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# **ZBA APPLICATION VARIANCE/SPECIAL PERMIT**

**11 VERNAL ST  
SWIFTS BEACH**

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# **A. Petition**

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 \$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:

STREET & NUMBER: 11 Vernal Street MAP: 50 LOT: 264  
ZONING DISTRICT: R30  
USE REQUESTED: Residential Single Family  
OWNER OF LAND & BUILDING: Linda A. Rose as Trustee of the Rose Family  
ADDRESS OF OWNER: 7 Buttermilk Way, Norton, MA 02766 Nominee Trust  
PERSON(S) WHO WILL UTILIZE PERMIT: Linda A. Rose  
ADDRESS: 7 Buttermilk Way, Norton, MA 02766 Tel. No. 508-958-7291  
DATE: 02/16/2021 SIGNATURE: T. A. Claffoni

This application was received on the date stamped here: Timothy A. Claffoni, Esq. as attorney  
for Linda A. Rose as Trustee of the  
Rose Family Nominee Trust  
Date: \_\_\_\_\_

Town Clerk: [Signature] Date: \_\_\_\_\_  
Tax Collector: [Signature] Date: 2/16/2021  
Planning/Zoning Dept.: \_\_\_\_\_ Date: \_\_\_\_\_

Application fee paid: \_\_\_\_\_ Check #: \_\_\_\_\_ Receipt: \_\_\_\_\_  
Advertising fee paid: \_\_\_\_\_ Check # \_\_\_\_\_ Receipt: \_\_\_\_\_  
Abutters fee paid: \_\_\_\_\_ Check # \_\_\_\_\_ Receipt: \_\_\_\_\_

**B. Deed**





Exhibit A

A certain parcel of land with the buildings thereon situated in Wareham, Plymouth County, Massachusetts, on the southerly side of Vernal Street, being Lot 264 as shown on a plan entitled "Plan of Swift's Neck Wareham, Mass., belonging to Swift Shore Estate, A.P. Trufant, C.E., Brockton & Whitman, October, 1920. Scale 1"=100'" and recorded with Plymouth County Registry of Deeds in Plan Book 2, Page 566; and to which plan reference may be had for a more particular description.

Subject to restrictions described in a deed recorded at Book 1912, Page 106.

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

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# **C. Certified Surveyor's Plan**



**BUILDING LOCATION PLAN**

LINDA ROSE  
11 VERNAL STREET  
WAREHAM, MA.

SCALE: 1"=20'  
NOVEMBER 11, 2020



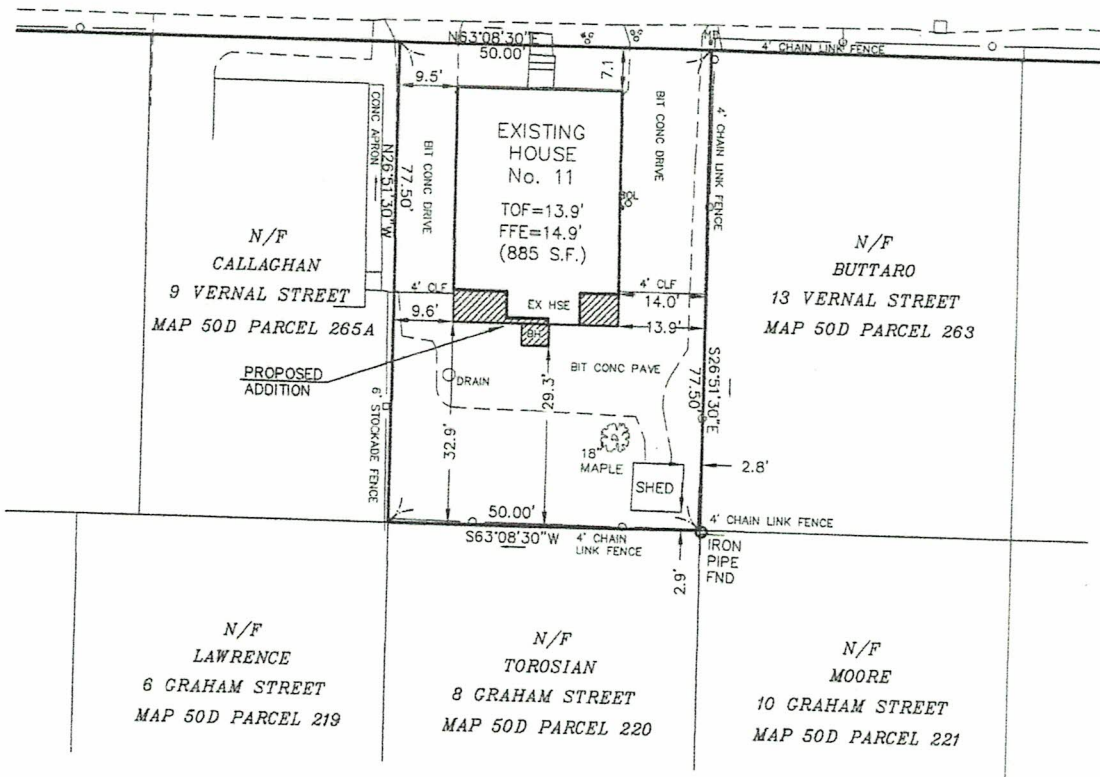
**BENCHMARK:**  
MAG SPIKE SET IN UP-156/3  
ELEV = 13.79' (NAVD 88)

N/F  
CUMMINGS  
8 VERNAL STREET  
MAP 50D PARCEL 269

N/F  
GIANNANDREA  
10 VERNAL STREET  
MAP 50D PARCEL 270

HOOVER STREET  
(20' WIDE - PRIVATE)

VERNAL (25' WIDE - PUBLIC) STREET



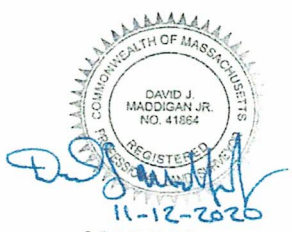
ZONE: AE (ELEV 15)  
AS SHOWN ON MAP 25023C0576K  
MAP REVISED FEBRUARY 5, 2014

ZONE: R30  
FRONTAGE: 150'  
MAX. HEIGHT: 35'  
OFFSETS: FRONT - 20'  
SIDE - 10'  
REAR - 10'

THE EXISTING HOUSE (885 S.F.) AND THE PROPOSED ADDITION W/ BH (93 S.F.) IN TOTAL WILL OCCUPY 25.2% OF THE LOT. REQUIRED IS 25% (OVER BY 13 S.F.)

MAP 50D PARCEL 264  
AREA: 3,875 SQ.FT.

DEED REFERENCE:  
BOOK 41453 PAGE 160  
PLAN REFERENCE:  
BOOK 2 PAGE 566



**MADDIGAN LAND SURVEYING, LLC**  
88 EAST GROVE STREET  
MIDDLEBOROUGH, MA.  
774-213-5196

# **D. Two Photographs**





**E. Attorney's  
written statement  
to Zoning Board**



February 16, 2021

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

RE: Application of Linda Rose, as Trustee of the Rose Family Nominee Trust u/d/t dated May 14, 2012 who is requesting a public hearing for a variance/special permit for the Subject Property located at **11 Vernal Street, Wareham, MA (Swifts Beach)**.

Dear Mr. Chairman and Members of the Board:

The applicant, Ms. Linda Rose, as Trustee and through her agent, applied for a building permit for the single family home located at 11 Vernal Street, and in the R-30 zoning district in the Town of Wareham, and the permit was denied on January 14, 2021 for the following reasons:

- **Article 6 Section 628, Dimensional Standards for Existing Small Lots:** The Applicant desires to add a second floor which would increase the floor area ratio where 30% is permitted to 48.5%, and she seeks a variance from this Board.
- **Article 6 Section 621, Residential District:** The Applicant seeks to add two very small first floor additions, in the rear of the house, by about 5', plus a bulkhead to access the basement, which would increase the current building coverage from 24.5% to 27.09% (25% is allowed by right), and she seeks a variance from this board.
- **Article 13 Section 1352, Non-Conforming Structures:** The instant locus is on one side of the dwelling 9.6 feet away from the property line where 10 feet is required. The Applicants alteration and/or expansion of a lawfully pre-existing non-conforming residential structure

requires relief from the Zoning Board of Appeals unless the expansion will be substantially more detrimental to the neighborhood in which case a Variance may be required.

In relation to the request for a variance, Massachusetts General Laws Chapter 40A, as you each are familiar with, states that a variance can be granted if the following criteria are met.

Owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or applicant 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.

In essence and more precise, in order for the Board to grant the variances requested, the board must make findings as to each of the four (4) requirements of Section 10 of MGL 40A as follows,

- 1.) Owing to circumstances relating to the soil conditions, shape, or topography of the petitioner's land or structures(s) and especially affecting such land or structures(s), enforcement of the Wareham Zoning Bylaws (failure to grant the Variance) would prevent use of the land as zoned. (Hardship)
- 2.) The Variance may be granted without detriment to the public good.
- 3.) The Variance may be granted without nullifying or substantially derogating from the intent or purpose of the Wareham Zoning Bylaws.
- 4.) Uniqueness.

The Applicant/Petitioner addresses the four (4) requirements as follows:

**Requirement 1.**

Owing to circumstances relating to the soil conditions, shape, or topography of the petitioner's land or structures(s) and especially affecting such land or structures(s), enforcement of the Wareham Zoning Bylaws (failure to grant the Variance) would prevent use of the land as zoned. (Hardship)

The Applicant/Petitioner responds to this requirement by stating that in considering the application, this Honorable Board should respectfully note that some derogation from the by-law purpose is anticipated by every variance; otherwise, the denial of relief on the basis of a slight or insubstantial departure from the goals of the by-law will prohibit the grant of any variance. Cavanaugh vs DiFlumera, 9 Mass. App. Ct. 400 (1980).

The Applicant/Petitioner further states that where a modest dimensional variance is sought, rather than a use variance the courts are more willing to find there have been no substantial derogation on the intent of the by-law or ordinance. Boston Edison Co. vs Boston Redevelopment Authority, 374 Mass. 66n.22(1969).

Here, the Applicant/Petitioner relies on that language in the statute stating:

. . . petitioner's land or structures(s) and especially affecting such land or structures(s), enforcement of the Wareham Zoning Bylaws (failure to grant the Variance) would prevent use of the land as zoned.

The Applicant/Petitioner makes particular reference to the wording "or structures" in reliance of this appeal and respectfully points out that Lot 50 is situated in the R-30 zoning district that contains almost all single family dwellings on very small lots. It should be noted that the primary purpose of residential zoning districts is to preserve the homogeneity of residential neighborhoods.....Atherton vs Bd. of Appeals of Bourne, 334 Mass. 451(1956); Circle Lounge and Grille, Inc. vs Bd. of Appeal of Boston, 324 Mass. 427, 430 (1949).

The current structure of the Applicant/Petitioner, in of itself, is on such a small lot in a district with all small lots that it leaves the instant owner, who desires to improve her property, little if any alternatives. The Applicant/Petitioner is left with no choice but to seek permission to build-up by adding another floor and/or build-out, slightly toward the rear property line, and both options are now prohibited which prevents the use of said land and structure and creates a substantial hardship to the Applicant/Petitioner, financial or otherwise, by not being able to use said land for the purpose she intends.



**Requirements 2 & 3.** The Applicant/Petitioner must show that the variance may be granted without detriment to the public good, and that the Variance may be granted without nullifying or substantially derogating from the intent or purpose of the Wareham Zoning Bylaws.

In support of her position the Applicant/Petitioner references the Denial Letter and Article 6, Section 621, and it should be again noted that the Applicant/Petitioner seeks to add two very small first floor additions, in the rear of the house, by about 5', plus a bulkhead to access the basement, which would increase the current building coverage from 24.5% to 27.09%.

The Denial Letter points out that that as a matter of right, building coverage of 25% is allowed, so in essence her request is only 2.09% above the allowed amount.

The request would not be out-of-conformity with the neighborhood in which the lots are situated, resulting in no substantial detriment to the public good and no derogation from the intent or purpose of the by-law.

The Applicant/Petitioner states that despite the stringency of the hardship requirement generally, and as set forth in Marashlian vs zoning Bd. of Appeals of Rockport, 19 Mass. App. 339 (1984), a lesser showing of hardship is often appropriate for dimensional variances because they usually do not change the character of the zoning district or endanger nearby properties with an inconstant land use.

Next, the Applicant/Petitioner addresses her desire to add a second floor to the instant locus and the Denial Letter points out that this would increase the floor area ratio where 30% is permitted to 48.5%. As a background the home is situated on the present Lot (264) on Wareham Assessor's Map 50, and it is regularly shaped. The applicant's intent in constructing a second floor, and small extension in the rear is to enhance the functionality and value of the property, reasonably proposed by the plans submitted, and in conformity with the

neighborhood resulting in no substantial detriment to the public good and no derogation from the intent or purpose of the by-law.

**Requirement 4. Uniqueness.**

This board as previously indicated herein must find that unique conditions effecting the shape, topography or soil conditions of the lot and not affecting generally other lots in the zoning districts must exist to satisfy the very first pre-requisite for variance, Marashlian vs Zoning Bd. of Appeals of Newburyport, 421 Mass. 719. A condition need not affect all property in a district in order to be regarded as a condition generally affecting the district as a whole; Planning Bd. of Watertown vs Bd. of Appeals of Watertown, 5 Mass. App. Ct. 833 (1977 case).

In support of her application the Applicant/Petitioner states that there are unique characteristics of the property that create a substantial hardship if the variance is not granted in that the shape/size of the instant lot is such that it is smaller than many other lots in the zoning district which sizes originate from the Master Plan, merger of lots or otherwise, but do not affect generally many other lots in the zoning district.

**Additional argument as to Hardship.**

The Applicant/Petitioner's intent in constructing a small rear addition and adding a second floor is to enhance the safety, functionality, and value of the property. This is important since the hardship to be accepted by the board maybe based only upon circumstances which directly affect the real estate and not upon personal hardship to the owner Huntington vs Zoning Bd. Of Appeals of Hadley 12 Mass. App. Ct. 710, 715 (1981) also Winn vs Bd. of Appeals of Saugus, 358 Mass. 804 (1970).

No one factor determines the question of what is practical difficulty or necessary hardship, but all relevant factors, when taken together, must indicate the plight of the premises in question is unique in that they cannot be reasonably put to a conforming use. Brackett vs Bd. of Appeals of Boston, 311 Mass at 60; also see Boyajian vs, Bd. Of Appeals of Wellesley, 6 Mass. App. Ct. 283 (1978).

Hardship is defined as not being reasonable able to use the property for the purposes or in the manor allowed by the municipal zoning requirements due to circumstances particularly affecting that property. The conditions that establish hardship are diverse. Substantial hardship financial or otherwise is found where under the unique circumstances it is not economical feasible or likely that the locus will be developed in the future for use permitted by the zoning by-law. Cavanaugh vs Diflumer, 9 Mass. App. Ct. 396 also see Marashlian vs Zoning Bd. of Appeals of Newburyport, 421 Mass. 719. (1996), noting that the other potential uses were not economically feasible; Sherman vs. Bd. of Appeals Worcester, 354 Mass. 133, 135-96 (1968); and Dion vs Bd. of Appeals of Waltham, 344 Mass. 547, 551 (1962). Dion vs Bd. of Appeals of Waltham, 344 Mass. 517. suggest circumstances in which permitted residential uses were not sound as an economic matter.

**As to a special permit and/or in the alternative variance as to Article 13 Section 1352.** The current Structure is 9.5 feet away from the northeast property boundary where 10 feet is required. The construction is being proposed within the non-conforming footprint and that would constitute and intensification and/or aggravation of a pre-existing non conformity. The Applicant/Petitioner references the Denial Letter as to Article 13 Section 1352, Non-Conforming Structures which states that alteration and/or expansion of a lawfully pre-existing non-conforming residential structure requires relief from the zoning Board of Appeals. A Special Permit is required for expansion of a lawfully non-conforming structure unless the Board of Appeals finds that the expansion will substantially more detrimental to the neighborhood to which a variance is needed. MGL 40A §9 provides in pertinent parts:

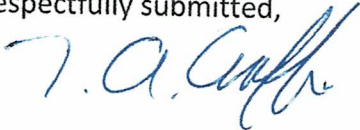
“Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit. Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein;

and such permits may also impose conditions, safeguards and limitations on time or use.”

Here, the Applicant/Petitioner suggest that the current structure being 9.6 feet away from the property line, in only 6” short of the required 10’ and does not affect the harmony to which the general purpose and intent of the ordinance or by-law was created, no parking issues are present, and many abutters are in support; accordingly, a special permit may be the preferred approach, or the Applicant/Petitioner relies on all of the above in support of a variance.

Member’s of the Board, in summary, the Applicant/Petitioner suggests that she meets the necessary requirements to obtain the variance and/or special permits, and she also relies on the **attached letters of support in favor** of the project; additionally, she points out that she has, and will continue to have parking on both sides of the dwelling. I thank you for your anticipated cooperation.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "T. A. Ciaffoni".

Timothy A. Ciaffoni, Esq.  
191 Main Street  
Wareham, MA 02571  
508-291-3033.

# **F. Inspector's denial letter**



# TOWN of WAREHAM

*Massachusetts*

## BUILDING DEPARTMENT

David L Riquinha  
Director of Inspectional Services

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Keith Dmytryck  
P.O. Box 815  
West Wareham, MA 02576

January 14, 2021

RE: 11 Vernal Street

Map 50-D, Lot 264

I have reviewed your application to construct two rear additions and a full second floor on your home at 11 Vernal Street in Wareham, MA. The proposal does not comply with current dimensional standards for the R-30 zoning district and must be denied at this time.

Your existing structure sits on a 3920 square foot parcel of land in the R-30 zoning district. Due to the size of the parcel, there is a 30% floor area ratio permitted and the current structure complies with that requirement having 22.5%. You are proposing two small additions as well as a full second floor which would bring the floor area ratio to 48.5%. This is a new non-conformity and will require a variance from the Zoning Board of Appeals.

The Wareham zoning by-law limits the amount of building coverage in the R-30 zoning district to 25%. The property currently has one dwelling and one accessory structure which jointly cover 24.5%, making them compliant with current regulations. The proposed additions would bring the building coverage to 27.09% and would require relief from the Zoning Board of Appeals. This is another new non-conformity and will require a variance in order to proceed.

The current structure is 9.5 feet away from the western property boundary where 10' is required. The construction is being proposed within the non-conforming footprint and that would constitute an intensification and/ or aggravation of a pre-existing non-conformity. A special permit from the Zoning Board of Appeals is required to intensify or enlarge a non-conforming structure unless the Zoning Board finds that enlargement would be substantially more detrimental to the neighborhood, in which case a variance will be required.

The submitted permit application documents which include a site plan by Maddigan Land Surveying LLC, labeled "Linda Rose" comprised of one page dated November 11, 2020; and the floor plan labeled "Plan of Intent" comprised of one page and dated September 2020, are being denied under the following sections of the Wareham Zoning By-law:

- **Article 6 Section 628, Dimensional Standards for Existing Small Lots:** Your proposal will create a new F.A.R. non-conformity by increasing the floor area ratio to 48.5% where 30% is permitted. This is a new non-conformity and requires a Variance from the Zoning Board of Appeals.

- **Article 6 Section 621, Residential Districts:** The construction of two small first floor additions will increase the current building coverage from 24.5% to 27.09% where 25% is permitted by right. This is a new non-conformity and requires a Variance from the Zoning Board of Appeals.
- **Article 13 Section 1352, Non-Conforming Structures:** alteration and/or expansion of a lawfully pre-existing non-conforming residential structure requires relief from the zoning Board of Appeals. A Special Permit is required for expansion of a lawfully non-conforming structure unless the Board of Appeals finds that the expansion will be substantially more detrimental to the neighborhood in which case a Variance may be required.

The subject dwelling is located in the R-30 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.

# **G. Letters of Support from Abutters**



# Coolidge St

Grenier ✓

Palumbo ✓

Furler ✓

Lawrence ✓

Callaghan  
*Callaghan*

**ROSE**

Torosian ✓

Buttaro ✓

Foley  
*Foley*

# Graham St

Cummings  
*Cummings*

Giannandrea  
McInerney ✓

# Vernal Street

February 8, 2021

Town of Wareham  
Zoning Board

RE: Special Zoning & Building Permit – Linda Rose 11 Vernal St,  
Wareham

We are Frank and Anna Buttaro of 13 Vernal Street, Wareham.

I have been a neighbor of Russell (deceased) and Linda Rose for approximately 15 years. Linda and her family have always been friendly and quiet neighbors.

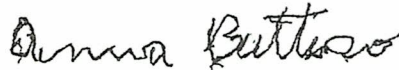
Linda's request for adding an addition of 5' on the back of her house and a second floor presents no issues to me.

Regards,

Frank Buttaro



Anna Buttaro



c/o Nancy Driscoll

February 8, 2021

Town of Wareham  
Zoning Board

RE: Special Zoning & Building Permit – Linda Rose 11 Vernal St,  
Wareham

My name is Lia McInerney, 10 Vernal Street, Wareham.

I have lived across the street from Russell (deceased) and Linda for approximately 15 years. Linda and her family are quiet and respectful neighbors.

Linda has discussed with me her hopeful plans to add a second floor and small addition to the back of the house to make Vernal Street her permanent address with her son. I have no issues with her doing so.

Regards,

  
Lia McInerney  
Antonio Giannandrea Et Ux

February 8, 2021

Town of Wareham  
Zoning Board

RE: Special Zoning & Building Permit – Linda Rose 11 Vernal St,  
Wareham

My name is Nancy Palumbo, 2 Coolidge Rd, Wareham.

I have recently met Linda and she has discussed her hopeful plans to add a second floor and small addition off the back of her house on Vernal Street.

I have no issues with this addition.

Regards,

*Nancy Palumbo*  
Nancy Palumbo

February 8, 2021

Town of Wareham  
Zoning Board

RE: Special Zoning & Building Permit – Linda Rose 11 Vernal St,  
Wareham

My name is Paul & Ruth Grenier, 6 Coolidge Rd, Wareham.

I have recently met Linda and she has discussed her hopeful plans  
to add a second floor and small addition off the back of her house  
on Vernal Street.

I have no issues with this addition.

Regards,



Paul Grenier



Ruth Grenier

February 8, 2021

Town of Wareham  
Zoning Board

RE: Special Zoning and Building Permit- Linda Rose 11 Vernal Street Wareham

My name is Jennifer Lawrence , 6 Graham St, Wareham

I recently met Lunda and she has discussed her hopeful plans to add a second floor and small addition off the back of her house in Vernal street.

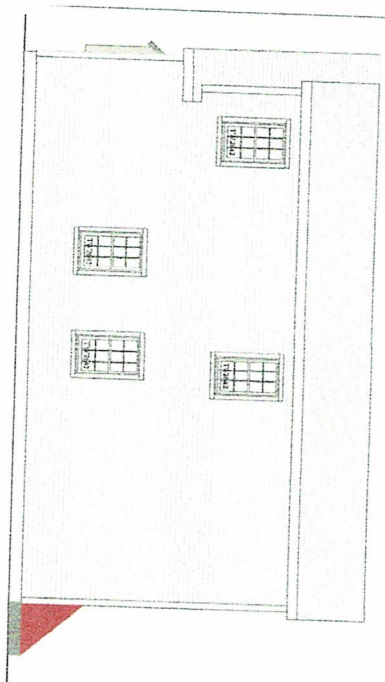
I have no issues with this addition.

Regards

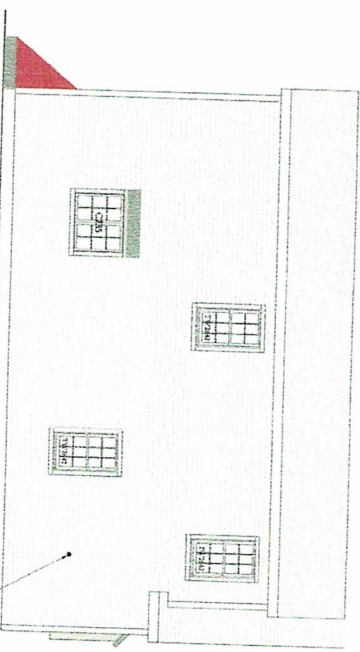
Jennifer Lawrence

A handwritten signature in cursive script that reads "Jennifer Lawrence". The signature is written in black ink and is positioned to the right of the typed name.

# **H. ARCHITECTURAL PLANS**



West Elevation



East Elevation

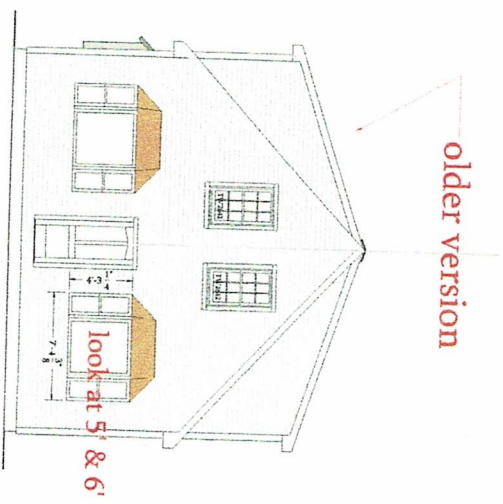
DO NOT SCALE DRAWINGS  
 Dimensions are given in feet and inches unless otherwise specified.  
 All dimensions are to the face of the member unless otherwise specified.



newer version

North Elevation

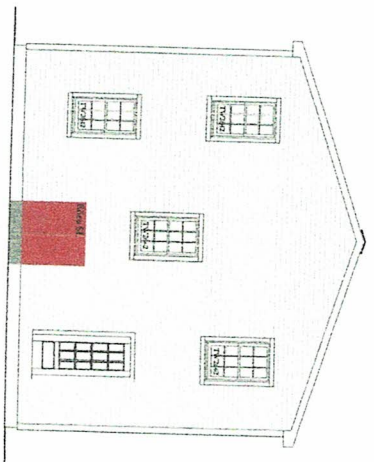
6'



older version

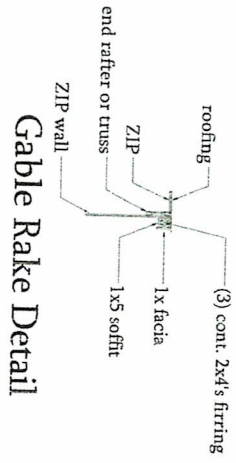
North Elevation

look at 5' & 6'



South Elevation

- Finish Notes:
1. Roofing shall be 35 year fiberglass reinforced asphalt "architect" type shingles.
  2. Siding shall be vinyl clapboard, 4" to weather
  3. Corner boards shall be pre-molded 5" vinyl
  4. Facia, vented soffit, & rake trim shall be cut from 3/4" PVC AZEK or eq.



Gable Rake Detail







