

# **LAW OFFICES OF PAUL REVERE, III**

**226 River View Lane  
Centerville, Massachusetts 02632  
(508) 237-1620  
revereiii@aol.com**

February 20, 2026

James Kyrimes, Chair  
Dennis Zoning Board of Appeals  
685 Route 134  
South Dennis, Massachusetts 02660

**Via Email**

RE: Variance Request, 14 Judith Ann, Dennis, Massachusetts, ZVAR-25-5

Chairman Kyrimes:

I represent the Petitioner Steven Nally. The Petitioner seeks a variance pursuant to G.L. ch. 40A, Sec. 10, and Section 1.4.4.2 of the Town Dennis Zoning Bylaw to establish the front yard setback for the subject property which is located on a private dirt lane and for which the Town of Dennis Bylaw (“Bylaw”) does not provide a means for establishing the required setback under its “setback averaging provision.” As explained in detail below, the Petitioner is proposing to raise and replace an existing single family home on a 6,000 square foot lot with a home that is comparable in size to abutting homes. The proposal involves a corner lot which abuts a public way and a private dirt lane and, as such, has two front yards – one on the public way and the dirt lane. The proposal meets established setbacks on all sides except for the setback to the dirt lane. Because the Petitioner’s property only abuts one property on the lane, the Bylaw’s “setback averaging provision” does not explain how it applies to a lane that only has two lots on each side. The Petitioner proposes that the Zoning Board of Appeals grant a variance that requires that the Petitioner meet the setback of the only adjacent lot on the dirt lane which setback was approved in a special permit in 2018, or an alternative setback calculate with the “setback averaging provision.”

## **Background**

The Petitioner is the owner of a lot shown as Lot #8 on a plan of Pleasant View Acres which is recorded at the Barnstable Registry of Deeds at Plan Book 72, Page 39 (hereinafter the “Property” and copy attached as Exhibit One) and commonly known as 14 Judith Ann Road. *See* Barnstable Registry of Deeds, Book 32954, Page 195 (title of Petitioner to the Property). The Property is a 6,000 square foot lot (Exhibit One) and has been developed with a single family home since approximately 1945. *See* Assessor’s Card. The Property is a 60 foot by 100 foot rectangle which abuts Judith Ann Road to the southwest for 60 feet and Rosemary Lane to the Northwest for 100 feet. Exhibit One. Judith Ann Road is a paved public way. Rosemary Lane is an unpaved and unmaintained private way which connects Judith Ann to Angelo Road.

Four properties abut Rosemary – two on each side. The two properties on the southeasterly side are the Petitioner’s property (14 Judith Ann Road) and a property known as 3 Rosemary Lane. 3

Rosemary Lane like the Petitioner's property also is a corner lot (Rosemary Lane and Angelo Road) and is a 60 foot by 100 foot rectangle which abuts Rosemary Lane along its northwesterly 100 foot side. Until 2018, 3 Rosemary Lane was developed with an approximately 1000 square foot single family home that was located 17.1 feet from Rosemary Lane. Exhibit Two. In 2018, Betterwood Homes applied for a special permit to replace that dwelling with a 2428 square foot home (1<sup>st</sup> floor - 876 sq. ft.; 2<sup>nd</sup> floor – 876 square feet; fin. basement – 676 sq. ft) which was located 17.9 sq. ft. from Rosemary Lane, 11 feet from the rear yard setback, but met the required setbacks to Angelo Road and the Petitioner's property. Exhibit Two. The proposed home was 36 feet in length and 26 feet in width for most of its length with the southeasterly 10 feet have a width of 20 feet. *Id.* In March, 2018, the Zoning Board of Appeals unanimously voted to issue the special permit finding that the proposed "structure is not substantially more detrimental to the neighborhood than the existing nonconforming structure." Exhibit Three.

### **Petitioner's Proposal**

Petitioners property is currently developed with a small (492 sq. ft.) one bedroom cottage that meets setbacks on Judith Ann Road, Rosemary Lane, and 3 Rosemary Lane.<sup>1</sup> Petitioner proposes to replace that structure with a proposed 2.5 story dwelling which has a width of 24 feet and a length of 35.5 feet . *See* Application. The proposed dwelling meets the applicable front yard setback on Judith Ann Road and rear yard to 3 Rosemary, and improves the existing nonconformity to the adjacent lot on Judith Ann from 12.63 feet to 14.58 feet. However, the proposal encroaches into the required front yard setback on the dirt lane known as Rosemary Lane by 4.50 feet.

The encroachment on Rosemary Lane is the heart of this request for a variance. Specifically, the Bylaw has a "setback averaging provision" that provides:

Where a lot is abutted at its street frontage by two (2) lots, each with existing buildings, the front yard setback requirement shall be determined by computing the numerical average of the existing front yard setbacks of those two abutting lots.

Where a lot is abutted at its street frontage by two (2) lots, one (1) of which has an existing building, and one (1) of which is a vacant lot, the front yard setback requirement shall be determined by computing the numerical average of the existing front yard setback on the built-upon lot and the required front yard setback for the zoning district. In no case shall the setback requirement be greater than the front setback for the Zoning District.

Bylaw, Section 2.3.2 Intensity of Use Schedule, n. 3.

The purpose of a "setback averaging provision" is to create an exception from the required front yard setback when adjacent properties are also closer to the street than the proposal so as to not

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<sup>1</sup> It should be noted that the setbacks for the 3 Rosemary property and the Petitioner's property differ due to the Bylaw providing that the rear yard setback be based upon the address. That is both 3 Rosemary and the Petitioner's property being corner lots have two sides that are required to meet the front yard setback on the sides facing each road. However, Petitioner's property has an address of Judith Ann Road and is required to meet the rear yard setback on the side facing 3 Rosemary Lane – whereas the 3 Rosemary Lane House must meet the rear yard setback to its neighbor on Angelo Road.

burden a property with a setback that is different than its neighbors.<sup>2</sup>

### **Legal Analysis**

The Petitioner's property has street frontage on two different streets and the setback for which the Petitioner seeks zoning relief only has one other lot on the same street. As such, the Petitioner has requested a variance to the applicable 25 foot setback by the Zoning Board of Appeals establishing a building line setback at either: (i) 18 feet which is the existing setback for 3 Rosemary Lane; or (ii) at 21.5 feet which is the average of 18 feet and the standard front yard setback of 25 feet.<sup>3</sup>

The Bylaw provides that "the Board of Appeals shall have and exercise all the powers granted to it by Massachusetts General Law, as amended and the Massachusetts Constitution, as amended," Section 1.4.2, and also "to hear and decide . . . petitions for variances from the terms of this By-Law . . . only in cases where the Board of Appeals makes findings that are consistent with the criteria outlined in M.G.L. ch. 40A, Sec. 10." Section 1.4.2.2.

G.L. ch. 40A, Sec. 10 authorizes the Board of Appeals to grant variances from the Bylaw when:

owing to circumstances relating to soil conditions, shape or topography of such land or structures and especially affecting such land or structure 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 purposes of such ordinance or by-law.

#### **Soil Conditions, Shape or Topography**

As explained previously, the Petitioner's property is unique in that it is a corner lot and is located on a street that only has two lots. As such, its shape and topography (i.e., land features such as roads and a single adjacent lot) makes for the property not only having two front yard setbacks, but, also, making it impossible to apply the "setback averaging" provision of the Bylaw.

#### **Hardship**

A literal enforcement of the Bylaw would result in substantial hardship if relief is not granted because the Petitioner will be left with a lot that has either an existing dreadfully small house or with the option to construct a 20 foot wide home. Specifically with regard to the latter point, the building envelope on Petitioner's property becomes essentially 20 feet in width which is more suitable for a mobile home than a house within the Old King's Highway District. A 20 foot width also makes it difficult to construct a rational

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<sup>2</sup> The Building Commissioner stated that the "setback averaging provision" only applies to vacant lots. However, nothing in the Bylaw supports that position.

<sup>3</sup> The Petitioner recognizes that it may be required to amend its plans to meet a 21.5 foot setback.

home for many reasons. For example, any stairway must be located along the length direction as any stairway would take up more than one-half of the width leaving only a small area for landings and outer wall width at each end of the stairs.

### **Substantial Detriment and Derogation**

The desired relief is simply to allow the Petitioner to establish the building line setback: (i) at 18 feet which is the existing setback for 3 Rosemary Lane; or (ii) at 21.5 feet which is the average of 18 feet and the standard front yard setback of 25 feet. These setbacks would be available if the setback averaging provision could be applied by its express terms to the Petitioner's Property. As such, there would be no substantial detriment to the public good or the intents or purposes of the Bylaw. In this regard, it should be noted that the Zoning Board of Appeals approved a house with essentially the same footprint on the adjacent lot (3 Rosemary) by special permit finding that the granting of the special permit was "structure is not substantially more detrimental to the neighborhood than the existing nonconforming structure."

### **Conclusion**

The Zoning Board of Appeals should grant a variance building line setback at either: (i) 18 feet which is the existing setback for 3 Rosemary Lane; or (ii) at 21.5 feet which is the average of 18 feet and the standard front yard setback of 25 feet.

/s/Paul Revere, III  
Paul Revere, III

EXHIBIT ONE

72-39



Plan Book 72 - Page 39

RECORDABLE  
DEPARTMENT OF DEEDS  
DEC - 5 1945  
/ C. H. J. A. A.  
RECORDED

PLEASANT VIEW ACRES  
DENNIS, MASS.  
PARTIAL  
SUBDIVISION FOR LOUIS A. SEGRINI  
NOV. 1945  
SCALE 80 FEET TO AN INCH  
ARTHUR L. SPARKOW, ENGINEER  
SOUTH OREGON, MASS.

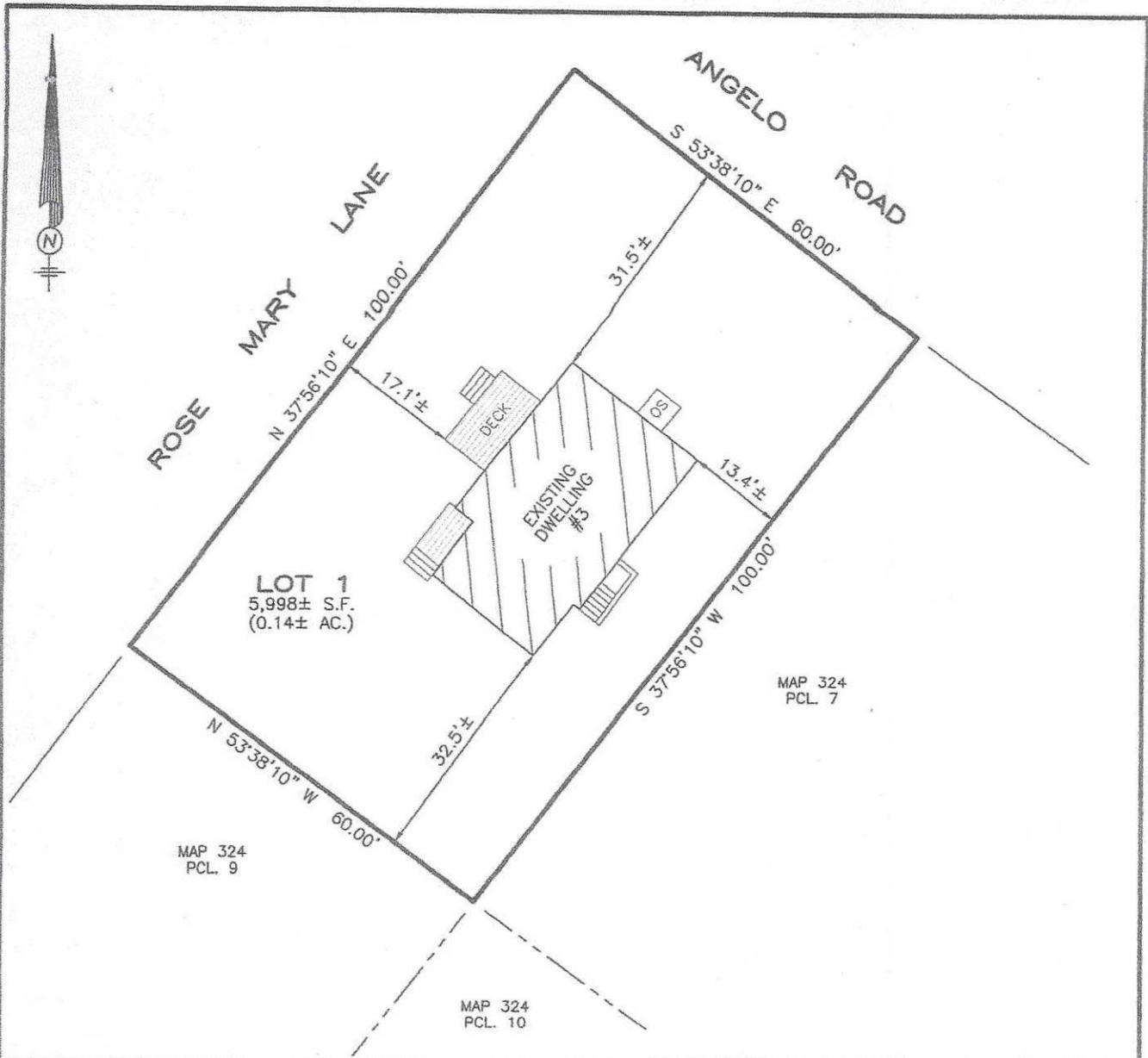
NOTE: BUILDINGS NOT SHOWN.

PLAN NO. 1412A

72-39

72-39

EXHIBIT TWO



## CERTIFIED PLOT PLAN

LOCUS : 3 ROSE MARY LANE

DENNIS, MA

REF : PLAN BOOK 72 PAGE 39

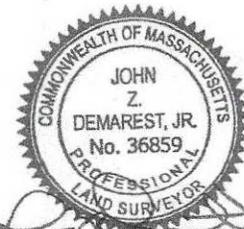
PLAN PREPARED FOR :  
BETTERWOOD HOMES

SCALE : 1"=20' DATE : 11/08/2017

ASSESSORS MAP: 324 PARCEL : 8

I HEREBY CERTIFY THAT THE STRUCTURE SHOWN ON THIS  
PLAN IS LOCATED ON THE GROUND AS SHOWN HEREON.

FILE=17170.DWG



11/8/17  
DATE

REG LAND SURVEYOR

DEMAREST LAND SURVEYING

338 MAYFAIR ROAD  
SOUTH DENNIS, MA  
508-364-9049



**LOCATION MAP**

GENERAL NOTES:  
 OWNER OF RECORD:  
 PAUL W. SULLIVAN & CHESTER J. DELUGA  
 744 MAIN STREET  
 DENNIS, MA 02638

REFERENCES:  
 DEED BOOK 30971 PAGE 12  
 PLAN BOOK 72 PAGE 39

BOARD APPROVED PLANS  
 FOR PERMITTING PURPOSES

*OFF 2/26/18* HEALTH

**PROPOSED SITE PLAN OF LAND  
 3 ROSEMARY LANE  
 DENNIS, MA**

PREPARED FOR:

**BETTERWOOD HOMES**

SCALE: 1" = 20' JANUARY 26, 2018  
 REVISED FEBRUARY 20, 2018

GRAPHIC SCALE IN FEET



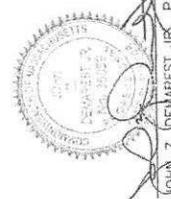
**DEMAREST LAND SURVEYING**  
 338 MAYFAIR ROAD  
 SOUTH DENNIS, MA 02660  
 508-364-9049



DANA L. & DEBORAH A.  
 WARNER  
 DEED BOOK 9016 PAGE 58  
 MAP 324 PCL 9

MICHAEL P. & LISA M.  
 LUSSIER  
 DEED BOOK 29814 PAGE 31  
 MAP 324 PCL 7

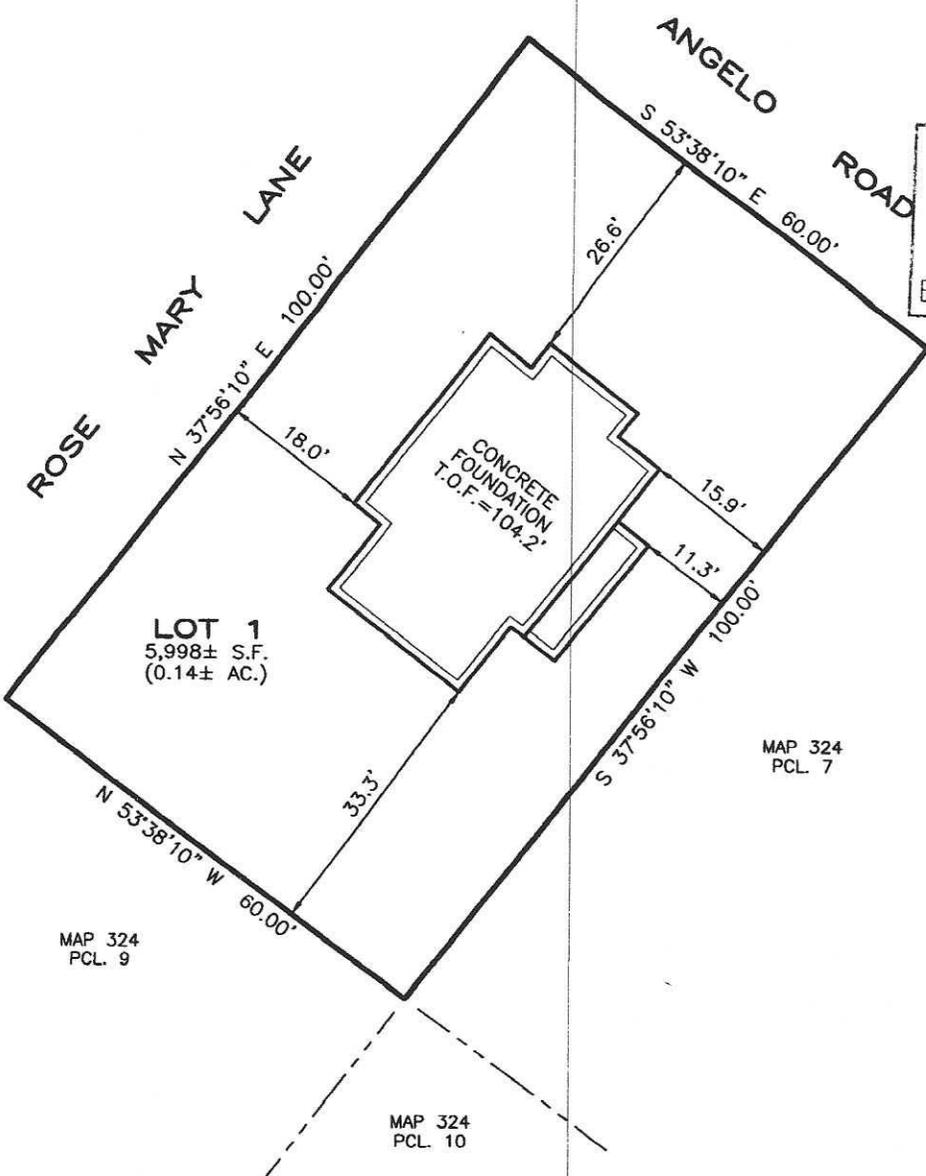
MARJORIE R. & RONALD P.  
 SUDMYER  
 DEED BOOK 9779 PAGE 209  
 MAP 324 PCL 10



JOHN Z. DEMAREST, JR., P.L.S.  
 DATE: 2/26/18

| ZONING DISTRICT: R-40           | REQUIRED      | EXISTING     | PROPOSED                                 |
|---------------------------------|---------------|--------------|--|
| MIN. LOT AREA                   | 40,000 S.F.   | 5,998± S.F.  | 5,998± S.F.                              |
| MIN. LOT FRONTAGE               | 50'           | 160.0'       | 160.0'                                   |
| FRONT SETBACK                   | 25'           | 17.1' DECK   | 17.9'± ROSEMARY LANE<br>26'± ANGELO ROAD |
| SIDE SETBACK                    | 15'           | 32.5'±       | 33'±                                     |
| REAR SETBACK                    | 25'           | 13.4'± DWELL | 16'± DWELL                               |
| BUILDING COVERAGE               | 15% MAX       | 12.6'±%      | 14.9'±%                                  |
| AREA NON-CONFORMING FLOOR SPACE | LESS THAN 40% | 1064± S.F.   | 1450± S.F.<br>(35.3%)                    |

324-8



RECEIVED  
MAY 30 2018  
BUILDING DEPARTMENT

## CERTIFIED PLOT PLAN

LOCUS : 3 ROSE MARY LANE

DENNIS, MA

REF : PLAN BOOK 72 PAGE 39

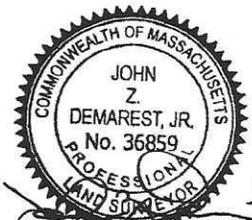
PLAN PREPARED FOR :  
BETTERWOOD HOMES

SCALE : 1"=20'      DATE : 5/30/2018

ASSESSORS MAP: 324      PARCEL : 8

I HEREBY CERTIFY THAT THE STRUCTURE SHOWN ON THIS PLAN IS LOCATED ON THE GROUND AS SHOWN HEREON.

FILE=17170.DWG



5/30/18  
DATE

REG. LAND SURVEYOR

DEMAREST LAND SURVEYING

338 MAYFAIR ROAD  
SOUTH DENNIS, MA  
508-364-9049

EXHIBIT THREE



Town of Dennis

685 Route 134, South Dennis, MA 02660 / Telephone: 508-394-8300 Fax: 508-394-8309

RECEIVED  
2018 MAR -8 PM 2:49  
DENNIS TOWN CLERK

DECISION

|                 |                                  |
|-----------------|----------------------------------|
| APPLICANT       | Paul Sullivan and Chester Deluga |
| CASE NUMBER     | ZBA 324-8                        |
| ZONING DISTRICT | R-40                             |

|   |     |                                  |            |
|---|-----|----------------------------------|------------|
| <b>REGISTRY OF DEEDS REQUIRED INFORMATION (Must be filled out by applicant)</b> |     |                                  |            |
| Current Property Owners:  |     | Paul Sullivan and Chester Deluga |            |
| Property Address:   |     | 3 Rosemary Lane, Dennis, MA      |            |
| Registry of Deeds Title Reference   |     | Book: 30971                      | Page 12    |
| or Certificate of Title #   |     | And Land Ct Lot                  | And Plan # |
| Town Map #  | 324 | Parcel 8                         | Lot 1      |

|              |  |
|--------------|--|
| HEARING DATE | February 26, 2018  |
| REQUEST      | a Special Permit in accordance with Sections 2.4.1.2 of the Dennis Zoning By-Law and M.G.L. Chapter 40A, Section 6, in order to replace a pre-existing nonconforming single-family dwelling and two decks with a less nonconforming single-family dwelling |

|                |   |
|----------------|---|
| PLANS          |   |
| PLOT PLAN      | Proposed Site Plan of Land, 3 Rosemary lane, Dennis, MA, Prepared for Betterwood Homes by John Demarest revised date 2/20/2018.                             |
| BUILDING PLANS | Elevations by Betterwood Homes dated 1/25/18 include:<br>A1. First and Second Floor Plans<br>A2: Right and Front Elevations<br>A3: Left and Rear Elevations |

|          |  |
|----------|--|
| FINDINGS | <ol style="list-style-type: none"> <li>1. The house stands on a substandard lot which is substandard due to width and lot size.</li> <li>2. The use is a conforming use.</li> <li>3. The structure reduces setback non-conformities.</li> </ol> <p>Based upon the above findings, the Board finds that the</p> |
|----------|--|

|             |                 |        |
|-------------|-----------------|--------|
| APPLICANT   | Sullivan/Deluga | Page 2 |
| CASE NUMBER | ZBA 324-8       |        |

|            |  |
|------------|--|
|            | structure is not substantially more detrimental to the neighborhood than the existing non-conforming structure.  |
| VOTE       | The Board voted unanimously 5-0-0 to approve the Special Permit with conditions (Zawadzkas [Acting Chair], Oliveira, Barber, Leogrande [Alternate], and Jackle [Alternate]). |
| CONDITIONS | (1) plantings will be added for screening between applicant's property and abutting property of the Lussiers;<br>(2) drywells for roof drains will be added.                 |

Details of the hearing and decision are on file in the Planning and Appeals Office at the Dennis Town Offices as File ZBA 324-8.

Appeal from this decision may be made pursuant to Massachusetts General Laws Chapter 40A, Section 17, within 20 days of filing with the Town Clerk. This Special Permit shall lapse if substantial use or construction has not commenced without good cause within one year from the date issued.

I certify that a copy of the original decision has been filed with the Town Clerk.

Elisa Zawadzkas  
Elisa Zawadzkas, Acting Chair

DATE: March 29, 2018  
I certify that this decision was filed on March 8, 2018 and no appeal was filed within 20 days after date of filing.

Sharon T. Ponce  
Dennis Town Clerk

BARNSTABLE REGISTRY OF DEEDS  
John F. Meade, Register