

Zoning Board of Appeals June 24, 2020

1000 Main Street LLC Page 1

West Page 40

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:²

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

¹ The Petitioner's Name will be the entity to whom the special permit will be issued to.
² 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.

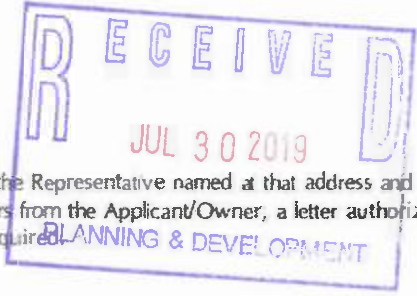
Signature: [Signature] Date: 7/29/19
Applicant's or Representative's Signature

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

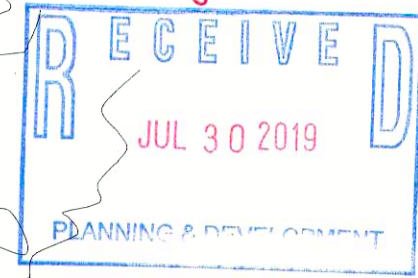
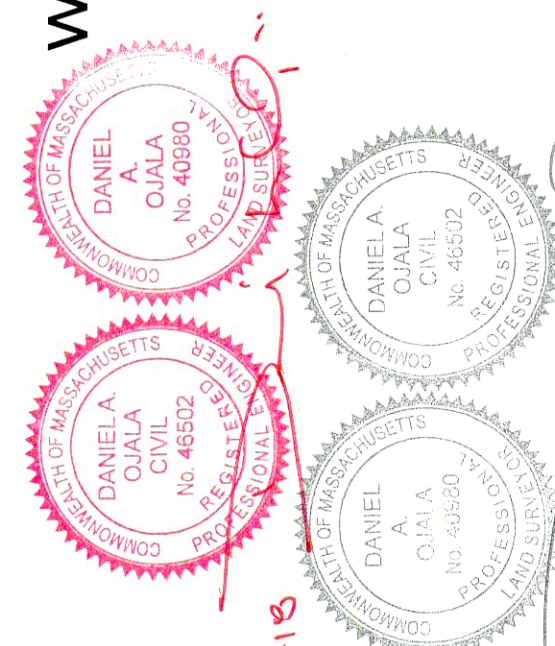
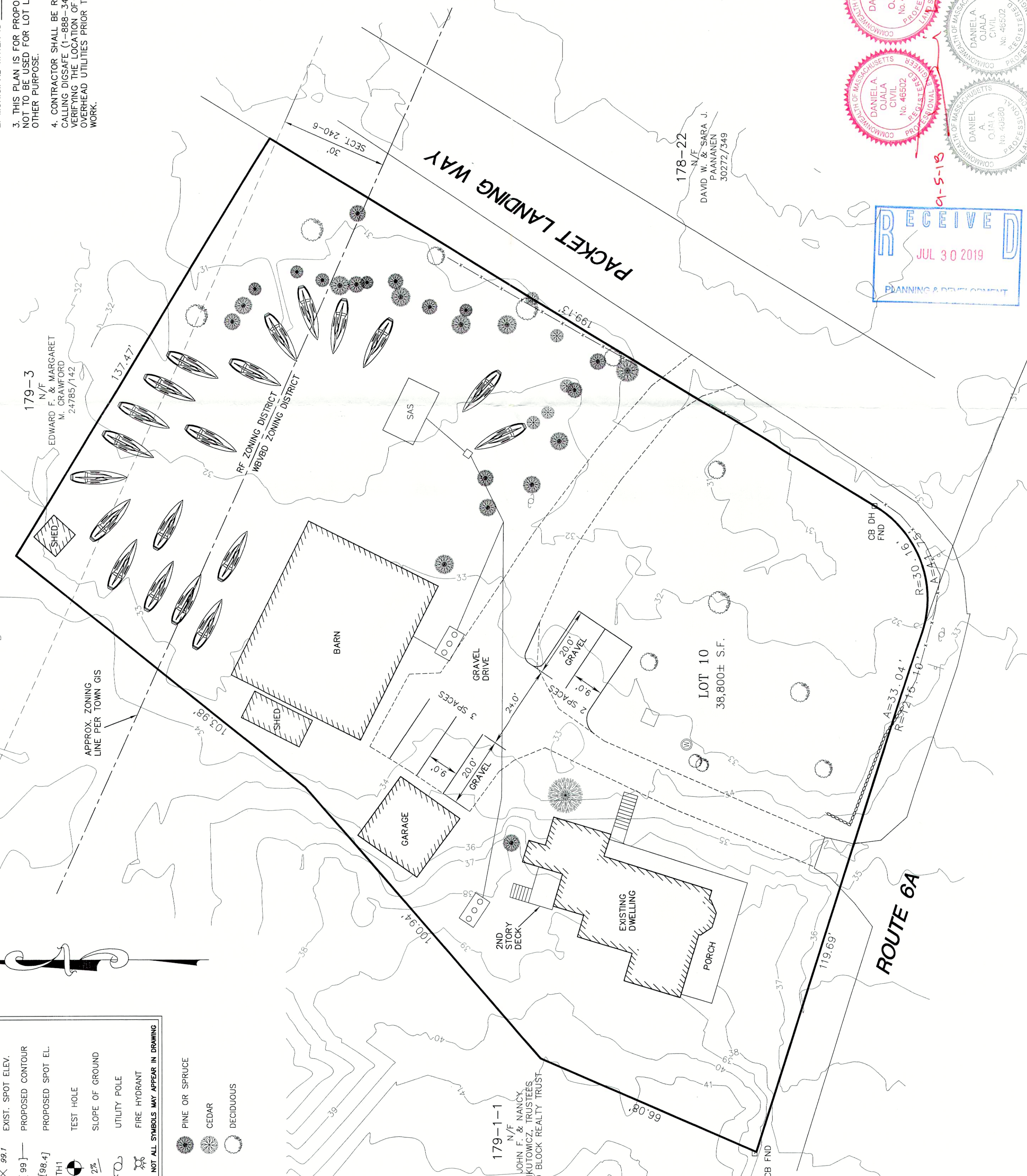
**1000 ROUTE 6A
WEST BARNSTABLE, MA**

PREPARED FOR
PETER EASTMAN

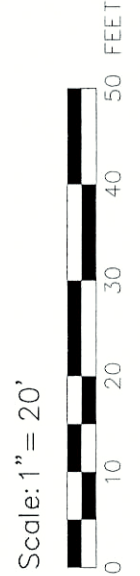
DATE: APRIL 10, 2018
 REV.: SEPTEMBER 5, 2018

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



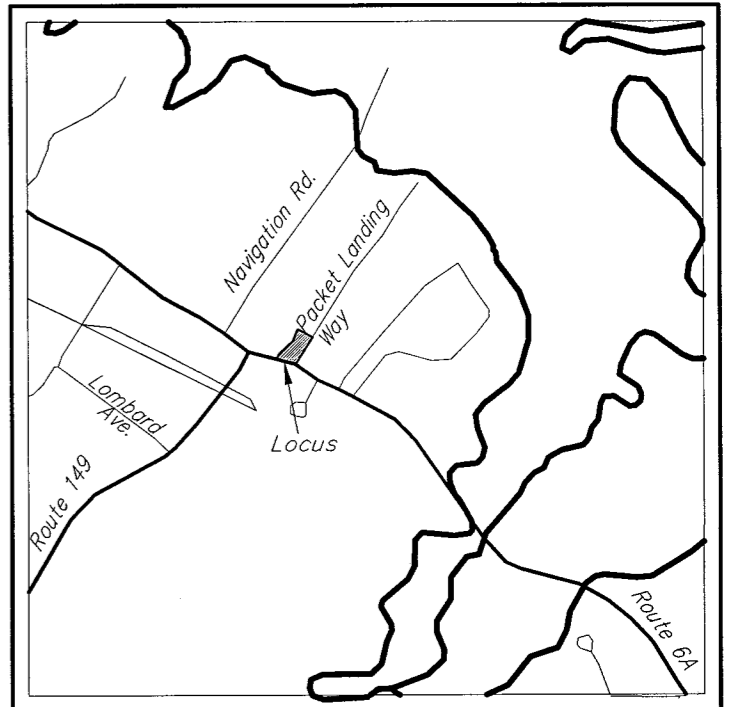
LEGEND

- 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'

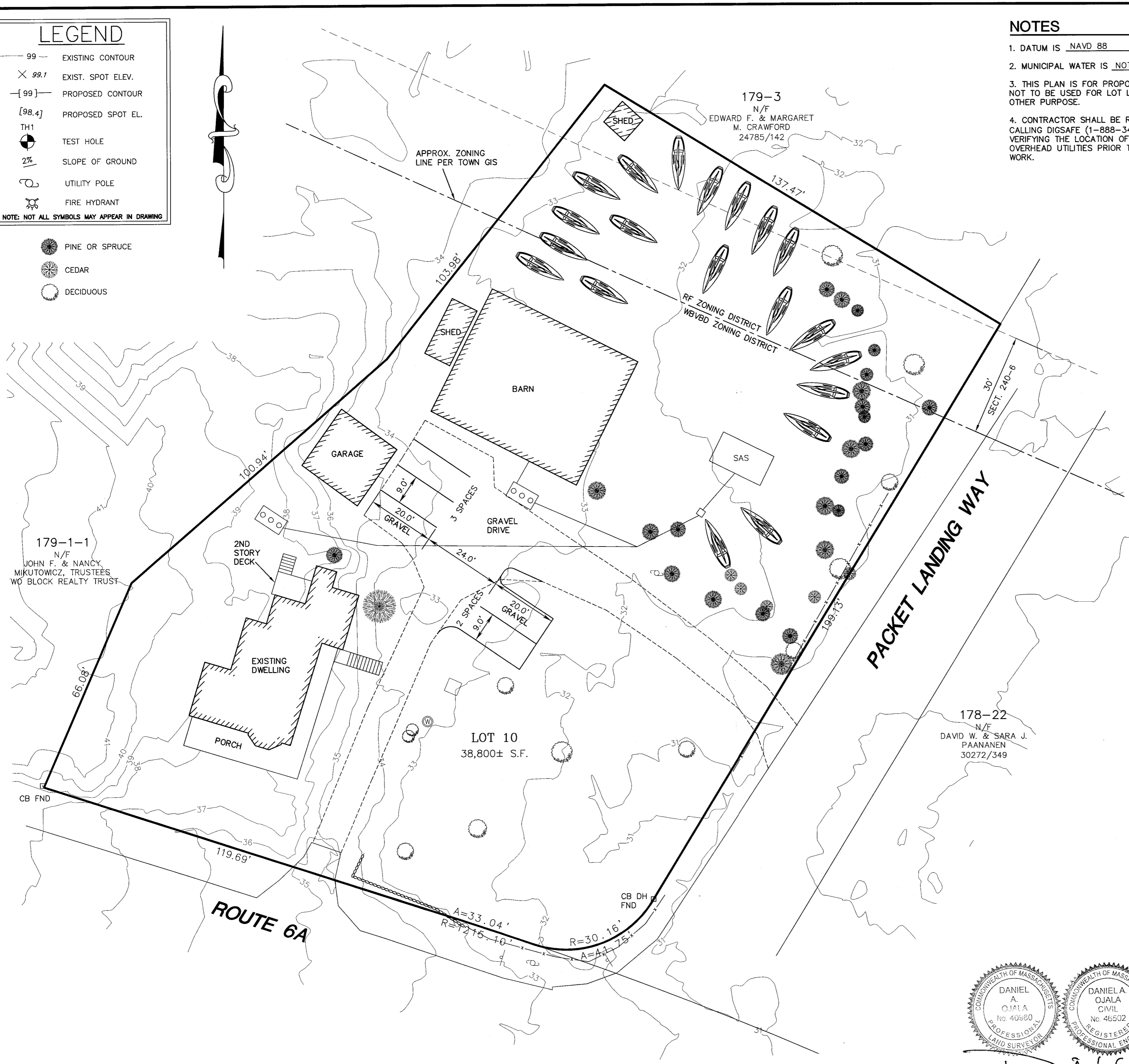
ZONING SUMMARY

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

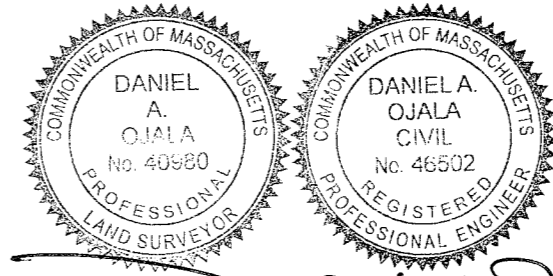


SITE PLAN

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

PREPARED FOR
PETER EASTMAN

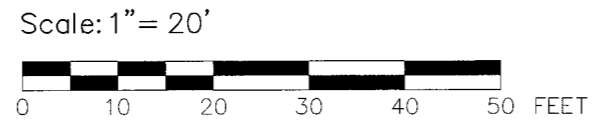
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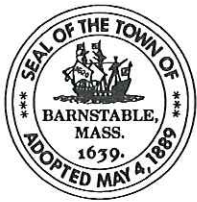


9-5-18
DATE DANIEL A. OJALA, P.E., P.L.S.

down cape engineering, inc.
civil engineers
land surveyors
939 Main Street (Rte 6A)
YARMOUTHPORT MA 02675
18-078 EASTMAN.DWG

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





Town of Barnstable

Building Department Services

Brian Florence, CBO

Building Commissioner

200 Main Street, Hyannis, MA 02601

www.town.barnstable.ma.us



Office: 508-862-4038

Fax: 508-790-6230

August 22, 2018

1000 Main LLC
Mr. Peter Eastman
P. O. Box 125
Barnstable, MA 02630

(BY) 8/29/18

RE: Site Plan Review #056-18 1000 Main LLC
1000 Main Street (Rte 6A), West Barnstable Map 179, Parcel 002

Proposal: Applicant proposes to modify existing special permit 1987-35 to allow the use of the property for boat storage north and east of the barn. Applicant further proposes to validate and continue the use of a pre-existing non-conforming three apartment (presently 4 bedrooms total) multi-family dwelling in the principal building.

Dear Mr. Eastman:

At the formal site plan review meeting held August 16, 2018, the Site Plan Review Committee found the above-referenced application to be approvable subject to the following:

- Approval is based upon plans entitled "Site Plan of 1000 Route 6A, West Barnstable", dated April 10, 2018, 1 Sheet, Scale 1" = 20' prepared by Down Cape Engineering for Peter Eastman. Plan will require revision to reflect the applicant's intention not to install a privet hedge, instead using existing plantings as screening; and, reflect revisions addressing conditions of approval as follows:
- Modification of the existing 1987-35 special permit will need to be granted to include the proposed boat storage use, repair and sale of boats and additional apartments. Documentation will need to be provided to the ZBA substantiating the apartments and the uses granted in the special permit.
- Application for relief from the Zoning Board of Appeals is required to be submitted forthwith due to violations of the existing special permit, specifically, expansion of a pre-existing non-conforming use.
- Final plan approval from the West Barnstable Fire Department Chief regarding adequate FD access, non-combustion safety measures, boat spacing and setbacks from abutting properties is required.
- All fuel and batteries will need to be removed from boats stored on site.

- Plan depicts parking of boats on the septic system as well as the need to drive across piping between tanks to deliver boats. A DEP certified inspector will be required to evaluate the loading of the system and piping as well as capacity.
- 1990 septic permit indicates septic capacity for 2 bedrooms. Because the applicant claims there is a discrepancy, applicant can submit a floor plan of the main house depicting the location of the apartments and bedrooms along with an affidavit regarding the number of years the apartments have been in existence to the Board of Health for a future hearing.
- Properties with a private well are limited to 1 bedroom for every 10,000 s.f. of land. This site contains only 38,800 s.f. which will limit the number of bedrooms to three (3) under Title V.
- A copy of the final revised plan filed with the Zoning Board of Appeals is required to be submitted for the Site Plan Review application file.
- Applicant must obtain all other applicable permits, licenses and approvals required.

Upon completion of all work, a registered engineer or land surveyor shall submit a certified "as built" site plan and a letter of certification, made upon knowledge and belief in accordance with professional standards that all work has been done in substantial compliance with the approved site plan (Zoning Section 240-105 (G)). This document shall be submitted prior to the issuance of the final certificate of occupancy.

Sincerely,



Ellen M. Swiniarski
Site Plan Review Coordinator

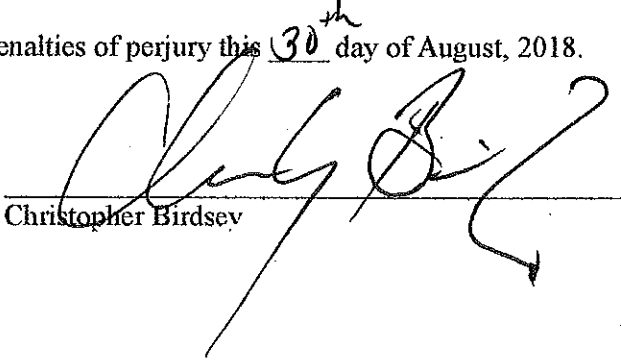
CC: Brian Florence, Building Commissioner, SPR Chairman
Chief Joseph Maruca, West Barnstable FD
Zoning Board of Appeals
Health Department

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 30th day of August, 2018.



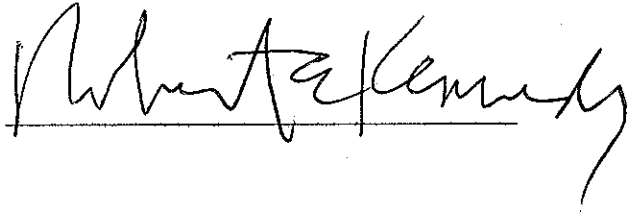
Christopher Birdsey

AFFIDAVIT OF ROBERT KENNEDY

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

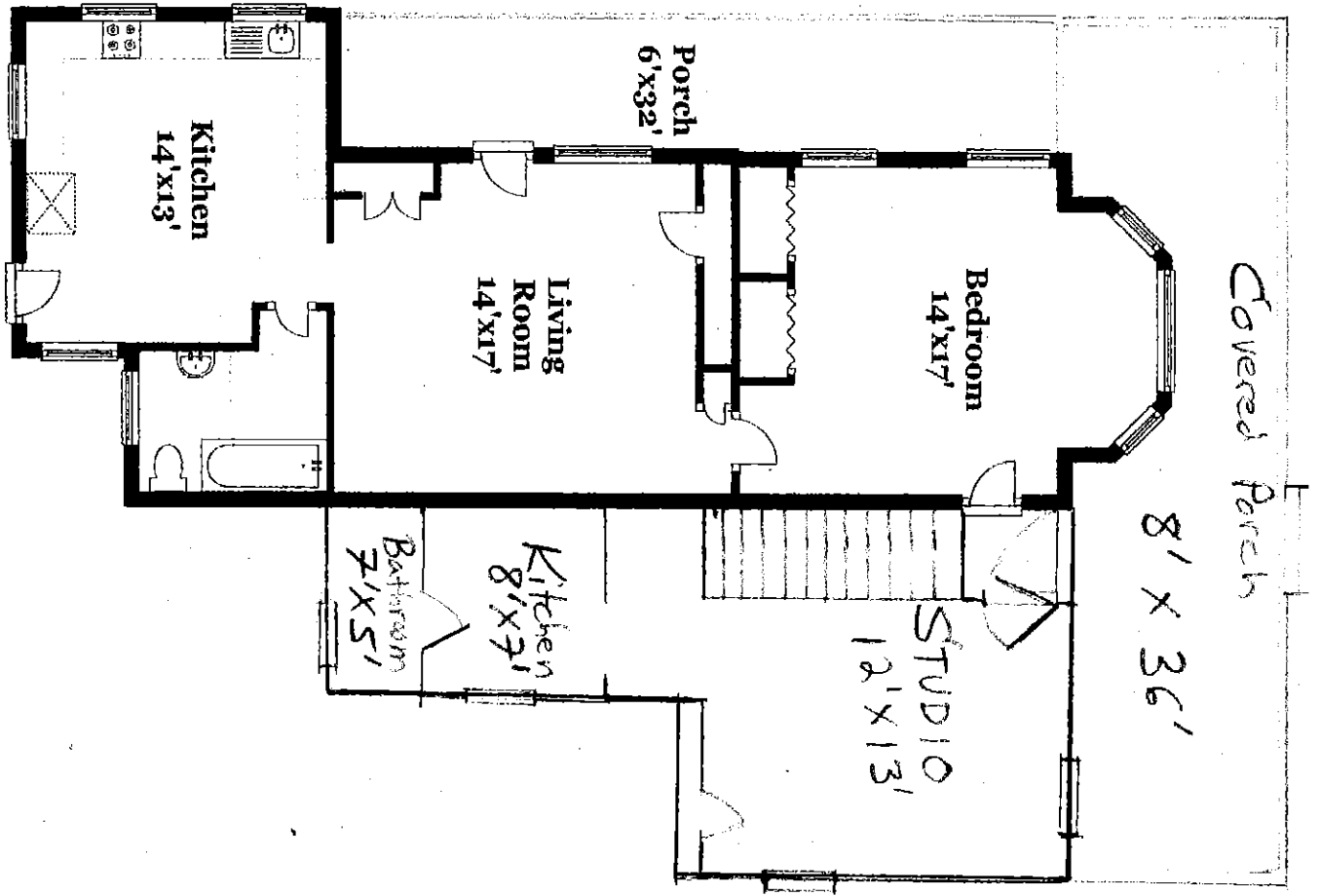
1. I reside in Barnstable, Massachusetts;
2. My partners and I owned the property located at 1000 Main Street, West Barnstable from July 1980 through June 1987.
3. During that period of time an antique store was operated in the barn.
4. The house had been divided into three separate residential units 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 30th day of August, 2019.



1000 MAIN STREET
WEST BARNSTABLE
(HOUSE)

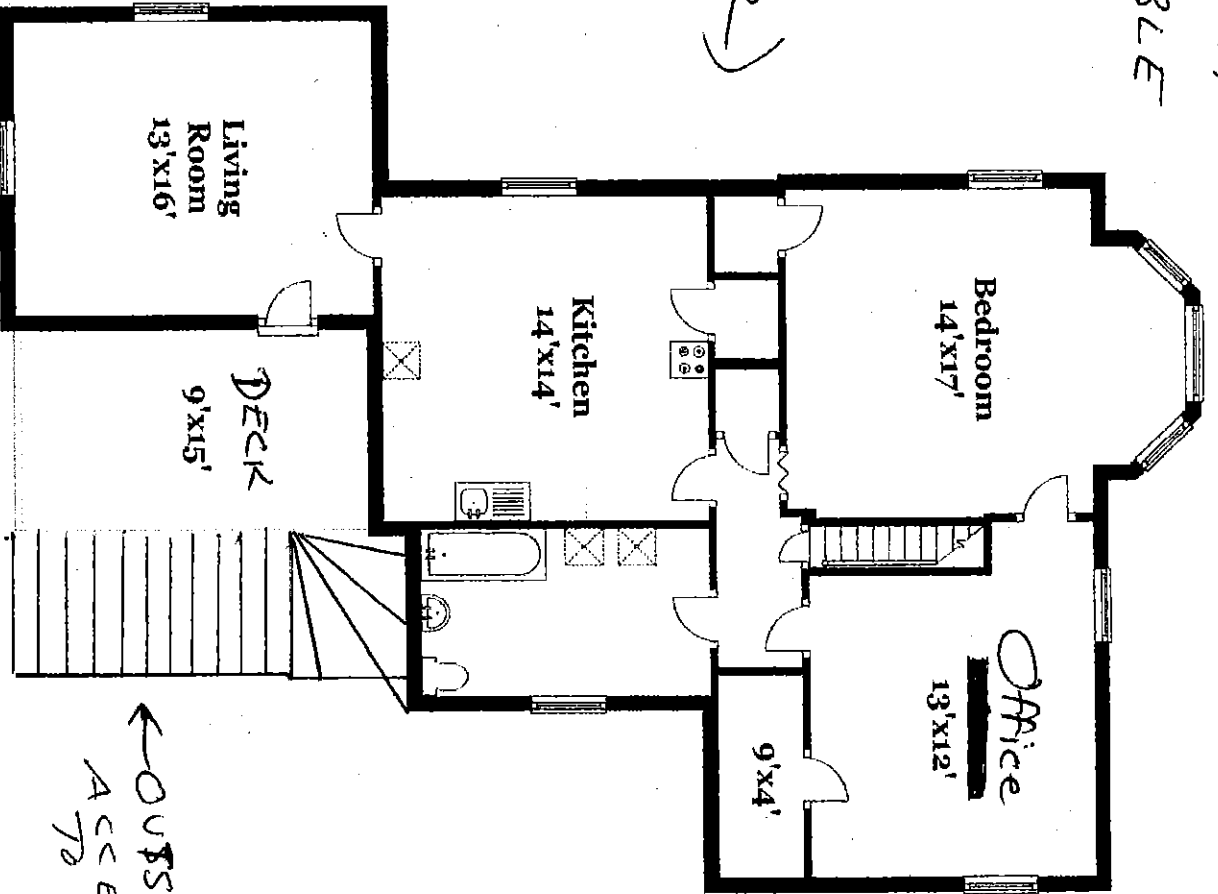
(1ST FLOOR)



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

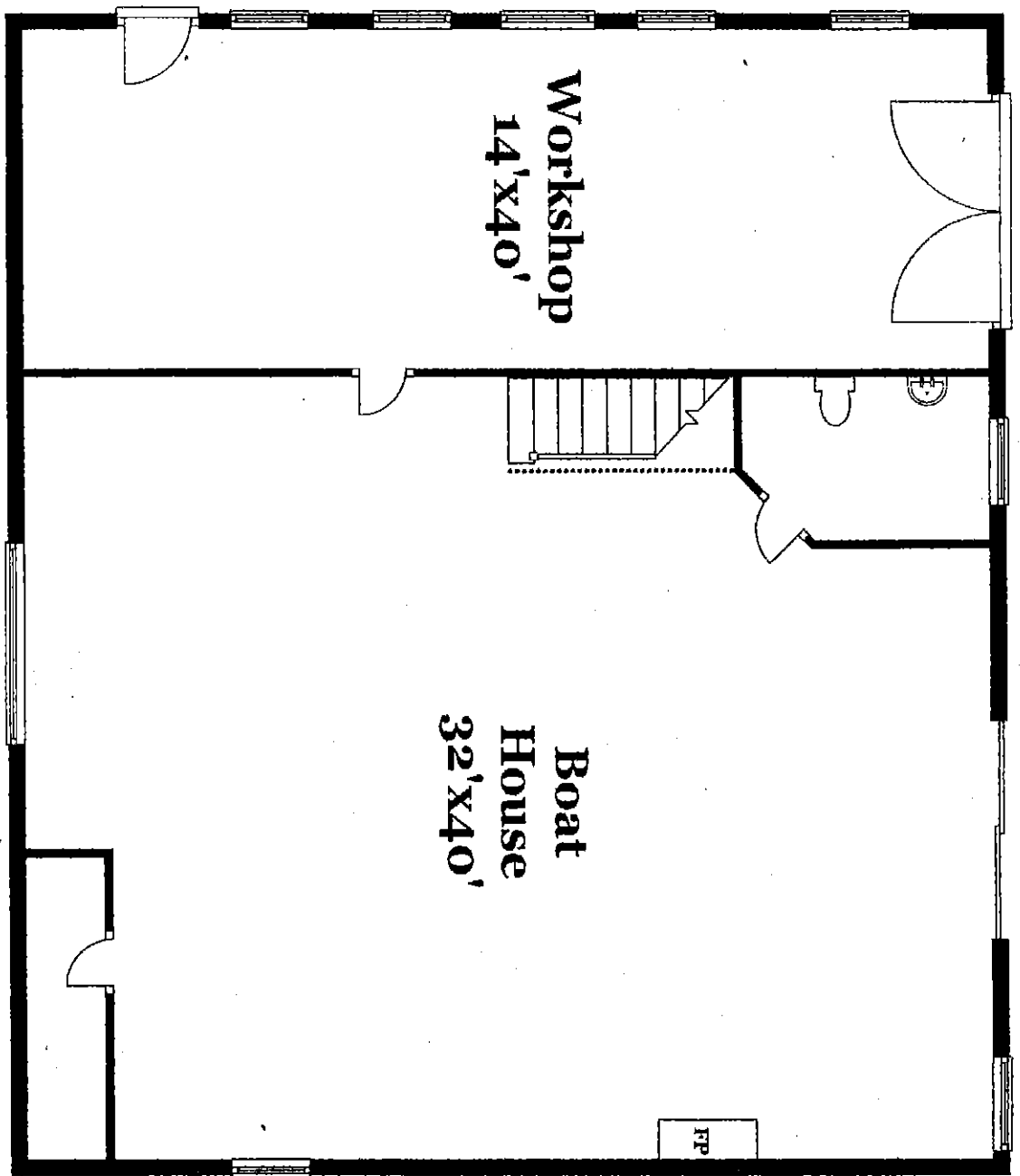


← OUTSIDE STAIR
ACCESS ENTRANCE
TO SECOND FLOOR

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)



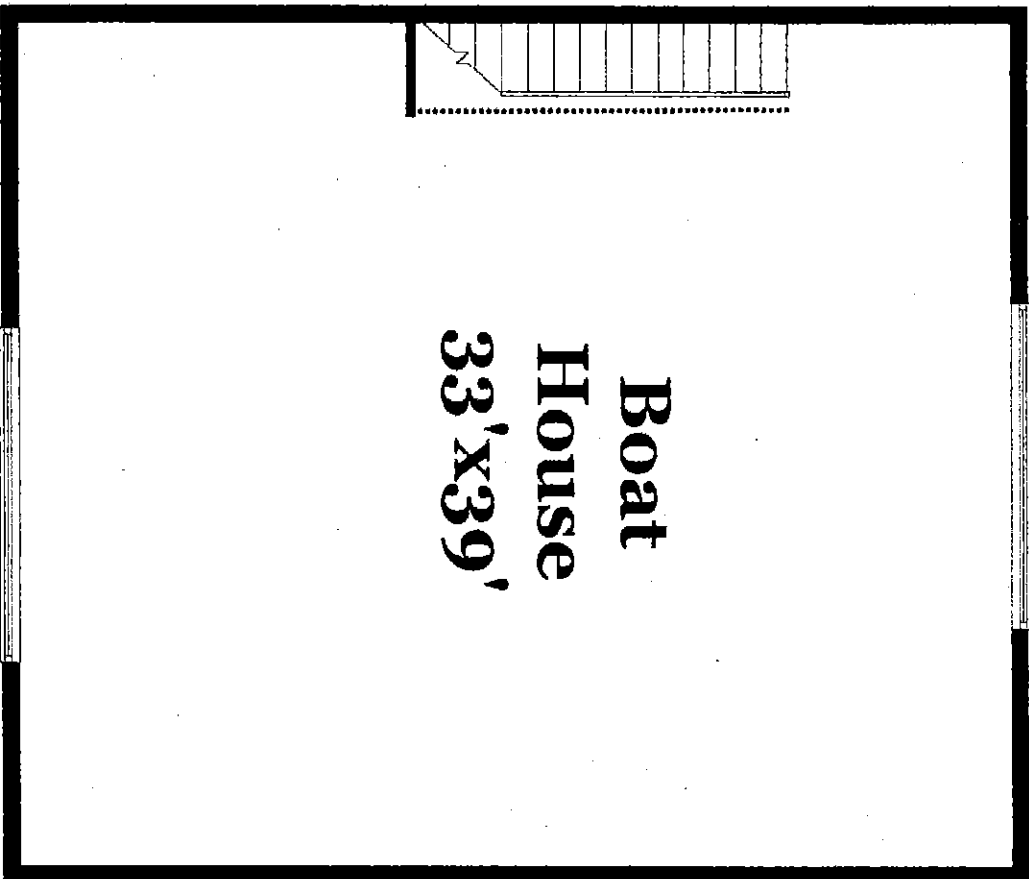
(FIRST FLOOR)

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)



(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.

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.

13) At this point in time the boat building operation run by Mr. Charles Birdsey had been abandoned for over five years.

14) Where the abandonment of the boatbuilding business exceeded the applicable period for its re-establishment by right; and where the boatbuilding was no longer an allowable use when that period had run, Mr. Eastman does not have the benefit of a lawful boatbuilding business use.

BOAT STORAGE:

15) Mr. Eastman's attorney told the Site Plan Review Committee that Eastman "thought that storage of boats would be incidental to the boat repair use permitted by the 1987 Special Permit."

16) It is difficult to understand how Mr. Eastman reached such a conclusion. The 1987 Special Permit is explicit that: "there be no more than one boat on display outside at any one time".

17) This application for a boat storage business does not fall within a category specifically accepted in the ordinance.

18) The storage of boats is not allowed in the WBVBD. Boat storage belongs in the more industrial type zoning districts in which it is allowed, such as Marina Business and Service and Distribution.

19) Please see 240-20 (4) (a) and (g): All outside storage associated with artisan and craft use is prohibited. Please see also 240-20 (9) Definitions, i.e. small wooden boat building.

20) The proposal to store shrink wrapped boats does not fulfill the spirit and intent of the Zoning Ordinance and will represent a substantial detriment to the neighborhood. It is inconsistent with a predominantly mixed use neighborhood.

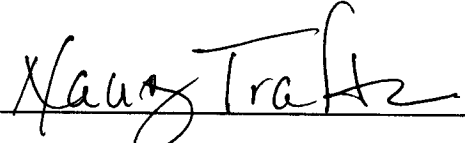
21) Boat Storage does not meet any of the criteria set forth in Section 240-20 West Barnstable Village Business District A. Purpose and intent (1) through (8).

22) By way of further explanation of the neighborhood and community intent for the land uses in the WBVD, please see the attached newspaper articles from The Barnstable Patriot and The Register written at the time of the newly developed WBVBD zoning.

23) The WBVBD was developed with an eye toward assuring the ongoing harmonious relationship between business and residential uses within the District. Former Town Councilor June Daley speaks to this and other related issues in her letter, attached.

25) Mr. Eastman has the ability to continue a single residence and an office in the main building as of right. He has a number of other by right options as well. His boat building operation in the barn would be welcomed by application for a new Special Permit and by meeting the performance standards set forth in the current zoning.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 25th DAY OF SEPTEMBER, 2015



Nancy Trafton

West Barnstable pushes zoning change

Villagers want to preserve character while encouraging (some) growth

By J. James Joiner
jjoiner@barnstablepatriot.com

What do tailors, tattoo artists, massage parlors, florists and hairdressers have in common? They are all defined as personal services, and could all soon find a new climate in West Barnstable.

A unanimous vote at the West Barnstable Civic Association (WBCA) annual meeting Jan. 18 sent a list of proposed zoning changes to the planning board, for eventual submission to the town council for its consideration.

The goal is to open up the West Barnstable Village Business District, which is composed of a portion of routes 149 and 6A, to more historically traditional types businesses. Personal service businesses, which were by right to this point, would be allowed by special permit. The proposed zon-



J. JAMES JOINER PHOTO

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

ing includes mixed use, which will let property owners have both a business and residence in the same building.

“We wanted to clarify mixed use,” explained WBCA business district subcommittee member Nancy Trafton. “It used to be the norm, but zoning had gotten away from that.”

Under the current regulations, only professional offices, small retail shops and banks are allowed.

“Our goal is to open it up to the types of businesses that one would traditionally find here, like a weaver or potter or boat builder,” Trafton noted. “We’re going to be doing that by spe-

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-

West Barnstable zoning change...

CONTINUED FROM PAGE B:6

ham. He added that businesses made up 4.5 percent of the village's assessed value.

"A lot of towns like to have more businesses to take up the tax burden, and here that just isn't the case," he said. The small-town, almost rural feel is

what has led to growth.

"The goal is to let business thrive and invite certain types of businesses in while maintaining the character of the village," Farnham said. "It's one thing to have a boat builder, but we don't want Boston Whaler to have a manufacturing plant here."

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West Barnstable has new business zone

By Susan Vaughn
svaughn@wickedlocal.com

The Barnstable Town Council recently approved a new zoning district titled the West Barnstable Village Business District that eliminates the former Village Business District-B and specifies the type of commercial activity sought for the district.

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.

Committee members also included former chairwoman Betty Nilsson and Audrey Loughnane, Wolfgang Fattler, Gay Black and the late Helen Wirtanen. Trafton presented the committee's report to the Town Council on Sept. 8, which unanimously ap-

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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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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).

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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.

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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



HOWARD BOATS

1000 Main, LLC
Companion Notes for ZBA
Special Permit Application
2019-050

- The purpose of zoning is to preserve and protect against unwanted growth, not to destroy. To this end, "pre-existing nonconforming" exists. It basically determines that you can still exist despite the creation of zoning bylaws.
- The business I own, Howard Boats (HBS Holdings, LLC - 164 Beale Way Barnstable) would not exist today were it not for the "pre-existing nonconforming" allowance.
- Howard Boats was started in by John Howard in 1938 in the Howard family's boathouse, where we stand today on Barnstable Harbor next to the Barnstable Yacht Club....another pre-existing nonconforming use in what is now a two-acre residential R₂ Zone.
- We employ people and contribute to the local economy due to our allowance to exist.
- Likewise, at 1000 Main Street West Barnstable, we do two things....which were also done by all of the property's previous owners dating back to the 1950's, but with Affidavits going back to 1980 and 1987, respectively.
- We provide good clean, maintained housing for people who work on Cape Cod.
- We store small, non-powered sailboats from 12 - 14 that we've built, primarily. We store no powerboats. We store no boats with fuel tanks or fuel.
- The last owner before us stored Large Inboard-Powered Powerboats. We have archival Google Earth photos dating back to 2001 that prove it.
- We don't even work there, just storage.
- We have ³ individuals in residence, which ^{was} is the number when I bought it.
- There were large boats stored outdoors, one indoors, and a boat being built indoors when I bought it in the Fall of 2013.

- I have rented the Studio in the past on three different occasions, whereby I've had full-occupancy of the house. Four people in three units with just three cars.
- I have left the Studio vacant over the last 18 months in order to not "ruffle any feathers" with the complainants across the street, or with the town.
- Leaving the Studio vacant has meant a loss of about \$16,000 in rental income. Meanwhile my property taxes have risen from about \$5,500 to over \$7,000.

The bottom line is this. I am not doing anything that the previous owners didn't do. I had every expectation that I would be allowed to follow the same practices and I have for the past six years.

I have improved the property. I have kept the tenant-count intentionally low, and we are good neighbors in an area where there are a Lot of commercial abutters.

We provide good housing in an area that needs it. We are helping an artisan business (Howard Boats) with needed storage on a very small-scale and without causing any negative affects to the community.

In the 1987 Special Permit, I maintain that Mr. Birdsey stated how he intended to use the house, but that it was not a stated requirement that he maintain that use.

I first looked at this property when it was for sale in 2007. It was being used for residential and one office. When I looked at it again in 2013, it was two residential units and the Studio, which had been residential in 2007 was vacant. There were large powerboats stored in the back, etc., as previously mentioned.

Thank you very much for your time.

Sincerely,

Peter C. Eastman

1000 Main, LLC and HBS Holdings, LLC - Howard Boats

June Daley
11 Little Pond Road
Marstons Mills, Massachusetts 02648

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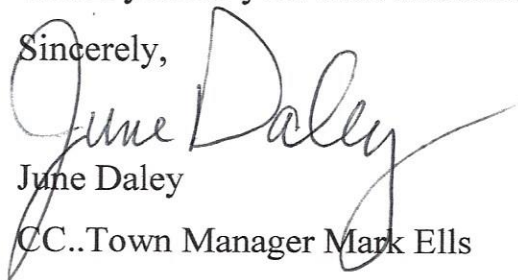
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June Daley

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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.

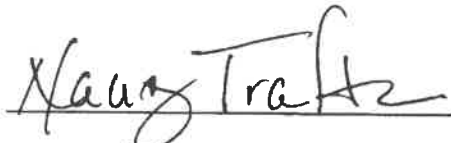
13) At this point in time the boat building operation run by Mr. Charles Birdsey had been abandoned for over five years.

14) Where the abandonment of the boatbuilding business exceeded the applicable period for its re-establishment by right; and where the boatbuilding was no longer an allowable use when that period had run, Mr. Eastman does not have the benefit of a lawful boatbuilding business use.

BOAT STORAGE:

- 15) Mr. Eastman's attorney told the Site Plan Review Committee that Eastman "thought that storage of boats would be incidental to the boat repair use permitted by the 1987 Special Permit."
- 16) It is difficult to understand how Mr. Eastman reached such a conclusion. The 1987 Special Permit is explicit that: "there be no more than one boat on display outside at any one time".
- 17) This application for a boat storage business does not fall within a category specifically accepted in the ordinance.
- 18) The storage of boats is not allowed in the WBVBD. Boat storage belongs in the more industrial type zoning districts in which it is allowed, such as Marina Business and Service and Distribution.
- 19) Please see 240-20 (4) (a) and (g): All outside storage associated with artisan and craft use is prohibited. Please see also 240-20 (9) Definitions, i.e. small wooden boat building.
- 20) The proposal to store shrink wrapped boats does not fulfill the spirit and intent of the Zoning Ordinance and will represent a substantial detriment to the neighborhood. It is inconsistent with a predominantly mixed use neighborhood.
- 21) Boat Storage does not meet any of the criteria set forth in Section 240-20 West Barnstable Village Business District A. Purpose and intent (1) through (8).
- 22) By way of further explanation of the neighborhood and community intent for the land uses in the WBVD, please see the attached newspaper articles from The Barnstable Patriot and The Register written at the time of the newly developed WBVBD zoning.
- 23) The WBVBD was developed with an eye toward assuring the ongoing harmonious relationship between business and residential uses within the District. Former Town Councilor June Daley speaks to this and other related issues in her letter, attached.
- 25) Mr. Eastman has the ability to continue a single residence and an office in the main building as of right. He has a number of other by right options as well. His boat building operation in the barn would be welcomed by application for a new Special Permit and by meeting the performance standards set forth in the current zoning.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 25th DAY OF SEPTEMBER, 2015



Nancy Trafton

West Barnstable pushes zoning change

Villagers want to preserve character while encouraging (some) growth

By J. James Joiner
jjoiner@barnstablepatriot.com

What do tailors, tattoo artists, massage parlors, florists and hairdressers have in common? They are all defined as personal services, and could all soon find a new climate in West Barnstable.

A unanimous vote at the West Barnstable Civic Association (WBCA) annual meeting Jan. 18 sent a list of proposed zoning changes to the planning board, for eventual submission to the town council for its consideration.

The goal is to open up the West Barnstable Village Business District, which is composed of a portion of routes 149 and 6A, to more historically traditional types businesses. Personal service businesses, which were by right to this point, would be allowed by special permit. The proposed zon-



J. JAMES JOINER PHOTO

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

ing includes mixed use, which will let property owners have both a business and residence in the same building. "We wanted to clarify mixed use," explained WBCA business district subcommittee member Nancy Trafton. "It used to be the norm, but zoning had gotten away from that."

Under the current regulations, only professional offices, small retail shops and banks are allowed. "Our goal is to open it up to the types of businesses that one would traditionally find here, like a weaver or potter or boat builder," Trafton noted. "We're going to be doing that by spe-

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

ham. He added that businesses made up 4.5 percent of the village's assessed value.

"A lot of towns like to have more businesses to take up the tax burden, and here that just isn't the case," he said. The small-town, almost rural feel is

what has led to growth.

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Sincerely,



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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
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
Application for Other Powers**

19 NOV 18 P 3:22

BARNSTABLE
TOWN CLERK

Date Received
Town Clerk's Office:

For office use only:

Appeal # 2020-004
Hearing Date 01-08-20
Decision Due 03-27-20

The undersigned Appellant hereby files an appeal to the Zoning Board of Appeals under M.G. L. Chapter 40A, Sections 8 & 15 for the reasons indicated:

Appellant's Name: Maryanne West, Phone: 857-343-9986

Appellant's Address: 25 Greycliff Rd Brighton ma 02135

Address of Property that is the subject of this application: 125 Waino Circle Oosterville 02655

Assessor's Map/Parcel Number: _____ Zoning District: _____

Groundwater Overlay District: _____

Property Owner: David Parella, Phone: 774-521-3899
If different from Appellant

Address of Owner: PO BOX 483 Barnstable ma
If different from Appellant

This is a request for:

- Enforcement Action
- Appeal of Administrative Official's Decision
- Other General Powers - Please Specify:

appealing decision of

*building department to allow demolition of
125 Waino Circle and accompanying shed*

Which Section(s) of the Zoning Ordinance and/or MGL Chapter 40A are you appealing to the Zoning Board of Appeals? _____

The Appellant is the person making the appeal.

Application for Other Powers - Page 2

The home that my family had built around 1970 is about to be demolished. I am appealing a

Nature of Appeal & Description of Request:

demolition permit that I was informed by your building department was granted last Friday around 12:58 PM November 15, 2019. This demolition will cause irreparable harm to the West family and I am asking that your office stop the demolition of the shed house until a public hearing is heard. Among the many issues & problems

Attach Additional Sheet if Necessary

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

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

Present Use(s): _____

Existing Gross Floor Area: _____ sq. ft. Proposed New Gross Floor Area: _____ sq. ft.

- 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 []

- Has a building permit been issued?..... Yes [] No []
- Has a building permit been refused?..... Yes [] No []

The following information, as applicable, should be submitted with the application at the time of filing.

- Three (3) copies of the completed application form, each with original signatures accompanied by all supporting documentation related to the appeal
- Three (3) copies of a 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 site improvement plan and one (1) reduced copy (8 1/2" x 11" or 11" x 17").
- The applicant may submit any additional supporting documents to assist the Board in making its determination.

Signature: Maryanne West Date: November 18, 2019
Appellant's or Representative's Signature? Manday

Print Name MARYANNE WEST

Address: 25 Huycliff Rd Phone: 857-343-9986
Brighton MA 02135 Fax No.: _____

e-mail Address: drmw@bc.edu

² 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 Appellant, a letter authorizing the Representative to act on behalf of the Appellant shall be required.

is that the Assessors Records of Concord state on record that this property was owned by a Richard + Sheron Bronsky on January 1, 2018. It also (the records (assessors) indicate as attached here that US Bank, National Associates in 24 Koyda Rd Wabon Ma 02468 also owned the property on January 1, 2018

The above is not true as a foreclosure was not ^{even} held until the following August 15, 2018 so I want this conflict stopped until many such issues can be clarified!

Also the foreclosing attorney Kade + Associates did not produce the original note when they presented it to me in their Lowell ^{MA} office. I request if possible that that note be presented. (The original) ^{which they did not have}

Furthermore, a Register of Deeds from Ma has shown in an affidavit about 125 W Wason Circle that a well known robo signer 'Letricia Davis' supposedly transferred the loan to U.S. Bank NA, which he said to AG office. Could be reported to

This is not a criticism of the building ⁽³⁾
inspector who issued the permit last Friday
I want the Board of Appeals to know the facts
or some of the facts that necessitate they appeal!

Although it is not the appeal board's
responsibility, the fact is that I was
never told of an eviction hearing that was
apparently held in Plymouth Housing
Court, and I am in process of asking for a
complete investigation ^{in Boston} as to why I was not
properly notified at my Brighton address
where TAD bills, Astorville Water bills,
Dunwoode Bills & even foreclosure notices
about 125 West End Circle were sent.
Rather I found out by Alderson Co
in Georgia that my house was being
resold on the HUB24 Internet site
on May 17, 2019.

If the home was being sold on
Internet in May 2019, how could the
Bronsky's have owned my home in
January, 2018
according to Assessor's Records?

The illegal eviction meant that all furniture and belongings of the West family were removed to a storage facility in New Bedford. This is a very serious action in my opinion, I have yet to be notified by the New Bedford Storage facility that our house was stripped of all our possessions etc. It is extremely serious in this case because my father, Kenneth P. West, formerly of Oyster Hills owned the property of beque I did and I have no idea what F.B.I property of his may have been stolen from the house or taken ^{or TAKEN} in this illegal evictions

I do plan on reporting this illegal evictions to the proper authorities. ^{The Landlord must ^{in my} STOP ^{opinion}}

Demolishing my home & my Dad's former home is a travesty of justice. The appeals board should stop this demolition so that the facts

and acts surrounding this outrageous foreclosure & activity after the foreclosure can be investigated.

I am not asking the board of appeals to investigate unless that is your role to do so. I will be asking for answers that will bring to the hearing when you hold it. I am merely appealing the imminent demolition of our home until the facts can be investigated and heard.

We will forever lose the home if this travesty of justice is not stopped until a public hearing occurs at which time I will present further facts.

I want to know why a real estate company a builder & architect had signs on the property on May 20 2019 when Hubyn claimed to me that they only were suppose to be selling the property? From the huge drawing (architectural) on a huge billboard on my property on May 20 2019 it certainly seemed that someone had already drawn up

architectural plans for a new home. ⑥
Why was that so? How did they know it
wasn't being sold on the internet
& their plans would have been for resale!

I hope to report this all to the federal
authorities when back in Boston this week
because I'm sure they will want to
get into a examine the property since
all my father's property was taken
to New Bedford!

I am enclosing a fraud analyst's
report from as far back as July 30, 2010
in which she declares an attempted
fraudulent sale, and her reasons for it.

I am sure that the members of the
Board of Appeals will cooperate with
allowing this appeal, until the facts can be
presented at the hearing.

The builder will just knock the house down
to make a profit. He should be allowed to do
that only after a public hearing occurs
regarding the facts surrounding
the sale of my beloved home
in any case what

85
Shares

Share

Tweet

Custom Search

Property Display

140 / 091/ - Use Code: 1010

Owner Information



Map/Block/Lot: 140 / 091/

Property Address

125 WIANNO CIRCLE

Village: Osterville

Town Sewer At Address: No

GIS Zoning Value: RC

Owner Name as of 1/1/18:

U.S. BANK, NATIONAL ASSOCIATION

24 KODAYA ROAD

WABAN, MA. 02468

Co-Owner Name

%BRIANSKY, RICHARD & SHARON

Assessed Values



Tax Information



Sales History



Photos



Sketches



Construction Details



Outbuildings and Extra Features



[Town of Barnstable 2019 \(/index.asp\)](#)

Town Records Access Officer

Ann Quirk

[Public Records Request Form \(/Departments/TownClerk/pageview.asp?file=Office%20Information/Public-Records-Request.html&title=Public%20Records%20Request&exp=Office%20Information\)](#)

P 508-862-4044

F 508-790-6326

Contact

Town Hall

**367 Main Street
Hyannis MA 02601**

508-862-4956

M-F 8:30 a.m. to 4:30 p.m.

[Email Us \(https://tobweb.town.barnstable.ma.us/townmeganet/telephone-directory.aspx\)](https://tobweb.town.barnstable.ma.us/townmeganet/telephone-directory.aspx)

Social Media

 [Facebook \(https://www.facebook.com/townofbarnstable/?fref=ts\)](https://www.facebook.com/townofbarnstable/?fref=ts)

 [Twitter \(https://twitter.com/BarnstableMA\)](https://twitter.com/BarnstableMA)

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[Calendar \(/calendar.asp\)](#)

[Property Look up \(/Departments/Assessing/Property Values/Property-Look-Up.asp\)](#)

[Employment \(/Departments/HumanResources/pageview.asp?file=Employment/Barnstable-Employment-Opportunities.html&title=Barnstable%20Employment%20Opportunities&exp=Employment\)](#)

[Contact Us \(https://tobweb.town.barnstable.ma.us/townmeganet/telephone-directory.aspx\)](https://tobweb.town.barnstable.ma.us/townmeganet/telephone-directory.aspx)



Commonwealth of Massachusetts

SOUTHERN ESSEX DISTRICT REGISTRY OF DEEDS
SHETLAND PARK
45 CONGRESS STREET
SUITE 4100
SALEM, MASSACHUSETTS 01970

JOHN L. O'BRIEN, JR.

Register of Deeds

(978) 542-1704

Fax: (978) 542-1706

e-mail: southernessexcustomerservice@sec.state.ma.us
www.salemdeeds.com

A division of the Secretary of the Commonwealth
WILLIAM FRANCIS GALVIN, SECRETARY

Maryanne West
125 Wianno Circle
Osterville, MA 02655

Dear Maryanne,

In an attempt to provide you with more assistance, I have enclosed an affidavit signed by me, as Register of the Southern Essex District Registry of Deeds, attesting to the presence of a robo-signed signature on your document as listed on McDonnell Property Analytics Approved Robo-signers List. If you are currently being foreclosed upon, this affidavit may be presented to your attorney, the lender, or the court to show that your chain of title has been corrupted. For those of you who are not in foreclosure, the affidavit may be presented to your current lender to show that a robo-signed document has in fact been recorded in your chain of title and be part of a request to investigate how this happened and what the lender is going to do to correct it.

Thank you for contacting us concerning your robo-signed document. Should you have any further questions or need assistance, please contact my Customer Service Department at 978-542-1704.

With Regards,

A handwritten signature in black ink, appearing to read "John O'Brien".

John O'Brien
Register of Deeds



Commonwealth of Massachusetts

SOUTHERN ESSEX DISTRICT REGISTRY OF DEEDS
SHETLAND PARK
45 CONGRESS STREET
SUITE 4100
SALEM, MASSACHUSETTS 01970

JOHN L. O'BRIEN, JR.
Register of Deeds
(978) 542-1722
Fax: (978) 542-1721
e-mail: jl.obrien@sec.state.ma.us
www.salemdeeds.com

A division of the Secretary of the Commonwealth
WILLIAM FRANCIS GALVIN, SECRETARY

AFFIDAVIT OF JOHN L. O'BRIEN, REGISTER OF DEEDS SOUTHERN ESSEX DISTRICT

I, John L. O'Brien, Register of the Southern Essex District Registry of Deeds, do hereby swear or aver as follows:

1. The attached copy of the document dated October 12, 2012 and recorded in the Barnstable County Registry of Deeds in Documents # 1,221,095 is either signed, notarized or witnessed by an identified robo-signer or a surrogate-signer. (See Exhibit A attached hereto).
2. As of June 2011 it has been my policy as follows:
 - a. IF THERE ARE VARIATIONS OF AN ALLEGED ROBO-SIGNER ON RECORD AT MY REGISTRY – I require that all documents sent for recording that are executed by that alleged robo-signer, be independently verified by an affidavit that the signature is in fact the signature of the named individual, prior to recording. (See Exhibit B attached hereto).
 - b. IF THERE ARE NO VARIATIONS OF AN ALLEGED ROBO or SURROGATE SIGNER ON RECORD AT MY REGISTRY – I record the documents and forward them to the Massachusetts Attorney General's Office for review and possible violation of a Crime Against Property, specifically MGL Chapter 266, Section 35A (b) (4).

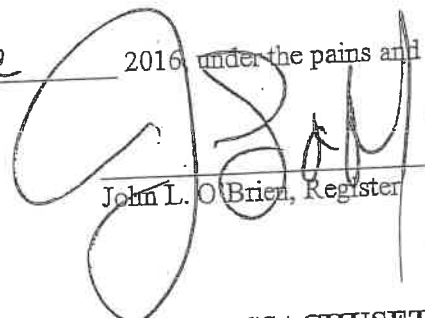
3. I have instituted this policy based on the opinion of our forensic analyst, Marie McDonnell of McDonnell Property Analytics who has provided me with a list of robo and surrogate signers.

McDonnell defines a "robo-signer" as: *The person on a legal document processing assembly line whose only task is to sign previously prepared documents affecting title to real property in a robotic-like fashion without reading the documents or verifying the facts contained therein by reviewing primary source evidence. The robo-signer's mission is to expedite the documents' recordation in the public land records or in court proceedings. Additionally, robo-signers regularly fail to establish or simply do not have the authority to execute these documents on behalf of the legal title holder or principal on whose behalf they purport to act.*

McDonnell defines a "surrogate signer" as: *A person who signs a legal document on behalf of and in the name of another without reading it or understanding the document's contents; surrogate-signers are not authorized to execute these documents on behalf of the legal title holder or principal on whose behalf they purport to act.*

4. I am aware that Leticia Arias is an alleged robo or surrogate signer.

Signed this 17th day of June 2016, under the pains and penalties of perjury.

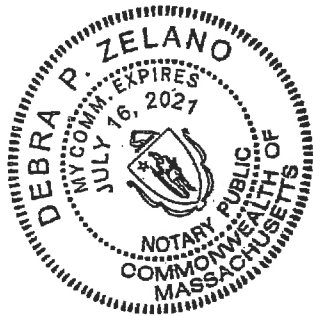


John L. O'Brien, Register

COMMONWEALTH OF MASSACHUSETTS

Essex,ss.

On this 17th day of June, 2016, before me, the undersigned notary public, personally appeared John L. O'Brien, who is personally known to be the person whose name signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Debra P. Zelano
Notary Name:
My Commission Expires: July 16, 2021

COMMONWEALTH OF MASSACHUSETTS
BARNSTABLE COUNTY REGISTRY OF DEEDS

P.O. Box 368
Barnstable, Massachusetts 02630
Telephone 508-362-7733
Fax 508-362-5065

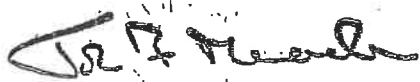
JOHN F. MEADE
Register

SPECIAL CERTIFICATION

THE COMMONWEALTH OF MASSACHUSETTS, COUNTY OF BARNSTABLE

I, the undersigned Assistant Recorder of the Land Court for the Barnstable Registry District, Barnstable County, Barnstable, Massachusetts, do hereby certify the within and foregoing to be a true and correct copy of the original as it appears on record and file in the office of the Barnstable County Registry District of the Land Court **Document No. 1,221,095** registered **May 14, 2013**.

Witness my hand and the seal as the Register of Deeds and the Assistant Recorder of the Land Court this 16th day of June, 2016.



John F. Meade
Assistant Recorder of the Land
Court

Prepared by: Nadiré Alvarez

After Recording Return To:
O'Connell, Attmore & Morris, LLC
71 Park Avenue, Suite C
West Springfield, MA 01089

ASSIGNMENT OF MORTGAGE
MASSACHUSETTS

This ASSIGNMENT OF MORTGAGE from BANK OF AMERICA, NATIONAL ASSOCIATION AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1, 2007, GSAMP TRUST 2007-NC1, whose address is c/o Ocwen Loan Servicing, LLC, 1661 Worthington Road, Suite 100, West Palm Beach, FL 33409 ("Assignor") to U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1, 2007, GSAMP TRUST 2007-NC1, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-NC1 whose address is c/o Ocwen Loan Servicing, LLC, 1661 Worthington Road, Suite 100, West Palm Beach, FL 33409 ("Assignee").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignor does by these presents hereby grant, bargain, sell, transfer and set over unto the Assignee, its successors, transferees and assigns forever, all of the right, title and interest of said Assignor in and to the following instrument describing land therein, duly recorded in the Office of the Public Records of BARNSTABLE County, State of MASSACHUSETTS, as follows;

Mortgagor: MARYANNE WEST
Mortgagee: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ACTING SOLELY AS NOMINEE FOR UNION CAPITAL MORTGAGE BUSINESS TRUST
Document Date: OCTOBER 19, 2006
Amount: \$ 367,500.00
Recording Date: OCTOBER 27, 2006
Instrument Number: 1047774
Property address: 125 WIANNO CIRCLE, OSTERVILLE, MA

NOTE CERTIFICATE OF TITLE NO 151521

125 Wianno Circle, Osterville, MA

This Assignment is made without recourse, representation or warranty.

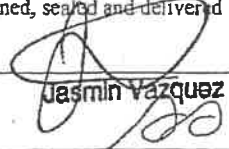
IN WITNESS WHEREOF the Assignor has caused these presents to be executed in its name, by its proper officer thereunto duly authorized, the 12TH day of OCTOBER, 2012

**BANK OF AMERICA, NATIONAL ASSOCIATION AS
SUCCESSOR BY MERGER TO LASALLE BANK
NATIONAL ASSOCIATION, AS TRUSTEE UNDER
POOLING AND SERVICING AGREEMENT
DATED AS OF FEBRUARY 1, 2007, GSAMP
TRUST 2007-NC1
BY IT'S ATTORNEY-IN-FACT
LITTON LOAN SERVICING, LP**

BY: 
NAME: Leticia N. Arias
TITLE: Vice President


STATE OF FLORIDA)
)ss.
COUNTY OF PALM BEACH)

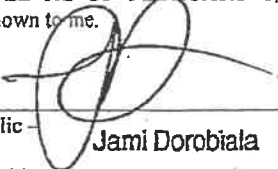
Signed, sealed and delivered in the presence of:


Jasmin Vazquez

Stephanie Simpson

The foregoing instrument was acknowledged before me this 12TH day of OCTOBER, 2012, by Leticia N. Arias, Vice President at LITTON LOAN SERVICING, LP Attorney-In-Fact For BANK OF AMERICA, NATIONAL ASSOCIATION AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1, 2007, GSAMP TRUST 2007-NC1, on behalf of the company. He/she is personally known to me.

NOTARY PUBLIC-STATE OF FLORIDA
 Jami Dorobiala
Commission #DD878994
Expires: APR. 08, 2013
BONDED THRU ATLANTIC BONDING CO., INC.


Notary Public - Jami Dorobiala
State of Florida



**CENTERVILLE-OSTERVILLE-MARSTONS MILLS
WATER DEPARTMENT**
P O BOX,369 - 1138 MAIN ST
OSTERVILLE, MASSACHUSETTS 02655
commwater.com

TEL: 508-428-6691

FAX: 508-428-3508

DATE OF
ISSUE: 1/1/2019

WEST, MARYANNE
25 GREYCLIFF RD
BRIGHTON, MA 02135-3103



ACCOUNT NO. 3982

SERVICE ADDRESS: 125 WIANNO CIR
OST

Water bills unpaid after (30) days from the date of issue are subject to interest charges, and termination of service for accounts past due (120) days. All in accordance with Centerville-Osterville-Marstons Mills Rules and Regulations.

Please Pay Past Due Bills Promptly
For water saving tips visit our
website: www.commwater.com

\$30.00 SEMI-ANNUAL ACCOUNT CHARGE
\$1.00 PER THOUSAND GALLONS 1-20K
\$2.90 PER THOUSAND BETWEEN 21-200K
\$3.95 PER THOUSAND OVER 200K

CUSTOMER COPY

PERIOD COVERED		
FROM	TO	
Jul 2018	Dec 2018	
Previous Meter Reading	Current Meter Reading	Consumption 1,000's of gallons
682	682	0
		0 @ \$1.00
		0 @ \$2.90
		0 @ \$3.95
TOTAL USAGE		\$0.00
PRIOR BALANCE		\$45.51
PAYMENT		.
INTEREST CHARGE		\$0.52
ACCOUNT CHARGE		\$30.00
Jan - Jun 2019		
TOTAL AMOUNT DUE		\$76.03

CONSUMPTION HISTORY	
Previous 6 Months	0
Same Period One Year Ago	0

FAX

Date: 6/5/2019

Number of pages including cover sheet: 2

To:

MARYANNE
WEST

Phone:

Fax phone:

CC:

From:

TOWN OF
BARNSTABL
E TAX
OFFICE

Phone:

Fax:

REMARKS:

Urgent

For your review

Reply ASAP

Please comment



TRUTH IN LENDING
AUDIT & RECOVERY SERVICES, LLC

Mortgage Fraud and Forensic Analysts

July 27, 2010

Via FEDERAL EXPRESS & E-Mail

Steven G. Manchini
Ablitt | Scofield
304 Cambridge Road
Woburn, Massachusetts 01801
v (781) 246-8995 f (781) 246-8994

URGENT: WRONGFUL FORECLOSURE - JULY 30, 2010

Re: Maryanne West

125 Wianno Circle, Osterville, Massachusetts 02655

Transaction Dated October 19, 2006

Originating Lender: Union Capital Mortgage Business Trust

Current Servicer: Litton Loan Servicing

Original Loan Number: 06090129

Servicing Account Number: 0100638683

Dear Mr. Manchini:

I am a *Mortgage Fraud & Forensic Analyst* and a *Certified Fraud Examiner* with twenty-three (23) years' experience in transactional analysis, mortgage auditing, and mortgage fraud investigation. I am contacting you to request that you consult with your client and recommend that they cancel the above referenced foreclosure sale which is set to take place this Friday, July 30, 2010 at 1:00 PM.

The reasons for my request are essentially twofold: 1) the foreclosure proceedings are fatally flawed; and 2) Ms. West has an affirmative right to rescind this transaction pursuant to the Massachusetts Consumer Credit Cost Disclosure Act and she will be exercising those rights tomorrow.

WRONGFUL FORECLOSURE

My review of the Prospectus, Prospectus Supplement and Pooling and Servicing Agreement ("Deal Documents") filed with the Securities and Exchange Commission ("SEC") incident to the alleged securitization of Ms. West's loan when compared with the documents recorded in the Barnstable County Registry of Deeds reveals that there are defects in the chain of title, the Assign-

ments of Mortgage, the Order of Notice, and the Land Court's Judgment of Foreclosure that are fatal to the instant foreclosure proceedings.

For example, Ms. West granted a Mortgage to the originating lender, Union Capital Mortgage Business Trust ("Union Capital") that was recorded on October 27, 2006. On September 27, 2007, Mortgage Electronic Registration Systems, Inc. acting as nominee for Union Capital executed an Assignment of Mortgage in favor of Avelo Mortgage, L.L.C. ("Avelo") which was subsequently recorded on January 10, 2008 ("Assignment #1"). That same day, Ablitt & Charlton, P.C. recorded an Order of Notice on behalf of Avelo. The Land Court granted Judgment of Foreclosure on January 30, 2008 which was recorded on June 11, 2010 together with a second Assignment of Mortgage dated May 20, 2010 from Avelo to GSAMP Trust 2007-NC1 ("Assignment #2"). (*See* Exhibit A. - Barnstable County Registry of Deeds Research)

This chain of assignments from Union Capital to Avelo, and from Avelo to GSAMP Trust 2007-NC1 does not comport with the Deal Documents filed with the SEC. For your convenience, I have developed a Securitization Flow Chart that maps out the expected transfer and assignment of Ms. West's Note and Mortgage based on the Prospectus Supplement, a summary of which I append hereto. (*See* Exhibit B. - Securitization Flow Chart & Prospectus Supplement)

The Deal Documents show that Union Capital would have sold Ms. West's loan to New Century Mortgage Corporation, not to Avelo Mortgage, L.L.C. In addition, only the Depositor, GS Mortgage Securities Corp., was authorized to transfer the Note and assign the Mortgage to the GSAMP Trust 2007-NC1; moreover, that had to occur on or before February 20, 2007. Hence, neither Assignment #1 nor Assignment #2 was prepared timely or is legally effective.

The Securitization Flow Chart shows that there were a total of five (5) buy-sell conveyances between the participants in the securitization of Ms. West's loan, none of which are documented with an Assignment of Mortgage. As a result, the Statutory Power of Sale contained in the Mortgage was never legally transferred from Union Capital Mortgage Business Trust through to the successor entities, and ultimately to the GSAMP Trust 2007-NC1.

REPURCHASE

I performed a search on MERS' public access website to investigate the identities of the current "Servicer" and "Investor" of Ms. West's loan using the MIN: #1003108-0006090129-1 stated on page one of her Mortgage. The search revealed that Litton Loan Servicing LP is the current *Servicer*, and Goldman Sachs Mortgage Company is the *Investor*. (*See* Exhibit C. - MERS Servicer Identification System)

Again, this information does not comport with the Deal Documents which designate Avelo as the *Servicer* and GSAMP 2007-NC1 as the *Investor*.

Since Goldman Sachs Mortgage Company ("Goldman Sachs") was the *Seller/Sponsor* in this securitization, I suspect that Ms. West's loan, which suffered a second-payment default, was rejected by LaSalle Bank National Association as Trustee of the GSAMP Trust 2007-NC1, and Goldman Sachs was required to repurchase it. Accordingly, Goldman Sachs selected Litton Loan Servicing LP ("Litton"), a well known "scratch and dent" Servicer, to replace Avelo.

RESCISSION RIGHTS

In addition to the foregoing, I performed a Truth In Lending Analysis and discovered that Ms. West has an affirmative right to rescind the subject transaction pursuant to the Massachusetts Consumer Credit Cost Disclosure Act for up to four (4) years from the consummation date which expires on October 15, 2010. (*See* Exhibit D. - Truth In Lending Analysis)

The defects in the transaction that trigger Ms. West's right to rescind are as follows:

- 1) The interest portion of the Finance Charge was understated by \$13,024.79 due to the fact that Union Capital selected an improper Index to calculate its Truth In Lending Disclosure Statement. This understatement in the Finance Charge exceeds the tolerance for error of one-half of one percent (.50%) of the principal amount of the loan pursuant to M.G.L. c. 140D § 12(a)(3) and 209 C.M.R. 32.18(4)(a)(1) and constitutes a material disclosure violation that affords Ms. West an affirmative right to rescind the subject transaction pursuant to M.G.L. c. 140D § 10 and its implementing regulation 209 C.M.R. 32.00.
- 2) Union Capital failed to include a Discharge Tracking Fee of \$75.00 in its determination of the Amount Financed. This, in turn, caused an understatement in the Finance Charge of more than \$35.00 which affords Ms. West an extended right to rescind in defense to the instant foreclosure action pursuant to M.G.L. c. 140D § 10(i)(2).

PREDATORY LENDING

Finally, my analysis of the loan's characteristics and Ms. West's financial profile at the time this loan was granted revealed many indicators that this loan was made without regard to Ms. West's ability to repay it. The initial interest rate of 8.150% is 3.975% below the fully indexed interest rate of 12.125% thus, this transaction meets the first two prongs of The Fremont Test for determining when a loan is deemed to be "presumptively unfair" and, therefore, subject to M.G.L. c. 93A.

CONCLUSION

For the foregoing reasons, I am requesting that you cancel the foreclosure sale scheduled to take place on July 30, 2010. I will be following up over the next two weeks to request a life of loan transaction history so that I can review the accounting and determine each party's tender obligation.

July 27, 2010
Re: Maryanne West
Page 4 of 4

I will be referring Ms. West to an attorney who will represent her in resolving the outstanding issues, but in the meantime, I appreciate your cooperation.

Sincerely yours,



Marie McDonnell, CFE
Mortgage Fraud and Forensic Analyst
Certified Fraud Examiner

Truth In Lending Audit & Recovery Services, LLC
P.O. Box 2760
Orleans, Massachusetts 02653
(v) 508-255-8829 (f) 508-255-9626
Marie.McDonnell@truthinlending.net

ATTACHMENTS

AUTHORIZATION
EXHIBIT A - BARNSTABLE COUNTY REGISTRY OF DEEDS RESEARCH
EXHIBIT B - SECURITIZATION FLOW CHART & PROSPECTUS SUPPLEMENT
EXHIBIT C - MERS SERVICER IDENTIFICATION SYSTEM
EXHIBIT D - TRUTH IN LENDING ANALYSIS

cc. Maryanne West
25 Greycliff Road
Brighton, Massachusetts 02135

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



Appeal No. 2020-004 – West

Appeal of Building Commissioners Issuance of a Demolition Permit

Date: December 20, 2019
To: Zoning Board of Appeals
From: Anna Brigham, Principal Planner
Appellants: **Maryanne West**
25 Greycliff Road, Brighton MA 02135
Subject Property Address: **125 Wianno Circle, Osterville, MA**
Assessor's Map/Parcel: 140/091
Zoning: Residence C (RC) District

Filed: November 18, 2019

Hearing: January 8, 2020

Decision Due: March 27, 2020

Copy of Notice

Maryanne West, as Appellant, is appealing the Building Commissioner's issuance of a demolition permit. The Appellant is claiming that her family owns the dwelling and the **demolition** will cause undo harm to her family. The Assessor's Office lists the ownership as Sharon and Richard Briansky who purchased it on July 25, 2019. The subject property is 125 Wianno Circle, Osterville, MA as shown on Assessors Map 140 as Parcel 091. It is located in the Residence C (RC) Zoning District

Appeal

Maryanne West, as Appellant, has appealed the issuance of a demolition permit for 125 Wianno Circle, Osterville. The Appellant is claiming that her family formerly owned the property at 125 Wianno Circle, which was subject to a wrongful foreclosure. The Appellant is claiming that the demolition of the dwelling will cause irreparable harm to her family. The Assessor's Office lists the ownership as David A. Parella, who purchased the property on October 23, 2019. Prior to that, ownership is listed as Sharon and Richard Briansky who purchased it on July 25, 2019. Staff repeatedly reached out to Ms. West (November 19, November 26, December 9, December 11, and December 12) for an update. Ms. West did send one email but her intention to withdraw the appeal was unclear.

Staff Comments

This Appeal is being made under Section 8 & 15 of MGL Chapter 40A, (The Zoning Act)

Section 8 of Chapter 40A states that an appeal may be taken by any person "aggrieved by an order or decision of the inspector of buildings, or other administrative official, in violation of any provision of this chapter or any ordinance or by-law adopted thereunder."

Section 15 states,"The petitioner shall file a notice of appeal specifying the grounds [of the appeal], with the city or town clerk, and a copy of said notice, including the date and time of filing certified by the town clerk, shall be filed forthwith by the petitioner with the officer or board whose order or decision is being appealed, and to the permit granting authority, *specifying in the notice grounds for such appeal*" (emphasis added).

The Application before the Board does not appear to specify the grounds for the appeal or identify how the decision to issue the demolition permit was in violation of MGL Chapter 40A (the Zoning Act) or Chapter 240 of the Code of the Town of Barnstable (the Zoning Ordinance).

The Board should consider whether the Appellant’s injury falls within an area of concern of the Zoning Act or Town of Barnstable Zoning Ordinance.

Procedural Review

This appeal was filed with the Town Clerk’s office and the Planning and Development Department, Zoning Board of Appeals office on November 18, 2019. It was filed within 30 days of the issuance of the Demolition Permit on November 13, 2019 as required by MGL 40A. The application fee and legal ad fee have not been paid.

Proposed Findings

In making findings, the Board should consider:

1. Appeal 2020-004 does not establish that the demolition permit for 125 Wianno Circle, Osterville, MA issued in November of 2019 was issued in violation of MGL Chapter 40A (the Zoning Act) or Chapter 240 of the Code of the Town of Barnstable (the Zoning Ordinance).

Decision

Upon making findings, the Board may choose to vote to:

-) Uphold or the Building Commissioner’s issuance of the demolition permit; or
-) Overrule the Building Commissioner’s issuance of the demolition permit,

A vote of 4 members of the Board is required to overrule the Building Commissioner’s decision.

CC: Appellant

Attachments: Application