



ZONING BOARD OF APPEALS Town of Chilmark

TOWN OFFICES:
Beetlebung Corner
Post Office Box 119
Chilmark, MA 02535
(508) 645-2110 Fax

THE COMMONWEALTH OF MASSACHUSETTS

To The Board of Appeals, TOWN OF CHILMARK

November 17, 2023

The undersigned hereby gives Notice of its Appeal of the Building Inspector's Determination dated November 7, 2023 pursuant to M.G.L. c. 40A, §8 and Section 9.9 of the Chilmark Zoning Bylaws, and in the alternative, petitions the Board of Appeals for a Special Permit under the terms of the Zoning By-laws of the Town of Chilmark, Article 12, Section 12.4(C)(1), and for a Variance from the bedroom limitations of Section 12.4(C)(1) pursuant to Section 9 and M.G.L. c. 40A, §10.

at the premises owned by (Owner of Record) James Adams, Trustee of the Santiago Realty Trust

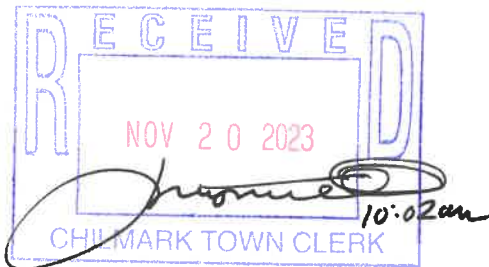
at 9 Signal Hill Lane, Chilmark, Massachusetts (street address),

Assessor's parcel MAP 34 LOT 1-3

In the following respect or limitation, extension, change, alteration or modification of use, or method of use as may at hearing appear as necessary or proper in the premises.

State Briefly Reasons for Special Permit

See attached Notice of Appeal and Special Permit and Variance Narrative for more information.



Petitioner Sarah A. Turano-Flores

Sarah Turano-Flores, Esq., Attorney at Nutter, McClennen & Fish, LLP

Address 155 Seaport Boulevard, Boston, Massachusetts 02210

Telephone Number 617-439-2754



Sarah A. Turano-Flores
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November 17, 2023
0125428-00001

VIA IN HAND DELIVERY

Chris Murphy, Chair
Chilmark Board of Appeals
Chilmark Town Hall
401 Middle Road
Chilmark, Massachusetts 02535
Email: buildinginspector@chilmarkma.gov

Re: Zoning Determination Request - 9 Signal Hill Lane, Chilmark, Massachusetts

Dear Chair Murphy and Members of the Board of Appeals:

With regard to the above-referenced property, please find enclosed for filing the following documents:

1. Filing Fee check in the amount of \$275.00;
2. Application/Petition to the Zoning Board of Appeals;
3. Narrative in Support of Application/Petition to the Zoning Board of Appeals, with Exhibits, including the deed for the Property as recorded in Book 1589 Page 890;
4. 300' Abutters List Report and Map;
5. Site Plan in Chilmark, MA prepared for the Santiago Realty Trust by Sourati Engineering Group, LLC dated June 2, 2023;
6. Total Living Area Sketch in Chilmark, MA prepared for the Santiago Realty Trust by Sourati Engineering Group, LLC dated June 2, 2023; and
7. Architectural Plans titled "Signal Hill Residence" prepared for the Santiago Realty Trust by Outlands Design LLC, last revised June 2, 2023 (5 sheets).

Kindly accept these documents for filing and place the Application on the Board's agenda for hearing at the Board's December 14, 2023 meeting.



Chilmark Zoning Board of Appeals
November 17, 2023
Page 2

Thank you in advance for your time and attention to this matter. Should you have any questions, please do not hesitate to contact me at the number on the letterhead above.

Sincerely,


Sarah A. Turano-Flores

Enclosures

cc (via email only): James Adams, Trustee of the Santiago Realty Trust
George Sourati, Sourati Engineering (Project Engineer)
Tim Stewart, Outlands Design LLC (Project Architect)
Town Attorney Michael Goldsmith
Building Inspector Adam Petkus



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Town of Chilmark

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at the premises owned by (Owner of Record) James Adams, Trustee of the Santiago Realty Trust

at 9 Signal Hill Lane, Chilmark, Massachusetts (street address),

Assessor's parcel MAP 34 LOT 1-3

In the following respect or limitation, extension, change, alteration or modification of use, or method of use as may at hearing appear as necessary or proper in the premises.

State Briefly Reasons for Special Permit

See attached Notice of Appeal and Special Permit and Variance Narrative for more information.

Petitioner Sarah @ Two Fingers
Sarah Turano-Flores, Esq., Attorney at Nutter, McClennen & Fish, LLP

Address 155 Seaport Boulevard, Boston, Massachusetts 02210

Telephone Number 617-439-2754



ZONING BOARD OF APPEALS

Town of Chilmark

Application Documentation

The filing fee of \$275 payable to the Town of Chilmark and the following check list of documents **MUST** accompany any application a minimum of 25 days prior to the hearing to allow time for legal advertisement and notification to abutters. *Applicants will be responsible for advertising costs and permits will not be valid until expenses have been paid in full.*

NOTE: Your failure to provide all items may result in delays. Any substantive or material changes made at the hearing (or during construction) MAY require re-advertisement and/or continuance or an Amended Decision filed at Registry of Deeds.

- Application and fee
- A site plan (an engineer's survey, unless not needed for decision in which case a copy of the Town's Assessor's map for the property in question may be used) showing the following existing and proposed conditions (but not limited to):
 1. Locations of building(s)
 2. Well
 3. Septic
 4. Building activity proposed by application
 5. Applicable setback lines (building envelope)
 6. All setback(s) from wetlands
- Accurate scale drawings, in plans and elevations (including dimensions of footprint, ridge height, etc.) of the building activity proposed by the application. (These need not necessarily be done by a registered architect or engineer, but must accurately reflect the proposed building and must be registerable).
- A copy of the latest deed (including complete restrictions referred to in the deed/title to which the deed/title is subject such as Covenants and Deed Restrictions).
- A signed Purchase and Sales agreement (applicable when the applicant is not yet the owner of record to the subject property).
- A list of abutters (may include abutters of abutters) with property within 300 feet of the subject property. Please include map and lot numbers.

The following information may be needed and/or submitted at the public hearing:

- A. As necessary and/or applicable:
 - Planning Board recommendations
 - Board of Health approval
 - Conservation Commission approval
 - Site Review Committee recommendation
 - Letters from abutters
 - Additional material dictated by the Zoning By-laws
- B. Updated plans and elevations may be submitted for approval.

At a minimum of 14 days before the public hearing, the proposed building activity must be clearly staked out (or otherwise signified) at the subject property to allow the ZBA to conduct a site visit. Each application will be reviewed on the material submitted, in combination with the ABA site visit and public hearing.

**NARRATIVE IN SUPPORT OF THE
APPEAL OF BUILDING INSPECTOR'S DETERMINATION,
SPECIAL PERMIT AND VARIANCE APPLICATION OF
James Adams, Trustee of the Santiago Realty Trust
9 Signal Hill Lane, Chilmark, Massachusetts**

I. Introduction

This Narrative is written in support of the zoning applications of James Adams, Trustee of the Santiago Realty Trust (“Trust”), owner of the property located at 9 Signal Hill Lane in Chilmark (the “Property”). The Trust seeks permission to demolish an existing, 286 square foot garage, attached to the existing, single-family dwelling on the Property, and to construct in its place, a 623 square foot addition containing two (2) bedrooms (the “Project”). The Project is shown more particularly on the following plans which are filed herewith:

- Site Plan in Chilmark, MA prepared for the Santiago Realty Trust by Sourati Engineering Group, LLC dated June 2, 2023
- Total Living Area Sketch in Chilmark, MA prepared for the Santiago Realty Trust by Sourati Engineering Group, LLC dated June 2, 2023
- Architectural Plans titled "Signal Hill Residence" prepared for the Santiago Realty Trust by Outlands Design LLC, last revised June 2, 2023 (5 sheets)
- In connection with this application, the Trust proposes to include an enhanced denitrification component to its proposed, upgraded Title 5 system.

The Trust’s zoning applications are filed in the alternative. The Trust first appeals the Building Inspector Adam Petkus’ zoning determination dated November 7, 2023 (the “Building Inspector’s Determination”) concluding that the project is subject to the provisions of Article 12 of the Chilmark Zoning Bylaws, the Squibnocket Pond District (“SP District”) provisions. A copy of the Building Inspector’s Determination is attached hereto as **Exhibit A**. The appeal of the Building Inspector’s Determination is brought pursuant to M.G.L. c. 40A, §8 and Section 9.9 of the Chilmark Zoning Bylaws.

In the alternative, *and only in the event the Building Inspector’s Determination is upheld by the Board*, the Trust seeks the zoning relief identified by the Building Inspector’s Determination; namely, a Special Permit for the expansion of an existing, single-family dwelling (less than 25% floor area) pursuant to Section 12.4(C)(1) of the Chilmark Zoning Bylaw, and M.G.L. c. 40A, §9, and a Variance from the bedroom count limitation contained in that same provision pursuant to Chilmark Zoning Bylaw Sections 9.3, 9.6 and 9.8, and M.G.L. c. 40A, §10.

II. Property and Project History

The Property was first created by definitive subdivision plan approved by the Planning Board in 1988 (“the 1988 Plan”) and subsequently recorded in the Dukes County Registry of Deeds

in Plan Book 0000C, Page 233, a highlighted copy of which is attached as **Exhibit B**. The Property is shown as Lot 3 on the 1988 plan, consisting of approximately 3.63 acres.

Two years later, in October of 1990, Chilmark Town Meeting adopted Article 12, the SP District provisions. Article 12 created different zones within the SP District, and within those zones, imposed certain coverage, setback, and use limitations. Relevant for our purposes, the new Article 12 prohibited new uses that require buildings within Zone B2 of the SP District. Zone B2 extends from between 100 and 500 feet from the shoreline of Squibnocket Pond. However, pursuant to Section 12.4(E):

“All lots in subdivisions approved by the Planning Board before October 16, 1990, **shall be exempt** from **the use and setback** requirements of **Zone B2** and Section 12.6C.” (Emphasis supplied.)

In 2014, a Building Permit was issued for the construction of the single-family dwelling and accessory structure currently existing on the Property, both of which were constructed within Zone B2. In accordance with Section 12.4(E) of the SP District provisions, the Building Inspector issued the Building Permit in 2014 without requiring any zoning relief from the SP District provisions. A true copy of the Building Permit is attached as **Exhibit C**.

The Trust purchased the Property in June of 2021 (a true copy of their deed is attached hereto as **Exhibit D**). Prior to purchasing the Property, the Trust consulted with its closing attorney and various land use permitting professionals on Island to ascertain what renovations could be undertaken on the Property. Based on their pre-closing due diligence, the Trust closed on the Property with the understanding that additional bedrooms could be added to the existing dwelling. The family spent the next two years planning and designing a renovation of the home. They worked with both the Trustees of Reservations and the Signal Hill Homeowners Association and gained their approvals of the Project. In addition, the Chilmark Board of Health approved the newly designed and upgraded Title 5 septic system that will support the new bedroom count for the dwelling.

On June 2, 2023, the Trust filed an application for a Special Permit pursuant to Article 6 of the Chilmark Zoning Bylaws, Section 6 (“Residential Building Size Regulations”) for the Project. During the initial public hearing on the Project, one of the Zoning Board members queried whether, in addition to Article 6, the Project might also trigger SP District provisions. The hearing was continued while this question was further explored. On November 7, 2023, the Building Inspector rendered the Building Inspector’s Determination (see **Exhibit A**) and concluded that the Article 12 SP District provisions are applicable to the Project, that a special permit pursuant to those provisions was required and that additional bedrooms were prohibited.

III. Relevant SP District Provisions

As noted above, in October of 1990, Chilmark Town Meeting adopted Article 12 of the Bylaws, the SP District provisions. These provisions created different zones within the SP District, and within those zones, certain coverage, setback and use limitations were imposed.

Relevant for our purposes, **Section 12.3(B)(2)** of Article 12 provides that no uses which require buildings are permitted within Zone B2 of the SP District. Zone B2 extends from between 100 and 500 feet from the shoreline of Squibnocket Pond.

Section 12.4(C)(1) of the SP District provisions further provides that, within 100 to 200 feet of wetlands within Zone B2 that drain into Squibnocket Pond:

“The Board of Appeals may grant a special permit for the alteration of an existing single-family dwelling, provided there is no increase in the number of bedrooms, and provided the alteration does not increase the floor area of the houses as of the date of this bylaw by more than 25%. Any such alteration will require Board of Health review.”

As noted above, **Section 12.4(E)** further provides that “[a]ll lots in subdivisions approved by the Planning Board before October 16, 1990 shall be exempt from the use and setback requirements of Zone B2 and Section 12.6C.”

IV. Zoning Relief Sought

With all due respect to the Building Inspector, the Trust is appealing his Determination to this Board and requesting that it find that Article 12 is **not** applicable to the Project because it is proposed on a property that was created prior to the effective date of Article 12 and is thus exempt from the SP District provisions pursuant to Section 12.4(E). In the alternative, and in the event the Board decides to uphold the Building Inspector’s Determination, the Trust seeks a Special Permit pursuant to Section 12.4(C)(1) of the Chilmark Zoning Bylaw to expand the existing dwelling (less than 25% floor area), and a Variance from the bedroom count limitation contained in that same provision.

A. Appeal of Building Inspector’s Determination

1. The Project is Exempt from the SP District Provisions

When it adopted the SP District provisions in 1990, the Town included the express exemption set forth in Section 12.4(E). This exemption provision is clear and unambiguous on its face. It expressly mandates that the use and setback provisions within Zone B2 “shall not” apply to lots in subdivisions approved by the Planning Board before October 16, 1990. The Property was created by the 1988 Plan and is thus exempt from the setback and use provisions of Article 12.

The fact that the language of the Bylaw is clear and unambiguous is determinative. The traditional canons of statutory construction apply to zoning by-laws. *See, e.g., Doherty v. Planning Bd. of Scituate*, 467 Mass. 560, 566-567 (2014). The first and primary rule of statutory construction requires that we look to the statutory language itself as the principal source for ascertaining legislative purpose. *See, e.g., Commonwealth v. Gove*, 366 Mass. 351, 354 (1974). When the meaning of a statute is plain and unambiguous, a court enforces the provision according to its plain wording. *See, e.g., Shirley Wayside Ltd. P’ship v. Bd. of Appeals of Shirley*, 461 Mass. 469, 477 (2012). Importantly, “[n]one of the words of a statute is to be regarded so superfluous.” *Bolster v. Comm’r of Corps. & Tax’n*, 319 Mass. 81, 84-85 (1946).

The language used in Section 12.4(E) is plain and unambiguous and must be applied to enforce its clear wording. *Id.* The plain meaning reading of Section 12.4(E) dictates that the Property is exempt from the Zone B2 use and setback provisions because the lot was created by subdivision plan adopted prior to October 1990. In consequence, the current Project being proposed by the Trust – just like the single-family dwelling proposed by the prior owner in 2014 – is exempt from the SP District use and setback provisions and a Building Permit should issue for the Project, without the need for zoning relief under the SP District provisions. For this reason alone, the Building Inspector’s Determination should be overturned.

2. The SP District Provisions Are Also Inapplicable to the Project

Even if the Project were not wholly exempt from the SP District Provisions pursuant to Section 12.4(E) (it is), there are three additional reasons the Building Inspector’s Determination is in error. After concluding that the Project was not exempt from the SP District provisions, the Building Inspector further concluded that Project required a Special Permit under Section 12.4(C)(1) and that there could be no increase in the bedroom count. *See, Exhibit A.*

Section 12.4(C)(1) provides that, within 100 to 200 feet of wetlands within Zone B2 that drain into Squibnocket Pond:

“The Board of Appeals may grant a special permit for the alteration of an existing single-family dwelling, provided there is no increase in the number of bedrooms, and provided the alteration does not increase the floor area of the houses as of the date of this bylaw by more than 25%. Any such alteration will require Board of Health review.”

This provision is inapplicable to the Property and to the Project for three distinct reasons.

First, the provisions of Section 12.4(C)(1) constitute use and setback provisions. Specifically, these provisions govern single-family dwelling uses (a zoning “use” provision) within 100 feet to 200 feet of a wetland draining into Squibnocket Pond (a zoning “setback” provision). Because this provision contains both use and setback limitations, and because the Property was created prior to October 16, 1990, it is not applicable to the Project under the exemption provisions of Section 12.4(E).

Second, by its express language, Section 12.4(C)(1) only applies to dwellings that existed “as of the date of the bylaw.” The clear and unambiguous language of the provision compares the proposed bedroom count and the proposed floor area to the floor area and bedroom count of the dwelling *as it existed “as of the date of this bylaw.”* Where no dwelling existed on the Property “as of the date of this bylaw” this provision is inapplicable.

Third, the limitation on the bedroom count set forth in Section 12.4(C)(1) is an impermissible regulation and restriction of the “interior area” of a single-family dwelling in violation of the Massachusetts Zoning Enabling Act (the “**Zoning Act**”). *See* Chapter 40A. Specifically, Section 3A of the Zoning Act states:

“No zoning ordinance or by-law shall regulate or restrict the interior area of a single-family residential building.”

Where Section 12.4(C)(1) seeks to limit the number of bedrooms within a single-family dwelling, it is a direct restriction on the “interior area” of a single-family dwelling and is thus impermissible under Chapter 40A. To be sure, Section 12.4(C)(1) directly restricts the interior area of single-family dwellings and includes no direct nor indirect correlation to or impact on its exterior bulk or dimensions. Indeed, the way Section 12.4(C)(1) is drafted, a project could involve the addition of bedrooms within an existing footprint and the bedroom count restriction would still apply. It is thus purely an interior area limitation, wholly unrelated – either directly or indirectly – to the “reasonable dimensional, bulk and density requirements” that are otherwise permitted under Chapter 40A¹. Thus, the bedroom count provision within Section 12.4(C)(1) is an impermissible restriction on the “interior area” of a single-family dwelling under Chapter 40A, and for this reason as well, should not be applied to the Project.

3. Building Inspector’s Determination Should Be Overturned

In light of the foregoing, the Trust respectfully requests that the Zoning Board overturn the Building Inspector’s Determination and conclude that the Project may proceed without relief under Article 12 because the Property was created by subdivision plan before October 1990 and is thus exempt from the SP District provisions in their entirety pursuant to Section 12.4(E). Moreover, even if the SP District Provisions applied (they do not), the Project can be undertaken as of right and without relief under Section 12.4(C)(1), because: i) the limitations set forth in Section 12.4(C)(1) constitute “use” and “setback” provisions, and thus do not apply to the Project because it is proposed on a Property created by subdivision plan prior to October 16, 1990; ii) by its express language, Section 12.4(C)(1) only applies to dwellings that existed “as of the date of the bylaw”; and iii) as a legal matter, the bedroom provision constitutes a limitation on the “interior area” of a single-family dwelling, and is therefore an impermissible restriction under Massachusetts General Laws Chapter 40A, Section 3. The Trust thus requests that the Board grant its appeal and overturn the Building Inspector’s Determination.

B. Alternative Request for a Special Permit Pursuant to Section 12.4(C)(1) of the Bylaws For the Expansion of a Single-Family Dwelling (Less than 25% floor area)

In the event the Building Inspector’s Determination is upheld by the Board, then the Trust alternatively applies for the zoning relief identified by the Building Inspector’s Determination.

First, the Trust seeks a Special Permit for the expansion of an existing, single-family dwelling pursuant to Section 12.4(C)(1) of the Chilmark Zoning Bylaw, and M.G.L. c. 40A, §9. Specifically, Section 12.4(C)(1) authorizes the Board of Appeals to grant Special Permits for the expansion of single-family dwellings within the Zone B2, “provided the alteration does not increase the floor area of the house as of the date of this bylaw by more than 25%.” The term

¹ Notably, only the bedroom count provision is an impermissible restriction on “interior area” under Chapter 40A. As a floor area requirement, the 25% floor area limitation set forth in Section 12.4(C)(1) is lawful under Chapter 40A. In *81 Spooner Road, LLC v. Town of Brookline*, 452 Mass. 109, 117 (2008), the Supreme Judicial Court found that floor area requirements were permissible bulk and dimensional-type provisions with only incidental effects on the interior area of single-family dwellings. As further detailed in this letter, the proposed Project is well under the 25% floor area limitation.

“floor area” is defined in Section 2.11 of the Chilmark Zoning Bylaw as: “The area of a building or structure, determined by adding all horizontal areas of the several floors, above grade level, having a high clearance of 6 feet or more, as measured from the interior faces of the exterior walls.”

As shown on the Plans accompanying this application, the floor area of the existing single-family dwelling is 3,695 s.f. The floor area of the proposed single-family dwelling is 4,318 s.f. Thus, the proposed alteration increases the floor area of the dwelling by only 623 s.f., or by only 16%. The Project therefore meets the provisions of Section 12.4(C)(1).

The Trust has already obtained Board of Health approval for an upgraded, Title 5 compliant septic system for the proposed Project. As part of this application, the Trust proposes to add an enhanced denitrification component to its previously proposed, upgraded Title 5 system. Where the SP District was “created in order to protect the waters, tributaries, groundwater and land abutting Squibnocket Pond” the addition of the denitrification component to the Project septic system will serve to greatly further that goal by reducing the total nitrogen (TN) levels in the effluent at this site.

The Board may thus issue the Trust a Special Permit Pursuant to Section 12.4(C)(1) because the proposed Project is in harmony with the purposes and general intent of the SP District provisions, and because the proposed alteration will not increase the floor area of the dwelling by more than 25%. Thus, the Trust respectfully asks the Board to vote to issue the Special Permit.

C. Alternative Request for a Variance From the Bedroom Limitation Set Forth in Section 12.4(C)(1) of the Bylaws

Section 12.4(C)(1) further authorizes the Board to issue special permits allowing the expansion of a single-family residential dwelling in Zone B2 “provided there is no increase in the number of bedrooms”. The Building Inspector cited this provision to conclude that additional bedrooms were prohibited on site. The Project includes a 623 square foot addition containing two (2) bedrooms. Therefore, in the event the Board of Appeals upholds the Building Inspector’s Determination that Article 12 applies to the Property, a Variance would be required from this provision.

Pursuant to the provisions of Sections 9.3, 9.6 and 9.8 of the Chilmark Zoning Bylaw and Massachusetts General Laws, Chapter 40A, Section 10, an applicant for a Variance must demonstrate the following:

- a) a literal enforcement of the provisions of this chapter would involve a substantial hardship, financial or otherwise, to the petitioner or appellant;
- b) the hardship is 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; and

- c) desirable relief may be granted without either substantial detriment to the public good, or nullifying or substantially derogating from the intent or purpose of the bylaw.

The Trust's Project meets the Variance criteria outlined above. First, a literal enforcement of the bedroom limitation would involve a substantial hardship. The Trust purchased the Property for over Eleven Million Dollars. *See, Exhibit D.* The family closed on the home only after consulting with land use professionals on Island and upon the understanding that they would be able to add bedrooms to the existing dwelling. They will not be able to realize their substantial investment backed expectations if they are not able to add the planned bedrooms to the existing dwelling.

Second, the Trust's hardship in this regard is owing to circumstances relating to the shape and topography of this Property and which especially affect it more than the general zoning district in which it is located. As shown on the Chilmark Assessor's GIS Map attached hereto as **Exhibit E**, the Property's shape is unique among the residential house lots that border Squibnocket Pond. The Property is wider than it is deep. Its shallow depth means there is no where on the Property that is located outside of Zone B2, which extends 500' from the Pond. The other lots fronting on Squibnocket Pond are primarily either undeveloped, "open space" lots, or they are deeper than they are wide, and thus afford greater opportunity to site a dwelling outside Zone B2.

Finally, desirable relief (the Variance) may be granted without substantial detriment to the public good, as well as without nullifying or substantially derogating from the intent or purpose of the bylaw. As noted above, as part of its alternative request for zoning relief under Section 12.4(C)(1), the Trust proposes to add an enhanced denitrification component to its previously proposed, upgraded Title 5 system. New innovative/alternative (I/A) systems such as the one being proposed by the Trust include a denitrification chamber between septic tanks and leaching that converts nitrates to nitrogen gas for a cleaner effluent in the leaching process. Where the SP District was "created in order to protect the waters, tributaries, groundwater and land abutting Squibnocket Pond" the addition of the denitrification component to the Project septic system will serve to greatly further that goal by reducing the total nitrogen levels in the effluent at this site.

Accordingly, the Trust's Project meets the Variance requirements of Sections 9.3, 9.6 and 9.8 of the Chilmark Zoning Bylaw and Massachusetts General Laws, Chapter 40A, Section 10. The Trust therefore respectfully requests that the Board grant its request for a Variance from the bedroom limitation provision set forth in Section 12.4(C)(1).

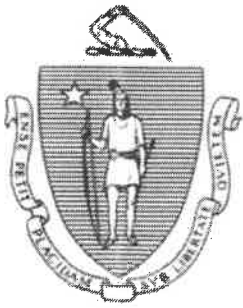
V. Conclusion

For the reasons stated above, the Trust respectfully requests that the Board overturn the Building Inspector's Determination and instead conclude that the Project is exempt from the entirety of the SP District provisions. In the alternative, *and in the event the Board decides to uphold the Building Inspector's Determination*, the Trust respectfully asks the Board to grant it the zoning relief identified by the Building Inspector's Determination; namely, a Special Permit pursuant to Section 12.4(C)(1) for the expansion of an existing, single-family dwelling (less than

25% floor area) and a Variance from the bedroom count limitation contained in that same provision.

The Trust thanks the Board in advance for its careful consideration of these applications. Should the Board have any questions regarding the requested relief, the Trust's project team will be in attendance at the December 14, 2023 hearing, and can answer those questions at that time.

EXHIBIT A



Town of Chilmark

The Commonwealth of Massachusetts



Sarah A. Turano-Flores
November 7, 2023

Via E-mail (sturano-flores@nutter.com)

Sarah A. Turano-Flores, Esq.
Nutter McClennan & Fish, LLP
Hyannis, MA 02601

Re: Zoning Determination Request – 9 Signal Hill Lane, Chilmark, Massachusetts

Dear Ms. Flores,

I received an email from you on 10/30/23 asking for a zoning determination on the proposed scope of work (the “Project”) at 9 Signal Hill Lane (the “Site”) and the applicability of certain provisions of the Town of Chilmark’s (the “Town”) Zoning By-Laws (the “ZBL”) set out in Article 12 establishing the Squibnocket Pond District (the “SPD”), a zoning overlay district in which the Site is located. Attached to the email was a thoughtfully constructed letter, dated 10/27/2023, outlining various reasons why the Project should be allowed, as a matter of right, under Article 12. (I recognize that the owners of the Site are in the middle of ongoing proceedings before the Zoning Board of Appeals (the “ZBA”) seeking a special permit under Section 6.11, which have been continued in order to address legal issues which arose during the course of those proceedings under Article 12 and the SPD.)

You and I spoke on the phone on 10/31 to discuss the matter further. I have given your arguments careful consideration. It is, however, my determination that the exemption set out in Section 12.4.E does not relieve the owners from the requirements Section 12.4.C.1: they must seek a special permit to alter the existing single family dwelling and they are prohibited from increasing the number of bedrooms on the Site.

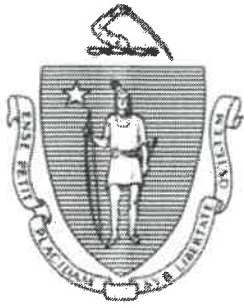
The text of the applicable provisions is as follows:

C. Zone 82 and Zone C from 100 feet to 200 feet from wetland or streams draining to Squibnocket Pond.

1. The Board of Appeals may grant a Special Permit for the alteration of an existing single-family dwelling, provided there is no increase in the number of bedrooms, and provided the alteration does not increase the floor area of the house as of the date of this bylaw by more than 25%. Any such alteration will require Board of Health review.

E. Exemptions

1. All lots in subdivisions approved by the Planning Board before October 16, 1990 shall be exempt from the use and setback requirements of Zone B2 and Section 12.6C.



Town of Chilmark

The Commonwealth of Massachusetts



Sarah A. Turano-Flores
November 7, 2023
Page 2

The exemption contained in Section 12.4.E permitted the issuance of a building permit in 2014 for a single family dwelling to be constructed on the Site, which was at that time a vacant lot in a subdivision approved by the Planning Board prior to October 16, 1990. Absent the exemption, a single family dwelling would not have been an allowed use on the Site. Section 12.4.E does not, in my opinion, provide a basis for the Project to avoid review under Section 12.4.C.1, which addresses alterations or expansions of existing uses. The proviso in the second clause of Section 12.4.C.1 – “provided the alteration does not increase the floor area of the house as of the date of this bylaw by more than 25%” – applies only to a proposed floor area increase and does not govern the prohibition on additions of bedrooms contained in the first clause of that provision, which applies to all dwellings, whether established before or after October 16, 1990. Finally, in my opinion, G. L. c. 40A, § 3, par. 2 does not exempt the Project from the limitations contained in Section 12.4.C.1, which does not regulate or restrict “the interior area” of the space in the proposed work but rather imposes legitimate limitations on expansions or alterations of existing uses, consistent with the purposes of the SPD and its fragile environmental attributes.

As the Zoning Enforcement Officer for the Town I have determined that the proposed addition of bedrooms at 9 Signal Hill is not allowed under Section 12.4.C.1 of the ZBL. You have thirty (30) days to appeal my determination to the ZBA.

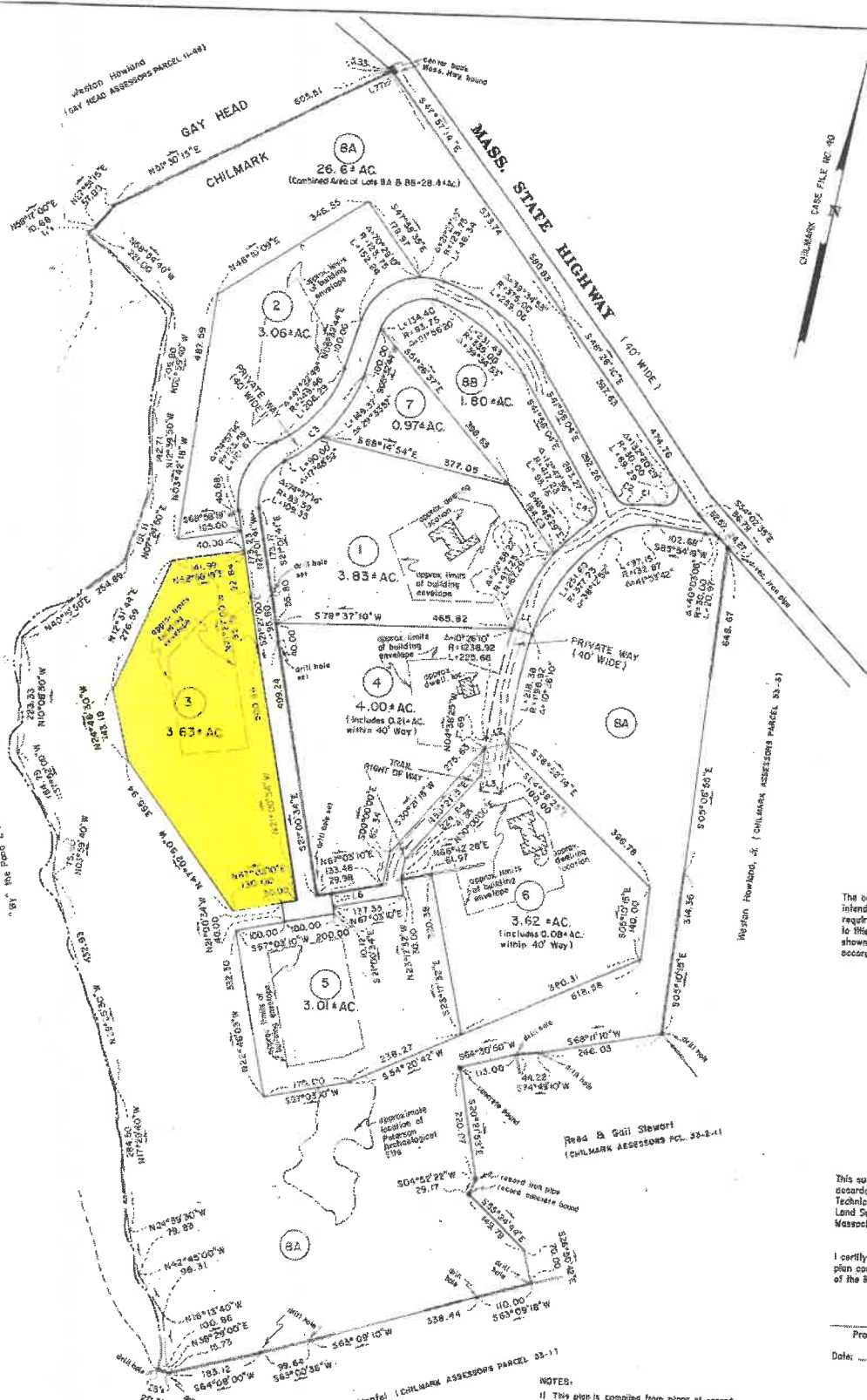
Please feel free to reach me by phone or email do discuss this matter further.

Sincerely,

Adam Petkus
Building Inspector/Zoning Officer
Town of Chilmark, MA
Email: buildinginspector@chilmarkma.gov
Phone: (508)-645-2103
Cell: (508)-560-5192

cc: Alison Kisselgoff, Administrator, ZBA
Michael A. Goldsmith, Esq.

EXHIBIT B



The verifications shown herein are intended to meet Registry of Deeds requirements and are not a certification to title or ownership of the property shown. Owners of adjoining properties are according to current town assessor's records.

This survey and plan were prepared in accordance with the Procedural and Technical Standards for the Practice of Land Surveying in the Commonwealth of Massachusetts.

I certify that the preparation of this plan conforms with the rules and regulations of the Registry of Deeds effective Jan. 1, 1976.

Donald H. Hall
Professional Land Surveyor

Date: 14 November 1987



PLAN OF LAND
IN
CHILMARK, MASS.
PREPARED FOR
WESTON HOWLAND, JR.

SCALE: 1" = 100' NOVEMBER 14, 1987
SCHOFIELD BROTHERS, INC.
REGISTERED
PROFESSIONAL ENGINEERS & LAND SURVEYORS
STATE ROAD, P.O. BOX 339, VINEYARD HAVEN, MA 02568



REVISED: DECEMBER 14, 1987

CURVE DATA

C1	Δ = 18° 40' 00"	R = 72.57	L = 56.32
C2	Δ = 70° 48' 30"	R = 30.00	L = 37.09
C3	Δ = 47° 22' 49"	R = 29.46	L = 23.67
C4	Δ = 83° 29' 47"	R = 35.00	L = 43.72

LINE DATA

L1	S 86° 12' 16" E.	40.00
L2	S 61° 30' 12" W	43.79
L3	S 86° 21' 15" W	40.00
L4	N 04° 38' 25" W	100.00
L5	N 04° 38' 25" W	92.31
L6	S 21° 00' 34" E	28.88

Approval Under the Subdivision Control Law is Required:

CHILMARK PLANNING BOARD
Approved by Planning Board 11 April 1988

Saw covenants recorded at County of Duke County Registry of Deeds:

Book _____ Page _____
Book _____ Page _____

I hereby certify that no notice of appeal was received during the twenty days next after receipt and recording of notice from the Planning Board of the approval of this plan.

Carol W. Spill
Town Clerk, Chilmark, Mass.

Date: April 11, 1988

- NOTES:
- This plan is compiled from plans of record. See Chilmark Case File Nos. 40 B 145. Perimeter Area = 53.11 Acres
 - Subdivision design by Vineyard Open Land Foundation, West Tisbury, Mass.
 - Until such time as each of the three existing houses (on Lots 1, 4, and 6) are transferred outside of the Howland family, each house may remain a part of the existing water system with the well on Lot 4.
 - Lots 2, 3, and 5 may be transferred within the Howland family prior to installation of a well and obtaining a septic design for each site. Prior to the transfer of Lots 2, 3, or 5 outside of the Howland family, a well shall be installed on the lot and a disposal works permit shall be obtained from the Board of Health.
 - No guest houses will be constructed on the lots shown on this plan.
 - Lots 7 and 8B are unbuildable for residential structures.
 - The roadway shown on this plan is approved for only the lots shown on the plan.

EXHIBIT C

INSPECTION RECORD

INSPECTION	BY	DATE
<u>ELECTRICAL</u>		
ROUGH		
FINAL		
<u>PLUMBING</u>		
ROUGH		
FINAL		
<u>SANITARY</u>		
1ST		
FINAL		
<u>SMOKE DETECTORS</u>		
FINAL		
<u>GAS</u>		
FINAL		
<u>BUILDING</u>		
FOUNDATION		
SHELL		
INSULATION		
FINAL		



TOWN OF CHILMARK
BUILDING DEPARTMENT

IN ACCORDANCE WITH THE MASSACHUSETTS
STATE BUILDING CODE SEC. 114 & 115 THIS

BUILDING PERMIT

IS ISSUED TO Richardas Negroponte (OWNER)

TO Build a DR

AT 3 Signal Hill Lane (STREET) 34-123

USE GROUP R3

CONSTRUCTION TYPE 5B

HEIGHT 13' (FEET) 1 (STORIES)

AREA 3262 (SQ. FT/FLOOR) 3262 (TOTAL)

FINISH BASEMENT 2162A

ALL WORK SHALL CONFORM TO THE APPROVED APPLICATION AND PLANS.
THIS PERMIT SHALL BECOME INVALID UNLESS THE WORK HAS COMMENCED
WITHIN 6 MONTHS, OR IF WORK IS SUSPENDED FOR A PERIOD OF ONE (1)
YEAR.

PERMIT NO 41 DATE ISSUED 2/24/14

BUILDING OFFICIAL General Jones

**APPLICATION FOR BUILDING PERMIT
CHILMARK, MASS.**

IF YOU HAVE WILDFLOWERS ON YOUR PROPERTY WHICH ARE GOING TO BE BULLDOZED, THE GARDEN CLUB'S WILDFLOWER COMMITTEE WOULD BE INTERESTED TO COME AND HELP YOU IDENTIFY AND SEE ABOUT RELOCATING THEM TO SAVE THEM. PLEASE CALL CAROL & ED KNAPP (845-9692) OR THE WAKEMAN CENTER (593-7233)

Owner: NICHOLAS NEGROPONTE Date: 4/28 2014
 Owner's Address: 3 SIGNAL HILL LANE CHILMARK City: MA
 Location of building: 3 SIGNAL HILL LANE Assessor's Parcel #: 34 1.3 State: MA

Please check items below that apply to you

CONSTRUCTION: New () Alter () Add () Demolish () Move ()
 TYPE OF OCCUPANCY: One Family Residence () Garage () Shed () Pool () Court ()
 Other: MAN HOUSE & DETACHED B.R.

Is proposed development within a district of Critical Planning Concern _____
 Is proposed development within 100 feet of a wetland NO

FOUNDATION: Basement Yes () No () Walls: Poured Concrete () Blocks () Other _____
 Mason's name: BILL HOWELL Address: P.O. B. 1087 O.P. MA 02657

STRUCTURE: Frame () Brick () Stone () Conc. Block () Other STEEL
 ROOF: Gable () Shed () Roof Height at Mean Grade: 13 FT FLAT

PLUMBING: Connect to Cesspool _____ Septic Tank _____ Field _____
 Size _____ No. _____ Size _____ Field 12x50
 Is there an approved working well YES Size _____

Connect to Town Water () Other water supply _____
 Number of fixtures: W.C. 5 Lav. 5 Bath tubs 1 Shr. 4 Sinks 6 Other _____
 Dishwasher 1 Automatic Washer 1 Disposal 0

Plumber's name: WALTER SMITH Address: EDS MA

HEATING: Heat by Coal () Oil () Gas () Electric () Hot Air () Hot Water () Space ()

ELECTRICAL WORK must conform with Mass. Electric Code
 Electrician's name: BONNITT ELECTRIC Address: CHILMARK

Name

Vertical handwritten note: Negroponte, N

Please answer the following questions Approximate date of construction 5/1/2014
 Size of Building 3,500 Addition INCLUDE DETACHED BR #Fl. 1 Height from mean grade 13'
 Extent of Alterations _____ Is there a building on this lot now? NO If so, how occpd. _____
 Lot Size (sq. ft.) 3,633 Bought from WALTER HOWELL OCCUPANT IN 21 Date deed recorded _____
 Covenant () Bond () Release () _____

Date lot was lawfully laid out by plan or deed and recorded _____
 Architect's name: OLSEN KUNDIG Address: SCOTTIS MA
 General Contractor's name: TATE BUILDERS INC Address: 108 HUDSLOF WAY U.H. 02658

ONE (1) PLAN AND SPECIFICATIONS OF INTENDED CONSTRUCTION MUST ACCOMPANY THIS APPLICATION

Be sure to fill in Plot Plan and Data on inside of application
 I estimate the value of this Work Will Be \$ 6M and that the building will conform to the requirements of the Law.

Applicant's Signature: [Signature]
 Address: 108 HUDSLOF WAY
 City: U.H.
 Phone: 508.560.0949

Permit Number: 411
 Date Issued: April 14
 DWP/

DWP
 BP
 FREE PAID
 \$ 1000

Board of Health Regulations prohibit any underground fuel storage tanks.

FOUNDATION: Material Poured CONCRETE Height 11'-0" 00" Thickness 8" 10" 14"
 Footings: Size 24" x 36" Depth below grade MIN 48" MAX 11'-6" Spacing _____

Kind of columns in cellar _____ Size _____
 BASEMENT: Slab () Crawl () Full () Below grade () At grade () Finished: Yes () No ()

FRAME: Size of girders W 8 X 21 (OTHER) Sills 2 X 6
 Size of floor joists 9 1/2" LVL Spacing on centers 16/18 16-OC Longest span 18 FT
 Size of ceiling joists STEEL Spacing on centers _____ Longest span _____
 Size of rafters STEEL Spacing on centers _____ Longest span _____

Lumber to be used above: Fir or Hem. () Spruce () Other _____
 Type & Size of sheathing on walls 5/8 CDX Weatherproofing of exterior walls WOOD & MOTHE SIDING

Type & Size of sheathing on roof KOMPOR Weatherproofing of roof KOMPOR on PLY
 HEATING: Kind of chimney MASONRY Number of fires 1 Will there be a fireplace? YES

ROOMS: Living Rm (/) Dining Rm (/) Kit: (/) Den () Family Rm (/) No. of Bedrooms 5 No. of Baths 4
 Other _____ Total number of rooms (after add/alt) 14

GARAGE: Attached () Detached () Under house () Size 12 X 22

FOR OFFICE USE ONLY

AREA: Living 1st floor	2nd floor	Basement	Total
Non living 1st floor	2nd floor	Base	Other
			Total

RECORD OF APPROVALS

Permit Received _____
 Planning: (Dis) Approved _____
 Approval: Sec _____ Par _____
 Engineer: _____
 Construction: (Dis) Approved _____
 V. C.: _____
 D.R.I.: (Dis) approved _____
 D.C.P.C.: (Dis) approved _____
 Planning Board approval _____
 (if required)

RECORD OF FINAL INSPECTIONS

Footings _____ Date _____
 Foundation _____ Date _____
 Frame _____ Date _____
 Plaster _____ Date _____
 Plumbing _____ Date _____
 Oil Burner _____ Date _____
 Electric Wiring _____ Date _____
 Septic Tank _____ Date _____

EXHIBIT D

Dukes County Registry of Deeds
Electronically Recorded Document

This is the first page of the document - Do not remove

Recording Information

Document Number : 6358
Document Type : DEED
Recorded Date : August 05, 2021
Recorded Time : 11:05:04 AM

Recorded Book and Page : 01589 / 890
Number of Pages(including cover sheet) : 4
Receipt Number : 235509
Recording Fee (including excise) : \$51,749.12

MASSACHUSETTS EXCISE TAX
Dukes County ROD #8 001
Date: 08/05/2021 11:05 AM
Ctrl# 045487 20887 Doc# 00006358
Fee: \$51,594.12 Cons: \$11,314,375.00

Dukes County Registry of Deeds
Paulo C. DeOliveira, Register
81 Main Street
PO Box 5231
Edgartown, MA 02539
508-627-4025
www.Masslandrecords.com

MARTHA'S VINEYARD LAND BANK FEE		
PAID	\$226,287.50	
EXEMPT		<i>M. McManus</i>
63626	08/05/2021	
NO.	DATE	CERTIFICATION

Quitclaim Deed

We, **Nicholas Negroponte and Deborah Z. Porter**, of Chilmark, Massachusetts, in consideration of **Eleven Million Three Hundred Fourteen Thousand Three Hundred Seventy Five and 00/100 (\$11,314,375.00) DOLLARS** paid, grant to **James Adams, Trustee of the Santiago Realty Trust, dated July 30, 2021** recorded herewith, with mailing address of c/o Mark E. Landesman, ML Management Partners, L.L.C, 888 Seventh Avenue, 4th Floor, New York, NY 10106.

with quitclaim covenants.

The land with the buildings and improvements thereon situated in Chilmark County of Dukes County, Massachusetts, bounded and described as follows:

That parcel of land with the improvements thereon, situated off the southwesterly side of the Mass. State Highway (South Road) in the Town of Chilmark, County of Dukes County, Commonwealth of Massachusetts, being shown as Lot 3, on a plan of land in Chilmark, Massachusetts prepared for Weston Howland, Jr., Scale 1" = 100' dated November 14, 1987, recorded with the Dukes County Registry of Deeds as Chilmark Case File No. 233, to which plan reference is hereby made for a more particular description thereof and containing 3.63 acres of land more or less.

The premises are conveyed subject to and with the benefit of all rights, rights of way, easements, appurtenances, reservations, and restrictions of record, insofar as the same are in force and applicable.

Grantor hereby certifies, under the pains and penalties of perjury, that the premises conveyed herein is not their principal residence, nor the principal residence of any spouse, former spouses, partners or former partners in a civil union, nor of any other Persons, and is therefore not homestead property pursuant to M G L ch. 188.

For Grantor's title see deed dated December 10, 2014, recorded with the Dukes County Registry of Deeds in Book 1365, Page 302.

[Remainder of page intentionally left blank. Signature page follows.]


Property Address: 9 Signal Lane, Chilmark, MA, 02535

Executed as a sealed instrument this 30th day of June 2021.

Nicholas Negroponte
Nicholas Negroponte

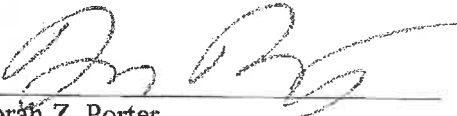
Commonwealth / State of Massachusetts
Dukes County, ss.

On this 30 day of June, 2021 before me, the undersigned notary public, personally appeared Nicholas Negroponte, proved to me through satisfactory evidence of identification, which was driver's license / passport / other: _____ (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, and swore or affirmed to me that the contents of the document with respect to homestead rights are truthful and accurate to the best of his knowledge and belief.

 CAROLINE R. FLANDERS
Notary Public
Commonwealth of Massachusetts
My Commission Expires
November 11, 2022


Caroline R. Flanders
Notary Public
My Commission Expires: 11/11/2022


Executed as a sealed instrument this 27 day of July 2021.


Deborah Z. Porter

Commonwealth / State of Massachusetts
Dukes County, ss.

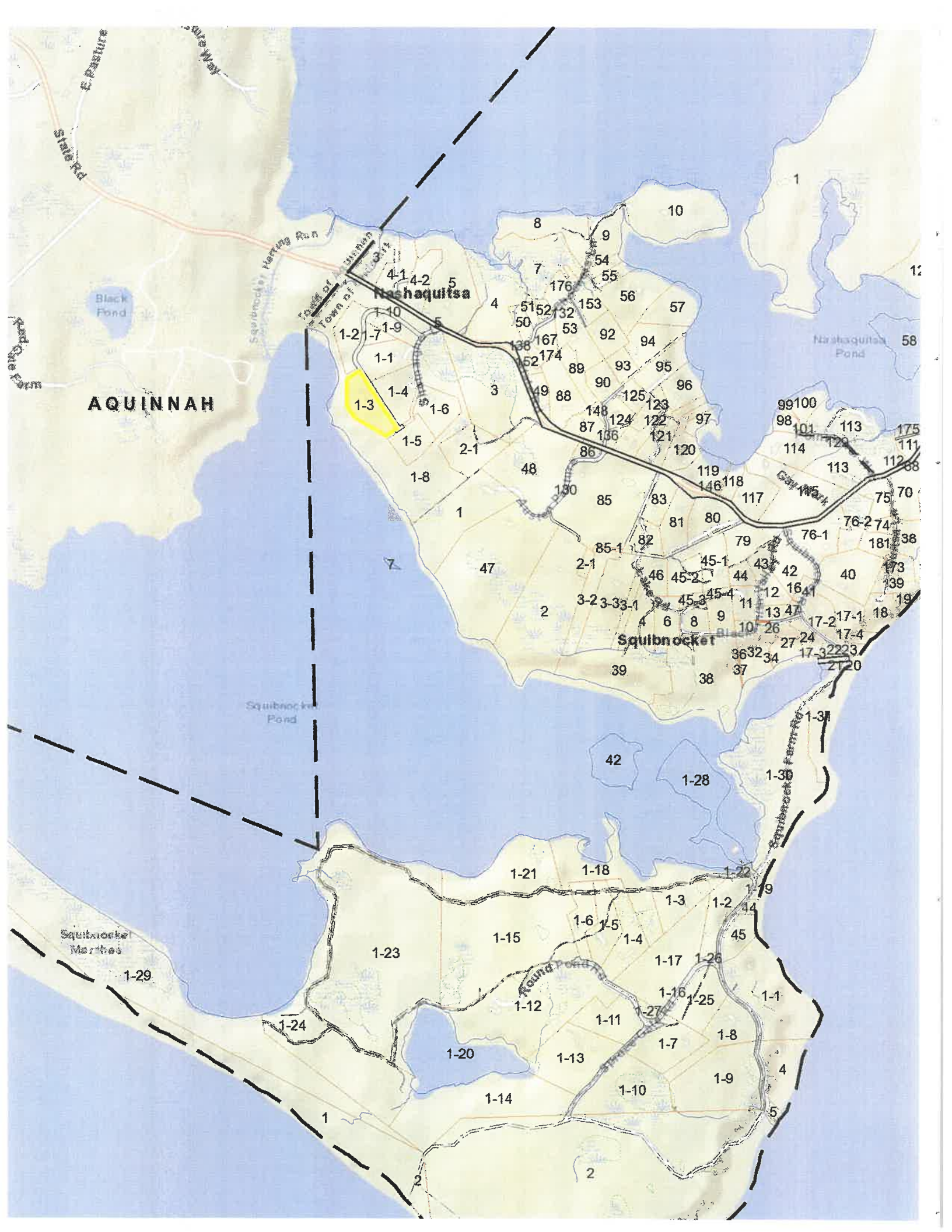
On this 22 day of July, 2021 before me, the undersigned notary public, personally appeared Deborah Z. Porter, proved to me through satisfactory evidence of identification, which was driver's license / passport / other: _____ (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose, and swore or affirmed to me that the contents of the document with respect to homestead rights are truthful and accurate to the best of her knowledge and belief.

 **CAROLINE R. FLANDERS**
Notary Public
Commonwealth of Massachusetts
My Commission Expires
November 11, 2022



Notary Public
My Commission Expires: 11/11/2022

EXHIBIT E





300 foot Abutters List Report

Chilmark, MA
November 17, 2023

Subject Property:

Parcel Number: 034-001-03
CAMA Number: 034-001-03
Property Address: 9 SIGNAL HILL LN

Mailing Address: ADAMS JAMES TRUSTEE ;SANTIAGO
REALTY TRUST
C/O M LANDESMAN/ ML MGMNT LLC
888 SEVENTH AVE 4TH FL
NEW YORK, NY 10106

Abutters:

Parcel Number: 034-001-01
CAMA Number: 034-001-01
Property Address: 5 SHOTNAIGHER LN

Mailing Address: BERNARD PETER J & SUSAN P
PO BOX 187
CHILMARK, MA 02535

Parcel Number: 034-001-02
CAMA Number: 034-001-02
Property Address: 0 SIGNAL HILL LN

Mailing Address: BERNARD PETER J TRUSTEE
SIGNAL HILL RD RE TRUST PO BOX 187
CHILMARK, MA 02535

Parcel Number: 034-001-04
CAMA Number: 034-001-04
Property Address: 11 SHOTNAIGHER LN

Mailing Address: HOWLAND WESTON III
WOODVALE FARM 40 PAGE RD
LINCOLN, MA 01773

Parcel Number: 034-001-05
CAMA Number: 034-001-05
Property Address: 0 SIGNAL HILL LN

Mailing Address: HOWLAND SUSANAH B & CHARLES E
CLAPP III
W HOWLAND III 2012 IRREV TRUST 75
FEDERAL ST
BOSTON, MA 02110

Parcel Number: 034-001-06
CAMA Number: 034-001-06
Property Address: 16 SHOTNAIGHER LN

Mailing Address: RUDNER ANNE
PO BOX 643
CHILMARK, MA 02535

Parcel Number: 034-001-07
CAMA Number: 034-001-07
Property Address: 0 SIGNAL HILL LN

Mailing Address: HOWLAND WESTON III, TCW&PB TRS
SIGNAL HILL HOMEOWNRS ASSOC TR
75 FEDERAL ST STE# 1100
BOSTON, MA 02110

Parcel Number: 034-001-08
CAMA Number: 034-001-08
Property Address: 0 SIGNAL HILL LN

Mailing Address: HOWLAND WESTON III, TCW&PB TRS
SIGNAL HILL HOMEOWNRS ASSOC TR
75 FEDERAL ST STE# 1100
BOSTON, MA 02110



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11/17/2023

Page 1 of 1



S426 Santiago Realty Trust, 9 Signal Hill Lane

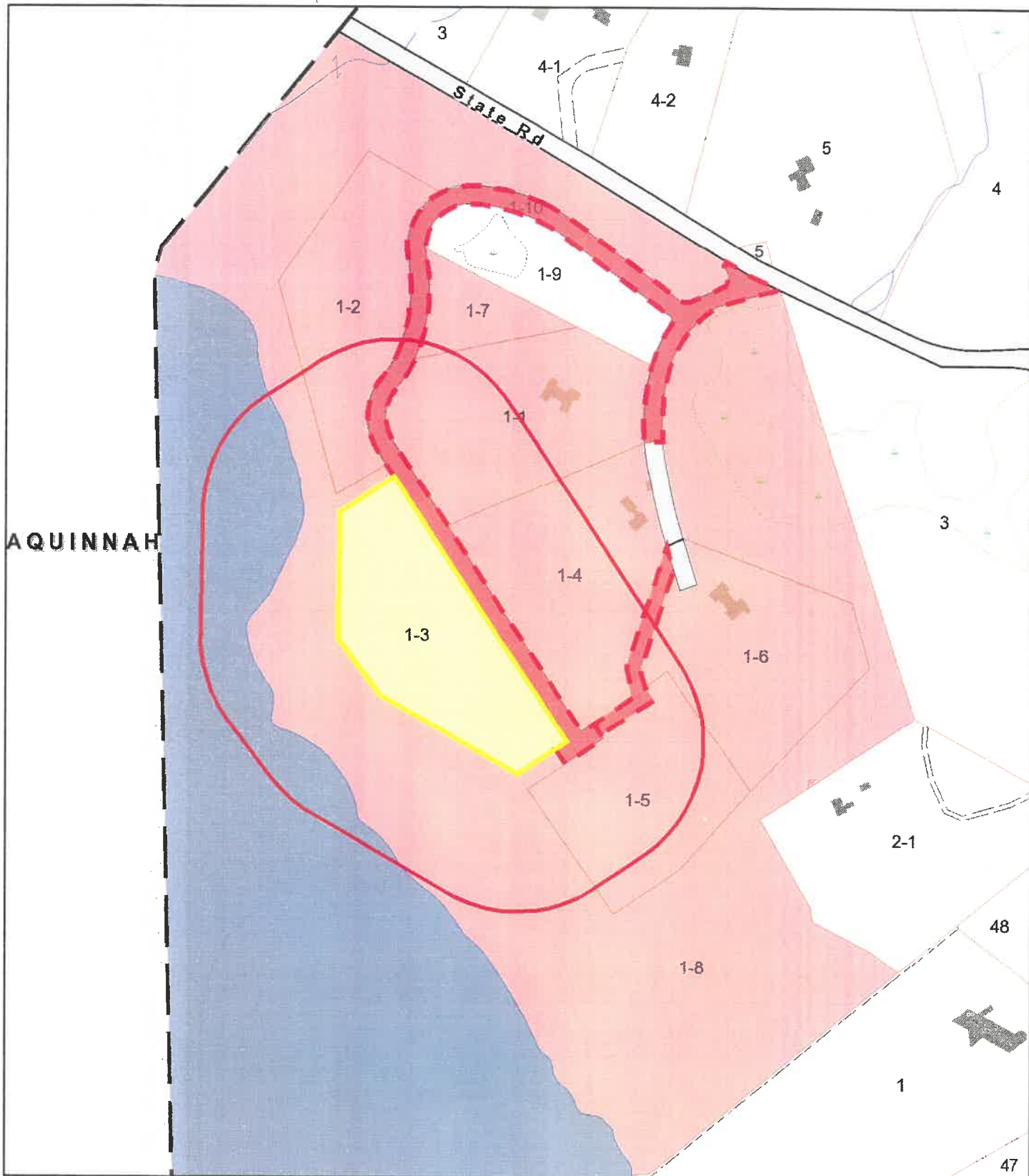
Chilmark, MA



November 17, 2023

1 inch = 300 Feet

www.cai-tech.com



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