 Pine Tree Drive, Centerville, MA 02632

Property Location: 358 Flint Street, Marstons Mills, MA 02648  
Property Owner: Serena A. Watson, Phone: (508) 744-7244  
Address of Owner: 83 Rendezvous Lane, Barnstable, MA 02630

*If applicant differs from owner, state nature of interest:<sup>2</sup>*

Applicants are purchasing the property from Owner pursuant to a  
Purchase and Sale Agreement dated October 17, 2020 (Exhibit A attached)  
Registry of Deeds/Land Court References: Deed Book 9607, Page 051 Plan Lot 5, Plan Book 352,

Assessor's Map/Parcel Number: 101/121 Zoning District: RF Page 44  
Number of Years Owned: 39 years Groundwater Overlay District: AP

Special Permit Requested: Section 240-92 (Nonconforming Buildings or Structures Used as Single Family Residence); Section 240-94.B., formerly 4-4.5(2)

*Cite Section & Title from the Zoning Ordinance (Expansion of Pre-Existing Nonconforming Use)*

Description of Activity/Reason for Request: see separate sheet attached

*Attach additional sheet if necessary*

Is the property subject to an existing Variance or Special Permit .....No [ ] Yes [X] – Appeal No. 1998-77  
Permit # \_\_\_\_\_

<sup>1</sup> The Petitioner's Name will be the entity to whom the special permit will be issued to.

<sup>2</sup> If the Applicant differs from owner, the Applicant will be required to submit one original notarized letter from the owner authorizing the application to the Zoning Board, a copy of an executed purchase & sales agreement or lease, or other documents to prove standing and interest in the property.



Petition for a Special Permit - Page 2

Description of Construction Activity (if applicable): No construction anticipated

*Attach additional sheet if necessary*

Existing Level of Development of the Property - Number of Buildings: 2

Present Use(s): single family residential with cottage for seasonal rental

Main Existing Gross Floor Area: 3,754 sq. ft. Proposed New Gross Floor Area: no change sq. ft.  
Cottage 2,182

Site Plan Review Number: N/A Date Approved: N/A (not required for Single or Two Family use)

Is the property located in a designated Historic District?..... Yes [ ] No [X]

Is this proposal subject to the jurisdiction of the Conservation Commission ..... Yes [X] No [ ]

Is this proposal subject to approval by the Board of Health ..... Yes [X] No [ ]

Is the building a designated Historic Landmark?..... Yes [ ] No [X]

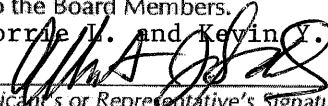
Have you applied for a building permit?..... Yes [ ] No [X]

Have you been refused a building permit?..... Yes [ ] No [X]

The following Required Information, as applicable to application, must be submitted with the application at the time of filing, failure to do so may result in a denial of your request.

- Three (3) copies of the completed application form, each with original signatures.
- Three (3) copies of a 'wet sealed' certified property survey (plot plan) and one (1) reduced copy (8 1/2" x 11" or 11" x 17") showing the dimensions of the land, all wetlands, water bodies, surrounding roadways and the location of the existing improvements on the land.
- Three (3) copies of a proposed site improvement plan, as found approvable by the Site Plan Review Committee (if applicable), and building elevations and layout as may be required plus one (1) reduced copy (8 1/2" x 11" or 11" x 17") of each drawing. These plans must show the exact location of all proposed improvements and alterations on the land and to the structures.
- The applicant may submit any additional supporting documents to assist the Board in making its determination. Twelve copies of all supporting documents must be submitted eight days prior to the public hearing for distribution to the Board Members.

Corinne J. and Kevin Y. Vilsaint, by their attorney

Signature:  Date: October 26, 2020  
*Applicant's or Representative's Signature<sup>3</sup>*

Print Name Albert J. Schulz

The Samuel Isham House

Address: 1340 Main Street Phone: (508) 428-0950

Osterville, MA 02655-1542 Fax No.: (508) 420-1536

e-mail Address: aschulz@schulzlawoffices.com

<sup>3</sup> All correspondence on this application will be processed through the Representative named at that address and phone number provided. Except for Attorneys, if the Representative differs from the Applicant/Owner, a letter authorizing the Representative to act on behalf of the Applicant/Owner shall be required.

**Description of Activity/Reason for Request:** Applicant seeks a modification of the Special Permit issued to Conrad and Serena A. Watson on September 9, 1998, in Appeal No. 1998-77, as follows:

1. Modify Condition 2 to allow year-round use of the cottage (barn structure) by Applicants' family members and house guests on occasional basis; and
2. Elimination of Condition 3, which provides that the Special Permit will expire upon the upon Owners' voluntary or involuntary transfer of the property.

There will be no increase in square footage of either the main dwelling or the cottage (barn structure) is contemplated and the number of bedrooms will not be increased beyond the three permitted bedrooms in the cottage (barn structure).

Applicants believe that the requested relief can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinance.

**EXHIBIT A**

*From the Office of:*  
Albert J. Schulz, Esquire  
Schulz Law Offices, LLC  
The Samuel Isham House  
1340 Main Street  
Osterville, MA 02655  
(508)428-0950

## **PURCHASE AND SALE AGREEMENT**

### **1. PARTIES.**

This 17<sup>th</sup> day of October, 2020,

**SERENA A. WATSON**, of 358 Flint Street, Marstons Mills, Massachusetts, hereinafter called the SELLER, agrees to SELL, and

**CORRIE L. VILSAINT** and **KEVIN Y. VILSAINT**, both of 103 Pine Tree Drive, Centerville, Massachusetts 02632, hereinafter, called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

### **2. DESCRIPTION.**

The land, together with the building and improvements thereon, located at 358 Flint Street, Barnstable (Marstons Mills), Barnstable County, Massachusetts, and being more particularly bounded and described as follows:

Lot 5, containing 60,000 square feet, more or less, and shown on the plan of land entitled "Plan of Land in MARSTONS MILLS, Barnstable, Mass., As Surveyed For CHARLES E. & CAROLYN S. LARSON, Scale: 1" = 60', April 27, 1981, which said plan is recorded in the Barnstable County Registry of Deeds in Plan Book 352, Page 44.

Being the same premises as described in the deed from Serena A. Watson, Trustee, to Serena A. Watson, dated March 15, 1997, and recorded in Book 9607, Page 51.

### **3. BUILDINGS, STRUCTURES, IMPROVEMENTS AND FIXTURES.**

Included in the sale as a part of said premises the buildings, structures, and improvements now thereon, and the fixtures, belonging to the SELLER used in connection therewith including, if any, all Venetian blinds, window shades, screens, screen doors, storm windows and doors, awnings, shutters, furnaces, heaters, heating equipment, stoves, ranges, oil and gas burners and fixtures appurtenant thereto, hot water heaters, plumbing and bathroom fixtures, electric and other lighting fixtures, mantels, outside television antennas, fences, gates, trees, shrubs, plants, and, if built in, air conditioning equipment,

ventilators and garbage disposers. All appliances and window treatments in both buildings are included in the sale, specifically range, refrigerator and dishwasher in both the main house and cottage. Said appliances shall be in the same condition as on the date of inspection.

**4. TITLE DEED.**

Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by a written notice to the SELLER at least seven (7) days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except as aforesaid, and (a) provisions of existing building and zoning laws; (b) such taxes for the then current year as are not due and payable on the date of the delivery of such deed; (c) any liens for municipal betterments assessed after the date of this Agreement; and (d) easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the current use of the premises for single or two-family residential purposes.

**5. PLANS.**

If the deed refers to plans necessary to be recorded therewith, SELLER shall deliver such plans with the deed in form adequate for recording or registration.

**6. REGISTERED TITLE.**

In addition to the foregoing, if the title to the Premises is registered, SELLER'S deed shall be in the form sufficient to entitle BUYER to a Certificate of Title of the Premises, and SELLER shall deliver with the deed all instruments, if any, necessary to enable BUYER to obtain a Certificate of Title.

**7. ENCUMBRANCES.**

It is understood and agreed by the parties that the Premises shall not be in conformity with title provisions of paragraph 4 of this Agreement, unless:

- (a) All buildings, structures and improvements, including but not limited to any driveways, parking area, cesspools, septic tanks and leaching fields and all means of access to the Premises, shall be located completely within the boundary lines of said Premises and shall not encroach upon or under the property of any other person or entities;
- (b) No building, structure, or improvement of any kind belonging to any other



person or entity shall encroach upon or under said premises;

- (c) The Premises shall abut a public way or a private way providing access to a public way to which BUYER shall have both pedestrian and vehicular access, and if a private way, that such private way in turn is duly laid out, accepted or approved as such by the city or town in which said Premises are located.
- (d) The Premises are insurable at normal premium rates for the benefit of BUYER and BUYER'S lender, if any, in a fee owner's ATLA-form policy and/or ATLA-form loan policy currently in use, subject only to the standard form's pre-printed exceptions and matters set forth in paragraph 2 of this Agreement. It is expressly understood, however, that the availability of title insurance shall not relieve the SELLER of the obligation to provide good and clear record and marketable title to the Premises in accordance with any applicable REBA title standard then in effect.

**8. PURCHASE PRICE.**

The agreed purchase price for said premises is SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00), of which

\$ 19,000.00	have been paid as a deposit this day,
\$ 1,000.00	have been paid with the Offer to Purchase; and
\$ 730,000.00	are to be paid at the time of delivery of the deed by certified, treasurer's check, an attorney's IOLTA check drawn on a Massachusetts' account or by wire transfer
<hr/>	
\$ 750,000.00	Total purchase price

**9. TIME FOR PERFORMANCE, DELIVERY OF DEED.**

Such deed is to be delivered at 12:00 P.M. on the 31st day of December, 2020, or within five (5) business days of expiration of the appeal period of the decision of the Barnstable Zoning Board decision, whichever is earlier, at the Barnstable Registry of Deeds or the office of the Buyer's attorney, 1340 Main Street, Osterville, Massachusetts, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this Agreement.

**10. POSSESSION & CONDITION OF PREMISES.**

Full possession of the Premises, free of all tenants and occupants, is to be delivered at the

time of the delivery of the deed, said premises to be then (a) in the same condition as they now are, reasonable wear and tear thereof excepted, (b) not in violation of said building and zoning laws or effectively protected from enforcement of any such violation, (c) in compliance with the provisions of any instrument referred to in paragraph 4, and (d) in broom-clean condition, free of all debris and SELLER'S personal property not included in the sale. BUYER shall be entitled personally to inspect said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

**11. INSPECTION(S).**

BUYER acknowledges that BUYER has been afforded the opportunity to have the premises inspected by a duly licensed person engaged in the business of conducting home inspections for structural, pest, lead paint radon, asbestos, chlordane hazardous materials, groundwater, water quality and soil testing. BUYER has conducted some or all of these inspections, is satisfied with the results of these inspections and is purchasing the premises in "as is" condition without warranty, express or implied.

**12. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM.**

If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated or if at the time of the delivery of the deed the premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days. For purposes of this Agreement, SELLER and BUYER agree that "reasonable efforts" to remove any defects or to deliver possession as provided herein, shall not require the SELLER to expend more than \$3,750.00 in the aggregate; provided, however, that such limitation shall not apply to SELLER'S obligations to discharge any mortgage or voluntary lien that may encumber the Premises and attorney's fees

The SELLER'S ability to extend the time for performance in order to conform with the provisions hereof, shall be conditioned upon the BUYER'S ability to extend its lender's commitment to provide financing for the purchase of said premises up to and including the extended date of closing without loss of rate or further expense. If the BUYERS' mortgage loan commitment and/or mortgage rate lock expires during this period of extension, the closing shall be postponed only until the last date for which the BUYERS mortgage loan commitment and/or mortgage rate lock remains effective. Paragraph 10 shall be construed to apply to matters affecting title, the physical condition of the

Premises and compliance of the Premises with municipal, county, state or federal codes, ordinances, statutes or regulations concerning the Premises and to which the Premises are subject under the terms of the Agreement. Paragraph 10 shall not, however, be construed to excuse SELLER from vacating the Premises at the time set for performance hereunder for reasons such as not having movers, inconvenience or other such delays in performance hereunder. Any extensions shall be for a shorter period of time as may be set forth in SELLER's written notice if such nonconformity can be cured within a shorter period of time.

**13. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, ETC.**

If at the expiration of the extended time the SELLER shall have failed to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, or if at any time during the period of this Agreement or any extension thereof, the holder of a mortgage on said premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then, at BUYER'S option, any payments made under this Agreement shall be forthwith refunded and all other obligations of all parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.

**14. BUYER'S ELECTION TO ACCEPT TITLE.**

The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said Premises in its then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title, except that in the event of such conveyance in accordance with the provisions of this clause, if said Premises shall have been damaged by fire or casualty insured against, then the SELLER shall, unless the SELLER has previously restored the Premises to its former condition, either (a) pay over or assign to the BUYER, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the SELLER for any partial restoration, or (b) if a holder of a mortgage on said Premises shall not permit the insurance proceeds or a part thereof to be used to restore the said Premises to its former condition, or to be so paid over or assigned, give to the BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amounts reasonably expended by the SELLER for any partial restoration.

**15. ACCEPTANCE OF DEED.**

The acceptance and recording of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every Agreement and

obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

**16. USE OF MONEY TO CLEAR TITLE.**

To enable the SELLER to make conveyance as herein provided the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of the deed or within a reasonable time thereafter by the conveyancing attorney in accordance with customary practices. SELLER agrees to use SELLER'S best efforts to cooperate in the procurement and recording of any discharge of mortgage after the delivery of the deed, and SELLER'S obligations hereunder shall survive the delivery of the deed.

**17. INSURANCE.**

Until the delivery of the deed, the SELLER shall maintain the present insurance on the Premises. All risk of loss shall remain with SELLER until the deed is recorded.

**18. ADJUSTMENTS.**

Water use charges and taxes for the then current year shall be apportioned, and the fuel value and homeowner's association dues, if any, shall be adjusted as of the day of performance of this Agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of delivery of the deed.

**19. ADJUSTMENT OF UNASSESSED AND ABATED TAXES.**

If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed.

**20. BROKER'S FEE.**

A broker's fee for professional services of five percent (5%) or \$37,500.00 is due from the SELLER to Thomas Foley Real Estate, who will pay the cooperating broker, Kinlin Grover Real Estate \$18,750.00, but only if, as and when the SELLER received the full

purchase price hereunder and the BUYER accepts and records the SELLER'S deed and not otherwise.

**21. BROKER'S WARRANTY.**

The Broker(s) named herein, FOLEY REAL ESTATE and KINLIN GROVER REAL ESTATE, warrant that they are duly licensed as such by the Commonwealth of Massachusetts.

**22. DEPOSIT.**

All deposits made hereunder shall be held by FOLEY REAL ESTATE, as agent for the SELLER, in a non-interest-bearing escrow account, subject to the terms of this Agreement, and shall be duly accounted for at the time for performance of this Agreement. In the event of any disagreement between the parties, the escrow agent shall retain all deposits made under this Agreement pending instructions mutually given by the SELLER and BUYER or final judgment entered by a court of competent jurisdiction.

**23. BUYER'S DEFAULT DAMAGES.**

If the BUYER shall fail to fulfill the BUYER'S Agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages as his sole remedy at law and in equity. SELLER and BUYER hereby agree that the deposit hereunder of \$20,000.00, being about 2.67% of the agreed purchase price, is a reasonable forecast of Seller's losses that could result from Seller's inability to resell the Premises for the same agreed purchase price due to any number of presently undeterminable factors.

**24. BROKER AS PARTY.**

The Brokers named herein join in this Agreement and become a party hereto, insofar as any provisions of this Agreement expressly apply to them, and to any amendments or modifications of such provisions to which they agree in writing.

**25. LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, ETC.**

If the SELLER or BUYER executes this Agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligations, express or implied hereunder.

**26. MORTGAGE CONTINGENCY.**

In order to help finance the acquisition of the Premises to be purchased, the BUYER shall apply for a conventional bank or other institutional mortgage loan of \$675,000.00, at prevailing rates, terms and conditions. If, despite the BUYER'S diligent efforts, a written commitment for such loan cannot be obtained on or before November 9, 2020, the BUYER may terminate this Agreement by written notice to the SELLER and/or Broker, as agent for the SELLER, by 5:00 p.m. on November 10, 2020. whereupon all deposits made under this Agreement shall be forthwith refunded and this Agreement shall be void without recourse to the parties hereto. In the event that notice has not been given, this contingency shall be deemed waived. BUYER shall not be considered to have used diligent efforts in obtaining said financing unless one (1) application is filed within three (3) business days of the date this Agreement is executed.

**27. LEAD PAINT.**

BUYER acknowledges that SELLER has represented that SELLER has disclosed any and all information known to SELLER about the actual or potential lead hazards in the property which is the subject of this Agreement. BUYER acknowledges that he or his agents have been given an opportunity to examine the Premises and that any obligations arising under Massachusetts General Law, Chapter 111, §197, shall be borne by BUYER in accordance with the terms thereof.

**28. WARRANTIES AND REPRESENTATIONS.**

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this Agreement or previously made in writing.

**29. SMOKE AND CARBON MONOXIDE DETECTORS.**

SELLER shall, at the time of the delivery of the deed, deliver a certificate from the Fire Department of the town in which the Premises is located stating that said Premises has been equipped with approved smoke and carbon monoxide detectors in conformity with applicable law.

**30. SELLER'S DOCUMENTS.**

At the time of the delivery of SELLER'S deed, SELLER shall execute and deliver to BUYER such documents as may reasonably be required by BUYER'S attorney or the attorney for any lender financing BUYER'S purchase of the Premises, including, but not limited to, (a) an affidavit stating that SELLER is not a foreign person under Internal



Revenue Code, Section 1445; (b) an affidavit regarding the true purchase price for the Premises and whether the SELLER has or intends to lend the BUYER any portion of the purchase price; (c) an affidavit to BUYER and BUYER's title insurance company certifying that there are no parties in possession of the Premises and that no work has been done on the Premises which would entitle anyone to claim a mechanic's or materialman's lien with respect to the Premises; (d) Internal Revenue Code 1099-S FORMS and W-9 FORMS; (e) an affidavit stating that said Premises have been equipped with approved smoke and carbon monoxide detectors in conformity with applicable law; and (f) an affidavit representing that, to the best of SELLER'S knowledge, there is no Urea Formaldehyde Foam Insulation (UFFI) on or in the Premises.

### **31. NOTICES.**

All notices required hereunder shall be deemed to have been duly given if in writing and (1) delivered by hand (2) mailed by registered or certified mail, return receipt requested, all charges prepaid, (3) sent by facsimile, or (4) sent by overnight delivery services, addressed:

if to SELLER to: Serena A. Watson  
358 Flint Street  
Marstons Mills, MA 02648

if to BUYER to: Corrie L. Vilsaint and Kevin Y. Vilsaint  
103 Pine Tree Drive  
Centerville, MA 02632

with a copy to: Albert J. Schulz, Esquire  
Schulz Law Offices, LLC  
The Samuel Isham House  
1340 Main Street  
Osterville, MA 02655  
Telephone: (508) 428-0950  
Facsimile: (508) 420-1536  
Email: [aschulz@schulzlawoffices.com](mailto:aschulz@schulzlawoffices.com)

### **32. ERRORS AND OMISSIONS.**

Errors and Omissions. If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement signed by the parties (or would have been included if not for any such error or omission) and notice thereof is given within sixty (60) days of the date of delivery of the deed to the party to be charged, then such party agrees to make payment to correct the error or omission.

**33A. SEPTIC SYSTEM (Main House).**

SELLER shall be responsible for engaging a licensed System Inspector to perform a System Inspection as required by the State Environmental Code, Title V; Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, 310 CMR 15.00, et seq. The cost of said inspection shall be borne by the SELLER. In the event that the System Inspection Report discloses one or more failure criteria, as defined by 310 CMR 15.303/304, SELLER shall promptly notify BUYER by certified mail. Such notice shall include a written estimate by licenses disposal system installer, which details the estimated costs to repair or upgrade the system to comply with requirements of Title V. The costs incurred to repair or remediate the system in order to make it comply with Title V shall be borne by the SELLER. The repair or upgrade shall include the upgrade or modification of system components, addition of fill or other change to the Premises or to the system necessary to satisfy the Maximum Feasible Compliance Standard set forth in 310 CMR 15.404. A system which conforms to the provisions of Title V shall be defined to by a system which may be lawfully maintained on the Premises. If the repair or upgrade of the system is not completed on or before the closing date set forth in the Agreement, or as extended, the closing date shall be extended, or further extended as the case may be, to a date not more than seven (7) days after said work has been completed and a compliance certificate issued.

**33B. SEPTIC SYSTEM (Cottage).**

SELLER agrees to install a new septic system for a 3-bedroom residence in accordance with Title 5 and Town of Barnstable Board of Health regulations.

**34. ZONING RELIEF CONTINGENCY.**

BUYER'S obligations under this Agreement are contingent upon SELLER obtaining, at SELLER'S sole cost and expense, a modification of the conditions set forth in the Special Permit issued to Conrad Watson and Serena A. Watson in Appeal No. 1998-77 on September 9, 1998, and recorded in the Barnstable County Registry of Deeds in Book 11739, Page 046, such that said special permit, as amended, will not terminate upon a future sale of the Premises, and will allow year-round use and rental of the cottage. Should SELLER not obtain such modification, upon conditions acceptable to BUYER, BUYER shall have the right to terminate this Agreement, whereupon all deposits made hereunder shall be forthwith refunded and this Agreement shall be null and void without course to BUYER or SELLER.

**35. REPAIRS.**

On or before the closing date, SELLER, at SELLER'S sole cost and expense, perform the

following repairs in a good and workman like manner:

1. Replace the hot water heater in the cottage.
2. Repair the well, which provides water to the cottage, and upon completion have the water tested to indicate sufficient quantity and quality of water.
3. Parge three sides of the old basement so that holes and open spaces in foundation walls are closed.
4. Remove tree, and roots, that are growing into the foundation wall of the cottage.

**36. TITLE/PRACTICE STANDARDS.**

Any dispute concerning any unresolved title issue or conveyancing practice as of the closing under or relating to this Agreement shall be resolved in accordance with applicable standards or practices of the Real Estate Bar Association for Massachusetts (REBA) to the extent possible.

**37. AUTHORITY.**

It is hereby agreed that BUYER'S and SELLER'S counsel are granted authority and power to execute extensions of any clause or provision of this Agreement, including the date for performance on behalf of their respective clients.

**38. ACCESS TO PREMISES.**

BUYER and/or BUYER'S representatives shall have the right of access to the Premises prior to the date for performance at reasonable times and upon reasonable notice to SELLER or BROKER, including the right to inspect the Premises just prior to the closing, provided that such access shall be coordinated through and be in the presence of SELLER or SELLER'S Agent.

**39. SELLER'S REPRESENTATIONS.**

To the best of SELLER'S knowledge and belief, SELLER represents as follows:

- (a) SELLER has full power to execute, deliver and carry out the terms and provisions of this Agreement and has taken all necessary action to authorize the execution, delivery, and performance of this Agreement, and this Agreement constitutes the legal, valid and binding obligation of SELLER enforceable in accordance with its terms;
- (b) There are no tenancies, occupancies or licenses in or to the Premises for any period after the delivery of the deed hereunder;

- (c) SELLER has not commenced nor has SELLER received notice of the commencement of any proceeding that would affect the present zoning classification of the Premises. SELLER will not initiate any such proceedings and will promptly notify BUYER if SELLER receives notice of any such proceeding commenced by third parties;
- (d) No work has been done on the Premises which could give rise to any liens under Massachusetts General Laws, Chapter 254 and no contracts are outstanding or in effect with respect to the doing any such work;
- (e) All terms and conditions of any recorded restrictive agreements applicable to the Premises have been met, SELLER is not in default or breach of any recorded restrictions, easements, rights of way or covenants affecting the Premises, and no event has occurred which with notice or the passage of time, or both, would constitute a default thereunder;
- (f) SELLER has not received any written notice that the Premises are in material violation of any federal, state or local law, including without limitation those respecting wetland, zoning or environmental conditions;
- (g) The Premises are not the subject of any outstanding agreements with any party pursuant to which any such party may acquire any interest in the Premises, other than any current recorded mortgages. SELLER has no knowledge of any litigation or administrative proceeding, pending or threatened, against or relating to the Premises, or against SELLER which will affect SELLER'S ability to convey good, clear and marketable title; and
- (h) There exists no underground storage tank on the Premises, and no other "oil or hazardous materials" (as defined in M.G.L. chapter 21E) are located on, under (including soil and groundwater conditions) or about the Premises.

**40. BROKER REPRESENTATION AND WARRANTY CLAUSE.**

BUYER and SELLER represent and warrant to each other that neither party has dealt with any broker nor other person in connection with the purchase of the Premises, other than the brokers named herein, if any. BUYER and SELLER agree that each will hold harmless and indemnify the other from any loss, cost, and damage, expense, including reasonable attorney's fees incurred by BUYER or SELLER for a commission or finder's fee as a result of the falseness of this representation. The provisions of this clause shall survive delivery of the deed.

**41. FACSIMILE SIGNATURES.**

For purpose of this Agreement, facsimile and emailed/scanned signatures shall be considered as original.


**42. CONSTRUCTION OF AGREEMENT.**

This instrument, executed in triplicate, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and ensures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors, and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. If two or more persons are named herein as BUYER, their obligations hereunder shall be joint and several.

**43. ADDITIONAL PROVISIONS.**


See TRID Rider attached hereto and incorporated herein by reference.

SELLER:

  
Serena A. Watson

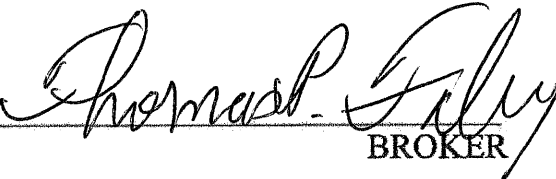
BUYER:

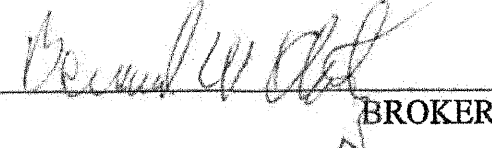
  
Corrie L. Vilsaint

  
Kevin Y. Vilsaint

Thomas Foley Real Estate

Kinlin Grover Real Estate

By:   
BROKER

By:   
BROKER

10-01-1998 @ 01:51



**Town of Barnstable  
Zoning Board of Appeals  
Decision and Notice**

**Appeal Number 1998-77 - Watson**

**Special Permit Pursuant to Section 4-4.3(2) - Nonconforming Buildings or Structures Used as  
Single or Two-Family Residences and Section 4-4.5(2) - Expansion of a Pre-Existing  
Nonconforming Use**

<b>Summary:</b>	<b>Granted with Conditions</b>	
<b>Applicant:</b>	Conrad and Serena A. Watson	
<b>Property Address:</b>	358 Flint Street, Marstons Mills	
<b>Assessor's Map/Parcel:</b>	Map 101, Parcel 121	
<b>Area:</b>	1.40 acres	<b>Building Area:</b> 3,132 sq. ft.
<b>Zoning:</b>	RF Residential F Zoning District	
<b>Groundwater Overlay:</b>	GP Groundwater Protection District	

**Background:**

The property that is the subject of this appeal is a 1.40 acre lot in Marstons Mills. It is improved with two structures and is located in an RF Residential F Zoning District. The RF zoning classification only permits one single-family residential dwelling per lot as-of-right. The property contains a 1,746 sq. ft. single-family residence and a 1,386 sq. ft. converted barn structure that has purported to be used as a seasonal bunk house. The current owners use the converted barn to house guests. The barn is a one-story structure consisting of 6 rooms; 3 bedrooms. It is serviced by its own cesspool and well. According to the applicant, the cesspool for the main residence has been up-graded to a Title V Septic System.

The converted barn structure currently contains a kitchen and a bathroom which qualifies it as a second single-family residence and second principal use. Section 2-3.6(1) of the Zoning Ordinance states "within residential districts, only one principal permitted building shall be located on a single lot." A review of Zoning Board of Appeals records indicates that no special permit or variance was ever approved to allow 2 single-family residences on this one lot.

In the early part of 1997, the Building Division became aware that a violation existed on the property. More recently, this past winter, the applicants began repairing a door and expanding the existing deck on the barn without obtaining a building permit. The Building Division issued a Stop Work Order and, at this point in time, the work is unfinished. A hearing at the Barnstable District Court was scheduled for July 9, 1998, pending the completion of the Zoning Board of Appeals application, which was filed on April 17, 1998.

The applicants contend that the plumbing, to include the kitchen and original two bathrooms, have existed in the barn since the 1950's, making the present use of the property a legal pre-existing nonconforming use. The applicants are seeking a Special Permit pursuant to Section 4-4.3(2) Nonconforming Buildings or Structures Used as Single and Two Family Residences and Section 4-4.5(2) Expansion of a Pre-Existing Nonconforming Use to allow them to continue to use the converted barn structure as a single-family residence for guests and to allow them to finish the work they started on this structure. They have stated that they do not intend to rent the barn out.

**Procedural Summary:**

This appeal was filed at the Town Clerk's Office and at the Office of the Zoning Board of Appeals on April 17, 1998. An extension of time to file the decision was executed by the applicant and Board Chairman. A copy of that extension is contained within the file. A public hearing before the Zoning Board of Appeals

See 9607/p.51



Town of Barnstable - Zoning Board of Appeals - Decision and Notice  
 Appeal No. 1998-77 - Watson  
 Special Permit Pursuant to Section 4-4.3(2) and Section 4-4.5(2)

was duly advertised and notices sent to all abutters in accordance with MGL Chapter 40A. The hearing was opened June 3, 1998, and continued to August 12, 1998 and August 26, 1998, at which time the Board granted the request with conditions.

Board Members hearing and deciding this appeal were Richard Boy, David Rice, Ron Jansson, Gene Burman and Chairman Emmett Glynn. Attorney Bruce Gilmore represented the applicants.

**Hearing Summary:**

At the hearing of June 3, 1998, Attorney Gilmore requested a continuance of this appeal. The Board agreed to continue the appeal to August 12, 1998.

At the August 12, 1998, continuance, Attorney Gilmore submitted some photographs to the file. He described the site and explained that this property was a portion of the Fair Acres Day Camp that has been actively operated since at least the 1940s. The property was bought in 1980 from the owners of the day camp. Before the applicants bought the property in issue, the barn building, had been used seasonally, by the camp, as a bunk house. It had two toilets and a refrigerator, but it did not have a stove.

In 1981, the applicant went to the Building Department to seek permits to section off part of the bunk house into individual bedrooms. He was told that because there was no structural changes, a permit was not need. At that time, he created the three separate bedrooms and the kitchen. It had been used as a guest house for the last 17 years without complaints, until 1996, when a disgruntled neighbor complained that the second unit was being used as a residence.

Attorney Gilmore reported the applicants come from large families and over the years, many relatives have come to visit and they use that dwelling as a guest house. The applicants are willing to limit the use of the second dwelling to family and friends and indicated they will not rent the unit out. The building is only used in the summer - not year round. In Mr. Gilmore's opinion, the use of this second dwelling as a guest house is not detrimental to the area. There will be no expansion of the building.

As background, Attorney Gilmore stated this dwelling was used as a bunk house in the 1940s by the summer counselors working at the Fair Acres Day Camp. There was no kitchen at that time because they ate in another building at the camp. Mr. Gilmore can not verify the continual use of the dwelling as a guest house from the 1940s to today, but Dr. Leach is present and can report to the Board that he was familiar with the operation of the summer camp in the 1950s.

The Building Commissioner reported this site came to his attention in 1997 when a neighbor complained the barn was being rented out for profit. A Building Inspector went to the property on July 29, 1997 but was not allowed into the property. The Inspector noted that work had been done without the proper permits. The Building Commissioner had a letter, dated July 30, 1997, from Carolyn Larson which states the barn was used by the summer day camp as a recreational building with two bathrooms, one sink, and a refrigerator. It did not have a kitchen. He could not verify how far back the dwelling had been used as a bunk house. He said it "appears the change (to a full dwelling status) happened in 1997."

**Public Comments:** No one spoke in favor or in opposition to this appeal.

The Board asked Attorney Gilmore if he could provide the Board with some evidence that the use has been ongoing since before zoning was adopted in the area. Dr. Leach addressed the Board and said he was born in 1950 and he went to the day camp when he was 6 years old (in 1956). He remembers - at that time - half of the building was used as an arts and craft area and the other half was used as a bunk house for the counselors.

The Board cited that even though the barn has been there since the 1940s, it must be established that the use (housing) pre-dates 1956 because that is when the zoning changed in the area. If he can establish that, then he can seek a change from one nonconforming use to another nonconforming use.

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 Appeal No. 1998-77 - Watson  
 Special Permit Pursuant to Section 4-4.3(2) and Section 4-4.5(2)

Attorney Gilmore clarified the kitchen was built in 1981 not 1997. Attorney Gilmore requested a continuance to allow him time to try to provide affidavits from people who can substantiate the use of the bunkhouse from before 1956.

The hearing was continued to August 26, 1998.

Attorney Gilmore stated that since the last meeting, he has been in contact with five people that remember the camp and he is now submitting two affidavits to the file. One affidavit is from Walter Perry which states, "...Prior to entering the Air Force in 1951, I had a part-time job driving a bus for the Fair Acres Day Camp. I remember at that time that counselors would stay overnight in the barn on the property." The other affidavit is from David G. Leach which states, "... I attended camp at Fair Acres Day Camp in 1951, 1952, and 1953. It is my recollection that counselors stayed overnight in the barn building at the time I was a camper."

Concerns were expressed for the "kitchen" and that to grant this use would lead to two separate dwelling units on one lot. Attorney Gilmore replied he is seeking to legalize a use that is pre-existing. The applicant has indicated he will not rent the unit out and it will only be used on a seasonal basis - from May to November. The applicant has no intention of subdividing the property (should this relief be granted) and Mr. Gilmore stated that the applicant would be amenable to the Board conditioning it as such.

**Findings of Fact:**

At the Hearing of August 26, 1998, the Board found the following findings of fact as related to Appeal No. 1998-77:

1. The applicants are Conrad and Serena A. Watson. The property in issue is located at 358 Flint Street, Marstons Mills, MA as shown on Assessor's Map 101, Parcel 121. It consists of 1.40 acres of land in a RF Residential F Zoning District and in the GP Groundwater Protection Overlay District.
2. The property itself is currently being occupied (as a matter-of-right) by a 1,746 sq. ft. single-family residence and a 1,386 sq. ft. barn structure that has existed on the property prior to the adoption of zoning in the Town.
3. The barn was converted and for the past several years has been used as a seasonal bunkhouse.
4. The petitioner has presented evidence, by means of affidavits, indicating that the barn has been utilized as a bunk house on a seasonal basis as far back as 1951.
5. The property itself has been serviced by its own current, upgraded Title V Septic System.
6. The applicant is seeking a Special Permit Section 4-4.5(2) Expansion of a Pre-Existing Nonconforming Use.
7. The use - that has continued in the barn as a seasonal use - is legal, pre-existing nonconforming use.
8. The relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinance.

The Vote was as follows:

AYE: Richard Boy, Gene Burman, Ron Jansson, David Rice, and Chairman Emmett Glynn

NAY: None

**Decision:**

Based upon the findings a motion was duly made and seconded to grant the Applicant the relief being sought in Appeal No. 1998-77 with the following conditions:

1. The barn structure shall not be rented out.
2. The use of the barn structure shall be seasonal - from May to November only.
3. This Special Permit shall run with the present owners only and shall expire upon the transfer of the property either voluntarily or involuntarily or through succession by will or intestate to their heirs.
4. The barn may not be further modified in terms of bedrooms and may not exceed the three bedrooms it currently has.

Town of Barnstable - Zoning Board of Appeals - Decision and Notice  
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Special Permit Pursuant to Section 4-4.3(2) and Section 4-4.5(2)

- 5. There shall be no expansion of the barn in footprint or in overall structure.
- 6. All requirements of the Health Division, Building Division, and Fire Department must be met.
- 7. The work which was started on the deck may be completed without further expansion. It [the deck] shall not be enclosed.

The Vote was as follows:

AYE: Richard Boy, Gene Burman, Ron Jansson, David Rice, and Chairman Emmett Glynn  
NAY: None

**Order:**

**Appeal Number 1998-77 has been granted with conditions.**

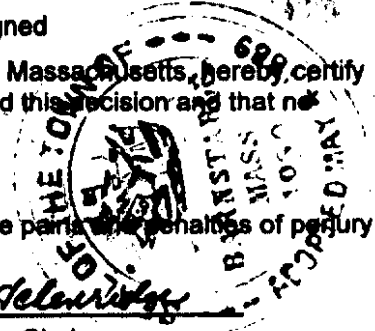
This decision must be recorded at the Registry of Deeds for it to be in effect. The relief authorized by this decision must be exercised in one year.

Appeals of this decision, if any, shall be made pursuant to MGL Chapter 40A, Section 17, within twenty (20) days after the date of the filing of this decision. A copy of which must be filed in the office of the Town Clerk.

*Emmett Glynn*  
Emmett Glynn, Chairman

9-9- 1998  
Date Signed

I Linda Hutchenrider, Clerk of the Town of Barnstable, Barnstable County, Massachusetts, hereby certify that twenty (20) days have elapsed since the Zoning Board of Appeals filed this decision and that no appeal of the decision has been filed in the office of the Town Clerk.



Signed and sealed this 30<sup>th</sup> day of Sept. 1998 under the pains and penalties of perjury.

*Linda C. Hutchenrider*  
Linda Hutchenrider, Town Clerk

# Proof of Publication

## LEGAL NOTICES

### TOWN OF BARNSTABLE ZONING BOARD OF APPEALS NOTICE OF PUBLIC HEARING UNDER THE ZONING ORDINANCE FOR JUNE 03, 1998

To all persons interested in, or affected by the Board of Appeals under Sec. 11 of Chapter 40A of the General Laws of the Commonwealth of Massachusetts, and all amendments thereto you are hereby notified that:

**7:30 PM** **Bacal** **Appeal Number 1998-75**

Jodi Bacal has petitioned to the Zoning Board of Appeals for a Special Permit pursuant to Section 3-1.1(2)(A) Conditional Uses to permit the renting of rooms to no more than six (6) lodgers in one (1) multi family dwelling. The property is shown on Assessor's Map 324, Parcel 088 and is commonly addressed as 34 Circuit Avenue, Hyannis, MA in an RB Residential B Zoning District.

**7:45 PM** **S.K.J.G. Co., Inc.** **Appeal Number 1998-76**

S.K.J.G. Co., Inc. (Stephen McCarthy, President) has petitioned to the Zoning Board of Appeals for a Special Permit pursuant to Section 3 3 6 (3XA) Conditional Uses in the HB Highway Business District, Section 4 4 4(2) Non-conforming Building or Structure Not Used as Single or Two-Family Dwellings and Section 4 4 5(1) Change of a Nonconforming Use to Another Nonconforming Use. The petitioner is seeking to demolish the existing gas pumps and building and redevelop the site for a dunkin donut satellite store with two take-out counters and 12 seats, and no drive thru. The property is shown on Assessor's Map 311, Parcel 029 and is commonly addressed as 499 Iyannough Road (Airport Rotary), Hyannis, MA in an HB Highway Business Zoning District.

**8:00 PM** **Watson** **Appeal Number 1998-77**

Conrad and Serena A. Watson have petitioned to the Zoning Board of Appeals for a Special Permit pursuant to Section 4 4 3(2) Nonconforming Buildings or Structures Used as Single and Two Family Residences and Section 4 4 5(2) Expansion of a Pre-Existing Nonconforming Use. The petitioner seeks to obtain approval from the Zoning Board of Appeals on a prior non-conforming use (kitchen installation in an auxiliary building formerly used as a seasonal bunk house). The property is shown on Assessor's Map 101, Parcel 121 and is commonly addressed as 358 Flint Street, Marstons Mills, MA in an RF Residential F Zoning District.

**8:15 PM** **Mullaly** **Appeal Number 1998-78**

Karen Mullaly has appealed the decision of the Building Commissioner pursuant to Section 5-3 2(1) General Powers - Appeal from Administrative Official) and MGL Chapter 40A, Sections 7, 8, and 15. Currently, there is a single family dwelling, a cottage used for residential purposes, and a storage shed existing on the site. The petitioners appeal the decision of the Building Inspector that the existing cottage on the site is not pre-existing non-conforming. A building permit to reconstruct the roof of the existing cottage was denied. The property is shown on Assessor's Map 024, Parcel 025 and is commonly addressed as 4364 Falmouth Road (Route 28), Cotuit, MA in an RF Residential F Zoning District.

**8:30 PM** **Mullaly** **Appeal Number 1998-79**

Karen Mullaly has applied to the Zoning Board of Appeals for a Variance to Section 2-3 6 Limitation of One Principal Building Per Lot in a Residential District. The Variance request is to allow the Petitioner to maintain the existing single family home and existing detached cottage on the site. (This relief is in the alternate to Appeal Number 1998 78). The property is shown on Assessor's Map 024, Parcel 025 and is commonly addressed as 4364 Falmouth Road (Route 28), Cotuit, MA in an RF Residential F Zoning District Zoning District.

These Public Hearings will be held in the Hearing Room, Second Floor, New Town Hall, 367 Main Street, Hyannis, Massachusetts on Wednesday, June 03, 1998. All plans and applications may be reviewed at the Zoning Board of Appeals Office, Town of Barnstable, Planning Department, 230 South Street, Hyannis, MA.

Emmett Glynn, Chairman  
Zoning Board of Appeals

The Barnstable Patriot  
May 14 and 21, 1998

PAR: R101 121.  
KEY: 48978 TAX CODE:300

WATSON, SERENA A  
358 FLINT STREET  
MARSTONS HILLS MA 02648-0000

PAR: R101 122.  
KEY: 48987 TAX CODE:300

KONNADIS, EVANGELIA  
335 MAIN ST  
W YARMOUTH MA 02673-0000

PAR: R102 213.  
KEY: 51080 TAX CODE:300

TRAGER, ELLEN L.  
61 RANDLETT PARK  
W NEWTON MA 02165-0000

PAR: R102 214.  
KEY: 51099 TAX CODE:300

LEACH, JONATHAN M & SUSAN F  
396 FLINT ST  
MARSTONS HILLS MA 02648-0000

PAR: R101 059.002  
KEY: 48362 TAX CODE:300

LEGGIERO, JOHN F & GRETTA  
1 SUMMIT RD  
NEOFORD MA 02155-0000

PAR: R101 059.001  
KEY: 48353 TAX CODE:300

NEDLUND, CAROL E  
19A GRANITE ST  
ROCKPORT MA 01966-0000

PAR: R101 091.  
KEY: 48674 TAX CODE:300

LITTLEFIELD, GEORGE A  
LITTLEFIELD, VIRGINIA A  
18 SANDY VALLEY  
MARSTONS HILLS MA 02648-0000

PAR: R100 048.  
KEY: 47791 TAX CODE:300

HOLLY HOMEOWNERS ASSOC INC  
C/O RICHARD K. WHITNEY  
97 CHUCKLES WAY  
MARSTONS HILLS MA 02648-0000

PAR: R101 058.002  
KEY: 389387 TAX CODE:300

SNODGRASS, DANIEL M  
24 CHUCKLES WAY  
MARSTONS HILLS MA 02648-0000

PAR: R101 058.003  
KEY: 389396 TAX CODE:300

LARSON, CURTICE C & JOE  
60 FAIR ACRES DRIVE  
MARSTONS HILLS MA 02648-0000

PAR: R101 120.  
KEY: 48969 TAX CODE:300

LARSON, CAROLYN S  
60 FAIR ACRE DRIVE  
MARSTONS HILLS MA 02648-0000

PAR: R101 119.  
KEY: 48958 TAX CODE:300

LARSON, CAROLYN S &  
LARSON, CRAIG S TRS  
60 FAIR ACRES DRIVE  
MARSTONS HILLS MA 02648-0000

PAR: R101 015.  
KEY: 47953 TAX CODE:300

BELL, RICHARD V & BARBARA A  
FLINT ST  
MARSTON HILLS MA 02648-0000

PAR: R124 055.  
KEY: 67796 TAX CODE:300

LARSON, CAROLYN S &  
LARSON, CRAIG S TRS  
60 FAIR ACRES DRIVE  
MARSTONS HILLS MA 02648-0000

PAR: R124 054.  
KEY: 67787 TAX CODE:300

LARSON, CAROLYN S  
60 FAIR ACRES DRIVE  
MARSTONS HILLS MA 02648-0000

*Watson*

*1998-77*



**Town of Barnstable**  
Planning and Development Department  
Elizabeth Jenkins, Director  
Staff Report

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**Special Permit No. 2020-038 – Vilsaint  
Section 240-92 (B) Nonconforming Buildings**

To modify Special Permit No. 1998-77 Conditions No. 2 and 3 to allow year round use of the Cottage and transfer to new ownership

**Date:** November 6, 2020  
**To:** Zoning Board of Appeals  
**From:** Anna Brigham, Principal Planner

**Applicant:** **Corrie L. and Kevin Y. Vilsaint**  
**Property Address:** 358 Flint Street, Marstons Mills, MA  
**Assessor's Map/Parcel:** 101/121  
**Zoning:** Residence F (RF)

Filed: October 26, 2020

Hearing: November 18, 2020

Decision Due: February 16, 2021

### **Copy of Public Notice**

Corrie L. and Kevin Y. Vilsaint, as prospective buyers, have applied for a Modification of Special Permit 1998-77, Condition No. 2 in order to allow for year-round use of the cottage (barn structure) by Applicant's family members and house guests; and elimination of Condition No. 3 which provides that the Special Permit will expire upon the Owner's voluntary or involuntary transfer of the property. The subject property is located at 358 Flint Street, Marstons Mills, MA as shown on Assessor's Map 101 as Parcel 121. It is located in the Residence F (RF) Zoning District.

### **Background**

The subject property is a 1.4 acre lot with frontage on Flint Street and overlooking Shubael Pond in Marstons Mills. The subject lot is improved with one 4-bedroom dwelling of 3,754 gross area (2,109 square feet of living area), 2 stories, and constructed in 1800. The second dwelling is a 3-bedroom dwelling consisting of 2,182 gross area (1,386 square feet of living area), 1 story and constructed in 1800. The lot is served by public water, gas, and septic.

In 1998, the Applicants and current owners Conrad and Serena Watson were granted Special Permit No. 1998-77, a request for an expansion of a preexisting nonconforming use. The Applicants sought to use the accessory structure for a guest cottage. The following were conditions to Special Permit No. 1998-77:

1. The barn structure shall not be rented out.
2. The use of the barn structure shall be seasonal – from May to November only.
3. This Special Permit shall run with the present owners only and shall expire upon the transfer of the property either voluntary or involuntary or through succession by will or intestate to their heirs.
4. The barn may not be further modified in terms of bedrooms and may not exceed the three bedrooms it currently has.
5. There shall be no expansion of the barn in footprint or in overall structure.
6. All requirements of the Health Division, Building Division, and Fire Department must be met.
7. The work which was started on the deck may be completed without further expansion. It (the deck) shall not be enclosed.



### **Proposal & Relief Requested**

Corrie L. and Kevin Y. Vilsaint, as prospective buyers, have applied for a Modification of Special Permit 1998-77, Condition No. 2 in order to allow for year-round use of the cottage (barn structure) by Applicant's family members and house guests; and elimination of Condition No. 3 which provides that the Special Permit will expire upon the Owner's voluntary or involuntary transfer of the property. The subject property is located at 358 Flint Street, Marstons Mills, MA. The Applicant shows standing as evidenced in the Purchase and Sale agreement dated October 17, 2020 in file. The Applicants have cited both Section 240-92 and Section 240-94 B.

**Under Section 240-92 (B)** the Zoning Board of Appeals may allow a preexisting nonconforming building or structure that is used as a single- or two-family residence to be physically altered or expanded only as follows:

A preexisting nonconforming building or structure that is used as a single- or two-family residence may be physically altered or expanded only as follows:

**A.** As of right. If the Building Commissioner finds that:

**(1)** The proposed physical alteration or expansion does not in any way encroach into the setbacks in effect at the time of construction, provided that encroachments into a ten-foot rear or side yard setback and twenty-foot front yard setback shall be deemed to create an intensification requiring a special permit under Subsection **B** below; and

**(2)** The proposed alteration or expansion conforms to the current height limitations of this chapter.

**B.** By special permit. If the proposed alteration or expansion cannot satisfy the criteria established in Subsection **A** above, the Zoning Board of Appeals may allow the expansion by special permit, provided that the proposed alteration or expansion will not be substantially more detrimental to the neighborhood than the existing building or structure.

In the case of a special permit, the Board must find the proposed alteration or expansion will not be substantially *more* detrimental to the neighborhood than the existing building or structure (emphasis added).

**Under Section 240-94 B,** the Zoning Board of Appeals may allow for an expansion of a nonconforming use only as follows:

Expansion of a preexisting nonconforming use. A preexisting nonconforming use shall not be expanded and/or intensified except by special permit from the Zoning Board of Appeals. In granting a special permit for expansion of a preexisting nonconforming use, the Board must find that the proposed expansion, and/or intensification will not be more detrimental to the neighborhood and that the following requirements are met:

**(1)** Any proposed expansion of the use shall conform to the established setbacks for the zoning district in which it is located, or such greater setbacks as the Zoning Board of Appeals may require due to the nature of the use and its impact on the neighborhood and surrounding properties.

**(2)** The proposed use and expansion is on the same lot as occupied by the nonconforming use on the date it became nonconforming.

**(3)** The proposed new use is not expanded beyond the zoning district in existence on the date it became nonconforming.

**(4)** At the discretion of the Zoning Board of Appeals, improvements may be required in order to reduce the impact on the neighborhood and surrounding properties including but not limited to the following:

- (a)** Greater conformance of signage to the requirements of Article VII;
- (b)** The addition of off-street parking and loading facilities;
- (c)** Improved pedestrian safety, traffic circulation and reduction in the number and/or width of curb cuts;
- (d)** Increase of open space or vegetated buffers and screening along adjoining lots and roadways. The applicant shall demonstrate maximum possible compliance with § 240-53, Landscape Requirements for Parking Lots, Subsection F, if applicable.
- (e)** Accessory uses or structures to the principal nonconforming use may be required to be brought into substantial conformance with the present zoning.

### Proposed Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

- 1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit.** Section 240-92 (B) Nonconforming buildings or structures used as a single- and two- family residences allows for alterations. Section 240-94 (B) allows for expansion of a nonconforming use.
- 2. Site Plan Review is not required for single family residential dwellings.**
- 3. After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.**
- 4. Pursuant to Section 240-92 (B), the proposed alteration or expansion will not be substantially more detrimental to the neighborhood than the existing building or structure.**

### Suggested Conditions

Should the Board find to grant the Special Permit No. 2020-039, it may wish to consider the following conditions:

1. Special Permit No. 2020-038, a request to modify Special Permit 1998-77, Condition No. 2 and elimination of Condition No. 3 is granted to Corrie L. and Kevin Y. Vilsaint, as prospective buyers, at 358 Flint Street, Marstons Mills, MA.
2. The proposed redevelopment shall represent full build-out of the lot. Further alteration or expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.
3. Condition No. 2 of Special Permit 1998-77 shall be modified to allow year-round use of the cottage (barn structure) by Applicant's family members and house guests on occasional basis
4. Condition No. 3 of Special Permit No. 1998-77 shall be eliminated.
5. All remaining Conditions of Special Permit No. 1998-77 shall remain in full force and effect.

6. All mechanical equipment associated with the dwellings (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
7. The decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Copies:            Applicant (Attorney Albert Schulz)

Attachments:    Application  
                      Site Plan  
                      Building plans  
                      Assessor's Record & Aerial Photo  
                      Copy of Special Permit 1998-77