

LAW OFFICES OF
JAMES W. MARSH

James W. Marsh

128 UNION STREET

SUITE 203

Of Counsel:
Shephard S. Johnson, Jr.

NEW BEDFORD, MASSACHUSETTS 02740

Telephone: (508) 991-5000

Fax: (508) 991-5252

December 30, 2022

Wareham Zoning Board of Appeals
Memorial Town Hall
54 Marion Road
Wareham, MA 02571

RE: Application for Variance Assessors Map 32, Lot 1006
31 Warren Point Road, Wareham, MA

Dear Chairperson:

This office represents Colin and Anne McNay (hereinafter the "Petitioner") and by this correspondence seeks a Variance from the Zoning Board of Appeals ("Board of Appeals") from Article 6, Density and Dimensional Regulations, Section 625 Accessory Building and any other applicable Sections of the Wareham Zoning By-Laws to allow the construction of a paddle tennis court, warming hut, and deck at the property located at 31 Warren Point Road, Wareham, MA (the "Locus").

Kindly direct all communications concerning this matter to the undersigned. This letter and all supporting exhibits and documents are attached and made a part of the "Petition" to the Board of Appeals.

The Locus is situated in the Residence 60 (R-60) District.

The proposed site of the paddle facility will be in the Locus' side yard and set back sixty (60) feet from Warren Point Road.¹

A Variance is needed from Article 6, Section 625 because the proposed site of the paddle facility (as shown on the attached site plan) is forward of the single-family dwelling's front setback from Warren Point Road. The single-family dwelling at the Locus is at its closest point 138 feet from the Road. The proposed paddle facility is an accessory structure to the dwelling at the Locus, and section 625 requires: "Front setbacks of accessory buildings shall be equal to or greater than the existing principal building's front setback".

The proposed paddle facility meets all other zoning requirements applicable to R-60.

¹ The original design proposed two (2) paddle courts to be sited forward of the front yard setback of sixty (60) feet. The Petitioner has redesigned the facility to reduce the size to one paddle board court and moved the location back from the road behind the 60 foot front setback from the street.

A variance may be granted if, among other things, the board of appeals finds “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. . . . and 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”.

The site of the paddle facility is proposed in an area adjacent to the existing tennis court that was constructed sometime shortly after 1985. The placement of the paddle facility at this location makes sense with the tennis court already constructed there. The paddle facility fits well next to the existing tennis court and the overall sport design theme of this location. The northerly corner of the proposed paddle facility will be a little over three feet closer to the Road than the closest point of the existing tennis court. The amount of the paddle facility forward of the tennis court can be best described as de minimis. The majority of the paddle facility lines up with the location of the existing tennis court.

The proposed site of the paddle facility is one of the flattest areas on the Locus that is not covered by a structure or driveway. Moving in a southerly direction from the existing tennis court to the single-family dwelling and down to Buzzards Bay, the slope of the Locus varies in different locales. Beginning at the existing tennis court, the Locus has a slight slope to the front of the dwelling. There is then a drop in the slope of the Locus down towards Buzzards Bay to the rear and sides of the dwelling.

There also exist coastal/tidal wetland resource areas with associated 100-foot buffer zones directly adjacent to Buzzards Bay. These areas at the rear of the property reduce the buildable upland, i.e. contiguous dry land, available in the area behind the front setback of the dwelling to build a 40 x 88 foot paddle facility.

These unique factors (topography, soils) exist on the Locus and affect the siting of the paddle facility. The Petitioner can only realistically site the paddle facility in the area adjacent to the existing tennis court. It would be “economically” impractical to site the paddle facility to the rear or side of the dwelling and closer to Buzzards Bay because of the slope of the Locus in that area and soils. Given the topography of the Locus and lack of contiguous dry upland, there are likely no other alternatives to site the paddle facility.

It is the confluence of all these factors, which together are unique to the Locus and give rise to the particular hardship suffered by the Petitioner if not granted the requested relief. See Shacka v. Board of Appeals, 341 Mass. 593, 595 (1961)(the hardship must be directly caused by topography, slope or shape of lot affecting such parcel). It is important to note that a variance from setback requirements constitutes a variance from dimensional—not use—requirements, and that the Massachusetts Supreme Judicial Court has held that where only a dimensional variance is involved, even relatively minor “hardship” can justify the granting of the requested variance.

See, e.g., Marashlian v. Zoning Bd. of Appeals of Newburyport, 421 Mass. 719, 725–26 (1996) (even where locus could be used as restaurant, retail space or parking, “hardship” requirement was satisfied by showing that it would be “economically impractical,” as result of unique conditions affecting locus, to provide number of parking spaces required by zoning bylaw; grant of dimensional variance was justified); Josephs v. Bd. of Appeals of Brookline, 362 Mass. 290, 293 (1972) (“hardship” requirement was satisfied by showing that as result of unique conditions affecting locus, alternatives for bringing fifteen-story building proposed on locus into compliance with off-street loading requirements would involve either excessively steep ramp or loss of usable space within proposed building; grant of dimensional variance was justified)

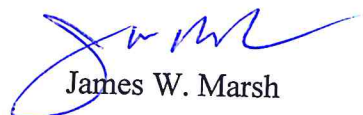
The desirable relief, if granted, will not substantially derogate from the intent or purposes of the Zoning By-laws. The paddle facility would keep in the nature of the neighborhood and add to the home values. The public is in no way harmed by this build.

The proposed paddle facility is also not detrimental to the neighborhood and is in harmony with the general purpose and intent of the Zoning By-law. The paddle facility will not extend further than the existing tennis court towards any neighboring property. In fact, none of the neighbors have ever complained about the presence of the tennis court.

Clearly the paddle facility will not negatively affect the neighborhood. Structures of this kind are prevalent in the neighborhood already.

Thank you in advance for your attention to this matter.

Very truly yours,
Law Offices of James W. Marsh


James W. Marsh

JWM/zca
encl.

Exhibit A: Certified Abutters List
Exhibit B: Quitclaim Deed recorded at Plymouth County Registry of Deeds, Bk. 17349, Pg. 80
Exhibit C: Building Inspector’s Notice of Violation Letter: Denial Letter, dated 11/30/2022
Exhibit D: Proposed Site Plan
cc: Colin and Anne McNay

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: Warren Point Road, 31 LOT: 1006 MAP: 32
ZONING DISTRICT: R-60
USE REQUESTED: Sport Court
OWNER OF LAND & BUILDING: Colin McNay TEL.# (508) 991-5000
ADDRESS OF OWNER: 31 Warren Point Road, Wareham, MA 02571
PERSON(S) WHO WILL UTILIZE PERMIT: Colin McNay
ADDRESS: 31 Warren Point Road, Wareham, MA 02571
DATE: 12-28-2022 SIGNATURE: Colin McNay
This application was received on the date stamped here:

Town Clerk: _____ Date: _____
Tax Collector: _____ Date: _____
Planning/Zoning Dept.: _____ Date: _____
Application fee paid: _____ Check #: _____ Receipt: _____
Advertising fee paid: _____ Check #: _____ Receipt: _____
Abutters fee paid: _____ Check #: _____ 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: **Colin McNay** _____

Applicant's Address: **31 Warren Point Road, Wareham, MA 02571** _____

Telephone Number: **(508) 991-5000** _____

Cell Phone Number: _____

Email Address: **jmarsh@jwmarshlaw.com** _____

Address of Property/Project: **31 Warren Point Road, Map #32, Lot 1006** _____

Landowner's Name: **same as Applicant** _____

Owner's Address: **same as Applicant** _____

Telephone Number: **same as Applicant** _____

Contact Person: **James W. Marsh, Esq.** Telephone Number: **(508) 991-5000**

Map **32** Lot **1006** Zone **R-60**

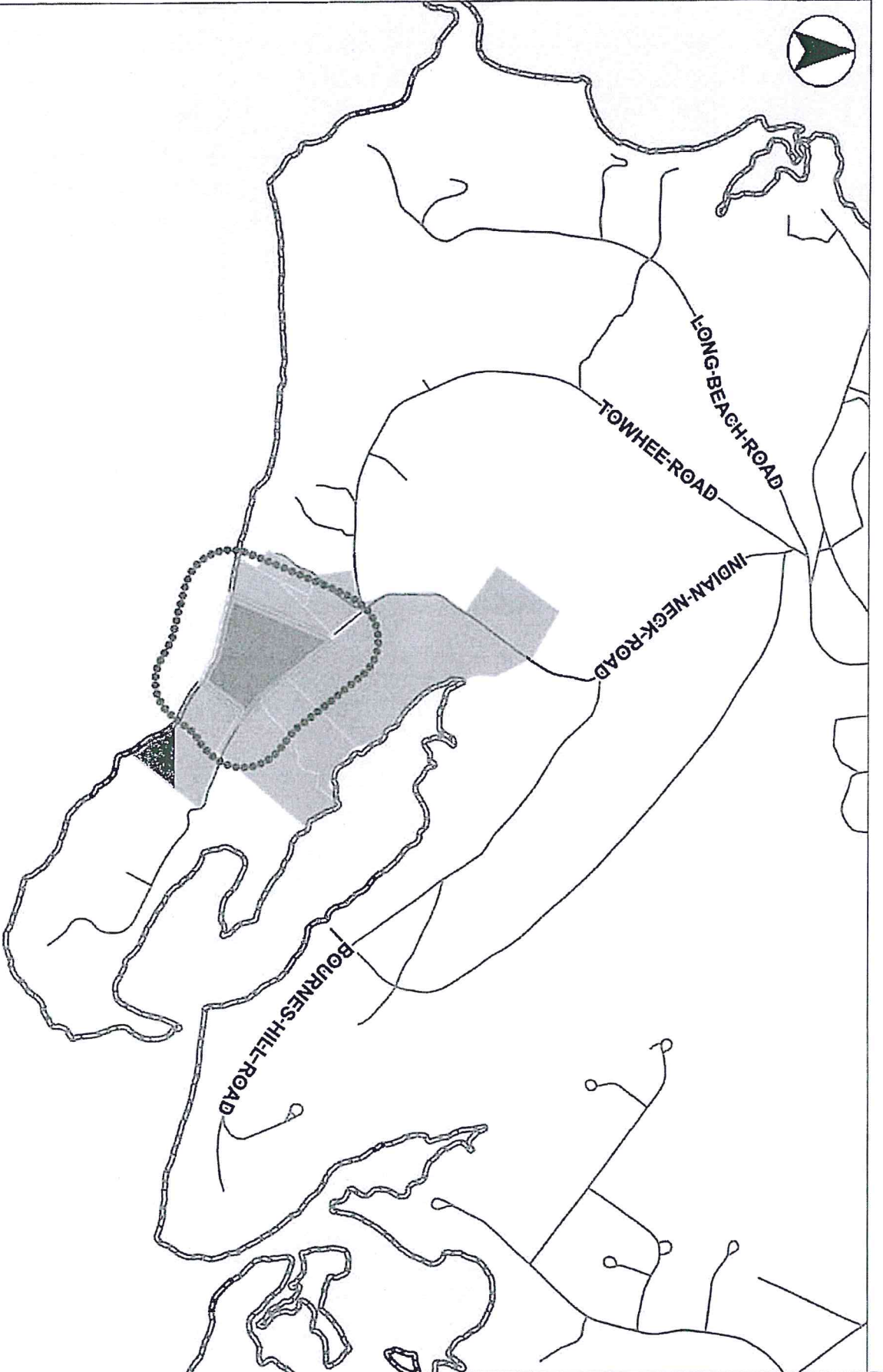
Date Approved _____ Date Denied _____

Comments: _____

EXHIBIT A

TOWN OF WAREHAM ABUTTERS LIST FOR:

MAP-LOT	OWNER	MAILING ADDRESS	TOWN	ST	ZIP
MAP 32 LOT 1006					
31 WARREN POINT RD.					
MCNAY, COLIN S. + ANNE E.C.					
300'					
33-B2	BREWSTER SYLVIA + MORGAN JOHN TRS	46 ORCHARD HILL RD	BRANFORD	CT	06405
33-B1	BENTON KATE B TRUSTEE	129 EAST 82ND ST	NEW YORK	NY	10028
33-B4	BENTON KATE B & SUCCESSORS TRS OF	129 EAST 82ND ST	NEW YORK	NY	10028
33-1	ALDEN, ERNEST EDWARD + DAWN	21 WARREN POINT RD	WAREHAM	MA	02571
33-1000	BALDWIN ROSE W ET ALS TRUSTEES	C/O EMILY B MORGAN	BROOKLYN	NY	11217
32-1006	C/O EMILY B MORGAN	195 BERGEN ST	BROOKLINE	MA	02445
32-1005	MCNAY COLIN S + ANNE E C	36 CODMAN RD			
	US TRUST COMPANY OF DELAWARE				
32-1006/B	TR STIFLER-MCFADDEN FAMILY TR	2951 CENTERVILLE RD STE 200	WILMINGTON	DE	19808
32-1004	WARREN POINT FIELD HOUSE LLC	58 MULBERRY DR	WAKEFIELD	RI	02879
32-1006/G	BROWNING JOHN H & SALLY A TRS	45 WARREN POINT RD	WAREHAM	MA	02571
	MOULDING LINTON A + JANE E	14 TRAYMORE STREET	CAMBRIDGE	MA	02140
CERTIFIED ABUTTERS AS THEY APPEAR					
ON OUR TAX ROLLS AS OF 12/29/2022					
<i>James D. Roth</i>					
ASSESSORS OFFICE					
REQUESTED BY:					
JIM MARSH					
508-991-5000					
jmarsh@jwmarshlaw.com					



The data shown on this site are provided for informational and planning purposes only. The Town and its consultants are not responsible for the misuse or misrepresentation of the data.



Printed on 12/28/2022 at 02:15 PM

- MA Purposes
 - Fire Station
 - Police Station
 - Town Hall
 - Public Library
 - School
- Buildings
- Panicle
- Town Boundary
- MA Highways
 - Interstate
 - US Highway
 - Numbered Routes
- Streets
- Bathymetry
 - 5-10 ft
 - 10-15 ft
 - 15-20 ft
 - 20-30 ft
 - 30-40 ft
 - 40-50 ft
 - 50-60 ft
 - 60-70 ft
 - 70+ ft
- Abutting Town Labels
- Abutting Towns

EXHIBIT B

51060
Received & Recorded
PLYMOUTH COUNTY
REGISTRY OF DEEDS
14 APR 1999 09:30AM
RICHARD C. SEIBERT
REGISTER
Bk 17349 Pg 80

QUITCLAIM DEED

Howard Baldwin of Los Angeles, California

for consideration paid, and in full consideration of Two Million Nine Hundred
Thousand (\$2,900,000) Dollars

grants to Colin S. McNay and Anne E. C. McNay, husband and wife, as tenants by
the entirety,

of 14 Valley Road, Chestnut Hill, MA 02167

with quitclaim covenants

a certain parcel of land, with the buildings and improvements thereon, situated in
that part of Wareham known as Indian Neck, Plymouth County, Massachusetts,
more particularly described as follows:

BEGINNING

at a cement bound in a corner of the premises at the
northwesterly corner of Lot C shown on the first plan
herein referred to; thence running

S 37° 49' 30" W

along Lot C, a distance of Two Hundred Seventy and
49/100 (270.49) feet to the mean high water mark (1961)
of Buzzard's Bay, and thence continuing in a straight line
One Hundred Three (103) feet, more or less, to the mean
low water mark (1961) of said Buzzard's Bay; thence

IN A GENERALLY
NORTHWESTERLY
DIRECTION

along the mean low water mark of Buzzard's Bay, a
distance of Six Hundred (600) feet, more or less, as shown
on said plan, to a corner; thence turning and running

31 Warren Point Adj Wareham

CANCELLED

PLYMOUTH
DEEDS REG#18
PLYMOUTH

04/14/99 9:21AM 01
000000 #1297

FEE \$13224.00

CASH \$13224.00

Quitclaim Deed
from
Howard Baldwin
to
Colin S. McNay, et ux
-Page 2-

N 22° 47' 30" E a distance of One Hundred Sixty-Five (165) feet, more or less, along Buzzard's Bay and land now or formerly of Catherine T. Bates et als to a stone bound shown on said plan; thence continuing in the same direction by said land of Bates, a distance of Five Hundred Eighty-Nine and 66/100 (589.66) feet to a stone bound; thence

N 47° 32' 30" E a distance of Forty and 5/100 (40.05) feet to a point in the northeasterly side of a right-of-way shown on the first plan hereafter referenced; thence

S 39° 34' 10" E along the northeasterly bound of said right-of-way, a distance of Five Hundred Seventy-One and 84/100 (571.84) feet to a cement bound; thence

S 53° 14' 40" E along the northeasterly bound of said right-of-way, a distance of Two Hundred Twenty-Six and 1/100 (226.01) feet through a cement bound to a corner; thence

S 63° 03' 00" E along the northeasterly bound of said right-of-way, a distance of Fifteen and 8/100 (15.08) feet to a corner; thence

S 48° 07' 35" W a distance of Fifty-Three and 62/100 (53.62) feet to a stone bound located in the southwesterly bound of said right-of-way; thence

N 53° 14' 40" W a distance of Forty-Five and 65/100 (45.65) feet to the point of beginning.

Quitclaim Deed
from
Howard Baldwin
to
Colin S. McNay, et ux
-Page 3-

BEING SHOWN in part on a survey entitled "Plan of Land Surveyed for Horace W. Frost, Trustee," dated Apr. 24, 1962, by Walter E. Rowley & Associates, recorded with the Plymouth County Registry of Deeds in Plan Book 12, Page 624, and in part on a survey entitled "Plan of Lots for Ernest A. Blanchard" dated October 9, 1980 by Robert A. Braman, recorded with said Deeds in Plan Book 21, Page 1107.

The above-described parcel is subject to a private right-of-way in common with others entitled thereto for purposes of access and egress, said private way being bounded and described as follows:

BEGINNING	at a cement bound in a corner of the premises at the northeasterly corner of Lot C shown on the first plan hereinabove referred to; thence running
N 53° 14' 40" W	along the southwesterly bound of the right-of-way shown on the aforesaid plan, a distance of One Hundred Ninety and 64/100 (190.64) feet to a cement bound; thence
N 39° 34' 10" E	along the southwesterly bound of said right-of-way, a distance of Five Hundred Seventy and 58/100 (570.58) feet to a point in the third bound of the above parcel; thence
N 22° 47' 30" E	a distance of Eleven and 29/100 (11.29) feet to a stone bound; thence
N 47° 32' 30" E	a distance of Forty and 5/100 (40.05) feet to a point in the northeasterly side of a right-of-way shown on the first plan hereafter referenced; thence

Quitclaim Deed
from
Howard Baldwin
to
Colin S. McNay, et ux
-Page 4-

- S 39° 34' 10" E along the northeasterly bound of said right-of-way, a distance of Five Hundred Seventy-One and 84/100 (571.84) feet to a cement bound; thence
- N 53° 14' 40" W along the northeasterly bound of said right-of-way, a distance of Two Hundred Twenty-Six and 01/100 (226.01) feet through a cement bound to a corner; thence
- S 63° 03' 00" E along the northeasterly bound of said right-of-way, a distance of Fifteen and 8/100 (15.08) feet to a corner; thence
- S 48° 07' 35" W a distance of Fifty-Three and 62/100 (53.62) feet to a stone bound located in the southwesterly bound of said right-of-way; thence
- N 53° 14' 40" W a distance of Forty-Five and 65/100 (45.65) feet to the point of beginning.

BEING SHOWN in part on a survey entitled "Plan of Land Surveyed for Horace W. Frost, Trustee," dated Apr. 24, 1962, by Walter E. Rowley & Associates, recorded with the Plymouth County Registry of Deeds in Plan Book 12, Page 624, and in part on a survey entitled "Plan of Lots for Ernest A. Blanchard" dated October 9, 1980 by Robert A. Braman, recorded with said Deeds in Plan Book 21, Page 1107.

TOGETHER WITH the right to pass and repass in common with others entitled thereto over any and all streets and ways which may be necessary for access and egress to and from the public ways of the Town of Wareham.

TOGETHER WITH all rights, privileges and easements connected therewith and subject to restrictions and easements of record and subject to any building and zoning law requirements which may be in force and applicable.

Quitclaim Deed
from
Howard Baldwin
to
Colin S. McNay, et ux
-Page 5

For Grantor's title, see deed from HMB Partners dated December 30, 1985, and recorded with said Registry in Book 6505, Page 320.

Witness my hand and seal this 8th day of April, 1999.



Howard Baldwin

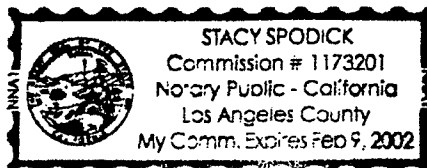
STATE OF CALIFORNIA
COUNTY OF L.A., ss.

STATE OF CALIFORNIA

APRIL 8, 1999

Then personally appeared the above named Howard Baldwin and acknowledged the foregoing instrument to be his free act and deed, before me


STACY SPODICK Notary Public
My commission expires: FEB. 9, 2002



← END OF INSTRUMENT →

EXHIBIT C



TOWN of WAREHAM

Massachusetts

BUILDING DEPARTMENT

Paul Turner
Director of Inspectional Services

November 30, 2022

Mr. Colin McNay
31 Warren Point Road
Wareham, Massachusetts 02571

RE: 31 Warren Point Road/ Map # 32, Lot 1006

I have reviewed your Building Permit application to construct a Sport Court at 31 Warren Point Road Wareham, MA.

Your application is being denied under the following section of the Wareham Zoning By-Laws:

- **Article 6: Density and Dimensional Regulations, 625 Accessory Buildings, note 2;**
Front setbacks of accessory buildings shall be equal to or greater than the existing Principle building's front setback.

Therefore, a Variance must be secured in order to proceed with your request.

The subject dwelling is located in R-60 Zoning district.

Respectfully,

Paul Turner
Building Commissioner
Zoning Enforcement Officer

It is the owners' responsibility to check with other departments 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

