



Town of Kittery
200 Rogers Road, Kittery, ME 03904

Board of Appeals Meeting Agenda
Meeting Location: Kittery Community Center
Tuesday, September 8, 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**
 - Timothy Phoenix representing Tamara Bourque, tenant, 518 US Route 1 Unit 4, seeking an administrative appeal to a Code Enforcement Officer decision and a Special Exception Use request to operate a dog grooming facility in the Mixed Use (MU) zone.
6. **Unfinished Business**
7. **New Business**
8. **Acceptance of Previous Minutes**
 - August 25, 2020
9. **Board Member or CEO Issues or Comment**
10. **Adjournment**

Board of Appeals Application

BOA-20-5

Status: Active

Submitted: Aug 18, 2020

Applicant



R. Timothy Phoenix

603-436-0666

tphoenix@hpgrlaw.com

Location

518 U.S. Route # 1

4

Kittery, ME 03904

Property Owner Information

Full Legal Name(s)

Aviva, LLC

Mailing Address

10 Stoneridge Way

State

ME

Phone Number

Unknown

City

Kittery

Zip Code

03904

Email Address

Unknown

Applicant if different from Property Owner

Full Legal Name (s)

Tamara Bourque

Mailing Address

326 Haley Road

State

ME

Phone Number

(207) 240-6351

City

Kittery

Zip Code

03905

Email Address

tlt999@yahoo.com

Property Information

Street Address

518 US Route 1, Unit 4

Tax Map

67

Base Zone(s)

Mixed use

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

No

Lot size in acreage

5 acres

Lot Number

2

Overlay Zone(s)

N/A

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

true

A Variance Request

A Miscellaneous Variation Request

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A Special Exception Use Request

true

Administrative Appeal Pertinent Town Codes

Title

Chapter and Section

16

2.2

Title

Chapter and Section

--

--

Title

Chapter and Section

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Administrative Appeal Affirmations

Please check each box

May hear and decide on an Administrative Appeal within the limitations set forth in Title 16, Section 6.4.A, Administrative Decision Appeal.

true

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 of 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.

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 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.

true

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

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

true

Local appeals process must be exercised and exhausted before the Superior Court will hear these cases.

true

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

true

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 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 of time; and 4) other persuasive powers of the Town.

true

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?

true

Administrative Appeal Statements

The decision/lack of action I object to is (attach any formal documents under Attachments)

August 3, 2020 Administrative Decision issued by Assistant Code Enforcement Officer Dave Evans

What relief is requested and why should the appeal be granted?

See attached Memorandum

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

N/A

Special Exception Use Request

Title	Chapter and Section
16	3.2.13C(2)

Title	Chapter and Section
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Special Exception Use Request Affirmations

Please check all boxes to confirm

Use request must: 1. Not have an unreasonably adverse effect on the health, safety or general welfare of the residents of the area or the general public; 2. Not significantly devalue abutting property or property across a public or private way; 3. Not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones; 4. Not have an adverse impact on spawning grounds, fish, aquatic life, or bird or other wildlife habitats; 5. Be in harmony with and promote the general purposes and intent of this Code; 6. Adequately provide for the disposal of all wastewater; 7. Conserve shore cover and visual, as well as actual, points of access to inland waters; 8. Protect archaeological and historic resources as designated in the Comprehensive Plan; and, 9. Avoid problems associated with floodplain development and use.

true

Board may establish additional conditions, including, but not limited to, the following: 1. Front, side or rear yards in excess of minimum requirements; 2. Modifications of the exterior features of buildings or other structures; 3. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements; 4. Regulation of design of access drives, sidewalks and other traffic features; 5. Off-street parking and loading spaces in excess of the minimum requirements; or, 6. Restrictions on hours of operation.

Proposed use may; 1. Not have an adverse effect. In making this determination, the Board shall take into consideration the potential effect of the development on the environment from air, water or soil pollution; noise; traffic congestion; soil erosion; the burden on sewage disposal or water supply systems or other municipal facilities, services or public ways; and any other relevant factors.

true

true

Proposed use may; 2. Not significantly devalue abutting properties. In making its determination, the Board shall take into consideration the type of structure proposed; the topography of the area; the market value of surrounding real estate; the availability of utilities and transportation; the availability of schools and hospitals; traffic conditions; and any other relevant factors.

true

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

Proposed use may; 4. Be subject to such additional conditions as teh Board deems necessary.

true

true

I understand that the Board of Appeals may hear and decide a special exception use request within the limitations set forth in Title 16 Section(s) identified above.

true

I understand that the Board of Appeals will conduct this hearing De Novo (meaning the Board acts if it were considering the question for the first time, affording no deference to the preceding agency decisions; may receive new evidence and testimony consistent with this Town Code Title 16 and the Board rules; and, conduct additional hearings and receive additional evidence and testimony).

true

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 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 complaint heard.

true

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

true

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

true

Special Exception Use Request Statements

Describe the general nature of the request:

See attached Memorandum

Certification of Application

Applicant's Signature

true

Name of Applicant

R. Timothy Phoenix, Esquire, Counsel

Date

08/18/2020

Attachments (2)

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 18, 2020

PDF Formal Documentation

Aug 18, 2020

Timeline

Payment

Status: Paid August 18th 2020, 5:49 pm

Application Completeness Review

Status: Completed August 18th 2020, 5:53 pm

Assignee: Craig Alfis

BOA Decision Sent to Applicant

Status: In Progress

Assignee: Craig Alfis

Craig Alfis August 18th 2020, 5:55:01 pm

Hi Mr. Phoenix,

Your appeal will be heard at the September 8th meeting at 6:30 pm at the Star Theater in the Kittery Community Center located at 120 Rogers Road. Feel free to reach out with any questions.

Craig

MEMORANDUM

TO: Town of Kittery, Board of Appeals
FROM: R. Timothy Phoenix, Esquire
DATE: August 18, 2020
RE: Aviva, LLC, Owner
Tamara Bourque, Applicant
518 US Route 1 Unit 4, Tax Map 67/Lot 02
Mixed-Use (MU) Zone

Dear Chair Timpko and Board of Appeals Members:

On behalf of Tamara Bourque (“Bourque” or “Applicant”), we are pleased to submit this memorandum and attached exhibits in support of Zoning Relief to be considered by the Board of Appeals (“BOA”) at its September 8, 2020 meeting.

I. Exhibits

- A. Administrative Decision issued by Assistant Code Enforcement Officer Dave Evans.
- B. Letter of Intent.
- C. Condominium Site Plans.
- D. Aerial and Site Photographs.
- E. Deed into present owner, Aviva, LLC.
- F. Kittery Tax Map 67.

II. Introduction

518 US Route 1 is a 5 acre lot in Kittery’s Mixed-Use (MU) Zone. Upon the lot is Landmark Hill Condominium – A Mixed Residential and Commercial Use Condominium. The subject of this application is Unit 4, located in Building 1 closest to Route One, (the “Property”). Owner Aviva, LLC and Applicant Tamara Bourque have executed a Letter of Intent (“LOI”) regarding a lease agreement for the space. Ms. Bourque desires to open a dog grooming facility within Unit 4. Upon executing the LOI, Ms. Bourque timely filed a Business Change of Use Permit which was subsequently denied by the Code Enforcement Officer (“CEO”) because he deemed the proposed use “dog grooming” was not specifically identified as a permitted use. Bourque contends that her proposed use properly falls within the Kittery Zoning Ordinance (“KZO”) definition of “commercial kennel” and/or it is permitted as a similar but less intensive use. Should the Board grant her Administrative Appeal and determine that her proposed use is

permitted by Special Exception, Ms. Bourque seeks a Special Exception and addresses the criteria herein.

III. Administrative Appeal

Pursuant to KZO §16.6.3, a decision of the Code Enforcement Officer may be appealed to the BOA as provided by KZO §16.6.4, which allows the BOA to hear additional evidence and testimony and either uphold, modify, or reverse the decision of the Code Enforcement Officer.

The Mixed-Use Zone (M-U) allows for a mix of office, service, limited residential and retail use and sets forth thirty-three uses permitted by right and eighteen permitted by special exception. In general, a use not identified as a permitted use is prohibited by KZO §16.3.1.6. However, this does not mean that a proposed use must be found in use requirements of the KZO as a single line item. Instead, one must look at the list of uses, their corresponding definitions, the intent of the ordinance and historical application to determine whether a proposed use is properly included within one of the permitted or Special Exception uses.

Ms. Bourque's intended use is permitted as a Special Exception use. A "commercial kennel" is defined under Section 16.2.2 as "[a] commercial operation that: 1) provides food and shelter and care of eight or more animals for purposes not primarily related to medical care; or 2) has at any one time eight or more animals for the purpose of commercial breeding."

Ms. Bourque's intended use qualifies as a commercial kennel under the first prong of the definition. While on the Property, Ms. Bourque will provide the dogs with food in the form of treats and dog snacks. She will provide the dogs with water and provide them shelter during the duration of their appointment. She will provide personal care in the form of baths, hair/nail clipping, and ear cleaning which is not primarily related to medical care. Ms. Bourque does not intend to have eight or more dogs at the facility at a given time, however, the ordinance does not specify that "eight or more" refers to a specific time period. She will, for instance, have more than eight dogs per week and intends to serve approximately 5-7 clients each day. This makes Ms. Bourque's use less intensive than the requirements within the code for a typical kennel, but it does not change the fact that her proposed use falls within the KZO intention of uses permitted under the category "commercial kennel" as a related but less intensive use. If a certain intensity of "dog" service is permitted, it follows that a less intensive use is also permitted. Perhaps most importantly, Ms. Bourque will also be required to obtain a state kennel license to operate her dog

grooming facility as required by Animal Welfare in the State of Maine. Therefore, the State of Maine considers Ms. Bourque's use as the operation of a form of kennel. As such her use meets the Town of Kittery definition of a "kennel."

The Code Enforcement Office has previously determined that Canine Solutions Dog Training Services, offering obedience classes, workshops, dog grooming and minimal boarding to enrollees, qualified as a commercial kennel and referred the Applicant to the BOA for a special exception, which was subsequently and properly approved. It is unknown why the same result was not here found by the CEO; however, the same result should here apply. Canine Solutions operated across the street at 517 US Route 1, in a larger facility serving a greater number of dogs, but has since relocated. Bourque proposes a smaller facility offering only dog grooming to the general public, a less intensive use than proposed by Canine Solutions and subsequently approved by the Board of Appeals.

At the Canine Solutions, BOA Hearing then -CEO Markey explained that in evaluating the application for change in business use his office determined that his office did not think Canine Solutions qualified as an educational institution, but instead as a commercial kennel. (Kittery Board of Adjustment Meeting, December 8, 2015). CEO Markey noted that the KZO did not specifically call out dog daycares, dog training or dog grooming but correctly opined that the proposed use was included within the KZO definition of commercial kennel. We urge the BOA to analyze the instant application in the same manner and reverse the decision of the Code Enforcement Officer.

IV. Special Exception

If the BOA grants Bourque's Administrative Appeal and finds the proposed use is permitted by Special Exception in accordance with to § 16.6.4D we submit criteria set forth in §16.6.6 are met as follows:

§ 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.
- (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 provision of grooming services to 5-7 dogs during business hours will not prevent the orderly and reasonable use of any adjacent properties.
- (b) The use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located or of permitted or legally established uses in adjacent use zones – similarly, the proposed dog grooming business is comprised of one owner/employee attending to 5-7 dogs on any given working day and will not negatively affect other legally permitted uses on adjacent properties or in adjacent zones.
- (c) The safety, the health and the welfare of the Town will not be adversely affected by the proposed use or its location – the proposed dog grooming salon will not adversely affect health safety and welfare.
- (d) The use will be in harmony with and promote the general purposes and intent of this title – the intent of the M-U district is to provide for a mix of uses including office, retail, service, and residential. This small dog grooming business qualifies as a commercial kennel, permitted by Special Exception yet operates with minimal intensity with one owner/operator serving 5-7 dogs each working day.

B. 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 is located in a commercial condominium in a mixed use development among other commercial uses and less intensive than a full kennel and/or other approved “dog” services (Canine Solutions) and is therefore a suitable use for the zone and this location.
- (2) The conservation of property values and the encouragement of the most appropriate uses of land – the proposed use will not diminish property values and is an appropriate use of a commercial condominium in the M-U 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 – the proposed use will occur in a mixed use development on Route 1 serving 5-7 customers per day. Traffic currently enters the development from Route One and parks in a large parking lot behind the Route 1 facing structure.
- (4) The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use – the use will not result in increased demand for public or private services.

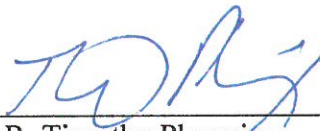
- (5) Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot – no materials used on site or produced on site will result in any such conditions.
- (6) Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise – the proposed use will not result in any such conditions.
- (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 – the proposed use will not negatively affect access to public parking or recreational facility parking.
- (8) The necessity for paved off-street parking – off-street parking is provided in the large parking lot behind the building facing Route One.
- (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 – the proposed use will occur in a code compliant commercial condominium.
- (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 – the proposed use will be contained within the commercial condominium unit and will not result in overcrowding of land or undue concentration of population.
- (11) Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof – the size of the condominium unit and parking area sufficiently support the proposed use.
- (12) Whether the proposed use will be adequately screened and buffered from contiguous properties – we respectfully submit the proposed use will be contained within the commercial condominium unit and no further screening is required.
- (13) The assurance of adequate landscaping, grading and provision for natural drainage – these elements will not be altered by undertaking the proposed use in the existing commercial condominium.
- (14) Whether the proposed use will provide for adequate pedestrian circulation – adequate circulation exists.
- (15) Whether the proposed use anticipates and eliminates potential nuisances created by its location – the proposed use will not result in any potential nuisances.
- (16) The satisfactory compliance with all applicable performance standard criteria contained in Chapters 16.8 (Design and Performance Standards for the Built Environment) and 16.9 (Design & Performance Standards for the Natural Environment) – Unit 4 is a previously constructed and approved unit in the approved Landmark Hill Condominium and parking is available in common with the other Condominium owners and tenants.

V. **Conclusion**

The proposed dog grooming use falls within the definition of commercial kennel and is therefore a use permitted by special exception. Applicant has further demonstrated that the proposed use complies fully with all elements of §16.6.6. Accordingly, Applicant respectfully requests that the BOA grant the Administrative Appeal, reverse the decision of the Code Enforcement Officer and grant the Special Exception.

Respectfully submitted,

Tamara Bourque



By: R. Timothy Phoenix
Hoefle, Phoenix, Gormley & Roberts, PLLC
127 Parrott Avenue
Portsmouth, NH 03801
(603) 436-0666

RTP/mfk
Encl.

cc: Tamara Bourque

Business Use Change Building Permit
BUC-20-9

Your Submission

Attachments

Code Department Review

Finance Review

Permit Fee

Code Department Final Approval

Town Planner Review and Approval

Permit Issuance

Rough Inspection

Final Inspection By Code Department

Certificate of Occupancy

Code Department Review

Stopped. This step was stopped on Aug 3, 2020 at 11:46am.

Review & determine other departments needing to review, as well as application completeness.



Tamara Bourque

Aug 1st 2020, 6:53pm

Thank you for your help



Dave

Aug 3rd 2020, 11:45am

The Kittery Code Enforcement Office reviewed your application to operate a dog grooming business at 518 U.S. Route 1, Unit 4. This location is located within the

Mixed-Use (MU) Zone for the Town of Kittery.

Your request is denied in accordance with Town Code § 16.3.2.13.B. Permitted Uses. The use of a dog grooming business is not listed as a permitted use for the zone. It is also not listed as a Special Exception Use in § 16.3.2.13.C. Furthermore, § 16.3.1.6 states, "Uses in all zones are defined in Article II of this chapter by zone as permitted or special exception uses. Any use not listed as a permitted or a special exception use is prohibited in the zone."

You may appeal this decision to the Kittery Board of Appeals within 30 days of the date of this letter in accordance to § 16.6.5. The application to appear before the Board of Appeals is found at <https://kitteryme.viewpointcloud.com/categories/1071/record-types/1006467> (<https://kitteryme.viewpointcloud.com/categories/1071/record-types/1006467>).

Message the reviewer

Send Message

Business Use Change Building Permit
BUC-20-9

Your Submission

Attachments

Code Department Review

Finance Review

Permit Fee

Code Department Final Approval

Town Planner Review and Approval

Permit Issuance

Rough Inspection

Final Inspection By Code Department

Certificate of Occupancy

Your submission

Submitted Aug 1, 2020 at 6:52pm

Contact Information

Tamara Bourque

Email address

tlt999@yahoo.com

Phone Number

2072406351

Mailing Address

326 Haley rd , Kittery Point , Me 03905

Location

518 U.S. Route # 1 , Unit 4
Kittery, ME 03904



Property Owner Information

Property Owner Name *

Michael Finneran

Property Owner Mailing Address * ⓘ

10 Stoneridge Way Kittery ME 03904

Business Owner Information

Business Owner Name *

Tamara Bourque

Business Owner Email Address *

Tlt999@yahoo.com

Business Owner Phone Number *

2072406351

Business Owner Mailing Address *

326 Haley rd Kittery Point ME 03905

Project Information

Current Use *

Vacant mixed use space

Other on site use(s) *

Mixed use

Business Name *

Happy Dogs Grooming Salon

Proposed Hours of Operation - i.e. Mon-Fri 9AM-5PM, Sat 9AM-4PM, etc. *

Tuesday-Saturday 730am-5pm

Please provide a brief narrative of the proposed project *

Take an open space and install a dog washing tub, non permanent half walls with a gate for safety, install GFI electrical outlets

Will there be any land or structural modifications made on the property? *

No

If YES was selected above, please describe those modifications in full detail. Construction design documents may be required.

--

Estimated Project Cost (fair market labor and materials) for structural modifications only made on the property: * ?

0

Number of people that will work, reside or visit the property during a typical weekday and weekend *

1 employee (owner) and 5-7 clients with dogs

Number of off-street parking spaces that will be provided *

Use of large parking lot behind building

If the property will be used for storage, what, how and where will it be stored? (Also place on site plan) *

None

Describe any foreseeable odor, smoke, gases, light, dust, vibrations or noise omitted beyond the property's boundaries *

None

Certification

I certify that, to the best of my knowledge, the information provided in the application is true and correct and I will not deviate from the plans submitted without notifying the Kittery Planning Department of any changes. *



I am the *

Applicant

Applicant/Contractor Name *

Tamara Bourque

Property Owner Name

Michael Finneran

Date *

08/01/2020



EXHIBIT B

14 Manchester Square, Suite 235
Portsmouth, NH 03801

June 1, 2020

Gerry O'Connell
Faulkner Commercial Group – KW Commercial
Gerry@oconnellre.com

RE: 518 US Route 1, Unit 4, Kittery, ME - Letter of Intent

Dear Gerry:

This letter sets forth the terms and conditions under which **Tamara Bourque** and/or assigns (hereinafter referred to as "Tenant") is willing to enter into a lease agreement with **AVIVA, LLC** (hereinafter referred to as "Landlord") for space at the above-referenced location.

Property Address: 518 US Route 1, Unit 4, Kittery, ME

Tenant: Tamara Bourque and/or assigns (LLC to be determined at a later date)

Landlord: AVIVA, LLC

Demised Premises: The demised premises shall be deemed to contain [REDACTED] of retail space.

Lease Term: [REDACTED]

Option Term: [REDACTED] options to renew

Lease Commencement Date: Upon Lease Signing.

Rent Commencement Date: The [REDACTED] of Tenant's Opening day of Business or [REDACTED].
Tenant shall be responsible for its prorated utilities at the start of the Lease Commencement Date.

Town Permit/Approval: Offer contingent on the town of Kittery zoning approval for intended use, to be determined prior to lease signing.

Tenant's Work: See attached Exhibit A for Tenant's Work.

Any and all modifications to the building by Tenant or Tenant's agent shall be submitted to Landlord for its approval prior to commencement of work. This consent shall not be unreasonably withheld. Tenant agrees that all work shall be completed in compliance with all applicable state and municipal building codes and ordinances.

Lease Rate: [REDACTED]

The above rent is quoted on a Modified Gross. Rent shall include Tenant's pro rata share of all operating expenses for this property, including real estate taxes, building repairs and maintenance, management, building insurance, parking lot maintenance, grounds maintenance, common area lighting and common area cleaning, etc

The rent does not include Tenant's premises electricity, HVAC, or water and sewer expense. Tenant shall be billed separately by Landlord on a 50/50 split for electricity and water/sewer. Tenant is also responsible for its premises' janitorial costs.

Option Lease Rate: [REDACTED] Annual increase at each option period

Use: Tenant will use the demised premises as a dog grooming salon.

Security Deposit: Upon full execution of a Lease Agreement, Tenant will deposit with Landlord the sum of one month's rent. This sum represents the security deposit due under the lease. Said deposit will be returned to Tenant at the end of the lease term, provided the premises are left in good repair, "broom clean," and provided Tenant has not been in default of lease. Interest will not be paid on said deposit.

Tenant Access: Tenant shall have 24 hour, 7 days a week, 365 days of the year, access to the electrical panel, without delay.

Signage: Tenant shall have signage access on pylon signage along Route One, half of the building signage above unit and on back common entrance door, if the Tenant so chooses. Signage will be at Tenant's sole expense; however, subject to the prior written approval of design and location by Landlord prior to installation and also subject to any standards in use at the property. Such approval shall not be unreasonably withheld or delayed.

Parking: Parking is available in-common with building tenants.

Brokerage Commission: Landlord's responsibility to Faulkner Commercial Group – KW Commercial and to be split on a 50/50 basis with The Boulos Company.

Assignment / Sublet: Tenant shall have the right to assign sublease or sublet space with written final approval from Landlord, approval not to be unreasonably withheld or delayed.

Zoning:

It is the responsibility of Tenant to determine all zoning information and secure all necessary or required permits and approvals for its proposed use of the subject premises. Landlord and The Boulos Company make no representations or warranties as to the suitability of, or the ability to obtain regulatory approval for, the subject premises for Tenant's intended use.

Lease Agreement:
Facsimiles/Emails:

Landlord agrees to forward its proposed lease to Tenant within five (5) days of the full execution of this Letter of Intent. In the event Tenant and Landlord have not executed a mutually agreeable lease within fifteen (15) days of Tenant's receipt of Landlord's lease, neither party is under any further obligation to the other.

Miscellaneous:

This Letter of Intent represents the preliminary understanding of the parties with respect to the proposed Lease. This letter is not intended to constitute a binding or enforceable contract nor does it constitute a legal obligation on either party. Further, the basic terms set forth are subject to both parties entering into a mutually agreeable written Lease agreement to be fully executed by both Landlord and Tenant.

Very truly yours,

Katherine Gemmecke
The Boulos Company

SEEN AND AGREED TO:

AVIVA, LLC, Landlord

DocuSigned by:

Michael Finneran

BDFF81288566547B

6/3/2020 | 8:13 PM CDT

By:

Its:

Date:

Tamara Bourque and/or Assigns, Tenant

DocuSigned by:

Tamara Bourque

TAMARA BOURQUE

6/5/2020

By:

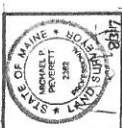
Its:

Date:

**Exhibit A:
Tenant's Work**

- Plumbing and installation of dog wash tub
- Installing temporary holding pens for dogs
- Installing desk and safety wall/gate
- Painting walls
- Electrical upgrades – GFI and possible added outlets
- Installation of washer/dryer

DS
MF



CONSULTANTS
 Michael Bircham
 Architect
 1000 Congress Street
 Portland, ME 04102
 (603) 877-8844
 www.michaelbircham.com

NO.	REVISIONS	DATE
1	ISSUE FOR PERMITS	08/20/18

RECORDED FOR
 MICHAEL BIRCHAM
 1000 CONGRESS STREET, PORTLAND, ME 04102

LANDMARK HILL CONDOMINIUM - A MIXED RESIDENTIAL
 AND COMMERCIAL USE CONDOMINIUM
 518 U.S. ROUTE 1 - TAX MAP 67, LOT 2
 KITTERY, YORK COUNTY, MAINE

DATE: AUGUST 3, 2018
 DRAWN BY: M.B.
 CHECKED BY: M.B.

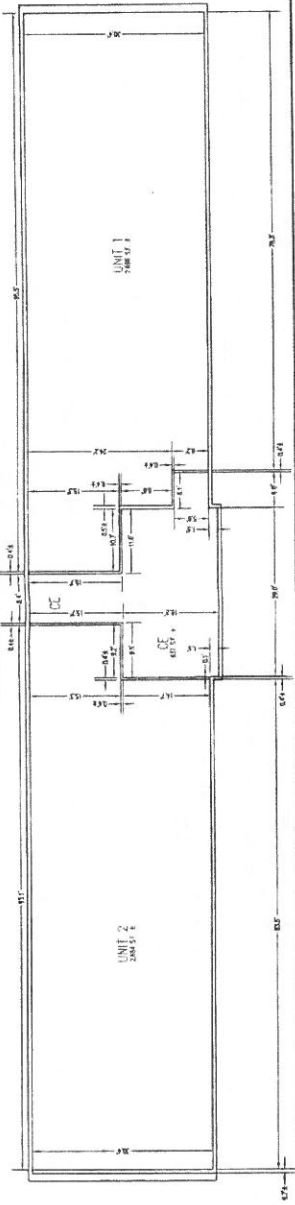
**BUILDING 1
 PLAN**

PROJECT NO. 18-26809
CP2

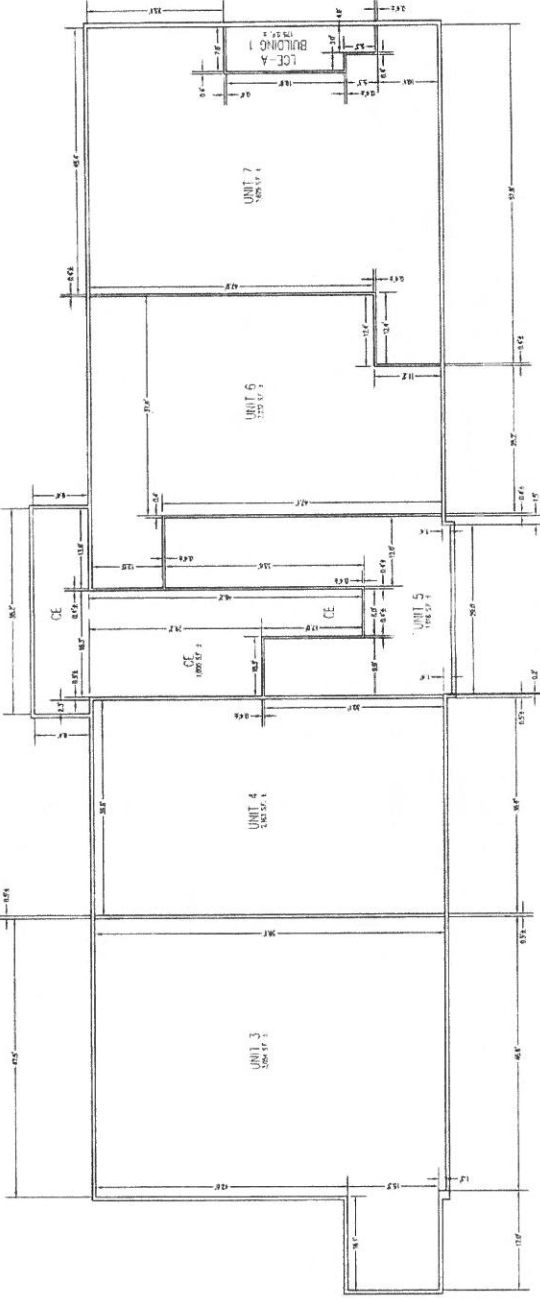
SHEET 2 OF 3
 PLAN DATE: 8/3/2018 8:58 AM

THIS IS A REGISTERED DESIGN
 AT 11:42 AM ON 08/20/18
 AT 11:42 AM ON 08/20/18
 REGISTER

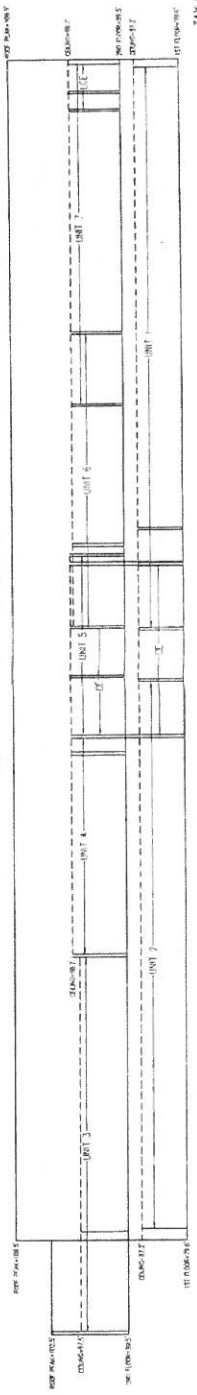
BUILDING 1 - 1ST FLOOR



BUILDING 1 - 2ND FLOOR

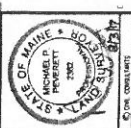


BUILDING 1 - CROSS SECTION



TAX MAP 67, LOT 2

COORDINATE FILE: A:\MAPS\180809\CAD\DWG\CP2\180809\180809-CP2-02.dwg



CONSULTANTS
 Engineers
 250 Commercial Street
 Portland, ME 04101
 Telephone: 603-761-1100
 Fax: 603-761-1101
 www.mecae.com

NO.	REVISIONS	DATE
1	ISSUED FOR PERMIT	10/20/09

LANDMARK HILL CONDOMINIUM - A MIXED RESIDENTIAL AND COMMERCIAL USE CONDOMINIUM
 518 U.S. ROUTE 1 - TAX MAP 67, LOT 2
 KITTERY, YORK COUNTY, MAINE
 PROJECT NO. 10-20090

CLIENT ADDRESS:
 MICHAEL BERGHAM
 29 CONGRESS STREET, PORTSMOUTH, NH 03801

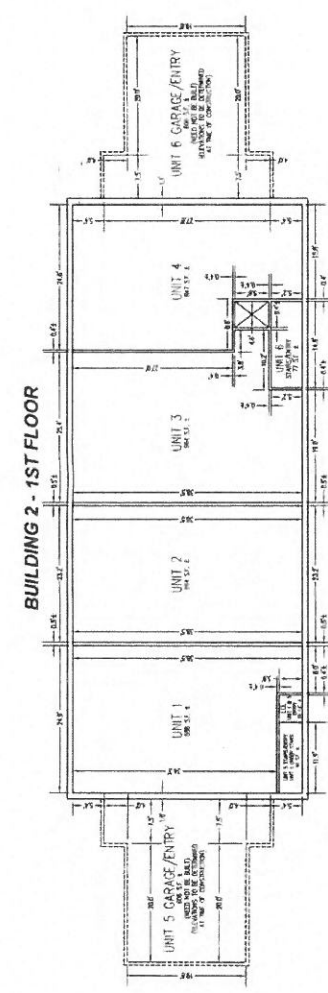
DATE: AUGUST 3, 2017
 DRAWN BY: DM
 CHECKED BY: DM
 PLOTTED BY: DM

**BUILDING 2
 PLAN**

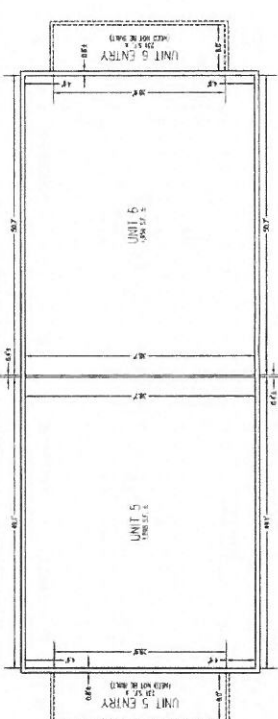
PROJECT NO. 10-20090
CP3
 SHEET 3 OF 3

TAX MAP 67, LOT 2
 CP3 FILE: \\s:\projects\2009\10-20090\CP3.dwg
 DATE: 10/20/09

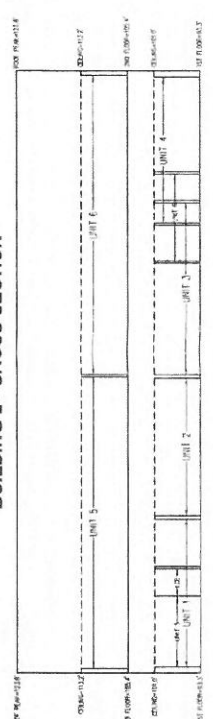
REGISTERED PROFESSIONAL ENGINEER
 STATE OF MAINE
 NO. 2502
 EXPIRES 12/31/2011
 REGISTERED



BUILDING 2 - 2ND FLOOR



BUILDING 2 - CROSS SECTION



REGISTERED PROFESSIONAL ENGINEER
 STATE OF MAINE
 NO. 2502
 EXPIRES 12/31/2011
 REGISTERED



CONSULTANTS
 Hobbs & Co., Inc.
 1000 Commercial Street
 Portland, ME 04101
 Telephone: 603-866-1100
 Fax: 603-866-1101
 E-mail: hco@hobbsco.com

DATE CONSULTED
 10/15/03

PROJECT NO.
 03-001

PROJECT NAME
 LANDMARK HILL CONDOMINIUM - A MIXED RESIDENTIAL AND COMMERCIAL USE CONDOMINIUM

PROJECT ADDRESS
 518 U.S. ROUTE 1 - 71K MAP #7, LOT 2
 KITTERY, YORK COUNTY, MAINE

PREPARED FOR
 CHINBURG PROPERTIES, INC.
 1 FLORENCE ST., KENNEBEC, ME 03943

SCALE
 1" = 30'

REVISIONS

DATE

BY

DESCRIPTION

REVISIONS

DATE

BY

DESCRIPTION

DATE

BY

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NOTES:

1. THE OWNER HAS PROVIDED ALL NECESSARY RECORDS TO BE REFERRED TO IN CONNECTION WITH THIS PROJECT. THE OWNER HAS PROVIDED ALL NECESSARY RECORDS TO BE REFERRED TO IN CONNECTION WITH THIS PROJECT. THE OWNER HAS PROVIDED ALL NECESSARY RECORDS TO BE REFERRED TO IN CONNECTION WITH THIS PROJECT.
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REFERENCE PLANS

1. 1000 COMMERCIAL STREET, PORTLAND, ME 04101
2. 1000 COMMERCIAL STREET, PORTLAND, ME 04101
3. 1000 COMMERCIAL STREET, PORTLAND, ME 04101
4. 1000 COMMERCIAL STREET, PORTLAND, ME 04101
5. 1000 COMMERCIAL STREET, PORTLAND, ME 04101
6. 1000 COMMERCIAL STREET, PORTLAND, ME 04101
7. 1000 COMMERCIAL STREET, PORTLAND, ME 04101
8. 1000 COMMERCIAL STREET, PORTLAND, ME 04101
9. 1000 COMMERCIAL STREET, PORTLAND, ME 04101
10. 1000 COMMERCIAL STREET, PORTLAND, ME 04101

LEGEND

1	UNIT 1000 - RESIDENTIAL AREA A
2	UNIT 1000 - RESIDENTIAL AREA B
3	UNIT 1000 - RESIDENTIAL AREA C
4	UNIT 1000 - RESIDENTIAL AREA D
5	UNIT 1000 - RESIDENTIAL AREA E
6	UNIT 1000 - RESIDENTIAL AREA F
7	UNIT 1000 - RESIDENTIAL AREA G
8	UNIT 1000 - RESIDENTIAL AREA H
9	UNIT 1000 - RESIDENTIAL AREA I
10	UNIT 1000 - RESIDENTIAL AREA J

CERTIFICATION:

I, the undersigned, being a duly qualified and licensed Professional Engineer, do hereby certify that the above is a true and correct copy of the original as shown to me by the owner of the same.

DATE: 10/15/03

BY: [Signature]

WORK AS INDICATED BY OTHER RECORDS AND AS NOTED IN THIS PLAN. ALL RECORDS TO BE REFERRED TO IN CONNECTION WITH THIS PROJECT ARE LISTED IN THE REGISTER.

DATE: 10/15/03

BY: [Signature]

LOCATION PLAN

1000 COMMERCIAL STREET, PORTLAND, ME 04101

1000 COMMERCIAL STREET, PORTLAND, ME 04101

1000 COMMERCIAL STREET, PORTLAND, ME 04101

REVISIONS

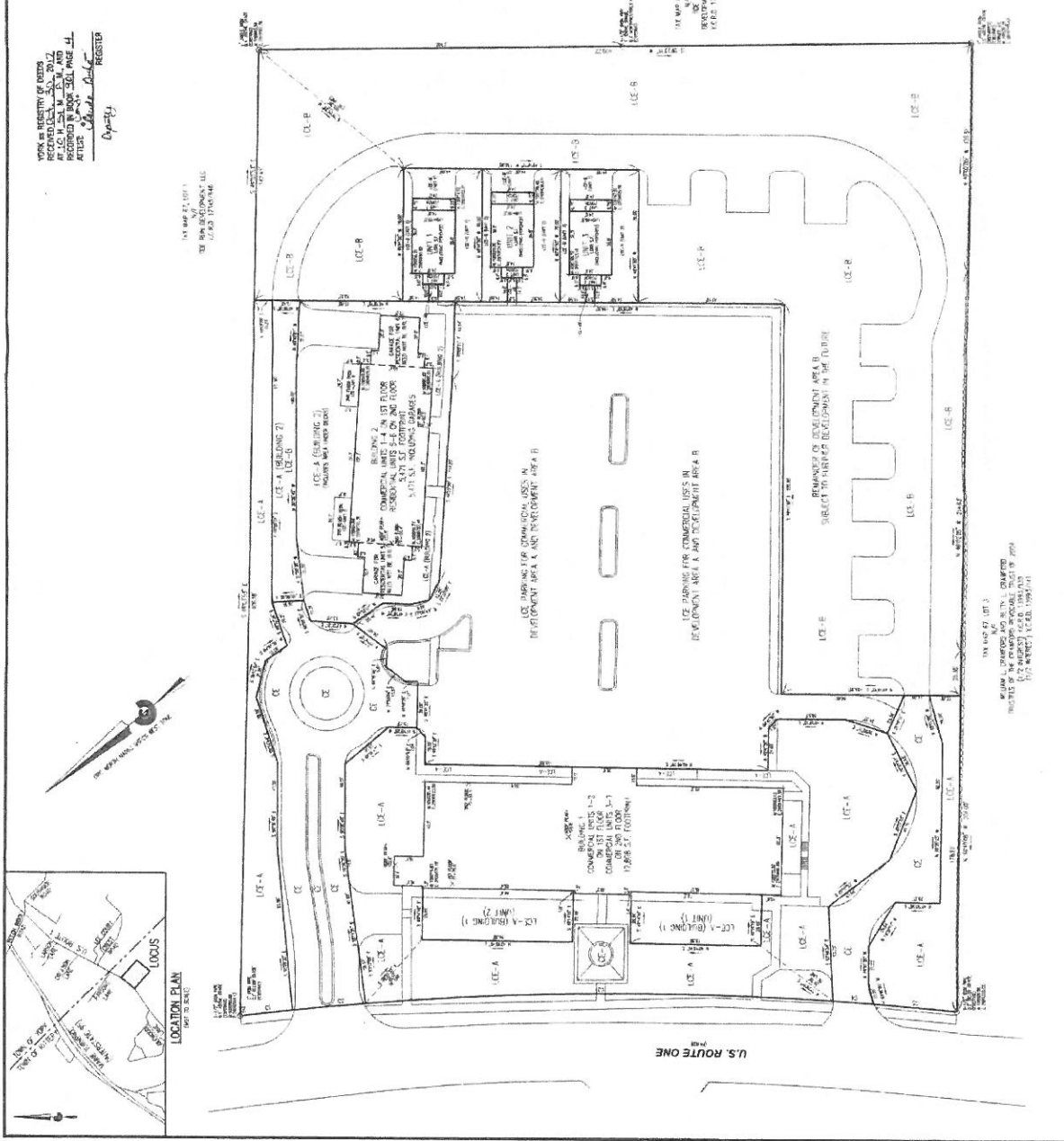
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9	10/15/03	ISSUED FOR PERMIT
10	10/15/03	ISSUED FOR PERMIT



U.S. ROUTE ONE

1000 COMMERCIAL STREET, PORTLAND, ME 04101

1000 COMMERCIAL STREET, PORTLAND, ME 04101

1000 COMMERCIAL STREET, PORTLAND, ME 04101

REVISIONS

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10	10/15/03	ISSUED FOR PERMIT

REVISIONS

NO.	DATE	DESCRIPTION
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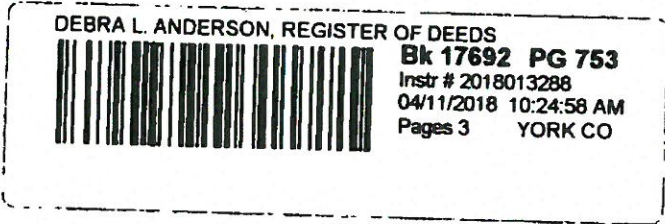
Image capture: Jun 2019 © 2020 Google

Kittery, Maine



Street View





CONDOMINIUM WARRANTY DEED

EXHIBIT E

No R.E. Transfer Tax Paid

KNOW ALL PERSONS BY THESE PRESENTS, That, **Michael P. Finneran and Alisha R. Finneran**, husband and wife, of 50 Remicks Lane, Kittery, County of York, State of Maine for consideration paid, grants to **AVIVA, LLC**, a Maine limited liability company with a mailing address of 10 Stone Ridge Way, Kittery, Maine 03904, with **WARRANTY COVENANTS**, the following:

A certain Condominium Unit at Landmark Hill Condominium located at 518 U.S. Route 1, Kittery, York County, Maine, more particularly bounded and described as follows:

Building 1, Unit 4 shown on a Plan entitled "Landmark Hill Condominium – A Mixed Residential and Commercial Use Condominium 518 U.S. Route 1 – Tax Map 67, Lot 2, Kittery, York County, Maine" prepared for Michael Brigham by Civil Consultants, and recorded in the York County Registry of Deeds in Condo Book 901, Page 1, as amended by Plan entitled "Revised Overall Condominium Plan, Landmark Hill Condominium – A Mixed Residential and Commercial Use Condominium 518 U.S. Route 1 – Tax Map 67, Lot 2, Kittery, York County, Maine" recorded in said Registry in Condo Book 901, Page 4; which shall include all undivided interests in the common areas and facilities appurtenant to said Area.

Said Unit is laid out and shown on a certain site plan and floor plan entitled "Landmark Hill Condominium – A Mixed Residential and Commercial Use Condominium 518 U.S. Route 1 – Tax Map 67, Lot 2, Kittery, York County, Maine" prepared for Michael Brigham by Civil Consultants, and recorded in the York County Registry of Deeds as Condo Plan File #901, Pages 1-3, as amended by Plan entitled "Revised Overall Condominium Plan, Landmark Hill Condominium – A Mixed Residential and Commercial Use Condominium 518 U.S. Route 1 – Tax Map 67, Lot 2, Kittery, York County, Maine" recorded in said Registry in Condo Book 901, Page 4.

Said Unit is hereby conveyed together with the use of the Limited Common Elements, shown as "LCE-A" on Plan entitled "Landmark Hill Condominium – A Mixed Residential and Commercial Use Condominium 518 U.S. Route 1 – Tax Map 67, Lot 2, Kittery, York County, Maine" prepared for Michael Brigham by Civil Consultants, and recorded in the York County Registry of Deeds as Condo Plan File #901 Pages 1-3.

Said Unit is hereby conveyed together with an equal undivided interest in the common areas and facilities appurtenant to said Unit as provided in the Declaration together with the right to use the same in common with others entitled thereto, and is conveyed subject to restrictions, conditions and other provisions of the Declaration and By-Laws referred to above all of which, including further amendments thereto, including Declarant's right to subdivide and create additional units pursuant to Section 1602-110 of the Condominium Act, if any, shall constitute covenants running with the land and which shall be binding upon any and all persons having at

any time any interest or estate in said Unit herein conveyed, their successors, their servants, visitors, as though such provisions, amendments and instruments were recited and stipulated herein.

Said Unit is to be used only for commercial purposes as may be expressly permitted by the Board of Directors in accordance with the provisions of the Declaration and By-Laws of the Condominium.

Said Unit is acquired with the benefit of and subject to the provision of Maine Condominium Act, Title 33, Section 1601-101 et seq. of the Maine Revised Statutes relating to the Unit Ownership of real property as that statute is written as of the date hereof and as it may in the future be amended.

Said Unit is also conveyed subject to the following:

1. Title to and right of the public and others entitled thereto in and to those portions of the premises lying within the bounds of all adjacent streets and ways, including but not limited to Franklin Street.

2. All matters noted and depicted on Subdivision Plan File #390, Page 21.

3. All matters noted and depicted on Condo Plan File #901 Pages 1-3, as amended by Condo Plan File #901, Page 4.

4. Unpaid real estate taxes for the current tax year.

5. All rights of way, easements, covenants, conditions and restrictions of record.

6. Declaration and ByLaws of Landmark Hill Condominium dated August 14, 2017 and recorded in the York County Registry of Deeds at Book 17538, Page 108, as amended by First Amendment to Declaration Exercising Special Declarant Rights and Development Rights in Development Area B dated October 31, 2017 and recorded in said Registry at Book 17593, Page 781, and as amended by Second Amendment to Declaration Creating Units in Development Area B dated October 31, 2017 and recorded in said Registry at Book 17593, Page 789.

Meaning and intending to convey and hereby conveying the same Unit conveyed to the Grantors by deed of Landmark Hill, LLC dated March 9, 2018 and recorded at the York County Registry of Deeds Book 17674, Page 941.

Signed this 6 day of April, 2018.

Victoria M Tibbetts

Witness

Michael P. Finneran

Michael P. Finneran

Michael P. Finneran

Witness

Alisha R. Finneran

Alisha R. Finneran

STATE OF MAINE
YORK, SS

April 6, 2018

Personally appeared the above named **Michael P. Finneran and Alisha R. Finneran** and subscribed to the foregoing and acknowledged same to be their free act and deed.

Before me,

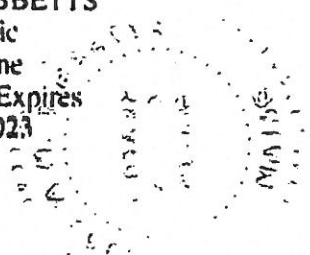
Victoria M Tibbetts

Notary Public

Name: VICTORIA M. TIBBETTS

My Commission Expires: Notary Public
State of Maine

My Commission Expires
August 19, 2023



SEAL

Return to
3p → Michael & Alisha Finneran
10 Stone Ridge Way
Kittery, ME 03904

EXHIBIT F

PROPERTY MAP
KITTERY
MAINE



LEGEND

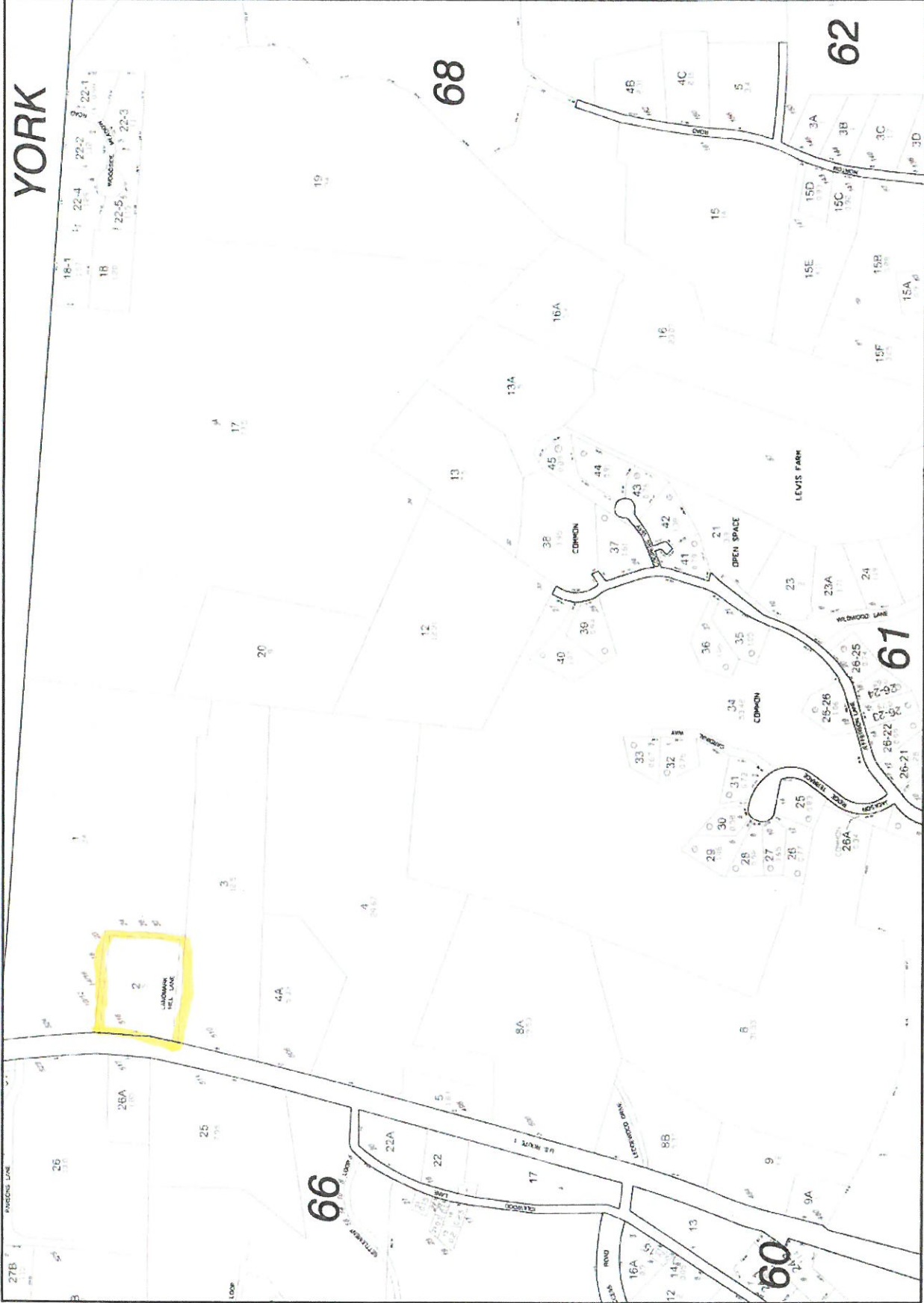
R11

UNIMPROVED LOT
IMPROVED LOT
PROPERTY BOUNDARY
EASEMENT
EASEMENT



John E. O'Donnell & Associates
632 Bald Hill Road
New Gloucester, Maine 04266
(207) 926-4044
www.jeodonnell.com

67



YORK

68

62

61

66

60



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

BOA Meeting Date: September 8, 2020

Item #: AA2020-02

STAFF REPORT – 518 US Route 1 Unit 4 – ADMINISTRATIVE APPEAL

Project Name: 518 US Route 1 Unit 4

Owner: Tamara Bourque

Appellant: Timothy Phoenix

Proposed Development: Approval of a dog grooming business

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

Site Addresses: 518 US Route 1 Unit 4

Map & Lot Numbers: M67 – L2



Current Zoning:

Mixed-Use (MU) Zone. The purpose of the of the Mixed-Use zone is to provide opportunities for a mix of office, service, and limited residential and retail uses, to alter the pattern of commercial activity on Route 1, to serve Kittery’s needs, and to minimize traffic congestion. A mix of uses on a site is desired and, in some cases required; a continuation of strip development is not encouraged in this zone.

The following use is permitted in the MU Zone: Commercial kennel.

District Standards:

Mixed-Use (MU) Zoning District Standards			
Road Frontage	250 feet	Front Yard Setback (min.)	30 feet
Maximum Building Height	40 feet	Rear Yard Setback (min.)	30 feet
Lot Size (Frontage on Route 1)	200,000 sf	Side Yard Setback (min.)	30 feet

Current Use: Mixed Use.

Surrounding Land Uses:

- West: Mixed-Use (MU), Commercial
- East: Mixed-Use (MU), Residential
- North: Mixed-Use (MU), Commercial
- South: Mixed-Use (MU), Residential

Future Land Use:

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

Site Description:

The subject property consists of roughly 218,000 square feet (5 acres) containing 13 buildings; one containing commercial units and twelve mixed use buildings containing first floor commercial units with residential units above.

Description of the Issue:

Ms. Bourque submitted a Business Use Change request to convert an open space in the commercial building at 518 US Route 1 into a dog grooming salon. Ms. Bourque contended that the dog grooming salon fit into the Special Exception Use of a ‘commercial kennel’. Code Enforcement staff reviewed the request and denied based on the Town Code definition of commercial kennel, which reads “a commercial operation that: 1) provides food and shelter and care of eight or more animals for purposes not primarily related to medical care; or 2) has at any one time eight or more animals for the purpose of commercial breeding.” In reviewing the application Code Enforcement

Staff found that this definition did not apply as she is not boarding the dogs and will only be receiving 5-7 dogs on a normal day.

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 may prevent the orderly and reasonable use of legally established uses in the zone as the use is not permitted in the zone by right or special exception.

- (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 not in harmony with Title 16 as it does not fall under a permitted or special exception use in the Mixed-Use zone.

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 not permitted in the zone.

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

The use involved is not 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 may produce 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;*

The use is contained indoors.

- (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.

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

The proposed use could potentially create a noise nuisance.

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

The proposed use appears to adhere to the applicable standards in Title 16.8 and 16.9 if it were permitted in the Mixed-Use zone.



**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

BOA Meeting Date: September 8, 2020

Item #: SE2020-02

STAFF REPORT – 518 US Route 1 Unit 4 – SPECIAL EXCEPTION USE REQUEST

Project Name: 518 US Route 1 Unit 4

Owner/Applicant: Timothy Phoenix

Proposed Development: Approval of a dog grooming business

Requests: Special Exception Use per LUDC Section 16.3.2.13C.(2), seeking approval for a dog grooming business under the Commercial Kennel use in the Mixed-Use (MU) zone.

Site Addresses: 46 Old Post Road

Map & Lot Numbers: M67 - L2



Current Zoning:

Mixed-Use (MU) Zone. The purpose of the of the Mixed-Use zone is to provide opportunities for a mix of office, service, and limited residential and retail uses, to alter the pattern of commercial activity on Route 1, to serve Kittery’s needs, and to minimize traffic congestion. A mix of uses on a site is desired and, in some cases required; a continuation of strip development is not encouraged in this zone.

The following use is permitted in the MU Zone: Commercial kennel.

District Standards:

Mixed-Use (MU) Zoning District Standards			
Road Frontage	250 feet	Front Yard Setback (min.)	30 feet
Maximum Building Height	40 feet	Rear Yard Setback (min.)	30 feet
Lot Size (Frontage on Route 1)	200,000 sf	Side Yard Setback (min.)	30 feet

Current Use: Mixed Use.

Surrounding Land Uses:

West: Mixed-Use (MU), Commercial
East: Mixed-Use (MU), Residential
North: Mixed-Use (MU), Commercial
South: Mixed-Use (MU), Residential

Future Land Use:

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

Site Description:

The subject property consists of roughly 218,000 square feet (5 acres) containing 13 buildings; one containing commercial units and twelve mixed use buildings containing first floor commercial units with residential units above.

Description of the Issue:

Ms. Bourque submitted a Business Use Change request to convert an open space in the commercial building at 518 US Route 1 into a dog grooming salon. Ms. Bourque contended that the dog grooming salon fit into the Special Exception Use of a ‘commercial kennel’. Code Enforcement staff reviewed the request and denied based on the Town Code definition of commercial kennel, which reads “a commercial operation that: 1) provides food and shelter and care of eight or more animals for purposes not primarily related to medical care; or 2) has at any one time eight or more animals for the purpose of commercial breeding.” In reviewing the application Code Enforcement Staff found that this definition did not apply as she is not boarding the dogs and will only be

receiving 5-7 dogs on a normal day.

Applicant's Special Exception Use Request:

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

§ 16.6.6 Basis for decision.

A. Conditions.

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

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

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

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

The use will not prevent the orderly and reasonable use of adjacent properties 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 may prevent the orderly and reasonable use of legally established uses in the zone as the use is not permitted in the zone by right or special exception.

- (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 not in harmony with Title 16 as it does not fall under a permitted or special exception use in the Mixed-Use zone.

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 not permitted in the zone.

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

The use involved is not 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;*

The property is connected to adequate sewer systems.

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

The use may produce 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 has non-paved existing space for 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 conforming lot of record.

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

The use is contained indoors.

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

No changes are proposed to the land.

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

The use does not appear to interfere with pedestrian movement.

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

The proposed use could potentially create a noise nuisance.

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

The proposed use appears to adhere to the applicable standards in Title 16.8 and 16.9 if it were permitted in the Mixed-Use zone.

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

- (1) *Front, side or rear yards in excess of minimum requirements*
- (2) *Modifications of the exterior features of buildings or other structures;*
- (3) *Limitations on the size of buildings and other structures more stringent than the*

- minimum or maximum requirements;*
- (4) Regulation of design of access drives, sidewalks and other traffic features;*
 - (5) Off-street parking and loading spaces in excess of the minimum requirements; or*
 - (6) Restrictions on hours of operation.*

Using the standards and criteria found in the LUDC, Staff recommends DENIAL of the Special Exception Use request to operate a dog grooming salon in the Mixed-Use zone as it is not a permitted or special exception use.

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

C-COAST PROPERTIES LLC
8 BANKS ROCK
YORK HARBOR, ME 03911

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

CRAWFORD TR, BETTY L
510 US ROUTE 1
KITTERY, ME 03904-5507

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

LYNCH, CHARLES S
13 POCAHONTAS ROAD
KITTERY POINT, ME 03905-5300

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

YANKEE SETTLEMENT MHP LP
1571 BELLVUE AVENUE, SUITE 210
WEST VANCOUVER, BC V7V1A6

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

WILSON FIVE SERVICE CO IN
PO BOX 810
KITTERY, ME 03904-0810



Town of Kittery Board of Appeals
NOTICE OF PUBLIC HEARING
Tuesday, September 8, 2020— 6:30PM
Kittery Community Center, 120 Rogers Road

Timothy Phoenix representing Tamara Bourque, tenant, 518 US Route 1 Unit 4, seeking an administrative appeal to a Code Enforcement Officer decision and a Special Exception Use request to operate a dog grooming facility in the Mixed Use (MU) zone.

Application information is available for public inspection by appointment only between 8:00 am to 6:00 pm Monday thru Thursday at the Planning and Development Department located in Town Hall. To request a reasonable accommodation for this meeting please contact staff at (207) 475-1323.

United States Air Force in Vietnam, and worked as a firefighter for many years at the Portsmouth Naval Shipyard.

James was a family man who enjoyed spending time with his wife, children, and grandchildren. He also enjoyed fishing, all things NASCAR and visiting Disney — he and his wife were pass holders and would go to Disney any chance they could get. James was Catholic by faith. James was preceded in

place at Florida National Cemetery of Bushnell, Fla. on Oct. 19, 2020 at 2:30 p.m.; where full military honors will be rendered in James' memory. Friends and family are welcome to gather and fellowship prior to the service at the Chas. E. Davis Funeral Home at 1:15 p.m., where a procession to the cemetery from the funeral home will begin at 1:45 p.m.

Arrangements are under the direction of the Chas. E. Davis Funeral Home, Inverness, Fla.

From Page A1

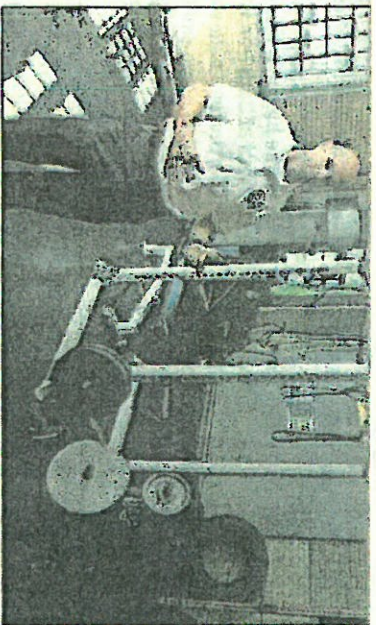
that Germain hops on and off with ease.

There's a treadmill, an "assault" stationary bicycle, kettle balls, a squat rack, resistance bands and a rowing machine. Cardio strength is measured at different stations and, Germain said, workout time and performance is tracked daily by a company officer. The coaches, he said, will ensure training is effective and safe.

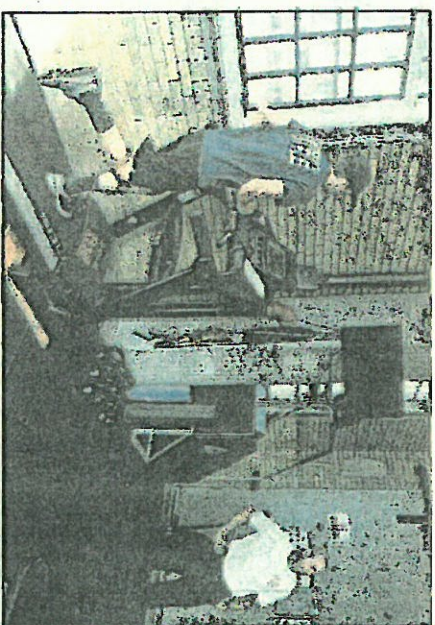
Firefighters will work on strength, flexibility and they've had "yoga in the firehouse," the chief said. There's also an accountability component while the entire 60-person department is on the same path, Germain said.

"These firefighters are under a lot of stress," he said, noting the workouts, coaching and training are aimed to reduce that.

The fire chief said now that the program is mandatory, firefighters who use the firehouse gyms are covered by worker's compensation if they're injured there. Additional cost is no more than other training, he said, while the plan aims to reduce costs related



Portsmouth Fire Chief Todd Germain talks about the advantages of the gym at Central Station and how it is now required of firefighters to work out as part of the wellness program. [DEB CRAW/SEACOSTONLINE]



Parter Cutting is a problem at the Portsmouth Fire Department and is making use of the treadmill as part of the gym available to firefighters. Fire Chief Todd Germain is at right. [DEB CRAW/SEACOSTONLINE]

to worker's compensation injuries and disability.

Germain said by gaining strength and staying fit firefighters will be less

the firehouse gyms while they're off duty to workout. He said the job of a firefighter is labor intensive and the new wellness program ensures firefighters remain "productive for the city."

Fire Commissioner Dickie Gamester said he likes the part requiring annual physicals because a lot of people put them off or ignore them.

"The results don't come to us, but the proof that they had one does," he said. "We fight the cancer stuff all the time, with all the stuff firefighters are exposed to," Gamester said.

"This is something the chief has wanted for years and it's not going to cost the city a dime."

"At the start of the pandemic, this was a busy place," Germain said in the downtown firehouse gym. "We'd meet here at 6 a.m. for a group workout, then go for a run."

He said he, McQuillen and Capt. Rick Condon hold each other accountable for group workouts and the support is sometimes the push someone else needs.

"Billy and I aren't spring chickens any more," Germain said. "It's important for us to set an example to show how important it is to be in shape at our age."

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Legal Notice

NOTICE OF PUBLIC HEARING

TOWN OF KITTERY - BOARD OF APPEALS Meeting Location: Kittery Community Center, 120 Rogers Road, Kittery Tuesday, September 8, 2020 - 6:30 p.m.

Timothy Phoenix representing Tamara Bourque, tenant, 518 US Route 1 Unit 4, seeking an administrative appeal to a Code Enforcement Officer decision and a Special Exception Use request to operate a dog grooming facility in the Mixed Use (MU) zone.

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.

08/20/2020