

Town of Kittery 200 Rogers Road, Kittery, ME 03904 Board of Appeals Meeting Agenda

Hybrid Meeting

Public may attend in person in Town Council Chambers or via zoom at: https://www.kitteryme.gov/board-appeals/events/75671

Tuesday, July 25th, 2023 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
 - Mike Sudak, on behalf of owner Darren LaPierre, request a variance to build a new boat repair facility within the wetland setback in the Commercial 2 (C-2) zone, per Section 16.2.3.(6).(c).
- 6. Unfinished Business
- 7. New Business
- **8.** Acceptance of Previous Minutes
- 9. Board Member or CEO Issues or Comment
- 10. Adjournment

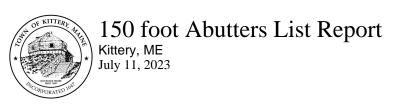
NOTICE OF PUBLIC HEARING TOWN OF KITTERY - BOARD OF APPEALS

In-Person, Council Chambers - Public can attend in person Tuesday, July 25th, 2023-6:30 p.m.

Mike Sudak, on behalf of owner Darren LaPierre, request a variance to build a new boat repair facility within the wetland setback in the Commercial – 2 (C-2) zone, per Section 16.2.3.(6).(c).

Application information is available for public inspection by appointment only between 8:30 am to 4:30pm, Monday through Thursday, at the Land Use Department located in Kittery Town Hall.

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



Subject Property:

Parcel Number: 29-1 Mailing Address: GREEN GRASS LLC GREEN GRASS LLC CAMA Number: 29-1

32 ROUTE 236 UNIT 1 KITTERY, ME 03904

122 MARTIN ROAD

Property Address: 41 ROUTE 236

Abutters:

7/11/2023

Parcel Number: 12-3-1 Mailing Address: 98 DENNETT ROAD LLC 98 DENNETT

CAMA Number: 12-3-1 ROAD LLC

Property Address: 98 DENNETT ROAD 12 ROSEBERRY LANE KITTERY, ME 03904

20-14 Parcel Number: Mailing Address: DUMAS, ARTHUR P DUMAS, ARTHUR P

CAMA Number: 20-14 31 ROUTE 236

Property Address: 31 ROUTE 236 KITTERY, ME 03904-5528

Parcel Number: 20-14A Mailing Address: SEAWARD, KAREN D SEAWARD,

CAMA Number: 20-14A KAREN D Property Address: 29 ROUTE 236 29 ROUTE 236

KITTERY, ME 03904-5528

Parcel Number: 20-15 Mailing Address: ROONEY, SEAN F. ROONEY, SEAN F.

CAMA Number: 20-15 33 ROUTE 236

Property Address: 33 ROUTE 236 KITTERY, ME 03904

Parcel Number: Mailing Address: BLACKBIRD BUSINESS SUITES, LLC 20-17

CAMA Number: 20-17 BLACKBIRD BUSINESS SUITES, LLC

Property Address: 37 ROUTE 236 32 ROUTE 236 KITTERY, ME 03904

Parcel Number: 20-18 Mailing Address: BURBANK, KAREN C BURBANK, KAREN

20-18 CAMA Number: Property Address: 122 MARTIN ROAD

KITTERY, ME 03904-1013

Parcel Number: CALDWELL, VIOLA F CALDWELL, VIOLA 29-2 Mailing Address:

CAMA Number: 29-2

Property Address: 140 MARTIN ROAD 140 MARTIN ROAD KITTERY, ME 03904-1013

Parcel Number: 29-3 Mailing Address: ENRIGHT, BONNIE M. ENRIGHT,

29-3 CAMA Number: BONNIE M.

Property Address: 136 MARTIN ROAD 136 MARTIN ROAD

KITTERY, ME 03904

Parcel Number: 29-31 Mailing Address: KITTERY LAND TRUST INC KITTERY

CAMA Number: LAND TRUST INC 29-31 Property Address: 6 MEADOW LANE **PO BOX 467** KITTERY, ME 03904

KING, VINCENT E KING, VINCENT E Parcel Number: 29-4 Mailing Address:

132 MARTIN ROAD **CAMA Number:** 29-4

KITTERY, ME 03904-1013 Property Address: 132 MARTIN ROAD





29-44-2

Property Address: 32 ROUTE 236 #UNIT 2

29-5

29-6 Property Address: 124 MARTIN ROAD

Property Address: 130 MARTIN ROAD

CAMA Number:

CAMA Number:

CAMA Number:

Parcel Number: 29-44 Mailing Address: LAPIERRE PROPERTIES LLC LAPIERRE

CAMA Number: 29-44-1 PROPERTIES LLC

Property Address: 32 ROUTE 236 #UNIT 1 32 ROUTE 236

KITTERY, ME 03904-5525

Parcel Number: 29-44 Mailing Address: LOBSTER PROPERTIES LLC LOBSTER

> PROPERTIES LLC 32 ROUTE 236 UNIT 2 KITTERY, ME 03904

Parcel Number: 29-5 Mailing Address: ORLANDO, THOMAS ORLANDO,

THOMAS

130 MARTIN ROAD KITTERY, ME 03904

Parcel Number: 29-6 Mailing Address: ORLANDO, THOMAS PETTER

ORLANDO, THOMAS PETTER

124 MARTIN ROAD KITTERY, ME 03904



PLANNING & DEVELOPMENT DEPARTMENT STAFF REPORT

BOA Meeting Date: <u>July 25th</u>, 2023

Item #: <u>VAR23-2</u>

STAFF REPORT – 41 ROUTE 236 –VARIANCE REQUEST

Project Name: 41 Route 236

Applicant: Mike Sudak, Attar Engineering

Owner: Darren LaPierre

Proposed Development: Construction of a new boat repair facility

Requests: Variance Request to build a new boat repair facility within the

wetland setback in the Commercial – 2 (C-2) zone, per Section

16.2.3.(6).(c).

Site Addresses: 41 Route 236

Map & Lot Numbers: M29 L1

Current Zoning:

Commercial-2 Zone (C-2): The purpose of the C-2 (Route 236 Commercial) Zone is to provide services, industry and business space within the Town in a location capable of conveniently serving community-wide and/or regional trade areas and oriented primarily to vehicular access.

<u>Staff Recommendation:</u> <u>DENIAL</u> of the variance request for failure to satisfy \underline{ALL} of the criteria set forth in 16.2.12.D(2)(a).

District Standards:

Commercial 2 Zoning District Standards					
Maximum Building Coverage	40%	Front Yard Setback (min.)	50 feet		
Lot Size (min.)	40,000 sf	Rear Yard Setback (min.)	30 feet**		
Side Yard Setback (min.)	30 feet**				

Current Use: B (38) Boatyard

Surrounding Land Uses:

West: Mixed Use – Neighborhood (MU-N), vacant land

East: Commercial 2 (C-2) & Resource Protection (RP) Overlay Zone, Boatyard storage

North: Commercial 2 (C-2), dwelling unit South: Commercial 2 (C-2), business suites

Site Description:

The subject property consists of an approximately 163,350 square foot lot (3.75 acres). The property is located completely within the Commercial 2 Zone. The parcel is notated having substantial wetlands on multiple sides of the property.

History of the Property:

The current use of the subject parcel is boat storage. Per the application, the parcel has been in use as a boatyard for the past 14 years. A boatyard is a permitted use within the Commercial 2 Zone.

Description of the Issue:

The applicant proposes to construct a 21'X30' building on the subject parcel for a repair facility. The proposed facility would encroach on the 100' wetland setback in the following amounts per the applicant's request;

• Northeast Corner: 2' relief requested

• Southeast Corner: 5' relief requested

• Southwest Corner: 1.2' relief requested

• Northwest Corner: 1.3' relief requested

Applicant's Variance Request:

Section 16.2.12.D(2)(a) requires the Board of Appeals to use the following process when hearing variance requests:

§ 16.2.12.D(2) Variance request.

- a) A variance may be granted only by the Board of Appeals under the following conditions:
 - [1] For a reduction in dimensional requirements related to height, are and size of structure or size of yards and open spaces;

The applicant is requesting a relief in the 100' wetland setback as notated above.

[2] The use is not prohibited by this title; and

The current use of a B (38) Boatyard is an allowable use in the Commercial 2 Zone.

[3] Only is the strict application of the terms of this title would result in undue hardship. The term "undue hardship" means the applicant must demonstrate **all** of the following:

(a) The land in question cannot yield a reasonable return unless a variance is granted.

The parcel in question currently operates as a boat storage yard. It has operated as such for the past 14 years per the applicant. Without the addition of a repair facility, the parcel yields a reasonable return. The addition of a small repair facility is plausible within a building envelope that does not encroach on the wetland setback, thereby increasing the overall reasonable return of the subject parcel without a variance being granted.

(b) The need for a variance is due to the unique circumstance of the property and not to the general conditions in the neighborhood.

The need for a variance is due to the unique circumstance of the property. Notated on the survey provided, the parcel is essentially surrounded by substantial wetlands.

(c) The granting of a variance will not alter the essential character of the locality.

The granting of a variance would not alter the essential character of the locality.

(d) The hardship is not the result of action taken by the applicant or a prior owner.

The hardship is not the result of action taken by the applicant or prior owner.

Using the standards and criteria found in 16.2.12.D(2)(a) of the LUDC, Staff recommends **<u>DENIAL</u>** of the variance request to reduce the 100' wetland setback as proposed for failure to satisfy **<u>ALL</u>** of the criteria set forth in 16.2.12.D(2)(a).

Sample Findings of Fact

- 1. The Variance Request is to construct a new 21'X30' repair facility partially within the 100' wetland setback.
- 2. The subject parcel consists of an approximately 163,350 square foot lot or 3.75 acres.
- 3. The Board had the authority to hear this request per Section 16.2.12D(2)(a).
- 4. The subject parcel can yield a reasonable return without granting the Variance Request.
- 5. The Board considered the Basis for Decision in Section 16.2.12.F
- 6. Staff recommends denial of the Variance Request due to failure to satisfy all of the criteria set forth in 16.2.12D(2)(a).
- 7. The Board ______ the Variance Request.

Sample Conclusions of Law

- 1. The Board had the authority to hear the request per Section 16.2.12.D(2)(a).
- 2. The Board considered the Basis for Decision and Factors for Consideration set forth in 16.2.12.F.
- 3. The request was _____.



Ms. Amelia Burke, Board of Appeals Chair Mr. Craig Alfs, Code Enforcement Officer Town of Kittery, Maine 200 Rogers Road Kittery, Maine 03904 June 29th, 2023 Project No. 23049

RE: Variance Request Application

Island Marine Services Boat Storage Yard (Tax Map 29, Lot 1)

41 Route 236, Kittery, Maine

Dear Ms. Burke & Mr. Alfs:

On behalf of Island Marine Services and Green Grass, LLC., I have enclosed for your review and consideration a Variance Request application, along with associated Plot Plan and attachments, for the above-referenced parcel.

To provide a brief history, the subject parcel has been operating as a Boatyard for the past 14 years, receiving Planning and Code Enforcement approval in February of 2009 for the Business Occupancy of a Boat Yard and Marine Storage use. "Boatyard" is a permitted use in the Commercial-2 base zone per §16.4.20.B, which the entire developed area of the subject parcel resides in. The site is regularly used as an overflow storage lot in support of the Island Marine Services complex located across the street at 32 Route 236.

The Applicant is requesting relief from Town of Kittery General Performance Standards Table §16.5.30 "Minimum Setbacks from Wetlands and Water Bodies", specifically the "Other Buildings and Structures" subsection with wetland size greater than 1 acre. Reasoning and Affirmations shall be provided in the narrative below. The Applicant believes that the Board of Appeals has the right to view this request as a Variance per §16.2.3.(6).(c) "Administration and Enforcement".

A series of Site Photos as well as a Plot Plan are attached, which depict the existing conditions and provide greater detail to the variance request. As described above, the Applicant operates the subject parcel as a boat storage yard, which as evidenced by the attached photos is effectively a vegetated parking lot and laydown space. Boats intended for storage on the subject parcel are trucked by trailer from the Island Marine Services building across Route 236, and these trips can occur several times a season for each boat to facilitate de-winterizing, inspections, repairs, and winterizing. In an attempt to alleviate the hazard of repeated crossings of the Route 236 corridor, the Applicant is seeking to expand the existing Boatyard use at the subject parcel and construct a small repair facility.

As depicted on the Plot Plan, a significant portion of the subject parcel is made up of forested wetlands, all of which are portions of complexes greater than 1 acre in size. Per the above-referenced ordinance section of Table §16.5.30, wetland setback requirements from wetland bodies of this size is 100'. The 100' setback line is shown in red on the Plot Plan, depicting a very small effective building envelope defined by an irregular polygon.

The Applicant is requesting slight relief from this 100' setback in a select few areas to accommodate a more properly-shaped building at a size that will allow the envisioned expansion of the existing Boatyard use. The 100' setbacks will all be enforced at the staked corners depicted in the Site Photos, but a "squaring off" of the building faces pushes the building corners into the wetland setback buffer and causes this variance request. Based on the Plot Plan and the proposal of a 21'x30' building, the wetland setback from each building corner would become:

Northeast Corner: 98.0' (2.0' relief requested) Southeast Corner: 95.0' (5.0' relief requested) Southwest Corner: 98.8' (1.2' relief requested) Northwest Corner: 98.7' (1.3' relief requested)

The Applicant professes that this requested variance will allow the existing use to operate more effectively, will not negatively impact the parcel nor its abutting properties, and overall reduce the hazard to the Route 236 corridor from repeated trips to and from the neighboring facility as described above. Without the requested variance, the building envelope created by the 100' wetland setbacks is too prohibitive to construct a property-functioning repair facility.

We look forward to discussing this project with the Board of Appeals at their next-available meeting. Please contact me for any additional information or clarifications.

Sincerely;

Michael J. Sudak, E.I.

Staff Engineer

cc: Green Grass, LLC., Island Marine Services 23049 Cover BOA Rev 29Jun2023



TOWN OF KITTERY **BOARD OF APPEALS** APPLICATION CHECKLIST

DATE SUBMITTED

MAP & LOT

ASA FEE

DATE PAID

APPLICANT: Darren LaPierre - Green Grass LLC

6/29/2023

6/29/2023

\$300

Tax Map 29 Lot 1

	1			
DATE COMPLETE				
HEARING DATE				
			YES NO N/A	
APPLICATION FO	ORM FILLED OUT COMP	LETELY & SIGNED		
Supporting Docu	ments provided:			
Citations of	pertinent ordinance(s)			
Deed(s)				
Map(s)				
Blueprint(s)				
Survey(s)				
Photo(s)				
Other:				
Detailed plot plan	n or diagram showing:			
• •	nd shape of the lot			
	tions of existing buildings	·		
	dimensions of proposed	buildings or alterations		
	ographic features (wetlan	-	lot V	
	he nearest structures on a			
	ights-of-way, easements,			
Administrative A	ppeal information:			
Detailed desc	ription of decision appeale	ed		
Date on which	the decision was made a	and by whom		
Facts surroun	ding the appeal			
Statement of	what is wrong about the d	ecision appealed		
Relief action r	equested to be taken in th	ne matter		
Statement of	how the decision will affect	t applicant/property		
Date: 6/29/2	2023	Ву:	Michael Sudal .	Agent
			Michael J. Sudak	
			WIICHACI J. OUGAN	

(Print Name)

Green Grass, LLC DBA Island Marine Services Darren Lapierre 32 Route 236 Kittery, ME 03904

June 29th, 2023 Project No.: 23049

Mr. Jason Garnham, Director of Planning and Development Mr. Maxim Zakian, Town Planner Town of Kittery 200 Rogers Road Kittery, ME 03904

Dear Mr. Garnham & Mr. Zakian,

Please be informed that Kenneth A. Wood, P.E., Michael J. Sudak, E.I. and other assigned staff at Attar Engineering, Inc. will be acting as the agents for the applications and permitting of my project located at 41 Route 236 in Kittery, Maine.

Please contact me if I can provide any additional information.

Sincerely,

cc:

Darren Lapierre

Kenneth A. Wood, P.E, Michael J. Sudak, E.I., Attar Engineering, Inc.

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that LAPIERRE PROPERTIES, LLC, a Maine limited liability company with an address of 32 Route 236, Kittery, County of York, State of Maine, 03904, for no consideration, hereby

Grants to GREEN GRASS, LLC, , a Maine limited liability company with an address of 32 Route 236, Kittery, County of York, State of Maine, 03904, with QUITCLAIM COVENANTS, the following described premises:

41 Route 236, Kittery

A certain lot or parcel of land with any buildings and improvements thereon situated on the Westerly side of Route 236 in the Town of Kittery, County of York, and State of Maine, depicted and identified as "Tax Map 29, Lot 1 193,880 square feet 4.45 acres" on plan entitled "Standard Boundary Survey for Property at 41 Route 236, Kittery, York County, Maine owned by Judy B. Haley and John E. Haley" prepared by Easterly Surveying, Inc. dated May 6, 2008, last revised May 9, 2008, and recorded in the York County Registry of Deeds in Plan Book 329, Page 37, to which reference is hereby made for a more particular description of the property herein conveyed.

This is a non-contractual transfer and is exempt from Maine transfer tax pursuant to MRSA Ch. $36 \ 84641$ -C:18.

Meaning and intending to describe and convey the same premises conveyed to Grantor herein by deed of John E. Haley and Judy B. Haley, dated June 12, 2008 and recorded in the York County Registry of Deeds at Book 15438, Page 992.

Dated this ____ day of January, 2022.

LAPIERRE PROPERTIES, LLC

By:

Darren LaPierre, Member

STATE OF NH COUNTY OF POLICING ham

Personally appeared before me this \(\frac{1}{2}\) day of January, 2022, the above named Darren LaPierre, Member of LaPierre Properties, LLC, known to me or satisfactorily proven to be the person who signed the foregoing deed, and acknowledged that he executed same as Member of LaPierre Properties, LLC and as his free and voluntary act.

COMMISSION EXPIRES MARCH 13, 2024

Notary Public Print Name:

My commission expires:



Subject Property:

Parcel Number: 29-1 Mailing Address: GREEN GRASS LLC GREEN GRASS LLC CAMA Number: 29-1

32 ROUTE 236 UNIT 1

Property Address: 41 ROUTE 236 KITTERY, ME 03904

Abutters:

Parcel Number: 12-3-1 Mailing Address: 98 DENNETT ROAD LLC 98 DENNETT

CAMA Number: 12-3-1 ROAD LLC

Property Address: 98 DENNETT ROAD 12 ROSEBERRY LANE

KITTERY, ME 03904 Parcel Number: 20-14 Mailing Address: DUMAS, ARTHUR P DUMAS, ARTHUR P

CAMA Number: 20-14 31 ROUTE 236

Property Address: 31 ROUTE 236 KITTERY, ME 03904-5528

Parcel Number: 20-14A Mailing Address: SEAWARD, KAREN D SEAWARD,

CAMA Number: 20-14A KAREN D

Property Address: 29 ROUTE 236 29 ROUTE 236 KITTERY, ME 03904-5528

Parcel Number: 20-15 Mailing Address: ROONEY, SEAN F. ROONEY, SEAN F.

CAMA Number: 20-15 33 ROUTE 236

Property Address: 33 ROUTE 236 KITTERY, ME 03904

Parcel Number: Mailing Address: BLACKBIRD BUSINESS SUITES, LLC 20-17

CAMA Number: 20-17 BLACKBIRD BUSINESS SUITES, LLC

Property Address: 37 ROUTE 236 32 ROUTE 236 KITTERY, ME 03904

Parcel Number: 20-18 Mailing Address: BURBANK, KAREN C BURBANK, KAREN

20-18 CAMA Number:

Property Address: 122 MARTIN ROAD 122 MARTIN ROAD

KITTERY, ME 03904-1013

Parcel Number: CALDWELL, VIOLA F CALDWELL, VIOLA 29-2 Mailing Address: CAMA Number:

29-2

Property Address: 140 MARTIN ROAD 140 MARTIN ROAD KITTERY, ME 03904-1013

Parcel Number: Mailing Address: ENRIGHT, BONNIE M. ENRIGHT, 29-3

29-3 CAMA Number: BONNIE M.

Property Address: 136 MARTIN ROAD 136 MARTIN ROAD KITTERY, ME 03904

Parcel Number: 29-31 Mailing Address: KITTERY LAND TRUST INC KITTERY

CAMA Number: LAND TRUST INC 29-31 Property Address: 6 MEADOW LANE **PO BOX 467**

KITTERY, ME 03904

KING, VINCENT E KING, VINCENT E Parcel Number: 29-4 Mailing Address:

CAMA Number: 29-4 132 MARTIN ROAD

Property Address: 132 MARTIN ROAD KITTERY, ME 03904-1013



6/29/2023



Parcel Number: **CAMA Number:** 29-44-1

29-44

Property Address: 32 ROUTE 236 #UNIT 1

Mailing Address: LAPIERRE PROPERTIES LLC LAPIERRE

PROPERTIES LLC

32 ROUTE 236

KITTERY, ME 03904-5525

29-44

Mailing Address:

LOBSTER PROPERTIES LLC LOBSTER

Parcel Number: CAMA Number:

29-44-2

PROPERTIES LLC

Property Address: 32 ROUTE 236 #UNIT 2

32 ROUTE 236 UNIT 2 KITTERY, ME 03904

Parcel Number: CAMA Number: 29-5 29-5 Mailing Address:

ORLANDO, THOMAS ORLANDO,

THOMAS

130 MARTIN ROAD KITTERY, ME 03904

Parcel Number:

29-6 29-6 Mailing Address:

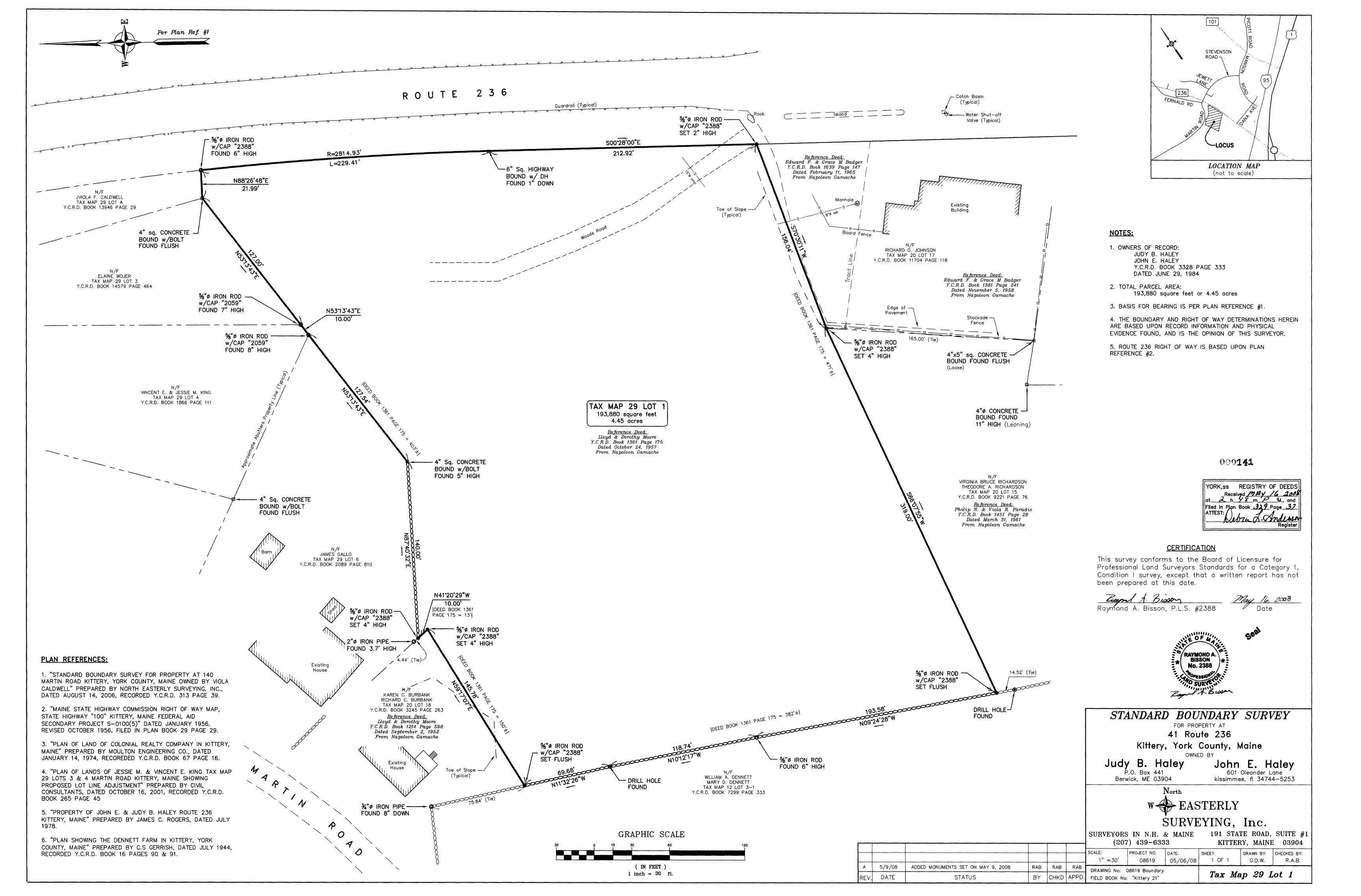
ORLANDO, THOMAS PETTER

ORLANDO, THOMAS PETTER

124 MARTIN ROAD KITTERY, ME 03904

CAMA Number: Property Address: 124 MARTIN ROAD

Property Address: 130 MARTIN ROAD





CIVIL * STRUCTURAL * MARINE

Ms. Amelia Burke, Board of Appeals Chair Mr. Craig Alfs, Code Enforcement Officer Town of Kittery, Maine 200 Rogers Road Kittery, Maine 03904 June 29th, 2023 Project No. 23049

RE: Variance Request – Supporting Site Photos Island Marine Services Boat Storage Yard (Tax Map 29, Lot 1) 41 Route 236, Kittery, Maine



Image #1 - Entrance into subject parcel from Route 236



Image #2 - Looking westerly at storage yard area from entrance drive



Image #3 – staked corners of 100' wetland setback limits



Image #4 - Looking southerly from proposed building location at remainder of storage yard



Image #5 - Looking easterly at wetland setback limits towards entrance drive

cc: Island Marine Services, Green Grass LLC. 23049 Site Photos

