



PATRICK J. SULLIVAN
DIRECTOR

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March 14, 2019

Councilor Hugh Dunn, Chairman
Committee on Ordinances
133 William Street
New Bedford, MA 02740

RE: PROPOSED REZONING REQUEST
CASE #19-08 157-161 Coggeshall Street (Map: 93 Lot: 169)

Dear Chairman Dunn:

This is to advise you of Planning Board action on Wednesday, March 13, 2019 to discuss the proposed request for the rezoning of 157-161 Coggeshall Street (Map: 93 Lot: 169) from the Mixed-Use Business (MUB) zone to Industrial B (IB) zone. **The Planning Board sends an unfavorable recommendation for this proposal.**

At the hearing, Mr. Michael Khalife and Mr. Antone Khalife (171 Coggeshall Street New Bedford, MA), owners of 157-161 Coggeshall Street presented the proposed zoning request before the Board. The brothers presented that they had purchased the property in 2006 and at the time the property was zoned Industrial B. The property was rezoned to Mixed-Use Business that same year, which they stated that they regretted not fighting against, as they did not realize the change would later restrict their ability to develop the property. They petitioned the rezoning would be contiguous to other properties nearby which are zoned Industrial B; namely Scott Collision, a directly abutting property, and Sunoco Gas Station, located across Coggeshall Street. Further, they noted the houses on the next block over are also zoned industrial (Industrial A). Responding to an inquiry about the desired site development, they informed the board that they propose to open a premium retail cannabis shop. However, to operate as a marijuana establishment the city ordinance requires the site to be industrially zoned. Responding to board members observation that the site would still not meet the 200' residential buffer under the marijuana establishment ordinance, the petitioners explained multiple options they are exploring to obtain compliance. These options included pursuing a zoning variance or purchasing abutting property and applying for a property lot line revision to make the site in conformance with the setback.

In response to the Chairwoman's offer to speak or be recorded in favor were the following:

Attorney Nick Gomes, Legal Agent for Tree Beard, LLC a proposed Marijuana Establishment Business, proposed for 1 Nauset Street New Bedford, MA, addressed the board. Atty. Gomes indicated he was

neither in opposition nor favor of the proposal but rather urged the board to carefully consider the long-term effect of this decision and possibility for individual business to circumvent the zoning ordinance. He agreed with the petitioner's assertion that there are only a handful of properties that meet the zoning ordinance requirements for marijuana establishments but noted that there are companies that have found locations that are within those requirements.

City Councilor Joseph Lopes (75 Dudley Street New Bedford, MA) spoke in favor of the rezoning request. Councilor Lopes explained he was in favor of the request as the intended use is a retail use which is compatible with the area. He also noted that the City Master Plan and other plans were developed prior to the legalization of cannabis in the state, therefore this type of use was not even considered in these reviews or plans.

Ms. Heidi Johnson, Trustee of Mitchell Street Trust 2013 (83 Point Road Portsmouth, RI), owner of the abutting property located to the rear of the subject site spoke in favor. Ms. Johnson agreed that the proposed use is retail and it's unusual that the property would need to be in an Industrial zone for it to be retail to begin with. She also noted that as long time property owners in the area, they have heard of all the plans which had come through and not all elements of those plans have come to fruition. She stated this proposal is in line with the type of retail in the surrounding area such as Popeyes and Taco Bell.

No one spoke in opposition of the request.

As it does with all rezoning requests, the Planning Board's review included consideration of the following specific criteria so as to ensure its action is consistent with existing case law: **uniformity, consistency, surroundings, fiscal impact** and **discriminating benefit**.

Board members discussed the proposed rezoning request and the comments received during the public hearing. The board expressed concerns that the proposal would be perceived as spot zoning, as the request is to change the zoning **on one parcel that is surrounded by parcels predominantly zoned Mixed-Use Business**. They indicated they would be more amenable if there were other adjacent properties included in the rezoning request. There was discussion and debate about the alignment of industrial zoning with the Master Plan goals for this area of the city. The board also noted the site was within the Hicks Logan Sawyer Overlay district with goals for a mixed-use, walkable development area, with connections to the Acushnet River. Board members debated the mixture of uses desired for the areas along the waterfront as discussed in the City 2020 Master Plan, Hick Logan Sawyer Overlay District plan, and Waterfront redevelopment plans. The board also observed that the city adopts ordinances and zoning districts for a reason and expressed concern for changes that may go against the intent of those goals and subsequent regulations. The board also noted the unusual zoning that remains in surrounding the area, such as residential dwellings in industrial zones, and noted zoning should be assessed in this area.

After closing the public hearing, a motion was made in the affirmative to recommend the City Council consider rezoning 157-161 Coggeshall Street (Map: 93 Lot: 169) from the Mixed-Use Business zone to

Industrial B (IB) zone. **The motion failed on a vote of 2-3**, with board members K. Khazan, and A. Kalife, recorded in favor; board members P. Cruz, A. Glassman and K. Duff recorded in opposition.

As such the **Planning Board sends an unfavorable recommendation for this proposal**. Please find enclosed a copy of the Planning Division Staff Report in regards to this matter for the Council's convenience and reference.

Sincerely,

A handwritten signature in black ink, appearing to read 'TH' followed by a stylized flourish.

Tabitha Harkin
City Planner

encl. Staff Report

cc. John Mitchell, Mayor
Danny Romanowicz, Building Commissioner

Mickaela McDermott, City Solicitor
Dennis Farias, City Clerk



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STAFF REPORT

REPORT DATE
March 1, 2019

PLANNING BOARD MEETING
March 13, 2019

Case # 19-08: REZONING
157-161 Coggeshall Street
Map: 100 Lot: 108

Petitioner: City Councilor
Hugh C. Dunn
(Ward 3)
133 William Street,
Room 215
New Bedford, MA

Overview of Request:

The Planning Board reviews rezoning petitions as standard practice and provides a recommendation based on their findings to the City Council Committee on Ordinances.

This case requests the rezoning of a 0.28 acre parcel of land known 157-161 Coggeshall Street (Map: 93, Lot:169) from its existing designation as in a Mixed Use Business (MUB) zoned district to a Industrial B (IB) zoned district.

Background:

New Bedford City Councilor Hugh C. Dunn put this zoning request forward on behalf of Mr. Michael Khalife, owner of the property. The owner petitions that he did not realize a previous rezoning of the site to MUB would limit the use of the building and therefore seeks to return the property zoning to Industrial B zoning district. Further, as other industrial zoned properties are in the neighborhood he does not believe the proposal would be spot zoning.

Existing Conditions:

Located just west of the I-195 Exit 23 on and off ramps, the subject site is 0.28 acres, with 90'± of frontage on Coggeshall Street and



141'± of depth. On the site is a 1,968 SF retail building with two units and an attached 720 SF car wash.

Directly abutting the property to the west is Petro Mart gas station and convenience store, which the applicant also owns. There is shared vehicular access through both properties. Also abutting the property on the west is Scott Collision, an auto repair business. Directly abutting to the east is a McDonalds fast food restaurant. Directly abutting in the rear of the site is an undeveloped parcel of land and just beyond this parcel is Market Basket grocery store. Directly south of the site is undeveloped land associated with the highway and a Sunoco gas station with convenience store and auto service center.

Multiple zoning districts are represented in the area surrounding the subject site, including: Mixed Use Business (MUB), Industrial A (IA), and Industrial B (IB). Additionally, this site is within the Hicks Logan Sawyer Interim Planning Overlay District (HLS IPOD).

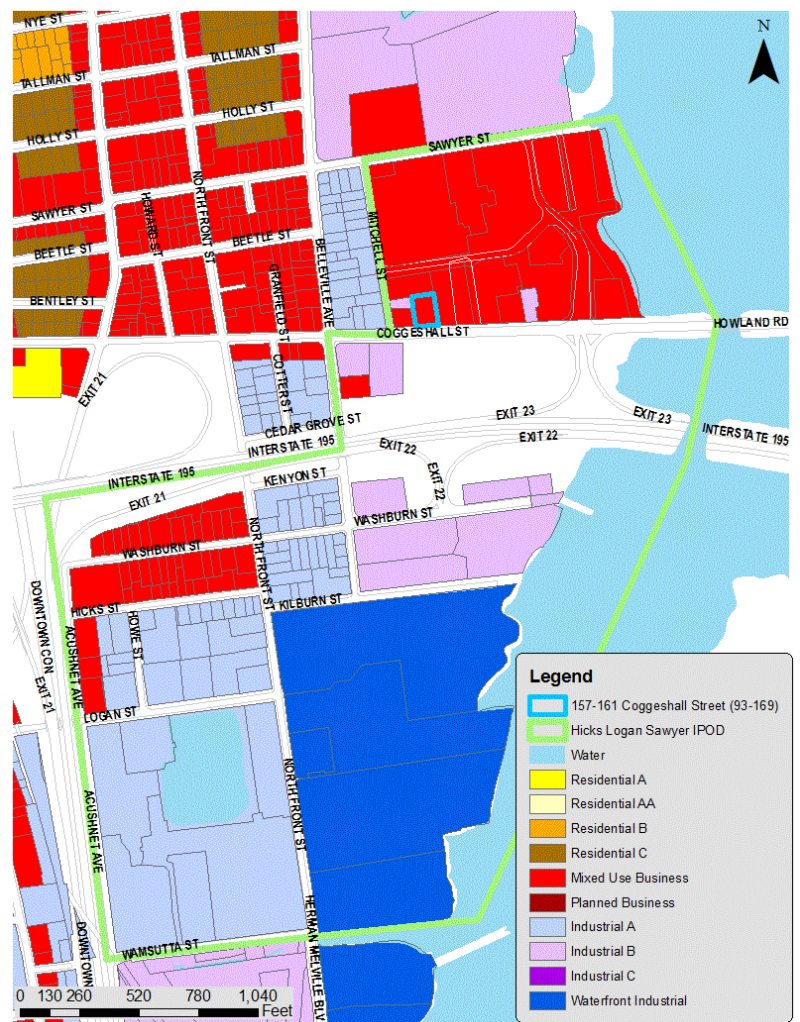
Historically, industrial mill buildings were located along the Acushnet River and therefore much of this area was zoned for industrial uses. Overtime the area developed including housing and a variety of commercial uses.

The Hicks Logan Sawyer District, in which the subject site is in, was identified as an area for redevelopment in the early 2000's. Extensive planning efforts were undertaken for this area and a Master Plan¹ was developed and interim overlay district was adopted for this area in 2008.

Hicks Logan Sawyer Interim Planning Overlay District (HLS IPOD)

The HLS IPOD is a temporary overlay zoning district that supersedes all underlying zoning regulations, except when a development is an expansion of an existing use and does not exceed 500 SF or if the proposed development is located within another overlay district adopted prior to this overlay; or for projects that were issued permits prior to enactment of this overlay.

The HLS IPOD is a flexible district allowing for the mix of compatible land uses, such as residential, commercial, and light manufacturing through a Special Permit process.



¹ Hicks Logan Sawyer Master Plan, available online: www.newbedford-ma.gov/planning/hicks-logan-sawyer-district-2/

Each project proposed under the HLS IPOD Special Permit process are evaluated for conformance with the HLS district mater plan design policies, principals, and goals:

- **Relationship to Public Spaces**
- **Historic Context**
- **Relationship to the Waterfront**
- **Environmental Goals**
- **Economic Development Goals**
- **Master Plan**

HLS IPOD Boundaries

The HLS IPOD Boundaries are starting at point on Wamsutta Street, then west to Acushnet Avenue, then north to a point at Interstate I-195, then east to a point at Belleville Avenue, then north to Coggeshall Street, then east to a point at Mitchell Street, then north to Sawyer Street, then east along Sawyer Street to the shoreline of the Acushnet River, then south along the shoreline to a point in line with Wamsutta Street, then west to the beginning point on Wamsutta Street.

Subject Property History

Planning staff research found that:

Pre-2006 – the property was previously zoned Industrial B. Staff was unable to determine exactly when the zoning changed to Mixed Use Business (MUB).

2006 - the property was purchased in 2006 by Mr. Khalife (S.D. Registry of Deed Bk 8163 Pg 289). The property at that time was known as 149-159 Coggeshall Street. At that time the property had a vacant machine shop building on the site. The building was later demolished for the site to be redeveloped. Also, in 2006 the Zoning Board of Appeals granted a Special Permit (Case #3739) for the property to be developed into a retail building with car wash. The Special Permit was required for the car wash as it was considered a “motor vehicle light service”. The decision indicates the property was zoned mixed use business at that time. Comments for the case note the city was considering adopting the Hicks Logan Sawyer Interim Planning Overlay District around that time but it had not gone into effect yet. The proposal was considered not to conflict with the proposed district.

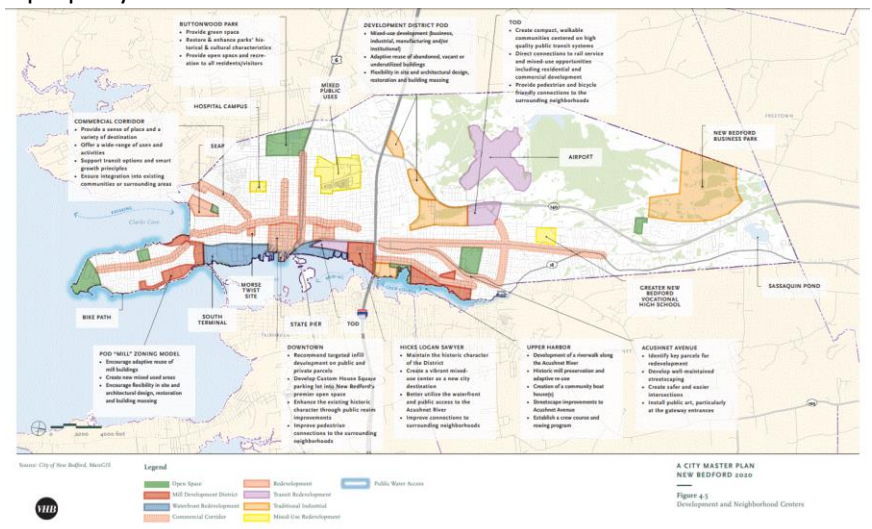
2008 – City adopts the Hicks Logan Sawyer Interim Planning Overlay District (HLS IPOD).

2010 – The Zoning Board of Appeals granted a Special Permit (Case #4001) for a proposed Subway Sandwich Shop fast-food use at property. The decision indicates the property was zoned mixed use business at the time.

2011 – The Zoning Board of Appeals granted a Variance (Case #4013) for the ground sign for the site. The decision indicated the property was zoned mixed us business at the time.

Master Plan.2020

In the Master Plan, this site is identified as part of an area known as the Hicks Logan Sawyer District. A district with identified goals to: maintain the historic character of the District, create a vibrant mixed-use center as a new city destination, better utilize the waterfront and public access to the Acushnet River, and improve connections to surrounding neighborhoods.



Input from Other City Departments:

The rezoning request was distributed to City Clerk, City Solicitor, Health Department, Inspectional Services, Engineering, Public Infrastructure, Conservation Commission, Fire Department and School Department. Although no comments have

been received as of the production date of these Planning Staff Comments, any such comments subsequently received will be provided at the Planning Board's public hearing.

For Board Member Consideration:

MERITS

If the rezoning was to be adopted, ten (10) new uses would be allowed. These uses include: motor vehicle body repairs manufacturing, light manufacturing, biotechnology facilities, medical device facilities, wholesale warehouse/self-storage/mini-warehouse or distribution facility, transportation terminal, contractors' yard, batch asphalt and concrete plants, and marijuana establishments.

The area is historically an industrially zoned area and other industrial properties are in the surrounding area.

A table comparing the uses permitted in the existing MUB zone and proposed IB zone is available as an attachment (Attachment #1) to these comments.

CONCERNS

If the rezoning was to be adopted, twenty-five (25) uses that are currently allowed in the MUB zoning district would be prohibited under a new IB district. These uses include: residential uses, cemeteries, hospitals, adult and family daycares, club, funeral home, bed and breakfast, big box retail, mixed use, live/work spaces, restaurant, **fast food restaurant**, business or professional office, medical office, bank, indoor or outdoor recreation, theater/auditorium.

There are only 4 other Industrial B zoned properties in the immediate vicinity of the subject: the abutting auto body property, the Sunoco gas station across Coggeshall Street, the municipal pump house, and a light manufacturing property east on Coggeshall Street.

The Industrial A zoned block located west of the site consists of predominantly multifamily dwellings, a few mixed residential commercial properties, and two auto repair businesses. This block may also require a zoning re-assessment given the mixture of uses.

The intention of the HLS IPOD district was to allow for the development of a smart growth mixed use district. Since, the overlay supersedes any underlying zoning, any change to the base zoning would have little effect. Additionally, the overlay district allows for greater flexibility regarding uses in the district than either the existing or proposed base zoning district provides.

Staff acknowledges that the overlay district was intended as a interim measure and more permanent zoning regulations have yet to be accepted for the area.

Standards for Evaluating Rezoning Requests

The Planning Board has previously relied on the following criteria in its evaluation of other rezoning requests so as to ensure its action is consistent with case law:

- Uniformity: the extent to which the zoning change would resemble the surrounding zoning;
- Consistency: whether or not the parcel is being singled out for a zoning change;
- Surroundings: how the proposal would change the neighborhood;
- Fiscal Impact: what impact on local/city economic development the rezoning would have; an
- Discriminating Benefit: an assessment of whether the reclassification of a single parcel that allows a use beneficial to the property owner is made to the detriment of the neighbors or community-at-large.

Attachments:

1. Use Table Comparison
2. Written Motion by City Councilor (Ward 3) Hugh C. Dunn
3. Zoning Maps & Aerials

ATTACHMENT 1: USE TABLE COMPARISON

EXISTING:	
MIXED USE BUSINESS DISTRICT	
A. Residential Uses	
Single-family dwelling	Y
Two-family dwelling	Y
Multi-family townhouse (3 stories)	Y
Multi-family mixed use (6 stories)	PB
Boarding house	BA
Group residence	BA
Assisted or Independent living facility	BA
Nursing or Convalescent home	BA
Animals or head of poultry, not to exceed one animal or head of poultry per one thousand (1,000) square feet of net area of the lot. Net area shall be determined by subtracting the gross ground floor area of all buildings and structures on the lots from the gross area of the lot plus any contiguous lots owned by the same party.	Y
B. Exempt and Institutional Uses	
Use of land or structures for religious purposes	Y
Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y
Child care facility (in existing building)	Y
Child care facility (not in existing building)	Y
Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area	Y
Facilities for the sale of produce, and wine and dairy products, provided that during the months of June, July, August, and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land containing more than five acres in area on which the facility is located	Y
Municipal facilities	Y
Essential services	BA
Cemeteries	Y
Hospital	Y
C. Commercial	
Nonexempt agricultural use	BA
Nonexempt educational use	Y
Animal clinic or hospital; with ancillary animal boarding	BA
Adult day care	BA
Family day care	BA
Large family day care	BA
Club or lodge, nonprofit	CC
Funeral home	BA
Adult entertainment establishment	CC
Bed & Breakfast	BA

PROPOSED:	
INDUSTRIAL B DISTRICT	
A. Residential Uses	
Group residence	BA
Assisted or Independent living facility	BA
Nursing or Convalescent home	BA
B. Exempt and Institutional Uses	
Use of land or structures for religious purposes	Y
Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y
Child care facility (in existing building)	Y
Child care facility (not in existing building)	Y
Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area	Y
Facilities for the sale of produce, and wine and dairy products, provided that during the months of June, July, August, and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land containing more than five acres in area on which the facility is located	Y
Municipal facilities	Y
Essential services	BA
C. Commercial	
Nonexempt agricultural use	BA
Nonexempt educational use	BA
Animal clinic or hospital; with ancillary animal boarding	BA
Adult entertainment establishment	CC

EXISTING:	
MIXED USE BUSINESS DISTRICT	
C. Commercial (continued)	
Motel, hotel or inn	Y
Retail stores and services not elsewhere set forth	Y
Grocery stores	Y
Big Box Retail (60,000 Sq. ft. or greater)	BA
Health clubs	Y
Mixed use	Y
Live /work	BA
Motor vehicle sales and rental	CC
Motor vehicle general repairs	CC
Motor vehicle light service	CC
Restaurant	Y
Restaurant, fast-food	BA
Business or professional office	Y
Medical offices, center, or clinic	BA
Bank, financial agency	Y
Indoor commercial recreation	Y
Outdoor commercial recreation	BA
Wireless Communications Facilities	PB
Theatres and auditoriums	PB
Convention Centers	PB
D. Industrial	
Research, development or testing laboratories and facilities	Y

PROPOSED:	
INDUSTRIAL B DISTRICT	
C. Commercial (continued)	
Motel, hotel or inn	Y
Retail stores and services not elsewhere set forth	Y
Grocery stores	BA
Health clubs	Y
Motor vehicle sales and rental	CC
Motor vehicle general repairs	CC
Motor Vehicle body repairs	CC
Motor vehicle light service	CC
Wireless Communications Facilities	PB
Convention Centers	PB
D. Industrial	
Manufacturing	Y
Light manufacturing	Y
Research, development or testing laboratories and facilities	Y
Biotechnology facilities	Y
Medical devices manufacturing	Y
Wholesale, warehouse, self-storage mini-warehouse, or distribution facility	Y
Transportation terminal	Y
Contractor's yard	Y
Batch asphalt & concrete plants	CC

*Highlighted (green) uses would be newly permitted if the proposed rezoning were to be adopted.
Highlighted (gray) uses would no longer be permitted if the proposed rezoning were to be adopted.

Planning Bd.



CITY OF NEW BEDFORD

CITY COUNCIL

February 14, 2019

WRITTEN MOTION

Requesting, on behalf of Michael Khalife, that 157-161 Coggeshall Street, Plot 93/Lot 169, New Bedford, MA, be Rezoned from Mixed-Use Business to Industrial "B". (To be Referred to the Committee on Ordinances and the Planning Board.)

Hugh C. Dunn, Councillor Ward Three

PLANNING
FEB 15 2019
DEPARTMENT

IN CITY COUNCIL, February 14, 2019

Referred to the Committee on Ordinances and the Planning Board.

Dennis W. Farias, City Clerk

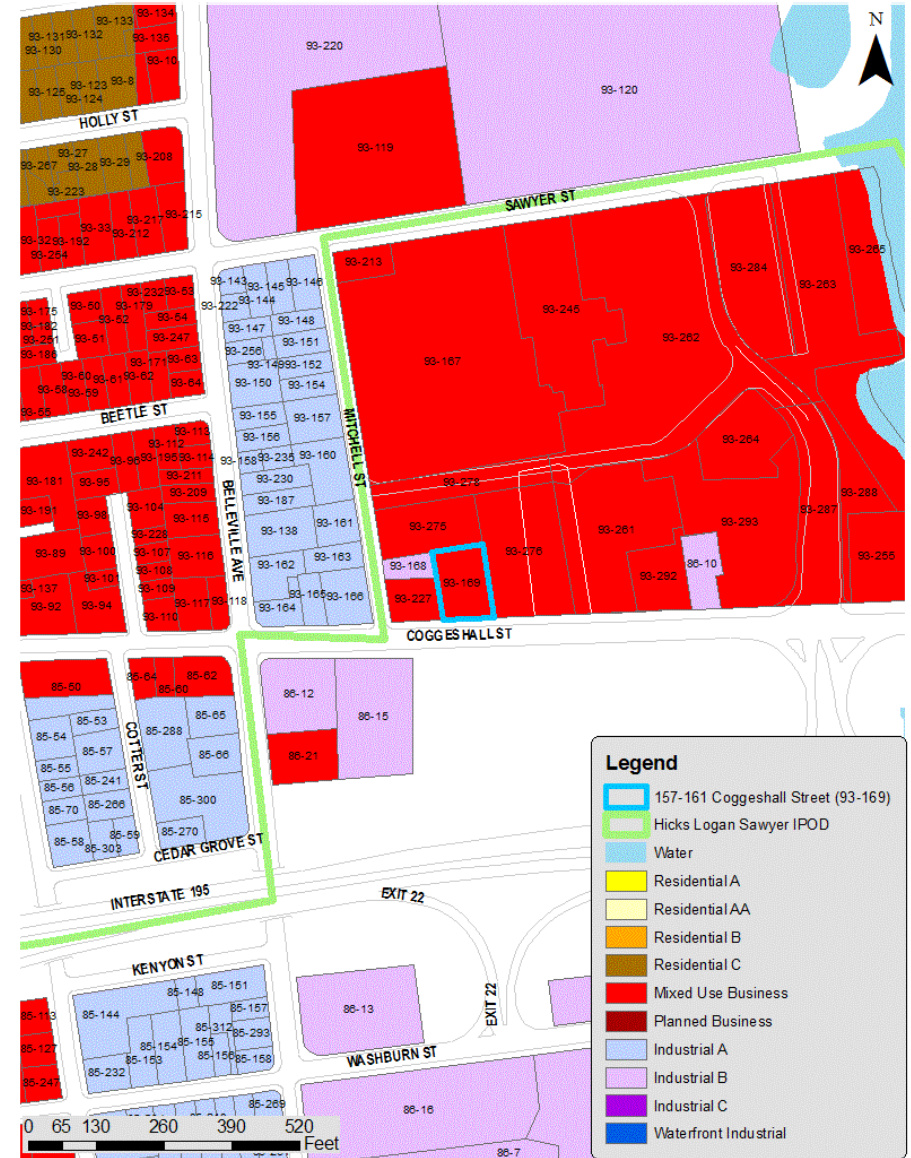
a true copy attests

Dennis W. Farias

City Clerk

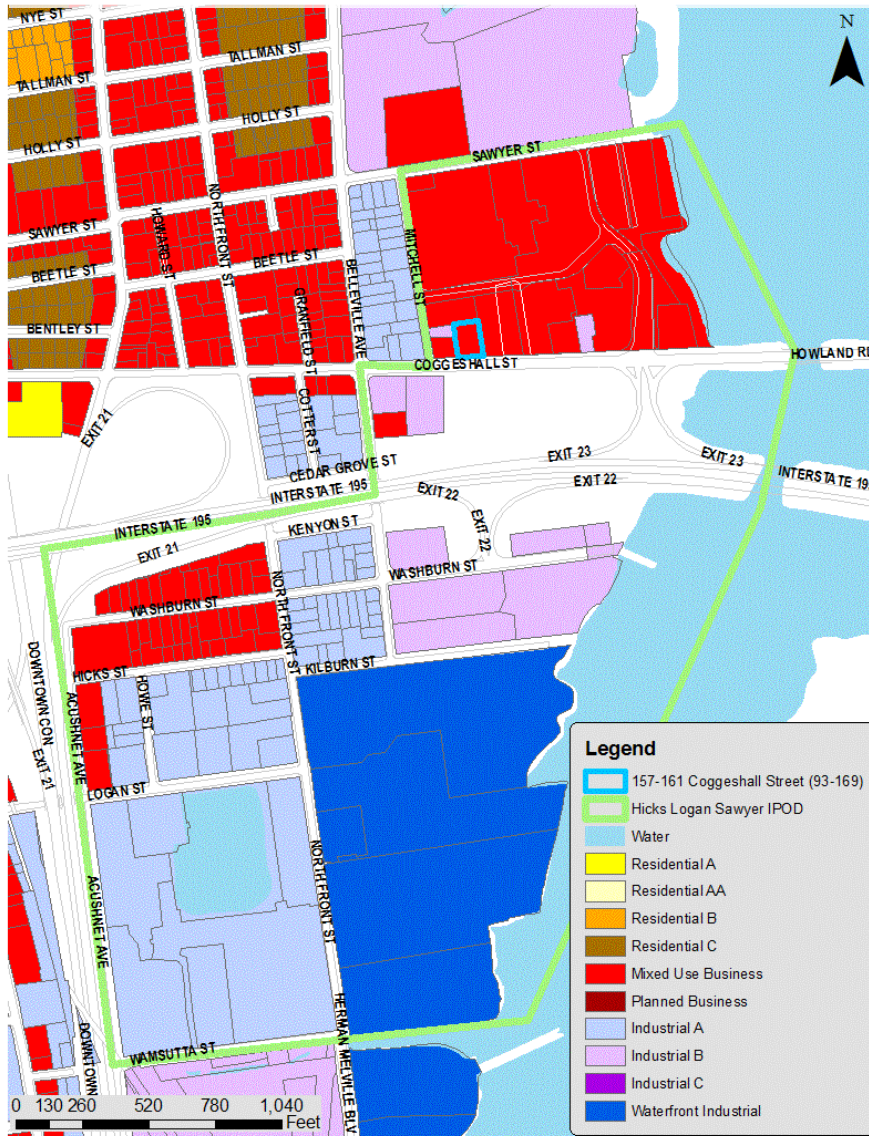
AERIAL & ZONING MAP OF SITE & NEARBY PROPERTIES

NOTE: Property line is approximate; for discussion purposes, only. Aerial map is oriented north.



AERIAL & ZONING MAP OF HICKS LOGAN SAWYER IPOD

NOTE: Property line is approximate; for discussion purposes, only. Aerial map is oriented north.



157-161 Coggeshall Street Map: 93 Lots: 169

NOTE: Property line is approximate; for discussion purposes, only. Aerial map is oriented north.

