



City of Gardiner
Planning Board Review Application

Eric McMaster/Manufacturing
Project Name: _____ Project Cost: 30,000
Date of submission: 06/01/2021 Received by: _____ Fees: \$125

A complete written description of the proposed project including all other local, state and federal permits required for the project.
I would like to place a 14' x 30' wood prefab building at 15 Lions Way.
This project is intended to be a commercial kitchen for adult use cannabis. A license from Office of Marijuana Policy will be required.

Anticipated beginning/completion dates of construction: 06/01/2022 / 12/01/2022

1. **General Information:** (6.3.2)

Name of Property Owner: Robin Spencer
Address: _____
Phone/Fax No: 207-242-0030

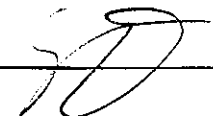
Applicant/Agent Name: Eric McMaster
Address: 15 Lions Way Gardiner, Maine 043454
Phone/Fax No: 207 215 7516

Design Professional(s)/Contractor(s): Surveyor Engineer Architect Contractor

Name: New England Rent to Own
Address: 65 River Road Chelsea, Maine
Phone/Fax No _____

Name: _____
Address: _____
Phone/Fax No _____

Name: _____
Address: _____
Phone/Fax No _____

Signature:  Date: 11/17/21

2. Property Information: (6.3.2)

- 15 Lions Way 29 1A
- * Property Location: _____ City Tax Map(s) _____ Lot(s) _____
 - * Deed Ref: Book 12132 Page 0201 Zoning District(s): MUV
 - * Copy of the tax map showing the property and surrounding location. **See attached Tax Map**
 - * Verification of the applicant's right, title, and interest in the property. **See attached Lease**

3. Development Information: (6.3.2.7)

One or more site maps drawn to scale showing the following:

a.) The existing conditions on the property including: (6.3.2.7.1)

1. The property boundaries; **Shown on the existing conditions map.**
2. The zoning district and zoning district boundaries if the property is located in more than one zone; **Entire property is in the MUV district.**
3. The location of required setbacks, buffers and other restrictions: **Shown on the existing conditions map.**
4. The location of any easements or rights-of-way; **There are no easements or right of ways on the properties.**
5. The locations of existing structures and other existing improvements on the property including a description of the current use of the property; **Shown on existing conditions map.**
6. The locations of existing utilities on and adjacent to the property including sewers, water mains, stormwater facilities, gas mains, and electric and other telecommunication facilities; **Shown on the existing conditions map.**
7. The location of the nearest source of a fire protection water supply (hydrant, fire pond, etc.) **Shown on the existing conditions map.**
8. The general topography of the property indicating the general slope of the land and drainage patterns. The CEO and/or Planning Board may require a topographic survey of all or a portion of the property for projects involving the construction of new or expanded structures or site modifications. **See attached TOPO map.**
9. The location, type and extent of any natural resources on the property including wetlands, vernal pools, floodplains, waterbodies, significant wildlife habitats, rare or endangered plants or animals, or similar resources; and **There are no known natural resources on the property.**
10. The location and type of any identified historic or archeological resource on the property. **There are no known historic or archeological resources on the property.**

b.) The proposed development activity for which approval is requested including: (6.3.2.7.2)

1. The estimated demand for water supply and sewage disposal together with the proposed location and provisions for water supply and wastewater disposal including evidence of soil suitability if on-site sewage disposal is proposed. **The kitchen will have a three bay sink and a hand wash sink. It will be connected to city water and city sewage.**
2. The direction of proposed surface water drainage across the site and from the site together with the proposed location of all stormwater facilities and evidence of their adequacy; **Shown on proposed map. Letter from Public Works addresses adequacy.**
3. The location, dimensions, and ground floor elevations of all proposed buildings and structures including expansions or modifications to existing buildings that change the footprint of the building; **Shown on the proposed map plan.**

4. The location, dimensions and materials to be used in the construction of drives, parking areas, sidewalks and similar facilities; **Shown on the proposed plan.**
5. The proposed flow of vehicular and pedestrian traffic into and through the property; **Shown on the proposed parking and traffic flow plan.**
6. The location and details for any signs proposed to be installed or altered; **There will not be any new signage installed at the property.**
7. The location and details for any exterior lighting proposed to be installed or altered; **Shown on the lighting plan**
8. Provisions for landscaping and buffering; and **There will be no new landscaping done.**
9. Any other information necessary to demonstrate compliance with the review criteria or other standards of the Land Use Ordinance. **There are no other concerns.**

c.) Evidence that the applicant has or can obtain all required permits necessary for the proposal. (6.3.2.8)

Additional Information Required: (6.3.3)

Building and structure drawings showing the footprint, height, front, side and rear profiles and all design features necessary to show compliance with this Ordinance. **See attached floor plan and elevations plan.**

An estimate of the peak hour and average daily traffic to be generated by the project and evidence that the additional traffic can be safely accommodated on the adjacent streets; **Estimated peak hours are 8-5 mon-fri. This is non retail and will have low foot traffic.**

An erosion and sedimentation control plan; and **Typical erosion control methods will be followed during construction.**

A stormwater management plan demonstrating how any increased runoff from the site will be handled if the project requires a stormwater permit from the Maine Department of Environmental Protection or if the Planning Board determines that such information is necessary based on the scale of the project and the existing conditions in the vicinity of the project. (6.3.3.4) **Impervious surface will remain the same as pre-construction. No DEP permit is required.**

Survey Requirements (6.3.5)

The Code Enforcement Officer or the Planning Board may require the applicant to submit a survey of the perimeter of the tract, giving complete descriptive data by bearing and distances, made and certified by a Registered Land Surveyor. The survey may be required for the construction of new structures or any construction proposed on a undeveloped parcel or tract of land, whenever the Code Enforcement Officer or the Planning Board finds that a survey is necessary to show compliance with the requirements of this Ordinance due to the size of the lot, location of the lot or the placement of existing or proposed structures on the lot or neighboring properties.

This is an existing lot, in town and has been shown on many surveys. The deed description accurately describes lot and no property lines are in question

Additional Studies (6.3.6) The Code Enforcement Officer or the Planning Board may require the applicant to perform additional studies or may hire a consultant to review the application or portions thereof. The cost to perform additional studies or hire a consultant shall be borne by the applicant.

I understand and acknowledge new or additional studies may be needed.

4. Review Criteria (6.5.1)

An applicant shall demonstrate that the proposed use or uses meet the review criteria listed below for the type of application. The Code Enforcement Officer and/or the Planning Board shall approve an application unless one or the other of them makes a written finding that one or more of the following criteria have not been met.

6.5.1.1 The application is complete and the review fee has been paid.
The Application is completed to the best of my ability and the appropriate fee of \$175 has been paid.

6.5.1.2 The proposal conforms to all the applicable provisions of this Ordinance.
I've reviewed the ordinance and feel the project conforms to all provisions in the ordinance.

6.5.1.3 The proposed activity will not result in water pollution, erosion or sedimentation to water bodies.
Measures will be taken to ensure that no erosion or sedimentation will take place during construction.

6.5.1.4 The proposal will provide for the adequate disposal of all wastewater and solid waste.
All liquid waste will enter the public sewer system and will consist of typical household effluent. The letter from Doug Clark, the waste water Director agrees there will not be any issues.

6.5.1.5 The proposal will not have an adverse impact upon wildlife habitat, unique natural areas, shoreline access or visual quality, scenic areas and archeological and historic resources.
This project will not have an adverse impact upon wildlife habitat, unique natural areas, shoreline access or visual quality, scenic areas and archeological and historic resources.

6.5.1.6 The proposal will not have an adverse impact upon waterbodies and wetlands.
There are no waterbodies or wetlands on or adjacent to the property.

6.5.1.7 The proposal will provide for adequate storm water management.
The property has not had a storm water issue. The project will not alter storm water run off nor will it increase the amount of impervious surface on the site. All storm water is currently channeled into the public storm water system.

6.5.1.8 The proposal will conform to all applicable Shoreland Zoning requirements.
This property is not in the shoreline zone.

4

6.5.1.9 The proposal will conform to all applicable Floodplain Management requirements.
This property is not in the flood zone.

6.5.1.10 The proposal will have sufficient water available to meet the needs of the development.

This project will use less water than a typical single family home. Attached letter from Paul Grey confirms water supply will not be an issue.

6.5.1.11 The proposal will not adversely affect groundwater quality or quantity.

This manufacturing/commercial kitchen will not impact/affect ground water quality.

6.5.1.12 The proposal will provide for safe and adequate vehicle and pedestrian circulation in the development.

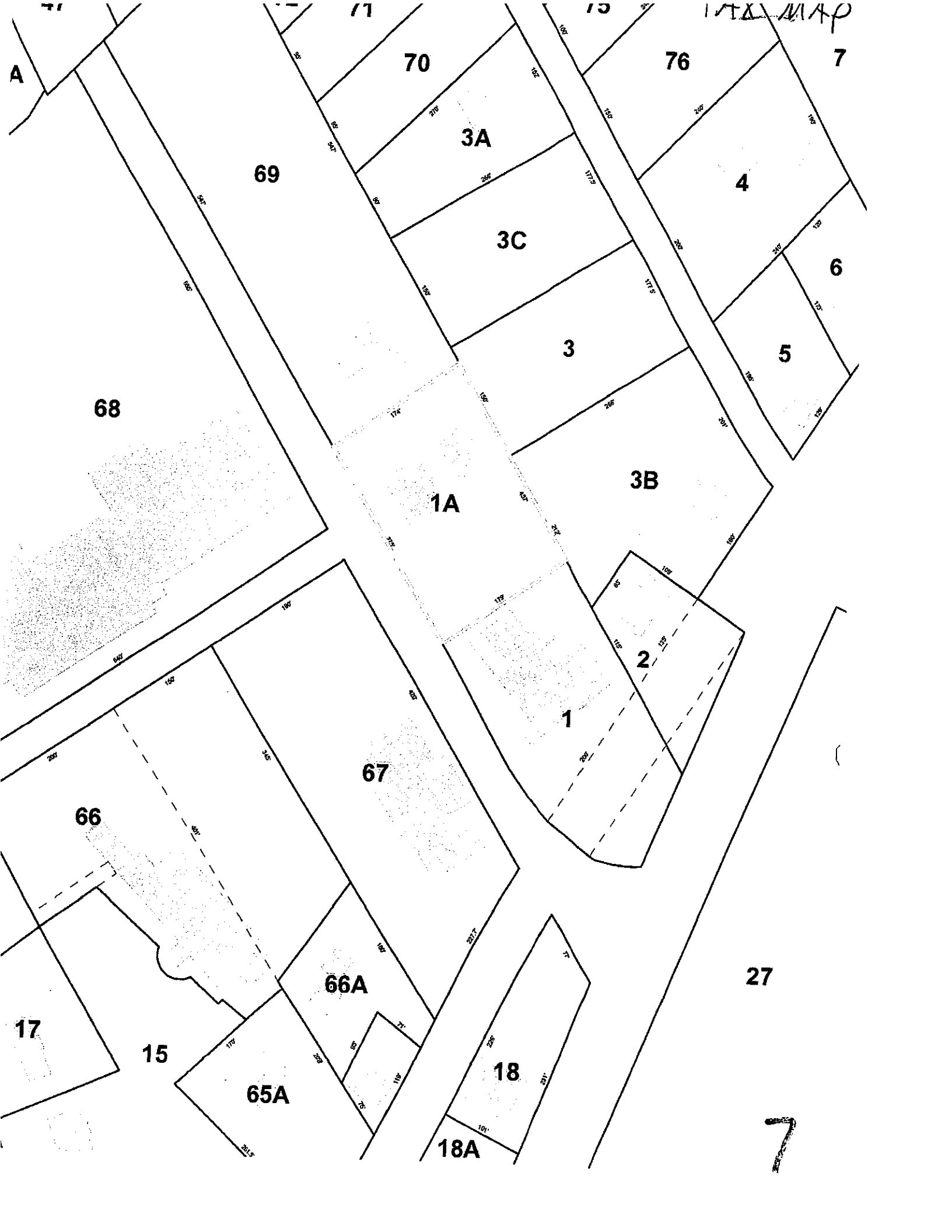
We feel there will safe and adequate access. The parking lot can easily accommodate the parking needed for employees and potential commercial customers. Spaces would be located by the front door for easy access.

6.5.1.13 The proposal will not result in a reduction of the quality of any municipal service due to an inability to serve the needs of the development.

The proposal will not result in reduction of municipal services. Attached are letters from Fire Chief, Police Chief, Waste Water, Public Works Director, and Water district addressing these concerns.

6.5.1.14 The applicant has the adequate financial and technical capacity to meet the provisions of this Ordinance.

Attached is a letter from my bank stating that I have the financial capacity to take on this project.



MAX MAP

77

71

75

7

70

76

A

3A

69

4

3C

6

3

5

68

1A

3B

2

1

67

66

27

17

66A

15

65A

18

18A

7

Fence Maintenance

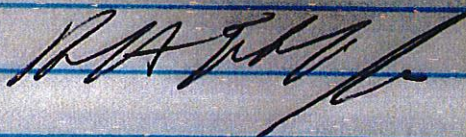
The Barbed wire fence that surrounds 333 Brunswicke are owned by Robert Wheelock Jr and 15 lions way leased by Eric McMaster (BX2 properties) will be permanent. Both parties agree to maintain the fence for the life of the property. The fence will remain intact and both parties will agree that each party is financially responsible for their own portion of the fence.

11/17/21

Eric McMaster

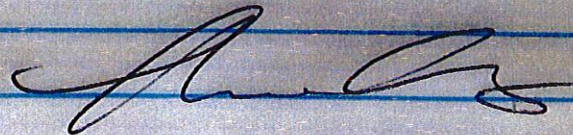


Robert Wheelock Jr



11/17/21

Thomas Catchings



11/17/21

MUV

69

174' Side Set back 25'

3 150'

Supply to ER

Medical Cannabis Cultivation

Rear Set back 25'

3B

Tele supply to Property
Power supply to Property
X

ER Lighting

Medical Cannabis Cultivation

ER Lighting

ER Lighting
Power supply to structure
via under ground feed
from main building

ER Lighting

1A
City meter to structure

ER Lighting

Small Brick Storage building
No water/power
45771

Dirt Drive

entrance
275'

Road side set back 25'

Side set back 25' 179'

1

67



Proposed plan
MOV

69

3 150'

174'

3B



457'

1A



Proposed building.

Building will
be made of wood.
With metal roof.
It will be delivered
pre-made and positioned.

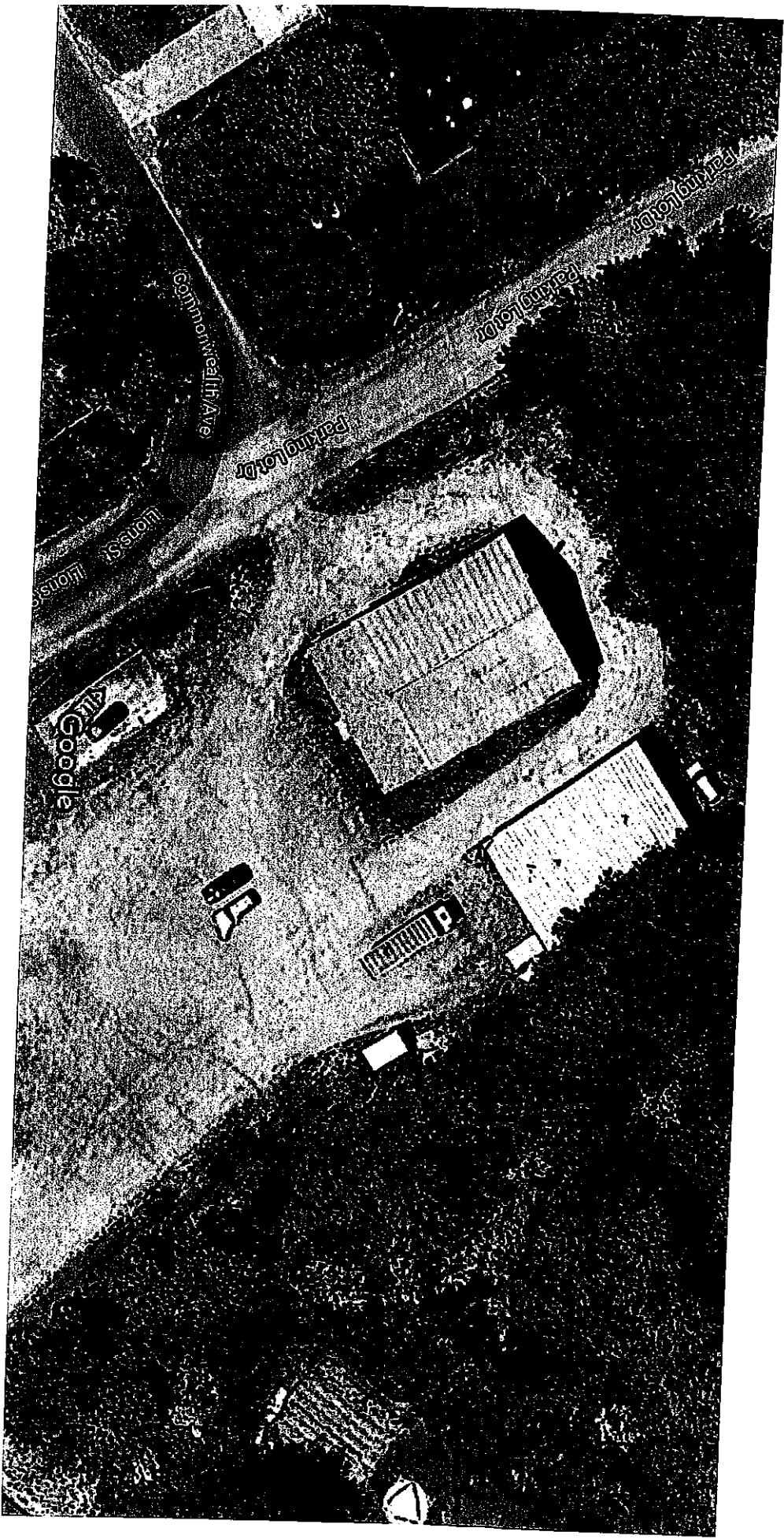
215'

179'

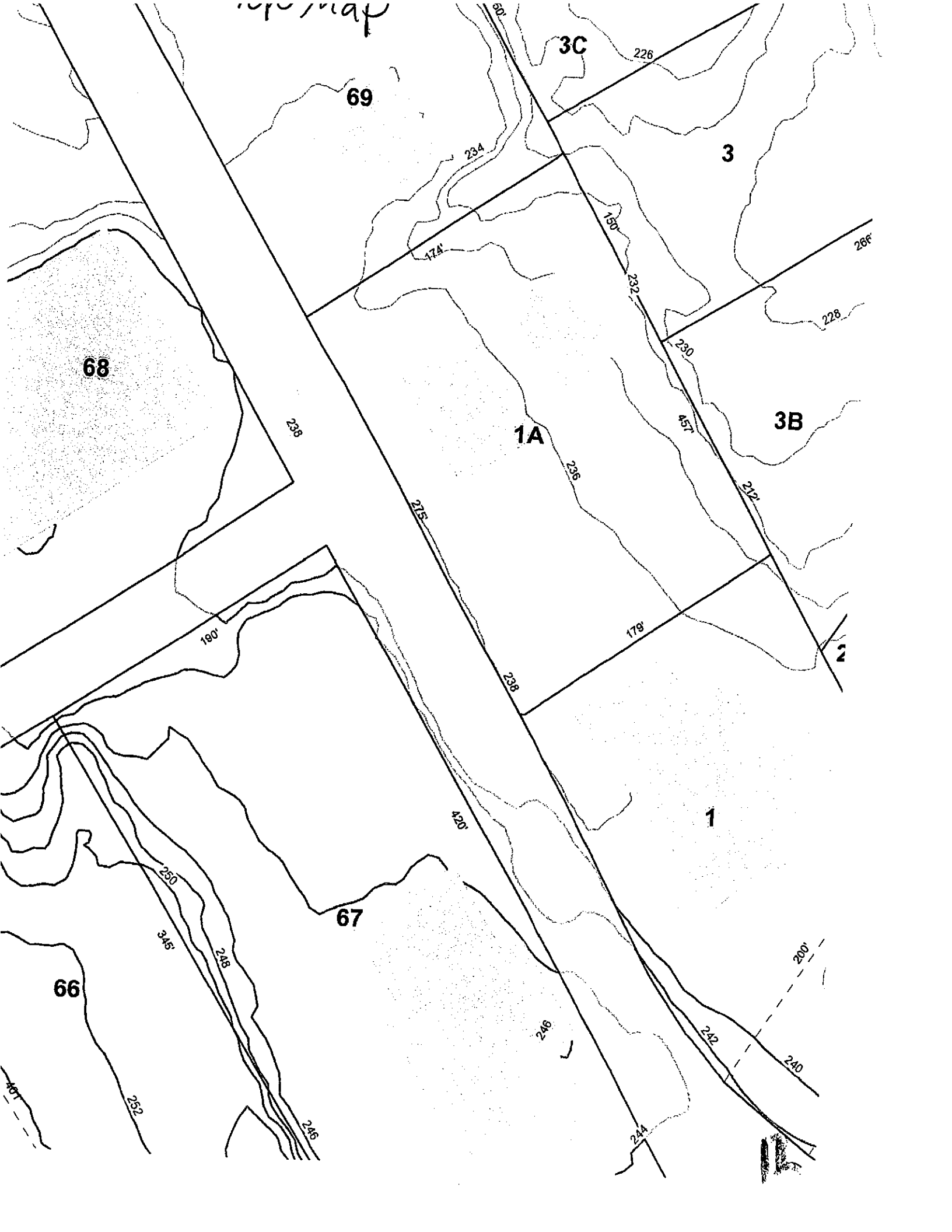
67

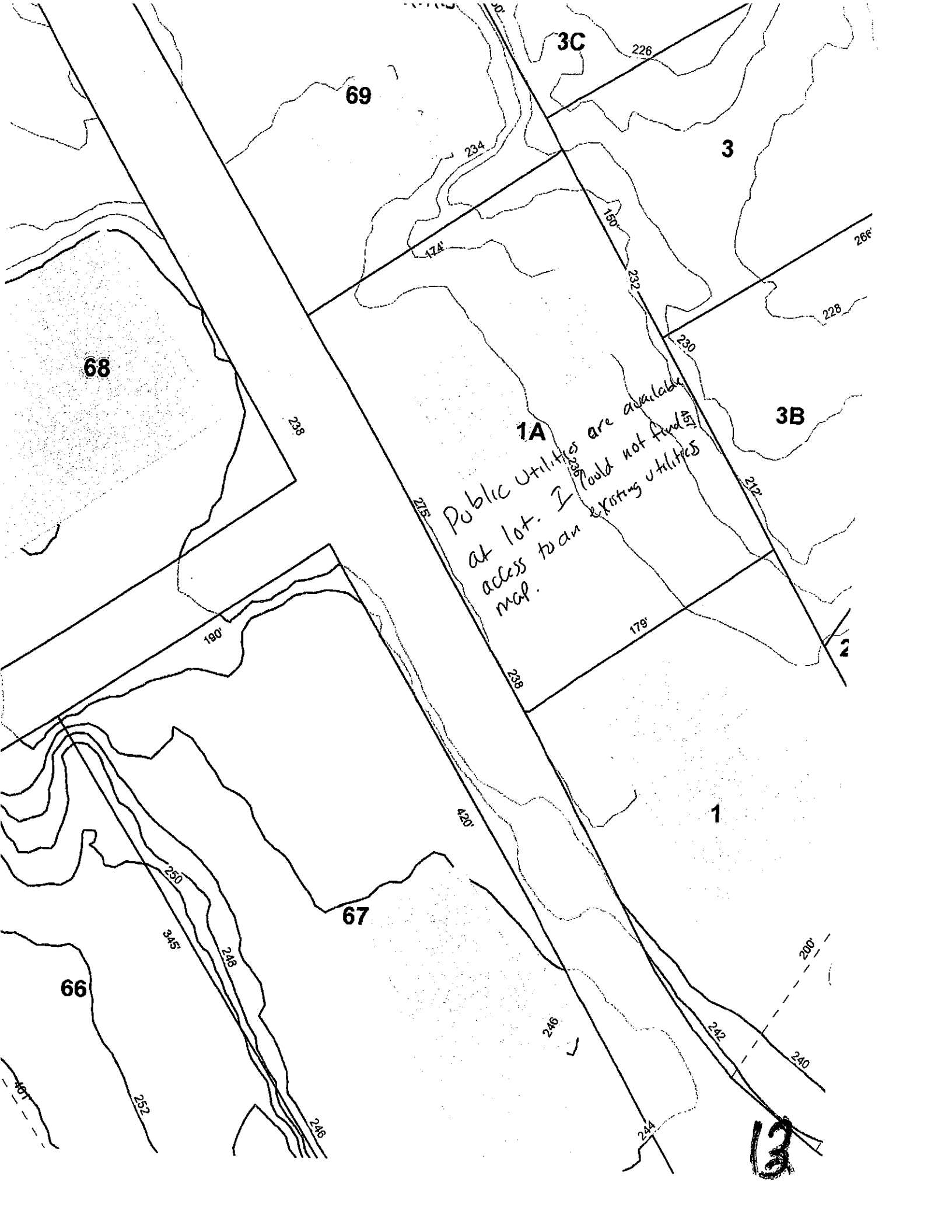
1





top map





3C

226

69

3

68

266

234

174

150

228

232

230

3B

238

1A

Public Utilities are available at lot. I could not find access to an existing utilities map.

212

190

178

2

238

420

1

67

200

250

345

248

66

246

242

240

252

246

244

13

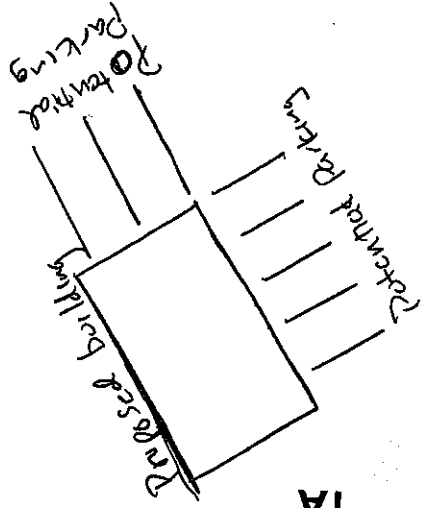
67

Property lined with Boardwalk
275' Entrance

69

174'

179'



1A

457'

3B

3 150'

Parking and traffic.

15

69

174'

3 150'

3B

1A

Solar exterior lighting
Sunlight Louvers



457'

215'

179'

67

1

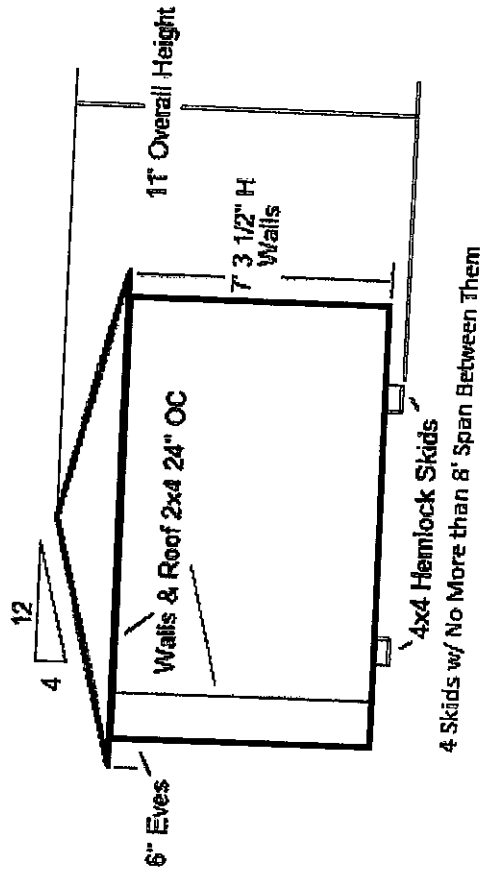
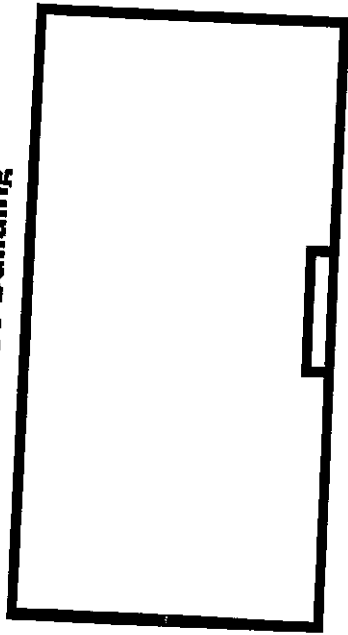
19

14 x 30 Building

Building Specs & Elevation Plan.

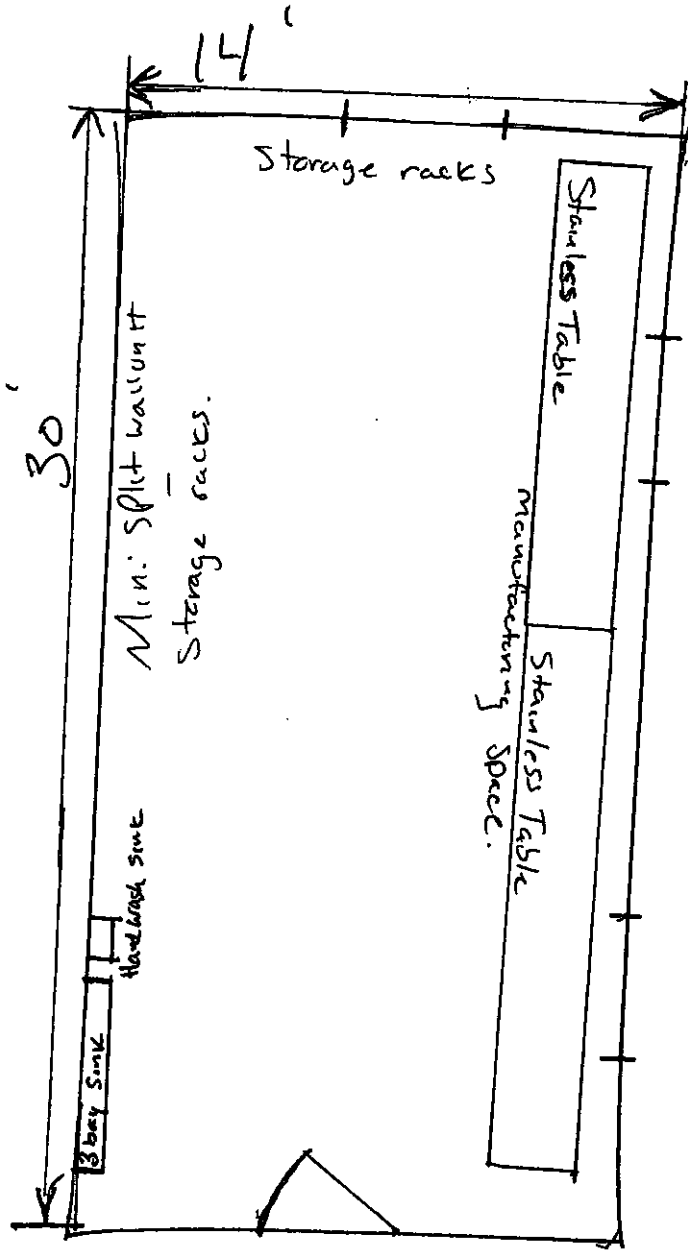
Construction Materials

- 40 Year Paint Metal Roof with Ridge Vent
- 5/8" OSB Roof Sheathing
- 2x6 Roof Trusses 24" On Center
- 2x6 Studs 24" On Center
- 1x10 T&G Pine Siding
- Weather Bracing (in framed walls)
- 4x4 Hemlock Skids / Base
- 3/4" Advantech Sub Floor In Tack Room



16

Floor plan



1" = 5'

17

Solar Lights Outdoor [42 LED/3 Working Model], SEZAC Solar Security Lights Solar | Google Shopping

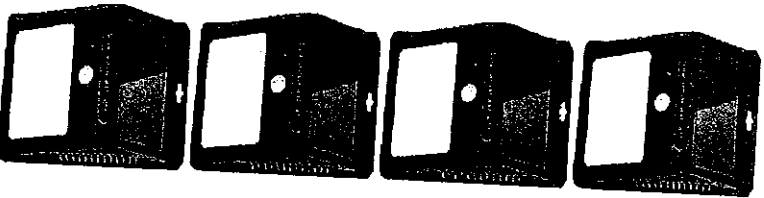
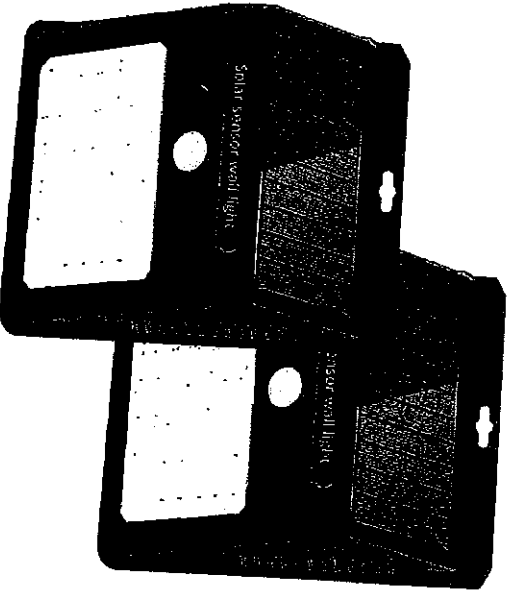
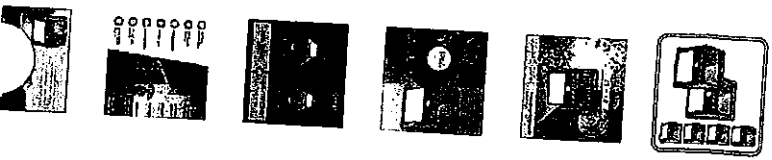
Google Shopping

exterior security solar lighting

Solar Lights Outdoor [42 LED/3 Working Model], SEZAC Solar Security Lights Solar (1)

SAVE

About this page



Buying options

PRICE DROP

\$40.45 Was \$52.34

+\$2.22 est. tax

Free delivery

Walmart - Digi Commerce

Visit site

PRICE DROP

\$33.60 Was \$58.32

+\$1.85 est. tax

Free delivery by Mon, Jun 14

eBay

Visit site

\$36.05

+\$1.98 est. tax

Free delivery

eBay

Visit site

Solar - With Motion Sensor

Compare prices from 4 stores











GARDINER POLICE DEPARTMENT



Chief James M. Toman

November 8, 2021

CEO Kris McNeill
Gardiner Planning Board
Office of Economic and Community Development

Mr. Eric McMaster
15 Lions Ave
Gardiner, Maine 04345

Per review criteria 6.5.1.13- Based upon information provided by the applicant and based upon my site visit that was conducted on November 5, 2021, this business appears to have appropriate operational guidelines in place as well as appropriate safety and security measures in place to operate the business as applied for with the City of Gardiner. The current systems and barriers that are in place appear to be appropriate crime and trespassing deterrent. I was also assured during my recent visit that there would be additional security features installed during the week ending November 12. As such, it is my belief that should the need arise, that the Gardiner Police Department will have the ability to respond safely and effectively to any emergency or criminal activity that may occur at the business and that the business will be able to properly furnish items of evidentiary value to any investigation if one needed to occur. This business may result in some calls for police services, however, it is not anticipated that these calls will have an impact on the overall services that the Gardiner Police Department delivers.

Sincerely,

Chief James M. Toman
Gardiner Police Department
City of Gardiner



CITY OF GARDINER FIRE & RESCUE DEPARTMENT



Fire Chief Richard Sieberg

May 25, 2021

Dear Eric McMaster,

I have received your request for a letter from the Fire Department regarding your existing business at 15 Lions Way. It is my understanding you would like to add a small premade building to be used as an adult use manufacturing kitchen.

After speaking with Code Enforcement, I see no issues for the Fire Department.

As always we look forward to working with all of the businesses in the City. Please feel free to reach out to the Fire Department if you have questions or concerns.

Sincerely,

Richard Sieberg
Gardiner Fire Department
Fire Chief

CITY OF
Gardiner
Moving Forward

Eric McMaster
15 Lions Way
Gardiner Maine, 04345

5/24/2021

Dear Eric,

Based on the information you provided for your adult use marijuana manufacturing kitchen located at 15 Lions Way, the Public Works Department does not anticipate any safety concerns. If any information you provided were to change, please inform us of these changes.

Thank You,

Jerry Douglass
Public Works Director
Phone: 582-4408



Department of Public Works
6 Church Street | Gardiner, ME 04345
207-582-4800 | 207-582-6895 (fax) | jdouglass@gardinermaine.com
www.GardinerMaine.com

24 L

June 1, 2021

Planning Board
City of Gardiner
6 Church Street
Gardiner, ME 04345

Dear Gardiner Planning Board,

Please be advised that the proposed kitchen addition at the Grow Facility operated by Eric McMaster at the former Gardiner Armory building will not put any adverse effects on the City of Gardiner Wastewater transport and treatment system. There is a currently a small sewerage pumping station on the side of the rear building which will collect this flow and pump it through a force main line across the property relieving into a gravity manhole by the front building but this system is well outside of any public right of ways and therefore is the responsibility of Mr. McMaster to operate and maintain, not the City of Gardiner. When I inspected the property this past Wednesday I met with one of his workers and he advised me that they had test run the pump and it is operational. If you have any questions please contact me.

Thank you,

Douglas E. Clark
Gardiner WWTF



June 2, 2021

Tru Blooms Wellness LLC
498 Maine AVE
Farmingdale, ME 04344

To Whom It May Concern:

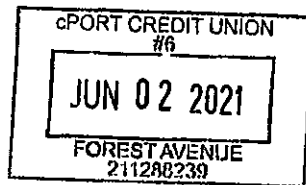
Please accept this letter as proof that Eric McMaster's business accounts under Tru Blooms Wellness LLC are in good-standing with cPort CU, opened 7/5/2018. This business account has the financial capacity to accommodate a \$30,000.00 project.

If you have any questions or would like any additional information, please feel free to contact us at 207-200-2300 or agoupee@cportcu.org.

Sincerely,

Alyssa Goupee
Branch Assist.

cPort CU
285 Forest Ave
Portland, ME 04101
PH: 207-200-2300



Portland Branch & Main Office:
50 Riverside Industrial Parkway
Portland, ME 04103

Mailing Address:
P.O. Box 777
Portland, ME 04104

207- 878-6200
800-464-0253
cportcu.org

25



McLaughlin Fence Company ESTIMATE/CONTRACT/INVOICE
“Good Fences Make Good Neighbors”

INVOICE: 326

DATE: **Nov 10, 2021**

McLaughlin Fence Company

845 Brunswick AVE.
 Gardiner ,Maine
 (207) 441-1677

With material prices being so unstable, estimates are currently only valid for 3 days, we apologize for inconvenience.

www.mclaughlinfenceco.com

SALESPERSON	JOB NAME	CONTACT #	DEPOSIT
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Kevin	Tru Bloom Wellness	Eric 215-7516	\$
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SITE ADDRESS AND DIRECTIONS

Armory Gardiner, ME

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
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	Install 24' 6' high plus 3 strands barbed wire roll gate. Gate frame will be constructed of 2" SS-40 galvanized pipe filled with 9 gauge HD chain link topped with 3 stands of 9 gauge barbed wire. Gate post will be 4" SS-40 galvanized set in 400 lbs concrete. Gate will be hung on HD pressed steel galvanized Teflon rollers. \$7000		\$
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	An additional \$5000 to turn into power operator. McLaughlin Fence will be responsible for all work except electrical hook up		
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TAX			
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TOTAL			\$
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DEPOSIT		\$	
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BALANCE			\$
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ESTIMATE BECOMES CONTRACT UPON SIGNING AND RETURNING WITH PROPER MATERIAL DEPOSIT, CONTRACT BECOMES INVOICE UPON FINAL PAYMENT AND COMPLETION OF JOB. 1.5% FEE APPLIES TO EACH 30 DAY LATE PAYMENT PERIOD.
THIS ESTIMATE DOES NOT COVER ANY ADDITIONAL WORK DUE TO UNFORESEEN ROCK FORMATIONS, FOUNDATIONS, OR OTHER UNDER GROUND OBSTRUCTIONS.

CUSTOMER SIGNATURE:

Sniper Surveillance Systems

474 Augusta-Rockland Rd
Windsor, ME 04363 US
+1 2076206190
snipersurveillance@gmail.com
https://snipersurveillance.com



INVOICE

BILL TO
Tru Blooms

INVOICE DATE: 05/27/2021
TERMS: Due on receipt
DUE DATE: 07/21/2021

DATE	SERVICE	DESCRIPTION	QTY	RATE	AMOUNT
	8ch POE NVR	4K, commercial grade video compression, POE, and 2 TB hard drive	1	450.00	450.00
	4MP Dome Security Cam	4MP WDR EXIR IP Dome Security Camera 4mm	8	200.00	1,600.00
	Cat6 Network Cable		2	200.00	400.00
	HDMI Video Cable	HDMI monitor cable per foot	1	150.00	150.00
	HDMI Splitter	1 into 4 split	1	100.00	100.00
	Metal DVR Lock Box Enclosure		1	195.00	195.00
	Installation		17	75.00	1,275.00

- * 100% Professional installation
- * Meets or exceeds requirements for the OMP program
- * 45+ days of hard drive storage
- * System allows for hard drive expansion as needed
- * All hardware and software is NDAA compliant
- * All cameras are digital cameras with True HD video
- * All cameras have 150' of night vision reach and 109 degrees of horizontal viewing area
- * These systems have been used in many other cannabis business applications

SUBTOTAL	4,170.00
TAX	0.00
TOTAL	4,170.00
PAYMENT	4,170.00
BALANCE DUE	\$0.00
	PAID

COMMERCIAL LEASE AGREEMENT (NNN)

1. PARTIES Capital Area Properties LLC, with a mailing address of 545 maine ave , farmingdale, ME, 04344 ("LANDLORD"), hereby leases to BXZ properties INC. with a mailing address of 498 Maine ave, Farmingdale, ME 04344 ("TENANT"), and the TENANT hereby leases from LANDLORD the following described premises:

2. PREMISES The leased premises are located at 15 Lions Way, Gardiner, ME 04345 together with the right to use, in common with others entitled thereto, the hallways, stairways, and elevators, necessary for access to said leased premises and lavatories nearest thereto. The leased premises are accepted in "as is" condition. TENANT acknowledges that a) LANDLORD has made no representations and TENANT is not relying on any representation about the leased premises, their suitability for any particular use and/or the physical condition thereof; and b) that TENANT has conducted its own due diligence inquiries with respect to the leased premises and is satisfied with the results thereof.

3. TERM The term of this lease shall be for three (3) months, unless sooner terminated as herein provided, commencing on November 15th, 2021 (the "Commencement Date") and ending on February 16th, 2022.

4. RENT Commencing on the Commencement Date, TENANT shall pay to the LANDLORD the following base rent:

<u>Lease Year(s)</u>	<u>Quarterly Base Rent</u>	<u>Monthly Rent</u>
1	\$13,500.00	\$4,500.00

payable in advance in equal monthly installments on the first day of each month during the term of this Lease without deduction or setoff.

5. RENT ADJUSTMENT
A. TAXES

Commencing on the Commencement Date, TENANT will pay to LANDLORD as additional rent hereunder, in accordance with subparagraph B of this Article, One Hundred Percent (100%) of all real estate taxes on the land and buildings of which the leased premises are a part in each year of the term of this Lease or any extension or renewal thereof and proportionately for any part of a fiscal year in which this lease commences or ends. If LANDLORD obtains an abatement of any such excess real estate tax, a proportionate share of such abatement, less the reasonable fees and costs incurred in obtaining the same, if any, shall be refunded to TENANT.

B. OPERATING COSTS

Commencing on the Commencement Date, TENANT shall pay to LANDLORD as additional rent hereunder in accordance with subparagraph B of this Article, One Hundred Percent (100%) of all operating expenses. Operating expenses are defined for the purposes of this Agreement as operating expenses per annum of the building and its appurtenances and all exterior areas, yards, plazas, sidewalks, landscaping, parking areas, and the like (i.e. as of said last day of the calendar year concerned) located outside of the building but related thereto and the parcels of land on which they are located (said building appurtenances, exterior areas, and land hereinafter referred to in total as the "building"). Operating expenses include, but are not limited to: (i) all costs of furnishing electricity, heat, air-conditioning, water and sewer and other utility services and facilities to the building; (ii) all costs of any insurance carried by LANDLORD related to the building; (iii) all costs for common area cleaning and janitorial services; (iv) all costs of maintaining the building including the operation and repair of heating and air conditioning equipment and any other common building equipment, non-capital roof repairs and all other repairs, improvements and replacements required by law or necessary to keep the building in a well-maintained condition; (v) all costs of snow and ice removal, landscaping and grounds care; (vi) all other costs of the management of the building, including, without limitation property management fees; and (vii) all other reasonable costs relating directly to the ownership, operation, maintenance and management of the building by LANDLORD. TENANT'S share of operating expenses shall be prorated should this Lease be in effect with respect to only a portion of any calendar year.

During each year of the term of this Lease, TENANT shall make monthly estimated payments to LANDLORD, as additional rent for TENANT'S share of such increases in real estate taxes and operating expenses for the then current year. Said estimated monthly payments shall be made along with base rent payments and shall be equal to one twelfth (1/12) of TENANT'S annualized share of LANDLORD'S real estate taxes and operating expenses for the current year. Within one hundred and twenty (120) days after the end of each calendar year, LANDLORD shall deliver to TENANT a statement showing the amount of such real estate taxes and operating expenses also showing TENANT'S share of the same. In the event that TENANT does not object to such statement in writing within ninety (90) days of receipt of same, such statement shall be deemed accurate. Upon written request by TENANT to LANDLORD made within said ninety (90) day period, LANDLORD shall provide to TENANT reasonable supporting documentation for any item of expense on such statement objected to by TENANT. TENANT shall, within thirty (30) days after such delivery, pay TENANT'S share to LANDLORD, as additional rent, less any estimated payments. If the estimated payments exceed TENANT'S share, then the excess shall be applied to the next year's monthly payments for estimated increases.

6. UTILITIES

TENANT shall pay, as they become due, all bills for electricity and other utilities (whether they are used for furnishing heat or other purposes) that are furnished to the leased premises and presently separately metered, all bills for fuel furnished to a separate tank servicing the leased premises exclusively, and all charges for telephone and other communication systems used at and supplied to the leased premises. LANDLORD agrees to furnish water for ordinary drinking, cleaning, lavatory and toilet facilities and reasonable heat and air conditioning, if installed as part of the structure of the building, (except to the extent that the same are furnished through separately metered utilities or separate fuel tanks as set forth above), so as to maintain the leased premises and common areas of the building at comfortable levels during normal business hours on regular business days of the heating and air condition seasons of each year, to furnish elevator service, if installed as part of the structure of the building, and to light passageways and stairways during business hours, and to furnish such common area cleaning service as is customary in similar buildings in said city or town, all subject to interruption due to any accident, to the making of repairs, alterations or improvements, to labor difficulties, to trouble in obtaining fuel, electricity, service, or supplies from the sources from which they are usually obtained for said building, or to any cause beyond the LANDLORD'S control.

LANDLORD shall have no obligation to provide utilities or equipment other than the utilities and equipment within the leased premises as of the commencement date of this lease. In the event TENANT requires additional utilities or equipment, the installation and maintenance thereof shall be the TENANT'S sole obligation, provided that such installation shall be subject to the written consent of the LANDLORD.

7. USE OF LEASED PREMISES TENANT shall use the leased premises only for the purpose of office and manufacturing space.

Neither LANDLORD nor LANDLORD'S BROKER have made any representations to TENANT regarding the uses of the leased premises allowed under applicable law or other restrictions of record, and TENANT acknowledges and agrees that TENANT assumes all responsibility and risk for investigating the same.

8. COMPLIANCE WITH LAWS

TENANT agrees to conform to the following provisions during the entire term of this Lease: (i) TENANT shall not injure or deface the leased premises or building; (ii) No auction sale, inflammable fluids, chemicals, nuisance, objectionable noise or odor shall be permitted on the leased premises; (iii) TENANT shall not permit the use of the leased premises for any purpose other than set forth herein or any use thereof which is improper, offensive, contrary to law or ordinance, or liable to invalidate or increase the premiums for any insurance on the building or its contents or liable to render necessary any alterations or additions to the building; and (iv) TENANT shall not obstruct in any manner any portion of the building not hereby demised or the sidewalks or approaches to said building or any inside or outside windows or doors. TENANT shall observe and comply with all reasonable rules and security regulations and other governmental or quasi-governmental orders or inspections affecting TENANT, the leased premises and/or TENANT's use and all reasonable rules and security regulations now or hereafter made by LANDLORD for the care and use of the leased premises, the building, its facilities and approaches. TENANT agrees to keep the leased premises equipped with all safety appliances and make all accessibility alterations,

improvements or installations to the building, and/or accommodations in TENANT'S use thereof required by law or any public authority as a result of TENANT'S use or occupancy of the premises or TENANT'S alterations or additions thereto, which alterations, improvements and installations shall be subject to LANDLORD'S consent as provided in this Lease.

9. MAINTENANCE
A. TENANT'S
OBLIGATIONS

TENANT acknowledges by entry thereupon that the leased premises are in good and satisfactory order, repair and condition, and covenants during said term and further time as TENANT holds any part of said premises (including without limitation windows, doors and all systems serving exclusively the leased premises) in as good order, repair and condition as the same are in at the commencement of said term, or may be put in thereafter, damage by fire or unavoidable casualty and reasonable use and wear only excepted. Notwithstanding anything to the contrary herein, if TENANT has leased ground floor space, TENANT covenants to keep all plate glass windows in good repair and condition and to carry adequate insurance to provide for the replacement of any such plate glass which is damaged or destroyed.

B. LANDLORD'S
OBLIGATIONS

LANDLORD agrees to maintain and repair the roof, exterior walls and structure of the building of which the leased premises are a part, building systems not exclusively serving the leased premises and the common areas, in the same condition as they are at the commencement of the term or as it may be put in during the term of this Lease, reasonable wear and tear, damage by fire and other casualty only excepted, unless such maintenance or repair is made necessary by fault or neglect of the TENANT or the employees, contractors, agents or invitees of TENANT, in which case such maintenance or repair shall be at the expense of TENANT and TENANT shall pay all costs thereof.

10. ALTERATIONS /
ADDITIONS

TENANT shall not make any alterations or additions, or permit the making of any holes in any part of said building (except for nail holes for hanging art), or paint or place any signs, drapes, curtains, shades, awnings, aerials or flagpoles or the like, or permit anyone except TENANT to use any part of the leased premises for desk space or for mailing privileges without on each occasion obtaining prior written consent of LANDLORD. TENANT may install signs of the following dimensions in the following locations, which signs shall be installed at TENANT'S sole expense, in compliance with all applicable laws and ordinances, and in compliance with LANDLORD'S sign standards attached hereto: _____

None If Left Blank. TENANT shall not suffer or permit any lien of any nature or description to be placed against the building, the leased premises or any portion thereof, and in the case of any such lien attaching to immediately pay and remove the same; this provision shall not be interpreted as meaning that the TENANT has any authority or power to permit any lien of any nature or description to attach or to be placed upon the LANDLORD'S title or interest in the building, the leased premises, or any portion thereof.

11. ASSIGNMENT

TENANT shall not by operation of law or otherwise, assign, mortgage or encumber this Lease, or sublet or permit the demised premises or any part thereof to be used by others, without LANDLORD'S prior express written consent in each instance. In any case where LANDLORD shall consent to such assignment or subletting, TENANT named herein and any guarantor of this Lease shall remain fully liable for the obligations of TENANT hereunder, including, without limitation, the obligation to pay the rent and other amounts

provided under this Lease. For purposes of this Lease, the sale of controlling interest in the stock of a corporate TENANT, sale of the controlling membership interest in an LLC or similar entity, or the change of a general partner of a partnership TENANT shall constitute an assignment of this Lease.

12. SUBORDINATION AND QUIET ENJOYMENT

This lease shall be subject and subordinate to any and all mortgages, deeds of trust and other instruments in the nature of a mortgage, that is now or at any time hereafter a lien or liens on the property of which the leased premises are a part and TENANT shall, within ten (10) days after they are requested, promptly execute and deliver such written instruments as shall be necessary to show the subordination of this Lease to said mortgages, deeds of trust or other such instruments in the nature of a mortgage. Provided TENANT performs all of its obligations under this Lease, TENANT shall be entitled to the quiet enjoyment of the leased premises; provided TENANT covenants that it holds the leased premises subject to all easements, covenants and other matters of record, and agrees to abide by same to the extent the same affect the leased premises. TENANT agrees to sign within ten (10) days after they are requested, such estoppel certificates as are required by LANDLORD'S lender.

13. LANDLORD'S ACCESS

LANDLORD or agents of LANDLORD may, at all reasonable times during the term of this Lease, enter the leased premises (i) to examine the leased premises and, if LANDLORD shall so elect, to make any repairs or additions LANDLORD may deem necessary and, at TENANT'S expense, to remove any alterations, additions, signs, drapes, curtains, shades, awnings, aerials or flagpoles, or the like, not consented to in writing, (ii) to show the leased premises to prospective purchasers and mortgagees, and (iii) to show the leased premises to prospective tenants during the Twelve (12) months preceding the expiration of this Lease. LANDLORD also reserves the right at any time within Twelve (12) months before the expiration of this Lease to affix to any suitable part of the leased premises a notice for leasing the leased premises and to keep the signage affixed without hindrance or molestation. LANDLORD also reserves the right at any time to affix to any suitable part of the leased premises a notice for selling the leased premises or property of which the leased premises are a part and to keep the same so affixed without hindrance or molestation.

14. INDEMNIFICATION AND LIABILITY

TENANT will defend and, except to the extent caused solely by the negligence or willful conduct of LANDLORD, will indemnify LANDLORD and its employees, agents and management company, and save them harmless from any and all injury, loss, claim, damage, liability and expense (including reasonable attorneys' fees) in connection with the loss of life, personal injury or damage to property or business, arising from, related to, or in connection with the occupancy or use by TENANT of the leased premises or any part of LANDLORD'S property or the building, or occasioned wholly or in part by any act or omission of TENANT, its contractors, subcontractors, subtenants, licensees or concessionaires, or its or their respective agents, servants or employees while on or about the leased premises. TENANT shall also pay LANDLORD'S expenses, including reasonable attorneys' fees, incurred by LANDLORD in successfully enforcing any obligation, covenant or agreement of this Lease or resulting from TENANT'S breach of any provisions of this Lease (including without limitation any attorneys' fees incurred to monitor or intervene in any bankruptcy proceeding involving TENANT), or any document, settlement or other agreements related to this Lease. TENANT agrees not to assert immunity under workers' compensation laws as a defense

to the enforcement by LANDLORD of the foregoing indemnity. The provisions of this Article shall survive the termination or earlier expiration of the term of this Lease. Without limitation of any other provision herein, neither the LANDLORD, its employees, agents nor management company shall be liable for, and TENANT hereby releases them from all claims for, any injuries to any person or damages to property or business sustained by TENANT or any person claiming through TENANT due to the building or any part thereof (including the premises), or any appurtenances thereof, being in need of repair or due to the happening of any accident in or about the building or the leased premises or due to any act or neglect of TENANT or of any employee or visitor of TENANT. Without limitation, this provision shall apply to injuries and damage caused by nature, rain, snow, ice, wind, frost, water, steam, gas or odors in any form or by the bursting or leaking of windows, doors, walls, ceilings, floors, pipes, gutters, or other fixtures; and to damage caused to fixtures, furniture, equipment and the like situated at the leased premises, whether owned by the TENANT or others.

15. TENANT'S LIABILITY
INSURANCE

TENANT shall (i) insure TENANT and LANDLORD, as an additional named insured, with commercial general liability coverage, on an occurrence basis and in such amounts and with such admitted companies and against such risks as LANDLORD shall reasonably require and approve, but in amounts not less than Two Million Dollars (\$2,000,000.00) combined single limit with deductibles of not less than \$5,000 per occurrence, and (ii) insure LANDLORD and TENANT, as their interests appear, against loss of the contents and improvements of the leased premises under standard Maine all risk perils form, or its equivalent, in such amounts and with such Maine admitted companies as LANDLORD shall reasonably require and approve, with waiver of subrogation if such waiver can be obtained without charge. TENANT shall deposit with LANDLORD certificates for such insurance at or prior to the commencement of the term, and thereafter within thirty (30) days prior to the expiration of any such policies and TENANT promptly shall deliver to LANDLORD complete copies of TENANT'S insurance policies upon request from LANDLORD. All of the foregoing insurance policies shall provide that such policies shall not be canceled without at least thirty (30) days prior written notice to each assured named therein. TENANT shall list LANDLORD as an additional named insured or loss payee, as the case may be, in all policies required by this Article.

16. FIRE CASUALTY -
EMINENT DOMAIN

Should a substantial portion of the leased premises, or of the property of which they are a part, be damaged by fire or other casualty, or be taken by eminent domain, LANDLORD may elect to terminate this Lease. When such fire, casualty, or taking renders the leased premises unfit for use and occupation and LANDLORD does not so elect to terminate this Lease, a just and proportionate abatement of rent shall be made until the leased premises, or in the case of a partial taking what may remain thereof, shall have been put in proper condition for use and occupation. LANDLORD reserves and excepts all rights to damages to the leased premises and building and the leasehold hereby created, accrued or subsequently accruing by reason of anything lawfully done in pursuance of any public, or other, authority; and by way of confirmation, TENANT grants to LANDLORD all TENANT'S rights to such damages and covenants to execute and deliver such further instruments of assignment thereof as LANDLORD may from time to time request. LANDLORD shall give TENANT notice of its decision to terminate this Lease or restore the premises within ninety (90) days after any occurrence giving rise to LANDLORD'S right to so terminate or restore. Notwithstanding

anything to the contrary contained herein, LANDLORD'S obligation to put the leased premises or the building in proper condition for use and occupation shall be limited to the amount of the proceeds from any insurance policy or policies or of damages which accrue by reason of any taking by a public or other authority, which are available to LANDLORD for such use.

17. DEFAULT AND BANKRUPTCY

In the event that:

- (a) TENANT shall default in the payment of any installment of rent or other sum herein specified when due which default is not corrected within seven (7) days after written notice thereof; or
- (b) TENANT shall default in the observance or performance of any other of the TENANT'S covenants, agreements, or obligations hereunder and such default shall not be corrected within ten (10) days after written notice thereof; or
- (c) The leasehold hereby created shall be taken on execution, or by other process of law; or
- (d) Any assignment shall be made of TENANT'S property for the benefit of creditors, or a receiver, guardian, conservator, trustee in bankruptcy or similar officer shall be appointed by a court of competent jurisdiction to take charge of all or any part of TENANT'S property, or a petition is filed by TENANT under any bankruptcy, insolvency or other debtor relief law,

then and in any of said cases (notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance), LANDLORD shall be entitled to all remedies available to LANDLORD at law and equity, including without limitation, the remedy of forcible entry and detainer, and LANDLORD lawfully may, immediately or at any time thereafter, and without demand or notice, mail a notice of termination to the TENANT, or, if permitted by law, enter into and upon the leased premises or any part thereof in the name of the whole and repossess the same as of its former estate, and expel TENANT and those claiming through or under it and remove it or their effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, and upon such mailing or entry as aforesaid, this lease shall terminate; and TENANT covenants and agrees, notwithstanding any entry or re-entry by LANDLORD, whether by summary proceedings, termination, or otherwise, that TENANT shall, as of the date of such termination, immediately be liable for and pay to LANDLORD the entire unpaid rental and all other balances due under this Lease for the remainder of the term. In addition, TENANT agrees to pay to LANDLORD, as damages for any above described breach, all costs of reletting the leased premises including real estate commissions and costs of renovating the Premises to suit any new tenant, and TENANT agrees to reimburse LANDLORD for all attorneys' and paralegals' fees incurred by LANDLORD in connection with a TENANT default, including without limitation such fees incurred in connection with a bankruptcy proceeding.

18. NOTICE

Any notice from LANDLORD to TENANT relating to the leased premises or to the occupancy thereof, shall be deemed duly served, if left at the leased premises addressed to TENANT, or upon mailing to the leased premises, certified mail, return receipt requested, postage prepaid, addressed to TENANT such notice shall be deemed served on the date of hand-delivery to the leased premises or on the date postmarked, and any time period in this Lease running from the date of notice shall commence on the date of delivery or postmark. Any notice from TENANT to LANDLORD relating to the leased premises or to the occupancy thereof, shall be deemed duly served, if mailed

to the LANDLORD by registered or certified mail, return receipt requested, postage prepaid, addressed to LANDLORD at LANDLORD'S address set forth in Article 1, or at such other address as LANDLORD may from time to time advise in writing.

19. SURRENDER

TENANT shall at the expiration or other termination of this Lease peaceably yield up the leased premises and all additions, alterations, fixtures (including those installed by TENANT), and improvements thereto in good order, repair and condition, damage by fire, unavoidable casualty and reasonable wear and tear only excepted, first moving all goods and effects not attached to the leased premises, repairing all damage caused by such removal, and leaving the leased premises clean and tenantable. If LANDLORD in writing permits TENANT to leave any such goods and chattels at the leased premises, and TENANT does so, TENANT shall have no further claims and rights in such goods and chattels as against LANDLORD or those claiming by, through or under the LANDLORD, and TENANT shall be deemed to have conveyed such items to LANDLORD unless LANDLORD elects to reject acceptance of the same.

20. HAZARDOUS MATERIALS

TENANT covenants and agrees that, with respect to any hazardous, toxic or special wastes, materials or substances including asbestos, waste oil and petroleum products (the "Hazardous Materials") which TENANT, its agent or employees, may use, handle, store or generate in the conduct of its business at the leased premises TENANT will: (i) comply with all applicable laws, ordinances and regulations which relate to the treatment, storage, transportation and handling of the Hazardous Materials; (ii) that TENANT will in no event permit or cause any disposal of Hazardous Materials in, on or about the leased premises and in particular will not deposit any Hazardous Materials in, on or about the floor or in any drainage system or in the trash containers which are customarily used for the disposal of solid waste; (iii) that TENANT will with advance notice and at all reasonable times permit LANDLORD or its agents or employees to enter the leased premises to inspect the same for compliance with the terms of this paragraph and will further provide upon five (5) days notice from LANDLORD copies of all records which TENANT may be obligated by federal, state and/or local law to obtain and keep; (iv) that upon termination of this Lease, TENANT will, at its expense, remove all Hazardous Materials, which came to exist on, in or under the leased premises during the term of this Lease or any extensions thereof, from the leased premises and comply with applicable local, state and federal laws as the same may be amended from time to time; and (v) TENANT further agrees to deliver the leased premises to LANDLORD at the termination of this Lease free of all Hazardous Materials which came to exist on, in or under the leased premises during the term of this Lease or any extension thereof. The terms used in this paragraph shall include, without limitation, all substances, materials, etc., designated by such terms under any laws, ordinances or regulations, whether federal, state or local.

21. LIMITATION OF LIABILITY

TENANT agrees to look solely to LANDLORD'S interest in the building for recovery of any judgment from LANDLORD or any of LANDLORD'S partners, managers or owners, it being agreed that LANDLORD and any other such party is not personally liable for any such judgment. The provisions contained in the foregoing sentence shall not limit any right that TENANT might otherwise have to obtain an injunctive relief against LANDLORD or LANDLORD'S successors in interest, or any other action not involving the personal liability of LANDLORD. Under no circumstances shall LANDLORD ever be liable for lost profits, indirect or consequential damages.

22. LANDLORD DEFAULT LANDLORD shall in no event be in default in the performance of any of its obligations hereunder unless and until LANDLORD shall have failed to perform such obligations within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by TENANT to LANDLORD properly specifying wherein LANDLORD has failed to perform any such obligation. Further, if the holder of the mortgage on the building of which the leased premises are a part notifies TENANT that such holder has taken over LANDLORD'S rights under this lease, TENANT shall not assert any right to deduct the cost of repairs or any monetary claim against lender or holder from rent thereafter due and accruing, but shall look solely to the LANDLORD for satisfaction of such claim.
23. WAIVER OF RIGHTS No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition or duty of the other, shall be construed as a consent or waiver to or of any other breach of the same or other covenant, condition or duty.
24. SUCCESSORS AND ASSIGNS The covenants and agreements of LANDLORD and TENANT shall run with the land and be binding upon and inure to the benefit of them and their respective heirs, executors, administrators, successor and assigns, but no covenant or agreement of LANDLORD, express or implied shall be binding upon any person except for defaults occurring during such person's period of ownership nor binding individually upon any fiduciary, any shareholder or any beneficiary under any trust.
25. HOLDOVER If TENANT fails to vacate the leased premises at the termination of this Lease, then the terms of this Lease shall be applicable during said holdover period, except for base rent, which shall be increased to two (2) times the then-current base rent for the period just preceding such termination; but this provision shall not be interpreted as consent or permission by the LANDLORD for TENANT to holdover at the termination of this Lease and terms of this holdover provision shall not preclude LANDLORD from recovering any other damages which it incurs as a result of TENANT'S failure to vacate the leased premises at the termination of this Lease.
26. JURY TRIAL WAIVER NOTWITHSTANDING ANYTHING IN THIS LEASE TO THE CONTRARY, TENANT AND LANDLORD, FOR THEMSELVES AND THEIR SUCCESSORS AND ASSIGNS, HEREBY KNOWINGLY, WILLINGLY, AND VOLUNTARILY WAIVE ANY AND ALL RIGHTS TENANT AND/OR LANDLORD MAY HAVE TO A TRIAL BY JURY IN ANY FORCIBLE ENTRY AND DETAINER ("FED") ACTION OR PROCEEDING BROUGHT BY LANDLORD OR LANDLORD'S SUCCESSORS AND/OR ASSIGNS BASED UPON OR RELATED TO THE PROVISIONS OF THIS LEASE. LANDLORD AND TENANT HEREBY AGREE THAT ANY SUCH FED ACTION OR PROCEEDING SHALL BE HEARD BEFORE A SINGLE JUDGE OF THE APPROPRIATE DISTRICT COURT OR A SINGLE JUDGE OF THE APPROPRIATE SUPERIOR COURT, OR A FEDERAL DISTRICT COURT JUDGE SITTING IN THE DISTRICT OF MAINE.
27. MISCELLANEOUS If TENANT is more than one person or party, TENANT'S obligations shall be joint and several. Unless repugnant to the context, "LANDLORD" and "TENANT" mean the person or persons, natural or corporate, named above as LANDLORD and TENANT respectively, and their respective heirs, executors, administrators, successor and assigns. LANDLORD and TENANT agree that this Lease shall not be recordable but each party hereto agrees, on

request of the other, to execute a Memorandum of Lease in recordable form and mutually satisfactory to the parties. If any provision of this Lease or its application to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease and the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law. The submission of this Lease or a summary of some or all of its provisions for examination by TENANT does not constitute a reservation of or option for the premises or an offer to lease said premises, and this document shall become effective and binding only upon the execution and delivery hereof by both the LANDLORD and TENANT. Employees or agents of LANDLORD have no authority to make or agree to make a lease or any other agreement or undertaking in connection herewith. All negotiations, considerations, representations and understandings between LANDLORD and TENANT are incorporated herein and no prior agreements or understandings, written or oral, shall be effective for any purpose. No provision of this Lease may be modified or altered except by agreement in writing between LANDLORD and TENANT, and no act or omission of any employee or agent of LANDLORD shall alter, change, or modify any of the provisions hereof. Time is of the essence of this agreement. This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of Maine. The headings herein contained are for convenience only, and shall not be considered a part of this Lease.

DISCLAIMER: THIS IS A LEGAL DOCUMENT. IF NOT FULLY UNDERSTOOD, CONSULT AN ATTORNEY.

IN WITNESS WHEREOF, the said parties hereunto set their hands and seals this 15th day of november, 2021.

TENANT:BXZ Properties Inc

LANDLORD:Capital Area Properties LLC

Eric McMaster

Ben Spencer

Legal Name of Tenant

Legal Name of Landlord

DocuSigned by:
Eric McMaster 11/15/2021
2EF5888E40E345A...

DocuSigned by:
Ben Spencer 11/15/2021
4F2F3F588A0E42Z...

Signature

Signature

owner

NAME/TITLE

member

NAME/TITLE

Witness to Tenant

Witness to Landlord

GARDINER PLANNING BOARD

July 27, 2021

**Review of Application for 14'x30' building at Lions Way for a commercial kitchen
for adult use cannabis**

Applicant: Eric McMaster

DECISION¹

Eric McMaster proposed placing a 14'x30' building at 15 Lions Way – Map 029 Lot 001A in the MUV district – with the intent that it be used as a commercial kitchen for adult use cannabis. This building houses an existing cultivation facility, which is very close to a local elementary school. After this application was tabled on 7/13, Mark Eyerman, City Planner, was asked to clarify 10.29.1 from the LUO, Marijuana section due to the proximity issue.

Mr. Eyerman presented a memo that gave his interpretation of this provision in the ordinance. He states in the memo that he feels that the proximity measurement should be from property line to property line-straight line distance. He goes on to explain LUO provisions 10.29.1.1 and 10.29.1.2- These provisions are included to address the limited situations where it is essentially not realistic to walk between the protected facility and the marijuana establishment. The key here is that it is a permanent feature that is not simply a barrier that is under the control of an applicant or other property owner. The Board is pleased with Mr. Eyerman's interpretation of these provisions, which helped to clarify the ordinance and separation distance. At the last meeting, the Board did measurements from the school, to the address in question. The measurements between Board members varied, but were less than the required 1000' and more than 500'.

Debby Willis chaired the meeting, and went through the application to see if they have standing. Chair Willis asks the Board if they feel that the application is complete- Yes. Can Board members hear this in an unbiased manner? Yes. There is a waiver request. The applicant is unable to locate the public utilities map. This will not be needed for this application. Pam Mitchel asks how many employees there will be. Mr. McMaster states there will be 2-3 full time employees. He also plans to keep the gate/fence that is on the property locked. Employees will need a fob or code to get into the site. Employees will use the entrance that is closest to the Lion's Club. Chair Willis asks the applicant to stay while the Board reviews the application.

¹ On August 10 the Planning Board confirmed the approved minutes of the July 27 Meeting constituted the written decision of the Planning Board, and authorized Chair Willis to sign a decision document on behalf of the Planning Board.

In regards to the waiver for public utilities map - the Board agrees that this building has been set up for a long time, with City Utilities. A new development/building would need a map for utilities. Pam Mitchel makes a motion to grant the waiver for the lack of a public utility map. Lisa St. Hilaire seconds the motion.

No further discussion. Roll Call vote- Pam Mitchel- yes, Lisa St. Hilaire- yes, Shawn Dolley-yes, Chair Debby Willis- yes. All in favor. Waiver granted.

Chair Willis opened the meeting for public comment. There was no one present to speak for or against the application. There was no public interest at City Hall. Chair Willis closed the public hearing.

Special Activity Performance Standards (10.29)

10.29.1 Any property line of the lot upon which a marijuana establishment is located shall be a minimum of one thousand (1,000) feet from any property line of a lot upon which a public or private school, athletic field or playground is located. A “school” includes public school, private school, or public preschool program as defined in 20-A M.R.S §1, or any other educational facility that serves children from prekindergarten to grade 12; provided however, a functional equivalent minimum setback of five hundred (500) feet may apply provided that the Planning Board finds that any of the following are met:

*Comments in writing from City Planner Mark Eyerman: The basic standard is the 1000 foot separation from property line to property line. This is the straight-line distance. Essentially this draws a line 1000 feet from the property line of the protected facility and says a marijuana establishment cannot be located inside that line except for the specific situations addressed in 10.29.1.1 and 10.29.1.2. The section **allows but does not require** the Planning Board to reduce the separation distance down to 500 feet if the conditions are met. I think the operative word here is **may**. The objective of the separation requirement is to mitigate the possible impacts of a marijuana establishment on the users of the protected facility. The ordinance does not address these factors but they probably include things like odors, traffic and people accessing the facility.*

Chair Willis continued with reviewing the application. The proximity distance should be 1000' from the school. Pam Michel states that since the distance is less than 1000', can 10.29.1.1 be applied. (Provided however, a functional equivalent minimum setback of five hundred (500) feet may apply if the Planning Board finds that any of the following are met- 10.29.1.2. The marijuana establishment is physically separated from the protected lot by a natural or other physical feature that makes pedestrian access between the two lots impractical.)

10.29.1.1 The location of the buildings or areas actively used on either or both lots results in the entrance to the marijuana establishment being more than one thousand (1,000) feet from the area of the protected lot that is actively used or that provides access to the building or facilities;

Comments in writing from City Planner Mark Eyerman: This provision allows the 1000 foot minimum separation to be measured from the entrance to the marijuana establishment to the portion of the protected facility that is actively used. I think this was intended to be the straight-line distance. This was added to address the situation where a marijuana establishment or a protected facility might be located on a large lot far from the property line. For example, a marijuana facility in the middle of a large lot in a rural area might be far more than 1000 feet from the protected facility or vice versa, a nursery school on a large rural lot could block a marijuana 2

10.29.1.2 The marijuana establishment is physically separated from the protected lot by a natural or other physical feature that makes pedestrian access between the two lots impractical.

*Comments in writing from City Planner Mark Eyerman: This provision was included to address the limited situations where it is essentially not realistic to walk between the protected facility and the marijuana establishment. I think the key here is that it is a permanent **feature** that is not simply a barrier that is under the control of an applicant or other property owner. During the ORC discussions, the provision was included to address situations such as the Cobbosseecontee or the Interstate where the 1000 foot separation around a protected facility could extend the other side of the physical feature.*

A barbed wire/chain link fence surrounds the property that has been there for years. The applicants feel that this fence is more than sufficient as a barrier, and that the 500' setback should apply. The applicant explains that his property has a unique history of not being accessible to the public, and the fence has been there. The applicant has been using this facility for years, and has been a good tenant. This will not be a retail business. Product will be made, and sent out to another site. The Board feels that the barrier needs to be permanent, and the fence does not qualify as the tenant leases this property and does not own it.

There are many good things about this business/application, but this request does not fit according to the LUO. Under the amended ordinance for MUV, this use would not be allowed. Under the previous ordinance, it was allowed, but whether or not it is allowed as a use is not the issue. The issue is the proximity distance to the school. There have been no issues, and the fence has been in use. The applicant states that he is responsible for maintaining the fence, and will make sure that it meets the board's requirements.

Chair Willis asks for a motion. Pam Mitchel makes a motion that this application meets the standard 10.29.1.2 because there is an existing robust barrier, with a condition the applicant must maintain that fence. Lisa St. Hilaire seconds the motion. Discussion-. Lisa St. Hilaire states that she feels that the application does not meet the ordinance due to proximity. Shawn Dolley feels that this a unique situation and the problem is that the applicant does not own the property- therefore does not own the fence. There is a likelihood that the fence will stay there, but if the land is sold, the applicant will not have control of the situation.

No further discussion on the motion. Roll Call vote- Shawn Dolley- no, Pam Mitchel-yes, Lisa St. Hilaire- no, Chair Debby Willis- no. Pam Mitchel makes a motion that this application does not meet the requirements of the LUO. Lisa St. Hilaire seconds. No further discussion. Roll Call vote- Pam Mitchel- yes, Lisa St. Hilaire- yes, Shawn Dolley-yes, Chair Debby Willis- yes- All in favor to reject the application.

The applicant Eric McMaster thanks the board for hearing the application. He is informed of the appeal process and what steps to take.

GARDINER PLANNING BOARD

Debby Willis, Chair

GARDINER BOARD OF APPEALS

Eric McMaster v. Gardiner Planning Board

NOTICE OF DECISION **AND ORDER**

I. INTRODUCTION

This decision concerns the appeal of Eric McMaster regarding the Gardiner Planning Board's denial of his application to construct a new building for the purpose of manufacturing adult use marijuana products.

On June 11, 2021, McMaster filed an application with the Gardiner Planning Board seeking approval to place a 14' x 30' prefabricated building at 15 Lions Way, which is located in the MUV District according to the Gardiner Zoning Map. The application proposed a commercial kitchen for adult use marijuana, with the application noting a license from the Office of Marijuana Policy will be required. The proposed kitchen would not involve any sales activities at this location. McMaster listed the property owner as Robin Spencer, and attached a commercial lease setting forth his leasehold interest.

On July 13, 2021, the Planning Board began its review of the McMaster application. (*See Planning Board Minutes, July 13, 2021.*) The Planning Board continued its review on July 27, 2021, and ultimately denied the application based upon a failure to satisfy minimum setback requirements contained in Section 10.29.1 of the Gardiner Land Use Ordinance. (*See Planning Board Minutes, July 27, 2021, and Planning Board Decision.*)

On July 30, 2021, McMaster filed an administrative appeal to the Gardiner Board of Appeals challenging the Planning Board's denial.

The Gardiner Board of Appeals ("Board" or "Board of Appeals") conducted an appellate review on September 13, 2021, rendering its vote on the original decision on that date.¹

II. SUBJECT MATTER JURISDICTION, STANDING, & STANDARD OF REVIEW

Under the Gardiner Land Use Ordinance ("LUO"), any appeal of a decision of the Planning Board may be appealed to the Board, such as the McMaster denial decision. No new evidence may be introduced by any party, except in limited circumstances. (*LUO § 2.4.5.2.1.*)

¹ Prior to hearing or discussing the merits of the appeal, the Board reviewed whether any member may have a conflict of interest or bias regarding the subject matter. Several members disclosed their prior work involving the federal government or federal contract matters. Legal counsel to the Board opined those circumstances did not rise to a conflict of interest or bias issue in this appeal. No other conflict of interest or bias was raised as a possible issue by a member of the Board or from a party, so the Board proceeded on the merits of the appeal.

The Board finds McMaster has standing as an aggrieved person to pursue an appeal as an applicant that received a denial decision from the Planning Board, and that he filed a timely administrative appeal to the Board of Appeals.²

When hearing and deciding an appeal from a Planning Board decision, the Board applies an appellate standard of review. Specifically, the “Board of Appeals may modify or reverse the action of the Planning Board . . . only where the Board of Appeals finds that the action of the Planning Board . . . is clearly contrary to the applicable ordinance.” (LUO § 2.4.5.2.3) (emphasis added). “The parties appealing the action of the Planning Board . . . shall have the burden of persuasion as to all issues on appeal.” *Id.*

III. RECORD

The following constitutes the Planning Board record in this matter:

- McMaster Planning Board Application, June 11, 2021
- Planning Board Minutes, July 13, 2021
- Planner Memorandum, July 27, 2021³
- Planning Board Minutes, July 27, 2021
- Recording of Planning Board Meetings of July 13 and 27, 2021
- Planning Board Decision

At the appellate hearing, McMaster was represented by Attorney Fredette, who presented argument on his behalf. McMaster also presented argument. Robin Spencer, as a member of the public, provided comments.⁴

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Applicable Law

The Board addressed what law applies to this appeal, since the LUO has been amended in at least two material ways. Specifically, on June 16, 2021, the Gardiner City Council adopted LUO amendments that prohibited McMaster’s proposed use and eliminated “other physical features” as a possible criteria when considering the reduction to a 500-foot minimum setback. Pursuant to the Gardiner City Charter, LUO amendments are not effective until 30 days following enactment, or by July 16, 2021 for the June 16, 2021 LUO amendments. These

² As stated *infra*, on remand the Board directs that the Planning Board examine whether McMaster has the requisite right, title, and interest for his application including, without limitation, placement of the prefabricated building and regarding the fence such as any conditions the Planning Board may place on improvements, maintenance, repairs, and upkeep.

³ Attorney Fredette, representing McMaster objected to inclusion of the Planner Memorandum in the record, stating his client did not receive a copy and did not have an opportunity to respond. The Board noted Attorney Fredette’s objection, and also noted McMaster was present at the Planning Board meeting in which the Planner Memorandum was discussed.

⁴ An email dated September 13, 2021 was also sent to the Board of Appeals from a member of the public, which was placed on file of the Board of Appeals. The Board of Appeals did not consider this email as part of the Planning Board record under review.

amendments do not contain any retroactive language. (See Council Order dated June 16, 2021 re: LUO Amendments, and City Charter.) The Board determined that the Planning Board conducted a substantive review on the McMaster application on July 13, 2021, and was therefore a pending proceeding within the meaning of 1 M.R.S. § 302. The Board thus considers, as the Planning Board did as well, that the applicable version of the LUO is the one that existed prior to the effective date of the above-described LUO amendments.

For ease of reference, this version of LUO Section 10.29.1 that applies to this appeal is stated below:

10.29.1. Any property line of the lot upon which a marijuana establishment is located shall be a minimum of one thousand (1,000) feet from any property line of a lot upon which a public or private school, athletic field or playground is located. A "school" includes public school, private school, or public preschool program as defined in 20-A M.R.S. § 1, or any other educational facility that serves children from prekindergarten to grade 12, provided however, a functional equivalent minimum setback of five hundred (500) feet [sic] may apply provided that the Planning Board finds that any of the following are met:

10.29.1.1. The location of the buildings or areas actively used on either or both lots results in the entrance to the marijuana establishment being more than one thousand (1,000) feet from the area of the protected lot that is actively used or that provides access to the building or facilities; or

10.29.1.2. The marijuana establishment is physically separated from the protected lot by a natural or other physical feature that makes pedestrian access between the two lots impractical.

LUO Section 10.29.1 (in effect prior to July 16, 2021).

B. Interpretation of LUO Section 10.29.1.

Maine statutory law requires adult use marijuana establishments such as the one proposed by McMaster to be at least 1,000 feet from the property line of a preexisting public or private school. (See 28-B M.R.S. § 402, setting forth minimum authorization criteria.) This statute contains an exception, in which a municipality by ordinance or other regulation may reduce the minimum 1,000-foot setback but in no instance less than 500 feet from the property line of a preexisting public or private school. *Id.*

LUO Section 10.29.1 falls within this exception, stating an applicant may obtain authorization to operate a marijuana establishment down to a minimum setback of 500 feet from the property line of a preexisting public or private school *provided* at least one of two conditions are satisfied as set forth in subsections 1 and 2 above.

Focusing on Section 10.29.1.2 regarding impractical pedestrian access, the Board finds this language plain and unambiguous in its meaning. Its clear objective is focused on conditions that render pedestrian access impractical by means of either a natural or physical feature when

comparing the relationship or characteristics between the proposed marijuana establishment and a protected lot (here, a school).

The Board interprets Section 10.29.1.2 to mean a fence is plainly a physical feature that may be considered as a type of barrier impeding or otherwise rendering pedestrian access impractical. This is because fences, depending on design specifications, existing/proposed conditions, and conditions of repair, maintenance, and upkeep, have the capacity to impede or make impractical pedestrian access within the meaning of Section 10.29.1.2.⁵

Further, the Board interprets Section 10.29.1.2 to permit consideration of natural or other physical features (such as fences) both on and off the subject property of a proposed marijuana establishment. In reaching this interpretation, the Board notes Section 10.29.1.2 identifies “marijuana establishment” as one point of reference in comparison to the “protected lot” as the other. Stated differently, Section 10.29.1.2 does not state “The *lot containing* the marijuana establishment is physically separated from the protected lot ... “– such “lot” point of reference is omitted from the language relative to the marijuana establishment. While the latter phrase in Section 10.29.1.2 describes pedestrian access between the two lots being impractical, on balance the Board finds the objective of this subsection is to make pedestrian access impractical relative to the marijuana establishment as set forth in the lead-in language, thereby allowing consideration of natural or other physical features on the subject property lot.

Finally, the Board interprets Section 10.29.1 to mean if either of the independent conditions are met in subsections 1 or 2 (assuming an applicant is pursuing one or more of these conditions), then the applicant gets the benefit of the reduced minimum setback of 500 feet. In reaching this conclusion, the Board examined the use of the term “may” in the context of the LUO and in recognition that private property rights are at stake as part of an application review (i.e., as a quasi-judicial proceeding). The Board is persuaded in these circumstances the term “may” connotes a mandatory as opposed to a purely directory or discretionary meaning in its application – *provided* the underlying conditions are fully satisfied to permit the authorization (here, a reduced minimum setback to 500 feet). Stated differently, the term “may” in this instance does not involve a procedural requirement without stated consequences or sanctions, but rather involves a substantive inquiry on the exercise of private property rights through zoning in whether a specific activity is permissible.⁶

⁵ The LUO defines a “fence” as “An enclosed barrier consisting of wood, vinyl, recycled/composite materials, stone, metal, or similar material intended to prevent ingress and egress.” (*LUO Section 17, Definitions.*)

⁶ See e.g., *Collins v. State*, 213 A.2d 835, 837-88 (Me. 1965) (“The word ‘may’ in a statute is to be construed ‘must or ‘shall,’ where the public interest or rights are concerned, and the public or third persons have a claim *de jure* that the power shall be exercised.’ Expressed more fully: ‘The word ‘may’ in a statute will be construed to mean ‘shall’ or ‘must’ whenever the rights of the public or third persons depend on the exercise of the power to perform the duty to which it refers; and such is its meaning in all cases where the public interests and rights are concerned, or where a public duty is imposed upon public officers, and the public or third persons have a claim *de jure* that the power shall be exercised. Or, as the rule is sometimes expressed, whenever a statute directs the doing of a thing for the sake of justice or the public good, the word ‘may’ will be read ‘shall.’”) (*citing Pierson v. People ex rel. Walter*, 201 Ill. 456, 68 N.E. 383, 386 (1903)); cf. *Doe v. Board of Osteopathic Licensure*, 2020 ME 134, ¶¶ 10-14, 242 A.3d 182.

C. Whether the Application Presents “Physical Features” Consistent with 10.29.1.2 Criteria.

The Board further determined that the type of fence system proposed by McMaster (approximately 5-foot high chain link fence with barbed wire and locked gate system with additional security detail, collectively enclosing the proposed marijuana establishment) satisfies the other physical feature elements of LUO Section 10.29.1.2, subject to (i) any reasonable conditions that may be imposed by the Planning Board for ongoing fence and security operations and additional improvements, repairs, maintenance, and upkeep of the fence; and (ii) satisfaction of sufficient right, title, and interest considerations.

D. Motions & Votes.

For the reasons set forth above, the Gardiner Board of Appeals adopted the following motions:

MOTION: The fence as described in the record satisfies the requirements of LUO Section 10.29.1.2.⁷

VOTE: 4-0 (unanimously adopted)

MOTION: The applicant (McMaster) receives the benefit of the 500-foot setback as allowed by LUO Section 10.29.1.

VOTE: 4-0 (unanimously adopted)

MOTION: The Planning Board record (upon remand) remains open to new evidence until the Planning Board finalizes its review of the McMaster application.⁸

VOTE: 4-0 (unanimously adopted)

⁷ In light of the Board’s determinations, it was unnecessary to reach McMaster’s claim that he alternatively complied with Section 10.29.1.1. When questioned on whether McMaster intended to pursue this claim, Attorney Fredette represented McMaster intended to rely on Section 10.29.1.2, while not completely foreclosing the possibility of pursuing Section 10.29.1.1 dependent upon the course of any future remand proceeding before the Planning Board.

⁸ The Board noted that in addition to fence items detailed in this Notice of Decision and Order regarding any reasonable conditions and right, title, and interest considerations, the Planning Board would still need to review all other applicable ordinance standards against McMaster’s application to determine compliance or non-compliance.

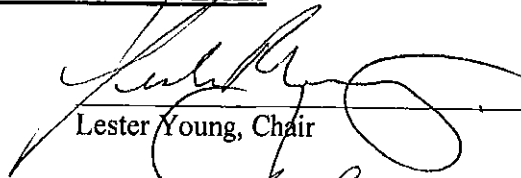
FINAL VOTE AND ORDER

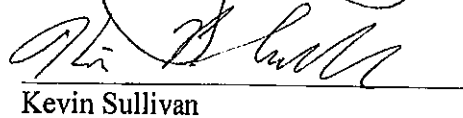
Upon motion and by unanimous vote, the Board GRANTS the McMaster administrative appeal thereby reversing the Planning Board's decision, and hereby REMANDS the application back to the Planning board for further development consistent with these findings and determinations of the Board and to continue the application review.

The City Clerk shall record this Notice of Decision and Order and cause it to be sent to all necessary and appropriate parties.

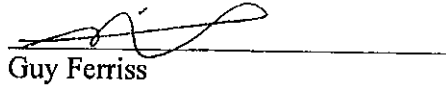
Dated this 16th day of September, 2021, in Gardiner, Maine

GARDINER BOARD OF APPEALS


Lester Young, Chair


Kevin Sullivan


Ted Potter


Guy Ferriss

Right of Appeal

In accordance with Section 2.4.3.3 of the Gardiner Land Use Ordinance, all appeals of decisions of from the Board of Appeals shall go to the Superior Court according to state law including, without limitation, in accordance with 30-A M.R.S. § 4482-B.