



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:

3 Conifer Woods Road. Said property is further described on

Assessor's Map # 25 and Parcel # N4 located in the RM Zoning District as shown on the attached plan.

Describe

Petition/Appeal: Please see attached /Relief from 25' front yard setback.

Relief requested - Cite specific Bylaw Section(s):

Harwich Zoning Bylaw 325-52 & 325-54

Signature of Owner (or Agent)

[Handwritten Signature]

Date 3/9/23

(Written authorization by the owner must accompany an Application signed by agent.)

Owner Name David & Susan Marcille

Phone No. 404-375-0277

Mailing Address: 9806 Thunderhill Court Great Falls, VA 22066

Agent Name: George Davis, Inc.

Phone No. 774-901-2848

Mailing Address: 33 North Main St. South Yarmouth, MA 02664

Has a petition previously been submitted for this property (Y/N) No

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.

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):

- ✓ **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.

- ✓ **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

- ✓ **Certified Abutters List**

- ✓ **Check made payable to "Town of Harwich" for \$315.00.**

Name of Applicant: George Davis, Inc
 Address of Property: 3 Conifer Woods Road
 Zoning District: RM

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

If Yes, specify District(s): _____

Year Structure(s) Built: 1958

Name/Address of Engineer/Architect: Down Cape Engineering 939 Route 6A Yarmouthport, MA 02675

Name/Address of Attorney: Matthew Fitzsimmons, PC 965 Route 28 S. Yarmouth, MA 02664

Subject	Existing	Required	Proposed
Lot Area (square feet)	15,479	40,000	15,479
Frontage (linear feet)	127.29	150	127.29
Front Yard Setback (feet)	35.2	25	21.6 / 50.94
Side yard Setback (feet)	31.7	20	20.1
Rear Yard Setback (feet)	11.2	20	11.2
Any Yard Setback - Specify which:	N/A		
Building Coverage (%)	5.8	20	11.8
Site Coverage (%) (see 325-2)	21.4	35	2.3
Building Height (see 325-2 & 325-108)*	22.10	30.	16.
If this is an Application for an Accessory Apartment, in addition to the above:	N/A		
A. Net Floor Area of the Principal Dwelling			
B. Net Floor Area of the proposed Accessory Apartment			

* Building height calculation(s) must be shown on plan for all zones per the Harwich Zoning By-laws Section 325-2. See Article XVII - Floodplain Regulations Section 325-108.

Form of Relief Requested: _____

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:

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: 3/9/23

Owner's Signature: Please see attached Date: _____

LAW OFFICE OF MATTHEW P. FITZSIMMONS, P.C.

965 ROUTE 28
SOUTH YARMOUTH, MA 02664

(508)827-4078 TELEPHONE
(508)815-1325 FACSIMILE

March 8, 2023

To: Town of Harwich
Zoning Board of Appeals
732 Main Street
Harwich, MA 02645

Re: Applicants: David & Susan Marcille
Property Address: 3 Conifer Woods Road, Harwich, MA 02645
Assessors Map/Parcel: Map 25, Parcel N4

**MEMORANDUM IN SUPPORT OF APPLICATION
FOR A SPECIAL PERMIT, OR IN THE ALTERNATIVE, A VARIANCE,
TO PROVIDE RELIEF FROM 25' FRONT YARD SETBACK REQUIREMENT**

I. Background

This application for a special permit, or in the alternative, a variance, concerns a pre-existing non-conforming residential lot containing 15,479 square feet in the R-M zoning district located at 3 Conifer Woods Road, Harwich, MA 02645 (Parcels N4 on Assessor's Map 25). Currently sited on the property is a three (3) bedroom single family dwelling, for which the applicants seek to modify pursuant to the plans submitted with this petition.

The property is owned by Mr. & Mrs. David and Susan Marcille. They seek to renovate a portion of the 1st floor of the home to relocate the kitchen, remodel the primary bath and relocate the laundry, construct a single-room addition to the front of the home for a family room, and accommodate a portion of the new kitchen and powder room bath to the right side of the home.

Following review of the building permit application, the Commissioner determined that relief from the Board of Appeals was required with respect to the front setback requirement of 25 feet.

II. Special Circumstances

The layout of the subdivision unfortunately lends itself to placing an undue burden on the owners as a result of the frontage along the so-called "paper road" of Conifer Woods Road being on the right side of the home as it is currently constructed, thereby forcing the right side of the home to be the "front side" of the lot for zoning purposes. (Please see the attached plan showing the driveway and face of the home to the south, but the frontage of Conifer Woods Road actually along the eastern sideline.)

The existing dwelling (built in 1958) is otherwise conforming except for the rear setback to the north, which is pre-existing non-conforming at a distance of 11.2 feet. The driveway to the home is not directly laid from Conifer Woods Road to the right (the east), but rather via an easement to the south. The frontage along Conifer Woods Road is not used for access to the property.

If the Board of Appeals is to establish that the non-conforming rear setback to the north allows the applicants to seek a Special Permit under § 325-54 as a nonconforming structure, then relief may be specifically provided for on such basis.

Alternatively, if the Board of Appeals may determine that since the relief sought is currently on a side of the home that is currently conforming, then the Board of Appeals can nevertheless provide relief to the applicants in the form of a variance under § 325-52 due to the special circumstances that would warrant such relief.

Whichever form of relief the ZBA may provide, approval of a special permit or a variance would allow a setback of 20.1 feet, which would otherwise be considered conforming if the right side of the home was actually subject to side setback requirements of 20 feet for zoning purposes.

III. Zoning Relief Required

The Applicants request that the Board of Appeals provide relief either in the form of a special permit or a variance to allow for a front yard setback of 20.1 feet.

As a pre-existing non-conforming structure (currently as to the rear setback only), the Board of Appeals may provide relief in the form of a special permit under § 325-54, which in pertinent part provides:

“B. Nonconforming uses.

(1) . . . a lawfully preexisting structure, whether conforming or not, used for a lawfully nonconforming use may, by special permit, be changed, altered, or razed and replaced with a new structure on the same site, provided that it is determined by the Board of Appeals that:

- (a) The replacement, alteration or change of the structure will not be substantially more detrimental to the neighborhood than the existing structure;*
- (b) The replacement, alteration or change of the structure will not cause or contribute to any undue nuisance, hazard or congestion in the neighborhood, zoning district or Town; and*
- (c) The replacement, altered or changed structure will be used for the same use or for a conforming use.”*

Alternatively, the Applicants request the Board of Appeals provide relief in the form of a variance under § 325-52 to allow for a front yard setback of 20.1 feet due to the special circumstances presented by the right side of the home being deemed the front side of the property for zoning purposes. M.G.L. Chapter 40A. § 10 provides that a variance may be granted by the Board of Appeals where:

“ . . . 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, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.”

IV. Zoning Criteria Satisfied

As to factors supporting a special permit under § 325-54, the alteration of the right side of the home to accommodate a portion of the new kitchen and powder room bath will have no adverse impact to the neighborhood and will be a continued residential use consistent with the intent of the by-law. A grant of less than five feet of relief to the front yard setback for a residence whose front yard setback is actually laid out in the neighborhood as a side yard with – notably – no immediate abutter to that side but just a paper road “*will not be substantially more detrimental to the neighborhood than the existing structure, . . . will not cause any undue nuisance, hazard or congestion in the neighborhood, and . . . will be used for the same use or for a conforming use.*” Allowing a setback of 20.1 feet would otherwise be considered conforming if the right side of the home was actually subject to side setback requirements of 20 feet for zoning purposes.

Alternatively, granting of a variance is justified under these circumstances because due to the unique special circumstances of the right side of the home being deemed the front side for zoning purposes, the literal enforcement of a front yard setback of 25 feet creates a substantial hardship for the applicants, and where relief may be provided “*without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.*” The need to retain the south yard for the septic system and topographical elements of existing trees to the south and west of the home limits the reasonable viability of design modifications in directions other than to the east. The modifications sought by the Marcille family would provide minimal change (if not none) to the neighborhood, increases building site coverage by only 4%, and would otherwise be considered conforming but for the right side being deemed the front of the lot.

If the right side of the home did not simply happen to be deemed the front side of the lot for zoning purposes – purely by lack of subdivision planning in the 1950’s when the home was originally built, and the inadvertent impact of the layout of Conifer Woods Road as a paper road by an abutting developer in 1985 – a setback of 20.1 feet would be entirely conforming.

The “substantial hardship” imposed by the literal enforcement of the front yard setback use intensity bylaw property justifies a variance. Providing relief will create no undue nuisance, hazard, or congestion, and there will be no substantial harm to the established or future character either of the neighborhood or of the town.

Respectfully Submitted,



Matthew P. Fitzsimmons, Esq.

Law Office of Matthew P.

Fitzsimmons, P.C.

965 Route 28

South Yarmouth, MA 02664

Tel.: (508)827-4078

Fax: (508)815-1325

Email: Matt@Fitzsimmons-Law-Office.com

TOWN OF HARWICH
Building Department
732 Main Street
Harwich, MA 02645



Telephone: (508) 430-7506

Fax: (508) 430-4703

By First Class Mail

February 24, 2023

David & Susan Marcille
9806 Thunderhill Ct
Great Falls, VA 22066

Re: Zoning Relief Required
Building Permit Application BLDG-23-180
3 Conifer Woods Road, Harwich, MA (Assessors Map 25 Parcel N4)
Zoning District R-M

Dear David & Susan Marcille:

Please be advised that as a condition to issuance of the above-referenced building permit as submitted, shown on a plan prepared by Down Cape Engineering, Inc dated February 14, 2023

Harwich Zoning Bylaw §325-54 "Nonconforming structures and uses"

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; the special permit 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 decision as recorded with the Barnstable Registry of Deeds or, as applicable, the Barnstable Registry District.

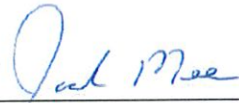
I also reserve the right, should you not expeditiously and continuously proceed with obtaining the required zoning relief or otherwise withdraw the building permit application, to deny the building permit application for incompleteness, or inconsistency with zoning, or both.

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 blue ink that reads "Jack Mee". The signature is written in a cursive style with a large initial "J".

Jack Mee
Harwich Building Commissioner

Cc: File



TOWN OF HARWICH
ASSESSORS OFFICE
732 MAIN STREET
HARWICH, MASSACHUSETTS 02645

TOWN OF HARWICH

FEB 22 2023

ASSESSORS OFFICE

** Please email all Abutters Requests to assessing@town.harwich.ma.us

OFFICE OF
BOARD OF ASSESSORS
Tel: 508-430-7503
Fax: 508-430-7086

ABUTTERS REQUEST FORM

Board Requesting Action: ZBA
Date Submitted: 2/22/23
Applicant's Name: George Davis, Inc.
Assessors Map(s) & Parcel(s): 25/N4
Property Location: 3 Conifer Woods Rd.
Owner(s): David & Susan Marcille
Contact Person: Pamela Larson
E-mail Address: plarson@georgedavisinc.com
Telephone #: 774-801-2848
Type of Petition: Special permit and/or Variance
Assessors Approval By: *[Signature]* 2/22/23

COPY

I hereby certify that the names and addresses on the attached or preceding sheet (s) are of the owners as they appear in the assessing departments most recent computerized tax list

INVOICE

This cover sheet is also your invoice.

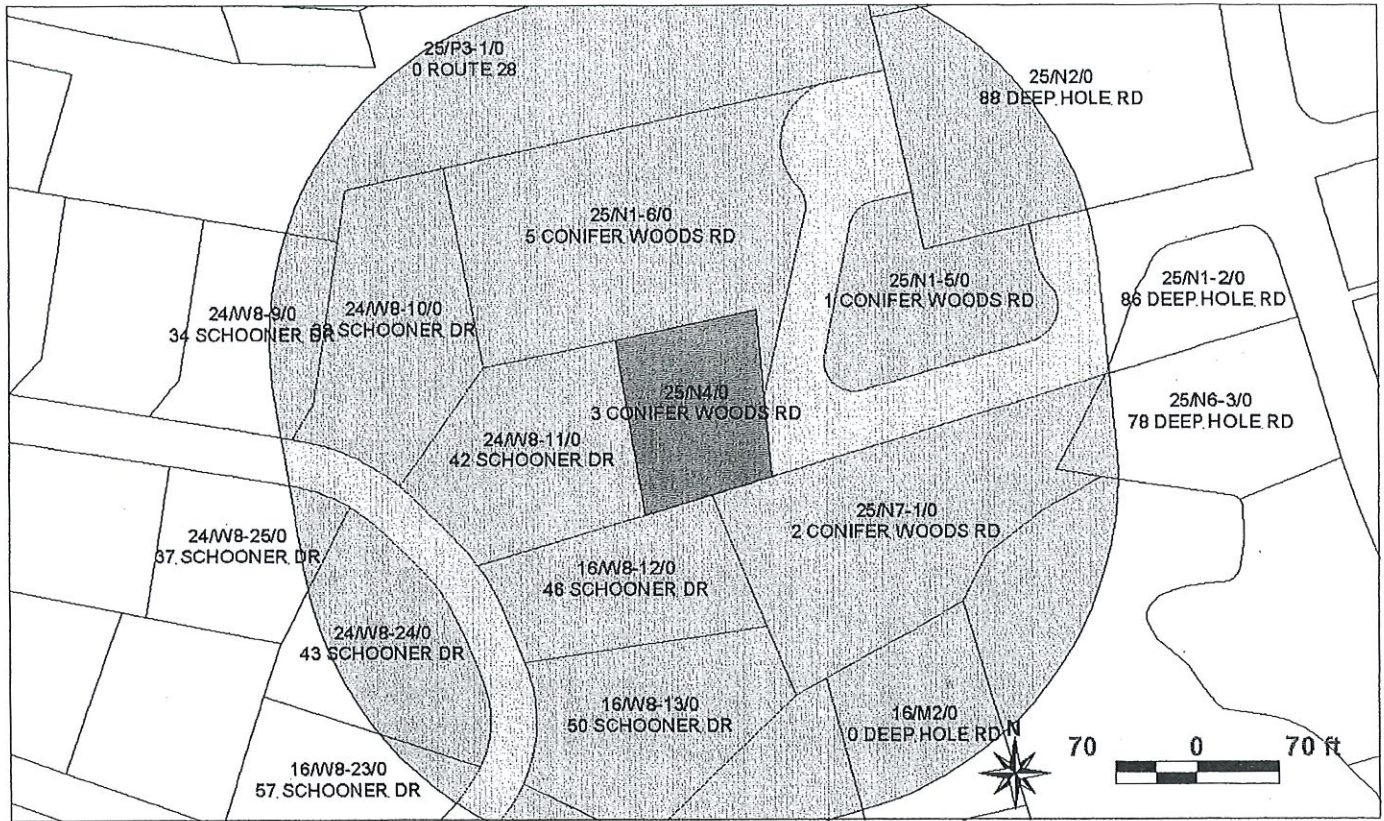
		Date Paid	Ck #
Abutters Fee	\$50.00	2/24/23	43550

Make checks payable to: Town of Harwich



TOWN OF HARWICH, MA
 BOARD OF ASSESSORS
 732 Main Street, Harwich, MA 02645

Abutters List Within 300 feet of Parcel 25/N4/0



Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	ZipCd/Country
2474	16-M1-A-0-R	KOCH LENORE C TRUSTEE KOCH REAL ESTATE TRUST	66 JULIEN RD	14 OLD WHARF RD	HARWICH PORT	MA	02646
8596	16-M1-B1-0-R	KNICKMAN JAMES R	0 DEEP HOLE RD	300 E 40TH ST UNIT 16-C	NEW YORK	NY	10016
2477	16-M2-0-R	KNICKMAN JAMES R	0 DEEP HOLE RD	300 E 40TH ST UNIT 16-C	NEW YORK	NY	10016
2742	16-W8-12-0-R	CONDON JAMES J JR & CONDON ELIZABETH A	46 SCHOONER DR	279 COREY ST	W ROXBURY	MA	02132
2743	16-W8-13-0-R	SMITH JOHN ROBERT & SMITH GEORGIA	50 SCHOONER DR	50 SCHOONER DR	HARWICH PORT	MA	02646
2745	16-W8-14-0-R	KOKOSZKA PATRICIA A LIFE EST	54 SCHOONER DR	54 SCHOONER DR	HARWICH PORT	MA	02646
2752	16-W8-23-0-R	GRUBELICH FRANCIS TR FRANCIS GRUBELICH REV TRUST	57 SCHOONER DR	9876 WEST GULL LAKE DR	RICHLAND	MI	04983
2810	24-W8-9-0-R	JUUL LYNDA L TR LOESCH FAMILY TRUST	34 SCHOONER DR	134 OLD FARM CIR	WILLIAMSVILLE	NY	14221
2811	24-W8-10-0-R	ALTIMAR MATTHEW T	38 SCHOONER DR	38 SCHOONER DR	HARWICH PORT	MA	02646
2812	24-W8-11-0-R	RADULSKI WALTER T & RADULSKI ROSEMARY	42 SCHOONER DR	100 PHILLIPS COMMON	N ANDOVER	MA	01845
2787	24-W8-24-0-R	COHEN BARRY N & LA PENOTIERE YVONNE K	43 SCHOONER DR	43 SCHOONER DR	HARWICH PORT	MA	02646
7841	24-W8-25-0-R	MANEY WILLIAM P TR MANEY FAMILY HARWICPORT TRUST	37 SCHOONER DR	44 POTTER POND	LEXINGTON	MA	02421
2967	25-N1-2-0-R	ROGERS MATTHEW L & ROGERS MARGARET M	86 DEEP HOLE RD	82 FOREST ST	DUXBURY	MA	02332
2970	25-N1-5-0-R	ZAREMBA NATALIE B TRS & ZAREMBA FRANK T TRS	1 CONIFER WOODS RD	42 8TH ST APT 3411	CHARLESTOWN	MA	02129
9041	25-N1-6-0-R	BAKER BRUCE L & BAKER JAN BLACHER	5 CONIFER WOODS RD	420 HAMEL RD PH2	LOS ANGELES	CA	90048

16-M1-A-0-R	16-M1-B1-0-R	16-M2-0-R
KOCH LENORE C TRUSTEE KOCH REAL ESTATE TRUST 14 OLD WHARF RD HARWICH PORT, MA 02646	KNICKMAN JAMES R 300 E 40TH ST UNIT 16-C NEW YORK, NY 10016	KNICKMAN JAMES R 300 E 40TH ST UNIT 16-C NEW YORK, NY 10016
16-W8-12-0-R	16-W8-13-0-R	16-W8-14-0-R
CONDON JAMES J JR & CONDON ELIZABETH A 279 COREY ST W ROXBURY, MA 02132	SMITH JOHN ROBERT & SMITH GEORGIA 50 SCHOONER DR HARWICH PORT, MA 02646	KOKOSZKA PATRICIA A LIFE EST 54 SCHOONER DR HARWICH PORT, MA 02646
16-W8-23-0-R	24-W8-9-0-R	24-W8-10-0-R
GRUBELICH FRANCIS TR FRANCIS GRUBELICH REV TRUST 9876 WEST GULL LAKE DR RICHLAND, MI 04983	JUUL LYNDA L TR LOESCH FAMILY TRUST 134 OLD FARM CIR WILLIAMSVILLE, NY 14221	ALTIMAR MATTHEW T 38 SCHOONER DR HARWICH PORT, MA 02646
24-W8-11-0-R	24-W8-24-0-R	24-W8-25-0-R
RADULSKI WALTER T & RADULSKI ROSEMARY 100 PHILLIPS COMMON N ANDOVER, MA 01845	COHEN BARRY N & LA PENOTIERE YVONNE K 43 SCHOONER DR HARWICH PORT, MA 02646	MANEY WILLIAM P TR MANEY FAMILY HARWICPORT TRUST 44 POTTER POND LEXINGTON, MA 02421
25-N1-2-0-R	25-N1-5-0-R	25-N1-6-0-R
ROGERS MATTHEW L & ROGERS MARGARET M 82 FOREST ST DUXBURY, MA 02332	ZAREMBA NATALIE B TRS & ZAREMBA FRANK T TRS 42 8TH ST APT 3411 CHARLESTOWN, MA 02129	BAKER BRUCE L & BAKER JAN BLACHER 420 HAMEL RD PH2 LOS ANGELES, CA 90048
25-N2-0-R	25-N3-1-0-R	25-N4-0-R
CALLANAN MARGARET E 88 DEEP HOLE RD HARWICH PORT, MA 02646	GOWANS WILLIAM G TRS ET AL GOWANS PHYLLIS E TRS 8 SPINDRIFT WAY HARWICH PORT, MA 02646	MARCILLE DAVID & MARCILLE SUSAN H 9806 THUNDERHILL CT GREAT FALLS, VA 22066
25-N6-3-0-R	25-N7-1-0-R	25-P3-1-0-R
WINER JOEL W & WINER LISA M 2897 DEER CHASE LN YORK, PA 17403	TOMASIAN GREGORY ARA & TOMASIAN MEGHAN WENGER PO BOX 312 S HARWICH, MA 02661	HILL MORGAN D TRS ET AL MASON PAMELA TRS 829 ROUTE 28 HARWICH PORT, MA 02646