



PLANNING BOARD MEETING AGENDA

Thursday September 3, 2020

Burgess Meeting Room, Berwick Town Hall

6:30 p.m.

Call to Order

Pledge of Allegiance

Introduction of Board Members

Approval of Minutes

- August 20, 2020

Public Hearing

- Site Plan Amendment & Expansion. Medical Marijuana Storefront & Adult Use Marijuana Production Facility. 357 Portland Street (R70 12-1 & 12-2). Paper Birch Property.

Old Business

- Site Plan Review. Adult Use Marijuana Cultivation Facility. 11 Pond Road (R70-16) RC/I Zone. CAF Realty of Maine.
 - Planner Memo
 - Town Attorney
 - Applicant Response
 - Board Decision
- Site Plan Amendment & Expansion. Medical Marijuana Storefront & Adult Use Marijuana Production Facility. 357 & 359 Portland Street (R70 12-1 & 12-2). Paper Birch Property.

New Business

- Subdivision Amendment (Lot line adjustment). Pleasant Drive (R32 17-3 & 21). R2 Zone. Civil Consultants on behalf of Timothy George.

Public Comment

Informational Items

Adjournment



PLANNING BOARD MEETING MINUTES

Thursday August 20, 2020

Burgess Meeting Room, Berwick Town Hall

6:30 p.m.

Call to Order

Pledge of Allegiance

Introduction of Board Members

Dave Andreesen; Nichole Fecteau

Regular Member Absent: Sean Winston; Frank Underwood; Michael LaRue

Alternate Member Present: David Ross-Lyons (voting member)

Staff Members Present: James Bellissimo, Director of Community Development & Planning; Jenifer McCabe, Code Enforcement Officer

Public Comment

Approval of Minutes

- August 6, 2020

Motion: David Ross-Lyons motioned to approve the minutes as presented.

Second: Nichole Fecteau

VOTED – 3-0 in favor

Motion Passed

In favor: Dave Andreesen; David Ross-Lyons; Nichole Fecteau

Opposed: None

Abstain: None

Public Hearing

- Site Plan Review. Adult Use Marijuana Cultivation Facility. 11 Pond Road (R70-16) RC/I Zone. CAF Realty of Maine.

Alyson Graybill, 10 Pond Road, said the application does not meet the Comprehensive Plan. Ms. Graybill said the Comprehensive Plan's intent for commercial activity is to be restricted to major highways: Route 4, 9, 236 and the Village District. The Plan sets out to protect small town atmosphere and rural character.

Ms. Graybill forwarded the following passages in support of the statement the application does not conform to the Comprehensive Plan:

Page 45 Section 2.4 – Preserve intangible aspects including rural quiet and sense of security, which contributes to the rural character of Berwick.

Page 46 – “Through a set of performance standards work with business to minimize the environmental impacts...”

Page 46 4.1A – Determine possible new sites for commercial and industrial parks along major highways that would not conflict with residential areas.

Page 57 – “Increase the tax base without compromising Berwick’s small-town atmosphere or open spaces.”

Page 67 – “Another goal of land use planning is to assure compatibility of adjacent land uses and reduce or minimize conflicts between incompatible adjacent uses.”

Page 68 – Definition of RC/I District – Specifies along Route 4 corridor.

Strategy 7 (2004 Update) – Promote acceptable industrial/commercial growth along Route 4.

Ms. Graybill said this application will adversely impact her home and neighborhood.

Jerry Graybill addressed the Conditions of Approval. Mr. Graybill requested the water meter have a lock on them so the meter cannot be bypassed. Mr. Graybill pointed out secondary containment and safety data sheets were not included in the conditions.

Ben Gauthier of 2 Pond Road introduced himself. Mr. Gauthier said the application is not congruent with the Town’s Comprehensive Plan. Mr. Gauthier said the minimal benefit to the Town does not match the cost to the neighborhood.

Paul Amatucci of 12 Perrys Way said he can see where the proposed building would be from his yard. Mr. Amatucci said there is a large interest in the neighborhood evidenced by the fact that two site walks were required because of the amount of people who were in attendance. Mr. Amatucci said there are issues still unresolved and the fact that it has been months and there are still issues unresolved speaks to the fact the project does not fit. Mr. Amatucci said property values will decline because of the marijuana cultivation facility. Mr. Amatucci asked how the Town can monitor tenant growers and expressed concern for nuisances and security issues. Mr. Amatucci said an alarm went off at Kind Farms for 45 minutes during the 4th of July.

Keith Richard introduced himself as the representative of Marlene McDonald and Heidi Leveille. Mr. Richard said the facility would ruin the quiet solitude in retirement of Ms. McDonald and he urges the Board to vote no because of the issues with the standards and complaints raised. Mr. Richard said the Board has discretion to approve or deny the

application. Mr. Richard said the Comprehensive Plan states a goal set out by the plan is to minimize incompatible uses. Mr. Richard said it is incompatible and will bring negative impacts. Mr. Richard said he knows the standard of review of Superior Court and there will not be a judge in the State that would question a Board's decision that the application does not fit and judges are wary to invade the Board's discretion. Mr. Richard referenced a case *Casco vs. Tomasino* and said the easement issue is a civil matter that needs to be addressed.

John Webster of 59 Junction Road in South Berwick, also owns two properties in Berwick. Mr. Webster said the proposed building is 140' from the closest residence. Mr. Webster said the South Berwick Water District does not own the aquifer in Berwick and should not be able to place restrictions on the application. Mr. Webster said the Route 4 has an AADT of 10,000 cars. Mr. Webster said there are an excess of 100 trips per day on Pond Road and said an added two to three trips per day will not have an adverse effect on the neighborhood quiet. Mr. Webster said there have been marijuana grow facilities in Berwick for six years and there has not been one call to the Berwick Police Department. Mr. Webster said the plan has not been updated since 2004 and per state guidelines is out of date. Mr. Webster said a provision in the Comprehensive Plan that refers to town-wide adverse impact is referencing environmental impacts. Mr. Webster said he is not opposed to the application.

Tony Cincotta said his generation does not want to see Berwick as the epicenter of marijuana. Mr. Cincotta asked how a cultivation facility was approved next to a school and how one was approved Downtown.

Ben Gauthier said while marijuana is legal in the state, it is illegal federally.

- Site Plan Amendment & Expansion. Medical Marijuana Storefront & Adult Use Marijuana Production Facility. 357 Portland Street (R70 12-1 & 12-2). Paper Birch Property.

Alyson Graybill asked how Kind Farms can build another building that is within 1,000 feet of an existing building. Ms. Graybill asked what is controlling businesses from coming to Berwick and expanding on additional lots.

Old Business

- Site Plan Review. Adult Use Marijuana Cultivation Facility. 11 Pond Road (R70-16) RC/I Zone. CAF Realty of Maine.

The Planning Board and Town Attorney discussed going into executive session. Mr. Andreesen said his radio company does advertising for Kind Farms.

The Board went into executive session.

Dave Andreesen explained the media company he works for does advertising for Kind Farms. Mr. Andreesen said he will have to recuse himself and because of this, the Board no longer has a quorum.

Phil Saucier said in executive session the Board discussed the standard on an appearance of a conflict of interest but the substance of the issue was not held in session.

Motion: Nichole Fecteau motioned for Dave Andreesen to recuse himself.

Second: David-Ross Lyons

**VOTED – 3-0 in favor
Motion Passed**

In favor: Dave Andreesen; David Ross-Lyons; Nichole Fecteau

Opposed: None

Abstain: None

Phil Saucier said the question on Board desertion can be addressed at the next Planning Board meeting.

- Site Plan Amendment & Expansion. Medical Marijuana Storefront & Adult Use Marijuana Production Facility. 357 & 359 Portland Street (R70 12-1 & 12-2). Paper Birch Property.
- ~~Land Use Ordinance Amendments~~

Public Comment

Informational Items

James Bellissimo said Great Falls Construction is moving along well and that they have started emptying the Prime buildings and are considering demolition for at least two of the four buildings.

Adjournment

Motion: Nichole Fecteau motioned to adjourn.

Second: David-Ross Lyons

**VOTED – 3-0 in favor
Motion Passed**

In favor: Dave Andreesen; David Ross-Lyons; Nichole Fecteau

Opposed: None

Abstain: None

Minutes prepared by Berwick Planner James Bellissimo, for consideration at the next Berwick Planning Board meeting.

Signed as Approved by the Board:



**PLANNING BOARD MEMORANDUM
TOWN OF BERWICK, PLANNING DEPARTMENT**

TO: BERWICK PLANNING BOARD
FROM: JAMES BELLISSIMO, DIRECTOR OF COMMUNITY DEVELOPMENT & PLANNING
SUBJECT: CAF REALTY – ADULT USE MARIJUANA PRODUCTION FACILITY
CONDITIONAL USE
DATE: SEPTEMBER 3, 2020
CC: JENIFER MCCABE, CODE ENFORCEMENT OFFICER; TOWN ATTORNEY

The following is a summary of issues:

- A DEP Stormwater Permit by Rule was approved August 13th, 2020 with no further conditions. The Permit by Rule reviewed the drainage on the site plan and all associated stormwater features.
- A future expansion building is now shown where the existing septic pipe easement is. The access to the proposed Phase I building goes over the actual septic pipe. The plans for pipe protection are included in sheet D3.
- **Wellhead Protection**
The primary risk of contamination comes from a buildup of nitrates. The proposed holding tank would greatly mitigate that risk. To further mitigate the risks, several conditions of approval are proposed (Page 3). Staff also received an e-mail from the Southern Maine Director of DEP and she said the jurisdiction on drinking water goes to the Water District, conditions have been requested by the District.
- **1,000-foot setback**
MJS measured their setback from the property line and based on the measurement, the Kind Farms proposed building is beyond the 1,000-foot requirement.
- **Third Party Review**
Tidewater Engineer was our third-party review. Their scope included: review of protection measures for the construction of a road over the existing sewer force main; technical review of the drainage report; and other comments identified while reviewing the drainage report and plan set. MJS Engineering sent in a response sheet indicating they addressed all issues identified on the third-party review.

The following Conditions of Approval are proposed:

1. A water sample shall be tested for priority pollutants and nutrients before any cultivation wastewater is discharged to a holding tank, and then tested annually thereafter. Results shall be provided to the Town and South Berwick Water District.
2. The South Berwick Water District shall be furnished with a detailed well drillers log for the new well.
3. A five-day pump test be performed on the well with well drawdown readings taken hourly until the well stabilizes. The Pump Test will be coordinated with the South Berwick Water District and 386 Portland Street, and 2, 10, 13 Pond Road so the well drawdowns at Junction Road and the abutters wells can be monitored to check for interference.
4. The Facility may not irrigate their plants if the new well has an adverse effect on the Junction Road water source or abutter's water source.
5. A water meter shall be installed to monitor the water usage from the well and permission shall be granted to the South Berwick Water District to periodically read the water meter to verify usage.
6. The applicant shall install and submit proof of purchase of carbon filtration and the equipment required to produce a negative pressure environment.
7. If an odor violation is determined by the Code Enforcement Officer, the applicant shall resolve the issue within five days. The Code Enforcement Officer may revoke the Certificate of Occupancy if the odor issues are not resolved within five days.
8. If well water is contaminated with nitrates or other byproducts as a result of production beyond safe concentrations, the cost to remediate the nitrates or other contamination levels shall be at the applicant's (property owner) expense.
9. The building height shall be restricted to one story.
10. The septic pipe easement shall be moved before the future expansion will be granted a building permit.
11. All pesticides and chemicals stored on site shall have a secondary containment.
12. Processing in this application refers to processing the flower. No marijuana manufacturing has been approved as part of this project.

Remaining:

1. The septic easement and Comprehensive Plan will be addressed by the Town's Attorney
2. Applicant Response
3. Planning Board review findings and vote on each standard.
4. Planning Board determination on the application

| Issue | Staff Comments | Status/ Recommendation |
|-------------------------------------|---|---|
| Septic easement | A septic easement is deeded in an incorrect location. The easement is currently where a proposed building is. | The easement will need to be resolved before a permit is granted for the Phase II building. |
| Driveway & Basin within buffer zone | The basin was reviewed by DEP and 3 rd party review | DEP permit by rule was approved. |
| Driving over the septic pipe | The plan was reviewed by a 3 rd party engineer. | Protections for the septic pipe have been reviewed by a 3rd party review and found no issues. |
| Public Safety | Both Fire & Police for both Towns have been notified. South Berwick has been aware of this project since Feb. 19 th | This concern is resolved. |
| Wetland Buffer Zone | The buildings have been moved out of the buffer zone and project scaled back from 4 buildings to 2 to fit in all the setbacks and buffers. | This concern is resolved. |
| Wellhead protection | The primary risk is nitrate concentration. The water will be tested annually for nutrient levels and pollutants. | This concern has been addressed. |
| Odor Control | Conditions of Approval were amended to include negative pressure. | This concern has been addressed. |
| 1,000-foot setback | The setback from Kind Farms is not surveyed but is taken from the property line. This is a conservative estimate, the Ordinance standard is building to building. | This concern is resolved. |

Karyn P. Forbes
Attorney-at-Law

July 15, 2020

Via email at planning@berwickmaine.org

Berwick Planning Board
Town of Berwick
11 Sullivan Street
Berwick, ME 03901

Re: CAF Realty of Maine, LLC – Site Plan and Conditional Use Applications

Dear Members,

Please be advised that we represent CAF Realty of Maine, LLC (“CAF Realty”) in relation to the above-referenced applications. This letter is a response to recent abutter communications, and comments made by Planning Board members at the conclusion of the June 4, 2020 Planning Board meeting.

As you know, CAF Realty is the owner of a parcel of land located on the northerly sideline of Pond Road, containing 17.9 acres of land (“CAF Property”). The CAF Property is located in the Rural Commercial/Industrial zone. There are currently existing structures on the CAF Property.

We are also enclosing three aerial photographs which show the surrounding areas (“Aerial Photographs”), including the proximity of the CAF Property to Route 4. The Aerial Photographs also show the limited number of residences in proximity to the CAF Property.

STATUS OF THIS MATTER

CAF Realty proposes to establish a marijuana cultivation facility on the CAF Property. A marijuana cultivation facility is classified as a Marijuana Production Facility under the Berwick Land Use Ordinance. *Berwick Land Use Ordinance* at p. 15. CAF Realty’s proposed use is allowed by conditional use. *Id.* at p. 35.

On February 5, 2020, CAF Realty submitted Site Plan and Conditional Use Permit Applications. The proposed development of the site is consistent with Comprehensive Plan because it expands the commercial/industrial development while maintaining the rural character of the neighborhood. On March 5, 2020, the Planning Board held a public hearing, at which time

Chairman Andreesen stated that the primary concerns were screening, lights and a tight odor control plan. *See Planning Board Minutes* dated March 5, 2020 at p. 3. The applications were accepted as complete.

On April 9, 2020, CAF Realty submitted revised plans, and responded to comments from Director of Planning Lee Jay Feldman. A further public hearing was held on April 16, 2020. Abutters submitted written statements in opposition, which included objections to the current land use ordinance and questions concerning facility operations. Following public comments, the Planning Board requested CAF respond to each question on each letter.

On May 27, 2020, CAF Realty provided a four-page response to abutters' written submissions.

At the public hearing on June 4, 2020, the Planning Department submitted a proposed Conditional Use Findings of Fact which listed almost all abutter issues being resolved. Of the remaining issues, four were issues which simply required conditions and solutions: Odor control (ensure the building is also equipped with negative pressure [vacuum]), 1,000-foot setback (seems okay, consider requesting a survey), septic easement (not an issue for first building but may need to come back for second), and public safety (widen driveway). As for the two remaining issues, driveway and basin within buffer and driving over septic pipe, the Planning Department stated that the Board could consider obtaining a second opinion.

The Planning Department's Conditional Use Findings of Fact also included specific findings to be made by the Planning Board which supported granting CAF Realty's request for a conditional use permit. The Finding of Fact related to Conformance with the Comprehensive Plan noted that the purpose of the Rural Commercial/Industrial District is "to provide for more Town tax base and employment." CAF Realty's proposal meets the criteria since the construction of a commercial facility will result in an increased tax base and full-time employees. Notably, the Planning Department did not list any pertinent codes, ordinances or regulations which the CAF Realty proposal did not comply, and therefore CAF Realty has met the criteria.

CAF Realty's proposal will not have "adverse effects on the scenic or natural beauty of the area, aesthetics, or rare and irreplaceable natural areas" since it provides for the construction of a barn-like commercial structure. Accordingly, the Planning Department did not list any Findings to the contrary. *See Aerial Photographs*.

At the conclusion of the June 4, 2020 meeting, the Planning Board decided to obtain third party review, at CAF Realty's expense, for the two remaining issues. One Planning Board Member read from a provision of the Comprehensive Plan which stated that projects shall not have a town wide adverse impact and in her interpretation, based on the feedback it would have a town wide negative impact. Another member said that he is not in favor of the application because it would adversely affect the health, safety and welfare of the Town.

We submit this letter in response.

THE LAW WHICH APPLIES

A conditional use is defined as “a use which would not be appropriate without restriction, but which is permitted provided that all performance standards and other requirements of this Ordinance are met.” *Berwick Land Use Ordinance* at p. 6.

A. The Berwick Comprehensive Plan is not a concrete standard to be applied to permitting requests.

A comprehensive plan is not a land use ordinance. Rather, a comprehensive plan is “just that – a plan – and the ordinances adopted pursuant to the plan are its regulatory teeth.” *Nestle Waters North America, Inc. v. Town of Freyburg*, 967 A. 2d 702, 708-709 (Me. 2009).

“[A]fter a comprehensive plan is adopted, the implementation program begins. That program includes the power to enact ordinances to carry out the purposes and general policies of the comprehensive plan. The ordinances so enacted are the means for the municipality to control the allowable uses of land and set the standards by which those uses are permitted. Ordinances must be consistent with the comprehensive plan, but so long as they are, the requirements of the ordinance are the concrete standards to be applied by municipal legislative bodies....

The comprehensive plan and the land use ordinance are complementary, but their purposes are different. The plan sets out what is to be accomplished; the ordinance sets out concrete standards to ensure that the plan's objectives are realized. The two are not meant to be interchangeable. A comprehensive plan imposes an obligation on the *town*, not on private citizens or applicants for permits. It dictates how the town effectuates its land use planning obligations. The ordinance is the translation of the comprehensive plan's goals into measurable requirements for applicants like Poland Spring.”

Id. at 709; *see also* M.R.S. § 43017(7).

For the reasons above, the Berwick Comprehensive Plan cannot be the basis for determining whether to grant or deny site plan or conditional use permits.

B. Criteria must be sufficiently specific to withstand constitutional challenge.

Moreover, conditional use criteria must be specific. “Because conditional uses are those uses that the legislature has determined to be ordinarily acceptable in a particular zone, in order to withstand attack as an impermissible legislative delegation of authority, ordinances that establish criteria for acceptance of a conditional use must specify sufficient reasons why such a

use may be denied...A conditional use standard must be sufficiently specific to ‘to guide an applicant in presenting his case...and the Board in examining the proposed use...’” *Gorham v. Town of Cape Elizabeth*, 625 A. 2d 898, 900 (Me. 1993).

“Developers are entitled to know with reasonable certainty what they must do under state law or local land use control laws to obtain the permits or approvals they seek.” *Kosalka v. Town of Georgetown*, 752 A. 2d 183, 186 (Me. 2000)(finding that “conserv[ing] national natural beauty” requirement was an unconstitutional delegation of legislative authority because it fails to ‘furnish a guide which will enable those to whom the law is to be applied to reasonably determine their rights’); *see also Cope v. Inhabitants of Brunswick*, 464 A. 2d. 223, 227 (Me. 1983) (compliance with the “health, safety and welfare of the public and the essential character of the area” not sufficiently specific); *Shapiro Bros Shoe Co. v. Lewiston-Auburn Shoeworkers Protective Ass’n*, 320 A. 23. 247, 253 (Me. 1974)(the public should not have to guess at the meaning of a statute “leaving them without assurances that their behavior complies with legal requirements....”).

As required under Maine law, the Berwick Land Use Ordinance provides land Performance Standards for Conditional Use and Site Plan Review. Berwick Land Use Ordinance at §8.25, 9.8 (“Performance Standards”). These are the only criteria which apply.

CAF REALTY’S REQUEST FOR SITE PLAN AND CONDITIONAL USE APPROVALS SHOULD BE GRANTED

A. Substantial Evidence exists that CAF Realty has satisfied the criteria for the granting of a conditional use permit.

CAF Realty, acting by and through MJS Engineering, P.C. has submitted competent evidence establishing that it has met the criteria for a conditional use permit. CAF Realty restates and incorporates herein, MJS Engineering, P.C.’s submissions dated February 5, 2020, April 8, 2020, and May 27, 2020. This evidence includes, but is not limited to evidence regarding water quality (setback distances to all wells meet or exceed protective well radius for intended use and facility will use 200 to 250 GPD), runoff (all runoff from impervious surfaces will be treated in stormwater treatment system meeting the local requirements), and waste water (no chemicals from the process will direct enter the ground water). *See MJS Response* dated May 27, 2020 at p. 2.

The evidence also included screening (the buildings will be setback and screened to fit into surrounding neighborhood), lighting (lighting will be minimal and only for security purpose. Lighting will be directed downward), and odor (facility will have charcoal filters and will not discharge to the exterior with exhaust fans).¹

B. There is no evidence that CAF Realty’s proposal will have “a town wide negative impact.”

¹ Notably, these were the issues raised by the Planning Board during the March 5, 2020 meeting.

First, “a town wide negative impact” is not one of the objective criteria enumerated in the Berwick Land Use Ordinance for the granting of a conditional use permit. The Planning Board cannot add to the Berwick Land Use Ordinance delineated criteria for a conditional use permit. *Nestle Waters North America* at p. 711.

Secondly, there is simply no evidence in the record to support any such finding. “Evidence” is defined as “something that furnishes or tends to furnish proof”. *Webster’s Third New International Dictionary* (3rd ed. 2002) at p. 788. No one has offered any proof of any town-wide detriment which will be caused by CAF Realty’s proposed use. Rather, three abutters have raised objections, based primarily upon broad and generalized concerns unsupported by evidence. There is no evidence of town- wide declining property values, no evidence of increased town-wide criminal activity, and no evidence of increased town-wide waste or excess town-wide water usage. To deny an application based upon alleged problems and not evidence is clear error. *WLH Management Corp. v. Town of Kittery*, 630 N.H. 110 (Me. 1994).

Rather, substantial evidence supports CAF Realty’s request for site plan and conditional use permits. Substantial evidence is evidence that a reasonable mind would accept as sufficient to support a conclusion. *Sproul v. Town of Boothbay Harbor*, 746 A. 2d 368, 372 (Me. 2000). CAF Realty, by and through MJS Engineering, has met its burden.

C. The Planning Board’s decision must be based solely upon the criteria delineated in the Berwick Land Use Ordinance.

Again, the Planning Board cannot add to the list of criteria delineated in the Berwick Land Use Ordinance. There is simply no generalized “health, safety, and welfare of Town” criteria. As such, board members cannot vote against an application on the grounds that it will “adversely affect the health, safety and welfare of the Town.” *See Berwick Planning Board Minutes* dated June 4, 2020 at p. 3. Moreover, even if the Berwick Land Use Ordinance expressly included the above criteria, such criteria would be void since the Maine Supreme Court has previously found such a provision to be an unconstitutional delegation of legislative power. *Cope* at 227 (compliance with the “health, safety and welfare of the public and the essential character of the area” not sufficiently specific and therefore void as unconstitutional).

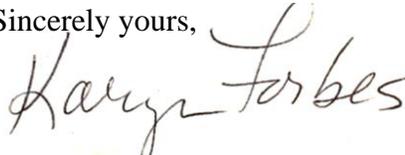
Instead, the Town of Berwick, acting through its legislative authority, has decided that if an applicant meets the criteria delineated in the Berwick Land Use Ordinance, then as a matter of law, the application does not adversely affect the health, safety and welfare of the Town. The Planning Board does not have the authority to alter these criteria. Once an applicant meets the criteria, it is entitled to approval. *WLH Management* at p. 110. Finally, of note, the Berwick Planning Department has submitted proposed Findings of Fact based upon the evidence. The staff proposed Findings of Fact are entitled to deference. *Warwick Development Co., Inc. v. City of Portland*, CV-89-206 (Me. Super. Ct., Cum. Cty., January 12, 1995).

CONCLUSION

CAF Realty requests that the Berwick Planning Board grant its requests for site plan and conditional use approval.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in black ink that reads "Karyn Forbes". The signature is written in a cursive style with a large, looped initial "K".

Karyn P. Forbes, Esq.

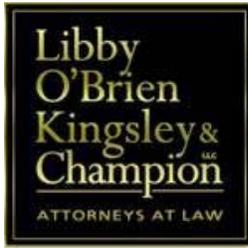
kforbes@shaheengordon.com

cc Client









KEITH P. RICHARD, ESQ.
krichard@lokllc.com

August 25, 2020

VIA EMAIL

Berwick Planning Board
planning@berwickmaine.org

Re: Site Plan Review. Adult Use Marijuana Cultivation Facility. 11 Pond Road (R70-16)

Dear Board:

As you know, I represent Heidi Leveille, 11 Perrys Way, and her mother, Marlene McDonald, 13 Pond Road. The August 20 meeting was adjourned without a vote due to a lack of quorum following the recusal of the Chair. I write to address two issues that must be addressed by the Planning Board when it reconvenes to vote on application for 11 Pond Road on September 3.

First, the upcoming vote should begin with each member of the Planning Board, who was not in attendance on August 20, stating affirmatively for the public record that they reviewed the August 20 meeting video replay, specifically the public comment during the public hearing.

Second, the Chairman's recusal should be put to a vote of the full Planning Board. At the August 20 meeting, following an executive session, the Chair announced that he determined there was an appearance of a conflict based on his employment as a radio marketer for Paper Birch LLC, another marijuana business. In a follow up, the Chair stated unequivocally that he believed he could act on the application impartially and without bias.

Municipal board member conflicts are governed by statute. Maine's statute provides: "**Avoidance of Appearance of Conflict of Interest.** Every municipal and county official shall attempt to avoid the appearance of a conflict of interest by disclosure or by abstention." 30-A M.R.S. § 2605(6).

The full Planning Board should reconsider and reopen the recusal decision and vote to reject the motion to recuse and allow the Chairman to vote on the application because there is no conflict of interest. To the extent the Board is concerned about the *appearance* of a conflict, the Chairman's disclosure of the nature of the concern, and his affirmative

August 25, 2020

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statements that he remains impartial, remedied any possible procedural issue with his participation. Additionally, neither the applicant nor the abutters object to the Chair's participation in light his disclosure. The appearance of a conflict is based upon possible business competition and marketing that constitutes a hypothetical benefit that is so remote and speculative that a legal challenge would surely fail. All the more so because the Chair remains impartial and without bias.

I urge the Planning Board to address these issues and ultimately vote no on the application. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Keith P. Richard', with a long horizontal flourish extending to the right.

Keith P. Richard

- c. Heidi Leveille
Jason Theobald, Esq. (Jason Theobald JTheobald@curtisthaxter.com)

Jason J. Theobald, Esq.
jtheobald@curtisthaxter.com

August 28, 2020

VIA ELECTRONIC AND REGULAR U.S. MAIL

Planning Board
Town of Berwick
11 Sullivan Street
Berwick, ME 03901
c/o planning@berwickmaine.org

Re: 11 Pond Road Site Plan Review – September 3rd, 2020 Planning Board Meeting

Dear Members of the Town of Berwick Planning Board,

This law firm represents Alyson and Jerry Graybill (the “Graybills”), owners and residents of 10 Pond Road, in Berwick, Maine. At the August 20th Planning Board meeting, the Planning Board voted to close the public hearing on the proposed Adult-Use Marijuana Cultivation Facility at 11 Pond Road (the “Application”). Neither the applicant nor its representatives spoke at the Planning Board meeting. The meeting then adjourned without a vote on the Application due to the lack of a quorum following the recusal of the Chair. I write to address several important issues the Planning Board must address on or before its September 3rd meeting.

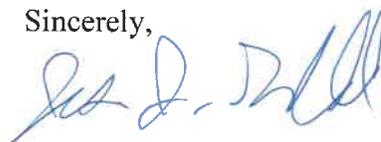
First, it is my understanding that applicant and its representatives will be granted the opportunity to speak at the upcoming September 3rd Planning Board meeting to respond to the comments of abutting property owners made at the August 20th meeting. The applicant or its representatives could have presented any rebuttal remarks at the August 20th meeting. Instead, the applicant now has an additional two weeks to prepare its responses. More importantly, because the public hearing is now closed, the abutting property owners will not have the opportunity to respond to any new information provided by the applicant or its representatives at the September 3rd meeting. Nothing in the Town of Berwick Land Use Ordinance (the “Ordinance”) prohibits the Planning Board from reopening the public hearing for additional comment. *See* Ordinance §9.8(G). Therefore, the Graybills respectfully request that the Planning Board reopen the public hearing regarding the Application in order to allow abutting property owners the opportunity to respond to any new information not previously addressed during the public hearing.

Second, it is my understanding that the Planning Board meeting information packet for the August 20th meeting, which included the meeting agenda, copies of submissions to the Planning Board and other important information, was not posted to the Town's website until 3:28 p.m. on August 20th – just a few hours before the hearing. This practice of posting the information packet only a few hours before the meeting does not provide the Graybills – who have full-time jobs – or other interested parties with sufficient time to review any new information prior to the meeting. Therefore, in the interest of fairness, the Graybills respectfully request that the information packet for the September 3rd Planning Board meeting be posted on the Town's website at least 48 hours prior to the meeting. This would provide all parties with sufficient time to review any additional materials.

Lastly, the Graybill's join in the request made by Keith P. Richard, Esq., attorney for Heidi Leveille and Marlene McDonald of 13 Pond Road, that the September 3rd meeting begin with each member of the Planning Board who was not in attendance on August 20th stating affirmatively for the public record that they reviewed the August 20th meeting video replay, and specifically that they reviewed the public comments regarding the Application. The Graybills further request that any member not in attendance at the June 4th meeting also state for the public record that they reviewed the June 4th video replay and public comments regarding the Application.

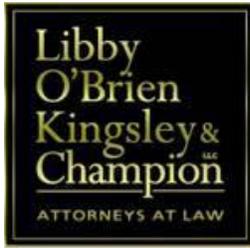
On behalf of the Graybills, I urge the Planning Board to address these requests and to vote no on the Application.

Sincerely,



Jason J. Theobald

cc: Clients
James Bellissimo, Berwick Town Planner (jbellissimo@berwickmaine.org)
Keith P. Richard, Esq. (krichard@lokllc.com)



KEITH P. RICHARD, ESQ.
krichard@lokllc.com

August 31, 2020

VIA EMAIL

Berwick Planning Board
planning@berwickmaine.org

Re: Site Plan Review. Adult Use Marijuana Cultivation Facility. 11 Pond Road (R70-16)

Dear Board:

As you know, I represent Heidi Leveille, 11 Perrys Way, and her mother, Marlene McDonald, 13 Pond Road. While I would have raised the issues in this letter in my remarks to the Board August 20 or in my previous letter of August 25, new information came to light thereafter. We were provided a copy of a letter from the Applicant's attorney dated July 15, 2020 for the first time on August 28, 2020. I write to clarify remarks around the comprehensive plan, the site plan review ordinance, and to respond to several legal assertions by the Applicant through counsel.

The Town of Berwick's ordinance is crystal clear that any conditional use application must conform to the comprehensive plan. Berwick, Me., Ordinances § 9.8(I)(1)(a) (July 14, 2020). It is the first standard in your site plan review ordinance and effectively incorporates the plan by reference. *See id.* The Board must make a positive finding that this application is consistent with the plan to approve the project. For the reasons previously articulated by correspondence and public comment, this proposal is inconsistent with and would adversely impact the rural and residential character of this neighborhood and is therefore inconsistent with the comprehensive plan.

The Applicant's legal opinion letter of July 15, 2020 cites a case involving Poland Spring out of the Town of Fryeburg. *See Nestle Waters N. Am., Inc. v. Town of Fryeburg*, 2009 ME 30, 967 A.2d 702. I enclose the entire decision of the Maine Supreme Court for the Board's reference. That case is inapplicable to Berwick's comprehensive plan and the ordinance here because in *Nestle Waters*, Fryeburg's ordinance did not expressly incorporate Fryeburg's comprehensive plan. The Court concluded that the comprehensive plan was neither referenced in the ordinance, nor within the meaning of "all other requirements of the district involved." *Id.* ¶ 29.

If presented with Berwick's ordinance and comprehensive plan, the Maine Supreme Court would reach the opposite conclusion here based upon the plain language of Section 9.8(I)(1)(a). The remaining legal arguments about constitutional challenges and vagueness

are inapposite because the ordinance and plan, in concert, set forth articulated, enforceable standards for the Board to apply. Berwick has made the legislative determination to incorporate the plan into site plan review and that is required by law.

The Applicant asserts that the proposal is consistent with the comprehensive plan, quoting selectively two phrases from a document that is hundreds of pages in total. The Applicant's letter of July 15 asserts that the "Rural Commercial/Industrial District is 'to provide for more Town tax base and employment'" and that the "proposal will not have 'adverse effects on the scenic or natural beauty of the area, aesthetics, or rare and irreplaceable natural areas' since it provides for the construction of a barn-like commercial structure."

Providing for tax base and employment is one broad goal of the R-C/I District referenced in the plan, but it is only one goal among the many goals and standards articulated. Respectfully, the assertion that there will be no adverse effects because of the barn-like structure of the building is a subjective opinion, not a fact.

The neighborhood has asserted that the proposal is not consistent with the plan, quoting from specific provisions and page references, submitting valid evidence-based comments based on personal knowledge. The Board has evidence in the record that is conflicting at best; but on balance, overwhelmingly against this project. However one weighs the evidentiary record, the larger point is that the Board, as the finder of fact—the body that must assess the evidence in the first instance—retains discretion to conclude that the Applicant has not met his burden of proof and persuasion.

You are not required to accept the Applicant's opinions, nor the opinions of professionals he has hired and paid to give opinions. My remarks on August 20 were not intended to suggest that the Board can apply their own personal discretion in voting on the application. The Board is guided by the ordinance and my arguments have focused on the ordinance standards. My point on August 20 was that whatever factual assertions and legal arguments the Applicant makes, whatever proposed findings the Planning Office drafts, the Board has the discretion to determine whether the evidence presented is credible, persuasive, and sufficient to make a finding in the Applicant's favor as to each and every one of the site plan review performance standards and the comprehensive plan. The burden is always on the Applicant and this evidentiary record does not compel the findings that the Applicant claims should be made.

The record does not support voting in favor of this application on numerous grounds. I urge the Planning Board to vote no on the application. Thank you for your consideration.

August 31, 2020
Page 3

Sincerely,

A handwritten signature in black ink, appearing to read "Keith P. Richard". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Keith P. Richard

- c. Heidi Leveille
Jason Theobald, Esq. (Jason Theobald JTheobald@curtisthaxter.com)



Positive

As of: August 31, 2020 5:24 PM Z

[Nestle Waters N. Am., Inc. v. Town of Fryeburg](#)

Supreme Judicial Court of Maine

January 13, 2009, Argued; March 19, 2009, Decided

Docket: Oxf-08-419

Reporter

2009 ME 30 *; 967 A.2d 702 **; 2009 Me. LEXIS 28 ***

NESTLE WATERS NORTH AMERICA, INC. v. TOWN OF FRYEBURG et al.

Prior History: [Griswold v. Town of Denmark, 2007 ME 93, 927 A.2d 410, 2007 Me. LEXIS 94 \(2007\)](#)

Disposition: [***1] Judgment vacated; remanded for entry of judgment affirming the Fryeburg Planning Board's approval of the land use permit.

Core Terms

ordinance, rural, residential, municipal, zoning, landowners, traffic, adjacent, loadout, non-intensive, criterion, enjoyment, quotation, soils, map, conform, loading, vacated, acres, noise

Case Summary

Procedural Posture

The Superior Court, Oxford County, Maine, vacated a town board of appeals' (BOA's) reversal of the planning board's (board's) decision to issue a bottling company a permit to build a water loadout facility, and remanded the matter to the board to consider additional criteria. The board denied the permit; the trial court affirmed. The company appealed; a citizens group cross-appealed the board's initial grant of the permit.

Overview

The company's proposed facility would pipe water from aquifers to the town. The board found that the project met the standards of Fryeburg, Me., Land Use Ordinance § 5(D) to qualify as an omitted use in the district where it would be located. The citizens group appealed to the BOA, which vacated the board's decision. The company appealed. The trial court held that, contrary to the BOA's ruling, the evidence supported the board's finding that the project would not violate § 5(D). However, it remanded the matter to the board to consider whether the project met the comprehensive plan's "low impact" standard. The board found that the project was not a low impact business under the comprehensive plan and denied the permit. The high court held that the comprehensive plan was visionary, not regulatory, and therefore the trial court erred in imposing a requirement for permit approval beyond those set out in the town's land use ordinances. As the board's finding that the proposed project complied with § 5(D) was supported by substantial evidence, and its analysis revealed no error of law; the trial court erred in not affirming the board's initial decision to grant the permit.

Outcome

The judgment was vacated and the matter was remanded for entry of judgment affirming the board's initial approval of the land use permit.

LexisNexis® Headnotes

Business & Corporate Compliance > ... > Real Property Law > Zoning > Variances

[HN1](#) [↓] Zoning, Variances

See Fryeburg, Me., Land Use Ordinance § 5(D).

Business & Corporate Compliance > ... > Real Property Law > Zoning > Variances

[HN2](#) [↓] Zoning, Variances

A permit cannot be denied on grounds other than those specified by statute or local ordinance. Where the applicant has demonstrated compliance with all the statutory criteria, the municipal officers must issue the permit.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

[HN3](#) [↓] Zoning, Comprehensive Plans

A comprehensive plan is a mandatory element of a municipality's growth management program. [Me. Rev. Stat. Ann. tit. 30-A, § 4326](#) (2008). The comprehensive plan has certain mandatory components, one of which is an implementation strategy that includes the adoption of land use ordinances. [§ 4326\(3\)](#).

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

[HN4](#) [↓] Zoning, Comprehensive Plans

See [Me. Rev. Stat. Ann. tit. 30-A, § 4326\(3\)](#) (2008).

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

[HN5](#) [↓] Zoning, Comprehensive Plans

The comprehensive plan is just that--a plan--and the ordinances adopted pursuant to the plan are its regulatory teeth. [Me. Rev. Stat. Ann. tit. 30-A, § 4312\(2\)\(C\)](#) (2008).

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

[HN6](#) [↓] Zoning, Comprehensive Plans

See Fryeburg, Me., Land Use Ordinance § 1(D)(1)(n).

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

Governments > Local Governments > Finance

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

[HN7](#) [↓] Zoning, Comprehensive Plans

A comprehensive plan's "implementation program" is that component of a local growth management program that begins after the adoption of a comprehensive plan and that includes the full range of municipal policy-making powers, including spending and borrowing powers, as well as the powers to adopt or implement ordinances, codes, rules or other land use regulations, tools or mechanisms that carry out the purposes and general policy statements and strategies of the comprehensive plan in a manner consistent with the goals and guidelines of the state growth management program. [Me. Rev. Stat. Ann. tit. 30-A, § 4301\(7\)](#) (2008). As a component of the implementation program, a "land use ordinance" is an ordinance or regulation of general application adopted by the municipal legislative body

which controls, directs or delineates allowable uses of land and the standards for those uses. [Me. Rev. Stat. Ann. tit. 30-A, § 4301\(8\)](#) (2008).

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

[HN8](#) **Zoning, Comprehensive Plans**

After a comprehensive plan is adopted, the implementation program begins. That program includes the power to enact ordinances to carry out the purposes and general policies of the comprehensive plan. The ordinances so enacted are the means for the municipality to control the allowable uses of land and set the standards by which those uses are permitted. Ordinances must be consistent with the comprehensive plan, but so long as they are, the requirements of the ordinance are the concrete standards to be applied by municipal legislative bodies.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

[HN9](#) **Zoning, Comprehensive Plans**

A zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body. [Me. Rev. Stat. Ann. tit. 30-A, § 4352\(2\)](#) (2008). The comprehensive plan that every municipality is required to have as a prerequisite to zoning is by definition a compilation of policy statements, goals and standards with respect to issues relevant to land use regulation. A zoning ordinance is consistent with its parent comprehensive plan if it strikes a reasonable balance among the municipality's various zoning goals.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

[HN10](#) **Zoning, Comprehensive Plans**

The comprehensive plan and the land use ordinance are complementary, but their purposes are different. The plan sets out what is to be accomplished; the ordinance sets out concrete standards to ensure that the plan's objectives are realized. The two are not meant to be interchangeable. A comprehensive plan imposes an obligation on the town, not on private citizens or applicants for permits. It dictates how the town effectuates its land use planning obligations. The ordinance is the translation of the comprehensive plan's goals into measurable requirements for applicants. The comprehensive plan is the overarching document, the grand design. Once this statement is in place, it is appropriate to talk about plan implementation, but not before.

Governments > Legislation > Interpretation

[HN11](#) **Legislation, Interpretation**

In interpreting laws, words such as "should," "generalized," "preferred," and "recommended" are words of suggestion, not commands of regulation.

Administrative Law > Separation of Powers > Legislative Controls > Scope of Delegated Authority

Governments > Local
Governments > Administrative Boards

Business & Corporate Compliance > ... > Real Property Law > Zoning > Administrative Procedure

Governments > Local Governments > Employees & Officials

Governments > State & Territorial
Governments > Employees & Officials

[HN12](#) **Legislative Controls, Scope of Delegated Authority**

When a public officer or agency exceeds its statutory authority or proceeds in a manner not authorized by law, its resulting orders, decrees or judgments are null and void.

Civil Procedure > Appeals > Appellate
Jurisdiction > State Court Review

those facts are applied presents a question of law
subject to de novo review.

Governments > Local Governments > Claims By &
Against

Business & Corporate Compliance > ... > Real
Property Law > Zoning > Administrative Procedure

[HN13](#) **Appellate Jurisdiction, State Court Review**

Business & Corporate Compliance > ... > Real
Property Law > Zoning > Variances

When the Maine superior court, in reviewing a decision
of a municipality, acts as an appellate court, the
Supreme Judicial Court of Maine reviews directly the
operative decision of the municipality.

[HN17](#) **Zoning, Administrative Procedure**

Business & Corporate Compliance > ... > Real
Property Law > Zoning > Administrative Procedure

Fryeburg, Me., Land Use Ordinance § 5(D) requires the
planning board to determine whether a permit applicant
has shown that (1) the soils, location and lot are suitable
for its proposed project; (2) the facility would not
unreasonably interfere with adjacent landowners' use
and enjoyment of their property; (3) the use would
conform to all other requirements of the district involved;
and (4) the facility meets the performance standards of
Fryeburg, Me., Land Use Ordinance § 16.

[HN14](#) **Zoning, Administrative Procedure**

When the proper role of a municipal board of appeals is
appellate review, the decision of the municipal planning
board is the operative decision of the municipality.

Business & Corporate Compliance > ... > Real
Property Law > Zoning > Variances

Administrative Law > Judicial Review > Standards
of Review > Substantial Evidence

[HN18](#) **Zoning, Variances**

[HN15](#) **Standards of Review, Substantial Evidence**

Substantial evidence exists when a reasonable mind
would rely on that evidence as sufficient support for a
conclusion.

The "requirements of the district involved" clause of
Fryeburg, Me., Land Use Ordinance § 5(D) means the
requirements of Fryeburg, Me., Land Use Ordinance §
14.

Business & Corporate Compliance > ... > Real
Property Law > Zoning > Ordinances

Counsel: For Nestle Waters North America, Inc.: Philip
F.W. Ahrens, Esq., Catherine R. Connors, Esq. (orally),
Brian M. Rayback, Esq., Pierce Atwood LLP, Portland,
Maine.

Real Property Law > Zoning > Judicial Review

[HN16](#) **Zoning, Ordinances**

A municipal planning board's factual findings are
reviewed deferentially; the appellate court does not
substitute its own judgment for that of the board. To the
contrary, the fact that the record before the board is
inconsistent or could support a different decision does
not render the decision wrong; the board's decision
should be vacated only if no competent evidence exists
in the record to support it. In contrast to the deferential
review accorded the board's factual findings and
conclusions, its interpretation of the ordinance to which

For the Town of Fryeburg: John J. Wall, III, Esq. (orally),
Monaghan Leahy, LLP, Portland, Maine.

For Western Maine Residents for Rural Living: Scott D.
Anderson, Esq. (orally), Verrill Dana LLP, Portland,
Maine.

Judges: Panel: SAUFLEY, C.J., and CLIFFORD,

ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

building with a concrete loading pad to be built at the site will allow the facility to fill up to fifty water transport trucks per day.

Opinion by: MEAD

Opinion

[705]** MEAD, J.

[*P1] Nestle Waters North America, Inc., d/b/a Poland Spring Bottling Company (Poland Spring), appeals pursuant to M.R. Civ. P. 80B from a judgment of the Superior Court (Oxford County, *Cole, J.*) affirming a 2007 decision of the Fryeburg Planning Board (Planning Board) to deny Poland Spring a permit to build a water loadout facility. That judgment followed the original decision by the Planning Board in 2005 to issue the permit; the reversal of that decision by the Fryeburg Board of Appeals (BOA); a judgment of the Superior Court vacating the BOA's decision and remanding the matter to the Planning Board for consideration **[**2]** of an additional criterion; and an appeal to this Court that was dismissed as interlocutory. [Griswold v. Town of Denmark, 2007 ME 93, P 18, 927 A.2d 410, 417](#). The Town of Fryeburg and Western Maine Residents For Rural Living (WMRRL), a citizens group that is a party-in-interest, cross-appeal, contending that the Planning Board erred when it granted the permit in 2005. We vacate the judgment, concluding that the Superior Court erred in requiring the Planning Board to consider an additional criterion taken from the Fryeburg comprehensive plan.

I. BACKGROUND

[*P2] In June 2005, Poland Spring applied to the Town for a permit to build a "loadout facility" on three acres of a fifty-nine acre parcel located close to Route 302, a major thoroughfare in the region. The proposed facility is part of a project that will extract water from aquifers in the Town of Denmark, then pipe it to Fryeburg.¹ Once the water arrives in Fryeburg, it will be stored in a silo. A

¹ We affirmed the decision of the Denmark Board of Selectmen to grant Poland Spring a water extraction permit. **[**3]** [Griswold v. Town of Denmark, 2007 ME 93, P 15, 927 A.2d 410, 416](#).

[*P3] The Town has in place a comprehensive plan, adopted in 1994, and a land use ordinance, originally adopted in 1998, in part to "[i]mplement portions of the Town's Comprehensive Plan." After Poland Spring filed its application, the Planning Board determined at an initial public meeting that Poland Spring's proposal qualified under the land use ordinance, if at all, as an "omitted use" for the rural residential district in which it would be located. Omitted uses are governed by section five of the ordinance, which is applicable to each type of land use district in Fryeburg. Section five provides, in part:

D. Uses Omitted from the Land Use Table

HN1  If in the opinion of the Code Enforcement Officer a proposed use is not specifically mentioned, or covered by any general category in the enumeration of permitted or prohibited uses for each district, said use shall only be granted upon showing by the applicant that the soils, location and lot are suitable for the proposed use and will not unreasonably interfere with the use and enjoyment of their property by adjacent landowners and that the use will conform to all other requirements **[**4]** of the district involved and the performance standards of Sections **[**706]** Sixteen and Seventeen of this Ordinance.²

[*P4] The Planning Board heard a public presentation on the proposal in August 2005, and held a formal public hearing in September 2005 attended by some 100 citizens. At that hearing, the results of a vehicle traffic peer review study commissioned by the Board were presented. In October 2005, the Planning Board held a final meeting to consider additional information it had received concerning the proposal. In extensive written findings, the Planning Board found that Poland Spring's project met the standards set out in the ordinance to qualify as an omitted use in the rural residential district. After attaching numerous conditions

² Section sixteen of the ordinance sets out general performance standards applicable to all land use categories; section seventeen sets out performance standards for specific uses not applicable here such as adult businesses, automobile graveyards, etc. The Planning Board found that none of the uses regulated by section seventeen applied to Poland Spring's project.

to the permit, the Planning Board approved it by a 4-1 vote.

[*P5] WMRRL appealed the Planning Board's **[***5]** decision to the BOA. Following two public hearings in January 2006, the BOA upheld all of the Planning Board's findings and conclusions save one: it concluded by a 3-2 vote that the "Planning Board erred in finding that the proposed use would not unreasonably interfere with the use, enjoyment and property values of the adjacent land owners in violation of Section 5D." The BOA granted WMRRL's appeal and vacated the Planning Board's decision to grant the permit.

[*P6] Poland Spring filed a complaint pursuant to M.R. Civ. P. 80B in the Superior Court, seeking to reverse the BOA's action. In its decision, the court found that the Planning Board correctly categorized the loadout facility as an omitted use under the land use ordinance, meaning the project would qualify for a permit under section 5(D) if: (1) the soils, location and lot were suitable; (2) there was no unreasonable interference with adjacent landowners' use and enjoyment of their property; and (3) the project "conform[ed] to all other requirements of the district involved," and with the standards outlined in section sixteen of the ordinance.

[*P7] The court focused on the second and third of these requirements.³ It concluded, contrary **[***6]** to the BOA, that the Planning Board's finding that the project would not unreasonably interfere with adjoining landowners' property rights was supported by substantial evidence in the record.

[*P8] In analyzing the third requirement, the court looked to both the ordinance and the comprehensive plan, considering their statements of purpose for the rural residential district. Section fourteen of the ordinance, specifically governing the rural residential district, states that:

The purpose of the Rural Residential District is to provide protection to the Town's rural resources; timber harvesting and growing areas, agricultural areas, natural resource based, business and recreation areas, open spaces, and rural views; while maintaining a rural land use pattern much like that which existed in Fryeburg in the last century; large contiguous open space areas, farmland, land

in the Tree Growth tax classification and other forest land, land in which the predominant pattern of development consists of homes and compatible, non-intensive home occupations and **[***7]** **[**707]** businesses interspersed among large open spaces.

[*P9] The comprehensive plan lists ten "various techniques which will foster the ruralness we all enjoy." One of the ten states:

The only business-type of land uses to be allowed in the rural area will be resource-based businesses, home occupations and other home-based businesses, businesses that while perhaps are not "in the home" are located on the same or adjoining lot(s), and "low impact" businesses. Low impact businesses would be those which are limited in size or amount of traffic.

[*P10] First examining the ordinance, the court found that although the Planning Board erred in finding that Poland Spring's project qualified as a natural resource-based business, there was substantial evidence in the record to support its conclusion that the loadout facility constituted a "non-intensive" business. Additionally, the court found no error in the Planning Board's conclusion that the project complied with all requirements imposed by section sixteen of the ordinance.

[*P11] The court found, however, that in applying the land use ordinance the Planning Board had not considered the comprehensive plan's provision that businesses in the rural residential district **[***8]** were to be "low impact" enterprises "limited in size or the amount of traffic." In a later decision the court explained that, in its view, section 5(D)'s requirement that the project "conform to all other requirements of the district involved" included requirements found in the comprehensive plan.

[*P12] In sum, the Superior Court found that Poland Spring's project satisfied all of the requirements of section 5(D) of the ordinance, governing omitted uses generally, and also satisfied the "non-intensive" standard found in the purpose clause of section fourteen of the ordinance, specifically governing the rural residential district. The court found that the "low impact" requirement contained in the comprehensive plan, which it incorporated into the ordinance through section 5(D)'s "all other requirements of the district involved" clause, had not been addressed. Accordingly, the court remanded Poland Spring's application back to the Planning Board for findings on whether the project met

³The Planning Board found that the "soils, location and lot" requirement had been met, and the Town concedes the point in its brief to this Court.

the comprehensive plan's "low impact" standard.

[*P13] Following the remand and our subsequent dismissal of Poland Spring's interlocutory appeal in *Griswold*, the Planning Board held three preliminary meetings, a workshop **[***9]** session, and another public hearing. On November 13, 2007, the Planning Board met to decide on Poland Spring's application for the second time. Explicitly restricting itself to the issue identified by the Superior Court, the Planning Board decided by a 3-1 vote that the loadout facility was not a low impact business under the comprehensive plan, and denied the permit.⁴

[*P14] Poland Spring appealed the Planning Board's decision to the BOA, which affirmed 3-1, and then to the Superior Court, which also affirmed. This appeal followed.

II. DISCUSSION

[*P15] Poland Spring argues that the Superior Court erred in finding an additional criterion for approval of its permit application in the comprehensive plan, **[**708]** contending that the court should have affirmed the Planning Board's 2005 decision to approve the permit based on the court's conclusion that the project otherwise satisfied the requirements of the land use ordinance. Poland Spring asserts that the Fryeburg comprehensive plan **[***10]** provides an overall land management strategy and guidance for the adoption of appropriate ordinances, but only the land use ordinance is regulatory.

[*P16] This issue is the threshold question before us, because if the Superior Court erred in imposing an additional requirement from the comprehensive plan, and if sufficient evidence supports its conclusion that the requirements of the ordinance were otherwise met, then we must affirm the Planning Board's 2005 decision to grant the permit.⁵ See *Spain v. City of Brewer*, 474 A.2d 496, 500 (Me. 1984) (stating that **HN2**  a permit cannot be denied "on grounds other than those specified by statute or local ordinance"; also stating that "where the applicant has demonstrated compliance with

all the statutory criteria, the municipal officers must issue the permit"). If the court correctly imposed the additional requirement, then the Planning Board's 2007 decision to deny the permit, reached after considering the new criterion, must be affirmed if supported by sufficient evidence. Based on the language of the applicable statutes, the comprehensive plan, and the ordinance, we conclude that the Fryeburg comprehensive plan is visionary, not regulatory, and therefore **[***11]** the Superior Court erred in imposing a requirement for permit approval beyond those set out in the ordinance.

A. Statutory Language

[*P17] The Legislature has enacted a growth management program, one purpose of which is to "[e]stablish, in each municipality of the State, local comprehensive planning and land use management." [30-A M.R.S. § 4312\(2\)\(A\)](#) (2008). A town may accomplish that purpose, as Fryeburg has, by adopting a comprehensive plan consistent with legislative guidelines. [30-A M.R.S. § 4324\(1\)](#) (2008). **HN3**  A comprehensive plan is a mandatory element of a municipality's growth management program. [30-A M.R.S. § 4326](#) (2008).

[*P18] The comprehensive plan itself has certain mandatory components, one of which is an "implementation strategy" that includes the adoption of land use ordinances. [30-A M.R.S. § 4326\(3\)](#). Beyond the logical conclusion that a comprehensive plan would not need an implementation strategy if it were regulatory standing on its own, the Legislature's description of an acceptable implementation strategy indicates that it anticipated further municipal **[***12]** action in order to enforce the comprehensive plan's policies:

HN4  A comprehensive plan must include an implementation strategy section that contains a timetable for the implementation program, including land use ordinances, ensuring that the goals established under this subchapter are met. These implementation strategies must be consistent with state law and must actively promote policies developed during the planning process. The timetable must identify significant ordinances to be included in the implementation program. The strategies and timetable must guide the subsequent adoption of policies, programs and land use ordinances and periodic review of the comprehensive plan.

[30-A M.R.S. § 4326\(3\)](#).

⁴Due to turnover and the involuntary recusal of the Planning Board's chairman for a potential conflict of interest, only one of the four members who voted had also voted at the October 2005 meeting when the permit was approved.

⁵The Superior Court noted that Poland Spring's challenge to its remand order has been preserved for appeal. See M.R. Civ. P. 80B(m).

[*P19] The statutory definitions of key terms used in this description reinforce the [**709] conclusion that [HN5](#) the comprehensive plan is just that--a plan--and the ordinances adopted pursuant to the plan are its regulatory teeth. See [30-A M.R.S. § 4312\(2\)\(C\)](#) (2008) (Legislature's purpose in growth management program is to "[e]ncourage local land use ordinances, tools and policies based on local comprehensive plans"); Fryeburg Land Use Ordinance, § 1(D)(1)(n) ([HN6](#)) "[one] purpose[] of this Ordinance [is] to . . . [i]mplement [***13] portions of the Town's Comprehensive Plan".

[*P20] [HN7](#) A comprehensive plan's "implementation program" is:

that component of a local growth management program that begins after the adoption of a comprehensive plan and that includes the full range of municipal policy-making powers, including spending and borrowing powers, as well as the powers to adopt or implement ordinances, codes, rules or other land use regulations, tools or mechanisms that carry out the purposes and general policy statements and strategies of the comprehensive plan in a manner consistent with the goals and guidelines of [the state growth management program].

[30-A M.R.S. § 4301\(7\)](#) (2008).

[*P21] As a component of the implementation program, a "land use ordinance" is:

an ordinance or regulation of general application adopted by the municipal legislative body which controls, directs or delineates allowable uses of land *and the standards for those uses*.

[30-A M.R.S. § 4301\(8\)](#) (2008) (emphasis added).

[*P22] Applying the plain language of these statutes, [HN8](#) after a comprehensive plan is adopted, the implementation program begins. That program includes the power to enact ordinances to carry out the purposes and general policies of the comprehensive [***14] plan. The ordinances so enacted are the means for the municipality to control the allowable uses of land and set the standards by which those uses are permitted. Ordinances must be consistent with the comprehensive plan, but so long as they are, the requirements of the ordinance are the concrete standards to be applied by municipal legislative bodies.

[*P23] This construction is consistent with the Legislature's directive that [HN9](#) "[a] zoning

ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body." [30-A M.R.S. § 4352\(2\)](#) (2008); see [F.S. Plummer Co., Inc. v. Town of Cape Elizabeth, 612 A.2d 856, 859 \(Me. 1992\)](#) (stating that zoning classification following zoning ordinance amendment reviewed for constitutionality and basic harmony with comprehensive plan). We have recognized that "[t]he comprehensive plan that . . . every municipality [is required] to have as a prerequisite to zoning is by definition a compilation of policy statements, goals and standards with respect to issues relevant to land use regulation." [LaBonta v. City of Waterville, 528 A.2d 1262, 1264 \(Me. 1987\)](#) (quotation marks omitted). A zoning ordinance is consistent with its [***15] parent comprehensive plan if it "[strikes] a reasonable balance among the [municipality's] various zoning goals." ⁶ [Id. at 1265](#).

[*P24] [HN10](#) The comprehensive plan and the land use ordinance are complementary, but their purposes are different. The plan [**710] sets out what is to be accomplished; the ordinance sets out concrete standards to ensure that the plan's objectives are realized. The two are not meant to be interchangeable. ⁷ A comprehensive plan imposes an obligation on the town, not on private citizens or applicants for permits. It dictates how the town effectuates its land use planning obligations. The ordinance is the translation of the comprehensive plan's goals into measurable requirements for applicants like Poland Spring. In this case the Town chose to implement the comprehensive plan's "low impact" objective for the rural residential district through the ordinance's "non-intensive" standard [***16] applied by the Planning Board in 2005.

B. Language of the Comprehensive Plan

⁶We note that the Fryeburg land use ordinance is not being challenged here. The issue is whether Poland Spring satisfied the requirements of the ordinance; no party is challenging the requirements themselves or the classification of the proposed project as lying within the rural residential district.

⁷One commentary put it this way:

The comprehensive plan . . . is the overarching document, the grand design. Once this statement is in place, it is appropriate to talk about plan implementation, but not before. Any other sequencing gets the cart before the horse.

Orlando E. Delogu, Samuel B. Merrill, and Philip R. Saucier, *Some Model Amendments to Maine (and Other States') Land Use Control Legislation*, [56 Me. L. Rev. 323, 339-40 \(2004\)](#).

[*P25] From its first page, the Fryeburg comprehensive plan emphasizes its role as a visionary, goal-oriented document. The cover states that the plan is "a guide for the future of our town." The introduction stresses that purpose (emphasis in original):

The Comprehensive Plan should be thought of as a blue print or a road map. It is a guide that, if used properly, will help us to achieve our community goals.

The Comprehensive Plan does not attempt to understand and plan for the ultimate development or "build out" of the town, rather it recognizes the planning process as a continuing process and that various parts of the plan are subject to refinement, periodic review, and updating so as **[***17]** to be of constant value.

....

The Comprehensive Plan is a statement of the community's vision of the future.

[*P26] In a section entitled "Implementation Strategies," the comprehensive plan recognizes and anticipates that further regulatory action will be needed to realize its goals (all emphasis in original):

This chapter of our Comprehensive Plan provides strategies that the appropriate staff, board or committee should follow to achieve our community's goals and policies. The chapter will explain what should be done, when, by whom, and why.

In each section of this chapter there are actions that should be taken if the Plan is to be implemented. All of the implementation actions which involve the adoption of new ordinances, the amendment of existing ordinances, or the raising of money will require Town Meeting approval.

....

The Land Use Plan is **NOT** a zoning ordinance or zoning map. The land use plan is a mapped representation of the community's goals as they relate to the use of land. It is our community's policy statement of where various land uses should be located in the future.

....

Again, this Future Land Use Map is not a zoning map! The areas shown are only generalized locations of **[***18]** appropriate future land uses.

The following descriptions summarize the preferred land use and development **[**711]** pattern for each

of the land use areas. It also gives the reasons why this land use pattern is being recommended.

[*P27] [HN11](#)^[↑] Words such as "should," "generalized," "preferred," and "recommended" are words of suggestion, not commands of regulation. Cf. Fryeburg Land Use Ordinance § 5(D) ("[An omitted use] *shall only* be granted upon showing by the applicant that . . .") (emphasis added). The comprehensive plan does not hold itself out as regulatory, to the contrary it emphasizes that it is a planning document.⁸

C. Interpretation of Ordinance § 5(D)

[*P28] The Superior Court found that the policy statements of the Fryeburg comprehensive plan were incorporated into the land use ordinance through the clause in section 5(D) that states **[***19]** an omitted use must "conform to all other requirements of the district involved" in order to be approved. A substantial part of the land use ordinance comprises ten sections, each setting out the purpose, location, dimensional requirements, and permitted uses of a specific district.⁹

[*P29] Section 14 of the ordinance governs the rural residential district in which Poland Spring's facility would be located. It sets out the general purposes of the district, specifies that its location is established on the official zoning map, gives specific dimensional requirements for various types of projects, and references the uses specifically permitted in the district. Nowhere is there any reference to the comprehensive plan. Section 5(D) applies to all ten districts governed by the ordinance. In this case, the natural construction of section 5(D)'s "requirements of the district involved" clause is that it means the requirements **[***20]** of section 14, not a potential requirement found in the comprehensive plan or some other external source. See [Gensheimer v. Town of Phippsburg, 2005 ME 22, P 22, 868 A.2d 161, 167](#) (stating that "the terms or

⁸ Provisions in a comprehensive plan can be given regulatory effect through purposeful incorporation into a land use ordinance. See, e.g., [Ogunquit Sewer Dist. v. Town of Ogunquit, 1997 ME 33, P 7, 691 A.2d 654, 657](#) (statute specifically gave comprehensive plan regulatory effect along with ordinance). The Fryeburg comprehensive plan/land use ordinance scheme does not do so.

⁹ The separately enumerated districts are: village residential, village commercial, outlying village residential, residential-commercial, outlying residential-commercial, general commercial, industrial, mobile home park overlay, rural residential, and wellhead protection overlay.

expressions in an ordinance are to be construed reasonably with regard to . . . the general structure of the ordinance as a whole" (quotation marks omitted); also stating that when construing an ordinance, "we look first to the plain language of the provisions to be interpreted").

[*P30] In sum, because the statutes, the comprehensive plan, and the ordinance are consistent in pointing to the ordinance as the source of the requirements Poland Spring had to meet in order to obtain a permit, the Superior Court erred in imposing a criterion not found in the ordinance.

D. Sufficiency of the Evidence

[*P31] The Planning Board decided in 2005 that Poland Spring met the requirements of the ordinance and issued the permit; in 2007 it did not revisit the ordinance's requirements, rather it decided only that Poland Spring did not satisfy the additional "low impact" criterion considered as a result of the Superior Court's remand and therefore denied the permit. Because the court erred in remanding the matter **[***21]** once it concluded that substantial evidence supported the Planning Board's **[**712]** finding that the requirements of the ordinance had been satisfied, the actions taken by the Planning Board in 2007 were nugatory.¹⁰ See [Brckett v. Town of Rangeley, 2003 ME 109, P 27, 831 A.2d 422, 430](#) (Alexander, J., concurring) (**HN12**) "When a public officer or agency exceeds its statutory authority or proceeds in a manner not authorized by law, its resulting orders, decrees or judgments are null and void"). Accordingly, we turn to a review of the Planning Board's original decision.

[*P32] Throughout the permitting process, both the Fryeburg Board of Appeals and the Superior Court acted only in an appellate capacity. We therefore review the Planning Board's 2005 decision directly for "abuse

¹⁰This case is distinguishable from *Carroll v. Town of Rockport*, where we said that "no local decision-making process can be considered over until it is over." [2003 ME 135, P 18, 837 A.2d 148, 154](#). *Carroll* involved several decisions and subsequent changes of mind by the Rockport planning board and board of appeals. At the conclusion of that process, there was an appeal to the Superior Court. The unremarkable point we made in *Carroll* was that a party cannot appeal until there is a final local decision. Here there was a final local decision--the Planning Board approved the permit in 2005, the Board of Appeals reversed, and then **[***22]** there was an appeal to the Superior Court. Applying *Carroll*, at that point the process was over at the local level.

of discretion, errors of law, or findings not supported by substantial evidence in the record." [Griswold, 2007 ME 93, P 9, 927 A.2d at 414](#) (quotation marks omitted); see [Gensheimer, 2005 ME 22, PP 7, 16, 868 A.2d at 163, 166](#) (stating the general rule that **HN13**) "[w]hen the Superior Court acts as an appellate court, we review directly the operative decision of the municipality" (quotation marks omitted); also stating that **HN14**) "[when] the proper role of the Board of Appeals . . . is appellate review, the decision of the Planning Board is the operative decision of the municipality" (quotation marks omitted)). **HN15**) Substantial evidence exists "when a reasonable mind would rely on that evidence as sufficient support for a conclusion." [Griswold, 2007 ME 93, P 9, 927 A.2d at 414](#) (quotation marks omitted).

[*P33] **HN16**) The Planning Board's factual findings are reviewed deferentially; we do not substitute **[***23]** our own judgment for that of the Board. [Id., 927 A.2d at 414-15](#). To the contrary, "[t]he fact that the record before the Board is inconsistent or could support a different decision does not render the decision wrong; the Board's decision should be vacated only if no competent evidence exists in the record to support it." [Id., 927 A.2d at 415](#). In contrast to the deferential review accorded the Planning Board's factual findings and conclusions, its interpretation of the ordinance to which those facts are applied presents a question of law subject to de novo review. [JPP, LLC v. Town of Gouldsboro, 2008 ME 194, P 8, 961 A.2d 1103, 1105](#).

[*P34] In its 2005 written decision, the Planning Board recognized its obligation to apply the land use ordinance impartially, and identified the applicable provision as section 5(D), governing omitted uses:¹¹

[713]** [Poland Spring's] application has clearly raised concerns by residents in the general proximity of the proposed use. Significant activity to oppose the use has been generated and has been

¹¹Poland Spring and the Town agree that section 5(D) governs Poland Spring's permit application. In a letter to the Planning Board dated October 25, 2007, WMRRL also appeared to agree by saying: "Nestle's trucking facility is an 'omitted use' as that term is used in the Fryeburg Land Use Ordinance . . . because 'trucking facility' is not listed on the Land Use Table." In its brief to this Court, WMRRL now argues that the proposed use should have been classified as "processing goods" and thus automatically barred in the rural residential district. To the extent WMRRL's position **[***25]** was not abandoned at oral argument, we find it to be unpersuasive.

reflected in the input at Planning Board meetings and in the public hearing on the application. The Board notes also, that a number of residents have supported the use.

. *****24**. . While the concerns expressed are deeply believed by their proponents, the Board must apply the Ordinance, and not treat the relative positions of citizens and the applicant as a referendum, with a decision based on the weight of opinion, rather than the provisions of the Ordinance itself.

The core concern of the opponents to this application relate to allowance of the proposed use in a rural residential zone. As indicated below, the Board decisions are based on Section 5D of the [ordinance]--Uses Omitted from the Land Use Table. In applying this section, the Board must deal with the Ordinance as it exists today.

[*P35] [HN17](#)[↑] Section 5(D) required the Planning Board to determine whether Poland Spring had shown that (1) the soils, location and lot were suitable for the loadout facility; (2) the facility would not unreasonably interfere with adjacent landowners' use and enjoyment of their property; (3) the use would conform to "all other requirements of the district involved"; and (4) the facility met the performance standards of section 16 of the ordinance. The Board's findings on each of these requirements are discussed below.

1. Soils, Location and Lot

[*P36] The Planning Board found that the proposed project satisfied the soils, location and lot requirements based on information in the permit application and a geotechnical report submitted by an engineering firm advising Poland Spring. In its brief, the Town concedes that "[t]he Court may assume the soils and lot size are suitable for the project."

[*P37] The permit application included a significant amount of information concerning access control and traffic, landscaping and screening, erosion control, stormwater runoff, and environmental impact. The submission was accompanied by numerous detailed drawings *****26** prepared by the engineering firm showing the specifics of the plan. The information before the Board provided substantial evidence to support its finding that the project satisfied this provision.

2. Unreasonable Interference With Adjacent Landowners

[*P38] Putting "primary focus on the concerns of abutting landowners," the Planning Board found that the measures proposed by Poland Spring, coupled with the conditions the Board attached to the permit, resulted in the project avoiding unreasonable interference with nearby landowners. Specifically, the Board found:

(1) The project, located at least 300 feet from the nearest residence, ¹² would not be visible from the road or from adjacent residential properties. Those buffers "substantially exceed the required setbacks for a rural residential use, and for any other use within Fryeburg zoning districts";

(2) There was no evidence that exhaust fumes would likely be transmitted through the vegetative barrier around *****714** the facility given Poland Spring's indication that its drivers do not idle their vehicles while waiting to be filled or while filling. The "actual period of engine operation while the trucks are on site is quite limited";

(3) With respect *****27** to lighting, in addition to the ordinance standards already in place, Poland Spring indicated that limited lighting would be used consisting of "cut-off" fixtures that would not reflect beyond the boundaries of its lot;

(4) The Board was satisfied that the project would meet the ordinance's noise requirements by an extensive noise study submitted by a professional engineer. The study concluded that "noise sources likely to be regulated by the Fryeburg Land Use Ordinance will generate sound levels at or below the applicable sound level limits without additional noise mitigation";

(5) Any impact on property values would be speculative, therefore the Board could not find that such a potential impact constituted unreasonable interference;

(6) Poland Spring agreed to finance signs through the Maine DOT prohibiting engine braking in the area, and agreed to instruct its drivers not to use engine braking; and

(7) The project would occupy a cleared area consisting of three acres out of a 59.3 acre site, and would be buffered on all sides. The remainder of the parcel would be left in tree growth.

[*P39] Beyond the measures proposed by Poland Spring, the Planning Board attached twelve conditions

¹²A noise study submitted to the Board indicated that the closest residence was approximately 625 feet *****28** from the proposed facility.

to the permit designed to reduce the impact of the loadout facility. They included construction of a 14 foot-high noise attenuation barrier to be approved by the code enforcement officer (CEO); a requirement that Poland Spring work with adjacent landowners to minimize any glare from lighting; a requirement that Poland Spring erect signs prohibiting engine braking and bar its drivers and contractors from using engine braking; the erection of appropriate entry/exit signs on Route 302; construction of a ten-foot shoulder along the approach/entry/exit portion of Route 302; financing a post-occupancy study to be commissioned by the Board, with a fair contribution toward the remediation of any deficiencies identified; introduction of a "Share the Road" educational effort; maintenance of the parcel in tree growth, except for the portion actually used for the facility; limits on truck loading events at the facility--two per hour during the hours of 6:30-8:30 A.M., 2:30-3:30 P.M., and 5:00-7:00 P.M., four per hour otherwise, with a maximum of fifty per day; mandatory water *****29** loading reports to the CEO and mandatory inspections of the facility by the CEO; and construction of the water pipeline according to Maine Department of Environmental Protection "best management practices," as verified to the CEO by an independent professional peer review.

***P40** The Planning Board also noted that the ordinance provides for the possibility of uses other than residential use in the rural residential district, and therefore determined that a subjective expectation by landowners that only residences would be permitted did not by itself create an unreasonable interference with their use and enjoyment of their property. Finally, while the Board discussed the project's traffic impact in detail in its consideration of whether the project satisfied the requirements of section 16 of the ordinance, it concluded that highway safety on Route 302, a state highway, was not a basis for finding unreasonable interference with the use and enjoyment of private property.

P41** *715** Giving proper deference to the Planning Board's fact-finding, on this record we cannot say that the Board's decision on this point was not supported by substantial evidence.

3. Requirements of the District Involved

P42** As discussed **30** above, we construe [HN18](#) the "requirements of the district involved" clause of section 5(D) to mean the requirements of section 14 of the ordinance, a conclusion assumed by

the Planning Board.

***P43** The Board found that the project met the dimensional standards of section 14, a finding that no party has challenged. After some debate, the Board decided that it needed to consider the purpose clause of section 14 as well. It found that Poland Spring's proposal was consistent with the stated purpose of the rural residential district in four ways:

(1) The project was a "natural resource based" business. The Board found that the project was centered around water as a commodity, like timber harvesting or mineral extraction, which are specifically allowed uses in the district;

(2) The project furthered "land in the Tree Growth tax classification and other forest land" by maintaining fifty-six of the fifty-nine acres in the parcel as forested;

(3) The project "maintain[ed] [a] rural land use pattern" by limiting its geographical and visual impact in a way similar to other currently-existing uses; and

(4) The project was a "non-intensive . . . business[]" interspersed among large open spaces." The Board based *****31** this finding on the permit restrictions limiting truck loading events to two per hour during peak school bus and commuting times, and four per hour otherwise, with a maximum of fifty per day. The Board noted that for eight months out of the year, the expected number of loads would average twenty-two per day.

***P44** Of these four findings, the Superior Court addressed only the first and last, ruling that the proposed facility was not a natural resource-based business before concluding that substantial evidence supported the Planning Board's "non-intensive" finding. The purpose statement of section 14 is a list of broadly-described goals; it does not assign particular weight to any single consideration. Given the Board's factual findings made when analyzing the impact of the project on adjacent landowners, which are supported by substantial evidence, its conclusion that the project was consistent with the purpose of the rural residential district was not erroneous.

4. Requirements of Section 16

P45** Section 16 of the ordinance sets out general performance standards applicable to any land use or building project. The Planning Board made findings on each of the section's twenty categories, concluding **32** that Poland Spring's proposal met the

standards. The Superior Court agreed, as does the Town on appeal.

[*P46] The provision of section 16 most in controversy was section 16-B, dealing with access control and traffic impact. The Board considered a traffic impact study prepared by an engineering firm and submitted with Poland Spring's original application, as well as a technical traffic peer review conducted at the Town's request by an engineering firm not connected with the project. The study concluded that the project presented no major traffic concerns, and the peer review generally **[**716]** agreed with that assessment.¹³ Taking into account the data compiled by the two engineering firms, the Planning Board made detailed findings and concluded that the project complied with section 16-B. The engineering studies provide competent evidence to support the Board's conclusion.

[*P47] In sum, then, the Planning Board's finding that Poland Spring's proposed project complied with the requirements of section 5(D) of the Fryeburg land use ordinance was supported by substantial evidence in the record, and the Board's analysis reveals no error of law.¹⁴ Accordingly, the Superior Court erred in not affirming the Planning Board's decision to grant Poland Spring a land use permit.

The entry is:

Judgment vacated; remanded for entry of judgment affirming the Fryeburg Planning Board's approval of the land use permit.

End of Document

¹³Discussing an issue separate from the potential traffic impact of the Poland Spring facility, the peer review study expressed concern about the physical condition of a portion of Route 302, which it opined might have contributed to a high number of "lost control" crashes occurring on that segment. The Board used suggested improvements **[***33]** from the peer review study in fashioning conditions on the permit.

¹⁴WRRRL contends that the Planning Board's forced recusal of its chair in 2007 for a potential conflict of interest invalidates its 2005 decision, in which that member participated. As the Superior Court noted, assuming *arguendo* that the member should have been recused in 2005, his participation did not affect the outcome of the 4-1 vote to approve the permit. We decline WRRRL's invitation to find that the single member imposed his will on the other members of the Board, and we do not address the issue further.

Jason J. Theobald, Esq.
jtheobald@curtisthaxter.com

September 1, 2020

VIA ELECTRONIC AND REGULAR U.S. MAIL

Planning Board
Town of Berwick
11 Sullivan Street
Berwick, ME 03901
c/o planning@berwickmaine.org

Re: 11 Pond Road - Conditional Use and Site Plan Review

Dear Members of the Town of Berwick Planning Board,

As you are aware, this law firm represents Alyson and Jerry Graybill (the “Graybills”), owners and residents of 10 Pond Road, in Berwick, Maine, in regards to the above-referenced application. This letter is a response to the letter submitted to the Planning Board by the attorney for applicant CAF Realty of Maine, LLC (the “Applicant”), dated July 15, 2020,¹ regarding the Applicant’s site plan and conditional use application for an adult-use marijuana cultivation facility.

The July 15, 2020 letter from the Applicant’s counsel argues the Planning Board should not consider the Town of Berwick Comprehensive Plan as part of its Conditional Use and Site Plan Review. Counsel’s assertion ignores the plain and unambiguous language of the Town of Berwick’s Land Use Ordinance, mischaracterizes and incorrectly analogizes certain case law, and ignores more recent case law regarding consideration of comprehensive plans. Furthermore, in their presentations to the Board at the Public Hearings, the Graybills have pointed to specific and definite provisions of the Comprehensive Plan that the Applicant has failed to meet and support the denial of its application.

A. The Planning Board must consider the Comprehensive Plan as part of its Conditional Use and Site Plan Review.

In their letter, counsel for the Applicant relies on the case of *Nestle Waters N. Am., Inc. v. Town of Fryeburg*, 2009 ME 30, 967 A.2d 702, for the proposition that the Town of Berwick Comprehensive Plan cannot be the basis for determining whether to grant or deny site plan or conditional use permits. However, the holding in that case is inapplicable to the facts of this

¹ Though the letter from the Applicant’s counsel is dated July 15, 2020, the letter was not provided to abutting property owners until August 28, 2020.

case. In *Nestle Waters*, the Town of Fryeburg’s land use ordinance provided that a proposed use shall be permitted upon a showing that “the use will conform to all other requirements of the district involved...” 2009 ME 30, ¶ 3, 967 A.2d 702. The Maine Superior Court had held that the language regarding “other requirements” incorporated by reference the town’s comprehensive plan. *Id.* ¶¶ 8-13, 28. The Maine Law Court, however, reversed the lower court and held that the “all other requirements of the district involved” language did not incorporate the town’s comprehensive plan or any other external into the land use ordinance. *Id.* ¶ 29.

Unlike the ordinance language in *Nestle Waters*, the Town of Berwick Land Use Ordinance unambiguously incorporates the Comprehensive Plan as follows:

I. Performance Standards for Conditional Use and Site Plan Review.

1. The following standards are to be used by the Planning Board in judging applications for site plan review and conditional use applications and shall serve as minimum requirements for approval of the application. The site plan shall be approved, unless in the judgment of the Planning Board the applicant is not able to reasonably meet any of these standards. In all circumstances the burden for proof shall be on the applicant and such burden of proof shall include the production of evidence necessary for the Planning Board to review the application.

a. Conformance with Comprehensive Plan: ***All proposed conditional uses and site plans shall conform to the Comprehensive Plan of the Town of Berwick...***

Berwick, Me. Land Use Ordinance § 9.8(I)(1)(a) (July 14, 2020) (emphasis supplied). Thus, the Town of Berwick’s Land Use Ordinance explicitly makes the Comprehensive Plan part of its conditional use and site plan standards.

The Town of Berwick’s Land Use Ordinance is more analogous to the ordinance analyzed by the Court in *Rommel v. City of Portland*, 2014 ME 114, 102 A.3d 1168. In that case, the City of Portland’s ordinances permitted property owners to seek conditional or contract rezoning. *Id.* ¶¶ 5-6. The ordinance provided, “Nothing in this division shall authorize either an agreement to change or retain a zone or a rezoning which is inconsistent with the city’s comprehensive plan.” *Id.* ¶ 6. In other words, the City’s ordinance explicitly permitted conditional or contract rezoning that is consistent with its comprehensive plan. *Id.* ¶ 13. The Court upheld an applicant’s request for rezoning in *Rommel* because the request “was consistent with the comprehensive plan as a whole, and struck a reasonable balance among the competing goals of the plan.” *Id.* ¶ 19.

Here, like the ordinance in *Rommel*, the Town of Berwick’s Land Use Ordinance expressly incorporates the Comprehensive Plan into its Performance Standards for Conditional Use and Site Plan Review. Therefore, the Planning Board must consider whether the Applicant’s

proposed adult-use marijuana cultivation facility conforms with the Town of Berwick's Comprehensive Plan.

B. The Graybills have identified specific and definite provisions of the Comprehensive Plan that the Applicant has failed to meet.

In their July 15, 2020 letter, counsel for the Applicant also asserts that the Performance Standards for Conditional Use and Site Plan Review set forth in the Town of Berwick's Land Use Ordinance are the only standards that apply to the Applicant's request for site plan and conditional use approval. Counsel for the Applicant asserts that those standards apply because they are sufficiently specific and measurable. *See Gorham v. Town of Cape Elizabeth*, 625 A.2d 898, 902 (Me. 1993). The Graybills agree that the performance standards set forth in § 9.8(I) of the Land Use Ordinance apply to Applicant's request for site plan and conditional use approval, including § 9.8(I)(1)(a), which explicitly requires, "***All proposed conditional uses and site plans shall conform to the Comprehensive Plan...***" Berwick, Me. Land Use Ordinance § 9.8(I)(1)(a) (emphasis supplied).

Under § 9.8, the burden to produce sufficient evidence demonstrating that all performance standards are met is placed squarely on the applicant. *See Berwick, Me. Land Use Ordinance § 9.8(I)(1)*. The Applicant in this matter has not met that burden. In their presentations to the Planning Board at the public hearings, the Graybills have identified specific and definite provisions of the Comprehensive Plan, which the Applicant has not met.

Specifically, the Graybills identified the Comprehensive Plan's provisions regarding Commercial Activity along Routes 4, 9, 236 and the Village District. The Comprehensive Plan makes clear that its intent is to promote commercial activity and development along Routes 4, 9, 236 and the Village District:

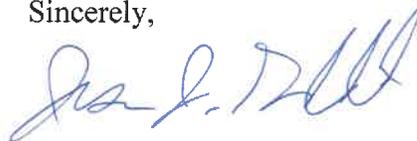
- Berwick, Me. Comprehensive Plan, Goals and Policy Statement, p. 46, § 4.1A (May 21, 1991): "Determine possible new sites for commercial and industrial parks adjacent to the village with direct access to Route 236, Route 9 and Route 4 that would not conflict with residential areas.";
- Berwick, Me. Comprehensive Plan, Table II-5, Growth and Rule Areas, p. 68, ¶ 4: describing the RC/I District as "Mixed use area near S. Berwick Village along Route 4 corridor and railroad for commercial activity..." (emphasis supplied);
- Berwick, Me. Comprehensive Plan Revision to Table 11-16 (May 18, 2004), p. 2, ¶ 5.1: "Allow industrial/commercial development along Route 236 and route 9..."; and
- Berwick, Me. Comprehensive Plan Revision to Table 11-16, p. 2, ¶ 7: "Work with North Berwick and South Berwick to promote acceptable industrial/commercial growth along Route 4."

The proposed adult-use marijuana cultivation facility is not located along Routes 4, 9, or 236 and is not located in the Village District. Therefore, it does not conform to these specific and definite provisions set forth in the Town of Berwick Comprehensive Plan. Accordingly, the proposed adult-use marijuana cultivation facility does not meet the conditional use and site plan standards set forth in § 9.8(I) of the Town of Berwick Land Use Ordinance.

C. Conclusion

Based on the foregoing, and for all reasons presented to the Planning Board during the public hearings and the prior written submissions of the abutting neighbors, the Graybills request that the Planning Board vote no, and deny the application for conditional use and site plan review.

Sincerely,



Jason J. Theobald

cc: Clients
James Bellissimo, Berwick Town Planner (jbellissimo@berwickmaine.org)
Keith P. Richard, Esq. (krichard@lokllc.com)

September 2, 2020

Planning Board
Town of Berwick
11 Sullivan Street
Berwick, ME 03901

Re: 11 Pond Road Marijuana Production Facility

Dear Members of the Planning Board,

In reviewing the packet, we respectfully ask for your consideration of the following:

1. Clarification for the public file that the applicant will not be processing at the facility. The application states that “growing, harvesting and processing” will occur on site. Based on a conversation with Alison Moody from the DEP, James Bellissimo and Jerry Graybill, if the business at 11 Pond Rd is processing marijuana, then a different DEP permit is required. MJS Engineering clarified with James that processing/extraction would not occur on site. Since the application states that processing will occur, we respectfully request that the conditions of approval state that the Town and the DEP be notified if processing/extraction will occur at the facility to ensure compliance with the Berwick Land Use Ordinance and DEP regulations.
2. As previously stated, we are concerned about the emittance of strong odor from the building. We are very appreciative that the Town is requiring the condition that a negative pressure system be installed. However, the existing condition only states that the applicant “shall submit proof of purchase of carbon filtration and the equipment required to produce a negative pressure environment.” We respectfully request that the condition state that a negative pressure system shall be installed as referenced in the Shaheen & Gordon letter dated September 2, 2020. We request that the Board consider requiring the applicant to submit to the Town the design of a negative pressure system and building envelope means for construction of a facility that will keep the smell inside.
3. We ask the Board to consider reducing the resolution time for odor violation from five business days to 2 calendar days. The five working days can turn into a week if the problem occurs on a Friday.

Thank you for your consideration of the above items. We are opposed to this project and respectfully request the Board decline this application.

Sincerely,

Jerry and Alyson Graybill
10 Pond Road
Berwick, ME

To whom it may concern:

In regards to the letter from CAF Realty dated July 15:

CAF Realty claims to be providing tax base and employment for the town, but according to town official estimates, the only tax revenue will be an increase of property taxes on 11 Pond Rd. by \$5,300, at the cost of abutters home values. There will be not be significant job creation as the applicants have two established growers who are simply switching job locations for the same employer. (Statement per those very growers).

CAF Realty claims to have, "submitted competent evidence establishing that it has met the criteria for a conditional use permit." It hasnt. It cant even be trusted to submit accurate measurements of the necessary distances between its proposed buildings and surrounding ones (schools) time and time again. In addition, I do not believe all issues raised were responded to in the PEER review.

CAF Realty claims their, "facility will have charcoal filters and will not discharge to the exterior with exhaust fans." But according to page 2 of their provided letter they were asked by the town to, "Odor control (ensure the building is also equipped with negative pressure [vacuum])" so again they have not met all the conditions and are claiming to. This time it is admitted by their legal representation.

The planning board did not add the lines, "The purpose of this ordinance is to promote the health, safety, and general welfare of the residents of the town", to the land use ordinance. It is online for everyone to see, that is where I found and raised the issue from, not the planning board. I would also have a hard time imagining, despite supposed precedent, that a court system would rule it "unconstitutional" for a town to protect is inhabitants.

I would also be remiss to not point out the logical fallacy of their claims that the Comprehensive Plan not be used for guidance, but the Land Use Ordinance instead; and then later on in the same letter attacking and asking that part of the Land Use Ordinance not be used either. Since this permit is "conditional" something has to be used to determine those conditions.

I also wish to state my complete agreement with Mr. Amatucci in the third point of his most recent letter regarding Mr. Ayers professionalism and treatment of our neighbors.

Ben Gauthier
2 Pond Rd

September 2, 2020

Via email at planning@berwickmaine.org

Berwick Planning Board
Town of Berwick
11 Sullivan Street
Berwick, ME 03901

Re: CAF Realty of Maine, LLC – Site Plan and Conditional Use Applications

Dear Members,

This letter is a follow up to our letter to the Berwick Planning Board dated July 15, 2020 (respectively “July 15, 2020 Letter” and “Planning Board”). We have recently learned that the July 15, 2020 Letter, although timely submitted, was not provided to the Planning Board until August 27, 2020, after the August 20, 2020 hearing. We also note for the record that the July 15, 2020 Letter was not provided to the public via the town web site until August 31, 2020.

The July 15, 2020 Letter was a response to comments made by two Planning Board members during the June 4, 2020 meeting. In particular, one Planning Board member read from a provision of the Comprehensive Plan and asserted that CAF Realty’s proposal would have town-wide negative impact, while another member stated that he was not in favor of the application because it could adversely affect the health, safety and welfare of the Town.¹ In response to these comments, we submitted the July 15, 2020 Letter, explaining the correct legal standard for considering the CAF Realty proposal. The July 15, 2020 Letter also includes aerial photographs which show the proximity of the CAF Realty property to Route 4 and the distance between the rurally located houses.

At the August 20, 2020 meeting, public comments again focused upon the Comprehensive Plan, with abutters referring to pages 10-11, 45 (policy objective is preserve intangible aspects), 46 (4.1 a goal objective), 57 (fiscal capacity goal is to increase tax base without compromising small town atmosphere), 67 (goal is compatibility of adjacent land uses), and 2004 Revised Table 11-16, 5.1 and 7. Because the Planning Board Chairman suddenly recused himself, we were unable to respond, and only learned after the hearing that the July 15, 2020 Letter had not been circulated.

We raise Berwick’s handling of the July 15, 2020 Letter because we believe it is error as a matter of law for the Planning Board to consider the Comprehensive Plan when acting upon CAF Realty’s application. We want the record to show that we raised this objection early and often. *Pearson v. Town of Kennebunk*, 590 A. 2d 537 (Me. 1991).

¹ Planning Boards must base their decisions upon relevant evidence, and not whether something “could” happen.

CAF REALTY PROCEDURAL STATUS

CAF Realty, LLC (“CAF Realty”) submitted Site Plan and Conditional Use Permit Applications on February 5, 2020. CAF Realty proposes to establish a marijuana cultivation facility on the northerly side of Pond Road. There have been four public hearings on CAF Realty’s application: March 5, 2020; April 9, 2020; June 4, 2020; and August 20, 2020. In addition, the Planning Board retained services of a third-party engineer, whose costs were paid for by CAF Realty.

CAF Realty’s property is located within the Rural Commercial/Industrial District which allows for a wide range of uses. These allowed uses, either by right or conditional use, include residential, daycares, churches, automobile service/motorcycle repair business, motels, kennels, auto graveyards/junkyard/auto recycling, mineral extraction and waste facility. *See* Land Use Ordinance, Land Use Table at p. 34-38.

Between the June 4, 2020 hearing and the August 20, 2020 hearing, CAF Realty received DEP Stormwater Permit by Rule approval. On August 18, 2020, James Bellissimo, Director of Community Development and Planning submitted a Memorandum and proposed Conditions Use Findings of Fact for the Planning Board’s review (“Planner’s Memorandum”). *See* Exhibit A. In almost every instance, the Planner’s Memorandum lists all other issues as resolved. In particular, Mr. Bellissimo noted: the easement will need to be resolved before a building permit will be granted for Phase II, the DEP permit by rule was approved, protections for the septic pipe have been reviewed by a third party reviewer and no issues were found, the fire and police department have been notified and no concerns were raised, the building is not in the wetlands buffer zone, the water will be tested annually, negative pressure environment will be required, and the 1000 foot setback has been met. *See* Exhibit A at p. 2. According to the Planner’s Memorandum, the only remaining unresolved issue was whether the CAF Realty proposal conformed with the Comprehensive Plan.²

Mr. Bellissimo also submitted a draft Conditional Use Findings of Fact dated August 20, 2020 (“Planner’s Findings of Fact”). *See* Exhibit B. The Planner’s Findings of Fact lists the nineteen Performance Standards for Conditional Use and Site Plan Review specified in the Berwick Land Use Ordinance. *See* Ordinance at §9.8, I, 1. In almost every instance, Mr. Bellissimo responded to each standard by reciting facts which showed how CAF Realty’s proposal met the standard.

In particular, Mr. Bellissimo noted: no trees were being removed, the proposed buildings are one story, the site layout has safe access and egress to Pond Road, two-way traffic is proposed for the interior of the lot, a bioretention basin is proposed, conditions of approval will

² The Memorandum states: “1. The following Planning Board determination: Conformance with the Comprehensive Plan. All proposed conditional uses and site plans shall conform to the Comprehensive Plan of the Town of Berwick and with the provisions of all pertinent federal, state and local codes, ordinances, and regulations.” *See* Memorandum from James Bellissimo to Berwick Planning Board dated August 18, 2020.

ensure water quality is met, no signage would be installed, there were no special features to the development, lighting will be pointed downward, the driveway was widened to 20 feet as requested by the Berwick Fire Department, a holding tank is proposed, water supply was sufficient, the project will not cause soil erosion, a new septic system has been installed, and the building is not located in a rare or irreplaceable area. *See Exhibit B at p. 2-4.* According to the Planner's Findings of Fact, the only issue left unresolved was whether CAF Realty's proposal "[c]onform[ed] with the Comprehensive Plan." *See Exhibit B at p. 2.* According to Mr. Bellissimo, the Berwick Land Use Ordinance was amended after 2015 to include this requirement.

During the August 20, 2020 public hearing, various abutters spoke in opposition citing the Comprehensive Plan as a basis for their objections and as recited above. Counsel for one abutter argued that the Planning Board should just deny the application because the burden on appeal would fall on the applicant's shoulders.

At the conclusion of the public hearing, the Board Chair raised for the first time that he might have a conflict of interest and could not sit on this matter. After suspending the public hearing and consulting with counsel, the Board Chair recused himself from this matter. After the recusal, the Planning Board did not have a quorum and this hearing was continued until September 3, 2020. Prior to the continuance, one Planning Board member requested instruction from town counsel regarding the duties of the Planning Board.

THE BERWICK PLANNING BOARD AND THE COMPREHENSIVE PLAN

Mr. Bellissimo has been with the Town of Berwick for almost four years. He states that he is not aware of any occasion where the Planning Board denied any conditional use application based upon whether the application conformed to the Comprehensive Plan. He is not aware of any other time when the Planning Board has discussed the Comprehensive Plan in regards to an application.

In 2020, the Planning Board approved four other marijuana facilities within the RC/I zoning district. In all instances, there is no evidence in the minutes that the Planning Board even considered whether the applications conformed to the Comprehensive Plan.

Tri-Cann submitted a Conditional Use Application for an Adult Use Marijuana Storefront in the RC/I zoning district. Tri-Cann's application was approved on January 16, 2020. Even though there is no evidence in the minutes that the Planning Board considered whether the application complied with the Comprehensive Plan, the Statement of Findings states: "The application conforms to the Comprehensive Plan because it is permitting an appropriate commercial use within the RC/I zoning district." *See Exhibit C.*

Straight Fire Farms submitted a Conditional Use Application for an Adult Use Storefront and Adult Use Production Facility in the RC/I zoning district. Straight Farm's request was granted on February 20, 2020. Even though there is no evidence in the minutes that the Planning Board considered whether the application complied with the Comprehensive Plan, the Statement

of Findings states: “The application conforms to the Comprehensive Plan because it is permitting an appropriate commercial use within the RC/I zoning district.” *See* Exhibit C.

Silver Therapeutics submitted a Conditional Use Application for an Adult Use Marijuana Storefront in the RC/I zoning district. Silver Therapeutics’ request was granted on April 2, 2020. Even though there is no evidence in the minutes that the Planning Board considered whether the application complied with the Comprehensive Plan, the Statement of Findings states: “The application conforms to the Comprehensive Plan because it is permitting an appropriate commercial use within the RC/I zoning district.” *See* Exhibit C.

Herbal Pathways submitted a Conditional Use Application for an Adult Use Marijuana Storefront and Adult Use Cultivation Facility in the RC/I Zone. Herbal Pathway’s request was granted on August 6, 2020. Even though there is no evidence in the minutes that the Planning Board considered whether the application complied with the Comprehensive Plan, the Statement of Findings states: “The application conforms to the Comprehensive Plan because it is permitting an appropriate commercial use within the RC/I zoning district and it meets all pertinent federal, state, local codes, ordinances and regulations.” *See* Exhibit C.

Based on the above, CAF Realty’s application is the only matter in which the Planning Board has considered whether an application conforms to the Comprehensive Plan.

THE PLANNING BOARD SHOULD GRANT CAF REALTY’S APPLICATIONS

I. The Berwick Comprehensive Plan

Maine towns may manage growth through the adoption of a comprehensive plan consistent with statutory guidelines. 30-A M.R.S.A. § 4324(1). Comprehensive plan requirements include inventory and analysis sections, policy development and an implementation strategy. 30-A M.R.S.A. § 4326. An implementation strategy must contain

“a timetable for the implementation program, including land use ordinances, ensuring that the goals established under this subchapter are met. ... The timetable must identify significant ordinances to be included in the implementation program. The strategies and timetable must guide the subsequent adoption of policies, programs and land use ordinances and period review of the comprehensive plan.” 30-A M.R.S.A. § 4326(3).

Berwick adopted its 168-page Comprehensive Plan in 1991, at a time when its population was approximately 6,250. *See* Comprehensive Plan at p. 9. The only amendments to the Comprehensive Plan since 1991 have been an amendment to Table II-16 on May 18, 2004,³ and the addition of a Berwick Downtown Vision Report and Implementation Plan in 2014, focusing on the downtown or what is identified as the village center.⁴ Accordingly, the non-village centers portion of the Comprehensive Plan have not been updated since 2004.

³ There is reference in the Downtown Vision Report to the Comprehensive Plan also being revisited and updated in 2000. It is presumed that the 2004 updated and superseded the 2000 update.

⁴ The Berwick Downtown Vision and Implementation Plan was drafted after Prime Tanning closed.

A. The Berwick Comprehensive Plan is Visionary and Not Regulatory.

It is clear that that the Berwick Comprehensive Plan was a goal-oriented plan, and not intended as a regulatory document. Its purpose was to provide:

“a guide managing all aspects of the town to the year 2010. It is based upon Berwick residents’ and landowners’ expressed needs and **their aspirations** for the town that has resulted in part from a public opinion survey conducted early in 1990 and in part from public participation through the plans’ development. ... This plan provides: (1) **the basis for zoning and other land use ordinances**; (2) the basis for town-wide capital improvements planning and budgeting; (3) the basis for detailed plans for housing, historic preservation, village center revitalization, open space, recreation, transportation, town facilities and other public facilities and services in Berwick.” Berwick Comprehensive Plan at p. 1. [emphasis added]

The Comprehensive Plan contains town history and a summary analysis of the most pertinent features affecting Berwick into the 21st century. *Id.* at p. 3-31. These features include findings and analysis relative to population, household, labor force, economy, natural resources, transportation, public facilities, public services, education, fiscal capacity, cultural resources, and land use. *Id.* The Comprehensive Plan also includes a **Goals and Policies Statement** based upon 1990 town resident surveys. *Id.* at p. 43 – 64 [emphasis added]. Finally, the Comprehensive Plan provides “**a set of plans for future land uses** and public services and management of natural and cultural resources.” *Id.* at p. 65 [emphasis added]. The Comprehensive Plan also notes that “[t]he existing Rural Commercial/Industrial (RC/I) District is similar to the C/I District except it requires larger minimum lot sizes to account for the lack of public water and sewer services in the rural Route 4 corridor along the South Berwick border.” *Id.* at 72.

Recognizing that it is only aspirational and not regulatory, the Comprehensive Plan concludes by recommending

“**changes to Berwick’s land use and other ordinances** and to Berwick’s infrastructure through a capital improvements program. The Implementation chapter organizes the plan into a set of **future actions arranged by priority of importance**. These actions include **future studies**, detailed follow-up plans on specific topics, i.e., on open spaces, new ordinances, **amendments to existing ordinances**, and capital improvements. The Implementation Chapter describes **who will be responsible for accomplishing the implementation actions**.” *Id.* at p. 129 [emphasis added].

The Comprehensive Plan also includes a flow chart describing the Planning Process. *Id.* at p. 2. Phase I is inventory, Phase II is policy development, Phase III is plan formulation, and Phase IV is implementation program. Implementation program includes zoning, subdivision, site plan, and other land use regulations, impact fees, open space recreation and historic preservation.

The flow chart further demonstrates that the Comprehensive Plan is visionary, and not designed to implement.

Table II-16 provides Policies, Implementation Actions, Responsibility, Phase and Cost, with the Planning Board being responsible for a number of items. *Id.* at p. 121-146. Table II-17 contains an implementation schedule broken down into phases: June 1991- June 1992, 1992-1995, 1996-1999, and 2000-2010. *Id.* at p. 148-156.

As noted above, the 2004 amendments to the Comprehensive Plan only updated Table II-16, Policies and Implementation Strategies. *See* Revision to Table II-16 1991 Comprehensive Plan Adopted May 18, 2004 (“Revised Table II-16”). Revised Table II-16 was again merely aspirational and included Land Use, Strategy, Responsibility and Time Frame. Time frames vary from 2004-2005 to “**ongoing**”. *Id.* [emphasis added]. The Berwick Downtown Vision and Implementation Plan was adopted in 2014 and is likewise aspirational and not regulatory.

The Comprehensive Plan contains no regulatory provisions. A regulatory provision is one which directs, controls, or delineates allowable uses and the standards for those uses. 30-A M.R.S. § 4301(8). There are no such provisions in the Comprehensive Plan or any amendment to it. None of the abutters have appointed to such provisions, nor has any member of the Planning Board.

In 2009, the Maine Supreme Judicial Court directly addressed the issue of whether a comprehensive plan could be considered in the approval process by a Planning Board. In *Nestle Waters North America, Inc. v. Town of Fryeburg*, 967 A. 2d 702 (2000), the Supreme Judicial Court reversed the Superior Court’s decision which had relied upon a section in the Fryeburg Comprehensive Plan.

After examining the Fryeburg Comprehensive Plan, the Supreme Judicial Court determined it was a visionary, goal-oriented document and not regulatory. Fryeburg’s Comprehensive Plan described itself as a “guide for the future of our town,” “recognizes the planning process as a continuing process” and “is a statement of the community’s vision for the future”. *Id.* at 710. It recognized that further action was needed. *Id.* As noted by the Court, words such as “should,” “generalized,” “preferred” and “recommended” were words of suggestion, not commands of regulation.

As the Supreme Judicial Court described in *Nestle Waters*,

“The comprehensive plan and the land use ordinance are complementary, but their purposes are different. The plan sets out what is to accomplished; the ordinances sets out concrete standards to ensure that the plan’s objections are realized. The two are not interchangeable. **A comprehensive plan imposes an obligation on the town, but not on private citizens or applicants for permits.** It dictates how the town effectuates its land use planning obligations. The ordinance is the translation of the comprehensive goals into measureable requirements for applicants like Poland Spring.” *Id.* [emphasis added]

The Berwick Comprehensive Plan is similar to the Fryeburg Comprehensive Plan. It is aspirational, contains no words of command, speaks of future actions including amendments to the zoning ordinance and does not substitute in any way for the Berwick Land Use Ordinance. Based upon its own terms, it cannot be considered regulatory, and cannot be the basis for consideration of a conditional use permit. It is simply a plan which imposes obligations upon the Town and not on private citizens or applicants for permits.

B. The Berwick Comprehensive Plan is Outdated.

Moreover, the Berwick Comprehensive Plan was adopted in 1991, and only updated in 2004. Except for the Berwick Downtown Vision Statement and Implementation Plan, there have been no further revisions.

Almost sixteen years have passed since Berwick revised its Comprehensive Plan. During this time, Berwick through its legislative body adopted ordinances which allowed for numerous commercial and industrial uses within the RC/I district, including medical marijuana cooperatives, dispensary/storefronts, and production facilities and adult use production facilities and storefronts within the RC/I zoning district with a conditional use permit. By its actions and it is entitled to, the Berwick legislative body has, to the extent that its' actions are inconsistent with the Comprehensive Plan, superseded the Comprehensive Plan. A zoning ordinance is consistent with its parent comprehensive plan if it “[strikes] a reasonable balance among the [municipality’s] various zoning goals.” *LaBonta v. City of Waterville*, 528 A,2d 1262, 1265 (Me. 1987).

The Planning Board cannot look to the Comprehensive Plan because it is simply outdated.

C. Berwick cannot require conformity with the Berwick Comprehensive Plan as a condition for approval.

1. *The Comprehensive Plan provides no concrete standards for the Planning Board to apply.*

Zoning ordinances must provide specific enough standards for a board to follow when reviewing whether a permit or approval should be issued. Without standards, a board would have unlimited discretion in approving applications, violating the applicant’s equal protection rights.

“Where a zoning ordinance permits officials to grant or refuse permits without the guidance of any standard, but according to their own ideas, it does not afford equal protection. It does not attempt to treat all persons or property alike as required by the Zoning Act. While the exercise of discretion and judgment is to a certain extent necessary for the proper administration of zoning ordinances, this is so only where some standard or basis is fixed by which such discretion and judgement may be exercised by the board. Where a zoning ordinance is vague and indefinite, it cannot be sustained as valid under

the authorizing act.” *Waterville Hotel Corp. v. Board of Zoning Appeals*, 241 A. 2d 50, 52 (Me. 1968(citing *Taylor v. Moore*, 303 Pa. 469 (1931))).

Except for paragraph 9.8, I, a., the Berwick Land Use Ordinance provides specific standards for the Planning Board to apply, including preservation and enhancing the landscape, relationship of proposed buildings to the environment, adequate surface water drainage, minimal impact from exterior lighting, and will not adversely impact municipal services.

Paragraph 9.8, I, a., on the other hand, merely requires the application “conform to the Comprehensive Plan”, ignoring the fact that the 168-page, outdated Comprehensive Plan provides no specific standards for the Planning Board apply. Rather, abutters asserted that Comprehensive Plan goals and objectives should be treated as if they were concrete standards when they are not.

Moreover, the Comprehensive Plan goals are so expansive and broad so as to render them meaningless, and the Planning Board could pick and choose what it wanted to apply. For example, the Comprehensive Plan also includes the following:

“3.2 Encourage a balance between tax consuming development, i.e. residential growth, and tax producing developing, i.e. commercial and industrial growth, to prevent precipitous tax rate increases...4.4 Encourage new business and non-polluting manufacturing that will provide employment opportunities for the existing labor force...4.1c Through a set of performance standards work with businesses to minimize the environmental impacts of new business development on ground water quality, storm water quality, erosion control, air quality and noise.” Comprehensive Plan at 45-46.

Because there are no concrete standards in the Comprehensive Plan, the Planning Board cannot consider it.

II. *Berwick cannot delegate its legislative power to the Planning Board.*

“Since it is axiomatic no legislative body may delegate legislative powers to administrative officers, it necessarily follows, the powers of the Board of Appeals must be delimited by the standards provided by the legislative body...The governing rule, constitutionally mandated, may be simply stated as that in delegating powers to an administrative agency, the legislative body must spell out its policies in sufficient detail to furnish a guide which will enable those to whom the law is to be applied to reasonably determine their rights thereunder, and so that the determination of those rights will not be left to the purely arbitrary discretion of the administrator.” *Stucki v. Plavin*, 291 A. 2d. 508, 510 (1972).

When Berwick enacted an ordinance allowing for CAF Realty’s proposed use, it made a determination that the proposed use generally complied with the health, safety and welfare of the public and the essential character of the area *Cope v. Inhabitants of Town of Brunswick*, 464 A. 2d 223, 227 (1983). However, by requiring applicants to conform with an outdated, 168-page visionary and goal-oriented Comprehensive Plan which contains no concrete standards, it

allowed the Planning Board to roam at will through policy-making, picking and choosing between the goals and objectives found therein.

This is an improper delegation of legislative power because it allows the Planning Board to decide the legislative question anew: is Berwick going to allow CAF Realty's proposed use in the RC/I zoning district? "The delegation is improper if the Board is permitted to decide the same legislative question anew, without specific guidelines which permit the Board to determine what unique or distinctive characteristics of a particular apartment building will render it detrimental or injurious to the neighborhood....'[t]here should be no discretion in the Board of Appeals as to whether or not to grant the permit if the conditions stated in the ordinance exist. That determination should be made by the legislators.'" *Cope at 227*.

III. *CAF Realty is entitled to know what it must do under the zoning ordinance to obtain approval of its Conditional Use Permit application.*

Developers are entitled to know with reasonable clarity what they must do under local land use laws to obtain the permits or approvals they seek. *Kosalka v. Town of Georgetown*, 752 A.2d 183, 186 (2000). See also *Waterville Hotel Corp. v. Board of Zoning Appeals*, 241 A.2d 50, 53 (Me.1968); *Cope at 227* (Me.1983) (compliance with the "health, safety and welfare of the public and the essential character of the area" not sufficiently specific); *Shapiro Bros. Shoe Co. v. Lewiston-Auburn Shoeworkers Protective Ass'n*, 320 A.2d 247, 253 (Me.1974) (the public should not have to guess at the meaning of a statute "leaving them without assurance that their behavior complies with legal requirements").

In *Stucki*, the Maine Supreme Judicial Court struck down an ordinance which vested discretion in the zoning board of adjustment because the standards were not concrete and left the applicant asking, "What facts must I present to gain the Board's approval?" The *Stucki* Court concluded that "[i]f there is no language in the ordinance, which by reasonable interpretation answers these questions, the section under investigation is vague on its face." *Stucki* at 511. "The absence of standards to control authority delegated to the Board is inconsistent with

The Court also struck down the ordinance in *Wakelin v. Town of Yarmouth*, 523 A.2d 575 (Me. 1987) which required an applicant to prove that the proposed use would be "compatible with existing uses in the neighborhood, with respect to physical size, visual impact, intensity of use, proximity to other structures and density of development." In striking down the Yarmouth ordinance, the Court stated that "the lack of specific standards in the Yarmouth ordinance permits the Board to go beyond its proper quasi-judicial function. Rather than restricting itself to its narrow task of finding whether a proposed "special exception" use satisfies defined factual requirements, the Board can roam at large in policy-making." *Wakelin* at 577.

The Comprehensive Plan did not give CAF Realty notice of what it must do in order to obtain approval for its applications because it does not contain any concrete standards. CAF Realty cannot be denied approval based upon policy-making goals and objectives.

IV. NOTWITHSTANDING THE FOREGOING, CAF REALTY'S APPLICATION CONFORMS WITH THE COMPREHENSIVE PLAN.

Contrary to abutters' allegations, CAF Realty's proposed use complies with the Comprehensive Plan as amended by the Land Use Ordinance.

The proposed use will be conducted entirely within a barn-like structure and will preserve the rural quiet, absence of intrusive outdoor lights, and the sense of security which contribute to the rural character of Berwick. Comprehensive Plan at p. 45, ¶ 2.4.

Traffic to and from CAF Realty's property will not conflict with residential areas. *Id.* at p. 46, ¶ 4.1A.

The proposed use will increase the tax base without compromising Berwick's small-town atmosphere or open space. Again, the business will be conducted within barn like structures, and will not affect the small-town atmosphere. *Id.* at p. 57, ¶ 8.4C.

The proposed use is compatible with adjacent land uses and minimized conflicts. Adjacent land uses include residential. The proposed use is not inconsistent since this will be a small operation with limited employees and traffic. *Id.* at p. 67, Land Use Compatibility.

The 2004 Revised Table 11-16, 5.1 indicates that a land use policy was to "[p]rovide for expanded shopping opportunities near the Village Center, with direct access to one of the State roads." As a strategy, the 2004 Revised Table called for allowing "industrial/commercial development along Route 236 and Route 9 in areas that can be served by municipal water and sewer, and that would not negatively affect residential development or historic features." In addition to a variety of other reasons, this section is wholly inapplicable because CAF Realty is not proposing a shopping opportunity.

The 2004 Revised Table 11-16, 7 indicates that a land use policy was to "[c]reate a suitable environment to encourage industrial/commercial growth." The strategy was to "[w]ork with North Berwick and South Berwick to promote acceptable industrial growth along Route 4." Again, this section is wholly inapplicable since it speaks to working with North Berwick and South Berwick. Moreover, it is not exclusive, and cannot be viewed in any way as a restriction on CAF Realty's ability to develop its property. Finally, Berwick's legislative body has determined that CAF Realty's proposed use is allowed with a conditional use permit.

For the reasons cited above, CAF Realty's proposed use conforms to the Comprehensive Plan.

CONCLUSION

CAF Realty has participated in four public hearings on this matter. CAF Realty's proposal has been reviewed at its expense by an independent third-party reviewer. The Town Planner's memorandum and draft Findings of Fact indicate that the only condition left to be considered is whether CAF Realty's proposed use conforms with the Comprehensive Plan.

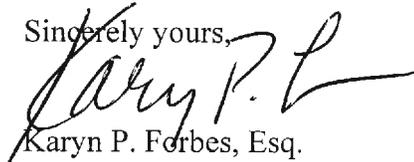
According to James Bellissimo, the Land Use Ordinance was amended to add conformance with the Comprehensive Plan approximately five years ago. Despite such addition, no application for conditional use has been denied based upon its failure to comply with the Comprehensive Plan. The Planning Board did not even discuss whether other applications for marijuana facilities in the RC/I zoning district conformed with the Comprehensive Plan when it granted approvals within the past few months.

The Comprehensive Plan contains no concrete standards by which the Planning Board can make a decision, or by which CAF Realty would know what it needed to prove in order to obtain approval. Conformance with the outdated, 168-page visionary and goal-oriented Comprehensive Plan is an improper delegation of legislative authority because it grants unfettered discretion to the Planning Board. It also fails to disclose to applicants such as CAF Realty what conditions it must meet in order to obtain approval. As a matter of law, the Planning Board is not free to roam through a policy-making document, picking and choosing goals and objectives to apply to one selected application. Approval is not based up a referendum of an applicant's neighbors.

Notwithstanding the foregoing, CAF Realty's proposed use conforms to the Comprehensive Plan for the reasons cited above.

We look forward to addressing these issues in person tomorrow night.

Sincerely yours,



Karyn P. Forbes, Esq.

cc Client

Jason Theobald at jtheobald@curtisthaxter.com

Keith P. Richard at krichard@lokllc.com

Mary Costigan at mcostigan@bernsteinshur.com

Exhibit A



PLANNING BOARD MEMORANDUM TOWN OF BERWICK, PLANNING DEPARTMENT

TO: BERWICK PLANNING BOARD
FROM: JAMES BELLISSIMO, DIRECTOR OF COMMUNITY DEVELOPMENT & PLANNING
SUBJECT: CAF REALTY – ADULT USE MARIJUANA PRODUCTION FACILITY CONDITIONAL USE
DATE: AUGUST 18, 2020
CC: JENIFER MCCABE; PHIL SAUCIER

A DEP Stormwater Permit by Rule was approved August 13th, 2020 with no further conditions. This Permit by Rule reviewed the drainage on the site plan and all associated stormwater features.

A future expansion building is now shown where an existing septic pipe easement is, this will have to be resolved before the Phase II building can be permitted. The access to the proposed Phase I building goes over the actual septic pipe. The plans for pipe protection are included in sheet D3.

Wellhead Protection

Staff spoke with Denise Douin of the DHHS Drinking Water Program. Ms. Douin said the primary risk of contamination comes from a buildup of nitrates. The proposed holding tank would mitigate that risk.

1,000-foot setback

MJS took their setback from the property line. Kind Farms proposed building is beyond the 1,000-foot requirement.



Third Party Review

Tidewater Engineer was our third-party review. Their scope included: review of protection measures for the construction of a road over the existing sewer force main; technical review of the drainage report; and other comments identified while reviewing the drainage report and plan set. MJS Engineering sent in a response sheet indicating they addressed all issues identified on the third-party review.

Summary of Issues

| Issue | Staff Comments | Status/ Recommendation |
|-------------------------------------|---|---|
| Septic easement | A septic easement is deeded in an incorrect location. The easement is currently where a proposed building is. | The easement will need to be resolved before a permit is granted for the Phase II building. |
| Driveway & Basin within buffer zone | The basin was reviewed by DEP and 3 rd party review | DEP permit by rule was approved. |
| Driving over the septic pipe | The plan was reviewed by a 3 rd party engineer. | Protections for the septic pipe have been reviewed by a 3rd party review and found no issues. |
| Public Safety | Both Fire & Police for both Towns have been notified. South Berwick has been aware of this project since Feb. 19 th | This concern is resolved. |
| Wetland Buffer Zone | The buildings have been moved out of the buffer zone and project scaled back from 4 buildings to 2 to fit in all the setbacks and buffers. | This concern is resolved. |
| Wellhead protection | The primary risk is nitrate concentration. The water will be tested annually for nutrient levels and pollutants. | This concern has been addressed. |
| Odor Control | Conditions of Approval were amended to include negative pressure. | This concern has been addressed. |
| 1,000-foot setback | The setback from Kind Farms is not surveyed but is taken from the property line. This is a conservative estimate, the Ordinance standard is building to building. | This concern is resolved. |

The following Conditions of Approval are proposed:

1. A water sample shall be tested for priority pollutants and nutrients before any cultivation wastewater is discharged into the septic, or to a holding tank, and then tested annually thereafter. Results shall be provided to the Town.
2. The South Berwick Water District shall be furnished with a detailed well drillers log for the new well.
3. A five-day pump test be performed on the well with well drawdown readings taken hourly until the well stabilizes. The Pump Test will be coordinated with the South Berwick Water District so the well drawdowns at Junction Road can be monitored to check for interference. The Facility may not irrigate their plants if the new well has an adverse effect on the Junction Road water source or abutter's water source.
4. The applicant shall submit proof of purchase of carbon filtration and the equipment required to produce a negative pressure environment.
5. If an odor violation is determined by the Code Enforcement Officer, the applicant shall resolve the issue within five business days. The Code Enforcement Officer may revoke the Certificate of Occupancy if the odor issues are not resolved within five business days.
6. If well water is contaminated with nitrates or other byproducts as a result of production beyond safe concentrations, the cost to remediate the nitrates or other contamination levels shall be at the applicant's (property owner) expense.
7. The building height shall be restricted to one story.
8. The septic pipe easement shall be moved before the future expansion will be granted a building permit.

Remaining:

1. The following Planning Board determination:

Conformance with the Comprehensive Plan: All proposed conditional uses and site plans shall conform to the Comprehensive Plan of the Town of Berwick and with the provisions of all pertinent federal, state and local codes, ordinances, and regulations.

2. Review of the rest of the findings

3. Planning Board determination on the application

Exhibit B

Town of Berwick Planning Board
Conditional Use Findings of Fact
 Applicant: CAF Realty
 11 Pond Road (Tax Map R-070, Lot 16)
 August 20, 2020

CAF Realty applied for a Site Plan & Conditional Use for an Adult Use Marijuana Productions Facility. A piece of the lot is in South Berwick, the Town was notified of the project on February 19, 2020 via e-mail. An odor control and security plan were submitted. The applicant does have standing to apply according to Section 8.25 the property is in the RC/I Zone and first appeared on the Planning Board agenda for March 5th, 2020. The Planning Board requested additional screening. The application was found complete by vote of 5-0.

The applicant initially indicated they would complete the project in multiple phases with four buildings at completion. Upon further review it was determined part of the proposal was in the Limited Residential District where the use is not allowed. As a result, the applicant submitted a new plan showing two buildings.

A landscape plan was submitted with a plant list as follows:

Plant List

SHRUBS

| Symbol | Botanical Name | Common Name | Quantity | Size |
|--------|---|---------------------------------------|----------|--------|
| Cs | <i>Cornus sericea</i> 'Cardinal' | Cardinal Red Osier Dogwood | 28 | 5 gal. |
| IvS | <i>Ilex verticillata</i> 'Sparkleberry' | Sparkleberry Winterberry (female) | 13 | 3-4' |
| IvSG | <i>Ilex verticillata</i> 'Southern Gentleman' | Southern Gentleman Winterberry (male) | 1 | 3-4' |
| JoSP | <i>Juniperus chinensis</i> 'Blue Point' | Blue Point Juniper | 12 | 6-7' |
| JoSG | <i>Juniperus chinensis</i> 'Seagreen' | Seagreen Juniper | 26 | 2-2.5' |
| VaBM | <i>Viburnum dentatum</i> 'Blue Muffin' | Blue Muffin Arrowwood Viburnum | 23 | 5 gal. |

The South Berwick Water District Superintendent requested several conditions (See Conditions of Approval)

The follow concerns have been raised by the neighborhood:

- Residency requirements for the use, frontage (8.25.3), property values, legal access, subdivision review, wetland buffer zone, easement restrictions, odor control, setbacks, septic easement issues, infrastructure within the wetland buffer zone, driving over a septic pipe and issues with public safety.

At the June 4th Public Hearing, abutters additionally raised concerns about security, health and welfare of the neighborhood, fire safety issues, communication with the applicant and issues with setbacks from wells. The Board requested a third-party review Based on the third-party review, the applicant revised their application to include detail on the force main protection, modifications to the Stormwater Management & Drainage Report and several General Site Design modifications.

A DEP Stormwater Permit by Rule was approved on August 13, 2020.

Findings of Fact

1. Conformance with the Comprehensive Plan: *All proposed conditional uses and site plans shall conform to the Comprehensive Plan of the Town of Berwick and with the provisions of all pertinent federal, state and local codes, ordinances, and regulations.*

Planning Board Finding _____

2. Preserve and enhance the landscape: *The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, retaining existing vegetation during construction. After construction is complete, landscape shall be designed and planted that will define, soften or screen the appearance of off street parking areas from the right of way and abutting properties and/or structures in order to enhance the physical design of the building(s) or site, and to minimize the encroachment of the proposed use on the neighboring land uses.*

No trees are proposed to be removed during construction. The applicant has proposed a landscape buffer to screen the buildings from the neighboring property.

3. Relationship of the proposed buildings to the environment: *Proposed structures shall be related harmoniously to the terrain and to the existing buildings in the vicinity which have a visual relationship to the proposed buildings. Special attention shall be paid to the bulk, location and height of the building(s) and such natural features such as slope, soil type and drainage ways.*

The proposed buildings are one story with pitched roofs and are designed to resemble a barn.

4. Vehicular access: *The proposed site layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and controls of access points including site distances, turning lanes, traffic signalization when required by existing and projected traffic flow on municipal road systems.*

The site layout provides for safe access and egress to Pond Road. Trucks will pick up products approximately two to four times per month. There will be five full time employees and eight during harvesting. This will be the extent of the traffic during operations.

5. Parking and circulation: *The layout and design of all vehicular and pedestrian circulation, including walkways, interior drives, and parking areas shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, loading areas, and arrangements and use of parking areas.*

Two-way traffic is proposed for the interior of the site. Parking is proposed to go in front of the first building. Access is provided around the proposed building and access to the front and right side of the proposed expansion comes from the interior road.

6. Surface water drainage: *Adequate provision shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, downstream conditions, soil erosion or the public storm drainage system. Whenever possible, on-site absorption of unpolluted run-off waters shall be utilized to permit groundwater recharge on the site.*

A bioretention basin with a swale heading to the basin is proposed for surface water. A swale is proposed along the proposed new interior road.

7. Existing utilities: *The development shall not impose an unreasonable burden on sewers, sanitary and storm drains, water lines or other public utilities.*

Concerns with South Berwick's water quality and water availability were raised by the District Superintendent. Conditions of Approval have been added to ensure this standard will be met.

8. Advertising features: *The size, location, design, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.*

No signage has been proposed for the project.

9. Special features of the development: *Exposed storage areas, exposed machinery installation, service areas, truck loading areas, utility buildings and similar structures shall have sufficient setback and screening to provide an audio/visual buffer to minimize their adverse impact on other land uses within the development area and surrounding properties.*

Not Applicable

10. Exterior lighting: *All exterior lighting shall be designed to minimize adverse impact on neighboring properties.*

Lighting is proposed to be mounted to the building and have a shield to direct the light downward.

11. Emergency vehicle access: *Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures.*

The driveway will be widened to 20' as requested by the Berwick Fire Department. The interior access road is also 20' wide.

12. Municipal services: *The development will not have an unreasonable adverse impact on the municipal services including municipal road systems, fire department, police department, solid waste program, sewer treatment plant, school, open spaces, recreational programs and facilities, and other municipal service and facilities.*

Concerns with South Berwick's water quality and water availability have been raised by the District Superintendent. Conditions of Approval have been added to ensure this standard will be met.

13. Will not result in water or air pollution: *In making this determination, it shall at a minimum consider: The elevation of the land above sea level and its relationship to the floodplains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its attest on effluents; and the applicable state and local health and water resources regulations*

The primary contamination risk of cultivation is a concentration of nitrates in the water. A holding tank is proposed to capture wastewater from cultivation. The water is required be tested annually.

14. Has sufficient water available for the reasonable foreseeable needs of the development (*this is usually considered to be ten years approximately*).

This standard has been met.

Will not cause an unreasonable burden on an existing water supply, *if a municipal or community water supply is to be utilized.*

This standard is not applicable, the water supply comes from a well.

15. Will not cause soil erosion or reduction in the capacity of the land to hold water *so that dangerous or unhealthy conditions may result.*

No soil erosion issues have been identified.

16. Will provide for adequate sewerage waste disposal.

A new septic system has been designed and included with the application.

17. Will not have adverse effects on the scenic or natural beauty of the area, aesthetics, or rare and irreplaceable natural areas.

The building is in a location not identified as a rare or irreplaceable area. The area has a large garage, barn and houses.

18. Whenever situated in whole or in part within 250 feet of any pond, lake or river, will not adversely affect the quality of such body of water or affect the shoreline of such body of water, based on the standards outlined in Section 9.8.I.1.j.

The bioretention basin is proposed to be constructed within the 250' wetland buffer. Part of the interior driveway is also within the 250' buffer. The stormwater system has received a Stormwater Permit by Rule.

19. Low Impact Design: *Each applicant is required to submit a statement to the Planning Board documenting proposed Low Impact Design (LID) for the site, which will help to reduce storm water volumes and help to enhance storm water quality. LID includes, but is not limited to, green roofs, rain gardens, tree wells, infiltration basins and permeable pavement.*

A bioretention basin and swales are proposed as part of the LID improvements on the project.

I, David Andreesen, certify that I am Chair of the Planning Board of the Town of Berwick, Maine, a Planning Board established pursuant to Maine State Statute (30-A § 4401) and I further certify that this decision was _____ by the Planning Board at its meeting of _____

No waivers were requested

Findings of Fact _____

Conditions of Approval

1. A water sample shall be tested for priority pollutants and nutrients before any cultivation wastewater is discharged to a holding tank, and then tested annually thereafter. Results shall be provided to the Town.
2. The South Berwick Water District shall be furnished with a detailed well drillers log for the new well.
3. A five-day pump test be performed on the well with well drawdown readings taken hourly until the well stabilizes. The Pump Test will be coordinated with the South Berwick Water District so the well drawdowns at Junction Road can be monitored to check for interference. The Facility may not irrigate their plants if the new well has an adverse effect on the Junction Road water source or abutter's water source.
4. The applicant shall submit proof of purchase of carbon filtration and the equipment required to produce a negative pressure environment.
5. If an odor violation is determined by the Code Enforcement Officer, the applicant shall resolve the issue within five business days. The Code Enforcement Officer may revoke the Certificate of Occupancy if the odor issues are not resolved within five business days.
6. If well water is contaminated with nitrates or other byproducts as a result of production beyond safe concentrations, the cost to remediate the nitrates or other contamination levels shall be at the applicant's (property owner) expense.
7. The building height shall be restricted to one story.
8. The septic pipe easement shall be moved before the future expansion will be granted a building permit.

Application _____

David Andreesen, Planning Board Chair

Date

Exhibit C

Town of Berwick Planning Board
Conditional Use Findings of Fact
Applicant: Aaron Barth (Tricann)
513 Portland Street (Tax Map R-072, Lot 5)

Date: January 16, 2020

As you may recall, in October of 2018 this board approved a Medical Use and food prep facility for Tricann, LLC. In March they were back before this board seeking approval for a Medical Marijuana Storefront. Now Tricann is seeking approval to utilize the other portion of the building formally a Beauty shop to be used as an Adult use retail store.

The Adult use store front would be segregated by a separate entrance in the main lobby of the building with an operation schedule of 7 days a week and being open from 7am to 7pm daily. In expanding the operation, the business will go from 8 employees to approximately 25 employees.

The submission includes a revised architectural plan of the building and internal layout of the facility. The submission also shows the aerial of the facility with the proposed Employee parking area to the rear of the facility. Should the parking to the rear of the facility show that 25 employees can adequately park in this area? Rather than just showing the aerial maybe the applicant can explain employee rotation for work if proposed so not all 25 will be at the property at one time. This issue should be clarified.

Parking for the storefront portion of the building has not been calculated for this application at this time. I would suggest that the calculation needs to be based on Retail Sales and Office space as shown on the plan. Both the Retail and Office space would be calculated at a ratio of 1 space for ever 150 square feet of floor space this calculation is based on Article 7 section 7.8.C.3.i.

The submission also includes a security plan for consideration.

The board held a site walk for the retail portion of the operation. The site walk occurred prior to the Public hearing on January 17, 2020. No one spoke on the application. The applicant answered some additional questions from the board with no concerns the Board voted to approve the application with a vote of 3-0 with Frank Underwood abstaining.

Findings of Fact

1. Conformance with the Comprehensive Plan: *All proposed conditional uses and site plans shall conform to the Comprehensive Plan of the Town of Berwick and with the provisions of all pertinent federal, state and local codes, ordinances, and regulations.*

The application conforms to the Comprehensive Plan because it is permitting an appropriate commercial use within the RC/I zoning district.

2. Preserve and enhance the landscape: *The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, retaining existing vegetation during construction. After construction is complete, landscape shall be designed and planted that will define, soften or screen the appearance of off street parking areas from the right of way and abutting*

properties and/or structures in order to enhance the physical design of the building(s) or site, and to minimize the encroachment of the proposed use on the neighboring land uses.

- This standard is being met insofar as it can. The site has been utilized as a multi-use office building and a residential apartment in the past. This applicant is taking over the entire building in order to introduce an Adult use retail component to the already existing Medical Marijuana sales facility.

Relationship of the proposed buildings to the environment: Proposed structures shall be related harmoniously to the terrain and to the existing buildings in the vicinity which have a visual relationship to the proposed buildings. Special attention shall be paid to the bulk, location and height of the building(s) and such natural features such as slope, soil type and drainage ways.

The current structure is being redesigned with a new updated façade. The structure is not being enlarged.

3. Vehicular access: *The proposed site layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and controls of access points including site distances, turning lanes, traffic signalization when required by existing and projected traffic flow on municipal road systems.*

The applicant does not plan to modify the existing access to the site.

4. Parking and circulation: *The layout and design of all vehicular and pedestrian circulation, including walkways, interior drives, and parking areas shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, loading areas, and arrangements and use of parking areas.*

The site provides enough parking for this operation. No new points of access are being provided.

5. Surface water drainage: *Adequate provision shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, downstream conditions, soil erosion or the public storm drainage system. Whenever possible, on-site absorption of unpolluted run-off waters shall be utilized to permit groundwater recharge on the site.*

Not Applicable. This application does not propose to expand the impervious area of the site.

6. Existing utilities: *The development shall not impose an unreasonable burden on sewers, sanitary and storm drains, water lines or other public utilities.*

There will be no impacts to the existing utilities. The applicant has indicated that the water usage is normal amounts of any type of operation

7. Advertising features: *The size, location, design, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.*

No signage has been proposed with this application. Any proposed signage shall meet the sign ordinance standards found in section 7.12 of the zoning ordinance.

8. Special features of the development: *Exposed storage areas, exposed machinery installation, service areas, truck loading areas, utility buildings and similar structures shall have sufficient setback and screening to provide an audio/visual buffer to minimize their adverse impact on other land uses within the development area and surrounding properties.*

Not Applicable

9. Exterior lighting: *All exterior lighting shall be designed to minimize adverse impact on neighboring properties.*

No additional lighting is proposed

10. Emergency vehicle access: *Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures.*

The current building and site is not being changed to serve this use. The current layout of the site has adequate access for emergency vehicles.

11. Municipal services: *The development will not have an unreasonable adverse impact on the municipal services including municipal road systems, fire department, police department, solid waste program, sewer treatment plant, school, open spaces, recreational programs and facilities, and other municipal service and facilities.*

No adverse impacts on municipal services have been identified.

12. Will not result in water or air pollution: *In making this determination, it shall at a minimum consider: The elevation of the land above sea level and its relationship to the floodplains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its attest on effluents; and the applicable state and local health and water resources regulations.*

Not Applicable

13. Has sufficient water available for the reasonable foreseeable needs of the development (*this is usually considered to be ten years approximately*).

This standard has been met.

Will not cause an unreasonable burden on an existing water supply, *if a municipal or community water supply is to be utilized.*

This standard is not applicable.

14. Will not cause soil erosion or reduction in the capacity of the land to hold water *so that dangerous or unhealthy conditions may result.*

Not Applicable

15. Will provide for adequate sewerage waste disposal.

This standard has been met by the use of an onsite septic disposal system

16. Will not have adverse effects on the scenic or natural beauty of the area, aesthetics, or rare and irreplaceable natural areas.

This standard does not apply since the site is zoned for Industrial/Commercial uses.

17. The developer has adequate financial and technical capacity to meet the above stated standards.

The applicant is currently running a successful operation from the site and will only be expanding the opportunity to sell Adult Recreation Retail Marijuana on this site

18. Whenever situated in whole or in part within 250 feet of any pond, lake or river, will not adversely affect the quality of such body of water or affect the shoreline of such body of water, based on the standards outlined in Section 9.8.I.I.j.

This standard does not apply because the site is not located near any type of water body.

19. Low Impact Design: *Each applicant is required to submit a statement to the Planning Board documenting proposed Low Impact Design (LID) for the site, which will help to reduce storm water volumes and help to enhance storm water quality. LID includes, but is not limited to, green roofs, rain gardens, tree wells, infiltration basins and permeable pavement.*

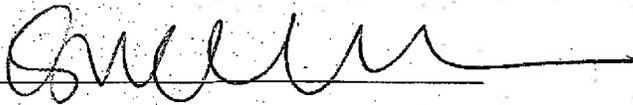
Not Applicable

I, David Andreesen, certify that I am Chair of the Planning Board of the Town of Berwick, Maine, a Planning Board established pursuant to Maine State Statute (30-A § 4401) and I further certify that this decision was approved by the Planning Board at its meeting of January 16, 2020

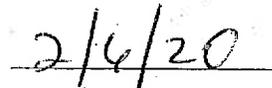
Findings of Fact Approved

Conditions of Approval None were noted

Application Approved 3-0-1



David Andreesen, Planning Board Chair



Date

Town of Berwick Planning Board
Conditional Use Findings of Fact
Applicant: Straight Fire Farms
569 Portland Street (Tax Map R-072, Lot 9-1)

Date: February 20, 2020

On November 7, 2019 Ron Fousek, co-owner of Straight Fire Farms, filed an application in the Berwick Planning Office. Straight Fire Farms requested a Conditional Use Application for an Adult Use Storefront and Adult Use Production Facility.

The applicant proposed a 2,945 ft² addition to an existing 5,072 ft² building. Part of the existing HP business will be converted to an Adult Use Storefront and the expansion proposed to be an Adult Use Production Facility. The septic system was proposed to be moved. A rain garden was designed to capture stormwater from the building expansion. Because of the added retail use on the site, 7 additional parking spaces were required and were shown on an updated Site Plan.

The Berwick Police Chief sent a memo to the Planning Office on January 9th 2020 indicating he had reviewed the plan and had no further requests. The applicant introduced the project at the January 16th Planning Board Meeting. For the February 6th, 2020 Planning Board meeting, the applicant submitted an odor control plan, a revised site plan and a revised narrative. For the February 20th, 2020 meeting the applicant submitted details of the rain garden.

At the Public Hearing, no comments were made and no abutters were in attendance. The Board voted 4-0 to approve the application with one Condition of Approval.

Findings of Fact

1. Conformance with the Comprehensive Plan: *All proposed conditional uses and site plans shall conform to the Comprehensive Plan of the Town of Berwick and with the provisions of all pertinent federal, state and local codes, ordinances, and regulations.*

The application conforms to the Comprehensive Plan because it is permitting an appropriate commercial use within the RC/I zoning district.

2. Preserve and enhance the landscape: *The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, retaining existing vegetation during construction. After construction is complete, landscape shall be designed and planted that will define, soften or screen the appearance of off street parking areas from the right of way and abutting properties and/or structures in order to enhance the physical design of the building(s) or site, and to minimize the encroachment of the proposed use on the neighboring land uses.*

No landscape will be removed. A raingarden will be added to the site.

Relationship of the proposed buildings to the environment: *Proposed structures shall be related harmoniously to the terrain and to the existing buildings in the vicinity which have a visual relationship to the proposed buildings. Special attention shall be paid to the bulk, location and height of the building(s) and such natural features such as slope, soil type and drainage ways.*

The proposed building expansion will have a visual relationship to the existing building and it will be placed behind the existing building.

3. Vehicular access: *The proposed site layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and controls of access points including site distances, turning lanes, traffic signalization when required by existing and projected traffic flow on municipal road systems.*

The vehicular access will remain the same from the previous use.

4. Parking and circulation: *The layout and design of all vehicular and pedestrian circulation, including walkways, interior drives, and parking areas shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, loading areas, and arrangements and use of parking areas.*

7 addition parking spaces have been added to the site in two separate locations. This will not impact the existing circulation on the site.

5. Surface water drainage: *Adequate provision shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, downstream conditions, soil erosion or the public storm drainage system. Whenever possible, on-site absorption of unpolluted run-off waters shall be utilized to permit groundwater recharge on the site.*

A rain garden has been installed for run-off from the building expansion.

6. Existing utilities: *The development shall not impose an unreasonable burden on sewers, sanitary and storm drains, water lines or other public utilities.*

Not Applicable. There are no public utilities on this section of Route 4.

7. Advertising features: *The size, location, design, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.*

No signage has been proposed with this application. Any proposed signage shall meet the sign ordinance standards found in section 7.12 of the zoning ordinance.

8. Special features of the development: *Exposed storage areas, exposed machinery installation, service areas, truck loading areas, utility buildings and similar structures shall have sufficient setback and screening to provide an audio/visual buffer to minimize their adverse impact on other land uses within the development area and surrounding properties.*

Not Applicable

9. Exterior lighting: *All exterior lighting shall be designed to minimize adverse impact on neighboring properties.*

No additional lighting is proposed

10. Emergency vehicle access: *Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures.*

The current building and site are not being changed significantly to serve this use. The current layout of the site has adequate access for emergency vehicles.

11. Municipal services: *The development will not have an unreasonable adverse impact on the municipal services including municipal road systems, fire department, police department, solid waste program, sewer treatment plant, school, open spaces, recreational programs and facilities, and other municipal service and facilities.*

No adverse impacts on municipal services have been identified.

12. Will not result in water or air pollution: *In making this determination, it shall at a minimum consider: The elevation of the land above sea level and its relationship to the floodplains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its attest on effluents; and the applicable state and local health and water resources regulations.*

The applicant has stated a minimal amount of wastewater will result from the Marijuana Production Facility.

13. Has sufficient water available for the reasonable foreseeable needs of the development (*this is usually considered to be ten years approximately*).

This standard has been met.

Will not cause an unreasonable burden on an existing water supply, *if a municipal or community water supply is to be utilized.*

This standard is not applicable.

14. Will not cause soil erosion or reduction in the capacity of the land to hold water *so that dangerous or unhealthy conditions may result.*

Not Applicable

15. Will provide for adequate sewerage waste disposal.

This standard has been met by the use of an onsite septic disposal system

16. Will not have adverse effects on the scenic or natural beauty of the area, aesthetics, or rare and irreplaceable natural areas.

The building expansion will be placed behind an existing building and will not have an adverse effect on the aesthetics of the area.

17. The developer has adequate financial and technical capacity to meet the above stated standards.

The above standards will not add a significant financial or technical burden so the developer will have adequate capacity to meet the above standards.

18. Whenever situated in whole or in part within 250 feet of any pond, lake or river, will not adversely affect the quality of such body of water or affect the shoreline of such body of water, based on the standards outlined in Section 9.8.I.1.j.

This standard does not apply because the site is not located within 250 feet any type of water body.

19. Low Impact Design: *Each applicant is required to submit a statement to the Planning Board documenting proposed Low Impact Design (LID) for the site, which will help to reduce storm water volumes and help to enhance storm water quality. LID includes, but is not limited to, green roofs, rain gardens, tree wells, infiltration basins and permeable pavement.*

The applicant designed a rain garden to capture stormwater from the building expansion.

I, David Andreesen, certify that I am Chair of the Planning Board of the Town of Berwick, Maine, a Planning Board established pursuant to Maine State Statute (30-A § 4401) and I further certify that this decision was approved by the Planning Board at its meeting of February 20, 2020

Findings of Fact Approved on February 20, 2020

Conditions of Approval

1. Straight Fire Farms shall provide the Town proof of State of Maine licensing for an Adult Use Storefront and an Adult Use Cultivation Facility before a Certificate of Occupancy is granted.

Application Approved 4-0

David Andreesen, Planning Board Chair

Date

Town of Berwick Planning Board
Conditional Use Findings of Fact
Applicant: Joshua Ferranto Silver Therapeutics
60 Route 236 (Tax Map R-57 Lot 55)

The proposed project entails redevelopment of 41,163 Square Feet (sf) of commercial property: An existing business outlet for Pitbull Automotive LLC, and proposed Marijuana Dispensary for Silver Therapeutics. Proposed improvements include: Redesign of the existing building for proposed business operations; redesign of said building's entrance and driveway; formalized parking; signage; and minor landscaping. The proposed facility's hours of operation will be from 10am until 8pm, seven days per week. Advancing the proposed facility design will require a Conditional Use Permit with the town of Berwick. The existing site is located in Northwest Berwick, .16 Miles from the nearest intersection of Route 36 and Berwick Road. Since 2005², the site has been used as a mechanic's garage for Pitbull Automotive, LLC. The enclosed portion of the garage sits upon a concrete slab that is approximately 2969 sf. The garage itself is 1467 sf. The surrounding parcel space consists of a gravel driveway³ extending North to

The surrounding land use has been characterized as rural with a mix of commercial and industrial (RC/I). Nevertheless, ten of the eleven parcels within a two hundred-foot radius from R-57 are *residential*,⁴ forming a rough divider between Route 236 and Berwick Road. Route 236 is in fact a continuous, two way road artery through this area, making it *transient* as well. It is worth noting that the surrounding zones are *Urban Residential* and *Transitional Residential* (See Figure 1.1). Route 236 and said residential land use continues North of the site.

The Southwest 1000-foot extent from the existing site is forested, while Lot 55 itself is mostly clear

On March 5th the Planning Board held a sitewalk. One abutter was on the walk and aired concerns regarding drainage from the site impacting his property.

On March 5th the planning board held a public hearing where no one spoke regarding the project. The planning board did take up the issue of the drainage impacting the abutter and asked the applicant to revise the plan to include a small drainage swale or LID pond just off the pavement to catch the water from the new paved area. The application action was postponed until the plans can be revised.

The plans were revised and addressed the LID Pond request. The Planning Board held a Zoom Meeting on April 2nd 2020 to discuss the project. No public spoke on the application. The application received approval from the board

Findings of Fact

1. **Conformance with the Comprehensive Plan:** *All proposed conditional uses and site plans shall conform to the Comprehensive Plan of the Town of Berwick and with the provisions of all pertinent federal, state and local codes, ordinances, and regulations.*

The application conforms to the Comprehensive Plan because it is permitting an appropriate commercial use within the RC/I

2. **Preserve and enhance the landscape:** *The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, retaining existing vegetation during construction. After construction is complete, landscape shall be designed and planted that will define, soften or screen the appearance of off street parking areas from the right of way and abutting properties and/or structures in order to enhance the physical design of the building(s) or site, and to minimize the encroachment of the proposed use on the neighboring land uses.*

New landscaping has been proposed adjacent to the abutter in the location of the proposed LID stormwater pond

3. **Relationship of the proposed buildings to the environment:** *Proposed structures shall be related harmoniously to the terrain and to the existing buildings in the vicinity which have a visual relationship to the proposed buildings. Special attention shall be paid to the bulk, location and height of the building(s) and such natural features such as slope, soil type and drainage ways.*

There are no new buildings proposed on the site

4. **Vehicular access:** *The proposed site layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and controls of access points including site distances, turning lanes, traffic signalization when required by existing and projected traffic flow on municipal road systems.*

There are no new points access proposed for this site

5. **Parking and circulation:** *The layout and design of all vehicular and pedestrian circulation, including walkways, interior drives, and parking areas shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, loading areas, and arrangements and use of parking areas.*

The site circulation will remain the same for the site. The applicant is proposing that parking will be moved back away from the building and some walkway areas will be added to the site.

6. **Surface water drainage:** *Adequate provision shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, downstream conditions, soil erosion or the public storm drainage system. Whenever possible, on-site absorption of unpolluted run-off waters shall be utilized to permit groundwater recharge on the site.*

The applicant is addressing the neighbor to the south where stormwater naturally sheet flows by adding a drainage swale or LID pond to pick up water currently impacting the neighboring property

7. **Existing utilities:** *The development shall not impose an unreasonable burden on sewers, sanitary and storm drains, water lines or other public utilities.*

The proposed use will not have any impacts on the existing utilities

8. **Advertising features:** *The size, location, design, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.*

The applicant does propose a new sign on the front of the site, and it will need a sign permit from the town requiring it meets the current sign standards

9. **Special features of the development:** *Exposed storage areas, exposed machinery installation, service areas, truck loading areas, utility buildings and similar structures shall have sufficient setback and screening to provide an audio/visual buffer to minimize their adverse impact on other land uses within the development area and surrounding properties.*

The site will have an added fence to the south property abutter.

10. **Exterior lighting:** *All exterior lighting shall be designed to minimize adverse impact on neighboring properties.*

A five new lights will be added to the parking area all must be dark sky friendly and shining in a downward manner. The application states that spill over will be less than .1 foot candles

11. **Emergency vehicle access:** *Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures.*

The applicant's plans have provided for adequate access

12. **Municipal services:** *The development will not have an unreasonable adverse impact on the municipal services including municipal road systems, fire department, police department, solid waste program, sewer treatment plant, school, open spaces, recreational programs and facilities, and other municipal service and facilities.*

No new impacts to services were identified during the review process

13. **Will not result in water or air pollution:** *In making this determination, it shall at a minimum consider: The elevation of the land above sea level and its relationship to the floodplains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its attest on effluents; and the applicable state and local health and water resources regulations.*

None of the above items are impacted

14. **Has sufficient water available for the reasonable foreseeable needs of the development** *(this is usually considered to be ten years approximately).*

There is an existing well servicing the site which has been in existence for many years

15. **Will not cause an unreasonable burden on an existing water supply, if a municipal or community water supply is to be utilized.**

Not Applicable, the site is served by a private on site well

16. **Will not cause soil erosion or reduction in the capacity of the land to hold water so that dangerous or unhealthy conditions may result.**

This site is already built out

17. **Will provide for adequate sewerage waste disposal.**

The site is served by the municipal sewer system.

18. Will not have adverse effects on the scenic or natural beauty of the area, aesthetics, or rare and irreplaceable natural areas.

The site is on a State aid route, Route 236 and no new structures will be added to the site

19. The developer has adequate financial and technical capacity to meet the above stated standards.

This use is a cash only use due to the fact that Financial institutions may not fund them due to the lack of Federal recognition as a legal use in some areas outside of Maine

20. Whenever situated in whole or in part within 250 feet of any pond, lake or river, will not adversely affect the quality of such body of water or affect the shoreline of such body of water, based on the standards outlined in Section 9.8.I.1.j.

This is not applicable

21. **Low Impact Design:** *Each applicant is required to submit a statement to the Planning Board documenting proposed Low Impact Design (LID) for the site, which will help to reduce storm water volumes and help to enhance storm water quality. LID includes, but is not limited to, green roofs, rain gardens, tree wells, infiltration basins and permeable pavement.*

The applicant has provided a statement in the submission as to how they have met this standard

I, David Andreesen, certify that I am Chair of the Planning Board of the Town of Berwick, Maine, a Planning Board established pursuant to Maine State Statute (30 MRSA § 1917 and Title 30-A § 4401) and I further certify that this decision was approved by the Planning Board at its meeting of April 2, 2020

Approval of the Findings of Fact 5-0

Approval of the Conditions Not Applicable

Approval of the Application 5-0



4/2/20

David Andreesen, Chair, Berwick Planning Board

Town of Berwick Planning Board
Conditional Use Findings of Fact
Applicant: Joshua Ferranto Silver Therapeutics
60 Route 236 (Tax Map R-57 Lot 55)

Project Description

The proposed project entails redevelopment of 41,163 Square Feet (sf) of commercial property: An existing business outlet for Pitbull Automotive LLC, and proposed Marijuana Dispensary for Silver Therapeutics. Proposed improvements include: Redesign of the existing building for proposed business operations; redesign of said building's entrance and driveway; formalized parking; signage; and minor landscaping. The proposed facility's hours of operation will be from 10am until 8pm, seven days per week. Advancing the proposed facility design will require a Conditional Use Permit with the town of Berwick. The existing site is located in Northwest Berwick, .16 Miles from the nearest intersection of Route 36 and Berwick Road. Since 2005², the site has been used as a mechanic's garage for Pitbull Automotive, LLC. The enclosed portion of the garage sits upon a concrete slab that is approximately 2969 sf. The garage itself is 1467 sf. The surrounding parcel space consists of a gravel driveway³ extending North to

The surrounding land use has been characterized as rural with a mix of commercial and industrial (RC/I). Nevertheless, ten of the eleven parcels within a two hundred-foot radius from R-57 are *residential*,⁴ forming a rough divider between Route 236 and Berwick Road. Route 236 is in fact a continuous, two way road artery through this area, making it *transient* as well. It is worth noting that the surrounding zones are *Urban Residential* and *Transitional Residential* (See Figure 1.1). Route 236 and said residential land use continues North of the site.

The Southwest 1000-foot extent from the existing site is forested, while Lot 55 itself is mostly clear

On March 5th the Planning Board held a sitewalk. One abutter was on the walk and aired concerns regarding drainage from the site impacting his property.

On March 5th the planning board held a public hearing where no one spoke regarding the project. The planning board did take up the issue of the drainage impacting the abutter and asked the applicant to revise the plan to include a small drainage swale or LID pond just off the pavement to catch the water from the new paved area. The application action was postponed until the plans can be revised.

The plans were revised and addressed the LID Pond request

Findings of Fact

1. **Conformance with the Comprehensive Plan:** *All proposed conditional uses and site plans shall conform to the Comprehensive Plan of the Town of Berwick and with the provisions of all pertinent federal, state and local codes, ordinances, and regulations.*

The application conforms to the Comprehensive Plan because it is permitting an appropriate commercial use within the RC/I

2. **Preserve and enhance the landscape:** *The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, retaining existing vegetation during construction. After construction is complete, landscape shall be designed and planted that will define, soften or screen the appearance of off street parking areas from the right of way and abutting properties and/or structures in order to enhance the physical design of the building(s) or site, and to minimize the encroachment of the proposed use on the neighboring land uses.*

No new landscaping has been proposed.

3. **Relationship of the proposed buildings to the environment:** *Proposed structures shall be related harmoniously to the terrain and to the existing buildings in the vicinity which have a visual relationship to the proposed buildings. Special attention shall be paid to the bulk, location and height of the building(s) and such natural features such as slope, soil type and drainage ways.*

There are no new buildings proposed on the site

4. **Vehicular access:** *The proposed site layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and controls of access points including site distances, turning lanes, traffic signalization when required by existing and projected traffic flow on municipal road systems.*

There are no new points access proposed for this site

5. **Parking and circulation:** *The layout and design of all vehicular and pedestrian circulation, including walkways, interior drives, and parking areas shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, loading areas, and arrangements and use of parking areas.*

The site circulation will remain the same for the site. The applicant is proposing that parking will be moved back away from the building and some walk way areas will be added to the site.

6. **Surface water drainage:** *Adequate provision shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, downstream conditions, soil erosion or the public storm drainage system. Whenever possible, on-site absorption of unpolluted run-off waters shall be utilized to permit groundwater recharge on the site.*

The applicant is addressing the neighbor to the south where stormwater naturally sheet flows by adding a drainage swale or LID pond to pick up water currently impacting the neighboring property

7. **Existing utilities:** *The development shall not impose an unreasonable burden on sewers, sanitary and storm drains, water lines or other public utilities.*

The proposed use will not have any impacts on the existing utilities

8. **Advertising features:** *The size, location, design, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.*

The applicant does propose a new sign on the front of the site, and it will need a sign permit from the town requiring it meets the current sign standards

9. **Special features of the development:** *Exposed storage areas, exposed machinery installation, service areas, truck loading areas, utility buildings and similar structures shall have sufficient setback and screening to provide an audio/visual buffer to minimize their adverse impact on other land uses within the development area and surrounding properties.*

The site will have an added fence to the south property abutter.

10. **Exterior lighting:** *All exterior lighting shall be designed to minimize adverse impact on neighboring properties.*

A five new lights will be added to the parking area all must be dark sky friendly and shining in a downward manner. The application states that spill over will be less than .1 foot candles

11. **Emergency vehicle access:** *Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures.*

The applicant's plans have provided for adequate access

12. **Municipal services:** *The development will not have an unreasonable adverse impact on the municipal services including municipal road systems, fire department, police department, solid waste program, sewer treatment plant, school, open spaces, recreational programs and facilities, and other municipal service and facilities.*

No new impacts to services were identified during the review process

13. **Will not result in water or air pollution:** *In making this determination, it shall at a minimum consider: The elevation of the land above sea level and its relationship to the floodplains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its attest on effluents; and the applicable state and local health and water resources regulations.*

None of the above items are impacted

14. **Has sufficient water available for the reasonable foreseeable needs of the development** *(this is usually considered to be ten years approximately).*

There is an existing well servicing the site which has been in existence for many years

15. **Will not cause an unreasonable burden on an existing water supply, if a municipal or community water supply is to be utilized.**

Not Applicable, the site is served by a private on site well

16. **Will not cause soil erosion or reduction in the capacity of the land to hold water so that dangerous or unhealthy conditions may result.**

This site is already built out

17. **Will provide for adequate sewerage waste disposal.**

The site is served by an onsite septic system

18. Will not have adverse effects on the scenic or natural beauty of the area, aesthetics, or rare and irreplaceable natural areas.

The site is on a State aid route, Route 236 and no new structures will be added to the site

19. The developer has adequate financial and technical capacity to meet the above stated standards.

This use is a cash only use due to the fact that Financial institutions may not fund them due to the lack of Federal recognition as a legal use in some areas outside of Maine

20. Whenever situated in whole or in part within 250 feet of any pond, lake or river, will not adversely affect the quality of such body of water or affect the shoreline of such body of water, based on the standards outlined in Section 9.8.I.1.j.

This is not applicable

21. Low Impact Design: *Each applicant is required to submit a statement to the Planning Board documenting proposed Low Impact Design (LID) for the site, which will help to reduce storm water volumes and help to enhance storm water quality. LID includes, but is not limited to, green roofs, rain gardens, tree wells, infiltration basins and permeable pavement.*

The applicant has provided a statement in the submission as to how they have met this standard

I, David Andreesen, certify that I am Chair of the Planning Board of the Town of Berwick, Maine, a Planning Board established pursuant to Maine State Statute (30 MRSA § 1917 and Title 30-A § 4401) and I further certify that this decision was approved by the Planning Board at its meeting of May 16, 2019

Approval of the Findings of Fact

Approval of the Conditions of

Approval of the

David Andreesen, Chair, Berwick Planning Board

Town of Berwick Planning Board
Findings of Fact
Applicant: Herbal Pathways
468 Portland Street (Tax Map R-71, Lot 7)
August 6, 2020

Herbal Pathways proposed to repurpose a 6,720 ft² manufacturing facility into an Adult Use Cultivation Facility and Storefront. The site will be serviced by an existing parking area, septic, and well. All waste will be locked in a dumpster located toward the back of the property and will be screened.

Herbal Pathways will have a maximum of seven employees on site during the largest shift and will employ fourteen in total. The cultivation facility is proposed to operate from 8am-5pm and the storefront from 10am-8pm.

A detailed security and odor control plans have been submitted. An interior floor plan has also been submitted which meets the requirements of Section 8.25. A letter from the Berwick Fire Chief was received, and his recommendation to add a Knox Box was added to the plan. The applicant submitted a bioretention cell for the Low Impact Design requirement.

A traffic study was completed and the following are the study's recommendations:

SAFETY REVIEW

The most important factor for a facility with this level of trip generation is safety. The MaineDOT map viewer was checked for any nearby high crash locations on Portland Street and none were identified. Additionally, the MaineDOT map viewer (as well as Google Earth) shows the posted speed limit to be 55 mph in this area. Based on this, Sewall recommends a minimum of 550' of sight distance be provided from the drive. It should be confirmed that the available driveway sight distance meets this criteria and that there is no landscaping or signage located, or planned to be located, in the driveway sight triangle that could potentially block sight distance in the future.

At the June 18 Planning Board meeting, the Berwick Planning Board asked about potential wastewater. The applicant said he uses an aeroponic system that results in zero wastewater. The Board voted the application complete by vote of 3-0.

At the August 6th Planning Board meeting the Planning Board voted to approve the application by vote of 5-0 with one Condition of Approval.

Findings of Fact

1. Conformance with the Comprehensive Plan: *All proposed conditional uses and site plans shall conform to the Comprehensive Plan of the Town of Berwick and with the provisions of all pertinent federal, state and local codes, ordinances, and regulations.*

The application conforms to the Comprehensive Plan because it is a permitted commercial use within the RC/I Zone and it meets all pertinent federal, state, local codes, ordinances and regulations.

2. Preserve and enhance the landscape: *The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, retaining existing vegetation during construction. After construction is complete, landscape shall be designed and planted that will define, soften or screen the appearance of off street parking areas from the right of way and abutting properties and/or structures in order to enhance the physical design of the building(s) or site, and to minimize the encroachment of the proposed use on the neighboring land uses.*

No trees are proposed to be taken down. The existing parking area is proposed to be softened by 4 Bonfire Super Maples and 8 Wintercreeper shrubs.

3. Relationship of the proposed buildings to the environment: *Proposed structures shall be related harmoniously to the terrain and to the existing buildings in the vicinity which have a visual relationship to the proposed buildings. Special attention shall be paid to the bulk, location and height of the building(s) and such natural features such as slope, soil type and drainage ways.*

This standard has been met. No new buildings are proposed to be constructed.

4. Vehicular access: *The proposed site layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and controls of access points including site distances, turning lanes, traffic signalization when required by existing and projected traffic flow on municipal road systems.*

A traffic study has been submitted with the application and the recommendation is to maintain a minimum of undisturbed 550' of sight distance.

5. Parking and circulation: *The layout and design of all vehicular and pedestrian circulation, including walkways, interior drives, and parking areas shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, loading areas, and arrangements and use of parking areas.*

The parking area is remaining the same from the previous use.

6. Surface water drainage: *Adequate provision shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, downstream conditions, soil erosion or the public storm drainage system. Whenever possible, on-site absorption of unpolluted run-off waters shall be utilized to permit groundwater recharge on the site.*

No additional impervious surface is being proposed. A bioretention cell is proposed to be constructed behind the existing building.

7. Existing utilities: *The development shall not impose an unreasonable burden on sewers, sanitary and storm drains, water lines or other public utilities.*

This standard has been met. No unreasonable burdens have been identified.

8. Advertising features: *The size, location, design, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.*

No signage has been proposed with this application. Any proposed signage shall meet the sign ordinance standards found in section 7.12 of the zoning ordinance.

9. Special features of the development: *Exposed storage areas, exposed machinery installation, service areas, truck loading areas, utility buildings and similar structures shall have sufficient setback and screening to provide an audio/visual buffer to minimize their adverse impact on other land uses within the development area and surrounding properties.*

Not Applicable

10. Exterior lighting: *All exterior lighting shall be designed to minimize adverse impact on neighboring properties.*

A LED flood light is proposed for behind the building, this light will not be visible to the street nor abutters.

11. Emergency vehicle access: *Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures.*

The access remains the same from the previous use. A Knox Box will be on site for Fire Department access in case of an emergency.

12. Municipal services: *The development will not have an unreasonable adverse impact on the municipal services including municipal road systems, fire department, police department, solid waste program, sewer treatment plant, school, open spaces, recreational programs and facilities, and other municipal service and facilities.*

No unreasonable adverse impacts on municipal services have been identified.

13. Will not result in water or air pollution: *In making this determination, it shall at a minimum consider: The elevation of the land above sea level and its relationship to the floodplains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its attest on effluents; and the applicable state and local health and water resources regulations.*

The proposed cultivation system using an aeroponic technique and will not produce wastewater. This standard has been met.

14. Has sufficient water available for the reasonable foreseeable needs of the development (*this is usually considered to be ten years approximately*).

This standard has been met.

15. Will not cause an unreasonable burden on an existing water supply, *if a municipal or community water supply is to be utilized.*

The site is serviced by an on-site well. This standard has been met.

16. Will not cause soil erosion or reduction in the capacity of the land to hold water *so that dangerous or unhealthy conditions may result.*

No conditions on the site will be altered. A bioretention cell will increase the capacity of the property to hold water.

17. Will provide for adequate sewerage waste disposal.

The existing septic system will be used and it was set up for 20 employees at the time. This standard has been met.

18. Will not have adverse effects on the scenic or natural beauty of the area, aesthetics, or rare and irreplaceable natural areas.

This standard has been met.

19. The developer has adequate financial and technical capacity to meet the above stated standards.

The above standards will not add a significant financial or technical burden. The applicant will have adequate capacity to meet the above standards.

20. Whenever situated in whole or in part within 250 feet of any pond, lake or river, will not adversely affect the quality of such body of water or affect the shoreline of such body of water, based on the standards outlined in Section 9.8.I.1.j.

This standard does not apply because the site is not located within 250 feet any type of water body.

21. Low Impact Design: *Each applicant is required to submit a statement to the Planning Board documenting proposed Low Impact Design (LID) for the site, which will help to reduce storm water volumes and help to enhance storm water quality. LID includes, but is not limited to, green roofs, rain gardens, tree wells, infiltration basins and permeable pavement.*

A bioretention cell will be constructed behind an existing building to reduce storm water volumes and enhance storm water quality.

I, David Andreesen, certify that I am Chair of the Planning Board of the Town of Berwick, Maine, a Planning Board established pursuant to Maine State Statute (30-A § 4401) and I further certify that this decision was approved by the Planning Board at its meeting of August 6, 2020.

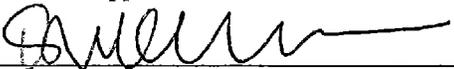
No Waivers

Findings of Fact 5-0

Conditions of Approval

1. A water sample shall be tested for priority pollutants and nutrients before any cultivation wastewater is discharged into the septic, or to a holding tank, and then tested annually thereafter.

Application Approved 5-0



David Andreesen, Planning Board Chair

8/6/20

Date

**Town of Berwick Planning Board
Conditional Use Findings of Fact**

Applicant: CAF Realty
11 Pond Road (Tax Map R-070, Lot 16)
September 3, 2020

CAF Realty applied for a Site Plan & Conditional Use for an Adult Use Marijuana Productions Facility. A piece of the lot is in South Berwick, the Town was notified of the project on February 19, 2020 via e-mail. An odor control and security plan were submitted. The applicant does have standing to apply according to Section 8.25 the property is in the RC/I Zone and first appeared on the Planning Board agenda for March 5th, 2020. The Planning Board requested additional screening. The application was found complete by vote of 5-0.

The applicant initially indicated they would complete the project in multiple phases with four buildings at completion. Upon further review it was determined part of the proposal was in the Limited Residential District where the use is not allowed. As a result, the applicant submitted a new plan showing two buildings.

A landscape plan was submitted with a plant list as follows:

| Plant List | | | | |
|-------------------|---|---------------------------------------|----------|--------|
| SHRUBS | | | | |
| Symbol | Botanical Name | Common Name | Quantity | Size |
| Cs | <i>Cornus sericea</i> 'Cardinal' | Cardinal Red Osier Dogwood | 28 | 5 gal. |
| IvS | <i>Ilex verticillata</i> 'Sparkleberry' | Sparkleberry Winterberry (female) | 13 | 3-4' |
| IvSG | <i>Ilex verticillata</i> 'Southern Gentleman' | Southern Gentleman Winterberry (male) | 1 | 3-4' |
| JcBP | <i>Juniperus chinensis</i> 'Blue Point' | Blue Point Juniper | 12 | 6-7' |
| JcSG | <i>Juniperus chinensis</i> 'Seagreen' | Seagreen Juniper | 26 | 2-2.5' |
| VdBM | <i>Viburnum dentatum</i> 'Blue Muffin' | Blue Muffin Arrowwood Viburnum | 23 | 5 gal. |

The South Berwick Water District Superintendent requested several conditions (See Conditions of Approval)

The follow concerns have been raised by the neighborhood:

- Residency requirements for the use, frontage (8.25.3), property values, legal access, subdivision review, wetland buffer zone, easement restrictions, odor control, setbacks, septic easement issues, infrastructure within the wetland buffer zone, driving over a septic pipe and issues with public safety.

At the June 4th Public Hearing, abutters additionally raised concerns about security, health and welfare of the neighborhood, fire safety issues, communication with the applicant and issues with setbacks from wells. The Board requested a third-party review Based on the third-party review, the applicant revised their application to include detail on the force main protection, modifications to the Stormwater Management & Drainage Report and several General Site Design modifications.

A DEP Stormwater Permit by Rule was approved on August 13, 2020.

At the September 20th meeting, abutters spoke in opposition of the application and stated based on several provisions of the Comprehensive Plan, the application does not conform to the Comprehensive Plan.

Findings of Fact

1. Conformance with the Comprehensive Plan: *All proposed conditional uses and site plans shall conform to the Comprehensive Plan of the Town of Berwick and with the provisions of all pertinent federal, state and local codes, ordinances, and regulations.*

The application conforms to the Comprehensive Plan because it is a permitted commercial use within the RC/I Zone and it meets all pertinent federal, state, local codes, ordinances and regulations.

2. Preserve and enhance the landscape: *The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, retaining existing vegetation during construction. After construction is complete, landscape shall be designed and planted that will define, soften or screen the appearance of off street parking areas from the right of way and abutting properties and/or structures in order to enhance the physical design of the building(s) or site, and to minimize the encroachment of the proposed use on the neighboring land uses.*

No trees are proposed to be removed during construction. The applicant has proposed a landscape buffer to screen the buildings from the neighboring property.

3. Relationship of the proposed buildings to the environment: *Proposed structures shall be related harmoniously to the terrain and to the existing buildings in the vicinity which have a visual relationship to the proposed buildings. Special attention shall be paid to the bulk, location and height of the building(s) and such natural features such as slope, soil type and drainage ways.*

The proposed buildings are one story with pitched roofs and are designed to resemble a barn.

4. Vehicular access: *The proposed site layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and controls of access points including site distances, turning lanes, traffic signalization when required by existing and projected traffic flow on municipal road systems.*

The site layout provides for safe access and egress to pond Road. Trucks will pick up products approximately two to four times per month. There will be five full time employees and eight during harvesting. This will be the extent of the traffic during operations.

5. Parking and circulation: *The layout and design of all vehicular and pedestrian circulation, including walkways, interior drives, and parking areas shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, loading areas, and arrangements and use of parking areas.*

Two-way traffic is proposed for the interior of the site. Parking is proposed to go in front of the first building. Access is provided around the proposed building and access to the front and right side of the proposed expansion comes from the interior road.

6. Surface water drainage: *Adequate provision shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, downstream conditions, soil erosion or the public storm drainage system. Whenever possible, on-site absorption of unpolluted run-off waters shall be utilized to permit groundwater recharge on the site.*

A bioretention basin with a swale heading to the basin is proposed for surface water. A swale is proposed along the proposed new interior road.

7. Existing utilities: *The development shall not impose an unreasonable burden on sewers, sanitary and storm drains, water lines or other public utilities.*

Concerns with South Berwick's water quality and water availability were raised by the District Superintendent. Conditions of Approval have been added to ensure this standard will be met.

8. Advertising features: *The size, location, design, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.*

No signage has been proposed for the project.

9. Special features of the development: *Exposed storage areas, exposed machinery installation, service areas, truck loading areas, utility buildings and similar structures shall have sufficient setback and screening to provide an audio/visual buffer to minimize their adverse impact on other land uses within the development area and surrounding properties.*

Not Applicable

10. Exterior lighting: *All exterior lighting shall be designed to minimize adverse impact on neighboring properties.*

Lighting is proposed to be mounted to the building and have a shield to direct the light downward.

11. Emergency vehicle access: *Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures.*

The driveway will be widened to 20' as requested by the Berwick Fire Department. The interior access road is also 20' wide.

12. Municipal services: *The development will not have an unreasonable adverse impact on the municipal services including municipal road systems, fire department, police department, solid waste program, sewer treatment plant, school, open spaces, recreational programs and facilities, and other municipal service and facilities.*

Concerns with South Berwick's water quality and water availability have been raised by the District Superintendent. Conditions of Approval have been added to ensure this standard will be met.

13. Will not result in water or air pollution: *In making this determination, it shall at a minimum consider: The elevation of the land above sea level and its relationship to the floodplains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its attest on effluents; and the applicable state and local health and water resources regulations*

The primary contamination risk of cultivation is a concentration of nitrates in the water. A holding tank is proposed to capture wastewater from cultivation. The water is required be tested annually.

14. Has sufficient water available for the reasonable foreseeable needs of the development (*this is usually considered to be ten years approximately*).

This standard has been met.

Will not cause an unreasonable burden on an existing water supply, *if a municipal or community water supply is to be utilized.*

This standard is not applicable, the water supply comes from a well.

15. Will not cause soil erosion or reduction in the capacity of the land to hold water *so that dangerous or unhealthy conditions may result.*

No soil erosion issues have been identified.

16. Will provide for adequate sewerage waste disposal.

A new septic system has been designed and included with the application.

17. Will not have adverse effects on the scenic or natural beauty of the area, aesthetics, or rare and irreplaceable natural areas.

The building is in a location not identified as a rare or irreplaceable area. The area has a large garage, barn and houses.

18. Whenever situated in whole or in part within 250 feet of any pond, lake or river, will not adversely affect the quality of such body of water or affect the shoreline of such body of water, based on the standards outlined in Section 9.8.I.1.j.

The bioretention basin is proposed to be constructed within the 250' wetland buffer. Part of the interior driveway is also within the 250' buffer. The stormwater system has received a Stormwater Permit by Rule.

19. Low Impact Design: *Each applicant is required to submit a statement to the Planning Board documenting proposed Low Impact Design (LID) for the site, which will help to reduce storm water volumes and help to enhance storm water quality. LID includes, but is not limited to, green roofs, rain gardens, tree wells, infiltration basins and permeable pavement.*

A bioretention basin and swales are proposed as part of the LID improvements on the project.

I, Nichole Fecteau, certify that I am Acting Chair of the Planning Board of the Town of Berwick, Maine, a Planning Board established pursuant to Maine State Statute (30-A § 4401) and I further certify that this decision was _____ by the Planning Board at its meeting of September 3, 2020.

No waivers were requested

Findings of Fact _____

Conditions of Approval

1. A water sample shall be tested for priority pollutants and nutrients before any cultivation wastewater is discharged to a holding tank, and then tested annually thereafter. Results shall be provided to the Town and South Berwick Water District.
2. The South Berwick Water District shall be furnished with a detailed well drillers log for the new well.
3. A five-day pump test be performed on the well with well drawdown readings taken hourly until the well stabilizes. The Pump Test will be coordinated with the South Berwick Water District and 386 Portland Street, and 2, 10, 13 Pond Road so the well drawdowns at Junction Road and the abutters wells can be monitored to check for interference.
4. The Facility may not irrigate their plants if the new well has an adverse effect on the Junction Road water source or abutter's water source.
5. A water meter shall be installed to monitor the water usage from the well and permission shall be granted to the South Berwick Water District to periodically read the water meter to verify usage.
6. The applicant shall install and submit proof of purchase of carbon filtration and the equipment required to produce a negative pressure environment.
7. If an odor violation is determined by the Code Enforcement Officer, the applicant shall resolve the issue within five days. The Code Enforcement Officer may revoke the Certificate of Occupancy if the odor issues are not resolved within five days.
8. If well water is contaminated with nitrates or other byproducts as a result of production beyond safe concentrations, the cost to remediate the nitrates or other contamination levels shall be at the applicant's (property owner) expense.
9. The building height shall be restricted to one story.
10. The septic pipe easement shall be moved before the future expansion will be granted a building permit.
11. All pesticides and chemicals stored on site shall have a secondary containment.
12. Processing in this application refers to processing the flower. No marijuana manufacturing has been approved as part of this project.

Application _____

Nichole Fecteau , Acting Planning Board Chair

Date

South Berwick Water District
80 Berwick Road
South Berwick, ME 03908

September 3, 2020

RE: Proposed Marijuana Growing Facility on Rt 4 for Paper Birch Property LLC

Berwick Planning Board
11 Sullivan Street
Berwick, ME 03901

Planning Board Members,

The South Berwick Water District would like you to consider placing conditions on the proposed Marijuana Cultivation Facility and expansion that is being proposed for Paper Birch Property LLC on Rt. 4. This proposed facility is going to be constructed in the recharge area of our Junction Road water source and intends to drill a well, in the same aquifer, for their water use. The Water District wants to ensure this use will not impact our water source and feels this can be accomplished if the following conditions are met:

The South Berwick Water District would ask that Paper Birch Properties utilize the existing 15 GPM well for the current use and the proposed expansion. If the existing well can be utilized, the South Berwick Water District will not ask for any conditions other than the secondary containment of pesticides and chemicals.

If Paper Birch Property chooses to drill a new well we ask the conditions be imposed.

An accurate water use projection be provided to the District.

The District be furnished with a detailed well drillers log for the new well.

In lieu of a five-day pump test, the Facility be mandated to install a pressure transducer and digital flow logger capable of collecting the data on an hourly interval during the first two years of use and to provide this information to the South Berwick Water District on a quarterly basis.

The Facility may not irrigate their plants if the new well has an adverse effect on our Junction Road water source.

Secondary Containment for all pesticides or chemicals to be stored on site.

The South Berwick Water District asks the Berwick Planning Board for your help in protecting our water source.

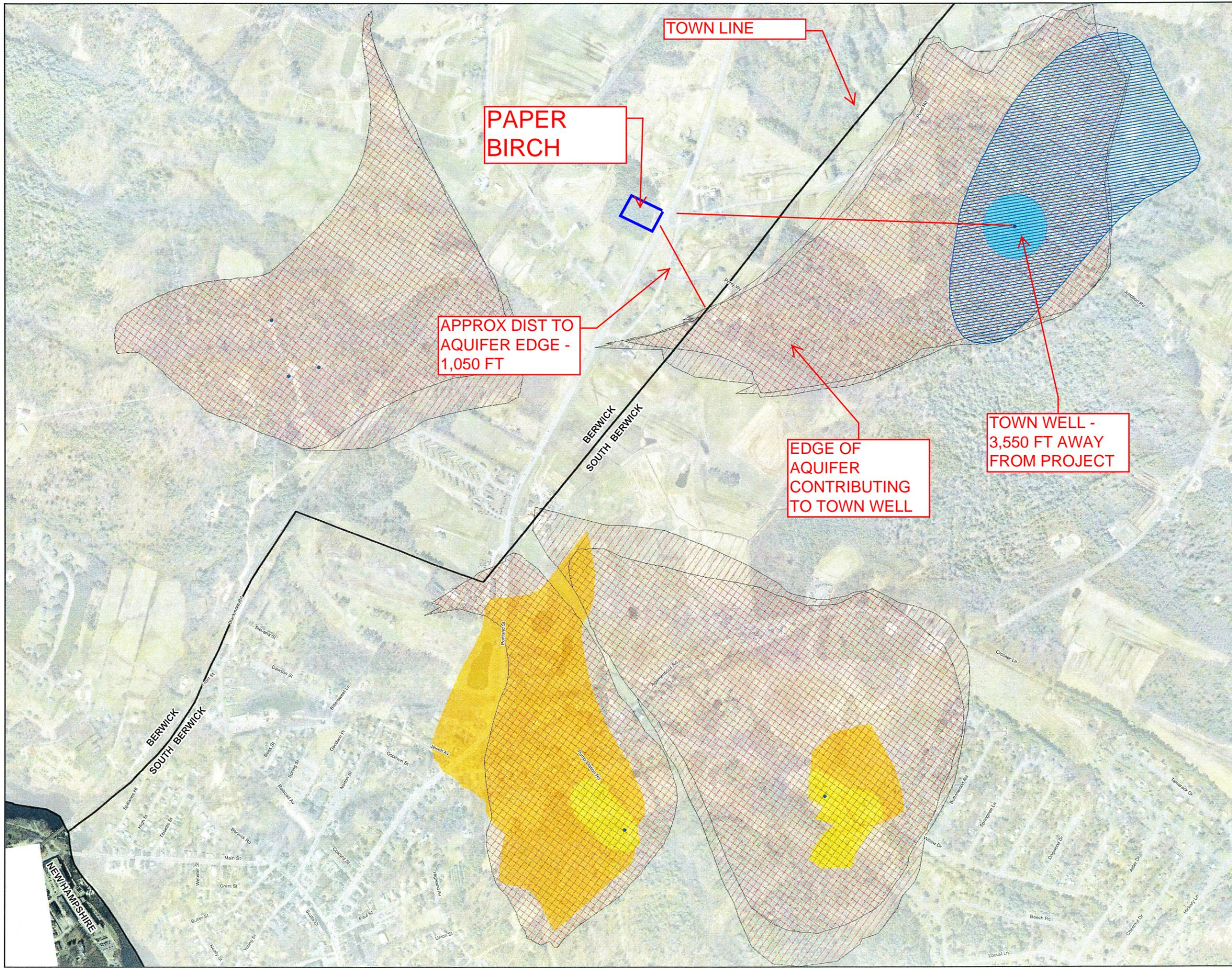
Regards,

John Leach
Superintendent
South Berwick Water District

- Legend**
- Wells
 - ▭ Town Boundaries
 - Junction Road Well Head Protection Area
 - Zone 1
 - Zone 2
 - Bedrock Source Water Protection Areas
 - Moderate probability of contributing to a community public water supply
 - High probability of contributing to a community public water supply
 - Sand and Gravel Aquifer Areas
 - 200 Day travel time to selected community public water supply well
 - 2500 Day travel time to selected community public water supply well



South Berwick Water District
Well Head Protection Areas



TOWN LINE

PAPER BIRCH

APPROX DIST TO AQUIFER EDGE - 1,050 FT

EDGE OF AQUIFER CONTRIBUTING TO TOWN WELL

TOWN WELL - 3,550 FT AWAY FROM PROJECT

BERWICK
SOUTH BERWICK

NEW HAMPSHIRE

LOT 357 PROPOSED PARKING INFO

| | |
|------------------------|--|
| RETAIL BUSINESS: | 1 SPACE PER 150 SF OF FLOOR SPACE |
| INDUSTRIAL BUSINESS: | 1 SPACE PER EMPLOYEE WORKING MAX SHIFT |
| EXISTING RETAIL SPACE: | 800 SF |
| EXISTING EMPLOYEES: | 5 MAX |
| PROPOSED RETAIL SPACE: | 1,000 SF |
| PROPOSED EMPLOYEES: | 5 MAX |
| TOTAL SPACES REQUIRED: | 22 SPACES |
| TOTAL SPACES PROVIDED: | 29 SPACES |

LOT 359 PROPOSED PARKING INFO

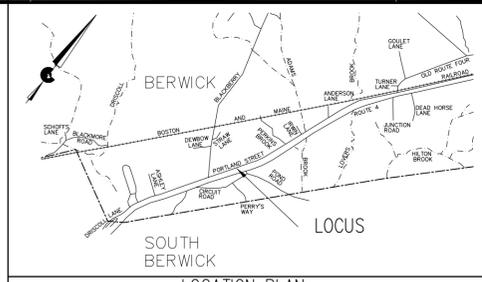
| | |
|--------------------------|--|
| INDUSTRIAL BUSINESS: | 1 SPACE PER EMPLOYEE WORKING MAX SHIFT |
| MAX NUMBER OF EMPLOYEES: | 20 - 20 SPACES REQUIRED |
| TOTAL SPACES REQUIRED: | 20 SPACES |
| TOTAL SPACES PROVIDED: | 33 SPACES (PHASE 1) 22 SPACES (PHASE 2) |

ODOR CONTROL SPECIFIC NOTES:

- ALL USERS OF THE FACILITY ARE TO REFERENCE THE APPROVED ODOR CONTROL PLAN. THIS PLAN IS PART OF THE SITE PLAN APPROVAL AND INDICATES THE MINIMUM REQUIREMENTS FOR ODOR CONTROL.
- THE BUILDING TENANTS WILL PROVIDE PROPER ODOR CONTROL MEASURES FOR EACH ODOR PRODUCING SOURCE. ALL ODOR CONTROL MEASURES SHALL FOLLOW THE REQUIREMENTS OF TOWN OF BERWICK LAND USE ORDINANCE SECTION 8.25.4.
- ODOR CONTROL SHALL BE IMPLEMENTED IN EACH PORTION OF THE OPERATION THAT CREATES AN ODOR THAT CAN REACH THE OUTSIDE ENVIRONMENT.
- ODOR CONTROL MEASURES CAN CONTAIN FANS AND EQUIPMENT TO TREAT THE AIR. AT A MINIMUM CARBON FILTRATION SHALL BE USED TO TREAT ANY EXHAUST AIR THAT EXITS THE STRUCTURE.
- DETAILED PLANS OF THE ODOR CONTROL SYSTEM INCLUDING PRODUCT NAMES AND MAINTENANCE SCHEDULES SHALL BE SUBMITTED TO THE CODE ENFORCEMENT OFFICE AS PART OF THE BUILDING PERMIT REVIEW AND OCCUPANCY INSPECTION.

PROPOSED COVERAGE INFO

| | |
|--|--|
| LOT 12-1 TOTAL AREA | 110,265 SF |
| LOT 12-2 TOTAL AREA | 105,003 SF |
| LOT 12-1: | |
| PROPOSED BUILDING COVERAGE | 4,380 SF |
| PROPOSED IMPERVIOUS COVERAGE (INCLUDING SHARED DRIVEWAY) | 20,251 SF |
| BUILDING COVERAGE | 4,380/110,265 = 3.97% |
| LOT COVERAGE | 35,735/105,003 = 18.4% |
| LOT 12-2: | |
| PROPOSED BUILDING COVERAGE | 20,000 SF (PHASE 1) 25,200 SF (PHASE 2) |
| PROPOSED IMPERVIOUS COVERAGE (INCLUDING SHARED DRIVEWAY) | 34,487 SF (PHASE 1) 37,222 SF (PHASE 2) |
| BUILDING COVERAGE | 20,000/105,003 = 19.0% (PH1) 25,200/105,003 = 24.0% (PH2) |
| LOT COVERAGE | 34,487/105,003 = 32.8% (PH1) 37,222/105,003 = 35.4% (PH2) |
| TOTAL WETLAND IMPACT (INCLUDES SHARED DRIVEWAY) | 5,458 SF > 4,300 SF |



ISSUED FOR PERMIT N.F.C

8/26/2020

CIVIL CONSULTANTS
CIVIL CONSULTANTS
Engineers
Planners
Surveyors
P.O. Box 100
South Berwick
Maine
03908
207-384-2560
www.civcon.com

NOTES:

- ASSESSOR'S INFORMATION: TOWN OF BERWICK ASSESSOR'S MAP R-70 LOT 12-1 & 12-2
- RECORD OWNER: LOT 12-1: PAPER BIRCH PROPERTY, LLC C/O PAUL VENUTI 3 APGAR LANE YORK, ME 03909; LOT 12-2: PAPER BIRCH PROPERTY, LLC P.O. BOX 426 PORTLAND, ME 04112
- DEED REFERENCE: LOT 12-1 - Y.C.R.D. 17566/284; LOT 12-2 - Y.C.R.D. 18120/324
- ZONING INFORMATION: RURAL COMMERCIAL / INDUSTRIAL - (RC//); LOT SIZE: LOT 12-1 = 110,265 SQ. FT. LOT 12-2 = 105,003 SQ. FT. MINIMUM FRONTAGE: 200' SETBACKS: FRONT YARD: 50' SIDE YARD: 25' REAR YARD: 25' MAXIMUM BUILDING HEIGHT: 45' MINIMUM LOT WIDTH: 200' MAXIMUM LOT COVERAGE: 80%
- NORTH AS DEPICTED HEREON IS BASED ON REFERENCE PLAN #1.
- THE PARCEL IS LOCATED IN FLOOD HAZARD ZONE X AS SHOWN ON THE FLOOD INSURANCE RATE MAP FOR THE TOWN OF BERWICK, COMMUNITY PANEL NO 2301440008B, EFFECTIVE DATE AUGUST 5, 1991. ZONE X IS DEFINED AS AREAS DETERMINED TO BE OUTSIDE THE 500-YEAR FLOODPLAIN.
- LOT 12-1 CONTAINS 2.531 ACRES MORE OR LESS. LOT 12-2 CONTAINS 2.411 ACRES MORE OR LESS.
- THE BOUNDARY AS SHOWN HEREON IS BASED ON REFERENCE PLAN #1 AND PHYSICAL MONUMENTS SHOWN THEREON. NO INDEPENDENT BOUNDARY RETRACEMENT WAS PERFORMED BY CIVIL CONSULTANTS.
- TOPOGRAPHIC DETAIL SHOWN HEREON IS BASED ON REFERENCE PLAN #1 AND MAY NOT ACCURATELY REFLECT CURRENT CONDITIONS ON SITE.
- WETLANDS AND SOILS SHOWN HEREON WERE DELINEATED BY JOSEPH NOEL, MAINE CERTIFIED SOIL SCIENTIST #209, IN DECEMBER 2012 AS PART OF THE APPROVAL OF REFERENCE PLAN #1. REPORT TITLED GLASS A HIGH INTENSITY SOIL SURVEY FOR JAMES AND DIANNE DEAN, TAX MAP R70, LOT 12, PORTLAND STREET (ROUTE 4), BERWICK, MAINE. REPORT CONTAINS INFORMATION ON TEST PITS DESIGNATED AS TP 3 AND TP 4.
- MINIMUM PARKING FOR RETAIL BUSINESS IS 1 SPACE FOR EVERY 150 SQUARE FEET OF FLOOR SPACE. MINIMUM PARKING FOR INDUSTRIAL BUSINESSES IS 1 SPACE PER EMPLOYEE ON THE MAXIMUM WORKING SHIFT.
- SIGHT DISTANCE INDICATED ON PLANS IS BASED ON INFORMATION PROVIDED BY MAINE DOT FROM PREVIOUSLY APPROVED PROJECT AT THIS LOCATION.
- ALL BUILDING MOUNT LIGHTS TO BE DOWN LIT AND SHIELDED TO REDUCE LIGHT DIRECTED TO ABUTTERS.
- KNOX BOX BUILDING ACCESS UNITS WILL BE INSTALLED ON THE BUILDING AT THE LOCATION SET BY THE BERWICK FIRE DEPARTMENT.
- MAP R-70, LOT 12-1 OWNER SHALL BE RESPONSIBLE FOR ALL MAINTENANCE OF THE SHARED DRIVEWAY LOCATED WITHIN THE 30 FT WIDE DRIVEWAY EASEMENT ON LOTS R-70, LOT 12-1 AND R-70, LOT 12-2.
- AFTER SITE CLEARING, INSTALL EROSION CONTROL MEASURES TO MITIGATE POTENTIAL SEDIMENT TRANSPORT OFF SITE. DUE TO CONSTRUCTION, MAINTAIN AND ADJUST EROSION CONTROL MEASURES AS SITE WORK PROGRESSES. ALL WORK TO FOLLOW TOWN OF BERWICK LAND USE ORDINANCE SECTION 7.15, EROSION AND SEDIMENTATION CONTROL STANDARDS.
- LOT 12-2 SEPTIC DESIGN INFO:
EMPLOYEES WITH SHOWER = 20 GALLONS PER DAY PER EMPLOYEE
NUMBER OF EMPLOYEES = 20
TOTAL 400 GALLONS PER DAY

REFERENCE PLANS:

- "SUBDIVISION PLAN, OWNERS OF RECORD JAMES & DIANNE DEAN, PORTLAND STREET - ROUTE #4, BERWICK, MAINE", DATED JANUARY 24, 2013 BY TRITECH ENGINEERING CORPORATION.

PROJECT SPECIFIC NOTES:

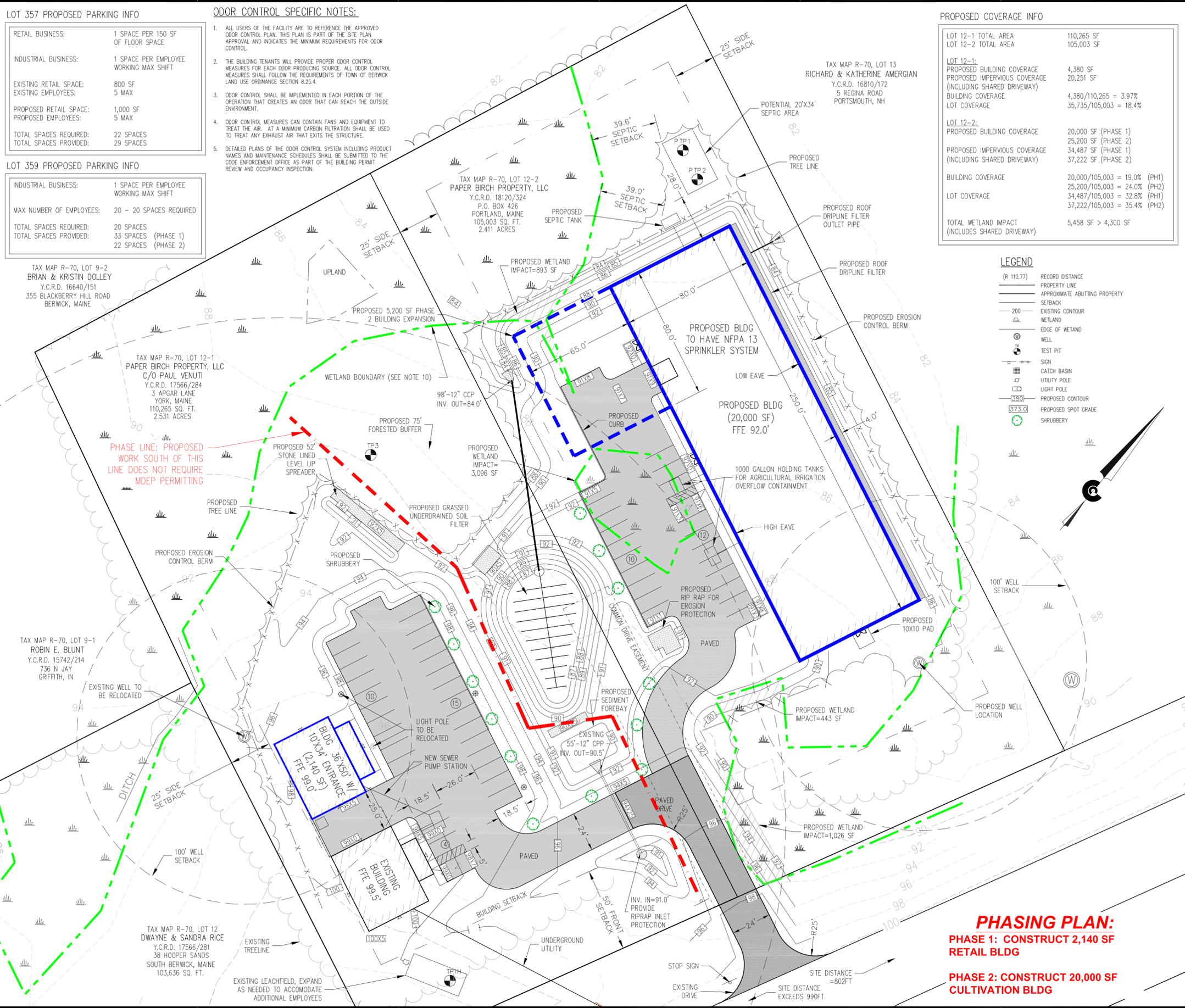
- THE BUILDING TENANTS WILL PROVIDE AN ODOR CONTROL PLAN THAT WILL MEET OR EXCEED THE APPROVED PLAN ON FILE WITH THE TOWN OF BERWICK. THE PLAN SHALL BE SUBMITTED TO THE TOWN AS PART OF THE BUILDING/OCCUPANCY PERMIT PROCESS.
- BUILDING OWNER TO PROVIDE TOWN OF BERWICK POLICE DEPARTMENT THE NAMES, ADDRESSES AND CONTACT INFORMATION FOR NOTIFICATION IF NEEDED.
- MAINE DEPARTMENT OF TRANSPORTATION ISSUED A DRIVEWAY PERMIT (#26694) FOR SHARED COMMERCIAL AND RESIDENTIAL ACCESS TO PROPERTIES KNOWN AS TAX MAP R70, LOT 12-1 AND 12-2. BASED ON THE CHANGED USE TO LOT 12-2, A NEW ENTRANCE PERMIT WILL BE OBTAINED FROM THE MDT.
- EACH TENANT SPACE SHALL HAVE TWO 1000 GALLON HOLDING TANKS TO COLLECT IRRIGATION WATER.

TAX MAP R-70, LOT 9-2
BRIAN & KRISTIN DOLLEY
Y.C.R.D. 16640/151
355 BLACKBERRY HILL ROAD
BERWICK, MAINE

PHASE LINE: PROPOSED WORK SOUTH OF THIS LINE DOES NOT REQUIRE MDEP PERMITTING

TAX MAP R-70, LOT 9-1
ROBIN E. BLUNT
Y.C.R.D. 15742/214
736 N JAY GRIFFITH, IN

TAX MAP R-70, LOT 12
DWAYNE & SANDRA RICE
Y.C.R.D. 17566/281
38 HOOPER SANDS
SOUTH BERWICK, MAINE
103,636 SQ. FT.



PHASING PLAN:
PHASE 1: CONSTRUCT 2,140 SF RETAIL BLDG
PHASE 2: CONSTRUCT 20,000 SF CULTIVATION BLDG

| | |
|---|----------|
| PLAN APPROVED BY TOWN OF BERWICK PLANNING BOARD | |
| | CHAIRMAN |
| | |
| | |
| DATE: | |

PROPOSED SITE PLAN 357 & 359 PORTLAND STREET BERWICK, MAINE

DATE: 05/29/2020
DRAWN BY: DRC
CHECKED BY: GRA
APPROVED BY: GRA

PROPOSED SITE PLAN PHASE 1
PROJECT NO: 17-287.02
PH-L1
SHEET: 1 OF 5

Town of Berwick Planning Board
Conditional Use Findings of Fact
Applicant: Paper Birch Property, LLC
357 Portland Street (Tax Map R-070, Lot 12-1 & 12-2)
September 3, 2020

Paper Birch Property, LLC requested a Site Plan expansion and a Conditional Use Application on May 29, 2020 for a Marijuana Caregiver Retail Store & An Adult Use Cultivation Facility & Adult Use Manufacturing Facility (commercial kitchen) at 357 Portland Street.

The applicant proposed to construct a 20,000 ft² Adult Use Cultivation Facility with a Phase II expansion of 5,200 ft² on lot 12-2. A detailed odor control plan has been submitted for the cultivation facility. There will be a maximum of 20 employees for the cultivation building and the parking area will have 22 spaces. The building will be sprinkled. A new septic system is proposed to the west of the building, a design will be submitted during final site plan review.

On lot 12-1, Mr. Venuti has proposed to construct a 2,140 ft² Marijuana Storefront. The new storefront will match the style of the existing building. 29 parking spaces are provided for the two stores which meets the Land Use Ordinance minimum of 23. A new DOT entrance permit is required. According to Mr. Aleva an expected total of 137 daily trips is expected with 22 during the peak hour.

5,458 ft² of wetland will be impacted and as a result a NRPA Tier 1 Wetlands Permit is required. A Class A Soil Survey Report has been included with the application. The Low Impact Design features on site include: roof dripline filters, a grassed under drained soil filter and a vegetated forest buffer.

Both Police & Fire Departments have been contacted. The applicant's correspondence with the Fire Department is included in the packet.

The applicant requested two waivers: Landscaping (9.8.2.I.1.b) & Off-Street Parking (7.8.5). and they were granted by vote of 4-0. The application was found complete on August 6th, 2020.

Phase I is proposed to be the construction of the Marijuana Caregiver Retail Store. Phase II is proposed to be the Adult Use Cultivation and Manufacturing Facility.

Findings of Fact

1. **Conformance with the Comprehensive Plan:** *All proposed conditional uses and site plans shall conform to the Comprehensive Plan of the Town of Berwick and with the provisions of all pertinent federal, state and local codes, ordinances, and regulations.*

The application conforms to the Comprehensive Plan because it is permitting an appropriate commercial use within the RC/I zone.

2. **Preserve and enhance the landscape:** *The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, retaining existing vegetation during*

construction. After construction is complete, landscape shall be designed and planted that will define, soften or screen the appearance of off street parking areas from the right of way and abutting properties and/or structures in order to enhance the physical design of the building(s) or site, and to minimize the encroachment of the proposed use on the neighboring land uses.

No change is proposed to the physical site since the previous amendments.

- 3. Relationship of the proposed buildings to the environment:** *Proposed structures shall be related harmoniously to the terrain and to the existing buildings in the vicinity which have a visual relationship to the proposed buildings. Special attention shall be paid to the bulk, location and height of the building(s) and such natural features such as slope, soil type and drainage ways.*

The storefront will match the style of the existing storefront. The cultivation building is on Route 4 adjacent to existing industrial areas.

- 4. Vehicular access:** *The proposed site layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and controls of access points including site distances, turning lanes, traffic signalization when required by existing and projected traffic flow on municipal road systems.*

The parking areas are accessed directly from the street and provide adequate sight distance onto the public way. The Maine DOT has provided a revised permit for the access opening to Portland Street.

- 5. Parking and circulation:** *The layout and design of all vehicular and pedestrian circulation, including walkways, interior drives, and parking areas shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, loading areas, and arrangements and use of parking areas.*

Parking as shown on the plan is adequate to allow for vehicles to circulate on site. Access will also accommodate the abutting parcel to the east through a common drive easement.

- 6. Surface water drainage:** *Adequate provision shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, downstream conditions, soil erosion or the public storm drainage system. Whenever possible, on-site absorption of unpolluted run-off waters shall be utilized to permit groundwater recharge on the site.*

This standard has been met and complies

- 7. Existing utilities:** *The development shall not impose an unreasonable burden on sewers, sanitary and storm drains, water lines or other public utilities.*

This standard is not applicable. The water will be services via onsite well and the sewer will be onsite septic system.

- 8. Advertising features:** *The size, location, design, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.*

The Applicant must apply and receive a permit from the Town for any proposed new signs.

- 9. Special features of the development:** *Exposed storage areas, exposed machinery installation, service areas, truck loading areas, utility buildings and similar structures shall have sufficient*

setback and screening to provide an audio/visual buffer to minimize their adverse impact on other land uses within the development area and surrounding properties.

The applicant has received a letter from the Police Chief indicating that the less screening proposed is better for security purposes. The applicant has provided an extensive Odor control plan which is made part of this approval and will be required to be adhered to throughout the life of the project.

10. **Exterior lighting:** *All exterior lighting shall be designed to minimize adverse impact on neighboring properties.*

All lighting on the building shall be cut-off types. See note 13 of the plan set.

11. **Emergency vehicle access:** *Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures.*

Emergency vehicles may access the building from the parking area.

12. **Municipal services:** *The development will not have an unreasonable adverse impact on the municipal services including municipal road systems, fire department, police department, solid waste program, sewer treatment plant, school, open spaces, recreational programs and facilities, and other municipal service and facilities.*

The proposed uses will not have adverse impacts on municipal services.

13. **Will not result in water or air pollution:** *In making this determination, it shall at a minimum consider: The elevation of the land above sea level and its relationship to the floodplains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its attest on effluents; and the applicable state and local health and water resources regulations.*

This standard has been met as the Applicant will be disposing wastewater from the operation by placing the irrigation wastewater in 1,000 gallon holding tanks on site and loading pumper trucks to be taken to the Treatment plant for proper disposal. The dumpster will be emptied on a regular basis.

14. **Has sufficient water available for the reasonably foreseeable needs of the development** *(this is usually considered to be ten years approximately).*

This standard has been met. The use is not residential and the Applicant will be using a well.

15. **Will not cause an unreasonable burden on an existing water supply,** *if a municipal or community water supply is to be utilized.*

A Condition of Approval has been added to ensure an unreasonable burden will be caused by the operation.

16. **Will not cause soil erosion or reduction in the capacity of the land to hold water** *so that dangerous or unhealthy conditions may result.*

This standard has been met since the site has been designed to accommodate stormwater and the Maine Dep has reviewed and permitted this project.

17. **Will provide for adequate sewerage waste disposal.**

This standard has been met as a septic system is proposed.

18. Will not have adverse effects on the scenic or natural beauty of the area, aesthetics, or rare and irreplaceable natural areas.

This standard does not apply since the site is zoned for Industrial/Commercial uses.

19. The developer has adequate financial and technical capacity to meet the above stated standards.

This standard has been met and complies.

20. Whenever situated in whole or in part within 250 feet of any pond, lake or river, will not adversely affect the quality of such body of water or affect the shoreline of such body of water, based on the standards outlined in Section 9.8.I.1.j.

This standard does not apply because the site is not located near any type of water body.

21. Low Impact Design: *Each applicant is required to submit a statement to the Planning Board documenting proposed Low Impact Design (LID) for the site, which will help to reduce storm water volumes and help to enhance storm water quality. LID includes, but is not limited to, green roofs, rain gardens, tree wells, infiltration basins and permeable pavement.*

This standard has been met as several LID features are included as part of existing and proposed site plan.

Conditions

1. The applicant shall provide a copy of their State of Maine license.
2. A water sample shall be tested for priority pollutants and nutrients before any cultivation wastewater is discharged to a holding tank, and then tested annually thereafter. Results shall be provided to the Town and South Berwick Water District.
3. If an odor violation is determined by the Code Enforcement Officer, the applicant shall resolve the issue within five days. The Code Enforcement Officer may revoke the Certificate of Occupancy if the odor issues are not resolved within five days.
4. The applicant shall submit DEP approval before a building permit will be granted for Phase II – The Adult Use Cultivation and Manufacturing Facility.

I, Nichole Fecteau, certify that I am acting Chair of the Planning Board of the Town of Berwick, Maine, a Planning Board established pursuant to Maine State Statute (30 MRSA § 1917 and Title 30-A § 4401) and I further certify that this decision was approved by the Planning Board at its meeting of September 3, 2020

Findings of Fact _____

Application _____

Nichole Fecteau, Acting Chair, Berwick Planning Board



**CIVIL
CONSULTANTS**

Engineers

Planners

Surveyors

P.O. Box 100

293 Main Street

South Berwick

Maine

03908

207-384-2550

August 18, 2020

James Bellissimo
Town of Berwick
11 Sullivan Street
Berwick, ME 03901

Re: Subdivisions Revisions

Dear Jim:

Following please find material for a subdivision amendment for the referenced lots. The information includes:

- A completed application
- A completed subdivision plan.
- Copies of existing subdivision plans.
- Deeds for the two properties.
- A written agreement between the two owners.
- Copies of the previous two subdivision plans.
- A check in the amount of \$100.00.

Three paper plan copies are being delivered to you with original signatures. Upon approval, one will need to be signed by the board and returned to us for recording.

Please put us on the schedule for the next available Planning Board meeting.

Very truly yours,
CIVIL CONSULTANTS


Thomas W. Harmon, PE.

Cc:enclosures



Town of Berwick

11 Sullivan Street, Berwick, ME 039001
Phone: (207) 698-1101 Fax (207) 698-5181
Website: www.berwickmaine.org

APPLICATION FOR SUBDIVISION

Complete Subdivision applications must be received by the Berwick Planning Department at least 44 10 days prior to the desired Planning Board meeting date. All review fees are due prior to the scheduled Planning Board meeting.

| | | | |
|-------------------------------------|-------------------|-------------------------------------|------------------|
| <input type="checkbox"/> | Major Subdivision | <input type="checkbox"/> | SKETCH |
| <input checked="" type="checkbox"/> | Minor Subdivision | <input type="checkbox"/> | Preliminary Plan |
| <input checked="" type="checkbox"/> | Lot Line Revision | <input checked="" type="checkbox"/> | Final Plan |

APPLICANT INFORMATION

- Name of Property Owner Timothy George / Brian Alton Bridge
Address 21 Pleasant Drive / 75 Guinea Road
Berwick, ME 03901
Telephone _____
- Name of Applicant Timothy George
Address 21 Pleasant Drive Berwick, ME 03901
Telephone _____
- Is Applicant a corporation? NO Attach documentation
- Authorized Agent's Name Civil Consultants
Address 293 Main Street, P.O. Box 100
South Berwick, ME 03908
Telephone 207-384-2550
- Persons preparing plan:
Surveyor Christopher H. Mende, PLS
State of Registration ME Reg No 1302
Engineer Thomas Harmon, PE, PLS
State of Registration ME Reg No 2977
Soil Scientist _____
State of Registration _____ Reg No _____

6. Persons to whom all correspondence concerning this application should be sent Civil Consultants, Christopher H. Mende, PLS
 Address P.O. Box 100
South Berwick, ME 03908
 Telephone 207-384-2550

7. What legal interest does the applicant have in the property to be developed? Ownership

Attach evidence of interest (Deed, option, purchase and sale contract, etc.)

8. What interest does the owner or applicant have in any abutting property?
None.

LAND INFORMATION

9. Location of Property 21 Pleasant Drive, Berwick, ME 03901

| | | | | |
|--------------------|------|--------------|------|-------------|
| Registry of Deeds: | Book | <u>16316</u> | Page | <u>552</u> |
| | | <u>17850</u> | | <u>111</u> |
| Berwick Tax Maps: | Map | <u>32</u> | Lot | <u>21</u> |
| | Map | <u>32</u> | Lot | <u>17-3</u> |

10. Land Use District in which property is located? R2

11. Is any part of the property located in the Shoreland Overlay District? No

The Aquifer Protection District? No

12. Is any portion of the property within a special flood hazard area as identified by the Federal Emergency Management Agency? No

13. Does any part of the property contain wetlands as identified by the National Wetlands Inventory, US Department of the Interior? No

14. Total acreage 0.456 Acreage to be developed 0

15. Does the parcel include or abut any brooks, streams, or other water bodies? No

Identify them by name, if known _____

16. What is the current use of the land? Residential

17. Has this land been part of a prior approved subdivision? Yes

Name Colonial Acres Date 09/21/73

Subdivision of Land of Frank LaPierre 04/04/85

18. Has the parcel been divided or has any portion of the land been conveyed for any purpose within the past five years? No

19. Indicate the nature of any restrictive covenants to be placed in the deeds
None at present.

20. List below the names and addresses of abutting property owners to include those across any road or street

| Map | Lot | Names(s) of Owner | Address: |
|-----|------|----------------------------------|--|
| R32 | 20 | Mark Dumont | 15 Pleasant Drive Berwick, ME 03901 |
| | 23 | Richard Moore Diane Moore | 24 Pleasant Drive Berwick, ME 03901 |
| | 24 | Arthur Lessard Jeanne Lessard | 18 Pleasant Drive Berwick, ME 03901 |
| | 17-2 | John Laroche Ellen Laroche | 62 Worster Road Berwick, ME03901 |
| | | | |
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| | | | |
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| | | | |

GENERAL INFORMATION:

30. Does the applicant propose to dedicate to the public any streets, recreation areas, resource protection or other common lands? No If yes, complete the following:

Streets/Estimated Length _____

Recreation/Estimated Acreage _____

Resource Protection/Acreage _____

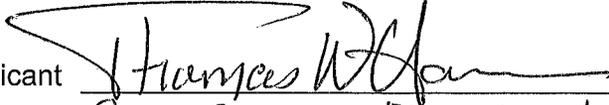
Common lands/Acreage _____

31. Does the applicant intend to request waivers of any of the subdivision regulations? No

If yes, identify each item separately and state reason for the request

32. Has the applicant received any variance from the requirements of the Land Use Ordinance? Yes If yes, what? Reduction in rear setback for the purpose of installing a pool.

To the best of my knowledge, all the above stated information submitted in this application is true and correct.

Date 8/18/20 Applicant 
for George, Bridget & Channon

CIVIL CONSULTANTS MEMORANDUM

| | |
|-----------------|---------------------------------|
| TO: | Berwick Planning Board |
| FROM: | Tom Harmon P.E., P.L.S. |
| SUBJECT: | Minor Subdivision Review |
| DATE: | AUGUST 2020 |
| PROJECT: | 19-228.00 |

The discussion below is provided to support the subdivision review process for the subject project.

6.3 SUBMISSIONS.

The final plan application shall consist of the following items.

| Requirements. | <i>Applicant's Response</i> |
|---|--------------------------------|
| A. Application Form. | |
| B. Location Map. The location map shall be drawn at a size adequate to show the relationship of the proposed subdivision to the adjacent properties, and to allow the Board to locate the subdivision within the municipality. The location map shall show: | <i>Represented in drawings</i> |
| 1. Existing subdivisions in the proximity of the proposed subdivision. | <i>Represented in drawings</i> |
| 2. Locations and names of existing and proposed streets. | <i>Represented in drawings</i> |
| 3. Boundaries and designations of zoning districts. | <i>Represented in drawings</i> |
| 4. An outline of the proposed subdivision and any remaining portion of the owner's property if the final plan submitted covers only a portion of the owner's entire contiguous holding | <i>Represented in drawings</i> |
| C. Final Plan. The subdivision plan for a Minor Subdivision shall consist of two plans on 20 pound white paper, one to be recorded at the Registry of Deeds, the other to be filed at the municipal office, and three copies of one or more maps or drawings drawn to a scale of not more than one hundred feet to the inch. The plans shall be embossed with the dated seal and signature of the individual(s) responsible for preparation of the plan. Plans for subdivisions containing more than one hundred acres may be drawn at a scale of not more than two hundred feet to the inch provided all necessary detail can easily be read. Plans shall be no larger than 24 by 36 inches in size, and shall have a margin of two inches outside of the border lines on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be provided for endorsement by the Board. Four copies of | <i>Acknowledged</i> |



| | |
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| all information accompanying the plan shall be submitted. | |
| <p>D. Application Requirements.</p> <p>The application for approval of a Minor Subdivision shall include the following information. The Board may require additional information to be submitted, where it finds necessary in order to determine whether the criteria of Title 30-A M.R.S.A., §4404 are met.</p> | <i>Upon Board's request</i> |
| 1. Proposed name of the subdivision, or identifying title, and the name of the municipality in which it is located, plus the assessor's map and lot numbers. | <i>Provided</i> |
| 2. Verification of right, title, or interest in the property. | <i>Provided</i> |
| 3. A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a Maine professional land surveyor. The corners of the parcel shall be located on the ground and marked by monuments. The plan shall indicate the type of monument found or to be set at each lot corner. | <i>Represented in Drawings</i> |
| 4. A copy of the most recently recorded deed for the parcel. A copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property. | <i>Provided</i> |
| 5. A copy of any deed restrictions intended to cover all or part of the lots or dwellings in the subdivision. | <i>None Known</i> |
| 6. An indication of the type of sewage disposal to be used in the subdivision. | <i>N/A</i> |
| a. When sewage disposal is to be accomplished by connection to the public sewer the following shall be accomplished: | <i>N/A</i> |
| 1. The Berwick Sewer District shall certify that providing service to the proposed subdivision is within the capacity of the system's existing collection and treatment system or improvements planned to be completed prior to the construction of the subdivision. | <i>N/A</i> |
| 2. The Berwick Sewer District shall review and approve the construction drawings for the sewerage system. The size and location of laterals, collectors, manholes, and pump stations shall be reviewed and approved in writing by the Berwick Sewer District. | <i>N/A</i> |
| b. When sewage disposal is to be accomplished by subsurface waste water disposal systems, test pit analyses, prepared by a Maine Licensed Site Evaluator shall be provided. A map showing the location of all test pits dug on the site shall be submitted. | <i>N/A</i> |
| 7. An indication of the type of water supply system(s) to be used in the subdivision. | <i>N/A</i> |
| a. When water is to be supplied by public water supply, a written statement from the Berwick Water Department shall be submitted indicating that there is | |



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| adequate supply and pressure for the subdivision and that the department approves the plans for extensions where necessary. Where the department's supply line is to be extended, a written statement from the fire chief, stating approval of the location of fire hydrants, if any, and a written statement from the department approving the design of the extension shall be submitted. | |
| b. When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area. Evidence shall also be submitted that adequate fire protection for fire fighting purposes is available to serve the site. If adequate fire protection is not available then a water storage tank or an automatic sprinkling system shall be included in the plan, and a written statement from the Fire Chief shall be submitted indicating the department has reviewed and approved the fire protection system design. | N/A |
| 8. The date the plan was prepared, north point, and graphic map scale. | <i>Represented in the Drawings</i> |
| 9. The names and addresses of the record owner, applicant, and individual or company who prepared the plan, and adjoining property owners. | <i>Represented in the Drawings</i> |
| 10. A high intensity soil survey by a Maine Certified Soil Scientist. Wetland areas shall be identified on the survey, regardless of size. | N/A |
| 11. The number of acres within the proposed subdivision, location of property lines, existing buildings, vegetative cover type, and other essential existing physical features. On wooded sites, the plan shall indicate the area where clearing for lawns and structures shall be permitted and/or any restrictions to be placed on clearing existing vegetation. | <i>Represented in the Drawings</i> |
| 12. The location of all rivers, streams and brooks within or adjacent to the proposed subdivision. If any portion of the proposed subdivision is located in the direct watershed of a great pond, the application shall indicate which great pond. | <i>Represented in the Drawings</i> |
| 13. Contour lines at the interval specified by the Board, showing elevations in relation to mean sea level. | <i>Board Action</i> |
| 14. The zoning district in which the proposed subdivision is located and the location of any zoning boundaries affecting the subdivision. | <i>Represented in the Drawings</i> |
| 15. The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivide. | N/A |
| 16. The location, names, and present widths of existing | <i>Represented in the Drawings</i> |



| | |
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| <p>streets and highways, and existing and proposed easements, building lines, parks and other open spaces on or adjacent to the subdivision. The plan shall contain sufficient data to allow the location, bearing and length of every street line, lot line, and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to reference points previously established.</p> | |
| <p>17. Size, type and locations of all existing and proposed overhead and underground utilities, to include but not be limited to street lighting, electricity, telephone, and cable television. The Board may require street lighting if there is a sufficient public safety need in accordance with the Town Street Lighting Policy.</p> | <p><i>Represented in the Drawings</i></p> |
| <p>18. The location of any open space to be preserved and a description of proposed improvements and its management.</p> | <p><i>None Proposed</i></p> |
| <p>19. All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers to convey title to the municipality of all public open spaces shown on the plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the applicant or lot owners are to be maintained shall be submitted. If open space or other land is to be offered to the municipality, written evidence that the municipal officers are satisfied with the legal sufficiency of the written offer to convey title shall be included.</p> | <p><i>None Proposed</i></p> |
| <p>20. If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the Town of Berwick's Flood Insurance Rate Map, shall be delineated on the plan.</p> | <p><i>N/A</i></p> |
| <p>21. A hydrogeologic assessment prepared by a Maine Certified Geologist or Maine Registered Professional Engineer experienced in hydrogeology, when the subdivision is not served by public sewer and</p> <ul style="list-style-type: none"> a. Any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled "Hydrogeologic Data for Significant Sand and Gravel Aquifers," by the Maine Geological Survey, 1985, Map No. 1; or b. The subdivision has an average density of more than one dwelling unit per 100,000 square feet. <p>The board may require a hydrogeologic assessment in other cases where site considerations or development design indicate greater potential of adverse impacts on groundwater quality. These cases include extensive areas of shallow to bedrock soils; or cluster developments in which the average density is less than one dwelling unit per 100,000 square feet but the density of the developed portion is in excess</p> | <p><i>N/A</i></p> |



| | |
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| <p>of one dwelling unit per 80,000 square feet; or proposed use of shared or common subsurface wastewater disposal systems.</p> <p>The hydrogeologic assessment shall be conducted in accordance with the provisions of Section 11.12.A.1 below.</p> | |
| <p>22. An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. Trip generation rates used shall be taken from <i>Trip Generation Manual</i>, current edition, published by the Institute of Transportation Engineers. Trip generation rates from other sources may be used if the applicant demonstrates that these sources better reflect local conditions.</p> | N/A |
| <p>23. For subdivisions involving 40 or more parking spaces or projected to generate more than 400 vehicle trips per day, a traffic impact analysis, prepared by a Maine Registered Professional Engineer with experience in traffic engineering, shall be submitted. The analysis shall indicate the expected average daily vehicular trips, peak-hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service of the street giving access to the site and neighboring streets which may be affected, and recommended improvements to maintain the desired level of service on the affected streets.</p> | N/A |
| <p>24. A stormwater management plan, prepared by a Maine Registered Professional Engineer in accordance with the <i>Stormwater Management for Maine: Best Management Practices</i>, published by the Maine Department of Environmental Protection, latest edition. The Board may not waive submission of the stormwater management plan unless the subdivision is outside the watershed of a great pond, the proposed subdivision does not involve grading which changes drainage patterns, or does not involve the addition of impervious surfaces such as roofs and driveways less than 5% of the area of the subdivision.</p> <p>The stormwater management plan shall be prepared in accordance with the provisions of Article 11.</p> | N/A |
| <p>25. An erosion and sedimentation control plan prepared in accordance with the <i>Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices</i>, published by the Cumberland County Soil and Water Conservation District and the Maine Department of Environmental Protection, latest edition. The Board may not waive submission of the erosion and sedimentation control plan unless the subdivision is outside the watershed of a great pond, the proposed subdivision does not involve grading which changes drainage patterns, or does not involve the addition of impervious surfaces such as roofs and driveways less than 5% of the area of the subdivision.</p> | N/A |



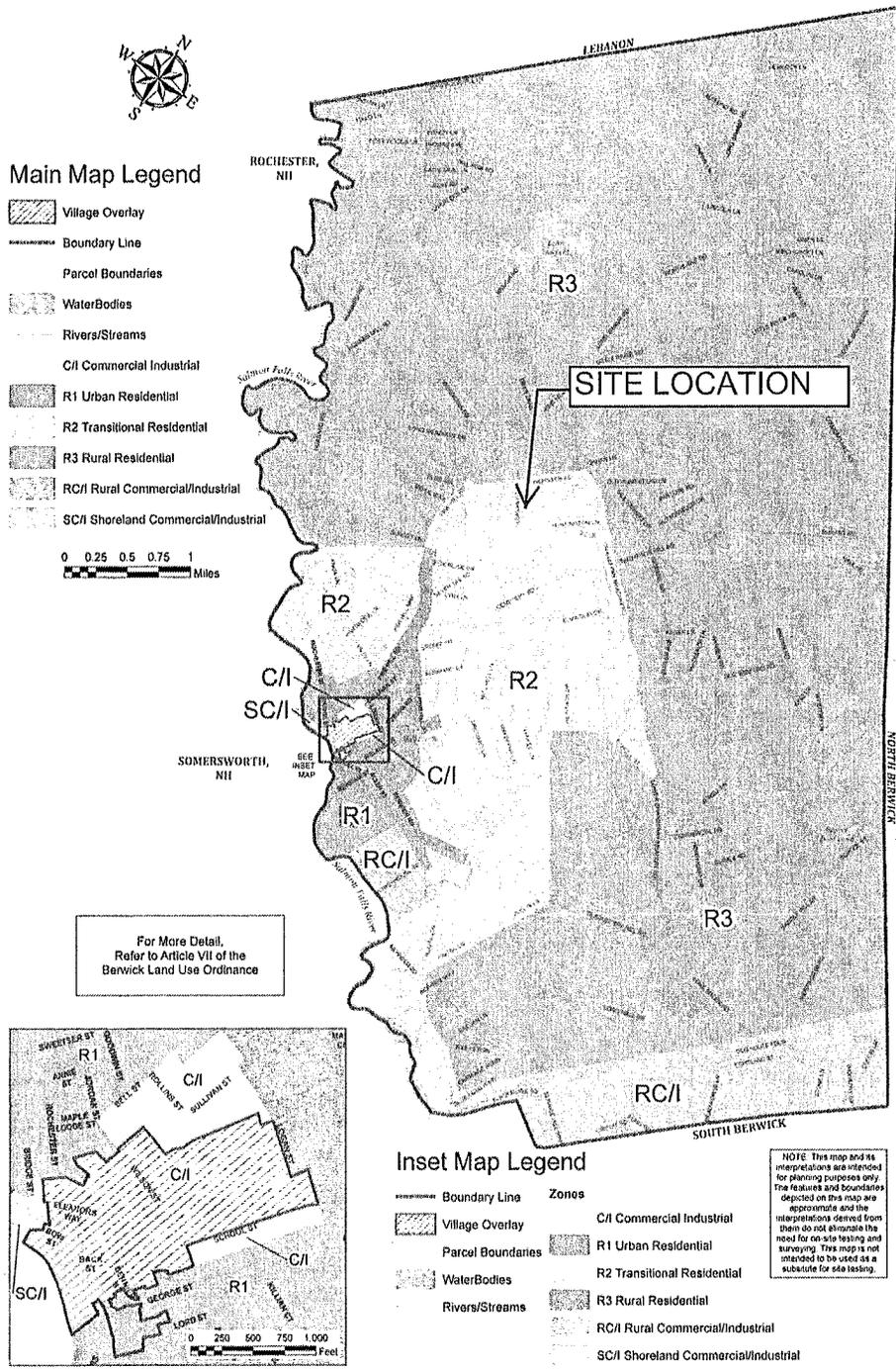
| | |
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| <p>26. Areas within or adjacent to the proposed subdivision which have been identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife or within the comprehensive plan. If any portion of the subdivision is located within an area designated as a critical natural area by the comprehensive plan or the Maine Natural Areas Program, the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.</p> | <p>N/A</p> |
| <p>27. If the proposed subdivision is in the direct watershed of a great pond, a phosphorus control plan.</p> <ol style="list-style-type: none"> a. For subdivisions which qualify for the simplified review procedure as described in Section 11.17.A.2, the plan shall indicate the location and dimensions of vegetative buffer strips or infiltration systems. b. For subdivisions which do not qualify for the simplified review procedure as described in Section 11.17.A.2, the following shall be submitted. <ol style="list-style-type: none"> 1. A phosphorus impact analysis and control plan conducted using the procedures set forth in <i>Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development</i>, published by the Maine Department of Environmental Protection, latest edition. 2. A long-term maintenance plan for all phosphorus control measures. 3. The contour lines shown on the plan shall be at an interval of no less than five feet. 4. Areas with sustained slopes greater than 25% covering more than one acre shall be delineated. | <p>N/A</p> |
| <p>28. All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the National Register of Historic Places, or have been identified in the comprehensive plan as sensitive or likely to contain such sites.</p> | <p>N/A</p> |
| <p>29. The location and method of disposal for land clearing and construction debris.</p> | <p>N/A</p> |
| <p>30. If the owner of the parcel to be subdivided has owned the parcel for less than five years, a narrative describing any timber harvesting operations since the owner obtained the parcel. If harvesting has occurred, a copy of the Forest Operations Notification and a written determination of the harvest's compliance with Maine Forest Service's Timber Harvesting Standards to Substantially Eliminate Liquidation Harvesting certified by a licensed forester shall be submitted.</p> | <p>N/A</p> |

B:\Ordinances&Regs\BERWICK\MinorSubdiv\Preliminary\20091119checklist.doc

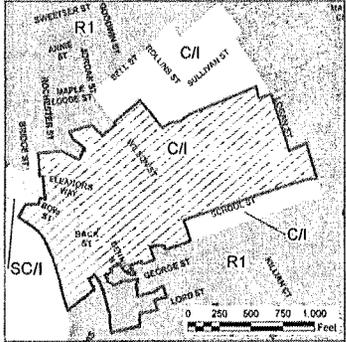


**CIVIL
CONSULTANTS**

P.O. Box 100 South Berwick, Maine 03908 207-384-2550



For More Detail,
Refer to Article VII of the
Berwick Land Use Ordinance



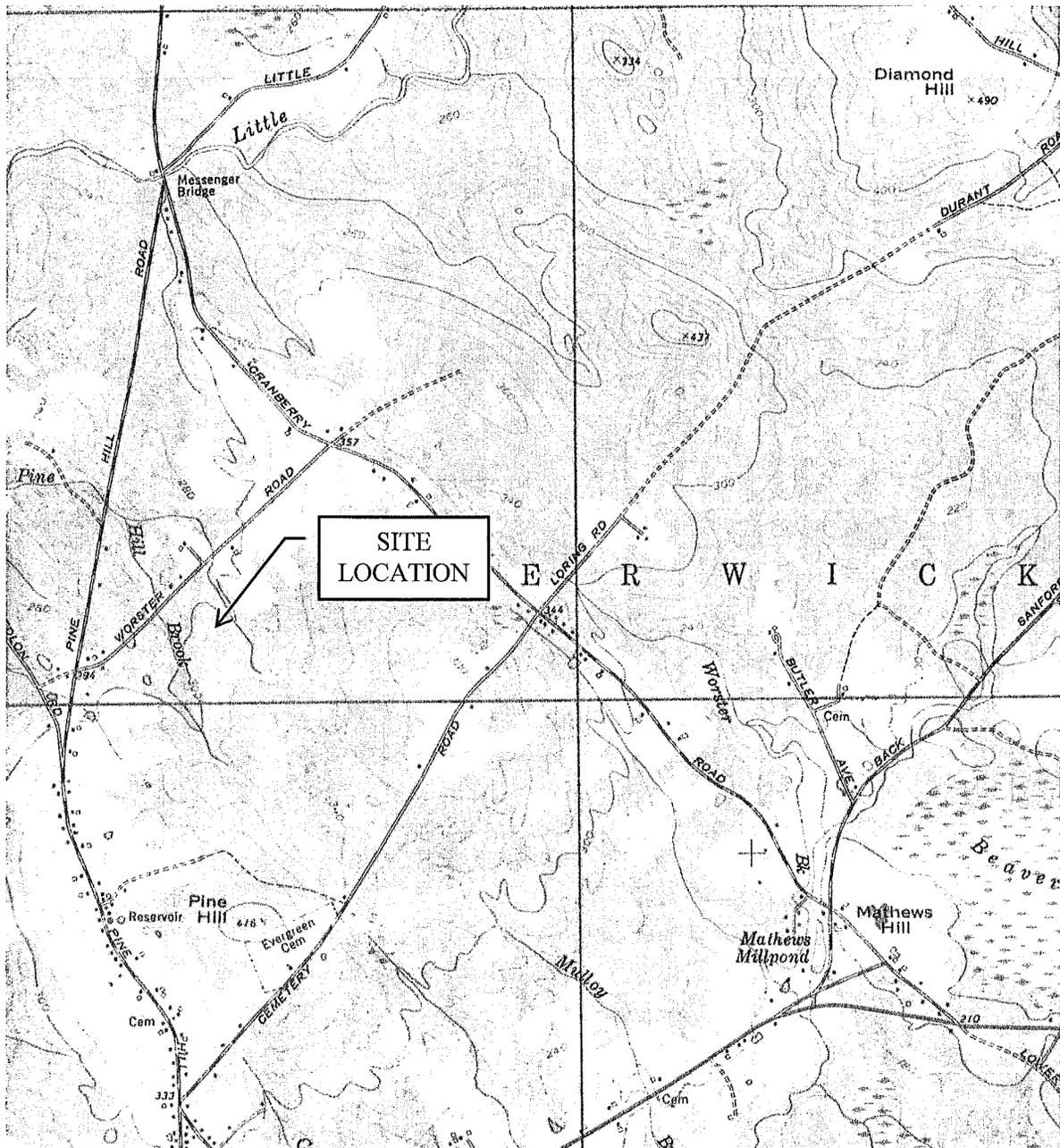
Northern Forests, LLC
GIS/PS Mapping Services
Revised 2018

**ZONING MAP
TOWN OF BERWICK,
MAINE**



| | | | |
|-------------------|--------------|-------------------|--|
| Zoning Map | | PREPARED FOR: | Tim George 21 Pleasant Drive Berwick, ME 03901 |
| JOB NO: 19-228.00 | Not to Scale | DATE: August 2020 | |

J:\aaa\2019\1922800\Planning Board\20200722_ZoningMap.doc



| | | |
|---|---------------------|---|
| <p>PRELIMINARY SUBDIVISION APPLICATION (Minor)</p> <p>USGS Quadrangle for Somersworth, ME 1973</p> | | <p>PREPARED FOR:</p> <p>Tim George 21 Pleasant Drive Berwick, ME 03901</p> |
| <p>JOB NO: 19-228.00</p> | <p>Not to Scale</p> | <p>DATE: August 2020</p> |

J:\aaa\2019\1922800\Planning Board\20200722-USGSMap.doc



**CIVIL
CONSULTANTS**

P.O. Box 100 South Berwick, Maine 03908 207-384-2550

York County Registry of Deeds Book 16316 Page 552

Doc# 2012018605
Bk 16316 Pg 552 - 553
Received York SS
05/04/2012 2:48PM
Debra L. Anderson
Register of Deeds

QUITCLAIM DEED

KNOWN ALL MEN BY THESE PRESENTS that I, CATHERINE M. OUTLAW of North Berwick, County of York and State of Maine, for consideration paid, grant to TIMOTHY GEORGE, of Berwick, County of York and State of Maine his heirs and assigns, with a mailing address of 21 Pleasant Drive, Berwick, Maine 03901, with Quitclaim Covenants the land and buildings in Berwick, County of York and State of Maine, described as follows:

A certain lot or parcel of land with the buildings thereon situated at 12 Pleasant Drive in Berwick, in the County York, State of Maine and being bounded and described as follows, viz:

A certain lot or parcel of land being Lot Number Twelve (12) as shown on a Plan of Colonial Acres on Worster Road, Berwick, Maine, dated September 21, 1973, drawn by Earle J. Blodgett, Land Surveyor, which Plan has been recorded in the York County Registry of Deeds in Plan Book 64, Page 39, said Lot Number Twelve (12) being mor particularly bounded as follows:

Northwesterly by Lot Number Nine (9) for a distance of one hundred (100) feet; Northeasterly by land of Hussey and Clement for a distance of two hundred (200) feet; Southeasterly by land of said Hussey and Clement for a distance of one hundred (100) feet and Southwesterly by Pleasant Drive, so-called, as shown on said Plan for a distance of two hundred (200) feet all a shown on said Plan.

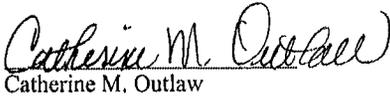
Together with a right of way for any and all purposes, in common with others having similar rights over the Streets and Avenues as delineated on said Plan.

The above-described property is hereby conveyed subject to the restrictions that said premises are to be used for residential purposes only and that no mobile home or house trailer shall be permitted on said Lot.

Meaning and intending to describe and convey the same premises conveyed to Catherine M. Outlaw and Timothy George as joint tenants with rights of survivorship by Quitclaim deed from Catherine M. Outlaw, dated November 30, 2004, and recorded with the York County Registry of Deeds, in Book 14335, Page 0210-0211. Meaning and intending to describe and convey the same premises conveyed to Catherine M. Outlaw by Warranty Deed from Joann M. Mazeau, dated January 26, 1996 and recorded with the York County Registry of Deeds in Book 7703 Page 189.

In Witness Whereof, I, CATHERINE M. OUTLAW being the Grantor herein, have hereunto set my hand and seal this 12 day of March, 2012.


Witness


Catherine M. Outlaw

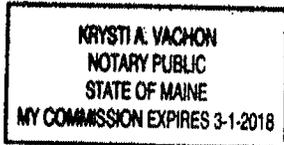
NO R.E. TRANSFER TAX PAID



State of Maine
County of York, ss.

March 12, 2012

Then personally appeared the above named **Catherine M. Outlaw** and acknowledged the foregoing instrument to be her fee act and deed.



Before me,

A handwritten signature in black ink, appearing to read "Krysti A. Vachon", written over a horizontal line.

Notary Public / Attorney at Law

Krysti A. Vachon
Print Name

SEAL

2pg
→ Timothy Georse
21 Pleasant Dr
Berwick Me
03901

End of Document

York County Registry of Deeds Book 17850 Page 111

DEBRA L. ANDERSON, REGISTER OF DEEDS
E-RECORDED Bk 17850 PG 111
Instr # 2018049520
11/28/2018 03:30:36 PM
Pages 2 YORK CO

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENT: That Dawn M. Bowden of 29 Pleasant Drive, Berwick, ME 03901, for consideration paid grants to Brian Alton Bridge and Allison Elizabeth Jones Charron, 75 Guinea Road, Berwick, ME 03901, as Joint Tenants with Rights of Survivorship, with WARRANTY COVENANTS:

Maine R.E. Transfer Tax Paid

A certain tract or parcel of land with the building(s) thereon, situate on the easterly side of a portion of Pleasant Drive and Ryan Street at the Intersection thereof, in the Town of Berwick, County of York and State of Maine, more particularly bounded and described as follows:

Beginning at a point, said point being a 3/4 inch iron pipe situate at the westerly corner of the within described lot, said point also being at the southerly corner of land now or formerly of Mazeau; thence turning and running N 65° 07' 03" E for 100.27 feet to an iron pin; thence turning and running N 17° 34' 08" W for 65.0 feet to a point; thence turning and running N 70° 19' 36" E for 97.66 feet, continuing N 70° 20' 54" E for 58.38 feet, continuing N 81° 07' 47" E for 56.93 feet to a point; thence turning and running S 22° 31' 21" E for 238.54 feet, and continuing S 28° 06' 37" E for 106.96 feet; thence turning and running S 65° 34' 24" W for 355.20 feet to a point; thence turning and running N 17° 25' 05" W for 310.35 feet to the point of beginning.

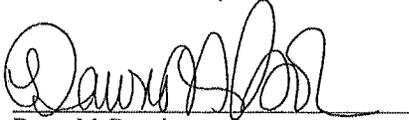
Being the same premises as described as Lot 3, Plan of Subdivision of Land of Frank LaPierre, Worster Road & Pleasant Drive, by Civil Consultants, South Berwick, ME, dated April 4, 1984.

Also conveying a right of way and easement for purposes of ingress and egress only, from Pleasant Drive to Lot 3, over land of Oscar L. Hussey, et al, as more particularly described in deed of Oscar L. Hussey, et al, to Francis A. LaPierre, et al, dated October 29, 1985, recorded at Book 3678, Page 4, York County Registry of Deeds, incorporated by reference herein.

These premises were conveyed to Grantor(s) Dawn M. Bowden by virtue of a Warranty deed from Jeffrey E. Scott and Cynthia A. Scott dated 01/08/2015 and recorded at the York County Registry of Deeds in Book 16952, Page 815.

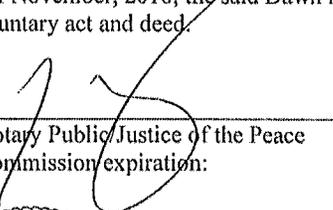


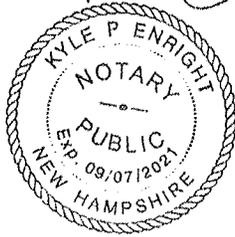
Executed this 21st day of November, 2018.


Dawn M. Bowden

State of New Hampshire
County of Rockingham

Then personally appeared before me on this 21st day of November, 2018, the said Dawn M. Bowden and acknowledged the foregoing to be her voluntary act and deed.


Notary Public/Justice of the Peace
Commission expiration:



RE: 2018-53673

Page 2 of 2

J:\aaa\2019\1922800\Planning Board\20200805_Deeds.doc

Subdivision modification

In regards to the proposed subdivision modification outlined by civil consultants project #19-228.00. All parties are in agreement of the drawing proposed to us from the civil consultants of Main St. South Berwick Maine. The Drawing provided showed a small parcel of land to be sold to Timothy L. George.

Seller(s):

Brian Alton Bridge

B. A. Bridge 6/25/2020

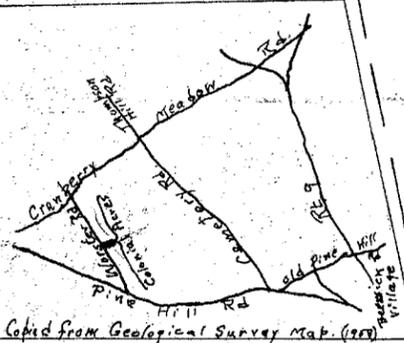
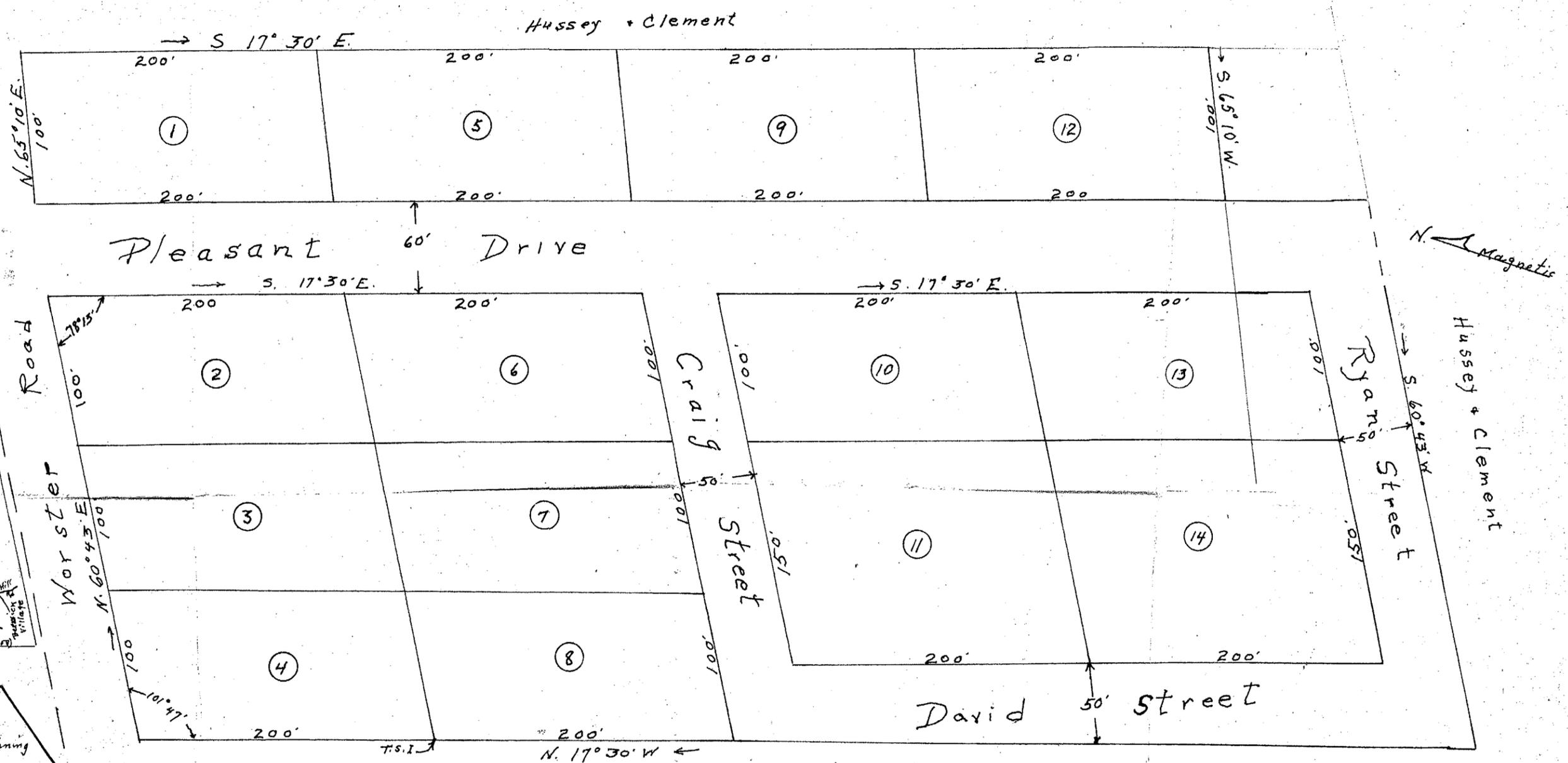
Allison Elizabeth Jones Charron

A. E. Jones Charron

Buyer(s):

Timothy L. George

Timothy L. George



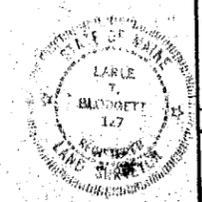
Berwick Planning Board
 Approved by the Berwick Planning Board October 4, 1973

Donald E. Bertho - Chairman
 Joseph [unclear]
 Edward J. [unclear]
 Daniel M. Newman

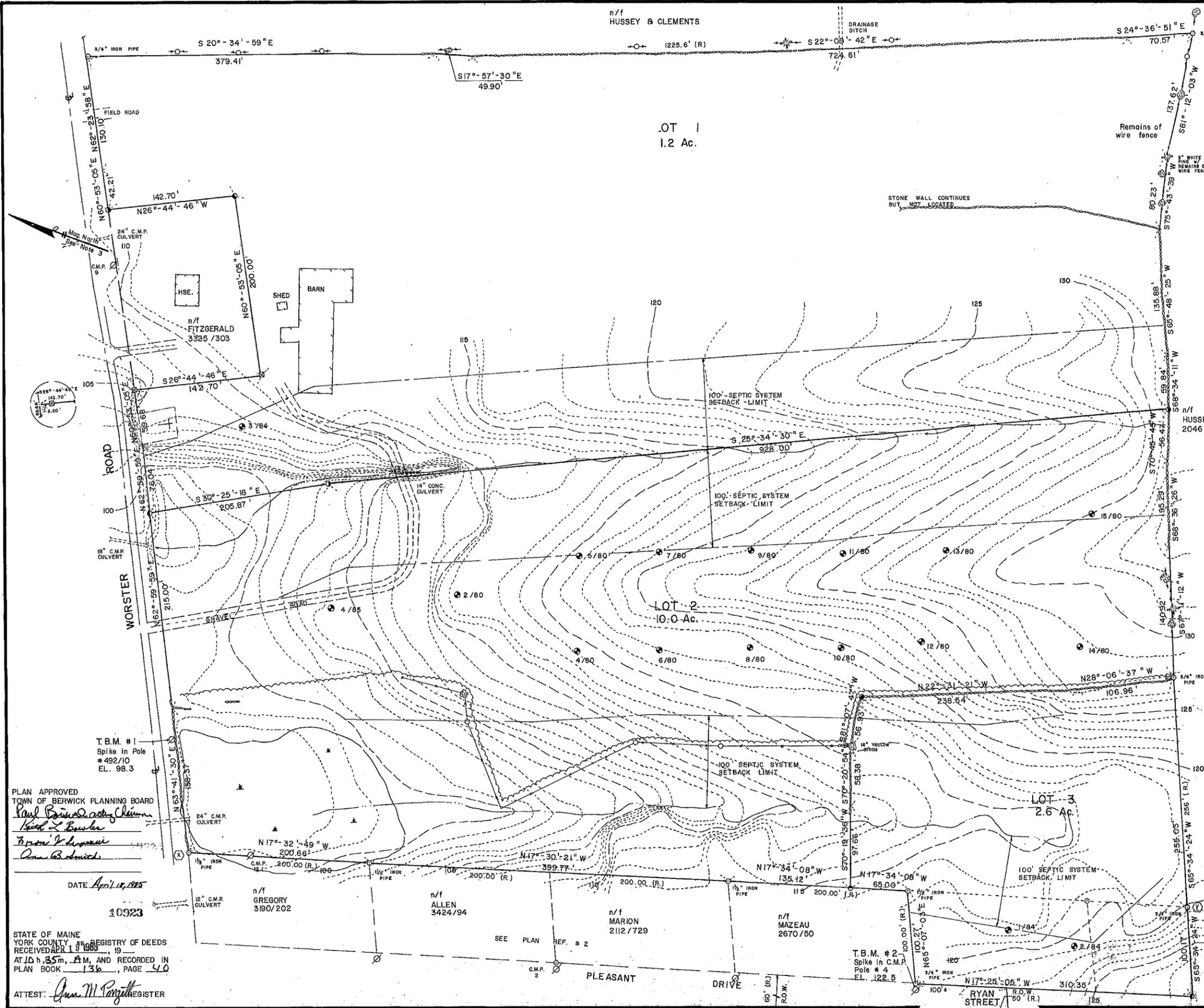
Formerly Abigail Lord

9.26 Acres.

RECORD OF DEED
 4 05 P 39
 64 39
 Noted E. Whiteaker

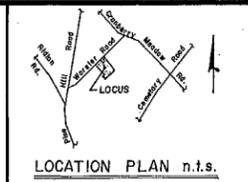


COLONIAL ACRES
 Development on Worster Road
 Berwick, Maine.
 owned by
 Oscar + Vivian Hussey and
 Nelson + Brenda Clement.
 Berwick, Maine.
 Scale 1" = 50' | Sept 21, 1973
 Earle T. Blodgett
 Land Surveyor



n/f
HUSSEY & CLEMENTS

DRAINAGE
DITCH



GENERAL NOTES:

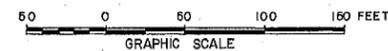
- 1.) Elevations are based on an assumed datum. See Bench marks shown hereon.
- 2.) Contours are at 1 foot intervals.
- 3.) Bearings are based on assuming bearing from (X) to (Y) to be S17°-30' E as shown on Plan Ref. # 2.
- 4.) Parcel Deed Ref.'s are 3378/170, 3418/316, & 3450/337.
- 5.) The sideline of Worster Road is assumed to be 25' off the centerline of existing travel way, unless otherwise evidenced by existing stonewalls.
- 6.) All wells are to be drilled or driven with steel casing seated in bedrock.
- 7.) Lots 1, 2, & 3 not to be further subdivided without prior approval of the Berwick Planning Board.
- 8.) Only a Conventional Wood Frame House shall be constructed on Lot 3 unless otherwise approved by the Berwick Planning Board.
- 9.) Drainage Channel along property line common to Lots 1 & 2 not to be obstructed, and to be maintained by owners of said lots. Channel not to be altered without prior approval of the planning board.

PLAN REFERENCES

- 1.) "Land Parcel, Berwick, Maine Owned by Oscar & Vivian Hussey and Nelson & Glenda Clements To be Conveyed to Susan & Stephen Brown
Earle T. Blodgett, July, 1990
Recorded at York County Registry of Deeds
Plan Book 3262; Page 80
- 2.) "Colonial Acres / Development on Worster Road, Berwick, Maine"
Earle T. Blodgett, Sept, 1973
Recorded at York County Registry of Deeds
Plan Book 64; Page 39

LEGEND

- Iron Pipe Found
- Trees
- Stone Wall
- Test Pit
- Culvert
- Barb Wire
- Existing Contours
- Utility Pole
- Brook
- Fence Post
- Iron Pin to be set
- Railroad Tie



PLAN APPROVED
TOWN OF BERWICK PLANNING BOARD
Paul B. ...
Krist L. ...
Ann B. ...

DATE April 19, 1995

STATE OF MAINE
YORK COUNTY REGISTRY OF DEEDS
RECEIVED APR 19 1995
AT 10 h. 35 m. A.M. AND RECORDED IN
PLAN BOOK 136, PAGE 40

ATTEST: *Ann M. ...* REGISTER

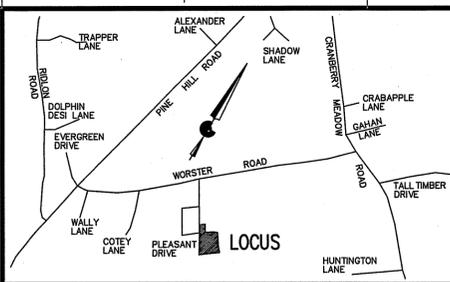
**SUBDIVISION OF LAND OF
FRANK LAPIERRE**

**WORSTER ROAD & PLEASANT DRIVE
BERWICK, MAINE**

CIVIL CONSULTANTS
ENGINEERING & PLANNING
SOUTH BERWICK, MAINE

| | | | | | |
|---------|--------|----------|----------------------|------|---------|
| DRAWN | C.H.D. | SCALE | 1" = 50' | DATE | 4/14/95 |
| CALC. | C.H.M. | APPROVED | <i>Thomas W. ...</i> | | |
| CHECKED | | | | | 89, 501 |

10.000p



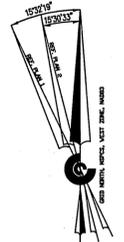
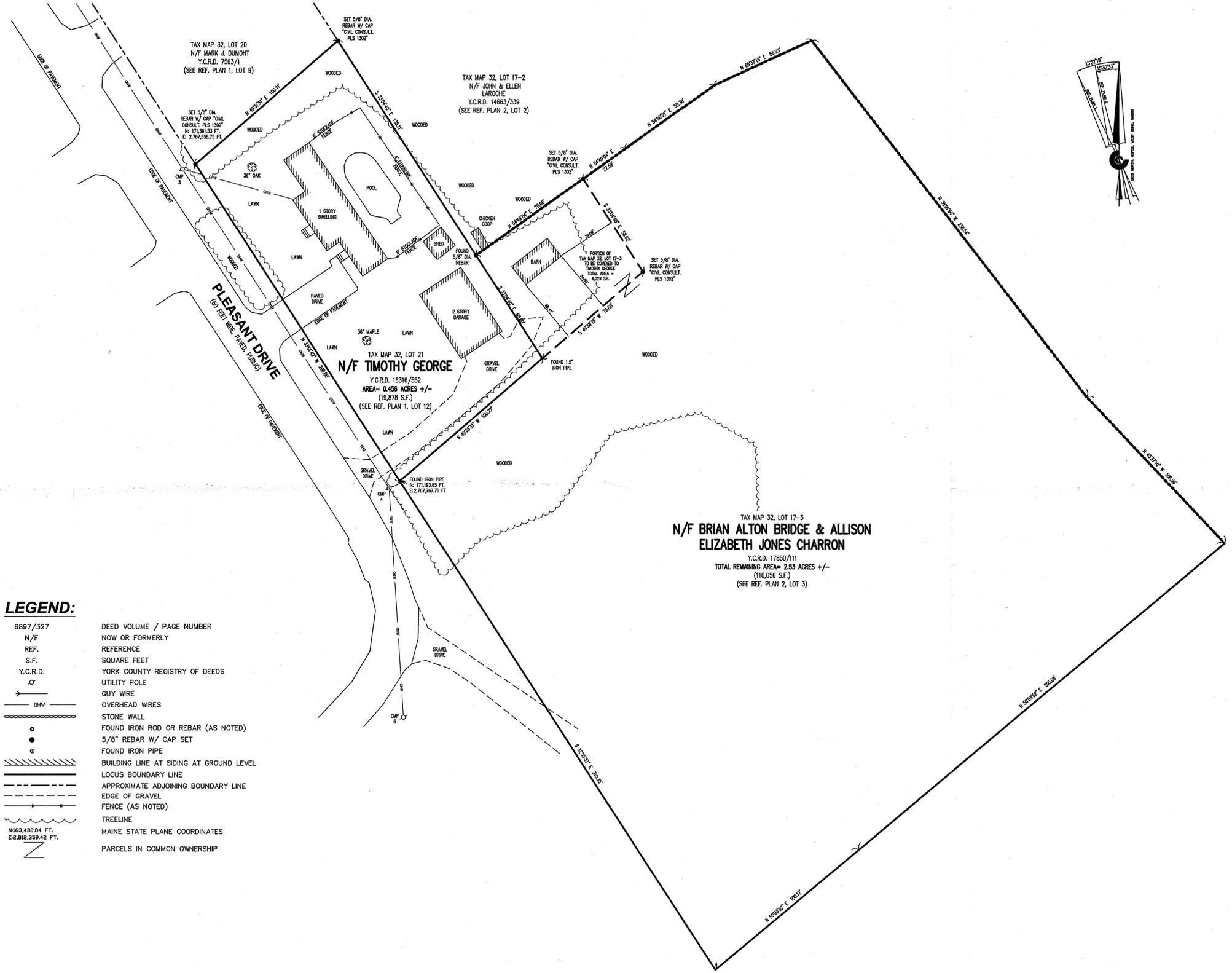
LOCATION PLAN
(NOT TO SCALE)

- NOTES:**
- ASSESSOR'S INFORMATION:
TOWN OF BERWICK ASSESSOR'S MAP 32, LOTS 21 & 17-3
 - RECORD OWNER:
MAP 32, LOT 21
TIMOTHY GEORGE
21 PLEASANT DRIVE
BERWICK, MAINE 03901
MAP 32, LOT 17-3
BRIAN ALTON BRIDGE & ALLISON ELIZABETH
JONES CHARRON
75 GUINEA ROAD
BERWICK, MAINE 03901
 - DEED REFERENCE:
Y.C.R.D. 16316/552 (MAP 32, LOT 21)
Y.C.R.D. 17850/111 (MAP 32, LOT 17-3)
 - ZONING INFORMATION:
TRANSITION RESIDENTIAL DISTRICT (R-2)
LOT SIZE: 20,000 SQ.FT. (W/ PUBLIC SEWER & WATER)
60,000 SQ.FT. (W/ SEPTIC) (LOCUS)
MINIMUM FRONTAGE: 150'
MINIMUM LOT WIDTH: 150'
MINIMUM SETBACKS:
FRONT YARD: 50'
SIDE YARD: 25'
REAR YARD: 25'
MAXIMUM BUILDING HEIGHT: 35'
MAXIMUM LOT COVERAGE: 35%
 - THE PARCEL IS LOCATED IN FLOOD HAZARD ZONE X AS SHOWN ON THE FLOOD INSURANCE RATE MAP FOR THE TOWN OF BERWICK, COMMUNITY PANEL NO 230144 0003 B, EFFECTIVE DATE AUGUST 5, 1991. ZONE "X" IS DEFINED AS AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOODPLAIN.
 - NORTH AS DEPICTED HEREON IS REFERENCED TO GRID NORTH, NAD83, MAINE STATE PLANE COORDINATE SYSTEM WEST ZONE. COORDINATE VALUES AND ORIENTATION ARE DERIVED FROM A GPS SURVEY COMPUTED UTILIZING THE NGS OPUS ON-LINE PROCESSING SERVICE. REFERENCE FRAME IS NAD83 (2011) CORS96 EPOCH 2010.0000. THE SURVEY IS TIED TO CORS STATIONS BOSTON WAAS 1 CORS (ZBWI), BARTLETT CORS (BARN) AND BRUNSWICK 1 CORS (BRU1). DISTANCES DEPICTED HEREON ARE GRID. TO CONVERT GRID DISTANCES TO GROUND DISTANCES, MULTIPLY THE GRID DISTANCE BY 1.0000164059 (AVERAGE COMBINED SCALE FACTOR FOR SITE).
 - UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE. PRIOR TO CONSTRUCTION THE CONTRACTOR SHALL CONTACT DIGSAFE (1-888-344-7233) FOR LOCATION OF ALL EXISTING UTILITIES.

- REFERENCE PLANS:**
- "COLONIAL ACRES, DEVELOPMENT ON WORCESTER ROAD, BERWICK, MAINE", BY EARL T. BLODGETT, DATED SEPTEMBER 21, 1973, RECORDED AT YORK COUNTY REGISTRY OF DEEDS IN PLAN BOOK 64, PAGE 39.
 - "SUBDIVISION OF LAND OF FRANK LAPIERRE, WORCESTER ROAD & PLEASANT DRIVE, BERWICK, MAINE", BY CIVIL CONSULTANTS, DATED APRIL 4, 1985, RECORDED AT YORK COUNTY REGISTRY OF DEEDS IN PLAN BOOK 134, PAGE 40.
 - "SUBDIVISION REVISION, TAX MAP R-32, LOT 17-2, LAND OF KAREN LAUZE, 62 WORCESTER ROAD, TOWN OF BERWICK, YORK COUNTY, MAINE", BY CIVIL CONSULTANTS, DATED SEPTEMBER 26, 2005, RECORDED AT YORK COUNTY REGISTRY OF DEEDS IN PLAN BOOK 305, PAGE 41.

LEGEND:

| | |
|----------|---|
| 6897/327 | DEED VOLUME / PAGE NUMBER |
| N/F | NOW OR FORMERLY |
| REF. | REFERENCE |
| S.F. | SQUARE FEET |
| Y.C.R.D. | YORK COUNTY REGISTRY OF DEEDS |
| ○ | UTILITY POLE |
| — | GUY WIRE |
| — | OVERHEAD WIRES |
| — | STONE WALL |
| ● | FOUND IRON ROD OR REBAR (AS NOTED) |
| ○ | 5/8" REBAR W/ CAP SET |
| ○ | FOUND IRON PIPE |
| — | BUILDING LINE AT SIDING AT GROUND LEVEL |
| — | LOCUS BOUNDARY LINE |
| — | APPROXIMATE ADJOINING BOUNDARY LINE |
| — | EDGE OF GRAVEL |
| — | FENCE (AS NOTED) |
| — | TREELINE |
| — | MAINE STATE PLANE COORDINATES |
| — | PARCELS IN COMMON OWNERSHIP |



PLAN APPROVED BY TOWN OF BERWICK PLANNING BOARD

| |
|----------|
| CHAIRMAN |
| |
| |
| |
| |
| DATE: |

CERTIFICATION:
THIS SURVEY WAS PERFORMED UNDER MY DIRECT SUPERVISION IN ACCORDANCE WITH THE STANDARDS OF PRACTICE ESTABLISHED BY THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS (02-360 CMR CHAPTER 90, PART 1 & PART II). SEE NOTES HEREON FOR EXCEPTIONS, IF ANY.

Christopher H. Meide
CHRISTOPHER H. MEIDE
MAINE PROFESSIONAL LAND SURVEYOR #1302
CIVIL CONSULTANTS
SOUTH BERWICK, MAINE 03908

08/30/2019
DATE

STATE OF MAINE
YORK COUNTY ss. REGISTRY OF DEEDS
RECEIVED _____, 20____
AT _____m, _____M, AND RECORDED IN
PLAN BOOK _____, PAGE _____

ATTEST _____
REGISTER

STATE OF MAINE
CHRISTOPHER H. MEIDE
PLS 1302
PROFESSIONAL LAND SURVEYOR

CIVIL CONSULTANTS

CIVIL CONSULTANTS
Engineers
Planners
Surveyors
P.O. Box 100
South Berwick
Maine
03908
207-384-2550
www.civcon.com

| | |
|---|-----------|
| | DATE |
| | INT. |
| | REVISIONS |
| 1 | NO. |

SUBDIVISION MODIFICATION PLAN OF COLONIAL ACRES & SUBDIVISION OF LAND OF FRANK LAPIERRE
TAX MAP 32, LOTS 21 & 17-3
PLEASANT DRIVE, BERWICK, YORK COUNTY, MAINE 03901

PREPARED FOR:
TIMOTHY GEORGE
CLIENT ADDRESS: 21 PLEASANT DRIVE, BERWICK, MAINE 03901

1"=30'

DATE: 08/30/2019
DRAWN BY: CBS
CHECKED BY: CHM
APPROVED BY: CHM

PROPOSED DIVISION

PROJECT NO: 19-228.00

PD1

SHEET: 1 OF 1

**Town of Berwick Planning Board
Subdivision Findings of Fact**

Applicant: Timothy George & Brian Bridge
21 Pleasant Drive (Tax Map R-32, Lot 21 & 17-3)
September 3, 2020

The subdivision amendment granted 4,329 ft² from tax map R-32, 17-3 to R-32, 21. A barn was built inadvertently on tax map R-32 17-3. The amendment put the barn on the correct property and met the zoning setback requirements. R-32, 17-3 remained a conforming lot and R-32 21 increased in conformity as a result of the amendment.

| Subdivision Regulation Standard | Finding(s) |
|---|--|
| 11.1 Pollution | N/A |
| 11.2 Sufficient Water | N/A |
| 11.3 Impact on Existing Water Supplies | N/A |
| 11.4 Soil Erosion. | N/A |
| 11.5 Traffic Conditions. | N/A |
| 11.6 Sewage Disposal. | N/A |
| 11.7 Solid Waste. | N/A |
| 11.8 Impact on Natural Beauty, Aesthetics, Historic Sites, Wildlife Habitat, Rare Natural Areas or Public Access to the Shoreline. | N/A |
| 11.9 Conformance with Zoning Ordinance and Other Land Use Ordinances. | As a result of the amendment. The barn met all setbacks in the zone. R-32, 17-3 remained conforming and R-32, 21 is increased in size and increased in conformity as a result. |
| 11.10 Financial and Technical Capacity. | N/A |
| 11.11 Impact on Water Quality or Shoreline. | N/A |
| 11.12 Impact on Ground Water Quality or Quantity. | N/A |

| | |
|--|-----|
| 11.13 Floodplain Management. | N/A |
| 11.14 Storm Water Management. | |
| 11.15 Reservation or Dedication and Maintenance of Open Space and Common Land, Facilities and Services. | N/A |

I, David Andreesen, certify that I am Chair of the Planning Board of the Town of Berwick, Maine, a Planning Board established pursuant to Maine State Statute (30 MRSA § 1917 and Title 30-A § 4401) and I further certify that this decision was approved by the Planning Board at its meeting of September 3, 2020 By a vote of Application _____

No waivers were requested

Findings of Fact _____

No Conditions of Approval

David Andreesen, Planning Board Chair

Date