



**Town of Kittery**  
**200 Rogers Road, Kittery, ME 03904**

**Board of Appeals**  
**Meeting Agenda, Council Chambers**  
**Tuesday, October 22, 2019**  
**Workshop - 5:30 P.M.**  
**Regular Meeting – 6:30 P.M.**

**1. Workshop**

a. Jensen Baird Gardner & Henry

**2. Call to Order; Introductory; Roll Call**

**3. Pledge of Allegiance**

**4. Agenda Amendment and Adoption**

**5. Executive session (if required)**

**6. 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.

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.

**7. Unfinished Business**

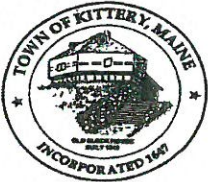
**8. New Business**

**9. Acceptance of Previous Minutes**

a. October 8, 2019

**10. Board Member or CEO Issues or Comment**

**11. Adjournment**



**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	9/30/19
MAP & LOT	46-01
ASA FEE	
DATE PAID	10/1/2019
DATE COMPLETE	
HEARING DATE	10/22/19

**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	16-39-16	CHAPTER		SECTION					PAGE	
TITLE	16-39-16	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	17 PICOTT ROAD, KITTERY, MAINE 03904									
MAP	46	LOT #						LOT SIZE		
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)	DARLENE HUDSON									
MAILING ADDRESS	17 PICOTT RD									
CITY	KITTERY	STATE	MAINE					ZIP CODE	03904	
PHONE No.	207-439-0699			e-MAIL:						

*NOTE: You may have an authorized representative, 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)	EDWARD MEEHAN & JOHN POOLER									
MAILING ADDRESS	17 PICOTT RD, #11 LONG STAIRS RD									
CITY	York & KITTERY	STATE	MAINE					ZIP CODE	03909	
PHONE No.	856-332-0065 - 201-713-9584									

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

Date:

September 30, 2019

By:

*(Signature)*  
DARLENE HUDSON  
*(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.

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**I also understand that the Board of Appeals:**

☒ May hear and decide a special exception use request within the limitations set forth in Title 16 Section(s) identified 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, sureliness, 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:

Firewood business - Monday thru Sunday  
8 AM to 3 PM. Permit  
my FATHER & Mother had a wood  
business for over 50 years - on this  
property.

#### 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.





**PLANNING & DEVELOPMENT DEPARTMENT  
STAFF REPORT**

BOA Meeting Date: October 22, 2019

Item #: SE2019-04

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**STAFF REPORT – 17 PICOTT ROAD – SPECIAL EXCEPTION USE REQUEST /  
MAJOR HOME OCCUPATION**

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**Project Name:** 17 Picott Road

**Applicant:** Darlene Hudson

**Owner:** Darlene Hudson

**Proposed Development:** Major home occupation: firewood processing business

**Requests:** Special Exception Use per LUDC Section 16.3.2.1C.(7), seeking approval for a major home occupation as a firewood processing business

**Site Addresses:** 17 Picott Road

**Map & Lot Numbers:** 46-01



**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 existing dwelling use is permitted by right in the zone. The following uses are permitted as a Special Exception Use in the R-RL Zone: (7) Sawmill.

**Staff Recommendation:** APPROVAL WITH CONDITIONS of Special Exception Use request.

**District Standards:**

Residential – Rural Zoning District Standards			
Land Area per DU (min)	40,000 sf	Front Yard Setback (min.)	40 feet
Building Coverage (max.)	15%	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), Shoreland Overlay, dwelling unit

East: Residential – Residential – Rural (R-RL), Shoreland Overlay, dwelling unit

North: Residential – Residential – Rural (R-RL), Shoreland Overlay, dwelling unit

South: Residential – Residential – Rural (R-RL), dwelling unit

**Future Land Use:**

The subject property is located within a Limited Growth, Natural Resource Area in the Future Land Use Map,

**Site Description:**

The subject property consists of approximately 30,050 square feet (.69 acres) located along the Eastern right-of-way of Picott Road. The property is zoned Residential – Rural (R-RL) and is a legally non-conforming lot. The property is not located in the Shoreland Overlay Zone, though their neighbors to the North, East and West are. The lot contains one non-conforming single-family dwelling with approximately 960 square feet of living area, and a 480-square-foot garage.

**History of the Property:**

The single-family dwelling unit was constructed in approximately 1986. Tax records show the dwelling consists of approximately 1,152 gross square feet area. The house is on private septic. The existing primary structure is conforming as to the required side and rear setbacks but non-conforming to the front, as the setback is roughly 20 feet.

**Description of the Issue:**

The owner/applicant wishes to operate a firewood processing business out of her home. The proposed hours of operation are Monday through Sunday, 8 am to 3 pm. The owner is proposing to perform the cutting, splitting and storage of firewood in the cleared area to the south of the garage, at the end of the driveway. A Notice of Violation and Stop Work Order were served on September 17, 2019 in response to complaints received about noise, vehicular traffic and work hours. The owners complied with all aspects of the order.



**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.**

**The requested activity is a major home occupation, defined in the code as “a type of home occupation that fails to meet all of the standards for a minor home occupation established in § 16.8.22.2, but is found by the Board of Appeals to satisfy the standards established in § 16.8.22.3 to ensure that a business results in no more than a minor intrusion in the quality of life of residents in the surrounding neighborhood.” Major home occupations as an accessory use are allowed only as a Special Exception Use in the Residential – Rural (R-RL) zone.**

- (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 can be granted only as an accessory use by the Board of Appeals, and will not prevent the orderly and reasonable use of adjacent properties. All adjacent properties are zoned Residential – Rural containing the same single dwelling use as the subject property and have the same opportunity to apply for home occupations per the code.**

- (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 the same as adjoining properties and there are no use restrictions between adjacent dwelling units in the zone.**

- (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, as long as conditions are met to ensure safe and legal operations.**

- (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 home occupation will occur in the side/backyard, 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;*

**There is no proposed change in the underlying use of the property nor increase in density of the existing dwelling unit. The applicant will presumably accept clients and/or deliveries arriving via vehicles. Client vehicular traffic should conform to the hours of operation restrictions in the code or imposed by the Board. Off-street parking for the home occupation shall be provided in the driveway.**

- (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 a private septic system.**

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

**The proposed use has the potential for odors created by running equipment**



**and chainsaws.**

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

**The use will emit noise. Noise must be limited to 55 decibels between 7 am and 9 pm, and limited to 45 decibels between 9 pm and 7 am.**

- (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 property has suitable existing space for off-street parking. Firewood processing and storage must not impinge upon the required area for parking of homeowners, clients or deliveries.**

- (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 will exist.**

- (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 legal, non-conforming lot of record.**

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

**Currently little vegetation exists for the purpose of screening to the East or the South.**

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

*drainage;*

**No changes are proposed to the land, which already includes adequate drainage.**

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

**No existing pedestrian facilities are present in this area.**

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

**The applicant must take care to avoid any public nuisances, abate any odors emanating from the use, and abide by restrictions on hours of operation.**

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

**The applicant must abide by specific conditions outlined in section 16.8.22.3 and any conditions placed on the use by the Board of Appeals.**

*16.6.6.C. Additional special exception conditions. Special exception approvals may be subject to additional conditions as determined by the BOA, including 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.*

**Using the standards and criteria found in the LUDC, Staff recommends APPROVAL WITH CONDITIONS of the Special Exception Use request for a major home occupation as a firewood processing business on an existing lot located in the R-RL zone, with the following conditions:**

- 1. 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.**
- 2. 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.**
- 3. No other major home occupations may be conducted on the premises.**



- 4. One (1) sign no greater than eight (8) square feet is allowed for the home occupation.**
- 5. 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 3:00 p.m. and 8:00 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.**
- 6. All 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.**
- 7. Room must be provided in the driveway such that any deliveries have adequate space to park outside of the public right of way.**
- 8. All refuse and recyclables must be stored in containers that are screened from view of abutting properties and from streets.**
- 9. 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.**



**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 Cranberry Lane Kittery Point me 03905				
MAP	68	LOT #	10-D	LOT SIZE	4.37
BASE ZONE(S):	R-RL		OVERLAY ZONE(S):	Shoreland	
<b>The subject property:</b> [ <input checked="" type="checkbox"/> is not ] in a Shoreland overlay or Resource Protection zone; [ is / <input checked="" type="checkbox"/> is not ] in a floodplain; AND [ does / <input checked="" type="checkbox"/> does not ] have outstanding code violations; and, if so, granting this appeal provides resolution .					
<b>PROPERTY OWNER: I have right, title or interest in the affected property, or issue, as shown by:</b>					
NAME(S)	David + Cheri Richard				
MAILING ADDRESS	3 Cranberry Ln				
CITY	Kittery PT	STATE	ME	ZIP CODE	03905
PHONE No.	207-703-8511		e-MAIL:	dcbrichard@comcast.net	

**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: 8/29/19

By:

*Cheri Richard*  
(Signature)  
Cheri Richard  
(Print Name)



**STATEMENT:**

**Describe the general nature of the request:**

I need to put an intra family dwelling ~~on~~  
for my parents. I would like to add ~~an~~  
attached area behind my existing garage.  
The size will be 24'28' x 24' one bedroom  
with 1 bathroom.

**Michael Cuomo, Soil Scientist**  
6 York Pond Road, York, Maine 03909  
207 363 4532  
mcuomosoil@gmail.com

Cheri Richard  
3 Cranberry Lane  
Kittery Point, ME 03905

12 August 2019

Dear Ms. Richard;

This letter is in reference to your property at 3 Cranberry Lane in Kittery Point, Maine. On 6 August 2019 I investigated the property to identify and flag the regulated wetlands nearest your home to assist you in planning an addition.

Wetlands are defined by the town of Kittery Land Use ordinance as follows:

**Wetland** means areas that under normal circumstances have hydrophytic vegetation, hydric soils, and wetland hydrology as determined in the Corps of Engineers Wetlands Delineation Manual - *Waterways Experiment Station Technical Report Y-87-1*, January 1987" (1987 manual). This definition of wetland is based on the 1987 manual and is not subject to further revisions and/or amendments.

This definition also encompasses wetlands as defined by the State of Maine and federal government, but those agencies have further amendments updating the original manual.

Blue flags one to nine were placed along the wetland-upland boundary nearest your home. This wetland is greater than 1 acre in size and therefore requires a 100 foot building and

wastewater disposal system setback. Only a portion of the wetland was flagged.

The front left corner of the existing garage is 92 feet from the wetland boundary. The left rear corner of the garage is 94 feet from the wetland boundary.

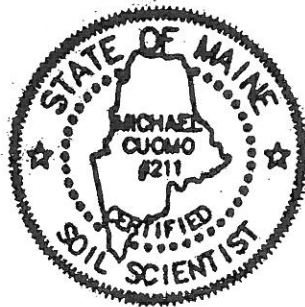
Please call if you have questions regarding this work.

Sincerely,

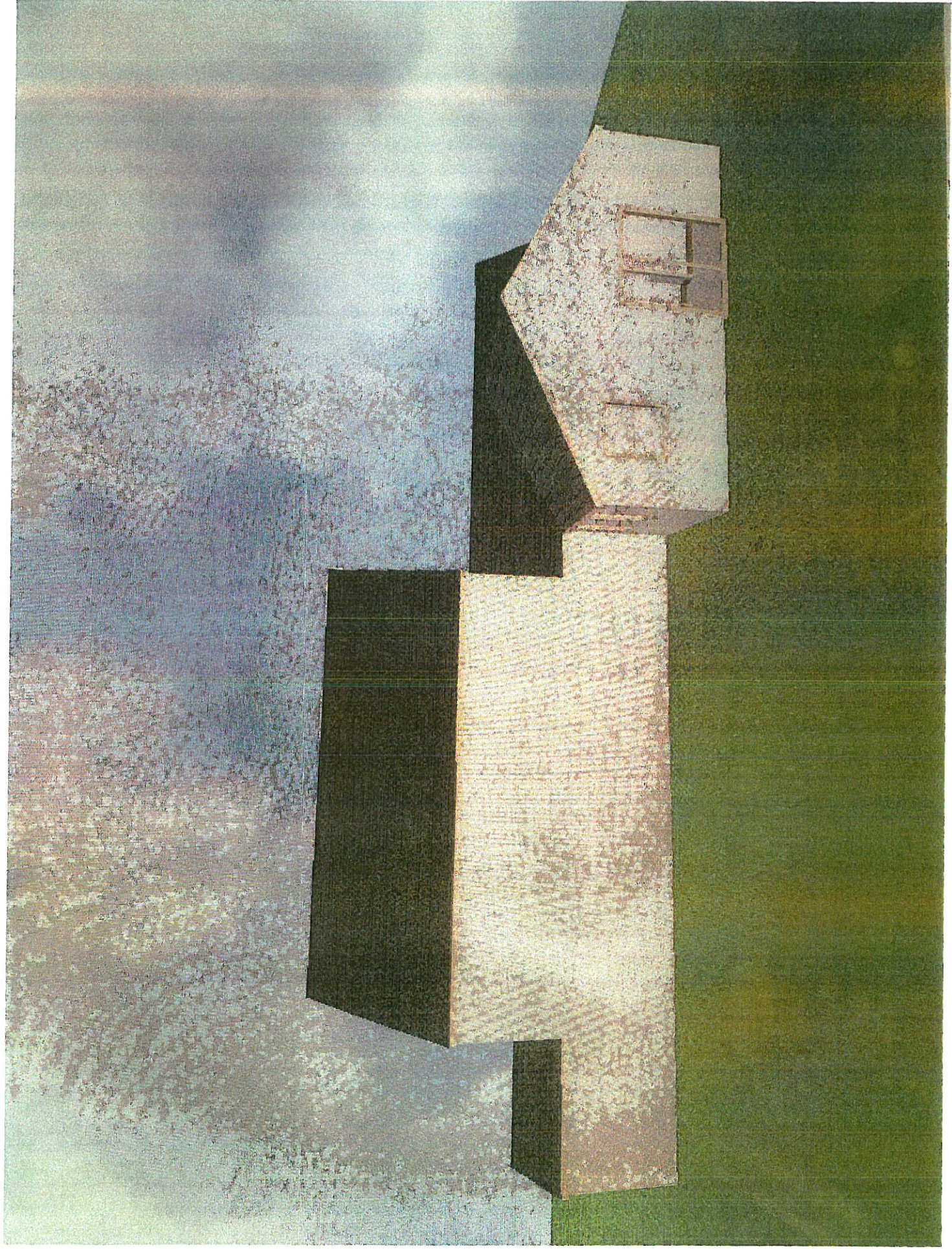
*Michael Cuomo*

Michael Cuomo

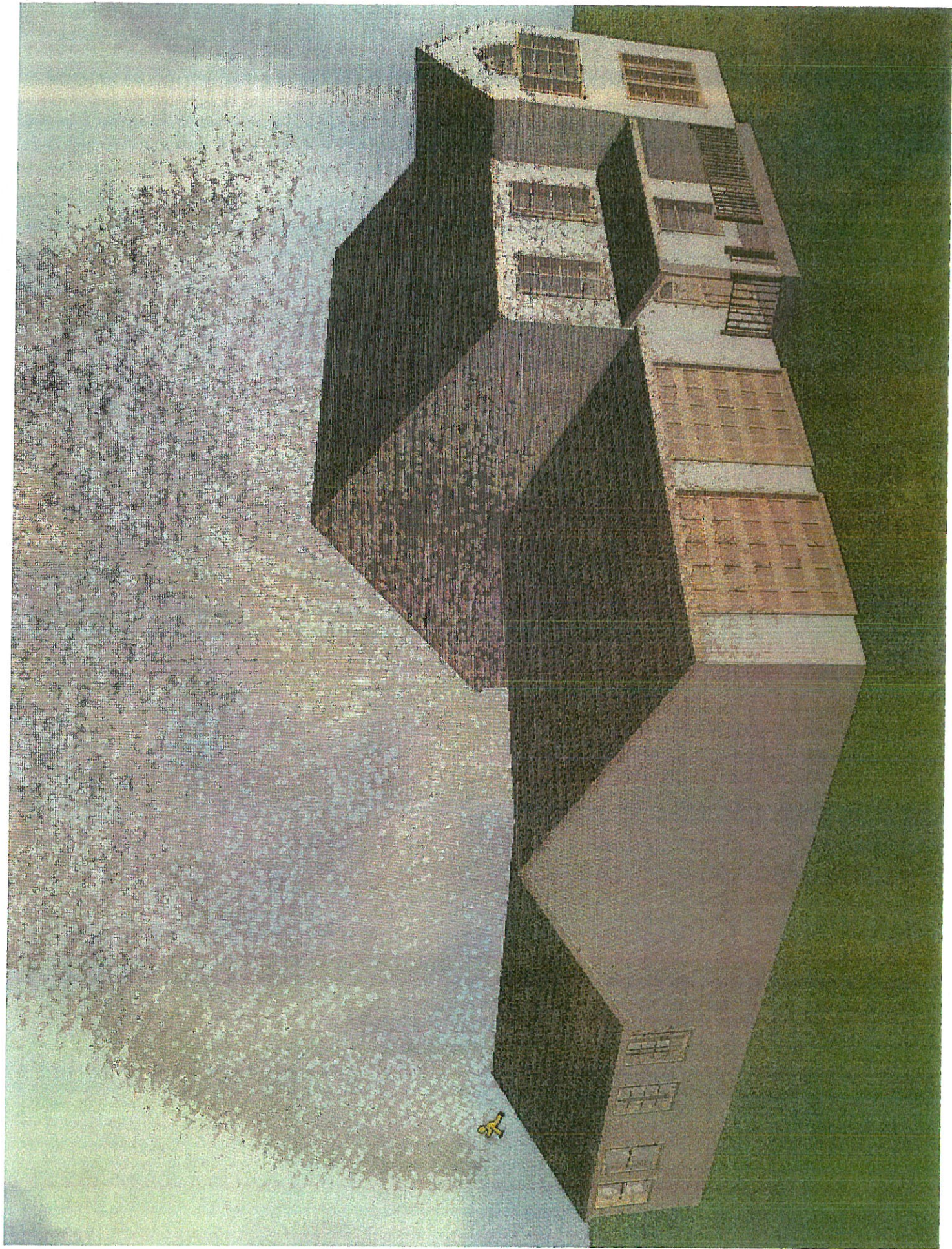
Maine Soil Scientist #211



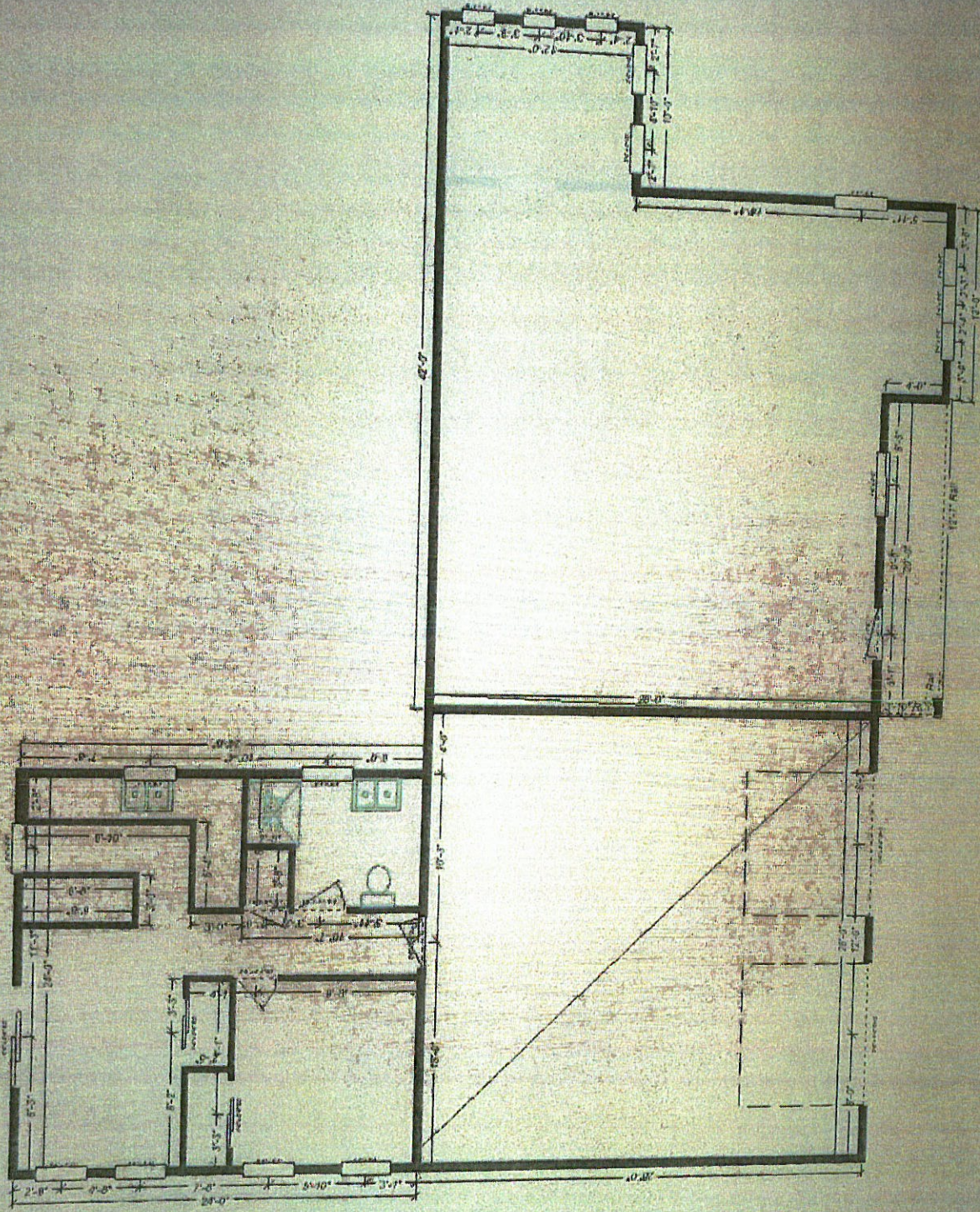




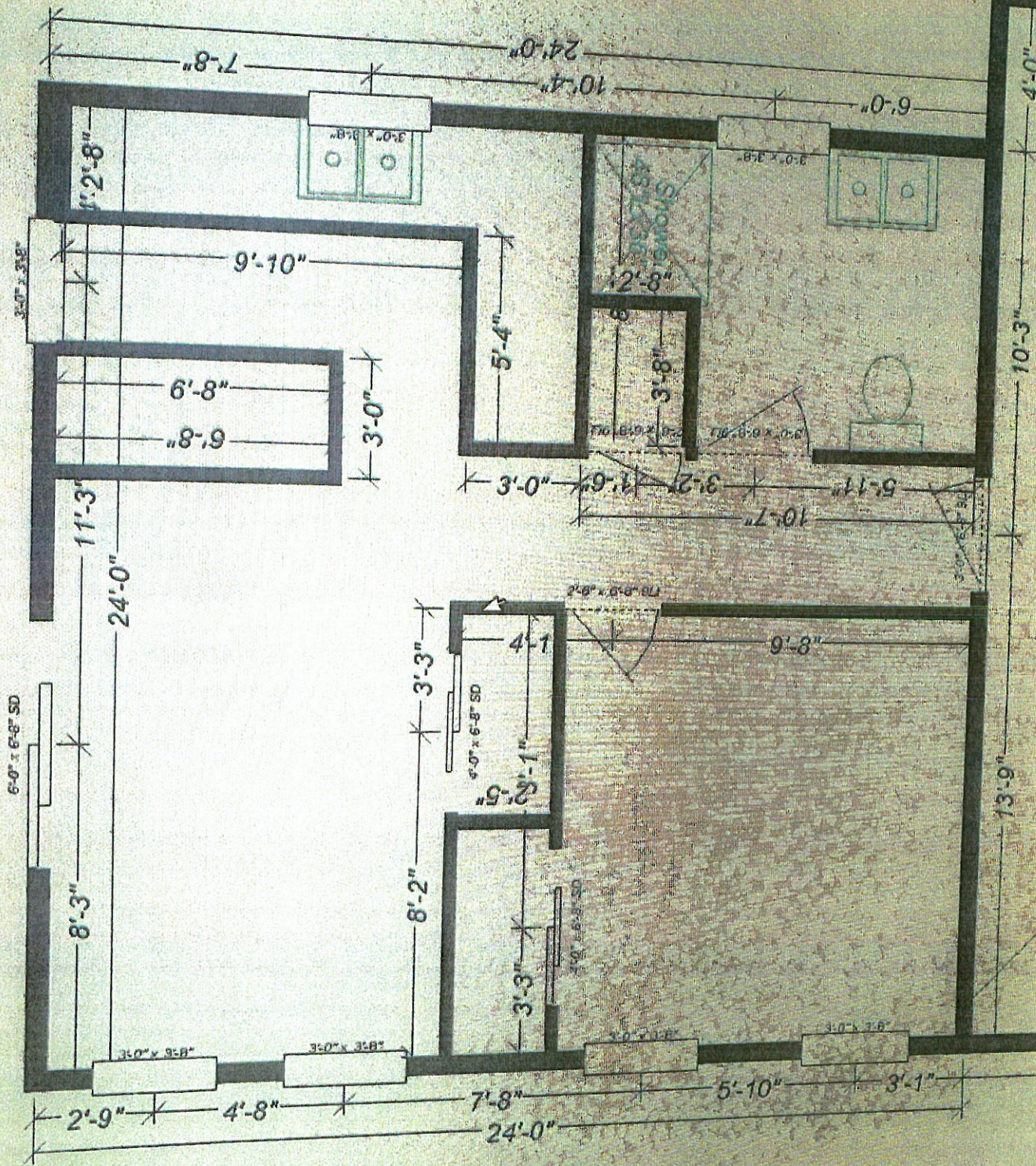
















**PLANNING & DEVELOPMENT DEPARTMENT  
STAFF REPORT**

BOA Meeting Date: October 22, 2019

Item #: MVR2019-10

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**STAFF REPORT – 3 CRANBERRY LANE – MISCELLANEOUS VARIATION  
REQUEST**

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**Project Name:** 3 Cranberry Lane

**Applicant:** David & Cheri Richard

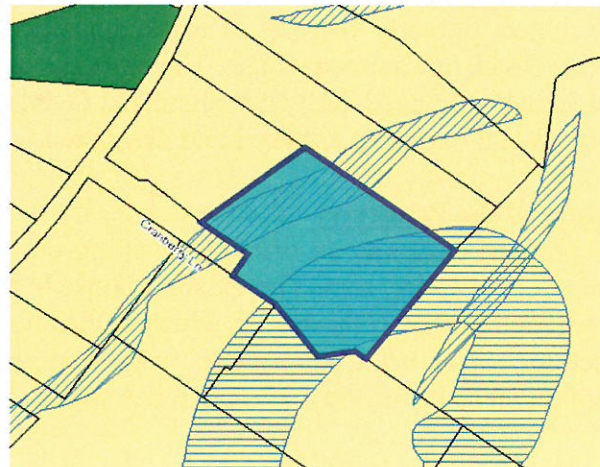
**Owner:** David & Cheri Richard

**Proposed Development:** Construction of an addition for a Temporary, Intra-Family Dwelling Unit

**Requests:** Miscellaneous Variation Request per LUDC Section 16.7.3, seeking expansion of a non-conforming structure and addition of a Temporary, Intra-Family Dwelling Unit per Section 16.8.21

**Site Addresses:** 3 Cranberry Lane

**Map & Lot Numbers:** M 68 L 10D



**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 subject property is also partially located in the Shoreland

Overlay Zone – Stream Protection Area.

The following uses are permitted as a special exception in the Residential – Rural (R-RL) Zone:  
(12) Temporary, Intra-Family Dwelling Units.

**Staff Recommendation:** **APPROVAL WITH CONDITIONS** of the 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	15%	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 – Rural (R-RL), Shoreland Overlay – Stream Protection Area, Kittery Land Trust

East: Residential – Rural (R-RL) dwelling unit

North: Residential – Rural (R-RL), Shoreland Overlay – Stream Protection Area, dwelling unit

South: Residential - Rural (R-RL), Shoreland Overlay – Stream Protection Area, dwelling unit

**Future Land Use:**

The subject property is located within a Limited Growth, Natural Resource Area in the Future Land Use Map.

**Site Description:**

The subject property consists of approximately 190,350 square feet (4.37 acres), located off of Bartlett Road, on Cranberry Lane. The property is a conforming lot of record. The property is zoned Residential – Rural (R-RL) with Shoreland Overlay Zone – Stream Protection Area. The property backs up to 57 acres of Kittery Land Trust area.

**History of the Property:**

The property contains an existing dwelling unit, approximately built in 1998, containing 2008 square feet of living area. The existing house is conforming to all setbacks with the exception of the wetland buffer to the North, which angles from 92 to 94 feet from the resource. The existing structures make up 1,960 square feet of impervious surface, making the building coverage approximately 1% of the 4.37-acre lot. A maximum of 15% is allowed in the zone.

**Description of the Issue:**

The applicant proposes to construct a 576 square foot, single story addition connected to the existing garage. The new structure will be nonconforming to the wetland setback, but no more non-conforming than the existing structure. The orientation of the proposed addition is such that it angles away from the resource.



Because the existing dwelling is non-conforming as to the wetland setback and a Temporary, Intra-Family Dwelling Unit is a Special Exception the Land Use & Development Code 16.7.3.3.B.(1) and 16.8.21 requires Board of Appeals approval.

**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 16.7.3.3.B.(1) states that, "Except where otherwise permitted in this title, repair and/or expansion of a nonconforming structure must be approved by the Board of Appeals. In cases where the structure is located in the Shoreland or Resource Protection Overlay Zone, the repair and/or expansion must be approved by the Planning Board."**

- (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 single-family 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 single-family dwellings.**

- (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 as a special exception in the zone.**

- (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;*

**The proposed increase in density and resulting additional vehicular traffic is negligible.**

- (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 existing property has a septic systems which will be upgraded to accommodate the additional bedroom.**

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

**The 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 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 subject property has a large driveway and existing two car garage.**

- (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 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 legal, non-conforming lot of record.**

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

**The property includes adequate landscape screening and mature trees.**

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

**Staff does not believe that the proposed addition will negatively affect natural drainage.**

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

**No pedestrian infrastructure exists along Cranberry Lane.**

- (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 residential 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 Code Enforcement Officer 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 expand a non-conforming structure as proposed, 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.**

## OBITUARIES & NEWS

**Calista A. Baker**  
*family, especially his six grandchildren, Morgan, Maeve and Lucy O'Donnell of Peabody, Massachusetts.*

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**Clay Richard Daniels**  
 In Pelham.  
 FIOBHAN  
 LOPEZ/WMUR-TV VIA AP

"Where is the United Nations? Let them come see the blood of our children on the floor! Why don't they show up?" cried a medic.

The medic was stationed at the Tal Tamr hospital, which received dozens of injured people from nearby Turkish shelling in recent days.

### LEGAL NOTICE

#### AMENDED LEGAL NOTICE BOARD OF ADJUSTMENT PORTSMOUTH, NEW HAMPSHIRE

NOTICE IS HEREBY GIVEN that the Board of Adjustment will hold Public Hearings on Petitions 1) through 5), including the following amended petition, on Tuesday, October 22, 2019 at 7:00 p.m. in the Eileen Dordano Foley Council Chambers, Municipal Complex, 1 Jenkins Avenue, Portsmouth, New Hampshire.

"This petition has been amended as indicated in italics and underlined. The balance of the petitions to be heard on October 22, 2019 remain as advertised.

5) Case 10-5, Petition of Weeks Realty Trust, Kaley E. Weeks, Trustee, and Chad Carter, owners, and Tuck Realty Corporation, applicant, for property located at 3110 Lafayette Road and 65 Ocean Road wherein relief is required from the Zoning Ordinance for construction of 18 Townhouses in 5 structures with 1 existing home to remain on conforming lot which requires a Variance from Section 10.521 to allow a lot area per dwelling unit of 4,459 s.f. where 15,000 is required. Said property is shown on Assessor Plan 292, Lots 151-1, 151-2 and 153 and lies within the Single Residence B District.

Juliet T.H. Walker  
 Planning Director

### Legal Notice

#### NOTICE OF PUBLIC HEARING TOWN OF KITTERY - BOARD OF APPEALS 200 Rogers Road, Kittery, Maine 03904 Tuesday, October 22, 2019 - 6:30 p.m.

Darlene Hudson, Owner, 17 Picot 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 Sections 16.3.2.1C and 16.3.2.2.3 of the Town Code.

David and Cheryl 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 Sections 16.3.2.1C, 16.7.3.3B and 16.8.2.1.1 of the Town Code

Application information is available for public inspection between 8:00 am to 6:00 pm, Monday through Thursday, at the Development Department located in Kittery Town Hall, 200 Rogers Road, to request a reasonable accommodation for this meeting please contact staff.

### Legal Notice

#### TOWN OF NEW CASTLE, NEW HAMPSHIRE BOARD OF ADJUSTMENT

Notice is hereby given that there will be a public hearing with the New Castle Zoning Board of Adjustment at the New Castle Town Hall on Tuesday, October 22, 2019 at 7pm for a request of a rehearing of the ZBA's August 20, 2019 Variance Application for Randolph and Ellen Bryan of 34 Wentworth Road, case 05-2019. Map 18 lot 64  
 Todd Baker, Chairman

### Legal Notice

#### PUBLIC NOTICE

#### Competitive/Noncompetitive Market Determination Medical Professional Liability Insurance for Physicians, Surgeons and Hospitals

Docket No.: Ins 19-023-AP

Pursuant to the provisions of RSA 400-A:17 and RSA 412:13, the New Hampshire Insurance Department will hold a public hearing to determine whether or not a competitive market exists in the State as it relates to medical malpractice insurance for physicians, surgeons and hospitals.

The public hearing shall be held on:

October 31, 2019  
 10:00 a.m.  
 at the

New Hampshire Insurance Department  
 Conference Room 274  
 21 South Fruit Street, Suite 14  
 Concord, NH 03301

Please use the center entrance of the Walker Building and follow the signs to room 274

The New Hampshire Insurance Department invites all interested parties with a pecuniary interest in the sale or purchase of medical malpractice insurance for physicians, surgeons and hospitals, including but not limited to insurance producers, insurers and all persons purchasing coverage, to participate in the public hearing. Persons who participate in the hearing may testify and offer oral and/or written testimony.