



# City of New Bedford

## Department of Planning, Housing & Community Development

608 Pleasant St, New Bedford, Massachusetts 02740  
Telephone: (508) 979.1500 Facsimile: (508) 979.1575

**PATRICK J. SULLIVAN**  
DIRECTOR

## STAFF REPORT

### PLANNING BOARD MEETING

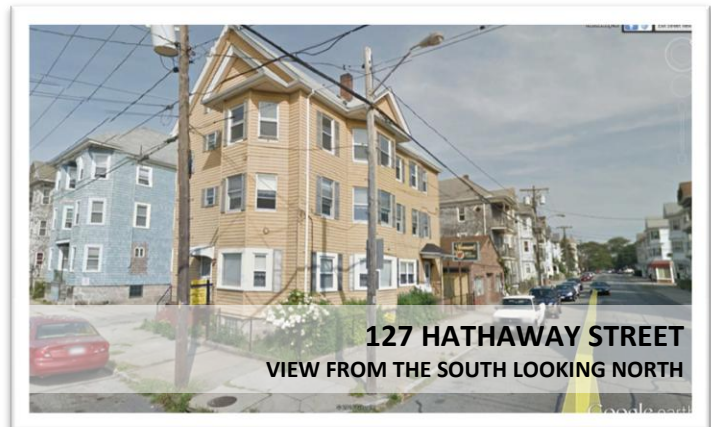
August 10, 2016

**Case # 23-16: REZONING**

127 Hathaway Street and  
331 Ashley Boulevard  
Map 103, Lot 13

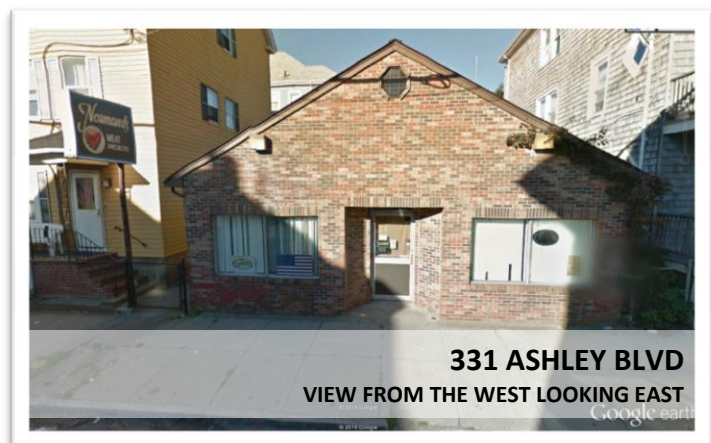
**Petitioner:** City Councilor Steven Martins  
(Ward 2)  
133 William Street, Room 215  
New Bedford, MA 02740

**Owner:** Beira Realty Trust  
Pedro Fernandes, Trustee  
12 Plumleigh Drive  
Dartmouth, MA 02747



**Overview of Request:**

The Planning Board reviews rezoning petitions as standard practice and provides a recommendation based on their findings to the City Council Committee on Ordinances. This case is for a request to rezone a parcel of land from its existing Mixed Use Business (MUB) zoning designation to a Residence C (RC) zoning district. The request has been put forth by New Bedford City Councilor Steven Martins.



**Existing Conditions:**

The lot addresses the Mixed Use Business transect of Ashley Boulevard in a dense urban setting comprised of multifamily dwellings and small business use.

The parcel contains 0.099 acres of land of land classified for assessment purposes as Mixed Residential Commercial. Currently, a three-family residential dwelling unit having 4122 +/-SF and a brick exterior business having 4314 +/- SF exist on one lot whose addresses are 127 Hathaway Street and 331 Ashley

Boulevard respectively. The business had previously served the dwelling as a garage and was changed to a store in 1962.

A variance was granted on July 23, 1987 (Case #2801) by the City of New Bedford Zoning Board of Appeals to allow the owner to expand the use by constructing a 17 ½ x 15 foot addition to the business at 331 Ashley Boulevard, relief from Chapter 9, §9-207A Off Street Parking, and construct an 8-foot peak to the flat roof, with the stipulation that “the addition of the 8 foot peak roof was not to be used for anything other the covering of the compressors”. Location of the map and lot is described on that application as Business Zoned. The petition/application for variance described the site as having two buildings, one apartment house and one store. This decision was appealed under Article 1, Chapter 9, §9-8 of then city code for insufficient off-street parking and subsequently dismissed on November 18, 1987.

The business, Normand’s Meats Specialties, was a viable and contributing business to the neighborhood for a generation. The proprietor employed seven (7) full time and five (5) part time employees in 1987, as recorded in the July minutes of the ZBA meeting. Purchase habits have changed, however. The most recent business to occupy the site, The International Meat Market, last posted to **Facebook** November 22, 2015 and now appears to have ceased operations.



**Proposed Conditions:**

The current owner has petitioned for zoning change because he claims leasing the space to a viable commercial tenant has posed a personal financial burden since assuming ownership in 2013. Mr. Fernandes has told staff the biggest reason for this request is the need for a bank loan, citing that with mixed use zoning “banks tend not to give you a loan...” and that in speaking with several bank employees, they suggested “changing the zoning as that would guarantee” his ability “to borrow money.” The owner wants to make renovations and purchase another home and the zone change will help him “borrow off this house.”

No plan to overcome the neighborhood off-street parking challenge has been presented. There is minimal off-street parking available to serve the residents of the neighborhood due to the development pattern of the area which evolved to provide housing for mill workers whose practice was to walk to their place of employment.

**Input From Other City Departments:**

The rezoning request was distributed to City Clerk, City Solicitor, Health Department, Inspectional Services, Engineering, Public Infrastructure, Conservation Commission, Fire Department and School Department.

The City Solicitor’s Office is completing its review and their comments will be available at the Board meeting; additionally, staff anticipates having a comment from the Commissioner of Inspectional Services relative to this zoning request in his capacity as Zoning Enforcement Officer to provide at the Planning Board’s meeting.

The Conservation Commission states the property is not in or within 100’ of State or Local Wetland resources.

No additional comments have been received as of the production date of this Planning Staff Report.

**For Board Member Consideration:**

The Planning Board is granted the power to review development proposals which have an impact on the natural or built environment of the city in order to promote the health, safety, and general welfare of the community, to ensure adequate parking, safe and accessible pedestrian and vehicular circulation, and to minimize impact on city streets. While this is a recommendation for a zoning district change submitted for consideration by City Council, the Board may wish to acknowledge the burden the conversion may place on sanitary services should the applicant convert the business use to residential use. As the dwelling and business are located on one parcel, it should be noted that the current structures share sanitary services and the earliest form and function of the business subsisted as a garage for the dwelling. In addition, to permit the conversion of the former garage, later business, to a residential use would add on-street overnight parking to an Urban Principal Arterial street already burdened by parking.

**Master Plan.2020**

The site is located within a neighborhood comprised of a mix of multifamily dwelling units and small business uses. Goals and objectives under **A City Master Plan New Bedford 2020** are to “provide a pathway to strengthen the distinct historic and cultural fabric that create dynamic neighborhoods where people enjoy each other and the positive experiences that close knit neighborhoods offer.” The following goals and objectives have been elaborated upon under the Neighborhoods and Housing section of the Master Plan to address the issues of housing choice, affordability, a safe housing stock and neighborhood revitalization:

- 1) Encourage and maintain a wide range of housing types throughout the city that reflects the historic and cultural character of each area by supporting development that provides for households of all income levels;
- 2) Make sure New Bedford can meet the need for affordable housing for its current and future residents;
- 3) Promote a mixed-use environment in commercial centers and corridors to ensure a vibrant community during the day, evening and weekends, that creates walkable village-like neighborhoods throughout the city;
- 4) Monitor and enforce compliance with applicable building and health codes to ensure a safe neighborhood; and
- 5) Establish standards for the use of sustainable practices in housing rehabilitation and new construction.

The vision of the Master Plan is one of a city comprised of small village like settings, each with their own distinct historic and cultural fabric that create dynamic neighborhoods where people meet on the street, buy local goods, and enjoy the experiences of their community. As the existing structure is located along the Mixed Use Business transect, its current zoning satisfies the goal of the Master Plan to weave the fabric of the community together under Mixed Use development, achieving a blend of residential, commercial, cultural, institutional or industrial uses and achieve an integration of the physical environment and the functionality of the area in a pedestrian friendly setting.

**Standards for Evaluating Rezoning Requests**

The Planning Board has previously relied on the following criteria in its evaluation of other rezoning requests so as to ensure its action is consistent with case law:

- Uniformity: the extent to which the zoning change would resemble the surrounding zoning;
- Consistency: whether or not the parcel is being singled out for a zoning change;
- Surroundings: how the proposal would change the neighborhood;
- Fiscal Impact: what impact on local/city economic development the rezoning would have; an

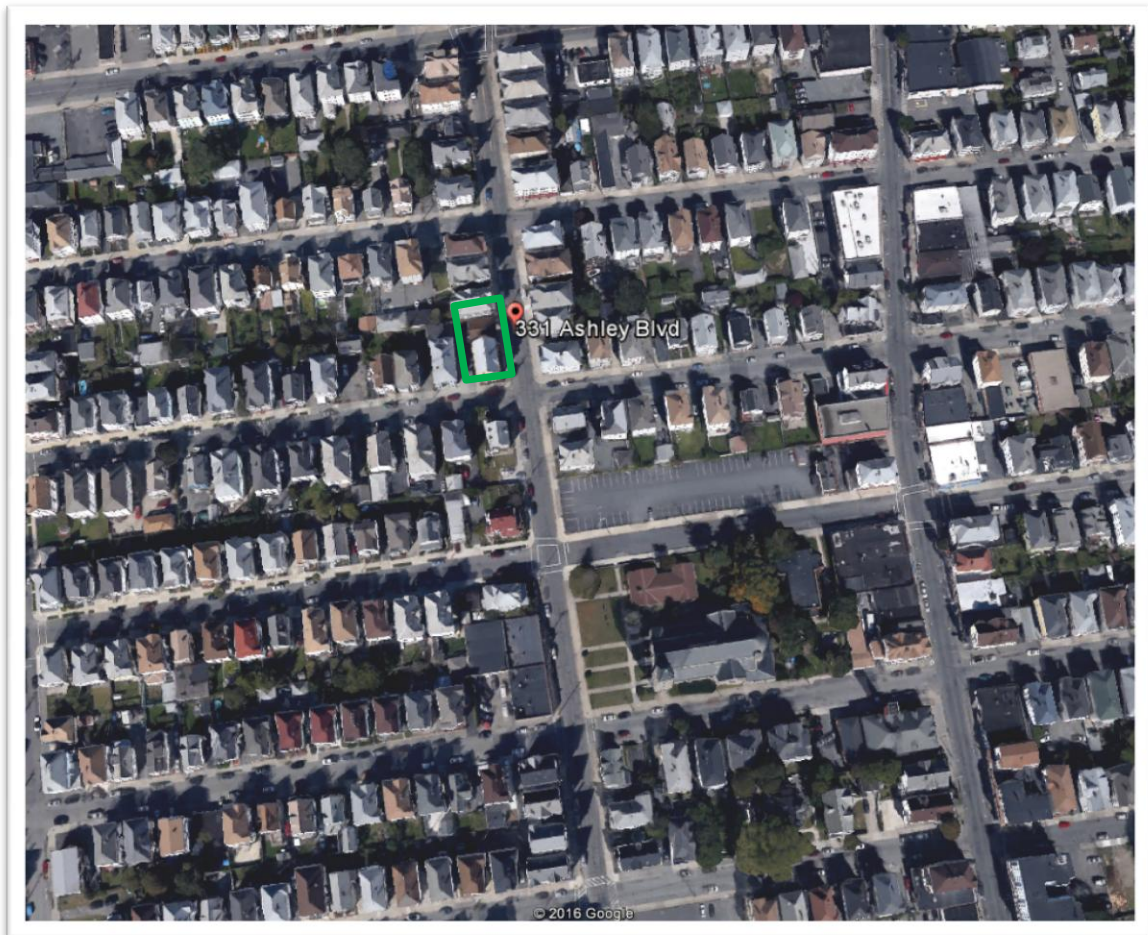
- Discriminating Benefit: an assessment of whether the reclassification of a single parcel that allows a use beneficial to the property owner is made to the detriment of the neighbors or community-at-large.

This proposal to rezone the parcel is inconsistent with Master Plan goals. As the existing structure is located along the Ashley Boulevard Mixed Use Business corridor, its current zoning resembles the surrounding zoning and satisfies the goal of the Master Plan to weave the fabric of the community together under Mixed Use development, achieving a blend of residential, commercial, cultural, institutional or industrial uses by not singling out the parcel for a zoning change, and achieve an integration of the physical environment and the functionality of the area in a pedestrian friendly setting and not changing the neighborhood by altering the zoning transect. Furthermore, the fiscal impact of the zoning change from Mixed Use Business to Residential C would result in a lower tax rate and affect economic development opportunities for the city by removing the by-right use of Mixed Use Business for future development. As final consideration of the standards for reevaluating rezoning requests, the board may wish to consider the extent to which the proposed reclassification would allow a use that is primarily beneficial to the property owner to the detriment to the neighbors or community at large along this corridor.

---

**Attachments:**

1. Written Motion by City Councilor (Ward 2) Steven Martins
2. Email from Constituent
3. ZBA Case 2801 Notice of Decision
4. Letter of Support from City Councilor Steven Martins dated August 5, 2016



BK 11126 PG 317  
07/24/14 10:06 DOC. 13781  
Bristol Co. S.D.

**QUITCLAIM DEED**

**AMBERGRIS REALTY LLC**, a Massachusetts Limited Liability Company located at 1960 Fall River Avenue, Seekonk, Massachusetts, for consideration paid in the amount of \$234,567.00, grants to **PALMER RIVER DEVELOPMENT CO., LLC**, a Massachusetts limited liability company with an address of P.O. Box 41 Swansea, MA 02777 with **QUITCLAIM COVENANTS**,

Those certain lots or parcels of land with all buildings and improvements thereon in the City of New Bedford, Bristol County, Massachusetts designated as LOTS 1, 3 and 10 on that plan entitled "Whaler's Place definitive Subdivision Plan of Land in New Bedford, Bristol County, Massachusetts" dated March 8, 2004, revised April 30, 2004 and May 11, 2004 and recorded with the Bristol County (S.D.) Registry of Deeds in Book 154 Page 84.

Address of property: 164 Durfee St. & Ambergris Lane  
New Bedford, MA

Subject to and with a benefit of an easement from the City of New Bedford Dated April 16, 2004 recorded in Book 6904, Page 76.

Subject to a sewer easement to the City of New Bedford recorded June 28, 2005 in Book 7624, Page 311.

Subject to an easement to Verizon New England Inc. And Commonwealth Electric Company recorded December 2, 2005 in Book 7900, Page 282.

Subject to an easement and right of way to Comcast of Southern New England recorded in Book 8618, Page 13.

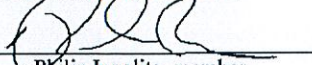
Subject to easements, restrictions and matters shown on plans recorded in Book 154 Pages 81 and 84.

Address of Property: 164 Durfee St. and Ambergris Lane, New Bedford, MA  
AP 76, Lot 22, Lot 269 and Lot 271

For title reference, see Foreclosure Deed of J.I.F. Investment Co., Inc. dated March 9, 2010, recorded with the Bristol County Southern District Registry of Deeds in Book 9659, Page 203 and Confirmatory Quitclaim Deed of J.I.F. Investment Co., Inc. dated March 9, 2010 recorded in Book 9659 Page 210.

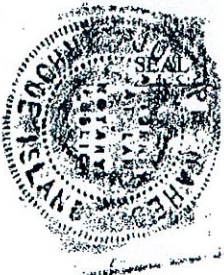
**EXECUTED** as an instrument under seal this 23<sup>rd</sup> day of July, 2014.

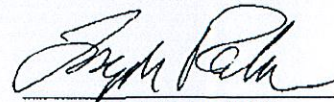
**AMBERGRIS REALTY LLC**

By:   
Philip Ippolito, member

State of Rhode Island  
County of Providence

On this 23<sup>rd</sup> day of July, 2014, before me, the undersigned notary public, personally appeared Philip Ippolito, proved to me through satisfactory evidence of identification, which was a Massachusetts Driver's License, to be the person whose name is signed above as Member of **AMBERGRIS REALTY LLC**, a Massachusetts limited liability company, and acknowledged said execution to be his free act and deed in said capacity and the free act and deed of said limited liability company.



  
Notary Public  
Joseph Raheb, Notary Public  
My Commission Expires: 6-18-17

REG. OF. DEEDS  
REG #07  
BRISTOL S  
07/24/14 10:08AM  
900000 REC'D  
FEE \$1071.60  
CASH \$1071.60

CITY CLERKS OFFICE  
NEW BEDFORD, MA

2016 JUL 15 A 10:11

CITY CLERK

Palmer River Development Co. LLC  
P.O. Box 41  
Swansea, MA 02777  
508-243-6615

City of New Bedford  
Planning Department  
Attention: Ms. Constance Brawdars, Staff Planner  
City Hall Room 303  
133 William Street  
New Bedford, MA 02740

July 15, 2016

RE: Whalers Place Subdivision

Dear Planning Office,

The above referenced subdivision was approved by the New Bedford Planning Board on 6/17/04.

The subdivision plan was recorded with the Bristol County S.D. Registry of Deeds in Plan Book 154, Page 84 on 9/14/04 at 11:05am. A copy of the recorded subdivision plan is included with this request.

I would like to be heard by the planning board at their August 10, 2016 meeting. At the meeting I will request that the Planning Board release subdivision lots 1 & 3 from the performance covenant, so that certificates of occupancy can issue and the properties can be sold. The addresses for the subject properties are 34 Ambergris Lane and 16 Ambergris Lane respectively.

In Lieu of the surety provided by the covenant on the lots, we will make a cash surety deposit in an amount equal to the cost to complete estimate provided by City Engineering. I have made that request to the City Engineering department and we are waiting their review. As soon as their review is complete, I will provide proof of funds in that amount.

A question has been raised as to whether or not other lots in the subdivision were properly released and recorded. Apparently there was not a clear record of that in the Planning Office Files and Ms. Brawdars was unable to locate all of the releases at the Registry of Deeds. I have taken the time to research this matter and found the following information related to releases.

Lots 6,7,8 & 9 were released and recorded in Book 9746 Page 180

Lot 2 was released and recorded in Book 10119 Page 225

**ATTACHMENT 2**

Whalers Place Subdivision  
07/15/2016

Lots 5 & 10 were released and recorded in Book 10185 Page 103

Lot 4 was released at the March 13, 2013 meeting of the Planning Board. On March 14, 2013 I met Jill McLean in the City Solicitors office to have the release notarized and then it was taken to the registry of Deeds to be recorded. I cannot find it on record and I cannot locate a copy of it. I have reached out to the attorney that conducted the closing for the subject property and expect that they will be able to furnish us a recorded copy shortly.

I have contacted Manny Silva at DPI and requested that a cost to complete estimate is prepared for the Planning Boards review. Manny explained that due to his work load he is unable to have it complete by 7/15 but expects to have it completed between 7/18 & 7/20.

As requested by Ms. Brawdgers, I have included with this package the certified list of abutters from the City Assessor's office .

Sincerely,

*Matthew B. Antonio*

Matthew B. Antonio  
Sole Member & Manager  
Palmer River Development Co. LLC



Department of Public Infrastructure

Euzebio Arruda  
Commissioner

Water  
Wastewater  
Highways  
Engineering  
Cemeteries  
Park Maintenance  
Forestry  
Energy

CITY OF NEW BEDFORD  
Jonathan F. Mitchell, Mayor

Whalers Place Subdivision Estimate

<u>Items</u>	<u>Quantity x Unit Price</u>	<u>Total</u>
1.) 4" Cement Concrete Sidewalk	5 SY x \$40. =	\$200.00
2.) 6" Cement Concrete WCRs & Drives	40 SY x \$42. =	\$1,680.00
3.) Loam & Seed	60 SY x \$6. =	\$360.00
4.) Granite Curb	20 LF x \$30. =	\$600.00
5.) Street Lights	1 EA x \$3,000. =	\$3,000.00
6.) Bounds	10 EA x \$1,000. =	\$10,000.00
7.) Clean Structures	10 EA x \$300. =	\$3,000.00
8.) As-Built Plans	Water, S&D, Street Acceptance & Electric	\$6,000.00
9.) Take Over Detention Basin	(120 FT x 70 FT) x \$1. =	\$8,400.00
10.) Detention Basin	Clean Bottom, Cut Grass, etc.	\$2,000.00
11.) Miscellaneous		\$2,120.00
	<b>Sum:</b>	\$37,360.00
	<b>10% Contingency:</b>	\$3,736.00
	<b>Total Estimate:</b>	\$41,096.00
	<b>SAY</b>	<b>\$41,100.00</b>

PLANNING  
JUL 28 2016  
DEPARTMENT

ATTACHMENT 3

Revised: 7/26/2016





FOR REGISTRY USE

I HEREBY CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMANCE WITH THE RULES AND REGULATIONS OF THE REGISTRY OF DEEDS.

DATE: 04/14/2014  
 PREPARED BY: [Signature]

DATE: 04/14/2014  
 CITY CLERK: [Signature]  
 JAMES R. LARSON, P.L.S.

I HEREBY CERTIFY THAT THE NOTICE OF APPROVAL OF THIS PLAN AND RECORDING INFORMATION HAS BEEN FILED IN THE PUBLIC RECORDS OF THE REGISTRY OF DEEDS, AND THAT THE PLAN IS SUBJECT TO THE PROVISIONS OF THE MASSACHUSETTS LAND USE AND PLANNING ACT, CHAPTER 40A, SECTION 20B, AS AMENDED.

DATE: 9-14-2004

SUBJECT TO A PERFORMANCE COVENANT DATED 9-14-2004 AND RECORDED WITH THIS PLAN BY THE OWNER OF RECORD.

APPROVED UNDER THE SUBDIVISION CONTROL LAW REQUIRED BY THE MASSACHUSETTS CONSTITUTION.

NEW BEDFORD PLANNING BOARD

[Signature]  
[Signature]

DATE: 6/17/14

WHALER'S PLACE  
 DEFINITIVE SUBDIVISION  
 PLAN OF LAND  
 THE CITY OF NEW BEDFORD,  
 BRISTOL COUNTY,  
 MASSACHUSETTS

DATE: MARCH 6, 2004 SCALE: 1"=40'  
 REVISION: APRIL 30, 2004  
 REVISION: MAY 14, 2004

PREPARED FOR:  
 HOWLAND PLACE REALTY TRUST

PREPARED BY:  
 PRIME ENGINEERING

CITY ENGINEER: LOU GARDNER  
 ENVIRONMENTAL ASSESSOR:  
 PLAN # 0008470000 FILE # 0008470000

PROJECT: 900101 DRAWING: 000845-00-DWG SHEET 1

**NOTES**

- THE SUBJECT PROPERTY IS SHOWN AS LOTS 22 & 23 OF NEW BEDFORD ASSASSORS' PLAN NUMBER 74.
- REFER TO A DEED FROM NEOLA ADKINS TO CURTIS J. WELLS AND JOHN E. WELLS, TRUSTEES OF HOWLAND PLACE REALTY TRUST, DATED SEPTEMBER 14, 2004, AND RECORDED IN THE BRISTOL COUNTY REGISTRY OF DEEDS (S.D.) IN BOOK 000847, PAGE 157 FOR TITLE REFERENCE TO ASSASSORS' LOT 22.
- REFER TO A DEED FROM PAUL STANKE AND SHARON STANKE TO CURTIS J. WELLS AND JOHN E. WELLS, TRUSTEES OF HOWLAND PLACE REALTY TRUST, DATED SEPTEMBER 14, 2004, AND RECORDED IN THE BRISTOL COUNTY REGISTRY OF DEEDS (S.D.) IN BOOK 000847, PAGE 157 FOR TITLE REFERENCE TO ASSASSORS' LOT 23.
- THE SUBJECT PROPERTY IS LOCATED IN ZONE C. AREA OF MINIMAL FLOODING AS SHOWN ON THE FLOOD INSURANCE RATE MAP (FIRM) NUMBER 25021E-0002-S, MAP REVISION DATE JANUARY 5, 1984. LOT 23 IS ZONED "RESIDENTIAL A" AND ASSASSORS' LOT 22 IS ZONED "RESIDENTIAL A" AND "CURRENT DIMENSIONAL ZONING REQUIREMENTS INCLUDES: MINIMUM FRONT YARD SETBACK 30 FEET; MINIMUM SIDE YARD SETBACK 5 FEET; MINIMUM REAR YARD SETBACK 30 FEET; MINIMUM LOT AREA 74 FEET; MINIMUM LOT WIDTH 30 FEET; MINIMUM FRONT YARD SETBACK 30 FEET; MINIMUM SIDE YARD SETBACK 30 FEET; MINIMUM REAR YARD SETBACK 30 FEET.
- A DEED PRESCRIPTION SHALL BE BASED ON LOT 23 THROUGH TO SO AS TO NOT IMPAIR THE OPERATION OF THE PROPERTY AND THE PROVISIONS OF THE MASSACHUSETTS LAND USE AND PLANNING ACT, CHAPTER 40A, SECTION 20B, AS AMENDED.
- LOTS 1 THROUGH 10 ARE SUBJECT TO A DEED FOR THE LANDSCAPING EASEMENT ALONG THE PROXIMATE OF AMBERGRIS LANE.

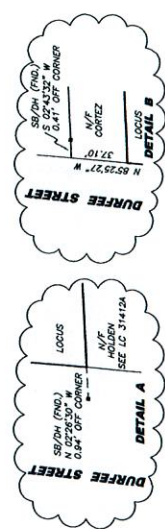
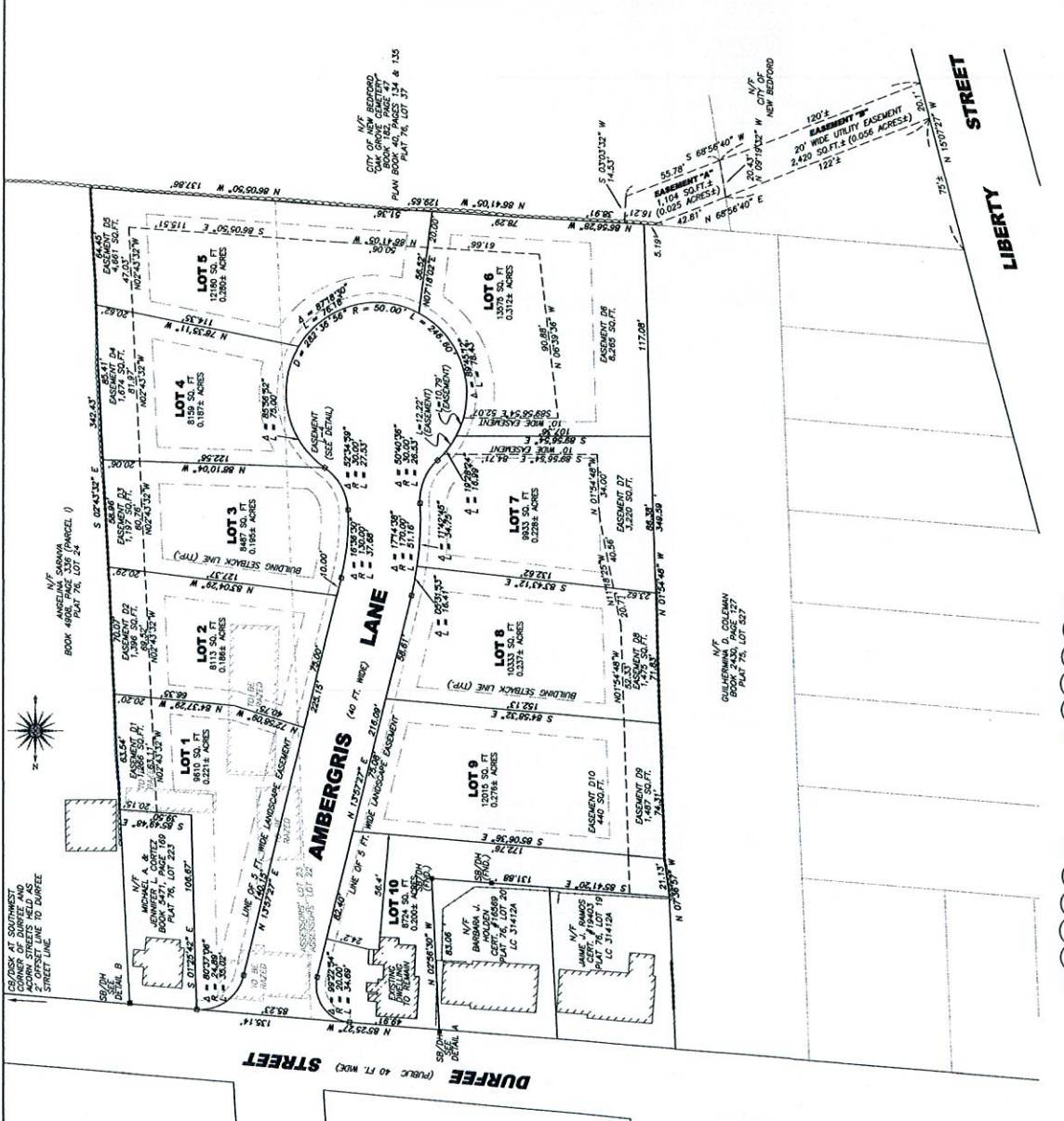
**TABLE OF FRONTAGES AND AREAS**

LOT 1	78x17'	9,610 S.F.
LOT 2	78x07'	6,113 S.F.
LOT 3	78x11'	6,487 S.F.
LOT 4	78x07'	6,159 S.F.
LOT 5	78x18'	12,180 S.F.
LOT 6	78x43'	13,579 S.F.
LOT 7	78x27'	9,833 S.F.
LOT 8	78x02'	10,333 S.F.
LOT 9	78x08'	12,019 S.F.
LOT 10	117x09'	8,724 S.F.

**LEGEND**

○ PROPOSED BOUND LOCATION PER PLANNING BOARD REGULATIONS

CAUTION  
 9/14/14  
 1/18-13



FORM F  
COVENANT

August 18, 2004

New Bedford, Massachusetts

KNOW ALL MEN by these presents that the undersigned has submitted an application dated March 19, 2004, to the New Bedford Planning Board for approval of a definitive plan of a subdivision of land entitled: Whalers Place, plan by: Prime Engineering, Inc., dated: 3/8/04 Rev. 4/20/04 and owned by: Howland Place Realty Trust, address: 651 Orchard St., NB, land located: off Durfee Street, and showing ten proposed lots. The undersigned has requested the Planning Board to approve such plan without requiring a performance bond.

IN CONSIDERATION of said Planning Board of New Bedford in the county of Bristol approving said plan without requiring a performance bond, the undersigned hereby covenants and agrees with the inhabitants of City of New Bedford as follows:

1. That the undersigned is the owner\* in fee simple absolute of all the land included in the subdivision and that there are no mortgages of record or otherwise on any of the land, except for those described below, and that the present holders of said mortgages have assented to this contract prior to its execution by the undersigned.

\*If there is more than one owner, all must sign. "Applicant" may be an owner or his agent or representative, or his assigns, but the owner of record must sign the covenant.

2. That the undersigned will not sell or convey any lot in the subdivision until the construction of ways and installation of municipal services necessary to adequately serve such lot has been completed in accordance with the covenants, conditions, agreements, terms and provisions as specified in the following:
  - a. The Application for Approval of Definitive Plan (Form C).
  - b. The Subdivision Control Law and the Planning Board's Rules and Regulations governing this subdivision.
  - c. The certificate of approval and the conditions of approval specified therein, issued by the Planning Board, dated May 19, 2004.
  - d. The definitive plan as approved and as qualified by the certificate of approval.
  - e. No Certificates of Occupancy shall be applied for from the City of New Bedford by the "Covenantor", Executors, Administrators, heirs or assigns of the Covenantor, or their successor in title to the premises until the construction of ways and the installation of municipal services has been satisfactorily completed, or a Form of surety sufficient to guarantee the same has been approved by the Planning Board.

- However, a mortgagee who acquires title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of the mortgaged premises or part thereof may sell or convey any lot, subject only to that portion of this covenant which provides that no lot be sold or conveyed or shall be built upon until ways and services have been provided to serve such lot.
3. That this covenant shall be binding upon the executors, administrators, devisees, heirs, successors and assigns of the undersigned and shall constitute a covenant running with the land included in the subdivision and shall operate as restrictions upon the land.
  4. That particular lots within the subdivision shall be released from the foregoing conditions upon the recording of a certificate of performance executed by a majority of the Planning Board and enumerating the specific lots to be released.
  5. That nothing herein shall be deemed to prohibit a conveyance by a single deed subject to this covenant, of either the entire parcel of land shown on the subdivision plan or of all lots not previously released by the Planning Board.
  6. That the undersigned agrees to record this covenant with the Bristol County Registry of Deeds, forthwith, or to pay the necessary recording fee to the said Planning Board in the event the Planning Board shall record this agreement forthwith. Reference to this covenant shall be entered upon the definitive subdivision plan as approved.
  7. A deed of any part of the subdivision in violation of the covenant shall be voidable by the grantee prior to the release of the covenant; but not later than three (3) years from the date of such deed, as provided in Section 81-U, Chapter 41, M.G.L.
  8. That this covenant shall be executed before endorsement of approval of the definitive plan by the Planning Board and shall take effect upon the endorsement of approval.
  9. Upon final completion of the construction of ways and installation of municipal services as specified herein, on or before August 31, 2005 the Planning Board shall release this covenant by an appropriate instrument, duly acknowledged. Failure to complete construction and installation within the time specified herein or such later date as may be specified by vote of the Planning Board with a written concurrence of the applicant, shall result in automatic rescission of the approval of the plan. Upon performance of this covenant with respect to any lot, the Planning Board may release such lot from this covenant by an appropriate instrument duly recorded.
  10. Nothing herein shall prohibit the applicant from varying the method of securing the construction of ways and installation of municipal services from time-to-time or from securing by one, or in part by one and in part by another of the methods described in M.G.L., Chapter 41, Section 81-U, as long as such security is sufficient in the opinion of the Planning Board to secure performance of the construction and installation.

For title to the property, see deed from 1) Noelia Quinones 2) Paul Starkie, et ux, dated 9/15/03, recorded in Bristol County Registry of Deeds, Book 1) 6527, Page 15, 2) Book 6527, Page 155 registered in Bristol County Land Registry as Document No. \_\_\_\_\_, and noted on certificate of title no. \_\_\_\_\_, in Registration Book \_\_\_\_\_, Page \_\_\_\_\_.

The present holder of a mortgage upon the property is Compass Bank, of One Compass Place, New Bedford, MA. The mortgage is dated September 15, 2003 and recorded in Bristol County Registry of Deeds, Book 6527, Page 159, or registered in Bristol County Land Registry as Document No. \_\_\_\_\_, and noted on certificate of title no. \_\_\_\_\_, Registration Book \_\_\_\_\_, Page \_\_\_\_\_. The mortgagee agrees to hold the mortgage subject to the covenants set forth above and agrees that the covenants shall have the same status, force and effect as through executed and recorded before the taking of the mortgage and further agrees that the mortgage shall be subordinate to the above covenant.

N/A, spouse of the undersigned applicant hereby agrees that such interest as I, we, may have in the premises shall be subject to the provisions of this covenant and insofar as is necessary releases all rights of tenancy by the dower or homestead and other interests therein.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 18th day of August, 2004.

Ronald A. Kennedy  
City Planner  
9/13/04

Acceptance by a Majority of the  
Planning Board of New Bedford

HOWLAND PLACE REALTY TRUST

Curtis J. Mello  
Curtis J. Mello, Trustee

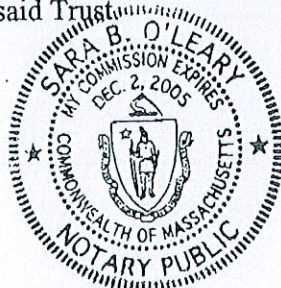
John E. Williams  
John E. Williams, Trustee

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

August 8, 2004

On this \_\_\_\_\_ day of August 2004, before me the undersigned Curtis J. Mello and John E. Williams, Trustees aforesaid, proved to me through satisfactory evidence of identification, which was MADONNA WANCE, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for the stated purpose and on behalf of said Trust.



Sara B. O'Leary  
Official Signature of Notary  
My Commission Expires:

12/2/2005

Subdivision Lot Releases									
WHALERS PLACE	LOT NUMBER	PARCEL NUMBER	MAILING ADDRESS	RELEASE Y/N	DATE OF RELEASE	SUBSTITUTION?	BOOK/PAGE	NOTES	BUILDING PERMIT
Endorsed 06/17/2004 Map 76, Lots 22 & 23 (Off Durfee Street)	1	76/269	ES Ambergris Lane	No					
	2	76/270	24 Ambergris Lane	Yes	6/8/2011		10119/225		
	3	76/271	ES Ambergris Lane	No					
Known as Ambergris Lane Plan Book 154/Page 84 Covenant Book 7169	4	76/272	10 Ambergris Lane	Y-Not Recorded	3/15/2013			Not Recorded. See Notes under Lot 10.	
	5	76/273	4 Ambergris Lane	Yes	10/12/2011		10185/103		
	6	76/274	7 Ambergris Lane	Yes	5/12/2010		9746/180		
	7	76/275	15 Ambergris Lane	Yes	5/12/2010		9746/180		
	8	76/276	23 Ambergris Lane	Yes	5/12/2010		9746/180		
	9	76/277	33 Ambergris Lane	Yes	5/12/2010		9746/180		
Anticipated Completion date	10	76/22	43 Ambergris Lane	No		YES		10/13/2011 Lot 5 & 10 released; Lot 10 exchanged for Lot 4 release 03/15/2013	
Pre dates Permit Extension act. (Extended to 06/30/2008, further extended thru 12/31/2013; file note extends completion to 8/31/2005 12/31/2017.									
Completed?									
Y									
N									
Date of Completion									
Road Acceptance									
PB									
Date									
City Council Date									
NOTES:									



# City of New Bedford

## PLANNING BOARD

**FREDERICK M. KALISZ, JR.**

**Mayor**

June 8, 2004

Rita Arruda, City Clerk  
133 William Street  
New Bedford, MA 02740

RE: Definitive Plan Approval of Whaler's Place Subdivision

Dear Ms Arruda:

Please be advised that the New Bedford Planning Board approved a Definitive Plan of land for a ten- lot residential subdivision at a meeting held on May 19, 2004..

Would your office kindly notify the Planning Department if any notice of appeal is received within the 20 day appeal period.

Sincerely,



George M. Smith  
Chairman

files

CITY CLERK

2004 JUN 22 P 1:00

CITY CLERKS OFFICE  
NEW BEDFORD, MA

### ATTACHMENT 7

133 William Street, New Bedford, Massachusetts 02740  
Tel. (508) 979-1488 Fax: (508) 979-1576



# City of New Bedford

## PLANNING BOARD

133 William Street  
New Bedford, Massachusetts 02740  
Telephone: (508) 979.1488 Facsimile: (508) 979.1576

JONATHAN F. MITCHELL  
MAYOR

### FORM G

#### PERFORMANCE BOND SECURED BY CASH DEPOSIT

#### Subdivision Name – WHALER'S PLACE DEFINITIVE SUBDIVISION

Agreement made this date between the City of New Bedford and Matthew B. Antonio, Sole Member & Manager, Palmer River Development Co., LLC, hereinafter referred to as the "Applicant" whose address is P.O. Box 41, Swansea, MA 02777 to secure constructions of ways and installation of municipal services in the subdivision of land shown on a plan entitled Whaler's Place Definitive Subdivision Plan of Land in the City of New Bedford, Bristol County, Massachusetts, dated March 8, 2004, revised thru May 11, 2004, recorded in Bristol County (S.D.) Registry of Deeds, Plan Book 154, Page 84, prepared for Howland Place Realty Trust, by Prime Engineering, P.O. Box 1088, 350 Bedford Street, Lakeville, MA 02347, for land located at Durfee Street and Ambergris Lane (Map 76, Lots 22 & 23) and showing ten (10) lots.

The Applicant hereby binds and obligates himself, his or its executors, administrators, devisees, successors and assigns to the City of New Bedford, Bristol County, acting through its Planning Board, for the sum of forty-one thousand, one hundred dollars (\$41,100.00), and has secured this obligation by depositing with the Treasurer of the City of New Bedford the above amount sum, to be deposited in a subdivision escrow account in the name of the City of New Bedford. The cash deposit will be placed in an interest bearing account compounded monthly at a rate which is based on current market conditions.

Said sum of money is to be used to insure the performance by the Applicant of all covenants, conditions, agreements, terms and provisions contained in the following:

1. The Subdivision Control Law, the City of New Bedford Code of Ordinances, and City of New Bedford Subdivision Rules and Regulations.
2. The Definitive Plan known as Whaler's Place Definitive Subdivision Plan of Land in New Bedford, MA prepared for Howland Place Realty Trust by Prime Engineering as approved by the Planning Board on May 19, 2004 and endorsed June 17, 2004.
3. All conditions and agreements included in a Form D Covenant between the Planning Board and Applicant, approved on August 18, 2004 and duly recorded by the Applicant in the Bristol County (S.D.) Registry of Deeds as amended at Book 9746/ Page 180, Book 10119/ Page 225 and Book 10185/ Page 103.
4. Other Documents, specifying construction or installation to be completed, as stipulated by the Whaler's Place Subdivision Estimate prepared by the City of New Bedford Department of Public Infrastructure revised thru 07/26/2016.

This agreement shall remain in full force and effect until the Applicant has fully and satisfactorily performed all obligations or provides another method of securing performance as provided in Massachusetts General Law, Chapter 41, Section 81-U.

Upon completion by the Applicant of all obligations as specified herein, on or before November 1, 2016 or such later date as may be specified by vote of the Planning Board with written concurrence of the Applicant, the deposit of money, including all interest accrued thereon, shall be returned to the Applicant by the City of New Bedford and this agreement shall become void.

In the event the Applicant should fail to complete the construction of ways and installation of municipal services as specified within the time stipulated, the cash deposit may be applied in whole or in part by the Planning Board for the benefit of the City of New Bedford, to the extent of the reasonable cost to the City of New Bedford for completing such construction and installation. Any unused money and interest accrued on the deposit, which shall bear a direct and reasonable relationship to the expected cost including the effects of inflation, shall be returned to the applicant upon completion of the work by the City of New Bedford.

The City of New Bedford, acting by and through its Planning Board, with City Planner as Agent, hereby agrees to accept the deposit of money in the amount specified in this agreement as security for the performance of the project. Any amendment to this agreement and/or to the aforesaid deposit of money shall be agreed upon in writing by all parties to this agreement.

---

Date

---

Jennifer Clarke, AICP, Acting City Planner  
Agent for the Planning Board



**COMMONWEALTH OF MASSACHUSETTS**

Bristol County, SS

\_\_\_\_\_, 20\_\_\_\_

Then personally appeared before me the above named Jennifer Clarke, stated as agent for the Planning Board, she is authorized to sign this document for said Planning Board and acknowledged the foregoing instrument to the Planning Board's free act and deed.

\_\_\_\_\_  
Signature of Notary Public

My commission expires:

\_\_\_\_\_

**CITY TREASURER**

The applicant has deposited cash in the amount of \_\_\_\_\_  
with the City of New Bedford.

\_\_\_\_\_  
Signature of City Treasurer

**APPLICANT**

In witness whereof I/we hereunto set my/our hands and seal this on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Signature of Owner



# *City of New Bedford*

## PLANNING BOARD

133 William Street  
New Bedford, Massachusetts 02740  
Telephone: (508) 979.1488 Facsimile: (508) 979.1576

JONATHAN F. MITCHELL  
MAYOR

Registry of Deeds Use Only:

### RELEASE OF COVENANT

#### PLANNING BOARD – CITY OF NEW BEDFORD, MA

The undersigned, being a majority of the Planning Board of the City of New Bedford, Massachusetts, hereby certifies that the following lots are released from the restrictions as to sale specified in a Covenant dated August 18, 2004 and recorded in Bristol County (S.D.) Registry of Deeds, Book 7169/Page 163, as amended at Book 9746/Page 180, Book 10119/Page 225 and Book 10185/Page 103.

Lots are shown on the Plan entitled Whaler's Place Definitive Subdivision Plan of Land in the City of New Bedford, Bristol County, Massachusetts, dated March 8, 2004, revised thru May 11, 2004, recorded in Bristol County (S.D.) Registry of Deeds, Plan Book 154, Page 84, prepared for Howland Place Realty Trust, by Prime Engineering, P.O. Box 1088, 350 Bedford Street, Lakeville, MA 02347, for land located at Durfee Street and Ambergris Lane (Map 76, Lots 22 & 23) and showing ten (10) lots.

Recorded with said Covenant in Plan Book 154, Page 84, as amended, the remaining enumerated lots are:

Lot 1, Lot 3, Lot 4 and Lot 10.

The name of the Owner as shown on said plan is Howland Place Realty Trust. Ownership was conveyed to Palmer River Development Co., LLC by Quitclaim Deed on July 24, 2014 and recorded in Bristol County (S.D.) Registry of Deeds in Book 11126, Page 317.

**A Building and Occupancy Permit are still required for each lot herein released.**

Majority of the Planning Board of the City of New Bedford, Massachusetts

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

Bristol County, ss. \_\_\_\_\_ 20\_\_

Then personally appeared \_\_\_\_\_, one of the above-named members of the Planning Board of the City of New Bedford, Massachusetts, and acknowledged the foregoing instrument to be the free act and deed of said Planning Board, before me,

\_\_\_\_\_

Notary Public

\_\_\_\_\_

My Commission Expires