

APPLICATION FOR DIMENSIONAL VARIANCE

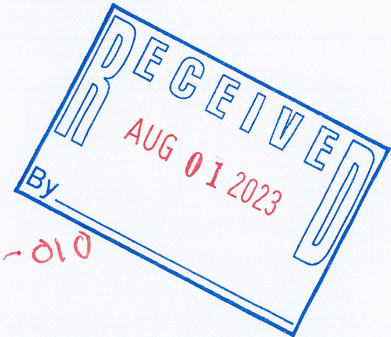
CITY OF NEWPORT, RI
ZONING BOARD OF REVIEW

Amended Application

DATE: June 12, 2023 - Revised July 31, 2023

ZBR

2023-JUL-010



Board members:

The undersigned hereby petitions the Zoning Board of Review for a variance in the application of the provisions or regulations of the Zoning Ordinance affecting the following described premises in the manner and on the grounds hereinafter set forth.

Location of premises

Street & No: 137 Broadway

Tax Assessor's Plat 19 Lot 25 & 26

Petitioner Information

Applicant BayCoast Bank Address 330 Swansea Mall Dr, Swansea, MA 02777

Owner Lion Capital LLC Address 168 Cottontail Dr., Portsmouth, RI 02871

Lessee _____ Address _____

Property Characteristics

Dimensions of lot-frontage 180.1 ft. ^{from Broadway} depth 82 ft. area 8,161 SF sq. ft.

Zoning District in which premises is located General Business (GB) District

How long have you owned above premises? Sale date March 15, 2021

Are there buildings on the premises at present? yes

Total square footage of the footprint of existing buildings +/- 1,722 square feet

Total square footage of the footprint of proposed buildings +/- 1,572 square feet

Present use of premises Dunkin' Donuts fast food restaurant, currently vacant

Proposed use of premises BayCoast Bank branch with drive-through

All of the following information and questions must be filled in and answered completely.

Give extent of proposed alterations Construction of +/- 1,572 square foot bank with drive-through and
associated site improvements inclusive of parking, lighting, landscaping, and utilities.

Zoning Characteristics Matrix

CALCULATIONS PROVIDED FOR LOT 25 ONLY UNLESS NOTED OTHERWISE

	Existing	Required/Allowed	Proposed
Lot Size (sq. ft.)	8,161 sq. ft.	5,000 sq. ft.	8,161 sq. ft.
Lot Coverage (%)	21.1%	80% max	19.3%
Dwelling Units	NA	NA	NA
Parking (# of spaces)	21*	6	11*
Front Setback	3.1 feet	0 feet	0.3 feet
Side Setbacks	1.8 feet	0 feet	22.4 feet
Rear Setback	N/A	5 feet	N/A
Height	21.3 feet	45 feet	< 45 feet

*COMBINED PARKING PROPOSED ON LOTS 25 & 26

What special conditions and circumstances exist which are peculiar to the land, structure or building involved, which are not applicable to other lands, structures or buildings in the same district?

1. See Attached Sheet, Response to Question 1. - Revised 07/31/2023

Explain how the literal interpretation of the provisions of this zoning code deprive the applicant of rights commonly enjoyed by other property owners in the same district under the provisions of this zoning code?

See Attached Sheet, Response to Question 2. - Revised 07/31/2023

Explain why this is the minimum variance that will make possible the reasonable use of the land, building or structure.

See Attached Sheet, Response to Question 3. - Revised 07/31/2023

The Zoning Boards Role


In granting a variance, the zoning board of review shall **require** that evidence of the following standards be entered into the record of the proceedings:

- a. That the reasons set forth in the application justify the granting of the variance and that the variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building or structure;
- b. That the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will not impair the intent or purpose of the zoning code or the comprehensive plan upon which this zoning code is based;
- c. That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant; and

d. That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.

e. That the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief;

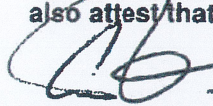
By signing below, I hereby attest that the information provided is accurate and truthful. I also attest that I have read the section entitled "The Zoning Board's Role".

_____ Applicant's Signature	 _____ Owner's Signature
() _____ Telephone Number	x (401) 450-5089 _____ Telephone Number
Email address	x Derek.Savgs@gmail.com _____

Be sure all required drawings are attached to this application at the time of the submittal.

- d. That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.
- e. That the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief;

By signing below, I hereby attest that the information provided is accurate and truthful. I also attest that I have read the section entitled "The Zoning Board's Role".

 - EXECUTIVE VICE PRESIDENT
BAYCOAST BANK Applicant's Signature CARL W. TABER Owner's Signature
(508) 675-4377 Telephone Number Telephone Number
Email address ctaber@baycoastbank.com

Be sure all required drawings are attached to this application at the time of the submittal.

CROSS EASEMENT AGREEMENT

This **Cross Easement Agreement** (this “Agreement”) is made and entered into as of this ____ day of _____ 2023 by and between **BayCoast Bank**, a financial institution chartered and existing under the laws of the Commonwealth of Massachusetts, with a principal office located at 330 Swansea Mall Drive, Swansea, Massachusetts 02777 (hereinafter referred to as “BayCoast”) and **Lion Capital, LLC**, a Rhode Island limited liability company with its principal office at 131 Broadway, Newport, Rhode Island 02840 (hereinafter referred to as “Lion Capital”). BayCoast and Lion Capital may each be referred to hereinafter individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, BayCoast is the owner of a parcel of land, and all improvements thereon, located in the City of Newport, State of Rhode Island, which parcel is designated as Newport Assessor’s Map 19, Lot 25 (hereinafter, “Lot 25”) and shown on the Site Plan (hereinafter called the “Site Plan”) annexed hereto and made a part hereof as Exhibit A; and

WHEREAS, Lion Capital is the owner of a parcel of land contiguous to Lot 25, which is designated as Newport Assessor’s Map 19, Lot 26 (hereinafter, “Lot 26”) and shown on the Site Plan, and Lot 25 and Lot 26 are hereinafter collectively called the “Subject Premises”; and

WHEREAS, Lot 25 and Lot 26 are contiguous to each other and are operated by the Parties as two independent properties, subject to the easements provided for herein; and

WHEREAS, BayCoast and Lion Capital desire that certain cross easements be created to allow for parking and ingress and egress, and desire that the Subject Premises be subject to the easements, covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of

which the Parties acknowledge, and further in recognition (i) that the following easements, covenants and restrictions shall be binding upon the Parties and shall attach to, and shall (except as set forth herein) run with the Subject Premises; and (ii) that all easements herein set forth shall be appurtenant to the dominant estates, the Parties do hereby agree as follows:

SECTION 1. CROSS-GRANT OF EASEMENTS

A. Access Easement for Ingress and Egress.

(i). BayCoast hereby grants and conveys to Lion Capital and to its affiliates, Carpe Noctem Restaurant, LLC and Carpe Noctem Real Property, LLC, who own and operate the Fifth Element Restaurant located at 111 Broadway, Newport (the “Restaurant Affiliates”), a non-exclusive perpetual easement appurtenant to and for the benefit of Lot 26 to pass and repass from the adjacent public road known as Broadway, in and over the curb cut and driveway located on Lot 25, for the purpose of pedestrian and vehicular ingress, egress, and passage (the “Access Easement”), as shown and labelled as the “Access Easement Area” on Exhibit A. The use of this Access Easement shall be limited to non-banking hours, as follows:

- Monday through Wednesday after 4:00 p.m.;
- Thursday and Friday after 5:00 p.m.
- Saturday after 12:00 noon; and
- Sunday, all day (the foregoing being hereinafter referred to collectively as the “Non-Banking Hours”).

(ii) The Restaurant Affiliates have signed this Agreement acknowledging that they will abide by the restrictions, limitations, and conditions applicable to them in this Agreement.

B. Lot 26 Parking Easement.

(i). Lion Capital hereby grants and conveys to BayCoast, its successors and assigns, a perpetual easement and exclusive right, appurtenant to and for the benefit of Lot 25, to use, during “Normal Banking Hours” (defined as follows: Monday through Wednesday, 9:00 a.m. to 4:00

p.m.; Thursday and Friday, 9:00 a.m. to 5:00 p.m.; and Saturday, 9:00 a.m. to 12:00 p.m.), approximately eleven (11) parking spaces situated in whole or in part on Lot 26 in the southwesterly portion of the Subject Premises (the “Lot 26 Parking Spaces”), for vehicular parking for BayCoast employees, business invitees, and patrons (the “BayCoast Parking Easement”), as depicted and labelled on Exhibit A as the “Lot 26 Parking Easement Area.” Lion Capital will not materially alter the location or size of the Lot 26 Parking Spaces or reduce the number thereof in the Lot 26 Parking Easement Area without the consent of BayCoast, which consent BayCoast may withhold in its sole discretion. No fee shall be charged for parking in the Lot 26 Parking Spaces.

C. Lot 25 Parking Easement.

(i). BayCoast hereby grants and conveys to the Restaurant Affiliates a non-exclusive right to pass and repass from Broadway in and over the Access Easement Area, for the purpose of pedestrian and vehicular ingress, egress, passage, and parking, solely during Non-Banking Hours, to park vehicles in those parking spaces situated on Lot 25 directly in front of the BayCoast building (the “Lot 25 Parking Easement”), as depicted and labelled on Exhibit A as the “Lot 25 Parking Easement Area.”. No fee shall be charged for parking authorized pursuant to this Lot 25 Parking Easement.

(ii). Upon the sale of the restaurant business by Carpe Noctem Restaurant, LLC, the rights of the Restaurant Affiliates to utilize the Lot 25 Parking Easement shall terminate automatically without any notice or recording of an instrument in the land evidence records, unless BayCoast consents to an assignment of such easement rights to a successor in interest, which consent BayCoast may withhold in its sole and absolute discretion.

SECTION 2. RESTRICTIONS.

A. NO OBSTRUCTIONS. No fence, barrier, structure or other obstruction of any

kind shall be located or suffered to be located on the Subject Premises that might interfere with the use of the Easement Areas for the purposes stated above or prevent the free flow of people or vehicles through the Easement Areas. Notwithstanding the foregoing, the following shall be exceptions:

(i). Such temporary obstacles, interference and/or disruptions of service as may be occasioned by the performance of any construction, repairs or maintenance.

SECTION 3. MAINTENANCE AND OPERATION.

A. Each of BayCoast and Lion Capital shall supervise, operate, manage, repair, replace and maintain all improved portions of the Easement Areas located on that part of the Subject Premises owned by it, together with any enlargements thereof and including without limitation the parking areas, interior drives and lanes, curb cuts, entrances, exits, sidewalks, landscaped areas, lighting facilities, drainage facilities, and any other areas, facilities and equipment intended for and available for the uses of the Subject Premises expressly authorized hereunder. Operation and maintenance shall include, but not be limited to, the prompt removal of all snow and ice or treatment of the same, cleaning, policing, and anything else necessary for the everyday maintenance of the Easement Areas and related facilities in the manner and to the standards mentioned in the prior sentences. The owner of each Lot in the Subject Premises shall re-pave, restripe and replace markings on the surface of the parking areas and driveway from time to time so as to provide for the orderly parking of automobiles and shall place or replace adequate exit and entrance and other traffic control signs to direct traffic in and out of said parking areas.

SECTION 4. REAL ESTATE TAXES.

Each of the Parties hereto agree to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities, all real property taxes and assessments which are levied against

that part of the Subject Premises owned by it. Notwithstanding the foregoing, each Party or their designees may contest such real estate taxes and assessments which are levied against that part of the Subject Premises owned by it in good faith by appropriate legal proceedings, and its owner shall pay all real estate taxes, penalties or interests, if at any time the Subject Premises or any part thereof shall be subject to forfeiture by reason of the non-payment thereof.

SECTION 5. INDEMNIFICATION AND INSURANCE.

A. INDEMNITY.

(i). BayCoast shall defend and indemnify and hold Lion Capital harmless (except for loss or damage resulting from the tortious acts or omissions of Lion Capital, the Restaurant Affiliates, their contractors, agents or employees) from and against any and all claims, actions, suits, judgments, damages, liability and expenses including reasonable attorneys' fees, in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the Lot 25, or occasioned wholly or in part by any act or omission of BayCoast, its agents, contractors, employees, servants or licensees.

(ii). Lion Capital shall defend and indemnify and hold BayCoast harmless (except for loss or damage resulting from the tortious acts or omissions of BayCoast, its contractors, agents or employees) from and against any and all claims, actions, suits, judgments, damages, liability and expense, including reasonable attorneys' fees, in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the Lot 26, or occasioned wholly or in part by any act or omission of Lion Capital, the Restaurant Affiliates, their agents, contractors, employees, servants or licensees.

B. INSURANCE. Each Party shall maintain at its own cost and expense or cause to be maintained with respect to such Owner's parcel, public liability insurance having minimum

limits of One Million (\$1,000,000.00) Dollars for each occurrence, combined single limit. All policies of insurance required hereunder shall be written and officially issued by solvent and responsible insurance companies authorized to do business in the State of Rhode Island. Within fifteen (15) days after the date hereof, each Party shall provide the other with certificates of its insurers evidencing the insurance coverage required of such Party under this Section, will deliver to the other renewal policies or certificates thereof upon reasonable request thereof. Either Party may carry additional insurance through blanket insurance covering such Party's Lot. Further, each Owner may name a mortgagee as an additional insured under any such policy. The Parties may agree to increase the minimum amounts of insurance required hereunder to reflect the amount of coverage appropriate as insurance for similar Rhode Island facilities.

SECTION 6. DEFAULT.

A. DEFAULT. If any Party shall, during the term hereof, default in the full, faithful and punctual performance of any obligation hereunder to be performed by such Party, then the other Party, in addition to all other remedies it may have at law or in equity, after having first given the defaulting Party thirty (30) days' written notice of default or earlier in the event of an emergency) and allowed such other additional time as may be reasonably necessary to cure such default in any case other than an emergency or a default which can be cured by the payment of a liquidated monetary sum, shall have the right (if such alleged default is not cured within the time so provided) to perform such obligation on behalf of the defaulting Party and be reimbursed by such defaulting Party for the cost thereof, including, without limitation, reasonable attorney's fees together with interest thereon at the rate of twelve (12%) percent per annum. Further, in the event of a breach, of any obligation of this Agreement by any Party of any portion of the Subject Premises, the other Party shall be entitled forthwith to full and adequate relief from the consequences of such breach.

B. CUMULATION. The remedies of any one or all such Parties specified herein shall be cumulative as to each and as to all others permitted at law or in equity.

C. WAIVERS. A waiver by any Party of a breach or a default of any of the terms and conditions of this Agreement by any other Party shall not be construed to be a waiver of any subsequent breach or default of the same or any other provisions hereof.

D. NO CANCELLATION. It is expressly agreed that except as otherwise specifically provided herein, no breach of the provisions of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have hereunder by reasons of any breach of the provisions of this Agreement. No breach of the provisions hereof shall defeat or render invalid the lien of any mortgage or deed of trust covering any part of the Subject Premises, and any improvements thereon, but the provisions of this Agreement shall be binding upon and effective against any Party or any portion thereof whose title is acquired by foreclosure, trustee's sale, tax sale or any grantee by deed in lieu of foreclosure or trustee's sale.

SECTION 7. RELEASE FROM LIABILITY.

If during the existence of this Agreement any Party shall sell or transfer or otherwise terminate its interest as owner in its parcel, then from and after the effective date of such sale, transfer or termination of interest, such owner shall be released and discharged from any and all obligations, responsibilities and liabilities under this Agreement as to the part sold or transferred, except those which have already accrued as of such date, but this Agreement shall continue to bind the parcel(s) transferred.

SECTION 8. RIGHTS OF SUCCESSORS.

A. COVENANTS. Except as expressly may be set forth herein, each and every

Agreement, covenant, promise undertaking, condition, easement, right, privilege, option and restriction made, granted or assumed by any Party to this Agreement is made by such Party not only personally for the benefit of the other Parties hereto but also as owner of a portion of the Subject Premises and shall be an equitable servitude on the portions of the Subject Premises owned by such Party appurtenant to and for the benefit of the other portion of the Subject Premises. Except as expressly may be set forth herein, every obligation of this Agreement shall be irrevocable and perpetual and shall run with the land and shall be binding upon the Party making or assuming such obligation and such Party's heirs, successors and assigns and shall inure to the benefit of all other Parties hereto and their respective heirs, successors and assigns.

B. ASSUMPTION. Any subsequent owner of any part of the Subject Premises shall automatically be deemed, by acceptance of the title of such parcel, or portion thereof, to have assumed all obligations hereof relating thereto, and to have agreed with the then owner of the other portion of the Subject Premises to execute any and all instruments and do any and all things reasonably required to carry out the intention of the provisions hereof.

C. LIABILITY RELEASE. Notwithstanding anything contained in this Agreement to the contrary, any owner or any mortgagee or trustee under a deed of trust and their respective successors and assigns shall be liable and responsible for the obligations, covenants, agreements and responsibilities of this Agreement and for any judgment rendered hereon only to the extent of their interest in the parcel owned by such Party and shall not be liable beyond their interests in the land and improvements.

SECTION 9. MISCELLANEOUS.

A. ESTOPPEL CERTIFICATES AND SUBORDINATION AND NONDISTURBANCE AGREEMENTS.

(i). Any Party shall, from time to time upon not less than twenty (20) days' prior written

notice from any other Party, execute and deliver to the requesting Party a certificate stating that this Agreement is unmodified and in full force and effect or, if modified, that this Agreement is in full force and effect, as modified, and identifying the documents or writings containing such modifications and stating whether or not to the best of the knowledge of the Party executing the certificate, and further in the event that any other Party is in default pursuant to this Agreement, alleging such default and specifying the date of such default and the nature thereof.

(ii). The Parties agree that each, and their respective mortgagees, will execute and deliver to the other such customary and reasonable Subordination and Nondisturbance Agreements (hereinafter "SNDA"); provided that each such SNDA contains provisions for all present and future mortgagees, and their respective successors and assigns, to recognize and honor the provisions of this Agreement in form as then comply with applicable title standards of the title insurance company or companies then issuing outstanding title insurance policies on the estate in question to ensure that this Agreement survives.

C. NOTICES. All notices, requests, consents, approvals or other communications under this Agreement shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or delivered by a nationally recognized overnight courier service which provides delivery receipts (e.g., Federal Express), or delivered by facsimile transmission, addressed:

If to Lion Capital, to:

Derek Savas
131 Broadway
Newport, RI 02840
E-mail: dereksavas@gmail.com

with a copy to:

Adam H. Thayer, Esq.
Sayer Regan & Thayer, LLP
120 Bellevue Avenue

Newport, RI 02840
E-mail: athayer@srt-law.com

If to BayCoast, to

330 Swansea Mall Drive
Swansea, Massachusetts 02777
Attention: Carl W. Taber, Executive Vice President
E-mail: ctaber@baycoastbank.com

with a copy to:

Jeremy B. Savage, Esq.
Savage Law Partners, LLP
564 South Water Street
Providence, RI 02903
E-mail: jeremy@savagelawpartners.com

Either Party may, by notice given as aforesaid, change its address for all subsequent notices. All notices hereunder shall be effective upon receipt of same.

SECTION 10. HEADINGS.

The headings herein contained are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

SECTION 11. INVALIDITY OF CERTAIN PROVISIONS.

If any provision of this Agreement shall be invalid or unenforceable, the remainder of the Provisions of this Agreement shall not be affected thereby and each and every provision of this Agreement shall be enforceable to the fullest extent Permitted by law.

SECTION 12. MODIFICATION AND CANCELLATION.

This Agreement may be modified, amended, or canceled only by written consent of both Parties.

[Signatures and Acknowledgments Appear on Following Pages.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

ATTEST:

BayCoast Bank

By: _____
Carl W. Taber
Executive Vice President

STATE/Commonwealth of
County of

In _____ on this ____ day of _____, 2023, before me personally appeared Carl W. Taber, Executive Vice President of BayCoast Bank, who proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, or ☐ personal knowledge of the undersigned, to be the party executing the foregoing instrument and he acknowledged said instrument, by him executed to be his free act and deed in said capacity and the free act and deed of BayCoast Bank.

Notary Public:
My Commission Expires:

ATTEST:

Lion Capital, LLC

By: _____
Derek D. Savas,
Authorized Member

STATE/Commonwealth of
County of

In _____ on this ____ day of _____, 2023, before me personally appeared Derek D. Savas, authorized Member of Lion Capital, LLC, who proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, or ☐ personal knowledge of the undersigned, to be the party executing the foregoing instrument and he acknowledged said instrument, by him executed to be his free act and deed in said capacity and the free act and deed of Lion Capital, LLC.

Notary Public:
My Commission Expires:

Acknowledged and Agreed:

Carpe Noctem Restaurant, LLC

Carpe Noctem Real Property, LLC

By: _____
Derek D. Savas,
Authorized Member

By: _____
Derek D. Savas,
Authorized Member

STATE/Commonwealth of
County of

In _____ on this ____ day of _____, 2023, before me personally appeared Derek D. Savas, authorized Member of Carpe Noctem Restaurant, LLC and Carpe Noctem Real Property, LLC, who proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, or ☐ personal knowledge of the undersigned, to be the party executing the foregoing instrument and he acknowledged said instrument, by him executed to be his free act and deed in said capacity and the free act and deed of Carpe Noctem Restaurant, LLC and Carpe Noctem Real Property, LLC.

Notary Public:

My Commission Expires:

EXHIBIT A
(Site Plan)

To Be Inserted

PROJECT NARRATIVE FOR NEWPORT ZONING & PLANNING BOARDS
137 Broadway – BayCoast Bank Branch

To the Members of the Zoning and Planning Boards for the City of Newport:

Lion Capital LLC, a Rhode Island limited liability company (the “Seller”), and BayCoast Bank, a financial institution chartered under the laws of the Commonwealth of Massachusetts, with a principal office in Swansea, Massachusetts (the “Bank”), have entered into a Purchase and Sale Agreement pursuant to which the Bank will acquire that certain parcel of real estate situated at and known as 137 Broadway, also designated as Map 19, Lot 25 on the Assessor’s maps for the City of Newport. The acquisition is contingent upon the Bank obtaining any necessary approvals from the Zoning Board and/or the Planning Board to demolish the currently vacant former Dunkin’ Donuts structure on Lot 25 and to construct a new Bank branch with drive through pursuant to the Plans submitted by the Bank. The configuration proposed by the Bank with drive through requires a dimensional variance.

The Seller owns both Map 19, Lot 25 and Lot 26, which are contiguous. However, the planned transaction between the Seller and the Bank only involves Lot 25. Lots 25 and 26 are each legal conforming lots. The configuration of such lots is somewhat unique, as, although Lot 25 is basically rectangular, Lot 26 is in the shape of a flagpole, with a panhandle strip running along the entire southwesterly border of Lot 25. Existing parking spaces along such border extend from Lot 25 across the property boundary onto Lot 26.

In accordance with the Plans that it has submitted, the Bank proposes to construct the new branch building on the left front corner of Lot 25 bordering on Broadway. To the south of the branch building, the Bank proposes to have a driveway with multiple parking spaces running from the existing curb cut at Broadway along the entire border of Lot 25, and also utilizing the Lot 26 panhandle. To document the right of Bank customers to use the parking spaces, the Seller and the Bank will enter into a Cross-Easement Agreement in the form submitted with the Bank’s applications, which confirms that the Bank may utilize the foregoing parking spaces that extend from Lot 25 into Lot 26. The Cross-Easement Agreement also grants access through the Bank driveway to the occupants of Lot 26.

The Bank proposes to construct a drive through (with two lanes) along the easterly portion of the branch building. Customers intending to enter the Bank would utilize the parking spaces adjacent to the driveway along the southwesterly border of the Lot. Drive through customers would enter through the driveway and then turn left into the drive through lanes.

The foregoing concept presents certain design challenges in order to comply with the “Parking Space Design Standards” set forth in Section 17.104.040 of the Newport Zoning Ordinance. The Bank believes that the design set forth in the Plans best accommodates the requirements of the Ordinance while permitting the Bank the reasonable and best use of the project site. Specifically, the Standards provide, inter alia, that:

where a drive-through window is part of a business or a controlled ingress/egress to a parking lot is proposed, sufficient area to allow for the on-site stacking of cars

is to be provided. Such stacking area shall consist of a minimum length of sixty (60) feet measured from the right-of-way. In addition, the stacking area shall not: (1) hinder on-site traffic circulation; (2) obstruct any area required for the on-site maneuvering of vehicles, or (3) impinge upon designated parking spaces for persons with disabilities or the direct access from such parking spaces to the restaurant entrance.

As set forth in the Plans, the designed stacking area for vehicles using the drive through is more than eighty feet (80') in length, and as such, is compliant with the Ordinance. The Bank has compiled and intends to present statistical data for all its locations throughout Rhode Island and Massachusetts concerning average daily drive through transactions and transaction time. This data demonstrates that it is unlikely that more than one or two stacked vehicles would ever be in the drive through queue, thus avoiding the possibility that stacked vehicles would hinder or obstruct onsite traffic circulation, or impinge upon designated disability parking spaces. As such, the Bank contends that its design will comply with the Standards. To the extent that literal non-compliance with the Standards could occur, the provisions of the Zoning Ordinance would deprive the applicant of the right to engage in a permitted use (a bank branch) of the site, and as such, the granting of a variance would be appropriate.

Finally, with regard to parking for persons with disabilities, the Plans specify a disability space far enough away from the drive through queue to avoid hindrance from stacked vehicles. The Plans further indicate that there will be direct access from such disability space across the driveway to the Bank door. This access will be clearly marked by signage and a disability crosswalk.



THE CITY OF NEWPORT, RHODE ISLAND - AMERICA'S FIRST RESORT
Department of Zoning & Inspections

ZONING CERTIFICATE

March 5, 2021

Diane M. LaChance
Sayer Regan & Thayer, LLP
130 Bellevue Avenue
Newport, RI 02840

RE: 131 Broadway, Tax Assessor's Plat 19, Lot 26
Property of WORTHEN APARTMENTS, LLC.

Dear Ms. LaChance;

The undersigned, Guy E. Weston, being the Zoning Officer for the City of Newport, Rhode Island, hereby certifies to as follows:

1. The property is located in a General Business (GB) zoning district. The property is not located within the local Historic District.
2. According to the city tax records, the lot contains approximately 6,079 sq. ft. of land. This is a legal conforming lot of record.
3. The use of property is that of a multi-family dwelling containing six (6) dwelling units. The use is permitted as a special use permit and is dimensionally non-conforming to the density allowances of the zoning code.
4. To the best of my knowledge, the property is in compliance with all applicable zoning regulations.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 5th day of March, 2021.

CITY OF NEWPORT, RHODE ISLAND

By:

Guy E. Weston
Zoning Officer

Cc:

RECEIVED
MAY 11 2021

THE CITY OF NEWPORT, RHODE ISLAND - AMERICA'S FIRST RESORT
Department of Zoning & Inspections

ZONING CERTIFICATE

March 5, 2021

Diane M. LaChance
Sayer Regan & Thayer, LLP
130 Bellevue Avenue
Newport, RI 02840

RE: 137 Broadway, Tax Assessor's Plat 19, Lot 25
Property of WORTHEN APARTMENTS, LLC.

Dear Ms. LaChance;

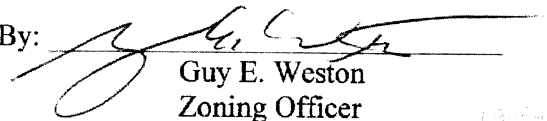
The undersigned, Guy E. Weston, being the Zoning Officer for the City of Newport, Rhode Island, hereby certifies to as follows:

1. The property is located in a General Business (GB) zoning district. The property is not located within the local Historic District.
2. According to the city tax records, the lot contains approximately 8,730 sq. ft. of land. This is a legal conforming lot of record.
3. The use of property is that of a fast food restaurant. The use is permitted as a special use permit.
4. To the best of my knowledge, the property is in compliance with all applicable zoning regulations.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 5th day of March, 2021.

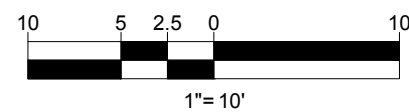
CITY OF NEWPORT, RHODE ISLAND

By:


Guy E. Weston
Zoning Officer

Cc: T

CLERK OF SUPERIOR COURT
CITY OF NEWPORT
1170 OLIVER
NEWPORT, RHODE ISLAND 02840
508-845-5452 FAX 508-846-1824



MULTIPLE OWNERS,
MULTIPLE DEEDS

REQUESTED RELIEF:

1. \$17,104,040.B PARKING SPACE DESIGN STANDARDS. THE APPLICANT IS REQUESTING RELIEF ON PARKING FOR DRIVE-THROUGH WINDOWS WHERE QUEUEING MAY IMPINGE UPON DIRECT ACCESS FROM PARKING SPACES TO THE BANK ENTRANCE, INCLUDING PERSONS WITH DISABILITIES.

It's fast. It's free. It's the law.

PROJECT:

FOR —

**PROPOSED
BANK**

352 TURNPIKE ROAD
SOUTHBOROUGH, MA 01772
Phone: (508) 480-9900

www.BohlerEngineering.com

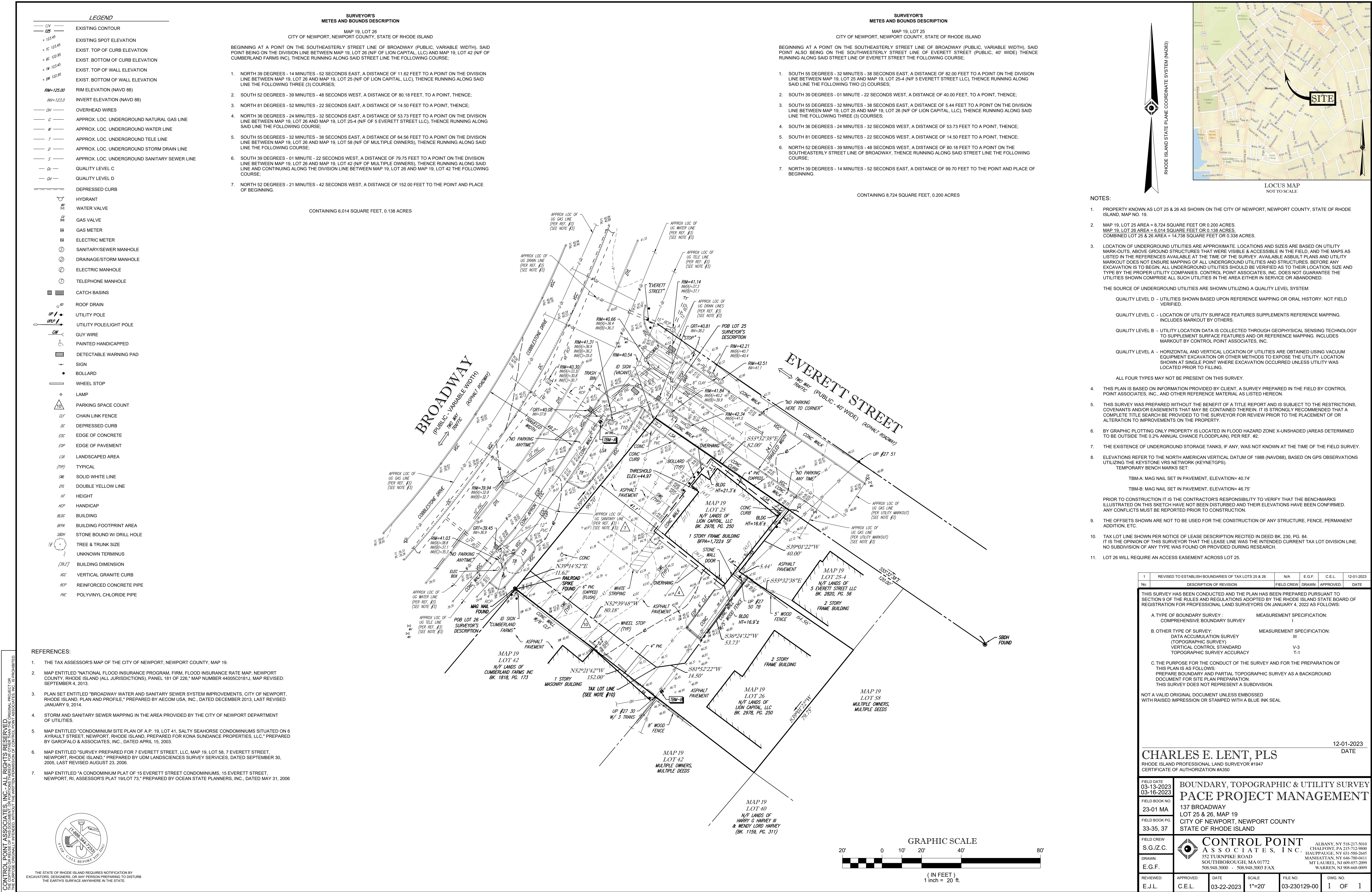
MASSACHUSETTS LICENSE No. 41697
NEW HAMPSHIRE LICENSE No. 14695
MAINE LICENSE No. 13816
CONNECTICUT LICENSE No. 30785
RHODE ISLAND LICENSE No. 11425

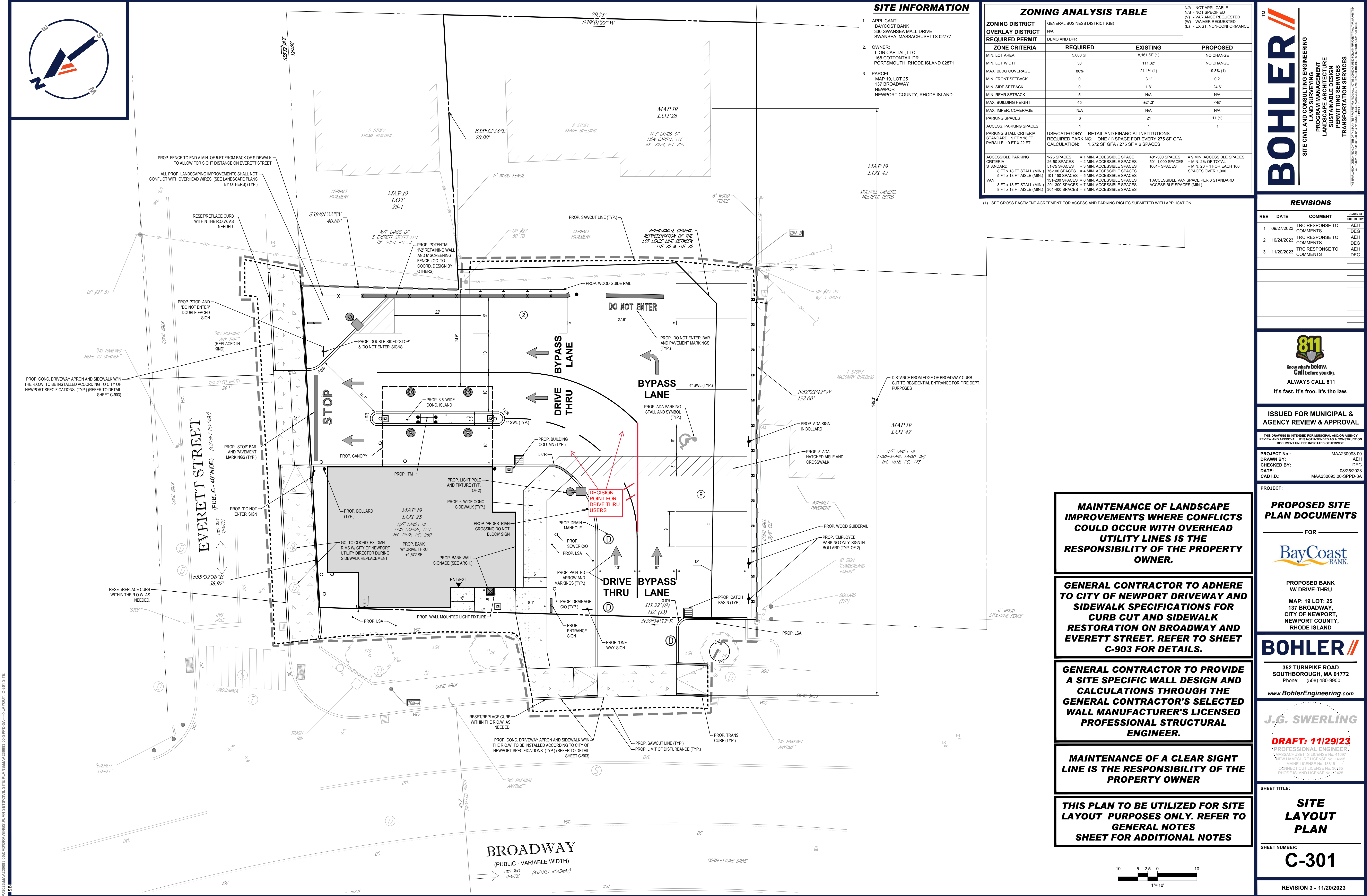
SHEET TITLE:

SHEET NUMBER:

C-101

ORG. DATE - #####





SITE INFORMATION

- 1. APPLICANT: BAYCOST BANK 330 SWANSEA MALL DRIVE SWANSEA, MASSACHUSETTS 02777
- 2. OWNER: LION CAPITAL, LLC 188 COTTONTAIL DR PORTSMOUTH, RHODE ISLAND 02871
- 3. PARCEL: MAP 19 LOT 25 137 BROADWAY NEWPORT NEWPORT COUNTY, RHODE ISLAND

ZONING ANALYSIS TABLE

ZONING ANALYSIS TABLE			
ZONING DISTRICT	GENERAL BUSINESS DISTRICT (GB)		
OVERLAY DISTRICT	N/A		
REQUIRED PERMIT	DEMO AND DPR		
ZONE CRITERIA	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA	5,000 SF	8,161 SF (1)	NO CHANGE
MIN. LOT WIDTH	50'	111.32'	NO CHANGE
MAX. BLDG COVERAGE	80%	21.1% (1)	19.3% (1)
MIN. FRONT SETBACK	0'	3.1'	0.2'
MIN. SIDE SETBACK	0'	1.8'	24.6'
MIN. REAR SETBACK	5'	N/A	N/A
MAX. BUILDING HEIGHT	45'	±21.3'	±45'
MAX. IMPER. COVERAGE	N/A	N/A	N/A
PARKING SPACES	6	21	11 (1)
ACCESS. PARKING SPACES	1	1	1
PARKING STALL CRITERIA	USE/CATEGORY: RETAIL AND FINANCIAL INSTITUTIONS		
STANDARD: 9 FT x 18 FT PARALLEL: 9 FT x 22 FT	REQUIRED PARKING: ONE (1) SPACE FOR EVERY 275 SF GFA CALCULATION: 1,572 SF GFA / 275 SF = 6 SPACES		
ACCESSIBLE PARKING CRITERIA	1-25 SPACES = 1 MIN. ACCESSIBLE SPACE 26-50 SPACES = 2 MIN. ACCESSIBLE SPACES 51-75 SPACES = 3 MIN. ACCESSIBLE SPACES 76-100 SPACES = 4 MIN. ACCESSIBLE SPACES 101-150 SPACES = 5 MIN. ACCESSIBLE SPACES 151-200 SPACES = 6 MIN. ACCESSIBLE SPACES 201-300 SPACES = 7 MIN. ACCESSIBLE SPACES 301-400 SPACES = 8 MIN. ACCESSIBLE SPACES	401-500 SPACES = 9 MIN. ACCESSIBLE SPACES 501-1,000 SPACES = MIN. 2% OF TOTAL 1001+ SPACES = MIN. 2% OF TOTAL SPACES OVER 1,000	1 ACCESSIBLE VAN SPACE PER 6 STANDARD ACCESSIBLE SPACES (MIN.)

(1) SEE CROSS EASEMENT AGREEMENT FOR ACCESS AND PARKING RIGHTS SUBMITTED WITH APPLICATION

REVISIONS

REV	DATE	COMMENT	DRAWN BY
1	09/27/2023	TRC RESPONSE TO COMMENTS	AEH
2	10/24/2023	TRC RESPONSE TO COMMENTS	AEH
3	11/20/2023	TRC RESPONSE TO COMMENTS	AEH



ALWAYS CALL 811
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ISSUED FOR MUNICIPAL & AGENCY REVIEW & APPROVAL

THIS DRAWING IS INTENDED FOR MUNICIPAL AND/OR AGENCY REVIEW AND APPROVAL. IT IS NOT INTENDED AS A CONSTRUCTION DOCUMENT UNLESS INDICATED OTHERWISE.

PROJECT No.: MAA230093.00
DRAWN BY: AEH
CHECKED BY: DEG
DATE: 08/25/2023
CAD ID: MAA230093.00-SPPD-3A

PROJECT:

PROPOSED SITE PLAN DOCUMENTS

FOR



PROPOSED BANK W/ DRIVE-THRU
MAP: 19 LOT: 25
137 BROADWAY,
CITY OF NEWPORT,
NEWPORT COUNTY,
RHODE ISLAND

BOHLER

352 TURNPIKE ROAD
SOUTHBOROUGH, MA 01772
Phone: (508) 480-9900

www.BohlerEngineering.com

J.G. SWERLING

DRAFT: 11/29/23
PROFESSIONAL ENGINEER
MASSACHUSETTS LICENSE No. 41887
NEW HAMPSHIRE LICENSE No. 14887
CONNECTICUT LICENSE No. 3816
RHODE ISLAND LICENSE No. 31765

SHEET TITLE:

SITE LAYOUT PLAN

SHEET NUMBER:

C-301

REVISION 3 - 11/20/2023