

SUPPLEMENT TO APPLICATION ON REMAND

Land Court Department Docket No. 23 MISC 000640 Board of Zoning Appeals Remand Case No. 3473

In connection with its Remand Application for Special Permit (Remand Case No. 3473) for the alteration/extension of the existing Funeral Home for the properties at 809 Main Street, 19 Cypress Street, and 0 Cypress Street, in Weymouth, the Applicant McDonald Keohane Funeral Home, Inc. (“McDonald Keohane”) provides (i) a general overview of the relevant procedural background related to the remand, (ii) overview of the proposed project, (iii) summary the project’s satisfaction of the criteria for approval of a special permit, and (iv) proposed special conditions for consideration by the Board of Zoning Appeals (“Board”).¹

1. Relevant Procedural Background

On February 4, 2022, McDonald Keohane filed its application for a Special Permit, pursuant to Weymouth Zoning Ordinance provisions § 120-13.A (as in effect on December 2, 2021), §120-22.12.A, and § 120-40 to the extent applicable, and such other relief as deemed necessary, to allow the alteration/extension of the existing funeral home and the construction of related accessory structure(s) and site improvements. After multiple public hearings, the Board deliberated at its November 16, 2022, meeting and a majority voted (3-2) to grant the Special Permit, subject to twenty-one (21) detailed special conditions. As the application failed to obtain the supermajority of the Board required by M.G.L. c. 40A, § 9, the request for a Special Permit was not granted.

¹ As part of this Remand Application, McDonald Keohane hereby incorporates by reference all materials and testimony submitted to the Board as part of Case No. 3473.

On or about January 31, 2023, McDonald Keohane filed an appeal pursuant to M.G.L. c. 40A, § 17 of the decision with the Land Court, Docket No. 23 MISC 000052. At the initial case management conference before the Land Court (Rubin, J.), the parties and Court agreed that the matter would benefit greatly by having a trained neutral serve as a mediator, and the matter was referred to mediation. On June 1, 2023, McDonald Keohane and the Board mediated their disputes before the Hon. Leon J. Lombardi (ret.). At the mediation, the parties reached an agreement concerning certain modifications to the proposed project and the conditions of use to address purported concerns related to the project, and the parties agreed that the matter should be remanded to the Board for further hearing(s). Based on the parties Joint Request, the Court (Rubin, J.) remanded the matter back to the Board.

On August 9, 2023, a public hearing on the remand matter was held before the Board. Consistent with the parties' settlement agreement, the updated plans and materials submitted included (i) the plan modifications agreed upon as part of the settlement agreement² and (ii) proposed special conditions agreed upon as part of the settlement agreement. At the conclusion of the hearing, the Board voted to close the hearing and to deliberate at the Board's September 6, 2023 meeting. At that meeting, three members, a majority of the Board, again voted to approve

² Specifically, the project was modified from the previous plans considered by the Board in order to:

- Eliminate the south staircase, and switchback ADA ramp adjacent thereto, that provided direct access from the south side parking lot to the proposed (relocated) south side entrance and to provide a handicap accessible ramp that begins on the Main Street side of the funeral home in virtually the same location as the existing ADA compliant ramp that currently provides access to the existing south side entrance.
- Screen the proposed ADA complaint ramp with landscape materials tall enough in height to screen guests on the ramp from the south side parking lot (whereas the existing ramp does not have any screening);
- Eliminate the two (2) parking spaces on the south side of the parking area located in the Medical Services (MS) district, nearest to 143 Columbian Street (and replace with landscaping);
- Eliminate the five (5) parking spaces on west side of the parking lot next to the proposed garage located within the R-1 district (and replace with landscaping); and
- Restore the property line of 19 Cypress Street to the pre-ANR Plan (dated 11/30/2021 and endorsed on 12/3/2021) property line.

the Special Permit this time with twenty-two (22) special conditions, and two members voted to deny the Special Permit – resulting in the denial of the Special Permit once again.

On or about November 23, 2023, McDonald Keohane filed an appeal pursuant to M.G.L. c. 40A, § 17 of the remand decision with the Land Court, Docket No. 23 MISC 000640. During the course of the appeal, an issue came to light related to the proposed retention and use of the existing Main Street (Route 18) entrance of the funeral home (the “Main Street Entrance”) which may have led to the confusion by at least one of the two Board members that voted to deny the Special Permit application. In light of this, the parties to the appeal agreed to modify the conditions to clarify the use of the Main Street Entrance and agreed that the matter should be remanded for further hearing. On February 20, 2024, the Land Court (Rubin, J.) allowed the parties’ Joint Motion for Remand and ordered that the matter be remanded to the Board for further public hearing(s).

2. Overview of the Project.

The existing funeral home has operated continuously in Weymouth for over sixty-three (63) years and is located on State Route 18 (Main Street), in the center of what is termed the “South Shore’s Medical Mecca.” The existing funeral home is a 6,500± square foot Victorian-era style house, originally constructed circa 1870, adapted for use as a funeral home, and has inherent inefficiencies to the operation of a funeral service in the contemporary setting. McDonald Keohane presently provides services in two parlors and the layout of the existing funeral home presents difficulties as space is both limited and inefficient, and participants, often elderly, are forced to stand and strain during services. One parlor is only 662 square feet when expanded, and the other parlor can only expand up to 693 square feet. The funeral home lacks an adequate lobby preceding the parlors or space within the building for attendees to queue – causing the queuing of

visitors outside the funeral home at the front entrance facing Main Street and along the ADA compliant ramp leading to the entrance on the south side of the facility. The building incorporates the standards of an earlier era and lacks even basic fire protection. McDonald Keohane currently undertakes the transfer of dead human bodies on the south side of the building behind a plastic fence.³ Eighty-four (84) parking spaces are currently provided onsite for the funeral home and the site provides very limited stormwater capture, treatment and infiltration.

The proposed project includes alterations to the existing funeral home building and improvements to the site to solve existing operations deficiencies, by providing adequate areas for funeral services and guest queuing *within the building*, creating a deceased body transfer bay attached to the north side of the building, and adding additional exterior parking spaces to the north of the building, and constructing a four (4) car garage for the parking of funeral home's vehicles to replace the existing dimensionally nonconforming garage. These proposed improvements shift activities currently occurring on the south portion of the property to the north portion of the property, away from residential uses.

As part of the proposed project, McDonald Keohane proposes to retain and continue to use the existing front entry facing Main Street (Route 18) as a primary access for guests and the funeral home proposes to continue to provide guest access to its facility via the Main Street entrance and an ADA compliant ramp on the south side of the facility. At present, there are two (2) public entrances to the funeral home facility utilized during services – a front entry facing Main Street (Route 18) and a south side entrance accessed via an ADA compliant ramp that also possesses a

³ Pursuant to the requirements of 239 CMR 3.06(1)(g), “[e]very Licensed Funeral Establishment shall... make removals of dead human bodies into the Licensed Funeral Establishment completely concealed from public view.” To comply with this Regulation, McDonald Keohane undertakes the dead body transfers behind the plastic fence.

stairway on the westerly portion for access to the entrance landing.⁴ See Existing Floor Plan attached as Exhibit 1. The existing south side entrance, accessed via the ADA compliant ramp and staircase, is currently utilized during services to provide access/egress for visitors and is the only ADA compliant access for the building. See Photographs attached as Exhibit 2. As part of the proposed project, the existing south side entrance will be replaced with a new entrance providing access to a proposed lobby area – which allows for queuing *within the building* – and a new ADA compliant ramp (without a staircase) is proposed to be (re)constructed in virtually the same location to provide access to the south side entry (which will continue to be the sole ADA compliant access for the facility). See Proposed Floor Plan attached as Exhibit 3. The new ramp is proposed to be screened with landscape materials tall enough in height to screen guests on the ramp from the southside parking lot, whereas the existing ramp does not have any screening.⁵ As previously stated, McDonald Keohane proposes to continue to provide guest access to its facility via the Main Street entrance and an ADA compliant ramp on the south side of the facility, as currently provided.⁶

The proposed project decreases the number of parking spaces within areas proximate to residential uses and increases the number of parking spaces proximate to abutting commercial uses. Today, there are forty-one (41) parking spaces located on the south and west sides of the funeral home site, only eleven (11) parking spaces to the north side of the funeral home, and thirty

⁴ The south side of the building also possesses a second entrance (in addition to the dead body transfer access on the south side of the existing building) that is primarily utilized for funeral home business (e.g., family planning) and egress during funeral services.

⁵ In addition to proposed screening adjacent to the ramp, the entire south property line will consist of an eight (8) foot tall solid cedar fence and extensive plantings.

⁶ As included herein, a submitted Special Condition 10 provides: “The funeral home shall continue to use the front entry facing Main Street (Route 18) as a primary access for guests. The funeral home shall continue to provide guest access to its facility via the Main Street entrance and an ADA compliant ramp on the south side of the facility, as previously provided and as approved herein.”

(30) parking spaces within the easterly (front) parking lot of the site.⁷ See Existing Layout Exhibit attached as Exhibit 4. The proposed project *reduces the number of parking spaces on the south and west sides* of the funeral home site by three (3) fewer spaces (dropping that figure to thirty-eight (38) parking spaces) and *increases the number of parking spaces to the north side of the building* (i.e., proximate to the Grayken Center for Treatment) by twenty-two (22) additional spaces (thus providing thirty-three (33) parking spaces).⁸ See Proposed Layout Exhibit attached as Exhibit 5. As the internal traffic circulation for the funeral home is a one-way loop with access from the northerly curb-opening, visitors to the funeral home will first elect to park within either the twenty-nine (29) parking spaces in the easterly (front) parking lot or thirty-three (33) parking spaces on the north side of the funeral home before circulating behind the building to the west side or south side parking spaces.

McDonald Keohane proposes to install an eight (8) foot tall solid cedar fence, as well as canopy trees and fifteen (15) Green Giant Western Arborvitae to be planted interior to the fence, all to screen the proposed garage and parking spaces from the residences, and the entire southwest corner of the site that is “outbound” of the solid cedar fence will be retained in its current state with existing trees and vegetation preserved. The proposed garage is single-story and incorporates premium residential design elements unlike the existing nonconforming commercial-grade concrete block garage. Modern, shielded dark-sky compliant LED lighting is proposed to be installed with no light spill onto adjacent properties. Existing lighting illuminates abutting

⁷ There are also two (2) ADA spaces are located proximate to the front entry vestibule.

⁸ The number of parking spaces within the easterly (front) parking lot is reduced by one (1) parking space to provide twenty-nine (29) parking spaces, and the two (2) ADA spaces located proximate to the front entry vestibule are proposed to be eliminated.

properties. The proposed funeral home project has been designed to shield, improve, and minimize impacts on neighboring residences.

The proposed project does not change the location of the existing entrance and exit on State Route 18, and is designed to improve internal traffic circulation for private vehicles and emergency apparatus, as previously reviewed and supported by the Weymouth Fire Department.⁹ A Transportation Impact Assessment was conducted that concluded that the project can be accommodated within the confines of the existing transportation infrastructure in a safe and efficient manner with the implementation of the recommendations that are incorporated into the project plans. The Town Traffic Engineer's report concurred with the conclusion that the project would not have a noticeable impact on Route 18 traffic.

3. The Project Satisfies the Criteria for Approval of a Special Permit.

McDonald Keohane asserts that the proposed project satisfies the criteria for approval of a Special Permit, pursuant to Section 120-122 of the Weymouth Zoning Ordinance, as follows:

(i) **The specific site is an appropriate location for such a use.**

- The site is located on the westerly side of Main Street (Route 18), a four-lane state highway.
- A funeral home has operated continuously at the site successfully since 1961.
- Uses proximate to the two access points include South Shore Hospital, Dana-Farber/Brigham and Women's Cancer, South Shore Health and a Massachusetts Eye and Ear facility.
- The project will allow for operational improvements and efficiencies to accommodate continuing community needs for funeral services and are in keeping with trends in the funeral home industry.
- The project has been designed to minimize potential impacts on neighboring residential and commercial uses.

⁹ As noted below, McDonald Keohane proposes to include a special condition that it shall modify the exiting curb cut in order to direct traffic leaving the site to make only a right-hand turn, subject to the approval of MassDOT and the Town's Fire Department and Traffic Engineer.

(ii) The use involved will not be detrimental to the established or future character of the neighborhood or Town.

- The site is located along Main Street in the center of what's been termed the "South Shore's Medical Mecca."
- Existing direct abutting uses to the funeral home include single family homes, Grayken Center for Treatment, and Massachusetts Eye and Ear Weymouth.
- Directly across the street is the 85,000 sq. ft. Dana-Farber/Brigham and Women's Cancer Center, with 6-story parking garage containing 647 parking spaces.
- The funeral home use at 809 Main Street has existed for over 60 years.
- There will be no fundamental change to the daily operation of the funeral home.
- The proposed alterations to the existing building and improvements to the site will greatly enhance operational efficiencies and provide adequate areas for queuing within the building.
- The addition to the funeral home is located entirely within the MS district.
- Uses permitted in the MS district include hospital, nursing home, medical office, outpatient clinic, medical laboratory and ambulance station.
- The MS district dimensional criteria allows building heights of 6 stories or 80 by special permit, lot coverage of 75% for building and paved areas, and minimum side and rear yard depths of 10 feet.
- The funeral home will retain and continue to use the existing front entry facing Main Street (Route 18) as a primary access for guests and the funeral home proposes to continue to provide guest access to its facility via the Main Street entrance and an ADA compliant ramp on the south side of the facility, as currently provided.
- The proposed project *reduces* the total number of parking spaces to the south and west side of the funeral home facility and *increases* the number of parking spaces along the north side of the facility where vehicles enter the parking areas.
- The open body transfer bay currently on the south side of the building will be replaced by an attached transfer bay on the north side of the building providing direct internal access to the building for the concealed transfer of human remains.
- Access/egress for the site will continue to be only via Main Street (Route 18) – with signage upgraded to MUTCD standards.
- 8-foot-tall cedar fence in an arc along the southwest corner, plant canopy trees and fifteen (15) Green Giant Western Arborvitae interior to the fence, and the entire southwest corner that is outside of the solid cedar fence is proposed to be retained in its current state with existing trees and vegetation to be preserved.
- Dark-sky compliant lighting is proposed to mitigate potential impacts.
- The design incorporates residential design features and aesthetics in keeping with the existing funeral home.

- The house at 19 Cypress Street is proposed to be retained as a single-family dwelling.

(iii) There will be no nuisance or serious hazard to vehicles or pedestrians.

- A Transportation Impact Assessment was conducted that concluded that the project can be accommodated within the confines of the existing transportation infrastructure in a safe and efficient manner with the implementation of the recommendations that were incorporated into the project plans.
- The Town Traffic Engineer's report concurred with the conclusion that the project would not have a noticeable impact on Route 18 traffic.
- Access to the site is via Main Street (Route 18) – with the existing curb-openings to remain as one-way and signage upgraded to MUTCD standards.
- Sixteen (16) additional exterior parking spaces, and four (4) new garage spaces for the funeral home's vehicles – for a total of 104 parking spaces (including 5 handicap accessible spaces) are proposed for the site.
- The project *reduces* the total number of parking spaces to the south and west side of the funeral home and *increases* the number of parking spaces to the north side of the funeral home facility.
- The funeral home will retain and continue to use the existing front entry facing Main Street (Route 18) as a primary access for guests and the funeral home proposes to continue to provide guest access to its facility via the Main Street entrance and an ADA compliant ramp on the south side of the facility, as previously provided.
- Enhanced circulation for private vehicles and emergency apparatuses is provided.
- An internal sidewalk and improved pedestrian striping are proposed.

(iv) Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

- Enhanced fire protection and fire sprinklers are proposed for the building, which currently does not have fire sprinklers.
- Significant stormwater improvements to the site will capture, treat and retain and infiltrate more runoff onsite.
- The proposed alterations to the existing building will provide adequate areas for queuing within the building.
- Any exterior queuing will be at the east entrance or buffered entry ramp accessed from the Main Street side of the building.

(v) The public convenience and welfare will be substantially served.

- The project will continue to function as a fully-licensed funeral home located, constructed, equipped and operated for the purpose of providing sanitary handling, preparation, disposition and care of dead human bodies.
- The project will provide for the continuation of a decades-long essential public health service to the community and Weymouth's 57,500 residents.
- The project services the public convenience and welfare through the modernization and upgrade of a residential conversion to a funeral home performed over 60 years ago, to meet shifting demographic, sectarian, secular and evolving end of life planning needs of the community.

4. Proposed Special Conditions.

As a result of the parties' discussions and as part of the present remand, McDonald Keohane submits proposed special conditions for consideration by the Board. The proposed special conditions are consistent with the those previously recommended by a majority of the Board, with the addition of a condition related to continued use of the front entry facing Main Street (Route 18) as a primary access for guests, as follows:

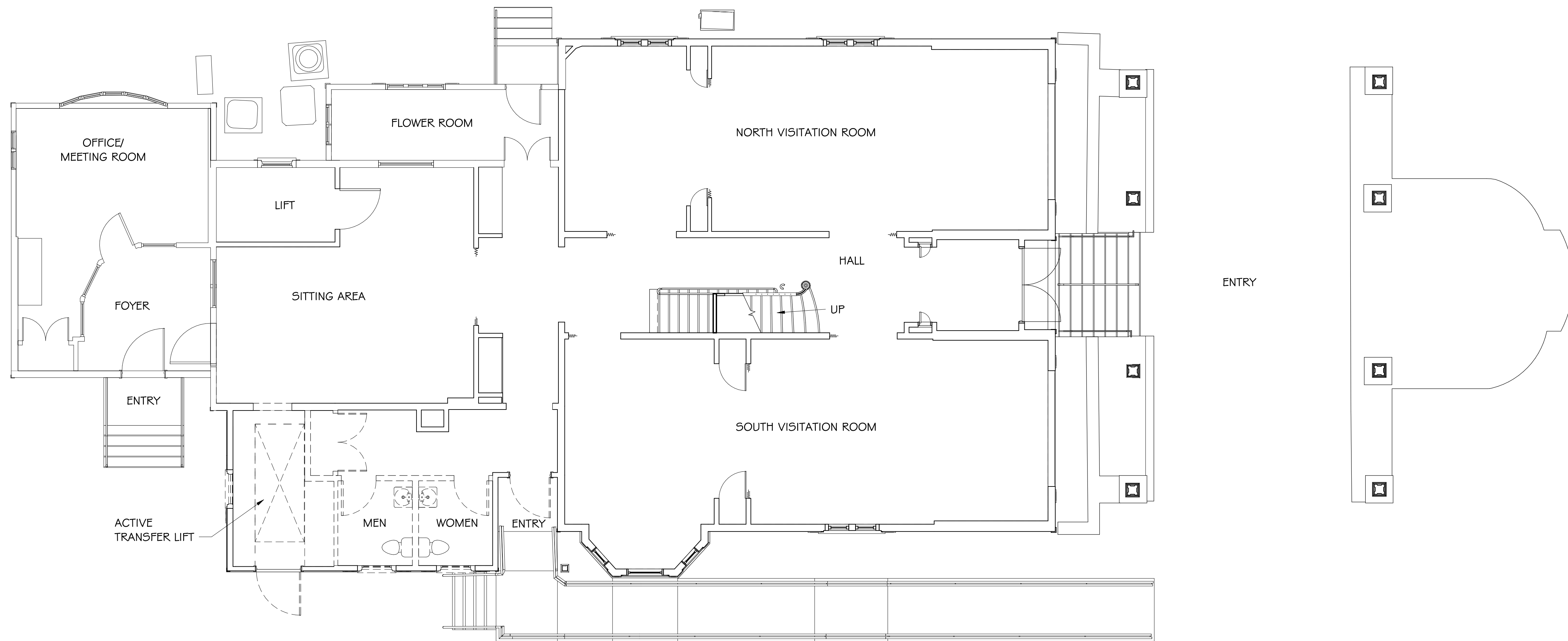
1. An ANR Plan shall be presented to the Director, Planning & Community Development, for review and endorsement of the site lot lines, separating 19 Cypress Street as a singular residential lot consistent with the approved plans.
2. The Applicant shall operate the project as a licensed funeral home in a manner consistent with the representations made within the submitted materials and at the hearings before the Board, and in accordance with 239 Code of Massachusetts Regulations (CMR) 3.00 et seq.
3. The site facility shall only be used for funeral, funeral-related services, and celebrations of life.
4. Funeral services followed with a procession shall be scheduled not to occur concurrently with another processional service.
5. No more than two (2) services shall be scheduled to occur at the same time within the funeral home. Services in this condition include any or all wakes, funeral services or celebrations of life.
6. No alcoholic beverages shall be allowed inside the funeral home building or on the outside premises of the funeral home, including but not limited to the parking areas.

7. There shall be no meals (plated or buffet style) for guests inside the funeral home or on the outside premises of the funeral home. The funeral home shall be allowed to serve light refreshments including nonalcoholic beverages and edible items commonly served between meals but not intended to substitute for meals, e.g., coffee, soft drinks, doughnuts, sweet rolls, fruit, cheese, and crackers, may be served within the funeral home. Guests shall not be allowed to consume the refreshments on the outside premises of the funeral home.
8. Visitation hours, celebrations of life, and funeral services shall be scheduled to end no later than 8:30 p.m.
9. The funeral home shall install directional traffic signage and have staff to direct guests towards the entry points for services located on the Main Street side of the funeral home.
10. The funeral home shall continue to use the front entry facing Main Street (Route 18) as a primary access for guests. The funeral home shall continue to provide guest access to its facility via the Main Street entrance and an ADA compliant ramp on the south side of the facility, as previously provided and as approved herein.
11. Gatherings or processions (or similar pre-funeral, wake or celebrations of life activities) involving a deceased with affiliation with a large organization (e.g. police, fire, political, motorcycle club, etc.) will be staged and contained to the front parking area or front entrance adjacent to Main Street (Route 18). A police detail shall be required for larger wakes and funerals.
12. The funeral home shall not host or allow funeral services or events within any parking area or outdoor spaces on the site. Employees of the funeral home shall monitor the parking areas in order to prevent loud gathering and congregations by guests, particularly, in the parking area along the Columbian Street side of the funeral home.
13. The parking areas and garage depicted on the approved plans that are located within the R-1 portion of the site and any expansion of the funeral home building into the R-1 zone shall not be extended or expanded in the future. Specifically, there will be no further expansion, development, or modifications, of the funeral home into the R-1 zoning district by the current Applicant and its successor or assigns.
14. Emerald Green Arborvitae (*Thuja Occidentalis* 'Smaragd') shall be planted proximate to the southerly lot line, as shown on the approved planting plan, shall be a minimum of twelve (12) feet in height at the time of installation to provide enhanced initial screening and site adaptability.
15. The Applicant shall conduct a post-project traffic monitoring program to validate the traffic projections associated with the project and to document operating conditions at the site. The monitoring program shall be performed within one (1) year after issuance of a Certificate of Occupancy for the project, and shall consist of automatic traffic recorder (ATR) counts over a four-day period on the two (2) driveways that serve the project site during weekday 24hour periods. The results of the monitoring program shall be summarized in a report to be provided to the Weymouth Traffic Engineer within 30-days

after the completion of the monitoring program. If the measured traffic volumes exceed the traffic volume projections for the project contained within the Supplemental Transportation Impact Assessment dated October 25, 2022, prepared by Vanasse & Associates, Inc. (actual counts plus 40% assumed evening peak hour), by more than 10 percent (>10%) the Applicant and Weymouth Traffic Engineer shall develop proposed measures to address the reported traffic volumes.

16. Access from Cypress Street to 809 Main Street shall be limited to subsurface utilities access only.
17. The Applicant shall not change the existing use of 19 Cypress Street from a detached one family dwelling which is located entirely in the R-1 Zoning District.
18. The Applicant proposes to provide enhanced fire protection and fire sprinklers at the funeral home as required by the Weymouth Fire Department (“WFD”). Upon receipt of all requisite approvals from the Town, the Applicant shall install a new 8-inch water main within Cypress Street and install a new fire hydrant, as shown on the approved plans, at its own expense. Both the applicant and contractor must be fully insured to cover any property damages to property Applicants on Cypress Street including damages to landscaping, driveways. Simultaneously with the completion of the water service upgrades for the project within Cypress Street, the Applicant shall repave the entirety of the right-of-way, shoulder to shoulder and install a single open bottom drainage catch basin at its own expense. Design of this catch basin must receive the approval of the Weymouth DPW/Engineering division. In the event that the requisite approval(s) for the new water main connection at Columbian Street is not granted within 90 days of Applicant's written request for filing of application for road opening, the Applicant may, if granted the appropriate approvals by the appropriate Town Departments, elect to provide alternative means to support fire suppression for the building (e.g., onsite below ground water storage tanks) upon the review and approval of the WFD, and the requirements of this condition shall be of no further effect unless the applicant decides at a later time to implement the plan to bring water in through Cypress Street provided that, in order to implement this plan at any time, the applicant shall be required to implement the conditions as stated above. Any onsite water storage tanks or other similar fire suppression referenced in the prior sentence shall not be in the R-1 residential zone.
19. All work relating to this project shall be conducted in accordance with the Town’s construction protocol and restrictions.
20. The Applicant shall modify the curb cut on 809 Main Street in order to direct traffic leaving the site to make only a right-hand turn, subject to the approval of MassDOT, Town’s Fire Department and Traffic Engineer. The Applicant shall install signage prohibiting its patrons from making a left-hand turn onto Main Street.
21. The eleven (11) parking spaces in the rear lot located in the R-1 District (7 spaces next to the funeral home and 4 spaces long northside of the lot next to the proposed location for the dumpsters) should be used as a last resort as an overflow parking area.

Exhibit 1



1 FIRST FLOOR - EXISTING (+/- 3480 SF)
3/16" = 1'-0"

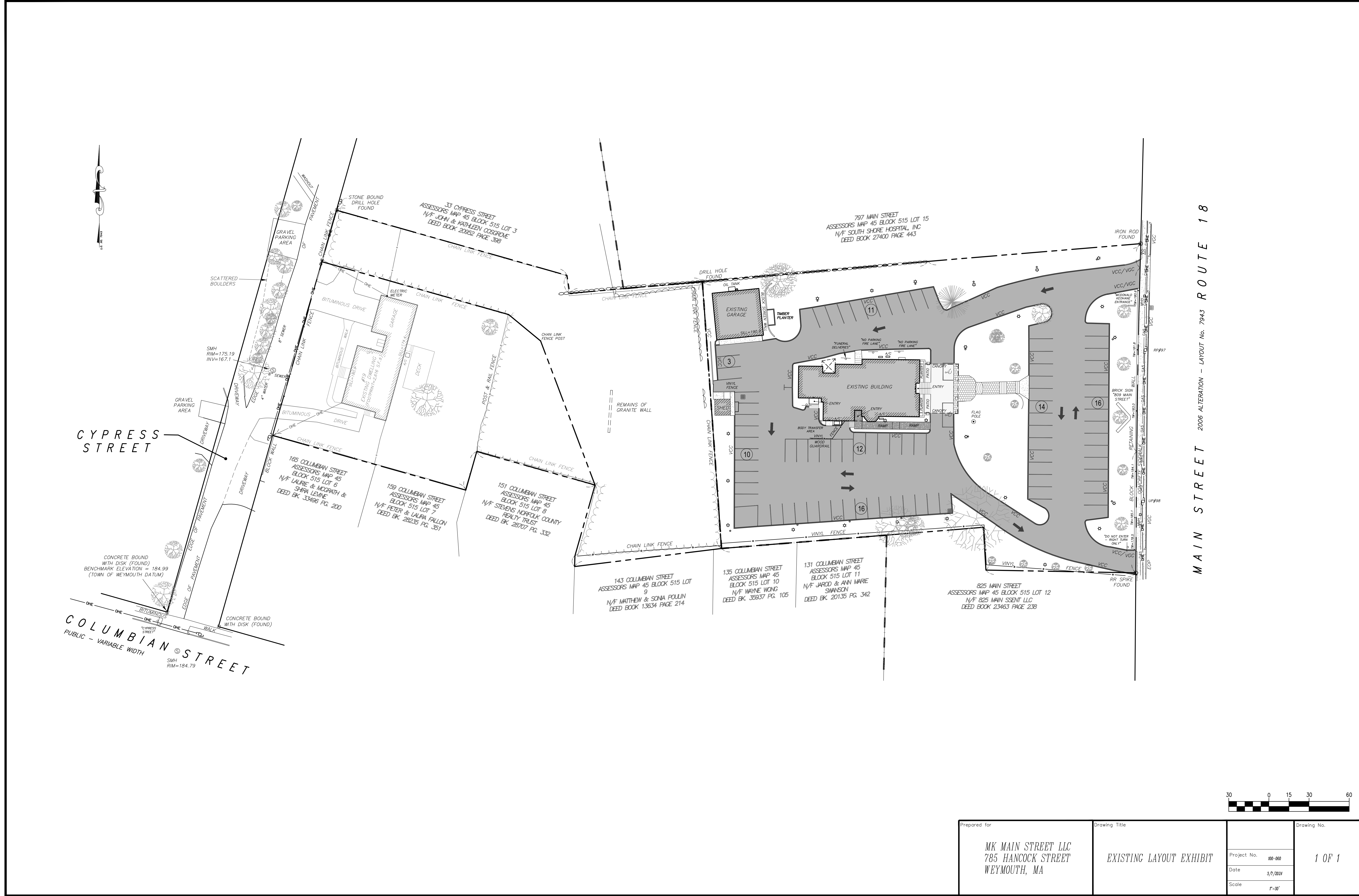
Exhibit 2





Exhibit 3

Exhibit 4



Prepared for MK MAIN STREET LLC 785 HANCOCK STREET WEYMOUTH, MA	Drawing Title EXISTING LAYOUT EXHIBIT	Drawing No.	
		Project No.	000-000
		Date	3/7/2024
		Scale	1"=30'

Exhibit 5

