



# **Town of Barnstable Zoning Board of Appeals Agenda**

**Wednesday, May 22, 2013**

2<sup>nd</sup> 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**

On April 19, 2013, the Board Chair reviewed four sets of Executive Session minutes with the Director of Growth Management, the Town Clerk and the Town Attorney's office. Based on the review, the Board Chair announces as follows:

The Chair has approved the Executive Session minutes for Executive Sessions held on the following dates and has authorized the release of these minutes which are available at the Town Clerk's Office:

January 13, 2004  
March 2, 2005  
November 19, 2008  
May 20, 2009

## **Old Business**

### **7:00 PM      Appeal No. 2013-012 - Continued**

**Wilson**

Catherine Wilson has appealed a decision of the Building Commissioner issued February 12, 2013, pursuant to Section 240-125(B)(1)(a) Appeals from an Administrative Official. The Building Commissioner ordered the appellant's property to be restored to a single-family dwelling upon finding that a family apartment in the basement had been vacated. The Appellant claims the apartment is not subject to the family apartment regulations (§240-47.1(5)), but rather to the conditions of Special Permit 1998-119 and Section 3-1.1(3)(D) of the Zoning Ordinance as it existed in October 1998. The Appellant seeks to keep the apartment in tact and allow for use of the bedroom for occasional guests. The subject property is located at 400 Mariner Circle, Cotuit, MA as shown on Assessor's Map 024 as Parcel 086. It is in a Residence F Zoning District.

Opened March 27, 2013. Continued to April 24, 2012. No members assigned. Continued to May 22, 2013.

## **New Business**

### **7:00 PM      Appeal Nos. 2013-013 & 2013-014**

**Wilson**

In Appeal 2013-013, Catherine Wilson has applied to modify Special Permit 1998-119, issued pursuant to the family apartment regulations of the Barnstable Zoning Ordinance, formerly Section 3-1.1(3)(D) and currently 240-47.1. Further, in Appeal 2013-014 Catherine Wilson has applied for a variance from Section 240-47.1(A)(5) of the family apartment regulations, which requires removal of "all cabinets, countertops, kitchen sinks and appliances from the family apartment, and the water and gas services utilities [to be capped] and placed behind a finished wall surface" once the family apartment is vacated. The Applicant seeks to retain a 'wet bar' after abandonment of a family apartment. The subject property is located at 400 Mariner Circle, Cotuit, MA as shown on Assessor's Map 024 as Parcel 086. It is in a Residence F Zoning District.

Opened April 24, 2013. No members assigned. Continued to May 22, 2013.

**7:01 PM      Appeal No. 2013-015**

**Bessey**

Palmer Bessey Jr. & Sarah Bessey have applied for a Special Permit pursuant to Section 240-91(H)(3) Demolition and rebuilding on nonconforming lots. The Petitioners seek to tear down the existing dwelling at 20 Sea Street and rebuild a new dwelling complying with lot coverage, floor-area ratio, and height requirements. The existing dwelling is set back 17.8' from Sea Street; the new dwelling is proposed to be set back 20' from Sea Street; the RF District requires a minimum front yard setback of 30'. The subject property is located at 20 Sea Street, Cotuit, MA as shown on Assessor's Map 033 as Parcel 007. It is in a Residence F Zoning District.

Opened April 24, 2013. No members assigned. Continued to May 22, 2013

**Correspondence**

**Upcoming Meetings**

June	12 & 26
July	10 & 24
August	14 & 28
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 2013-015 – Bessey**

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

To demolish & rebuild a single-family residential dwelling within the required front yard setback

**Date:** May 15, 2013  
**To:** Zoning Board of Appeals  
**From:** Elizabeth S. Jenkins, AICP, Principal Planner  
**Petitioner:** **Palmer Q. Bessey, Jr. & Sarah I. Bessey**  
1320 York Ave Apt 32H, New York, NY 10021  
**Property Address:** 20 Sea Street, Cotuit  
**Assessor's Map/Parcel:** 033/007  
**Zoning:** Residence RF District

Filed: March 28, 2013

Hearing: April 24, 2013; May 22, 2013

Decision Due: July 23, 2013

**Copy of Public Notice**

Palmer Bessey Jr. & Sarah Bessey have applied for a Special Permit pursuant to Section 240-91(H)(3) Demolition and rebuilding on nonconforming lots. The Petitioners seek to tear down the existing dwelling at 20 Sea Street and rebuild a new dwelling complying with lot coverage, floor-area ratio, and height requirements. The existing dwelling is set back 17.8' from Sea Street; the new dwelling is proposed to be set back 20' from Sea Street; the RF District requires a minimum front yard setback of 30'. The subject property is located at 20 Sea Street, Cotuit, MA as shown on Assessor's Map 033 as Parcel 007. It is in a Residence F Zoning District.

**Background**

The subject property, located on Sea Street in Cotuit, contains 10,430 sq.ft of upland and a single-family dwelling. Sea Street is a Town road that connects Main Street and Ocean View Avenue. The property is bounded by single-family residential development on all sides. The lot as it exists today was lawfully created with the benefit of a lot area variance in 1978. The lot was originally created by plan in 1947. In 1963, the owners of 200 Ocean View Avenue transferred 1,700 sq.ft of land to the owners of 20 Sea Street by deed, apparently in violation of zoning. The transfer resulted in unlawful lot area and setback nonconformities. In 1978, the owners appealed to the ZBA seeking variances to legalize both lots as buildable lots. The ZBA granted the relief and a plan was recorded depicting the property transfer.

The property is developed with a one-story 1,000 gsf. single-family residential dwelling with a front yard setback of 17.8 feet. The Assessor lists the construction date as 1957, although the minutes of the 1978 ZBA hearing indicate the house was constructed in the late 1940s.<sup>1</sup> The property also contains an accessory shed/garage that is bisected by the lot line shared with 200 Ocean View. This setback issue was noted by the Board in 1978 and, by their decision, authorized to remain.

**Proposal & Relief Requested**

The property owners are proposing to completely demolish the existing dwelling and rebuild a new, 2,546 gsf dwelling. The new dwelling is proposed to be set back from the front property line 21.8 feet. Section 240-91(H)(3)(a) requires a special permit for rebuilt dwellings that do not comply with

<sup>1</sup> Dimensional zoning regulations, including a 20' front yard setback, were adopted here in 1956; the front yard setback requirement increased to 30' in 1957.



current setback requirements. The proposed setbacks must be equal or greater than the setback of the existing building.

Setbacks, floor area ratio and lot coverage are as follows:

		Existing	Proposed	Required
Setbacks	Front	17.7'	21.8'	30' min
	Side	25.3'/35.6'	26.1'/15.5'	15' min
	Rear	35.6'	40.9'	15' min
FAR		--	24.4%	30% max
Lot Coverage		12.2%	19.0%	20% max

Staff confirmed that the screened porch is included in the FAR and lot coverage figures. The as-built drawing for the on-site septic system indicate the system is sized for four bedrooms. The dwelling is proposed to contain three bedrooms.

### 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)(3)(a) allows for the complete demolition and rebuilding of a residence on a nonconforming lot provided that the setbacks of the new dwelling are equal to or greater than the setback of the existing dwelling. The existing dwelling has a front yard setback of 17.7 feet. The proposed dwelling has a front yard setback of 21.8 feet.**

- **Site Plan Review is not required for single-family residential dwellings.**
- **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 all other setback requirements of the RF District.**
- **The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The proposed lot coverage is 19%.**
- **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 FAR is .24.**
- **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 17 feet to the highest plate.**

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 2013-015, it may wish to consider the following conditions:

1. Special Permit 2013-015 is granted to Palmer Q. Bessey, Jr and Susan I. Bessey for the demolition of an existing dwelling and rebuilding of a 2,546 square foot dwelling at 20 Sea Street in Cotuit.
2. The dwelling shall be reconstructed in substantial conformance with the site plan entitled Proposed Plan located at 20 Sea Street, dated May 2, 2013, drawn and stamped by Yankee Land Survey Co, Inc and the elevations and floor plans in the ZBA file.
3. 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.
4. The proposed redevelopment shall represent full build-out of the lot. Further expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.
5. The redevelopment shall be in full compliance with all state and local Board of Health regulations for on-site septic disposal without variance or waivers from any state or local requirement.
6. The decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Copies:                   Applicant (Attorney Ted Schilling)

Attachments:       Application  
                          Memorandum (3/27/2013)  
                          Deed (Bessey, Bk 25767 Pg 1) and Plan (Bk 321 Pg 84)  
                          Site Plan (5/2/2013)  
                          Elevations and Floor plans  
                          1978 Variance  
                          Aerial Photo





TOWN OF BARNSTABLE  
2013 MAR 28 AM 9:36



BARNSTABLE  
TOWN CLERK

'13 MAR 28 P1:51

GROWTH MANAGEMENT

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

Date Received  
Town Clerk's Office:

For office use only:  
Appeal # 2013-015  
Hearing Date 04-24-13  
Days Extended  
Decision Due 07-23-13

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 Name<sup>1</sup>: Palmer Q. Bessey, Jr. & Sarah I. Bessey, Phone: 212-744-6252  
Petitioner's Address: 1320 York Ave., New York, NY 10021 Apt. 32H

Property Location: 20 Sea Street, Cotuit/Barnstable MA 02635  
Property Owner: Palmer Q. Bessey, Jr. & Sarah I. Bessey, Phone: 212-744-6252  
Address of Owner: Same as above  
*If applicant differs from owner, state nature of interest:<sup>2</sup>*

Registry of Deeds/Land Court References: Deed Bk 25767, Pg 1 Plan 321-84

Assessor's Map/Parcel Number: 033-7 Zoning District: RF

Number of Years Owned: two (2) Groundwater Overlay District: AP

Special Permit Requested: 240-91 (H)(3)  
*Cite Section & Title from the Zoning Ordinance*

Description of Activity/Reason for Request: tear down existing structure & replace the same with a new structure complying with all the provisions of Sec.

240-91 H(1) (b)(1)(2)(3) except for front Attach additional sheet if necessary  
yard setback -proposed 20 feet -existing structure 17.8 feet  
Is the property subject to an existing Variance or Special Permit .....No [ ] Yes ☒ -

Permit # 1978-5

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

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

Petition for a Special Permit - Page 2

Description of Construction Activity (if applicable): construction of a new dwelling as set forth on construction plans attached hereto & made a part hereof.

*Attach additional sheet if necessary*

Existing Level of Development of the Property - Number of Buildings: 2 (house and shed)

Present Use(s): single family

Existing Gross Floor Area: 1,000 sq. ft. Proposed New Gross Floor Area: 1,857 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 [X]
Is this proposal subject to the jurisdiction of the Conservation Commission .....	Yes [ ] No [X]
Is this proposal subject to approval by the Board of Health .....	Yes [ ] No [X]
Is the building a designated Historic Landmark?.....	Yes [ ] No [X]
Have you applied for a building permit?.....	Yes [ ] No [X]
Have you been refused a building permit?.....	Yes [ ] No [X]

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

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

Signature:  Date: MARCH, 2013  
Applicant's or Representative's Signature<sup>3</sup>

Print Name Theodore A. Schilling, Esq.

Address: 1185 Falmouth Road Phone: 508 775 0700  
Centerville MA 02632 Fax No.: 508 775 0792

e-mail Address: law@cape.com OR tas@lawcapecod.com

<sup>3</sup>

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



LAW OFFICES OF  
**THEODORE A. SCHILLING, P.C.**

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1185 FALMOUTH ROAD, CENTERVILLE, MA 02632  
TELEPHONE: (508) 775-0700; FAX: (508) 775-0792  
www.lawcapecod.com EMAIL: law@cape.com

March 27, 2013

**MEMORANDUM TO BARNSTABLE ZONING BOARD OF APPEALS**

**RE: PETITION FOR A SPECIAL PERMIT**  
**Palmer Q. Bessey, Jr. and Sarah I. Bessey**  
**20 Sea Street**  
**Barnstable (Cotuit), MA 02635**

Petitioners seek a Special Permit under the provisions of Barnstable Zoning Section 240-91 H(3).

The existing building is shown on an as built plan included herewith which is located within 17.8 feet of Sea Street. The RF zoning district requires a 30-foot setback.

Petitioners seek this Special Permit to allow for the construction of a new dwelling at a 20-foot setback. The new building complies with all of the current use and setbacks except for the front yard setback.

Under the provisions of Section 240.91 H(1)(a), the lot contains 10,429.91 square feet in compliance with H (1). The lot coverage of all buildings and structures does not exceed 20 percent. The proposed dwelling is 1,857 in lot coverage and the existing shed is approximately 130 square feet, giving a total lot coverage of 19 percent.

The floor area ratio does not exceed .30 percent and the height does not exceed 30 feet. The proposed structure is of Cape Cod design and is compatible with the existing structures in the neighborhood, both in design and size. The proposed structure contains a family room, kitchen and master bedroom on the first floor and 2 bedrooms on the second floor with a bath on each floor and a 1-car garage, all as shown on the attached plans.

The Petitioners' land was purchased on October 20, 2011, by a Deed recorded with the Barnstable County Registry of Deeds in Book 25767, Page 1. This Deed contains 2 parcels of land that make up the locus; Lot A and Lot B1 on a plan recorded in Plan Book 321, Page 84. It should be noted that the assessors' records incorrectly list the lot size as .20 acres or 8,712 square feet. I have notified the assessors that they have failed to include Lot B1 as indicated above which is part of the Petitioner's land which, when calculated with Lot A, equals 10,429 square feet as shown on the attached as built plan drawn by Yankee Survey Consultants. Said Deed and plan referred to therein are attached hereto.

Petitioners seek this Special Permit in full compliance of the requirements of 240.91 H(3). Based on the size of the lot and the new proposed dwelling, in comparison to other surrounding properties and dwellings, which is generally smaller in size, it is Petitioners' belief that this project will not be substantially more detrimental to the neighborhood than the existing building, which existing building was built in 1957.

Petitioners respectfully request the issuance of a Special Permit allowing the demolition and rebuilding as herein requested.

Theodore A. Schilling  
Attorney for Petitioners



QUITCLAIM DEED

I, Palmer Q. Bessey, Jr.

for consideration of ONE AND 00/100 (\$1.00) DOLLAR paid,

grant to Palmer Q. Bessey, Jr. and Sarah I. Bessey, husband and wife as tenants by the entirety, with a mailing address of 1320 York Ave. #32H, New York, NY 10021,

with *QUITCLAIM COVENANTS*,

the premises commonly known as 20 Sea Street, Cotuit, being the two adjacent parcels of land with the improvements thereon situate in Commonwealth of Massachusetts, shown as Lot A and Lot B1 on a plan entitled "Subdivision of Land in Cotuit, Barnstable, Mass. Property of Elizabeth B. MacGregor" dated January 26, 1978 and filed at Barnstable County Registry of Deeds in Plan Book 321, Page 84, and being bounded and more particularly described as follows:

Parcel A

SOUTHWESTERLY	by Sea Street, ninety-three and 00/100 (93.00) feet;
NORTHWESTERLY	one hundred one and 71/100 (101.71) feet;
NORTHEASTERLY	by land now or formerly of Mabell R. Mather, eighty and 56/100 (80.56) feet; and
SOUTHEASTERLY	by Lot B1, ninety-nine and 91/100 (99.91) feet.

Parcel B1

SOUTHWESTERLY	by Sea Street, seventeen and 50/100 (17.50);
NORTHWESTERLY	by Lot A, ninety-nine and 91/100 (99.91) feet;
NORTHEASTERLY	by land now or formerly of Mabell R. Mather, sixteen and 69/100 (16.69) feet; and
SOUTHEASTERLY	by Lot B2, ninety-nine and 67/100 (99.67) feet.

For title see deed recorded with the Barnstable County Registry of Deeds in Book 9553, Page 218.

Executed under seal this 11<sup>th</sup> day of OCTOBER, 2011.

Palmer Q. Bessey Jr.  
Palmer Q. Bessey, Jr.

## STATE OF NEW YORK

County: New York

On this 11<sup>th</sup> day of October, 2011, before me, the undersigned notary public, personally appeared Palmer Q. Bessey, Jr., personally known to me or proved to me through satisfactory evidence of identification, which was New York State Driver's license to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

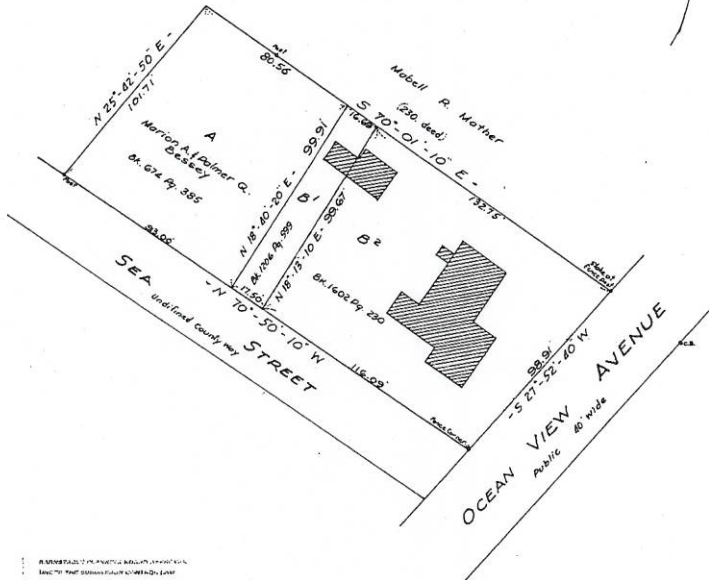
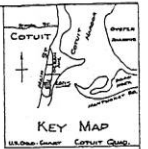
John Feliz  
Notary Public  
My commission expires: 05/11/2013

JOHN FELIZ  
Notary Public, State of New York  
Qualified in New York County  
No. 01FE6205775  
My Commission Expires 05-11-2013

2043639.1



1978



See variance Board of Appeals 1978-5

TOWN MAP 23 LOT B  
ZONE R.F.

I CERTIFY THAT THIS PLAN HAS BEEN  
FILED IN THE RECORDS OF THE  
TOWN OF COTUIT, MASSACHUSETTS  
IN ACCORDANCE WITH THE  
RECORDING ACT OF THE  
COMMONWEALTH OF MASSACHUSETTS  
JAN 26 1978



RECORDING ACT OF THE  
COMMONWEALTH OF MASSACHUSETTS  
JAN 26 1978

Note:  
Survey data taken from plan Rec B 79 P.3

SCALE OF FEET  
0 10 20

SUBDIVISION OF LAND  
IN  
COTUIT, BARNSTABLE, MASS.  
PROPERTY OF  
ELIZABETH B. MACGREGOR  
SCALE 1/4"=20' JAN. 26, 1978  
DEAR & LAY SURVEYORS  
CENTERVILLE

Total floor area of the proposed building is 2546 square feet (1<sup>st</sup> floor 1360 and 2<sup>nd</sup> floor 1186) which are actual outside wall to outside wall of all "living space" including all rooms, staircases, hallways, closets, etc

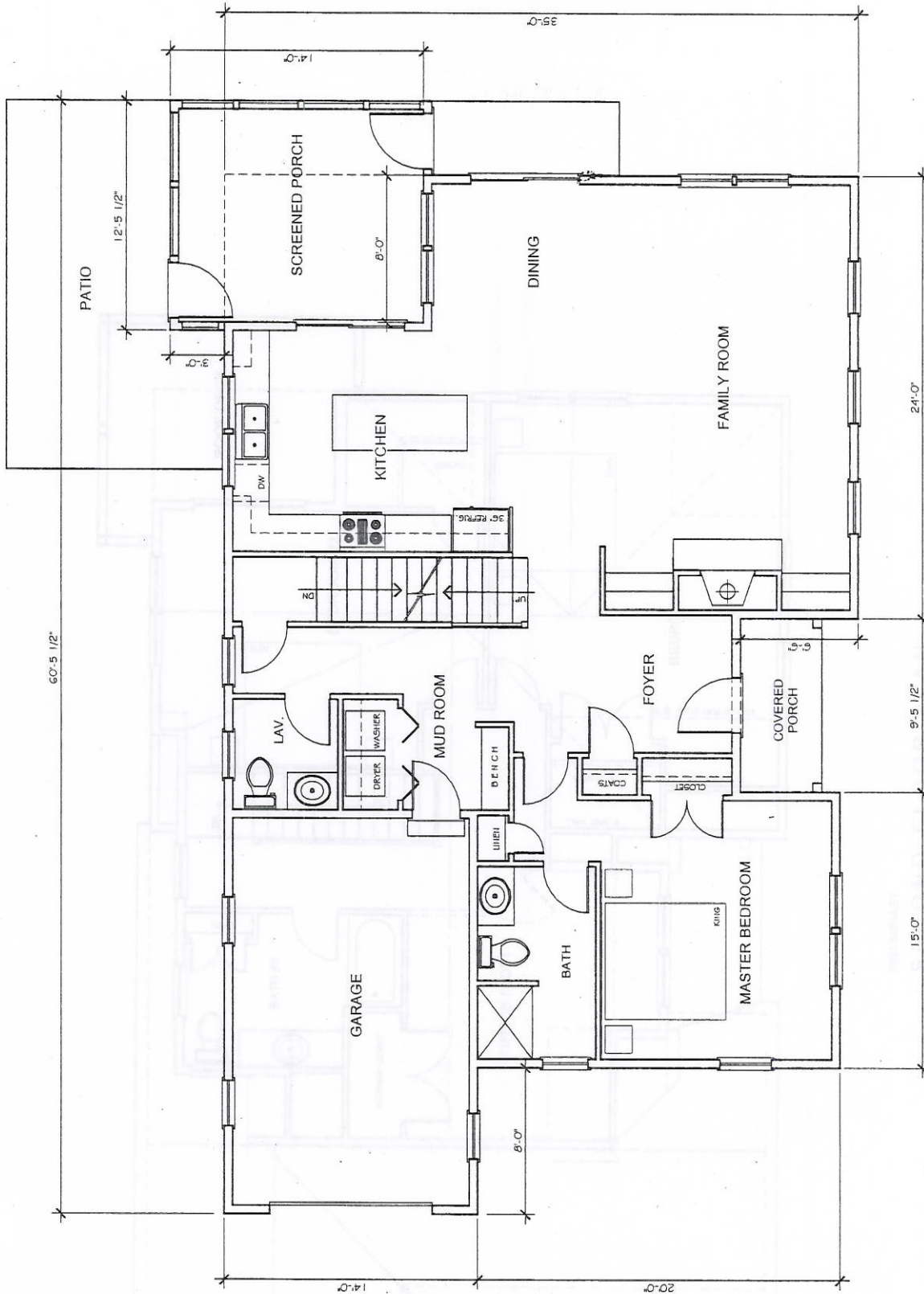
Peter Pometti

AI Enterprises Inc./Architectural Innovations, Inc.

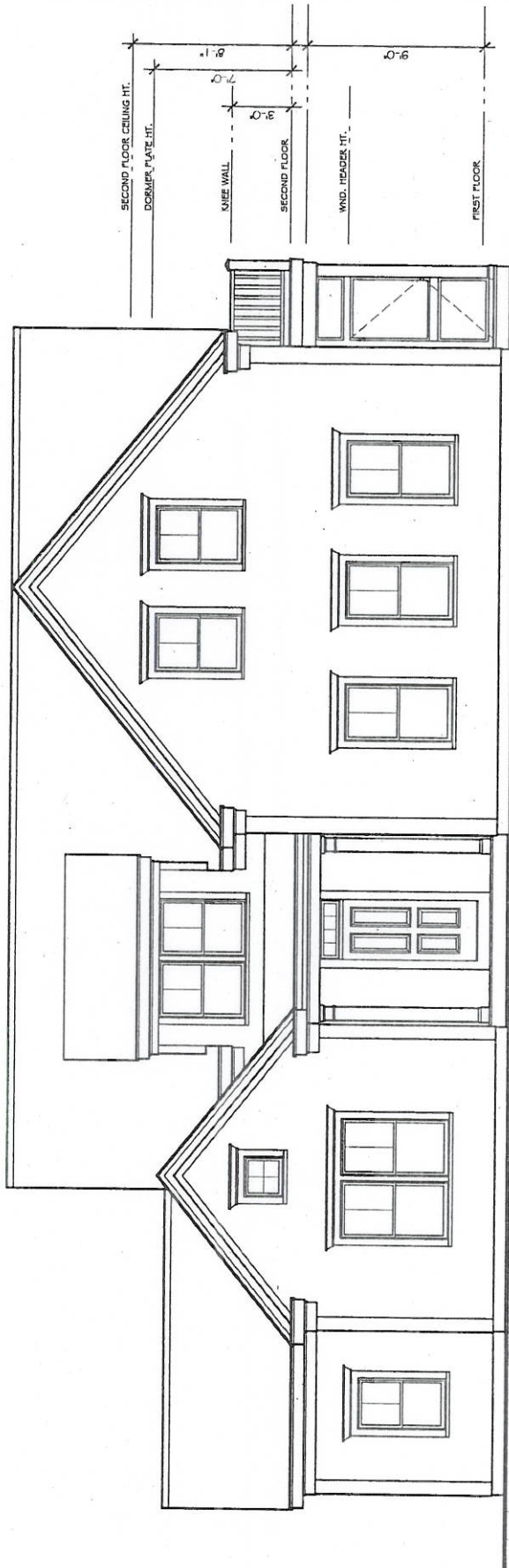
P.O. Box 2056Cotuit, MA 02635

Office Phone - 508-428-4219

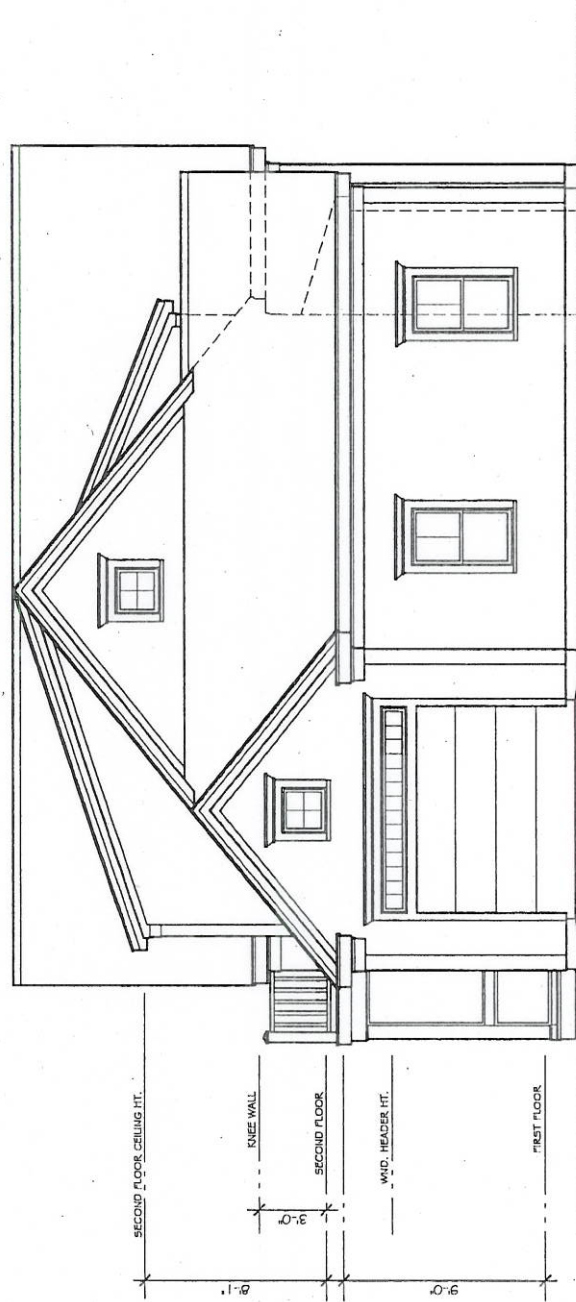




PRELIMINARY  
**FIRST FLOOR PLAN A**  
 1/4"=1'-0"  
 LOT COVERAGE ..... 1857 S.F.  
 LIVING AREA ..... 1360 S.F.

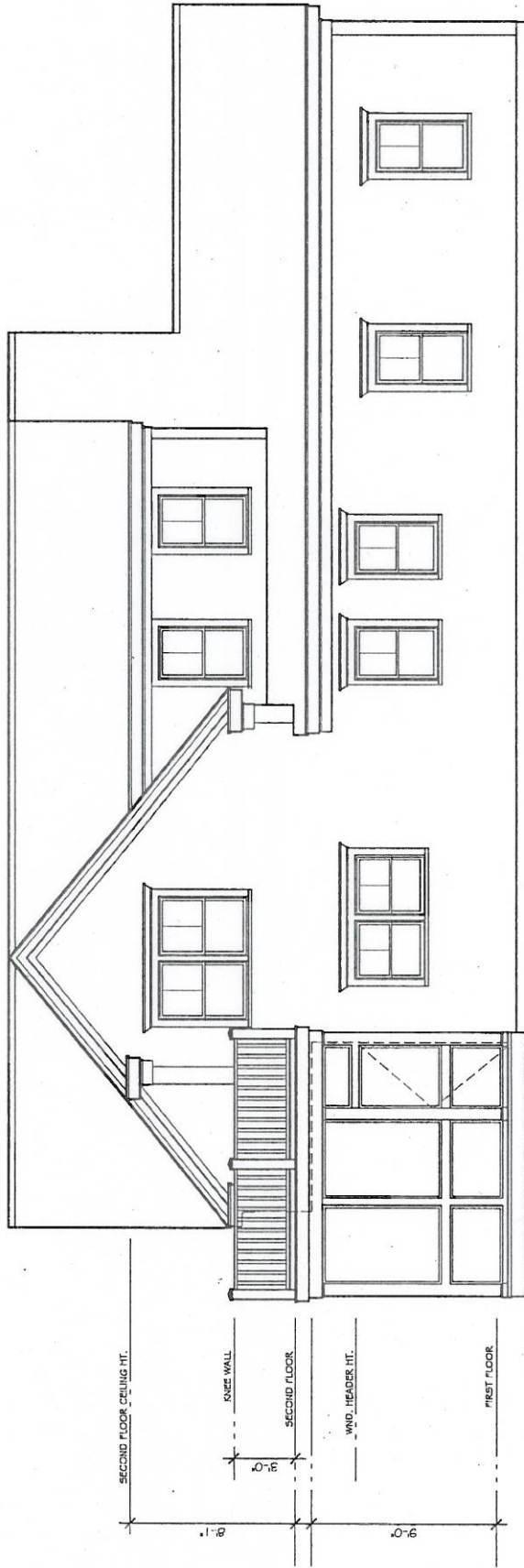


PRELIMINARY  
FRONT ELEVATION  
1/4"=1'-0"

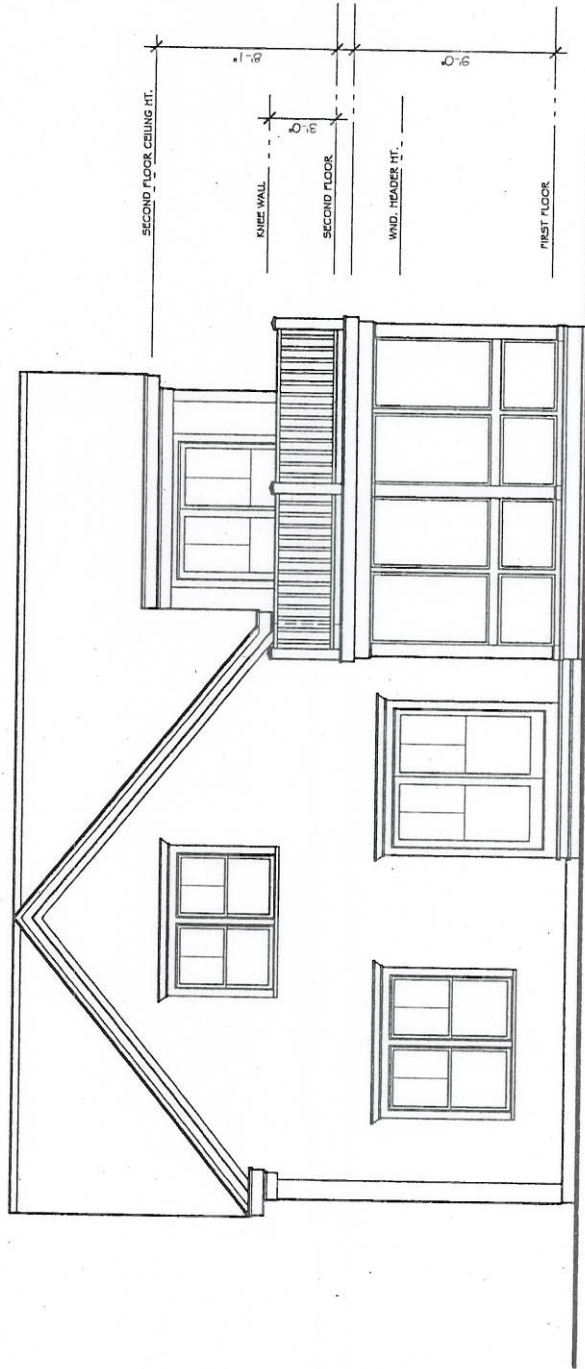


PRELIMINARY  
LEFT SIDE ELEVATION  
1/4"=1'-0"





PRELIMINARY  
REAR ELEVATION  
1/4"=1'-0"



PRELIMINARY  
RIGHT SIDE ELEVATION  
1/4"=1'-0"

TOWN OF BARNSTABLE

TOWN CLERK  
BARNSTABLE, MASS.

BOARD OF APPEALS

'78 MAY -5 PM 3 13

May 3 1978

NOTICE OF VARIANCE

Conditional or Limited Variance or Special Permit

(General Laws Chapter 40A, Section 18 as amended)

Notice is hereby given that a Conditional or Limited Variance or Special Permit has been granted

To Elizabeth B. MacGregor & Marion A. Bessey  
Owner or Petitioner

Address 3706 Pershing Ave., S. E.

City or Town Albuquerque, New Mexico

Map 33, Lots 7 and 8 in Barnstable Town Assessor's Records.  
Identify Land Affected

by the Town of Barnstable. Board of Appeals affecting the rights of the owner with respect to the use of premises on Sea St. & Ocean View Ave., Cotuit  
Street City or Town

the record title standing in the name of  
(7) Marion & Palmer Bessey (8) Elizabeth B. MacGregor

whose address is Box 2, Cotuit, MA 3706 Pershing Ave. S.E. Albuquerque  
Street City or Town State New Mexico

by a deed duly recorded in the Barnstable County Registry of Deeds in Book  
674 (7) Page 385 (7)  
1602 (8) 230 (8) Registry District of the Land Court  
Certificate No. Book Page

The decision of said Board is on file with the papers in Decision or Case No. 1978-5  
in the office of the Town Clerk of the Town of Barnstable.

Signed this 5th day of May 19 78

Subscribed and sworn to before me this 5th day of May, 1978. Board of Appeals:

*Aune Cahoon*

My commission expires 12/31/82.

*Joseph W. Allen* Chairman  
Board of Appeals

Clerk  
Board of Appeals

19 at o'clock and minutes M.

Received and entered with the Register of Deeds in the County of  
Book Page

ATTEST

Register of Deeds

Notice to be recorded by Petitioner





TOWN OF BARNSTABLE  
BOARD OF APPEALS

397 MAIN STREET  
HYANNIS, MASSACHUSETTS 02601

CERTIFICATE

Elizabeth B. MacGregor &  
Marion A. Bessey, Petitioners  
Appeal No. 1978-5

I, AUNE CAHOON, Ass't. Clerk of the Town of Barnstable, Barnstable County, Massachusetts, hereby certify that twenty-one (21) days have elapsed since the Board of Appeals rendered its decision in the above entitled petition and that no appeal of said decision has been filed in the office of the Town Clerk.

SIGNED and SEALED this 1st day of August, 1978 under the pains and penalties of perjury.

Aune Cahoon

TOWN OF BARNSTABLE

Board of Appeals

TOWN CLERK  
BARNSTABLE, MASS.

'78 MAR 30 AM 9 59

Elizabeth B. MacGregor & Marion A. Bessey  
Petitioner

Appeal No. 1978-5

March 28 1978

FACTS and DECISION

Petitioner E. B. MacGregor & M. A. Bessey filed petition on Feb. 1 1978,  
requesting a variance-permit for premises at \_\_\_\_\_ Street, in the village  
of Cotuit, adjoining premises of (see attached list)

for the purpose of Variance from Section J. - Intensity Regulations - Residence F  
Zoning District.

Locus is presently zoned in Residence F Zoning District

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

A public hearing by the Board of Appeals of the Town of Barnstable was held at the Town  
Office Building, Hyannis, Mass., at 2:45 ~~AM~~ P.M. March 1 1978,  
upon said petition under zoning by-laws.

Present at the hearing were the following members.

Joseph A. Williams  
Chairman

Buford Goins

Mary Ann B. Strayer



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

On March 28 19 78, the Board of

Appeals found

Attorney John Alger represented the petitioners, Elizabeth MacGregor and Marion Bessey, and presented a subdivision plan for which they are seeking approval. The petitioners are asking for clarification and approval of what already exists at the locus in question. They are asking that lot A and lot B-1 be combined into one buildable lot and that lot B-2 be allowed as a buildable lot. Both of these lots require a variance from Section J., Intensity Regulations - Residence Districts. There is a residence now existing on lot A and a residence on lot B-2. Lot B-1 is a strip of land, approximately 17½ feet in width and contains a shed. This lot (B-1) was conveyed to Marion and Palmer Bessey in June of 1963. The property line passed through the combination shed-garage and further reduced the size of Lot B-2 so that it did not comply with zoning. Elizabeth MacGregor now wishes to sell her real estate shown as lot B-2 on the plan submitted and the petitioners ask that Lot A and Lot B-1 be combined into a single lot and that Lot B-2 be allowed as a single lot and that the two residences, one on each of the lots, and the garage-shed combination, all be maintained in their present locations. No one spoke in favor of or in objection to the petition.

The Board found that the petitioner was seeking a variance to allow two lots (lot A and lot B-2) as single lots, under Section Q 2. (c) of the Barnstable Zoning by-laws. Elizabeth B. MacGregor now wishes to sell her real estate shown as lot B-2 on the new plan filed with the Appeals Board and seeks a variance to allow the approval and recording of the plan submitted showing Lots A and B-1 as a single approved building lot and Lot B-2 as a single approved building lot and the maintenance of all of the buildings now on both premises. Inasmuch as no additional construction is contemplated at this time, and inasmuch as the shed now located on Lot B-1 has been used as an integral part of the premises shown as lot A since the late 1940's, long prior to zoning, and since the plan now presented reflects the ownership of the property and the location of the buildings as they have existed since prior to 1963, conditions exist affecting these parcels and buildings which in no way generally affect the other land in this zoning district, and to literally enforce the provisions of the existing zoning by-law would involve substantial hardship to the petitioners. The Board found that to grant the relief sought would merely approve a use that has existed long prior to zoning and to allow the variance would not substantially nullify or derogate from the spirit and intent of the zoning by-laws nor be detrimental to the neighborhood. Therefore, the Board voted unanimously to approve the petitioners' request for a variance inasmuch as variance conditions as defined in Section 10, Chapter 40A of the Mass. Gen. Laws do exist on the lots in question.

Distribution:—

Town Clerk

Applicant

Persons interested

Building Inspector

Public Information

Board of Appeals

Board of Appeals

Town of Barnstable

By

  
Chairman



'78 FEB -1 PM 2 23



Appeal No. 1978-5

Date Received \_\_\_\_\_

TOWN OF BARNSTABLE

PETITION FOR VARIANCE UNDER THE ZONING BY-LAW  
SPECIAL PERMIT

To the Board of Appeals,  
Hyannis, Mass.

Date February 1, 1978

The undersigned petitions the Board of Appeals to vary, in the manner and for the reasons hereinafter set forth, the application of the provisions of the zoning by-law to the following described premises. Elizabeth B. MacGregor 3706 Pershing Ave., S.E.  
Applicant: Marion A. Bessey Albuquerque, New Mexico

(Full Name) (Winter Address)

Owner: Same  
(Full Name) (Winter Address)

Tenant (if any): None  
(Full Name) (Winter Address)

1. Assessors map and lot number Map 33, Lots 7 and 8

2. Location of Premises Sea St. & Ocean View Ave. Area Cotuit  
(Name of Street) (What section of Town)

3. Dimensions of lot 116' (Sea Street) 98.91' (Ocean View) 12,196.80'±  
(Frontage) (Depth) (Square Feet)

4. Zoning district in which premises are located Residence F

5. How long has owner had title to the above premises? Nine years

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

7. Give size of existing buildings Single family residence 48'±x55'±, Garage-shed 16'±x25'±

Proposed buildings No new construction

8. State present use of premises Single family residence

9. State proposed use of premises No change

10. Give extent of proposed construction or alterations: None

11. Number of living units for which building is to be arranged One family

12. Have you submitted plans for above to the Building Inspector? N/A

13. Has he refused a permit? N/A

14. What section of zoning by-law do you ask to be varied? J intensity  
Regulations - Appendix A - Residence F to area and setback requirements.

15. State reasons for variance or special permit: \_\_\_\_\_

SEE RIDER ATTACHED.

Respectfully submitted, \_\_\_\_\_

(Signature)

Petition received by \_\_\_\_\_

(Address)

Hearing date set for \_\_\_\_\_ 19 \_\_\_\_\_

\* Filing fee of \$25.00 required with this petition.

\* This form may also be used for Appeals.

(OVER)



Petitioners: Elizabeth B. MacGregor  
Marion A. Bessey

1978

15. State reasons for variance or special permit:

Petitioners seek approval of a plan entitled "Subdivision of Land in Cotuit, Barnstable, Mass. Property of Elizabeth B. MacGregor" dated January 26, 1978, drawn by Bearse & Law, Surveyors, Centerville, showing Parcels A, B<sup>1</sup> and B<sup>2</sup>, so that the same may be allowed and seek a variance of Paragraph J, Intensity Regulations, Appendix A, Residence F as to area and setback requirements so that the buildings on the lots may be maintained and improved.

On May 18, 1920, by deed recorded in Barnstable Deeds Book 372, Page 325, Marion A. Breck, the grandmother of the petitioners, acquired title to all of the real estate included in this petition. She held title to this property for twenty-seven years and on July 16, 1947, before any zoning was adopted in the town, by deed recorded in Book 674, Page 385, Mrs. Breck conveyed Lot A on a plan entitled "Subdivision of Land in Cotuit, Barnstable, Mass. Property of Marion A. Breck" dated June 22, 1947, drawn by Bearse & Kellogg, Civil Engineers, recorded in Plan Book 79, Page 3, to her daughter, Marion A. Bessey, a petitioner, and the daughter's husband, Palmer Q. Bessey since deceased. This Parcel A is identical to the Parcel A on the plan now sought to be approved.

Zoning was first adopted in the Town of Barnstable in 1956 and the locus in this petition was originally zoned as RB-1 which required 10,000 square feet and 120 feet of width. At the time of the adoption, Lot A was individually held and Lot B on the plan in Plan Book 79, Page 3 was owned by Marion A. Breck.

Marion A. Breck died a resident of Cotuit on July 2, 1956, and her will was probated in the Barnstable Probate Court, Case No. 35467. By the terms of her will, her cottage in Cotuit was devised to her daughter, Frances B. Benbow.

~~In 1957, the zoning in that section of Cotuit was upgraded to a Residence D-2 requiring an area of 20,000 square feet. At that point, because Lot B was individually held, even though it contained 13,895 square feet, it complied with the existing zoning.~~

Shortly after Mr. and Mrs. Bessey acquired title to Lot A, in 1947, they built a residence on the lot. This was completed prior to zoning. At that time and for many years the house and cottage had existed on Lot B as shown on the plan. From the time of the construction of the residence on Lot A, in the late forties, the shed on the rear portion of the garage on Lot B was used for storage by the Bessey Family.

On June 17, 1963, Frances B. Benbow, now deceased, conveyed a strip of land approximately 17½ feet in width, which is now shown on the new plan sought to be approved as Lot B<sup>1</sup>, to Marion A. Bessey and Palmer Q. Bessey by deed recorded in Book 1206, Page 599. This conveyance merged the title of Lot B<sup>1</sup> and Lot A in the same owners but was not in accordance with zoning in that it caused the property line to pass through the garage so that the shed used by the Bessey Family was located on the Bessey land. It violated zoning inasmuch as there was no building setback and it further reduced the size of Lot B so as not to comply with zoning.

CONTINUED . . . . .



Petitioners: Elizabeth B. MacGregor  
Marion A. Bessey

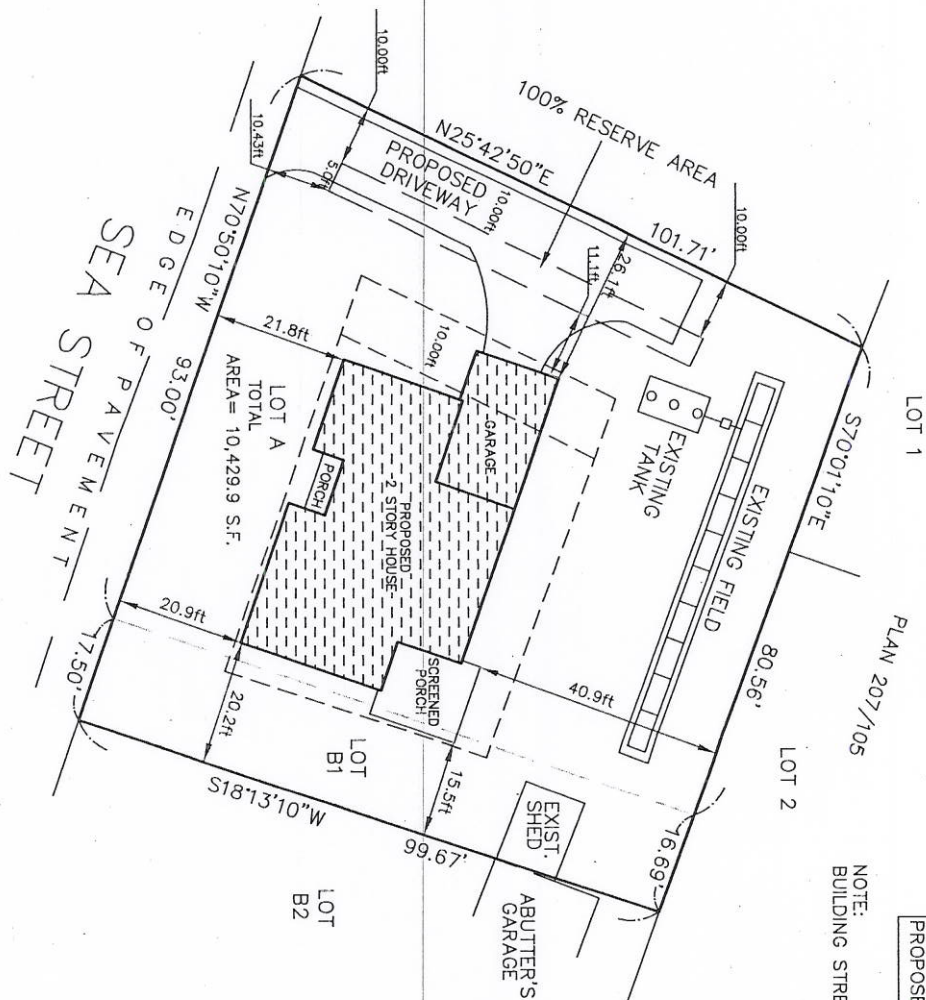
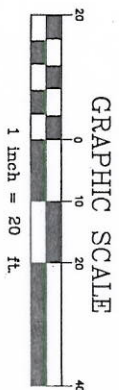
Statement of Reasons continued:-

On August 16, 1969, Frances B. Benbow conveyed what purported to be Lot B<sup>2</sup> on the plan in Plan Book 97, Page 3, but what in fact was Lot B<sup>2</sup> on the plan now sought to be approved, to her daughter, Elizabeth B. Draper by deed recorded in Book 1447, Page 91. In 1972, Elizabeth B. Draper, by deed dated January 27, 1972, conveyed the property to herself as Elizabeth B. MacGregor to reflect her new married name by deed recorded in Book 1602, Page 230. In 1973, the zoning was again upgraded in this district to a Residence F district requiring one acre in area and requiring a sideline setback of 15 feet.

Elizabeth B. MacGregor now wishes to sell her real estate shown as Lot B<sup>2</sup> on the new plan filed herewith and seeks a variance as above set forth to allow the approval and recording of this plan and the approval of Lots A and B<sup>1</sup> as a single approved building lot and Lot B<sup>2</sup> as a single approved building lot and the maintenance of all of the buildings now on both premises. Inasmuch as no additional construction is contemplated at this time, and inasmuch as the shed now located on Lot B<sup>1</sup> has been used as an integral part of the premises shown as Lot A since the late 1940s, long prior to zoning, and since the plan now presented reflects the ownership of the property and the location of the buildings as they have existed since prior to 1963, conditions exist affecting these parcels and buildings which in no way generally affect the other land in this zoning district, and to literally enforce the provisions of the existing zoning by-law would involve substantial hardship to the petitioners, to grant the relief herein sought would merely approve a use that has existed since long prior to zoning and a division of legal ownership as has existed since 1963 without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning by-laws.

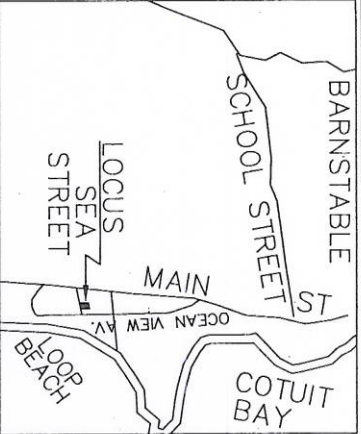
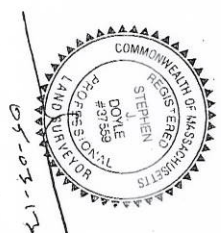
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PERCENTAGE OF LOT COVERAGE	
LOT AREA	10,429± S.F.
PROPOSED STRUCTURES	19.0%
PROPOSED DRIVEWAY	10.1%

NOTE:  
BUILDING STREET LINE SETBACK REQUIRED



LOCUS MAP  
PLAN REF: 321-84  
DEED REF: 25767-1  
ASSESSOR'S MAP: 033-007  
ZONING: RF  
SETBACKS: 30'-15'-15'  
FLOOD ZONE: C  
PANEL NUMBER: 250001 0018 D  
DATED: 7/2/1992

### PROPOSED PLAN

LOCATED AT:  
20 SEA STREET  
COTUIT, MA

PREPARED FOR:  
PETER POMETTI,  
MAY 2, 2013

REV:  
REV:  
REV:  
YANKEE LAND SURVEY CO., INC.  
119 ROUTE 149  
MARSTONS MILLS, MA

TEL: (508)428-0055 FAX: (508)420-5553  
yankeesurvey@comcast.net www.yankeesurvey.net  
SHEET 1 OF 1 JOB#: 54904 JM