



GLOUCESTER CITY COUNCIL
Planning & Development Committee
Wednesday, April 2, 2014 – 5:30 p.m.
1st Fl. Council Committee Room – City Hall
AGENDA

(Items May be taken out of order at the discretion of the Committee)

1. *Revisit of Free Petition in accordance with City Charter Sec. 9-1(b) re: Condition, Restoration and Preservation of Stage Fort Park (Cont'd from 03/05/14) TO BE CONT'D TO 04/16/14*
2. *Memorandum and pertinent material from Planning Director re: Land Disposition Committee Recommendations on 6 Stanwood Street (Easement Request by Karen Elliot, 6 Stanwood Street (Cont'd from 03/19/14)*
3. *CC2014-007 (Verga) Request amendment to GZO under Sec. 1.11.2(e) to amend “sign ordinance” Sec. 4.3 by adding new definition to Sec. VI for “programmable scrolling sign” and amend Sections 4.3.2, 4.3.3 and 4.3.4 to include “outdoor programmable scrolling signs (Cont'd from 3/19/14)*
4. *SCP2014-004: Commercial Street #47-61, Modification of Special Council Permit (SCP2012-010) under GZO Sec. 1.5.13 & Sec. 5.25 Hotel Overlay District (Cont'd from 03/19/14)*
5. *SCP2014-005: Fort Hill Avenue #48, GZO Sec. 3.1.6(b) Building Height in Excess of 35 feet (Cont'd from 03/19/14)*
6. *Memorandum from General Counsel re: Gloucester/Rockport Intermunicipal Agreement (IMA) for sewer services*
7. *Memorandum from Senior Engineering Aide re: Proposed Street Naming & Numbering Plans*
8. *Application for License of Flammable and Combustible Liquids, Flammable Gasses and Solids re: 27 Maplewood Avenue*

COMMITTEE
Councilor Greg Verga, Chair
Councilor Paul Lundberg, Vice Chair
Councilor Steven LeBlanc

Back-up and Supporting Documentation all on file at the City Clerk's Office, City Hall

CC: Mayor Kirk
Jim Duggan
Linda T. Lowe
Tom Daniel
Gregg Cademartori
Suzanne Egan
Karen Andrews

The listing of matters is those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

have enough to make a project. **Councilor Ciolino** commented that the City keeps on studying this project with design proposals, etc. and it is tiring. **Councilor Verga** said that the argument could have been made the City should have done analysis before it was bought from this point of view. One thing to keep in mind as it seems their focus is nonprofits, whether public or private, and he didn't think they should close the door on for profit in something that is going to create jobs as well as property taxes. **Mr. Daniel** wanted to make it clear that is it not nonprofit and not for profit. It is looking for users that can fill the space. In the context of a public, most likely there will need to be some public participation to make a feasible development. Most likely there probably will be need for public to make it a feasible development. The mix of the tenants may all be for profit entities and even with that there most likely be some public participation. **Councilor Verga** asked the question to Mr. Daniel that GMRI be telling us maybe here is what they want to do, build this and we will bring the people in. Mr. Daniel said that is not the model they are looking for. It is looking at the potential mix and looking at the business model behind that. **Councilor Ciolino** said that when the City bought this, the Council promised the citizens of Gloucester that this would be on the tax rolls. He said that he is disappointed, whether public or private, that was not what the intention was for this site. **Councilor Verga** said that unfortunately that was where Council got redirected, and he agrees one hundred percent that he didn't vote for a parking lot and he didn't vote for some freebee down the road. Hopefully, after seeing the report and seeing what is realistic, at that point Council may not say that was not what they were looking for. Mr. Daniel said they are trying to do the analysis and get the information so that good decisions can be made.

4. Memorandum and pertinent material from Planning Director re: Land Disposition Committee Recommendations on 6 Stanwood Street (Easement Request by Karen Elliot, 6 Stanwood Street (Cont'd from 10/02/13))

Councilor Verga said that Council did not yet take action on this and is still on the agenda. He asked Ms. Elliot if there was anything else to update them on. Ms. Elliot said that she was not exactly sure what an easement was and what she is asking for is a legal right of way to know that she can go in and out of her yard without someone telling her that she cannot or someone blocking the way so that she can't. All she is asking for is a legal right of way in writing. She said how that differs from an easement she did not know. **Councilor Ciolino** asked Ms. Elliot how long she has been using this right of way. She replied seven months as she just bought the house, but stated that it has been used for over thirty years. **Sam Stone**, the representative of the lessee of the property, said that it has come before the city council back in 1984 requesting an easement and was denied, and a little over two years ago the council reviewed a lease to the Cape Ann Amateur Radio Association requesting a survey of the property and a fence to be put on property lines. They have done the first part required by the lease the survey. **Councilor Verga** asked what did the parties involved want to see as a compromise. **Hank McCarl** replied they would like to do a joint driveway, but they legally would have to be owners of the property and that is still up in the air. **Councilor Verga** asked the Planning Director, **Greg Cademartori**, how difficult was it to put in a joint driveway? **Mr. Cademartori** explained the process and criteria for a joint driveway. **Councilor Ciolino** asked **Suzanne Egan**, General Counsel, to explain the difference between an easement and a right of way. She explained the difference and said that this is different because it is a request for an easement to pass and repass. **Councilor Ciolino** asked the parties involved whether they could live with all this. **Mr. McCarl** replied they would prefer that this not be imposed on them by the City and would like to negotiate this as three property owners as private individuals, but they cannot do that until they actually own the property, if that is even possible. Sandra McGrath, another abutter to 6 Stanwood, of 537 Washington Street, and Mr. McCarl both agreed that the neighbors work well together. Mr. McCarl said that they have the ability to work with Ms. Elliot, after they own the building, to put in a joint driveway in and would be willing to negotiate that. His thoughts were that it would be in the City's best interest for them to put a joint driveway in, but reiterated that they would have to be owners of the property. They would have to have a legal right to do this. **General Counsel** said that she had discussion with the organization and with Ms. Elliot about sort of entering into a three party agreement in which the City would also be a party into it that would insure that the access provided across that property. It wouldn't be a property interest but a contractual obligation. The city would be a party to it as they would be there to help with any type of enforcement or issues that came up. There was further discussion between **General Counsel** and committee members and the parties involved regarding the agreement. There was discussion between the parties involved and the standing committee members on the drawing that was submitted (on file). There was discussion regarding a four party agreement, which would be drawn up by the legal department, and to work out the issues before coming back to the Planning and Development Committee.

This matter is continued until December 4, 2013



CITY OF GLOUCESTER
COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
3 Pond Road, Gloucester, MA 01930

Memorandum

Date: September 16, 2013
To: Mayor Kirk
From: Gregg Cademartori, Planning Director *GMC*
Cc: Tom Daniel, Community Development Director
Re: Land Disposition Committee Recommendations - Fall 2013

6 Stanwood Avenue - Request for Easement

Staff has reviewed a request for an easement across 6 Stanwood Avenue. The application is attached for reference. The 6 Stanwood ~~Avenue~~ ^{Street (S)} property is city owned property containing a two story building, currently being leased by the Cape Ann Amateur Radio Associate (CAARA). Karen Elliot, current owner of 541 Washington Street, currently accesses a parking area in the rear of her home, via the 6 Stanwood Avenue ~~Street~~ ^{Street (A)} property. 541 Washington Street has retaining walls fronting on Washington Street and limited side yards, with no current driveway access to Washington Street. Ms. Elliot also indicated that her neighbor has not objected to her, or prior owners of 541 Washington Street, accessing the parking area in the rear of the lot. Ms. Elliot provided a surveyed plan of the property, which would need to be further annotated to describe the proposed easement, along with the drafting of an easement describing the area that would be allowed for access. With these pieces in place, staff recommends the disposition of an easement for access.

from R-20 (Low-Medium Density Residential) to VB (Village Business); AND FURTHER TO ADVERTISE FOR PUBLIC HEARING.

The Committee recessed at 8:16 p.m. and reconvened at 8:20 p.m.

6. *CC2013-021 (Verga) Develop and implement a use and fee structure for Magnolia Woods facility under GCO Sec. 2-558 and amend GCO by adding new subsection 2-555(1) (a) entitled, "Use and Fee Structure" (Cont'd from 09/04/13)*

Mike Hale, DPW Director said earlier this summer asked to look at rules and fee structure for Magnolia Woods. At the same time they were doing rules and regulations for Newell Stadium. He said it made sense to do it for all recreational facilities in the City. Before the Committee is a draft of Athletic Fields Rules and Regulations which he reviewed with them along with the proposed tiered fee system for facility use.

Mr. Hale also touched upon facility security, especially at Newell Stadium and issues surrounding other facilities as well, such as Magnolia Woods and all the challenges facing the DPW involved in this matter. He also noted the fall season is just about over; and that it would be worth bringing the draft rules and regulations to the stakeholders for their input once the draft is final but before it comes back to the Council and possibly hold a workshop with those same stakeholders when that point is reached.

This matter is continued to February 19, 2014.

7. *Discussion of Recreation Committee (GCO c. 15, Sections 15-15 & 15-16) possible consolidation with Open Space & Recreation Committee or reconstitution same (Cont'd from 09/04/13)*

This matter is continued to October 15, 2013.

8. *Memorandum from Harbormaster & pertinent material re: draft Engineering & Marketing Feasibility Assessment for a Transient Marina*

Ralph Pino, Waterways Board Acting Chair said that the Board went before B&F a week ago on this matter. Tony Gross, former Chair of the Board has also appeared before the P&D Committee on this matter as well. The Board, he said, unanimously voted not to go forward with the Transient Marina. He indicated Susan Neilson was present from CLE Engineering who made the engineering assessment of the prospective transient marina to speak to the report if needed. It was clear to the Board that it was inadvisable to go forward, he said. Mr. Pino added that the Board concurs with the report. At the time of the DPA discussions, a change in the DPA to allow a marina tied to land is much more advantageous. With a change in those regulations it would provide better access and be more popular and allow private industry to enter that business with transient facilities and save the City money.

MOTION: On motion by Councilor Hardy, seconded by Councilor Verga, the Planning & Development Committee accepted the memorandum from the Harbormaster and pertinent material for the Draft Engineering & Marketing Feasibility Assessment for a Transient Marina with no further action required at this time.

9. *CC2013-039 (McGeary) Amend Gloucester Zoning Ordinance Use Table 2.3.2 (Community Service Uses and Sec. 5.27 re: Medical Marijuana Treatment Centers (Cont'd from 09/04/13)*

Councilor Verga said that the Planning Board at its September 19th meeting continued its public hearing on this matter, and that the P&D Committee is still awaiting that Board's recommendation, and so would continue this matter to the Committee's next regularly scheduled Committee meeting of October 15th.

This matter is continued to October 15, 2013.

10. *Review & Recommendations for the Disposition by Sale/Purchase of Real Property, RFP #31338 re: 6 Stanwood Street (Cont'd from 09/04/13)*

Gary Johnstone, City Assessor informed the Committee that the assessed value of 6 Stanwood Street is \$230,700, which is its market value. He said this is the same valuation formulated that the Assessors' value all other properties in the City, and adjusted for style of property and valuation of land. **Ms. Egan** noted that the \$1,000 minimum bid as shown in the RFP is a placeholder with the understanding that number can be changed by the Council will make a determination as to the property's value and is not being put forward as a recommended sale price; rather, what is recommended is fair market value.

Councilor Hardy, referring to Agenda Item #11, a request for an easement regarding 6 Stanwood Street, said that upon on the transfer of the 6 Stanwood Street property, rather than having the City issue the easement on the property, she would want to allow the people or entity to whom the property is transferred to upon a successful bid, thereby making the RFP contingent upon granting an easement to 541 Washington Street and let the successful bidder work out an easement for an amount of money. **Councilor Hardy** further clarified the City would grant, based on whatever amount of money the Council agreed to, that the property transfer would be conditioned upon the granting of the easement by the successful bidder, to the requestor of the easement as well as the filing of the easement in the Registry of Deeds be done by those parties.

Ms. Egan said she did not see a problem with this conditioning proposed by Councilor Hardy. She pointed out that language for an easement is simple, and that it is really the dimensions of the easement the City needs on a surveyed plan which has yet to be filed. She said the only issue this raises is the value of the property that is conveyed; and that there should be some parity when there is a discussion of the easement conveying it to an abutter. **Ms. Egan** added if the City sells the property for fair market value but does not get fair market value, when the new owners own the property she said one would want to make sure they are not selling the easement to the abutter at fair market value. **Councilor Hardy** put forward that the new owners would be expected to work as good neighbors and grant the easement. She said it should have nothing to do with the City. **Councilor Verga** said by the new owners conveying the easement to the requestor, it would be less complicated for the City as well.

Gregg Cademartori, Planning Director said in fairness, both CAARA and the applicant for the easement put an application for 6 Stanwood Street at the same time. Based on this fact, the question was whether it was appropriate to grant this easement, he said. The Council is then saying the applicant for the easement is no longer dealing with the City, but are now dealing with someone else other than the City which he said was the Council's prerogative. He noted that the plan that came with the easement request did not define the area of the property that was being requested which the requestor is now having prepared. The specifics of the actual location of the easement are not defined at this point, but the request remains to same, for the requestor to pass and access her property on Washington Street.

Stanley Stone, President of the Cape Ann Amateur Radio Association (CAARA) whose organization currently maintains a communications center on the 6 Stanwood Street property that during public emergencies and large events serves the whole city, said related to the price of the property, CAARA has already as a tenant paid for a survey of the property which was a condition of the lease that he said the City should have paid for because it is city property. It cost CAARA \$750, he noted. He said CAARA is willing to pay the \$1,000 minimum bid.

Jim Duggan, CAO said that approximately two years ago the Council faced a similar situation with the Disposition for Sale of the Blynman School House to the Magnolia Historical Society (MHS), with the price negotiated taking into consideration what that organization brought to the City as a whole. He said this is a similar situation; and that CAARA has been at this location for a number of years. **Mr. Duggan** pointed out that CAARA is a pivotal team member when there is a City emergency and the opening and maintaining of the Emergency Operations Center. When the Administration was approached by CAARA about purchasing this property, the RFP was based upon what was observed by the MHS purchase of the School House and thus the \$1,000 placeholder for the City Council to negotiate a price, he said. He said the School House property would be conveyed back to the City as a right of refusal with a certain amount of improvements to be done. If certain conditions for these improvements were not met, if the organization became defunct, the property would revert back to the City with no reimbursement by the City to the organization for any capital improvements made by them.

Councilor Verga said he wanted to see the same sort of conditions with this Disposition by Sale which would prevent the property from being sold immediately for a profit. **Mr. Duggan** said the conditions from the sale agreement for the Blynman School House would be forwarded to the Council.

Ms. Egan said that the conditions were plugged in after the RFP. The RFP has to go out to offer the property. The details are not appropriate now, but are for a negotiation; it is appropriate when there is a bid for the property and negotiations begin for its purchase. **Mr. Duggan** said the conditions and price were negotiated discussed with the B&F Committee.

Councilor Hardy said she would like to see the minimum bid upped. **Councilor Verga** said that Magnolia School House was in a poor condition when it was sold with a number of issues; foremost of which was the potential

of a failed septic system. This property it is not quite the same, he said. He agreed there needed to be an uptick for the minimum bid. **Councilor Hardy** suggested 1 percent of the assessed value. **Councilor Verga** said there is full recognition of the benefit of CAARA to the community but he would be in favor of raising the minimum bid.

Mr. Stone discussed his concerns with the Committee for his organization, should they be the successful bidder, about the granting an easement to the abutting property and it being permanent on the Deed.

MOTION: On a motion by **Councilor Hardy**, seconded by **Councilor Verga**, the Planning & Development Committee voted 2 in favor, 0 opposed, 1 (**Tobey**) absent, to recommend to the City Council that the Request for Proposal #31338, as received by the P&D Committee on October 2, 2013 for disposition by sale of the City-owned property at 6 Stanwood Street (Map 111, Lot 8, zoned R-10), be authorized by the City Council pursuant to the terms and conditions of the RFP and pursuant to the Code of Ordinances Sec. 2-3 (a) (2) and 2-3 (a) (4) and MGL c. 30B with a minimum bid of \$2,300 conditioned upon the new property owner for a property located at Map 111, Lot 8, 6 Stanwood Street granting an easement to a property located at Map 111, Lot 6, 541 Washington Street to pass and repass for the purpose of access for parking for 541 Washington Street.

11. *Memorandum and pertinent material from Planning Director re: Land Disposition Committee Recommendations on 6 Stanwood Street; 19A, 19R and 23B Harbor Loop, and 4 Lane Road (Easement Request by Karen Elliot, 6 Stanwood Street Cont'd from 09/04/13)*

A. 6 Stanwood Street

Motion: On a motion by **Councilor Hardy**, seconded by **Councilor Verga**, the Planning & Development Committee voted 2 in favor, 0 opposed, 1 (**Tobey**) absent, file the application for an Request for Easement for 6 Stanwood Street until the disposition of the RFP and bid award has been made for 6 Stanwood Street.

B. 19A, 19R & 23B Harbor Loop

This matter was completed by the votes taken under Agenda Item #1.

C. 4 Lane Road

Mr. Cademartori said that the Waterways Board reviewed this matter as did Land Disposition and both endorsed the water line easement.

Mr. Pino said that on April 17th the Waterways Board unanimously voted to allow the easement and installation of water lines with conditions which he read from a Waterways Board memo (on file). He said the owner of 4 Lane Road **Mr. Gardiner** agreed to the Board's conditions.

Ms. Egan said that **Mr. Gardiner** has been pursuing this easement for about a year. He knew that the Committee would take this matter up. **Mr. Pino** said Lane Road is a solid dirt road. The Waterways Board concern was that there is a continuing obligation on the part of the owner because of possible settling of the roadway after installation of the water lines. The public landing adjacent to this property has two accesses – one off of Lane Road and one around the corner up closer to Washington Street where there are two/three parking spaces. There is something there that might be considered a boat ramp.

Cate Banks, Waterways Board member said Lane Road runs between the house on 4 Lane Road and the Annisquam Village Church. Going down Leonard Street to the other end of the **Gardiner's** property is where the water line would go servicing the red barn on the property. The house address is Lane Road, and the City-owned property surrounds the **Gardiner** property.

Mr. Hale confirmed to the Committee that the nominal consideration is usually pegged at \$1.00 for this sort of easement.

MOTION: On a motion by **Councilor Hardy**, seconded by **Councilor Verga**, the Planning & Development Committee voted 2 in favor, 0 opposed, 1 (**Tobey**) absent, under Code of Ordinances Sections 2-3 (a) (2) and 2-3 (a) (4) and 2-3 (d) to recommend to the City Council to grant a water line easement, for a nominal consideration of \$1 to be paid for 4 Lane Road and 151 Leonard Street from the City of Gloucester to the property located at 4 Lane Road off of 151 Leonard Street (Certificate #14564 filed 6/4/1943, Plan dated



CITY OF GLOUCESTER
 COMMUNITY DEVELOPMENT DEPARTMENT
 3 Pond Road, 2nd Floor - Gloucester, MA 01930
 TEL 978-281-9781
 FAX 978-281-9779

CITY CLERK
 GLOUCESTER, MA
 13 JUL -3 PM 1:07

REQUEST TO PURCHASE CITY OWNED LAND
 (Code of Ordinance, Section 2.3)

APPLICANT INFORMATION

1. Name of applicant: Karen Elliott
2. Address of applicant: 541 Washington Street
3. Telephone number: 978-621-6285

PARCEL INFORMATION

1. Street address: 6 Stanwood Street
 2. Map and lot(s): 111-8
 3. Size of Parcel: 0.12 AC
 4. Current zoning: NB
 5. Intention of purchase: To access off street parking
-
6. Is applicant an abutter? yes
 7. Location of abutting parcel: 541 Washington St.
 Map and lot: 111-6

Karen Elliott
 Applicant's signature

June 18, 2013
 Date

For City Clerk Only

- Sent to: Mayor.....Date _____
 Planning Director, (Land Disposition).....Date _____
 Planning & Development.....Date _____
 City Council.....Date _____

CITY OF GLOUCESTER LAND DISPOSITION SHEET

BASE MAP NUMBER _____ ADDRESS 6 Stanwood St.

ASSESSORS MAP & LOT(S): 111-8

BOOK & PAGE: _____ DATE UPDATED: 2012

LAND COURT CASE: _____ LAND COURT MAP #: _____

ZONING: R-10 CATEGORY: _____

ACREAGE: 0.12 AC ASSESSED VALUE: 107,000 (land)

PRESENT USE: MUN IMP RES (Rented by Radio Club)

USE RESTRICTIONS: _____

MANAGEMENT AGENCY: _____

EXISTING BUILDING: 6 Stanwood St. ASSESSED VALUE: ~~235,100~~ 125,900

Condition: _____

Leased to: Amateur Ham Radio Club

Rent: _____

UTILITY SERVICE

Water:

Sewer:

Gas: oil

Electric:

PHYSICAL CHARACTERISTICS:

July 3, 2013

City of Gloucester

CITY CLERK
GLOUCESTER, MA

13 JUL -3 PM 1:09

To Whom it May Concern:

I am applying for an easement that would enable me access for off street parking. The access is partly owned by the City of Gloucester. All the information, i.e., application and property survey are attached.

I was advised to speak to former property owners of 541 Washington St. who have used the area in question for many years as access to their off street parking.

I spoke with Barry McGovern who owned the property at 541 Washington St. prior to 1988, and he said that they always used the access off of Stanwood St. I also spoke with former owner Jeri Kroil who also said she used the access off of Stanwood St., and the former owner from whom I purchased the house, Mario Branceleone, also informed me that he used this same access.

Part of this access belongs to Sandra McGrath who has been very open and friendly and allowing me to use her part of the access. The Cape Ann Amateur Radio Club rents the property at 6 Stanwood St., and have twice come over to tell us that the city of Gloucester is asking them to put up a fence. This would block our access, hence this request for an easement.

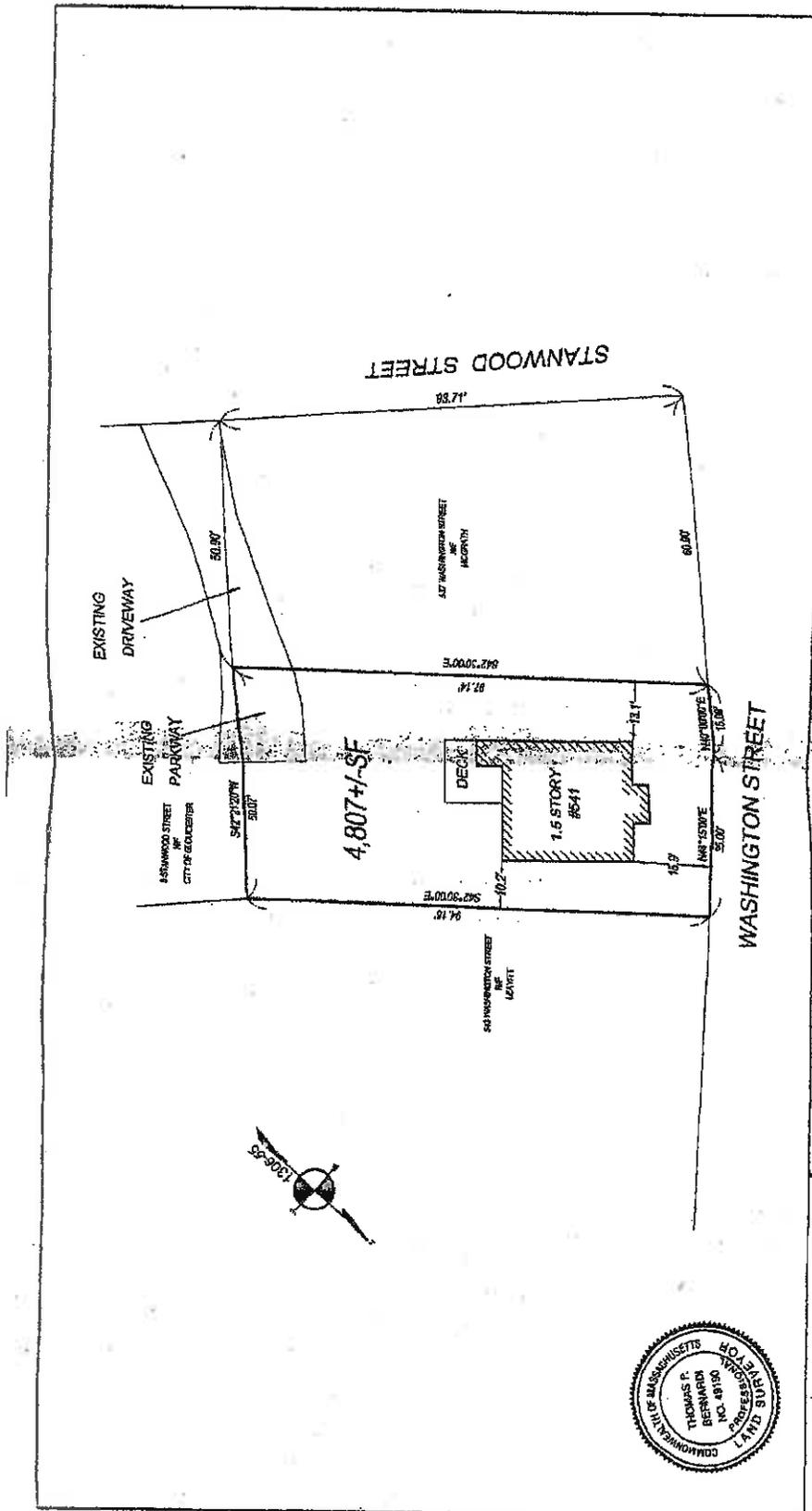
Your consideration is greatly appreciated. Thank so much.



Karen Elliott

541 Washington St.

Gloucester, MA 01930



CERTIFICATION
 I CERTIFY THAT THE PLAN HEREIN WAS MADE FROM A PERSONAL SURVEY OF THE PROPERTY AND ALL THEREON, AND THAT THE SAME IS ACCURATE AND CORRECT.
 I HEREBY CERTIFY THAT THE SURVEY WAS MADE IN ACCORDANCE WITH THE MASSACHUSETTS SURVEYING ACT AND THE RULES OF THE BOARD OF REGISTRATION OF PROFESSIONAL LAND SURVEYORS AND THAT I AM A LICENSED PROFESSIONAL LAND SURVEYOR IN THE COMMONWEALTH OF MASSACHUSETTS.
 I HAVE NO INTEREST IN THE PROPERTY SURVEYED OR IN THE RESULTS OF THIS SURVEY.
 THOMAS F. BERNARD
 PROFESSIONAL LAND SURVEYOR
 NO. 48190
 COMMONWEALTH OF MASSACHUSETTS

REFERENCES
 DEED: BOOK 32252 PAGE 77
 PLAN: PLAN BOOK 854 PLAN 88
 PLAN: 635 OF 1949
 PLAN: 72 OF 1954
 PLAN: BOOK 1306 PAGE 55
 SCALE: 1 INCH = 20 FEET

PLAN OF LAND
 541 WASHINGTON STREET
 GLOUCESTER, MA

MASSACHUSETTS SURVEY CONSULTANTS
 10 FIRST AVE SUITE 24
 PEABODY, MA 01960
 (978) 899-0703
 www.MassachusettsSurvey.com
 JOB # 541WASHINGTON.DWG

PREPARED FOR:
 KAREN ELLIOT
 DATE: APRIL 26, 2013



OFFICE OF THE CITY CLERK
9 Dale Avenue • Gloucester, Massachusetts 01930
Office (978) 281-9720 Fax (978) 282-3051

July 3, 2013

CITY CLERK
GLOUCESTER, MA
13 AUG -5 PM 12:15

MEMORANDUM

To: Mayor Carolyn Kirk

From: Linda T. Lowe *LTL*

Re: Request for Easement from Karen Elliott for 6 Stanwood St. and Referral to Land Disposition Committee

Under the Code of Ordinances sec. 2-3 "Disposition of Real Estate" we are providing you with a Request to Purchase an Easement recently received from Karen Elliott as owner of 541 Washington St. Ms. Elliott is requesting to purchase an easement across the northwesterly side of the city owned property at 6 Stanwood St. which runs from the corner of the Stanwood St. frontage of 6 Stanwood St. to the southeasterly rear corner of her property at 541 Washington St. The easement area currently contains part of an existing driveway (from Stanwood) and part of a parking area. The entrance of the driveway is located completely on the 6 Stanwood St. property. The request is for access to the off street parking at the rear of 541 Washington.

Prior to being considered by the City Council this request must, by Code of Ordinances sec 2-3(b), be reviewed by the Land Disposition Committee under the direction of the Planning Director. In addition under sec.2-3(d) (2) the petitioner must "provide a detailed statement setting forth the need for the easement" and "a copy of a plan indicating the location and approximate metes and bounds of the grant." These documents have been provided by Ms. Elliott with her application.

By this memo we have also referred this request to the Planning Director, Gregg Cademartori for the LDC review and recommendation. Upon completion of the Committee recommendation we ask that you please forward the request, together with the required documentation to the Council in an upcoming Mayor's Report.

Thank you.

Enclosures : K.Elliott Request to Purchase Easement on City Owned Land

Copy to: Joanne Senos, Asst. City Clerk
Gregg Cademartori, Planning Director



**CITY OF GLOUCESTER 2014
CITY COUNCIL ORDER**

ORDER: CC#2014-007
COUNCILLOR: Greg Verga

DATE RECEIVED BY COUNCIL: 02/11/14
REFERRED TO: P&D & PB
FOR COUNCIL VOTE:

ORDERED that the Gloucester City Council under the Gloucester Zoning Ordinance section 1.11.2(e) initiate an amendment to the “sign ordinance” section 4.3 of the zoning ordinance and to section VI “Definitions” as follows:

Add a new definition to Section VI for “programmable scrolling sign”. Amend sections 4.3.2, 4.3.3. and 4.3.4 to include “outdoor programmable scrolling signs” located on public property and on property of non-profit community groups when the signs provide notices that benefit the public;

And further

ORDERED that this matter be referred to the Planning & Development Standing Committee to work together with the Building Inspector as the Zoning Enforcement Officer to finalize the language of these amendments and to the Planning Board for review and recommendation

Greg Verga
Councillor at Large

City of Gloucester
Special Council Permit - Application

SCP2014-004

MODIFICATION OF SPECIAL COUNCIL PERMIT

4/28/14
(Public hearing to be held
no later than above date)

In conformance with the requirements of the Zoning Ordinance of the City of Gloucester, the undersigned hereby applies for a Modification of a Special Council Permit (CCS) in accordance with Section 1.5.13 of the Ordinance and other Sections listed below:

Type of Permit: Modification of Special Council Permit under Section 1.5.13

Applicant's Name: Beauport Gloucester, LLC

Owner's Name: Same
(if different from applicant)

Location: 47-61 Commercial Street, Map 1, Lot 33
(street address)

Zoning Classification: Hotel Overlay District (MI)

CITY CLERK
GLOUCESTER, MA
14 FEB 20 PM 12: 06

- Attached is a list of owners (with complete addresses) of land directly opposite on any public or private street or way, direct abutter, and abutters to the abutters of land within three hundred (300) feet of the property line, as they appear on the most recent City of Gloucester Assessor's Maps and Tax list.
- Attached is a copy of the Special Council Permit as granted and a statement as to the criteria set forth in Section 1.5.13 of the Zoning Ordinance
- Attached are the necessary plans as set forth in Section 1.5.3 and 5.7.2 (a) of the Zoning Ordinance.

City of Gloucester – Action	
Fee: <u>\$5000 paid</u> ✓	
City Clerk (received):	<u>2/20/14 d r z</u>
City Council (received):	<u>2/25/14</u>
Public Hearing (ordered):	_____
Public Hearing (opened):	_____
Public Hearing (closed):	_____
Final Decision	_____
Disposition	_____
(Approved, Denied, Approved with conditions)	

Applicant: Beauport Gloucester, LLC

By: Sheree Zizik
Name (Signature) Sheree Zizik

6 Rowe Square, Gloucester, MA 01930
Address

978-282-9700
Telephone

Certified for completeness:

Building Inspector: [Signature] Date: 2/20/14

Planning Director: [Signature] Date: 2/20/14

APPLICATION FOR MODIFICATION OF A SPECIAL COUNCIL PERMIT

The undersigned applicant hereby applies for a modification of a special council permit as follows:

1. Applicant:

Name: Beauport Gloucester, LLC

Address: 6 Rowe Square, Gloucester, MA 01930

Telephone Number: Days: 978-282-9700 Nights: Same

2. Owner, if other than applicant:

Name: N/A

Address: N/A

Telephone Number: Days: N/A Nights: Same

3. Property:

Street Address: 47-61 Commercial Street, Gloucester, MA 01930

Assessor's Map: 1 Lot: 33

Registry of Deeds where deed, plan, or both recorded: Essex South District Registry of Deeds

Deed recording: Book 30531, Page 311

Plan recording: Plan: Book 184, Plan 8

Property is located in the Hotel Overlay District (MI) zoning district

4. Nature of relief requested:

See Attachment to the Modification to City Council Special Permit, attached hereto.

5. Evidence to support grant of modification of special council permit:

The standard for granting a modification of a Special Council Permit pursuant to Section 1.5.13 of the Zoning Ordinance is a finding that the interests of the neighborhood and the city are not impaired. The proposed modifications as set forth in the attachment are consistent with the original decision and do not detract from the protection provided to the neighborhood and the City by the Council's original decision. The modifications of the special council permit requested will be in harmony with the intent and purpose of the Zoning Ordinance:

If someone other than owner of equitable owner (purchaser on a purchase and sales agreement) is the Applicant or will represent the Applicant, owner of equitable owner must designate such representative below.

Name of Representative: John D. Cunningham, III, Esq.
Address of Representative: 59 Main Street, Gloucester, MA 01930
Telephone Number: Days: 978-281-0006 Email: j.cunningham@cunningham.cc
Relationship of representative to owner or equitable owner: attorney

I hereby authorize John D. Cunningham, III, Esq. to represent my interest before the Special Permit Granting Authority with respect to this Modification of Special Council Permit Application.

Beauport Gloucester, LLC

By Sheree Zizik
Sheree Zizik

I hereby certify under the pains and penalties of perjury that the information contained in this Application is true and complete

Beauport Gloucester, LLC

By Sheree Zizik
Sheree Zizik Date

Attachment to the Modification to City Council Special Permit

The City Council approved the Special Council Permit for the Beauport Gloucester Hotel by its decision filed with the City Clerk on May 9, 2013. That decision, and other permits and approvals, were subsequently appealed.

Agreements for settlement, which will result in the dismissal of all such appeals, have been reached with both the Mortillaros and Port Community Alliance. Those agreements call for modifications to the Hotel plans, which fall into two major categories:

- A. Additional setbacks for the Hotel levels above the parking deck, moving the building farther back from Commercial Street; and
- B. Moving the seawall landward approximately 10' farther.

Sets of revised plans for the Hotel are submitted with this request for modification. They show the changes to the Hotel plans made to incorporate the settlement terms. Beauport Gloucester has retained the Manchester architectural firm of Olsen/Lewis to prepare revised architectural plans. Olsen/Lewis has extensive experience in hotel design. The project engineers, Beals and Associates, have prepared a set of revised site and engineering plans which show the engineering revisions.

A summary of the proposed changes is as follows:

The Hotel building massing above the garage level was redesigned to move the building farther back from Commercial Street. The lobby floor is set back from Commercial Street. The two guest room floors are moved farther back and space between the northerly guest room wings is widened by building over the loading dock.

A primary goal of the design modification is to provide additional setbacks, while substantially matching the footprint of the original design. The revised design moves the hospitality functions toward the beach side of the site and reduces shadow and other impacts on the Commercial Street side.

Following from the re-design, the room total was lowered from 101 to 96. The tower is now relocated within the building. The tower has a cross section of 400 square feet and is no higher than originally proposed.

The width of the porte cochere at the entry has been increased to cover two vehicles, while maintaining the same vertical clearance. The stairs at each end of the building on the beach side have been made internal. The lobby at ground level has been increased in size for improved circulation and guest services. With the decrease in the number of rooms, the required parking count is reduced by five spaces. The number of spaces provided on site decreases by three spaces, a net gain of two spaces.

The seawall has been moved back to just in front of the face of the garage and an increased beach/sand area replaces the concrete walkway. Handicap accessible ramps from the Commercial Street walkway and from Fort Square are retained and redesigned.

As a result of the increased setback from Commercial Street, the layout of the Lobby floor has been revised to relocate the back of the house functions to the Commercial Street side of

the hotel, the restaurant to the southwest corner and the multi-use rooms to the southeast, taking advantage of the beach front views and locating back of the house functions to the Commercial Street side of the property.

As a result of moving the building forward on the deck, the deck size has been reduced and the pool has been reduced in size and depth and relocated to the top floor space. With the relocation of the multi-use rooms, the deck on the Commercial Street side has been removed.

The generator has been relocated from Fort Square to the first floor level on the Commercial Street side of the building and the electrical/utilities have been relocated from the garage level to the back of the house first floor area. The original permit plans had a mechanical penthouse that extended above the peak of the roof which has been eliminated.

Additional room for Commercial Street traffic has been created by utilizing a 5'-wide sidewalk with a mountable curb in front of the parking garage.

By agreement with the PCA, an area approximately 10' x 20' to be located in front of the seawall in front of the outdoor parking area has been proposed for planting with American Beach grass in biodegradable fabric as a pilot project.

The original Special Council Permit provided in Paragraphs 25 and 26 of the Special Permit Condition (in Appendix 1) for the process of modifications to the plan. Beauport Gloucester concurs with the Building Inspector that the changes should be reviewed as substantial under the provisions of the Special Council Permit and are therefore submitted to the City Council for review, hearing and determination.

Beauport Gloucester, LLC requests that the City Council modifies the Special Council Permit in accordance with this request and make a finding in accordance with Section 1.5.13 of the Gloucester Zoning Ordinance, that the interests of the neighborhood and the City are not impaired by the proposed modifications. Specific requested actions relative to this application for modification to the City Council Special Permit are as follows:

1. Plan sets. The original plans are replaced by the following plan set:
Plan entitled, "New Construction: Beauport Gloucester Hotel, Amended Special Permit Issue February 5, 2014."
2. Because the emergency generator has been relocated and is no longer at street level at Fort Square, condition 2 (on Page 8 of the decision) is deleted.
3. The reference to a walkway across the beach side of the Hotel in condition 8 is deleted, so that the condition will now read: There shall be public access from Commercial Street to Pavilion Beach, as shown on the plans.
4. The City Council granted a Special Permit under Section 5.25.5.1 for off-site valet and tandem parking. The applicant is acquiring the premises at 99A Essex Avenue (Assessor's Map 218, Parcels 1, 17 and 126). The Building Inspector has reviewed the Essex Avenue site and determined it to meet the standards of the decision. The City Council concurs in the Building Inspector's determination and finds that condition 24 is satisfied by the acquisition and use of the Essex Avenue site for offsite parking. The issuance of a building permit for the hotel is subject to Beauport Gloucester providing evidence of ownership or lease agreement for the site to the Building Inspector.

5. A Beach and Development Agreement was entered into between the City of Gloucester and Beauport Gloucester, LLC ("Beauport"), dated April 30, 2013, which was made a condition of the permit as Condition 9 on Page 8 of the Decision and attached to the Decision as Appendix 4. Pursuant to that Agreement, Beauport has escrowed with the City of Gloucester a deed (the "Deed") of Parcel 2 shown on a plan entitled, "Approval Not Required, Plan of Land, 47-61 Commercial Street, Gloucester, MA" dated January 23, 2013. Beauport has agreed, if, as and when all necessary approvals for the hotel have been awarded and the appeals period(s) have expired, without appeal, to modify the Deed to delete so much of the escrowed Deed as reserved an easement to Beauport for coastal structures on Parcel 2 on the Plan, and to add to the Deed an easement in perpetuity that will allow the public to use those portions of Parcel 1 seaward of the structures, improvements and sea walls to be constructed on Parcel 1 and which are not from time to time occupied by approved coastal structures or beach access and egress walkways, subject to Beauport's continuing right to construct possible future coastal structures, including but not limited to retaining walls, sea walls and revetments, as well as access and egress walkways on Parcel 1. Beauport confirms that the deed will continue to provide that Parcel 2 will be deeded to the City. Beauport's right to construct such possible future coastal structures shall be subject to any applicable permitting and approval requirements and shall be limited to circumstances in which such construction is directed by a governmental authority or flood insurance requirements, or where such construction is necessary or appropriate to protect the beach or any structure on Parcel 1. The City Council is asked to approve this modification to the Agreement.

CUNNINGHAM & CUNNINGHAM
ATTORNEYS AT LAW
59 MAIN STREET
GLOUCESTER, MASSACHUSETTS 01930

JOHN D. CUNNINGHAM III
ROBERT W. CUNNINGHAM

TEL. (978) 281-0006
FAX (978) 281-7400

January 31, 2014

Mr. William Sanborn
Gloucester Building Inspector
City Hall Annex
3 Pond Road
Gloucester, MA 01930

Re: Beauport Gloucester Hotel
47-61 Commercial Street

Dear Bill:

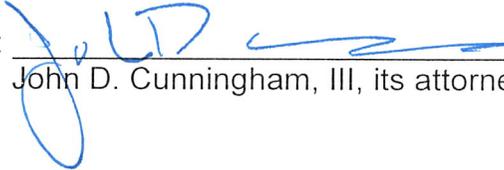
Pursuant to Paragraph 25 and 26 of Appendix 1 of the Decision of the City Council dated May 7, 2013 (see copy attached and labeled "A"), Beauport Gloucester, LLC hereby submits for your review a set of revised plans showing requested modifications to the Hotel plans. We believe that under the standards of Paragraph 26, the changes would be "substantial" because, at a minimum, the proposed changes have modified "the architectural character of the building." Therefore, the provision of Paragraph 25 would be applicable and the proposed modifications are subject to review and recommendation by the Planning Board and public hearing by the City Council.

If you concur, would you please so advise us by signing a copy of the letter and returning it to me and we will submit our proposed modifications to the City Council.

Should you need any additional information, please feel free to contact me.

Sincerely,

Beauport Gloucester, LLC

By: 
John D. Cunningham, III, its attorney

I concur that the proposed changes
are substantial



William Sanborn

2/3/14
Date

JDC/amm

Cc: Sheree Zizik
Lisa Press
Windover Construction, LLC
Todd Morey

Gregg Cademartori
Mike Hale, DPW
Michele Harrison, Esq.
John Olson



CITY OF GLOUCESTER
INSPECTIONAL SERVICES
3 POND ROAD □ GLOUCESTER MA 01930
PHONE 978-281-9774 FAX 978-282-3036

February 3, 2014

John D. Cunningham III
59 Main Street
Gloucester, MA 01930

Re: Offsite parking for Beauport Gloucester Hotel at 79-99 Essex Avenue
Determination of the Building Inspector

Dear Attorney Cunningham:

On May 8, 2012, the City council granted a Special Council Permit to Beauport Gloucester, LLC under GZO Section 5.25, which called for providing off-street parking.

It is my determination that Section 5.25.5.1 authorized the City Council to authorize off-street parking (including valet, tandem and stacked parking) provided that the offsite parking was 1) not in a residential district and 2) that a hotel on such site was allowable either as of right or special permit. The site at 79-99 Essex Avenue is in the EB district and satisfies both requirements.

In its decision, the City council did, in fact, vote to grant a City Council Special Permit to Beauport pursuant to Section 2.25.5.1 for offsite parking including valet, tandem and stacked parking. Appendix 1, Paragraph 24 of the decision authorizes offsite parking for 50 or more vehicles on a site meeting the standards of GZO Section 5.25 and provides that the determination of the Building Inspector as to compliance is conclusive.

I have determined that the City Council by its Special Permit has authorized the offsite parking and that the project site complies with the provision of the ordinance and the decision.

Sincerely,

William Sanborn
Inspector of Buildings

WS/kgf



City of Gloucester Abutters Report

Abutters to Parcel: Map-Lot-Unit 1-33

Please be aware that the abutters list reflects mailing address for the real estate tax bills as requested by the property owners. Mortgage companies, banks and other financial institutions may be receiving the notification and not the homeowner as required. Please be sure you are complying with notification requirements.
Gloucester Board of Assessors.

This list of owners of record as shown on the most recent tax list of the City of Gloucester has been prepared for the purposes of notifying abutters as required by the City's Zoning Board of Appeals or City Council and it reflects the abutters to the Parcel known as Map 1 Lot 33 as further shown on the attached map dated 2/11/2014.

ABUTTER	STREET ADDRESS	PARCEL NO.	TAX BILL ADDRESS
1-22 1907 LLC	33 COMMERCIAL ST	1-22	1907 LLC 33 COMMERCIAL ST GLOUCESTER, MA 01930
1-33 BEAUPORT GLOUCESTER LLC	47 COMMERCIAL ST	1-33	BEAUPORT GLOUCESTER LLC 6 ROWE SQ GLOUCESTER, MA 01930-3057
1-14 MY MANAGEMENT GROUP LLC	52 COMMERCIAL ST	1-14	MY MANAGEMENT GROUP LLC 27-29 HARBOR LP GLOUCESTER, MA 01930
1-73 VJ&E REALTY LLC	58 COMMERCIAL ST	1-73	VJ&E REALTY LLC 58-60 COMMERCIAL ST GLOUCESTER, MA 01930-5825
1-45 MORTILLARO GINO 1/3 & VINCENT 2/3 C/O MORTILLARO LOBSTER LLC	65 COMMERCIAL ST	1-45	MORTILLARO GINO 1/3 & VINCENT 2/3 C/O MORTILLARO LOBSTER LLC 60 COMMERCIAL ST GLOUCESTER, MA 01930
1-51 ORLANDO JOSEPHINE RES L/EST	67 COMMERCIAL ST	1-51	ORLANDO JOSEPHINE RES L/EST 67 COMMERCIAL ST GLOUCESTER, MA 01930
1-12 NICASTRO JOHN B TR NICASTRO FA	78 COMMERCIAL ST	1-12	NICASTRO JOHN B TR NICASTRO FA 78 COMMERCIAL ST GLOUCESTER, MA 01930
1-11 CURCURU ANTHONY TR ET AL C/O SCOLA GRACE	80 COMMERCIAL ST	1-11	CURCURU ANTHONY TR ET AL C/O SCOLA GRACE 36 PROSPECT ST GLOUCESTER, MA 01930
1-52 CIARAMETARO C E & PETERSON R F TRS	2 FORT SQ	1-52	CIARAMETARO C E & PETERSON R F TRS 2 FORT SQ GLOUCESTER, MA 01930-5002
1-53 CIARAMETARO C E & PETERSON R F TRS	6 FORT SQ	1-53	CIARAMETARO C E & PETERSON R F TRS 2 FORT SQ GLOUCESTER, MA 01930-5002



City of Gloucester Abutters Report

Abutters to Parcel: Map-Lot-Unit 1-33

Please be aware that the abutters list reflects mailing address for the real estate tax bills as requested by the property owners. Mortgage companies, banks and other financial institutions may be receiving the notification and not the homeowner as required. Please be sure you are complying with notification requirements.
Gloucester Board of Assessors.

This list of owners of record as shown on the most recent tax list of the City of Gloucester has been prepared for the purposes of notifying abutters as required by the City's Zoning Board of Appeals or City Council and it reflects the abutters to the Parcel known as Map 1 Lot 33 as further shown on the attached map dated 2/11/2014.

ABUTTER	STREET ADDRESS	PARCEL NO.	TAX BILL ADDRESS
1-54 LUCIDO FRANK & FAVAZZA JENNIE ET AL	10 FORT SQ 25 FORT SQ	1-54	LUCIDO FRANK & FAVAZZA JENNIE ET AL 3317 NORTH COUNTRY CLUB RD TUCSON, AZ 85716-1349
1-1 GLOUCESTER CITY OF	25 FORT SQ	1-1	GLOUCESTER CITY OF
1-20 DANISH DANIEL A	12 BEACH CT	1-20	9 DALE AV GLOUCESTER, MA 01930 DANISH DANIEL A
1-19 LOVASCO SALVATORE & ROSE	1 PASCUCCI CT	1-19	12 BEACH CT GLOUCESTER, MA 01930 LOVASCO SALVATORE & ROSE 1 PASCUCCI CT GLOUCESTER, MA 01930 0000

I hereby certify that the above identifies the assessed owner of record and the mailing information for the parcel listed, as shown on the most recent tax list of the City of Gloucester Massachusetts.

Signed,

Madonna Fleming

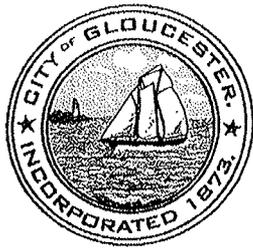
Name:

Title: Principal Clerk

Date:

2/14/14

Authorized Representative of the City of Gloucester Assessors' Office, City Hall, 9 Dale Avenue, Gloucester, MA 01930



OFFICE OF THE CITY CLERK
9 Dale Avenue • Gloucester, Massachusetts 01930
Office (978) 281-9720 Fax (978) 282-3051
E-mail: lhowe@gloucester-ma.gov

May 9, 2013

John Cunningham, Esquire
Cunningham & Cunningham
59 Main Street
Gloucester, MA 01930

Re: Application for Special Council Permits by Beauport, LLC pursuant to Sections 5.25 Hotel Overlay, 5.25.3.2(a) and (b) (Hotel and accessory uses), 5.25.4.1 (height), 5.25.5.1 (parking) and 5.25.7.2 and 5.5.4 (Lowlands), and 5.7 (Major Project) of the Gloucester Zoning Ordinance for 47-61 Commercial Street, Map 1, Lot 33

Dear Attorney Cunningham :

In accordance with Massachusetts General Laws, Chapter 40A, Section 11, I am enclosing a copy of the City Council Decision for the Special Council Permits for Beauport, LLC at 47-61 Commercial St., for which a public hearing was held and voted in the affirmative. The Decision was adopted on May 7, 2013 and was filed in the City Clerk's Office on May 9, 2013.

Included with the copy of the decision is the "Right to Appeal" notice. The twenty (20) day appeal period for your application will end on May 28, 2013. After May 28, 2013, you may pick up the Certificate of Lapse of Appeal and attach it to your decision and file with the Registry of Deeds, 45 Congress Street, Salem, MA 01970.

Please feel free to give the City Clerk's Office a call at (978) 281-9720 with any questions regarding this process. Thank you.

Very truly yours,

Linda T. Lowe
City Clerk

Enclosure: File, Building Inspector, City Planner

CITY CLERK
GLOUCESTER, MA

In Re:

13 MAY -9 PM 12: 21

Application of Beauport Gloucester, LLC)	
Special Council Permit)	DECISION OF THE
Pursuant to City of Gloucester Zoning Ordinance)	CITY COUNCIL OF
Section 5.25 (hotel overlay district))	
Section 5.25.3.2(a) and (b) (hotel and accessory uses)))	THE CITY OF GLOUCESTER
Section 5.25.4.1 (height))	
Section 5.25.5.1 (off-site, valet and tandem parking)))	
Section 5.25.7.2 and 5.5.4 (lowlands))	
Section 5.7 (major project))	

The City Council of the City of Gloucester, Massachusetts, constituting the Special Permit granting authority under the laws of the Commonwealth of Massachusetts and the Zoning Ordinance of the City of Gloucester, hereby adopts the following findings and conclusions with regard to the application of Beauport Gloucester, LLC for Special Permits pursuant to Sections 5.25, 5.25.3.2(a) and (b), 5.25.4.1 footnote (h), 5.25.5.1, 5.25.7.2, 5.5.4 and 5.7 of the City of Gloucester Zoning Ordinance.

The applicant is Beauport Gloucester, LLC. The property is located at 47-61 Commercial Street, Gloucester, and is shown on Assessor's Map 1, Lot 33. The property is within the Hotel Overlay District of the Marine Industrial District (MI).

The applicant seeks a Special Permit pursuant to Section 5.25, 5.25.3.2(a) and (b), Section 5.25.4.1 footnote (h), 5.25.7.2, 5.5.4 and 5.7 to construct a hotel as defined in 5.25.2.1.

On August 8, 2012, the application for the Special Permit was filed with the City Clerk's office. The City Council received the application on August 14, 2012 and found that the form and content of the application met the requirements of Sections 1.5.2 and 1.5.3 of the Gloucester Zoning Ordinance (GZO). The application and plans submitted and revised (the "Record Plans") are incorporated herein by reference.

The City Council referred the application to the Planning and Development Committee (P & D Committee). Pursuant to Section 5.7.4, the application was also submitted to the Planning Board for its review and recommendations. The application was also forwarded to the city departments as required by Section 5.7. The applicant filed a notice of intent with the Gloucester Conservation Commission. The Planning Board held multiple public meetings and reviewed the following documents as requested by the applicant:

- Special Permit Application for Hotel received 8/12/2012;
- Site development plans entitled: "Plans to Accompany Permit Applications for Beauport Gloucester Hotel", with revisions thru 12/21/2012 prepared by Beals Associates Inc. Charlestown, MA;
- A Letter of Transmittal, Executive Summary/Project Overview;
- A Traffic Impact & Access Study (TIAS) prepared by VHB of Watertown, MA;

Stormwater Management Report – dated 8/8/2012 revised 12/21/2012;
Site Plan Review Application and Plans Stamped Received 8/23/2012
Perkins & Will Light and Shadow Study

The Planning Board relied upon its peer review consultant, BETA Associates, Inc., to provide technical assistance. The Planning Board held meetings on September 20, 2012, November 15, 2012, January 17, 2013, January 31, 2013 and February 7, 2013.

The Planning Board received reports or heard testimony from representatives of the City departments and from citizens both in favor and in opposition to the application.

The Planning Board issued an Advisory Report on the Hotel Overlay District Special Permit and Site Plan Review submitted by Beauport Gloucester, LLC, dated February 7, 2013 recommending the granting of the special permits with findings and recommended conditions. A copy of the report, all submittals by the Applicant and the peer review consultant and the minutes of all meetings are filed with the City Clerk's office and the Community Development Department and are incorporated herein.

The Planning Board also reviewed the project under the Site Plan Review provisions of the Ordinance, Section 5.8.4, but has not issued a final decision. In accordance with Section 5.8.4.1., the following representation was made by the Planning Board: "The work described herein requires the approval of a site plan by the Gloucester Planning Board pursuant to Section 5.8 of the Zoning Ordinance. Any conditions imposed in such site plan approval shall be incorporated herein by reference."

Pursuant to the Gloucester Zoning Ordinance, the P & D Committee of the City Council noticed and posted its multiple public meetings held on the application. The P&D Committee opened its meeting on August 22, 2012, and held additional meetings on October 3, 2012; October 17, 2012; December 5, 2012, January 16, 2013; February 6, 2013; February 20, 2013 and March 7, 2013. Joint Planning Board and P & D Committee meetings were held on September 4, 2012, September 20, 2012 and January 31, 2013. A site visit was held on February 16, 2013, and one of the site visits was specifically for the infrastructure. The P&D Committee concluded its review on March 7, 2013.

The applicant made presentations on the application and plans with specific emphasis on the six criteria of section 1.8.3 of the zoning ordinance for a hotel, the criteria of section 5.25.4.1 footnote (h) for greater building height, the criteria for a lowlands special permit and the major project criteria. Presentations were made by the applicant on social, economic or community needs served by the proposal; traffic flow and safety; adequacy of utilities and other public services; neighborhood character and social structure; qualities of the natural environment; and potential fiscal impact. Presentations included review of traffic, environmental and drainage issues with review and comment by the City staff.

In addition to the presentations, the P&D Committee received reports and other documents from its technical consultants, municipal departments and the general public. All material is on file with the City Clerk's office and is incorporated herein.

On the basis of the testimony at the public meetings, the documents submitted, the representations of the applicant and the public and the recommendations of the Planning Board, on March 7, 2013, the P&D Committee voted 3 in favor, 0 opposed to recommend that the City Council to grant the application of Beauport Gloucester, LLC for a Special Permit under Gloucester Zoning Ordinances Section 5.7.5 and Section 5.25 to construct a Hotel subject to the conditions contained within the Conservation Commission's Order of Conditions and conditions recommended by the Planning Board in its report of February 7, 2013 attached hereto as Appendix 1, and subject to the following additional conditions:

1. The emergency generator testing and maintenance, as required by the State Building Code and NFPA 110, shall only occur between the hours of 12:00 noon and 2:00 p.m., except in cases of an emergency.
2. There shall be evergreen vegetation planted and maintained at the sound board wall on Fort Square. The vegetation shall be of a species that will withstand the salt air and other environmental considerations in the area. A landscaping plan reflecting the required vegetation shall be submitted to the building inspector prior to the issuance of a building permit.
3. The applicant shall purchase two (2) identical decibel meters (sound meters) one for the Gloucester Inspector of Buildings and the other for the Hotel Community Liaison.
4. As it relates to sound and odors, the Applicant shall provide a Hotel staff person to act as a Community Liaison to listen to and follow up on neighbors' concerns.
5. There shall be no lighting of Pavilion Beach at any time by the Hotel.
6. There shall be bollards placed around the project's onsite hydrant, said hydrant shall remain unobstructed at all times.
7. There shall be public access from Commercial Street to Pavilion Beach and a walkway across the beach side of the Hotel for public access as shown on the plans as a part of this application.
8. The Applicant shall urge National Grid to work with it in order to place the utilities underground.
9. The Beach and Development Agreement shall be incorporated herein as Appendix 4 and made a condition of this special permit.
10. That the City Council adopt as its own the Planning Board's recommended conditions which are incorporated herein by reference and attached hereto as Appendix 1, General Conditions 1-26 and Appendix 2 for Conditions 1-7 as relates to the parking plan.
11. Employees will be encouraged to car-pool, use CATA bus service and existing public off-site parking. Employees will not be allowed to park on-site when there is significant Hotel demand. Employees will be encouraged not to park in the local neighborhood.
12. The Applicant shall be required pursuant to the Zoning Ordinance, Appendix A, Rule 25, Part II, 5(i) to provide documentary evidence to the City Council providing that any and all conditions specified by the City Council in the Special Council Permits have been met

at which time the City Council will issue a "Certificate of Conditions Complete". No occupancy permit shall be issued until said Certificate has been submitted to the City Council.

The P&D Committee found that the section 5.25.4.1 footnote (h) criteria for greater building height were satisfied in that such an increase in the allowable height is consistent with the neighborhood character and will not be substantially detrimental to the neighborhood because of obstruction of views, overshadowing of other properties, impairment of utilities or other adverse impacts. The P&D Committee found that the additional height would permit the use of a peaked roof to hide the building utilities and mechanicals which is consistent with the neighborhood and surrounding area.

The P & D Committee voted 3 in favor, 0 opposed, to recommend to the full City Council the granting of a Special Council Permit for Beauport Gloucester, LLC (applicant and owner) located at 47-61 Commercial Street, as shown on Assessors Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, pursuant to section 5.25.4.1 footnote (h) by reference to Section 3.1.6(b) for a height exception of 21 feet, height not to exceed 61 feet from average existing grade as shown on site plans dated September 21, 2012 revised February 27, 2013, drawing number A0-06.

The Committee also found that the criteria of Section 5.5.4 for a lowlands special permit has been satisfied in that the application meets the requirements of the Wetlands Protection Act as indicated by the Conservation Commission's issuance of an order of conditions and the report of the shellfish constable, and that such construction will not pose a hazard to health or safety and will be so executed as to conserve the shellfish and other wildlife resources of the City. The approved motions incorporated the recommendations and conditions of the Planning Board, the Conservation Commission and the additional conditions set by the P&D Committee.

The P & D Committee voted 3 in favor, 0 opposed, to recommend to the full City Council the granting of a Special Council Permit for Beauport Gloucester, LLC (applicant and owner) located at 47-61 Commercial Street, as shown on Assessors Map-1, Lot 33, Hotel Overlay District in the MI zoning classification, for a lowlands permit under the Gloucester Zoning Ordinance Section 5.5.4.

The P & D Committee voted 3 in favor, 0 opposed, to recommend to the full City Council the granting of a Special Council Permit for Beauport Gloucester, LLC (applicant and owner) located at 47-61 Commercial Street, as shown on Assessors Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, pursuant to section 5.25.5.1 for off-site, valet and tandem parking for the proposed Hotel with the following conditions:

1. The off-site parking lot shall comply with the requirements of the Gloucester Zoning Ordinance.
2. The parking management plan submitted by the applicant dated December 12, 2012 as part of the response to peer review proposed seven conditions which shall be incorporated herein and will be attached to the final decision as Appendix #2.

Following proper notice and advertisement, on March 12, 2013 and continued to March 13, 2013, the City Council opened a public hearing.

The City Council considered the application plans and other submission material, presentations by the applicant, its legal counsel, John Cunningham, its consulting engineers, Beals Associates, its consulting traffic engineer, its architect, its construction manager, and its Coastal Geologists of Epsilon Associates. The City Council reviewed and considered the light and shadow studies submitted by the applicant along with the shadow studies submitted by the attorney for abutter Mortillaro. In addition, the City Council considered material submitted and presented by municipal departments and the City's independent engineering consultants. The City Council also considered the numerous letters, documents and reports submitted by those in opposition and in support of the project. Specifically, among other documents included in the record, it considered the presentation and reports submitted by the abutters in opposition and the organized opposition group regarding the seawall and the effect the project will have on the beach. Based on the expert testimony of the Coastal Geologists, Coastal Engineers, the light and shadow studies and reports submitted by the architects and the concurrence of the peer review studies of these experts' opinions, the City Council deliberated and made findings as to the criteria for the special permits. Throughout its deliberations, the City Council weighed and considered the statements of the applicant and its representatives, the City's reviewers, municipal departments, boards and commissions and the comments and submissions of the abutters and the public, all as made and considered on multiple occasions at the public meetings and public hearings.

SECTION 1.8.3 CRITERIA

Based on the evidence presented, the City Council finds that the Application for Special Permits, as revised, meets the criteria of Section 1.8.3 of the Zoning Ordinance as follows:

1. Social economic and community needs: The Hotel will serve the social, economic and community needs of the City. The multiple studies commissioned by the City and by the Applicant and submitted as a part of the record and the testimony by members of the Gloucester business community demonstrate that there is a demand for a year round Hotel in Gloucester. The application materials show that the project provides a full service business, family and tourist oriented facility with meeting rooms and function facilities. The Hotel patrons will generate additional business for downtown restaurants, businesses, and cultural activities. The Hotel will result in the creation of many jobs including but not limited to construction-related jobs and at least 160 professional and service jobs. The applicant has committed to giving a preference for Gloucester residents in employment and to Gloucester companies and Gloucester vendors for services.
2. Traffic flow and safety: On the basis of the traffic reports submitted and the conclusion of the independent consultant, the City Council finds that any increase in traffic generated by the Hotel will not have a material negative impact on the traffic flow and safety in the neighborhood and surrounding area. The hotel will have 145 onsite parking spaces and

has an appropriate Parking Management Plan. The traffic engineering report indicates that the additional traffic generated by the Hotel will not have an impact on the existing traffic patterns in the area. The application indicates that the hotel will have sufficient on-site parking spaces, and provide overflow, tandem and valet parking when it is required. The application exceeds the off-street loading requirements (Section 5.25.5.2) for a Hotel within the HOD as the proposed Hotel has two full loading bays rather than the requirement of one.

3. Adequacy of utilities and other public services: The City Council finds, based on the evidence presented, including but not limited to submissions by pertinent City departments, that the utilities and other public services are adequate. Department of Public Works Director opined that once the proposed infrastructure project is complete the utilities will be adequate for the project. Additionally, the peer review consultant, BETA Group, has also determined that public utility issues were addressed.
4. Neighborhood character and social structure: The neighborhood is a mixed use area. It includes industrial, commercial and multi-family and single family residential use. A hotel use is consistent with the diversity of uses within the neighborhood. As established by the adoption of the Hotel Overlay District provisions of the ordinance, a Hotel use is appropriate. The City Council finds that a hotel will not be substantially detrimental or out of character with the neighborhood or its social structure.
5. Qualities of the natural environment: The applicant will make onsite stormwater improvements. The Conservation Commission has issued an Order of Conditions with numerous conditions which will protect the site. The hotel abuts a portion of Pavilion Beach, a public bathing beach. As a part of this project, the dispute regarding the ownership of the beach parcel will be resolved and the parcel will be conveyed to the City for the continued use as a public beach thus protecting the natural environment and preserving the beach for continued public recreation use. The City Council considered all of the evidence, including the expert reports and opinions relating to the construction of the seawall and to the conservation of Pavilion Beach and finds that the project, as designed, will protect the beach and the natural environment.
6. Potential fiscal impact: The City Council finds that the hotel will generate increased real estate tax revenue and new rooms and meal tax revenue. The Hotel will create additional employment opportunities for the city and overall will have a positive fiscal impacts on the City.

In short, considering the various positive and negative impacts of the project, the City Council finds that the project will not adversely affect the neighborhood, the zoning district or the City in a manner that outweighs the project's benefits.

SECTION 5.7 MAJOR PROJECT REQUIREMENTS

The City Council further finds that the criteria contained in Section 5.7.5 for a major project has been met. The site access is sufficient as required by the ordinance. The City Council's consultants, BETA Consultants, have reviewed the drainage and utility plans, entitled "Plans to Accompany Permit Applications for Beauport Gloucester Hotel, Commercial Street, Gloucester Massachusetts", prepared by Beals Associates, Inc., dated September 21, 2012 and revised and issued as final local permit set February 26, 2013 and recommended that they meet the applicable requirements. The plans submitted by the Applicant entitled "Beauport Gloucester Hotel, Beauport Gloucester, LLC, 47-61 Commercial Street, Gloucester, MA, Special Permit Issue August 8, 2012, revised 2/27/2013", by Perkins & Will Architects, Boston, MA, and Copley Wolff Design Group, 160 Boylston, St., Boston, MA, demonstrate that the project will be screened to reduce impact to the neighborhood and that the lighting plan is in compliance with the requirements of section 5.7.5 and with the City's lighting ordinance.

The City Council further finds that based on the light and shadow studies submitted by the applicant and reviewed by the City Council's consultants, the project is designed and sited in such a manner so that there will no material overshadowing or obstruction of views. Further the Council finds that the traffic and parking plan is designed in a manner which will accommodate the additional vehicles generated by the project and not adversely impact the existing traffic patterns, as shown on the plans entitled "Plans to Accompany Permit Application for Beauport Gloucester Hotel, Commercial Street, Gloucester", prepared by Beals Associates, Inc., 2 Thirteenth St., Charlestown, MA, page C-300 Site Layout and Materials Plan and as modified by Responses of Beauport Gloucester, LLC to Review Letters Dated November 14, 2012 dated December 14, 2012 pages 9-14 and shown on SK-1 through SK-9 and the Beauport Hotel Parking Management Plan Memorandum attached hereto.

CITY COUNCIL DECISIONS

MAJOR PROJECT HOTEL SPECIAL PERMIT

Whereupon, having considered the entire record herein, including the unanimous recommendation of the P&D Committee, the minutes of the meetings and all testimony and documents received at the hearing, the City Council finds that the project meets the requirements of Sections 1.8.3, 5.25 and 5.7 of the zoning ordinance to construct a Hotel.

The City Council voted 8 in favor, 0 opposed, 1 absent (Whynot) to grant the Special Council Permit for Major Project/Hotel for Beauport Gloucester, LLC (applicant and owner) Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, pursuant to 5.25.3.2(a) and (b) and section 5.7 (Major Project) with the following conditions:

1. The emergency generator testing and maintenance, as required by the State Building Code and NFPA 110, shall only occur between the hours of 12:00 noon and 2:00 p.m., except in cases of an emergency.

2. There shall be evergreen vegetation planted and maintained at the sound board wall on Fort Square. The vegetation shall be of a species that will withstand the salt air and other environmental considerations in the area. A landscaping plan reflecting the required vegetation shall be submitted to the building inspector prior to the issuance of a building permit.
3. The applicant shall purchase two (2) identical decibel meters (sound meters) one for the Gloucester Inspector of Buildings and the other for the Hotel Community Liaison.
4. As it relates to sound and odors, the Applicant shall provide a Hotel staff person to act as a Community Liaison to listen to and follow up on neighbors' concerns.
5. There shall be no lighting of Pavilion Beach at any time by the Hotel.
6. There shall be bollards placed around the project's onsite hydrant, said hydrant shall remain unobstructed at all times.
7. There shall be public access from Commercial Street to Pavilion Beach and a walkway across the beach side of the Hotel for public access as shown on the plans as a part of this application.
8. The Applicant shall urge any and all owners or operators of overhead utility lines to work with it in order to place the utilities underground.
9. The Beach and Development Agreement shall be incorporated herein as Appendix 4 and made a condition of this Special Permit.
10. The City Council adopts as its own the Planning Board's recommended conditions which are incorporated herein by reference and attached hereto as Appendix 1, General conditions 1-26 and Appendix 2 for conditions 1-7 as relates to the parking plan.
11. Employees will be encouraged to car-pool, use CATA bus service and existing public off-site parking. Employees will not be allowed to park on-site when there is significant Hotel demand. Employees will be encouraged not to park in the local neighborhood.
12. The applicant shall agree to hold the City harmless for any claim of property damage or personal injury that may arise out of the applicant's businesses activities or during construction on the site.
13. That Beauport Gloucester, LLC shall provide pest control services for the duration of the construction and for a period of one year after the hotel opens to neighbors whose properties, as determined by the Board of Health, suffer rodent infestations as a result of the construction of the hotel.
14. The Applicant shall be required pursuant to the Zoning Ordinance, Appendix A, Rule 25, Part II, 5(i), to provide documentary evidence to the City Council proving that any and all conditions specified by the City Council in the Special Council Permits have been met at which time the City Council will issue a "Certificate of Conditions Complete". No occupancy permit shall be issued until said Certificate has been provided by the City Council.

SECTION 5.25.4.1 FN (h), SECTION 3.16(b) BUILDING HEIGHT SPECIAL PERMIT

Whereupon, having considered the entire record herein, including the P&D Committee's unanimous recommendation that the City Council grant the Special Permit pursuant to Section 5.25.4.1 footnote (h) by reference to Section 3.1.6(b) of the Gloucester Zoning Ordinances for

greater building height and all the testimony and documents received at the hearing, the City Council finds that the increase in height is consistent with neighborhood character and will not be substantially detrimental to the neighborhood because of obstruction of view, overshadowing of other properties, impairment of utilities or other adverse impacts and that the project meets the requirements of Section 5.25.4.1 footnote (h) by reference to Section 3.1.6 (b) for a height exception.

The City Council voted 8 in favor, 0 opposed, 1 absent (Whynott) to grant a Special Council Permit for Beauport Gloucester, LLC (applicant and owner) Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, pursuant to 5.25.4.1 footnote (h) by reference to Section 3.1.6 (b) for a height exception of 21 feet, height not to exceed 61 feet from average existing grade as shown on site plans dated September 21, 2012, revised February 27, 2013, drawing number A0-06. Subject to the conditions as outlined in the Conservation Commission's Order of Conditions, the Planning Board's Advisory Report and the P&D Committee's recommendation shall be conditions to the grant of this special permit and are attached to this decision as Appendix 1, 2, 3, and 4 and are incorporated herein.

SECTION 5.25.5.1 OFF-SITE, VALET AND TANDEM PARKING SPECIAL PERMIT

Whereupon, having considered the entire record herein, including the P&D Committee's unanimous recommendation that the City Council grant the Special Permit pursuant to Section 5.25.5.1 for off-site, valet and tandem parking for the proposed Hotel with conditions and all the testimony and documents received at the hearing, the City Council finds that the parking plan meets the requirements of the HOD and that as designed it will help traffic flow and ease congestion and therefore the project meets the requirements of Section 5.25.5.1 for off-site, valet and tandem parking for the proposed Hotel with conditions.

The City Council voted 8 in favor, 0 opposed, 1 absent (Whynott) to grant a Special Council Permit for Beauport Gloucester, LLC located at 47-61 Commercial Street as shown on Assessors Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, pursuant to 5.25.5.1 for off-site, valet and tandem parking for the proposed Hotel with the following conditions:

1. The off-site parking lot shall comply with the requirements of the Gloucester Zoning Ordinance.
2. The parking management plan submitted by the applicant dated December 12, 2012 as part of the response to peer review proposed several conditions which shall be incorporated herein and attached as Appendix #2.
3. Subject to the conditions as outlined in the Conservation Commission's Order of Conditions, the Planning Board's Advisory Report and the P&D Committee's recommendation shall be conditions to the grant of this special permit and are attached to this decision as Appendices and are incorporated herein.

SECTION 5.5.4 LOWLANDS SPECIAL PERMIT

Whereupon, having considered the entire record herein, including the P&D Committee's unanimous recommendation to the grant of the Zoning Ordinance Section 5.5.4 lowlands special permit for 47-61 Commercial Street and the testimony and documents submitted, the City Council finds that the criteria in section 5.5.4 has been satisfied in that the application meets the requirements of the Wetlands Protection Act as indicated by the Conservation Commission's issuance of an Order of Conditions and that such construction will not pose a hazard to health or safety and will be so executed as to conserve the shellfish and other wildlife resources of the City as indicated by the Shellfish Constable's report.

The City Council voted 8 in favor, 0 opposed, 1 absent (Whynott) to grant a Special Council Permit for Beauport Gloucester, LLC (applicant and owner) located at 47-61 Commercial Street as shown on Assessors Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, for a lowlands permit under the Gloucester Zoning Ordinance Section 5.5.4. Subject to the conditions as outlined in the Conservation Commission's Order of Conditions, the Planning Board's Advisory Report and the P&D Committee's recommendation shall be conditions to the grant of this special permit and are attached to this decision as Appendicies and are incorporated herein.

GENERAL CONDITIONS

In addition to the foregoing, the following general conditions shall apply:

1. In granting this Special Permit, the City Council has relied upon the oral and written representations of the applicant, the documents submitted in support of their application and in their testimony at committee meetings and the public hearings. Any failure to honor any material representation shall constitute just cause for revocation of this special permit.
2. The minutes of the P&D Committee meetings and the City Council public hearings and all documents and testimony received during the hearings are incorporated into this Decision. All construction and use of the property must comply with the plans, as revised, that were submitted with the applicant's special permit application. Any material changes that are not contemplated by the Special Permit application will require either a new special permit or an amendment hereto.
3. Each finding, term and condition of this decision is intended to be severable. Any invalidity in any finding, term or condition of this decision shall not be held to invalidate any other finding, term or condition of this decision.

4. This permit shall not take effect until a certified copy of this decision is recorded with the Registry of Deeds for Essex County. The fee for such recording shall be paid by the applicant.

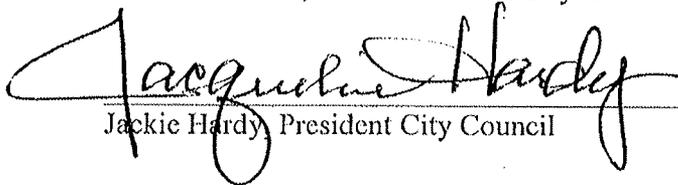
Accordingly, by said City Council Vote of March 13, 2013,

1. The Section 5.25 Special Council permit for a Hotel is granted;
2. The 5.7 Major Project special permit is granted;
3. The Section 5.25.4.1 footnote (h) and 3.1.6(b) special permit for height in excess of 40 feet not to exceed 61 feet in height is granted;
4. The Section 5.5.4 Lowlands special permit is granted;
5. The Section 5.25.5.1 off-site, valet and tandem parking special permit is granted.

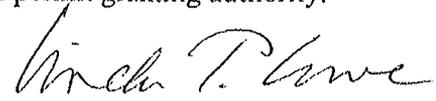
Decision adopted at the City Council meeting of May 7, 2013.

Appeals, if any, shall be made pursuant to Section 17 of Massachusetts General Laws chapter 40A, and shall be filed within twenty days after the filing of the above referenced decision in the City Clerk's Office. Copies of the complete decision and final plans entitled Beauport Gloucester Hotel, Beauport Gloucester, LLC, 47-61 Commercial Street, Gloucester, MA Special Permit Issue August 8, 2012, revised 2/27/2013, by Perkins & Will Architects, 55 Court St. 2nd Floor, Boston, MA and Plans to Accompany Permit Applications for Beauport Gloucester Hotel, Commercial Street, Gloucester Massachusetts, prepared by Beals Associates, Inc., 2 Thirteenth Street, Charlestown, MA and dated September 21, 2012 and revised and issued as final local permit set February 26, 2013 and the Beauport Hotel Parking Management Plan Memorandum are on file with the City Clerk and the Community Development Department.

Pursuant to Rule 25 of the City Council Rules of Procedure, the President of the City Council and the City Clerk have signed this decision demonstrating that it is a true and accurate reflection of the March 13, 2013 vote of the City Council sitting as the special permit granting authority.



Jackie Hardy, President City Council



Linda Lowe, City Clerk
5/7/13

Dated: 5-7-13, 2013

Appendix I Special Permit Conditions

The following conditions, as modified have been recommended by the Planning Board and have been adopted by the City Council as conditions to the special permit. These modified conditions are to be binding on the Applicant and are to become part of the Special City Council Permit Decision.

1. The Project shall be constructed in accordance with the following Record Plans, which are on file with the Planning Board and City Clerk's Office:
 - a) Beauport Gloucester Hotel, Beauport Gloucester, LLC, 47-61 Commercial Street, Gloucester, MA Special Permit Issue August 8, 2012, revised 2/27/2013, by Perkins & Will 55 Court St. 2nd Floor, Boston, MA;
 - b) Plans to Accompany Permit Applications for Beauport Gloucester Hotel, Commercial Street, Gloucester Massachusetts, prepared by Beals Associates, Inc., 2 Thirteenth Street, Charlestown, MA and dated September 21, 2012 and revised and issued as final local permit set February 26, 2013; and
 - c) The Beauport Hotel Parking Management Plan Memorandum
2. All operations and maintenance system reports of the stormwater and wastewater shall be forwarded to the Community Development and Engineering Departments.
3. All site lighting shall be in compliance with the lighting provision of the Code of Ordinances.
4. That any action by the City Council includes specification of elements of the Project and responsibilities that will remain private. The City shall not have any legal responsibility for the operation, maintenance, repair or replacement of the same to the extent such features are located on the Site:
 - a) All driveways and parking areas within the Project;
 - b) Stormwater management facilities within the Project;
 - c) Snow plowing of driveways and parking areas and snow removal
 - d) Landscaping within the Project
 - e) Trash removal from the Project
 - f) Lighting within the Project
 - g) Water and sewer services within the Project.
5. In the event of any emergency, the Applicant shall allow the City of Gloucester DPW access to the sewer and water lines on the Site for repair purposes.
6. The Conservation Commission's Order of Conditions pursuant to 310 CMR 10.00, or any superseding order of the Department of Environmental Protection (DEP), if applicable, and an Order of Conditions issued under the Gloucester Wetland Ordinance regarding this property shall be made a part of the special permit. If there is any inconsistency between the Record Plans and the plans as may be approved by the Conservation Commission or by DEP, the Applicant shall submit an amended plan to City Council and

the Planning Board for review and to the Conservation Commission and to DEP (if applicable) for approval before the City Council Decision to ensure all approvals are consistent with one another.

7. A preconstruction conference with City departments shall be held prior to the commencement of construction of the Project. The contractor shall request such conference at least fourteen business days prior to commencing construction by contacting the Planning Director and Engineering Department in writing. At the conference, the applicant and municipal officials shall agree upon a schedule of inspections. The applicant shall provide the City (including the following departments: Inspector of Buildings, Fire, Police, Engineering, DPW, Community Development and the Board of Health) with 24 hour emergency contact numbers as well as the name and telephone number of a designated owner's representative for all Project related communication.
8. During construction of the Project, the applicant shall conform to all local, state and federal laws regarding noise and vibration. The applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Exterior construction of the Project shall not commence on any weekday before 7:00 a.m. and shall not continue beyond 6:00 p.m. except for certain operations such as concrete finishing and emergency repairs. Exterior construction shall not commence on Saturday before 8:00 a.m. and shall not continue beyond 5:00 p.m. with the same exceptions. The Building Inspector may allow longer hours of construction in special circumstances provided that such activity normally is requested in writing by the applicant except for emergency circumstances where oral communication shall be followed by written confirmation. There shall be no exterior construction on any Sunday or state or federal legal holiday. Hours of operation shall be enforced by the Gloucester Police Department.
9. The City Council's agents shall be allowed entrance onto and view and inspect the Site during regular business hours to ensure compliance subject to applicable safety requirements as established by the applicant or its contractor including signing in at the construction field office trailer prior to entering the site.
10. Construction monitoring shall occur as required under the Conservation Commission's Order of Conditions or any Final Order issued by DEP.
11. Dust from outside activities shall be controlled. The applicant and its contractors shall effectuate the following practices to minimize levels of dust:
 - a) Wetting soils that are excavated from unsaturated zones
 - b) Wetting equipment during excavation/loading activities
 - c) Minimizing dust generation from areas that have been excavated through the wetting of soils or by other means of stabilizing dust particles.
 - d) Stockpiles left more than 30 days shall be stabilized

- e) Restricting vehicle speeds and travel routes on the Site
 - f) Covering truck beds transporting soils off-site/on-site to prevent dust generation
 - g) Regularly scheduled sweeping of paved areas to ensure a nuisance is not created by blowing soil, dust or debris.
12. Construction fencing shall be erected for the duration of construction, as shown on the Record Plans. Fencing shall be 6 foot wire fencing with fabric screen.
 13. Staging of equipment and material shall be located within the Project. Good faith efforts shall be made to schedule material deliveries to avoid peak traffic hours.
 14. Excavation shall be conducted according to all city and state regulations including 527 CMR. 13.00 And the Gloucester Code of Ordinances Section 13 Noise, and shall be conducted within the hours set forth in Condition #8.
 15. Sedimentation and erosion controls, as shown on the Record Plans, shall be maintained and inspected by an independent erosion control monitor on a weekly basis, or as directed by the Conservation Agent or Engineering Department and said inspections shall be reported in writing to Conservation and Engineering Departments.
 16. The applicant shall (at its own expense) be required to promptly repair any damage which applicant causes to sidewalks, street pavement, signs or other fixtures or features within the public right of way after obtaining permission from the City.
 17. The Project shall be connected to the City of Gloucester utility system for domestic water and fire flow. Final fire flows in compliance with state and local regulations shall be certified by the Fire Department.
 18. The Applicant shall follow the Operation and Maintenance Manual dated December 14, 2012, for the Project's stormwater management system. In the event that the Applicant fails to maintain the on-site stormwater management system in accordance with such Plan, the DPW shall give written notice of such failure and the Applicant shall have twenty (20) days to repair the cited failure. In the event of an emergency and an inability to contact the Applicant or its successor in interest, the DPW may conduct such emergency repair and the Applicant shall permit entry onto the Site to make such emergency repair. In the event the DPW conducts such emergency repair, the Applicant shall promptly reimburse the DPW for all reasonable expenses associated therewith. No entry by the DPW shall be made without prior written notice to the Applicant and without affording the Applicant a reasonable opportunity of not less than twenty (20) days as aforesaid to cure the maintenance or repair problem.
 19. The Applicant shall be responsible for Site security during and following construction. The Applicant shall pay for public safety details when required during the construction period when site equipment and material deliveries affect public roadways adjacent to the Site, as directed by the Gloucester Police Department.

20. Following construction of the Project, the applicant shall provide an "as-built" site plan to the Engineering Department, Building Department and Community Development Department prior to the issuance of a certificate of occupancy for the Project in accordance with applicable regulations. The applicant shall provide a separate as-built plan depicting the water mains and services and sewer mains and facilities to the Engineering Department demonstrating compliance with the Record Plans and installation specifications. These plans shall also be submitted in electronic format.
21. The applicant shall actively recruit in Gloucester for all open staff positions including making such efforts as advertising jobs in the local Gloucester newspapers and having a job fair in Gloucester for Gloucester residents
22. Construction shall commence within 2 years of the granting of this special council permit, as affected by state law.
23. That the Agreement between Beauport Gloucester, LLC and the City of Gloucester that was presented to the City Council on February 25, relating to conveyance of the beach parcel and contribution for off-site improvements is incorporated into this special permit (see Appendix 4) and any violation of the Agreement would be grounds to revoke this permit.
24. Applicant shall enter into one or more legal agreements with owners of property in Gloucester and/or purchase property in Gloucester, which provide, in the aggregate, off-site parking for 50 or more vehicles, to be used for additional parking for the Hotel, as needed. Copies of such agreements (redacted as to financial terms) or copies of deed(s) for such parcel(s) shall be delivered to the Building Inspector, before a building permit is issued for the applicant's project. Use of such site(s) shall be in conformance with the Gloucester Zoning Ordinance. Any such agreement or deed may be replaced from time to time with others, so long as there is always parking for 50 or more vehicles in the aggregate. The Building Inspector's determination that this condition has been satisfied shall be conclusive.
25. If the Applicant wishes to modify the approved Record Plans, it shall submit proposed modifications in accordance with the provisions of GZO Section 1.5.13 and/or the provisions of the Permit. Where such modification is deemed substantial, the same standards and procedures applicable to an original application for a special permit approval shall apply to such modification and review, and recommendation by the Planning Board and public hearing by the City Council; provided, however, that the Building Inspector may determine that a proposed modification is insubstantial and approve the same.
26. The Building Inspector, in consultation with the Conservation Agent, Planning Director, and the Director of Public Works shall determine whether any modifications to the Project are substantial or insubstantial. In making such determination, the following shall be presumed to constitute substantial modifications, subject to confirmation by the City Council by majority vote at a public meeting:

- a) Changes to the building or grading that increase the building's height beyond that shown on the Record Plans;
- b) Changes to the building that increase the total floor area of the Project beyond that shown on the Record Plans;
- c) Changes to the architectural character of the buildings shown in the Record Plans.

Authorization to modify the Record Plans shall be obtained prior to any substantial modification in the field.

Appendix 2 Parking Plan Conditions

The City Council adopts the parking management plan submitted by the applicant dated December 12, 2012. These conditions are binding on the Applicant and are part of the Special City Council Permit Decision:

1. As recommended by the Planning Board, Applicant shall enter into one or more legal agreements with owners of property in Gloucester and/or purchase property in Gloucester, which provide, in the aggregate, off-site parking for 50 or more vehicles, to be used for additional parking for the Hotel, as needed. Copies of such agreements, (redacted as to financial terms) or copy(s) of deeds for such parcels shall be delivered to the Building Inspector, before a building permit is issued for the Applicant's project. Use of such site(s) shall be in conformance with the Gloucester Zoning Ordinance. Any such agreement or deed may be replaced from time to time with others, so long as there is always parking for 50 or more vehicles in the aggregate. The Inspector of Buildings determination that this condition has been satisfied shall be conclusive.
2. During busy periods, use of the garage spaces will be reserved primarily for Hotel guests, assisted and managed by the valet/parking manager. The surface parking spaces will be available for short term visitors and users of the restaurant and multi-use facilities.
3. During the peak busy season, on-site parking may be limited to one vehicle per room.
4. Employees will be encouraged to car-pool, use CATA bus service and existing public off-site parking. Employees will not be allowed to park on-site when there is significant Hotel demand.
5. At peak times, valet service will be used to efficiently park vehicles in the garage. Managed parking will be done so as not to block circulation lanes.
6. Off-site parking, when needed, will be made available for employee parking or for parking for Hotel guests who do not anticipate needing their cars on a daily basis. A van can be utilized to provide shuttle service for employees and guests when off-site parking is required.
7. Groups using the Hotel for meetings or functions, particularly during peak seasons will be encouraged to arrive and depart in limousines and small buses and trolleys.

Appendix 3 Order of Conditions

The City Council adopts as its own, the following Order of Conditions, as modified, that have been recommended by the Conservation Commission as their Attachment "A". These modified conditions are to be binding on the Applicant and are a part of the Special City Council Permit Decision:

Attachment A
CITY OF GLOUCESTER, MA CONSERVATION COMMISSION
ORDER OF CONDITIONS

Applicant: Beauport Gloucester, LLC March 6, 2013
Location: 47-61 Commercial Street, Gloucester, MA DEP FILE #028-2232 and
City of Gloucester Wetlands Ordinance

The property site is defined as the property located at 47-61 Commercial Street in the City of Gloucester, Massachusetts, which is shown in part as Lot 33 on the City of Gloucester Assessor's Map 1. The upland parcel contains about 1.85 +/- acres of land. The property is described in a deed dated July 7, 2011 and recorded with Essex South District Registry of Deeds in Book 30521, Page 84, together with applicant's rights in the beach and flats thereto belonging.

The activity is defined as the construction of a 101-room hotel along with the construction of a seawall, walkway, utilities, construction of entrance and egress, parking areas and the construction of a stormwater management system, all as shown on the approved plans. Portions of the work lie within the 100' buffer of the coastal bank, 100' foot buffer to the coastal beach, and within land subject to coastal storm flowage.

After conducting public hearings, conducting a site visit and obtaining professional review the Gloucester Conservation Commission has found as fact that portions of this property are defined as Coastal Beach and Land Subject to Coastal Storm Flowage. There are also areas defined as Coastal Bank, Land Under the Ocean, Shellfish Beds and Eelgrass Beds located seaward of the Coastal Beach fronting the property. The locations of the Coastal Resource Areas on the property were the subject of an Order of Resource Area Delineation, DEP File #28-2211 issued by the City of Gloucester Conservation Commission on September 14, 2012., the Gloucester Conservation Commission has found as matter of fact that a portion of the proposed project is subject to the Wetlands Protection Act and the City of Gloucester Wetlands Ordinance, Chapter 12 as well as the 2008 Massachusetts Department of Environmental Protection Stormwater Regulations.

Special Conditions:

1. No work shall commence on the affected property until all appeal periods pertaining to this order have elapsed. After the expiration of all such appeal periods in accordance with General Condition 9 on page 3 of this Order of Conditions and prior to commencement of any work on the affected property, this Order of Conditions must be recorded at the Southern Registry District of

*Beauport Gloucester, LLC
Special Council Permit Decision
Appendices*

the Essex County Registry of Deeds. Failure to record this Order of Conditions will result in automatic revocation of this Order as provided by General Condition 1 on page 7 of this Order of Conditions.

2. The Gloucester Conservation Commission shall be notified in writing within fifteen (15) days of all transfers of title of any portion of property that take place prior to the issuance of the Certificate of Compliance. In conjunction with the transfer of ownership, interest, or control of the property subject to this Order and/or transfer of contract to perform the work conditioned by this Order, the applicant shall submit to the Gloucester Conservation Commission a statement signed by the successor(s) in ownership, interest or control of the property or contract to perform the work that she/he is aware of an outstanding Order of Conditions on the site, has received a copy of this Order of Conditions and has accepted responsibility required by General Condition 17 on page 5 of this Order of Conditions.
3. This Order shall be made part of all construction contracts and subcontracts dealing with the work proposed, and the requirements of this Order of Conditions shall supersede any conflicting contract requirements. The contractor or contractors responsible for the project's completion shall understand and be notified of the requirements of this Order of Conditions. Any person performing work on the activity that is the subject of this Order of Conditions is individually responsible for understanding and complying with the requirements of this Order of Conditions.
4. The contractor, contractors, or other individual(s) in charge of work on the site shall have a copy of this Order of Conditions, as well as all approved plans and documents referenced in Section A 8 of this Order available at the on-site office upon commencement of any site work and shall make the plans and documents available to any person doing work on the site at all times.
5. Prior to any work being done on the project site, the applicant shall inform the Gloucester Conservation Commission in writing of the names, addresses, business, mobile and home telephone numbers of both the project supervisor who will be responsible for ensuring on-site compliance with this Order and his/her alternate. The notification shall occur at least 48 hours prior to commencement of any work on the site. The 48 hours shall not be over weekends or holidays. The applicant shall also notify the Commission in writing of any changes in this information.
6. All work shall be conducted in strict accordance with the Notice of Intent and approved plans and supporting documentation unless otherwise specified in this Order of Conditions, which shall be the controlling document. Any other or additional activity in areas within the jurisdiction of the Gloucester Conservation Commission will require separate review and approval by the Conservation Commission.
7. If the Gloucester Conservation Commission finds, by majority vote, any changes as referenced in General Condition 14 on page 4 of this Order of Conditions to be significant and/or to deviate from the original plans, the Notice of Intent, or this Order of Conditions, the applicant shall provide written notice to the Gloucester Conservation Commission for approval prior to implementing the change in the field. The Commission shall determine whether the change is

*Beauport Gloucester, LLC
Special Council Permit Decision
Appendices*

significant enough to require a new Public Hearing and/or the filing of a new Notice of Intent within 21 days. If a new public hearing is required or a new Notice of Intent is required these shall all be conducted and advertised and noticed to the abutters at the expense of the applicant, in order to take testimony from all interested parties. Within 21 days of the close of said hearing, the Commission shall issue an amended or new Order of Conditions.

8. Any material errors found in the plans or information submitted by the applicant shall be considered as changes, and the procedures outlined in General Condition 14 and Special Condition 7 above shall be followed.
9. No on-site wells for irrigation shall be constructed within 100 feet of any Coastal Resource Area without the filing of a new Notice of Intent with the Gloucester Conservation Commission.
10. Issuance of these conditions does not in any way imply or certify that the site or adjacent areas will not be subject to flooding, storm damage, or any other form of water damage.
11. The applicant agrees with the Gloucester Conservation Commission's position that the Order of Conditions as written, individually or as a group, protects the Interests of the Act. In the event that an Enforcement Order is issued to the applicant and/or the property owner and the applicant and/or the property owner fails to act after five (5) business days from the receipt of said Enforcement Order, the Gloucester Conservation Commission may satisfy the requirements of the Enforcement Order and the applicant agrees to reimburse the Gloucester Conservation Commission for all administrative costs and other expenses required to satisfy the Enforcement Order including but not limited to all costs incurred by the City due to the use of its own resources or the use of outside resources including the employment of experts, specialized contractors or any other individual or organization it deems necessary to satisfy the requirements of the Enforcement Order.
12. By accepting this Order of Conditions the Applicant, the Owner and any successors in ownership agree that the Agent or members of the Gloucester Conservation Commission or their designees and consultants may enter and inspect the property and the project pursuant to Condition 15, with or without probable cause or prior notice, and until a Certificate of Compliance is issued. After a Certificate of Compliance is issued the Owner and any successors in ownership agree that the Agent or members of the Gloucester Conservation Commission or their designees and consultants may enter and inspect the property and the project, with or without probable cause or prior notice for the purpose of monitoring compliance with those Conditions of this Order of Conditions which remain in effect in perpetuity. The Agent or members of the Gloucester Conservation Commission or their designees and consultants will follow the Owner's on-site check-in and safety procedures.
13. It is the responsibility of the applicant to satisfy all procedural requirements of all agencies which may have jurisdiction over the activity that is the subject of this Order of Conditions, and to obtain all required licenses, permits, or authorizations. These may include but are not limited to the following: a) Massachusetts Department of Environmental Protection Waterways License and other approvals, if required, b) NPDES Stormwater Pollution Prevention Permit, c)

Massachusetts Highway Department Access Permit, if required, d) City of Gloucester City Council, e) Permits from the City of Gloucester Building Department including building, wiring and plumbing permits. Copies of all such licenses, permits and authorizations shall be provided to the Gloucester Conservation Commission immediately upon receipt.

Prior to Construction

14. At least 30 days prior to any construction or activity on the site the Applicant shall submit the following revised or supplemental final engineering drawings and information to the Gloucester Conservation Commission for their Approval. As appropriate the revised or supplemental plans and information shall be signed and sealed by a Massachusetts Registered Professional Engineer, Registered Professional Land Surveyor, Massachusetts Registered Landscape Architect, Massachusetts Licensed Site Professional or Massachusetts Licensed Soil Evaluator.
15. At least 30 days prior to the commencement of any activity on this site, the applicant shall pay for the services of the Gloucester Conservation Commission's consultant for the project to perform the following services:
 - a) Review and make recommendations to the Gloucester Conservation Commission on the applicant's revised plans, information and submittals as required by this Order of Conditions;
 - b) Attend the pre-construction meeting with the Gloucester Conservation Agent;
 - c) Inspect the installed erosion controls with the Gloucester Conservation Agent;
 - d) Conduct inspections of the site with the Gloucester Conservation Agent on a monthly basis while the work is being performed;
 - e) Conduct inspections of the site with the Gloucester Conservation Agent on a regular basis
16. The Gloucester Conservation Commission's consultant shall provide the Conservation Commission and the Applicant with a Scope of Services and proposed budget for the inspectional and consulting services required by this order. Upon acceptance of the proposal by the Conservation Commission, the Applicant shall fund an account administered by the City of Gloucester in the full amount of the estimated cost for the environmental monitoring at least 7 days prior to the commencement of any of the consultant's work. The consultant shall submit monthly invoices for services rendered to the Conservation Commission for approval and payment.
17. The Applicant shall submit the final SWPPP which includes all of the appendices, forms and attachments required by the 2008 NPDES General Permit for Stormwater Discharges From Construction Activities and which identifies the responsible parties. The construction period checklist should be revised to meet all of the requirements of the 2008 NPDES General Permit for Stormwater Discharges from Construction Activities. A sample inspection report form is available from the US EPA at

http://www.epa.gov/npdes/pubs/exampleswppp_residential_apppe.pdf. The SWPPP shall include a spill control and response plan.

18. The Applicant shall submit a detailed vibration monitoring plan to monitor vibrations near the Coastal Bank during the pile driving phase of the project. The plan shall be prepared by a Massachusetts Registered Professional Engineer experienced in pile driving operations and monitoring vibrations. Results of the monitoring shall be reported to the Gloucester Conservation Commission on a weekly basis. At no time shall the peak particle velocity adjacent to the coastal bank exceed 0.75 in/sec.
19. Design calculations supporting the final seawall construction plans and certification of the structure by a Massachusetts Licensed Engineer responsible for the design of the wall shall be submitted to the Conservation Agent for the City files prior to construction. Final Construction Plans depicting the Seawall and associated details shall be submitted by the design engineer noted above. Said plans shall incorporate any and all revisions requested by the Conservation Commission and agreed to by the applicant.
20. The ramps and stairway to the beach shall be ADA compliant and shall be designed to account for normal fluctuations of the level of sand.
21. The applicant shall coordinate with the City DPW and their engineers on the details of the connection at the east end of the seawall.
22. All of the above items shall receive Approval from the Gloucester Conservation Commission prior to any work on the site. The applicant shall pay for the Conservation Commission's NOI consultant, who will review and make recommendations to the Conservation Commission on the applicant's revised plans, information and submittals.
23. At least 7 days prior to the commencement of any construction or activity on the project site, an on-site Preconstruction Meeting must be held with the contractor, designated agent and the Conservation Agent and the selected environmental monitor to review this Order of Conditions to ensure that all conditions of this Order are understood and review the construction sequencing.
24. At the Preconstruction Meeting, the Applicant shall submit the documents listed below. These documents shall be updated regularly until construction on the project is complete. Documents shall include the following:
 - a) Photographs depicting the project site along the Coastal Resource Areas.
 - b) Results of sand density testing and grain size analysis. This shall form the basis of the sand specification required below.
 - c) Sand specifications shall be prepared by the applicant's engineer and submitted at the preconstruction meeting

- d) Construction sequencing plan.
 - e) Construction schedule.
25. At least 7 days prior to the commencement of any activity on the project site the applicant shall notify the Gloucester Conservation Commission in writing that activity is commencing on a date certain. The 7 calendar days shall not include holidays.
 26. No clearing of vegetation, including trees, or disturbance of soil on any areas within 100 feet of any wetland resource area shall occur prior to the Preconstruction Meeting, except such minimal disturbance required in order to stake the required erosion control lines.
 27. After the Preconstruction Meeting and prior to any construction at the site, all erosion controls shall be installed along the approved staked line. The erosion controls shall consist of devices as located and detailed on the approved plans.
 28. The construction and associated protective measures for the installation of the sheet pile wall, demolition of the existing building, placement of armor stone and the construction of ramps and stairways, shall be monitored and inspected by an independent engineering/environmental monitor as chosen by the Conservation Agent on a schedule determined and directed by the Conservation Agent. Periodic reports by the Monitor shall be filed with the Conservation Agent.
 29. During demolition, and during construction of the seawall, the Applicant's consultant shall submit weekly monitoring reports with photos of the work and site, a description of work that took place that week and a description of work planned for the following week.
 30. Prior to pouring the concrete for the seawall cap, the condition of the protective coating shall be inspected and any deterioration of the steel sheet piles shall be addressed.
 31. Sand brought to the site for placement on the beach shall be compatible in color, shape and grain size with existing sand on the beach. A material specification shall be filed with the Conservation Agent prior to construction.
 32. Construction safety fencing shall be installed prior to construction as outlined on the project plans and shall be modified as directed by the City Staff. The limits of the fencing adjacent to Coastal Resource Areas may be phased to maximize protection to the Coastal Resource Areas during the demolition of the existing building. Temporary protective fencing may be placed on the beach portion of the site at the Conservation Agent's direction if it is determined that further beach protection is necessary during demolition or during seawall construction.
 33. No construction activities or alterations shall occur to the westerly end of Pavilion Beach on the seaward side of the upland parcel. This area shall be left in a "natural" state.
 34. The designated inspector under the NPDES Permit and the SWPPP shall provide the Gloucester Conservation Commission with copies of all SWPPP Inspection Reports. Inspections shall be

conducted at the intervals required under the NPDES. The inspection reports shall address the current condition of erosion and sedimentation controls; describe any erosion or sedimentation problems and mitigation measures implemented. Reports shall be sent to the Gloucester Conservation Commission by email within two days of the inspection followed by hard copy in the mail.

35. The Applicant's Engineer shall provide the Gloucester Conservation Commission with a minimum of two (2) progress reports per month or at intervals as agreed with the Conservation Agent when work is ongoing directly adjacent to the Coastal Beach or work on the stormwater management system is ongoing. Progress reports shall indicate what work has been completed and what work is anticipated to be done over the next reporting period. The report shall also address the current condition of erosion and sedimentation controls and shall describe any erosion or sedimentation problems and mitigation measures implemented. Reports shall be sent to the Gloucester Conservation Commission by email within two days of the inspection followed by hard copy in the mail. Failure to provide these reports within two days of the Applicant's Engineer's inspection of the site shall constitute a violation of this Order of Conditions and the Commission may issue an Enforcement Order requiring that all work be ceased until the reports are provided and the site is inspected by the Gloucester Conservation Commission, the Commission's Agent and/or the Commission's consultant.

During Construction

36. Accepted engineering and construction standards shall be followed in the completion of this project. This includes proper installation and maintenance of Erosion & Sediment Control (E&SC) Best Management Practices (BMPs) per applicable DEP, US Department of Agriculture Natural Resource Conservation Service (NRCS), and/or manufacturers' guidelines.
37. The erosion controls shall be maintained per General Condition 18 on page 8 of this Order of Conditions until the referenced stabilization efforts are inspected and approved in writing by the Commission. Upon completion of the project, the applicant shall remove and discard all E&SC materials determined to be detrimental to the resource areas and restore the soil and vegetation beneath the barriers to pre-disturbance condition.
38. The applicant shall have on hand at the start of any soil disturbance, removal or stockpiling, an emergency supply of erosion control materials consisting of a minimum of 200 feet of filter mitts in good condition and sufficient stakes for securing the filter mitts. The additional supply of filter mitts and stakes shall be used only for the control of emergency erosion, and shall be installed in accordance with the details shown on the approved plans. An emergency-use only reserve of products for other methods of E&SC, if previously approved in writing by the Commission, may be substituted. (See Standard Condition 17.)
39. The Owner must maintain erosion control devices and check on a weekly basis and after any rain event totaling more than 0.5" of precipitation over any 24-hour period. Filter mitts shall be maintained and replaced on an as-needed basis, unless the Gloucester Conservation Commission determines otherwise, to prevent the passage of accumulated sediments to resource areas

downgradient of the site and the work areas. Accumulated sediment upgradient of erosion control devices shall be removed immediately if its depth exceeds 6 inches or every two weeks during construction.

40. The erosion control specifications provided in the Notice of Intent and the erosion control provision in the Order of Conditions will be the minimum standards for this project. Erosion control devices may be modified based upon experience at the site. Additional or modified erosion control measures may be required by the Gloucester Conservation Commission at any time before, during and after construction. These will be maintained until the Applicant's Engineer and a member or agent of the Gloucester Conservation Commission agree that they are no longer needed, at which time they will be removed, using mutually satisfactory removal procedures.
41. All existing catch basins and stormwater inlets and all new catch basins and stormwater inlets (immediately upon their installation) on and immediately adjacent to the site shall be protected by Silt Sacks to prevent sediment from entering the stormwater drainage system. Silt Sacks shall be maintained and regularly cleaned of sediments until all areas associated with the work permitted by this Order of Conditions have been permanently stabilized and the Gloucester Conservation Commission and/or Staff has formally approved their removal. Filter fabric placed under the inlet rim is not an acceptable substitute for silt sacks.
42. The contractor shall install temporary erosion controls on all stormwater drainage system and stormwater management system inlet and outlet pipes until the construction of the systems and their tributary pre-treatment measures has been completed and all surfaces on the site have been stabilized.
43. Until the proposed impervious surfaces and travel ways within the site have been paved, a temporary stabilized construction entrance for the site shall be maintained.
44. Street sweeping to eliminate any siltation and deposited material on paved surfaces on and immediately adjacent to the project site (on Commercial Street and Fort Square) during construction will be provided by the Owner and/or his Contractor as necessary until all affected surfaces of the site have been stabilized.
45. All equipment shall be operated and maintained to prohibit alterations of Coastal Resource Areas not allowed by this Order of Conditions and to minimize disturbance in buffer zones to those areas clearly identified on the plans, demarcated in the field, and permitted by this Order of Conditions. No equipment is to enter or cross any Coastal Resource Area (other Land Subject to Coastal Storm Flowage) at any time. At the end of each work day all equipment shall be parked outside of the 100 foot resource area buffer zone as shown on the plans.
46. Immediately upon the completion of the foundation for the proposed building, the applicant shall engage a Registered Professional Engineer or Land Surveyor to prepare an as-built plan accurately depicting the foundation location and its proximity to wetland resource areas and certifying that the completed foundation is located as shown on the approved plans. This plan shall be submitted

to the Gloucester Conservation Commission Agent for approval prior to proceeding with any further work on the building.

47. Grading shall be performed in accordance with the approved plans for the project and shall not direct runoff to the property of others, unless such conditions already exist. This project shall not increase runoff, nor cause flood or storm damage to abutters or the property of others.
48. If any dewatering activities are necessary for the project, water shall not be directly released into any Coastal Resource Area or stormwater drainage system. Water from dewatering activities shall first be deposited into and filtered by a Dirt Bag® or similar device such as a sediment sump surrounded by a crushed stone and filter fabric dike or a stilling basin to remove sediment before the water is released. This requirement also applies to discharge of any and all construction-generated runoff, whether released by gravity or pumped.
49. The area of construction shall remain in an environmentally stable condition at the close of each construction day.
50. If any of the stormwater management structures or stormwater treatment systems are to be used as sedimentation control during construction, all accumulated silt and debris shall be thoroughly removed to the naturally occurring soil and cleaned prior to final construction and final stabilization. If fill is required to bring the basin to proposed subgrade the fill shall be clean gravel fill. The stormwater management and treatment structures and/or infiltration areas shall be inspected by the Gloucester Conservation Commission and/or its agent and consultant when they have been cleaned and prior to adding any fill or surfacing materials.
51. Prior to final installation of the subsurface infiltration structures, any fill and accumulated silt and debris shall be removed to the naturally occurring soil. If fill is required to bring the infiltration area to proposed subgrade, the fill shall be Title 5 fill. The installation of the subsurface infiltration structures shall be inspected by the Gloucester Conservation Commission and/or its agent when they have been cleaned down to the natural soil and prior to adding any fill or surfacing materials.
52. Prior to the creation of any impervious surfaces for any building or structure (roof), parking areas, roadways, walkways within a particular phase of the project, all stormwater drainage collection, treatment and control systems including infiltration and detention structures serving that phase shall be fully constructed and functional.
53. Beach profile monitoring shall be required immediately after the seawall is constructed and annually for three years post-construction to determine if the seawall is causing any adverse impacts to the coastal beach. Beach profile monitoring shall consist of elevation profiles taken from the face of the seawall across the coastal beach to approximately the low tide line. Profiles should be taken approximately every 100 feet along the coastal beach starting at the southeasterly edge of the property to just beyond the westerly property line. Adverse impact to the coastal beach will be deemed to be changes that cannot be attributed to normal seasonal fluctuations to the coastal beach.

54. The applicant will be required to submit an annual report by a qualified coastal geologist or coastal engineer along with these surveys. This report will summarize the surveys with a discussion of any profile changes and whether the coastal geologist/ coastal engineer deems that these are natural changes or whether changes have occurred that are deemed to be adverse impacts resulting from the seawall construction. If it has been determined based on these surveys that the seawall has caused adverse impacts to the coastal beach, the applicant will be required to perform beach nourishment with compatible sediment to remedy the impacts.
55. The applicant shall provide the Commission with an illicit discharge statement prior to discharging any stormwater to post-construction Best Management Practices (BMPs).
56. All plantings on the site must be regionally native and shall not be non-native invasive plants.
57. If the work undertaken for this project results in the introduction of or growth of invasive species, it shall be the Applicant's responsibility to remove the invasive species (including the roots) and re-establish native vegetation within the affected areas.
58. All debris, fill and excavated material shall be stockpiled as far away from Coastal Resource Areas as possible and surrounded by a double row of staked filter mitts to prevent sediment from surface runoff entering the resource areas. At no time shall any debris or other waste material be buried or disposed of within a Coastal Resource Area or Coastal Resource Buffer Zone.
59. No unsuitable material of any kind (stumps, roots, trash, debris, etc.) may be buried, placed or dispersed on the property.
60. All construction debris that is not recycled for appropriate on-site use shall be removed from the site. All void areas shall be brought to grade and any imported backfill material shall be tested for contaminants prior to being imported to the site. The results of the testing of all imported soil testing shall be submitted to the Gloucester Conservation Commission along with a certified statement by a Massachusetts Licensed Site Professional that all soil materials imported to the site are clean and free from contamination.
61. Concrete trucks and other vehicles shall not be washed out in any Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), Buffer Zone, or into any stormwater drainage system components. Any deposit of cement or concrete products into a Buffer Zone, or Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage) shall be immediately removed and the area shall be restored.
62. During and after work on this project, there shall be no discharge or spillage of fuel, oil, or other pollutants into any Coastal Resource Area or Buffer Zone. Also, there shall be no refueling of mechanical equipment within a Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), or Buffer Zone. Equipment for fuel storage and refueling operations shall be located outside all areas within the jurisdiction of the Gloucester Conservation Commission (excepting

Land Subject to Coastal Storm Flowage). The applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident, or vandalism.

63. There shall be no above ground or underground storage of fuel oils, gasoline or other hazardous substances or pollutants allowed within any Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), or Buffer Zone, except for such substances stored within the original manufacturer's tank for power generation equipment or within a building.
64. Any future work, excluding routine landscape maintenance, within any Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), or Buffer Zone other than that permitted under this Order of Conditions, must be reviewed and approved by the Gloucester Conservation Commission. In the event sand replenishment is required in the area in front of the seawall, such replenishment shall be permitted on an as needed basis under this order with notice to the Conservation Agent of the time, amount, and need for such replenishment.

Certificate of Compliance

65. Upon completion of the work on the project, the applicant shall request in writing a Certificate of Compliance from the Gloucester Conservation Commission and shall submit the following information with the request:
 66. A certification from a Massachusetts Registered Professional (Civil) Engineer stating that construction complies in all respects with this Order of Conditions and setting forth deviations, if any exist.
 67. Two sets of field surveyed as-built site plans prepared, signed and stamped by a Massachusetts Registered Professional Land Surveyor or a Massachusetts Registered Professional (Civil) Engineer. The as-built plan shall include, at a minimum, and as applicable to the project, elevations of all pipe inverts and outlets, pipe sizes, materials, and slopes; all other drainage structures, limits of clearing, grading and fill; all structures, pavement and spot elevations and 2 foot contour elevations within 100 feet of Coastal Resource boundaries; locations of wetlands boundaries; all alterations within Coastal Resource areas; and all dates of fieldwork. The as-built survey shall include a statement that the survey was made on the ground under the direct supervision of the Surveyor/Engineer and that the survey conforms to all of the requirements of 250 CMR 6.02.
 68. A CD containing the electronic drawing file for the As-Built Survey in .pdf and AutoCAD 2004 formats.
 69. The as-built plans shall locate at least three control points and at least three benchmarks.
 70. Post-construction photographs demonstrating compliance with this Order of Conditions, including established vegetation where required.

71. All fees for the Gloucester Conservation Commission's Consultant required by this Order of Conditions shall be paid in full by the Applicant prior to any request for a Certificate of Compliance.

Perpetual Conditions

Conditions 72 through 77 shall survive the expiration of this Order of Conditions and shall be included as continuing requirements in perpetuity on the Certificate of Compliance and the property owner shall be the party responsible for compliance with these conditions. These conditions shall survive the Order of Conditions and shall run with the title of the property in Perpetuity. The Gloucester Conservation Commission or its agent shall have permanent rights of entry onto the property to check on compliance with these Conditions.

General

72. There shall be no above ground or underground storage of fuel oils, gasoline or other hazardous substances or pollutants allowed within any Wetland Resource Area, or within the 100-foot Coastal Buffer Zone except for such substances stored within the original manufacturer's tank for power generation equipment or within a building.
- a) The expanded beach area seaward of the seawall shall be monitored on an annual basis for the purposes of determining if there has been loss of sand over the course of natural beach cycles. In the event it is determined that there has been a loss of sand due to reasons other than natural beach cycles, the applicant shall be allowed to perform beach nourishment programs upon written notification to the Gloucester Conservation Commission. Such nourishment shall result in a sand condition similar in nature to the condition prior to sand loss with respect to color, grain size and density of material.
73. Any new owner or successor in title shall, within 30 days of assuming ownership, provide a letter to the Gloucester Conservation Commission acknowledging that they understand their obligations under this Order of Conditions. This requirement shall be recorded in the deed and on subsequent deeds for the property.

Stormwater Management

74. The applicant shall provide the Gloucester Conservation Commission with a copy of any Ownership documentation along with the contact name and telephone number for the agent or property manager. The property owner(s) are responsible for the Operation and Maintenance Plan, of the stormwater collection, treatment and management systems on the property.
75. The applicant shall comply with all requirements of the Operation and Maintenance Plan filed with the Order of Conditions. The applicant shall maintain and repair the stormdrain collection system and appurtenances in order to ensure that the design capacity, the storm water treatment and pollution abatement capacity, and structural integrity of these facilities are maintained. The applicant shall maintain all stabilized surfaces as designed including maintenance and repair of

pavement and maintenance of landscaped areas maintaining a vigorous growth of all plant materials. Catch basins and stormwater treatment units shall be inspected and cleaned and roadways, driveways and sidewalks shall be swept at intervals specified in the O&M Plan. Accumulated sediments shall be removed from sumps and floatable wastes shall be removed from the surface of every catch basin at intervals specified in the O&M Plan. All drain pipes shall be inspected and sediment and debris removed at intervals specified in the O&M Plan. Sediments and wastes shall be disposed of in accordance with all applicable federal, state, and local laws.

76. Snow shall not be stockpiled on the property. Snow shall be removed from the site upon completion of plowing activities and disposed of in accordance with proper procedures.
77. The applicant and his successors in ownership shall file written reports of the inspections, cleaning and stormwater maintenance along with an up to date certified illicit discharge statement with the Gloucester Conservation Commission on an annual basis, by November 1st beginning the year the binder course of pavement is first installed.
78. Any issues which arise at any time affecting the function of any components of the Stormwater Management system on the site, including the underground infiltration system, the biofiltration swales or the constructed stormwater wetlands must be addressed immediately by the property owner at his sole expense.

APPENDIX 4 Beach and Development Agreements

Agreement

This Agreement (the "Agreement") is made as of April 30, 2013, by and between Beauport Gloucester, LLC, a Massachusetts limited liability company ("Beauport") and the City of Gloucester, a municipality incorporated under the laws of the Commonwealth of Massachusetts (the "City").

WHEREAS, Beauport is the owner of certain uplands now known as and numbered 47-61 Commercial Street in Gloucester and claims to have ownership of certain beach and flats seaward of the uplands (the "Property"); and

WHEREAS, the City of Gloucester disputes Beauport's claim of ownership of Pavilion Beach, and claims that it owns the Beach, and the City of Gloucester believes that Pavilion Beach is one of the oldest public bathing beaches in the United States of America; and

WHEREAS, Beauport is applying for permits in order to be able to construct a hotel and appurtenances (the "Project") within a portion of the Property under the Gloucester Zoning Ordinance (the "Ordinance"); and

WHEREAS, the Project is shown on certain plans (which may be amended and supplemented, from time to time) submitted to the Gloucester City Council as part of the City Council Special Permit processes and other provisions of the Ordinance; and

WHEREAS, the City has requested that Beauport convey to it that portion of the Property comprising the beach and flats known as Pavilion Beach (the "Pavilion Beach Portion"); and

WHEREAS, Beauport is agreeable to deeding the Pavilion Beach Portion to the City for \$1.00, subject to the terms and conditions set forth below; and

WHEREAS, independent of the Project, the City intends to make certain improvements to the sewer, water, storm drainage and roadways in the Commercial Street and Fort Square area (the "Infrastructure Improvements"), and may also make improvements to the West End Intersection (collectively with the Infrastructure Improvements, the "Improvements"); and

WHEREAS, Beauport has already contributed \$600,000.00 to the City for such Infrastructure Improvements, and is willing to contribute an additional \$1,400,000.00 to the City for the Improvements, subject to the terms and conditions set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Beauport and the City agree as follows:

- (i) The deed (the "Deed") to the City of the Pavilion Beach Portion will be in the form attached hereto as Exhibit One which is made a part hereof;
- (ii) The Deed will be executed and delivered in escrow to the City within ten (10) days of the filing in the City Clerk's Office of a City Council Special Permit approving the Project;
- (iii) The City shall be entitled to remove the Deed from escrow and record it after the Building Inspector confirms to the City and to Beauport, that the foundation, seawall, stairs and ramps have been completed;
- (iv) In mitigation of the cost and expense to the City of making the Improvements necessary for the construction and uninterrupted use of the Hotel, Beauport shall make the additional \$1,400,000.00 contribution to the City for the Improvements in three installments, one within ten (10) days of the issuance of a building permit for the Project, one six (6) months thereafter, and the final one within ten (10) days of the issuance of a final certificate of occupancy for the Project; and
- (v) This Agreement shall bind the parties and their successors and assigns, including any of Beauport's successors in title to the Property;
- (vi) It is further agreed that if Beauport shall make customary beach amenities available (which may include without limitation, towels, beach chairs or umbrellas or the like) to its guests, Beauport shall make the same available to members of the general public;
- (vii) Except as provided in the Deed, at no time during the construction of the Project, will Beauport interfere with the public's right to use Pavilion Beach.

Beauport's obligation to convey the Property to the City and to make the additional \$1,400,000.00 contribution for the Improvements shall automatically terminate, and the City shall promptly return the Deed to Beauport, if Beauport notifies the City in writing that it is not proceeding with the Project. In such event, the City and Beauport agree that the City Council Special Permit shall be null and void. The failure of the City to enforce any provision of this Agreement shall not be deemed a waiver by the City of its enforcement rights, unless it issues a waiver in writing.

Time is of the essence of this Agreement.

All notices to the City shall be addressed to the Mayor and the City Council.

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

Executed in duplicate under seal as of the date first above written.

BEAUPORT GLOUCESTER, LLC

By: 
Name: Sheree Zink
Title: Vice President

CITY OF GLOUCESTER

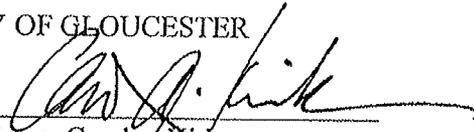
By: 
Name: Carolyn Kirk
Title: Mayor

Exhibit One

DEED

Beauport Gloucester, LLC, a Massachusetts limited liability company ("Grantor"), for One Dollar (\$1.00) consideration paid, grants to the City of Gloucester, a municipality incorporated under the laws of the Commonwealth of Massachusetts ("Grantee"), all of its right, title and interest in and to that certain parcel of beach and flats in Gloucester, Essex County, Massachusetts (the "Premises") described in Exhibit A, attached hereto and incorporated herein by reference, for use, in common with others entitled thereto, for all purposes for which public beaches are now or hereafter used in the City of Gloucester.

Grantor reserves the perpetual right and easement, as appurtenant to Grantor's Remaining Land, as defined in Exhibit A, to utilize the Premises as a public beach and for all purposes which are not materially inconsistent with the rights of the general public to utilize the Premises as a public beach. No rights reserved by Grantor hereunder shall be exercised in a manner which is materially inconsistent with the general public's rights to utilize the Premises as a public beach, other than as provided herein.

Subject to obtaining all required permits therefor, the Grantor reserves the perpetual right and easement, from time to time, as appurtenant to Grantor's Remaining Land, to use, maintain, alter, repair, add to, remove, construct, install and replace the following improvements, which now exist or which Grantor, or its successors and assigns may hereafter locate in whole or in part on the Premises and/or on Grantor's Remaining Land:

- (1) Revetments, seawalls, and/or retaining walls including any already in existence;
- (2) Walkways, including stairways and ramps, providing access to the Premises from Grantor's Remaining Land and/or Fort Square, including any already in existence;
- (3) Any other coastal structures which are reasonably necessary to protect Grantor's Remaining Land and any improvements now and hereafter thereon, or to enable occupants of Grantor's Remaining Land to have reasonable access to and from the Premises; and
- (4) Any other improvements which are required or mandated by any governmental agency or entity having jurisdiction.

Notwithstanding anything to the contrary herein contained, Grantor, subject to obtaining all required permits therefore, in exercising any of its rights hereunder, shall have the temporary right, from time to time, to bring onto the Premises, such personnel, equipment and materials as may be reasonably necessary or appropriate for Grantor to so exercise its rights. In such instances, the general public's right to utilize the Premises, or portions thereof, may be

Address of Premises: Rear of 47-61 Commercial Street, Gloucester, MA 01930
Address of Grantee: Gloucester City Hall, 9 Dale Avenue, Gloucester, MA 01930

temporarily interrupted. In addition, any improvements constructed or installed on the Premises by Grantor which are approved by the Commonwealth of Massachusetts or by the Grantor, or which are required by or mandated by any governmental agency or entity, shall be presumptively deemed not to be materially inconsistent with the general public's rights to utilize the Premises as a public beach.

Grantor shall include its employees, guests, invitees and licensees and its successors and assigns.

No rights to use the Grantor's Remaining Land are being granted or created, including, but not limited to, any rights by implication or necessity.

WITNESS the execution hereof under seal this ____ day of _____, 2013.

Beauport Gloucester, LLC

By: _____
Name: _____
Title: _____

COMMONWEALTH OF MASSACHUSETTS

On this ____ day of _____, 2013 before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were a _____ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as _____ for Beauport Gloucester, LLC.

Notary Public

Commission expires:

Exhibit A to Deed from Beauport Gloucester, LLC to the City of Gloucester

The "Premises" are that certain parcel of land located southwesterly of, but not on, Commercial Street in Gloucester, Essex County, Massachusetts consisting of beach and flats and shown as Parcel 2 on a plan (the "Plan") entitled "Approval Not Required, Plan of Land, 47-61 Commercial Street, Gloucester, MA" by Coler & Colantonio dated January 23, 2013, to be recorded herewith.

Parcel 1 on the Plan is referred to in the Deed to which this Exhibit is attached as "Grantor's Remaining Land".

For Grantor's title to the Premises and Grantor's Remaining Land, see Deed dated July 7, 2011, recorded with the Essex South District Registry of Deeds in Book 30521, Page 84 and Confirmatory Deed dated July 15, 2011, recorded with said Deeds in Book 30531, Page 311.

Supporting Documents in regard to Special City Council Permit Application #2014-004 for Modification of Special Council Permit (SCP2012-010) for Commercial Street #47-61 under GZO Sec. 5.25 Hotel Overlay District are on file in the City Clerk's Office and may be viewed during regular business hours.



CITY OF GLOUCESTER CITY CLERK
GLOUCESTER, MASSACHUSETTS - 01930 GLOUCESTER, MA

City of Gloucester 14 FEB 25 PM 3:17
Special Council Permit - Application

5/2/14

(Public hearing to be held no later than above date)

In conformance with the requirements of the Zoning Ordinance of the City of Gloucester, the undersigned hereby applies for a Special Council Permit (CC or CCS) in accordance with Section 1.8.3 of the Ordinance and other Sections as listed below:

Type of Permit (Give specific section of Zoning Ordinance) special permit to exceed 35' in height (sec. 3.1.6 (b) of the zoning ordinance) to allow height of 38 - 85 feet

Applicant's Name: Kathleen Stavis, Trustee of Fort Hill Avenue Realty Trust by Attorney Salvatore J. Frontiero.

Owner's Name: _____
(If different from applicant)

Location 48 Fort Hill Avenue Map# 36 Lot # 47
(Street Address)

Zoning Classification: RC-40 (Coastal Residential)

- Attached is a list of owners (with complete addresses) of land directly opposite on any public or private street or way, direct abutters, and abutters to the abutters of land within three hundred (300) feet of the property line, as they appear on the most recent City of Gloucester Assessor's Maps and Tax list.
- Attached is a listing of criteria set forth in Section 1.8.3 of the Zoning Ordinance, including any supportive material or comments the applicant may wish to include (i.e. ZBA decisions, Order of Conditions, etc.) if necessary.
- Attached are the necessary plans as set forth in Section of 1.5.3 of the Zoning Ordinance, which at a minimum consist of an accurate plot plan (to scale) showing existing and/or proposed building or structures.

City of Gloucester - Action	
Fee: <u>\$1350 LTR</u>	
City Clerk (received):	<u>2/26/14</u>
City Council (received):	<u>3/11/14</u>
Public Hearing (ordered):	_____
Public Hearing (opened):	_____
Public Hearing (closed):	_____
Final Decision	_____
Disposition	_____
(Approved, Denied, Approved w/conditions)	

Applicant:

Name (Signature)

FRONTIERO LAW OFFICE P.C

Address 46 MIDDLE STREET
GLOUCESTER, MA 01930

Telephone (978) 283-2850

Certified for completeness:

Building Inspector: _____ Date: 2/20/14

Planning Director: BMC Date: 2/20/14

Section 1.8.3 (Use additional sheets, if necessary)

1. Economic, or community needs served by the proposal:

Not Applicable

2. Traffic flow and safety:

Not Applicable

3. Adequacy of utilities and other public services:

Not Applicable

4. Neighborhood character and social structure:

Not Applicable

5. Qualities of the natural environment:

Not Applicable

6. Potential fiscal impact:

Not Applicable

The applicant is advised that City staff is available to assist the applicant in preparing the application, including the Inspector of Buildings and City Planner.

Application For Special Permit

The undersigned applicant hereby applies for a special permit under M.G.L. Ch. 40A, § 9 as follows.

1. Applicant (includes equitable owner or purchaser on a purchase and sales agreement):

Name: Kathleen Stavis, Trustee of Fort Hill Avenue Realty Trust by Attorney
Salvatore J. Frontiero

Address: c/o Frontiero Law Office, P.C., 46 Middle Street, Gloucester, MA 01930

Tel.#: Days 978-283-2850 Evenings: Same
 Check here if you are the purchaser on a purchase and sales agreement.

2. Owner, if other than applicant:

Name: N/A

Address: _____

Tel.#: Days _____ Evenings _____

3. Property:

Street address: 48 Fort Hill Avenue

Assessor's Map: 36 Lot: 47

Registry of deeds where deed, plan, or both records:

Essex South, Salem

Deed recording: Book 31923 Page 50

Plan recording: Plan #35 Plan Book 295

Property is location in the RC-40 Coastal Residential zoning district

4. Nature of relief requested.

Special permit pursuant to Article/Section 31.6 (b) of the
Zoning Ordinance/By-Law which authorizes the City Council to permit
a residential building height in excess of 35 feet by special permit.

Detailed explanation of request:

See Attachment 4

5. Evidence to support grant of special permit:

Because of reasons set forth below, the special permit requested will be in harmony with the intent and purpose of the Zoning Ordinance/By-Law;

See Attachment 5

Because of reasons set forth below, the special permit requested will meet the additional requirements of the Zoning Ordinance/By-Law as follows:

All other permits/relief necessary to allow construction has been obtained

and/or property is otherwise zoning compliant.

If someone other than owner or equitable owner (purchaser on a purchase and sales agreement) is the Applicant or will represent the Applicant, owner or equitable owner must designate such representative below.

Name of Representative: Attorney Salvatore J. Frontiero

Address of Representative: 46 Middle Street, Gloucester, MA 01930

Tel. #: Days 978-283-2850 Evenings Same

Relationship of representative to owner or equitable owner:

Attorney

I hereby authorize _____ to represent my interests before the

Special Permit Granting Authority with respect to this Special Permit Application.

(Signed by owner/equitable owner) _____

I hereby certify under the pains and penalties of perjury that the information contained in this Application is true and complete.



Signature of Applicant

2/19/14

Date

Signature of Owner, if other than Applicant

Date

Signature of Equitable Owner Who is filing Application to satisfy condition of Purchase and sales agreement

Date

ATTACHMENT 4
PETITION OF KATHLEEN STAVIS, TRUSTEE
RE: 48 FORT HILL AVENUE (MAP 137, LOT 47)

Detailed Explanation of Request for Relief:

A. Background

Petitioner purchased the property in 2012 with the intention of building a new home and converting an existing structure on the property into a cottage for the purposes of providing a private setting for guests, most notably Petitioner's children. The one existing structure onsite previously served as a guard house and guest quarters. Historically, the property contained a large residence sited close to the ocean. This large residence, together with another smaller accessory structure, were destroyed by a coastal storm, as was a portion of the existing structure, which portion is shown on the site plan as "existing concrete foundation." Petitioner desires to keep the existing guest house and build a larger primary residence on site as well.

As a result of this desire, last year Petitioner obtained relief from the Zoning Board of Appeals for the purposes of enabling Petitioner to keep the accessory structure and build a new structure. On July 25, 2013, that Board rendered a decision granting Petitioner (1) a special permit for customary accessory use (sleeping quarters), (2) a variance to allow the accessory structure to be closer to the street than the primary structure and (3) a variance for minimum required distance from street for accessory structure. A copy of that decision is submitted with this application.

Both the accessory structure and the proposed primary structure are presently located (or are to be located) well above the present flood elevation "VE," applicable to coastal flooding. This zone delineates areas that are susceptible to not only coastal flooding but also damage from wave velocity. The elevation of zone VE is up to sixteen feet above sea. The sixteen-foot flood elevation line presently runs along an existing seawall that was previously constructed at the zone VE line (and is shown on the site plan submitted with this application). However, subsequent to the Zoning Board of Appeals decision described above, FEMA made public a proposed shifting of zone VE to an elevation of thirty feet above sea level. This proposed change would result in the majority of this large site being located within this flood zone, including both the accessory and proposed primary structures.

This potential change made it of paramount importance to locate the new primary structure as far away from the ocean as possible and at the highest elevation possible so as to minimize any flood damage risks, as well as to lower any flood insurance premiums. However, the site has challenges in that there is a large wetland located in the middle of the lot. This wetland essentially cuts off the upland portion of this lot from the ocean front portion. Moreover, the upland portion of the lot is where the approved septic system is to be constructed. Therefore, as far as building envelope, Petitioners were left with a small portion of the lot on the southeasterly side of the lot between the large wetland and the ocean.

In order to gain the maximum distance from the ocean and maximum elevation, Petitioners

needed to move the site of their proposed home northeasterly as shown on the "updated house location detail" on the upper right hand corner of the site plan submitted herewith. Shifting the location of the house as shown on the plan detail changes the average grade at foundation from 21.1 feet to 23.9 feet. Although this nearly three foot change in elevation may seem minimal, it is in fact quite significant as it relates to dissipation of wave velocity and the like. In order to move the home, Petitioners again needed relief from the Zoning Board of Appeals for the purposes of allowing them to encroach twenty feet into the required rear yard setback. Petitioners requested rear yard setback variance and the was granted by the Zoning Board on January 8, 2014. The written decision in that matter is pending as of the date of this petition. A copy of the approved unsigned decision is attached to this application.

B. Relief Requested.

However, in order to ensure that the home as sited is sufficiently above the proposed new flood elevation while at the same time maintaining the design of the home, is also necessary to request a special permit from the City Council for a height exception to allow the height of the structure to be an average of 38.85 feet. This would set the height at bottom of the concrete slab at thirty-two feet, which provides a two foot clearance for the structure over and above the FEMA-proposed thirty-foot VE flood zone elevation.

ATTACHMENT 5
PETITION OF KATHLEEN STAVIS, TRUSTEE
RE: 48 FORT HILL AVENUE (MAP 137, LOT 47)

Evidence in Support of Grant of Special Permit

A. Standard to be Applied.

In accordance with section 1.10.2 of the Zoning Ordinance, a special permit may be granted by the Council for a height exception in excess of thirty-five if "the proposed use will be in harmony with the general purpose and intent of [the] ordinance, based upon the standards and requirements set forth in the applicable section of [the] ordinance." Here, the applicable section is section 3.1.6, which authorizes the council to issue a special permit for height in excess of thirty-five feet upon a determination that such increase in height is "consistent with neighborhood character and will not be substantially more detrimental to the neighborhood because of obstruction of views, overshadowing of other properties, impairment of utilities or other adverse impacts.

B. Reasons in Support of Grant of Special Permit

In applying the standards set forth above, the grant of a special permit in this situation for the purposes of allowing an average height of 38.85 is appropriate. As to the purposes of Zoning Ordinance in general, section 1.2.1 states, among other reasons, that the purpose of the City's Zoning Ordinance is to "promote health, safety, convenience, quality of life and welfare" of the City's inhabitants. Among the concerns stated in section 1.2.1 as they are germane to this petition are "safety from...flood... providing adequate air and light...to conservation of natural resources and prevention of... pollution to the environment."

Here, the Petitioners propose to site their home in the only location that will maximize elevation while at the same time not encroaching upon the wetland resources on site. This promotes the ordinance's purpose of conserving natural resources and protecting the environment. Also, allowance of the requested special permit will obviously promote the ordinances' purposes of providing safety from flooding for the petitioners.

Moreover, although the home proposed home is large and will be located within the rear yard setback area, it will be located on an approximately 278,000 square foot lot in a sparsely populated neighborhood. The size of the home and the large property are both consistent with the character of this Eastern Point neighborhood. The site plan shows that an existing house on a neighboring lot located closest to the proposed home is set further back from the ocean than the proposed house and is quite distant from it. Therefore, allowing the requested relief will not implicate "overshadowing" of any neighboring properties and will not affect "light and air." Also, as such it will not obstruct any views from this neighboring home. The proposed new structure also does not affect the view of any neighbors to the rear. This home will be separated from those neighbors by a large wetland and wooded area that largely shield this home from the view of those neighbors to the rear (on Drumhack Road).

Based on the foregoing, it is clear that the proposed 38.85 high structure is both “in harmony with the general purpose and intent of [the] ordinance” and not “substantially more detrimental to the neighborhood” than building within the thirty-foot height limit due to any “obstruction of views, overshadowing of other properties, impairment of utilities or other adverse impacts.” It is clear that this is a unique situation and that the granting of the requested special permit would be more in line with the intent and spirit of our Zoning Ordinance than a denial would be. Accordingly, the Petitioner respectfully requests that the City Council issue a special permit allowing Petitioners to construct their home at an elevation of 38.85 feet as located on the site plan and as shown on the elevation plans.



CITY CLERK
GLOUCESTER, MA
JUL 26 AM 11:03

CITY OF GLOUCESTER ZONING BOARD OF APPEALS

July 25, 2013

PETITIONER: KATHLEEN STAVIS, TRUSTEE of Fort Hill Avenue Realty Trust, 200 Sagamore Street, South Hamilton, Massachusetts.

LOCUS (hereafter, the "Site"): 48 FORT HILL AVENUE (Assessors Map 36, Lot 47)

RELIEF REQUESTED:

1. Special Permit to allow "Customary Accessory Use" (sleeping quarters) (Section 2.3.7 (use #21), of the Zoning Ordinance).
2. Variance to allow accessory structure to be closer to street than primary structure (Section 3.2.1 [note C] of the Zoning Ordinance).
3. Variance for minimum required distance from street for accessory structure (Section 3.2.1 of the Zoning Ordinance).

PURPOSE OF PETITION: to enable petitioner to construct a new single family home onsite and to use existing structure on Site for accessory sleeping quarters for guests.

HEARING DATE, TIME AND PLACE:

As advertised, July 11, 2013; 7:00 PM; Gloucester City Hall, Dale Avenue, Gloucester, Massachusetts.

BOARD MEMBERS PRESENT AND VOTING ON THE PETITION:

JAMES P. MOVALLI, CHAIRPERSON
 VIRGINIA BERGMANN, VICE CHAIRPERSON
 MICHAEL NIMON
 DAVID B. GARDNER
 LEONARD A. GYLLENHAAL

ZONING DISTRICT: RC-40 (Coastal Residential)

PETITIONER REPRESENTED BY: Salvatore J. Frontiero, Esq., 46 Middle Street, Gloucester

APPEARING IN SUPPORT OF THE PETITION: no one

APPEARING IN OPPOSITION TO THE PETITION: no one

RE: 48 Fort Hill Avenue, Gloucester, MA

**PLANS, ELEVATIONS, ETC. SUBMITTED IN SUPPORT OF THE PETITION
(COLLECTIVELY, THE "PROJECT PLANS"):**

Site plan entitled "Plan of Land for 48 Fort Hill Avenue, Gloucester, Massachusetts," dated June 13, 2013, by Mill River Consulting; and

Untitled plan with legend (excerpt from Assessor's Map) prepared by Petitioner's attorney identifying properties in Eastern Point neighborhood with multiple dwelling buildings and/or multiple accessory structures.

SITE VISIT PHOTOGRAPHS: Yes

PHOTOGRAPHS BY OTHERS: No

OTHER LETTERS, REPORTS, DOCUMENTS, ETC. SUBMITTED IN SUPPORT OF THE PROJECT: Petitioner submitted the following letters of support signed by the following people on the abutter's list: (1) Ken Weiss, 9 Drumhack Road, (2) John and Ann DeRaismes, 8 Drumhack Road, (3) Samuel and Betsy Holdsworth, 3 Drumhack Road and (4) Lila and Marcus Monell, 44 Fort Hill Avenue.

FACTUAL FINDINGS OF THE BOARD:

The Board carefully considered the evidence presented, including the Project Plans, the photographs, and written submissions, statements of the Petitioner's attorney letters in support. Based on the foregoing, the Board finds, as follows.

1. The Site consists of an approximately 278,000 square foot lot abutting the Atlantic Ocean and is improved with a small, residential structure made of granite that was formerly used as gatehouse ("the Gatehouse"). Wetlands occupy a large portion of the center of the lot for its entire width, thereby cutting off the ocean front portion of the lot from the inland portion. The Gatehouse is located on the ocean-front portion of the Site and toward the front of the lot near the end of Fort Hill Avenue. According to the Project Plans, the Gatehouse is located eighty-five (85) feet from the paved edge of Fort Hill Avenue and thirty-two (32) feet from Fort Hill Avenue as laid out "on paper." The Site previously contained a very large single family structure, an art studio and the Gatehouse. However, the single family structure, the art studio and a garage that was attached to the Gatehouse were destroyed by coastal storms in the 1970s (house and studio) and the early 1990s (garage attached to Gatehouse).

2. Petitioner purchased the Site in 2012 intending to build a large single family structure to the rear of the Gatehouse. Petitioner's Attorney stated that, due to the location of the wetlands and threat of coastal storm damage, this is the only area suitable for building a home on this otherwise large lot. The inland portion of the Site on the opposite side of the dividing wetlands will contain the new septic system. Attorney Frontiero further stated that the Petitioners wish to preserve the Gatehouse as guest sleeping quarters, as that structure is connected to the history of this Site and it is architecturally pleasing. They propose to use it strictly for family and friends in a "family compound" type of atmosphere. Petitioners currently live in South Hamilton. However, until their new home is complete, they will stay in the Gatehouse while visiting the Site.

3. Attorney Frontiero noted that the use of accessory structures for housing or sleeping quarters is common in the Eastern Point neighborhood. He presented a map of the area identifying twelve different properties in the neighborhood that contained either multiple dwelling structures, including art studios, bath houses and the like, and at least eight of which contained two or more

detached dwellings. Based on the foregoing, the Board found that the use of accessory structures for housing or sleeping quarters is a customary accessory use in the Eastern Point neighborhood and such accessory use fits in with the character of the area.

4. Furthermore, the Board found that, as it concerns the issuance of a special permit for use of an accessory structure for sleeping quarters, this Site is unique for the following reasons: (1) it contains nearly seven times the required 40,000 square-foot minimum lot size for this zone; Hence the proposed use is much less intensive density-wise than is otherwise allowable under the Zoning Ordinance; (2) the Gatehouse has existed for decades and has historically has been used for accessory housing on the Site; (3) the neighborhood is one the few in the city where it is customary to use accessory structures for this purpose; and (4) the proposed use of the Site for a primary residential structure with detached accessory sleeping quarters is less intense than the historic use of this Site, namely, three buildings used as a primary dwelling, accessory dwelling and art studio, respectively.

5. Despite the foregoing, the Board is mindful that conditions must be placed on any grant of a special permit for this use as a safeguard to ensure that the use does not become a second separate, detached primary dwelling structure. Those conditions are detailed below.

STANDARD TO BE APPLIED BY THE BOARD:

1. Special permit to allow accessory structure to be used for customary accessory use as sleeping quarters (Section 2.3.7 [Use #21] of the Zoning Ordinance)

Under Section 1.8.3 of the Zoning Ordinance, a special permit authorizing a use may be granted only upon a determination that the proposed use will be in harmony with the purposes and intent of the Zoning Ordinance and will not adversely affect the neighborhood, the zoning district or the city to such an extent as to outweigh the benefits of such use. In making this determination, Section 1.8.3 requires this Board to consider six factors: (1) the social, economic and community needs that will be served by the proposed use, (2) the effect on traffic flow and safety, (3) the adequacy of utilities and other public services, (4) the neighborhood character and social structure, (5) the effect of the use on the qualities of the natural environment and (6) the potential fiscal impact of the use.

2. Variances to allow accessory structure to be closer to street than primary structure (Section 3.2.1 [note C] of the Zoning Ordinance) and for minimum required distance from street for accessory structure (Section 3.2.1 of the Zoning Ordinance).

Pursuant to Section 1.7.2 of the Zoning Ordinance, in considering whether to grant a variance the Board must find that a literal enforcement of the provisions of the ordinance would involve a substantial hardship, financial or otherwise, to petitioners. Furthermore, the Board must make two additional findings:

A. that the hardship is owing to arises from circumstances relating to the soil conditions, shape, or topography of the land or structure(s) in question, which circumstances particularly affect such land or structure(s) but which do not generally affect the zoning district in which they are located, and

B. that the desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinance.

DECISION OF THE BOARD:

1. Special permit to allow accessory structure to be used for customary accessory use as sleeping quarters (Section 2.3.7 [Use #21] of the Zoning Ordinance)

The six factors to be considered when deciding whether to grant a use special permit, as delineated above, all weigh in favor of granting the special permit in the instant case. As to the first use factor, social, economic and community needs will be served by the proposed use. The Site has been in disrepair for decades, due to coastal storm destruction of the former residence and art studio on the site. The granting of this special permit will allow Petitioner to revitalize this Site. It will allow them to have family visit, while also maintaining privacy for both Petitioners and their children. Also, the Petitioner plans to improve the Site with the construction of a new single family home, thereby increasing its taxable value.

As to the second factor, effect on traffic flow and safety, access to the Site will be through a common driveway, meaning there will be only one curb cut, and will not impact traffic flow or safety. The Site is located at the end of a rural road and the accessory use will not cause any appreciable increase in traffic. The proposed does not increase the number of visitors to the Site. It simply allows those who would otherwise visit to stay in a separate building.

As to the third factor, adequacy of utilities and other public services, the planned improvements will result in one additional residential building being added to the area (the new primary structure). This is less than what historically existed on this site. Also, both the primary and the accessory structures will be served by municipal water and private septic systems. Moreover, the area is served by underground electric cables. Lastly, as stated above, it will not result in an increase in the number of people living at or visiting the Site. Therefore, there will be no appreciable impact on utilities or other public services.

Regarding neighborhood character and social structure, the Eastern Point neighborhood at issue consists of high-end type homes. This Site has been in dilapidated condition for quite some time. The construction of the new home and the refurbishing of the existing Gatehouse will allow the Site to be improved in a manner consistent with the neighborhood character. Moreover, as explained above, there are several properties in the area that contain more than one detached structure used for dwelling or guest house purposes in a "family compound" type setting. Also, the owners of five properties on the abutters list submitted letters in support of the petition. Therefore, the proposed accessory use is in harmony with the neighborhood character and social structure.

The proposed use satisfies the last two special permit factors as well. Relative to the effect on the qualities of the natural environment, the Site contains a vast amount of wetlands and the proposed construction avoids these areas and minimizes disturbance. In fact, the allowance of the special permit helps ensure that the Gatehouse will not be torn down, thereby further minimizing the impact on the environment. In addition, the proposed dwelling and the Gatehouse are both located further landward than the former residence that was destroyed by a coastal storm. Lastly, the potential fiscal impact of the proposed use can only be viewed as a positive. As stated, the Site will be improved, thereby increasing its value for the purposes of real estate tax assessment by the City of Gloucester. Also, the Gatehouse will be renovated and a new home will be constructed. This will result in permitting fees for the city and construction work for local contractors.

Based on the above reasons, the Board finds that the proposed use of the Gatehouse for guest sleeping quarters will be in harmony with the purposes and intent of the Zoning Ordinance and will not adversely affect the neighborhood, the zoning district or the city to such an extent as to outweigh the benefits of such use.

BASED ON THESE FINDINGS, AND SUBJECT TO SPECIAL CONDITIONS SET FORTH BELOW, THE BOARD GRANTS PETITIONER A SPECIAL PERMIT TO USE THE ACCESSORY STRUCTURE FOR THE CUSTOMARY ACCESSORY USE OF GUEST SLEEPING QUARTERS.

2. Variances to allow accessory structure to be closer to street than primary structure (Section 3.2.1 [note C] of the Zoning Ordinance) and for minimum required distance from street for accessory structure (Section 3.2.1 of the Zoning Ordinance).

Based on Petitioner's Attorney's testimony, the Project Plans, the photographs submitted, its visit to the Site, and the factual findings set forth above, the Board finds that literal enforcement of the applicable provisions of the zoning ordinance would involve substantial hardship to Petitioners in that the Site is limited by both the effects of ocean storms and by the vast amount of wetlands on the inland portions of the site. Accordingly, even though the Site is quite large, the useable areas are limited when considering both the siting of a substantial home befitting of this neighborhood and locating of a large capacity septic system as well. Moreover, Gatehouse, a stone building, would as a practical matter be extremely expensive to move and doing so would disturb this otherwise sensitive site more than is needed. The Gatehouse is located near the road. Based on its location and other site factors, the only practical area to build a home would be behind the Gatehouse and hence further distant from the road than the accessory structure.

These characteristics present hardships owing to circumstances relating to the soil conditions, shape, or topography of the Site. The conditions make complying with both the requirement that the Gatehouse not be located closer to the street than the primary structure and the requirement that the Gatehouse be located no closer than forty (40) feet from the street extremely difficult and impractical. Moreover, it is worthy of note that the variance for minimum distance from the street is more technical than practical in nature. As stated, the Gatehouse is located eighty-five (85) feet from the paved edge of Fort Hill Avenue but thirty-two (32) feet from Fort Hill Avenue as laid out "on paper." As the Site is located at the end of this dead end street, as a practical matter Fort Hill Avenue will likely never be widened to its maximum allowable width.

Moreover, the hardship conditions explained above are unique and particularly affect the Site but do not generally affect the zoning district in which the Site is located. There are few sites if any that pose the unique challenges resulting from a combination of wetlands, coastal storms and location of existing structures. Lastly, as set forth above in the special permit analysis, the requested variances may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinance. Indeed, the variances merely allow the status quo, namely, preserving this building where it stands.

SUBJECT TO THE SPECIAL CONDITIONS SET FORTH BELOW, WE HEREBY GRANT PETITIONER A VARIANCE TO ALLOW THE GATEHOUSE TO BE CLOSER TO THE STREET THAN THE PROPOSED PRIMARY STRUCTURE.

SUBJECT TO THE SPECIAL CONDITIONS SET FORTH BELOW, THE BOARD HEREBY GRANTS THE FOLLOWING DIMENSIONAL RELIEF TO ALLOW THE GATEHOUSE TO BE LOCATED CLOSER TO THE STREET THAN IS ALLOWED BY OUR ZONING ORDINANCE:

DIMENSIONAL REQUIREMENT	REQUIRED	PROPOSED	VARIANCE
Min distance from street for accessory structure	40'	32.1' +/-*	7.9' +/-*

* Based on width of street as laid out by plan. Distance to edge of existing pavement is eighty five (85) feet.

SPECIAL CONDITIONS PERTAINING TO GRANT OF SPECIAL PERMIT ONLY.

The special permit granted above for use of the Gatehouse for sleeping quarters is based on the following special permit conditions. Failure to comply with these conditions shall result in automatic revocation of the special permit.

1. The Gatehouse's use as sleeping quarters shall be used for social guests only and shall at no time be rented out for value. All use shall be gratuitous.
2. The Gatehouse shall at all times remain in common ownership with any proposed primary dwelling building. Accordingly, the Gatehouse may not be severed from the primary dwelling structure in any way, including by dividing the Site into two or more parcels or converting the Site to condominium ownership.
3. The use of the Gatehouse shall at all times remain "accessory" and shall not be converted to use as a separate detached dwelling unit. Accordingly, the accessory structure may contain sleeping, living and bathroom facilities, but may not contain a stove or any kitchen facilities.
4. The use of the Gatehouse as accessory sleeping quarters shall be allowed only upon the issuance of a certificate of occupancy for the proposed primary dwelling structure. Until such time, the Gatehouse may continue to be used as a primary dwelling. Any modifications to the Gatehouse necessary to comply with condition #3 above shall be completed before a certificate of occupancy issues for the new proposed primary dwelling building.

SPECIAL CONDITIONS PERTAINING TO ALL RELIEF GRANTED:

1. All work authorized by this decision shall be in accordance with the above-referenced Project Plans, which have been stamped and endorsed by the Board Chairman and which are the sole plans of record in this matter. Any unauthorized deviation from the Project Plans shall result in automatic revocation of this special permit and variance, and shall subject petitioner to all available remedies at law.
2. This decision shall not take effect until notice thereof is filed in the Registry of Deeds of Essex County. The fee for filing such notice shall be paid by petitioner. Prior to filing this decision with the Registry of Deeds, petitioner shall have the Seal of the City affixed to same.

VOTE OF THE BOARD

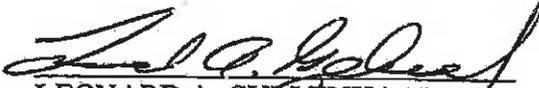
In favor:


JAMES P. MOVALLI, CHAIRMAN


VIRGINIA BERGMANN, VICE CHAIR


MICHAEL C. NIMON


DAVID B. GARNER


LEONARD A. GYLLENHAAL

Opposed: NONE

The within vote is in accordance with the plans submitted and approved by the Board on July 11, 2013. The petitioner must construct according to those plans. This decision is granted in accordance with the Zoning Ordinance of June 1, 2002.



City of Gloucester
Office of the City Clerk
9 Dale Avenue
Gloucester, Massachusetts 01930

Office (978) 281-9720 Fax (978) 282-3051

Attachment to Board of Appeals

Kathleen Stavis
Trustee of Fort Hill Avenue Realty Trust
200 Sagamore Street
South Hamilton, Massachusetts

Map 136, Lot 47 Locus (if different from above): 48 Fort Hill Avenue

Addendum to the above:

I, Linda T. Lowe, City Clerk for the City of Gloucester, hereby certify that this decision is a true and accurate copy of the original decision, which decision is filed in the City Clerk's Office, and that 20 days has elapsed since the filing of such decision, and I further certify that no notice of appeal concerning this decision has been filed in said office.

Linda T. Lowe, City Clerk

Date: August 23, 2013

Seal:



City of Gloucester Abutters Report

Abutters to Parcel: Map-Lot-Unit 136-47

Please be aware that this abutters list reflects mailing addresses for the real estate tax bills as requested by the property owners. Mortgage companies, banks, and other financial institutions may be receiving the notification and not the homeowner as required. Please be sure you are complying with notification requirements.
Gloucester Board of Assessors.

This list of owners of record as shown on the most recent tax list of the City of Gloucester has been prepared for the purposes of notifying abutters as required by the City's Zoning Board of Appeals or City Council and it reflects the abutters to the Parcel known as Map 136 Lot 47 as further shown on the attached map dated 2/19/2014.

ABUTTER	STREET ADDRESS	PARCEL NO	TAX BILL ADDRESS
136-39 SCHOEMAN ROY H	14 PRENTISS RD	136-39	SCHOEMAN ROY H 14 PRENTISS RD GLOUCESTER, MA 01930
137-32 SCOGNAMIGLIO MICHAEL & OLSON JANET L	18 ROUSE RD	137-32	SCOGNAMIGLIO MICHAEL & OLSON JANET L 162 E ALLENDALE RD SADDLE RIVER, NJ 07458
136-69 DRUMHACK PLAYHOUSE GROUP LLC	3 DRUMHACK RD	136-69	DRUMHACK PLAYHOUSE GROUP LLC 19R WALKER RD GLOUCESTER, MA 01930
136-68 HOLDSWORTH SAMUEL S	5 DRUMHACK RD	136-68	HOLDSWORTH SAMUEL S 130 LEAPING POWDER RD SANTA FE, NM 87508
136-58 DE RAISMES JOHN F & ANN M	8 DRUMHACK RD	136-58	DE RAISMES JOHN F & ANN M 8 DRUMHACK RD GLOUCESTER, MA 01930
137-26 MASS AUDUBON SOCIETY	41 FORT HILL AV	137-26	MASS AUDUBON SOCIETY 208 SOUTH GREAT RD LINCOLN, MA 01773
136-42 SEUS JOHN D & MOONEY-SEUS M L	42 FORT HILL AV	136-42	SEUS JOHN D & MOONEY-SEUS M L 42 FORT HILL AV GLOUCESTER, MA 01930
136-44 MONELL DONALD CAPE ANN SAVING BANK TR DEPT	44 FORT HILL AV	136-44	MONELL DONALD CAPE ANN SAVING BANK TR DEPT 109 MAIN ST GLOUCESTER, MA 01930
137-28 BROWN L A JR EST OF BROWN DOROTHY ADDAMS	45 FORT HILL AV	137-28	BROWN L A JR EST OF BROWN DOROTHY ADDAMS 45 FORT HILL AV GLOUCESTER, MA 01930 0000
136-47 STAVIS KATHLEEN G TR FORT HILL AVENUE REALTY TRUST	48 FORT HILL AV	136-47	STAVIS KATHLEEN G TR FORT HILL AVENUE REALTY TRUST 200 SAGAMORE ST HAMILTON, MA 01862



City of Gloucester Abutters Report

Abutters to Parcel: Map-Lot-Unit 136-47

Please be aware that the abutters list reflects mailing address for the real estate tax bills as requested by the property owners. Mortgage companies, banks and other financial institutions may be receiving the notification and not the homeowner as required. Please be sure you are complying with notification requirements.
Gloucester Board of Assessors

This list of owners of record as shown on the most recent tax list of the City of Gloucester has been prepared for the purposes of notifying abutters as required by the City's Zoning Board of Appeals or City Council and it reflects the abutters to the Parcel known as Map 136 Lot 47 as further shown on the attached map dated 2/19/2014.

ABUTTER

STREET ADDRESS

PARCEL NO.

TAX BILL ADDRESS

I hereby certify that the above identifies the assessed owner of record and the mailing information for the parcel listed, as shown on the most recent tax list of the City of Gloucester Massachusetts.

Signed,

Madonna Jimmy

Name:

Principal Clerk

Title:

4/19/14

Date:

Authorized Representative of the City of Gloucester Assessors' Office, City Hall, 9 Dale Avenue, Gloucester, MA 01930



City of Gloucester Abutters Report

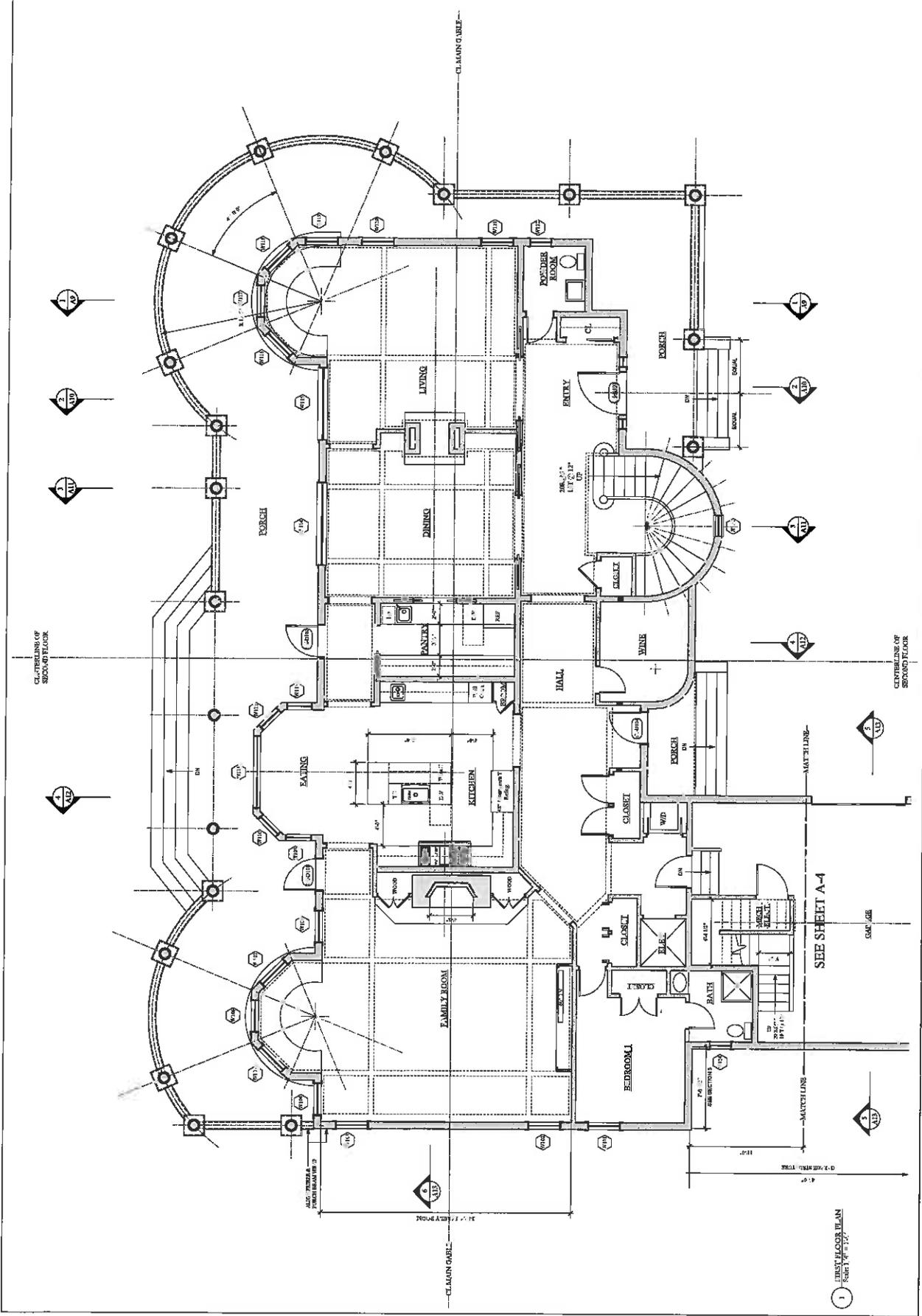
Abutters to Parcel: Map-Lot-Unit 136-47

Please be aware that the abutters list reflects mailing addresses for the real estate tax bills as requested by the property owners. Mortgage companies, banks, and other financial institutions may be receiving the notification, and not the homeowner as required. Please be sure you are complying with notification requirements.

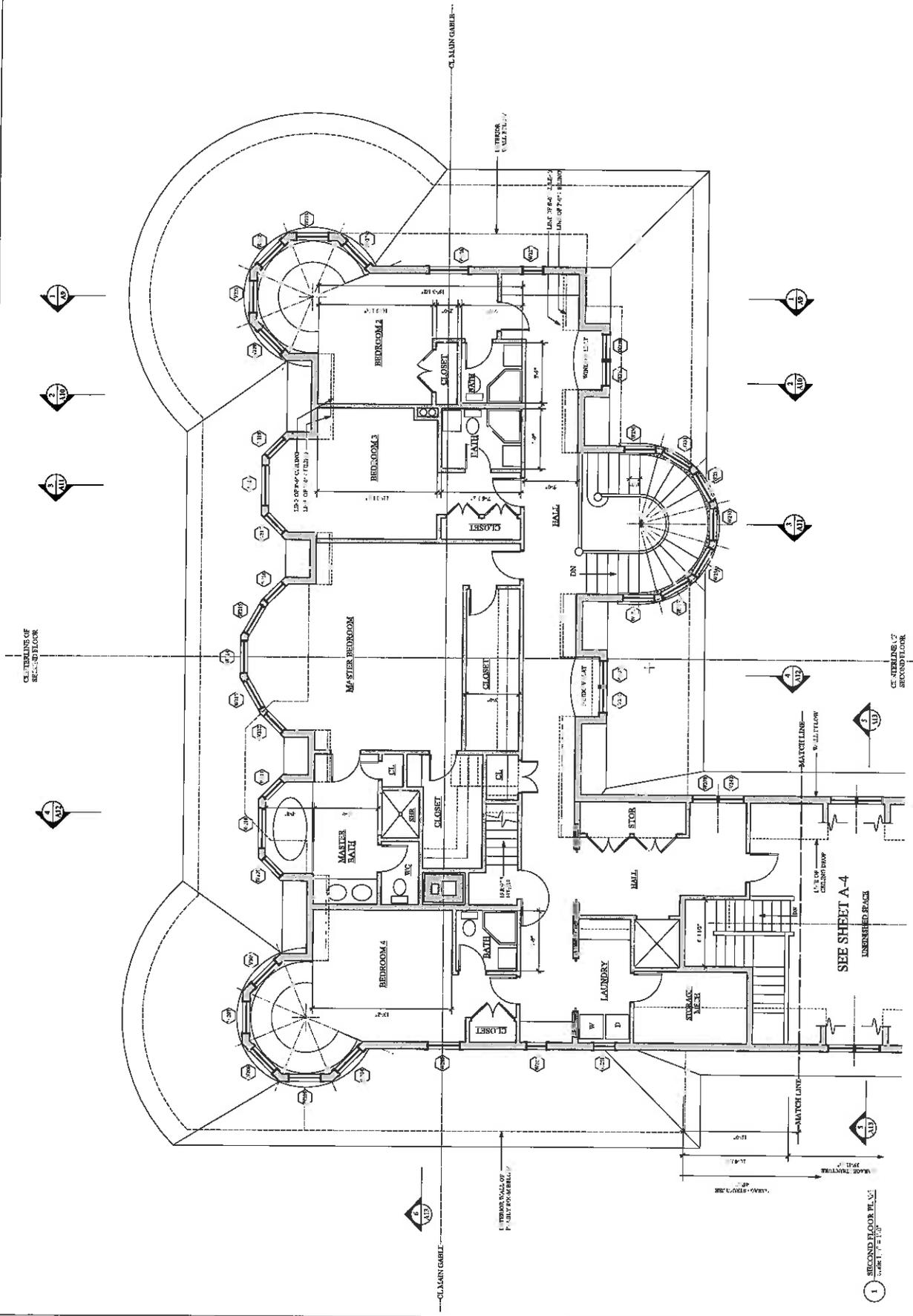
Gloucester Board of Assessors

This list of owners of record as shown on the most recent tax list of the City of Gloucester has been prepared for the purposes of notifying abutters as required by the City's Zoning Board of Appeals or City Council and it reflects the abutters to the Parcel known as Map 136 Lot 47 as further shown on the attached map dated 2/19/2014.





1 FIRST FLOOR PLAN
Scale: 1/8" = 1'-0"

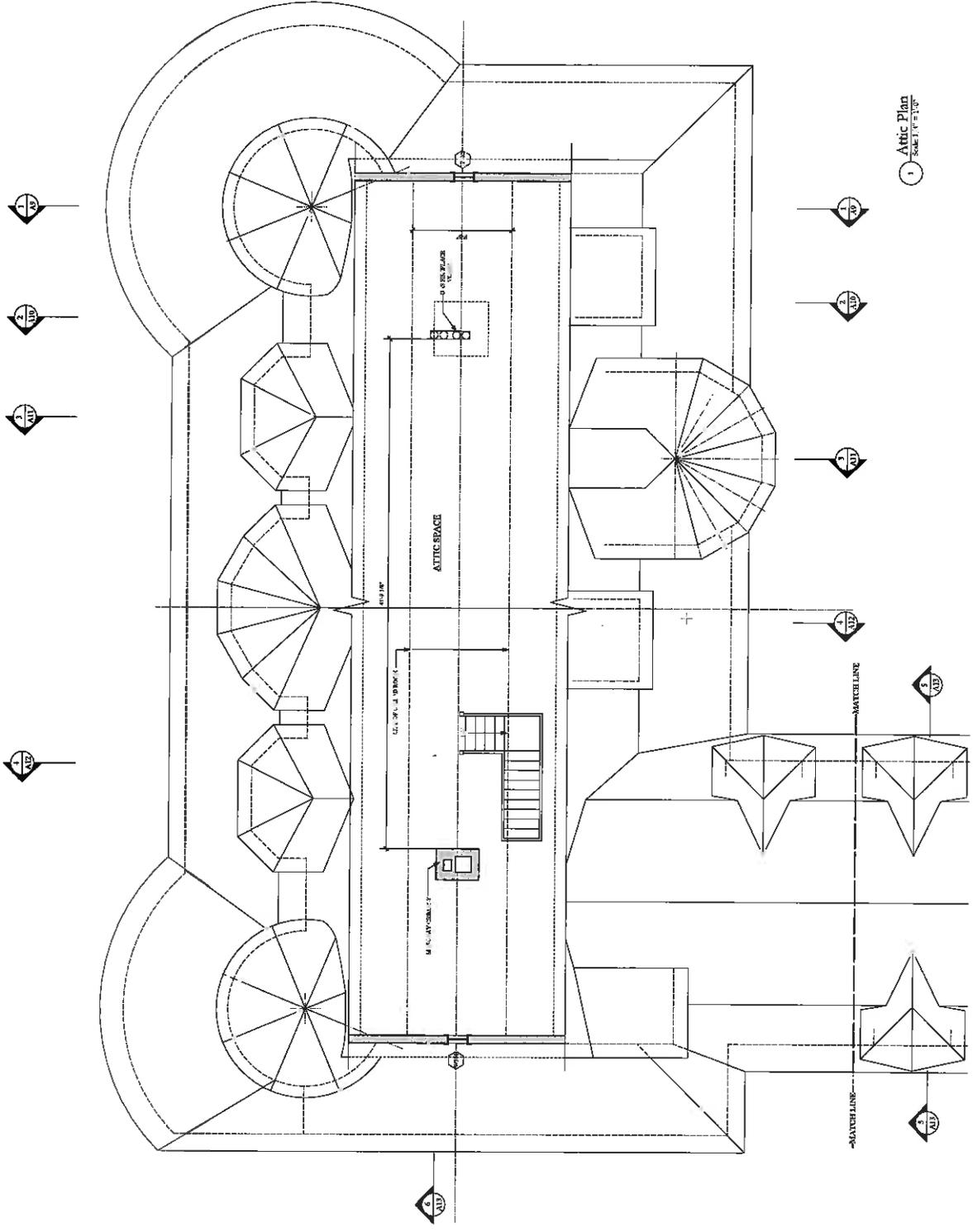


CENTELINE OF SECOND FLOOR

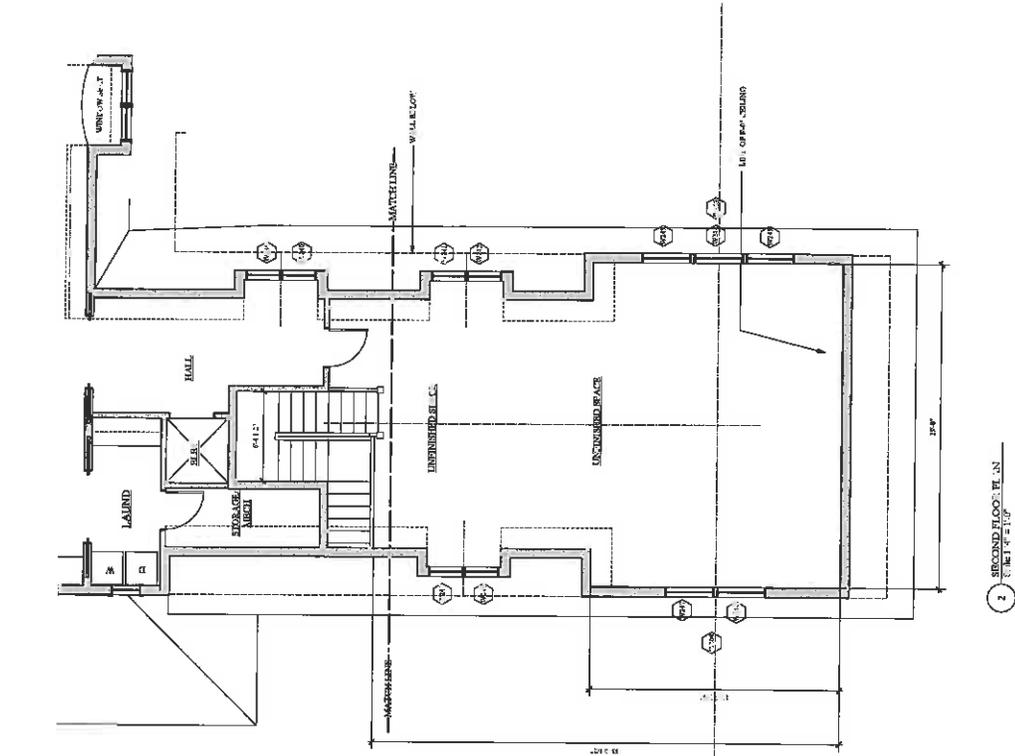
CENTELINE OF SECOND FLOOR

SEE SHEET A-4
UNFINISHED SPACE

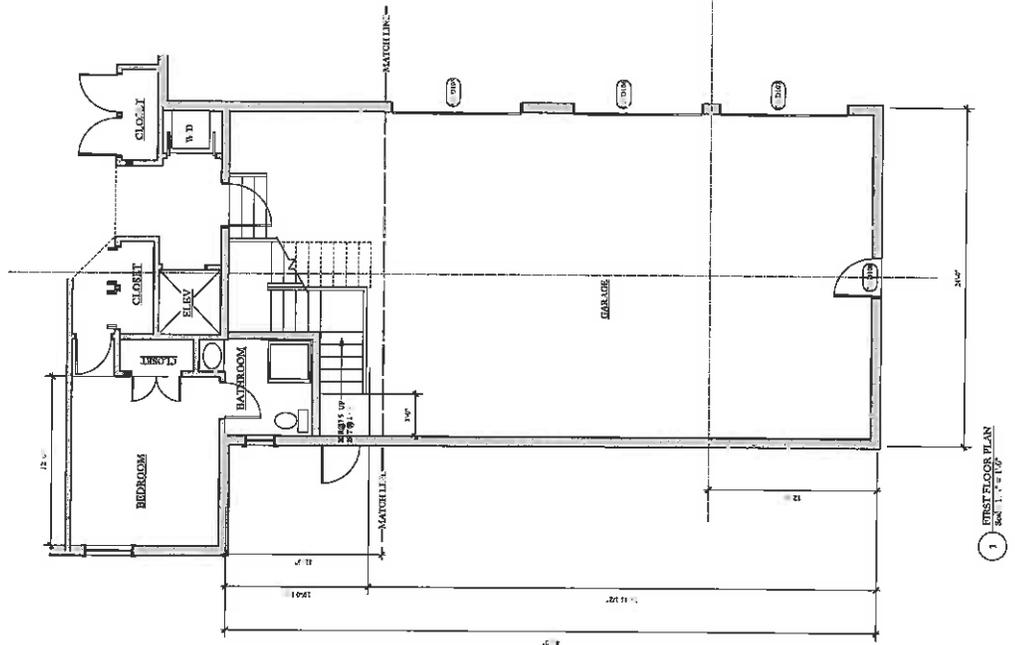
1 SECOND FLOOR PLAN
SCALE 1/4" = 1'-0"



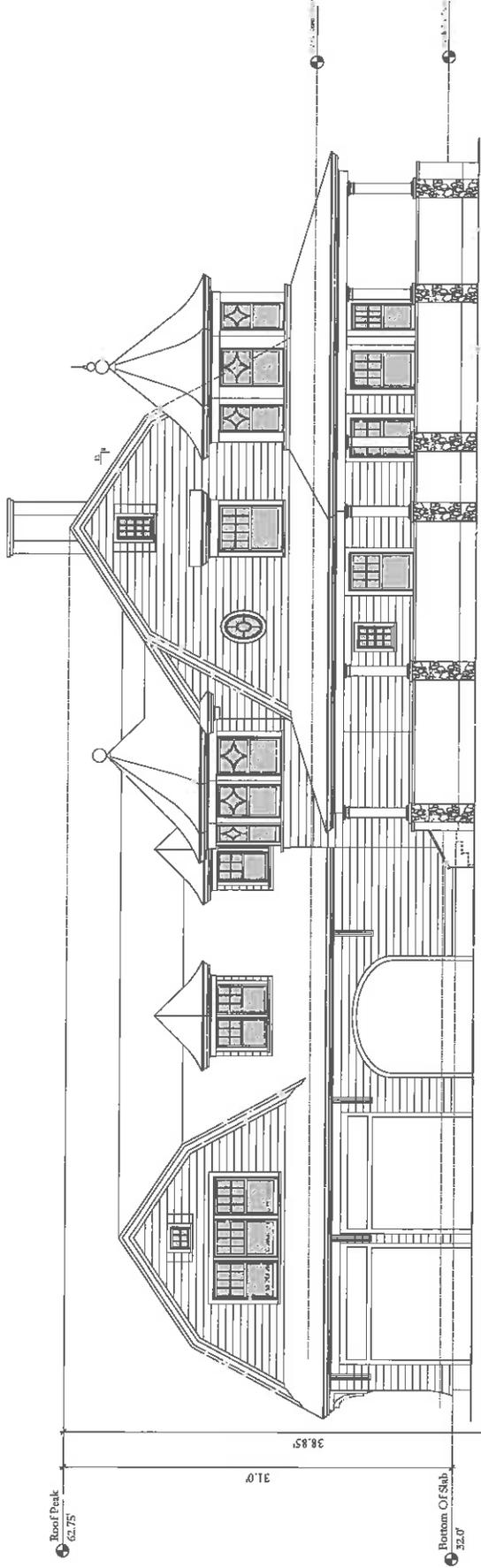
1 Attic Plan
Scale: 1/4" = 1'-0"



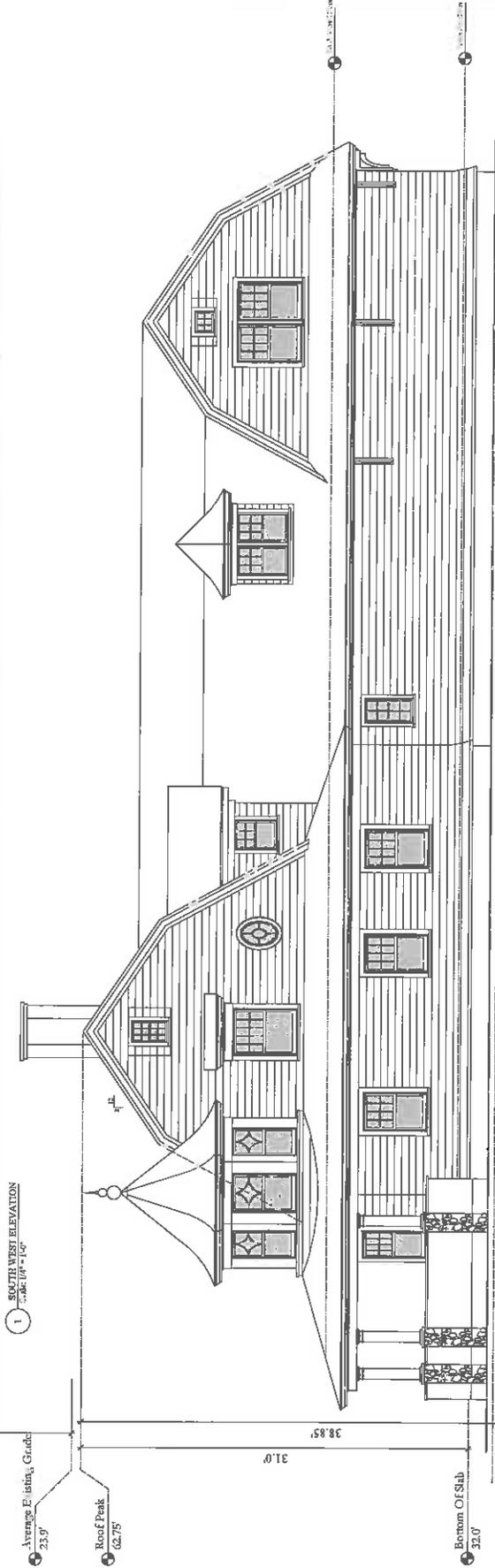
2 SECOND FLOOR PLAN
SEE SET # 110



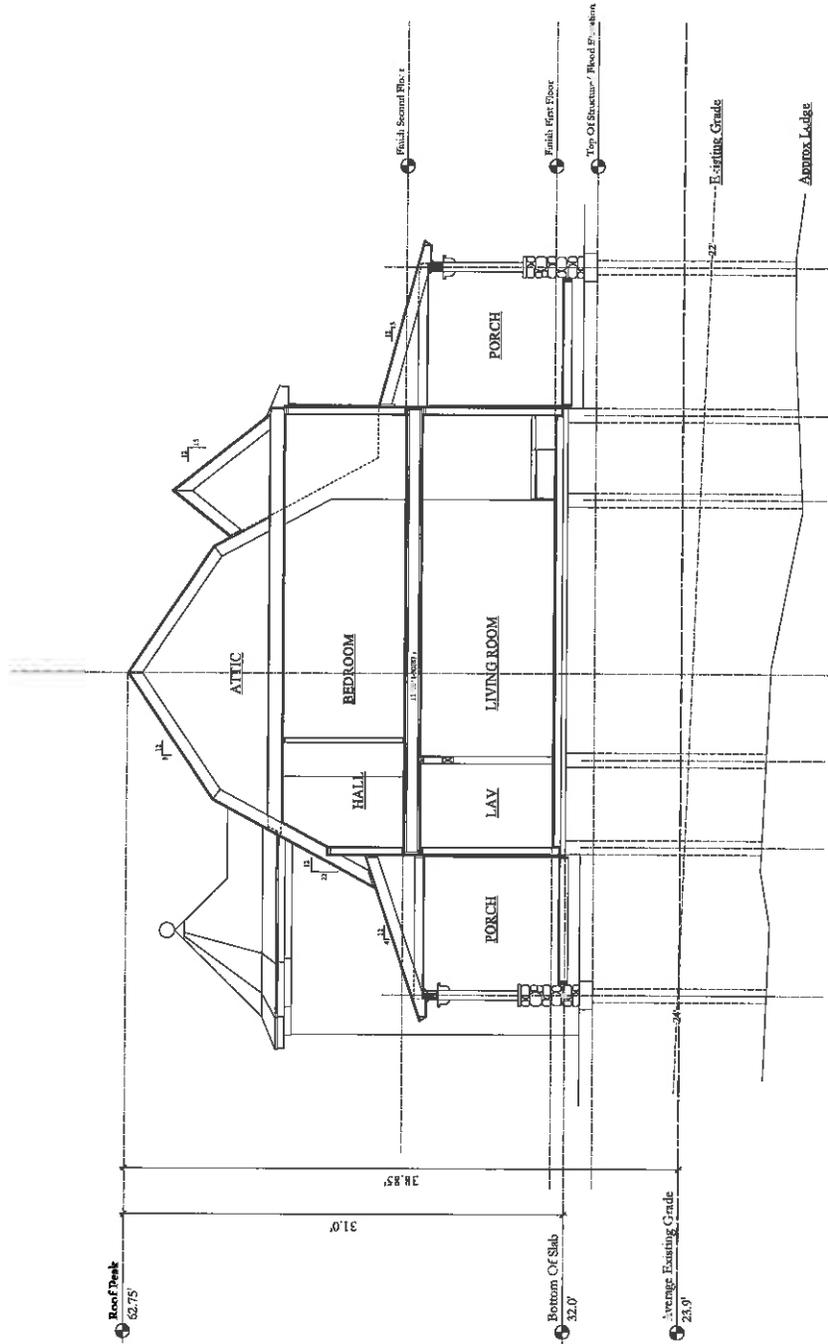
1 FIRST FLOOR PLAN
SEE SET # 110



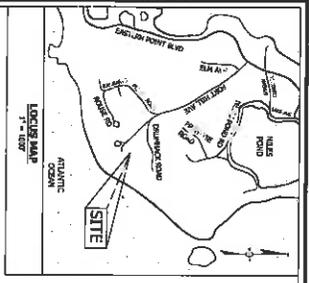
1 SOUTH WEST ELEVATION
Scale: 1/4" = 1'-0"



2 NORTH EAST ELEVATION
Scale: 1/4" = 1'-0"



SECTION 1
1/8" = 1'-0"



Annotations
Map 136, Lot 47

Zoning
Zoned R-1 (Residential Single-Family) District

Proposed Structure
Proposed 2.5 story, 200 sq. ft. structure

Local Addressing
1. Court St. at 5256 ft, Page 439
2. Fort Hill Ave. at 295 ft, Page 52
3. South Hamilton, MA 01982

Notes
1. Plan was developed by an on the ground survey conducted by Mill River Consulting

Dimensional Requirements - Principal Use

Requirement	Required	Proposed
Minimum lot area (sq. ft.)	40,000 S.F.	236,986 S.F. (1)
Minimum front setback (ft.)	10'	25'
Minimum side setback (ft.)	10'	15'
Minimum rear setback (ft.)	10'	25'
Minimum height (ft.)	30'	25'
Maximum building area (sq. ft.)	30'	236,986 S.F. (1)

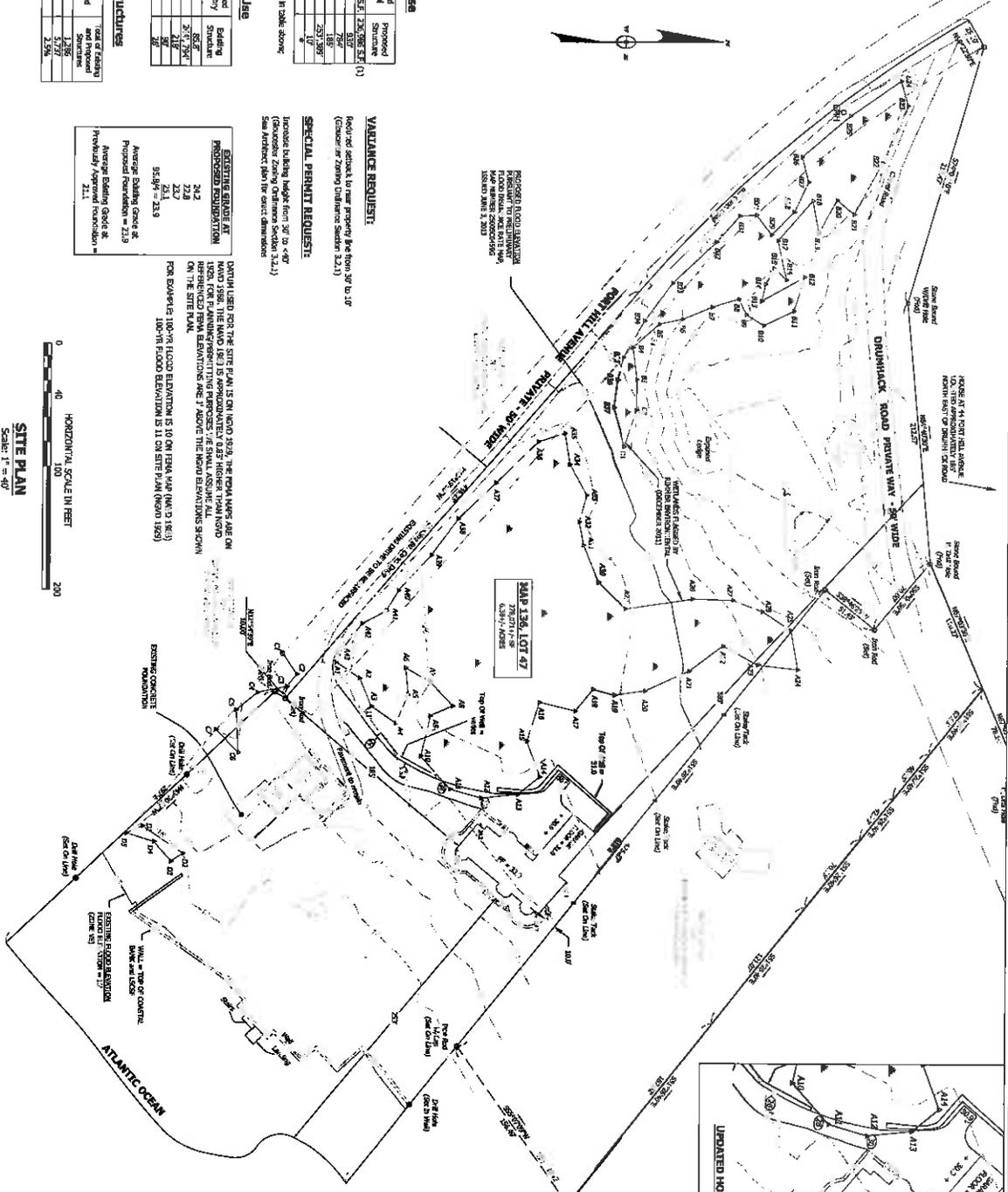
(1) Lot area per proposed zoning ordinance definition is as shown in table above.
(*) Per Architect's plan

Dimensional Requirements - Accessory Use

Requirement	Required	Proposed
Minimum distance from street	10'	15'
Minimum distance from other structures	10'	15'
Minimum distance from rear lot lines	10'	15'
Minimum distance from side lot lines	10'	15'
Minimum distance from front lot lines	10'	15'
Maximum height (ft.)	20'	25'
Maximum building area (sq. ft.)	20'	25'

Maximum Lot Coverage - Total of All Structures

Zoning District	Required	Proposed
Zoning District R-1 - Coastal Residential	25%	25%
Total area of existing structures (sq. ft.)	1,236	1,236
Lot area coverage (%) by structure	25%	25%



VARIANCE REQUEST:

Reduce rear setback from 25' to 15' (Corner or existing distance under 22.1)

SPECIAL PERMIT REQUEST:

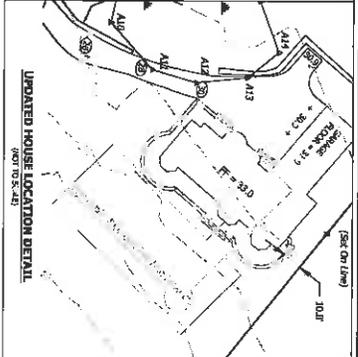
Increase building height from 30' to 40' (Proposed zoning Ordinance Section 3.2.1) See Architect's plan for exact dimensions

EXISTING ELEVATION AT PROPOSED FOUNDATION

24.2
22.7
24.1
23.3

Average Building Grade at Proposed Foundation = 23.9
Previously Approved Foundation = 21.1

DEPTH USED FOR THE SITE PLAN IS ON MAP 136, THE TYPICAL MAPS ARE ON MAP 136B. THE HAWK IS APPROXIMATELY 0.85' HIGHER THAN HAWK DEPTH. THE HAWK IS APPROXIMATELY 0.85' HIGHER THAN HAWK DEPTH. THE HAWK IS APPROXIMATELY 0.85' HIGHER THAN HAWK DEPTH. THE HAWK IS APPROXIMATELY 0.85' HIGHER THAN HAWK DEPTH.



Mill River Consulting
6 Sargent Street, Gloucester, Massachusetts
Phone: 978-282-0014 Fax: 978-282-1318
www.millriverconsulting.com

Plan of Land for
48 Fort Hill Avenue, Gloucester, Massachusetts
Map 136 Lot 47
November 19, 2013

Prepared For:
Fort Hill Avenue Realty Trust,
200 Sargent Street,
South Hamilton, MA 01982

DATE: _____

REVISION: _____

Mill River Consulting
Professional Engineer
No. 10000
State of Massachusetts
No. 10000

CITY OF GLOUCESTER ZONING BOARD OF APPEALS

January 9, 2014

PETITIONER: KATHLEEN STAVIS, TRUSTEE of Fort Hill Avenue Realty Trust, 200 Sagamore Street, South Hamilton, Massachusetts.

LOCUS (hereafter, the "Site"): 48 FORT HILL AVENUE (Assessors Map 36, Lot 47)

RELIEF REQUESTED:

1. Variance for rear yard setback (Section 3.2.1 of the Zoning Ordinance).
2. Special Permit to alter/expand nonconforming structure (Section 2.4.3 of the Zoning Ord.)

PURPOSE OF PETITION: to enable petitioner to construct a new single family home onsite.

HEARING DATE, TIME AND PLACE:

As advertised, January 9, 2014; 7:00 PM; Gloucester City Hall, Dale Avenue, Gloucester, Massachusetts.

BOARD MEMBERS PRESENT AND VOTING ON THE PETITION:

JAMES P. MOVALLI, CHAIRPERSON
VIRGINIA BERGMANN, VICE CHAIRPERSON
MICHAEL NIMON
FRANCIS S. WRIGHT, JR.
DAVID B. GARDNER

ZONING DISTRICT: RC-40 (Coastal Residential)

PETITIONER REPRESENTED BY: Salvatore J. Frontiero, Esq., 46 Middle Street, Gloucester (Attorney Meredith Fine, 38 Pleasant Street, Gloucester standing in for Attorney Frontiero at hearing)

APPEARING IN SUPPORT OF THE PETITION: No one.

APPEARING IN OPPOSITION TO THE PETITION: No one.

**PLANS, ELEVATIONS, ETC. SUBMITTED IN SUPPORT OF THE PETITION
(COLLECTIVELY, THE "PROJECT PLANS"):**

Site plan entitled "Plan of Land for 48 Fort Hill Avenue, Gloucester, Massachusetts," dated November 19, 2013, by Mill River Consulting; and

Elevation Plans entitled "Stavis Residence, 48 Fort Hill Avenue, Gloucester, MA," dated November 14, 2013, by Castle Del Rio Architects.

SITE VISIT PHOTOGRAPHS: None.

PHOTOGRAPHS BY OTHERS: None.

OTHER LETTERS, REPORTS, DOCUMENTS, ETC. SUBMITTED IN SUPPORT OF THE PROJECT: None.

FACTUAL FINDINGS OF THE BOARD:

The Board carefully considered the evidence presented, including the Project Plans and written submissions and statements of the Petitioner's attorney. Based on the foregoing, the Board finds, as follows.

1. The Site consists of an approximately 278,000 square foot lot abutting the Atlantic Ocean and is improved with a small, residential structure that was formerly used as gatehouse. Wetlands occupy a large portion of the center of the lot for its entire width, thereby cutting off the ocean front portion of the lot from the inland portion. The Site previously contained a very large single family structure, an art studio and the gatehouse. However, the single family structure, the art studio and a garage that was attached to the gatehouse were destroyed by coastal storms in the 1970s (house and studio) and the early 1990s (garage attached to gatehouse).

2. Petitioner purchased the Site in 2012 intending to build a large single family structure to the rear of the gatehouse. As a result of this desire, earlier this year Petitioner obtained relief from this Board for the purposes of enabling Petitioner to keep the accessory structure (gatehouse) and build a new structure. On July 25, 2013, this Board rendered a decision granting Petitioner (1) a special permit for customary accessory use (sleeping quarters) for the gatehouse, (2) a variance to allow the accessory structure to be closer to the street than the primary structure and (3) a variance for minimum required distance from street for accessory structure. Although the siting of the primary structure was not technically part of the relief granted in that matter, the proposed location of the primary structure was shown on the plans submitted with that earlier petition and approved by this Board. Therefore, it can be said that the Board at least implicitly granted its relief conditioned upon the house being built at the location shown on the approved plans.

3. Both the accessory structure and the proposed primary structure are presently located (or are to be located) well above the present flood elevation "VE," applicable to coastal flooding. The perimeter of zone VE is presently located at sixteen feet above sea level and runs along an existing seawall that was previously constructed at the zone VE line. However, subsequent to the zoning relief granted by this Board as described above, FEMA made public a proposed shifting of zone VE to an elevation of thirty feet above sea level. This proposed change would result in the majority of this large site being located within this flood zone, including both the accessory and proposed primary structures.

4. As stated, the Site has challenges in that there is a large wetland located in the middle of the lot that essentially cuts off the upland portion of this lot from the ocean front portion. Moreover, the upland portion of the lot is where the approved septic system is to be constructed. Therefore, as far as building envelope, Petitioners are left with a small portion of the Site on the southeasterly side between the large wetland area and the ocean.

5. In order to gain the maximum distance from the ocean and maximum elevation, Petitioners propose to shift the site of their proposed home northeasterly as shown on the "updated

house location detail" on Site plan. This shift would change the average grade at foundation from 21.1 feet to 23.9 feet. According to Petitioner, this change is significant as it pertains to the dissipation of wave velocity and the like. However, in order to achieve this elevation change while also ensuring that the structure itself does not encroach upon the wetland, it is necessary to encroach twenty feet into the thirty-foot rear setback applicable to the Site as it pertains to an unenclosed porch and fifteen feet into the setback as it concerns the main structure. This results in the need for a rear yard setback variance.

6. The property abutting the Site to the rear (the property most affected by the new house location) contains a single family home that is located much farther landward than the site of the proposed structure.

STANDARD TO BE APPLIED BY THE BOARD:

1. Variance for rear yard setback (Section 3.2.1 of the Zoning Ordinance).

Pursuant to Section 1.7.2 of the Zoning Ordinance, in considering whether to grant a variance the Board must find that a literal enforcement of the provisions of the ordinance would involve a substantial hardship, financial or otherwise, to petitioners. Furthermore, the Board must make two additional findings:

A. that the hardship is owing to arises from circumstances relating to the soil conditions, shape, or topography of the land or structure(s) in question, which circumstances particularly affect such land or structure(s) but which do not generally affect the zoning district in which they are located, and

B. that the desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinance.

2. Special Permit to Alter/Expand Nonconforming Structure (Section 2.4.3 of the Zoning Ordinance).

Pursuant to Sections 2.4.3 and 2.3.4 of the Zoning Ordinance, in considering whether to grant a special permit to alter or expand a non-conforming one or two-family dwelling, the Board must make two findings. First, the Board must determine whether the proposed alteration or expansion increases the nonconforming nature of the structure. If it does not, then no special permit is required and the Building Inspector may issue the necessary permits without further action of the Board. If the proposed alteration or expansion does increase the nonconforming nature of the structure, the Board may issue a Special Permit only if it finds, upon consideration of all the evidence, that the proposed structure will not be substantially more detrimental to the neighborhood than the existing structure.

DECISION OF THE BOARD:

1. Variance for rear yard setback (Section 3.2.1 of the Zoning Ordinance).

Based on the foregoing facts, it is clear that enforcement of the rear yard setback requirement would result a substantial hardship because the home would be at a much greater risk for coastal flood damage. Moreover, such a hardship exists in the present situation due to the soil conditions, shape and topography of the Site. The lot contains an unusually large amount of wetlands, leaving little room for a building envelope, especially when coupled with the need to site a septic system.

Moreover, it is the low elevation of this Site and its gradual, sloping topography that subjects it to coastal flooding risks, thereby making building too close to the ocean impractical. These circumstances are unique to this Site and do not generally affect this zoning district. Moreover, the desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinance. The Site is located in a sparsely populated area and, because the house on the neighboring property is located further inland than proposed structure on this Site, no crowding, privacy or shading concerns are raised by the granting of the within relief.

BASED ON THESE FINDINGS, AND SUBJECT TO SPECIAL CONDITIONS SET FORTH BELOW, THE BOARD GRANTS PETITIONER A VARIANCE FOR REAR YARD SETBACK AS FOLLOWS:

DIMENSIONAL REQUIREMENT	REQUIRED	PROPOSED	VARIANCE
For structure:	30'	15' +/-	15' +/-
For porch*	27'	10' +/-	17 +/-

* unenclosed decks and porches are allowed to encroach three feet into setback and are proposed to be located within ten feet of the lot line.

2. Special Permit to Alter/Expand Nonconforming structure (Section 2.4.3 of the Zoning Ord).

Petitioner submits that as this property is already "legally nonconforming" as a result of the granting of the earlier zoning relief as described above. Therefore, according to Petitioner, a question arises as to whether a special permit to alter/expand a nonconforming structure may be necessary in the present situation. Therefore, Petitioner requests such a special permit as "an abundance of caution." As this relief has been requested by Petitioner, the Board will decide this request under the assumption that a special permit is necessary and this Board need not address the necessity of a special permit in a situation such as the one before it.

First, the proposed relocation of the primary residence does increase the nonconforming nature of the Site, because the house location as previously approved complied in all respects with the dimensional requirements of the Zoning Ordinance. However, for the reasons set forth as relied upon in granting the variance request, the Board finds that this change is minimal and the proposed re-located structure will not be substantially more detrimental to the neighborhood than the structure as previously proposed.

SUBJECT TO THE SPECIAL CONDITIONS SET FORTH BELOW, WE HEREBY GRANT PETITIONER A SPECIAL PERMIT TO ALTER/EXPAND A NONCONFORMING STRUCTURE.

SPECIAL CONDITIONS PERTAINING TO RELIEF GRANTED:

1. All work authorized by this decision shall be in accordance with the above-referenced Project Plans, which have been stamped and endorsed by the Board Chairman and which are the sole plans of record in this matter. Any unauthorized deviation from the Project Plans shall result in automatic

revocation of this special permit and variance, and shall subject petitioner to all available remedies at law.

2. This decision shall not take effect until notice thereof is filed in the Registry of Deeds of Essex County. The fee for filing such notice shall be paid by petitioner. Prior to filing this decision with the Registry of Deeds, petitioner shall have the Seal of the City affixed to same.

VOTE OF THE BOARD

In favor:

JAMES P. MOVALLI, CHAIRMAN

VIRGINIA BERGMANN, VICE CHAIR

FRANCIS S. WRIGHT, JR.

MICHAEL C. NIMON

DAVID B. GARDNER

Opposed: NONE

FRONTIERO LAW OFFICE, P.C.

SALVATORE J. FRONTIERO, ESQ.

46 MIDDLE STREET
GLOUCESTER, MA 01930
Telephone: (978) 283-2850
Facsimile: (978) 283-2950
Email: sal@frontierolaw.com

March 3, 2014

City of Gloucester
Attn: City Clerk
Dale Avenue
Gloucester, MA 01930

*Re: Special Council Permit Application
48 Fort Hill Avenue*

Dear Sir/Madam:

This is to inform you that on the Special Council Permit Application filed by this office with the City Clerk on February 26, 2014, this office inadvertently listed the property as being Assessor's Lot 47 on Map 36. This is incorrect. The correct Map # is 136.

Please let me know if you have any questions or concerns.

Thank you.

Sincerely,



Salvatore J. Frontiero

Enclosure

CITY CLERK
GLOUCESTER, MA
14 MAR -4 PM 1:14

City Hall
Nine Dale Avenue
Gloucester, MA 01930



TEL 978 281-9727
FAX 978 281-9734

CITY OF GLOUCESTER
DEPARTMENT OF LAW

MEMORANDUM

TO: Carolyn A. Kirk, Mayor

FROM: Suzanne P. Egan *SPE*
General Counsel

DATE: March 17, 2014

SUBJECT: Gloucester/Rockport Intermunicipal Agreement (IMA)

Attached please find the Rockport Long Beach - Gloucester Intermunicipal Agreement (IMA) for sewer services. This IMA was originally agreed to on October 5, 2000 for a ten year period to provide sewer service for the seasonal homes located in the Long Beach area of Rockport. This extends the term of the agreement for an additional ten years.

There are two substantive changes to the document.

1. The original agreement noted that the homes on Long Beach would be occupied from May to September. This agreement lengthens the season to April to October.
2. The original agreement provided that if requested by Rockport, the City was required to accept additional users although no additional flow. This agreement gives the City the right to evaluate whether the additional users will have a negative impact on the system prior to agreeing to additional users.

City Council approval is required to enter into an IMA. Kindly forward this to the Council for their consideration.

Enclosure

INTERMUNICIPAL AGREEMENT
FOR
WASTEWATER COLLECTION, TREATMENT AND DISPOSAL
BETWEEN
CITY OF GLOUCESTER, MASSACHUSETTS
AND
TOWN OF ROCKPORT, MASSACHUSETTS

Preamble

THIS AGREEMENT made and entered this _____ day of _____, 2014, and executed in quadruplicate (each executed copy constituting an original) between the City of Gloucester (hereinafter "Gloucester") and the Town of Rockport (hereinafter "Rockport").

WITNESSETH:

WHEREAS, the City of Gloucester owns and operates a wastewater treatment system; and

WHEREAS, Rockport has constructed a sewer system to the Rockport Gloucester line where it connects with the Gloucester sewer system; and

WHEREAS, Gloucester, in and under the terms and conditions as listed herein, has sold wastewater treatment and disposal capacity to Rockport; and

WHEREAS, Rockport, in and under the terms and conditions as listed herein, has purchased wastewater treatment and disposal capacity from Gloucester; and

WHEREAS, as a condition of this agreement, Rockport agrees that the use of the cottage colony at Long Beach in Rockport shall remain seasonal; and

WHEREAS, the parties recognize that Gloucester must implement and enforce a pretreatment program to control discharges from certain users of its wastewater treatment system under the Clean Water Act, 42 U.S.C. '1251 et seq. and requirements set forth at 40 CFR Part 403; and

WHEREAS, the parties are authorized by Chapter 40, Section 4 and 4A of the General Laws to enter into an Intermunicipal Agreement for the purpose of the City of Gloucester supplying wastewater treatment and disposal to the Town of Rockport, subject to authorization by the Gloucester City Council and the Rockport Town Meeting and Board of Selectmen; and

WHEREAS, at present there are no existing facilities in the Long Beach area of Rockport to be served by the proposed sewer system which will discharge industrial waste subject to Gloucester's pretreatment program to the Gloucester system; and

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties agree as follows:

1. Term/Purpose/Intent

1.1 The term of this Agreement shall be for a period of ten (10) years from date hereof, unless sooner terminated as herein provided. Rockport shall have the sole and exclusive option to extend this Agreement for a second ten (10) year term upon notification to Gloucester on or before the end of the eighth (8) year of this Agreement of its intention to exercise this option. The parties intend that the municipal corporations entering into this Agreement are the sole and exclusive beneficiaries of the Agreement. Subject to the terms and limits of this Agreement and of applicable state and federal law, the City of Gloucester, acting through its Department of Public Works, will provide sewer service to the Town of Rockport as shown on the map in the Appendix in consideration for payment of applicable sewer use rates and fees. The City and Town shall meet at a minimum of once every five years to discuss the contract including but not limited to rate setting and capital forecasts.

1.2 This Agreement shall not take effect until it has been authorized by the Mayor of the City of Gloucester and the City Council and the Rockport Town Meeting and Board of Selectmen and the Massachusetts Department of Environmental Protection ("the DEP") and the U.S. Environmental Protection Agency (the "EPA") as may be required by law.

1.3 Gloucester shall use its best efforts to be at all times in compliance with the NDPDES permit issued for the facility and to comply with all state and federal laws,

regulations, water quality standards, orders, decrees of any state and/or federal governmental authority having jurisdiction over the treatment and disposal of waste waters.

1.4 Characteristics of waste delivered to the facility by or from Rockport shall at all times conform to standards set by Rules and Regulations of the EPA and the DEP and Gloucester's Sewer Use Ordinance, all as issued and amended from time to time.

1.5 Town of Rockport has adopted a sewer use by-law which incorporates the pertinent terms of this agreement. No sewage will be accepted until the sewer by-law is in place.

1.6 The City of Gloucester shall amend its sewer ordinance to the extent necessary to incorporate the pertinent terms of this Agreement.

2. Amendments

2.1 No officer, official, agent, or employee of Gloucester or Rockport shall have the power to amend, modify or alter this Agreement or waive any of its provisions or to bind Gloucester or Rockport by making any promise or representation not contained herein except by an amendment, in writing, executed by both municipal corporations in the same manner as this Agreement is executed. Neither party may rely on any conduct, statements, action, inaction or course of conduct of the employees, agents or officers of the other party as having changed, modified or amended this Agreement. Neither party shall be construed as waiving any provision of the Agreement unless the waiver is executed in writing as an amendment to this Agreement. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach. Forbearance or indulgence in any form or manner by either party shall not be construed as waiver of any term or condition hereto nor shall it limit the legal or equitable remedies available to that party.

3. Assignment

3.1 This Agreement shall not be assigned or transferred by either party, without the express written consent of the other party given with the same formalities as are required for the execution of this Agreement.

4. Hold Harmless/Indemnification

4.1 . To the extent permitted by law, Rockport hereby agrees to indemnify and save harmless Gloucester or its agents against any and all liability or claims arising from the negligent or willful acts or omissions of Rockport or its agents or employees relating to Rockport's performance under this Agreement, including but not limited to liability deriving from state and federal environmental administrative findings or orders or actions or claims for damages on account of injury to person, or property or the environment caused by any act or omission of Rockport, its agents or employees or any fine, penalties or monetary awards which arise out of Rockport's acts or omissions under the terms of this Agreement.

4.2 To the extent permitted by law, Gloucester hereby agrees to indemnify and save harmless Rockport or its agents against any and all liability or claims arising from the negligent or willful acts or omissions of Gloucester or its agents or employees relating to Gloucester's performance under this Agreement, including but not limited to liability deriving from state and federal environmental administrative findings or orders or actions or claims for damages on account of injury to person, or property or the environment caused by any act or omission of Gloucester, its agents or employees or any fine, penalties or monetary awards which arise out of Gloucester's acts or omissions under the terms of this Agreement.

5. Force Majeure

5.1 No failure or delay in performance shall be deemed to be a breach of this Agreement when such failure or delay is occasioned by or due to any Act of God, strike, lockout, war, riot, epidemic, explosion, sabotage, breakage or accident to machinery or lines or pipe, the binding order of any court or governmental authority, or any other cause whether of the kind herein enumerated or otherwise not within the control of the party against whom a breach is alleged.

6. Reports/Records/Rate Schedules

6.1 Annually, during the first week of January, Rockport and Gloucester shall mutually exchange records from each municipality pertaining to the flows. The records shall include the daily flow for each month. The annual flow data will be reconciled

against the allocated treatment capacity for the Town and the City. The Town and the City shall also, at this time, furnish data on the expected flows for the upcoming year, the amount of committed but unconnected capacity, and uncommitted capacity.

6.2 Annually in the first week of January, or upon Gloucester's request, Rockport shall provide reports and records giving the names and addresses of all Rockport's Long Beach customers and as shown on the Map in the Appendix showing the location from which sewage is being accepted, character of occupancy, and amount of sewage produced on a monthly basis by each customer and any other reports, records or data reasonably required by Gloucester.

6.3 Rockport shall furnish sewer system plans as Gloucester may request from time to time.

6.4 Rockport shall notify Gloucester in writing and keep Gloucester informed of the name and title of its official or officials responsible for sewage services in Rockport and for implementation of the terms of this Agreement. Gloucester and Rockport shall notify each other within 30 days in writing of any changes in personnel.

7. Inspections

7.1 Gloucester has the right to inspect facilities and equipment in Rockport which may affect the sewage system. These inspections and any inspections permitted under this Agreement may include any and all reasonable tests Gloucester deems necessary. Rockport hereby consents to Gloucester's entry onto or into property of Rockport for the purpose of any inspection or repair, installation or maintenance which Gloucester may require under this Agreement. Gloucester will not, except as expressly set forth in this Agreement, perform any work in Rockport but will require work, as needed, to Gloucester's specifications for all extensions of sewer lines.

8. Remedies

8.1 In addition to the remedies, power and authority which the Department of Public Works has under ordinances of the City of Gloucester, the following remedies apply:

a) If either party fails to fulfill any material obligation or condition of this Agreement, the other party has the right to terminate this Agreement by giving ninety

(90) days notice, in writing, of its intent to do so. Upon receipt of such notice, the party shall have the right to prevent termination by curing the default within sixty (60) days. Termination shall not release Rockport from its obligation to pay all bills or sums due in accordance with this Agreement.

b) Both parties reserve the right, either in law or equity, by suit and complaint in the nature of mandamus, or other proceeding, to enforce or compel performance of any or all covenants herein.

c) Any bill remaining unpaid after the thirtieth day from the date of billing or the due dates as specified in this Agreement, whichever is later, shall bear interest in accordance with General Laws.

d) If an administrative agency, board, commission or division of the state or federal government or any court impairs, alters, restricts or limits, directly or indirectly Gloucester's rights, powers or authority to maintain, sell, contract for, or permit sewage disposal as described in this Agreement, Gloucester, in its sole discretion, may terminate and void this Agreement by written notice to Rockport. Termination under this clause shall not release Rockport from its obligation to pay any sums due and all bills owed for services previously rendered unless to do so would be in violation of a final administrative or judicial decree, order or ruling. The notice of termination under this subsection shall be given within five business days after Gloucester receives written notice of the action or decision of such agency, board, commission, division or court. It is the intent of this notice provision to give Rockport as much advance notice as possible consistent with Gloucester's need to terminate. Gloucester will notify Rockport of the formal institution of any proceedings or the issuance of any formal order so that Rockport may, if it chooses, participate in such proceedings or challenge any such order.

e) If either party fails to perform any obligation under this Agreement, the other party may perform on behalf of the defaulting party and charge the reasonable costs thereof, including administrative time, to the defaulting party as a sum due under the Agreement provided written notice is given to the defaulting party allowing it a reasonable time to cure the default.

f) Gloucester may in its sole discretion immediately stop providing service to Rockport: (1) if Rockport fails to cure any default within sixty (60) days after

written notice as provided in paragraph 8.1(a); or (2) if Rockport or any *consumer* utilizing Rockport's access to Gloucester's sewer system, by intent violates or fails to comply with any notice, ordinance, regulation or order of the City permitted or required under EPA's pretreatment regulations or (3) if after notice to Rockport and Rockport having an opportunity to cure the violation, violates any requirement imposed by the EPA regulating wastewater discharge or treatment. This paragraph shall not apply in the event that Rockport takes and completes appropriate enforcement action against one of its consumers as a result of such violation.

g) The remedies set forth in this Agreement are cumulative. The election of one does not preclude use of another.

h) In the event that Gloucester terminates this Agreement for any reason, other than a threat of imminent harm to Gloucester wastewater treatment plant, Gloucester shall not be obligated to continue to accept and treat wastewater from Rockport even if Rockport is unable to implement an alternative wastewater treatment disposal plan. Rockport shall have the right to request an extension of any termination date if Rockport uses its best efforts to adopt such an alternative plan as soon as practicable.

9. Emergencies

9.1 Each party shall immediately notify the other of any emergency or condition in either party's system of which it learns which may affect the sewer disposal system in either municipality.

10. Meter Readings

10.1 The Town of Rockport and the City of Gloucester will jointly determine the sewer usage of the Long Beach Area properties on a quarterly basis by taking readings of the Pump Run-Time Hour Meters of the Long Beach Pump Station. These readings shall be taken on or about January 14, April 14, and October 16 of each year that this agreement is in effect so that this usage can be billed to the Town of Rockport by the City of Gloucester DPW Director. An invoice will be generated and sent to Rockport within thirty (30) days.

10.2 If Gloucester determines that the Pump Run-Time Meters have registered incorrectly, the DPW Director shall prepare an estimate of the amount of sewage accepted from the Long Beach Sewer Area for the purposes of billing Rockport. Gloucester shall present evidence to Rockport demonstrating that the Pump Run-Time Hour Meters have registered incorrectly, justifying its estimate of sewage flow for the billing period. The estimate shall be based upon the average of three (3) preceding similar quarterly billings, exclusive of incorrect readings. When less than three (3) correct readings are available, fewer readings, including some obtained after the period of incorrect registration, may be used. If the Town determines that the Pump Run-Time Hour Meters have registered incorrectly, the Town, in like manner, may present evidence to Gloucester justifying the Town's estimate of sewerage flow for the billing period. In the event that a dispute arises under this paragraph, the parties agree to meet in good faith to resolve the dispute.

10.3 Gloucester and Rockport may perform periodic inspections and/or tests of the Long Beach Pump Station Pump Run-Time Hour Meter. The Pump Run-Time Hour Meters are to be immediately repaired if found to be malfunctioning or inoperable at any time. Representatives from both municipalities are free to observe the repairs. Rockport shall bear the expense of the repairs to the Pump Run-Time Hour Meters.

11. Rockport/Gloucester Employees

11.1 Employees, servants, or agents of either municipality shall not be deemed to be agents, servants or employees of the other municipality for any purpose including but not limited to either Workers' Compensation or unemployment insurance purposes.

12. Method of Supply

12.1 Rockport agrees to purchase sewer disposal services and capacity from Gloucester in accordance with the terms and conditions of this Agreement. Rockport shall be entitled to discharge a total of 35,000 gallons per day of Normal Strength Wastewater into Gloucester's sewer collection system at one or more metered location(s) at the City of Gloucester line. Discharges in excess of this daily limit shall constitute grounds for default and shall be subject to a penalty of \$5,000 per day under Gloucester Ordinance Section 23-41.

12.2 The Town agrees to maintain an inflow and infiltration program, which shall be subject to a periodic review by the City of Gloucester. The Town also agrees to ensure that no storm water will be discharged to the system. The City agrees that no penalty for violation of the 35,000 gallons per day limit shall be imposed if said discharge violation is caused by an inflow and infiltration event so long as the Town promptly takes action to rectify the inflow and infiltration which caused the excess discharge. The City agrees that if the violation is caused by an inflow and infiltration event, Rockport is not in default so long as the Town promptly takes action to rectify the inflow and infiltration which caused the excess discharge.

12.3 Gloucester and Rockport shall monitor wastewater flow during subsequent years of this Agreement in order to determine actual daily wastewater flow. After adequate wastewater flow information is obtained, and to the extent that the actual daily flow is less than the 35,000 gallons per day purchased by the Town, Rockport shall have the right to request of the Gloucester City Council to approve other Rockport residents to connect to the sewer system at Long Beach. In no event shall the total daily flow from Rockport consumers exceed 35,000 gallons per day.

12.4 Gloucester may undertake a review as to the impact of any additional connections by Rockport to the Gloucester wastewater system. Provided Gloucester finds that there will not be adverse impact to its sanitary system, Gloucester may approve all connections by Rockport to the Gloucester wastewater system. Approval of said connections shall not be unreasonably withheld. Rockport shall construct and maintain a flow measuring station at each approved connection, suitable to continuously measure and record all flows entering the Gloucester sewer system. Gloucester shall have the right of access to said metering stations for purposes of inspection and data acquisition. Gloucester must approve the measuring system design before Rockport begins construction.

13. Use Restriction

13.1 Subject to applicable law, Rockport shall use the sewage capacity furnished under this Agreement solely for its municipal wastewater and for wastewater generated by residential properties only.

13.2 Rockport shall continue to limit the use of cottages at Long Beach to seasonal use and occupancy from April 1st to December 1st.

14. Reserved Capacity

14.1 Gloucester agrees to permit Rockport to discharge flow of up to 35,000 gallons per day through the Long Beach connection area with the Gloucester sewer system during the term of this Agreement. Any discharge in excess of 35,000 gallons per day shall be grounds for default, and/or the implementation of fines.

However, so long as Rockport, in a reasonable amount of time, moves to correct or address any event(s) causing such excess daily discharge, then Rockport shall not be in default and no fine shall be imposed for that month unless an excess daily discharge is repeated within the same calendar month.

15. Funding and Appropriations

15.1 Rockport shall appropriate annually sufficient money to pay for its obligations under this Agreement.

16. Capacity Purchase Price

16.1 Rockport has paid a Capacity Purchase Price of \$175,000.00 to the City of Gloucester. It is the intent of the parties that the Capacity Purchase Price represents a portion of the costs that Rockport would have been required to expend to construct its own wastewater treatment facility. The Capacity Purchase Price paid by the Town shall be a one-time charge. The City of Gloucester shall not, as a precondition for renewal of this Agreement, require the Town to pay an additional Capacity Purchase Price or any other fee for the privilege of renewing this Agreement, unless the daily flow of 35,000 gallons per day is increased.

17. Capital Improvement Provision

17.1 a) All construction documents will be submitted to Gloucester for review. The design shall be approved by Gloucester prior to construction; such approval shall not be unreasonably withheld.

b) Rockport agrees to indemnify and save harmless Gloucester from any and all actions for damages arising out of the installation and/or construction of said sewers within the City of Gloucester. The installation and construction of sewers by Rockport shall be in conformity with all requirements of the General Laws, including without limitation General Laws Chapter 30, section 39M, relating to public construction projects. Rockport shall also furnish proof of liability insurance equal to 5% of the value of the contract.

c) All permits, environmental or otherwise, required for the project will be obtained by Rockport.

d) The parties agree that upon completion of the said sewers and subject to the approval of the City of Gloucester, title to the sewers in Gloucester constructed by Rockport and the operation and maintenance of said lines shall be assumed by Gloucester. Gloucester is permitted at its convenience to make sewer connections to the said sewers.

17.2 In the event that the Gloucester Department of Works performs capital improvements on a portion of the City system affected by Rockport effluent, or if Gloucester is directed or ordered by EPA, DEP or any other Agency or Court of the state or federal government to provide a higher degree of treatment at the facility in the future, or otherwise to modify the process from that used or in place at the time of execution of this Agreement, the total cost of such replacement or additional facilities shall be apportioned between the parties as set forth in paragraph 17.3 of this Agreement.

17.3 In the event that Gloucester undertakes capital improvements to the Gloucester wastewater treatment facility which become necessary after the date at which flow first passed from Rockport to Gloucester, and Gloucester opts to recover the capital costs of such improvements through betterments to its residents rather than incorporation of debt service costs into the rate structure, Rockport shall pay to Gloucester its proportional share of Gloucester's annual debt service. Such proportional share shall be determined by dividing the Rockport design flow by the then applicable Gloucester design capacity. At the time of execution of this Agreement, Rockport's share of such capital improvements is 0.00488 percent.

17.4 The Town of Rockport shall upon advance notice have the right to inspect and audit at the City of Gloucester's offices any and all cost records of the City relating to the construction, expansion, replacement, modification, operation and maintenance of the plant and facilities as stated in this Article, at the City of Gloucester Office.

17.5 User Rate/Rate Setting. The rate to be charged based on the quarterly readings from the master meter shall be the same rate paid by Gloucester residential users.

17.6 Gloucester shall provide to Rockport all necessary permanent and temporary construction easements for sewer lines, pump stations and other appurtenant facilities located in Gloucester, but constructed by Rockport pursuant to this Agreement.

18. Sewer Use Ordinance, Bylaws and Regulations

18.1 For purposes of this section and related sections the term "regulations" shall also mean by-law. Rockport's sewer use regulations shall be no less stringent in every particular and, as broad in scope as, or stricter than the current Gloucester Sewer Ordinance. The Rockport regulations shall in any event be consistent with and meet all requirements of the EPA as presently codified at 40 CFR part 403 and as the same may from time to time be amended.

18.2 Rockport's adoption of such valid regulations and its establishment of local limits as set forth in this section at (18.5) shall constitute a condition precedent to the existence of this Agreement. Gloucester shall have no obligation to accept wastewater from Rockport until the regulations are duly enacted and effective.

18.3 Rockport has submitted its regulations to Gloucester for review within ninety (90) days of the date of execution of the Agreement of October 5, 2000 and has obtained Gloucester's approval of said regulations.

18.4 Whenever Gloucester revises its sewer use ordinance, it will forward a copy of the revisions to Rockport. Rockport will adopt revisions to its sewer regulations that are at least as stringent in every particular and as broad in scope as those adopted by Gloucester. Rockport will submit its proposed revisions to Gloucester for review within thirty days of its receipt of Gloucester's revisions and will adopt its revisions within sixty (60) days of receiving approval from Gloucester.

18.5 Rockport has adopted pollutant specific local limits which address the same pollutant parameters and are at least as stringent as the local limits enacted by Gloucester. If Gloucester makes any revisions or additions to its local limits, it will forward those revisions to Rockport which will adopt such revisions within 30 days after receipt thereof.

18.6 Any proposed by-law changes shall be placed on the warrant for the next regularly scheduled Town Meeting. Failure to timely adopt or amend a sewer use by-law shall be grounds for default.

19. Enforcement Authority

19.1 Gloucester may: (1) enforce the terms and conditions of all permits issued by it under this Agreement; (2) conduct inspections, sampling and analysis of permitted users; and (3) perform any other technical or administrative duties it deems appropriate. In addition, Gloucester may, as agent of Rockport, take emergency action to stop, prevent or lessen any discharge which presents, or may present an imminent or immediate threat or danger to the health, safety or welfare of human beings or which reasonably appears, in its discretion, to threaten the environment or which threatens to cause interference, pass through or sludge contamination.

19.2 Rockport shall have the duty to administer and enforce its sewer regulations. Upon Rockport's failure to enforce, Gloucester may take any enforcement action which it deems necessary or which is necessary to enforce or compel compliance with EPA pretreatment standards, regulations and policies. Gloucester may, upon such failure, take any action under Rockport's sewer use regulations which Rockport could take including but not limited to enforcement by administrative fines, or civil or criminal enforcement in any appropriate court. Rockport's regulations restates this agency and requires any Rockport consumer to consent formally to the provisions of this agency. All administrative and judicial civil penalties and fines assessed by or for Gloucester pursuant to this agency authority shall be the property of, and paid, to Gloucester.

19.3 Rockport will continue to reimburse Gloucester for all Gloucester's reasonable costs incurred in implementing and enforcing Rockport's sewer use regulations within thirty days after receipt of an accounting of all such costs.

19.4 A repeated failure by Rockport to enforce its regulations and the terms of this Agreement shall constitute grounds for default and/or the implementation of fines.

19.5 The parties will review and revise this Agreement to ensure compliance with the United States Clean Water Act, 42 U.S.C. '1251' et seq. and the rules and regulations promulgated thereunder as necessary, but at least once every three years on a date to be determined by the parties.

20. Definitions of Terms

"EPA" shall mean the United States Environmental Protection Agency or where appropriate the Regional Water Management Division Director or other authorized official of the agency.

"Gloucester" or "City" shall mean the City of Gloucester or where appropriate the City of Gloucester acting by and through its Department of Public Works.

"Rockport" or "Town" shall mean the Town of Rockport.

"Act" or "the Act" shall mean the Federal Water Pollution Control Act, also known as the Clean Water Act as amended. 33 U.S.C. 1251, et seq.

"DEP" or "MA DEP" shall mean the Massachusetts Department of Environmental Protection.

"Discharge" or "indirect discharge" shall mean the introduction of pollutants into the public owned treatment works from any non-domestic source regulated under the Act.

"BOD" or "Biochemical Oxygen Demand" shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20 deg. centigrade expressed as a concentration (e.g. as mg/l).

"Person" shall mean every individual, partnership, corporation, municipal corporation, water district, firm, association or group of individuals.

“Rockport’s customer or consumers” shall mean those persons in Rockport to whom Rockport sells or distributes sewage disposal from Gloucester under this Agreement as designated on the Map in Appendix. Only persons who reside on the town property at Long Beach pursuant to a town lease and those persons jointly designated by the Town and the City of Gloucester to utilize the balance of the 35,000 gallons per day capacity in accordance with Section 12.3 shall be Rockport customers or consumers. For purposes of this definition and this agreement, the area and persons covered by this agreement shall be limited to the attached Map which is incorporated herein.

“Normal Strength Sewage (Wastewater)” as expressed or referred to in this Agreement shall be defined as sewage having a five day biochemical oxygen demand (BOD) less than or equal to 250 mg/L and a total suspended solids concentration less than or equal to 300 mg/L based upon a 24 hour composite sample comprised of at least 6 discrete samples.

“User” as used herein shall mean a source discharge or indirect discharge.

“TSS” or “total suspended solids” shall mean solids that either float on the surface of, or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

“Seasonal” shall mean April 1st to December 1st.

Any word or phrase used in this Agreement not otherwise expressly defined herein shall have the meaning assigned to them as set forth in the Gloucester Sewer Ordinance.

21. Service of Notice

21.1 All notices or communications permitted or required by this Agreement must be in writing except in emergencies, and shall:

As to Gloucester, be delivered or mailed by certified mail, return receipt requested, to the Department of Public Works Director, at the office of the Department of Public Works, 22 Poplar Street, Gloucester, MA 01930.

As to Rockport, be delivered or mailed by certified mail, return receipt requested, to the Board of Selectmen, Town Office Building, 34 Broadway, Rockport, MA 01966, and the office of the official designated by Rockport pursuant to Section 6.4 of this Agreement.

22. Extension of Term

22.1 If Rockport has exercised its option to extend this Agreement for a second ten (10) year term, the parties during the 18th year of this Agreement, unless it is sooner terminated, shall meet to negotiate in good faith for an extension or renewal of this Agreement subject to authorizations that may be required by then applicable law. This acknowledgment that the term of the Agreement, including any new terms or conditions, may be extended, does not impose on either party any express or implied obligations with regard to the potential negotiations or Agreement. Neither party has implied obligation to extend or renew the terms of the Agreement (with or without modifications).

23. Forum and Choice of Law

23.1 This Agreement and any performance under it shall be interpreted and governed in accordance with the laws of the Commonwealth of Massachusetts except for those requirements, terms, duties and conditions regulated by federal law. Any and all proceedings or actions relating to the subject matter herein shall be brought and maintained in the courts of the Commonwealth which shall have exclusive jurisdiction thereof. Any term or word used herein not otherwise defined shall have the same meaning as the term or word is defined in the Gloucester Sewer Ordinance.

24. Dispute Resolution

If any dispute arises regarding the interpretation of this Agreement or over the extension of the term under Paragraph 23, either party may initiate mediation through a mutual agreed upon dispute resolution organization.

25. Regulatory Authority

25.1 This Agreement is subject to the lawful rules, regulations, decisions, order or directives of the EPA and of any agency of the state and federal government with

jurisdiction over the parties or subject matter of the Agreement. Any and all conditions, rules, regulations, orders or other requirements heretofore or hereafter placed upon Gloucester or Rockport by the EPA or by the DEP or any other agency, division, office or department of the United States or the Commonwealth of Massachusetts or by any court of competent jurisdiction and by any other applicable Federal, state or county agency, shall be construed to become a part of this Agreement unless the Agreement is terminated hereunder. Further, any additional costs placed upon Gloucester as a result of any orders of the above-referenced court or agencies in connection with the supplying of sewage disposal to Rockport by Gloucester shall be borne by Rockport in the same proportion as provided in Section 17.3.

26. Severability, Headings, Integration

26.1 If any provision of this Agreement is declared or found illegal, unenforceable or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Agreement shall be enforced to the fullest extent permitted by law. The headings are used for reference only and shall not be a factor in the interpretation of this Agreement. This Agreement shall supersede all other verbal and written Agreements and negotiations by the parties relating to performance of the obligations under this Agreement and contains to full and complete and integrated agreement of the parties on the subject matters referred to herein. Any doubt as to meaning, any interpretation issue or any question as to intent of the parties shall be resolved to make this Agreement and the obligations of the parties under it, conforms to the letter purpose and intent of the EPA pre-treatment standards and the Act.

IN WITNESS WHEREOF, on the date first mentioned, the officials of the City of Gloucester and the Town of Rockport hereto execute this Agreement, in quadruplicate copies.

When executed, the Agreement shall be recorded in the office of the Clerk of each municipality.

CITY OF GLOUCESTER

(Seal of the City of Gloucester) By _____
Mayor of Gloucester

Approved as to form and legality By _____
City Solicitor

By _____
Director, Department of Public Works

TOWN OF ROCKPORT

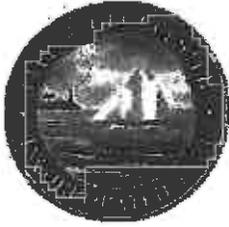
(Seal of the Town of Rockport) By _____
Selectman

Approved as to form and legality By _____
Town Counsel

By _____
Rockport Commissioner of Public Works

By _____
Rockport Commissioner of Public Works

By _____
Rockport Commissioner of Public Works



CITY OF GLOUCESTER

Commonwealth of Massachusetts
DPW - ENGINEERING DIVISION
CITY HALL ANNEX
2ND FLOOR
3 POND ROAD
GLOUCESTER, MA 01930
PHONE: 978- 281-9773 FAX: 978-281-9725

Michael B. Hale, A.I.C.P.
Director of Public Works

Paul G. Keane, P.E.
City Engineer

Ryan Marques,
M.S.C.E., E.I.T.,
Civil Engineer

Karen L. Andrews
Sr. Engineering Aide

To: *Mayor Carolyn Kirk*

From: *Karen Andrews*
Engineering

Date: *March 5, 2014*

RE: *Proposed Street Naming and Numbering Plans*

Attached please find 3 proposed street naming and numbering plans to be forwarded to the City Council for approval.

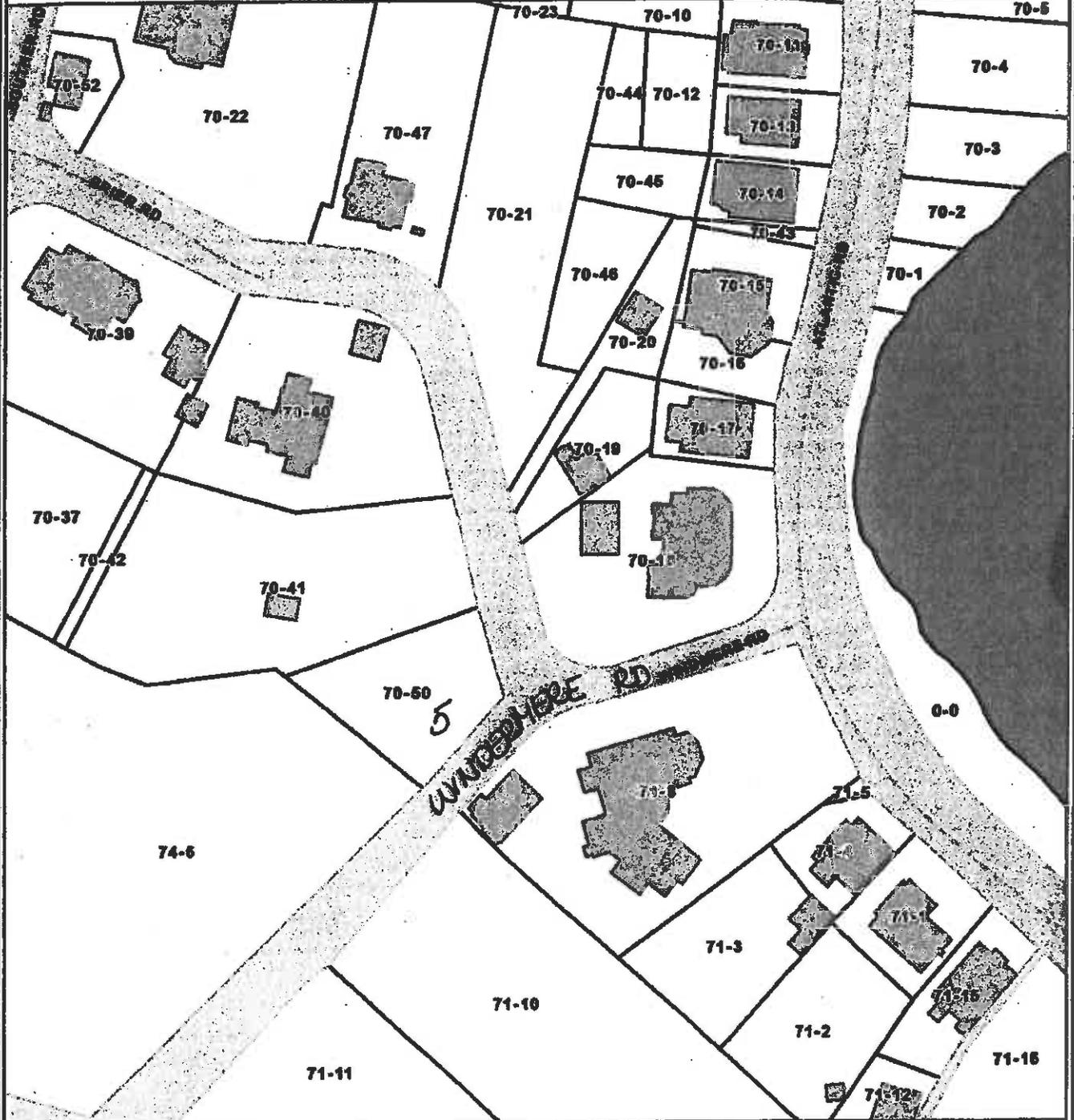
Windermere Road – though there have been different spellings of this road name over the years this is how it is spelled on the plan of the Souther Estate, dated 1900, and on numerous Land Court Plans. It is essentially a “paper road”, but the Planning Board recently approved a Road Improvement Plan for a new structure to be built with access on this road

Mulligan Drive – the portion of Brier Road, off Windermere Road. This portion of Brier Road does not connect with the upper portion, off Souther Road, therefore it should be renamed for 911 purposes

My Way – currently Gilson Way. The current owner has requested this street name change.

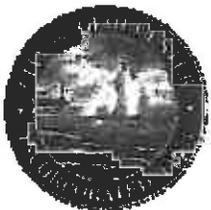
PROPOSED STREET NAMING AND NUMBERING PLAN FOR WINDERMERE ROAD

OWNER OR RESIDENT & MAILING ADDRESS	ASSESSORS DATABASE	APPROVED STREET NAME/ NUMBER	ASSESSOR MAP/LOT #
J N & E M Luongo P V Fallon c/o Paula Fallon 74 Mountain Road Burlington, MA 01803	69 Atlantic Road	69 Atlantic Road (1 Windermere Road)	70-18
Andrew Roesle 6 Brier Road Gloucester, MA 01930	Brier Road	5 Windermere Road	70-50
Peter & Elizabeth Rapaport 1557 N. Ocean Boulevard Palm Beach, FL 33480	71 Atlantic Road	71 Atlantic Road (2 Windermere Road)	71-8



- Interest P**
- Athletic
 - Beach
 - Cemetery
 - Church
 - Federal Government Facility
 - Fire Station
 - Historic Site
 - Medical
 - Library
 - Municipal Gov't Govern
 - Med-Flight Landing Zones
 - Park & Ride Lot
 - Police Station
 - Recreation site
 - School
 - State Parks, Forests, & Rts
 - Building Footprint

- Transportation**
- Street Centerline
- Water Bodies**
- Pond, Lake, Ocean
 - Reservoir
 - Wetland
 - Salt Wetland
 - Submerged Wetland
 - Cranberry Bog
 - Tidal Flat
 - Inundated Area
 - Parcels



Planimetric and topographic base map features 1" = 40 scale from Aerial Photography March, 2011. The information depicted on this map is for planning purposes only. The City of Gloucester makes no warranties, expressed or implied, concerning the accuracy, completeness, reliability, or suitability of these data. The City of Gloucester does not assume any liability associated with the use or misuse of this information.

1" = 100 ft



Transport
— State Highway
□ Image Parcels



Parcels and geographic boundary features 1 = 40 scale from Aerial Photography March 2011. The information depicted on this map is for planning purposes only. The City of Gloucester makes no warranties, expressed or implied, concerning the accuracy, completeness, reliability, or suitability of these data. The City of Gloucester does not assume any liability associated with the use or misuse of this information.

1" = 100 ft

PROPOSED STREET NAMING AND NUMBERING PLAN FOR MULLIGAN DRIVE

OWNER OR RESIDENT & MAILING ADDRESS	ASSESSORS DATABASE	APPROVED STREET NAME/ NUMBER	ASSESSOR MAP/LOT #
J N & E M Luongo P V Fallon c/o Paula Fallon 74 Mountain Road Burlington, MA 01803	69 Atlantic Road	69 Atlantic Road (1 Mulligan Drive)	70-18
Leonard, Jr & Lisa McGrath 21 Ledgewood Drive Danvers, MA 01923-1128	3 Briar Road	3 Mulligan Drive	70-19
Alfred & Flora Pennino 264 Park Avenue Arlington, MA 02174	5 Briar Road	5 Mulligan Drive	70-20
Alfred & Flora Pennino 264 Park Avenue Arlington, MA 02174	65R Atlantic Road	5R Mulligan Drive	70-46
Andrew Roesle 6 Briar Road Gloucester, MA 01930	2 Briar Road	4 Mulligan Drive	70-41
Andrew Roesle 6 Briar Road Gloucester, MA 01930	Briar Road	2 Mulligan Drive	70-50



Transport
-- State Highway
□ Image Parcels

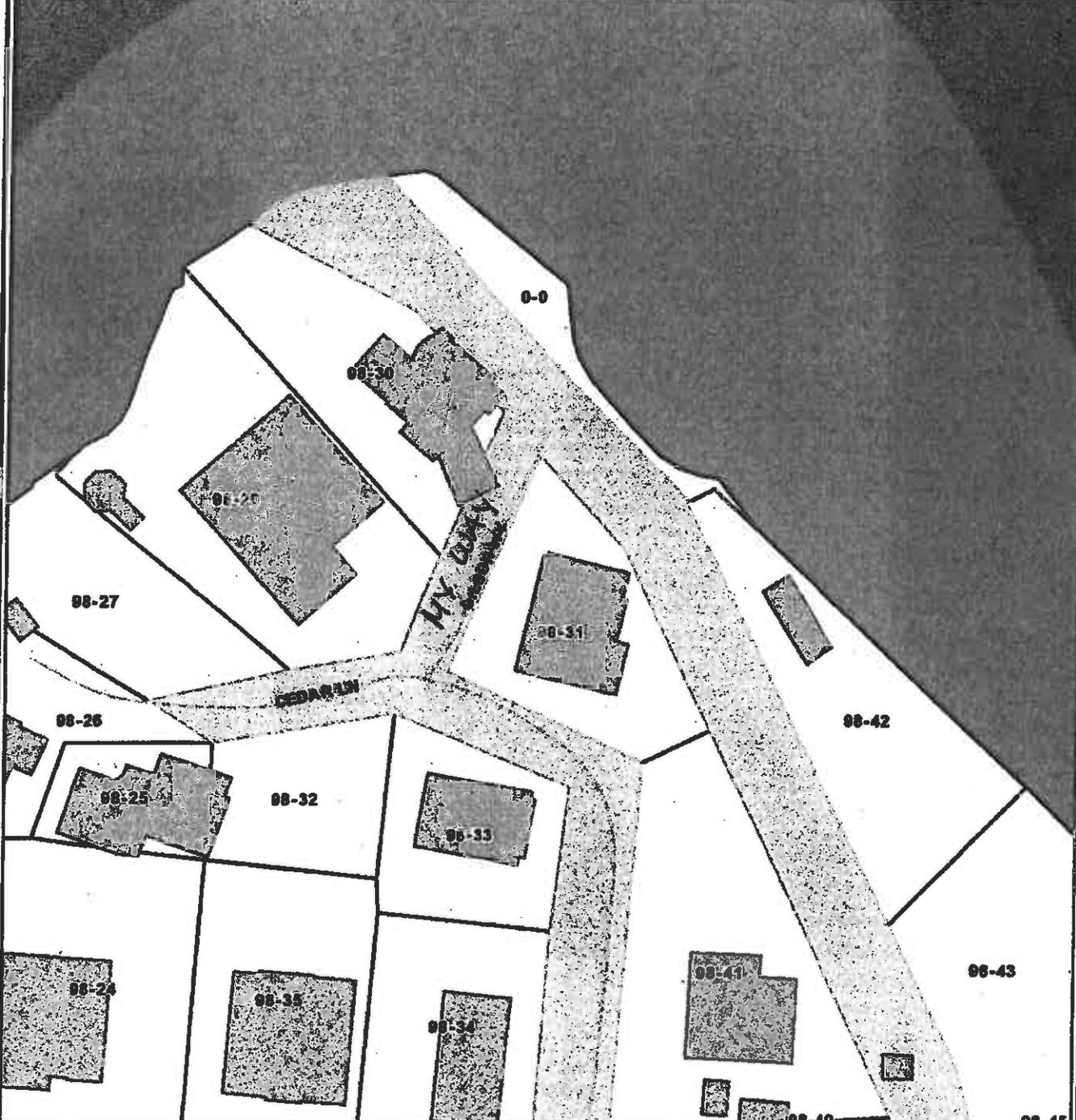


Parcels and topography imagery obtained from Aerial Photography March 2011. The information depicted on this map is for planning purposes only. The City of Gloucester makes no warranties, expressed or implied, concerning the accuracy, completeness, reliability, or suitability of these data. The City of Gloucester does not assume any liability associated with the use or misuse of this information.

1" = 100 ft

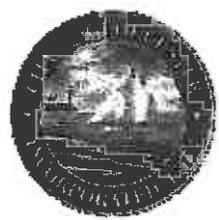
PROPOSED STREET NAMING AND NUMBERING PLAN FOR MY WAY

OWNER OR RESIDENT & MAILING ADDRESS	ASSESSORS DATABASE	APPROVED STREET NAME/ NUMBER	ASSESSOR MAP/LOT #
William & Myra Coletti P O Box 1770 Gloucester, MA 01930-1770	4 Gilson Way	4 My Way	98-30



- Interest P**
- Athletic
 - Beach
 - ▲ Cemetery
 - ▲ Church
 - Federal Government Facility
 - Fire Station
 - Historic Site
 - Medical
 - Library
 - Municipal/State Governm
 - Med-Flight Landing Zones
 - Park & Ride Lot
 - Public Station
 - Recreation site
 - J School
 - State Parks, Forests, & Re
 - Building Footprint

- Transportation**
- Street/Centerline
 - Water Bodies**
 - Pond, Lake, Ocean
 - Reservoir
 - Wetland
 - Salt Wetland
 - Submerged Wetland
 - Cranberry Bog
 - Tidal Flat
 - Insulated Area
 - Parcel



Planimetric and topographic base map features 1 = 40 scale from Aerial Photography March, 2011. The information depicted on this map is for planning purposes only. The City of Gloucester makes no warranty, expressed or implied, concerning the accuracy, completeness, reliability, or suitability of these data. The City of Gloucester does not assume any liability associated with the use or misuse of this information.

1" = 50 R



Transport
— State Highway
□ Image Parcels



Footprints and geographic data are accurate to 1 in 40 scale from Aerial Photography March 2011. The information depicted on this map is for planning purposes only. The City of Gloucester makes no warranties, expressed or implied, concerning the accuracy, completeness, reliability, or suitability of these data. The City of Gloucester does not assume any liability associated with the use or misuse of this information.

1" = 50 ft

works, the mayor and the city auditor, stating that sufficient funds are on hand and will be allocated for placing such way in safe condition for travel.

(Code 1970, § 20-1)

Sec. 21-2. Record of names, width, etc., of streets.

The city clerk shall keep a book, in which shall be recorded and alphabetically arranged the names of all the streets and ways in the city which are laid out and accepted, with the date of such laying out and acceptance, the width of such streets and ways, and all alterations made therein from time to time by the city council.

(Code 1970, § 20-3)

Sec. 21-3. Street names.

(a) The several streets, ways and squares in the city shall continue to be called and known by the names heretofore established.

(b) All streets and ways hereafter laid out shall be named by the city council. The city council may change the name of any street or way at any time following sections (c) through (f) as follows:

(c) All requests for street names and numbering plans shall be filed with either city clerk or engineering department. The written requests must contain a clear locus map to show the exact location and/or numbering being requested. The engineering department shall route all requests to the city clerk.

(d) The city clerk shall forward all street naming and numbering plans to the city council for review at the appropriate standing committee, planning and development.

(e) The planning and development committee shall request written reports from the following agencies prior to any final recommendation for action. The agencies and their respective responsibilities are defined below:

City engineer: Agency for the development of numbering plans and master list recording.

Fire department: Input on sound-alike names, duplicate names, public safety and response aspects.

Police department: Input on sound-alike names, duplicate names, public safety and response aspects.

Planning department: Review with respect to names and proposed developments to avoid conflicts.

Assessors: For review based on assessor's records to avoid conflicts.

All departments will have fourteen (14) days to respond. No response shall indicate no concern with the name or number plan.

(f) The decision of the city council, along with the locus map and or numbering plan shall be routed to the departments listed above.

(Code 1970, § 20-2; Ord. No. 25-1994, § I, 12-13-94)



FP-2A
(Rev. 04-2010)

The Commonwealth of Massachusetts
City/Town of GLoucester

Application For License

Massachusetts General Law, Chapter 148 §13

New License Amended License

GIS Coordinates

LAT.

LONG.

License Number

Application is hereby made in accordance with the provisions of Chapter 148 of the General Laws of Massachusetts for a license to store flammables, combustibles or explosives on land in buildings or structures herein described.

Location of Land: 27 MAPLEWOOD AVE #0027-0029-000 Book C 56003
Number, Street and Assessor's Map and Parcel ID

Attach a plot plan of the property indicating the location of property lines and all buildings or structures.

Owner of Land: FAYE HOLDING LLC

Address of Land Owner: 209 ESSEX AVE GLOUCESTER MA 01930

Use and Occupancy of Buildings and Structures: GASOLINE SALES - VEHICLE INSPECTION

If this is an application for amendment of an existing license, indicate date of original license and any subsequent amendments

Attach a copy of the current license

Flammable and Combustible Liquids, Flammable Gases and Solids

Complete this section for the storage of flammable and combustible liquids, solids, and gases; see 527 CMR 14; Attach additional pages if needed. All tanks and containers are considered full for the purposes of licensing and permitting.

PRODUCT NAME	CLASS	MAXIMUM QUANTITY	UNITS gal., lbs, Cubic feet	CONTAINER UST, AST, IBC, drums
<u>GASOLINE</u>		<u>12,000</u>		
<u>DEISEL FUEL</u>		<u>4,000</u>		

Total quantity of all flammable liquids to be stored: 16,000
Total quantity of all combustible liquids to be stored: _____
Total quantity of all flammable gases to be stored: 12,000
Total quantity of all flammable solids to be stored: _____

14 MAR 20 AM 11:38
CITY CLERK
GLOUCESTER, MA

LP-gas (Complete this section for the storage of LP-gas or propane)

Indicate the maximum quantity of LP-gas to be stored and the sizes and capacities of all storage containers. (See 527 CMR 6)

❖ Maximum quantity (in gallons) of LP-gas to be stored in aboveground containers: _____
List sizes and capacities of all aboveground containers used for storage: _____

❖ Maximum quantity (in gallons) of LP-gas to be stored in underground containers: _____
List sizes and capacities of all underground containers used for storage: _____

Total aggregate quantity of all LP-gas to be stored: _____

Fireworks (Complete this section for the storage of fireworks)

Indicate classes of fireworks to be stored and maximum quantity of each class. (See 527 CMR 2)

- ❖ Maximum amount (in pounds) of Class 1.3G: _____ Type/class of magazine used for storage: _____
- ❖ Maximum amount (in pounds) of Class 1.4G: _____ Type/class of magazine used for storage: _____
- ❖ Maximum amount (in pounds) of Class 1.4: _____ Type/class of magazine used for storage: _____

Total aggregate quantity of all classes of fireworks to be stored: _____

Explosives (Complete this section for the storage of explosives)

Indicate classes of explosive to be stored and maximum quantity of each class. (See 527 CMR 13)

- ❖ Maximum amount (in pounds) of Class 1.1: _____ Number of magazines used for storage: _____
- ❖ Maximum amount (in pounds) of Class 1.2: _____ Number of magazines used for storage: _____
- ❖ Maximum amount (in pounds) of Class 1.3: _____ Number of magazines used for storage: _____
- ❖ Maximum amount (in pounds) of Class 1.4: _____ Number of magazines used for storage: _____
- ❖ Maximum amount (in pounds) of Class 1.5: _____ Number of magazines used for storage: _____
- ❖ Maximum amount (in pounds) of Class 1.6: _____ Number of magazines used for storage: _____

I, Anthony Taliaferro, hereby attest that I am authorized to make this application. I acknowledge that the information contained herein is accurate and complete to the best of my knowledge and belief. I acknowledge that all materials stored pursuant to any license granted hereunder must be stored or kept in accordance with all applicable laws, codes, rules and regulations, including but not limited to Massachusetts Chapter 148, and the Massachusetts Fire Code (527 CMR). I further acknowledge that the storage of any material specified in any license granted hereunder may not exceed the maximum quantity specified by the license.

Signature [Signature] Date 3-14 Name ANTHONY TALIAFERRO

Fire Department Use Only

I, Miles Schlichte, Head of the Gloversdale Fire Department endorse this application with my

Approval Disapproval

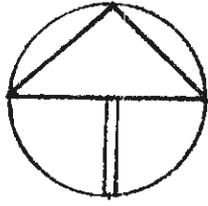
Signature of Head of the Fire Department [Signature] - Dep Chief

Date 3/18/2011

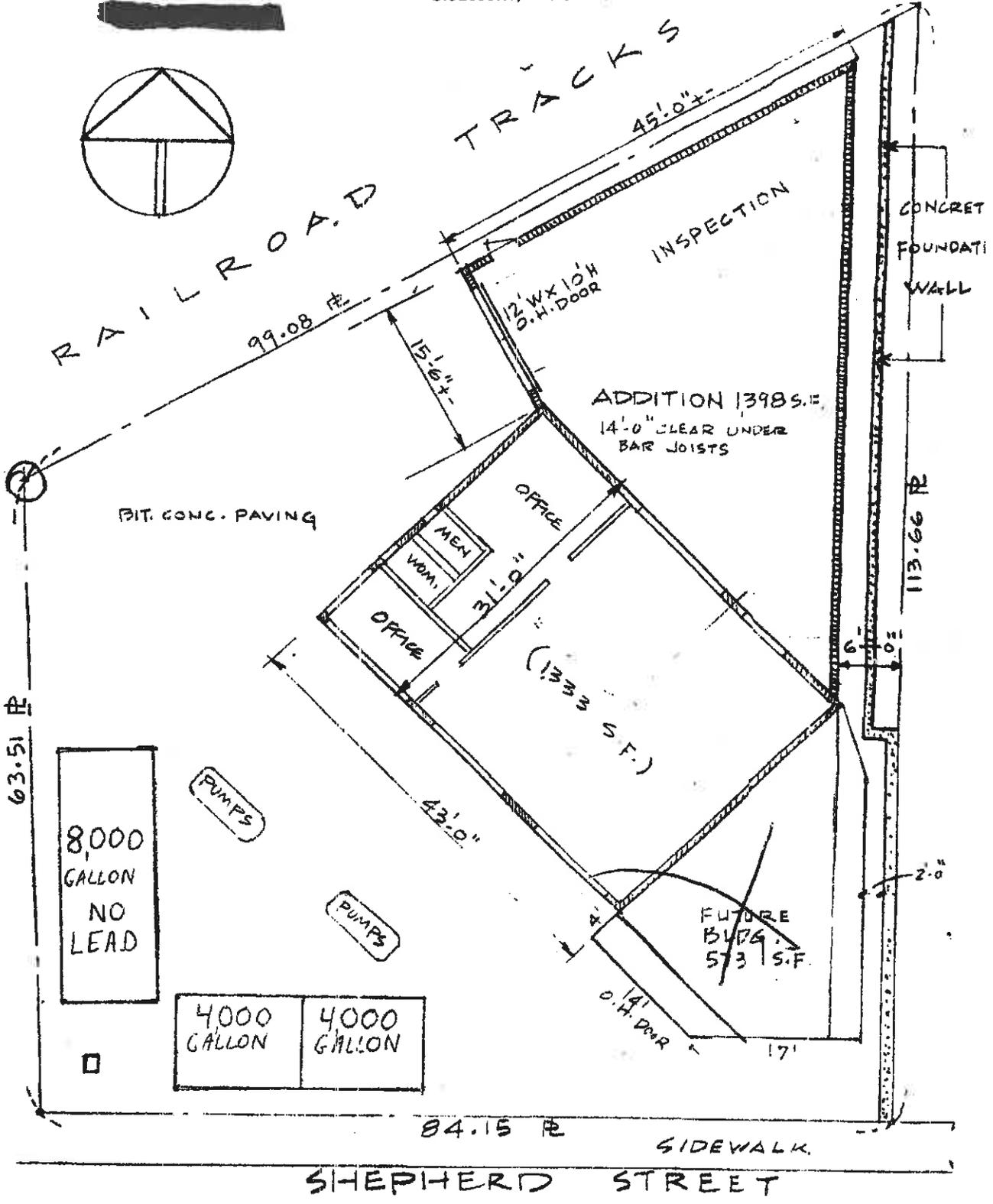
Recommendations: _____

27 MAPLEWOOD AVE.
GLOUCESTER, MA 01930

TONY'S SERVICE, INC.
209 Essex Ave.
Gloucester, MA 01930



MAPLEWOOD AVENUE





The Commonwealth of Massachusetts
 Department of Fire Services - Office of the State Fire Marshal



PERMIT

To Maintain an Existing/New Storage Tank Facility
 for Storage Tanks Regulated under 527 CMR 9.00

In accordance with the provisions of 527 CMR 9.00 this permit to maintain an existing/new storage tank facility is granted to:

Location of property: 27 Maplewood Ave
Street address
 Owner of property: Faye Holding LLC (LAND) Tony's Service Station Inc.
Full name of person, firm or corporation
 Number of storage tanks: aboveground 2 underground

Facility to be maintained in accordance with the restrictions described below:
MGL and NEPA COMPLIANCE

Fee paid: \$ 100 (M.G.L. Chapter 148, section 10A)
CR# 4994

This permit will expire 3/19/15
Date

Signature of Head of Fire Department or appointed designee

(Owner's copy - To be posted at the storage facility)