



Town of Barnstable Zoning Board of Appeals Agenda

Wednesday, August 28, 2013

2nd Floor Hearing Room – 367 Main Street, Hyannis, MA

Call to Order

Introduction of Board Members

Notice of Recording

Please note that this meeting is recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

Approval of Minutes

Minutes from June 26, 2013

Old Business

7:00 PM

Appeal No. 2013-039- New

Swann

Dr. Marcus Swann, as lessee, has applied for modification of Special Permit No. 2007-070-A to allow one of the four professional office suites to be utilized as a dental office. Condition No. 3 of the permit currently prohibits use of the building for medical or dental offices. Special Permit 2007-070 modified Permit Nos. 1984-92 and 1980-35 and allows for pre-existing nonconforming use of a pre-existing nonconforming structure. The property is located at 2957 Falmouth Road (Route 28), Marstons Mills, MA as shown on Assessor's Map 121 as Parcel 009. It is in a Residence F zoning district and the Groundwater Protection Overlay District.

Opened: July 24, 2013. No members assigned. No testimony taken.

7:00 PM

Appeal No. 2013-002 - Cont'd

AT&T Mobility

AT&T Mobility, as Lessee, has petitioned for a modification of Special Permit No. 1998-043 to add two panel antennas, four remote radio heads, and two surge arrestors within the petitioner's 80 foot lease area on the tower and add one panel antenna, two remote radio heads and one surge arrestor within the 66 foot lease area on the tower. The subject property is located at 49 Ocean Street, Hyannis, MA as shown on Assessor's Map 326 as Parcel 025. It is located in the Hyannis Village Business Zoning District.

Opened: February 13, 2013, continued to March 27, 2013, June 12, 2013, August 14, 2013, August 28, 2013
Members assigned on February 13, 2013: Craig Larson, Alex Rodolakis, Brian Florence, George Zevitas, William Newton

Email received 08-20-13 from Gerry Squires requesting a continuance to September 11, 2013.

7:00 PM

Appeal No. 2013-035

Ruggiero

Daniel and Mindi Ruggiero have petitioned for a Special Permit pursuant to Section 240-91(H)(3) Demolition and Rebuilding on Nonconforming Lots. The Petitioners are proposing to raze an existing dwelling on a 7,500 square foot lot and rebuild a new two-story dwelling of approximately 2,100 gross square feet. The subject property is located at 93 Circuit Avenue, Hyannis, MA as shown on Assessor's Map 324 as Parcel 052. It is in the Residence B Zoning District.

Opened: June 26, 2013. Continued to August 14, 2013, continued to August 28, 2013.
Members Deciding Repetitive Petition: Craig Larson, Brian Florence, Alex Rodolakis, William Newton, Laura Shufelt
Also present, George Zevitas, David Hirsch

7:00 PM Appeal No. 2013-017 – Cont'd**Gingras**

Diane R. Gingras has applied for a variance to Section 240-46(C)(2) Home Occupation by Special Permit. The Applicant seeks to install a two sq.ft freestanding sign in the front yard of her home to advertise her dog washing business. The ordinance allows one non-illuminated wall sign not to exceed two sq.ft and only listing the occupant's name and occupation. The property is located at 3111 Falmouth Road/Route 28, Marstons Mills, MA as shown on Assessor's Map 098 as parcel 008-005. It is in a Residence F zoning district.

Opened June 12, 2013, Continued to June 26, 2013, Continued to August 14, 2013.

Members assigned June 12, 2013: Alex Rodolakis, George Zevitas, Brian Florence, William Newton, Laura Shufelt. David Hirsch has submitted a Mullin Form and can sit on the appeal.

7:00 PM Appeal No. 2013-018 – Cont'd**Gingras**

Diane R. Gingras has petitioned to modify Condition No. 8 of Special Permit No. 2005-102, which prohibits freestanding signage in conjunction with her permitted dog washing home occupation. The Petitioner seeks to install a two sq.ft freestanding sign in the front yard of her home. The property is located at 3111 Falmouth Road/Route 28, Marstons Mills, MA as shown on Assessor's Map 098 as parcel 008-005. It is in a Residence F zoning district

Opened June 12, 2013, Continued to June 26, 2013, Continued to August 14, 2013.

Members assigned June 12, 2013: Alex Rodolakis, George Zevitas, Brian Florence, William Newton, Laura Shufelt. David Hirsch has submitted a Mullin Form and can sit on the appeal.

Correspondence

Hearing Notice from Cape Cod Commission for August 29, 2013 regarding proposed amendment to Chapter H, municipal application for revisions on DRI thresholds.

Upcoming Meetings

| | |
|-----------|---------|
| September | 11 & 25 |
| October | 9 & 23 |
| November | 13 |
| December | 11 |

Other Business

Town of Barnstable
Growth Management Department
Jo Anne Miller Buntich, Director
Staff Report



Special Permit 2013-035 – Daniel & Mindi Ruggiero

§ 240-91(H)(3) – Demolition and Rebuilding on Nonconforming Lots

Repetitive Petition: To demolish and rebuild a single-family residential dwelling

Date: August 22, 2013
To: Zoning Board of Appeals
From: Elizabeth S. Jenkins, Principal Planner
Petitioner: **Daniel and Mindi Ruggiero**
2 Fieldstone Dr, Raynham, MA
Property Address: 93 Circuit Ave, Hyannis
Assessor's Map/Parcel: 324/052
Zoning: Residence RB District

Filed: May 24, 2013

Determination on Repetitive Petition: June 19, 2013

Hearing: August 28, 2013

Copy of Public Notice

Daniel and Mindi Ruggiero have petitioned for a Special Permit pursuant to Section 240-91(H)(3) Demolition and Rebuilding on Nonconforming Lots. The Petitioners are proposing to raze an existing dwelling on a 7,500 square foot lot and rebuild a new two-story dwelling of approximately 2,100 gross square feet. The subject property is located at 93 Circuit Avenue, Hyannis, MA as shown on Assessor's Map 324 as Parcel 052. It is in the Residence B Zoning District.

Background

In Appeal 2013-035, the Petitioners are proposing to demolish an existing dwelling and rebuild a new four-bedroom, 2.5 story single-family residence. The subject property is 7,500 sq.ft in area, of which 6,920 sq.ft is upland. It is developed with a single-family dwelling with 864 sq.ft of living area. The lot is served by public water and sewer. It is in the 100-year floodplain, with a BFE of 10.

The history of the application is as follows:

September 5, 2012: The Petitioners filed a Special Permit application (2012-049) seeking relief pursuant to §240-91(H)(3).

February 27, 2013: The Board, in a 3-2 vote, failed to grant the relief requested.

March 8, 2013: A written decision was filed with the Town Clerk on. The decision was not appealed and was certified by the Town Clerk.

May 24, 2013: Daniel and Mindi Ruggiero filed Special Permit application 2013-035. In this appeal, as in Appeal No. 2012-049, the Applicants seek relief pursuant to §240-91(H)(3) to demolish and rebuild a dwelling on a lot with less than 10,000 sq.ft. Appeal 2013-035 was filed approximately six weeks after the Board rendered the decision on Appeal No. 2012-049.

June 19, 2013: The Board voted to find that the proposal includes "specific and material changes in the conditions on which the previous unfavorable action was based."

July 22, 2013: The Planning Board voted to concur with the Zoning Board of Appeals findings, thus sending the appeal back to the Board for consideration of the merits of the case.

Proposal and Relief Requested

The applicant is proposing to demolish the existing dwelling and rebuild a new four-bedroom, two-story single-family house.

Setbacks, FAR and coverage (calculated using upland area) are as follows:

| | | Existing | Proposed |
|------------------------|-------|------------|------------|
| Setbacks | Front | 28' | 21.5' |
| | Side | 6.8'/37.8' | 8.0'/31.3' |
| | Rear | 31.7' | 43' |
| FAR (30% max) | | 24.9% | 29.9% |
| Lot Coverage (20% max) | | 12.8% | 17.1% |

The 8 foot side yard setback on the north side is proposed in reliance of the existing dwelling's 6.8 foot setback. The reduced side yard setback serves to site the dwelling further from the wetland.

The new dwelling will have two full-stories with utilities in the attic. The first floor base elevation is 12.5 feet, above the BFE of 10. The crawl space elevation is at 8 feet. The existing house has a top-of-floor elevation of 9.57; the new construction will elevate the dwelling above the flood plain.

A screened-in porch with a second-floor open-air deck is proposed on the south façade. The rear patio is adjacent to the dwelling, with an outdoor grill directly abutting the house. The landscape plan includes extensive mitigation landscaping using a variety of traditional and native plantings.

The on-site parking area to the north of the front stairs is 19 feet wide.¹ Approximately 280 sq.ft of existing gravel parking area will be removed and replaced with lawn.

The final revisions to the plan will need to be submitted to the Conservation Commission for review and approval.

Ordinance Section 240-91(H) applies to preexisting legal nonconforming lots less than 10,000 square feet improved with a single-family residence which conformed to all provisions of the zoning ordinance in effect at the time of construction. This Section allows for the complete demolition of the old residence and reconstruction of a new residence with grant of a Special Permit.

Proposed Special Permit Findings

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

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit:

Section 240-91(H) applies to preexisting legal nonconforming lots less than 10,000 square feet improved with a single-family residence which conformed to all provisions of the zoning ordinance in effect at the time of construction. This section allows for the complete demolition of the old residence and reconstruction of a new residence with grant of a Special Permit.

- **Site Plan Review is not required for single-family residential dwellings.**

¹ Note: The width of the on-site gravel parking area and the location of the front stairs was revised based on comments made at the meeting where the repetitive petition determination was made.

- **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.**

Further, Section 240-91(H)(3) requires the Board to find that the proposed dwelling is in compliance with standards for setback, lot coverage, floor area, and height, as follows:

- **The proposed dwelling is in compliance with today's front and rear setback requirements and does not increase the existing side-yard setback nonconformity.**
- **The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The proposed lot coverage is 17.1% of the lot's upland area.**
- **The floor area ratio shall not exceed 0.30 or the existing floor area ratio of the structure being demolished and rebuilt, whichever is greater. The proposed floor area ratio is 29.9%.**
- **The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 ½ stories. The building height, in feet, shall be defined as the vertical distance from the average grade plane to plate. The proposed height is 24 feet.**

The Board is also asked to find that:

- **The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.**

Suggested Conditions

Should the Board find to grant the Special Permit 2013-035, it may wish to consider the following conditions:

1. Special Permit 2013-035 is granted to Daniel and Mindi Ruggiero for the demolition of an existing residence and rebuilding of a 2,070 square foot dwelling at 93 Circuit Avenue, Hyannis.
2. The dwelling shall be reconstructed in substantial conformance with the site plan entitled "Plan to Accompany Special Permit Application – 93 Circuit Avenue Hyannis MA", last revised 07/22/13, drawn and stamped by GAF Engineering, Inc., the landscape plan entitled "Mitigation Planting Plan" drawn by Mary LeBlanc Landscape Design, last revised 06/17/13 and the elevations and floor plans drawn by Keiser Industries, Inc, last revised 06/17/13.
3. Prior to issuance of a certificate of occupancy, a certified as-built plan prepared by an independent party shall be submitted to the Building Commissioner to confirm that the floor area ratio of the dwelling conforms to code requirements.
4. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be located so as to conform to the required setbacks for the district and screened from neighboring homes and the public right-of-way.
5. The proposed redevelopment shall represent full build-out of the lot. Further expansion of the dwelling, construction of additional accessory structures, or addition of impervious areas is prohibited without prior approval from the Board.
6. The dwelling shall be connected to public sanitary sewer.
7. Site development and landscaping shall be in full compliance with the Order of Conditions issued by the Conservation Commission.
8. The decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Town of Barnstable Growth Management Department Staff Report
Appeal 2013-035 – Ruggiero – Special Permit to Demo/Rebuild

Copies: Applicant

Attachments: Planning Board letter re: Repetitive Petition
 Application and Memorandum
 Site Plan (07/22/13)
 Landscape Plan (06/17/13)
 Elevations and Floor plans (06/17/13)
 Aerial Photo



**Town of Barnstable
Growth Management Department
Planning Board**
www.town.barnstable.ma.us/planningboard

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Matthew K.
Teague

Vice Chair

Paul R. Curley

Clerk

Patrick Princi

Members

Raymond B. Lang
David P. Munsell
Felicia R. Penn
Stephen Helman

Town Council

Liaison

Fred Chirigotis

Staff

Director

Jo Anne Miller
Buntich

Regulatory/Design

Review Planner
Art Traczyk

Principal Assistant

Karen Herrand

July 23, 2013

Craig G. Larson, Chair, Zoning Board of Appeals
Town of Barnstable
200 Main Street
Hyannis, MA 02601

Reference: Repetitive Petition – Appeal No. 2013-035 Ruggiero Planning Board
Concurrence

Dear Mr. Larson

In response to your letter of June 27, 2013, regarding the above referenced repetitive petition of Daniel and Mindi Ruggiero seeking a special permit pursuant to §240-91(H)(3) to demolish and rebuild a dwelling on a lot of less than 10,000 square feet at 93 Circuit Avenue, Hyannis, MA the Planning Board concurs with the Zoning Board of Appeals findings that specific and material changes have been made in the revised plan that directly address the conditions upon which the earlier unfavorable action was based.

The Planning Board's review of the repetitive petition was conducted pursuant to MGL Chapter 40A, Section 16. A public meeting was duly noticed and published in the Barnstable Patriot and notice sent to abutters. The matter was discussed at the regular scheduled July 22, 2013, meeting. Board Member Patrick Princi recused himself from the proceedings.

The Board cited that the changes made in the plan with respect to the alteration to the patio and the revised setbacks from the wetlands were substantial changes that attempt to address the conditions upon which previous unfavorable action was based.

At the conclusion a motion was duly made, seconded and positively voted that the Planning Board concurs with the Zoning Board of Appeals findings that specific and material changes in the conditions upon which the earlier unfavorable action was based have been found.

The motion carried by 6 positive votes of the Planning Board Members. The reapplication made by the petitioners may proceed to a public hearing on the merits of the proposal.

Respectfully,

Matthew Teague, Chair,

Copy: Attorney Robert F. Mills, Wynn & Wynn
Jo Anne Miller Buntich, Director GMD

200 Main Street, Hyannis, MA 02601
367 Main Street, Hyannis, MA 02601

324/052



13 NOV 24 11 45

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

Date Received
Town Clerk's Office:

For office use only:

Appeal # 2013-035
Hearing Date 06-26-13
Days Extended
Decision Due 09-24-13

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 Name¹: Daniel & Mindi Ruggiero, Phone: 781-562-1955

Petitioner's Address: 59 Walpole Street, Apt. 214, Canton, MA 02021

Property Location: 93 Circuit Avenue, Hyannis

Property Owner: Daniel & Mindi Ruggiero, Phone: 781-562-1955

Address of Owner: 59 Walpole Street, Apt. 214, Canton, MA 02021

If applicant differs from owner, state nature of interest:²

Registry of Deeds/Land Court References: Deed Book 26289, Pg. 89 Plan Book 9, Page 103

Assessor's Map/Parcel Number: 324/52 Zoning District: RB

Number of Years Owned: 4/19/12 Groundwater Overlay District: AP

Special Permit Requested: 240-91.H Demolition & Rebuilding on Nonconforming Lot
Cite Section & Title from the Zoning Ordinance

Description of Activity/Reason for Request: Raze an existing dwelling and construct a new dwelling. See attached cover letter.

Attach additional sheet if necessary

Is the property subject to an existing Variance or Special PermitNo ☒ Yes ☐ -

Permit # _____

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): To demolish and rebuild a single family dwelling on a pre-existing nonconforming lot.

Attach additional sheet if necessary

Existing Level of Development of the Property - Number of Buildings: 1 single family

Present Use(s): residential - single family

Existing Gross Floor Area: 1,728 sq. ft. Proposed New Gross Floor Area: 1,856 sq. ft.

Site Plan Review Number: _____ Date Approved: _____ (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 [x]

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: 5/24/13
Applicant's or Representative's Signature³

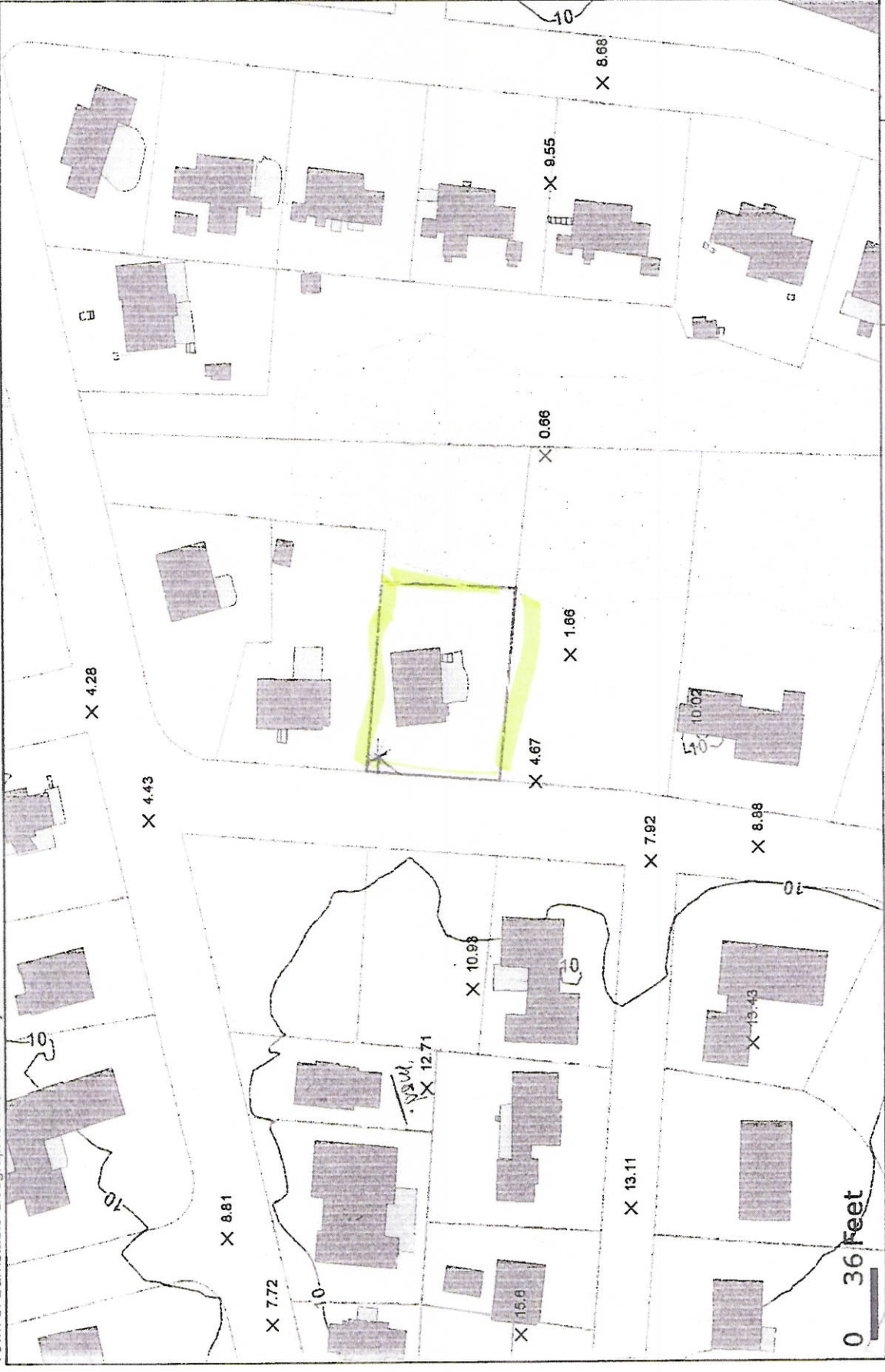
Print Name Robert F. Mills, Esq.

Address: 300 Barnstable Road Phone: 508-775-3665
Hyannis, MA 02601

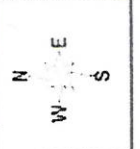
Fax No.: 508-775-1244

e-mail Address: rmills@wynnandwynn.com

3 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.

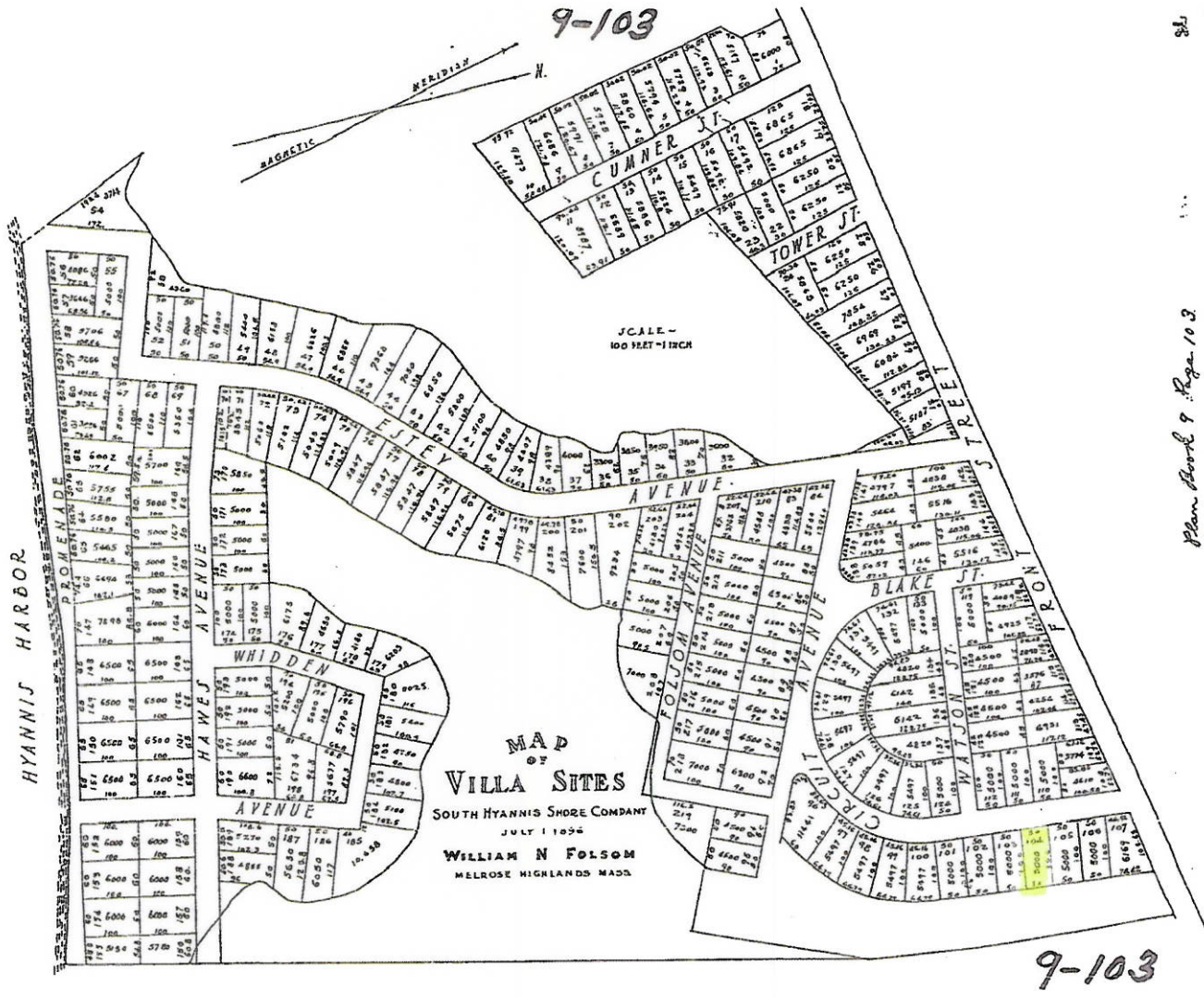


| | |
|---|--|
| <p>Map: 324 Parcel: 052 Owner: ST ONGE, CHRISTIAN D Co-Owner: %RUGGIERO, DANIEL G & Location: 93 CIRCUIT AVENUE</p> | <p>Total Assessed Value: \$269900 Acreage: 0.17 acres</p> |
| <p>Selected Parcel Abutters Buffer</p> | <p>DISCLAIMERS: This map is for planning purposes only. It is not adequate for legal boundary determination or regulatory interpretation. Enlargements beyond a scale of 1"=100' may not meet established map accuracy standards. The parcel lines on this map are only graphic representations of Assessor's tax parcels. They are not true property boundaries and do not represent accurate relationships to physical features on the map such as building locations.</p> |



9-103

84



Plan Book 9 Page 103

3. The screened lower porch on the southerly side has been shortened and is now setback 8 feet from the front right corner.

M.G.L. Chapter 40A, §16, provides that the Board may not vote favorably upon an application for special permit which has been unfavorably voted upon within two years after the date of final unfavorable action unless it finds "specific and material changes in the conditions upon which the previous unfavorable action was based and describes such changes in the record of its proceedings". In addition, the new application requires all but one of the members of the planning board to consent thereto at a proceeding where notice is given to parties in interest at the time and place of the proceedings when the question of such consent will be considered. See attached copy of M.G.L. Chapter 40A, §16.

Instructive in this regard is the case of Ranney v. Board of Appeals of Nantucket 11 Mass. App. Ct. 112 (1981). In that case, the Court opined that "Whether conditions have changed sufficiently to justify a reapplication during the moratorium period is principally for the local board to determine. The board may give weight to differences which in an absolute sense are relatively minor." Id.

Based upon the proposed changes made to the plan, it is respectfully requested that the Board make a finding in accordance with M.G.L. Chapter 40A §16, and refer a copy of its decision to the Planning Board for its consent after hearing and notice to interested parties.

With regard to the requested relief, a special permit is requested pursuant to 240-91.H.(2). The applicant is seeking to raze an existing dwelling and build a new dwelling at this location. The property is a pre-existing non-conforming developed lot containing less than 10,000 square feet and, as such, falls short of seeking a permit "as of right" under 240-91. H.(1). This lot contains 7,500 square feet. The new construction will not comply with the current sideline setbacks of 240-91.H.(1)(a) but will comply with 240-91.H.(b)[1] through [3].

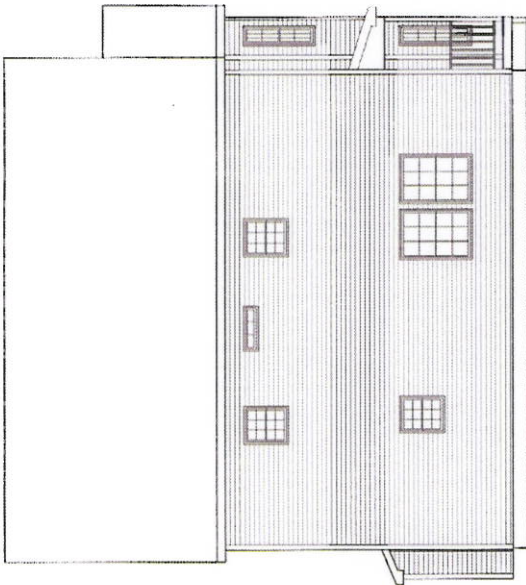
240-91.H.(1)(a)

The proposed structure is setback 8 feet from the northerly property line at the house corner as a result of discussions with staff. In all other respects, the proposed structure conforms to current use and setback requirements of RB Zoning District which requires a 20-foot front setback and 10-foot side and rear setbacks. The existing structure is setback 28.1 feet from the street and 6.8 feet from the northerly property line. The proposed structure will provide a front setback of 21.5 feet and a setback of 8 feet from the northerly property line.

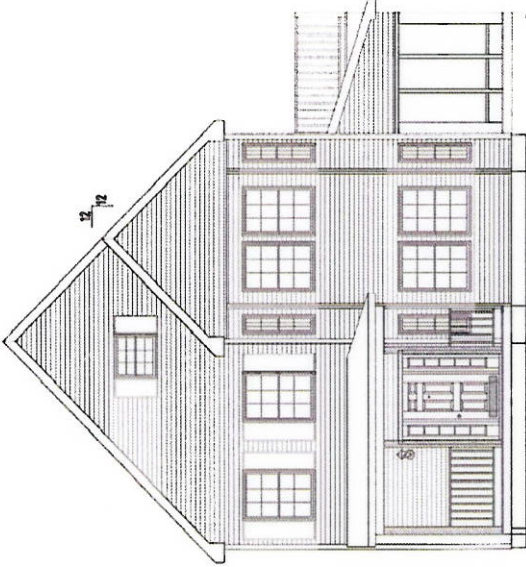
240-91.H.(1)(b)(1)

The proposed structure will meet the lot coverage requirement of 20%. The existing dwelling has an 12.8% lot coverage. The proposed dwelling will have a 17.1% lot coverage.

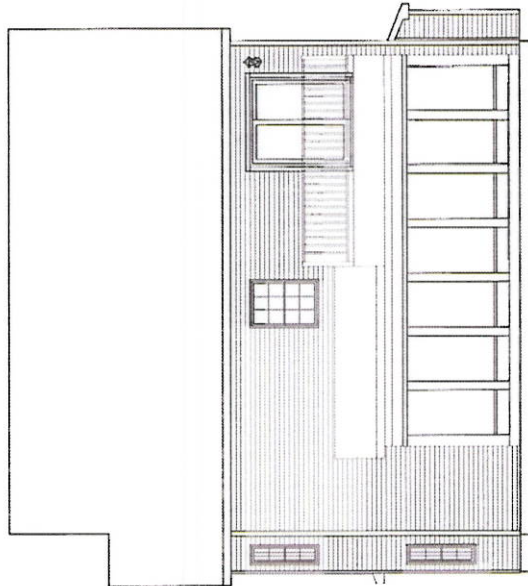
ELEVATIONS INTENDED FOR
CONCEPTUAL PURPOSES ONLY.
NOT TO BE USED FOR
CONSTRUCTION PURPOSES.



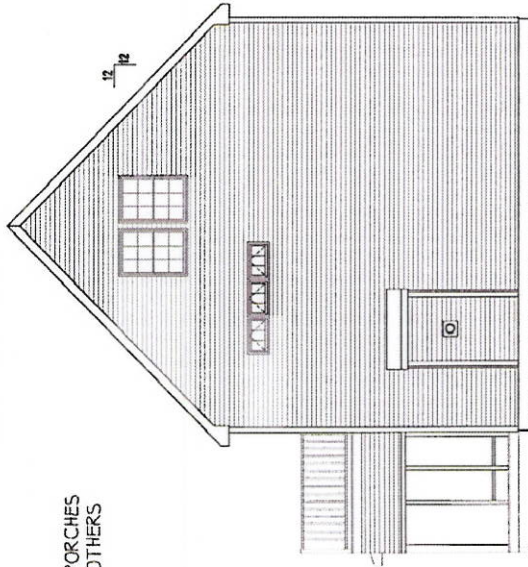
LEFT END ELEVATION



FRONT ELEVATION



RIGHT END ELEVATION



REAR ELEVATION

DECKS AND PORCHES
ON-SITE BY OTHERS

KEISER
INDUSTRIES INC.
P.O. BOX 9000 WILM, DE 19809
TEL: (302) 537-0883
FAX: (302) 537-4448

27'-8" x 35'-6"
CUSTOM
COLONIAL

SPEC. NUMBER:
13-002

BUILDER:
SMART BUILD

PLANS PREPARED FOR:
RUGGERO

ELEVATIONS

NOTE: ANY DEVIATIONS FROM
THE PLAN TO THE ORDER
CONTRACT ARE THE FULL
RESPONSIBILITY OF THE
BUILDER.

DATE: 1-4-13

DRAWN BY:
SLP

CHECKED BY:

REVISIONS DATE

6-17-13 SLP

SCALE:
1/8"=1'-0"

SHEET NO.

3

LAST PRINTED: 6/18/2013 AT 2:26 AM
R:\DRAWINGS\JOBS\SPEC\2013\13-002 (BA) RUGGERO

27'-8" x 35'-6"
CUSTOM
COLONIAL

SPEC. NUMBER:
13-002

BUILDER:
SMART BUILD

PLANS PREPARED FOR:
RUGIERO

FIRST FLOOR

NOTE: ANY DEVIATIONS FROM
THE PLAN TO THE ORDER
CONTRACT ARE THE FULL
RESPONSIBILITY OF THE
BUILDER.

DATE: 1-4-13

DRAWN BY:
SLP

CHECKED BY:

REVISIONS DATE:

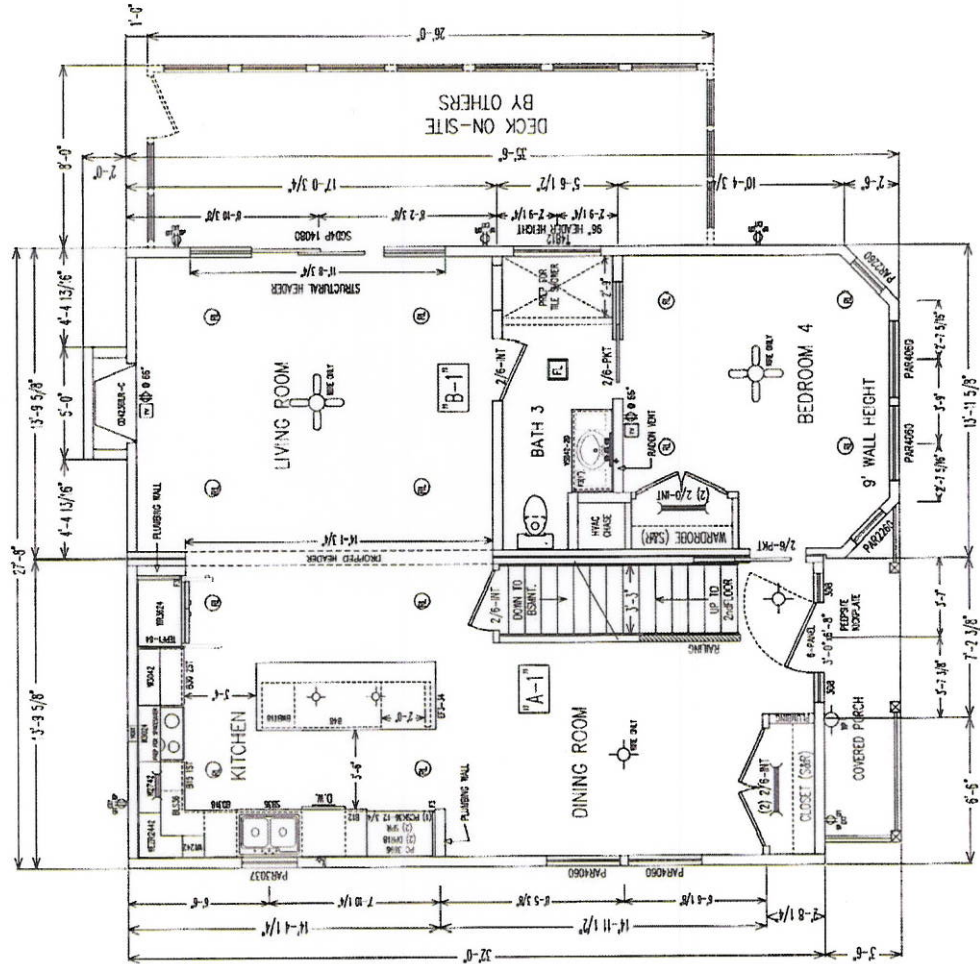
6-17-13 SLP

SCALE:
3/16" = 1'-0"

SHEET NO.

2

LAST PRINTED: 6/17/2013 AT 3:37 PM
R:\DRAWINGS\JOBS\SPEC\2013\13-002 (BA) RUGIERO



Area=927.974 ft

MASSACHUSETTS 110 MPH WIND DESIGN NOTES:

1. TOWN OF HYANNIS (BARNSTABLE)
2. 30 PSF GROUND SNOW LOAD
3. 110MPH WIND SPEED

4. THIS TOWN REQUIRES WINDOW & DOOR DP UPGRADES
SEE LISTED DP REQUIREMENT ON ORDER CONTRACT.

5. A FORCED DP UPGRADE DOES NOT INCLUDE IMPACT GLASS
REQUIRED IN WIND BORN DEBRIS ZONES UNLESS SPECIFIED SPECIFICALLY ON
FINAL QUOTE/CONTRACT AGREEMENT.

6. IF YOUR SITE IS LOCATED WITHIN THE WIND BORN DEBRIS ZONES OF THIS
TOWN YOU MUST REQUEST IMPACT GLASS BE QUOTED OR USE STRUCTURAL
PANEL STORM SHUTTERS PROVIDED & INSTALLED BY OTHERS. KEISER HOMES IS
NOT RESPONSIBLE FOR ANY REQUIRED IMPACT GLASS UNLESS IT IS
SPECIFICALLY LISTED AS IMPACT GLASS ON THE CONTRACT AGREEMENT.

7. TYPICAL 110MPH WIND DESIGNS REQUIRE VERTICAL OSB TALL BOARD
SHEATHING, UPGRADES TO PLYWOOD SHEET GOODS WILL INCUR ADDITIONAL
CHARGES FOR EDGE SUPPORT BLOCKING, CONTINUOUS PATH METAL &
SHEATHING CONNECTIONS, 3/8 ANCHOR BOLTS SPACED 32 O/C WITH 3X3X1/4
PLATE WASHERS & DOUBLE FOUNDATION WIND SILLS ATTACHED TO EACH
OTHER W/GRK-HSS STRUCTURAL SCREWS.

8. ALL FINAL ENGINEERING DESIGNS AND PRICE QUOTES FOR BUILDINGS
LOCATED IN 100 & 110MPH WIND ZONES ARE PENDING THIRD PARTY REVIEW
AND APPROVALS OF SUBMITTAL. PLAN SETS ANY ADDITIONAL DESIGN OR PE
CONSIST DUE TO BUILDING OR SITE SPECIFIC ENGINEERING ARE THE BUILDERS
RESPONSIBILITY AND MAY REQUIRE SPECIFIC PLAN CHANGES TO ALLEVIATE
COSTLY OR UNREASONABLE DESIGN CONDITIONS.

27'-8"x35'-6"
CUSTOM
COLONIAL

SPEC. NUMBER:

13-002

BUILDER:

SMART BUILD

PLANS PREPARED FOR:

RUGGIERO

SECOND FLOOR

NOTE: ANY DEVIATIONS FROM
THE PLAN TO THE ORDER
CONTRACT ARE THE FULL
RESPONSIBILITY OF THE
BUILDER.

DATE: 1-4-13

DRAWN BY:

S.L.P.

CHECKED BY:

REVISIONS DATES

6-17-13 SLP

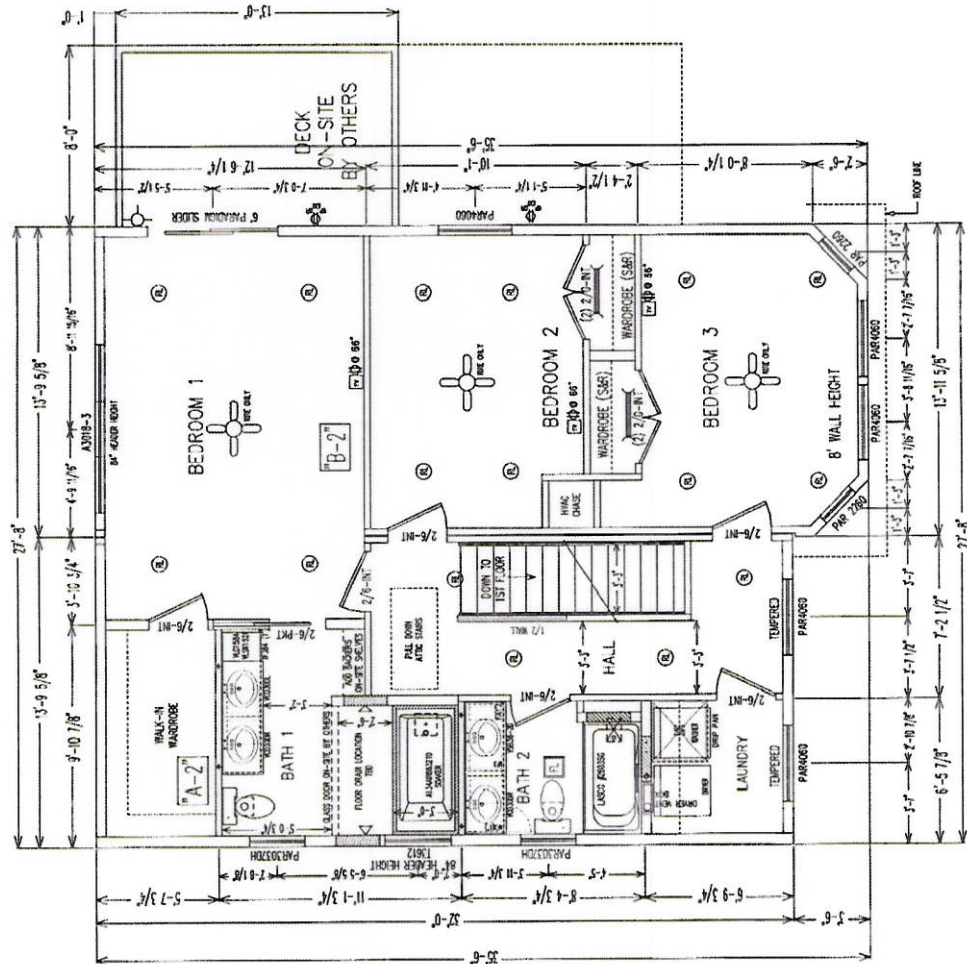
SCALE:

3/16"=1'-0"

SHEET NO.

2A

LAST PRINTED: 6/18/2013 AT 8:25 AM
R:\DRAWINGS\JOBS\SPEC\2013\13-002 (BA) RUGGIERO



Area=927.974 ft

Town of Barnstable
Growth Management Department
Jo Anne Miller Buntich, Director
Staff Report



Special Permit 2013-039 – Dr. Marcus Swann
Modification of Special Permit No. 2007-070-A

Modification of condition prohibiting medical/dental use to allow for one dental office

Date: July 17, 2013
To: Zoning Board of Appeals
From: Elizabeth Jenkins AICP, Principal Planner
Petitioner: **Dr. Marcus Swann** (as lessee)
Property Address: 2957 Falmouth Road (Rte. 28)
Assessor's Map/Parcel: 121/009
Property Owner: Paul A. & Sheila K. Gargano, 251 Green Dunes Dr, W Hyannisport
Zoning: Residence F, GP Overlay

Filed: June 20, 2013

Hearing: July 24, 2013

Decision Due: October 22, 2013

Copy of Public Notice

Dr. Marcus Swann, as lessee, has applied for modification of Special Permit No. 2007-070-A to allow one of the four professional office suites to be utilized as a dental office. Condition No. 3 of the permit currently prohibits use of the building for medical or dental offices. Special Permit 2007-070 modified Permit Nos. 1984-92 and 1980-35 and allows for pre-existing nonconforming use of a pre-existing nonconforming structure. The property is located at 2957 Falmouth Road (Route 28), Marstons Mills, MA as shown on Assessor's Map 121 as Parcel 009. It is in a Residence F zoning district and the Groundwater Protection Overlay District.

Background

In Appeal No. 2013-039, Dr. Marcus Swann is seeking to modify the conditions of Special Permit 2007-070-A to establish a dentist's office in an existing building at 2957 Falmouth Road (Rte 28). The subject property is a 1.06 acre lot at the corner of Rte. 28 and Osterville-West Barnstable Road. It is developed with a 6,240 sq.ft office building containing four professional offices in 4,110 sq.ft of leasable area. Common areas include building entrances, shared restrooms, an ADA compliant elevator, and mechanical area.

The Board granted permits for use and development of the property in 1972, 1975, 1978, 1980 and 1984. According to those files, the site is a former gas station that included a general store and a residence. The commercial uses predated zoning and were recognized by the Board as legal pre-existing nonconforming. The structure was also determined to be legal pre-existing nonconforming; it does not conform to the current 100-foot front yard setback off Route 28.

The existing site and uses are the products of the 1980, 1984, and 2007 Special Permits:

- Special Permit 1980-35 was issued to Donald L. LeBlanc to change the nonconforming use the property to offices with 32 on-site parking spaces.
- Special Permit 1984-92 was issued to Robert Byrne authorizing a 25 by 30 foot addition to the existing structure as well as construction of a two-car garage and 33 on-site parking spaces. That permit limited the office use to a maximum of 4 offices and prohibited retail sales.
- Special Permit 2007-070A was issued to Paul & Shelia Gargano to demolish an older portion of the building and reconstruct a two-story addition. The resulting development would contain four offices suites.

Standing

Property owners Marcus and Shelia Gargano submitted a letter authorizing Dr. Marcus Swann to modify the Special Permit.

Relief Requested

The Applicant is requesting to modify Condition No. 3 of the permit pursuant to MGL Chapter 40A §14. The condition reads:

Use of the property shall be as previously permitted for a maximum of 4 professional office suites. That use shall not include professional medical or dental offices defined as those practitioners that have an associate or graduate of an accredited medical or dental school. Professional office use, however, may include psychology and chiropractic professionals.

The Applicant seeks to establish a dentist's office in one of the building's tenant spaces. The proposed dentist office includes two exam chairs, lab/staff space, and a small reception area.

Based on the floor plans submitted, it appears that the tenant space to be occupied by the dentist will be on two levels, the first floor and basement. The total leased area occupied by the dentist would be approximately 1,500 square feet. A floor plan for the basement was not provided. Staff is under the impression that the basement floor will be used for additional office space for the dentist and storage. The Board may wish to clarify the use of the basement space with the applicant.

No changes are proposed to the exterior of the building, parking lot, or site.

Parking & Site Access

The site has 22 parking spaces, including two handicapped spaces. The Zoning Ordinance requires 1 parking space for every 300 sq.ft of office space, plus one space for every suite. The required parking, when calculated using the 4,110 sq.ft of leasable area, plus four suites, is 18 spaces.

The subject property can be accessed from Rte. 28 (a State Highway) or Osterville-West Barnstable Road. At this location, Route 28 is two lanes in both directions without a median. Route 28 and Osterville-West Barnstable Road is a signalized intersection. Condition No. 1 of Special Permit 2007-070-A specified that access from Route 28 shall be right-in and right-out only. Based on the contents of the file, it appears that the property owner submitted a plan to MassDOT to construct an island limiting left turns out of the site at the Rte. 28 driveway. It appears that MassDOT rejected the island and instead requested that access be controlled with pavement markings and signage. The access was constructed in compliance with MassDOT's request.

Staff Comments

- **ADA Access:** Based on the floor plan submitted, it appears that the primary entrance to the dental office would be from a dedicated external entrance, as opposed to the shared common area. The Board may wish to ask the applicant to address this decision, given the primary entrance to the office is not ADA accessible.
- **Definition and Division of Space:** Title V and local Board of Health requirements limit the wastewater discharge on this property to 350 gallons/day, based on the size of the lot and the GP Overlay District designation. The Health Division calculates flows based on the square footage of office space, number of kitchen facilities and, for the dentist's office, the number of dental exam chairs. Storage space is not counted in the flow calculations.

Staff encourages the Board to have the applicant define the square footage of the basement storage space, and, should the Board so choose, condition the permit to require that the square footage be used only for storage, and not for any office use.

The property owner is seeking approval from DEP to allow for a reduced flow calculation, given the small size of the office and water-saving measures being implemented. The Applicant is researching water use at similar facilities and DEP has yet to issue a determination.

Suggested 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. In Appeal No. 2013-039, Dr. Marcus Swann has requested to modify Special Permit 2007-070-A to allow a dentist office within an existing structure at 2957 Falmouth Road (Rte 28). The modification is requested pursuant to MGL Chapter 40A §14.
2. The request would amend Condition No. 3 of the Special Permit to modify the nonconforming office uses allowed within the existing 6,240 sq.ft office building.
3. No changes are proposed to the exterior of the building, parking lot, or site.
4. 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.

Suggested Conditions

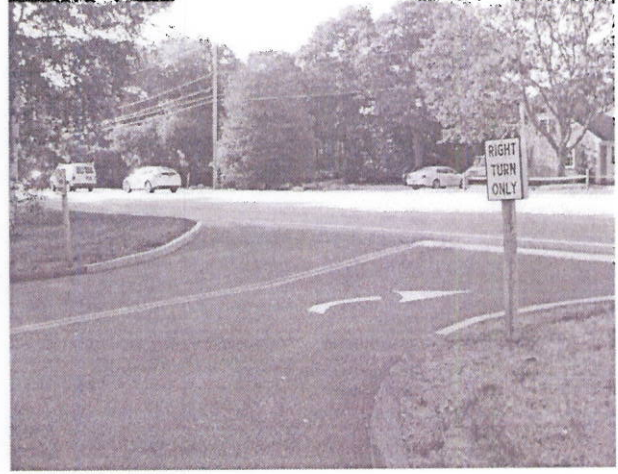
Should the Board find to grant the special permit, it may wish to consider the following conditions:

1. Special Permit No. 2013-039 is granted to Dr. Marcus Swann to allow one of the four office suites within the existing building at 2957 Falmouth Road, Marstons Mills to be used as a dental office.
2. Condition No. 3 of Special Permit No. 2007-070A shall be modified to read:

Use of the property shall be as previously permitted for a maximum of 4 professional office suites. That use shall not include professional medical or dental offices defined as those practitioners that have an associate or graduate degree from an accredited medical or dental school, except those expressly permitted by Special Permit No. 2013-039. Professional office use, however, may include psychology and chiropractic professionals.
3. The dental office shall be limited to one of the four tenant spaces and shall not exceed a total of 1,500 square feet, including basement storage space. Basement storage space (____sq.ft) shall not be converted to office space.
4. The number of dental examination chairs in the office shall be limited to two.
5. This permit shall not be transferable to any other medical use.
6. All other conditions of Special Permit No. 2007-070-A shall remain in full force and effect.
7. The use and property shall be in compliance with local Board of Health and Title V regulations.
8. This decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division for this special permit to be in effect. The rights authorized by this special permit must be exercised within two years, unless extended by the Board.

CC: Applicant c/o Attorney John Kenney

Attachments: Application w/ attached letter of standing, proposed floor plan, topographic site plan, approved Rte. 28 access plan, building elevation, and building floor plan
Special Permit No. 2007-070-A
Aerial Photo



TOWN OF BARNSTABLE

2013 JUN 21 AM 11:25

RECEIVED



21 JUN 20 11:01

**Town of Barnstable
Zoning Board of Appeals**

Petition for a Special Permit
* Modification of**

Date Received
Town Clerk's Office:

For office use only:

Appeal # 2013-039
Hearing Date 07-24-13
Days Extended
Decision Due 10-22-13

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 Name¹: Dr. Marcus Swann, Phone: 860-574-5818

Petitioner's Address: 30 Guildford Road, Centerville, MA 02632

Property Location: 2957 Falmouth Road, Marstons Mills, MA

Property Owner: Paul A. and Sheila K. Gargano, Phone: 508-778-8880

Address of Owner: 251 Green Dunes Drive, W. Hyannisport, MA

If applicant differs from owner, state nature of interest:²

Prospective Tenant - See Letter of Authorization Attached

Registry of Deeds/Land Court References: Deed Book 8821, Page 332 Plan 257/67

Assessor's Map/Parcel Number: 121-009 Zoning District: Resid.F/GPOD Overlay Dt.

Number of Years Owned: 20 Groundwater Overlay District: GP- Groundwater Protection

Special Permit Requested: MGL c.40A§ 14 - Modification of Special Permit No.

Cite Section & Title from the Zoning Ordinance 2007-070-A

Description of Activity/Reason for Request: Applicant seeks to modify Condition No. 3 in Special Permit No. 2007-070-A to allow one of the four professional office suites (Unit 1) to be used as a dental office. *Attach additional sheet if necessary*

Is the property subject to an existing Variance or Special PermitNo [] Yes [X] -

Permit # 2007-070-A
1984-92
1980-35

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.

Description of Construction Activity (if applicable): Interior renovations to Unit 1 to set up dentist office.

Attach additional sheet if necessary

Existing Level of Development of the Property - Number of Buildings: One (1)

Present Use(s): Office Building

Existing Gross Floor Area: 6,240 sq. ft. Proposed New Gross Floor Area: N/A sq. ft.

Site Plan Review Number: _____ Date Approved: 1984 (not required for Single or Two Family use)

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

Is this proposal subject to the jurisdiction of the Conservation Commission Yes ☐ 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 [x]

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

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

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

Signature: [Signature] Date: 6/21/13

Print Name John W. Kenney, Esq.

1550 Falmouth Road

Address: Suite 12 Phone: 508-771-9300

Centerville, MA 02632 Fax No.: 508-775-6029

e-mail Address: john@jwkesq.com

3 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.

Town of Barnstable

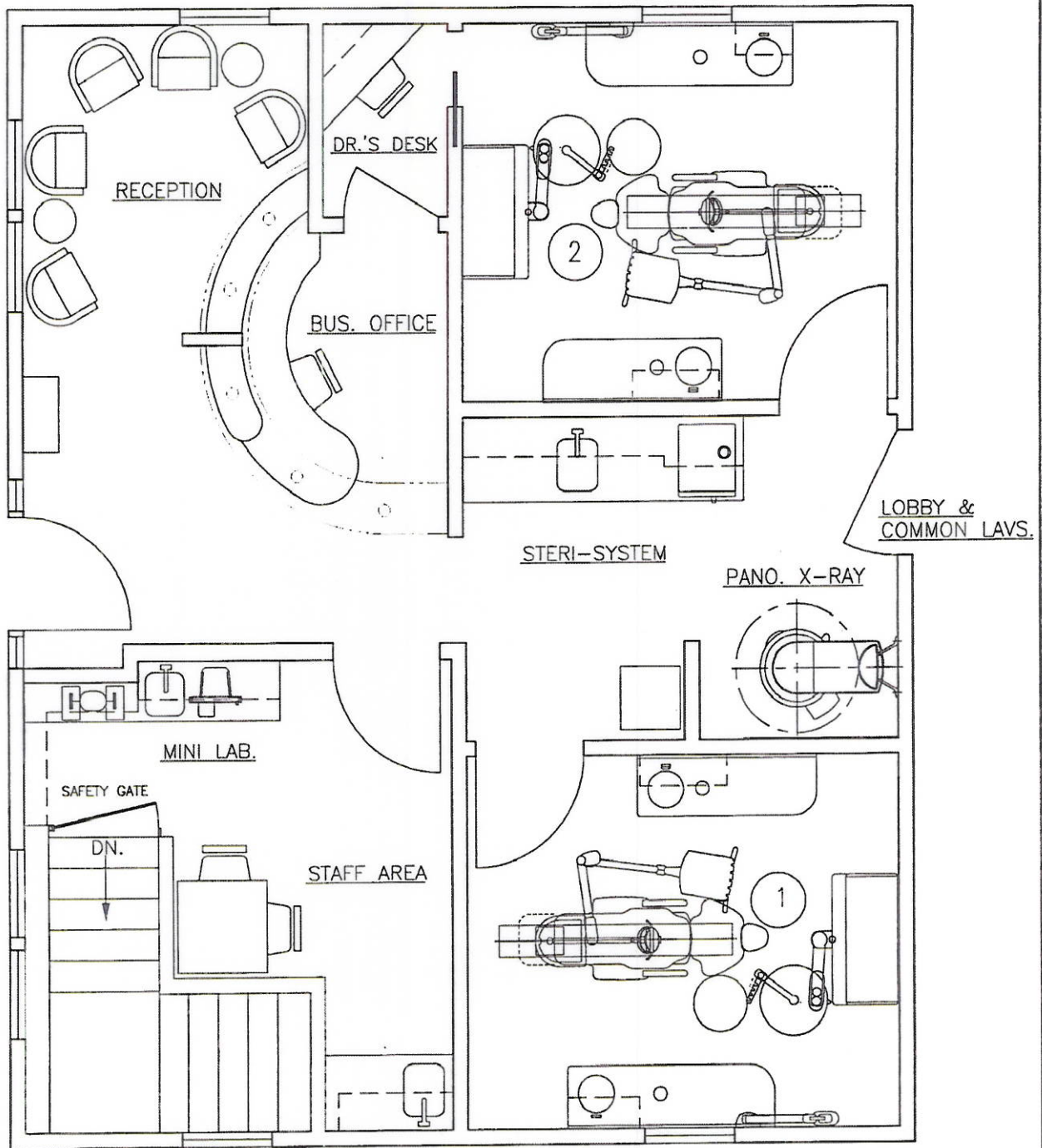
Zoning Board of Appeals

Please be advised that my wife, Sheila and I authorize Dr. Marcus Swann to appear before your board to request a Modification of Special Permit Number 2007-070-A to allow one of the office suites in our Building at 2957 Falmouth Road, Marstons Mills to be used as a dentists Office.

Respectfully Submitted


Paul A. Gargano


Sheila Gargano



1 PROPOSED FLOOR PLAN
SCALE 1/4"=1'-0"

PATTERSON
DENTAL




PATTERSON
DENTAL
BOSTON BRANCH
400 RESEARCH DRIVE
SUITE 110
WILMINGTON, MA 01897
(717) 261-9100
(800) 843-8355
www.pattersondental.com

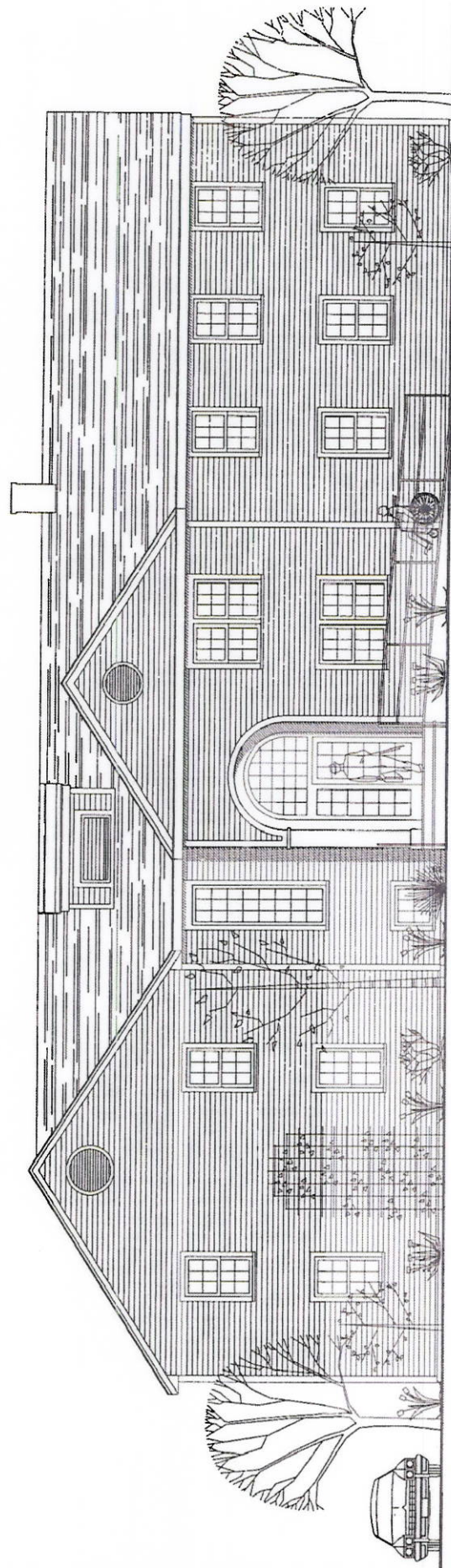
THESE ARE CONCEPTUAL LAYOUTS ONLY AND ARE NOT ARCHITECTURAL PLANS. THESE LAYOUTS ARE DRAWN TO AN ARCHITECTURAL SCALE, BUT THEY DO NOT INCLUDE ALL OF THE REQUIREMENTS THAT MAY BE NECESSARY, OR THAT AN ARCHITECT MIGHT PROVIDE YOU IN A COMPLETE SET OF ARCHITECTURAL PLANS. PATTERSON'S DENTAL MAY NOT BE SUBMITTED AS FINISHED ARCHITECTURAL DRAWINGS FOR THE PURPOSE OF OBTAINING A BUILDING PERMIT. IF YOU SHOULD CHOOSE TO USE PATTERSON'S LAYOUT IN THE DRAFTING OF YOUR CONCEPT, YOU SHOULD RETAIN A REGISTERED ARCHITECT TO CONVERT THE LAYOUT INTO PROPER AND COMPLETE ARCHITECTURAL PLANS. PATTERSON WILL WORK WITH THE ARCHITECT YOU SELECT TO DEVELOP COMPLETE ARCHITECTURAL PLANS.

THESE DRAWINGS AND SPECIFICATIONS ARE THE PROPERTY OF PATTERSON DENTAL SUPPLY, INC. AND ARE NOT TO BE LOANED TO A THIRD PARTY OR USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF PATTERSON DENTAL SUPPLY, INC. ANY USE OR REPRODUCTION OF THESE DRAWINGS AND SPECIFICATIONS WITHOUT THE WRITTEN PERMISSION OF PATTERSON DENTAL SUPPLY, INC. IS STRICTLY PROHIBITED. ALL WORKER RESPONSIBILITIES SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL CURRENT AMERICANS WITH DISABILITIES (AWD) REQUIREMENTS, HANDICAPS AND REPAIRS. THE CONTRACTOR SHALL COMPLY WITH ALL STATE, CITY AND LOCAL CODES PERTAINING TO THE CONSTRUCTION OF THIS PROJECT. THESE DRAWINGS FOR USE INDICATE. HANDICAP PREVENTIONS MUST BE INSTALLED.

AREA: 667 Sq. Ft.
Marcus T. Swann, DMD
2957 Route 28, Osherville, MA
DESIGNED BY: M. CHASE
DENT
DRAWING NUMBER:
EQUIPMENT SPECIALIST- PATTERSON DENTAL
SCALE- AS NOTED DATE: 5/16/2013

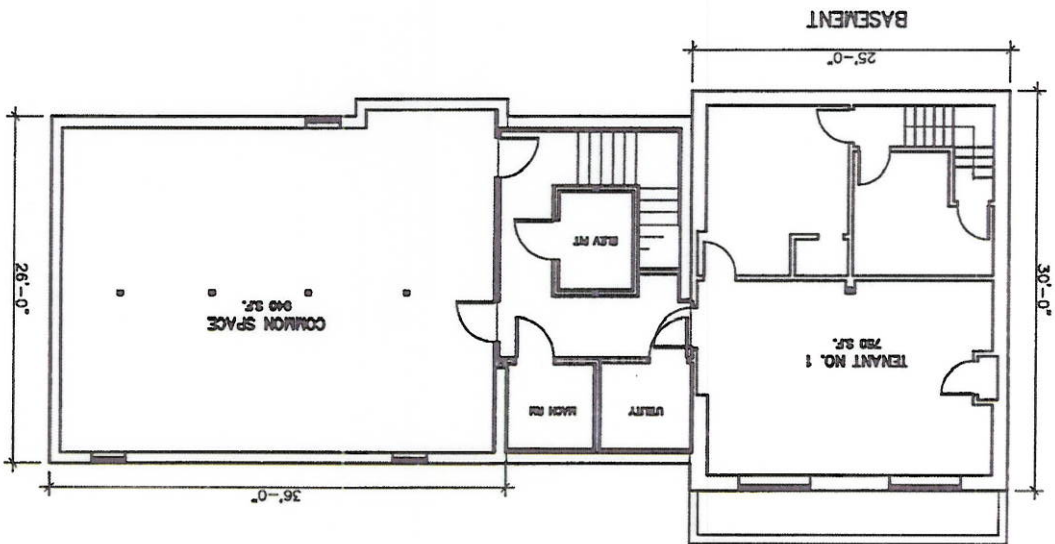
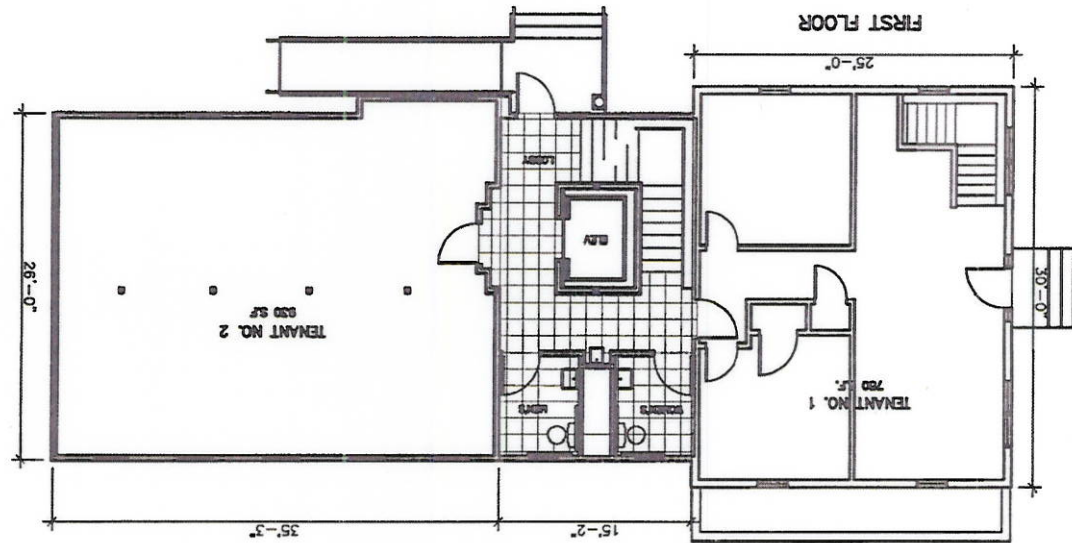
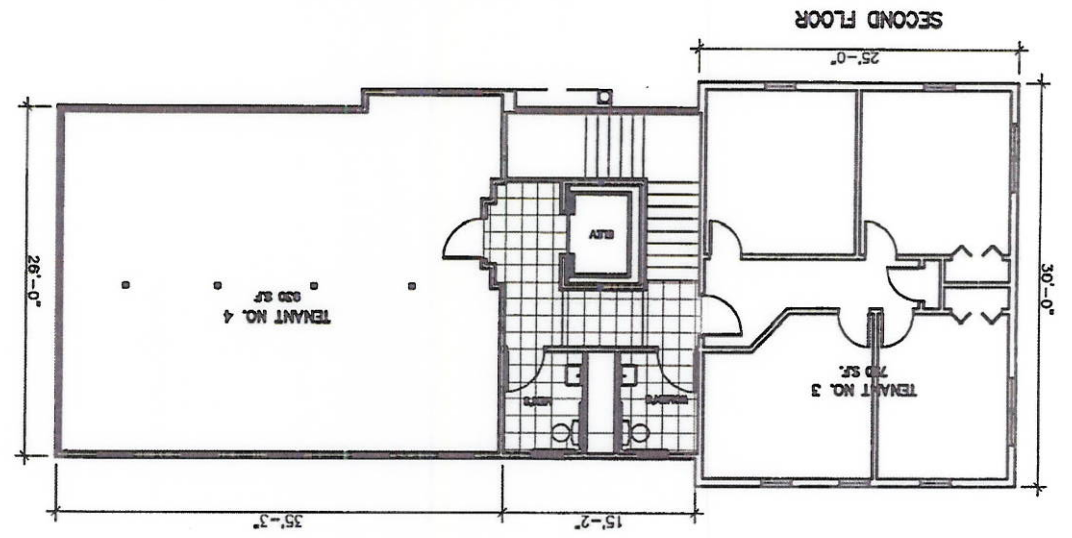
PROPOSED LAYOUT
SHEET 1 OF 1

| | | | | | | | | | | | |
|--|---|--|--|--|---|--|--|--|--|--|--|
|  | Designed by : _____ Drawn by : _____ Checked by : _____ Surveyed by : _____ Approved by : _____ | | SCALE SCALE 1" = 10'  | |  | DATE _____ | | | | | |
| | | | | | | NO. BY DATE REVISION | | | | | |
| | | | | | | 1 100-17-03 PER CLIENT 2 100-18-03 PER MR. DOMENICIS/ALANUS | | | | | |
| | | | | | | | | | | | |
| APPLICANTS: | | | | | | MASSACHUSETTS HIGHWAY DEPARTMENT CURB CUT PLAN | | | | | |
| PAUL A. AND SHEILA K. GARGANO P.O. BOX 444 WEST HYANNISPORT, MASSACHUSETTS 02672 | | | | | | 2957 FALMOUTH ROAD OSTERVILLE, MASSACHUSETTS 02665 JUNE 30, 2008 | | | | | |



PROPOSED ROUTE 28 ELEVATION

OFFICE BUILDING
2957 ROUTE 28
OSTERVILLE MA



BARNSTABLE
TOWN CLERK



'07 SEP -4 P2:21

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

**Special Permit 2007-070 A – Gargano
Modification of Special Permits 1980-35 and 1984-92**

To allow for the demolition of part of the existing nonconforming building and reconstruction of that part.

| | |
|-------------------------------|--|
| Summary: | Granted with Conditions |
| Petitioner: | Paul A. and Sheila K. Gargano |
| Property Address: | 2957 Falmouth Road (Route 28), Marstons Mills, MA |
| Assessor's Map/Parcel: | Map 121, parcel 009 |
| Zoning: | Residential F Zoning, Resource Protection and Groundwater Protection Overlay Districts |

Background & Review:

The locus is a 1.06 acre parcel developed with a 4,637 sq.ft. office building. The property is situated on the southwest corner of the intersection of Route 28 with Osterville/West Barnstable Road in Marstons Mills. The use of the property and development is nonconforming and subject to Special Permits 1980-35 and 1984-92 previously issued by the Zoning Board.

The petitioners are seeking to demolish part of that existing building and rebuild it within the existing footprint. As the existing structure was conditioned by the Board as the building to be situated on the site, the petitioners requested a modification of the earlier special permits to allow this redevelopment resulting in a new structure.

The property has been before the Board a number of times dating back to 1972, 1975, 1978, as well as 1980 and 1984. According to those files, the site is a former gas station that included a general store and a residence. That use predated zoning and was recognized in those past permits issued as a legal pre-existing nonconforming use and later as a legal pre-existing nonconforming building as the location of the structure does not conform to the current 100-foot front yard setback off Route 28.

According to architectural plans submitted the proposal is to demolish the older 1.5-story section of the structure and replace that portion with a full two-story addition. According to information submitted with those drawings, the layout retains 4 office suites. The overall gross area of the structure is expanded from 6,091 sq.ft. to 6,240 sq.ft. However, the lease area is reduced from 4,445 sq.ft. to 3,840 sq.ft.

Procedural & Hearing Summary:

This petition was filed at the Town Clerk's office and at the office of the Zoning Board of Appeals on June 1, 2007. A public hearing before the Zoning Board of Appeals was duly advertised and notice sent to all abutters in accordance with MGL Chapter 40A. The hearing was opened August 22, 2007,

Plan Book
Lots 1, 2 257/67
Deed 8821/332



at which time the Board found to grant the modification of the prior two special permits subject to additional conditions herein. Board members deciding this appeal were: Ron S. Jansson, Randolph Childs, James R. Hatfield, Sheila Geiler, and Chairman - Gail C. Nightingale.

Attorney Bruce P. Gilmore represented the petitioners. He cited that the use of the property and the extent of development allowed are governed by special permits issued. Those permits having been issued for a pre-existing legally created nonconforming use of the site, the original use being a former gas station. He noted that the prior permits, 1980-35 was issued to a Donald L. LeBlanc and 1984-92 was issued to Robert Byrne. Both permits were issued for office use and the 1984 permit authorized the building expansion which now exists on the property.

Attorney Gilmore presented the proposal indicating that the lower and older section of the existing building, the 1.5-story section, is to be demolished and replaced with a more appropriate structure that matches the remaining part of the building. At the same time, the entire structure would be upgraded to today's building and office requirements, including elevator service to all floors including the basement for handicapped accessibility. He cited that the layout plans would retain 4 office suites as permitted. The overall gross area of the structure is only slightly expanded from 6,091 gross sq.ft. to 6,240 gross sq.ft. That area being expanded on the second floor as the reconstructed section would be upon the existing footprint of the existing building. What was changing is the lease area. However, that would be reduced from 4,445 sq.ft. to 3,840 sq.ft. He noted that the common area did increase from 1,646 sq.ft. to 2,400 sq.ft. to provide area for the elevator, stairways and bathrooms.

The Board discussed the issue with Attorney Gilmore and it was noted that there would be no increase in wastewater flow and no increase in traffic as the lease area of the building will not increase. It was noted that the site conditions would be the same as that authorized by the Board in 1984. The Board did state that they would require the curb cut on Route 28 to be right-in and right-out only. The applicant agreed with that issue. The Board reviewed the 1984 site plan.

Public comment was requested and Andrew Laurinaitis of 375 Osterville/West Barnstable Road, direct abutter to the property, spoke in favor of granting the modification as it would be an improvement to the neighborhood. No-one spoke in opposition to the request.

Findings of Fact:

At the hearing of August 22, 2007, the Board unanimously made the following findings of fact:

1. In this appeal before the Board, Paul A. and Sheila K. Gargano are petitioning for a modification of Special Permits 1980-35 and 1984-92. The subject property is addressed as 2957 Falmouth Road (Route 28), Marstons Mills, MA and is shown on Assessor's Map 121 as parcel 009. It is in a Residence F Zoning District and in the Resource Protection Overlay Zoning District. The petitioners seek to demolish and rebuild part of the existing structure located on the property and alter the remaining section resulting in a more unified and updated office building.
2. The property has been before the Board a number of times dating back to 1972, 1975, 1978, as well as 1980 and 1984. The property was formerly a service station. What exists currently is the product of the 1980 and 1984 special permits. Special Permit 1980-35 was issued to a Donald L. LeBlanc converting the use to that of offices with 32 on-site parking spaces. A plan for the



remodeling of the building was submitted and the permit issued conditioned upon that architectural plan as well as maintaining access to the site from Osterville/West Barnstable Road. Special Permit 1984-92 was issued to Robert Byrne authorizing a 25 by 30 foot addition to the existing structure as well as construction of a two-car garage and 33 on-site parking spaces. That permit limited the office use to a maximum of 4 offices.

3. The petitioner is proposing to demolish the older 1.5-story section of the existing structure and replace that portion with a full two-story addition. The overall gross area of the structure is to expand some 200 sq.ft. from 6,091 sq.ft. to 6,240 sq.ft. The lease area of the structure is reduced from 4,445 sq.ft. to 3,840 sq.ft. The common area which consists of the building entrances, restrooms, and elevator (all in compliance with ADA) as well as the mechanical area is increased from 1,646 sq.ft. to 2,400 sq.ft.
4. As to a site plan, the prior 1984 site plan was submitted based upon the fact that nothing is going to be expanded that would trigger the need for a new site plan. Therefore, the existing special permits can be modified and no new special permit is required. There is no increase in parking needs, no traffic increase, and no added wastewater.

Decision:

Based on the findings of fact, a motion was duly made and seconded to grant a modification of special permits 1980-35 and 1984-92 subject to all of the following conditions:

1. Access from Route 28 will be right-in and right-out only. Plan for this alteration shall be submitted to the Board and to MassHighway and the improvements made prior to the issuance of any occupancy permit for the building. If an issue should develop with the plan not being acceptable to MassHighway, the applicant shall be required to revisit that issue at that time with the Board.
2. The applicant shall meet with the Centerville, Osterville, Marstons Mills Fire Department and Water Department and shall comply with any needed site improvements to assure sufficient water service, fire protection requirements, fire hydrant location and site access.
3. Use of the property shall be as previously permitted for a maximum of 4 professional office suites. That use shall not include professional medical or dental offices defined as those practitioners that have an associate or graduate of an accredited medical or dental school. Professional office use, however, may include psychology, and chiropractic professionals.
4. The structure shall be modified as per plans submitted to the Board entitled "Proposed Renovations for Gargano Office Building, 2957 Route 28, Osterville, MA" as drawn by ConServ and consisting of Sheets A6 & A7 dated 4-6-07, and Sheet 1 dated 04-24-07 showing floor layouts, building modifications and proposed building elevations.
5. The site improvements, including landscaping shall conform to the 1984 plan submitted and entitled "Additions and Alterations to Office Building for Bobby Byrnes Management Corp., 2956 Falmouth Road, Osterville, MA" Sheet A-2 as previously approved by the Board and noted on said plan. That plan showing a 25-foot wide green area on the southerly boundary of the property. That green area and the existing trees are to remain.



Town of Barnstable - Zoning Board of Appeals
Special Permit 2007-070 A - Decision and Notice - Gargano

The vote was as follows:

AYE: Ron S. Jansson, Randolph Childs, James R. Hatfield, Sheila Geiler, Gail C. Nightingale

NAY: None

Ordered:

Appeal 2007-070 A has modified Special Permit 1980-35 and 1984-92. This decision must be recorded at the Barnstable Registry of Deeds for it to be in effect and notice of that recording submitted to the Zoning Board of Appeals office. The relief authorized by this decision must be exercised within one year. Appeals of this decision, if any, shall be made pursuant to MGL Chapter 40A, Section 17, within twenty (20) days after the date of the filing of this decision. A copy of which must be filed in the office of the Barnstable Town Clerk.

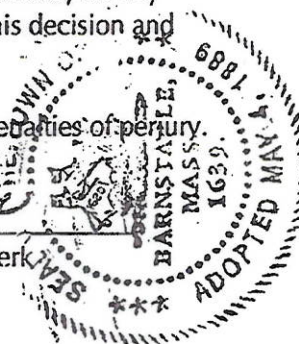
Gail C. Nightingale
Gail C. Nightingale - Chairman

9/4/07
Date Signed

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

Signed and sealed this 25th day of Sept. 2007 under the pains and penalties of perjury.

Linda Hutchenrider
Linda Hutchenrider - Town Clerk

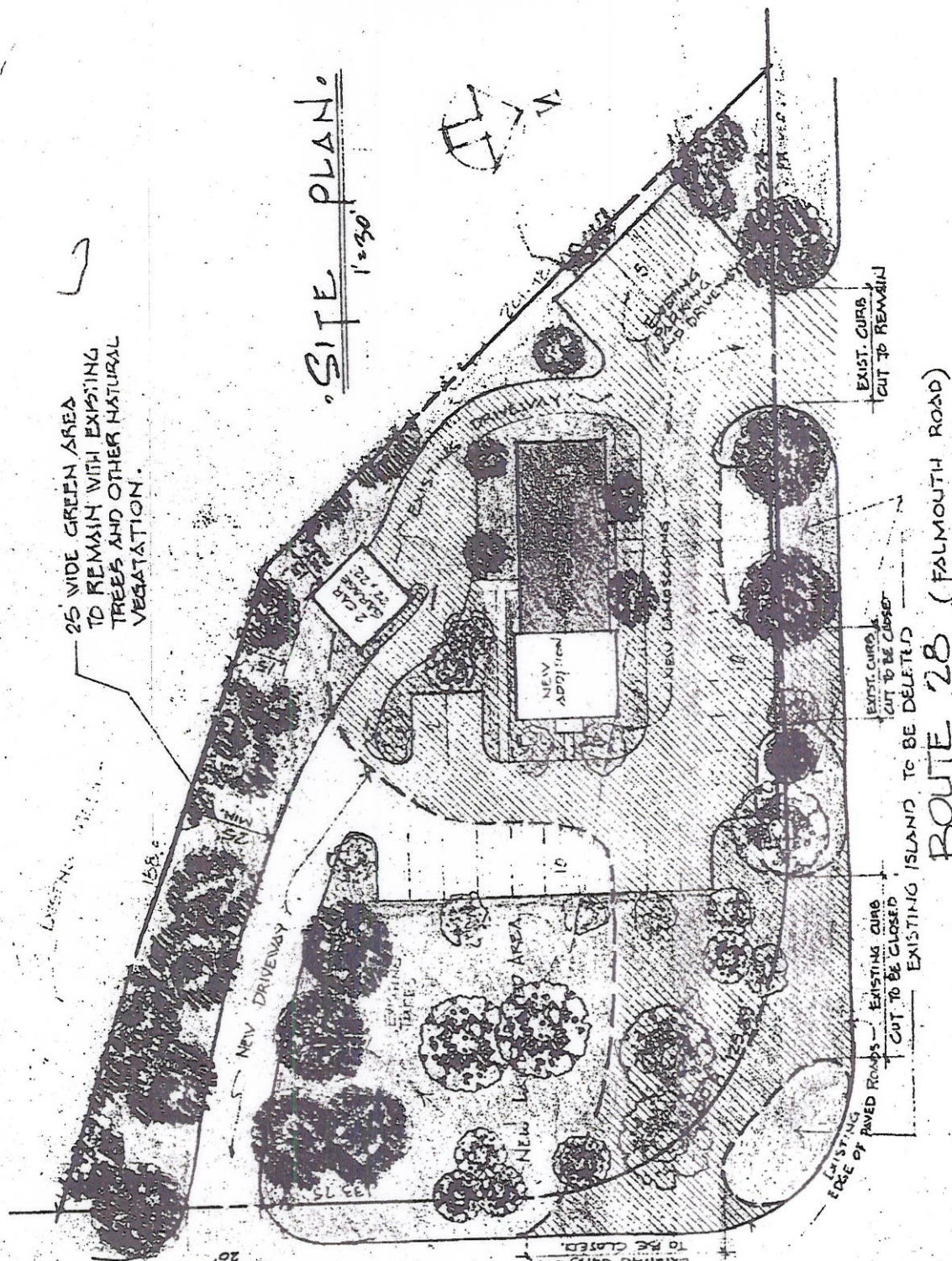


SITE PLAN

2BA-2007-070A

OSTERVILLE - WEST BARNSTABLE ROAD

SITE PLAN



DARKING: NOTE:

ADDITIONAL PARKING SPACES - 11

EXPLOSIVE WAREHOUSE #14

THE FARMING SPACE PROVIDED = 55

ROUTE 28 (FALMOUTH ROAD)



J. Lee Consulting, Inc.
753 Forest St. Suite 110
Marlborough, Ma 01752

Ms. Elizabeth Jenkins
Principal Planner
Town of Barnstable
200 Main Street
Barnstable, MA 02601

Dear Ms. Jenkins,

The client that I am representing, AT&T Mobility, has asked me to request a continuance in hearing 2013-002 from August 28th until September 11th, 2013.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gerard Squires", is written over a faint, larger signature that is partially obscured.

Gerard Squires