

Name: Susan LaChapelle Ropolo
CRMC File No.: 2021-05-075
Staff Report



STATE OF RHODE ISLAND
COASTAL RESOURCES MANAGEMENT COUNCIL
STAFF REPORT TO THE COUNCIL

DATE: January 22, 2024
TO: Jeffrey M. Willis, Executive Director
FROM: Amy Silva, Ross Singer

Applicant's Name:	Susan LaChapelle Ropolo
CRMC File Number:	2021-05-075
Project:	Residential Boating Facility over SAV with tender lift
Location:	80 Washington Street; Newport: Plat(s): 12; Lot(s): 73
Water Type/Name:	Newport Harbor
Coastal Feature:	Coastal headland with Concrete Seawall
Plans Reviewed:	“Purpose: Construction of Timber Dock, Float, Gangway and Piles... 80 Washington St, Newport...” Dated 11/20/18 and last revised 12/13/2023 by Mount Hope Engineering.

INTRODUCTION:

The application requests Assent to construct a residential boating facility over Submerged Aquatic Vegetation (SAV – eelgrass). The application was originally submitted with depth/length and side setback Variances and received objections during the notice period.

The application has been revised to eliminate the depth/length issues, but the facility is proposed to remain within 25’ of the property line extension. A second public notice was sent in early December, noting the same side setback Variance but eliminating the length Variance. The Town of Newport requested an extension to the public comment period to discuss at their harbor management meeting, despite having approved multiple other iterations of this facility.

Several comments were received during the most recent notice. All comments mirror those received earlier-regarding the proximity of the proposed facility to the Walnut St extension/ROW, except one letter of support for the project. Please note that for the purposes of this report, and for clarity, the Walnut St extension will be referred to as “ROW” or “Walnut St ROW”, and is designated as CRMC ROW Z-12.

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CRMC HISTORY:

87-3303-2473	Enforcement: Construction of shoreline protection in tidal waters	George Gordon	Resolved
1987-09-070	Sheetpile Bulkhead	George Gordon	B- Approved
2005-11-078	Repair Stone & Mortar seawall	Susan Ropolo	M- Approved
2009-09-020	Repair Stone & Mortar seawall	Susan Ropolo	M- Approved
2017-01-037	Repair Existing Sheetpile	Susan Ropolo	M- Approved
2017-04-051	Off-Street Parking; Pool	Susan Ropolo	Returned Deficient
2018-06-025	Inground Swimming Pool & Driveway	Susan Ropolo	A- Approved
2018-12-065	Residential Boating Facility	Susan Ropolo	Returned Deficient
2019-12-032	Residential Boating Facility	Susan Ropolo	Returned Deficient
2021-05-075	Residential Boating Facility	Susan Ropolo	Current Application

COMMENTS ON APPLICATION/APPLICABLE POLICIES, STANDARDS & ETC:

1.2.1(D)	High Intensity Boating	Recreational Boating dominates this water classification. A Residential Boating Facility is considered consistent with this.
1.3.1(D)	Residential Boating Facilities	
(D)(11)(k)	25 Foot Property Line Setback Standard	The facility falls within 25' of the southern property line. However, between the subject lot and the abutting residential lot is the terminus of Walnut St, which is approximately 30 feet wide. The applicant has provided a PLS plan as required.
(D)(11)(l)	50' MLW Standard	The facility extends beyond 50' MLW. It extends beyond this standard length to achieve the depth required by the SAV regulations.
(D)(11)(v)	Lateral Access Standard	The facility will extend off the top of the existing seawall which is noted on the plans to be elevation 7.5. Lateral access is available beneath the facility.
(D)(11)(x)	Long Term Docking at SAV docks	Assent shall have stipulations stating that the facility shall be used for touch-and-go-purposes only, as is standard for all SAV docks.
1.3.1(R)	Submerged Aquatic Vegetation	
(R)(2)(b)	Floats & Float Lifts Prohibited	The facility is a fixed pier facility that meets Burdick & Short design criteria.
R(2)(c)	1200 Tender Lift Prohibition	The facility has proposed a 1200lb tender lift. Boat lifts greater than 1200lb are prohibited.
R(2)(d)	Long Term docking prohibited	The Assent shall have stipulations stating that the facility shall be used for touch-and-go-purposes only, as is standard for all SAV docks.
(R)(3)(d)	SAV Survey standards	The applicant has provided an SAV survey that meets the requirements.
(R)(3)(e)(2) & (3)	5 foot water depth standard	The design has been modified to terminate at 5 foot water depth and now meets the SAV standards.

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As originally submitted, the proposed dock did not meet the SAV standards. It was proposed in the same location as currently proposed but extended beyond the 5 foot water depth standard representing two Variances – length as well as side setback. The application was sent to public notice as submitted. Multiple objections were received from the public as well as a letter from the Town of Newport citing the public concerns and requesting that a Council hearing be held for the public to comment.

In early 2022, staff discussed the project with attorney Chris McNally, who represents the applicant. At that time staff discussed revisions to better meet the regulations.

In June 2022, draft revisions were submitted to CRMC that still did not meet the SAV requirements. The applicant was notified that these revisions would not be acceptable and reiterated revisions that would better meet the regulations.. The file then went dormant, though staff reminded the attorney on multiple occasions in response to his queries of the June 2022 response regarding their revised draft and stating revisions that could be supported.

On August 1, 2023, after a year of inactivity, a 30 day cancellation notice was issued. In late August attorney McNally replied stating that the project would be redesigned in accordance with staff recommendations. Revisions were received in late September 2023 and finalized in December. As revised, the facility meets the SAV requirements and prohibitions, and remains located within the 25' side setback. It should be noted that the location within the side setback is where staff suggested the facility be sited to least impact SAV. The most recently revised set was then sent to notice again.

COMMENTS ON VARIANCE REQUEST:

As proposed, the facility is 11 feet from the property line at its closest, and 13 feet away at its furthest. This is the location suggested by staff to least impact SAV resources, as the SAV does not extend as far seaward in the most southern portion of the lot's shoreline. As proposed, the facility is more than 40 feet from the property line extension of the dwelling to the south.

The applicant had submitted Variance Criteria for the original design, which was both length and side setback Variances. The revision has eliminated the length Variance, and new plans were submitted. No updated Variance request was submitted and is not considered necessary as the side setback Variance hasn't changed with the revisions. The applicant pointed out in the Variance request that the siting of the facility allows the least impact to the SAV identified along the entire waterfront of this lot. This is also the location staff recommended.

Staff agrees that the applicant has designed the project to minimize impacts to coastal resources to the maximum extent possible. Meeting the 25' setback would adversely affect more SAV area.

COMMENTS ON OBJECTIONS:

During the first public notice period, several objections were received, nearly all of them concerned about the impact to public use of the Walnut Street ROW. These comments were reiterated during the most recent comment period.

The small area of beach at the ROW appears to be a popular location, especially in the summer months. The area is reported to be heavily utilized for swimming, kayaking, and boating. As evidence of this, staff noted a number of tenders stored at the ROW. Residents of the area are concerned with the potential interference of

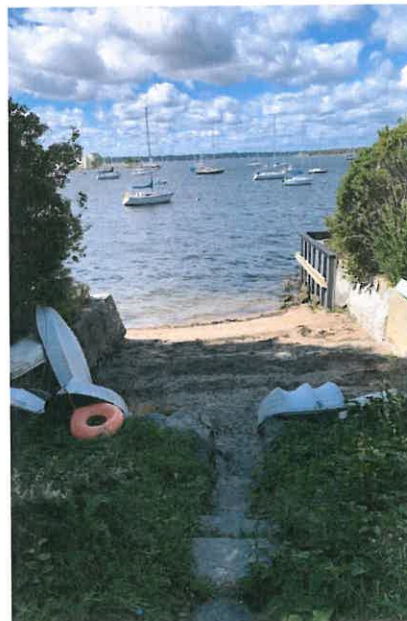
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near shore recreation activities with the presence of a new dock and additional boat traffic so near to the ROW.

As can be seen in the below aerial imagery (DEM aerial photo, Winter 2022-2023), there is a sizable area of rocks at the southern corner of the subject lot in the waters at the end of Walnut St. extension./ROW At lower tides, it is unlikely that anyone utilizing this area to swim or launch small craft are doing so in this area, and possibly favoring the area in front of the southern residence which has no rocks. In fact, one letter calls out utilizing the beach in this area. However, rocks are underwater at higher tides, and it is possible that kayaks, paddleboards and tenders are launched in the area to the north near the affected property line.



Above: Aerial Image of subject lot (top), Walnut St ROW (with small vessels) and beach area to the south of the extension. Yellow dot indicates subject lot.

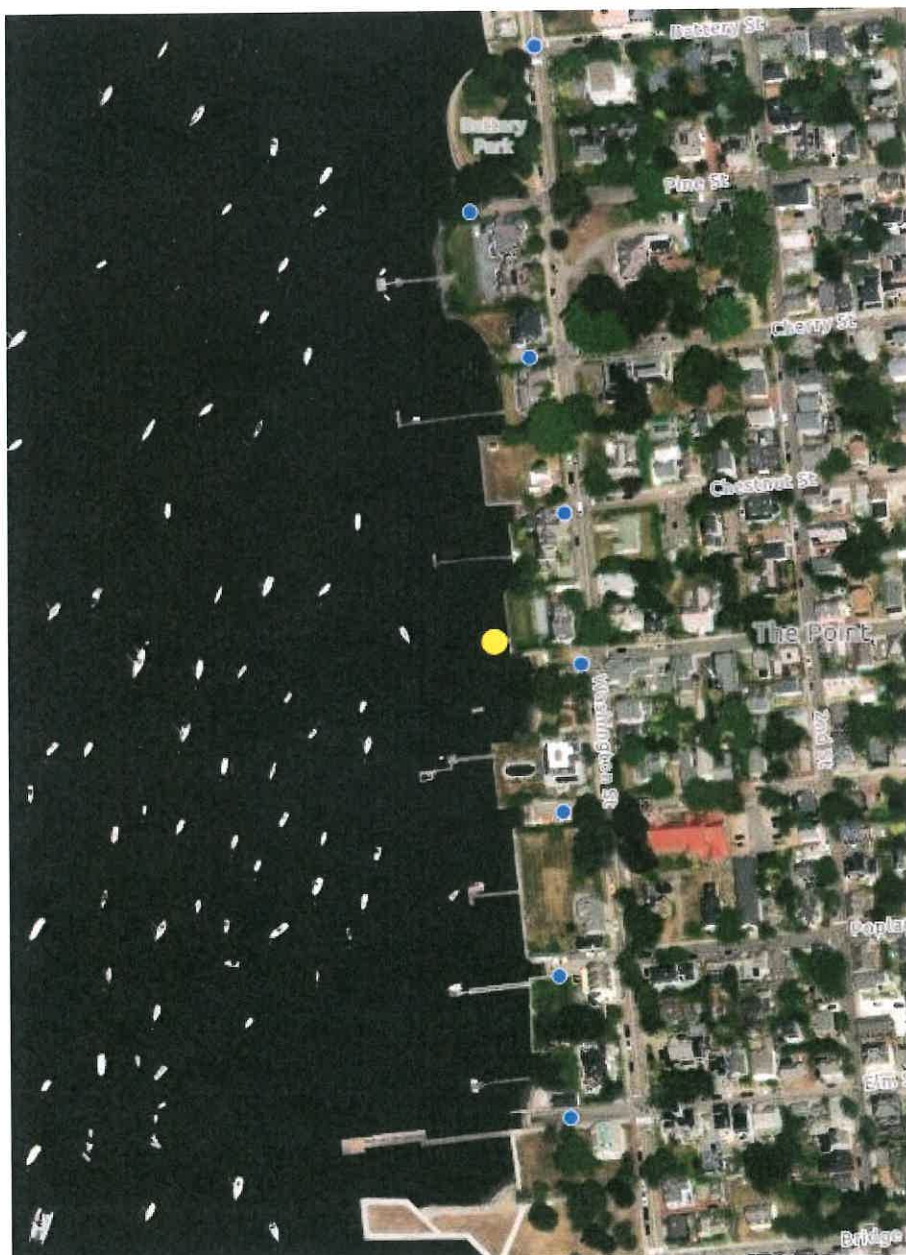


Right: Image looking north from southern lot/beach area, across the Walnut St ROW toward the subject property's retaining wall
Left: Image looking west down the Walnut St ROW showing small recreational vessels stored within the ROW. (both photos, CRMC staff)

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While the facility has been placed at the top of the seawall and will provide access beneath it, the presence of the rocks as well as high tide also likely impedes lateral access in front of the subject lot.

It should also be noted that there are several “dead end” streets along Washington St in the vicinity of the subject lot. All are designated CRMC ROW’s. There are docks along the entire stretch, as can be seen in the aerial imagery below (yellow dot indicating the approximate location of the proposed dock). Though the image is small, close inspection of DEM Aerial Imagery reveals small recreational craft in several of the ROWs, indicating that the public is successfully able to utilize these access points, even with dock facilities nearby.



Above: Aerial image depicting multiple docks, seawalls and road extensions (ROWs) along Washington St. Yellow dot indicates subject lot. Blue dots indicate CRMC designated ROWs.



Above: DEM Spring 2021 Imagery of southern portion of subject lot, Walnut St ROW, lot to the south with beach area (taken at a likely low tide). Yellow dot denotes subject property.

The proposed facility is located entirely within the property line extension of the subject property and does not intrude into the Walnut St ROW. The presence of the rocks at the southern property line where the facility will be sited likely limits recreational use of the waters immediately along the property line. The proposed facility is located 11-13' inside that property line and will only be utilized for touch-and-go purposes to access the owner's mooring -as required by the SAV regulations. Therefore it is staff's opinion that the facility is not likely to have significant adverse impacts on the public utilizing the Walnut St ROW to access the water, or utilizing the area of beach located in front of the southern portion of the ROW and in front of the lot to the south.

Comments regarding Redbook section 1.1.6(G): It is Staff's opinion that evidence was not provided to demonstrate that the objections are substantive as defined by this section, and offers the following regarding specific areas of this section:

- 1.6.1(G)(1)(a): "Loss of objector's property"- The facility is located entirely within the property lines. No area of the objector's "property" (aka the public ROW) will be utilized for the facility.

- 1.6.1(G)(1)(b): “Evidence that the proposed...activity does not meet all of the...standards”- It is true that the application does not meet all of the applicable standards and was submitted with a Variance Request. It does not meet the side setback standard within the Residential Boating Facility Section. However, the facility has been sited in this location at the request of staff to better meet a different Red Book Section’s requirements – Section 1.3.1(R) – minimizing impact to Submerged Aquatic Vegetation.
- Of the nine impacts identified within 1.6.1(G)(1)(c), only three could be considered to be applicable to this request – numbers (3): “Biological communities, including vegetation, shellfish and finfish resources, and wildlife habitat”; (5): “Scenic and/or recreation values”, and (7): “Public access to and along the shore”. As noted above, the biologic impacts have been addressed by siting the facility in the area with the least SAV, and public access and recreation impacts have been addressed within the objection portion of this report. (Docks have long been considered to not represent an adverse scenic impact).

RI Historic Preservation has signed off (#4), and as to the remaining elements of this section: (1) Circulation and/or flushing patterns; (2) Sediment deposition and erosion; (6) Water quality; and (8) Shoreline erosion and flood hazards are all not considered to be impacts associated with residential boating facilities. (9) Does not conform to state or duly adopted municipal development plans, ordinances, or regulations is not applicable as the Town has approved the proposal.

CONCLUSION AND RECOMMENDATION

The applicant has followed staff guidance to site and design a residential boating facility located within an extensive area of SAV to minimize impact to the SAV. The original design had the facility extending approximately 97’ beyond MLW. The revision reduces the length by more than 20 feet to 71’ beyond MLW, a -5 water depth as required by the SAV regulations. Were it not for the objections, this application could have been approved administratively.

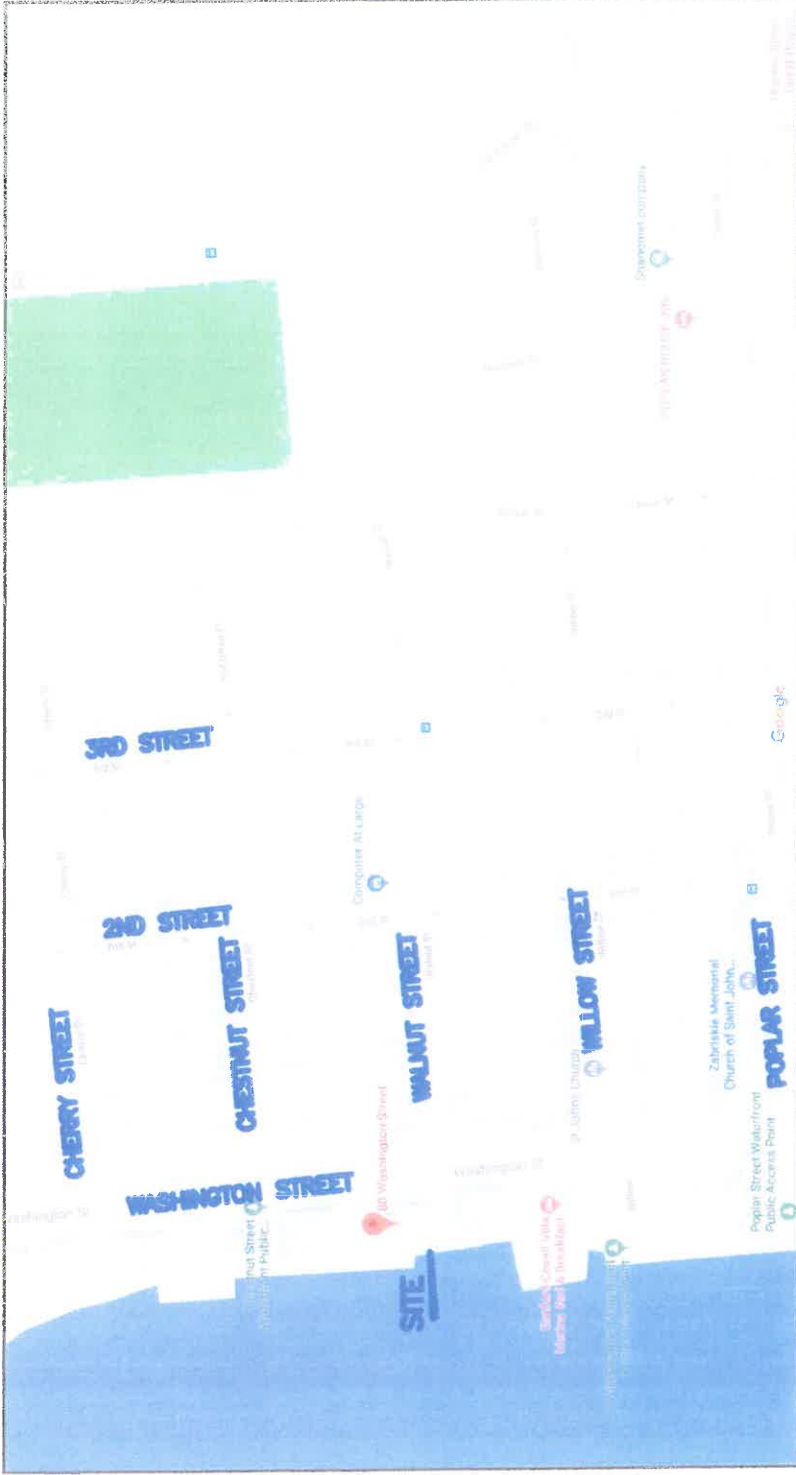
Staff recognizes the public’s concerns regarding a facility located near the ROW, but notes that there are several facilities with similar locations along this stretch of shoreline. Further, this facility does not cross into the ROW, and the most desirable areas to utilize (beach and free of rocks) are located along the southern portion of the ROW and in front of the southern property. The facility is located 11-13’ north of the southern property line/ROW. It is Staff’s opinion that the alternative of locating the facility farther away from the ROW creates a more significant environmental impact to SAV.

Staff is of the opinion that the applicant has designed the facility to meet the SAV regulations and that the Variance is required to minimize impact to SAV resources. The facility offers reasonable height to allow lateral access along the shoreline and will be utilized for touch-and-go purposes only. The Variance is not likely to adversely affect public utilization of the Walnut St ROW. Staff recommends approval of the application.

Should the Council approve this request, standard SAV dock stipulations will be prepared, including those limiting the boat lift to 1200lbs and the facility to touch-and-go use only.

Signed _____  Staff Biologist

Signed _____  Staff Engineer



LOCUS MAP
NOT TO SCALE

PURPOSE: CONSTRUCTION OF
TIMBER DOCK, FLOAT, GANGWAY & PILES
IN: NEWPORT HARBOR, NEWPORT
80 WASHINGTON STREET, NEWPORT

DATUM: MHW = 3.5
MLW = 0.0

DATE: 11/20/18

REVISED: 11/18/19, 02/05/20, 02/27/20

LOCUS MAP

APPLICATION FOR:

TYLER ROPOLO
80 WASHINGTON STREET
NEWPORT, RI 02840

BY: MOUNT HOPE ENGINEERING, INC.
1788 G.A.R. HIGHWAY
SWANSEA, MA. 02777



LIST OF ABUTTERS

MAP 12, LOT 59
EDWARD KANE & MARTHA WALLACE
1437-2 MONUMENT STREET
CONCORD, MA 01742

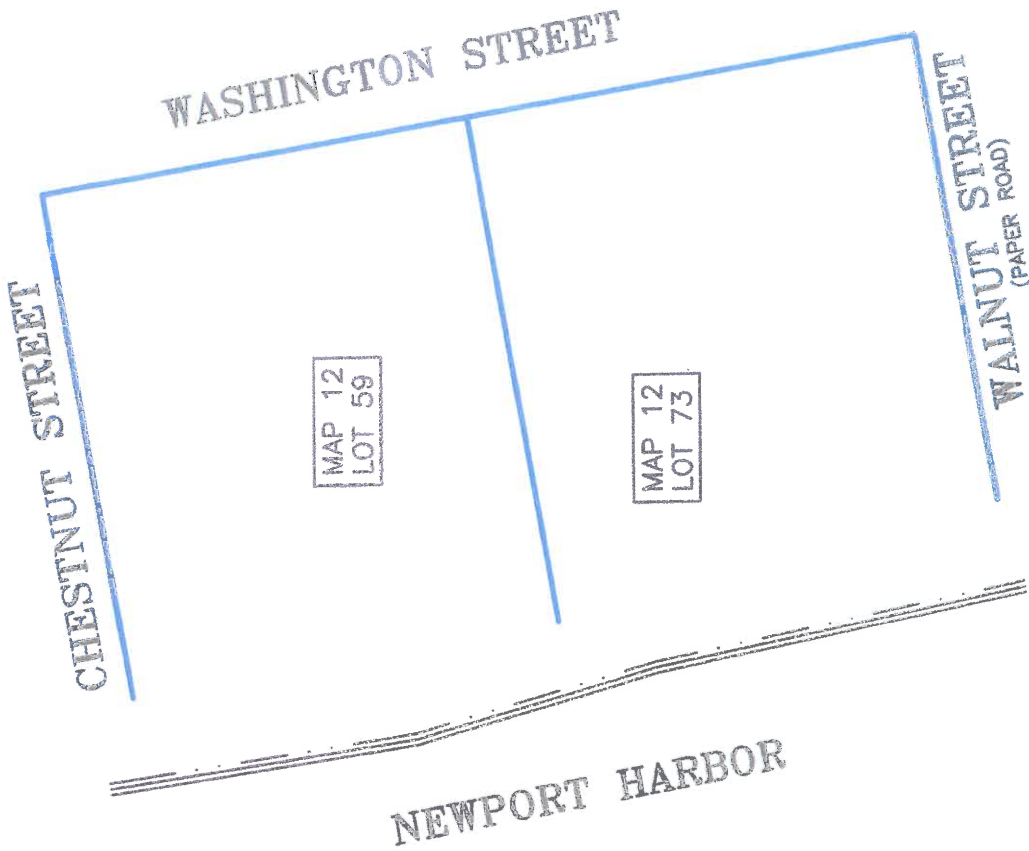
REFERENCE:
CITY OF NEWPORT ASSESSOR'S MAP #12

SHEET 2 OF 7

PURPOSE: CONSTRUCTION OF
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80 WASHINGTON STREET, NEWPORT

DATUM: MHW = 3.5
MLW = 0.0

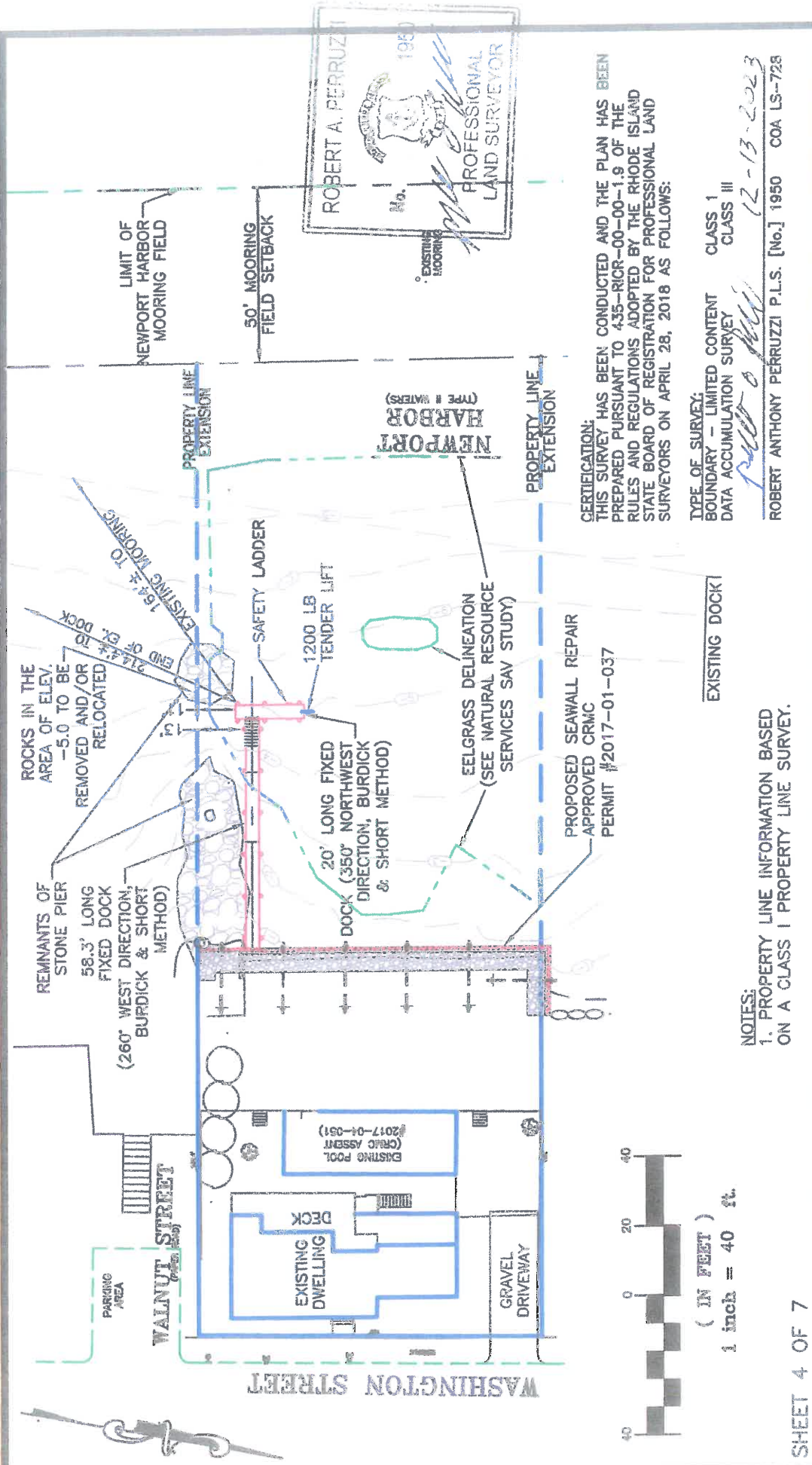
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REVISED: 11/18/19, 02/05/20, 02/27/20



ABUTTERS MAP

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1788 G.A.R. HIGHWAY
SWANSEA, MA. 02777





ROBERT A. PERRUZZI
 No. 1950
 PROFESSIONAL
 LAND SURVEYOR

CERTIFICATION:
 THIS SURVEY HAS BEEN CONDUCTED AND THE PLAN HAS BEEN PREPARED PURSUANT TO 435-RIGR-00-00-1.9 OF THE RULES AND REGULATIONS ADOPTED BY THE RHODE ISLAND STATE BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS ON APRIL 28, 2018 AS FOLLOWS:

TYPE OF SURVEY:
 BOUNDARY - LIMITED CONTENT CLASS 1
 DATA ACCUMULATION SURVEY CLASS III
 12-13-2023
 ROBERT ANTHONY PERRUZZI P.L.S. [No.] 1950 COA LS-725

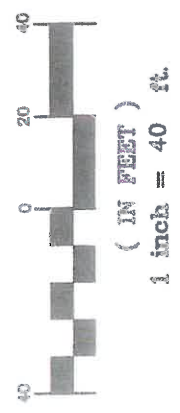
PLAN VIEW

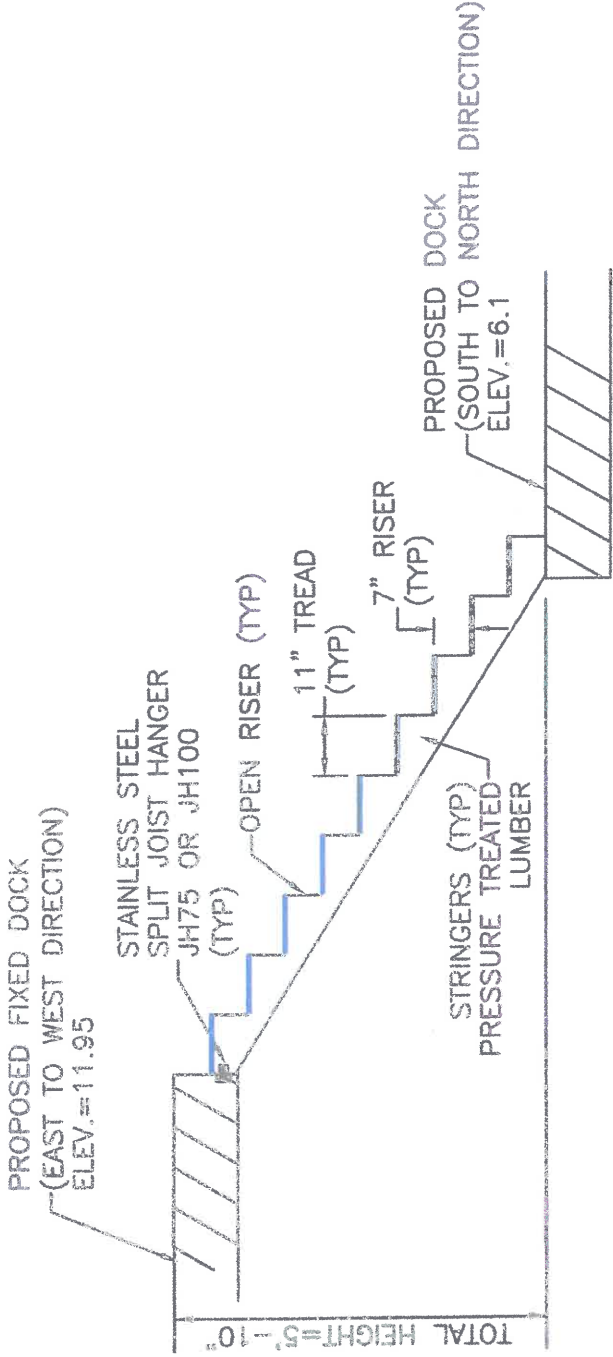
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 03/13/20, 07/19/21, 08/29/23, 12/13/23

TODD CHARLIN
 No. 5335
 REGISTERED
 PROFESSIONAL ENGINEER

NOTES:
 1. PROPERTY LINE INFORMATION BASED ON A CLASS I PROPERTY LINE SURVEY.





STAIRS PROFILE VIEW
NTS

SHEET 7 OF 7

PURPOSE: CONSTRUCTION OF
TIMBER DOCK, FLOAT, GANGWAY & PILES
IN: NEWPORT HARBOR, NEWPORT
80 WASHINGTON STREET, NEWPORT

DATUM: MHW = 3.5
MLW = 0.0

DATE: 11/20/18

REVISED: 11/18/19, 02/05/20, 02/27/20,
08/29/23

DOCK DETAILS

APPLICATION FOR:
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