



Town of Kittery
200 Rogers Road, Kittery, ME 03904

Board of Appeals
Meeting Agenda, Council Chambers
Tuesday, December 10, 2019
Regular Meeting – 6:30 P.M.

- 1. Call to Order; Introductory; Roll Call**
- 2. Pledge of Allegiance**
- 3. Agenda Amendment and Adoption**
- 4. Executive session (if required)**
- 5. Public Hearings**
 - a. Melissa Williamson, on behalf of 74 State Road LLC, requesting a Special Exception Use to convert an existing commercial building into a mixed use building at 74 State Road in the Business – Local (B-L) per Section 16.3.2.8.C(9) and 16.6.4.D of the Town Code.
 - b. Chris Velardi, on behalf of Josephine Robbins, owner, 3 Old Cutts Road requesting a Miscellaneous Variation Request to expand a non-conforming structure in the Residential – Rural (R-RL) zone per Section 16.6.4.C(1).
- 6. Unfinished Business**
- 7. New Business**
 - a. Election of Board Officers
 - o Chair
 - o Vice Chair
 - o Secretary
- 8. Acceptance of Previous Minutes**
 - a. October 22, 2019
 - b. November 26, 2019
- 9. Board Member or CEO Issues or Comment**
 - a. 2020 Board of Appeals Schedule
- 10. Adjournment**

NOV 18 2015 4:12:31



TOWN OF KITTERY
CODE ENFORCEMENT OFFICE
200 ROGERS ROAD, KITTERY, MAINE 03904
PHONE: (207) 475-1305
FAX: (207) 439-6806

Application to the
BOARD OF APPEALS

DATE SUBMITTED	
MAP & LOT	8-41A
ASA FEE	
DATE PAID	
DATE COMPLETE	
HEARING DATE	

SPECIAL EXCEPTION USE REQUEST

I have reviewed Town Code Title 16, Board of Appeals By-Laws, and the Ordinance(s) pertinent to this application. My request is based on the following:

TITLE	16	CHAPTER	16.3	SECTION	16.3	2	8	C	6	PAGE	64
TITLE		CHAPTER		SECTION						PAGE	

Special exception means a use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning districts as special exceptions, if specific provision for such special exceptions is made in Chapter 16.3.

**IN ORDER FOR AN APPLICATION TO BE DETERMINED COMPLETE AND SCHEDULED FOR A PUBLIC HEARING:
APPLICATIONS FORMS MUST BE COMPLETE; 10 SETS OF DOCUMENTATION PROVIDED; & ALL FEE(S) PAID**

PROPERTY INFORMATION									
ADDRESS	74 State Rd Kittery, ME 03904-0159								
MAP	8	LOT #	41A	LOT SIZE	3.561 Acres				
BASE ZONE(S):	Business-Local (B-L)			OVERLAY ZONE(S):	Shoreland - Stream Protection				
The subject property: [is/ is not] in a Shoreland overlay or Resource Protection zone; [is /is not] in a floodplain; AND [does does not] have outstanding code violations; and, if so, granting this appeal provides resolution.									
PROPERTY OWNER: I have right, title or interest in the affected property, or Issue, as shown by:									
NAME(S)	74 State Road LLC c/o Melissa Williamson								
MAILING ADDRESS	215 Thornton Street								
CITY	Portsmouth	STATE	NH	ZIP CODE	03801				
PHONE No.	603-498-1704			e-MAIL:	mrw0212@gmail.com				

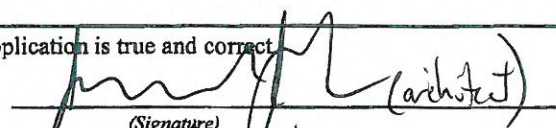
NOTE: You may have an attorney represent you, but such representation is not necessary. You may also be represented by a designated agent (e.g. family member, neighbor, engineer, contractor) as you so desire.

APPLICANT (if different) I am an agent of the applicant with standing, as shown by:									
NAME(S)									
MAILING ADDRESS									
CITY		STATE		ZIP CODE					
PHONE No.				e-MAIL:					

To the best of my knowledge, all information submitted on and with this application is true and correct.

Date: 11/18/2015

By:


(Signature)
Jeremiah Johnson
(Print Name)

AFFIRMATIONS (Please read and check all the boxes to confirm)

I understand that the:

☒ Use requested must:

- ☒ 1. Not have an unreasonably adverse effect on the health, safety or general welfare of the residents of the area or the general public.
- ☒ 2. Not significantly devalue abutting property or property across a public or private way.
- ☒ 3. 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.
- ☒ 4. Not have an adverse impact on spawning grounds, fish, aquatic life, or bird or other wildlife habitats.
- ☒ 5. Be in harmony with and promote the general purposes and intent of this Code.
- ☒ 6. Adequately provide for the disposal of all wastewater.
- ☒ 7. Conserve shore cover and visual, as well as actual, points of access to inland waters.
- ☒ 8. Protect archaeological and historic resources as designated in the Comprehensive Plan.
- ☒ 9. Avoid problems associated with floodplain development and use.

☒ Board may establish additional conditions, including, but not limited to, the following:

- ☒ 1. Front, side or rear yards in excess of minimum requirements;
- ☒ 2. Modifications of the exterior features of buildings or other structures;
- ☒ 3. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements;
- ☒ 4. Regulation of design of access drives, sidewalks and other traffic features;
- ☒ 5. Off-street parking and loading spaces in excess of the minimum requirements; or
- ☒ 6. Restrictions on hours of operation.

☒ Proposed use may:

- ☒ 1. Not have an adverse effect. In making this determination, the Board shall take into consideration the potential effect of the development on the environment from air, water or soil pollution; noise; traffic congestion; soil erosion; the burden on sewage disposal or water supply systems or other municipal facilities, services or public ways; and any other relevant factors.
- ☒ 2. Not significantly devalue abutting properties. In making its determination, the Board shall take into consideration the type of structure proposed; the topography of the area; the market value of the surrounding real estate; the availability of utilities and transportation; the availability of schools and hospitals; traffic conditions; and any other relevant factors.
- ☒ 3. Not give rise to any grave concern regarding the expectations as listed above.
- ☒ 4. Be subject to such additional conditions as the Board deems necessary.

I also understand that the Board of Appeals:

☒ May hear and decide a special exception use request within the limitations set forth in on page 1 of this application.

☒ Appears to have jurisdiction to hear this request; hearing must be held within 30 days of this request filing; application must be complete; and, public and abutter notice must be made no less than seven days prior to the scheduled hearing.

☒ Will conduct this hearing De Novo (meaning the Board acts if it were considering the question for the first time, affording no deference to the preceding agency decisions; may receive new evidence and testimony consistent with this Town Code Title 16 and the Board rules; and, conduct additional hearings and receive additional evidence and testimony).

☒ Will determine my Burden of Proof:

- 1) What does the ordinance/statute require the applicant to prove?
- 2) Does the ordinance/statute prohibit or limit the type of use being proposed?
- 3) What factors must be considered under ordinance/statutes to decide whether to grant the request?
- 4) Is the evidence presented substantial? Is it credible? Is it outweighed by conflicting evidence?

☒ Requires substantial evidence as the Standard of Review for this request, meaning:

"More than a mere scintilla". It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The preponderance of evidence standard is met if the proposition is more likely to be true than not true. The standard is satisfied if there is greater than fifty percent chance that the proposition is true.

☒ May hear, decide, and approve variations in accordance with the criteria listed in Town Code Title 16, Sections 6.6, Basis for Decision; and may consider other Title 16 standards.

- ☒ Approval may not be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any state law which the municipality is responsible for enforcing.
- ☒ Is only legally authorized to deal with issues arising from the list above, and do not include such matters as constitutionality, civil rights, criminal acts, property disputes, surliness, etc.
- ☒ Will not even hear my appeal unless I can show that I have "standing" to have my complaint heard;
- ☒ Purpose of establishing my case for "standing" is to limit appeals on an issue to those who are directly involved and/or affected.
- ☒ Will try to decide my case based only on the factual information presented and what is written in the pertinent Town ordinance/regulation, State statute(s)/regulation(s) and the rulings of the rulings of the State Supreme Judicial Court.
- ☒ Tries to make decisions it believes would be upheld if appealed to Superior Court.

STATEMENTS:

Describe the general nature of the request:

The general nature of this request is to keep 5 out of the existing 15 commercial units as is on the ground level. The second and third floor existing commercial units would be converted to Residential units for a total of 10 units (5 per floor). According to Title 16, Chapter 3, Section 3.5.C, 6, a Apartment building is a special Exception Use. There will be no exterior modifications to the existing building and existing parking does not need to be altered (50 spots).

Additional Information

1. Please complete this application in its entirety. You may add other information as may be needed to adequately describe the purpose of seeking relief from the Board of Appeals.
2. A detailed plot plan or diagram must be provided showing dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings or alterations, and any natural or topographic features (wetlands, streams, etc) of the lot in question. This plot plan should also include the distances to the nearest structures on abutting properties and show the detail of any rights-of-way, easements, or other encumbrances.
3. Blueprints, surveys, photos and other documents may be helpful in explaining your request and should be included.

74 STATE ROAD, KITTERY, ME

DECEMBER 2019, BOARD OF APPEALS

CURRENT BUILDING INFORMATION

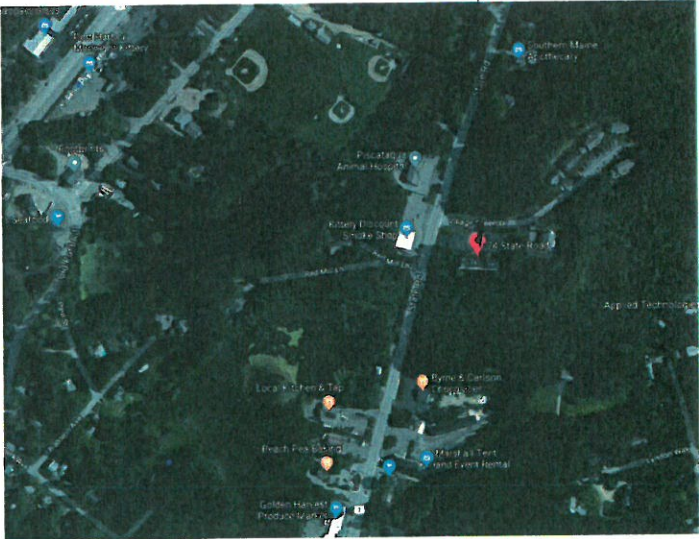
- ZONE B-L
- 15 COMMERCIAL UNITS
- 14,273 SF

PROJECT DESIGN INTENT

- THERE WILL BE NO EXTERIOR MODIFICATIONS TO THE EXISTING BUILDING.
- THE 5 GROUND LEVEL UNITS WILL REMAIN 5 COMMERCIAL UNITS
- THE SECOND AND THIRD FLOOR UNITS WILL CHANGE FROM 5 COMMERCIAL UNITS PER FLOOR TO 5 RESIDENTIAL UNITS PER FLOOR, FOR A TOTAL OF 10 RESIDENTIAL UNITS.

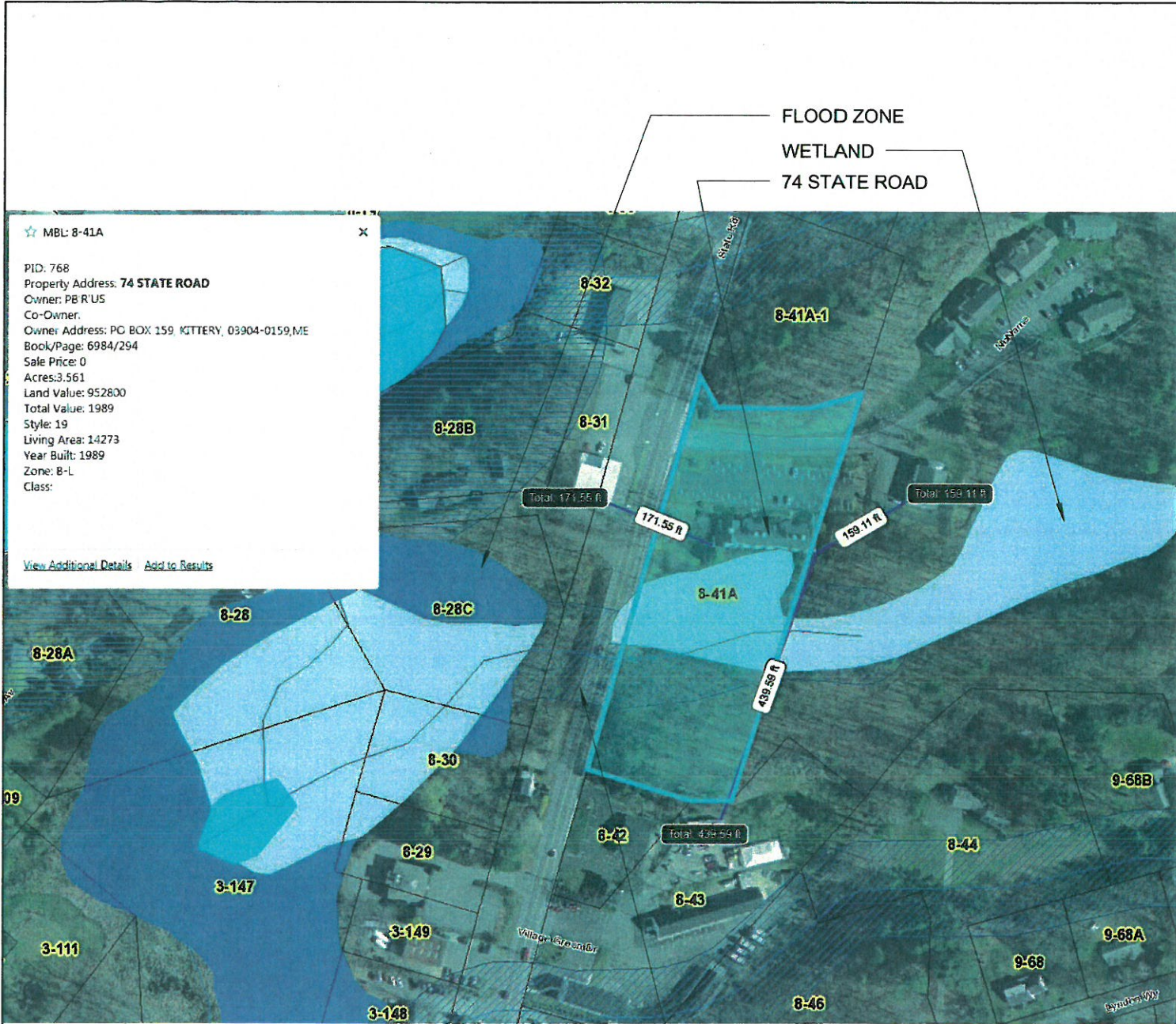
Sheet List	
Sheet Number	Sheet Name
T1	Project Intent and Sheet List
S-1	Site Plan
A-2	Existing Floor Plans - Original Drawings
AD101	Second Floor Removal Plan - Typical Unit
AD102	Third Floor Removal Plan - Typical Unit
A101	Second Floor Plan - Typical Unit
A102	Third Floor Plan - Typical Unit

74 State Road, Kittery, ME



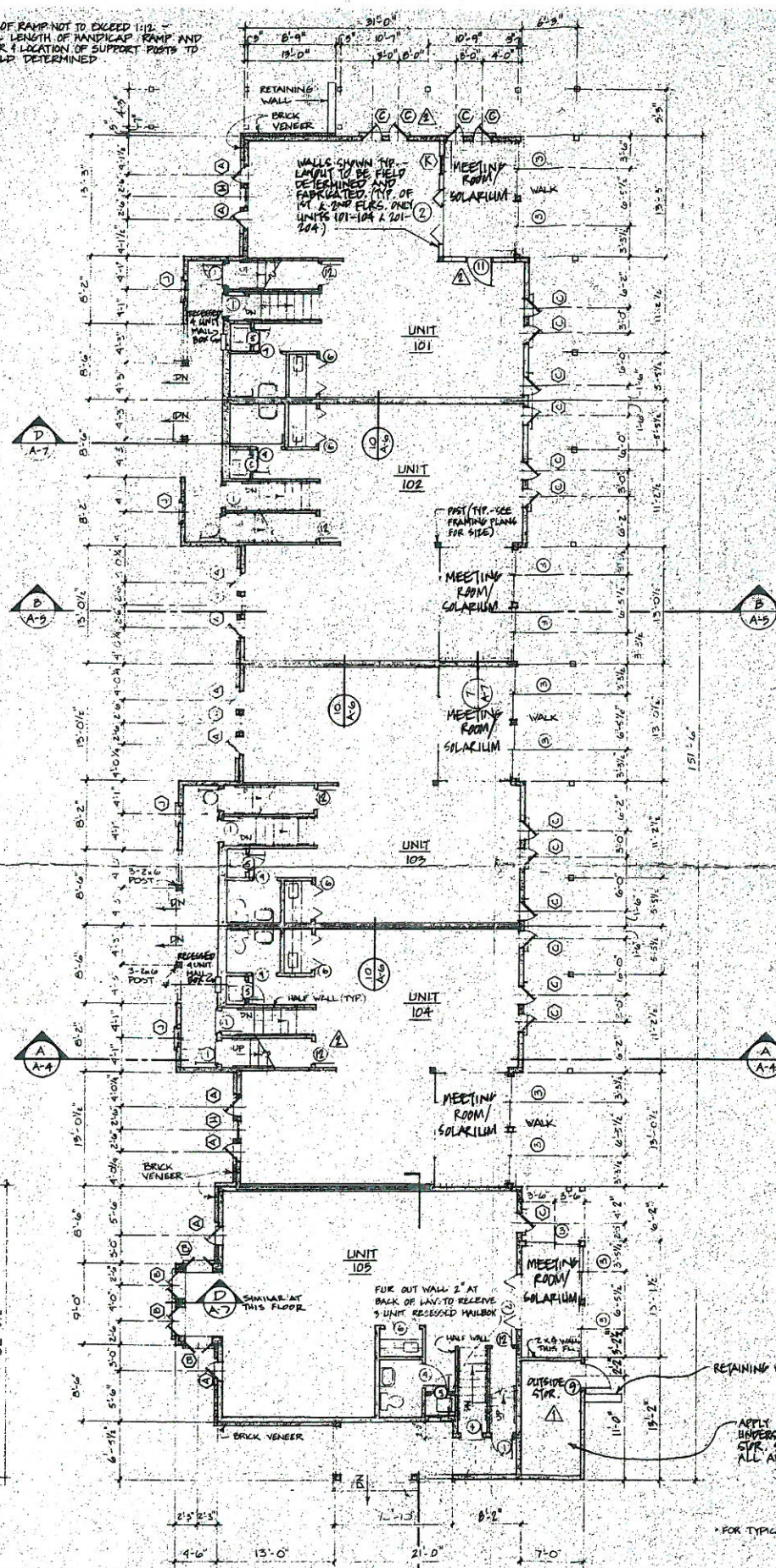
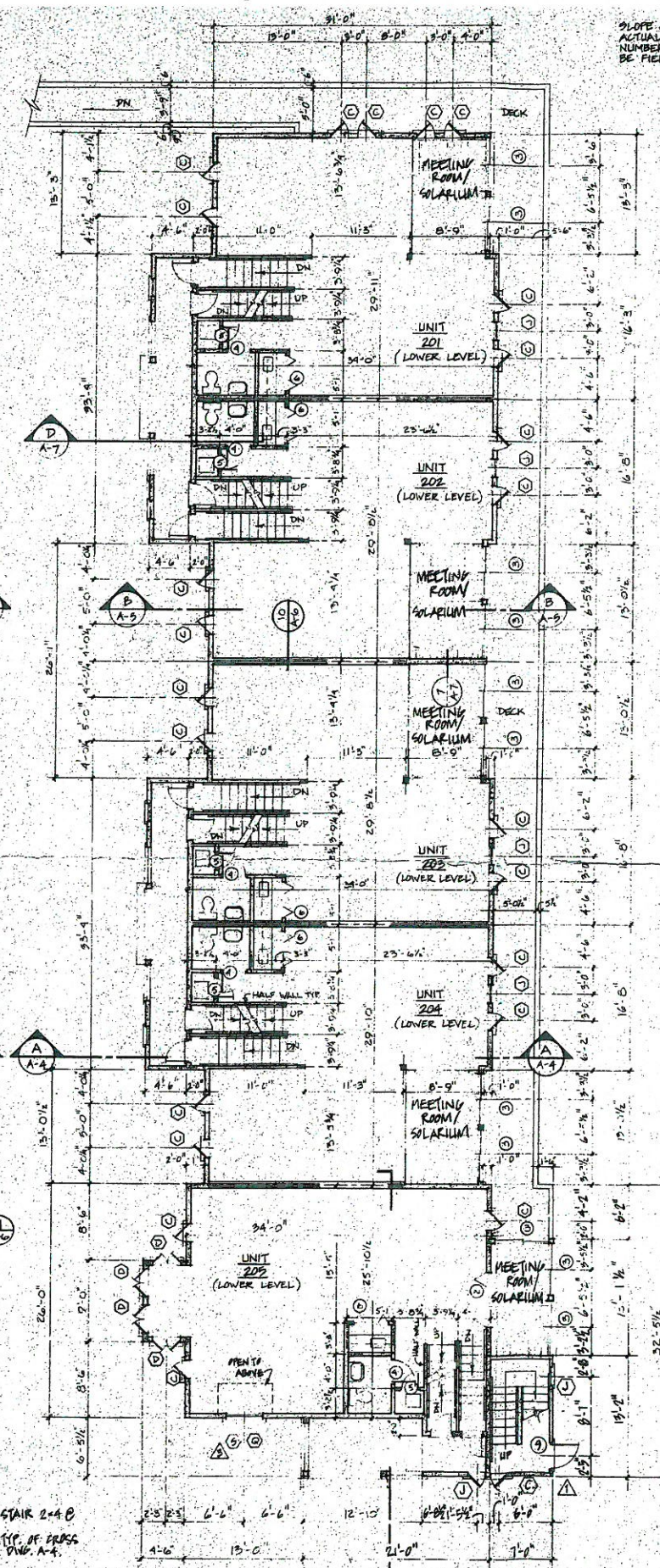
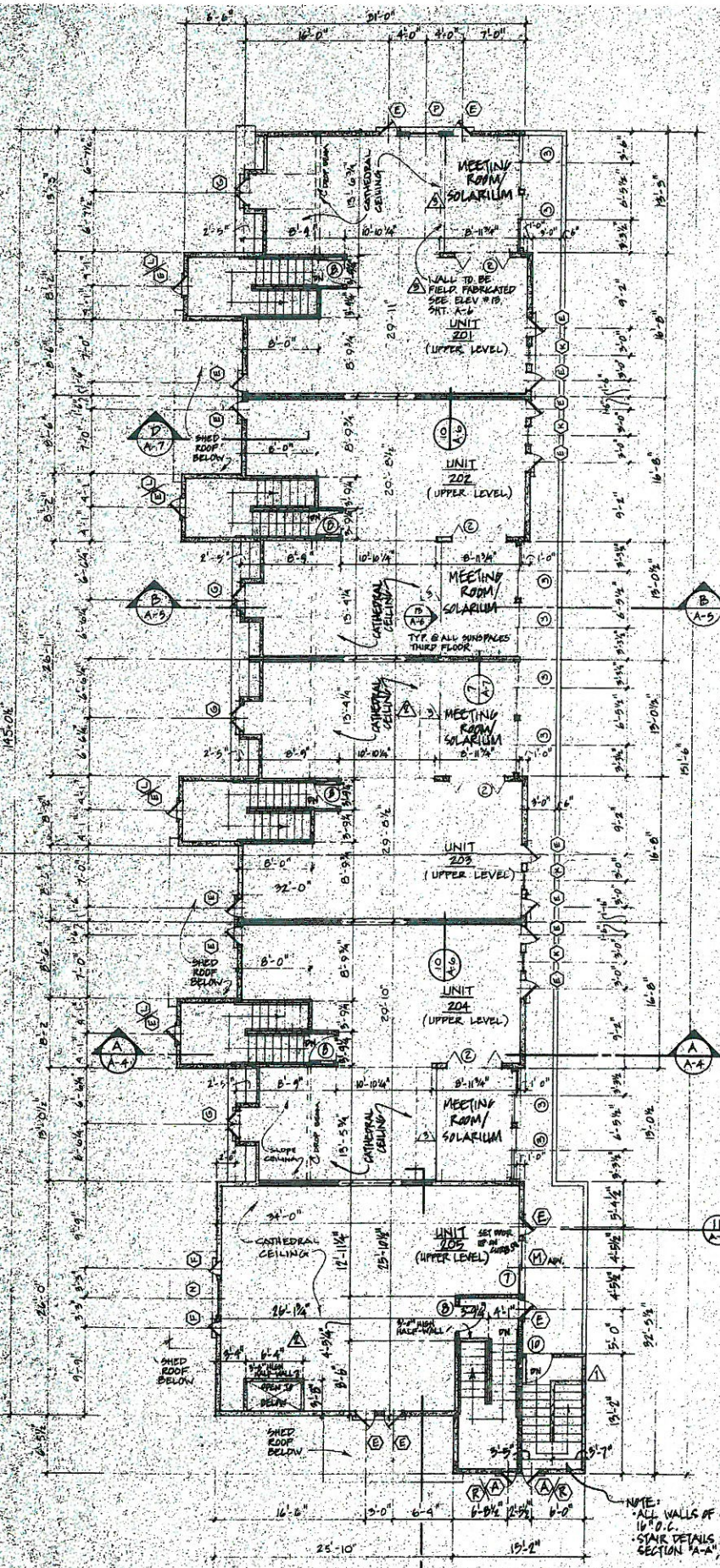
Kittery Condos 74 State Road	McHENRY ARCHITECTURE	
	Project number	19062
Project Intent and Sheet List	Date	DECEMBER 2019
	Drawn by	RD
	Checked by	JJ
		Scale

T1



SHORELAND - STREAM PROTECTION OVERLAY

Kittery Condos 74 State Road	McHENRY ARCHITECTURE	
	Project number	19062
	Date	DECEMBER 2019
	Drawn by	RD
Site Plan	Checked by	JJ
	Scale	



SLOPE OF RAMP NOT TO EXCEED 1:12 -
ACTUAL LENGTH OF HANDICAP RAMP AND
NUMBER & LOCATION OF SUPPORT POSTS TO
BE FIELD DETERMINED

WALLS SHOWN TIP -
LAYOUT TO BE FIELD
DETERMINED AND
FABRICATED. (TIP OF
1ST & 2ND FLRS. ONLY
UNITS 101-104 & 201-
204.)

I certify that the floor plans for Reparatel Green Office Condominium were prepared under my direction and these floor plans accurately represent the intended location and dimensions of the contemplated improvements which SHALL BE BUILT. At this time, for purposes of certification, the building has been constructed, but the actual dimensions of the building and units have not been fully verified.

David J. Gault
10-6-88



Roger K. Ross and

REVISIONS

1. REMOVE EXCESS
STAKE & OVER 10
PER OWNER
12-14-86 TCM

2. ADD CATCH CAGE ON
S&P FLY
ADD BARK IN TRAILING
CIN FLY TRAIL 20'
CHANGE DIRT TO 10'
CHANGE DIRT TO 10'
CHANGE HINDEN 10'
TO HINDEN 10'
12-22-86 TCM

3. CHANGED TO PER
OWNER
12-23-86 AME

Salmon Falls Associates
Architectural Analysis Planning
478 Main Street P.O. Box 32
So. Berwick, Maine 03908
207-364-2177 207-384-2960



DRAWN: PJM JS DRY AC	
CHECKED: PJM PGG	
DATE: 11-2-04	5

PROJECT NO. 8625

PEPPERRELL GREEN
D.S. Route 1 Kittery Maine
Fox Pepperrell Associates
174 Middle Street
Portsmouth, New Hampshire

A-2
Existing Floor Plans
- Original Drawings
1986

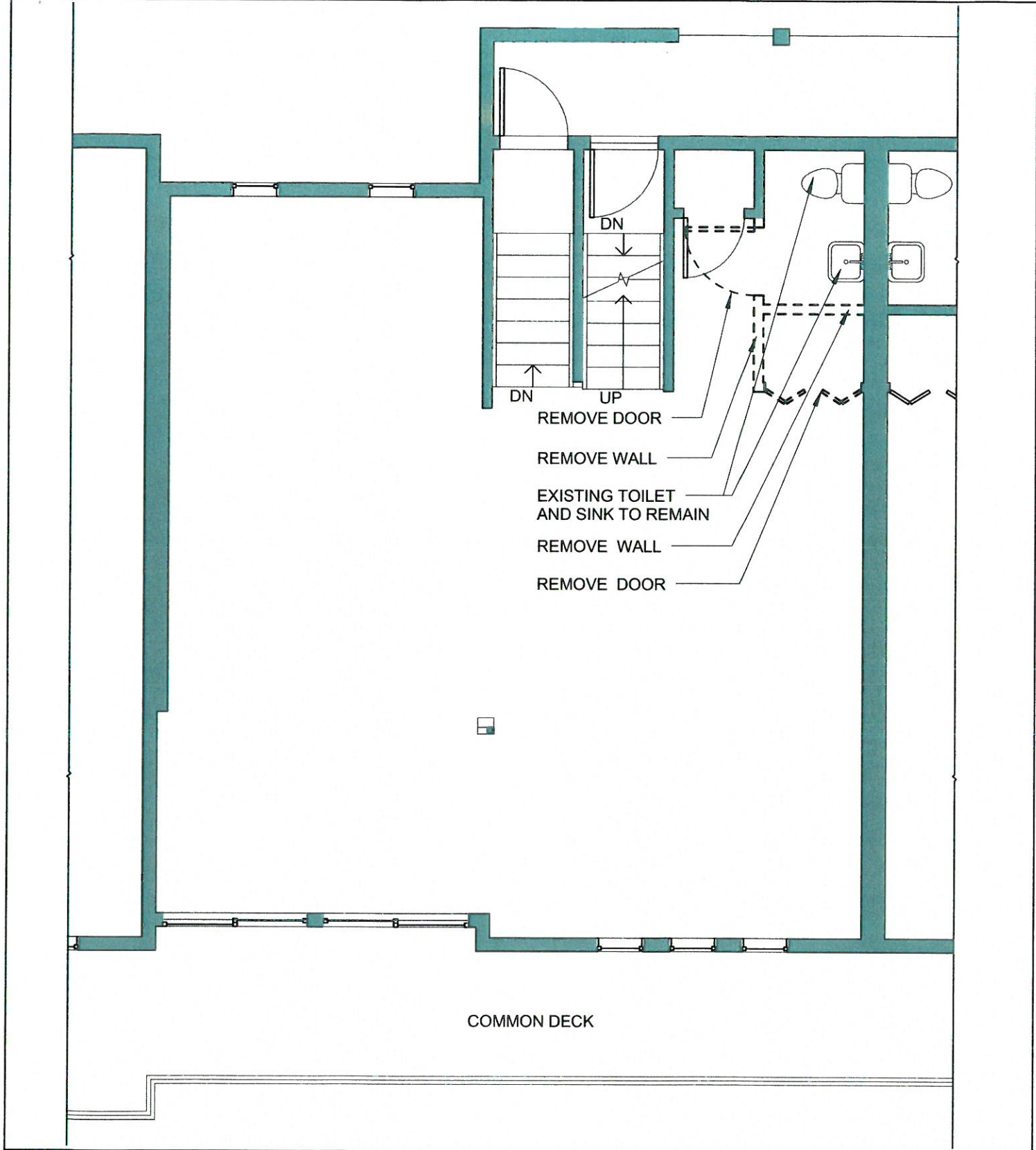
FLOOR PLANS
DATE: 4-1-00

A-2

ACTUAL NUMBER OF
TREADS & RISERS TO BE
FIELD DETERMINED TYPICAL

CONTRACTOR SHALL MEASURE AND VERIFY
ALL DIMENSIONS AT WORK.

SEE EMT A-9 FOR GEN. NOTES
1.1, 1.3, 1.4, 1.6, 1.7, 1.8, 2.3, 6.1, 6.2
6.3, 6.5, 6.6, 6.8, 7.3, 7.4, 7.5



Kittery Condos
74 State Road

Second Floor Removal Plan - Typical

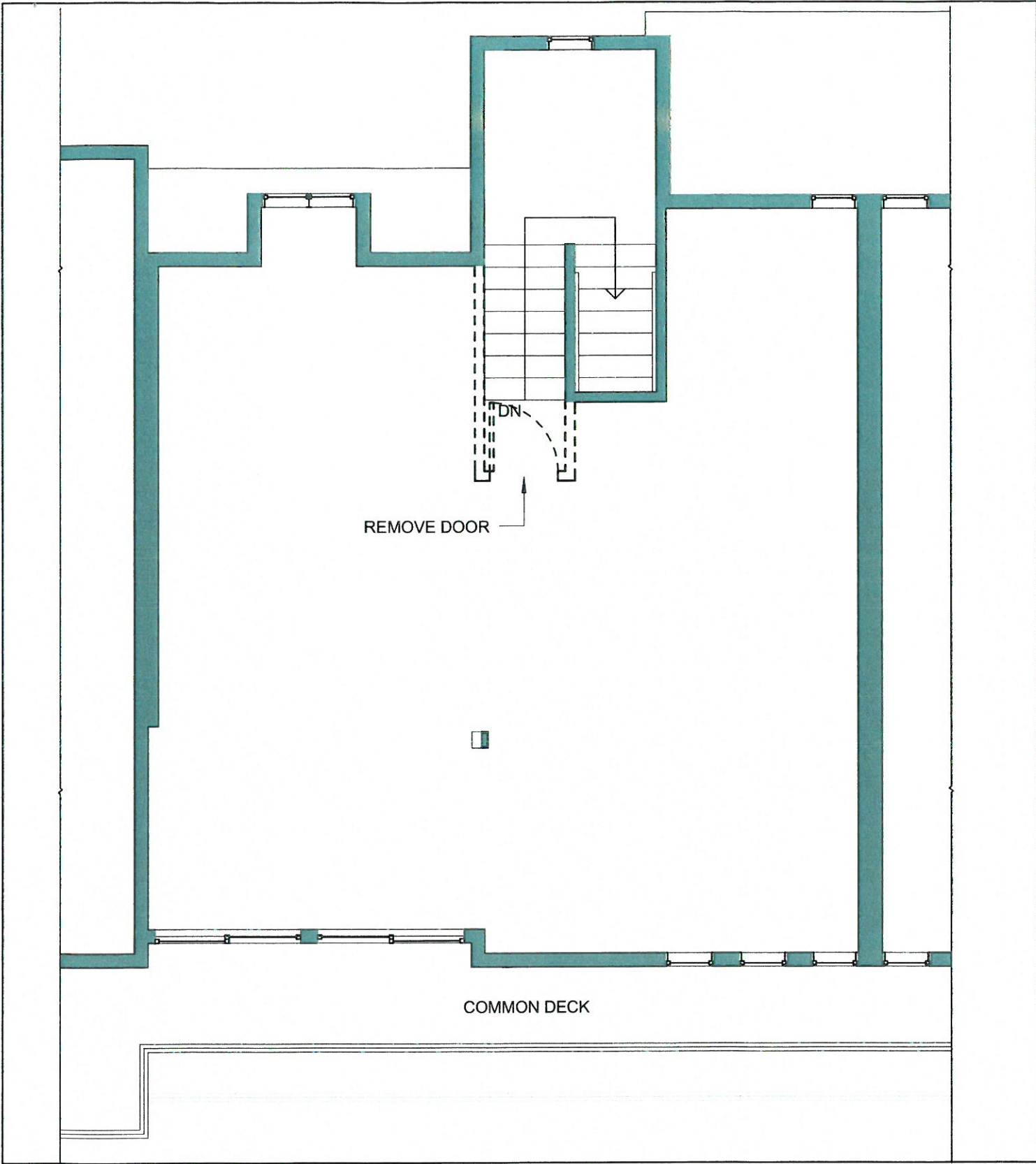
Unit PLAN DRAWN BASED ON 04 UNITS

McHENRY
ARCHITECTURE

Project number	19062
Date	DECEMBER 2019
Drawn by	RD
Checked by	JJ

AD101

Scale 3/16" = 1'-0"



Kittery Condos
74 State Road

Third Floor Removal Plan - Typical Unit

FLOOR PLAN DRAWN BASED ON 04 UNITS

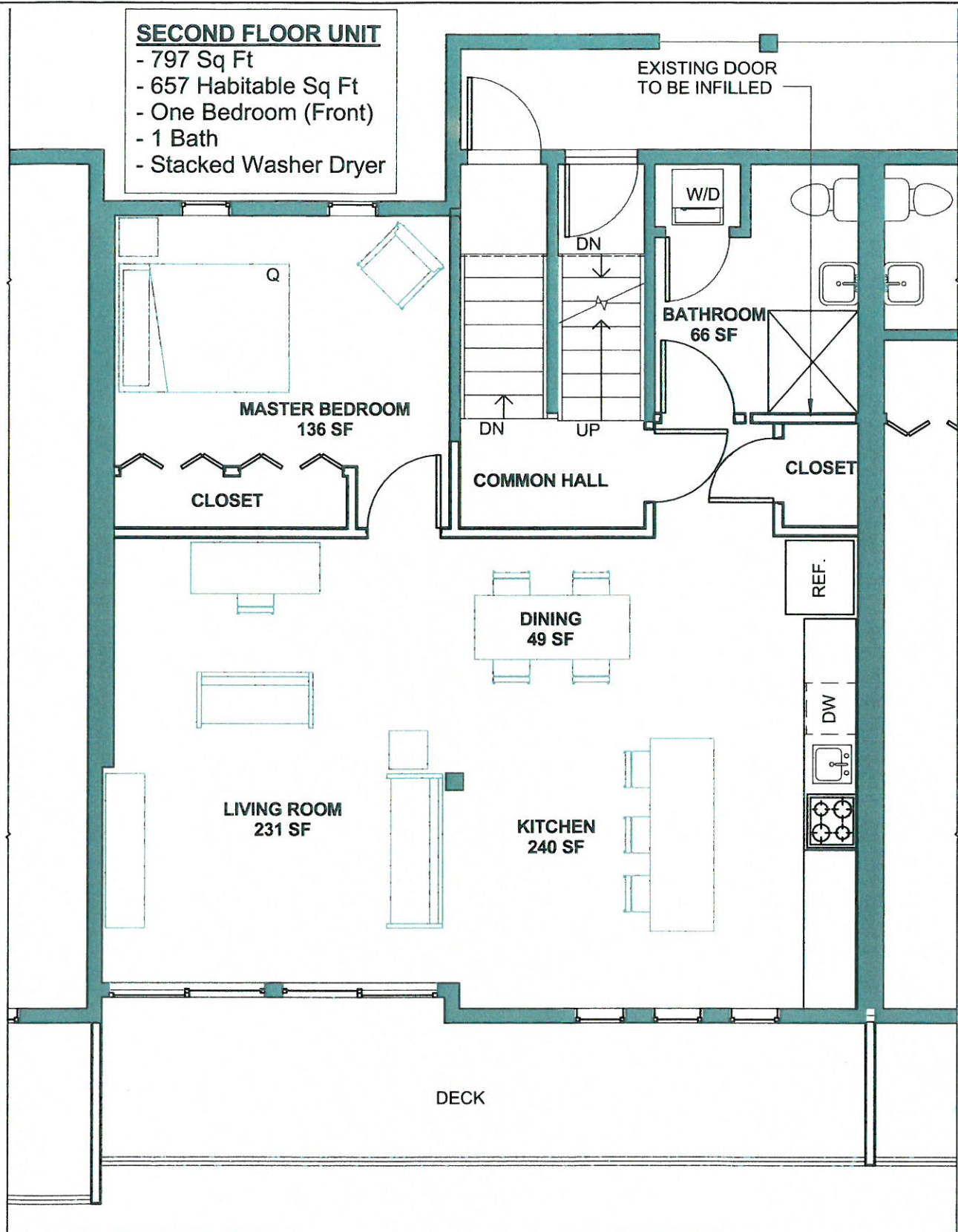
McHENRY
ARCHITECTURE

Project number	19062
Date	DECEMBER 2019
Drawn by	RD
Checked by	JJ

AD102

Scale 3/16" = 1'-0"

- SECOND FLOOR UNIT**
- 797 Sq Ft
 - 657 Habitable Sq Ft
 - One Bedroom (Front)
 - 1 Bath
 - Stacked Washer Dryer



Kittery Condos
74 State Road

Second Floor Plan - Typical Unit

FLOOR PLAN DRAWN BASED ON 04 UNITS

McHENRY
ARCHITECTURE

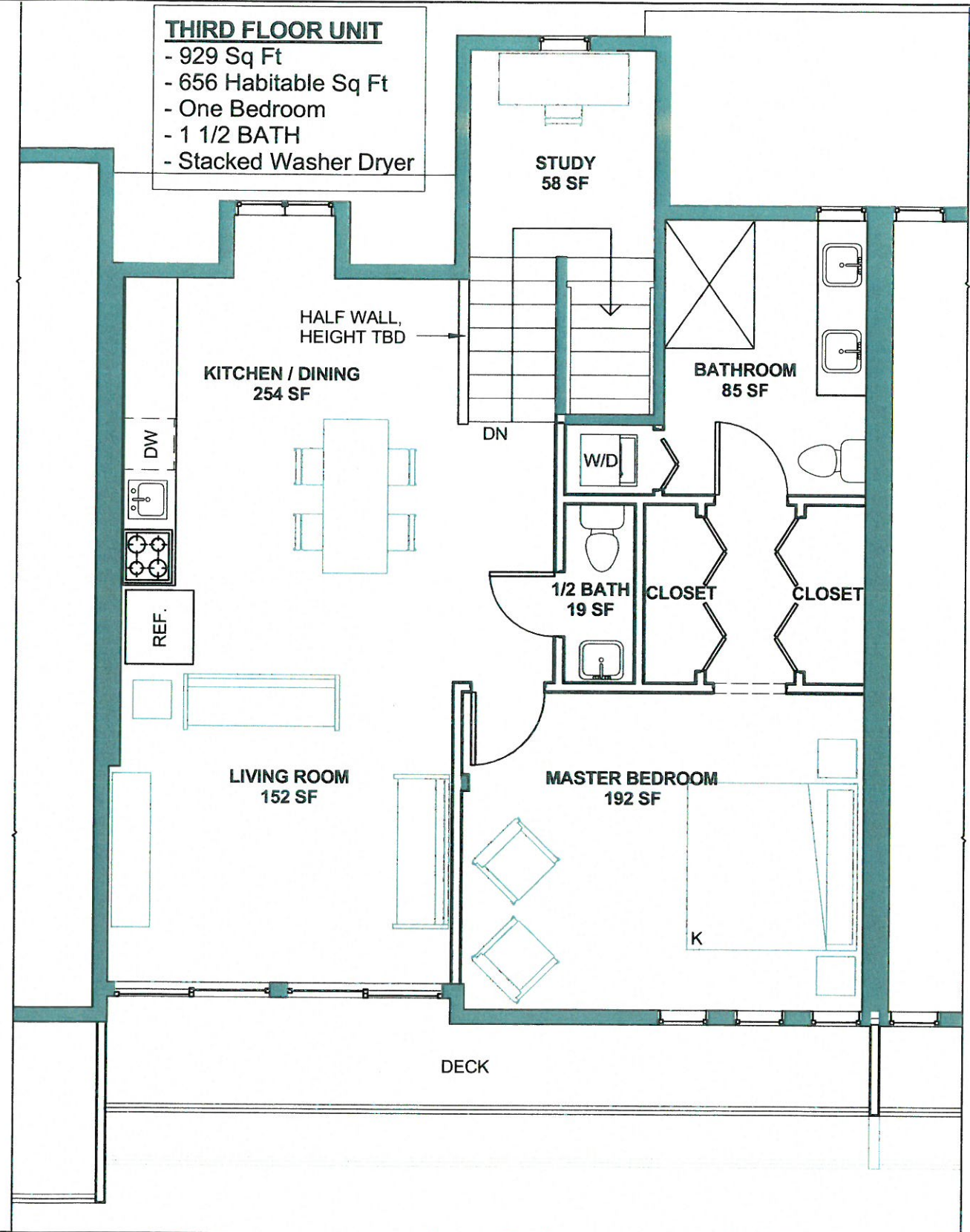
Project number	19062
Date	DECEMBER 2019
Drawn by	RD
Checked by	JJ

A101

Scale 3/16" = 1'-0"

11/13/2019 3:22:57 PM

THIRD FLOOR UNIT
 - 929 Sq Ft
 - 656 Habitable Sq Ft
 - One Bedroom
 - 1 1/2 BATH
 - Stacked Washer Dryer



Kittery Condos 74 State Road	McHENRY ARCHITECTURE	
	Project number 19062	A102
Third Floor Plan - Typical Unit	Date DECEMBER 2019	
	Drawn by RD	
Checked by JJ		Scale 3/16" = 1'-0"
FLOOR PLAN DRAWN BASED ON 04 UNITS		

Current Zoning:
Business – Local (B-L) - The purpose of the Business – Local zone is to provide local sales, services and business space within the Town.

The existing salon use is permitted by right in the zone. The following uses are permitted as a Special Exception Use in the B-L Zone: (9) residential dwelling unit as part of a mixed-use building.

Staff Recommendation: APPROVAL of Special Exception Use request.

District Standards:

Business – Local (B-L) Zoning District Standards			
Land Area per DU	4,000 sf	Front Yard Setback (min.)	15 feet
Building Coverage (max.)	None	Rear Yard Setback (min.)	10 feet
Lot Size	None	Side Yard Setback (min.)	10 feet

Current Use: One dwelling unit.

Surrounding Land Uses:

West: Business - Local (B-L) and Shoreland Overlay (OZ-SL), Retail unit

East: Business – Local, Elder care facility

North: Business – Local (B-L), vacant land

South: Business – Local 1 (B-L1), Retail/commercial unit

Future Land Use:

The subject property is located within a Growth Area in the Future Land Use Map, defined in the Comprehensive Plan as “areas where the Town would like to encourage future development to occur.” Growth Area include parts of Town where 75% or more of future non-residential growth is expected, areas that are or can relatively easily be served by public facilities and services, are accessible by a variety of modes of transportation, promote more compact and denser pattern of development, and where there is existing development.

Site Description:

The subject property consists of approximately 155,117 square feet (3.5 acres) located along the South-Eastern right-of-way of State Road. The property is zoned Business – Local (B-L). The lot contains one commercial building of 14,273 square feet currently housing 15 commercial units. The parking lot is located to the front of the building and contains 50 parking spaces. The building is situated in such away that from the front, the first of its 3 stories is partially below grade, with the rear of the building having all 3 stores above grade.

History of the Property:

The commercial building was built in 1989 and consists of 14,273 square feet currently housing 15 commercial units.

Description of the Issue:

The owner/applicant wishes to convert all but 5 of the 15 units to residential dwelling units per the attached plans. The 5 first floor units would remain commercial. No exterior modifications to the

building are proposed. This structure is located in the Business – Local zone.

Applicant’s Special Exception Use Request:

Section 16.6.6 requires the Board of Appeals to use the following process when hearing requests:

§ 16.6.6 Basis for decision.

A. Conditions.

- (1) 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.*

LUDC Section 16.6.4.D.(1) allows the Board of Appeals to “hear, decide and may grant an applicant's special exception use request where authorized in Chapter 16.3 for any application excluded from Planning Board review as stated in § 16.10.3.2, if the proposed use meets the criteria set forth in § 16.6.6, Basis for decision.” Since this property is not in the Shoreland Overlay or Resource Protection Overlay Zones, the special exception use request falls to the Board of Appeals.

- (2) In hearing appeals/requests under this section, the Board of Appeals must use the following criteria as the basis of a decision, that:*

- (a) The proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;*

The use will not prevent the orderly and reasonable use of adjacent properties.

- (b) 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;*

The use will not prevent the orderly and reasonable use of legally established uses in the zone since the use is similar adjoining properties.

- (c) The safety, the health and the welfare of the Town will not be adversely affected by the proposed use or its location; and*

The use will not adversely affect the health and welfare of the Town.

- (d) The use will be in harmony with and promote the general purposes and intent of this title.*

The use is in harmony with Title 16 and promotes its general purposes.

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

- (1) *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;*

The use involved is legally permitted in the zone, per review by Board of Appeals.

- (2) *The conservation of property values and the encouragement of the most appropriate uses of land;*

The proposed dwelling units will be created within the existing structure, which is an appropriate and compatible use of the land.

- (3) *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;*

The space was previously used for business uses, which would have had a higher traffic rate than for a dwelling unit.

- (4) *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;*

The property is connected to adequate sewer systems.

- (5) *Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;*

The proposed use should not produce any obnoxious gases, odors, smoke or soot.

- (6) *Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;*

The use causes no disturbing emission of electrical discharges, dust, light, vibration or noise.

- (7) *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;*

No undue interference should result from this use.

- (8) *The necessity for paved off-street parking;*

Per §16.8.9.4.D each of the 5 professional units are required to have 6 parking spaces and each of the 10 dwelling units are required to have 2. The property

would be required to have 50 parking spaces and currently contains a parking lot with 50 parking spaces.

- (9) *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 persons upon such plot;*

No hazard to life, limb or property should be created by the use.

- (10) *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;*

No overcrowding should result from this use.

- (11) *Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;*

The existing lot is a conforming lot of record.

- (12) *Whether the proposed use will be adequately screened and buffered from contiguous properties;*

Adequate existing vegetation exists.

- (13) *The assurance of adequate landscaping, grading and provision for natural drainage;*

No changes are proposed to the land.

- (14) *Whether the proposed use will provide for adequate pedestrian circulation;*

There are existing sidewalks along State Road.

- (15) *Whether the proposed use anticipates and eliminates potential nuisances created by its location; and*

The proposed uses should not cause any nuisances.

- (16) *The satisfactory compliance with all applicable performance standard criteria contained in Chapters 16.8 and 16.9.*

Other than the request applied by the applicant here, the property conforms to Title 16.8 and 16.9 in its existing state. The applicant must abide by any

conditions placed on the use by the Board of Appeals.

Using the standards and criteria found in the LUDC, Staff recommends APPROVAL of the Special Exception Use request to convert an existing commercial building into mixed used occupancy with the following conditions:

1. A Business Use Change application must be submitted and approved by the Code Enforcement Officer prior to construction starting.
2. A State Construction Permit must be obtained from the Office of the State Fire Marshal prior to construction starting



TOWN OF KITTERY
CODE ENFORCEMENT OFFICE

200 ROGERS ROAD, KITTERY, MAINE 03904
PHONE: (207) 475-1305
FAX: (207) 439-6806

Application to the
BOARD OF APPEALS

DATE SUBMITTED	
MAP & LOT	
ASA FEE	
DATE PAID	
DATE COMPLETE	
HEARING DATE	

MISCELLANEOUS VARIATION REQUEST

I have reviewed Town Code Title 16, Board of Appeals By-Laws, and the Ordinance(s) pertinent to this application. My request is based on Title 6.4.3, Miscellaneous Variation Request and:

- ☒ Nonconformity (Article III of Chapter 16.7);
- ☐ Nonconforming Residential Use in Commercial Zones Expansion (Section 7.3.5.3);
- ☐ Nonconforming Lots of Record (Section 7.3.5.9);
- ☐ Sign Violation and Appeal Standards (Section 8.10.3);
- ☐ Parking, Loading and Traffic Standards (Article IX of Chapter 16.8);
- ☐ Temporary, Intra-Family Dwelling Unit (Article XXI of Chapter 16.8); or
- ☐ Accessory Dwelling Units Standards (Article XXV of Chapter 16.8).

IN ORDER FOR AN APPLICATION TO BE DETERMINED COMPLETE AND SCHEDULED FOR A PUBLIC HEARING:
APPLICATIONS FORMS MUST BE COMPLETE; 10 SETS OF DOCUMENTATION PROVIDED; & ALL FEE(S) PAID

PROPERTY INFORMATION

ADDRESS	3 Old Cutts Rd				
MAP	60	LOT #	17	LOT SIZE	.2 acres
BASE ZONE(S): R-RL			OVERLAY ZONE(S):		
The subject property: [is /is not] in a Shoreland overlay or Resource Protection zone; [is /is not] in a floodplain; AND [does /does not] have outstanding code violations; and, if so, granting this appeal provides resolution .					
PROPERTY OWNER: I have right, title or interest in the affected property, or issue, as shown by:					
NAME(S)	Josephine Robbins				
MAILING ADDRESS	24 Old Dennett Rd South				
CITY	Kittery	STATE	ME	ZIP CODE	03904
PHONE No.	207-439-2618			e-MAIL:	Jorobbins47@gmail.com

NOTE: You may have an attorney represent you, but such representation is not necessary. You may also be represented by a designated agent (e.g. family member, neighbor, engineer, contractor) as you so desire.

APPLICANT (if different) I am an agent of the applicant with standing, as shown by:

NAME(S)	Chris Velardi				
MAILING ADDRESS	1 Vicki Ln				
CITY	South Berwick	STATE	ME	ZIP CODE	03908
PHONE No.	603-667-1424			e-MAIL:	cvelardi23@gmail.com

To the best of my knowledge, all information submitted on and with this application is true and correct.

Date: 11/18/19

By: Chris Velardi
(Signature)
Chris Velardi
(Print Name)

AFFIRMATIONS										
(Please read and check all the boxes to confirm)										
Identify relevant Town code sections:										
TITLE	16	CHAPTER	16.3	SECTION	2.1					PAGE
TITLE		CHAPTER		SECTION						PAGE
TITLE		CHAPTER		SECTION						PAGE

I understand that the Board of Appeals:

- ☒ May hear and decide on a miscellaneous variation request within the limitations set forth in the Title 16 Section identified in Item A-H on Page 1.
- ☒ Appears to have jurisdiction to hear this request; hearing must be held within 30 days of this request filing; application must be complete; and, public and abutter notice must be made no less than seven days prior to the scheduled hearing.
- ☒ Will conduct this hearing De Novo (meaning the Board acts if it were considering the question for the first time, affording no deference to the preceding agency decisions; may receive new evidence and testimony consistent with this Town Code Title 16 and the Board rules; and, conduct additional hearings and receive additional evidence and testimony).
- ☒ Will determine my Burden of Proof:

1) What does the ordinance/statute require the applicant to prove?

2) Does the ordinance/statute prohibit or limit the type of use being proposed?

3) What factors must be considered under ordinance/statutes to decide whether to grant the request?

4) Is the evidence presented substantial? Is it credible? Is it outweighed by conflicting evidence?
- ☒ Requires substantial evidence as the Standard of Review for this request, meaning:

"More than a mere scintilla". It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The preponderance of evidence standard is met if the proposition is more likely to be true than not true. The standard is satisfied if there is greater than fifty percent chance that the proposition is true.
- ☒ May hear, decide, and approve variations in accordance with the criteria listed in Town Code Title 16, Sections 6.6.1, Factors, and 6.6.2, Considerations; and may consider other Title 16 standards.
- ☒ Approval may not be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any state law which the municipality is responsible for enforcing.
- ☒ Is only legally authorized to deal with issues arising from the list above, and do not include such matters as constitutionality, civil rights, criminal acts, property disputes, surliness, etc.
- ☒ Will not even hear my appeal unless I can show that I have “standing” to have my complaint heard;
- ☒ Purpose of establishing my case for “standing” is to limit appeals on an issue to those who are directly involved and/or affected.
- ☒ Will try to decide my case based only on the factual information presented and what is written in the pertinent Town ordinance/regulation, State statute(s)/regulation(s) and the rulings of the rulings of the State Supreme Judicial Court.
- ☒ Tries to make decisions it believes would be upheld if appealed to Superior Court.

Additional Information

1. Please complete this application in its entirety. You may add other information as may be needed to adequately describe the purpose of seeking relief from the Board of Appeals.

2. A detailed plot plan or diagram must be provided showing dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings or alterations, and any natural or topographic features (wetlands, streams, etc) of the lot in question. This plot plan should also include the distances to the nearest structures on abutting properties and show the detail of any rights-of-way, easements, or other encumbrances.

3. Blueprints, surveys, photos and other documents may be helpful in explaining your request and should be included.

STATEMENT:

Describe the general nature of the request:

We would like to remove the existing exterior deck and build in its place a one story kitchen addition. The addition will not exceed the extents of the current western facade setback(frontage) nor the southern facade extents, and will blend with and compliment the existing structure aesthetic. We would also like to add a stair to the Eastern facade off the Northeast bedroom. This stair will be held well within the existing setback.

Index:

S01 Site plan
A01 Floorplans
A02 Elevations 01
A03 Elevations 02
A04 Photos



Proposed Addition to
the **Palos Residence**
3 Old Cutts Road, Kittery, ME

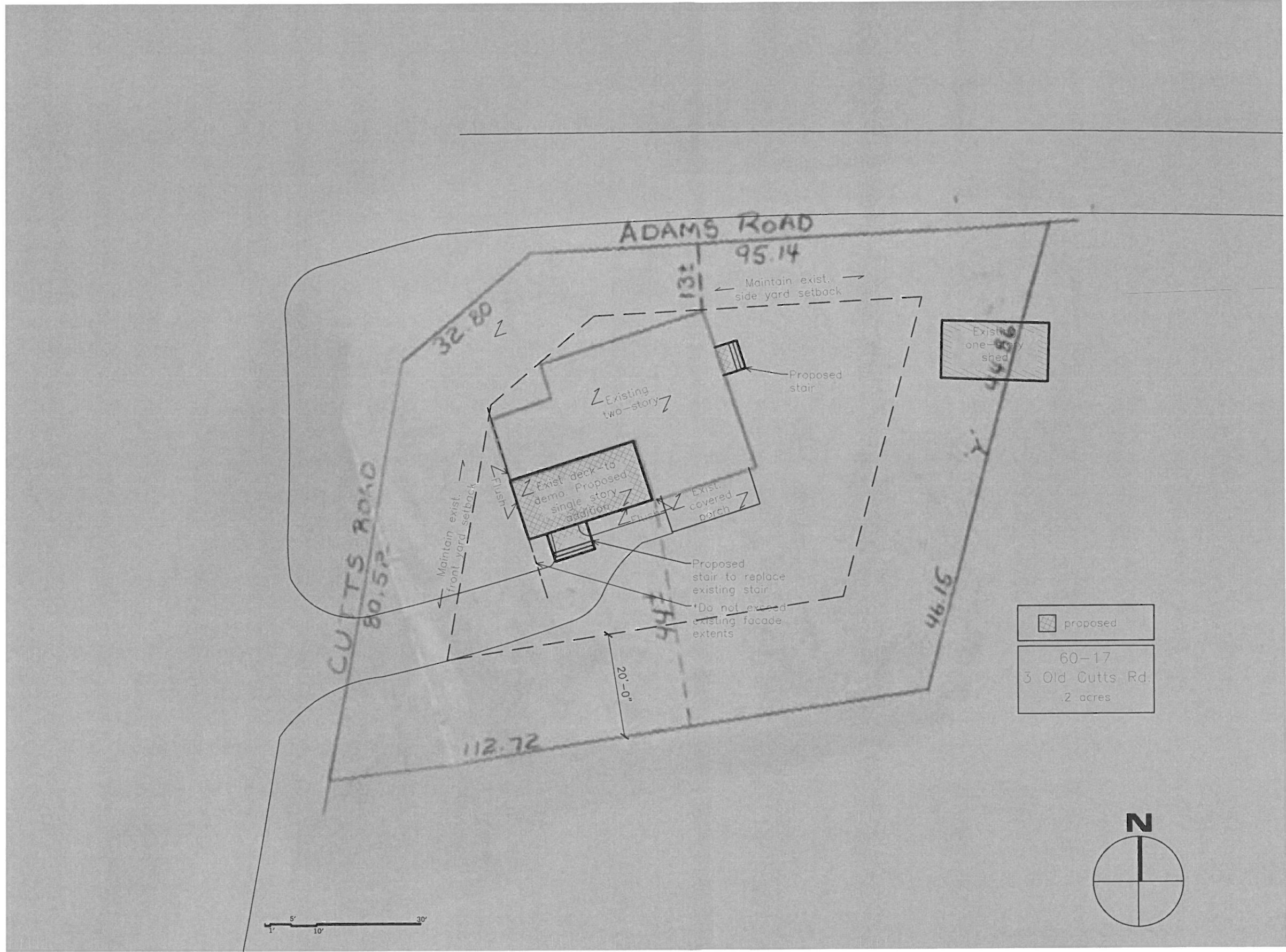
Title Sheet

Date: 11.18.2019

Scale: not to scale

Proposed Addition to
the **Palos Residence**
3 Old Cutts Road, Kittery, ME

owner: Jessica Palos 603.205.9882
draftsman: Chris Velardi 603.667.1424
builder: Paul Audete 207.451.8148



owner: Jessica Palos 603.205.9882
draftsman: Chris Velardi 603.667.1424
builder: Paul Audete 207.451.8148

Proposed Addition to
the **Palos Residence**
3 Old Cutts Road, Kittery, ME

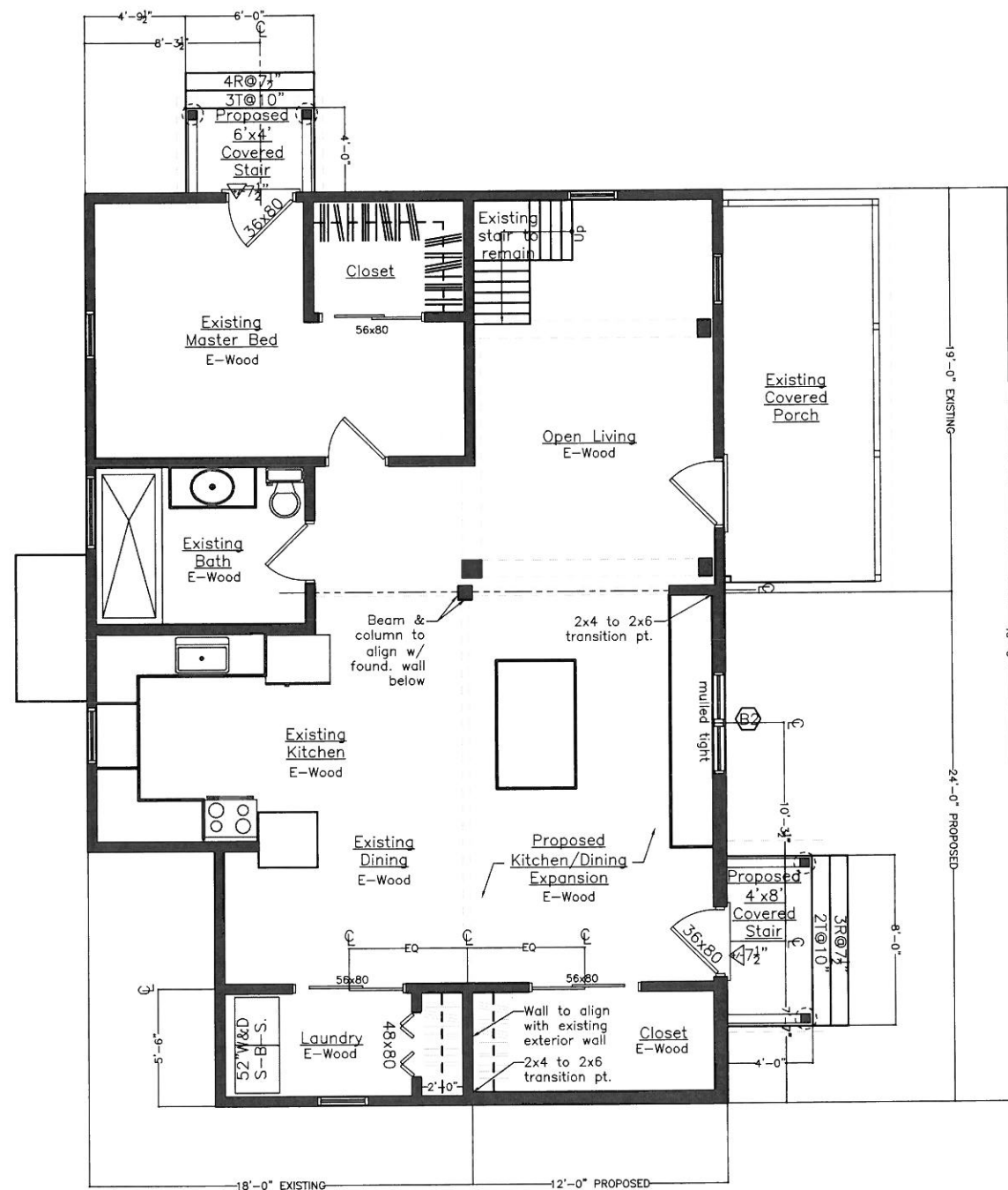
Site Plan

Date: 11.18.2019

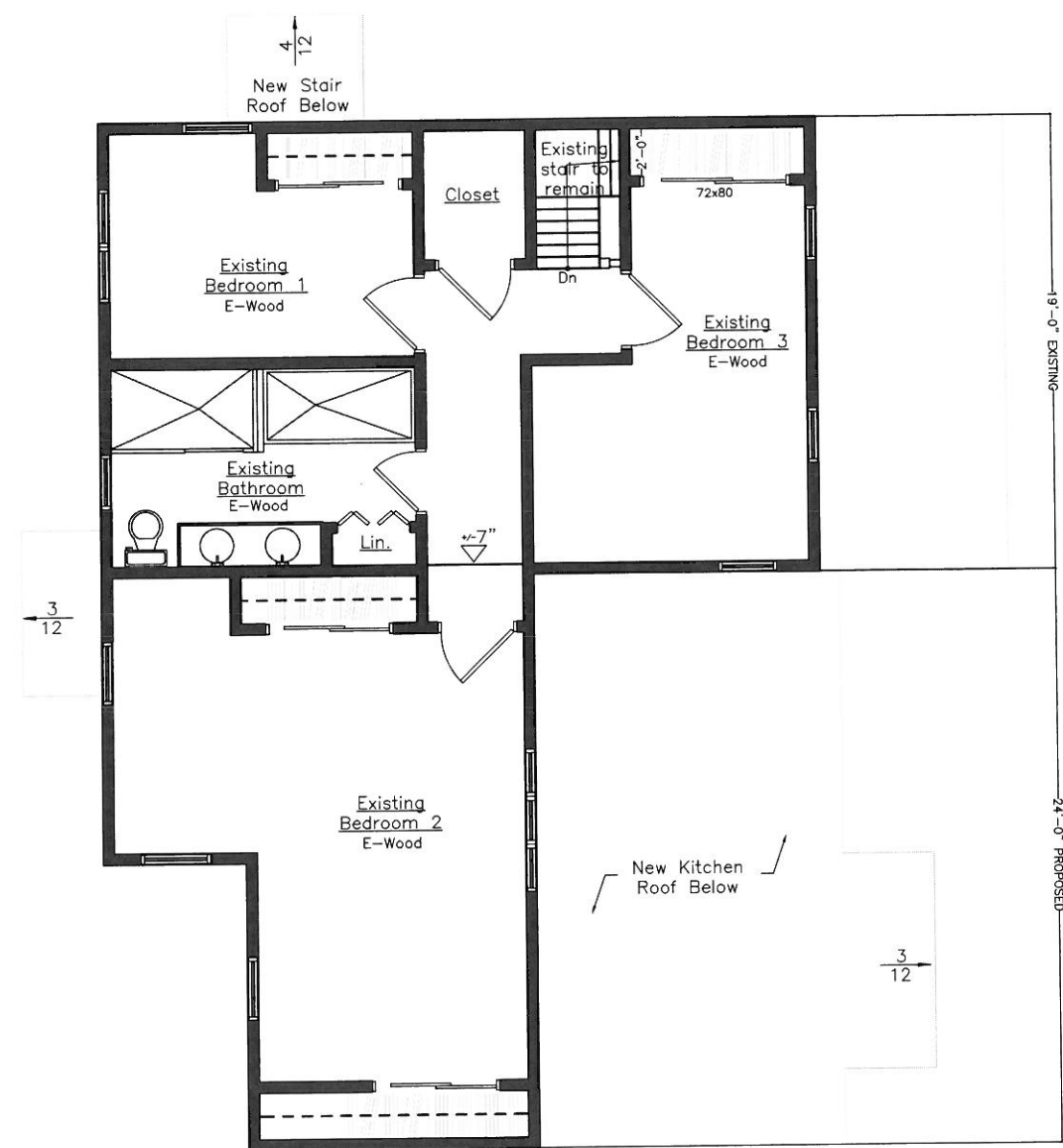
Scale: 1"=20'-0"

1 of 5

S01



First Floor Plan
1/8"=1'-0"



Second Floor Plan
1/8"=1'-0"

owner: Jessica Palos 603.205.9882
draftsman: Chris Velardi 603.667.1424
builder: Paul Audete 207.451.8148

Proposed Addition to
the **Palos Residence**
3 Old Cutts Road, Kittery, ME

Floor Plans

Date: 11.18.2019 Scale: 1/8"=1'-0"

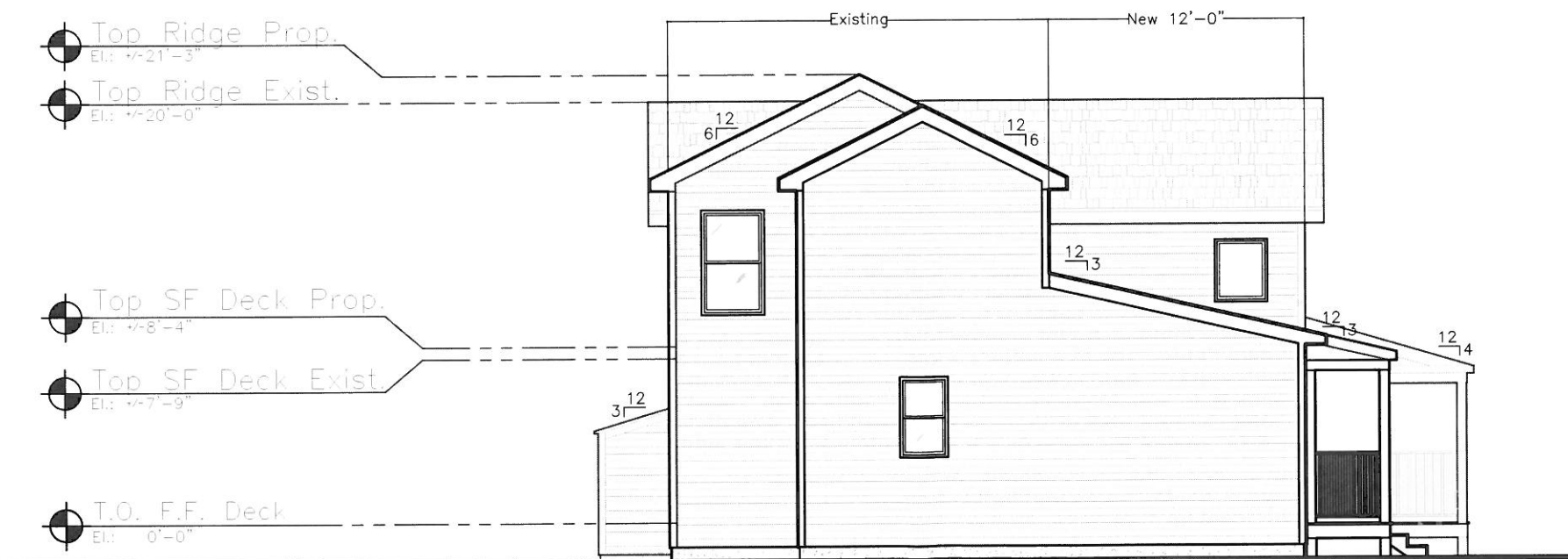
2 of 5

A01



South Elevation

$\frac{1}{8}" = 1'-0"$



West Elevation

$\frac{1}{8}" = 1'-0"$

owner: Jessica Palos 603.205.9882
 draftsman: Chris Velardi 603.667.1424
 builder: Paul Audete 207.451.8148

Proposed Addition to
 the **Palos Residence**
 3 Old Cuffs Road, Kittery, ME

Elevations 01

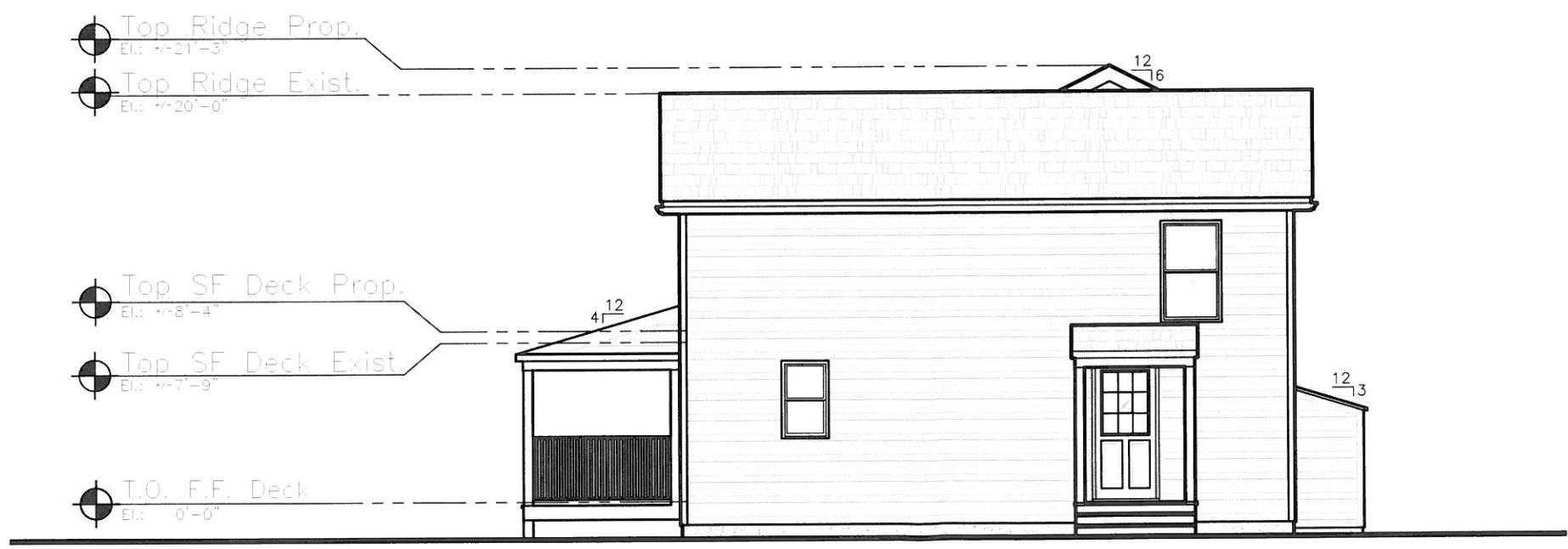
Date: 11.18.2019 Scale: as noted

3 of 5

A02



North Elevation
1/8" = 1'-0"

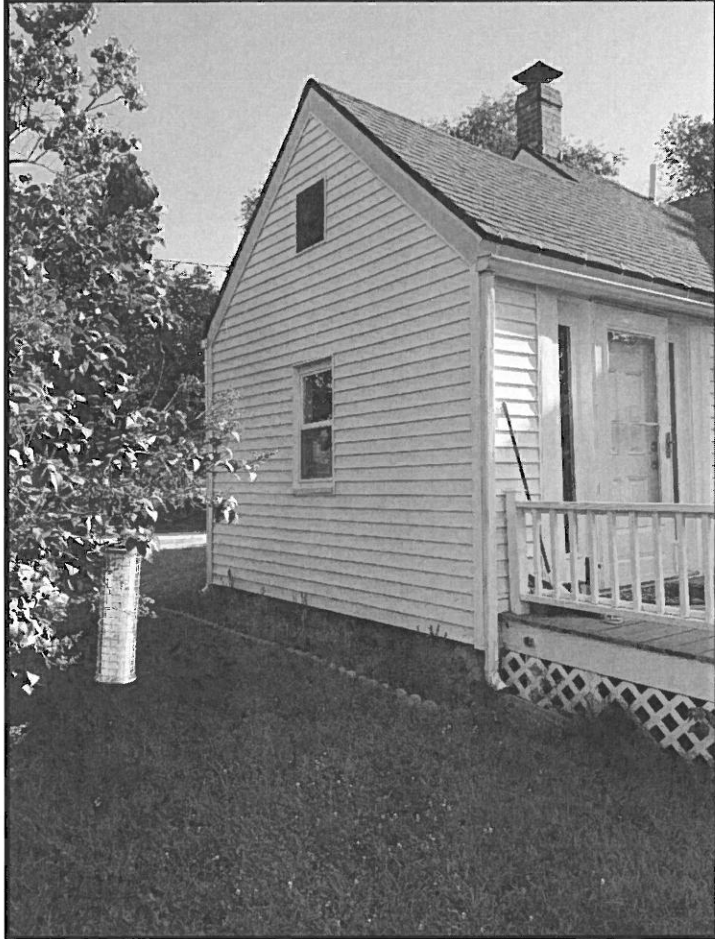
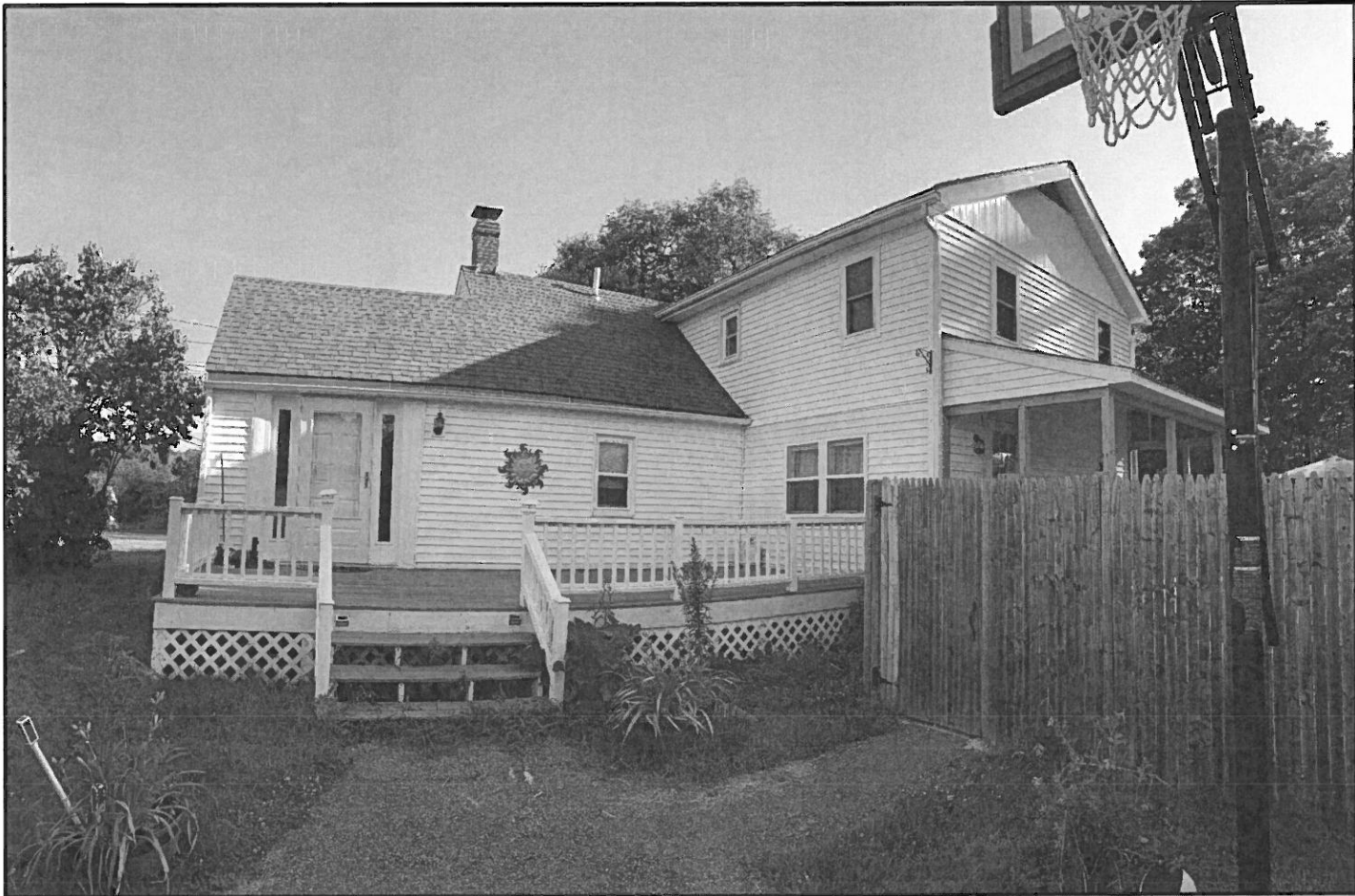


East Elevation
1/8" = 1'-0"

owner: Jessica Palos 603.205.9882
draftsman: Chris Velardi 603.667.1424
builder: Paul Audete 207.451.8148

Proposed Addition to
the Palos Residence
3 Old Cuffs Road, Kittery, ME

Elevations 02
Date: 11.18.2019
Scale: as noted



owner: Jessica Palos 603.205.9882
draftsman: Chris Velardi 603.667.1424
builder: Paul Audete 207.451.8148

Proposed Addition to
the **Palos Residence**
3 Old Cutts Road, Kittery, ME

Photos

Date: 11.18.2019 Scale:

5 of 5

A04

MORTGAGE INSPECTION PLOT
(CERTIFIED PLOT PLAN)

FOR
BANKEAST MORTGAGE CORPORATION

LOCUS: CUTTS ROAD
KITTERY, ME

SCALE: 1" = 20'
DATE: DECEMBER 1985

PARKER SURVEY ASSOC., INC.
EXETER & SEABROOK, N.H.

FOR MORTGAGE LENDING PURPOSES ONLY.
NOT TO BE DEEMED A BOUNDARY SURVEY.
LOT CONFIGURATION DERIVED FROM:

- ☒ PREVIOUS SURVEY (Y.C.R. 88-48) ☐ TAX MAP
- ☐ DEED
- ☐ OTHER
- ☐ APPARENT OCCUPATION

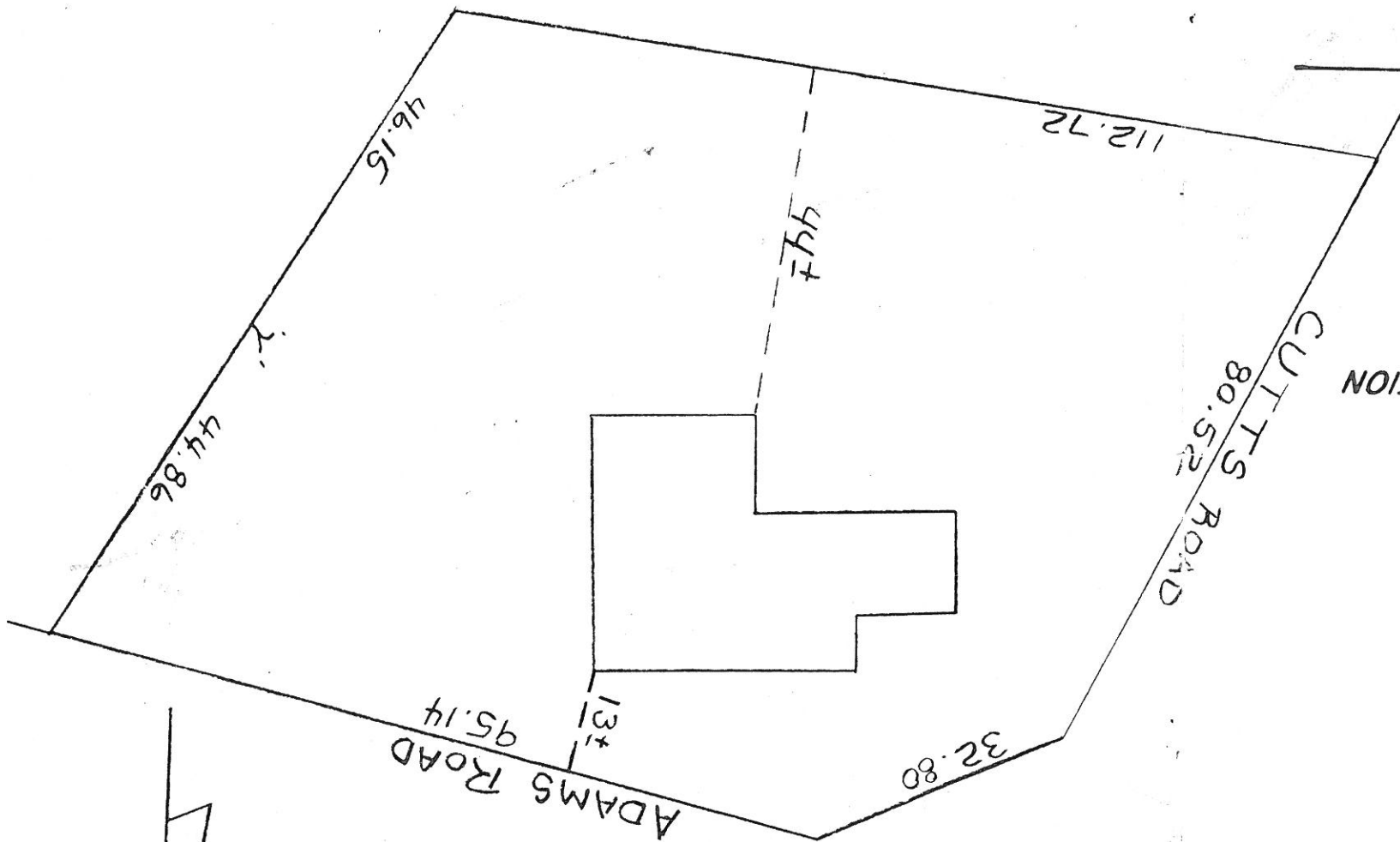
I HEREBY CERTIFY TO THE **BANKEAST MORTGAGE CORPORATION** AND ITS INSUROR THAT THE DWELLING LOCATION IS SUBSTANTIALLY AS SHOWN ON LOT OF RECORD; THAT THERE ARE NO APPARENT EASEMENTS OR ENCROACHMENTS EXCEPT AS INDICATED: NONE APPARENT

THAT THE DWELLING LOCATION ☒ IS ☐ IS NOT IN COMPLIANCE WITH ZONING AT THE TIME OF CONSTRUCTION; AND THAT THE DWELLING ☐ DOES ☒ DOES NOT LIE WITHIN A FEDERALLY DESIGNATED FLOOD HAZARD ZONE



RICHARD K. PARKER, JR.

NO FURTHER REPRESENTATIONS ARE EITHER EXPRESSED OR IMPLIED.



COMMENTS:



PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT

BOA Meeting Date: December 10, 2019

Item #: MVR2019-11

STAFF REPORT – 3 OLD CUTTS ROAD – MISCELLANEOUS VARIATION REQUEST

Project Name: 3 Old Cutts Road

Applicant: Chris Velardi

Owner: Josephine Robbins

Proposed Development: Addition to a non-conforming structure

Requests: Miscellaneous Variation Request to expand a non-conforming structure in the Residential – Rural (R-RL) zone per Section 16.6.4.C(1).

Site Addresses: 3 Old Cutts Road

Map & Lot Numbers: M 60 L 17



Current Zoning:

Residential – Rural (R-RL) - This zoning district is intended to protect the prevailing rural character of the Town and its natural rural quality from development sprawl by prescribing the most appropriate uses and standards.

The following uses are permitted in the Residential – Rural (R-RL) Zone: (1) Dwellings or modular homes, exclusive of mobile homes. The proposed use is permitted by right.

Staff Recommendation: APPROVAL of miscellaneous variation request.

District Standards:

Residential – Rural Zoning District Standards			
Land Area per Dwelling (min.)	40,000	Front Yard Setback (min.)	40 feet
Maximum Building Coverage	25%	Rear Yard Setback (min.)	20 feet
Lot Size (min.)	40,000 sf	Side Yard Setback (min.)	20 feet

Current Use: Dwelling unit, occupied house

Surrounding Land Uses:

West: Residential – Residential Rural (R-RL). dwelling unit
East: Residential – Residential Rural (R-RL). dwelling unit
North: Residential – Residential Rural (R-RL). dwelling unit
South: Residential – Residential Rural (R-RL). dwelling unit

Future Land Use:

The subject property is located within the “Limited Growth” area on the future land use map which is defined as land where the town would like to discourage growth and development in order to protect natural resources and limit the expansion of public utilities, services, and infrastructure.

Site Description:

The subject property consists of an 8,712 square foot lot (.2 acres), located along the eastern right-of-way of Old Cutts Road, off of Cutts road. The property is a non-conforming lot of record as it does not meet the minimum land area or the street frontage. The property is a corner lot and thus a 40-foot front setback is measured from both sections of Old Cutts Road.

History of the Property:

The property contains one dwelling built in approximately 1900. The existing building violates one of the front setbacks as it is located 13 feet from the property line, where 40 feet is required. The rest of the property conforms to the zoning setbacks.

Description of the Issue:

The applicant proposes to remove and existing exterior deck and build in its place a one-story kitchen addition. The addition will remain conforming to the front setback. Additionally, a stair set is proposed to be added to the eastern side of the building. Both additions will be constructed within the building envelope of the property and will not make the structure more non-conforming.

Applicant’s Miscellaneous Variation Request:

Section 16.6.6 requires the Board of Appeals to use the following process when hearing requests:

§ 16.6.6 Basis for decision.

A. Conditions.

- (1) *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.*

LUDC Section 16.6.4.C.(1) allows the Board of Appeals to decide variations for nonconformities covered in Section 16.7.3. Further, Section 16.7.3.5.A.(1) states, “Nonconforming lots. In any district, notwithstanding limitations imposed by other sections of this title, single noncontiguous lots legally created when recorded may be built upon consistent with the uses in the particular zone. These provisions apply even though such lots fail to meet the minimum requirements for area or width, or both, which are applicable in the zone, provided that yard dimensions and other requirements, not involving area or width, or both, of the lot conform to the regulation for the zone in which such lot is located. Relaxation of yard and other requirements not involving area or width may be obtained only through miscellaneous variation request to the Board of Appeals.”

- (2) *In hearing appeals/requests under this section, the Board of Appeals must use the following criteria as the basis of a decision, that:*

- (a) *The proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;*

Staff believes the use will not prevent the orderly and reasonable use of adjacent properties since adjacent properties are zoned Residential – Rural and contain the same dwelling use as the subject property.

- (b) *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;*

Staff believes the use will not prevent the orderly and reasonable use of legally established uses in the zone since the use is the same as adjoining properties and there are no use restrictions among adjacent dwelling units.

- (c) *The safety, the health and the welfare of the Town will not be adversely affected by the proposed use or its location; and*

Staff believes the use will not adversely affect the health and welfare of the Town.

- (d) *The use will be in harmony with and promote the general purposes and intent of this title.*

Staff believes the use is in harmony with Title 16 and promotes its general purposes.

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

- (1) *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;*

The proposed use involved is allowed in the zone by right.

- (2) *The conservation of property values and the encouragement of the most appropriate uses of land;*

The proposed expansion is an appropriate use of the land. The proposed expansion would not be detrimental to property values.

- (3) *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;*

There is no proposed increase in density that would result in additional vehicular traffic.

- (4) *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;*

The property contains an adequate septic system. The proposed addition should not add any additional effluent.

- (5) *Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;*

The proposed use produces no obnoxious gases, odors, smoke or soot.

- (6) *Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;*

The proposed use causes no disturbing emission of electrical discharges, dust, light, vibration or noise.

- (7) *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;*

No undue interference should result from this use.

- (8) *The necessity for paved off-street parking;*

The project proposes to construct adequate space for off-street parking.

- (9) *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 persons upon such plot;*

No hazards should result from this use.

- (10) *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;*

No overcrowded should result from this use.

- (11) *Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;*

The existing lot is a legal, non-conforming lot of record.

- (12) *Whether the proposed use will be adequately screened and buffered from contiguous properties;*

The project will not change the existing landscaping, which does provide for some buffering from neighboring lots.

- (13) *The assurance of adequate landscaping, grading and provision for natural drainage;*

The project does not propose any grading changes.

- (14) *Whether the proposed use will provide for adequate pedestrian circulation;*

The proposed project will not change the site plan of the property.

- (15) *Whether the proposed use anticipates and eliminates potential nuisances created by its location; and*

No new nuisances are expected from the continuation of the dwelling use.

- (16) *The satisfactory compliance with all applicable performance standard criteria contained in Chapters 16.8 and 16.9.*

Other than the miscellaneous variation request filed here, the proposed use and

site plan appear to conform to Title 16.8 and 16.9, subject to Planning Board review and approval.

Using the standards and criteria found in 16.6.6 of the LUDC, Staff recommends **APPROVAL** of the miscellaneous variation request to reduce the setbacks as proposed.

MEETING MINUTES

1. CALL TO ORDER; INTRODUCTORY; ROLL CALL

Vice Chair Louis Leontakianakos called the meeting to order at 6:31 p.m. and asked that the roll be called.

Board Members Present: Vern Gardner, Charles Denault III, April Timko, Suzanne Dwyer-Jones, Louis Leontakianakos

Board Members Absent: Jeff Brake, Barry Fitzpatrick

Staff Present: Craig Alfis, Code Enforcement Officer

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

- Motion by Mrs. Timko to amend the agenda to remove ACCEPTANCE OF PREVIOUS MINUTES as the previous meeting minutes have not been provided. Seconded by Ms. Dwyer-Jones. Motion passed 5-0-0 by roll call vote [Aye: Gardner, Denault, Timko, Dwyer-Jones, Leontakianakos; Nay: --; Abstain: --;]

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

- a. **Darlene Hudson Owner, 17 Picott Road, requesting a Special Exception Use for a Major Home Occupation to operate a wood cutting business in the Residential – Rural (R-RL) zone, per Section 16.3.2.1C and Section 16.8.22.3 of the Town Code.**
- The applicant was invited to the podium and it was explained that the Board did not have all members present and that they would have the option to have their request continued to the next meeting should they choose. The applicant declined. Mr. Alfis presented the staff report. The applicant was given the opportunity to state the details of their request. The Board had several questions for the applicant. The public were invited to comment. One abutter and one resident spoke out against the proposed Major Home Occupation. The applicant was invited back to the podium for rebuttal. The Board entered into discussion.

Motion by Mrs. Timko to deny the Special Exception Use request for a Major Home Occupation to operate a wood cutting business in the Residential - Rural zone for failure to meet the requirements of a Major Home Occupation and the standards of review. Seconded by Ms. Dwyer-Jones. Discussion ensued. Motion passed 4-0-1 by roll call vote [Aye: Denault, Timko, Dwyer-Jones, Leontakianakos; Nay: ; Abstain: Gardner]

The applicant was notified of their legal standing to appeal.

Mrs. Timko read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) Darlene Hudson, owner of 17 Picott Road, requested a Special Exception Use per code section 16.3.2.1.C.(7) seeking approval for a Major Home Occupation to operate a wood cutting business. (2) The property is at Map 46 Lot 01 in the Residential Rural zone. (3) The property consists of .69 acres. (4) The owner/applicant proposed to operate a wood cutting business Monday through Sunday, 8 am to 3 pm. (5) The applicant provided no information about the potential for odors, noise emissions or any plans to reduce or screen for the noise emissions. (6) The applicant did not provide any information about space for off street parking or traffic and parking overflows. (7) The applicant did provide any information about vegetation for the purpose of screening. (8) Two members of the public testified against the proposed use.

Conclusions of Law: (1) Section 16.6.4.D.1 allows the Board of Appeals to hear, decide and may grant applicant’s special exception use request where authorized for any application excluded from Planning Board review as stated in §16.10.3.2, if the proposed use meets the criteria set forth in §16.6.6, Basis for Decision. (2) Since the property was not in the Shoreland Overlay or Resource Protection Overlay zones this Special Exception Use request was considered by the Board of Appeals. (3) The Board considered the factors set forth in 16.6.6, Basis for Decision. (4) In addition, the Board considered the standards set forth in 16.8.22.3, Major Home Occupation Standards. In particular, the Board considered the standards related to Subsection D: Business Hours, Subsection E: Nuisances, Subsection F: Parking, and Subsection J: Traffic. (5) The Board found that the proposed use did not meet the criteria for approval and the Special Exception Use request was denied.

Motion to accept the Findings of Fact and Conclusions of Law made by Mr. Gardner. Seconded by Mr. Denault. Motion passed 5-0-0 by roll call vote [Yes: Denault, Gardner, Timko, Dwyer-Jones, Leontakianakos; Nay: --; Abstain:--]

**b. David and Cheri Richard, Owners, 3 Cranberry Lane, requesting a
Miscellaneous Variation Request for the expansion of a nonconforming**

structure to add a Temporary, Intra-Family Dwelling Unit in the Residential – Rural (R-RL) zone, per Section 16.3.2.1C, Section 16.7.3.3B and Section 16.8.21.1 of the Town Code

- Mr. Alfis presented the staff report. The applicant was given the opportunity to state the details of their request. The Board had several questions for the applicant. It was determined that an internal connection between the two dwelling units was not practicable.

Motion by Mr. Gardner to approve the applicants Miscellaneous Variation Request per Code Section 16.7.3 for the expansion of a nonconforming structure to add a Temporary, Intra-Family Dwelling Unit with the following conditions:

1. The applicant must annually submit a signed and dated certification by January 15 of each year to both the Code Enforcement Officer and the Board of Appeals that the temporary intrafamily dwelling unit is occupied by either a:
 - a. Person(s) related by blood or marriage within the sixth degree to an occupant of the property;
 - b. Personal care provider(s) to an occupant on the property;
 - c. Personal care receiver(s) from an occupant of the property; or
 - d. Person(s) with a demonstrably familial type relationship to an occupant of the property.
2. Upon a permanent vacancy of the temporary intrafamily dwelling unit or the applicant no longer residing on the premises, the use of the property must be converted to its original dwelling status or another conforming permanent use.
3. Reapplication to the BOA upon a change in ownership or the property.
4. Joint signature of submitted floor plans by the applicant and a representative of the BOA signifying the approved design of the temporary intrafamily dwelling unit, and the manner to convert the use of the property to its original dwelling status or another conforming permanent use.

Motion was seconded by Mr. Denault. Motion passed 5-0-0 [Yes: Gardner, Denault, Timko, Dwyer-Jones, Leontakianakos; No: -- ; Abstain: --]

Mrs. Timko read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) The applicant David & Cheri Richard requested a Miscellaneous Variation Request per code section 16.7.3 for the expansion of a nonconforming structure to add a Temporary, Intra-Family Dwelling Unit at Map 68 Lot 10-D in the Residential – Rural zone. (2) The property is located in the Shoreland Overlay zone. (3) The applicant proposes to construct a 576 square foot single story addition connected to the existing garage. (4) The proposed structure will be nonconforming to the wetland setbacks but no more nonconforming than the existing structure. (5) A letter from Michael Cuomo, soil scientist, was submitted. (6) The Board found that the internal connection between the two dwelling units was not practicable. (7) There would be no separate utility metering. (8) The Board considered the standards for Temporary, Intra-family Dwelling Units set forth in 16.8.21.2. (9) The Board approved the Miscellaneous Variation Request with the conditions set out in Code Section 16.8.21.3.

Conclusions of Law: (1) The Board considered the factors set forth in 16.6.6, Basis for Decision and the factors set forth in 16.8.21.3, Temporary, Intra-Family Dwelling Units and (2) the Board determined that the applicant met the requirements and the request was approved.

Motion to accept the Findings of Fact and Conclusions of Law made by Mr. Denault.
Seconded by Mr. Gardner. Motion passed 5-0-0 by roll call vote [Yes: Denault,
Gardner, Timko, Dwyer-Jones, Leontakianakos; Nay: --; Abstain:--]

6. UNFINISHED BUSINESS
7. NEW BUSINESS
8. ACCEPTANCE OF PREVIOUS MINUTES
9. BOARD MEMBER OR CEO ISSUES OR COMMENT

- Mr. Gardner noted that workshops are required to be noticed.

10. ADJOURNMENT

Motion by Mrs. Timko to adjourn. Second by Ms. Dwyer-Jones. Motion passed 5-0-0 by voice
vote [Aye: Denault, Gardner, Timko, Dwyer-Jones, Leontakianakos, Brake; Nay: --; Abstain: --]

The Kittery Board of Appeals meeting of October 22, 2019 adjourned at 7:39 p.m.

Submitted by Craig Alfis, Code Enforcement Officer

Disclaimer: The preceding minutes constitute the author’s understanding of the meeting. While every effort has been made to ensure the accuracy of the information, the minutes are not intended to be a verbatim transcript of comments at the meeting but only a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>.

MEETING MINUTES

1. CALL TO ORDER; INTRODUCTORY; ROLL CALL

Chair Jeff Brake called the meeting to order at 6:30 p.m. and asked that the roll be called.

Board Members Present: Vern Gardner, Charles Denault III, April Timko, Barry Fitzpatrick, Louis Leontakianakos, Jeff Brake

Board Members Absent: Suzanne Dwyer-Jones

Staff Present: Craig Alfis, Code Enforcement Officer

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

- a. **Wade Blake, on behalf of owner James Powers, 5 Hutchins Cove Drive, requesting a Variance build an addition within the rear setback to an existing structure in the Residential – Rural (R-RL) zone, per Section 16.6.4.B of the Town Code**
- Mr. Gardner disclosed that he had previously worked with Mr. Pelech, representative for Mr. Powers and requested to recuse himself. Mr. Alfis presented the staff report. The Board had several questions for Mr. Alfis. Mr. Alfis also relayed correspondence from an abutter, Mr. Cititaresse, who spoke in favor of the applicant’s request. The applicant’s representative was given the opportunity to state the details of their request. The Board had several questions for Mr. Pelech. The owner, Mr. Powers and the applicant, Mr. Blake spoke on behalf of the request. The public were invited to comment. One abutter spoke in favor of the variance request. The Board entered into discussion.

Motion by Mrs. Timko to grant the variance request to build an addition in the rear setback to an existing structure in the Residential - Rural zone, as presented to the Board. Seconded by Mr. Denault. Discussion ensued. Motion failed 0-5-0 by roll call vote [Yes: --; No: Denault, Timko, Fitzpatrick, Leontakianakos; Brake; Abstain: --]

Mrs. Timko read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) Wade Blake, on behalf of owner James Powers, 5 Hutchins Cove Drive, requesting a Variance build an addition within the rear setback to an existing structure in the Residential – Rural (R-RL) zone. (2) An attorney presented the case for the applicant. (3) The applicant proposed to construct an 18x22 addition to the rear of the existing structure. (4) The new addition would encroach 7 feet into the rear setback of the property. (5) The rear setback would be reduced from 20 feet down to 13 feet. (6) The presentation included information about the proposed use of the addition, the lot size and configuration. (7) One abutter spoke in favor of the proposal.

Conclusions of Law: (1) The Board considered the requirements set out in Section 16.6.4.B(c). (2) The Board found that the request did not meet the requirement of an undue hardship, specifically that the land in question could not yield a reasonable return unless a variance is granted and that the hardship was not the result of action taken by the applicant or prior owner. (3) The request for a variance was denied by a vote of zero in the affirmative to five in the negative.

Motion to accept the Findings of Fact and Conclusions of Law made by Mr. Leontakianakos. Seconded by Mr. Denault. Motion passed 5-0-0 by roll call vote [Yes: Denault, Timko, Fitzpatrick, Leontakianakos, Brake; Nay: --; Abstain:--]

The applicant was notified of their legal standing to appeal.

- b. **Erin Sherman, on behalf of tenant Mitchell Delaney, 120 State Road, requesting a Special Exception use for a Major Home Occupation to operate as a medical marijuana primary caregiver in the Business – Local (B-L) zone, per Section 16.3.2.8 and Section 16.8.22.3 of the Town Code.**

Mr. Gardner rejoined the meeting at 7:02.

- There was much discussion from the Board on who presents their information first: the applicant or the CEO. Mr. Gardner contended that the applicant goes first. The Chair and majority of the Board contended that the CEO present the staff report first. Mr. Alfis presented the staff report. The applicant's representation, Ms. Sherman presented the details of the request. The Board had several questions for the applicant and tenant. Mr. Delaney was invited to answer the Boards questions. There was much discussion about potential parking issues.

Motion by Mrs. Timko to approve the applicants Special Exception Use Request per Code Section 16.8.22.3 for a Major Home Occupation as a marijuana primary caregiver with the following conditions:

1. The owner must abide by all provisions of Maine State Law on medical marijuana licensed caregivers, 22 M.R.S. § 2425.
2. The applicant must be a resident of the 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.
3. The maximum total amount of square footage attributed to the home occupation use must not exceed 1,257 square feet.
4. There must be no more than five adults, inclusive of residents of the premises, working in the home occupation at the site at any one time.
5. No other major home occupations may be conducted on the premises while operating as a licensed medical marijuana caregiver.
6. 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 7:00 p.m. and 7:00 a.m. The applicant must submit a plan that provides safe and sufficient off-street parking to meet the needs of the business and prevent parking from overflowing off the site.
7. If there is any outdoor storage of equipment, vehicles or items associated with the home occupation must be screened from view of abutting properties and from all streets except for one (1) vehicle used in conjunction with the home occupation and vehicles owned by residents of the premises with valid license plates.
8. All business activities on the site must take place within an enclosed building.
9. All refuse and recyclables must be stored in containers that are screened from view of abutting properties and from streets.
10. Upon approval of a major home occupation by the Board of Appeals and compliance with the above conditions, the Code Enforcement Officer is authorized to issue a certificate of occupancy permit for not more than a one-year time period. Such permit may be renewed annually upon application to the Code Enforcement Officer. The annual permit may be renewed only if the Code Enforcement Officer finds the major home occupation complies with all applicable standards of this Code and any conditions required by the Board of Appeals in the original approval.

Motion was seconded by Mr. Fitzpatrick. Motion passed 6-0-0 [Yes: Gardner, Denault, Timko, Fitzpatrick, Leontakianakos Brake; No: -- ; Abstain: --]

Mrs. Timko read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) Attorney Erin Sherman submitted an application on behalf of Mitchell Delaney for a Special Exception Use per Code Section 16.8.22.3 seeking approval for a Major Home Occupation as a medical marijuana primary caregiver to be located at 120 State Road. (2) The Board found they had authority to hear the Special Exception Use pursuant to Code 16.1.5.B.6(e). (3) The premise is located in the Business Local zone. (4) The property is a legal conforming lot containing one single family dwelling with attached garage with approximately 2,517 total square feet. The residential living space on the first floor consists of three bedrooms of 1,477 square feet. (5) Mr. Delaney will reside there full time. (6) The Major Home Occupation would be in the basement which consists of the garage and a small room and at 858 square feet would be approximately 1/3 of the total square footage. (7) Mr. Delaney is the sole employee but may employ others in the future. (8) Mr. Delaney is a registered primary caregiver in the State of Maine. (9) Business activities would be conducted indoors. (10) Marijuana would not be grown at this location. (11) A parking plan has been submitted. (12) The Board considered the standards for a Major Home Occupation set forth in 16.8.22.3, and (13) the general requirements for the Basis of Decision set forth in Code 16.6.6. (14) The Board found that the proposed use meets the requirements set out for a Major Home Occupation and approved the request (15) This request was noticed in the Portsmouth Herald on November 19, 2019.

Conclusions of Law: (1) The Board had authority to hear the request under Section 16.1.5.B.6(e) and 16.8.22.3. (2) The Board found that the applicant met the requirements and standards and (3) approved the request by a vote of six in the affirmative with one member absent.

Motion to accept the Findings of Fact and Conclusions of Law made by Mr. Leontakianakos. Seconded by Mr. Denault. Motion passed 6-0-0 by roll call vote [Yes: Denault, Gardner, Timko, Fitzpatrick, Leontakianakos, Brake; Nay: --; Abstain:--]

The Board was notified of their right to reconsider and the public was notified of their right to appeal.

6. UNFINISHED BUSINESS

7. NEW BUSINESS

- Mr. Leontakianakos noted that elections for Board officers were coming up. Chair Brake announced they would be held on the meeting of December 10, 2019.

8. ACCEPTANCE OF PREVIOUS MINUTES

- October 8, 2019
Motion made by Mr. Denault to accept the minutes of October 8, 2019 as submitted. Seconded by Mr. Fitzpatrick. Motion passed 6-0-0 by roll call vote [Yes: Denault, Gardner, Timko, Fitzpatrick, Leontakianakos, Brake; Nay: --; Abstain:--]
- October 22, 2019
Motion made by Mr. Leontakianakos to accept the minutes of October 22, 2019 as submitted. Seconded by Mr. Denault. Discussion ensued. Mrs. Timko pointed out that the Findings of Fact and Conclusions of Law were missing from the minutes for Agenda Item 1. Mrs. Timko proposed to amend the motion to postpone the acceptance until the minutes could be corrected. Amendment seconded by Mr. Denault. Motion failed 3-0-3 by roll call vote [Yes: Denault, Timko, Leontakianakos; Nay: --; Abstain: Gardner, Fitzpatrick, Brake]

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

- Mr. Denault stated that Mr. Gardner's behavior is absolutely unbecoming and inappropriate for this Board and will be making a recommendation to the Town Council as well as the Town Manager for his removal.
- Mr. Alfis informed the Board that the 2020 meeting calendar would be submitted for review at the next meeting.
 - It was also noted that the only meeting in December is on the 10th.
- Mr. Fitzpatrick voiced his agreement with Mr. Denault's statement about Mr. Gardner.
- Chair Brake stated that he will be speaking with both the Town Manager and Chair Spiller tomorrow concerning the issues at the meeting.

10. ADJOURNMENT

Motion by Mr. Fitzpatrick to adjourn. Second by Mr. Gardner. Motion passed 6-0-0 by voice vote [Aye: Denault, Gardner, Timko, Dwyer-Jones, Leontakianakos, Brake; Nay: --; Abstain: --]

The Kittery Board of Appeals meeting of November 26, 2019 adjourned at 7:59 p.m.

Submitted by Craig Alfis, Code Enforcement Officer

Disclaimer: The preceding minutes constitute the author’s understanding of the meeting. While every effort has been made to ensure the accuracy of the information, the minutes are not intended to be a verbatim transcript of comments at the meeting but only a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>.