

City of Biddeford

Planning Board

October 19, 2022 6:00 PM Council Chambers & Zoom

<https://biddeford.zoom.us/j/99337035715?pwd=WmVlbGdMVzcwNFpYZEFtR1N0a1pLQT09>

Webinar ID: 993 3703 5715 Passcode: 868183

STATUS: Planning Board-City Council Chambers, Wednesday, October 19, 2022 6:00PM

1. PLEDGE OF ALLEGIANCE

2. DECLARATION OF QUORUM/VOTING MEMBERS

3. ADJUSTMENTS TO THE AGENDA

4. PLANNER'S BUSINESS

5. CONSENT AGENDA

6. UNFINISHED BUSINESS

6.A. 2022.30 Public Hearing and take comments as a continuation of this item appearing before the Planning Board, on October 5, 2022, to review a Preliminary Subdivision Plan for

Shawn Brown to create a 5 lot subdivision in the Residential 2 Zone at 355 Pool Street (Tax Map 44, Lot 21).

[2022.30 - 355 Pool Street - Preliminary Subdivision SR_10.13.22.pdf](#)

[355 Pool St Prelim Amend Packet 10-11-22.pdf](#)

[Fire Confirmation.pdf](#)

[Maine Dot Confirmation.pdf](#)

[Maine Water Confirmation.pdf](#)

[Spaghetti Lots.pdf](#)

[2022-10-13 Tartre Letter Planning Board.pdf](#)

[10-17-22 Brown Letter to Planning Board.pdf](#)

[Saco River Corridor 10-17-22.pdf](#)

[Brown Pool St Subdivision Sketch Plan.pdf](#)

[RE_Letter to Biddeford Planning Board 05_09_2022.pdf](#)

7. NEW BUSINESS

7.A. THIS ITEM HAS BEEN TABLED PER APPLICANT REQUEST

2022.30 Public Hearing and take comments to review a Greatest Practical Extent Application for Lynn Wright construct a 3 story, 2 bedroom residence, raised on a flow-thru foundation. This structure will be relocated on the property to be more conforming within property setbacks at 77 Fortunes Rocks Road in the Coastal Residential Zone with a Limited Residential Shoreland Overlay. (Tax Map 66, Lot 48).

[2022.40 - Wright- 77 Fortunes Rocks Road- GPE - SR FINAL.pdf](#)

[2022.40 - Wright- 77 Fortunes Rocks Road- GPE - FOF FINAL.pdf](#)

[77 Fortunes Rocks-Application Packet.pdf](#)

[Deed Book 18867, Page 222.pdf](#)

[77 Fortunes Rocks-Plan Set.pdf](#)

[Noble Letter.pdf](#)

[Rana Letter 10-19-22.pdf](#)

[Rana-Supplement.pdf](#)

- 7.B. 2022.39 Public Hearing, take comments, and make a recommendation to the City Council regarding a zoning amendment to revise the Shoreland Zoning Ordinance. This change would establish a new shoreland sub-district called the ‘Waterfront Renaissance’ District, under Maine DEP’s special local condition designation process, for a portion of the Downtown between the Saco Industrial Railroad Bridge and Pearl Street, to allow for new mixed-use development within the shoreland zone.

[2022.39 Shoreland Zoning Amendment PB Memo.pdf](#)

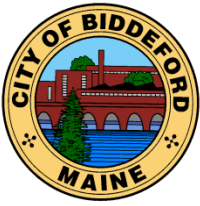
[Waterfront Renaissance Proposed Zone Boundary.pdf](#)

[Waterfront Renaissance Text Amendment_Redline.pdf](#)

8. OTHER BUSINESS

9. ADJOURN

The Board reserves the right to halt official business at 9:30 p.m. Items not heard at tonight’s meeting shall be rescheduled to the next meeting of the Board. All materials pertaining to items on the agenda are available for public review at the Biddeford Planning Department, second floor, Biddeford City Hall during normal business hours.



CITY OF BIDDEFORD

Planning and Development Department

Matthew Grooms, AICP
Deputy Director/City Planner
205 Main Street
P.O. Box 586
Biddeford, ME 04005
(207) 284-9115
Matthew.Grooms@biddefordmaine.org

PLANNING BOARD REPORT

TO: Chair Southwick and the Biddeford Planning Board

FROM: Matthew Grooms, AICP, City Planner

DATE: October 13, 2022

RE: 2022.30 Preliminary Plan Review for a proposed 5-lot residential subdivision at 355 Pool Street.

MEETING DATE: Wednesday, October 19, 2022 at 6:00 pm

1. INTRODUCTION

This application contains materials for Preliminary Plan review for a five-lot subdivision created from the parcel located at 355 Pool Street (Tax Map 44, Lot 21). The property is located in the SR-1 (Suburban Residential) and LR (Limited Residential Shoreland Overlay) Zones. The existing parcel is approximately 8.3 acres, and the five proposed lots may range from 27,318 square feet to 137,700 square feet. All lots are proposed to have adequate frontage along Pool Street, as required in the SR-1 zone. A Wetland study for the property has been prepared by Jones Associates, and is included in the application package.

This proposal does not involve the development of new roadways, or major extension of public utilities. Driveways and connections to available water service will be directly into Pool Street, and will occur as part of each individual lot development. The properties will utilize individual septic systems to service each property. Given the nature of this project, and the fact that it does not involve physical improvements as part of this proposal, the application has not undergone full engineering review.

2. PROJECT INFORMATION

	SUBJECT	DATA/INFORMATION
1.	Applicant	Shawn Brown 5 Buckthorn Circle Saco, ME 04072
2.	Property Owner	Shawn and Lee-Marie Brown 5 Buckthorn Circle Saco, ME 04072
3.	Agent	Walter Pelkey, BH2M 380B Main Street Gorham, ME 04038

4.	Engineer/Surveyor	Same as Agent
5.	Project Location	355 Pool Street
6.	Map/Lot	Map 44, Lot 21
7.	City Approvals Required	Residential Subdivision
8.	Existing Zoning	SR-1 (Suburban Residential)
9.	Overlay Zoning	Limited Residential (partial)
10.	Existing Use	Vacant
11.	Proposed Use	Residential Subdivision
12.	Uses in the Vicinity	Residential
13.	Parcel Size	8.2 acres
14.	Water Supply	Public Water
15.	Sewerage Disposal	Private Septic
16.	Fire Protection	City of Biddeford
17.	Ownership of Road	Public
18.	Additional Approvals/Permits Needed	None
19.	Fees Paid (LDR Attachment A)	All fees paid
20.	Planning Board Review History	August 3, 2022, October 5, 2022

3. COMPLIANCE WITH CITY ORDINANCES

Per the City of Biddeford Code of Ordinances Chapter 66 Subdivisions, Section 30, projects classified as a major subdivision, are required to go before the Planning Board for Sketch Plan, Preliminary Plan and Final Plan review. The Board determined the application to be a major subdivision at their August 3rd meeting, which resulted in the applicant having to submit all information required for a Preliminary Subdivision Review, as stipulated under Section 66-35. The Board may also request additional studies to be made, at the applicant's expense, to inform the design and approval process.

All proposed lots are in conformance with the City of Biddeford LDR Article V, Table B Dimensional Requirements with a minimum lot size of 20,000 square feet, and a minimum frontage of 100 feet.

Other review comments are as follows:

- Applicant shall provide draft deeds and covenants for each of the newly created lots being proposed. This information is a requirement of the preliminary subdivision application.
 - [Update \(10.13.22\): Draft covenants and deeds are included as part of the applicant's amended plan set.](#)
- Proposed driveway locations should be identified on the preliminary plan and the applicant should reach out to Maine DOT to determine whether separate permits are required by the state as Pool Street is a state route.
 - [Update \(10.13.22\): Proposed driveway locations are now depicted on the plan. City staff also confirmed with the Public Works Director that the spacing between driveways is expected to be generally adequate. Staff would note that driveways need to be set back from the edge of the property line by at least the width of the driveway at the property line. It appears for example that the proposed driveway for lot 3 would need to be shifted to the west. Similarly, the driveway depicted for Lot 5 appears very close to a 50 foot access easement, and may similarly need to be shifted.](#)

- Applicant has provided a drafted letter to the water company requesting confirmation that there is adequate capacity to service this development. As of the writing of this report, the applicant has not received this confirmation, which will be required at time of final plan submission.
 - [Update \(10.13.22\): Confirmation of capacity from Maine Water Company has been received and is included in the materials.](#)
- The provided materials do not include a written narrative outlining compliance of the project with the City's preliminary subdivision requirements. In general, most required elements appear to be provided, however staff would request that a brief narrative accompany any future submission.

4. PLANNING BOARD MEETING – AUGUST 3, 2022

The Planning Board reviewed the sketch plan application for the proposed 5-lot subdivision at their August 3rd meeting, and provided the following feedback:

- Clarify the applicability of Maine State Subdivision law (30-A M.R.S.A. §§ 4404) governing review criteria for subdivisions. Specifically, 30-A M.R.S.A. §§ 4404 – 17 specifies that lots with shore frontage on a river have a lot depth to shore frontage ratio greater than 5:1.
 - [Update:](#) The applicant, at the August 3rd meeting, stated that since this project was along the Saco River and under the jurisdiction of the Saco River Corridor Commission, that these particular subdivision rules were not applicable. In staff's review of the state subdivision statute, and the Saco River Corridor Act, staff has not identified a clear indication that the Saco River Corridor Act, and associated performance standards for shore frontage supercede the state's subdivision requirements, particularly as these are not inherently in conflict. Staff has requested a legal opinion from the City Attorney, that is expected prior to the October 5, 2022 Planning Board Hearing.
 - [Update \(10.13.22\):](#) The City's Attorney provided references to language in the Saco River Corridor Act, which states that both the State and the local municipality have the authority to require more stringent performance standards or requirements than those of the Saco River Corridor Commission, and that the more stringent of those requirements are to be adhered to. Based upon this guidance, the applicant has revised their plan to eliminate shore frontage for Lots 4 and 5, which then resolves the 'spaghetti lot' conflict for those lots previously identified.

[While this appears to address the City's comments regards compliance with local subdivision requirements, staff would note that the spaghetti lots were proposed in order to make the lots buildable, per Saco River Corridor Commission performance standards. These require that lots within the Saco River Corridor Limited Residential District, feature a minimum shore frontage of 100 feet, without which, a property owner would be unable to obtain a permit from the Saco River Corridor Commission to construct a single-family home. This performance standard does not however preclude](#)

the subdivision of property in accordance with a municipalities local subdivision requirements, but instead, renders the lot unbuildable.

- Update the plans to depict the required 100-foot shoreland setback, as required per the City's local shoreland zoning requirements.
 - Update: This information has been added to the draft subdivision plat.
- Ongoing property dispute between applicant and abutter.
 - Update: The applicant's attorney has provided a letter outlining legal precedent in instances where a Planning Board is tasked with considering an application pending ongoing litigation around title issues. Staff agree with the legal opinion provided, and concur that the Board is within its rights to take action on the subdivision application before them.
 - Update (10.13.22): At the October 5, 2022 meeting, the attorney representing the abutter requested that the Planning Board table this application until the ongoing litigation is resolved, stating that the Board could not approve this application due to a dispute undermining the applicant's right, title and interest in the property. The Board requested that the abutter's attorney provide the City and applicant a written legal opinion presenting this argument, with sufficient time for the applicant to provide a written response. No such legal opinion has been provided to the City.

5. **STAFF RECOMMENDATION**

In reviewing the preliminary subdivision application for 355 Pool Street, staff found the application to be complete, and generally consistent with Biddeford's local subdivision requirements. While this is the case, staff would again note that the application appears to be in conflict with the Saco River Corridor performance standards, which would make Lots 4 and 5 unbuildable. As stated above, this does not prevent the Planning Board from taking action on the proposed subdivision at this time. However, noting that the applicant's submittal identifies the 5 proposed lots as being for future single-family development, staff would recommend that the applicant submit the updated design to the Saco River Corridor Commission and determine whether the lots are buildable, prior to the Planning Board taking final action on this application.

6. **SAMPLE MOTIONS**

1. *Motion to determine the application is "complete" for review purposes.*
2. *Motion to grant Preliminary Subdivision Approval for the proposed 5-lot subdivision at 355 Pool Street (Tax Map 44, Lot 21) conditioned on the Final Application and Plan Set not being submitted to the Planning Board until:*
 - A. *Applicant obtains written opinion or approval from Saco River Corridor Commission identifying all proposed lots as buildable: OR*
 - B. *Applicant identifies on the subdivision plan that that Lots 4 and 5 are unbuildable lots.*

October 11, 2022

Matthew Grooms, City Planner
City of Biddeford
205 Main Street
Biddeford, ME

RE: Preliminary Amended Major Subdivision
Shawn Brown
355 Pool Street

Dear Matthew,

On behalf of the applicant, Shawn Brown, we are submitting Amended Preliminary Subdivision documents as requested in the previous Planning Board Meeting of October 5, 2022 and Chapter 66, Subdivision, Division 3, Preliminary Plan review.

The project will consist of 5 single family house lots with public water, electric, communications and private individual septic systems. All lots will be accessed by individual driveways as depicted on the plan and shall comply with the attached covenants for the lots created by this amendment. Individual deeds for the proposed lots will follow as part of the Final Plan Submission later this week.

Please find enclosed 8 copies of the following information in support of the Preliminary Major Subdivision Application for the above referenced project:

- Attachment 1 – Declaration of Protective Covenants, Conditions and Restrictions
- Attachment 2 – Amended Subdivision Plan

Please contact me if you have any questions or if any additional information is needed.

Sincerely,



Walter Pelkey
Project Manager

**EDGEWATER ESTATES AT 355 POOL RD
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS**

Made as of this _____ day of _____ 20_____, by Seacoast Development, LLC, a Maine limited Liability Company, with its place of business in the city of Saco, County of York, State of Maine (Herein Called "Developer").

Whereas, the developer is the owner of certain real property situated at 355 Pool Road in the City of Biddeford, County of York and State of Maine, and being Lots No. 1 through 5 inclusive, as more particularly shown on a plan entitled "AMENDED PLAN, TARTRE REALTY SUBDIVISION, EDGEWATER ESTATES AT 355 POOL ROAD" Biddeford, Maine, by BH2M, dated July 2021 and recorded in the York County Registry of Deeds in Plan book -----, Page ---- (The "plan"); and

Whereas, developer desires to develop a residential subdivision on lots 1 through 5 of the property known as EDGEWATER ESTATES AT 355 POOL ROAD SUBDIVISION (called "Property" the "Lots" or in the singular "Lot")

Whereas, lots 1 through 5 as shown on the aforesaid Plan shall be affected by this Declaration of Protective Covenants, Conditions and Restrictions.

Now, therefore, Developer hereby declares that the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described property or any part hereof, their heirs, successors and assigns, and shall insure the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS:**

Section1: **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2: **"Property"** shall mean and refer to that certain real property hereinbefore described.

Section 3: **"Lot"** shall mean and refer to those numbered building sites shown upon the recorded subdivision map of the property.

Section 4: **"Developer"** shall mean and refer to Seacoast Development, LLC, its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the developer for the purpose of development.

Section 5: **"Declaration"** shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the property recorded in the York County Registry of Deeds.

ARTICLE II
COVENANTS AND RESTRICTIONS:

Each lot in EDGEWATER ESTATES AT 355 POOL ROAD SUBDIVISION located in Biddeford, York County, Maine, is and will be conveyed **SUBJECT TO** the following restrictions and conditions which shall run with the land, shall remain in effect until midnight, December 31, 2047 and shall be enforceable by the original Developer, Seacoast Development, its successors and assigns, and also by all other owners of lots on said plan whose property is similarly burdened.

1. Each lot shall be used for residential purposes and shall be occupied by not more than one residential structure, said residential structure to include no buildings or structures other than the following, viz: one detached dwelling structure designated as a residence for one or two families, a garage and/or barn for private use constructed either as an integral part of the dwelling or as a detached building and adapted for the storage of not more than four (6) automobiles in total. A swimming pool, a swimming pool apparatus housing shed, suitable garden structures including a greenhouse and such additional structures as shall from time to time be used in connection with residential uses situated in similar neighborhoods. EXCEPT as permitted under the provisions of paragraph 15 Hereof, no such lot shall be used for access to any other land or for the use, introduction, maintenance or repair of utility services benefitting any other land not part of EDGEWATER ESTATES AT 355 POOL ROAD SUBDIVISION.
2. The keeping of poultry, swine, or any livestock, other than household pets normally housed in a dwelling house, shall not be permitted. No kennels, automobile trailers, house trailers, boat trailers or similar shall be brought upon or be maintained and permitted to remain on the above-described premises unless completely enclosed within a structure permitted under paragraph 1. These items must be stored in such a manner that they are not visible from any street.
3. All residential structures shall be reviewed by Developer before any construction can begin and shall be placed on permanent masonry foundations. The placement and elevation of residential structures must be submitted in writing to, and approved by, the Developer. All above ground propane or other utility tanks must be enclosed and finished to match the exterior residence.
4. The use of simulated or artificial brick or stone composition sidings shall be prohibited unless the appearance, finish and durability of the same shall be comparable to natural materials.
5. Until the expiration of two (2) years of the sale of Seacoast Development, LLC, entire interest in the 355 Pool Road Subdivision, all plans, specifications and designs including, but not limited to, the exterior finish, color and building placement, for structures to be located on such lots must receive written approval of the original Developer, Seacoast Development, LLC, its successors and specific assigns. Such approval shall not be

unreasonably withheld but such plans, specifications and designs must, in the opinion of Seacoast Development, LLC, be harmonious with other structures in the subdivision.

6. All exterior finishing on any building and all landscaping to the grounds must be completed within one year of the commencement of construction. Mailboxes shall be set on granite posts, unless otherwise approved by the developer. Completed, as used herein, includes, but not limited to, porches, steps, decks, platforms, carports, other outdoor living terraces, grading and seeding of lawns. Lawns and landscaping areas must be regularly maintained as to be similar as other properties in the subdivision.
7. No junk, abandoned, unregistered or commercially registered dual rear wheeled three axle 10,000 GVWR or more vehicle shall be allowed on the premises, except as may be permitted under paragraph 2. No accumulations of trash or debris shall be allowed on the premises. Trash & Recycling barrels shall be kept in an area out of sight from the public view while not at curbside awaiting removal.
8. No clotheslines shall be permitted and no satellite television antennas or similar receiving devices shall be permitted unless 18 inches in diameter or less and shall be located at the rear of the building structure in a non-visible location from the curbside frontal view to be approved by the developer.
9. Seacoast Development, LLC, reserves the right to use all driveways shown and depicted on said plan for use, introduction and maintenance of all utility services to any other adjacent or nearby land owned by it or its specific assigns or hereinafter acquired by it or them. It is further agreed or understood that no purchaser of such adjacent or near land from Seacoast Development, LLC, shall have the right to use such driveways and lots for such purposes unless such right shall have been specifically granted to such purchaser by Seacoast Development, LLC.
10. Seacoast Development, LLC, reserves for itself, its successors and assigns, the right and privilege to alter, amend, reconfigure, combine or re-subdivide any unsold lots in the EDGEWATER ESTATES AT 355 POOL ROAD SUBDIVISION plan or any adjacent real estate in its ownership or to use any such lots for access to and for the use, introduction, installation and maintenance of utility services to any adjacent land owned by Seacoast Development, LLC, or hereinafter acquired by it or its assigns and to alter, amend or change the location of any driveways, rights-of-ways or access roads shown on said plan to a location of its choosing provided the access to the premises to be conveyed is not materially impaired or affected.
11. The within grantees, their heirs and assigns, shall not alter the area encompassed within the bounds of the proposed drainage swales as indicated on the aforesaid plan in any manner which would impede or adversely affect the drainage of the subdivision in which the above-described premises are situated.

ARTICLE III
AMENDMENT OF DECLARATION

The "Developer" may amend this declaration at any time as long as the Developer still owns a lot in the development.

No amendment or termination of this Declaration shall be effective unless approved by the City of Biddeford Planning Board. All other items in this Declaration may be amended at any time and from time-to-time written instruments duly executed by the owners of the lots and by all mortgagees of record and recorded in the York County Registry of Deeds.

All present and future owners of lots are subject to the terms and provisions contained or referred to in this Declaration. The acceptance of a deed and conveyance of a lot other than as security, or the entering into if occupancy of any lot, shall signify the provisions contained or referred to in this Declaration are accepted and ratified by such owner or occupant and shall further signify that the owners acknowledge the authority of the lot owners to enforce the covenants and restrictions which run with the land, by suit or otherwise. All the provisions contained or referred to herein shall be deemed and taken to the covenants running with the land and shall bind any person having at any time having an interest or estate in a lot (except as mortgage security) as though such provision were recited and stimulated at length in each and every deed or conveyance of a lot.

If any one or more of these covenants, or any part thereof, shall be invalid or unenforceable, such invalid yet or unenforceability shall not affect the remaining portions hereof which shall remain in full force and effect.

IN WITNESS WHEREOF, COASTAL DEVELOPMENT, LLC, has caused this instrument to be signed in its name and behalf by Shawn D. Brown its manager thereunto duly authorized, all as of day and date first above written.

WITNESS:

SEACOAST DEVELOPMENT, LLC

BY: _____

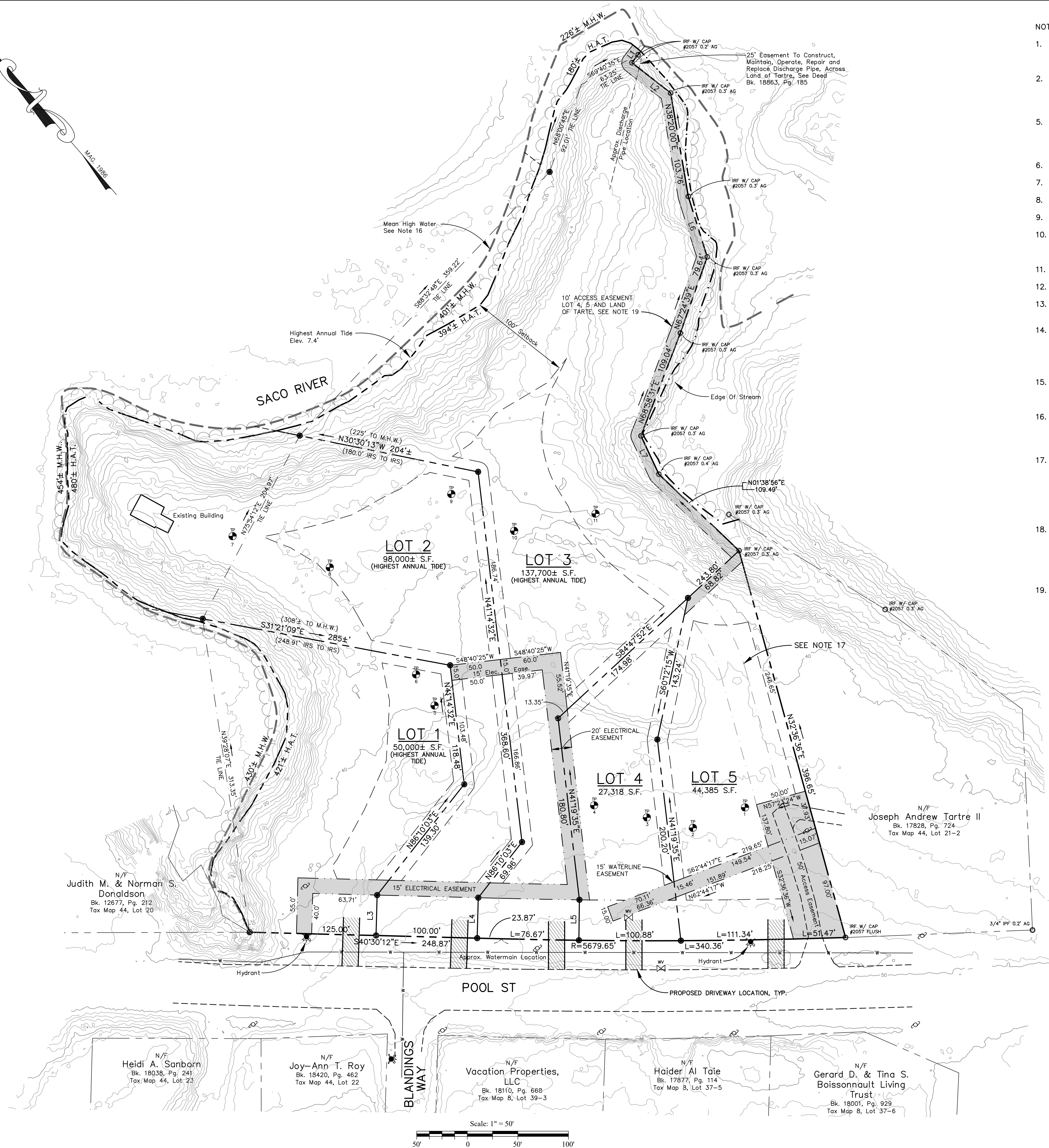
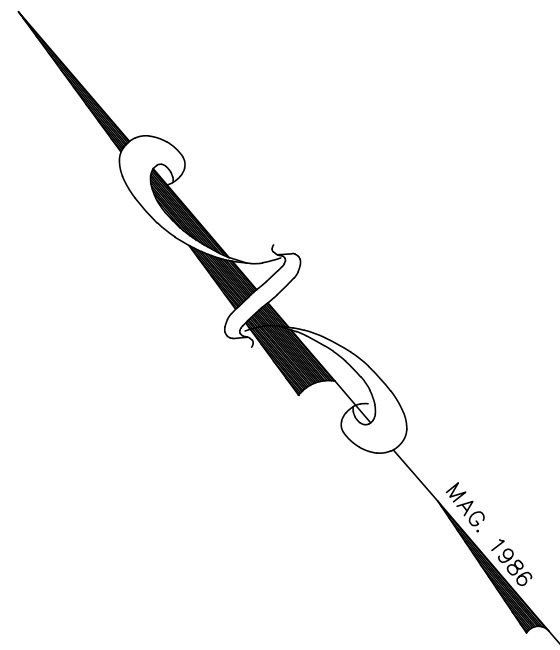
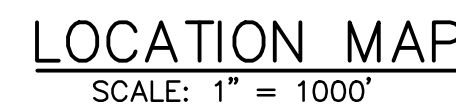
Managers

Shawn D. Brown, its
Thereunto duly authorized

STATE OF MAINE
YORK, ss.

Then personally appeared the above-named Shawn D. Brown, in his said capacity and acknowledged the foregoing to be his free act and deed and free act and deed of said Seacoast Development, LLC.

Before Me,

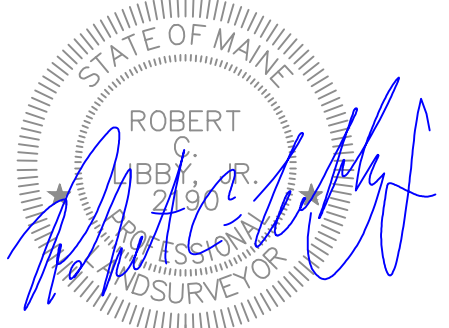


1. OWNER/APPLICANT: SHAWN BROWN
5 BUCKTHORN CIRCLE
SACO, MAINE
2. SURVEYOR: ROBERT C. LIBBY JR., PLS #2190
BH2M
380B MAIN STREET
GORHAM, MAINE
5. DEED REFERENCE: BK. 18863, PGS. 185-188
BK. 6222, PGS. 13 THRU 16
BK. 4553, PGS. 41-43
BK. 4521, PGS. 10-12
6. TAX MAP REFERENCE: MAP 44, LOT 21
7. ZONING: SUBURBAN RESIDENTIAL (SR1)
8. PROJECT AREA: 8.21± ACRES
9. PROPOSED USE: 5 SINGLE FAMILY LOTS
10. MINIMUM STANDARDS: LOT SIZE - 20,000 S.F. (PUBLIC WATER)
FRONTAGE - 100' (PUBLIC WATER)
SETBACKS - 40' FRONT, 10' SIDE & REAR
11. SEWER SERVICE: INDIVIDUAL ON SITE SEPTIC SYSTEMS
12. WATER SERVICE: PUBLIC
13. ELECTRIC/TELEPHONE: UNDERGROUND FROM UTILITY POLES
ALONG POOL STREET
14. ALL CONSTRUCTION AND SITE ALTERATIONS SHALL BE DONE IN
ACCORDANCE WITH THE EROSION PREVENTION PROVISIONS
OUTLINED IN THE MAINE EROSION CONTROL AND SEDIMENTATION
HANDBOOK FOR CONSTRUCTION: BEST MANAGEMENT PRACTICES,
LATEST EDITION.
15. SITE CONTOURS, ARE PER MAINE GIS CATALOG, BIDDEFORD,
MAINE, NAVD 88. MEAN HIGH WATER AND HIGHEST ANNUAL TIDE
PER ON SITE TOPOGRAPHIC SURVEY, NAVD 88.
16. MEAN HIGH WATER IS AS LOCATED IN MARCH OF 2022 WITH ICE
CONDITIONS. MEAN HIGH WATER ELEVATION DATA IS PER NOAA,
BIDDEFORD, SACO RIVER STATION, ACCEPTED APRIL 17, 2003,
ELEVATION 3.98, NAVD 88.
17. 25' ACCESS EASEMENT SHOWN PER DEED REFERENCED IN
BOOK 18863, PAGES 185 THRU 188. EASEMENT WAS NOT
REFERENCED IN PREVIOUSLY APPROVED PLAN ENTITLED
"TARTRE REALTY SUBDIVISION", DATED SEPTEMBER 26, 1986,
APPROVED BY THE CITY OF BIDDEFORD MAY 6, 1987 AND
RECORDED IN THE YORK COUNTY REGISTRY OF DEEDS PLAN BOOK
156, PAGE 27.
18. PLAN REFERENCE: "TARTRE REALTY SUBDIVISION: DATED
SEPT. 26, 1986 BY ALIBERTI, LAROCHELLE
& HODSON SURVEYORS AND ENGINEERS
MADE FOR PERSPECTIVE ASSOCIATES AND
RECORDED IN THE Y.C.R.D. PL. BK. 156,
PAGE 27.
19. PROPERTY IS SUBJECT TO A RIGHT OF ACCESS EASEMENT TO AND
FROM THE SACO RIVER FOR PURPOSE OF ACCESSING BOAT
MOORINGS FOR PERSONAL USE, SAID EASEMENT SHALL RUN WITH
THE LAND. SEE DEED REFERENCES, NOTE 5.

THIS PLAN SUPERSEDES THE PREVIOUSLY
RECORDED PLAN ENTITLED TARTRE REALTY
SUBDIVISION, RECORDED IN THE YORK
COUNTY REGISTRY OF DEEDS, PLAN
BOOK 156, PAGE 27, DATED MAY 22, 1987.
THE PURPOSE OF THIS AMENDMENT IS THE
DIVISION OF THE PREVIOUSLY APPROVED LOT 4.

I CERTIFY THAT THIS SURVEY CONFORMS
TO THE MAINE BOARD OF LICENSURE
FOR PROFESSIONAL LAND SURVEYORS
TECHNICAL STANDARDS OF PRACTICE FOR
A STANDARD BOUNDARY SURVEY WITH
THE FOLLOWING EXCEPTIONS:

1. NO SURVEYORS REPORT
2. INTERIOR LOT LINES ONLY



ROBERT C. LIBBY JR. PLS #2190

REVISION		DESCRIPTION
NO.	DATE	
1	10/4/22	Rev'd. Per Staff Review For 10/5 Planning Board Mtg.
2	10/12/22	Rev'd. Lots 4 and 5



Berry, Huff, McDonald, Milligan Inc.
Engineers, Surveyors
380B Main Street
Gorham, Maine 04038
Tel. (207) 839-2771
www.bh2m.com

FOR
Shawn Brown
5 Buckthorn Circle

AMENDED PLAN
TARTRE REALTY SUBDIVISION

DESIGNED W. Pelkey	DATE July 2021
DRAWN Dept.	SCALE 1" = 50'
CHECKED R. Libby, Jr.	JOB. NO. 21109

SHEET
1

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OF BH2M INC. IS PROHIBITED

From: Gagne, Scott
Sent: Monday, October 3, 2022 8:08 AM
To: Walter Pelkey
Subject: Pool street lots

The Biddeford Fire Department has the ability to serve the 5 lots as proposed located off Pool St. We would ask that all building location are no more than 1,000 feet from the nearest hydrant. Thank you.



[Biddeford Fire Department](#)

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From: Walter Pelkey
Sent: Wednesday, September 7, 2022 10:19 AM
To: Terrell, Van
Subject: RE: Pool Street

Thanks Van.

Walter E. Pelkey
Vice President

BH2M
380 B Main Street
Gorham, ME 04038
www.bh2m.com
(207) 839-2771 Ext. 201



From: [Terrell, Van](#)
Sent: Wednesday, September 7, 2022 9:45 AM
To: [Walter Pelkey](#)
Subject: RE: Pool Street

Good morning Walter,

The location you provided on Rte.9/Pool Street in Biddeford is in an Urban Compact area and outside MaineDOT jurisdiction. You would need to contact the municipality for driveway cuts.

Thank you,

Van Terrell
Permit Specialist
Southern Region
[Maine Department of Transportation](#)
[51 Pleasant Hill Rd](#)
[P.O. Box 358](#)
[Scarborough, ME 04070-0358](#)
Office (207) 885-7040

From: Walter Pelkey <wpelkey@bh2m.com>
Sent: Tuesday, September 6, 2022 3:53 PM

To: Terrell, Van <Van.Terrell@maine.gov>
Subject: Pool Street

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Van,

We are working on a 5 lot subdivision located along Route 9 (Pool Street) in Biddeford. I am wondering if you can give me some guidance on driveway cuts for the project? Plan and location map of the project is attached. I'd appreciate any direction you could give me on this, what we need, if anything for driveway cuts.

Thanks.

Walter E. Pelkey
Vice President

BH2M
380 B Main Street
Gorham, ME 04038
www.bh2m.com
(207) 839-2771 Ext. 201



From: Marcus Knipp
Sent: Monday, October 3, 2022 11:41 AM
To: Walter Pelkey
Subject: RE: 355 Pool Street

Hi Walter,

No issues with Capacity. Maine Water can confirm there is plenty of capacity from the existing 8-inch cast iron main on Pool Street to serve the domestic water needs of these 5 proposed lots from normal residential water usage as assumed single family dwellings on each lot. For additional capacity beyond single family homes, I'll want to see a demand schedule with specifics of what each lot is proposing individually.

(GIS image is approximate, for illustration purposes only, needs field verified and is not GPS or survey grade)



From Hydrant B-137 – water main is 7' away

From Hydrant B-138 – water main is 5' away Should be fairly straight between those two connections as shown on GIS image)

Reach out with any questions over this for now.

Thanks,
Marcus

Marcus Knipp, EI
Engineer



93 Industrial Park Road
Saco, ME 04072
Office: 207-294-6943
Cell: 207-468-2089

PS (working on getting you the final review for 58 Portland Ave at the moment – will send shortly)

From: Walter Pelkey <wpelkey@bh2m.com>
Sent: Monday, September 12, 2022 10:38 AM
To: Marcus Knipp <Marcus.Knipp@MaineWater.com>
Subject: 355 Pool Street

CAUTION: This email originated outside the SJWG organization.

Hi Marcus,

Attached is a plan for a property located at 355 Pool Street in Biddeford. Our client is proposing a lot split for 5 lots to be served by public water and private individual sewer systems. First, could you confirm the watermain size and approximate location for the plan. Second, could you provide us with a letter or email with the ability to serve for the proposed lots.

Thanks.

Walter E. Pelkey
Vice President

BH2M
380 B Main Street
Gorham, ME 04038
www.bh2m.com
(207) 839-2771 Ext. 201



Title 38: WATERS AND NAVIGATION

Chapter 6: SACO RIVER CORRIDOR

§961. Relation to municipal, state and federal regulations

Nothing in this chapter prevents municipal, state or federal authorities from adopting and administering more stringent requirements regarding performance standards or permitted uses within use districts established by the commission or within districts overlapping the districts established pursuant to this chapter. Where there is a conflict between a provision adopted under this chapter and any other municipal, state or federal requirement applicable to the same land or water areas within the corridor, the more restrictive provision takes precedence. All performance standards, rules and regulations proposed for hearing by the commission must be submitted to the Commissioner of Environmental Protection, the Department of Agriculture, Conservation and Forestry, the Greater Portland Council of Governments and the Southern Maine Regional Planning Commission at least 7 days prior to the hearing for review and comment. The commission may not adopt any rule establishing air or water quality standards within the corridor in conflict with the rules of the Department of Environmental Protection without the prior approval of the Board of Environmental Protection. [PL 2011, c. 655, Pt. JJ, §37 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF); PL 2011, c. 657, Pt. W, §5 (REV).]

SECTION HISTORY

PL 1979, c. 459, §1 (NEW). PL 1989, c. 890, §§A40,B204 (AMD). PL 2011, c. 655, Pt. JJ, §37 (AMD). PL 2011, c. 655, Pt. JJ, §41 (AFF). PL 2011, c. 657, Pt. W, §5 (REV).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.

[Office of the Revisor of Statutes \(mailto:webmaster_ros@legislature.maine.gov\)](mailto:webmaster_ros@legislature.maine.gov) · 7 State House Station · State House Room 108 · Augusta, Maine 04333-0007

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**Bernstein, Shur,
Sawyer & Nelson, P.A.**
100 Middle Street
PO Box 9729
Portland, ME 04104-5029

T (207) 774 - 1200
F (207) 774 - 1127

James Monteleone
207-228-7198 direct
jmonteleone@bernsteinshur.com

Sent via Electronic Mail

October 13, 2022

Matthew Grooms
Town Planner, City of Biddeford
205 Main Street
Biddeford, ME 04005
matthew.grooms@biddefordmaine.org

Re: Application 2022.30, Shawn Brown Subdivision at 355 Pool Street

Dear Mr. Grooms and Planning Board Members:

Thank you for the opportunity to respond on behalf of abutter J. Andrew Tartre to the legal issues discussed by applicant Shawn Brown's attorney, Sandra Guay, in her August 18, 2022 correspondence.

Attorney Guay's analysis misstates the issue raised by the applicant's pending lawsuit filed against Mr. Tartre asking that the York County Superior Court reform Mr. Tartre's easements over the proposed subdivision property. The issue is *not* whether Mr. Brown has demonstrated sufficient right, title and interest to proceed with his application.

The true issue is that Mr. Brown's lawsuit seeking a reformation and declaration of the easements affecting the proposed subdivision property's prevents the applicant from completing his application for preliminary subdivision approval until after the court's determination of the applicable deed restrictions is resolved.

The Subdivision Ordinance, Sec. 66-35, defines the contents required to complete an application for preliminary subdivision approval. A complete application must include documentation of the "covenants or deed restrictions as are intended to all or part of the tract" being subdivided. See Sec. 66-35(d)(9).

Here, the applicant cannot accurately show the deed restrictions affecting the proposed subdivision until Mr. Brown's requested judicial declaration of the applicable easements is entered by the court. In the meantime, Mr. Brown's preliminary subdivision plan remains incomplete.

No provision of the Subdivision Ordinance authorizes the Board to act upon an incomplete subdivision application, or to waive submission requirements. The Law Court, in *Hartwell v. Town of Ogunquit*, 2015 ME 51, held that an incomplete permitting application cannot go forward until all

submission requirements are satisfied. The Court explained: “When a municipal ordinance requires an applicant to submit specific information, and the ordinance neither allows for the submission of written waiver requests nor includes a provision allowing a planning board to determine that certain requirements are not applicable, the planning board has no authority to disregard or waive the requirements of the ordinance.” *Hartwell*, 2015 ME 51 ¶ 10, 115 A.3d 81, 84.

Consequently, the Maine Municipal Association guidance the applicant cites to contend that the Board should not table an application amid pending litigation or entangle itself in the title dispute does not apply where the pending litigation renders the application incomplete. Subdivision Ordinance, Sec. 66-39(a), governing timing of the Board’s actions on a preliminary subdivision application, requires only that the Board shall act “within 30 days following receipt of *complete* application and submission ...” No Board action is required – or permitted— until the application is complete.

Moreover, the applicant’s correspondence notably omits discussion that the case law cited to support the request to proceed on Mr. Brown’s application despite pending litigation applied to litigation disputing property ownership. The Law Court, however, has established that pending disputes over the scope of applicable easement rights are an exception to the general rule allowing a municipal permitting application to proceed while litigation is pending.

In *Tomasino v. Town of Casco*, 2020 ME 96, the Law Court concisely summarized this exception: “Whatever minimum ‘right, title or interest’ is required by ordinance ... we conclude that, in the face of a dispute between private property owners, that requirement is not met by an easement whose parameters have not been factually determined by a court with jurisdiction to do so.” 2020 ME 96, ¶ 15, 237 A.3d 175, 181.

This is not a case where Mr. Tartre has initiated legal action against the applicant in an effort to slow down or obstruct Mr. Brown’s subdivision application. Rather, Mr. Brown himself initiated the legal action prior to submitting his application based upon an apparent belief that the scope of Mr. Tartre’s deeded easements is unclear and erroneous, requiring a judicial declaration of the true easement rights burdening the proposed subdivision.

Mr. Tartre strongly contests Mr. Brown’s legal claims for reformation of Mr. Tartre’s deeded easement rights that burden the subdivision property, which Mr. Brown presumably intends to sell to buyers.

Section 66-35(d)(9) of the Ordinance, requiring disclosure of the “covenants or deed restrictions as are intended to all or part of the tract” being subdivided, ensures the Board has opportunity to review whether a proposed lot configuration is rendered impossible by deed restrictions, such as the easements disputed here. Until the Board receives the applicant’s complete submission outlining what deed restrictions actually apply to these proposed lots, the necessary review of Mr. Brown’s preliminary subdivision proposal is impossible.

Mr. Tartre, as an abutter to the proposed subdivision, respectfully renews his requests that the Board table Mr. Brown’s application until such time as the real estate litigation ends and the Court declare

the easement rights that apply, as Mr. Brown has requested, and a complete preliminary subdivision application is received.

Very truly yours,

A handwritten signature in blue ink, reading "James G. Monteleone". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

James G. Monteleone

cc: Sandra L. Guay, Esq. (sguay@archipelagona.com)

Keith P. Richard, Esq. (krichard@archipelagona.com)



Sandra L. Guay
Partner
sguay@archipelagolaw.com

1 Dana Street
Portland, Maine 04101
(207) 558-0102

October 17, 2022

Via Email

Biddeford Planning Board
Matthew Grooms, City Planner
City of Biddeford
matthew.grooms@biddefordmaine.org

RE: Application of Shawn Brown/Andrew Tartre litigation

Dear Planning Board Members:

As requested by the Planning Board at its October 5, 2022 meeting, this letter is submitted in response to a letter dated October 13, 2022, that has been submitted to the Board by Attorney Monteleone, on behalf of his client, Mr. Tartre.

As many of these issues have already been addressed in my August 18, 2022 letter to Matt Grooms, which I have attached to this letter for the Board's convenience and incorporate herein by reference, I will speak only to certain assertions or misconceptions raised in Attorney Monteleone's letter.

Attorney Monteleone claims that the issue raised by the lawsuit has been misstated (while then misstating the scope of the claims made in the complaint¹). He also states that "[t]he issue is *not* whether Mr. Brown has demonstrated sufficient right, title and interest."² (emphasis in original). This confuses two separate and distinct issues.

First, there is the pending lawsuit in the Superior Court, which has no bearing on this Board. As clearly stated in your ordinance, and as a matter of law, the jurisdiction of this Board with respect to subdivisions is to "[r]eview and approve, approve with conditions or disapprove" a subdivision plan. (Art. 10, Sec. 1.B.2). With respect to right, title or interest, the Maine Law Court has been crystal clear that the role of a planning board is to determine whether the applicant has provided evidence of title sufficient to allow the applicant to use the property in the

¹ In his letter, Attorney Monteleone consistently refers to the litigation as seeking only "reformation" of easements. There are seven other counts in the complaint, including fraud, extinguishment or abandonment, a declaration of rights and trespass, among others. A positive decision on some of these counts would necessarily require reformation.

² For clarification, the correct term is right, title *or* interest."

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Biddeford Planning Board
October 17, 2022
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manner that would be authorized by the permit being sought. *See e.g., Southridge Corp. v. Board of Environmental Protection*, 665 A.2d 345 (Me. 1995). The Court has also repeatedly said that the level of evidence of right, title or interest for the purposes of demonstrating standing to bring an application to an administrative board is set at a low bar. Mr. Brown has provided the Planning Board with a deed proving that he holds fee title in the entire parcel that is the subject of the subdivision application. There can be no question that he has more than met the standard for administrative standing to bring the subdivision application to this Board.

Second, the issue is *specifically* whether Mr. Brown has demonstrated sufficient right, title or interest in the property. That is the only question that is presently before the Planning Board with regard to the applicant's standing to bring the application, and the Board's jurisdiction to review the application. This requirement is reflected in Section 66-35(a)(14) of the Subdivision Ordinance and in the Required Information Checklist in Appendix B of the Ordinance, which requires, among other application materials, a "*Copy of deed*, or option for purchase, for land being subdivided" and "*Valid deed* or option indicating an interest held by the subdivider in the parcel of land." By submission of his recorded deed, Mr. Brown has demonstrated sufficient right, title, and interest to proceed with his application.

Attorney Monteleone also asserts that a submission requirement in the subdivision ordinance (Sec. 66-35(d)(9)), requiring the application to include "copies of covenants or deeds restrictions as they are intended to all or part of the tract" has not been met because there is a dispute about the existence and/or location of claimed easements on the property. Attorney Monteleone misconstrues this submission requirement. The requirement does not seek to adjudicate any disagreement by someone claiming to have an easement across the property and it does not require any such disagreement to be adjudicated by a court prior to submission of the application; it merely asks that if the developer is proposing any covenants or deeds restrictions as a part of the proposed subdivision, that he or she provide the Board with copy of those proposed covenants or restrictions. The applicant has not sought to waive this submission requirement (as suggested in Attorney Monteleone's letter) and in fact, the application as submitted includes this required information. The requirement has been met, and the application is complete. That there may or may not be a later amendment to the plan in the unlikely event that a Court determines there is a valid easement area that must be treated differently, Mr. Brown will need to return to this Board for that amendment; that is not a reason to abstain from review the plan as presented.

Attorney Monteleone likewise misconstrues the Law Court's decision in *Tomasino v. Town of Casco*, 2020 ME 96, 237 A.3d 175. In that case, the applicant did not own or have any interest in the title to the property. Rather, the applicant held only an easement interest in the property and was seeking to remove trees within the easement area. The owner of the property that was subject to the easement objected, claiming that the easement did not include a right to clear trees in the easement area. While discussing similar decisions in prior cases, the *Tomasino* Court explained that:

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Biddeford Planning Board
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“[N]one of these decisions supports the proposition that administrative standing may be conferred merely by possessing any kind of easement on the property at issue. Unlike title owners, easement owners are subject to a second layer of necessary authority—what the easement itself allows—in addition to what the applicable ordinances and statutes allow.” *Tomasino v. Town of Casco*, 2020 ME 96, ¶ 15, 237 A.3d 175.

In other words, the Court did not say that a title owner with a disputed easement over his or her property lacked sufficient right, title or interest for the purposes of administrative standing, rather, that a person who holds only an easement interest over someone else’s property may lack such standing. Unlike the applicant in *Tomasino*, my client owns fee title to the property at issue and his right to seek approval from this Board is established by deed. Nothing more is required.

Lastly, by coincidence, this subject recently came up at a Planning Board meeting in Harpswell where, on September 16, 2022, the Town’s municipal attorney, Amy Tchao, wrote a letter that looks similar in many respects to the August 18, 2022 letter sent to Matt Grooms in support of this application. I have included a copy of Attorney Tchao’s letter here as further support for the sufficiency of right, title or interest in this matter. Note that on the second page of her letter Attorney Tchao also discusses the *Tomasino* decision and the Court’s admonition that “an applicant cannot demonstrate sufficient [right, title or interest] in the specific situation *when the claimed interest arises from an easement*.” (Tchao letter, page 2; emphasis added). Again, in this case, the claimed interest arises from a recorded deed evidencing record title to the property, not from asserted easement rights.

We hope that this further clarifies the scope of the Planning Board’s review and look forward to the Board’s timely consideration of the proposed amended subdivision plan.

Very Truly Yours,



SANDRA L. GUAY

SLG/lb
Copy (w/attachment) to:
Shawn Brown
James Monteleone, Esq.



Sandra L. Guay
Partner
sguay@archipelagolaw.com

22 Free Street, Ste 403
Portland, Maine 04101
(207) 558-0102

August 18, 2022

Via Email

Matthew Grooms, City Planner
City of Biddeford
matthew.grooms@biddefordmaine.org

RE: Application of Shawn Brown/Andrew Tartre litigation

Dear Mr. Grooms:

Please accept this letter as a response to comments submitted by abutters regarding my client, Shawn Brown's, request to amend an approved 1987 subdivision and in particular, abutter assertions about pending litigation. We hope to clarify the limited scope of our client's pending application at the Planning Board and the significance (or lack of significance) of the pending litigation. In short, the Board has full authority to act upon the request to amend the subdivision and should decline requests to stay the application.

The lawsuit brought by my client against Andrew Tartre was filed not in anticipation of this application, as his counsel asserts, but rather to separately correct a title problem created after the 1987 subdivision approval, in the correct forum—the court system. Maine courts have repeatedly held that a municipal forum is not the place for parties to litigate title issues, which are private controversies for judges to decide. Boards apply the ordinances within their charge; title and property disputes are beyond the scope and jurisdiction of the municipal decisionmaker's review under the ordinances.

The only question regarding title that this Board need decide is whether Mr. Brown has demonstrated sufficient right, title, and interest to proceed with his application. This requirement is reflected in Section 66-35(a)(14) of the Subdivision Ordinance and in the Required Information Checklist in Appendix B of the Ordinance, which requires, among other application materials, a "Copy of deed, or option for purchase, for land being subdivided" and "Valid deed or option indicating an interest held by the subdivider in the parcel of land."

Guidance from the Maine Municipal Association underscores that municipal decisionmakers should avoid entangling themselves in title questions when deciding permit applications. The Manual for Local Planning Boards (2017 Rev.) advises municipal planning boards, in part, that:

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Matthew Grooms, City Planner

October 14, 2022

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“The board cannot deny an application because the proposed use would violate a private deed restriction if the use otherwise would be in compliance with the applicable ordinance/statute.

.....

Nor may the board refuse to act on an application or deny approval of a permit because of the existence of a pending lawsuit by the applicant on a related issue, absent language in the ordinance to the contrary. *Portland Sand and Gravel, Inc. v. Town of Gray*, 663 A.2d 41 (Me. 1995).” (MMA Manual at page 35)

The Manual also helpfully provides sample language for Planning Boards to use in decisions where an adverse party has appeared and raised title issues. The sample language is found at page 337 in the MMA Manual and is enclosed herewith for your convenience. As this language suggests, when the Board confines review to narrow questions of deeded ownership and declines to attempt to adjudicate a title question, the inquiry is far simpler and easier. The adverse party is not prejudiced whatsoever; he or she can of course still raise arguments in court, as Mr. Tartre may do in the pending Superior Court case.

Case law also supports keeping municipal review and title litigation separate. Where there is a dispute or alleged uncertainty about title, the Maine Law Court has held that the required showing is minimal to seek a permit. An applicant seeking approval from a municipal board need only demonstrate “a legally cognizable expectation of having the power to use that site in the ways that would be authorized by the permit or license he seeks.” *Murray v. Lincolnville*, 462 A.2d 40, 43 (Me. 1983).

This principle has been reaffirmed and remains good law. For example, in *Southridge Corporation v. Board of Environmental Protection*, the applicant sought a permit for a septic system that was located on adjoining property and had been in existence for decades. *Southridge Corp. v. Bd. of Envtl. Prot.*, 655 A.2d 345, 348 (Me. 1995). The applicant had separately filed an action for adverse possession of the property on which the septic system was located, which remained pending in Superior Court at the time of the Law Court’s decision on the Planning Board appeal. *Id.* at 346-47. The Law Court held that *even without any present title interest in the property at issue*, the applicant had demonstrated a sufficient right to seek a permit by merely filing the adverse possession action, the result of which could be for the applicant to obtain title to the property. In so holding, the Court acknowledged that the applicant might lose the court case and the permit might be revoked, but this possibility did not deprive the applicant of his standing and ability to seek a permit now. *Id.* at 348.

More recently, in *Tomasino v. Town of Casco*, 2020 ME 96, ¶ 8, the Court again made this ruling clear when it stated that “a municipal zoning case is not the proper forum for a private property dispute between neighbors.” *Citing to Rockland Plaza Realty Corp. v. La Verdiere's Enters., Inc.*, 531 A.2d 1272, 1273-74 (Me. 1987) (“[T]he Planning Commission was not the proper forum to determine existing property rights in the narrow strip of land and consequently

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Matthew Grooms, City Planner
October 14, 2022
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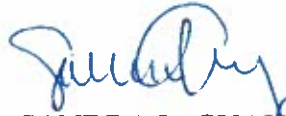
the Superior Court was not in a position to entertain the issue on a Rule 80B appeal."); *Cunningham v. Kittery Planning Bd.*, 400 A.2d 1070, 1078-79 (Me. 1979) (stating that the purpose of a municipal board hearing was "to give the public an opportunity to present facts . . . for its consideration in reviewing the subdivision application and not for the purpose of adjudicating private rights" (quotation marks omitted)).

There is no question that Mr. Brown has sufficient right and title interest in the property as the current owner of record. To the extent that Mr. Tartre is challenging the scope of my client's rights, and how those square with his purported rights, we fully believe that the result of the pending litigation will be to reaffirm that Mr. Brown has the right to develop the parcel in the manner proposed. As the Law Court has repeatedly held, this is more than adequate for the Planning Board to hear and decide the application now. There is no need to stay the Board's review of Mr. Brown's application, because the result of the Superior Court action has no bearing on his present interest to seek the requested amendments to the subdivision plan.

In summary, the only matter pending for review and decision by the Planning Board is a request to amend the existing, approved and recorded 1987 Tartre Realty Subdivision Plan and the Board's inquiry must necessarily begin with that approved plan and the amendments sought. The easement that Mr. Tartre claims does not appear on the 1987 plan, and it in fact was clearly and specifically excluded from that plan with full knowledge of Mr. Tarte, by the then Planner and Planning Board. Mr. Tarte's present claim will be adjudicated in court and is therefore not relevant to this Board's consideration of the proposed amendment.

We hope that this clarifies the scope of the Planning Board's review and look forward to the Board's timely consideration of the proposed amended subdivision plan.

Very Truly Yours,



SANDRA L. GUAY

SLG/lb
Copy (w/attachment) to:
Shawn Brown
James Monteleone, Esq.

Sample Wording for Use in a Permit Issued to a Landowner Where Title to the Land, Boundary Location or Other Title Problem has Been Raised by a Third Party

“This permit represents a finding by the (Board)/(CEO) that the application satisfies the requirements of the town’s ordinance. It is approved on the basis of information provided by the applicant in the record regarding his/her ownership of the property and boundary location. The applicant has the burden of ensuring that he/she has a legal right to use the property and that he/she is measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding property boundaries, ownership or similar title issues. The permit holder would be well-advised to resolve any such title or boundary problems before expending money in reliance on this permit.”

Sample Wording for Use in Approving a Development Plan to Ensure that the Plan will be Developed Exactly as Depicted Unless Revisions are Approved by the Appropriate Authority

“The (Board)/(CEO) approves the development proposal submitted by (applicant’s name) as described in his/her application dated _____, including all depictions on the accompanying plan and other attachments. Except to the extent that the (Board)/(CEO) has expressly indicated in its/his/her decision that certain depictions may be revised by the applicant without further review and approval by the (Board)/(CEO), any changes to the plan and attachments must receive prior approval by the (Board)/(CEO), including but not limited to changes in the proposed location of structures, roads, wells, and subsurface disposal systems, the method of waste disposal, and the extent and location of vegetated areas.”

September 16, 2022

Via Email – allanlegrow@comcast.net

Allan LeGrow, Chair
Town of Harpswell
Planning Board
P.O. Box 39
Harpswell, ME 04079

Dear Mr. LeGrow and Planning Board Members:

This letter is in response to a request from Planning Board Chair Mr. Allan LeGrow, made through Town of Harpswell administration, for legal guidance as to whether an applicant for a land use permit has demonstrated sufficient right, title, or interest (“RTI”) to confer the applicant administrative standing to seek permits and approvals before the Planning Board. It is my understanding that this inquiry has arisen in the context of a site plan application brought by Mr. Sheldon Morse, Jr. d/b/a Morse Lobster, LLC (lessee), with authorization from Mr. Albert Rose (lessor/owner), to operate a mobile food concession trailer on a parcel located on Harpswell Tax Map 8, Lot 20 at 119 Lookout Point Road.

While it is ultimately the role of the Planning Board to determine whether or not an applicant has demonstrated sufficient RTI, I am happy to discuss what is generally required.

In general, an applicant for a land use permit must, as a threshold issue, demonstrate that the applicant has “sufficient title, right, or interest in all of the property which is proposed for development or use.” *Southridge Corp. v. Board of Environmental Protection*, 655 A.2d 345, 348 (Me. 1995). The applicant must show “the kind of relationship to the site that gives him a legally cognizable expectation of having the power to use that site in the ways that would be authorized by the permit or license he seeks.” *Id.* (citations omitted). The purpose of requiring a demonstration of RTI is to “prevent an applicant from wasting an administrative agency’s time by applying for a permit or license that he would have no legally protected right to use.” *Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983).

As a practical matter, the threshold issue of administrative standing on the basis of sufficient RTI is generally a low bar, and the courts have stated repeatedly that it is not the role of a local permitting authority to determine the property rights of private parties in the face of a dispute between those parties. *See Tomasino v. Town of Casco*, 2020 ME 96, ¶¶ 7-8, 237 A.3d 175 (determining private property rights “are matters that are well outside the Board’s jurisdiction, authority, or expertise, which is instead limited to the interpretation and application of ordinance provisions”). The fact that an applicant’s claim to title is subject to an ongoing dispute that might at some future point impact the applicant’s purported title interest does not generally stand in the

September 16, 2022

Page 2

way of proving sufficient RTI to proceed with review of the application. *See Southridge*, 655 A.2d at 348 (noting that an applicant's current interest in the land is what is relevant for proving RTI, even if that status may change later).

The Maine Law Court has recently noted that an applicant cannot demonstrate sufficient RTI in the specific situation when the claimed interest arises from an *easement* whose exact scope is relevant to the permit being sought and subject to a dispute among the parties to that easement. *See Tomasino*, 2020 ME 96, ¶ 15, 237 A.3d 175. The courts have stated more generally, however, that demonstration of *title ownership* may be sufficient to meet the RTI requirement and confer administrative standing to seek local permits and approvals, *see id.* ¶ 14. This is true even when the applicant's title ownership is subject to a pending judicial proceeding to quiet title. *Southridge*, 655 A.2d at 348.

In short, in analyzing whether an applicant has demonstrated sufficient RTI to confer standing to allow the applicant to proceed before the Board with its application, showing a legally cognizable *title* interest, even a disputed *title* interest, is generally treated as meeting the low threshold to demonstrate administrative standing.

I understand specifically in this instance that there is some dispute between the owner (on behalf of the applicant who is a business lessee of the owner) and another party regarding whether certain possible conditions in the underlying deed would be triggered by the applicant's use of the property in the manner proposed that would operate to potentially defeat the fee owner's title to the property. These legal issues, which have been raised in back-and-forth letters by attorneys for both parties, totaling over 10 pages, are complex both legally and factually, and are more appropriately addressed by a court in a quiet title action, not by the Planning Board. *See Tomasino*, 2020 ME 96, ¶ 8 ("a municipal zoning case is not the proper forum for a private property dispute between neighbors").

As noted above, the Planning Board does not need to address these potential issues between private parties regarding the status of title to the property currently subject to the pending site plan application. Rather, the question at hand is whether the Planning Board cannot proceed with review of the application because the applicant lacks administrative standing and/or the Board lacks jurisdiction to proceed. Based on my review of the law in this area, I cannot conclude that the Planning Board may not proceed with review of the pending application. Consistent with the Law Court's decisions in *Southridge* and *Tomasino*, and with prior jurisprudence governing administrative standing, I believe the unresolved property dispute between the parties in this matter regarding who has title to the property does not deprive the applicant/owner of administrative standing, nor does it deprive the Planning Board of jurisdiction to review the applicant's application.

In perhaps more practical terms, in light of the owner's presentation of a deed purporting to demonstrate *fee title* to the property in question, I believe the Planning Board can proceed with substantive review of the application because to do so "would not be a waste of its time." *See Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40 (Me. 1983); *Walsh v. City of Brewer*, 315 A.2d 200 (Me. 1974); *Southridge*, 655 A.2d 345, 348 (Me. 1995) (holding that an

September 16, 2022

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applicant can have sufficient RTI to seek a permit even if there is a possibility that a court might determine otherwise in a different context).

I trust that this letter is responsive to your inquiry. I am happy to make myself available to the Planning Board at its upcoming meeting on September 21st should you have further questions regarding this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. Tchao".

Amy K. Tchao

AKT/mk

Cc: Kristi Eiane, Town Administrator (via email only)
Mark Eyerman, Town Planner (via email only)
Sandra Guay, Esq. (via email only)
Brendan Rielly, Esq. (via email only)

Whitten, Nan

From: dalyn@srcc-maine.org
Sent: Thursday, October 13, 2022 4:02 PM
To: Whitten, Nan
Cc: 'shawn brown'; Fecteau, Roby
Subject: Sean Tarpey <starpey@rumerys.com>; Don Furman <don@fgd-law.com>
Attachments: RE_Letter to Biddeford Planning Board 05_09_2022.pdf; Brown Pool St Subdivision Sketch Plan.pdf

Hello, Nan.

Shawn Brown asked me to forward a letter regarding one of his proposed subdivision plans on Pool Street (see the attached plan). If this is the proposed plan, we strongly recommend reconsideration as lots #4 and 5 would be unbuildable, according to the Commission's standards, which require 100 feet of river frontage, among other requirements. So, if someone were to apply for a permit to build on lots #4 or 5, they would not be able to receive a permit for any construction whatsoever.

Please do not hesitate to contact me if you have any further questions.

Very Sincerely,

Dalyn Houser
Executive Director
Saco River Corridor Commission

81 Maple Street
Post Office Box 283
Cornish, Maine 04020
207-625-8123
www.srcc-maine.org



LOCATION MAP
SCALE: 1" = 1000'

APPROXIMATE LOCATION OF
Cleared Area Within 75' OF
THE APPROXIMATE MEAN
HIGH WATER LINE

NOTES

1. OWNER/APPLICANT: PCD ST REALTY TRUST
100 WATERMAN DR, STE 401
SOUTH PORTLAND, ME 04108
2. ENGINEER: AUSTIN FAGAN, PE #16323
B212
3008 MAIN STREET
CORHAM, MAINE 04038
3. SURVEYOR: ROBERT LUTY, JR.
BK
4. DEED REFERENCES: BK 8222, PG. 13-14
BK 8222, PG. 19-16
5. TAX MAP REFERENCE: MAP 44, LOT 21
6. ZONING: SUBURBAN RESIDENTIAL (SR1)
7. PLANNED AREA: 380,534 S.F. (8.77+ AC)
8. MINIMUM STANDARDS: MIN. LOT SIZE = 20,000 S.F.
(PUBLIC WATER)
FRONTAGE = 100' MIN. (PUBLIC
WATER)
SETBACKS = 40' FRONT
REAR 10' SIDE AND REAR
9. PLAN REFERENCE: A. "TARTIER REALTY SUBDIVISION" DATED
SEPTEMBER 20, 1996, MADE BY
ALBERT LANCHEILLE & HODSON
SURVEYORS AND ENGINEERS, MADE FOR
PERSPECTIVE ARCHITECTS AND
RECORDED IN T.C.R.D IN PLANK BOOK
106, PAGE 27.
10. MEAN HIGH WATER IS APPROPRIATE AS LOCATED IN MARCH
2002 WITH ICE CONDITIONS. MEAN HIGH WATER ELEVATION DATA
IS PER NOAA, BIDEFOER, SACO RIVER STATION, ACCEPTEF
17, 2003, ELEVATION 3.96, NAVD83.
11. SITE CONTROLS ARE PER Maine GIS CATALOG, BIDEFOER® MAINE
NAVD83

REDUCED COPY
NOT TO SCALE

EASEMENT LINE DATA		
E1	- N27°19'43"E	15.00'
E2	- N57°23'24"W	25.00'
E3	- N07°23'24"W	25.00'
E4	- N86°39'38"E	25.00'
E5	- S32°38'36"W	137.80'

LINE DATA		
L1	- N22°57'28"E	41.95'
L2	- N30°37'03"E	62.89'
L3	- N04°01'03"W	48.84'
L4	- N85°58'57"E	10.00'

I CERTIFY THAT THIS SURVEY CONFORMS TO THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS TECHNICAL STANDARDS OF PRACTICE FOR A STANDARD BOUNDARY SURVEY WITH THE FOLLOWING EXCEPTIONS:

1. NO SURVEYORS REPORT

ROBERT C. LIBBY JR.

FLS #2190

[illegible]

BH2M
Bryant, Huff, McDevitt, McHugh Inc.
Engineers, Surveyors

FC4
Post St. Realty Trust
1000 A Street, N.E. 2nd fl.
Atlanta, Georgia 30309
Phone: 404/525-1111

SKETCH PLAN
POOL STREET SUBDIVISION
601 POOL STREET

DESIGNED W. Pelling	DATE October 20
DRAWN T. Vignati	SCALE
CHECKED R. L. ...	JOB. NO. ...

SHEET
I

REPRODUCTION OF WHOLE OR IN
DOCUMENT WITHOUT THE
WRITTEN CONSENT
OF SHAW INC. IS PROHIBITED

LEGEND	
SYMBOL	DESCRIPTION
	EXISTING SEWER MAINHOLE
	CAPPED IRON ROD TO BE SET
	GRANITE MONUMENT TO BE SET
	IRON ROD/PIPE FOUND
	GRANITE MONUMENT FOUND
	UTILITY POLE
	ABOVE GRADE
	DOWN OR FORMERLY
	MAJOR CONTOUR LINE
	MINOR CONTOUR LINE
	PROPERTY LINE
	ADJUTER PROPERTY LINE
	EXISTING RIGHT OF WAY
	EASEMENT LINE

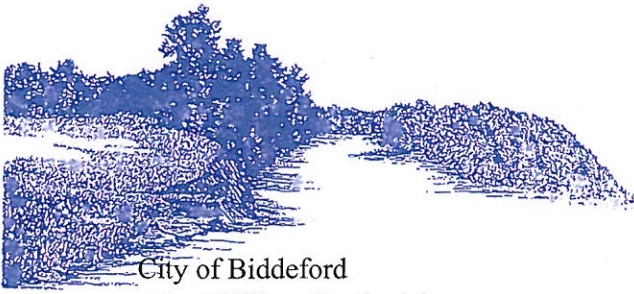
N/F
Heidi A. Sanborn
Bk. 1D338, Pg. 241
Twp. 44, Lot 23

N/T
Joy-Ann T. Roy
Uk. 18420, Pg. 402
Tue Mar 46, Lst 22

N/F
Vacation Properties
LLC

N/F
Haidar Ali Tale
Bk. 17877, Pg. 194
Tos. Map. 2, Lot. 11-12

H/FF
Gerard D. & Tina S.
Boissonnault Living



Saco River Corridor Commission

"Communities Working Together To Protect Our Rivers"

City of Biddeford
Attn: William Southwick
P.O. Box 586
Biddeford, ME 04005

May 9, 2022

Dear Mr. Southwick:

At the April 27th, 2022, Commission Meeting, the Saco River Corridor Commission approved Application #20-450, Shawn Brown: seeking a permit to remediate an original sewage tank, all original storm drains, a parking lot, and service driveways at 355 Pool Street in Biddeford. The approved permit is limited in scope to the activities above. Any future proposed development activities will require additional permits from the Commission.

For the review of this application, Mr. Brown submitted a forestry survey by Jones Associates Inc. detailing the extent of vegetation removal within the 75-foot buffer area. Draft plans were included with this submission that depict a future subdivision of Lot #21, Map #44 (*see plans enclosed*). While the Commission does not require a permit to subdivide lots, any future construction on these proposed lots would require permits from the Commission.

According to the standards of the Saco River Corridor Act, the subdivision shown on the draft plans would result in the creation of two nonconforming lots (#4 and 5) as they would have no river frontage. Future property owners would not be able to obtain a permit from the Commission to build on those lots.

Our office has previously had numerous conversations with Mr. Brown about the Commission's standards regarding subdivisions. We understand that these plans may not be the final plans submitted to the Biddeford Planning Board, but we wanted to address the matter before it became a potential issue.

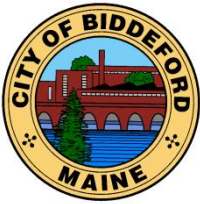
Thank you for your attention to this matter. If you have any additional questions, please do not hesitate to contact us.

Sincerely,

Dalyn Houser
Executive Director

Enclosures: Brown Pool Street Subdivision Draft Sketch Plan

Cc: Robert Fecteau, Director of Biddeford Code Enforcement Office
Don Furman, Biddeford Commission Member
Sean Tarpey, Biddeford Commission Alternate



CITY OF BIDDEFORD

Planning and Development Department

Eric Freeman
Assistant City Planner
205 Main Street
P.O. Box 586
Biddeford, ME 04005
(207) 284-9115
eric.freeman@biddefordmaine.org

PLANNING BOARD REPORT

TO: Chair Southwick and the Biddeford Planning Board

FROM: Eric Freeman, Assistant City Planner

DATE: October 12th, 2022

RE: **2022.40 Determination of the Greatest Practical Extent for the reconstruction of a nonconforming residential structure in the Coastal Residential (CR) Zone and Limited Residential Shoreland Overlay Zone for Lyn Wright at 77 Fortunes Rocks Rd. (Tax Map 68, Lot 44).**

MEETING DATE: Wednesday, October 19th, 2022 @ 6:00 PM

PROJECT DESCRIPTION

The project site is located within the Limited Residential overlay (LR) of the Shoreland Zone and the Coastal Residential (CR) base zone. There is currently a 1-story camp residence on the property. The applicant seeks to demolish this structure and construct a new 3 story residence with a smaller footprint in its place. The new structure will sit partially within the footprint of the existing one-story structure, but will be shifted to sit in a more central location on the parcel and reduces the residential lot coverage from the current 97% to 84%. And reduces the amount of impervious groundcover by 440 sq. ft. The new structure will have side setbacks of 10'2" on either side, creating more evenly spaced side setbacks. The minimum side setback outlined in the ordinance is 25', as such, this is an area of nonconformity. Additionally, this proposal involves the removal and reconstruction of a septic system within the footprint of the existing septic system on the inland side of the property facing Fortunes Rock Road.

This site plan preserves an existing concrete patio facing Fortunes Rocks Beach.

The Planning Board must determine the setbacks from the protected resource (Atlantic Ocean / Fortunes Rocks Beach) to the *greatest practical extent*.

COMPLIANCE WITH CITY ORDINANCES

The application is before the Planning Board for reconstruction of a nonconforming structure within the Shoreland Zone per the Shoreland Zoning Ordinance (Article XIV, Section 12.C.4 *Reconstruction*). As outlined in this provision, the Planning Board is required to determine the

greatest practical extent, the distance the new structure can be located from the protected resource, as directed in Section 12.C.3 *Relocation*.

The existing building is located **44'-10"** from the highest annual tide line as shown on a survey plan dated 09/14/2022 As such, the structure is a non-conforming structure under the Code. According to City Assessor records, the structure was constructed in 1956.

When determining the greatest practical extent, the Board must consider factors outlined in Section 12.C.3 and included below:

- The size of the lot,
- The slope of the land,
- The potential for soil erosion,
- The location of other structures on the property and on adjacent properties
- The location of the septic system and other on-site soils suitable for septic systems,
- The type and amount of vegetation to be removed to accomplish the relocation.

PROJECT DATA/INFORMATION

1.	Applicant:	Lyn Wright 11 Gumpus Rd. Dracut, MA 01826 978-361-6410
2.	Owner of Property:	Same as Applicant
3.	Agent:	Mobile Studio Design Cat Sumislaski 128 Main St. Biddeford, ME 04005 207-494-8102
4.	Surveyor:	Same as Agent
5.	Project Location:	77 Fortunes Rock Rd.
6.	Project Tax Map #/Lot #:	Tax Map 68, Lot 44
7.	Lot Size:	3,336
8.	Base Zoning:	Coastal Residential
9.	Overlay Zoning:	Limited Residential
10.	Designations:	
11.	Existing Use:	Single Family Residential
12.	Proposed Use:	Single Family Residential
13.	Floodplain Status:	Flood Hazard Zone A2 (Elevation 10) per FRIM Panel 2301450011B effective date May 15, 1984.
14.	Approvals Required:	Determination of the Required Setback to the Greatest Practical Extent
15.	Uses in the Vicinity:	Single Family Residential

16.	Shoreland Zoning Setbacks: Limited Residential: Minimum Setback from the normal high-water line (Highest Annual Tide) of other water bodies, tributary streams, or the upland edge of a wetland: 100' or as depicted on the plan. Reconstruction of a nonconforming structure located less than the required setback for a new structure is to be located to the greatest practical extent from the shoreline (HAT) as depicted on the approved plans (referenced below) and signed by the Planning Board considering all factors outlined in Section 12.C.3 and 12.C.4 of Article XIV (Shoreland Zoning Ordinance) of the City's Land Development Regulations and subject to the Board's Conditions of Approval.	
17.	Waivers Needed:	a. None
18.	Waivers Granted:	a. None
19.	Variances Needed for Approval:	None
20.	Other Approvals Required:	Building Permits from the Biddeford Code Enforcement Office.
21.	Other Permits Obtained:	None
22.	Other Non-City Permits Required:	None
23.	LDR Attachment A: Fees Paid:	Yes
24.	Application Materials Submitted: 1. Application form (dated 09/14/2022) 2. Plan entitled: <i>77 Fortunes Rocks Rd, Biddeford, ME 04005. – Project Narrative (Dated 09/14/2022)</i> Prepared by Mobile Studio Design (dated 09/14/2022) 3. <i>Plan entitled: 77 Fortunes Rocks Rd.- existing site & Planned (dated 09/14/2022)</i> 4. <i>Plan entitled: 77 Fortunes Rocks Rd. – Existing Elevations</i> Prepared by Mobile Studio Design 5. <i>Plan entitled: 77 Fortunes Rock Rd. – Site Plan (Dated 09/14/2022)</i> Prepared by Mobile Studio Design 6. Proof of abutter notice (dated 09/20/2022) 7. Proof of payment (dated 09/20/2022)	
25.	Planning Board Review History: Final review and approval of the required setback to the greatest practical extent on October 19th, 2022	

WAIVER REQUESTS

None.

ADDITIONAL COMMENTS

- The final plan should include the following revision:
 - Amend the signature recording plan Note 5 as follows:

Purpose of this Plan: This plan depicts reconstruction of a non-conforming structure to meet the shoreland setback requirement to the greatest practical extent, pursuant to Article XIV Shoreland Zoning Ordinance, Section 12.C.4 of the City of Biddeford's Land Development Regulations. The new building shall be no closer than 44'-10" feet from the Highest Annual Tide, 7.4' elevation (HAT) from the Atlantic Ocean, as denoted on this plan.

CONCLUSION

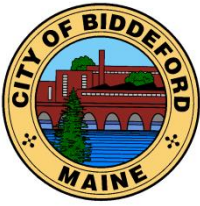
The Planning Board should review Section 12.C.4 and 12.C.3 for the determination of the setback from the shoreline to the greatest practical extent for the reconstruction of a nonconforming structure and determine if it concurs with the required setback from the shoreline proposed.

With the submittal of a site plan to the City Planner for review and approval, the application appears to address the applicable provisions in the City's Shoreland Zoning Ordinance (Article XIV), and a conditional approval (conditioned to recommended plan revisions) appears to be in order. Suggested conditions of approval can be found in the draft Findings of Fact.

NEXT STEPS/SUGGESTED ACTIONS

- A. If the applicant has addressed the outstanding items to the satisfaction of the Planning Board, and Planning Board approves the project, Staff recommend doing so with the following Conditions of Approval attached:**
- 1. The new building shall be no closer than 44'-10" feet from the Highest Annual Tide, elevation 7.4' (HAT) of the Atlantic Ocean, as denoted on the approved plan.**
 - 2. Where feasible, when a structure is relocated on a parcel, the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.**
 - 3. The Code Enforcement Officer shall review and approve conformance to Section 15 of the Shoreland Zoning Ordinance.**
 - 4. Obtain all required permits from the Biddeford Code Enforcement Office.**
 - 5. This approval shall expire one year from the date below if a substantial start is not made in construction. If a substantial start is made within one year of the date below, the applicant shall have one additional year to complete the project, thereafter this approval shall expire.**

1.



CITY OF BIDDEFORD

Planning and Development Department

Eric Freeman
Assistant City Planner
205 Main Street
P.O. Box 586
Biddeford, ME 04005

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Determination of the Required Setback to the Greatest Practical Extent

Pursuant to the provisions of the City of Biddeford Land Development Regulations, Article XIV, Shoreland Zoning, the Biddeford Planning Board has considered the application Lyn Wright, including supportive data, public hearing testimony and related materials contained in the record. Based on Public Comment and Staff's review and recommendation, the Planning Board makes the following Findings of Fact and Conclusions of Law:

1. FINDINGS OF FACT

1.	Applicant:	Lyn Wright 11 Gumpus Rd. Dracut, MA 01826 978-361-6410
2.	Owner of Property:	Same as Applicant
3.	Agent:	Mobile Studio Design Cat Sumislaski 128 Main St. Biddeford, ME 04005 207-494-8102
4.	Engineer / Surveyor:	Same as Agent
5.	Project Location:	77 Fortunes Rocks Rd.
6.	Project Tax Map #/Lot #:	Tax Map 66 Lot 48
7.	Lot Size:	3,336 Sq. Ft
8.	Base Zoning:	Coastal Residential
9.	Overlay Zoning:	Limited Residential
10.	Designations:	
11.	Existing Use:	Single Family Residential
12.	Proposed Use:	Single Family Residential
13.	Floodplain Status:	Flood Hazard Zone A2 (Elevation 10) per FRIM Panel 2301450011B effective date May 15, 1984.
14.	Approvals Required:	Determination of the Required Setback to the Greatest Practical Extent
15.	Uses in the Vicinity:	Single Family Residential

16.	Shoreland Zoning Setbacks:	Limited Residential: Minimum Setback from the normal high-water line (Highest Annual Tide) of other water bodies, tributary streams, or the upland edge of a wetland: 100' or as depicted on the plan. Reconstruction of a nonconforming structure located less than the required setback for a new structure is to be located to the greatest practical extent from the shoreline (HAT) as depicted on the approved plans (referenced below) and signed by the Planning Board considering all factors outlined in Section 12.C.3 and 12.C.4 of Article XIV (Shoreland Zoning Ordinance) of the City's Land Development Regulations and subject to the Board's Conditions of Approval.
17.	Waivers Needed:	a. None
18.	Waivers Granted:	a. None
19.	Variances Needed for Approval:	None
20.	Other Approvals Required:	Building Permits from the Biddeford Code Enforcement Office.
21.	Other Permits Obtained:	None
22.	Other Non-City Permits Required:	None
23.	LDR Attachment A: Fees Paid:	Yes
24.		1. Application form (dated 09/14/2022) 2. Plan entitled: <i>77 Fortunes Rocks Rd, Biddeford, ME 04005. – Project Narrative (Dated 09/14/2022)</i> Prepared by Mobile Studio Design (dated 09/14/2022) 3. <i>Plan entitled: 77 Fortunes Rocks Rd.- existing site & Planned (dated 09/14/2022)</i> 4. <i>Plan entitled: 77 Fortunes Rocks Rd. – Existing Elevations</i> Prepared by Mobile Studio Design 5. <i>Plan entitled: 77 Fortunes Rock Rd. – Site Plan (Dated 09/14/2022)</i> Prepared by Mobile Studio Design 6. Proof of abutter notice (dated 09/20/2022)

		7. Proof of payment (dated 09/20/2022)
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2. CONCLUSIONS OF LAW

The Planning Board has determined that based on the following factors, as outlined in Article XIV (Shoreland Zoning), Section 12.C.2. (Land Use Standards) of the Land Development Regulations, the plan for Lyn Wright approved by the Planning Board on October 19th, and signed by the City Planner demonstrates the limits of the Greatest Practical Extent setback from the resource:

- a. The size of the lot limits the ability to locate further from the resource;
- b. The slope of the land limits the ability to locate further from the resource;
- c. The potential for soil erosion limits the ability to locate further from the resource;
- d. The location of other structures on the property and on adjacent properties limits the ability to locate further from the resource;
- e. The location of the septic system and other on-site soils suitable for septic systems limits the ability to locate further from the resource; and
- f. The type and amount of vegetation to be removed to accomplish the relocation limits the ability to locate further from the resource.

4. DETERMINATION

Based on the evidence available and the conclusions above, the Biddeford Planning Board grants the determination of the Greatest Practical Extent for the proposed project summarized above, located at 77 Fortunes Rocks Rd. (Tax Map 66 – Lot 48) in accordance with the submitted application, supporting data, representations made, other related materials on file, and the following Conditions of Approval:

Conditions of Approval:

- 1. The new building shall be no closer than 44'-10" from the Highest Annual Tide, elevation 7.4' (HAT) of the Atlantic Ocean, as denoted on the approved plan.**
- 2. The Code Enforcement Officer shall review and approve conformance to Section 15 of the Shoreland Zoning Ordinance.**
- 3. Obtain all required permits from Maine Department of Environmental Protection and the Biddeford Code Enforcement Office.**
- 4. This approval shall expire one year from the date below if a substantial start is not made in construction. If a substantial start is made within one year of the date below, the applicant shall have one additional year to complete the project, thereafter this approval shall expire**

Planning Board Chairman

Date

DRAFT

mobile studio design

77 Fortunes Rocks Rd

12 September 2022

The house located on 77 Fortunes Rocks Rd is a single story residence with 2 bedrooms and a crawl space below. It was quickly determined that a renovation is not feasible without having to raise the house as any work would exceed 50% of the value of the structure. Therefore, the house will need to be raised onto a flow-thru foundation per the regulations of the DEP for projects located on the Front Dune and Erosion Hazard Area.

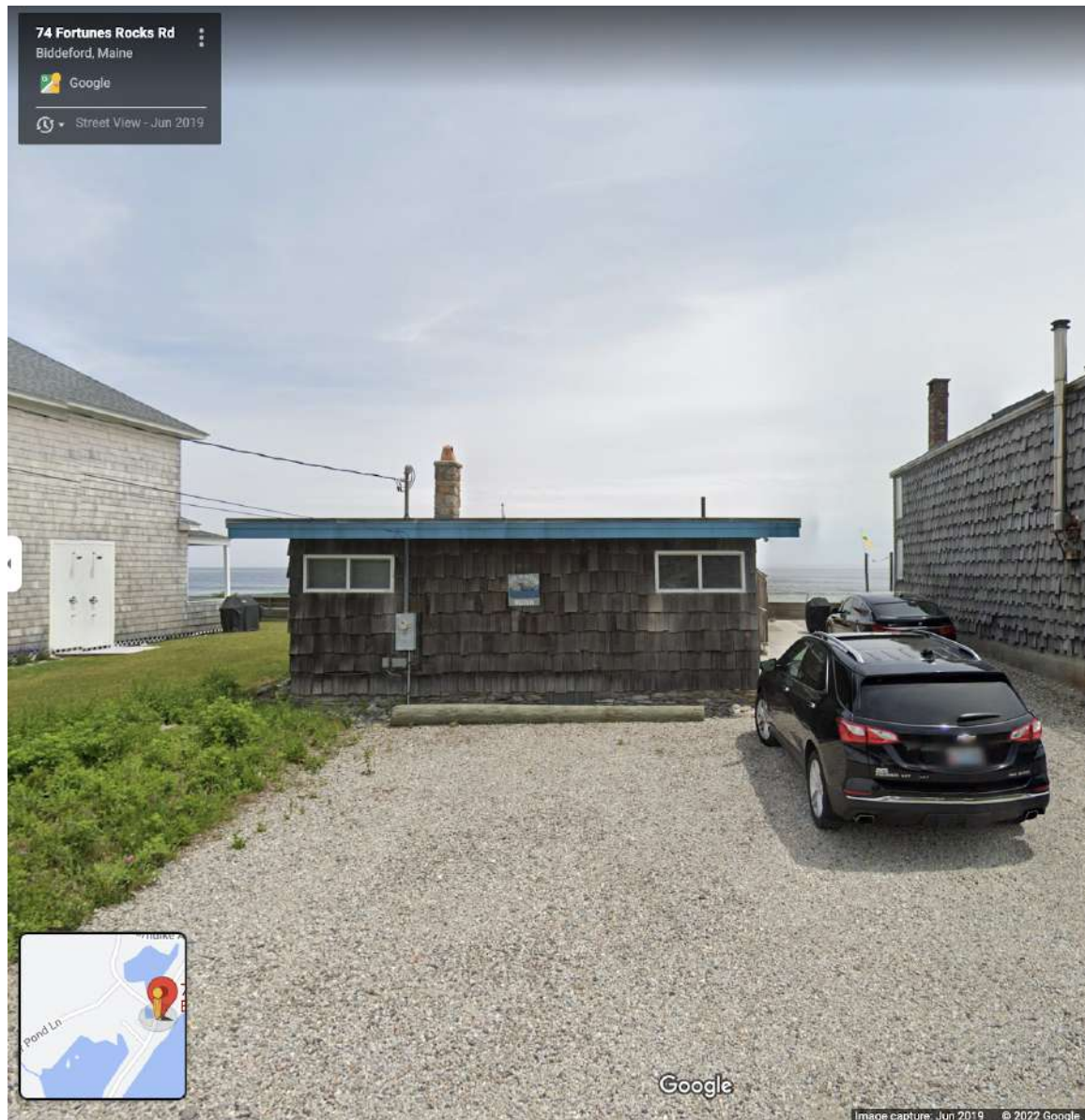
As it will be a new structure raised onto piles or piers, the City requires the house to be relocated in a manner to be more conforming. In initial meetings with the Code Enforcement Officer, it was also identified that the current language of building height is not as restrictive if the proposed project only expands vertically. As the footprint will shrink to fit between the side setbacks, there is only the possibility of vertical expansion.

The proposal is to remove the existing house and build a new 3-story residence with 2 bedrooms on a flow-thru foundation. The proposal for the rear/ oceanside setback to the greatest practical extent is to maintain the rear line of the existing house footprint and reduce the 2'-0" roof overhang.

In addition to relocating the house on the property to be more conforming, the footprint and lot coverage will be impacted. There is a reduction of the footprint from 775 sq ft to 726 sq ft (29.5% down to 23%) in order to fit within the setbacks of the site. Lot coverage is being reduced from 97.4% down to 84.3% by returning the newly exposed area under the original house footprint back to natural vegetation.

Mobile Studio Design, Inc.
128 Main Street, Unit 201
Biddeford, Maine 04005
207.494.4208

mobile studio design

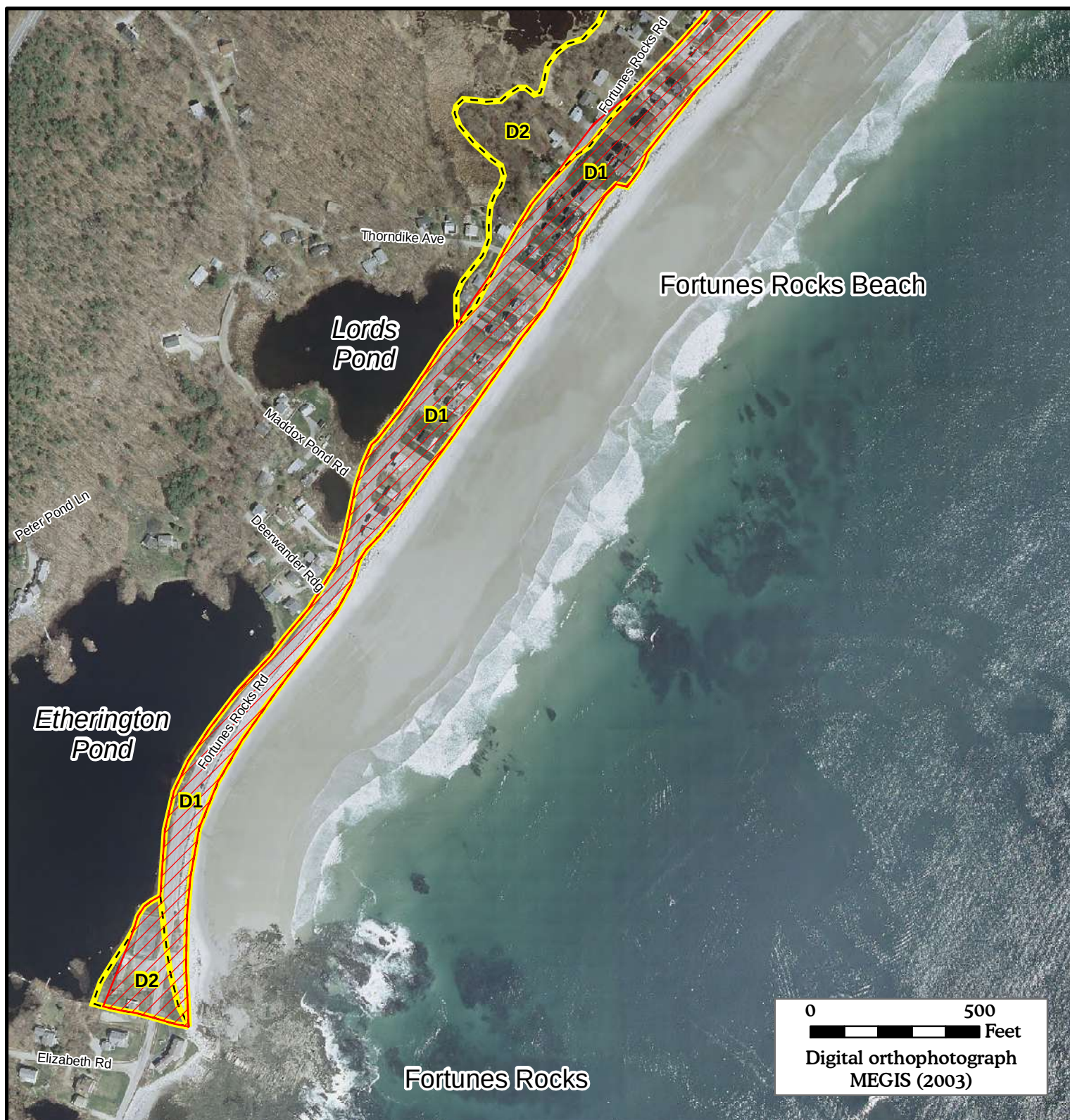


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207.494.4208

mobile studio design



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Biddeford, Maine 04005
207.494.4208



Maine Geological Survey

Address: 22 State House Station
Augusta, Maine 04333

Telephone: 207-287-2801

E-mail: mgs@maine.gov

Home page: <http://www.maine.gov/doc/nrimc/nrimc.htm>

See back for description of map units.

Coastal Sand Dune Geology Fortunes Rocks Beach, Fortunes Rocks, Biddeford, Maine

by Peter A. Slovinsky and Stephen M. Dickson

Open-File No. 11-101
2011

MAPPING MAINE'S DYNAMIC DUNES

Maine's coastal beaches and dunes are constantly changing. Erosion or accretion can reshape the beach and dunes over time so remapping is needed for resource protection and coastal development. This map updates and supersedes the previous *Beach and Dune Geology Aerial Photo* series maps (Dickson, 2001) that were based on 1986 aerial photographs and field work. Using ESRI ArcGIS, each 1986 photograph was georeferenced, using a minimum of four ground control points per image, to orthophotographs from spring 2003 ORTHO_1F (1-ft resolution) and April 2001 ORTHO_HF (0.5-ft resolution) from the Maine Office of GIS. Previously mapped frontal dune and back dune boundaries were digitized, checked for accuracy, and adjusted using the newer photographs in combination with field work and 2004 Light Detection and Ranging (LiDAR) topography from the NOAA Coastal Services Center (6.5-ft ground spacing; vertical accuracy 0.7 feet at a 95% confidence interval). Some dune boundaries were moved slightly to reflect more accurate data and current geology. Erosion Hazard Area boundaries were mapped according to the existing definition using historical shoreline change data, geomorphology, FEMA flood maps, and field evidence of storm washover in dunes.

COASTAL SAND DUNE RULES

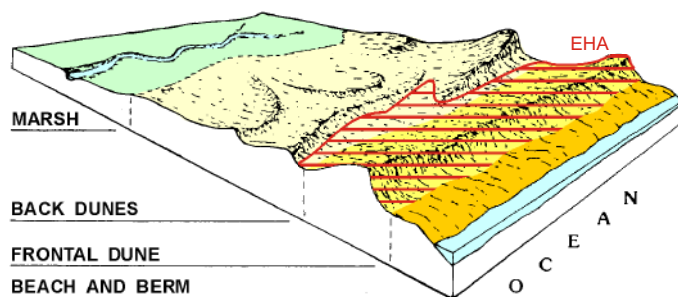
The Maine Natural Resources Protection Act (NRPA: Title 38 Section 480-D) requires that new coastal development will not unreasonably (1) interfere with the natural supply or movement of sand or gravel within or to the sand dune system; (2) increase the erosion hazard to the sand dune system; (3) cause or increase the flooding of the dunes or adjacent properties; (4) interfere with the natural flow of any surface or subsurface waters; (5) inhibit the natural transfer of soil from the terrestrial to marine or freshwater environments; (6) harm any significant wildlife habitat, threatened or endangered plant habitat, travel corridor, freshwater, estuarine or marine life; or (7) interfere with existing scenic, aesthetic, recreational, or navigational uses.

Permits are usually required for building projects located in Maine's coastal sand dune system. The Coastal Sand Dune Rules, Chapter 355, of the Maine Department of Environmental Protection clarify the criteria for obtaining a permit under NRPA (in regard to coastal sand dune systems). The rules outline classes of projects which are exempt from the requirement of obtaining a permit. For all other projects, the rules outline standards which must be met to satisfy the statutory criteria. The rules are based on the location of the project within the sand dune system.

Additional Sources of Information

Contact the Maine Department of Environmental Protection, Bureau of Land and Water Quality, 17 State House Station, Augusta, ME 04333 for information regarding the Coastal Sand Dune Rules and the Natural Resources Protection Act.

EXPLANATION OF MAP UNITS



D1 Frontal dune. The frontal dune is the area consisting of the most seaward ridge of sand and gravel and includes former frontal dune areas modified by development. Where the dune has been altered from a natural condition, the dune position may be inferred from the present beach profile, dune positions along the shore, and regional trends in dune width. The frontal dune may or may not be vegetated with dune vegetation and may consist in part or in whole of artificial fill. In areas where smaller ridges of sand are forming in front of an established dune ridge, the frontal dune may include more than one ridge. The frontal dune includes former frontal dune areas modified by development. Where the dune has been modified by structures, the dune position may be inferred from the present beach profile, dune positions along the shore, and regional trends in dune width.

D2 Back dunes. Back dunes consist of sand dunes and eolian sand flats that lie landward of the frontal dune or a low energy beach. Back dunes include those areas containing artificial fill over back dune sands or over wetlands adjacent to the coastal sand dune system.



Erosion hazard area (EHA). Any portion of the coastal sand dune system that can reasonably be expected to become part of a coastal wetland in the next 100 years due to cumulative and collective changes in the shoreline from: (1) historical long-term erosion; (2) short-term erosion resulting from a 100-year storm; or (3) flooding in a 100-year storm after a two-foot rise in sea level, or any portion of the coastal sand dune system that is mapped as an AO flood zone by the effective FEMA Flood Insurance Rate Map, which is presumed to be located in an Erosion Hazard Area unless the applicant demonstrates based upon site-specific information, as determined by the department, that a coastal wetland will not result from either (1), (2), or (3) occurring on an applicant's lot given the expectation that an AO-Zone, particularly if located immediately behind a frontal dune, is likely to become a V-Zone after 2 feet of sea level rise in 100 years (Ch. 355, Section 3.P.).



Funding was provided by the Maine Geological Survey, the Maine Department of Environmental Protection and, the Maine Coastal Program with financial assistance from the Coastal Zone Management Act of 1972, as amended, administered by the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration under Award No. NA06NOS4190188.

**City of Biddeford – Planning Department****Planning Board Application**

P.O. Box 586, 205 Main Street Biddeford, Maine 04005
207-284-9115

Type of Application:

☐ Shoreland Zoning Permit ☐ Site Plan Review ☐ Extraction
☐ Conditional Use Permit ☐ Subdivision ☐ Private Way
☐ Other: _____

Applicant Information:

Name: Lynn Wright
Mailing Address: 11 Gumpus Rd, Dracut, MA 01826
Telephone: 978.361.6410
Email: lwright1125@gmail.com

What is your legal interest in the property?

☒ Owner ☐ Potential Buyer with Contract ☐ Lease/Rental Agreement

Owner's Information:

Name: Lynn Wright
Mailing Address: 11 Gumpus Rd, Dracut, MA 01826
Telephone: 978.361.6410
Email: lwright1125@gmail.com

Agent's Information:

Name: Mobile Studio Design, Cat Sumislaski
Mailing Address: 128 Main St, Unit 201, Biddeford, ME 04005
Telephone: 207.494.8102
Email: Cat@MobileStudioDesign.com

Engineer/Surveyor's Information:

Name: _____
Mailing Address: _____
Telephone: _____
Email: _____

Project Location and Lot Information:

Street Address: 77 Fortunes Rocks Rd Drainage Watershed: _____
Tax Map: 66 Lot: 48
Current Zoning: Coastal Residential Shoreland Zoning: Limited Residential
Size of Lot: 3,336 () acres (X)s.f. Lot Frontage: 46.1 ft
Existing Use of Property: Single family residence

Property currently serviced by:

☒ City Road ☐ Public Sewer ☒ Public Water ☒ Public Trash
☐ Private Road ☒ Septic System ☐ Private Well ☐ Private Hauler

Slope Conditions in Area of Construction (if applicable):

☒ Flat (0-3% slope) ☐ Rolling (3-8% slope) ☐ Hilly (8-15% slope) ☐ Steep (15%+ Slope)

Are there any wetlands or waterbodies on the site? ☐ (Yes) ☒ (No) if yes attach information

Is the project within the 100-year floodplain? ☒ (Yes) ☐ (No) if yes attach information

Do you plan to bring fill onto the lot? ☐ (Yes) ☒ (No) If yes attach information

Description of proposed use of property:

Project/Proposed Use:

New 3-story, 2 bedroom residence raised on a flow-thru foundation. Relocated on property to be more conforming within property setbacks.

Property to be Serviced by:

☒ City Road ☐ Public Sewer ☒ Public Water ☒ Public Trash
☐ Private Road ☒ Septic System ☐ Private Well ☐ Private Hauler

Limits of Disturbance: _____ () acres () s.f.

Net change in impervious cover: Reduce by 440 _____ () acres (X) s.f.

Is this project part of a larger project? ☐ (Yes) ☒ (No)

Is the project proposing a new Private or Public Road? ☐ (Yes, Private) ☐ (Yes, Public) ☒ (No)

Is this project within the Urbanized Area/MS4 (see [City Drainage Map](#)) ☐ (Yes) ☒ (No)

Is the project proposing any Stormwater facilities/BMPs? ☐ (Yes) ☒ (No)

Will a Traffic Movement Permit (TMP) be required?: ☐ (Yes) ☒ (No)

☒ If in a Shoreland Zone:

Percent of residential lot coverage (Max 20%): Existing 97.45, Proposed 84.2%

Percent of structure expansion (Max 30%): No horizontal expansion

☐ **If Subdivision Review, number of lots proposed:** _____

☐ **If a Private Way is proposed, number of lots served:** _____

If Site Plan Review, you must provide the following information:

Total new square feet footprint of structure: 726 sq ft

Total new square feet paving/parking: 1,363 sq ft

Waiver Requests (attach details):

1. _____
2. _____
3. _____
4. _____
5. _____

Required Submittal Attachments:

A. Letters of Approval

☐ Fire Department – Contact Chief or Deputy Chief – 282-9986

☐ Ability to Serve for Water Service – Maine Water – 282-1543

☐ Ability to Serve for Sewer Service – Engineering Department – Tom Milligan 284-9118

☐ Police Department – e-911 Road Name Designation – Contact Joanne Fisk 282-5127

B. Letter to Planning Board describing project, Waiver requests, proposed improvements, addressing permit requirements, etc.

C. Photographs of Site.

D. Architectural renderings/drawings of proposed buildings, as required.

E. Engineering Plans, as required.

F. Stormwater Management Report, as required.

Fees (Due at time of Submission):

- \$75 Nonrefundable Administration Fee is required for every application.
- Refer to “Attachment A Fees and Charges” of the Land Development Regulations for more information. Consult with Planning Staff if you have questions.

Required Signatures:

By signing this application, as the foresaid applicant or authorized agent:

- I certify that I have read and completely understand the application;
- I certify that the information contained in this application and its attachments are true and correct;
- I understand that all information provided on this form and all other documents submitted as part of my proposal is a matter of public record;
- I understand that copies of this information may be supplied upon request to an interested party.
- I understand that additional funds may be required through the course of the review for special studies, legal review costs, and/or engineering review.
- I understand that by submitting an application I am not guaranteed a place on any particular agenda. I further understand that the City Planner will place me on an agenda for review when the application is deemed substantially complete.

Will the proposed project cause 1 acre or more of site disturbance?: ☐ (Yes) ☒ (No)

- **If Yes, applicant is responsible for any required Maine Construction General Permits and shall comply with the requirements of DEP Chapter 500 Stormwater Regulations, as they apply.**

Signature of Applicant: 

Date 14 September 2022

Signature of Property Owner: Lynn Wright



Date September 14, 2022

DIGITAL SUBMITTAL REQUIREMENTS FOR ALL SUBMITTALS:

A) PDF OF SIGNED APPLICATION

B) PDFs OF ALL DRAWING SETS AND OTHER REQUIRED SUBMITTAL ATTACHMENTS NOTED ABOVE

HARD-COPY SUBMITTAL REQUIREMENTS FOR PLANNING BOARD APPLICATIONS:

A) SEVEN (7) FULL-SIZE PAPER COPIES OF DRAWING SETS

DIGITAL SUBMITTAL REQUIREMENTS FOR FINAL APPROVAL:

A) INDIVIDUALLY NAMED PDFs OF EACH DRAWING (NOT A COMBINED PDF SET)

- *Individual Drawing PDF Naming Format: 'PROJECT/SHEETSET NAME_INDIVIDUAL DRAWING NAME.pdf'*

B) PDF COPIES OF ALL PERMIT APPROVALS, APPLICATIONS, REPORTS, NARRATIVES, LETTERS, ETC.

C) FINAL CAD REFERENCE FILES IN DWG FORMAT (SURVEY & PROPOSED DESIGN LINEWORK)

- *All drawings & CAD reference files must be to-scale and within the following coordinate systems:*

- *MAINE STATE PLANE WEST NAD83 (Horizontal Datum) & NAVD88 (Vertical Datum)*

HARD-COPY SUBMITTAL REQUIREMENTS FOR FINAL APPROVAL:

A) THREE (3) FULL-SIZE PAPER COPIES OF INDIVIDUAL DRAWINGS REQUIRING BOARD SIGNATURE

B) ONE (1) FULL-SIZE PAPER COPY OF ENTIRE DRAWING SET FOR ENGINEERING RECORDS

PLEASE CONFIRM WITH PLANNING STAFF FOR CLARIFICATION



Department of Health and Human Services
Maine Center for Disease Control and Prevention
286 Water Street
11 State House Station
Augusta, Maine 04333-0011
Tel: (207) 287-5672
Fax: (207) 287-4172; TTY: 1-800-606-0215

SUBSURFACE WASTEWATER DISPOSAL SYSTEM VARIANCE REQUEST

This form must accompany an application (HHE-200 Form) for any subsurface wastewater disposal system which requires a variance to provisions of the Subsurface Wastewater Disposal Rules. The Local Plumbing Inspector must not issue a permit for the installation of a subsurface wastewater disposal system requiring a variance from the Department of Health and Human Services until approval has been received from the Department.

GENERAL INFORMATION		Town of <u>Biddeford</u>
Property Owner's Name: <u>Lynn Wright</u>	Tel. No.: <u>978-361-6410</u>	
System's Location: <u>77 Fortunes Rocks Road</u>		
Property Owner's Address: _____	Zip Code _____	
e-mail address: <u>lwright1125@gmail.com</u>		

The subsurface wastewater disposal system design for the subject property requires a ☒ replacement system variance ☐ first time system variance to the Subsurface Wastewater Disposal Rules. This variance requires ☐ local approval ☒ local and state approval.

SPECIFIC VARIANCE REQUESTED (To be filled in by Site Evaluator. Use additional sheets if needed.)	SECTION OF RULE
1. <u>See Sheet Attached</u>	<u>8</u>
2. _____	_____
3. _____	_____
SITE EVALUATOR	
When a property is found to be unsuitable for subsurface wastewater disposal by a licensed Site Evaluator, the Evaluator shall so inform the property owner. If the property owner, after exploring all other alternatives, wishes to request a variance to the Rules, and the Evaluator in his professional opinion feels the variance request is justified and the site limitations can be overcome, he shall document the soil and site conditions on the Application. The Evaluator shall list the specific variances necessary plus describe below the proposed system design and function. The Evaluator shall further describe how the specific site limitations are to be overcome, and provide any other support documentation as required prior to consideration by the Department. Attach a separate sheet if necessary.	
_____ _____ _____	
I, <u>Brady Frick</u> , S.E., certify that a variance to the Rules is necessary since a system cannot be installed which will completely satisfy all the Rule requirements. In my judgment, the proposed system design on the attached Application is the best alternative available; enhances the potential of the site for subsurface wastewater disposal; and that the system should function properly.	
_____ SIGNATURE OF SITE EVALUATOR	_____ DATE

PROPERTY OWNER	
I, _____, am the ☐ owner ☐ agent for the owner of the subject property. I understand that the installation on the Application is not in total compliance with the Rules. Should the proposed system malfunction, I release all concerned provided they have performed their duties in a reasonable and proper manner, and I will promptly notify the Local Plumbing Inspector and make any corrections required by the Rules. By signing the variance request form, I acknowledge permission for representatives of the Department to enter onto the property to perform such duties as may be necessary to evaluate the variance request.	
_____ ☐ SIGNATURE OF OWNER ☐ AGENT FOR THE OWNER	_____ DATE

LOCAL PLUMBING INSPECTOR - Approval at local level

The local plumbing inspector shall review all variance requests prior to rendering a decision.

I, _____, the undersigned, have visited the above property and find that the variance request submitted by the applicant does not conform with certain provisions of the wastewater disposal rules. The variance request submitted by the applicant is the best alternative for a subsurface wastewater disposal system on this property. The proposed system (☐ does ☐ does not) conflict with any provisions controlling subsurface wastewater disposal in the shoreland zone. Therefore, I (☐ do ☐ do not) approve the requested variance. I (☐ will ☐ will not) issue a permit for the system's installation as proposed by the application.

LPI Signature

Date

LOCAL PLUMBING INSPECTOR - Referral to the Department

The local plumbing inspector shall review all variance requests prior to forwarding to the Division of Environmental Health.

I, _____, the undersigned, have visited the above property and find that the variance request submitted by the applicant does not conform with certain provisions of the wastewater disposal rules. The variance request submitted by the applicant is the best alternative for a subsurface wastewater disposal system on this property. The proposed system (☐ does ☐ does not) conflict with any provisions controlling subsurface wastewater disposal in the shoreland zone. Therefore, I (☐ do ☐ do not) recommend the issuance of a permit for the system's installation as proposed by the application.

LPI Signature

Date

FOR USE BY THE DEPARTMENT ONLY

The Department has reviewed the variance(s) and (☐ does ☐ does not) give its approval. Any additional requirements, recommendations, or reasons for the Variance denial, are given in the attached letter.

SIGNATURE OF THE DEPARTMENT

DATE

Notes: 1. Variances for soil conditions may be approved at the local level as long as the total point assessment is at least the minimum allowed. (See Section 7.B.4 of the Subsurface Wastewater Disposal Rules for Municipal Review.)

2. Variances for other than soil conditions or soil conditions beyond the limit of the LPI's authority are to be submitted to the Department for review. (See Section 7.B.3 for Department Review.) The LPI's signature is required on these variance requests prior to sending them to the Department.

**SOIL, SITE AND ENGINEERING FACTORS FOR FIRST TIME SYSTEM VARIANCE ASSESSMENT
WITH LIMITING SOIL DRAINAGE CONDITIONS (SEE TABLES 7C THROUGH 7M).**

	CHARACTERISTIC	POINT ASSESSMENT
Soil Profile		
Depth to Groundwater/Restrictive Layer		
Terrain		
Size of Property		
Waterbody Setback		
Water Supply		
Type of Development		
Disposal Area Adjustment		
Vertical Separation Distance		
Additional Treatment		
TOTAL POINT ASSESSMENT:		

Minimum Points (Check One): ☐ Outside Shoreland Zone-50 ☐ Inside Shoreland Zone-65 ☐ Subdivision-65

DISPOSAL SYSTEM VARIANCE REQUEST ATTACHMENT
Table 8A
Setback Distances for Replacement System, Limits of LPI Authority

VARIANCE CATEGORY	LIMIT OF LPI'S APPROVAL AUTHORITY						VARIANCE REQUESTED TO:	
SOILS								
Soil Profile	Ground Water Table						inches	
Soil Condition	Restrictive Layer						inches	
from HHE-200	Bedrock						inches	
Site Features vs. disposal system components of various sizes	Disposal Fields (total design flow)			Septic Tanks and Holding Tanks (total design flow)			Disposal Fields	Septic Tanks
	Less than 1000 gpd	1000 to 2000 gpd	Over 2000 gpd	Less than 1000 gpd	1000 to 2000 gpd	Over 2000 gpd	To	To
Wells with water usage of 2000 or more gpd or public water supply wells	300 ft	300 ft	300 ft	150 ft	150 ft	150 ft		
Potable Supply Well	100 down to 60 ft	200 down to 100 ft	300 down to 150 ft	50 down to 25 ft [a]	100 down to 50 ft [a]	100 down to 50 ft		
Water supply line	10 ft	20 ft	25 ft	10 ft	10 ft	10 ft		
Water course, major [c]	100 down to 50 ft	200 down to 120 ft	300 down to 180 ft	100 down to 25 ft [a]	100 down to 50 ft	100 down to 50 ft	43'-83'	25'
Water course, minor [c]	50 down to 25 ft	100 down to 50 ft	150 down to 75 ft	50 down to 25 ft	50 down to 25 ft	50 down to 25 ft		
Drainage ditches	25 down to 12 ft	50 down to 25 ft	75 down to 35 ft	25 down to 12 ft	25 down to 12 ft	25 down to 12 ft		
Slopes greater than 3:1	10 ft	18 ft	25 ft	N/A	N/A	N/A		
No full basement [e.g. slab, columns, posts]	15 down to 7 ft	30 down to 15 ft	40 down to 20 ft	8 down to 5 ft	14 down to 7 ft	20 down to 10 ft	6'	
Full basement [below grade foundation, frost wall]	20 down to 10 ft	30 down to 15 ft	40 down to 20 ft	8 down to 5 ft	14 down to 7 ft	20 down to 10 ft	17'	5'
Property lines	10 down to 5 ft [b]	18 down to 9 ft [b]	20 down to 10 ft [b]	10 down to 4 ft [b]	15 down to 7 ft [b]	20 down to 10 ft [b]	4'	
Burial sites or graveyards boundaries, measured from the down toe of the fill extension	25 ft	25 ft	25 ft	25 ft	25 ft	25 ft		
Stormwater infiltration systems	100 down to 60 feet	200 down to 120 feet	300 down to 180 feet	100 down to 50 feet	100 down to 50 feet	100 down to 50 feet		
Wetponds, retention ponds, and detention basins (excavated below grade); Soil filters underdrained swales, underdrained outlets, and similar structures	50 down to 25 feet [d]	100 down to 50 feet [d]	150 down to 75 feet [d]	50 down to 25 feet [d]	50 down to 25 feet [d]	50 down to 25 feet [d]		
Stormwater detention basins (basin bottom at, or above, predevelopment grade)	25 down to 12 feet	50 down to 25 feet [d]	75 down to 35 feet [d]	25 down to 12 feet	25 down to 12 feet	25 down to 12 feet		
OTHER								
1. The setback distances shown above account for the 1' of crushed stone alongside the concrete chambers.								
2.								
3.								

Notes:

- [a] This distance may be reduced to 25 feet, if the septic or holding tank is tested in the LPI's presence and shown to be watertight pursuant to water tightness standards found in Section 6(H)(8) or of monolithic construction.
- [b] Additional setbacks may be needed to prevent fill material extensions from encroaching onto abutting property.
- [c] All ground disturbance or clearing of woody vegetation necessary for the installation of a subsurface wastewater disposal system that occurs within 100 feet of the normal high water mark of a major or minor water body/course must comply with these Rules pertaining to work adjacent to or within wetlands and water bodies (for more details, see Section 12).
- [d] The reduced setback distance may be further reduced down to 12 feet if the stormwater structure has an impervious liner and the fill extensions do not encroach onto the stormwater structure.

SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION

Maine Dept. Health & Human Services
Div of Environmental Health 11 SHS
(207) 287-5672 FAX (207) 287-3165

PROPERTY LOCATION		>>CAUTION: LPI APPROVAL REQUIRED<<	
City, Town, or Plantation	BIDDEFORD	Town/City _____	Permit # _____
Street or Road	77 FORTUNES ROCKS ROAD	Date Permit Issued ____/____/____	Fee \$ _____ Double Fee Charged []
Subdivision, Lot #			LPI # _____
OWNER/APPLICANT INFORMATION		The Subsurface Wastewater Disposal System <i>shall not</i> be installed until a Permit is issued by the Local Plumbing Inspector. The Permit shall authorize the owner or installer to install the disposal system in accordance with this application and the Maine Subsurface Wastewater Disposal Rules.	
Name (last, first, MI)	☒ Owner ☐ Applicant WRIGHT LYNN		
Mailing Address of Owner/Applicant	C/O CAT SUMISLASKI MOBILE STUDIO DESIGN 128 MAIN STREET, UNIT 201 BIDDEFORD, ME 04005		
Daytime Tel. #	978-361-6410		
		Municipal Tax Map # <u>64</u> Lot # <u>48</u>	
OWNER OR APPLICANT STATEMENT		CAUTION: INSPECTION REQUIRED	
I state and acknowledge that the information submitted is correct to the best of my knowledge and understand that any falsification is reason for the Department and/or Local Plumbing Inspector to deny a permit.		I have inspected the installation authorized above and found it to be in compliance with the Subsurface Wastewater Disposal Rules Application.	
_____ Signature of Owner/Applicant		_____ Local Plumbing Inspector Signature	
_____ Date		_____ (1st) Date Approved	
		_____ (2nd) Date Approved	

PERMIT INFORMATION			
TYPE OF APPLICATION ☐ 1. First Time System ☒ 2. Replacement System Type Replaced: <u>TRENCH</u> Year Installed: <u>UNKNOWN</u> ☐ 3. Expanded System ☐ a. <25% Expansion ☐ b. >25% Expansion ☐ 4. Experimental System ☐ 5. Seasonal Conversion	THIS APPLICATION REQUIRES ☐ 1.No Rule Variance ☐ 2.First Time System Variance ☐ a. Local Plumbing Inspector Approval ☐ b. State & Local Plumbing Inspector Approval ☒ 3.Replacement System Variance ☐ a. Local Plumbing Inspector Approval ☒ b. State & Local Plumbing Inspector Approval ☐ 4.Minimum Lot Size Variance ☐ 5.Seasonal Conversion Permit	DISPOSAL SYSTEM COMPONENTS ☒ 1. Complete Non-Engineered System ☐ 2. Primitive System(graywater & alt toilet) ☐ 3. Alternative Toilet, specify: _____ ☐ 4. Non-Engineered Treatment Tank (only) ☐ 5. Holding Tank, _____ gallons ☐ 6. Non-Engineered Disposal Field (only) ☐ 7. Separated Laundry System ☐ 8. Complete Engineered System(2000gpd+) ☐ 9. Engineered Treatment Tank (only) ☐ 10. Engineered Disposal Field (only) ☒ 11. Pre-treatment, specify: <u>FUJI-CLEAN UNIT</u> ☐ 12. Miscellaneous components	
SIZE OF PROPERTY <u>0.08</u> ☐ SQ. FT. ☒ ACRES	DISPOSAL SYSTEM TO SERVE ☒ 1. Single Family Dwelling Unit, No. of Bedrooms: <u>2</u> ☐ 2. Multiple Family Dwelling, No of Units: _____ ☐ 3. Other: _____ (specify) Current Use ☒ Seasonal ☐ Year Round ☐ Undeveloped		
SHORELAND ZONING ☒ Yes ☐ No	TYPE OF WATER SUPPLY ☐ 1. Drilled Well ☐ 2. Dug Well ☐ 3. Private ☒ 4. Public ☐ 5. Other: _____		

DESIGN DETAILS (SYSTEM LAYOUT SHOWN ON PAGE 3)			
TREATMENT TANK NOT APPLICABLE WITH FUJI-CLEAN ☐ 1. Concrete ☐ a. Regular ☐ b. Low Profile ☐ 2. Plastic ☐ 3. Other: _____ CAPACITY: _____ GAL. SEE NOTE ON PAGE 3	DISPOSAL FIELD TYPE & SIZE ☐ 1. Stone Bed ☐ 2. Stone Trench ☒ 3. Proprietary Device ☒ a. Cluster array ☐ c.Linear ☐ b. Regular ☒ d. H-20 loaded ☐ 4. Other: _____ SIZE: <u>256</u> ☒ sq. ft. ☐ lin. ft. 4 H-20 RATED CONCRETE CHAMBER UNITS	GARBAGE DISPOSAL UNIT ☒ 1. No ☐ 2. Yes ☐ 3. Maybe If Yes or Maybe, specify one below: ☐ a.Multi-compartment tank ☐ b. _____ tanks in series ☐ c.Increase in tank capacity ☐ d.Filter on tank outlet	DESIGN FLOW <u>180</u> gallons per day BASED ON: ☒ 1.Table 4A (dwelling unit(s)) ☐ 2.Table 4C (other facilities) SHOW CALCULATIONS for other facilities 2 BEDROOMS AT 90 GALLONS PER DAY EACH ☐ 3. Section 4G (meter readings) ATTACH WATER-METER DATA LATITUDE AND LONGITUDE at center of disposal area Lat. <u>N43</u> d <u>25</u> m <u>47.48</u> s Lon. <u>W70</u> d <u>22</u> m <u>31.18</u> s If g.p.s., state margin of error
SOIL DATA & DESIGN CLASS PROFILE <u>11</u> CONDITION <u>B</u> at Observation Hole # <u>TP 1</u> Depth _____" of Most Limiting Soil Factor	DISPOSAL FIELD SIZING ☒ 1. Medium - 2.6 sq.ft./gpd ☐ 2. Medium-Large - 3.3 sq.ft./gpd ☐ 3. Large - 4.1 sq.ft./gpd ☐ 4. Extra-Large - 5.0 sq.ft./gpd		EFFLUENT/EJECTOR PUMP ☐ 1. Not required ☒ 2. May be required ☐ 3. Required Specify only for engineered systems: SEE NOTE ON PAGE 3 DOSE: _____ gallons

SITE EVALUATOR STATEMENT		
I Certify that on <u>8/24/22</u> (date) I completed a site evaluation on this property and state that the data reported is accurate and that the proposed system is in compliance with the Subsurface Wastewater Disposal Rules (10-144A-CMR 241).		
_____ Site Evaluator Signature	<u>163</u> SE #	<u>9/18/22</u> Date
<u>ALBERT FRICK</u> Site Evaluator Name Printed	<u>(207) 839-5563</u> Telephone Number	<u>ALBERT@ALBERTFRICK.COM</u> E-mail Address
ALBERT FRICK ASSOCIATES - 95A COUNTY ROAD ROAD GORHAM, MAINE 04038 - (207) 839-5563		
Note: Changes to or deviations from the design should be confirmed with the Site Evaluator		

SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION

Maine Department of Human Services
Division of Health Engineering, Station 10 SHS
(207) 287-5672 FAX (207) 287-4172

Town, City, Plantation BIDDEFORD	Street, Road Subdivision 77 FORTUNES ROCKS ROAD	Owner's Name LYNN WRIGHT
ALBERT FRICK ASSOCIATES ARE NOT SURVEYORS PROPERTY INFORMATION APPROXIMATED PER SITE PLAN BY MOBILE STUDIO DESIGN, TOWN TAX MAP AND AERIAL PHOTOGRAPH VERIFY PROPERTY LINES TO ASSURE ACCURATE LOCATION PRIOR TO SYSTEM INSTALLATION		SITE LOCATION PLAN (Attach Map from Maine Atlas Recommended)
SITE PLAN Scale 1" = <u>40</u> Ft. or as shown		

OCEAN

APPROX. PROPOSED REPLACEMENT DWELLING (ON POSTS)

EXISTING DWELLING #77 (TO BE RAZED/REBUILT)

PROPOSED DISPOSAL AREA

EXISTING DWELLING #78

APPROXIMATE EXISTING DISPOSAL AREA

FORTUNES ROCKS ROAD

MADDOX POND

SOIL DESCRIPTION AND CLASSIFICATION (Location of Observation Holes Shown Above)									
Observation Hole <u>TP 1</u> ☒ Test Pit ☐ Boring " Depth of Organic Horizon Above Mineral Soil					Observation Hole <u> </u> ☐ Test Pit ☐ Boring " Depth of Organic Horizon Above Mineral Soil				
BACKHOE TEST PIT									
Texture	Consistency	Color	Mottling		Texture	Consistency	Color	Mottling	
GRAVEL				0					0
				10					10
	FRIABLE	PALE		20					20
FINE	TO LOOSE	BROWN	NONE	30					30
SAND			EVIDENT	40					40
				50					50
(LIMIT OF EXCAVATION AT -54")									
Soil Classification	Slope	Limiting Factor	☐ Ground Water ☐ Restrictive Layer ☐ Bedrock ☒ Pit Depth		Soil Classification	Slope	Limiting Factor	☐ Ground Water ☐ Restrictive Layer ☐ Bedrock ☐ Pit Depth	
11	B	0-3 %	54"						
Profile	Condition				Profile	Condition			

Site Evaluator Signature

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SE *

Date

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SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION

Maine Department of Human Services
Division of Health Engineering, Station 10 SHS
(207) 287-5672 FAX (207) 287-4172

Town, City, Plantation

Street, Road, Subdivision

Owner's Name

BIDDEFORD

77 FORTUNES ROCKS ROAD

LYNN WRIGHT

NEW FUJI-CLEAN TREATMENT UNIT
LOCATE WHERE FEASIBLE, 5' MIN.
FROM BUILDING STRUCTURE
AND 25' MIN. FROM HIGH WATER MARK
ASSURE WATERTIGHTNESS IN PRESENCE
OF LOCAL PLUMBING INSPECTOR
SET AT HIGH ENOUGH ELEVATION
TO PROVIDE GRAVITY FLOW
OR PROVIDE PUMP STATION

SUBSURFACE WASTEWATER DISPOSAL PLAN

PUMP STATION
(IF NEEDED)

SCALE 1" = 20' FT.

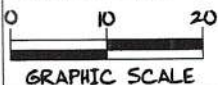
IF PUMPING USE
1 1/2" TO 2" DIA.
EFFLUENT LINE BURIED
BELOW FROST OR INSULATE
TO PROTECT FROM FREEZING
OR IF GRAVITY FLOW USE
4" DIA. SCH40 SOLID PVC
(ASSURE WATERTIGHTNESS)

APPROX. PROPOSED
REPLACEMENT DWELLING
(ON POSTS)

PROPOSED WATERLINE
(10' MIN. FROM PROPOSED
DISPOSAL AREA)

ERP: BOTTOM OF
ELECTRIC METER BOX
ON NEIGHBORING DWELLING #79
60" ABOVE GROUND LEVEL

NOTE: THOROUGHLY SCARIFY UNDER
ENTIRE DISPOSAL FIELD, SHOULDER
AREA, & FILL EXTENSION AREA PRIOR
TO FILL PLACEMENT, THEN BLEND FIRST
6" LIFT OF FILL INTO EXISTING SOIL
SURFACE TO PROMOTE MIXING



FORTUNES ROCKS ROAD

PROPOSED DISPOSAL AREA
(1 ROWS OF 4 H-20 RATED
CONCRETE CHAMBER UNITS)

MADDOX
POND

FILL REQUIREMENTS

Depth of Fill (Upslope) : 0"
Depth of Fill (Downslope) : 0"
DEPTHS AT CROSS-SECTION (shown below)

CONSTRUCTION ELEVATIONS

Finished Grade Elevation
Top of Distribution Pipe or Proprietary Device
Bottom of Disposal Area

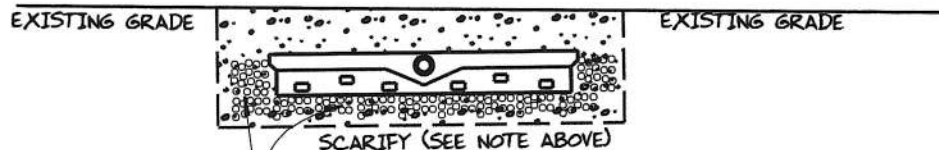
ELEVATION REFERENCE POINT

Location & Description TOP OF ELECTRIC
BOX ON DWELLING #79, 60" ABOVE GRADE
Reference Elevation is: 0.0" or -----

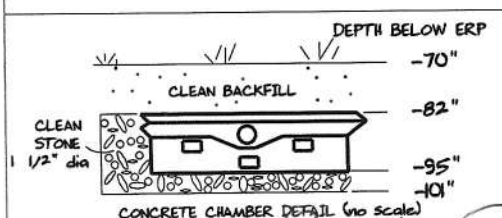
SCALE:
VERTICAL: 1" = 5 FT
HORIZONTAL: 1" = 5 FT

DISPOSAL AREA CROSS SECTION

REMOVE ALL PORTIONS OF EXISTING DISPOSAL AREA ENCOUNTERED
TO A DEPTH OF 2' BENEATH AND 5' AROUND PROPOSED
DISPOSAL AREA AND REPLACE WITH CLEAN
GRAVELLY COARSE SAND FILL



1 1/2 INCH CLEAN CRUSHED STONE
PLACE 12" THICKNESS
OF CRUSHED STONE
AROUND ENTIRE PERIMETER
AND 6" BENEATH CHAMBER UNITS



Site Evaluator Signature

163
SE *

Date

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HHE-200 Rev. 10/02

ALBERT FRICK ASSOCIATES - 95A COUNTY ROAD ROAD GORHAM, MAINE 04038 - (207) 839-5563



BIDDEFORD

77 FORTUNES ROCKS ROAD

LYNN WRIGHT

TOWN

LOCATION

APPLICANT'S NAME

- 1) The Plumbing and Subsurface Wastewater Disposal Rules adopted by the State of Maine, Division of Health and Human Services pursuant to 22 M.R.S.A. § 42 (the "Rules") are incorporated herein by reference and made a part of this application and shall be consulted by the owner/applicant, the system installer and/or building contractor for further construction details and material specifications. The system Installer should contact Albert Frick Associates, Inc. 839-5563, if there are any questions concerning materials, procedures or designs. The system installer and/or building contractor installing the system shall be solely responsible for compliance with the Rules and with all state and municipal laws and ordinances pertaining to the permitting, inspection and construction of subsurface wastewater disposal systems.
- 2) This application is intended to represent facts pertinent to the Rules only. It shall be the responsibility of the owner/applicant, system Installer and/or building contractor to determine compliance with and to obtain permits under all applicable local, state and/or federal laws and regulations (including, without limitation, Natural Resources Protection Act, wetland regulations, zoning ordinances, subdivision regulations, Site Location of Development Act and Minimum Lot Size law) before installing this system or considering the property on which the system is to be installed a "buildable" lot. It is recommended that a wetland scientist be consulted regarding wetland regulations. Prior to the commencement of construction/installation, the local plumbing inspector or Code Enforcement Officer shall inform the owner/applicant and Albert Frick Associates, Inc. of any local ordinances which are more restrictive than the Rules in order that the design may be amended. All designs are subject to review by local, state and/or federal authorities. Albert Frick Associates, Inc.'s liability shall be limited to revisions required by regulatory agencies pursuant to laws or regulations in effect at the time of preparation of this application.
- 3) All information shown on this application relating to property lines, well locations, subsurface structures and underground facilities (such as utility lines, drains, septic systems, water lines, etc.) are based upon information provided by the owner/applicant and has been relied upon by Albert Frick Associates, Inc. in preparing this application. The owner/applicant shall review this application prior to the start of construction and confirm this information. Well locations on abutting properties but not readily visible above grade should be confirmed by the owner/applicant prior to system installation to assure minimum setbacks.
- 4) Installation of a garbage (grinder) disposal is not recommended. If one is installed, an additional 1000 gallon septic tank or a septic tank filter shall be connected in series to the proposed septic tank. Risers and covers should be installed over the septic tank outlet per the "Rules" to allow for easy maintenance of filter.
- 5) The septic tank should be pumped within two years of installation and subsequently as recommended by the pump service, but in no event should the septic tank be pumped less often than every three years.
The system user shall avoid introducing kitchen grease or fats into this system. Chemicals such as septic tank cleaners and/or chlorine (such as from water treatment units) and controlled or hazardous substances shall not be disposed of in this system. Additives such as yeast or enzymes are discouraged, since they have not been proven to extend system life.
- 6) All septic tanks, pump stations and additional treatment tanks shall be installed to prevent ground water and surface water infiltration. Risers and covers should be properly installed to provide access while preventing surface water intrusion to within 6" of a finished ground surface.
Vehicular traffic over disposal system is prohibited unless specifically designed with H-20 rated components.

BIDDEFORD	77 FORTUNES ROCKS ROAD	LYNN WRIGHT
TOWN	LOCATION	APPLICANT'S NAME

- 7) The actual waste water flow or number of bedrooms shall not exceed the design criteria indicated on this application without a re-evaluation of the system as proposed
- 8) The general minimum setbacks between a well (public or private) and septic system serving a single family residence is 100-300 feet, unless the local municipality has a more stringent requirement. A well installed by an abutter within the minimum setback distances prior to the issuance of a permit for the proposed disposal system may void this design.
- 9) When a gravity system is proposed: BEFORE CONSTRUCTION/INSTALLATION BEGINS, the system installer or building contractor shall review the elevations of all points given in this application and the elevation of the existing and/or proposed building drain and septic tank inverts for compatibility to minimum pitch requirements. In gravity systems, the invert of the septic tank(s) outlet(s) should be at least 4 inches above the invert of the distribution box outlet at the disposal area.
- 10) When an effluent pump is required: Pump stations should be sized per manufacturer's specifications to meet lift requirements and friction loss. Provisions shall be made to make certain that surface and ground water does not enter the septic tank or pump station, by sealing/grouting all seams and connections, and by placement of a riser and lid at or above grade. An alarm device warning of a pump failure shall be installed. Also, when pumping is required of a chamber system, install a 'T' connection in the distribution box and place 3 inches of stone or a splash plate in the first chamber. Insulate gravity pipes, pump lines and the distribution box as necessary to prevent freezing.
- 11) On all systems, remove the vegetation, organic duff and old fill material from under the disposal area and any fill extension. Additional fill beyond indicated on plan may be necessary to replace organic matter. On sites where the proposed system is to be installed in natural soil, scarify the bottom and sides of the excavated disposal area with a rake. Do not use wheeled equipment on the scarified soil surface. For systems installed in fill, scarify the native soil by roto-tilling or scarifying with teeth of backhoe to a depth of at least 8 inches over the entire disposal and fill extension area to prevent glazing and to promote fill bonding. Place fill in loose layers no deeper than 8 inches and compact before placing more fill (this ensures that voids and loose pockets are eliminated to minimize the chance of leakage or differential settling). Do not use wheeled equipment on the scarified soil area until after 12 inches of fill is in place. Keep equipment off proprietary devices. Divert the surface water away from the disposal area by ditching or shallow landscape swales.
- 12) Unless noted otherwise, fill shall be gravelly coarse sand, which contains no more than 5% fines (silt and clay). Crushed stone shall be clean and free of any rock dust from the crushing process.
- 13) Do not install systems on loamy, silty, or clayey soils during wet periods since soil smearing/glazing may seal off the soil interface.
- 14) Seed all filled and disturbed surfaces with perennial grass seed, with 4" min. soil or soil amendment mix suitable for growing, then mulch with hay or equivalent material to prevent erosion. Alternatively, bark or permanent landscape mulch may be used to cover system. Woody trees or shrubs are not permitted on the disposal area or fill extensions.
- 15) If an advanced wastewater treatment unit is part of the design, the system shall be operated and maintained per manufacturer's specifications.



Albert Frick Associates, Inc.
 Soil Scientists & Site Evaluators
 95A County Road Gorham, Maine 04038
 (207) 839-5563

DLN: 1002140170563

QUITCLAIM DEED WITH COVENANT

I, **Peter W. Bouthillette**, of 6 Rocky Way, Biddeford, ME 04005

for consideration paid,

grant to **Lynn Ann Wright**, now of 77 Fortunes Rocks Road, Biddeford, ME 04055

with **quitclaim covenants** the following property in York County, Maine

A certain lot or parcel of land situated in that part of the City of Biddeford known as Fortunes Rocks, bounded and described as follows:

Beginning at an iron pipe driven into the ground on the southeasterly side of the Town Road leading from Fortunes Rocks to Biddeford Pool, said iron being one and thirty-seven hundredths (1.37) feet northerly from the metal cornerboard at the northerly corner of the building standing on land now or formerly of one Smith, and being eighty-five and thirty hundredths (85.30) feet westerly from the base-board at the southerly corner of the porch attached to the southwesterly side of the house standing on land now or formerly of William E. Hyland and Ora C. Hyland;

Thence southeasterly by said Smith's land and making an included angle of ninety-eight degrees two minutes (98 degrees 02') with said Road sixty-three and two hundredths (63.02) feet to a spike driven into the wooden bulkhead;

Thence the same course to the Atlantic Ocean;

The above described line being the same as defined in a Quit Claim deed of Henry Reny to Francois X. Maillette dated July 29, 1927 and recorded in the York County Registry of Deeds, Book 766, Page 360;

Thence northeasterly by the Ocean forty-five feet, more or less, to said Hyland land;

Thence northwesterly by said land of Hyland and parallel with the first above described line and forty-five (45) feet northeasterly therefrom, measured at right angles thereto, to a spike drive into the wooden bulkhead;

Thence the same course by said land of Hyland seventy-six and fifteen hundredths (76.15) feet to an iron pipe driven into the ground on the southeasterly side of said Road;

Thence southwesterly by said Road forty-five and forty-five hundredths (45.45) feet to the point of beginning.

Maine R.E. Transfer Tax Paid

This conveyance is made subject to any easement that may exist in any person over a ten (10) foot strip of land over the above described lot between said Town Road and the Ocean.

TO HAVE AND TO HOLD the same, together with all the privileges and appurtenances thereunder belonging, to said Lynn Ann Wright, her heirs and assigns forever.

AND I do covenant with the said Lynn Ann Wright, her heirs and assigns, that I will warrant and defend the premises to the said Grantee, her heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through and under me.

Being the same premise conveyed to the grantor by Deed of Roland R. Bouthillette dated 08/15/2001 and recorded with the York County Registry of Deeds in Book 10884, Page 289. Also see Corrective Deed dated 3/19/2007 and recorded with said Deeds in Book 15127, Page 856. Roland R. Bouthillette passed away on 02/05/2013.

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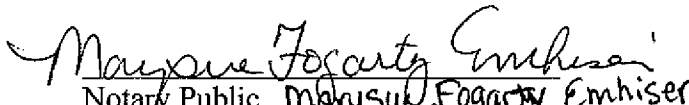
In witness whereof I have set my hand and seal this 8th day of November, 2021.


Peter W. Bouthillette

STATE OF MAINE

York, ss

On this 8th day of November, 2021, before me, the undersigned notary public, personally appeared Peter W. Bouthillette, proved to me through satisfactory evidence of identification, which was DRIVER'S license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.


Notary Public Marysue Fogarty Emhiser
My Commission Expires: August, 14, 2022



PROPERTY ADDRESS: 77 Fortunes Rocks Road, Biddeford, ME 04005

GENERAL NOTES:

1. Contractor will review all drawings and any specifications and confirm unclear information with MSD before commencing construction.
2. To ensure proper coordination, sheets are not to be separated when distributed to subcontractors.
3. Contractor is responsible for coordinating and supervising all sub-contractors. Workmanship standards shall be those generally accepted for high-grade custom residential construction.
3. Contractor is responsible for the construction of a complete weather tight building shown in accordance with the construction documents and building codes. Should the contractor discover any discrepancies or conflicts with code restrictions, he/she shall discuss with MSD.

COMMON ABBREVIATIONS

AFF	Above Finished Floor
B.O.	Bottom of
CMU	Concrete Masonry Unit
CEO	Code Enforcement Officer
CFCI	Contractor Furnished, Contractor Installed
ETR	Existing to Remain
GYP	Gypsum Board
IBC	International Building Code
IECC	International Energy Conservation Code
IRC	International Residential Code
MIN	Minimum
MAX	Maximum
MSD	Mobile Studio Design
MUBEC	Maine Uniform Building and Energy Code
OFCI	Owner Furnished, Contractor Installed
PT	Pressure-Treated
PSF	Pounds per square foot
PSI	Pounds per square inch
T.O.	Top of
TYP	Typical
VIF	Verify in Field
WD	Wood



EXISTING HOUSE FROM ROAD



PROPOSED HOUSE FROM ROAD

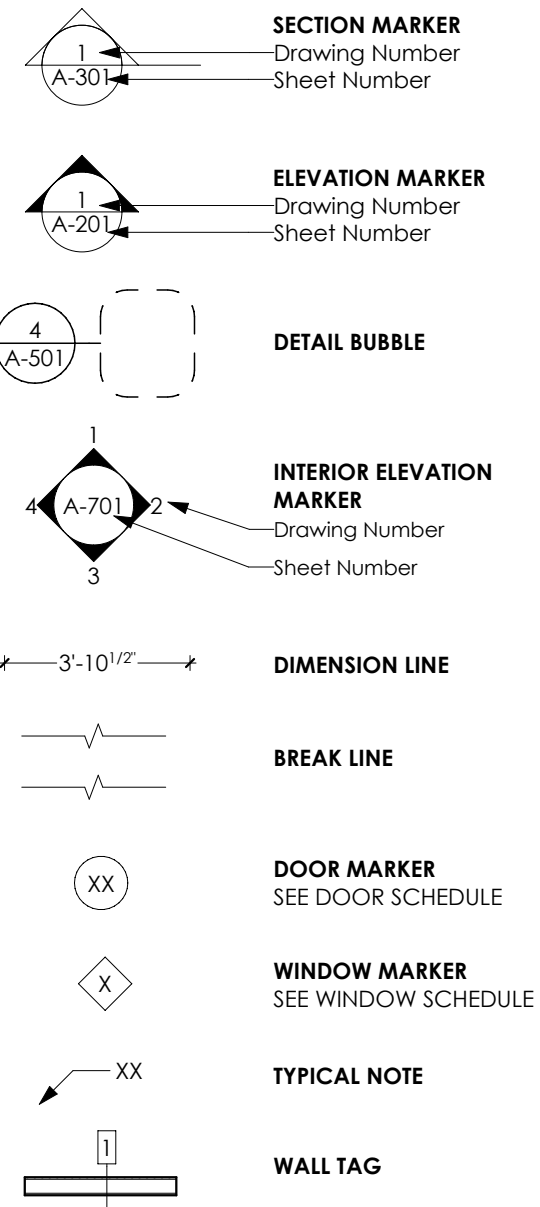


EXISTING HOUSE LEFT SIDE NEIGHBOR



PROPOSED HOUSE FROM OCEAN

SYMBOL LEGEND



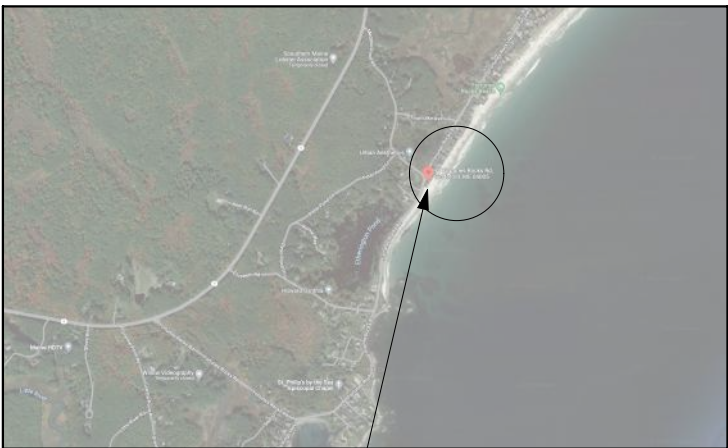
MATERIAL LEGEND

Brick - Elevation
Brick - Section
Concrete - Block
Concrete - CIP
Earth
Gravel
Gypsum
Gypsum - Fire Rating
Insulation - Batt
Insulation - Rigid
Metal - Aluminum
Metal - Steel
Not in Contract
Plywood
Vegetation
Wood - End Grain

SHEET INDEX

ID	Name
G-000	COVER SHEET
EX-101	EXISTING SITE & PLAN
EX-201	EXISTING ELEVATIONS
A-001	SITE PLAN - REGULATORY
A-101	PROPOSED PLANS
A-201	PROPOSED ELEVATIONS

LOCATION MAP



77 Fortunes Rocks Rd
Biddeford, ME 04005

PRELIMINARY
NOT FOR CONSTRUCTION

PROJECT NARRATIVE

DEMOLITION OF EXISTING SINGLE STORY, 2 BEDROOM RESIDENCE & CRAWL SPACE.

NEW CONSTRUCTION OF 3-STORY, 2 BEDROOM RESIDENCE RELOCATED TO BE MORE CONFIRMING WITHIN PROPERTY SETBACKS.

ISSUE	DATE	DESCRIPTION

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Fortunes Rocks Rd

Lynn Wright
77 Fortunes Rocks Rd
Biddeford, ME 04005

MOBILE STUDIO DESIGN
128 Main Street, Suite 201
Biddeford, ME 04002
office: 207.494.8102

DATE OF ISSUE: 9/14/22

PROJECT STATUS:
SCHEMATIC DESIGN

PROJECT MANAGER:
Cat Sumisloski
Cat@MobileStudioDesign.com

CONSULTANTS:
SEPTIC DESIGNER: ALBERT FRICK
ASSOCIATES, 95 A COUNTY RD, GORHAM,
ME 04038, 207.839.5563
SITE EVALUATOR: - BRADY FRICK

SURVEYOR: JPS PROFESSIONAL SERVICES,
DATED JANUARY 5, 2022, AMENDED 2.6.22

STRUCTURAL ENGINEER

CONTRACTOR:
TBD

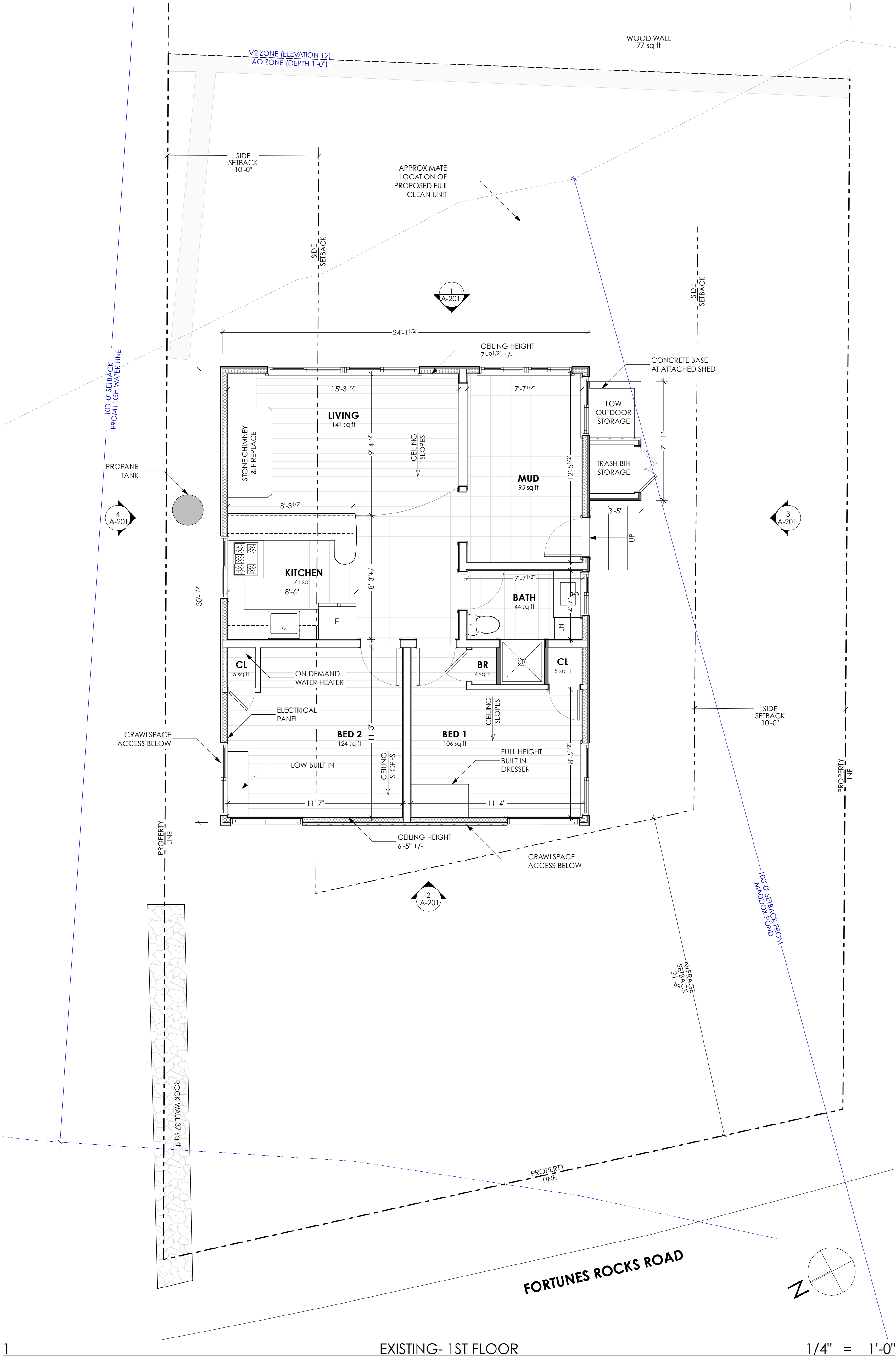
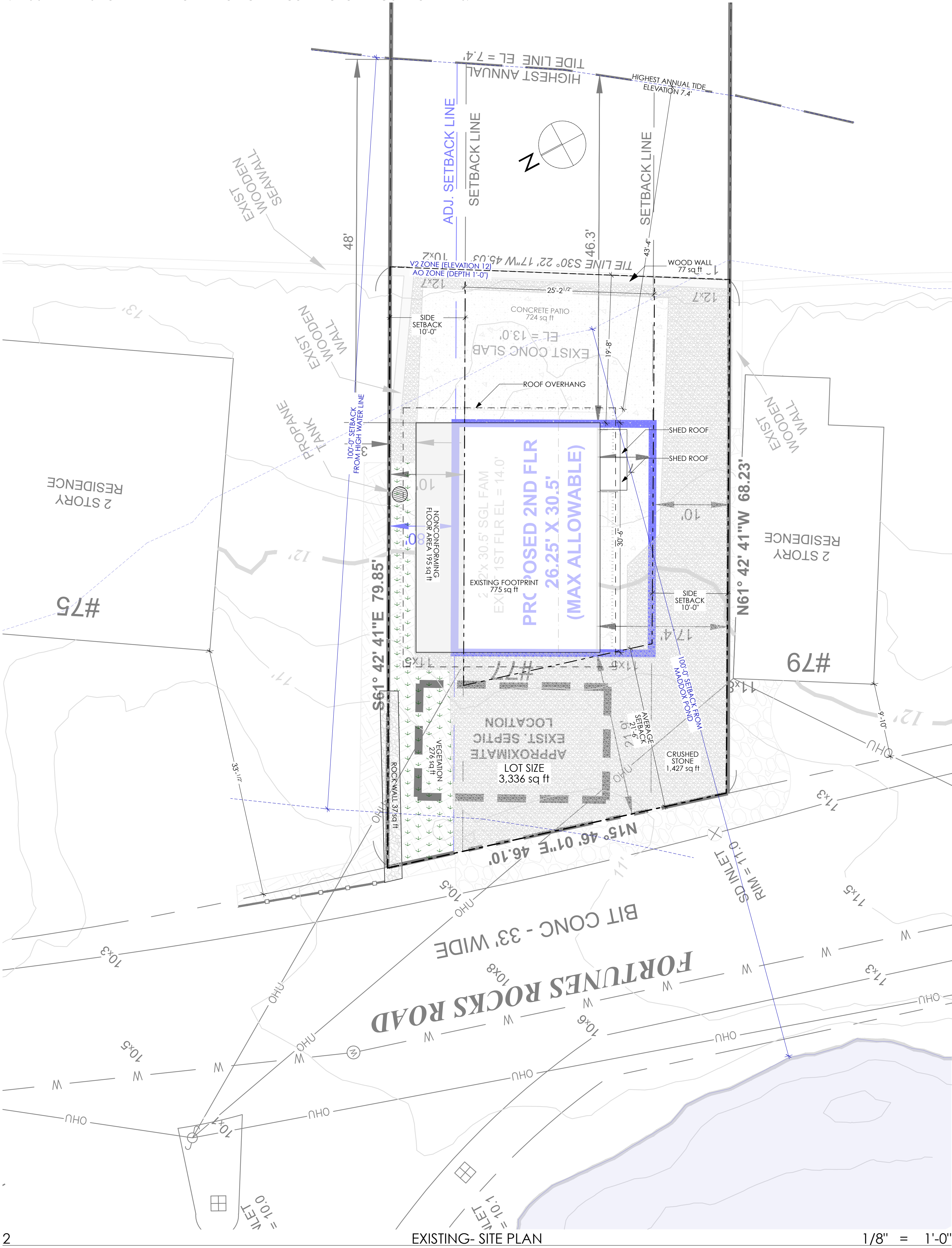
COVER SHEET

G-000

mobile
studio
design

GENERAL SITE PLAN NOTES:

1. THIS SITE PLAN WAS GENERATED BASED ON "PRELIMINARY SITE PLAN PROPOSED 2ND FLOOR ADDITION" PROVIDED BY JPS PROFESSIONAL SERVICES, DATED JANUARY 5, 2022, AMENDED 2.6.22.
2. THIS SITE PLAN IS NOT INTENDED FOR ANY OFFICIAL RECORDING TO A REGISTRY OF DEEDS.



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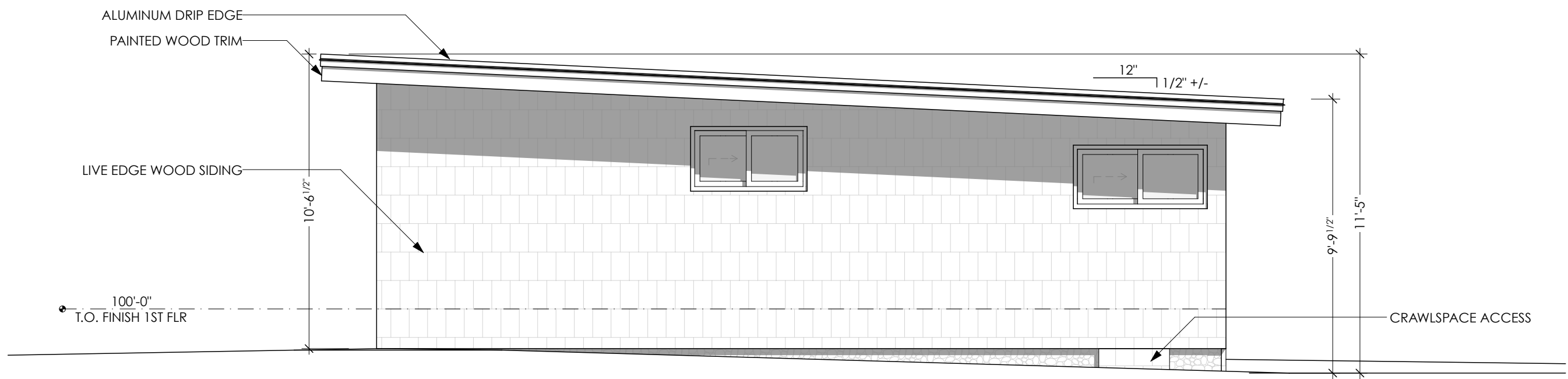
EXISTING SITE & PLAN

EX-101

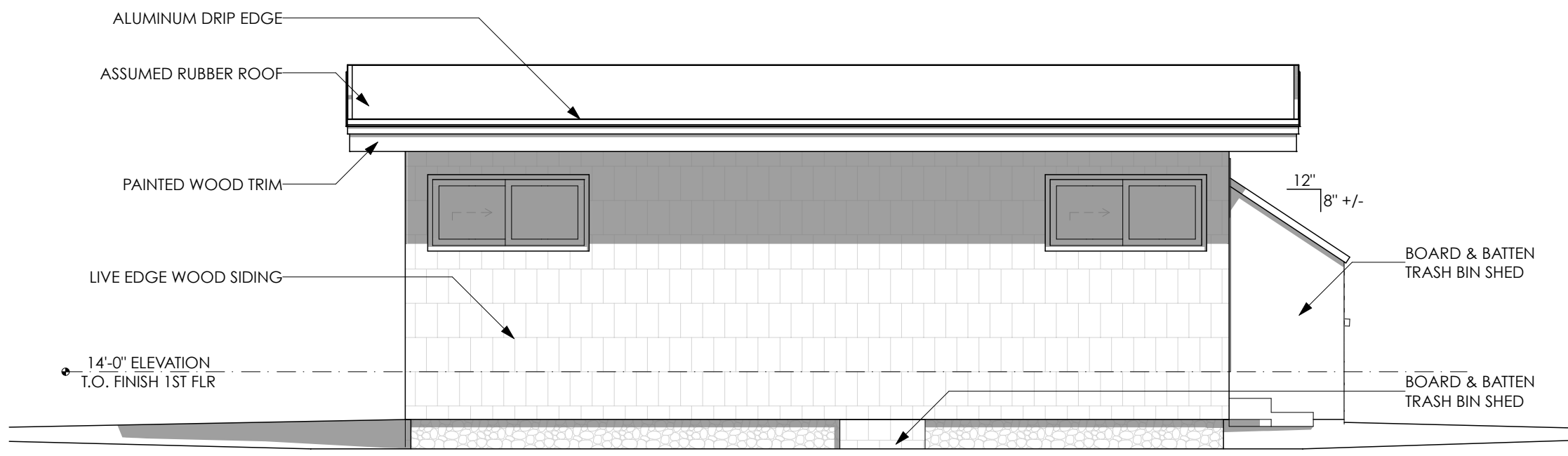
mobile
studio
design

/Volumes/Mobile Studio Server-1/PROJECTS/CURRENT/Lynn Wright/DRAWINGS/2. SD/ARCHICAD/22.09.09 Fortunes Rocks 3 story.pln

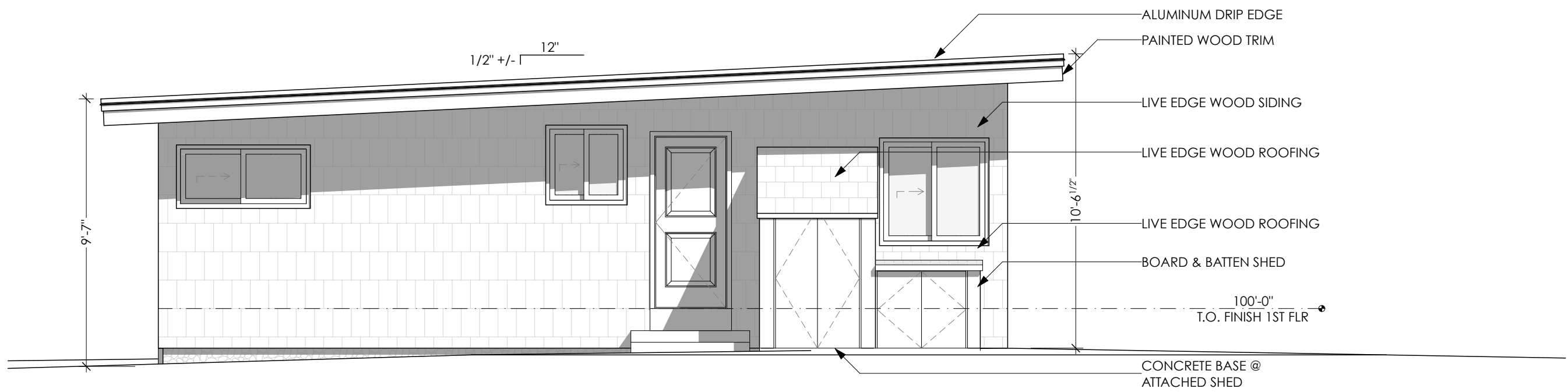
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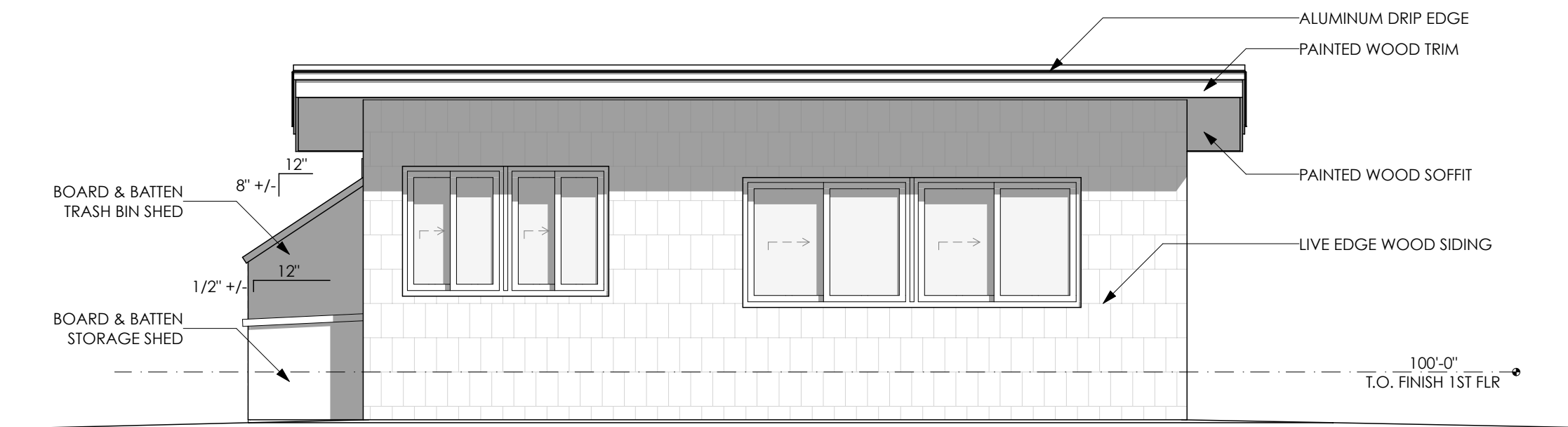
3 EXISTING- EAST ELEVATION 1/4" = 1'-0"



2 EXISTING- NORTH ELEVATION 1/4" = 1'-0"



4 EXISTING- WEST ELEVATION 1/4" = 1'-0"



1 EXISTING- SOUTH ELEVATION 1/4" = 1'-0"

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EXISTING ELEVATIONS

EX-201

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/Volumes/Mobile Studio Server-1/PROJECTS/CURRENT/Lynn Wright/DRAWINGS/2. SD/ARCHICAD/22.09.09 Fortunes Rocks 3 story.pln

PROPERTY INFORMATION

77 FORTUNES ROCKS RD, BIDDEFORD, ME
MAP/ LOT - 66/48
DEED BOOK & PAGE - 15,127 & 856

ZONE: CR - COASTAL RESIDENTIAL
LR - LIMITED RESIDENTIAL

FLOOD ZONE: ZONE AO

DEP: D1 - FRONT DUNE
EROSION HAZARD AREA

BIDDEFORD REQUIREMENTS

DIMENSIONAL REQ.	ALLOWABLE	EXISTING	PROPOSED
MOST RESTRICTIVE			
MIN LOT AREA ^a	30,000 SF	3,336 sq ft	NO CHANGE
FRONTAGE	150 FT	46.1 FT	NO CHANGE
FRONT SETBACK - AVERAGE	21'-6"	+/- 19'-6 ¹ / ₂ "	21'-7 ¹ / ₂ "
SIDE YARD SETBACK ^d	10'-0"	+/- 15'-0" & 1'-5 ¹ / ₂ "	10'-2"
REAR YARD SETBACK ^d	10'-0"	+/- 17'-8"	19'-5"
NORMAL HIGH-WATER LINE	100'-0"	+/- 44'-3"	44'-9 ¹ / ₂ "
MAX LOT COVERAGE	20% - 696.88 sq ft	97.4%	84.2%
MAXIMUM HEIGHT ^b - LR	20'-0"	11'-5"	35'-0"
FOOTPRINT ^c , TOTAL	1,000 SF ^{SEE BELOW FOR DEP RESTRICTIONS}	775 SF	
BUILDING ELEVATION	1'-0" ABOVE FEMA DEPTH	CRAWLSPACE BELOW GRADE	3'-0" ABOVE HIGHEST GRADE TO B.O. STRUC.

NOTE: REFERENCES FROM CITY OF BIDDEFORD, CODE OF ORDINANCE, LAND DEVELOPMENT REGULATIONS
a. ART. XIV, SEC. 17: **HEIGHT OF A STRUCTURE** - VERTICAL DISTANCE BETWEEN THE MEAN ORIGINAL GRADE AT THE DOWNHILL SIDE OF THE STRUCTURE AND THE HIGHEST POINT OF THE STRUCTURE, EXCLUDING CHIMNEYS, STEEPLES, ANTENNAS, & SIMILAR APPURTENANCES
b. ART. XIV, SEC. 17: **LOT AREA** - AREA OF LAND ENCLOSED WITHIN THE BOUNDARY LINES OF A LOT, MINUS LAND BELOW THE NORMAL HIGH-WATER LINE
c. ART. XIV, SEC. 17: **FOOTPRINT** - ENTIRE AREA OF GROUND COVERED BY THE STRUCTURE(S) ON A LOT, INCLUDING BUT NOT LIMITED TO CANTILEVERED OR SIMILAR OVERHANGING EXTENSIONS, AS WELL AS UNENCLOSED STRUCTURES, SUCH AS PATIOS AND DECKS
d. TABLE B, NOTE C: ANY RESIDENTIAL STRUCTURES IN EXISTENCE PRIOR TO DECEMBER 20, 1990, MAY BE EXPANDED OR ADDED TO AS LONG AS THEY MEET MINIMUM SETBACKS (FROM MAJOR ACCESS, 40FT; FROM OTHER STREETS, 25 FT; FROM SIDE AND REAR PROPERTY LINES, 10FT)

LOT COVERAGE	EXISTING	PROPOSED
HOUSE - TO ROOF OVERHANG	984 SQ FT 29.5%	766 SQ FT 23%
CONCRETE PATIO	724 SQ FT 21.7%	566 SQ FT 17%
WOOD WALL	77 SQ FT 2.3%	77 SQ FT 2.3%
CRUSHED STONE	1,427 SQ FT 42.8%	1,363 SQ FT 40.9%
ROCK WALL	37 SQ FT 1.1%	37 SQ FT 1.1%
TOTAL LOT COVERAGE	3,249 SF 97.4%	2,809 SQ FT 84.2%
TOTAL LOT AREA	3,336 sq ft	

MAINE DEP

This property is located in the frontal dune system (D1) and the erosion hazard area.

Any work that exceeds 50% of the building's current assessed value will require raising the house onto piles or piers, a flow-thru foundation. The Sand Dune Rules in Chapter 355 states the house will need to be raised a minimum of 3'-0" above the highest existing elevation within the building's footprint to the bottom of the first floor structure.

The maximum allowable footprint is 20% of the lot. The existing house footprint exceeds the 20% which means no horizontal expansion is allowable.

DEP REQUIREMENTS

BUILDING COVERAGE	ALLOWABLE	EXISTING	PROPOSED
EXISTING BUILDING COVERAGE	20% 667.2 SQ FT	23.2% 775 SQ FT	20.8% 694 SQ FT
TOTAL LOT AREA	3,336 sq ft		

COASTAL SAND DUNE RULES, CHAPTER 355, 3. DEFINITIONS

FOOTPRINT The outline that would be created on the ground by extending the exterior walls of the building to the ground surface. For the purposes of Sections 6(D), 6(E) and 6(F), a porch is not considered when determining the building's footprint.

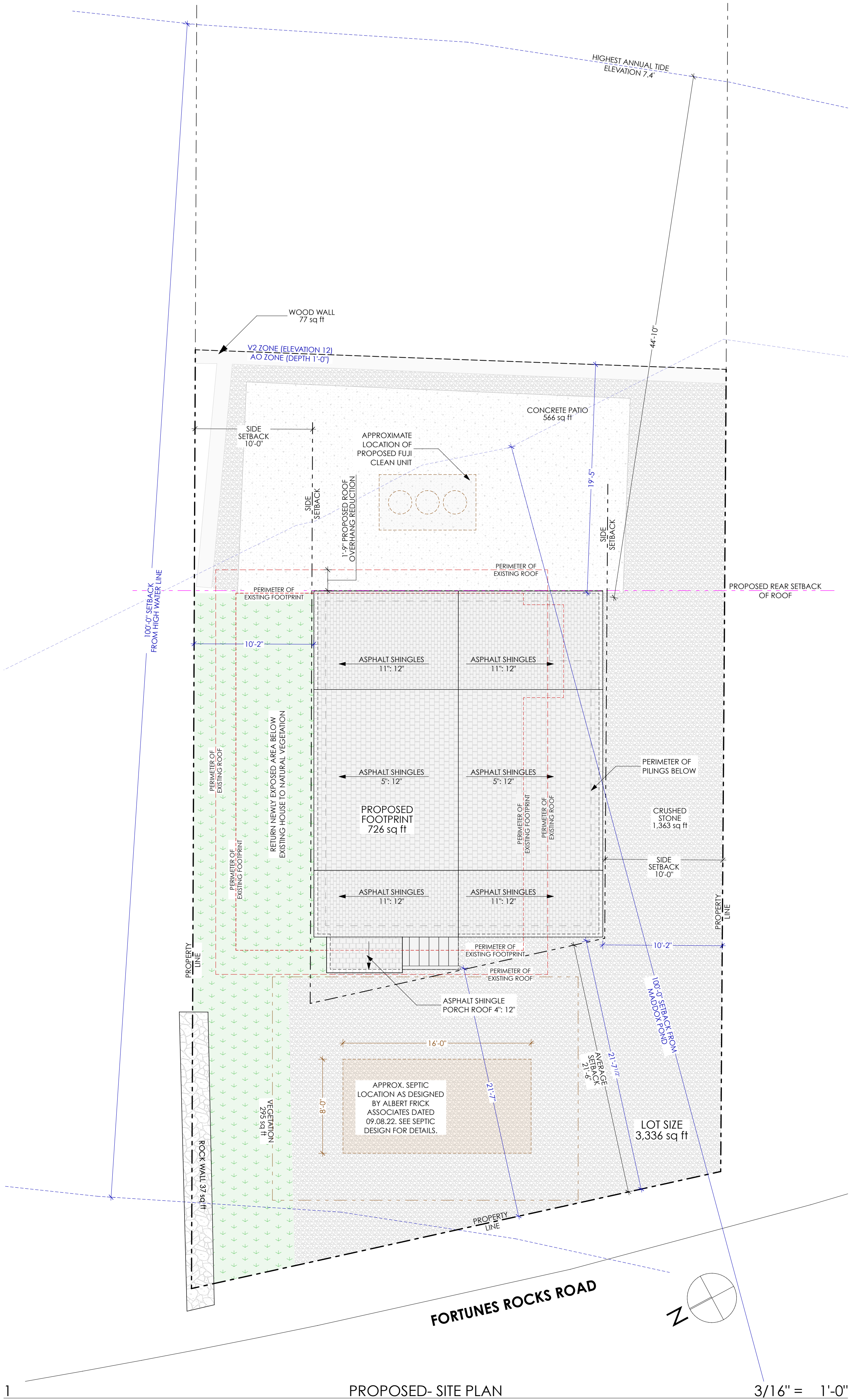
DEVELOPED AREA	ALLOWABLE	EXISTING	PROPOSED
EXISTING DEVELOPED AREA	40% 1,334.4 SQ FT	97.4% 3,249 SQ FT	84.2% 2,809 SQ FT
TOTAL LOT AREA	3,336 sq ft		

CHAPTER 355: COASTAL SAND DUNE RULES

6. STANDARD FOR FRONTAL DUNE PROJECTS

B. (4)(a) VERTICAL BUILDING ADDITIONS IS ALLOWABLE PROVIDED THAT THE ADDITION DOES NOT EXTEND HORIZONTALLY BEYOND THE FOOTPRINT COVERED BY THE EXISTING BUILDING.

G. LOWEST PORTION OF THE STRUCTURAL MEMBERS OF THE LOWEST FLOOR TO BE CONSTRUCTED 3'-0" ABOVE THE HIGHEST NATURAL ELEVATION WITHIN THE EXISTING FOOTPRINT.



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STRUCTURAL ENGINEER

CONTRACTOR:
TBD

SITE PLAN -
REGULATORY

A-001

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XX

DOOR MARKER
SEE DOOR SCHEDULE

X

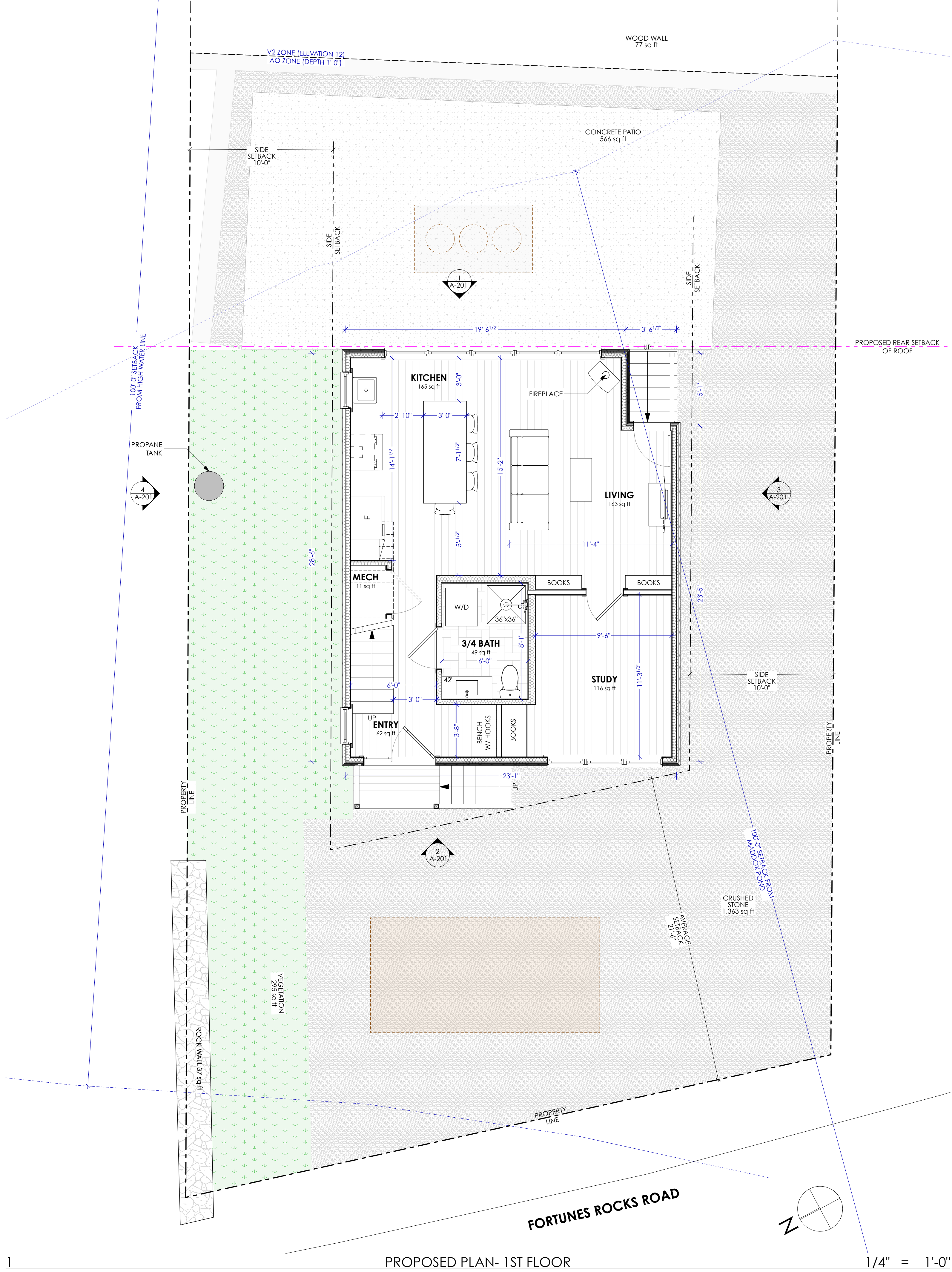
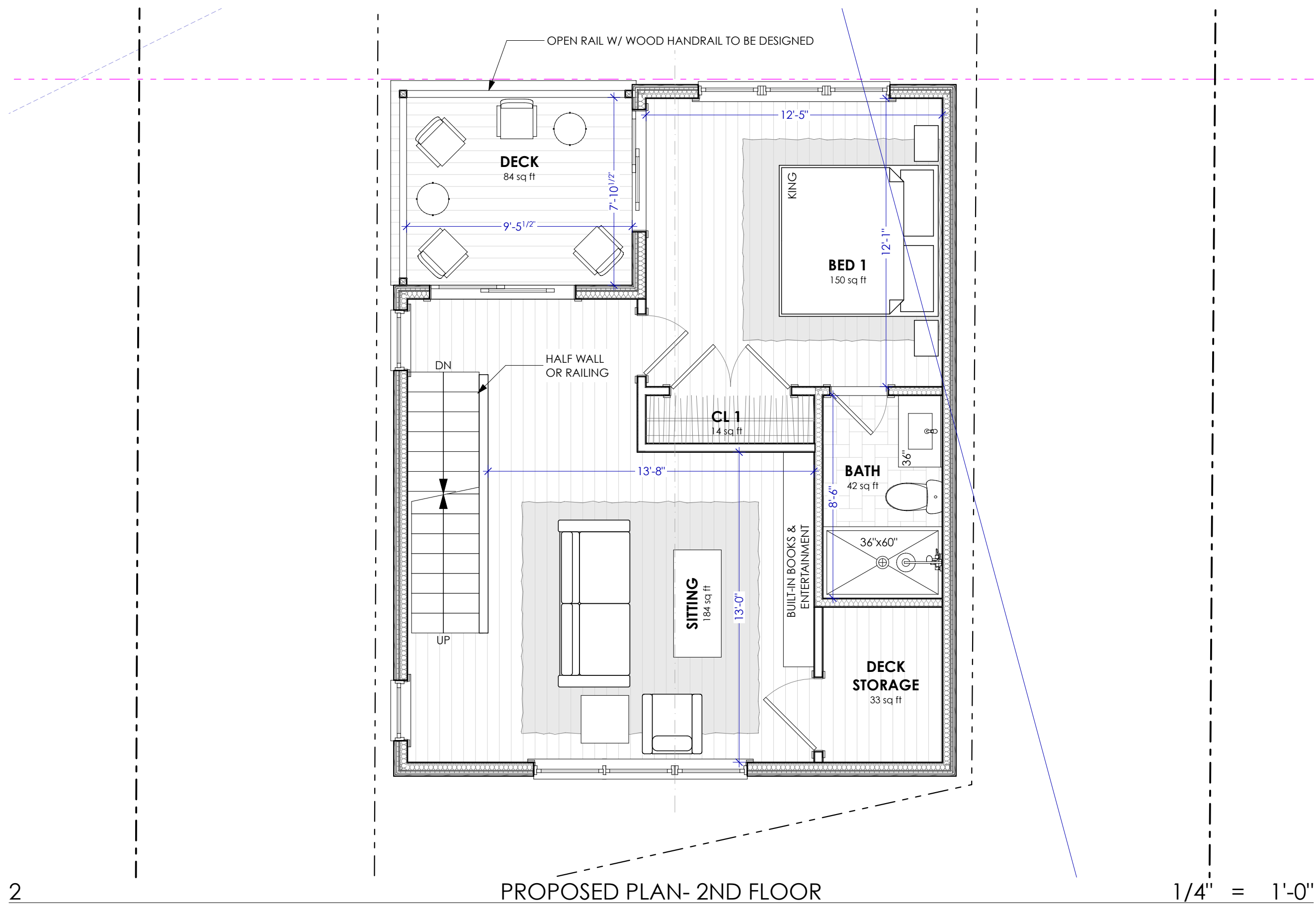
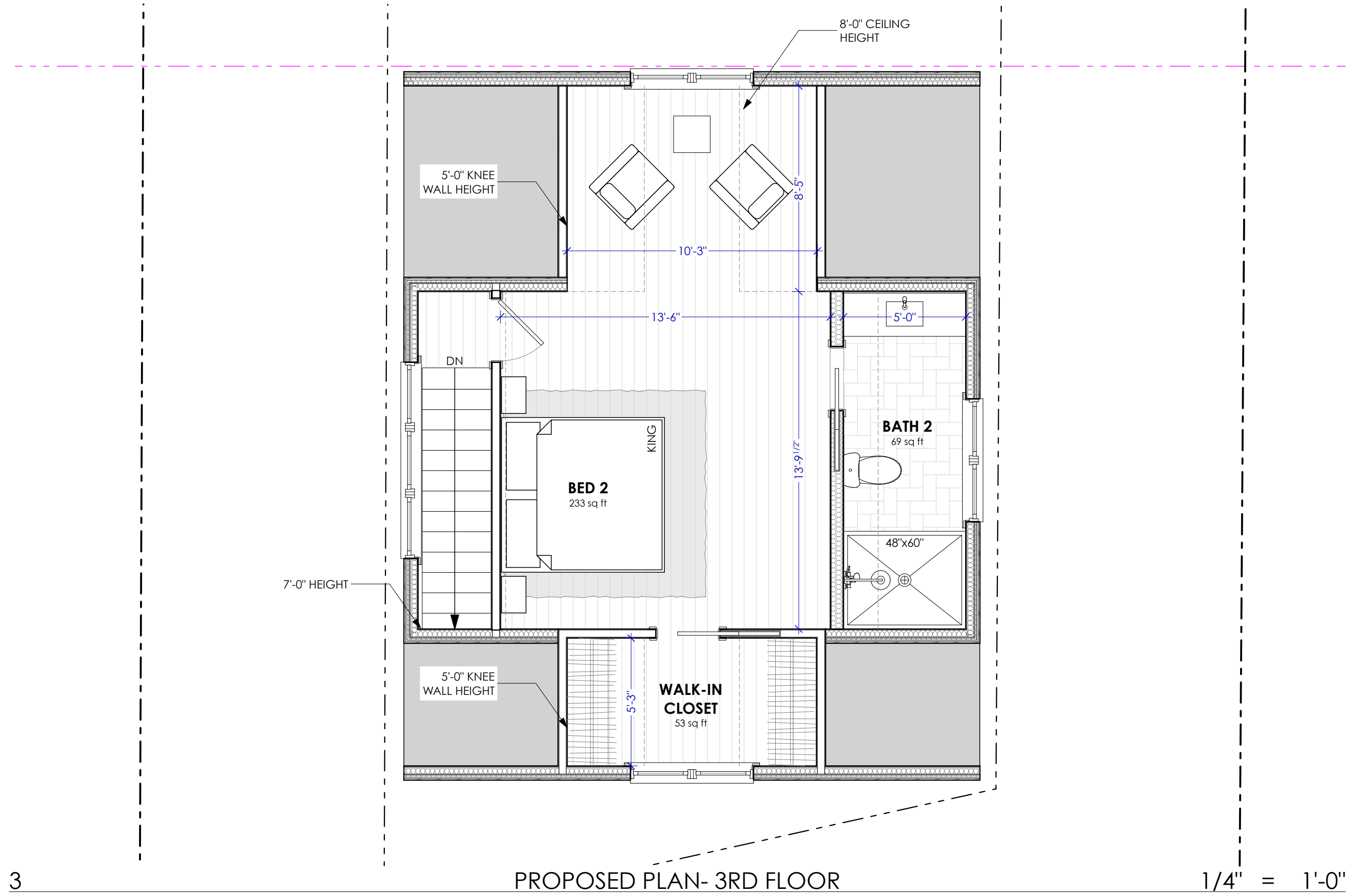
WINDOW MARKER
SEE WINDOW SCHEDULE

XX

TYPICAL NOTE

WALL TAG

- LEGEND**
GENERAL PLAN NOTES
1. All work is to be completed in conformance with all local, state and federal building codes
 2. All dimensions for walls are to rough framing or face of concrete of UNO.
 3. All dimensions are to center lines of doors and windows UNO.



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PROPOSED PLANS

A-101

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/Volumes/Mobile Studio Server-1/PROJECTS/CURRENT/Lynn Wright/DRAWINGS/2. SD/ARCHICAD/22.09.09 Fortunes Rocks 3 story.pln

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Cat@MobileStudioDesign.com

CONSULTANTS:
SEPTIC DESIGNER: ALBERT FRICK
ASSOCIATES, 95 A COUNTY RD, GORHAM,
ME 04038, 207.839.5563
SITE EVALUATOR: BRADY FRICK

SURVEYOR: JPS PROFESSIONAL SERVICES,
DATED JANUARY 5, 2022, AMENDED 2.6.22

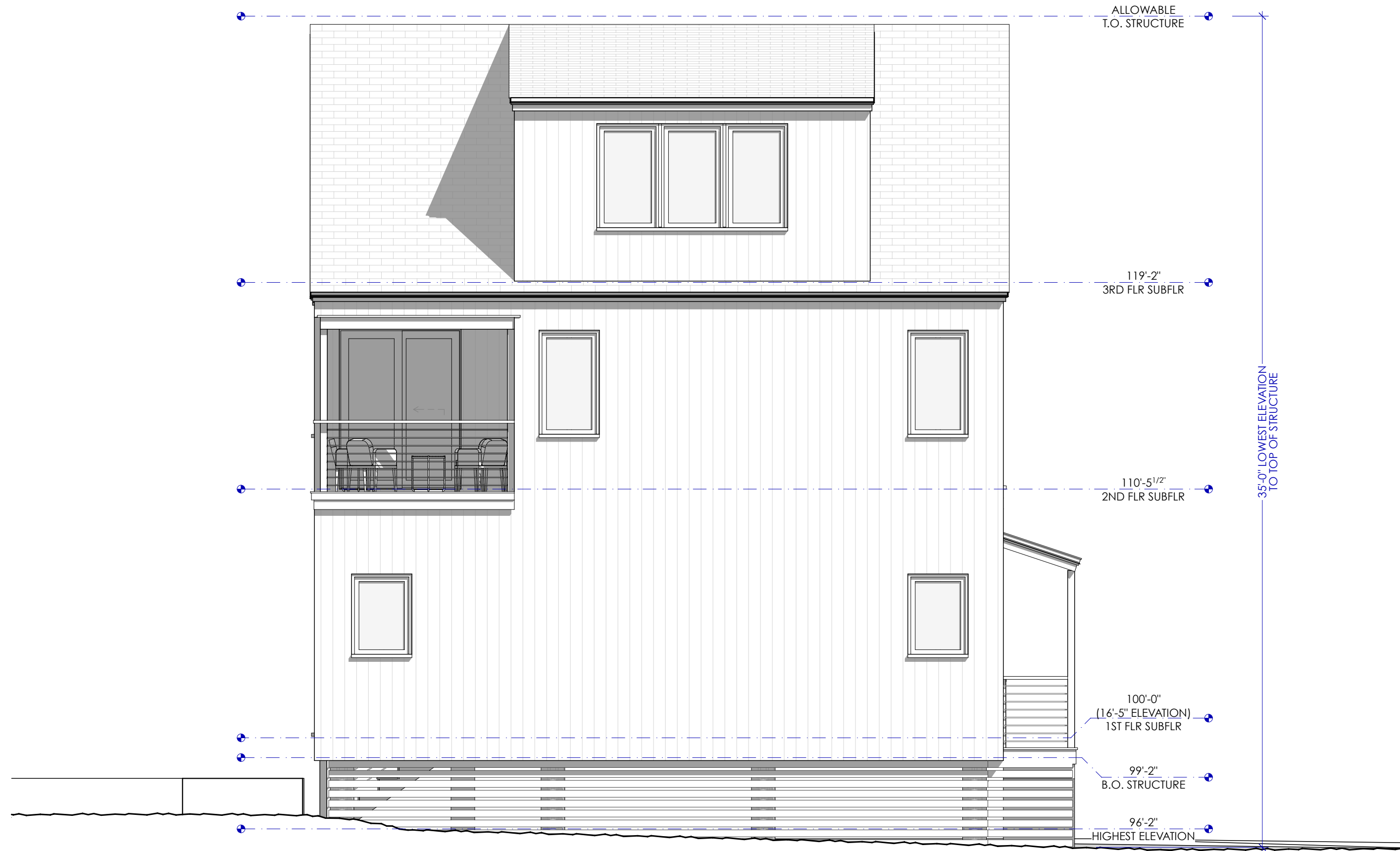
STRUCTURAL ENGINEER

CONTRACTOR:
TBD

PROPOSED ELEVATIONS

A-201

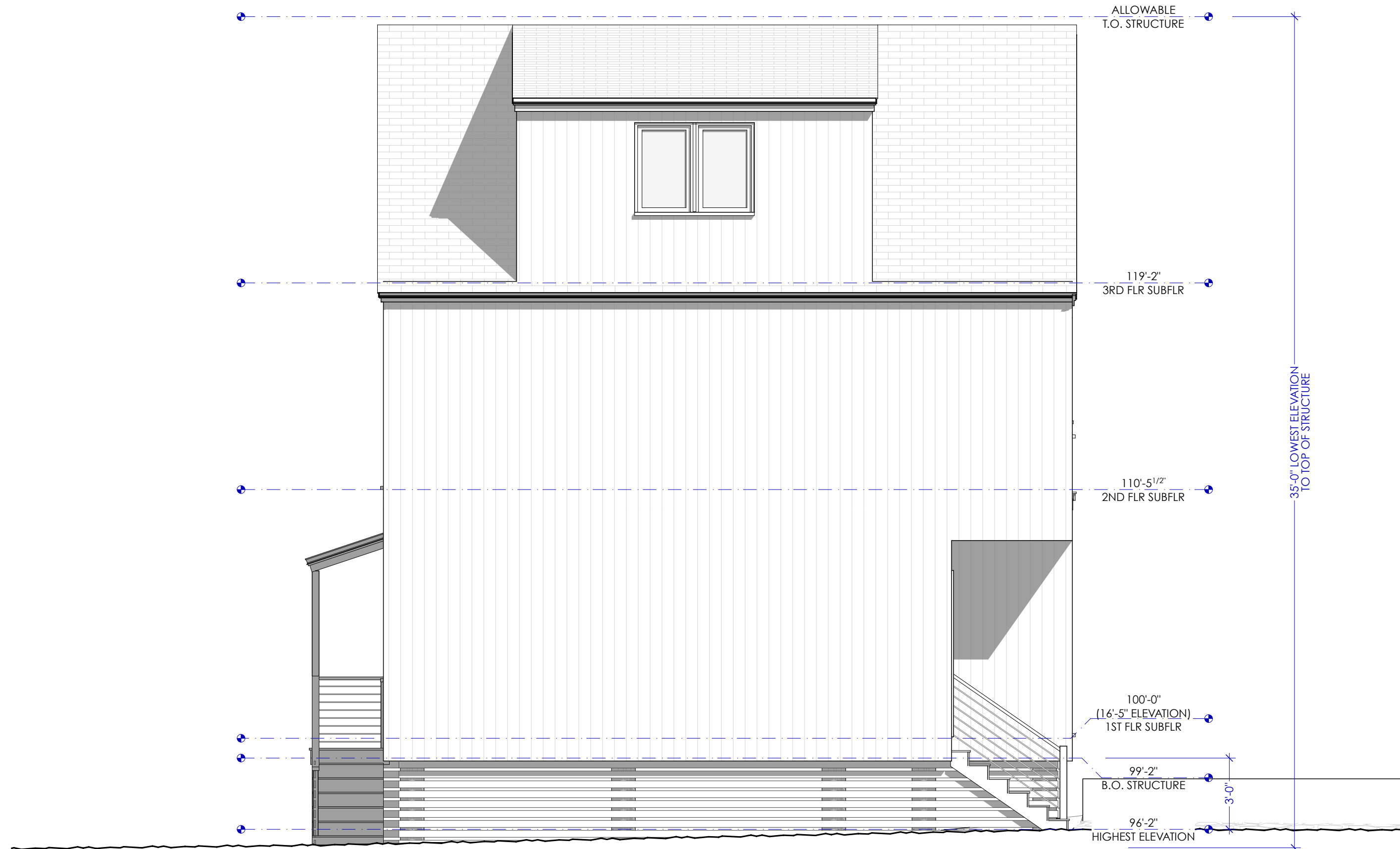
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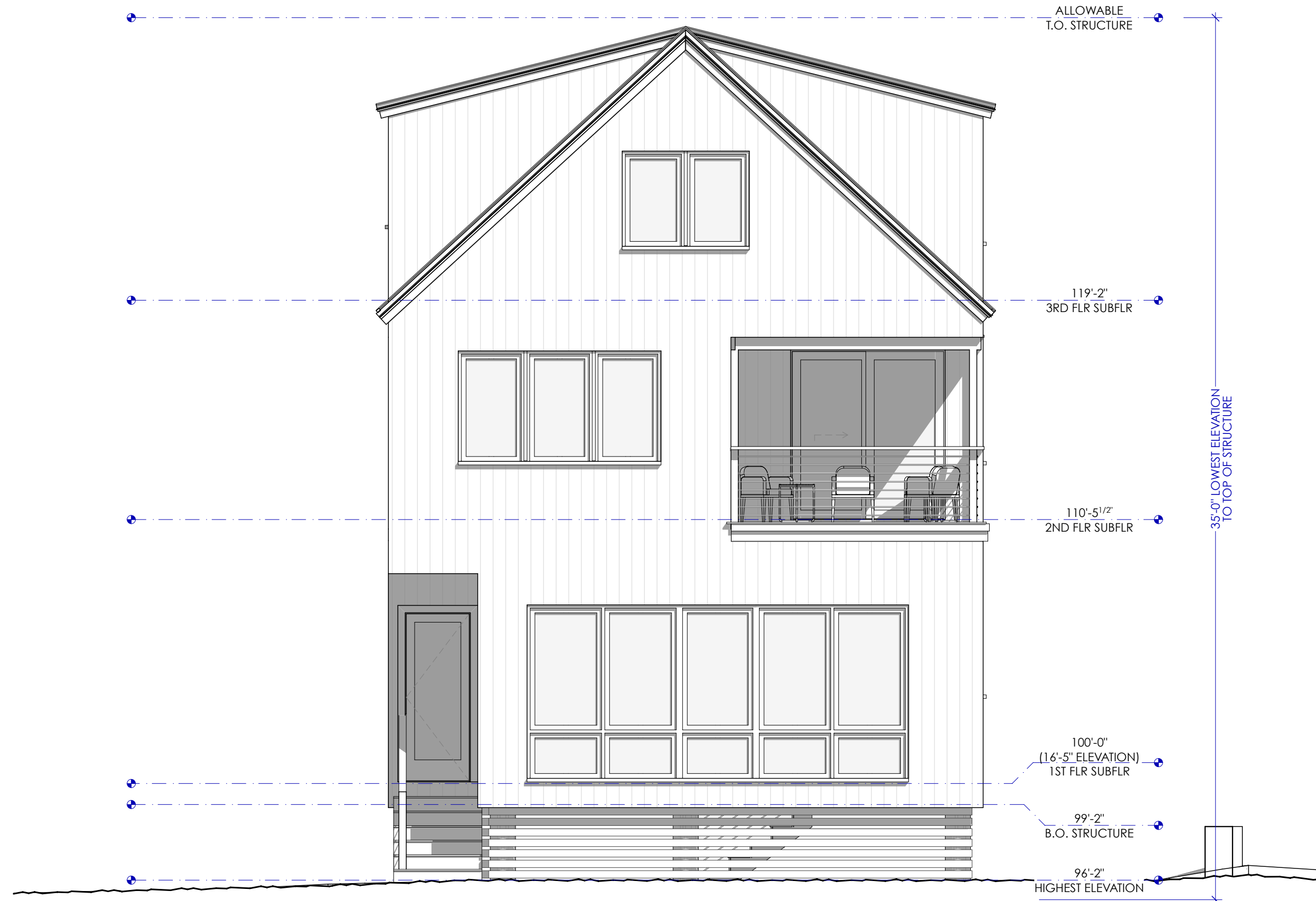
4 PROPOSED- EAST ELEVATION 1/4" = 1'-0"



2 PROPOSED- NORTH ELEVATION 1/4" = 1'-0"



3 PROPOSED- WEST ELEVATION 1/4" = 1'-0"



1 PROPOSED- SOUTH ELEVATION 1/4" = 1'-0"

Whitten, Nan

From: Grooms, Matthew
Sent: Tuesday, October 18, 2022 4:52 PM
To: Whitten, Nan
Subject: FW: 77 Fortunes Rocks Road, Biddeford

From: Kyle H. Noble <noblehouse@maine.rr.com>
Sent: Tuesday, October 18, 2022 12:21 PM
To: Fecteau, Roby <Roby.Fecteau@Biddefordmaine.org>; Bennett, James <James.Bennett@Biddefordmaine.org>; Casavant, Alan <Alan.Casavant@Biddefordmaine.org>
Cc: William Southwick <William.Southwick@biddefordmaine.org>; colin.a.clark@maine.gov <colin.a.clark@maine.gov>; jeffrey.c.kalinich@maine.gov <jeffrey.c.kalinich@maine.gov>
Subject: 77 Fortunes Rocks Road, Biddeford

Roby,

Please explain before I present at tomorrow night's Planning Board meeting why exactly the subject proposed replacement house does not need to comply with Biddeford's Shoreland Zoning, Section 12 Nonconformance, subsection C Nonconforming structures, paragraph 1 Expansions, subparagraph c. i., and especially why this proposed structure may exceed 20 feet in height as specified in those ordinance provisions.

Thank you,

Kyle H. Noble

Whitten, Nan

From: Whitten, Nan
Sent: Wednesday, October 19, 2022 8:50 AM
To: 'Louis Rana'
Cc: Grooms, Matthew; Freeman, Eric
Subject: RE: Proposed Work @ 77 Fortunes Rocks Rd. Biddeford Maine

Good Morning Mr. Rana:

I have passed your comments onto the Board, the Planner & the applicant. My apologies on the date of the notice, I should have updated it. The notice was sent out on October 11, 2022. Thank you for reaching out.

From: Louis Rana <louisrana@gmail.com>
Sent: Tuesday, October 18, 2022 9:44 PM
To: Whitten, Nan <Nan.Whitten@Biddefordmaine.org>
Cc: Louis Rana <louisrana@gmail.com>
Subject: Proposed Work @ 77 Fortunes Rocks Rd. Biddeford Maine

Hi Nan,

I have the following questions and concerns about the proposed project at the subject property:

- Proof of Notice - I received the "Notice To Property Owner" today via a postcard. The packet in the material contained on the Biddeford website specifies a date of 9/20 for notification. I have not had sufficient time to review the material in detail and I cannot attend the meeting tomorrow on such short notice. Therefore, I respectfully request that the meeting be postponed until the next normally scheduled meeting of the Planning Committee. However, in the event that this postponement is not granted, I offer the comments listed below.
- Existing Easement - The Quitclaim deed refers to a 10 ft easement that runs through the property from the road to the ocean. How will this 10 ' wide access to the ocean be provided with the new plan? Also, are setbacks affected because of this easement? Finally, does the City have a responsibility in maintaining the easement?
- Height of the Proposed Building - The proposed building's height is 35' compared to the existing building's height of 11' 5" for an increase of 205%. The presenters argue that because there is a small decrease in the foot print of the proposed building, codes allow the substantial increase in height. A more reasonable approach may be restrict the height of the proposed building to the height of adjacent buildings or heights referenced in 12.c.i.

Sincerely,
Louis Rana

Whitten, Nan

From: Whitten, Nan
Sent: Wednesday, October 19, 2022 9:07 AM
To: 'Louis Rana'
Cc: noblehouse@maine.rr.com; Fecteau, Roby; alancasavant@biddefordmaine.org; Bennett, James; Martha Kleinman
Subject: RE: Proposed Work @ 77 Fortunes Rocks Rd. Biddeford Maine

Good Morning Again:

We will send this to the Board members and applicants as well.

Thank you again.

*Nan Whitten
Office Manager
City of Biddeford
Planning & Development
207-284-9115*

*NOTE: Starting the week of June 27, 2022, new City Hall business hours will be:
Monday & Tuesday – 7:00 a.m. to 5:00 p.m.
Wednesday & Thursday – 8:00 a.m. to 4:00 p.m.
Closed on Fridays*

From: Louis Rana <louisrana@gmail.com>
Sent: Wednesday, October 19, 2022 9:04 AM
To: Whitten, Nan <Nan.Whitten@Biddefordmaine.org>
Cc: noblehouse@maine.rr.com; Fecteau, Roby <Roby.Fecteau@Biddefordmaine.org>; alancasavant@biddefordmaine.org; Bennett, James <James.Bennett@Biddefordmaine.org>; Martha Kleinman <marthakleinman@gmail.com>
Subject: Fwd: Proposed Work @ 77 Fortunes Rocks Rd. Biddeford Maine

Hi Nan,

The following is a supplement to yesterday's e mail.

- The proposed replacement building falls under Section 12 paragraph 4 of the Biddeford's Shoreland Zoning (Relocation or Replacement). The applicable sentence in this paragraph is — "If the reconstructed or replacement structure is less than the required setback it shall not be any **larger** than the original structure, except as allowed pursuant to Section 12C1 above, as determined by the nonconforming footprint of the reconstructed or replaced structure at its new location". The important word in this sentence is "**larger**" and it does not restrict the application to just the

footprint. The proposed building is about three times larger than the existing building in terms of floor area, height, and volume. The paragraph allows for exceptions as per 12C1.

- Section 12C1- This paragraph deals for “expansions” which is defined in Section 17 and is not applicable for this case because the footprint is not being expanded.

Therefore, it would appear that proposed nonconforming building must not be larger than the existing building. If the intention of Biddeford’s Shoreland Zoning was to limit the phrase ”larger than” to the footprint of the building, the authors would have used a phrase that included the word “expansion” since it is defined in Section 17. Perhaps wording such as “not have a footprint expansion beyond the original footprint” rather than ”not be larger than the original structure” would have avoided the misinterpretation.

Thank you for your consideration.

Louis Rana
80 Fortunes Rocks Rd
Biddeford, Maine

Begin forwarded message:

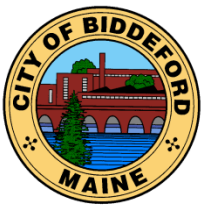
From: Louis Rana <louisrana@gmail.com>
Subject: Proposed Work @ 77 Fortunes Rocks Rd. Biddeford Maine
Date: October 18, 2022 at 9:44:06 PM EDT
To: nan.whitten@biddefordmaine.org
Cc: Louis Rana <louisrana@gmail.com>

Hi Nan,

I have the following questions and concerns about the proposed project at the subject property:

- Proof of Notice - I received the "Notice To Property Owner" today via a postcard. The packet in the material contained on the Biddeford website specifies a date of 9/20 for notification. I have not had sufficient time to review the material in detail and I cannot attend the meeting tomorrow on such short notice. Therefore, I respectfully request that the meeting be postponed until the next normally scheduled meeting of the Planning Committee. However, in the event that this postponement is not granted, I offer the comments listed below.
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- Height of the Proposed Building - The proposed building’s height is 35’ compared to the existing building’s height of 11’ 5” for an increase of 205%. The presenters argue that because there is a small decrease in the foot print of the proposed building, codes allow the substantial increase in height. A more reasonable approach may be restrict the height of the proposed building to the height of adjacent buildings or heights referenced in 12.c.i.

Sincerely,
Louis Rana



CITY OF BIDDEFORD

Planning and Development Department

Matthew Grooms, AICP
Deputy Director/City Planner
205 Main Street
P.O. Box 586
Biddeford, ME 04005
(207) 284-9115
Matthew.Grooms@biddefordmaine.org

PLANNING BOARD REPORT

TO: William Southwick, Chair & Members of the Biddeford Planning Board

FROM: Matthew Grooms, AICP, City Planner

DATE: October 13, 2021

RE: **Waterfront Renaissance - Shoreland Zoning Amendment**

I. INTRODUCTION:

The City of Biddeford is proposing to establish a new 'special local condition' shoreland zoning district within downtown Biddeford, encompassing areas currently zoned as either General Development 1 (GD-1) or General Development 2 (GD-2), in order to facilitate new mixed-use development on property along the Saco River within the City's urban core. The GD-1 and GD-2 are currently restricted to either very low intensity new development, or redevelopment. Biddeford's Mill District is, and has historically, been intensively developed with both commercial and industrial uses. Today, former mill facilities have been successfully converted for both residential and commercial use, which has helped to breathe new life into downtown Biddeford. At the northern end of the City's Mill District, is an area of either underutilized or vacant property along Pearl Street (former home of the MERC site), Gooch Street (Upper Falls Way), and Diamond Street (former Diamond Match Complex). All three sites were at one point fully developed, although the Diamond Match property has since become revegetated. Amendments to Biddeford's shoreland zone are essential to facilitating new, higher-intensity mixed-use development, consistent with Biddeford's vision for downtown, and complementary of Biddeford's historic mill district.

Understanding that the GD-1 and GD-2 districts exist state-wide, and that alterations to either district could set new unwanted precedent for changes in other communities, the City of Biddeford is proposing to develop a new, stand-alone district unique to the City of Biddeford, proposed as the 'Waterfront Renaissance' (WR) District, in accordance with Title 38, Chapter 3, Subchapter 1, Article 2-B, §438-A.2, which states the following:

"When a municipality determines that special local conditions within portions of the shoreland zone require a different set of standards from those in the minimum guidelines, the municipality shall document the special conditions and submit them, together with its proposed ordinance provisions, to the commissioner for review and approval."

City staff have had ongoing conversations with the DEP regarding the establishment of this district, and participated in a site walk of the Diamond Match property on to better understand the geography and local conditions, and discuss the proposed amendments to the dimensional standards. In this meeting, the DEP indicated that they were generally supportive of staff's recommended changes, with a recommendation that staff amend the proposal to introduce more stringent setback and lot coverage requirements for the Diamond Match property, on account of the property's revegetation.

II. OVERVIEW OF PROPOSED AMENDMENT

Based upon the City's strong interest in seeing this area of the City redeveloped with higher-intensity mixed-use development, and feedback from Maine DEP, staff are recommending the following changes for consideration:

A. Purpose Statement:

The Waterfront Renaissance District includes targeted areas of Biddeford's former industrialized waterfront located along the Saco River and immediately adjacent to the City's urban core. Intensive redevelopment here is critical to the ongoing revitalization of downtown, with this district supporting a mixture of new commercial, residential and open space development. The Waterfront Renaissance District shall include areas within 250 feet of the Saco River, horizontally measured from the normal high water line.

B. Land Uses:

In terms of use, the proposal would mirror the GD-1 district, in terms of allowed uses and use permissions, the City's least restrictive shoreland zoning sub-district. This can be seen in redline form in Table 1 of the attached draft.

C. Dimensional Requirements:

With respect to new development, one of the existing limiting factors is a density requirement, which heavily restricts new residential and commercial development unless that development is occurring within an existing structure. In order to facilitate new development comparable to what exists currently in the rest of downtown Biddeford, the City offers the following recommendations:

	Minimum Lot Area (Sq. Ft.)	Minimum Shore Frontage (ft.)
Residential Per Dwelling Unit		
A. Within the Shoreland Zone Adjacent to Tidal Areas	30,000	150
B. Within the Shoreland Zone Adjacent to Non-Tidal Areas	40,000	200
C. Within the General Development 1 District (within existing structures only)	None	None
<u>D. Within the Waterfront Renaissance District</u>	<u>425</u>	<u>None</u>

Governmental, Institutional, Commercial or Industrial Per Principal Structure

A. Within the Shoreland Zone Adjacent to Tidal Areas, Exclusive of Those Areas Zoned for Commercial Fisheries and Maritime Activities	40,000	200
B. Within the Shoreland Zone adjacent to Tidal Areas Zoned for Commercial Fisheries and Maritime Activities	None	None
C. Within the Shoreland Zone Adjacent to Non-Tidal Areas	60,000	300

D. Within the General Development 1 District (within existing structures only)	None	None
<u>E. Within the Waterfront Renaissance District</u>	<u>5,000</u>	<u>100</u>

Public and Private Recreational Facilities

A. Within the Shoreland Zone Adjacent to Tidal and Non-Tidal areas	40,000	200
B. Within the General Development 1 District	None	None
<u>C. Within the Waterfront Renaissance District</u>	<u>None</u>	<u>None</u>

The proposed density limits are based upon the latest proposed program of uses for the three developments anticipated to occur within this new subdistrict; the mixed-use development proposed by Fathom Company on Pearl Street (2022.02), the mixed-use development at 10, 20, and 30 Gooch Street by Tom Watson & Co (2022.11), and the residential development proposed at the former Diamond Match property by Lord & Harrington LLC (2021.51). These proposed densities were considered acceptable by the DEP.

D. Lot Coverage and Setbacks:

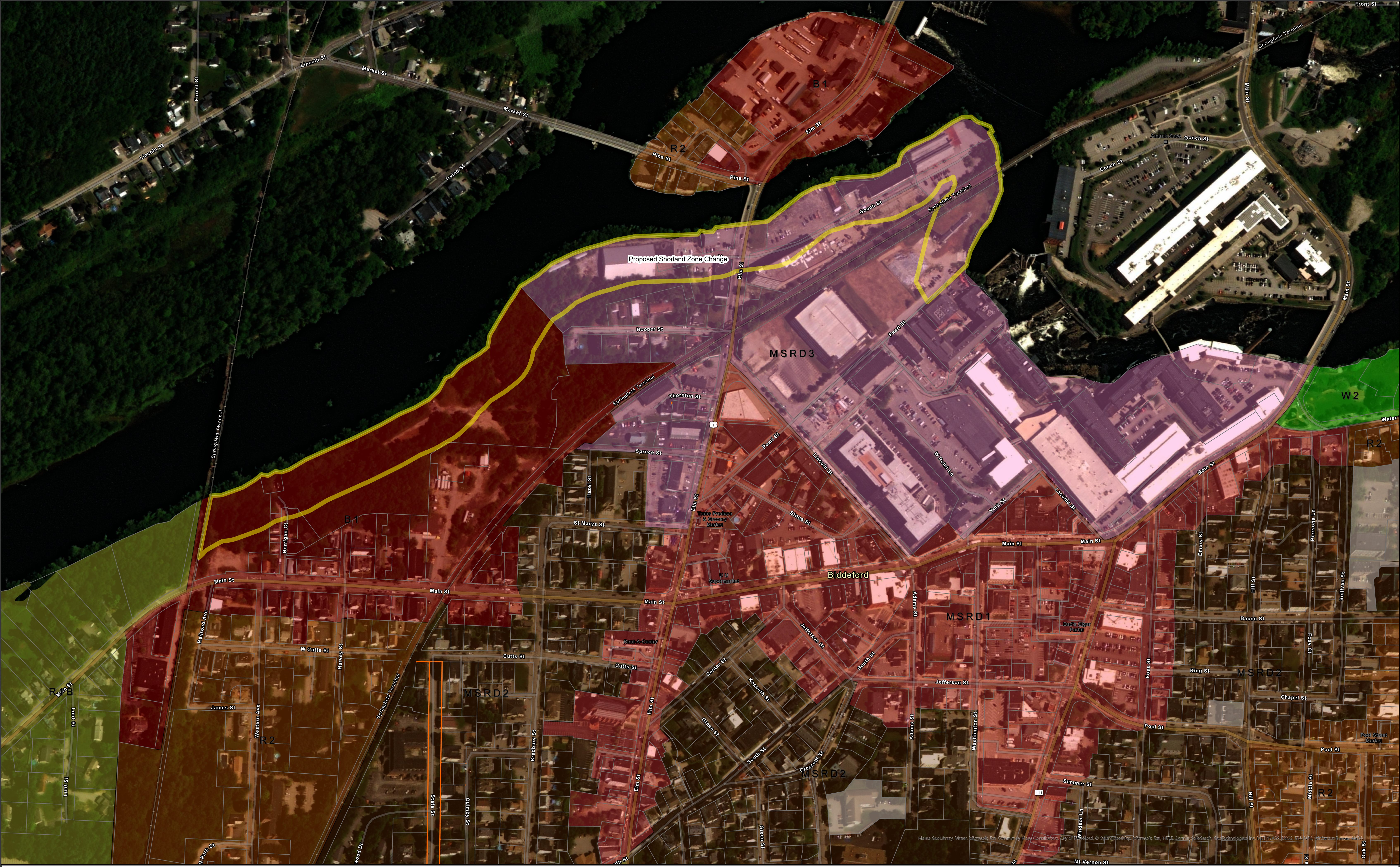
As with land uses, the City's proposal with respect to lot coverage and setback requirements is to mirror the requirements of the GD-1, with a maximum proposed lot coverage of up to 70% and a minimum setback requirement from the normal high water line of 25 feet.

In speaking with DEP, this was the one area of concern with staff's recommendation, due to the current condition of the Diamond Match property. In discussions with DEP, it was generally acknowledged that the other two development sites were, at present, almost entirely devegetated and at nearly 100% impervious surface. Noting this, it was acknowledged that new development here, compliant with the City's and State's requirements for new development, would actually significantly improve the environmental quality of these sites and reduce impervious surface. However, as the Diamond Match property has been largely revegetated, the DEP wished to see more stringent dimensional restrictions.

In response to DEP's concerns, staff are recommending that there be a minimum setback of 100 feet for all portions of the Waterfront Renaissance District west of Route 1/Elm Street, and that lot coverage be reduced to no more than 60% of the lot. Staff are awaiting final confirmation from DEP that this change would be acceptable.

III. NEXT STEPS

The October 19, 2022 meeting is advertised as a public hearing, however staff are still waiting on final confirmation that this approach is acceptable to DEP. In light of this, staff recommend that the Planning Board not take action at this meeting, but instead utilize this opportunity to provide feedback on the proposal and take public comment to help inform DEP's deliberation. We would then suggest that the public hearing be postponed to the Board's next scheduled meeting on November 2, 2022.



Article XIV: City of Biddeford Shoreland Zoning Ordinance – Waterfront Renaissance Amendment (City Council and Maine DEP Approved)

Section 1. Purposes.

The purposes of this ordinance are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

Section 2. Authority.

This Ordinance has been prepared in accordance with the provisions of Title 38 Sections 435--449 of the Maine Revised Statutes Annotated (M.R.S.A.).

Section 3. Applicability.

This Ordinance applies to all land areas within 250 feet, horizontal distance, of the normal high-water line of any great pond, river or freshwater wetland; within 250 feet, horizontal distance, of the upland edge of a coastal or freshwater wetland; within 250 feet, horizontal distance, of the normal high water line of Swan Pond Brook, and its tributaries specifically depicted on the Official Zoning Map; and within 100 feet, horizontal distance, of the normal high-water line of a stream. This Ordinance also applies to a land area greater than 250 feet, horizontal distance, of the upland edge of the coastal wetland located on the west side of Granite Point Road, as depicted on the Official Zoning Map. This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

Section 4. Effective Date of Ordinance and Ordinance Amendments.

This Ordinance, which was adopted by the Biddeford City Council on October 18, 2016, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance, or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance Amendment, it shall be automatically approved.

Any application for a permit submitted to the City of Biddeford within the forty-five (45) day period shall be governed by the terms of this Ordinance, or Ordinance Amendment, if the Ordinance, or Ordinance Amendment, is approved by the Commissioner.

Section 5. Availability.

A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.

Section 6. Severability.

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

Section 7. Conflicts with Other Ordinances.

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other Ordinance, Regulation or Statute administered by the City of Biddeford, the more restrictive provision shall control, except that where there are conflicts or inconsistencies between Section 12 (Nonconformance) of this Ordinance and any other Ordinance, Regulation or Statute administered by the City of Biddeford, Section 12 (Nonconformance) of this Ordinance shall prevail.

Section 8. Amendments.

This Ordinance may be amended by majority vote of the Biddeford City Council. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the Biddeford City Council and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her receipt of the amendment, the amendment is automatically approved.

Any application for a permit submitted to the City of Biddeford within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

Section 9. Overlay Districts and Zoning Map.

A. Official Zoning Map.

The areas to which this Ordinance is applicable are hereby divided into the following overlays as shown on the Official Zoning Map which is made a part of this Ordinance:

1. Resource Protection (RP)
2. Resource Protection-1 (RP-1)
3. Limited Residential (LR)
4. Limited Commercial (LC)

5. General Development 1 (GD-1)
6. General Development 2 (GD-2)
7. Commercial Fisheries/Maritime Activities (CFMA)
8. Stream Protection (SP)
- ~~8-9.~~ Waterfront Renaissance (WR)

B. Scale of Map.

The Official Zoning Map shall be drawn at a scale of not less than: 1 inch = 2,000 feet. Overlay boundaries shall be clearly delineated and a legend indicating the symbols for each overlay shall be placed on the map.

C. Certification of Official Zoning Map.

The Official Zoning Map shall be certified by the attested signature of the Municipal Clerk and shall be located in Biddeford City Hall.

D. Changes to the Official Zoning Map.

If amendments, in accordance with Section 8, are made in the overlay boundaries or other matter portrayed on the Official Zoning Map, such changes shall be made on the Official Zoning Map within thirty (30) days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.

Section 10. Interpretation of overlay boundaries.

Unless otherwise set forth on the Official Zoning Map or in this Ordinance by written description, overlay boundary lines are property lines, the centerlines of streets, roads and rights-of-way, and the boundaries of the shoreland area as defined herein (subject to field verification). Where uncertainty exists as to the exact location of overlay boundary lines, the Board of Appeals shall be the final authority as to location.

Section 11. Land use requirements.

Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the overlay in which it is located, unless a variance is granted.

Section 12. Nonconformance.

A. Purpose.

It is the intent of this Ordinance to promote land use conformities, except that nonconforming conditions that existed before the effective date of this Ordinance, or amendments thereto, shall be allowed to continue, subject to the requirements set forth in Section 12. Except as

otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

B. General.

1. Transfer of Ownership: Nonconforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the nonconforming structure or lot, subject to the provisions of this Ordinance.
2. Repair and Maintenance: This Ordinance allows, without a permit, the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations that do not involve expansion of the nonconforming use or structure, and such other changes in a nonconforming use or structure as federal, state, or local building and safety codes may require.

C. Nonconforming structures.

Effective Date of Amendments to Section 12.C: The Effective Date of the Amendments to Section 12.C. shall be September 1, 2017. This effective date also applies to the definitions of “Expansion of Structure” and “Expansion of Use” in Section 17 of this Ordinance.

1. Expansions. All new principal and accessory structures, excluding functionally water-dependant uses, must meet the water body, tributary stream, or wetland setback requirements contained in Section 15(B)(1). A nonconforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the nonconformity of the structure and is in accordance with subparagraphs a. and b. below.
 - a. Expansion of any portion of a structure- within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.
 - b. Notwithstanding paragraph a., above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by Section 12(C)(1).

- (i) The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.
- c. All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by Section 12.C.1., or Section 12.C.1.a., above.
 - i. For structures located less than 100 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. For structures located less than 75 feet but greater than 25 feet from the normal high-water line of a waterbody, tributary stream, or the upland edge of a wetland the maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater. For structures located less than 100 feet but greater than 75 feet from the normal high-water line of a waterbody, tributary stream, or the upland edge of a wetland the maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater.
 - ii. In addition to the limitations in subparagraph i., for structures that are legally nonconforming due to their location within the Resource Protection District the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 100 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12.C.1.b.i., and Section 12.C.1.c.i., above.
- d. An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the nonconforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.

2. Foundations. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board basing its decision on the criteria specified in Section 12.C.3. (Relocation) below.
3. Relocation: A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with Section 15.S. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- a. Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.
 - b. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.
4. Reconstruction or Replacement: Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland which is removed, or damaged or destroyed, regardless of the cause by more than 50 percent of the market value of the structure before such damage, destruction or removal, may

be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this Ordinance. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming footprint of the reconstructed or replaced structure at its new location. If the total footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12.C.3. above.

Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50 percent or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained, from the Code Enforcement Officer within one (1) year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent the Planning Board shall consider in addition to the criteria in Section 12.C.3. above, the physical condition and type of foundation present, if any.

5. Change of Use of a Nonconforming Structure. The use of a nonconforming structure may not be changed to another use unless the Planning Board, after receiving a written application determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

D. Nonconforming uses.

1. Expansions: Expansions of nonconforming uses are prohibited, except that nonconforming residential uses may, after obtaining a permit from the Planning

Board, be expanded within existing residential structures or within expansions of such structures as permitted in section 12.C.1. above.

2. Resumption Prohibited: A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a nonconforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five-year period.
3. Change of Use: An existing nonconforming use may be changed to another nonconforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses in the CFMA (Commercial Fisheries-Maritime Activities) overlay, than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in section 12.C.5. above.

E. Nonconforming lots.

1. Nonconforming lots: A nonconforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width, and shore frontage can be met. Variances relating to setback or other requirements not involving lot area or shore frontage shall be obtained by action of the Board of Appeals.
2. Contiguous Built Lots: If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this Ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

3. Contiguous Lots Vacant or Partially Built: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to two or more contiguous lots, at least one of which is nonconforming, owned by the same person or persons on December 20, 1990 and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and:

- a. Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- b. Any lots that do not meet the frontage and lot size requirements of Section 12.E.3.a. are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

Section 13. Establishment of Overlay Districts.

- A. Resource Protection (RP) District. The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed and areas which meet the criteria for the Limited Commercial, General Development 1, General Development 2 or Commercial Fisheries/Maritime Activities Districts need not be included within the Resource Protection District. For further clarification of those areas not included in RP under this definition, refer to the Official Zoning Map and the descriptions of other Districts provided in this Section.
 1. Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the MDIF&W that are depicted on a GIS layer maintained by either MDIF&W or the Maine Department of Environmental Protection as of December 31, 2008. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river.
 2. Flood plains along rivers and flood plains along artificially formed great ponds along rivers, defined by the 100-year flood plain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils. This district shall also include 100-year flood plains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
 3. Areas of two or more contiguous acres with sustained slopes of 20 % or greater.

4. Areas of two or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal high water.
5. Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.
6. The land area located on the west side of Granite Point Road, as depicted on the Official Zoning Map.

For clarification of the Granite Point area to the west side of Granite Point Road, the RP District is as depicted on the Official Zoning Map and in no case extends east of the centerline of Granite Point Road. The northern extent of the RP District in Granite Point includes Biddeford Tax Map 67, Lot 2; Tax Map 67, Lot 2-2; Tax Map 5, Lot 5; and part of Tax Map 5, Lot 9-4 extending west along the same bearing as the northern lot boundary of Tax Map 5, Lot 5, to the Little River. The southern extent of the RP District in Granite Point is to the southern tip of Timber Point as depicted on the Official Zoning Map.

For clarification of the Fortunes Rocks area on the west side of Fortunes Rocks Road, the RP District is as depicted on the Official Zoning Map and in no case extends east of the centerline of Fortunes Rocks Road or north of the centerline of Bridge Street.

For clarification of the Mile Stretch area on the west side of Mile Stretch Road, the RP District is as depicted on the Official Zoning Map and includes all lots northeast of, and including, Biddeford Tax Map 62, Lot 26-1 and in no case extends east of the centerline of Mile Stretch Road.

- B. Resource Protection-1 District (RP-1). The RP-1 District is specific to the Swan Pond Brook corridor. The City of Biddeford recognizes the critical nature of limiting development that would adversely affect water quality, productive habitat and biological ecosystems in the Swan Pond Brook corridor, due to its proximity to the intake pipe of the City's public water supply. The RP-1 district shall include areas within 250 feet, horizontal distance of the normal high water line (as determined in the field) of Swan Pond Brook and tributaries as specifically depicted on the Official Zoning Map.
- C. General Development 1 (GD-1) District. The General Development 1 District includes the following types of existing, intensively developed areas:
 1. Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
 - a. Areas devoted to manufacturing, fabricating or other industrial activities;

- b. Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and
 - c. Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.
 - 2. Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.
 - 3. Portions of the General Development District 1 may also include residential development. However, no area shall be designated as a General Development District based solely on residential use.
- D. General Development 2 (GD-2) District. The General Development 2 District includes the same types of areas as those listed for the General Development 1 District. The General Development 2 District, however, shall be applied to newly established General Development Districts where the pattern of development at the time of adoption is undeveloped or not as intensively developed as that of the General Development 1 District.
- Portions of the General Development District 2 may also include residential development. However, no area shall be designated as a General Development District based solely on residential use.
- E. Stream Protection (SP) District. The Stream Protection District includes all land areas within one-hundred (100) feet, horizontal distance, of the normal high-water line of a stream (as determined in the field), exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond, or river, or within two-hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area is located within 250 feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland. The beginning (furthest upstream extent) of a stream is as depicted on the Official Zoning Map of the City of Biddeford, unless determined to be otherwise by the Zoning Board of Appeals as per Article XIV, Section 10.
- F. Limited Residential (LR) District. The limited residential district includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, Stream Protection Districts, and areas, which are used less intensively than those in the Limited Commercial District, the General Development Districts, or the Commercial Fisheries/Maritime Activities District. The Limited Residential District includes the following:
- 1. The land area located within 250 feet, horizontal distance, of the normal high-water line of any great pond, river, or freshwater wetland; and within 250 feet of the upland

edge of a coastal or freshwater wetland as depicted on the Official Zoning Map and field verified, unless otherwise described below;

- a. For clarification along the interior of "The Pool", the LR District is as depicted on the Official Zoning Map and follows property line boundaries away from "The Pool" except for the following:

- i. Hills Beach Area:

For clarification around the northwest coastal wetland associated with "The Pool" starting and including Tax Map 9, Lot 3-5 and running clockwise around the coastal wetland, the LR District boundary is the upland edge of the coastal wetland until Tax Map 54, Lot 97. Starting at and including Tax Map 54, Lot 97 all lots southwest of Hills Beach Road to Tax Map 54, Lot 85 are designated within an LR District except Tax Map 54, Lots 93, 98, and 99 and Tax Map 55, Lot 47-1 (which are designated as RP).

- G. Limited Commercial (LC) District. The Limited Commercial District includes areas of mixed, light commercial and residential uses, exclusive of the Stream Protection District, which should not be developed as intensively as the General Development Districts. This district may include commercial lots in existence prior to January 1, 1989 as defined below. Industrial uses are prohibited.

For clarification purposes, the LC Districts includes the shoreland zone (as determined in the field) that overlays the W3 Zone.

- H. Commercial Fisheries/Maritime Activities (CFMA) District. The Commercial Fisheries/Maritime Activities District includes areas where the existing predominant pattern of development is consistent with the allowed uses for this district as indicated in the Table of Land Uses, Section 14, and other areas which are suitable for functionally water-dependent uses, taking into consideration such factors as:

1. Shelter from prevailing winds and waves;
 2. Slope of the land within 250 feet, horizontal distance, of the shoreline;
 3. Depth of the water within 150 feet, horizontal distance, of the shoreline;
 4. Available support facilities including utilities and transportation facilities; and
 5. Compatibility with adjacent upland uses.

For clarification purposes, the CFMA District includes the following area:

1. The shoreland zone (as determined in the field) that overlays Tax Map 47, Lot 1 (Marblehead Boat Launch).

- I. Waterfront Renaissance (WR) District. The Waterfront Renaissance District includes targeted areas of Biddeford's former industrialized waterfront located along the Saco River and immediately adjacent to the City's urban core. Intensive redevelopment here is critical to the ongoing revitalization of downtown, with this district supporting

a mixture of new commercial, residential and open space development. The Waterfront Renaissance District shall include areas within 250 feet of the Saco River, horizontally measured from the normal high water line.

Section 14. Table of Land Uses.

All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Section 15. The overlay designation for a particular site shall be determined from the official zoning map.

Key to Table 1:

Yes - Allowed (no permit required but the use must comply with all applicable land use standards.)

No - Prohibited.

PB - Requires permit issued by the Planning Board.

CEO - Requires permit issued by the Code Enforcement Officer.

LPI - Requires permit issued by the Local Plumbing Inspector.

Abbreviations:

RP - Resource Protection

RP-1 - Resource Protection-1

LR - Limited Residential

LC - Limited Commercial

GD-1 - General Development 1

GD-2 - General Development 2

CFMA - Commercial Fisheries/Maritime Activities

SP - Stream Protection

WR - Waterfront Renaissance

TABLE 1. LAND USES IN THE SHORELAND ZONE
TABLE INSET:

LAND USES	OVERLAY DISTRICT								<u>WR</u>
	SP	RP	GD-1	GD-2	RP-1	LR	LC	CFMA	
1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking	yes	yes	yes	yes	yes	yes	yes	yes	<u>yes</u>
2. Motorized vehicular traffic on existing roads and trails	yes	yes	yes	yes	yes	yes	yes	yes	<u>Yes</u>
3. Forest management activities except for timber harvesting & land management roads	yes	yes	yes	yes	yes	yes	yes	yes	<u>yes</u>
4. Timber harvesting	yes	CEO1	yes	yes	CEO1	yes	yes	yes	<u>yes</u>
5. Clearing or removal of vegetation for activities other than timber harvesting	CEO	CEO1	yes	yes	CEO1	yes	yes	yes	<u>yes</u>
6. Fire prevention activities	yes	yes	yes	yes	yes	yes	yes	yes	<u>yes</u>
7. Wildlife management practices	yes	yes	yes	yes	yes	yes	yes	yes	<u>yes</u>
8. Soil and Water conservation practices	yes	yes	yes	yes	yes	yes	yes	yes	<u>yes</u>
9. Mineral exploration	no	yes2	yes2	yes2	yes2	yes2	yes2	yes2	<u>yes2</u>
10. Mineral extraction including sand and gravel extraction	no	PB3	PB	PB	PB3	PB	PB	PB	<u>PB</u>
11. Surveying and resource analysis	yes	yes	yes	yes	yes	yes	yes	yes	<u>yes</u>
12. Emergency Operations	yes	yes	yes	yes	yes	yes	yes	yes	<u>yes</u>
13. Agriculture	yes	PB	yes	yes	yes	yes	yes	yes	<u>yes</u>
14. Aquaculture	PB	PB	yes	yes	PB13	PB	yes	yes	<u>yes</u>

15. Principal structures and uses

A. One and two-family residential, including driveways

PB4 no CEO CEO no CEO CEO no CEO

B. Multi-unit residential

no no PB PB no PB PB no PB

C. Commercial

no no10 PB PB no no10 PB PB5 PB

D. Industrial

no no PB PB no no no PB5 PB

E. Governmental and Institutional

no no PB PB no PB PB PB5 PB

F. Small nonresidential facilities for educational, scientific, or nature interpretation purposes

PB4 PB PB PB PB CEO CEO PB5 PB

16. Structures accessory to allowed uses

PB4 PB yes yes PB CEO CEO yes yes

17. Pier docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland

A. Temporary

CEO11 CEO11 CEO11 CEO11 CEO11 CEO11 CEO11 CEO11 CEO11

B. Permanent

PB PB PB5 PB5 PB PB PB PB5 PB5

18. Conversions of seasonal residences to year-round residences

LPI LPI no no no LPI LPI no no

19. Home occupations

PB PB yes yes no PB CEO yes yes

20. Private sewage disposal systems for allowed uses

LPI LPI LPI LPI LPI LPI LPI LPI LPI

21. Essential services

A. Roadside distribution lines (34.5kV and lower)

CEO6 CEO6 yes12 yes12 CEO6 yes12 yes12 yes12 yes12

B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	PB6	PB6	CEO	CEO	PB6	CEO	CEO	CEO	<u>CEO</u>
C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone	PB6	PB6	PB	PB	PB6	PB	PB	PB	<u>PB</u>
D. Other Essential Services	PB6	PB6	PB	PB	PB6	PB	PB	PB	<u>PB</u>
22. Service drops, as defined, to allowed uses	yes	yes	yes	yes	yes	yes	yes	yes	<u>yes</u>
23. Public and private recreational areas involving minimal structural development	PB	PB	CEO	CEO	PB	PB	CEO	CEO5	<u>CEO</u>
24. Individual, private campsites	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	<u>CEO</u>
25. Campgrounds	no	no7	no	no	no	PB	PB	no	<u>no</u>
26. Road & driveway construction	PB	no8	PB	PB	no8	PB	PB	PB5	<u>PB</u>
27. Land management roads	yes	PB	yes	yes	PB	yes	yes	yes	<u>yes</u>
28. Parking facilities	no	no7	PB	PB	no	PB	PB	PB5	<u>PB</u>
29. Marinas	PB	no	PB	PB	no	PB	PB	PB	<u>PB</u>
30. Filling and earth moving of less than 10 cubic yards	CEO	CEO	yes	yes	CEO	yes	yes	yes	<u>yes</u>
31. Filling and earth moving of greater than 10 cubic yards	PB	PB	CEO	CEO	PB	CEO	CEO	CEO	<u>CEO</u>
32. Signs	yes	yes	yes	yes	yes	yes	yes	yes	<u>yes</u>
33. Uses similar to allowed uses	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	<u>CEO</u>
34. Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	<u>CEO</u>
35. Uses similar to uses requiring a PB permit	PB	PB	PB	PB	PB	PB	PB	PB	<u>PB</u>

36. Recreational Trails

A. Primitive Trails

CEO CEO CEO CEO CEO CEO CEO CEO CEO

B. Category 2 Multiple Use
Non-Motorized Trails

CEO14 CEO14 CEO14 CEO14 CEO14 CEO14 CEO14 CEO14 CEO14

C. Category 1 Multiple Use
Non-Motorized Trails

PB PB PB PB PB PB PB PB PB

D. Category 2 Multiple Use
Trails, Including Motorized
Uses

PB PB PB PB PB PB PB PB PB

E. Category 1 Multiple Use
Trails, Including Motorized
Uses

PB PB PB PB PB PB PB PB PB

Table 1 Notes:

- 1 In RP not allowed within 75 feet horizontal distance of the normal high-water line of great ponds, except to remove safety hazards.
- 2 Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.
- 3 In RP not allowed in areas so designated because of wildlife value.
- 4 Provided that a variance from the setback requirement is obtained from the Zoning Board of Appeals.
- 5 Functionally water-dependent uses and uses accessory to such water dependent uses only (See note on previous page).
- 6 See further restrictions in section 15(L)(2).
- 7 Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the PB.
- 8 Except as provided in Section 15.H.3.
- 9 [Reserved.]
- 10 Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.
- 11 Excluding bridges and other crossings not involving earthwork, in which case no permit is required.
- 12 Permit not required but must file a written “notice of intent to construct” with CEO.
- 13 Allowed only if no development, as defined in Article II of this Ordinance, is required to pursue this use.
- 14 Planning Board review required if a setback waiver is necessary.

NOTE: A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to 38 M.R.S.A., section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates it such a manner that material or soil may be washed into them:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Filling, including adding sand or other material to a sand dune; or
- D. Any construction or alteration of any permanent structure.

Section 15. Land Use Standards.

All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

A. Minimum Lot Standards.

1. [Table.]

TABLE INSET:

	Minimum Lot Area (Sq. Ft.)	Minimum Shore Frontage (ft.)
Residential Per Dwelling Unit		
A. Within the Shoreland Zone Adjacent to Tidal Areas	30,000	150
B. Within the Shoreland Zone Adjacent to Non-Tidal Areas	40,000	200
C. Within the General Development 1 District (within existing structures only)	None	None
<u>D. Within the Waterfront Renaissance District</u>	<u>425</u>	<u>None</u>

Governmental, Institutional, Commercial or Industrial Per Principal Structure

A. Within the Shoreland Zone Adjacent to Tidal Areas, Exclusive of Those Areas Zoned for Commercial Fisheries and Maritime Activities	40,000	200
B. Within the Shoreland Zone adjacent to Tidal Areas Zoned for Commercial Fisheries and Maritime Activities	None	None
C. Within the Shoreland Zone Adjacent to Non-Tidal Areas	60,000	300
D. Within the General Development 1 District (within existing structures only)	None	None
<u>E. Within the Waterfront Renaissance District</u>	<u>5,000</u>	<u>100</u>

Public and Private Recreational Facilities

A. Within the Shoreland Zone Adjacent to Tidal and Non-Tidal areas	40,000	200
B. Within the General Development 1 District	None	None
<u>C. Within the Waterfront Renaissance District</u>	<u>None</u>	<u>None</u>

1. Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two lots shall not be included toward calculating minimum lot area.
2. Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
3. The minimum width of any portion of any lot within 100 feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.
4. If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure, or use, or combination thereof, is constructed or

established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use, except as provided in the above Table in the General Development District.

B. Principal and Accessory Structures.

1. All new principal and accessory structures shall be set back at least one-hundred (100) feet, horizontal distance from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and one-hundred (100) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the Waterfront Renaissance excluding areas west of Elm Street and General Development 1 and 2 Districts the setback from the normal high water line of the wetland shall be at least 25 feet, horizontal distance, and in the Commercial Fisheries/Maritime Activities District there shall be no minimum setback. In the Resource Protection District and Resource Protection-1 District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirement specified above shall apply.

In addition:

- a. The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
- b. [Reserved]
- c. For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Zoning Board of Appeals.
- d. On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the

storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

2. Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection and Limited Residential, Limited Commercial, and Stream Protection Districts, shall not exceed 35 feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area. Further, this provision shall not apply to cupolas, domes, widow's walks and other similar features added to a legally existing conforming structure provided the provisions of 38 MRSA §439-A(9) are met as follows:
 - a. The legally existing conforming structure is not located in a Resource Protection District or a stream protection district as defined in guidelines adopted by the board; and
 - b. The cupola, dome, widow's walk or other similar feature:
 - (1) Does not extend beyond the exterior walls of the existing structure;
 - (2) Has a floor area of 53 square feet or less; and
 - (3) Does not increase the height of the existing structure, as determined under section 436-A, subsection 7-A, by more than 7 feet.

For purposes of this provision "cupola, dome, widow's walk or other similar feature" means a nonhabitable building feature mounted on a building roof for observation purposes.

3. The lowest floor elevation or openings of all buildings and structures including basements, shall be elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils. In those municipalities that participate in the National Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that Ordinance and need not meet the elevation requirements of this paragraph.
4. With the exception of the Waterfront Renaissance and General Development Districts located adjacent to coastal wetlands and rivers that do not flow to great ponds, and Commercial Fisheries/Maritime Activities Districts, non-vegetated surfaces shall not exceed a total of twenty (20) percent of the portion of the lot located within the shoreland zone. This limitation does not apply to public boat launching facilities regardless of the district in which the facility is located.

In a Waterfront Renaissance or General Development District located adjacent to coastal wetlands, or rivers that do not flow to great ponds, or in a Commercial Fisheries/Maritime Activities District, non-vegetated surfaces shall not exceed a total of seventy (70) percent of the portion of the lot located within the shoreland zone. In the Waterfront Renaissance District west of Route 1/Elm Street, non-vegetated surfaces shall not exceed sixty (60) percent of the portion of the lot within the shoreland zone.

For the purposes of calculating lot coverage, non-vegetated surfaces include, but are not limited to the following: structures, driveways, parking areas, and other areas from which vegetation has been removed. Naturally occurring ledge and rock outcroppings are not counted as nonvegetated surfaces when calculating lot coverage for lots of record on March 24, 1990 and in continuous existence since that date.

When calculating lot coverage for lots of record on March 24, 1990 and in continuous existence since that date, the area of naturally occurring ledge and rock outcroppings not to be counted as non-vegetated surfaces in a shoreland zone shall be deducted from the total lot area before calculating the allowable lot coverage. For example, a 40,000 square foot lot located entirely in a Limited Residential district with 10,000 square feet of ledge reduces the applicable lot area to 30,000 square feet to which the twenty (20) percent maximum non-vegetated surface would be applied being 30,000 square feet times 20% equaling 6,000 square feet.

5. Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
 - a. The site has been previously altered and an effective vegetated buffer does not exist;
 - b. The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
 - c. The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
 - d. The total height of the wall(s), in the aggregate, is no more than 24 inches;
 - e. Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
 - f. The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
 - g. A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a

wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:

- i. The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
 - ii. Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
 - iii. Only native species may be used to establish the buffer area;
 - iv. A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
 - v. A footpath not to exceed the standards in Section 15(P)(2)(a), may traverse the buffer;
6. Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided that the structure is limited to a maximum of four feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.
- C. Piers, Docks, Wharfs, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland.
1. Except as provided in Section 15.C.11 and Section 15.X.7, no more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single residential lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 15(A), a second structure may be allowed and may remain as long as the lot is not further divided.
 2. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
 3. The location shall not interfere with existing developed or natural beach areas.
 4. The facility shall be located so as to minimize adverse effects on fisheries.
 5. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock, or wharf in non-tidal waters shall not be wider than six (6) feet for non-commercial uses.

6. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
7. New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
8. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
9. Except in the General Development District, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure.
10. Vegetation may be removed in excess of the standards in Section 15(P) of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.
 - (a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment accessway must be restored.
 - (b) Revegetation must occur in accordance with Section 15(S).

NOTE: A permit pursuant to the Natural Resource Protection Act is required from the Department of Environmental Protection for Shoreline Stabilization activities.

11. A deck over a river may be exempted from the shoreland setback requirements if it is part of a downtown revitalization project that is defined in a project plan approved by the legislative body of the municipality, and may include the revitalization of structures formerly used as mills that do not meet the structure setback requirements, if the deck meets the following requirements:
 - (a) The total deck area attached to the structure does not exceed 700 square feet;
 - (b) The deck is cantilevered over a segment of a river that is located within the boundaries of the downtown revitalization project;

- (c) The deck is attached to or accessory to an allowed commercial use in a structure that was constructed prior to 1971 and is located within the downtown revitalization project;
- (d) The construction of the deck complies with all other applicable standards, except the shoreline setback requirements in section 15(B); and
- (e) The construction of the deck complies with all other state and federal laws.

D. Campgrounds.

Campgrounds shall conform to the minimum requirements imposed under state licensing procedures and the following:

1. Campgrounds shall contain a minimum of five-thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
2. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

E. Individual Private Campsites. Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

1. One campsite per lot existing on the effective date of this ordinance, or thirty thousand (30,000) square feet of lot area within the shoreland zone, whichever is less, may be permitted.
2. When an individual private campsite is proposed on a lot that contains another principal use and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure and/or use, and the individual private campsite separately.
3. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or river flowing to a great pond classified GPA, and 100 feet from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

4. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
 5. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a resource protection district shall be limited to one thousand 1,000 square feet.
 6. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
 7. When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.
- F. Commercial and Industrial Uses. The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to great ponds classified GPA, and rivers and streams which flow to great ponds classified GPA:
1. Auto washing facilities.
 2. Auto or other vehicle service and/or repair operations, including body shops.
 3. Chemical and bacteriological laboratories.
 4. Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households or farms.
 5. Commercial painting, wood preserving, and furniture stripping.
 6. Dry cleaning establishments.
 7. Electronic circuit assembly.
 8. Laundromats, unless connected to a sanitary sewer.
 9. Metal plating, finishing, or polishing.
 10. Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas.

11. Photographic processing.

12. Printing.

G. Parking Areas.

1. Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that in the Commercial Fisheries/Maritime Activities District parking areas shall be setback at least twenty-five (25) feet, horizontal distance, from the shoreline. The setback requirement for parking areas serving public boat launching facilities, in districts other than the General Development I District and Commercial Fisheries/Maritime Activities District shall be reduced to no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.
2. Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.
3. In determining the appropriate size of proposed parking facilities, the following shall apply:
 - a. Typical parking space: Approximately ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.
 - b. Internal travel aisles: Approximately twenty (20) feet wide.

H. Roads and Driveways. The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

1. Roads and driveways shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

On slopes of greater than 20 percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

Section 15.H.1. does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures; and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 15.H.1. except for that portion of the road or driveway necessary for direct access to the structure.

2. Existing public roads may be expanded within the legal road right-of-way regardless of their setback from a water body, tributary stream or wetland.
3. New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.
4. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 15.T.
5. Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.
6. In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least fifty (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
7. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:

- a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

TABLE INSET:

Grade (Percent)	Spacing (Feet)
0--2	250
3--5	200--135
6--10	100--80
11--15	80--60
16--20	60--45
21+	40

- b. Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.
 - c. On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.
 - d. Ditches relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.
8. Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.
- I. Signs. The following provisions shall govern the use of signs in the Resource Protection, Stream Protection, Limited Residential and Limited Commercial Districts:
 1. Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. In the Limited Commercial District, however, such signs shall not exceed sixteen (16) square feet in area. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.
 2. Name signs are allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) square feet in the aggregate.
 3. Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.

4. Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area.
5. Signs relating to public safety shall be allowed without restriction.
6. No sign shall extend higher than twenty (20) feet above the ground.
7. Signs may be illuminated only by shielded, non-flashing lights.

J. Stormwater Runoff.

1. All new construction and development shall be designed to minimize stormwater runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwaters.
2. Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.

K. Septic Waste Disposal.

1. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

L. Essential Services.

1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
2. The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said District, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
3. Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

M. Mineral Exploration and Extraction. Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes shall be immediately capped, filled or secured by other equally effective measures to restore disturbed areas and to protect the public health and safety. Mineral extraction may be permitted under the following conditions:

1. A reclamation plan shall be filed with, and approved by, the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 15.M.3. below.
2. No part of any extraction operation, including drainage and runoff control features shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line, without written permission of the owner of such adjacent property.
3. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
 - a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
 - b. The final graded slope shall be a two and one-half to one (2 1/2:1) slope or flatter.
 - c. Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
4. In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

N. Agriculture.

1. All spreading of manure shall be accomplished in conformance with *Manure Utilization Guidelines* published by the former Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
2. Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond, classified GPA, or within seventy-five (75) feet, horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated stormwater.
3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the shoreland zone, shall require a Conservation Plan to be filed with the Planning Board. Nonconformance with the provisions of said plan shall be considered to be a violation of this Ordinance.
4. There shall be no new tilling of soil within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, from other water bodies; nor within twenty-five (25) feet, horizontal distance, of tributary streams, and freshwater wetlands. Operations in existence on the effective date of this Ordinance and not in conformance with this provision may be maintained.
5. Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance of other water bodies and coastal wetlands, nor; within twenty-five (25) feet, horizontal distance, of tributary streams, and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

O. Timber harvesting (Repealed).

P. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.

1. In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending seventy-five (75) feet, horizontal distance, inland from the normal high-water line, except to remove hazard trees as described in Section Q.

Elsewhere, in any Resource Protection District, the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that District.

2. Except in areas as described in Section P.1., above, within a strip of land extending one hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

- a. There shall be no cleared opening greater than two hundred and fifty (250) square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a single footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed for accessing the shoreline provided that a cleared line of sight to the water through the buffer strip is not created.
- b. Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of Section 15.P.2.b. a "well-distributed stand of trees" adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

Diameter of Tree at 4 1/2 feet Above Ground Level (inches)	Points
2-<4 in.	1
4-<8 in.	2
8-<12 in.	4
12 in. or greater	8

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

The following shall govern in applying this point system:

- i. The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- ii. Each successive plot must be adjacent to, but not overlap a previous plot;
- iii. Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
- iv. Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance;

- v. Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of Section 15.P.2.b. “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

- c. In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 15.P. paragraphs 2 and 2.a. above.
- d. Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
- e. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, dead or hazard trees results in the creation of cleared openings, these openings shall be replanted with native tree species in accordance with Section Q. below, unless existing new tree growth is present.
- f. In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreline buffer, must comply with the requirements of Section 15.P.2.

Section 15.P.2. does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

- 3. At distances greater than one hundred (100) feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured four and one-half (4 ½) feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, twenty-five (25) percent of the lot area or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision applies to the portion of a lot within the shoreland zone, including the buffer area, but shall not apply to the Waterfront Renaissance, General Development or Commercial Fisheries/Maritime Activities Districts.

4. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
5. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 15.P.

Q. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal.

1. Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
 - a. Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four (4) feet in height, and be no less than two (2) inches in diameter. Stumps may not be removed.
 - b. Outside of the shoreline buffer, when the removal of hazard trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot area within the shoreland zone, or ten thousand (10,000) square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level.
 - c. The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result

in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.

- d. The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
 - e. The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) feet above the ground level.
2. Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
- a. Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:
 - i. The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;
 - ii. Stumps from the storm-damaged trees may not be removed;
 - iii. Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third ($\frac{1}{3}$) of the tree; and
 - iv. If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty (80) square feet of lost canopy.
 - b. Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

R. Exemptions to Clearing and Vegetation Removal Requirements

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 15.P., provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

1. The removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of Section 15(P) apply;
2. The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of section 15(B) are not applicable;
3. The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;
4. The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of section 15(N) are complied with;
5. The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a Waterfront Renaissance, General Development, Commercial Fisheries and Maritime Activities district or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S.A section 343-E, and that is located along:
 - a. A coastal wetland; or
 - b. A river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A section 465-A.
6. The removal of non-native invasive vegetation species, provided the following minimum requirements are met:
 - a. If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;

- b. Removal of vegetation within twenty-five (25) feet, horizontal distance, from the shoreline occurs via hand tools; and
 - c. If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.
7. The removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.

S. Revegetation Requirements.

When revegetation is required in response to violations of the vegetation standards set forth in Section 15.P., to address the removal of non- native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

1. The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
2. Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed:
3. If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.
4. Revegetation activities must meet the following requirements for trees and saplings:
 - a. All trees and saplings removed must be replaced with native noninvasive species;
 - b. Replacement vegetation must at a minimum consist of saplings;

- c. If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;
 - d. No one species shall make up 50% or more of the number of trees and saplings planted;
 - e. If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
 - f. A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) years period.
5. Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:
- a. All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) feet in height as applicable;
 - b. Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
 - c. If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;
 - d. No one species shall make up 50% or more of the number of planted woody vegetation plants; and
 - e. Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years
6. Revegetation activities must meet the following requirements for ground vegetation and ground cover:
- a. All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
 - b. Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four (4) inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and

- c. Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years.

T. Erosion and Sedimentation Control.

1. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
 - a. Mulching and revegetation of disturbed soil.
 - b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - c. Permanent stabilization structures such as retaining walls or rip-rap.
2. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of rip-rap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
 - a. Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
 - b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.

5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater, and shall be stabilized with vegetation or lined with rip-rap.

- U. Soils. All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.
- V. Water Quality. No activity shall deposit on or into the ground or discharge to the waters of the state any pollutant that, by itself or in combination with other activities or substances will impair designated uses or the water classification of the water body, tributary stream, or wetland.
- W. Archaeological Sites. Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least 20 days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the commission prior to rendering a decision on the application.
- X. Recreational Trails.
1. Standards Applicable to Recreational Trails
- a. Recreational trails shall be designed and constructed consistent with the Maine Trails Manual *Guidelines for Recreational Trail Construction in Maine*, published by the Maine Department of Conservation, Bureau of Parks and Lands, dated October 2002, or the American Association of State Highway and Transportation Officials (*AASHTO*) *Guide for the Development of Bicycle Facilities*, 1999, except where stricter standards are contained in this Ordinance.

- b. Where a recreational trail is permitted within 100 feet of a great pond or within 75 feet of another water body or wetland, tree cutting associated with the recreational trail construction shall be limited to the minimum amount necessary and, to the extent practical, tree canopies over the trail shall be preserved.
- c. All portions of a recreational trail, including any trail spurs, shall be designed and constructed to shed water, avoid erosion, and minimize channelized flow to surface waters.
- d. A trail that exceeds the limitations contained in this section shall meet all of the standards for Roads and Driveways, found in Section 15.H.

2. Standards Applicable to Primitive Trails

- a. Primitive trails shall be set back at least ten (10) feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland, except for water body and wetland crossings, and water access sites. Water access sites are limited to one site per 500 feet of shore frontage, excluding canoe portage locations and allowed footpaths pursuant to Section 15.P(2)(a), and shall be limited to the width of the trail. Private water access sites shall not be located closer than 200 linear feet from a footpath allowed by Section 15.P(2)(a).
- b. Primitive trails shall be constructed using hand tools only, including power hand tools.
- c. The trail must be designed and constructed such that soil erosion will be prevented. Such prevention measures may include steps, water bars, drainage dips, and minor side-sloping of trails, in addition to lining of the trail with crushed rock, pea stone, or other natural material.
- d. Where necessary, wooden walkways, bridges, and similar installations no more than four feet in width, are allowed in wet, rocky or unstable areas.

3. Standards Applicable to Category 2 Multiple Use Non-Motorized Trails

- a. A Category 2 Multiple Use Non-Motorized Trail, including its base, shall set back at least twenty-five (25) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland, except for water and wetland access sites, and except where an existing trail base or developed area is present, including but not limited to a discontinued rail bed, roadway, parking area or industrial site. The Planning Board may waive the setback requirement when the applicant demonstrates that there is no other reasonable alternative for the location of the trail. Examples include, but are not limited to, the avoidance of rail, road and wetland crossings, the circumvention of bridge abutments, ledges and steep slopes, and the need to meet required safety standards. Where necessary, elevated walkways/platforms no more than 7 feet in width over a water body or wetland resource may be permitted.

- b. Trail spurs, no more than five feet in width, may be constructed to the water or wetland. No spur, however, shall be located less than 500 linear feet from another spur. Clearing of vegetation for a trail spur shall not exceed 200 square feet per 25 linear feet of trail length.
- c. Where necessary to prevent erosion of surface materials, trail surfaces shall be paved, graveled, mulched, or otherwise stabilized.

4. Standards Applicable to Category 1 Multiple Use Non-Motorized Trails

- a. Category 1 Multiple Use Non-Motorized Trails shall meet the same shoreline or wetland setback requirement as that required of structures in the applicable district, except as follows:
 - i. A trail may be permitted over an existing base, such as a discontinued rail bed, roadway, berm, dike, parking lot or industrial site. The trail may be expanded within a road or rail right-of way existing on the effective date of this ordinance, provided that no part of the expanded trail is less than 25 feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland.
 - ii. The setback requirement of the trail may be reduced to no less than 25 feet for up to one-quarter (25%) of the length of the trail, upon demonstration by the applicant that: water quality will not be degraded; there will be no unreasonable impacts on natural beauty or wildlife populations, including effects on habitat; and that the trail will be designed and constructed in a manner consistent with the purposes of this Ordinance.
 - iii. Notwithstanding the limitations in paragraphs 1.a, and 1.b, above, the Planning Board may waive the water or wetland setback requirement when the applicant demonstrates that there is no other reasonable alternative for the location of the trail. Examples include, but are not limited to, the avoidance of rail, road, and wetland crossings, the avoidance of permanent structures, ledges, and steep slopes, and the need to meet required safety standards. When the applicant demonstrates the need, an elevated walkway/platform over the water or wetland resource may be permitted provided that it is no larger than necessary.

Note: Elevated walkways must comply with local floodplain management ordinances, and may require a permit from the DEP pursuant to the Natural Resources Protection Act.

- b. When a trail is permitted within the structure setback area, any significant areas of exposed mineral soil present between the trail and the water body or wetland, shall be planted with native vegetation or be otherwise stabilized, to prevent erosion and protect water quality.

- c. Trail spurs, no greater than eight (8) feet in width, may be established at distances no less than 500 linear feet apart. Clearing of vegetation for a trail spur shall not exceed 250 square feet per 25 feet of spur length. Trail spurs that extend to the shoreline shall not include any structural development except that necessary for shoreline stabilization or trail hardening, and except for the placement of a bench or similar object for sitting purposes. No trail spur shall be permitted on sustained ground slopes of greater than 15%.
 - d. Trail surfaces must either be paved, graveled, mulched or otherwise stabilized/surfaced to prevent erosion of surface materials. Trail banks and side slopes steeper than a 50% slope, and retaining walls greater than four (4) feet in height, shall be designed by a professional engineer, and shall be stabilized in accordance with the provisions for erosion and sedimentation control contained in subsection Q.
5. Standards Applicable to Category 2 Multiple Use Trails, Including Motorized Uses
- a. Category 2 Multiple Use Trails, Including Motorized Uses shall meet the same shoreline or wetland setback requirement as that required for structures in the district in which such trails are located, except for water and wetland crossings, and except as follows:
 - i. A trail may be permitted over a legally existing base, such as a discontinued rail bed, roadway, berm, dike, parking lot or industrial site. No portion of the base shall be expanded closer to the normal high-water line of a water body or upland edge of a wetland.
 - ii. The Planning Board may waive the setback requirement when the applicant demonstrates that there is no other reasonable alternative for the location of the trail. Examples include the avoidance of road and wetland crossings, ledges, and steep slopes. Any portion of the trail that is less than 75 feet from a water body or wetland shall be paved or similarly hardened to prevent erosion.
 - iii. A trail that is limited exclusively for winter use need not meet setback requirements provided that the trail is chained, gated or otherwise blocked to motorized access, except during frozen ground conditions.
 - iv. All crossings of flowing water shall require a bridge or culvert, except in areas with low, hardened banks and channel beds which are composed of gravel, rock or similar hard surface which will not be eroded or otherwise damaged.
 - v. Trails are prohibited within the shoreland zone of a Significant River Segment, except for water crossings, and in a Resource Protection District so designated because of wildlife habitat value or the presence of sustained slopes greater than 20%.

- vi. When a trail is permitted within the setback area, any exposed mineral soil between the trail and the water body or wetland, shall be planted with native vegetation, or be otherwise stabilized, in order to prevent erosion and protect water quality.
 - vii. Where trail stability is of concern the Planning Board may require hardening or compacting of the trail tread to prevent erosion. Examples include wet or steeply sloped areas, and trail switchback sites.
 - viii. Trail banks and side slopes steeper than a 50% slope, and retaining walls greater than four (4) feet in height, shall be designed by a professional engineer, and shall be stabilized in accordance with the provisions for erosion and sedimentation control contained in subsection Q.
6. Standards Applicable to Category 1 Multiple Use Trails, Including Motorized Uses
- a. Category I Multiple Use Trails, including Motorized Uses, shall meet the same standards as those for a Category II Multiple Use Trail, including Motorized Uses except that the Planning Board may waive the setback requirement only where existing roads and similar obstructions require the trail to be located within the setback area. In such case the trail shall not extend into the setback area for more than 200 linear feet on each side of the obstruction. All portions of the trail permitted within 75 feet of a water body or wetland shall be paved or otherwise hardened or compacted to prevent erosion.
7. Exemption from setback requirements for walkways and trails over rivers within a downtown revitalization project.
- a. A pedestrian walkway or trail is exempt from the otherwise applicable water or wetland setbacks if the following requirements are met:
 - i. The walkway or trail is adjacent to a segment of a river that is located within the boundaries of a downtown revitalization project;
 - ii. If cantilevered over a segment of river, the walkway or trail does not extend over the river more than 10 feet from the normal high-water line;
 - iii. If cantilevered over a segment of river, the walkway or trail is attached to a structure that was constructed prior to 1971 and is located within a downtown revitalization project; and
 - iv. A walkway or trail may be cantilevered over a segment of river, provided the Planning Board has determined there is no other practical means to construct the walkway or trail without cantilevering over that segment of the river. If there

are no other practical means to construct the walkway or trail, approaches to the cantilevered walkway or trail may also cantilever off adjacent retaining walls but no more than is necessary to access the cantilevered walkway or trail.

- b. A downtown revitalization project under this subsection must be defined in a project plan approved by the legislative body of the municipality and may include the revitalization of buildings formerly used as mills that do not meet the water or wetland setback requirements in Section 15.
- c. Except for the water and wetland setback requirements in Section 15, a walkway or trail that meets the requirements of this subsection must meet all other state and local permit requirements and comply with all other applicable rules.
- d. A walkway or trail exempt under this subsection may be either privately or publicly owned and maintained.

Section 16. Administration.

A. Administering Bodies and Agents.

- 1. **Code Enforcement Officer.** A Code Enforcement Officer shall be appointed or reappointed annually by July 1st.
- 2. **Zoning Board of Appeals.** A Zoning Board of Appeals shall be created in accordance with the provisions of 30-A M.R.S.A. section 2691.
- 3. **Planning Board.** A Planning Board shall be created in accordance with the provisions of State law.

B. Permits Required. After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the overlay in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to the Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

- 1. A permit is not required for the replacement of an existing road culvert as long as:
 - a. The replacement culvert is not more than twenty-five (25) percent longer than the culvert being replaced;
 - b. The replacement culvert is not longer than seventy-five (75) feet; and
 - c. Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the water course.

2. A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
3. Any permit required by this Ordinance shall be in addition to any other permit required by other laws and ordinances.

C. Permit Application.

1. Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in Section 14.
2. All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
3. All applications shall be dated, and the Code Enforcement Office or Planning Office, as appropriate, shall note upon each application the date and time of its receipt.
4. If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the plumbing inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.
5. When an excavation contractor will perform an activity that requires or results in more than one (1) cubic yard of soil disturbance, the person responsible for management of erosion and sedimentation control practices at the site must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. This requirement does not apply to a person or firm engaged in agriculture or timber harvesting if best management practices for erosion and sedimentation control are used; and municipal, state and federal employees engaged in projects associated with that employment.

- D. Procedure for Administering Permits. Within thirty-five (35) days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as appropriate,

shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within thirty-five (35) days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within thirty-five (35) days after the first available date on the Planning Board's agenda following receipt of the completed application, or within thirty-five (35) days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

1. Will maintain safe and healthful conditions;
2. Will not result in water pollution, erosion, or sedimentation to surface waters;
3. Will adequately provide for the disposal of all wastewater;
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
6. Will protect archaeological and historic resources as designated in the comprehensive plan;
7. Will not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;
8. Will avoid problems associated with floodplain development and use; and
9. Is in conformance with the provisions of section 15, Land Use Standards.

If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall 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 statute administered by the municipality.

- E. Expiration of Permit. Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.
- F. Installation of Public Utility Service. A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in

the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

G. Appeals.

1. Powers and Duties of the Zoning Board of Appeals. The Zoning Board of Appeals shall have the following powers:
 - a. Administrative Appeals: To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this Ordinance, is not appealable to the Zoning Board of Appeals.
 - b. Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance.
2. Variance Appeals. Variances may be granted only under the following conditions:
 - a. Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
 - b. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
 - c. The Board shall not grant a variance unless it finds that:
 1. The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the nonconformity and from which relief is sought; and
 2. The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:
 - i. That the land in question cannot yield a reasonable return unless a variance is granted;

- ii. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - iii. That the granting of a variance will not alter the essential character of the locality; and
 - iv. That the hardship is not the result of action taken by the applicant or a prior owner.
- d. Notwithstanding Section 16.G.2.c.ii. above, the Zoning Board of Appeals, or the codes enforcement officer if authorized in accordance with 30-A MRSA §4353-A, may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. Any permit issued pursuant to this subsection is subject to Sections 16.G.2.f. and 16.G.4.b.iv. below.)
- e. The Zoning Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- f. A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Zoning Board of Appeals. Any comments received from the Commissioner prior to the action by the Zoning Board of Appeals shall be made part of the record and shall be taken into consideration by the Zoning Board of Appeals.

3. Administrative Appeals

When the Zoning Board of Appeals reviews a decision of the Code Enforcement Officer the Zoning Board of Appeals shall hold a “de novo” hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the Zoning Board of Appeals shall hear and

decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Zoning Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Zoning Board of Appeals may only review the record of the proceedings before the Planning Board. The Zoning Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Zoning Board of Appeals may receive and consider written or oral arguments. If the Zoning Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Zoning Board of Appeals may remand the matter to the Planning Board for additional fact finding.

4. Appeal Procedure.

a. Making an Appeal.

- i. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters as described in Section 16.G.1.a. above. Such an appeal shall be taken within thirty (30) days of the date of the official written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.
- ii. Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes.
 - a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
 - b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- iii. Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
- iv. The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.

- b. Decision by the Board of Appeals.
 - i. A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
 - ii. The person filing the appeal shall have the burden of proof.
 - iii. The Board shall decide all administrative appeals and variance appeals within thirty-five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
 - iv. The Zoning Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision. Copies of written decisions of the Zoning Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.
- 5. Appeal to Superior Court. Except as provided by 30-A M.R.S.A. Section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.
- 6. Reconsideration. In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, Planning Board, Code Enforcement Officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

H. Enforcement.

- 1. Nuisances. Any violation of this Ordinance shall be deemed to be a nuisance.
- 2. Code Enforcement Officer.
 - a. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of

this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the Municipal Officers and be maintained as a permanent record.

- b. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.
 - c. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected.
3. Legal Actions. When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The Municipal Officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized Municipal Official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.
4. Fines. Any person, including but not limited to a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. Section 4452.

Section 17. Definitions.

Accessory Structure or Use. A use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

Aggrieved Party: An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

Agriculture: The production, keeping or maintenance for sale or lease, of plants or animals, including, but not limited to, forages and sod crops, grains and seed crops, dairy animals and dairy products, poultry and poultry products, livestock; fruits and vegetables, and ornamental green house products. Agriculture does not include forest management and timber harvesting activities.

Aquaculture: The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Basal Area: The area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

Basement: Any portion of a Structure with a floor-to-ceiling height of six (6) feet or more and having more than 50% of its volume below the existing ground level.

Boat Launching Facility: A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

Bureau of Forestry: State of Maine Department of Agriculture, Conservation, and Forestry, Bureau of Forestry.

Campground: Any area or tract of land to accommodate two (2) or more parties in temporary living quarters for a fee, including, but not limited to tents, recreational vehicles or other shelters.

Canopy: The more or less continuous cover formed by tree crowns in a wooded area.

Category 2 Multiple Use Non-Motorized Trails: A public trail, or a private trail open to the public, with a tread path no more than five (5) feet in width and an overall clearance of seven (7) feet wide, established for walking, hiking, non-motorized biking, snow-shoeing, or cross-country skiing. Electrically operated bicycles, wheelchairs, and similar transportation related equipment used only by persons with disabilities are permitted. (CEO, unless setback waiver is necessary, in which case a permit is required from the Planning Board)

Category 1 Multiple Use Non-Motorized Trail : A public trail or a private trail open to the public, established for walking, hiking, non-motorized biking, snow-shoeing, or cross-country skiing, with a tread path no more than twelve (12) feet in width [fourteen (14) feet in an urban area] and an overall width, including trail side-slopes, of twenty (20) feet or less. No motorized vehicles except electrically operated bicycles, wheelchairs, and similar transportation related

equipment used only by persons with disabilities, and vehicles necessary for maintenance and emergency purposes are permitted. (Planning Board permit required)

Category 2 Multiple Use Trail, Including Motorized Uses: A public trail, or a private trail open to the public, with a tread path no more than 5 feet wide, and an overall clearance of seven (7) feet wide, established for recreational vehicles, equestrian activities, mountain biking, hiking, ATVing, off-road motorcycling, snowmobiling, snow-shoeing, or cross-country skiing. (Planning Board permit required)

Category 1 Multiple Use Trail, Including Motorized Uses: A public trail or a private trail open to the public, with a tread path no more than twelve (12) feet wide [fourteen (14) feet in an urban area], and an overall clearance of twenty (20) feet wide, established for recreational vehicles, equestrian activities, mountain biking, hiking, ATVing, off-road motorcycling, snowmobiling, snow-shoeing, cross-country skiing. (Planning Board permit required)

Coastal Wetland: All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables generated by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes and may consist of rocky ledges, sand and cobble beach, mud flats, etc. in addition to salt marshes and salt meadows. The Atlantic Ocean is a large coastal wetland.

Commercial Use: The use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

Cross-sectional area: The cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.

DBH: The diameter of a standing tree measured 4.5 feet from ground level.

Development: A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

Dimensional Requirements: Numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

Disability: Any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

Disruption of Shoreline Integrity: The alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.

Driveway: A vehicular access-way less than five hundred (500) feet in length serving no more than one lot.

Emergency Operations: Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

Essential Services: Gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services, telecommunications facilities, or small wind energy systems.

Excavation Contractor: An individual or firm engaged in a business that causes the disturbance of soil, including grading, filling and removal, or in a business in which the disturbance of soil results from an activity that the individual or firm is retained to perform.

Expansion of a Structure (for Shoreland Zoning purposes): An increase in the footprint of a structure, including all extensions such as, but not limited to attached: decks, garages, porches and greenhouses.

Expansion of Use (for Shoreland Zoning purposes): The addition of one or more months to a use's operating season; or the use of more footprint of a structure or ground area devoted to a particular use.

Family: One or more persons occupying a dwelling and living as a single housekeeping unit.

Floodway: The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

Floor area: The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls.

Footprint: The entire area of ground covered by the structure(s) on a lot, including but not limited to cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks.

Forest Management Activities: Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

Forested wetland: A freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller.

Forest Stand: A contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

Foundation: The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other bases consisting of concrete, block, brick or similar material.

Freshwater wetland: Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

1. Of ten (10) or more contiguous acres; or of less than ten (10) contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of ten (10) acres; and
2. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

Functionally Water-dependent Uses: Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish-

related storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, shoreline structures necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to coastal or inland waters. Recreational boat storage buildings are not considered to be a functionally water-dependant use.

Great pond: Any inland body of water which in a natural state has a surface area in excess of ten (10) acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

Great pond classified GPA: Any great pond classified GPA, pursuant to 38 M.R.S.A. Article 4-A section 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds.

Ground Cover: Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

Harvest Area: The area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.

Hazard tree: A tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

Height of a structure: The vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

Home occupation: An occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2) which employs no more than two (2) persons other than family members residing in the home.

Increase in Nonconformity of a Structure as related to Shoreland Zoning (Section 12 of this Ordinance): Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

Individual Private Campsite: An area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but not be limited to gravel pads, parking areas, fire places, or tent platforms.

Industrial: The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

Lot area: The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

Institutional: A non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

Land Management Road: A route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.

Licensed Forester: A forester licensed under 32 M.R.S.A. Chapter 76.

Marina: A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities.

Market value: The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

Mineral exploration: Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

Mineral extraction: Any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction-site.

Minimum lot width: The closest distance between the side lot lines of a lot. When only two (2) lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Multi-unit residential: A residential structure containing three (3) or more residential dwelling units.

Native: Indigenous to the local forests.

Non-conforming condition: A non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

Nonconforming Lot: A single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.

Nonconforming Structure: A structure which does not meet any one or more of the following dimensional requirements; setback, height, lot coverage, or footprint, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

Nonconforming Use: Use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

Non-native invasive species of vegetation: A species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems.

Normal High-water Line (Non-tidal Waters): That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land.

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Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

Outlet stream: Any perennial or intermittent stream, as shown on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland.

Person: An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two (2) or more individuals having a joint or common interest, or other legal entity.

Piers, Docks, Wharfs, Bridges and Other Structures and Uses Extending Over or Beyond the Normal High-water Line or Within a Wetland:

Temporary: Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

Primitive Trail – a public or private path or trail, with a tread path no more than three (3) feet in width and an overall clearance of four (4) feet in width, established for walking, hiking, non-motorized biking purposes, snow-shoeing, or cross-country skiing. (CEO permit required)

Principal Structure: A structure other than one which is used for purposes wholly incidental or accessory to the use of another structure or use on the same lot.

Principal Use: A use other than one which is wholly incidental or accessory to another use on the same lot.

Public Facility: Any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

Recent Floodplain Soils: The following soil series as described and identified by the National Cooperative Soil Survey: Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Alluvial, Cornish, Charles, Podunk, Rumney, Saco, Suncook, Sunday, Winooski.

Recreational Facility: A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

Recreational Trail: A thoroughfare or way across land or snow, used primarily for recreational purposes including, but not limited to, such uses as bicycling, Nordic (cross-country) skiing, day

hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long distance backpacking, roller skating, in-line skating, dog sledding, running, snowmobiling, canoe and kayak portaging, and vehicular travel by motorcycle, four-wheel drive or all terrain, off-road vehicles. Recreational trail use may be limited to foot, horse, or other non-motorized means of transportation or motorized means of transportation or a combination of any of them. Recreational trails include Primitive Trails, Multiple Use Non-motorized Trails, and Multiple Use Trails, Including Motorized Uses. A recreational trail is not a structure.

Recreational Vehicle: A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

Replacement System: A system intended to replace:

1. An existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or
2. Any existing overboard wastewater discharge.

Residential Dwelling Unit: A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

Residual Basal Area: The average of the basal area of trees remaining on a harvested site.

Residual Stand: A stand of trees remaining in the forest following timber harvesting and related activities.

River: A free-flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of twenty-five (25) square miles to its mouth.

Riprap: Rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

Road: A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

Salt Marsh: Areas of coastal wetlands (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly

inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

Salt Meadow: Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common three square occurs in fresher areas.

Sapling: A tree species that is less than two (2) inches in diameter at four and one half (4.5) feet above ground level.

Seedling: A young tree species that is less than four and one half (4.5) feet in height above ground level.

Service Drop: Any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. In the case of electric service:
 - a. The placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
 - b. The total length of the extension is less than one thousand (1,000) feet.
2. In the case of telephone service:
 - a. The extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
 - b. The extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

Setback: The nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area.

Shore Frontage: The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Shoreland Zone: The land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or river; within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within two hundred and fifty (250) feet of the upland edge of a or

freshwater wetland; within 250 feet, horizontal distance, of the normal high water line of Swan Pond Brook, and its tributaries specifically depicted on the Official Zoning Map; or within one-hundred (100) feet, horizontal distance, of the normal high-water line of a stream; the land area greater than 250 feet, horizontal distance, of the upland edge of the coastal wetland located on the west side of Granite Point Road, as depicted on the Official Zoning Map.

Shoreline: The normal high-water line, or upland edge of a freshwater or coastal wetland.

Skid Road or Skid Trail: A route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

Slash: The residue, e.g., treetops and branches, left on the ground after a timber harvest.

Storm-damaged tree - a tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as the result of a storm event.

Stream: A free-flowing body of water from the outlet of a great pond or the confluence of two perennial streams as depicted on the most recent, highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map to the point where the stream becomes a river or where the stream meets the shoreland zone of another water body or wetland. In addition, for the purposes of this Ordinance, a stream is also as depicted within an SP District on the Official Zoning Map of the City of Biddeford. When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.

Structure: Anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind or anything constructed or erected on or in the ground. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes. Structure does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface waste water disposal systems as defined in Title 30-A, section 4201, subsection 5; geothermal heat exchange wells as defined in Title 32, section 4700-E, subsection 3-C; or wells or water wells as defined in Title 32, section 4700-E, subsection 8.

Substantial start: Completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.

Subsurface sewage disposal system: Any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system

licensed under 38 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

Sustained slope: A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

Tidal Waters: All waters affected by tidal action during the highest annual tide.

Timber Harvesting: The cutting and removal of timber for the primary purpose of selling or processing forest products. "Timber harvesting" does not include the cutting or removal of vegetation within the shoreland zone when associated with any other land use activities. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 15 (P), *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

Timber harvesting and related activities: Timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

Tree - a woody perennial plant with a well-defined trunk(s) at least two (2) inches in diameter at four and one half (4.5) feet above the ground, with a more or less definite crown, and reaching a height of at least ten (10) feet at maturity.

Trail spur: A pathway, extending toward the shoreline from a primary non-motorized trail. Such pathways shall extend, generally, perpendicular from the primary trail but shall be constructed as a winding pathway.

Tributary Stream: Means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

Upland Edge of a Wetland: The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, including all areas affected by tidal action.

In the event that it is not possible to determine the upland edge in the above manner, this elevation shall be measured relative to NAVD88. Current tidal benchmarks and tidal datum information shall be obtained from the data developed by the National Ocean Service (NOS). As of 2016, the highest annual tide elevation is 7.4 feet above NAVD88,

and will be the figure used to determine setback. When used as a reference for setback, all benchmark data, locations, calculations, delineation, and posting highest annual tide elevation must be presented to the Code Enforcement Officer for review and approval.

For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) feet) tall or taller.

Vegetation: All live trees, shrubs, and other plants including without limitation, trees both over and under four (4) inches in diameter, measured at 4 1/2 feet above ground level.

Velocity Zone: An area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Volume of a Structure: The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

Water Body: Any great pond, river, or stream.

Water Crossing: Any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

Wetland: A freshwater or coastal wetland.

Windfirm: The ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage.

Woody Vegetation: Live trees or woody, non-herbaceous shrubs.