



Town of Kittery
200 Rogers Road, Kittery, ME 03904

Board of Appeals Meeting Agenda
Meeting Location: Kittery Community Center
Tuesday, August 25, 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**
 1. Pam Edwards, tenant, 99 State Road, seeking an Administrative Appeal per LUDC Section 16.6.3, Appeal of Code Enforcement Officer decision to deny a sign permit.
 2. Nicholas Mercier, owner, 134 Whipple Road, seeking a variance per Town Code Section 16.6.4.B to expand a non-conforming retaining wall in the Residential - Urban (R-U) and Shoreland Overlay (OZ-SL) zones for the purpose of controlling erosion.
 3. George Nazzaro, owner, 79 Pepperrell Road, requesting a Miscellaneous Variation per Town Code Section 16.6.4.C and 16.7.3.5.D(b) to adjust the boundary line of a non-conforming lot of record.
6. **Unfinished Business**
7. **New Business**
8. **Acceptance of Previous Minutes**
 - a. March 10, 2020
 - b. July 28, 2020
9. **Board Member or CEO Issues or Comment**
10. **Adjournment**



TOWN OF KITTERY

CODE ENFORCEMENT OFFICE

200 ROGERS ROAD, KITTERY, MAINE 03904

PHONE: (207) 475-1305

FAX: (207) 439-6806

Application to the BOARD OF APPEALS

RECEIVED

JUL 09 2020

BY: CW

DATE SUBMITTED	7/8/20
MAP & LOT	8 & 31
ASA FEE	\$200
DATE PAID	7/8/20
DATE COMPLETE	7/8/20
HEARING DATE	8/11/20

ADMINISTRATIVE APPEAL

I hereby request the Board consider a Administrative Appeal as I contest the interpretation or application of ordinance / regulation, and seek relief from the decision of the Code Enforcement Officer.

I have reviewed Town Code Title 13 & Title 16, Board of Appeals By-Laws, and the Ordinance(s) pertinent to this application. My appeal is based on the following:

TITLE		CHAPTER		SECTION					PAGE	
TITLE		CHAPTER		SECTION					PAGE	

**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	99 State Rd Kittery ME #2									
MAP	8	LOT #	31	LOT SIZE						
BASE ZONE(S):	BL			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)	Andrew Chick										
MAILING ADDRESS	99 State Rd #1, Kittery, ME										
CITY	Kittery	STATE	ME	ZIP CODE							03904
PHONE No.	207 439 5868			e-MAIL:							

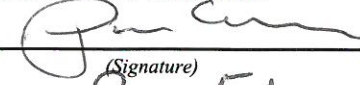
NOTE: You may have an attorney represent you, but such representation is not necessary. You may also be represented by a designated agent (e.g. family member, neighbor, engineer, contractor) as you so desire.

APPLICANT (if different) I am an agent of the applicant with standing, OR, I am an aggrieved party in the subject property, or issue, as shown by:

NAME(S)	Pam Edwards										
MAILING ADDRESS	99 State Rd										
CITY	Kittery	STATE	ME	ZIP CODE							03904
PHONE No.	603 969 8966			e-MAIL:							

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

Date: 7 8 20

By: 
 (Signature)
Pam Edwards
 (Print Name)

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

- May hear and decide on an Administrative Appeal within the limitations set forth in Title 16, Section 6.4.1, Administrative Decision Appeal.
- Appears to have jurisdiction to hear this request; hearing must be held within 30 days of this Appeal filing; application must be complete; and, public and abutter notice must be made no less than seven days prior to the scheduled hearing.
- Role for administrative appeals is to examine and resolve problems between the Town and those affected by its ordinances, decisions or lack of action by the Town.
- 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.
- Local appeals process must be exercised and exhausted before the Superior Court will hear these cases.
- 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 the Standard of Review for this appeal:

For questions of mixed law and fact, a review for "arbitrary and capricious" factors:

- 1) Was the decision/lack of action a "plain error" which led to a "brazen miscarriage of justice?"
- 2) Was the decision/lack of action made on "unreasonable grounds", or "without any proper consideration of circumstances"?
- 3) Does any State or Federal law apply to my circumstances?
- 4) Is there any conflict between ordinances and/or statutes related to the issues?
- 5) Can the Board determine with a "definite and firm conviction" that a mistake was committed by the Town?

When questions of statutory interpretation decided in a manner that has the force of law, a "Chevron review":

- 1) First, always, is the question whether the legislative enacting body has directly spoken to the precise question at issue.
- 2) If the intent is clear, that is the end of the matter; for the Board, as well as the Town, must give effect to the unambiguously expressed intent of the legislation.
- 3) If, however, the Board determines the enacting body has not directly addressed the precise question at issue, the Board does not simply impose its own construction on the statute. If the statute or ordinance is silent or ambiguous with respect to the specific issue, the question for the Board is whether the Town's answer is based on a permissible construction of the statute.

For questions of statutory interpretation decided in a manner that does not have the force of law, to determine the deference to be given to the Town decision based on a four-part test:

- 1) the thoroughness of the Town's investigation;
- 2) the validity of its reasoning;
- 3) the consistency of its interpretation over time; and
- 4) other persuasive powers of the Town.

Will determine my Burden of Proof:

- 1) What does the ordinance/statute require me 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 appeal?
- 4) Is the evidence presented substantial? Is it credible? Is it outweighed by conflicting evidence?

STATEMENTS:

I wish to appeal to the Board of Appeals because I have a problem in regard to a matter of Town Code Title 13, Public Services or Title 16, Land Use and Development: (Section, Title, Page No.)

The decision/lack of action I object to is [Include formal documents related to the matter]:

I am requesting the Appeal board reverse thier decision, dated 2/27/18, regarding the exclusion of Your Green Thumbs signage at 99 State Rd.
- See Code Enforcement letter dated 11/18/19 for details regarding recent code. "rejection due to finding of fact dated 3/6/18."
- See 1 of 7 + 2 of 7 regarding my rights to this Appeal.

What relief is requested and why should the appeal be granted? (Pathway) (double sided)

- Allow Your Green Thumbs to add 2 signs to "freestanding board". See page 5 of 7 and 3 of 7.
- Allow Your Green Thumbs to place on "B" sign on the building board in front of doors, see 3/7 and "B".
- Finally, we would like to add "C" sign to the building, see page 4 of 7.

Unlike others in the community, I will suffer a particularized injury in this matter if not resolved in my favor. I am adversely and directly affected by:

Our customers are having difficulty finding our location and that is causing distracted driving that could lead to liability situations for the town. Majority of our customers are elderly and/or sick, they should not need to struggle to locate thier medicine.

I object to the decision / lack of action for the following reason(s):

There are 2 other "similarly situated" caregivers on State Rd and it makes perfect sense the town also allow us to have proper signage.

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.

[Support with citations(s), of pertinent ordinance(s), deeds, maps, documents, etc. Describe in detail what decision you are appealing; the date on which the decision was made; and, by whom, the facts surrounding this appeal, what you think is wrong about the decision which you are appealing, and what action you want the Board of Appeals to take in this matter. Also, please indicate how that Board's decision will affect you and/or your property. Use extra sheets if necessary and attach them to this application.]

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.



Pamela Edwards

pamster.e@gmail.com

Messages



Dave Evans

Mar 4, 2020 at 4:01pm

Ok. But the request is still denied given the reason above.

Code Department Review - Sign Permit SGN-20-SGN-20-6



Craig Alfis

Jun 22, 2020 at 12:32pm

Hi Pam,
 I've reactivated the viewpoint record and moved it to the p...

Permit Fee - Sign Permit SGN-20-SGN-20-6



Craig Alfis

Jul 1, 2020 at 11:04am

This permit was rejected due to the Finding of Fact dated 3/6/2018 stating t...

Code Enforcement Approval - Sign Permit SGN-20-SGN-20-6

[View All](#)

Applications

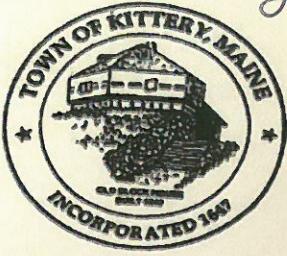


Home Occupation Application HO-20-2

99 STATE ROAD, KITTERY, ME 03904

Mar 18, 2020

[View All](#)



2 of 7

MAP 8 LOT 31

TOWN OF KITTELY

Code Enforcement Office

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1308 Fax: 207-439-6806

CEO@kitteryme.org

November 18, 2019

Kate Pelletier
317 Bolt Hill Road
Eliot, ME 03905

Ms. Pelletier,

On October 30, 2019 you submitted a sign permit request for 99 State Road. The permit was issued a number of SGN-19-28 and was for the entity Your Green Thumb. The proposed sign was to be a 6-foot by 2-foot sign mounted to the exterior of the building with an image of a green thumb, the name of the entity, and a phone number. The sign permit request was rejected on October 31, 2019 by the Code Enforcement Office.

The decision to reject the sign permit application was based upon the Board of Appeals Approval granted to Pam Edwards on February 27, 2018. Ms. Edwards testified to the Board of Appeals that there would be no signage for her Medical Marijuana Caregiver entity Your Green Thumb. This testimony became a Finding of Fact for the approval decision. The Finding of Fact states: "There will be no exterior signage outside of the medical marijuana business." Furthermore, a condition to the approval stated that "There will be signs on interior doors for smoke shop and major home occupation".

David Evans
Assistant Code Enforcement Officer

CC: Craig Alfis, Code Enforcement Officer
Property File

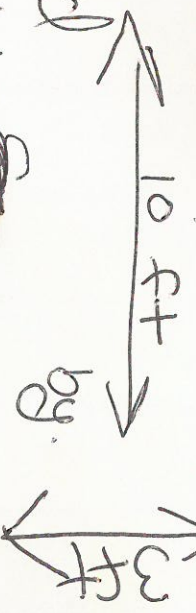
3 of 7



5 of 7
 (B)
 Sign only

4 of 7 and sign "C" and located North side of building.

Existing sign board w/ lights



5 of 7

Medical Marijuana



207-703-0130

UNIVERSAL MEDICAL SIGN

↑
(A)

YOUR GREEN THUMB CAREGIVERS



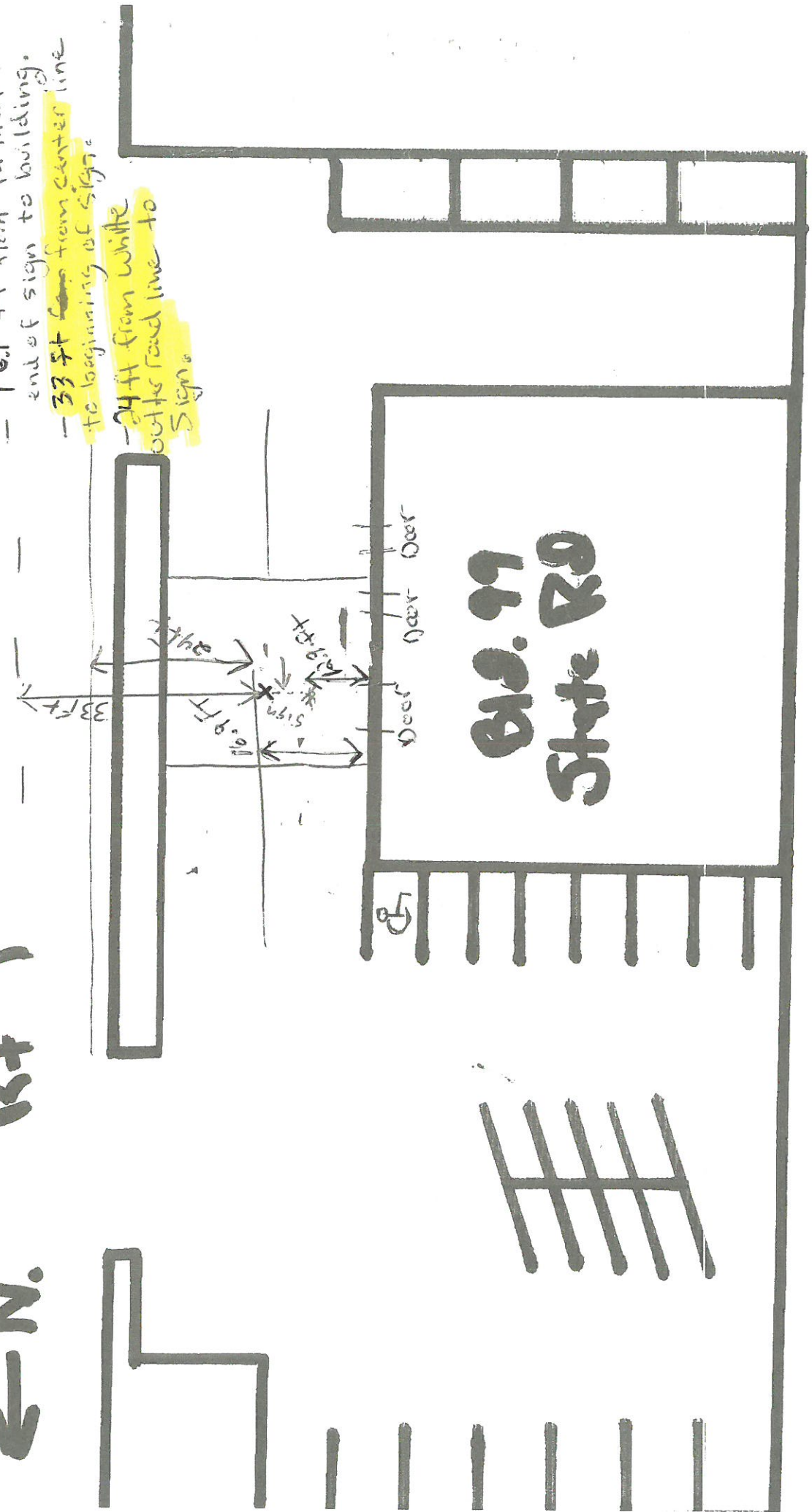
207-703-0130

YGT SIGN

↑
(B)

← N. Rt 1

- 12.9 ft from building to sign
- 16.9 ft from farthest end of sign to building.
- 33 ft from center line to beginning of sign.
- 24 ft from white outline road line to sign.



99 State Rd
BL zone



Google earth

Google earth



Sign Permit

SGN-20-6

Status: Stopped

Submitted: Mar 04, 2020

Applicant



Pamela Edwards

6039698966

pamster.e@gmail.com

Location

99 STATE ROAD
KITTERY, ME 03904

Project Information

Name of Business

Your Green Thumb

Business Owner's Name

Pam edwards

Business Owner's Phone Number

603-969-8966

Business Owner's Email Address

pamster.e@gmail.com

Business Owner's Mailing Address (if different than Property Address)

99 State road #2 Kittery ME 03904

Sign Information

Number of Proposed Free Standing Signs

0

Square Footage of Proposed Free Standing Signs

0

Number of Proposed Building Mounted Signs

1

Square Footage of Proposed Building Mounted Signs

12

Number of Proposed Temporary Banners

0

Existing Sign Information

Number of Businesses at the Map/Lot

5

Length of building on side of principal entry

67'

Number of Existing Signs (Do not include proposed)

3

Square Footage of Existing Signs

187

Design Requirements

Dates Requested for Temporary Sign (Banner) ONLY:

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Additional Dates Requested for Temporary Sign (Banner) ONLY:

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Certification

I certify that the information contained in this application and any related submissions to be true and accurate to the best of my knowledge. I understand that I am responsible for compliance with all applicable Town, State and Federal regulations and that failure to comply may result in the imposition of fines, legal fees, and the abatement of any violations to include abandonment of use and occupancy and corrective action such as the removal or modification of improvements if setbacks or other requirements have not been met and satisfied. I understand that this is an application and that I shall not begin any improvements until the appropriate permit(s) is/are issued nor will I make use of the improvements without first having obtained an occupancy permit. I will notify the Code Enforcement Officer of any changes to this application. A PERMIT ISSUED IS SUBJECT TO APPLICABLE ORDINANCES AS ADOPTED BY THE TOWN OF KITTEERY AND IS ONLY VALID FOR WORK AS DESCRIBED ON THIS PERMIT APPLICATION.

Applicant is
Owner

true

Condition of Approval

Condition of Approval

--

Attachments (1)

pdf Building Mounted Sign Plan
Mar 04, 2020

Timeline

Code Department Review

Status: Completed June 22nd 2020, 12:30 pm

Assignee: Craig Alfis

Pamela Edwards March 4th 2020, 1:40:12 pm

Hi, this request is actually for 2 signs, one for the side of the building and one for the sign out front that includes the other businesses. I'm happy to stop by if you have any questions, thanks.

undefined undefined March 4th 2020, 1:48:55 pm

Pamela,

This request is denied per the Board of Appeals Approval on February 28, 2019 and communicated to Pamela Edwards in a letter dated March 6, 2018. In the Findings of Fact, 7th item, it states "There will be no exterior signage outside for the medical marijuana business."

Dave Evans

Pamela Edwards March 4th 2020, 3:15:03 pm

Hi, I am retracting my last note as it contained some inaccuracies, thanks.

undefined undefined March 4th 2020, 4:01:49 pm

Ok. But the request is still denied given the reason above.

Permit Fee

Status: Paid June 22nd 2020, 5:45 pm

Craig Alfis June 22nd 2020, 12:32:16 pm

Hi Pam,

I've reactivated the viewpoint record and moved it to the payment step. In order for us to legally deny and allow you the right to

appeal you will need to pay the permit fee. Once payment is made we will deny the permit and you can appeal to the Board of Appeals. Should the Board not allow you to have a sign, the \$100 permit for for the sign permit will be refunded. Thanks.

Craig

Pamela Edwards June 30th 2020, 11:42:02 am

Hi Craig, I'm still waiting for the rejection letter so that I can appeal? Thanks.

Pamela Edwards July 8th 2020, 1:07:25 pm

Hi Craig, would you please send me a rejection letter to Pamster.e@gmail.com, I believe that I need to provide a copy of the letter to the Appeal Board? Also, I left you VM regarding the Administrative Appeal application that is asking for "Title, chapter, Section and Page numbers for the Appeal, is this something that you can assist me with please? Thanks. Pam Edwards 603-969-8966

Code Enforcement Approval

Status: Rejected June 22nd 2020, 5:50 pm

Assignee: Craig Alfis

Craig Alfis July 1st 2020, 11:04:10 am

This permit was rejected due to the Finding of Fact dated 3/6/2018 stating that no exterior signage will be installed for the medical marijuana business.

Permit Issuance

Status: Pending



**TOWN OF KITTERY
PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

BOA Meeting Date: August 11, 2020
Item #: AA2020-01

STAFF REPORT – 99 STATE ROAD – ADMINISTRATIVE APPEAL

Project Name: 99 State Road

Owner: Andrew Chick

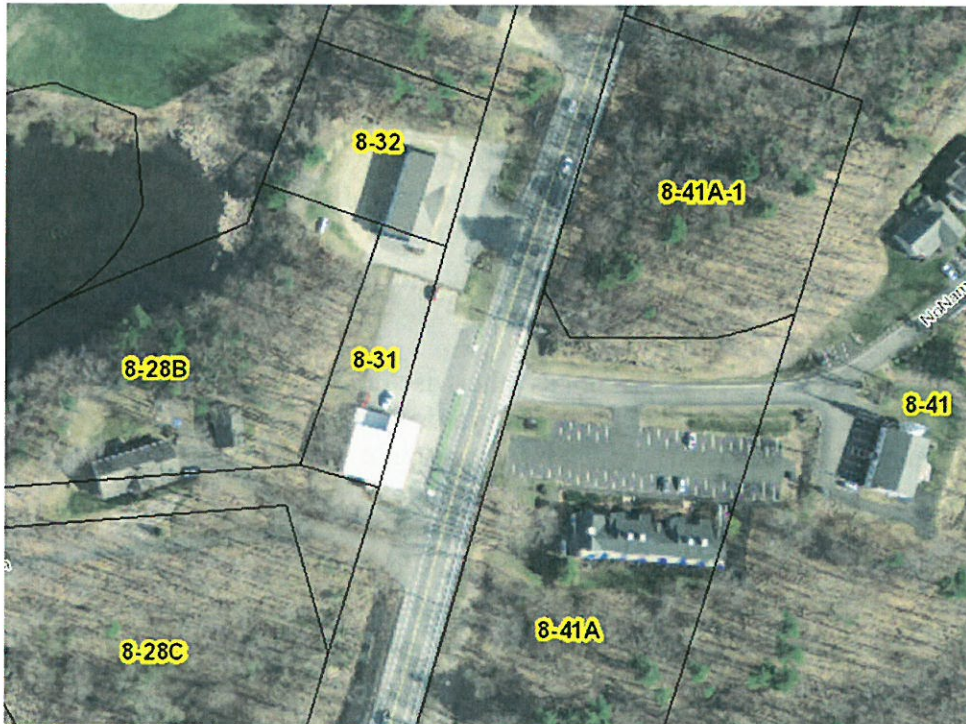
Appellant: Pam Edwards

Proposed Development: Installation of business signage

Requests: Administrative Appeal per Kittery Land Use & Development Code (LUDC) Section 16.6.3., Appeal of Code Enforcement Officer decision.

Site Addresses: 99 State Road

Map & Lot Numbers: M 8 L 31



Current Zoning:

Business – Local (B-L) Zone. The purpose of the of the Business Local – B-L Zone is to provide local sales, services and business space within the Town.

The following use is permitted in the B-L Zone: (4) Accessory uses and buildings including minor or major home occupations. The major home occupation is a permitted use.

The following use is permitted in the B-L Zone as a Special Exception: (9) Residential dwelling units as part of a mixed-use building. This use was permitted by the Board of Appeals on February 27, 2018.

District Standards:

(a)

Minimum land area per dwelling unit when all floors are residential: 20,000 square feet if served by on-site sewage disposal; 8,000 square feet if served by the public sewerage system. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

(b)

Minimum land area per dwelling unit when the entire first floor is used for nonresidential uses: 20,000 square feet if served by on-site sewage disposal; 4,000 square feet if served by the public sewerage system.

(c)

Minimum lot size: none. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

(d)

Minimum street frontage: none. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

(e)

Minimum front yard: 15 feet. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

(f)

Maximum front setback of the principal building: 60 feet.

(g)

Minimum rear and side yards: 10 feet. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

(h)

Maximum building height: 40 feet. (NOTE: Except that space standards for single- and two-family residential uses are the same as for those of the Urban Residential District.)

(i)

Maximum building and outdoor stored material coverage: none, except that side, rear and front yards must be maintained

(j)

Minimum setback from water body and wetland water-dependent uses: zero feet.

(k)

Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.

Current Use: Mixed Use.

Surrounding Land Uses:

West: Business – Local (BL), dwelling

East: Business – Local (BL), commercial

North: Business – Local (BL), commercial

South: Business – Local (BL), vacant

Future Land Use:

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

Site Description: 0.51 ± acres accessed via State Road

History of the Property:

The subject property consists of a mixed-use building with commercial space and a dwelling unit located on the second floor. The dwelling unit was approved by the Board of Appeals in 2018 as it is a special exception use in the zone.

Description of the Issue:

Ms. Edwards was granted approval by the Board of Appeals on February 27, 2018 for the building of a dwelling unit and the operation of her medical marijuana business as a licensed caregiver operating as a major home occupation. The Finding of Facts for the 2/27/18 BOA approval stated: “There will be no signage outside for the medical marijuana business.”

Ms. Edwards applied for a sign permit for outside signage for her medical marijuana business on October 31, 2019 and that request was denied given the Finding of Facts mentioned above. A denial letter was sent to Ms. Edwards’s representative Katie Pelletier on November 18, 2019 that outlined the reason for the denial.

Ms. Edwards applied again for sign permit for outside signage for her medical marijuana business on March 4, 2020 and was denied on March 4, 2020. Ms. Edwards was expecting to receive a denial letter so that she could appeal the decision, and was unaware that communication through the online permitting system was the written record. Mr. Alfis re-instated the record on June 22, 2020 and denied it on June 22, 2020.

Ms. Edwards submitted the Administrative Appeal on July 8, 2020.

Administrative Appeal:

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

§ 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 16.6.3 states that “a Code Enforcement Officer decision may be appealed to the Board of Appeals as provided in § 16.6.4A.”

- (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 since all adjacent properties are zoned Business Local and contain the same occupancy classifications 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;*

The use will not prevent the orderly and reasonable use of legally established uses in the zone since the use is permitted in the zone by special exception granted by the Board of Appeals.

- (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.

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

The use involved is legally permitted in the zone.

- (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.

- (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;*

It is on the public sewer system.

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

The 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 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 property contains suitable space for paved off-street parking.

- (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 legally conforming lot.

- (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;*

Not applicable.

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

The use does not appear to interfere with pedestrian movement along State Road.

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

No new nuisances are expected from the use.

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

The proposed signage appears to adhere to the applicable standards in Title 16.8 and 16.9.

1. Call to Order, Introductory, Roll Call

The Chair called the meeting to order at 6:30 p.m.

Present: Craig Wilson, Charles Denault, III, Jeffrey Brake, April Timko, Judy Spiller

Absent: Louis Leontakianakos, Barry Fitzpatrick

Staff Present: Robert Marchi, Code Enforcement Officer

2. Pledge of Allegiance

3. Agenda Amendment and Adoption

The Board adopted the Agenda as presented.

4. Executive Session

There was no executive session.

5. Public Hearings

Chair Wilson gave the applicant the choice to postpone tonight's hearing because two members of the Board were absent, and they would need four like votes. The applicant stated she would like her item heard tonight.

Andy Chick, Owner, Pam Edwards, Applicant, 99 State Road, Map 8 Lot 31, Business - Local B-L Zone, requesting Special Exception request to convert commercial space to a single-family dwelling in a mixed-use building and, if approved, apply for a Major Home Occupation for Licensed Medical Marijuana Caregiver.

Testimony

The Board decided to hear the testimony for both applications at the same time. Mr. Marchi explained this is a Special Exception application for a residential unit in a mixed-use, commercial building. The building is an existing nonconforming building which has been around since the 1960's. He added, if the Board approves the use, the applicant will still need to meet certain code requirements for the building. The reason for this request is the applicant would like to have a home occupation use that is not allowed in the zone for a commercial building because the Town only allows a medical marijuana caregiver as a home occupation. By establishing a residence in the commercial building, the applicant hopes to be allowed for this use. Mr. Marchi commented conditions added by the Board would be in the record and enforced. Mr. Marchi also stated the Chair had asked him earlier of the availability of parking on the property and Mr. Marchi stated there are 17 required and 25 available parking spots.

Pam Edwards, applicant, stated she is a Kittery resident and business owner. She explained she is making the request of changing commercial space into a single-family unit. This would enable her to live closer to one of her stores, Kittery Discount Smoke Shop and allow her to have a home occupation providing medical marijuana as a caregiver. She added home occupation is allowed in the zone. Mr. Marchi reviewed Home Occupation in Code 16.8.2.21. Ms. Edwards explained why the site is a good location for the home occupation. The structure is ideal for cultivation; the building is a single-level entry with parking for handicapped patients, the location is off the regular pedestrian path, there will be no signage, and there are not many children, churches or playgrounds in the immediate area. She added she has a license from the State of Maine and the Department of Human Services considers the building as a simple remodel. Ms. Edwards explained the plans for security to the property. She also explained her history of helping people in the community and her concern for patients who need to drive to Biddeford to get what they need. She added she has letters of support for the Board to consider.

The residence will be on the first and second floor and Mr. Marchi pointed out commercial usually occupies the first floor and residential the second. Mr. Marchi's concerned is that the applicant is creating a storefront for a home occupation.

The Chair opened the public hearing.

Peter Macdonald, Lee, NH, explained he began the Veteran Resort Chapel, which helps homeless combat veterans, and the applicants have helped his organization. He commented the Board should look at the benefits of bringing the old building up to code and having someone on the property is added security.

Sherry Lehoullier stated she supports the applicant. She is a medical healthcare professional in Maine and New Hampshire and described the benefits this would be for patients in need.

Tammie Snow, Ms. Edward's attorney, clarified there will be no living room on the second floor. The existing smoke shop will be moved next door with a separate entrance.

There being no further comment, the Chair closed the public hearing.

The Board has the power and duty to hear the proposal of a special exception for residential in the B-L zone under 16.1.5.2 4d Special Exception Request. This proposal does not require Planning Board review because it is not in the shoreland zone.

The Board has the power and duty to hear the proposal for Major Home Occupation under Article XII, 16.8.22(2)(c) Major Home Occupation.

The Chair ruled the Board can hear both components.

Deliberation

Ms. Spiller expressed her concern of the layout of the residential property. Ms. Edwards explained there will be four bedrooms, a kitchen and bath on the second floor. The first floor

will have a living room and a small pantry. She added the store is not part of the residential property and will be located next door. Sales of medical marijuana will take place in the living room on the first floor because it is handicapped accessible. Ms. Timko asked of the total square footage of the residence proposed and the square footage for the area used for the business. The applicant explained two bedrooms will be used as a grow room and veg. room and 25% of the living room will be dedicated for the business. Chair Wilson pointed out home occupation needs to be an accessory to the residence. He added a building floor plan showing square footage of pre-proposal and post-proposal for all floors should be submitted, which should be a condition of approval.

Ms. Spiller expressed her concern with the smoke shop being next to the living room because it seems more like a dispensary than a home and asked about Number 7 on the application regarding retail sales of smoking accessories. Ms. Edwards explained they have changed their minds about Number 7 and it can be struck out. Chair Wilson asked about signage. The applicant explained the home occupation will be called "Your Green Thumb" and there will be a separate sign on the door.

Chair Wilson commented the Board needs to certify the testimony in the applications meets 16.6.6.1, .2 and .3. There is testimony there will be no outside venting and there will be inside charcoal filters for odor. The Board found this acceptable. The Code Enforcement Officer will need to make sure this is being upheld. The Chair listed the following three conditions: 1. plot plans and calculations; 2. signage on interior doors for smoke shop and major home occupation; and 3. certification at a date uncertain by the Code Enforcement Officer that odor control that is adequate.

Mr. Denault moved that the Kittery Board of Appeals grant approval for Andy Chick, Owner, Pam Edwards, Applicant for 99 State Road, Map 8 Lot 31, Business - Local B-L Zone, Special Exceptions to convert commercial space to a single-family dwelling in a mixed-use building and also special exception for a Major Home Occupation for Licensed Medical Marijuana Caregiver with the following conditions: 1. the applicant supplies plot plans to the Code Enforcement Officer's satisfaction for preproposal conditions including square footage of all the existing uses and a post proposal plot showing the reconfigured building and reconfigured square footage. The plot plans must show less than 50% square footage allocated to the home occupation; 2. signs on interior doors for smoke shop and major home occupation; and 3. date chosen by a by the Code Enforcement Officer that the odor control system is adequate.

Mr. Marchi asked the applicant how many patients they are legally allowed to service. Ms. Edwards responded she and her partner are licensed caregivers and they are allowed to service ten patients and they are also allowed to have one employee each who need to be registered with the State under them. Attorney Snow explained the State law of allowances and limitations for caregivers.

Mr. Marchi explained his concern of this creating a commercial venture and the residential aspect being on the first floor where generally commercial is allowed. Chair Wilson asked if this requirement for a mixed-use building is in the code. Mr. Marchi replied it is not. The Board also

discussed the procedure if State law changes and the applicant can expand the business because it would affect the accessory-use percentage. Mr. Marchi pointed out major home has an annual renewal and, if there were any issues, the Code Enforcement Officer would be aware.

Ms. Spiller spoke of her continuing concern of the residential area being on the first floor with the smoke shop being adjacent and both businesses having the same owners. She also expressed her concern with the smoke shop selling pipes and vaporizers making the business more of a dispensary. Attorney Snow explained the State law allows caregivers to sell accessories in their homes, but the applicants have chosen not to do so. The State law does not permit caregivers to have retail sales. She added the smoke shop is a separate entity with a separate entrance.

Ms. Timko seconded the motion.

Ms. Spiller referred to Code 16.6.6.1 and of her concern of mixed commercial and major occupation in the proximity to Memorial Field and Legion Pond which will be a town park.

Ms. Timko pointed out the Board needs to be consistent of accessory use and incidental use in fairness of other applicants. She added she is concerned that there is no square footage. After discussion, language will be added to condition 1 reading: "The plot plans must show less than 50% square footage allocated to the home occupation."

The motion carried 5-0-0.

Chair Wilson noted there is a one-year time limit and they will need to go to the Code Enforcement Officer for a building permit. He also noted 32 form letter petitions of support were submitted to the Board and will be placed in the record.

Findings of Fact

- We had appearing before us the applicant, Pam Edwards, representing Andy Chick, Owner, for two special exceptions at 99 State Road, Map 8 Lot 31, Business - Local B-L Zone, first Special Exception request to convert commercial space to a single-family dwelling in a mixed-use building and, second Special Exception for Major Home Occupation for Licensed Medical Marijuana Caregiver.
- 99 State Road is a nonconforming building as per setbacks.
- The parking for the building currently requires 17 spaces and 25 spaces are available.
- Pam Edwards spoke and there will be two caregivers.
- She spoke about being a single level for the home occupation, so parking and entry are handicapped accessible.
- Ms. Edwards talked about the security plans, cameras motion detectors and the like.
- She spoke about the location having no window shopping pedestrian traffic or people happening by.
- There will be no signage outside for the medical marijuana business.
- There are no schools or playgrounds are nearby.
- Talked about it being an organic product.

- The public speaking portion Peter Macdonald, veteran, spoke of the positives of upgrading the building and will be occupied providing better security.
- Sherry Lehoullier, health care professional, spoke of this being one of the anecdotes to the opioid problem and benefitting for pain relief.
- Attorney Tammie Snow appeared and clarified the smoke shop will become the living room and there was discussion about where in the living room the medical marijuana transfer would take place.
- There was testimony that there are two separate business entities - the smoke shop and the marijuana caregiving though the same people who are associated with the two business entities.

The Chair asked for a vote on the Findings of Fact as presented and all were in favor 5-0-0.

Basis of Law

For first Special Exception, the Board is granted the ability to grant special exception under 16.1.5.2 to grant a Special Exception 4(D) and the Board of Appeals reviewed the basis for decision and factors for consideration and found that Special Exception was appropriate and so voted. Under the Home Occupation, the Board of Appeals is given the power under 16.8.22.3(A1), (A2) (C) and they went through factors of consideration and found it was appropriate and so voted.

The Chair asked for a vote on the Basis of Law as presented and all were in favor 5-0-0.

6. Unfinished Business

Chair Wilson explained this is the second notice of the time change to the 6:30 start time. They changed the By-Laws and the first notice was on January 9, 2018.

Ms. Spiller moved to accept the second reading of the By-Laws to change the start time to 6:30.

Vice Chair Brake seconded the motion.

The motion carried 5-0-0.

7. New Business - Election of Officers

Since only five board members were in attendance, the Chair suggested postponing this item until the next meeting. Board members agreed. The Chair will act as Chair and Secretary at the next meeting. He added the powers and duties can be referenced in Chapter 16 and their By-Laws have the duties of the Chair and duties of the Secretary. Chair Wilson informed the Board a new Chair should be elected since his time on the Board will be over in November.

Mr. Marchi stated a public hearing will be held on March 13, 2018.

8. Acceptance of Minutes: None.

9. Board Member or CEO Issues or Comment

There will be a training session with an attorney and planning and development. A date will be determined later.

10. Adjournment

The meeting adjourned at 8:00 p.m.



TOWN OF KITTERY, MAINE

200 Rogers Road – Kittery, ME 03904

Phone: 207-439-1308 Fax: 207-439-6806

www.kitteryme.gov

KITTERY BOARD OF APPEALS

March 6, 2018

Pamela Edwards
99 State Road, #2
Kittery, ME 03904

Dear Ms. Edwards,

Your application for Special Exception request to convert commercial space to a single-family dwelling in a mixed-use building and for a Major Home Occupation for Licensed Medical Marijuana Caregiver was heard at Town Hall, Tuesday evening, February 28, 2018.

A motion was made as follows: *Mr. Denault moved that the Kittery Board of Appeals grant approval for Andy Chick, Owner, Pam Edwards, Applicant for 99 State Road, Map 8 Lot 31, Business - Local B-L Zone, Special Exceptions to convert commercial space to a single-family dwelling in a mixed-use building and also special exception for a Major Home Occupation for Licensed Medical Marijuana Caregiver with the following conditions: 1. the applicant supplies plans to the Code Enforcement Officer's satisfaction for preproposal conditions including square footage of all the existing uses and a post proposal showing the reconfigured building and reconfigured square footage. The plot plans must show less than 50% square footage allocated to the home occupation; 2. signs on interior doors for smoke shop and major home occupation; and 3. Code Enforcement Officer determination that the odor control system is adequate.*

The motion was seconded by Ms. Timko.

The motion carried 5-0-0.

Findings of Fact

- We had appearing before us the applicant, Pam Edwards, representing Andy Chick, Owner, for two special exceptions at 99 State Road, Map 8 Lot 31, Business - Local B-L Zone, first Special Exception request to convert commercial space to a single-family dwelling in a mixed-use building and, second Special Exception for Major Home Occupation for Licensed Medical Marijuana Caregiver.
- 99 State Road is a nonconforming building as per setbacks.
- The parking for the building currently requires 17 spaces and 25 spaces are available.

- Pam Edwards explained there will be two medical marijuana caregivers operating on site.
- The home occupation will be on the first floor, so parking and entry are handicapped accessible.
- Ms. Edwards talked about the security plans, cameras, and motion detectors that will be installed and used.
- She spoke about the location having no window shopping, pedestrian traffic.
- There will be no exterior signage outside for the medical marijuana business.
- There are no schools or playgrounds nearby.
- The product will be an organic product.
- Peter MacDonald, veteran, spoke of the positives of upgrading the building and that it will be occupied providing better security.
- Sherry Lehoullier, health care professional, spoke of this being one of the anecdotes to the opioid problem and patients benefitting for pain relief.
- Attorney Tammie Snow appeared and clarified the smoke shop will become the living room of the dwelling unit.
- There was testimony that there are two separate business entities, owned by the same tenant - the smoke shop and the marijuana caregiving.

The Chair asked for a vote on the Findings of Fact as presented and all were in favor 5-0-0.

Conditions of Approval

1. The applicant supplies building plans to the Code Enforcement Officer's satisfaction for preproposal conditions including square footage of all the existing uses and an as built plan showing the reconfigured building and reconfigured square footage. The plans must show less than 50% square footage allocated to the home occupation;
2. There will be signs on interior doors for smoke shop and major home occupation;
3. Code Enforcement Officer determination that the odor control system is adequate.

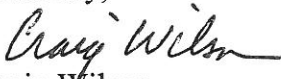
Basis of Law

For first Special Exception, the Board is granted the ability to grant special exception under 16.1.5.2 to grant a Special Exception 4(D) and the Board of Appeals reviewed the basis for decision and factors for consideration and found that Special Exception was appropriate and so voted. Under the Home Occupation, the Board of Appeals is given the power under 16.8.22.3(A1), (A2) (C) and they went through factors of consideration and found it was appropriate and so voted.

The Chair asked for a vote on the Basis of Law as presented and all were in favor 5-0-0.

This approval is not the granting of a building/regulated activity permit, and any aggrieved party may appeal this decision to Superior Court within 45 days.

Sincerely,


Craig Wilson
Chair

cc: Chairperson, Town Council
Town Manager
Code Enforcement Officer
Board of Appeals Members
Chairman, Conservation Commission
Chairman, Planning Board
Town Attorney
Town Planner

Board of Appeals Application

BOA-20-3

Status: Active

Submitted: Jul 16, 2020

Applicant



Nicholas Mercier

6036748239

nick@macyind.com

Location

134 WHIPPLE ROAD
KITTERY, ME 03904

Property Owner Information

Full Legal Name(s)

Nicholas Mercier

Mailing Address

35 Goffstown Road

State

NH

Phone Number

6036748239

City

Hooksett

Zip Code

03106

Email Address

nick@macyind.com

Applicant if different from Property Owner

Full Legal Name (s)

--

Mailing Address

--

State

--

Phone Number

--

City

--

Zip Code

--

Email Address

--

Property Information

Street Address

134 Whipple Road

Tax Map

10

Base Zone(s)

Residential-Urban (R-U)

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

Yes

Lot size in acreage

.31

Lot Number

6A

Overlay Zone(s)

Shoreland (OZ-SL-250)

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

true

--

A Special Exception Use Request

--

Variance 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 Section 16.6.4.B.

true

Please describe the general nature of the variance request:

Our existing single family house's foundation is less than ten feet from the top of a 2:1 slope along the river side. That slope extends down to the river edge where a seawall has been in place for many years. Erosion over the years of the slope has become a concern and created cracks in the foundation of the house and visible soil erosion to the surrounding areas. We recognize that the soil stabilization will be critical to ensure long-term preservation of our home.

Our home is located within the Shoreland Overlay Zone. We recognize that the Overlay Zone provides for the protection of your property, it also mandates that the impacts on the Piscataqua River be minimized when selecting options to protect the land and the house.

We love the community here in Kittery and we want to be good stewards of our property. In doing so we have consulted with the town and professionals to best understand how to achieve our wishes of preserving our property. We have included a letter detailing the impact of our project to the surrounding area.

Our plan to replace the small existing wall, shown on the Existing Condition drawing, with a new long lasting environmentally friendly material and soils will achieve our preservation of the property. We have also included a re-vegetation plan to improve the new upper retaining wall area and the lower existing section below. This includes planting 82 new native plants.

We have given great thought to this proposal, spoken with multiple organizations, engineers, private companies to ensure that we are presenting the best solution for our site that is the least intrusive to the environment and most importantly provide soil and foundation stabilization.

Variance Request Affirmations

I have read Town Code 16.6.4.B. and understand that I must demonstrate undue hardship based on the following criteria: 1. The land in question cannot yeild a reasonable return unless a variance is granted; 2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; 3. The granting of a variance will not alter the essential character of the locality; and, 4. The hardship is not the result of action taken by the applicant or a prior owner.

true

Will conduct this hearing De Novo (meaning the Board acts as if it were considering the question for the first time, affording no deference to the preceding agancy 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

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

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

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

I understand that the Board of Appeals:

May hear and decide on a variance request within the limitations set forth in Title 16, Section 6.4.B and 30-A MRS 4553.

true

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

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

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

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 not even hear my appeal unless I can show that I have "standing" to have my request 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 beleives would be upheld if appealed to Superior Court.

true

Variance Request Statements

The land in question cannot yeild a reasonable return unless the variance is granted. (Applicant must demonstrate that all of substantially all of the value and use of the property would be lost without a variance).

Soil stabilization is needed to preserve the foundation of the existing dwelling. The dwelling is within 10' of the 2:1 slope, the home's foundation has visible signs of continued cracking along with the concrete floor of the dwelling. Since purchasing home in 2017 there has been movement in the foundation cracks bringing this matter to urgency.

The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood. (Applicant must show that this property has unique characteristics different from surrounding properties and that these differences are the reason for the need of a variance).

The property is unique to the area given it is located along the river, has 2-sided exposed to water and a vacant adjacent lot. The property is approximately 6' lower then the street an receives excess water runoff from the road. The construction of the soil retention system will encourage infiltration an reduce the water cascading over the slopes edge.

That the granting of a variance will not alter the essential character of the locality.

The variance request will improve the utility of the property, provide a natural barrier to wildlife and human traffic. There will be a buffer zone at the base of the wall an edge of the river to provide a wildlife corridor and area for new native planting that currently do not exist.

The hardship is not the result of action taken by the owners or a prior owner. (Applicant must demonstrate that the need for a variance is due to the nature of the property, not the action of owners).

The hardship of soil degradation is adversely affecting the dwelling's foundation an structural integrity. This is no fault of the applicant but a result of the existing lot layout, lack of water infiltration and unchecked steep slope.

Certification of Application

Applicant's Signature

true

Name of Applicant

Nicholas Mercier

Date

07/16/2020

Attachments (8)



Photo 1
Jul 16, 2020



Photo 2
Jul 16, 2020



Photo 3
Jul 16, 2020



Photo 4
Jul 16, 2020

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.**

Jul 16, 2020

pdf **Construction Documents**

Jul 16, 2020

pdf **Additonal Documentation**

Jul 16, 2020

pdf **Piscataqualand Landscaping Plantings 2020.pdf**

Jul 16, 2020

Timeline

Application Completeness Review

Status: Completed July 20th 2020, 9:10 am

Assignee: Craig Alfis

Nicholas Mercier July 16th 2020, 12:26:51 pm

I received an email saying the payment was made using a credit card, then got a paid receipt then an email with a voided payment....? Just keep me in the loop as to what you need. Thanks Nick

Payment

Status: Paid July 29th 2020, 4:28 pm

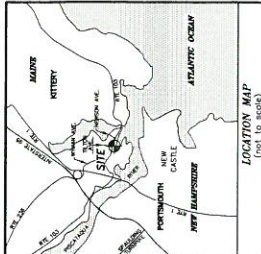
Nicholas Mercier July 16th 2020, 12:10:46 pm

Please let me know if you have any additional questions prior to the meeting. Thanks Nick

BOA Decision Sent to Applicant

Status: In Progress

Assignee: Craig Alfis



ZONING DATA PER KITTERY ZONING ORDINANCE
 (LAST AMENDED 06/22/2018)
BASE ZONE: Residential-Upon (R-U)
OVERLAY ZONE: Shoreland (OZ-SL-250)
REQUIREMENTS:
 MINIMUM LAND AREA: 20,000 SQ. FT.
 MINIMUM LOT SIZE: 20,000 SQ. FT.
 MINIMUM FRONT YARD SETBACK: 30 FT.
 MINIMUM REAR AND SIDE YARDS: 15 FT.
 MINIMUM BUILDING HEIGHT: 25 FT.
 MINIMUM SHORE FRONTAGE: 50 FT.
 MAXIMUM DEVEGETATED AREA: 20%

Per Town of Kittery Code Title 16 (Sec. 16.3.2.4)
 (See Sec. 16.3.2.4, D.2)

PLAN REFERENCES:

- STANDARD BOUNDARY SURVEY FOR PROPERTY AT 134 WHIPPLE ROAD, KITTERY, YORK COUNTY, MAINE, OWNED BY ESTATE OF GABRIEL B. VANNEY, PREPARED BY NORTH EASTERLY SURVEYING, INC. DATED AUGUST 10, 2017.
- PROPOSED SIDEWALK EASEMENT, FOR A PORTION OF WHIPPLE ROAD, KITTERY, YORK COUNTY, MAINE, CLIENT, KITTERY TOWN WORKS DEPARTMENT, SHEETS 283 OF 6 PREPARED BY NORTH EASTERLY SURVEYING, INC. DATED AUGUST 20, 2017.

NOTES:

- OWNERS OF RECORD: LOT 6A
 NICHOLAS E. MERCIER
 50 W. MAIN ST. #271
 DATED SEPTEMBER 29, 2017
 TAX MAP 10 LOT 6A
 0.312 AC.
- TOTAL EXISTING PARCEL AREA:
 0.312 AC.
- BASIS OF BEARING IS PER PLAN REFERENCE #1.
- APPROXIMATE ADJUTER'S LINES SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY AND SHALL NOT BE RELIED UPON AS BOUNDARY INFORMATION.
- EASEMENTS OR OTHER UNWRITTEN RIGHTS MAY EXIST THAT ENCUMBER OR BENEFIT THE PROPERTY NOT SHOWN HEREON.
- ZONING INFORMATION AND SETBACKS SHOWN HEREON ARE FOR REFERENCE PURPOSES. CONFIRM CURRENT ZONING REQUIREMENTS WITH THE TOWN OF KITTERY PRIOR TO DESIGN OR CONSTRUCTION.
- THE BOUNDARY SHOWN HEREON IS DETERMINED FROM WRITTEN RECORDS AND FIELD EVIDENCE RECOVERED AT THE TIME OF SURVEY AND MAY BE SUBJECT TO CHANGE IF OTHER EVIDENCE BECOMES AVAILABLE.
- SUBJECT PARCEL IS CONVEYED TOGETHER WITH ALL THE TIDE LAND LYING BETWEEN HIGH AND LOW WATER MARK ON THE WESTERLY SIDE OF THE SUBJECT PARCEL AND THE SOUTHWESTERLY SIDE OF SAID TIDE LAND. RIPARIAN BOUNDARIES HAVE NOT BEEN DETERMINED BETWEEN HIGH AND LOW WATER.
- THE ENTIRETY OF THE SUBJECT PARCEL IS WITHIN THE OZ-SL-250 SHORELAND ZONE.
- A PORTION OF THE SUBJECT PARCEL IS WITHIN A SPECIAL FLOOD HAZARD AREA (SFHA). REFERENCE IS MADE TO FEMA FIRM 25071-0002 D, LAST REVISED JULY 3, 1988.

BUILDING COVERAGE CALCULATIONS:

LOT AREA: 13,381.50 SQ. FT.
 EXISTING: 1,358.4 SQ. FT. (10.1%)

DEVEGETATED COVERAGE CALCULATIONS:

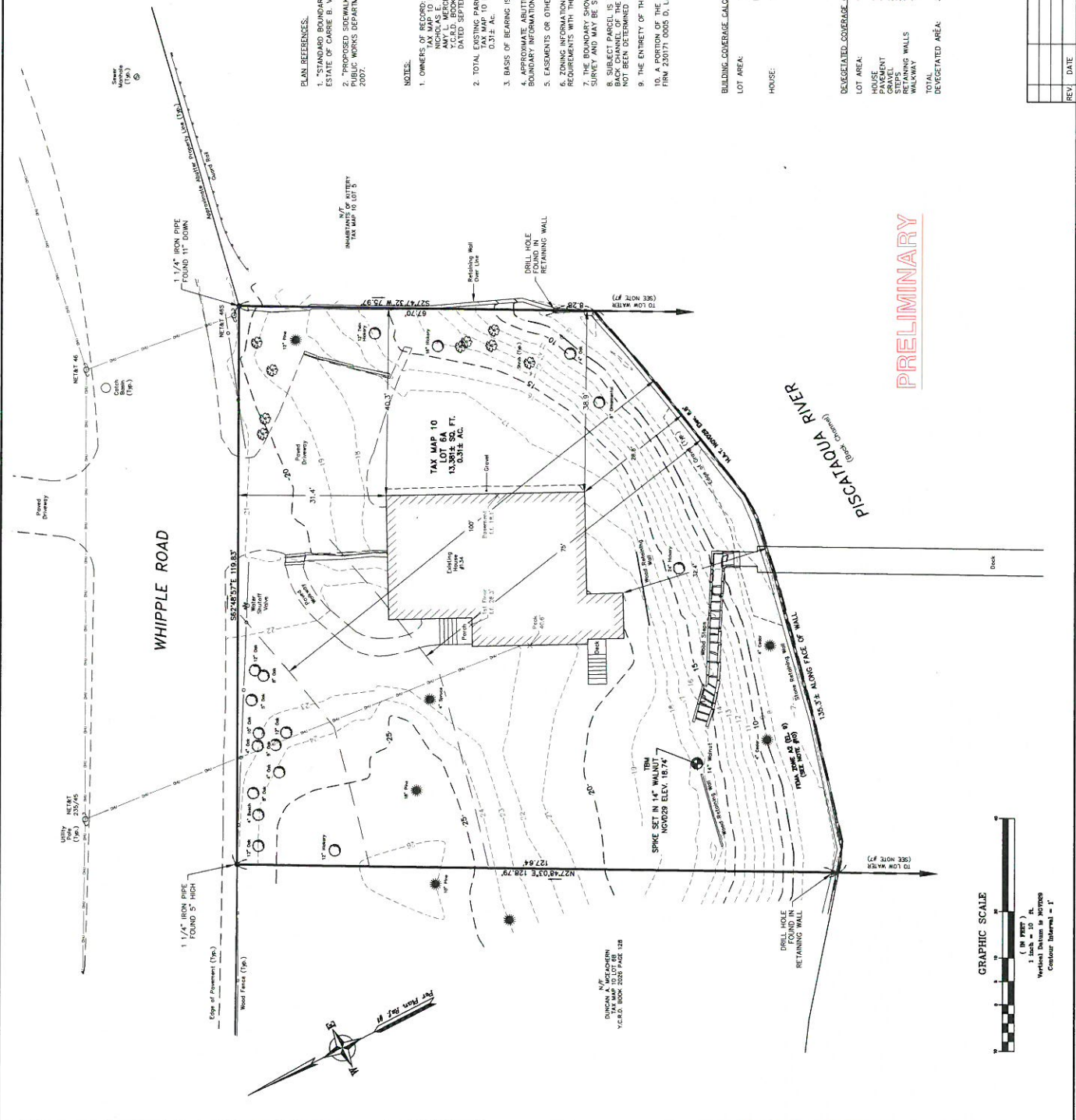
LOT AREA: 13,381.50 SQ. FT.
 HOUSE: 1,358.4 SQ. FT.
 PAVEMENT: 1,059.4 SQ. FT.
 STEPS: 201.4 SQ. FT.
 WALKWAY: 194.2 SQ. FT.
 TOTAL DEVEGETATED AREA: 3,242.2 SQ. FT. (24.2%)

EXISTING CONDITIONS PLAN
 FOR PROPERTY AT
134 Whipple Road
 Kittery, York County, Maine
 OWNED BY
Nicholas E. Mercier
 Amy L. Mercier
 35 Goffstown Road, Hooksett, NH 03106

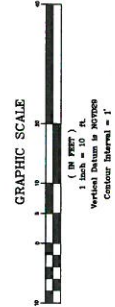
NORTH EASTERLY SURVEYING, Inc.
 SURVEYORS IN N.H. & MAINE 191 STATE ROAD, SUITE #1
 KITTERY, MAINE 03904

SCALE: 1" = 10'
 DATE: 2/27/2020
 DRAWING NO: 20012 EXISTING CONDITIONS
 FIELD BOOK NO: "Kittery #3"

PROJECT NO: 20012
 SHEET NO: 1 OF 1
 DATE: 2/27/2020
 BY: [Signature] STATUS: []
 REV: [] DATE: [] STATUS: []



PRELIMINARY



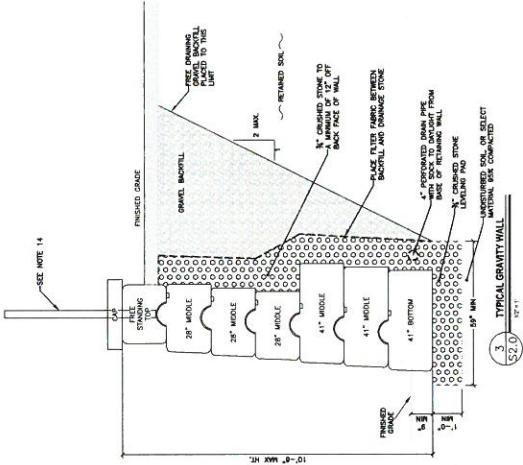


SFC ENGINEERING
 183 ROCKINGHAM RD UNIT 3 EAST
 WINDHAM, NH 03097
 WWW.SFCENG.COM
 (603) 542-4700

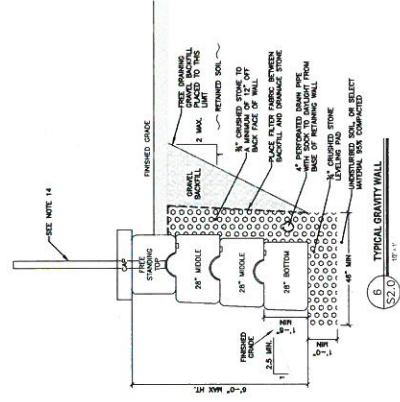
Project No. 659930
 Red-Rock Wall Design Drawings
 134 Whipple Road
 Kittery, ME
 Merrier Residence

PREPARED FOR
 Nicholas E. Merrier
 35 Gofftown Road
 Hooksett, NH 03103

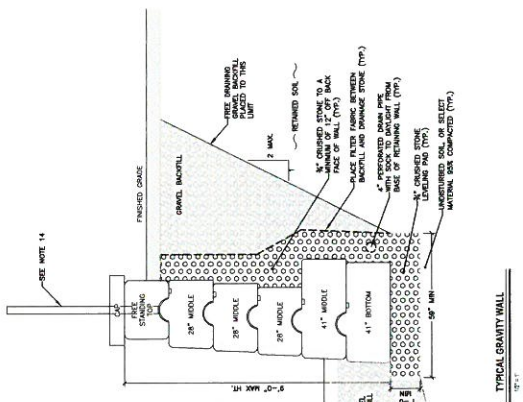
DWG NO. S2.0



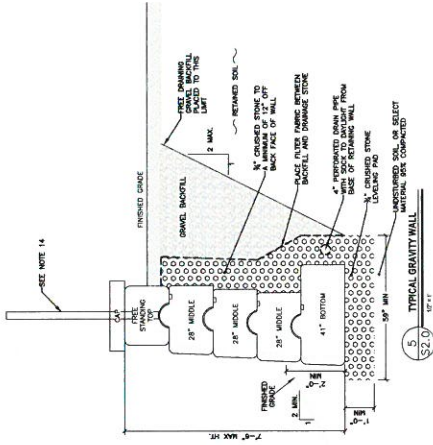
3 TYPICAL GRAVITY WALL
 59' MIN.
 10'-0" MAX. HT.



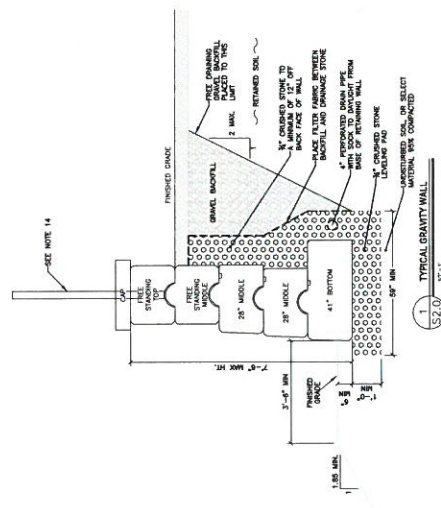
6 TYPICAL GRAVITY WALL
 46' MIN.
 9'-0" MAX. HT.



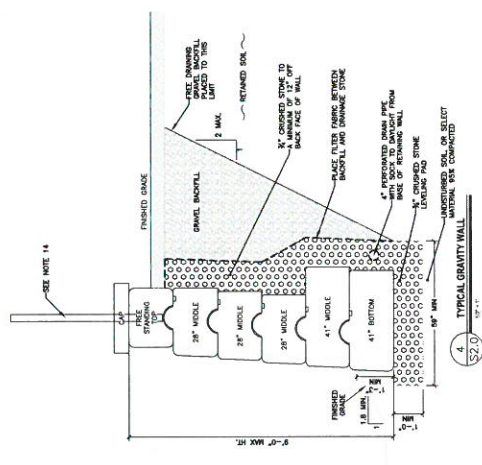
2 TYPICAL GRAVITY WALL
 59' MIN.
 10'-0" MAX. HT.



5 TYPICAL GRAVITY WALL
 59' MIN.
 10'-0" MAX. HT.



1 TYPICAL GRAVITY WALL
 59' MIN.
 10'-0" MAX. HT.



4 TYPICAL GRAVITY WALL
 59' MIN.
 10'-0" MAX. HT.

THIS PLAN DOES NOT SHOW THE EXISTING WALL SECTION.

NO.	DATE	REVISION



July 15, 2020

Nick Mercier
Macy Industries, Inc.
5 Lehoux Drive
Hooksett, NH 03106

RE: 134 Whipple Road Kittery ME

Mr. Nick Mercier,

SFC Engineering Partnership, Inc. (SFC) presents this letter to describe the impacts of the proposed segmental block retaining wall at 134 Whipple Road. The wall is proposed as a method to stabilize the soils on your property.

Soil stabilization is critical to ensure the long-term preservation of your home. Your existing building foundation is less than ten feet from the top of a 2:1 slope. That slope extends down to the river edge. Potential erosion of that slope is a concern.

The home is located within the Shoreland Overlay Zone. While the Overlay Zone provides for the protection of your property, it also mandates that the impacts on the Piscataqua River be minimized when selecting options to protect the land and the house.

The impacts of the wall are evaluated in light of the purposes of the Shoreland Overlay Zone. The purposes of the Overlay Zone, as outlined by the Mandatory Shoreland Zoning Act, includes provisions for (1) the prevention and control of water pollution; (2) the protection of wildlife habitat; (3) the conservation of shore cover, and visual as well as actual points of access to inland and coastal waters; and (4) the conservation of natural beauty, and (5) the protection of buildings and lands from accelerated erosion; .

Construction of a segmental block retaining wall offers a viable solution to protecting your property in compliance with the purpose of the Shoreland Overlay Zone. The following outlines the evidence to support this opinion:

1. The retaining wall is a widely accepted method to address steep slopes.
2. Erosion is arrested because storm water will no longer flow down steep slopes. The flat grades on the top side receive storm water and encourage infiltration. Construction of the retaining wall includes free-draining soils behind the wall to receive the water. Stormwater will find its way to the river, but it does not cascade over the edge of the wall; it will filter through the free draining soils.
3. Any lawn treatment or incidental pollutants are detained on the flat upper grade. Pollutants which currently run unchecked along the steep slope are detained, infiltrated and filtered prior to discharge to the river
4. The retaining wall becomes a natural barrier to wildlife and human traffic. The buffer distance between the base of the wall and the edge of river provides a wildlife corridor.
5. Access to the river can be safely incorporated into the retaining wall design and construction.

6. The river will be protected during the construction process by perimeter controls for erosion and siltation. Machinery required for the construction can work from the top side, to minimize disturbance of the shore cover
7. Wall construction includes earth materials: gravel and sand. No hydrocarbon based, nor other environmentally un-friendly materials are necessary.
8. Concrete in the block construction is inert and stable. Concrete will have no negative impacts.
9. Textured concrete block are aesthetically pleasing.
10. The retaining wall will provide a flat stable grade adjacent to the existing foundation to protect the building from further cracking.

We affirm that a segmental block retaining wall provides a responsible solution to protect your home, while also maintaining the quality and beauty of the Piscataqua River, and the native wildlife community.

Please contact us with any questions or comments.

SFC ENGINEERING PARTNERSHIP, INC.



Jeffrey M. Benway, P.E.
Project Manager



**26 Maclellan Ln
Eliot, ME 03903**

Phone: 207-439-2241 / Fax: 207-439-6661

PROPOSAL: 10482
SHEET NO: 1 of 4
DATE: 7/9/2020

PROPOSAL SUBMITTED TO:

Nick Mercier
Nick Mercier
134 Whipple Rd
Kittery, ME 03904

Phone:

Email: nick@macyind.com

WORK TO BE PERFORMED AT:

Mercier, Nick
134 Whipple Rd
Kittery, ME 03904

Scope of Work

Plantings at base of new seawall and top of new seawall

Remove all plant material at base of wall and plant;

(3) Juniper 'Emerald Sentinel' size 6-7'

(12) Bayberry size #5

(15) Yarrow 'Terra Cotta' size #3

(15) 'Little Miss' Grass size #2

Amend soil as needed and mulch with brown mulch at 2" thickness.

Add loam/compost mix to top area of wall, build bed and cut fresh edge along grass and plant;

(9) Hosta 'Big Daddy' size #1

(9) Hosta 'Fragrant Bouquet' size #2

(12) Daylily 'Rosy Returns' size #2

(7) Hakonechloa grass size #2

Mulch area with brown mulch at 2" thickness.

**All plantings will need to be watered daily after planting until established.*

Construction Softscape

Total \$8,750.00

PAYMENT SCHEDULE

SCHEDULE	TOTAL PRICE
1st Payment due on Signing	\$4,375.00
Due on Completion	\$4,375.00
	<hr/> \$8,750.00

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and attachments completed in a substantial workmanlike manner for the sum of: **\$8,750.00**. Payments to be made as follows: A 50% deposit upon signing, final payment upon completion. 2% interest charged upon any past due balance.

Payments are due in full 15 days from invoice date.

Customer agrees to pay all reasonable attorney and other professional fees necessary to collect any unpaid balances. Late payments will void any guarantees or warranties.

Plant Warranty: All new plants will be guaranteed for one year from the date of installation and will only be replaced once, providing they are well watered and taken care of. Warranty does not cover acts of god, including but not limited to: heavy winds, snow, vandalism, damage caused by animals or improper watering.

Existing trees, shrubs and or perennials, which we transplant, are moved entirely at the owners' risk and, due to circumstances beyond our control, are not guaranteed by Piscataqua Landscaping & Tree Service.

Piscataqua Landscaping & Tree Service only guarantees seed germination, in all forms, one time provided the seed is adequately watered. Piscataqua Landscaping & Tree Service is not responsible for wash-out, weedy growth, temperature or other acts of god.

Piscataqua Landscaping & Tree Service will make every effort to cancel orders as soon as we are notified, but we cannot control restocking fees imposed by our vendors. Customer is aware of the following restocking fees which may be assessed.

A 20% Restocking fee will be applied to any cancelled plants or orders, assuming the nursery will restock them. Should the nursery refuse the order, customer will be responsible for the cost of the order.

A 20% restocking fee will be applied to stock landscaping products.

There will be no refund on special or custom ordered products. All special orders will be invoiced in full prior to order being placed.

Piscataqua Landscaping & Tree Service will not be held responsible for damage from acts of God/Nature.

Natural Stone Materials: Customer understands that stone quarried from the earth may change in color and appearance after installation. This is a naturally occurring process that we cannot control and as such cannot guarantee or warranty the product.

Permits: It is the customer's responsibility to provide copies of any, and all permits and approvals required by the state and local municipalities. Any fines levied against the Piscataqua Landscaping & Tree Service for lack of permits is the responsibility of the client. Piscataqua Landscaping & Tree Service may be available to assist in permitting at rate of \$85.00 per hour for services requested. Rates are subject

Extra work dealing with underground obstacles may entail extra costs.

Any alteration or deviation from above specification involving extra costs will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owners to carry fire, tornado, or other necessary insurance upon above work. Worker's Compensation and Public Liability Insurance on above work to be taken out by Piscataqua Landscaping & Tree Service. Note: we may withdraw This Proposal if not accepted within thirty days.

ACCEPTANCE OF PROPOSAL

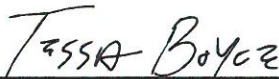
If the terms above are agreeable to you, please sign and date below, retain one copy for your records, and return the other copy with your deposit. Thank you!

The above prices, specifications and conditions are satisfactory and are hereby accepted. Piscataqua Landscaping & Tree Service is hereby authorized to do the work as specified.

Customer Name (printed)

Authorized Owner/PropertyManager (signature)

Date



Authorized PLTS Representative (signature)

7/9/2020

Date



PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT

BOA Meeting Date: August 25, 2020

Item #: VAR2020-01

STAFF REPORT – 134 WHIPPLE ROAD –VARIANCE REQUEST

Project Name: 134 Whipple Road

Applicant: Nicholas Mercier

Owner: Nicholas Mercier

Proposed Development: Install retaining wall to prevent erosion

Requests: Variance request to expand a non-conforming retaining wall in the Residential - Urban (R-U) and Shoreland Overlay (OZ-SL) zones for the purpose of controlling erosion.

Site Addresses: 134 Whipple Road

Map & Lot Numbers: M10 L6A



Current Zoning:

Residential – Urban (R-U) - This zoning district is intended to preserve the physical, aesthetic and social quality of Kittery’s urban area and, consistent with this goal, to provide therein for the location of a variety of residential uses in accordance with the standards of this title.

Staff Recommendation: ***APPROVAL*** of variance request as it satisfies ***ALL*** of the criteria set forth in 16.6.4.B(1)(c).

District Standards:

Residential – Urban Zoning District Standards			
Land Area per Dwelling (min.)	20,000 sf	Front Yard Setback (min.)	30 feet
Maximum Building Coverage	20%	Rear Yard Setback (min.)	15 feet
Lot Size (min.)	20,000 sf	Side Yard Setback (min.)	15 feet

Current Use: Dwelling unit, occupied house

Surrounding Land Uses:

West: Residential – Urban (R-U) & Shoreland Overlay (OZ-SL), vacant land
East: Residential – Urban (R-U), & Shoreland Overlay (OZ-SL) dwelling unit
North: Residential – Urban (R-U) & Shoreland Overlay (OZ-SL), dwelling unit
South: Residential – Atlantic Ocean

Site Description:

The subject property consists of an approximately 13,000 square foot lot (.3 acres), located along the Southern right-of-way of Whipple Road. The property is a non-conforming lot of record. The property is zoned Residential – Urban (R-U). The grade drops steeply from the house to the shoreline. There is a small existing wooden retaining wall and wooden steps leading down to the shoreline. The house is non-conforming as it sits well within the 100’ Shoreland buffer

History of the Property:

The property contains one dwelling built in approximately 1966. There are no, nor have there been any documented violations of the Town Code at the property.

Description of the Issue:

The applicant is requesting to build a retaining wall to halt soil erosion on the property which is causing structural issues for the existing single-family dwelling. The applicant proposes to install an engineered retaining wall system and gravel back fill to prevent further erosion. Included in this plan will be the replacement of the wooden steps and the re-planting of any removed vegetation. Due to the scope and size of the retaining wall, it is considered a structure per the Town Code and requires a variance prior to review by the Planning Board.

Applicant’s Variance Request:

Section 16.6.4.B requires the Board of Appeals to use the following process when hearing variance

requests:

§ 16.6.4.B. Variance request

(1) A variance may be granted only by the Board of Appeals under the following conditions:

(a) For a reduction in dimensional requirements related to height, area and size of structure or size of yards and open spaces;

The applicant is requesting a reduction in the 100-foot shoreland overlay setback.

(b) The use is not prohibited by this title; and

The addition/expansion of a retaining wall is not prohibited by Title 16.

(c) Only if the strict application of the terms of this title would result in undue hardship. The term "undue hardship" means the applicant must demonstrate all of the following:

[1] *The land in question cannot yield a reasonable return unless a variance is granted.*

The land in question is already providing a reasonable return as there is already a single-family residence on the property, but this return could be jeopardized by structural issues resulting in reduced property value.

[2] *The need for a variance is due to the unique circumstance of the property and not to the general conditions in the neighborhood.*

The need for a variance is due to the proximity of the existing structure to the shoreline and is therefore unique to the property.

[3] *The granting of a variance will not alter the essential character of the locality.*

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

[4] *The hardship is not the result of action taken by the applicant or a prior owner.*

The house was conforming to all setbacks when it was constructed in 1966, as it predated the Mandatory Shoreland Protection Act. It is located in essentially the only area of the property where all setbacks could be met, therefore the hardship is not due to action

taken by the applicant or prior owner.

Using the standards and criteria found in 16.6.4.B of the LUDC, Staff recommends **APPROVAL** of the variance request to reduce the setback as proposed as it satisfies **ALL** of the criteria set forth in 16.6.4.B(1)(c).

Board of Appeals Application

BOA-20-4

Status: Active

Submitted: Aug 04, 2020

Applicant



George Nazzaro

315-436-7115

geonazz@hotmail.com

Location

79 PEPPERRELL ROAD
KITTERY, ME 03905

Property Owner Information

Full Legal Name(s)

George j. Nazzaro

Mailing Address

PO Box 79/ 79 pepperrell rd.

State

Me

Phone Number

3154367115

City

Kittery Point

Zip Code

03905

Email Address

Geonazz@hotmail.com

Applicant if different from Property Owner

Full Legal Name (s)

--

Mailing Address

--

State

--

Phone Number

--

City

--

Zip Code

--

Email Address

--

Property Information

Street Address

79 pepperrell rd.

Lot size in acreage

.9

Tax Map

26

Lot Number

22

Base Zone(s)

Residential kittery point village

Overlay Zone(s)

O

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

No

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?

No

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

--

true

A Special Exception Use Request

--

Miscellaneous Variation Request

Nonconformance as prescribed in Chapter 16.7, Article III

Parking, loading and traffic standards contained in Chapter 16.8, Article IX

true

--

Sign violation and appeal standards contained in 16.8.10.3

Accessory dwelling unit standards contained in Chapter 16.8, Article XXV

--

--

Miscellaneous Variation Request Pertinent Town Codes

Title

Chapter and Section

16

7- 3.5.d

Title

Chapter and Section

--

--

Title

Chapter and Section

--

--

Miscellaneous Variation Request Affirmations

I understand that the Board of Appeals:

May hear and decide on a miscellaneous variation request within the limitations set forth in Title 16 with the sections identified above.

true

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 Nove (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 the Town Code Title 16 and the Board rules; and, conduct additional hearings and receive additional evidence and testimony).

true

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

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

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

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

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 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

Miscellaneous Variation Request Statement

Describe the general nature of the request:

See attached

Certification of Application

Applicant's Signature

true

Name of Applicant

George J. Nazzaro

Date

08/04/2020

Attachments (6)

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.**

Aug 04, 2020

pdf **Additonal Documentation**

Aug 04, 2020

docx Narrative for BOA Application.docx

Aug 04, 2020

pdf 2013 Deed (81 Pepperrell Rd).pdf

Aug 04, 2020

pdf 2017 Deed (Mirian and Nick into Trust).pdf

Aug 04, 2020

pdf Nazzaro deed (79 Pepperrell Road).pdf

Aug 04, 2020

Timeline

Payment

Status: Paid August 4th 2020, 2:11 pm

George Nazzaro August 4th 2020, 1:57:24 pm

How do i pay by credit card?

Application Completeness Review

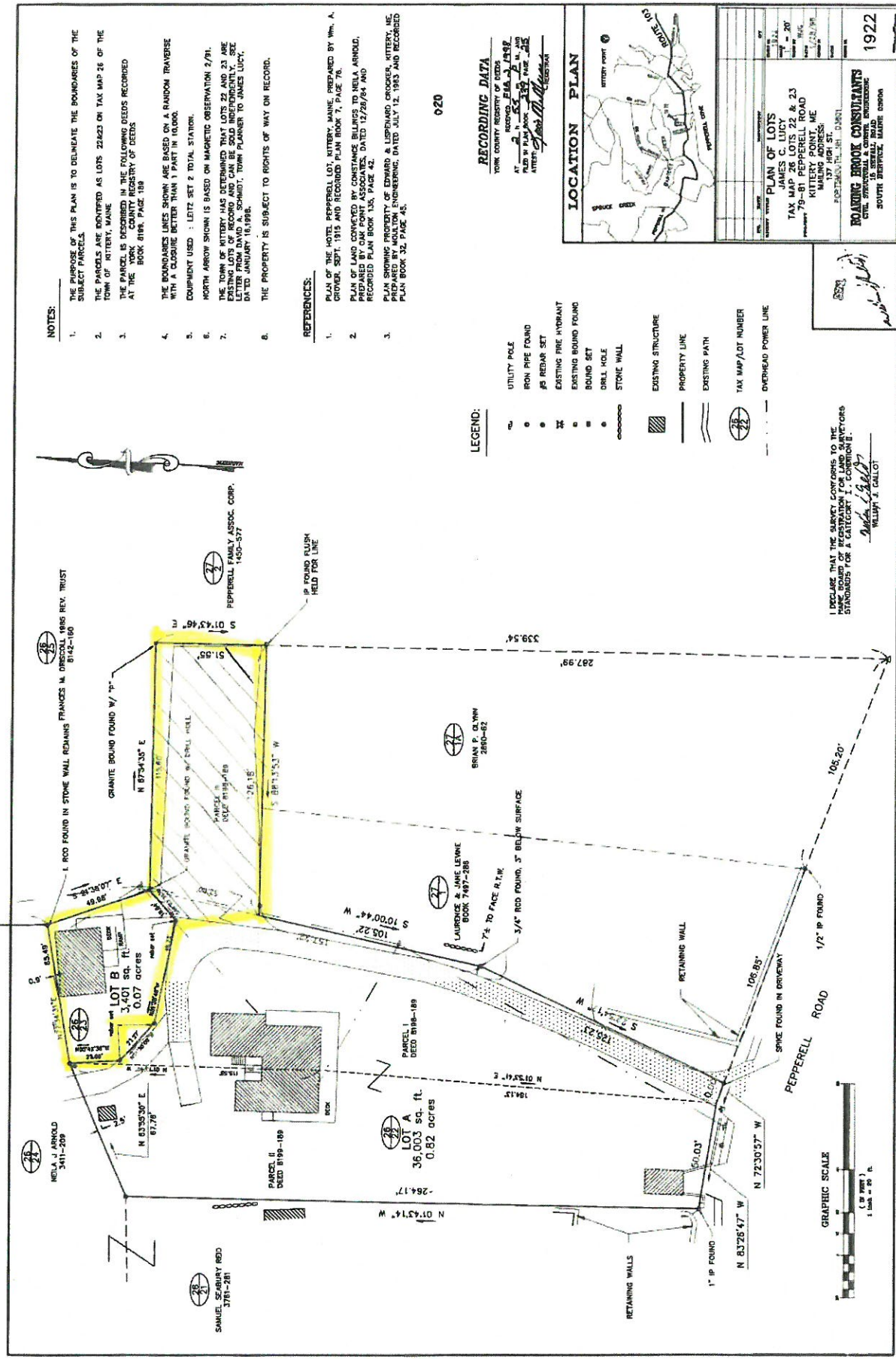
Status: Completed August 4th 2020, 3:54 pm

Assignee: Craig Alfis

BOA Decision Sent to Applicant

Status: In Progress

Assignee: Craig Alfis



NOTES:

1. THE PURPOSE OF THIS PLAN IS TO DELINEATE THE BOUNDARIES OF THE SUBJECT PARCELS.
2. THE PARCELS ARE IDENTIFIED AS LOTS 22623 ON TAX MAP 26 OF THE TOWN OF KITTEERY, MAINE.
3. THE PARCEL IS DESCRIBED IN THE FOLLOWING DEEDS RECORDED AT THE MECHANICAL OFFICE OF DEEDS BOOK 8198, PAGE 188.
4. THE BOUNDARIES LINES SHOWN ARE BASED ON A RANDOM TRANSVERSE WITH A CLOSURE BETTER THAN 1 PART IN 10,000.
5. EQUIPMENT USED : LEITZ SET 2 TOTAL STATION.
6. NORTH ARROW SHOWN IS BASED ON MAGNETIC OBSERVATION 2/91.
7. THE TOWN OF KITTEERY HAS DETERMINED THAT LOTS 22 AND 23 ARE EXISTING LOTS OF RECORD AND CAN BE SOLD INDEPENDENTLY. SEE DEED 1988-181 (DEED) TOWN PLANNER TO JAMES LUCY, DATED JANUARY 16, 1988.
8. THE PROPERTY IS SUBJECT TO RIGHTS OF WAY ON RECORD.

REFERENCES:

1. PLAN OF THE HOTEL PEPPERELL LOT, KITTEERY, MAINE, PREPARED BY Wm. A. GROVER, SEPT. 1915 AND RECORDED PLAN BOOK 7, PAGE 76.
2. PLAN OF LAND CONVEYED BY CONSTANCE BILLINGS TO HELLA ARNOLD, PREPARED BY ONE POINT ASSOCIATES, DATED 12/28/84 AND RECORDED PLAN BOOK 105, PAGE 42.
3. PLAN SHOWING PROPERTY OF EDWARD A. LISPIANARD GROVER, KITTEERY, ME. PREPARED BY ONE POINT ASSOCIATES, DATED JULY 12, 1983 AND RECORDED PLAN BOOK 32, PAGE 45.

LEGEND:

- UTILITY POLE
- IRON PIPE FOUND
- #3 REBAR SET
- ⊗ EXISTING FIRE HYDRANT
- ⊕ EXISTING BOUND FOUND
- ⊖ BOUND SET
- DRILL HOLE
- ⊕ STONE WALL
- ▨ EXISTING STRUCTURE
- PROPERTY LINE
- ⊕ EXISTING PATH
- ⊕ TAX MAP/LOT NUMBER
- OVERHEAD POWER LINE

RECORDING DATA

TOWN COUNTRY RECORDS OF DEEDS
 KITTEERY, MAINE
 RECEIVED FEB 2 1988
 PAID TO PLAN BOOK 333 PAGE 42
 ATTEST: *[Signature]*

LOCATION PLAN



PLAN OF LOTS
 JAMES C. LUCY & 33
 TAX MAP 26 OF KITTEERY, MAINE
 PROPERTY 79-81 PEPPERELL ROAD
 KITTEERY POINT, ME
 MAILING ADDRESS:
 FORTY-TWO PLUM STREET
 PORTLAND, MAINE 04108
 1922

I DECLARE THAT THE SURVEY CONFORMS TO THE STANDARDS OF A CERTIFICATED SURVEYOR IN MECHANICAL OFFICE OF DEEDS
[Signature]
 WALTER J. GILLOT

[Handwritten notes in right margin:]
 - new boundary line of Lot B (Trust)
 - parcel to be transferred from Lot A to Lot B

The Applicant, George Nazzaro, owns property located at 79 Pepperrell Road (Map 26, Lot 22). Miriam Habert and Nicolas Jacques, Trustees of the PEPPKPM-1 REALTY TRUST (the "Trust"), own an adjacent property located at 81 Pepperrell Road (Map 26, Lot 23). In accordance with § 16.7.3.5(D)(1)(b) and §16.6.4 of the Kittery Land Use Ordinance, the Applicant seeks Board of Appeals approval for a boundary line adjustment transferring a portion of his property to the Trust.

The proposed boundary line adjustment is shown on a survey submitted with this application. The Applicant's property is shown as "Lot A" and the Trust's property is shown as "Lot B" on the survey. The adjustment would transfer a piece of land from Lot A, shown as "Parcel III" on the survey (plus a small area up to the existing right of way), from the Applicant to the Trust in order to clear up an issue with a septic easement and location of the Trust's existing septic system.

§ 16.7.3.5(D)(1)(b) states in its entirety:

- (1) The common property line of two nonconforming lots of record, each with legally created principal structures, can be adjusted if:
 - (b) Where the lots are located entirely outside the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this title; and
 1. Each resulting lot is not less than 20,000 square feet in lot size when not served by public sewer; or
 2. Each resulting lot is not less than the smallest residential lot permitted under the Town's land use base zones, Title 16.3, when served by public sewer

The properties are both nonconforming lots of record because they are less than 40,000 total square feet, and each has a single legally created principal structure. Dave Evers has determined that the lots are located entirely outside the Shoreland Overlay Zone and that the proposed lot line adjustment would make the Applicant's lot more nonconforming (though will also make the Trust's lot more conforming).

The approximate area of the land to be transferred is 6,600 sq. ft. The boundary line adjustment would reduce the size of the Applicant's property from 36,003 sq. ft. to 29,403 sq. ft. but increase the size of the Trust's property from 3,401 sq. ft. to 10,001 sq. ft. The transfer does not change the legally nonconforming status of either property, will not affect or change the nature or use of any adjacent properties, and the Applicant's remaining lot will not be less than 20,000 square feet.

The Trust has an easement and existing septic system on Parcel III of the Applicant's property, and there is some dispute over the extent of the easement and location of the septic system. Approval of this boundary line adjustment will allow the Trust to own the property where their septic system is located and resolve potential issues concerning the easement in the future, including potential title issues for future owners of the properties.



BK 16735 PGS 644 - 646 11/19/2013 02:53:29 PM
 INSTR # 2013056738 DEBRA ANDERSON
 RECEIVED YORK SS REGISTER OF DEEDS

QUITCLAIM DEED WITHOUT COVENANT

BANK OF NEW ENGLAND, with a mailing address of 31 Pelham Rd., Salem, NH (03079), for consideration paid, releases to Miriam Habert and Nicholas G. Jaques, with a mailing address of PO Box 327, Bartlett, Carroll County, New Hampshire (03812) as joint tenants and not as tenants in common, any and all right, title and interest in and to the real property, together with any improvements thereon, commonly known as 81 Pepperrell Road, Kittery Point, York County, Maine (the "Property"), more particularly bounded and described on Exhibit A hereto.

The premises are conveyed subject to the following items:

- a. Any and all municipal, state, or federal laws, regulations, and ordinances including, without limitation, permits and approvals heretofore issued by any federal, state, or municipal government authority (compliance with, application for the transfer of any such permits, or approvals shall be the sole responsibility of the Purchaser).
- b. Any and all encumbrances and easements of record and any governmentally imposed or required zoning, subdivision, environmental, and other land use restrictions.
- c. Any condition which a physical examination or adequate survey of the property might reveal.
- d. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by a law, and which may or may not be shown by the public records
- e. The rights of tenants and persons in possession, if any.
- f. All outstanding municipal fees and charges, including water and sewer and municipal taxes, including those which constitute liens encumbering the mortgaged property.
- g. Any and all conditions shown on any recorded plans of all or a portion of the property.
- h. Granted with the right and easement to use, maintain, repair and replace the septic system currently located in whole or in part on Lot #A (commonly known 79 Pepperrell Road) as shown said Plan of Land for James C. Lucy, recorded in the York County Registry of Deeds at Plan Book 239, Page 25.
- i. And further granted with a right of way and easement, in common with others, for ingress and egress for pedestrian and vehicle traffic and for the installation of utilities over the existing road as shown said Plan of Land for James C. Lucy, recorded in the York County Registry of Deeds at Plan Book 239, Page 25.

This deed is granted through a foreclosure sale held pursuant to 14 M.R.S.A. §6203-A. A Notice of sale stating the time, place and terms of the sale was published on September 19, 2013, September 26, 2013, and October 3, 2013, in the Portsmouth Herald, a newspaper of general circulation in the Town of Kittery, Maine, where the premises is located. The public

3pg → Cooper, Cargill, Chant
 2935 White Mountain Highway
 North Conway, N.H. 03860

sale was held on October 17, 2013. The grantee was the highest bidder. Additional reference is made to Affidavit of Foreclosure Sale recorded in the York County Registry of Deeds within 30 days of the sale date.

IN WITNESS WHEREOF, Bank of New England has caused this instrument to be signed by its undersigned officer, duly authorized, this 15 day of November, 2013.

BANK OF NEW ENGLAND



By: Gary B. Austin
Its Vice-President

STATE OF NH
COUNTY OF Rockingham ss

November 15, 2013

Personally appeared the above-named Gary B. Austin, Vice President of Bank of New England, and acknowledged before me the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of Bank of New England.



Heidi English
Notary Public/Attorney at Law
Printed Name: Heidi English
Commission Expires: 8/24/16

EXHIBIT A

A certain lot or parcel of land, including the buildings thereon located on the northerly side of Pepperrell Road, but not on the road, in the Town of Kittery Point, County of York and State of Maine. The parcel is shown as Lot #B on Plan of Land for James C. Lucy and recorded in the York County Registry of Deeds at Plan Book 239, Page 25 and is more particularly described as below:

Beginning at a granite bound found at the south-west corner of land now or formerly of Frances M. Driscoll, 1985 Rev. Trust; thence S 46° 53' 31" W, a distance of 18.64 feet along line of land now or formerly of James C. Lucy and Lot A to a rebar; thence N 81° 38' 46" W, a distance of 48.73 feet along line of and now or formerly of James C. Lucy to a rebar; thence N 51° 30' 09" W, a distance of 23.27 feet along line of land now or formerly of James C. Lucy and Lot A to a rebar; thence N 05° 42' 36" W, a distance of 23.66 feet along line of land now or formerly of James C. Lucy and Lot A to an iron pipe found at the line of land now or formerly of Neila J. Arnold; thence N 77° 34' 31" E, a distance of 65.49 feet along line of land now or formerly of Neila J. Arnold to an iron rod found at the line of land now or formerly of Frances M. Driscoll, 1985 Rev. Trust; thence S 21° 38' 07" E, a distance of 49.98 feet along line of land now or formerly of Frances M. Driscoll, 1985 Rev. Trust, to the granite bound at the point of beginning.

Containing 0.07 acres, more or less,

with the right and easement to use, maintain, repair and replace the septic system currently located in whole or in part on Lot #A as shown said Plan of Land for James C. Lucy, recorded in the York County Registry of Deeds at Plan Book 239, Page 25.

and

a right of way and easement, in common with others, for ingress and egress for pedestrian and vehicle traffic and for the installation of utilities over the existing road as shown said Plan of Land for James C. Lucy, recorded in the York County Registry of Deeds at Plan Book 239, Page 25.

QUITCLAIM DEED

We, **Miriam Habert and Nicholas G. Jaques**, spouses married to each other, of PO Box 327, Bartlett, New Hampshire 03812 ("Grantors");

For consideration paid of ONE DOLLAR (\$1.00),

Grant to **Miriam A. Habert and Nicholas G. Jaques, as Trustees of PEPPKPM-1 Realty Trust** (u/d/t dated December 11, 2017 and recorded with the York County Registry of Deeds herewith), with a mailing address of PO Box 186, Bartlett, New Hampshire 03812. ("Grantees");

With **QUITCLAIM COVENANTS**,

A certain lot or parcel of land, including the buildings thereon located on the northerly side of Pepperrell Road, but not on the road, in the Town of Kittery Point, County of York and State of Maine. The parcel is shown as Lot #B on Plan of Land for James C. Lucy and recorded in the York County Registry of Deeds at Plan Book 239, Page 25 and is more particularly described as below:

Beginning at a granite bound found at the south-west corner of land now or formerly of Frances M. Driscoll, 1985 Rev. Trust; thence S 46° 53' 31 11 W, a distance of 18.64 feet along line of land now or formerly of James C. Lucy and Lot A to a rebar; thence N 81° 38' 46 11 W, a distance of 48.73 feet along line of and now or formerly of James C. Lucy to a rebar; thence N 51° 30' 09 11 W, a distance of 23.27 feet along line of land now or formerly of James C. Lucy and Lot A to a rebar; thence N 05° 42' 36 11 W, a distance of 23.66 feet along line of land now or formerly of James C. Lucy and Lot A to an iron pipe found at the line of land now or formerly of Neila J. Arnold; thence N 77° 34' 31 11 E, a distance of 65.49 feet along line of land now or formerly of Neila J. Arnold to an iron rod found at the line of land now or formerly of Frances M. Driscoll, 1985 Rev. Trust; thence S 21° 03' 07 11 E, a distance of 49.98 feet along line of land now or formerly of Frances M. Driscoll, 1985 Rev. Trust, to the granite bound at the point of beginning.

Containing 0.07 acres, more or less.

No R E Transfer Tax Paid

i 30A Habert

The herein described premises are conveyed with the right and easement to use, maintain, repair and replace the septic system currently located in whole or in part on Lot #A as shown said Plan of Land for James C. Lucy, recorded in the York County Registry of Deeds at Plan Book 239, Page 25, and a right of way and easement, in common with others, for ingress and egress for pedestrian and vehicle traffic and for the installation of utilities over the existing road as shown said Plan of Land for James C. Lucy, recorded in the York County Registry of Deeds at Plan Book 239, Page 25.

For title see Deed of Bank of New England dated November 15, 2013 and recorded with the York County Registry of Deeds at Book 16735, Page 644.

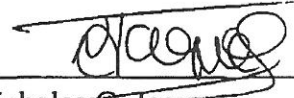
This is a non-contractual transfer and no transfer tax is being paid pursuant to Title 36 MRSA §4641-C-15.

SIGNATURES ON FOLLOWING PAGE

Witness our hands and seals this 11th day of December, 2017.



Miriam Habert



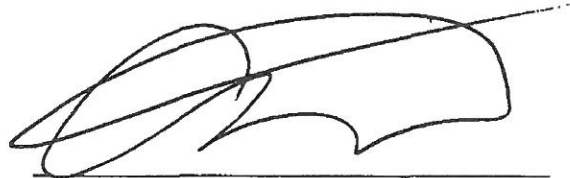
Nicholas G. Jaques

STATE OF NEW HAMPSHIRE

County: Carroll

On this 11th day of December, 2017 before me, the undersigned notary public, personally appeared Miriam Habert and Nicholas G. Jaques, proved to me through satisfactory evidence of identification, which was NH Driver's License, or Other _____, to be the persons whose names are signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purpose.





Notary Public
My Commission Expires:



BK 16755 PGS 972 - 974
INSTR # 2013061715
RECEIVED YORK SS

12/27/2013 02:29:06 PM
DEBRA ANDERSON
REGISTER OF DEEDS

QUITCLAIM DEED WITH COVENANT

BANK OF NEW ENGLAND, a New Hampshire banking corporation with a mailing address of 31 Pelham Rd., Salem, NH 03079, for consideration paid, grants to **GEORGE J. NAZZARO**, with a mailing address 5417 Springview Drive, Fayetteville, NY 13066, with Quitclaim Covenants, the real property, together with any improvements thereon, commonly known as 79 Pepperrell Road, Kittery Point, Maine (the "Property"), more particularly bounded and described on Exhibit A hereto.

The premises are conveyed subject to the following items:

- a. Any and all municipal, state, or federal laws, regulations, and ordinances including, without limitation, permits and approvals heretofore issued by any federal, state, or municipal government authority (compliance with, application for the transfer of any such permits, or approvals shall be the sole responsibility of the Purchaser).
- b. Any and all encumbrances and easements of record and any governmentally imposed or required zoning, subdivision, environmental, and other land use restrictions.
- c. Any condition which a physical examination or adequate survey of the property might reveal.
- d. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by a law, and which may or may not be shown by the public records
- e. The rights of tenants and persons in possession, if any.
- f. All outstanding municipal fees and charges, including water and sewer and municipal taxes, including those which constitute liens encumbering the mortgaged property.
- g. Any and all conditions shown on any recorded plans of all or a portion of the property.
- h. **SUBJECT TO** the right and easement for the benefit of Lot #B (commonly referred to as 81 Pepperrell Road) (as shown on the Plan referenced below) to use, maintain, repair and replace the septic system currently located in whole or in part on Lot #A (commonly known 79 Pepperrell Road) as shown said Plan of Land for James C. Lucy, recorded in the York County Registry of Deeds at Plan Book 239, Page 25.
- i. **FURTHER SUBJECT TO** a right of way and easement, in common with others, for ingress and egress for pedestrian and vehicle traffic and for the installation of utilities for the benefit of the owner of Lot #B (81 Pepperrell Road) over the existing road as shown said Plan of Land for James C. Lucy, recorded in the York County Registry of Deeds at Plan Book 239, Page 25.

Maine R.E Transfer Tax Paid

Signature Page follows

IN WITNESS WHEREOF, Bank of New England has caused this instrument to be signed by its undersigned officer, duly authorized, this 23 day of December, 2013.

BANK OF NEW ENGLAND



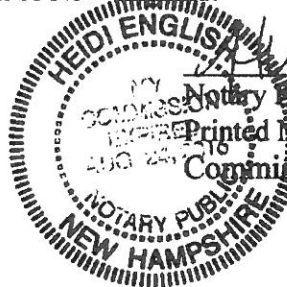
By: Anthony J. DeLuca
Its: Real Estate Officer

STATE OF NEW HAMPSHIRE

COUNTY OF ROCKINGHAM,ss

December 23, 2013

Personally appeared the above-named Anthony J. DeLuca, Real Estate Officer of Bank of New England, and acknowledged before me the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of Bank of New England.



Heidi English
Notary Public
Printed Name: Heidi English
Commission Expires: 8/24/16

EXHIBIT A

A certain lot or parcel of land, including the buildings thereon located on the north side of Pepperrell Road in the Town of Kittery Point, County of York and State of Maine. The parcel is shown as Lot #A on Plan of Land for James C. Lucy, recorded in the York County Registry of Deeds at Plan Book 239, Page 25 and is more particularly described below:

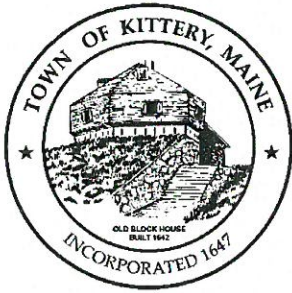
Beginning at a spike found at apparent northerly sideline of Pepperrell Road and at the south-west corner now or formerly of Laurence and Jane Levine; thence N 72° 38' 57" W, a distance of 10.00 feet along the apparent northerly sideline of Pepperrell Road to a point; thence N 83° 26' 47" W, a distance of 50.03 feet along the apparent northerly sideline of Pepperrell Road to an iron pipe found at the south-east corner of land now or formerly of Samuel Seabury Reid; thence N 01° 43' 14" W, a distance of 264.17 feet along line of land now or formerly of Samuel Seabury Reid, to an iron pipe at the land now or formerly of Neila J. Arnold; thence N 63° 55' 30" F a distance of 67.76 feet along line of land now or formerly of Neila J. Arnold, to an iron pipe at the north-west corner of Lot 23, Map 26; thence S 05° 42' 36" E, a distance of 23.66 feet along line of land now or formerly of James Lucy and Lot B to a rebar; thence S 51° 30' 09" E, a distance of 23.27 feet along line of land now or formerly of James Lucy and Lot B to a rebar; thence S 81° 38' 46" E, a distance of 48.73 feet along line of land now or formerly of James Lucy and Lot B to a rebar; thence N 46° 53' 31" E, a distance of 18.64 feet along line of land now or formerly of James Lucy and Lot B to a granite bound at line of land now or formerly of Frances M. Driscoll, 1985 Rev. Trust; thence N 81° 54' 35" E, a distance of 115.60 feet along line of land now or formerly of Frances M. Driscoll, 1985 Rev. Trust, to a granite bound marked with a "P"; thence S 01° 43' 46" E, a distance of 51.55 feet along line of land now or formerly of Pepperrell Family Association Corporation to an iron pipe found at the north-east corner of land now or formerly of Brian P. Glynn; thence S 88° 13' 53" W, a distance of 126.18 feet along line of land now or formerly of Glynn and land of Levine to a point; thence S 10° 00' 44" W, a distance of 105.22 feet along line of land now or formerly of James C. Lucy to an iron rod found; thence S 22° 54' 17" W, a distance of 125.23 feet along line of land now or formerly of James C. Lucy to the spike at the point of beginning.

Containing 0.82 acres, more or less.

SUBJECT TO the right and easement for the benefit of Lot #B to use, maintain, repair and replace the septic system currently located in whole or in part on Lot #A as shown said Plan of Land for James C. Lucy, recorded in the York County Registry of Deeds at Plan Book 239, Page 25.

FURTHER SUBJECT TO a right of way and easement, in common with others, for ingress and egress for pedestrian and vehicle traffic and for the installation of utilities for the benefit of the owner of Lot #B over the existing road as shown said Plan of Land for James C. Lucy, recorded in the York County Registry of Deeds at Plan Book 239, Page 25.

3P
Sentinel Title Services, Inc
681 Wallis Road
Rye, New Hampshire 03870



PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT

BOA Meeting Date: August 25, 2020

Item #: MVR2020-04

STAFF REPORT – 79 Pepperrell Road – MISCELLANEOUS VARIATION REQUEST

Project Name: 79 Pepperrell Road

Applicant: George J. Nazzaro

Owner: George J. Nazzaro

Proposed Development: Lot Line Adjustment

Requests: Miscellaneous Variation Request to approve a non-conforming lot line adjustment per § 16.6.4.C(1) and §16.7.3.5.D.(1)(b).

Site Addresses: 79 Pepperrell Road

Map & Lot Numbers: M 26 L 22



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 following is a permitted in the Residential – Kittery Point Village (R-KPV) Zone: (1) Dwellings, excluding mobile homes, in a single-family, duplex, or multiunit residential configuration with not more than four units per building. The proposed use is permitted by right.

Staff Recommendation: APPROVAL of miscellaneous variation request.

District Standards:

Residential – Kittery Point Village (R-KPV) Zone			
Minimum Road Frontage	150 feet*	Front Yard Setback (min.)	40 feet
Lot Size (min.)	40,000 sf	Rear Yard Setback (min.)	15 feet
Side Yard Setback (min.)	15 feet		

* Minimum street frontage is 150 feet; however, the required minimum street frontage for a new lot may be less than 150 feet if the established pattern of street frontage in the immediate area of the lot as determined below is less than 150 feet per lot.

The required minimum street frontage in this case is the average of the street frontage of existing developed residential lots that are located on the same street and within 500 feet of the parcel, but in no case less than 100 feet.

Current Use: Dwelling unit

Surrounding Land Uses:

- North: Residential – Kittery Point Village (R-KPV) – Dwelling Unit
- South: Residential – Kittery Point Village (R-KPV) – Dwelling Unit
- East: Residential – Kittery Point Village (R-KPV) – Dwelling Unit
- West: Residential – Kittery Point Village (R-KPV) – Dwelling Unit

Future Land Use:

The subject property is located within the “Limited Growth” area on the future land use map which is defined as areas that could accommodate a minimal amount of growth. Furthermore, the subject property is located within the “Neighborhood Conservation Areas” which is defined as areas that may have infill potential, but for the most part will retain a similar character in the future.

Site Description:

The subject property consists of 0.9 acres, or 39,204 square feet, boarded to the south by Pepperrell Road. The lot is legally non-conforming for minimum lot size and for minimum land area per dwelling unit.

History of the Property:

The property contains a single-family dwelling unit. The parcel adjacent to the property, Tax Map

26, Lot 23, is also a single-family residence with their septic system located on the property of 79 Pepperrell Road. This is allowed via a deed restriction.

Description of the Issue:

The property at 79 Pepperrell Road currently houses the septic system from an adjacent property. That septic system belongs to 81 Pepperrell Road (Map 26, Lot 23). This is allowed through deed. The lot line adjustment would place the septic system entirely on the property of 81 Pepperrell Road. This would increase the non-conformity of the lot at 79 Pepperrell Road, but would decrease the non-conformity of 81 Pepperrell Road (0.05 acres or 2,178 square feet currently) and would also alleviate the issue of the septic system being on another property.

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 Residential – Kittery Point Village 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 use would not have a negative effect on property values in the area.

- (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;*

There is no proposed increase in the amount of sewage, refuse, or other effluent.

- (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 proposed use would not affect off-street parking

- (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.

- (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 current 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 request filed here, the proposed use appear to conform to Title 16.8 and 16.9.

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

OBITUARIES & NEWS

Rise in limb-threatening blood clots during COVID-19 crisis

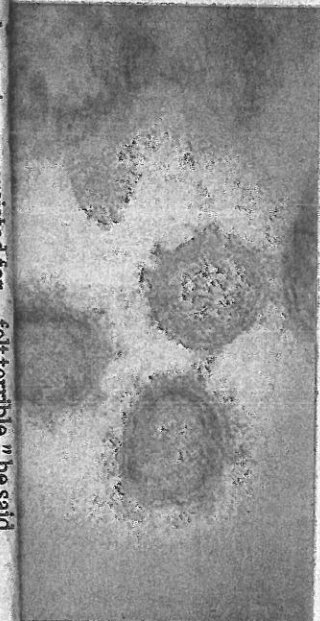
By Mario Ariza
Sun Sentinel

FORT LAUDERDALE, Fla. — Health experts are now encountering a rare and terrifying COVID-19 complication: plug-like blood clots in the limbs of coronavirus victims that strangle circulation.

And that means you could be more information about right foot.

the man who lost his leg, and data is scarce on amputations in Florida since the pandemic started. A spokesman for Florida's Agency for Health Care Administration, which keeps track of amputated limbs, says they don't expect to have clear statistics about amputations until April next year because of the way that

Florida's Agency for Health Care Administration, which keeps track of amputated limbs, says they don't expect to have clear statistics about amputations until April next year because of the way that



felt terrible," he said. So Guerrero checked himself into the emergency room at Broward Health, and that's

when medical professionals told him he was in danger of losing his leg.

"There was no blood getting into his foot," said Abdallah, who was Guerrero's vascular surgeon. He and his medical partner, both vascular surgeons with Broward Health, have seen at

Abdallah told Guerrero they were going to have to go in and bust the clots by hand. "At this point he didn't have much to lose. His limb was going to go if we left it alone, and if we intervened there was a possibility he'd keep it," Abdallah said.

What the vascular surgeon found inside the arteries of Guerrero's leg surprised him. "It was like a plug almost," Abdallah said of the hard, black clots he removed by hand. "It was pretty extensive."

Dr. Jorge Rey, chief of

vascular surgery at the University of Miami School of Medicine, said the vascular surgeons at his hospital network have treated 20 patients with symptoms similar to Guerrero's.

Rey said doctors can often save the arms and legs of younger people, but he said pre-existing conditions, such as diabetes or heart disease. At least two of the 26 individuals were otherwise healthy people, and data on pre-existing conditions for the other 24 was not immediately available.

"What is the molecular mechanism? No one knows yet," Rey said. Rey notes that he's found no evidence of virus in people's blood when they get the clot, meaning that the clots are likely triggered by the human immune system itself.

LEGAL NOTICE

TOWN OF KITTEERY - BOARD OF APPEALS

Meeting Location: Kittery Community Center, 120 Rogers Road, Kittery
Tuesday, August 25, 2020 - 6:30 p.m.

Pam Edwards, tenant, 99 State Road, seeking an Administrative Appeal per LUDC Section 16.6.3, Appeal of Code Enforcement Officer decision to deny a sign permit.
Nicholas Mercier, owner, 134 Whipple Road, seeking a variance per Town Code Section 16.6.4.B to expand a non-conforming retaining wall in the Residential - Urban (R-U) and Shoreland Overlay (OZ-SL) zones for the purpose of controlling erosion.
George Mazzaro, owner, 79 Peppercell Road, requesting a Miscellaneous Variation per Town Code Section 16.6.4.C and 16.7.3.5.D(b) to adjust the boundary line of a non-conforming lot of record.

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.

PA-004688972

Legal Notice

The Greenland Supervisors of the Checklist will be in session on Thursday 08.27.2020 from 7 p.m. to 7:30 p.m. at the Town Hall. The purpose of this session is to make corrections and update the checklist in preparation for the NH State Primary Election on Tuesday 09.08.2020. Residents who are not currently on the checklist may be register at that time. No further changes to the checklist may be made until after the election once the Supervisors have approved the additions made at that meeting. Due to COVID-19, appropriate forms will be available and a drop box at the door of the Town Hall for completion and submission. Please ring the doorbell on arrival as the building is closed to the public. Those forms may be requested from the Town Clerk and submitted prior to the session. The Supervisors will act on all such requests during the course of the session. CHANGE IN PARTY AFFILIATION FORM

PA-202088972

MEETING MINUTES

1. CALL TO ORDER; INTRODUCTORY; ROLL CALL

Chair Timko 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, Jeff Brake, Louis Leontakianakos, April Timko

Board Members Absent: Barry Fitzpatrick, Suzanne Jones

Staff Present: Craig Alfis, Code Enforcement Officer; David Evans, Assistant Code Enforcement Officer

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

- Chair Timko advised the appellant that there are only five Board members present and in order for an appeal to pass, four like votes are required. Chair Timko gave the appellant the opportunity to postpone the appeal to a later date. The appellant declined.
- Chair Timko proposed that Item a. under Public Hearings be changed to indicate that it is a Miscellaneous Variation Request rather than an Administrative Appeal and that both Code Enforcement and the applicant agree to the change. Discussion ensued and several questions were asked of Mr. Alfis.

Motion by Chair Timko to change Item A. under Public Hearings to indicate that it is a Miscellaneous Variation Request rather than an Administrative Appeal. Seconded by Vice Chair Leontakianakos. Motion passed 4-1-0 by roll call vote [Yes: Denault, Brake, Leontakianakos, Timko; No: Gardner; Abstain: --]

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

- a. David Arnold, Owner, 95 Old Dennett Road in the Residential Suburban (R-S) zone, requesting a Miscellaneous Variation Request in accordance with Town of Kittery Code 16.6.4.C.1**

- Chair Timko stated that the public hearing was noticed on Saturday February 29, 2019 and confirmed the Board has the authority to hear the request. Mr. Alfis presented the staff

report. Mr. David Arnold, applicant, made a presentation on their proposed development. Mr. Arnold read three letters from abutters in support of the proposed garage. The Board had several questions for Mr. Arnold. Three members of the public spoke in support of the proposal. Chair Timko closed the public hearing at 7:03 PM. The Board entered discussion.

Motion by Mr. Gardner to approve the Miscellaneous Variation Request. Seconded by Mr. Brake. Motion passed 5-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Leontakianakos, Timko; No: --; Abstain: --]

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

Chair Timko and Vice Chair Leontakianakos read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) The Board found that David Arnold and his wife, owners of 95 Old Dennett Road in the Residential Suburban zone submitted a Miscellaneous Variation Request related to a non-conforming lot of record. (2) The request is to build a garage that would meet a side yard setback of 10 feet in relation to a right of way for a private street that runs along the property line. (3) The Board heard a presentation from David Arnold, heard letters of support from three neighbors along Old Dennett Road and heard support from three neighbors in person in support. (4) The Board heard no opposition to the request. (5) The Board considered the Basis for Decision set forth in Section 16.6.6 including the Factors for Consideration set forth in Section 16.6.6.B. (6) 95 Old Dennett Road is an existing non-conforming lot. (7) The 10 foot side yard setback would be allowed based on Section 16.7.3.3.B(3)(b) which allows for ½ the side yard setback in zones other than the Village. (8) The square footage of the proposed garage does not exceed maximum set forth in Section 16.7.3.3.B(3)(b).

Motion to accept the Findings of Fact made by Vice Chair Leontakianakos. Seconded by Mr. Denault. Motion passed 5-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Leontakianakos, Timko; No: --; Abstain: --]

Conclusions of Law: (1) The Board of Appeals approved a Miscellaneous Variation Request in accordance with Section 16.6.4.C(1) for a non-conforming lot of record in accordance with Section 16.7.3.5.

Motion to accept the Conclusions of Law made by Vice Chair Leontakianakos. Seconded by Mr. Brake. Motion passed 5-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Leontakianakos, Timko; No: --; Abstain: --]

6. UNFINISHED BUSINESS

7. NEW BUSINESS

8. ACCEPTANCE OF PREVIOUS MINUTES

- January 14, 2020
- January 28, 2020

Motion by Chair Timko to approve the meeting minutes of January 14, 2020 and January 28, 2020. Second by Vice Chair Leontakianakos. Motion passed 4-0-1 by voice vote [Aye: Denault, Brake, Leontakianakos, Timko; Nay: --; Abstain: Gardner]

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

- Mr. Alfis gave an update on the Major Home Occupation at 120 State Road, in response to the letter sent by Mr. Ed Wilson dated March 4, 2020.
- Mr. Alfis noted that there are no items on the agenda for the March 26th meeting.
- Mr. Gardner discussed potential changes that could be made to the way the Board handles Findings of Fact. Specifically, as long as the Findings of Fact are in written form they are acceptable and that the staff report could be adopted as Findings of Fact. Discussion ensued and seeing no objections Chair Timko stated the Board will try this method in the future.

10. ADJOURNMENT

Motion by Vice Chair Leontakianakos to adjourn. Second by Mr. Brake. Motion passed 5-0-0 by voice vote [Aye: Gardner, Denault, Brake, Leontakianakos, Timko; Nay: --; Abstain: --]

The Kittery Board of Appeals meeting of March 10, 2020 adjourned at 7:22 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>.

MEETING MINUTES

1. CALL TO ORDER; INTRODUCTORY; ROLL CALL

Chair Timko called the meeting to order at 6:31 p.m. and asked that the roll be called.

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

Board Members Absent: None

Staff Present: Craig Alfis, Code Enforcement Officer

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

- **Bruce Huntress, Owner, 6 Creek Crossing in the Residential Rural (R-RL) zone, requesting a Miscellaneous Variation to expand a non-conforming structure in accordance with Town of Kittery Code 16.6.4.C(1) and 16.7.3.3.B(1).**
- Chair Timko stated that the public hearing was noticed on Wednesday July 20, 2020 and confirmed the Board has the authority to hear the request. Mr. Alfis presented the staff report. Mr. Bruce Huntress, applicant, made a presentation on their proposed development. The Board had several questions for Mr. Huntress. No members of the public attended. Chair Timko closed the public hearing at 6:55 PM. The Board entered discussion.

Motion by Vice Chair Leontakianakos to approve the Miscellaneous Variation Request with the condition that the new addition be no more non-conforming than the existing propane tank at its closest point to the wetland and that the propane tank will be removed. Seconded by Ms. Jones. Motion passed 7-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Fitzpatrick, Jones, Leontakianakos, Timko; No: --; Abstain: --]

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

Chair Timko and Vice Chair Leontakianakos read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) The property consists of a 61,420 square foot lot located off Haley Road. (2) The property is a conforming lot of record containing a single-family dwelling unit. (3) The existing building is non-conforming as it encroaches on both the 75-foot Stream Protection Overlay zone and a wetland setback. (4) We found that the applicant is seeking to build a 400 square foot addition on the Southern side of the existing house within the 100-foot setback required for a wetland greater than 1 acre in size. (5) The existing house sits 39.4 feet from the same wetland. (6) We also found that on that same property there is an aging 500-gallon propane tank, roughly 30 feet from the wetland and found that the propane tank is considered to be a structure. (7) As the propane tank is closer to the wetland than the existing structure, we found that the addition would be no more non-conforming than the propane tank given the condition in the motion. (8) We have found that the applicant would remove the propane tank as part of the project. (9) All of the 16 points in the staff report were met.

Motion to accept the Findings of Fact made by Ms. Jones. Seconded by Mr. Denault. Motion passed 7-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Fitzpatrick, Jones, Leontakianakos, Timko; No: --; Abstain: --]

Conclusions of Law: (1) The meeting was properly noticed in the Portsmouth Herald. (2) The Board had the authority to hear the request. (3) The Basis of Decision set forth in Section 16.6.6 was considered. (4) The approval of the request with the conditions would make the property no more non-conforming than it currently is.

Motion to accept the Conclusions of Law made by Vice Chair Leontakianakos. Seconded by Ms. Jones. Motion passed 7-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Fitzpatrick, Jones, Leontakianakos, Timko; No: --; Abstain: --]

6. UNFINISHED BUSINESS

7. NEW BUSINESS

- Mr. Fitzpatrick requested that the Town place an American flag in the Star Theater for future meetings.

8. ACCEPTANCE OF PREVIOUS MINUTES

- March 10, 2020

- The Board chose to postpone the acceptance of the minutes to the next meeting.

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

- Mr. Alfis relayed to the Board that the application has been transferred to the Viewpoint system to allow for applicants to apply without having to come to the Town offices.
- Ms. Timko discussed the various options that the Board has for holding meetings during the COVID-19 pandemic. The Board unanimously agreed that they were comfortable with holding future meetings at the Kittery Community Center.
- Mr. Fitzpatrick voiced concern over adapting of Town Codes to enable the development of projects along Dennett Road and behind the Water District and relayed that he has had residents approach him with similar concerns.

10. ADJOURNMENT

Motion by Mr. Gardner to adjourn. Second by Ms. Jones. Motion passed 7-0-0 by voice vote [Aye: Gardner, Denault, Brake, Fitzpatrick, Jones, Leontakianakos, Timko; Nay: --; Abstain: --]

The Kittery Board of Appeals meeting of March 10, 2020 adjourned at 7:27 p.m.

Submitted by Craig Alfis, Code Enforcement Officer

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