

COTUIT CENTER RESIDENCES
671-675 MAIN STREET
COTUIT, MA 02635

September 9, 2020

Anna Brigham
Principal Planner
Town of Barnstable
200 Main Street
Hyannis, MA 02601

**RE: Cotuit Center Residences Request for Modified Amendment/
Site Permit**

Dear Anna:

This letter and accompanying documents will serve as the Cotuit Center Residences' (CCR) request to be placed on the next Zoning Board of Appeals agenda. It is our understanding that the Board may make two findings: (1) that the modification is minor and (2) approve the request.

If you need any further information, please contact me at 1(508) 272-2414.

Thank you for all your assistance and quick response to this matter. Look forward to hearing from you soon.

Sincerely,



Nancy E. Joyce, Clerk
Board of Trustees
1 (508) 272-2414
Email: nancyejoyce@gmail22.com

Encs.



**Town of Barnstable
Zoning Board of Appeals
Special Permit**

DO NOT TIME STAMP THIS SHEET

Town Clerk's stamp is to be placed on the first page of the application which is page 3 and 4 of this packet.

Thank you.

CHECKLIST

The following required Information, as it applies to your application, must be submitted with the application at the time of filing, failure to do so may result in a denial of your request.

- Three (3) copies of the completed application form with materials, each with original signatures and time stamped by the Town Clerk (One copy is to remain at the Town Clerk's office and two (2) completed applications with materials listed below must be submitted to the Zoning Board of Appeals office).

Materials shall include:

1. 'Wet sealed' certified property survey (plot plan) and one (1) reduced copy (8 1/2" x 11" or 11" x 17") showing the dimensions of the land, all wetlands, water bodies, surrounding roadways and the location of the existing improvements on the land as well as the proposed improvements.
 2. Proposed site improvement plan, as found approvable by the Site Plan Review Committee (if applicable), with building dimensions, elevations and layout as may be required plus one (1) reduced copy (8 1/2" x 11" or 11" x 17") of each drawing. These plans must show the exact location of all proposed improvements and alterations on the land and to the structures.
- Check made payable to The Town of Barnstable in the amount as outlined below: Fee is non-refundable.

Single & Two Family	
Home Occupation, Bed & Breakfast Special Permits	\$600.00
All Other Special Permits	\$400.00
Multi-Family	
Multi-Family	\$750.00 plus \$100.00 per unit
Commercial Business & Industrial	
Under 4,999 gross square feet of structure	\$750.00 (Plus \$100.00 for location/traffic review of permits along Routes 132, 28, 6A and West Main Street, Hyannis)
5,000 to 9,999 gross square feet of structure	\$1000.00 (Plus \$100.00 for location/traffic review of permits along Routes 132, 28, 6A and West Main Street, Hyannis)
10,000 gross square feet of structure and above	\$1500.00 (Plus \$100.00 for location/traffic review of permits along Routes 132, 28, 6A and West Main Street, Hyannis) (Plus \$100.00 for each additional 10,000 gross square feet)
Time Extension	
Six (6) Month Decision Time Extension	\$100.00

Site Plan Review Required

- Check made payable to The Barnstable Patriot in the amount of \$200.00 to be held by this office until notice is received indicating that the legal ad has been paid by the applicant/representative. Once paid, this office will return the check to applicant/representative.
- Postage stamps will be required in order to notify abutters. Please contact this office for the amount of stamps needed prior to submitting application.
- If after application is submitted and applicant/representative wishes to submit additional supporting documentation to assist the board in making a determination, twelve (12) copies must be submitted eight (8) days prior to the public hearing
- If the Applicant(s) differs from property owner, the Applicant will be required to submit one original notarized letter from the owner authorizing the Applicant(s) to represent them before the Board. Also, if perspective owner(s), an executed Purchase and Sales Agreement or lease, or other documents to prove standing and interest in the property will be required.



Town Clerk Stamp

Town of Barnstable
Zoning Board of Appeals

Application for a Special Permit

For Office Use Only	
Date Application Received:	Appeal No.:
Hearing Due Date:	Hearing Date:
Decision Due:	

Property Owner: <i>Cotuit Center Residences</i>	Phone: <i>508-272-2414</i>	<i>Nancy Joyce, Clerk</i>	
Property Location: <i>671-675 Main Street</i>	Village: <i>Cotuit</i>		
City: <i>Cotuit / Barnstable</i>	State: <i>MA</i>	Zip: <i>02635</i>	
Address of Owner (if different from above): <i>Street #, Street Name N/A</i>			

City:	State:	Zip:		
Assessor's Info:	Map:	Parcel:	Zoning District:	Groundwater Overlay:
Registry of Deeds/Land	Book:	Page:	Document #:	Certificate #:
Court Reference:	Plan Book:	Plan Page:		

Applicant's Name: ¹	<i>Cotuit Center Residences</i>	Phone: <i>508-272-2414</i>
Applicant's Address:	<i>671-675 Main Street</i>	Fax #:
City:	<i>Barnstable</i>	State: <i>MA</i> Zip: <i>02635</i>

If Applicant(s) differs from owner, state nature of interest²

N/A

The undersigned hereby applies to the Zoning Board of Appeals for a Special Permit, in the manner and for the reasons set forth below:

Nancy E. Joyce, Clerk

Cite Section(s) & Title(s) from Zoning Ordinance:	<i>240-</i>
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Description of Activity/Reason for Request:	<i>modified Amendment / Site Permit</i>
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¹ The Applicant(s) Name will be the entity to whom the Special Permit will be issued to.
² If the Applicant(s) differs from property owner, the Applicant will be required to submit one original notarized letter from the owner authorizing the Applicant(s) to represent them before the Board. Also, if perspective owner(s), an executed Purchase and Sales Agreement or lease, or other documents to prove standing and interest in the property will be required.

Is property subject to an existing Special Permit or Variance:	<input checked="" type="checkbox"/> Yes Please list Appeal #(s): 2005-100	<input type="checkbox"/> No
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Existing Level of Development of Property – Existing Number of Buildings:	5 buildings (8 units)
Existing Use of Property:	Condominium Association
Existing Gross Floor Area:	

Proposed Level of Development of Property – Total Number of Buildings:	
Proposed Use of Property:	N/A
Proposed New Gross Floor Area:	N/A

Site Plan Review Number: <small>Not required for Single or Two-Family Use</small>	Date Approved:
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Description of Construction Activity (if applicable):	N/A

Is the property located in a designated Historic District:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the building a designated Historic mark: only 671 Main Street	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is this proposal subject to approval by the Board of Health:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is this proposal subject to the jurisdiction of the Conservation Commission:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Have you applied for a building permit:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Have you been refused a building permit:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Signature: Nancy E. Joyce, Clerk	Date: 9-8-2020	
Print Name: Nancy E. Joyce	Phone: 508-272-2414	
Mailing Address: 675 Main Street		
City: Cotuit	State: MA	Zip: 02635
Fax Number:	Email Address: nancyjoyce22@gmail.com	

DOCUMENT A

Cotuit Center Residences Condominium Trust.
Cotuit, MA

671 - 675 Main Street,
September 8, 2020

Request to Town of Barnstable Zoning Board of Appeals

Background:

An E-mail sent from Matt Spillane, Esq. to Paul Wackrow, Town of Barnstable, dated June 17, 2020, includes the following:

“The Endorsed Disposition and Settlement Agreement “EDSA” is recorded at the Barnstable Registry of Deeds at Book 27606 Page 3. The EDSA and Settlement Agreement is recorded immediately thereafter at Book 27606 Page 32.

According to Atty. Spillane:

“The Premises have long since been improved, and the Units are fully occupied, and the Developer no longer maintains any attachment to the Premises. I do not believe it is an incorrect statement to assert that Premises have been developed and improved in accordance with the EDSA and Memorandum of Understanding #1 and Memorandum of Understanding #2 which both modify the EDSA and are recorded at Book 27606 Page 58 and Book 27606 Page 61 respectively.”

“After conversations with Town Counsel and the Building Inspector, I believe the Parties agree that it would be burdensome to the Town and costly for the Trust for the Town to continue to monitor architectural, aesthetic, and landscaping changes to the locus. With staff support, the Condominium Trust would like to assume responsibility for monitoring architectural, aesthetic, and landscaping changes that may occur on the Premises. Shifting this focus and eliminating the requirement of Paragraph 7 does not detract from the purpose of the EDSA and MOU #1 and MOU #2. The specific request of the Condominium Trust is that Paragraph 7 be stricken from the EDSA.”

“The Condominium Trust recognizes that nothing in the request it seeks would relieve the Trust from seeking any approval or permit for changes to the locus that might be independently required by the Town outside of the EDSA and MOU #1 and MOU #2. “

Matt Spillane further states in this E-mail:

“If upon review of the Comp Permit’s Condition 5, Charlie still disagrees, then obviously the Trust would like to proceed to the ZBA. The Trust has commissioned and now has in its possession an updated site condition plan.”

REQUEST to ZBA from Cotuit Center Residences Condominium Trust:

Since the Condominium Trust was turned over to the Condominium Association in September 2018, Keith Sexton, CCR President, and Nancy Joyce, CCR Clerk, have been communicating by email and in person with various Town of Barnstable officials. The latest communication with Anna Brigham suggests we are simply looking for approval of landscape plantings. **The above email from Matt Spillane more clearly represents our request for the Condo Association to assume responsibility for monitoring architectural, aesthetic, and landscaping changes that may occur on the Premises.**

Because we are trying to complete work that the developer left undone, our current proposed modifications are:

- Completion of retaining wall and fencing - rear of property A1
- Completion of plantings in front of each condo building
- Beautification of area around "Catch Basin" / "Rain Garden" in front of the A1 building down to the sidewalk - Common Area -with appropriate plantings and maintenance plan.

Included with this request:

- Site Plan 2010 from Down Cape Engineering
- Site Plan 2020 from Down Cape Engineering - emailed from Keith Sexton, CCR President, to town officials 6/6/2020
- Communication from Richard Fisher, Fisher Landscaping, that "plantings proposed for the common rain garden, which is designed to collect and filter storm water, are appropriately selected and/or maintained." Request made by Anna Brigham 9/2/ 2020.
- Completed ZBA Application

Our Main Request from the ZBA is, as stated above, For the Condo Association to assume responsibility for monitoring architectural, aesthetic and landscaping changes that may occur on the premises.

We have communicated with the following Town of Barnstable officials:

Charles McLaughlin
Brian Florence
Paul Wackrow
Karen Herrand
Elizabeth Jenkins
Anna Brigham

Respectfully Submitted,



Nancy Joyce, Clerk Cotuit Center Residences Board of Trustees

Invoice

Richard Fisher
P. O. Box 1783
Sandwich MA 02563
508 648 1855

Date	Invoice #
9/8/2020	10326

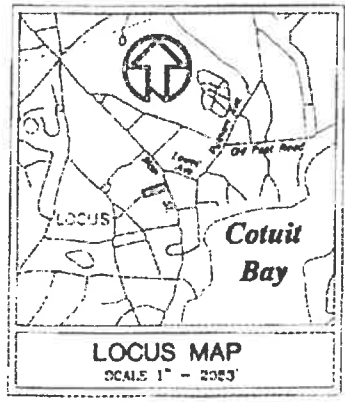
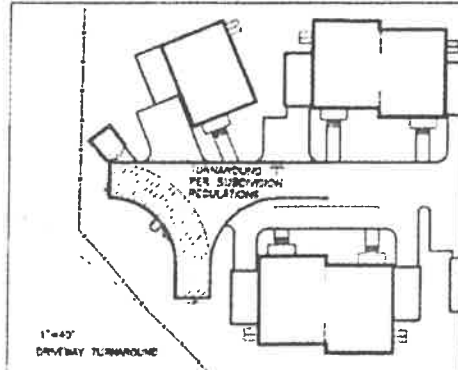
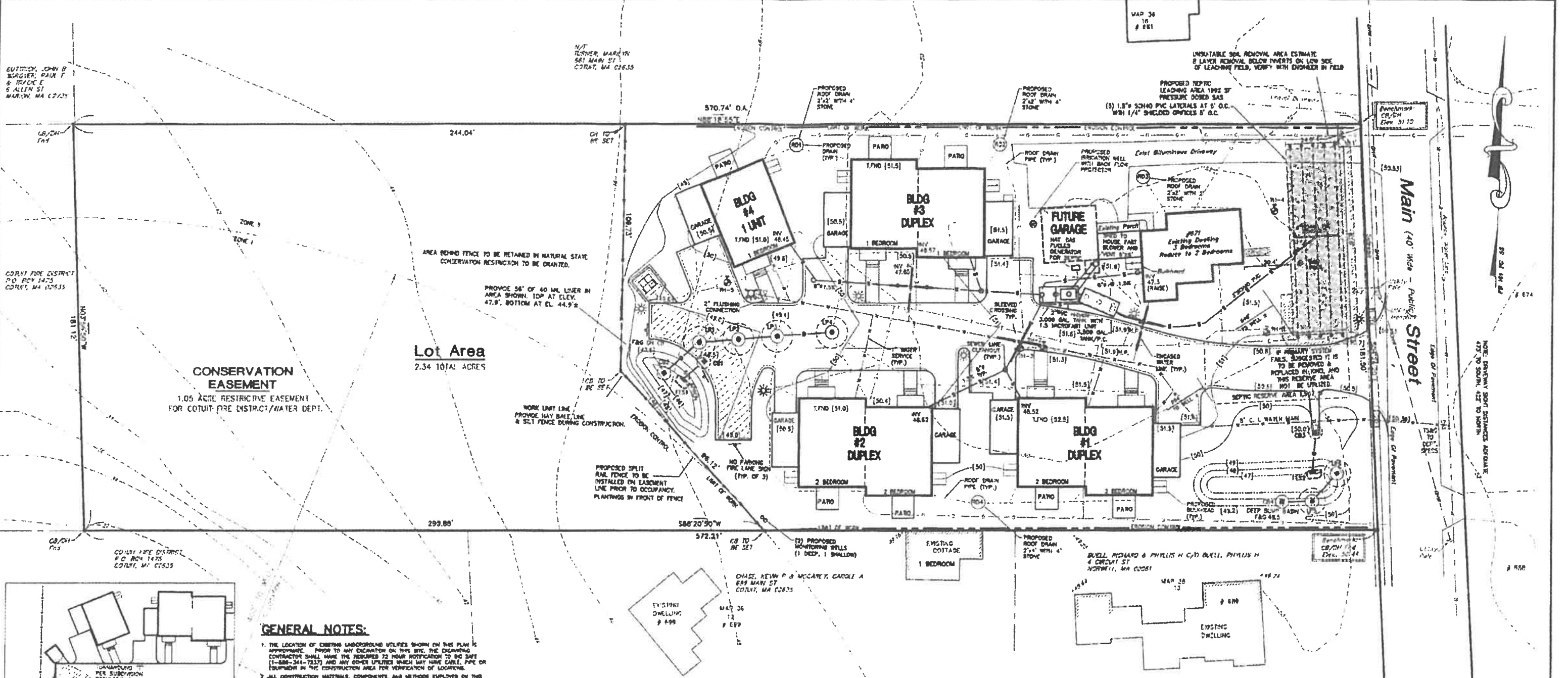
Bill To
Cotuit Center Residences P.O. Box 696 Cotuit MA 02635

Description	
<p>This letter is to assure the Association that all plantings installed in the catch basins will be appropriately selected and maintained, recognizing that certain varieties are most appropriate for these areas. There are countless varieties that are excellent choices for this application.</p> <p>Richard Fisher Landscaping P.O. Box 1783 Sandwich, MA 02563</p> <p><i>Richard T. Fisher, Owner</i></p>	

From: Richard Fisher mrfisher1960@gmail.com
Subject: Richard Fisher
Date: Sep 9, 2020 at 10:23:29 PM
To: Molly Kelley dk80524@gmail.com



Virus-free. www.avg.com



GENERAL NOTES:

1. THE LOCATION OF EXISTING UNDERGROUND UTILITIES SHOWN ON THIS PLAN IS APPROXIMATE. PRIOR TO ANY EXCAVATION ON THIS SITE, THE CONTRACTOR SHALL MAKE THE REQUIRED 72 HOUR NOTIFICATION TO THE CITY (1-888-344-7233) AND ANY OTHER UTILITIES WHICH MAY HAVE CABLE, PIPE OR EQUIPMENT IN THE CONSTRUCTION AREA FOR VERIFICATION OF LOCATION.
2. ALL CONSTRUCTION MATERIALS, COMPONENTS, AND METHODS EMPLOYED BY THE PROJECT WORK SHALL CONFORM TO THE TOWN OF BARNSTABLE SUBDIVISION REGULATIONS AND/OR THE MASSACHUSETTS DEPARTMENT OF PUBLIC WORKS STANDARD SPECIFICATIONS FOR BRIDGES AND HIGHWAYS AS APPLICABLE TO PROJECTS. ALL SEPTIC WORK AND MATERIALS TO CONFORM TO 310 CMR 16.00 TITLE 8 AND BARNSTABLE HEALTH REGULATIONS.
3. VERTICAL DATA IS PROVIDED AS DERIVED FROM TOWN GIS DATA.
4. ALL ROOF FLASHING TO BE PIPED TO DRAINAGE SYSTEM. COORDINATE DOWNSPOUT LOCATION WITH ARCHITECT ROOF DRAWS & PROVIDE PVC AT 1% MIN. PITCH TO DRYWELLS/DRAINAGE. ALL STORMWATER FROM IMPERVIOUS SURFACES TO BE REMOVED ON-SITE.
5. DESIGN LOADS FOR ALL PROPOSED UNITS TO BE AMHS-14-20 UNLESS NOTED.
6. SEPTIC SYSTEM UNDER PERMANENT OPERATION AND MAINTENANCE CONTRACT. INSPECTIONS REQUIRED VIA SYSTEM INSTALLER TO CONTACT VENDOR AND COORDINATE ALL CONSTRUCTION DETAILS WITH VENDOR.
7. GRADE ALL URBAN AREAS TO PROVIDE POSITIVE PITCH AWAY FROM BUILDINGS.
8. 1" LEAK AND REED ALL DISTURBED AREAS NOT PAVED. ALTE. METING ON ALL SLOPES >12%. STAKED 3" X 3" FENCE AROUND WORK LIMIT TO BE MAINTAINED UNTIL SITE STABILIZED. SEE NOTE 19.
9. ALL SEWER PIPING & SEPTIC PVC AT 2% MIN. UNLESS NOTED.
10. SEWER COMPONENTS NOT TO BE BACKFILLED OR CONCEALED WITHOUT PERMISSION BY ENGINEER AND PERMITS OBTAINED.
11. COORDINATE UTILITY INSTALLATIONS WITH APPROPRIATE VENDORS.
12. SITE LIGHTING SHALL BE RESIDENTIAL STYLE POST LIGHTS AND SHALL NOT CAUSE GLARE FOR NEIGHBORS, PEDESTRIANS, OR NEIGHBORING TOWNSHIPS.
13. TOPOGRAPHY AND BEVEL LOCATION FROM FIELD SURVEY BY DOWN CAPE ENGINEERING. SOME OFF SITE DETAIL FROM TOWN GIS DATA - APPROXIMATE. FOR REFERENCE ONLY.
14. ANY FILL AREAS ARE TO BE CLEANED AND COVERED WITH TOP AND SUBSOIL REMOVED PRIOR TO FILL PLACEMENT. ALL FILL TO BE CLEAN & STRUCTURAL FILL COMPACTED IN 6" LAYS TO 95% MOISTURE PROCTOR MAX. DENSITY. AREAS UNDER BUILDINGS TO BE MONITORED AND INSPECTED BY FOUNDATION ENGINEER, 48 HR. NOTICE REQUIRED.
15. ALL PROPOSED PAVEMENT TO BE FINISHED WITH CAPE COD BROWN 12" X 3" ROOM TO BE CREATED INTERNAL WITH BASE AND TOP COATS OF ASPHALT.
16. IF SEWER LINES MUST CROSS WATER SUPPLY LINES, THE SEWER PIPE SHALL BE CONSTRUCTED OF CLASS 150 PRESSURE PIP AND SHALL BE PRESSURE TESTED TO ASSURE WATER TIGHTNESS.
17. SEWER LINES SHOULD BE 36" (18" MIN) BELOW WATER SUPPLY LINES, BUT IF IT IS NECESSARY TO CROSS ABOVE A WATER UTILITY, BOTH THE BUILDING SEWER AND THE WATER LINE SHALL BE ENCASED IN A LARGER DIAMETER WATERPROOF PIPE FOR A DISTANCE OF 10 FEET ON BOTH SIDES OF THE CROSSING. (DET. BSNR, SEWER REGS. TITLE 8, AND 16-18)
18. ALL WATER MATERIALS & SPECIFICATIONS MUST CONFORM TO COTUIT WATER DEPARTMENT REGULATIONS. APPROVED CONTRACTOR REQUIRED. COORDINATE W/ COTUIT WATER DEPARTMENT.
19. SWPPP AND HD TO BE FILED WITH EPA PER NPDES REGULATIONS PRIOR TO CONSTRUCTION.
20. ROOF GRABS TO BE PROVIDED AT ONE SQUARE FOOT OF LEACHING AREA PER 12 SQ. FT. OF ROOF AREA.
21. CONDOMINIUM MASTER DEED SHALL REFLECT TOTAL NUMBER OF BEDROOMS ON THE SITE TO 13 MAXIMUM.

LEGEND:

- CONCRETE ROUND/SPALL W/FL
- PROPOSED LIGHT POST
- EXISTING TREE
- PROPOSED TREE
- PROPOSED CATCH BASIN
- PROPOSED LEACHING PIT
- PROPOSED SEWER MANHOLE
- PROPOSED ROOF DRAIN
- PROPOSED DRAIN LINE
- EXISTING CONTOUR
- PROPOSED CONTOUR
- PROPOSED SPOT GRADE
- PROPOSED CENTER LINE
- PROPOSED GAS LINE
- PROPOSED ELECTRIC LINE
- PROPOSED WATER LINE
- PROPOSED ROOF DRAIN 4" DIA. CONC. W/ 1/2" STONE
- PROPOSED SEWER CLEANOUT

STRUCTURE	TRIM	INVERT	TOP OF PRECAST
CB1	48.5	48.0	48.0
CB2	47.5	44.5	48.5
LP1	48.7	44.4	48.4
LP2	48.8	44.4	48.4
LP3	49.2	44.4	48.4
LP4	48.8	44.4	48.4
CB3	50.0	47.5	45.0
FF52		47.5	
CB4	48.5	48.0	48.0
LP5	48.5	45.8	48.3
LP6	48.5	45.8	48.3
RD1		45.0	48.0
RD2		47.0	48.0
RD3		48.0	48.0
RD4		47.0	48.0

12-14-14
 DATE DANIEL A. OVALA, P.E., P.L.S.

off 509-362-4541
 fax 508-362-8850
 downcape.com ©
down cape engineering, inc.
 civil engineers
 land surveyors
 939 Main Street (Rte 6A)
 YARMOUTHPORT MA 02675

**COTUIT CENTER RESIDENCES
 (FMLY. BAY POINT TOWNHOUSES)
 GRADING & UTILITIES
 SITE PLAN**

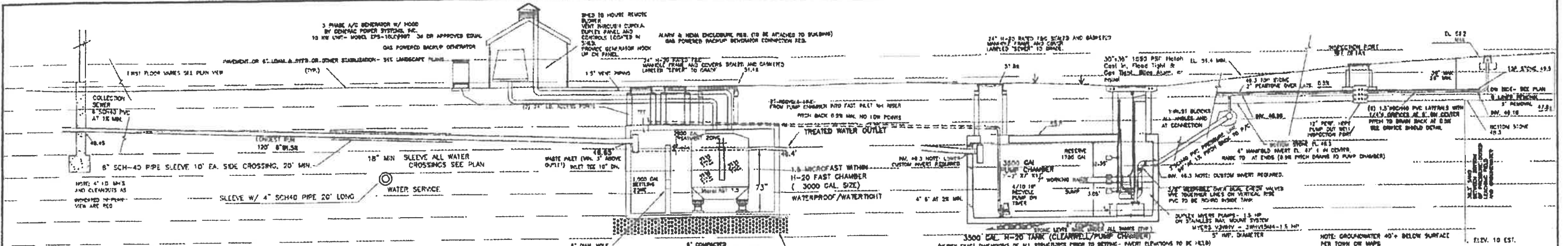
OF LAND IN
COTUIT (BARNSTABLE), MA

PREPARED FOR
PLM BUZZY, LLC
 2604 ELMWOOD AVE, SUITE 352
 ROCHESTER, NY 14618

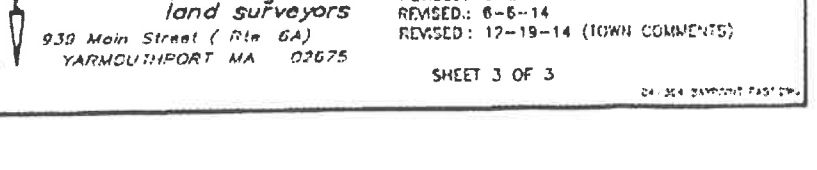
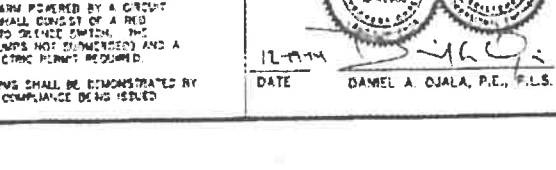
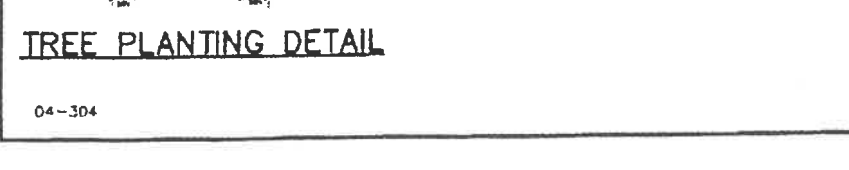
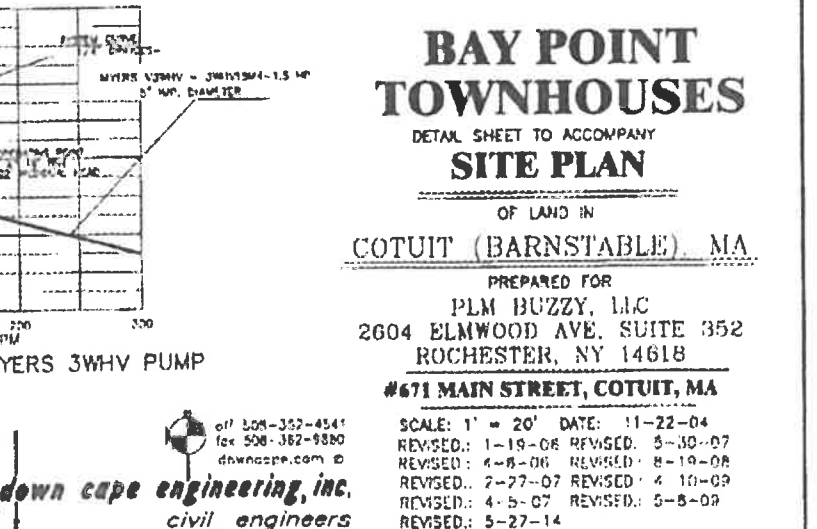
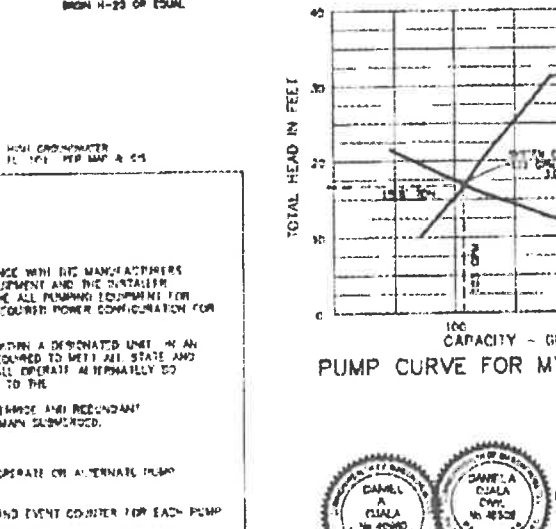
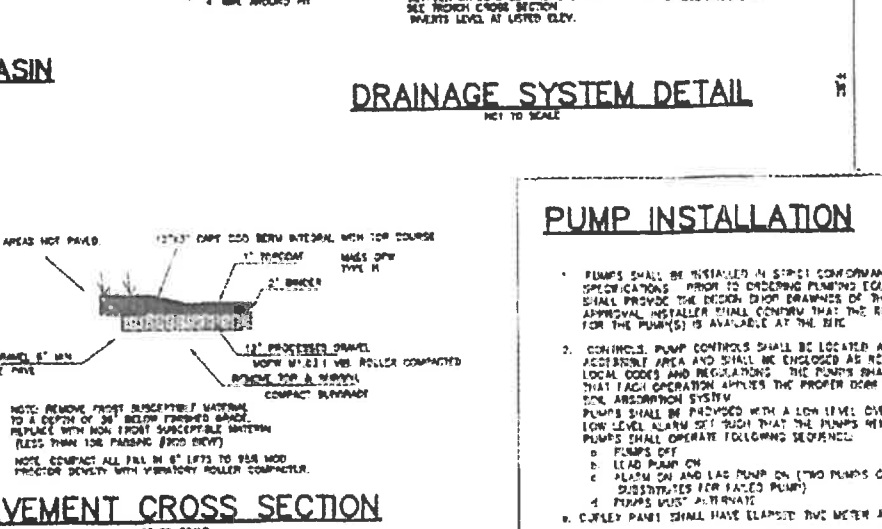
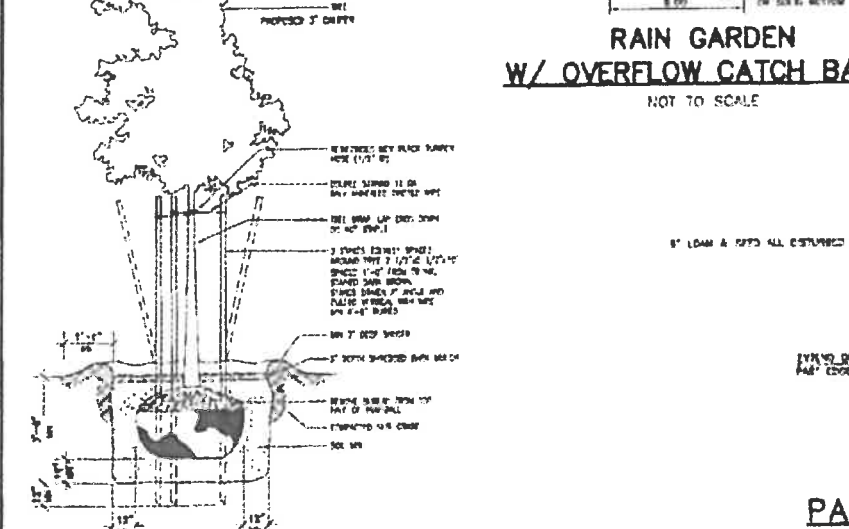
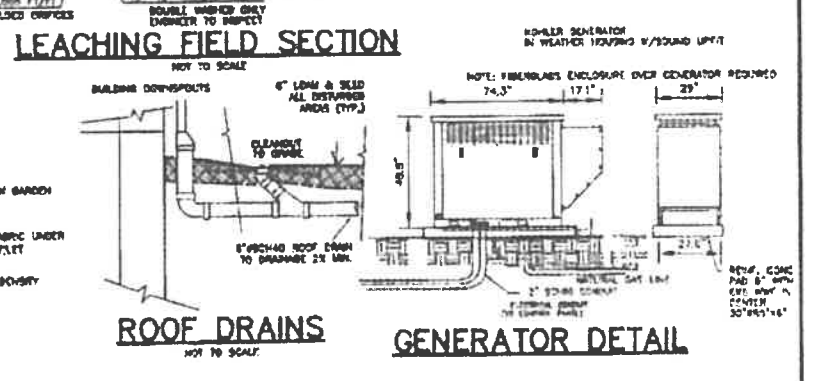
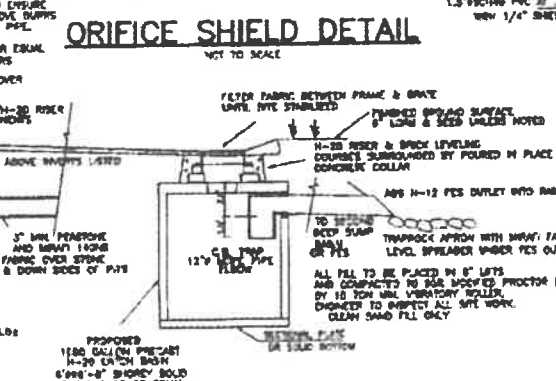
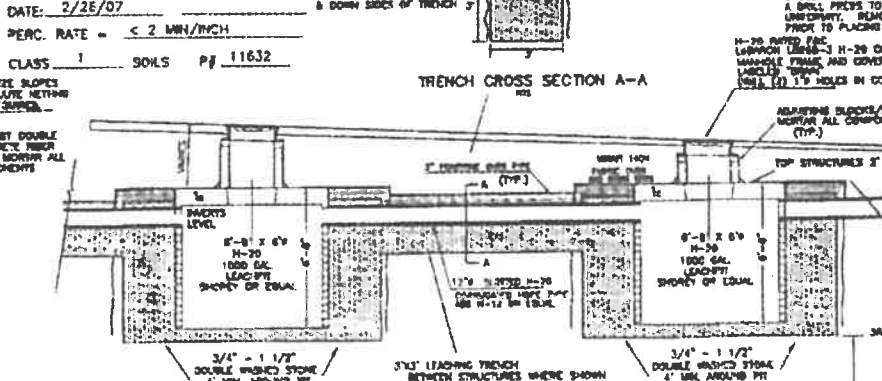
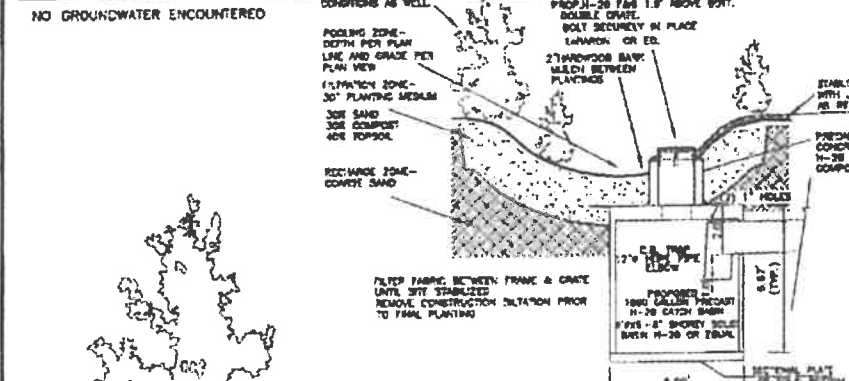
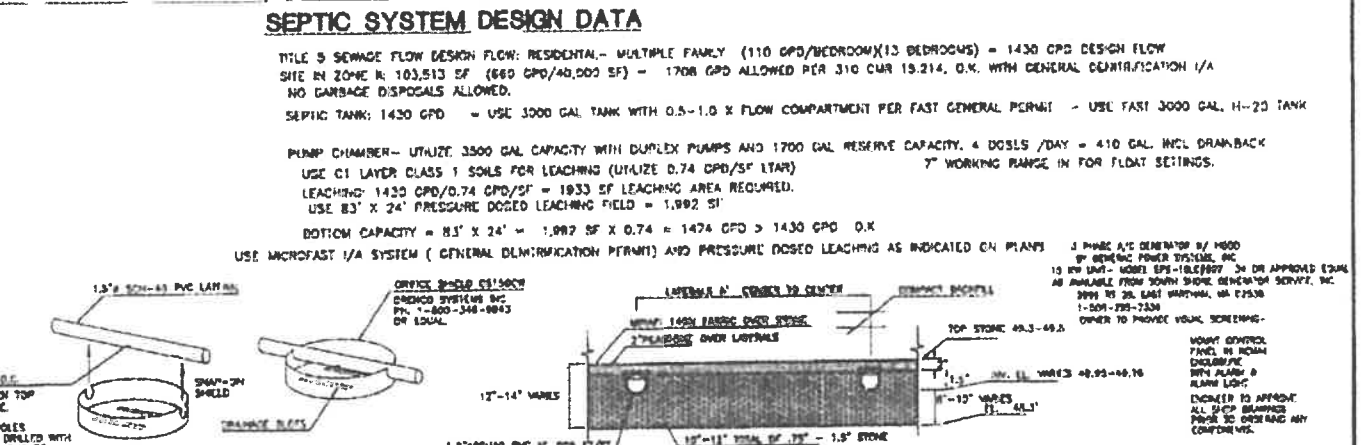
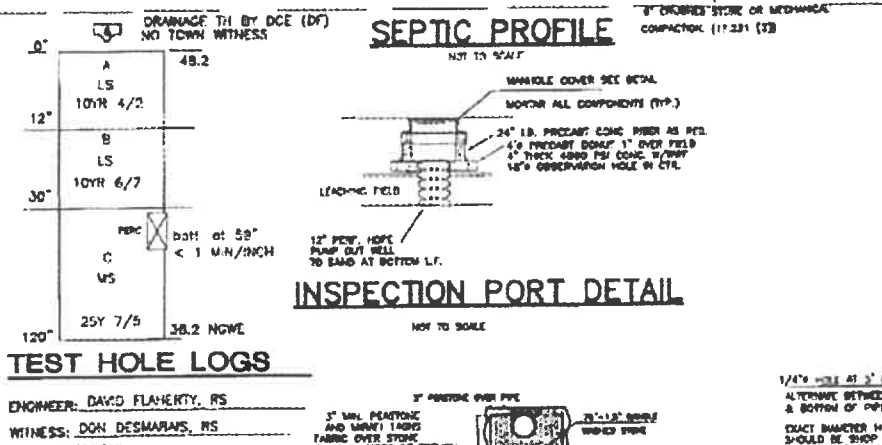
#671 MAIN STREET, COTUIT, MA

SCALE: 1" = 20' DATE: 11-22-04
 REVISED: 1-19-05 REVISED: 5-10-07
 REVISED: 4-6-08 REVISED: 8-19-08
 REVISED: 7-27-07 REVISED: 4-10-09
 REVISED: 4-5-07 REVISED: 5-8-09
 REVISED: 5-27-14
 REVISED: 6-6-14
 REVISED: 12-19-14 (TOWN COMMENTS)





ELEV.	50.3'	ELEV.	50.9'	ELEV.	51.3'	ELEV.	51.9'
A	LS	A	LS	A	LS	A	LS
10YR 4/2	49.3	10YR 4/2	49.9	10YR 4/2	50.3	10YR 4/2	50.8
B	LS	B	LS	B	LS	B	LS
10YR 6/7	47.8	10YR 6/7	48.2	10YR 6/7	48.7	10YR 6/7	49.2
C	MS	C	MS	C	MS	C	MS
25Y 7/5		25Y 7/5		25Y 7/5		25Y 7/5	

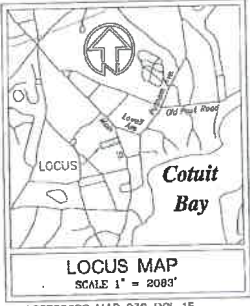


BAY POINT TOWNHOUSES
 DETAIL SHEET TO ACCOMPANY
SITE PLAN
 OF LAND IN
COTUIT (BARNSTABLE) MA
 PREPARED FOR
PLM BUZZY, LLC
 2604 ELMWOOD AVE. SUITE 352
 ROCHESTER, NY 14618
#671 MAIN STREET, COTUIT, MA
 SCALE: 1" = 20'
 DATE: 11-22-04
 REVISED: 1-19-06
 REVISED: 4-8-06
 REVISED: 7-27-07
 REVISED: 4-5-07
 REVISED: 5-27-14
 REVISED: 6-6-14
 REVISED: 12-19-14 (TOWN COMMENTS)

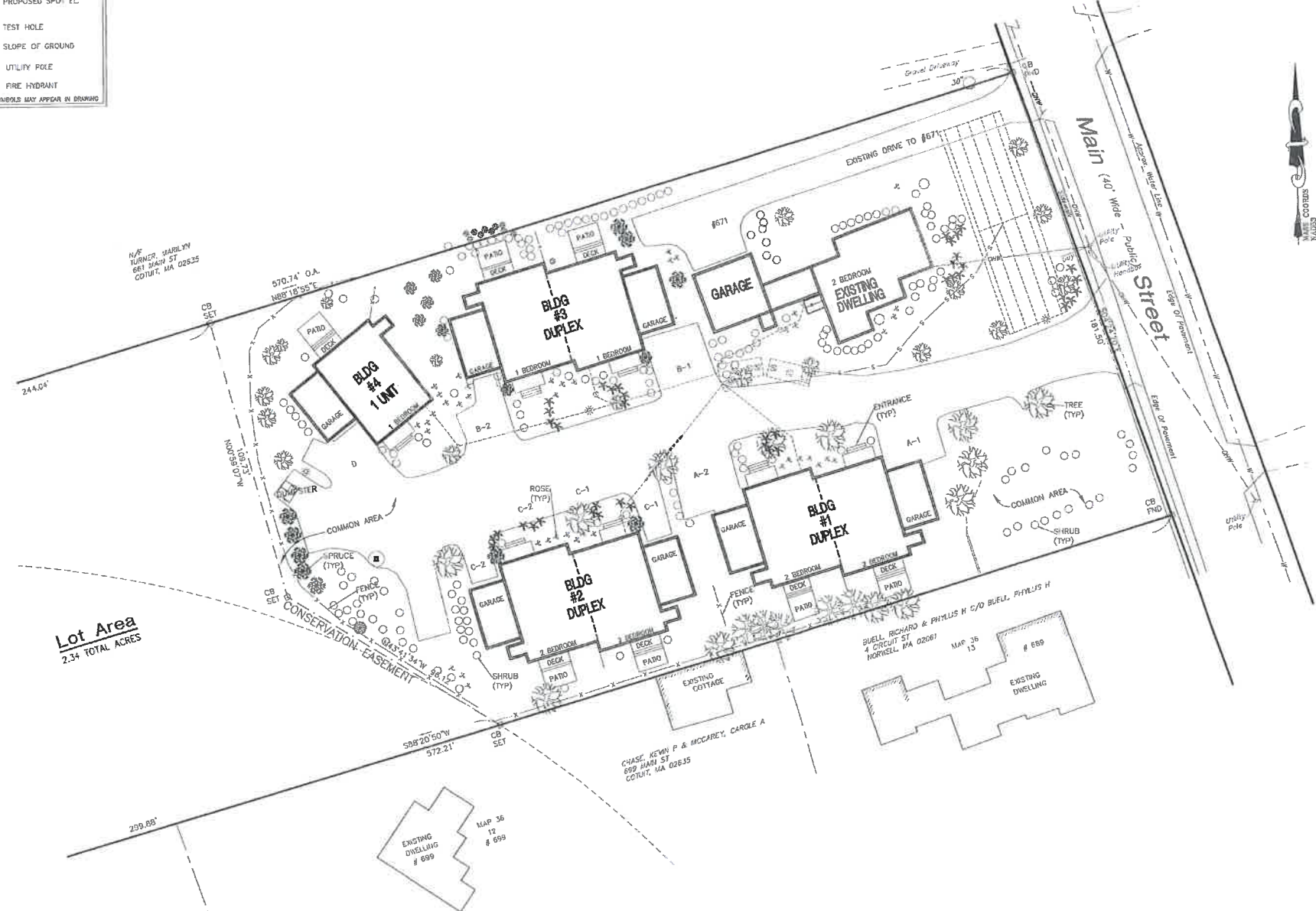
down cape engineering, inc.
 civil engineers
 land surveyors
 930 Main Street (Rte 6A)
 YARMOUTHPORT MA 02675
 TEL: 508-352-4541
 FAX: 508-382-9880
 dhw@downcape.com

LEGEND	
99	EXISTING CONTOUR
X 88.7	EXIST. SPOT ELEV.
-[99]	PROPOSED CONTOUR
[98.4]	PROPOSED SPOT E.L.
TH	TEST HOLE
2%	SLOPE OF GROUND
U	UTILITY POLE
FH	FIRE HYDRANT

NOTE: NOT ALL SYMBOLS MAY APPEAR IN DRAWING



- NOTES**
1. DATUM IS NAVD83.
 2. THIS PLAN IS FOR PROPOSED WORK ONLY AND NOT TO BE USED FOR LOT LINE STAKING OR ANY OTHER PURPOSE.
 3. CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING DEEPATE (1-888-344-7235) AND VERIFYING THE LOCATION OF ALL UNDERGROUND & OVERHEAD UTILITIES PRIOR TO COMMENCEMENT OF WORK.
 4. EXISTING SEPTIC LOCATION PER TR-540 01 FILE WITH TOWN.



SITE PLAN
OF
#675 MAIN STREET
COTUIT, MA
PREPARED FOR
KEITH SEXTON

DATE: JUNE 8, 2020
Scale: 1" = 20'

FOR REVIEW

DATE: 6-8-20
DANIEL A. OJALA, P.E., P.L.S.

down cape engineering, inc.
civil engineers
land surveyors
939 Main Street (Rte 6A)
YARMOUTHPORT MA 02675

F Y I

MASTER DEED
OF
COTUIT CENTER RESIDENCES CONDOMINIUM

PLM BUZZY LLC, a Massachusetts Limited Liability Company with its usual place of business at 120 East Avenue, 3rd Floor, Rochester, NY 14610("Declarant"), being sole owner of certain premises on 671 Main Street, Cotuit, MA 02635, hereinafter described, by duly executing and recording this Master Deed (hereinafter any reference to the terms Master Deed shall refer to this Master Deed), do hereby submit said premises to the provisions of Chapter 183A of the General Laws of Massachusetts, as amended, and propose to create , and do hereby create, a Condominium to be governed by and subject to the provisions of said Chapter 183A and to that end, I hereby declare and provide the following:

1. **NAME OF THE CONDOMINIUM.** The name of the Condominium shall be Cotuit Residences Condominium hereafter referred to as the Condominium.

2. **DESCRIPTION OF THE LAND.** The premises which constitute the Condominium hereby established comprise the land together with the buildings and improvements thereon, and are described in a deed from BAY POINT, LLC to PLM BUZZY LLC, dated December 19, 2013 and recorded in the Barnstable County Registry of Deeds in Book 27900, Page 187, all as described on EXHIBIT A, attached hereto and made a part hereof. The Declarant hereby expressly reserves to itself and its successors-in-title and their nominees, for a period ending two (2) years next after the date on which this Master Deed is recorded, the easement, license, right and privilege to pass and re-pass by vehicle and on foot in upon, over and to the common areas and facilities of the Condominium for all purposes, including but not limited to transportation of construction materials in order to complete work(if any) on the Condominium, provided that the exercise of the rights reserved by the Declarant in this paragraph, the Declarant will not unreasonable affect the use and enjoyment of the common areas and facilities. Nothing in this paragraph shall be deemed to create any rights in the general public.

3. **DESCRIPTION OF BUILDINGS.**

The Condominium will be constructed and incorporated by this Master Deed. When completed the Condominium will consist of 8 age-restricted units with 13 total bedrooms consisting of the renovation of the existing structure into a 2 bedroom home, 4 townhouse units, each with 2 bedrooms located in two duplex buildings and three one bedroom units, two of which shall be in a duplex structure and one of which shall be free-standing. One of the two-bedroom units will be affordable and one of the one-bedroom units in the duplex will be affordable, all consistent with the Comprehensive Permit recorded in Book 27606 Page 3, Book 28774 Page 200, the Confirmatory Regulatory Agreement recorded in Book 28824 Page 38 and the Endorsed Disposition and Settlement Agreement.

1500 Book 674 Page 21+22

4. **DESCRIPTION OF UNITS.** The designation of each unit together with a statement of their location, approximate area, number of rooms, and immediate common area to which it has access and any other data necessary for its proper identification and other descriptive specifications thereof are set forth in **EXHIBIT B** attached hereto and made a part hereof. All units shall have access to the steps, walkways, green space, dumpster, parking areas, and all other areas immediately adjacent to and contiguous with the Condominium and each unit, as depicted on the Site Plan.

- A. **Floors:** The upper surfaces of the concrete forming the floor of the basement of those Units having Basements and the plane of the upper surface of the sub-flooring in those Units without basements;
- B. **Ceilings:** The plane of the lower surface of the ceiling joists.
- C. **Interior Building Walls:** The plane of the interior surface of the wall studs facing such unit.
- D. **Exterior Building Walls, Doors, and Windows:** As to the walls, the plane of the interior surface of wall studs; as to the doors the exterior surface thereof; and as to windows, the exterior surface of the glass and the window frames.
- E. **Pipe Chases or Other Enclosures** concealing pipes, wires or conduits within a unit are part of that unit, but the pipes, wires or conduits within such pipe chase or other enclosure that serve more than one unit are part of the common area and facilities.
- F. All structural Portions of the building are part of the common areas and facilities.

5. **COMMON AREAS AND FACILITIES.** The common areas and facilities of the Condominium shall consist of the following to the extent that the same are not included within a unit or units:

- A. The land, together with the benefit of and subject to all rights, reservations, easements, takings, restrictions and agreements of record;
- B. The yards, lawns, gardens, driveways, walkways, parking areas, and other improvements on the land, including, without limitation, walls, fences, railings, steps,

exterior lighting fixtures, and similar facilities.

C. Those portions of the buildings not included within the boundaries of the units including the foundations, columns, girders, beams, supports, exterior walls, party and common walls, roofs, gutters, drainage downspouts and other elements attached to the buildings but not included with the units;

D. The installation of central service equipment providing power, light, air, exhaust, gas, hot and cold water, heating, air conditioning, and waste disposal, including all equipment attendant thereto, all smoke detectors and fire alarm systems, sprinkler systems, all conduits, junction boxes, chutes, ducts, plumbing, wiring, flues, and other facilities for the furnishing of utility services or waste removal contained in portions of the building contributing to the structure or support thereof, and all such facilities contained within any unit which serve parts of the Condominium other than the unit within which such facilities are contained (but specifically excluding equipment contained within and servicing a single unit), together with an easement of access thereto. The maintenance, repair, and replacement of the heating apparatus shall be the obligation of the unit owners whose unit is served thereby.

E. Such additional common areas and facilities as may be defined in Chapter 183A, and except as otherwise provided or stipulated herein.

Each unit owner shall be entitled to an undivided interest in the common areas and facilities in the percentages as set forth in **EXHIBIT C**, which is attached hereto and incorporated herein by reference. **EXHIBIT C** sets for the percentage ownership in the common areas based upon the values of the units to be incorporated by amendment to the Master Deed and shall be subject to (1) the terms and provisions of this instrument including exclusive rights as provided herein and of the By-Laws of the Condominium Trust, as defined and described in Paragraph 13 herein, (2) Rules and Regulations promulgated pursuant thereto with respect to the use thereof, (3) the timely making of the payments required to be made in connection therewith.

6. **SITE AND FLOOR PLANS.** There has been recorded herewith a Site Plan entitled "Cotuit Center Residences Condominium Site Plan" prepared for PLM Buzzy, LLC, #671 Main Street, Cotuit, MA, Scale 1"=20', dated January 17, 2018 and an attached set of floor plans entitled "Cotuit Center Residences Condominium Building Plans", prepared for PLM Buzzy, LLC, #671 Main Street, Cotuit, MA, Scale 1" = 10' dated January 17, 2018 showing the layout, location, unit numbers, and dimensions of the Units and stating the name of the Condominium and bearing the verified statement of said Surveyor, certifying that the plans fully and accurately depict the layout, location, and unit numbers and dimensions of the units, as built.

7. **MODIFICATION OF UNITS.** Except as otherwise provided herein the owner of any unit may not at any time make any change or modification of the of the exterior of said unit or any interior changes that would affect or in any way modify the structural or supportive characteristics of the building or its surfaces; however, such owner may at any time and from time to time change the use and designation of any room or space within the unit, subject always to the provisions of this Master Deed, and the provisions of the By-Laws of the Trust

including the Rules and Regulations promulgated and all work with respect to the foregoing shall be done in a good and workmanlike manner pursuant to a building permit issued by the Town of Barnstable, where required, and pursuant to plans and specifications which have been submitted to and approved by the Trustee or managing agent appointed by the Trustee, as the case may be, of the Trust. Such approval shall not be unreasonably withheld or delayed. Any unit owner doing such work shall indemnify the Trustees and all other unit owners from and against, and hold each of them harmless against, any claims for damage to persons or property, and any mechanics or materialmen's liens which arise out of work.

8. USE AND RESTRICTIONS ON USE OF UNITS.

A. The units shall be used for residential purposes as permitted under the Town of Barnstable Zoning By-Laws and no unit is intended or designed for commercial purposes. Not more than one family unit nor more than two (2) unrelated persons per bedroom; no portion of the units shown as Loft, Attic, Basement Area or Office on the Master Plans shall be used as a sleeping area or bedroom, no modifications shall be made or closets added to those areas.

B. The units and common elements shall be used only for purposes consistent with their design and in a manner consistent with the Bylaws of the Condominium Trust and the rules and regulations from time to time adopted pursuant thereto;.

C. Each unit shall be used only for such purposes and to such extent as will not overload or interfere with any common element or the enjoyment thereof by the owners of other units.

D. No nuisances shall be allowed on the property nor shall any use or practice be allowed which is in violation of the By-Laws or Rules and Regulations of the Trust or which unreasonably interfere with or is an unreasonable annoyance to the peaceful possession or proper use of the property by the other unit owners or occupants or which requires (unless the Trustees consent thereto) any alteration of or addition to the common element.

E. No unit owner or occupant shall commit or permit any violation of the policies of insurance taken out by the Trustees in accordance with the By-Laws, or do or permit anything to be done, to keep or permit anything to be kept, or permit any condition to exist, which might (1) result in termination of any such policies; (2) adversely affect the right to recovery thereunder; (3) result in reputable insurance companies refusing to provide insurance as required or permitted by the By-Laws, or result in any increase in the insurance rates or premium unless, in case of such increase, the unit owner responsible for such increase shall pay the same. If the rate of premium payable with respect to the policies of insurance taken out by the Trustees in accordance with the By-Laws, or with respect to any policy of insurance carried independently by any unit owner in the building as permitted by the By-Laws shall be increased, or shall otherwise reflect the imposition of a higher rate than that applicable to the lowest ranked unit in the building by any reason of anything that is done or kept in a particular unit, or as a result of the failure of any unit owner or any occupant of a unit to comply with the requirements of the policies of insurance taken out by the Trustees, or as a result of the failure of such unit owner or occupant to comply with any of the other terms and provisions of this Master Deed, the By-Laws, or the Rules and Regulations, the unit

owner of that particular unit shall reimburse the Trustees and such other unit owners respectively for the resulting additional premiums which shall be payable by the Trustees or such other unit owners as the case may be. The amount of any such reimbursement due the Trustees may without prejudice to any other remedy of the Trustees be enforced by assessing the same to that particular unit as a Special Common Charge under the By-Laws.

F. No unlawful use shall be made of the property or any part thereof, and all valid laws, rules, and regulations of all government agencies having jurisdiction thereof (collectively "legal requirements") shall be strictly complied with. Compliance with any Legal Requirements shall be accomplished by and at the sole expense of the unit owner or owners, or the Trustees, as the case may be, whichever shall have the obligations under the By-Laws to maintain and repair the portion of the property affected by any such Legal Requirement affecting its unit or the property. Notwithstanding the foregoing provisions, any unit owner may, at his own expense, defer compliance with the contest, by appropriate proceedings prosecuted diligently and in good faith the validity or applicability of any Legal Requirement affecting any portion of the property which such unit owner is obligated to maintain and repair, and the Trustees shall cooperate with such unit owner in such proceedings provided that:

1. Such unit owner shall pay and shall defend, save harmless, and indemnify the Trustees, the Trust, and each other unit owner against all liability loss or damage which any of them respectively shall suffer by reason of such contest and any noncompliance with such Legal Requirement, including reasonable attorney's fees and other expenses reasonably incurred as limited by the provisions of the, Permitting Documents, this Master Deed, the Trust and By-laws; and
2. Such unit owner shall keep the Trustees advised as to the status of such proceedings. Such unit owner need not comply with any Legal Requirement so long as it shall be so contesting the validity or applicability thereof, provided that noncompliance shall not create a dangerous condition or constitute a crime or an offense punishable by fine or imprisonment, and that no part of the building shall be subject to being condemned or vacated by reason of noncompliance or otherwise by reason of such contest. The Trustees may also contest any Legal Requirement without being subject to the foregoing conditions as to contest and may also defer compliance with any Legal Requirement, but only subject to the foregoing conditions as to deferral of compliance.

G. No unit owner or occupant shall discharge, or permit to be discharged, anything into waste lines, vents, or flues of the building which cause or might be anticipated to cause damage thereto, spread odors or otherwise, and be offensive.

H. All mechanical equipment installed in any unit shall be so designed installed, maintained, used by the owner and occupant of such unit, at the expense of such owner, as to minimize insofar as possible and in any event reduce to a reasonably acceptable level the transmission of noise, vibration, odors, and other objectionable transmissions from such unit to any other area of the

building.

I. No owner of a unit shall, without the written approval and consent of the Trustee, place or suffer to be placed or maintained (1) on any exterior door, wall, window of the unit, or upon any door, wall, or window of the common elements, any sign, awing or canopy, addition, or advertising matter or other thing of any kind, or (2) any decoration, lettering or advertising matter on the glass of any window or door of the unit or (3) any advertising matter within the unit which shall be visible from the exterior thereof; provided, that the Trustees shall establish reasonable and uniform regulations permitting the placement and maintenance by each owner identifying signs and insignia of such sizes and materials and in such locations as shall be architecturally suitable and appropriate to the design and function of the Condominium.

The Trustees of the Trust also reserve the right and easement to enter upon the premises from time to time at reasonable hours, for the purpose of reconstructing and repairing adjoining units, common areas and facilities, and to perform any obligations of the Trust required or permitted to be performed under the Master Deed and /or the By-Laws of the Trust.

The maintenance, repair, and improvement of the exterior portion of the units shall be performed by the Trust and the cost of such maintenance, repair and improvements shall be a common expense and shall be allocated and assessed to each unit owner in the Condominium as any other common expense.

J. No unit owner or occupant shall store materials or place unregistered or non-functioning vehicles outside his unit or on the premises.

K. All Units shall be owned or occupied solely for residential purposes by persons age 55 or older. If any Unit is owned in trust, any corporate entity, or in any other form of ownership, 100% of the beneficial interests, stock ownership, membership, or ownership interests shall be held by persons age 55 or older. Notwithstanding the foregoing, a unit may be owned or occupied by a person over age 55 with a spouse under age 55 and if the owner/occupant over age 55 dies leaving the ownership/occupancy to a spouse under age 55, that spouse may continue to own or occupy the unit.

L. The Market Units may be rented provided that no Market Unit shall be rented, leased or sub-leased for less than a one (1) year term and shall be rented only to persons who are 55 or older.

9. Restrictions and Obligations Imposed By the Comprehensive Permit and Regulatory Agreement.

Comprehensive Permit and Regulatory Agreement
A. The terms and provisions under this Master Deed are subject to and governed by the Comprehensive Permit issued by the Town of Barnstable to Bay Point LLC dated August 30, 2007 and recorded in the Barnstable County Registry of Deeds (Barnstable Deeds") in Book 27606, Page 3; the Endorsed Disposition and Settlement Agreement dated August 16, 2010 recorded on August 10, 2013 in the Barnstable County Registry of Deeds in Book 27606, Page 32;

the Memorandum of Understanding dated March 28, 2012 and recorded in Barnstable Deeds, Book 27606, Page 58; a Second Memorandum of Understanding dated April 23, 2013 and recorded in Barnstable Deeds Book 27606, Page 61; the Deed from Bay Point LLC to PLM Buzzy LLC dated December 19, 2013 and recorded in Barnstable Deeds Book 27900, Page 187; and the Confirmatory Regulatory Agreement dated April 1, 2015 and recorded on April 27, 2015 in Barnstable Deeds in Book 28824, Page 38 (collectively "Permitting Documents").

Pursuant to the Permitting Documents the affordable units shall be sold only to eligible purchasers at no greater than the maximum initial sales price as defined in the Confirmatory Regulatory Agreement and approved by the Subsidizing Agency and set forth in the Master Deed. The Subsidizing Agency is the Massachusetts Finance Agency, 1 Beacon Street, Boston, MA 02108. All affordable owners shall be required to execute an Affordable Housing Restriction in the form set forth in Exhibit B to the Confirmatory Regulatory Agreement such that all the affordable units will be preserved each time a resale of an affordable unit occurs. The sale price for the affordable units has been established and approved by the Subsidizing Agency.

In setting forth the terms of this Master Deed, the Grantor certifies that prior to the marketing of the affordable units the Grantor obtained from the Subsidizing Agency approval of the marketing plan, inclusive of the approval of the initial budget for the condominium, the percentage interests of the affordable and the market units, and the share to be borne by the affordable owners.

Pursuant to the Paragraph 5 of the Confirmatory Regulatory Agreement, the Grantor has established an Affordability Monitoring Agent, the Barnstable Housing Authority, 146 South Street, Hyannis, MA 02601.

The Terms of this Master Deed as applied to the Affordable Owners shall be exercised in compliance with the Permitting Documents, which are incorporated herein by reference and made part hereof.

B. The following restrictions are imposed upon the Affordable Units, 675 A-1 and 675 B-1:

1. Without limiting the generality of the foregoing, the Affordable Units shall be subject, in perpetuity, to the resale provisions and affordability criteria as set forth in the Regulatory Agreement, and each Affordable Unit shall be conveyed subject to a Deed Rider in the Form of Exhibit B attached to the Regulatory Agreement.

2. The provisions of this section 9 shall constitute a permanent restriction pursuant to G.L. c. 184, § 26 running in favor of the Town of Barnstable and encumbering the Affordable Units.

10. ENCROACHMENTS. If any unit, now or hereafter, encroaches upon any other unit or upon a portion of the common areas and facilities, or if any portion of the common areas and facilities, now or hereafter, encroaches upon any unit as a result of the settling

or construction of a building, or a unit therein, or the alteration or repair of such a building or unit, each unit owner shall have the benefit of and be subject to a valid easement which shall exist for such encroachment and for the maintenance of the same, so long as the building stands.

can be amended to eg. Easement

11. DETERMINATION OF PERCENTAGE INTERESTS. The determination of percentage interest of the respective units of the common areas and facilities has been made upon the basis of the anticipated values and purchase prices of the market and affordable units all the units in the Condominium, which determination has been approved by the Subsidizing Agency and the Town of Barnstable and in the opinion of the Developer, complies with the requirements of said Chapter 183A and the Permitting Documents.

12. DEFINITIONS. All terms and expressions herein used which are defined in Chapter 183A of General Laws of Massachusetts, as amended, shall have the same meaning unless the context otherwise requires. "Trust" shall refer to Condominium Trust (see Paragraph 13 of this document). In addition, "By-laws of the Trust" shall refer to the By-Laws of the Condominium and set forth in the Trust.

13. MANAGING ENTITY. The COTUIT CENTER RESIDENCES CONDOMINIUM TRUST ("Trust") is formed in accordance with the said Chapter 183A through which the unit owners will manage and regulate COTUIT CENTER RESIDENCES / CONDOMINIUM, pursuant to the Trust, this instrument, and Chapter 183A of General Laws of the Commonwealth of Massachusetts. Said Trust is recorded herewith and is intended to be read with this Master Deed as to the management of the Condominium.

The Initial Board and sole Trustee of the Trust shall be PLM BUZZY, LLC for a term as set forth in said Trust. Thereafter, in accordance with the provisions of the Trust, the Unit Owners shall elect successor Trustees exercising their proportionate ownership vote to govern the Trust by a majority vote of the ownership interests in accordance with the terms and conditions of the Declaration of Trust to be recorded herewith.

The Trust has been duly adopted in accordance with the provisions of the said Chapter 183A and recorded herewith, and such amendments thereto as may from time to time be enacted.

"Rules and Regulations" shall refer to those rules and regulations as are delineated in the By-laws of the Trust and may be hereafter adopted by the Trust for use of the common areas and facilities of the Condominium.

14. TERMINATION. The unit owners may remove the property from the provisions of Chapter 183A of the General Laws of Massachusetts and this Master Deed by the procedure set forth in the appropriate section of said Chapter 183A, as may amended from time to time.

Upon such removal, the unit owners shall be deemed to own the Condominium property as tenants in common, with undivided interest therein in the percentage of undivided interest previously owned by each owner in the common area and facilities.

The removal provided for in this paragraph and in the By-Laws of the Trust shall not bar the subsequent re-submission of the property to the provisions of Chapter 183A of the General Laws of Massachusetts.

*Trustees
of the
Trust*

15. AMENDMENTS. The Master Deed may be amended, by an instrument in writing (a) signed by the owners of the units entitled to seventy - five (75%) percent or more of the undivided interests in the common area and facilities and at least one affordable owner, (b) signed and acknowledged by a majority of the Trustees of the TRUST, and (c) duly recorded with the Barnstable County Registry of Deeds, provided, however, that:

A. The date on which any such instrument is first signed by a unit owner shall be indicated thereon as the date thereof and no such instrument shall be of any force or effect unless the same has been so recorded with six (6) months after such date;

B. No instrument of amendment which alters the dimensions of any unit shall be of any force or effect unless the same has been signed by the owners of the unit so altered.

C. No instrument of amendment which alters the percentage of the undivided interest in and to the common areas and facilities to which any unit is entitled shall be of any force or effect unless the same has been signed by all unit owners and said instrument is recorded as an amended Master Deed;

D. No instrument of amendment which purports to increase or decrease or redefine the property defined herein as common areas and facilities shall be of any force or effect unless signed by the unit owners entitled to one hundred (100%) percent of the undivided interests in the common areas and facilities; provided; however that this Subparagraph (D) does not apply to any instrument of amendment executed in accordance with the provisions of Subparagraph (F) of this Paragraph 15, if such instrument of amendment does not purport to increase or decrease or redefine the property defined herein as common areas and facilities;

E. No instrument of amendment affecting any unit upon which there is a first mortgage of record held by a bank or insurance company or a purchase money second mortgage held by the grantor or his heirs or assigns shall be any force or effect unless the same shall have been assented to by the holder of such mortgage.

F. No instrument of amendment which alters the property line between two contiguous units or which alters that portion of the common area and facilities which exists within the walls , floors, or ceiling of such contiguous units shall be any force or effect unless signed by the owners of all units (1) the property lines of which are being altered or (2) which are immediately contiguous with the section of the floors, walls, or ceilings, in which the common areas and facilities are being altered, as the case may be, and such instrument of amendment need not be signed by any other unit owners so long as such instrument of amendment states that such alteration (1) will not jeopardize the soundness or safety of the building portion of the Condominium, (2) will not adversely affect any other unit, and (3) does not affect the

exterior walls of said building; and

G. No instrument of amendment which alters Master Deed in any manner which would render it contrary to or inconsistent with any requirements or provisions of said Chapter 183A of the General Laws of Massachusetts or the Permitting Documents shall be of any force or effect.

16. MASSACHUSETTS GENERAL LAWS, CHAPTER 183A.

The units, the common areas and facilities, the unit owners and the Trustee of the Condominium shall have the benefit of and be subject to the provisions of Chapter 183A of the General Laws of Massachusetts, and in all respects not specified in this Master Deed or in the Declaration of Trust (including the By-Laws) of the Condominium established hereby, including, without limitation, provisions thereof with respect to removal of the Condominium premises or any portion thereof from the provisions of such Chapter 183A.

17. UNITS SUBJECT TO MASTER DEED, UNIT DEED, DECLARATION OF TRUST, ETC.

All present and future owners, tenants, servants and occupants of the units shall be subject to and shall comply with the provisions of this Master Deed, the Unit Deed, the By-Laws and Rules and Regulations, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into occupancy of any unit shall constitute an agreement that (a) the provisions of this Master Deed, the Unit Deed, the By-Laws and Rules and Regulations, as they may be amended from time to time are accepted and ratified by such owner, tenant, servant, or occupant, and all such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof, and (b) a violations of the provisions of this Master Deed, the Unit Deed, By-Laws or Rules and Regulations by any such person shall be deemed a substantial violation of the duties of the Condominium unit owner.

18. RIGHTS AND EASEMENTS.

In addition to and not in limitation of the rights of the unit owners as elsewhere herein set forth and as provided in said Chapter 183A, the owner or owners of each unit shall have, as appurtenant to such unit, the rights and easements, in common with the owner or owners of all other units and subject to like rights and easement appurtenant to such other units, to use all common areas and facilities located in any of the other units elsewhere on the property and serving its unit, and each unit shall be subject to any easement in favor of the Owners of all other units to use the common areas and facilities located in that unit and serving such other units, to use the common areas and facilities including, without limiting the generality thereof, all driveways, ways, walks, paths, parking areas, conduits, pipes, plumbing, wiring, chimney, flues, and other facilities for the furnishing of utilities and services, subject always, however, to

(a.) the exclusive rights and easements herein granted to particular units in

certain facilities.

- (b.) the restrictions and other provisions herein set forth, and
- ↙ ©.) the rules and regulations promulgated by the Board of Trustees of Cotuit Center Residences Condominium;

The Trustees of Cotuit Center Residences Condominium shall have, and are hereby granted, the right of access, at reasonable times and consistent with the comfort, convenience, and safety of unit owners, to such areas of each unit as reasonably needed to be entered for purposes of operation, inspection, protection, maintenance, repairs, and replacement of common areas and facilities, and correction, termination and removal of acts of things that interfere with the common areas and facilities or as otherwise contrary to or in violation of the provisions hereof, and also a right of access for making emergency repairs as provided for in Chapter 183A of Massachusetts General Laws.

The Trustees of Cotuit Center Residences Condominium shall also have, and are hereby granted, the exclusive right to maintain, repair, replace, add to, and alter the driveways, ways, walks, paths, parking areas, utility and service lines and facilities, lawns, trees, plants, and other landscaping comprised in the common areas and facilities, and to make excavation for said purposes; no unit owner shall do any of the foregoing without the prior written permission of said Trustees in each instance.

19. **WAIVER.** No provisions contained in this Master Deed shall be deemed to have been waived or abrogated by reason of any failure to enforce the same, irrespective of the number of violations or breaches which occur.

20. **INVALIDITY.** The invalidity of any provision of this Master Deed shall not be deemed to impair or effect in any manner the validity, enforcement or affect of the remainder of this Master Deed shall continue in full force and effect as though such invalid provision has never been included herein.

21. **GENDER.** The use of the masculine gender in the Master Deed shall be deemed to refer to the feminine and neuter genders and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.

22. **CAPTIONS.** The captions herein are inserted only as a Matter of convenience and for reference and in no define, limit or describe the scope of this Master Deed nor the intent of any provision hereof.

23. **LEGAL EXPENSES.** Except as limited for the affordable owners by the Permitting Documents, the Master Deed, the Trust and the By-laws, any and all legal fees and expenses of any contest by the Trustees shall be common expense as defined in the By-Laws. The amount

COTUIT CENTER RESIDENCES CONDOMINIUM

EXHIBIT "C" TO MASTER DEED

<u>Unit Designation</u>	<u>Percentage of Undivided Interest in Common Areas and Facilities</u>
675 A-1 Affordable	4.6425%
675 A-2	15.2049%
675 B-1	12.4399%
675 B-2 Affordable	4.1282%
671	19.3524%
675 C-1	15.2049%
675 C-2	15.2049%
675 D	13.8224%
TOTAL	100.00 % ***

**COTUIT CENTER RESIDENCES CONDOMINIUM
EXHIBIT "B" TO MASTER DEED**

<u>Unit Designation</u>	<u>No. of Rooms</u>	<u>*Approx. Sq. Ft. in Area</u>	<u>% **</u>
Unit 675 A-1 Affordable	2 Bedroom	1736	4.6425%
Unit 675 A-2	2 Bedroom	1736	15.2049%
Unit 675 B-1	1 Bedroom	1736	12.4399%
Unit 675 B-2 Affordable	1 Bedroom	1736	4.1282%
Unit 671	2 Bedroom	2360	19.3524%
Unit 675 C-1	2 Bedroom	1812	15.2049%
Unit 675 C-2	2 Bedroom	1812	15.2049%
Unit 675 D	1 Bedrooms	1812	13.8224%

100 %

Units 675 A-1 and 675 B-1 are Affordable Units.

* All approximate square footage designated herein includes all of the interior space of each unit including bathrooms for each unit, and it specifically excludes the common areas, basements, and garages.

** Percentage ownership based upon proportionate values of estimated fair market value as approved by the Town of Barnstable, the Subsidizing Agency, and the Grantor. Consistent with the Permitting Documents, the percentages of the affordable units shall not be altered or changed by any amendment to the Master Deed or the Trust.

Each unit owner shall have the right to partition the interior of the unit; provided however no such work shall affect the structural integrity of the Condominium and further provided that all such work shall be in accordance with Federal, State and Local Building Codes or regulations in effect.

Immediate Common Areas

All Units shall have access to the steps, walkways, and parking areas which are immediately adjacent to and contiguous with each unit.

Exclusive Common Areas

All Units shall have the exclusive rights to Use a designated one car garage and one outside parking space in front or the designated garage and shall have the right to post such signs and ground painting to so designate.

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COTUIT CENTER RESIDENCES CONDOMINIUM

EXHIBIT "A" TO MASTER DEED

DESCRIPTION OF THE CONDOMINIUM PARCEL

The land together with the buildings thereon, situated in Barnstable (Cotuit) Barnstable County, Massachusetts, bounded and described as follows:

- Easterly by Main Street, one hundred eighty-one and 50/100 (181.50) feet;
- Southerly by land of Elizabeth Glover Shafer and of the Cotuit Fire District, five hundred seventy-two and 65/100 (572.65) feet;
- Westerly by land now or formerly of F. Maynard Gifford, Jr., one hundred eighty-one and 26/100 (181.26) feet; and
- Northerly by land of Charles and Nina Turner, five hundred seventy-one and 13/100 (571.13) feet, containing an area of 2.38 acres.

Said premises are shown as Parcel No. 1 and Parcel No. 2 on a plan of land entitled "Plan of Land in Cotuit-Barnstable-Mass, for Rowland E. Cooks, et ux, Scale: 40 ft to the inch, Charles N. Savory, C.E., November 1951", duly filed with Barnstable County Registry of Deeds in Plan Book 101, Page 55.

Said premises are conveyed with the benefit of all easements, rights and restrictions of record, insofar as the same are in force and effect, including, but not limited to: Easement to the Town of Barnstable recorded in Barnstable Registry of Deeds Book 27316, Page 157; Comprehensive Plan recorded in Book 27605, Page 3; Settlement Agreement recorded in Book 27606, Page 32; and Memorandum of Understanding recorded in Book 27606, Pages 58 and Page 61.

For title, see deed of Bay Point, LLC to PLM Buzzy, LLC dated December 19, 2013 and recorded in the Barnstable Registry of Deeds in Book 27900, Page 187.

Property Address: 671 Main Street, Cotuit, MA 02638

due the Trustees and the Trust under the foregoing obligation of a unit owner to defend, save harmless and indemnify the Trustees and the Trust may without prejudice to any other remedy of the Trustees and the Trust be enforced by assessing the same to the units or owners of such unit as a special common charge.

24. CONFLICTS. This Master Deed is set forth to comply with the requirements of Chapter 183A of the General Laws of the Commonwealth of Massachusetts and the Permitting Documents. In case any of the provisions stated above conflict with the provisions of said statute or Permitting Documents, the provisions of said statute and Permitting Documents shall control.

EXECUTED as a sealed instrument this 19th day of January 2018

DECLARANT
PLM BUZZY, LLC


Thomas E. Massaschi, Manager

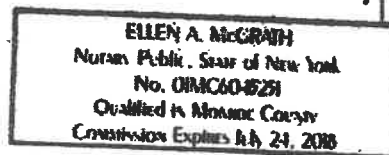
THE STATE OF NEW YORK

County Monroe

January 19, 2018

On this 19 day of January, 2018, before me, the undersigned notary public, personally appeared Thomas E. Massaschi, Manager, PLM Buzzy, LLC and proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document(s), and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.


Notary Public: Ellen McGrath
My Commission Expires: 7/24/18





Town of Barnstable
Planning & Development Department
www.townofbarnstable.us/planninganddevelopment



Elizabeth Jenkins, AICP
Director

MEMORANDUM

TO: Zoning Board of Appeals
FM: Planning and Development Staff
RE: No. 2005-100 Bay Point LLC, Cotuit Center Residences, 671 – 675 Main Street, Cotuit request for a minor modification to landscape plan

In 2007, Comprehensive Permit No. 2005-100 was granted for Five (5) units of multi-family housing on 2.38 acres. Two of the dwellings are affordable units marketed to qualified low and moderate-income households at 65% and 70% of the median income. Three units are one-bedroom new construction townhouse units. A fourth unit is a one-bedroom created by either renovation of an existing cottage or demolition of that cottage and construction of a new townhouse. The fifth unit is created by preservation and restoration of the existing historic home as a three-bedroom dwelling. Related site improvements include on-site septic, parking, utilities and landscaping.

On September 9, 2020, Ms. Joyce, representing the Condo Association, requested a minor modification to the landscape plan. The modifications include:

1. Completion of retaining wall and fencing to the rear of property A1.
2. Completion of plantings in front of each condo building.
3. Beautification of area around “catch basin”/“rain garden” in front of the A1 building down to the sidewalk – Common area – with appropriate plantings and maintenance plan.

Ms. Joyce further explains that her main request from the Board is for the Condo Association to assume responsibility for monitoring architectural, aesthetic and landscaping changes that may occur on the premises.

Draft Motions:

Based upon the information provided by the Applicant, the Board may:

-) Find the request for a modification to the landscape plan as a minor modification.

Based upon a positive vote, the Board may:

-) Make a motion to approve the request for the Minor Modification.

From: McKean, Thomas
Sent: Thursday, September 24, 2020 7:25 PM
To: Brigham, Anna; Florence, Brian
Cc: Nancy Joyce
Subject: Re: Cotuit Center Residences Minor Modification Request

Zoning Board of Appeals
C/O Ms. Anna Brigham
Principal Planner
Planning & Development

The Town of Barnstable Health Division has no objections to the minor modifications to the 2007 Comprehensive Permit No. 2005-100 which was granted for five buildings of multi-family housing on 2.38 acres which includes the following 3 items left unfinished by the developer prior to his bankruptcy:

- >
- > 1. Completion of a retaining wall and fencing at the rear of unit A1.
- > 2. Completion of plantings in front of each condo building.
- > 3. Beautification of area around the "catch basin"/"rain garden" in
- > front of the A1 building down to the sidewalk-common area-with
- > appropriate plantings and maintenance plan.

It has not been within the Health Division's purview to monitor aesthetics and landscape plantings. It would also be too burdensome for the Division to monitor the maintenance of plantings in front of each building, around the rain garden, and at other common areas.

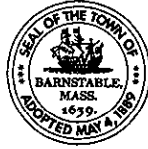
Sincerely,

Thomas A. McKean

> On Sep 24, 2020, at 6:36 PM, Nancy Joyce <nancyjoyce22@gmail.com> wrote:

- >
- > September 24, 2020
- >
- > Mr. McKean and Mr. Florence:
- >
- > My name is Nancy Joyce. I am on the Board of Trustees of Cotuit Center Residences, an 8 unit (5 building) condo complex at 671 and 675 Main Street, Cotuit.
- >
- > After submitting an application and many documents to the ZBA, I appeared via Zoom on Wednesday evening with the ZBA requesting a Minor Modification to the 2007 Comprehensive Permit No. 2005-100 which was granted for 5 buildings of multi-family housing on 2.38 acres.
- >
- > I have been communicating with Anna Brigham, Principal Planner, who also attended the Zoom ZBA Meeting. She had walked me through the application process to the ZBA for a Minor Modification to the Landscape Plan. The Modification includes the following 3 items left unfinished by the developer prior to his bankruptcy:
- >
- > 1. Completion of a retaining wall and fencing at the rear of unit A1.
- > 2. Completion of plantings in front of each condo building.

> 3. Beautification of area around the “catch basin”/“rain garden” in
> front of the A1 building down to the sidewalk-common area-with
> appropriate plantings and maintenance plan.
>
> In the application to the ZBA, I further explained that my main request from the Board is for the Condo
Association to assume responsibility for monitoring aesthetic and landscaping changes that may occur on the
premises.
>
> It should be noted that the condo complex was turned over to the unit owners in September of 2018 and that
the owners have respectfully put off any uncompleted work and have waited patiently for the last two years
while our Board of Trustees presented our request to numerous Town departments.
>
> It was the determination of the ZBA on Wednesday evening that before
> granting our request we should first check with the Board of Health
> and the Building Department to see if our application would be
> supported. The ZBA is requesting a statement from each department
> saying that it would support our application for the Minor
> Modification as stated above. In addition, they are requesting a
> statement from the BOH that it would be “too burdensome for them to
> monitor our plantings.”
>
> We would welcome a list of approved plantings and/or we would gladly submit to you a list of plantings our
landscaper, Richard Fisher, would supply.
>
> With the help of Anna Brigham, we submitted many documents to the ZBA. Anna said she would be happy to
provide you with these.
>
> We are rescheduled for the next ZBA Meeting on October 14th. If we are able to get approvals from your two
departments, they will reconsider our request.
>
> Please call me or Anna Brigham or any member of the ZBA with any questions you may have.
>
> Respectfully,
>
> Nancy Joyce, Clerk
> Cotuit Center Residences
> 671-675 Main Street
> Cotuit, Ma 02635
>
> 508-272-2414
>
>
>
>
> Sent from my iPad
> CAUTION:This email originated from outside of the Town of Barnstable! Do not click links, open attachments or
reply, unless you recognize the sender's email address and know the content is safe!



BARNSTABLE
TOWN CLERK

'07 AUG 30 P2:28

Town of Barnstable
Zoning Board of Appeals

M.G.L., Chapter 40B Comprehensive Permit Decision and Notice

Bay Point LLC

Comprehensive Permit 2005-100 – Cotuit Center Residence

Applicant: Bay Point, LLC
Property Address: 671 Main Street, Cotuit, MA
Assessor's Map/Parcel: Map 036, Parcel 015
Zoning: Residence F Zoning District
Groundwater Overlay: Wellhead Protection Overlay District

Permit Granted: Five (5) units of multi-family housing on 2.38 acres. Two of the dwellings are to be affordable units marketed to qualified low and moderate-income households at 65% and 70% of the median income. Three units are to be one-bedroom new construction townhouse units. A fourth unit is to be a one-bedroom created by either renovation of an existing cottage or demolition of that cottage and construction of a new townhouse. The fifth unit is to be created by preservation and restoration of the existing historic home as a three-bedroom dwelling. Related site improvements include on-site septic, parking, utilities and landscaping.

Background Information:

The Applicant:

The applicant is Bay Point, Limited Liability Company (LLC), Stuart A. Bornstein - Manager. The address of the company is 297 North Street, Hyannis, MA 02601. Copies of the Commonwealth of Massachusetts Certificate of Organization creating Bay Point, LLC and a copy of the proposed Operating Agreement for Bay Point, LLC have been submitted.

Relief Requested:

On September 16, 2005, the applicant, Bay Point, LLC, submitted a Comprehensive Permit application to the office of the Zoning Board of Appeals for the development of "Cotuit Center Residence". The application requested the development of 11 multi-family units on an existing developed lot consisting of 2.38-acres fronting on Main Street in Cotuit. The application was made with the intent that the development would be restricted to age 55 and over.

The plans proposed retaining the front half of the main structure located on the property as a three-bedroom dwelling and the expansion of the existing "cottage" structure to a two-bedroom unit. Three new multi-family structures were to be built on the premises with each structure containing three, two-bedroom townhouse type dwelling units. Three, three-car garage structures were also proposed. The development was to be serviced by public water and a proposed private on-site

septic disposal system. Plans included re-grading of the property, a center driveway, accessory parking, utility services and landscaping.

Three of the dwellings were to be dedicated as affordable units marketed to qualified low and moderate-income households. The development was to be funded through the Housing Starts Program of Massachusetts Housing Finance Agency and/or the New England Fund Program of the Federal Home Loan Bank of Boston.

The Locus:

The 2.38-acre parcel is a developed lot consisting of two dwellings. The principal dwelling is a 2,369 sq.ft., two-story, three-bedroom, single-family structure. A second one-story "cottage" dwelling consisting of 550 sq.ft. is situated to the rear of the principal dwelling. The property was purchased in the name of Bay Point, LLC on February 17, 2005 for \$700,001.00.

The locus is zoned Residence F. That district permits only one single-family dwelling and its accessory buildings and uses. It is within the Resource Protection Overlay District and a Wellhead Protection Overlay District. The property is approximately 1,200 feet from Cotuit Bay, a south coastal embayment and one of the three bays situated between Cotuit and Osterville. Nitrogen loading to those bays has been of concern as fin and shell fishing resources have deteriorated and public beaches have experienced high levels of nitrogen and high bacteria counts.

The property is within the Town's designated Wellhead Protection Overlay District and is subject to the local Board of Health regulations, Section 232 of the Code of the Town of Barnstable, Wastewater Discharge. That Section is commonly referred to as the "330 Rule" which limits on-site wastewater discharge to 330 gallons per day per acre within designated groundwater protection districts. Approximately 1/3 of the lot is within a Massachusetts Department of Environmental Protection (DEP) 'Zone I' which, for public water system well with approved yields of 100,000 gallons per day, the protective radius is 400 feet. The remaining property is in a DEP designated Zone II.

The undisturbed portion of the property which is the bulk of the lot is identified in the Natural Heritage & Endangered Species Program Priority Habitats of Rare Species and Estuary Habitats of Rare Wildlife. According to that program, the area constitutes a habitat for the Eastern Box Turtle.

The principal structure dates to the 1900's and is listed in the National Registry of Historic Places as a contributing building to the Cotuit Main Street Historic District. The abutting uses are all single-family with the exception of the land to the rear of the site that is owned by the Cotuit Water District and is used as a public supply well site.

Main Street in Cotuit is mostly single-family as it has been zoned only for single-family use since the Town enacted zoning in 1929. The commercial uses are all nonconforming or exempt uses that are relatively benign, low impact uses consisting of a neighborhood convenience store that includes package goods, take-out pizza and sandwich service. Further southward is the village's library and a small landscaped green. Further on is "Freedom Hall", the village's recreation and

social gathering hall. Along School Street there is a professional real estate and an architect's office, a neighborhood eatery with a bar, the Cotuit Post Office and a religious institution. A way-to-water with a small public beach is located off Main Street. Also, northward and off Main Street, there is a public soft ball field which hosts the Cape Cod Baseball League.

Procedural History:

On September 16, 2005, the applicant, Bay Point LLC, submitted a Comprehensive Permit application to the Town Clerk and to the Office of the Zoning Board of Appeals accompanied with a signed Extension of Time Limits for holding the public hearing. On the same day, a memorandum from the Board, transmitting copies of the application and requesting review and comment was sent from the Board's office to select agencies, boards and commissions in accordance MGL Chapter 40B and the Board's Comprehensive Permit Rules and Regulations.

A public hearing was duly scheduled before the Board for November 02, 2005 and public notice of that hearing was posted in Town Hall, mailed to interested parties and published in the Barnstable Patriot on October 14 and 21, 2005. The public hearing on this permit application opened on November 2, 2005, continued to December 14, 2005, February 15, 2006, April 12, 2006, May 24, 2006, August 23, 2006, November 15, 2006, January 17, 2007, February 28, 2007, April 11, 2007, May 9, 2007, and to July 25, 2007. At the July 25th hearing, public comment was closed and the Board continued the hearing to August 8, 2007, for the purposes of rendering a decision. Board Members hearing the Comprehensive Permit application and rendering this decision were: Sheila Geiler, Randolph Childs, James R. Hatfield, Daniel M. Creedon, and Chairman - Gail C. Nightingale.

Mr. Stuart A. Bornstein was present throughout the hearing. Attorney Edwin E. Taipale initially represented the applicant at the hearing, after which, Mr. Bornstein presented the application. They were assisted by the project engineer Daniel A. Ojala. During the course of the public hearings, plans for the development were modified several times. The applicant eliminated the proposed age restriction, relocated the development out of the DEP designated Zone I area of the site, eliminated the garage structures, increased the number of units to 12, reduced the total number of designated bedrooms to 14 and added open loft areas to the second floors. To assist the Board in addressing concerns for the on-site septic system and nitrogen loading to the public supply well and the costal embayment, the applicant agreed to and funded a peer review of that issue and the plans.

The last rendering of the plan proposed a 12 unit development consisting of 5 new duplex buildings totaling 10, one-bedroom dwellings with second floor loft areas, a one-bedroom unit created from the existing cottage building and a three-bedroom unit from the existing main dwelling. That plan also proposed an on-site septic system that included a biological filter treatment and nitrogen removal, outdoor parking for 24 vehicles and related landscaping and utility services.

List of Materials Submitted:

The following is a list of materials submitted to the file on this application.

1. A transmittal letter dated September 14, 2005, to the Zoning Board of Appeals from Stuart A. Bornstein accompanied by the Comprehensive Permit Application.
2. Application for a Comprehensive Permit as submitted by Bay Point, LLC, with Town Clerk's Office date stamped September 16, 2005, and consisting of several attachments as itemized:
 - Attachment A – Applicant's status including a copy of the Commonwealth of Massachusetts Certificate of Organization creating Bay Point Limited Liability Company (LLC) identifying Stuart A. Bornstein as Manager.
 - Attachment B – Agency Commitment Letter dated August 2, 2005, Site Approval Letter to Stuart A. Bornstein - Manager, Bay Point LLC from Thomas R. Gleason - Executive Director, Department of Housing and Community Development.
 - Attachment C – Document of applicant's ownership of the property containing copies of two deeds transferring the property from Kristine E Nielsen and Karen Grammaticas, and Eloise G. Nielsen to Bay Point, LLC, as recorded at the Barnstable Registry of Deeds on February 17, 2005, in Book 19541, page 310 and page 317.
 - Attachment F - Project description and narrative explaining existing conditions and description of the proposed development as initially presented.
 - Attachment G – Project site plan and architectural plans
 - Attachment H - Pro-Forma analysis projecting costs of the originally proposed development at \$3,724,670. Total income from sale of the units estimated at \$4,084,200 resulting in total profits of \$359,530 or 9.65%.
 - Attachment I – List of public agencies for review and approval:
 - Attachment J – List of requested exceptions
 - Attachment 1 – Developer's Profile
3. Copies of the September 16, 2005, Transmittal Memorandum from Daniel M. Creedon III - Chairman, Zoning Board of Appeals to various agencies, boards, commissions and departments, transmitting copies of the application and requesting a review of the proposed Comprehensive Permit application. The memorandum was sent to: Gary C. Brown – President - Town Council; John Klimm - Town Manager; Robert D. Smith, Ruth Weil - Town Attorney's Office; Laura F. Shufelt – Chairman - Barnstable Housing Committee, and Elizabeth Dillen - Office of Community and Economic Development; Thomas K. Lynch – Director - Barnstable Housing Authority; David Munsell – Chairman - Barnstable Planning Board; John J. Finnegan – Chief - Barnstable Police Department; Mark S. Ells – Director - Department of Public Works; Maureen

McPhee - Tax Collector; Robert Gatewood - Conservation Administrator; Thomas McKean - Health Agent; Tom Perry - Building Commissioner; Margo L. Fenn - Executive Director - Cape Cod Commission; Chief Paul A. Frazier - Cotuit Fire Department; Thomas F. Geiler - Director of Health Safety and Environmental Services; Ken Ventura – Superintendent - Cotuit Water Company; and Thomas F. McDonald - Interim Superintendent - Barnstable School Department and Nancy Clark – Chairman -, Barnstable Historic Commission.

4. Agencies, Boards and Commissions reviews received:

- Cotuit Fire Department e-mail correspondence dated September 28, 2005, from Paul A. Frazier - Fire Chief - Cotuit Fire Department.
 - Board of Health/Health Division e-mail correspondence dated October 18, 2005, from Thomas McKean - Health Agent noting that the Bay Point Chapter 40B proposal had been reviewed by the Board of Health on October 11, 2005, and that the proposal does not comply with State Environmental Code, Title 5 or the Section 232 of the Code of the Town of Barnstable - Wastewater Discharge.
 - Cape Cod Commission correspondence of October 21, 2005, noting that for the purposes of Comprehensive Permits, the Commission is a local review board. The Commission's review stated, among other things, that age 55 and over affordability is not a priority need in Barnstable County and that wastewater treatment system exceeded 6.00 ppm nitrogen loading in an area of concern for nitrogen loading to Cotuit Bay.
 - Town of Barnstable - Police Department review of October 24, 2005, from Sgt. Andrew P. McKenna, cites that the proposal does not appear to adversely affect traffic conditions.
 - Letter dated October 17, 2005, from Theresa A. Egan – President of the Historic Society of Santuit & Cotuit, Inc., citing that a higher density of development within the village center of Cotuit is an inappropriate development of an historic building and site.
5. *Age Restricted Active Adult Housing in Massachusetts*, a June 2005 report of the Citizen's Housing and Planning Association
6. A citizen's petition signed by 127 persons in opposition to Bay Point's Comprehensive Permit application was received October 19, 2005. Public correspondence in opposition was received from: Edward L. Peirson, 621 Main Street, Cotuit, Phyllis J. Miller, 688 Main Street, Cotuit, Gloria Y. Myers, 923 Main Street, Cotuit, Barbara A. Kern, 701 Main Street, Cotuit, Richard Buell & Phyllis H. Buell, 689 Main Street, Cotuit, Raymond E. Smith 719 Main Street, Cotuit, and Anne & Jim Adams, 759 Main Street, Cotuit.
7. Town of Barnstable - Planning Division Staff Report dated October 24, 2005, as submitted to the Board and inclusive of attachments to that date.
8. A December 8, 2005, letter from Attorney Edwin E. Taipale transmitting copies of the proposed Operating Agreement of Bay Point, LLC.

9. An April 25, 2006, e-mail correspondence from the Barnstable Housing Committee requesting that staff secure additional information.
10. Barnstable Public School's letter dated May 03, 2006, from William F. Butler - School Attorney citing that the School Committee had no concerns.
11. A May 10, 2006, e-mail from Thomas McKean - Health Director noting that the Town's Wastewater Discharge Ordinances (330 rule) would limit the number of bedrooms permitted on the property and that the Chairman of the Board of Health has requested a review of the Amphidrome I/A system.
12. A letter dated May 17, 2006, from Frederick Kiely – Chairman - Board of Water Commissioners, Cotuit Fire District, and the Water Department, stressing concern for the increased density within Zones II to the public supply wells and potential threat to the quality of the drinking water supply.
13. A letter dated May 16, 2006, from Chief Paul A Frazier - Cotuit Fire Department reviewing the revised plans and citing plan needs.
14. A May 22, 2006, letter from Thomas K. Lynch - Executive Director - Barnstable Housing Authority expressing support of the revised proposals as it is no longer age restricted and will be a mix of rental units and ownership units and that three affordable units would be rental units priced to be affordable to the 65% income level.
15. Correspondence dated May 30, 2006, from Daniel A. Ojala - Project Engineer responding to Mr. McKean's request and noting that a waiver was being requested from the Zoning Board to the local 330 rule.
16. A copy of the June 13, 2006, Board of Health meeting results as it relates to Bay Point.
17. A June 20, 2006, Memorandum from Robert A. Burgmann - Town Engineer, expressing concern for the revised plans.
18. An August 16, 2006, Town of Barnstable - Growth Management Department Staff Report as submitted to the Board and inclusive of attachments to that date.
19. A copy of the Consulting Services Request for Proposed dated August 30, 2006, as mailed to five consulting firms regarding the peer review.
20. Public correspondence from Frances S. Parks dated August 31, 2006, citing the need for a back-up electric generator.
21. Copies of the three responses to the Request for Proposals regarding the peer review as received at the Zoning Board of Appeals Office and a September 21, 2006, distribution memorandum requesting review of proposals.

22. An October 06, 2006, staff notification to Mr. Bornstein regarding the Board's October 04, 2006, selection of the proposal submitted by the Horsley Witten Group, Inc and requesting the funds for the study.
23. A landscape plan for the development submitted to the file on October 11, 2006.
24. An October 20, 2006, letter in opposition along with a copy of a letter sent to the Barnstable Housing Committee from Thomas Knight Burgess and Ann Elizabeth Burgess-Berbee, abutters to the development.
25. A second request from staff dated October 23, 2006, to Mr. Bornstein to fund payment account for the selected consultant.
26. Copy of an October 26, 2006, correspondence to Town Treasurer for deposit of funds received from Mr. Bornstein for the peer review.
27. Copy of an October 27, 2006, letter sent to Mark Nelson - Horsley Witten Group notifying them as the selected consultant.
28. A copy of a letter dated November 20, 2006, sent to Ken Ventura - Cotuit Water Company and Frederick Kiely - Cotuit Board of Water Commissioners notifying them of the consultant selection and activities.
29. An invoice dated November 30, 2006, from Horsley Witten Group and letter dated December 6, 2006, to Gareth Markwell - Assistant Treasurer requesting payment of invoice.
30. A December 7, 2006, letter from Mark Nelson - Horsley Witten Group notifying staff that the site of the development is in a designated rare species habitat and a letter dated December 12, 2006, to Stuart Bornstein regarding that information.
31. Drainage Calculation and Utility Plan dated May 6, 2006, from Daniel Ojala - Project Engineer, submitted December 26, 2006.
32. Copy of second peer review invoice from Horsley Witten Group received January 4, 2007
33. Copy of the applicant's MESA (Mass. Endanger Species Act) Information Request Form as submitted to Natural Heritage & Endangered Species Program - January 9, 2007.
34. The Horsley Witten Group Wastewater & Stormwater Peer Review as submitted to Zoning Board of Appeals office on January 9, 2007.
35. Copy of Town of Barnstable Growth Management Staff report dated January 10, 2007, revised January 17, 2007.
36. Revised Site Plans dated 2-28-07 as submitted at the Public Hearing of February 28, 2007, and a memorandum from Daniel A. Ojala summarizing changes made and Nitrogen Loading Calculations.

37. Copy of a March 2, 2007, letter to Gareth Markwell - Assistant Treasurer transmitting additional funds to that office for processing of the peer review.
38. Letters in objection to the grant of the Comprehensive Permit from L. Odence, PO Box 503, Cotuit, MA dated March 10, 2007, from Anna & Jim Adams, 756 Main Street, Cotuit, MA dated March 13, 2007, from Herbert and Barbara Jackson, PO Box 501, Cotuit, MA dated April 5, 2007, and from Phyllis Miller, 688 Main Street, Cotuit, MA dated April 4, 2007.
39. Copy of a letter dated March 28, 2007, to Gareth Markwell - Assistant Treasurer requesting and authorizing payment of Horsley Witten Group invoice dated February 28, 2007.
40. An April 5, 2007, memorandum from Attorney Michael D. Ford to the Board on denial of Comprehensive Permits. The memorandum was submitted at the request of the Board.
41. Revised plans incorporating Nitrix filter and SeptiTech processor submitted April 5, 2007, and an April 6, 2007, e-mail from Daniel A. Ojala including Revised Site Plan dated 4-5-07, Revised Nitrogen Loading Calculations dated 4-6-07, NHESP Approval Letter and related documents.
42. Budget Amendment Request from Horsley Witten Group dated April 5, 2007. Copy of an April 9, 2007, letter to Gareth Markwell - Assistant Treasurer transmitting additional funds to that office for processing in the peer review.
43. Letters in opposition from Warren & Sandra Nickerson, 24 Hannah Circle, Cotuit, MA dated April 6, 2007, from Cotuit-Santuit Civic Association, signed by Thomas K. Burgess for the Executive Committee dated April 9, 2007, from Anne & Jim Adams, 759 Main Street, Cotuit, MA dated May 14, 2007, from Alfred N. Wohlwend, 923 Main Street, Cotuit, MA dated May 18, 2007, and copy of correspondence to Health Division/Board of Health from Kenneth H. Molloy, 225 Oxford Drive, Cotuit, MA dated May 16, 2007.
44. E-mail correspondence dated April 11, 2007, to Daniel Ojala from staff requesting that copies of plans be provided to Health, Fire, and Engineering for review and correspondence from Paul A. Frazier - Chief, Cotuit Fire Department including a copy of the prior May 16, 2007, correspondence
45. An April 18, 2007, letter from Wayne Miller, M.D., Barnstable Board of Health to the Zoning Board of Appeals citing the need for review of the revised septic design.
46. Horsley Witten Group Peer Review Update dated April 30, 2007, based upon revised plans.
47. Correspondence dated May 3, 2007, from Stuart Bornstein requesting continuance of the May 9th hearing.
48. Copy of a May 16, 2007, letter to Gareth Markwell - Assistant Treasurer requesting payment of an invoice dated April 30, 2007, from Horsley Witten Group.

49. A May 30, 2007, e-mail Transmittal Sheet from Down Cape Engineering with attachments sent to Thomas McKean - Director Health Division. A June 4, 2007, e-mail copy of Board of Health filing dated May 31, 2007, made by Daniel Ojala with attachments.
50. Letter from the Board of Health dated June 13, 2007, citing concerns for design of the units with lofts being "de facto two-bedrooms" and that the proposed septic system is a provisional system - a pilot installation.
51. A July 17, 2007, e-mail correspondence from Daniel Ojala with an attached document from Dr. Jennifer Rivers Cole (The Rivers Consulting Report) dated July 12, 2007.
52. Copy of a July 18, 2007, Growth Management Department Staff Report to the Board.
53. A July 25, 2007 letter from Attorney Mark H. Boudreau citing the Cotuit Water Department's opposition.
54. A July 30, 2007, fax correspondence from Stuart Bornstein with a January 20, 2006, letter from MassHousing attached.
55. Copies of a draft regarding possible findings on Bay Point dated July 23, 2007, to deny and August 1, 2007, to grant. The drafts were generated at the request of the Board.

Findings with Respect to Standing - Review of Jurisdictional Requirements:

Motion: At the hearing on August 8, 2007, a motion was duly made and seconded to find the following findings of fact on standing, the Jurisdictional Requirements of the applicant to apply for a Comprehensive Permit under MGL Chapter 40B as identified in CMR 760 Sections 30-31:

1. With respect to the limited dividend organization, the applicant is Bay Point LLC., a Limited Liability Company, Mr. Stuart A. Bornstein - Manager. A copy of the Commonwealth of Massachusetts Certificate of Organization was submitted with the application for a Comprehensive Permit on September 16, 2005.

A copy of the proposed Operating Agreement of Bay Point, LLC. was submitted to the file on August 28, 2006. It includes language that restricts the company to low or moderate income housing developments as defined in Chapter 40B, Sections 20-23, and as that term is used by the Commonwealth of Massachusetts Housing Appeals Committee. It cites that the organization would restrict its operation pursuant to the requirements of the CMR Chapter 760, Section 30.02 to that of a limited dividend organization. At this time, the document has not been signed nor recorded. Mr. Stuart Bornstein has testified that it would be signed and recorded upon the granting of the Comprehensive Permit.

2. As to the fundability, this is a difficult aspect as to standing as the proposed project has changed during the course of this hearing. A copy of a Site Approval letter dated August 2, 2005, to Stuart A. Bornstein – Manager of Bay Point LLC., from Thomas R. Gleason - Executive Director

of the Department of Housing and Community Development, was submitted with the application for a Comprehensive Permit on September 16, 2005. That letter was issued based upon the initial plan for the development that proposed a total of 11 two-bedroom units of housing on 2.38 acres. The plans upon which the site approval letter was issued proposed the retaining of the front half of an historic three-bedroom dwelling as one unit, expansion of the existing 'cottage structure' to a two-bedroom dwelling, and the construction of three new multi-family structures each consisting of three, two-bedroom townhouse type dwelling units. Nine indoor garages in three new structures were also proposed as was accessory outdoor parking. Of the 11 units, three of the dwellings were to be dedicated as affordable units. The development was intended to be restricted to age 55 and over and all units were intended to be for sale with the affordable units restricted to the 80% income limitation.

Over the course of this hearing, development plans have changed a number of times including the total number of units, type of units, pricing of the affordable units reduced to the 65% and/or 70% income group and includes that option of a mixture of for sale and rental units. The Board has requested an updated Project Eligibility–Site Approval Letter - and the applicant had testified that the August 2, 2005, Site Approval letter is still valid regardless of the change in the complexion of the project. No written confirmation on extending the Project Eligibility letter from MassHousing was received. On July 30, 2007, after the close of the public hearing and the record for this application, a January 20, 2006, letter from MassHousing was faxed to the Board. That letter stated that MassHousing policy is to review changes made to a development plan only upon a request for Final Funding Approval. That letter reiterated that the Project Eligibility Approval letter dated August 2, 2005, is valid for two (2) years and stated "if an extension is required, a formal request must be made". No extension has been submitted to the file. As the August 2, 2005, Site Approval letter has expired; the Board will condition any approval upon receipt of an extension of the Project Eligibility Approval letter and receipt of a Final Approval letter based upon the final plans as conditioned herein if granted.

3. The third statutory regards site control. The applicant owns the property as documented by copies of two deeds transferring it from Kristine E. Nielsen & Karen Grammaticas, and from Eloise G. Nielsen to Bay Point LLC. The deeds were recorded at the Barnstable Registry of Deeds on February 17, 2005, in Book 19541, page 310 and page 317. Copies have been submitted to the file with the application.

The Vote on the findings for standing was as follows:

Aye: Sheila Geiler, Randolph Childs, James R. Hatfield, Daniel M. Creedon, Gail C. Nightingale.

Nay: None

Decision on Standing:

Motion: Based upon the findings cited above a motion was duly made and seconded to find that the applicant has standing to apply for a Comprehensive Permit subject to an updated project site eligibility letter from MassHousing.

The Vote with respect to standing was as follows:

Aye: Sheila Geiler, Randolph Childs, James R. Hatfield, Daniel M. Creedon, Gail C. Nightingale.

Nay: None

Findings of Fact Regarding Consistency with Local Needs:

Motion: The Board, having found that the applicant has satisfied the requirements as to standing, proceeded to make a motion and second that motion that the following findings be made with respect to the proposed development consistency with local needs:

1. Bay Point, LLC, has applied for a Comprehensive Permit under the General Laws of the Commonwealth, Chapter 40B "Affordable Housing". The applicant submitted a Comprehensive Permit application to the Zoning Board of Appeals (the Board) on September 16, 2005, seeking to develop 11 units of multi-housing on the 2.38 acres, addressed as 671 Main Street, Cotuit, MA. The plans were to:
 - Retain the existing historic dwelling and restore it to a three-bedroom, free-standing dwelling unit;
 - Expand and renovate the existing cottage to a two-bedroom, free-standing dwelling unit;
 - Construct nine, new, two-bedroom townhouse dwelling units in three, multi-family structures each with three units. Nine garages were also proposed in three accessory buildings.
2. Initially, the total number of bedrooms was 23, well in excess of the number permitted under local Board of Health regulations and in excess of that permitted under state Title 5 regulations for family housing. The original proposal was that all units were to be for sale and restricted to age 55 and over. Three of the units were to be dedicated as affordable and sold only to those households with an age 55 or older member and with an income level not to exceed 80% of the median income for the Barnstable Metropolitan Statistical Area (MSA). The development was to be funded through the Housing Starts Program of Massachusetts Housing Finance Agency and/or the New England Fund Program of the Federal Home Loan Bank of Boston.
3. The 2.38 acres lot is currently nonconforming in use as the Residence F Zoning District in which it is located only permits one single-family dwelling only. The locus is also within the Resource Protection Overlay District which requires two acres of upland to meet the minimum

lot area to which the lot does conform. All of the property is within the Town's designated Wellhead Protection Overlay District and subject to the Board of Health "330 Rule".

Approximately 1/3 of the lot is within a Massachusetts Department of Environmental Protection (DEP) 'Zone I' to a public supply well. The remaining area of the site is within DEP 'Zone II'. The site is also identified in the Natural Heritage & Endangered Species Program Priority Habitats of Rare Species and Estuaries Habitats of Rare Wildlife. The property is within the designated Cotuit Historic District, a National Historic District. The locus is approximately 1,200 feet from the waters of Cotuit Bay in an area identified as being of concern for nitrogen loading to coastal waters.

4. The locus is currently developed with two existing dwellings. The principal structure is a three-bedroom dwelling that dates to the early 1900's and is designated as a contributing feature to the Cotuit Historic District. The other is a one-story, one-bedroom cottage structure situated to the rear of the principal dwelling. The development and use of the property predates the adoption of single-family zoning in the area. The property fronts on Main Street and is serviced by public water. There is no public sewer in this area of Barnstable and use of the property requires a private on-site wastewater disposal system. The rear of the property abuts property owned by the Cotuit Fire District and used for public water supply.
5. With respect to the Natural Heritage & Endangered Species Program, application was made under that program and on March 30, 2007, a letter was issued identifying that the site is located within the habitat of the Eastern Box Turtle. It cites that development would be subject to a deed restriction that preserved the back area of the property in a natural habitat as per a January 12, 2007, plan entitled "Conservation Restriction Plan in Cotuit (Barnstable), MA #671 Main Street". The review also required a 20-foot perimeter temporary construction area and the restoration and delineation of the restricted area with a split rail fence.
6. The locus is in an area of concern for nitrogen loading to Cotuit Bay. The Resource Protection Overlay District was adopted in 2000 to specifically address recharge to the south coastal area that includes the 'Three Bays' area of Cotuit. It was enacted to reduce nitrogen contamination to the south coastal marine embayment in order to protect water quality, preserve fin and shellfish habitat, and preserve the beach and swimming areas of the south coastal area. In fact, a recent study of the 'Three Bays' area has concluded that a zero nitrogen loading guideline should be adopted which Massachusetts Department of Environmental Protection (DEP) has accepted. Those guidelines were seen in a recently issued Comprehensive Permit to Cotuit Equitable Housing for a 124 single-family dwelling development. In that development, DEP imposed the zero nitrogen loading requirement after the permit was issued by this Board when the Board had only imposed a 5 parts per million (ppm) overall nitrogen loading to the development.
7. The rear, third portion of the lot is within 400 feet of the Cotuit Water District's public supply well CT-E3, that yields in excess of 100,000 gallons per day. This is one of five public supply wells of the Cotuit Water District. This particular public supply well has a full-rate pumping capacity of 350 gallons per minute. At that capacity, the well would pump in excess of 500,000 gallons per day, sufficient water for over 2,300 average households.

8. Given the concerns for on-site wastewater disposal and proximity of the site to a public supply well and to the south coastal embayment, the applicant, at the request of the Board, funded an independent peer review of the plans and issues regarding nitrogen loading and wastewater disposal. The consultant firm selected was the Horsley Witten Group which has been before the Board in a number of passed Comprehensive Permits with regards to nitrogen loading from on-site wastewater disposal and site drainage. From the peer review comments and recommendations, the plans were modified several times and the final plan presented to the Board proposed a total of 12 dwelling units. That proposal had removed the age restriction on the development and revised plans dated May 30, 2007, called for:
- Retaining the existing historic dwelling and restoring it to a three-bedroom free-standing dwelling unit;
 - Renovating the existing cottage to a one-bedroom free-standing dwelling unit;
 - Construction of ten, new, one-bedroom townhouse dwelling units with a second floor loft in five duplex structures. Each new unit having 1,540 sq.ft. of living area and a full basement.

That plan has a total of 14 bedrooms still in excess of the number of bedrooms permitted under local Board of Health "330 Rule" but included a nitrogen reduction on-site septic system. The plans eliminated garage parking and sited 23 open air parking spaces. After discussion with the Barnstable Housing Committee, the applicant committed the three affordable units to be dedicated in perpetuity as affordable to the 65% and 70% median income household level for the Barnstable Metropolitan Statistical Area (MSA). The option for having both for sale and/or rental was also presented to the Board.

9. The latest plan purports a 3.98 ppm overall site nitrogen loading to meet the Cape Cod Commission's standard of 5 ppm nitrogen loading. That plan also attempts to address nitrogen loading to groundwater caused by the septic disposal in close proximity to a public supply well and concerns cited in the peer review for possible contamination of the public supply well by pathogens, active viruses, volatile organic compounds (VOC's) and other contaminants. In attempting to meet the standards and address those concerns, the applicant has proposed a SeptiTech™ system which is an aerobic enhanced re-circulating biological filter treatment system followed with a Nitrex™ nitrogen removal wastewater treatment system to filtration through the soil absorption system, a leach field. The leach field is outside of the DEP 400-foot Zone I, but still only 568 feet from the public supply well and within the Town's designated Wellhead Protection Overlay District and DEP Zone II to the public supply well.
10. Both the SeptiTech™ and Nitrex™ systems are "provisional systems" by Massachusetts Department of Environmental Protection. Fifty (50) of each type are being allowed statewide on a provisional basis in order to further evaluate the capabilities and performance of the systems. The Town of Barnstable's Board of Health noted in its June 13, 2007, letter that "this means that in pilot installations it has preformed adequately enough to warrant further evaluation [and] ... further experience in some cases has not supported the nitrogen removal claims."

11. The proposed on-site septic system is at a design flow of 1,540 gpd. That reflects a total Title 5 capacity of 14 bedrooms maximum. According to the last development plans, the total number of bedrooms is 14.
12. The '330 Rule' - Section 232-5 of the Code of the Town of Barnstable - Wastewater Discharge, Maximum Allowable Wastewater Discharge in a Groundwater Protection Overlay District – was adopted in 1985 to protect the aquifers that supply public drinking water. Barnstable's Board of Health regulation requires all developments, subsidized and unsubsidized housing as well as commercial developments, be limited to an on-site wastewater discharge to 330 gallons per day, per acre within designated overlay protection districts. There is no variance or waiver provisions provided in the Code to this requirement and it has been equally applied in the overlay protection districts since its adoption, over 20 years ago. Under the 330 rule, this 2.38-acre lot would be limited to on-site disposal of 785 gallons per day of wastewater. The proposed development exceeds this standard by doubling the daily flow of wastewater being discharged on-site. The submitted application requests that the Zoning Board of Appeals grant a waiver from the '330 Rule' - Maximum Allowable Wastewater Discharge in a Groundwater Protection Overlay District.
13. The last plan submitted proposed a total of 11 units of housing. Ten (10) are one-bedroom units and the 11th-unit is the existing three-bedroom dwelling located on the property. The one bedroom units are not family housing. Family housing is the most pressing need in Barnstable and, as virtually all of the units are only one-bedroom, the development does not satisfy this local and regional need.
14. The Horsley Witten Group's January 4, 2007, review has concluded that the travel time from the proposed leach field to the public supply well is only 87.3 days at the full rate pumping capacity of the well and 180.5 days at half the full rate pumping capacity. This means that the effects of any increased nitrogen loading by the development to the groundwater could be realized at the wellhead and in the public water supply in as little as 3-months, as could any pathogens, active viruses, volatile organic compounds (VOC's) and other contaminants. It was also pointed out to the Board that the increase in the number of households residing on the property proportionally increases the chances that pathogens, active viruses, volatile organic compounds (VOC's) might be introduced into the septic system.
15. It should be noted for the record that, unlike most of Massachusetts, the Cape is a sole source aquifer. Simply put, we draw our drinking water from that single aquifer and what we put into the ground around us will eventually show up in our drinking water. The wastewater treatment systems being proposed for this site are allowed only as provisional systems state-wide and in most of those other areas of the state, options exist to secure potable water from other aquifers and sources. That is not the case for the Cape. Once a well is contaminated that aquifer is also contaminated and there is no other viable alternative to secure potable water.
16. The applicant has provided the Board with a July 12, 2007, review of groundwater issues by Dr. Jennifer Rivers Cole (The Rivers Consulting Report). In that review, Dr. Rivers Cole states "the proposed Bay Point Townhouses pose virtually no risk of contaminating groundwater in Cotuit. Nitrogen has been more than adequately addressed, pathogens will be attenuated in the

very thick vadose zone, and there is virtually no risk of VOC contamination from septic effluent." She states that her opinion is based on her experience and her review of the materials in this case. Her report, however, leaves the Board with more apprehension than comfort. The report states that this particular well, CT-E3, is drawing water from a "high risk condition", that being, a shallow surface aquifer and, therefore, is susceptible to contamination by the very nature of its geological composition and proximity to the land surface. The report cites certain Title 5 regulations that are the same regulations that a single-family Title 5 system must abide by. It seems to ignore that this proposal is that of a multi-family development in close proximity to a public supply well dealing with soil conditions of Cape Cod. Many of the references used may not be applicable to the Cape. As, in one instance, it states that "commonly used guidelines in many soil conditions keepat least 15 meters [about 45 feet] from any well used for drinking purposes. The Board of Health in Barnstable requires 150 feet of separation and that is for a well serving a single-family dwelling, not a public supply well. The report states the "current targets are 5.00 ppm" for nitrogen loading. As a prior finding has stated, the current policy and adopted guidelines by DEP is now zero nitrogen loading in this area.

17. The applicant has been very cooperative in assisting the Board by agreeing to and funding the peer review on the issues of the groundwater. The study has strived to address the best possible practices that can be employed to attempt to protect the public well. However, given all of that, nitrogen from the development will migrate to the public supply well and over time add to the overall loading to the public supply well and the embayment. The conclusion reached in January of 2007 by the Horsely Witten Group study which was also reiterated at the last public hearing of July 25, 2007, was that the project will pose a threat to the Town's drinking water supply in terms of nitrogen loading, transport of pathogens, VOC's and other contaminants. Further, escalating this threat to the public's health is the fact that water sampling from monitoring wells does not regularly test for many pathogens, viruses and some contaminants.
18. The Massachusetts Housing Partnership guidelines for review of Chapter 40B recommends that local zoning boards not review development pro formas unless a condition imposed is cited by the applicant to make the project uneconomical. Barnstable's Zoning Board of Appeals has regularly requested a copy of that pro forma be submitted to the file. The last pro forma submitted to the file for this application was on January 9, 2007. That pro forma was generated based upon development plans that have since been revised three times. The accompanying fax cover page with the pro forma states that it was submitted to MassHousing on December 12, 2006. No updated pro forma has been submitted based upon the last revised plan and as noted in the findings on standing, no extension of the Project Eligibility letter has been submitted to the file nor any letter acknowledging that the project, as revised, remains economically viable to MassHousing.
19. In early 2005, the Barnstable Housing Committee cited that the maximum sale price of the one-bedroom affordable units should not exceed \$104,879. That estimate was based upon a monthly cost of \$56.00 for taxes, insurance, and association dues. That estimate was made prior to the refinement of the on-site septic system and the realization that its operating expenses would be substantial. The pro forma submitted on January 9, 2007, cited the projected sale price of the one-bedroom units as \$145,000. Some \$40,000 more than the calculated figure of the Housing Committee. In addition, it should be noted that the Barnstable

Housing Committee figures were based upon pricing of the units at 30% of the 80% income level for the Barnstable Metropolitan Statistical Area (MSA). Since that calculation, the applicant has testified that the units would now be priced at the 30% of the 65% and 70% income levels of the MSA. No pro forma has been submitted to the file showing that updated commitment.

20. The Board has received reviews and comments from town agencies, numerous letters and heard testimony from the applicant, public officials, abutters and concerned citizens. The comments generally objected to the affordable housing development with the overwhelming concern expressed for protection of the public water supply. A petition opposing the grant of this Comprehensive Permit containing 127 signatures has been submitted to the file.
21. According to the Department of Housing and Community Development Chapter 40B Subsidized Housing Inventory of July 9, 2007, the Town of Barnstable has a total of 1,343 affordable housing units. This represents 6.6% of the total housing stock as being affordable units within the Town. The goal of MGL Chapter 40B, the Local Comprehensive Plan and the Regional Policy Plan is to provide 10% of the housing stock as affordable. The Town has a certified affordable housing plan that it has been working under and making strives to implement. When this project was issued, a Project Eligibility letter dated in late 2005 was noted that the Town had met its annual requirement of providing 0.75% of its year-round housing stock as affordable and, therefore, met its annual compliance. That annual compliance certification has since expired
22. 760 CMR, Section 31.07(2) required that the Board review the evidence submitted and balance regional housing needs with local concerns. In this case local concern is for the health and safety of the public drinking water and for nitrogen loading to the nearby coastal embayment. The housing need is that of three, one-bedroom, for sale and/or rental units. In summary:
 - The three units would only represent an increase in the Town's overall affordable housing stock of 1/5th of 1% (or .2%) and the nature of the one-bedroom units does not fulfill the Town's and region's pressing need for family housing. The Accessory Affordable Housing Program of the Town has been very successful in providing affordable one-bedroom housing units and as that program requires conformance with the 330 rule, those units do not pose a threat to public supply wells.
 - The local Wellhead Protection Overlay District in which the property is fully located and the application of the local '330 Rule' are the Town's regulations specifically designed to address the local needs to protect public water supply wells. The two in combination were enacted 22 years ago to directly protect that critical groundwater resource, the sole source aquifer that feeds the public supply wells, the importance of which is recognized in the local Codes of the Town in that no waiver or variance provision is provided to the 330 Rule. The Rule limits the amount of wastewater discharge to 330 gallons per day per acre in designated areas thereby assuring nitrogen loading is kept to a safe level and the number of households that could contribute various pathogens, active viruses, VOC's and other contaminates up-gradient and within that area that directly contribute to a public supply well is reduced. In this particular instance, the 330 rule would limit the property to 785

gallons per day that translates to a maximum of 7 bedrooms total in any housing development on this lot. The applicant, in the latest plan, has requested a total of 14 bedrooms, double that allowed by local regulations. Given the known threat to the public water supply, the grant of a waiver to this 330 Rule will contribute to the degradation of the public drinking water and imperil public health. The Zoning Board does not find the benefit of providing these three units of affordable housing commensurate with the degree to which the Town's resident's public health and safety would be put at risk. The implications of losing this public supply well would also damage perspective residential housing, the tourist and vacation economy, the shell fishing industries and the public's perception of the natural environment in this area of the Town and region.

- The Town has been striving towards its goal of providing affordable housing and in fact a recently approved 124 unit affordable housing development is in its early stages of being implemented. That housing is situated approximately one mile from this site and is to be served by a full wastewater package treatment plant in full conformity to zero nitrogen loading. Since this application was filed, the Board has issued a total of five Comprehensive Permits totaling 188 units. In addition, other affordable units have been added to the Town's inventory over that same period by the Private Initiated Affordable Housing Development (PIAHD), Special Permits issued by the Planning Board, Comprehensive Permits issued under the Accessory Affordable Housing Program, units created by Regulatory Agreements (Chapter 148 of the Code), and those required by Chapter 9, Article 1 of the Code - Inclusionary Affordable Housing Requirements.

The Vote with respect to findings on consistency with local needs was as follows:

Aye: Sheila Geiler, Randolph Childs, James R. Hatfield, Daniel M. Creedon, Gail C. Nightingale.

Nay: None

Decision on Consistency with Local Needs:

Motion: Based upon the findings on consistency with local needs a motion was duly made and seconded to find that the proposed development of affordable Chapter 40B housing by Bay Point LLC at this location, would be consistent with local needs provided development complies with the 330 Rule and certain other safeguard conditions are imposed.

The Vote with respect to consistency with local needs was as follows:

Aye: Sheila Geiler, Randolph Childs, James R. Hatfield, Daniel M. Creedon, Gail C. Nightingale.

Nay: None

Decision and Conditions:

Motion: Based upon the findings and the balancing of local and regional needs for affordable housing with local concern for protection of the public supply well and the coastal embayment, a motion was duly made and seconded to grant a Comprehensive Permit in accordance with MGL Chapter 40B to Bay Point LLC for the 2.38-acre property addressed as 671 Main Street, Cotuit, MA subject to all of the following restrictions and conditions:

1. The total number of housing units permitted shall not exceed five (5) units and the total number of bedrooms shall conform to the 330 Rule and not exceed seven (7). The units shall be created by:
 - a. Preservation and restoration of the existing historic home as a three-bedroom free-standing single-family dwelling,
 - b. Renovation and expansion of the existing cottage as a free-standing one-bedroom unit, and
 - c. Construction of three new one-bedroom townhouse type units in one or two structures.

In lieu of renovating the existing cottage (b), and the construction of three new townhouses (c), the applicant has the option to demolish the cottage and construct four, new, one-bedroom, attached townhouse dwelling units in two new structures.

2. The area of the existing historic home to be retained and renovated shall be that area shown in the last May 30, 2007 plans submitted to the Board. It shall not include the back garage area. That section of the building shall be demolished. The one-bedroom units shall not exceed 1,320 sq.ft. each and shall be limited to one-story only. They shall not include lofts or walkout basements as no living area shall be permitted in the basements.
3. The on-site septic system shall include the biological filter treatment and a nitrogen removal wastewater treatment appropriately sized for the seven (7) bedrooms permitted by this permit. The soil absorption system and the leach field shall remain located where shown on the May 30, 2007, plan and as far from the public supply well as possible. The system shall include a backup generator.
4. All development of the lot shall occur to the eastern half of the site within 240 feet of Main Street. No new structures shall be located westerly of the existing cottage structure. All construction shall conform to the district setback requirements. In addition, that part of the lot that lies within 460 feet of the Wellhead shall not be disturbed by any development activity including grading and/or tree removal. That 460-foot area shall be delineated by fencing prior to any construction and remain in an undisturbed natural state during and after construction.
5. The development shall conform to applicable site plan review standards. Auto access shall be from one curb-cut only onto Main Street. On-site parking shall provide at least two spaces per unit plus a minimum of 3 visitor parking spaces (total 13). All parking shall be appropriately screened. An emergency vehicle turn around shall be created and a fire hydrant provided. The turn-around and hydrant location and installation shall be to the satisfaction and specification of

the Cotuit Fire Department. Interior drives and parking areas shall be paved and all site run-off shall be drained into grassed lined bio-retention area(s) "rain garden(s)" before overflowing to catch basins and subsurface leaching. Rain Gardens shall be sized to contain the first 1 inch of rainfall. All drainage shall be contained on-site and shall not be permitted to flow into adjoining property or the public right-of-way. The development site shall be attractively landscaped consisting of street, shade and specimen trees, deciduous and evergreen shrubs, grasses, groundcovers and lawn areas. All shall be installed prior to the issuance of the third occupancy permit and shall be properly nurtured and maintained. Exterior lighting consistent with residential use shall be provided. Sodium or mercury vapor exterior lighting shall not be permitted. All site lighting shall be contained on-site and shall not be permitted to shine into abutting properties.

6. Within one year of the grant of this permit, the applicant shall cause an engineered site plan, grading & utility plan, septic & engineering detail plan, a detailed landscaping plan, revised architectural elevations and floor plans, a monitoring and maintenance plan for the on-site septic system, and a projected condominium association budget to be prepared in accordance with applicable Town requirements and to professional standards that reflects the prior conditions and other conditions herein as applicable. Those plans shall be submitted to the Board's staff for distribution and review by appropriated town departments, agencies and boards and the Cotuit Fire Department. That plan shall be reviewed and transmitted along with all comments within 5 weeks after submission to the Zoning Board for the Board's review and approval. No construction activities, including site clearing and grading, shall be initiated until the Board has approved the development plans as consistent with this decision and all applicable Town standards.
7. Of the five dwelling units, two (2) of the newly constructed one-bedroom townhouses shall be dedicated in perpetuity to be affordable for sale units. The units shall be committed in perpetuity to affordability at 65% and 70% of the median income level to households in the Barnstable Metropolitan Statistical Area (MSA). Sale price of the affordable units, including principal, interest, taxes, insurance and association fees, shall not exceed 30% of the 65/70% income figure as applicable and adjusted for household size in perpetuity. All units shall be made available to qualified households on a fair and open basis. A Regulatory Agreement reflecting the above restrictions shall be prepared by the applicant, approved by the Town Attorney's Office, and recorded at the Barnstable Registry of Deeds by the applicant prior to any building permits being issued. Such restrictions shall take priority over all financing documents relating to this project. The affordable units shall not be rented unless those units are owned by an agency with the purpose of providing affordable housing. In that case they shall only be rented as affordable units to qualified tenants at the 65% and 70% income level, with a minimum lease of one year, pursuant to the official pricing guidelines established by the Commonwealth's Department of Housing and Community Development.
8. Also, within the one year period of the grant of this permit, the applicant shall cause the following to be completed and copies submitted to the Board's file:
 - A revised/updated Project Eligibility - Site Approval letter issued from MassHousing, or in the alternative, final funding approval from the Department of Housing and Community

Development issued based upon development plans as changed in this decision, including the total number of units, type of units, pricing of the affordable units to the 65% and 70% income group.

- A copy of the signed Operating Agreement of Bay Point, LLC. This agreement shall reflect that this document was submitted to the file and reviewed and approved by the Town Attorney's Office.
9. This Comprehensive Permit is granted with the condition that the proposed development is to be funded under the Housing Starts Program of the Massachusetts Housing Finance Agency and/or the New England Fund Program of the Federal Home Loan Bank of Boston. If the funding source changes, the applicant shall be required to notify the Board for a modification of this Comprehensive Permit. No building permits shall be issued for the development until the applicant receives its final funding approval from the Department of Housing and Community Development and a copy of that letter is submitted to the Board's file.
 10. The on-site wastewater disposal system shall be sized for the five units of housing with a total of 7 bedrooms in full conformity to Title 5 methodology and the '330 Rule' of the Town of Barnstable. The system shall be designed and maintained so as to reduce nitrogen and remove pathogens, viruses, VOC's and other contaminants as required. The final design of the system including a maintenance schedule and a monitoring program shall be submitted for final approval by the Board of Health prior to the issuance of a building permit. A copy of that maintenance schedule and the monitoring program as well as the Board of Health's approval shall also be submitted to the Board's file. Final overall nitrogen loading for the property shall be kept below 3.98 ppm with the goal of achieving zero nitrogen loading.
 11. Prior to the issuance of any building permit, a Regulatory Agreement and Monitoring Agreement reflecting the restrictions and consistency with this Comprehensive Permit, shall be executed by the applicant, DHCD, and the Town of Barnstable. The applicant shall prepare the agreements and submit them for approval by the Town Attorney's Office. Upon being signed, they shall be recorded at the Barnstable Registry of Deeds by the applicant against the property and the individual units. Such restrictions shall take priority over all financing documents relating to this project and shall survive foreclosure. All costs associated with monitoring for consistency with the Regulatory Agreement shall be the responsibility of the applicant.
 12. In issuing building permits and occupancy permits, the first of any four permits shall be for an affordable unit.
 13. The Condominium Master Deed, Declaration of Trust, and Bylaws (herein after "the Condominium Documents"), shall be as submitted to the Board's Office prior to any application for a building permit. The condominium documents shall include a restriction that limits the unit's number of bedrooms as per this decision and restricts the basement area, attic area or any room from being divided for sleeping purposes or converted into a bedroom area. That restriction shall be included within each unit's deed and within the condominium documents. Association dues shall be based upon the unit's value and not the percent of unit area. Upon transfer of a unit, a fee equal to three months of the unit dues shall be collected

and placed in an escrow account for the condominium association. That escrow account shall only be accessed by the association after the trusteeship is transferred from the applicant to the individual unit owners. The trusteeship of the condominium association shall be transferred to the unit owners within one month after the issuance of the fourth occupancy permit. The condominium documents shall be reviewed by the Town Attorney's Office for consistency with this decision and shall be duly recorded in the Barnstable County Registry of Deeds at or before any issuance of the first occupancy permit. A confirmed copy of such recorded documentation shall be forthwith provided to the Board. None of the condominium documents shall be modified or amended in any way or manner so as to negate the terms and conditions of this decision.

14. None of the five units (market rate and affordable rate units) may be rented for less than a one-year term. This condition shall be included within the Master Deed, the unit deeds and association bylaws. Sub-leasing of any such unit shall, if otherwise permitted, not be less than one year.
15. Prior to the issuance of a Certificate of Occupancy for any unit, the applicant shall have the development and the units connected to the public water supply system and to the on-site wastewater treatment system. The applicant shall be responsible for obtaining all necessary permits including those of the Department of Environmental Protection (DEP), if necessary, and the Town of Barnstable Health Division.
16. To the extent permissible by law, preference for the sale of the affordable units shall be given to households who are Barnstable residents or that have one of the persons within the household employed by businesses located within the town of Barnstable. The affordable units are to be sold as affordable units and are not to be subsidized units.
17. The applicant shall utilize the Housing Assistance Corporation's Cape Home Ownership Center (CHOC) in the selection of eligible buyers for the affordable units. The Cape Home Ownership Center is to verify first time homebuyers, income and asset limitations, affirmative marketing, and appropriate lottery procedures for buyer selection consistent with the terms of this decision.
18. A copy of this Comprehensive Permit shall be recorded at the Barnstable County Registry of Deeds. Proof of that recording shall be submitted to the Board's file and the Building Division prior to the issuance of any building permits for the development.
19. All construction shall comply with all applicable state building codes, state fire protection requirements, and Board of Health regulations. In addition, the development shall conform to all pertinent requirements of the Americans with Disabilities Act. All newly constructed units shall provide visitability. Both market rate and affordable homes shall have wider door frames on one exterior entranceway and on all interior door frames including bathroom and walk-in closet door frames. The top of the exterior wood decks and platforms shall be placed directly under and abutting the bottom of the exterior door threshold.
20. The units are to contain low flow toilets and showers, energy efficient appliances, heating and air, thermal windows and doors. The exterior finishing of the affordable units, including walls,

windows and doors, shall be identical in all respects to the exterior of the market rate units. The interior finishing for the affordable units shall have color-matched appliances inclusive of microwaves, coordinated bathroom and kitchen fixtures, finished painted walls and woodwork, finished floors, exterior lighting, and front doorbells. Any amenity (cable television, alarm system, exterior lighting, etc.) that is paid from association funds shall equally be included within the affordable units.

21. Exterior restoration and preservation of the existing historic dwelling shall comply with The Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*. The interior of both the historic structure and the cottage, if that building is to be rehabilitated, shall be improved as necessary to meet all applicable building codes. All appliances, utility services, fixtures, heating and air systems and structural systems including roofs, windows, floors, walls, etc, shall be of equal quality as that of the new construction and equal in regards to unit amenities and finishing as those new units to be constructed. Rehabilitation of the historic structure shall be completed and an occupancy permit issued prior to the issuance of occupancy permits for the last three units authorized in this decision.
22. During all stages of development and construction of the dwellings, all construction equipment, materials, and all parking of vehicles shall be kept on the locus and no vehicles or materials shall be permitted within the right-of-way of Main Street nor within that 460-foot protective zone from the public supply well or within 10 feet of the property lines of the locus except as may be needed for utilities or landscaping and then only on a temporary basis. No audible construction shall be permitted prior to 7:30 AM or after 5:30 P.M on weekdays, prior to 7:30 AM or after 12:00 noon on Saturdays and at no time on Sundays.
23. This Comprehensive Permit shall not be transferable to another entity other than the applicant without prior written approval of this Board. This condition, however, shall not apply to the use of the permit in securing financing for the development.
24. Transfer of each unit shall include the transfer or assignment of two on-site parking spaces. Three of the spaces shall remain unassigned and not transferred to individual owners. Those spaces shall be labeled visitor parking and shall remain that way.
25. The property shall be addressed and each unit shall be posted in accordance with the Code of the Town of Barnstable General Ordinances, Chapter 51. All signage shall conform to the Town of Barnstable Zoning Ordinances without variance.
26. No certificate of occupancy for any building or unit shall be issued until the improvements specified in this decision and set forth on the plans of record are constructed and installed so as to adequately serve said building, or adequate security has been provided, reasonably acceptable to the Town Engineer and approved by the Town Attorney's Office to ensure such completion. Any such performance guarantees shall be governed by the subdivision rules and regulations of the Planning Board and shall be approved by the Town Attorney's Office.
27. Upon completion of all work and prior to certification of total development costs, a letter of certification, made upon knowledge and belief according to professional standards, shall be

submitted to the Building Commissioner with a copy to the Board's file by a registered engineer that all work has been done substantially in compliance with the approved plan.

28. The applicant or a management company shall be responsible for the installation, operation, and maintenance of all aspects of the common facilities and utilities including, but not limited to, septic and drainage systems, common electrical power, snow plowing, landscape maintenance, and garbage removal as well as a periodic reporting requirement as may be imposed by the Board of Health. The applicant or a management company shall be responsible to maintain that the emergency turn around remain clear and passable for emergency vehicles at all times.
29. The Board shall require a full compilation and certification of total development costs (net of related-party expenses) and total revenues, on a federal income tax basis, prepared and certified by a certified public accountant acceptable to the monitoring agent or the Town to show that the profit made is within the 20% limitation imposed. Any profit in excess of the 20% limitation rule shall be governed by the terms of the regulatory agreement. To assure compliance with this requirement upon the sale and transfer of the last two units in the development, the gross proceeds from the sale of both units shall be placed in an escrow account as security for compliance.
30. The Building Commissioner or his designee shall have the right in perpetuity with proper prior notification and arrangement with the owner to enter and inspect any of the premises authorized in this permit to assure full compliance with the Comprehensive Permit.
31. The conditions contained herein are in addition to, and independent of, any requirements of any funding source for the project. All of the conditions of this decision as set forth herein shall have independent legal significance and effect.

The Vote on the conditions was as follows:

Aye: Sheila Geiler, Randolph Childs, James R. Hatfield, Daniel M. Creedon, Gail C. Nightingale.

Nay: None

Relief/ Waivers Granted:

Motion: With respect to the applicant's request for relief from local rules and regulations Attachment J of the application, a motion was made and seconded to grant only the following waivers and variances to Bay Point LLC., for the development as conditioned herein and based upon that balance test of local and regional housing need with that of local concern for protection of the public water supply well.

Variances are granted to the following zoning requirements:

- Section 240-7.F.I that limits development within residential districts to one principal permitted building per lot to allow a maximum of 4 principal buildings on this lot.

- Section 240-14.A that limits the principal permitted use in this district to one single-family dwelling to allow multi family dwellings on this lot.
- Section 240-21.A.9 the provisions for developing multi-family is waived to allow development at this site as per plans to be submitted consistent with this decision.
- Sections 240-98 through 240-105 site plan review process is waved only to that extent that formal submission and public meeting shall not be required as it shall be processed through staff and then to the Zoning Board. All other plan requirements and development standards shall be complied with
- Section 240-115.B.2 Growth Management Provision are waved only to the extent that all building permits may issue at one time provided that the permits are available in that calendar year. The permits are subject to all other requirements of the Building Division for the issuance of building permits and the applicant shall comply with any and all requirements of this Comprehensive Permit decision, which must be fulfilled and completed before any building permits may be issued.

With respect to the other Ordinances of the Code of the Town, the Zoning Board acting under Mass. General Laws, Chapter 40B grants waivers to only the following:

- Chapter 112 Article I - Protection of Historic Properties and Article II - Historic Landmarks is waved as the project is conditioned herein. This shall included authorization to demolish the garage structure connected to the back of the historic home and the cottage structure should that option be exercised by the Applicant.
- Chapter 360-38A waiver from the local Board of Health regulations only to the extent that this Board is permitting an Innovative/Alternative on-site septic system. All other requirements including approval of the monitoring and maintenance plans by the Board of Health shall be complied with.

The Board is not granting the zoning variances requested by the applicant from Section 240-35.G - Well Protection Overlay District Regulations, and Section 240-53 Landscaping Requirements for Parking Lots.

No waiver is granted to the General Ordinances; Chapter 232 - Wastewater Discharge, Chapter 360 - On-site Sewage Disposal Systems with the exception of Section 38A of that Chapter to provide for the use of Innovative/Alternative septic system, and Chapter 9 - Affordable Housing as that section is not applicable to Chapter 40B development.

No waiver is granted to the Town's application and permit fees.

The Vote on the waivers and fees was as follows:

Aye: Sheila Geiler, Randolph Childs, James R. Hatfield, Daniel M. Creedon, Gail C. Nightingale

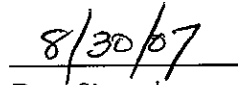
Nay: None

Town of Barnstable - Zoning Board of Appeals
Comprehensive Permit 2005-100 - Cotuit Center Residence

Ordered:

Comprehensive Permit 2005-100 has been granted with conditions. This decision must be recorded at the Barnstable Registry of Deeds for it to be in effect. The relief authorized by this decision must be exercised within three years. Appeals of this decision, if any, shall be made to the Barnstable Superior Court pursuant to M.G.L. Chapter 40A, Section 17, within twenty days after the date of the filing of this decision in the office of the Town Clerk. The applicant has the right to appeal this decision as outlined in M.G.L. Chapter 40B, Section 22.


Gar C. Nightingale - Chairman


Date Signed


I, Linda Hutchenrider, Clerk of the Town of Barnstable, Barnstable County, Massachusetts, hereby certify that twenty (20) days have elapsed since the Zoning Board of Appeals filed this decision and that no appeal of the decision has been filed in the office of the Town Clerk.

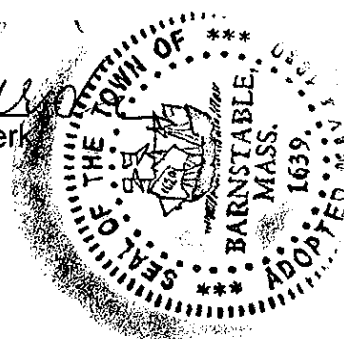
Signed and sealed this _____ day of _____ under the pains and penalties of perjury.

Linda Hutchenrider - Town Clerk

I, Linda Hutchenrider, Town Clerk of the Town of Barnstable, Barnstable County, Massachusetts, hereby certify that this Comprehensive permit was appealed by the Petitioner to the Housing Appeals Committee in the case No. 07-14, entitled "Bay Point, LLC, v. Barnstable Zoning Board of Appeals". All issues in that appeal were settled by compromise and approved August 27, 2010 by the Housing Appeals Committee in an "Endorsed Disposition and Settlement Agreement" filed with the Barnstable Town Clerk on January 14, 2011. I further certify that twenty (20) days have elapsed since such filing and that no appeal of the Comprehensive Permit or the Endorsed Disposition and Settlement Agreement has been filed in the office of the Town Clerk. This Comprehensive Permit, as modified by the said Endorsed Disposition and Settlement Agreement, are to be filed simultaneously with the Barnstable County Registry of Deeds and are to be cross-referenced to one another by appropriate marginal notations.

Signed and sealed this 22nd day of March, 2011.


Linda Hutchenrider, Town Clerk
Town of Barnstable



LEGAL NOTICES**Town of Barnstable Zoning Board of Appeals
Notice of Public Hearing Under The Zoning Ordinance
November 2, 2005**

To all persons interested in, or affected by the Zoning Board of Appeals under Section 11, of Chapter 40A of the General Laws of the Commonwealth of Massachusetts, and all amendments thereto you are hereby

notified that:

7:00 P.M.

Sherman

Appeal 2005-095

Moses H. Sherman and Claire L. Sherman have applied for a Variance to Section 240-14 (E) Bulk Regulations Minimum Lot Area and Section 240-36 Resource Protection Overlay District Minimum Lot Area. The relief from the minimum lot area requirements is for a 0.46-acre lot that has merged with an adjoining lot held in common ownership. The applicants seek to unmerge the lot so that it would be a separate buildable under zoning. The subject property is located as shown on Assessor's Map 077 as Parcel 045, addressed 19 Hilltop Drive, Marstons Mills, MA 02648 in a Residence F and Resource Protection Overlay Zoning Districts.

7:15 P.M.

Gold

Appeal 2005-101

Randolph R. Gold has applied for a Variance from Chapter 240-14 (E) RF-1 Residential District Bulk Regulations side setback requirements of 15 feet, to allow for a swimming pool to infringe 5 feet into the setback. The subject property is as shown on Map 334 as Parcel 005, addressed 1360 Mary Dunn Road, Barnstable, MA 02630 in a Residence F-1 Zoning District.

7:25 PM JDJ Housing Development - The Village Green

Comp. Permit 2003-90

JDJ Housing Development, LLC has requested a modification in Comprehensive Permit 2003-90 issued for the development of the Village Green, a 135 unit rental apartment development with 44 units committed to affordable housing on 14.32 acres. The Applicant seeks to change the total number of units from 135 to 148 units and to change the number of affordable units from 44 units committed to low and moderate-income households to 37 units committed to low and moderate-income households and 14 units committed to workforce housing, those households earning between 81% and 120% of the area median income. The Property is addressed 770 Independence Drive, Barnstable, MA, as shown on Assessor's Map 332 as Parcel 010-1, located in an Industrial Zoning District.

7:30 P.M.

Bay Point

Appeal 2005-100

Bay Point, LLC, Stuart A. Bornstein, Manager, has applied for a Comprehensive Permit under the General Laws of the Commonwealth of Massachusetts, Chapter 40B "Affordable Housing", to allow the construction of 11, multi-family units to be located on 2.38 acres. Three of the units are to be dedicated as affordable and sold to low and moderate income housing. The property is shown on Assessor's Map 036 as parcel 015, addressed 671 Main Street, Cotuit, MA, in a Residence F Zoning District.

These Public Hearings will be held at the Barnstable Town Hall, 367 Main Street, Hyannis, MA, Hearing Room, 2nd Floor, Wednesday, November 2, 2005. Plans and applications may be reviewed at the Planning Division, Zoning Board of Appeals Office, Town Offices, 200 Main Street, Hyannis, MA.

Gail Nightingale, Chairman
Zoning Board of Appeals

The Barnstable Patriot
October 14 and October 21, 2005

Zoning Board of Appeals (ZBA) Abutter List for Map 036 Parcel 015

Abutters = Parties of Interest - those directly opposite subject lot on any public / private street / way and abutters to abutters. Notification of all properties within 300' ring of the subject lot.

This list by itself does NOT constitute a certified list of abutters and is provided only as an aid to the determination of abutters. The requestor of this list is responsible for ensuring the correct notification of abutters. Owner and address data taken from the Town of Barnstable Assessor's database on 10/13/2005

Mappar	Owner1	Owner2	Address 1	Address 2	City	State	Zip	Country
021009	COTUIT FIRE DISTRICT		P.O. BOX 1475		COTUIT	MA	02635	USA
021114	PEIRSON, ELIZABETH LAWRENCE		975 MAIN ST		COTUIT	MA	02635	USA
036002	COTUIT FIRE DISTRICT		P.O. BOX 1475		COTUIT	MA	02635	USA
036009	JACKSON, GUY L & CHRISTOPHER &	JACKSON, GARDNER III & GORDON FISKE	58 EAST END RD		BOLTON	MA	01740	
036009001	SMITH, DEBORAH J	C/O SMITH, RAYMOND E	719 MAIN ST		COTUIT	MA	02635	USA
036010	KERN, BARBARA & KERN, JILL PHELPS	%KERN, BARBARA & JILL	P O BOX 1996		COTUIT	MA	02635	USA
036011	RIVES, JOHN & SHAUNA		36 GREENWICH PARK - #3		BOSTON	MA	02118	USA
036012	CHASE, KEVIN P &	MCCAREY, CAROLE A	699 MAIN ST		COTUIT	MA	02635	USA
036013	BUEL, PHYLLIS H		4 CIRCUIT ST		NORWELL	MA	02061	USA
036014	COTUIT FIRE DISTRICT		P.O. BOX 1475		COTUIT	MA	02635	USA
036015	NIELSEN, KRISTINE E &	%BAY POINT, LLC	297 NORTH ST		HYANNIS	MA	02601	USA
036016	TURNER, MARILYN		661 MAIN ST		COTUIT	MA	02635	USA
036017	JACKSON, HERBERT B &	JACKSON, BARBARA D	PO BOX 501		COTUIT	MA	02635	USA
036030	BURGESS, THOMAS K & ANNA E		658 MAIN ST		COTUIT	MA	02635	USA
036031	NORTHEY, ANTHONY & POSCHINGER, I	C/O ANTHONY NORTHEY	11169 HIGHWAY 1 RR #1	WOLFVILLE, NOVA SCOTIA	CANADA		B4P2R1	
036032	MILLER, PHYLLIS J		P O BOX 2082		COTUIT	MA	02635	USA

Mapper	Owner1	Owner2	Address 1	Address 2	City	State	Zip	Country
036033	EDELSON, JILL &	HARLEY, MARGOT ETALS	136 UNADILLA RD		RIDGEWOOD	NJ	07450	USA
036036	MARY BARTON LAND CONS TRUST	%DIETZGEN, JOSEPH TRS ETAL	PUTNAM AVE M 5B		COTUIT	MA	02635	USA
036038	BARNSTABLE, TOWN OF (REC)		367 MAIN STREET		HYANNIS	MA	02601	USA
036039	BARZUN, ROGER M ET AL		P O BOX 767		CONCORD	MA	01742	USA
036049	KILLALEA, JAMES A		700 MAIN ST		COTUIT	MA	02635	USA
036051	GROVER, PAUL E & TRACIE E		6 ALLEN ST		MARION	MA	02738	USA
036052	ZAIS, CAROL D TR		36 OLD COACH RD		SUDBURY	MA	01776	USA
036061	PEIRSON, NICHOLAS DALAND	PEIRSON, SUSAN ANDREA LOCKE	10629 NW 49TH		CORAL SPRINGS	FL	33076	USA
036062	PEIRSON, SUSAN R, TRUSTEE		P O BOX 1487		MARACO ISLAND	FL	33969	USA
036063	PEIRSON, ELIZABETH L &	HIGGINS, JEFFREY R	95 MAIN ST		COTUIT	MA	02635	USA

BARNSTABLE REGISTRY OF DEEDS

Town Clerk Stamp



**Town of Barnstable
Zoning Board of Appeals
Application for a Special Permit**

For Office Use Only	
Date Application Received:	Appeal No.:
Hearing Due Date:	Hearing Date:
Decision Due:	

The undersigned hereby applies to the Zoning Board of Appeals for a Special Permit, in the manner and for the reasons set forth below:

Applicant's Name¹: Douglas & Tina Crook Phone: 508-566-9327

Applicant's Address : 115 Bay Road, Maustons Mills, Ma 02648

Property Location: 115 Bay Road, Maustons Mills, Ma 02648

Property Owner: Douglas & Tina Crook Phone: 508-566-9327

Address of Owner: 115 Bay Road, Maustons Mills, Ma 02648
Street Number and Street Name City/Village State Zip

If applicant differs from owner, state nature of interest:

Registry of Deeds/Land Court References: Deed 21873-291 Plan 585-42

Assessor's Map/Parcel Number: 045 016 005 Zoning District RF

Number of Years Owned: 13 Groundwater Overlay District: AP

Special Permit Requested: 240-47.1 Family Attachments
Cite Section & Title from the Zoning Ordinance

Description of Activity/Reason for Request: Create 1 bedroom, family apartment in existing detached structure on site. See attached narrative
Attach additional sheet if necessary

Is the property subject to an existing Variance or Special PermitNo Yes []:
If Yes, please list Appeal #'s

¹ The Applicant's Name will be the entity to whom the special permit will be issued to.
² If the Applicant differs from owner, the Applicant will be required to submit one original notarized letter from the owner authorizing the application to the Zoning Board, a copy of an executed purchase & sales agreement or lease, or other documents to prove standing and interest in the property.

Petition for a Special Permit - Page 2

Description of Construction Activity (if applicable): CONSTRUCTION OF A 3 BEDROOM HOME @ EXISTING 1 BEDROOM APARTMENT OVER DEGRADED GARAGE WOULD THEN BE CLASSIFIED AS AN ACCESSORY FAMILY APARTMENT

Attach additional sheet if necessary

Existing Level of Development of the Property - Number of Buildings: 1

Present Use(s): SINGLE FAMILY DWELLING

Existing Gross Floor Area: 720 sq. ft. Proposed New Gross Floor Area: 2520 sq. ft.


*Site Plan Review Number: _____ * Date Approved: _____

*(Not required for Single or Two Family use)

Is the property located in a designated Historic District?.....	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Is this proposal subject to the jurisdiction of the Conservation Commission	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Is this proposal subject to approval by the Board of Health.....	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Is the building a designated Historic mark?.....	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Have you applied for a building permit?.....	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Have you been refused a building permit?.....	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>

The following required information, as applicable to application, must be submitted with the application at the time of filing, failure to do so may result in a denial of your request.

- Three (3) copies of the completed application form, each with original signatures.
- Three (3) copies of a 'wet sealed' certified property survey (plot plan) and one (1) reduced copy (8 1/2" x 11" or 11" x 17") showing the dimensions of the land, all wetlands, water bodies, surrounding roadways and the location of the existing improvements on the land.
- Three (3) copies of a proposed site improvement plan, as found approvable by the Site Plan Review Committee (if applicable), and building elevations and layout as may be required plus one (1) reduced copy (8 1/2" x 11" or 11" x 17") of each drawing. These plans must show the exact location of all proposed improvements and alterations on the land and to the structures.
- The applicant may submit any additional supporting documents to assist the Board in making its determination. Twelve copies of all supporting documents must be submitted eight days prior to the public hearing for distribution to the Board Members.

Signature:  TRAVIS CROOK Date: 8/11/2020 8/11/20

Applicant's or Representative's Signature³

Print Name DOUGLAS CROOK TRAVIS CROOK

Address: 115 BOG ROAD Phone: 508-560-9327

MARSHONS MILLS MA 02648 Fax No.: _____

e-mail Address: dcrook132@gmail.com

³ All correspondence on this application will be processed through the Representative named at that address and phone number provided. Except for Attorneys, if the Representative differs from the Applicant/Owner, a letter authorizing the Representative to act on behalf of the Applicant/Owner shall be required.

August 11, 2020

To: Chairman, Barnstable Zoning Board of Appeals

RE: Special Permit Application for Family Apartment 115 Bog Road, Marstons Mills, Ma 02648

Special Permit Request: We Douglas and Tina Crook, owners of the above-referenced property are requesting a special permit to create a Family Apartment under Section 240-47.1 of the zoning bylaw. The special permit application is required under Section 240-47.1,B, (4) as the proposed family apartment will be in an existing structure. Outside of the detached structure issue, this application meets all other criteria for an as of right application under Section 240-47.1, A:

- 1) The apartment unit shall not exceed 50% of the square footage of the single family dwelling, and shall be limited to no more than 2 bedrooms.
 - a. The Single Family dwelling will be 2500 sf (Main Residence), proposed family apartment Accessory Apartment will contain 700sf, less than 50% and will only have 1 bedroom
- 2) The occupancy of the apartment shall not exceed two family members
 - a. The proposed family apartment in Building 2 will only have 1 occupant, the owner's daughter.

Property Description: There is currently one building under construction on the 5.6 acre property at 115 Bog Road, Marstons Mills. This building is a 30 x 24 foot, two car garage with 700 square feet of living space above. The living space has 1 bathroom, 1 bedroom, kitchen, smoke and CO detectors, septic system connection, natural gas and complete electrical system. The septic system is an approved four (4) bedroom septic system installed in 2020. The owners would like to submit a building permit for the Main Residence, a single family home, 2500 square feet. Upon completion of the Main Residence, the owners will reside in the Main Residence, and the garage apartment will become the Family Apartment.

Family Relationship and History: The applicants, Douglas and Tina Crook, who have been Barnstable Residents since 2001, purchased the property in 2007. In 2020, they began construction of a 2 car garage with 700 square foot living space above. Their plan is to reside in the garage while their home is built. Upon completion of their home, the Accessory (garage) apartment would become a family apartment. Their daughter, Sydney Crook, will reside in the family apartment.

Construction Required: As the Accessory Apartment is under construction and is expected to be completed by September of 2020 the construction required will be building the Main Residence. The main residence is within 100 feet of a wetland and the construction does fall under conservation commission review and has been granted an Order of Conditions. Douglas and Tina Crook plan on residing in the Accessory Apartment as they construct the Main Residence while their daughter completes her last year of college.

**THE
CROOK
RESIDENCE**

**115
BOG
ROAD**

**MARSTONS
MILLS,
MA**

PROJECT # 150519

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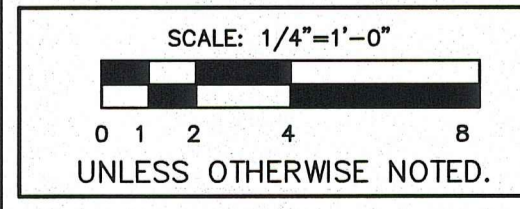
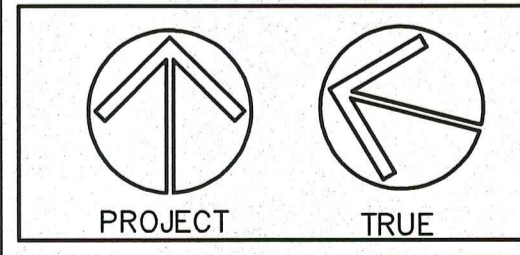
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REGISTRATION

REVISIONS

DATE:	REVISIONS:

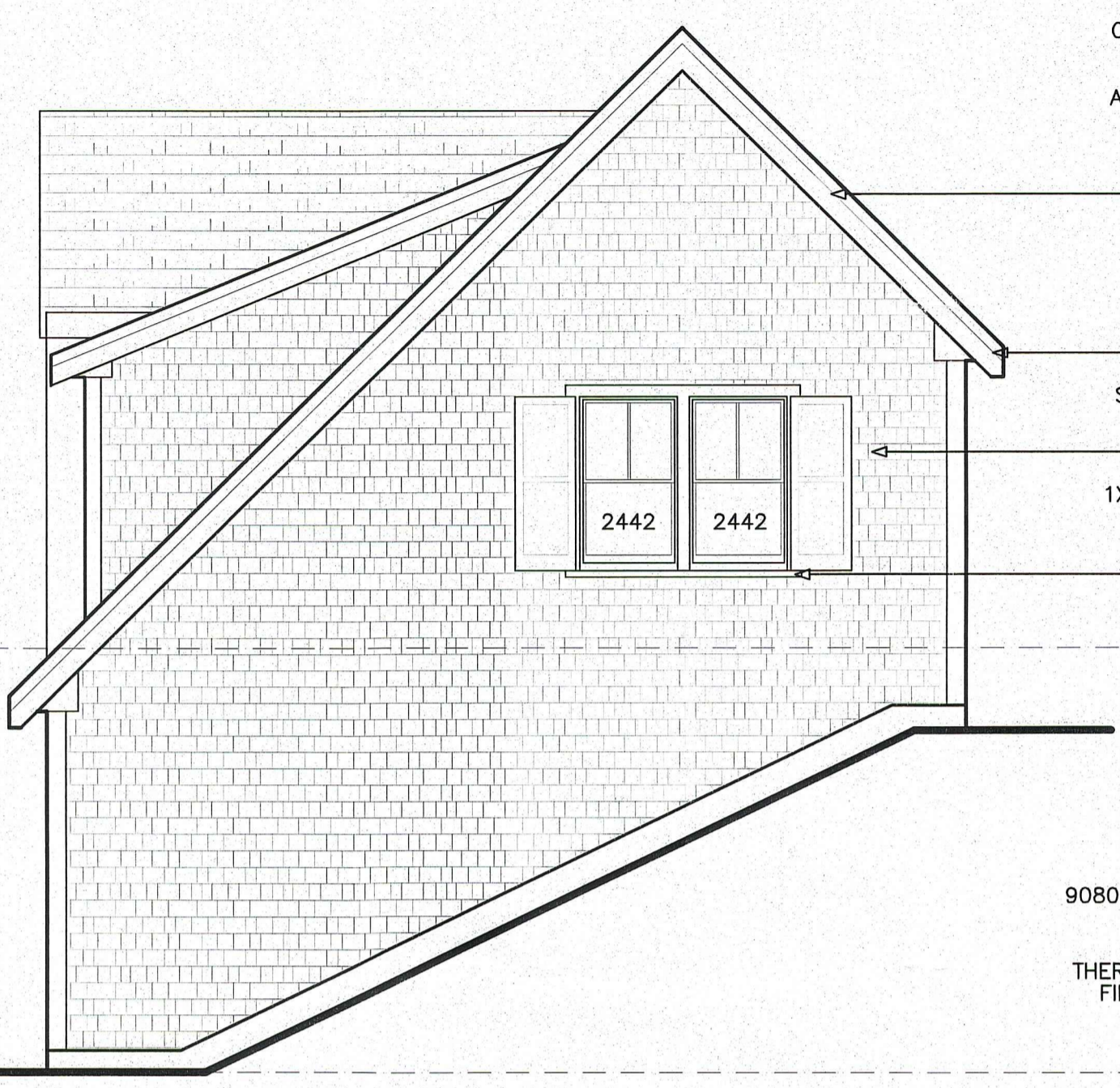
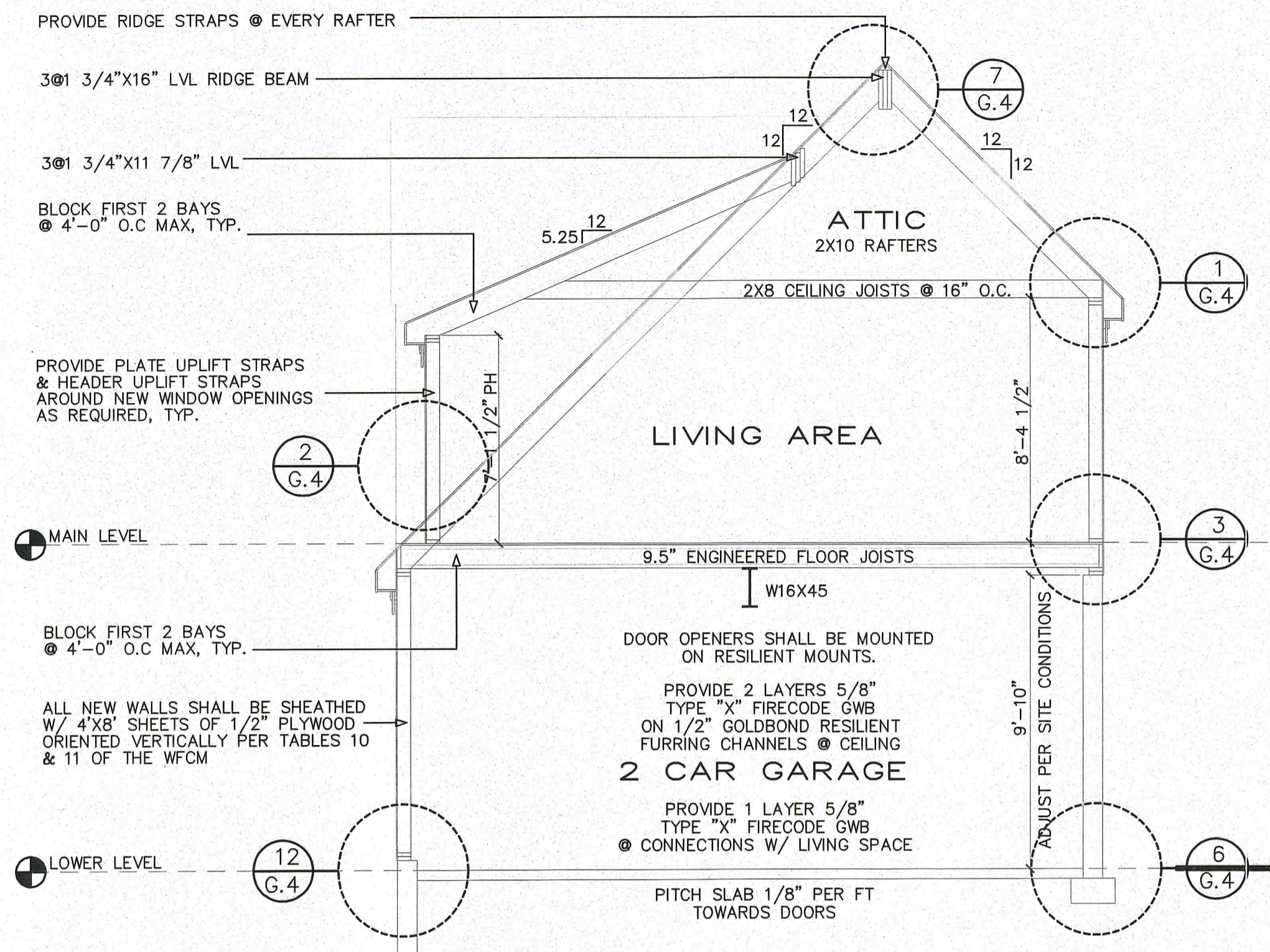
ISSUED FOR:
DATE:



SHEET NO.
G.2

TOTAL NUMBER OF SHEETS
IN SET:

THIS SHEET INVALID
UNLESS ACCOMPANIED BY
A COMPLETE SET OF
WORKING DRAWINGS



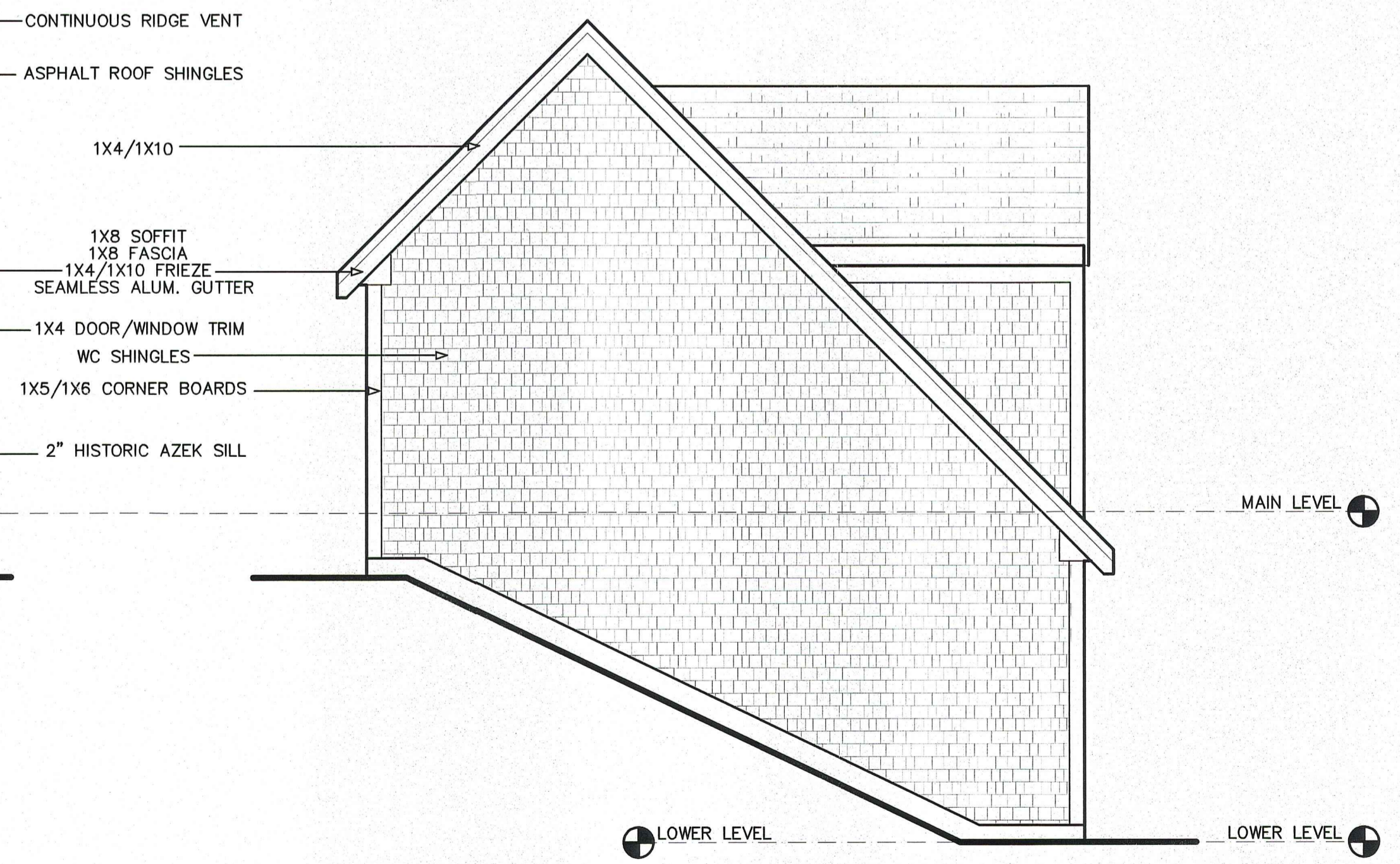
RIGHT ELEVATION



FRONT ELEVATION



REAR ELEVATION



LEFT ELEVATION

THE CROOK RESIDENCE

115 BOG ROAD

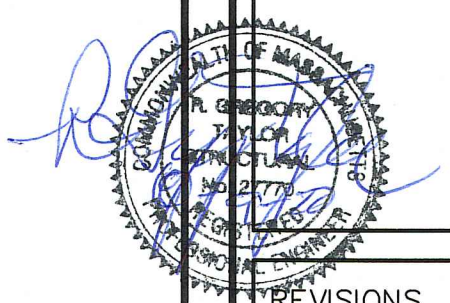
MARSTONS MILLS, MA

PROJECT # 150519

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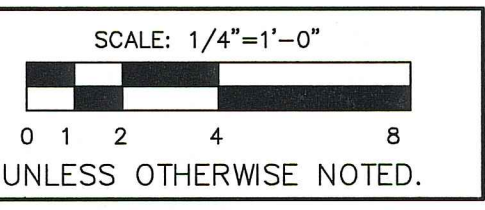
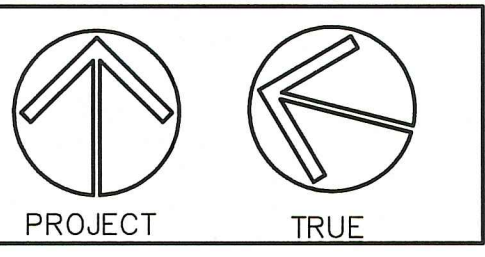
REGISTRATION



REVISIONS

DATE:	REVISIONS:
05.20.20	DELETE 2ND FLOOR

ISSUED FOR:
DATE:

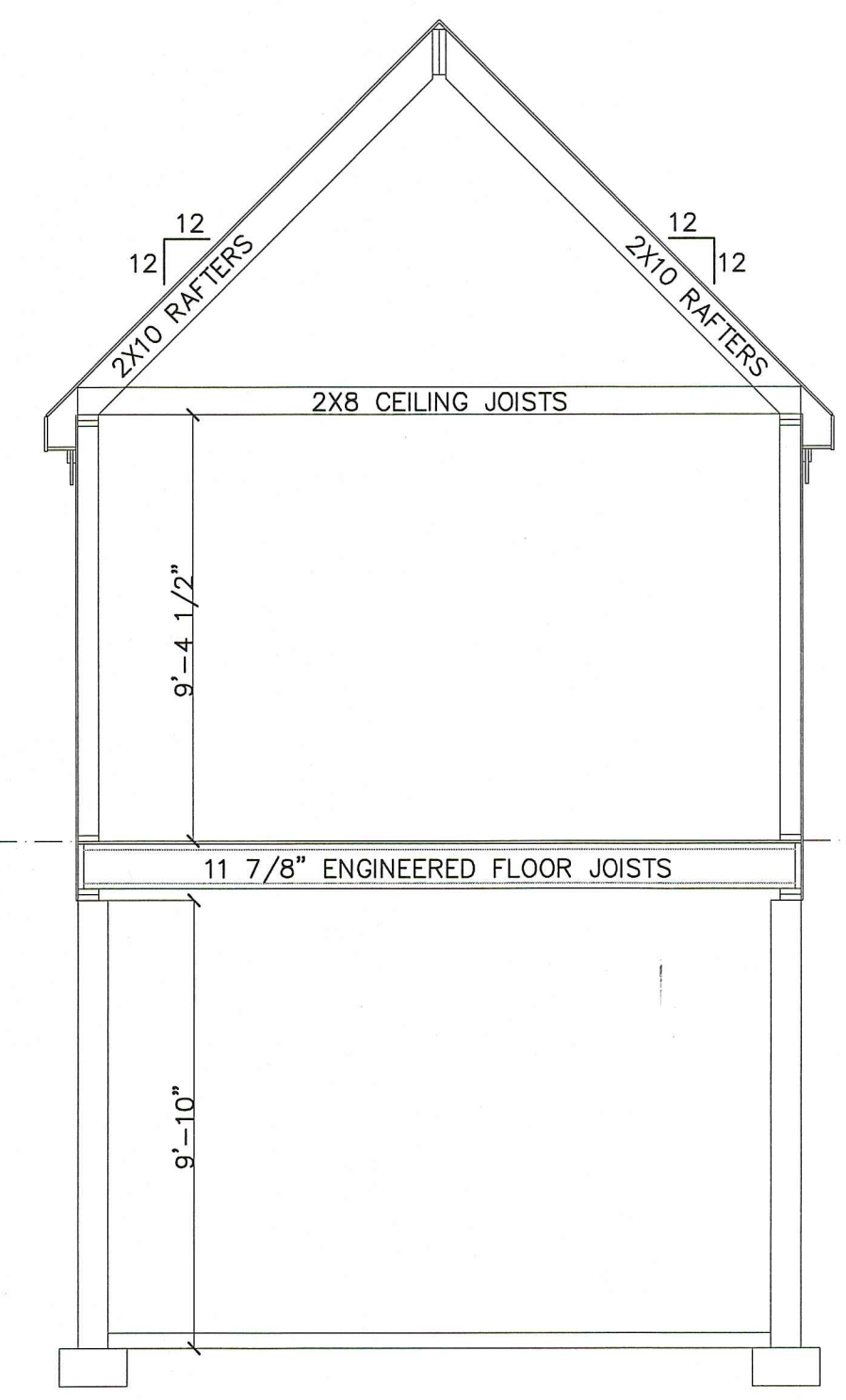


SHEET NO.
A.3

TOTAL NUMBER OF SHEETS IN SET:

THIS SHEET INVALID UNLESS ACCOMPANIED BY A COMPLETE SET OF WORKING DRAWINGS

A
A.3



BUILDING SECTION
FLAT CEILING

CUSTOM SCREEN PANELS
W/ ALUMINUM FRAME
6X6 PT POST ENCASED
W/ 1X TRIM, PTD.



FRONT ELEVATION

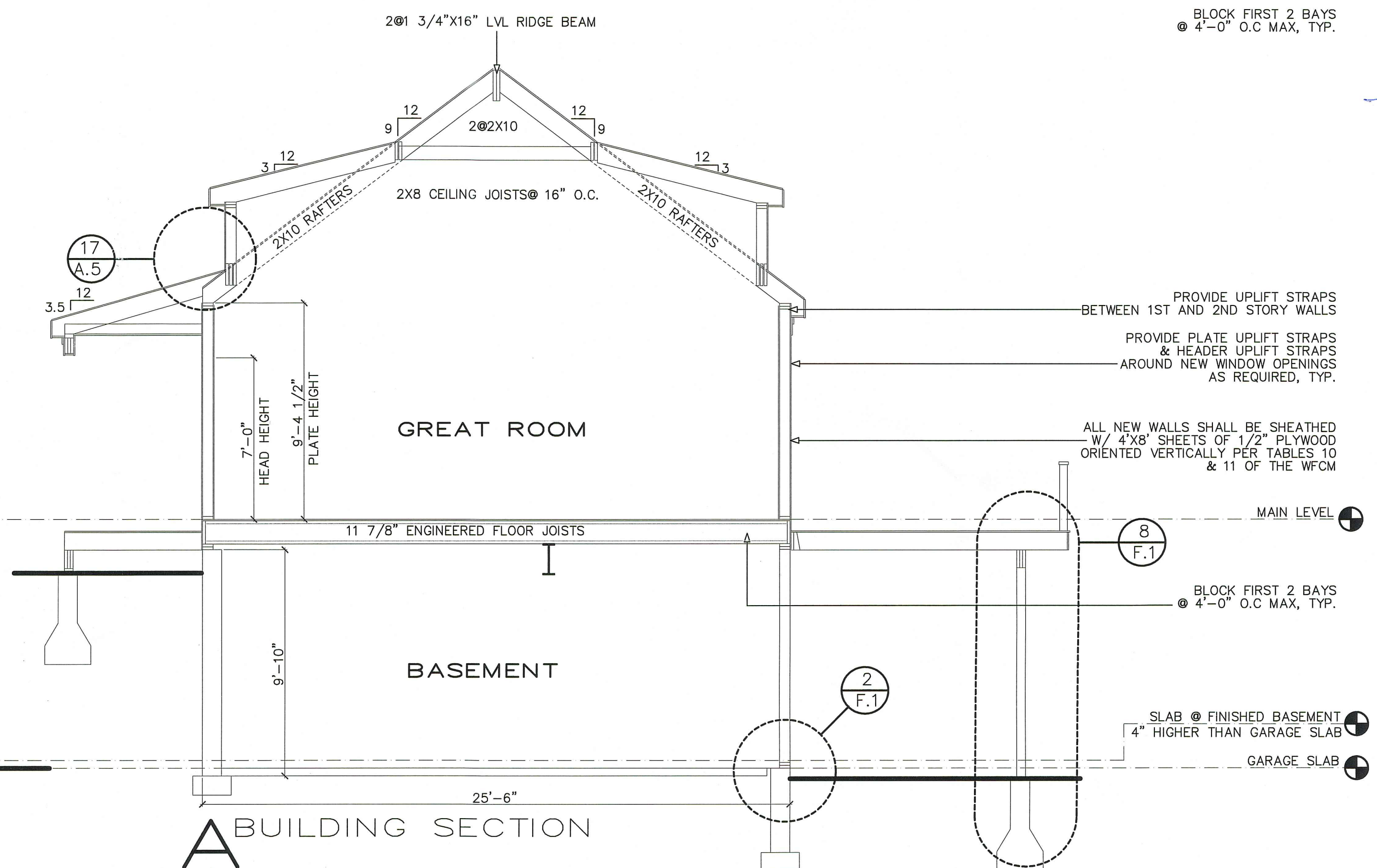
PROVIDE RIDGE STRAPS @ EVERY RAFTER

C
A.3



RIGHT ELEVATION

THERMATRU INSULATED
FIBERGLASS DOOR
9080 OVERHEAD DOORS
SLAB @ FINISHED BASEMENT
4" HIGHER THAN GARAGE SLAB
GARAGE SLAB



A BUILDING SECTION

BLOCK FIRST 2 BAYS
@ 4'-0" O.C MAX, TYP.

PROVIDE UPLIFT STRAPS
BETWEEN 1ST AND 2ND STORY WALLS
PROVIDE PLATE UPLIFT STRAPS
& HEADER UPLIFT STRAPS
AROUND NEW WINDOW OPENINGS
AS REQUIRED, TYP.

ALL NEW WALLS SHALL BE SHEATHED
W/ 4X8 SHEETS OF 1/2" PLYWOOD
ORIENTED VERTICALLY PER TABLES 10
& 11 OF THE WFCM

BLOCK FIRST 2 BAYS
@ 4'-0" O.C MAX, TYP.

SLAB @ FINISHED BASEMENT
4" HIGHER THAN GARAGE SLAB
GARAGE SLAB

THE CROOK RESIDENCE

115 BOG ROAD

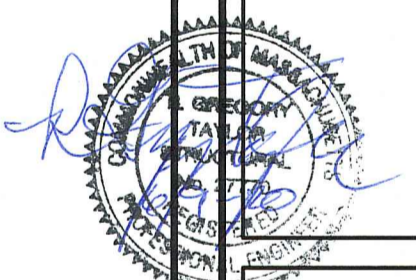
MARSTONS MILLS, MA

PROJECT # 150519

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THESE PLANS ARE NOT TO BE USED FOR PERMITTING OR CONSTRUCTION PURPOSES UNLESS STAMPED & SIGNED WITH AN ORIGINAL ARCHITECT'S STAMP AND SIGNATURE & MARKED AS "PERMIT SET" OR "CONSTRUCTION SET".

REGISTRATION

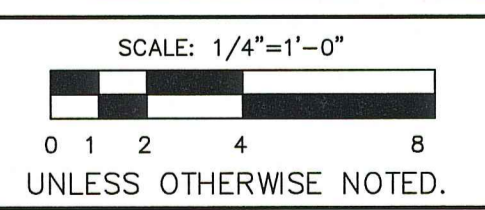
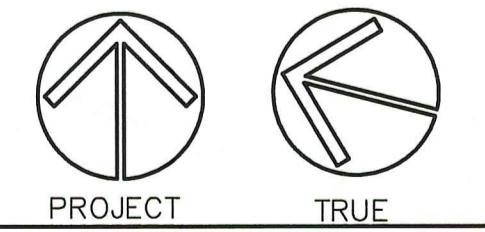


REVISIONS

DATE:	REVISIONS:
05.20.20	DELETE 2ND FLOOR

ISSUED FOR:

DATE:



SHEET NO.
A.4

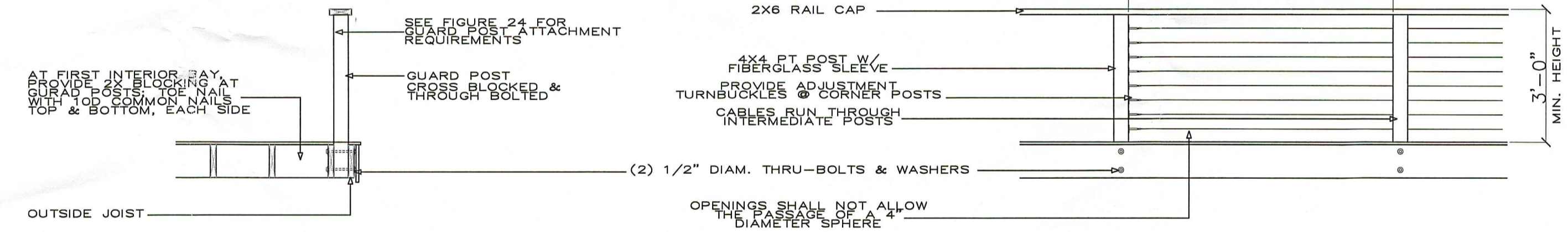
TOTAL NUMBER OF SHEETS
IN SET:

THIS SHEET INVALID
UNLESS ACCOMPANIED BY
A COMPLETE SET OF
WORKING DRAWINGS



B BUILDING SECTION
@ CATHEDRAL

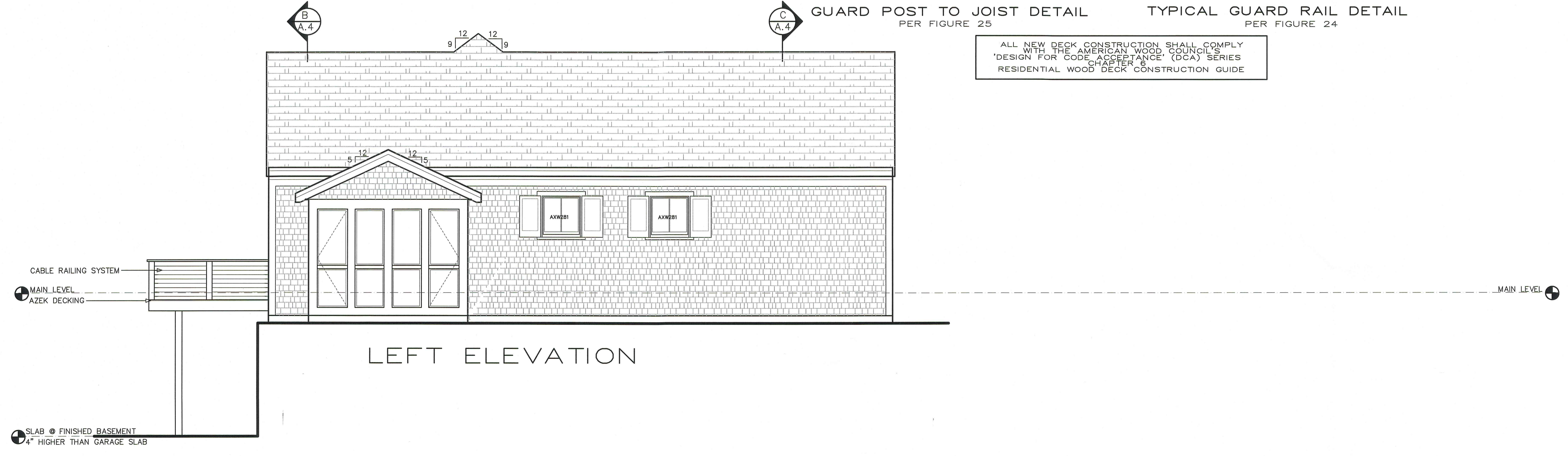
REAR ELEVATION



GUARD POST TO JOIST DETAIL
PER FIGURE 25

TYPICAL GUARD RAIL DETAIL
PER FIGURE 24

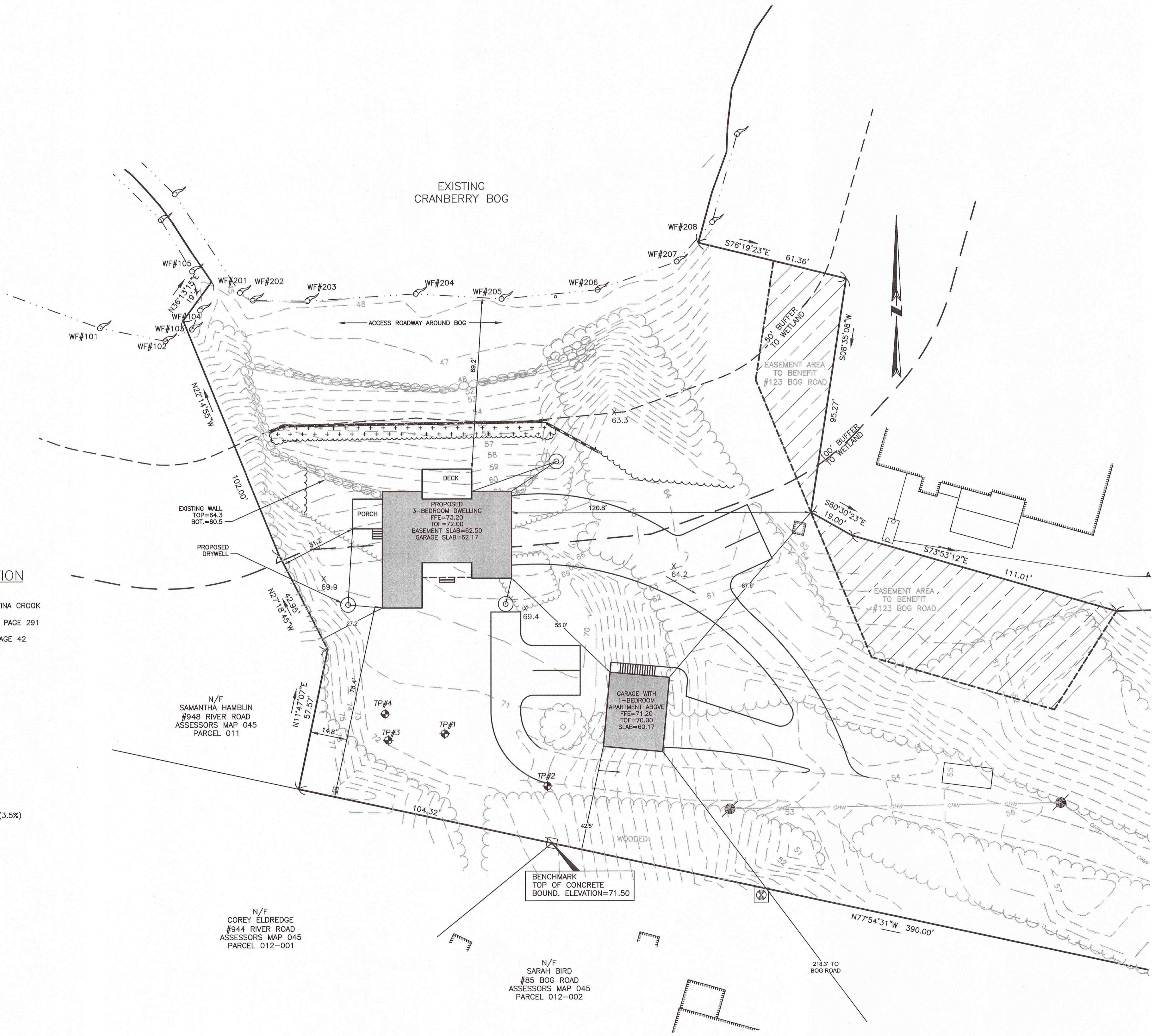
ALL NEW DECK CONSTRUCTION SHALL COMPLY WITH THE AMERICAN WOOD COUNCIL'S "DESIGN FOR CODE ACCEPTANCE" (DCA) SERIES CHAPTER 8 RESIDENTIAL WOOD DECK CONSTRUCTION GUIDE



LEFT ELEVATION

SLAB @ FINISHED BASEMENT
4" HIGHER THAN GARAGE SLAB

File name: \\bsoos\ver\Projects-YAR\5033100\Civil_Drawings\5033100-SP5.dwg - Tab: Planning Board Plotted On: October 7, 2020 - 11:32 AM By: HEALY, KIERAN J. Saved on 10/7/2020 11:27 AM by KHEALY



LOCUS INFORMATION

CURRENT OWNER: DOUGLAS & TINA CROOK
 TITLE REFERENCE: BOOK 21893, PAGE 291
 PLAN REFERENCE: BOOK 585, PAGE 42
 ASSESSORS MAP: 45
 PARCEL: 16-5
 ZONING DISTRICT: RF
 SETBACKS: FRONT 30', SIDE 15', REAR 15'
 MINIMUM LOT SIZE: 43,560 S.F.
 EXISTING UPLAND LOT AREA: 87,700± S.F.
 NITROGEN SENSITIVE ZONE: ZONE II
 FEMA FLOOD ZONE DISTRICT: "X"
 OVERLAY DISTRICT: G.P.O.D.
 BUILDING COVERAGE: G.P.O.D.
 (DWELLING/PORCH/DECK/STOOP/GAR.) 3,077± S.F. (3.5%)

N/F SAMANTHA HAMLIN
 #948 RIVER ROAD
 ASSESSORS MAP 045
 PARCEL 011

N/F COREY ELDREDGE
 #944 RIVER ROAD
 ASSESSORS MAP 045
 PARCEL 012-001

N/F SARAH BIRD
 #85 BOG ROAD
 ASSESSORS MAP 045
 PARCEL 012-002



Kieran J. Healy 9/30/2020
 KIERAN J. HEALY DATE
 PROFESSIONAL LAND SURVEYOR

SEPTIC SYSTEM DESIGN

115 BOG ROAD
 IN
 MARSTONS MILLS
 MASSACHUSETTS
 (BARNSTABLE COUNTY)

SITE PLAN

OCTOBER 15, 2019

REVISIONS:

NO.	DATE	DESC.
1	1/30/20	PER HEALTH DEPT.
2	5/4/20	PROPOSED WELL
3	6/1/20	MODIFY PROP. DWELLING
4	9/16/20	ADDITIONAL OFFSETS
5	9/30/20	REMOVE SEPTIC

PREPARED FOR:
 DOUGLAS CROOK
 50 APPOLO DRIVE
 W. BARNSTABLE, MA 02668
 dcrook132@gmail.com

BSC GROUP
 349 Route 28, Unit D
 W. Yarmouth, Massachusetts
 02673
 508 778 8919

© 2020 BSC Group, Inc.
 SCALE: 1" = 20'

FILE: Projects-YAR\5033100\C\0\5033100-SP5.dwg
 DWG. NO: 6610-04 SHEET 1 OF 1
 JOB. NO: 5-0331.00



Town of Barnstable
Planning and Development Department
Elizabeth Jenkins, Director
Staff Report

Special Permit No. 2020-032 – Crook
Section 240-47.1 (B) (4) – Family Apartment

To create a family apartment in a detached structure

Date: September 24, 2020
To: Zoning Board of Appeals
From: Anna Brigham, Principal Planner

Applicant: Douglas and Tina Crook
Property Address: 115 Bog Road, Marstons Mills, MA
Assessor's Map/Parcel: 045/016-005
Zoning: Residence F (RF)

Filed: August 27, 2020

Hearing: October 14, 2020

Decision Due: January 12, 2021

Copy of Public Notice

Douglas and Tina M. Crook have applied for a Special Permit pursuant to Section 240-47.1 – Family Apartments. The Special Permit is required under Section 240-47.1.B(4) as the proposed family apartment will be in a detached existing structure. The Applicants are proposing to reside in the garage apartment while their principal dwelling is being built. Upon completion of their dwelling, the garage apartment would then become a family apartment for their daughter. The subject property is located at 115 Bog Road, Marstons Mills, MA as shown on Assessor's Map 045 as Parcel 016-005. It is located in the Residence F (RF) Zoning District.

Background

The subject property consists of a 5.68 acre lot with frontage on Bog Road in Marstons Mills and overlooking working cranberry bogs. According to the application, the 1-bedroom, 30 foot by 24 foot dwelling with two-car garage is currently under construction. The septic system is an approved 4-bedroom system recently installed. The owners would now like to submit a building permit for a proposed 2,500 square foot principal dwelling. Upon completion of the principal dwelling, the owners will reside in the principal dwelling and the garage apartment will become a family apartment. The owners' daughter will reside in the family apartment. The area consists of a variety of sized residential lots.

Proposal & Relief Requested

The Applicants are proposing to create a family apartment in a 700 square foot of living space in a detached structure on site. The detached family apartment requires a Special Permit pursuant to Section 240-47.1, Subsection B. The subject property is located at 115 Bog Road, Marstons Mills, MA.

Section 240-47.1 B. By special permit. The Zoning Board of Appeals may allow by special permit if:

- (1) A family apartment unit greater than 50% of the square footage of the dwelling.
- (2) A family apartment unit with more than two bedrooms.
- (3) Occupancy of a family apartment unit by greater than two adult family members.
- (4) A family apartment unit within a detached structure, with a finding that the single-family nature of the property and of the accessory nature of the detached structure are preserved.

Section 240-47.1 C. Conditions and procedural requirements. Prior to the creation of a family apartment, the owner of the property shall make application for a building permit with the Building Commissioner providing any and all information deemed necessary to assure compliance with this section, including, but not limited to, scaled plans of any proposed remodeling or addition to accommodate the apartment, signed and recorded affidavits reciting the names and family relationship among the parties, and a signed family apartment accessory use restriction document.

(1) Certificate of occupancy. Prior to occupancy of the family apartment, a certificate of occupancy shall be obtained from the Building Commissioner. No certificate of occupancy shall be issued until the Building Commissioner has made a final inspection of the apartment unit and the single-family dwelling for regulatory compliance and a copy of the family apartment accessory use restriction document recorded at the Barnstable Registry of Deeds is submitted to the Building Division.

(2) Annual affidavit. Annually thereafter, a family apartment affidavit, reciting the names and family relationship among the parties and attesting that there shall be no rental of the principal dwelling or family apartment unit to any non-family members, shall be signed and submitted to the Building Division.

(3) At no time shall the single-family dwelling or the family apartment be sublet or subleased by either the owner or family member(s). The single-family dwelling and family apartment shall only be occupied by those persons listed on the recorded affidavit, which affidavit shall be amended when a change in the family member occupying either unit occurs.

(4) When the family apartment is vacated, or upon noncompliance with any condition or representation made, including but not limited to occupancy or ownership, the use as an apartment shall be terminated. All necessary permit(s) must be obtained to remove either the cooking or bathing facilities (tub or shower) from the family apartment, and the water and gas service of the utilities removed, capped and placed behind a finished wall surface; or a building permit must be obtained to incorporate the floor plan of the apartment unit back into the principal structure.

Proposed Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

- 1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-47.1. B. allows a Special Permit for a Family Apartment in a detached structure.**
- 2. Site Plan Review is not required for single-family residential dwellings.**
- 3. After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.**

The Board is also asked to find that:

- 4. The proposed family apartment would not be substantially more detrimental to the neighborhood than the existing dwelling.**
- 5. The single-family nature of the property and of the accessory nature of the detached structure are preserved.**

Suggested Conditions

Should the Board find to grant Special Permit No. 2020-032, it may wish to consider the following conditions:

1. Special Permit No. 2020-032 is granted to Douglas and Tina Crook to establish a family apartment in a detached accessory structure at 115 Bog Road, Marstons Mills, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled “Septic System Design” by BSC Group dated October 15, 2019 with the last revision date of September 16, 2020, and design plans by ERT Architects sheet G.2 undated and sheets A.3 and A.4 last revised May 20, 2020.
3. The proposed development shall represent full build-out of the lot. Further development of the lot or construction of additional accessory structures is prohibited without prior approval from the Board.
4. The Applicant must comply with the restrictions in Section 240-47.1 Family Apartments C. Conditions and Procedural Requirements 1-4 of the Ordinance as follows:
 1. Certificate of occupancy. Prior to occupancy of the family apartment, a certificate of occupancy shall be obtained from the Building Commissioner. No certificate of occupancy shall be issued until the Building Commissioner has made a final inspection of the apartment unit and the single-family dwelling for regulatory compliance and a copy of the family apartment accessory use restriction document recorded at the Barnstable Registry of Deeds is submitted to the Building Division.
 2. Annual affidavit. Annually thereafter, a family apartment affidavit, reciting the names and family relationship among the parties and attesting that there shall be no rental of the principal dwelling or family apartment unit to any non-family members, shall be signed and submitted to the Building Division.
 3. At no time shall the single-family dwelling or the family apartment be sublet or subleased by either the owner or family member(s). The single-family dwelling and family apartment shall only be occupied by those persons listed on the recorded affidavit, which affidavit shall be amended when a change in the family member occupying either unit occurs.
 4. When the family apartment is vacated, or upon noncompliance with any condition or representation made, including but not limited to occupancy or ownership, the use as an apartment shall be terminated. All necessary permit(s) must be obtained to remove either the cooking or bathing facilities (tub or shower) from the family apartment, and the water and gas service of the utilities removed, capped and placed behind a finished wall surface; or a building permit must be obtained to incorporate the floor plan of the apartment unit back into the principal structure.
5. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
6. The decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to the issuance of a building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Copies: Applicant

Attachments: Application

Town of Barnstable Planning and Development Department Staff Report
Special Permit No. 2020-032 – Crook

Site Plan
Building plans
Assessor's Record & Aerial Photo



Town of Barnstable
Planning & Development Department
www.townofbarnstable.us/planninganddevelopment



September 29, 2020

Department of Housing and Community Development
100 Cambridge Street, Suite 300 - Boston, MA 02114

Cape Cod Commission
P.O. Box 226 - 3225 Main Street (Route 6A) - Barnstable, MA 02630

Town of Sandwich, Planning Board
16 Jan Sebastien Drive - Sandwich, MA 02563

Town of Mashpee, Planning Board
16 Great Neck Road - Mashpee, MA 02649

Town of Yarmouth, Planning Board
1146 Route 28 - Yarmouth, MA 02664

Town of Barnstable, Zoning Board of Appeals
200 Main Street- Hyannis, MA 02601

**Reference: Town of Barnstable Town Council
Proposed Zoning Amendment – TC Item No. 2020-193**

**AMENDING THE CODE OF THE TOWN OF BARNSTABLE, PART I GENERAL ORDINANCES,
CHAPTER 240 ZONING, ARTICLE II, SECTION 7, ADDING CERTAIN PROVISIONS
PERTAINING TO SHORT TERM RENTALS**

The Barnstable Town Council, acting under Chapter 40A, Section 5 of the General Laws of the Commonwealth of Massachusetts, will hold a public hearing on Thursday, October 15, 2020, at 7:00 p.m. The purpose of this public hearing is to take comment on a proposal to amend the Town of Barnstable Zoning Ordinance by revising the Zoning Code, Chapter 240, Article II, Section 7 by adding certain provisions pertaining to short term rentals. The proposal would amend Section 240-7 Application of District Regulations by adding the following subparagraph (J):

“J. Short term rentals. Notwithstanding any provisions to the contrary in this Chapter 240, short term rentals shall be permitted within lawful dwelling units in all zoning districts. A short term rental shall be defined as a residential dwelling or any portion of a dwelling rented out through the use of advance reservations, for a fee, for a period of not more than 31 consecutive calendar days, excluding: Cottage Colonies, as defined herein; hotels licensed under M.G.L. Chapter 140, Section 6; motels licensed under M.G.L. Chapter 140, Section 32B; lodging establishments licensed under M.G.L. Chapter 140, Section 23 or under Chapter 506 of the Code of the Town of Barnstable; bed & breakfast establishments or bed & breakfast homes licensed under said Chapter 506. Cottage Colony shall be defined as a group of three or more detached dwellings, legally in existence at the time of adoption of this ordinance, located on a single lot, which are customarily occupied on a seasonal basis. When a property is in use as a short term rental, on-site parking shall not be in any

cultivated or landscaped area between a roadway and the part of the principal structure nearest to the roadway.”

Members of the public may participate in the Public Hearing through remote access via the Zoom link or telephone number and Meeting ID provided below as a result of the COVID-19 state of emergency in the Commonwealth of Massachusetts.

Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be viewed via the Channel 18 website at <http://streaming85.townofbarnstable.us/CablecastPublicSite/>
2. Real-time access to the Town Council meeting is available utilizing the Zoom link or telephone number and Meeting ID provided below. Public comment can be addressed to the Town Council by utilizing the Zoom link or telephone number and Meeting ID provided below:

Join Zoom Meeting: <https://zoom.us/j/95142427549>

888 475 4499 US Toll-free Meeting ID: 951 4242 7549

3. Applicants, their representatives and individuals required or entitled to appear before the Town Council may appear remotely and are not permitted to be physically present at the meeting, and may participate through accessing the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to cynthia.lovell@town.barnstable.ma.us so that they may be displayed for remote public access viewing.

Copies of the proposed amendment are available for review by calling 508-862-4738 or emailing cynthia.lovell@town.barnstable.ma.us.

Attach: Notice Amendment and Summary
Copy: Town Council File TC Item No. 2020-193
Town Council Chair

B. NEW BUSINESS (Refer to Planning Board)

BARNSTABLE TOWN COUNCIL

**ITEM# 2020-193
INTRO: 06/18/2020**

**2020-193 ORDER AMENDING CHAPTER 240 ZONING, ARTICLE II, SECTION 7
ADDING CERTAIN PROVISIONS PERTAINING TO SHORT TERM RENTALS**

ORDERED that the Code of the Town of Barnstable, Chapter 240 Zoning, Article II, Section 7, be amended by adding the following subparagraph (J) to Section 240-7:

“J. Short term rentals. Notwithstanding any provisions to the contrary in this Chapter 240, short term rentals shall be permitted within lawful dwelling units in all zoning districts. A short term rental shall be defined as a residential dwelling or any portion of a dwelling rented out through the use of advance reservations, for a fee, for a period of not more than 31 consecutive calendar days, excluding: Cottage Colonies, as defined herein; hotels licensed under M.G.L. Chapter 140, Section 6; motels licensed under M.G.L. Chapter 140, Section 32B; lodging establishments licensed under M.G.L. Chapter 140, Section 23 or under Chapter 506 of the Code of the Town of Barnstable; bed & breakfast establishments or bed & breakfast homes licensed under said Chapter 506. Cottage Colony shall be defined as a group of three or more detached dwellings, legally in existence at the time of adoption of this ordinance, located on a single lot, which are customarily occupied on a seasonal basis. When a property is in use as a short term rental, on-site parking shall not be in any cultivated or landscaped area between a roadway and the part of the principal structure nearest to the roadway.”

SPONSOR: Town Council Committee to Review Zoning & Permitting Regulations: Paula K. Schnepf, Chair, Councilor Precinct 12, Britt Beedenbender, Councilor Precinct 4, Kristine Clark, Councilor Precinct 11, Jennifer Cullum, Councilor Precinct 13, Gordon Starr, Councilor Precinct 1

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
- ___ Close Public Hearing
- ___ Council Discussion
- ___ Move/Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2020-193
INTRO: 06/18/2020

SUMMARY

TO: Town Council
FROM: Town Council Committee to Review Zoning & Permitting Regulations
DATE: June 12, 2020
SUBJECT: Order amending Chapter 240 Zoning, Article II, Section 7 adding certain provisions pertaining to Short Term Rentals

RATIONALE: This proposed amendment to Chapter 240, Zoning, aims to provide a clear understanding of what is permitted in terms of renting a residential dwelling as a Short Term Rental in the Town of Barnstable. Currently, Short Term Rentals are neither expressly permitted nor prohibited in the Town of Barnstable; the use is not addressed in any municipal ordinance. Short Term Rentals are being, and historically have been, operated in all villages in Barnstable. According to the latest data set provided by the Massachusetts Department of Revenue, there are 663 short term rentals currently registered in the Town of Barnstable.

This proposed amendment to the Town's zoning ordinance defines Short Term Rentals in a manner consistent with the Commonwealth in the Short-Term Rental Law (Chapter 337 of the Acts of 2018, revising G.L. c. 64G, Section 3A), which includes Short Term Rentals among the list of establishments subject to the local excise tax. Short Term Rentals are broadly defined as residential dwellings, or portions of dwellings, that are rented out in advance for less than 31 days (including weekly rentals).

The proposed approach to Short Term Rentals is two-fold: a general ordinance to register Short Term Rentals with the Inspectional Services Department and require that certain standards, including life safety standards, are met; and an amendment to the zoning ordinance to recognize Short Term Rentals as an allowed use of a residential dwelling.

This item is a proposed amendment to the Zoning Ordinance to recognize and define Short Term Rentals. Short Term Rentals are defined consistent with the Short-Term Rental Law, as noted above; the definition also includes exclusions, including historical cottage colonies. The amendment also establishes parking standards for the use. Parking is appropriately addressed through zoning, as opposed to a general ordinance.

This proposed amendment to the zoning ordinance was developed with the assistance of consultant groups who provided background research on short term rental operations in Barnstable; meetings with the Centerville, Osterville, West Barnstable, Barnstable, Marston Mills, and Greater Hyannis Civic Associations; and public input at multiple Town Council and Zoning & Regulatory Subcommittee meetings.

A proposed zoning amendment requires referral by the Council to the Planning Board, and a recommendation by the Planning Board to the Town Council. The amendment then must be considered by the Town Council at an advertised public hearing, and requires a two-thirds majority vote for passage.

STAFF ASSISTANCE: M. Andrew Clyburn, Assistant Town Manager, Karen Nober, Town Attorney, Charles McLaughlin, Assistant Town Attorney, Brian Florence, Building Commissioner, Elizabeth Jenkins, Planning & Development Director, Paul Wackrow, Senior Planner, Gloria McPherson, Planning & Economic Development Coordinator