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2023 AUG 28 A 10:12



CITY OF NEWBURYPORT
PLANNING BOARD
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4400
WWW.CITYOFNEWBURYPORT.COM

**RECORD OF PROCEEDINGS AND
SPECIAL PERMIT DECISION**

APPLICANT: City of Newburyport
60 Pleasant Street
Newburyport, MA 01950

PROPERTY OWNER: City of Newburyport

FILE NO.: PBSP-23-2

PROPERTY ADDRESS: **149 High Street**

DECISION DATE: 08/16/2023

MAP/PARCEL(S): 35-160-A

BOOK/PAGE: 276-114

ZONING DISTRICT: Ag. C/DOD

PROCEDURAL HISTORY:

The above referenced application for a Special Permit was submitted on 5/17/2023 for relief from the Newburyport's Zoning Ordinance Section XXVII Downtown Overlay District for the following request: *installation of a 12'x12' utility shed to house a pump and wet well to maintain the park.* The application was determined complete and filed with the City Clerk on 6/16/2023. Notice of the public hearing was published on 7/3/2023 and 7/10/2023 in the Newburyport Daily News. The public hearing was held on 7/19/2023 and continued to 8/2/2023 and 8/16/2023.

At the close of the public hearing, upon a motion to approve made by Robert Koup and seconded by Alden Clark, the Planning Board voted as follows:

Rick Taintor, Chair	<u>Yes</u>	Charles Palmisano	<u>Yes</u>	Elisabeth DeLisle	<u>Yes</u>
Alden Clark	<u>Yes</u>	Robert Koup	<u>Yes</u>	Heather Rogers	<u>Yes</u>
Jamie Pennington	<u>Yes</u>	Richard Yeager	<u>Absent</u>		

Having received the necessary two-thirds supermajority vote of the Planning Board, in accordance with M.G.L. Chapter 40A Section 9, as amended, the petition was therefore **APPROVED**.

PLANS AND DOCUMENTS:

The Board approved the project subject to the following plans, drawings, documents, and/or submittals:

- Final August 16th (2nd as labeled), 2023 slide presentation from the Planning Board meeting of August 16, 2023; and
- “Site Plan, Bartlett Mall Restoration Project, Proposed Final Conditions” prepared by Aqueous Consultants, LLC dated April 14, 2023 and most recently revised on July 10, 2023.

Throughout its deliberations, the Planning Board has been mindful of the statements of the applicants and their representatives, and the comments of the general public, as made at the public hearing.

FINDINGS:

In order to grant this Special Permit this Board must determine that the applicant’s project meets certain specific criteria, as provided in Section X-H (7) and Section XXVII Downtown Overlay District of the NZO. These criteria and the Board’s project specific findings for each are enumerated here:

DOD Special Permit Findings:

- The requested use is to construct a new 12’x12’ utility structure to house equipment (wet well, pump, etc.) to maintain the water quality of the frog pond at the Bartlett Mall.
- The Board found that the project complies with Section XXVII-F (5) of the Newburyport Zoning Ordinance in that the new construction is compatible with existing historic buildings and structures within the Downtown Overlay District (DOD).
- The Board found that the proposed new construction within the DOD does not disrupt the essential form and integrity of the lot where it is located or its setting within the DOD.
- The Board found that the new construction within the DOD is compatible with the size, scale, height, color (excepting paint color), material, and character of the (x) subject historic building, structure or exterior architectural feature, (y) the lot where it is located, and (z) its setting within the DOD, as the case may be.
- The proposed project meets Section XXVII- F.5.c where non-historic styles are permitted for new construction and additions. The proposed project is compatible with the historic character and scale of the subject historic building, structure, or exterior architectural feature, its lot, and its setting within the DOD, as the case may be.

General Special Permit Findings

1. The use requested is listed in the table of use regulations or elsewhere as in the ordinances requiring a special permit in the district for which application is made or is similar in character to permitted uses in a particular district but is not specifically mentioned.

The requested use is to construct a new 12’x12’ utility structure to house equipment (wet well, pump, etc.) to maintain the water quality of the frog pond at the Bartlett Mall in the Downtown Overlay District. Section XXVII-F states that “all new construction, alteration, or demolition within the DOD shall require the owner of the relevant property to submit an application for a DOD-SP.” Thus, the requested use is specifically listed in the Ordinance as requiring a special permit.

2. The requested use is essential and/or desirable to the public convenience or welfare.

The requested use— to construct a new 12'x12' utility structure to house equipment (wet well, pump, etc.) to maintain the water quality of the frog pond at the Bartlet Mall in the Downtown Overlay District — is necessary to keep the water of the Frog Pond clean and is therefore is essential for public welfare.

3. The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.
The requested use will not create undue traffic congestion, or unduly impair pedestrian safety. There will be no offsite parking impacts in connection with the proposed use.
4. The requested use will not overload any public water, drainage, sewer system, or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the city will be unduly subjected to hazards affecting health, safety, or the general welfare.
The requested use will not overload any public water, drainage or sewer system or any other municipal system.
5. Any special regulations for the use, set forth in the special permit table are fulfilled.
There are no special regulations for this use.
6. The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health or welfare.
The Planning Board found that the proposed project not would impair the integrity and character of the Downtown Overlay District. The Board found that the project complies with Section XXVII-F (5) of the Newburyport Zoning Ordinance in that the new construction is compatible with the existing historic buildings and structures and setting within the Downtown Overlay District.
7. The requested use will not, by its addition to a neighborhood, cause an excess of that particular use that could be detrimental to the character of said neighborhood.
The proposed new use will not cause an excess of that particular use that could be detrimental to the character of said neighborhood.
8. The proposed use is in harmony with the purpose and intent of this ordinance.
The proposed use— to construct a new 12'x12' utility structure to house equipment (wet well, pump, etc.) to maintain the water quality of the frog pond at the Bartlet Mall in the Downtown Overlay District —is in harmony with the purpose of the ordinance as expressed in Sections XXVII-B, XXVII-F.3 and XXVII-F.5.
9. The proposed use shall not be conducted in a manner as to emit any dangerous, noxious, injurious, or otherwise objectionable fire, explosion, radioactive or other hazard, noise, vibration, smoke, dust, odor, or other form of environmental pollution.
The proposed use shall not be conducted in a manner as to emit any dangerous, noxious, injurious, or otherwise objectionable fire, explosion, radioactive or other hazard, noise, vibration, smoke, dust, odor, or other form of environmental pollution.

STANDARD CONDITIONS:

In view of the foregoing findings, the Planning Board hereby grants a Special Permit approval subject to the terms and conditions stated below:

1. Recording of Decision and Approved Plans: The applicant shall file this decision with the Southern Essex County Registry of Deeds (or Land Court if registered land) and a copy of the

decision stamped with the recording information (Book/Page or Land Court document number) shall be included with the application for any related Building Permits. To ensure compliance with this decision, site/construction plans issued to any contractors shall make clear reference to this written decision and conditions of approval contained herein.

2. Permit Lapse: This permit will lapse after three years from the date of granting and shall no longer be valid if a substantial use has not commenced except for good cause or, in the case of a permit for construction, if construction has not commenced except for good cause, within this period. Excluded from any lapse period is the time required to pursue or await the determination of any appeal taken pursuant to MGL Chapter 40A Section 17.
3. Modifications to Approved Plans: The applicant, property owner, and their successors or assigns, shall adhere to the above referenced and approved plans which are incorporated herein by reference. Should the applicant and/or property owner determine that a plan(s) needs to be modified, they shall notify the Planning Board and Office of Planning and Development (OPD) of the proposed modifications in writing and obtain approval from the Planning Board (or OPD as specified herein) for such modifications prior to making any changes in the field. The OPD shall determine whether such modifications are minor or major (material) in nature. The Planning Board shall schedule a public hearing for review and approval of any changes deemed major or material in nature to the permit originally issued. Any major or material alterations or changes to the above referenced plans shall require prior approval by the Planning Board. Minor changes may be approved in writing by the OPD without further review by the Planning Board. The determination as to whether an alteration or change in plans is material and therefore subject to Planning Board review shall be made at the discretion of the OPD.
4. Curb Cuts: Any new driveway opening or curb cuts that have egress to the public right of way must be approved by the Director of Public Services or Designee in advance of construction.
5. Fire Department Review and Approval: The applicant, owner, successors, or assigns shall be responsible for designing the utilities to meet City standards and ensuring compliance with fire codes prior to commencing work under this approval.
6. Stormwater Management Permit: If the project involves more than 10,000 square feet of land disturbance, the applicant, owner, his successors or assigns, shall obtain a Stormwater Management Permit under the City of Newburyport Stormwater Management Ordinance (Code of Ordinances, Chapter XVII) from the Department of Public Services prior to beginning any site work, including tree clearing and/or regrading. The applicant shall provide a copy of said permit to the Building Commissioner and Zoning Administrator with the application for any related Building Permits.
7. Code & Permit Compliance: The proposed scope of exterior building demolition/construction shall be limited to that shown in the above referenced and approved plans, and shall remain at all times in compliance with the Downtown Overlay District (DOD) zoning provisions. Any changes that exceed the above scope (including but not limited to the removal of existing exterior wall wood framing) shall require that such modification be submitted to, and approved in writing by the Zoning Administrator or the Planning Board as the case may be, prior to such additional demolition or other change of scope.
8. Submission of As-Built Foundation Plan: A copy of the as-built foundation plan shall be provided to the Office of Planning and Development and Building Department upon foundation completion.

9. Site Lighting: All lighting fixtures, including but not limited to, signage, building, parking lot, site, decorative, and security, shall feature cut off fixtures so that the lights are pointed downward reducing light pollution and glare onto abutting properties.
10. Hours of Construction: The developer shall take reasonable care not to disturb surrounding properties and property owners during construction. Construction work shall be limited to the hours between 7 a.m. and 5 p.m. Monday through Friday and 8 a.m. and 4 p.m. on Saturday.
11. Trees and Sidewalks: The applicant shall be responsible for compliance with the applicable provisions of Sections II-B.46a, X-H.6.Q, and X-H.7.B.10 of the Newburyport Zoning Ordinance. If at least one (1) dwelling unit is added or if the cost of the project exceeds more than 50% of the physical value of the entire property, the applicant shall obtain the written recommendation from the Newburyport Tree Warden and Department of Public Services prior to building permit with respect to plans and specifications for (1) the reconstruction, repair, and/or replacement, where appropriate, of all city-owned sidewalks actually adjoining the project Property, in accordance with Sections 12-54 and 12-55 of the Newburyport Code of Ordinances; and (2) the planting, preservation, and/or replacement, where appropriate, of street trees along all public rights-of-ways actually adjoining the project Property, in accordance with article VI of chapter 12 of the Newburyport Code of Ordinances. Said improvements shall be completed prior to occupancy or a proposal shall be submitted to the Zoning Administrator indicating proposed completion schedule. The applicant shall be responsible for the care and maintenance (including adequate watering) of all new tree plantings within the R.O.W. installed as part of this project, in accordance with the final approved plan(s) referenced above, for two (2) years following initial planting, in order to ensure their successful transplant and survival. If any of such trees die during this two (2) year period, they shall be replaced in kind at the applicant's expense.
12. Submission of As-Built Site Plans: A copy of the as-built site plan stamped by a professional engineer shall be submitted to the Office of Planning and Development at the completion of the construction.

SPECIAL CONDITIONS

In addition to the foregoing standard conditions, the Planning Board hereby grants approval subject to the special conditions stated below:

1. The exterior **design** of the proposed pump house approved herein shall be consistent with either Option C or D as presented to the Board during the public hearing, and more specifically in the final August 16th (2nd as labeled), 2023 slide presentation. Said design options incorporate white stone string courses above and below the door on all four facades, with Option D also incorporating dentil molding along the roofline. The final design for installation, prior to issuance of a building permit and/or construction, shall be subject to confirmatory approval by the Planning Director, consistent with this condition, following consultation with members of the Planning Board designated by the Chair at such time.
2. The **materials** used on the exterior foundation, walls and roof of the pump house shall consist of real stone, brick and slate, respectively, as represented by the applicant. Should the applicant desire to substitute any other materials than these, the applicant shall submit a request for minor modification of this special permit, including specifications for the proposed materials. The Planning Director may approve such minor modification following consultation with members of

the Planning Board designated by the Chair at such time, but without review and approval by the full Board.

3. It is acknowledged herein that the proposed **location** of the pump house is subject to change following final approval of the overall Bartlet Mall/Frog Pond project plans by the City Council and execution of a construction contract for the project. Such a change in location may be made in order to reduce the visual impact of the pump house on the historic Mall landscape. The applicant has identified, and the Planning Board has considered, the following potential changes in location: (a) shifting the pump house further from the pond; (b) embedding it partially into the adjacent hillside; or (c) incorporating it into/under the stair structure on the east side of the adjacent District Courthouse. Such change in location may also require or accommodate revisions to the design of the pump house structure. Should the applicant determine that it is feasible and desirable to make such a change in the location and design of the pump house, the applicant shall submit a request for minor modification of this special permit including a revised site plan (with grading) and building elevations. The Planning Director may approve such minor modification, consistent with this condition, following consultation with members of the Planning Board designated by the Chair at such time, but without review and approval by the full Board. Any change in location other than as listed herein shall require review and approval by the full Board, and may (at the Board's discretion) require another advertised public hearing.
4. In order to mitigate noise from the operation of pump equipment within the new pump house, which has exterior louvers and other openings in the façade, the effective decibel level adjacent to the pump house (exterior) shall be no higher than 45 dBA as confirmed by a registered acoustical engineer. Prior to grant of an occupancy permit for, or use of, the new pump house/equipment (not including initial testing), the applicant shall provide to the Zoning Administrator written confirmation of compliance with this performance standard by a registered acoustical engineer.

CONCLUSION AND DECISION:

For all of the reasons stated herein, the petition for a Special Permit is therefore **APPROVED**.

APPEALS:

Appeals shall be made within twenty (20) days after the date of filing of this decision in the Office of the City Clerk directly to a court of competent jurisdiction in accordance with the provision of M.G.L. Chapter 40A Section 17.

SIGNATURE OF THE BOARD:

The following signature is made in accordance with M.G.L. c.110G and pursuant to the Planning Board's electronic signature authorization vote recorded on Jun 12, 2020 in Book 38602 Page 210 at the Southern Essex Registry of Deeds.

Rick Taintor
Rick Taintor (Aug 28, 2023 09:40 EDT)
Rick Taintor, Chair

Aug 28, 2023
Date

CITY CLERK CERTIFICATION:

I, Richard Jones, City Clerk of the City of Newburyport, hereby certify pursuant to M.G.L. Chapter 40A Section 17, that the Special Permit decision for the property known as 149 High Street was filed in the Office of the City Clerk on _____. Twenty (20) days have elapsed since the decision was filed and no appeal has been filed.

City Clerk

Date







PBSP-23-2 149 High Street

Final Audit Report

2023-08-28

Created:	2023-08-28
By:	Dianne Boisvert (dboisvert@cityofnewburyport.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXzR5BxaTL8-Kli4bxXwZJ8sL4qjkgZ8o

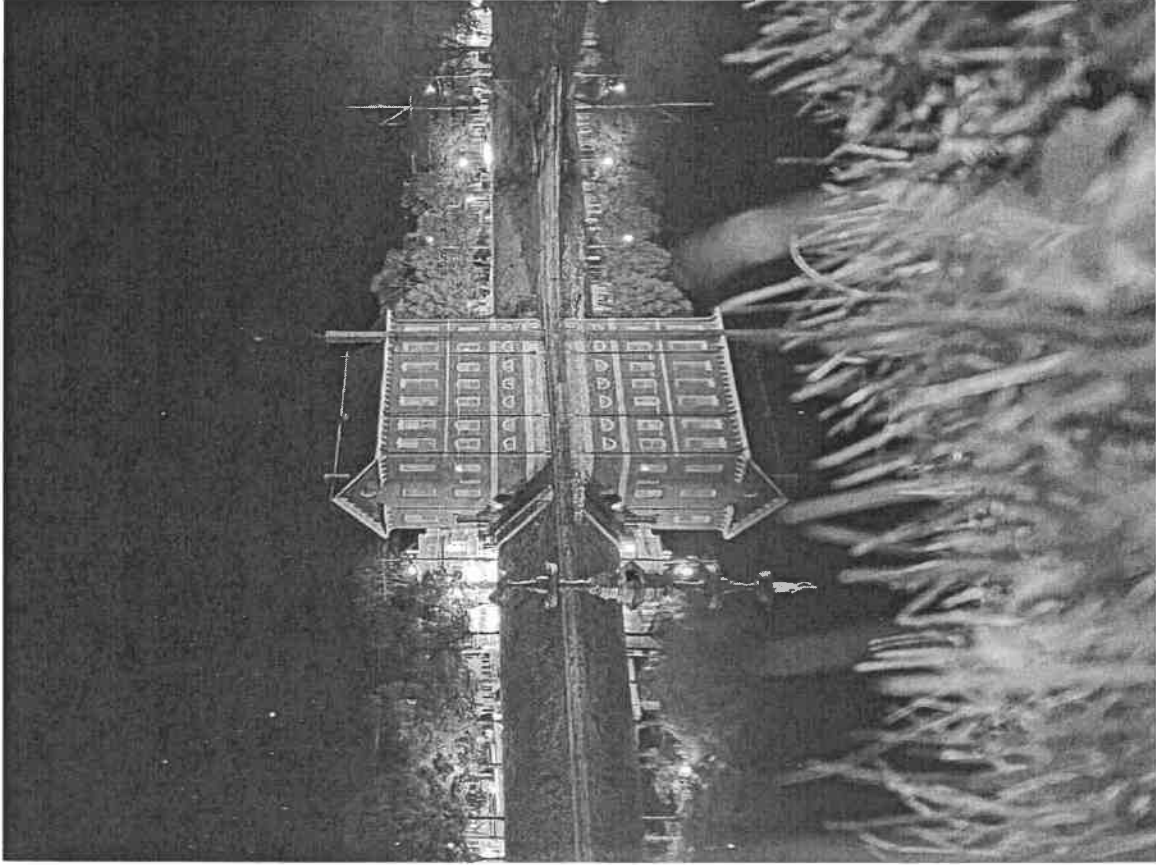
"PBSP-23-2 149 High Street" History

-  Document created by Dianne Boisvert (dboisvert@cityofnewburyport.com)
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-  Document emailed to Frederick S. Taintor (rtaintor@gmail.com) for signature
2023-08-28 - 1:25:37 PM GMT
-  Email viewed by Frederick S. Taintor (rtaintor@gmail.com)
2023-08-28 - 1:39:43 PM GMT
-  Signer Frederick S. Taintor (rtaintor@gmail.com) entered name at signing as Rick Taintor
2023-08-28 - 1:40:38 PM GMT
-  Document e-signed by Rick Taintor (rtaintor@gmail.com)
Signature Date: 2023-08-28 - 1:40:40 PM GMT - Time Source: server
-  Agreement completed.
2023-08-28 - 1:40:40 PM GMT

Bartlet Mall Restoration Project

PRESENTATION TO NEWBURYPORT
PLANNING BOARD

AUGUST 2, 2023



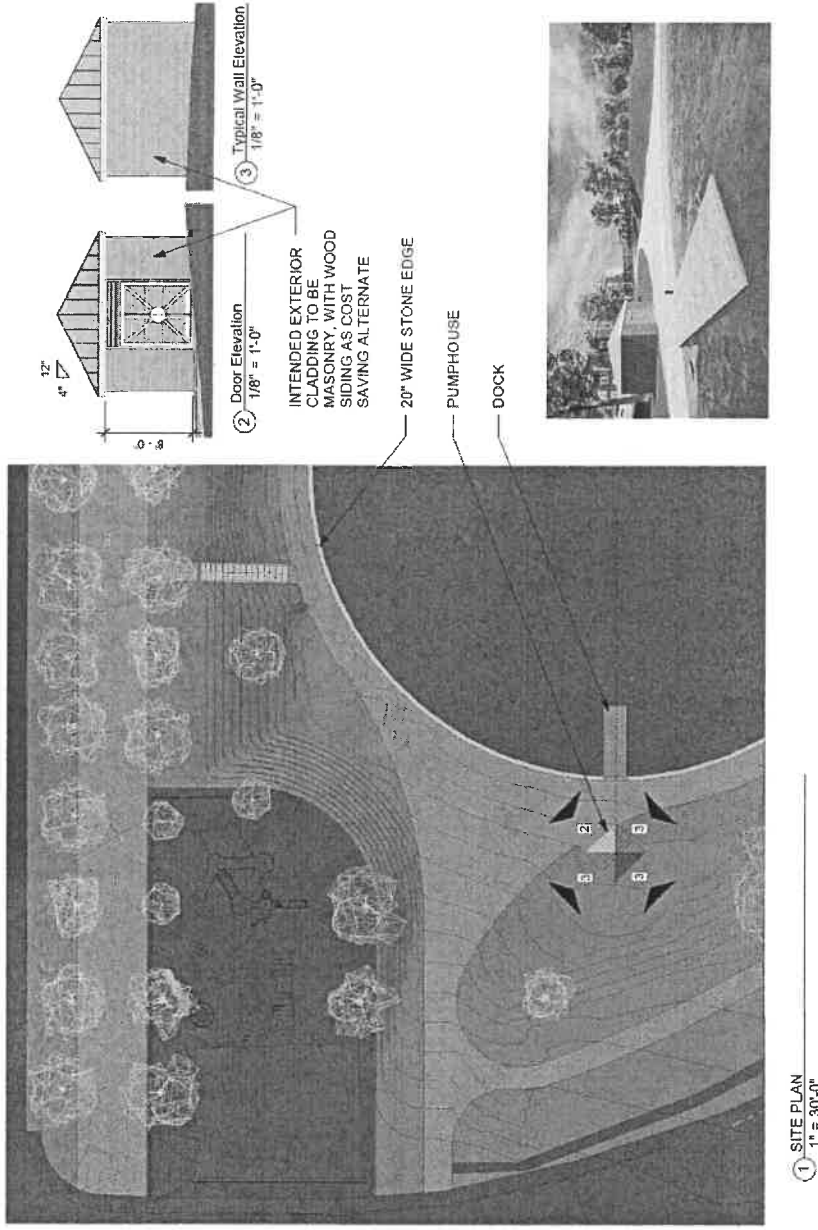
Original proposal

Pump house:

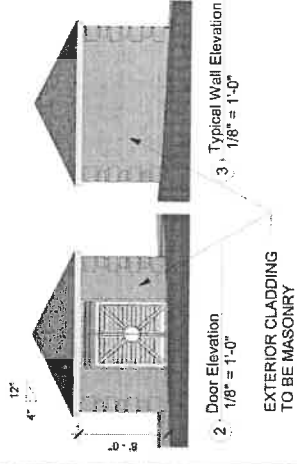
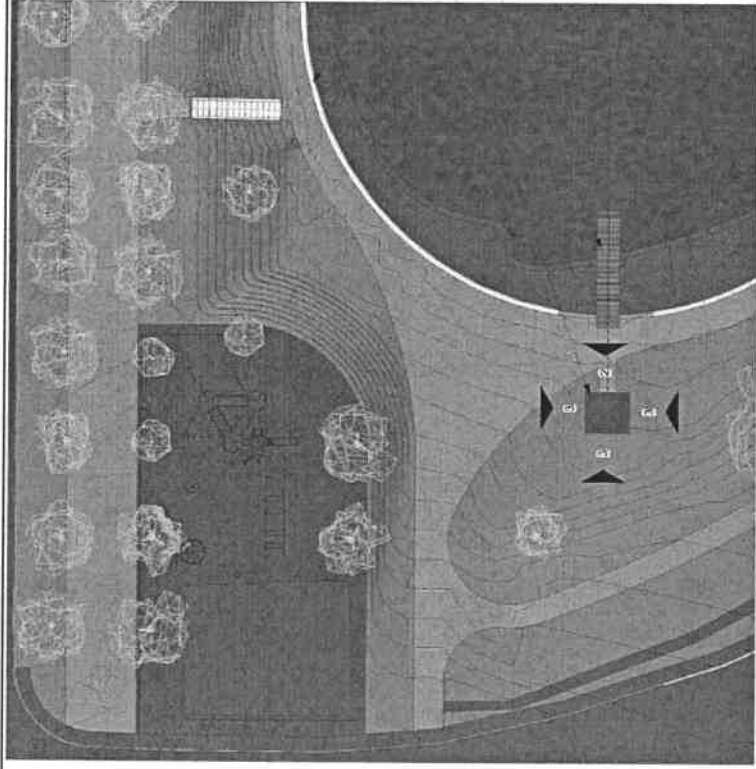
- Elevation at street: +/-62.5
- Elevation at pump house: +/-50.0
- Height of structure: +/-12' at peak
- Materials and design to compliment the Courthouse

Requests from NHC:

- Rotate building
- Shift it further from pathway
- Architectural detailing
- Brick façade requirement



Option A: based on NHC feedback



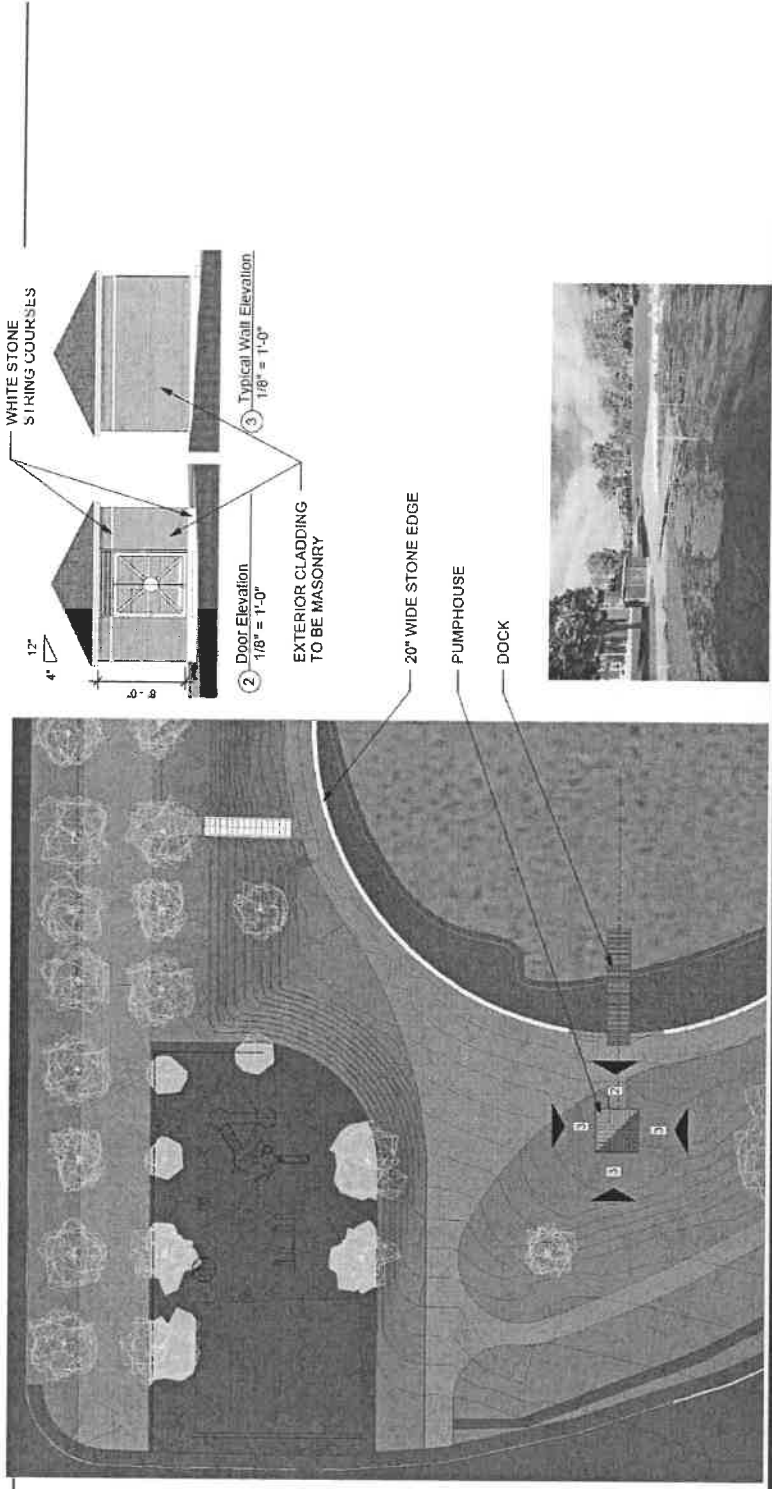
20" WIDE STONE EDGE

PUMPHOUSE

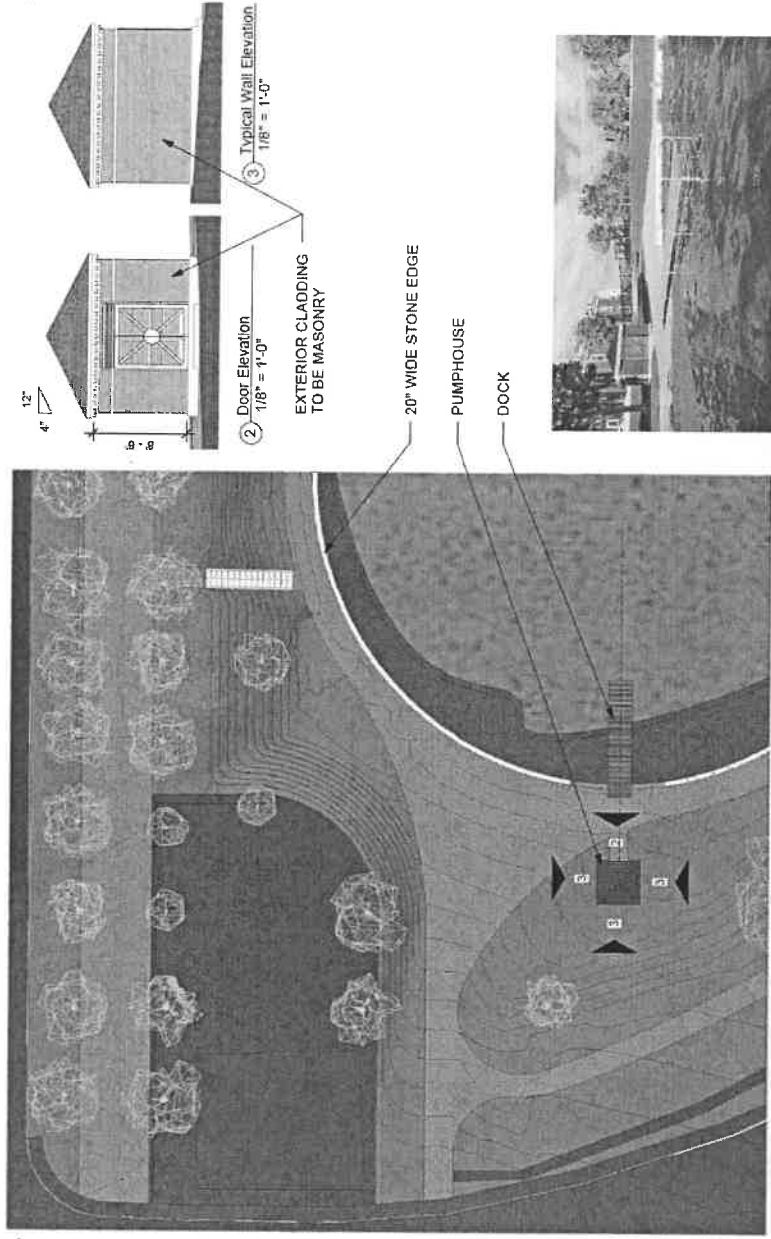
DOCK



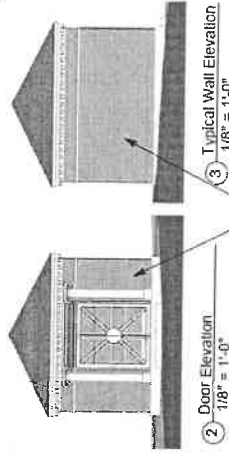
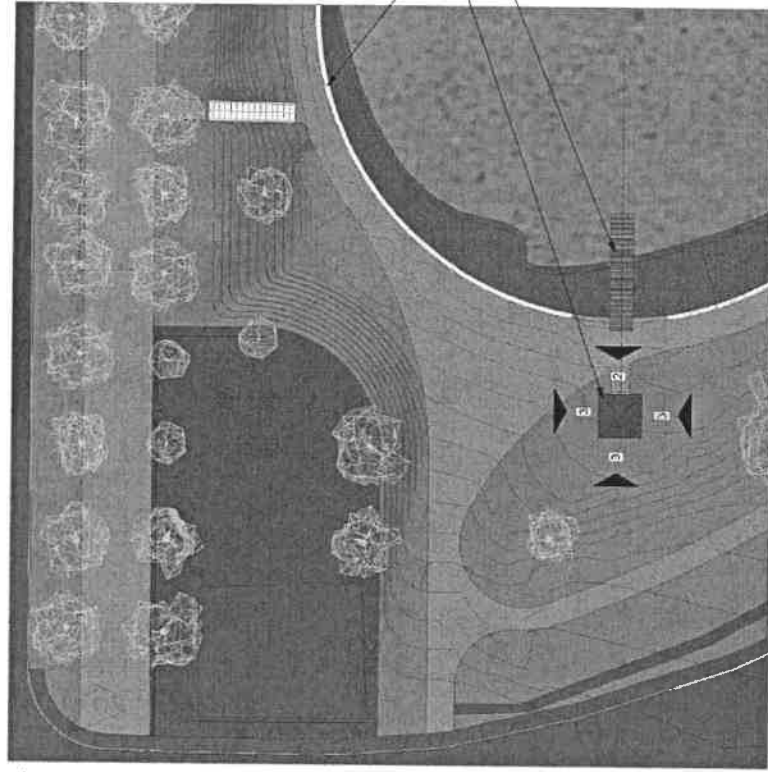
Option C: based on NHC feedback



Option D: based on PB feedback



Option E: based on PB feedback



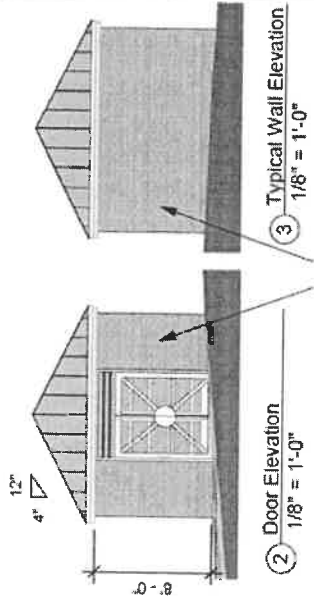
EXTERIOR CLADDING
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20" WIDE STONE EDGE

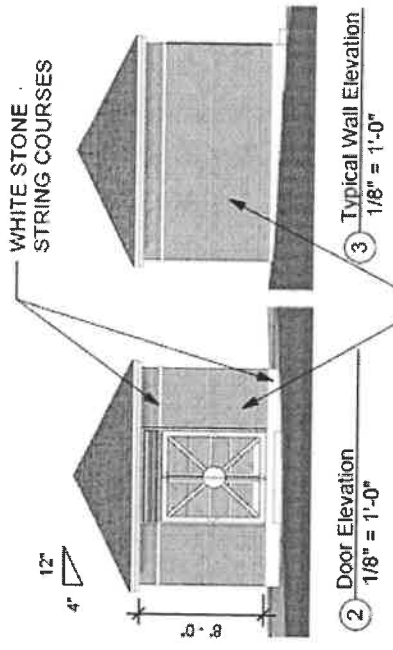
PUMPHOUSE

DOCK

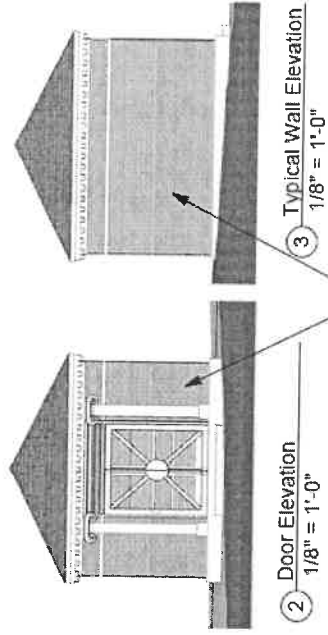




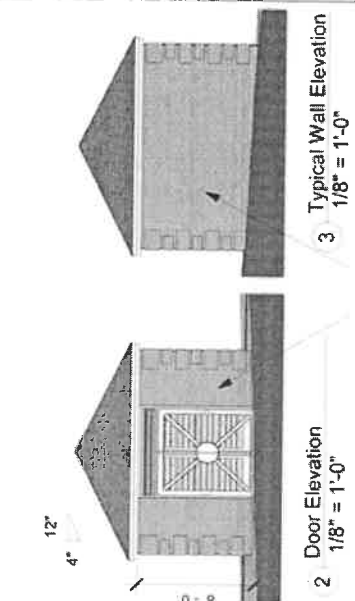
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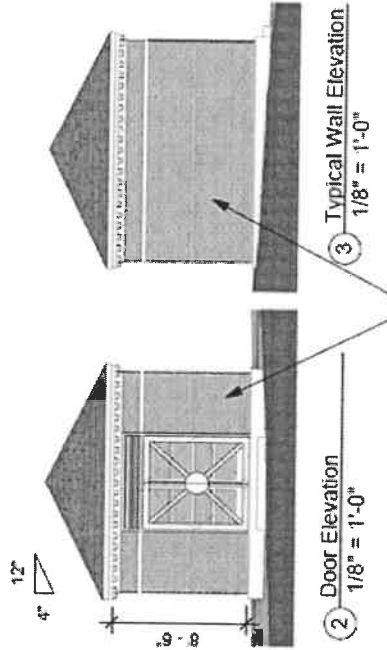
Option C



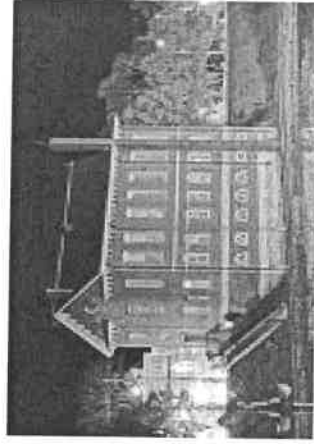
Option E



Option A



Option D





CITY OF NEWBURYPORT
60 PLEASANT STREET
NEWBURYPORT, MA 01950

DATE	DESCRIPTION
07/14/14	REVISED
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Project No. A-1000001
Drawn By: M. P.
Date: 4-14-2023



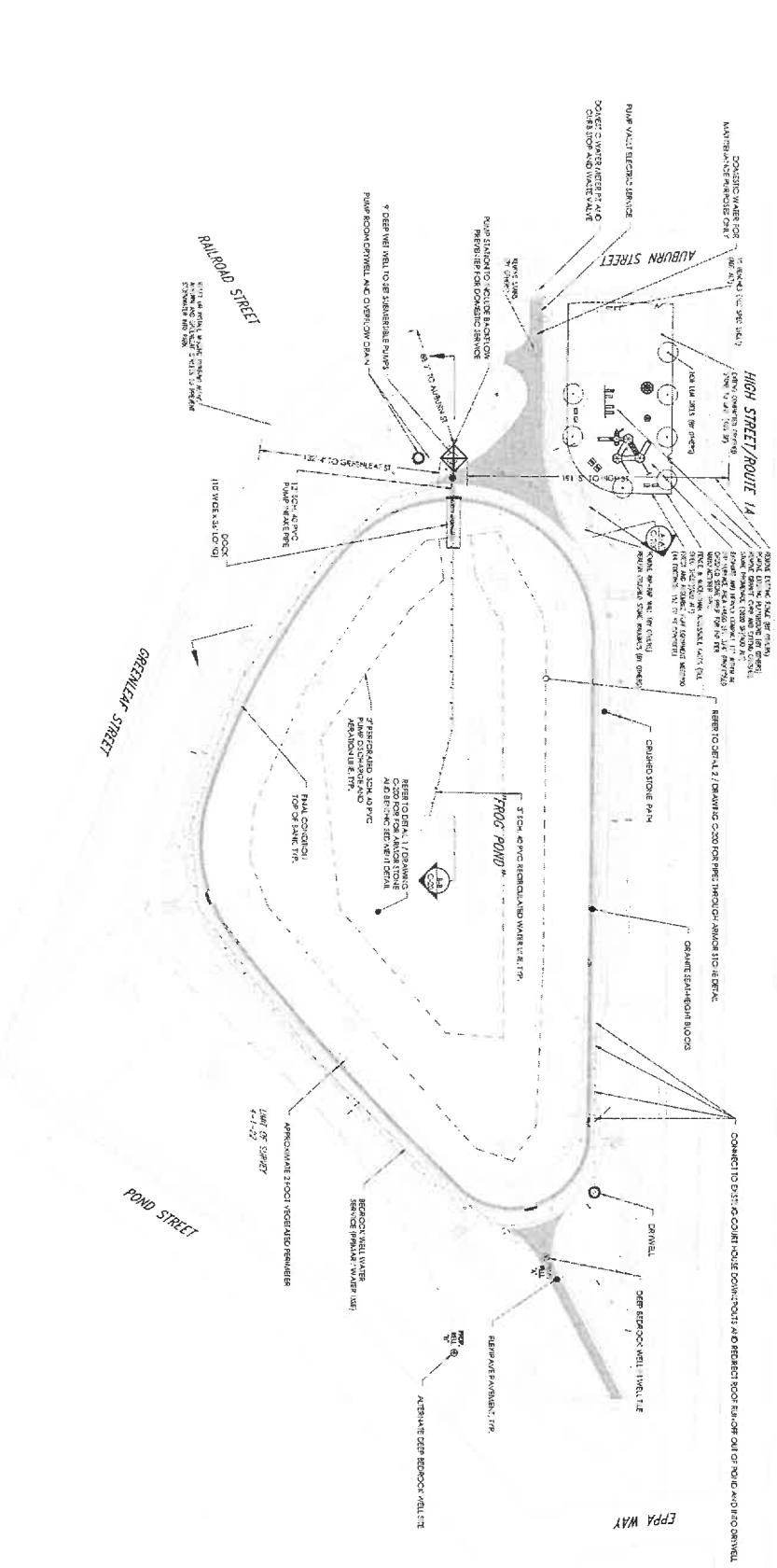
BARTLETT MALL RESTORATION PROJECT
PROPOSED FINAL CONDITIONS

Sheet No. C-104

PERMITTING SET - NOT FOR CONSTRUCTION



Aqueous
AQUEOUS CONSULTANTS, LLC
1 Dundee Park Drive, Suite 10
Andover, MA 01810
(978) 470-1595
www.aqueousllc.com



LEGEND

- UNGRADED TO BE PAVED
- REPAVED WALKWAY
- VEGETATED SWABBER
- PROPOSED
- REDOCK WELL LINE
- EXISTING WATER LINE
- ELECTRICAL SERVICE
- DISCHARGE AND REINFORCEMENT
- REINFORCED WALKER LINE
- PLUMB WALKER LINE
- DRINKING WATER LINE