



TOWN OF CAPE ELIZABETH

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REPORT TO THE CAPE ELIZABETH TOWN COUNCIL FROM THE PLANNING BOARD ON THE NONCONFORMING AMENDMENTS TO THE ZONING ORDINANCE March 29, 2001

Introduction

In May, 2000, the Town Council forwarded to the Planning Board a request to amend the Zoning Ordinance, the result of which would make one lot buildable. Beginning in June, 2000, the Planning Board has held 8 workshop discussions and 2 regular meetings on changes to the nonconforming provisions and is recommending by a vote of 4 - 3 the attached amendments to the Zoning Ordinance. Below is a summary of the analysis undertaken by the Planning Board to evaluate the Town's nonconformance policy and the proposed amendments.

Original proposed Zoning Ordinance amendment

Paul Vose, the owner of a 10,400 sq. ft. vacant lot located on Ocean Avenue, requested the following amendment to the Zoning Ordinance in order to make his lot buildable.

"Notwithstanding the minimum lot area requirements applicable to lots with on-site sewerage disposal, the code enforcement officer may issue permits in the case of an otherwise qualifying lot of record in the RA Zone which contains 10,000 sq. ft., provided such lot received both a State of Maine minimum lot size waiver and a Cape Elizabeth Public Access Waiver prior to August 11, 1999.

Under the current Zoning Ordinance, the minimum lot size for a nonconforming lot in an unsewered area is 20,000 sq. ft. Variances cannot be granted for lot size, so the only way to make this lot buildable is to change the Zoning Ordinance.

Pre-1997 Zoning Ordinance

The pre-1997 Zoning Ordinance nonconforming provision applicable to nonconforming lots reads as follows:

- (4) Further, as to all non-conforming lots described in b (1)(2) and (3) above, they must contain not less than 10,000 square feet if to be served by public sewer or not less than 20,000 square feet if not to be served by the public sewer (or otherwise meet the requirements of Section 19-3-3 and the state Minimum Lot Size Statute 12 M.R.S.A. Sec. 4807. et. seq.)

State Minimum Lot Size Law

Underlying the pre-1997 Ordinance was an assumption that the State of Maine would not grant a minimum lot size waiver for lots of less than 10,000 sq. ft. in size. In fact, the 10,000 sq. ft minimum is not law but a department policy to which exceptions have been granted. The area of 10,000 sq.ft is generally accepted as the minimum amount of land needed to accommodate a septic system, well and structure. The department will consider a lot of less than 10,000 sq. ft under circumstances such as no other development nearby or the availability of public water to serve the lot.

1997 Zoning Ordinance

In 1997, the Town adopted a new Zoning Ordinance after a 2+ year effort. The old ordinance had been amended many times, resulting in inconsistencies and difficulty in locating and understanding applicable provisions.

The new ordinance was written in a user-friendly format that is consistent and contemporary. The new ordinance also included policy changes that were recommended in the Comprehensive Plan.

Major changes were not proposed for the Nonconformance section, although the section was dramatically reformatted. At the time of adoption of the new Zoning Ordinance, it was noted that, because no one could clearly explain what the pre-1997 nonconformance provisions meant, the reformatted section may include policy changes. Records of the Zoning Ordinance Rewrite Committee (ZORC) show that the committee discussed and decided on a minimum lot size for nonconforming lots of 10,000 sq. ft. for sewerred lots and 20,000 sq. ft. for unsewered lots.

1999 Technical Amendments to the Zoning Ordinance

When the new Zoning Ordinance was adopted in 1997, a commitment was made to return to the Town Council in one year with amendments to correct the inevitable glitches that would be discovered as the new ordinance was implemented.

In 1999, a set of Technical Amendments to the Zoning Ordinance was adopted by the Town Council. These amendments were technical adjustments intended to fix unintentional omissions, reflect existing practices and in a few cases related to home businesses, make minor policy changes.

The Technical Amendments package included several changes recommended by the Code Enforcement Officer. He specifically recommended that wording be added to the Nonconformance Chart (which includes the minimum lot size requirement) to clarify that it did not apply to built lots. He noted that "It has been my interpretation that the minimum lot area in the [Nonconformance] chart is a requirement that must be met for an existing vacant nonconforming lot of record only." Based on the Code Enforcement Officer's recommendation, a statement was added to clarify how the chart should be applied. This text addition to the Zoning Ordinance was not presented as changing policy but rather as clarifying existing practice.

Equity broadens scope of the amendment

When the Planning Board began discussion of the proposed amendment, it was immediately evident that lot owners in addition to Mr. Vose were effected by the 1997 Zoning Ordinance adoption. An initial analysis of vacant lots between 10,000 sq. ft. - 20,000 sq. ft. in size revealed that some lots were assessed as buildable and others as unbuildable. This suggested that some lot owners were unaware that their lots were no longer buildable. It is reasonable to expect that these property owners would also seek legislative relief when they discovered that their lots were not buildable.

In order to avoid a flurry of subsequent zoning amendments, the Planning Board expanded the scope of the nonconforming lots amendment to all unsewered lots between 10,000 sq. ft. and 20,000-sq. ft. The Planning Board's intention was to recommend a clear policy that would be equally applied to all similarly situated property owners, regardless of the final amendment.

Under consideration, then, was a reduction in the minimum lot size for unsewered lots to 10,000 sq. ft. This would make the minimum lot size for sewerred and unsewered lots the same. It is common practice in most communities and in Cape Elizabeth, however, that lots not on sewer must be larger than lots on public sewer.

Like the lot owners with unsewered lots, there are property owners with vacant lots of record served by public sewer and public water than cannot build on the lot because of the Town's minimum lot size requirement. In order to treat lot owners with public sewer access and private disposal access equitably, the Planning Board decided to expand their analysis to include sewerred lots between 7,500 sq. ft to 10,000 sq. ft.

Limitations of the Data

At the direction of the Planning Board, town staff prepared a list of vacant lots between 10,000 and 20,000 sq. ft. in size located in unsewered areas using the GIS (Geographic Information System) and the Assessor's Data base. This list was further refined to exclude lots that were unbuildable due to wetlands, shoreland zoning or deed restrictions. A similar list was prepared for lots between 7,500 sq. ft. and 10,000 sq. ft. in sewerred areas.

Unlike many communities, Cape Elizabeth does not require that nonconforming subdivision lots in common ownership merge to decrease their nonconformity. An individual may have purchased 2 or more adjoining lots in the 1920's and, because the lots have always been held by one owner, they are treated as one lot in the Assessor's records. Under the ordinance, however, these subdivision lots can be separated as long as they meet the nonconforming minimum lot size. For this reason, the total number of lots that would become buildable by reducing the nonconforming lot minimum size is larger than the number of lots identified in the analysis. The Planning Board directed that a study be done to determine the total number of lots that could become buildable if the minimum lot sizes were reduced.

The Board also decided to expand the study to include built as well as vacant lots. The value of land in Cape Elizabeth is high enough that the property owner of two adjoining lots, where a structure straddled the lot line, might be willing to remove the structure in order to sell two rather than one lot. It was also noted that the determination of whether a lot was vacant or built upon was based on whether there was a building assessment for the lot. In the case of those multiple lots in common ownership, however, the building assessment is assigned to one lot even if a portion of the building or accessory structures are located on the adjacent lot, resulting in a false assumption that the lot is vacant.

Nonconformance provisions and subdivision lots

During the review, the Planning Board also discussed the need to clarify the nonconforming provisions so that they are consistently interpreted the same way. Confusion specifically centered on how the nonconforming provisions apply to lots in recorded and/or approved subdivisions.

In some cases, it appears that lots in subdivisions are exempt from the nonconforming provisions. Almost all of the lots that do not conform to existing regulations, however, are in subdivisions. A staff analysis revealed that at least 62% of lots in the Town are in subdivisions. The Planning Board is recommending that the distinction between nonconforming lots in subdivisions and other nonconforming lots be eliminated so that all nonconforming lots are treated the same. The proposed amendments reflect that policy recommendation.

Analysis of effected lots

In order to complete an inventory, a copy of every recorded subdivision located in the Town of Cape Elizabeth was retrieved and requested from the Cumberland County Registry of Deeds. Just under 200 subdivisions were collected from the 1800's to 1987.

The subdivision plans were then compared to the current Assessor's maps and a subdivision lot coverage was developed for the GIS. Many of the subdivision lots fit neatly within the current assessor's map lot lines. In the case of some older subdivisions, however, most of the lot lines of the subdivision did not match with the Assessor's map lot lines. The mismatch can be attributed to the imprecision of old subdivision plans and to the casual adjustment of lot lines by property owners which would result in the lots no longer having the option to separate.

Once the lots were mapped, further analysis based on size and availability of sewer was done. It should be noted that the subdivision lot sizes have been calculated by computer and will vary from the actual lot size determined by a boundary survey. In addition, lots may be unbuildable for reasons other than lot size, such as the presence of wetlands or lack of a suitable site for a septic system.

Of the lots in unsewered areas between 10,000 -20,000 sq. ft. in size, approximately 18 vacant lots would become buildable and an additional 18 lots could be separated from existing lots for an approximate total of 36 lots (See attached list).

Of the lots in sewerred areas between 7,500 -10,000 sq. ft. in size, approximately 26 vacant lots could buildable and an additional 35 lots could be separated from built lots for further development, for a total of 61 lots.

Planning Board recommendation

The Planning Board is recommending that the minimum lot size for nonconforming lots without public sewer remain 20,000 sq. ft.. Due to the large number of lots in the 7,500-10,000 sq. ft./sewered category, no change to reduce the minimum lot size for lots served by sewer is recommended. The Zoning amendments also include a recommendation that any distinction in the treatment of nonconforming subdivision lots and nonconforming nonsubdivison lots be eliminated. The proposed amendments also have been supplemented with illustrations to facilitate a clearer understanding of the provisions.

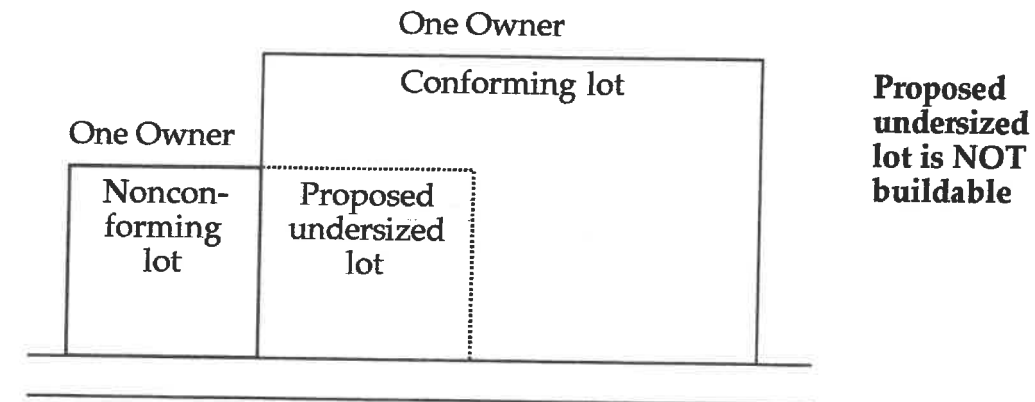
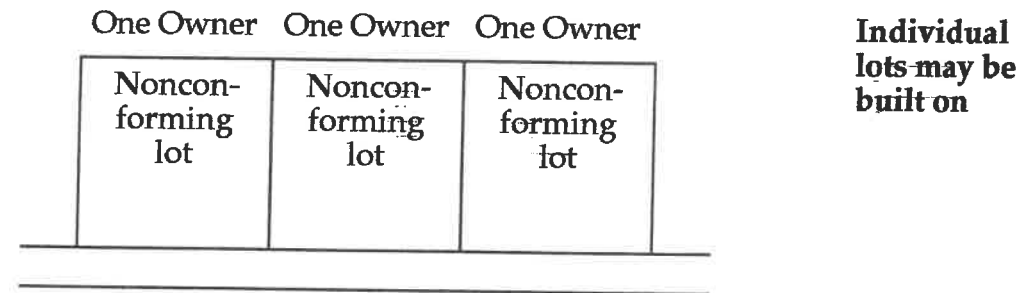
SEC. 19-4-3. NONCONFORMANCE OUTSIDE OF SHORELAND AND RESOURCE PROTECTION DISTRICTS

A. Nonconforming Lots

The following provisions shall govern the development of lots that are nonconforming because they do not meet the minimum lot area, net lot area per dwelling unit, minimum street frontage, or similar requirement of the district within which they are located.

1. Vacant Nonconforming Lots

- a. Single Lots: A single, vacant nonconforming lot that is held under separate and distinct ownership from adjoining lots or that is held in common ownership with adjoining lots may be built upon in conformance with the provisions of the district in which it is located even though the lot does not meet the minimum lot area, net lot area per dwelling unit, street frontage, or similar requirement as long as the requirements of the chart below are met. (Effective August 11, 1999)



The Code Enforcement Officer may issue a building permit and related permits and approvals for a principal structure and related accessory buildings and structures that do not comply with the setbacks and other Space and Bulk Standards that would otherwise be required in the district in which it is located as long as the following standards are met: (Effective August 11, 1999)

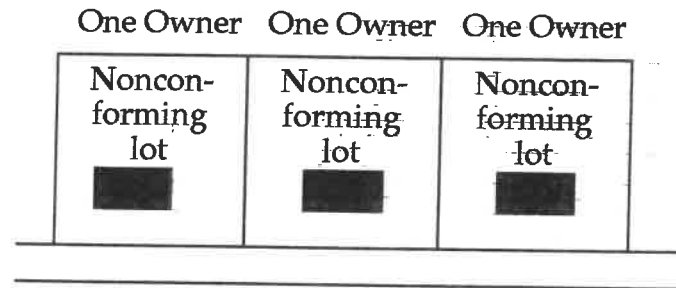
	RA District	RC District	TC District
Front setback for principal structure - local roads	25'	As required by Sec. 19-6-3.E	As required by Sec. 19-6-4.D
- other roads	As required by Sec. 19-6-1.E	As required by Sec. 19-6-3.E	As required by Sec. 19-6-4.D
Side setback	25'	10'	As required by Sec. 19-6-4.D
Rear setback	25'	10'	As required by Sec. 19-6-4.D
Minimum lot area - with public sewerage	10,000 sq. ft.	10,000 sq. ft.	As required by Sec. 19-6-4.D
- with on-site sewage disposal	20,000 sq. ft.	20,000 sq. ft.	As required by Sec. 19-6-4.D
Maximum building coverage - with public sewerage	25%	25%	N/A
- with on-site sewage disposal	20%	20%	N/A

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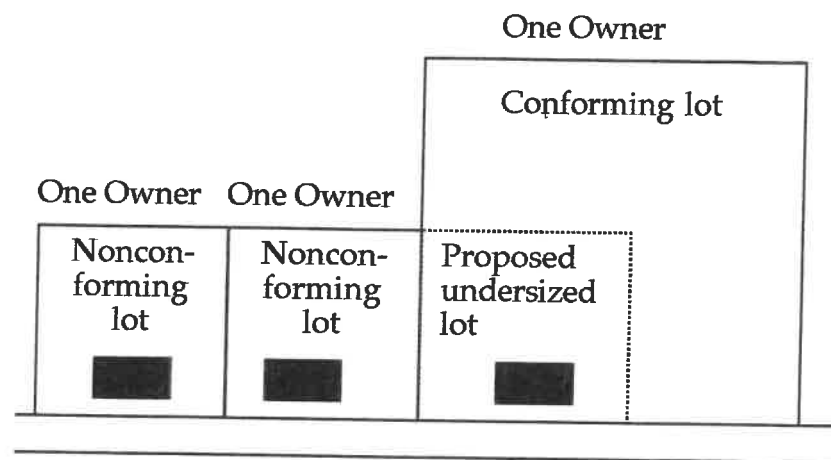
- b. ~~Two or more vacant contiguous lots in common ownership as of June 4, 1997, or at any time thereafter, except for lots in approved recorded subdivisions, shall be combined to the extent necessary to meet the Space and Bulk Standards of the district in which they are located, if any of the lots does not individually meet the dimensional requirements of the district.~~

2. *Developed Nonconforming Lots*

- a. ~~Single Lots: A single lot that is and at all times since March 13, 1968, has been held under separate and distinct ownership from adjoining lots and that is improved with a principal building or structure may continue to be used. Any existing principal or accessory building or structure may be modified, enlarged, or relocated or a new building or structure constructed even though it does not conform to the setback requirements of the district in which it is located provided that such modification, construction, or relocation conforms to the standards, except minimum lot size, set forth in Sec. 19-4-3.A.1.a above (Effective August 11, 1999).~~

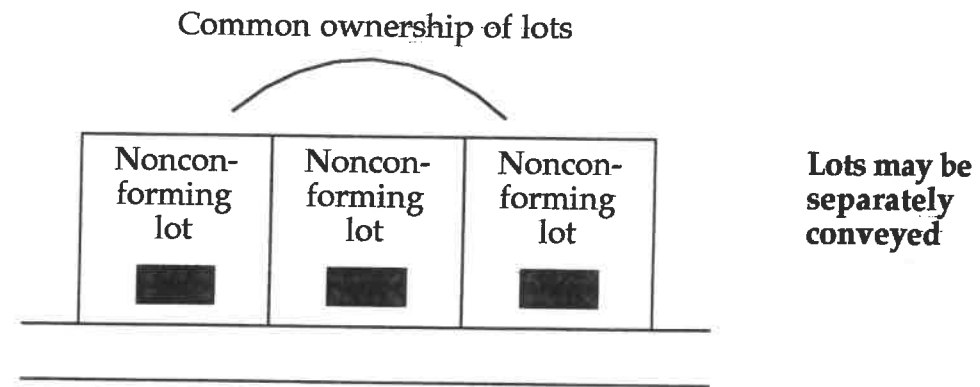


Lots may be conveyed; Buildings may be enlarged per limitations on Nonconformance Chart

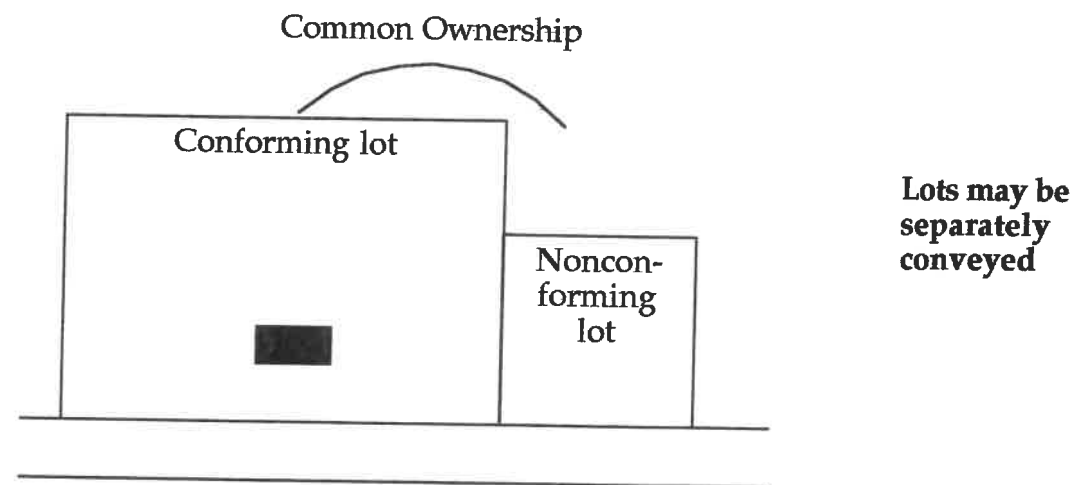
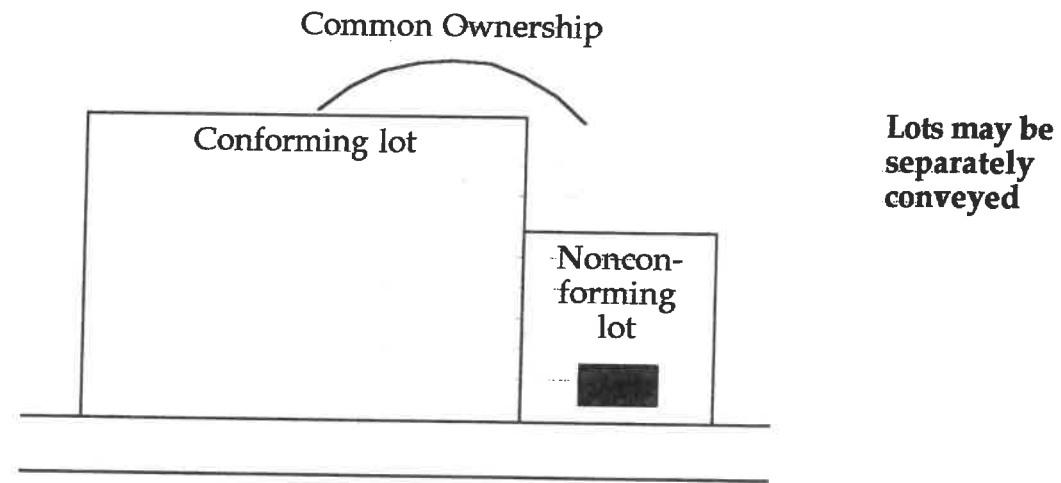


Proposed undersized lot not buildable

- b. Contiguous Built Lots: Two or more contiguous lots or parcels in common ownership as of June 4, 1997, may be conveyed separately or together, even if all or some of the lots do not meet the dimensional requirements of this Ordinance, if a principal use or structure exists on each lot, provided that the nonconforming lots comply with the State ~~Minimum Lot Size Laws~~ and the Subsurface Wastewater Disposal Rules. and the Town Sewage Ordinance.

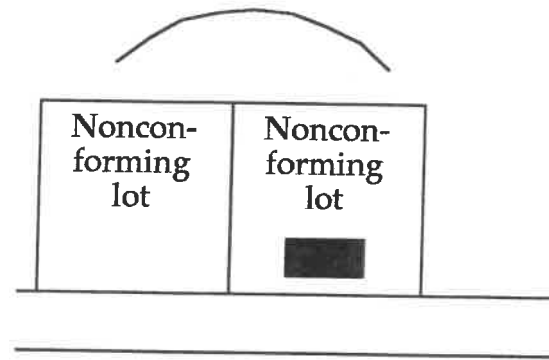


- c. Partially Developed Contiguous Lots: If a vacant conforming lot abuts a developed nonconforming lot held in the same ownership, the two lots may be separated and owned independently. If, ~~however,~~ a vacant nonconforming lot abuts a developed conforming lot in the same ownership, the two lots may be separated and owned independently. ~~the nonconforming lot may not be separated unless the lot can be reconfigured so that both lots are conforming.~~ If a developed nonconforming lot abuts an undeveloped nonconforming lot held in the same ownership, the lots may be separated and owned independently. (Effective August 11, 1999)



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Common Ownership



**Lots may be
separately
conveyed**

Unsewered lots between 10,000 - 20,000 sq. ft. in size

No	Street	Sqft	Subdivision Lot	Land Value	Building Value	Owner	Maplot
27	ALGONQUIN ROAD	19,525		55,300	0	SHAPELL IRVIN N &	U12057000000
0	BALSAM ROAD	19,312		74,600	0	HUSTED ROBERT T &	U15040000000
12	BAYBERRY LANE	15,369		7,900	0	PALANZA ANTONIO C +	U19056000000
0	DELANO PARK	10,089		12,800	0	BRILL ANDREW L & MORG/	U07046000000
0	FESSENDEN ROAD	11,000		11,000	0	BAILLIE ELIZABETH M &	U16064000000
0	FOWLER ROAD	52,272	10,458	8,800	0	MURRAY LELAND P JR +	U20007000000
0	FOWLER ROAD	52,272	10,458	8,800	0	MURRAY LELAND P JR +	U20007000000
0	FOWLER ROAD	18,000		11,500	0	CARTER LESLIE W JR	U44007000000
0	GLADYS ROAD	15,862		14,000	0	LEATHERS ALAN &	U19038000000
20	OCEAN AVENUE	10,041		39,400	0	VOSE PAUL	U17007A 000
0	OCEAN HOUSE RO	11,475		5,700	0	FARLEY & FARLEY INC	U16003000000
0	REEF ROAD	11,451		14,700	0	LORING RICHARD J &	U12047000000
0	REEF ROAD	18,465		20,300	0	PRIOR GEORGE N &	U12050000000
0	REEF ROAD	10,356		10,500	0	DANIELSON ALICIA M	U13005D 000
0	SAWYER ROAD	13,000		14,900	0	JAMES CHRISTOPHER L &	U47027000000
0	SUNRISE DRIVE	19,484		15,500	0	FISSMER ROBERT J	U14030A 000
0	LAWSON ROAD	12,068		62,100	500	ARMSTRONG JANE G	U08041A 000
93	WELLS ROAD	174,240	12,335	50,600	51,800	JORDAN EDWARD	R05046B 000
8	SUSAN ROAD	17,480		44,000	68,300	SIMPSON WALTER E &	U43036000000
8	SURF SIDE AVEN	22,968	12,979	173,300	74,600	WINSOR RICHARD B &	U12064000000
28	ALGONQUIN ROAD	29,556	10,399	198,800	111,400	CASEY JOHN EARL &	U12056000000
11	BAYBERRY LANE	34,745	17,396	45,700	115,600	SCHAFFNER WILLIAM S &	U19064000000
25	GROVER ROAD	35,056	11,710	32,900	128,300	ROSS ROBERT W &	U20006N 000
25	ALGONQUIN ROAD	73,616	12,161	189,300	167,100	DUNPHEY BRUCE R &	U12058000000
74	HUNTS POINT RO	50,000	18,737	79,800	177,900	PIERCE CLINTON W &	U39001058000
71	HUNTS POINT RO	35,719	19,783	87,700	188,900	TIERNEY KEVIN G &	U39001055000
31	LAWSON ROAD	24,506	14,149	292,200	217,200	CAPUTO DANIEL &	U08034000000
66	HUNTS POINT RO	40,000	19,551	95,100	233,200	KOSTELNIK K ERIK &	U39001054000
112	DELANO PARK	42,229	12,679	320,100	240,400	CRETEAU JEANETTE L	U07012000000
75	HUNTS POINT RO	36,250	19,131	90,200	266,500	DANGELO WILLIAM F &	U39001057000
27	LAWSON ROAD	34,155	12,338	270,000	292,500	ARONSON FREDERICK R &	U08035000000
305	DELANO PARK	43,560	18,945	211,600	300,400	MORGAN DODGE D &	U07036000000
59	HUNTS POINT RO	46,174	19,813	97,600	369,100	CARLSON WENDELL &	U39001049000