COMBINDED APPLICATION FOR A SPECIAL USE PERMIT & A REGULATORY (DIMENSIONAL) VARIANCE

CITY OF NEWPORT, RI ZONING BOARD OF REVIEW

DATE:

August 23, 2021

Board Members:

The undersigned hereby petitions the Zoning Board of Review for a Special Use Permit and a Regulatory (Dimensional) 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.: 9 Sayers Wharf & 0 America's Cup Avenue

Tax Assessor's Plat: 27, Lots: 02 & 283

Petitioner Information

Applicant:

SW 02-283, LLC

Addresses:

c/o J. Russell Jackson, Esq.

Miller Scott Holbrook & Jackson

122 Touro Street Newport, RI 02840

Owner:

SW 02-283, LLC

Leasee:

N/A

Same

Same

Property Characteristics

Dimensions of Lot No. 002:

Frontage:

6.41 ft. +/-

(America's Cup Avenue)

Depth:

248.17 ft. +/-

Area:

35,716 sf. +/-

Zoning District in which premises is located:

WB

How long have you owned above premises?

6.5 Yrs. (Purchased 12/17/2014)

Are there buildings on the premises at present?

Yes

Total square footage of the footprint of existing buildings:

2,415 sf. (7%)

Total square footage of the footprint of proposed buildings:

3,115 sf. (9%)

Present use of premise:

Proposed use of premises:

Commercial Parking Lot with

Accessory Buildings

Commercial Parking Lot with

Accessory Buildings

Dimensions of Lot No.283: Frontage: 103 ft. +/- (America's Cup Avenue)

Depth: 5.5 ft. +/-**Area:** 540 sf. +/-

Zoning District in which premises is located: WB

How long have you owned above premises? 6.5 Yrs. (Purchased 12/17/2014)

Are there buildings on the premises at present? No

Total square footage of the footprint of existing buildings: 0 sf. (0%)

Total square footage of the footprint of proposed buildings: 16 sf. (3%)

Present use of premise:

Commercial Parking Lot
Commercial Parking Lot

Give extent of proposed alterations: The Applicant proposes to upgrade the existing commercial parking lot to improve traffic flow, pedestrian access and safety. In addition to the parking lot improvements, the Applicant proposes to build decking and a permeable patio area in the southeast corner of the parking lot, adjacent to the Smokehouse, to allow for the permanent conversion of the temporary outdoor dining area.

Zoning Characteristics Matrix

	Existing	Required/Allowed	Proposed
Lot Size (sq. ft)	Lot No. 02 = 35,716 sf. Lot No. 283 = 540 sf.	5,000 sf.	Lot No. 02 = 25,716 sf. Lot No. 283 = 540 sf.
Lot Coverage	Lot No. 02 = 7 % Lot No. 283 = 0%	40 %	Lot No. 02 = 9% Lot No. 283 = 3%
Dwelling Units	Lot No. 02 = 0 Lot No. 283 = 0	2	Lot No. 02 = 0 Lot No. 283 = 0
Parking (# of spaces)	Lot No. 02 = 88 Lot No. 283 = 0	Lot No. 02 = 15 Lot No. 283 = 0	Lot No. 02 = 77 Lot No. 283 = 0
Front Setback (ft.)	Lot No. 02 = N/A Lot No. 283 = N/A	0 ft.	Lot No. 02 = N/A Lot No. 283 = N/A
Side Setbacks (ft.)	Lot No. $02 = N/A$ Lot No. $283 = N/A$	5 ft.	Lot No. 02 = 0 ft. +/- (New Deck) Lot No. 283 = 0 ft. +/- (New Deck/Entry)
Rear Setback (ft.)	Lot No. $02 = N/A$ Lot No. $283 = N/A$	5 ft.	Lot No. 02 = N/A Lot No. 283 = 0 ft. +/-
Height (ft.)	All Structures < 35 ft.	35 ft.	All Structures < 35 ft.

Project Summary:

The Applicants seek relief under:

Section 17.108.020 (Special Use Permits)

Section 17.108.010 (Variances)

Section 17.72.030 (Alteration to Nonconforming Development)

Section 17.56.040 (Side Line Setback Requirements for Waterfront Business Zone)

The Applicant seeks permission to make improvements to the commercial parking lot and create a permanent extended outdoor dining area for the Smokehouse by building a deck and permeable patio in the southeast corner of Lot No. 02 and a small portion of Lot No. 283. The decking and entry will encroach into the side setback of Lot Nos. 02 and 283. The upgrades to the parking lot will improve traffic circulation, pedestrian access and safety. The outdoor dining area improvements will convert the temporary space that has been utilized by the Smokehouse throughout the Covid-19 pandemic, into a permanent outdoor service area. The Applicant requires a Special Use Permit and Dimensional Variance for the parking lot and dining area improvements.

The existing subject property consists of two irregularly shaped legal non-conforming lots of record. Lot No. 02 contains 35,716 sf of land and Lot No. 283 contains 540 sf of land. Both parcels together will continue to be utilized primarily for the on-site commercial parking lot. The property is in the WB Zone. The improvements being made to upgrade the parking lot and expand the service area for the Smokehouse are taking place primarily on Lot No. 02. Lot No. 283 will remain essentially a landscaping feature and buffer along America's Cup Avenue. The plan proposed by the Applicant is harmonious with the surrounding Waterfront Business area and will not create dimensional or regulatory non-conformities to such a degree that it is injurious to, or inconsistent with the area or the purpose and intent of the WB Zone.

What provisions of the Comprehensive Land Use Plan are the applicable to this project?

The Applicants state that the proposed development is consistent with many provisions of the Comprehensive Land Use Plan, including, but not limited to the following:

Land Use:

Goal LU-1: To provide a balanced City consisting of residential, commercial, and employment uses consistent with the character, environmental resources and vision of the community.

Policy LU-1.6 The City shall encourage upgrading, beautification, revitalization, and environmentally appropriate reuse of existing commercial areas.

Economic Development:

Goal ED-1 To develop a robust and diverse economy, providing suitable employment opportunities for residents, and a stable tax base.

- Policy ED-1.1 The City shall support key economic drivers while also seeking to attract and grow its technology sector and businesses that represent new and innovative concepts and technologies.
- Policy ED-1.5 The City shall build upon thriving sectors to develop a more substantial year round tourism economy.

Transportation:

- Policy T-1.5 The City shall incorporate measures to support older citizens and people with special needs when planning and designing streets, parking areas, and facilities.
- Goal T-5 To provide sufficient and suitably located parking, designed to eliminate, mitigate or reduce impacts.

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?

Existing parcels No. 02 and No. 283 are irregularly shaped legal non-conforming lots of record. In order to create a permanent outdoor dining area to service the Smokehouse, the proposed structure needs to located in the south side setback of both Lot Nos. 02 & 283 so that the new structure is directly attached to the existing restaurant, which sits on the adjacent parcel (Lot No. 244) to the south. This will ensure the safety of staff and patrons.

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?

The Applicant proposes to continue with the commercial parking lot as the primary use on Lot No. 02 and Lot No. 283. Accessory buildings already exist on site. The proposed deck in the southeast corner of Lot No. 02 will be an accessory structure which services the Smokehouse. The standard restaurant use is allowed by right in the Waterfront Business Zone. The commercial parking lot is allowed by Special Use Permit and thus requires a Special Use Permit for modifications. The Applicant seeks minor dimensional relief and a Special Use Permit in order to improve its parking operations and provide a small area to allow the Smokehouse to permanently expand its outdoor dining area. The subject property is located on America's Cup Avenue, at the corner of Scott's Wharf. This is a very densely developed commercial area. There are a number of parcels in this waterfront commercial area with a myriad of uses such as wedding venues, restaurants, retail shops, marinas, hotels and other businesses that do not meet the code requirements. The literal interpretation of the zoning code, resulting in the denial of the relief requested, would unreasonably deny this Applicant the ability to take make substantial improvements to its parking lot and permanently convert a makeshift dining area to an improved and accessible outdoor service area for the Smokehouse. The relief requested will be consistent with surrounding properties and the rights enjoyed by other property owners in this area of the WB Zone.

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

The Applicant is seeking permission to upgrade the commercial parking lot and construct a deck in the southeast corner of Lot No. 02 to serve as an outdoor dining area for the Smokehouse. The only dimensional relief being requested is a south side setback encroachment for Lots No. 2 and No. 283. Both subject parcels will remain well below lot coverage requirements. The new outdoor dining structure will be well below the height limitation and will not require any other dimensional variances. Utilizing this space to provide additional permanent outdoor dining for the Smokehouse will be in harmony with the streetscape on America's Cup Avenue. The dimensional variances are minor. The Applicant has taken great care to develop a proposed plan to permanently expand the outdoor service area for the Smokehouse which is consistent with the use enjoyed over the last year and a half. The plan is appropriate in scope, scale and size for this area and will be a natural extension and enhancement to the Smokehouse. The overall proposal has been designed to meet the reasonable business needs of the Applicant. The hardship is driven by the irregularly shaped lots involved in this plan and the need to encroach into the south setback in order to directly connect with the Smokehouse, which also already encroaches into the side setback. Granting the request for side setback relief is the minimum variance which will allow the reasonable ongoing commercial use of the property. Accordingly, the proposed use of the property and the relief sought by the Applicant will not be injurious to, or create a burden for abutting property owners, will be harmonious with the commercial area and will be an appropriate use for this area of the WB Zoning District.

The Zoning Boards Role

Special use permits shall be granted only where the zoning board of review finds that the proposed use or the proposed extension or alteration of an existing use is in accord with the public convenience and welfare, after taking into account, where appropriate:

- 1. The nature of the proposed site, including its size and shape and the proposed size, shape and arrangement of the structure;
- 2. The resulting traffic patterns and adequacy of proposed off-street parking and loading;
- 3. The nature of the surrounding area and the extent to which the proposed use or feature will be in harmony with the surrounding area;
- 4. The proximity of dwellings, churches, schools, public buildings and other places of public gathering;
- 5. The fire hazard resulting from the nature of the proposed buildings and uses and the proximity of existing buildings and uses;
- 6. All standards contained in this zoning code;
- 7. The comprehensive plan for the city.

The burden of proof in a special-use permit application is on the applicant. This means that if the applicant fails to present adequate competent evidence to prove the applicable standard for issuing a special-use permit has been met, the board must deny the application.

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 are; 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".

Applicants & Owners, By Their Attorneys, Miller Scott Holbrook & Jackson

J. Russell Jackson, Esq.

122 Touro Street

Newport, RI 02840 Tel: 401-847-7500 Fax: 401-848-5854

jrjackson@millerscott.com



SCOTTS WHARF: PARKING LOT IMPROVEMENTS AND NEW SMOKE HOUSE PATIO

SHE	ELLIST	01.0
		A1.1
G1.0	COVER	A5.3
100401	EXISTING CONDITIONS	A5.4
C1.0	DRAINAGE PLAN	
EC1.1	PHOTO ANALYSIS	
L1.21	HARDSCAPE PLAN	

A0.0 COVER SHEET & NOTES GRAPHIC SYMBOLS, ABBREVIATIONS, & NOTES

DEMOLITION PLAN & NOTES FIRST FLOOR PLAN OPTION A PROPOSED EXTERIOR ELEVATIONS & NOTES EXISTING EXTERIOR ELEVATIONS & NOTES



PERMITTING SET

NOT FOR CONSTRUCTION

PROJECT NAME

SCOTT WHARF LOTA

PROJECT ADDRESS

SAYERS WHARF, NEWPORT, RI, 02840 NO. REVISIONS

		300
UBMITTAL		DATE
ERMITTING SUB	MISSION	8.20,2021
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DP	-	Al
ATT ICCLIED.	SCALE	

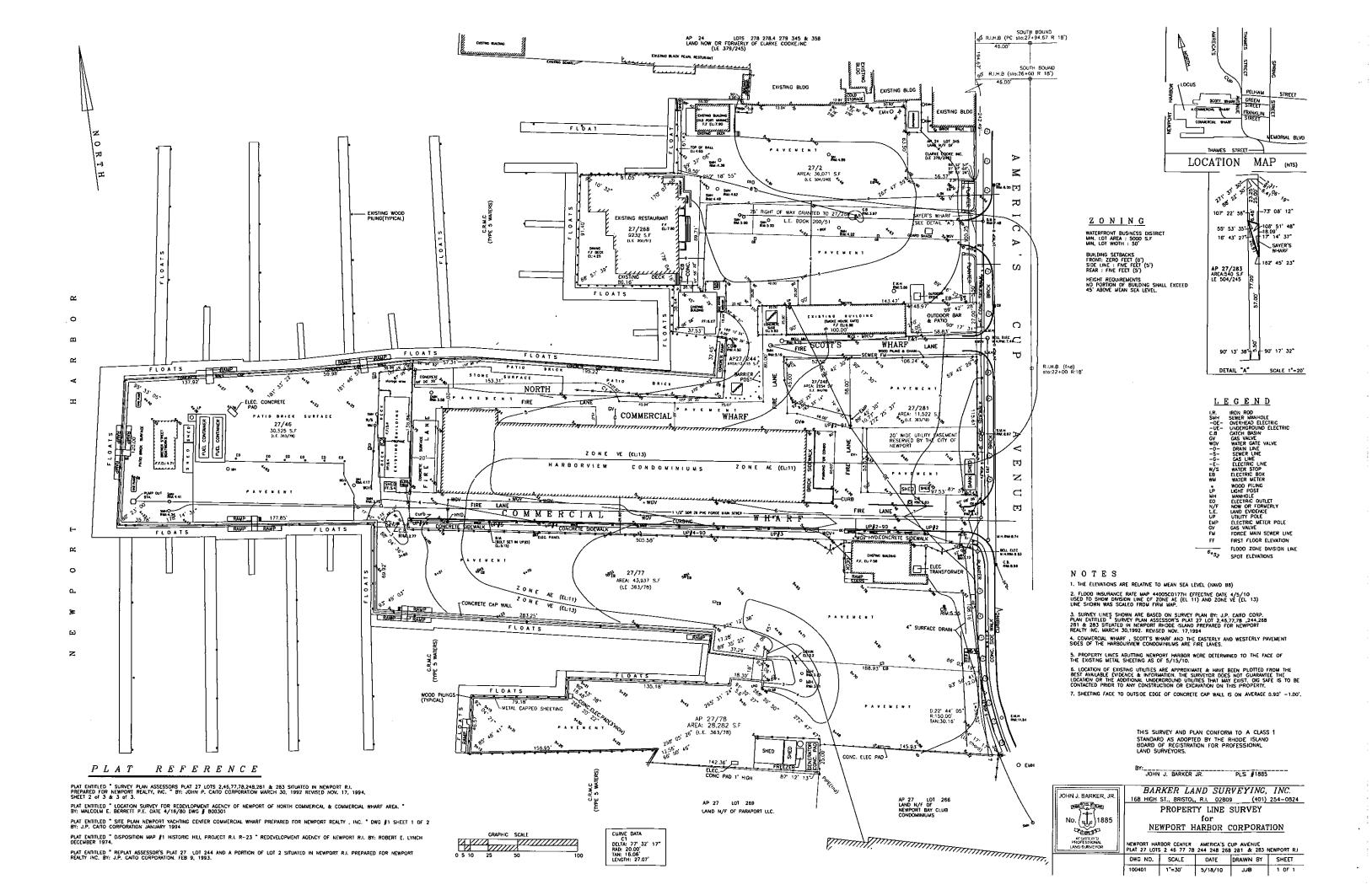
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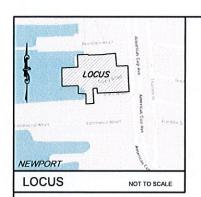
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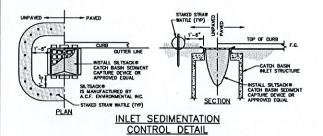
COVER

SHEET NO.

G1.0



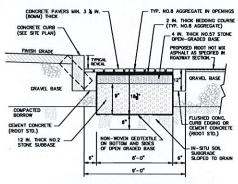




SOIL EROSION AND SEDIMENTATION CONTROL NOTES

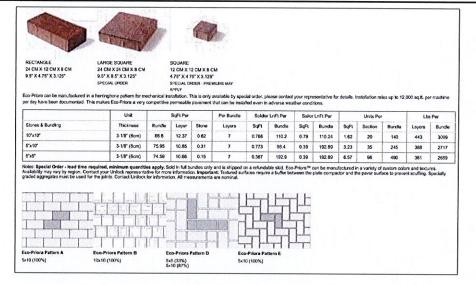
PRIOR TO INITIATING CONSTRUCTION, ALL SEDIMENTATION AND EROSION CONTROL MEASURES SHALL BE INSTALLED AS SHOWN ON THE PLANS, AS DIRECTED BY THE ENGINEER AND/OR AS NECESSITATED BY FIELD CONDITIONS. THE CONTRACTOR SHALL MAINTAIN THESE MEASURES UNITIAL ALL WORK IS COMPLETED AND ALL AREAS HAVE BEEN STRAILEZD.

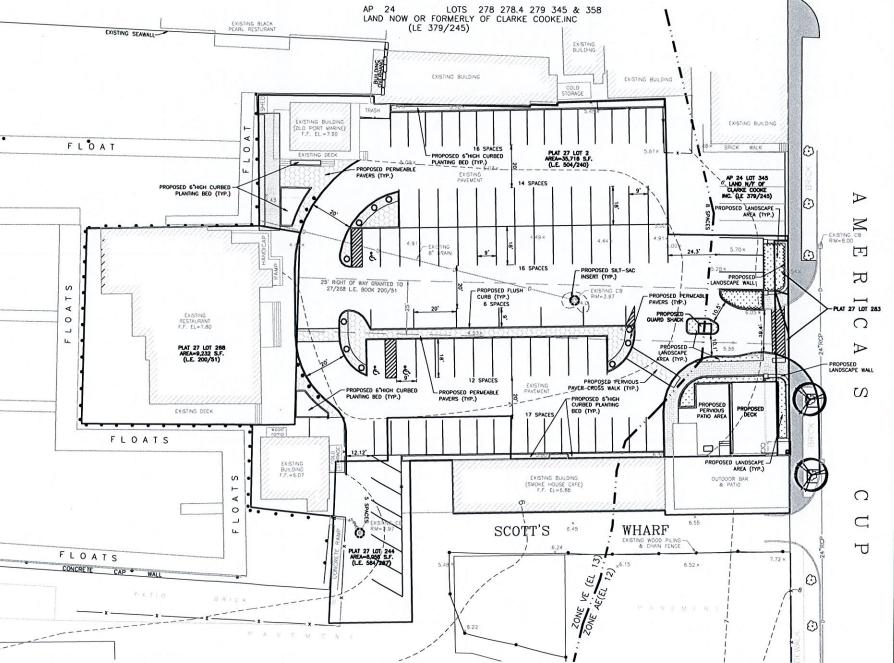
- NSTALLATION SEQUENCE
 A. INSTALL SILT FENCE AND HAYBALES AS SHOWN ON PLAN.
 B. CLEAR AND GRUB STIE.
 C. CONSTRUCT STE INFRASTRUCTURE AS SHOWN ON PLANS.
 D. THE FOLLOWING ACTIVITIES SHALL TAKE PLACE IMMEDIATELY FOLLOWING CONSTRUCTION OF EMBANKMENTS AND FILL SLOPES:
 PLACEMENT OF LOAM AND GRASS SEED, INSTALLATION OF GEOWEB SLOPE STABILIZATION.
 E. THE CONTRACTIOR SHALL INSPECT ALL FILL SLOPES AND EMBANKMENTS ON A WEEKLY BASIS AND FOLLOWING ALL RAINFALL EVENTS
 UNTIL A MINIMUM 75% GRASS COVER IS ESTABLISHED SUFFICIENT TO PREVENT EROSION FROM OCCURRING.
- 2. ACCUMULATED SEDIMENT SHALL BE REMOVED AND DISPOSED OF BY THE CONTRACTOR OR AS DIRECTED BY THE ENGINEER.
- 3. AFTER THE INSTALLATION OF DRAINAGE STRUCTURES, HAYBALES OR OTHER APPROVED MATERIALS SHALL BE PLACED TO PROTECT THE INTEGRITY OF THE STRUCTURES.
- DISTURBED AREAS SHALL BE STABILIZED WITH THE APPLICATION OF A MINIMUM OF FOUR INCHES (4) OF LOAM AND SHALL BE SEEDED WITH AN APPROVED GRASS MIX OR SHALL BE RIPRAPPED AS SOON AS POSSIBLE AFTER THE FINISHED GRADE HAS BEEN MET. IF FINIAL GRADING DOES NOT OCCUR DURING THE GROWING SEASON, THESE AREAS SHALL BE MULTCHD WITH HAY AND SECURED BY JUTE NETTING WITH STAPLES. SLOPES EXCEEDING 2:1 SHALL BE LOAMED AND STABILIZED WITH PEGGED SOO OR APPROVED EROSION CONTROL BURKETS UNKLESS OTHERWISE NOTED.
- 5. THE MOUTHS OF ALL CATCH BASINS SHALL BE FITTED WITH SILTSACK OR FILTER FABRIC DURING THE ENTIRE CONSTRUCTION PROCESS TO RETARD SILTATION.
- WHERE APPLICABLE, PROPER DUST CONTROL MEASURES SHALL APPLY TO REDUCE THE SURFACE AND AIR TRANSPORT OF DUST GENERATED DURING CONSTRUCTION. THE FOLLOWING METHODS SHALL BE USED:
- A. WET SUPPRESSION WITHOUT WETTING AGENT SHALL BE APPLIED DURING LOAD IN / LOAD OUT AND EARTH MOVING CONSTRUCTION ACTIVITIES, SPECIALLY ON STOCKPILES.
- B. INACTIVE STOCKPILES SHALL BE STABILIZED THROUGH APPLICATION OF SOIL STABILIZERS OR SEEDING
- C. WIND SCREENS OR BARRIERS AND PLASTIC TARP COVERS SHALL BE SECURED TO PREVENT WIND DISLOGGE AND DAMAGE. ANY DAMAGES SHALL BE REPAIRED OR REPLACED IMMEDIATELY.
- CONTRACTOR SHALL CONSTRUCT A TEMPORARY CRUSHED STONE CONSTRUCTION ENTRANCE APPROXIMATELY DRIVEWAY WIDTH WIDE BY 50' LONG BY 6" DEEP FOR USE DURING CONSTRUCTION ACTIVITIES AS RECESSARY TO REJOVE SEMINENT FROM VEHICLES. THE CONSTRUCTION ENTRANCE IS TO BE LOCATED AT THE ENTRANCE TO THE SITE FROM EXISTING ACCESS DRIVEWAY.
- 8. DEWATERING OPERATIONS SHALL BE PROVIDED, IF REQUIRED; ALL DISCHARGE SHALL PASS THROUGH SEDIMENTATION CONTROL DEVICES TO PREVENT IMPACTS UPON WATER BOOIES, BORDERING VEGETATED WETLANDS, DRAINAGE SYSTEMS AND ABUTTING PROPERTIES.



TYPICAL PERMEABLE INTERLOCKING CONCRETE PAVEMENT DETAIL

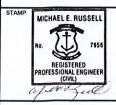
- . PERMEABLE INTERLOCKING CONCRETE PAVEMENT MANUFACTURER SHALL MEET ICPI MEMBERSHIP AND QUALIFICATION.
- INSTALLATION PROCEDURE OF PERMEABLE INTERLOCKING CONCRETE PAYEMENTS SHALL COMPLY WITH THE CONCRETE PAYEMENT MANUFACTURER SPECIFICATIONS AND RECOMMENDATIONS.
- FINAL MATERIAL SELECTION SHALL BE REVIEWED BY THE DESIGN ENGINEER, TOWN REPRESENTATIVE, AND PROJECT OWNER.







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PERMITTING SET

NOT FOR CONSTRUCTION

PROJECT NAME

SCOTT WHARF LOT A

SAY	JECT ADDRES ERS WHAR JPORT, RI, (F,	
NO.	REVISIONS		DATE
			7.7
			4
SUB	AITTAL		DATE
PERMITTING SUBMISSION		8.20,2021	
DRAWN BY CHEC		CHEC	KED BY:
DATE ISSUEDA 08/20/2021		SCALE	
PROJ		1016	0.1

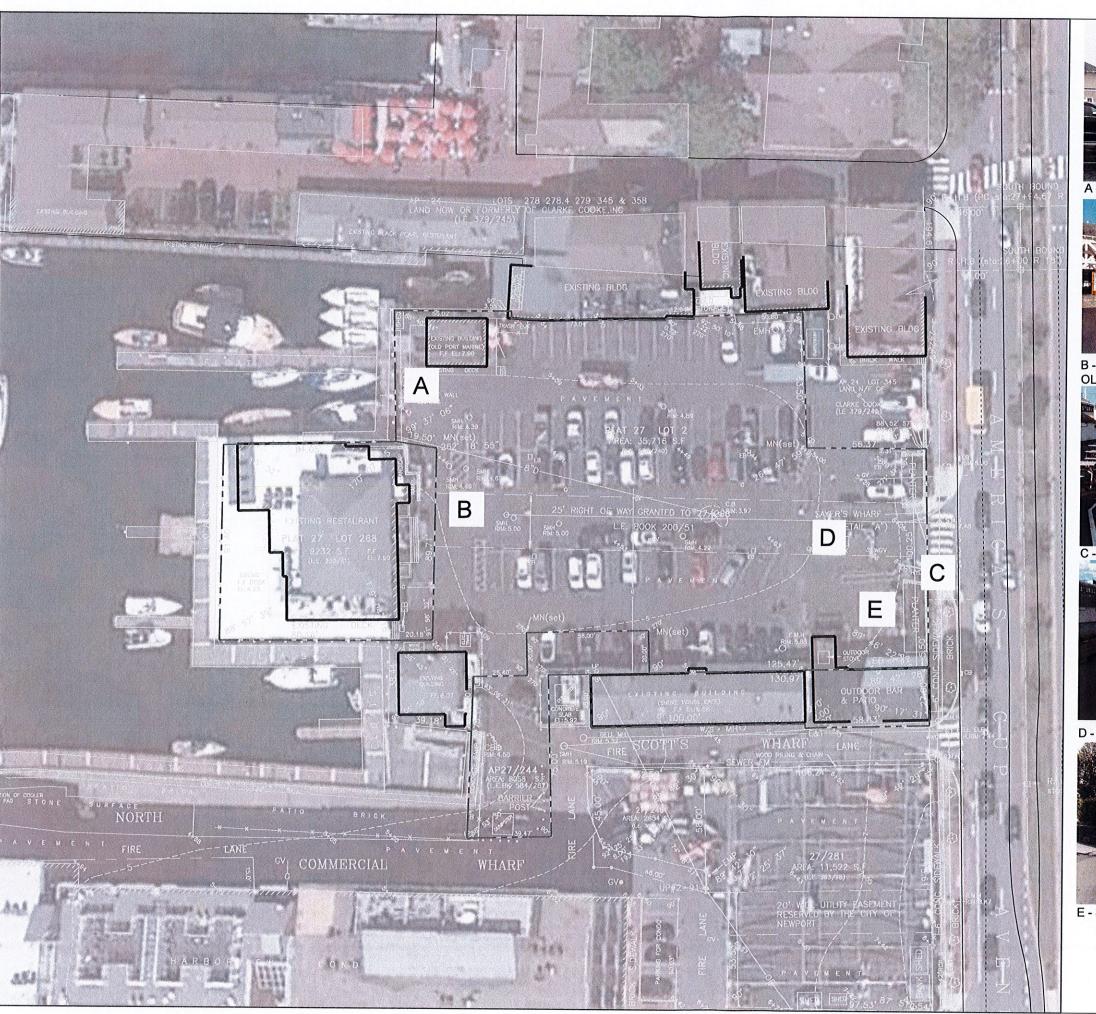
DRAINAGE

PLAN

C1.0

SHEET NO.







A - VIEW OF OLD PORT MARINE



B - VIEW LOOKING WEST BETWEEN OLD PORT MARINE AND THE MOORING



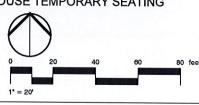
C - CURRENT PEDESTRIAN ACCESS ROUTE



D - ENTRANCE GATE



E - SMOKE HOUSE TEMPORARY SEATING





PERMITTING SET

NOT FOR CONSTRUCTION

PROJECT NAME

SCOTT WHARF LOT A

SAYERS WHARF, NEWPORT, RI, 02840

O. REVISIONS	B DATE	
	X 100 5	
	A	
UBMITTAL	DATE	
ERMITTING SUE	MISSION 8.20.2021	
	-	
RAWN BY:	CHECKED BY:	
DP	Al	
	SCALE:	
ATE ISSUED:	1"=20'	

PHOTO ANALYSIS

EC1.1

