

**Town of Kittery
Planning Board Meeting
November 12, 2020**

70-78 Wallingford Square – Shoreland Development Plan Review

Action: Accept or deny plan, continue agenda item to a subsequent meeting, schedule a site walk and/or public hearing, or approve or deny plan. Pursuant to §16.10.3.2 *Other Development Review* and §16.10.3.4 *Shoreland Development Review* of the Town of Kittery Land Use Development Code, owner/applicant Jeffrey Kilty requests approval for a shoreland development plan proposing to expand the use of an existing restaurant by 500-sf by converting an existing retail space with no proposed exterior structural expansion on a legally conforming lot with a legally non-conforming structure within the Shoreland Overlay Zone located on real property with the address of 70-78 Wallingford Square, Tax Map 4 Lot 81, in the Mixed-Use-Kittery Foreside (MU-KF) Zone and Shoreland (OZ-250_SL) and Resource Protection (OZ-RP) Overlay Zones.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan	None	NOT APPLICABLE
NO	Site Visit	TBD	TBD
YES	Shoreland Development Plan Review Completeness/Acceptance	Scheduled for November 12, 2020	PENDING
NO	Public Hearing	TBD	TBD
YES	Shoreland Development Plan Review Plan Approval	TBD; may occur on November 24, 2020 if the Board decides not to schedule a public hearing and/or site walk	PENDING

Applicant: Plan Review Notes reflect comments and recommendations regarding applicability of Town Land Use Development Code, and standard planning and development practices. Only the PB makes final decisions on code compliance and approves, approves with conditions or denies final plans. Prior to the signing of the approved Plan any **Conditions of Approval related to the Findings of Fact along with waivers and variances (by the BOA) must be placed on the Final Plan and, when applicable, recorded at the York County Registry of Deeds. PLACE THE MAP AND LOT NUMBER IN 1/4" HIGH LETTERS AT LOWER RIGHT BORDER OF ALL PLAN SHEETS.** As per Section 16.4.4.13 - Grading/Construction Final Plan Required. - Grading or construction of roads, grading of land or lots, or construction of buildings is prohibited until the original copy of the approved final plan endorsed has been duly recorded in the York County registry of deeds when applicable.

Project Introduction

70-78 Wallingford Square (“Property”) is located along the bank of the Piscataqua River in the Mixed-Use-Kittery Foreside (MU-KF) zoning district and within both the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Zones. The property is a legally non-conforming lot containing a legally non-conforming structure as the lot has a 80% devegetation rate, exceeds the building coverage rate (62%) and the encroaches onto the side yard setback. Surrounding 70-78 Wallingford Square is the Portsmouth Naval Yard, residential units, a municipal parking lot, and commercial and mixed-use buildings. 70-78 Wallingford Square itself comprises a restaurant, dwelling units and retail with an existing parking spaces in the rear of the lot.

Due to the pandemic, the applicant is planning to expand the restaurant by incorporating the abutting retail space (500-sf) to the restaurant for the purpose of increasing seating capacity (24 seats) and creating more space for patrons to dine in a safe manner. The applicant plans, during the pandemic, to have a maximum of 48 people, or whatever occupancy rate state law permits. The proposed expansion is stated as necessary for the business as the weather is becoming more inhospitable for outdoor dining. Considering in inclement, the expansion has been determined by the applicant to be only approach currently feasible to keep the restaurant open and his employees working.

The application is before the Planning Board due to the fact an use change within the Shoreland Overlay Zone is occurring and an proposed expansion is creating an additional 5 parking spaces. The objective for the Board is to analyze the application on its merits, consider the waiver request, and ultimately render a decision on whether the application meets the spirit of the pertinent zoning ordinances.

Staff Commentary and Analysis

Submission content, waivers and standards

As described above, the applicant proposes only to expand within the existing building by 500-sf with the conversion of an adjacent commercial unit that previously was used for retail purposes. Given the nature and scope of the application, the applicant is requesting a waiver from §16.10.5.2.B, as no exterior expansion nor site work is proposed in the application that warrants bona fide shoreland development plan. As an alternative, a snippet of a site plan was filed to give the Planning Board a general idea where the site is located.

In addition to the application and the rudimentary site plan, the applicant submitted an executed parking lease between Rudders Public House and 28 Traip Avenue, LLC wherein the Lessor granted the use of 6 parking spaces from the restaurant to use. This

document appears to satisfy the standard under 16.3.2.15.E(1)(g)1 and 16.3.2.15.E(3)2. It appears that the distance between the parking lot and the restaurant is approximately 600 ft.

Given the scope of the application and considering the waivers, project circumstances and site characteristics, it appears the application generally complies with Title 16 standards.

Planning Board Procedural Steps

After the Board has been presented with the application and deliberation exhausted, the following procedural sequence must take place:

1. Plan acceptance: Before the board can move on the application, a vote must occur to accept the plan.
2. Thereafter, the Board needs to determine if a site visit, public hearing, or both need to occur. If a site walk is necessary, the Board should consider scheduling it for the middle of next week. As regards the public hearing, if desirable, it should be scheduled for the next Planning Board meeting, December 10, 2020.
3. If a public hearing is not elected to take place, the Board should consider the following:
 - a. to move to continue the application to a subsequent meeting if more time for consideration is required by the Board,
 - b. approve with or without conditions, or
 - c. deny the application.

Recommended Motions

Below are recommended motions for the Board's consideration:

Motion to continue application

Move to continue the agenda item to the December 10, 2020 Planning Board meeting for a shoreland development application from owner/applicant Jeffrey Kilty requesting approval to expand the use of an existing restaurant by 500-sf by converting an existing retail space with no proposed exterior structural expansion on a legally conforming lot with a legally non-conforming structure within the Shoreland Overlay Zone located on real property with the address of 70-78 Wallingford Square, Tax Map 4 Lot 81, in the Mixed-Use-Kittery Foreside (MU-KF) Zone and Shoreland (OZ-250_SL) and Resource Protection (OZ-RP) Overlay Zones.

Motion to schedule a site walk

Move to schedule a site walk on _____, 2020, for a shoreland development application from owner/applicant Jeffrey Kilty requesting approval to expand the use of an existing restaurant by 500-sf by converting an existing retail space with no proposed exterior structural expansion on a legally conforming lot with a legally non-conforming structure within the Shoreland Overlay Zone located on real property with the address of 70-78 Wallingford Square, Tax Map 4 Lot 81, in the Mixed-Use-Kittery Foreside (MU-KF) Zone and Shoreland (OZ-250_SL) and Resource Protection (OZ-RP) Overlay Zones..

Motion to schedule public hearing

Move to schedule a public hearing on the December 10, 2020 Planning Board meeting for a shoreland development application from owner/applicant Jeffrey Kilty requesting approval to expand the use of an existing restaurant by 500-sf by converting an existing retail space with no proposed exterior structural expansion on a legally conforming lot with a legally non-conforming structure within the Shoreland Overlay Zone located on real property with the address of 70-78 Wallingford Square, Tax Map 4 Lot 81, in the Mixed-Use-Kittery Foreside (MU-KF) Zone and Shoreland (OZ-250_SL) and Resource Protection (OZ-RP) Overlay Zones.

Motion to approve with conditions

Move to approve the shoreland development application from owner/applicant Jeffrey Kilty requesting approval to expand the use of an existing restaurant by 500-sf by converting an existing retail space with no proposed exterior structural expansion on a legally conforming lot with a legally non-conforming structure within the Shoreland Overlay Zone located on real property with the address of 70-78 Wallingford Square, Tax Map 4 Lot 81, in the Mixed-Use-Kittery Foreside (MU-KF) Zone and Shoreland (OZ-250_SL) and Resource Protection (OZ-RP) Overlay Zones with the following conditions:

1. In the event the parking lease between Rudders Public House ("Lessee") and 28TraipAve, LLC ("Lessor") terminates, the applicant shall submit a revise plan or parking lease to the Planning and Development Department demonstrating compliance within §16.3.215.E. and §16.5.9.4 of the Town of Kittery Land Use and Development Code.

Motion to deny.

1 Restaurants: one parking space for each 100 square feet of gross floor area used by the public.

2 Off-site parking. Required off-street parking may be satisfied at off-site locations, provided such parking is on other property owned by the applicant or is under the terms of a contractual agreement that will ensure such parking remains available for the uses served. Applicant must present evidence of a parking location and a contractual agreement to the Town Board or officer with jurisdiction to review and approve.

Move to deny the shoreland development application from owner/applicant Jeffrey Kilty requesting approval to expand the use of an existing restaurant by 500-sf by converting an existing retail space with no proposed exterior structural expansion on a legally conforming lot with a legally non-conforming structure within the Shoreland Overlay Zone located on real property with the address of 70-78 Wallingford Square, Tax Map 4 Lot 81, in the Mixed-Use-Kittery Foreside (MU-KF) Zone and Shoreland (OZ-250_SL) and Resource Protection (OZ-RP) Overlay Zones.

M4 L81

Kittery Planning Board
Findings of Fact
For 70-78 Wallingford Square
Shoreland Development Plan Review

UNAPPROVED

WHEREAS: Owner/applicant Jeffrey Kilty requests approval for a shoreland development plan proposing to expand the use of an existing restaurant by 500-sf by converting an existing retail space with no proposed exterior structural expansion on a legally conforming lot with a legally non-conforming structure within the Shoreland Overlay Zone located on real property with the address of 70-78 Wallingford Square, Tax Map 4 Lot 81, in the Mixed-Use-Kittery Foreside (MU-KF) Zone and Shoreland (OZ-250_SL) and Resource Protection (OZ-RP) Overlay Zones.

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And pursuant to the application and plan and other documents considered to be a part of a plan review decision by the Planning Board in this Finding of Fact consisting of the following (hereinafter the "Plan"):

1. Shoreland Development Plan Application, dated 10/22/20
2. Parking Lease between Rudder Public House and 28TraipAve, LLC, dated 10/21/20

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

FINDINGS OF FACT

Chapter 16.3 LAND USE ZONE REGULATIONS

16.3.2.15.E(3) Off-Site Parking

Standard: *Off-site parking. Required off-street parking may be satisfied at off-site locations, provided such parking is on other property owned by the applicant or is under the terms of a contractual agreement that will ensure such parking remains available for the uses served. Applicant must present evidence of a parking location and a contractual agreement to the Town Board or officer with jurisdiction to review and approve.*

Findings: The applicant submitted an executed parking lease on a lot with an address of 28 Traip Avenue, Kittery, Maine, that is located approximately 500 ft. away from the restaurant. Said lease provides 6 additional spots for the applicant to use whereas only 5 parking spots are required, pursuant to §16.3.2.15.E(1)(g).

Conclusion: The standard appears to be met.

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS
Article III Nonconformance

16.7.3.1 Prohibitions and Allowances
Standard: <i>A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming</i>
Finding: The applicant is not proposing any kind of exterior expansion of the structure nor site work on the lot. The proposed expansion of the restaurant is entirely within the structure.
Conclusion: The requirement appears to be met.
Vote: ___ in favor ___ against ___ abstaining

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW
Article 10 Shoreland Development Review

16.10.10.2 Procedure for Administering Permits
<i>D. An application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:</i>
Standard: <i>1. Maintain safe and healthful conditions;</i>
Finding: The proposed development as represented in the plans and application does not appear to have an adverse impact.
Conclusion: This requirement appears to be met
Vote: ___ in favor ___ against ___ abstaining
Standard: <i>2. Not result in water pollution, erosion or sedimentation to surface waters;</i>
Finding: The applicant is not proposing any site work that would require such measures.
Conclusion: This requirement is not applicable.
Vote: ___ in favor ___ against ___ abstaining
Standard: <i>3. Adequately provide for the disposal of all wastewater;</i>
Finding: The proposed expansion will be connect to public sewer.
Conclusion: This requirement appears to be met.
Vote: ___ in favor ___ against ___ abstaining
Standard: <i>4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i>
Finding: The proposed development does not appear to have an adverse impact.
Conclusion: This requirement appears to be met.
Vote: ___ in favor ___ against ___ abstaining

<p>Standard: 5. <i>Conserve shore cover and visual, as well as actual points of access to inland and coastal waters;</i></p> <p>Finding: The application is not proposing any site work.</p> <p>Conclusion: This requirement is not applicable.</p> <p style="text-align: right;">Vote: __ in favor __ against __ abstaining</p>
<p>Standard: 6. <i>Protect archaeological and historic resources;</i></p> <p>Finding: There appears to be no archaeological and historical resources on the lot, thereby nothing to protect.</p> <p>Conclusion: This requirement appears to be met.</p> <p style="text-align: right;">Vote: __ in favor __ against __ abstaining</p>
<p>Standard: 7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;</i></p> <p>Finding: The application is not proposing any exterior site work.</p> <p>Conclusion: This requirement is not applicable.</p> <p style="text-align: right;">Vote: __ in favor __ against __ abstaining</p>
<p>Standard: 8. <i>Avoid problems associated with floodplain development and use;</i></p> <p>Finding: Portions of the property is located in the FEMA Flood Zone (AE-100 year). The proposed interior expansion appears to be outside this zone. Accordingly, the proposed application does not appear to have an impact on the current floodplain or flood-prone area.</p> <p>Conclusion: This requirement appears to be met.</p> <p style="text-align: right;">Vote: __ in favor __ against __ abstaining</p>
<p>Standard: 9. <i>Is in conformance with the provisions of this code;</i></p> <p>Finding: The proposed development complies with the applicable standards of Title 16.</p> <p>Conclusion: This requirement appears to be met.</p> <p style="text-align: right;">Vote: __ in favor __ against __ abstaining</p>
<p>Standard: 10. <i>Be recorded with the York county Registry of Deeds.</i></p> <p>Finding: A waiver to submit a recordable plan to the Planning Board for review was granted to the applicant as no exterior expansion nor additional devegetation to the site was proposed</p> <p>Conclusion: This standard is not applicable.</p> <p style="text-align: right;">Vote: __ in favor __ against __ abstaining</p>

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants final approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

Waivers:

1. Applicant was granted relief with the waiver from §16.10.5.2.B of the Town of Kittery Land Use and Development Code at the November 12, 2020 Planning Board meeting.

Conditions of Approval (to be depicted on final plan to be recorded):

2. None.

Conditions of Approval (not to be depicted on final plan):

1. In the event the parking lease between Rudders Public House (“Lessee”) and 28TraipAve, LLC (“Lessor”) terminates, the applicant shall submit a revised plan or parking lease to the Planning and Development Department demonstrating compliance within §16.3.215.E. and §16.5.9.4 of the Town of Kittery Land Use and Development Code.

The Planning Board authorizes the Planning Board Chair, or Vice Chair, to sign the Final Plan and the Findings of Fact upon confirmation of required plan changes.

Vote: __ in favor __ against __ abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON _____

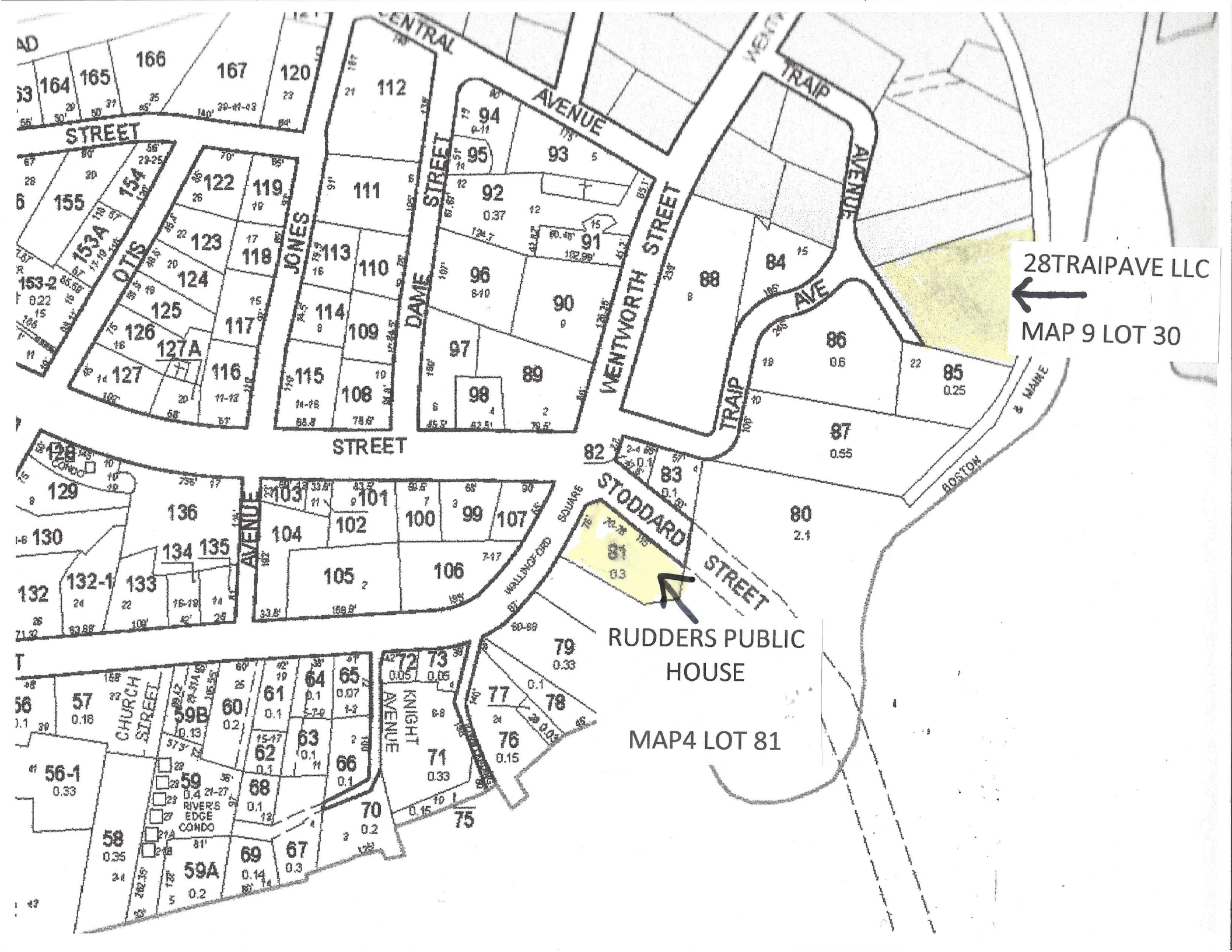
Dutch Dunkelberger, Planning Board Chair

Notices to Applicant:

1. Prior to the release of a building permit, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
2. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

Appeal of Decision:

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



28TRAIPAVE LLC
←
MAP 9 LOT 30

RUDDERS PUBLIC
HOUSE
MAP4 LOT 81

Narrative of application

Rudders needs a waiver from 16.10.5.2.(B)

Rudders public house is a restaurant located in the Kittery Foreside.

Rudders is located at 70 Wallingford square.

Rudders wants to add an additional 500sq-ft by leasing 72 Wallingford square.

72 Wallingford square currently is retail space and Rudders is a restaurant so Town Rules require an additional 3 new parking spaces.

Rudders has secured a lease for 6 additional parking spots at the 28 Traip ave parking lot.

Rudders will not be doing any work on the outside of the building.

Additionally:

Rudders inside seating before Covid-19 was 48.

Rudders current inside seating with Covid-19 restrictions is 24.

Rudders new inside seating will be 48. This is where we were at before Covid-19.

PARKING SPACE LEASE AGREEMENT

This Parking Space Lease Agreement (the "Lease") is made and entered into on November 01, 2020 (the "Effective Date") by and between 28TRAIPAVE LLC of 28 TRAIP AVE, KITTERY, Maine, 03904 (the "Lessor") and RUDDERS PUBLIC HOUSE of 70 WALLINGFORD SQUARE, KITTERY, Maine, 03904 (the "Lessee"), collectively known as the "Parties." The Parties hereby agree as follows:

Terms and Conditions

1. Term

Lessor hereby leases to Lessee the parking space's located at 28TRAIPAVE LLC, 28 TRAIP AVE, KITTERY, Maine 03904 and designated as space numbers 1-6. The lease will start on November 01, 2020 and will continue as a month-to-month tenancy until such time as it is terminated by either party.

2. Rent

Lessee agrees to pay \$300.00 as rent in advance on the 1st of each month to Lessor or his or her agent by mail or in person to Lessor or his or her agent at their respective addresses as noted above. Upon receiving any payment of parking space rent in cash, Lessor agrees to issue a receipt stating the name of Lessee, the amount of rent paid, the designation of the parking space and the period for which said rent is paid.

3. Liability

Lessor shall not be responsible for damage or loss to possessions or items left in Lessee's vehicle. Lessor shall not be responsible for damage to Lessee's vehicle, whether or not such damage is caused by other vehicle(s) or person(s) in the parking lot and surrounding area. Lessor may, at Lessor's sole discretion, provide parking lot attendants. In the event that Lessor or operator of the parking lot provides such attendants, any use of such attendant by Lessee to park or drive Lessee's vehicle shall be at Lessee's request, direction and sole risk of any resulting loss, and Lessee shall indemnify Lessor for any loss resulting from such use.

4. Termination

Either party may terminate this Lease by providing 30 days' written notice to the other party. Any such notice shall be directed to a party at the party's address as listed in this Lease.

5. Governing Law

This Agreement shall be governed by the laws of Maine.

6. Entire Agreement

This Lease contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Lease. This Lease supersedes any prior written or oral agreements between the parties.

7. Severability

If any provision of this Lease will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

8. Amendment

This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

9. Waiver of Contractual Rights

The failure of either party to enforce any provision of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

10. Assignment

Neither party may assign or transfer this Lease without the prior written consent of the non-assigning party, which approval shall not be unreasonably withheld.

LESSOR

By: 
28TRAIPAVE LLC

Date: 10-21-20

LESSEE

By: 
RUDDERS PUBLIC HOUSE

Date: 10-21-20

Shoreland Development Plan Application

SDP-20-6

Submitted On: Oct 22, 2020

Applicant

👤 Jeffrey Kilty
☎ 603-767-6062
@ jeffkilty@yahoo.com

Location

70-78 WALLINGFORD SQUARE
KITTERY, ME 03904

Project Information

Size of Waterbody

> 1 Acre

Will this project create one acre or more of disturbed area? If yes, you will be required to file a MDEP Notice of Intent to Comply with the Maine Construction Permit. Excavation will require a Maine Dep certified contractor in erosion control measures.

No

Full description of the project

Requesting a waiver to 16.10.5.2(B)

Rudders Public House, an existing restaurant wants to convert 500 sq-ft of retail space in an existing building to restaurant space

No exterior change

Lot Size (SF)

8740

Base Zone

Mixed-Use-Kittery Foresside (MU-KF)

Overlay Zone(s)

OZ-SL-250 Shoreland Overlay Zone\\tWater Body/Wetland Protection Area 250'

true

OZ-SL-75 Shoreland Overlay Zone Stream Protection Area 75'

--

OZ-CFMU Commercial Fisheries/Maritime Uses Overlay Zone

--

OZ-RP Resource Protection Overlay Zone

--

Project within buffer of overlay zone?

WITHIN 100FT or 75FT (0-100FT from Highest Annual Tide) see sect. A, B, C, D, F Planning Board Review

A. Devegetated Area - Parcel Devegetation

% Allowed (Enter 20% , 50%, 60% or 70% per narrative above)

60

Existing (sf) Devegated Area within 250' Shoreland Overlay Zone

7341

Proposed (sf) Devegated Area within 250' Shoreland Overlay Zone

7341

% Existing Devegated Area within 250' Shoreland Overlay Zone

84

% Proposed Devegated Area within 250' Shoreland Overlay Zone

84

B. Building Footprint - Principle and Accessory Structures

Structure distance from Highest Annual Tide or upland edge of wetland (FT)	Building Coverage Existing (sf)
175	5400
	(%) Building Coverage Allowed
	0
Building Coverage Proposed (sf)	(%) Building Coverage Existing
5400	62
(%) Building Coverage Proposed	(%) Increase of Coverage
62	0
Type of Construction	Value (\$) of Construction
Maintenance/repair	5000

C. Building Height

Bldg. Height Existing (FT)	Bldg. Height Proposed (FT)
38	38

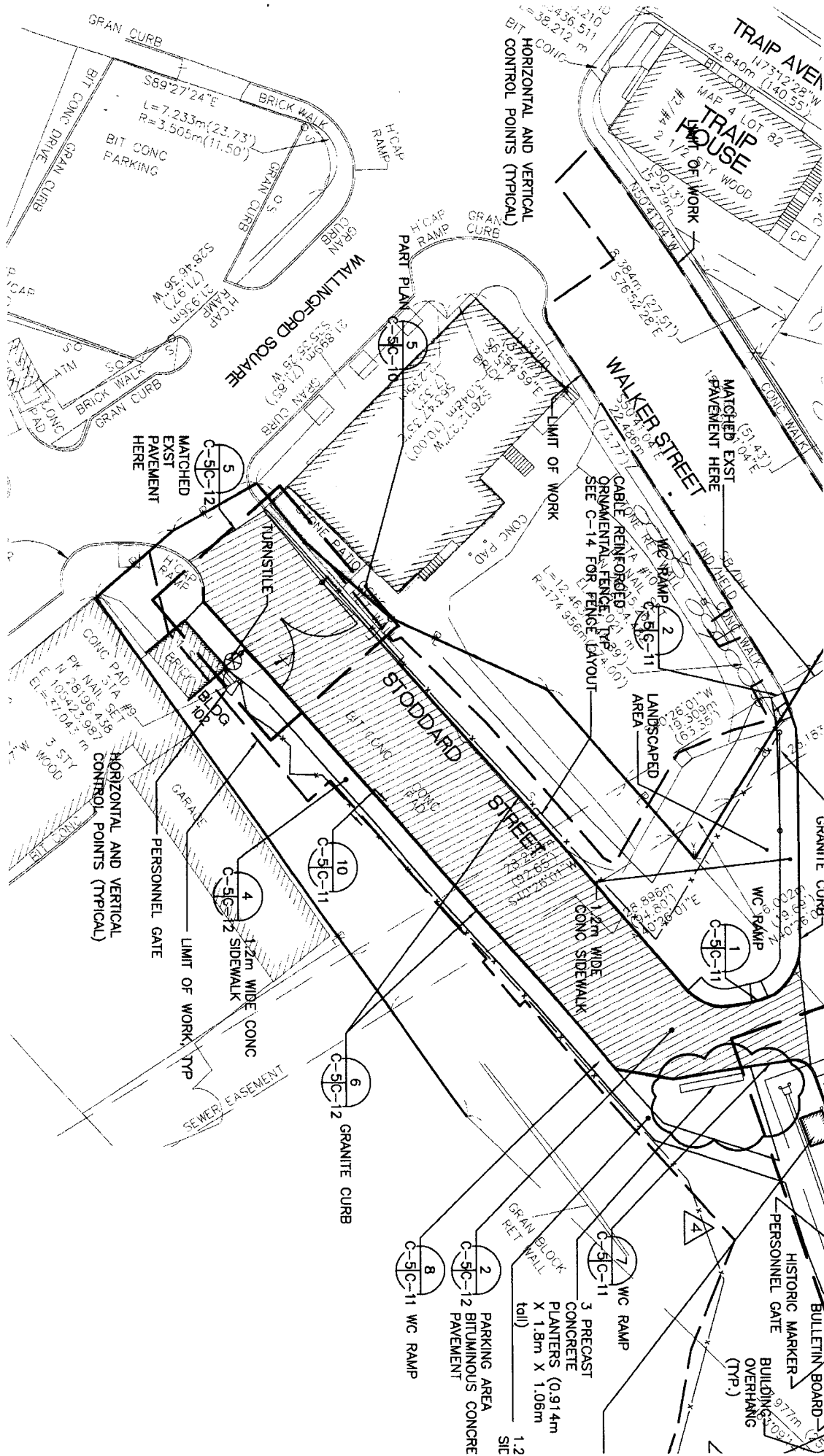
D. Certifications

I certify I have provided, to the best of my knowledge, information requested for this application that is true and correct and I will not deviate from the Plan submitted without notifying the Code Enforcement Departments of any changes.
true

I understand an approved Shoreland Development Plan must be recorded in the York Country Registry of Deeds and I am responsible for incurred costs.
true

I understand calculations for area, volume, and de-vegetated areas must be included on the final plan and certified by a State of Maine registered architect, landscape architect, engineer, or land surveyor
true

Applicant is
Owner



HORIZONTAL AND VERTICAL CONTROL POINTS (TYPICAL)

HORIZONTAL AND VERTICAL CONTROL POINTS (TYPICAL)

HISTORIC MARKER BUILDING OVERHANG (TYP.)

2 C-5C-12 BITUMINOUS CONCRETE PARKING AREA
 7 C-5C-11 WC RAMP
 3 PRECAST CONCRETE PLANTERS (0.914m X 1.8m X 1.06m tall)

6 C-5C-12 GRANITE CURB

4 C-5C-12 1.2m WIDE CONC SIDEWALK

LANDSCAPED AREA

CABLE REINFORCED ORNAMENTAL FENCE (TYP) SEE C-14 FOR FENCE LAYOUT

MATCHED EXIST PAVEMENT HERE

MATCHED EXIST PAVEMENT HERE

8 C-5C-11 WC RAMP

1 C-5C-11 WC RAMP

7 C-5C-11 WC RAMP

10 C-5C-11

4 C-5C-12

5 C-5C-12

2 C-5C-11

5 C-5C-10

