
THE LAW OFFICES OF BELLO & MORTON, LLC

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

February 17, 2021

Zoning Board of Appeals of Wareham

Memorial Town Hall

54 Marion Road

Wareham, MA 02571

*Re: Application for Special Permit/Variance Assessors Map 129, Lot WB & 1037, 14
Old Woods Road, East Wareham, MA 02538*

1. Petitioners

Paul & Phyllis Balestracci
12 Dunham Road, Assonet MA 02702

2. Recorded Owner:

3. Paul & Phyllis Balestracci, Trustees of the Balestracci Living Trust u/d/t May 8, 2020
12 Dunham Road, Assonet MA 02702

4. Certified Abutters List:

Copy Attached as Exhibit A

5. Current Deed and Trust Documents:

Plymouth County Registry of Deeds Book 52788, Page 150 (Deed). Exhibit B.

6. Building Inspector's Notice of Violation Letter:

Violation Letter dated February 8, 2021 attached here as Exhibit C from the Building Commissioner referencing Appeal to Zoning Board of Appeal is necessary.

7. Proposed Site Plan:

Attached as Exhibit D is a copy of the Relevant Plan. Please note our Parcel is in the R-130 District. As well as the Architectural renderings of the project.

8. Photographs:

See the attached Photographs as Exhibit E as accompanying evidence for the allowance this petition.

9. Letter of Intent

Dear Mr. Chairman,

I represent the applicants Mr. and Mrs. Balestracci re the above application for a Variance on their proposed rebuild of their home on 14A Old Woods Road here in East Wareham.

Background:

They purchased the small cottage on the May 2020 comprised of approximately 320 square feet of living space and 1020 square feet of gross area (which includes the covered and open porch). The cottage is located on beautiful Spectacle Pond in the R-130 zoning district.

My client submitted an application to the building department to raze the existing cottage and replace it with a new single-family home on the same site. As my clients are looking to retire in Wareham, they are looking to build a suitable 4 season home with three bedrooms. The building Commissioner issued a denial letter per two Variances needed.

Relevant By Law for Relief: Variances

1470 VARIANCES

The Board of Appeals shall have the power to hear and decide applications for Variances from the provisions of the Zoning By-Laws, including the power to grant a Variance authorizing a Use or activity not otherwise permitted in the district in which the land or structure is located. A Variance may be granted 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. An applicant must

demonstrate 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.

Commissioners Denial Letter:

Per the Commissioners Letter, we are seeking two Variances under MGL, chapter 40 A Section 15:

CODE SECTION	DESCRIPTION	RELIEF
621 RESIDENTIAL DISTRICTS	Front yard, new non-conforming Setback. 55.8' where 100' required	Variance, Zoning Board Pursuant to §1357
621 RESIDENTIAL DISTRICTS	Side yard, new non-conforming Setback. 28' where 30' required	Variance, Zoning Board Pursuant to § 1357

Legal Standard as Applied to our case:

As for the statutory requirements, this lot is unique in that it is situated behind another lot which has the true frontage onto Old Woods Road. The applicants have a driveway easement with their abutter to enter onto their property. Its shape is triangular and borders Spectacle Pond on two sides. The frontage as the Commissioner said is 55.8' in a district where 100' is required. As stated, before in front of this Board, waterfront properties are special and unique due to their location abutting protected waterways. In our situation, the frontage is short because of the lot's location in the pond. My client is looking to actually pull the footprint of the home closer to the road and away from the no touch buffer zone as well. Our intention is to obtain Variance approval prior to going before the Conservation Commission. It should be noted that the second Variance for side yard setbacks is only 2' off of the standard. The reasoning for that is due to the triangular shape and the proximity to the coastal bank and observing that setback.

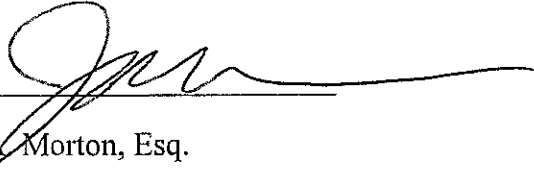
There would be a substantial hardship to my client if these Variances where not granted in the way that they would not be able to build additional critical amenities for a 4-season permanent home including but not limited to additional bedrooms, and bathrooms, as well as a garage for their vehicles. As shown on the picture provided the current structure was originally a summer cottage to enjoy the pond built in 1954. Over the years prior owners have added heat but the home simply still remains at the one-bedroom footprint with the open porch.

It is our hope that the Board views the granting of these Variances as keeping with the nature of the neighborhood and other pond front homes in this area. Most of these homes were similar to this 1950s cottage and were latter developed for owners who were looking to have full time residence down in this majestic area.

Lastly, granting the Petitioner the relief being requests in no way derogates from the intent of the zoning by-laws as the lot is zoned for single family residences. The build keeps with the nature of the neighborhood while respecting the protection afforded to the waterways through conservation and no touch zones.

All things considered allowing these Variances would not be detrimental to the neighborhood and certainly would not derogate from the intent of the Zoning By Law.

Respectfully submitted,

By 
Jilian A. Morton, Esq.

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:

- o Complete this form.
- o Complete information packets. (Directions attached)
- o Submit application form and packet to Town Clerk for signature.
- o Submit application form and packet to Town Collector for signature.
- o 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: 14A Old Woods Rd LOT: _____ MAP: _____
ZONING DISTRICT: R-130 ↳ East Wareham, MA 02538
USE REQUESTED: Single Family - Residential
OWNER OF LAND & BUILDING: Paul + Phyllis TEL.# _____
ADDRESS OF OWNER: 13 Bate Stracci 12 Dunham Rd, Astonet, MA 02702
PERSON(S) WHO WILL UTILIZE PERMIT: David Zorn (Builder)
ADDRESS: Jillian A. Morton, Bell & Morton, LLC
DATE: _____ SIGNATURE: _____
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: Jillian A. Morton, ESQ

Applicant's Address: 184 Main Street, Wareham, MA

Telephone Number: 508-295-2522 02571

Cell Phone Number: N/A

Email Address: jam@mortonlawllc.com

Address of Property/Project: 14A Old Woods Rd, East Wareham MA 02538

Landowner's Name: Paul and Phyllis Balestracci, Trustees of

Owner's Address: 12 Dunham Road, Assonet MA 02702 The Balestracci Living Trust

Telephone Number: _____
Contact Person: C/O Attorney Jillian Morton Telephone Number: 508-295-2522

Map 129 Lot WB + 1037 Zone R-130

Date Approved _____ Date Denied _____

Comments: _____

Exhibit A

TOWN OF WAREHAM ABUTTERS

MAP 129 LOT WB

OWNER PAUL & PHYLLIS G BALESTRACCI

MAP & LOT	OWNER	CO-OWNER	STREET ADDRESS	TOWN	STATE	ZIP CODE
129-1034	KENNEY DIANE		10 OLD WOODS RD	E WAREHAM	MA	02538
129-L/B	LETENDRE DONALD E	LETENDRE LOUISE M	P O BOX 375	E WAREHAM	MA	02538
129-L/A	COOK MARGARET F	COOK DONALD H JR TRUSTEES	PO BOX 459	E WAREHAM	MA	02538
129-1036	EARLE WILLIAM N & RITA A	BUNKER TERI L & VENTRESCO PEGGY J	14 OLD WOODS RD	E WAREHAM	MA	02538
129-1038	POYANT RENE P	POYANT CHERYE L LIFE ESTATE	PO BOX 370	E WAREHAM	MA	02538
129-WB	BALESTRACCI PAUL	BALESTRACCI PHYLLIS G	12 DUNHAM RD	ASSONET	MA	02571

CERTIFIED ABUTTERS AS THEY

APPEAR ON OUR TAX ROLLS

AS OF 1/15/2021

W. Rene Akers

ASSESSORS OFFICE

REQUESTED BY

JILIAN MORTON

JAM@MORTONLAWLLC.COM

Exhibit B

CERTIFICATE OF TRUSTEE UNDER MGL CH. 184 SECTION 35

The undersigned Grantors and Trustees hereby certify the following:

1. This Certificate of Trust refers to the **Balistracci Living Trust**, dated May 8, 2008 executed by **Paul Balistracci and Phyllis G. Balistracci**, as Grantors.
2. The address of the Grantors is 12 Dutchess Road, Assonet, MA 02702.
3. The address of the property is 14A Old Woods Road, East Wareham, MA 02535.
4. The initial Trustees of the Trust are: **Paul Balistracci and Phyllis G. Balistracci**, both of 12 Dutchess Road, Assonet, MA 02702.
5. The present Trustees are: **Paul Balistracci and Phyllis G. Balistracci**.
6. **Trustee Succession Pursuant to Article Three.** All references to "we," "us," and "our," refer to the Grantors, or the survivor of them:

Trustee Succession while Both of Us Are Alive

While the Grantors are both alive, this Section governs the removal and replacement of our Trustee.

a. Removal and Replacement by Both of Us

By joint agreement, we may remove any Trustee at any time, with or without cause. If a Trustee is removed, resigns, or cannot continue to serve for any reason, either or both of us may serve as Trustee, we may appoint a Trustee to serve with either or both of us, or we may appoint a successor Trustee.

b. Removal and Replacement by One of Us

If one of us is incapacitated, the non-incapacitated Grantor may remove any Trustee at any time, with or without cause. If a Trustee is removed, resigns, or cannot continue to serve for any reason, the non-incapacitated Grantor may serve as sole Trustee, appoint a Trustee to serve with the non-incapacitated Grantor, or appoint a successor Trustee.

c. Successor Trustee during Incapacity of a Grantor

During the incapacity of a Grantor, the other Grantor may serve as the Trustee.

PROPERTY ADDRESS: 14A Old Woods Road, East Wareham, MA 02535

*** Electronic Recording ***

Doc# 00012533

Bk: 52788 Pg: 150 Page: 1 of 4

Recorded: 05/21/2020 02:43 PM

ATTEST: John R. Buckley, Jr. Registrar

Plymouth County Registry of Deeds

MASSACHUSETTS EADISE TAX

Plymouth District R01D #11001

Date: 05/21/2020 02:43 PM

City:

Fee: 5.00 Cons: \$1.00

DEED

KNOW ALL MEN BY THESE PRESENTS that we, Paul Balistracci and Phyllis G. Balistracci, being married, both of 12 Dusham Road, Acornet, Bristol County, MA 02702, for consideration of love and affection and One Dollar (\$1.00), hereby grant to Paul Balistracci and Phyllis G. Balistracci as Trustees of the Balistracci Living Trust, dated May 8, 2020, and any amendments thereto, of 12 Dusham Road, Acornet, Bristol County, MA 02702, see Certificate of Trustee recorded hereon,

with quitclaim covenants,

the lands in East Wareham, Plymouth County, MA, bounded as is described by follows:

SEE SCHEDULE A.

For Title of Paul Balistracci and Phyllis G. Balistracci see deed dated July 16, 2010, recorded in the Plymouth County Registry of Deeds in Book 3075A, Page 23.

NO TITLE EXAMINATION
NO DOCUMENTARY STAMPS REQUIRED

WITNESS our hands and seals on this day, May 8, 2020

Paul Balistracci
Paul Balistracci

Phyllis G. Balistracci
Phyllis G. Balistracci

MASSACHUSETTS COMM

Bristol, ss

New Bedford

May 8, 2020

On this day, May 8, 2020, before me, the undersigned notary public, personally appeared Paul Balistracci and Phyllis G. Balistracci proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purposes.

Phyllis G. Balistracci
Phyllis G. Balistracci
Notary Public
My Commission Expires: July 20, 2024



PROPERTY ADDRESS: 14A Old Woods Road, East Wareham, MA 02555

Exhibit C



TOWN of WAREHAM

Massachusetts

BUILDING DEPARTMENT

David L Riquinha
Director of Inspectional Services

David Zorn
7 Morning Mist lane
Buzzards Bay, MA 02532

February 8, 2021

RE: 14A Old Woods Rd.

Map # 129, Lot # WB

I have reviewed your building permit application to raze an existing dwelling and replace it with a new single family dwelling on the same site. The new dwelling creates two new nonconformities at the south and west property boundaries and must be denied at this time.

The following review and or relief must be secured prior to re-application for a building permit:

CODE SECTION	DESCRIPTION	RELIEF
621 RESIDENTIAL DISTRICTS	Front yard, new non-conforming Setback. 55.8' where 100' required	Variance, Zoning Board Pursuant to §1357
621 RESIDENTIAL DISTRICTS	Side yard, new non-conforming Setback. 28' where 30' required	Variance, Zoning Board Pursuant to § 1357

The above information was compiled based on the site plan by "JC Engineering" labeled "Job # 4810" comprised of one page and dated January 21, 2021. If there is any new information, or changes to this plan, please provide them to me and I will amend my findings accordingly.

The subject structure is located in the R-130 zoning district.

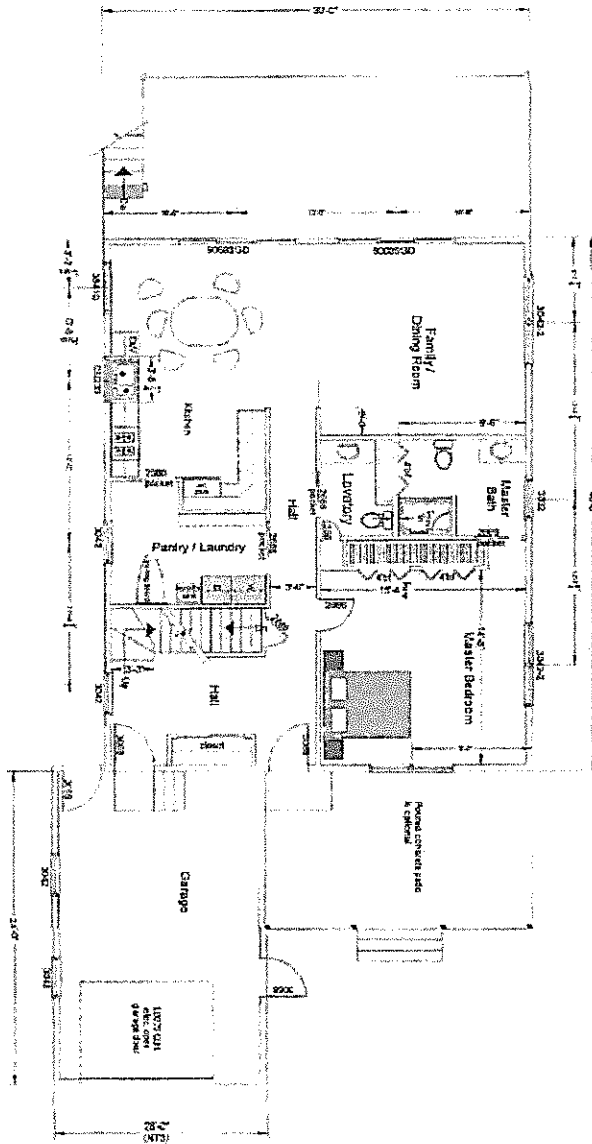
Respectfully,

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.

Exhibit D

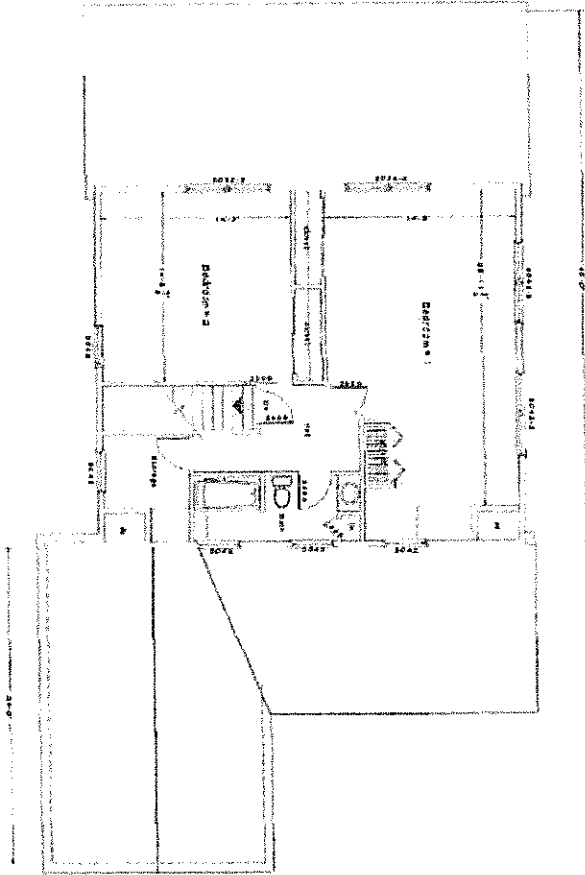


First Floor Plan

Room	Area	Notes
Family/Dining Room	120 sq ft	10'0" x 12'0"
Kitchen	80 sq ft	8'0" x 10'0"
Parity/Laundry	56 sq ft	7'0" x 8'0"
Master Bedroom	132 sq ft	11'0" x 12'0"
Bathroom	30 sq ft	5'0" x 6'0"
Hall	10 sq ft	
Garage	120 sq ft	10'0" x 12'0"
Pond concrete pad	80 sq ft	8'0" x 10'0"
Front Porch	120 sq ft	10'0" x 12'0"
Back Porch	80 sq ft	8'0" x 10'0"

- General Notes:**
1. This plan is an Preliminary. Call for typical and floor finish details.
 2. All work is to be in accordance with the 2018 Building Code, with any amendments.
 3. All work is to be in accordance with the 2018 Building Code, with any amendments.
 4. All work is to be in accordance with the 2018 Building Code, with any amendments.
 5. All work is to be in accordance with the 2018 Building Code, with any amendments.
 6. All work is to be in accordance with the 2018 Building Code, with any amendments.
 7. All work is to be in accordance with the 2018 Building Code, with any amendments.
 8. All work is to be in accordance with the 2018 Building Code, with any amendments.
 9. All work is to be in accordance with the 2018 Building Code, with any amendments.
 10. All work is to be in accordance with the 2018 Building Code, with any amendments.

Second Floor Plan



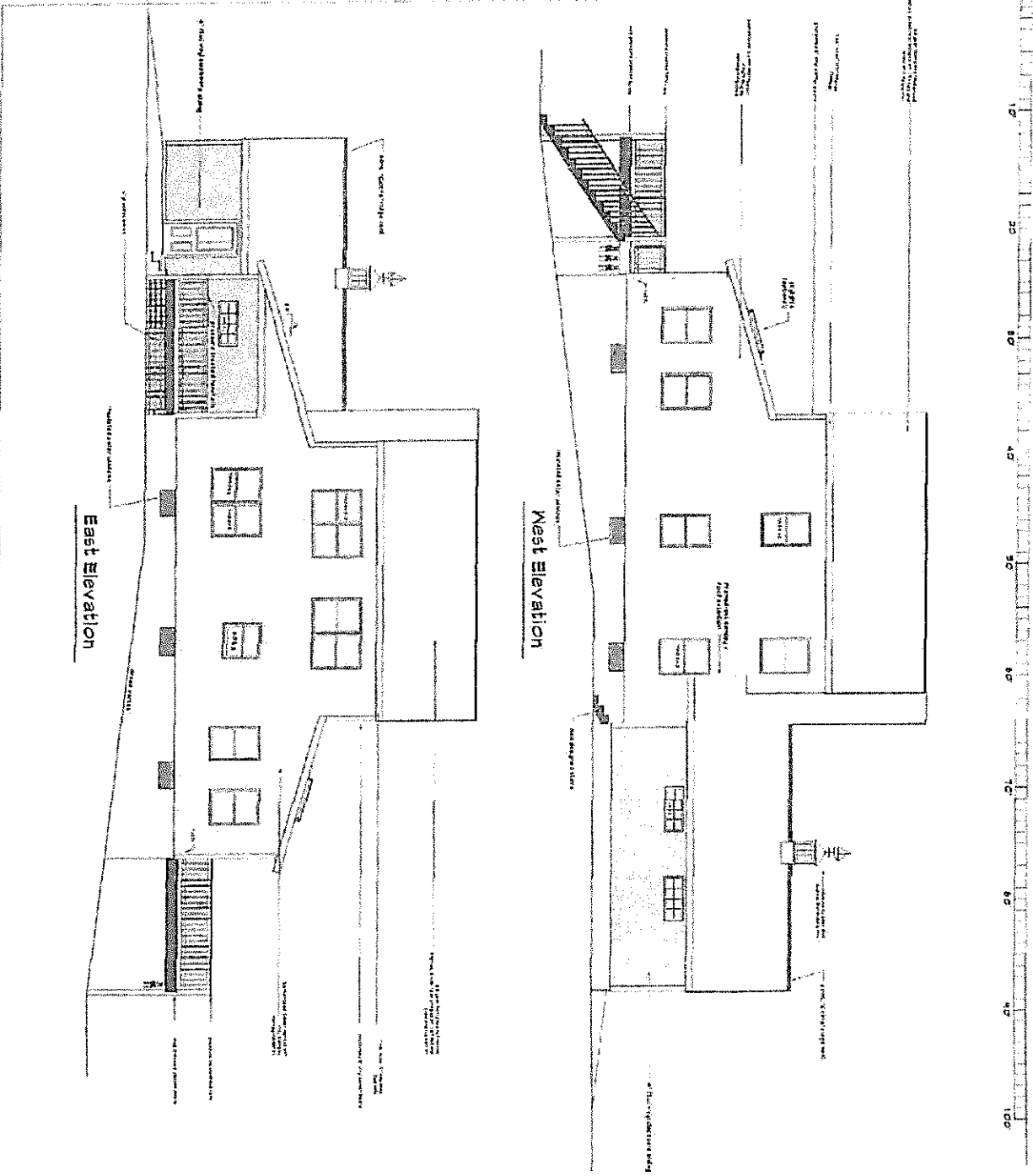
10' 0" 20' 0" 30' 0" 40' 0" 50' 0" 60' 0" 70' 0" 80' 0" 90' 0" 100' 0" 110' 0" 120' 0" 130' 0" 140' 0" 150' 0" 160' 0" 170' 0" 180' 0" 190' 0" 200' 0" 210' 0" 220' 0" 230' 0" 240' 0" 250' 0" 260' 0" 270' 0" 280' 0" 290' 0" 300' 0" 310' 0" 320' 0" 330' 0" 340' 0" 350' 0" 360' 0" 370' 0" 380' 0" 390' 0" 400' 0" 410' 0" 420' 0" 430' 0" 440' 0" 450' 0" 460' 0" 470' 0" 480' 0" 490' 0" 500' 0" 510' 0" 520' 0" 530' 0" 540' 0" 550' 0" 560' 0" 570' 0" 580' 0" 590' 0" 600' 0" 610' 0" 620' 0" 630' 0" 640' 0" 650' 0" 660' 0" 670' 0" 680' 0" 690' 0" 700' 0" 710' 0" 720' 0" 730' 0" 740' 0" 750' 0" 760' 0" 770' 0" 780' 0" 790' 0" 800' 0" 810' 0" 820' 0" 830' 0" 840' 0" 850' 0" 860' 0" 870' 0" 880' 0" 890' 0" 900' 0" 910' 0" 920' 0" 930' 0" 940' 0" 950' 0" 960' 0" 970' 0" 980' 0" 990' 0" 1000' 0"

A-2
Designed by
R.A.F.
10/1/07

The Eric Residence
Wareham, Massachusetts
Second Floor Plan

Robert A. Faelten, Architectural Design
Box 591, Rochester, MA. 02770 (508) 291-7103



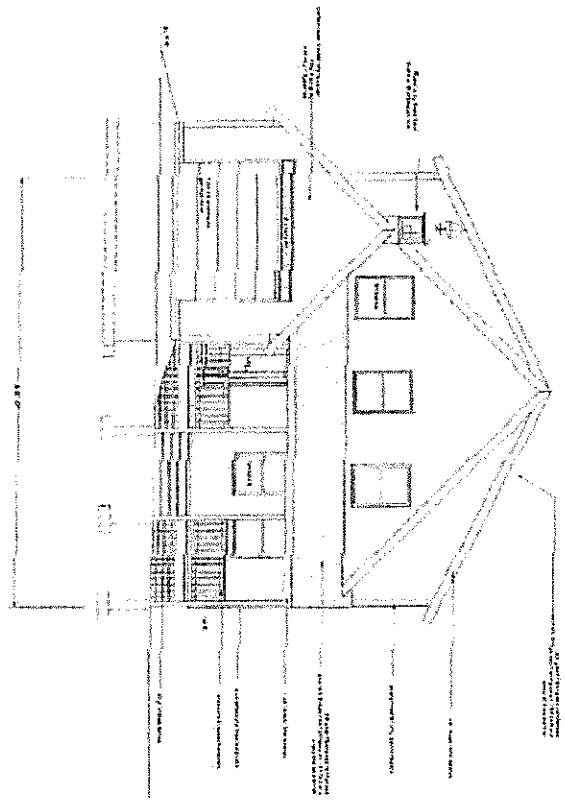


A-7
 DESTINALLY
 R.A.P.
 NOV. 07

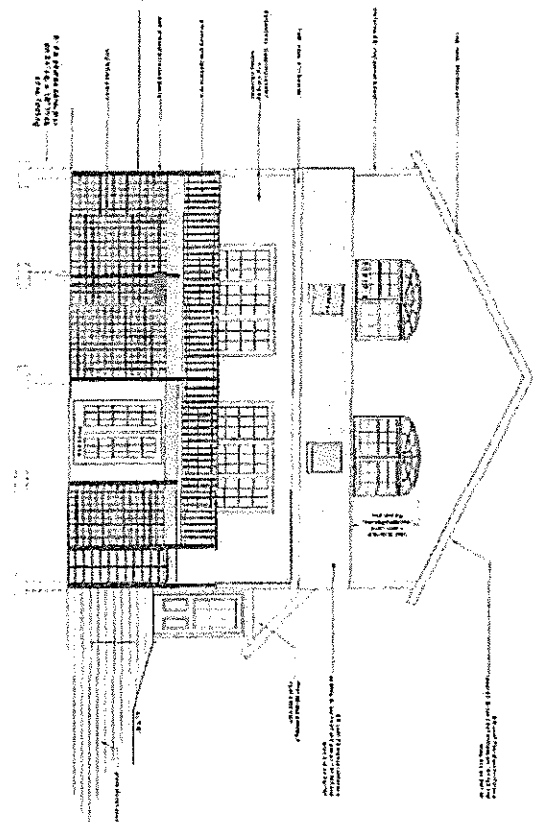
The Eric Residence
 Wareham, Massachusetts
 Elevations

Robert A. Faeltens, Architectural Design
 Box 591, Rochester, MA. 02770 (508) 291-7103





South Elevation



North Elevation



A-6
 R.A.F.
 NOV. 07

The Darle Residence
 Wareham, Massachusetts
 Elevations

Robert A. Faelten, Architectural Design
 Box 591, Rochester, MA. 02770 (508) 291-7103



Exhibit E



