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Zoning Board of Appeals December 8, 2021

O'Neill/ Dunbar Point LLC

Appeal No. 2021-057

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Town Clerk Stamp

5 OCT '21 PM 3:28
BARNSTABLE TOWN CLERK

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

For Office Use Only

Date Application Received:	Appeal No.:
Hearing Due Date:	Hearing Date:
Decision Due:	

Property Owner: J. Brian O'Neill, Miriam O'Neill, and Dunbar Point LLC		Phone:	
Property Location: 689 and 697 Scudder Avenue		Village: Hyannis	
City: Hyannis		State: MA	Zip: 02601
Address of Owner (if different from above): 2701 Renaissance Blvd 4th Floor <small>Street #, Street Name</small>			
City: King of Prussia		State: PA	Zip: 19406
Assessor's Info:	Map: 287	Parcel: 61 & 62	Zoning District: RF-1
Registry of Deeds/Land	Book: 3168	Page: 181	Document #: and
Court Reference:	Plan Book: LC Plan 14153B		Plan Page:
Applicant's Name: ¹	J. Brian O'Neill and Dunbar Point LLC		Phone: 5087905776
Applicant's Address:	See above		Fax #: 5087757526
City: c/o Attorney Jeffery Johnson, P.O. Box 960, Hyannis			State: MA Zip: 02601

If Applicant(s) differs from owner, state nature of interest²

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

Cite Section(s) & Title(s) from Zoning Ordinance: 240-91 A, B and F	240- 91F - Merged Lots No new buildable lots are created hereby
Description of Activity/Reason for Request: The cottage that is presently part of the parcel known as 697 Scudder Ave is going to be added to the parcel known as 689 Scudder Ave. No new residences are being created by this redivision of property lines, just the dividing line between 697 and 689 Scudder Ave per the attached plan drawn by Cape Surv, with the parcel to be transferred highlighted.	
Is property subject to an existing Special Permit or Variance: Yes	<input checked="" type="checkbox"/> YES - Please list Appeal #(s): 1978-67 Allowed the cottage that exists today <input type="checkbox"/> NO

¹ The Applicant(s) Name will be the entity to whom the Special Permit will be issued to.

² If the Applicant(s) differs from property owner, the Applicant will be required to submit one original notarized letter from the owner authorizing the Applicant(s) to represent them before the Board. Also, if perspective owner(s), an executed Purchase and Sales Agreement or Lease, or other documents to prove standing and interest in the property will be required.

Existing Level of Development of Property – Existing Number of Buildings: 2 single family homes and a cottage and pool

Existing Use of Property: Residential

Existing Gross Floor Area: See assessors cards

Proposed Level of Development of Property – Total Number of Buildings: No change except for property lines

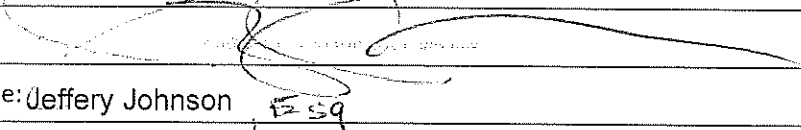
Proposed Use of Property: Residential

Proposed New Gross Floor Area: Same

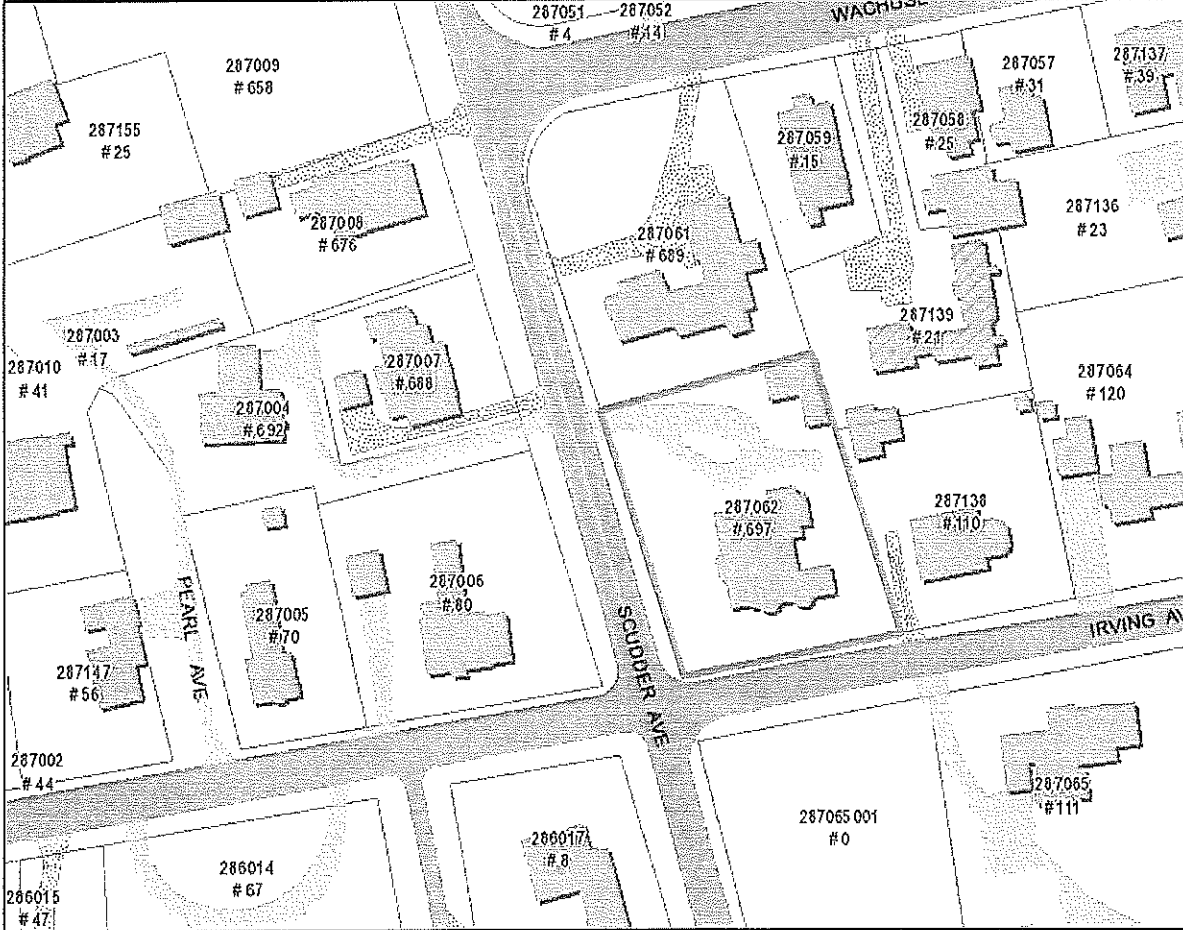
Site Plan Review Number: Not required for Single or Two-Family Use Date Approved:

Description of Construction Activity (if applicable): None associated with division of property lines

Is the property located in a designated Historic District:	Yes	No	x
Is the building a designated Historic mark:	Yes	No	x
Is this proposal subject to approval by the Board of Health:	Yes	No	x
Is this proposal subject to the jurisdiction of the Conservation Commission:	Yes	No	x
Have you applied for a building permit:	Yes Done	No	
Have you been refused a building permit:	Yes	No	x

Signature: 	Date: 10/5/2021	
Print Name: Jeffery Johnson, Esq	Phone: 5087905776	
Mailing Address: P.O. Box-960		
City: Hyannis	State: MA	Zip: 02601
Fax Number: 5087757526	Email Address: jeff@jefferyjohnsonesq.com	

TOWN OF BARNSTABLE PROPERTY MAPS



Legend

- Parcels
- Town Boundary
- Railroad Tracks
- Buildings
- Approx. Building
- Buildings
- Painted Lines
- Parking Lots
- Paved
- Unpaved
- Driveways
- Paved
- Unpaved
- Roads
- Paved Road
- Unpaved Road
- Bridge
- Paved Median
- Streams
- Marsh
- Water Bodies

Map printed on: 10/4/2021

0 83 167 Feet

Approx. Scale: 1 inch = 83 feet

This map is for illustration purposes only. It is not adequate for legal boundary determination or regulatory interpretation. This map does not represent an on-the-ground survey. It may be generalized, may not reflect current conditions, and may contain cartographic errors or omissions.

Parcel lines shown on this map are only graphic representations of Assessor's tax parcels. They are not true property boundaries and do not represent accurate relationships to physical objects on the map such as building locations.



Town of Barnstable GIS Unit
 367 Main Street, Hyannis, MA 02601
 508-862-4624
 gis@town.barnstable.ma.us

TOWN OF BARNSTABLE PLAN OF A PORTION OF WACHUSETT AVENUE

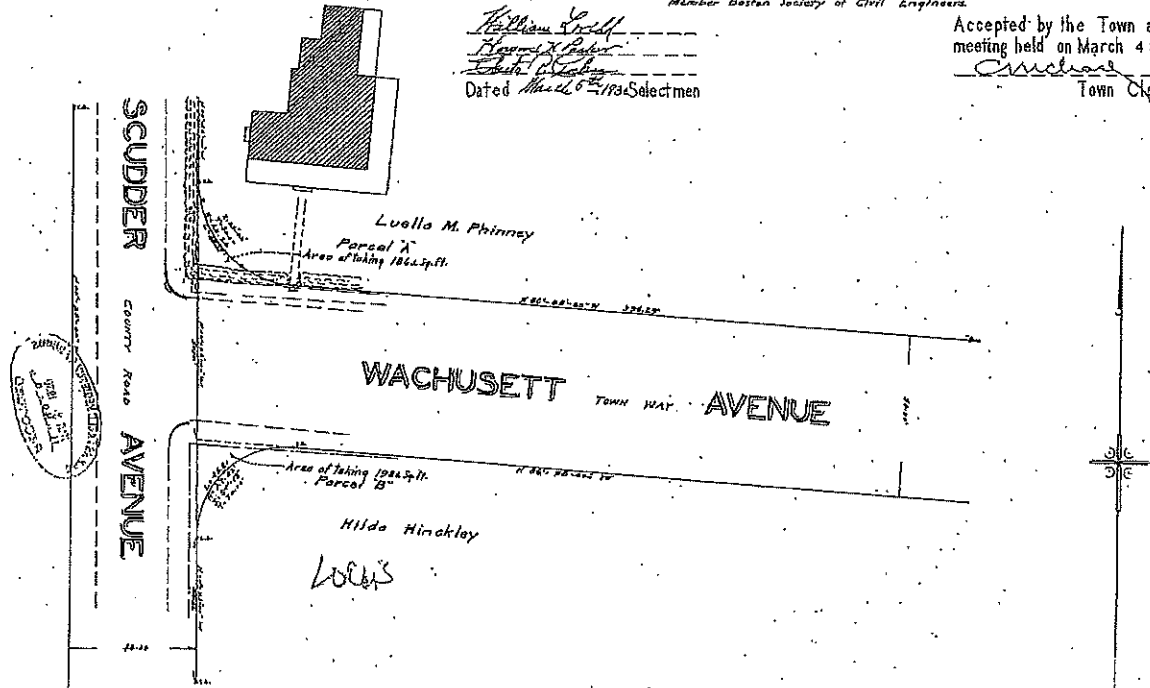
HYANNISPORT BARNSTABLE MASS
AS RELOCATED BY THE SELECTMEN

SCALE 1 inch = 20 feet
Dec. 14, 1929

Helen Deane Surveyor Centerville, Mass.
Member Boston Society of Civil Engineers

William Smith
Raymond X. Fisher
Edith B. ...
Dated March 6th 1930 Selectmen

Accepted by the Town at a
meeting held on March 4 1930
Caroline
Town Clerk



797

Helen Deane

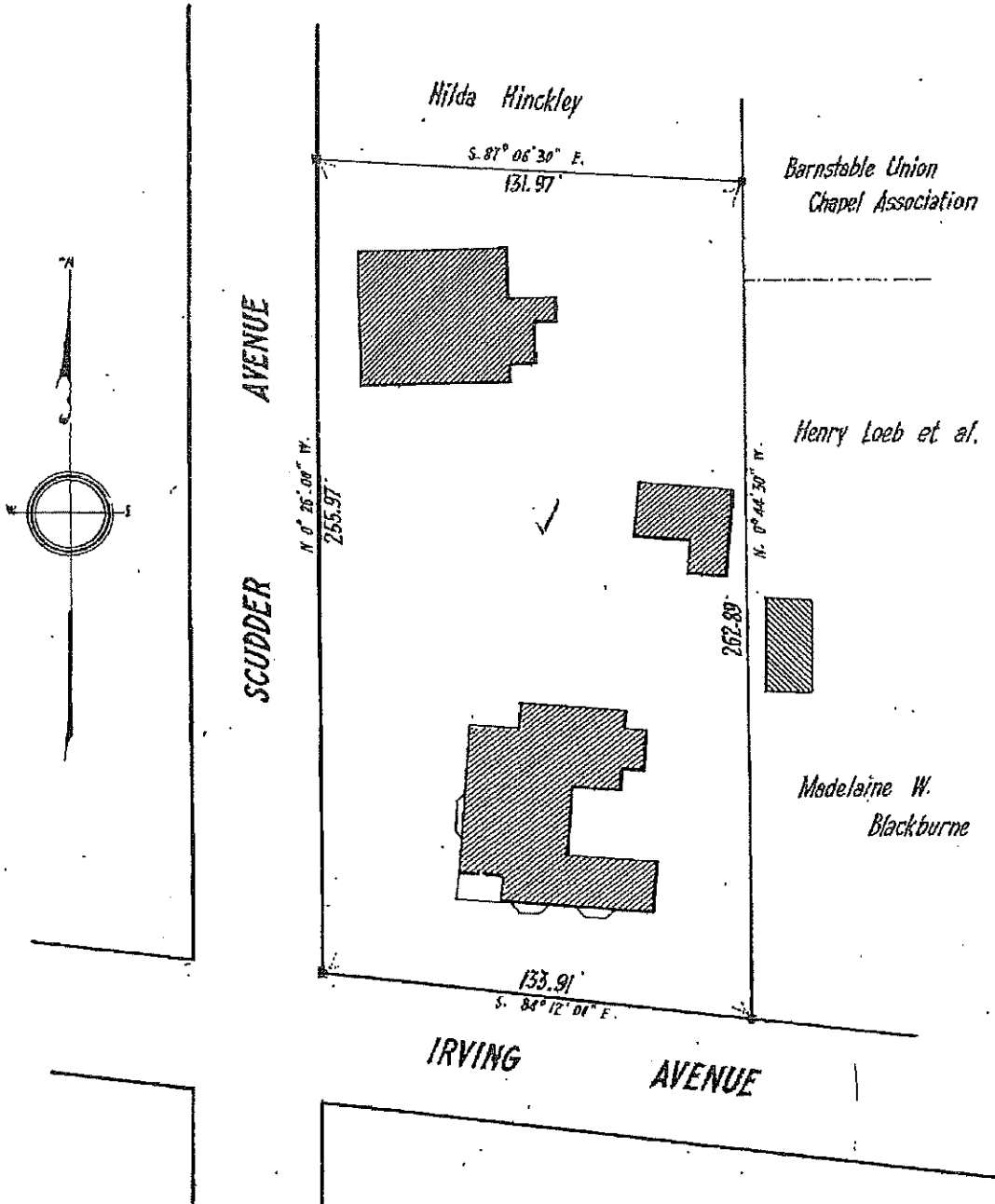
40-67

14153A

PLAN OF LAND IN BARNSTABLE (Hyannisport)

Nelson Bearse, Surveyor

SEPTEMBER 1929.



Copy of part of plan
 filed in
LAND REGISTRATION OFFICE
 APR. 9, 1930
 Scale of this plan 40 feet to an inch
 C.B. Humphrey, Engineer for Court

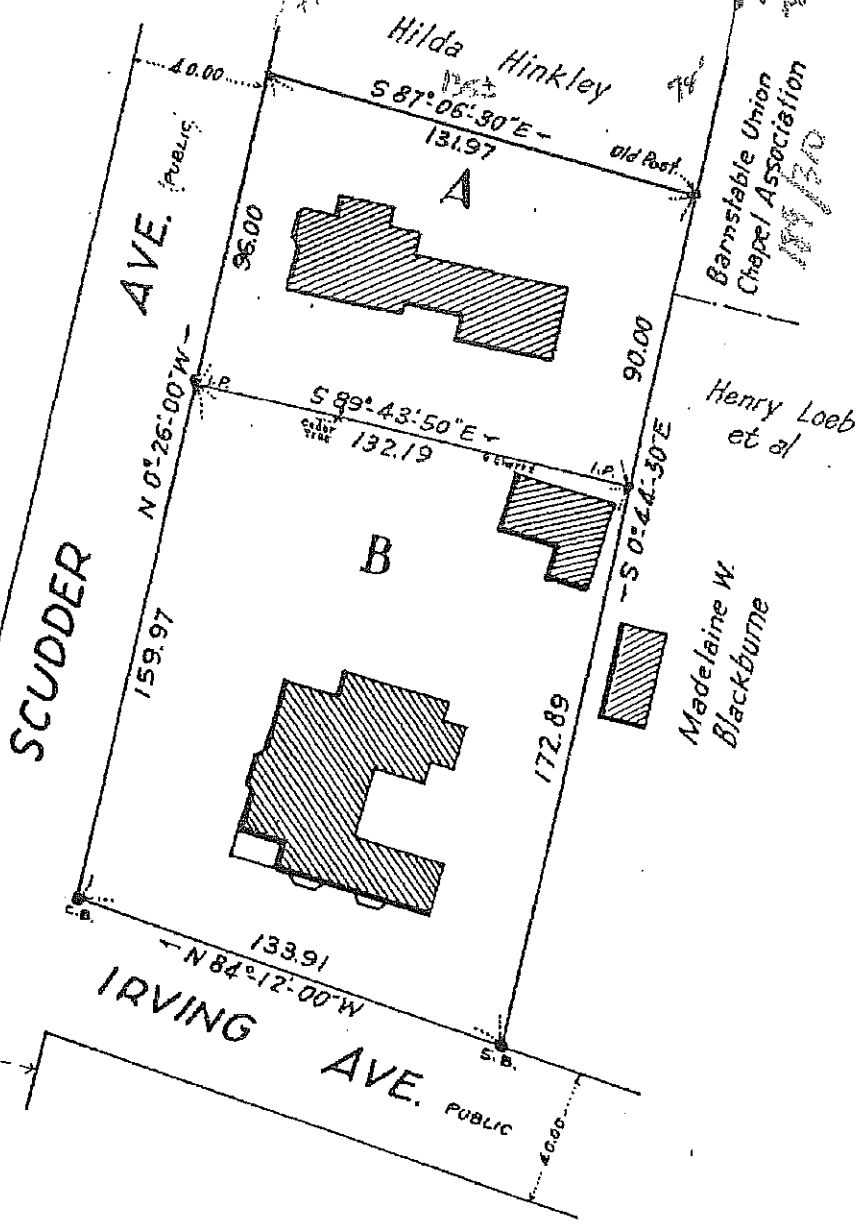
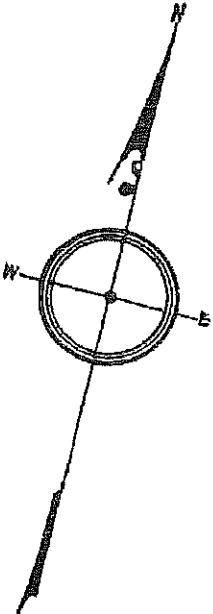
14153B

SUBDIVISION PLAN OF LAND IN BARNSTABLE (Hyannisport)

Bearse & Kellogg, Civil Engineers

May 25, 1948

Subdivision of Land
Shown on plan 14153A
Filed with Cert. of Title No. 2419
Registry District of Barnstable County



Separate certificates of title may be issued
for lots A and B as shown hereon
By the Court *Dennis J. Cummings*
Deputy Recorder.

Copy of part of plan filed in
LAND REGISTRATION OFFICE
JUNE 23, 1948
Scale of this plan 40 feet to an inch
W. T. Fairclough, Engineer for Court

JUNE 23, 1948

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

Appeal No. 1978-67

Page 2 of 2

On October 25, 1978, The Board of Appeals found

Atty. Robert E. O'Neil represented the petitioner and said the property in question is located at the corner of Scudder and Irving Avenues in Hyannis-Port in a residence C zoned district. The large family home which is on this property is not winterized and the petitioner wishes to enlarge and convert the existing garage into a small apartment. The petitioner (Mrs. Griggs) is asking for a Special Permit to allow a family apartment under Section V. of the Zoning By-laws and will comply with all of the requirements. This property has been in the petitioner's family for three generations and if permission is denied, she will be forced to sell the property since it is not feasible for her to winterize and heat the large house. The petitioner's family will use the large house in the Summer and it will not at any time of the year be rented out. A plan of the conversion of the garage into an apartment was presented to the Board and explained by Atty. O'Neil. There would be an addition to the roof line to accomodate the loft on the second floor and the first floor would contain a kitchen, a bathroom, a bedroom, a livingroom and sundeck. The proposed use would not be detrimental to the neighborhood nor in derogation of the spirit and intent of the by-laws. Mr. Eldredge, representing the HyannisPort Civic Association, said they had no objection to the petition provided that all of the conditions applicable to family apartments are met. No one spoke in objection to the petition.

The Board found that the petitioner applied for a Special Permit under Section V., Family Apartments, to allow the conversion of an existing garage into an apartment to be used by Mrs. Griggs, the property owner. The Board further found that the existence of plumbing and a separate septic system for the garage indicated that at one time, the garage did have facilities for living quarters. The Board voted unanimously to allow the petitioner's request for a Special Permit under Section P., (4) and (5) to increase the size of a non-conforming building and to re-establish a non-conforming use which had been discontinued subject to the following restriction:

1. Neither the apartment in the converted garage nor the main house, shall be rented out at any time, and a violation of this restriction shall result in a revocation of this Special Permit.

I, AUNE CAHOON Assy., 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 28th day of Dec. 1978 under the pains and penalties of perjury. Aune Cahoon

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

Board of Appeals
Town of Barnstable

By Laurel Ann B. Stayer
Chairman



BOARD OF APPEALS

PARTIES IN INTEREST - APPEAL NO. 1978-67 - TERRILL M. GRIGGS

Terrill M. Griggs

Bruso, Bernard & Claire
Burke, William J. & Helen
Clifford, Marion L.
Connolly, Walter J. & Paulina
Curley, Maureen K.
Dickey, Katherine H.
Englelson, Richard H.
Evans, John D. Jr.
Fowler, Sally W.
Griggs, Northam Lee Jr.
Harrison, Wm. R. & Karen
Ingram, Ellen H.
Kennedy, Robert F. c/o Corbin
Kennedy, Jacqueline B.
Laughlin, Leighton & Carin
Lewis, Madelaine B.
Loutrel, Margaret S.
Ludtke, Jean E. & James B.
Milliken, Arthur & Susan B.
Murphy, Margaret F.
Newman, Mary F.
Niehoff, K. Richard B.
O'Neil, Wm. J. & Mildred L.
Page, Christopher I.
Parker, William E. & Helen
Parker, Helen P.
Parshall, Lawrence et al
Patterson, Wm. Jr. & Marilyn C.
Quinn, Tangley L.
Reed, Virginia R.
Richards, Ross W. & Marilyn M.
Currie, L. Rodger
Stavros, George
Swan, Robert Jr. & Mary R.
Taylor, Elizabeth B.
Union Church
Wiggin, Jebra D.
Winship, S. R. c/o P. Winship
Woodwell, John Jr., etali
Yarmouth Planning Board
Mashpee Planning Board
Yarmouth Planning Board
Barnstable Planning Board

Doc:1,359,232 11-21-2018 11:15
Ctf#:217958
BARNSTABLE LAND COURT REGISTRY

Bk 31681 Pg 181 #58206
11-21-2018 @ 11:22a

(Space above this line reserved for Registry of Deeds use)

QUITCLAIM DEED

I, Todd S. Anderson, an unmarried individual, having a mailing address of P.O. Box 813, Hyannis Port, Massachusetts 02647,

for consideration paid and full consideration of One Million Six Hundred Thousand and 00/100 (\$1,600,000.00) Dollars,

grant to J. Brian O'Neill and Miriam O'Neill, husband and wife, as tenants by the entirety, of 2701 Renaissance Boulevard, Fourth Floor, King of Prussia, Pennsylvania 19406,

with Quitclaim Covenants,

a certain parcel of land, together with the buildings thereon, situated in Barnstable (Hyannis Port), Barnstable County, Massachusetts, bounded and described as follows:

PARCEL ONE:

Beginning at a stone post at the northeast corner of the granted premises on Wachusett Avenue and at land now or formerly of the Union Chapel Association; thence running

Westerly, one hundred and thirty-five (135) feet, more or less, on Wachusett Avenue to Scudder Avenue; thence

Southerly by Scudder Avenue, seventy-four (74) feet, more or less, to a fence post and land now or formerly of Emma C. Baker, thence running

Easterly by said land of Emma C. Baker, one hundred thirty-five (135) feet, more or less, to a fence post and land now or formerly of Union Chapel Association; thence running

Locus: 689 Scudder Avenue, Hyannis, Massachusetts

Northerly by land said Association, seventy-four (74) feet, more or less, to Wachusett Avenue, and point of beginning.

This land is conveyed subject to an order of taking for road purposes by the Board of Selectmen of The Town of Barnstable recorded with the Barnstable Registry of Deeds in Book 471, Page 563.

Subject to and together with all rights, easements, restriction and reservations of record, insofar as the same are still in force and applicable.

For title, see deed recorded with the Barnstable County Registry of Deeds at Book 28149, Page 32.

PARCEL TWO:

The land situated in Barnstable, Barnstable County, Massachusetts, described as follows:

Lot A

Land Court Plan 14153-B

Subject to and together with all rights, easements, restrictions and reservations of record, insofar as the same are still in force and applicable.

For title, see deed filed with the Barnstable Registry District of the Land Court as Document no. 1,245,912, noted on Certificate of Title No. 203380.


I, Todd S. Anderson, hereby release all of my rights of Homestead in the above-described property, and further state under the penalties and pains of perjury, that I have no former spouses, partners, or former partners in civil unions who can claim the benefit of a Homestead by court order or otherwise in the above described property.

(The remainder of this page has been left intentionally blank.)

MASSACHUSETTS STATE EXCISE TAX
BARNSTABLE LAND COURT REGISTRY
Date: 11-21-2018 @ 11:15am
Ct1#: 451 Doc#: 1359232
Fee: \$5,472.00 Cons: \$1,600,000.00

BARNSTABLE COUNTY EXCISE TAX
BARNSTABLE LAND COURT REGISTRY
Date: 11-21-2018 @ 11:15am
Ct1#: 451 Doc#: 1359232
Fee: \$4,896.00 Cons: \$1,300,000.00

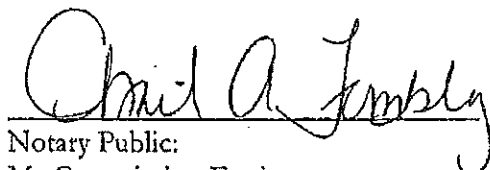
Executed as a sealed instrument under the pains and penalties of perjury this 19
day of November, 2018.



Todd S. Anderson

Commonwealth of Massachusetts

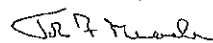
Barnstable, ss.

On this 19 day of November, 2018, before me, the undersigned notary public,
personally appeared Todd S. Anderson as aforesaid, proved to me through satisfactory
evidence of identification, which was MA Driver 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 and who swore or affirmed to me
that the contents of the attached document are truthful and accurate to the best of his
knowledge and belief.


Notary Public:
My Commission Expires:

 **CHRISTINE A. TREMBLAY**
Notary Public
Commonwealth of Massachusetts
My Commission Expires
August 12, 2022

BARNSTABLE REGISTRY OF DEEDS
John F. Meade, Register

BARNSTABLE COUNTY
REGISTRY OF DEEDS
A TRUE COPY, ATTEST

JOHN F. MEADE, REGISTER

QUITCLAIM DEED

We, **ELLEN W. GRIGGS** and **MARY LOUISE ORR**, **TRUSTEES OF THE T. G. REALTY TRUST**, under a Declaration of Trust dated December 28, 1978 and filed with the Barnstable Registry District of the Land Court in Document No. 290,981, of 1280 Washington Street, Unit 401, Boston, MA 02118-2151 and 901 S. Trenton Avenue, Pittsburgh, PA 15221, respectively

for consideration of **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** paid, grant to

DUNBAR POINT, LLC, a Pennsylvania limited liability company, of 201 King of Prussia Road, Suite 501, Radnor, PA 19087

with **QUITCLAIM COVENANTS**, the land together with the buildings thereon in Barnstable (Hyannis Port), Barnstable County, Massachusetts, being described as follows:

Being Lot B as shown on Land Court Plan 14153-B.

Subject to and together with the benefit of all easements, rights, reservations and restrictions of record, insofar as the same are now in force and applicable.

We, Ellen W. Griggs and Mary Louise Orr, hereby release all rights of homestead and other rights we have in and to the herein granted premises. We further aver under the pains and penalties of perjury that there are no other persons entitled to an estate of homestead or who have any homestead rights in the property conveyed herein.

For title, see Certificate of Title No. 87880.

WITNESS my hand and seal this 18 day of February, 2020.

THE T. G. REALTY TRUST

By:

Ellen W. Griggs, Trustee
ELLEN W. GRIGGS, TRUSTEE

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 18 day of February, 2020, before me, the undersigned notary public, personally appeared Ellen W. Griggs, Trustee as aforesaid and proved to me through satisfactory evidence of identification, a MA driver's license, to be the person whose name is signed on the preceding or attached document and acknowledged to me that she signed it as her free act and deed and made oath that the foregoing certification is true and correct

Stephanie Nordberg
Notary Public

My commission expires:

02/11/2022



STEPHANIE NORDBERG
Notary Public
Commonwealth of Massachusetts
My Commission Expires Feb. 11, 2022

MASSACHUSETTS STATE EXCISE TAX
BARNSTABLE LAND COURT REGISTRY
Date: 02-28-2020 @ 03:15pm
Ct1#: 1039 Doc#: 1391414
Fee: \$6,840.00 Cons: \$2,000,000.00

BARNSTABLE COUNTY EXCISE TAX
BARNSTABLE LAND COURT REGISTRY
Date: 02-28-2020 @ 03:15pm
Ct1#: 1039 Doc#: 1391414
Fee: \$6,120.00 Cons: \$2,000,000.00

WITNESS my hand and seal this 19th day of February, 2020.

THE T. G. REALTY TRUST

By:

Mary Louise Orr
MARY LOUISE ORR, TRUSTEE

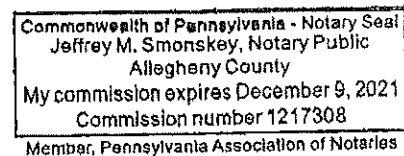
COMMONWEALTH OF PENNSYLVANIA

Allegheny, ss.

On this 19th day of February, 2020, before me, the undersigned notary public, personally appeared Mary Louise Orr, Trustee as aforesaid and proved to me through satisfactory evidence of identification, a PA driver's license, to be the person whose name is signed on the preceding or attached document and acknowledged to me that she signed it as her free act and deed and made oath that the foregoing certification is true and correct

Jeffrey M. Smonskey
Notary Public

My commission expires: 12/9/2021



TRUSTEE'S CERTIFICATE

We, Ellen W. Griggs and Mary Louise Orr, Trustees of The T. G. Realty Trust, of Boston, Massachusetts and Pittsburgh, Pennsylvania, respectively, under oath, do depose and say as follows:

1. That we are the sole trustees of The T. G. Realty Trust, under a Declaration of Trust dated December 28, 1978 and filed with the Barnstable Registry District of the Land Court in Document No. 290,981.
2. That the Trust is a non-testamentary trust. That any certification by any person named as a current or as a successor trustee shall be conclusive on all persons.
3. That, pursuant to the terms of the Trust, the trustee then serving shall have the absolute power to sell at public auction, or private sale, and to assign, transfer, pledge, barter or exchange for real or personal property, all or any part of the real or personal property of the Trust, including mortgages of property now or hereafter held under the trust, at such time and prices and upon such terms and conditions as the trustee(s) deem(s) proper without order or license of court, and to execute any and all deeds and other instruments necessary or appropriate to accomplish such sale or other transaction, and no person need make any inquiry concerning the propriety of any of the trustee's actions and all such actions shall conclusively be presumed to be proper.
4. That no fact exists which constitutes a condition precedent to acts by the trustee(s) or which are in any manner germane to the affairs of the trust.
5. That said Trust has not been amended or revoked and that the same is still in full force and effect.
6. That I have been duly authorized and directed by all of the beneficiaries of said Trust to sign, seal, acknowledge and deliver the attached or foregoing deed of property known as 697 Scudder Avenue, Hyannis Port, Massachusetts, for the purchase price of 2,000,000.00.
7. That all of the beneficiaries of said trust are individuals, are not minors, are competent and are operating under no constraint or undue influence.

SUBSCRIBED AND SWORN to under the pains and penalties of perjury
this 18 day of February, 2020.

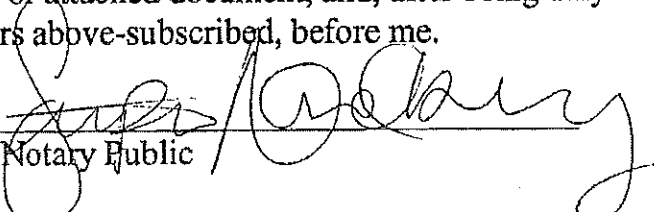


Ellen W. Griggs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 18 day of February, 2020, before me, the undersigned notary public, personally appeared Ellen W. Griggs, proved to me through satisfactory evidence of identification, which was a MA driver's license, to be the person whose name is signed on the preceding or attached document, and, after being duly sworn, attested to the truth of the matters above-subscribed, before me.



Notary Public

My commission expires:

02/11/2022



STEPHANIE NORDBERG
Notary Public
Commonwealth of Massachusetts
My Commission Expires Feb. 11, 2022

SUBSCRIBED AND SWORN to under the pains and penalties of perjury
this 19th day of February, 2020.

Mary Louise Orr
Mary Louise Orr

COMMONWEALTH OF PENNSYLVANIA

Allegheny, ss.

On this 19th day of February, 2020, before me, the undersigned notary
public, personally appeared Mary Louise Orr, proved to me through satisfactory
evidence of identification, which was a PA driver's license, to be the person whose
name is signed on the preceding or attached document, and, after being duly
sworn, attested to the truth of the matters above-subscribed, before me.

Jeffrey M. Smonskey
Notary Public

My commission expires: 12/9/2021

Commonwealth of Pennsylvania - Notary Seal
Jeffrey M. Smonskey, Notary Public
Allegheny County
My commission expires December 9, 2021
Commission number 1217308
Member, Pennsylvania Association of Notaries

BARNSTABLE REGISTRY OF DEEDS
John F. Meade, Register

Assessor's map and lot number 287-62 gm
Sewage Permit number (78) 5
House number

OK. PCM-1-4-79

SEPTIC SYSTEM MUST BE
INSTALLED IN COMPLIANCE
WITH ARTICLE II STATE
SANITARY CODE AND TOWN
REGULATIONS



TOWN OF BARNSTABLE

BUILDING INSPECTOR

APPLICATION FOR PERMIT TO REMODEL

TYPE OF CONSTRUCTION FRAME

Jan 4 1979

TO THE INSPECTOR OF BUILDINGS:

The undersigned hereby applies for a permit according to the following information:

Location corner Irving Ave & Sudder Ave Hyannisport

Proposed Use

Zoning District RB Fire District H4

Name of Owner MRS TERRELL GRIGGS Address SAME

Name of Builder HAROLD E FINCH Address 658 MAIN ST. W. YARMOUTH

Name of Architect — Address

Number of Rooms 4 Foundation CONCRETE BLOCK

Exterior SHINGLES Roofing ASPHALT

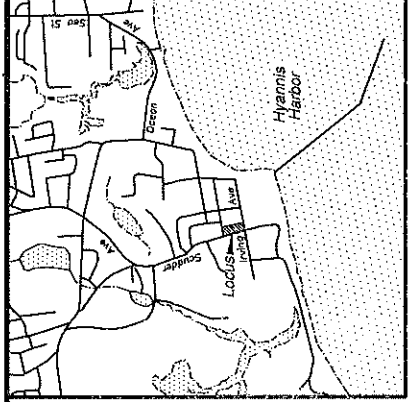
Floors WOOD Interior SHEETROCK

Heating HOT WATER - GAS Plumbing 1 BATH

ASSESSORS REF.:
Map 287, Parcels 061 & 062

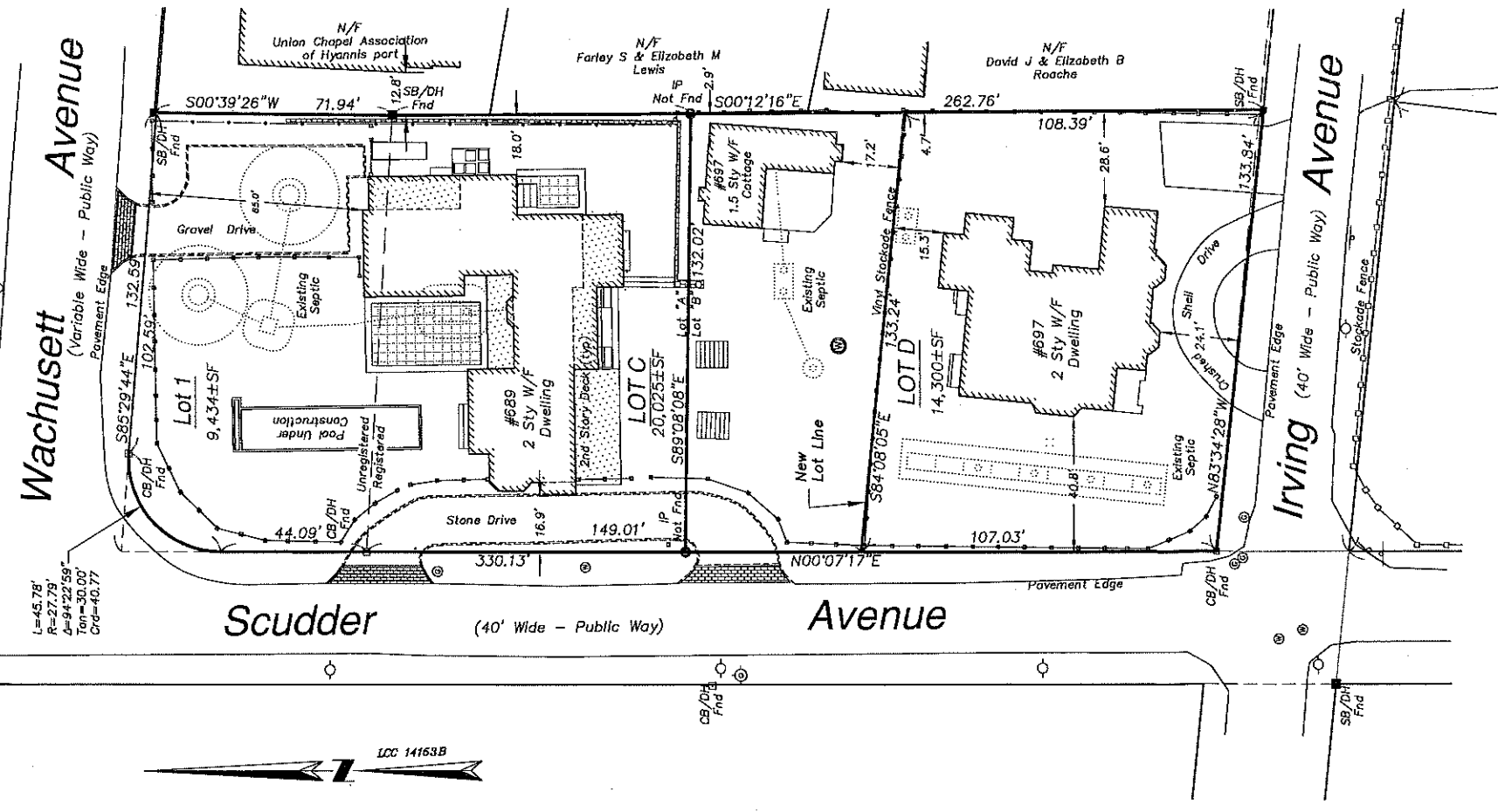
ZONE:
RF-1
Area (min.) 43,560 SF
Frontage (min.) 20'
Width (min.) 125'
Setbacks:
Front 30'
Side 15'
Rear 15'

FLOOD ZONE:
Zone X
Community Panel No. #2500100568J
July 16, 2014



Location Map
Scale: 1"=2,000'

- Legend:**
- Water, Mounds
 - Hydrant
 - Hose Bib
 - Iron Pipe
 - CB/DH
 - SB/DH
 - MHB
 - PK nail
 - Utility Pole
 - Sign
 - Water Gate (round)
 - Gas Gate (round)
 - Overhead Wires



Approval under the Subdivision Control Law is not required.
BARNSTABLE PLANNING BOARD

Date _____

No determination as to compliance with the Zoning Ordinance requirements has been made or intended by the above

Note:
1.) The purpose of this plan is to create Lot D by re-subdividing Lots A & B as shown on LCC 14153B.
2.) Lot 1, which is an unregistered parcel, will be combined with Lot C. The total area resulting here will be 29,459±SF

DRAFT
PLAN OF LAND
AT 689 & 697 Scudder Ave
BARNSTABLE
(HYANNISPORT)
MASSACHUSETTS

March 24, 2021
Scale: 1"=30'

Being A Re-division Of
Lots A & B As Shown On LCC 14153B

PETITIONERS: J. Brian O'Neill
And Miriam O'Neill

Prepared by:

CapeSurv
23 West Bay Road, Suite C
Osterville MA 02653
(508) 420-3994 (508) 420-3995 fax
cape.surv@capecad.net

I certify that this actual survey was made on the ground in accordance with the Land Court Instructions of 2006 on or between 28/AUG/08 and 18/MAR/21.



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



Special Permit No. 2021-057 – O’Neill and Dunbar Point LLC

Section 240-91 Nonconforming lot

- A. Separate Lot Exemption**
- B. Common Lot Exemption**
- F. Merged Lots**

To allow the relocation of the shared property line which will result in the cottage on abutting lot

Date: November 22, 2021
To: Zoning Board of Appeals
From: Anna Brigham, Principal Planner

Applicant: J. Brian O’Neill, Miriam O’Neill and Dunbar Point LLC
Applicants Address: 2701 Renaissance Blvd, 4th floor, King of Prussia PA 19406
Property Address: 689 and 697 Scudder Avenue Hyannis
Assessor's Map/Parcel: 289, 061 and 062
Zoning: Residence F-1 (RF-1)

Filed: October 5, 2021

Hearing: December 8, 2021

Decision Due: January 13, 2022

Copy of Public Notice

J. Brian O’Neill, Miriam O’Neill, and Dunbar Point LLC have applied for a Special Permit pursuant to Section 240-91 F Merged Lots. The Applicant seeks to relocate the property line between 689 and 697 Scudder Avenue which would result in the cottage to be part of 689 Scudder Avenue. The subject properties are 689 Scudder Ave and 697 Scudder Ave, Hyannis, MA on Assessors Map 287, Parcels 061 and 062. Both properties are located in the Residence F-1 (RF-1) Zoning District.

Background

Subject property addressed as 689 Scudder Ave consists of 0.5 acres and contains a 6-bedroom, single family dwelling with 5,957 square feet of living area (13,991 gross) constructed in 1825. The lot is located at the intersection of Scudder Ave and Wachusett Avenue in the Hyannisport area.

Subject property addressed as 697 Scudder Ave consists of 0.5 acres and contains a 9-bedroom single family dwelling with 4,404 square feet of living area (6,180 gross) constructed in 1860. The lot is located at the intersection of Scudder Ave and Irving Street in the Hyannisport area.

Both residential lots are consistent with the lot sizes in the neighborhood. Both lots are served by public water, gas, and private septic.

Special Permit 1978-67 allowed the conversion of a garage to an apartment to be used by the property owner at 697 Scudder Ave with the condition that neither the principal dwelling nor the cottage can be rented out and a violation of this restriction shall result in a revocation of the Special Permit.

Proposal & Relief Requested

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§ 240-91 Nonconforming lot states:

A. Separate lot exemption. *Any increase in area, frontage, width, yard or depth requirement of this chapter shall not apply to a lot for single- or two-family residential use which at the time of recording or endorsement:*

- (1) Was not held in common ownership with any adjoining land; and*
- (2) Had a minimum of 5,000 square feet of area and 50 feet of frontage or the minimum frontage requirement for the zoning district in which it is located; and*
- (3) Conformed to the existing zoning if any when legally created; and*
- (4) Was separately owned at the time of every zoning change which made it nonconforming.*

B. Common lot protection states:

(1) Any increase in the area, frontage, width, yard or depth requirement of this chapter shall not apply for a period of five years from the effective date of the change, to a lot for single- or two-family residential use that:

- (a) Is held in common ownership with not more than two adjoining lots; and*
- (b) Had a minimum of 7,500 square feet in area and 75 feet of frontage or the minimum frontage requirement for the zoning district in which it is located; and*
- (c) Was recorded or endorsed on a plan that conformed to zoning when legally created; and*
- (d) Conformed to applicable zoning requirements as of January 1, 1976.*

240-91 F. Merged lots, states:

Except as otherwise provided herein, lawfully nonconforming lots that are adjoining and held in common ownership, or under the control of the same owner, shall be treated so as to conform so far as possible with the minimum area requirement of the zoning district in which they are located. No lot so merged, or portion thereof, may be changed or transferred in any manner that will increase the degree of nonconformity unless a special permit has first been obtained from the Zoning Board of Appeals. No such special permit may create any additional buildable lot(s).

Staff Comments

Special Permit No. 2021-057 is being heard in conjunction with Variance No. 2021-063. By relocating the property line between two preexisting nonconforming lots, a variance is required to create two new nonconforming lots. The Cottage at No. 697 Scudder Ave received a Special Permit in 1978. By relocating the cottage to No. 689 Scudder Ave, the permitting path for the use must be determined. The Cottage could be a Family Apartment with a Special Permit, it could be permitted as an Accessory Dwelling Unit, or rented as an Accessory Affordable Apartment. This proposal will need to revise the condition within Special Permit 1978-67 which prohibits the cottage from being rented.

Proposed Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the

public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

1. **The application falls within a category specifically excepted in the ordinance for a grant of a special permit.** *Section 240-91F allows for lawfully nonconforming lots that are adjoining and held in common ownership, or under the control of the same owner, shall be treated so as to conform so far as possible with the minimum area requirement of the zoning district by Special Permit.*
2. **Site Plan Review is not required for single-family residential dwellings.**
3. **After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.**

The Board is also asked to find that:

4. **The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.**
5. **The existing accessory structure, once an apartment, will require further relief if seeking to restore the residential use.**

Suggested Conditions

Should the Board find to grant the Special Permit No. 2021-057, it may wish to consider the following conditions:

1. Special Permit No. 2021-057 is granted to J. Brian O'Neill, Miriam O'Neill, and Dunbar Point LLC to relocate the property line between 689 and 697 Scudder Avenue which would result in the cottage to be part of 689 Scudder Avenue, Hyannis.
2. The site development shall be constructed in substantial conformance with the plan entitled "Draft Plan of Land at 689 and 697 Scudder Ave, Barnstable (Hyannisport) Massachusetts" by CapeSurv dated March 24, 2021.
3. The accessory structure being relocated to 689 Scudder Avenue shall not be a dwelling unit without further relief.
4. The proposed redevelopment shall represent full build-out of the lots. Any expansion of the dwellings or construction of additional accessory structures is prohibited without prior approval from the Board.
5. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
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 (c/o Attorney Jeff Johnson)

Attachments: Application
Site Plan
Building plans
Special Permit No. 1978-67