

**Town of Kittery Maine
 Town Planning Board Meeting
 August 11, 2016**

2 Bridge View Terrace – Special Exception Use Request

Action: Accept or deny application. Approve or deny request. Owner, Jim Higgins, and applicant, Jesse Marsh, requests special exception approval for a minor home occupation application dated 2-16-2016 for a property located at 2 Bridge View Terrace (Tax Map 2 Lot 42D) in the Residential-Suburban (R-S) and Shoreland Overlay (SH-OZ-250') Zones.

PROJECT TRACKING

REQ'D	DESCRIPTION	COMMENTS	STATUS
YES	Determination of Completeness	Scheduled for 8/11/2016	PENDING
NO	Public Hearing	At the Board's discretion	
NO	Site Walk	At the Board's discretion	
Yes	Final Plan Review and Decision	Feasible for 8/11/2016	TBD

Plan Review Notes reflect comments and recommendations regarding applicability of Town Land Use Development Code, and standard planning and development practices. Only the PB makes final decisions on code compliance and approves, approves with conditions or denies final plans. Prior to the signing of the approved Plan any **Conditions of Approval related to the Findings of Fact along with waivers and variances (by the BOA) must be placed on the Final Plan and recorded at the York County Registry of Deeds. PLACE THE MAP AND LOT NUMBER IN ¼: HIGH LETTERS AT LOWER RIGHT BORDER OF ALL PLAN SHEETS.** As per Section 16.4.4.13 – Grading/Construction Final Plan Required. – Grading or construction of roads, grading of land or lots, or construction of buildings is prohibited until the original copy of the approved final plan endorsed has been duly recorded in the York County registry of deeds when applicable.

Background

Planning Board review of this project is required by 16.6.4.4 Special Exception Use Request. The applicant is requesting approval for a special exception to operate a sustainable fisheries and community consulting business, in her residence, that is located in the Shoreland Overlay Zone. Minor home occupations are a special exception use Shoreland Overlay Zone.

The applicant submitted a Home Occupation application in February, 2016, which was denied by the Code Enforcement Officer, as stated in the attached letter dated February 25, 2016. If the Board approves this Special Exception request, the applicant may then resubmit the Minor Home occupation to the CEO for approval.

The Planning Board may approve a special exception provided it conforms with the criteria set forth in 16.10.8.3.4 and 16.6.6 (attached). Also attached is Title 16.8.22.2, Minor Home Occupation Standards.

Staff Review

The proposed use is a single employee-operation and will not generate any additional traffic; has operating hours consistent with traditional business hours; and does not require on-site purchase or sale of any retail materials.

The applicant plans to operate the consulting business in a first-floor bedroom of their residence. The operation of the consulting business has no external impacts to the site, such as signage, on-site meetings with clients, etc.

The applicant is the only employee of the consulting business. The business does not appear to generate any frequent trips from clients or customers. Therefore, no additional parking is required, and the two spaces required for the residence is provided.

There appears to be no adverse impacts to the residential character of the neighborhood, nor will it impede any potential for future residential growth, as outlined in the base zone, Title 16.3.2.2, Residential - Suburban.

The applicant has provided a copy of the property deed, confirming ownership of 2 Bridgeway Terrace as Jim Higgins. Mr. Higgins is aware of the home occupation request. A minor home occupation application, signed by Mr. Higgins, was submitted to the Town dated February 5, 2016, and is included with this application.

Recommendations

It appears the application is complete and conforms to the standards of Title 16. If the Board is satisfied with the information presented by the applicant, Staff recommends the Board approves the request (suggested motion below)...

Move to grant the Special Exception Use Request dated July 13, 2016 from owner, Jim Higgins, and applicant, Jesse Marsh, for a minor home occupation at 2 Bridgeview Terrace (Tax Map 2 Lot 42D) in the Residential-Suburban and Shoreland Overlay Zones, upon the review and voting, in the affirmative, on the Findings of Fact.

<After an affirmative vote, proceed to reading and voting on the Findings of Fact>

Kittery Planning Board

UNAPPROVED

Findings of Fact
2 Bridgeview Terrace
Special Exception Use Request

WHEREAS: Owner, Jim Higgins, and applicant, Jesse Marsh, requests special exception use for a minor home occupation located at 2 Bridge View Terrace in the Residential-Suburban and Shoreland Overlay Zones hereinafter the “Development” and

Pursuant to the review meeting conducted by the Town Planning Board as noted {in the plan review notes prepared for 8/11/2016}

Special Exception Use Request Review	8/11/2016	HELD
Special Exception Use Request Approval	8/11/2016	GRANTED

And pursuant to the application and plan and other documents considered to be a part of the decision by the Planning Board in this Finding of Fact consisting of the following: {as noted in the plan review notes prepared for 8/11/2016}

1. Home occupation application, dated 2/16/2016
2. Letter of decision, Town of Kittery Code Enforcement Office, dated February 25, 2016
3. Confirmatory Quitclaim Deed, dated 12/14/2016

NOW THEREFORE, based on the entire record before the Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings and conclusions:

FINDINGS OF FACT

Chapter 6 DECISION APPEAL, VARIANCE and OTHER REQUESTS
Article 4 Appeals/requests to Board of Appeals

<p>16.6.4.4 Special Exception Use Request <i>B. The Planning Board will review, decide and may approve an applicant’s Special Exception Use request where the proposed project requires Planning Board review as defined in Section 16.10.3.2 or is located in a shoreland or Resource Protection Overlay Zone. The Planning Board must find the proposed project and use meets the criteria set forth in Section 16.10.8.3.4 and 16.6.6.</i></p>
<p>16.6.6 Basis for decision 16.6.6.1 Conditions <i>B. In hearing appeals/requests under this Section, the Board of Appeals {or Planning Board if located within the Shoreland or Resource Protection Overlay Zone} must use the following criteria as the basis of a decision:</i></p>
<p><i>1. The proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;</i></p>

Finding: The proposed use is a single employee-operation and will not generate any additional traffic; has operating hours consistent with traditional business hours; and does not require on-site purchase or sale of any retail materials.

There appears to be no adverse impact on the use of adjacent properties, or of properties in adjacent zones.

Conclusion: This requirement appears to be met

Vote: ___ in favor ___ against ___ abstaining

2. The use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones.

Finding: The proposed use is a single employee-operation and will not generate any additional traffic; has operating hours consistent with traditional business hours; and does not require on-site purchase or sale of any retail materials.

There appears to be no adverse impact on the permitted or legal use in the zone, or of uses in adjacent zones.

Conclusion: This requirement appears to be met

Vote: ___ in favor ___ against ___ abstaining

3. The safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or its location;

Finding: The proposed use appears not to have an adverse impact on the safety, health or welfare of the Town.

Conclusion: This requirement appears to be met.

Vote: ___ in favor ___ against ___ abstaining

4. Use will be in harmony with and promote the general purposes and intent of this code.

Finding: The proposed use appears to be in harmony with the general purposes and intent of Title 16.

Conclusion: This requirement appears to be met.

Vote: ___ in favor ___ against ___ abstaining

16.6.6.2 Factors of Consideration

In making such determination, the Board of Appeals {or Planning Board if located within the Shoreland or Resource Protection Zone} must also give consideration, among other things, to:

- A. The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone of the location of any such uses;*
- B. The conservation of property values and the encouragement of the most appropriate uses of land;*
- C. The effect that the location of the proposed use may have upon the congestion of undue increase of vehicular traffic congestion on public streets or highways;*
- D. The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use);*
- E. Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;*
- F. Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;*
- G. Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;*
- H. The necessity for paved off-street parking;*
- I. Whether a hazard to life, limb or property because of fire, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of person upon such plot;*
- J. Whether the sue, or the structures to be used, will cause an overcrowding of land or undue concentration of population; or unsightly storage of equipment, vehicles or other materials;*
- K. Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof*
- L. Whether the proposed use will be adequately screened and buffered from contiguous properties;*
- M. The assurance of adequate landscaping, grading and provision for natural drainage;*
- N. Whether the proposed use will provide for adequate pedestrian circulation;*
- O. Whether the proposed use anticipates and eliminates potential nuisances created by its location;*
- P. The satisfactory compliance with all applicable performance standard criteria contained in Chapter 16.8 and 16.9*

Finding: Factors A through P have been considered and are not applicable or are adequately addressed by the development.

Conclusion: This requirement appears to be met.

Vote: ___ in favor ___ against ___ abstaining

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan Application and subject to any conditions or waivers, as follows:

Waivers: None

Conditions of Approval: None

The Planning Board authorizes the Planning Board Chair, or Vice Chair, to sign the Findings of Fact.

Vote of ___ in favor ___ against ___ abstaining

APPROVED BY THE KITTELY PLANNING BOARD ON August 11, 2016

Ann Grinnell, Planning Board Chair

Notices to Applicant:

1. Incorporate any revisions as required by Planning Board and submit for Staff review prior to presentation of final mylar.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.



Town of Kittery, Maine - Code Enforcement Office
200 Rogers Road, Kittery, ME 03904 Telephone: (207) 475-1308 Fax: (207) 439-6806
www.kitteryme.gov

February 25, 2016

Jesse Marsh
P.O. Box 964
Kittery, ME 03904

Ms. Marsh,

We have reviewed your Minor Home Occupation application request dated 2-16-16, submitted with labeled floor plan, copy of deed, and aerial photo, for property located at 2 Bridgeview Terrace, in the Suburban Residential zone with Shoreland overlay.

Home occupation applications for properties in the Shoreland overlay zone require Special Exception approval from the Planning Board per Title 16.3.2.17.B.2.b.v, Permitted and Special Exception Land Use, Special Exception Uses, Home Occupations.

Applications for review can be found on the website at www.kitteryme.gov under the Planners page, or in the Development Department.

Please contact me should you have any questions.

Sincerely,

Robert Marchi

Cc: Jim Higgins, O Strong Place, Boston, MA 02114
Planning Department
File

Rebecca Spitko

From: Jesse Marsh <jmarsh@scalingblue.com>
Sent: Wednesday, July 13, 2016 10:39 AM
To: Rebecca Spitko
Subject: Agenda for August 11 meeting

Hi Rebecca,

If you could please put me on the agenda for the August 11 meeting, re: my application for a **minor home occupation at 2 Bridgeview Ter Apt 3**, that would be great.

Best,
Jesse

Jesse Marsh
Principal & Manager
Scaling Blue, LLC
www.scalingblue.com

jmarsh@scalingblue.com
+1 831.295.7129



HOME OCCUPATION APPLICATION

Town of Kittery – Code Enforcement
200 Rogers Road Kittery, ME 03904
(207) 475-1308 www.kitteryme.gov

MAP 2 LOT 42D

PERMIT # _____

DATE 2/16/14

PROPERTY LOCATION: ADDRESS <u>2 Bridgeview Terrace, Apt 3, Kittery ME 03904</u> BASE ZONE <u>SR</u> R-RL/R-S/R-KPV/R-U/R-V/R-RC/CON/B-L/B-L1/B-P/C-1/C-2/C-3/MU/MU-BI/MU-KF	TYPE OF HOME OCCUPATION REQUESTED: <input checked="" type="checkbox"/> MINOR HOME OCCUPATION <input type="checkbox"/> MAJOR HOME OCCUPATION *SEE ATTACHED ORDINANCE LANGUAGE FOR CLARIFICATION
PROPERTY OWNER INFORMATION: NAME <u>Jim Higgins</u> MAILING ADDRESS <u>0 Strong Place, Boston MA 02114</u> PHONE NUMBER <u>617-501-6149</u> E-MAIL <u>jimhiggins05@comcast.net</u> <input checked="" type="checkbox"/> MUST PROVIDE COPY OF DEED, PURCHASE & SALES AGREEMENT OR OTHER DOCUMENTATION OF RIGHT, TITLE OR INTEREST.	APPLICANT INFORMATION (IF APPLICABLE): NAME <u>Jesse Marsh</u> MAILING ADDRESS <u>PO Box 964, Kittery ME 03904</u> PHONE NUMBER <u>831-295-7129</u> E-MAIL <u>jmarsh@scalingblue.com</u>

PROPOSED USE OF THE PROPERTY, INCLUDING DESCRIPTION OF THE BUSINESS:

The business, Scaling Blue, LLC is a consultancy focused on sustainable seafood. Scaling Blue is an independent consultancy, which was founded in 2014. Scaling Blue provides capacity to non-profit organizations, foundations, the private sector, and other stakeholders to help scale our collective impact in achieving more sustainable fisheries and communities.

Jesse Marsh, Principal & Manager of Scaling Blue, will use the bedroom on the first floor of the apartment as her home office. All of Jesse's work is desktop-based research and writing, and none of her clients are based locally therefore there will be no additional traffic associated with the business.

APPLICATIONS MUST ALSO INCLUDE THE FOLLOWING:

PLOT/SITE PLAN – PLAN SHOWING ENTIRE LOT, WHERE ANY STRUCTURES ARE LOCATED ON THE LOT, THE LOCATION AND AMOUNT OF PARKING AREAS, OUTDOOR STORAGE OR DISPLAN, INCLUDING LOCATION OF DUMPSTERS

FLOOR PLAN – SCALED FLOOR PLAN LABELING THE USE OF EACH ROOM AND SHOWING EXIT DOORS

HOME OCCUPATION APPLICATION FEE \$40

<input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED FEE: \$40 RECEIPT #: <u>41753</u> CEO: _____ DATE: _____	CERTIFICATION: I CERTIFY THAT THE INFORMATION CONTAINED IN THIS APPLICATION AND ANY RELATED SUBMISSIONS TO BE TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE. I WILL NOTIFY THE CODE ENFORCEMENT OFFICER OF ANY CHANGES TO THIS APPLICATION. <u>SIGNED APPLICATION ATTACHED</u> _____ PROPERTY OWNER DATE APPLICANT DATE
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PLEASE READ Town Code Title 16, Article XXII Home Occupation below and the following:

1. Is your business compliant with the definition of a major home occupation or a minor home occupation?	Minor home occupation
2. How many workers will you have?	One; I am the only employee of Scaling Blue, LLC
3. What are the business hours and days of operations?	Monday – Friday, 9 a.m. – 5 p.m.
4. Where will your business be conducted?	In the downstairs bedroom of my apartment, which I will use as an office.
5. What will be done with refuse and recyclables?	There will be no additional refuse/recyclables, as I will be working from a home office. All refuse/recyclables are removed by a rubbish removal company.
6. Will there be recurring traffic? If so, how often?	There will be no traffic associated with the business.
7. Will you have retail sales? If so, what types of retail products will you sell?	No, there are no retail sales.
8. Is the proposed home occupation compatible with the surrounding neighborhood?	Yes

Article XXII. Home Occupation

RECODIFICATION – Amendments Ordained 10/26/2015

16.8.22.1 Purpose.

- A. It is the intent of these regulations governing home occupations to balance the economic and community benefits of allowing home-based businesses with the goal of protecting the quality of life of the surrounding residential neighborhood from unreasonable or unsafe intrusions and nuisances inappropriate to a residential setting. The regulations attempt to ensure that any home-based business operates in a manner that respects the neighborhood in which it is situated.
- B. Regulation of home occupations should not prohibit beneficial and unobtrusive uses and should provide standards to protect the health, safety and general welfare of the surrounding neighborhood. A home occupation should not degrade the residential character of the neighborhood.
- C. These regulations take a two-tier approach to regulating home occupations. At the least intrusive level are business activities that by their nature and intensity will be compatible with a residential location. These types of businesses are considered “minor home occupations” and require only review by the Code Enforcement Officer for compliance with the standards. A “major home occupation” in a residential district has the potential to be incompatible with its neighborhood setting. Therefore, a public hearing with notification to abutting property owners and BOA approval is necessary.
- D. A more extensive business activity that does not satisfy the standards for a “major home occupation” is treated as a type of commercial use and does not qualify as an acceptable type of home occupation. Such businesses should be located in an appropriately-zoned area of Town.



HOME OCCUPATION APPLICATION

Town of Kittery - Code Enforcement
200 Rogers Road Kittery, ME 03904
(207) 475-1308 www.kitteryme.gov

MAP _____ LOT _____

PERMIT # _____

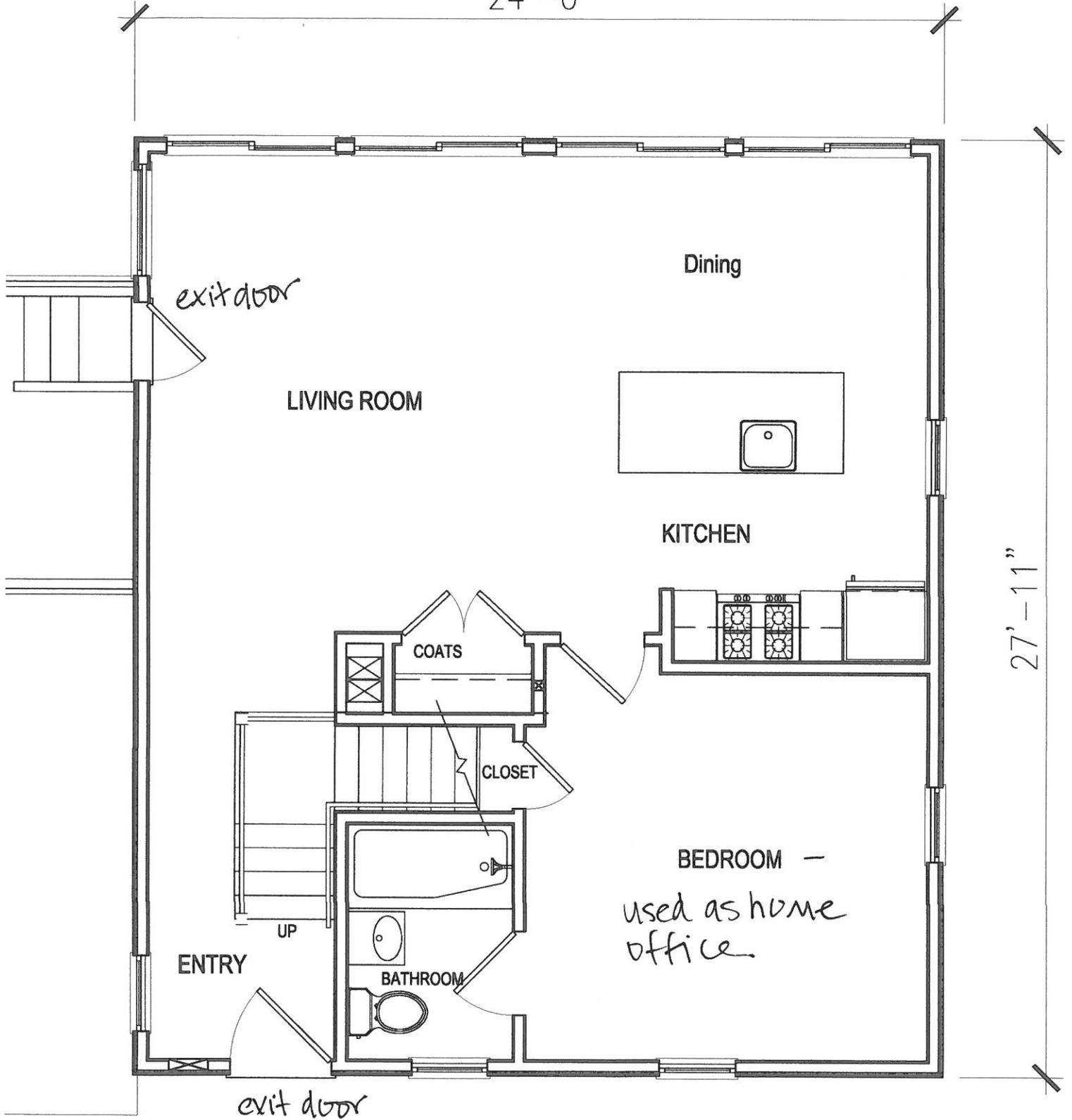
DATE _____

PROPERTY LOCATION: ADDRESS 2 Bridgeview Terrace, Apt 3, Kittery ME 03904
TYPE OF HOME OCCUPATION REQUESTED: [X] MINOR HOME OCCUPATION
PROPERTY OWNER INFORMATION: NAME Jim Higgins
APPLICANT INFORMATION (IF APPLICABLE): NAME Jesse Marsh
PROPOSED USE OF THE PROPERTY, INCLUDING DESCRIPTION OF THE BUSINESS: The business, Scaling Blue, LLC is a consultancy focused on sustainable seafood.
HOME OCCUPATION APPLICATION FEE \$40
CERTIFICATION: I CERTIFY THAT THE INFORMATION CONTAINED IN THIS APPLICATION AND ANY RELATED SUBMISSIONS TO BE TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE, I WILL NOTIFY THE CODE ENFORCEMENT OFFICER OF ANY CHANGES TO THIS APPLICATION.

INCOMPLETE APPLICATIONS WILL NOT BE PROCESSED

REV 11/15

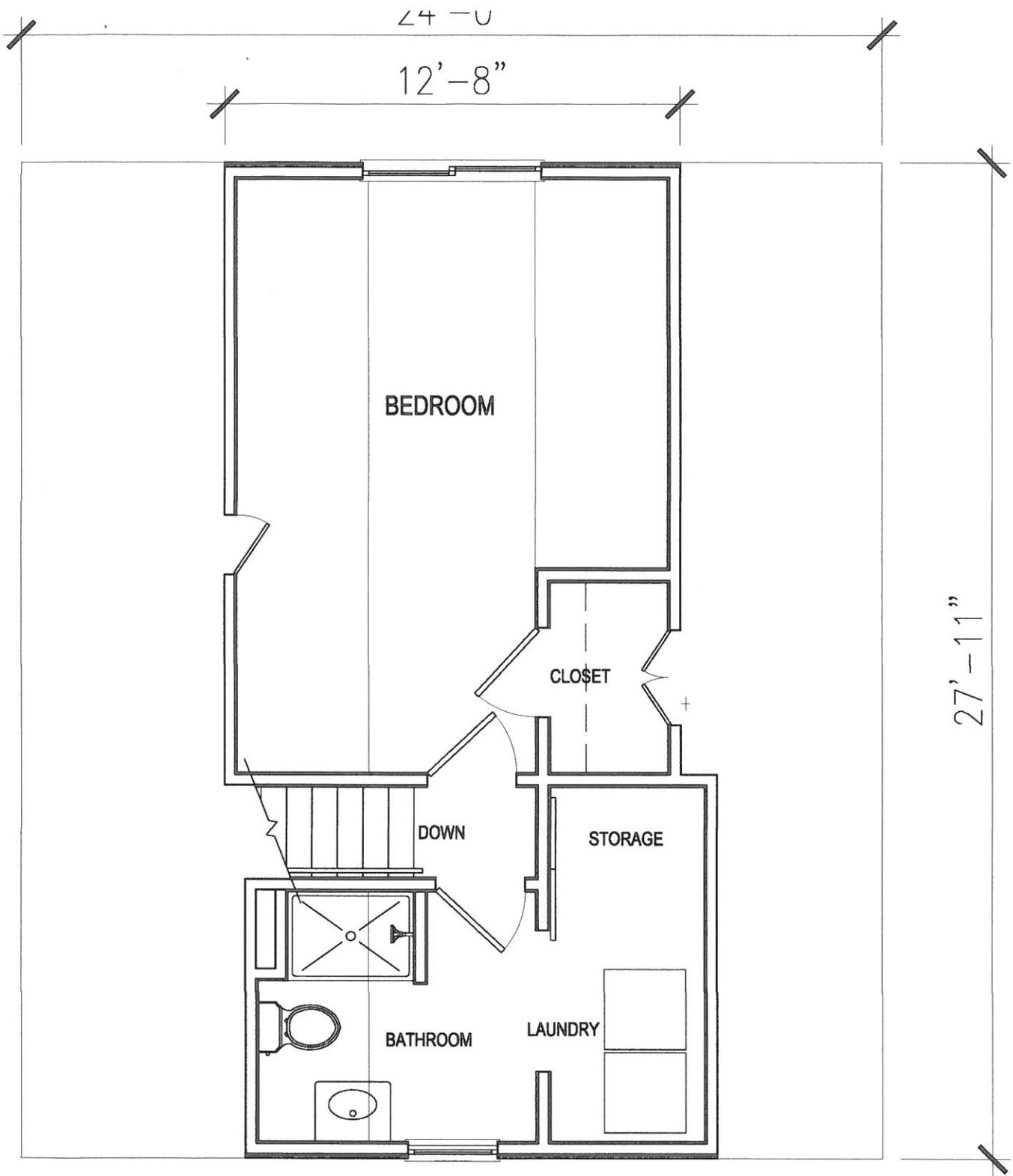
24'-0"



27'-11"

UNIT 3

1st Level



UNIT 3

2nd Level

Scale: 1/4"=1'-0"

Confirmatory Quitclaim Deed

Know all by these presents that We, **JAMES D. HIGGINS** and **RUI MONTEIRO-CLARO** of 0 Strong Place, Boston, MA 02114, for consideration paid, grant to **JAMES D. HIGGINS** and **RUI MONTEIRO-CLARO**, of 0 Strong Place, Boston, MA 02114, as **JOINT TENANTS**, the real estate described as follows:

A certain lot or parcel of land with the buildings thereon situated in the Town of Kittery, County of York and State of Maine, bounded and described as follows:

Beginning at a stake driven into the ground at the northwesterly corner of the lot herein conveyed at land now or formerly of Graham;

Thence running southerly seventy-two (72) feet, more or less, along the Piscataqua River to a stone wall at land now or formerly of Roberts;

Thence turning and running easterly, ninety-six (96) feet, more or less, to a wall at Bridgeview Terrace, so-called;

Thence turning and running northerly by Bridgeview Terrace sixty (60) feet, more or less, to said Graham property;

Thence turning and running westerly by said Graham property one hundred seven (107) feet, more or less, to the point of beginning.

Together with a perpetual right and easement for the use of fifteen (15) foot right of way adjacent to and northeasterly of the conveyed parcel in common with others for all manner of travel by foot and vehicle.

See also a roadway affidavit for the property involved at 2 Bridgeview Terrace, Kittery, Maine from Frank M. Remick dated August 26, 1986 and recorded at the York County Registry of Deeds in Book 3987, Page 151.

Being the same premises conveyed to **James D. Higgins** and **Rui Monteiro-Claro** by Confirmatory Deed of Wells Fargo Bank, N.A. dated September 25, 2012 and recorded at said Registry in **Book 16443, Page 732**. Said Confirmatory Deed failed to convey to Grantees as **JOINT TENANTS** as originally deeded August 16, 2012. The purpose of this deed is to confirm the joint tenancy.

The current address of the premises is 2 Bridgeview Terrace, Kittery Tax Map 2, Lot 42D

Signed, sealed, witnessed and delivered this 14th day of December, 2012.

Donna M. Reynolds
WITNESS

James D. Higgins
James D. Higgins

Donna M. Reynolds
WITNESS

Rui Monteiro-Claro
Rui Monteiro-Claro

STATE OF MAINE

County of York, ss.

December 14, 2012

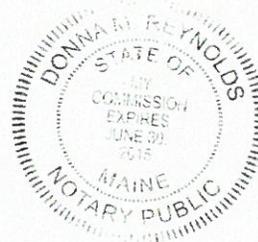
Then personally appeared the above named James D. Higgins and Rui Monteiro-Claro and severally acknowledged the foregoing instrument to be their free act and deed.

Before me,

Donna M. Reynolds
Notary Public

Print Name:

My Commission Expires:





ABOUT EXPERTISE CONTACT



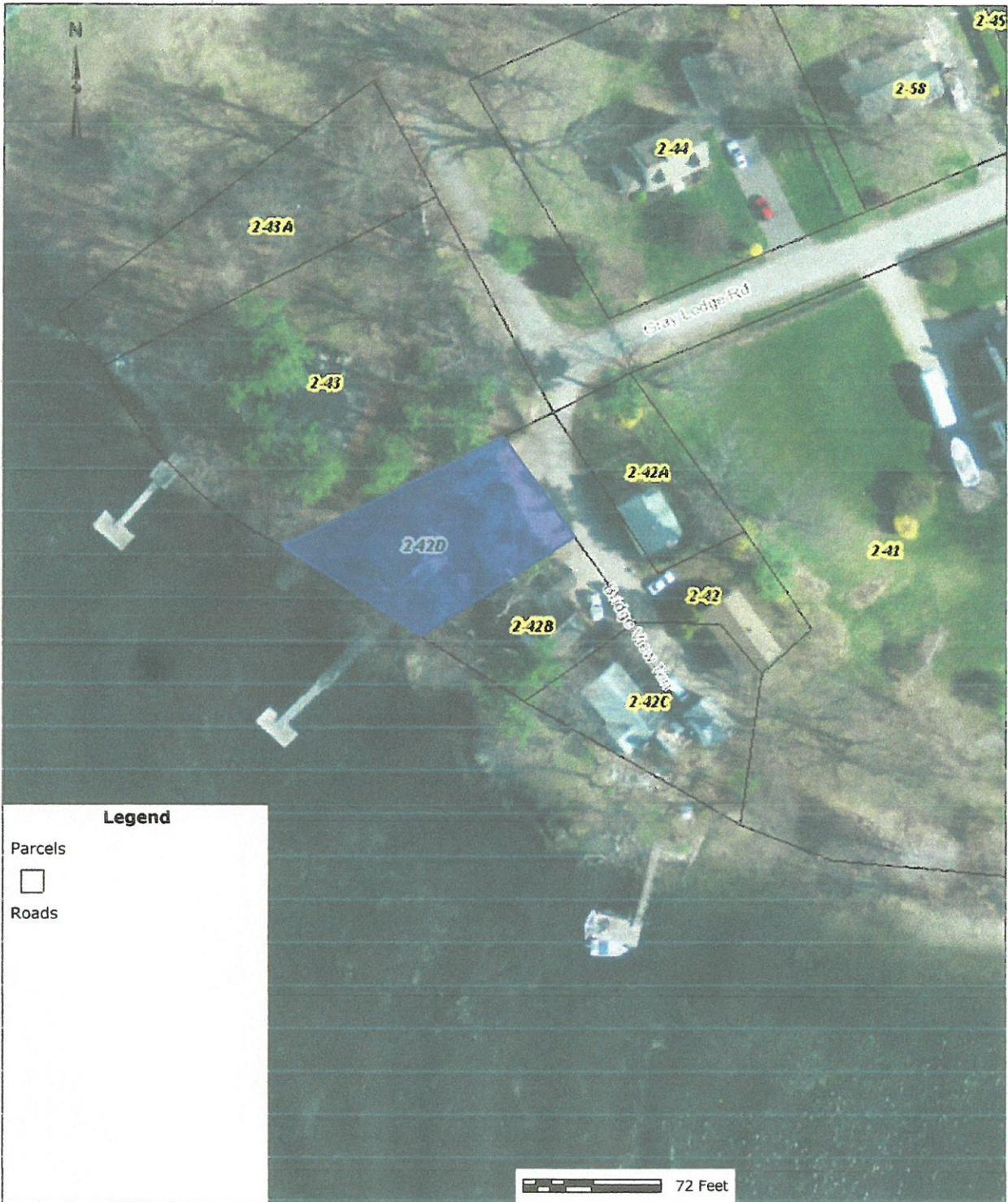
Scaling Blue, LLC is an independent consultancy, which was founded in 2014. Scaling Blue provides capacity to non-profit organizations, foundations, the private sector, and other stakeholders to help scale our collective impact in achieving more sustainable fisheries and communities.

Jesse Marsh, Principal & Manager, has over a decade of experience in the sustainable seafood community. Prior to founding Scaling Blue, Jesse led World Wildlife Fund's initiative to engage seafood businesses in developing market incentives for sustainable fisheries.

Over the last six years she developed and expanded WWF's fishery improvement project portfolio, and has worked with fisheries in Southeast Asia, Latin America and the Caribbean, and Africa. Jesse received a B.A. in Environmental Science from Boston University and a master's degree in Environmental Management from Duke University.

The inspiration for her work began on the waters of Magdalena Bay.

© 2014 Scaling Blue, LLC



Legend

Parcels

Roads

72 Feet

Town of Kittery, Maine

2 Bridgeview Terrace

This information has been compiled from various public and private sources. While every attempt has been made to provide accurate information, neither the municipality nor the service host guarantee the accuracy of information provided herein.

Special Exception Request

RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14; 1/28/15; 9/28/15;10/14/15;10/26/15)

16.6.6 Basis for Decision.

16.6.6.1 Conditions.

- A. In hearing appeals/requests under this Section, the Board of Appeals must first establish that it has a basis in law to conduct the hearing and decide the question.
- B. In hearing appeals/requests under this Section, the Board of Appeals must use the following criteria as the basis of a decision, the:
 - 1. Proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
 - 2. Use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones;
 - 3. Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or its location; and
 - 4. Use will be in harmony with and promote the general purposes and intent of this Code.

16.6.6.2 Factors for Consideration.

In making such determination, the Board of Appeals must also give consideration, among other things, to:

- A. The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;
- B. The conservation of property values and the encouragement of the most appropriate uses of land;
- C. The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;
- D. The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use);
- E. Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;
- F. Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;
- G. Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;
- H. The necessity for paved off-street parking;

RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14; 1/28/15; 9/28/15;10/14/15;10/26/15)

- I. Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of person upon such plot;
- J. Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population; or, unsightly storage of equipment, vehicles, or other materials;
- K. Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;
- L. Whether the proposed use will be adequately screened and buffered from contiguous properties;
- M. The assurance of adequate landscaping, grading, and provision for natural drainage;
- N. Whether the proposed use will provide for adequate pedestrian circulation;
- O. Whether the proposed use anticipates and eliminates potential nuisances created by its location;
- P. The satisfactory compliance with all applicable performance standard criteria contained in Chapter 16.8 and 16.9.

16.6.6.3 Additional Special Exception Conditions.

Special exception approvals may be subject to additional conditions as determined by the BOA, including the following:

- A. Front, side or rear yards in excess of minimum requirements;
- B. Modifications of the exterior features of buildings or other structures;
- C. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements;
- D. Regulation of design of access drives, sidewalks and other traffic features;
- E. Off-street parking and loading spaces in excess of the minimum requirements; or
- F. Restrictions on hours of operation.

16.6.6.4 Findings of Fact.

After reaching a decision on an appeal/request under this Section, the Board of Appeals must verify on the record its findings of fact supporting the basis of its decision.

16.6.6.5 Outstanding Violations.

No variance, special exception, or miscellaneous variation request may be granted for premises on which outstanding violations of this Code exist, unless the effect of such variance, special exception, or miscellaneous variation would remedy all such violations.

16.8.22.2 Minor Home Occupation Standards.

- A. Compliance with the Definition of a "Home Occupation".
 - 1. An applicant must be a resident of a dwelling on the premises where the home occupation will occur. An applicant who is not the owner of the property, but is residing on the premises, must submit written permission of the property owner for the proposed home occupation.
 - 2. As an accessory use, the home occupation(s) must be subordinate to the principal use. Quantitative measures that may be considered in determining whether a proposed activity is an accessory use include, but are not limited to, percentage and/or total amount of square footage attributed to the home occupation(s) use in relation to the residential use. Qualitative factors include, but are not limited to, the projected activity level of the home occupation(s) on the premises in relation to the residential use and whether the proposed home occupation is a traditional accessory use in the community.
- B. Number of Workers. There must be no more than three persons, inclusive of residents of the premises, working in the home occupation(s) at the site at any one time.
- C. Prohibited Uses. The following uses are categorically prohibited as minor home occupations: motor vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor storage; machine shop; wholesale use; junkyard; auto salvage yard; seafood cooking, processing and/or cleaning; bait sales.
- D. Business Hours. Business activities involving clients or customers on the premises or vehicular traffic to and from the premises must not be conducted between the hours of seven p.m. and eight a.m., except for a bed and breakfast, a day care facility or a functionally water-dependent use.
- E. Nuisances.
 - 1. Any excessive noise, dust, smoke, vibrations, glare, direct lighting, objectionable fumes, traffic, or electrical interference detected at the property boundary must not be greater in duration or intensity than that expected in the surrounding residential neighborhood.
 - 2. When reviewing a functionally water-dependent use, the above standards allow customary noises and smells caused by the use if all practicable steps are taken to manage and minimize the adverse impact on abutting property owners.
- F. Parking. A plan must be submitted showing sufficient and safe parking for customers', clients' and workers' use during normal business operations. To the maximum extent practicable, parking should be arranged so as to avoid vehicles backing out into the street.

In addition to parking required for the residence, the following parking is required:

 - 1. One parking space per nonresident worker at the site during the peak shift;
 - 2. One parking space if clients or customers frequently visit the site;
 - 3. One parking space per adult student up to the maximum class size; or
 - 4. One parking space per rental unit.
- G. The parking design standards in Figure 2 for Chapter 16.8, set out at the end of this chapter (e.g., aisle width, stall size, etc.) may be modified for parking by workers if the parking arrangement will still provide for practical off-street parking adequate to prevent parking from overflowing the site.
- H. With the exception of a bed and breakfast with more than three rooms for rent, three additional off-street parking spaces should satisfy the parking demand for a minor home occupation. Any recurring observed parking overflow is a violation of these standards.
- I. The CEO may approve the joint use of a parking area where it is clearly demonstrated that the parking area will be available for use by customers or workers during the hours of operation due to the variation in time of use.
- J. Outdoor Storage. All outdoor storage of equipment, vehicles, items or equipment associated with the home occupation is prohibited except for the following:
 - 1. One vehicle used in conjunction with the home occupation;
 - 2. Seasonal storage of items necessary for functionally water-dependent uses, such as lobster traps; and
 - 3. Vehicles owned by residents of the premises with valid license plates.
 - 4. All bait must be stored indoors and must be kept refrigerated or otherwise stored to prevent offensive odors.
- K. Business Conduct. All business activities on the site must take place within the dwelling or enclosed buildings, except for outdoor recreational uses, agriculturally-oriented uses or functionally water-dependent uses.
- L. Refuse and Recyclables. All refuse and recyclables must be stored within an enclosed building. No outdoor dumpsters are allowed. All waste materials from the home occupation must be removed from the premises on at least a monthly basis.
- M. Traffic. The home occupation must not result in creating or significantly exacerbating a traffic hazard. Recurring vehicle traffic involving vehicles larger than a twenty (20) foot fixed axle, thirty (30) foot total length truck is prohibited.
- N. Retail Sales. Retail sales in which customers do not come to the premises are permissible, such as mail order or telephone sales. On-site retail sales are limited to the following:
 - 1. Sales of products grown, raised or produced on the premises. For the purposes of this subsection, the term "produced" is not to be construed to allow the assembly of a product from components produced elsewhere; and
 - 2. Sales of items customarily incidental and subordinate to a nonretail home occupation, such as sales of shampoo and hair brushes at a beauty salon.
 - 3. All other on-site retail sales are prohibited as a minor home occupation.
- O. Health and Safety. The proposed use must not create a health or safety hazard.

