



# Town of Wenham

Town Hall  
138 Main Street  
Wenham, MA 01984

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WENHAM, MA 01984

2020 SEP -8 PM 3:16

## ZONING BOARD OF APPEALS

TEL 978-468-5520

FAX 978-468-8014

### APPLICATION FOR PUBLIC HEARING

Appeal From the Action of the Building Inspector - Fee: \$250  
Special Permit for Single Family Residence - Fee: \$250  
Special Permit for All Others Including Commercial - Fee: \$400  
Variance - Fee: \$250  
Application to Amend, Modify or Transfer a Variance or Special Permit - Fee: \$250

Checks made payable to the Town of Wenham

DATE: September 7, 2020

PHONE: 978 468 7074

EMAIL: carneyrealestate@comcast.net

APPLICANT: Five One Cherry Street Realty Trust, Pamela J. Carney,

LOCATION OF PROPERTY: 51 Cherry Street Trustee

Applicable Section of Zoning Bylaw: 5.1; 5.2.2.1(3); 13.2.2(3)(4);

NATURE OF APPLICATION: 13.4; 13.6; 4.4.1; 4.4.3,

(attach narrative and or site plan as appropriate)

See attachment for narrative and site plan.

I hereby request a hearing before the Board of Appeals with reference to the above noted application. I understand I will be billed for the publication of the legal notice and have completed the attached acknowledgement.

Pamela J. Carney  
Pamela J. Carney,  
Trustee

Signed [Signature]  
E. James Kroesser  
Attorney-in-Fact  
for Applicant

NATURE OF APPLICATION

RE: 51 Cherry Street, Wenham, MA

The Applicant is in the process of creating a Hammerhead Lot under Wenham Zoning Bylaw Section 5.2.2.1, said lot being shown as **Lot 2** on the plan filed with this Application, dated June 12, 2020, prepared by Griffin Engineering. Located on **Lot 2** is a shed which was constructed in 1985 pursuant to Wenham Building Permit # 38, and added to in 1990 pursuant to Wenham Building Permit #407, (copies attached). The side yard setback at those times was 5'. The shed is located approximately 10' from the easterly side lot line of **Lot 2**, and is now nonconforming, as the current Zoning Bylaw requires a 15' side yard setback. Moreover, under Section 5.2.2.1, Hammerhead lots require that "...any building or structure *shall be* [emphasis supplied] set back fifty feet from all lot lines."

The Applicant is seeking a Variance, or in the alternative a Special Permit, or such other relief as is legally required, in order to maintain the shed in its current location. As noted, the shed has been in its present location for 35+ years, it is set on a concrete slab foundation, and would be difficult and costly to relocate to another suitable location on **Lot 2**, in conformity with the 50' setback required under the Hammerhead Bylaw.

The Applicant submits the following as grounds for the relief requested:

- (a) The Hammerhead Bylaw language set forth above should be construed to be prospective, and not retroactive, and therefore would apply only to buildings or structures erected *after* the grant of a Special Permit for such a lot, and not to preexisting structures which are otherwise lawfully existing. The first two definitions of the verb "*shall*" in **Merriam-Webster's Dictionary** are "...used to express what is inevitable or seems likely to happen in the future", and "...used to express simple futurity". If the Board determines that this section of the Bylaw should be construed as prospective only, then the existing shed may remain in its present location as a matter of right, as a pre-existing nonconforming structure.
- (b) Since the shed is already a legally nonconforming structure, the effect of increasing its nonconformity due to its location on a Hammerhead lot would require the Applicant to obtain a **Special Permit** under sections 4.4.1, 4.4.3, and 13.4 of the Bylaw, to allow it to remain in its present location. The Applicant submits that she meets or exceeds all relevant criteria in this regard, in that the existing shed, although further nonconforming, is not being physically moved or altered, and is therefore not substantially more detrimental to the neighborhood than it was prior to the approval of the Hammerhead lot. As can be seen on the Applicant's plan filed herewith, the shed is located well off Cherry Street, and a significant distance from any other dwellings on adjacent properties.


(c) If the Applicant is required to obtain a **Dimensional Variance** to maintain the shed in its current location, she submits that she meets the requirements for such relief set forth in Section 13.6.1 of the Bylaw. This section requires that a Variance may be granted when,

“...owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner..., and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or bylaw.”

In this case, **Lot 2** is irregular in shape, and a portion of the Lot lies within a FEMA Flood Zone A. When taking into account the 50' setback restriction of the Hammerhead Bylaw, which affects all lot lines, these factors together limit the feasible areas where the shed could be placed. In addition, the shed would be costly to physically move, with no assurance that it would not be damaged, perhaps beyond repair, in an attempt to move it. Presumably the existing slab foundation would need to be removed, and a new foundation installed in the new location. For these reasons the Applicant submits that she will suffer substantial hardship, financial and otherwise, if such relief is not granted, and that she is entitled to a Variance based on the shape and soil conditions affecting Lot 2, and that the grant of a Variance will not result in substantial detriment to the public good, or nullify or derogate from the intent or purpose of the Wenham Zoning Bylaw.

September 7, 2020

Respectively Submitted,

  
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E. James Kroesser, Attorney for Applicant

  
\_\_\_\_\_

Pamela J. Carney, Trustee

\$10.00 P



# BUILDING PERMIT TOWN OF WENHAM

Office of the Inspector of Buildings

Permit No. 38

Wenham, April 12 1985

This Certifies that Jim Corney has permission to put up tool

shed building, situated at E. Cherry St.  
provided that the person accepting this permit shall conform to the terms of the application on file in this office, and to the provisions of Law and the Statutes and Ordinances of the Town of Wenham. Any violation of the terms above noted shall cause an immediate revocation of this permit.

H. Ford Brown  
Inspector of Buildings.

BUILDING PERMIT

TOWN OF WENHAM

MASSACHUSETTS

OFFICE OF THE BUILDING INSPECTOR

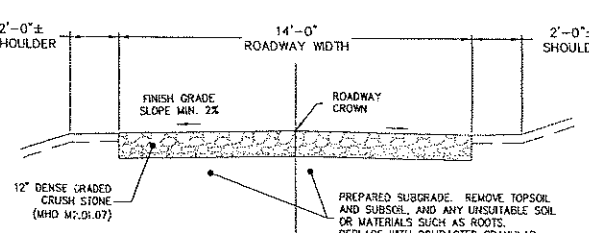
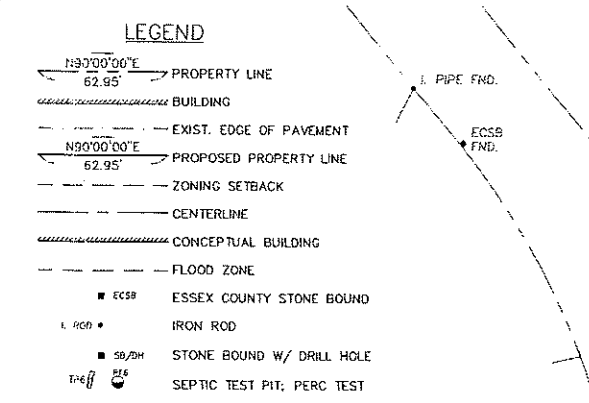
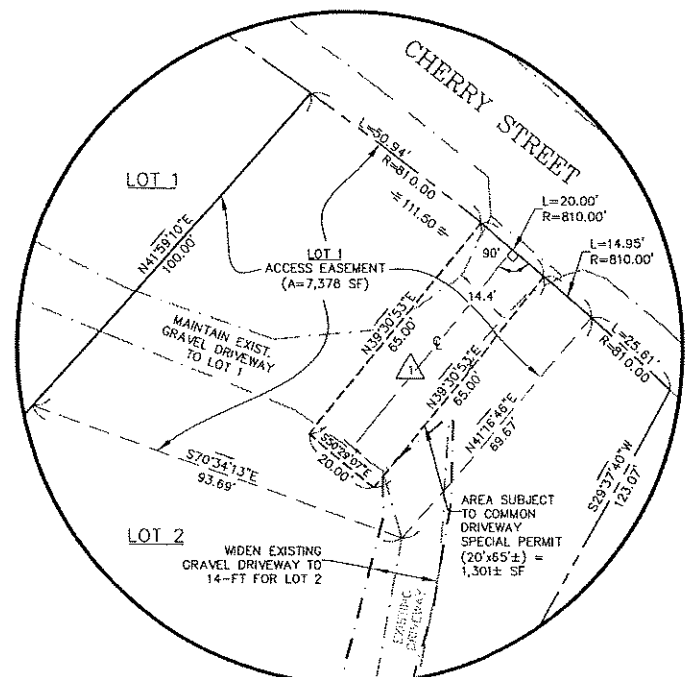
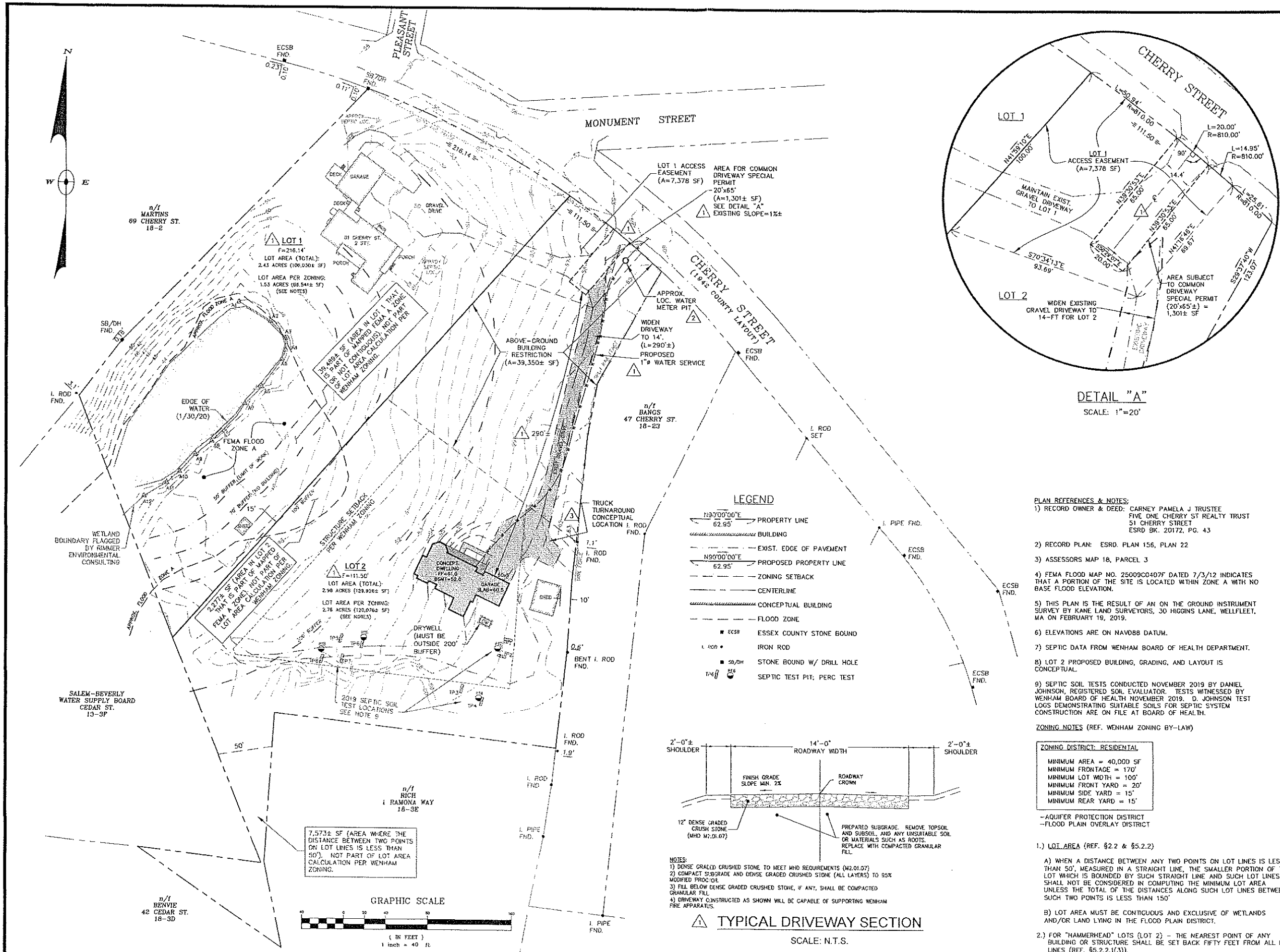


Permit No. 407 Wenham, 11/10, 19 90

This Certifies that J. J. Carney has permission to add lean-to  
shed building, situated at 51 Cherry St

provided that the person accepting this permit shall conform to the terms of the application on file in this office, and to the provisions of Law and the Statutes and Ordinances of the Town of Wenham. Any violation of the terms above noted shall cause an immediate revocation of this permit.

H. Ford Brewer  
Building Inspector



NOTES:  
 1) DENSE GRADED CRUSHED STONE TO MEET MHD REQUIREMENTS (M2.01.07)  
 2) COMPACT SUBGRADE AND DENSE GRADED CRUSHED STONE (ALL LAYERS) TO 95% MODIFIED PROCD-94  
 3) FILL BELOW DENSE GRADED CRUSHED STONE, IF ANY, SHALL BE COMPACTED GRANULAR FILL  
 4) DRIVEWAY CONSTRUCTED AS SHOWN WILL BE CAPABLE OF SUPPORTING WENHAM FIRE APPARATUS

**PLAN REFERENCES & NOTES:**  
 1) RECORD OWNER & DEED: CARNEY PAMELA J TRUSTEE FIVE ONE CHERRY ST REALTY TRUST 51 CHERRY STREET ESRD BK. 20172. PG. 43  
 2) RECORD PLAN: ESRD PLAN 156, PLAN 22  
 3) ASSESSORS MAP 18, PARCEL 3  
 4) FEMA FLOOD MAP NO. 25009C0407F DATED 7/3/12 INDICATES THAT A PORTION OF THE SITE IS LOCATED WITHIN ZONE A WITH NO BASE FLOOD ELEVATION.  
 5) THIS PLAN IS THE RESULT OF AN ON THE GROUND INSTRUMENT SURVEY BY KANE LAND SURVEYORS, 30 HIGGINS LANE, WELFLEET, MA ON FEBRUARY 19, 2019.  
 6) ELEVATIONS ARE ON NAVOBS DATUM.  
 7) SEPTIC DATA FROM WENHAM BOARD OF HEALTH DEPARTMENT.  
 8) LOT 2 PROPOSED BUILDING, GRADING, AND LAYOUT IS CONCEPTUAL.  
 9) SEPTIC SOIL TESTS CONDUCTED NOVEMBER 2019 BY DANIEL JOHNSON, REGISTERED SOIL EVALUATOR. TESTS WITNESSED BY WENHAM BOARD OF HEALTH NOVEMBER 2019. D. JOHNSON TEST LOGS DEMONSTRATING SUITABLE SOILS FOR SEPTIC SYSTEM CONSTRUCTION ARE ON FILE AT BOARD OF HEALTH.

**ZONING NOTES (REF. WENHAM ZONING BY-LAW)**  
**ZONING DISTRICT: RESIDENTIAL**  
 MINIMUM AREA = 40,000 SF  
 MINIMUM FRONTAGE = 170'  
 MINIMUM LOT WIDTH = 100'  
 MINIMUM FRONT YARD = 20'  
 MINIMUM SIDE YARD = 15'  
 MINIMUM REAR YARD = 15'

-AQUIFER PROTECTION DISTRICT  
 -FLOOD PLAIN OVERLAY DISTRICT

**1.) LOT AREA (REF. §2.2 & §5.2.2)**  
 A) WHEN A DISTANCE BETWEEN ANY TWO POINTS ON LOT LINES IS LESS THAN 50', MEASURED IN A STRAIGHT LINE, THE SMALLER PORTION OF THE LOT WHICH IS BOUNDED BY SUCH STRAIGHT LINE AND SUCH LOT LINES SHALL NOT BE CONSIDERED IN COMPUTING THE MINIMUM LOT AREA UNLESS THE TOTAL OF THE DISTANCES ALONG SUCH LOT LINES BETWEEN SUCH TWO POINTS IS LESS THAN 150'  
 B) LOT AREA MUST BE CONTIGUOUS AND EXCLUSIVE OF WETLANDS AND/OR LAND LYING IN THE FLOOD PLAIN DISTRICT.  
 2.) FOR "HAMMERHEAD" LOTS (LOT 2) - THE NEAREST POINT OF ANY BUILDING OR STRUCTURE SHALL BE SET BACK FIFTY FEET FROM ALL LOT LINES (REF. §5.2.2.1(3)).

No.	Date	Description
3	8/7/20	ADD TRUCK TURNAROUND, SHED, SETBACK DIMENSIONS, SEPTIC SOIL TEST LOCATIONS
2	8/3/20	ADD WATER METER PIT
1	7/31/20	ADD DWY LENGTH, ADD FRONTAGE LENGTH, ADD COMMON DWY CENTERLINE, ADD DWY X-SECTION.

Revisions

8-7-20

**Griffin Engineering Group, LLC**  
 495 Cabot Street, 2nd Floor  
 Beverly, MA 01915  
 Tel: 978-927-5111  
 Fax: 978-927-5103

FIVE ONE CHERRY ST  
 REALTY TRUST  
 51 CHERRY ST.  
 WENHAM, MA

SPECIAL PERMIT  
 SITE PLAN

Scale: 1"=40'  
 Job No.: 1836  
 File Name:  
 Date: 6/12/20  
 C-1