### THE LAW OFFICES OF BELLO & MORTON, LLC

184 Main Street Wareham, Massachusetts 02571 · 508-295-2522

Zoning Board of Appeals of Wareham

Memorial Town Hall

54 Marion Road

Wareham, MA 02571

FILE COPY

Re: Application for Special Permit/Variance Assessors Map 20, Lot 1017/C 16 Over Jordan Road, Wareham, MA 02571

### 1. Petitioners

Thomas Parenteau, Owner of

TJP Realty LLC

19 Over Jordan Road

Wareham, MA 02571

### 2. Recorded Owner:

TJP Realty LLC

19 Over Jordan Road

Wareham, MA 02571

### 3. Certified Abutters List:

Copy Attached as Exhibit A

### 4. Current Deed and Trust Documents:

Plymouth County Registry of Deeds Book 51249, Page 227 (Deed). Exhibit B.

### 5. Building Inspector's Notice of Violation Letter:

Violation Letter dated February 11, 2021 attached here as <u>Exhibit C</u> from the Building Commissioner referencing Appeal to Zoning Board of Appeal is necessary.

### 6. Proposed Site Plan:

Attached as Exhibit D is a copy of the Relevant Plan and architectural renderings for the project. Please note our Parcel is in the R-60 District.

### 7. Letter of Intent

Dear Mr. Chairman,

I represent the applicant Mr. Thomas Parenteau of TJP Realty LLC re the above application for a Variance on their proposed new construction on 16 Over Jordan Road.

### Background:

As noted in the Commissioner's denial letter, the applicant razed an existing one family structure on the property and "this activated the Mass Merger Doctrine and created a land merger with the adjacent parcel in common ownership."

The applicant intends to seek relief from the Board in the form of this petition in order to build the new construction he is proposing in the attached plans and renderings.

### Relevant By Law for Relief: Variances

### 1470 VARIANCES

The Board of Appeals shall have the power to hear and decide applications for Variances from the provisions of the Zoning By-Laws, including the power to grant a Variance authorizing a Use or activity not otherwise permitted in the district in which the land or structure is located. A Variance may be granted when factors relating to soil conditions, lot shape, or topography of such land creates an impracticality or limits the location or positioning of a new structure or addition on a site or location that previously conformed to zoning requirements. An applicant must demonstrate that a literal enforcement of the By-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and 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.

### Commissioners Denial Letter:

Per the Commissioners Letter, we are seeking two Variances under MGL, chapter 40 A Section 15:

- Article 6, Table 621, Residential Districts: Lots in the R-60 zoning district require a minimum of 60,000 square feet and 180' of frontage. A <u>Variance</u> from the Zoning Board of Appeals is required in order to break the land merger and to allow construction on the parcel.
- Article 6, Section 621, Residential Districts: New structures in the R-60 Zoning District are required to maintain a minimum 60' front yard setback. You are proposing a 40' setback which requires a <u>Variance</u> from the Zoning Board of Appeals in order to proceed.
- Article 6, Section 621, Residential Districts: You are proposing a 17' side yard setback from the left boundary line where 20' is required. A <u>Variance</u> from the Zoning Board of Appeals must be secured in order to proceed with your proposal.

### Legal Standard as Applied to our case:

Our lot was preexisting and non-conforming, but since the demolition of the existing structure (footprint as noted on the plan) now we are before you seeking relief to build a one family new construction on the smaller lot.

Looking at this lot – it has 144.45 feet of frontage (short 35.55') and has approximately 27077.2 square feet (short 32,992.8). This Board has the authority to grant a variance on this project if they see it meets the requirements set out by the Variance statute. We shall review here:

Now to the statutory requirements, this lot is certainly unique in its topography. The land is surrounded by wetlands and no touch conservation zones. Secondly there is an extreme hardship to the petitioner here if the Board deems these properties unbuildable- the lots have been occupied by a single-family home since 1957. The old building was falling in disrepair and a hazard to the area. The petitioner is seeking to reduce the footprint and improve the property tremendously. To have the property be deemed unusable for development is surely not the intent of our Zoning by-law. Case law shows that the local Zoning board do have the authority to break the merger of lots if is applicable – in this instance it surely is. There are three lots with single family homes from the 50s which are were in need of development and reconstruction.

As for the statutory requirements for the front yard setback variance, this lot is unique in that flanked on one side by Over Jordan Road and then on the other side by coastal wetlands and bordering vegetated wetlands. The topography of the land is an issue as well to as the homes being

built here need to be put on stilts as they are in the FEMA flood zone. The front yard setback as the Commissioner said is 406 in a district where 60' is required. The reasoning for this setback is due to the proximity of the builds to the wetlands and protected conservation area.

The last variance for the side yard setback is again due to the proximity of the locus near the coastal bank and the proposed location of the erosion control barrier. The soil conditions on this parcel are in danger of erosion and therefore this would be needed for the build. We are seeking a small deviation from the 20' here again due specifically to the topography of the land.

There would be a substantial hardship to my client if these Variances where not granted in the way that he would not be able to build on the sites that previously had single family homes on them. The loss of the grandfathering through this doctrine would be extreme detrimental to Mr. Parenteau warranting these lots unbuildable. We in Town are looking to encourage thoughtful development. After reviewing the plans, my hope would be that the Board sees the value that Mr. Parenteau is bringing to the area here, which is difficult to develop considering the challenges with the wetlands and coast.

It is our hope that the Board views the granting of these variances as keeping with the nature of the neighborhood and helping the value of the properties increase, therefore increasing tax revenue for the town.

Lastly, granting the Petitioner the relief being requests in no way derogates from the intent of the zoning by-laws as the lot is zoned for single family residences. The build keeps with the nature of the neighborhood.

All things considered allowing these Variances would not be detrimental to the neighborhood and certainly would not derogate from the intent of the Zoning By Law.

Respectfully submitted,

Jilian A. Morton, Esq.

### TOWN OF WAREHAM

### ZONING BOARD OF APPEALS

### APPLICATION FOR A PUBLIC HEARING FOR A VARIANCE/SPECIAL PERMIT

Certain uses are allowed in several zoning districts only by means of a Variance and/or Special Permit from the Zoning Board of Appeals. Those uses are indicated in the Wareham Zoning By-Laws. To apply for a Variance/Special Permit from the Zoning Board of Appeals, please do the following:

- o Complete this form.
- o Complete information packets. (Directions attached)
- O Submit application form and packet to Town Clerk for signature.
- o Submit application form and packet to Town Collector for signature.
- Submit completed form, packets, and appropriate fees\*\* to the Zoning Board of Appeals secretary.

\*\*Permits may be issued only after a public hearing. There is a filing fee of \$300.00 per lot, per application for all non-conforming residential lots, whether built upon or not. There is a filing fee of \$750.00 per lot, per application for all commercial applications. In the case of a multi-family development, the fee is \$300.00 plus an additional \$50.00 for every unit over two (2). Please make check payable to the Town of Wareham.

\*\*A check to cover two (2) legal advertisements for the public hearing should be made payable to Wareham Week in the amount of \$80.00.

\*\*The applicant will also be responsible for the costs of sending out abutter notifications by Certified Mail. The cost is \$6.73 per certified letter to each abutter. Please see Zoning Board secretary for cost of mailings. Please make check payable to the Town of Wareham.

I hereby apply for a Variance/Special Permit for a use to be made of the following described place:

c/o Attorney Jiliour A. Maran,	STREET & NUMBER: _/ZONING DISTRICT:USE REQUESTED:OWNER OF LAND & BUADDRESS OF OWNER: PERSON(S) WHO WILL ADDRESS:	R-60 Single Sar JILDING: TTP Rea LG OVER UTILIZE PERMIT: 19 OVER J CVC OUR 21 SIGNATURE:	vily 1 Ity L Total	AP: 20 LOT: 10/7C ACME LC TEL.# 20 Road P Realty U.C Durcham, MA 02 1200	2
ESQ	Town Clerk:		Date:		
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	Planning/Zoning Dept.:				
	Application fee paid:	Check #:		_Receipt:	
	Advertising fee paid:	Check #		_Receipt:	
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### TOWN OF WAREHAM

APPLICANT/CONTRACTOR/REPRESENATIVE INFORMATION SHEET

Check Applicable:VarianceSpecial PermitSite PlanAppeal	
Date stamped in: Date decision is due	
Applicant's Name: TJP Realty LLC	,
Applicant's Address: 19 Over Jordan Road, Wareham,	M
Telephone Number:	51/
Cell Phone Number: CO Attaney Mortan	
Email Address:	
Address of Property/Project: 16 Over Jordan Road, Waveligh	M,
Landowner's Name: Thomas Paventeau	7237
Owner's Address: Same as applicant	
Telephone Number: 508-295-2522	
Contact Person: Jilian A, Mahan, Telephone Number: 508-295-3	152
Map 20 Lot 1017 ESQ Zone R-60	
Date Approved Date Denied	
Comments:	
	1

### EXHIBIT A

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MAP 20 LOT 1017/C	017/C				
OWNER TJP REALTY LLC	EALTY LLC				
***************************************	Amelian is served in the Section of				
MAP & LOT	OWNER	STREET ADDRESS	NWOT	STATE	ZIP CODE
-	SASS JOSEPH A	5 JAMES DR	WAREHAM	MA	02571
	CURRY-MCKEON BRENDA R	23 SALTWARSH LN	WAREHAM	MA	02571
20-1017/C	TUP REALTY LLC	310 KENNETH WELCH DR	LAKEVILLE		02347
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<b>JAM@MORT</b>	JAM@MORTONLAWLLC.COM				

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### EXHIBIT B

Jordan Rd. & Other Parcels

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cusinuss at 340 Secureth Welch Drive. "akeville, Massachuseus 06547 ("Grantee"), with

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WITHOUT COVENANTS.

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Address E. Volpe died December 8, 1983 (Norfolk County Probate Docket Number NO83F3178E1) and Sabestino Valpe died on August 8, 1975 (Norfolk County Probate Number 73F2411-E1). Paul Volpe died July 3, 2017 (Plymouth County Probate Decket Number PL17P1896EA) Effect

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Meaning and intending to describe and convey that parcel conveyed to Paul Volpe by deed dated December B, 1988 and recorded to the Hymorath County Registry of Decds at 30 ok 8885 page 254.

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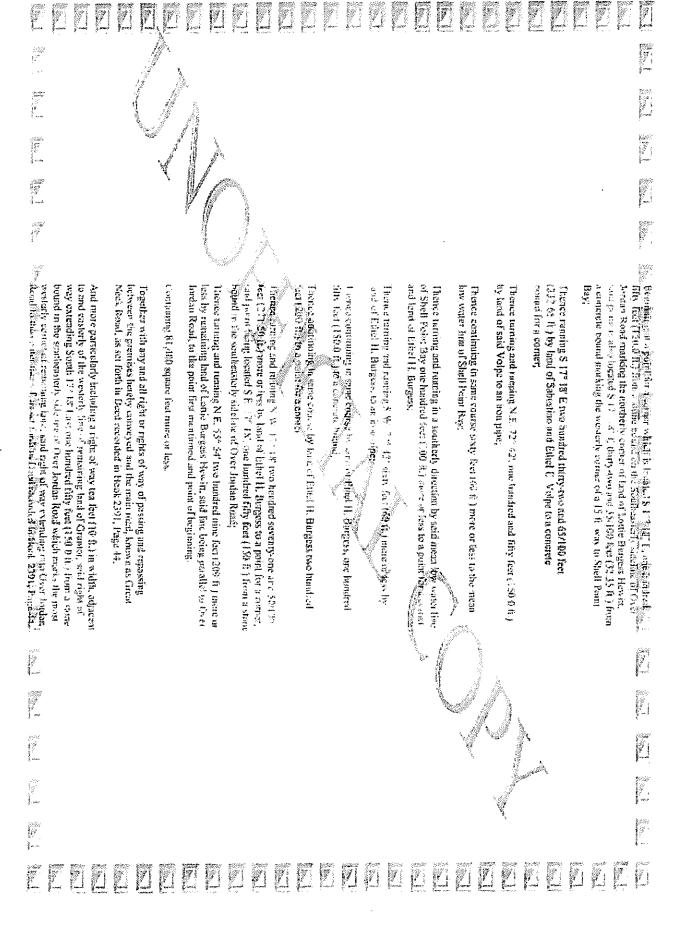
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Meaning and intending to describe and convey that percel conveyed to Sabestino Voluciasal Ethel E. Vulpe by deed direct June 18, 1945 and recorded in the Plymastir Causty Registry of Deeds or Book 1948 page 572.

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## PARCEL 7 - 17 Shell Lane

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> private way between the land hereby conveyed and Great Neek Read, as set forth in the Deed received in Bure, 2016, Page 418. Sand land is hereby consequed with the right to pass and represerver a

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and enough than one diversing shall be orecled or mainteneed thereon. No other building shall be erected or narratained except a garage heaving me newe that purposes that it shall not be used for begreess of commercial propinces, and that Subject to the conditions and restrictions that it shall be used only for residential

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produced Ž Ī 7 7 ESMA Allo 1935 18 SAGE N TO (WILL) at hear by Was fortal Road of accuracy applies. Tr band basebad and west family threat NESS Resignary to facilities Designation of the Transfer of the Section 1997. Tarzel #2 dellans | 2) acres most or low according to said plan Surveyer, recorded with Phymouth County Registry of Deads in Book 2526 Four northin parects of land slidated in that part of Wareham, Plymouth County. Massachusens, known as Grent Neck, with the buildings thereon, described as Physics. th County Registry of Deces at Book 2468 page 189). Massachuseus, known as Gren Neck, with the hutdings thereas, Inconfed and Said parcels further described in the vesting deed as follows: read knawn ge Orest Neck Kuad in common with others having a like right. replies in and over said Over Jordan Road between said purcels and the public Built said pateels are hereby conveyed together with the right to pass and Judan West Cours New Marchen, Sept. 1817 1958 Weller E. Rowley. Turkel Chassingup on Tous of Land Surveyor for Ethel H. Burgess, Over Parcel #2 - 15 Chang Lorden March have mean arriver and last it executive Thydis's square feet many a hear, all by Saluctino Volpe and Ethel Volpe, Great Neck, Wareham, Massa News Ser Excel #1 - 13, 13 & 16 Over Juickin Read Meaning and intending to describe and convey that parcel conveyed to Sistestino Vidgo and Ethel E. Volpe by dood dated Movember 30, 1955 and recorded in the the wantewesterly current final sow or famority of Anna G. Hale, described as follows: actividing to said phas Let A consider ALCO second has more as loss, Landennius 25 MI second Thereinth Courty Registry of Beeds in Pag Book 11, Page Issa [98] Walter E. Riveley, Surveyor, West Wastelam, Mass. [necorded w]. the A, Lid B and Lot it as shown an a plan emilled "Objects of Energial Object." Beginning at a concern bound in the normally line of Over Jordan Road at Target #1 - 12. 19 & 16 Over Jardin Road Two percels of fund situated in that part of Watchard, Plymouth County, thence conding South 47" 47" iii. West one matter force force and 2007K 100 BBBBBBB 

reneral Constitution of Ž. 2000 Section 1 21633 2164 246 Hewit to a stake: 276.60 Text by Olde Armin Road to Down the Tipe (1) shrevender their teories (wellorder Ruha). A Need, Wittenson Fig. 13. by said hand of the result. The first to stake the and not the 12 g O) had, more neatheasterly comer or land now or formerly of Lettie B. Hewitt. (175.18) for he are arted April & Habi to the general beginning sold land now or formerly of Anna E. Hale to a concrete bound. (275.08) feet by remaining land of Finel H. Burgess to a concrete learning feet by remaining family fixed of fixed of fixegess to a softenue house [11] T.65) Feet by said and of Massitt in the point of heginaing said had of Hewiz to a conserve hound, and utifier so Myselody, was instant seventy and most (2750) been more good for the Myselog and the South States as or has he great the sense has at Shell best Bay. by Over Lindan Road is a stakes Beginning at a same bound in the sputherly time of over Jordan Roughal the Parcel 42 - 15 Over Jordan Ross Containing 2.17 pares, none or less hat by remaining bow of Libel H. Dorgers to a someth humb; expans in and over sond ever dending Road between said perceds and the public Remerly of Cauche L. L. Laws, September 1" High, stance & Rowley, up men," receded with deviloants subject to and large these sections if an in and All of the courses, diseases and sounds muniform in the foregoing the same below wear age water and Said pussel 2 is subject to any and all pushlo rights legally extendig to and ever read known as Coma Seck Road in common with others basing a like sight Both said care is are hereby conveyed togother with the right to pass and THE STATE OF THE PARTY OF THE STATE OF THE S Theose South R. 58 30" West, sevenly-live and no 160 (750) feet more or less, to a theree South \$2, 58, 30" West, vighty-two and 78/125 (82, 10) feet by said land of ty of Cardina 1 Laws. there with to 17 for east we handed upon and so test thereo wivers with 160 M. W. Bust, rights and 78 With All Male thence South 39° 16'00" East, one hundred severily-live and 28'100 thence North 50" 34" 00" East, sixty-right and 404 00 (6%,40) feet by thence Stanta 85° 15' OU' Hast, two handred screency five and 08' 180 thence North 4" 14-20" West, two hundred eight and 38/100 (208-38) thence North 7" 03' 30" West, once bundred seventeen and 65/100 Containing 1.21 acres, more or less. thence South 37-38 Jiff West, fifty-time and Enditt (30.33) icet by Then of them 91030a i despe 400E 30000 4 NEDEFEEDE And the second 38.000 5.000 Salahan Salaha Control of the contro

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# PARCEL 13 - 11 Shell Lane

The land, together with the buistings thereon, whated in Wareham, Plymouth County, Massachtmetts, in that part known as Burgess Point busided and described as follows:

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# PARCEL 14.- 5 Over Jundan Rand

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### EXHIBIT C

### TOWN of WAREHAM



### Massachusetts

### BUILDING DEPARTMENT

David L Riquinha
Director of Inspectional Services

TJP Realty LLC 19 Over Jordan Rd Wareham, MA 02571 February 11, 2021

RE: 16 Over Jordan Rd

Map 20, Lot 1017/C

I have reviewed your permit application to construct a new single family dwelling on the parcel of land known as 16 Over Jordan Road, in Wareham Massachusetts. The proposal is not in compliance with current zoning regulations and must be denied at this time.

You are proposing to construct a new single family dwelling where a single family structure recently existed. The dwelling was situated on the nonconforming parcel and was razed prematurely without the proper approvals in place. This activated the Mass Merger Doctrine, and created a land merger with the adjacent parcel in common ownership. A <u>variance</u> will have to be secured from the Zoning Board of Appeals in order to fracture the merger, and to allow construction to continue on the undersized parcel. If you are successful in acquiring the variance to release the merger, you will then need to secure an additional <u>variance</u> for the non-conforming front yard setback and one for the left side non-conforming setback as well.

The submitted permit application documents which include a site plan by G.A.F. Engineering labeled "Job no 19-9295" comprised of two pages dated February 6, 2020, are being denied under the following sections of the Wareham Zoning By-law:

- Article 6, Table 621, Residential Districts: Lots in the R-60 zoning district require a minimum of 60,000 square feet and 180° of frontage. A <u>Variance</u> from the Zoning Board of Appeals is required in order to break the land merger and to allow construction on the parcel.
- Article 6, Section 621, Residential Districts: New structures in the R-60 Zoning
  District are required to maintain a minimum 60' front yard setback. You are
  proposing a 40'setback which requires a <u>Variance</u> from the Zoning Board of
  Appeals in order to proceed.
- Article 6, Section 621, Residential Districts: You are proposing a 17' side yard setback from the left boundary line where 20' is required. A <u>Variance</u> from the Zoning Board of Appeals must be secured in order to proceed with your proposal.

The subject property is located in R-60 Zoning District.

Respectfully,

David Riquinha
Building Commissioner
Zoning Enforcement Officer

It is the owners' responsibility to check with other departments, i.e. Health, and conservation, etc. to ensure full compliance.

In accordance with the provisions of MGL chapter 40A §§ 15, you may apply to the Zoning Board of Appeals for the above noted relief within thirty (30) days of receipt of this letter.

### EXHIBIT D