

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF THE COMMONWEALTH
SUPERIOR COURT

BARNSTABLE, ss

CIVIL ACTION:

THE LOOKOUT BAY CONDOMINIUM)
TRUST)

Plaintiff)

v.)

COMPLAINT
(c. 40A §17)

VERDANT MEDICAL, INC., AND)
DAVID ABRAMSON, STEEN BAKER,)
RYAN CAMPBELL, JOHN GOLDEN)
and BRANDON QUISNELL)
Defendants)

COUNT I

1. The Plaintiff, The Lookout Bay Condominium Trust, is the owner of the common areas of the Lookout Bay Condominium, located at Captain Bertie's Way, Provincetown, MA, pursuant to a declaration of trust dated June 28, 2001, and recorded in the Barnstable County Registry of Deeds in Book 13989 at Page 177, as amended.
2. The Defendant, Verdant Medical, Inc., is a Massachusetts Corporation, having a principal place of business at 711 Atlantic Ave., Boston, MA.
3. The named individual Defendants are the duly constituted Planning Board for the Town of Provincetown, MA, all receiving their official mail at the Provincetown Town Hall, 260 Commercial Street, Planning Board Office, Provincetown, MA 02659:
 - i) David Abramson
 - ii) Steven Baker

- iii) Ryan Campbell
 - iv) John Golden
 - v) Brandon Quesnell
4. On or about May 15, 2018, the Defendant, Verdant, applied to the Defendant Planning Board for special permits in order to be allowed to operate a retail and medical marijuana dispensary at 44 Captain Berties Way (AKA Captain Bertie's Way) (The "subject property").
 5. The property of the Plaintiff abuts the subject property.
 6. The Defendant Board conducted duly advertised and noticed public hearings on the Defendant's said applications on June 28 and July 26, 2018.
 7. At its public haring on July 26, 2018, the member of the Defendant Board voted to grant the requested Special Permits.
 8. The Defendant's said decision, granting the special permits, was filed with the Provincetown Town Clerk on August 27, 2018, a copy of which is attached as Exhibit "A".
 9. The Plaintiff alleges that the Defendant Board failed to render its decision in accordance with the law, and failed to make the findings required to support the decision, and that its decision is not supported by the facts or the law, and is therefore beyond its jurisdiction, arbitrary and capricious.
 10. The Plaintiff is aggrieved by the said decision, and appeals hereto pursuant to General Law c. 40A §17.

Wherefore, the Plaintiff requests that the Court annul the decision of the Defendant Board, and grant such other or further relief as may be deemed just and equitable.

Respectfully Submitted,
The Lookout Bay
Condominium Trust,

By Its Attorney,



David S. Reid, Esq.
1292 Route 28
South Yarmouth, MA 02664
508-394-5648
BBO #415540
DSReid@Verizon.net

Town of Provincetown
Planning Board
Town Hall
Provincetown, MA 02657

FINDINGS AND DECISION OF THE PLANNING BOARD

August 23, 2018

Case Nos.: FY18-34 and FY18-35

Applicant: Anne Nagle, 711 Atlantic Ave., C/O Verdant Medical, Boston, MA 02111

Owner: Klaus Peter Steuermer, PO Box 10, Provincetown, MA 02657

Property: 44 Captain Bertie's Way, Provincetown, MA 02657

Assessor's ID: Map 8-2 Parcel 28

Registry: Book 11890, Page 84

The Town of Provincetown Planning Board (Board) hereby approves the application of Anne Nagle (Applicant) for a Special Permit for Use under the Town of Provincetown Zoning By-laws (By-laws) Article 2, Section 2440(b)(14) and Administrative Site Plan Review under Article 4, Section 4010 for the construction of a +/- 3800 square-foot Marijuana Establishment, Retail on the site of an existing automobile repair facility (Project). This decision is rendered pursuant to a vote of the Board on July 26, 2018.

The application for the Project was received on May 15, 2018. Board members David Abramson, Steven Baker, Ryan Campbell, John Golden and Brandon Quesnell sat on the case. On June 28, 2018 the Board opened the public hearing, the Applicant presented the Project, testimony was taken, changes and additional materials were requested, and the Board continued the public hearing to its regularly scheduled meeting on July 26, 2018.

At the continued public hearing on July 26, 2018 the Board was presented with additional information, closed the public hearing, deliberated, and voted to approve the Project with David Abramson, Steven Baker, Ryan Campbell, John Golden, and Brandon Quesnell in favor. The motion required 4 votes in favor, thus the motion passed and the Project was thereby approved.

FINDINGS

The Board finds as follows:

1. The Property is currently developed with a +/-2200 square-foot automobile repair facility.
2. The Project as proposed consists of the demolition of the existing automobile repair facility and construction of a +/- 3800 square-foot Marijuana Establishment in accordance with the following plan sets:

- *Site Plan, Proposed RMD, 44 Capt. Bertie's Way, Provincetown, Mass., prepared by Hayes Engineering Inc., consisting of 6 sheets, dated 5/11/2018, revised 7/12/2018*

- *Landscape Plan in Provincetown, Mass.*, prepared by Hayes Engineering, Inc., dated 7/15/2018
 - *Figure 1 Lighting Plan*, unattributed, dated 7/13/2018
 - Sheet A1.1.1: *First and Second Floor Plan*, prepared by Glidden Spina + Partners, dated 6/6/2018
 - Sheets A3.0.1 and A3.0.2: *Exterior Elevations*, prepared by Glidden Spina + Partners, dated 7/17/2018
 - Traffic Impact Assessment (including trip reduction measures), prepared by Hayes Engineering, Inc., dated January 29, 2018, revised June 11, 2018
 - Storm Water Management Report (including operations and maintenance measures), prepared by Hayes Engineering, Inc., dated May 11, 2018
3. The Project was reviewed on the Special Permit review criteria as listed in Section 5300 of the By-laws and the Site Plan Review review criteria as listed in Section 4035 of the By-laws.
 4. The Board found that the location is appropriate for the proposed use. The Board required, and the Applicant incorporated, the following changes to the original application to ensure the Project would meet the applicable review criteria:
 - The site drive be relocated to the west side of the property so as not to conflict with traffic exiting George's Path;
 - A greater landscape buffer be provided on the east side of the property;
 - A handicap accessible route into the site be provided for those not arriving by car;
 - Details be provided on the proposed bike rack location;
 - Plantings be native and drought-resistant;
 - Exterior elevations and details on materials and fenestration be provided; and
 - The location of the proposed generator and propane tanks be detailed.
 5. The Project as modified fully conforms to the By-laws and the review criteria therein.
 6. The Board approved the Project subject to the conditions herein.

CONDITIONS

The Board approves the Project subject to the following conditions:

1. The Project shall be constructed and maintained in accordance with the plans and other documents referenced herein.
2. The applicant shall provide a directional "entrance" sign at the easterly corner of the site drive's intersection with Captain Bertie's Way as allowed under the By-laws to prevent vehicles passing the drive.
3. All fuel tanks at the site shall be underground in a location accessible from the site drive or parking area. All fueling shall occur from areas internal to the site.
4. Routine testing of the generator shall occur between the hours of noon and 4:00PM on weekdays so as to be least impactful to abutters.
5. Doors and windows for the building shall provide adequate security for the use. Prior to issuance of a Building Permit for the project, detailed specifications on doors and windows shall be submitted for review and approval by Town staff and incorporated by reference into the decision.
6. Bicycle parking for no less than 14 bicycles shall be provided on-site. Bicycle racks shall be of "post and ring" or "inverted u" type.

7. Local delivery of retail product to customers and/or on-site consumption shall not be allowed at the site without modification of this Special Permit.

This Special Permit shall lapse twenty-four (24) months from the date of filing with the Provincetown Town Clerk (plus such time as may be required to pursue or await the determination of an appeal referred to in MGL Chapter 40A, Section 17), if a substantial use thereof or construction has not commenced.

MOTIONS

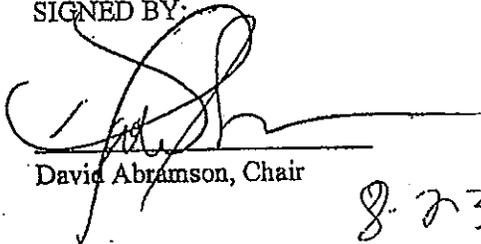
The Town of Provincetown Planning Board voted to approve, with conditions, the Special Permit for application number FY18-34 and the Site Plan Review for application number FY18-35 based on the findings set forth above on July 26, 2018. The motion passed.

Motion: Ryan Campbell

Second: Steven Baker

Vote: 5-0-0

SIGNED BY:



David Abramson, Chair

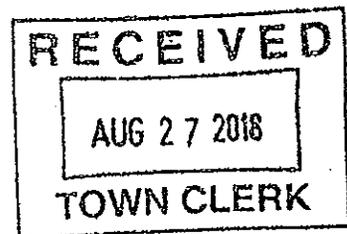
8-23-2018

DATE OF FILING:

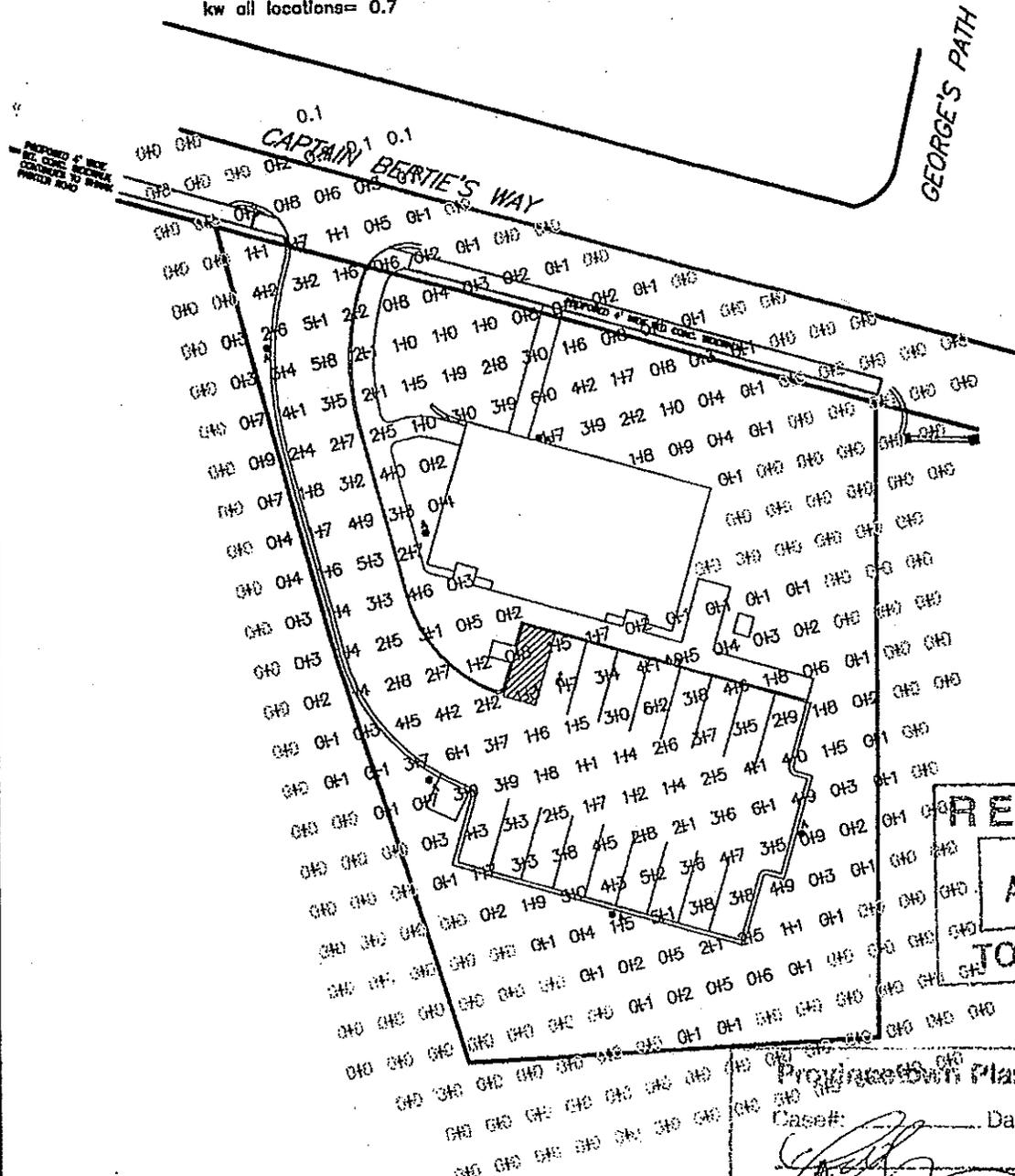
A copy of this application will be on file in the Town Clerk's Office as well as the Department of Community Development.

The Special Permit issued hereunder shall not be valid until recorded at the Barnstable County Registry of Deeds as provided in MGL Chapter 40A.

Any appeal of this decision of the Planning Board can be made only to the Court and must be made pursuant to MGL Chapter 40A, Section 17, as amended, and must be filed within 20 days after the date of filing of the decision with the Town Clerk.



* EATON - STREETWORKS (FORMER COOPER LIGHTING) UTLD-AF24-100-D-U-T3-HSS
 INNOVATIONS CENTER(G1) test report no. P239676
 lamp(s): XXX
 candela file 'UTLD-AF24-100-D-U-T3-HSS.ies'
 24 lamp(a) per luminaire, photometry is absolute
 Light Loss Factor = 0.850, watts per luminaire = 96
 mounting height = 12 ft
 number locations = 7, number luminaires = 7
 kw all locations = 0.7

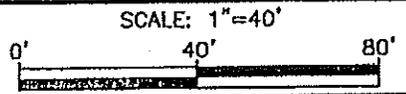


RECEIVED
 AUG 27 2018
 TOWN CLERK

Provincetown Planning Board
 Case#: _____ Date: _____

**FIGURE 1
 LIGHTING PLAN**

PROPOSED RME
 44 CAPTAIN BERTIE'S WAY
 PROVINCETOWN, MASS.



SOURCE:



7/13/18

N:\PTN1\SPP44captainBertiesR2.dwg, 7/16/2018 7:59:35 AM, TC

GENERAL NOTES

PROPOSED ELEV KEYNOTES

- 1. All elevations shall be shown in accordance with the proposed elevations.
- 2. All elevations shall be shown in accordance with the proposed elevations.
- 3. All elevations shall be shown in accordance with the proposed elevations.
- 4. All elevations shall be shown in accordance with the proposed elevations.
- 5. All elevations shall be shown in accordance with the proposed elevations.
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- 9. All elevations shall be shown in accordance with the proposed elevations.
- 10. All elevations shall be shown in accordance with the proposed elevations.
- 11. All elevations shall be shown in accordance with the proposed elevations.
- 12. All elevations shall be shown in accordance with the proposed elevations.
- 13. All elevations shall be shown in accordance with the proposed elevations.
- 14. All elevations shall be shown in accordance with the proposed elevations.
- 15. All elevations shall be shown in accordance with the proposed elevations.
- 16. All elevations shall be shown in accordance with the proposed elevations.
- 17. All elevations shall be shown in accordance with the proposed elevations.
- 18. All elevations shall be shown in accordance with the proposed elevations.
- 19. All elevations shall be shown in accordance with the proposed elevations.
- 20. All elevations shall be shown in accordance with the proposed elevations.

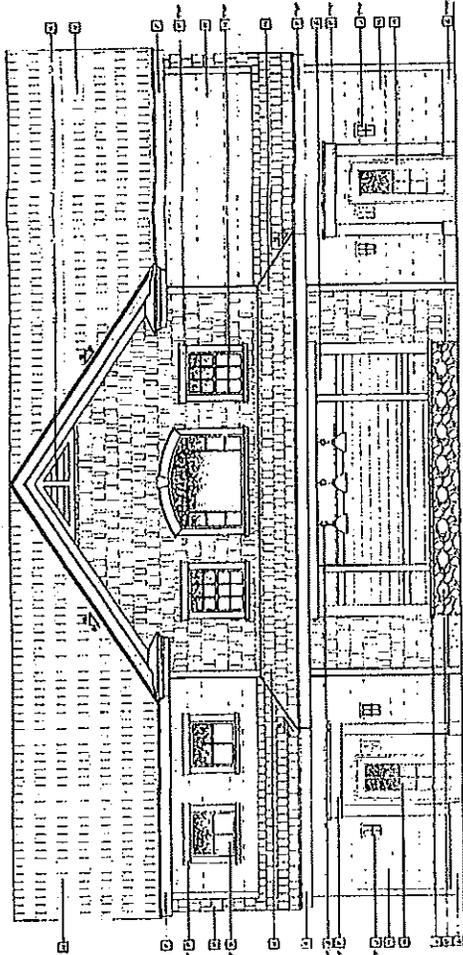

GLIDENSPINA
 ARCHITECTURE + INTERIOR DESIGN
 100 CENTRE STREET
 WEST PALM BEACH, FLORIDA 33411
 TEL: 561.833.1111
 WWW.GLIDENSPINA.COM

New Construction for
Verdant Medical, INC
 44 Captain Bartle's Way
 Provincetown, Massachusetts

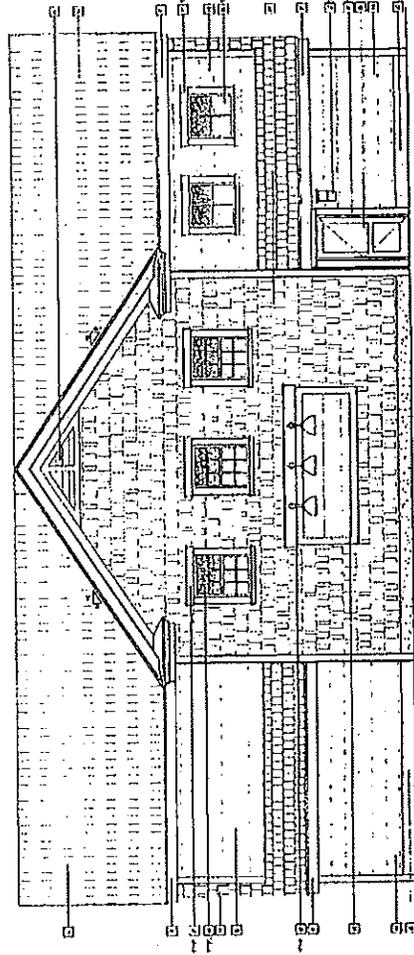
RECEIVED
 AUG 27 2018
 TOWN CLERK

Provincetown Planning Board
 Cassie: _____ Date: _____


A3.0.1



1 SOUTH ELEVATION



2 NORTH ELEVATION

2025 STATEMENTS
 WEST PALM BEACH, FLORIDA 33411
 P.O. BOX 10000
 WEST PALM BEACH, FLORIDA 33411

GIDDENS PINA
 ARCHITECTS

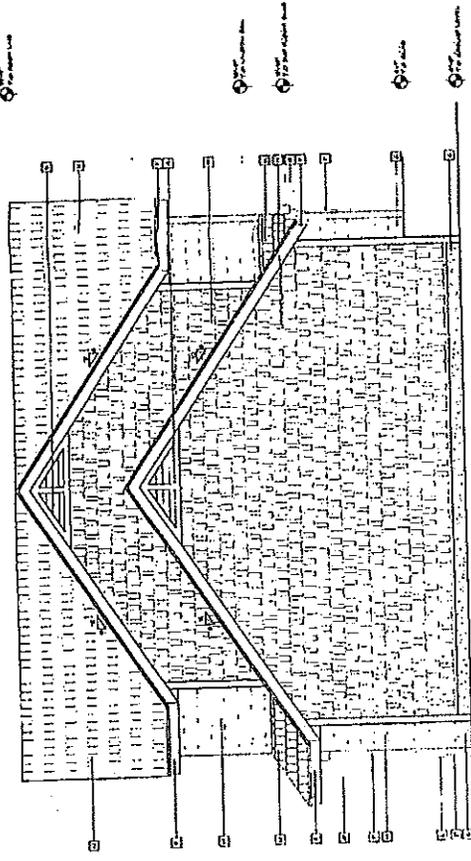
Architectural & Interior Design
 1000 N. Dixie Highway, Suite 1000
 West Palm Beach, Florida 33411

Verdant Medical, INC New Construction for: 44 Captain Bertie's Way Provincetown, Massachusetts	
Project No.: Drawing No.:	A3.0.2

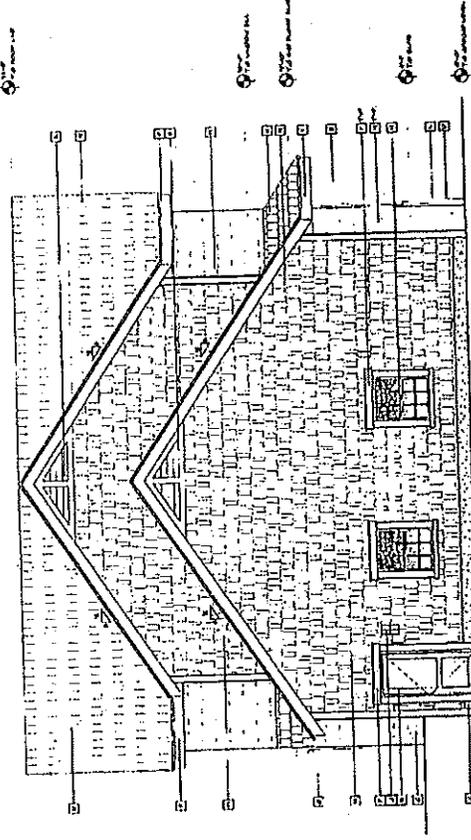
GENERAL NOTES

PROPOSED ELEV KEYNOTES

- 1. All elevations shall be in accordance with the approved architectural drawings.
- 2. All elevations shall be in accordance with the approved architectural drawings.
- 3. All elevations shall be in accordance with the approved architectural drawings.
- 4. All elevations shall be in accordance with the approved architectural drawings.
- 5. All elevations shall be in accordance with the approved architectural drawings.
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- 18. All elevations shall be in accordance with the approved architectural drawings.
- 19. All elevations shall be in accordance with the approved architectural drawings.
- 20. All elevations shall be in accordance with the approved architectural drawings.



1 EAST ELEVATION



2 WEST ELEVATION

Landscape Plan in PROVINCETOWN, MASS.

Hayes Engineering, Inc.
Civil Engineers & Land Surveyors
603 Salem Street
Wakefield, MA 01880

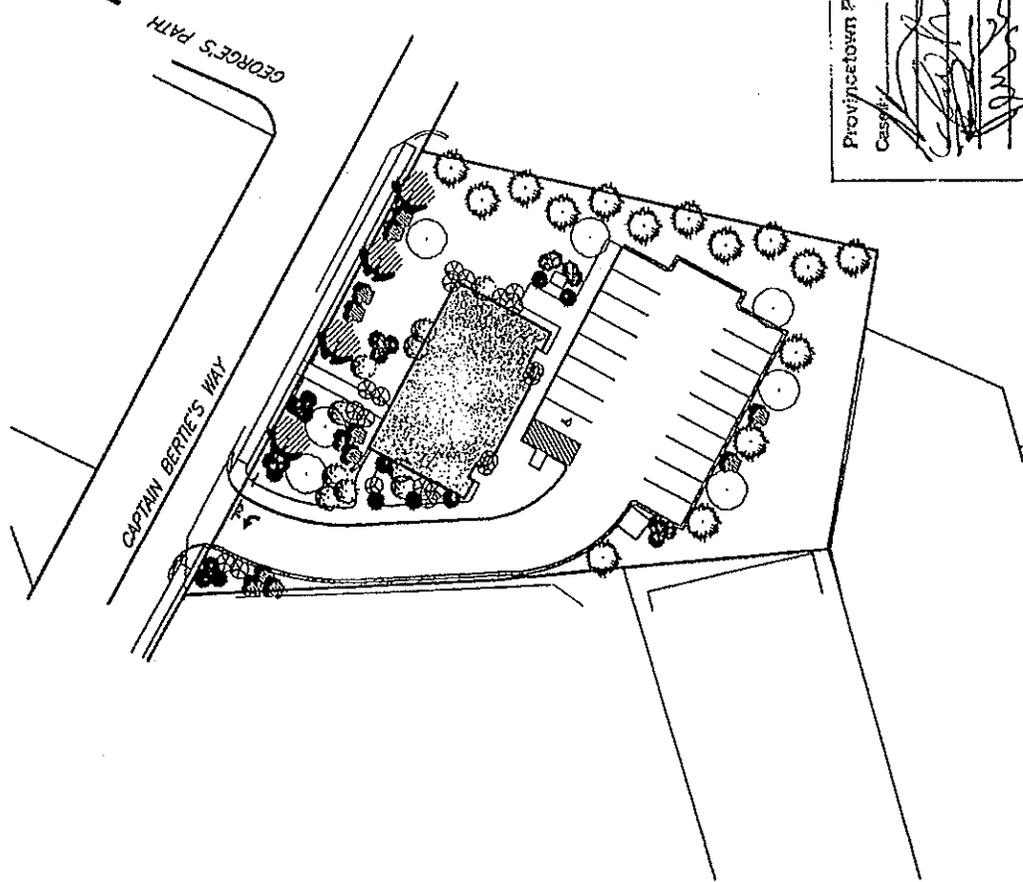
Telephone: 781.246.2800
Facsimile: 781.246.7596
www.hayeseng.com

Hayes

Scale: 1" = 40'



July 15, 2018



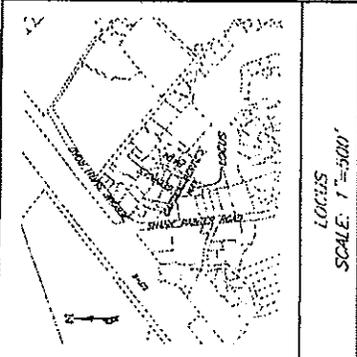
Provincetown Planning Board
Case#: _____ Date: _____
[Signature]

PLANT SCHEDULE					
QTY.	KEY	SYMBOL	SCIENTIFIC NAME	COMMON NAME	SIZE
TREES:					
8	BP		BETULA POPULIFOLIA	GRAY BIRCH	2" Ø
4	NS		NYSSA SYLVATICA	BLACK TUPELO	2" Ø
15	JV		JUNIPERUS VIRGINIANA	EASTERN RED CEDAR	4" Ø
SHRUBS:					
12	MP		MYRICA PENNSYLVANICA	BAYBERRY	5 gal.
10	IV		ILEX VERTICILLATA	COMMON WINTERBERRY	3 gal.
20	CA		CLETHRA ALNIFOLIA	COASTAL SWEET PEPPERBUSH	3 gal.
GRASSES:					
25	VP		VACCINIUM PALLIDUM	LITTLE BLUESTEM GRASS	3 gal.

SITE PLAN
 PROPOSED RMD
 44 CAPT. BERTIE'S WAY
 PROVINCETOWN, MASS.

Date: May 11, 2010
 Scale: 1"=20'
 0 10 20 40
 Feet

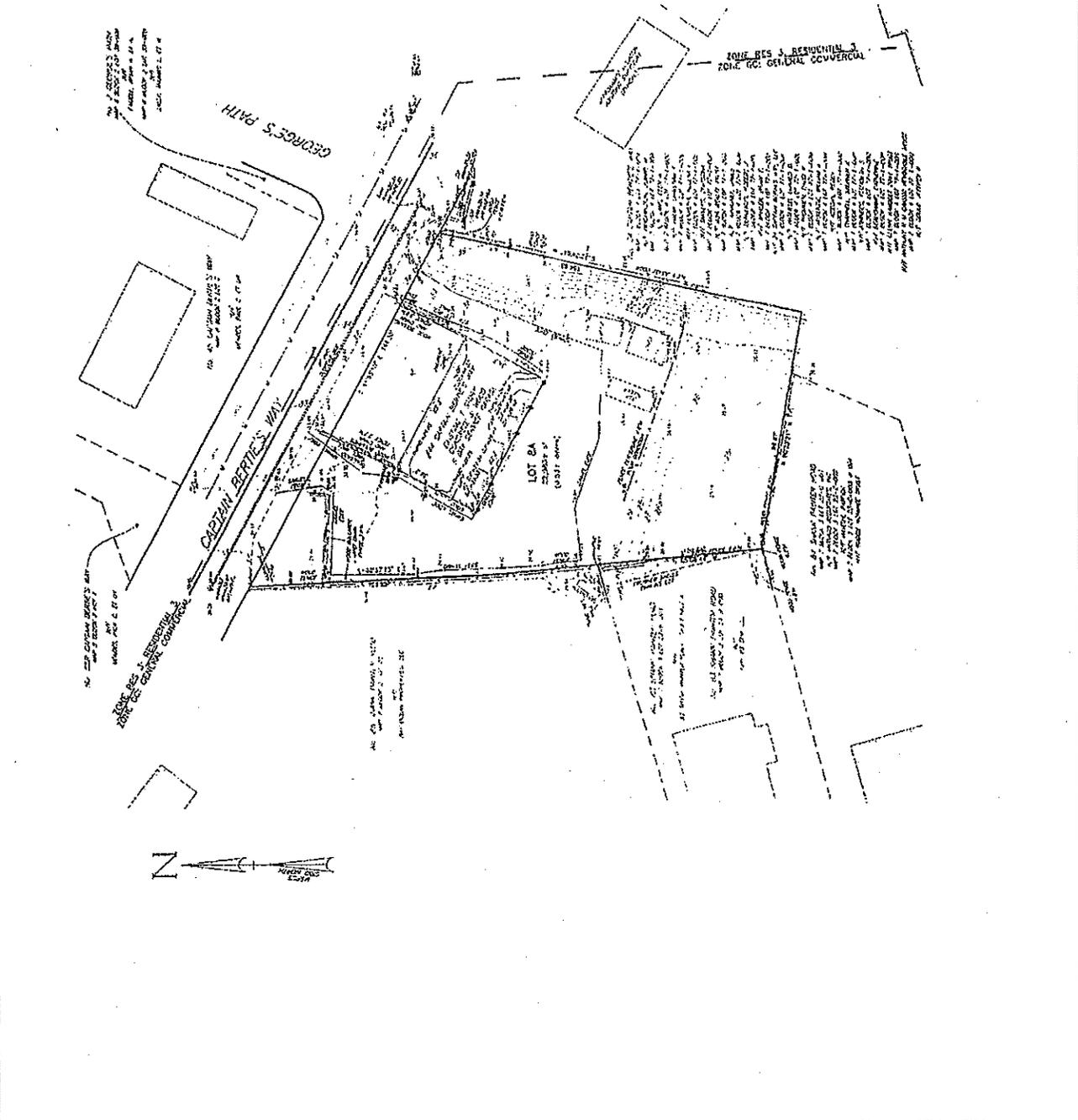
Prepared For:
 APPLICANT:
 44 CAPT. BERTIE'S WAY
 PROVINCETOWN, MASS. 02543
 409.250.8182
 33 BROADWAY
 WESTPORT, MASS. 02156



LOCUS
 SCALE: 1"=500'

LOCUS BARRED INFORMATION:
 1. The proposed site is located within the Locus Barred Area.
 2. The Locus Barred Area is defined by the Locus Barred Line.
 3. The Locus Barred Area is shown on the Locus Map.
 4. The Locus Barred Area is shown on the Locus Map.
 5. The Locus Barred Area is shown on the Locus Map.
 6. The Locus Barred Area is shown on the Locus Map.
 7. The Locus Barred Area is shown on the Locus Map.
 8. The Locus Barred Area is shown on the Locus Map.
 9. The Locus Barred Area is shown on the Locus Map.
 10. The Locus Barred Area is shown on the Locus Map.

PLAN TITLE	SHEET INDEX	SHEET DESIGNATION
CUSTOMER CONDITIONS	01	01
DEVELOPMENT	02	02
CONTRACT AND BONDING	03	03
UTILITIES	04	04
LANDSCAPING	05	05
DETAILS	06	06



RECEIVED
 APR 27 2011
 TOWN CLERK

CIVIL ACTION COVER SHEET INSTRUCTIONS
SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

*** CONTRACTS**

*** REAL PROPERTY**

MISCELLANEOUS

A01 Services, Labor and Materials (F)	C01 Land Taking (eminent domain) (F)	E02 Appeal from Administrative Agency G.L. c. 30A (X)
A02 Goods Sold and Delivered (F)	C02 Zoning Appeal, G.L. c.40A (F)	E03 Claims against Commonwealth or Municipality (A)
A03 Commercial Paper (F)	C03 Dispute concerning title (F)	E05 Confirmation of Arbitration Awards (X)
A08 Sale or Lease of Real Estate (F)	C04 Foreclosure of mortgage (X)	E07 G.L. c.112, s.12S (Mary Moe) (X)
A12 Construction Dispute (A)	C05 Condominium Lien & Charges (X)	E08 Appointment of Receiver General Contractor bond, G.L. c. 149, ss. 29, 29a (A)
A99 Other (Specify) (F)	C99 Other (Specify) (F)	E11 Worker's Compensation (X)
E03 Claims against Commonwealth or Municipality (A)	E03 Claims against Commonwealth or Municipality (A)	E12 G.L.c.123A, s.12 (SDP Commitment) (X)
	EQUITABLE REMEDIES	E14 G.L. c. 123A, s. 9 (SDP Petition) (X)
*TORT	D01 Specific Performance of Contract (A)	E15 Abuse Petition, G. L. c. 209A (X)
B03 Motor Vehicle Negligence personal injury/property damage (F)	D02 Reach and Apply (F)	E16 Auto Surcharge Appeal (X)
B04 Other Negligence- personal injury/property damage (F)	D06 Contribution or indemnification (F)	E17 Civil Rights Act, G.L. c.12, s. 11H (A)
B05 Products Liability (A)	D07 Imposition of a Trust (A)	E18 Foreign Discovery Proceeding (X)
B06 Malpractice-Medical (A)	D08 Minority Stockholder's Suit (A)	E19 Sex Offender Registry G.L. c. 178M, s. 6 (X)
B07 Malpractice-Other (Specify) (A)	D10 Accounting (A)	E25 Plural Registry (Asbestos cases) (F)
B08 Wrongful Death, G.L. c.229, s.2A (A)	D12 Dissolution of Partnership (F)	E95 **Forfeiture G.L. c. 94C, s. 47 (F)
B15 Defamation (Libel-Slander) (A)	D13 Declaratory Judgment G.L. c. 231A (A)	E96 Prisoner Cases (F)
B19 Asbestos (A)	D99 Other (Specify) (F)	E97 Prisoner Habeas Corpus (X)
B20 Personal Injury- slip & fall (F)		E99 Other (Specify) (X)
B21 Environmental (F)		
B22 Employment Discrimination (F)		
B99 Other (Specify) (F)		
E03 Claims against Commonwealth (A)		

*Claims against the Commonwealth or a municipality are type E03, Average Track, cases.

**Claims filed by the Commonwealth pursuant to G L c 94C, s 47 Forfeiture cases are type E95, Fast track.

TRANSFER YOUR SELECTION TO THE FACE SHEET.

EXAMPLE:

CODE NO.	TYPE OF ACTION (SPECIFY)	TRACK	IS THIS A JURY CASE?
B03	Motor Vehicle Negligence-Personal Injury	(F)	[X] Yes []

SUPERIOR COURT RULE 29

DUTY OF THE PLAINTIFF. The plaintiff or his/her counsel shall set forth, on the face sheet (or attach additional sheets as necessary), a statement specifying in full and itemized detail the facts upon which the plaintiff then relies as constituting money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served on the defendant together with the complaint. If a statement of money damages, where appropriate is not filed, the Clerk-Magistrate shall transfer the action as provided in Rule 29(5)(C).

DUTY OF THE DEFENDANT. Should the defendant believe the statement of damages filed by the plaintiff in any respect inadequate, he or his counsel may file with the answer a statement specifying in reasonable detail the potential damages which may result should the plaintiff prevail. Such statement, if any, shall be served with the answer.

A CIVIL ACTION COVER SHEET MUST BE FILED WITH EACH COMPLAINT.

FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY
MAY RESULT IN DISMISSAL OF THIS ACTION.