



Town of Kittery
200 Rogers Road, Kittery, ME 03904

Board of Appeals
Meeting Agenda, Council Chambers
Tuesday, July 23, 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. Michael Dumond, Applicant, 53 Old Post Road (Map 8 Lot 6), Commercial Zone (C-3), requesting a Miscellaneous Variation Request per the terms of 16.7.3.3B(3)(c), and seeking relief from setback requirements for an accessory structure.

b. Washburn Realty Group, Owner, 60 Route 236 (Map 29 Lot 14), Commercial Zone (C-2), requesting a Miscellaneous Variation Request to the terms of Article III of Town Code Chapter 16.7 (Nonconformance), seeking relief of front, side, and wetland setbacks for a commercial building.

6. Unfinished Business

7. New Business

8. Acceptance of Previous Minutes

- a. September 25, 2018
- b. November 13, 2018
- c. January 8, 2019
- d. February 26, 2019
- e. March 12, 2019
- f. April 9, 2019
- g. June 11, 2019
- h. June 25, 2019

9. Board Member or CEO Issues or Comment

- a. Introduction of new CEO Craig Alfis

10. Adjournment

Legal Notice
NOTICE OF PUBLIC HEARING
TOWN OF KITTEERY - BOARD OF APPEALS

200 Rogers Road, Kittery, Maine 03904

Tuesday, July 23, 2019 - 6:30 p.m.

Washburn Realty Group, Owner, 60 Route 236 (Map 29 Lot 14), Commercial Zone (C-2), requesting a Miscellaneous Variation Request to the terms of Article III of Town Code Chapter 16.7 (Nonconformance), seeking relief of front, side, and wetland setbacks for a commercial building.

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.

To request a reasonable accommodation for this meeting please contact staff.

PM-00442705

Legal Notice
NOTICE OF PUBLIC HEARING
TOWN OF KITTEERY - BOARD OF APPEALS

200 Rogers Road, Kittery, Maine 03904

Tuesday, July 23, 2019 - 6:30 p.m.

Michael Dumond, Applicant, 53 Old Post Road (Map 8 Lot 6), Commercial Zone (C-3), requesting a Miscellaneous Variation Request per the terms of 16.7.3.3B(3)(c), and seeking relief from setback requirements for an accessory structure.

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To request a reasonable accommodation for this meeting please contact staff.

PM-00442707



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	4/20/19
MAP & LOT	8
ASA FEE	
DATE PAID	
DATE COMPLETE	
HEARING DATE	7/23/19

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	53 Old Post Road Kittery ME.				
MAP	8	LOT #	8-06	LOT SIZE	8712 ft ²
BASE ZONE(S):	OVERLAY ZONE(S):				
The subject property: [is <u>is not</u>] in a Shoreland overlay or Resource Protection zone; [is / <u>is not</u>] in a floodplain; AND [does / <u>does not</u>] 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)					
MAILING ADDRESS					
CITY		STATE		ZIP CODE	
PHONE No.				e-MAIL:	

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)	Michael Dumond / Lee Irvin				
MAILING ADDRESS	53 Old Post Rd.				
CITY	Kittery	STATE	ME.	ZIP CODE	03904
PHONE No.	207-332-9617			e-MAIL:	me@dumond@yahoo.com

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

Date: 6/19/19

By:
(Signature)
Michael Dumond
(Print Name)

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

Identify relevant Town code sections:

TITLE	16	CHAPTER	7	SECTION	3					PAGE	3
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 State Supreme Judicial Court.
- Tries to make decisions it believes would be upheld if appealed to Superior Court.

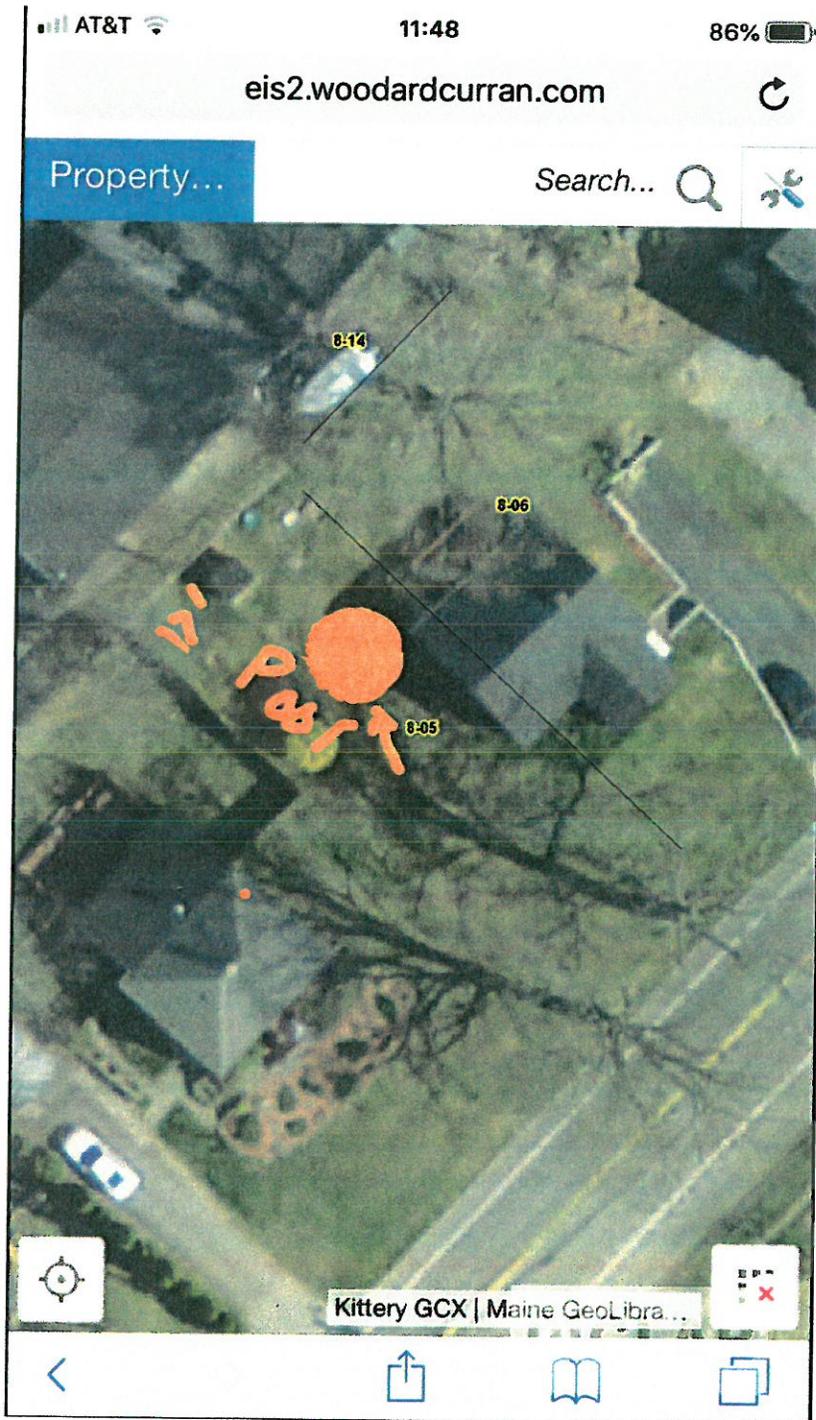
Additional Information

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:

I am applying for a permit for a temporary 'seasonal' structure (pobi), which is a customarily incidental use which is subordinate to the principal use of this legally non-conforming lot.





**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

BOA Meeting Date: July 23, 2019

Item #: MVR2019-06

STAFF REPORT – 53 OLD POST ROAD – MISCELLANEOUS VARIATION REQUEST

Project Name: 53 Old Post Road

Applicant: Michael Dumond

Owner: Denise & Trevor Silveria

Proposed Development: Accessory structure on non-conforming lot

Requests: Miscellaneous Variation Request per LUDC Section 16.7.3.3.B(3)(c), expansion of a residential use in the Commercial Zone

Site Addresses: 53 Old Post Road

Map & Lot Numbers: M 8 L 6



Current Zoning:

Commercial (C-3) - This zoning district is intended to provide general retail sales, services and business space within the Town in locations capable of conveniently serving community-wide and/or regional trade areas and oriented primarily to automobile access.

Dwelling units are not permitted nor allowed by special exception in the C-3 zone. The existing dwelling use is a legal, nonconforming use.

Staff Recommendation: DENIAL of miscellaneous variation request.

District Standards:

Commercial Zoning District Standards			
Land Area per Dwelling (min.)	N/A	Front Yard Setback (min.)	50 feet
Maximum Building Coverage	40%	Rear Yard Setback (min.)	30 feet
Lot Size (min.)	40,000 sf	Side Yard Setback (min.)	30 feet

Current Use: One dwelling unit (legal, nonconforming)

Surrounding Land Uses:

West: Commercial (C-3), dwelling unit (legal, nonconforming use)

East: Commercial (C-3), dwelling unit (legal, nonconforming use)

North: Commercial (C-3), commercial use

South: Residential – Urban (R-U), park use (Memorial Field, Town land)

Future Land Use:

The subject property is located within a Growth Area in the Future Land Use Map. A Growth Area is defined in the Comprehensive Plan as, “areas where the Town would like to encourage future development to occur.”

Site Description:

The subject property consists of approximately 8,702 square feet (.2 acres), located along the northern right-of-way of Old Post Road. The property is a nonconforming lot of record. The property is zoned Commercial (C-3). The lot contains one dwelling of approximately 1,344 square feet in size. The structure is legally nonconforming due to it encroaching on all setbacks required by the zone.

History of the Property:

The property contains a dwelling unit constructed in 1940. Tax records show the dwelling consists of approximately 1,344 square feet. The existing structure is located within the 50-foot front yard setback required for C-3 zoning district but its current setback is in line with the average setbacks for adjacent dwellings along the road.

Description of the Issue:

The applicant is a tenant in the existing dwelling and has placed an above ground pool in the side yard between the dwelling and the neighboring property at 51 Old Post Road. The pool, an accessory structure, is located within the side yard setback (30 feet required). The applicant was denied a permit by the Code Enforcement Officer to have the pool remain in its location. The applicant did not appeal the CEO denial and instead requests BOA approval for the pool based on section 16.7.3.3.B.(3)(c):

Where the expansion of the residential use within the Commercial Zones involves an expansion of a structure, the structure must be expanded in conformity with the dimensional requirements contained in this title. If the proposed structure expansion cannot meet the dimensional requirements of this title, the application may be submitted to the Board of Appeals for review as a miscellaneous variation request. In reviewing all such applications, the Board of Appeals must use the criteria established in this section, and then may approve the proposed variations to the dimensional requirements.

However, the placement of a pool is not an “expansion” of a structure. In denying the applicant’s original request to place the pool, the CEO explained that the nonconformance section of the code would not cover a pool. There is language in the code providing exceptions for residential storage sheds and residential garages of a certain size, but limited to the Residential – Village (R-V) zone and not applicable to pools. Staff maintains there is no path forward for approval by the BOA.

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.*

Staff contends there is no basis in law for the Board of Appeals to decide this question. An accessory structure was placed illegally in the side setback of a nonconforming lot with a legal, nonconforming principal structure. However, the accessory structure itself is not a legal, nonconforming structure and Town Code offers no avenue for the Board of Appeals approve its relocation.

Using the standards and criteria found in 16.6.6 of the LUDC, Staff recommends **DENIAL** of the submitted miscellaneous variation request.

Adam Causey

From: Michelle McDonald
Sent: Tuesday, June 25, 2019 7:38 AM
To: Adam Causey
Subject: FW: 53 old post rd pool
Attachments: IMG_0459.jpg; ATT00001.txt

I asked Michael Drummond (tenant) to submit something that says the property owner is fine with him having a pool on her property.

See the attachment.

Thank you!

Michelle McDonald, CMA
Development Staff Clerk
E-911 Addressing Officer
207-475-1304

Kittery Town Hall
200 Rogers Road
Kittery ME, 03904
Please note: Town Hall is Closed Fridays

-----Original Message-----

From: Mike Dumond <mrddumond@yahoo.com>
Sent: Tuesday, June 25, 2019 6:07 AM
To: Michelle McDonald <MMcDonald@kitteryme.org>
Subject: 53 old post rd pool

Hi Michelle. Here is the homeowners permission for a pool at 53 old post rd in Kittery. Thanks Michelle.

9:59 ↖



From: Denise

To: Lee

Hide



Re: Pool again

Today at 9:10 AM

I, Denise Silveria, give permission for the pool to be placed on the property.

Sent from XFINITY Connect App

----- Original Message -----

From: Lee Irwin

To: Denise

Sent: June 21, 2019 at 8:23 AM

Subject: Pool again

53 Old Post Road – Thursday, July 11, 2019





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

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

Application to the
BOARD OF APPEALS

MISCELLANEOUS VARIATION REQUEST

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PROPERTY INFORMATION					
ADDRESS	60 Route 236, Kittery, Maine				
MAP	29	LOT #	14	LOT SIZE	73,330 s.f. / 1.6834 acres
BASE ZONE(S)	C-2 Commercial Zone		OVERLAY ZONE(S)	N/A	
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:					
Deed dated 11/28/18 rec. in YCRD in Book 17857, Page 22 from James E. Wilson Living Trust (attached).					
NAME(S)	Washburn Realty Group, LLC				
MAILING ADDRESS	PO Box 463				
CITY	Winchester	STATE	MA	ZIP CODE	01890
PHONE No.	617-212-9364	e-MAIL:	andymurraysupply@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:					
Authorization from Property Owner (attached).					
NAME(S)	Matthew J. Williams, Esq. & Stephen Y. Hodsdon, Esq. / HODSDON & AYER				
MAILING ADDRESS	56 Portland Road				
CITY	Kennebunk	STATE	ME	ZIP CODE	04043
PHONE No.	207-985-6184	e-MAIL:	mjw@kennebunklaw.com		

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

Date: July 2, 2019

By:

Matthew J. Williams, Esq.

(Print Name)

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

Identify relevant Town code sections:											
TITLE	16	CHAPTER	16.6	SECTION	16	6	4	C	1	PAGE	546
TITLE	16	CHAPTER	16.7	SECTION	16	7	3	3	A	PAGE	559
TITLE	16	CHAPTER	16.3	SECTION	16	3	2	11	D(2)(c)	PAGE	461

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

MISCELLANEOUS VARIATION REQUEST NARRATIVE
FOR APPLICATION TO KITTERY BOARD OF APPEALS
60 ROUTE 236, KITTERY, MAINE (TAX MAP 29, LOT 14)

The Applicant proposes to redevelop the property located at 60 Route 236 in Kittery and is requesting a miscellaneous variation in nonconformance with respect to a proposed structure's front setback from 50 feet as required under the Kittery Land Use Development Code ("LUDC") to 15 feet. Concurrent with this Application, the Applicant is also going through the Site Plan Review process in connection with the redevelopment of this parcel.

The proposal is to build a new 4,608 square foot two-story building at the site to use as a plumbing wholesale business and showroom. The property currently contains a warehouse structure and a garage, as well as a foundation that has never been built on. The site is currently abandoned and has fallen into disrepair (see pictures of existing site and rendering of proposed building). The proposal is to remove the existing structures and construct the new building in a different location (see Existing Conditions Plan and Variance Plan).

Section 16.6.4 (C)(1) of the LUDC provides that the Board of Appeals may hear, decide and approve variations in Nonconformance as prescribed in Chapter 16.7, Article III. Section 16.7.3.3(A) of the LUDC provides that the relocation of a nonconforming structure must be approved by the Board of Appeals (provided the structure is not located in the Shoreland or Resource Protection Overlay Zone). With regard to dimensional requirements, the nonconforming structures may be relocated within the boundaries of the parcel "provided the site of relocation conforms to all dimensional requirements to the greatest practical extent".

The property is located in the C-2 Commercial Zone, which requires 50 foot front yard setbacks and 30 foot side yard setbacks under section 16.3.2.11(c) and (d) of the LUDC. The current foundation located at the site is nonconforming with respect to side setbacks at 1.7 feet and front setbacks at 9.9 feet. The warehouse is nonconforming with respect to front setbacks at 21.9 feet. The proposed building would only be nonconforming with respect to its front setback. Although the proposed building would contain a lesser setback than the existing warehouse, when the elimination of the existing foundation is considered, there would be a significant overall reduction in nonconformity at the site.

The need for a 15 foot front setback is a result of the unique shape, proximity to the highway corridor, wetland location and site topography of the property. When wetland setback requirements are factored in, all the setbacks overlap and there would be no area on the property that would meet all the dimensional and wetland setback requirements. The proposal is to place the building in the front of the lot, which will be as far from the wetlands as possible.

The re-use of the site requires that new lot development meet current codes. An important part of the site design involves safe access to the warehouse. In order to gain safe access, a delivery vehicle must be able to enter onto the site from the highway safely, and after the delivery is made, turn around so the vehicle can come back to the highway and face the highway for safe exiting. In the past it is not clear how deliveries were made to this existing warehouse. There is a very steep drive immediately adjacent to the highway and tractor trailer trucks likely

had to pull ahead of the site on the side of the road and back into the site. Such a maneuver is dangerous and places the travelling public at risk. Site redevelopment, therefore, focused on a review of turning radius for the tractor-trailer delivery trucks. The current proposal represents the safest design in that regard. The trucks will be able to enter the site from either direction without crossing the yellow line in Route 236. The truck will then travel around the side of the building to make the deliveries at the lower level. There is sufficient space for the truck to then turn around in the lower parking area and travel back to the front of the site facing forward, to then be able to exit safely (see drawings depicting entry/exit paths of vehicles to/from the south and north).

Many configurations were reviewed to try and place the driveway in the front of the building so as to allow the front building setback to be respected. Essentially there is not enough room, under any scenario, to accommodate the swing of the delivery vehicles to enter and exit safely from the highway without placing the building so far back on the site that wetlands would have to be impacted (filled) to construct in that location. This would not be an acceptable alternative as it would impact the environment negatively. Therefore, the design before you represents the safest alternative to gain access to the site and re-develop the site in an environmentally responsible manner.

Finally, the proposed front building setback is not unlike building setbacks in the immediate area. The proposed 15 foot setback in the front is in keeping with adjacent properties and will appear to be conforming to the surroundings. Route 236 is a wide right-of-way corridor and the setback distance from the proposed building face to the edge of travel way will vary from 40-45 feet. Landscaping and site grading along the front of the building will help to make the building appear further back from the street.

QUIT-CLAIM DEED
WITH COVENANT

Know All By These Present that **JAMES E. WILSON and URSULA H. WILSON, Trustees of the James E. Wilson Living Trust, dated June 2, 2000** with a mailing address of 33 Remicks Lane, Kittery, Maine 03909, for consideration paid, *Grant* to **Washburn Realty Group, LLC** with a mailing address of P.O. Box 463, Winchester, Massachusetts 01890, with *Quit-Claim Covenant*, a certain parcel of land, together with the buildings and improvements located thereon, situated on Route 236 in the Town of Kittery, County of York and State of Maine and bounded and described as follows:

Beginning on the State Highway known as Route 236 and the line of the right of way of the New Hampshire Public Service Company; thence northerly by Route 236, 600' to a hub; thence easterly by land now or formerly of Frank and Frances Jewett, 150' to a hub; thence southerly by other land now or formerly of Frank and Frances Jewett, 600' to the line of the New Hampshire Public Service Company right of way; thence westerly by said power line right of way, 150' to the place of beginning.

Excepting from the above-described parcel so much as was released by Partial Release from The Ocean National Bank of Kennebunk to Hector W. MacKenzie, Jr., dated December 18, 1987 and recorded in the York County Registry of Deeds at Book 4577, Page 310.

Meaning and intending to convey to same premises conveyed to the Grantors by deed of James E. Wilson dated July 22, 2015 and recorded in York County Registry of Deeds Book 17064, Page 465.

WITNESS my hand this 28 day of November, 2018.

James E. Wilson Living Trust

Maria Hunt
Witness

James E. Wilson
JAMES E. WILSON, Trustee
Ursula H. Wilson
URSULA H. WILSON, Trustee

Maine R.E. Transfer Tax Paid

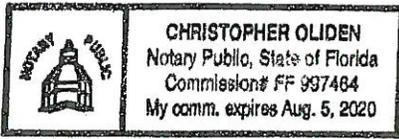
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3 of 2

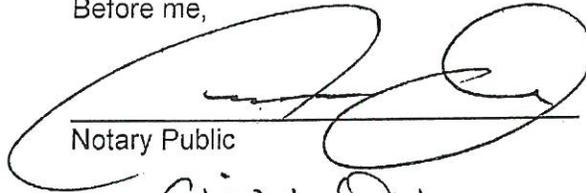
STATE OF *Florida*
County of *Broward*

November 29, 2018

Then personally appeared the above-named, **JAMES E. WILSON and URSULA H. WILSON, Trustees of the James E. Wilson Living Trust** and acknowledged the foregoing instrument to be their free act and deed in said capacity,

Before me,





Notary Public

Christopher Oliden

Print Name

J.E.W.
U.H.W.
P. 2 of 2

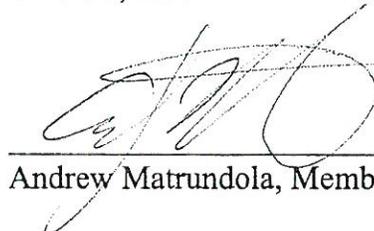
AUTHORIZATION

WASHBURN REALTY GROUP, LLC hereby authorizes the following attorneys to submit an Application to the Town of Kittery Board of Appeals for a Miscellaneous Variation Request with respect to the LLC's property located at 60 Route 236, Kittery, Maine and identified by the Kittery Tax Assessor on Map 29, as Lot 14:

**Stephen Y. Hodsdon, Esq.
Matthew J. Williams, Esq.
HODSDON & AYER
56 Portland Road
Kennebunk, Maine 04043
(207) 985-6184**

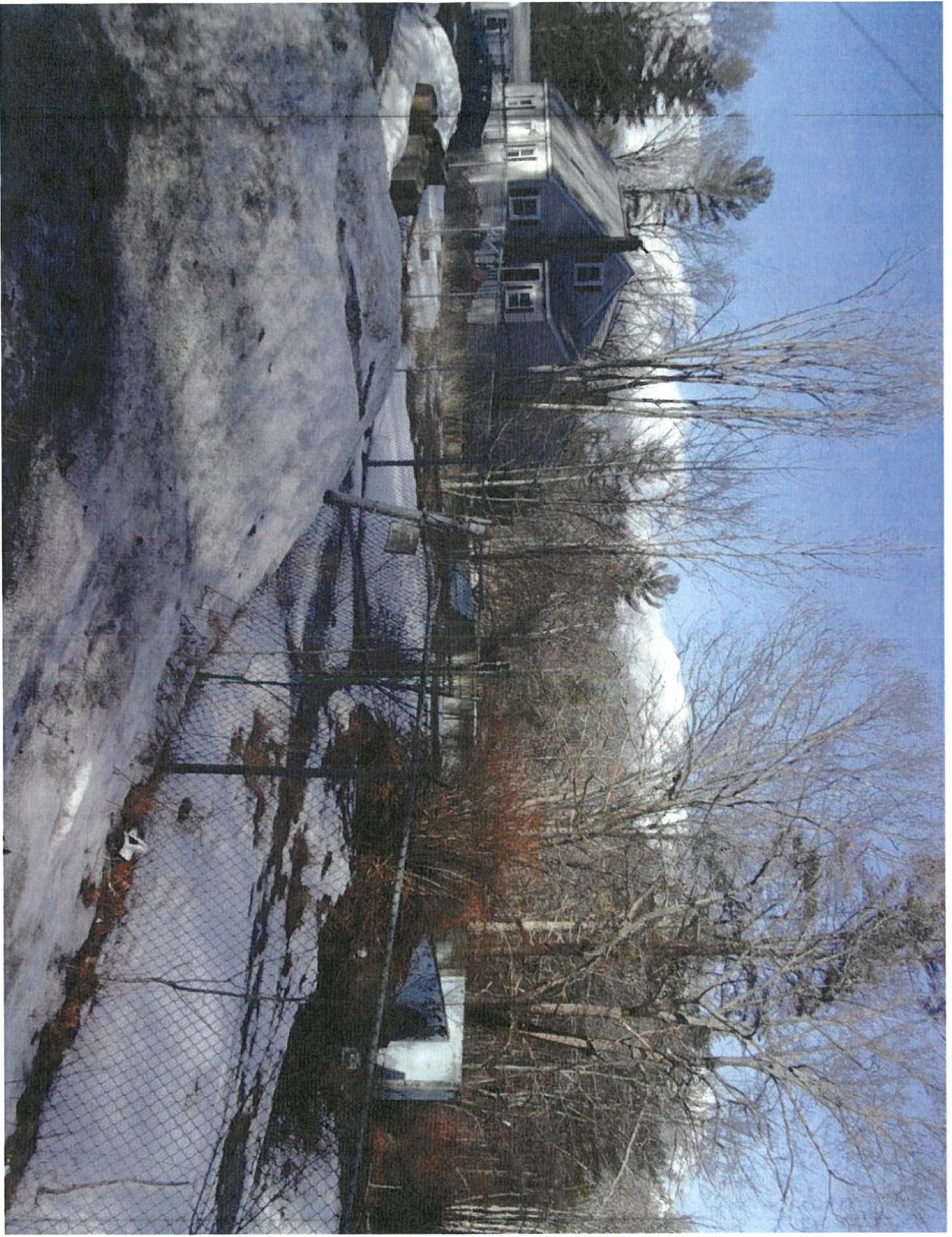
WASHBURN REALTY
GROUP, LLC

Dated: July 1, 2019



Andrew Matrundola, Member





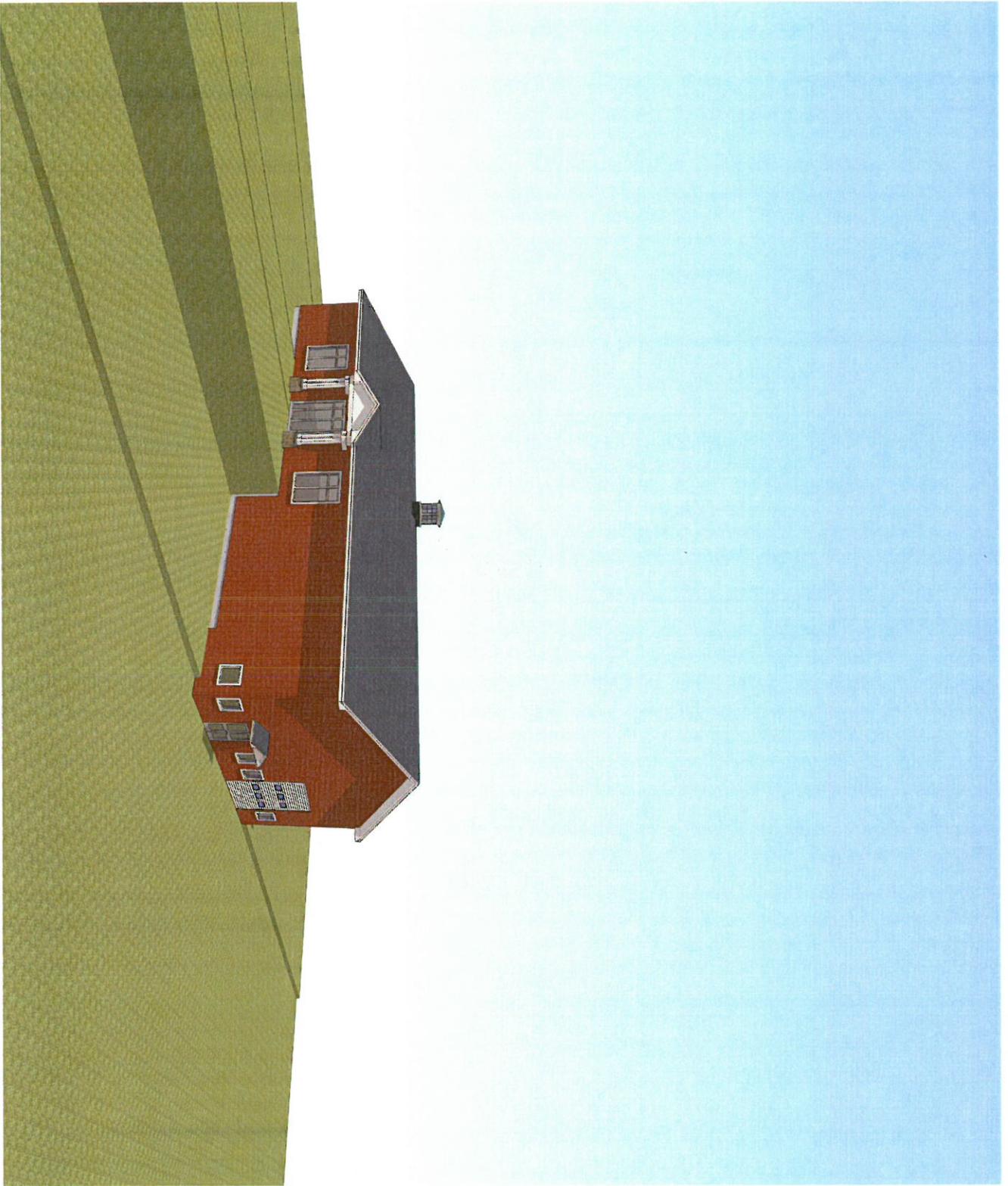












WETLAND NOTES:

- 1) WETLAND LINE DELINEATED BY STEVEN D. RIKER, CWS ON 1/30/2019 IN ACCORDANCE WITH THE FOLLOWING STANDARDS:
 - A) U.S. ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL, TECHNICAL REPORT Y-87-1 (JAN. 1987), AND REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2012.
 - B) FIELD INDICATORS OF HYDRIC SOILS IN THE UNITED STATES, VERSION 8.1, USDA-NRCS, 2017 AND (FOR DISTURBED SITES) FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND, VERSION 4, NEIWPCC WETLANDS WORK GROUP (2017).
 - C) NATIONAL LIST OF PLANT SPECIES THAT OCCUR IN WETLANDS: NORTHEAST (REGION 1), USFWS (MAY 1988).
 - D) CLASSIFICATION OF WETLANDS AND DEEPWATER HABITATS OF THE UNITED STATES. USFW MANUAL FWS/OBS-79/31 (1997).
- 2) WETLAND FLAGS WERE FIELD LOCATED BY AMBIT ENGINEERING, INC.

NOTES:

- 1) PARCEL IS SHOWN ON THE TOWN OF KITTEERY ASSESSOR'S MAP 29 AS LOT 14.
- 2) OWNER OF RECORD:
WASHBURN REALTY GROUP, LLC
PO BOX 463
WINCHESTER, MA 01890
17857/22
PB 317/4
- 3) PARCEL IS NOT IN A FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 2301710004C. EFFECTIVE DATE JULY 5, 1984.
- 4) EXISTING LOT AREA:
73,330 S.F.
1.6834 ACRES
- 5) PARCEL IS LOCATED IN THE C-2 COMMERCIAL ZONING DISTRICT.
- 6) DIMENSIONAL REQUIREMENTS:

MIN. LOT AREA:	40,000 S.F.
FRONTAGE:	150 FEET
SETBACKS:	FRONT 50 FEET
	SIDE* 30 FEET
	REAR* 30 FEET
	40 FEET

MAXIMUM BUILDING HEIGHT:
MAXIMUM BUILDING AND OUTDOOR STORED MATERIAL COVERAGE: 40%
*SUBJECT TO BUFFER RESTRICTIONS CONTAINED IN TOWN OF KITTEERY LAND USE AND DEVELOPMENT ORDINANCE

WETLAND SETBACKS:
100' TO STRUCTURES
50'-100' TO PARKING AREAS
10'-30' TO TOE OF DRIVEWAY SLOPE
100' TO SEPTIC COMPONENTS
- 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE RESULT OF A STANDARD BOUNDARY AND TOPOGRAPHIC SURVEY OF TAX MAP 29 LOT 14 IN THE TOWN OF KITTEERY.
- 8) VERTICAL DATUM MEAN SEA LEVEL NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GPS OBSERVATIONS (±0.2).

WASHBURN REALTY GROUP, LLC
60 ROUTE 236
KITTEERY, MAINE

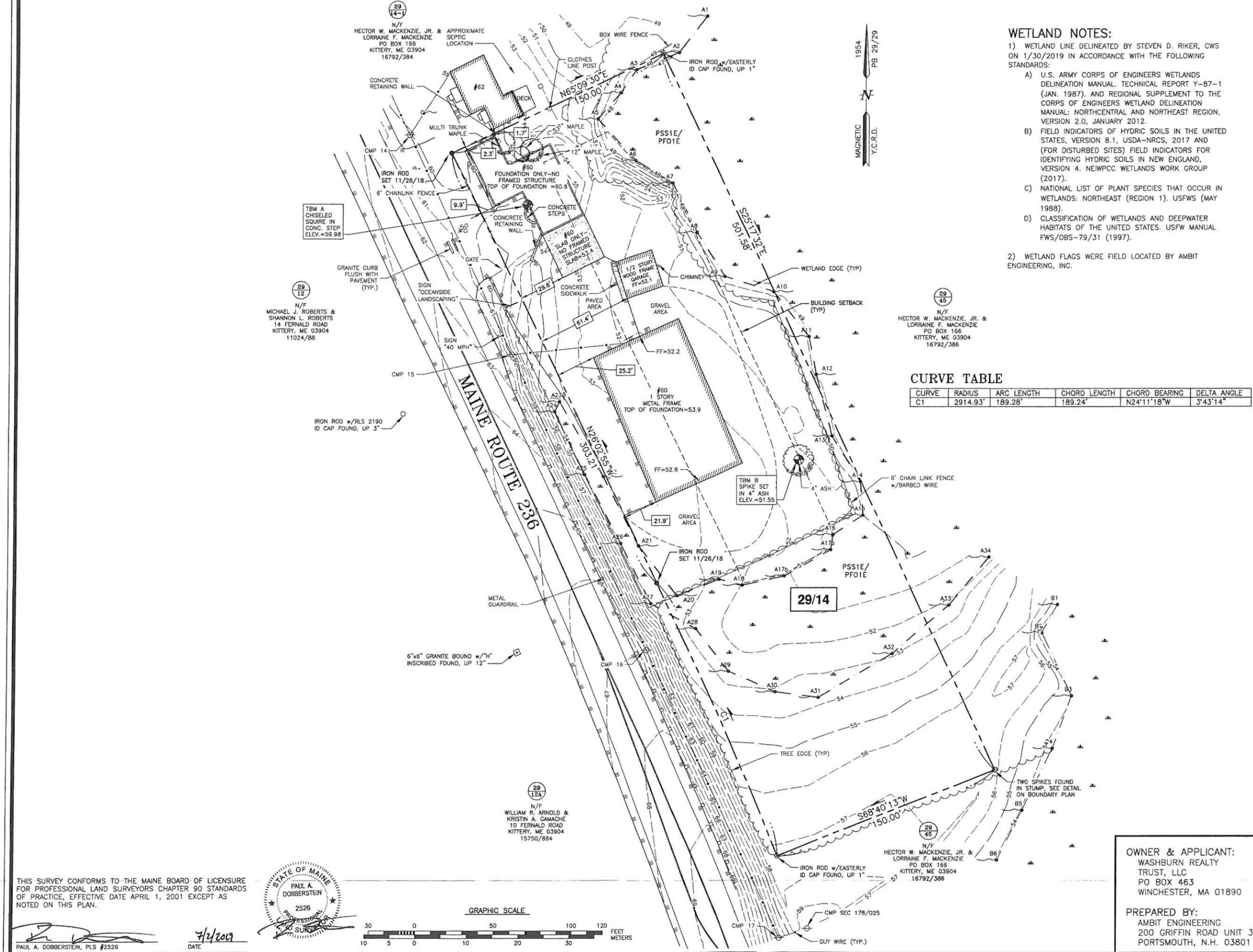
2	ADDED EXIST. BLDG SETBACK TXT	7/2/19
1	ISSUED FOR REVIEW	6/17/19
0	ISSUED FOR COMMENT	2/22/19
NO.	DESCRIPTION	DATE

REVISIONS

SCALE 1"=30' FEBRUARY 2019

EXISTING CONDITIONS PLAN

C1

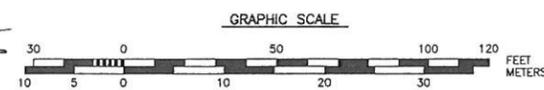


CURVE TABLE

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	2914.93'	189.28'	189.24'	N24°11'18\"W	3°43'14\"

THIS SURVEY CONFORMS TO THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS CHAPTER 90 STANDARDS OF PRACTICE, EFFECTIVE DATE APRIL 1, 2001 EXCEPT AS NOTED ON THIS PLAN.

PAUL A. DOBBERSTEIN, PLS #2526
DATE: 7/4/2019



OWNER & APPLICANT:
WASHBURN REALTY TRUST, LLC
PO BOX 463
WINCHESTER, MA 01890

PREPARED BY:
AMBIT ENGINEERING
200 GRIFFIN ROAD UNIT 3
PORTSMOUTH, N.H. 03801

IMPERVIOUS SURFACE AREAS
(TO PROPERTY LINE)

STRUCTURE	PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
STRUCTURE	6,649	4,701
FOUNDATION	2,284	0
SLAB	899	0
PAVEMENT	7,704	16,642
CONCRETE	116	1,093
RETAINING WALL	23	487
GRAVEL	7,098	0
TOTAL	24,773	22,923
LOT SIZE	73,330	73,330
% LOT COVERAGE	33.8%	31.3%



PROPOSED VARIANCES

VARIANCES REQUESTED:

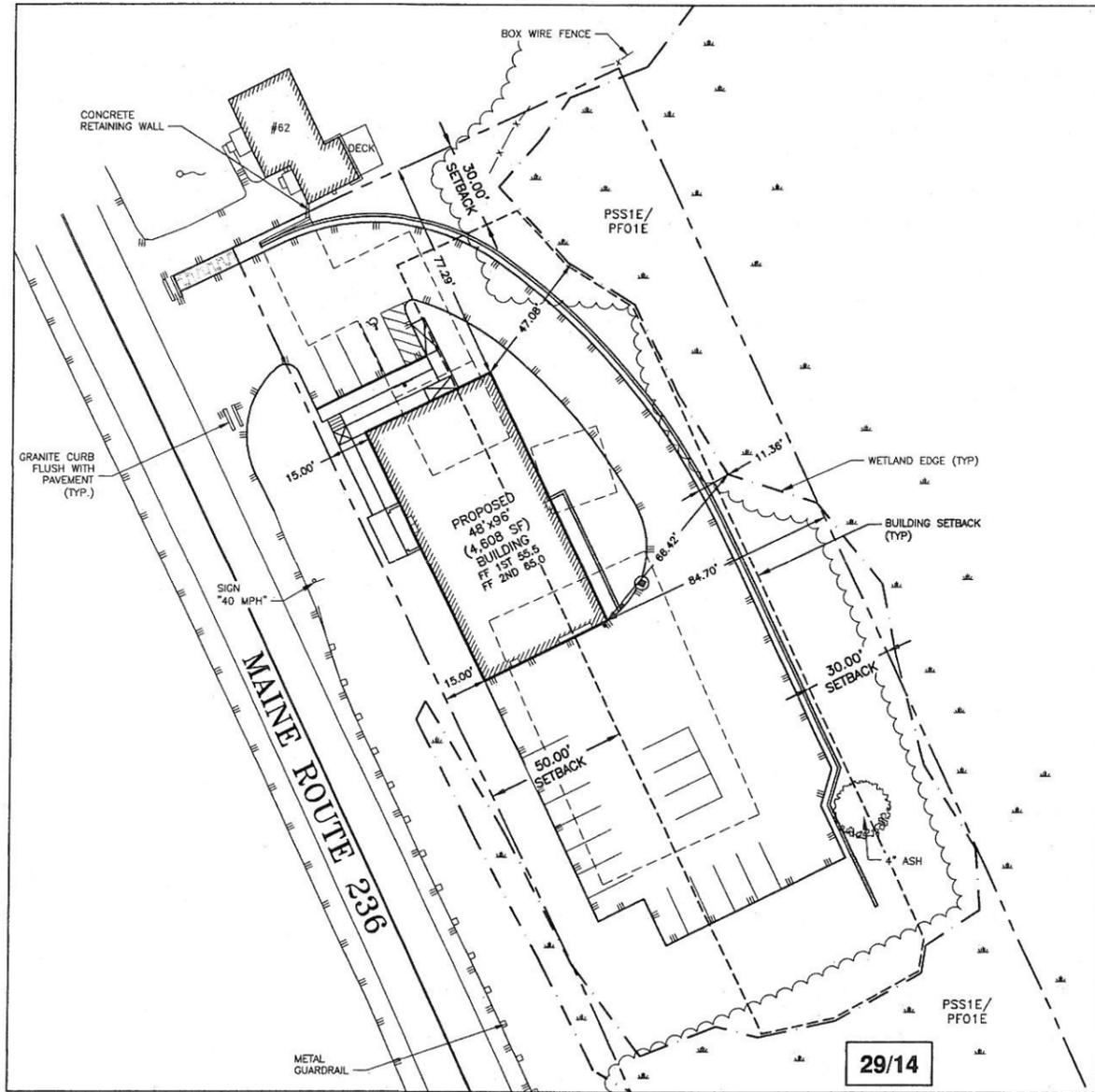
FRONT BUILDING SETBACK 15' WHERE 50' IS REQUIRED



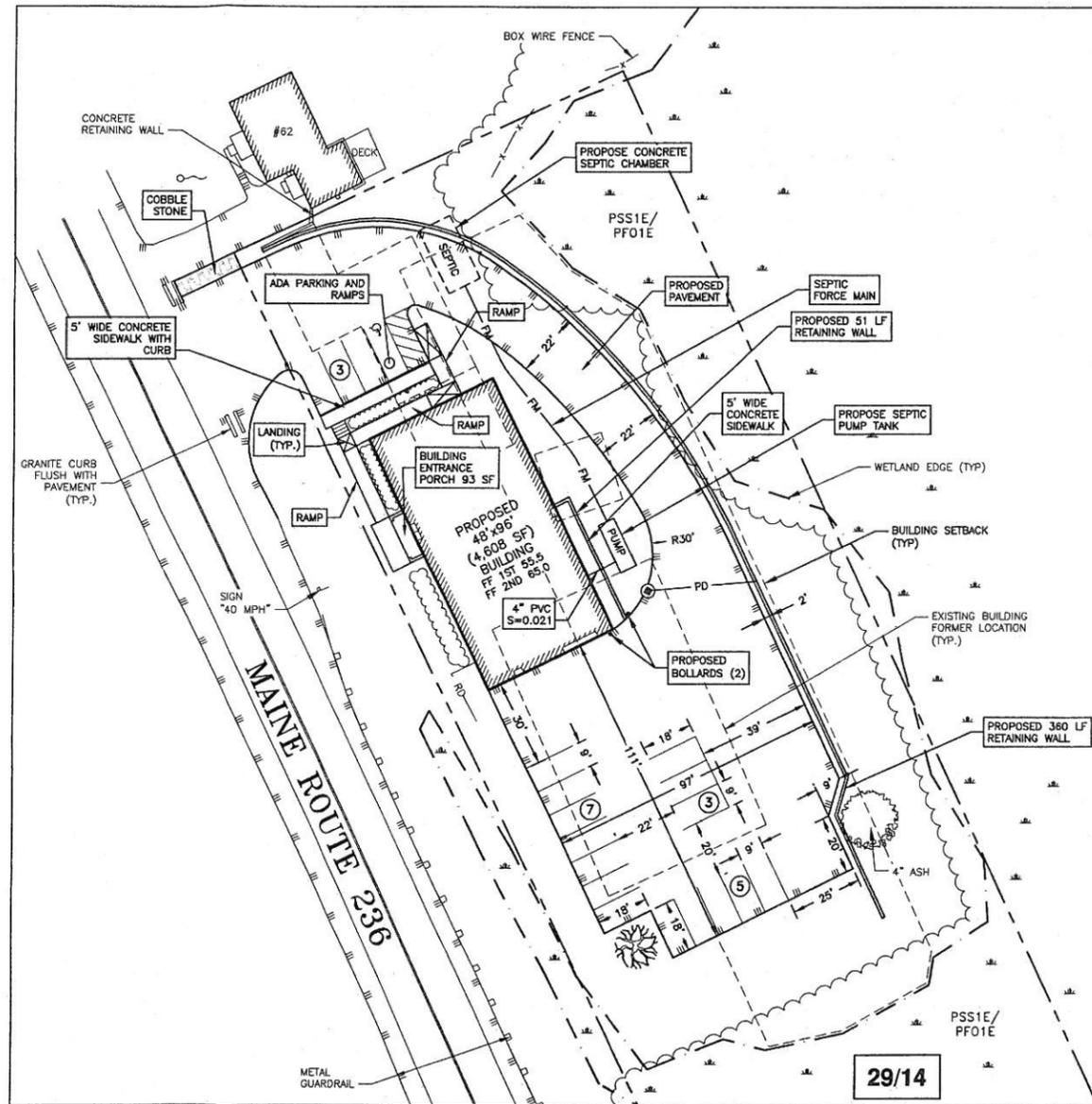
AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

NOTES:

- PARCEL IS SHOWN ON THE TOWN OF KITTERY ASSESSOR'S MAP 29 AS LOT 14.
- OWNER OF RECORD:
WASHBURN REALTY GROUP, LLC
PO BOX 463
WINCHESTER, MA 03890
17857/22
PB 317/4
- PARCEL IS NOT IN A FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 2301710004C. EFFECTIVE DATE JULY 5, 1984.
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SETBACKS: FRONT 50 FEET
SIDE* 30 FEET
REAR* 30 FEET
40 FEET
MAXIMUM BUILDING HEIGHT:
MAXIMUM BUILDING AND OUTDOOR
STORED MATERIAL COVERAGE: 40%
*SUBJECT TO BUFFER RESTRICTIONS
CONTAINED IN TOWN OF KITTERY
LAND USE AND DEVELOPMENT ORDINANCE
- THE PURPOSE OF THIS PLAN IS TO SHOW PROPOSED DEVELOPMENT ON TAX MAP 29 LOT 14 IN THE TOWN OF KITTERY.
- VERTICAL DATUM MEAN SEA LEVEL NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GPS OBSERVATIONS (±0.2').
- REQUIRED PARKING: 1 SPACE PER 500 SF GFA
9,216 SF x SPACE / 500 = 19 SPACES REQUIRED
LOWER LOT SPACES ARE 9'x18': 15 SPACES
UPPER LOT SPACES ARE 9'x20': 3 SPACES
ADA SPACES ARE 8'x20': 1 SPACE
TOTAL: 15+3+1= 19 SPACES



SETBACK PLAN
30 SCALE

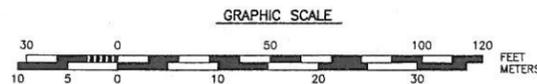


SITE PLAN
30 SCALE

APPROVED BY THE KITTERY ZONING BOARD

CHAIRMAN _____

DATE _____

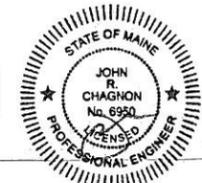
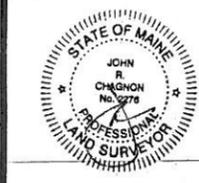


OWNER & APPLICANT:
WASHBURN REALTY
TRUST, LLC
PO BOX 463
WINCHESTER, MA 01890

PREPARED BY:
AMBIT ENGINEERING
200 GRIFFIN ROAD UNIT 3
PORTSMOUTH, N.H. 03801

**WASHBURN REALTY
GROUP, LLC**
60 ROUTE 236
KITTERY, MAINE

NO.	DESCRIPTION	DATE
2	ADDED SEPTIC	7/2/19
0	ISSUED FOR COMMENT	6/28/19



SCALE 1"=30'

JUNE 2019

**VARIANCE
PLAN**

C2

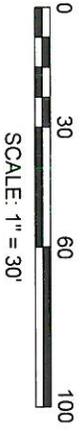
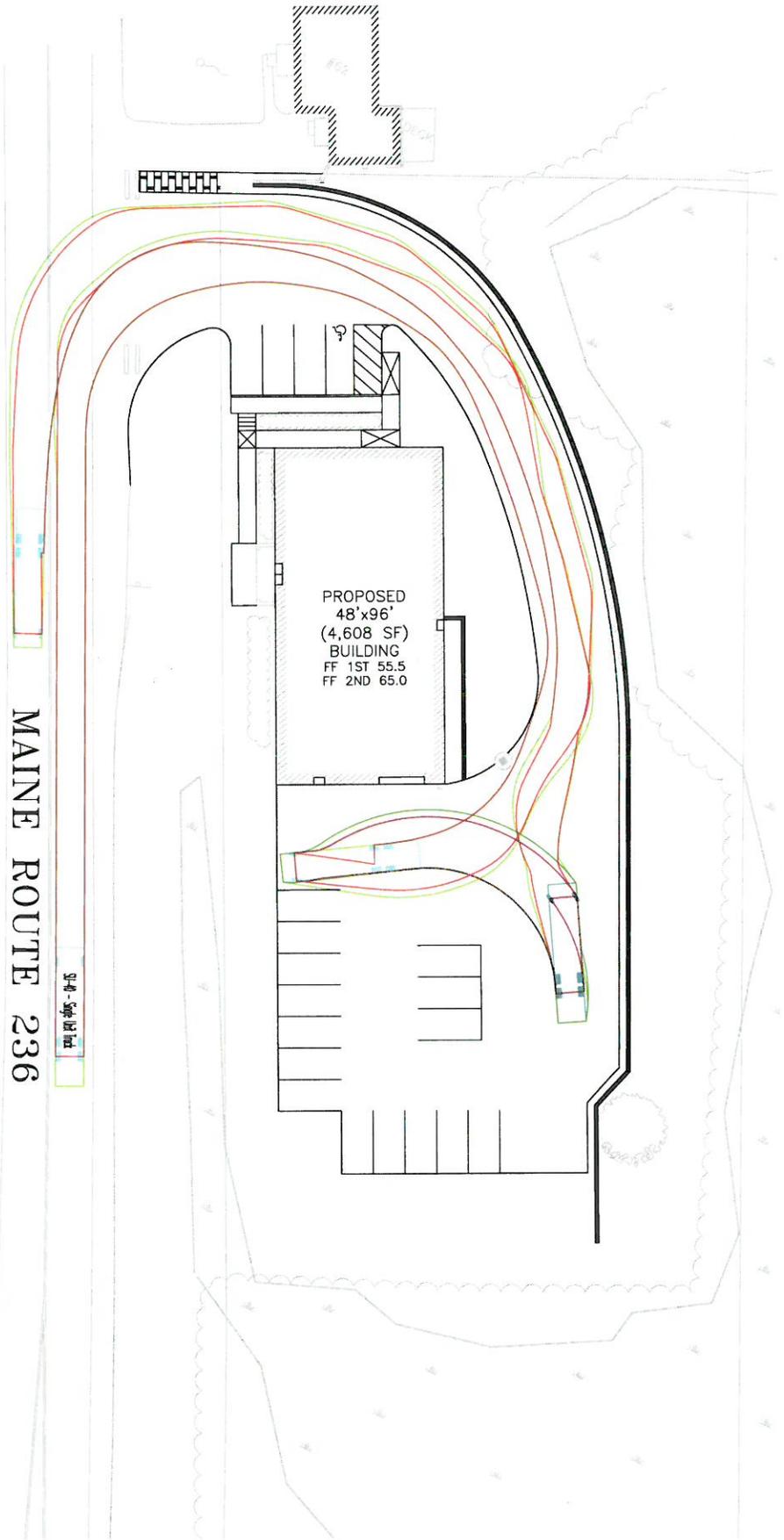


Figure 2
SU-40
TO/FROM THE SOUTH

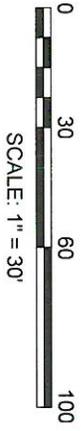
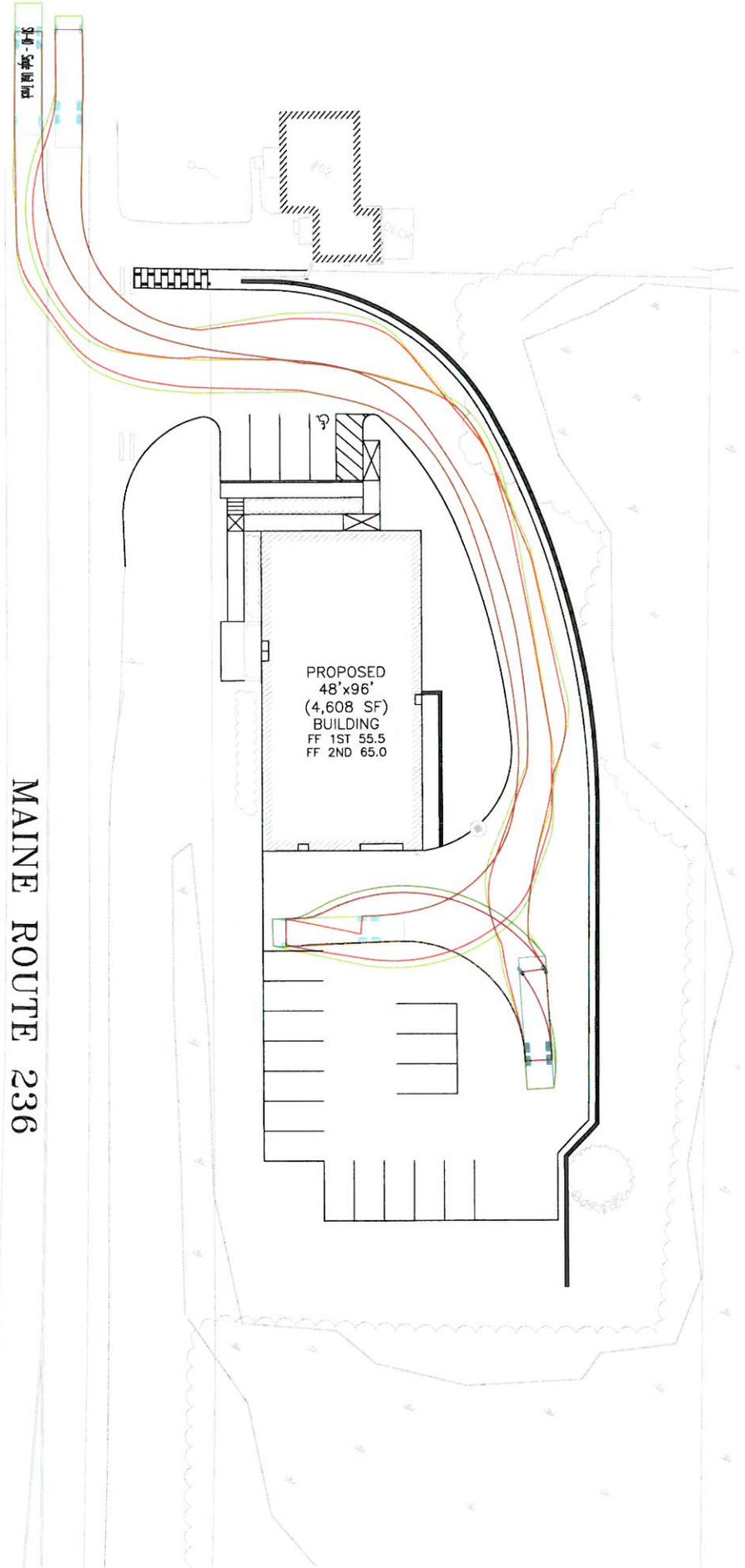


Figure 3
 SU-40
 TO/FROM THE NORTH

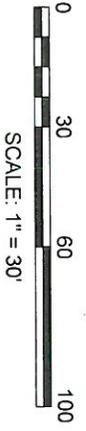
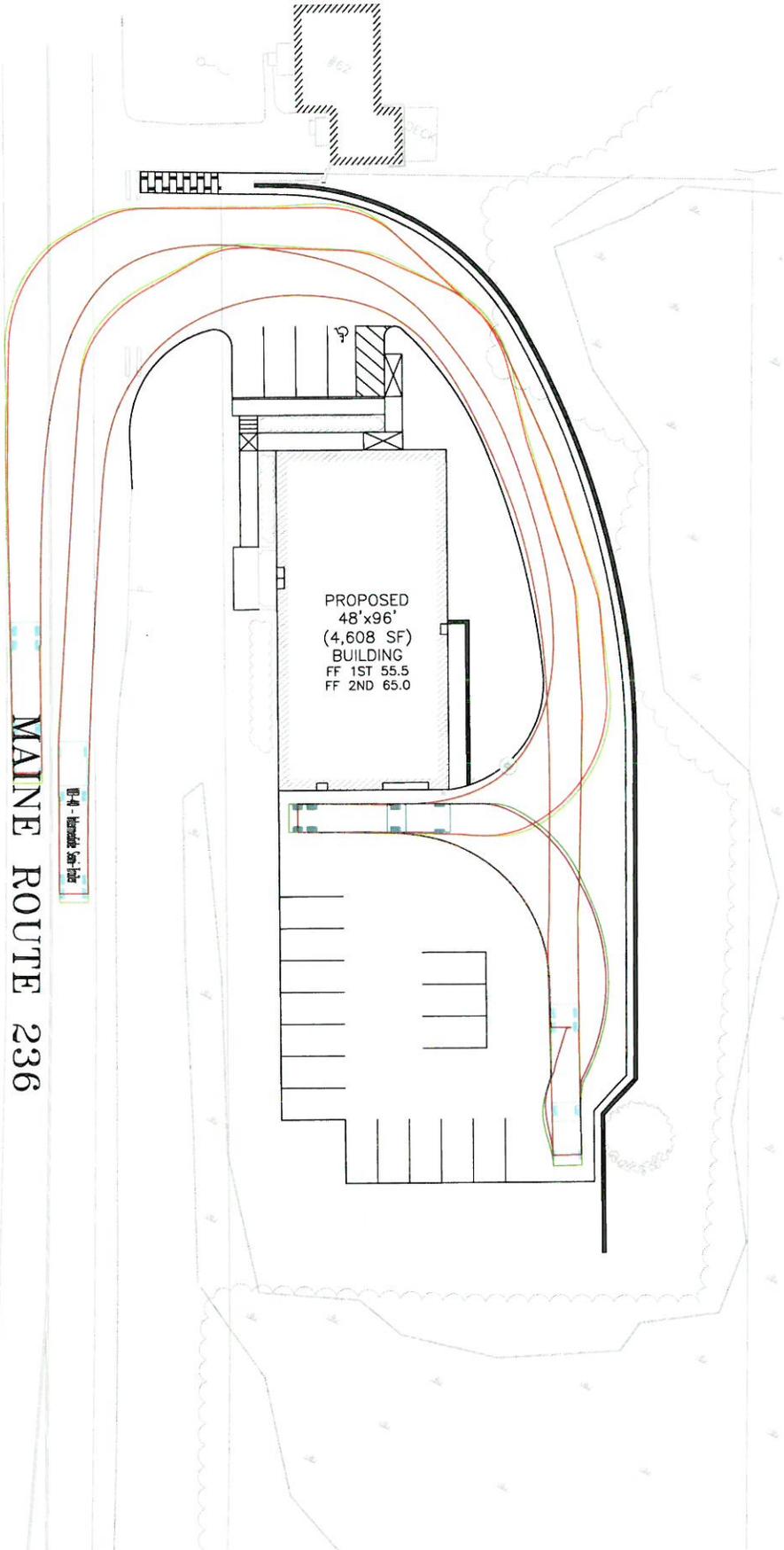
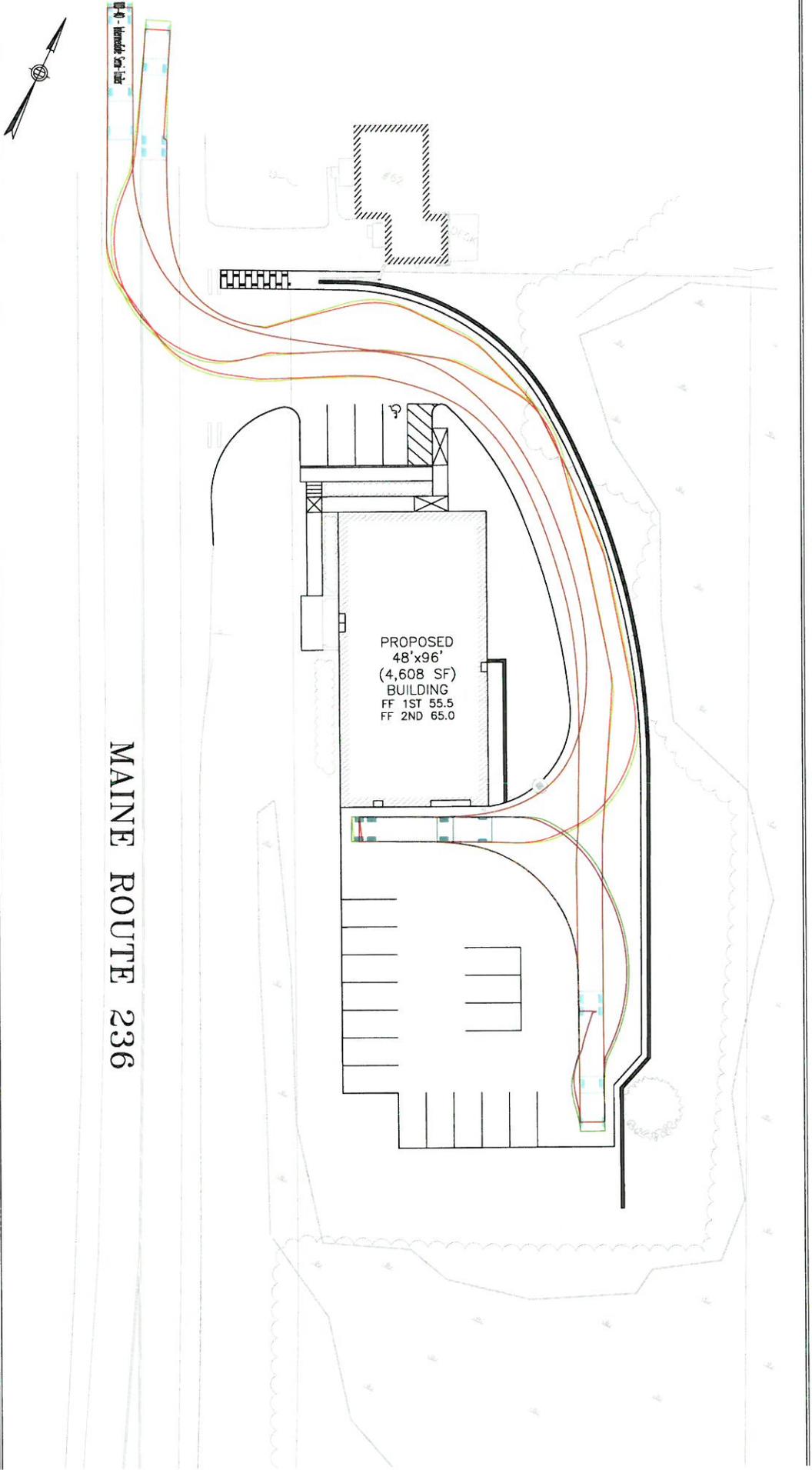


Figure 4
WB-40
TO/FROM THE SOUTH



GPI Engineering
Design
Planning
Construction Management

Greenman-Pedersen, Inc.
181 Ballardvale Street
Suite 202
Wilmington, MA 01887

0 30 60 100
SCALE: 1" = 30'

Figure 5
WB-40
TO/FROM THE NORTH



**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

BOA Meeting Date: July 23, 2019

Item #: MVR2019-07

STAFF REPORT – 60 ROUTE 236 – MISCELLANEOUS VARIATION REQUEST

Project Name: Plumbing supply warehouse

Applicant: Matthew Williams

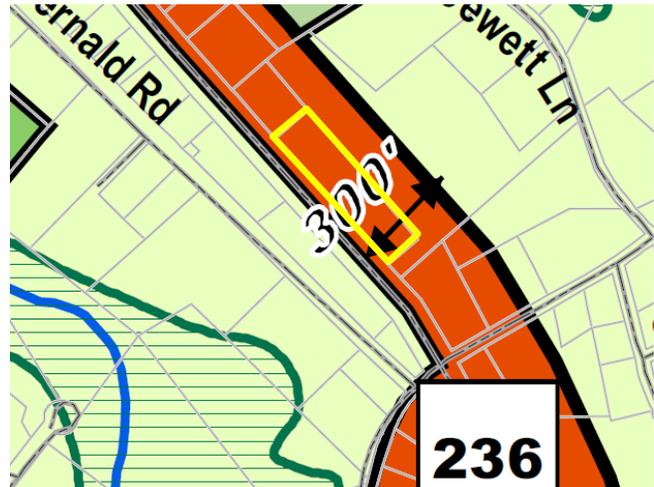
Owner: Washburn Realty Group

Proposed Development: Construct new commercial building and associated parking lot

Requests: Miscellaneous Variation Request per LUDC Section 16.7.3 Nonconformance, seeking relief of front, side, and wetland setbacks for a commercial building

Site Addresses: 60 Route 236

Map & Lot Numbers: M 29 L 14



Current Zoning:

Commercial (C-2) - This zoning district is intended to provide general retail sales, services and business space within the Town in locations capable of conveniently serving community-wide and/or regional trade areas and oriented primarily to automobile access.

The following uses are permitted in the Commercial (C-2) Zone: (r) Building materials and garden supply. The proposed use is permitted by right.

Staff Recommendation: APPROVAL of miscellaneous variation request.

District Standards:

Commercial Zoning District Standards			
Land Area per Dwelling (min.)	N/A	Front Yard Setback (min.)	50 feet
Maximum Building Coverage	40%	Rear Yard Setback (min.)	30 feet
Lot Size (min.)	40,000 sf	Side Yard Setback (min.)	30 feet

Current Use: Vacant, dilapidated warehouse

Surrounding Land Uses:

West (across road): Residential – Suburban (R-S), dwelling unit

East: Commercial (C-2), vacant

North: Commercial (C-2) dwelling unit

South: Commercial (C-2), vacant

Future Land Use:

The subject property is located within a Growth Area in the Future Land Use Map. A Growth Area is defined in the Comprehensive Plan as, “areas where the Town would like to encourage future development to occur.”

Site Description:

The subject property consists of approximately 64,469 square feet (1.48 acres), located along the eastern right-of-way of Route 236 north of I-95. The property is a nonconforming lot of record. The property is zoned Commercial (C-2). The property is approximately 150 feet deep as measured from the Route 236 right-of-way to the eastern property line and approximately 500 feet in length along its Route 236 frontage, making it a very narrow lot. A wetland exists on the eastern portion of the property and into the adjacent lot. The Shoreland Resource Officer determined the wetland to be in excess of 1 acre, so the required building setback would be 100 feet from the wetland.

History of the Property:

The property contains a vacant warehouse structure and old foundation with no structure. The former use has not been in operation for several years. The existing foundation and structure do not conform to the C-2 setback standards, with the old foundation located less than two feet from the property line along Route 236.

Description of the Issue:

The applicant proposes to construct a new two-story commercial building – with 4,608 square feet on each floor – to serve as a plumbing supply warehouse and showroom. The front building setback for the C-2 zone is 50 feet, and the setback from the wetland to the east is 100 feet. If applying

those setbacks to the property, there appears to be no area where a building would not violate setbacks. The applicant is request Board of Appeals approval to site the building in an area that would still violate some setbacks, but that would allow for less impacts to the wetlands to the east.

Because the existing building and foundation are nonconforming structures, Kittery Land Use & Development Code 16.7.3.3.A.(1) requires Board of Appeals approval. Town Code Section 16.7.3.3.A.(2) states that when determining if a structure relocation meets the setback to the “greatest practical extent,” the Board of Appeals must consider the following conditions:

(a) *The size of the lot;*

The lot is 1.48 acres, which does not conform to the current C-2 district standards. The lot is very narrow at 150 feet from the western property line along Route 236 to the eastern property boundary.

(b) *The slope of the land;*

The land includes some significant grade changes due to the presence of low-lying areas to the east.

(c) *The potential for soil erosion;*

There is potential for soil erosion impacts to the wetland to the east without significant changes to the existing site.

(d) *The location of other structures on the property and on adjacent properties;*

Existing non-conforming structures are to be removed and replaced with new commercial structures located as far away from the wetland resource as possible. A dwelling unit occupies the adjacent parcel to the north, and the proposed building would be sited farther away from this property than the existing foundation. There are no adjacent structures to the east, west, or south.

(e) *The location of the septic system and other on-site soils suitable for septic systems;*

The project proposes to site a new septic system underneath the driveway on the north end of the site in suitable soils.

(f) *The type and amount of vegetation to be removed to accomplish the relocation.*

The proposed relocation will not require removing significant vegetation. The existing site contains several paved and gravel areas that will be removed to redesign the site, as well as an existing building and old foundation. New vegetation is planned between the proposed driveway and the wetlands to the east, which can be accomplished if the proposed building is sited as close to Route 236 as possible.

This project will also require Planning Board approval via the site plan process.

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.A.(1) states that, “A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided the site of relocation conforms to all dimensional requirements, to the greatest practical extent, as determined by the Planning Board or Board of Appeals, and provided the applicant demonstrates the present subsurface sewage disposal system meets the requirements of state law and the State of Maine Subsurface Wastewater Disposal Rules, or a new system can be installed in compliance with the law and said rules. In no case may the relocation of a structure be permitted that causes the structure to be more nonconforming.”

- (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 all adjacent properties are zoned Commercial C-2 in a conforming or legal, nonconforming state. The 236 corridor is zoned for the proposed type of commercial use.

- (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 proposed use is permitted by right and the property is surrounded by either vacant or nonconforming uses.

- (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 project will eliminate a dilapidated building an eyesore, preserving area property values with an appropriate use.

- (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 use will not cause an undue increase of vehicular traffic. The property is located along Route 236, a commercial corridor classified as a Minor Arterial in the Kittery Comprehensive Plan.

- (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 project proposes to construct adequate on-site septic facilities.

- (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 19 parking spaces based on calculations of the areas for a “warehouse” at 1 space per 500 gross square feet. Town code does not include specific parking requirements for a “building supply” use. Town Code Section 16.8.9.4.C. states that “...the Town Board or officer with jurisdiction to approve the application is authorized to determine the parking requirements and projected development use intensity.” The Planning Board will have ultimate approval authority over the minimum parking requirements for the site.

- (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 proposes landscape buffering and vegetation per the code.

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

The lot currently slopes away from Route 236 and will require regrading. The project proposes a retaining wall along the driveway and portions of the parking lot to direct water away from the wetland to the east and into appropriate stormwater infrastructure.

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

The proposal does not include the provision of pedestrian facilities along Route

236. The applicant will need to build such improvements consistent with the “Design and Construction Standards for Streets and Pedestrianways” for an Arterial Highway outlined in Table 16.8 or request a waiver from the Planning Board during site plan review.

(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 single-family 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 relocate a non-conforming structure as proposed.



TOWN OF KITTERY
Planning and Development
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1304 Fax: 207-439-
6806

TO: BOARD OF APPEALS
FROM: ADAM CAUSEY, DIRECTOR OF PLANNING & DEVELOPMENT
CC: KENDRA AMARAL, TOWN MANAGER
SUBJECT: BOARD MEETING MINUTES
DATE: JULY 18, 2019

Sometime in late 2018, the Planning & Development Department lost its dedicated minute taker for the Planning Board and Board of Appeals. The Town has found it difficult to fill that position in the current economic climate. Planning staff is working to clear the backlog of minutes that need to be approved by the Board of Appeals. To that end, the Town Manager has directed staff to generate minutes based on the minimum requirements contained in state law. These action minutes will look a bit different than previous meeting minutes.

State law on records of meetings is as follows:

§403. Meetings to be open to public; record of meetings

1. Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.

2. Record of public proceedings. Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include:

A. The date, time and place of the public proceeding;

B. The members of the body holding the public proceeding recorded as either present or absent; and

C. All motions and votes taken, by individual member, if there is a roll call.

3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.

4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.

5. Validity of action. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.

6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.

Since all Board of Appeals meetings are broadcast and recorded, staff feels this change in no way prevents the public from gaining an accurate understanding of what takes place during public meetings. The minutes submitted to the Board by staff are a starting point – Board of Appeals members are the sole judge of how and if minutes are approved. Staff will work with the Board to amend and modify minutes, subject to votes of the Board.

The next Board of Appeals' meeting agenda (July 23, 2019) contains several past meetings worth of minutes. Staff recommends each board member review the minutes, make any corrections or additions they feel necessary, and bring up any modifications to the minutes for a vote of the Board at the appropriate time.

Please direct all questions or comments to the chair of the Board of Appeals.

Thank you,

Adam Causey, AICP
Director, Planning & Development Department