



**TOWN OF HARWICH**  
732 Main Street, Harwich, Massachusetts 02645

**ZONING BOARD OF APPEALS**

**Notice of Appeal/Application and Petition for Public Hearing, ("APPLICATION")**

**This Application does not apply to Comprehensive Permits.**

**Please refer to the Rules and Regulations of the Town of Harwich Board of Appeals for documentation requirements.**

This original completed and signed notice ("Application"), along with a certified abutters list and twelve (12) copies of all plans, sketches, statements, site plans or other supporting documents per the attached checklist must be presented to the Building Department prior to being filed with the Town Clerk. The required documentation, **ALL** of which must be submitted on the date of filing, is listed on this Application. **THE RULES AND REGULATIONS ("RULES") OF THE TOWN OF HARWICH BOARD OF APPEALS APPLY TO ALL APPEALS AND APPLICATIONS AND SHOULD BE CONSULTED BEFORE FILING AN APPEAL OR APPLICATION TO ENSURE COMPLIANCE WITH THEM.**

To the Zoning Board of Appeals, Harwich, MA:

(We, I) hereby petition your Board for a public hearing on the request for action checked below:

- Appeal from decision of or refusal of permit application by the Building Inspector, Selectmen or Planning Board or other administrative officer or officers.
- Application for a Variance from requirements of the Harwich Zoning By-Law.
- Application for a Special Permit that is subject to Board of Appeals approval.

I/we am/are the owner[s]/agent of the property involved in this petition, which is located in Harwich, MA at the following address:

182 Route 137, Harwich, MA 02645. Said property is further described on

Assessor's Map #97 and Parcel # S1-1-0 located in the Six Ponds/DWRPD and C-H-2 Zoning District as shown on the attached plan.

Describe Petition/Appeal: See attached

Relief requested - Cite specific Bylaw Section(s): See attached correspondence from Building Commissioner.

Signature of Owner (or Agent) [Signature] Date 7/27/23  
(Written authorization by the owner must accompany an Application signed by agent.)

Owner Name SBS Properties, LLC agreed purchaser from Peter S. Stagg, Trustee of Stagg Realty Trust  
Phone No. 508-432-1643

Mailing Address: SBS Properties, LLC-59 Commerce Park Rd., Brewster, MA 02631  
Peter S. Stagg - P.O. Box 1423, E. Harwich, MA 02645

Agent Name: William D. Crowell, Esq. Phone No. 508-432-1643

Mailing Address: 466 Main Street, Harwich Port, MA 02646

Has a petition previously been submitted for this property (Y/N) \_\_\_\_\_

If yes, the date of original hearing \_\_\_\_\_ Petition No. \_\_\_\_\_ Decision \_\_\_\_\_

**For Appeal Only:**

Reason for Denial: \_\_\_\_\_

Denial From: \_\_\_\_\_ Date of Denial: \_\_\_\_\_

Within 14 days following any Board decision, the Board will file its decision with the Town Clerk. A building permit will not be issued during the appeals period, until 21 days after the Board of Appeals decision has been filed with the Town Clerk or if an appeal to that decision has been filed during that time. It is the **applicant's responsibility** to have the decision recorded at the Barnstable County Registry of Deeds or Land Court, whichever may be applicable, and to present copies of that recording to the Town Clerk and to the Building Department with all Building Permit application requirements.

RECEIVED  
TOWN CLERK  
HARWICH, MA  
2023 JUL 27 P 1:40

Please be advised that an incomplete Application may result in a delay in processing your Application and **may result in a denial by the Board** without consideration of the merits of the Application. **IT IS YOUR RESPONSIBILITY TO REVIEW THE RULES THAT APPLY TO YOUR APPEAL/APPLICATION AND TO MAKE SURE BEFORE FILING THAT YOUR APPLICATION/APPEAL COMPLIES WITH THOSE RULES.** The burden of proof is on the petitioner, not on the Town. If you do not understand the criteria, legal counsel should be sought. Either the petitioner or his/her agent is required to appear at the hearing to present the Application.

All applicants for hearing before the Board of Appeals must complete the Application and submit along with it the supporting documentation listed herein to the Building Department for review and subsequent filing with the Town Clerk. The Building Department accepts Applications during posted hours. You are strongly encouraged to submit your Application to the Building Department well in advance of the filing deadline to allow adequate time for staff review for completeness. **All information, including the applicable fee made payable to the Town of Harwich, must be submitted with the Application.**

Please submit the following, sorted and grouped into **twelve (12) packets along with one (1) Certified Abutters List** (Available from the Assessors Department. A separate application and fee is required):

- X**     **The original Application (additional stamped copies can be provided at a nominal fee):**
  - Signed by the owner or agent.
  - If signed by an agent, a letter of authorization signed by the owner must also be included.
  
- X**     **A typewritten narrative to explain the project , the purpose for this Application and the relief requested, with citations to the applicable provisions of the MGL and the Harwich Zoning Bylaw.**
  
- **The original and eleven (11) copies of a Certified Plot Plan with topographical information plan (not septic plans) not more than five (5) years old (total of 12 copies):**
  - 8½" x 11" or larger. *Larger plans must be folded.*
  - Scale no greater than 1" = 50'
  - Original stamped and signed by a Professional Engineer (as allowed by law), or a Professional Land Surveyor.
  - Certified Plot Plan **must** indicate:
    - the locus;
    - the parcel or parcels of land involved;
    - the existing building or buildings;
    - the proposed building or buildings and/or additions to, or alterations of existing buildings with all dimensions set forth;
    - the location of the septic;
    - the Town of Harwich zoning requirements applicable to the property, as well as existing and proposed dimensions for: frontage, front, sides, and rear setback distances, building height(s), building stories, building and site coverage and parking requirements (if any);
    - all perimeter dimensions (existing and proposed);
    - location and width of abutting and on-site street and drives, parking, existing topography;
    - a grading plan, areas of proposed and retained vegetation, distinction between upland and wetland.
  - Building Plans drawn to scale:
    - Floor layout (for existing structure and proposed additions and/or alterations)
    - Proposed front, side, and rear elevations
  
- X**     **Certified Abutters List**
  
- X**     **Check made payable to "Town of Harwich" for \$315.00.**

Name of Applicant: SBS Properties, LLC agreed purchaser from Peter S. Stagg, Trustee of Stagg Realty Trust

Address of Property: 182 Route 137, Harwich, MA 02645

Zoning District: Six Ponds/DWRPD and C-H-2

Is the property Located in any Special District(s)/Overlay District(s) established by the Town of Harwich or the State of Massachusetts: Yes X No \_\_\_\_\_

If Yes, specify District(s): 6 Pond District Zone A Overlay and DWRPD

Year Structure(s) Built: 1974

Name/Address of Engineer/Architect: unknown

Name/Address of Attorney: William D. Crowell, Esq., 466 Main Street, Harwich Port, MA 02646

	Required by Bylaw	Existing	Proposed
Lot Area	60,000	134,236	Same
Frontage	150'	263.33	Same
Front Yard Setback	50'	>50	Same
Side yard Setback	25'	>25	Same
2 <sup>nd</sup> Side Yard Setback	25'	>25	Same
Rear Yard Setback	25'	>25	Same
Building Coverage	10%	<10%	Same
Site Coverage	30%	<30%	Same
Building Height	<30'	<30'	Same
<b>If this is an Application for an Accessory Apartment, in addition to the above:</b>			
A. Net Floor Area of the Principal Dwelling			
B. Net Floor Area of the proposed Accessory Apartment			

Form of Relief Requested: Variance

If the Applicant is requesting a Variance, state the hardship which the Applicant believes justifies this form of relief in accordance with MGL Chapter 40 and the Harwich Zoning Bylaw: See attached.

By signing and submitting this Application, you hereby authorize the members of the Board of Appeals, or its agent, to conduct a site visit of the exterior of your property for an inspection of the property involved in this petition, should they deem it appropriate.

The Board of Appeals is entitled to rely on the information contained in this Application. Therefore, the undersigned certifies that the information provided in this Application, and all submitted plans and other documentation, is true and accurate to the best of my knowledge and belief.

Agent's Signature: [Signature] Date: 7/27/23

Owner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**wcrowell.office1@comcast.net**

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**From:** Chris Dias <Chris@sbsonesource.com>  
**Sent:** Tuesday, July 25, 2023 12:39 PM  
**To:** wcrowell.office1@comcast.net  
**Subject:** 182 Route 137, East Harwich

I, Christopher J. Dias, Manager of SBS Properties, LLC, purchaser under agreement for the property located at 182 Route 137, East Harwich, MA 02645, hereby authorize William D. Crowell, Esq. to represent me before any and all applicable Town of Harwich Boards regarding the same.

Thank you,

Christopher J. Dias




**Chris Dias**  
*President | Owner | Sales*  
Email: [chris@sbsonesource.com](mailto:chris@sbsonesource.com)  
O: (508) 896-8866  
C: (508) 221-7705  
59 Commerce Park Road  
Brewster, MA 02631

**CONFIDENTIALITY NOTICE:**

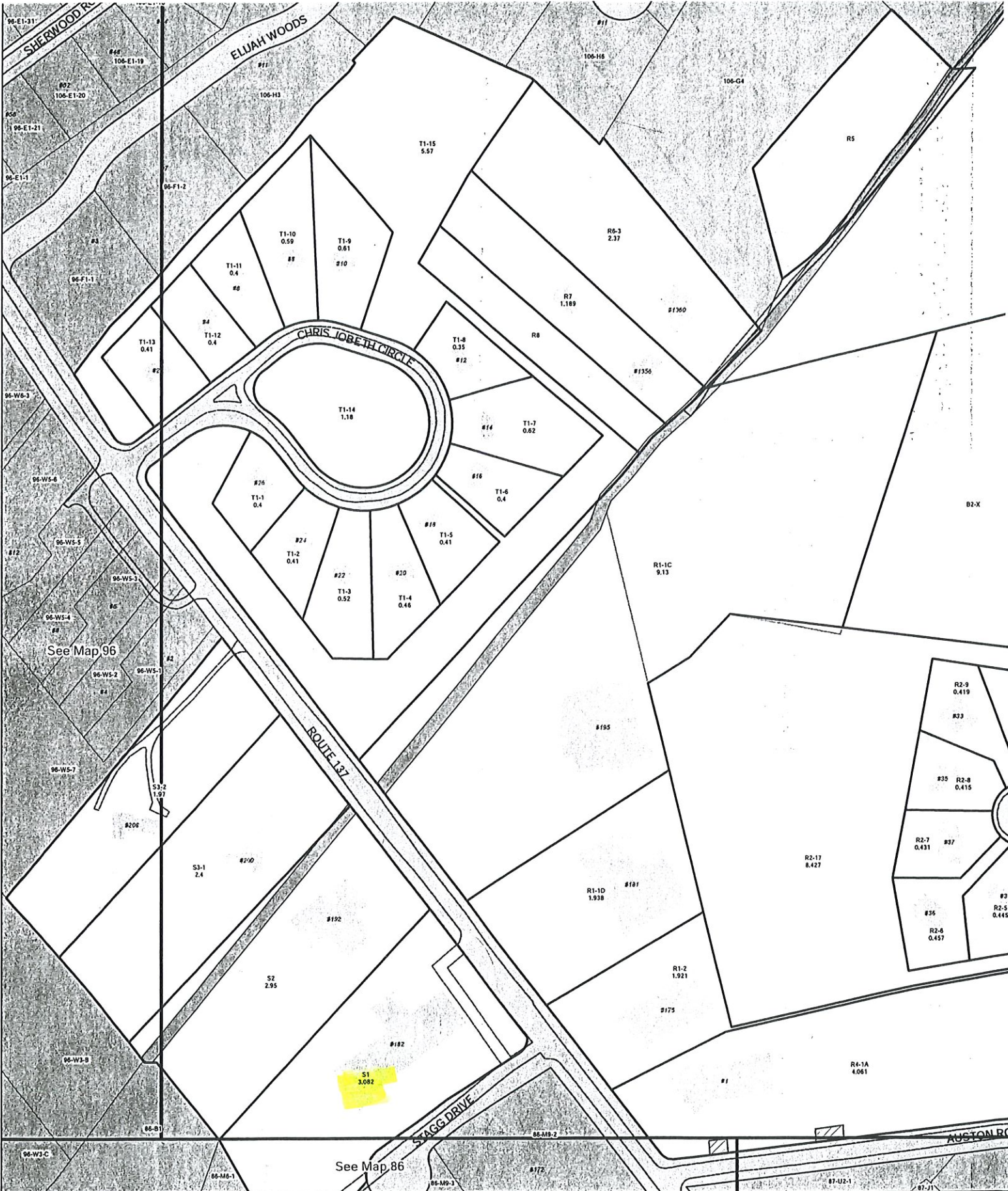
The contents of this email message and any attachment are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying or storage of this message or its attachments is strictly prohibited.

**LIMITED AUTHORIZATION FOR REPRESENTATION**

I, Peter S. Stagg, Trustee of Stagg Realty Trust, u/d/t dated November 22, 1983, owner of the property located at 182 Route 137, East Harwich, MA 02645, hereby authorize William D. Crowell, Esq. to represent me and Christopher J. Dias, Manager of SBS Properties, LLC, purchaser under agreement, before any and all applicable Town of Harwich Boards regarding the same.

  
\_\_\_\_\_  
Peter S. Stagg  
Trustee

DATED: July 26, 2023



**Note:**  
 These maps are not intended for use in conveyancing or for engineering design purposes. The Town of Harwich and its representatives shall not be held liable for any reuse of this information.

**FOR REGISTRY USE ONLY**

I certify that this plan was prepared in accordance with the Registry of Deeds Regulations effective January, 1976. This certification is intended to meet the requirements of the Registry of Deeds and is not a certification of the title or ownership of the land shown hereon.

Date 01-26-2012

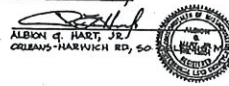


BOOK 642 PAGE 9  
 NAONTIYAL  
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RECORDED 2012  
 JUL 26 11 30 AM '12  
 REGISTRY OF DEEDS  
 HARTFORD, CT

LAWRENCE K. CARBONELL ET UX, ANNE  
 OSCAR W. DOANE, JR.

I certify that this actual survey was made on the ground in accordance with the Land Court instructions of 1971 between 9-1-57 and 1-5-57.  
 DATE Nov. 20, 1977



APPROVAL OF THE PLANNING BOARD:  
 HARWICH PLANNING BOARD  
 DATE OF HEARING \_\_\_\_\_  
 DATE SIGNED: March 17, 1987  
Jacqueline E. [Signature]  
Wayne R. [Signature]  
James T. [Signature]  
Earl [Signature]  
[Signature]  
 Date of Approval: February 3, 1987

I, Ruth B. Erickson, CLERK OF THE TOWN OF HARWICH HEREBY CERTIFY THAT THE NOTICE OF APPROVAL OF THIS PLAN BY THE PLANNING BOARD HAS BEEN RECEIVED AND RECORDED AT THIS OFFICE AND NO NOTICE OF APPEAL WAS RECEIVED DURING THE TWENTY DAYS NEXT AFTER SUCH RECEIPT AND RECORDING OF SAID NOTICE.  
 DATE 3/18/87  
 TOWN CLERK Ruth B. Erickson

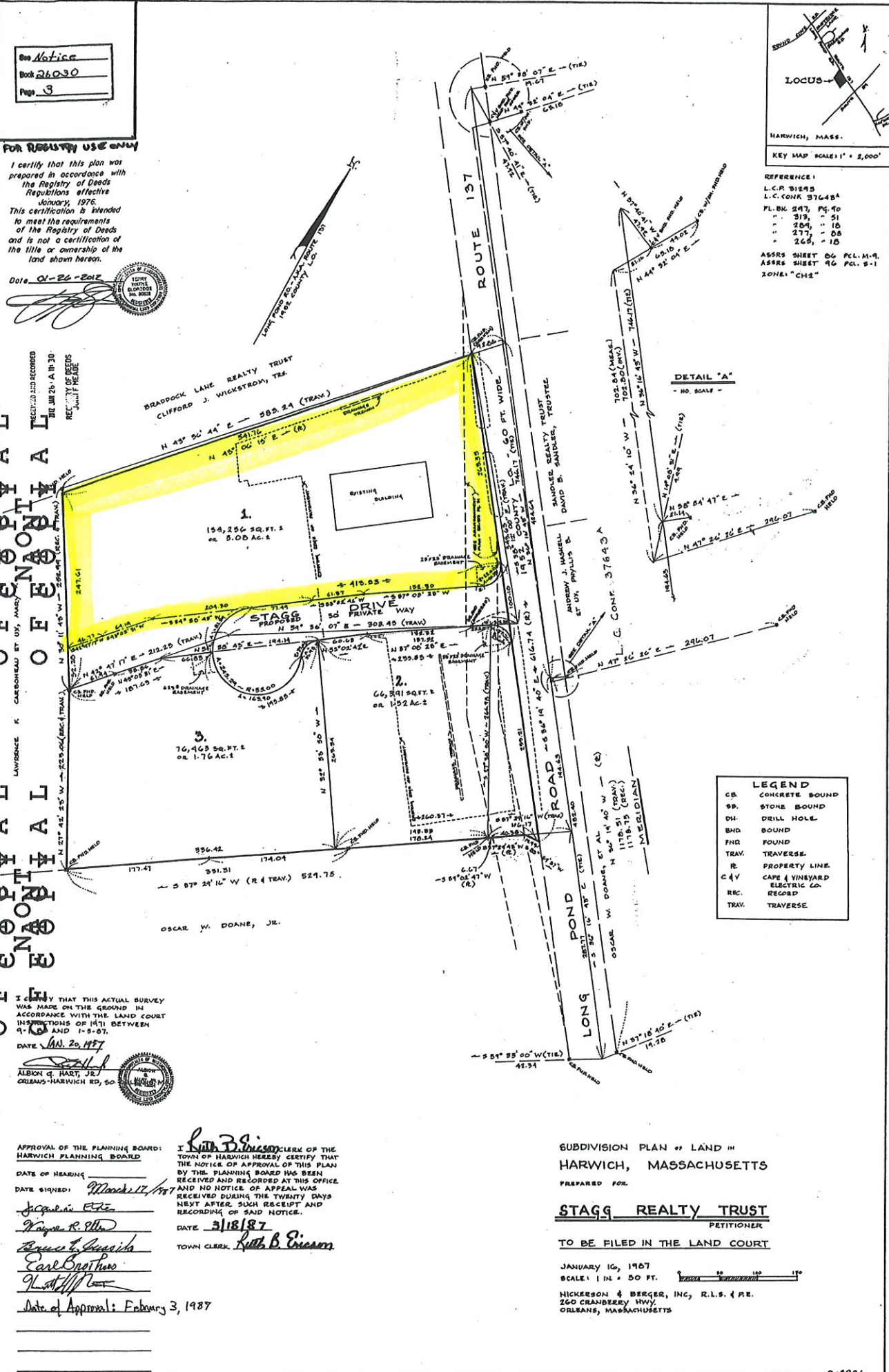
SUBDIVISION PLAN OF LAND IN  
 HARWICH, MASSACHUSETTS  
 PREPARED FOR

**STAGG REALTY TRUST**  
 PETITIONER  
 TO BE FILED IN THE LAND COURT

JANUARY 10, 1987  
 SCALE: 1 IN. = 50 FT.  
 NICKERSON & BERGER, INC., R.L.S. & P.E.  
 260 CRANBERRY HWY.  
 ORLEANS, MASSACHUSETTS



- REFERENCE:  
 L.C.P. 31293  
 L.C. CONK. 37648A  
 PL. BK. 247, PG. 40  
 = 313, " 51  
 = 284, " 10  
 = 277, " 08  
 = 269, " 10  
 ASSRS SHEET 06 PCL. M-9  
 ASSRS SHEET 96 PCL. S-1  
 ZONE "CH2"



DETAIL "A"  
 - NO. SCALE -

**LEGEND**

CB	CONCRETE BOUND
SB	STONE BOUND
DH	DRILL HOLE
BN	BOUND
FND	FOUND
TRAV.	TRAVERSE
R	PROPERTY LINE
C.V.	CAPE & VINEYARD
REC.	ELECTRIC CO. RECORD
TRAV.	TRAVERSE

**SBS Properties, LLC agreed purchaser from Peter S. Stagg, Trustee of Stagg Realty Trust**

**182 Route 137**

The Petitioner, who is the agreed purchaser of the subject property, requests a Use Variance to operate a lumber company on the subject property which would include retail sales of lumber and related products and outside display of the same for retail sales to the general public. Please see attached correspondence dated July 3, 2023 by Attorney William D. Crowell to Jack Mee, Building Commissioner, as well as a referral letter to this Board by Mr. Mee dated July 27, 2023 together with attached e-mail correspondence from Attorney Amy Kwesell of KP Law.

Section 325-54, B (2) of the By-law indicates that "in no case shall a non-conforming use be changed to another non-conforming use." Consequently, in light of the opinion of the Building Commissioner and Town Counsel the Petitioner needs a Variance from the aforesaid section of the By-law to change the use from the pre-existing, non-conforming auto dealership and repair use to the retail sale, both indoor and outdoor, of lumber and related products as well as outside display and storage of the same for said purposes. It should be noted that said Use Variance can be granted by this Board regardless of whether this Board agrees that Mr. Stagg's automobile sales and repair use has been abandoned or not.

There is an existing large steel building on the subject lot that is unique in that use of the same would require a use such as that proposed by the Petitioner as the building is not conducive to smaller, retail or professional offices. Mr. Stagg has a financial hardship in that he has been unable to sell his car dealership and repair shop to any buyer in the last 10 years or so. In addition, the Petitioner has a financial hardship because his existing structure for his lumber company in Brewster very recently was destroyed by fire and he needs to re-locate the lumber company business as soon as possible.

As stated above, a literal enforcement of the By-law would cause substantial financial hardship to the Petitioner and Mr. Stagg. In addition, it is submitted that desirable relief in the form of the requested Use Variance may be granted without substantial detriment to the public good as the subject property is located in an underlying commercial zone and appropriate safeguards can be taken by the Petitioner to prevent environmental harm to the overlay Six Ponds District. Finally, said Use Variance can be granted without nullifying or substantially derogating from the intent or purpose of the By-law as the proposed use by the Petitioner is a commercial use substantially similar to the prior use by Mr. Stagg involving retail sales and outside display of lumber and related products for sale to the public much like Mr. Stagg's retail sales and outside display of automobiles.



**WILLIAM D. CROWELL**

ATTORNEY AT LAW

466 MAIN STREET

P.O. BOX 185 HARWICH PORT, MA 02646

RAYMOND H. GRAYSON  
1901-1991

FAX NO. (508) 430-0631

TELEPHONE NO.  
(508) 432-1643

July 3, 2023

Mr. Jack Mee, Building Commissioner  
Town of Harwich  
732 Main Street  
Harwich, MA 02645

Dear Mr. Mee:

Please be advised that this office represents Christopher J. Dias concerning the proposed purchase of the property located at 182 Route 137 East Harwich, MA and known as the "Stagg Chevrolet property". It is currently owned by Peter S. Stagg, Trustee of the Stagg Realty Trust, u/d/t dated November 22, 1983 by a Deed recorded in Book 3998 Page 174 and shown as Lot 1 in Plan Book 642 Page 97 (copy of plan enclosed). Mr. Dias currently owns a lumber company in Brewster, known as SBS Properties, LLC as well as a similar company on Martha's Vineyard. He would like to purchase said property so as to have another site for a similar lumber company in Harwich and is under contract with Mr. Stagg to purchase the same.

According to my research, the subject property at 182 Route 137 consisting of 3.08 acres is shown on Assessor's Map 97-S1-1 and is in the underlying C-H-2 Zoning District but is subject to the Overlay District known as the Six Ponds District. Consequently, the provisions of the Six Ponds District would control over any conflicting provisions of the underlying C-H-2 Commercial District. Section 325-93 (B) of the By-law indicates the Uses in the Six Ponds District that are allowed in the underlying Commercial District (C-H-2). Section 325-94 indicates Uses in the Six Ponds District that are allowed by Special Permit by the Planning Board. The existing use by the current owner, which has been an automotive dealership and service shop for automobiles is not a permitted use either by right or by Special Permit as set forth in said Sections 325-93 (B) or 325-94. Although Section 325-95 "Prohibited Uses" states that "any uses not specifically allowed as of right or by Special Permit within this District are prohibited" the following Section 325-96 "Pre-existing Uses" states that "any lawfully existing use of a

structure or land that does not conform to the provisions of this By-law may continue. Any change of such use shall be governed by the provisions of this By-law.”

Attached for your review is a copy of correspondence dated June 24, 2021 from Attorney Daniel W. Chamberlain to the then Building Commissioner for the Town of Harwich, Raymond Chesley, outlining the history of the use of said property by Mr. Stagg and his predecessor, Gladding Motors, since at least 1972 or earlier. Also attached is an Affidavit of Mr. Stagg dated 12/5/2022 regarding the use of said property to support Attorney Chamberlain’s aforesaid correspondence. I have not included the voluminous exhibits that were attached to said correspondence and Affidavit, but I can provide them to you if requested. In any event, said correspondence from Attorney Chamberlain and Affidavit of Mr. Stagg make it clear that Mr. Stagg’s use of the building and the property were for retail sales of personal property to the general public and outside display of the same for retail sales on the land owned by Mr. Stagg that surrounded the building that contained the management/sales office and repair shop to service the personal property for sale, which, in his case was automobiles. Consequently, since the use by Mr. Stagg and his predecessor of said property for retail sales and outside display of personal property for retail sales pre-dated any prohibition of the same by the By-law it would be a “lawfully existing use of a structure or land that does not conform to the provisions of this By-law” pursuant to said Section 325–96 and which indicates that said use “may continue“ in the Six Ponds District.

It is hereby submitted that Mr. Dias’s propose use of said property as a lumber company, which would involve retail sales of personal property and outside display of the same for retail sales to the general public would not constitute a “change of such use“ pursuant to said Section 325–96, but instead would be a continuation of the “lawfully existing use” that “may continue” pursuant to the first sentence of Section 325–96 regarding pre-existing uses in the Six Ponds District. His proposed use for retail sales and outside display of personal property for retail sale will therefore be the same as Mr. Stagg’s prior use, the only difference being that the actual personal property for sale would be lumber as opposed to automobiles. It should also be pointed out that sale of lumber and lumber products is arguably a more environmentally friendly use of said property in the Six Ponds District as opposed to sale and servicing of automobiles.

Incidentally, it is also worthy of note that in the underlying C-H-2 District retail sales in the Table of Commercial Uses No. 33 are a permitted use and No. 24 outside display for retail sales are allowed by a Special Permit. However, as stated above, the overlay Six Ponds District controls so that a

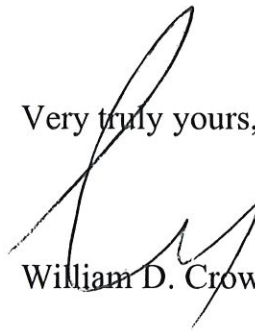
Special Permit is not required if there is no change of a lawfully existing use of a structure or land as set forth in said Section 325-96.

Finally, Section 325-97 "Dimensional Regulations" in said Six Ponds District, sub-section F., "Developed Lots" states that "structures on pre-existing, non-conforming lots may be added to or extended, and accessory structures exceeding one hundred (100) square feet constructed, on the provision that the addition, extension, or accessory structure exceeding 100 square feet meets the following criteria," which goes on to say that any such addition, etc. has to be set back twenty-five (25) feet from any street, twenty (20) feet from side and rear lot lines, and the maximum site coverage must not exceed twenty-five (25)%. Said section does not require any review by the Planning Board or Board of Appeals and can be acted upon administratively by the Building Commissioner. Mr. Diaz will be proposing to construct an addition to the existing building which meets said requirements as set forth above.

In summary, therefore, it is my opinion that Mr. Dias's proposed use of the subject property and proposed addition to the structure on the subject property in the Six Ponds Overlay District do not require approval by either the Planning Board or the Board of Appeals but can be approved administratively by the Building Commissioner as set forth above. Of course, site plan review for parking, landscaping, lighting, etc. would be submitted to the Planning Board for its approval, if required.

Thank you very much.

Very truly yours,

A handwritten signature in black ink, appearing to read "William D. Crowell". The signature is stylized with a large, sweeping initial "W" and "C".

William D. Crowell, Esq.

WDC/sjh  
cc: Paul Halkiotis, Town Planner  
Christopher J. Dias

**CHAMBERLAIN LAW**  
ATTORNEYS AND COUNSELLORS AT LAW

ROBERT C. CHAMBERLAIN  
DANIEL W. CHAMBERLAIN  
MARY B. CHAMBERLAIN

OF COUNSEL  
PAMELA B. MARSH

June 24, 2021

VIA FEDERAL EXPRESS  
AIRBILL NO. 774091734882

Mr. Raymond Chesley  
Building Commissioner  
Town of Harwich  
732 Main Street  
Harwich, MA 02645

RE: PETER S. STAGG SELECT USED CARS  
182 ROUTE 137, EAST HARWICH, MA 02645  
OUR FILE NO. 11388-008 (903/12987)

Dear Mr. Chesley:

This firm represents Peter S. Stagg (hereinafter referred to as "Mr. Stagg") in connection with the sale of property located at 182 Route 137, East Harwich, Massachusetts 02645. As you are aware, Mr. Stagg has an agreement with a potential buyer who is also in the automotive retail and service industry. This agreement is subject to multiple contingencies being satisfied, including the condition that there is a determination that the current business is a lawful preexisting use and structure.

During a teleconference with you in April, 2021 I am advised that the question of whether or not Mr. Stagg had abandoned the used car sales and service shop in recent years was raised. This correspondence addresses the abandonment question and further requests that your Department issue an affirmative determination that Mr. Stagg's use and structure is lawfully preexisting.

Pursuant to M.G.L. c. 40A, §6, "a zoning ordinance or by-law may regulate nonconforming uses and structures abandoned or not used for a period of two years or more." M.G.L. c. 40A, §6. Section 325-96 of the Six Ponds Special District allows lawfully preexisting uses and structures to continue. Section 325-54B(3) of the Town By-law further states that "nonconforming uses, actual uses which has [have] been discontinued for a period of two consecutive years, shall be conclusively presumed to be abandoned." Town of Harwich By-law Chapter 325, Article XVI.

Mr. Raymond Chesley  
June 24, 2021  
Page Two

Abandonment by discontinuance requires a "cessation of the nonconforming use for a period of at least two years." See, Ka-Hur Enterprises, Inc. vs. Zoning Board of Appeals of Provincetown, 424 Mass. 404 (Mass. 1997) and Bartlett vs. Board of Appeals of Lakeville, 23 Mass. App. Ct. 664, 669 (Mass. App. Ct. 1987). Use to any degree prevents a finding of cessation. See, e.g., Ka-Hur Enterprises, Inc. vs. Zoning Board of Appeals of Provincetown, 424 Mass. 404 (Mass. 1997); Derby Refining Company & another vs. City of Chelsea & another, 407 Mass. 703 (Mass. 1990) and Kanj vs. D'Agostno, 25 LCR 335 (Mass. Land Ct. 2017). Under Massachusetts law, the right to continue a nonconforming use is not confined to the existing user, but runs with the land. See, Revere vs. Rowe Contracting Co., 362 Mass. 884, 885 (1972).

The property located at 182 Route 137, East Harwich, Massachusetts has been utilized as an automotive dealership since 1972 or earlier. Mr. Stagg's company, Stagg Chevrolet, Inc., purchased the automotive business in 1980. The current owner, Stagg Realty Trust, acquired the property in 1984. From 1984 to 1987 Mr. Stagg significantly expanded the dealership to its current scale and structure.

Mr. Stagg has continuously operated an automotive dealership at the property from 1980 to date. At all times Mr. Stagg has maintained the appropriate Town of Harwich business certificates, commercial property, commercial automotive insurance policies and appropriate Massachusetts dealer plate(s). Mr. Stagg has consistently solicited and engaged with potential customers, maintained the property to safely serve these customers and bought/sold vehicles.

From May, 2017 to May, 2020, Mr. Stagg bought and/or sold eleven (11) vehicles. There were four (4) transactions in 2017, three (3) transactions in 2018, two (2) transactions in 2019 and two (2) transactions in 2020. Furthermore, these vehicles, as well as others for sale on the property, were serviced and maintained in the service shop located on the premises. Please refer to the Affidavit of Peter S. Stagg detailing the history of the property from 1980 to date, together with supporting documentation attached hereto as Exhibit "A."

Mr. Raymond Chesley  
June 24, 2021  
Page Three

As Mr. Stagg has continuously maintained the proper Town of Harwich licenses, commercial general liability and automotive policies, a Registry of Motor Vehicles dealer plate, regularly responded to solicited inquiries on existing inventory, completed eleven (11) vehicle transactions in the past four (4) years and serviced all of these vehicles on site, Mr. Stagg has clearly not abandoned his business. Mr. Stagg kindly requests an affirmative determination that his automotive dealership is a lawfully preexisting nonconforming use so he can proceed with the sale of his property.

Should you have any questions or issues, please do not hesitate to reach out to me.

Very truly yours,

CHAMBERLAIN LAW GROUP LLP



Daniel W. Chamberlain

DWC:rtp

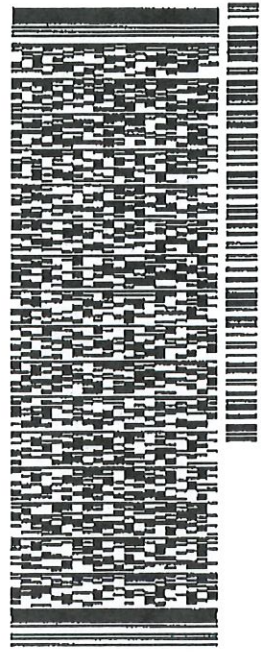
Enclosure

cc: Mr. Peter S. Stagg w/encl.

ORIGIN DHYAA (508) 362-6262  
DANIEL W. CHAMBERLAIN, ESQ.  
CHAMBERLAIN LAW GROUP LLP  
99 WILLOW STREET  
POST OFFICE BOX 40  
YARMOUTH-PORT, MA 02675  
UNITED STATES US

SHIP DATE 24JUN21  
ACTWGT: 1.00 LB  
CAD: 252966784IN/ET4340  
BILL SENDER

TO RAYMOND CHESLEY  
BUILDING COMMISSIONER  
TOWN OF HARWICH  
732 MAIN SREET  
HARWICH MA 02645  
REF: 11388-008  
DEPT:



TRK# 7740 9173 4882  
0201

FRI - 25 JUN 12:00P  
PRIORITY OVERNIGHT

01HYAA

02645  
MA-US BOS



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**After printing this label:**

1. Use the 'Print' button on this page to print your label to your laser or Inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

**Warning:** Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number. Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

IN RE: 182 Route 137, East Harwich, MA 02645

AFFIDAVIT OF PETER S. STAGG

I, Peter S. Stagg, on my oath depose and say as follows:

1. My name is Peter S. Stagg and I own Peter S. Stagg Used Vehicle Sales and Service located at 182 Route 137, East Harwich, Massachusetts 02645.

2. I am also the Trustee of the Stagg Realty Trust, the owner of record of the land and buildings located at 182 Route 137, East Harwich, Massachusetts 02645.

3. I have continuously operated an automotive dealership and service shop at 182 Route 137, East Harwich, Massachusetts 02645 from September, 1980 to date.

4. On or about September, 1980 my company Stagg Chevrolet, Inc., purchased the then Chrysler Plymouth Dodge Dealer franchise located at 182 Route 137, East Harwich, Massachusetts 02645 from Gladding Motors.

5. Stagg Chevrolet, Inc. initially leased the property from Gladding Motors.

6. In 1980 the property consisted of an 8,000 to 10,000 square foot building containing a three-car show room, a ten-car bay service shop and office space. This facility was built in 1972 prior to any zoning regulations and predated all the commercial buildings in the area except the Town of Harwich Fire Department.



7. On or about January 6, 1984 I purchased the property from Gladding Motors. The property was subsequently conveyed to Stagg Realty Trust on or about January 27, 1984.

8. From 1984 to 1987 the dealership was significantly expanded as follows:

- 8,000 square feet was added to the building
- The addition of a car wash with a recycling system
- Show room capacity increased from three to five cars
- Service bays were increased from 10 to 22

9. On or about 1987 I also purchased an adjacent lot from a neighbor in order to expand my outdoor new car display.

10. I initially operated under the doing business as (d/b/a) name of Stagg Automotive Sales until the late 1980s and subsequently as Cape Cod Auto Mall until 2012.

11. The dealership sold new Chevrolet and Chrysler Plymouth Dodge vehicles, bought trade-ins and serviced vehicles.

12. I sold both new and used vehicles until the end of 2011 when my Chevrolet franchise agreement ended. My Chrysler franchise had ended in 2009. Both franchises ended as a result of the then well-known Chrysler and GMC bankruptcies in 2009. See, Wicked Local article dated May 24, 2009 attached hereto as Exhibit "A."

13. In 2012 I started Peter S. Stagg Used Vehicles and Service Shop. I have primarily sold and serviced used vehicles from 2012 to date.

14. I maintained a Class I New Car Automotive Dealer License with the Town of Harwich from 1980 until 2012.

15. Since 2012 I have maintained a Class II Used Car Dealer's and Class IV Vehicle Repairman licenses. See, copy of the current Town license attached hereto as Exhibit "B."

16. I have always maintained appropriate commercial property and commercial automotive insurance policies. See, copies of my current Hanover General Commercial Lines Policy No. RHN D142339 05 and MAPFRE Automotive Policy No. 21MMBCXV10 attached hereto as Exhibits "C" and "D," respectively.

17. I or others at my direction have continually maintained the building and property in order to safely serve my customers. See, copy of maintenance log from December 26, 2018 to date attached hereto as Exhibit "E."

18. A sign including the language "Car Sales by Appointment Only Call Peter Stagg 508-280-4303" has been posted on site since 2013. See, picture of said sign attached hereto as Exhibit "F."

19. I have continuously registered at least one (1) dealer plate since 1980. See, copy of my current dealer plate registration renewal attached hereto as Exhibit "G."

20. From 2012 to June, 2021 two (2) classic cars have been available for sale and displayed in my show room at Peter S. Stagg Used Vehicle Sales and Service: a 1999 Plymouth Prowler and a 2004 Chevrolet SSR. See, dealer stickers and pictures of both vehicles on display for sale attached hereto as Exhibit "H."

21. From July, 2021 to present date my inventory of vehicles for sale has increased to six (6) vehicles, one (1) motorcycle and four (4) trailers. An inventory list and VIN numbers are attached hereto as Exhibit "I."

22. Since May of 2017 I have purchased and/or sold the following vehicles:

May 18, 2017	Harley-Davidson FLHTKSE Motorcycle VIN #1HD1TEF12HB959956
July 19, 2017	2015 GMC Yukon XL VIN # 1GKS2JKJ2FR130000
July 19, 2017	2017 Yukon XL VIN # # 1GKS2HKJ6HR174769
December 9, 2017	2013 Harley-Davidson Motorcycle VIN #1HD1KEM10DB672938
January 19, 2018	2006 Chrysler 300C VIN #2C3LK63H26H339914
July 16, 2018	1986 Dodge Ram Charger VIN #3B4GW1279GM607996

December 22, 2018	2019 GMC Sierra VIN #1GTU9FEL0KZ192922
January 14, 2019	2015 GMC Sierra VIN #3GTU2WEJOF439106
September 20, 2019	2000 Chevrolet Silverado VIN #2GCEK19T2Y1189477
May 13, 2020	1988 Chevrolet Silverado VIN #2GCDK14H2J1212650
May 14, 2020	2003 Chevrolet Silverado VIN #2GCEK19T531127547
July 1, 2022	2022 GMC Yukon XL VIN #1GKS2JKL0NR318918

23. All vehicles currently for sale and those that I have sold have been serviced and maintained at my service shop. See, copies of recent invoices for wholesale parts from Orleans Auto Supply attached hereto as Exhibit "J."

24. I have continued to answer telephone and e-mail inquiries relating to vehicles in my showroom to this day. See, an example of an on-line inquiry attached hereto as Exhibit "K."

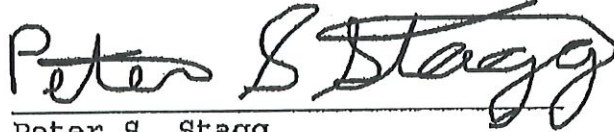
25. I originally prepared this Affidavit in response to a previous question from the Building Commissioner as to whether or not my pre-existing use as an automotive dealership and service shop had been abandoned in recent years. I have updated this Affidavit for a local licensing hearing on December 5, 2022.

26. As I have maintained the proper Town of Harwich licenses, commercial general liability and automotive insurance policies, a Registry of Motor Vehicles dealer plate, regularly responded to solicited inquiries on existing inventory, completed eleven (11) vehicle transactions in the past four (4) years and serviced all of these vehicles on site, I have clearly not closed or abandoned my business.

*[Remainder of page intentionally left blank, signature page to follow.]*

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY

THIS 5<sup>TH</sup> DAY OF DECEMBER, 2022.

A handwritten signature in cursive script that reads "Peter S. Stagg". The signature is written in black ink and is positioned above a horizontal line.

Peter S. Stagg

**TOWN OF HARWICH**

*Building Department*  
732 Main Street  
Harwich, MA 02645



**Telephone: (508) 430-7506**

**Fax: (508) 430-4703**

**By First Class Mail**

July 27, 2023

Peter S Stagg Trustee  
Stagg Realty Trust  
PO Box 1423  
182 Route 137  
Harwich, MA 02646

Re: Zoning Relief Required  
182 route 137, Harwich, MA Parcel ID 97-S1-1-0  
Zoning District C-H-2, Six Pond District, Zone A overlay.

Dear Peter Stagg,

Please be advised that as a condition to issuance of a permit to convert your car dealership to another commercial use, the following zoning relief is first required:

***Harwich Zoning Bylaw §325-54, B.***

Should you desire to proceed with the project, you must first apply for the foregoing relief; this letter shall serve as a referral to the Board for the same. Copies of the necessary zoning forms and applications are available in the offices of the Town's Building and Planning Departments.

In the meantime, your building permit application shall be deemed 'incomplete' and the period to review and issue such permit suspended until such time as you apply for and obtain the special permit / variance; the special permit / variance decision issues and is filed with the Town Clerk; the applicable appeal period elapses; and you provide the Building Department a copy of the special permit / variance decision as recorded with the Barnstable Registry of Deeds or, as applicable, the Barnstable Registry District.

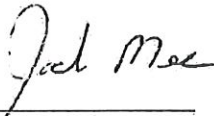
I also reserve the right, should you not expeditiously and continuously proceed with obtaining the required zoning relief or otherwise withdraw the building permit application, to deny the building permit application for incompleteness, or inconsistency with zoning, or both.

Further, be advised that, subject to obtaining the required permits and after construction, you will be required to submit a final as-built plan to the Building Department certifying that the project complies with the approved plans and all applicable dimensional requirements under town zoning.

This correspondence also serves as a zoning determination under Section 7 of Massachusetts General Laws Chapter 40A, which may be appealed by a 'person aggrieved' under Sections 8 & 15 of Massachusetts General Laws Chapter 40A.

Please feel free to contact the Building Department to discuss further, as necessary.

Respectfully,

A handwritten signature in cursive script that reads "Jack Mee". The signature is written in dark ink and is positioned above a horizontal line.

Jack Mee  
Harwich Building Commissioner

Attachment



**From:** Amy E. Kwesell <AKwesell@k-plaw.com>  
**Sent:** Monday, July 24, 2023 2:23 PM  
**To:** Jack Mee  
**Subject:** RE: Dias - 182 Route 137

Jack – I have a significant amount of background materials on this as another buyer (a new car dealership) was also looking to buy this property.  
In my opinion, used car sales and retail sales of lumber are not the same use and this would not be the extension of a nonconforming use. As you noted, pressure treated lumber is a concern that is present with the proposed use while not a concern with the used car use.  
Further “Sale or rental of new or used motor vehicles” (used chart #36) is its own use category and clearly does not include lumber sales.

Below is my opinion to the then planner, Jon Idman:  
Hello Jon,

You requested an opinion on the Jack Madden Ford’s (the “Applicant”) proposal to relocate its car dealership to 182 Route 137 in Each Harwich (the “Property”). According to the information provided to me, Peter Stagg has most recently utilized the Property for the sale of used vehicles under a Class II automotive license. The Applicant has indicated that it intends to operate a “typical” car dealership: inside and outside sales of new vehicles, offices, on-site repair, and servicing.

Peter Stagg, the current owner of the Property, has operated a used car dealership on the Property since the 1980s. See Affidavit of Peter Stagg at 2-3. Prior to 2012, he operated a Chevrolet and Chrysler dealership under the name “Stagg Automotive Sales.” Id. Since 2012, he maintained a Class II used car license and a Class IV vehicle repair licensee. Id. Since 2017, he made occasional vehicle sales. Id., at 4.

The property is located in the “CH2” (base zoning) district, Drinking Water Resource Protection (overlay zoning) District (DWRPD), and the Six Ponds Special (overlay zoning) District/ Zone B. Automotive sales use is permitted by right in the CH2 district and by special permit in the DWRPD, but is prohibited in the Six Ponds/ Zone B district. Automotive service and repair use is prohibited in all three applicable districts. See HZB Sections 325-8; 325-9; 325-93 through 95; 325-13 & Attachment/ Table 1 (Use Regulations). Therefore, the automotive sales use and service and repair use are pre-existing non-conforming.

You have specifically asked: “[i]f we assume that auto sales is a preexisting nonconforming use at the subject property, how intense can this use be without the need for a use variance or (if one is even allowed) without a finding/ special permit? Can it be a ‘full’ dealership with cars stored outside, repair, etc. where these conditions don’t currently exist?”

In my opinion, if you determine that the use was not abandoned, the Zoning Board of Appeals (the “Board”) should apply the “Powers Test” (explained below) to determine whether the protections afforded to the nonconforming automotive sales and service uses by G. L. c. 40A, § 6, will cease because the proposed use will be a “change or substantial extension of the use.” Lastly, it is my further opinion that if the Board determines that the proposed use is a “change or substantial extension” of the existing use, it may authorize the change upon the granting of a Section 6 Special Permit/Finding.

As a threshold matter, G. L. c. 40A, § 6 provides in part: “a zoning ordinance or by-law may regulate nonconforming uses and structures abandoned or not used for a period of two years or more.” Section 325-54B(3) of the Zoning Bylaws governs abandonment, and states:

Notwithstanding the provisions hereof, nonconforming uses, actual use of which has been discontinued for a period of two consecutive years, shall be conclusively presumed to be abandoned and thereafter shall not be reestablished, changed (except to a conforming use), or extended without a variance from the Board of Appeals.

The Affidavit of Peter Stagg provides some history regarding the use of the Property. However, and in my opinion, does not specifically detail the use of the Property between 2012 and 2017, other than saying he offered two (2) cars for sale on the Property. I recommend that the Board, as an initial matter, determine the extent of the use of the Property between 2012 and 2017, and determine whether at any point the use was abandoned for two (2) years.

Assuming the Board finds that the automotive uses were not abandoned, and are therefore pre-existing non-conforming, the Board should then apply the “Powers Test” to determine if the proposed car dealership use requires zoning relief.

The Supreme Judicial Court in Powers v. Building Inspector of Barnstable, 363 Mass. 648 (1973), established three criteria for determining whether an alteration of a nonconforming use constitutes a “change or substantial extension” of such use that will subject the use to the application of the current zoning bylaws. The Court concluded that in the following cases, the zoning bylaws are applicable to the resulting use:

1. The resulting use does not reflect the nature and purpose of the nonconforming use prevailing when the zoning laws took effect;
2. There is a difference in the quality of character, as well as degree, of the resulting use; or
3. The resulting use is different in kind in its effect on the neighborhood.

Powers, 363 Mass. at 653.

An alteration to a use that satisfies even one of the three Powers criteria will lose the protections afforded to a nonconforming use by G. L. c. 40A, § 6. Applicable to the current proposal is criteria 2 and criteria 3.

The second Powers criteria provides that the current zoning laws apply to the alteration of a nonconforming use if the resulting use constitutes a change in the quality of character, as well as the degree, of the prior nonconforming use. Under this test, a nonconforming use maybe enlarged as long as the increase is an outgrowth of the original use. See Cape Resort Hotels, Inc. v. Alcoholic Licensing Bd. of Falmouth, 385 Mass. 205, 214 (1982). Situations in which it was found that the changed uses were not different in quality or character include an increase in the number of trucks and buses stored on premises originally used for the storage of school buses and trucks. See Selectmen of Blackstone v. Tellestone, 4 Mass. App. Ct. 311, 315 (1976). On the other hand, a change from a new and used car dealership in which service and repair work was performed to a place used exclusively to maintain and service vehicles was found to be different in quality in character, and thus, subject to zoning. See Building Inspector of Groton v. Vlahos, 10 Mass. App. Ct. 890, 891 (1980).

The third Powers criteria provides that the current zoning laws apply to the alteration of a nonconforming use if the resulting use differs from the prior nonconforming use in its effect on the neighborhood. Only an increase in the severity of the adverse aspects of the use will trigger a “different in kind” holding. For example, the following have been the basis for finding a difference in kind in the effect on the neighborhood: noise problems; increased traffic; increased periods of operations; and increased noise, activity, vapors, and odors.

With all that said, even if the Board determines that the proposed car dealership use is a “substantial extension” of the pre-existing non-conforming automotive sales use, the Board may still authorize the new car dealership use pursuant to a Section 6 finding. The second sentence of the first paragraph of G. L. c. 40A, § 6 provides that a pre-existing non-conforming use may be extended or altered, provided that the permit granting authority finds that the change, extension, or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming use.

Therefore, I recommend that the Board take the following steps:

1. Determine whether the pre-existing non-conforming automotive sales and service use was abandoned.
2. If the pre-existing non-conforming use was not abandoned, determine whether the proposed car dealership use is a “change or substantial extension” of the existing use using the Powers Test.
3. If the proposed car dealership use is a “change or substantial extension” of the existing use, determine whether the proposed car dealership use “is not substantially more detrimental to the existing nonconforming use,” and therefore, eligible for a Section 6 Finding.

I am happy to have a further conversation with you regarding this matter should you have any questions or concerns.

Thank you,

Amy

Amy E. Kwesell, Esq.

KP | LAW

101 Arch Street, 12th Floor

Boston, MA 02110

O: (617) 654 1811

F: (617) 654 1735

C: (857) 378 9218

[akwesell@k-plaw.com](mailto:akwesell@k-plaw.com)

[www.k-plaw.com](http://www.k-plaw.com)

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**From:** Jack Mee <jmee@harwich-ma.gov>

**Sent:** Monday, July 24, 2023 1:13 PM

**To:** Amy E. Kwesell <AKwesell@k-plaw.com>

**Subject:** FW: Dias - 182 Route 137

Amy,

I am just checking in on this recent request as the attorney is pushing for my determination “If” I will be able to issue this permit.

When you have a chance could you let me know if you see any red flags with this?

Thank you,

Jack Mee