

(SEAL)

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

DUKES, ss

MISCELLANEOUS CASE
NO. 17 MISC 000139 (RBF)

JOHN J. ZARBA and SUSAN L. LEMOIE)
ZARBA,)

Plaintiffs,)

v.)

KRIS CHVATAL, MICHAEL PERRY,)
JOE RA, ANDREA ROGERS,)
LLEWELLYN ROGERS, GEORGE)
WARREN, and PETER YOARS,)
Members of the Town of Oak Bluffs)
Zoning Board of Appeals,)

Defendants.)

JUDGMENT

John J. Zarba and Susan L. Lemoie Zarba (the Zarbas) filed their complaint in this action on March 17, 2017. The Complaint is an appeal under G.L. c. 40A, § 17, of a decision of the Oak Bluffs Zoning Board of Appeals (ZBA), dated February 16, 2017 (Decision), upholding an enforcement action of the Oak Bluffs Building Inspector (enforcement order) with respect to a guesthouse constructed by the Zarbas (guesthouse) on the property they own at 14R South Street, Oak Bluffs, Massachusetts (property), by a deed from John P. Reagan and Lisa A. Reagan, Trustees of Reagan Realty Trust, dated November 17, 2005 and recorded in the Dukes County Registry of Deeds (registry) at Book 1063, Page 542 on November 18, 2005 (deed). The property, as described in the deed, consists of Lot 2 as shown a plan entitled "Plan of Land in Oak Bluffs, Massachusetts prepared for John P. Reagan Scale: 1"=20'" dated May 25, 2005, endorsed by the Oak Bluffs Planning Board as approval under the Subdivision Control Law not required on June 27, 2005, and recorded in the registry in Plan Book 15, Page 35 (ANR plan). A copy of the ANR plan is attached.

The Defendant Zoning Board of Appeals' Motion for Summary Judgment, along with supporting memorandum of law, statement of facts, and exhibits, and Plaintiffs' Motion for Parking Issue Summary Judgment (the Zarbas' summary judgment motion), along with

supporting memorandum of law, statement of facts, affidavit, and exhibits, were filed on January 30, 2018. The Defendant Zoning Board of Appeals' Opposition (and Incorporated Memorandum) to the Plaintiffs' Motion for Partial Summary Judgment and supporting materials were filed on February 28, 2018. The Plaintiffs Memorandum in Opposition of the Zoning Board of Appeals Motion for Summary Judgment and supporting materials were filed on March 1, 2018. The Plaintiffs' Reply Memorandum to Defendants' Summary Judgment Opposition Concerning Parking and supporting affidavits and appendix were filed on March 21, 2018.

At a hearing on April 4, 2018, the court heard the filed motions and denied the Defendant ZBA's motion for summary judgment and allowed in part and denied in part the Zarbas' summary judgment motion (the summary judgment order). In a Memorandum and Order on Motion for Entry of Separate and Final Judgment under Rule 54(b) (Memorandum and Order) of August 16, 2019, the court (Foster, J.) allowed the Zarbas' Motion of Entry of Separate and Final Judgment under Rule 54(b), made findings, and ordered entry of separate and final judgment of the summary judgment order, and entered Separate and Final Judgment Pursuant to Mass. R. Civ. P. 54(b). On September 3, 2019, the Zarbas filed their Motion to Amend Judgment to Remove Reference to Davis Avenue in the Parking Ruling (Motion to Amend Judgment). The Defendant ZBA filed the Zoning Board of Appeals' Opposition to Motion to Amend Judgment to Remove Reference to Davis Avenue on September 10, 2019. In an Order of September 24, 2019, the court allowed the Motion to Amend Judgment, and entered the Amended Separate and Final Judgment Pursuant to Mass. R. Civ. P. 54(b) that same day.

This case was tried on November 29 and 30, 2018, and January 16, 2019. Plaintiff's Request for Findings of Fact, Plaintiff's Request for Rulings of Law, and Defendants' Post-Trial Submission were filed on February 19, 2019. The court heard closing argument on February 22, 2019, and took the matter under advisement. In a decision of even date, the court (Foster, J.) has made findings of fact and rulings of law.

In accordance with the court's Decision issued today, it is

ORDERED, ADJUDGED and DECLARED that the southern bound of the property is that shown as the southern boundary of lot 2 on the ANR plan. It is further

ORDERED, ADJUDGED and DECLARED that the Decision is ANNULLED. It is further

ORDERED, ADJUDGED and DECLARED that this matter is REMANDED to the ZBA. It is further

ORDERED, ADJUDGED and DECLARED that upon remand, the ZBA shall issue a decision reversing the Building Inspector's enforcement order and ordering the Building Inspector to issue a certificate of occupancy for the guesthouse. It is further

ORDERED, ADJUDGED and DECLARED that upon payment of all required fees, this Judgment or a certified copy of this Judgment may be recorded at the registry and marginally referenced on the deed and all other relevant documents.



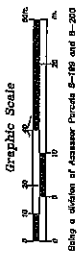
By the Court. (Foster, J).

Attest:

Dated: December 26, 2019.

Deborah J. Patterson
Recorder

A TRUE COPY
ATTEST:
Deborah J. Patterson
RECORDER

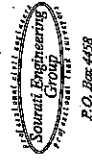


807 ... denotes "ligatured" lot number.

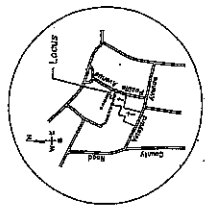
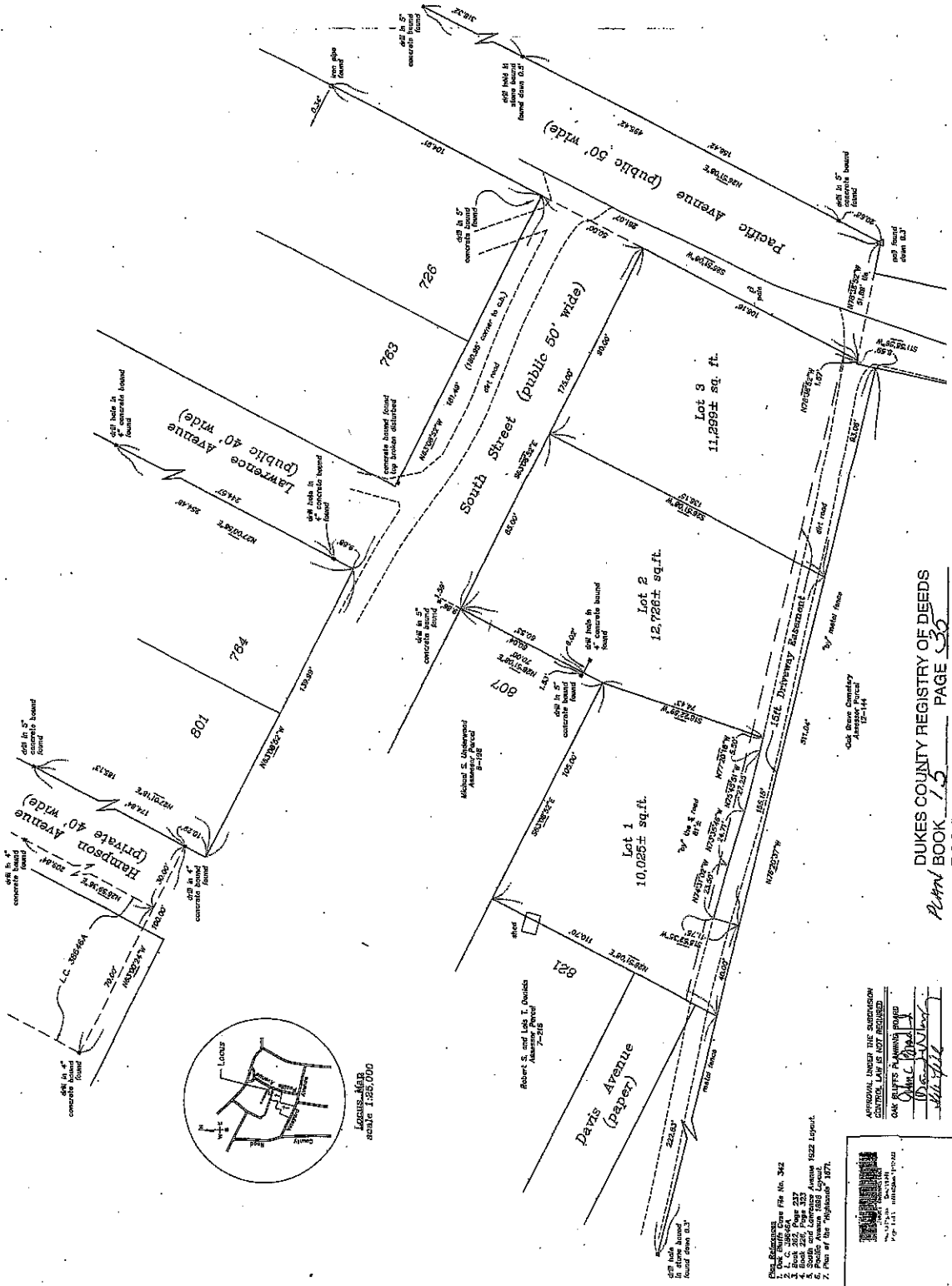
Every day this map was prepared in accordance with the provisions of the Statute of Land Surveying in the Commonwealth of Massachusetts.



Plan of Land in Oak Bluffs, Massachusetts prepared for John P. Reagin Scale 1"=20' May 25, 2003



SOVART ENGINEERING GROUP P.O. Box 4438 107 Beach Road, Suite 202 Provincetown, MA 02558 Phone (508) 685-5933 Fax (508) 685-4933



Location Map scale 1:25,000

- 1. Oak Bluffs Code Book No. 342
2. Book 216, Page 237
3. Book 216, Page 237
4. Book 216, Page 237
5. Pacific Avenue 882 Layout
6. Plan of the "Highways" 1871

APPROVAL UNDER THE SUBDIVISION CONTROL LAW IS NOT REQUIRED. OAK BLUFFS PLANNING BOARD. APPROVED: [Signature] DATE: June 24, 2003

DUKES COUNTY REGISTRY OF DEEDS. PLAN BOOK 15 PAGE 32. DOC.# CERT.#. A true copy attested 1/22/18

Handwritten signature: Robert C. DeBartola