

November 21, 2022
155 Candy Lane
Brockton, Mass. 02031

Zoning Board of Appeals
54 Marion Road
Wareham, Mass. 02571

Dear ZBA Members:

Nazih Elkallassi, Chairman, James Eacobacci, Clerk, Jacob Morrison, Member, Veronica DeBonise, Member, Richard Semple, Member, Troy Larson, Associate Member

November 7, 2022, I received a letter, via Certified Mail, a formal notification from the Wareham ZBA, stating that Richard and Anita Padula c/o Attorney Jilian Morton, are seeking an immediate Cease and Desist at the property located at 9 Murphy Street, Wareham, MA (Assessors MAP 50B, Lot 1/3 in the R-30 zoning district, and that the ZBA will hold a public hearing on November 30, 2022, at 6:30 PM in Rm 320 of the Wareham Multi Service Center. **The following is my rebuttal, to the appeal of my Building Permit:**

My wife and me bought our Lot 50B, Lot 1-3, at 9 Murphy Street on August 7, 2020, which encompasses 3.28 acres including several paper streets which are unconstructed, and we are taxed on 2.78 acres on one single tax bill, and would request the issuance of a **Variance** for lot size, to acquire the

right to build this proposed duplex, **if you don't agree**, that we have the needed 45,000 square feet, as currently required.

Well before submitting my Building Permit application, I reached out to the former Building Commissioner, expressing exactly what my intentions were, please see the attached email and his reply. My Building Permit application said, I would like to build a 3248 square foot, 2-level duplex on reinforced concrete piers, 2.1 feet above 18' Base Flood Elevation, in a VE flood zone, on Lot 50B-1-3 at 9 Murphy Street, 3.28 acres, with 210 frontage on Murphy Street. I answered **No** to the questions about having prior **ZBA** and **Planning Board review**. Apparently, in Mr. Riquinha's professional opinion and by his due diligence at the time, he determined that neither review was required, and that our lot meets all the other zoning requirements for a duplex in an R-30 zone, without implications of the paper roads. The prior Building Commissioner, and all other Town Departments, that had a review, as part of the online application process, approved my Building Permit application. I was also advised, when George Stewart, the Building Inspector brought it up with a zoning official at that time, that official informed him, that our lot was **grandfathered In**.

This last-minute development **does not come as a complete surprise to me**, as I was advised by a former attorney, who practices in Wareham, a few months ago, that some individuals, were in the process of lawyer shopping, and were seeking representation for action against my wife and me, for

issues regarding access to Marks Cove and removal of boats from our salt marsh. By presenting this appeal to the Wareham ZBA, shows that this case fell through the cracks of the town bureaucracy, due to a lack of communications with each other, or a failure of these Boards and Commissions, as being a required signoff, in the approvals process of the online Building Permit applications, on the Wareham Viewpoint Cloud system, **thus creating this disturbing hardship, at the last minute, some eight months into the process.**

This, however, is not the reason that this application for a public hearing for a Variance/Special Permit is before you right now. This zoning issue controversy has everything do to retaliation by the Padulas, and the other likeminded residents of Swifts Beach, whom they have whipped up into a frenzy and who are supporting this action by coordination, penning these dishonest letters, and supporting their narrative. Seemingly, they all feel terribly aggrieved that we, after purchasing this property in good faith, and paying our taxes, had the nerve, to post “No Trespassing “signs on it, at the recommendation of **the Director of Natural Resources/Harbormaster, Gary Buckminster, and the Police Department.** The Harbormaster, in the performance of his duties, tagged all the boats, skiffs and dinghies that he could identify ownership of, that were illegally chained and locked to steel stakes with concrete bases into our salt marsh, which is Land Court registered land, located above the mean high-water mark. Most of the violators immediately removed their watercraft from our salt marsh and a few staked them down closer to the water, below the mean highwater

mark, including the Padulas who also sought special permission from my wife to keep their boat where it was. My wife told her that would not be consistent, nor equal treatment, and would be unfair to the other boat owners, and told her **no**. Then, Mrs. Padula asked for more time to comply and move their boat, and eventually moved it below the mean high-water mark, meanwhile also stating that they always access the waterfront to Marks Cove by using the paper streets, likewise this claim strains credulity, as we have personally witnessed the opposite. **The Harbormaster was very professional dealing with the whole situation** and advised us that we should call the Wareham Police Department immediately if we observed people continuing to ignore the “No Trespassing” signs, who we only called once after it was posted. The Harbormaster, largely agreed with our assessment of the situation, meaning that all the people claiming to be using the “paper street” portion of Columbia were not. They, in fact, were veering off Columbia paper street where it intersects Fearing Avenue, paper street, then onto our lots 13, 12, 7 and 8, to reach the mean high-water mark, adjacent to Marks Cove.

In Attorney Morton’s **Exhibit 5**, she attached seven letters from, the so called, aggrieved abutters who made several spurious and well-coordinated claims, including: that we were preventing them from traveling down the paper street section of Columbia. This claim is farcical and provably false. Even if, I stipulated that this is a legally accepted public way, the aerial imagery available, from multiple different sources, of our salt marsh clearly shows the **path and the scarring** that has

occurred from hauling their four-wheel beach carts across the salt marsh, loaded with supplies for a day on their boats, that shows that they are not using Columbia. The fact is, if they stayed on the Columbia paper street, they would end up in a totally different location, the creek behind the low tide sandbar, and in muck up to their ankles and knees. The other claims in most of these letters are farcical as well. I have had little or no face-to-face interaction or contact with any of these folks, and I have not had much of any with any these aggrieved abutters, who do not seem to appear on **Exhibit 4**, certified abutters list, except for Mrs. Anita Padula, a short conversation which was not initiated by, nor terminated by myself. In fact, it was Mrs. Anita Padula who first tried to contact me thru phone, text, and email, which I ignored because she just identified herself as one of my neighbors, in Swifts Beach. Subsequently she found a way to contact my wife. Also, the claims that our **beautifully designed duplex**, which was intentionally designed to look just like a single-family home, on reinforced concrete piers, as required by code, is somehow detrimental to the neighborhood, is also a red herring, and is totally unfounded, because I have not shared our architectural or engineering plans publicly and therefore claiming its magnitude is detrimental to the neighborhood is also very misleading, as the 3 buildable lots in our subdivision will be very similar in size, footprint, and height, regardless if they are a single or a duplex. Attorney Morton is now making this case in opposition to our duplex, on a group of our lots comprising 32,235 square feet, surrounded by paper streets, that we own the lots on both sides of, and to the centerline of, for all practical purposes,

while giving short shrift to our other fully taxed 89,765 square feet, comprised of woods, wetlands, and salt marsh.

This is in stark contrast to 17 Murphy Street, where this attorney argued vigorously, and with great determination, **in favor of a variance**, before your Board, December 8, 2021 and again January 12, 2022, public hearing, 64-21, for Scott Green Variance, **17 Murphy Street**, Map 50B, Lot 1-41, to build a 47-foot single-family, 2 story home on concrete reinforced piers, on a vacant, unbuildable 20,500 square foot parcel, surrounded by paper streets, including Range Avenue paper street, between the lot, and Swifts Beach. **Even though it was lacking 31.7% or 9,500 square feet lot size to meet current zoning requirement in the R30 zoning district, Attorney Morton, sung its praises as a most desirable, beautifully designed, and as a welcomed addition, fitting into the Swifts Beach community.** At these same two hearings, there was also a lot of discussion during this appeal regarding, rights of way, private property rights on Land Court registered land, viewing rights, easements, trespassing and inappropriate dinghy placement in the area. Now, 10 months later, Attorney Morton, seemed to have developed a case of selective memory, as she now is arguing vigorously that **the public good and the abutters rights will be aggrieved, if a build of this magnitude is allowed to move forward**, and that somehow these folks have some claim over our property, in regards to crossing over it, to **Marks Cove** and or storing of their boats on it. She, now comes before you, in an amazing juxtaposition, **to argue in opposition to our project**, in comparison to, and in contrast with what she advocated to be approved previously,

right on Swifts Beach, and in the face of serious opposition from the former Conservation Agent, David Pichette and concerns by the **DEP**. She is arguing from both sides of the same coin, by seeking your disapproval of our 35 foot, 2 story duplex, on the same footprint as our single-family, for lacking 28.4%, or 12,765 square feet, lot area between the paper streets, that we own both sides of, to their centerline, while ignoring the rest of the plot encompassing another two acres, everything being considered, including its remoteness.

We are in no way interested in building this duplex as an **investment property**, and we are not, as alleged, **greedy developers**, nor are we interested in **violating anyone's legal ability to enjoy using the waterfront of Marks Cove**. We only insist that they do it properly, legally and within the bounds of propriety and good taste. If, using these paper roads, streets and avenues, laid out on this 1939 Land Court, registered land accepted subdivision, 12124F are legal rights of way, then, they are more than welcome to travel them, as they may, but without violating the provisions of the **Massachusetts Wetlands Protection Act or the Wareham Wetland Bylaws**, as they struggle to trudge through the mucky salt marsh, where Columbia paper street lies, or the briar bushes, burrs, thickets and densely wooded areas of Short, Fearing, Handy and Cove paper streets, with their fully loaded beach carts, in tow. This is not the **path** they seek, nor is it the **path** they claim to have been using, all along. They are really upset that we were somehow **allowed** to purchase this land, in the first place, preventing their convenient longtime existing **pathway** to the

waterfront, and stopping their unchecked scarring of our salt marsh!

After watching all the Town Boards and Commission hearings on the **WCTV's YouTube channel**, for the last few years, I have observed that the ZBA, usually is in the business of providing relief, from zoning restrictions by an applicant who owns the land or project involved, and granting said relief, by means of issuing **Variances and Special Permits**. Now, it is apparently going to be used to have an ethically obtained Building Permit, that was issued by the previous Building Commissioner and Zoning Enforcement Officer and subsequently extended by the current Building Commissioner and Zoning Enforcement Officer, stopped from continuing forward. Based on my observations of your Boards decisions over the last few years, **this seems to be largely unprecedented**, in my humble opinion, especially after watching this same attorney fight vehemently to achieve the opposite result, **in favor of the Scott Green proposed build, at 17 Murphy Street**, adjacent to Swifts Beach. **In no way imaginable**, as alleged by Attorney Morton, did we set out on a path to somehow try to **short circuit the intended process, or to circumvent any Town Board or Commission**, to, be allowed to build a family duplex on our lot in the R30 zoning district, **nor to jeopardize the integrity of existing neighborhoods or its residents, as alleged by Attorney Jilian Morton**, representing Mr. Richard and Mrs. Anita Padula.

Additionally, the notification of this appeal before the ZBA at this late date, under these convoluted circumstances, to seek a

Cease-and-Desist order of our intended duplex project, although not surprising, is extremely distressing and demoralizing for my family and me, **by creating this hardship**, after spending countless hours, to properly bring this dream of a family duplex, in a remote and pristine location to fruition. My experience, after watching hundreds of hours of testimony before your Board, informs my opinion, that although you must operate within certain guidelines, within the Zoning Bylaws, by making decisions on **Variances and Special Permits, you seem to also exercise a wide latitude, based on whether you may be reversed on appeal, or based on the emotional aspects of the applicant, in the moment.**

I'm not asking for special treatment before your Board, just equal treatment, and a fair and impartial determination based on these unusual conditions presented by this subdivision plan, conceived twelve years before the first zoning bylaws were adopted in Wareham, and registered containing over a dozen, un-deeded, unconstructed paper streets, most of which, due to their locations, will never be constructed, nor be used for roadway purposes.

If, from the beginning of this process, had anyone in the Town of Wareham government had advised us, that we needed to secure prior Zoning Board of Appeals relief, before proceeding forward, we would have, and not spent thousands of dollars for a new site plan, architectural plan, engineering plans, Building Permit Application, Amended Superseding Order of Conditions, and a subsequent extension of the ASOC until April 18, 2025.

Most assuredly, we would not have moved forward, before securing it first, only to possibly be denied later.

Hopefully, none of these other extraneous issues, surrounding this appeal, brought to the forefront by Attorney Jilian Morton in this case, which are not germane to the zoning appeal issue, should be considered, as you make your decision.

Our section of this subdivision was on the market for three months before we purchased it. If all these folks were so concerned how the land might be used, in the future, they had an equal opportunity to purchase it for themselves.

Whether we are allowed to build our proposed duplex, or build a single-family home, these folks will still have the same extraneous issues with us to complain about, however, they should seek another platform, or forum to resolve them.

Respectfully submitted.

Michael Marzullo
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Enclosures.

Email to former Building Commissioner

Email reply from former Building Commissioner

Google Earth Map

