

# MARK J. LANZA

*Attorney At Law*

9 Damonmill Square, Suite 4A4

Concord, MA 01742

(978) 369-9100

mjlanza@comcast.net

Sudbury Office:

11 Meadow Drive

Sudbury, MA 01776

(978) 440-8007

Fax (978) 261-5034

April 5, 2024

**VIA USPS EXPRESS MAIL**  
**AND ELECTRONIC MAIL**

Zoning Board of Appeals c/o  
Cassie Hammond, Administrative Ass't  
Building and Inspection Department  
Bourne Town Hall  
24 Perry Avenue  
Buzzards Bay, MA 02532-3441; and

Barry H. Johnson, Town Clerk  
Bourne Town Hall  
24 Perry Avenue  
Buzzards Bay, MA 02532-3441

RE: Application for Modification of Variance;  
Lot 10, Tecumseh Road, Sagamore Beach, Massachusetts

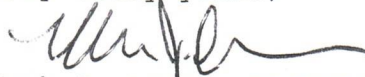
Dear Ms. Hammond and Mr. Johnson:

Enclosed with respect to the above referenced matter please find the original application and 11 copies, application fee (\$200 + \$75.00 + \$75.00 [10 abutters @ \$7.50] = \$350.00), related and required documents and the application packet check list.

Please acknowledge your office's receipt of these documents by date stamping the enclosed copy of Page 1 of the application marked "COPY" and mailing it to me in the enclosed self-addressed stamped envelope.

Thank you for your attention to this matter.

Very truly yours,



Mark J. Lanza, Attorney for  
Kevin Sweigert, Trustee,  
Ten Tecumseh Road Nominee Trust

MJL/ms  
Enclosures

Town of Bourne  
Zoning Board of Appeals

**Application Packet Check List**  
**(Please Check Appropriate Box)**

Application: Supportive Finding ☐ Special Permit ☐ Variance ☒ - Modification -  
Building Inspector Decision Appeal ☐

Applicant Name: Kevin Sweigert, Trustee, Ten Tecumseh Rd. Nom. Tr. Telephone: (978) 369-9100

Property Address: Lot 10, Tecumseh Road, Sagamore Beach

**Submission Requirements**

- ☒ The original and eleven (12) copies of the completed and signed application.
- ☒ Twelve (12) copies of the Bourne Assessors Map  
(from the Town Engineering Department).
- ☐ Twelve (12) copies Certified Plot Plan - N/A - No construction is involved.  
(NOTE: This is a required document for new construction, additions or modifications to existing structures).
- ☐ Twelve (12) copies of a Building Plan if needed for clarification. N/A
- ☒ Twelve (12) copies of registered subdivision plans. - Enclosed for  
(NOTE: pertaining only to cases subdividing land). informational purposes  
No land division is proposed.
- ☒ Two (2) certified list of "Parties of Interest" (Abutters). Ordered 4/5  
Please use the form located after this checklist and submit to the  
Assessor's Office
- ☒ Twelve (12) copies of driving directions to the property from Town Hall.
- ☐ Twelve (12) copies of the GFA worksheet signed by the Town Planner (located on pg. 29) - N/A.
- ☐ Copy of Kennel Report from Natural Resources  
(prior to submitting application) N/A.
- ☒ An electronic copy of entire submission emailed to chammond@townofbourne.com or on a thumb drive.

Condominium Section - Additional Documents.

☐

Signed document from the condominium association attesting to the fact that the applicant's proposal does not conflict with their rules/regulations and/or master deed if such are applicable. N/A

☐

Letter of approval from the Bourne Fire Department attesting that there are no safety, traffic or other problems related to the proposed alterations. N/A - No alterations are proposed  
(This will be done in-house after the application has been submitted)

The office of the Town clerk has determined that the following items are missing from the application:

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(Signature) - Town Clerk

Date

Town of Bourne  
Zoning Board of Appeals  
**PETITION FOR VARIANCE FROM THE BOURNE ZONING BYLAW - MODIFICATION**  
**Under Massachusetts General Laws, Chapter 40A, Section 10**

Date: April 5, 2024

1. Applicant Full Name: Kevin Sweigert, Trustee, Ten Tecumseh Road Nominee Trust
2. Mailing Address: c/o Mark J. Lanza, Esq., 9 Damonmill Square - Suite 4A4
3. City/State/Zip: Concord, MA 01742
4. Telephone: (978) 369-9100 Email: mjlanza@comcast.net mjlanza@comcast.net
5. Property Owner Full Name (if different): Same as Applicant
6. Mailing Address: 88 Oak Street
7. City/State/Zip: Hyannis, MA 02601
8. Telephone: N/A
9. Property Affected Address: lot 10, Tecumseh Road
10. Village/Section of Town: Sagamore Beach
11. Zoning District: R40 Map: 4.3 Parcel 30 Book: 16884 Page: 125
12. Dimensions of Lot: 114 119.5 Area: 15.160  
(Frontage) (Minimum Average Width) (Square Feet)
13. What section(s) of the Zoning Bylaw are you seeking a Variance from: N/A - Modification  
[Refer to Section Number(s)]
14. Describe briefly the nature of your request: Modification of the variance (Exhibit B) filed with the Town Clerk on May 13, 2002, recorded at the Barnstable County Registry of Deeds on June 10, 2002 and determined by the Land Court on March 1, 2024 to be in effect by deleting therefrom the condition that the unit be used by a family member.

**Petition of Variance (continued)**

15. Generally state or attach information necessary to answer the following:

- a) What conditions relating to the soil conditions, shape or topography of the land affect this parcel of land but are not affecting the zoning district in which the parcel is located?

N/A - This is an application for modification of an existing variance only.

- b) How would substantial hardship, financial or otherwise be imposed on the petitioner or applicant by literal enforcement of the Zoning Bylaw?

N/A - This is an application for modification of an existing variance only.

- c) Why would the requested variance not be substantially detrimental to public good?

N/A - This is an application for modification of an existing variance only.

- d) Why would the requested variance not nullify or substantially derogate from the intent or purpose of the Zoning Bylaws?

N/A - This is an application for modification of an existing variance only.

16. Supporting Documents: **(Check what documents are included)**

Bourne Assessors Map: ☒ Plot/Site Plan: ☒ Building Plan: ☐

List of Abutters ☒

Other: Supporting Statement - Exhibit A

Directions to the site ☒

Lot Coverage/Gross Floor Area Worksheet: N/A

Petitioner Signature:  Date: April 5, 2024

**Mark J. Lanza, Esq.**  
**Attorney for the Applicant**



MARK J LANZA, ESQ.  
9 DAMONMILL SQ STE 4A4  
CONCORD, MA 01742-2859  
(978) 369-9100

6696

53.13/110 MA  
26552

April 4, 2024  
Date

Pay To The  
Order Of

Town of Boverne

\$ 350.00

Three hundred fifty and no/100

Dollars



Photo  
Safe  
Deposit  
Details on the  
back

**BANK OF AMERICA**

ACH R/T 011000138

For

variance modifications for Appn  
1076 E. Wms. Rd., Boverne

011000138

6696

Harland Clarke

# EXHIBIT A

## **SUPPORTING STATEMENT**

### **APPLICATION FOR MODIFICATION OF VARIANCE**

The variance should be modified as requested for the following reasons.

#### Vagueness-Ambiguity

The subject condition is not clear and can be interpreted in several ways. Recent experiences are the best evidence.

The applicant interpreted it to mean that the housing unit on Lot 10 must be used by a family member of the owner of Lot 10. On appeal to the ZBA, at least 2 members of the ZBA interpreted it consistent with the Building Commissioner's interpretation – that the housing unit on Lot 10 must be used by a member of the family of the applicant for the variance, Gary Lepore. On appeal to the Land Court, the Judge interpreted it to mean that the housing unit on Lot 10 must be used by a family member of the owner(s) of abutting 12 Tecumseh Road.

Perhaps, there are other interpretations of the condition. Eliminating the condition will eliminate the confusion.

Further, "family member" is not a defined term in the variance decision or in the Town's Zoning Bylaws. In these times, the concept of family is ever changing and can vary among diverse groups of people.

#### Enforcement

The condition is perpetual. It does not expire with the passage of time as some deed restrictions lapse, if not extended. The problems with it would be never ending.

Enforcing the condition could be challenging, disruptive to the occupants and owners and costly to the Town. It would also involve privacy issues.

This problem is compounded by the lack of a definition of "family member".



## Potential Discriminatory Effect

Lastly, both Federal and State law broadly prohibit discrimination in housing based on certain characteristics including race, color, familial status and national origin. See 42 U.S.C. § 3604 and M.G.L. c. 151B, § 4. These laws prohibit towns from using their zoning powers in a discriminatory manner, meaning in a manner that has the purpose or effect of limiting or interfering with housing opportunities available to members of a protected class. Violations occur when a town uses its zoning power to intentionally discriminate against a member of a protected class or when such zoning power has a discriminatory impact on members of a protected class. See Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265 (1977). Discriminatory effect can occur when a zoning rule, neutral on its face, is applied in a manner to exclude members of a protected class. In discriminatory impact cases, once it has been shown that a neutral action has a discriminatory impact, the burden shifts to the defendant to show that its actions furthered a legitimate bona-fide government interest and that no alternative would serve that interest with less discriminatory effect. See Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926, 939 (2d Cir.) (1988). The restriction in the variance limiting the use of the property to a family member could have the effect of limiting or interfering with housing opportunities available to members of a protected class, even though it was intended to do so.

# EXHIBIT B



CERTIFIED TRUE AND  
CORRECT COPY OF ORIGINAL  
DOCUMENT TRANSMITTED  
FOR RECORDATION

# **TOWN OF BOURNE**

## **Board of Appeals**

24 Perry Avenue  
Buzzards Bay, MA 02532



06-10-2002 @ 08:53a

Appeal #02-15

Gary Lepore c/o Robert W. Parady

A Public Hearing was held in The Lower Level Conference Room at Bourne Town hall upon petition of: Gary L. Lepore C/o Robert Parady petitions for a Variance from the provisions of Section 2500 of the Bourne Zoning Bylaw, the petitioner seeks a Variance from the provisions of Section 2500 minimum lot area and lot frontage requirements of the Bourne Zoning Bylaw in order to be able to build a single-family residence at 10 Tecumseh Road, Sagamore Beach. Premises Affected: 10 Tecumseh Road, Sagamore Beach, MA, Map 4.3 Parcel 30, located in a R-40 zoning district.

Notice of public hearing was given to all parties of interest as defined by Chapter 40A, Section 11, M.G.L., by mail, postage prepaid and by publication in The Enterprise, a newspaper, published in Falmouth and circulated in Bourne.

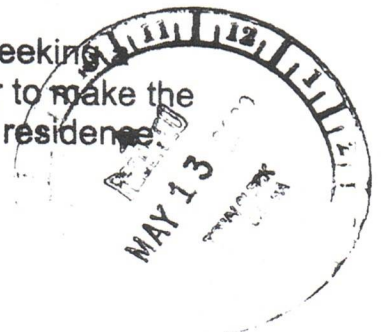
The following members for the Board of Appeals were present and voting:

John Priestley, Chairman  
Lee Berger  
Burns Roper  
Sharon Travers-Gay  
Anne Deane

Application received by the Bourne Town Clerk on March 4, 2002.

Attorney Robert Parady represented the petitioner in seeking variance from Section 2500, minimum lot size, in order to make the lot at 10 Techumeseh Rd. buildable for a single-family residence.

The following is provided by way of background.



Address: 10 Tecumseh Road, Bourne, Mass.



In 1968, both lots 10 and 11 were owned by Emelio Lepore and Louise Lepore, the mother and father of the petitioner. In 1977, both lots were owned by Louise Lepore. Later in 1977, lot 10 was conveyed to the petitioner and at that time grandfathered by State law, since it was in ownership separate and apart from all adjoining land. In 1992, Louise Lepore, the sole owner of lot 11, conveyed it to herself and the petitioner. Lot 10 remained grandfathered because it stayed in the name of the petitioner alone.

On July 28, 1995, the petitioner and his mother, as owners of Lot 11, conveyed lot 11 solely to the petitioner for estate planning reasons. This action, unknown to the petitioners, made Lots 10 and 11 as contiguous non-conforming lots in the same ownership, thereby losing the State grandfather protection and making Lot 10 unbuildable.

There was a zoning By-law provision in effect, Section 2410, which until January 1, 1978 would have afforded Lot 10 grandfather protection, notwithstanding any statutory protection. This local zoning bylaw section afforded grandfather protection to contiguous non-conforming lots which contained 10,000 square feet or more in area and 80 foot or more frontage, further provided that the planning board certified all applicable requirements of the subdivision control law had been met. Section 2410 was later amended in 1979 to protect certain contiguous lots having more than 13,000 square feet in area. This amended provision would still afford grandfather protection, since the subject lot is 15,160 square feet in area. Later, Section 2410 was repealed.

In 1995, when Lot 11 was conveyed to the petitioner for estate planning purposes, the petitioner and his mother both innocently believed that the subject lot, Lot 10, was grandfathered by the 1977 conveyance, and the fact that subsequent to this conveyance, and until the present, the Town has assessed Lot 11 as a buildable lot, most recently for \$52,000, generating a tax of \$754 just for FY 2002.

Building a new home on this lot would not in any way be detrimental to the public good.

The Board found that a literal enforcement of the Zoning bylaw would impose a substantial hardship.

The motion to grant with condition that the unit be used by a family member.

Motion to grant was made by Burns Roper and seconded by Lee Burger.

Record to vote 5-0.

John Priestley, Chairman

Lee Berger-Grant

Burns Roper-Grant

Anne Deane- Grant

Sharon Travers-Gay

### RIGHT TO APPEAL

Anyone aggrieved by this decision may appeal pursuant to Chapter 40A, Section 17, M.G.L., within twenty days of this decision with the Bourne Town Clerk.

*John Priestley, JR*  
Chairman, John Priestley

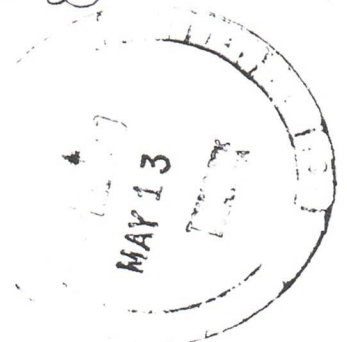
JP/jh

Twenty days have elapsed since the decision was filed in the office of the Town Clerk of Bourne and no appeal has been filed in accordance with Section 17, Chapter 40A of the Massachusetts General Laws.

*Lee Berger-Grant*  
Town Clerk of Bourne

*Lee Berger-Grant*  
Town Clerk of Bourne

Massachusetts General Laws.  
In accordance with Section 17, Chapter 40A of the  
Town of Bourne and no appeal has been filed in  
the office of the Town Clerk of Bourne.  
Twenty days have elapsed since the decision was filed in the office of the Town Clerk of Bourne.





DATE OF REVISION 7/1/13  
 AERO SERVICE, INC. 1000  
 1000 BROADWAY, SUITE 1000  
 NEW YORK, NY 10018  
 TEL: 212-691-1000  
 FAX: 212-691-1001  
 E-MAIL: info@aeroservice.com  
 WEBSITE: www.aeroservice.com

**TOWN OF BOURNE  
 MASSACHUSETTS**

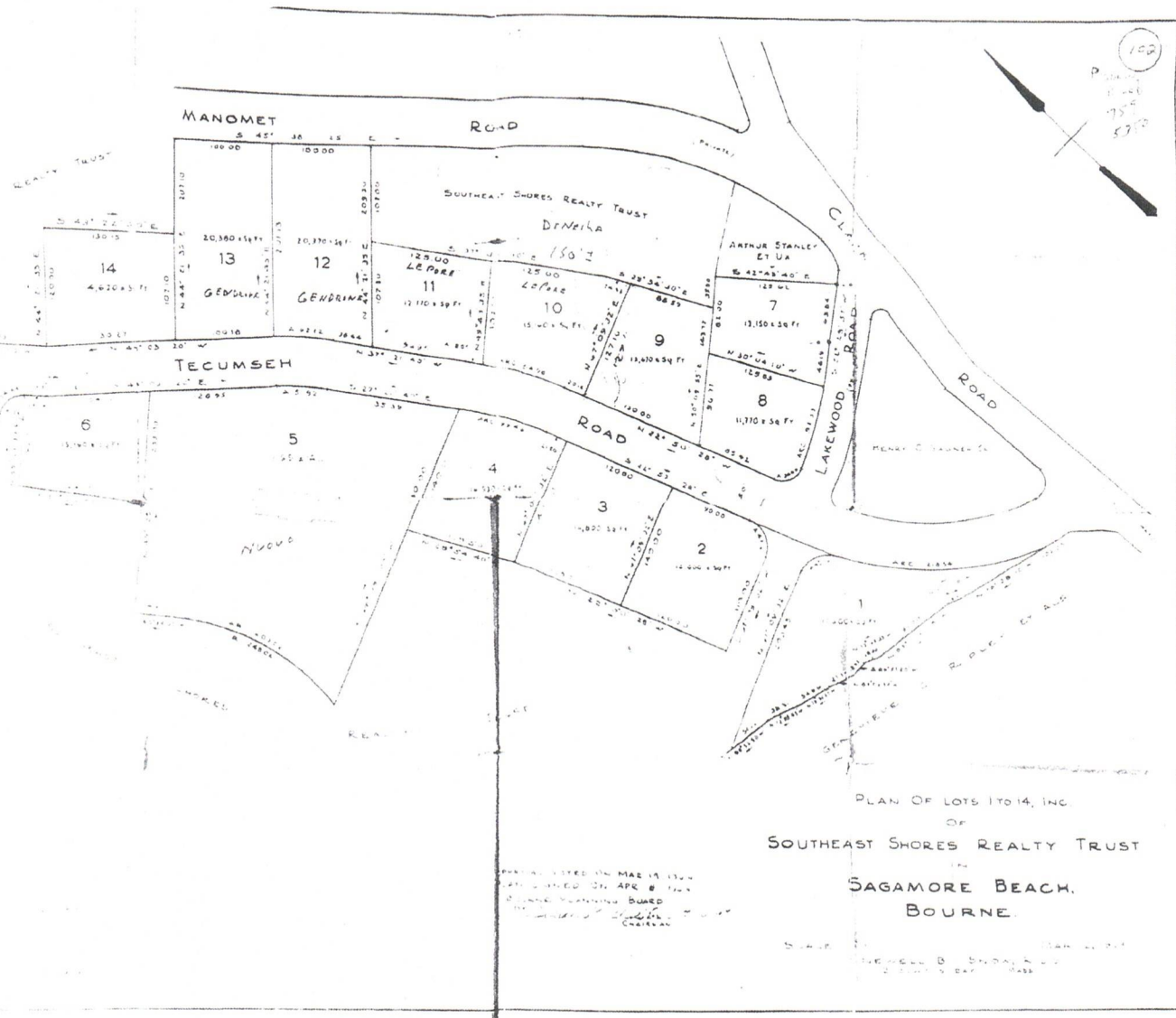
**LEGEND**

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102

P. 102  
75  
57



PLAN OF LOTS 1 TO 14, INC.  
OF  
SOUTHEAST SHORES REALTY TRUST  
SAGAMORE BEACH,  
BOURNE.

RECORDED IN THE MAR 13, 1924  
FILED IN THE APR 8, 1924  
RECORDING DEPT  
OF THE COMMONWEALTH OF MASSACHUSETTS

SCALE: 1" = 100' (SEE PLAN)  
PREPARED BY: GEORGE B. BORDEN & CO.  
200 STATE ST., BOSTON, MASS.

## **DIRECTIONS TO PREMISES**

Take best driving route to Sagamore Bridge Flyover. Go to Scusset Beach Road. Proceed on Scusset Beach Road about 0.4 mile to Old Plymouth Road. Turn left onto Old Plymouth Road. Proceed about 0.8 mile to Clark Road, on your right. Turn onto Clark Road. Proceed on Clark Road 0.4 mile to Tecumseh Road on your left. Turn left onto Tecumseh Road. Proceed 0.1 mile. Lot is on your right, just after house at 8 Tecumseh Road.

Your Confirmation number is 20240404933357

Date of Confirmation: 4/4/2024

NOTE: When paying by ACH (Checking) it will take two business days for the payment to be debited from your bank account. Your account number is not verified until this payment is presented to your bank. They have the right to return this payment if unable to process this transaction against your account.

Your request for payment(s) of \$27.50 has been received and is subject to approval by your financial institution.

### Account Information

**Name:** Mark J Lanza  
**Address:** 11 Meadow Drive  
**City:** Sudbury  
**State:** MA  
**Zip:** 01776  
**Email:** mjlanza@comcast.net

### Payment Information

**Payment Type:** Credit Card  
**Payer Name:** Mark J Lanza  
**Card Number:** \*\*\*\*\*7858

### Transaction Information

| Transaction   | Quantity | Amount  | Fee    | Payment Type |
|---|----------|---------|--------|--------------|
| Town of Bourne - Assessor's Office<br>Abutter's List<br>Date: 04/04/2024<br>Business Name: Mark J. Lanza,<br>Attorney at Law<br>Parcel: Map 4.3, Lot 30<br>Contact Person: Mark J. Lanza, Esq.,<br>Attorney for Landowner<br>Contact Address: 9 Damonmill Square<br>- Suite 4 A4, Concord, MA 01742<br>Contact Phone Number: 978-369-<br>9100<br>Email Address: mjlanza@comcast.net<br>Purpose: Variance<br>Name of Board: Zoning Board of<br>Appeals<br>Location of Property: Lot 10,<br>Tecumseh Road, Sagamore<br>Beach, MA<br>Owner of Property: Kevin Sweigert,<br>Trustee, Ten Tecumseh Road<br>Nominee Trust<br>Comments: Please send list to ZBA<br>for Variance Modification App'n | 1        | \$25.00 | \$2.50 | Credit Card  |

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**Total: \$27.50**



**Your Confirmation number is 20240404933417**

**Date of Confirmation: 4/4/2024**

NOTE: When paying by ACH (Checking) it will take two business days for the payment to be debited from your bank account. Your account number is not verified until this payment is presented to your bank. They have the right to return this payment if unable to process this transaction against your account.

Your request for payment(s) of \$27.50 has been received and is subject to approval by your financial institution.

### Account Information

**Name:** Mark J Lanza  
**Address:** 11 Meadow Drive  
**City:** Sudbury  
**State:** MA  
**Zip:** 01776  
**Email:** mjlanza@comcast.net

### Payment Information

**Payment Type:** Credit Card  
**Payer Name:** Mark J Lanza  
**Card Number:** \*\*\*\*\*7858

### Transaction Information

| Transaction   | Quantity | Amount  | Fee    | Payment Type |
|---|----------|---------|--------|--------------|
| Town of Bourne - Assessor's Office<br>Abutter's List<br>Date: 04/04/2024<br>Business Name: Mark J. Lanza,<br>Attorney at Law<br>Parcel: Map 4.3, Lot 30<br>Contact Person: mark Lanza<br>Contact Address: 9 Damonmill Square<br>- Suite 4 A4, Concord, MA 01742<br>Contact Phone Number: 978-369-<br>9100<br>Email Address: mjlanza@comcast.net<br>Purpose: Variance<br>Name of Board: Zoning Board of<br>Appeals<br>Location of Property: Lot 10,<br>Tecumseh Road, Sagamore<br>Beach, MA<br>Owner of Property: Kevin Sweigert,<br>Trustee, Ten Tecumseh Road<br>Nominee Trust<br>Comments: Please send list to ZBA<br>for Variance Modification App'n | 1        | \$25.00 | \$2.50 | Credit Card  |

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**Total: \$27.50**



# REQUEST FOR CERTIFIED ABUTTERS LIST

## REQUESTED BY:

Mark J. Lanza, Esq., attorney for Kevin Sweigert, Trustee,  
NAME: Ten Tecumseh Road Nominee Trust

ADDRESS: 9 Damonmill Square - Suite 4A4

CITY: Concord, MA ZIP: 01742

PHONE: (978) 369-9100 (Office) or (781) 249-8687 (Cell)

EMAIL: mjlanza@comcast.net

## SUBJECT PROPERTY:

LOCATION Lot 10, Tecumseh Road, Sagamore Beach, MA

MAP/PARCEL 4.3/30

Check appropriate purpose:

### Planning Board

- ☐ Special Permit
- ☐ Sub-division
- ☐ Waiver of SP/SPR
- ☐ Site Plan Review

### Zoning Board of Appeals

- ☒ Variance - Modification
- ☐ Special Permit
- ☐ Appeal B.I. Decision

☐ Cape Cod Commission

☐ Board of Selectmen:  
Special Permit  
Liquor License

☐ Board of Health

☐ Conservation Commission  
RDA  
NOI

### Assessors Office Use Only

## ABUTTERS:

MAP/PARCEL

MAP/PARCEL

MAP/PARCEL

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