
THE LAW OFFICES OF BELLO & MORTON, LLC

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

November 9, 2023

Wareham Zoning Board of Appeals
54 Maron Road
Wareham, MA 02571

Re: Appeal Application for Karen DeMichele, Property Located at 43 South
Boulevard, Wareham, MA 02532; Assessor's Map 1, Lot 10

Dear Members of the Board of Appeals:

Please find enclosed the following information and exhibits:

1. Petitioner and Record Owner:

Karen DeMichele
4 Sarsen Stone Way
Southboro, MA 01772

2. Current Deed:

Plymouth County Registry of Deeds Book 32880, Page 348, Deed attached as
Exhibit A.

3. Building Inspector's Denial Letter:

Notice of Violation attached here as Exhibit B from the Building Commissioner.

4. Certified Abutters List:

Copy Attached as Exhibit C.

5. Attorney Flemings Letter to Building Commissioner dated September 29, 2023

Copy Attached as Exhibit D.

6. Attorney Walsh to Building Commissioner dated October 12, 2023

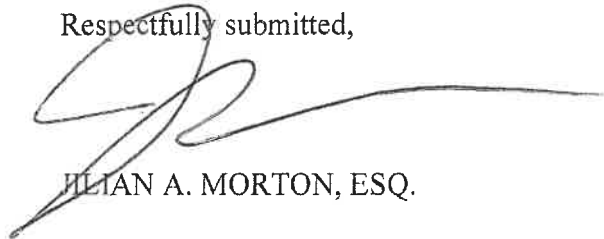
Copy Attached as Exhibit E.

Our request is to Appeal the Notice of Violation of the curtains and poles as the matter is civil and is between my clients and their abutters. There is a Superior Court case as well as a Criminal case pending in front of the courts.

It has been settled law that the Board of Appeals may overturn the Commissioner's letter of Violation in light of pending litigation between neighbors. Specifically, the importance of the pools and curtains are for the purposes of safety and privacy of Karen DeMichele and Peter Russell when they are on the property. The curtains are only put up when they are at the premises and drawn down when they are not there.

We urge the Board not to uphold the Violation. We ask the Board to my clients to keep the structures there in order to protect their immediate safety and privacy.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Julian A. Morton', with a long horizontal flourish extending to the right.

JULIAN A. MORTON, ESQ.

508-295-2522

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:

- Complete this form.
- Complete information packets. (Directions attached)
- Submit application form and packet to Town Clerk for signature.
- 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 \$100.00.

**The applicant will also be responsible for the costs of sending out abutter notifications by Certified Mail. The cost is \$6.90 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:

STREET & NUMBER: 43 South Boulevard, Wareham, MA 02530 LOT: 1 MAP: 10

ZONING DISTRICT: OV-2

USE REQUESTED: Single Family Residence

OWNER OF LAND & BUILDING: Karen DeMichele TEL.# _____

ADDRESS OF OWNER: 4 Sarsen Stone Way, Southboro, MA 01772

PERSON(S) WHO WILL UTILIZE PERMIT: Karen DeMichele

ADDRESS: 4 Sarsen Stone Way, Southboro, MA 01772

DATE: 11/9/2023 SIGNATURE: 

This application was received on the date stamped here:

WAREHAM TOWN CLERK
2023 NOV 30 AM 9:36

Town Clerk: _____ Date: _____

Tax Collector:  Date: 11-30-23

Planning/Zoning Dept.: Sonia Raposo Date: 11-29-23

Application fee paid: 300.00 Check #: 5268 Receipt: _____

Advertising fee paid: 150.00 Check #: 5260 Receipt: _____

Abutters fee paid: 424.20 Check #: 5259 Receipt: _____

TOWN OF WAREHAM

APPLICANT/CONTRACTOR/REPRESENTATIVE INFORMATION SHEET

Check One: Variance Special Permit Site Plan Appeal

Date stamped in: _____ Date decision is due _____

Applicant's Name: Karen DeMichele

Applicant's Address: c/o Jillian Morton, Esq., 184 Main Street, Wareham, MA 02571

Telephone Number: 508-295-2522

Cell Phone Number: N/A

Email Address: jam@mortonlawllc.com

Address of Property/Project: 43 South Boulevard, Wareham, MA 02532

Landowner's Name: Karen DeMichele

Owner's Address: 4 Sarsen Stone Way, Southboro, MA 01772

Telephone Number: N/A

Contact Person: Jillian Morton, Esq. Telephone Number: 508-295-2522

Map 1 Lot 10 Zone OV-2

Date Approved _____ Date Denied _____

Comments: _____

EXHIBIT A

Return to: *mail 1*
Karen DeMichele
4 Sarsen Stone Way
Southborough, MA 01772

00107
Received & Recorded
PLYMOUTH COUNTY
REGISTRY OF DEEDS
19 JUN 2006 10:05AM
JOHN R. BUCKLEY, JR.
REGISTER
Bk 32880 Pg 348-349

DEED

We, **LOUIS DeMICHELE and KAREN DeMICHELE** of 4 Sarsen Stone Way,
Southborough, MA 01772

In consideration of **LESS THAN ONE HUNDRED DOLLARS**

Grant to **KAREN DeMICHELE**

of 4 Sarsen Stone Way, Southborough, MA 01772

With Quitclaim Covenants

The land in that part of Wareham, Plymouth County, Massachusetts, called Onset, with the buildings thereon, being Lot #10 as shown on "Plan of Lands of the Onset Bay Grove Association" recorded with Plymouth County Registry of Deeds dated 1878 recorded in Plan Book 1, Page 58, as the same is set out on said plan, and subject to such restrictions of the Onset Bay Grove Association as are now in force and applicable. Said lot contains 3289 square feet of land.

Also granting a strip of land 5 feet wide on the southeasterly side of Lot #9 running from Second Street to Lot #8 as shown on said plan. Said line running parallel to the line of Lot #10 and 5 feet distant there from.

Said premises are subject to the rights in common driveway over a strip of land 4 feet and 8 inches in width, which is more fully described in the deed of Adlia M. Wixon to Elsbeth I. Clark, dated August 1, 1925 and recorded in Plymouth County Registry of Deeds, Book 1488, Page 352. Said premises are conveyed with the right to use a strip of land 3 feet and 4 inches in width which was described in said deed, which two parcels constitute a common driveway between portions of Lot #10 and Lot #11 on said plan.

Together with all rights, privileges and easements connected therewith and subject to restrictions and easements of record and are hereby conveyed subject to any building and zoning law requirements which may be in force and applicable.

For our title, see deed recorded in Plymouth County Registry of Deeds, Book 18200, page 340-341

LOCUS: 43 South Boulevard, Onset, Wareham

No Title Work done at the time of this conveyance.

Executed as a sealed instrument this 14th day of June 2006.



LOUIS DeMICHELE


KAREN DeMICHELE

THE COMMONWEALTH OF MASSACHUSETTS

Worcester City SS.

On this 14th day of June, 2006, before me, the undersigned notary public, personally appeared **LOUIS DeMICHELE** and **KAREN DeMICHELE** proved to be through satisfactory evidence of identification, which was personal knowledge to be the persons whose names are signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purpose.


Notary Public
My Commission Expires:



JOANNE BOSCH
Notary Public
Commonwealth of Massachusetts
My Commission Expires
October 27, 2011

EXHIBIT B



TOWN of WAREHAM

Massachusetts

BUILDING DEPARTMENT

Paul Turner
Director of Inspectional Services

October 10, 2023
CERTIFIED MAIL
REGULAR MAIL

Ms. Karen Demichele
4 Sarsen Stone Way
Southboro, Massachusetts 01772

RE: 43 South Boulevard/ Map 1, Lot 10

NOTICE OF VIOLATION

Ms. Demichele,

It has come to the attention of the Building Department that property you currently have control of, 43 South Boulevard, Onset Massachusetts is in violation of the Town of Wareham Zoning By-Laws, Article 6: Density and Dimensional Regulations, section 628, Existing Small Lots, Category 1, Side and Rear setback, ten (10) feet minimum, after installing an unpermitted structure on your property in the rear and side setback. The location of the structure was determined by visual observation on site from the public sidewalk assuming the fence was the approximate rear property line.

Article 16 of the Wareham Zoning By-Law defines structure as, "A combination of materials assembled at a fixed location to give support or shelter, such as a building, bridge, trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium, reviewing stand, platform, bin, fence, flagpole or the like."

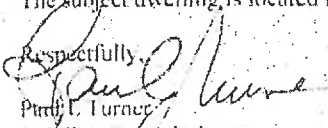
The structure assembled at the rear of 43 South Boulevard consists of three (3) posts approximately 14-16 feet apart with the top post elevation approximately 12-14 feet above grade with a rope pulley system to raise and lower tarps. The wooden post are flagpoles or the like and are structures as defined by the Wareham Zoning By-Law. Also, the arrangement of the wooden posts allows the tarps to be held in place, therefore, the wooden posts are also considered framework or the like and again by definition deemed a structure by Wareham Zoning By-Laws.

REMEDY:

Decommission the structure within sixty (60) days of receipt of this notice.

The subject dwelling, is located in OV-2 zoning district.

Respectfully,


Paul L. Turner
Building Commissioner
Zoning Enforcement Officer

Any person, firm, or corporation violating any of the provisions of the By-Law shall be liable for a fine of not more than three hundred dollars (\$300.00) for each violation. Each day the violation exists shall constitute a separate offense.

In accordance with the provisions of M.G.L. 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 C

TOWN OF WAREHAM ABUTTERS

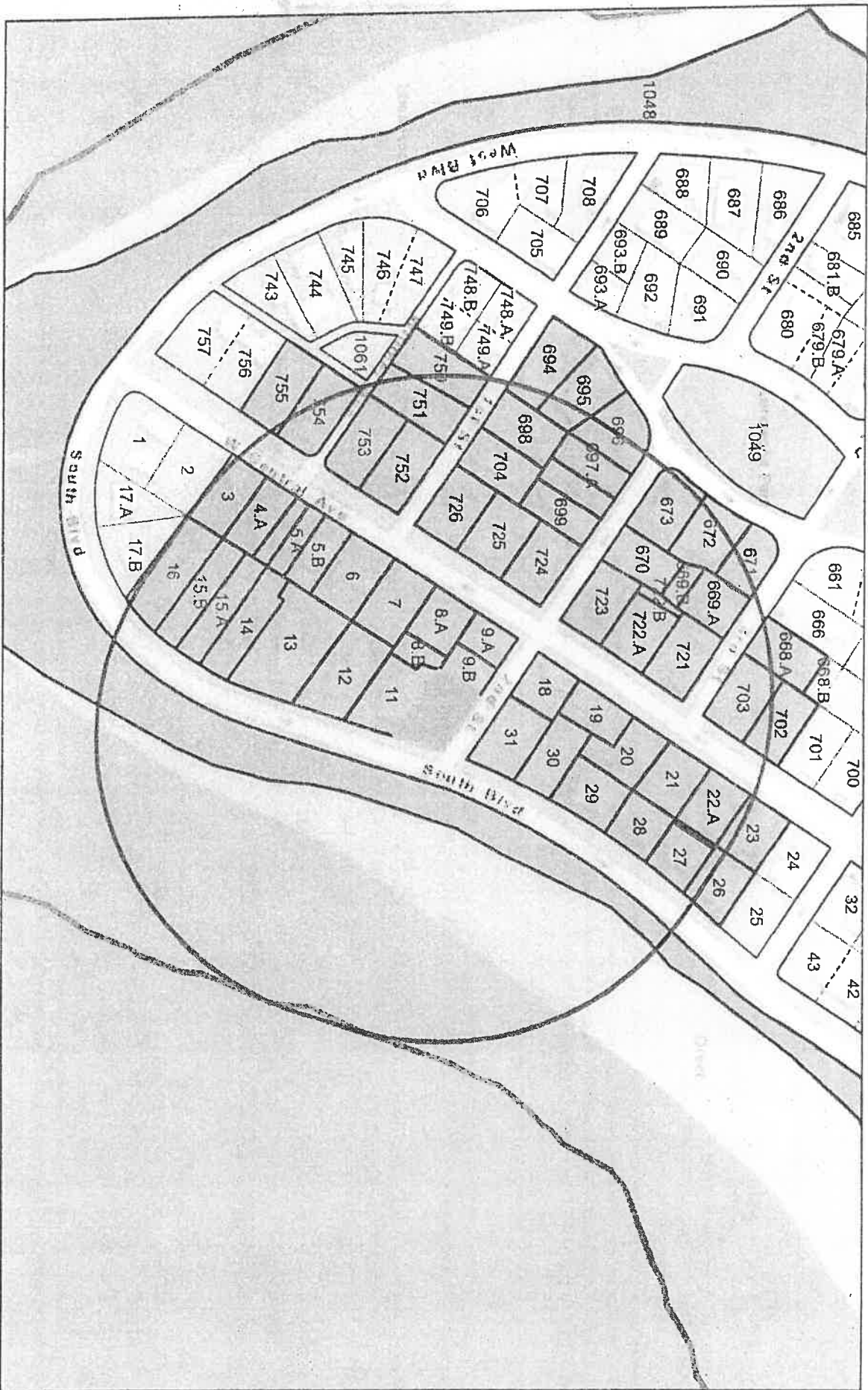
MAP 1 LOT10

OWNER KAREN DEMICHELE

MAP & LOT	OWNERS	STREET ADDRESS	TOWN & STATE	ZIP CODE
1-0-10	DEMICHELE KAREN,	4 SARSEN STONE WAY,	SOUTHBORO, MA	01772
1-0-11	ANDREWS GLENN D & LORI E, ENOS LINDA M	244 PROVINCENCE ST	REHOBOTH, MA	02769
1-0-12	WINTERBOTTOM JAMES, WINTERBOTTOM MARTHA	PO BOX 962,	BUZZARDS BAY, MA	02532
1-0-13	FIELDS JANET EDSALL, FIELDS ALLAN W TRUSTEES	25 CHANDLER ST,	NEWTON, MA	02458
1-0-15.A	AMATO JENNIE A TRUSTEE, JENNIE A AMATO TRUST	18 PHEDON PKWY,	MIDDLETOWN, CT	06457
1-0-18	LAWRENCE LAURIE A, LAWRENCE ALBERT E JR TRUSTEES	4 FOREST EDGE RD,	S EASTON, MA	02375
1-0-19	RUDIN MARGOT J,	P O BOX 1776,	ONSET, MA	02558
1-0-20	MORGAN DAVID TROY, MORGAN SUNDAY STRONG	40 BRIANT DR,	SUDBURY, MA	01776
1-0-21	CARBONI PETER TRUSTEE,	155 HARTFORD ST,	FRAMINGHAM, MA	01701
1-0-22.A	NEALE STEPHANIE L TRUSTEE	20 KIDDS WAY	STONINGTON, CT	06378
1-0-22.B	MONAST SARINA R,	PO BOX 1300,	ONSET, MA	02558
1-0-23	BROOKS JEFFREY, ALAVIAN CHRISTINA	6 JOSLIN LN,	SOUTHBOROUGH, MA	01772
1-0-3	SNOPKOSKI KATHY, MCCARTHY ROBERT J JR	10 CATHERINE ST,	DANBURY, CT	06811
1-0-31	FERRETTI LEWIS C TRUSTEE, OF EATON REALTY TRUST	P O BOX 286,	ONSET, MA	02558
1-0-4.A	SCOTT STEPHEN J + FERNANDA P, SAMPAIO FERNANDO + MARY	25 BRAGDON AVE,	DANBURY, CT	06811
1-0-4.B	WALLANDER PHILIP R, WALLANDER DOROTHY A LIFE ESTATE	35 SILVER ST,	MONSON, MA	01057
1-0-5.B	LEBLANC BRUCE J,	PO BOX 1408	ONSET, MA	02558
1-0-6	LAWRENCE EDWARD JOSEPH, C/O SULLIVAN LINDA L	PO BOX 885,	ONSET, MA	02558
1-0-668.A	GILDERSLEEVE DUSTIN, GILDERSLEEVE HANG	6333 WENRICH DR,	SAN DIEGO, CA	92120
1-0-669.A	KEATING NANCY L,	108 HERRICK RD,	NEWTON, MA	02459
1-0-669.B	SOUTH SHORE APARTMENTS LLC	8 ALTON PLACE	BROOKLINE, MA	02446
1-0-671	MINNICK ROBERT P,	PO BOX 571,	W WAREHAM, MA	02576
1-0-694	LOTTERHAND ROBERT P	15 CHERRY STREET COURT	PLYMOUTH, MA	02360
1-0-695	FARIAS JENNIFER TRUSTEE, SUNSET TRUST	PO BOX 1752,	ONSET, MA	02558
1-0-696	PISARCZYK CAROLYN,	PO BOX 506,	ONSET, MA	02558
1-0-697.A	MURPHY WILLIAM TRUSTEE, 14 SECOND ST REALTY TRUST	6 HAMMOND RD,	NATICK, MA	01760
1-0-697.B	CHIASSON LESTER J, CHIASSON PATRICIA W	104 MOKEMA AVE,	WALTHAM, MA	02154
1-0-699	DULLEA SUSAN M, KELLEGREW WALLACE ROBERT JR	286 CHESTNUT ST,	CLINTON, MA	01510-2603
1-0-7	WINTERBOTTOM JAMES, WINTERBOTTOM MARTHA	PO BOX 962,	BUZZARDS BAY, MA	02532
1-0-702	REALE RICHARD A TRUSTEE, REALE RICHARD A TRUSTEE	87 ROWE ST,	AUBURNDALE, MA	02166
1-0-703	O'DONNELL NIALL M, O'DONNELL SANDRA L TRUSTEES	PO BOX 1161,	ONSET, MA	02558
1-0-704	KLINE JESSE S	146 ORCHARD ST	WATERTOWN, MA	02472
1-0-721	SHEEHAN MARY C, SHEEHAN EDWARD J JR TRUSTEES	PO BOX 842,	ONSET, MA	02558
1-0-722.A	COYNE PAULA & CHARLES E JR TR, OF 45 WEST CENTRAL AVE REALTY TR	48 EDINBORO ST,	MARLBORO, MA	01833

1-0-722.B	CUBELLUS LENORD G TRUSTEE, ONSET VILLAGE REALTY TRUST	55 COLLIER RD,	SCITUATE, MA	02066
1-0-723	ONANIAN SCOTT A, ONANIAN KELLY J	PO BOX 1034,	ONSET, MA	02558
1-0-724	TRAMONTOZZI PAUL D, TRAMONTOZZI CATHY L	PO BOX 1239	ONSET, MA	02558
1-0-725	O'NEILL SHARON E,	145 RESERVOIR RD,	QUINCY, MA	02170
1-0-750	HAARMANN ANNE M + VANDUSEN LISA C + HIXON DENISE C + COONEY CAROLINE C	339 CEDAR HILL AVE	WYCKOFF, NJ	07481-2312
1-0-751	WHELAN LAWRENCE J JR,	PO BOX 1397,	ONSET, MA	02558
1-0-752	COLLINS JODI A, CARABITSES SARAH M TRUSTEES C/O RICHARD MCBRINE	PO BOX 549	ONSET, MA	02558
1-0-753	GARABEDIAN VAROUJAN JOHN,	PO BOX 1703,	ONSET, MA	02558
1-0-754	MCDONALD JOHN H, MCDONALD LORRAINE M TRUSTEES	PO BOX 1123,	ONSET, MA	02558
1-0-755	BROPHY PATRICK F, BROPHY THERESA	PO BOX 1	ONSET, MA	02558
1-0-8.A	ONEILL THERESA,	350-352 GALLIVAN BLVD	DORCHESTER, MA	02124
1-0-9.B	LAWRENCE LAURIE A, LAWRENCE ALBERT F JR	4 FOREST EDGE RD,	S EASTON, MA	02375
<p>CERTIFIED ABUTTERS AS THEY APPEAR ON OUR TAX ROLLS AS OF 10/24/2023</p> <p><i>47. Road</i></p> <p>ASSESSORS OFFICE</p>				
<p>REQUESTED BY CHERYL SILVE 508 295-2522 CHERYL@MORTONLAWLLC.COM</p>				

ArcGIS Web Map

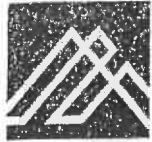


10/24/2023, 2:03:51 PM

Parcels with CAMA Data Parcel Lines
Town Line
Property Line
Common Line
Public Road
PWater



EXHIBIT D



**Mirrione
Shaughnessy
Uitti LLC**

Counselors at Law

Gregory Fleming
(617) 404-8748 – Direct
gfleming@msullc.com
Admitted in: MA, NY

September 29, 2023

**CERTIFIED MAIL NO. 9589 0710 5270 1051 3755 19
FIRST CLASS MAIL AND EMAIL**

Paul Turner
Building Commissioner
Memorial Town Hall
54 Marion Road
Wareham, MA 02571
inspections@wareham.ma.us

RE: Request for Zoning Bylaw Enforcement, 43 South Blvd., Onset, MA,

Dear Mr. Turner:

Please be informed that I represent Laurie A. Lawrence and Albert E. Lawrence of 56 West Central Ave, Onset, Massachusetts, with regard to a certain zoning violation occurring in the installation of structures located at 43 South Blvd. The Lawrences are direct abutters to the subject property and are "aggrieved persons" as that term is used in the Zoning Act.

Pursuant to Mass. Gen. L. ch. 40A, s. 7, I hereby request that you determine that the installation of the structures at 43 South Blvd was accomplished in violation of Mass. Gen. L. ch. 40A, s. 10, and sections 622, 1361, and 1470 of the Wareham Zoning By-Law. Specifically, the Lawrences assert that said structures are located within the minimum side/rear setback of the subject property without first obtaining a variance allowing same. Further, the structures were installed without issuance of a building permit.

As reasons for their allegation, the Lawrences state that the structures are located within the ten (10) foot minimum side/rear yard setback requirement for structures located in Zoning District OV2. See section 622 and 628 of the Zoning By-Law. There are no exceptions for the structures installed by the owner of 43 South Blvd. in the Zoning By-Law.

Article 16 of the Wareham Zoning By-Law defines structure as, "A combination of materials assembled at a fixed location to give support or shelter, such as a building, bridge, trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium, reviewing stand, platform, bin, fence, flagpole or the like."

Office Locations

Main Office – Use for all correspondence
2 Batterymarch Park, Suite 202
Quincy, MA 02169
Tel. (508) 510-5727 ■ Fax (508) 857-0751
Office Hours: Monday – Friday ■ 9:00 AM – 5:00 PM

183 Mammoth Road
Londonderry, NH 03053
Tel. (603) 404-6200
Office Hours: Appointment Only

As seen in the attached photograph, the wooden posts installed at 43 South Blvd. qualify as several different types of structures as defined in the By-Law. First, the wooden posts are structures as they are or are similar to flagpoles. Webster's Dictionary defines a flagpole as, "A pole on which to raise a flag." The wooden posts, and their attached rope and pulley system, are used to raise tarps into the air. This is the same setup that would be used to raise a flag. The wooden posts installed by the owner of 43 South Blvd. to raise the tarps, otherwise could be used to raise a flag. Therefore, the wooden posts are flagpoles or the like and are structures as defined by the Wareham Zoning By-Law.

Second, the wooden posts are structures as they are or are similar to framework. Webster's Dictionary defines framework as, "a skeletal, openwork, or structural frame." Here the wooden posts support the tarps that are raised by the owner of 43 South Blvd. Without the support of the wooden posts, the tarps could not stay elevated. The framework created by the wooden posts is what allows the tarps to be raised and lowered. Therefore, the wooden posts are framework or the like and are structures as defined by the Wareham Zoning By-Law.

Third, the wooden posts are screwed into the existing six (6) foot fence that separates 43 South Blvd. and 56 West Central Ave. As a result, the wooden posts have become part of that fence and are therefore structures. Also, the wooden posts being in excess of seven (7) feet in height, required a building permit as fences in Wareham are only permitted to be up to seven (7) feet in height by right. The owner of 43 South Blvd. has neither sought nor acquired any permits or variances related to the alteration or extension of the existing fence in violation of section 1361 of the Wareham Zoning By-Law. Therefore, the wooden posts are part of a fence or the like and are structures as defined by the Wareham Zoning By-Law.

As stated above, section 622 of the Wareham Zoning By-Law sets forth the minimum side/rear setback for structures for nonresidential use in district OV2. In this district, the minimum side/rear setback is ten (10) feet. There are no exceptions in the Wareham Zoning By-Law for the structures in question which would allow the structures not to conform to the minimum side/rear setback requirements. Therefore, the wooden posts installed by the owner of 43 South Blvd. are in violation of the Zoning By-Law. Upon information and belief, the owner of 43 South Blvd. has neither sought nor obtained a variance from the Wareham Zoning Board of Appeals to install the wooden posts within the minimum side/rear setback, and are in violation of both Mass. Gen. L. ch. 40A, s. 10 and section 1470 of the Wareham Zoning By-Law.

My clients respectfully request that you, as the Town of Wareham's Zoning Enforcement Officer, enforce the By-Law against the owner of 43 South Blvd. as follows:

1. Order the removal of the wooden posts, as they are structures, from within the minimum side/rear setback;
2. Issue appropriate and continuing monetary fines to the owner of 43 South Blvd. for the continued violation of the By-Law;

September 29, 2023
Page 3 of 3

3. If the violations continue, commence litigation against the owner of 43 South Blvd. in a Court of competent jurisdiction to, among other things, obtain a court order to enjoin the owner of 43 South Blvd. from engaging in these continuing violations of the By-Law; and
4. Provide any and all additional relief so as to enforce the aforementioned provisions of the By-Law against the owner of 43 South Bld. So that the violations of the By-Law immediately cease.

Please respond within fourteen (14) days specified by Mass. Gen. L. ch. 40A, s. 7.

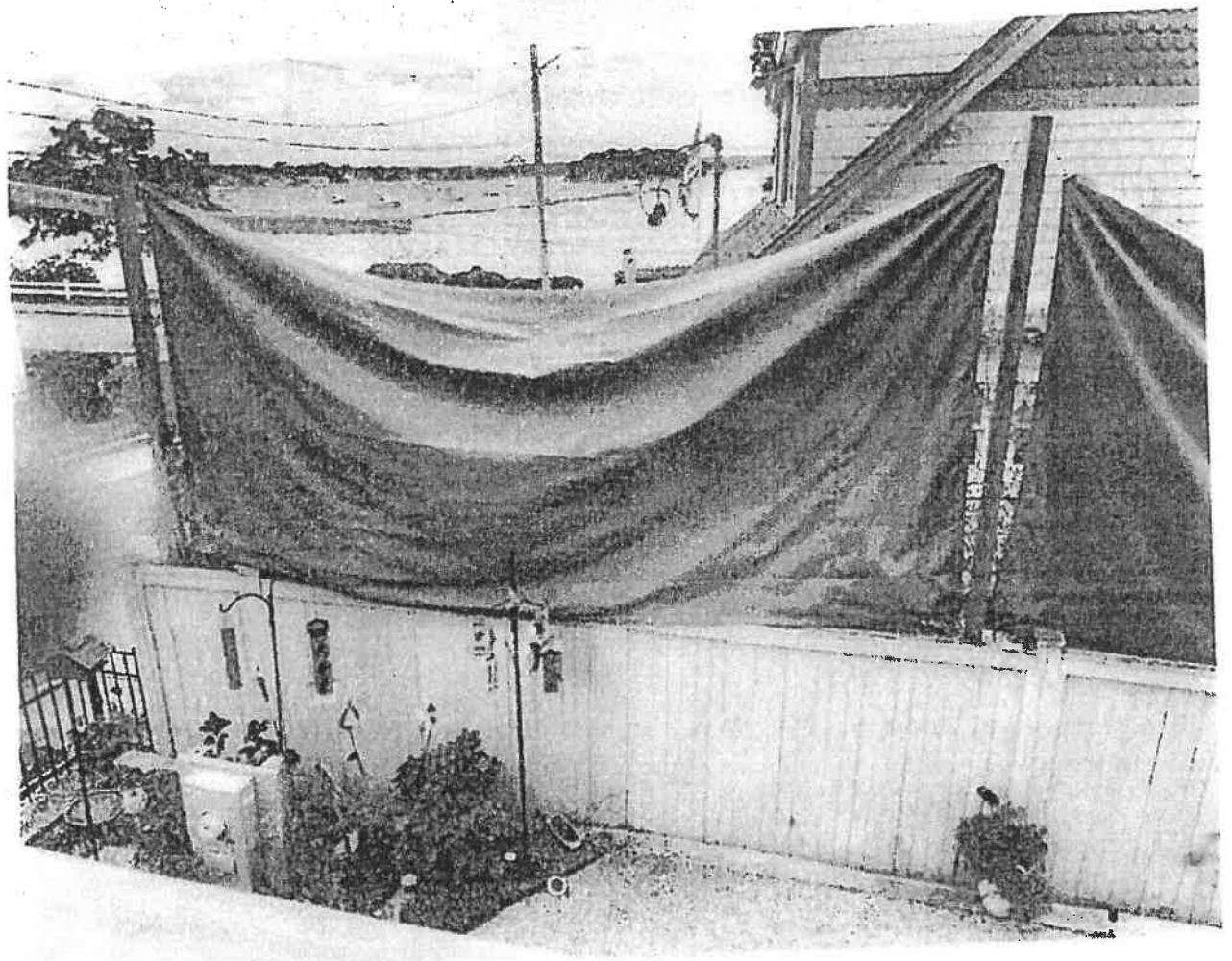
Sincerely,

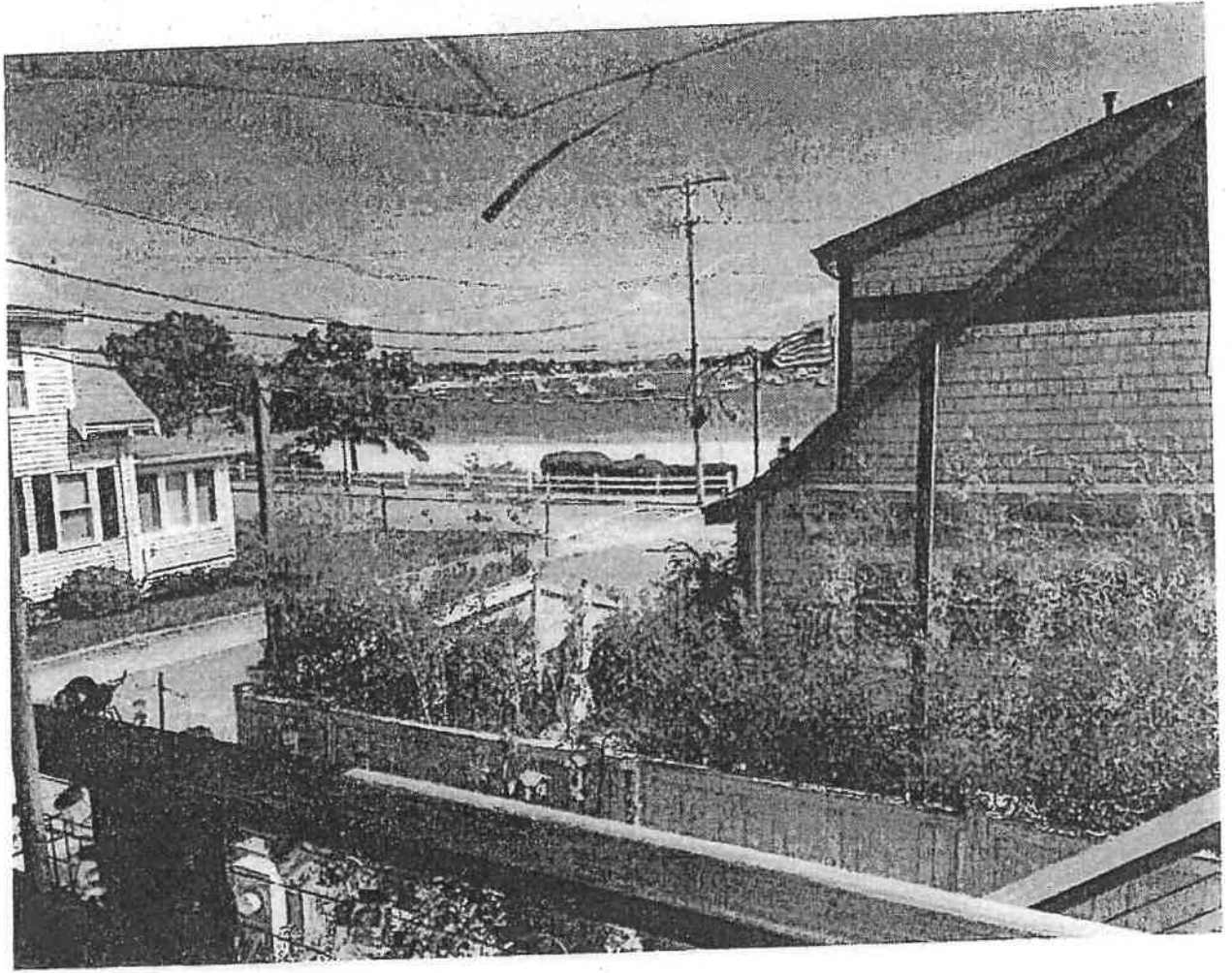
MIRRIONE, SHAUGHNESSY
& UITTI, LLC

/s/ Gregory Fleming
Gregory Fleming, Esq.

Enclosure







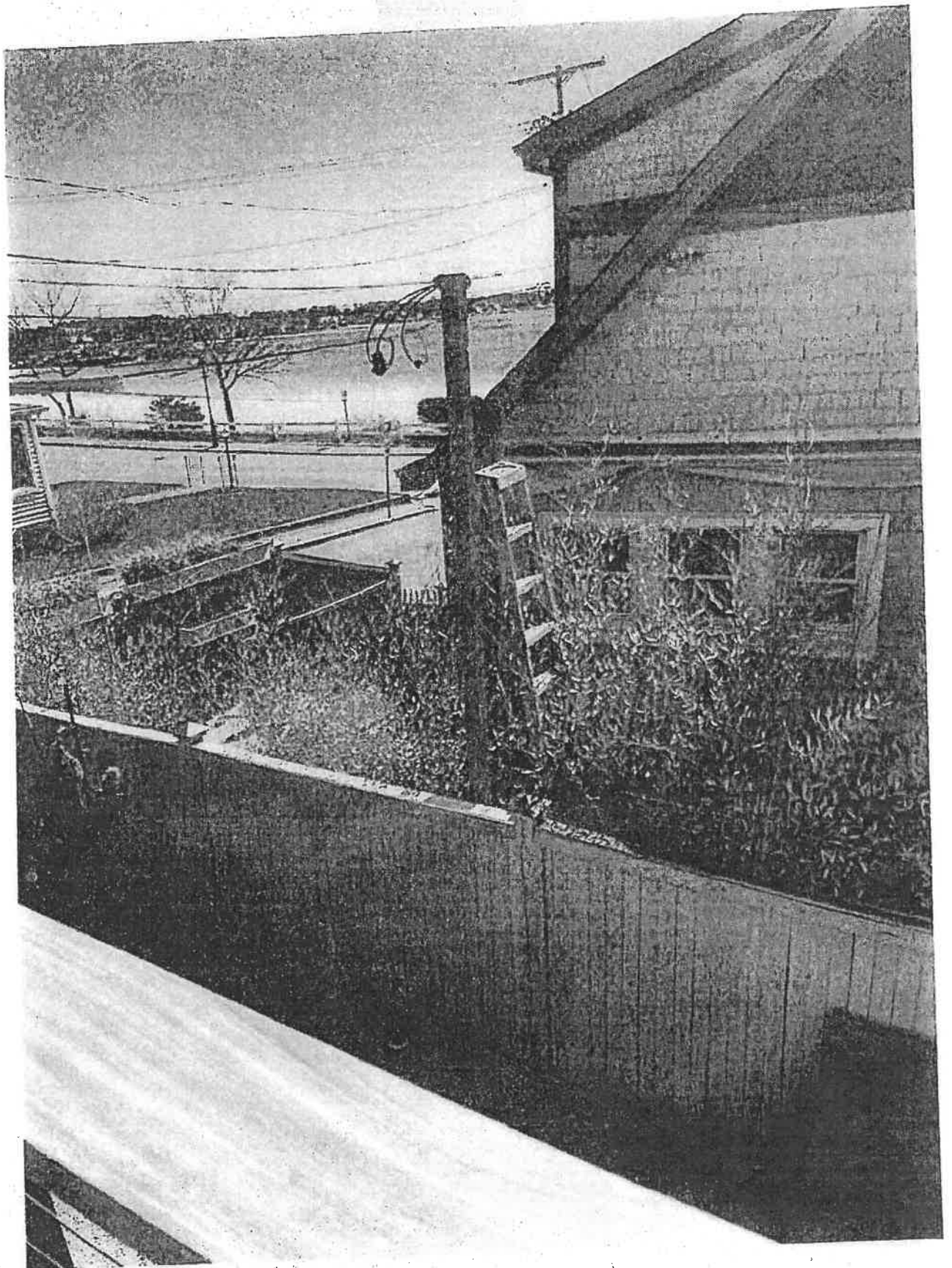


EXHIBIT E

Law Office of Daniel Walsh, P.C.

40 Court Street, 3rd Floor
Plymouth, MA 02360

Tel: (508) 732-0023

Fax: (508) 732-9823

VIA FIRST CLASS MAIL AND EMAIL: inspections@wareham.ma.us

October 12, 2023

Mr. Paul Turner
Building Commissioner
Memorial Town Hall
54 Marion Road
Wareham, MA 02571

RE: **43 South Boulevard, Onset MA**

Dear Mr. Turner:

I write in response to the letter entitled "Request for Zoning Bylaw Enforcement, 43 South Blvd., Onset, MA," dated September 29, 2023, written by counsel for Mr. and Ms. Lawrence, Attorney Gregory Fleming. Please be advised this office represents Karen DeMichele and her husband Peter Russell in a series of ongoing disputes with Laurie A. Lawrence and Albert E. Lawrence related to 43 South Blvd., Onset, MA. Record title to the property is in the name of Karen DeMichele.

At this time, I ask that you take no action on this matter because the parties are presently engaged in litigation in the Plymouth Superior Court (See Docket Number 2283CV000754) where all issues raised in the September 29, 2023 letter are already being addressed. A copy of the Superior Court Docket is appended hereto as Exhibit A. This is actually the *second* time the Lawrences have attempted to sue Ms. DeMichele. Prior to commencing the Superior Court case, the Lawrences filed an action in Land Court (Docket Number 22 Misc 000507) seeking a preliminary injunction. The Land Court action was ultimately dismissed for lack of subject matter jurisdiction.

Mr. and Ms. Lawrence sought a preliminary injunction related to the curtains that are being used to protect my clients from ongoing harassment from Ms. Lawrence, primarily. On October 18, 2022, a hearing was held in Brockton Superior Court relative to the Lawrences' request for a preliminary injunction. In their opposition to the motion for a preliminary injunction, Mr. Russell submitted his affidavit, attached to this letter as Exhibit B. The Lawrences' motion was denied on October 22, 2022. The Court held "the Plaintiffs have failed to meet their burden to show that they have a reasonable likelihood of success on the merits of their claims." A copy of the Memorandum of Decision is appended hereto as Exhibit C.

In order to aid in your determination as well as to assist in interpreting the litigation, I am providing a concise factual recitation to illustrate my clients' position. Ms. DeMichele is the owner of a single-family home located at 43 South Blvd., Onset, MA. This property has been owned by the DeMichele family for more than 60 years. In those six decades, the DeMichele

Paul Turner
Building Commissioner
October 12, 2023
Page 2

family never had a dispute with their neighbors. This dispute between the parties arose out of their abutting properties, each being relatively small lots. The DeMichele Property is used by Ms. DeMichele, Mr. Russell and their family for weekend and leisure use. The home is not their primary residence.

During the spring of 2022, the Lawrences constructed a new home on their lot. The home is a mere twelve feet from the backyard fence of DeMichele/Russell property. Due to the moderate density and close proximity of the homes, including the elevation of the Lawrences' house, which was built on stilts to the maximum height allowed, the Lawrences have an unobstructed view of my clients' backyard. The Lawrences are even able to look into the rear windows of the DeMichele/Lawrence residence. A photograph depicting the Lawrences' property overlooking my client's backyard is appended hereto as Exhibit D. The utter lack of privacy and deprivation of their ability to fully use and enjoy the property resulted in tensions arising between the parties. In an effort to mitigate the harm, my clients planted bamboo along the property line, attempting to create a privacy barrier.

This attempt did not resolve the disputes, however. Ms. Lawrence threatened to cut down or poison any bamboo planted. My clients were subjected to profane and threatening tirades and intrusions from the Lawrences. Ms. Lawrence has vowed to Ms. DeMichele that Ms. Lawrence would sit on her deck every time Ms. DeMichele and her family are in their backyard. Left with no further recourse, Ms. DeMichele engaged a company to install privacy curtains in a final effort to prevent the Lawrences from further harassment. Thereafter, the Lawrences commenced litigation against my client.

With respect to the relief sought by Attorney Fleming, I would respectfully suggest you decline to take any action at this time. As stated above, each of the parties' respective concerns will be determined through the courts.

In this case, I would suggest Article 16 does not compel a determination that the structure must be removed. As you are aware, otherwise nonconforming structures may nonetheless be used upon application to and approval of the Board of Appeals. Specifically, Article 16 describes an "exception" as the "use of a structure ... or any action upon a premises, which may be permitted under the By-Law only upon application to and the approval of the Board of Appeals." The operative term, "may" connotes a degree of latitude in determining whether a nonconforming structure is permissible. In this matter, the reason for the installation of the poles more than justifies approval of an exception. My clients can produce a litany of documents readily available to the public that illustrate the urgency in which the poles were installed. Given the relatively small size of my clients' lot, they would otherwise have no recourse in staving off the neighbors' efforts to disrupt the use and enjoyment of DeMichele/Russell property.

Ordering the removal of the privacy barrier would subject Ms. DeMichele to a substantial nuisance. The existence of the curtains in no way poses a harm to the Lawrences. Nor does the curtain deprive the Lawrences of the full use and enjoyment of their property. The curtains are raised only when the Ms. DeMichele, Mr. Russell or their family members are at the property,

Paul Turner
Building Commissioner
October 12, 2023
Page 3

typically weekends during the spring, summer and fall. Accordingly, the structure installed by Ms. DeMichele may be permitted to remain.

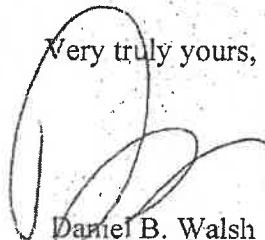
Unfortunately, this matter extends well-beyond whether the privacy pole curtains constitute "structures" as defined by Zoning Bylaw Article 16. The Lawrences continually antagonize Ms. DeMichele, her family, her guests, even contractors who work on the property. Ms. DeMichele and Mr. Russell have repeatedly petitioned the courts for protection from the harassment, but to no avail. The situation has deteriorated so far that Mr. Russell filed a criminal complaint after Ms. Lawrence, unprovoked, sprayed him in the face with a garden hose.

The letter of September 29, 2023 is little more than the Lawrence's latest attempt at forum shopping. Be that as it may, the privacy curtain remains the only reasonable solution preventing my clients from being subjected to further abuse at the hands of Mr. and Ms. Lawrence.

In light of the foregoing, I respectfully ask that you give consideration to taking no action on the Lawrences' request where the parties are already engaged in litigation to resolve this matter. If the Lawrences do not prevail in courts, they have additional remedies available. However, seeking the same relief from two forums simultaneously is certainly not in the spirit of justice or within the purpose of the By-Laws.

If you have any questions regarding any of the above, or require any further supporting materials to assist you in reaching your decision, please do not hesitate to contact me. Thank you for your attention to this matter.

Very truly yours,



Daniel B. Walsh
dwalsh@walshlegal.com

enclosures

cc: Ms. Karen DeMichele (via email)
Mr. Peter Russell (via email)
Attorney Gregory Flemming (via email and first class mail)

EXHIBIT A

2283CV00754 Lawrence, Jr., Albert E. et al vs. Demichele, Karen

- Case Type:
 - Equitable Remedies
- Case Status:
 - Open
- File Date:
 - 10/12/2022
- DCM Track:
 - A - Average
- Initiating Action:
 - Declaratory Judgment G.L. c. 231A
- Status Date:
 - 10/12/2022
- Case Judge:
- Next Event:

All Information Party Event Tickler Docket Disposition

Party Information

Lawrence, Jr., Albert E.
- Plaintiff

Alias

Party Attorney

- Attorney
- Fleming, Esq., Gregory Jon
- Bar Code
- 568630
- Address
- Mirrione, Shaughnessy and Uitti LLC
- 2 Batterymarch Park Suite 202
- Quincy, MA 02169
- Phone Number
- (508)510-5727

[More Party Information](#)

Lawrence, Laurie A.
- Plaintiff

Alias

Party Attorney

- Attorney
- Fleming, Esq., Gregory Jon
- Bar Code
- 568630
- Address
- Mirrione, Shaughnessy and Uitti LLC
- 2 Batterymarch Park Suite 202
- Quincy, MA 02169
- Phone Number
- (508)510-5727

[More Party Information](#)

Demichele, Karen
- Defendant

Alias

Party Attorney

- Attorney
- Walsh, Esq., Daniel B
- Bar Code
- 638261
- Address
- Law Office of Daniel Walsh, P.C.
- 40 Court St
- Third Floor
- Plymouth, MA 02360
- Phone Number
- (508)732-0023

[More Party Information](#)











Events










<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
10/18/2022 02:00 PM	Civil C Plymouth		Hearing on Preliminary Injunction		Held as Scheduled

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Service	10/12/2022	01/10/2023	90	10/24/2022
Answer	10/12/2022	02/09/2023	120	11/01/2022
Rule 12/19/20 Served By	10/12/2022	02/09/2023	120	
Rule 12/19/20 Filed By	10/12/2022	03/13/2023	152	
Rule 12/19/20 Heard By	10/12/2022	04/10/2023	180	
Rule 15 Served By	10/12/2022	12/06/2023	420	
Rule 15 Filed By	10/12/2022	01/05/2024	450	
Rule 15 Heard By	10/12/2022	01/05/2024	450	
Discovery	10/12/2022	10/01/2024	720	
Rule 56 Served By	10/12/2022	10/31/2024	750	
Rule 56 Filed By	10/12/2022	12/02/2024	782	
Final Pre-Trial Conference	10/12/2022	03/31/2025	901	
Judgment	10/12/2022	10/13/2025	1097	

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/12/2022	Complaint electronically filed.	1	
10/12/2022	Civil action cover sheet filed.	2	
10/12/2022	Plaintiffs Albert E. Lawrence, Jr., Laurie A. Lawrence's Motion for a preliminary injunction	3	
10/12/2022	Albert E. Lawrence, Jr., Laurie A. Lawrence's Memorandum in support of motion for preliminary injunction	3.1	
10/12/2022	Plaintiffs(s) Albert E. Lawrence, Jr., Laurie A. Lawrence's MOTION for Short Order of Notice Applies To: Demichele, Karen (Defendant)	4	
10/12/2022	Albert E. Lawrence, Jr., Laurie A. Lawrence's MOTION for appointment of Special Process Server. filed and allowed (O'Shea, J.)	5	
10/12/2022	Summons and order of notice issued on a Motion for a Preliminary Injunction , returnable on 10/18/2022 02:00 PM Hearing on Preliminary Injunction. Judge: O'Shea, Hon. Daniel J.	6	
10/12/2022	Case assigned to: DCM Track A - Average was added on 10/12/2022		
10/18/2022	Event Result:: Hearing on Preliminary Injunction scheduled on: 10/18/2022 02:00 PM Has been: Held as Scheduled Comments: FTR Hon. Daniel J. O'Shea, Presiding		
10/18/2022	Opposition to motion for a preliminary injunction filed by Karen Demichele	7.1	
10/18/2022	Karen Demichele's Memorandum in support of defendant's opposition to plaintiff's motion for preliminary injunction	7.2	
10/18/2022	Affidavit of Karren Demichele	7.3	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/18/2022	Affidavit of Peter M. Russell	7.4	
10/18/2022	Affidavit of Theresa O'Neill	7.5	
10/18/2022	Exhibits/Appendix		
10/19/2022	Endorsement on Motion for a preliminary Injunction (#3.0): DENIED after hearing (See memorandum and Decision dated October 19, 2022)		
	Judge: O'Shea, Hon. Daniel J.		
10/19/2022	MEMORANDUM & ORDER: Motion for Preliminary Injunction. Order. Based on the foregoing, the Plaintiffs' request for preliminary injunction is DENIED Judge: O'Shea, Hon. Daniel J.	8	
	10/19/22 cc: GF		
10/21/2022	Attorney appearance On this date Daniel B Walsh, Esq. added as Private Counsel for Defendant Karen Demichele		
10/24/2022	Service Returned for Defendant Demichele, Karen: Service accepted by counsel:	9	
11/01/2022	Answer to original complaint Received from Defendant Demichele, Karen: Answer to original complaint;	10	
11/21/2022	Received from Plaintiffs Lawrence, Jr., Albert E. and Lawrence, Laurie A.: Answer to the Counterclaim;	11	

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Pending		

For Land Court only: Name search is currently unavailable. Case type and case number searches are available. For a Land Court name search, contact the Land Court Recorder's Office at 617-788-7470. We apologize for the inconvenience. ✖

EXHIBIT B

10/18/22

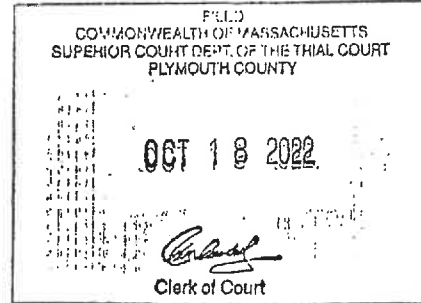
74

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

TRIAL COURT DIVISION
SUPERIOR COURT DEPT.
DOCKET NO. 2283 CV 0754

LAURIE A. LAWRENCE, et al)
Plaintiff)
)
v.)
)
KAREN DEMICHELE)
Defendant)



AFFIDAVIT OF PETER M. RUSSELL TO SUPPORT OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

1. My name is Peter M. Russell. I am over the age of eighteen (18), and I have personal knowledge of the facts stated herein.
2. My wife, Karen DeMichele, is the defendant named in this matter. We live at 4 Sarsen Stone Way, Southboro, MA.
3. I am the vice president and principal of a local insurance company.
4. My wife is the owner of record of a single-family home located at 43 South Boulevard, Onset (Wareham), MA (hereinafter the "Property").
5. The Property has been owned by my wife's family for more than sixty years. (See deed dated June 22, 1960 from Eugene Mitchell to Victor DeMichele and Andrew DeMichele, recorded at the Plymouth County Registry of Deeds, Book 2787, page 240.)
6. It's important to note that the Lawrences' new house is approximately twelve (12') feet from our backyard, and it stands approximately twenty-five (25') feet higher than the house it replaced.

7. In order to gain some privacy, my wife and I decided to plant bamboo trees along the back of our property, inside of our fence.
8. I never said anything to any contractors to the effect that we were planting the bamboo to obstruct the Lawrences' view. (See Paragraph 15 of the Plaintiff's Verified Complaint, in which Albert E. Lawrence, Jr., states, "... contractors for the Lawrences heard persons believed to include the Defendant state that the bamboo was going to be planted along the Defendant's side of the fence with the intent to obstruct the Lawrences' view of Onset Bay.") That assertion is simply false.
9. On or around July 12, 2021, the bamboo trees had been delivered and were in our driveway. Mrs. Lawrence told me that if we planted the trees, she would either cut them or poison them.
10. About a week after the bamboo trees were planted, a neighbor told me that she saw Mr. Lawrence cut off a few branches of the bamboo, get in his truck with the cuttings and leave.
11. A couple of weeks later, on August 22, 2021, my wife and I were entertaining friends at the property. When my friend and I stepped out to the backyard, I noticed Mrs. Lawrence on the first floor deck of her house.
12. Without any provocation at all, Mrs. Lawrence began yelling, among other things, "You f***ing asshole, you piece of shit." She screamed, "I am never leaving this f***ing deck," and "I will be here a lot longer than you, asshole."
13. Mr. Lawrence, who was in the street, began yelling at me as well. He screamed, "Get your ass out here! I want you right now, and bring your wife! I know she owns the house!"

14. Even the parties' son Sean Lawrence, who lives across the street, got involved. Sean came running over to the plaintiffs' backyard. Incredibly, Sean was carrying a chain saw. He started up the chain saw and screamed, "I am cutting those f***ing trees down right now!"
15. My wife tried to speak to Mrs. Lawrence, but Mrs. Lawrence started screaming at her as well. She screamed, "F*** off, you fat, ugly bitch." My wife turned around without saying anything and started walking back to our house. Mrs. Lawrence yelled, "What? Are you afraid of me?" My wife responded, "Yes," and walked back into the house.
16. My friend, who was about 70 years old at the time, was concerned about everything going on and suggested that we go inside. I should note that Mrs. Lawrence called my friend an asshole as well.
17. A little later, I went back outside to talk to Mrs. Lawrence, Mr. Lawrence and Sean Lawrence, who were all sitting on the first floor deck. I wanted to talk to them about a bird deterrent device that I put out earlier that day. I had learned that the device was emitting a high-pitched whine.
18. I tried to explain that I was totally unaware of any sounds the device may have given off, and as soon as the issue was brought to my attention, I took the device down and shut it off. I also apologized for the device possibly offending any of them.
19. They made no reference or acknowledgment of the device (or my apology).
20. Instead, Mrs. Lawrence continued to spew profanities again, calling me a "F***ing asshole," and reminded me that she "was not going anywhere."
21. As Mrs. Lawrence continued her tirade, Mr. Lawrence finally asked his wife to be quiet. He then turned to me and said he had spent "a lot of money" on his retirement home and

that he was upset about the bamboo trees blocking his view to the water, even though they are not blocking their view.

22. He suggested that I cut the last 10 or 15 feet of the trees to preserve his view. I politely declined saying it would look foolish. Also, my wife and I very much want to have some privacy in our backyard.
23. Mr. Lawrence responded, "Well then, as long as those trees are there, we are at war."
24. About 10 or 15 minutes later, I was at my grill and my wife came to our back door. I asked her to get me a dish. I then heard Mrs. Lawrence from her deck mimic me with, "Get me a dish, get me a dish." I looked at her and said, "Really?" She said, "I am right here, and I am not going anywhere, asshole."
25. On July 5, 2022, I purchased a plastic owl approximately one (1') in height to place on top of our fence in the hope of discouraging some of the birds from the Lawrences' seven different birdfeeders from coming into our yard and making a mess.
26. Mrs. Lawrence positioned the bird feeders immediately on her side of the fence, approximately four (4') feet from our outdoor dinner table, and were placed there 2-3 months before the house was even finished.
27. Unbeknownst to me, Mrs. Lawrence was at one of her birdfeeders. When she saw me mounting the owl, she started screaming, "You're not going to ruin my life! You're not going to tell me what to do, you f***ing asshole, you f***ing wimp!" When I asked her what she was talking about, she started yelling, "You f***ing douche bag. The days of me being the nice guy are over!"
28. She started cutting the bamboo trees, saying "These are on my side of the fence! I can cut them anytime I want."

29. My wife came out and said to Mrs. Lawrence, "I believe you are supposed to let us know if you are going to cut the trees." Mrs. Lawrence said, "Oh, look who is here! The redheaded, balding, ugly bitch!"
30. Mrs. Lawrence then went up on her deck, continuing her profanity laced rant. She spotted my next-door neighbor in his backyard and, while pointing at my wife and me, yelled to him, "You are friends with these people? They are bad f***ing people."
31. Mrs. Lawrence then leaned over the deck railing and said to us, "I'm going to stand here and stare at you and harass you, every time you, your family and friends are in your backyard."
32. The next day, July 6, 2022, my sprinkler contractor was in my backyard to do some work. Mrs. Lawrence yelled at him, "You drop anything in my yard and it is not yours anymore!" A few minutes later, she yelled "The people you are working for are bad people, and that one (pointing at me) is a f***ing pervert!"
33. The following day, July 7, 2022, another contractor was in my backyard with me, taking some measurements. We looked up to see Mrs. Lawrence was filming us with her cell phone, laughing. My son's fiancée was also sitting in the yard until she saw Mrs. Lawrence filming us, at which point she went inside because she felt very uncomfortable.
34. A few days after that, on July 9, 2022, my wife and I were again entertaining guests. One of our guests went into our backyard just as Sean Lawrence was going up the stairs to his parents' deck. Sean looked over to my friend and yelled, "What the f*** are you looking at? Stop f***ing looking over here!"
35. This friend was also present at the incident on August 22, 2021. He said to me, "I am very sorry to see that nothing has changed with your neighbors since last summer. To be

honest with you, at my age (70), I do not need this crap. I think it will be a while before we return.”

36. Both of my adult children have expressed to me their concern about coming to our family home due to the behavior of the Lawrence family, particularly Mrs. Lawrence.
37. With the bamboo clearly not giving my wife and I the privacy we would like to have in our backyard and especially after Mrs. Lawrence’s vow on July 5, 2022, to harass us from her deck every time we are in our own backyard, my wife and I talked about other options.
38. My wife found a company that could make custom privacy curtains that could be raised and lowered during the weekends and vacations that we occupy the property.
39. Since the property is our summer home, I estimate the curtains are raised about 30% of the time and lowered about 70% of the time.
40. My wife made arrangements to order the fabric, and I made arrangements to have poles installed to raise and lower the privacy curtain.
41. For poles, I wanted something attractive yet durable. I talked to a contractor and decided upon using Brazilian fruit wood. The poles look like mahogany.
42. There are three poles, about 10 feet high. The poles have pulleys which allow us to raise and lower to privacy curtains.
43. We raise the curtains when we are at the property on weekends and during our vacation, and we lower the curtains when we leave.
44. While the curtains may interfere with the view from the first floor deck of the Lawrences’ home, the interference is temporary.
45. Also, the Lawrences continue to have unobstructed views from the decks on the second and third floors of their house.

46. The use of the privacy curtains are in no way intended to be malicious or spiteful. Our privacy was significantly compromised with the construction of the Lawrences' house, given its size, height and proximity to our backyard. The situation was made intolerable, however, by the behavior of the Lawrences, particularly Mrs. Lawrence, which unfortunately made the curtains a necessity.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY, THIS THE 18th DAY OF OCTOBER, 2022.

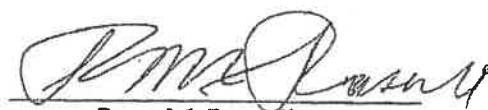

Peter M. Russell

EXHIBIT C

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT
NO. 2283CV00754

Laurie A. Lawrence and Albert E. Lawrence, Jr.

v.

Karen Demichele

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

INTRODUCTION

Laurie A. Lawrence and Albert E. Lawrence, Jr., (“Plaintiffs”) filed a Verified Complaint on October 12, 2022 against Karen Demichele (“Defendant”) for violation of G.L. c. 49, § 21 (the “spite fence” statute), and for trespass, injunctive relief, and declaratory relief. The Plaintiffs complain that the Defendants have erected a tarp above the adjoining 6-foot fence, which obstructs their view of Onset Bay. The Plaintiffs also seek a preliminary injunction requiring the Defendants to remove the offending tarp while the litigation is pending.

The matter proceeded to a hearing on October 18, 2022. After reviewing the Verified Complaint and attached exhibits, and for reasons as follows, the court hereby **DENIES** the request for a preliminary injunction.

DISCUSSION

In order to prevail on a Motion for Preliminary Injunction, the burden is on the moving party, here the Plaintiffs, to establish that: (1) success is likely on the merits; (2) irreparable harm will result from the denial of the injunction; and (3) the risk of irreparable harm to the moving

party outweighs any similar risk of harm to the opposing party. To obtain preliminary relief, the Plaintiffs must prove a likelihood of success on the merits of the case and a balance of harm in their favor when considered in light of the likelihood of success. Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 616-617 (1980). It is well settled that “[a] preliminary injunction is an extraordinary remedy never awarded as of right.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 24 (2008). To the contrary, “the significant remedy of a preliminary injunction should not be granted unless the plaintiffs had made a clear showing of entitlement thereto.” Student No. 9 v. Board of Educ., 440 Mass. 752, 762 (2004). One is not required to wait until he is injured before applying for equitable relief, “but he is not entitled to seek [injunctive] relief unless the apprehended danger is so near as at least to be reasonably imminent.” Shaw v. Harding, 306 Mass. 441, 449 (1940). In ruling on a motion for preliminary injunction, the court is charged with balancing the “rights, interests and harms to each party to determine if the requested relief by way of preliminary injunction is legally appropriate and warranted.” See Tri-Nel Management, Inc. v. Board of Health of Barnstable, 433 Mass. 217 (2001).

Here the Plaintiffs argue through counsel that they have a reasonable likelihood of success on the merits of their claim that the offending tarp enters upon their property when the wind blows, causing a trespass, and that the tarp was erected just to annoy them and block their view. The Defendants, on the other hand, argue through counsel that the tarp is necessary because of the insulting and outrageous conduct of the Plaintiffs, which occurs when the Defendants or their guests attempt to use their patio area. The Defendants also assert that the subject property is their vacation home and that they only erect the tarp when they are there, which is about 30% of the time.

At this preliminary stage, the Plaintiffs have failed to meet their burden to show that they have a reasonable likelihood of success on the merits of their claims. As such, the court need not rule on the other elements required for a preliminary injunction. See New Comm Wireless Servs., Inc. v. SprintCom Inc., 287 F.3d 1, 9 (1st Cir. 2002) (“The sine qua non of this [preliminary injunction] inquiry is likelihood of success on the merits: if the moving party cannot demonstrate that he is likely to succeed in his quest, the remaining factors become matters of idle curiosity.”).

For the aforesaid reasons, the court declines to issue a preliminary injunction.

ORDER

Based upon the foregoing, the Plaintiffs’ request for preliminary injunction is **DENIED**.



Daniel J. O’Shea
Justice of the Superior Court

DATED: October 19, 2022

EXHIBIT D

