

#### **Town of Brewster**

#### Zoning Board of Appeals

2198 Main St., Brewster, MA 02631 brewplan@brewster-ma.gov (508) 896-3701

#### MEETING AGENDA April 11, 2023 at 7:00 PM

This meeting will be conducted in person at the time and location identified above. This means that at least a quorum of the members of the public body will attend the meeting in person and members of the public are welcome to attend in person as well. As a courtesy only, access to the meeting is also being provided via remote means in accordance with applicable law. Please note that while an option for remote attendance and/or participation is being provided as a courtesy to the public, the meeting/hearing will not be suspended or terminated if technological problems interrupt the virtual broadcast or affect remote attendance or participation, unless otherwise required by law. Members of the public with particular interest in any specific item on this agenda, which includes an applicant and its representatives, should make plans for in-person vs. virtual attendance accordingly.

Members of the public who wish to access the meetings may do so in the following manner:

- Phone: Call (929) 436-2866 or (301) 715-8592. Zoom Meeting ID: 880 7666 8068 and Passcode 047258
   To request to speak: Press \*9 and wait to be recognized.
- Zoom Webinar: <a href="https://us02web.zoom.us/j/88076668068?pwd=b3|XWnMwM2tybTk4Sz|KMk5vT3NTUT09">https://us02web.zoom.us/j/88076668068?pwd=b3|XWnMwM2tybTk4Sz|KMk5vT3NTUT09</a> enter Passcode 047258

To request to speak: Tap Zoom "Raise Hand" button, then wait to be recognized.

When required by law or allowed by the Chair, person wishing to provide public comment or otherwise participate in the meeting, may do so by accessing the meeting remotely, as noted above.

Additionally, the meeting will be broadcast live, in real time via *Live broadcast* (Brewster Government TV Channel 18), *Livestream* (livestream.brewster-ma.gov), or *Video recording* (tv.brewster-ma.gov).

- Department Assistant
- Ellen Murphy

**Zoning Board** 

Brian Harrison

Patricia Eggers

Bruce MacGregor

Chair

Jeff Carter Vice Chair

Trish Metz

- 1. Call to Order
- 2. Declaration of a Quorum
- 3. Meeting Participation Statement
- 4. Recording Statement
- 5. Approval of Meeting Minutes
- 6. Applications:

#### **Continued Applications:**

**ZBA** Case #22-14 Petitioner: Great Cape Co-op, Inc., 2624-2628 Main Street, Map 89, Lot 14. The petitioner appeals from a Cease-and-Desist order of the Building Commissioner dated September 9, 2022, pursuant to MGL Chapter 40A, Section 8 and 15.

**ZBA** Case #23-04 Applicants: Preservation of Affordable Housing, Inc./Housing Assistance Corporation, 0 Millstone Road, Map 98, Lot 12-0. The applicants seek a Comprehensive Permit to construct 45 affordable rental units on 16.6 acres, pursuant to MGL Chapter 40B, Section 20-23.

#### **New Applications:**

ZBA Case #23-07 Owner/Applicant: Stephen G and Catherine C McInnes, 6 Pilots Way, Map 15, Lot 83, in the RM zoning district. The applicants seek a variance pursuant to section 179-52 of the Brewster zoning bylaw to construct a shed to be located 2ft. from both the side and rear property line.

ZBA Case #23-08 Owner/Applicant: Ocean Edge Resort, LLC, 2907 Main Street, Map 90, Lot 160 in the RM zoning district. The applicant seeks a special permit pursuant to section 179-25B of the Brewster zoning bylaw to change, extend or alter the non-conforming use of the property to include outdoor dining.

ZBA Case #23-09 Owner/Applicant: Janice Marinello, 439 Paines Creek Road, Map 38 Lot 1 in the RM zoning district. The applicant seeks special permits pursuant to sections 179-25B & 179-42.2B of the Brewster zoning bylaw to raze and replace a detached non-conforming single-family residential structure for use as an accessory dwelling unit (ADU). The lot is approximately 23,943 sq.ft.

- 7. Matters Not Reasonable Anticipated by the Chair
- 8. Next Meeting: May 9, 2023
- 9. Adjournment

**Date Posted:** 3-16-2023

Date Revised: 3-28-2023

Received by Town Clerk:

23 MAR28 9:31#

# TOWN OF BREWSTER ZONING BOARD OF APPEALS MEETING MINUTES Town Hall Room B Tuesday, March 14, 2023, at 7 PM

Brian Harrison, Chairman, convened the Brewster Zoning Board of Appeals with members: Jeff Carter, Patricia Eggers, Bruce MacGregor and Trish Metz.

Also present: Attorney Andrew Singer (representing ZBA #22-15), Attorney Christopher Senie (representing ZBA# 22-14), David Schlesinger, Attorney Peter Freeman (representing ZBA#23-04), Judi Barrett, Vida Shklovsky, POAH, Dave Quinn, HAC, Paul Attemann, Union Studio, Joe Henderson and Brain Kuchar, Horsley Witten Group, Jefferey Dirk, Vanasse and Associates, Jon Idman (Town Planner), Davis Walters (Building Commissioner) and Ellen Murphy (Department Assistant)

The Chair read the Recording or Taping Notification: This meeting will be conducted in person at the time and location identified above. This means that at least a quorum of the members of the public body will attend the meeting in person and members of the public are welcome to attend in person as well. As a courtesy only, access to the meeting is also being provided via remote means in accordance with applicable law. Please note that while an option for remote attendance and/or participation is being provided as a courtesy to the public, the meeting/hearing will not be suspended or terminated if technological problems interrupt the virtual broadcast or affect remote attendance or participation, unless otherwise required by law. Members of the public with particular interest in any specific item on this agenda, which includes an applicant and its representatives, should make plans for in-person vs. virtual attendance accordingly.

To submit public comment or questions to the Zoning Board of Appeals, please email: <a href="mailto:zbameeting@brewster-ma.gov">zbameeting@brewster-ma.gov</a>.

#### Review and Approval of February 7<sup>th</sup> meeting minutes:

Brian asked the Board if there were any changes to the minutes. There being none, a motion was made by Pat to approve the February 7<sup>th</sup> meeting minutes, Trish seconded the motion, a vote was taken, and the minutes were unanimously approved, Bruce abstained due to absence at the February 7<sup>th</sup> meeting.

#### **Continued Applications:**

- ZBA Case #22-15 Owner/Applicant: Remington's Trust; Peter T. Lomenzo & Kerry Barton, Trustees, 61-63 A. P.
   Newcomb Road, Map 25, Lot 75, in the RM zoning district.
  - Members present and voting: Brian Harrison, Bruce MacGregor, Jeff Carter, Pat Eggers, and Trish Metz. Attorney Andrew Singer representing the applicants, informed the Board that Attorney Marian Rose from Law office of Singer and Singer LLC submitted a request for continuance until the May 9<sup>th</sup> ZBA hearing. The continuance will provide the opportunity to submit revised plans to the Board. Jeff Carter made a motion to grant the continuance for ZBA case #22-15 until the May 9<sup>th</sup> ZBA hearing, Pat Eggers seconded the motion a vote was taken, and the Board unanimously approved the continuance.
- ZBA case #22-14 Petitioner: Great Cape Co-Op, Inc., 2624-2628 Main Street, Map 89, Lot 14.

  Members present and voting: Brian Harrison, Bruce MacGregor, Jeff Carter, Pat Eggers and Trish Metz.

  Attorney Chris Senie and David Schlesinger addressed the Board. They requested a continuance until the April 11<sup>th</sup> ZBA hearing in order to provide the Board with a final order to address the Cease and Desist or of the Building Commissioner. Bruce MacGregor made a motion to grant a continuance for ZBA #22-14 until the April 11<sup>th</sup> ZBA hearing, Trish seconded the motion a vote was taken, and the Board unanimously approved the continuance.

The Chair informed the Board that he would be taking cases out of order and the Board will hear ZBA case #23-06 next.

ZBA case #23-04 Owner/Applicant: Preservation of Affordable Housing, Inc./Housing Assistance Corporation,
 0 Millstone Road, Map 98, Lot 12-0.

Members present and voting: Brian Harrison, Jeff Carter, Pat Eggers and Trish Metz.

Attorney Peter Freeman representing the applicant addressed the Board. He introduced the team: Joe Henderson, Horsely Witten Group and Dave Quinn from HAC, Vida Shklovksy, POAH and Paul Attemann, Union Studio.

Attorney Freeman informed the Board since the last meeting they revised the site plan based on parking and trash removal. He indicated that Dave Quinn reached out to some of the neighbors in response to their concerns. Attorney Freeman handed the meeting over to Joe Henderson who shared his screen with the Board displaying the updated site plan that outlined additional parking, road site distance and trash enclosures. Six additional parking spaces were added, trash and recycling areas are displayed in more detail on the updated site plan, also included were walkways and sidewalks on the plan.

Joe Henderson addressed the letter that was sent responding to the Town Department comments. He touched on a few major comments indicating the team is working closely with the Health Department and the Fire Department to address any concerns.

Attorney Freeman addressed Irene Szturo, an abutter's comments regarding endangered species. He indicated the site is not in a mapped priority habitat subject to state law and there will be supplemental plantings on the site to buffer light. Dave Quinn informed the Board he reached out to two of the neighbors with requests for additional fencing on the property line. After his discussions the team will take a look at additional plantings for the buffer where it makes sense to fill in any gaps.

Attorney Freeman suggested after discussion the hearing could be closed and a decision could be drafted. Bruce referenced the previous month's hearing regarding the cost of the project from Mr. Casey a concerned resident. He asked if a financial study was performed. Attorney Freeman stated the information from the resident was not accurate and when it was discussed at the last hearing it was addressed.

Bruce questioned the traffic study and asked why queuing on 6A and sunshine visibility was not considered. During high season queuing can be backed up to the Orleans line. Attorney Freeman suggested the traffic study indicates it is an existing condition and de minimis. Daniel La Civita, traffic engineer, addressed the summer traffic question and informed the Board it was 34% higher than the average month. Bruce clarified the queuing is on 6A not coming out of Millstone onto 6A. Daniel La Civita informed the Board based on the traffic analysis the impact of the project to the existing condition of the 6A queuing is 1 additional car. Bruce did not agree. Attorney Freeman tried to clarify it is an existing condition and not an impact to the Millstone project. The Board discussed parking including other development properties in Brewster and access to public transportation. Trish expressed concern that the project doesn't understand the location and the impact of the location. She asked about access to public transportation from the Millstone project. She highlighted the lack of parking issue, the impact on the people who will be living there and the surrounding residents. She also questioned if the Fire Department does not allow parking on the street, where are residents of the development going to park if they have more than one vehicle or guests. Attorney Freeman disagreed, indicating the parking is sufficient and the project is creating a desirable environment for the people who will be living there. Brian Harrison questioned parking for service people. It was suggested overflow parking be considered. Vita Shklovsky indicated that increasing the parking spaces has now made it a 1.8 ratio to each unit. She indicated that other POAH and HAC properties have a range of 1.5 and 2.0 ratio for each unit. Bruce asked what the policy is for boat trailers. Dave Quinn indicated that they are not allowed on the property. He also informed the Board that although there is no public transportation, HAC and POAH have a good relationship with Cape Cod Regional Transit Authority and will reach out to them. Attorney Freeman will look into the possibility of shadow parking. Brian asked if the questions that were sent to the consultant Judi Barrett had been addressed. Judi informed the Board she did not have the email that was sent handy but would answer any questions or concerns of the Board. Brian questioned the risk if the development project was not complete due to financial issues. Judi indicated it was not an issue for ZBA but for Town Counsel and the Select Board. Trish asked why the ratio of low-income housing and affordable housing changed and the number of bedrooms changed from the original proposal. Dave Quinn provided information on the process of designing the development according to the guidelines and requirements set forth in the proposal. Donna Kalinick, Assistant Town Manager addressed the affordability question in terms of the RFP. She indicated there is a range of affordability. The highly advantageous category all of the units at 80% of the Area Median Income (AMI) or below with affordability

ranging from 30% AMI to 80% AMI. It was not prescribed how many units were determined in each affordable category. She stated there is a whole financial structure that goes along with each of the categories of the AMI. Bruce asked if solar was included in the design. Donna stated the design is solar ready. Judi Barrett located the email sent regarding questions from the Board. She addressed the questions stating additional land development would be a decision of the Town since the Town owns the land. She suggested if the Board is concerned with parking the Town needs to change their zoning requirements. Jon Idman, Town Planner addressed the parking bylaw. He paraphrased the Brewster bylaw for parking saying the presumptive standards are the beginning of the negotiation for the Board to discuss parking appropriate to the project. The Planning Board is usually the Board addressing parking issues. He indicated it is not necessary for the Planning Board to change the Zoning bylaw for parking because the parking is inflexible. There is nothing in the bylaw that limits the ZBA from staying at 1.5 or 1.8 spaces. Brian Harrison stated that if that is the case asking for shadow parking should be agreeable. Jon Idman informed the Board that reserved parking is in the bylaw and is allowable. He also spoke about the land disposition agreement, and the parameters of the project. Expanding the footprint of the project to increase parking may be a breach of the agreement and would need additional approval from the Select Board. Jeff asked about the 10x20 size parking and if 9x18 is more standard. Jon informed the Board that the Planning Board supported the 9x18 size parking. Pat asked if a proposed location for shadow parking could be updated on the site plan. Attorney Freeman will provide updated plans displaying a shadow parking location at the next meeting. Bruce asked if some of the parking spaces could accommodate a pick up truck. They will be considered. Jon Idman highlighted the importance of maintaining the drive aisle lanes as proposed on the plan when considering additional parking. Donna will provide the land disposition

The Board opened to public input, Rick Gaffney, 598 Millstone Road expressed a concern regarding the 18ft buffer as opposed to a 25ft buffer. Joe Henderson addressed the question, informing the Board on the Millstone side there is a 25ft buffer, at the back there is a 49.8 ft buffer. Mr. Gaffney also requested a fence to deflect lights at night from turning cars into Millstone Road. Dave Quinn will meet with the design team and come back next month with an update. Glenn Casey joining remotely had technical difficulties and was not responding when called upon. Jillian Douglas addressing the Board expressed her support for the project. After several tries, Aileen, having her hand up, did not respond when called upon. There being no more public input, Pat made a motion to close to public input, Jeff seconded the motion a vote was taken and the Board unanimously voted to close to public input. Attorney Freeman suggested Judi Barrett, the consultant, provide a draft decision to review at the next hearing. Judi agreed to provde a draft decision for review at the next meeting.

Pat made a motion to continue ZBA case #23-04 until the next ZBA hearing on April 11th, Trish seconded the motion, a roll call vote was taken and unanimously approved.

#### **New Applications:**

ZBA Case #23-06 Applicant: Joshua Schiff, 3038 Main Street, Map 101, Lot 26, in the RM zoning district.

Members present and voting: Brian Harrison, Bruce MacGregor, Jeff Carter, Pat Eggers and Trish Metz.

Attorney Andrew Singer represented the applicant Joshua Schiff, farm manager at Chatham Bars Inn (CBI) Farm.

Attorney Singer introduced the applicant and Gary Thulander, general manager of Chatham Bars Inn. Attorney Singer informed the Board this is the 6<sup>th</sup> season for CBI Farms. He indicated there are absolutely no changes proposed from what has been requested and done in the past. He referred to the event dates, stating all necessary permits will be obtained and they will continue to work with all of the town departments as necessary. He expressed the importance financially to the Farm and the positive asset to the Community. The events are a mix of both private to CBI and open to the public. Brian Harrison asked if there have been any complaints in the past, Attorney Singer indicated there have been no complaints. Jeff Carter asked if a police detail has been used, Josh Schiff stated that they have attempted to request a police detail when necessary, often times the police are not available, but they are requested. He indicated CBI Farms hired a parking/valet service that was very successful. The Chair opened to public input. Abutter Fran Schofield from 161 Fox Meadow Drive expressed her support as long as the previous conditions remain. Terrance Walsh 157 Fox

Meadow Drive also expressed his support. There being no additional input the Board voted unanimously to close to public input. Pat Eggers made a motion to approve the special event permit for ZBA case# 23-06, Bruce MacGregor seconded the motion a vote was taken and the special event permit for ZBA case# 23-06 was unanimously approved.

#### Matters Not Reasonably Anticipated by the Chair:

none

Brian announced the ZBA is in need of members. Please reach out to the Select Board if you are interested.

The next meeting of the Brewster Zoning Board of Appeals is scheduled for April 11<sup>th</sup>, 2023. Pat made a motion to adjourn the meeting, Trish seconded the motion, the vote was taken, and the Board unanimously voted to adjourn. Vote: 5-0-0. Hearing adjourned at 9:00 pm.

# #22-14 Appeal

Petitioner:

Great Cape Co-op Inc.

2624-2628 Main Street

# #23-04 Applicants: Preservation of Affordable Housing, Inc. & Housing Assistance Corporation 0 Millstone Road



#### FREEMAN LAW GROUP LLC

Attorneys at Law

Peter L. Freeman

pfreeman@freemanlawgroup.com Tel. (508) 362-4700 Mobile (781) 854-2430 Nancy J. MacPhee Legal Assistant

nmacphee@freeemanlawgroup.com Tel. (508) 362-4700 ext. 3

Via email to Ellen Murphy at emurphy@brewster-ma.gov

April 4, 2023

Town of Brewster Zoning Board of Appeals 2198 Main Street Brewster, MA 02631

Re:

40B Application – 0 Millstone Road

Preservation of Affordable Housing, Inc., and Housing Assistance Corporation

0 Millstone Road, Brewster

Dear Board Members:

In connection with the above-referenced Application, please find enclosed the following for filing:

- 1. Revised overall site plan dated March 28, 2023 (a summary of the revisions is being transmitted to you separately by Horsley Witten Group);
- 2. Landscape Plan dated 04-03-23;
- 3. Vanasse & Associates, Inc. traffic response letter dated March 31, 2023;
- 4. Cape Cod Regional Transit Authority letter dated March 24, 2023; and
- 5. Waiver List revised 04-04-24 (revisions as to building height).

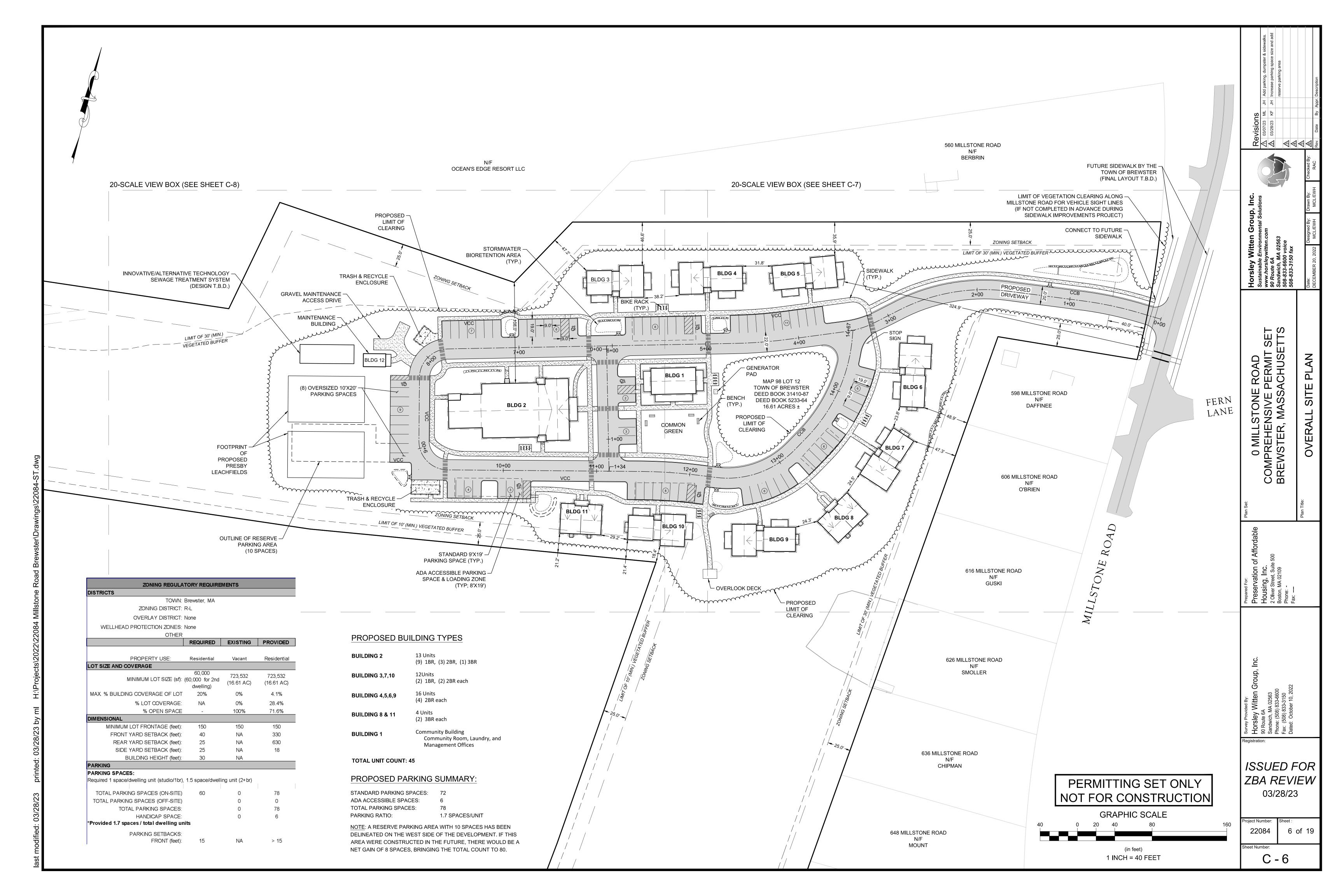
We look forward to meeting with you on April 11, 2023. Thank you.

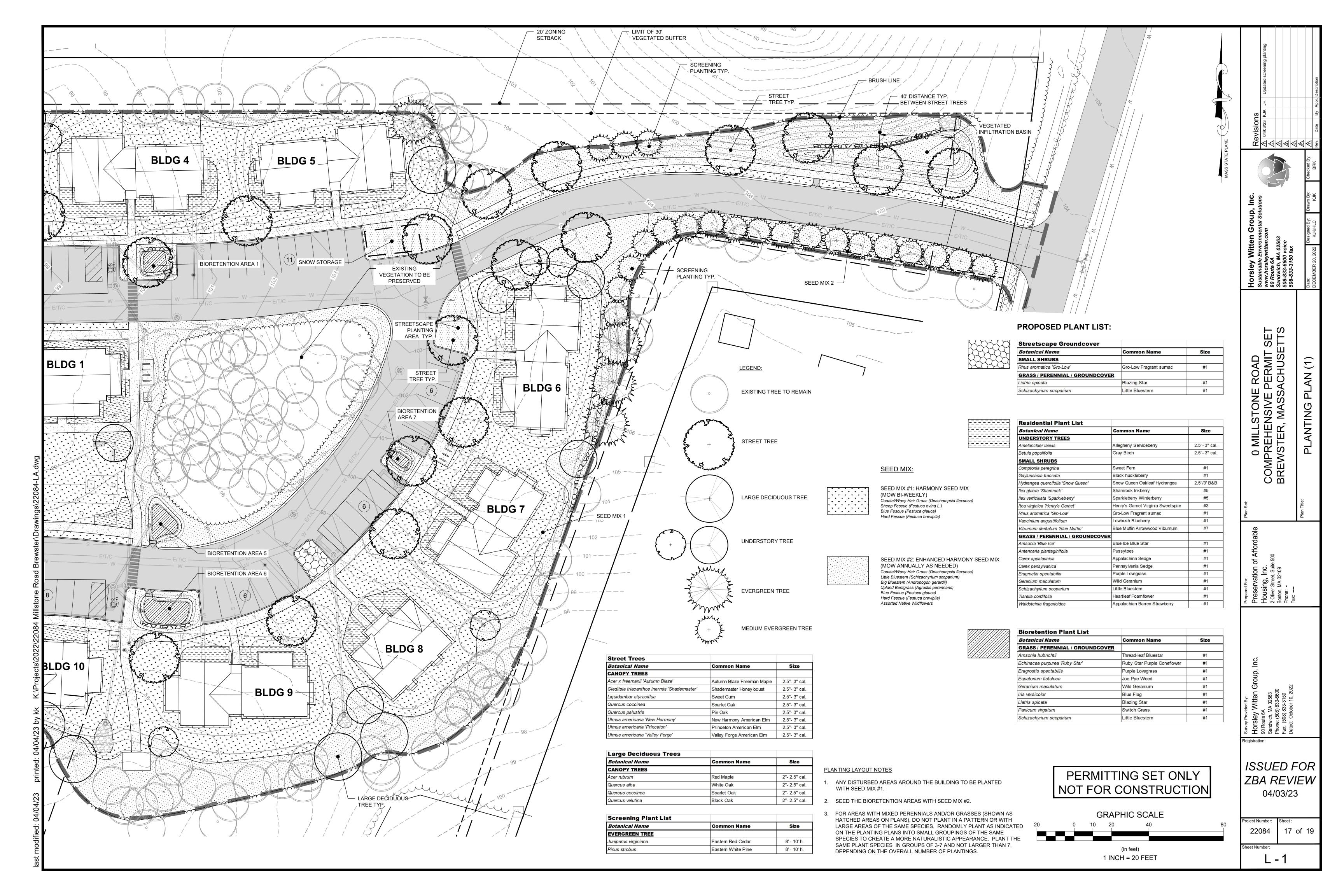
Very truly yours,

Peter L. Freeman

PLF: njm Enclosures

cc: Vitalia Shklovsky David Quinn







Ref: 9564

March 31, 2023

Mr. Brian Harrison, Chair Zoning Board of Appeals Town of Brewster 2198 Main Street Brewster, MA 02631

Re: Response to Zoning Board of Appeals Comments

Proposed Multifamily Residential Development – Millstone Road

Brewster, Massachusetts

Dear Chair Harrison and Members of the Zoning Board of Appeals:

Vanasse & Associates, Inc. (VAI) is providing responses to the questions that were posed by the Zoning Board of Appeals (ZBA) at the March 14, 2023 public hearing for the proposed construction of a multifamily residential development to be located off Millstone Road in Brewster, Massachusetts (hereafter referred to as the "Project"). Specifically, we are responding to comments that were raised by the ZBA concerning: i) the drive aisle width that was recommended in the January 2023 Transportation Impact Assessment prepared by VAI in support of the Project (the "January 2023 TIA"); ii) the impact of the Project under peak summer month conditions; and iii) the parking ratio that will be provided. The following summarizes our responses to these comments.

#### **DRIVE AISLE WIDTH**

In the Recommendations section of the January 2023 TIA, VAI recommended the following under "Site Access":

Where perpendicular parking is proposed, the drive aisle behind the parking should be a minimum of 23 feet in width in order to facilitate parking maneuvers.

The drive aisle within the Project site is proposed to be 22-feet wide in an effort to reduce the amount of impervious area and land disturbance. The 22 foot dimension is acceptable to accommodate parking maneuvers, particularly in a residential development where there the turn-over of parking spaces is limited and the users are familiar with the parking layout. The 23 foot wide drive aisle is a recommended dimension for all parking facilities and allows for larger vehicles to accomplish parking maneuvers in one movement. The 22-foot dimension will allow most vehicles to complete parking maneuver in one movement; larger vehicles (vehicles 19-feet in length, such as a large pick-up truck or similar) may need to make an additional backing maneuver to enter or exit a parking space when a vehicle is parked on either side.

Mr. Brian Harrison, Chair Zoning Board of Appeals Town of Brewster March 31, 2023 Page 2 of 3

#### PEAK SUMMER MONTH IMPACTS

The January 2023 TIA includes an assessment of traffic volumes and operating conditions on the roadways serving the Project site under both average and peak summer month conditions. As defined in the January 2023 TIA, the Project is expected to generate between 37 and 40 vehicle trips during the weekday peak commuter hours. Approximately 35 percent of these trips are expected to be oriented to/from Route 6A and the remaining 65 percent are expected to be oriented to/from Route 132. The incremental increase in traffic to these roadways is less than 30 vehicle during the weekday peak hours, or fewer than one additional vehicle every 2-minutes. While it is acknowledged that traffic volumes, delays and vehicle queuing are pronounced during the peak summer months, during this 2 to 3 month period, the Project's impacts were minor and characterized as a potential increase in vehicle queuing of up to two (2) additional vehicles, which is not considered significant. During the majority of the year, the impact of the Project will not be readily apparent.

#### **PARKING RATIO**

Table 1 summarizes the ITE peak parking demand data that is derived from parking demand observations performed at conventional multifamily residential communities situated in a general urban/suburban setting. The ITE data was obtained for a mid-rise residential community as the available data set for a low-rise residential community is limited.

Table 1
ITE PEAK PARKING DEMAND DATA

	Peak Parking Demand per Dwelling Unit		
Land Use Code/Time Period	Average Rate	85th Percentile	
Multifamily Housing (Low-Rise) <sup>a</sup>			
Weekday	1.31	1.47	
Saturday	1.22	1.33	

<sup>&</sup>lt;sup>a</sup>ITE Land Use Code 221, Multifamily Housing (Mid-Rise).

As can be seen in Table 1, the ITE parking demand data for a multifamily residential community indicates that the average peak parking demand on a weekday is 1.31 parking spaces per unit, with an observed 85<sup>th</sup> percentile peak parking demand of 1.47 parking spaces per unit. On a Saturday, the average observed peak parking demand was observed to be 1.22 parking spaces per unit, with the observed 85<sup>th</sup> percentile peak parking demand found to be 1.33 parking spaces per unit. Given that the weekday peak parking demands are higher than those on a Saturday, the weekday data is used for design purposes.

<sup>&</sup>lt;sup>1</sup>The 85<sup>th</sup> percentile peak parking demand is defined as the parking demand at which 85 percent of the observed peak parking demands fall below and 15 percent are above.

Mr. Brian Harrison, Chair Zoning Board of Appeals Town of Brewster March 31, 2023 Page 3 of 3

Given that the Project will provide a parking ratio of 1.7 parking spaces per unit, the proposed parking supply is sufficient to accommodate the parking demands of the Project and exceeds peak parking demand ratios for a multifamily residential community as documented by the ITE.

We trust that this information is responsive to the questions that were raised at the March 14, 2023 ZBA hearing. If you should have any questions or would like to discuss our responses in more detail, please feel free to contact me.

Sincerely,

VANASSE & ASSOCIATES, INC.

Seffrey S. Dirk, P.E., PTOE, FITE

Managing partner

Professional Engineer in CT, MA, ME, NH, RI and VA

Grey S. Dirk

JSD/jsd





#### CAPE COD REGIONAL TRANSIT AUTHORITY

BARNSTABLE BOURNE BREWSTER CHATHAM DENNIS EASTHAM FALMOUTH HARWICH MASHPEE ORLEANS PROVINCETOWN SANDWICH TRURO WELLFLEET YARMOUTH

#### Dear Mr. Quinn:

Please consider this letter as the Cape Cod Regional Transit Authority's (CCRTA) commitment to provide a future deviation bus stop in support of the proposed 45-unit affordable housing project in Brewster on Millstone Road. The CCRTA is pleased to provide transportation in support of this outstanding project that addresses the severe housing shortage on the Cape through the provision of these affordable housing units. Please do not hesitate to contact me if you have any further questions regarding this commitment letter and looking forward to providing CCRTA public transportation in support of your project.

Sincerely,

Thomas S. Cahir

Administrator

Box 1988

Hyannis, MA 02601

508.775.8504











#### **REQUESTED WAIVERS -REVISED 04-04-23**

APPLICANT: Preservation of Affordable Housing, Inc. (POAH) & Housing Assistance

**Corporation (HAC)** 

SUBJECT PROPERTY: 0 Millstone Road, Brewster, MA

PROJECT NAME: To be determined

PROJECT: 45 Rental Units on 16.6 Acres

The Applicant seeks waivers from the Brewster local Bylaws, rules and regulations, as shown below.

The Applicant also requests that waivers be granted from any requirements to apply to the Town or other municipal Boards or departments, including but not limited to the, Board of Health, Board of Selectmen, Department of Public Works, Planning Board, and Water Department, if normally required; and the Applicant requests that the Comprehensive Permit be issued in lieu of all of the aforementioned permits, inclusively, including but not limited to the permits and approvals to connect to the municipal water system (please note that the Applicant will comply with all technical requirements related to the municipal water system).

If in the course of the hearings it is determined that there are other local by-laws, rules and regulations that would otherwise be applicable to this development that have not been requested in this application, the Applicant reserves the right to so amend the Requested Waivers.

The Applicant also requests waivers from otherwise applicable building permit and water department fees, as to the affordable units.

<sup>1</sup> Pursuant to 760 CMR 56.05(7), waivers are not needed from Special Permit provisions of a zoning bylaw, but only from the requirements of the underlying as of right zoning provisions.

#### Comprehensive Permit Rules of the Zoning Board of Appeals

**Section 3.01 (h).** Applicant will submit a list of requested exemptions or exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations as required by this section and the Comprehensive Permit regulations (760 CMR 56.05(2)(h). However, the requirement of a 'written explanation of why, but for the failure to grant the requested waiver, the proposed project would be uneconomic' should be determine in the aggregate during the scope of the local hearing process and be based on consistency with local need (760 CMR 56.05(4).

Thus, to the extent necessary, applicant requests a waiver from this requirement of a written explanation to the requested exemptions of rendering the project uneconomic.

**Section 3.01 (k).** Applicant requests waiver from the submission of proof of filing of a Project Notification Form ("PNF") with the Massachusetts Historical Commission ("MHC). Applicant will prepare and file a PNF with MHC at such time as a final project is approved.

**Section 3.01 (I).** Applicant requests waiver from the submission of proof of filing of a Rare Species Information Form with the Massachusetts Natural Heritage and Endangered Species Program ("NHESP"). The project is not located within an Estimated Habitat of Rare Wildlife or Priority Habitat as indicated in the Massachusetts Natural Heritage Atlas (14<sup>th</sup> Edition). This has been confirmed by the Massachusetts Division of Fisheries & Wildlife.

**Section 3.01 (m).** Financial information such as a pro forma is not applicable as it is in conflict with 760 CMR 56.05(6). To the extent necessary, Applicant requests waiver from the submission of project pro forma.

**Section 3.01 (o)**. Applicant requests a waiver from submission of appropriate attention to impact on town services, including fire, police, and schools. All local boards and departments will have the opportunity to provide comments relating to any impact on town services to the Zoning Board of Appeals and those comments can be addressed during the scope of the hearing process. Additionally, applicant along with development team members attended an informal town staff meeting in April 2017 to review these matters and took the comments presented into account.

**Section 3.01 (q)**. Application request a waiver from the submission of project impacts to the extent necessary. As stated above under Section 3.01 (o), all local boards and departments will have the opportunity to provide comments relating to any impact on town services to the Zoning Board of Appeals and those comments can be addressed during the scope of the hearing process. Notwithstanding this request, the applicant will be submitting a Traffic Impact Assessment and a Stormwater Management Report. Additionally, applicant along with development team members attended an informal town staff meeting in April 2017 to review these matters and took the comments presented into account.

# ZONING - CHAPTER 179 OF THE CODE OF THE TOWN OF BREWSTER

(in effect October 2017)

#### **Article IV. Use Regulations**

#### Section 179-10. Applicability of use regulations.

Applicant requests a waiver from the requirement that no building, structure or land shall be used except for the purposes permitted in the district as described in the Use Regulation section.

#### Section 179-11. Table of Use regulations.

Applicant requests a waiver from the requirement of conformance to the Table of Use Regulations (Table 1) as follows:

Residential 8. Multifamily dwelling units are not permitted in the R-L district.

The proposed affordable housing project consists of (45) multi-family dwelling units to be permitted under a Comprehensive Permit.

#### **Article IV. Use Regulations**

#### Section 179-16. Tables of regulations.

#### Table 2 Area Regulations Minimum Required Lots:

Applicant requests a waiver from Table 2 Area Regulations Minimum Required Lots within the R-M zoning district, including minimum lot frontage and minimum side yard setback:

	Required	Proposed
Side Yard Setback	25 feet	17 feet

Applicant requests a waiver from Table 2 Area Regulations Minimum Required Lots footnote 1 from the requirement that generally, only one principal structure shall be permitted on one lot. The proposed project will consist of 10 residential buildings and a one community building to be permitted under a Comprehensive Permit.

#### Table 3 Height and Bulk Regulations

Applicant seeks a waiver from Table 3 Height and Bulk Regulations within the R-M zoning district from the Maximum Permitted Height of thirty (30) feet to a maximum height of up to thirty-six (36) feet. See Chart of building height calculations attached hereto.

#### Article VII. Off-Street Parking and Loading

#### Section 179-23. Parking and loading lot standards.

Applicant requests a waiver  $\S179-23(A)(4)$  from the requirement that all parking spaces be  $10 \times 20$  feet in dimension. The parking spaces as shown on the project plans are  $9 \times 18$  feet in dimension.

#### **Article IX. Special Regulations**

#### Section 179-34. Multifamily dwellings.

Applicant requests a waiver from this section of the zoning bylaw as applicable to permit the construction of multifamily dwellings on the site in the R-L zoning district as shown on the submitted Site Plans. The proposed project will be permitted under a Comprehensive Permit.

#### Article XI. Water Quality Protection District

#### Section 179-61. Water quality review.

Applicant requests a waiver from the requirement of obtaining a certificate of water quality compliance from the Water Quality Review Committee.

#### Article XII. Site Plan Review

#### Section 179-64. Applicability.

Applicant requests a waiver from the applicability of Site Plan Review. Under Chapter 40B, the Zoning Board of Appeals sits in lieu of all other local boards and departments, and all such boards and departments in any event have the opportunity to provide comments and suggestions to the Zoning Board of Appeals.

#### **TOWN OF BREWSTER BOARD OF HEALTH REGULATIONS**

#### Water Quality Report Regulation (Effective January 15, 1988)

Applicant requests a waiver from the applicability of this Water Quality Report Regulation. The proposed wastewater system is designed and sited to comply with Title V requirements and Board of Health requirements. The Project Site is not in a well recharge area, not upgradient of a nitrogen sensitive tidal embayment, and not upgradient of any freshwater ponds.

### Design, Operation, and Maintenance of Small Wastewater Treatment Facilities (Effective March 15, 2007)

Applicant requests a waiver from the applicability of this regulation pertaining to the Design, Operation, and Maintenance of Small Wastewater Treatment Facilities. The proposed wastewater system design flow is less than 10,000 gpd and is not regulated under MassDEP groundwater discharge permit regulations. The proposed wastewater system is designed and sited to comply with Title V requirements and Board of Health requirements. The Project Site is not in a well recharge area, not upgradient of a nitrogen sensitive tidal embayment, and not upgradient of any freshwater ponds.

#### **TOWN OF BREWSTER GENERAL BYLAWS**

(in effect October 2017)

#### **Chapter 83. Staff Review**

Applicant requests a waiver from the applicability of Staff Review. Under Chapter 40B, the Zoning Board of Appeals sits in lieu of all other local boards and departments, and all such boards and departments in any event have the opportunity to provide comments and suggestions to the Zoning Board of Appeals.

#### SCENIC ROAD ACT AND PUBLIC SHADE TREE ACT

Applicant requests a waiver from obtaining approval from the Planning Board of any tree cutting within the Millstone Road public right of way, and asks that the Zoning Board of Appeals grant such approval.

0 MILLSTONE ROAD							
BUILDING NUMBER	AVG EXIST GRADE	FFE PER CIVIL	BUILDING HEIGHT (FROM FFE TO TOP OF RIDGE)	BUILDING HEIGHT (FROM AVERAGE EXISTING GRADE TO TOP OF RIDGE)	BUILDING HEIGHT (FROM AVERAGE EXISTING GRADE TO TOP OF RIDGE IN FEET & INCHES)	ALLOWABLE BUILDING HEIGHT (BREWSTER ZONING ORDINANCE)	HEIGHT BEYOND ZONING ORDINANCI (FEET AND INCHES)
1	95.70	99.7	21.25	25.25	25'-3"	30'-0"	0'-0"
2	99.37	100.8	33.166	34.596	34'-8"	30'-0"	4'-8"
3	96.86	99.7	31.166	34.006	34'-1"	30'-0"	4'-1"
4	98.69	101.0	31.166	33.476	33'-6"	30'-0"	3'-6"
5	103.60	104.5	31.166	32.066	32'-1"	30'-0"	2'-1"
6	104.75	104.5	31.166	30.916	30'-11"	30'-0"	0'-11"
7	102.10	103.0	31.166	32.066	32'-1"	30'-0"	2'-1"
8	97.25	100.5	29	32.25	32'-3"	30'-0"	2'-3"
9	94.30	98.3	31.166	35.166	35'-2"	30'-0"	5'-2"
10	94.35	97.8	31.166	34.616	34'-8"	30'-0"	4'-8"
11	95.10	98.2	29	32.1	32'-2"	30'-0"	2'-2"

Archived: Wednesday, March 29, 2023 8:30:30 AM

From: Jarrod West

**Sent:** Tue, 28 Mar 2023 20:44:46

To: brewplan

Subject: Millstone affordable housing permit

Sensitivity: Normal

My wife, my son and myself are totally against this whole project! It's a terrible location for it! To clear the 16 acres of woodland just is not right! Will add to much traffic to that road! I wish we could be there to vote against it but we will be in VA that week. Is there any absentee voting for this?

Thanks
Jarrod West
Kimberly West
Jason West
44 Cummings rd
Brewster

# #23-07 Owner/Applicant: Stephen G and Catherine C McInnes

6 Pilots Way



#### Brewster Zoning Board of Appeals

2198 Main Street
Brewster, Massachusetts 02631-1898
(508) 896-3701 x 1168
FAX (508) 896-8089
www.brewster-ma.gov

Date + Time Stamped By Town Clerk

123 FES2 311 3m

#### 

NAME OF APPLICANT Stephen G. and Catherine C MacInnes				
REPRESENTATIVEPHONE NUMBER 508-596-161				
MAILING ADDRESS 78 Island Rd. Millis MA 02054 E-MAIL ADDRESS cathy 02054@ gmail.com				
PROPERTYADDRESS 6 PILOTS Way				
CURRENT PROPERTY OWNER(S) Stephen G + Catherine C Macthnes				
REGISTRY OF DEEDS TITLE REFERENCE BOOK PAGE OR				
CERT. OF TITLE # 157022 LAND COURT #				
PLAN # 12014B Sheet 2				
MAP#15LOT#				
ZONING DISTRICT RM YEAR BUILT 2002 FLOOD PLAIN AE VE				
Place an 8'x10' shed to be located				
two (2') feet from left side lot line				
and two(2') feet from rear let line. See attached				
Catherine Mac Signature of owner or agent for owner DATE  2-27-2023  DATE				
<b>NOTE:</b> This petition is NOT COMPLETE until all information is provided. Accuracy of this information is the responsibility of the petitioner.(Initial)				

N:\Planning\ZONING BOARD of APPEALS\FORMS AND APPLICATIONS\Special Permit ZA Appeal and Variance APPLICATION UPDATED 07.18.18.doc Page 1 7/19/2018 12:02 PM

#### MGL 40A, Section 6B, Brewster Zoning Bylaw 179-27, Article 8

#### **DATA SHEET**

Complete this form for <u>every structure</u> on the site that is in some way <u>nonconforming</u> .					
Identify structure: primary house, garage, tool shed, other Primary House					
STREET ADDRESS 6 Pilots Way YEAR BUILT 2002					
MAP # 79 LOT # 104					
ZONING DISTRICT RM					
<u>List only the nonconformities below:</u> Identify all nonconforming setbacks.					
LOCATION EXISTING REQUIRED PROPOSED					
Front -W 75.23' 150'					
Side - Fight S 28.6', 25'					
area 19" 60,000 st					
FRONTAGE EXISTING 75.23' REQUIRED 150'					
LOT SIZE 6,934 S.F.					
<u>Location</u> is used to identify the setback: I.E. front, back, left side, right side, N-north, S-south, E-east W-west,					
Existing is the setback that currently exists on the ground					
Required is the applicable setback required currently in the Brewster zoning bylaw					
Proposed is the setback being requested					
LOT COVERAGE EXISTING % 15.86 PROPOSED % 17.01 ALLOWED %					
SIZE OF PARCEL 6,934 sq. ft. BUILDABLE UPLAND 6,934 sq. ft.					
BUILDING COVERAGE/PRIMARY STRUCTURE $80$ sq, ft. $87 \times 10^{\circ}$					

BUILDING COVERAGE ALL OTHER STRUCTURESsq, ft.
BUILDING HEIGHT: EXISTING PROPOSED
SPECIAL PERMITS:
APPLICATION FOR SPECIAL PERMIT AS SET FORTH IN G.L.C. 40A, #9, SECTION 179-51, BREWSTER BYLAW UPON WHICH THE BOARD IS EMPOWERED TO ACT.
SECTION(S) PARAGRAPH(S) OF BREWSTER BYLAW UNDER WHICH THE SPECIAL PERMIT IS SOUGHT AND A BRIEF DESCRIPTION OF THE PROPOSAL.
ADDITIONAL COMMENTS:
APPEAL IN ACCORDANCE WITH G.L.C. 40 A:8, 14
CITE ORDER OR DECISION OF ZONING AGENT OR OTHER ADMINISTRATIVE OFFICIAL OR ATTACH LETTER FROM ZONING AGENT/ADMINISTRATIVE OFFICIAL.

	VARIANCE:	in accordance with	MGL 40A§ 10			
MGL 40A Section 10. The permit granting authority shall have the power after public hearing for which notice has been given by publication and posting as provided in section eleven and by mailing to all parties in interest to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that;						
1.	Owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, <u>and</u>					
2.	2. A literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, <u>and</u>					
3.	<ol> <li>That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.</li> </ol>					
The B	oard must find that appli	ications for a variance meet <u>al</u>	three findings.			
Body And Section Property and						

#### ZONING BOARD OF APPEALS FILING PROCEDURES

Completed application packages are required to be submitted and time stamped by the Town Clerk at least thirty-five (35) days prior to the requested hearing date. Town Hall hours are 8:30 am – 4:00 pm Monday- Friday.

Completed application packages include twelve (12) copies of the following:

- APPLICATION
- PROFESSIONALLY ENGINEERED SITE PLAN
- ASSESSOR'S MAP SHOWING THE APPLICANT'S LOT
- BUILDING PLANS, INCLUDING FLOOR LAYOUT, ELEVATIONS AND DIMENSIONS
- DECISION LETTER FROM THE ZONING AGENT, IF APPLICABLE
- CHECK IN THE AMOUNT OF THREE HUNDRED (\$300) DOLLARS

Photographs are recommended.

Please also provide one (1) pdf or electronic copy of the completed application package.

An Abutter's List will be requested by the Zoning Board Clerk when the application is filed.

In accordance with Massachusetts General Laws, Chapter 40A, Section 11, the Appeal will be advertised in the local newspaper for two (2) consecutive weeks prior to the public hearing. The agenda will also be posted on the Meeting Board on the main floor of the Town Offices.

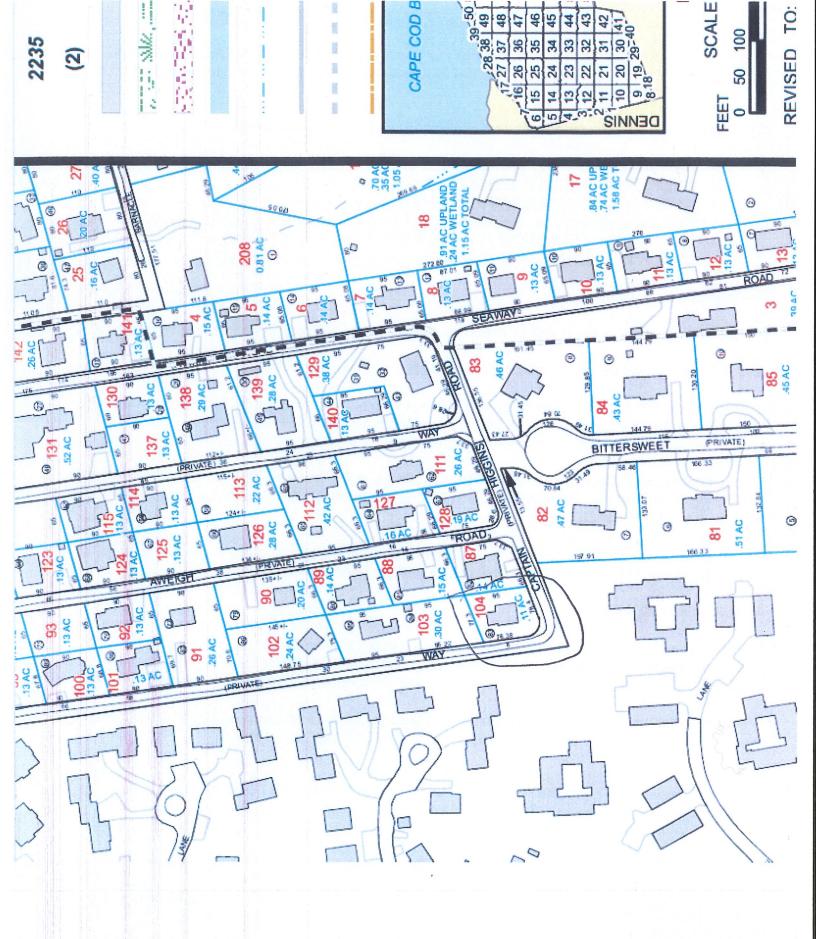
A copy of the Zoning-By-Law, Chapter 179, is available at the Brewster Ladies' Library. It may also be purchased at the Town Offices for \$25.00 or downloaded without charge from www town brewster ma.GOV

Please be advised that it is improper for the Chairman or any member of the Board of Appeals to give legal advice or to discuss the merits of any petition prior to the public hearing.

#### **AFTER YOUR HEARING:**

Within two weeks a formal decision will be written, signed and time stamped with the Town Clerk. A 20-day appeal period the follows. If NO appeals are taken, you will receive your final sealed decision, file with Barnstable Registry of Deeds and proceed with obtaining your Building Permit.

Any Decision of the BOA may be appealed to Superior Court, Land Court or District Court within twenty (20) days from the time that the decision is filed with the Town Clerk.



#### BREWSTER ZONING BOARD OF APPEALS

Applicants: Stephen G. and Catherine C. MacInnes

Property: 6 Pilots Way, Map 79 Lot 104, RM District

Applicants seek side lot and rear lot variances from the Brewster Zoning By-laws in order to construct a maximum size of eight feet by ten feet (8' x 10') shed to be located two (2') feet from both the rear yard and left side yard set-back requirements. The locus is approximately 100' by 75.' The set-back requirements for shed registration are forty (40') feet from street frontage and ten (10') feet from the side and rear lines. The locus is a corner lot with street frontages on Pilots Way and Captain Higgins Way.

The attached septic system as-built plan dated February 24, 2016, prepared by Jason C. Ellis, certifies the location of all underground septic construction. After research, Mr. Ellis concluded its current location was the only viable spot. The existing soil absorption system (S.A.S.), an essential component to the property's septic system, is located 10 1/2 feet from the side lot line and just over eight feet from the rear lot line. Previously, the Board of Health advised that a structure is not permitted to cover a septic system component.

The house located to the rear of the locus, known as parcel 87, is approximately 10 feet from its rear lot line. Parcel 88 has seven feet high row of arborvitae shrubs surrounding its side and rear lot lines. The lot line abutting parcel 103 is wooded over 20 feet before its house.

The topography, i.e., location of septic system, prevents applicants from meeting the zoning requirements for a shed. The proposed location of the shed will not be detrimental to abutters and the public good. In fact, it will enhance abutting properties by providing much needed lot line privacy for them.

The applicants are aging since they purchased the property in 2000. This past Fall, we were unable to move our  $3' \times 6'$  table down the cellar stairs. Also recently given to the

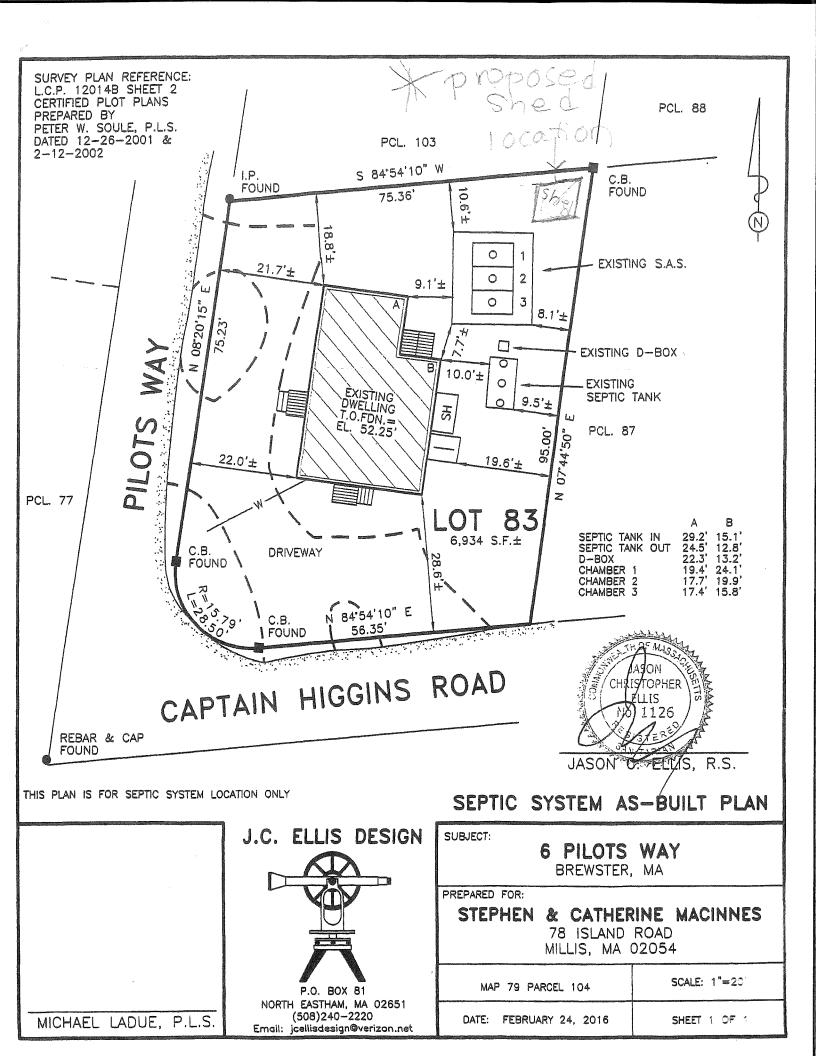
applicants was a gas grill that also cannot be moved down 12 cellar stairs.



Our rear yard abutter is installing a fence from the branched cedar tree on the right to the tall pine tree, giving her much needed privacy for her new paved patio. The proposed shed location will be on the other side of that pine tree toward the tall row of hedges, providing much needed privacy while using the picnic table. Note the location of the 7' hedges outlining parcel 88's lot lines. Those abutters will not see the shed.

Without any variance, the applicants are permitted to erect a fence, similar in height to a shed, directly on their property line. The requested relief is no more detrimental than a permitted fence, the applicants humbly state.

Thank you for your time and consideration.





#### **Brewster Zoning Board of Appeals**

2198 Main Street Brewster, MA 02631-1898 (508) 896-3701 x1168 brewplan@brewster-ma.gov

#### DEPARTMENT REVIEWS Application #23-07

APPLICANT: Stephen G and Catherine C McInnes

REPRESENTATIVE:

MAP/LOT: Map 15, Lot 83 PROPERTY ADDRESS: 6 Pilots Way

Received from:

#### Police Dept. Comments received from Lt. Charles Mawn

The police dept has no comments to add at this time.

#### Health Dept. Comments received from Sherrie McCullough

• The existing Title 5 compliant septic system was installed in 2016. Due to the lot size (6,034 SF) and configuration the plan was approved with setback variances granted by the Brewster Board of Health. The Health Department is fine with the proposed location of the new shed as it will not hinder access to any existing septic components and there are no Title 5 setbacks to sheds.

#### Fire Dept. Comments received from Chief Moran

FD has no comments.

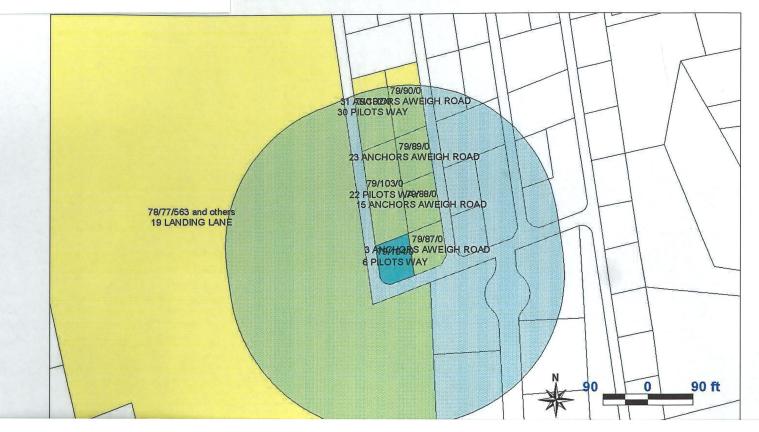
Application#23-07 www.brewster-ma.gov Page 1 of 1

TOWN OF BREWSTER, MA BOARD OF ASSESSORS 2198 Main Street Brewster, MA 02631 Certified by:

James M. Gallagher, MAA

**Deputy Assessor** 

Abutters List Within 300 feet of Parcel 79/104/0



# #23-08 Owner/Applicant: Ocean Edge Resort, LLC

2907 Main Street

Archived: Thursday, April 6, 2023 4:09:14 PM

From: Michael Ford

**Sent:** Thu, 6 Apr 2023 20:05:14 +0000ARC

To: Ellen Murphy; John O'Reilly

Cc: Devane, Tom; jmostyn@corcoranjennison.com; Jeffrey Ford

Subject: RE: ZBA Hearing 4-11-2023

Sensitivity: Normal Attachments:

CCE04062023.pdf

Brewster Zoning Board of Appeals, c/o Ellen Murphy Administrative Assistant,

I write on behalf of our client, Ocean Edge Resort LLC, the Applicant for a Special Permit in ZBA Case #23-08 to request a continuance of the public hearing scheduled for April 11, 2023 to the Board's next meeting on May 9<sup>th</sup>, 2023. In support of this request the Applicant's representatives are in discussion with some abutters to the project and additional time is needed to continue that process. I have attached an executed waiver form.

Thank you for your attention to this matter.

Regards, Mike Ford

FORD & FORD ATTORNEYS AT LAW MICHAEL D. FORD, ESQ. 72 MAIN STREET, P.O. BOX 485 WEST HARWICH, MA 02671 TEL. (508)430-1900 FAX (508)430-9979 EMAIL: mike@fordandfordattorneys.com



### Brewster Zoning Board of Appeals

2198 Main Street Brewster, MA 02631-1898 (508) 896-3701 x1133 brewplan@brewster-ma.gov Date & Time Received Town Clerk's Office

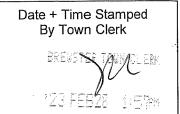
#### TIME EXTENSION/WAIVER/CONTINUANCE FORM

DATE	4-6-2023				
PETITION #	23-08			· 	
APPLICANT	Ocean Edge Re	esort, LLC	<del></del>		
M.G.L. Chapter 40 waives my rights t	extend the time limi OA and Brewster co o claim a construct O A and the Town o	de Chapter 179 by ive grant based or	/ 90 days. I und the time limits	derstand and a	agree that this
APPLICANT/AUTI	HORIZED AGENT	Attorny Vi	nich For	) 	
AGREED BY THE	ZONING BOARD	OF APPEALS:			
BRIAN HARRISOI					
DATE					



## **Brewster Zoning Board of Appeals**

2198 Main Street
Brewster, Massachusetts 02631-1898
(508) 896-3701 x 1168
FAX (508) 896-8089
www.brewster-ma.gov



SIGNATURE OF OWNER OF	D ACENT FOR OWNER	7.28.2023 DATE
Refer to Project Narrative		
STATEMENT OF PROJECT	•	
ZONING DISTRICT RM	YEAR BUILT 1909	FLOOD PLAIN AEVE
MAP # 90	<b>LOT #</b> 160 (OER) and 160-2	381 (BCA)
PLAN # Book 679, Page 81	Lot 6 and Book 649, Page 82, I	Lot 7
CERT. OF TITLE #	LAND	COURT #
REGISTRY OF DEEDS TITL	E REFERENCE BOOK 32280 (E	DER) PAGE 259 (OER) OR 256 (BCA)
CURRENT PROPERTY OW	NER(S) Ocean Edge Resort,LLC (OER	and Baypines Condominium Assoc. (BCA)
PROPERTYADDRESS 290		<u> </u>
MAILING ADDRESS P.O. B E-MAIL ADDRESS joreilly@j	ox 1773, Brewster, MA 02631	
	. O'Reilly, P.E., P.L.S. PHONE	NUMBER 508-896-6601
NAME OF APPLICANT Oce	an Edge Resort,LLC	
•	E	

**NOTE:** This petition is NOT COMPLETE until all information is provided. Accuracy of this information is the responsibility of the petitioner.( Initial )

# MGL 40A, Section 6B, Brewster Zoning Bylaw 179-27, Article 8

# DATA SHEET

NOT APPLICABLE

Complete this form	for <u>every structure</u>	on the site that is in	some way <u>nonconforming</u> .
Identify structure: pi	rimary house, garage	e, tool shed, other _	
STREET ADDRESS	S		YEAR BUILT
MAP#L	OT #		
ZONING DISTRIC	г		
List only the nonc	onformities below:	Identify all nonco	onforming setbacks.
LOCATION	EXISTING	REQUIRED	PROPOSED
FRONTAGE	EXISTING	REQUIRED	
LOT SIZE			
<u>Location</u> is used to W-west,	identify the setback	: I.E. front, back, left	side, right side, N-north, S-south, E-east
Existing is the setb	eack that currently ex	xists on the ground	
Required is the app	olicable setback requ	uired currently in the	Brewster zoning bylaw
<u>Proposed</u> is the se	tback being requeste	ed	
LOT COVERAGE E	EXISTING %	PROPOSED 9	% ALLOWED %
SIZE OF PARCEL	sq. ft.	BUILDABLE UPLA	ANDsq. ft.
BUILDING COVER	AGE/PRIMARY STI	RUCTURE	sq, ft.

BUILDING COVERAG	E ALL OTHER STRUCTURE	<b>S</b> sq, ft.
BUILDING HEIGHT:	EXISTING	PROPOSED
SPECIAL PERM	ITS:	
		SET FORTH IN G.L.C. 40A, #9, SECTION E BOARD IS EMPOWERED TO ACT.
SECTION(S) PARAGE PERMIT IS SOUGHT A	RAPH(S) OF BREWSTER BYI AND A BRIEF DESCRIPTION	LAW UNDER WHICH THE SPECIAL OF THE PROPOSAL.
SEE ATTACHED NAR	RATIVE	
ADDITIONAL COMME	ENTS:	
·		
☐ APPEAL IN	N ACCORDANCE WIT	H G.L.C. 40 A:8, 14
	CISION OF ZONING AGENT ( R FROM ZONING AGENT/ADI	OR OTHER ADMINISTRATIVE OFFICIAL MINISTRATIVE OFFICIAL.
-		

			·
	<b>VARIANCE:</b>	in accordance with	MGL 40A§ 10
which to all p struct	notice has been given b parties in interest to gran	y publication and posting as p t upon appeal or upon petition terms of the applicable zoning	re the power after public hearing for rovided in section eleven and by mailing with respect to particular land or ordinance or by-law where such permit
1.		ly affecting such land or struct	, shape, or topography of such land or ures but not affecting generally the
2.		the provisions of the ordinanc herwise, to the petitioner or ap	e or by-law would involve substantial pellant, <u>and</u>
3.			ial detriment to the public good and intent or purpose of such ordinance or
The B	oard must find that appli	ications for a variance meet <u>all</u>	three findings.

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# J.M. O'Reilly & Associates, Inc.

Professional Engineering, Land Surveying & Environmental Services

Site Development • Property Line • Subdivision • Sanitary • Land Court • Environmental Permitting

#### **Application Narrative:**

February 28, 2023

Applicant:

Ocean Edge Resort, LLC

Re:

Request for seating on the Front Lawn of the Ocean Edge Resort

2907 Main Street Brewster, MA

Applicant seeks a Special Permit pursuant to Section 179-25 B. of the Brewster Zoning Bylaw and M.G.L. C. 40A sec. 6, to change, extend or alter the non-conforming use of the Property located at 2907 Main Street, currently utilized as the Ocean Edge Resort, to include outdoor dining on the front lawn of the Resort Property in accordance with the Site Plan and the Front Lawn Operational Plan filed herewith.

The proposal includes eleven sails with a total of 66 seats to be placed on the front lawn substantially as shown on the site plan from Memorial Day Weekend until Columbus Day Weekend. Three temporary (portable structures) would also be placed on the front lawn consisting of shed A – kitchen, and shed B concession stand, portable pizza oven(s). Food and beverage would be served from 4:00 pm - 9:00 pm daily.

During the past two years of the COVID pandemic the Resort, as a result of the Governor's Emergency Orders, has been licensed by the Town for 114 seats on the front lawn with identical temporary structures and operational limitations. While the COVID Emergency Declaration has expired the public need and demand for outdoor dining continues. The reduced outdoor dining proposed represents the Applicant's attempt to meet this continuing public need and demand.

Applicant suggests the proposal meets the statutory and bylaw standard as it will not be substantially more detrimental to the neighborhood than the existing non-conforming Resort use as follows:

- 1) The wastewater flow associated with the outdoor dining use is within the capacity of the existing wastewater facility (a 3.4 % increase in flow from pre-pandemic levels).
- 2) The applicant valet parking arrangement (utilized at 114 seats) for the last 2 years has provided sufficient parking.
- 3) The front lawn outdoor dining is consistent with the Resort use and represents a minor increase in Resort activities at the Property.
- 4) No outside music events on the front related to dining are proposed.
- 5) A continued public need and demand for outdoor dining will be provided.
- 6) Given the preparation of the Front-Lawn Operational Plan and the fact that the activities proposed are located in the internal portion of the Resort property, there will not be impacts to the neighborhood beyond the customary impacts of the existing Resort.



#### FRONT LAWN OPERATIONAL PLAN

An outline for planning, monitoring, managing, and review of daily operations for the Front Lawn dining option at Ocean Edge Resort & Golf Club

#### **Dates and Hours of Operation**

Our proposed plan for operations is based on daily business. However, this may result in only operating on weekends in the Spring and/or Fall.

- 1. Dates Memorial Day Weekend through Columbus Day Weekend, inclusive
- 2. Daily hours of Operation 4:00pm 9:00pm with lawn cleared by 10:00pm of all guests. Team members may still be finalizing clean-up duties post 10:00pm

#### **Alcohol Sales**

All laws and rules that are encompassed by our Resort Liquor License will be adhered to at the Front Lawn.

- 1. All Alcoholic beverages are "Canned" Beer, Wine, "Ready To Drink" Cocktails. There is no "Bar" for mixing cocktails, everything is pre-portioned and labeled with alcohol content.
- 2. "BYOB" is strictly prohibited. Signs are currently in place around the Front Lawn indicating this.
- 3. Signage for restricting alcoholic beverages beyond a certain point is also in place.

#### **Food Preparation**

All food preparation will be conducted within the rules outlined in the latest Food Code and enforced by inspections from the Brewster Health Department.

- 1. One shed is dedicated to the preparation and service of Food. Proper refrigeration, work surfaces, and sanitation practices are included.
- 2. A hand sink exists in the shed for proper hand-washing practices.
- 3. Food is cooked in 2 enclosed Pizza Ovens, just outside the shed.
- 4. Proper Hot Holding equipment exists in the shed

#### F&B Service/Trash

The Front Lawn is a "take-out" based operation, meaning there is no "table service" and everything is served in disposable containers. Some guests choose to take their food back to their rooms, however, there are those that will sit at one of the 66 seats.

- 1. Daily staff consists of:
  - a. Dedicated Manager to oversee day-to-day operations
  - b. Servers/Order Takers in the shed to accommodate guest orders and requests
  - c. Outside Support to assist guests with picking up their food and other guest assistance
  - d. Cooks to prepare and cook food for this venue

<sup>\*</sup>All subject to review by the Board of Health and passed inspections from the Health Department

- 2. Trash cans are placed conveniently around the lawn near each "pod" to promote guests disposing of their own trash
- 3. Service team periodically patrols during service to empty receptacles and assist with trash monitoring.
- 4. All trash is disposed into existing compactor behind the Carriage House.
- 5. Reservations are not accepted; it is a first come first serve operation.

#### Front Lawn Games/Activities

Ocean Edge provides outdoor "lawn" games for Children of all ages to enjoy as part of the dining experience at the Front Lawn.

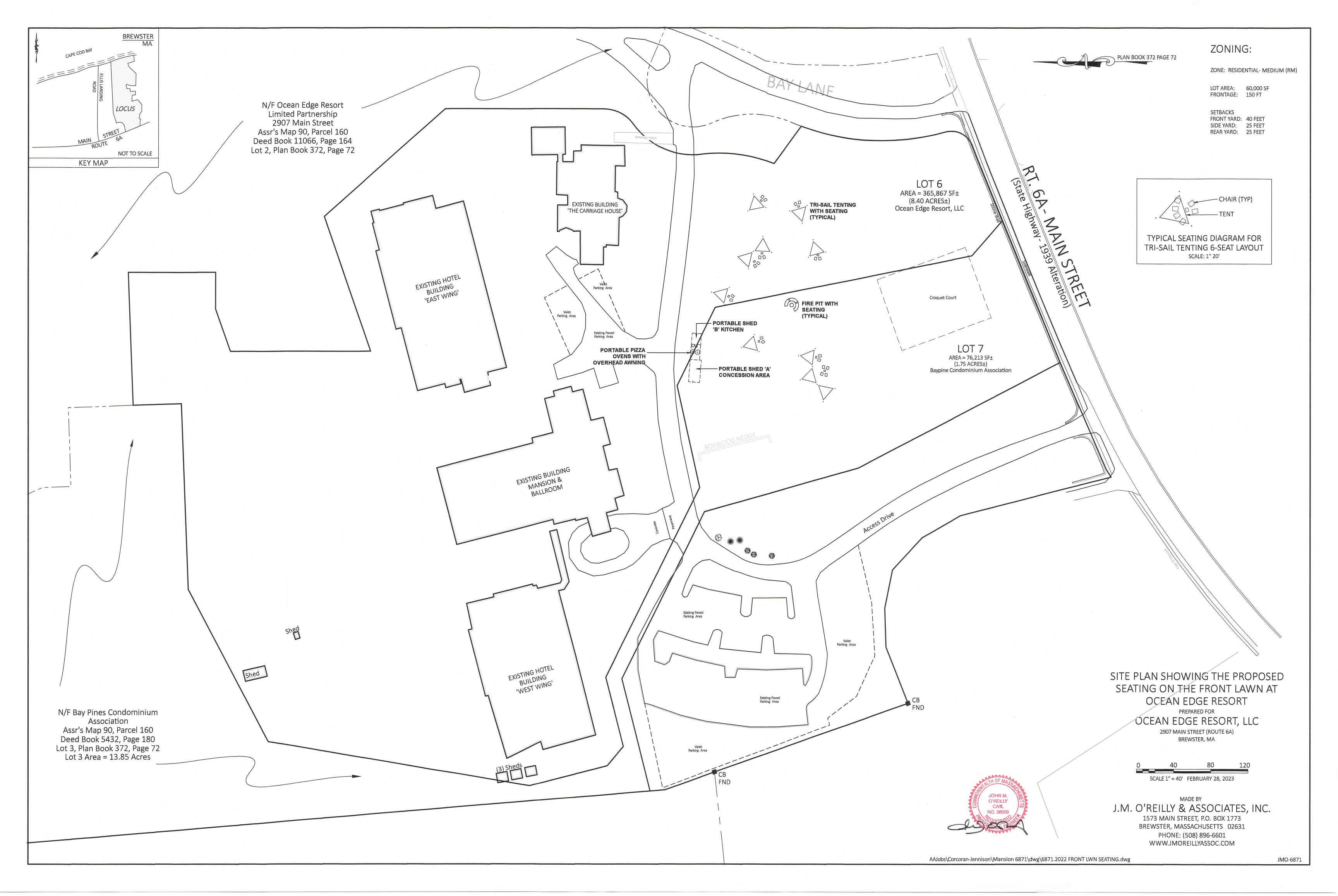
- 1. Games include, but not limited to: Corn Hole, Stacking Buckets, Croquet, Hula Hoops, Giant Jenga
- 2. Games are monitored by activities team member

#### Music/Entertainment

In accordance with our current Entertainment license, no music events on the front lawn related to outdoor dining will take place.

#### **Parking**

We currently have Valet Parking service in the registration lot adjacent to the Mansion for guests of the Front Lawn to park their cars.





#### **Brewster Zoning Board of Appeals**

2198 Main Street Brewster, MA 02631-1898 (508) 896-3701 x1168 brewplan@brewster-ma.gov

#### **DEPARTMENT REVIEWS** Application #23-08

APPLICANT: Ocean Edge Resort LLC

**REPRESENTATIVE:** 

Map 90, Lot 160 MAP/LOT: PROPERTY ADDRESS: 2907 Main Street

#### Received from:

#### Planning Dept. Comments received from Jon Idman

- Various staff, including me, met with the applicant and its representatives for informal staff review several months ago. It was determined that the outdoor dining proposal does not require site plan review from the Planning Board because the proposal does not meet or exceed any of the site plan review thresholds under Section 179-64 of the zoning bylaw.
- Further, it was determined that the proposal does not implicate or require modification to the existing special permit from the Planning Board, which authorizes certain special events on the front lawn.
- We did advise the applicant that it should be mindful to coordinate the various front lawn activities to avoid potential conflicts.

#### Health Dept. Comments received from Sherrie McCullough

- In June of 2020, in accordance with Governor Bakers COVID-19 Order No. 35, the Town of Brewster, with approval from Building, Health, Police, Fire and Licensing, allowed Food Establishments to provide temporary outdoor seating and restaurant service in response to the Re-Opening Plan due to the Pandemic.
- Ocean Edge Resort created an extension of their existing indoor food service to extend into food service on the front lawn of the Mansion.
- To date, this operation has run very smoothly with no health code violations.
- Ocean Edge Resort has requested to come before the Brewster Board of Health on April 5, 2023, to request approval for the continued use of the existing outdoor food service venue associated with the front lawn operation.

#### Town Administration Comments received from Donna Kalinick

- Entertainment: Current license is through June 30, 2023, licenses are attached. They are currently not licensed to have music on the lawn, related to outdoor dining.
- Liquor Licenses: They hold multiple liquor licenses, for various parts of the property:
  - Linx Tavern- All Alcoholic Club License on-premises consist of the dining room, bar, attached deck/patio, two (2) waiting rooms, pool area, seven (7) entrances/exits, Fletcher Pool, 18hole golf course and driving range, and the café in the fitness building.
  - · Ocean Edge Inn & Conference Center- All Alcoholic Club License on-premises consists of multiple areas including: the mansion, the carriage house, guest wings, beach and adjacent areas, the pool area and tennis courts. EXCLUDES the main lobby and main entrance
  - Ocean Edge Resorts- Wines & Malt Package Store License- not to be consumed on premises; premises includes 517sq. ft. lobby area and main entrance porch of the mansion
- There is no mention of alcohol to be served on the front lawn in relation to outdoor dining on their licenses. They have been doing so under the expansion of patio service and takeaway/delivery of alcohol by on-premises licensees of pandemic provisions. If this is going to be a permitted and licensed use, they will have to amend their liquor license to include the lawn area where outdoor dining is taking place.

#### Police Dept. Comments received from Lt. Charles Mawn

• The police dept has no comments to add at this time.

# Fire Dept. Comments received from Chief Moran

- Fire lanes shall be kept clear of all vehicles to ensure FD access.
- Ocean Edge shall submit all required permits for the storage of propane.

Application#23-08 www.brewster-ma.gov Page 2 of 2



### **Town of Brewster**

2198 Main Street Brewster, MA 02631 (508) 896-3701 www.brewster-ma.gov Office Of: Select Board Town Administration

NUMBER #07-2022

FEE \$250.00

# COMMONWEALTH OF MASSACHUSETTS Town of Brewster Licensing

This is to certify that: Ocean Edge Resort Limited Partnership d/b/a Ocean Edge Inn & Conference
Center

2907 Main Street, Brewster MA 02631

IS HEREBY GRANTED A YEARLY (Weekday, Monday - Saturday) ENTERTAINMENT LICENSE

This permit is granted in conformity with the Statutes and Ordinances relating thereto, and is valid from July 11, 2022, until June 30, 2023, unless sooner suspended or revoked.

Date Issued: July 11, 2022

Select Board

• Indoor entertainment allowed hours:

Monday-Saturdays from

11am - midnight

• Outdoor entertainment allowed hours:

Monday- Saturday from

11am - 10:00pm

No music events on front lawn related to outdoor dining

- Entertainment can include DJ's and live music
- Ocean Edge is restricted to the following as outlined in their Special Permit issued by the Planning Board:
  - 7 events between May September on .
     the front lawn
  - 2 events per month from October- April on the front lawn
- See attached restrictions



## **Town of Brewster**

2198 Main Street Brewster, MA 02631-1898 Phone: (508) 896-3701 www.brewster-ma.gov Office of: Select Board Town Administrator

#### RESTRICTIONS FOR WEEKDAY AND SUNDAY ENTERTAINMANE LICENSE

#### OCEAN EDGE RESORT AND CONFERENCE CENTER

- 1. No music will allowed after 10:00 PM at the Bay Pines Pavilion, the terrace above the ballroom, the Mansion second floor terrace or the Carriage house terrace.
- 2. No amplified live music will be permitted at any time on the terrace above the ballroom, the Mansion second floor terrace or the Carriage house terrace.
- 3. No entertainment will be permitted after 10:00 PM on the Front Lawn. Tent sides must be rolled down when there is entertainment at any time.

LAW OFFICES OF

#### **OHANESIAN & OHANESIAN**

106 SOUTH MARLBORO STREET 'POST OFFICE BOX 1373 BENNETTSVILLE, SOUTH CAROLINA 29512-1373 843-479-7193

BARBARA OHANESIAN KAROLAN F.OHANESIAN GLENN V. OHANESIAN GREG OHANESIAN OTHER OFFICES:
504 NORTH KINGS HIGHWAY
POST OFFICE BOX 2433

MYRTLE BEACH, SOUTH CAROLINA 29578-2433
843-626-7193
1814 BULL STREET
COLUMBIA, SOUTH CAROLINA 29201
803-779.7193

March 27, 2023

Chair, Town of Brewster Board of Appeals 2198 Main Street Brewster, MA 02631

Re: ZBA Case #: 23-08

RECEIVED

MAR 3 0 2023

BREWSTER PLANNING BOARD ZONING BOARD OF APPEALS

Dear Sir:

I write in opposition of the proposed extension of outdoor dining at Ocean Edge Mansion (see enclosed).

The subject property already has heavy traffic in season. Additionally, excessive noise from rise of present outdoor dining spills over adjoining properties affecting the peace and quiet enjoyment of said adjoining properties!

Thank you for your attention to my concerns.

Sincerely yours,

Greg Ohanesian

Owner of Ocean Edge's immediate

Eastern Property

P.S. (1) Now passers by see a bentiful lawn
and then strikingly handsome buildings. When
I've or more large white tests que up, The
Wiew is lost.

(2) Must greed win every time?

Town of Brewster Board of Appeals 2198 Main Street, Brewster, MA 02631 508-896-3701, ext. 1168

#### To the Abutters:

You are hereby notified that a public hearing will be held at 7:00-p.m. at the Town Hall with respect to this petition/appeal requested by the appellant therein stated. As an abutter, you have the right to offer comments if you so desire by appearing in person or by letter addressed to the Brewster Board of Appeals, on the petition of:

ZBA Case #23-08 Owner/Applicant: Ocean Edge Resort, LLC, 2907 Main Street, Map 90, Lot 160 in the RM zoning district.

The applicant seeks a special permit pursuant to section 179-25B of the Brewster zoning bylaw to change, extend or alter the non-conforming use of the property to include outdoor dining.

Hearing date: Tuesday, April 11, 2023, at 7:00 PM, Town Hall

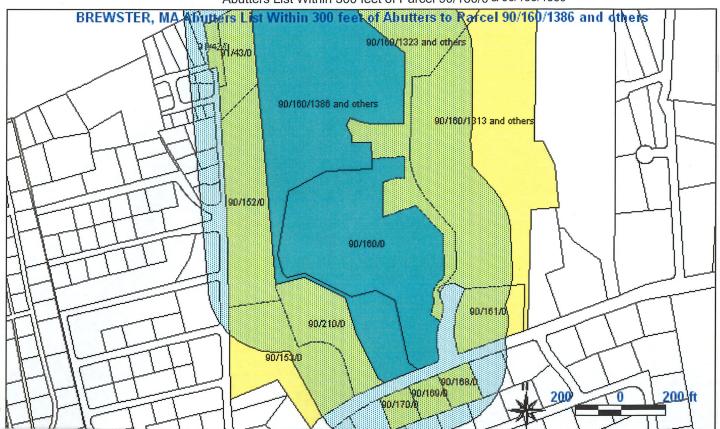
Any plans or additional materials which have been filed with the Board may be reviewed during business hours at the Board of Appeals Office.



TOWN OF BREWSTER, MA BOARD OF ASSESSORS 2198 Main Street Brewster, MA 02631 Certified by:

James M. Gallagher, MAA Deputy Assessor

Abutters List Within 300 feet of Parcel 90/160/0 & 90/160/1386



# #23-09 Owner/Applicant: Janice Marinello

439 Paines Creek Road



# **Brewster Zoning Board of Appeals**

2198 Main Street
Brewster, Massachusetts 02631-1898
(508) 896-3701 x 1168
FAX (508) 896-8089
www.brewster-ma.gov

Date + Time Stamped By Town Clerk

> PREMISTER FOR CLEEK P23 FEB28 228

NAME OF APPLICANT JANKE MARINELLO
REPRESENTATIVE JAMES HAGERTY PHONE NUMBER 508.258.7069
MAILING ADDRESS PO BOX 186 W. DENNIS MA 02670
PROPERTYADDRESS 439 PAINES CREEK RD, BREWSTER MA
CURRENT PROPERTY OWNER(S) ESTATEOF ANTHONY MARINELLO,
REGISTRY OF DEEDS TITLE REFERENCE BOOK 24753 PAGE 116 OR
CERT. OF TITLE # LAND COURT #
PLAN # BOOK 355 PG 64
TOWN MAP # 38 LOT #
ZONING DISTRICT RM YEAR BUILT 1949
STATEMENT OF PROJECT  PAZE EXISTING NON-CONFORMING SINGLE FAMILY HOME  AND CONSTRUCT NEW SINGLE FAMILY HOME AND A
DETACHED ADU ON A PARCEL CONTAINING 23,943 S.F.
SIGNATURE OF OWNER OF AGENT FOR OWNER  2.27.2023 DATE
NOTE: This petition is NOT COMPLETE until all information is provided. Accuracy of this

ZBA SPECIAL PERMIT/ VARIANCE/ APPEAL APP. REVISED 10-02-2017

information is the responsibility of the petitioner.

# **DATA SHEET**

•	**************************************		some way <u>nonconforming</u> .
Identify structure: pr	imary house, garage	e, tool shed, other	ADU/GARAGE
STREET ADDRESS	3 439 PAINES	CREEK RD.	YEAR BUILT
MAP# 38 L	от #/		
ZONING DISTRICT	r_ <i>RM</i>		
List only the nonce	onformities below:	Identify all nonce	onforming setbacks.
LOCATION	EXISTING	REQUIRED	PROPOSED
FRONT LEFT RIGHT REAR	3.3 FT.	30 20 20 20	14.5FT
<ul> <li>Existing is the second</li> <li>Required is the</li> </ul>	ed to identify the setback setback that currently ex applicable setback requeste e setback being requeste	ists on the ground iired currently in the Bre	e, right side, N-north, S-south, E-east, W-west, wster zoning bylaw
FRONTAGE: EXIS	TING 80FT	REQUIRED 15	OFT
LOT SIZE: 23,	743 S.F.		
		PROPOSED	% 14.1% ALLOWED % 25%
			and <u>23,943</u> sq. ft.
BUILDING COVER	AGE/PRIMARY ST	RUCTURE 2, 130	sq, ft.
BUILDING COVER	AGE ALL OTHER S	TRUCTURES	950 sq, ft. POOL=3005.F.  POSED MAIN HOUSE = 29,9'
BUILDING HEIGHT	: EXISTING 16.	3' PROI	POSED MAIN HOUSE = 29,9' ADU/GAR = 20,9'
SPECIAL PERMITS	<b>S</b> :		
APPLICATION 17 TO ACT.	ON FOR SPECIAL P '9-25, BREWSTER I	ERMIT AS SET FO BYLAW UPON WH	RTH IN M.G.L. 40A, § 6, or § 9 and CH THE BOARD IS EMPOWERED

SECTION(S) PARAGRAPH(S) OF BREWSTER BYLAW UNDER WHICH THE SPECIAL
PERMIT IS SOUGHT AND A BRIEF DESCRIPTION OF THE PROPOSAL.
RELIEF REQUESTED FROM SECTION 179-24. A AND 179-42.Z.A
RASE EXISTING NON-CONFORMING, SINGLE FAMILY HOME AND CONSTRUCT A NEW SINGLE FAMILY HOME AND A DETACHED ADU, WHICH WILL BE LESS NON-CONFORMING, ON A PARCEL CONTAINING 23,943 S.F.
VARIANCES:
☐ APPLICATION FOR VARIANCE AS SET FORTH IN M.G.L. 40A, § 10
SECTION(S) PARAGRAPH(S) OF BREWSTER BYLAW UNDER WHICH THE VARIANCE IS SOUGHT AND A BRIEF DESCRIPTION OF THE PROPOSAL. In order to grant a Variance, the ZBA must find all three of the following to be true:
<ul> <li>Owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, and</li> <li>A literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and</li> <li>That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law</li> </ul>
□ APPEAL IN ACCORDANCE WITH M.G.L. 40 A, § 8, 14 CITE ORDER OR DECISION OF ZONING AGENT OR OTHER ADMINISTRATIVE OFFICIAL OR ATTACH LETTER FROM ZONING AGENT/ADMINISTRATIVE OFFICIAL.

### ZONING BOARD OF APPEALS FILING PROCEDURES

Completed application packages are required to be submitted and time stamped by the Town Clerk at least thirty-five (35) days prior to the requested hearing date. Town Hall hours are 8:30 am – 4:00 pm Monday- Friday.

Complete application (12 copies) checklist:

☑ Application

☑/ Professionally engineered site plan

Assessor's map showing the applicant's lot

Building plans, including floor layout, elevations and dimensions

☑/Decision letter from the zoning agent, if applicable

Photographs are recommended.

Please also provide one (1) pdf or electronic copy of the completed application package.

An Abutter's List will be requested by the Zoning Board Clerk when the application is filed.

In accordance with Massachusetts General Laws, Chapter 40A, Section 11, the Appeal will be advertised in the local newspaper for two (2) consecutive weeks prior to the public hearing. The agenda will also be posted of the Meeting Board on the main floor of the Town Offices.

A copy of the Zoning-By-Law, Chapter 179, is available at the Brewster Ladies' Library. It may also be purchased at the Town Offices for \$25.00 or downloaded without charge from The Town of Brewster e-code website: <a href="http://www.ecode360.com/BR1068">http://www.ecode360.com/BR1068</a>

Any Decision of the Board of Appeals may be appealed to Superior Court, Land Court or District Court within twenty (20) days from the time that the decision is filed with the Town Clerk.

From:

Davis Walters <dwalters@brewster-ma.gov>

Sent:

Friday, February 24, 2023 1:14 PM

To:

Jim Hagerty; Building; Ellen Murphy

Subject:

RE: ZBA referral - 439 Paines Creek Rd .

Mr. Hagerty –

Thank you for your email.

You correctly indicate that application for a Special Permit from the Zoning Board of Appeals is required per Brewster Zoning Bylaws for Accessory Dwelling Units on Residential lots under 30,000 square feet.

I am forwarding your letter to Ellen Murphy, Clerk for the ZBA.

Ellen will be in touch.

Regards,

Davis Walters

From: Jim Hagerty < jhagerty@capecodbuilder.com>

Sent: Thursday, February 23, 2023 9:34 AM To: Building <a href="mailto:building@brewster-ma.gov">building@brewster-ma.gov</a> Subject: ZBA referral - 439 Paines Creek Rd

Dear Mr. Walters,

I'm requesting a referral to the ZBA for a special permit for this proposed project at 439 Paines Creek Rd.. I've attached the certified site plans and architectural plans to this email.

We're proposing to build within the existing non-conforming area of the existing home that will be demolished. We're also proposing an ADU on the property that has less than 30,000 sf.

Certified Existing Zoning Plan dated 2/22/23

Certified Proposeed Zoning Plan dated 2/22/23

Proposed ADU architectural Plans dated 1/5/23

Proposed Single Family architectural plans dated 1/5/23

Thank you in advance for your time,

Jim Hagerty

#### Janice Marinello 439 Paines Creek Rd, Brewster MA

#### ZONING ANALYSIS

#### I. Introduction

Janice Marinello, beneficiary of the Anthony Marinello Estate, current record title owner of the property located at 439 Paines Creek Rd, Brewster, MA, seeks a Special Permit from the Brewster Zoning Board of Appeals pursuant to the provisions of M.G.L. c. 40A, §6 and Brewster Zoning Bylaw, Section 179-24.A, and Section 179-42.2.A. The proposal involves the demolition of a Single Family, three-bedroom home and the construction of a Single Family four-bedroom home and a detached one-bedroom Accessory Dwelling Unit (ADU) with a garage and attached pool cabana, located on a pre-existing, non-conforming lot with less than 30,000sf within the RM Zoning District.

The lot is only 23,943 square feet and the minimum lot size requirement is 60,000 in the RM district and the lot frontage is 80' where 150' is required in the RM district. The existing three-bedroom dwelling was located on the site at the time of the purchase of the property in 1999 and according to the Town of Brewster Assessors card, it was constructed in 1949.

The proposal will serve to remove the existing non-conforming dwelling and construct a new one bedroom detached ADU in the location of the razed, non-conforming structure and construct a separate four-bedroom single family dwelling in the western end of the property. The proposed four-bedroom single family dwelling will be in full compliance with all bulk and dimensional requirements per the Town of Brewster zoning by-law. The proposed ADU, although a portion of the proposed structure will still fall within the southern property line setback, it will be substantially less non-conforming than the existing dwelling to be razed. We will also be requesting relief from the ADU zoning bylaw 179-42.2.A requiring a minimum lot size of 30,000 square feet. The building setbacks, North, East and West, will be in compliance with current zoning regulations as well as building height, building coverage.

As more fully explained below, we submit that the proposal will, in fact, enhance the neighborhood and will not be detrimental to any of the qualities of the surrounding neighborhood and the town.

### II. Intensity of Use schedule – Brewster Zoning ByLaw

Required in the RM Zoning District:

Minimum lot size: 60,000 square feet

Maximum building coverage: 25% Minimum frontage: 150 feet

Front yard setback: 30 feet (see BZB 179-26B)
Side yard setback: 20 feet (see BZB 179-26B)
Rear yard setback: 20 feet (see BZB 179-26B)

Building Height: 30 feet from average existing natural grade

Existing:

Lot size: 23,943 square feet

Building coverage: 5.4% Street yard setback: 36.4 feet

Left Side yard setback: 3.3 feet (non-conforming, 20' req.)

Right Side yard setback: 35.6 feet
Rear yard setback: 228.3 feet
Non-conforming volume 3,112 cubic feet

Building Height: 16.3 feet from average existing natural grade

**Proposed Main House:** 

Lot size: 23,943 square feet

Building coverage (both buildings) 14.1%
Street yard setback: 151.3 feet
Right Side yard setback: 29.2 feet
Left Side yard setback: 21.6 feet
Rear yard setback: 81.4 feet

Non-conforming volume 0

Building Height: 29.9 feet from average existing natural grade

Proposed ADU:

Lot size: 23,943 square feet

Building coverage (both buildings): 14.1% Street yard setback: 47.3 feet Right Side yard setback: 29.3 feet

Left Side yard setback: 14.5 feet (non-conforming, 20' req.)

Rear yard setback: 220.4 feet
Non-conforming volume 1,145 cubic feet

Building Height: 20.9 feet from average existing natural grade

## III. Non-Conforming Conditions

The proposal will serve to demolish the existing non-conforming dwelling and construct a new single-family dwelling and an accessory dwelling unit/garage/pool cabana. Neither building intensifies an existing non-conforming condition.

The proposal also requests relief for the construction of an ADU on a property with less than 30,000 sf. and less than 20ft to a lot line.

- The existing left-side of the building is 3.3 feet from the property line where 20 feet is required. We are proposing the new ADU structure setback of 14.5 feet off the property line. This will reduce the setback encroachment by 11.2 feet or 78%.
- The non-conforming roofed area of the existing structure that is within the setback, is 491 sf. The proposed structure <u>will reduce</u> that by 391 sf. or 80% for a total of 100sf.
- The volume of the existing structure that is within the 20 ft setback is 3,112 cubic feet. The proposed structure <u>will reduce</u> the volume in the non-conforming area by 1,967 cubic feet or 64% for a total of 1,145 cubic feet.
- The property has 23,943sf of area where 30,000sf is required for an ADU. This represents a shortage of 20% land area required. The proposed ADU has only 723 sf where 900 sf is allowed, which is 20% less than allowed.
- The proposed ADU/Garage/Pool Cabana has 950sf of roofed area and represents only 4% of the building coverage.

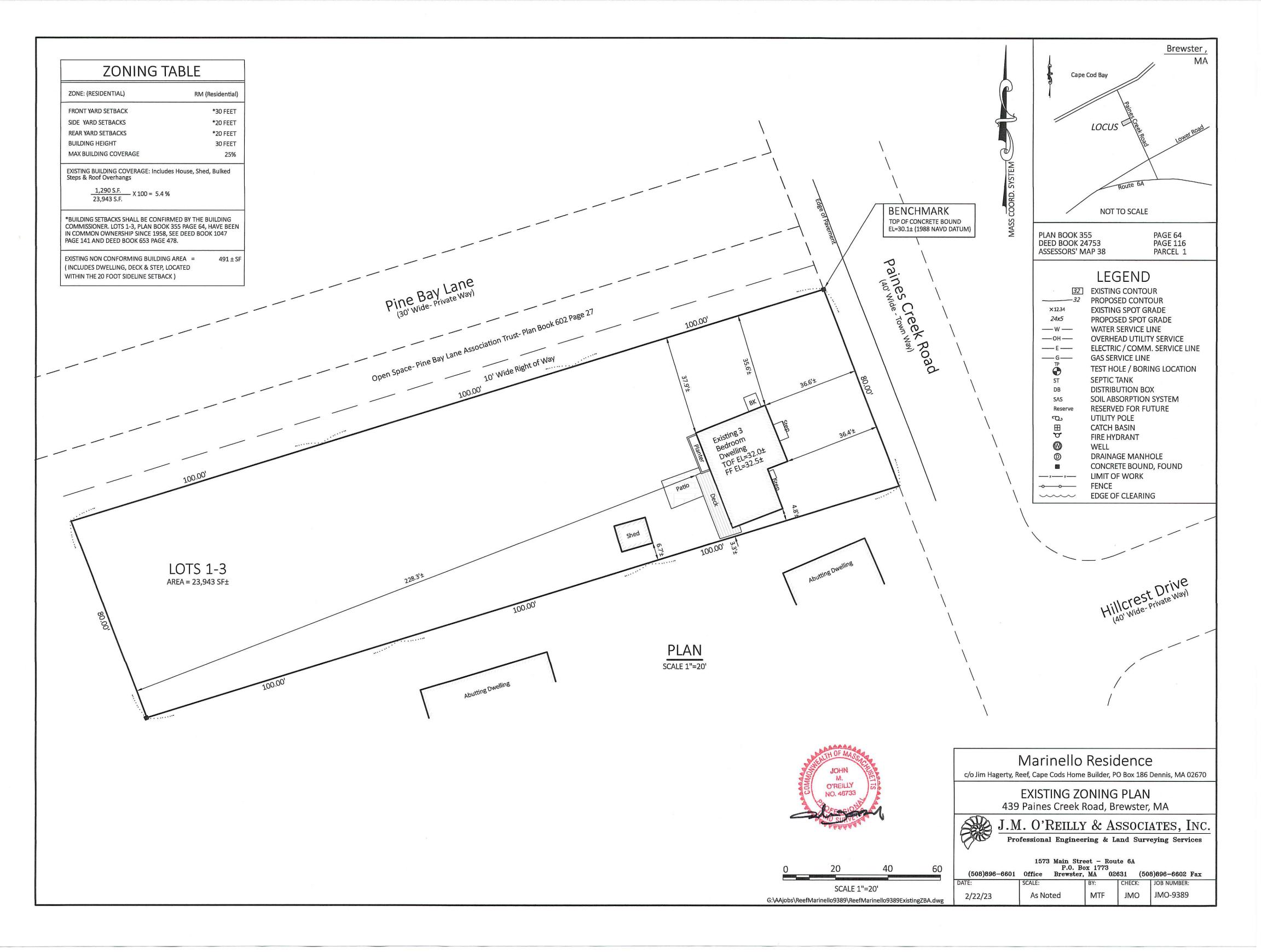
A Special Permit may be granted after determining whether a proposal will not be detrimental to the surrounding neighborhood and Town. The Board of Appeals is to consider the following criteria under section 179-51.A.(5)a of the Bylaw:

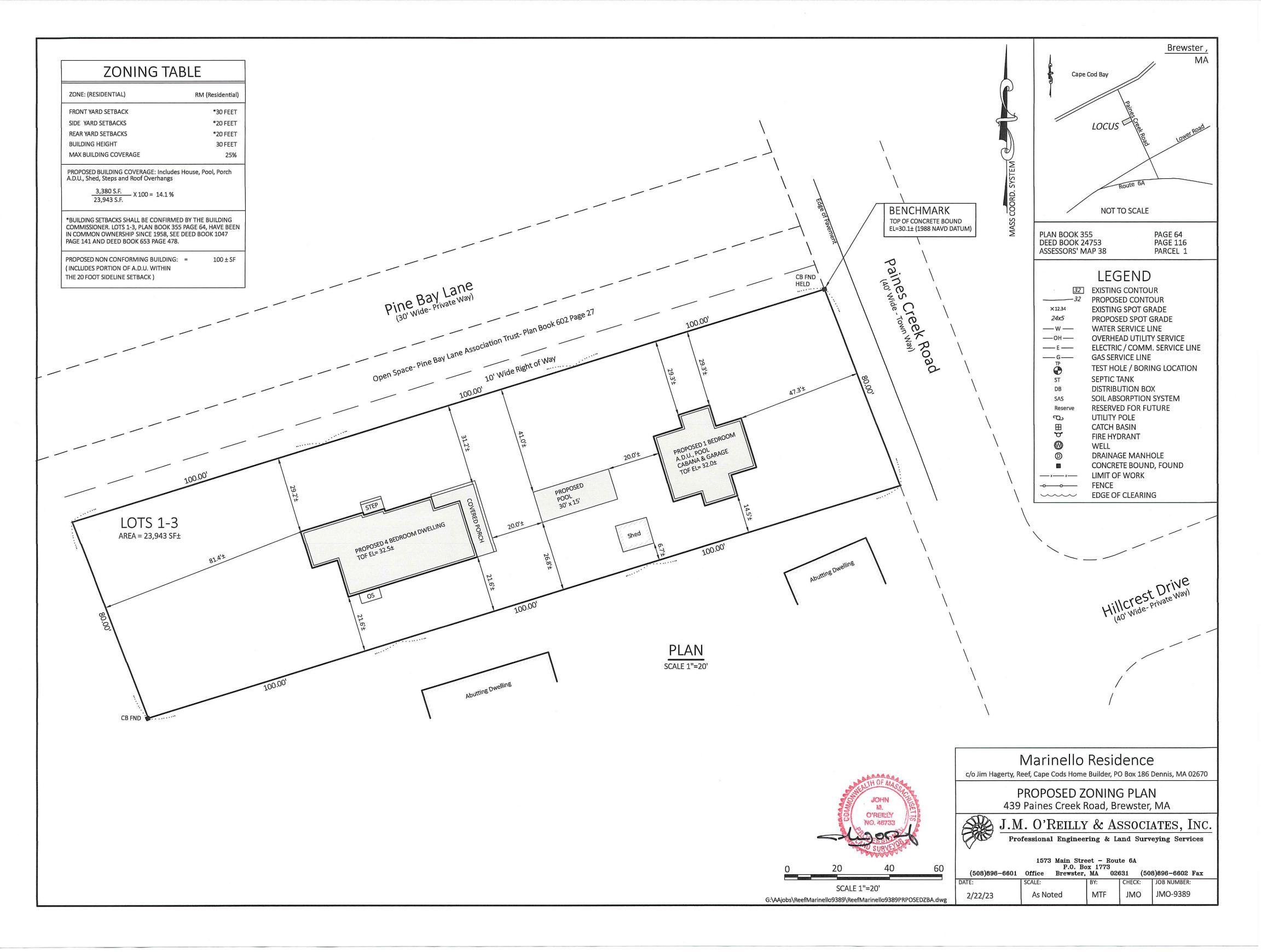
- (1) The proposed use is consistent with the purpose and intent of the Town of Brewster's Comprehensive Plan.
  - Single family dwellings make up the neighborhood, although larger than the existing 1949 home, the proposed structures are consistent with the neighborhood in size and volume.

- (2) The location, type, character and size of the use/ building, or other structure in connection therewith, will be in harmony with the visual character of the neighborhood, including views and vistas and, where applicable, the historic character of the neighborhood.
  - Special care was taken in the design of the buildings to be in harmony with the neighborhood. The front building is a dormered cape style structure and the rear building is a farmhouse style structure. Both designs are captured throughout the surrounding area.
- (3) The site is suitable for the proposed use.
  - The proposed use will remain residential in nature.
- (4) Adequate access will be provided for the purpose of fire protection, police protection and other emergency equipment.
  - Access for police and fire will be provided to both buildings via a traditional driveway for any emergency events.
- (5) The streets serving the proposed use are adequate (width, grade, construction, overall safety and design capacity) to carry all prospective traffic and adequate provision is made for entering and leaving the proposed site such that no undue hazard to traffic congestion will be created.
  - Paines Creek Road is a paved town road and will not be altered in any way by this proposal.
- (6) The proposed use/development has incorporated applicable trip reduction measures, where possible, in order to minimize vehicular trips to and from the site. These include company sponsored carpooling/vanpooling, bicycle and pedestrian incentives and/or variable work-hour or flextime programs.
  - The proposal is residential in nature and the traditional construction traffic will vary daily and all parking will be on site. After completion, the traffic pattern will be of typical residential vehicular traffic.
- (7) Adequate parking and loading facilities are provided in accordance with § 179-2
  - There will be adequate off-street parking in the driveway for all residence.
- (8) The site will be suitably landscaped to protect the character of the neighborhood and adjacent property.
  - The property will be professionally landscaped in a manner keeping with that of the immediate neighborhood.

- (9) The proposed use has an adequate method of sewage disposal, source of water and drainage.
  - The site is serviced by town water and will have a new Title V sewage disposal system as approved by the Brewster Health Dept. The project will be required to submit an application for a major stormwater management permit to the town for approval prior to issuance of a building permit.
- (10) Adequate utilities and other public services will be provided.
  - All existing public utility services that are located at the roadway are adequate for the redevelopment of this residential property.
- (11) The proposed use will not result in the degradation of groundwater quality or coastal water quality off site.
  - The groundwater quality will be improved with the introduction of a new Title V septic system.
- (12) The location and design of buildings, roads, parking and loading areas will not cause avoidable damage to wildlife habitats or corridors or to any plant species listed as endangered, threatened or of special concern by the Massachusetts Natural Heritage and Endangered Species Program.
  - The majority of the property is already cleared and maintained as lawn. Limited clearing will be needed for the redevelopment. The property is not in a mapped NHESP area.
- (13) The proposed use complies with all applicable provisions of this Zoning Bylaw.
  - The proposed residential project lies in the RM zoning district. This district allows residential dwellings by right.

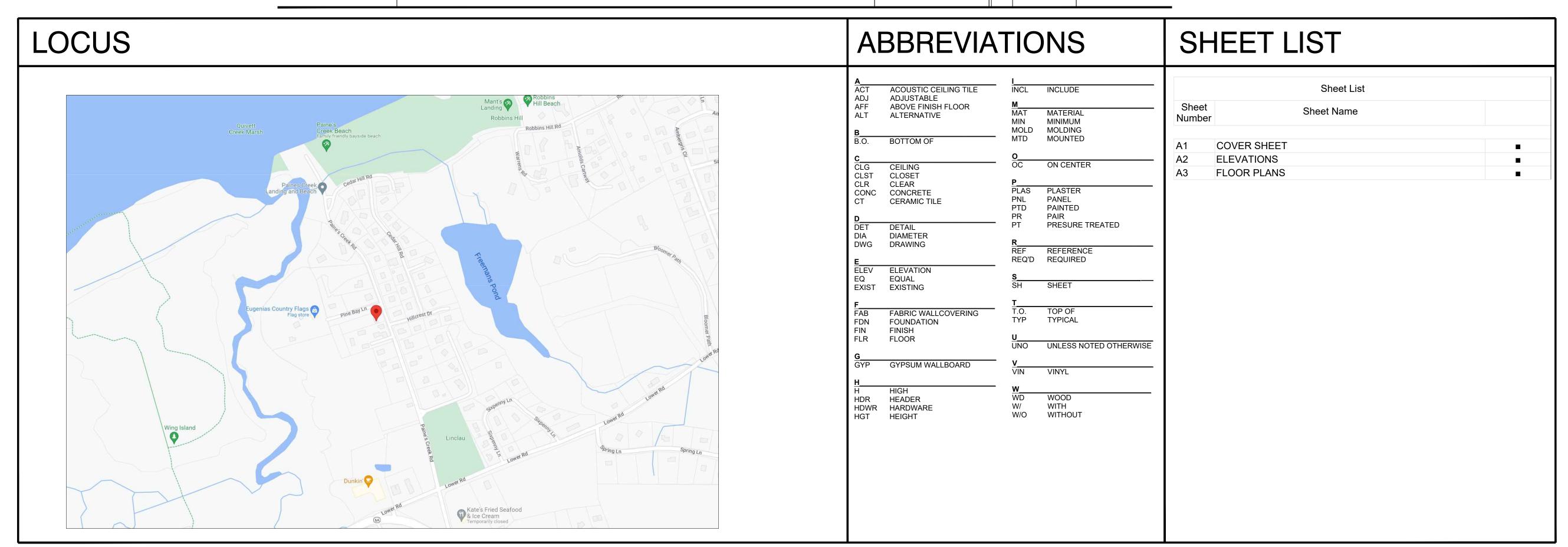
In light of the foregoing, we believe the proposal will not be detrimental to the surrounding neighborhood and Town and respectfully request the board to grant the special permit.

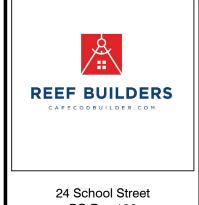




# MARINELLO RESIDENCE 439 PAINE'S CREEK BREWSTER, MA 02631

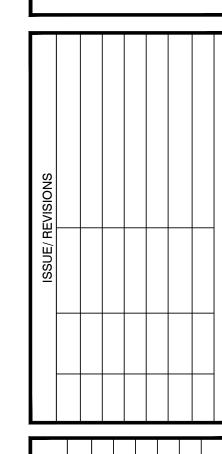






24 School Street PO Box 186 West Dennis, MA 02670 t: 508.394.3090

> Marinello Residence 439 Paines Creek Brewster, MA

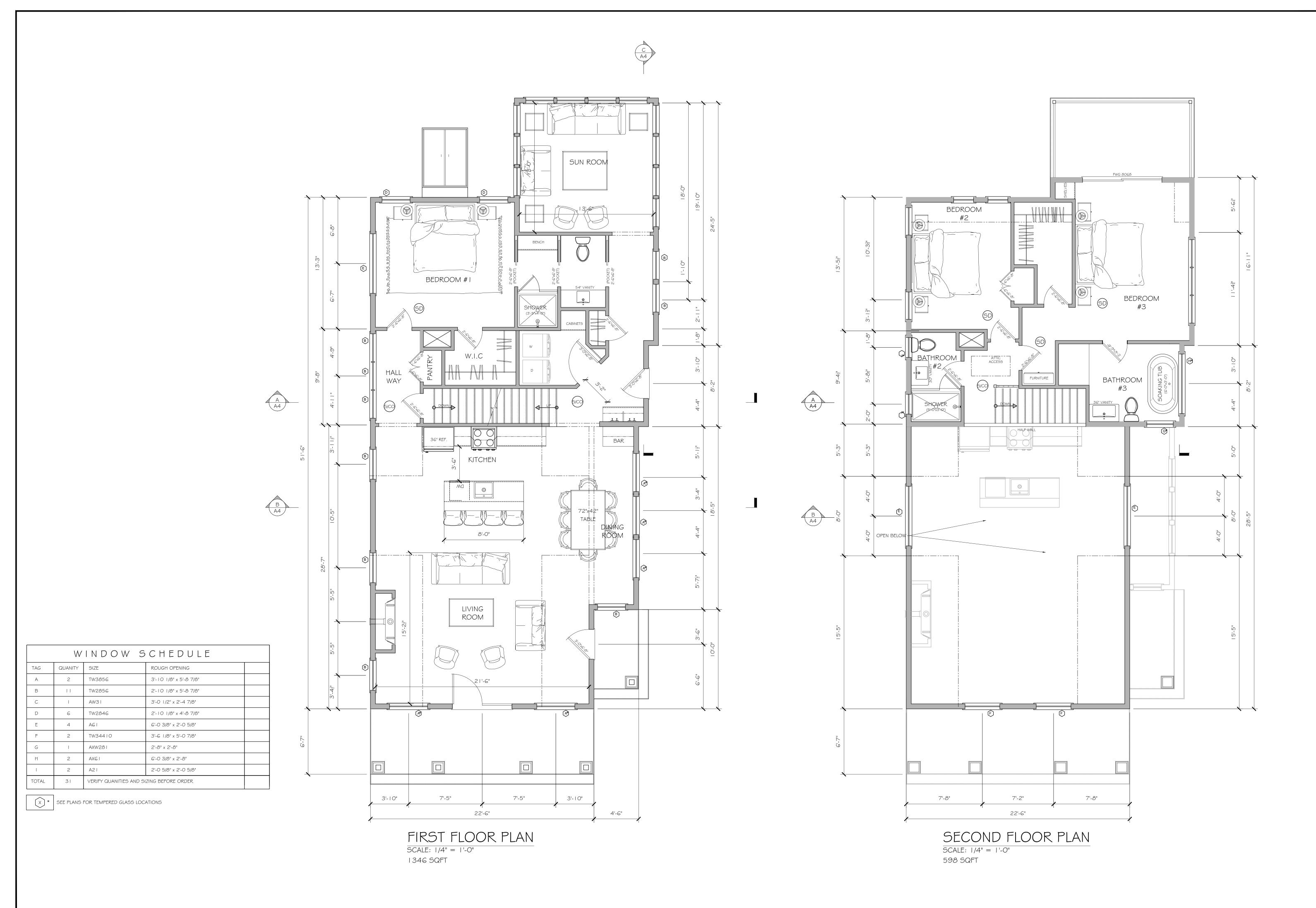


Date: January 05, 2023	ISSUE/ REVISIONS	ZBA SUBMITTAL			
Date: Ja	SI	#1 MJK 02/27/2023			
		MJK			
		#1			

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**A1** 







24 School Street PO Box 186 West Dennis, MA 02670 t: 508.394.3090

> Marinello Residence 439 Paines Creek Brewster, MA

ISSUE/ REVISIONS

Date: January 05, 2023

ISSUE/ REVISIONS

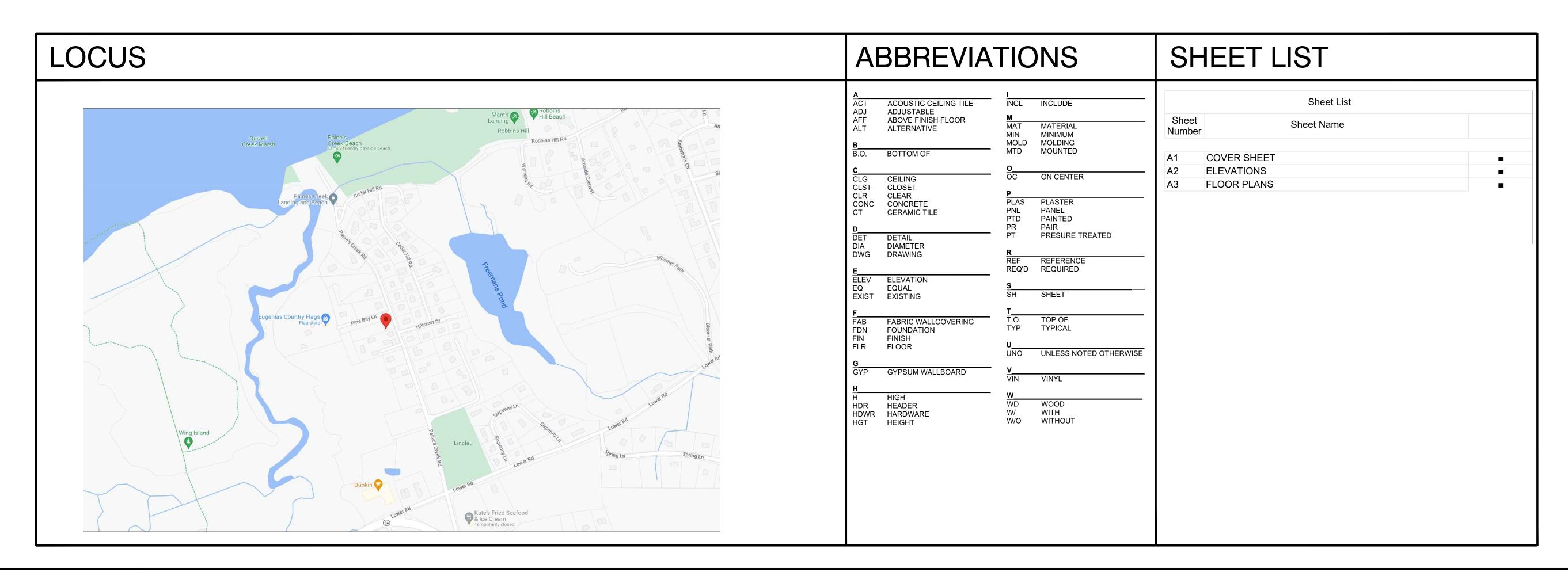
1 MJK 02/27/2023 ZBA SUBMITTAL

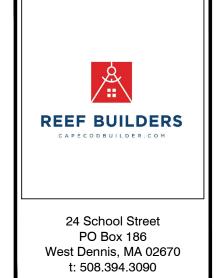
PROPOSED FLOOR PLANS

**A3** 

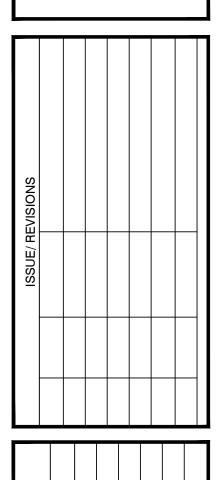
# MARINELLO RESIDENCE 439 PAINE'S CREEK BREWSTER, MA 02631







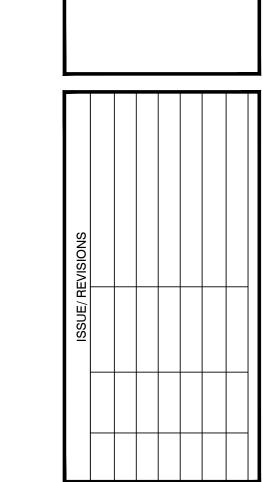
Marinello Residence 439 Paines Creek Brewster, MA

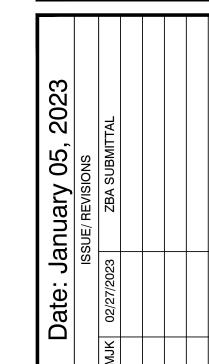


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		MJK			
		#1			

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REAR ELEVATION (POOL SIDE) SCALE: 1/4" = 1'-0"



RIGHT SIDE ELEVATION

SCALE: 1/4" = 1'-0"



24 School Street PO Box 186 West Dennis, MA 02670 t: 508.394.3090

> Marinello Residence 439 Paines Creek Brewster, MA

ISSUE/ REVISIONS

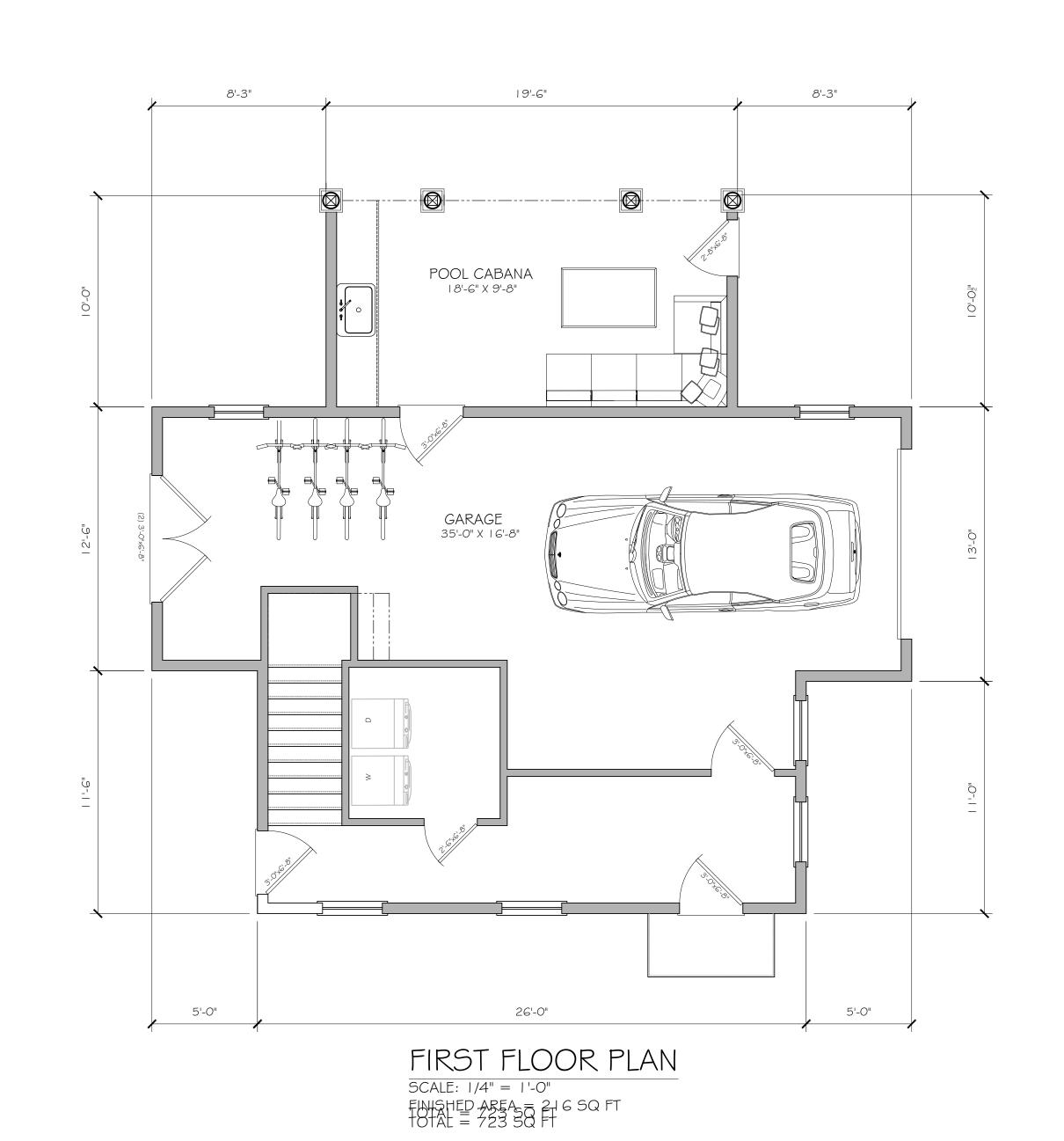
Date: January 05, 2023

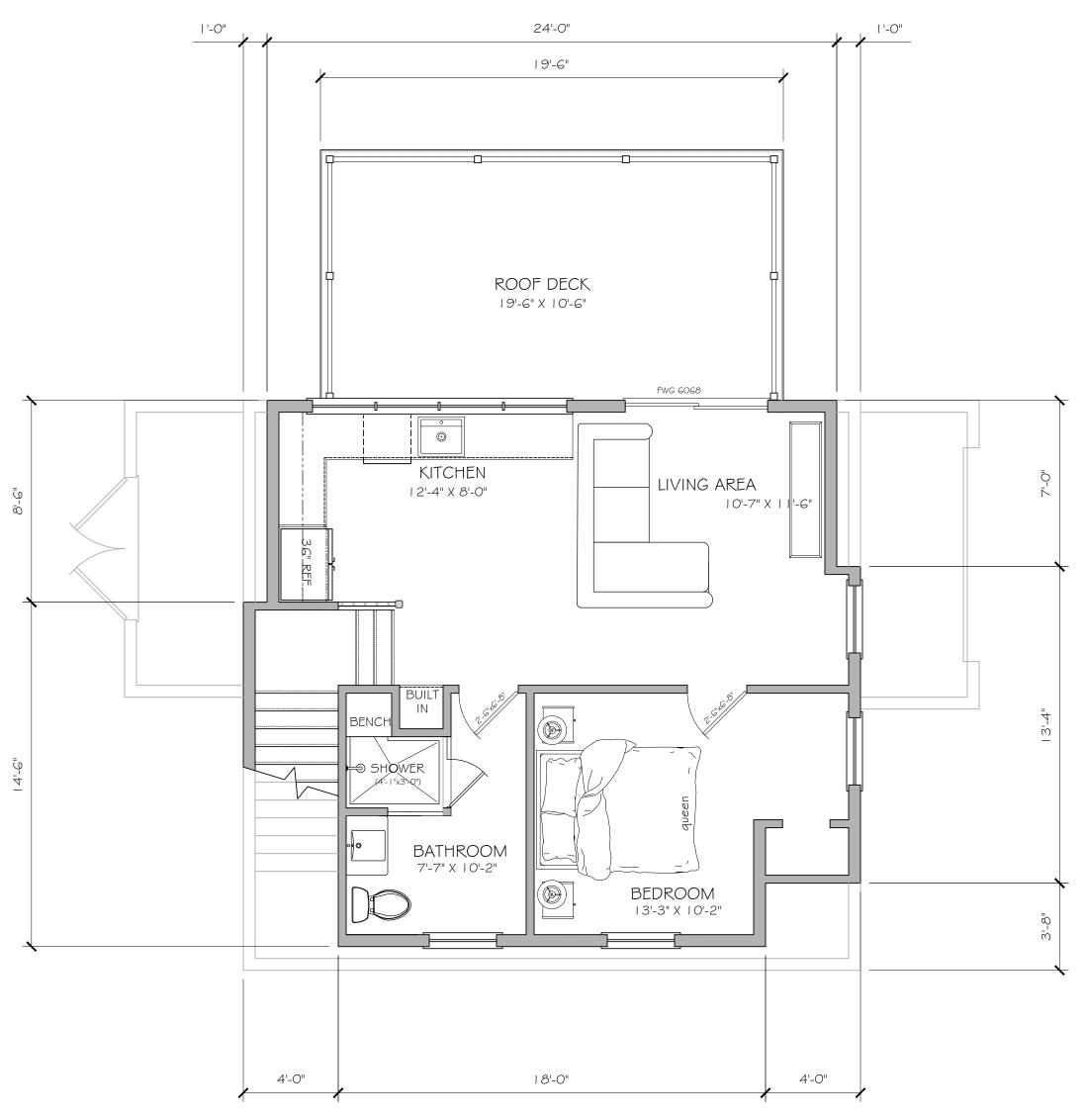
ISSUE/ REVISIONS

1 MJK 02/27/2023 ZBA SUBMITTAL

PROPOSED FLOOR PLANS







SECOND FLOOR PLAN

SCALE: 1/4" = 1'-0"

SCALE: 1/4" = 1'-0"
FINISHED AREA = 507 SQ FT
TOTAL = 723 SQ FT



### **Brewster Zoning Board of Appeals**

2198 Main Street Brewster, MA 02631-1898 (508) 896-3701 x1168 brewplan@brewster-ma.gov

#### **DEPARTMENT REVIEWS** Application #23-09

APPLICANT: Janice Marinello

**REPRESENTATIVE:** 

Map 38. Lot 1 MAP/LOT:

PROPERTY ADDRESS: 439 Paines Creek Road

Received from:

#### Police Dept. Comments received from Lt. Charles Mawn

The police dept has no comments to add at this time.

#### Comments received from Sherrie McCullough Health Dept.

The Health Department file indicates an existing 1991 Title 5 compliant septic system with a total daily flow of 495 gallons per day (gpd), servicing an existing three-bedroom dwelling. The existing dwelling is located on a 23,943 Sf lot and is serviced by town water. The lot does not lie within the Zone of Contribution, (Zone II) or the District of Critical Planning Concern (DCPC) and is not deemed an Environmentally Sensitive Area (ESA) therefor there are no current restrictions for increased flow. Full review of the proposal will be required by the Health Department prior to final approval.

#### Water Dept. **Comments received from Paul Anderson**

The applicant would need to contact us and request a cut and cap, so the service is turned off and cut outside the work zone. The meter will be removed and reinstalled once the new service is installed. There are fees associated that Sherry could explain when they contact us. I've cc'd both Sherry and Alex in case they have comments.

#### **Comments received from Chief Moran** Fire Dept.

- Paine's Creek Road shall remain open to traffic during all facets of the proposed project.
- FD requests discussion with owner on potential use of the dwelling being razed for training purposes.

Application#23-09 www.brewster-ma.gov Page 1 of 1 TOWN OF BREWSTER, MA BOARD OF ASSESSORS 2198 Main Street Brewster, MA 02631 Certified by:

James M. Gallagher, MAA Deputy Assessor

Abutters List Within 300 feet of Parcel 38/1/0

