



Town of Kittery
200 Rogers Road, Kittery, ME 03904

Board of Appeals
Meeting Agenda, Council Chambers
Tuesday, January 14, 2020
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. Lisa Ash, owner 22 Folcutt Road, requesting a Special Exception Use to operate a dog day care as a Major Home Occupation in the Residential - Rural (R-RL) zone per Section 16.3.2.3.C(7) and 16.8.22.3 of the Town Code.
 - b. Harrison E. Lemont Management Co, Inc, owner 447 US Route 1, requesting a Miscellaneous Variation Request to approve a non-conforming structure in the Mixed Use (MU) zone per Section 16.6.4.C(1) and 16.7.3.3.A of the Town Code.
 - c. Ryan Kanteres, on behalf of owner Town of Kittery, requesting a Miscellaneous Variation Request to expand a non-conforming structure at 8 Wentworth Street in the Mixed Use – Kittery Foreside (MU-KF) zone per Section 16.6.4.C(1) and 16.7.3.3.B of the Town Code.
- 6. Unfinished Business**
- 7. New Business**
- 8. Acceptance of Previous Minutes**
 - a. December 10, 2019
- 9. Board Member or CEO Issues or Comment**
- 10. Adjournment**



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

Application to the
BOARD OF APPEALS

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

SPECIAL EXCEPTION USE REQUEST

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

TITLE	16	CHAPTER	3	SECTION	2.3			PAGE	55
TITLE		CHAPTER		SECTION				PAGE	

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

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

PROPERTY INFORMATION					
ADDRESS	22 Folcutt Rd. Kittery Point				
MAP	25/18/A	LOT #	B	LOT SIZE	1.2 Acres
BASE ZONE(S):	R-KPV		OVERLAY ZONE(S):		

The subject property:
 is / is not in a Shoreland overlay or Resource Protection zone; is / is not in a floodplain; AND
 does / does not have outstanding code violations; and, if so, granting this appeal provides resolution .

PROPERTY OWNER: I have right, title or interest in the affected property, or issue, as shown by:

NAME(S)	Robert F. White (spouse)				
MAILING ADDRESS	22 Folcutt Rd.				
CITY	Kitt. Pt.	STATE	ME.	ZIP CODE	03905
PHONE No.	207.703.8711		e-MAIL: rw2566@gmail.com		

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

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

NAME(S)	LISA A. Ash (business owner)				
MAILING ADDRESS	- SAME -				
CITY		STATE		ZIP CODE	
PHONE No.	207-703-8664		e-MAIL: l22ash59@gmail.com		

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

Date: 11-25-2019

By: *Lisa A. Ash*
 (Signature)
LISA A. ASH
 (Print Name)

AFFIRMATIONS*(Please read and check all the boxes to confirm)***I understand that the:**

- Use requested must:
 - 1. Not have an unreasonably adverse effect on the health, safety or general welfare of the residents of the area or the general public.
 - 2. Not significantly devalue abutting property or property across a public or private way.
 - 3. Not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones.
 - 4. Not have an adverse impact on spawning grounds, fish, aquatic life, or bird or other wildlife habitats.
 - 5. Be in harmony with and promote the general purposes and intent of this Code.
 - 6. Adequately provide for the disposal of all wastewater.
 - 7. Conserve shore cover and visual, as well as actual, points of access to inland waters.
 - 8. Protect archaeological and historic resources as designated in the Comprehensive Plan.
 - 9. Avoid problems associated with floodplain development and use.
- Board may establish additional conditions, including, but not limited to, the following:
 - 1. Front, side or rear yards in excess of minimum requirements;
 - 2. Modifications of the exterior features of buildings or other structures;
 - 3. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements;
 - 4. Regulation of design of access drives, sidewalks and other traffic features;
 - 5. Off-street parking and loading spaces in excess of the minimum requirements; or
 - 6. Restrictions on hours of operation.
- Proposed use may:
 - 1. Not have an adverse effect. In making this determination, the Board shall take into consideration the potential effect of the development on the environment from air, water or soil pollution; noise; traffic congestion; soil erosion; the burden on sewage disposal or water supply systems or other municipal facilities, services or public ways; and any other relevant factors.
 - 2. Not significantly devalue abutting properties. In making its determination, the Board shall take into consideration the type of structure proposed; the topography of the area; the market value of the surrounding real estate; the availability of utilities and transportation; the availability of schools and hospitals; traffic conditions; and any other relevant factors.
 - 3. Not give rise to any grave concern regarding the expectations as listed above.
 - 4. Be subject to such additional conditions as the Board deems necessary.

I also understand that the Board of Appeals:

- May hear and decide a special exception use request within the limitations set forth in Title 16 Section(s) identified on Page 1.
- Appears to have jurisdiction to hear this request; hearing must be held within 30 days of this request filing; application must be complete; and, public and abutter notice must be made no less than seven days prior to the scheduled hearing.
- Will conduct this hearing De Novo (meaning the Board acts if it were considering the question for the first time, affording no deference to the preceding agency decisions; may receive new evidence and testimony consistent with this Town Code Title 16 and the Board rules; and, conduct additional hearings and receive additional evidence and testimony).
- Will determine my Burden of Proof:
 - 1) What does the ordinance/statute require the applicant to prove?
 - 2) Does the ordinance/statute prohibit or limit the type of use being proposed?
 - 3) What factors must be considered under ordinance/statutes to decide whether to grant the request?
 - 4) Is the evidence presented substantial? Is it credible? Is it outweighed by conflicting evidence?
- Requires substantial evidence as the Standard of Review for this request, meaning:

"More than a mere scintilla". It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The preponderance of evidence standard is met if the proposition is more likely to be true than not true. The standard is satisfied if there is greater than fifty percent chance that the proposition is true.
- May hear, decide, and approve variations in accordance with the criteria listed in Town Code Title 16, Sections 6.6.1, Factors, and 6.6.2, Considerations; and may consider other Title 16 standards.

Approval may not be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any state law which the municipality is responsible for enforcing.

Is only legally authorized to deal with issues arising from the list above, and do not include such matters as constitutionality, civil rights, criminal acts, property disputes, 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.

STATEMENTS:

Describe the general nature of the request:

MY NAME IS LISA ASH. I wish to continue running my professional, owner-operated small business, BEACH DOG PET SERVICES, LLC.

I have been in business since 2014, providing loving care for Kittery (and surrounding areas) clients and their beloved pets.

I provide dog walks and home visits, cat and small animal care, overnight stays in my home for a few canines.

Beach Dog is fully bonded and insured, and a registered LLC in the state of Maine.

Beach Dog Pet Services provides 1/2 the household income in our home. We are extremely grateful for our loyal clients. ☺☺

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.

Doc# 2011024522
Bk 16118 Ps 620 - 622
Received York SS
06/29/2011 10:21AM
Debra L. Anderson
Register of Deeds

Return to:

Robert White
22 Folcutt Road
Kittery, ME 03905

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That I, **Lynne Von Cianciulli Trustee of the Cianciulli 1992 Revocable Trust udt April 1, 1992**, with a mailing address of 201 Twelve Oaks Los Gatos, CA 95030, for consideration paid, grants to **Robert White**, of 82 Newfane Hill Road Newfane, VT 05345, with
WARRANTY COVENANTS:

SEE ATTACHED EXHIBIT A.

MEANING and INTENDING to describe and convey the same premises conveyed to the grantors herein by deed of deed of Edward Jones Trust Company f/k/a Edward Jones Trust Company, a division of Boone National Savings and Loan Association, F.A. Trustee of the Ruth H. Erlandson Revocable Trust dated 4/13/2006, dated 1/22/2008 and recorded at Book 15355, Page 662 in the York County Registry of Deeds.

The undersigned, **Lynne Von Cianciulli** Trustee of Cianciulli 1992 Revocable Trust under Trust Agreement dated April 1, 1992, hereby has full and absolute power in said Trust Agreement to convey any interest in real estate and improvements thereon held in said Trust and to hold any interest in real estate and no purchaser or third party shall be bound to inquire whether the Trustee has said power or are properly exercising said power or to see the application of any Trust assets paid to the Trustee for conveyance thereof. **Lynne Von Cianciulli** continues and remains the Trustee of the above Trust and is duly authorized to execute such documents as may be necessary to sell certain property located at 22 Folcutt Road Kittery, ME 03905.

MAINE R.E. Transfer Tax Paid

399
Market Street Settlement
70 Market St.
Manchester, NH 03101

Executed this 23 day of June, 2011.

CIANCIULLI 1992 REVOCABLE TRUST

Lynne Von Cianciulli

By: **Lynne Von Cianciulli**
Its: Trustee
Duly Authorized

State of California
County of Santa Clara 6/23/, 2011

Then personally appeared before me the said **Lynne Von Cianciulli** Trustee of the Cianciulli 1992 Revocable Trust and acknowledged the foregoing to be her voluntary act and deed.

Girish Patel
Notary Public/Justice of The Peace
Commission expiration: 6/25/14



EXHIBIT A

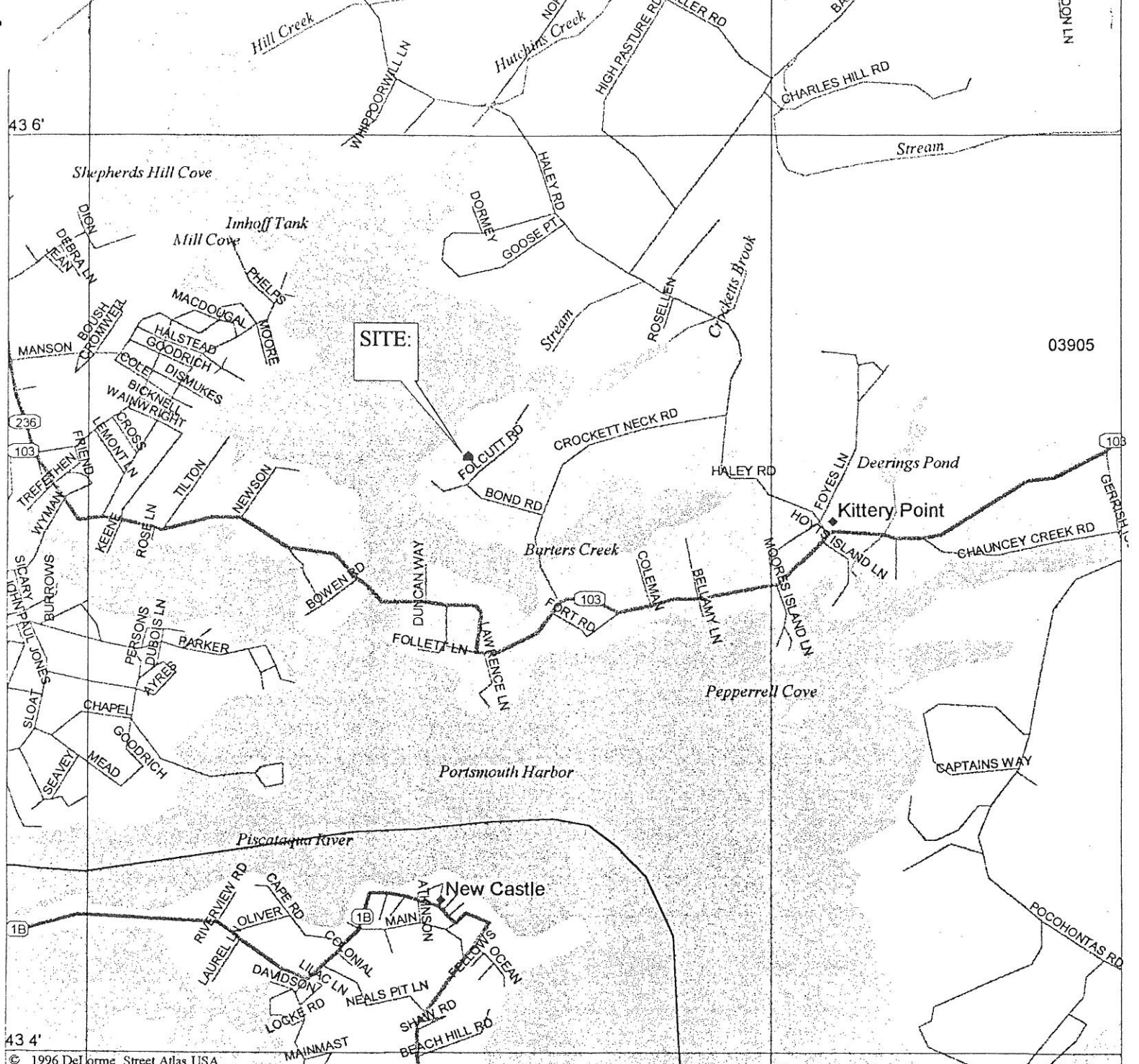
A certain lot or parcel of land situated in Kittery, County of York, State of Maine, more particularly described as follows:

Beginning at a point about thirty (30) feet Easterly from land now or formerly of Sadie Gordon, and about twenty-five (25) feet Northerly from a stone wall; thence running Northerly 24" East by land now or formerly of Philip A. Foley, about one hundred and twenty-two (122) feet to an angle in the line; thence running North 45' 31" West, still by said land now or formerly of said Foley, about two hundred and five (205) feet to an angle in the line; thence running North 53' 40" West still by said land nor or formerly of said Foley, about two hundred ninety (200) feet to a marked rock on the shore of Spruce Creek; thence running Easterly by the shore of Spruce Creek about three hundred forty (340) feet to a point on the shore; thence turning and running South 43' East, by said land now or formerly of said Foley about three hundred fifty (350) feet to a point; thence running South 24' East, still by said land now or formerly of said Foley about one hundred twenty-two (122) feet to a corner; thence turning and running South 65' 12" West, still by said land now or formerly of said Foley about two hundred twenty (220) feet to the point of beginning.

Together with the right and privilege, in common with others similarly entitled, of traveling over a thirty (30) foot private way adjacent to the line of land of Sadie Picard from the granted premises to Folcutt Road, subject to the right to help maintain said way in proportion to the number of users and from the place where they enter into Folcutt Road.









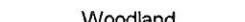


Excepting and reserving from the above description Deed to Joan Stocker dated 7/30/98 and recorded at Book 8940, Page 195 in the said Registry of Deeds.

End of Document



© 1996 DeLorme Street Atlas USA

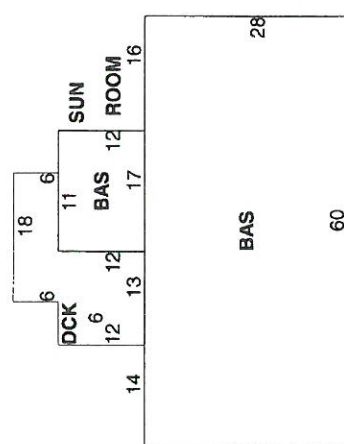
Mag 14.00
 Sun May 10 21:34 1998
 Scale 1:21,875 (at center)
 2000 Feet
 500 Meters

-  Local Road
-  State Route
-  Interstate/Limited Access
-  Small Town
-  State Boundary
-  Population Center
-  Land
-  Water
-  Woodland
-  River/Canal
-  Intermittent River

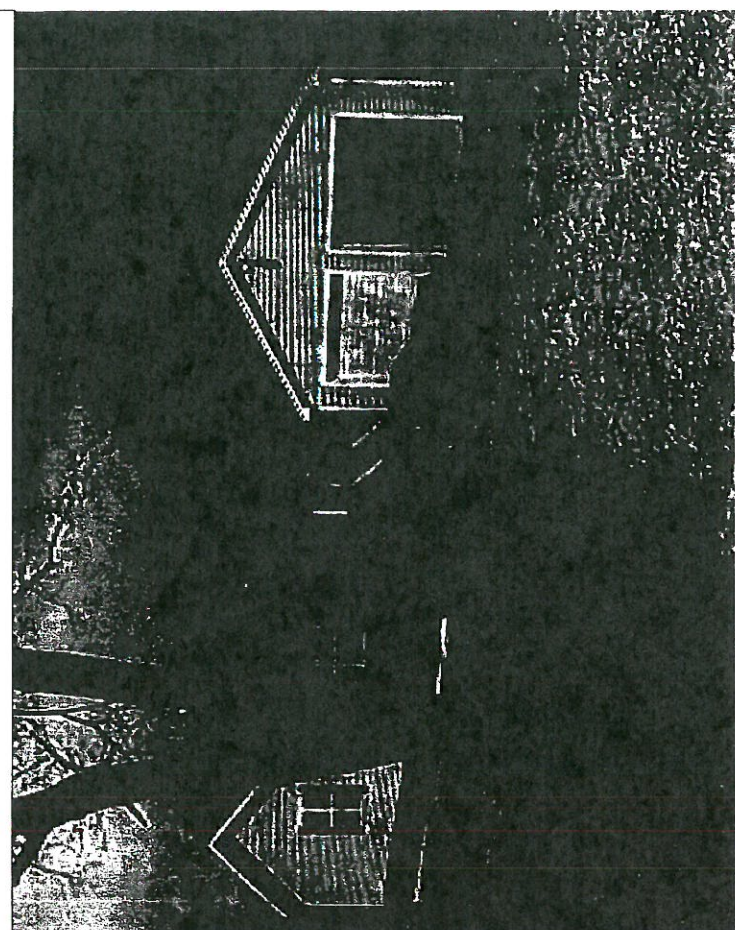
CONSTRUCTION DETAIL		CONSTRUCTION DETAIL (CONTINUED)	
Element	Cd.	Ch.	Description
Style	01		Ranch
Model	01		Residential
Grade	03		Average
Stories	1		1 Story
Occupancy			MIXED USE
Exterior Wall 1	25		Vinyl Siding
Exterior Wall 2			
Roof Structure	03		Gable/Hip
Roof Cover	03		Asph/F Gls/Cmp
Interior Wall 1	02		Wall Brd/Wood
Interior Wall 2			
Interior Flr 1	14		Carpet
Interior Flr 2	06		Inland Sht Gds
Heat Fuel	02		OH
Heat Type	03		Hot Air-no Duc
AC Type	01		None
Total Bedrooms	03		3 Bedrooms
Total Bthrms	2		
Total Half Baths	0		
Total Xtra Fixtrs			
Total Rooms	5		5 Rooms
Bath Style	03		Modern
Kitchen Style	03		Modern

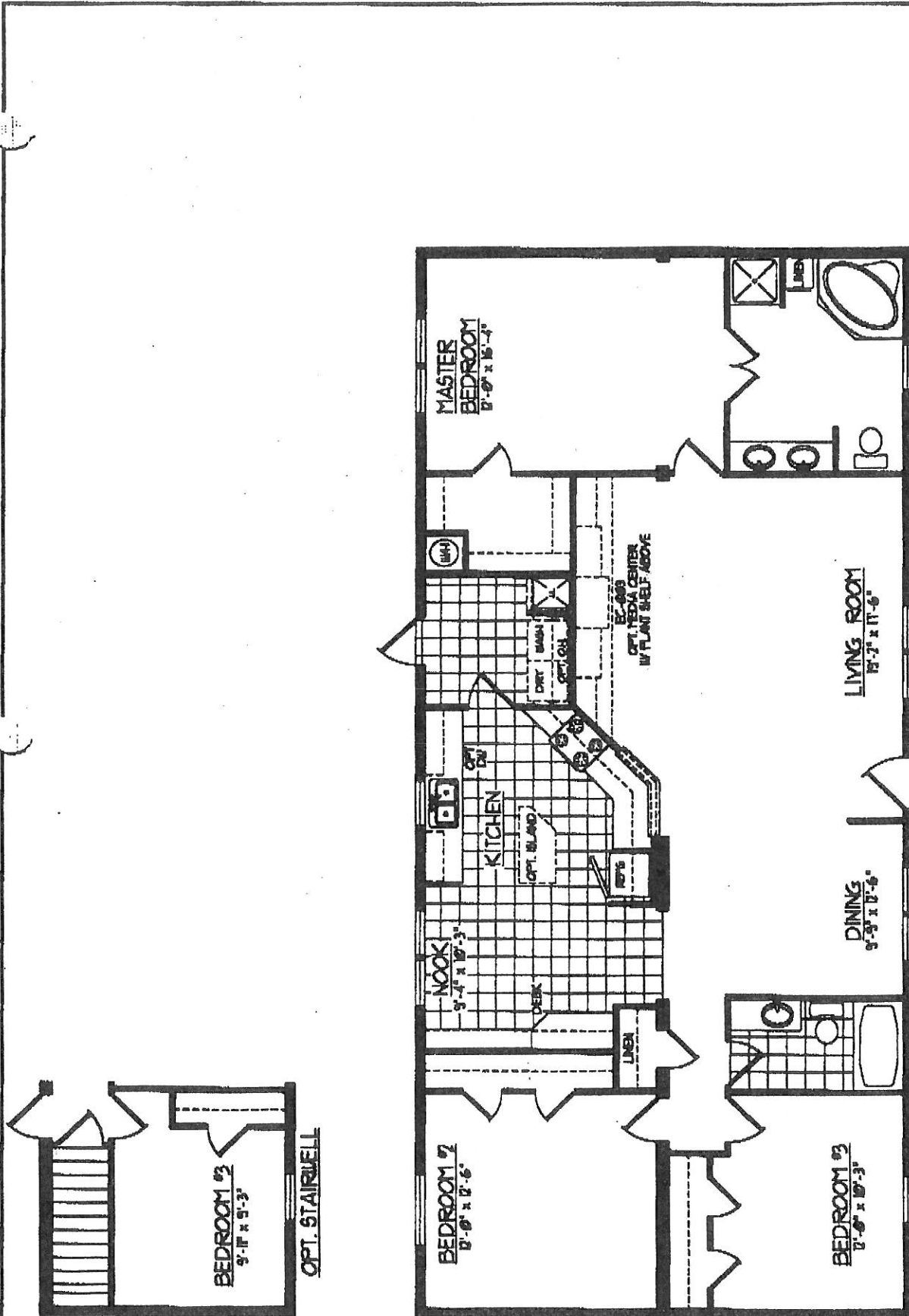
OB-OUTBUILDING & YARD ITEMS(L) / XF-BUILDING EXTRA FEATURES(B)		CONSTRUCTION DETAIL (CONTINUED)	
Code	Description	L/B	Units
FGRI	GARAGE-AVE	768	16.00
			1995
			0
			100
			12,300

BUILDING SUB-AREA SUMMARY SECTION			
Code	Description	Living Area	Gross Area
BAS	First Floor	1,884	1,884
DCK	Deck	0	264
FDG	Garage, finished, detached	0	768
			307
			28.94
			72.39
			136,383
			7.13
			1,882
			22,224
			2,217
			160,489



Handwritten signature: GAV...
 Three horizontal lines below the signature.





3 BEDROOM MODEL 110 28' x 64'
 ACTUAL DIMENSIONS 26'-8" x 60'-0"
 TOTAL AREA = 1600 SQ. FT

MODEL	07-110
DATE	2/2/94
TITLE	LITERATURE PLAN
DESIGNED BY	J. HOOVER
CHECKED BY	
SCALE	
DATE	

REVISIONS	
110 - CHAMPION - 3 BEDROOM	
DIVISION 07 - PRODUCTION PRINT	
DATE: 3/13/94	

CHAMPION
 HOME BUILDERS CO.

SURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION

Town, City or Plantation

KITTERY

Street, Road or Subdivision

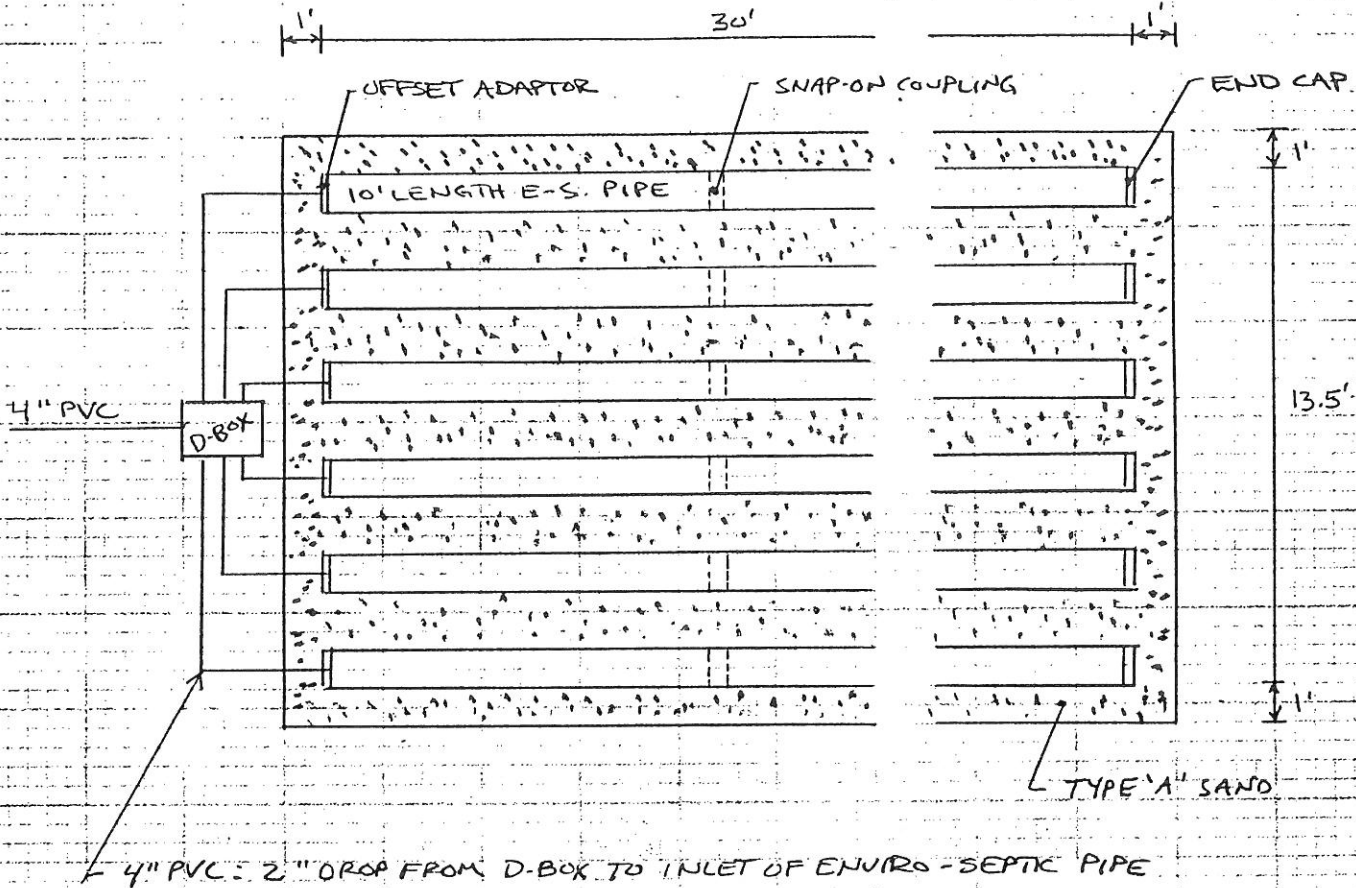
FOLCUTT RD

Name of Owner

RUTH ERLANDSON

SUBSURFACE WASTEWATER DISPOSAL PLAN

Scale: 1" = 5 Ft.

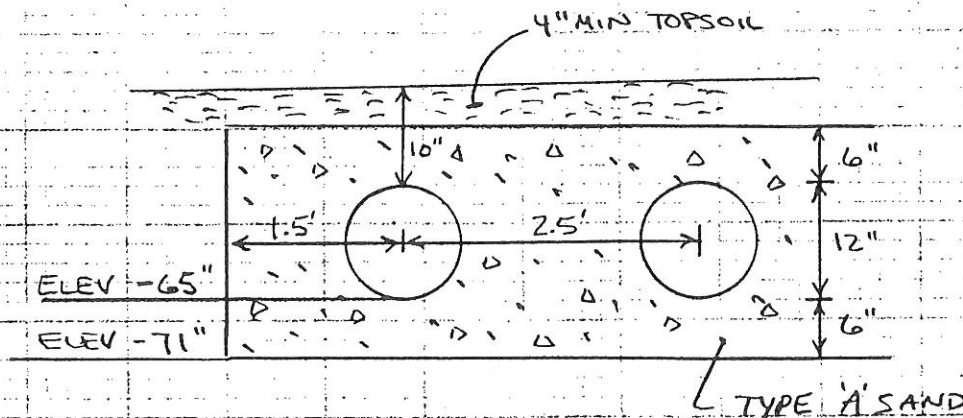


FILL REQUIREMENTS	CONSTRUCTION ELEVATIONS	ELEVATION REFERENCE POINT
Depth of Fill (Upslope) _____"	Finished Grade Elevation _____	Location & Description _____
Depth of Fill (Downslope) _____"	Top of Distribution Pipe or Proprietary Device _____	Reference & Elevation _____
	Bottom of Disposal Area _____	

DISPOSAL AREA CROSS SECTION

Scale:

Vertical: 1" = nts Ft.
 Scale: 1" = nts Ft.



Michael Manors
 Site Evaluator Signature

219
 SE #

5-9-98
 Date

Lisa Ash, Owner/Operator
Beach Dog Pet Services, LLC
22 Folcutt Rd., Kittery Point, ME
(207)703-8664

CLIENT CONTRACT

Client's Name: _____

Address: _____

Phone Numbers: (H): _____ (C): _____

Email Address: _____

Pet(s) Name, Age and Breed:

1) _____

2) _____

3) _____

4) _____

Emergency Contact Name and Phone #:

Veterinarian's Name & Phone #:

Do you give Beach Dog Pet Services permission to take your pet to the veterinarian if needed?

YES NO

Special Instructions for Pet Care (feeding instructions, daily routines, favorite toys, medications, etc.):

Does your pet have any behavior or aggression issues regarding people or other animals? YES NO

If YES, please explain:

Do we have permission to post photos of your pet on the *Beach Dog Pet Services* website and/or Facebook page? <http://www.beachdogpetservices.com> YES NO

Service Agreement:

Client agrees that all pets cared for by Beach Dog Pet Services must be spayed/neutered, possess current rabies/vaccination records, and must wear a collar with pet identification tags at all times. We do not diagnose or make medical decisions, nor offer veterinary services. While under the care of Beach Dog Pet Services, any serious veterinary/medical concern will be referred to your veterinarian, or Port City 24 hr. Veterinary Hospital, with the client responsible for all charges. Beach Dog Pet Services reserves the right to terminate this contract at any time if issues arise regarding staff safety or payment concerns. Beach Dog Pet Services agrees to provide responsible and reliable pet care as stated in this contract, and the client agrees to waive any and all claims against Beach Dog Pet Services, unless proven negligence on the part of Beach Dog Pet Services.

I have read and agree to the above service statement:

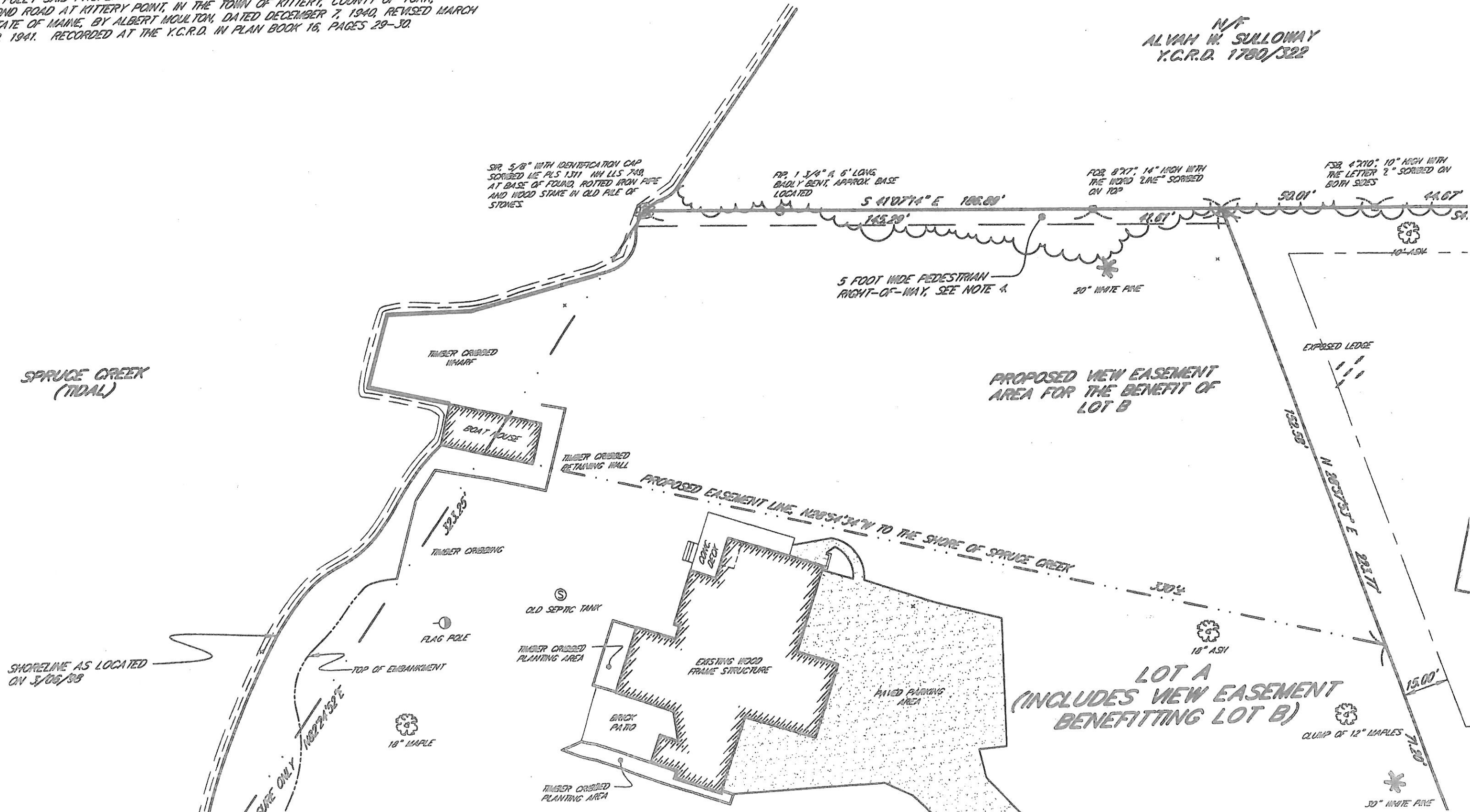
Pet Owner's Signature *Date*

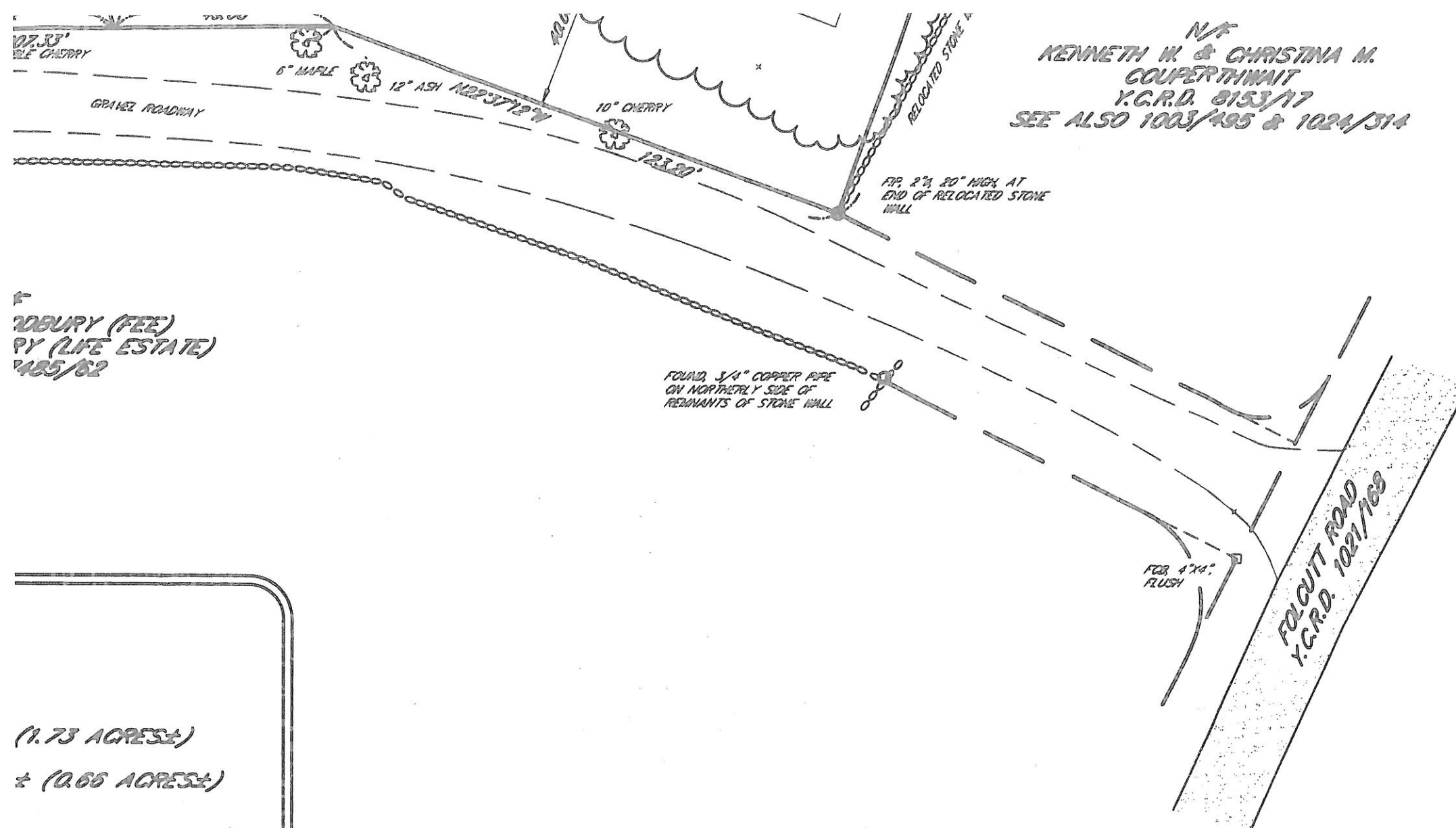
Beach Dog Pet Services

REFERENCE PLANS

1.) PLAN SHOWING HOUSE LOTS AND STREETS LOCATED ON PROPERTY OF PHILIP A. FOLEY SAID PROPERTY BEING LOCATED ON THE NORTHEASTERLY SIDE OF THE BOND ROAD AT KITTERY POINT, IN THE TOWN OF KITTERY, COUNTY OF YORK, STATE OF MAINE, BY ALBERT MOULTON, DATED DECEMBER 7, 1940, REVISED MARCH 10, 1941. RECORDED AT THE Y.C.R.D. IN PLAN BOOK 16, PAGES 29-30.

N/F
ALVAN W. SULLOWAY
Y.C.R.D. 1780/322





N/F
 KENNETH W. & CHRISTINA M.
 COUPERTHWAIT
 Y.C.R.D. 8153/17
 SEE ALSO 1003/495 & 1024/314

- STONE WALL
- |—|—| BARBED WIRE
- N/F LAND, NOW OR FORMERLY, OF
- Y.C.R.D. YORK COUNTY REGISTRY OF DEEDS
- 7654/321 VOLUME OF RECORDED DOCUMENT/PAGE OF RECORDED DOCUMENT
- Y.C.P.R. YORK COUNTY PROBATE RECORDS
- SIP SET IRON ROD, 5/8 INCH DIA. WITH IDENTIFICATION CAP SCRIBED ME PLS 1311 NH LLS 749
- SDH SET DRILL HOLE, 5/8 INCH DIA. WITH IDENTIFICATION CAP SCRIBED ME PLS 1311 NH LLS 749
- CB CATCH BASIN

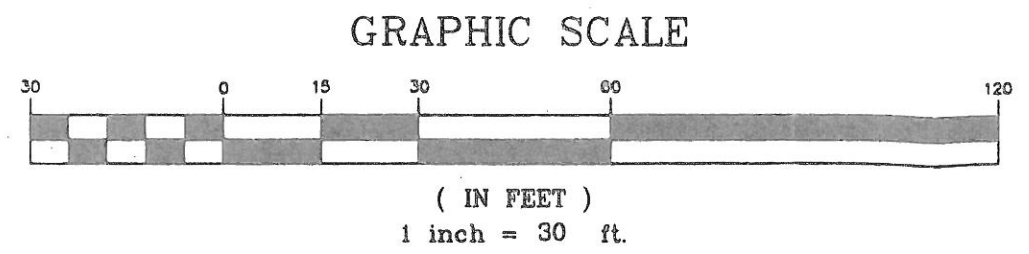
ADJURY (FEE)
 PY (LIFE ESTATE)
 1485/82

(1.73 ACRES±)
 ± (0.66 ACRES±)
 1.20 ACRES±

FOUND 3/4" COPPER PIPE
 ON NORTHERLY SIDE OF
 REMNANTS OF STONE WALL

FEET 4'14"
 FLUSH

FOLCUTT ROAD
 Y.C.R.D. 1021/168



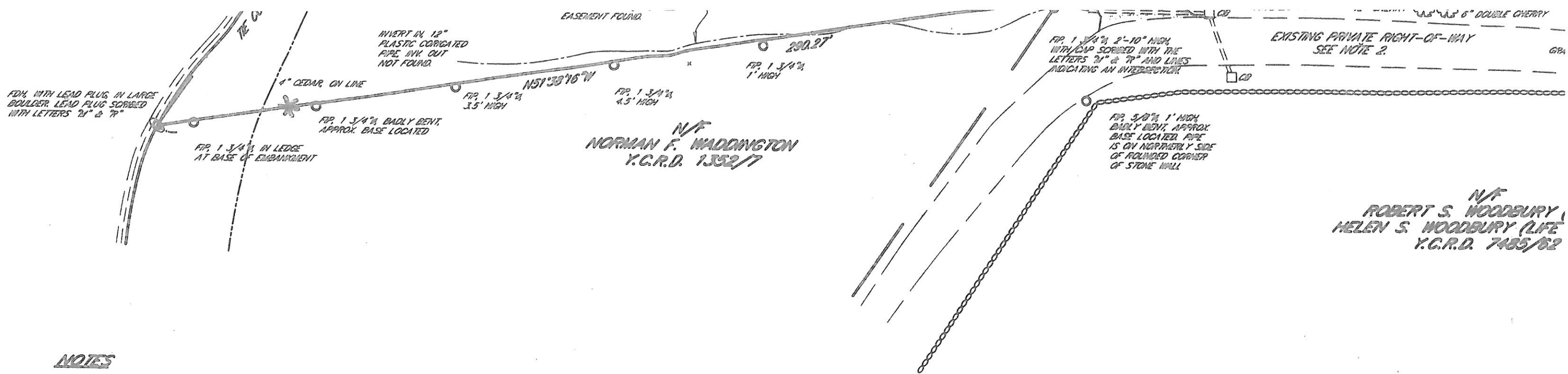
STANDARD BOUNDARY SURVEY PLAN
 PREPARED FOR
 RUTH H. ERLANDSON
 OFF FOLCUTT ROAD ~ KITTERY, MAINE

LOCUS INFORMATION

OWNER OF RECORD: RUTH H. ERLANDSON
 MAILING ADDRESS: 20 FOLCUTT ROAD
 KITTERY POINT, MAINE 03905
 RECORD REFERENCE: Y.C.R.D. VOLUME 7605, PAGE 240
 MUNICIPAL REFERENCE: KITTERY TAX MAP 25, LOT 18
 AREA OF PARCEL TO HIGH WATER MARK: 2.9 ACRES±

PRELIMINARY 4/30/98	Post Road Surveying Wells, Maine 04090 P.O. Box 1557 Tel. 207-646-4246 FAX 207-646-4242	
	DRAWN J. WRIGHT	SCALE 1" = 30'
	CALC. J. WRIGHT	APPROVED
	7145306&RWS N.B.# 102/98	SHEET 1 OF 1

DATE
 DWS 97148



NOTES

- 1.) THE BEARINGS DEPICTED HEREON ARE MAGNETIC, MARCH 1998
- 2.) PRIVATE RIGHT-OF-WAY IN EXISTENCE SINCE MAY 12, 1953. REFERENCE IS MADE TO THE Y.C.R.D. VOLUME 1238, PAGE 272. UNDERLYING FEE INTEREST APPEARS TO RESIDE WITH MERLE C., GEORGIA T., GERALD W., & NITA M. MITCHELL. REFERENCE IS MADE TO THE Y.C.R.D. VOLUME 1944, PAGE 663.
- 3.) REFERENCE IS MADE TO A LETTER TO RUTH H. ERLANDSON FROM POST ROAD SURVEYING DATED MARCH 19, 1998.
- 4.) THE FIVE FOOT WIDE PEDESTRIAN EASEMENT SHOWN HEREON IS AN EASEMENT IN GROSS FOR THE EXCLUSIVE BENEFIT OF RUTH H. ERLANDSON. SAID EASEMENT TO BE EXTINGUISHED AT THE TIME OF TRANSFER OF TITLE TO LOT B OR THE DEATH OF THE SAID RUTH ERLANDSON, WHICHEVER OCCURS FIRST.

FB 4"x4", 3" HIGH WITH SCRIBED LINE

ADDITIONAL INFORMATION

LOT A
 GROSS AREA: 75,501.79 SQ. FT. ± (1.73 AC)
 EASEMENT AREA: 28,811.84 SQ. FT. ± (0.66)
 LOT FRONTAGE: 160' ±

LOT B
 GROSS AREA: 52,141.37 SQ. FT. ± (1.20 AC)
 LOT FRONTAGE: 172.88'

STATE OF MAINE
 YORK COUNTY ss. REGISTRY OF DEEDS
 RECEIVED _____, 19____
 AT ___h, ___m, ___M, AND RECORDED IN
 PLAN BOOK _____, PAGE _____
 ATTEST _____ REGISTER

TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE PERIMETER BOUNDARY DEPICTED ON THIS PLAT CONFORMS TO THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS STANDARDS, FOR A STANDARD BOUNDARY SURVEY. TOLERANCES CONFORM TO CONDITION II.

EXCEPTIONS:
 1.) NO DETAILED WRITTEN REPORT PREPARED.



**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

BOA Meeting Date: January 14, 2020

Item #: SE2020-001

**STAFF REPORT – 22 FOLCUTT ROAD – SPECIAL EXCEPTION USE REQUEST /
MAJOR HOME OCCUPATION**

Project Name: 22 Folcutt Road

Applicant: Lisa Ash

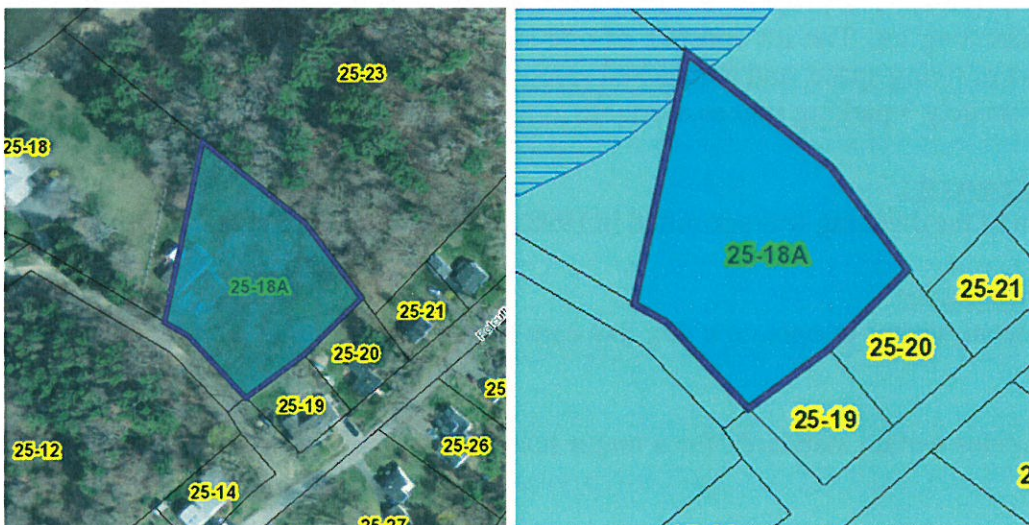
Owner: Robert White

Proposed Development: Major home occupation: Dog Day Care Services

Requests: Special Exception Use per LUDC Section 16.8.22.3, seeking approval for a major home occupation as a dog day care service with limited overnight care.

Site Addresses: 22 Folcutt Road

Map & Lot Numbers: 25-18-A



Current Zoning:

Residential – Kittery Point Village (R-KPV) – The purpose of the Residential – Kittery Point Village R-KPV Zone is to preserve the established character and development pattern of the Kittery

Point neighborhood while assuring that any new development is consistent with this historical development pattern and is environmentally suitable.

The existing dwelling use is permitted by right in the zone. The following use is permitted in the R-KPV Zone: (7) Major home occupations as an accessory use, but Major Home Occupations require Board of Appeals approval prior to permitting.

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

District Standards:

Residential – Kittery Point Village (R-KPV) Zoning District Standards			
Land Area per DU	40,000 sf	Front Yard Setback (min.)	40 feet
Building Coverage (max.)	20%	Rear Yard Setback (min.)	15 feet
Lot Size	40,000 sf	Side Yard Setback (min.)	15 feet

Current Use: Single dwelling unit.

Surrounding Land Uses:

West: Residential – Kittery Point Village (R-KPV); Dwelling Unit

East: Business – Kittery Point Village (R-KPV); Dwelling Unit

North: Business – Kittery Point Village (R-KPV); Empty Lot

South: Business – Kittery Point Village (R-KPV); Dwelling Unit

Site Description:

The subject property consists of approximately 4,087 square feet (1.01 acres) located along the north side of a private Right-of-Way off of Folcutt Road. Folcutt Road is a town owned road located off of Bond Road. The property is zoned Residential – Kittery Point Village (R-KPV) and is a legally conforming lot. The lot consists of one single-family dwelling with approximately 1,884 square feet of living space, and a detached garage. We looked at the site and estimated that there are approximately 3 parking spaces available in addition to the two in the garage.

History of the Property:

The construction of the dwelling was permitted in 1998 and has remained a single family dwelling.

Description of the Issue:

The owner/applicant wishes to operate a dog day care service with limited overnight care out of her home.

Town Code provides certain standards for a major home occupation in Section 16.8.22.3 of the LUDC.

Applicant's Special Exception Use Request:

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

§ 16.6.6 Basis for decision.

A. Conditions.

- (1) *In hearing appeals/requests under this section, the Board of Appeals must first establish that it has a basis in law to conduct the hearing and decide the question.*

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

The requested activity is a major home occupation, defined in the code as “a type of home occupation that fails to meet all of the standards for a minor home occupation established in § 16.8.22.2, but is found by the Board of Appeals to satisfy the standards established in § 16.8.22.3 to ensure that a business results in no more than a minor intrusion in the quality of life of residents in the surrounding neighborhood.”

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

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

The use can be granted only as an accessory use by the Board of Appeals, and will not prevent the orderly and reasonable use of adjacent properties. All adjacent properties are zoned Residential – Kittery Point Village and have the same opportunity to apply for home occupations per the code.

- (b) *The use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located or of permitted or legally established uses in adjacent use zones;*

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

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

The use will not adversely affect the health and welfare of the Town, as long as conditions are met to ensure safe and legal operations.

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

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

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

- (1) *The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;*

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

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

The proposed home occupation will occur within the existing dwelling unit, which is an appropriate and compatible use of the land.

- (3) *The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;*

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

- (4) *The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;*

The property is connected to a private on-site septic system.

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

The applicant will need to adequately deal with pet waste to mitigate the emission of potentially obnoxious odors.

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

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

vibration. The use has the potential to create obnoxious 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 applicant did not supply a parking plan. By our estimation, the site has two parking spaces located in the garage and the driveway can accommodate another three parking spaces.

- (9) *Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot;*

There should be no hazard to life, limb or property created.

- (10) *Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials;*

No overcrowding should result from this use.

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

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

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

The property to the North is vacant. The properties to the South and West are adequately screened by trees. The property to the East is screened by a fence.

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

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

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

There are no sidewalks adjacent to the site. The property is located along a private right-of-way.

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

The applicant must take care to avoid any public nuisances including obnoxious odors from pet waste and excessive noise, abide by restrictions on hours of operation, and develop a parking plan for the site.

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

Other than the request applied by the applicant here, the property conforms to Title 16.8 and 16.9 in its existing state. The applicant must abide by specific conditions outlined in section 16.8.22.3 and any conditions placed on the use by the Board of Appeals.

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

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

Using the standards and criteria found in the LUDC, Staff recommends APPROVAL WITH CONDITIONS of the Special Exception Use request for a major home occupation as a dog day care service with limited overnight care in an existing dwelling unit located in the R-KPV zone, with the following conditions:

- 1. The owner must mitigate potential obnoxious odors from the accumulation of pet waste, and must mitigate against potential obnoxious noise.**
- 2. The applicant must be a resident of the dwelling on the premises where the home occupation will occur. An applicant who is not the owner of the property, but is residing on the premises, must submit written permission of the property owner for the proposed home occupation.**
- 3. The maximum total amount of square footage attributed to the home occupation use must not exceed 942 square feet.**
- 4. There must be no more than five adults, inclusive of residents of the premises,**

working in the home occupation at the site at any one time.

- 5. No other major home occupations may be conducted on the premises while operating as a dog day care with limited overnight care.**
- 6. Business activities involving clients or customers on the premises or vehicular traffic to and from the premises must not be conducted between the hours of 7:00 p.m. and 7:00 a.m. The applicant must submit a plan that provides safe and sufficient off-street parking to meet the needs of the business and prevent parking from overflowing off the site.**
- 7. All outdoor storage of equipment, vehicles or items associated with the home occupation must be screened from view of abutting properties and from all streets except for one (1) vehicle used in conjunction with the home occupation and vehicles owned by residents of the premises with valid license plates.**
- 8. All business activities on the site must take place within an enclosed building.**
- 9. All refuse and recyclables must be stored in containers that are screened from view of abutting properties and from streets.**
- 10. Upon approval of a major home occupation by the Board of Appeals and compliance with the above conditions, the Code Enforcement Officer is authorized to issue a certificate of occupancy permit for not more than a one-year time period. Such permit may be renewed annually upon application to the Code Enforcement Officer. The annual permit may be renewed only if the Code Enforcement Officer finds the major home occupation complies with all applicable standards of this Code and any conditions required by the Board of Appeals in the original approval.**



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

DATE SUBMITTED	12/23/19
MAP & LOT	60-22
ASA FEE	
DATE PAID	100
DATE COMPLETE	
HEARING DATE	

Application to the
BOARD OF APPEALS

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	447 US Rte. #1 Kittery				
MAP	60	LOT #	22	LOT SIZE	0.7978 Acres
BASE ZONE(S):	Mixed Use		OVERLAY ZONE(S):		
The subject property: [is / is not] in a Shoreland overlay or Resource Protection zone; [is / is not] in a floodplain; AND [does / does not] have outstanding code violations; and, if so, granting this appeal provides resolution .					
PROPERTY OWNER: I have right, title or interest in the affected property, or issue, as shown by:					
NAME(S)	Harrison E. Lemont Mgmt. Co., Inc.				
MAILING ADDRESS	435 US Rte. #1				
CITY	Kittery	STATE	Me	ZIP CODE	03904
PHONE No.	207-752-4050		e-MAIL:	klemont @ comcast.net	

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

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

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

Date: 12/23/19

RECEIVED
 DEC 23 2019

By: Kenneth F. Lemont
 (Signature)
Kenneth F. Lemont
 (Print Name)

BY: C. Bacon

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

Identify relevant Town code sections:

TITLE	16	CHAPTER	7	SECTION	3	3				PAGE	
TITLE		CHAPTER		SECTION						PAGE	
TITLE		CHAPTER		SECTION						PAGE	

I understand that the Board of Appeals:

- May hear and decide on a miscellaneous variation request within the limitations set forth in the Title 16 Section identified in Item A-H on Page 1.
- Appears to have jurisdiction to hear this request; hearing must be held within 30 days of this request filing; application must be complete; and, public and abutter notice must be made no less than seven days prior to the scheduled hearing.
- Will conduct this hearing De Novo (meaning the Board acts if it were considering the question for the first time, affording no deference to the preceding agency decisions; may receive new evidence and testimony consistent with this Town Code Title 16 and the Board rules; and, conduct additional hearings and receive additional evidence and testimony).
- Will determine my Burden of Proof:
 - 1) What does the ordinance/statute require the applicant to prove?
 - 2) Does the ordinance/statute prohibit or limit the type of use being proposed?
 - 3) What factors must be considered under ordinance/statutes to decide whether to grant the request?
 - 4) Is the evidence presented substantial? Is it credible? Is it outweighed by conflicting evidence?
- Requires substantial evidence as the Standard of Review for this request, meaning:

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

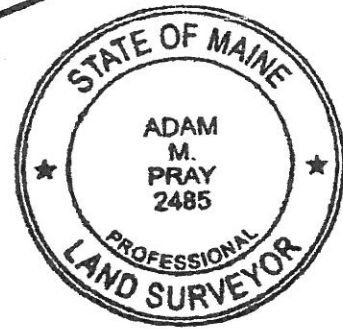
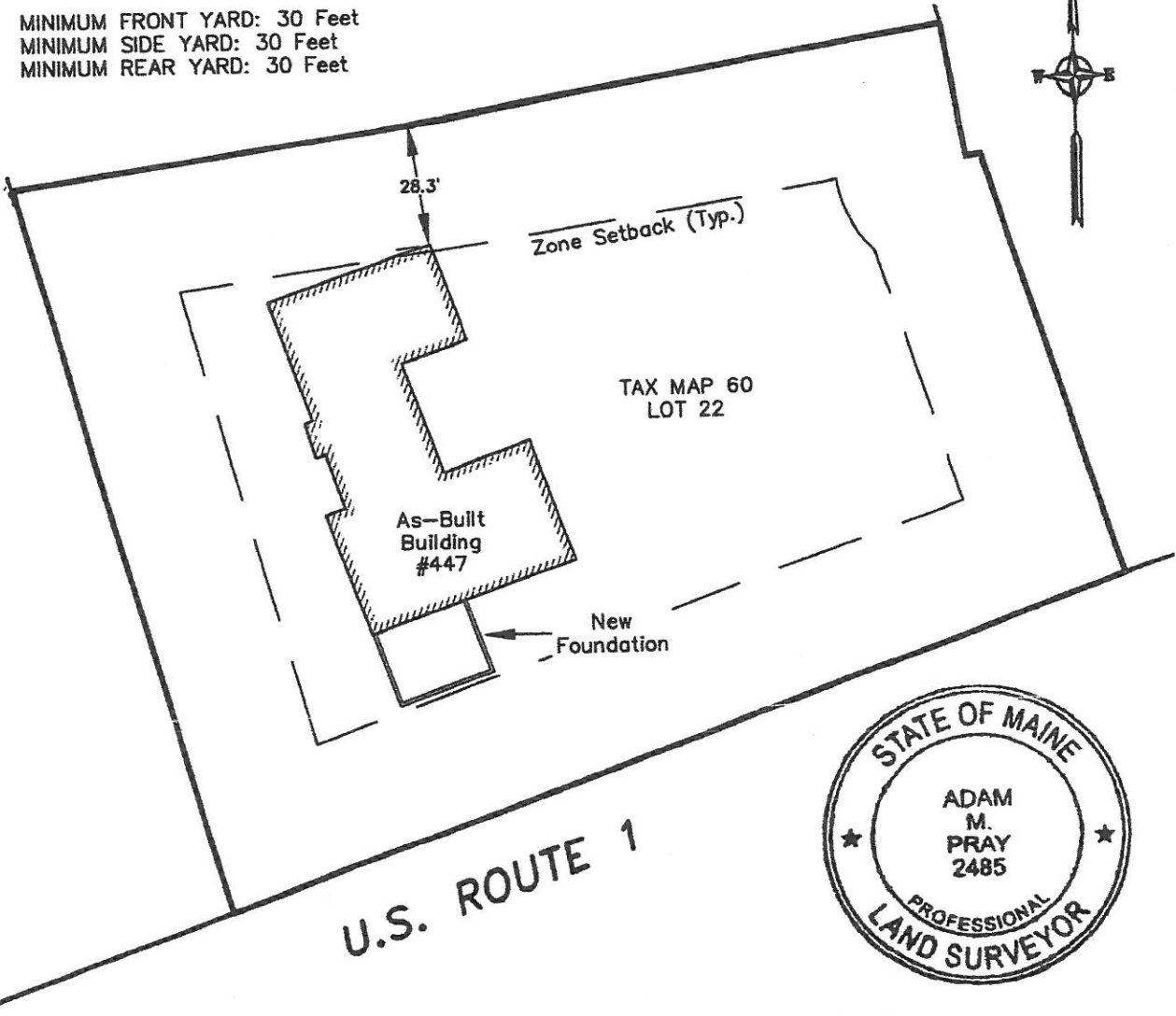
Requesting misc. variance because the addition added is 1.5' into the set back. A new conforming building was taken down thus now less conforming.

Anderson
Livingston

ZONE DATA:

ZONE: MU (Mixed-Use)

MINIMUM FRONT YARD: 30 Feet
MINIMUM SIDE YARD: 30 Feet
MINIMUM REAR YARD: 30 Feet



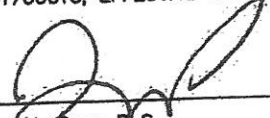
U.S. ROUTE 1

CERTIFICATION:

I HEREBY CERTIFY TO KENNEBUNK SAVINGS BANK THAT THE AS-BUILT BUILDING SHOWN HEREON DOES NOT APPEAR TO CONFORM TO THE ZONING REGULATIONS AS SET FORTH BY THE TOWN OF KITTERY, ME., (IN REGARD TO SETBACKS FROM PROPERTY BOUNDARIES) AT THE TIME OF CONSTRUCTION.
I FURTHER CERTIFY THAT THE FOUNDATION IS IN FLOOD ZONE C (AREAS OF MINIMAL FLOODING) AS SHOWN ON FEMA F.I.R.M. (230170001C, EFFECTIVE JULY 5, 1984)

NOTES:

- 1.) THIS INSPECTION SHALL NOT BE USED FOR FUTURE BUILDING ADDITIONS.
- 2.) FIELD WORK PERFORMED ON OCTOBER 25, 2019.
- 3.) TOWN OF KITTERY BUILDING PERMIT BP-19-196 DATED JULY 11, 2019.


Adam M. Pray, FLS

10/25/19
Date



SURVEYORS IN N.H. & MAINE 191 STATE ROAD, SUITE #1
(207) 439-8333 KITTERY, MAINE 03904

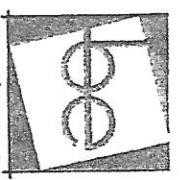
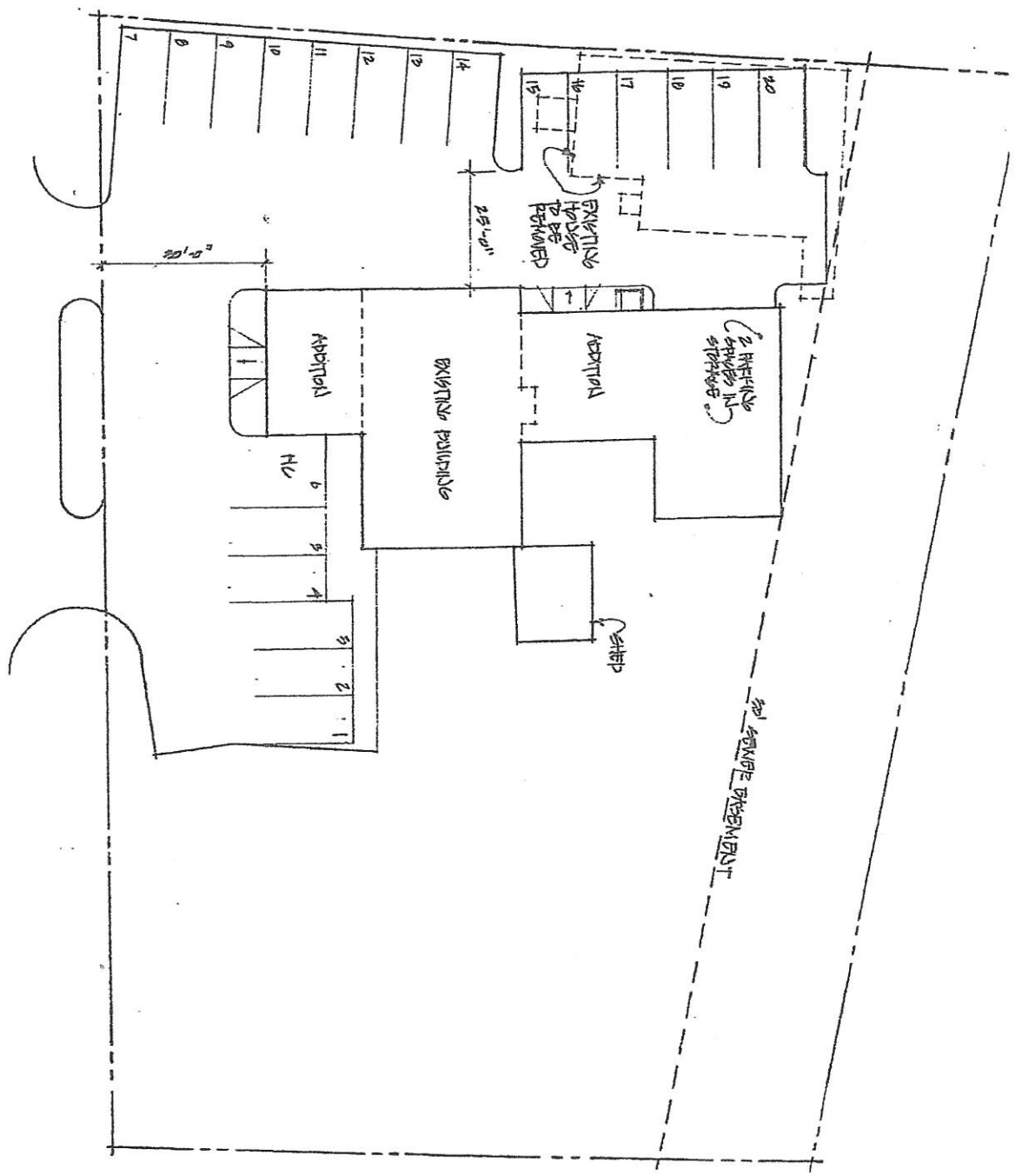
LOCUS: TAX MAP 60 LOT 22
447 U.S. ROUTE 1
KITTERY, MAINE

MORTGAGE LOAN INSPECTION

SCALE 1" = 40'	
DRAWING NO. 18680_MLJ	
DATE: 10/25/19	
BY: A.H.P.	APPROVED: A.M.P.

① SITE PLAN
1" = 20' 0"

US ROUTE 1



studio-BE
ARCHITECTURE

Architect:
Tom Emerson
207.752.1371

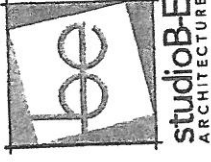
Owner:
Larmoni
Management
Company
207.752.4058

Mixed
Use
Building

445 US Route 1
Kittery, ME

SITE
PLAN

C1.01



10 Ox Point Drive
 Kittery, ME 03904
 207.752.1371
 studioB-E@Comcast.net

ZONING INFORMATION:

Zone: Mixed Use - MU
 Min. Lot Size: 200,000 sf. / 33,825 Existing
 Legally Non-conforming

Setbacks: Required / Proposed
 Front: 30' / 30'
 Side: 30' / 48'
 Rear: 30' / 30'

Building Height: 40' / 23.6'

Parking: Restaurant: 13 spaces
 Retail: 3 "
 Residential: 3 "
 Total Required: 19 "
 Provided: 22 "

Building: No Maximum
 Existing: 1553 sf.
 Proposed: 3142.5 sf.

Lot Coverage: 35% Maximum Open
 Space Required

Building: 3142.5 sf.
 Shed: 266 sf.
 Dumpster: 128 sf.
 Paved: 8760 sf.
 Total: 12,296.5 sf.

63.63% Open Space Provided

PROJECT INFORMATION:

Owner: Ken Lamont,
 Harrison K. Lamont
 Management Company
 207.752.4058

Contractor: TBD

Architect: Tom Emerson,
 studioB-E
 207.752.1371

PROJECT LOCATION:

447 US Route 1, Kittery, Maine 03904
 Map: 60 Lot: 22

DRAWING INDEX:

CS	Cover Sheet	A7.10	Details - Market
C1.01	Site Plan	A7.20	Details - Canopy
D1.01	Site Demolition Plan	E1.01	Lower Level Lighting, Switching & Outlet Plan
D1.02	Building Demolition Plan	E1.02	Upper Level Lighting, Switching & Outlet Plan - Unit 2o1
Ao.01	Specification	E1.03	Upper Level Lighting, Switching & Outlet Plan - Unit 2o2
Ao.02	Specification	S1	Foundation Plan & Details
Ao.03	Door & Window Schedules	S2	Second Floor & Lower Roof Framing
Ao.04	Wall & Partition Types	S3	Upper Roof & Market Portal Framing
A1.01	Lower Level Floor Plan	S4	Shear Walls & Sections
A1.02	Upper Level Floor Plan	S5	General Notes
A1.03	Roof Plan	S6	Schedule of Special Inspections
A2.01	South & East Elevations		
A2.02	North & West Elevations		
A2.03	Enlarged Elevations		
A2.04	Enlarged Elevations		
A3.01	Building Sections		
A3.20	Wall Sections		
A3.21	Wall Sections		
A4.01	Detailed Floor Plan - Market		
A4.02	Detailed Floor Plan - Prep Area		
A4.02	Detailed Floor Plan - Garage		
A4.03	Detailed Floor Plan - Unit 2o1		
A4.04	Detailed Floor Plan - Unit 2o2		
A5.01	Interior Elevations		
A6.01	Stair Plans & Details		

**Mixed
 Use
 Building**

447 US Route 1
 Kittery, Maine 03904



REV#	DATE	DESCRIPTION	CHK
1	02/25/19	PRELIMINARY	
2	02/25/19	REVISED	

ROSS ENGINEERING
 CIVIL/Structural Engineering & Surveying
 909 Main Street, Ste 100
 Portland, ME 04101
 (603) 433-7500

FOUNDATION PLAN
 HENRY VIII CARVERY ADDITION
 445 US ROUTE 1
 KITTERY MAINE

PREPARED FOR:
 1000 MAIN STREET, SUITE 100
 KITTERY, ME 04260

DESIGNED BY:
 JAY KERRICK

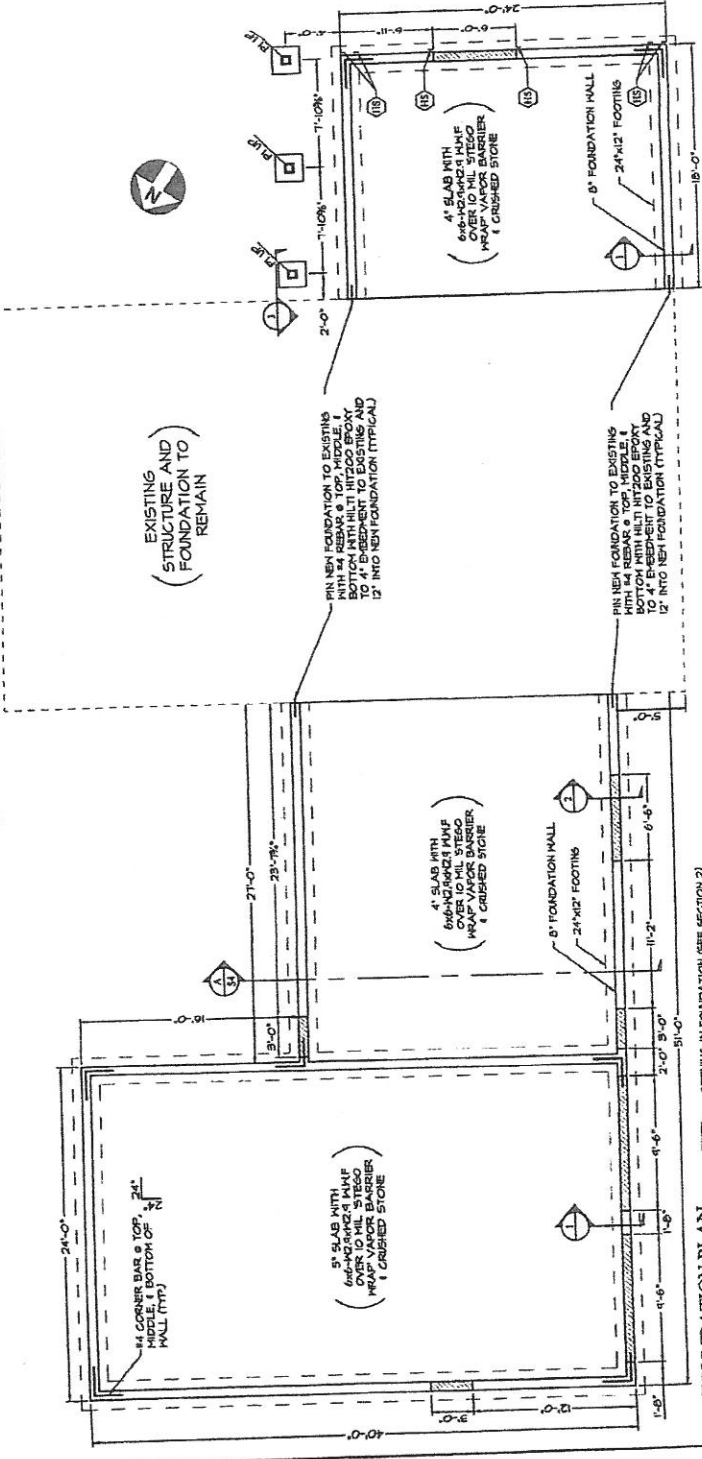
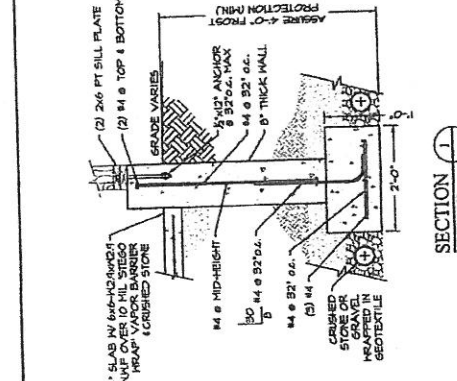
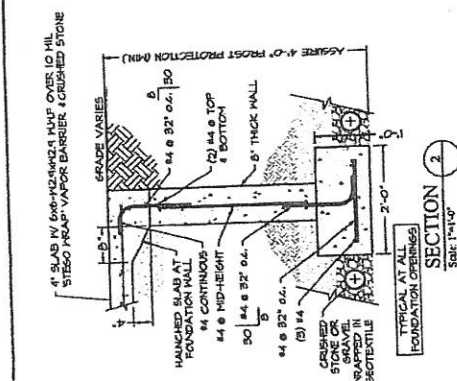
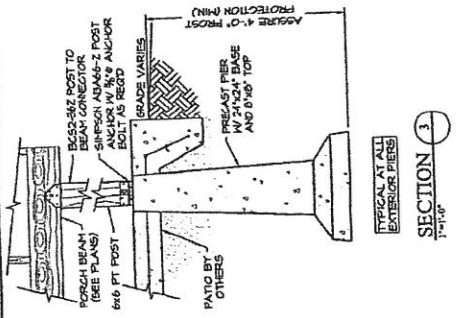
PLANNED BY:
 JAY KERRICK

CHECKED BY:
 JAY KERRICK

DATE:
 02/25/19

PROJECT NO.: 19-001
 SCALE: AS NOTED
 DRAWING NO.: 1 OF 6
 SHEET: 1 OF 6

SI



COLLUMN GENERAL	DETAIL #
1. 6x6 PT POST	3/25
2. 2x4x8	3/25

IF MULTIPLE DETAILS ARE REQUIRED THEN "X/Y" REFERS TO X-TOP AND Y-BOTTOM DETAIL (SEE DETAILS)
 ** ASSURE POSITIVE ATTACHMENT AT ALL POST TO BEAM-HEADERS CONNECTIONS

OPENING IN FOUNDATION (SEE SECTION 2)

Scale: 1/4"=1'-0"

REV	DATE	DESCRIPTION
1	11/11/19	ISSUED FOR PERMITS
2	11/11/19	REVISED
3	11/11/19	REVISED
4	11/11/19	REVISED
5	11/11/19	REVISED

ROSS ENGINEERING
 CIVIL/STRUCTURAL ENGINEERING
 909 Jefferson St.
 Portland, ME 04101
 (603) 432-7550

SHEAR WALLS AND SECTIONS
 HENRY VIII CARVEY AND ADDITION
 445 US ROUTE 1
 KITTERY MAINE

PREPARED FOR:
 HENRY VIII CARVEY ARCHITECTS
 1000 W. BROAD ST.
 KITTERY, ME 04260

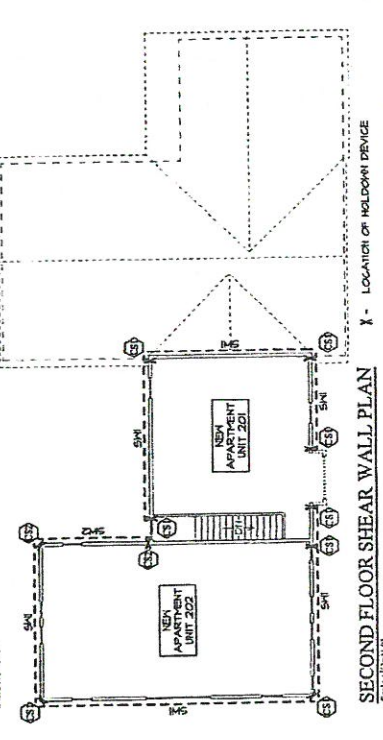
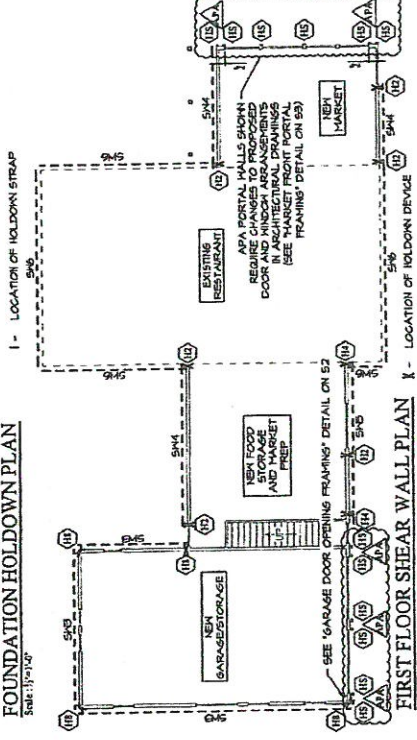
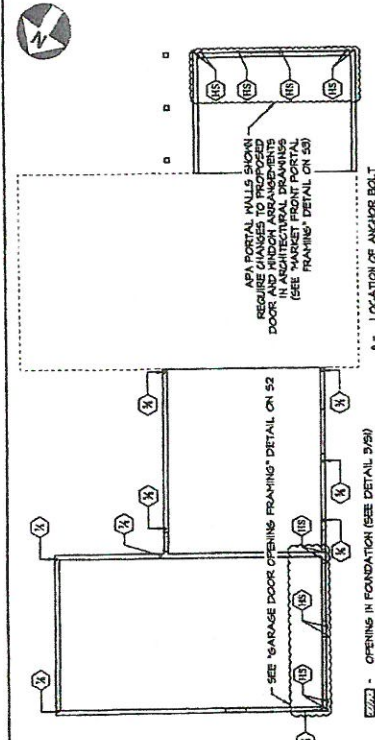
DESIGNED BY:
 JAV 4/28/2018

DRAWN BY:
 JAV 4/28/2018

CHECKED BY:
 JAV 4/28/2018

STATE OF MAINE
 REGISTERED PROFESSIONAL ENGINEER
 No. 10118
 EXPIRES 12/31/2020

DATE: 11-11-19
 SCALE: AS SHOWN
 SHEETS: 4 OF 4
 DRAWING: S4

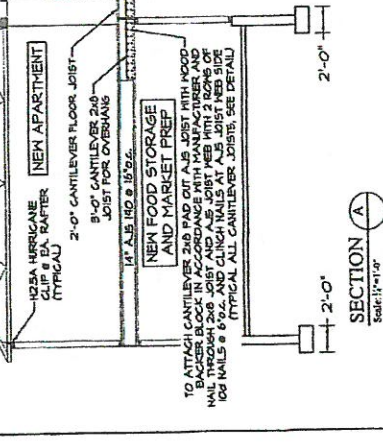
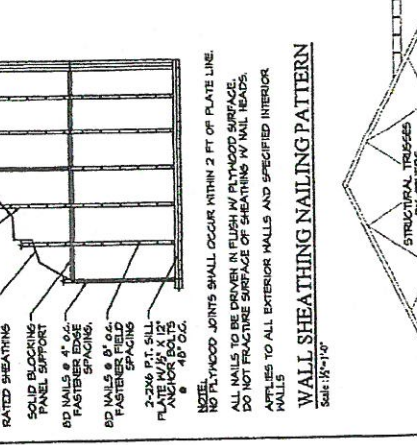


FOUNDATION HOLD-DOWN PLAN
 Scale: 1/4"=1'-0"

FIRST FLOOR SHEAR WALL PLAN
 Scale: 1/4"=1'-0"

SECOND FLOOR SHEAR WALL PLAN
 Scale: 1/4"=1'-0"

SHEAR WALL		FRAMING		SHEATHING		BIO POST		FASTENER		FIELD		ANCHORAGE SCHEDULE	
SW1	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.
SW2	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.
SW3	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.
SW4	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.
SW5	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.
SW6	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.	2x6 @ 16" O.C.



* CONTRACTOR TO VERIFY EXISTING SHEATHING, FRAMING, AND NAILING ARE MINIMUM AS DESCRIBED. IF NOT, CONSULT PROJECT ENGINEER.

APPROXIMATE LOCATION OF 3/8\"/>
 APPROXIMATE LOCATION OF 7/8\"/>
 APPROXIMATE LOCATION OF H8 STRONG-TIE HOLD-DOWN FOR APA PORTAL WALLS (SEE DETAILS) ATTACH TO FOUNDATION FORM-POR WITH APPROPRIATE DEVICE PRIOR TO FOUNDATION CONCRETE POUR. (IF REQUIRED)

SIMPSON STRONG-TIE HOLD-DOWN DEVICE ATTACHED TO FRAMING (BY MINIMUM POST OR BUILT UP STUDS) WITH 6-505 1/2\"/>
 SIMPSON STRONG-TIE HOLD-DOWN DEVICE ATTACHED TO FRAMING (BY MINIMUM POST OR BUILT UP STUDS) WITH 6-505 1/2\"/>
 SIMPSON STRONG-TIE HOLD-DOWN DEVICE ATTACHED TO FRAMING (BY MINIMUM POST OR BUILT UP STUDS) WITH 20-505 1/2\"/>
 APA PORTAL WALLS AS PER TYPICAL PORTAL FRAME WITH HOLD-DOWN DEVICE ATTACHED TO FRAMING (BY MINIMUM POST OR BUILT UP STUDS) WITH 6-505 1/2\"/>
 SIMPSON STRONG-TIE C2616 COIL STRAP (GALVANIZED OR STAINLESS STEEL) ATTACHED TO STRAP ONTO FRAMING. ENSURE STRAP IS ATTACHED TO STUD/POST AT DESIGNATED LEVEL AND BELOW.

REVISION HISTORY

REVISIONS

DATE

DESCRIPTION

11/11/19

ISSUED FOR PERMITS

11/11/19

REVISED

11/11/19

REVISED

11/11/19

REVISED

11/11/19

REVISED



**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

BOA Meeting Date: January 14, 2020

Item #: MVR2020-1

STAFF REPORT – 447 US Route 1 – MISCELLANEOUS VARIATION REQUEST

Project Name: 447 US Route 1

Applicant: Harrison E. Lemont Mgmt. Co., Inc.

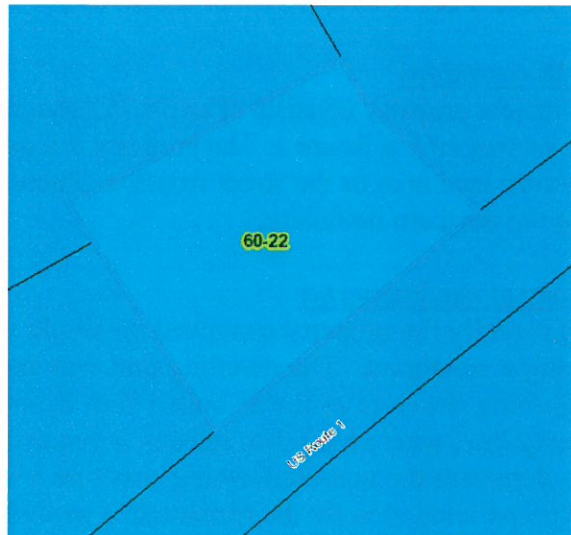
Owner: Harrison E. Lemont Mgmt. Co., Inc.

Proposed Development: Approval of a non-conforming structure

Requests: Miscellaneous Variation Request to approve a non-conforming structure in the Mixed Use zone per Section 16.6.4.C(1) and 16.7.3.3.A.

Site Addresses: 447 US Route 1

Map & Lot Numbers: M 60 L 22



Current Zoning:

Residential – Rural (R-RL) - This zoning district is intended to provide opportunities for a mix of office, service, and limited residential and retail uses, to alter the pattern of commercial activity on Route 1, to serve Kittery’s needs, and to minimize traffic congestion. A mix of uses on a site is

desired and, in some cases, required; a continuation of strip development is not encouraged in this zone. The Mixed-Use Zone is intended to accommodate growth.

The following uses are permitted in the Mixed – Use (MU) Zone: (9)(a) Dwelling units on the upper floors of a mixed-use building that is served by public sewerage. The proposed use is permitted by right.

Staff Recommendation: APPROVAL of miscellaneous variation request.

District Standards:

Mixed Use (MU) Zoning District Standards			
Minimum Road Frontage	250 feet	Front Yard Setback (min.)	30 feet
Lot Size with Frontage on Rt 1 (min.)	200,000 sf	Rear Yard Setback (min.)	30 feet
Side Yard Setback (min.)	30 feet		

Current Use: Dwelling unit, under construction; Restaurant

Surrounding Land Uses:

North: Mixed Use (MU). Mobile Home Park

South: Mixed Use (MU). Commercial

East: Mixed Use (MU). Vacant Land

West: Mixed Use (MU). Commercial

Future Land Use:

The subject property is located within the “Growth” area on the future land use map which is defined as areas where the Town would like to encourage future development to occur.

Site Description:

The subject property consists of an 34,752 square foot lot (.7978 acres), located along the northern right-of-way of US Route 1. The property is a non-conforming lot of record as it does not meet the minimum land area or the street frontage. There is also a 30-foot sewer easement on the property along the northern boundary.

History of the Property:

Until recently the property contained on single family dwelling unit and one commercial building housing a restaurant. The dwelling unit was roughly 1,879 square feet and was an existing non-conforming structure as it was built 1 foot from the west property line and 28-feet from the north property line, where a 30-foot setback is required for both. A building permit was issued on July 8th to demolish the non-conforming structure and replace it with an addition containing additional food preparation area for the restaurant, a garage and two dwelling units.

Description of the Issue:

The addition to the restaurant was permitted based on documents provided by an architectural firm. The information provided showed that the proposed building would have a 30-foot front, rear and side setback. The financial institution involved in the construction required that a foundation

survey be completed, which is attached. The survey revealed that the building infringed on the rear setback by 1.7-feet, resulting in a 28.3-foot setback where 30-feet is required. Based on a closer inspection of the construction documents it was found that the scale on the site plan used for permitting was slightly off, resulting in the setback issue discovered by the foundation survey. The new addition is much less non-conforming than the previous building, as it conforms with the side setback and is .3-feet further from the rear property line.

Applicant’s Miscellaneous Variation Request:

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

§ 16.6.6 Basis for decision.

A. Conditions.

- (1) *In hearing appeals/requests under this section, the Board of Appeals must first establish that it has a basis in law to conduct the hearing and decide the question.*

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

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

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

Staff believes the use will not prevent the orderly and reasonable use of adjacent properties since adjacent properties are zoned Mixed Use and contain similar uses as the subject property.

- (b) *The use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located or of permitted or legally established uses in adjacent use zones;*

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

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

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

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

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

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

- (1) *The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;*

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

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

The proposed addition is already permitted and is an appropriate use of the land. The proposed addition would not be detrimental to property values.

- (3) *The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;*

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

- (4) *The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;*

The property is connected to sewer and sewer impact and entrance fees have been paid.

- (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 site contains adequate space for off-street parking for both the restaurant and dwelling units.

- (9) *Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot;*

No hazards should result from this use.

- (10) *Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials;*

No overcrowding should result from this use.

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

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

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

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

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

The project does not propose any grading changes.

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

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

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

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

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

Other than the miscellaneous variation request filed here, the proposed use and site plan appear to conform to Title 16.8 and 16.9, subject to Planning Board review and approval.

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



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

DATE SUBMITTED	12 / 23 / 2019
MAP & LOT	MAP 4 LOT 88
ASA FEE	WAIVED
DATE PAID	12 / 23 / 2019
DATE COMPLETE	12 / 23 / 2019
HEARING DATE	1 / 14 / 2020

Application to the
BOARD OF APPEALS

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 16 Section 6.4.C, Miscellaneous Variation Request and:

- X Nonconformity (16.7.3);
- Nonconforming Residential Use in Commercial Zones Expansion (16.7.3.3.B(3)(c));
- Nonconforming Lots of Record (16.7.3.5.A);
- Sign Violation and Appeal Standards (16.8.10.13);
- Parking, Loading and Traffic Standards (16.8.9);
- Accessory Dwelling Units Standards (16.8.25.4.C).

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	Rice Public Library - 8 Wentworth Street, Kittery, Maine 03904				
MAP	4	LOT #	88	LOT SIZE	0.80 ACRES
BASE ZONE(S):	MU-KF		OVERLAY ZONE(S):	NONE	

The subject property:
 [is / is not] in a Shoreland overlay or Resource Protection zone; [is / is not] in a floodplain; AND
 [does / does not] have outstanding code violations; and, if so, granting this appeal provides resolution .

PROPERTY OWNER: I have right, title or interest in the affected property, or issue, as shown by:

NAME(S)	Town of Kittery				
MAILING ADDRESS	200 Rogers Road, Kittery, ME 03904				
CITY	Kittery	STATE	Maine	ZIP CODE	03904
PHONE No.	207.475.1329		e-MAIL:	kamaral@kitterymaine.org	

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)	Ryan Kanteres - Scott Simons Architects				
MAILING ADDRESS	75 York St				
CITY	Portland	STATE	Maine	ZIP CODE	04101
PHONE No.	(207) 772-4656		e-MAIL:	ryan@simonsarchitects.co1 n	

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

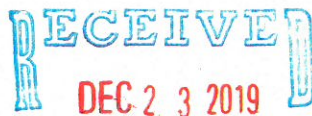
Date: 12 / 23 / 2019

By:

(Signature)

Ryan Kanteres

(Print Name)



BY: _____

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

Identify relevant Town code sections:

TITLE	16	CHAPTER	3	SECTION	2	15	D	4	e.2	PAGE	
TITLE	16	CHAPTER	2	SECTION	2					PAGE	
TITLE	16	CHAPTER	3	SECTION	2	15		2	g	PAGE	

I understand that the Board of Appeals:

- May hear and decide on a miscellaneous variation request within the limitations set forth on page 1 of this application.
- Appears to have jurisdiction to hear this request; hearing must be held within 30 days of this request filing; application must be complete; and, public and abutter notice must be made no less than seven days prior to the scheduled hearing.
- Will conduct this hearing De Novo (meaning the Board acts if it were considering the question for the first time, affording no deference to the preceding agency decisions; may receive new evidence and testimony consistent with this Town Code Title 16 and the Board rules; and, conduct additional hearings and receive additional evidence and testimony).
- Will determine my Burden of Proof:
 - 1) What does the ordinance/statute require the applicant to prove?
 - 2) Does the ordinance/statute prohibit or limit the type of use being proposed?
 - 3) What factors must be considered under ordinance/statutes to decide whether to grant the request?
 - 4) Is the evidence presented substantial? Is it credible? Is it outweighed by conflicting evidence?
- Requires substantial evidence as the Standard of Review for this request, meaning:
"More than a mere scintilla". It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The preponderance of evidence standard is met if the proposition is more likely to be true than not true. The standard is satisfied if there is greater than fifty percent chance that the proposition is true.
- May hear, decide, and approve variations in accordance with the criteria listed in Town Code Title 16, Sections 6.6, Basis for Decision; and may consider other Title 16 standards.
- Approval may not be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any state law which the municipality is responsible for enforcing.
- Is only legally authorized to deal with issues arising from the list above, and do not include such matters as constitutionality, civil rights, criminal acts, property disputes, surliness, etc.
- Will not even hear my appeal unless I can show that I have "standing" to have my complaint heard;
- Purpose of establishing my case for "standing" is to limit appeals on an issue to those who are directly involved and/or affected.
- Will try to decide my case based only on the factual information presented and what is written in the pertinent Town ordinance/regulation, State statute(s)/regulation(s) and the rulings of the rulings of the State Supreme Judicial Court.
- Tries to make decisions it believes would be upheld if appealed to Superior Court.

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:

This application requests two miscellaneous variations be considered for an addition to a non-conforming historic structure. The first request is regarding the need for a project specific review of the applicability of section 16.3.2.15.D.4.e.2. of the town ordinance. The second request is for a clarification of the definition of maximum allowable building height for additions to non-conforming historic structures.

The proposed Rice Public Library project consolidates the library operations to one building and addresses the current facilities accessibility and life safety code deficiencies. The project is designed to the requirements of the MU-KF zone, however it is an addition to an existing historic, public, non-conforming building which will require the pursuit of these miscellaneous variation requests.

The proposed design maintains the current use and meets the requirements of the zone's minimum; lot size, street frontage, front yard, rear and side yards, separation distances, and setbacks, as well as the maximum lot coverage requirements.

The existing building currently exceeds the allowable height in the MU-KF zone and this will remain unchanged as a part of this project, the existing structure will remain the highest part of the building. The proposed building increases the footprint by more than 30%. (existing footprint is 1,700 square feet, the proposed total footprint is 5,170 square feet) 16.3.2.15.D.4 requires the project meet the additional requirements (a through h). The project meets the applicable requirements of this section, with the exception with the specific provision of 16.3.2.15.D.4.e.2. Implementing the requirements of section e.2 on this project would detrimentally impact the historic structure by requiring the removal of dormers and portions of the historic slate roof, as well as requiring more of the building be built to a non-conforming height. This application of the requirements of section 16.3.2.15.D.4.e.2. appear to contradict the National Park Service technical brief on recommendations for additions to historic structures on the national Historic Register.

The proposed project is the result of a transparent process and has been supported through public voting. The project does not adversely effect adjacent properties, and the use is consistent with public desire and zoning requirements. The proposed project directly contributes to the safety, health, and welfare of the Kittery foreshore.



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

APPLICANT: RICE PUBLIC LIBRARY

DATE SUBMITTED	12/23/2019
MAP & LOT	MAP 4 Lot 88
ASA FEE	---
DATE PAID	---
DATE COMPLETE	12/23/2019
HEARING DATE	1/14/2020

APPLICATION FORM FILLED OUT COMPLETELY & SIGNED YES NO N/A

Supporting Documents provided:

Citations of pertinent ordinance(s)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deed(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Map(s)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blueprint(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Survey(s)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Photo(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Detailed plot plan or diagram showing:

Dimensions and shape of the lot	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Size and locations of existing buildings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Locations and dimensions of proposed buildings or alterations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Natural or topographic features (wetlands, streams, etc) of the lot	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Distances to the nearest structures on abutting properties	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Detail of any rights-of-way, easements, or other encumbrances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Administrative Appeal information:

Detailed description of decision appealed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Date on which the decision was made and by whom	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Facts surrounding the appeal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Statement of what is wrong about the decision appealed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Relief action requested to be taken in the matter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Statement of how the decision will affect applicant/property	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date: 12/23/2019

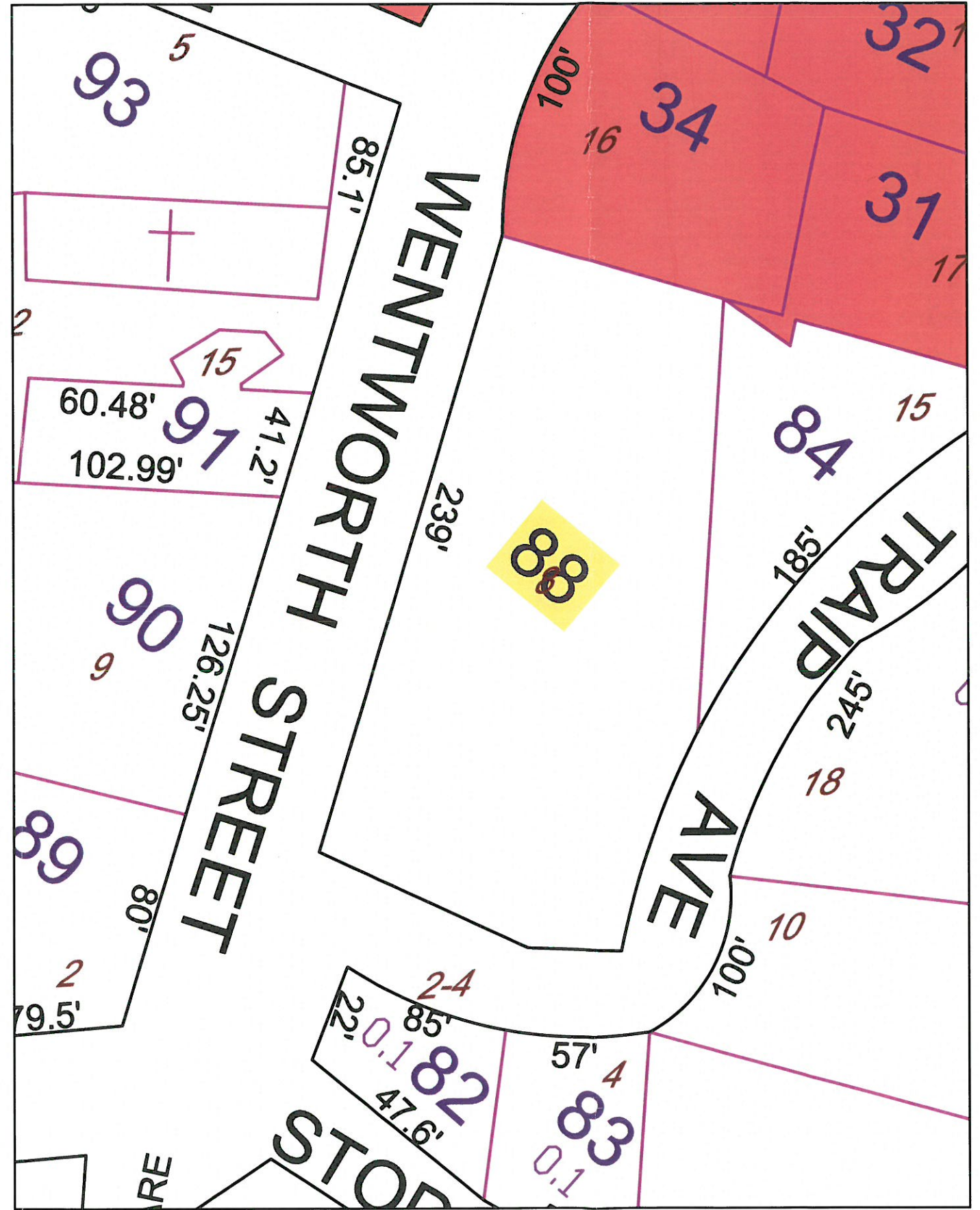
By: _____
(Signature)
RYAN KANTERES
(Print Name)

Rice Public Library - Vicinity and Tax Maps



Vicinity Map

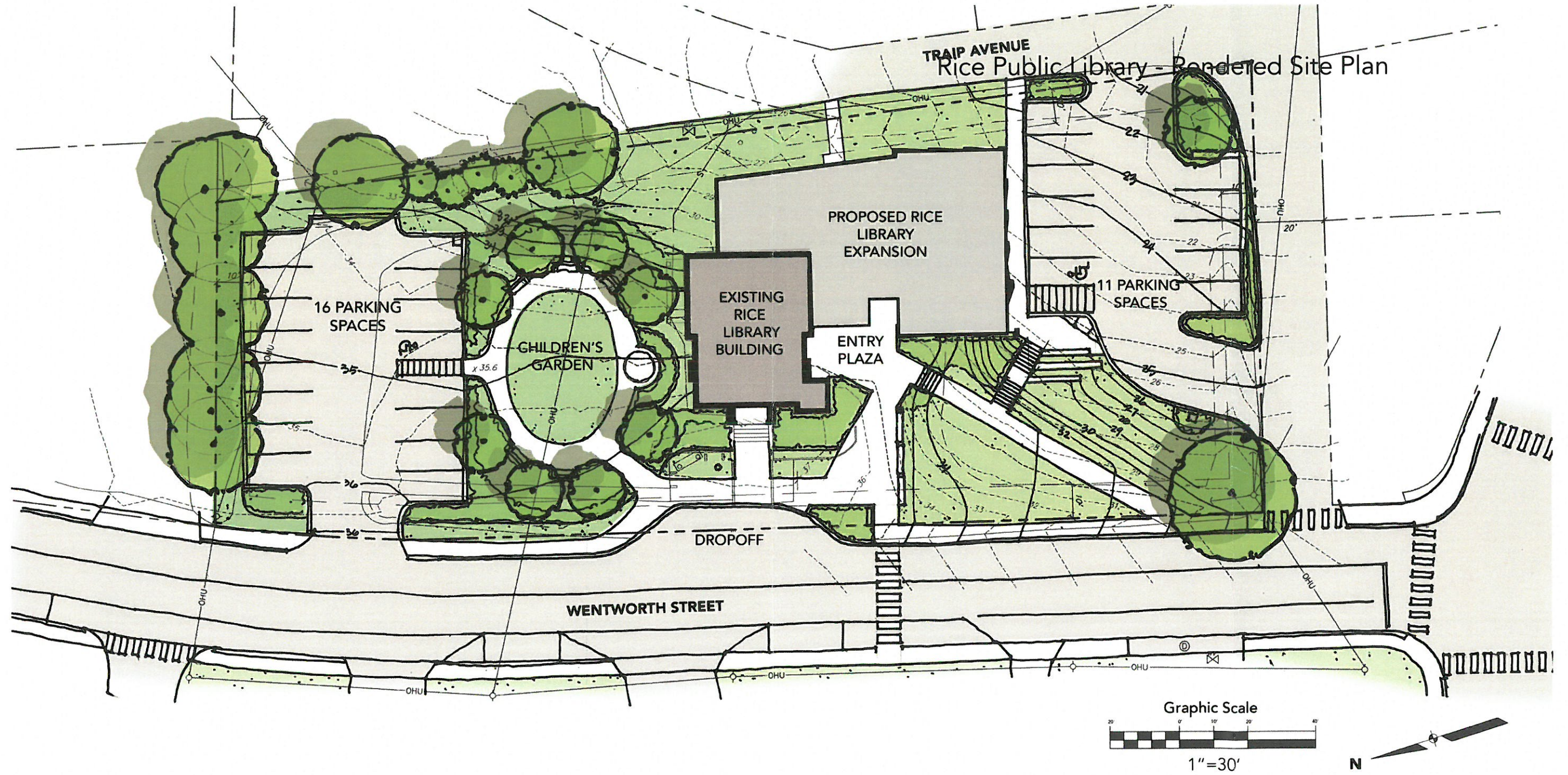
Scale 1" = 50'



Tax Map

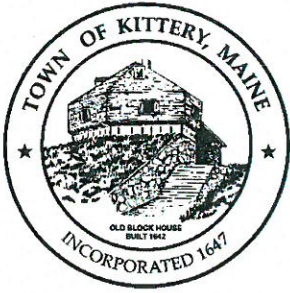
Scale 1" = 50'

Rice Public Library - Rendered Site Plan





Rendering of Current Massing from the Kittery Foreside



PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT

BOA Meeting Date: January 14, 2020

Item #: MVR2020-2

**STAFF REPORT – 8 WENTWORTH STREET – MISCELLANEOUS VARIATION
REQUEST**

Project Name: Rice Public Library Expansion

Applicant: Ryan Kanteres

Owner: Town of Kittery

Proposed Development: Addition to a non-conforming structure

Requests: Miscellaneous Variation Request to expand a non-conforming structure at 8 Wentworth Street in the Mixed Use – Kittery Foreside zone per Section 16.6.4.C(1) and 16.7.3.3.B of the Town Code.

Site Addresses: **8 Wentworth**

Map & Lot Numbers: M 4 L 88



Current Zoning:

Mixed Use – Kittery Foreside (MU-KF) – The purpose of the Mixed Use – Kittery Foreside (MU-KF) Zone is to provide business, service and community functions within the Mixed Use – Kittery Foreside Zone and to provide a mix of housing opportunities in the historic urbanized center of the community and to allow for the use patterns which recognize the densely build-up character of the zone and the limitation for providing off-street parking. Design standards are used to facilitate the revitalization of downtown Kittery Foreside as a neighborhood center, while promoting economic development of service business and walk-in shopping as well as respecting the zone’s historic and residential character.

The following uses are permitted in the Mixed Use – Kittery Foreside (MU-KF) Zone: (3) Municipal or state building or use. The proposed use is permitted by right.

Staff Recommendation: APPROVAL of miscellaneous variation request.

District Standards:

Mixed Use – Kittery Foreside (MU-KF) Zoning District Standards			
Minimum Road Frontage	0 feet	Front Yard Setback (min.)	0 feet
Lot Size (min.)	5,000 sf	Rear Yard Setback (min.)	30 feet
Side Yard Setback (min.)	10 feet	Maximum Building Coverage	60%
Minimum Open Space	40%		

Current Use: Public Library

Surrounding Land Uses:

North: Mixed Use – Kittery Foreside (MU-KF). Professional Office

South: Mixed Use – Kittery Foreside (MU-KF). Residential

East: Mixed Use – Kittery Foreside (MU-KF). Residential

West: Mixed Use – Kittery Foreside (MU-KF). Commercial & Residential

Future Land Use:

The subject property is located within the “Growth” area on the future land use map which is defined as areas where the Town would like to encourage future development to occur.

Site Description:

The subject property consists of an 30,500 square foot lot (.7 acres), located along the eastern right-of-way of Wentworth Street. The property is a conforming lot of record containing the Rice Public Library and two parking lots. The building is non-conforming as it exceeds the 40-foot building height restriction. The building is listed on the National Register of Historic Places.

History of the Property:

The Rice Public Library was constructed in 1889 and is considered to be one of the most outstanding examples of the Romanesque Revival style building in the State of Maine. It has had very little, if any renovations and retains practically all of its original character. In 2019 the Inhabitants of the

Town of Kittery voted to renovate and add on to the existing structure.

Description of the Issue:

Through meetings with both the Town and community groups, the designing architect, Scott Simons Architects, has proposed a design for the expansion of the library. It features a flat roof structure connected to the original building, which is then connected to a hip roof structure. As the existing building is non-conforming and per Section 16.7.3.3.B.(1) the repair and expansion must be approved by Board of Appeals. Also, per Section 16.3.2.15.(e).[2] *The roof pitch of elements that link buildings or portions of buildings must be the same or greater than the pitch of the roofs on the buildings that are being linked*, Section 16.3.2.15.(e).[3] *Flat or nearly flat shed roofs are not allowed except for porches, dormers or attachments distinct from the primary structure or where systems are concealed by standard roof forms* and Section 16.3.2.15.(e).[3] *The roof pitch of additions or wings must be similar to the pitch of the primary roof*. The applicant seeks relief from the dimensional standards contained the above listed sections per Section 16.6.4.C.(1). The flat roof portion has been designed as such to minimize the impact to the historic architecture of the original building.

Applicant's Miscellaneous Variation Request:

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

§ 16.6.6 Basis for decision.

A. Conditions.

- (1) *In hearing appeals/requests under this section, the Board of Appeals must first establish that it has a basis in law to conduct the hearing and decide the question.*

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

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

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

Staff believes the use will not prevent the orderly and reasonable use of adjacent properties since the use is not changing and the community has voted to approve the expansion.

- (b) *The use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located or of permitted or legally established uses in adjacent use zones;*

Staff believes the use will not prevent the orderly and reasonable use of legally established uses in the zone since the use is not changing and the community has voted to approve the expansion.

- (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 addition has been designed to complement the existing historic structure and the surrounding neighborhood.

- (3) *The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;*

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

- (4) *The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;*

The property is connected to adequate town sewer.

- (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 site plan includes two parking areas with a total of 27 parking spaces.

- (9) *Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot;*

No hazards should result from this use.

- (10) *Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials;*

No overcrowding should result from this use.

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

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

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

The project includes landscaping which staff believes will adequately screen the property.

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

The project will include a grading and drainage plan once construction documents are created.

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

The project will include new sidewalks and walking paths that will provide for adequate pedestrian circulation.

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

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

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

Other than the miscellaneous variation requests filed here, the proposed use and site plan appear to conform to Title 16.8 and 16.9, subject to Planning Board review and approval.

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

MEETING MINUTES

1. CALL TO ORDER; INTRODUCTORY; ROLL CALL

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

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

Board Members Absent: Barry Fitzpatrick

Staff Present: Craig Alfis, Code Enforcement Officer

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

- Chair Brake made a motion to hold the Board elections after Board Member or CEO Issues or Comment. Seconded by Mr. Gardner. Motion passed unanimously by voice vote.

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

- Melissa Williamson, on behalf of 74 State Road LLC, requesting a Special Exception Use to convert an existing commercial building into a mixed use building at 74 State Road in the Business – Local (B-L) per Section 16.3.2.8.C(9) and 16.6.4.D of the Town Code.**
- Mr. Alfis presented the staff report. The Board had several questions for Mr. Alfis. The applicant's representative, Monica Keiser, was given the opportunity to state the details of their request. The Board had several questions for Ms. Keiser. The public were invited to comment. The Board entered into discussion.

Motion by Ms. Timko to approve the application by Melissa Williamson, on behalf of owner 74 State Road LLC, requesting a Special Exception Use to convert an existing commercial building into a mixed use building at 74 State Road in the Business – Local (B-L) district. Seconded by Ms. Dwyer-Jones. Motion passed 6-0-0 by roll call vote [Yes: Denault, Gardner, Timko, Dwyer-Jones, Leontakianakos; Brake; No: --; Abstain: --]

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

Findings of Fact: (1) The public hearing was noticed in the Portsmouth Herald on December 4th, 2019. (2) A representative for Melissa Williamson, on behalf of 74 State Road LLC made a presentation requesting a Special Exception Use to convert the existing commercial building into a mixed use building at 74 State Road in the Business – Local (B-L) zone per Section 16.3.2.8.C(9). (3) The Board found that the property is located in a future growth area on the Future Land Use Map and has sufficient lot size to accommodate the use and sufficient parking. (4) The Board considered as a basis for decision the conditions set forth in 16.6.6.A and the factors for consideration set forth in 16.6.6.B. (5) The Board approved the request by a vote of six to zero.

Conclusions of Law: (1) The Board had the authority to hear the Special Exception Use Request pursuant to section 16.6.4.D and 16.3.2.8.C(9). (2) The Board found that the proposed use meets the requirements of the code and satisfied the Basis for Decision and Factors for Consideration set forth in 16.6.6.

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

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

b. Chris Velardi, on behalf of Josephine Robbins, owner, 3 Old Cutts Road requesting a Miscellaneous Variation Request to expand a non-conforming structure in the Residential – Rural (R-RL) zone per Section 16.6.4.C(1).

- Mr. Alfis presented the staff report. The Board had several questions for Mr. Alfis. Mr. Velardi was invited to the podium to state the details of the request. The Board had several questions for Mr. Velardi.

Motion by Ms. Timko to approve the applicant, Chris Velardi’s Miscellaneous Variation Request to expand a non-conforming structure in the Residential – Rural zone per Code Section 16.6.4.C(1). Motion was seconded by Mr. Gardner. Motion passed 6-0-0 [Yes: Gardner, Denault, Timko, Dwyer-Jones, Leontakianakos Brake; No: -- ; Abstain: --]

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

Findings of Fact: (1) The Board heard Chris Velardi, on behalf of owner Josephine Robbins of 3 Old Cutts Road requesting a Miscellaneous Variation to expand a non-conforming structure in the Residential – Rural zone per Code Section 16.6.4.C(1). (2) The Board found that this is an existing non-conforming lot and the addition would be

no more non-conforming. (3) In making this decision the Board considered the conditions and factors set out in Section 16.6.6 of the Code and as described in the Staff Report.

Conclusions of Law: (1) The Board found it had authority to hear this Miscellaneous Variation Request pursuant to Code Section 16.6.4.C(1) and 16.7.3.3.B. and in particular subsection (3)(a) regarding a non-conforming structure repair and expansion.

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

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

6. UNFINISHED BUSINESS

8. ACCEPTANCE OF PREVIOUS MINUTES

- October 22, 2019 & November 26, 2019
 - Mr. Gardner had one correction for minutes of October 22
 - Ms. Timko had a general correction for submitted and future minutes
- Motion made by Mr. Leontakianakos to accept both minutes as amended. Seconded by Mr. Denault. Motion passed 5-0-1 by roll call vote [Yes: Denault, Timko, Dwyer-Jones, Leontakianakos, Brake; Nay: --; Abstain: Gardner]

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

- Mr. Alfis presented the 2020 meeting calendar to the Board.
- Mr. Leontakianakos confirmed that the next Board meeting is on January 14, 2020.

7. NEW BUSINESS

- Election of Board Officers
 - Secretary

- Ms. Dwyer-Jones nominated by Ms. Timko, seconded by Mr. Leontakianakos.
 - Nomination passed 5-0-0 by roll call vote [Yes: Denault, Gardner, Timko, Leontakianakos, Brake; Nay: --; Abstain: --]
- Vice-Chair
 - Mr. Denault nominated by Mr. Gardner. Mr. Denault respectfully declined.
 - Mr. Leontakianakos by Mr. Brake, seconded by Ms. Dwyer-Jones.
 - Nomination passed 5-0-0 by roll call vote [Yes: Denault, Gardner, Timko, Dwyer-Jones, Brake; Nay: --; Abstain: --]
- Chair
 - Ms. Timko nominated by Mr. Brake, seconded by Mr. Leontakianakos.
 - Nomination passed 5-0-0 by roll call vote [Yes: Denault, Gardner, Dwyer-Jones, Leontakianakos, Brake; Nay: --; Abstain: --]

10. ADJOURNMENT

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

The Kittery Board of Appeals meeting of December 10, 2019 adjourned at 7:11 p.m.

Submitted by Craig Alfis, Code Enforcement Officer

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

OBITUARIES & NEWS

Master Chief Manuel Chavez

PORTS-MOUTH
— Master Chief Manuel "Manny" Chavez born March 4, 1938 and who passed away October 23, 2018, was laid to rest in Arlington National Cemetery on November 21, 2019, with full



military honors. It was a beautiful, fitting tribute to Manny's 28 years of proud service in the US Navy, Submarine Service.

More than 50 family members and friends were able to attend.



MARKET WATCH

Dow 28,634.88 ▼ 233.92
Nasdaq 9,020.77 ▼ 71.42
S&P 3,234.85 ▼ 23.00

MARKET MOVERS

• **Tesla Inc.:** Up \$12.75 to \$443.01 — The electric vehicle maker reported a 50%

Hassan, Shaheen: Caution needed after U.S. kills Iran general

The Associated Press

The Trump administration needs to proceed with great caution, consult with Congress and be clear with the American people about its strategy following the U.S. military air strike that killed Iran's top military commander, Gen. Qasem Soleimani, New Hampshire Sen. Maggie Hassan said Friday.

"Soleimani was an enemy of the United States who was responsible for the murder of thousands, including U.S. service members," Hassan, a Democrat, said in a statement. "This is an incredibly volatile situation, and our first priority must be protecting U.S. troops and interests around the world."



The application of **Five Hundred Five Lafayette Rd., LLC, Owner**, for property located at 805 Lafayette Road requesting Amended Site Plan Review approval for installation of a dumpster including a concrete pad and enclosure. Said property is shown on Assessor Map 229, Lot 09 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

The application of **Pease Development Authority, Owner, and Lonza Biologics, Inc., Applicant**, for property located at 101 International Drive requesting Site Plan Review approval under Chapter 400 of the Pease Land Use Controls, Site Review Regulations, for parking expansion at three different locations within the site resulting in a total of sixty new parking spaces with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 305 Lot 06 and lies within the Industrial (I) District.

The application of **Hope for Tomorrow Foundation, Owner**, for property located at 355 (315) Barnfield Road requesting Amended Site Plan Review approval for the construction of a 17,000 s.f. freestanding gymnasium and associated parking area to serve the existing private school on the property with related paving, lighting, utilities, landscaping, and drainage improvements. Said property is shown on Assessor Map 266 Lot 05 and lies within the Industrial (I) District.

The application of **DPF 1600 Woodbury Avenue, LLC, Owner**, for property located at 1600 Woodbury Avenue requesting Amended Site Plan Review approval to upgrade the existing shopping center with new and additional signage, a new driveway entrance off of Woodbury Avenue, and repurposing of the former supermarket space to separate retail space and new grocery space with accessory café/food court. Said property is shown on Assessor Map 238 Lot 16 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

The application of the **Maud Hett Revocable Trust, Owner**, for property located on Barnfield Road requesting Conditional Use Permit approval for an Open Space Planned Unit Development according to the requirements of Section 10.725 of the Zoning Ordinance and Site Plan Review approval for the construction of 22 single-family homes and a new road with related parking, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 256 Lot 02 and lies within the Single Residence A (SRA) District.

Juliet T.H. Walker, AICP
Planning Director

Note: The Agenda for the Planning Board meeting will differ from the Legal Notice. For information on the Agenda call the Planning Department at 610-7217 during the week of January 13, 2020, or check the City's website at www.cityofportsmouth.com/planportsmouth/planning-board.

Notice to the members of the public who are hearing impaired — If you wish to attend a meeting and need assistance, please contact the Human Resources office at 610-7274 one week prior to the meeting.

Legal Notice

Notice of Public Hearing Budget Committee Newington, New Hampshire

To the residents of the Town of Newington, in Rockingham County in the State of New Hampshire: Notice is hereby given of a PUBLIC HEARING regarding the Town and School District budgets on Wednesday, February 5, 2020 at 8:30PM in the Newington Town Hall, 205 Nimble Hill Road, Newington, New Hampshire for the purpose of open disclosure and discussion on the proposed budgets prior to the Budget Committee's recommendation of the same. (Snow day- Friday, Feb. 7, 6:30pm)

John Lamson, Chair
Newington Budget Committee

Legal Notice

THE VILLAGE DISTRICT OF LITTLE BOAR'S HEAD in the Town of North Hampton, New Hampshire NOTICE OF A MEETING OF THE ZONING BOARD OF ADJUSTMENT

The Zoning Board of Adjustment of the Village District of Little Boar's Head will meet in public hearing at the North Hampton Town Hall, 231 Atlantic Avenue, North Hampton, New Hampshire on Thursday January 9, 2020 at 6:30 PM to hear the following:

Case No. 20-1: Application of Boulders Realty Corp, 149 Epping Rd. Suite 2A, Exeter, NH 03833 for a Variance under Section VIII L of said ordinance ("Fill") related to Woodland Rd. Map 12 Lot 10 and the proposed placement of fill within 75 feet of a wetland to construct a pervious driveway over the existing woods road located on the property.

John Shaw, Chair
Little Boar's Head Zoning Board of Adjustment
December 28, 2019

Legal Notice

NOTICE OF PUBLIC HEARING TOWN OF KITTERY - BOARD OF APPEALS 200 Rogers Road, Kittery, Maine 03904 Tuesday, January 14, 2020 - 6:30 p.m.

Lisa Ash, owner 22 Folcitt Road, requesting a Special Exception Use to operate a dog day care as a Major Home Occupation in the Residential - Rural (R-RL) zone per Section 16.3.2.3.C(7) and 16.8.22.3 of the Town Code.

Harrison E. Lemont Management Co, Inc, owner 447 US Route 1, requesting a Miscellaneous Variation Request to approve a non-conforming structure in the Mixed Use (MU) zone per Section 16.6.4.C(1) and 16.7.3.3.A of the Town Code.

Ryan Karnteres, on behalf of owner, Town of Kittery, requesting a Miscellaneous Variation Request to expand a non-conforming structure at 8 Wentworth Street in the Mixed Use - Kittery Foreside (MU-KF) zone per Section 16.6.4.C(1) and 16.7.3.3.B of the Town Code.

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

LEGAL NOTICE TOWN OF RYE BUDGET COMMITTEE PUBLIC HEARINGS

The Town of Rye Budget Committee will hold the following Public Hearings:

1. **Wednesday, January 15, 2020** at 6:30 p.m. in the cafeteria at the Rye Junior High School, 501 Washington Road, to consider the Rye School District Operating Budget for the school year ending June 2021 including Warrant Articles.
2. **Thursday, January 16, 2020** at 6:30 p.m. in the Rye Town Hall, 10 Central Road, to consider the 2020 Town Operating Budget including Warrant Articles.

If necessary, the snow date for one or both Public Hearings will be Tuesday, January 21, 2020 at 6:30 p.m. in the Rye Town Hall.

Town of Rye Budget Committee