

CAPE COD COMMISSION

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DATE: January 10, 1991
TO: Dr. J. Richard Fennell
FROM: Cape Cod Commission

RE: Development of Regional Impact Request
Cape Cod Commission Act, Sections 12 and 13

APPLICANT: Snow Inn Realty Trust
PROJECT #: TR90005
PROJECT: Snow Inn Complex Expansion
23 Snow Inn Road
Harwichport, MA 02646

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Snow Inn Realty Trust for a Development of Regional Impact approval under Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed expansion of the Snow Inn Complex in Harwichport, MA. The decision is rendered pursuant to the vote of the Commission on December 20, 1990.

PROJECT DESCRIPTION

The Snow Inn complex is located on Snow Inn Road in Harwichport, MA. Snow Inn Road intersects with Route 28 approximately 1/2 mile east of the Harwichport town center. Wychmere Harbor is directly east of the site, with Nantucket Sound to the south. The site is bordered by conservation land to the west, and residential properties to the north and west. The site contains existing restaurant and hotel uses, including the Thompson's Clam Bar, Snow Inn and the Wychmere Harbor Beach Club.

The expansion proposal includes renovations to the existing Snow Inn building, construction of a replacement building housing restaurants, recreational facilities, and 87 hotel units for the existing Wychmere Harbor Beach Club, and construction of three buildings which will house 44 condominium units to replace the existing Tower House, Jetty House, Captain's House, Deck House and Seaview building. It also includes the completion of the second phase of the site's wastewater treatment system as previously licensed by the Massachusetts Division of Water Pollution Control. The site's parking and drainage facilities, including those for Thompson's Clam Bar, will be upgraded as part of this project. Approximately two-thirds of the parking for the project will be underground.

PROCEDURAL HISTORY

This project received site plan review approval from the Harwich Planning Board on December 12, 1989 and a special permit from the Harwich Zoning Board of Appeals (ZBA) on January 3, 1990. An appeal of the ZBA decision was filed by abutters in Barnstable County Superior Court on January 22, 1990 with a decision pending. The project also received a wetlands permit under both M.G.L. Ch. 131 Sec. 40 and the Harwich Wetlands Protection By-Law from the Harwich Conservation Commission on November 27, 1989. An appeal of the order of conditions under M.G.L. Ch. 131 Sec. 40 was filed in December, 1989, with a decision pending. An appeal of the Order of Conditions issued by the Harwich Conservation Commission was filed in Orleans District Court on December 21, 1989 with a decision also pending.

This project was referred to the Commission by the Harwich Building Inspector on April 17, 1990. A public hearing on this project was originally scheduled for June 22, 1990 and continued until August 27, 1990. A duly noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on August 27, 1990 at the Harwich Town Hall, Harwich, MA. The public hearing was closed on August 27, 1990 and the record was left open until September 26, 1990 for submission of additional written materials.

The subcommittee held a public meeting on September 4, 1990 after the close of the public hearing to deliberate on this project. As a result of the public hearing and this meeting, the subcommittee recommended that the hearing should be re-opened at a later date with a new design of the project. This recommendation was made with the understanding that the project was unacceptable to the subcommittee as proposed, due primarily to the visual impact of the project as well as other issues. Pursuant to this recommendation, the Applicant agreed to extend the decision of the Commission until November 27, 1990.

The project was then revised and a duly noticed public hearing pursuant to Section 5 of the Act was conducted by the same subcommittee on November 2, 1990. Due to continued concern of the staff for visual impacts of the proposed project even after re-design by the Applicant, the Commission obtained the services of Ben Thompson Associates, Inc., Cambridge, MA to provide an architectural study and alternative approaches to the design of the project, which were presented at the November 2 hearing. Additional meetings were held between staff, the Applicant and the architectural consultant prior to the new hearing. The second public hearing and record were closed on November 2, 1990. The subcommittee held public meetings after the close of the second public hearing on November 5, November 19, and December 13, 1990. At the November 5 meeting the Applicant agreed to further extend the decision of the Commission until January 11, 1991.

The subcommittee gave a report to the full Commission on December 20, 1990 in Barnstable Superior Courthouse, Route 6A, Barnstable, MA. The Commission voted at this meeting to approve with conditions the application of Snow Inn Realty Trust as a Development of Regional Impact. The conditions were agreed to by the Applicant and approved by the subcommittee.

Materials Submitted for the Record

Materials submitted by the Applicant include:

- document titled Interim DRI Submission, vols. I-III, dated June 18, 1990
- document titled Revised Project Plans, dated November 2, 1990 (revised)
- Snow Inn Complex Existing Conditions Plan, dated October 5, 1989, revised October 17, 1989
- Snow Inn Landscape Plan, dated November 19, 1989

- Sewer System/Drainage & Grading Plan, Proposed Underground Parking Plan and details, sheets 1-5, A.M. Wilson Associates, dated October 5, 1989, revised November 22, 1989
- Snow Inn Complex Architectural Plans/Elevations, Demmons Company, undated, sheets 1-4, revised September 7, November 2, November 19, December 6, and December 13, 1990
- Snow Inn Complex Schematic Site Plan, A.M. Wilson Associates, dated September 7, 1990
- Snow Inn Complex Preliminary Site Plan, A.M. Wilson Associates, dated October 12, 1990, revised November 2, November 19, December 6, December 11, and December 13, 1990
- Snow Inn Complex Statistical Data, dated December 12, 1990
- Snow Inn Complex Building Footprint Summary, revised September 7, November 19, and December 13, 1990
- excerpts from Historic and Archaeological Resources of Cape Cod and the Islands, published by the Massachusetts Historical Commission, Office of the Massachusetts Secretary of State, undated
- decision extension agreements dated September 14, and November 5, 1990
- complaint re: Rockwood v. Harwich Board of Appeals, Civil Action No. 90-84
- detailed fee calculation sheet, A.M. Wilson Assoc., dated September 25, 1990
- letter from Demmons Co. re: wind/shadow impacts, received August 24, 1990
- photographs submitted by A.M. Wilson Associates, undated

Additional materials:

- DRI Referral Form received from Mr. George Arsenault, Town of Harwich Building Inspector, received April 17, 1990
- Soil Logs & Site Plan, Hoyt Road Assessor's Map 15, Parcel K4 received from Harwich Board of Health
- Three (3) Cape Cod Commission staff reports, dated August 27, October 13, and December 13, 1990
- One (1) Subcommittee report, dated December 20, 1990
- Snow Inn Complex Fee Calculations, dated August 31, 1990
- Commonwealth of Massachusetts Supreme Judicial Court Brief No. 5363 of the Plaintiffs-Appellants Rockwood et al.
- Commonwealth of Massachusetts Land Court Decision Case No. 127368
- Snow Inn Existing Conditions, Excerpt from Neighbor's Brief in Zoning Litigation, undated

The application and notices of public hearings relative thereto, the Commission's staff notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of our proceedings are incorporated into the record by reference.

Testimony

AUGUST 27, 1990 HEARING:

The Commission heard oral testimony at the August 27, 1990 hearing from the Applicant's representatives, Arlene Wilson, A.M. Wilson Associates, and Terry Eldredge, Eldredge Surveying and Engineering, Inc. These representatives described the project and contents of a three volume document submitted with the application. The proposal presented at this hearing included renovations to the existing Snow Inn building, construction of a replacement four-story building containing restaurants, recreational facilities, and 65 hotel units for the existing Wychmere Harbor Beach Club, and construction of one four-story building, approximately 480 feet in length, which

would house 74 condominium units to replace the existing Tower House, Jetty House, Captain's House, Deck House and Seaview building. A total of 471 parking spaces was proposed, with approximately one-third of the parking below the Beach Club and proposed condominium building. The change to condominium use would result in reduced traffic with proposed buildings brought up to meet FEMA standards. The existing buildings were just below flood elevation. Project construction was expected to be approximately \$26M.

Staff comments related to the following issues: the impact of the project on regional views with the proposed height and massing of the buildings; a reduction in traffic from current levels due to proposed condominium use and reduced restaurant seating, although seating restrictions and possible mitigation for the Snow Inn Road/Route 28 intersection were recommended; and review of the sewage treatment plant capacity also resulting in a recommendation to restrict seating.

Comments from the Commission were primarily concerned with regional views that would be affected by the proposed height of the buildings, as well as the ability of the Commission to continue to deliberate on the project due to appeals that were pending. Comments from the public were balanced between those supportive and those against the project. Positive comments were based on the economic and employment value of the proposed project to the town. Negative comments generally focused on the scale of buildings, noise, maintaining views and traffic impacts. As a result of this hearing, the following recommendations were made: the staff was to seek information as to the ability of the subcommittee to continue to deliberate on the project due to pending appeals; that the Applicant extend the 60-day decision period in order to submit additional information.

At a subsequent subcommittee meeting held on September 4, 1990, the subcommittee voted that a new hearing should be opened at a later date with a new design proposal. This was due to the project being unacceptable as proposed, and would otherwise be recommended for denial by the subcommittee. An agreement to extend the decision was necessary to allow for the redesign. The Applicant agreed to extend the decision until November 27, 1990.

NOVEMBER 2, 1990 HEARING:

Testimony received at the second public hearing held on November 2, 1990, included a revised proposal by the Applicant. Condominium units were reduced from the original proposal of 74 to a total of 46 units, with hotel rooms increased from 65 to 84 units. Other changes included separating the condominiums into two buildings from the 480 foot long structure originally proposed. Underground parking was also eliminated below the Beach Club in this proposal.

Armando Carbonell, Executive Director of the Commission, explained the process of negotiations between the staff and applicant on the design of the project. The Commission had retained Ben Thompson, Jr. of Ben Thompson Associates (BTA) to study the project's architectural and site design. Ben Thompson described his role in the design and review process. He stated that he was not convinced that the project was too big but would like to further study the project. He suggested that the Applicant continue to work on the design of the project.

At this hearing the Applicant also offered the following: assurance that the 41 rooms offered to employees on a seasonal basis would continue to be available, or a donation of 4.3 acres of land for affordable housing. This offer was made to mitigate the impact of the residential component of the project on affordable housing in the town of Harwich. The staff was directed by the subcommittee to make an assessment of the parcel for its ability to support affordable housing. Staff comments again focused on design, affordable housing and the following issues: open space linkage, as well as traffic and water resource concerns brought out at the previous hearing.

Comments from the Commission at this hearing also related to the height and bulk of the buildings, as well as the possibility of requesting a variance to exceed coverage limits which would allow for

a reduction in height. The Applicant replied that any variance would be appealed and therefore this was not an option. Zoning allowed four-story buildings with only 15% building coverage. The Applicant stated that he was willing to continue to work with Ben Thompson Associates, but that he was down to a minimum square footage to make the project work financially. This hearing and record were closed on November 2, 1990 with a subcommittee meeting scheduled for November 5, 1990.

At the November 5, 1990 subcommittee meeting the consensus of the subcommittee was that the proposal presented at the new hearing was an improvement over previous submittals; however, there was continued concern over the scale of the project and height of the buildings. The Applicant was again requested to extend the decision so that the project could continue to be revised with the assistance of Ben Thompson Associates. Agreement was reached to extend the decision until January 11, 1991 with the Applicant to give progress reports to the subcommittee on November 19, and December 13, 1990.

Work continued on the design of the project with additional subcommittee meetings held on November 19 and December 13, 1990. Although further revisions were completed without the input of BTA, the subcommittee recommended approval of the project on December 13, 1990, and directed the staff to prepare a set of conditions to be attached to this approval.

The design approved by the subcommittee included separating the condominiums into three buildings. Condominium units were reduced to a total of 44 units, with hotel units increased to 87 total rooms. The Beach Club was modified to contain a two-story central portion. Underground parking below the Beach Club, part of the original proposal, was again included in the final design. The Applicant also agreed to continue to provide seasonal employee housing to the extent he owns or controls such housing. However, due to the costs of providing the additional underground parking with a reduced project size, the Applicant withdrew his offer of the affordable housing parcel on December 13, 1990. This offer was reintroduced by the Applicant on December 19, 1990.

DECEMBER 20, 1990 CAPE COD COMMISSION MEETING:

Testimony was received at the full Commission meeting held on December 20, 1990 from the subcommittee chairman, Donald LeBlanc, who gave a report on the project to the Commission. Discussion at this meeting focused on the donation of the land for affordable housing and the wording of the condition related to this donation. The Commission voted on this date to approve the project with conditions proposed by the subcommittee. Staff was directed to work towards an agreement on the affordable housing condition with the Applicant.

JURISDICTION

The proposed Snow Inn Complex expansion qualifies as a Development of Regional Impact (DRI) under Section 12(c)(7) of the Act, which requires review of "any proposed development, including the expansion of existing developments, that is planned to create or accommodate more than thirty dwelling units." The expansion also qualifies under Section 12(c)(6) which requires review of "any proposed retail or wholesale business, office or industrial development, as well as any private, health, recreational or educational development...greater than 10,000 square feet."

FINDINGS

The Commission has considered the application of Snow Inn Realty Trust for the proposed expansion of the Snow Inn Complex, and based on consideration of such application and upon the information presented at the public hearing, makes the following findings pursuant to Sections 12 and 13 of the Act:

- 1). Design flexibility for the project was limited due to the Applicant's minimum square footage requirements, and the Town of Harwich Zoning By-law which permitted four-story structures with a 50-foot height limitation, but also limited building coverage to a maximum of 15% of the site.
- 2). Prior to Commission review the project had received Site Plan Review approval from the Harwich Planning Board and a special permit from the Harwich Zoning Board of Appeals.
- 3). Although the majority of the proposed structures are four stories in height, the visual impacts of the project will be mitigated through a reduction in project size, architectural design and site planning which includes the provision of two-thirds of the parking for the project underground.
- 4). The existing structures on-site did not meet minimum Flood Emergency Management Act (FEMA) regulations for flood hazard protection. The proposed construction will bring all buildings into conformance with these FEMA regulations.
- 5). The project will not create an undue hazard to water quality as all proposed uses will be connected to a wastewater treatment plant which will be upgraded as a part of the project.
- 6). Forty-four units of luxury residential housing will be constructed as a part of the project. In order to offset the impact of this construction on the housing supply in the Town of Harwich, the Applicant made a contribution of 4.3 acres of land as an affordable housing contribution.
- 7). The Applicant currently offers seasonal housing at reduced rates to employees. This housing will continue to be offered as long as the Applicant owns or controls such housing.
- 8). The Applicant is a major employer in the Town of Harwich. With the construction of this project, seasonal employment will be maintained at current levels with additional employment generated through project construction.
- 9). The Snow Inn building will be restored to its original historic character as part of the project construction.
- 10). The project will not create an undue traffic hazard as traffic volumes will be reduced due to the conversion to condominium use and reduced restaurant seating from current levels.
- 11). The proposed project will include removal of the existing Seaview building, which is inconsistent with the surrounding character of development.

CONCLUSION

Based upon the findings above, the Cape Cod Commission hereby concludes:

The benefits of the proposed project outweigh the detriments resulting from the proposed development. This conclusion is supported by the facts that the project as proposed will provide the following: affordable and seasonal housing; traffic and water resources mitigation; continued seasonal and construction employment; preservation of the historic character of the existing Snow Inn building; removal of incompatible structures; and bringing proposed structures into conformance with FEMA regulations. These benefits outweigh the detriment of the overall height and bulk of the proposed buildings and their impact on regional views.

The Commission hereby approves with conditions the Snow Inn Realty Trust as a Development of Regional Impact, pursuant to Section 13 of the Act. The following conditions are to be attached to this approval:

GENERAL CONDITIONS:

1). The Applicant shall obtain a Certificate of Compliance from the Commission or its designee for the Beach Club Hotel, Snow Inn, Captain's House, Jetty House, and Seaview, before the local official responsible for issuing certificates of occupancy may issue a Certificate of Occupancy for that building.

PROJECT DESIGN:

2). The plans submitted on December 13, 1990 shall become part of the written decision. Because these plans are architectural renderings and not construction documents, it is understood that some changes in these plans will be necessary. However, any substantial change in either the architectural or site plans must be approved by the Cape Cod Commission.

3). Review by the Cape Cod Commission shall be concerned only with the exterior features and appearance of the buildings and will not extend to the interior layout and design of the buildings.

4). Plans for the renovation of the Snow Inn building shall be submitted to the Cape Cod Commission for review prior to issuance of its building permit to ensure that the historic character of this building is preserved. This review by the Commission shall be concerned only with exterior features and appearances of the Snow Inn building and shall not extend to the interior layout and design of the building.

5). Prior to the issuance of any Certificate of Compliance by the Commission for the Beach Club Hotel, Snow Inn, Captain's House, Jetty House, and/or Seaview, the Applicant shall donate a 4.3 acre parcel of land which is located on Hoyt Road in Harwichport and which is shown on Harwich Assessor's Map 15, Parcel K-4, lots 1-4 to the Harwich Housing Authority. The land or the proceeds from the sale of the land shall be used for the express purpose of developing affordable housing.

Prior to the donation of the land, the Applicant shall perform a percolation test on each of the four lots. The results of these tests shall be reviewed by the Harwich Board of Health to determine their compliance with Title V regulations governing septic systems. In the event that the Hoyt Road parcel is deemed by the Harwich Housing Authority to be unsuitable for any reason, the Applicant agrees to donate in its place a parcel or parcels of land which would qualify for building permits for a total of four (4) single family dwellings under the Bylaws and Regulations pertaining to the issuance of building permits for single family dwellings in the Town of Harwich.

The number of units to be constructed by the Harwich Housing Authority shall be determined within the discretion of the Harwich Housing Authority.

6). The Applicant shall continue to provide employee housing to the extent that the applicant owns or controls such rooms. The applicant currently provides the following employee rental housing:

Houses	3	Year-round
	3	Seasonal
Rooms	41	Seasonal

In addition, the Applicant shall adhere to the following guidelines for the provision of such housing:

- 1). No employee shall pay more than 30% of his/her gross income for rent of such units.
- 2). The applicant shall ensure that the units meet the minimum standards of habitability.
- 3). The applicant, in providing such housing, shall not discriminate based on race, gender, or other legally prohibited distinction.

TRAFFIC:

7). The size of the Snow Inn complex shall not exceed the following development limitations:

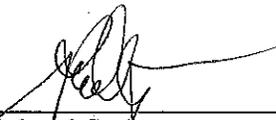
- Thompsons Clam Bar: 502 Seats
- Beach Club & Snow Inn Hotels: 87 Hotel Units
- Beach Club & Restaurants: 600 Members
502 Seats
11,500 square feet gross floor area for dining area
- Condominiums: 44 Condominium Units

WATER RESOURCES:

8). To ensure that the maximum capacity of the site's tertiary sewage treatment plant is not exceeded, the following restrictions shall be imposed on the project:

- site usage shall be restricted to no more than 132 residential bedrooms and 87 hotel units
- restaurant seating shall be restricted to 1004 persons at one time
- the Harbor Club shall not provide more than 168 lockers
- a maximum of nine washing machines and 1000 square feet of retail space shall be allowed.

The Cape Cod Commission hereby grants Snow Inn Realty Trust an approval with conditions as a Development of Regional Impact, pursuant to Section 13 of the Cape Cod Commission Act, with the eight conditions listed above.



 Richard S. Armstrong, Chairman

1/11/91

 Date



 Notary my commission expires 5/7/93

1/11/91

 Date

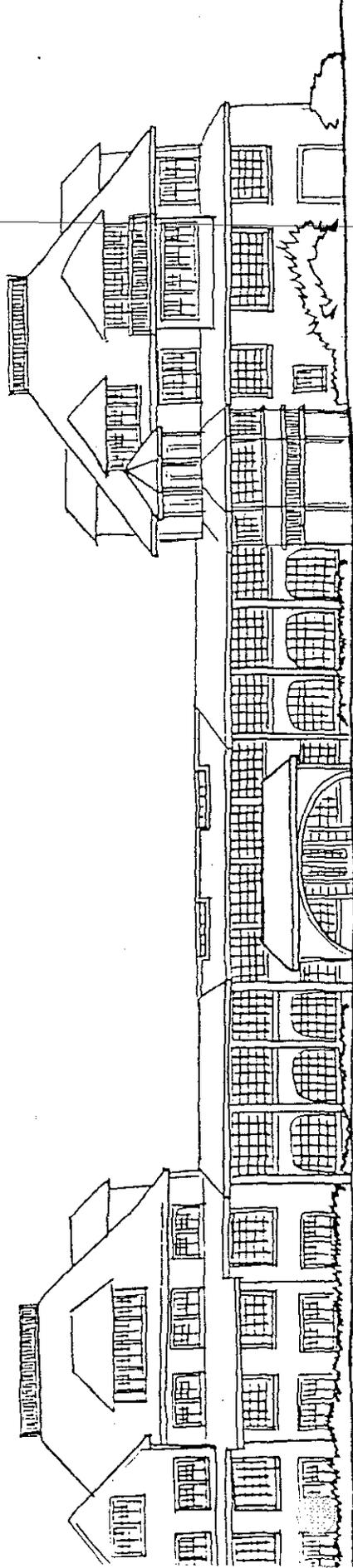
CERTIFICATION OF PROPER NOTICE

I hereby certify that the requirements of Section 5(a) of the Act regarding notice of the public hearing concerning the proposed Snow Inn Complex expansion were fulfilled, as follows:

1. Notice of the public hearing appeared in the Cape Cod Times on June 7, June 14, August 13, August 20, October 18, and October 25, 1990.
2. Notice of the public hearing was posted in a conspicuous place in the Commission's office at 3225 Main Street, Route 6A, Barnstable, MA 02630; and
3. Copies of all documents subject to notice were made available at the Commission's office during normal business hours.

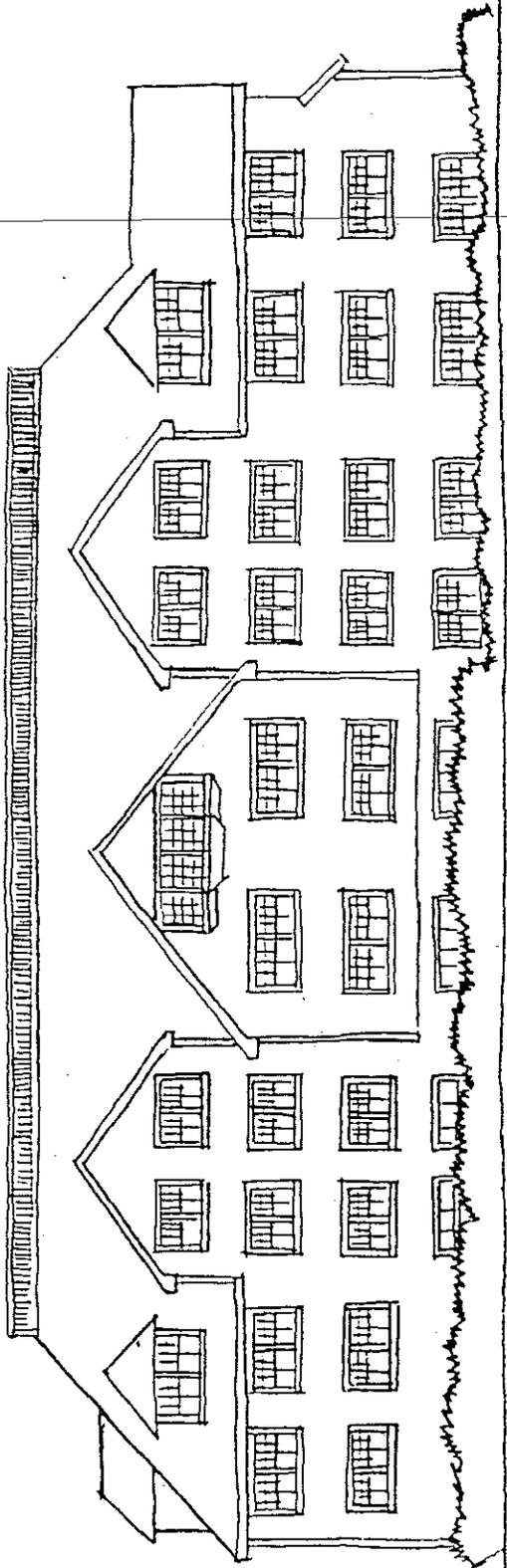
Katharine Peters, Clerk
Katharine Peters, Clerk

1/11/91
Date

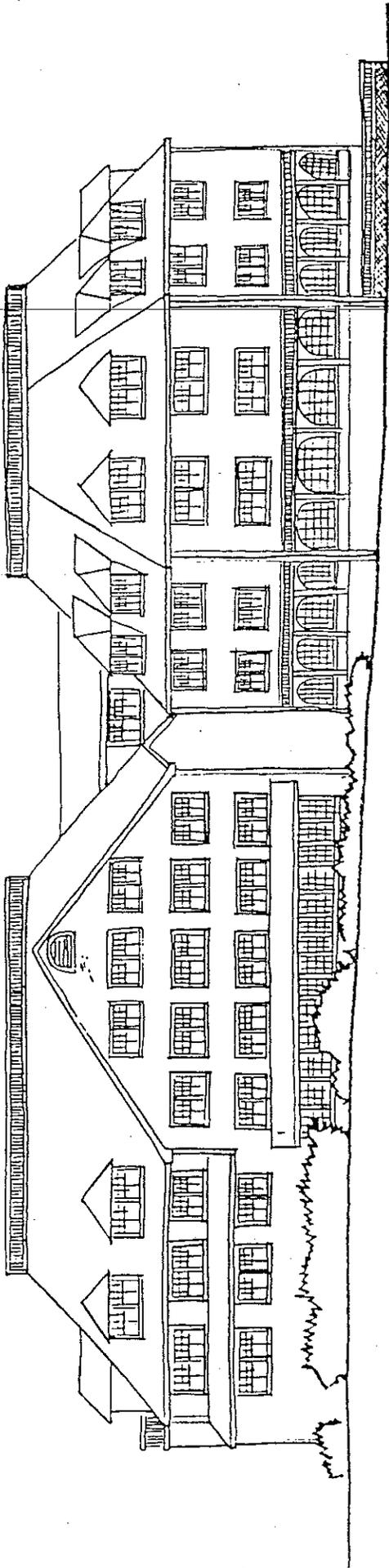


NORTH ELEVATION

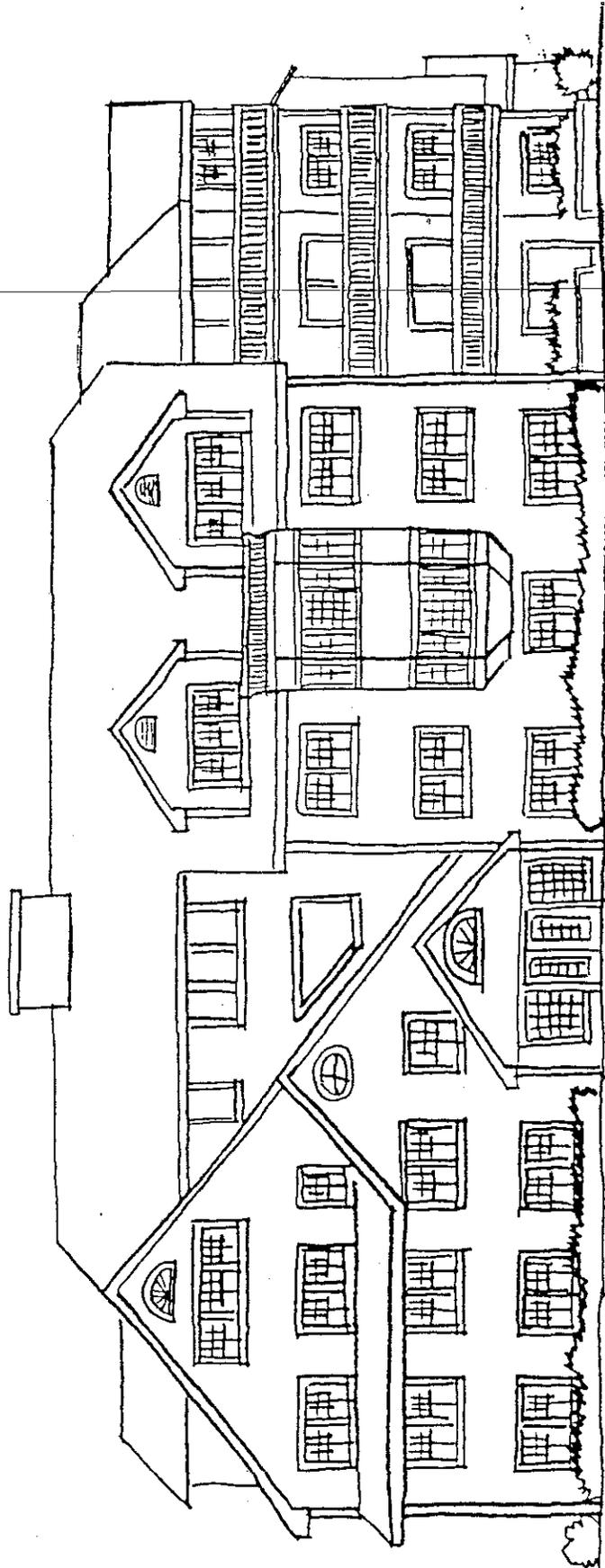
BEACH CLUB



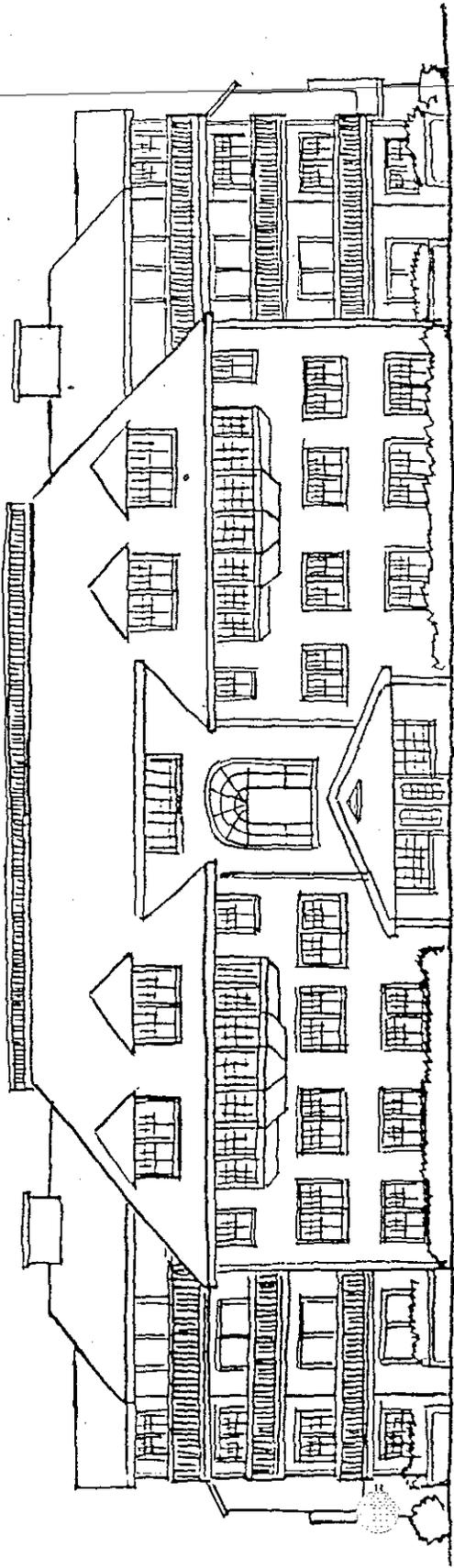
EAST ELEVATION



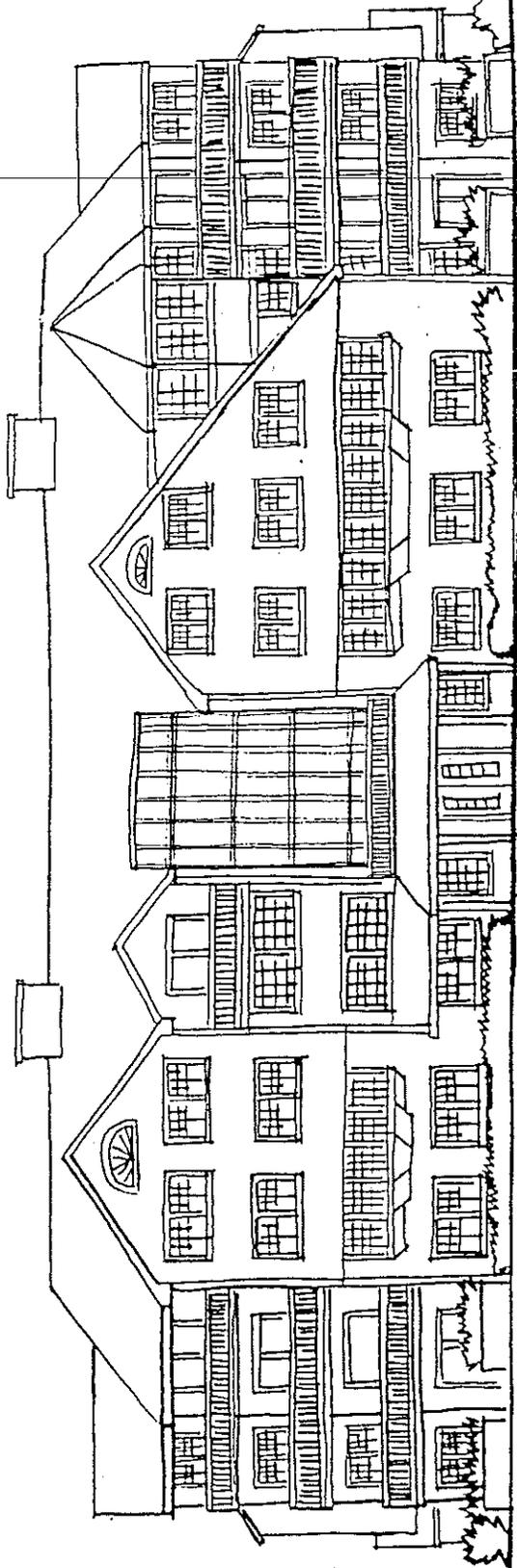
WEST ELEVATION



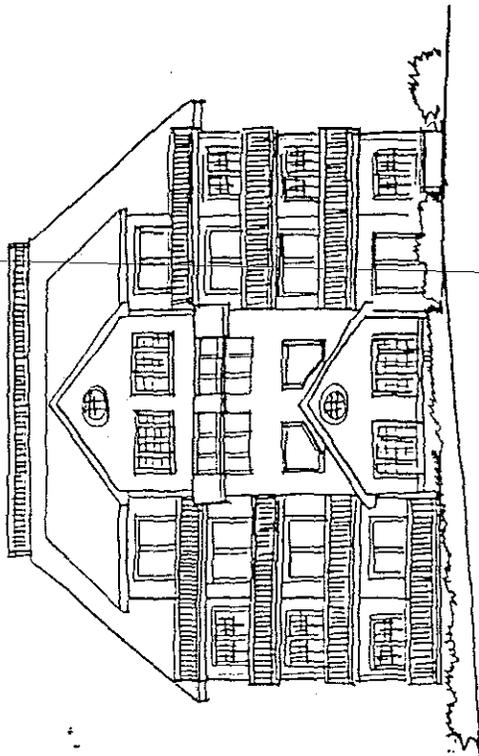
JETT HOUSE
WEST ELEVATION



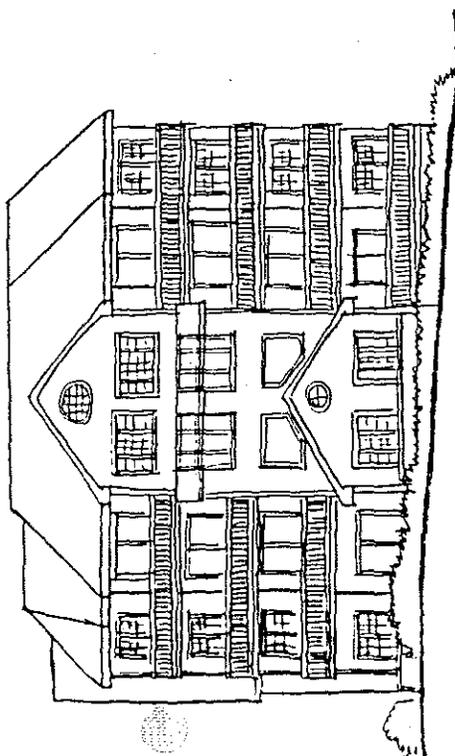
CAPTAIN'S HOUSE
WEST ELEVATION



SEAVIEW
WEST ELEVATION



CAPTAIN'S HOUSE.
NORTH ELEVATION



SEAVIEW
SOUTH ELEVATION

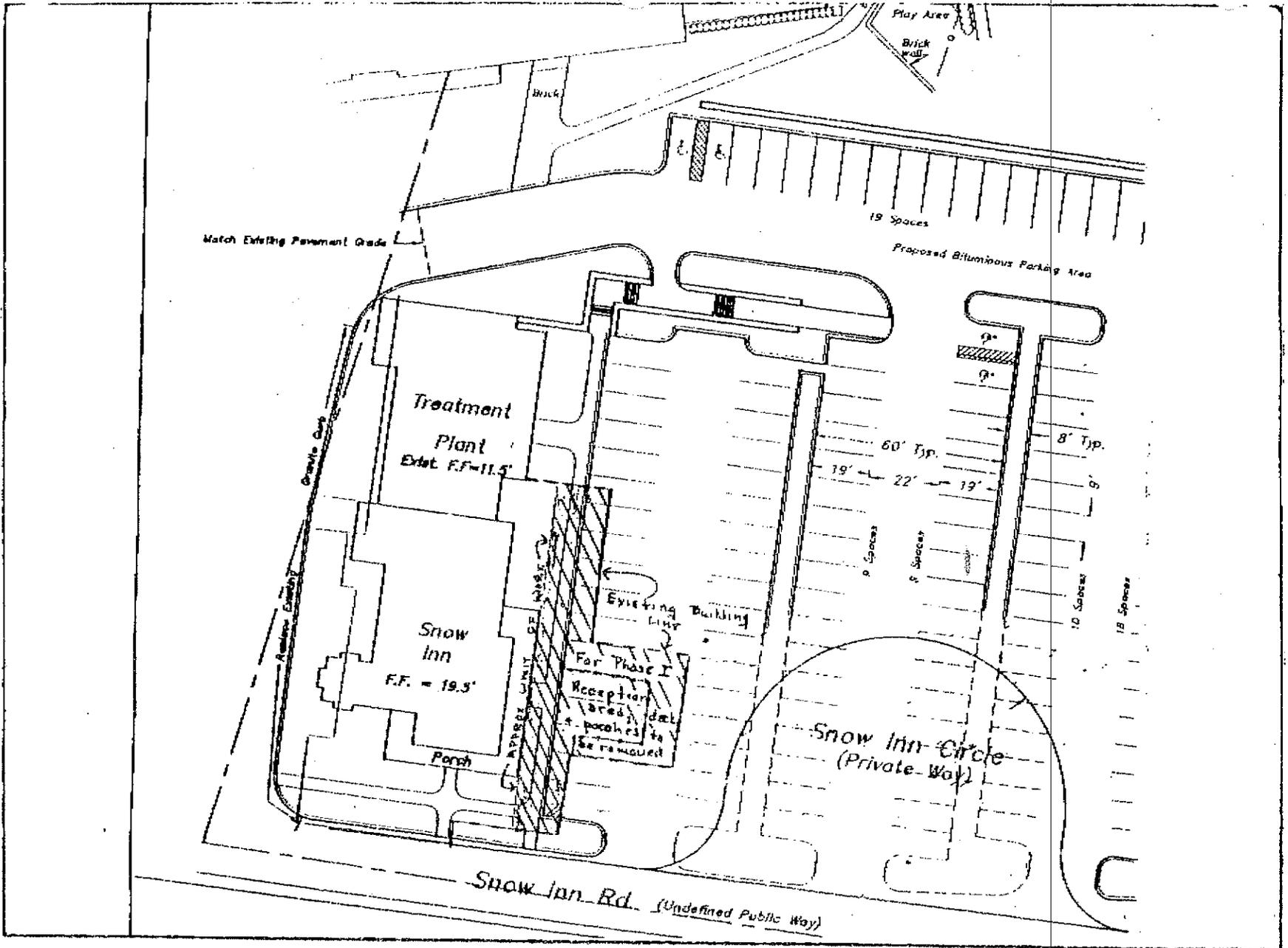


Illustration showing approximate limits of additions to Snow Inn to be removed during Phase I construction.

