



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

Virtual Meeting, link can be found at:

<https://www.kitteryme.gov/board-appeals/events/44024>

**Tuesday, November 24, 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**
 - Derek Durbin on behalf of 74 State Road Redevelopment LLC, owner 74 State Road, requesting a Special Exception to convert the existing commercial building into apartments in the B-L Zone per Code Section 16.3.2.8.C(6).
- 6. Unfinished Business**
- 7. New Business**
- 8. Acceptance of Previous Minutes**
 - November 10, 2020
- 9. Board Member or CEO Issues or Comment**
 - 2021 BOA Meeting Calendar
- 10. Adjournment**

Board of Appeals Application

BOA-20-8

Status: Active

Submitted: Nov 03, 2020

Applicant



Derek Durbin

603-287-4764

derek@durbinlawoffices.com

Location

74 STATE ROAD
KITTERY, ME 03904

Property Owner Information

Full Legal Name(s)

State Road LLC

Mailing Address

PO Box 159

State

ME

Phone Number

6034981704

City

Kittery

Zip Code

03904-0159

Email Address

mrw0212@gmail.com

Applicant if different from Property Owner

Full Legal Name (s)

74 State Road Redevelopment LLC

Mailing Address

26 Drake Lane

State

ME

Phone Number

603-498-6690

City

Elliot

Zip Code

03903

Email Address

jayprewitt@comcast.net

Property Information

Street Address

74 State Road

Tax Map

8

Base Zone(s)

B-L

Is the Subject Property located within a Shoreland Overlay or Resource Protection Overlay?

Yes

Lot size in acreage

5.2

Lot Number

41A

Overlay Zone(s)

Shoreland

Is the Subject Property located in a floodplain?

No

Does the Subject Property have any outstanding code violations?

No

If the Subject Property has an outstanding code violation, will approval for your request by the Board of Appeals provide resolution?

--

Application to Appear before the Board of Appeals

I wish to appear before the Board of Appeals to request:

An Administrative Appeal

--

A Variance Request

A Miscellaneous Variation Request

--

A Special Exception Use Request

true

Special Exception Use Request

Title

Chapter and Section

Derek R. Durbin

16.3.2.8.C(6)

Title

Chapter and Section

Special Exception Uses

--

Special Exception Use Request Affirmations

Please check all boxes to confirm

Use request 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; and, 9. Avoid problems associated with floodplain development and use.

true

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.

true

true

Proposed use may: 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 surrounding real estate; the availability of utilities and transportation; the availability of schools and hospitals; traffic conditions; and any other relevant factors.

true

Proposed use may: 3. Not give rise to any grave concern regarding the expectations as listed above.

true

Proposed use may: 4. Be subject to such additional conditions as the Board deems necessary.

true

I 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 above.

true

I understand that the Board of Appeals 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.

true

I understand that the Board of Appeals 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).

true

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?

true

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.

true

May hear, decide, and approve variations in accordance with the criteria listed in Town Code Title 16, Section 6.6; and may consider other Title 16 standards.

true

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.

true

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.

true

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.

true

Will not even hear my appeal unless I can show that I have "standing" to have my complaint heard.

true

Purpose of establishing by case for "standing" is to limit appeals on an issue to those who are directly involved and/or affected.

true

Tries to make decisions it believes would be upheld if appealed to the Superior Court.

true

Special Exception Use Request Statements

Describe the general nature of the request:

To allow an apartment building within the B-L District, where such use is permitted by Special Exception.

Certification of Application

Applicant's Signature

true

Name of Applicant

74 State Road Redevelopment LLC

Date

10/30/2020

Attachments (4)

- pdf A detailed plot plan or diagram showing dimensions and shape of the lote, the size and locatoins of existing buildings, the location and dimensions of proposed buildings or alterations, and 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.**
Oct 30, 2020
- docx Deed, title, contract or other document demonstrating legal ownership and authority to initiative appeal or request.**
Oct 30, 2020
- pdf Letter of Authorization - 74 State Road Redevelopment LLC - Prewitt - 10-31-2020.pdf**
Nov 03, 2020
- pdf ZBA Application Narrative - Prewitt - 11-3-2020 (clean).pdf**
Nov 03, 2020

Timeline

Payment
Status: Paid November 4th 2020, 2:44 pm

Application Completeness Review
Status: In Progress
Assignee: Craig Alfis

Craig Alfis November 4th 2020, 4:23:51 pm
Hi Derek,
Your request will be heard at the 11/24/2020 meeting at 6:30 pm at the Kittery Community Center. If for any reason the meeting needs to be held in a format other than in person I will let you know.

Craig
Craig Alfis November 16th 2020, 9:50:34 am
Hi Derek,
We are moving all of our BOA meeting to Zoom webinar. I will email you a link once everything is set up. Date and time will remain unchanged. Thanks.
Craig

BOA Decision Sent to Applicant
Status: Pending

144 Washington Street
P.O. Box 1222
Portsmouth, NH 03802
www.durbinlawoffices.com



Durbin Law Offices, P.L.L.C.

Derek R. Durbin, Esq.
603.287.4764
derek@durbinlawoffices.com
**Also admitted in MA*

VIA VIEWPOINT

November 3, 2020

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

**RE: Special Exception Application of 74 State Road Redevelopment LLC
74 State Road, Kittery, ME (Tax Map 8, Lot 41A)**

Dear Chair Timko,

Our Office represents 74 State Road Redevelopment LLC (the "Applicant") with respect to the foregoing special exception application being filed with the Board of Appeals. The Applicant is under contract to purchase the property at 74 State Road in Kittery with a closing date of November 17, 2020. Attached herewith, please find the following materials for submission to the Board of Appeals for consideration at its next regularly scheduled meeting in November.

- 1) Landowner Letter of Authorization;
- 2) Narrative to Special Exception Application; and
- 3) Plan Set and Photographs of the Property;.

We are delivering 10 copies of the submission materials to Town Hall or near date herewith. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,


A handwritten signature in black ink, appearing to read 'Derek Durbin', written over a white background.

Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

74 State Road LLC, owner of property located at 74 State Road, identified on Kittery Tax Map 8, as Lot 41A (the "Property"), hereby authorizes **74 State Road Redevelopment LLC** and its authorized representatives, including Durbin Law Offices PLLC and McHenry Architecture, to act as its agent and representative in connection with the filing of any building, zoning, planning or other municipal permit applications with the Town of Kittery for said Property. This Letter of Authorization shall be valid until expressly revoked in writing.

74 State Road LLC


Name MELISSA WALDMAN, M.R.
Member, Duly Authorized

October 30, 2020

**TOWN OF KITTERY
BOARD OF APPEALS
APPLICATION NARRATIVE**

74 State Road Redevelopment LLC
(Applicant)
74 State Road
Kittery, ME 03904
Tax Map 8, Lot 41A

INTRODUCTORY STATEMENT

The property at 74 State Road is located in Kittery’s Business-Local (“B-L”) Zoning District. The subject property is 155,843 square feet (3.5 acres) and contains a 3-story 14,273 square foot building with 15 professional office space units. Each floor of the building contains 5 units. The building was originally constructed in 1989 and has a parking lot with 50 spaces located in the front of the building, which is accessed by Village Green Drive which is located directly off of State Road.

The stated purpose of the B-L Zoning District within the Zoning Ordinance is to “provide local sales, services and business space within the Town.” The subject property is located in the Growth Area on the Future Land Use Map as designated in the Comprehensive Plan for Kittery. It is a stated goal of the Comprehensive Plan to encourage the adaptive re-use and redevelopment of existing commercial properties.

The subject property has frontage on both State Road and Village Green Drive. The only building on the subject property, and the parking area associated with it, are accessed via Village Green Drive. The other properties situated off of Village Green Drive are used for residential purposes, containing a mixture of apartments and single-family residences.

Most of the office spaces in the building on the subject property are unoccupied. In general, there is a declining market demand for professional office space of the nature that exists at the subject property, which has only exacerbated by the current Covid-19 pandemic. The location of the subject property is also not ideal for professional office space. The subject property is not within quick walking distance of the Foreside businesses or downtown Portsmouth and is in an otherwise residential neighborhood. Together, these factors make the subject property less attractive for a business office use and more suited for a residential use.

The Applicant, 74 State Road Redevelopment LLC, is proposing to change the use of the entire building on the subject property to residential. The Applicant intends to convert all 15 business offices to apartments. To accomplish this goal, the Applicant needs a Special Exception from the Board of Appeals pursuant to Section 16.3.2.8(C)(6). Whenever all floor of a building in the B-L District are proposed as residential, Section 16.3.2.8(D)(2)(a) of the Ordinance requires a “minimum land area” of 8,000 square feet if the property is served by the Town’s sewerage system. In the present instance, the subject property is connected to the Town’s sewer system and thus, the 8,000 square foot requirement applies. Based on the current “minimum land area”, of

96,858 square feet, which excludes wetland areas and easements that cannot be built upon, the property supports 12 residential units under the standard set forth in Section 16.3.2.8(D)(2)(a). A special exception was previously granted by the Board on December 10, 2019, under a prior applicant, to convert 10 of the 15 commercial units to residential. Subsequently, that applicant decided to sell the property and has yet to implement the residential conversion.

In recent conversations with the Town staff, including code enforcement and the planning director, the Applicant has been informed that the Town intends to adopt amendments to the Zoning Ordinance before the end of the year that will permit the commercial-residential conversion that is currently proposed without need for zoning relief.

SUMMARY OF ZONING RELIEF

The Applicant seeks the following relief:

1. A special exception pursuant to Section 16.3.2.8(C)(6) of the Ordinance to allow an “apartment building” use within the B-L Zoning District.

SPECIAL EXCEPTION CRITERIA

As demonstrated below, Applicant meets the criteria for granting a special exception:

The use request 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;**

In the present instance, the Applicant is proposing an adaptive re-use of an existing commercial building which would involve no changes to the exterior. The proposed use of the subject property as residential is a less intense use than other permitted commercial uses within the B-L Zoning District when considering traffic flow and parking demand. The subject property has sufficient land area to accommodate the proposed use. The subject property has 50 parking spaces, which is more than sufficient to meet the demand implicated by the conversion of the residential use. In addition, the apartment building use of the subject property is consistent with the use the of other properties on Village Green Drive where the building is situated. There is a housing supply shortage in the area. Adding 15 residential units to the housing supply provides a public benefit as opposed to a detriment. For these reasons, the use will not have an unreasonably adverse impact on the general public or its health, safety and welfare.

- 2. Not significantly devalue abutting property or property across a public or private way;**

The residential use of the subject property will only have a positive impact upon surrounding property values. Village Green Drive otherwise consists of properties used for residential purposes thus the proposed use is consistent therewith. The properties located to the East are zoned Residential-Urban (“R-U”). The surrounding properties

situated off of State Road are primarily retail with a mixture of office and other business uses. The surrounding properties that are used for commercial purposes will only benefit from adding residential units to the area, as future occupants will utilize the surrounding businesses for goods and services, thus maintaining their viability. Conversely, having a commercial building consisting of office units that are predominantly vacant and are likely to remain so due to market demand is a detriment to surrounding properties.

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;

As set forth above, the proposed use should only be consistent with, benefit and provide support for the surrounding uses that are legally permitted in the B-L District and the closest adjacent zone which is classified as R-U. Moreover, the Town of Kittery is likely to adopt amendments to its Zoning Ordinance before the end of the year that would make the proposed use legally permitted within the B-L Zoning District without need for a special exception. It is also important to note that the B-L Zoning District was primarily intended to promote commercial retail, goods and service-oriented businesses in buildings fronting on State Road. The building on the subject property that will be converted to an apartment building is set back from State Road and fronts on and accessed via Village Green Drive. The current B-L District Zoning District standards were clearly intended to protect the

4. Not have an adverse impact on spawning grounds, fish, aquatic life, or bird or other wildlife habitats;

No physical changes are proposed to the subject property, thus the apartment building use will have no adverse impact upon 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;

Assuming that the Town adopts the current zoning amendments that are proposed, which Town officials have deemed likely, the proposed use will be legally permitted within the B-L Zoning District, which indicates that it is considered to be in harmony with and promotes the general purposes of the Code. Regardless, the proposed use is consistent with surrounding uses on Village Green Drive and will benefit the properties used for commercial purposes on State Road for the reasons set forth above. The proposed use is also consistent with the Comprehensive Plan. The Applicant will be making adaptive re-use of a mostly vacant commercial building that is located off of a primary artery in Kittery. The subject property is already served by public utilities and is located within walking distance of important amenities, which promotes more efficient growth and development.

6. Adequately provide for the disposal of all wastewater;

The subject property is served by the public wastewater system, thus adequate provision is provided for it. The conversion of the property to a residential apartment building should also add little or no additional demand upon the wastewater system.

7. Conserve shore cover and visual, as well as actual, points of access to inland waters;

No physical alterations are proposed to the subject property. Therefore, it will provide the same protections to shore cover and access to inland waters.

8. Protect archaeological and historic resources as designated in the Comprehensive Plan; and

No physical changes are proposed to the subject property thus the proposed use will provide the same protections as the current use with respect to archaeological and historic resources.

9. Avoid problems associated with floodplain development and use.

The change of use of the subject properties has no implications relative to floodplain development and use. The subject property is not considered to be in a floodplain zone.

The proposed use may:

1. Not have an adverse effect.

For all of the reasons set forth in criteria #1-9 above, the proposed use will not have any adverse impacts associated with it. The impacts associated with the proposed use will only be positive in nature for the area and the surrounding environment.

2. Not significantly devalue abutting properties.

See Answer to criteria #2 above.

3. Not give rise to any grave concern regarding the expectations as listed above.

The proposed use does not give rise to any special concerns that could be viewed as detrimental to the general public, safety or welfare. The proposed use is a natural use of the subject property given its location, its orientation with respect to State Road, and the intent of current zoning amendments that would render the proposed use permissible by right.

4. Be subject to such additional conditions as the Board deems necessary.

The proposed use of the subject property should not require any special conditions or stipulations, as no physical alterations are being made to the subject property, other than the interior of the building thereon. Moreover, there is safe access and ample parking for the proposed use.

CONCLUSION

In conclusion, the Applicant has demonstrated that its application meets the criteria for granting a special exception and respectfully requests that the Board approve its application.

Dated: November 3, 2020

Respectfully Submitted,

74 State Road Redevelopment LLC

By and Through Its Attorneys,
Durbin Law Offices PLLC



By: Derek R. Durbin, Esq.
144 Washington Street
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com

74 STATE ROAD, KITTERY, ME

NOVEMBER 2020, BOARD OF APPEALS

CURRENT BUILDING INFORMATION

- ZONE B-L
- 15 COMMERCIAL UNITS
- 14,273 SF

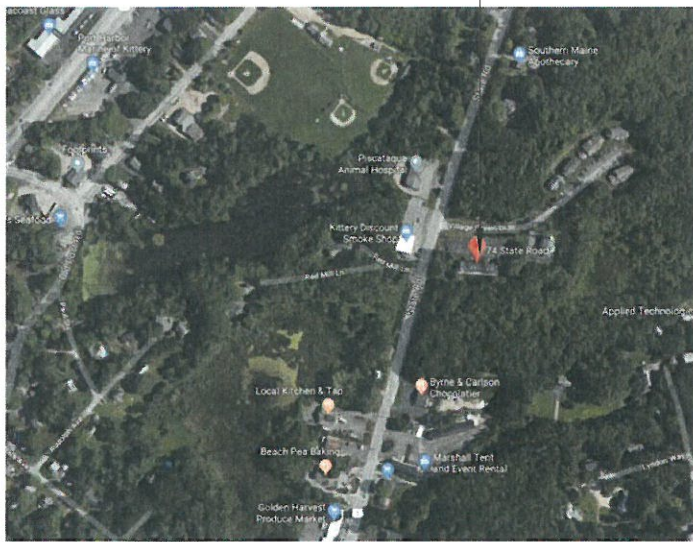
PROJECT DESIGN INTENT

- THERE WILL BE NO EXTERIOR MODIFICATIONS TO THE EXISTING BUILDING.
- ALL FLOOR UNITS WILL CHANGE FROM 5 COMMERCIAL UNITS PER FLOOR TO 5 RESIDENTIAL UNITS PER FLOOR, FOR A TOTAL OF 15 RESIDENTIAL UNITS.

Sheet List- BOA

Sheet Number	Sheet Name
T1	Project Intent and Sheet List
S-1	Aerial Site Plan
S-2	Site Plan
A-2	Existing Floor Plans - Original Drawings
AD101	Second Floor Removal Plan - Typical Unit
AD102	Third Floor Removal Plan - Typical Unit
A101	Second Floor Plan - Typical Unit
A102	Third Floor Plan - Typical Unit

74 State Road, Kittery, ME



RESIDENTIAL UNIT CONVERSION
74 STATE ROAD
KITTERY, ME 03904

Project Intent and Sheet List

McHENRY
ARCHITECTURE

Project number 20101

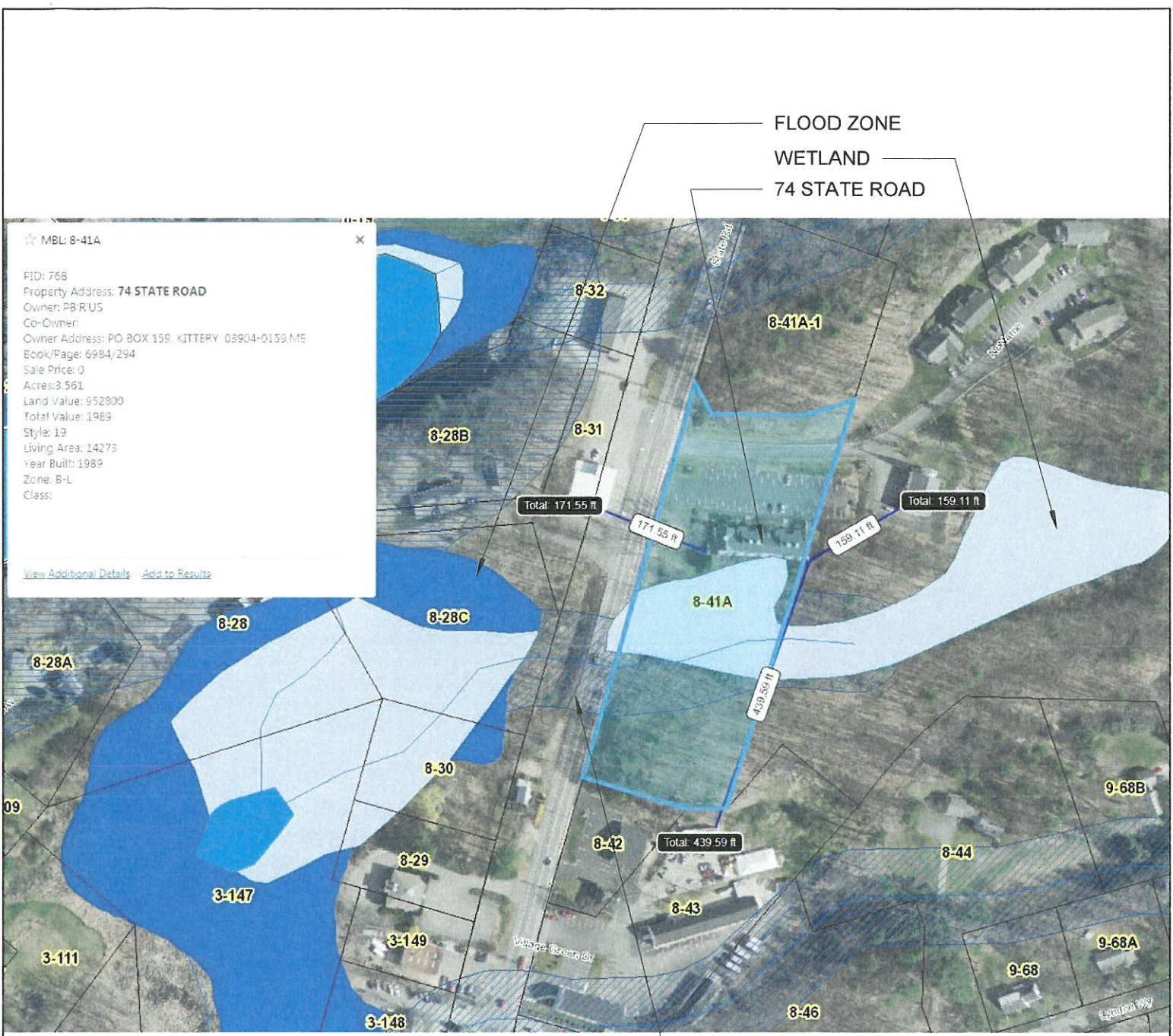
Date November 2020

Drawn by RD

Checked by JJ

T1

Scale NTS



☆ MBL: 8-41A
 FID: 768
 Property Address: 74 STATE ROAD
 Owner: P8/R/U5
 Co-Owner:
 Owner Address: PO BOX 159, KITTEERY 03904-0159, ME
 Book/Page: 6984/294
 Sale Price: 0
 Acres: 3.561
 Land Value: 952900
 Total Value: 1989
 Style: 19
 Living Area: 14273
 Year Built: 1989
 Zone: B-L
 Class:
[View Additional Details](#) [Add to Results](#)

FLOOD ZONE
 WETLAND
 74 STATE ROAD

- LAND AREA: 155,043 SQUARE FEET
 - WETLAND AREA: 34,511 SQUARE FEET
 - EASEMENTS AND ROW: 23,674 SQUARE FEET
 - EXISTING MINIMUM LAND AREA: 96,858 SQUARE FEET
 - LAND REQUIRED PER UNIT: 8,000 SQUARE FEET
- 96,858SF / 8,000SF = 12 RESIDENTIAL UNITS BY RIGHT

SHORELAND - STREAM PROTECTION OVERLAY

REQUESTING 3 RESIDENTIAL UNITS FOR SPECIAL EXCEPTION RELIEF

RESIDENTIAL UNIT CONVERSION 74 STATE ROAD KITTEERY, ME 03904 Aerial Site Plan	McHENRY ARCHITECTURE	
	Project number	20101
	Date	November 2020
	Drawn by	RD
	Checked by	JJ
	Scale	NTS

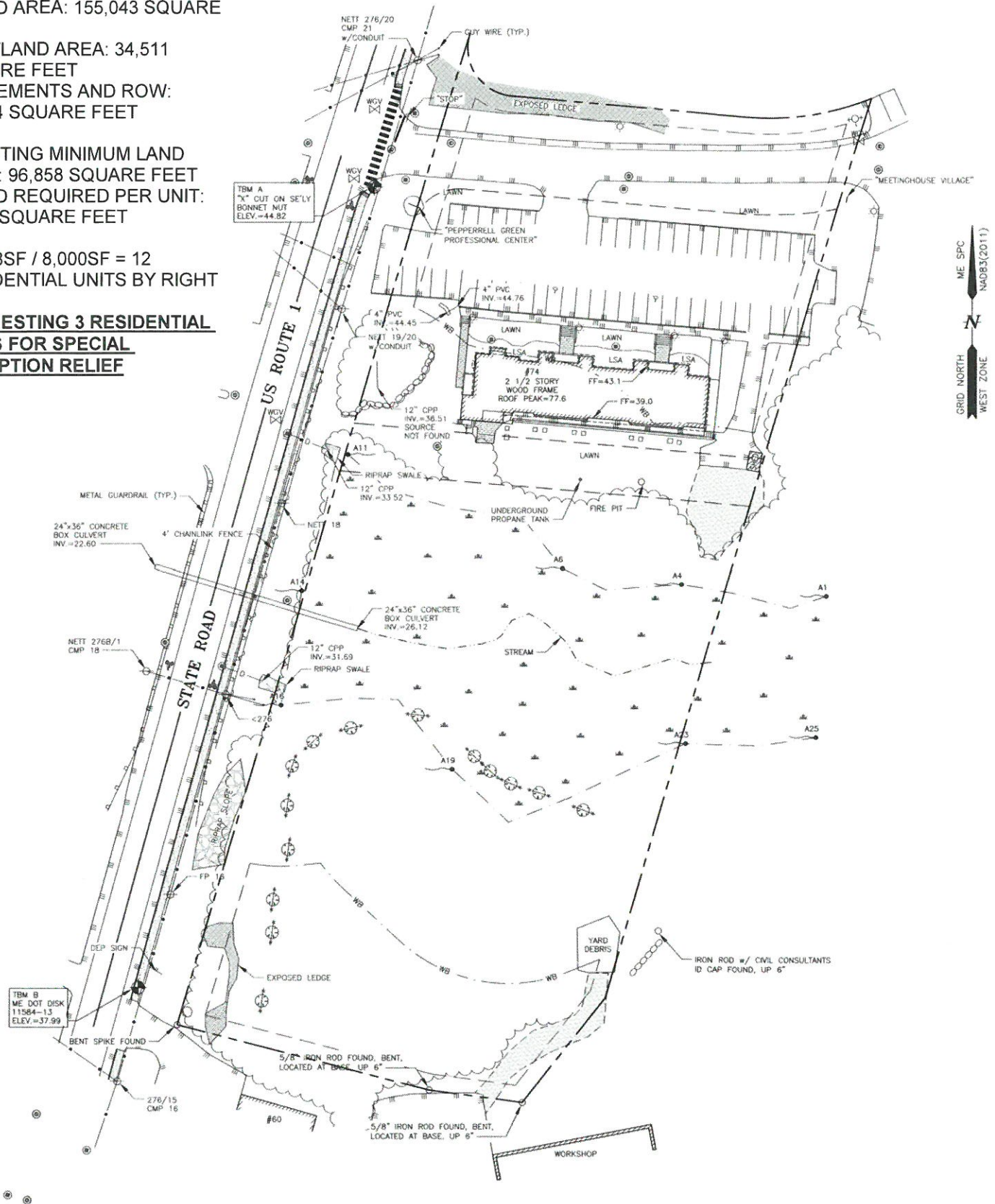
S-1

- LAND AREA: 155,043 SQUARE FEET
 - WETLAND AREA: 34,511 SQUARE FEET
 - EASEMENTS AND ROW: 23,674 SQUARE FEET

- EXISTING MINIMUM LAND AREA: 96,858 SQUARE FEET
 - LAND REQUIRED PER UNIT: 8,000 SQUARE FEET

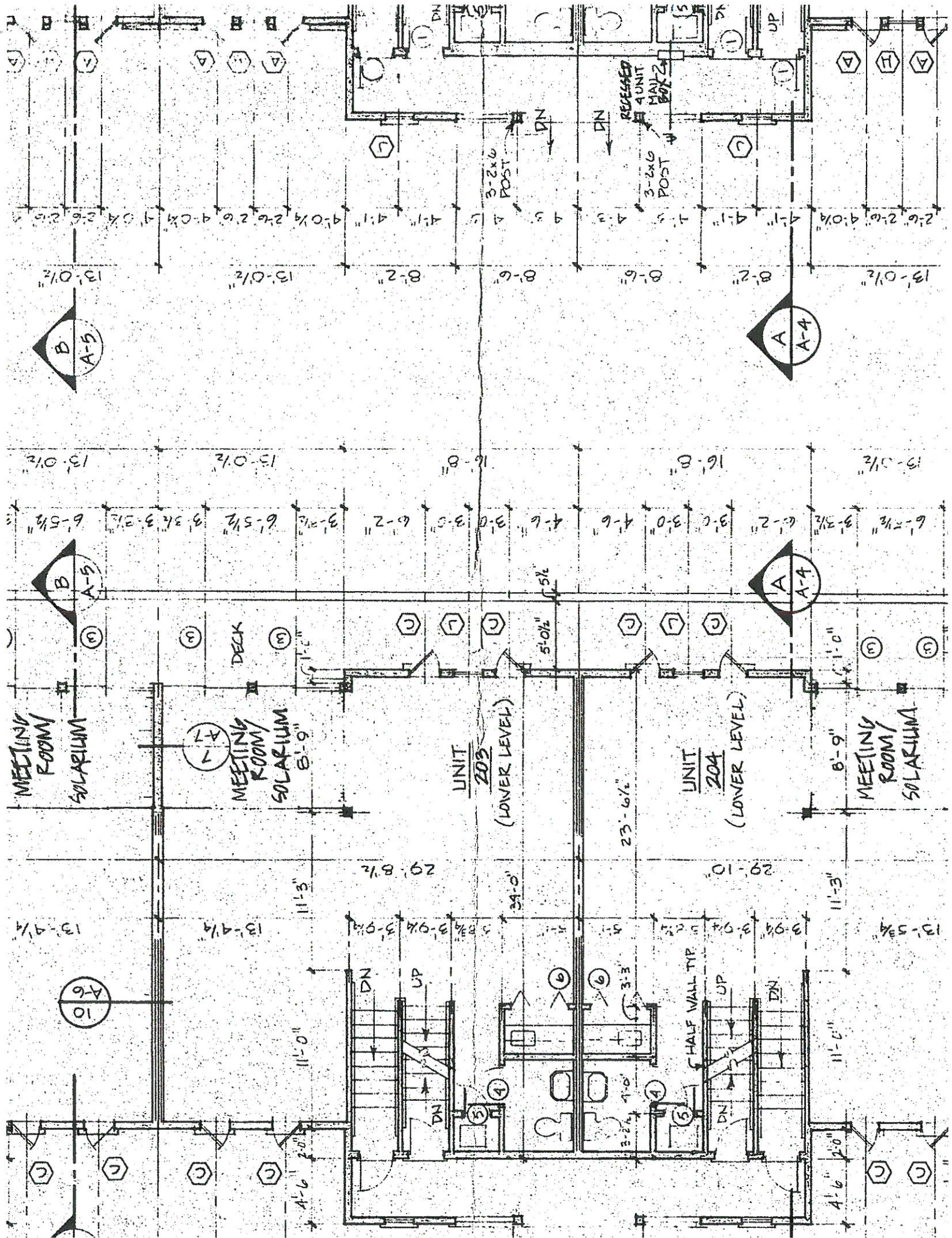
96,858SF / 8,000SF = 12 RESIDENTIAL UNITS BY RIGHT

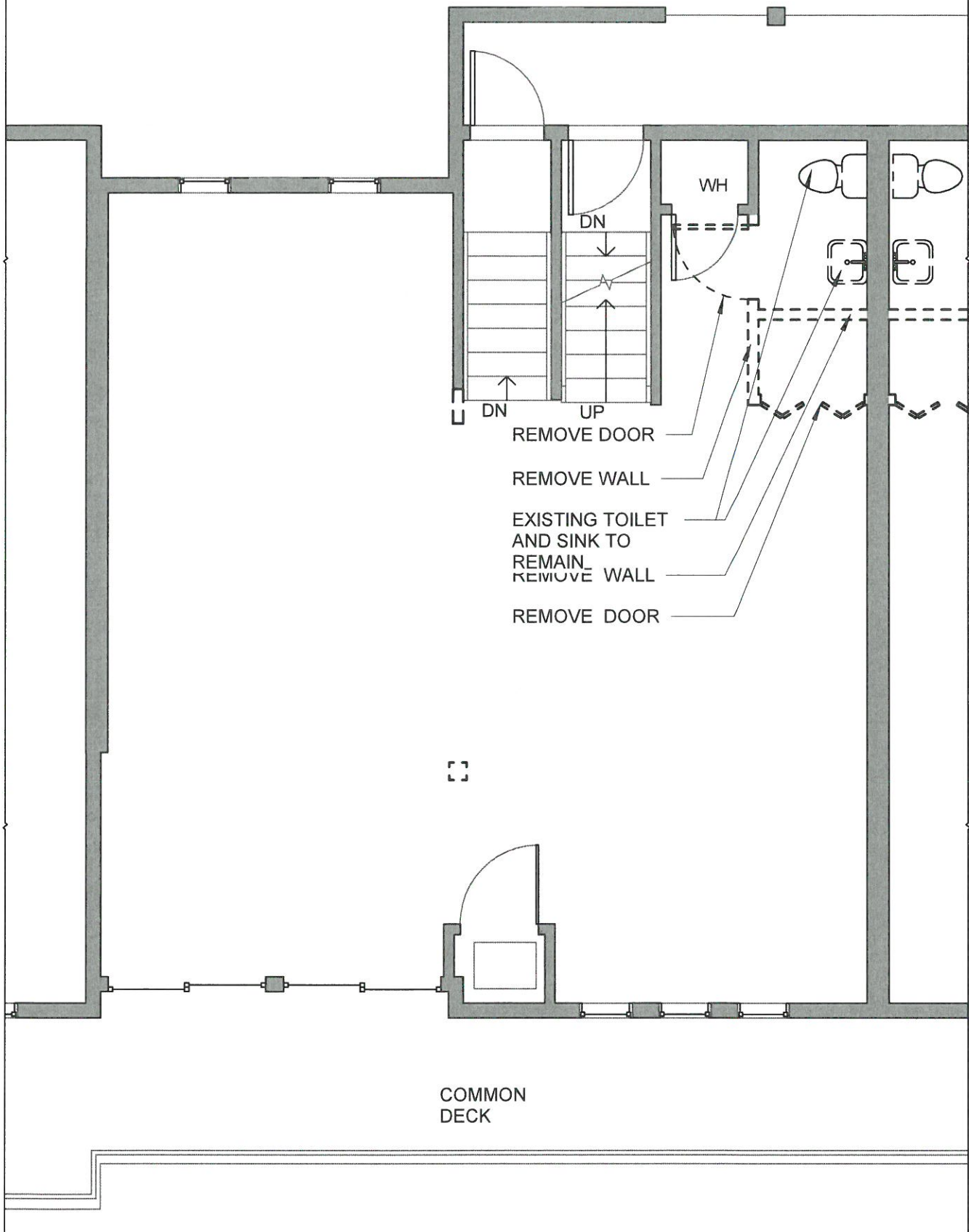
REQUESTING 3 RESIDENTIAL UNITS FOR SPECIAL EXCEPTION RELIEF



RESIDENTIAL UNIT CONVERSION 74 STATE ROAD KITTERY, ME 03904 Site Plan	McHENRY ARCHITECTURE	
	Project number	20101
	Date	November 2020
	Drawn by	RD
	Checked by	JJ
	Scale	NTS

S-2





REMOVE DOOR

REMOVE WALL

EXISTING TOILET AND SINK TO REMAIN
REMOVE WALL

REMOVE DOOR

COMMON DECK

RESIDENTIAL UNIT CONVERSION
74 STATE ROAD
KITTERY, ME 03904

McHENRY
ARCHITECTURE

Project number 20101

Date November 2020

Drawn by RD

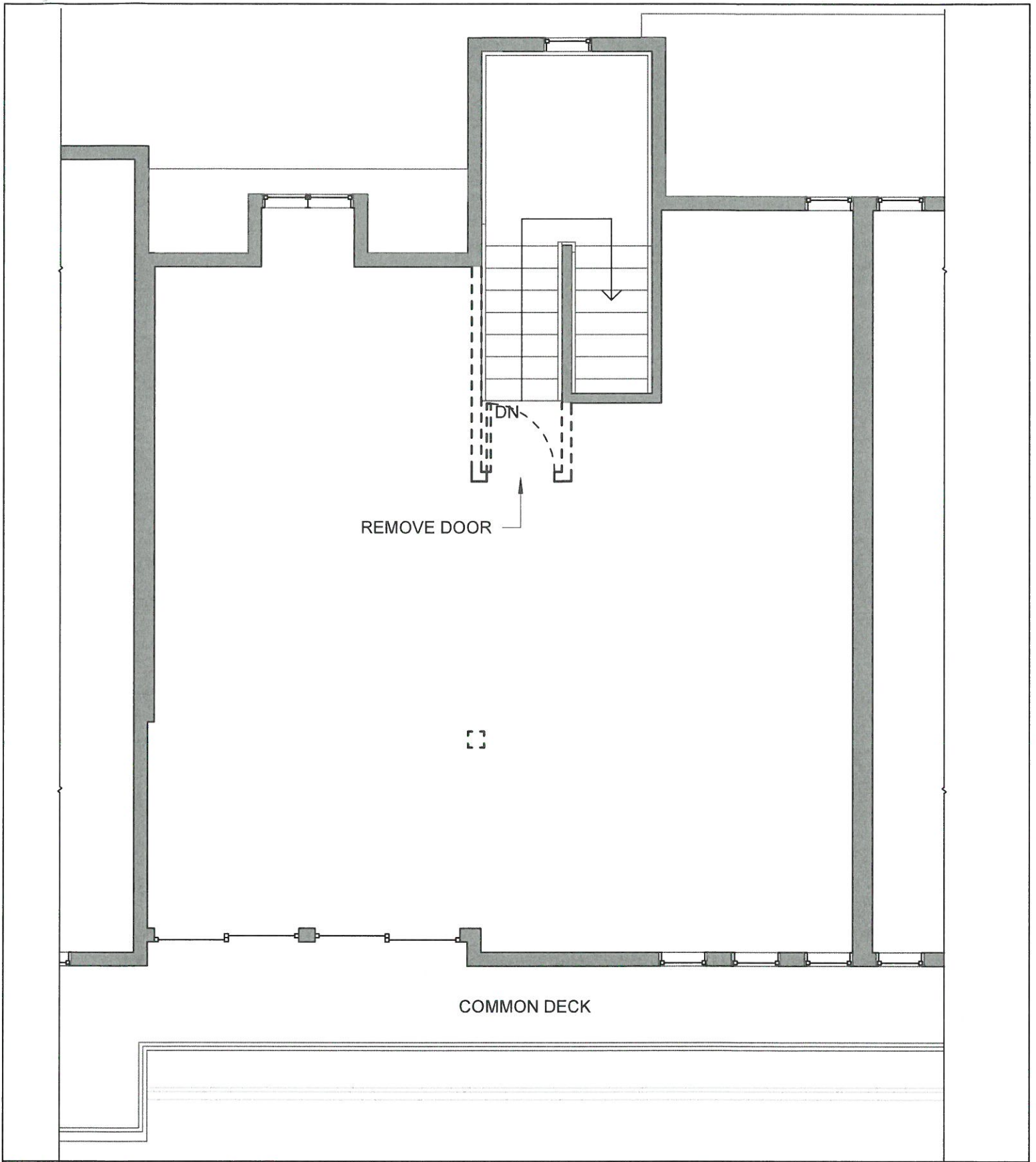
Checked by JJ

AD101

Scale 3/16" = 1'-0"

Second Floor Removal Plan - Typical

Unit PLAN DRAWN BASED ON 04 UNITS



RESIDENTIAL UNIT CONVERSION
 74 STATE ROAD
 KITTERY, ME 03904

McHENRY
 ARCHITECTURE

Third Floor Removal Plan - Typical Unit

FLOOR PLAN DRAWN BASED ON 04 UNITS

Project number 20101

Date November 2020

Drawn by RD

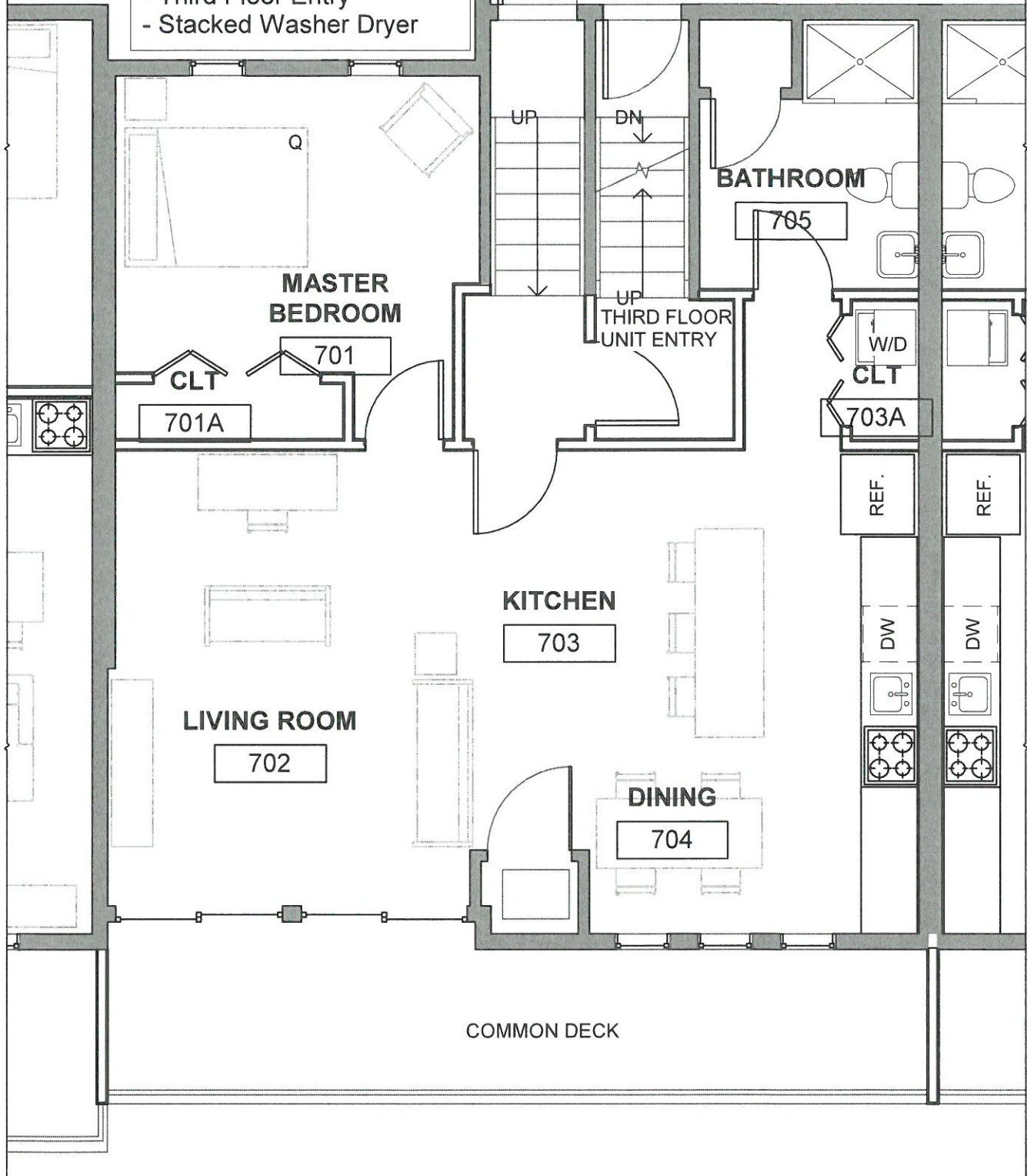
Checked by JJ

AD102

Scale 3/16" = 1'-0"

SECOND FLOOR UNIT - D

- 774 Sq Ft
- 656 Habitable Sq Ft
- One Bedroom (Front)
- Third Floor Entry
- Stacked Washer Dryer



RESIDENTIAL UNIT CONVERSION
 74 STATE ROAD
 KITTELY, ME 03904

Second Floor Plan - Typical Unit

FLOOR PLAN DRAWN BASED ON 04 UNITS

McHENRY
 ARCHITECTURE

Project number 20101

Date November 2020

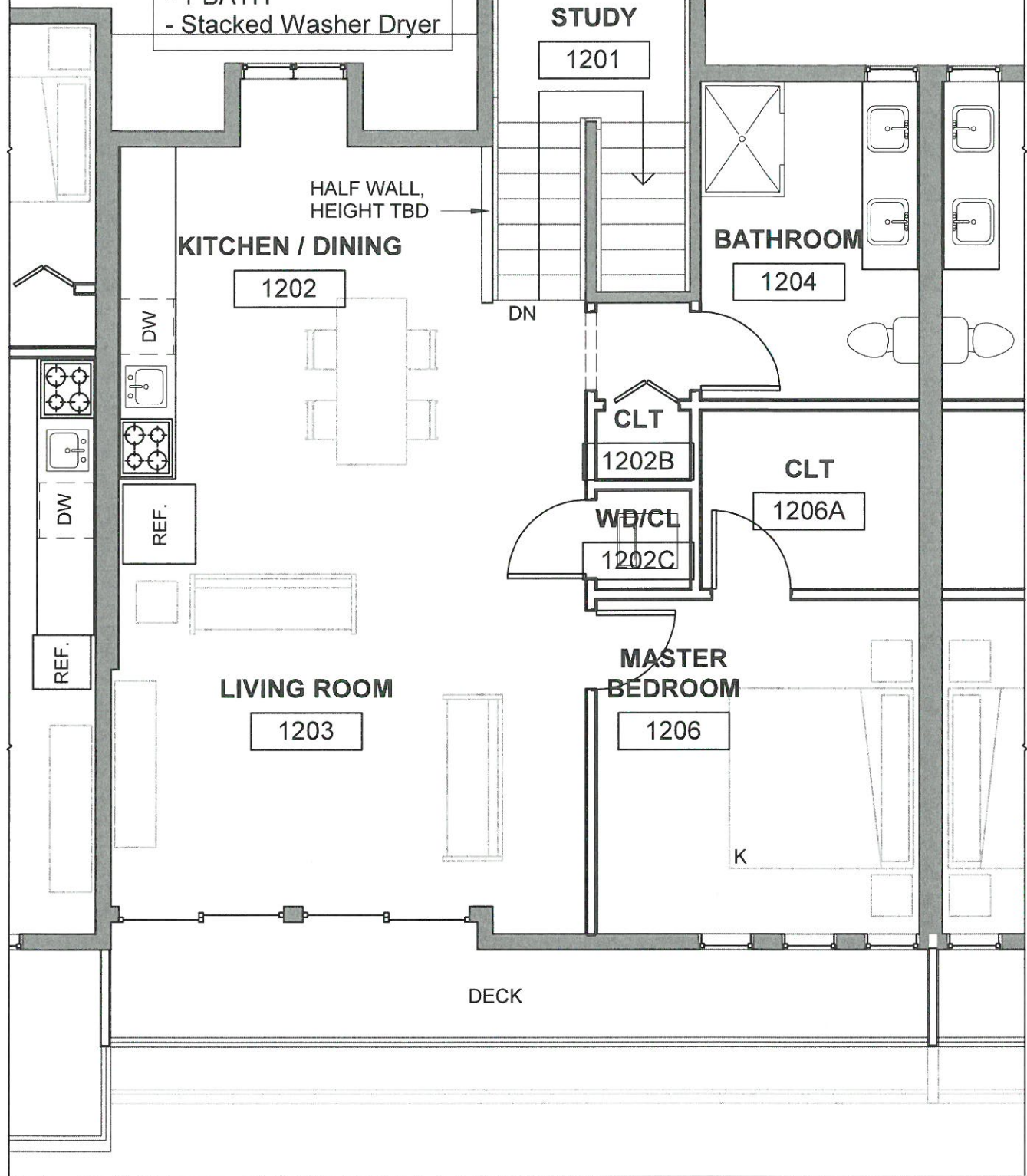
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Checked by JJ

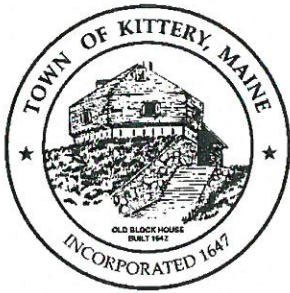
A101

Scale 3/16" = 1'-0"

THIRD FLOOR UNIT
 - 929 Sq Ft
 - 656 Habitable Sq Ft
 - One Bedroom
 - 1 BATH
 - Stacked Washer Dryer



RESIDENTIAL UNIT CONVERSION 74 STATE ROAD KITTERY, ME 03904	McHENRY ARCHITECTURE	
	Project number 20101 Date November 2020 Drawn by RD Checked by JJ	A102 Scale 3/16" = 1'-0"
Third Floor Plan - Typical Unit <small>FLOOR PLAN DRAWN BASED ON 04 UNITS</small>		



**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

BOA Meeting Date: November 24, 2020

Item #: SE2020-05

STAFF REPORT – 74 STATE ROAD – SPECIAL EXCEPTION USE REQUEST

Project Name: 74 State Road

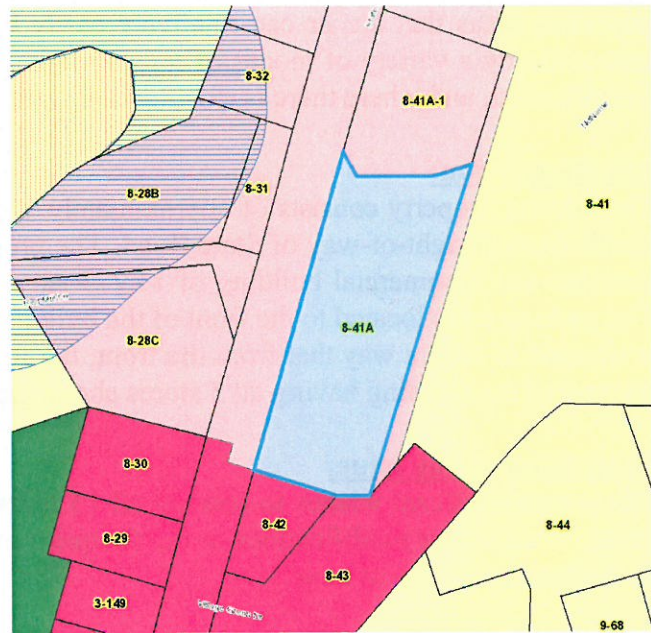
Owner/Applicant: Derek Durbin, representative
74 State Road LLC, owner

Proposed Development: Conversion of a commercial building to an apartment building

Request: Special Exception Use to convert an existing commercial building into an apartment building in the Business – Local (B-L) per Section 16.3.2.8.C(6) and 16.6.4.D of the Town Code.

Site Addresses: 74 State Road

Map & Lot Numbers: 8-41A



Current Zoning:

Business – Local (B-L) - The purpose of the Business – Local zone is to provide local sales, services

and business space within the Town.

The existing salon use is permitted by right in the zone. The following uses are permitted as a Special Exception Use in the B-L Zone: (6) apartment building.

Staff Recommendation: APPROVAL of Special Exception Use request.

District Standards:

Business – Local (B-L) Zoning District Standards			
Land Area per DU	4,000 sf	Front Yard Setback (min.)	15 feet
Building Coverage (max.)	None	Rear Yard Setback (min.)	10 feet
Lot Size	None	Side Yard Setback (min.)	10 feet

Current Use: Professional offices.

Surrounding Land Uses:

West: Business - Local (B-L) and Shoreland Overlay (OZ-SL), Retail unit

East: Business – Local, Elder care facility

North: Business – Local (B-L), vacant land

South: Business – Local 1 (B-L1), Retail/commercial unit

Future Land Use:

The subject property is located within a Growth Area in the Future Land Use Map, defined in the Comprehensive Plan as “areas where the Town would like to encourage future development to occur.” Growth Area include parts of Town where 75% or more of future non-residential growth is expected, areas that are or can relatively easily be served by public facilities and services, are accessible by a variety of modes of transportation, promote more compact and denser pattern of development, and where there is existing development.

Site Description:

The subject property consists of approximately 155,117 square feet (3.5 acres) located along the South-Eastern right-of-way of State Road. The property is zoned Business – Local (B-L). The lot contains one commercial building of 14,273 square feet currently housing 15 commercial units. The parking lot is located to the front of the building and contains 50 parking spaces. The building is situated in such a way that from the front, the first of its 3 stories is partially below grade, with the rear of the building having all 3 stores above grade.

Description of the Issue:

The owner/applicant wishes to convert all 15 units to residential dwelling units per the attached plans. No exterior modifications to the footprint of the building are proposed. This structure is in the Business – Local zone.

Applicant’s Special Exception Use Request:

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

§ 16.6.6 Basis for decision.

A. Conditions.

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

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

- (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 will not prevent the orderly and reasonable use of adjacent properties.

- (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 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.

- (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 dwelling units will be created within the existing structure, 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;*

The space was previously used for business uses, which would have had a higher traffic rate than for an apartment building.

- (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 sewer systems.

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

The proposed use should not produce any obnoxious gases, odors, smoke or soot.

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

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

- (7) *Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;*

No undue interference should result from this use.

- (8) *The necessity for paved off-street parking;*

Per §16.8.9.4.D each of the 15 dwelling units are required to have 2 parking spaces. The property would be required to have 30 parking spaces and currently contains a parking lot with 50 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 hazard to life, limb or property should be created by the 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 conforming lot of record.

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

Adequate existing vegetation exists.

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

No changes are proposed to the land.

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

There are existing sidewalks and crosswalks along State Road.

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

The proposed uses should not cause any nuisances.

- (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 any conditions placed on the use by the Board of Appeals.

Using the standards and criteria found in the LUDC, Staff recommends APPROVAL of the Special Exception Use request to convert an existing commercial building into an apartment building with the following conditions:

- 1. A Business Use Change application must be submitted and approved by the Code Enforcement Officer prior to construction starting.**
- 2. A State Construction Permit must be obtained from the Office of the State Fire Marshal prior to construction starting.**



150 foot Abutters List Report

Kittery, ME
November 09, 2020

Subject Property:

Parcel Number: 8-41A
CAMA Number: 8-41A
Property Address: 74 STATE ROAD

Mailing Address: 74 STATE ROAD LLC
74 STATE ROAD
KITTERY, ME 03904

Abutters:

Parcel Number: 8-28
CAMA Number: 8-28
Property Address: 6 RED MILL LANE

Mailing Address: SCHNEIER, JEFFREY D SCHNEIER,
TERESA HOLOM
6 RED MILL LANE
KITTERY, ME 03904

Parcel Number: 8-28C
CAMA Number: 8-28C
Property Address: 77 STATE ROAD

Mailing Address: HANSBERRY, ELAINE C HANSBERRY,
DAVID M
4 RED MILL LANE
KITTERY, ME 03904

Parcel Number: 8-30
CAMA Number: 8-30
Property Address: 67 STATE ROAD

Mailing Address: CELLUCCI, JOSEPH K CELLUCCI,
TERRY L
270 CONCORD STREET
GLOUCESTER, MA 01930

Parcel Number: 8-31
CAMA Number: 8-31
Property Address: 99 STATE ROAD

Mailing Address: CHICK, ANDREW S
318 RIVER ROAD
ELIOT, ME 03903

Parcel Number: 8-32
CAMA Number: 8-32
Property Address: 103 STATE ROAD

Mailing Address: SCHAFER, MICHAEL T MARCHELL, T
FRANK
103 STATE ROAD
KITTERY, ME 03904-1535

Parcel Number: 8-41
CAMA Number: 8-41
Property Address: 100 VILLAGE GREEN DRIVE

Mailing Address: VERNON CONTINUING CARE HOMES
INC
143 ROGERS ROAD SUITE 100
KITTERY, ME 03904-1449

Parcel Number: 8-41A-1
CAMA Number: 8-41A-1
Property Address: STATE ROAD

Mailing Address: M.W.C PROPERTY HOLDINGS LLC
23 WHIPPOORWILL LANE
KITTERY, ME 03904

Parcel Number: 8-42
CAMA Number: 8-42
Property Address: 60 STATE ROAD

Mailing Address: MARSHALL JR, RICHARD C & GAIL
MARSHALL, TIMOTHY P
56 STATE ROAD
KITTERY, ME 03904-1520

Parcel Number: 8-43
CAMA Number: 8-43
Property Address: 56 STATE ROAD

Mailing Address: MARSHALL JR, RICHARD C MARSHALL,
GAIL E
27 WATER STREET
KITTERY, ME 03904-1630



www.cai-tech.com

Data shown on this report is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this report.

11/9/2020

Page 1 of 1



Town of Kittery Board of Appeals
NOTICE OF PUBLIC HEARING
 Tuesday, November 24, 2020 - 6:30PM
 Virtual Meeting. Link can be found at
<https://www.kitteryme.gov/boards-appeals/cvcm/441024>

Derek Durbin on behalf of 74 State Road Redevelopment LLC, owner, 74 State Road, requesting a Special Exception to convert the existing commercial building into apartments in the B-1 Zone per Code Section 16.3.2.8.C(6).

Application information is available for public inspection by appointment only between 8:00 am to 5:00 pm Monday thru Thursday at the Planning and Development Department, 200 Rogers Road, Kittery, ME 03904. A request for a reasonable accommodation for this meeting please contact staff at (207) 475-1323.

TOWN OF KITTERY
 Planning & Development Dept
 200 Rogers Road
 Kittery, ME 03904

US POSTAGE **PRINTER BONDS**
 ZIP 03904 \$ 000.50⁰
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 0001393582 NOV 18 2020

VERNON CONTINUING CARE HO
 143 ROGERS ROAD SUITE 100
 KITTERY, ME 03904-1449

TOWN OF KITTERY
 Planning & Development Dept
 200 Rogers Road
 Kittery, ME 03904

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 MARSHALL, GAILE E
 27 WATER STREET
 KITTERY, ME 03904-1630

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 Kittery, ME 03904

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 318 RIVER ROAD
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 Kittery, ME 03904

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SCHNEIER, JEFFREY D
 SCHNEIER, TERESA HOLLOM
 6 RED MILL LANE
 KITTERY, ME 03904

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 HANSBERRY, DAVID M
 4 RED MILL LANE
 KITTERY, ME 03904

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 MARSHALL, TIMOTHY P
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 Kittery, ME 03904

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 02 18
 0001393582 NOV 18 2020

SCHAFFER, MICHAEL T
 MARCHELL, T FRANK
 103 STATE ROAD
 KITTERY, ME 03904-1535

TOWN OF KITTERY
 Planning & Development Dept
 200 Rogers Road
 Kittery, ME 03904

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M/W/C PROPERTY HOLDINGS
 23 WHIPPOORWILL LANE
 KITTERY, ME 03904

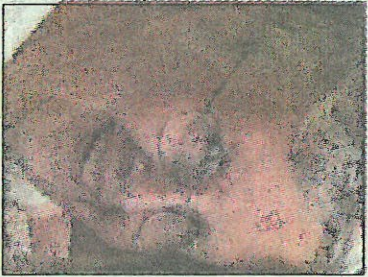
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 0001393582 NOV 18 2020

MARSHALL JR, RICHARD C &
 MARSHALL, TIMOTHY P
 56 STATE ROAD
 KITTERY, ME 03904-1520

OBITUARIES & NEWS

Phyllis A. Mellen



KITTERY, Maine — Phyllis A. Mellen, 91, died Friday, November 13, 2020 after a long illness. She was born in North Jay, Maine, in 1929, and lived with her parents, the late Amy (Clark) Spaulding and Ray Spaulding, in New Vineyard, Maine, and then in Strong, Maine, until 1944, when the family moved to Kittery.

Phyllis graduated from Robert W. Traip Academy in 1946 and worked for both a law firm and a financial services company until marrying Franklin H. Mellen in 1951. For much of her husband, Franklin H. Mellen, and is survived by Lisa Andreozzi and her husband, Anthony, of Delray Beach, Fla., and York Beach, Maine; Beth Martin of Pittsburg, Kan.; Ross Mellen of Kittery; Brian Mellen and his wife, Debra, of Richland, Wash.; Frank Mellen her kids' most treasured memories.

Phyllis is predeceased by her husband, Franklin H. Mellen, and is survived by Lisa Andreozzi and her husband, Anthony, of Delray Beach, Fla., and York Beach, Maine; Beth Martin of Pittsburg, Kan.; Ross Mellen of Kittery; Brian Mellen and his wife, Debra, of Richland, Wash.; Frank Mellen

Replacement of one complete system Furnace

The Town of Salem intends to contract a qualified company for the complete replacement of a furnace located at Salem NH Police department, 9 Veterans Memorial Parkway, Salem NH. There will be a mandatory walk through November 30th (Monday) at 10:00am. Sealed bids must be received no later than December 10, 2020 before 11:00 a.m. to be eligible for consideration by the Town. Bids must be submitted in a sealed envelope that is clearly marked: "Bid # 2020-019 PD Furnace". Faxed/mailed copies will not be accepted, and late bids will not be considered. Sealed bids and all correspondence relating to this request for Bids shall be submitted to:
Christine Wholley, Purchasing Agent
Town of Salem
33 Geermony Drive

Conrad L Farr II

SOUTH BERWICK, Maine/BEAUFORT, S.C. — Conrad Leslie (Skip) Farr II, 77, died Saturday, November 7, 2020 at York Hospital following a brief illness.

SERVICES: A livestream of the memorial service can be viewed at 2 p.m., Friday Nov. 20, 2020 at <https://mygather.app/remem-ber/contrad-farr>. The Farr family would like to invite the public to attend a time

of visitation to be held Thursday, November 19, 2020 from 4-6 p.m., at the J S Pelkey and Son Funeral Home, 125 Old Post Rd., Kittery, ME 03904. All Covid-19 guidelines and recommendations will be observed and enforced. For more information please visit www.jspelkeyfuneralhome.com. Care of the Farr family has been entrusted to the J S Pelkey and Son Funeral Home.

'Run-it-hot' wins argument over how to get Americans back to work

By Matthew Boesler
Bloomberg News

How far Biden can push the approach, which implies more government spending

Behind President-elect Joe Biden's push for a 'run-it-hot' approach to get Americans back to work is a debate over how much government spending to use.

TOWN OF KITTERY - BOARD OF APPEALS

Legal Notice
NOTICE OF PUBLIC HEARING
Virtual Meeting
Tuesday, November 24, 2020 - 6:30 p.m.
Derek Durbin on behalf of 74 State Road Redevelopment LLC, owner 74 State Road, requesting a Special Exception to convert the existing commercial building into apartments in the B-4 Zone per Code Section 16.3.2.8 C(6). Due to the Declaration of a State of Emergency for the State of Maine and Town of Kittery, this meeting will be held remotely in accordance with LD 2167. The meeting will be broadcast on Channel 22, Facebook, and live broadcast from the Town's website. Application information is available for public inspection by appointment only 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



U.S. Sen. Susan Collins, R-Maine, made a stop outside the Kittery Trading Post on Tuesday to talk with supporters.
[RICH BEAUCHESNE/SEACOASTONLINE] [RICH BEAUCHESNE/SEACOASTONLINE]

Woman charged with threatening Sen. Collins

By Associated Press

Gary Rohr, Director, in the total amount of \$31,494.00, the nature of said transaction or transactions being more particularly described as follows:
ATTEN: Learning Skills Academy, 1247 Washington Road, Rye, NH 03870
By: Paul Whitcomb, President
Board of Directors
November 13, 2020

RYE BEACH VILLAGE DISTRICT

Legal Notice
830 Central Road
PO Box 442
Rye Beach, NH 03871
PUBLIC NOTICE
BOARD OF ADJUSTMENT
NOTICE IS HEREBY GIVEN that the Rye Beach Board of

MEETING MINUTES

1. CALL TO ORDER; INTRODUCTORY; ROLL CALL

Chair Timko called the meeting to order at 6:33 p.m. and asked that the roll be called.

Board Members Present: Vern Gardner, Charles Denault III, Jeff Brake, Suzanne Jones, Rick Nohmer, April Timko

Board Members Absent:

Staff Present: Craig Alfis, Code Enforcement Officer

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

- **David Ballou on behalf of Mark Quinn, tenant 134 State Road, requesting a Special Exception to operate a Major Home Occupation as a Medical Marijuana Caregiver in the Business Local (B-L) zone per Town Code Section 16.8.22.3.O(1).**
- Both Mr. Gardner and Mr. Nohmer informed the Board that they have had professional interactions with Mr. Ballou. Neither felt that their interactions would have an adverse effect on their ability to be impartial. Ms. Jones confirmed the Board has the authority to hear the appeal. Mr. Alfis presented the staff report. Mr. Mark Quinn and Mr. David Ballou presented the details of the appeal. The Board had several questions for Mr. Quinn, Mr. Ballou and Mr. Alfis. Mr. Dominic Goupil, 132 State Road and Mr. John Quinn, 5 Page Street spoke in opposition of the request. Ms. Nichole Bockman, 129 State Road, had questions for the applicant. Mr. Quinn was given and took the opportunity to rebut. Chair Timko closed the public hearing at 7:09 PM. The Board entered discussion.

Motion by Mr. Gardner to grant the Special Exception Use request for a Major Home Occupation as a medical marijuana licensed primary caregiver in an existing dwelling unit located at 134 State Road in the B-L zone with the conditions set forth in the Staff Report, numbers 1-11 and with the additional condition that the applicant will take reasonable steps to adequately screen from light and other nuisances. Seconded by Ms. Jones. Motion

passed 6-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Jones, Nohmer, Timko; No: --; Abstain: --]

Chair Timko notified the Board of their right to reconsider and the public of their right to appeal.

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

Findings of Fact: (1) Applicant Mark Quinn and his attorney David Ballou are seeking a Special Exception Use to operate a Major Home Occupation as a medical marijuana licensed primary caregiver per Code Section 16.8.22.3.O(1). (2) Mr. Quinn's Limited Liability Company bought the property located at 134 State Road. (3) Mr. Quinn is the sole owner and has leased the property from the LLC. (4) The Board found that the applicant has been granted a Medical Marijuana Primary Caregiver's license by the State of Maine which expires on 5/8/2021. (5) The Board found that he will operate primarily as a delivery service with no more than 3 patients on the premises between the hours of 7am and 7pm. (6) There will be 3 employees associated with the business. (7) There will be no marijuana grown on the property. (8) The Board found that he satisfied all the requirements set forth in Section 16.6.6. (9) The applicant provided a deed confirming that he is the owner of the property. (10) There were abutters that attended the meeting that expressed concern over lighting and other issues which this Board took into consideration when it approved this request with conditions.

Motion to accept the Findings of Fact made by Mr. Nohmer. Seconded by Mr. Brake. Motion passed 6-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Nohmer, Jones, Timko; No: --; Abstain: --]

Conclusions of Law: (1) The Board approved the applicants Special Exception Use request for a Major Home Occupation as a medical marijuana licensed primary caregiver. (2) The Town Code provides standards for Major Home Occupations and the Board found that the applicant met those standards covered in Section 16.8.22.3. (3) The Board considered the Basis for Decision and Factors for Consideration set out in Section 16.6.6.

Motion to accept the Conclusions of Law made by Mr. Nohmer. Seconded by Ms. Jones. Motion passed 6-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Jones, Nohmer, Timko; No: --; Abstain: --]

6. UNFINISHED BUSINESS

7. NEW BUSINESS

8. ACCEPTANCE OF PREVIOUS MINUTES

- October 27, 2020

Motion to accept the meeting minutes made by Mr. Gardner. Seconded by Mr. Denault. Motion passed 4-0-2 by roll call vote [Yes: Gardner, Denault, Brake, Timko; No: --; Abstain: Jones, Nohmer]

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

- Chair Timko welcomed the Board's newest member, Mr. Rick Nohmer and noted that there will be another new Board member appointed in the near future.
- Chair Timko encourage the Town officials to review the medical marijuana caregiver rule of only being allowed to operate as a Major Home Occupation.
- Mr. Alfis relayed that the Town administration is strongly encouraging the Board to begin meeting virtually. After some discussion the Board agreed to hold the next meeting virtually.

10. ADJOURNMENT

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

The Kittery Board of Appeals meeting of November 10, 2020 adjourned at 7:49 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>.