

# MORIARTY TROYER & MALLOY LLC

ATTORNEYS AT LAW

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Admitted in MA

September 17, 2021

VIA EMAIL [sraposo@wareham.ma.us](mailto:sraposo@wareham.ma.us)  
AND FEDERAL EXPRESS MAIL

Town of Wareham  
Zoning Board of Appeals  
Memorial Town Hall  
54 Marion Road  
Wareham, MA 02571  
**c/o Sonia Raposo**

Re: 39-21 First Hartford Realty Corp – Special Permit, Variance & Site Plan Review  
3005/3013 Cranberry Hwy, Wareham, MA  
Map 12 Lots B & LC1 - CS Zoning District  
Reign Car Wash – Motor Vehicle Service

Dear: Honorable Members of the Zoning Board of Appeals:

In connection with First Hartford Realty Corporation's ("Applicant") application for Special Permit, Variance and Site Plan Review in the above-referenced matter, which was filed on July 12, 2021, attached please find the following Applicant's request for a variance from Section 763.4 of the Town of Wareham Zoning Bylaw:

1. Original and eight (8) copies of the Applicant's Memorandum in Support of Application along with Attachments:
  - A. Variance Application Support Graphic, dated September 15, 2021;
  - B. September 8, 2021 Building Inspector Denial Letter; and
  - C. Digital Version of Applicant's materials is attached to the filing email.

Should you need any additional information, or documents in order to process this Application, please feel free to contact me directly at (781) 817-4900 or via email at [dtroyer@lawmtm.com](mailto:dtroyer@lawmtm.com).

Additionally, it is my understanding that this matter will be placed on the ZBA's agenda for October 13, 2021, along with Applicant's continued hearing on the above-referenced matter, subject to any public hearing notice requirements.

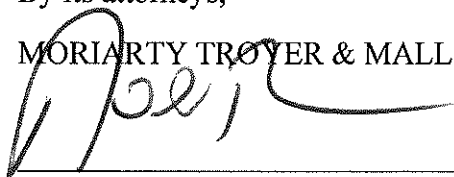
Thank you for your attention to this matter.

Respectfully submitted,

FIRST HARTFORD REALTY CORPORATION

By its attorneys,

MORIARTY TROYER & MALLOY LLC



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Douglas A. Troyer  
One Adams Place  
859 Willard Street, Suite 440  
Quincy, MA 02169  
Tel. (781) 817-4900  
[dtroyer@meeb.com](mailto:dtroyer@meeb.com)

cc: First Hartford Realty Corporation (via email only).

**TOWN OF WAREHAM**

**APPLICANT/CONTRACTOR/REPRESENTATIVE INFORMATION SHEET**

Check One:  Variance  Special Permit  Site Plan  Appeal

Date stamped in: \_\_\_\_\_ Date decision is due \_\_\_\_\_

Applicant's Name: First Hartford Realty Corp.

Applicant's Address: c/o Douglas A. Troyer, Esq., 859 Willard Street, Suite 440, Quincy, MA 02169

Telephone Number: (781) 817-4900

Cell Phone Number: (508) 524-2761

Email Address: dtroyer@lawmtm.com

Address of Property/Project: 3005-3013 Cranberry Highway, Wareham, MA

Landowner's Name: OSJ of Wareham, LLC | Caradimos Company

Owner's Address: 3005-3013 Cranberry Highway, Wareham, MA

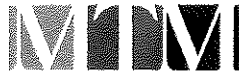
Telephone Number: \_\_\_\_\_

Contact Person: Douglas A. Troyer Telephone Number: (781) 817-4900

Map 12 Lot B/LC1 Zone CS

Date Approved \_\_\_\_\_ Date Denied \_\_\_\_\_

Comments: \_\_\_\_\_  
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\_\_\_\_\_  
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MORIARTY  
TROYER &  
MALLOY LLC

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MEMORANDUM

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To: Town of Wareham – Zoning Board of Appeals  
From: Doug Troyer, Moriarty Troyer & Malloy LLC  
Re: 39-21 First Hartford Realty Corp - Special Permit, Variance and Site Plan Review  
3005/3013 Cranberry Highway, Wareham, MA  
Map 12 Lots B & LC1 – CS Zoning District  
Reign Car Wash – Motor Vehicle Service  
Date: September 17, 2021

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Dear Honorable Members of the Zoning Board of Appeals:

This Memorandum is submitted to the Town of Wareham Zoning Board of Appeals (hereinafter the “Board”) on behalf of our client, First Hartford Realty Corporation (“Applicant”), in support of its request for a variance concerning its application for Variance, Special Permit and Site Plan Review relating to properties located at 3005 & 3013 Cranberry Highway, Wareham, MA (the “Property” or the “Site”).

The Applicant respectfully requests a variance from the Board in accordance with Section 1470 of the Bylaw from the 15’ landscape buffer required in Section 763.4 of the Bylaw. Specifically, the Applicant seeks a 9.16 foot variance from Section 763.4 of the Bylaw requiring a landscape buffer of 15 feet along the front street line in the 339 sq. ft. area shown in red on the plan attached hereto as **Exhibit A**.

**I. FACTUAL BACKGROUND**

As the Board is aware, on June 29, 2021, the Applicant received a denial letter from the Building Commissioner outlining certain relief that the Applicant would need to secure before receiving a building permit for the Project. Prior to its application on July 12, 2021, the Applicant made certain revisions to the proposed plans submitted in support in order to comply with those sections identified by the Building Commissioner in his June 29, 2021 letter. The initial public hearing on this matter was held on August 11, 2021. Pursuant to the Board’ request at the August 11, 2021 hearing, representatives of the Applicant met with David Riquinha, Building Inspector, on September 8, 2021 to confirm that the Applicant’s plans were in compliance with all applicable provisions of the Bylaw and to discuss whether any variances were still required pursuant to Applicant’s project plans dated June 28, 2021.

On September 8, 2021, Mr. Riquinha, after review of the June 28, 2021 plans, issued an updated letter which held that the following relief and/or review must be secured prior to issuance of a building permit:

- a. Special Permit from the ZBA for Motor Vehicle Service Use, pursuant to Section 320 of the Bylaws;
- b. Site Plan Review from ZBA pursuant to Section 1520 of the Bylaws; and
- c. Variance from ZBA concerning Section 763.4 of the Bylaws regarding 15' Landscape Buffer.

(See copy of Mr. Riquinha's September 8, 2021 letter attached hereto as **Exhibit B**). In the instant matter, the Applicant has applied for the Special Permit and Site Plan Review identified in Mr. Riquinha's letter and the Applicant's plans comply with all applicable provisions of the Bylaw, except for Section 763.4 regarding the required 15' landscape buffer, as noted by Mr. Riquinha.

Specifically, Mr. Riquinha held that pursuant to the Site Plan, "The landscape buffer shown in code Section 763.4 is continuous along the Cranberry Highway property boundary, with the exception of a small section along the radius that reduces down to approximately 7'". Mr. Riquinha concluded that a variance, pursuant to Section 763.4 of the Bylaw, would be necessary relative to the nonconforming section only, and not for the remainder of the site. (See **Exhibit B**).

Thus, to the extent necessary, the Applicant respectfully requests a variance from the Board in accordance with Section 1470 of the Bylaw from the 15' Landscape Buffer requirement set forth in Section 763.4 of the Bylaw.

## **II. Variance from Section 763.4 of the Bylaw (15' Landscape Buffer)**

The Applicant respectfully submits that it is entitled to a variance from the Bylaw due to the unique shape of the lot that resulted wholly from the actions of the Commonwealth through its powers of eminent domain which was created by no fault of the current owners, and which affects the Property and not the zoning district generally. In the absence of the requested relief, the Applicant would suffer substantial hardship. Moreover, the Board's grant of a variance would not be substantially detrimental to the public good, but rather benefit it, and would not nullify or substantially derogate from the intent or purpose of the Bylaw.

Pursuant to Section 1470 of the Bylaw, the Board is empowered to hear and decide petitions for variances. Section 10 of the Zoning Act provides that a variance may be granted if the Board:

specifically finds that 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 or appellant, 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 by-law.

G.L. c. 40A, § 10.

The Applicant respectfully requests a variance from Section 763.4 of the Bylaws provides that:

A landscaped buffer zone of 15 feet must be provided along the front street line. No cars may be parked within the 15-ft. wide landscape buffer zone. The landscaped buffer shall include a soil berm of minimum 24-inch height and be sufficiently planted so as to visually screen parked cars.

In or around October 2018, the Massachusetts Department of Transportation (“MassDOT”) by eminent domain, took certain property on the Property for easements in connection with road work that is currently being conducted on Cranberry Highway in order to place and allow for vehicles heading northwest on Cranberry Highway to be able to take a U-turn to access properties on the southern side of the highway which is for the public good. Due to the unique shape of the lot that resulted from the taking which was created by no fault of the current owners, the Applicant is unable to develop the Property as proposed and comply with the 15’ Landscape Buffer requirement within the 339 sq. ft. area shown as red on **Exhibit A**. (See Sv-1 Plan previously submitted in connection with Applicant’s July 12, 2021 filing).

If MassDOT had not taken the land from the Property, the proposed project would comply with Section 763.4 of the Bylaw and provide for the required 15’ foot landscape buffer. Given the shape of the Property due to the taking, the Applicant is able to comply with the 15’ landscape buffer, except for the small section along the radius that reduces the buffer down to approximately 5.8’. (See area highlighted in red on **Exhibit A**). As a result, the Applicant is unable to develop the Property as proposed and requires a 9.16’ variance of the 15’ landscape buffer requirement for this 339 sq. ft. area on the Property.

- a. **Circumstances exist that relating to the unique shape of the lot that affects the Property which is not characteristic of other Lots in the area.**

Variances have been deemed properly granted due to the shape of a lot that resulted from the actions of the Commonwealth through its powers of eminent domain which was created by no fault of the current or previous owners. In *Bateman v. Board of Appeals of Georgetown*, the Appeals Court considered the appeal of a board of appeals’ grant of a variance relating to lack of frontage that was created due to actions of the Commonwealth through its powers of eminent domain. 56 Mass. App. Ct. 236, 240-241 (2002). Holding that the variance had been properly granted, the Appeals Court noted that the “shape of the lot resulted wholly from the actions of the Commonwealth through its powers of eminent domain which deprived the locus of any

frontage and was created by no fault of the current or previous owners” and the unique shape of the lot was not characteristic of other lots in the area. *Id.* at 240-241 (see also *Adams v. Brolly*, 46 Mass.App.Ct. 1, 4, (1998) (owner did not create his own hardship where taking precluded the consummation of land swap designed to secure necessary frontage; variance properly granted for “ ‘pork chop’ lot unlike any other in the neighborhood”).

Here, the project plans show a landscaped buffer zone of 15 feet is provided along the front street line and no cars will park within the 15’ buffer zone. The 15’ buffer zone includes a soil berm of minimum 24” height and will be planted to visually screen parked cars. The curved portion of the state highway layout concerns an easement taken by the MassDOT which reduces the 15’ Landscape Buffer in this small area to 5.8’. The Applicant is required to locate the structure on the Property as proposed and due to the Bylaw’s requirement of a 15’ landscape buffer, it is not possible for the Applicant to develop the Property and comply with Section 763.4 fully. A variance of 9.16’ is only necessary in this small area on the Property as the remainder of the Property provides the required 15’ buffer and the Project complies with all other dimensional requirements. Moreover, the shape of the Property, due to the taking, is unique to the Property and will be used by MassDOT as a truck turnaround area, as shown on Site Layout and Materials Plan submitted in connection with the Applicant’s July 12, 2021 submission. As such, the Property contains a unique shape than other properties in the surrounding zoning district.

**b. A literal enforcement of the Bylaw would involve substantial hardship.**

In addition to the unique shape of the Property, G.L. c. 40A, § 10 specifies that an applicant must demonstrate that “a literal enforcement of the provisions of the ordinance or bylaw would involve substantial hardship, financial or otherwise.” Hardship means “not being reasonably able to use property for the purposes, or in the manner, allowed by the municipal zoning requirements due to circumstances particularly affecting that property.” Martin R. Healy et al., *Massachusetts Zoning Manual* § 9.3 (5th ed. 2010); see also *Marashlian v. Zoning Bd. of Appeals of Newburyport*, 421 Mass. 719, 725-26 (1996) (rejecting “the proposition that a variance is unwarranted if any other possible use can be made of a site”).

Additionally, and as discussed in Section (a) above, Massachusetts case law supports the granting of variances due to hardships created from the actions of the Commonwealth through its powers of eminent domain which impact the ability of owners to meet dimensional regulation requirements called for by a municipalities zoning bylaws. *Batemen*, 56 Mass.App.Ct. at 241; see also *Adams v. Brolly*, 46 Mass.App.Ct. 1, 4 (1998) (variance properly granted as owner did not create his own hardship where taking precluded the consummation of land swap designed to secure necessary frontage).

In the instant matter, the Property is located in the C-S District, which has been identified by the Town of Wareham as an appropriate location for the motor vehicle service use, upon receipt of Site Plan – Special Permit review and approval by the Board. The appropriateness of such use in the location is recognized, as the Site is currently fully developed with a former 99 Restaurant building and paved parking areas and is bordered by Eastern Bank, Taco Bell, and

Ocean State Job Lot on three sides and one side by Cranberry Highway. The unique shape of the lot that resulted from MassDOT's taking of an easement on the Property renders the Applicant, and any other entity standing in its shoes, unable to develop the site for such use, as it is unable to comply with the Bylaw's 15' landscaped buffer along the 339 sq ft area identified in red in **Exhibit A**. Thus, on the basis of the foregoing, if the requested relief is not granted, the Applicant will be prevented from using the Property in a manner authorized – and deemed particularly suitable – in the C-S District.

**c. The grant of the variance will promote the public good by permitting the cohesive redevelopment of two adjacent parcels for a singular use.**

When considering the public good, there must be a finding as to the effect of the development of a site “upon other property within the same district, a necessary element in determining whether the statutory standard has been met.” *Planning Bd. of Framingham v. Zoning Bd. of Appeals of Framingham*, 5 Mass. App. Ct. 789, 789-90 (1977). This inquiry looks to the element of the development for which the variance is requested and not at the effects of the project in the aggregate. *See, e.g., Josephs*, 362 Mass. at 294 (noting that zoning relief would “have no effect upon the abutting properties”). A proposed development has been found to enhance, rather than detract from, the public good when it would increase property values, retain character, and provide adequate on-site facilities. *See, e.g., Boyajian v. Bd. of Appeal of Wellesley*, 6 Mass. App. Ct. 283, 286 (1978).

The de minimis request for a reduction of the 15' Landscape Buffer to 5.8' in the 339 sq. ft. area along the front street line as shown in red on **Exhibit A** will not create a substantial detriment to the public good. In fact, MassDOT's taking allows for the much needed road work along Cranberry Highway to the betterment of the public good.

Additionally, as discussed in the Applicant's July 12, 2021 memorandum in support of its application, the redevelopment of the Property will further have a positive impact on the public good. The Property will undergo a significant aesthetic upgrade in building design and improvements, which are beneficial to the Town, the surrounding neighboring area, and community at-large. The Project will eliminate the current status quo of having a site with a blighted restaurant structure which has remained vacant for several years along an important commercial corridor in the Town and promote an opportunity for the construction and use of a business that will be a vast improvement over existing conditions. The use of the Site as an automatic car wash will not have adverse effects which over-balance its beneficial effects for either the neighborhood or the Town, in view of the particular characteristics of the Site, and of the proposal in relation to the Site.



**d. The variance will not substantially derogate from the Bylaw's purpose and intent.**

The final prerequisite for the grant of a variance is that it must not substantially derogate from the Bylaw's purpose and intent. In considering this prerequisite, the Appeals Court noted that "the deviation must be *substantial*, and ... unless the [proposal] significantly detracts from the zoning plan for the district, the local discretionary grant of the variance (all the other statutory elements having been satisfied) must be upheld. ... [S]ome derogation from the by-law's purpose is anticipated by every variance." Cavanaugh v. DiFlumera, 9 Mass. App. Ct. 396, 400 (1980) (emphasis added).

The purpose of Section 763.4 of the Bylaw is to ensure that a 15' landscape buffer be provided along the front street line, that no cars be parked within the 15' landscape buffer and that the buffer include a soil berm of minimum 24" height and be sufficiently planted so as to visually screen parked vehicles. As shown by the Planting Plan (L1.01) and **Exhibit A**, a landscaped buffer zone of 15 feet is provided along the front street line, with the exception of the small section along the radius that reduces down to 5.8' as shown in red in **Exhibit A**. No cars will park within the 15' buffer zone, and the 15' buffer zone includes a soil berm of minimum 24" height and will be planted so as to visually screen parked cars. The requested variance will permit the Applicant to redevelop the Property in order to update and vastly improve the current aesthetics of the Property, landscaping, and improve pedestrian safety features. The Project provides for the convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets and calls for significant improvements for access to and egress from the site which improve internal traffic flow and enhance the safety of those using the site. Further, the Project affords increased landscaped buffers than existing conditions and preserves views, light, and air to surrounding properties. In addition, the Project will add a stormwater drainage system that will substantially improve existing conditions and is designed to accommodate all anticipated runoff.

Considering the foregoing and the benefits that the proposed redevelopment of the Property will have, any derogation from the Bylaw is *de minimis*. Accordingly, this Board should grant the requested zoning relief.<sup>1</sup>

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<sup>1</sup> The Applicant files the Application and request for a variance WITHOUT PREJUDICE to and with a FULL RESERVATION of Applicant's rights to argue that a variance from Section 763.4 of the Bylaw is not required in connection with Applicant's application for Special Permit and Site Plan Review.

**CONCLUSION**

The Applicant's proposed redevelopment of the Property will provide significant enhancements to the Property – both visually and from a zoning perspective. The relief requested herein – i.e. a 9.16 foot variance from Section 763.4 of the Bylaw requiring a landscape buffer of 15 feet along the front street line in the 339 sq. ft. area shown in red on the plan attached hereto as **Exhibit A** - will enable the proposed car wash operation to be constructed in an appropriate area for such use, – will enable the Applicant to improve existing site conditions and develop the Property consistent with the Bylaw. On the basis of the foregoing, and for all of the reasons set forth herein, the Applicant respectfully requests a variance be granted.

Thank you for your consideration of this matter. Should you have any questions or require any additional information concerning this matter, please do not hesitate to contact Douglas Troyer at Moriarty Troyer & Malloy LLC, One Adams Place, 859 Willard Street, Suite 440, Quincy, MA 02169, (781) 817-4900, dtroyer@lawmtm.com. We look forward to being able to further discuss the application with you in greater detail at the next public hearing.

Respectfully submitted,

FIRST HARTFORD REALTY CORPORATION

By its attorneys,

MORIARTY TROYER & MALLOY LLC



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Douglas A. Troyer  
One Adams Place  
859 Willard Street, Suite 440  
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Tel. (781) 817-4900  
[dtroyer@meeb.com](mailto:dtroyer@meeb.com)

cc: First Hartford Realty Corporation (via email only).



# TOWN of WAREHAM

*Massachusetts*

## BUILDING DEPARTMENT

David L. Riquinha  
Building Commissioner

Sean Kavanagh  
149 Colonial Rd.  
Manchester, CT 06042

September 8, 2021

**RE:** 3013 Cranberry Highway

Map # 12, Lot # LC1

I have performed a review of your building permit application for the construction of "Reign Car Wash" at 3013 Cranberry Highway, in East Wareham, MA. The proposal requires additional review, and zoning relief from the Zoning Board of Appeals; therefore, your application must be denied at this time.

The following review and or relief must be secured prior to re-application for a building permit:

CODE SECTION	DESCRIPTION	RELIEF
<b>320 TABLE OF PRINCIPAL USE</b>	Motor Vehicle Service	Special Permit, Zoning Board
<b>763.4 DESIGN STANDARDS</b>	15' Landscape buffer	Variance, Zoning Board
<b>1520 SITE PLAN REVIEW</b>	More than 10 spaces	Zoning Board Review

The above information was compiled based on the site plan by "vhb" labeled "Site Plans" comprising thirteen pages and dated June 28, 2021. The landscape buffer shown in code section 763.4 is continuous along the Cranberry Highway property boundary, with the exception of a small section along the radius that reduces down to approximately 7'. The relief noted above is relative to the nonconforming section only, and does not pertain to the remainder of the site. If there is any new information, or changes to this plan, please provide them to me and I will be happy to amend my findings accordingly.

The subject structure is located in the CS Zoning district.

Respectfully,

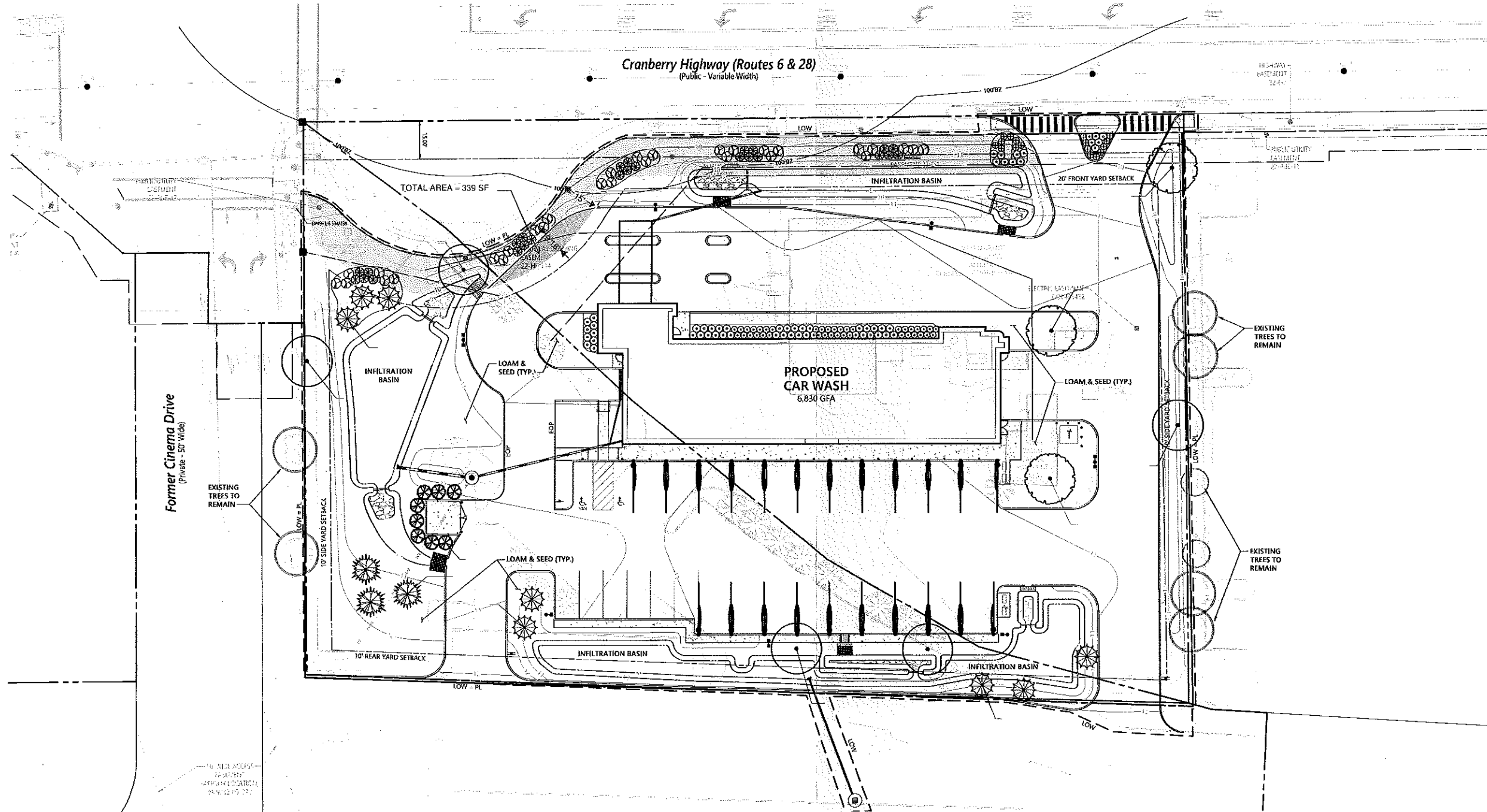
David Riquinha  
Building Commissioner  
Zoning Enforcement Officer

**It is the owners' responsibility to check with other departments, i.e. Health, and conservation, etc. to ensure full compliance.**

**In accordance with the provisions of MGL chapter 40A §§ 15, you may apply to the Zoning Board of Appeals for the above noted relief within thirty (30) days of receipt of this letter.**



1 Cedar Street  
Suite 400  
Providence, RI 02903  
401.272.8100



**Reign Car Wash,  
Wareham**  
3013 Cranberry Highway  
Wareham, Massachusetts

No.	Revised	Date	App'd

Designed by: \_\_\_\_\_  
Checked by: \_\_\_\_\_  
Date: 9/15/2021

Issued for: **Permits**

Not Approved for Construction  
**Variance  
Application  
Support Graphic**

Drawing Number

**G-1**

Sheet 1 of 1

Project Number:  
73170.00