



March 16, 2022

Re: WAITES WHARF PROPOSED DEVELOPMENT; 3rd FOW LETTER

City of Newport Planning Board
City Hall
43 Broadway
Newport, Rhode Island 02840

Dear Chairman Brooks and Members of the Planning Board,

I. Summary

The Planning Board cannot make a favorable recommendation to the Zoning Board of Review on the proposed development plan until it is revised to address certain deficiencies.

The plan is inimical to public health, safety and welfare because it would interfere the public right-of-way on Waites Wharf. It creates numerous safety concerns for pedestrians. Further, the development plan is in conflict with the Comprehensive Land Use Plan's 2036 Vision for the City of Newport, as well as numerous Goals and Policies on public access and pedestrian safety.

II. Introduction and Background

Although I write on behalf of Friends of the Waterfront (FOW), allow me to state my own background. My name is Thomas Gibson, and I am a Newport resident with over thirty-five years of experience in environmental law and policy at the local and federal level. I served on the Newport Planning Board and Aquidneck Island Planning Commission in the 1980s. I then worked in a number of public policy positions in Washington D.C., including as Counsel and Deputy Staff Director on the Senate Environment and Public Works Committee under Senator John Chafee, and later as Chief-of-Staff and head of policy at the U.S. Environmental Protection Agency.

While I was stationed on a Navy minesweeper in Newport in the 1980s, I was a frequent customer at Thomas Crawford's shop on West Extension Street. At that time, both the Navy and private boat owners used Crawford's welding shop and the skills/talents of Joe Silvia to fabricate parts for boat repairs.

As we all know, times change and traditional maritime businesses like Crawford's have largely disappeared from the Lower Thames Street working waterfront.

I was a member of the Newport Planning Board in the late 1980s when the City first adopted the Waterfront Business zoning district. At the time it was enacted, it was intended to slow the rapid "time share and condo-ization" of the old working waterfront and encourage traditional maritime

uses along with enhanced public access. It is fair to say the Waterfront Business zone has not worked out as intended, as the economics of Newport as a tourist destination created an irresistible demand for housing, hotels and hospitality in what was formerly a maritime commerce district.

To be clear, neither the FOW nor I oppose the mix of uses proposed by the applicant for the site. In theory, an appropriately designed development consisting of a hotel, restaurants and an event venue could be more inherently “public” — and a better opportunity for conflict-free, clear public access — than a purely residential condominium. We have seen bad outcomes elsewhere on the waterfront, where the privacy aspirations of condominium owners and construction efficiency and expediency trample (or, at least, inhibit) established or agreed public access rights.

The question is whether or not this is the right development plan for Newport, now and in the future. Based on the plan as submitted, the answer must be “no.”

III. Planning Board Role and Standard of Review

The proposed development plan for Waites Wharf is before the Planning Board under Chapter 17.88 of the Newport City Ordinances. The chapter requires that, prior to issuing findings and recommendations to the Zoning Board of Review, the Planning Board shall find that:

1. The granting of the approval will not result in conditions inimical to the public health, safety or welfare;
2. The granting of the approval will not substantially or permanently injure the appropriate use of property in the surrounding area or zoning district;
3. The plans for the development comply with the requirements of the zoning ordinance and subdivision regulations, Titles 12, 13 and 15 of the Codified Ordinances of the City of Newport governing public services, streets, sidewalks and public places, parking, buildings and construction as well as laws, ordinances, rules and regulations governing stormwater management. An applicant may seek waivers and modifications of the requirements of the subdivision regulations and variances from the requirements of the zoning ordinance pursuant to provisions authorizing the same.
4. The plans for the development are consistent with the comprehensive plan; and
5. Conditions, restrictions or required site improvements required to meet these guidelines are incorporated in the written approval or guidelines.

It is worth noting that this is not the first time that the Waites Wharf project has been before the Planning Board, which acted upon the demolition permits last year. In that process, the Board was repeatedly reminded that it was narrowly restricted to the criteria for approving demolition of existing buildings. Applicant’s counsel instructed the Board that it was not allowed to consider broader concerns regarding the appropriateness of the overall development plan. At that time, applicant’s counsel essentially instructed you to “stay in your lane.”

By contrast, however, the review you are undertaking now is broad. From the perspective of public access and safety, there are two key questions to answer in making your decision. *First*, that granting of approval will not result in conditions inimical to the public health, safety and welfare. *Second*, whether or not the proposed development is consistent with the City of Newport

Comprehensive Land Use Plan (“CLUP”) and/or has satisfactorily addressed issues where there are inconsistencies.

As shown below, the Planning Board cannot make a positive finding in answering either question.

IV. The Proposed Development Plan Will Effectively Convert and Privatize Significant Portions of an Existing Public Right-of-Way on Waites Wharf

Before evaluating the proposed development plan’s consistency with the CLUP, it is important to note that the proposed development plan is also inconsistent with important public rights, namely Rhode Islanders’ *proprietary interests in public lands*. FOW attorney Michael Rubin submitted two letters to the Planning Board on the Waites Wharf proposal, the first dated February 18, 2022, and the second dated March 2, 2022. Both are attached. The letters lay out the long history of the main right-of-way (ROW) at the Waites Wharf site, which, itself, bears the name Waites Wharf. I will not repeat the letters at length here, but the letters establish that, this year, in the latest set of plans, the applicant, for the first time on the official record, introduces the prospect of a mere 20-foot ROW in the future.

To be complete, a close reading of the plans reveals that there would possibly be some additional, theoretically-public space; but this would be limited to narrow “ribbons” or “shoelaces” of public access on the sidewalk flanking the curbed roadway. These appear to be a mere 18” in width although no dimension is stated. The sidewalks are otherwise private. In other words, the sidewalks appear to be about six feet wide of which 4.5 feet are private and 1.5 feet are public. Thus, as the plans now stand, the supposed accommodation is illusory; it is an encroachment disguised as an enhancement.

The two prior FOW letters — the Rubin letters —conclude that the proposed development plan should not move forward until the encroachments on the ROW are resolved.

The remainder of this letter builds on that foundation and demonstrates that, as a regulatory matter, the impacts on the public ROW are not consistent with the CLUP.

V. The Proposed Development Plan is Inimical to the Public Health, Safety and Welfare and is NOT Consistent with the Comprehensive Land Use Plan

A. Public Access to the Waterfront

The Comprehensive Land Use Plan includes numerous references to the importance of the public’s access to the waterfront. The Vision Statement holds that: “The year is 2036 and Newport is . . . A Beautiful City . . . Where there is public access to the waterfront, both physically and visually.” This is bolstered in the several Goals and Policies.

- Goal LU-1 is: “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 1-3 states that: “The City shall work with state and regional agencies and private property owners to maintain viable maritime uses and public access

- within the city's harbor area, while also supporting uses necessary to accommodate tourism.”
- Policy LU 1-4 states that: “The city shall maintain design standards to protect historic structures, maintain the heritage of the community, and maintain views and access to the harbor and waterfront area.”
- Goal OSR-3 is: “To protect and enhance public access to the shoreline and waterfront areas.”
 - Policy OSR-3.1 states that: “The City shall enhance and protect public access to the shoreline and waterfront areas through recreational sites, public rights-of way, and shoreline easements.”

The two prior FOW letters — the Rubin letters — demonstrate the proposed development plan encroaches upon a recognized existing right-of-way that is at least 23' wide. A paved road of 20' is not a substitute for a 23' right-of-way. Even viewed in a light most favorable to the applicant, the proposal implies that the 20' road would also have an additional 18" of passage-way, above the curb, on either sidewalk (on both sidewalks) abutting the roadway. The balance of the sidewalks are on the private land of the developer. These parallel 18" ribbons or shoe-laces of passage-ways, separated by 20' of roadway, would have no practical use as public sidewalks and would amount to a *de facto* appropriation of that portion of the width of the public right-of-way for private use.

No explanation is given. In any event, any such explanation would be inadequate. No assertions by the developer that the public would be permissively allowed to use their private sidewalks for access can substitute for this loss to the public. Thus, the developer cannot resolve this problem short of a written commitment to make a permanent recorded dedication of land owned by the developer for such purpose. Such dedication is not part of the developer's proposal.

But the proposal is, in fact, even worse for public access. The plan not only encroaches on the Waites Wharf ROW, the plan also seeks to entirely exclude pedestrians from traveling along the ROW from Thames Street, through the project site, to the waterfront. Close examination of the documents reveal that it is the applicant's intent to exclude pedestrians from both the 20' roadway and the 18" ribbons of passageway (which are impractical in any event) while traveling between the new hotel buildings and the waterfront. The pedestrian public is to be confined to walkways on the perimeter of the project. The developer's Traffic Impact Analysis makes this plain, stating that:

There are three potential pedestrian/bicycle routes that could be utilized for access to the site, via West Extension Street, Waites Wharf, and Coddington Wharf. It is recommended that Coddington Wharf should be utilized for primary pedestrian access to and from the site. Pedestrians may use West Extension Street but will not be directed to this roadway due to geometric restrictions and existing obstructions. Waites Wharf should not be encouraged to be used for pedestrian access since sidewalks are not present and installation of sidewalks would be difficult due to geometric restrictions and existing obstructions. All three roadways can be utilized for bicycle access to and from the site.¹

¹ Traffic Impact Analysis at p. 13.

Examination of the drawings confirms this. Sheet 9 of the plans illustrate the ingress and egress plans for vehicles, bicycles and pedestrians. It includes the location and wording for signs to direct all forms of traffic within the development. Pedestrian traffic is limited to the perimeter of the project area via West Extension Street and Coddington Street. A note on Sheet 9 indicated that, at the eastern edge of the hotel complex on the Waites Wharf ROW, a sign would state that there is “No Pedestrian Access On This End Of Waites Wharf---Veh. & Bike Access Only;” and the associated signage specified for that location would state: “No Pedestrian Access from Waites Wharf to Thames Street.” The intent to privatize the Waites Wharf ROW from the new hotels westerly to the waterfront and easterly to Thames Street could not be clearer.

These issues came up repeatedly in the deliberations of the Technical Review Committee (TRC). The TRC Minutes document² is a record of the many interactions between the developers and City officials and entities over the years. The minutes make numerous references to access concerns, including:

- “The existing decking of the Harbor Walk at this site is in poor condition. The TRC would like to see the Harbor Walk improvements as part of this project, including improved access from West Extension Street.” (TRC Minutes, May 9, 2019).
- “The TRC will consider potential applicant improvements to raise the Waites Wharf right-of-way two feet in elevation, but **want to see a clear pedestrian pathway from the proposed hotel to Thames Street.**” (TRC Minutes May 19, 2019) (emphasis added).
- “Mr. Boardman noted the 200 vehicle per day increase, but stated his primary concern was accommodating pedestrians and directed applicant to look at other solutions, including sidewalks or a woonerf.” (TRC Minutes, September 12, 2019).
- Several comments in the November 13, 2019 TRC Minutes on pedestrians from the developer’s experts, including an acknowledgement that “The level of service at intersections in the vicinity of the project is very low and made slightly worse by the project” It also notes that “Waites Wharf is currently a shared street.” Developers’ traffic engineer Todd Brayton stated that “he wants to discourage **pedestrians** from using Waites Wharf.” (TRC Minutes, November 13, 2019) (emphasis added).
- Various references to revised pedestrian plans in the minutes of TRC meetings on November 10, 2021, December 8, 2021, and January 12, 2022. This includes references to signage to be erected regarding **pedestrian** access (emphasis added).

The TRC’s “clear pathway” directive of May 9, 2019 and the related concerns raised by City Engineer Boardman and others in subsequent meetings have never been adequately addressed.

This developer’s plan reveals several unacceptable scenarios for pedestrians: they will be forced into the unsafe lane of vehicular traffic, forced to negotiate an 18-inch narrow strip, channelized onto the West Extension Street, banned from Waites Wharf altogether or, most likely, some combination of the above. Despite the developer’s contrary assertions about enhancing public access, the proposed development plan restricts the public access.

The public’s interest in access to the waterfront is no mere aspirational goal; it is a protected right. Failing to protect it by favorably recommending the development plan as proposed is clearly inimical to the public welfare. Further, the Vision, Goals and Policies in the

² Waites Wharf Permit Progression, TRC (with CRMC) and Demolition, Next Step-Development Plan Review (Undated) (“TRC Minutes.”)

Comprehensive Land Use Plan recognize the importance of those rights. No municipal Board should “balance” access rights or trade them off against some other priority. Those particular rights belong to the citizens of Newport and Rhode Island, and, respectfully, this Board cannot allow such rights to be usurped.

B. Pedestrian Safety

The Comprehensive Land Use Plan includes a strong Vision Statement on pedestrian safety. It states that: “The year is 2036 and Newport is . . . A Destination City . . . Where visitors and residents alike may safely travel the streets and sidewalks.” The CLUP includes several policies on this topic under the general heading of Goal T-1, including but not limited to:

- Policy T-1.3---“The City’s transportation system shall be designed to safely accommodate all bicyclists, pedestrians, and especially those with disabilities.”
- Policy T-1.4---“The City shall incorporate measures to support older citizens and those with special needs when planning and designing streets, parking areas, and facilities.”

In the previous section on public access, it was established that the proposed development plan discourages any use of the Waites Wharf ROW by pedestrians between the new hotel buildings to the waterfront. This presents a pedestrian with a conundrum, as the only place a pedestrian has a legal right to walk is either in the 20’ wide street in the ROW or on the impractical 18” ribbons of purported passage on the sidewalks. The public must be able to walk through the project area to the waterfront safely, in a place they have a legal right to be present. The configuration of the 20’ road in the project area must be changed. Permanent, public normal-width sidewalk easements must be declared in the plans, and must be followed by a deed of dedication.

The pedestrian safety problem also extends beyond the project boundary, but nonetheless must be addressed by the City and the developer. As was demonstrated in the two prior FOW letters — the Rubin letters —, the public ROW, which should be at least 23’, extends beyond the limits of the project area all the way to Thames Street towards the east. However, the existing conditions at the intersection of Thames Street and Waites Wharf create a bottleneck. A document with measurements near the intersection is attached. Measurements were taken at five points along the Waites Wharf ROW. The narrowest point of useable roadway for both cars and pedestrians measured 19’7” at a utility pole at near the northeast corner of O’Brien’s Pub. Elsewhere, the width varies from 20’4” to 23’6” moving west along Waites Wharf towards the project area.

The applicant’s own traffic study anticipates that the project, as proposed, could generate 75 vehicle trips per hour at peak times, and up to 886 vehicle trips on peak days. The existing conditions at the intersection of Thames Street and Waites Wharf create a bottleneck precisely at the point where pedestrians will enter the project area, and cars will be maneuvering to enter and exit the property. As multiple comments in the TRC meeting minutes demonstrate, the City recognizes this problem and wants a clear pedestrian pathway all the way to Thames Street. The proposed development plans do not provide for such a pathway. This is extremely problematic and presents an urgent safety problem that must be addressed. It is incumbent upon the City and the developer to work with the abutting property owners, and whoever controls the utility pole, to insure there is a safe, continuous and useable ROW of at least 23’, with walkway, from the intersection of Waites Wharf and Thames Street to the project area and the water.

Public safety is a paramount concern. How can Newport claim to be a pedestrian-friendly, walkable city when pedestrians cannot safely walk along a public ROW to the waterfront? The development plan must be amended to provide a continuous path for pedestrians both throughout the project area and easterly along Waites Wharf towards the intersection with Thames Street. This intersection has seen incremental encroachments on the public ROW over the years, and it creates a bottleneck that will present real dangers to pedestrians, especially those with limited mobility or special needs.

VI. Conclusion — The Proposed Development Plan Must Be Rejected as Inimical to the Public Health, Safety and Welfare and Inconsistent With the Comprehensive Land Use Plan Until Significantly Revised

In closing, in the course of the admittedly byzantine project approval process, there are only a few opportunities for any board, commission or agency to step back, take off the narrow legal blinders, and look at an entire project in a holistic way. It is the Planning Board's obligation and mandate to do so now. This letter and the two prior FOW letters — the Rubin letters — amply demonstrate that public rights will be irreparably harmed should the project go forward as proposed. Until the public property interests in the existing 23" ROW (width stated is a minimum) are satisfactorily resolved, the proposed development plan is not even ripe for the Planning Board's action.

Further, no matter how hard one tries, the development plan, as proposed, cannot be reconciled with the CLUP goal "to protect and enhance public access to shoreline and waterfront areas." Nor can it be reconciled with CLUP goals and policies on public safety. And further, the plan is inimical to public health, safety and welfare because it would interfere with the public right-of-way on Waites Wharf, and create numerous safety concerns for pedestrians.

Simply stated, the developer has not met its burden under Chapter 17.88.

The fact that developing a site like this one is expensive and complicated — a so-called "jigsaw puzzle" — is a burden that the developer has chosen. The limitations that the site presents to the developer should not be solved at the cost of Rhode Islanders' property rights. It is within the developers' power to come forward with a better proposal. Respectfully, you should require the developer to do so before giving your favorable recommendation.

Sincerely,



Thomas J. Gibson, Jr., Member Board of Directors
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CC: Russ Jackson, Scott Spear, Girard Galvin, Patricia Reynolds, Chris Behan, Jeff Willis

Attachments: Letter from Friends of the Waterfront Attorney Michael Rubin, February 18, 2022
Letter from Friends of the Waterfront Attorney Michael Rubin, March 2, 2022
Measurements of Waites Wharf ROW Near Intersection with Thames Street

MICHAEL RUBIN
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Patricia Reynolds, Director of Planning & Economic Development
City Hall -- 43 Broadway; Newport, RI 02840
via email to: preynolds@cityofnewport.com

March 2, 2022

Re: Harbour Rlty; The plans admit the true ROW width is 23' (but envision merely 20').

Dear Ms. Reynolds (on behalf of the Planning Board):

INTRODUCTION

This follows-up on my letter of Feb. 18 on behalf of Friends of the Waterfront (FOW). That was based on FOW's review of a single sheet of the plans (the only sheet available at that time).

That letter, working with that one piece of the plans, was based on an *external* comparison. By comparing items found in the Land Evidence Records (LER) with that one draft sheet, FOW proved that the project would privately occupy 3 feet of the width of the Waite's Wharf right-of-way (ROW). FOW compared certain predecessors' 1977 survey plans (admitting that the existing ROW is 23-feet wide) with that sheet (showing the ROW under the proposal as 20-feet wide).

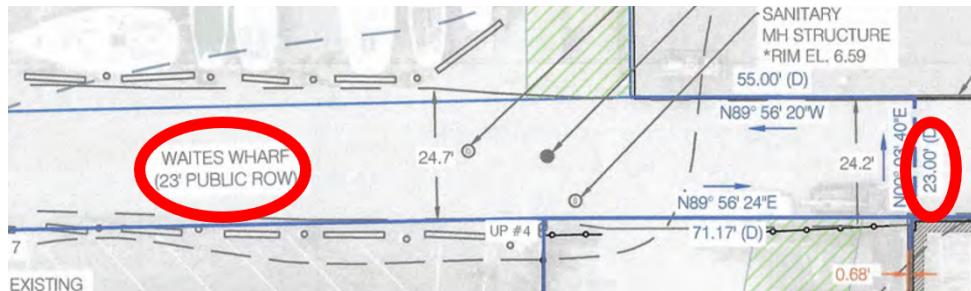
Now, this letter is based on review of the full set of plans, which were made available on Feb. 23.

This letter, working with the full plans, is based on an *internal* comparison. By comparing certain parts with other parts, FOW now proves, again, that the project would privately occupy 3 feet of the width of the ROW. FOW will compare certain sheets of the plans (admitting that the existing ROW is 23-feet wide) with others (showing the ROW under the proposal as 20-feet wide).

In sum, the earlier letter demonstrated that the applicant's predecessors admitted a 23-foot width. This letter demonstrates that the applicant itself admits a 23-foot width. Thus, the two FOW letters are mutually buttressing: under the proposal, there would be a usurpation.

I. THE PRIOR APPLICATION TO THIS BOARD ADMITS THE TRUE WIDTH IS 23'

Before turning to the latest set of plans, some background is in order. As this Board is well aware, in 2019 the applicant sought a demolition permit (a prerequisite for the current application), culminating in this Board's approval just last year. A plan accompanied that application:



Excerpt of sheet one-of-five of the June 20, 2019 plan supporting the July 31, 2019 application. Red circling is added where the applicant admitted that the ROW is 23-feet wide. This admission is repeated throughout the set.

Presumably, this Board relied on this representation that the Waite's Wharf ROW would be 23-feet-wide. Certainly, FOW did so. It is too late now for the applicant to reverse course.

II. THE TRAFFIC REPORT ADMITS THE TRUE WIDTH IS MORE THAN 20'

Before turning to the engineering plans, a brief detour to the other parts of the application is in order. In particular, the Traffic Impact Analysis filed in February contains this admission:

Waite's Wharf in the vicinity of the proposed site is a two-lane, two-way unmarked bituminous roadway, approximately 25 feet in width. There are no sidewalks. There are log posts and edging on both sides

Excerpt of the traffic report (p. 2). Highlighting is added to the admission that the ROW is well more than 20'.

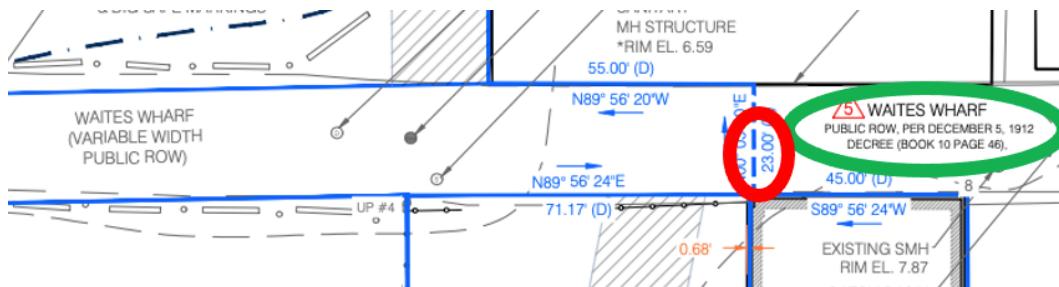
Thus, the applicant's own expert states the width. The expert's use of the word "approximately" cannot be used to cover a 20% reduction, which is what the applicant's proposal contemplates.

III. THE PLANS OF EXISTING CONDITIONS ADMIT THE TRUE WIDTH IS 23'

There are basically two types of plans that comprise the 17-page engineering packet: existing conditions and proposed conditions. As shown next, the existing conditions plans acknowledge that the ROW is 23-feet wide. Thus, the admitted *status quo* is that the ROW is 23-feet wide.

- **The current conditions Survey Plan depicts Waite's Wharf ROW as 23-feet wide.**

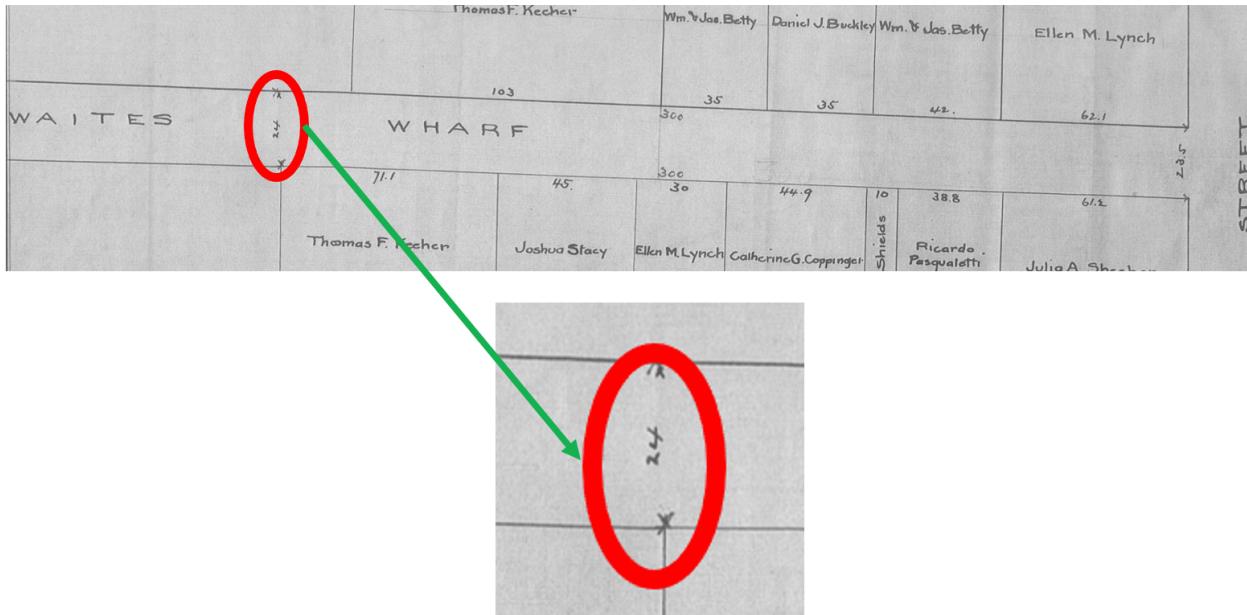
In the engineering packet, after the cover sheet, is Sheet 1 — the master existing conditions drawing entitled Survey Plan. This affirms that the Waite's Wharf ROW is 23 feet wide:



Excerpt of current conditions plan. Red circling is added where the applicant admits that the ROW is 23-feet wide. Green circling is added to a cross-reference that is discussed below.

- **The same Plan makes a reference that proves the ROW is at least 23-feet wide.**

Circled in green on the above excerpt is a Book & Page citation that appears to be a LER reference but that, upon investigation, is actually a reference to old Board of Aldermen records. This leads to a 1912 map, formally adopted by the City leadership, that further proves a relatively wide ROW:



Excerpt of a 1912 map (that is cross-referenced in the current conditions plan) with magnification of a portion. Red circling is added where the City decreed that the ROW is 24-feet at a location that matches the current project area.

This plan, which is incorporated-by-reference into the applicant's plans, indicates a width of 24-feet at a spot that is, upon scrutiny, 300 feet from Thames Street. That location now is at the heart of the proposed project. Having incorporated this 1912 map, applicant cannot now switch to 20'.

- **The Administrative Merger Plan also depicts Waite's Wharf ROW as 23-feet.**

In the same engineering packet, following the above Sheet 1, is Sheet 2 — entitled Administrative Merger Plan. This is, insofar as pertinent here, identical. The above points are reinforced.

- **The Demolition & Staging Plan also depicts Waite's Wharf ROW as 23-feet wide.**

In the same packet is Sheet 4 — Demolition & Staging Plan. This depicts the site during the work:



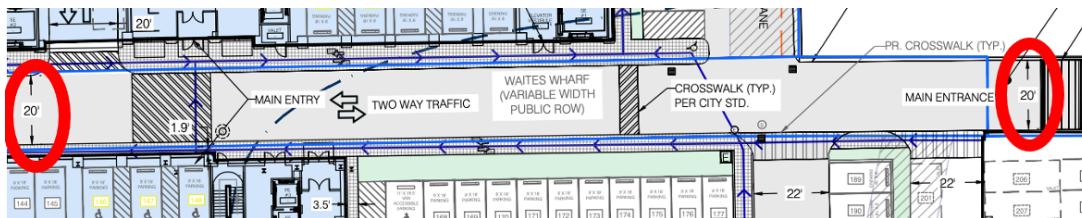
Excerpt of demolition plan. Red circling is added where the applicant again admits that the ROW is 23-feet wide.

IV. BY CONTRAST, THE FUTURE CONDITIONS PLANS CLAIM THE WIDTH IS 20'

By contrast, the plans that depict the proposed conditions substitute the measure of 20-feet.

- **The Proposed Site Plan flip-flops to depict Waite's Wharf ROW as only 20-feet.**

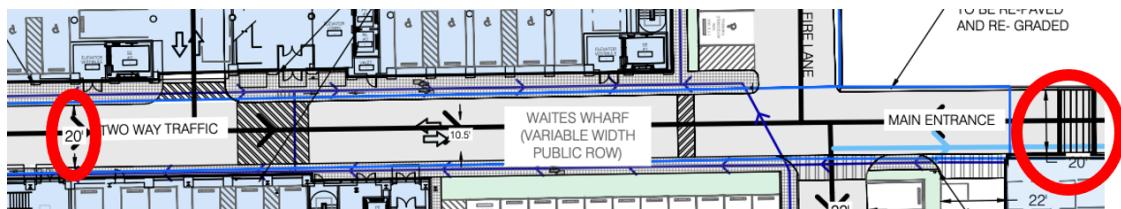
In the same packet is Sheet 5 —entitled Proposed Site Plan. This contradicts the prior plans:



Excerpt of the latest Proposed Site Plan. Red circling is added where the ROW width is changed to show 20-feet.

- **The Traffic Plan also depicts Waite's Wharf ROW as only 20-feet in the future.**

In the same packet is Sheet 9 —entitled Traffic & Signage Plan. This proposes the same narrowing:



Excerpt of the latest proposed traffic plan. Red circling added where the ROW measure is changed to show 20-feet.

Adding insult to injury is this plan's treatment of signage. At the outset, the plan recognizes the need for signs that will invite public use; it does so by listing "Harbor Walk" signage in a legend:

PEDESTRIAN AND TRAFFIC SIGN INDEX
S-1: BIO-BETENTION/LMNS INFORMATION SIGN
S-2: PUBLIC HARBOR WALK SIGN
S-3: CAUTION CHILDREN CROSS AHEAD
S-4: SLOW- PROCEED WITH CAUTION SIGN
S-5: EMERGENCY EXIT ONLY SIGN
S-6: DO NOT ENTER SIGN
S-7: PEDESTRIAN CROSSING SIGN
S-8: PEDESTRIAN AND VEHICULAR ACCESS SIGN
S-9: ADA PREFERRED ACCESS SIGN
S-10: VEHICLE AND BIKE ENTRANCE ONLY
S-11: NO SIDEWALK ACCESS TO THAMES ST. SIGN

This promises that implicit (non-physical) barriers to public use will be overcome by welcoming signage. Alas, the promise is quickly broken. One searches Sheet 9 in vain for any mention of "S-2". Every other code listed is employed, but the drafter did not mark "S-2" anywhere on the Plan.

V. FURTHER, THE PLANS EVINCE A GENERAL NEGLECT OF PUBLIC RIGHTS.

The last point, above, in isolation, might seem to be a trivial oversight. But a pattern emerges:

Applicant's Impact Traffic Analysis (p. 14) reaches the conclusion that: "Waite's Wharf should not be encouraged for pedestrian access." This ban violates Newport tradition.

The applicant would thereby channel pedestrian traffic onto West Extension St., but the applicant offers no effort to restore that roadway to the width designated by the Coastal Resources Management Council (CRMC). West Extension St. is shown by the CRMC to widen at its western end. Moreover, West Extension Street barely has a sidewalk.

The pedestrian “Perpetual Public Access” boardwalk (so described by the applicant’s signs on site), which runs along the northern edge is, as of this moment, in disrepair.

Sheet 1 reveals the ongoing current physical encroachments on the ROW (a building intrudes at the western terminus).

Sheet 5 repeats the mis-identification of West Extension St. by using the wrong CRMC number.

Sheet 5 displays a serious violation of the public’s riparian rights stemming from the Waite’s Wharf ROW.

As already noted, Sheet 9 fails its own standard for Harbor Walk signage.

The entire set of plans falls back on the “Variable Width” canard, which is unsupported.

Of course, as described at length above, overriding all else is the creeping private trespass on the Waite’s Wharf ROW. But other problems with respect to rights-of-way proliferate as well.

SUMMARY

Combining this documentation with that set forth in the prior FOW letter (Feb. 18), one sees:

In 1912, the City decreed that the ROW was 24-feet wide in the vicinity of the intended project.

In 1977, the City and three predecessors-in-title of the applicant fixed the width at 23 feet.

In 1989, the CRMC designated the ROW, using straight parallel lines.

In 2019, the applicant admitted to this very Board that the ROW has a width of 23 feet.

In 2022, the applicant’s traffic analysis allows an even higher figure.

Also in 2022, the applicant files the latest set of engineering plans including several that depict existing conditions and that admit that the width is 23 feet.

Further in 2022, in the same set of plans, the applicant, for the first time on the official record, makes an about-face. The applicant introduces the prospect of a mere 20-foot ROW in the future.

CONCLUSION

Figuratively and literally, the applicant must go back to the drawing board. Respectfully, FOW asks that the Board require this. In particular, the applicant should revise all plans using the correct ROW measure of 23’ and should make the other revisions indicated.

Most cordially,

Michael Rubin

Cc: Russ Jackson, Scott Spear, Girard Galvin, Chris Behan, Jeff Willis

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February 18, 2022

RE: Petition of Harbour Realty, LLC (Waite's Wharf proposal), Friends of the Waterfront's comments submitted in anticipation of Planning Board meeting to be held March 7, 2022.

Dear Ms. Reynolds (on behalf of the Planning Board):

For nearly 40 years, Friends of the Waterfront (FOW), my client, a Newport-based non-profit organization, has focused on preserving public access to the city's unique urban waterfront.

In particular, FOW protects the colonial-era waterfront rights-of-way (ROWS). Thus, these ROWs have been documented, designated by the Coastal Resources Management Council (CRMC), and publicized. They are of great value to the city, the state, and the nation.

In this vein, FOW now alerts the Board to four defects in this application, all of which directly involve ROWs. Moreover, those four matters are each a threshold problem in the application itself that, respectfully, prevent the Board from even considering the proposal in its current form. The applicant must re-submit in order to go forward. Moreover, compounding the situation, three of these four deficiencies are objective matters that can be verified by the established record.

Defects concerning Waite's Wharf ROW

1. The proposal would narrow the CRMC-designated Waite's Wharf ROW from 23 feet to 20 feet; — the former width was acknowledged by predecessors in 1977.

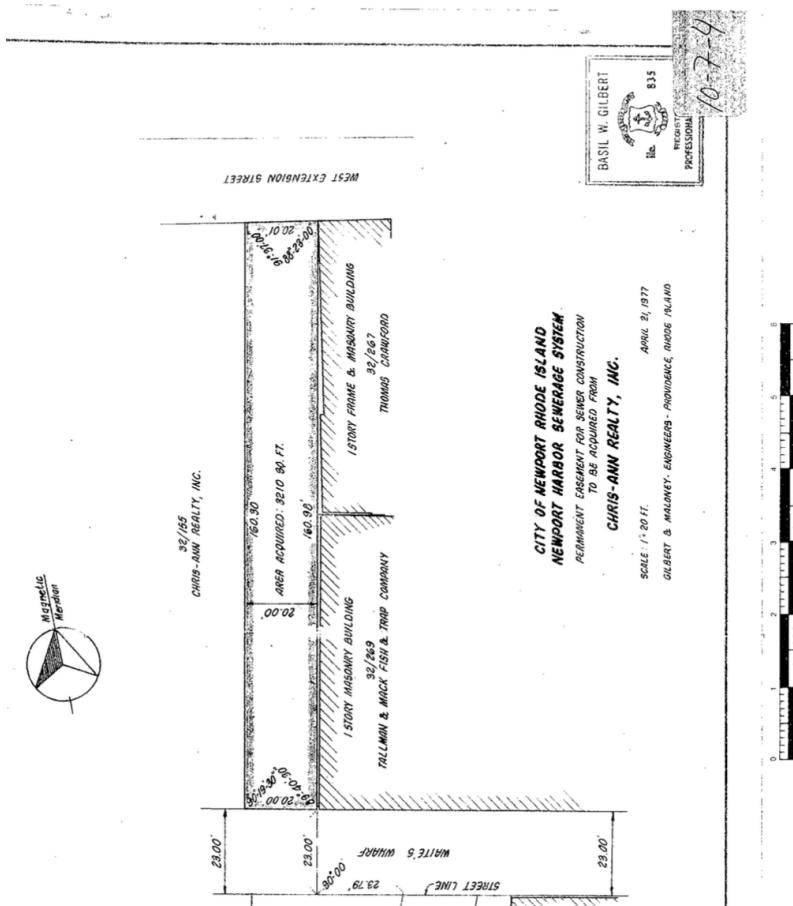
The facts are revealed, step-by-step, in the Land Evidence Records of the City of Newport (LER).

A deed of easement (entitled "EASEMENT") to the City dated August 4, 1977, and recorded in Vol. 270 at Page 151 of the LER, was made by Chris-Ann Realty, the predecessor of the current owners with respect to Assessor's Plat and Lot (APL) 32/155, the largest parcel in the project, comprising most of the "North Lots" area. This incorporated by reference a plan. As recited in the deed:

Said easement being shown on that certain Plat entitled
"City of Newport, Rhode Island, Newport Harbor Sewerage System
Permanent Easement for Sewer Construction, to be acquired from
Chris-Ann Realty, Inc., scale One (1) inch equals Twenty (20)
feet, April 21, 1977, Gilbert & Maloney, Engineers, Providence,
Rhode Island", which Plat is on record in the Land Evidence Re-
cords of the City of Newport.

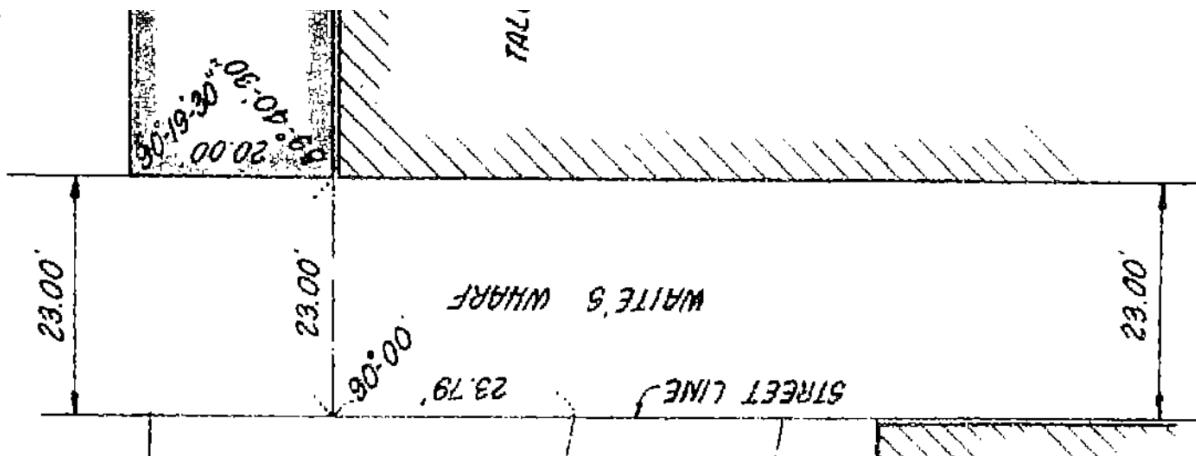
Excerpt from Easement Deed made by a predecessor-in-title and incorporating-by-reference a site plan.

This leads to the plan (Clerk's Document #197722), which shows a sewer easement forming a strip extending from West Extension Street southerly to Waite's Wharf in a perpendicular manner:



Plan showing north-south sewer easement perpendicular to two ROWs: West Extension St. and Waite's Wharf.

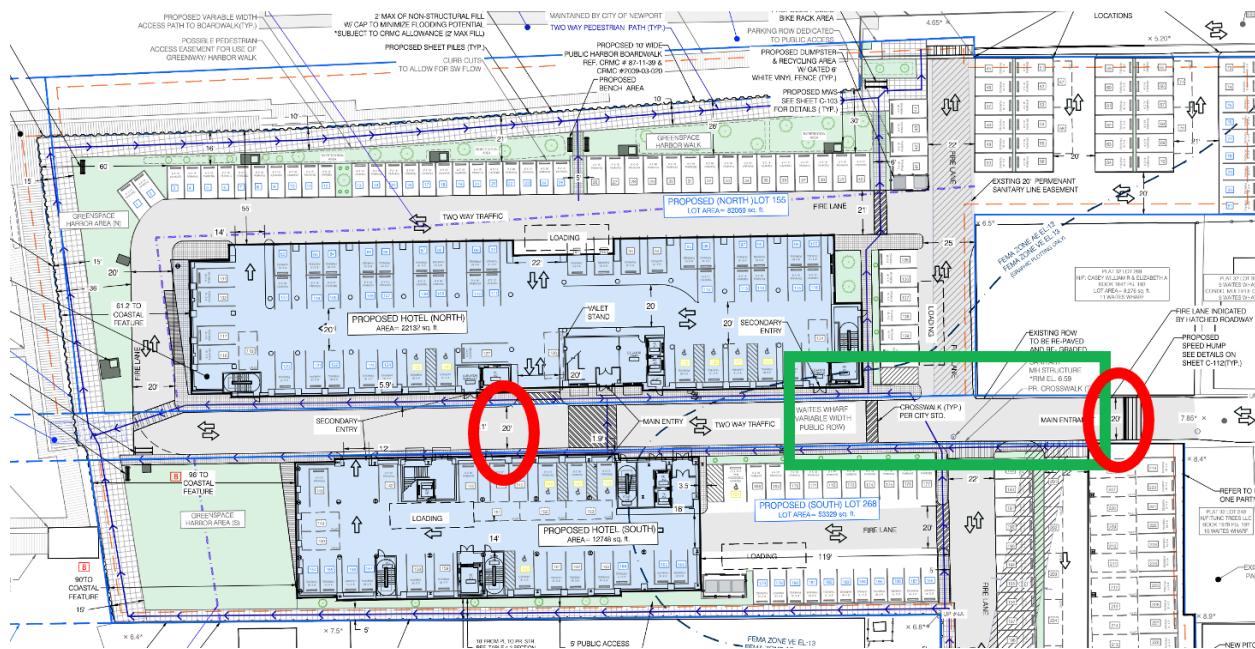
The sewer easement is of no import here. It is Waite's Wharf that we are concerned with. The delineation of Waite's Wharf is unmistakable in that the phrase "Street Line" is employed:



Magnification of above plan detailing the measurements and delineation of the City street, Waite's Wharf.

Importantly, the width of 23 feet is noted three times; the private abutter and the City agreed on this figure. An abutter would resist undue widening. Here, twenty-three feet is conceded.

It is instructive to excerpt the current proposed plan, now pending before the Board, and then mark it to approximately highlight (frame) the area depicted in the above excerpt of the 1977 Plan:



Excerpt of current proposed plan with green framing added to the area corresponding to the magnification of the 1977 plan. Red circling is added to the areas where the current applicant represents that the ROW is 20-feet wide.

This juxtaposition shows that the very stretch of roadway that was mutually acknowledged to be 23-feet wide is now misleadingly presented as merely 20-feet wide. The Board will note that the area framed in green is situated squarely between the two measurement notations indicating the purported shorter distance of 20 feet across the ROW, both of which I have circled in red.

If that were not enough, two other 1977 plans — each respectively made by predecessors of other lots that form part of the subject land — reaffirm that Waite's Wharf is 23 feet in width. See Clerk's Document #197720 (by the predecessor-owner of APL 32/293) and Clerk's Document #197721 (by the predecessor-owner of APL 32/272). In sum, three predecessors plus the City all agreed.

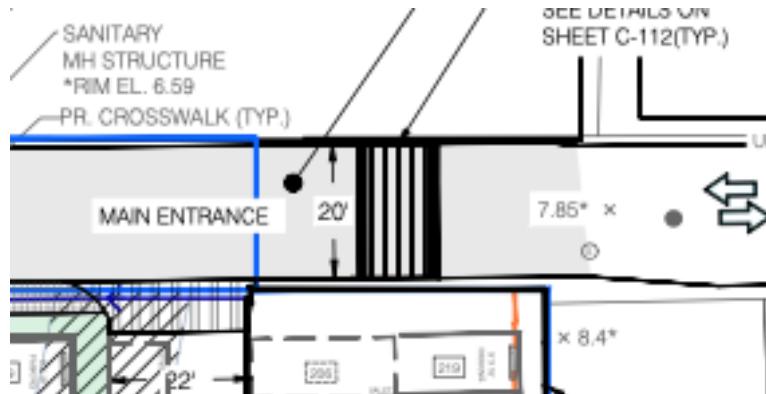
The Board can see the discrepancy. Respectfully, the current proposal must be summarily dismissed. The additional three feet due to the public will require a complete re-engineering.

2. The proposal could further narrow the ROW by the myth of “variable width.”

Related to the above mischief is the “Variable Width” declaration that is posited, without citation, with respect to Waite’s Wharf on the above currently-proposed plan. These words appear in the midst of the area on the plan that is shown as surrounded by the green framing (that I have added).

This is a double-barreled error. *First*, the suggestion is that the road-width varies within the project area. This uncertainty could invite future encroachments. *Second*, this seems to be an attempted justification for the subtraction of three feet from the true width as alluded-to above.

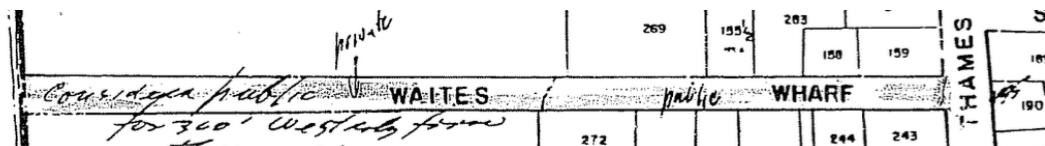
The applicant's own proposed plan depicts the "Variable Width" theory in one respect. There is a narrowing seemingly shown where Waite's Wharf enters from the eastern edge of the plan:



Excerpt of current plan depicting the one area where the applicant seemingly represents that the ROW varies in width.

If this is intended to show a narrowing of the ROW as one moves westward from Thames Street, this image constitutes sleight-of-hand. Absolutely no other plan discovered shows such tapering.

The allegation not only stands in defiance of all of the recorded plans mentioned above, it also stands in defiance of the recorded CRMC designation. The recorded version of the designation (LER Vol. 440, Page 396, June 2, 1989) does not itself include a plan, but the CRMC files do so:

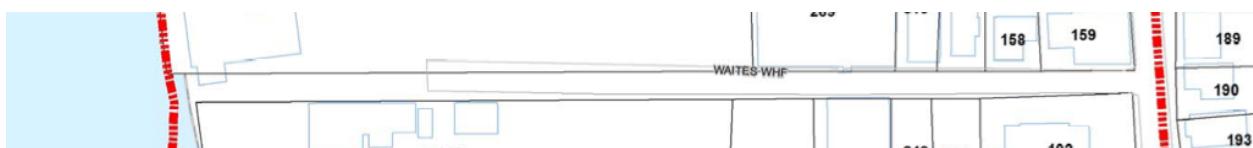


Excerpt of plan (based on 1980s version of Assessor's Plat 32) found in CRMC packet for ROW Z-22, Waite's Wharf

(The CRMC decisions — including the plan from which the above excerpt is taken — can be verified by consulting the CRMC website and then referring to the maps page, which is an option close to the top of one's screen. From there, click on "CRMC-designed Right-of-Ways ..." After clicking "OK" on a dialog, one is brought to a map of RI. There, zoom-in and click on the dot corresponding to the location in question. (Waite's Wharf is the southernmost of the designated downtown Newport ROWs.) A panel then appears on the left of one's screen. A horizontal scroll arrow invites one to scroll through a series of eight files. Files #7 and 8 constitute the legal documentation of the ROW. Within file 7, one finds the plan that yielded the above excerpt.)

The CRMC plan is clearly an adoption of Assessor's Plat 32 that was in use in the 1980s. Thus, the CRMC, agreeing with the then-Assessor, designated the ROW with no variation in width.

The current Tax Assessor also generally uses parallel lines to depict Waite's Wharf. The exception is that there is a slight widening as one moves westward from Thames St. in an area that is not part of the application. This belies the idea that the ROW narrows as it leaves Thames St.



Excerpt of current version of Assessor's Plat 32 found in City web-site, within the pages for Finance Department

Respectfully, the matter must be dismissed pending re-drafting consistent with a fixed width.

3. The proposal cannot be considered while ROW encroachments are ongoing.

It would be anomalous if the following-depicted recurring and ongoing encroachments were not corrected before the application were to be processed:



Summer '21 photo. Multiple encroachments.



Summer '21 photo. Multiple encroachments.

Defects concerning Sisson's Wharf (aka West Extension Street) ROW

4. The proposal mislabels the CRMC-designated Sisson's Wharf ROW.

The applicant calls this CRMC ROW “Z-20.” This is written right on the current proposed plan:

WEST EXTENSION STREET
CRMC DESIGNATED PUBLIC
RIGHT OF WAY TO SHORE #Z-20.

Plan inscription related to West Extension Street, which constitutes Sisson's Wharf. The correct designation is Z-21.

By undergoing a CRMC web-site search, as described above, one finds that this is really Z-21. (“Z-20” pertains to Howard Wharf.) A misstatement, standing alone, might not be serious. However, it must be considered in combination with the other instances of cavalier treatment of ROWs.

Conclusion

Respectfully, the application must be rejected out-of-hand and the matter should be dismissed at the outset. Alternatively, the application should receive a negative advisory opinion on the merits.

Most cordially,

Michael Rubin

Cc: Russ Jackson, Scott Spear, Girard Galvin, Jeff Willis

PS This comment is based on a particular sheet understood to be the latest revision of sheet one of the plans. This is in the form of a PDF file that you, Ms. Reynolds, transmitted to me at 10:20 yesterday. The file is labeled n880240_WAITES WHARF_SITE PLAN_REV_8-C-100.pdf; the sheet indicates revisions made as recently as “12.29.21.” I understand that the other sheets are still undergoing revision and are unavailable. I insert below (next page) a part of the title block.

PPS Once a resolution of (ruling on) these threshold objections (comments) is achieved, FOW will comment on the substantive details of whatever plan emerges, when actually available.

**PRELIM
REV.3 SOUTH
GREENSPACE**

INTERNAL REVISIONS + MUNI PERMITTING:
 REV. 1: ADDRESSED COMMENTS PER MEETING WITH CRMC REGARDING BUFFER & MISC. SITE EDITS. CRMC RECORDS SEARCH TO ADDRESS PREVIOUS ASSENTS/ RESTRICTIONS. CONTINUED SITE PLAN DEVELOPMENT.

REV. 2: INTERNAL REVIEWS OF OF OVERALL SITE PLAN, EDITS TO PROPOSED STORM-WATER, GRADING & UTILITY SHEETS.

REV. 3: EDITS PER REVIEW FROM TRC NEWPORT (MULTIPLE MEETINGS) INCLUDING UPGRADED EGRESS/ INGRESS PLAN (PED. & VEHICULAR), SIGNAGE, MAXIMIZED PARKING COUNT, UPDATES TO STORMWATER PLAN, UPDATED UAV FLIGHT, REVIEWED UTILITY PLAN WITH DEPT. OF UTILITIES.

REV. 4: COTTAGE (23 CODDINGTON WRF.) TO REMAIN, REORGANIZE PARKING LAYOUT AND ACCESS POINTS AROUND COTTAGE AREA.

REV. 5: EDITS PER CRMC, MOVED SOUTH BUILDING LOCATION (50 SETBACK), RECONFIGURATION OF HARBOR AREA GREENSPACE, REARRANGE PARKING LAYOUT

REV. 6: UPDATED HOTEL BUILDINGS, ASSOCIATED PARKING, GREENSPACE, STORMWATER EDITS PER NEW BUILDING LAYOUT

REV. 7: UPDATED HOTEL VEHICLE INGRESS (NORTH ONLY), UPDATED PARKING LAYOUT, ADDED VALET SPACES, MISC. UTILITY EDITS TO DEMO SHEET, ADDED WAYFINDING PLAN & SIGN DETAILS, MISC SITE EDITS

TRC APPROVED

REV. 8: SOUTH BUILDING SHIFTED 35', ASSOCIATED PARKING EDITS, EXPANDED GREENSPACE AREA (S)

PROJECT #	DATE	DRAWN	CHECK
880240	2/01/19	LD	NKH/ EC
No	DATE	REVISIONS/DESCRIPTION	BY
1	5/19/20	CRMC P.D. RESPONSE	NH,KH,LD
2	6/11/20	EDITED COASTAL FEAT. MEASUREMENT	NH,LD
3	8/7/20 - 12.29.21	EDITS PER CONF. W/ CRMC MOVED BLD LOCATION, REVISED GREENSPACE	NH,LD

PURPOSE FOR USE IN PLANNING ONLY.
 GOAL OF PROJECT IS TO MERGE LOTS 155 & 267 AND LOTS 248, 268, 272, 293 IN ORDER TO CONSTRUCT HOTEL ON THE LOTS

REF. N.E.I DOCUMENT * CRMC FILE SUMMARY FOR FULL CRMC SITE HISTORY

REF. ARCH PLANS BY GROUP ONE PARTNERS, LLC.

REF. PRELIMINARY STORM WATER MEMORANDUM BY: CHERENZIA AND ASSOCIATES, LTD.

SCHEMATIC PLANTINGS ONLY. FINAL PER RLA DESIGN LIGHTING PLAN TO BE DETERMINED

SITE CONTAINS LETTER OF COMPLIANCE PER RIDEM SOIL MANAGEMENT & POST CONSTRUCTION CAPPING DESIGN PLAN REQUIRED.

DRAWINGS MUST BE PRINTED IN COLOR TO BE VALID. THIS NOTE SHOULD BE

BLUE. IF THIS NOTE IS NOT BLUE, PLEASE REPRINT IN COLOR OR CONTACT NEL



C-100

SCALE
1"=30'

5

Identifying excerpt of the only sheet of the only version of the current plan that was made available to FOW.

Waites Wharf Right-of-Way Measurements

1 Utility Pole	→	Edge of Sidewalk	19' 7"
2 O'Brien's Wall	→	Edge of Sidewalk	20' 4"
3 O'Brien's Wall	→	Corner of Building	23' 6"
4 O'Brien's Bollard	→	Edge of Building	22"
5 O'Brien's Wall	→	Edge of Asphalt	20' 7"
		Edge of Parking Lot	

