



Town of Dennis

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**257 Old Wharf Road U-4**

**ZBA SPECIAL PERMIT STAFF REVIEW – July 24, 2025**

<b>APPLICANT:</b>	Simon Peter Kotzeff C/O Paul R Tardif
<b>PROJECT ADDRESS:</b>	257 Old Wharf Road, Unit 4, Dennisport MA 02639
<b>MAP AND LOT NUMBER:</b>	Map 20 Lot 32 (50,400 sf – 1.15 acres)
<b>APPLICANT ADDRESS:</b>	490 Main Street, Yarmouth Port, MA 02675
<b>CASE NUMBER:</b>	ZBAS-25-26
<b>ZONING:</b>	Resort Residential Zone
<b>HEARING DATE:</b>	July 28 2025

1. **Project Summary; Request per Zoning Bylaw; Plan Citations**
2. **Plans Specifications; Basic Site Data**
3. **Actions Requiring Findings**
4. **§ 1.4.2.1 Special Permit Granting Authority – Criteria and Proposal**
5. **Town Department Comments**
6. **Proposed Conditions**

<b>PROPOSAL</b>	Demolish a single-story 712 sf detached condominium unit built in 1953 with a 2-story condominium structure with a finished walkout basement and four (4) bathrooms.
<b>PROJECT SUMMARY</b>	<ul style="list-style-type: none"> <li>• The unit is Unit 4 on the map but 20-32-6 on the Assessors Building Card. The unit is a single-family structure but is part of a cottage colony on shared common land.</li> <li>• The Cottage Colony has 7 single family dwellings and a garage built in approximately 1953 on about 1.15 acres (50,400 sf - 42,015 sf of upland).</li> <li>• The existing structure is a single-story, 2-bedroom single-family seasonal cottage with a footprint of 712 sf (35.5' X 20') with a crawl space.</li> <li>• The proposed structure is a two-story, "2-bedroom" with a footprint of 850 sf (34' X 25') plus a full walkout basement, 2 full bathrooms and 2 half bathrooms.</li> <li>• The GSF of the proposed 2-story home is app. 1,700 sf (34' X 25' footprint minus dormers plus deck overhang) not including the full walkout basement.</li> <li>• GSF with the full finished walkout basement, 2 full bathrooms and 2 half bath, Rumpus room, Gym, Media Room and 2 bedrooms is approximately 2,500 sf.</li> <li>• The proposal increases the footprint but moves the structure 2 feet further from the side boundary. The existing structure is 9.6 feet from the side boundary and the new home is proposed to be 11.6 feet from the easterly boundary.</li> <li>• Because this is a cottage colony with multiple dwellings on the same property, the side setbacks are actually 50 feet, not 15 feet, as indicated on the site plan. This means that the entire house is within the setbacks.</li> <li>• The project was referred under § 2.4.1.2.F because it is part of a cottage colony and thus subject to higher setbacks (50', not 15'). The structure itself is a single-family structure and thus may be interpreted as entirely in non-conforming area per § 2.4.1.2.D.2, which only allows such single family structures to increase by 40 %.</li> </ul>

	<ul style="list-style-type: none"> <li>The project would not conform with the dimensional requirements.</li> </ul>
<b>REQUEST</b>	<p><b>§ 2.4.1.2.F</b> -Activities Requiring a Finding of Substantially More Detrimental for Structures Other Than Single and Two Family Structures With Setback Non-Conformities</p> <p>In the following circumstances, alteration, reconstruction, extension or structural change (collectively "alteration") to structures other than single or two family residential structures shall be considered to increase the intensity of an existing non-conformity and shall be considered to create additional non-conformities and shall be <u>considered to be substantially more detrimental than the existing nonconforming structure to the neighborhood:</u> <b>(F.1)</b> The <u>creation of any new non-conformity</u> where no non-conformity currently exists; <b>(F.4)</b> The <u>voluntary demolition and reconstruction</u> of a building or structure nonconforming by dimension <u>unless it conforms with the dimensional regulations of the zone</u> in which it is located <u>or</u> the non-conforming nature of the new proposed structure is <u>found to be substantially less non-conforming</u> by the Board of Appeals.</p>
<b>PLOT PLAN</b>	Site Plan of Unit 4, 257 Old Wharf Rd. Dennisport, MA prepared for Simon & Laura Kotzeff by Moran Engineering Assoc. 941 Main Street (Rte. 28) Harwich, MA. Plan consisting of 1 sheet with existing and proposed conditions, Septic System Profile and Design with Test Hole Logs. Plan dated 6-19-2025 by Michael S. Ladue and Daniel P. Croteau.
<b>BUILDING PLANS</b>	Plan of #4, 257 Old Wharf Rd. Dennisport, MA prepared for Simon & Laura Kotzeff by Ric Roy Construction 123A Queen Anne Road Harwich, MA 02631. Plan consisting of 3 Sheets with, Proposed Front Elevation, Proposed Right Elevation (x2), Proposed Left Elevation, Proposed 1 <sup>st</sup> Floor Plan, Proposed Basement Plan (x2), Proposed 2 <sup>nd</sup> Floor Plan, and Hold Down Key. Plan dated June 19, 2025.
<b>Resort Residential District Intent</b>	To provide sites for seasonal resource oriented resorts with special attention to preserving the value of land and enhancing the existing vegetation, visual landscape, and amenities with consideration of neighboring properties, and to conserve the value of existing structures and buildings with good period design, recognizing the value of recycling of old structures and buildings with good period design for future generations, thereby retaining the character of the area, the town and the quality of a rural seaside New England Village.

### 1.3.2 Plans and Specifications

REQUIREMENTS	PROVIDED ON PLAN
CERTIFIED PLOT PLAN INCLUDING	
LOCUS MAP	Yes
PERIMETER DIMENSIONS, INCLUDING FRONTAGE	Yes
AREA OF LOT	50400 sf
NAMES OF STREETS	Yes
NAMES OF ABUTTING PROPERTY OWNERS	No
DISTANCES EXISTING AND PROPOSED STRUCTURES TO PROPERTY LINES	Yes
PROPOSED ADDITONS/ALTERATIONS OF EXISTING BLDGS W/ SETBACKS	Yes
PROXIMITY OF WETLANDS	Yes
EXISTING AND PROPOSED TOPOGRAPHYAND/OR OTHER LAND ISSUES	Yes
DIMENSIONS OF EXISTING AND PROPOSED STRUCTURES	Yes
ARCHITECTURAL DRAWINGS ILLUSTRATING THE PROPOSED CONDITIONS	Yes
ARCHITECTURAL DRAWINGS ILLUSTRATING THE EXISTING CONDITIONS	Yes

Basic Site Data	Required/ Allowed	Existing	Proposed
Frontage	100'	60.5'	60.5'
Front Setback	25'	130'	130'
Right Side Setback	50'	51.3'	49.3'
Left Side Setback	50'	9.6'	11.6'
Rear Setback	50'	256'	251'
Lot Area	40,000 sf	50400 sf	50400 sf
Lot Width	150'	100'	100'
Non-conforming floor space within Setbacks		255'	All
D2. Increase in new non-conforming floor space by more than 40% within any 10-year period	40		
Cumulative footprint size of all structures	15	12.6	12.9
Cumulative lot coverage (footprint) percent for all	15%	12.6%	12.9%
Cumulative floor space of all structures (F.A.R.)	15120	10000	11225
Cumulative floor space to lot area % all structures	30%	19.8%	22%

§ 2.4.1.2 F Activities Requiring a Finding of Substantially More Detrimental for Structures Other Than Single- and Two-Family Structures With Setback Non-Conformities

In the following circumstances, alteration, reconstruction, extension or structural change (collectively "alteration") to structures other than single- or two-family residential structures <u>shall be considered to increase the intensity of an existing non-conformity and shall be considered to create additional non-conformities and shall be considered to be substantially more detrimental than the existing nonconforming structure to the neighborhood:</u>	
<b>ACTION</b>	<b>FINDING</b>
F1 The creation of any new non-conformity where no non-conformity currently exists.	Does the 40% rule apply?
F4 The voluntary demolition and reconstruction of a building or structure nonconforming by dimension <u>unless it conforms with the dimensional regulations</u> of the zone in which it is located <u>or</u> the non-conforming nature of the new proposed structure is <u>found to be substantially less non-conforming by the Board of Appeals.</u>	Dimensional regulations for the RR District with multiple dwellings have a 50-foot setback. Entire detached single family condo is within the setbacks thus should be limited in how much it can expand.

§ 1.4.2.1 To hear and decide applications for special permits upon which the Board is empowered to act under this By-Law pursuant to M.G.L. ch. 40A. Special permits may be granted only upon a finding by the Board that the proposed use will not create a nuisance, hazard or congestion, or other significant harm to the neighborhood, nor cause derogation from the general purpose and intent of the By-Law, the stated district intent or applicable use criteria. It shall be the responsibility of the applicant for any special permit to show, to the satisfaction of the Special Permit granting authority, that the following criteria are met:

- a. The use is allowed by special permit in the district in which proposed, pursuant to §2.2.2 - Use Regulations Schedule; **The site is used for residential purposes and will continue to be used as such.**
- b. Suitability of the site for the proposed use in light of the applicable district intent, as provided in §2.1.5; **If every cottage in such colonies expanded to this degree the "quality of a rural seaside" would change.**

- c. Adequacy of management of traffic flow within the site as well as in relation to adjoining streets and properties, so as to minimize unsafe or harmful impacts of the use; **Proposed alterations could allow easily a second unit in this structure and increase traffic to the site with no parking.**
- d. Compatibility of the proposed use with surrounding land uses, so as to minimize harmful impact or conflict with existing desirable neighborhood character, including views, vistas and other aesthetic values; **Site will continue to be used in a fashion similar to that of other properties and historical use.**
- e. Adequacy of provision of utilities and other necessary or desirable public services; **The addition will not increase the need for utilities or other public services.**
- f. Adequacy of control of artificial light, noise, litter, odor or other sources of nuisance or inconvenience to adjoining properties, public ways and neighborhoods; **The addition could generate some additional light or other sources of nuisance to direct abutters.**
- g. Adequacy of protection from degradation and alteration of the natural environment, including but not limited to slopes and other topographical features, vegetation, wetlands, groundwater and water bodies and wildlife habitat. **The proposed addition with full basement on crowded property at top of the hill might affect the natural environment and slope.**

**TOWN DEPARTMENTS COMMENTS:**

- **PLANNING:**
  - Because this is a cottage colony with multiple dwellings on the same property, the side setbacks are actually 50 feet, not 15 feet, as indicated on the site plan.
  - The project was referred under § 2.4.1.2.F because it is part of a cottage colony and thus subject to higher setbacks (50’, not 15’). The structure itself is a single-family structure and thus it may be interpreted that it is entirely in non-conforming area which can only be increased by 40% per § 2.4.1.2.D.2. Therefore, the project does not conform with the dimensional requirements.
  - If § 2.4.1.2.D.2 applies, because it is a single-family structure, and the setbacks of the cottage colony apply (50’), then, a single-story, 2-bedroom seasonal cottage with a footprint of 712 sf (35.5’ X 20’) could only expand (by SP) with the existing footprint and a 2<sup>nd</sup> floor of 285 sf.
  - The proposed expansion with a finished walkout basement and 4 bathrooms and multiple other rooms could easily become two units, for which there is not adequate parking.
  - If the 40% rule for expansion of single-family structures within the setback did not apply, the Board should still consider the full walkout basement with bedroom, full bath and two additional rooms as a third floor. The proposed expansion should be re-designed.
  - As proposed, the project does not appear to be allowed by Special Permit.
- **NATURAL RESOURCES:** Not in Conservation jurisdiction.
- **HEALTH:** Located in an ESA. Project was approved on July 10, 2026 by the BOH for a variance.

<b><u>If Approved PROPOSED CONDITIONS</u></b>	<ol style="list-style-type: none"> <li>1. The lot owners shall apply for all required permits and will comply with the intent of the Dennis Stormwater By-law, all requirements of the Dennis Conservation Commission and Board of Health and any other permits that are required.</li> <li>2. Construction shall not commence before 7:00 am nor continue after 7:00 pm Monday through Friday and shall not commence before 7:00 am nor continue after 5:00 pm on Saturdays. No construction shall occur on Sundays.</li> <li>3. The addition shall not generate new light, noise, litter, odor or other sources of nuisance. Any new lighting shall be restricted to downward-shielded motion sensitive security lighting that is “Dark-Sky” compliant.</li> <li>4. Failure to comply with all conditions in the Board of Health Permit shall be deemed cause to revoke the ZBA Special Permit.</li> </ol>
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