
THE LAW OFFICES OF BELLO & MORTON, LLC

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

May 15, 2024

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

Re: Request for Insubstantial Modification request for Variance previously granted for JCMA Realty LLC c/o John Salerno; Located at 169 Onset Avenue, Onset, MA 02588; Assessor's Map 1, Lot B

Dear Members of the Board of Appeals:

We respectfully request a determination from the Board for this case to be placed on the May 22, 2024 agenda.

The Board has already granted the Variance in 2020 which was appealed by an abutter. Since then, we have received a favorable court decision from a Superior Court judge in June 2023 and began construction of the two – family property.

It came to our attention from the Building Commissioner that we need to seek determination from your Board on the plans submitted because of a change to the original plan. We are seeking to turn a small portion of the attic into a loft. The loft area with a standing head height is 317 square feet, see attached plans as Exhibit A.

Paragraph 6 of the Decision (attached here as Exhibit B) allows the ZBA to approve insubstantial modifications without any further approval, which is what we are requesting considering the Floor Area Gross in the Zoning Bylaw excludes Attics. This lot is not a separate unit but is a space that the second unit will be able to access. It is a portion of the top floor that is open and not a bedroom.

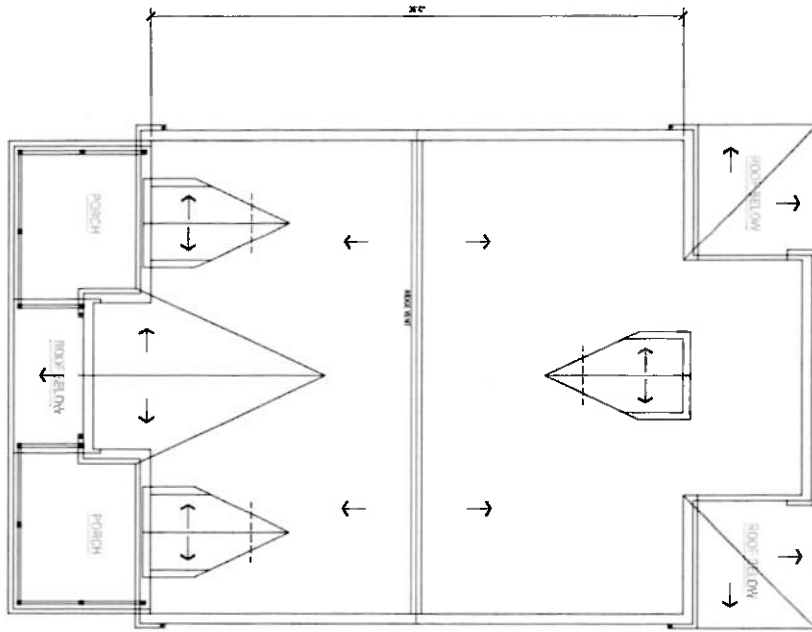
We seek a vote from this Board that the modification is insubstantial and does not seek a formal hearing. The reason being that this change does not change the footprint or occupancy of the property.

Respectfully submitted,

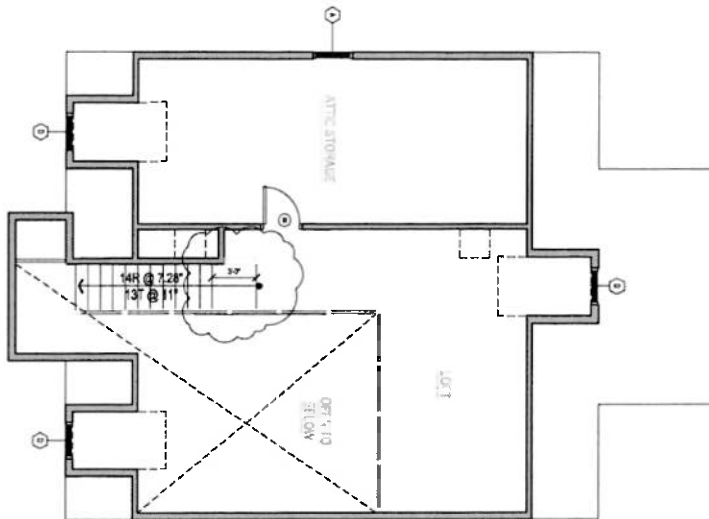

JILIAN A. MORTON, ESQ.

508-295-2522

EXHIBIT A



2 ROOF PLAN
SCALE: 1/4" = 1'-0"



1 ATTIC PLAN
SCALE: 1/4" = 1'-0"

NEW TWO UNIT STRUCTURE
JCMS REALTY
169 ONSET AVE.
ONSET, MA 02558

Anthif
FRANGIADIS ASSOCIATES
PO Box 267, Marion, MA 02738
Ph 508-992-3494 • Fax 508-992-3495 • www.anthif.com • email: anthif@anthif.com

REVISIONS

1	1/17/2012	ISSUED FOR PERMIT
2	5/20/2014	REV. STAIR LANDING
3	5/20/2014	REV. STAIR LANDING
4	5/20/2014	REV. STAIR LANDING
5	5/20/2014	REV. STAIR LANDING
6	5/20/2014	REV. STAIR LANDING

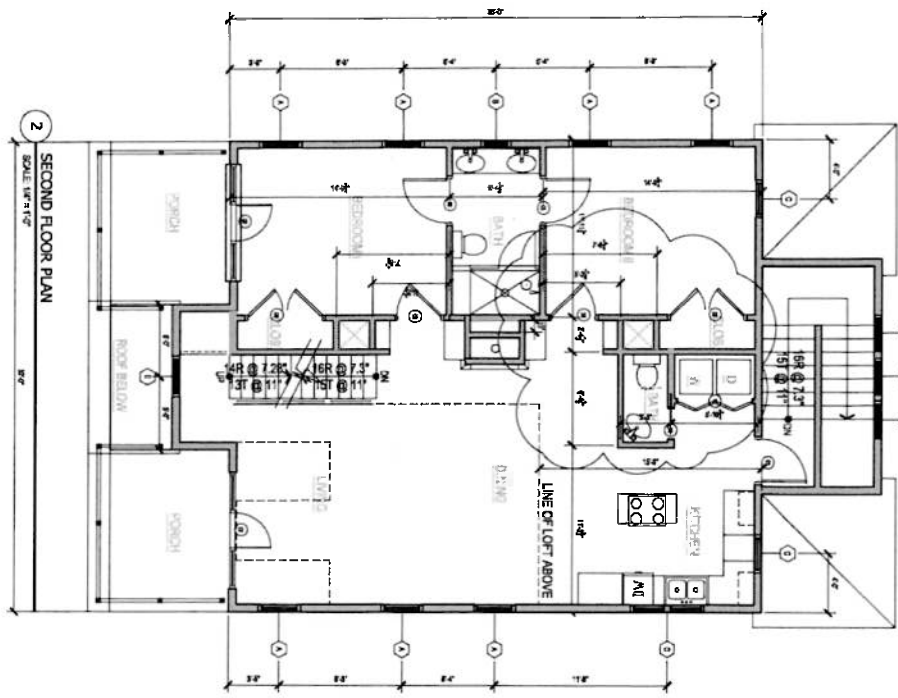
DATE OF EXPIRATION: 12/31/2015
 THIS DRAWING IS THE PROPERTY OF ANTHIF ASSOCIATES, INC. AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED ON THE DRAWING. ANY REUSE OR REPRODUCTION OF THIS DRAWING WITHOUT THE WRITTEN PERMISSION OF ANTHIF ASSOCIATES, INC. IS STRICTLY PROHIBITED.

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TITLE: ATTIC & ROOF PLAN

FILE NO. ROOM 102.2
 DATE: 12/14/13
 SHEET NO.

A-1.2



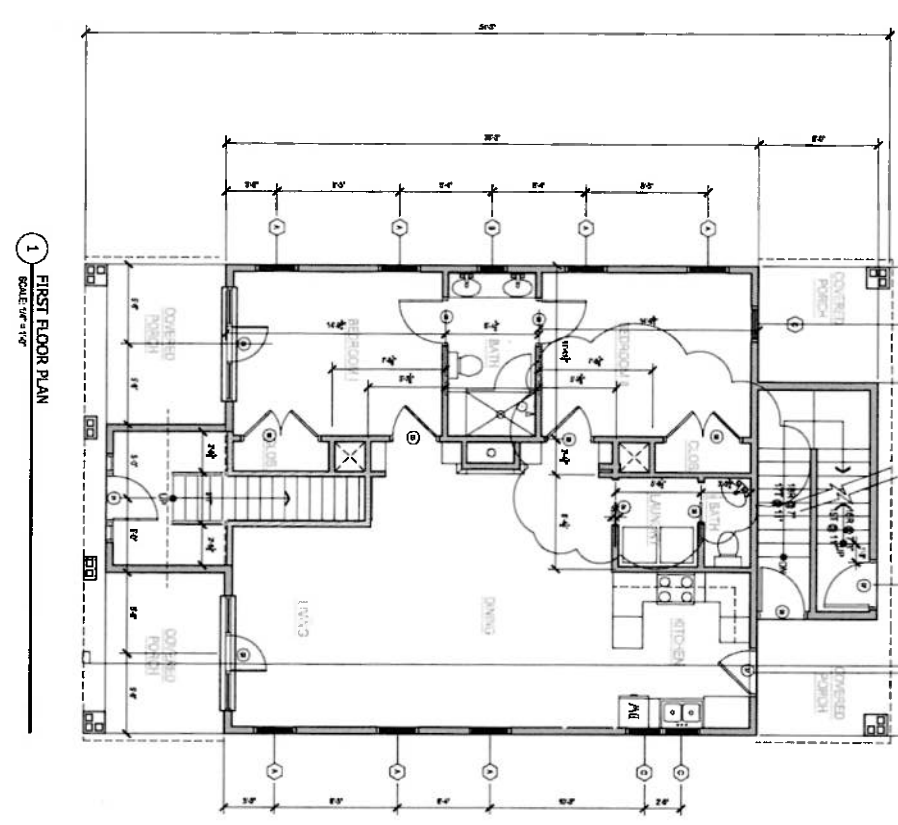
2 SECOND FLOOR PLAN
SCALE: 1/8" = 1'-0"

DOOR SCHEDULE

NO.	SYMBOL	TYPE	FINISH	LOCATION
1	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
2	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
3	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
4	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
5	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
6	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
7	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
8	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
9	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
10	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
11	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
12	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
13	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
14	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
15	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
16	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
17	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
18	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
19	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
20	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM

WINDOW SCHEDULE

NO.	SYMBOL	TYPE	FINISH	LOCATION
1	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
2	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
3	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
4	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
5	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
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17	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
18	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
19	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM
20	(Symbol)	6'-0" x 2'-0"	WOOD	REAR PORCH TO REAR ROOM



1 FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"

REVISIONS

NO.	DATE	DESCRIPTION
1	11/27/03	ISSUED SET
2	12/12/03	REVISIONS
3	12/12/03	REVISIONS
4	12/12/03	REVISIONS
5	12/12/03	REVISIONS
6	12/12/03	REVISIONS
7	12/12/03	REVISIONS
8	12/12/03	REVISIONS
9	12/12/03	REVISIONS
10	12/12/03	REVISIONS

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NEW TWO UNIT STRUCTURE
JCMS REALTY
169 ONSET AVE.
ONSET, MA 02558

FILE NO: 1003 S&E 1
DATE: 12/14/03
SHEET NO: A-1.1

TITLE:
FIRST & SECOND FLOOR PLAN

EXHIBIT B

THE COMMONWEALTH OF MASSACHUSETTS

Town of Wareham

BOARD OF APPEALS

Petition No. : 27-20
Book: 41430 Page: 293
Date: 01/11/2021

Certificate of Granting of Variance
(General Laws Chapter 40A, Section 11)

The Board of Appeals of the Town of Wareham hereby certifies that a Variance has been granted:

To: ICMA Realty, LLC. c/o John Salerno

Address: 310 Kenneth Welch Drive, Lakeville, MA 02347

City or Town: Lakeville, MA 02347

Affecting the rights of the owner with respect to land or buildings at 169 Onset Avenue,
Onset, MA 02558, Assessor's Map 1, Lot(s) B

The Board of Appeals certifies that the decision attached hereto is a true and correct copy of its decision to grant a variance and that copies of said decision, and of all plans referred to in the decision, have been filed with the ZBA, Conservation Commission, and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 provides that no special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The owner or applicant shall pay the fee for such recording or registering. A copy of the registered decision shall be returned to the Board of Appeals as proof of filing.

Any person aggrieved by this decision may appeal to the Superior Court of Land Court as in Section 17 of Chapter 40A, M.G.L. by filing a NOTICE OF ACTION AND COMPLAINT within twenty (20) days of the date of filing of this decision.

James D. Fazio
Chairman
Clerk

I hereby certify that 20 days have elapsed after the decision was filed in the office of the Town Clerk of Wareham and no appeal has been filed in accordance with Section 17, Chapter 40 A of the Massachusetts General Laws.

Delia C. Thomas
Town Clerk

Date: June 14, 2023

TOWN OF WAREHAM
Board of Appeals
CLERK'S RECORD OF NOTIFICATION

No. 27-20

Petition of: JCMA Realty, LLC. c/o John Salerno

Location of Property: 169 Onset Avenue, Onset, MA 02558

Date of Notification of Hearing: November 19, 2020 and November 26, 2020

Date of Hearing: January 6, 2021

Date of Notification of Decision: January 11, 2021

DECISION: See attached

REASON:

I hereby certify that a copy of the Board of Appeals decision has been appealed at Superior Court Docket# 2183CV00029 on June 1, 2023

Debra A. Greco
Debra A. Greco
Wareham Town Clerk

Date: June 14, 2023

Name and Address of Abutting Owners: Certified Abutters List Attached

I hereby certify that 20 days have elapsed after the decision was filed in the office of the Town Clerk of Wareham and no appeal has been filed in accordance with Section 17, Chapter 40 A of the Massachusetts General Laws.

Janice D. Peralta

Debra A. Greco
Town Clerk

Board of Appeals

Date: June 14, 2023

NOTICE OF DECISION OF THE WAREHAM ZONING BOARD OF APPEALS

Petition: 27-20

Applicant: JCMA Realty LLC, John Salerno

Owner: Same

Owner Address: 310 Kenneth Welch Drive, Lakeville, MA 02347

Subject Property Address: 169 Onset Avenue, Onset, MA

Subject Property Parcel ID: Map 1 Lot B

Date of Public Hearing: January 6, 2021

Date of Notice: January 11, 2021

Record Plans: Entitled "New Two Unit Structure, JCMA Realty, 169 Onset Ave., dated August 27, 2020, and prepared by Anthi Frangiadis Associates

Findings/Decision/Reason:

The Petitioner was before the Zoning Board of Appeals pursuant to a Denial Letter issued by the Building Commissioner on November 3, 2020 who determined that the Petitioner's request construct a new two family dwelling on 169 Onset Ave with a Floor Area Ratio (FAR) of 0.51 on a lot of 5,405 square feet with 2,744 square feet of building floor, was above the allowed 1,250 square feet [actually 1,500, as the minimum of the smaller size category] under the small lot regulations of the Wareham Zoning By-Law; Table 628. As such, he petitioned for relief in the form a Variance by the Zoning Board of Appeals. After hearing, testimony from the neighbors, and much discussion, the Board finds that the Petitioner is properly before the Zoning Board of Appeals and that the larger FAR of this build qualifies for the granting of a Variance under the MGL chapter 40 Section 10.

The Petitioner and his counsel have demonstrated the statutory requirements of a Variance as the statute reads: "...such permit granting authority specifically finds that 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 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 Board finds that this lot is located in the Onset Village-1 District, and finds that the average FAR of homes and businesses surrounding the subject site, including several direct abutters, is 58%, while the proposed building has an FAR of 51%.

The lot is uniquely positioned in that it is situated on the bluff overlooking Onset Bay and has a very important role in contributing to the visual character of the village as a whole. It is the last open lot along the bluff and is part of the prominence. Construction on the lot will be an unusually important event in defining the character of the village.

This parcel has a unique footprint. It is located on Onset Ave (a major traveled road) and is abutted by the historic Glen Cove Hotel which boasts an FAR of 89%. The topography of the lot including its location to surrounding properties, location and elevation, surrounding roads, and parking lots were all factors in granting this Variance.

Secondly, the Board found that literal enforcement of the Town's By-Laws would cause a hardship to the Petitioner. This property has a unique history. In 1993, the building that

was located on it for about 100 years was actually moved to 213 Onset Ave. That structure had an FAR of 62% when located on the 169 Onset Ave location. So, it would be a hardship not to build a more significant structure on this site than allowed by current zoning.

The Board found by right the Petitioner may build a two-family structure as this is a grandfathered lot. Having to strictly adhere to the Zoning Code with a 25% FAR would be neither practical for a two-family nor be in keeping with the esthetic look and historic nature of the businesses and residences on the bluff.

Third, the Board finds that the desired relief may be granted without substantial detriment to the public good. This two-family footprint was approved in 2015 on a site plan when there was reconstruction of the adjacent Glen Cove Hotel. Due to the change in the Zoning code, now the Petitioner has to come in front of the Board to seek relief. The neighbors did discuss a concern for limited parking which the Board vigorously discussed.

The Board took into account the parking situation in Onset Village. As with most older neighborhoods, parking has become a problem for the businesses and residents. However, the lot in question has four parking spaces within its bounds and so meets the Zoning By-Law requirement for two spaces per unit. Also, the matter before the Board was a Variance considering FAR not parking violations. Their vote reflects that.

Lastly, the intent of the Wareham Zoning by-law clearly laid out in Article 1 Section 130 of which includes "to preserve and increase amenities by the promulgation of regulations to fulfill said objectives". The Board found this approval of Variance would not derogate from their Zoning By-Laws all factors considered.

Based upon the above the Board votes [4-0-1] to grant the Petitioner a Variance allowing for the increase in the Floor Area Ratio as approved on the plan submitted to the Board and dated "August 27, 2020 by Anthi Frangiatis Associates" constructing a two-family structure.

Conditions

1. Upon completion, an "As Built" plan is to be submitted to the Building Department with a copy provided to the Board of Appeals.
2. Any relief not expressly granted hereunder is hereby denied.
3. For this decision to become effective, a copy of said decision and notice thereof must be filed at the Plymouth County Registry of Deeds and must bear the certification of the Town Clerk that twenty (20) days have elapsed and no appeals have been filed, or that if such appeal has been filed, that it has been dismissed or denied. A certified copy of said recording must be thereafter filed with the Board of Appeals.
4. If substantial use or construction permitted by this Variance has not commenced within one year from the date of which a copy of this decision is filed with the Town Clerk, excluding the amount of time required for an appeal period to expire and the amount of time required to pursue and await the determination of any such appeal, then this Special Permit/Variance shall expire in so far as the foregoing statement is modified by Chapter 195 of the Acts of 1984. Any person exercising rights under a duly appealed Special Permit/Variance does so at the risk that a court may reverse the permit and any construction performed under the permit may be ordered undone.

5. Any person aggrieved by this decision of the Zoning Board of Appeals may file an appeal pursuant to the provisions of M.G.L. Chapter 40A, section 17 within twenty (20) days of the filing of this decision in the office of the Town Clerk. If no appeal is taken within the allotted time, the Clerk will so certify.
6. If the applicant wishes to modify the approved Record Plans, it shall submit proposed modifications in accordance with the provisions of this paragraph. Where such modification is deemed substantial, the same standards and procedures applicable to an original application for approval shall apply to such modification and a public hearing shall be required by the ZBA; provided, however, that the ZBA may determine that a proposed modification is insubstantial and approve the same without the need for any further ZBA approval.

VOTE: (5-0-0) By the Wareham Zoning Board of Appeals

JCMA Realty LLC

Map 1 Lot B

MAP & LOT	OWNER	CO-OWNER	STREET ADDRESS	TOWN	STATE	ZIP CODE
TOWN OF WAREHAM ABUTTERS MAP 1 LOT B JCMA REALTY LLC						
1-C	SCOTT WILLIAM		PO BOX 426	ONSET	MA	02558
1-131/A	NEARY RICHARD	NEARY DOROTHY M	14 THIRD ST	ATTLEBORO	MA	02703
1-130	MEDEIROS RITA		PO BOX 782	ONSET	MA	02558
1-121	RICHER NICOLE D		PO BOX 38	ONSET	MA	02558
1-1054	TOWN OF WAREHAM		54 MARION RD	WAREHAM	MA	02571
1-122	DOUGHERTY WILLIAM F TRUSTEE	12 OCEAN AVE WAREHAM REALTY TR	PO BOX 227	ROCKFALL	CT	06481
1-123/A	PERRY JILL C	8730 N HIMES AVE APT 1118	8730 N HIMES AVE APT 1118	TAMPA	FL	33614
1-123/B	MORROW DAVID M	MORROW CHRISTINE M	53 SWEENEY LN	PLYMOUTH	MA	02360
1-124/A	CAPACHIONE TERESA M TRUSTEE	TERESA CAPACHIONE 2019 REV LIV TR	PO BOX 459	ONSET	MA	02558
1-124/B	WILSON RHONDA A		894 HUNTINGTON DR	FISHKILL	NY	12524
1-1013	CHARLTON RUTH M TRUSTEE	C/O PHILLIP CHARLTON	PO BOX 907	ONSET	MA	02558
1-1012/A	CARDIN LARUREN	CARDIN JULES	PO BOX 467	ONSET	MA	02558
1-1012/B	BESSE SANDRA	QUELETTE JOHN J LIFE ESTATE	PO BOX 18	ONSET	MA	02558
1-1014	STONE BRIDGE MARINA LLC	C/O JOHN CORNISH	PO BOX 600	WAREHAM	MA	02538
1-131	Greig, Richard + Marie		PO Box 839	Onset	MA	02558

CERTIFIED ABUTTERS AS THEY
APPEAR ON OUR TAX ROLLS
AS OF 12/31/2019

Jenny A. Stolo
ASSESSORS OFFICE

REQUESTED BY
JOHN C. SALERNO
JCMA REALTY