Filed
File Date: 6/23/2022 11:52 AM
Merrimack Superior Court
E-Filed Document

STATE OF NEW HAMPSHIRE

MERRIMACK, SS SUPERIOR COURT

Case No. 217-2022-CV-00634

Town of Canterbury

v.

Nancy Emerson Kress

and

Brian Thomas Kress

and

Derek Januszewski

PETITION FOR DECLARATORY JUDGMENT, TEMPORARY AND PERMANENT INJUNCTIVE RELIEF AND ASSESSMENT OF CIVIL FINES AND ATTORNEYS' FEES

NOW COMES the Town of Canterbury, by and through its attorneys, Upton & Hatfield, LLP, complaining against Nancy Emerson Kress, Brian Thomas Kress and Derek Januszewski, (hereinafter collectively referred to as "Defendants") stating as follows:

1. The Town of Canterbury is a municipal corporation located in the County of Merrimack, with a mailing address of 10 Hackleboro Road, PO Box 500, Canterbury, NH 03224.

2. Nancy Emerson Kress and Brian Thomas Kress (hereinafter "Kress") own property with an address of 417 Shaker Road, Canterbury, New Hampshire 03224, located within the Town of Canterbury (hereinafter the "Property"). Kress' mailing address is PO Box 1606, Nederland, Colorado 80466.

3. Derek Januszewski (hereinafter "Januszewski") operates a business and is a tenant at the Property. Januszewski's mailing address is 417 Shaker Road, Canterbury, NH 03224.

This is a Service Document For Case: 217-2022-CV-00634
Merrimack Superior Court
8/11/2022 2:30 PM

4. The Town of Canterbury has adopted a Zoning Ordinance and Site Plan Review Regulations. *See Pl. Exhibit 1* (Site Plan Review Regulations).

5. The Property is located in the Rural District of the Town. *See Pl.'s Ex.* 2.

6. Beginning on January 5, 2022, the Town advised the Defendants that permits were required to operate the business at the Property. *See Pl.'s Exhibits 3 and 4.*

7. The operation includes the gathering of unrelated persons, including up to 30 persons, for multiple overnight stays at the Property.

8. Januszewski received a special exception from the ZBA on February 23, 2022 for the operation. *See Pl.'s Exhibit* 5.

9. A Site Plan application was submitted to the Planning Board on March 14, 2022 by Januszewski for the self-described "commercial" operation. *See Pl.'s Exhibit* 6.

10. The Planning Board has not, however, approved the site plan. *See Pl.'s Ex.* 7.

11. Despite not receiving site plan approval from the Planning Board and receiving additional notice from the Town, Defendants continue to operate a business at the Property and have represented to the Town that they will be operating in a large tent outside this summer. *See Pl.'s Exhibits* 8 and 9.

12. Neighbors continue to complain to the Selectmen, describing the negative impact on the neighborhood.

13. On or about June 16, 2022, the Defendants' engineer invited the Town's Building Inspector/Zoning Officer Joel French to inspect the Property. Mr. French observed "makeshift toilets," a "hand-wash sink that drained directly onto the ground," and, the tent not properly secured to the ground and lacking Fire Department inspection. *See Pl. Ex.* 10.

14. Defendants are thus currently operating a non-residential, commercial operation without an approved site plan and with significant potential for harm to the Property, persons and neighborhood.

15. The Town does not object to any purported use of the Property for religious purposes but is instead requiring that Site Plan Review and life safety regulations are followed.

16. Despite the best efforts of the Town to secure the cooperation of the Defendants, they have continued to permit the Property to be used in a manner that violates the Town's Site Plan Review Regulations.

17. The Town is without a remedy at law, and is suffering irreparable harm for each day the Defendants choose to ignore Town and state laws.

WHEREFORE, the Town of Canterbury respectfully prays that this Honorable Court:

A. Find the Defendants are using the Property in a manner violative of the Town's Site Plan Regulations as described above;

B. Issue an injunction, ordering the defendants to cease operating at the Property, in accordance with RSA 676:15;

C. Issue an injunction allowing the Town to inspect the Property for three years to ensure compliance, with the Town giving 24 hours' notice to the Defendants before entering the Property;

D. Order the Defendants to pay a fine in the amount of $275 for the first day of the violation of the Zoning Ordinance of the Town of Canterbury, and $550 for each subsequent day of their continuing violation of the Town of Canterbury's Site Plan Review Regulations, beginning on the date when the Town ordered the defendants to bring their property into compliance with the Town's Zoning Ordinance;

E. Order the Defendants to pay to the Town its attorneys' fees and costs incurred in connection herewith, in accordance with RSA 676:17, II, and the common law of this state; and

F. Grant such other and further relief as may be just and equitable.

FURTHER, BY WAY OF PROMPT TEMPORARY RELIEF, schedule this matter for an immediate hearing for the purpose of granting a **TEMPORARY INJUNCTION AND REQUIRING THE DEFENDANTS TO POST A BOND** with this Court to secure payment of any penalty or remedy or the performance of any of the relief which may be ordered or both, pursuant to RSA 676:17, IV.

Respectfully submitted,
TOWN OF CANTERBURY
By their Attorneys
UPTON & HATFIELD, LLP

Dated: June 23, 2022

By: /s/ Michael P. Courtney

Michael P. Courtney (NH Bar #21150)
10 Centre St., P. O. Box 1090
Concord, NH 03302-1090
(603) 224-7791
mcourtney@uptonhatfield.com

TABLE OF CONTENTS
SITE PLAN REVIEW REGULATIONS

Section		Page
	AUTHORITY and EFFECTIVE DATE	1
	INDEX	2
I.	PURPOSE AND SCOPE	3-4
II.	PROCEDURES	4-5
III.	SUBMISSION REQUIREMENTS	5
IV.	REQUIRED EXHIBITS AND DATA	6-7
V.	GENERAL STANDARDS	7-11
VI.	TOWN ENGINEER	11
VII.	WAIVERS OF SITE PLAN REVIEW REGULATIONS	12
VIII.	PERFORMANCE BOND	12
IX.	RECORDATION	12
X.	JOINT HEARINGS	12
XI.	AMENDMENTS	12
XII.	SEVERABILITY	13
XIII.	DEFINITIONS	13
XIV.	PENALTIES	13
XV.	CONCEPTUAL CONSULTATION	13-14

I. PURPOSE AND SCOPE

A. Purpose.

The purpose of the Site Plan Review Regulations and the site review procedure is to

1. Provide for the safe and attractive development, change or expansion of use of the site and guard against such conditions as would involve danger or injury to health, safety, or prosperity by reason of:
   a. Inadequate drainage or conditions conducive to flooding of the property or that of another;
   b. Inadequate protection for the quality of groundwater;
   c. Undesirable and preventable elements of pollution such as noise, smoke, soot, particulates, or any other discharge into the environment which might prove harmful to persons, structures, or adjacent properties; and
   d. Inadequate provision for fire safety, prevention, and control.
2. Provide for the harmonious and aesthetically pleasing development of the municipality and its environs.
3. Provide for open spaces and green spaces of adequate proportions.
4. Require the proper arrangement and coordination of streets within the site in relation to other existing or planned streets or with features of the official map of the municipality;
5. Require suitably located streets of sufficient width to accommodate existing and prospective traffic and to afford adequate light, air, and access for firefighting apparatus and equipment to buildings, and be coordinated so as to compose a convenient system;
6. Require, in proper cases, that plats showing new streets or narrowing or widening of such streets be submitted to the planning board for approval;
7. Require that the land indicated on plats submitted to the planning board shall be of such character that it can be used for building purposes without danger to health; and
8. Include such provisions as will tend to create conditions favorable for health, safety, convenience, and prosperity.

B. Scope.

1. When Required. Except as provided in subsection 2 or when a waiver is granted under Article VII, site plan review under these regulations is required for:
   a. New Use. Any new principal or accessory building or structure, or site alteration, for a nonresidential or multifamily use (other than 2-family) or for a mixed residential and nonresidential use.

b. Expanded Use. Any substantial physical expansion of a nonresidential or multifamily or mixed residential and nonresidential use. Substantial expansion shall be deemed to exist when:
   (1) The area of any building or structure or the area of the property devoted to the use will be increased by 10% or by 500 square feet, whichever is less; or
   (2) Where the expansion will result in increased traffic, noise or other effects on the public or the neighborhood.

c. Conversion. Any conversion from one use (whether or not site plan review has previously been granted) to another use for which review is required under Paragraph a or b.

2. Exemptions. Site plan review which would otherwise be required under subsection 1 is not required:

a. Waiver. When the planning board grants a waiver under Article VII.

b. Minor Expansion of Previously Approved Use. For expansion of an existing use which has previously received site plan review if the expansion is not a substantial expansion (see subsection 1 b.)

c. Home Office, Accessory Apartment, Agricultural Stand. For any new or expanded nonresidential use which does not involve the construction of a new building or structure, if the use will be:

(1) A home office, shop or industry as defined in Section 2.5 of the zoning ordinance;

(2) An accessory apartment to a business use as defined in Section 2.5A of the zoning ordinance; or

(3) An agricultural retail farm stand meeting all of the requirements described in Section 5.2, B, 5 of the zoning ordinance.

3. Notices. The planning board shall prepare a summary of the requirement of this section which shall be provided to any person who applies for a building permit or receives a special exception or variance for a use which requires site plan review under these regulations.

II. PROCEDURES

1. There shall be a final plat prepared in accordance with the provisions of Section IX .
2. Site plan review shall be conducted in accordance with the procedural requirements contained herein for review of final plats including the notice to abutters and a public hearing and in accordance with RSA 676:41 as from

time to time amended.

3. The list of all abutters and property owners should be checked with records at the Town Office.
4. The applicant shall bear all the costs of review, including the costs of notifying abutters, the board's administrative expenses, the costs of special investigations, the review of documents, and other costs required by particular applications (see RSA 674:44 V). All costs associated with known expenses should be paid before the application is deemed complete. All other expenses should be paid by an escrow account set up as early in the process as possible.
5. A site walk by the planning board or portion thereof may be required if any member of the board feels that it might be helpful or informative.
6. The applicant shall submit a request in writing for waiving any requirement herein when submitting the Site Plan application and material
7. A public hearing will occur once the application has been determined to be complete (RSA 676:4 I)
8. Developments of Regional Impact shall be determined and notice provided in accordance with RSA 36:57
9. Written notice of Approvals, Approval with conditions and Disapproval shall be mailed to the applicant within 7 days of the decision.
10. If the site plan meets the evaluation criteria and is approved by the planning board, then the applicant may apply for a building permit. No building permit will be issued until approval of the site plan by the planning board is granted.

III. SUBMISSION REQUIREMENTS

1. Completed Application for Site Plan Review
2. Site Plan:
   a. Sheet size: 22" x 34"
   b. Scale: not less than 1"=100'
   c. Match lines when needed
   d. Three (3) prints of each plan sheet (blue or black line)
   e. Date, title, scale, north arrow, location map
   f. Name and address of developer, designer/engineer, and owner of record
   g. Show all easements
   h. Topography with contour lines at two (2) foot vertical intervals
   i. Locus map
3. List of current names and addresses of all abutters and owners of land within 200' of any property line, as shown on records at the Town Office.
4. Written notification of the intent to request the waiving of any criteria. Specify which criteria and why.
5. Fees as set by the planning board.

IV. REQUIRED EXHIBITS AND DATA

1. Narrative description of the proposal to include its purpose, hours of operation, parking needs, lighting, employment figures, land use compatibility, aesthetics, school population projection, noise and traffic impacts;
2. Site plan showing:
   a. Existing natural features including water courses and water bodies, wetlands, soil types, trees and other vegetation, topographical features, any other features which should be considered in the site design process,
   b. Surveyed property lines showing their deflection angles, distances, radius, lengths of arcs, control angles, along property lines and monument locations and names of all abutters,
   c. Existing and proposed contours and finished grade elevations, all contours shall be a minimum of 2-foot intervals;
   d. The location, elevation and layout of catch basins and other surface drainage features;
   e. The location, width, curbing and type of access ways and egress ways (driveways), plus streets within and around site;
   f. The lines, names, widths and class of all existing, proposed and adjoining streets, lanes, ways, or easements intended to be dedicated for public use;
   g. Location of existing and proposed utilities (water, sewer, electric, gas, telephone, cable, etc.) wells, septic systems and leach fields;
   h. The size and proposed location of water supply and sewage facilities and provision for future expansion of sewage and water facilities, and all distances from existing water and sewage facilities on the site and on abutting properties to a distance of 200 feet;
   i. The size and location of all public service connections, gas, power, telephone, fire alarms, overhead and underground;
3. The site plan shall include the seal and signature of the engineer(s) and the signature of the owners of record;
4. A plan of all buildings with their type, size and location (setbacks) and first floor finished elevation; including an elevation view or photograph of all buildings indicating their height, bulk and surface treatment;
5. A landscaping plan showing the type, extent and location of existing and proposed landscaping and open space areas indicating what existing landscaping and open space areas will be retained;
6. A description of the parking needs including the location of off-street parking and loading spaces with a layout of the parking indicated;
7. A description of the location, size and design of proposed signs and other advertising or instructional devices;
8. A description of the type and location of solid waste disposal facilities;
9. A description of provisions for snow removal and disposal;

10. An erosion and sediment control plan;
11. A noise study;
12. A traffic study;
13. A lighting study showing the location and type of lighting for all outdoor facilities, including direction and area of illumination;
14. Copies of all applicable state and federal applications or permits;
15. Any other exhibits or data that the planning board may require in order to adequately evaluate the proposed development for site review;
16. If a subdivision, all subdivision regulations shall apply.

V. GENERAL STANDARDS

A. Design of development should fit the existing natural and man-made environments with the least stress:

1. Site preparation is to be conducted with minimal disturbance to existing vegetation. Stripped topsoil is to be piled and reused on the site. A minimum of 4 inches of topsoil is to be placed on the disturbed area. The site shall be adequately landscaped.
2. Landscape treatment shall consist of natural, undisturbed vegetation or features, or ground cover, shrubs, or trees as appropriate.
3. Grading and filling must be conducted to minimize the alteration of surface and subsurface drainage to, toward, or across abutting properties.
4. If excavation material is not being reused on site, an excavation permit shall be required.

B. Appropriate buffers are to be maintained or installed to provide privacy and noise reduction to residential areas abutting non-residential sites. Buffer strips (the number of feet depending largely on the density of development in the area) must be maintained between non-residential use and residential zones. Buffer strip between non-residential and residential zone must contain vegetation or appropriate fencing which will screen non-residential uses from sight from residential area throughout the year.

C. Screening must be provided to reduce visual pollution:
1. Storage areas must be fenced or screened throughout the year from onsite or adjoining parking and neighboring properties.
2. Litter (garbage) storage areas must be screened throughout the year.
3. All rooftop mechanical equipment shall be screened from view with either building walls or roof forms. All sides visible to the public and abutters should have screen materials.
4. The ground view of all mechanical equipment accessory to the building (not vehicles) with a footprint of 50 sq. ft. or greater should be fully screened from contiguous properties and adjacent streets and roads.

5. Screening shall be accomplished by architecturally integrating the equipment into the principle structure or by surrounding it with materials compatible with the principle structure. The use of either fencing or hedges as screening is also permitted, so long as it is high and dense enough to screen the area in question.

D. Parking, Loading and Pedestrian Safety:

1. Sufficient off-street parking must be provided for the anticipated use to accommodate both employees and customers so that no parking is forced onto public streets or nearby properties.
2. Sufficient off-street loading and/or unloading space must be provided, including off-street areas for maneuvering of anticipated trucks or other vehicles which shall be designed to ensure the safety of vehicles and pedestrians on the site. Maneuvers for parking and/or loading or unloading spaces must not take place from a public street.
3. Access, parking and loading areas are to be constructed so as to minimize dust, erosion and run-off conditions that would have a detrimental effect on abutting or neighboring properties and public rights-of-way and shall be designed to ensure the safety of vehicles and pedestrians.

    a. Permeable surfacing may be used which might reduce the need for installation of drainage facilities to accommodate run-off; however,
    b. The board may require that access, parking and loading areas be conventionally paved if appropriate or necessary.

4. Sidewalks. Sidewalks a minimum of four (4) feet wide shall be provided for pedestrian traffic to provide connection between the main entrances to business, housing or industrial establishments and parking areas. In the event that pedestrian traffic is reasonably anticipated, provisions shall be made for sidewalks running from the street line to the establishments. Such sidewalks, when adjacent to or within five (5) feet of driveways or roadways shall be at least six (6) inches above grade and protected by curbing.

5. Provision shall be made for removal and/or storage of snow.

E. Erosion and Sedimentation Control Plan shall:

1. Make provision to accommodate the increased run-off caused by changed soil and surface conditions during and after development. Sediment basins or other acceptable techniques may be required. Diversions, sediment retention basins, and other such devices, shall be constructed prior to any on-site grading or disturbance of existing surface material.

2. Show control measures both during construction and any permanent controls to remain after construction.

3. Identify, locate and show elevation, grades and/or contours at intervals of not more than two (2) feet for the existing and proposed drainage ways, drainage easements, drainage structures, and water bodies.

4. Identify and locate proposed erosion and sediment control measures and structures during and after development.

5. Include drawings and specifications for each proposed soil erosion and sediment control measure and structure in accordance with Storm Water Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire by the Rockingham County Conservation District in Cooperation with the NH Department of Environmental Services and the USDA Soil Conservation Service, dated August 1992, successor publication comparable equivalent.

6. Include drawings, details and specifications for proposed flood hazard prevention measures and structures and for proposed storm water retention basins.

7, Ensure that stripping of vegetation, regrading or other development will be done in such a way that will minimize soil erosion. Temporary seeding and/or mulching may be required by the board to protect exposed critical areas during development. Whenever practical, natural vegetation shall be retained, protected and supplemented.

F. Illumination:

1. Outdoor lighting shall not glare on abutting properties or on public highways or streets.

2. Indirect lighting should be used on signs advertising goods or services offered on the premises. Moving, fluttering, blinking or flashing lights or signs are not permitted.

3. Outdoor lighting is restricted to that which is necessary for advertising, safety and security of the development.

G. Access to Public Streets:

Access to public streets shall be in conformance with the rules and regulations of the New Hampshire Department of Transportation and/or the town, as adopted and amended.

H. Water Supply and Sewage Disposal:

Water supply and sewage disposal systems must be sized to adequately meet the needs of the proposed use under the regulations of the New Hampshire Department of Environmental Services, Division of Water Supply and Pollution Control and/or the town subdivision regulations. It shall be the responsibility of the developer or his agent to provide adequate information to prove that the area of the lot is adequate to permit the installation and operation of an individual sewage disposal system. The developer shall provide the necessary percolation tests and submit such tests together with the proposed plan to the New Hampshire Department of Environmental Services, Division of Water Supply and Pollution Control, for its consideration and approval. Such approval must be obtained before site plan approval can be finalized.

I. Special Flood Hazard areas:

a. The planning board shall review the proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the "Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C, 1334.

b. The planning board shall require that all proposals for development greater than 50 lots or 5 acres, whichever is the lesser, include Base Flood Elevation (RFE) data within such proposals (i.e., floodplain boundary and 100-year flood elevation).

c. The planning board shall require the applicant to submit sufficient evidence (construction drawings, grading and land treatment plans) so as to allow a determination that:

(i) all such proposals are consistent with the need to minimize flood damage;

(ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and,

(iii) adequate drainage is provided so as to reduce exposure to flood hazards.

J. Offsite Improvements:

The board may condition site plan approval on the applicant's contribution towards off-site improvements that are reasonably related to the applicant's site plan proposal.

K. Lot Coverage:

The development of any site subject to these regulations shall not result in coverage of more than 35% of the lot by impervious surfaces. The area of the lot which is deemed to be covered by impervious surfaces shall include all buildings and structures, whether open or closed, and all paved surfaces, including parking areas and sidewalks. When warranted by soil conditions, topography or the type of use proposed, the planning board may alter the lot coverage requirements as necessary achieve the purposes of site plan review.

L. Building façade.

1. In order to preserve the aesthetic character of the community and to approve high-quality new development within the town, the building façade may be regulated at the discretion of the planning board.
2. All site plans must ensure that they are consistent with or improve the architectural character of the town.
3. New roof forms should be compatible with the roof forms of adjacent structures where appropriate.
   a. A pitched roof should be provided for structures with a building footprint of 5,000 square feet or less in order to have new development better fit with the rural and residential character of the community.
   b. Common roof forms should be required to be duplicated on the primary structure whenever possible.
   c. For structures with a footprint larger than 5,000 square feet, flat roofs should be permitted, provided that mansard roof is employed.
   d. Varied offsets, roof heights and forms and window placement should be incorporated into all new structures, or additions to existing structures.

VI. TOWN ENGINEER

Throughout the process of planning board consideration of an application, the board may consult with engineers, architects, soil scientists, attorneys, planners or others, at the expense of the applicant. A registered engineer hired by the planning board shall inspect all site improvements. The developer shall pay the cost of the board's employment of said engineer or other consultants and the cost of any inspection(s) and test(s) deemed necessary by the board or the engineer.

VII. WAIVERS OF SITE PLAN REVIEW REGULATIONS

The planning board may waive any requirements listed in the Site Plan Review Regulations, where it finds that such regulation does not apply to the proposed development.

VIII. PERFORMANCE BOND

The planning board may require that a performance bond or other security, in an amount to be determined by the planning board, in the form of an irrevocable letter of credit, bond or other security, be posted by the developer and held by the town until the board of selectmen is satisfied that all conditions of the site plan approval and any other pertinent zoning ordinance(s), subdivision regulation(s), and other town ordinance(s) or regulation(s) have been met. The bond or other security may be released in part as the project is completed in part as determined by the planning board.

IX. RECORDATION

The final approved plat shall be drawn on Mylar or equivalent material. Said plat shall be prepared in compliance with all applicable statutory requirements and shall be prepared on 22 X 34 inch standard sheets measured from cutting edges. If one sheet is not of sufficient size to contain the entire area of the site and environs, the plat shall be divided into sections to be shown on separate sheets of equal size with reference on each sheet to the adjoining sheets. All dimensions shall be shown to hundredths of a foot and bearing to at least thirty seconds. The error of closure shall not be more that 1:15,000

The reproducible Mylar of the site plan, which shows, at a minimum, lot lines and proposed constructions, roads and other improvements, and planning board approval and has a signed licensed land surveyor's seal shall be recorded with the Registry of Deeds. Should the approval be subject to conditions not apparent on the face of the map, such conditions shall be recorded as well with reference made to such recording on the face of the map. The board or its agent shall record the site plan map and other documents at the registry. The cost of recording, and of having the registry provide attested copies of the recorded documents, shall be paid by the applicant.

X. JOINT HEARINGS

In accordance with adopted Rules of Procedure, the planning board may hold a hearing on site plan review in conjunction with a subdivision hearing if both are required for a proposal. A hearing for site plan review by the planning board may be held at the same time and place that a hearing for special exception is held for the project by the board of adjustment.

XI. AMENDMENTS

Amendments to these site plan review regulations shall be made in the same manner as these regulations were adopted and in accordance with the procedure outlined in RSA 675:6, as may from time to time be amended.

XII. SEVERABILITY

If any provision herein shall be held to be invalid for any reason by a court, such holding shall not invalidate, in any manner, any other provision contained herein.

XIII. DEFINITIONS

The Definitions section of the zoning regulations are hereby adopted by reference.

XIV. PENALTIES

As provided in RSA 676:15 & 17, as from time to time amended, the town may obtain an injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove any erection, construction, alteration, or reconstruction which is not in compliance with this regulation. Any violation of this regulation may be punishable, as determined by the selectmen, by either (a) a civil fine of not more than $100 for each day that such violation is found by a court to continue after the conviction date or after the date on which the violator receives written notice from the municipality that he or she is in violation of this regulation, whichever is earlier, or (b) a criminal penalty, which shall be a misdemeanor if the violation is committed by a natural person, or a felony if committed by any other person.

In any legal action brought to enforce these regulations, the prevailing party may recover its costs in pursuing or defending itself in such legal actions.

XV. CONCEPTUAL CONSULTATION

A. Conceptual consultation purpose.

To expedite site plan review by identifying potential problems as early as possible, all prospective applicants are encouraged, but not required, to engage in a conceptual consultation as described below.

B. Parameters of consultation.

1. At the meeting, the potential applicant may address the board concerning a potential application, but must limit the presentation to the intent and the location of the proposal, without going beyond a description of the basic concept of the

proposal.

2. The board may briefly outline the steps that an applicant may take to obtain board approval. It may discuss the content of the Master Plan of the town and its relation to the potential applicant's proposal. The board may also cite specific sections of these regulations or the Zoning Ordinance. The proposal may be discussed in general terms only, such as the desirability of types of development and proposals under the Plan for Tomorrow. The board may make suggestions which might be of assistance in resolving problems with meeting the requirements of a formal application.

3. The board shall not approve or disapprove the proposal.

4. No comments made during this consultation shall bind either the applicant or the board.

5. Statements made by board members shall not be the basis for disqualifying said members or invalidating any action eventually taken on an application.

C. Information requested to be supplied.

It is recommended that the prospective applicant submit the following information in writing at least 1 week prior to the next regularly scheduled planning board meeting:

1. The location of the proposed development
2. Correct names and mailing addresses of owner(s) of record (and the applicant, if different)
3. A brief narrative description of the proposal
4. Drawing or sketch of plan
5. Any other information that the applicant feels will be helpful

D. Notice.

Such discussion may occur without formal notice to the abutters, but may occur only at formal meetings of the board when the discussion has been paced on the agenda. [See RSA 676:4, 11(a).]

Exhibit 2 to Petition

Map Lot Sub: 000212 014000 000000 | **Card: 1 of 1** | **417 SHAKER ROAD** | **CANTERBURY** | **Printed: 06/16/2022**

OWNER INFORMATION

KRESS, NANCY EMERSON &
KRESS, BRIAN THOMAS
PO BOX 1606

NEDERLAND, CO 80466

SALES HISTORY

Date	Book	Page	Type	Price	Grantor
01/27/2014	3429	116	Q I	227,000	KENYON, JAMES & SANDRA
07/06/2006	2908	620	Q I	289,933	CORNELIUS

PICTURE

LISTING HISTORY

05/15/13	RERL
04/30/10	EBRL
06/24/04	KSRL

NOTES

RU (OLD PID:000014 000036 000001) WALKOUT BMF; POST & BEAM CONST; ESMT TO PROP ACROSS 14-36 '10 REMOVED 17X9 LEANTO-BLEW DOWN, ADDED 12X8 SHED, INFO IN YARD. 2013 2 GAS HEATERS IN BMF AREA, UFF HAS PINE FLOORING, 8X12 UTILITY RM IN BSMT, 3X12 STO AREA UNDER CARPORT=NV

EXTRA FEATURES VALUATION

Feature Type	Units	Lngth x Width	Size Adj	Rate	Cond	Market Value	Notes
CARPORT WOOD FRAME	576	24 x 24	88	11.00	80	4,461	
SHED-WOOD	96	12 x 8	227	11.00	100	2,397	
HEARTH SV	1		100	500.00	100	500	
						7,400	

MUNICIPAL SOFTWARE BY AVITAR

Town of Canterbury 603-783-9955
Office Hours- Mon. & Weds. 9am- 1pm
Thurs. 10am-2pm

PARCEL TOTAL TAXABLE VALUE

Year	Building	Features	Land
2020	$ 160,900	$ 5,600	$ 75,700
		Parcel Total:	$ 242,200
2021	$ 206,700	$ 7,400	$ 106,400
		Parcel Total:	$ 320,500
2022	**$ 206,700**	**$ 7,400**	**$ 106,400**
		Parcel Total:	**$ 320,500**

LAND VALUATION

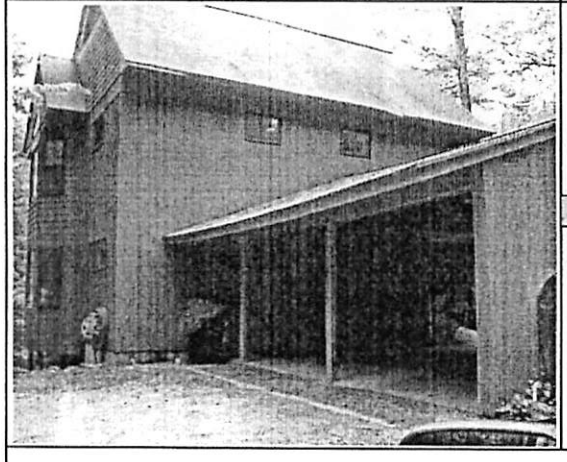
LAST REVALUATION: 2021

Zone: RU - RURAL IMP **Minimum Acreage: 1.00** **Minimum Frontage: 300**

Land Type	Units	Base Rate	NC	Adj	Site	Road	DWay	Topography	Cond	Site: Ad Valorem	SPI	R	Driveway: Tax Value	Road: Notes
1F RES	1.000 ac	105,000	E	100	100	100	100		95	99,800	0	N	99,800	ROW THROUGH 14-36
1F RES	1.000 ac	x 3,000	X	100					100	3,000	0	N	3,000	
1F RES	1.200 ac	x 3,000	X	100					100	3,600	0	N	3,600	
	3.200 ac									106,400			**106,400**	

Map Lot Sub: 000212 014000 000000 | Card: 1 of 1 | 417 SHAKER ROAD | CANTERBURY | Printed: 06/16/2022

PICTURE



OWNER

KRESS, NANCY EMERSON &
KRESS, BRIAN THOMAS
PO BOX 1606

NEDERLAND, CO 80466

TAXABLE DISTRICTS

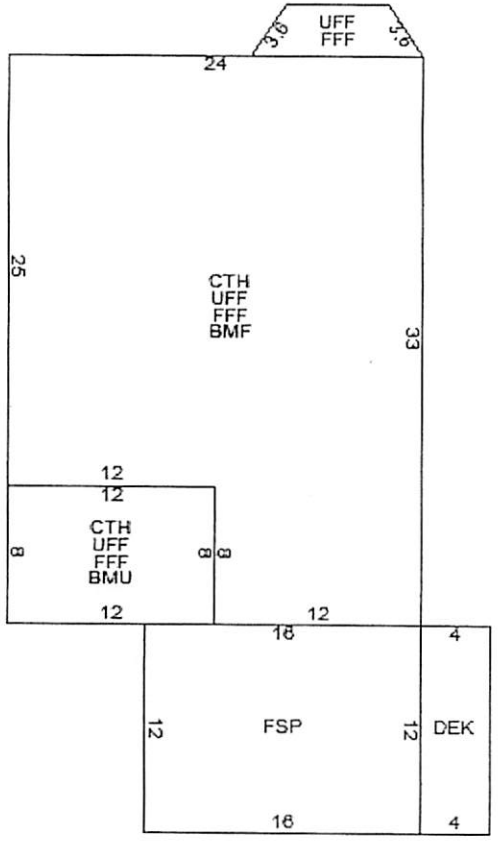
District	Percentage

PERMITS

Date	Project Type	Notes

BUILDING DETAILS

Model: **2.00 STORY FRAME COLONIAL**
Roof: **GABLE HIP/ASPHALT**
Ext: **AVERAGE**
Int: **DRYWALL**
Floor: **HARDWOOD/PINE/SOFT WD**
Heat: **GAS/CONVECTION**
Bedrooms: **3** Baths: **2.5** Fixtures:
Extra Kitchens: Fireplaces:
A/C: **No** Generators:
Quality: **A2 AVG+20**
Com. Wall:
Size Adj: **1.0050** Base Rate: **RSA 98.00**
Bldg. Rate: **1.0655**
Sq. Foot Cost: **$ 104.42**



BUILDING SUB AREA DETAILS

ID	Description	Area	Adj.	Effect.
FFF	FST FLR FIN	816	1.00	816
CTH	CATHEDRAL	792	0.25	198
BMF	BSMNT FINISHED	696	0.35	244
FSP	SCREEN PORCH	192	0.40	77
DEK	DECK/ENTRANCE	48	0.10	5
BMU	BSMNT	96	0.20	19
UFF	UPPER FLR FIN	816	1.00	816
GLA:	**1,632**	**3,456**		**2,175**

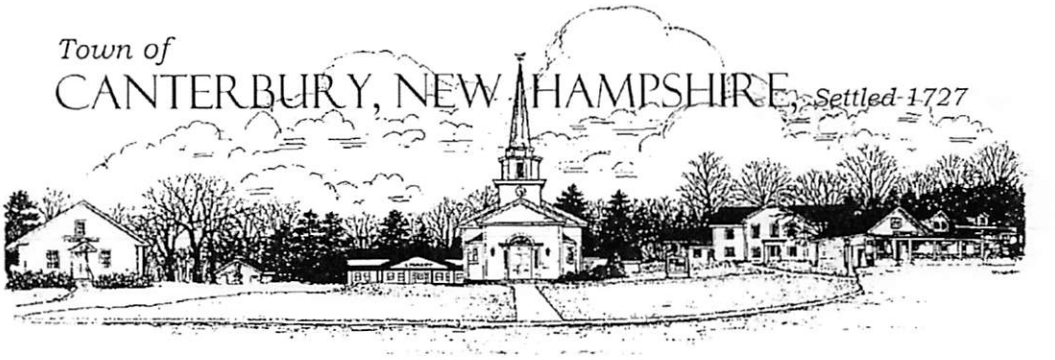
2021 BASE YEAR BUILDING VALUATION

Market Cost New: **$ 227,114**
Year Built: **1988**
Condition For Age: VERY GOOD **9 %**
Physical:
Functional:
Economic:
Temporary:
Total Depreciation: **9 %**

Building Value: **$ 206,700**

Exhibit 3
to Petition

Town of
CANTERBURY, NEW HAMPSHIRE, Settled 1727



01/05/2022

Brian Kress
Nancy Kress
P.O. Box 1606
Nederland CO 80466

RE: 417 Shaker Rd
Map # 212-14

Dear Brian & Nancy,

While out doing other inspections a business sign for Pachamama Sanctuary was seen located on the driveway of your property located at 417 Shaker Rd Canterbury NH. Upon review of your property files it has been found that your property is located in the rural zone which requires a special exception by the ZBA for Campgrounds, Bed & Breakfast, Short term lodging, Home Office, Church under the town permissive zoning ordinance. Please contact me by January 21, 2022 to discuss the process for complying with Canterbury Zoning Ordinances.

Sincerely,

Joel French
Building inspector/ Zoning compliance officer
10 Hackleboro Rd, PO box 500
Canterbury NH 03224
buildinginspector@canterbury-nh.org
603-783-9033

Exhibit 4
to Petition



7016 2710 0000 0604 4750

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee	$ 3.75
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	$ 3.05
☐ Return Receipt (electronic)	$
☐ Certified Mail Restricted Delivery	$
☐ Adult Signature Required	$
☐ Adult Signature Restricted Delivery	$
Postage	$ .53
Total Postage and Fees	$ 7.33

Postmark Here
JAN 26 2022
CANTERBURY, NH 03224-9998
UNITED STATES POSTAL SERVICE

Sent To: Nancy Kress
Street and Apt. No., or PO Box No.: PO Box 1606
City, State, ZIP+4®: Nederland, CO 80466

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

P.O. Box 1606 Nederland CO 80466

01/27/2022

Dear Ms. Kress,

Our Building Inspector/ Code Enforcement Officer spoke to you about the use of your property here in Canterbury on Shaker Rd. You explained that you will not be renewing the lease to the current tenant. Unfortunately, the timeline for that will not satisfy the Town. The current use violates Canterbury zoning ordinances which require a "Special Exception" from the Zoning Board of Adjustment.

The Board of Selectmen are enforcing zoning regulations by issuing an immediate "Cease and Desist" and will follow up with a request to the Superior Court for Injunctive Relief under NH RSA 676:17

Please contact me no later than February 14, 2022 to avoid court action.

Sincerely,

Kenneth Folsom

Town Administrator
Canterbury, NH 03224
603-783-9955
kfolsom@canterbury-nh.org

cc-Joel French

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Nancy Kress
PO Box 1606
Nederland, CO 80466

RECEIVED FEB 09 2022

9590 9402 4497 8278 7391 87

2. Article Number (Transfer from service label)
7016 2710 0000 0604 4750

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☒ Addressee

B. Received by (Printed Name): Nancy E Kress
C. Date of Delivery: 2/3/2022

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

NEDERLAND, CO 80466
FEB 03 2022
USPS

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☑ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☑ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Sam Lake House
Copy

Exhibit 5
to Petition

Notice of Decision
Board of Adjustment
Canterbury, NH

Case No. 2022-2 Special Exception
Date: 23 February 2022

You are hereby notified that the application of **Derek Januszewski** that involves Tax Map 212, Lot 14 located at 417 Shaker Road in the Rural zone has been **GRANTED.** The proposed use states "Religious activities". The application references Article 8.2A. The Board voted three in favor and two in opposition with the four regular and one alternate voting members present based upon the following:

1. That granting the permit would be in the public interest. By the applicant's own words, it is because of the people he is helping.
2. That the proposed use would not adversely affect the property values in the district. It is off the road and property values would not be devalued.
3. That the specific site is an appropriate location for the proposed use. Nothing to suggest otherwise.
4. That the proposed use would not adversely affect the health and safety of the residents and others in the area and would not be detrimental to the use or development of adjacent or neighboring properties. Besides the occasional campfire there is nothing to suggest otherwise.
5. That the proposed use would not constitute a nuisance because of offensive noise, vibration, smoke, dust, odors, heat, glare, or unsightliness. Nothing to suggest otherwise.
6. That granting of the permit would be in the spirit of this ordinance. Churches and educational facilities are allowed by special exception and it is in the spirit of the ordinance.
7. That the proposed use would not constitute a hazard because of traffic, hazardous materials or other conditions. Nothing was spoken of about traffic.

Respectfully submitted,

Lisa Carlson

Lisa Carlson, Clerk
Board of Adjustment

NOTE: If any person wishes to appeal this decision, you must act within 30 days of the date of this notice and apply to the Board of Adjustment for a rehearing. The Motion for Rehearing must set forth all the grounds upon which you base your appeal.

Exhibit 6
to Petition

CANTERBURY PLANNING BOARD
PO BOX 500
THE SAM LAKE HOUSE
CANTERBURY, NH 03224

SITE PLAN REVIEW APPLICATION
(Rev. 10/2016)

RECEIVED MAR 14 2022

NOTE: This application, and all required information, must be filed at lease twenty-one (21) days before the date of the meeting at which it is to be submitted to the Board for acceptance as complete, whether in person or by mail. Filing is to be done at The Sam Lake House, Canterbury, NH to the attention of the Planning Board.

1. **Name and address of applicant:**

Derek Januszewski
417 Shaker Rd, Canterbury, NH 03224-2731
Phone Number: 904-377-7534
Email Address: derek@pachamamaretreats.org

2. **Name and address of owner of record, if other than applicant:**

Nancy Emerson Kress and Brian Thomas Kress
PO Box 1606 Nederland, CO 80466-1606
Phone Number: 303-709-1783
Email Address: nancy.emerson.kress@gmail.com

3. **Name, address and telephone number of surveyor and or agent authorized to represent owner/applicant before the Planning Board**: (attach letter of authorization to application):

N/A

4. **Location of proposed project:**

417 Shaker Rd, Canterbury, NH 03224
Tax Map/Lot No.: 212-014
parcel number (APN) CNBYM00212B014000L000000

5. **Zoning District**: RU **Flood Area**: Yes / No

6. **Name of proposed development (if applicable)**:

---

7. **Number of acres**: 3.2 **Number of lots** 1

Number of structures: 2 **Number of units in structure**: 1

8. **Type(s) and number of dwelling units proposed in development (check all that apply)**:

Single Family ✓ Duplex _____ Multi-Family _____

9. **Type(s) of proposed uses in development**:

_____Residential _____Multi-Family _____Manufactured Housing Park

_____Cluster ✓ Commercial _____Industrial

As to each use identified above, is the use a permitted use under the Zoning Ordinance?

Yes, with special exception

If no, has a Special Exception or Variance been applied for or obtained?_____

Date of approval: 2/23/22

10. **Date of last Site Plan Review or Subdivision of land**: N/A

11. **DES Subdivision Number** (if applicable): _____

12. **Identify any existing easements or Rights of Way on property**:

---

13. **Abutters**: Attach a separate list containing the name, mailing address, and tax map/lot number of all abutters, including those across a street, brook, or stream. Names should be those of current owner as recorded in the Tax Records five (5) days prior to the submission of this application.

This application must comply with all requirements set forth in the Site Plan Regulations of the Town of Canterbury.

14. **Application fees**:

Application Submission fee:	$ 100.00
Abutter notification - $10.00 each abutter 12 (Include applicant, owner if other than applicant, and surveyor, and anyone else whose seal appears on the plan)	$ 120.00
Registry filing fee ($33.00 for each Mylar recording; fee includes $7.00 for a recorded copy for the Planning Board's file). **Mylar will not be recorded until Town receives letter from surveyor indicating bounds have been set.**	$
TOTAL (check payable to Town of Canterbury Planning Board.	$ 220.00

Also include a check in the amount of $25.00 (per plan) payable to the Merrimack County Registry of Deeds for the State of New Hampshire LCHIP surcharge.

Note regarding costs: Upon submission of this application, the Planning Board may, in its discretion, require that the applicant pay and addition sum for estimated administration, legal, or technical review costs.

CERTIFICATION AND ACKNOWLEDGMENT

I. The applicant (and the owner or agent, if applicable) certifies that the information and representations contained in this application are complete and correct. All costs for engineering, legal or other professional services or recording by the Planning Board or the Town of Canterbury in the site plan review process of this property shall be borne by the applicant and/or owner and shall be paid prior to recording of the final plat.

II. I have reviewed, or have had an opportunity to review, the Town of Canterbury Zoning Ordinance and Site Plan Review Regulations prior to submission of this application.

III. I, as owner of the land to be subdivided, hereby authorize the Canterbury Planning Board and its agents to access my land for the purpose of reviewing this site plan, and performing road inspections and any other inspections deemed

necessary by the Board or its agents to ensure conformance of the on-site improvements with the approved plan and all Town of Canterbury ordinances and regulations.

IV. I agree to pay any costs incurred by the Planning Board in employing an engineer in accordance with Section VI of the Site Plan Review Regulations.

V. I am aware that failure to satisfy all conditions precedent to final approval within 45 days of the Planning Board vote shall be adequate grounds for revocation of approval of the application and/or termination of the application process. The Planning Board, in its sole discretion, may grant extensions for this 45-day period.

Date: 3/21/21 Applicant: _____

Date: _____ Owner: _____

Date: _____ Agent: _____

FOR PLANNING BOARD USE ONLY:

Filing Fee:	$ 100 -	Date: 3/14/22
Lot Fee:	$ _____	Date: _____
Abutter Fee:	$ 120 -	Date: 3/14/22
Registry Fee:	$ _____	Date: _____
Estimated Technical Review Fee (if any):	$ _____	Date: _____

NOTE: Fees must be paid before hearing. A position has been reserved on the agenda for _____.

_____
Secretary/Clerk/Agent for Planning Board

FOR PLANNING BOARD USE ONLY:

Preapplication consultation (optional) _____ Date

Completed application filed with Board
(at least 21 days before hearing date) _____ Date

Fees paid Amount: 220 - 3-14-22 Date

Notices mailed and posted _____ Date

Completed application on Board agenda _____ Date

Application accepted by Board _____ Date

Public hearing dates _____ Date

_____ Date

_____ Date

Approved/Disapproved _____ Date

Applicant notified of Board action _____ Date

All conditions in final approval satisfied _____ Date

Recording of final plat (Plan No._____) _____ Date

Copy of final plat provided to Selectmen _____ Date

Rev. 10/2016

ANDREW, THOMAS G. & CHERYL D.
ANDREW FAMILY TRUST 12/1/15
413 SHAKER ROAD
CANTERBURY, NH 03224

BOOTH, DAVID & RUSH, MELORA
153 ELM STREET
SOMERVILLE, MA 02144

CLOCK, KERRY & TOMASEK, DEBRA
TOMASEK-CLOCK FAMILY TRUST
PO BOX 134
CANTERBURY, NH 03224

EMERSON, DAVID & ANNE
418 SHAKER ROAD
CANTERBURY, NH 03224

GENDRON, GEORGE JR. & KAREN
427 SHAKER ROAD
CANTERBURY, NH 03224

HEATH, GREGORY & RUTH
C/O SOFT PATH COMM ASSOC
49 WYVEN ROAD
CANTERBURY, NH 03224

KRESS, NANCY EMERSON &
KRESS, BRIAN THOMAS
PO BOX 1606
NEDERLAND, CO 80466

MELASECCA, SARAH B. E. & MICHA
434 SHAKER ROAD
CANTERBURY, NH 03224

PARKER- BUCHANAN, KAREN AKA
WITHROW, KAREN TRUSTEE OF THE
REVOCABLE TRUST OF 2009
39 WYVEN ROAD
CANTERBURY, NH 03224

SCHEPKER, CAROL P. & MILLER, R
98 SADDLEWOOD DRIVE
HILLSDALE, NJ 07642

SOFT PATH COMMUNITY ASSOC.
C/O RUTH HEATH
49 WYVEN ROAD
CANTERBURY, NH 03224

12. total.

Narrative Description of Site Plan for Pachamama Sanctuary

Purpose:
Pachamama Sanctuary seeks to improve the lives of our congregation, our community, and the world at large through safe and effective practices of connecting with our spirituality. We chose Canterbury, New Hampshire for our location in part because of this town's rich history of religious tolerance. Before moving here, we researched the Shakers and were inspired by their devotion to the community and their strong beliefs in the value of integrity.

Hours of Operation:
Friday 2 pm to Sunday 2 pm
Closed Sunday 2 pm to Friday 2 pm

Parking Needs:
Approximately 20 cars per weekend

Lighting:
All interior areas are well-lit.
The exterior of the structure is surrounded by motion-activated floodlights.

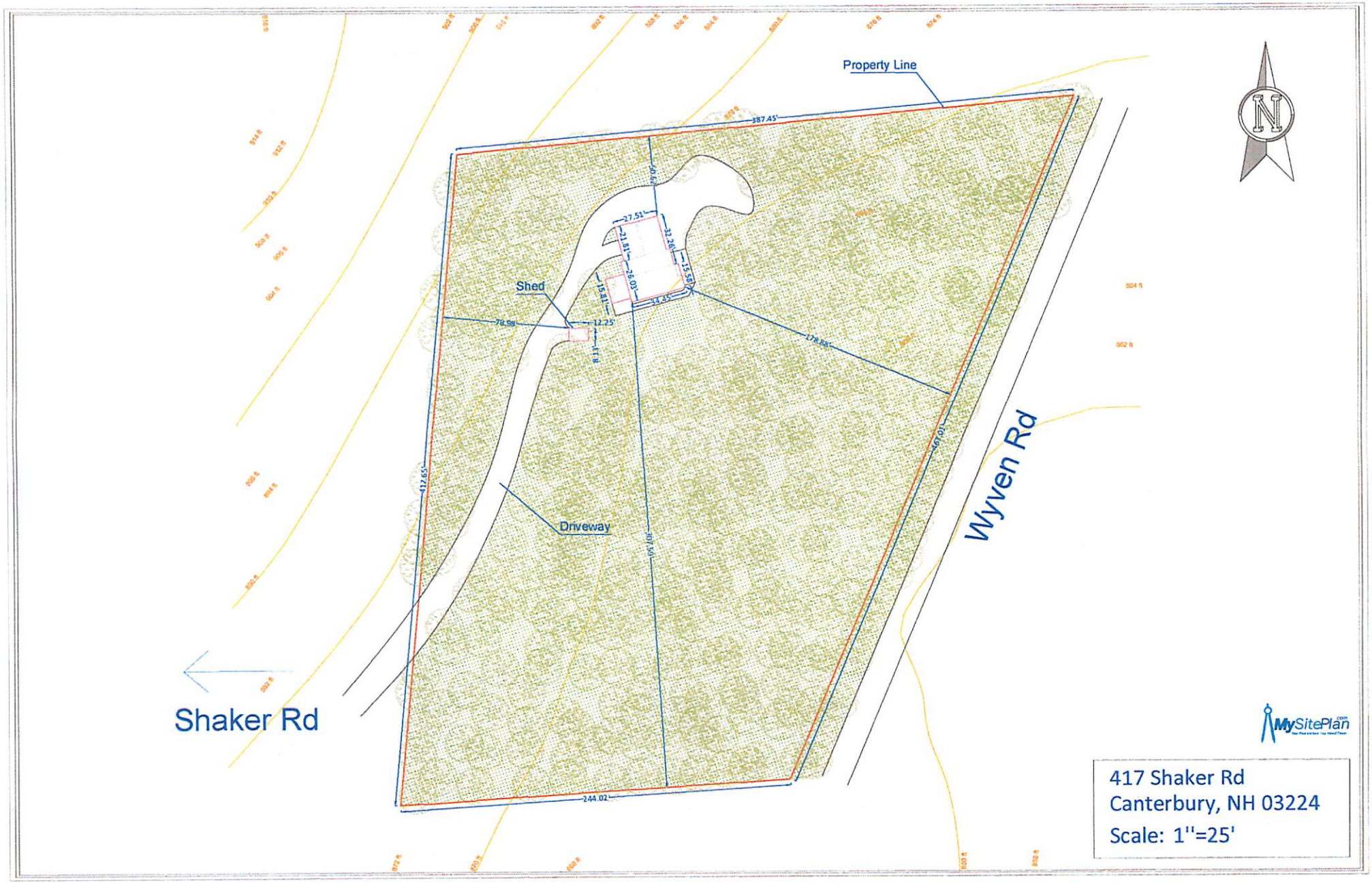
Employment Figures:
Pastor
Assistant Pastor
Head Deacon
Shaman
Volunteers

Land Use Compatibility:
Permitted use under the Zoning Ordinance with a special exception, granted on February 23, 2022.

Aesthetics:
There is no intention of any alterations of the current state.

School Population Projection:
Not Applicable

Noise and Traffic Impacts:
Previous operations have not provoked any noise complaints from abutters.
Approximately 60 cars per month or 2 cars per day are added to local traffic.


Property Line
387.45'
Shed
Driveway
Wyven Rd
Shaker Rd
244.02'
417 Shaker Rd
Canterbury, NH 03224
Scale: 1''=25'

DRAFT

Minutes of the Planning Board Meeting

May 10, 2022, at the Meeting House

Members Present

Greg Meeh (Chair), Scott Doherty (Vice Chair), Anne Dowling, John Schneider, Kent Ruesswick (BOS rep), Lucy Nichols: and Hillary Nelson, Ann Berry, and Logan Snyder (alternates)

Members absent

Joshua Gordon

Others present

John Noonan (Fieldstone Land Consultants PLLC): Sarah Malasecca, Anne Emerson, George and Karen Gendron, (abutters of Pachamama Sanctuary): Cheryl Gordon (BOS): Derek Janusewski: Meghan Mcaffy (Pachamama Sanctuary)

AGENDA

1. Call meeting to order

Greg Meeh called meeting to order at 7 pm.

2. Minutes of April 26, 2022

Scott Doherty moved the Minutes of April 26. John Schneider seconded. There being no discussion all voted in favor to accept those Minutes.

Kent Ruesswick raised a point of order about alternates but at that point the Board already had a quorum.

3. Pre conceptual discussion – Patriot Holdings/ Fieldstone consultants – for two storage units on Hall Road

John Noonan of Fieldstone Land Consultants PLLC introduced himself as the agent for Patriot Holdings based in Las Vegas NV. The first self-storage unit is located on Tax map/lot 248/15. They had planned this to be at 34.9% impervious impact, for which the Chair thanked them. The units are 10 x10 with doors on each side. There would be fire access. They were taking storm water measures so that most

of the site would drain across to a larger swale and water be redirected back into the ground. This would be designed for the 2-year, 10 year and 50 year storm events. They did not need an alteration of terrain permit for this project as it was just under the size limit. Lights were not needed, just electricity. They generally used security cameras and asked if the Board would want fencing as well as cameras.

Board members asked questions about the proposed operation of the storage site. There would be no washing of vehicles on this first site. The remote-control security would be monitored by Patriot Holdings, a NH based manager would take care of that. The tapes are kept for 30 days. If there was any trouble the manager monitoring the camera would contact the local police. The company is expanding across the nation. The owner, Jeremiah Boucher, was from NH though now based in NV. The erosion and sediment control will be a dry wall wells and catch basin. The sandy soil and gravels drain well, and a maintenance company will clean out leaves, debris and sediment when necessary to allow the water to go back into the ground. Signage will be on Hall Road, not the I 93 side. There are landscaping plans for the site. They are aware of the ATV trails. Board members thought that fencing would be necessary as well as the security cameras.

Scott asked for more details about lighting plans.

The second site will be for Boat and RV Storage. It is on Tax Map/lot 249/16. The buildings will be large enough for a Class A Motor Home and have 12-foot-high doors. Most of the site will be closed – there might be one building open. The bays inside will be 40-foot split 20 by 12 for each. This site did involve alteration of terrain, and the same 2, 10, 50-year storm water planning going to an infiltration basin at the back. They hope to have washing facilities and are waiting to hear back from the NH DES about that. Should it be septic or an oil separation and infiltration system?

The proposed lot surface for asphalt on this site plan is 57%. They would need a waiver from the Planning Board to build this in the Industrial zone. It is well over the 35% maximum in the regulations. The site is in the ground water protection area. The state only requires 50-year storm planning, not 100 year storm standards. The proposed drainage channel and filter should be fine for all conditions, nothing will overtop it. There will not be vehicles left outside and

likely these storage units will be for upmarket vehicles in good condition. The management company will not let old vehicles be left around outside. They are waiting for a response from the state about the storm water plan at this time. Members wanted to know what would happen if there was a spill of materials.

The lighting would be dark sky compliant, slightly higher up on the doors. At present there are no plans for a fire response system. Members asked about fire, given the risk of flammable fuel in the vehicles. Perhaps there would have to be a kind of alarm system that would link to a fire department (not necessarily Canterbury with its part time staff). Burned cars would otherwise be covered by owner's liability insurance. The water source would be from a well, which will be drilled. Members noted that water availability in the winter, when there was no source of heat, was problematic. The water would need to be turned off in winter. There might be keypads for opening doors. Each unit would have its own wiring for lights and door opening. The company were aware of the potential problem of people trying to live in such units. It would be monitored to prevent that. There will not be a dumpster. It will be 'carry in and carry out' for all trash.

John Noonan said they were waiting for conditional approval from the NH DES and hoped to return for full Site Plan Review at the June 14 hearing. The Chair thanked him for his presentation.

4. <u>Pachamama Retreat/Ayahuasca Retreat – preliminary considerations - vote for Completeness of Site Plan Review Application</u>

Greg Meeh introduced the application and invited Derek Januszewski and Meghan Mcaffy to be seated in front of the Board. He stated that this evening was the consideration of the application in terms of completeness, not a discussion on the merits of the application and so no testimony would be taken. The application was ordinary in some respects (such as considerations of lodging, food service, parking etc.) but unique in other respects pertinent to public safety (such as guests paying to drink ayahuasca and therefore becoming impaired).

The Chair worked through the Site Plan regulations list of Required Exhibits, pointing out that Pachamama had not provided a description of what they were actually doing. What they had submitted was a statement of purpose. This

needed revising to show what they were doing. Greg asked about employment of staff and volunteers that had been referenced at the ZBA hearing. Derek Januszewski clarified that they were not providing professional therapy or counseling at the retreats. He lived at 417 Shaker Road in part of the house. The numbers attending during summer retreats could be as high as 30 when they could sleep outside, otherwise it was more like 18-20 guests attending indoors.

Mr. Janusewski confirmed that the number of staff present for the retreats as:

- Pastor – 1
- Asst. Pastor – 1
- Shaman – 1
- Asst. Shaman - 1
- Volunteers 3 – 7, 7 for summer weekends.

Greg listed all the requirements for the Site Plan Required Exhibits that were missing and would therefore require a written waiver. This included:

- Most of the provisions for showing the topography and natural features of the property.
- Drainage and septic details were missing. Greg had checked with NHDES staff Taylor O'Conner regarding the "additional flow" being managed with porta potties. Taylor O'Conner had written that the DES could "not approve additional flow based on porta potties". A new septic system for the larger number of people must be registered with the DES. Typically, the Board does not approve waivers for water and sewer requirements.
- The Property lines and elevations were not shown. Nor the engineer seal. There was no plan of the buildings with floor plans to show how each part of the property was being used. Given the number of people attending, the property would have to be in compliance with State Codes.
- Parking needs and provisions would need to be included and offsite parking shown on the site plan.
- Snow removal and disposal was not included, and that would be important for emergency vehicle access.
- The erosion and sediment plan would need a drawing or waiver request.
- There were no details regarding Traffic or Lighting studies or waiver request

- The applicable State and Federal permits or licenses were not included, for instance, food service licenses from the State.
- The Board may add other requirements if relevant – Scott Doherty suggested emergency vehicle access provisions be given attention.
- Greg also asked about specific plans at Pachamama regarding policies for keeping guests and the surrounding community safe - such as lock boxes for car keys, measures to keep guests within the grounds of 417 Shaker Road so that any risk of guests encountering neighbors is addressed – maybe a fence such as the New Freedom Academy constructed.

The driveway of the property crosses someone else's property but there is a Right of Way, which Derek said was deeded.

It was made clear the Board was not trying to make Pachamama do something unrealistic, but their measures needed to be appropriate for the nature of the operation. It was further suggested that it there were 'industry best practices' for the Ayahuasca Retreat industry, that these be included and shown to be followed. Derek Januszewski said he had a contact in Massachusetts who could write a safety plan. The previous applicants had their site plan review application presented by a professional engineer consultant and it was suggested that this could be helpful for the Pachamama application too.

John Schneider moved that the Board does not accept the application as complete. Scott Doherty seconded, and all members voted unanimously to agree with it being incomplete.

The applicants were given notes to show all the aspects of the application that were missing.

5. <u>Planning Board Site Plan Regulations</u>

Members looked at a draft for the section on Procedures and noted some changes needed in terms of clarity of process. Chair and Secretary to work more on the draft, particularly on the Regional Impact steps.

The section K regarding Lot Coverage in the Regulations will be something to discuss with the Conservation Commission members when they attend on May 24. Greg said they should be looking to protect infiltration that occurs with

natural topography and the hard limit of 35% has sometimes been waived. He would like to see a hard cap on it for groundwater protection.

6. Other Business

Lucy Nichols mentioned that a committee of the NH Senate had tabled (sent to interim study) the short-term rentals bill (SB 249) that would have prevented towns from prohibiting short term rentals.

8. Adjournment

Scott moved to adjourn, and Lucy seconded. It was around 8.30 pm.

Respectfully submitted,
Lois Scribner, secretary

Exhibit 8
to Petition

To all it may concern,

First, I would like to express my gratitude for all who have extended concern and worked on the challenges that have arisen due to the religious practices of the Pachamama Sanctuary community here in Canterbury, NH. I truly appreciate not only those who support our mission, directly or indirectly, but also those who have chosen to scrutinize our safety measures. Safety is my highest priority, and I very much appreciate these things being brought to our attention. The process has illuminated some areas where we can improve safety today, and every day going forward. Im truly thankful.

Secondly, working to achieve compliance has allowed us to find ways that are safe and legal in operating over the summer. At great expense (over $15,000) I have purchased a tent for us to host our sacred ceremonies. It was difficult to find a tent with the highest safety measures and fire ratings, and I am happy to report that we had it delivered last week, and hired a contractor to build a platform underneath the tent. This will allow us to host weekend retreats without allowing anyone inside the house at any point. The maximum number of people sleeping inside the house will never go over 6 adults. Because of the categorization with the State of New Hampshire, portable bathrooms are legal and safe to use while we stay outside, including overnights. We will also not be cooking any food here to be served at retreats.

In short, we have addressed every single concern that the town has identified, and we have hired an engineer to handle everything. It was also made clear at the last Planning Board meeting that we are in over our head trying to do this alone. So in working with the engineer, and going to great lengths, at great expense, we have addressed all points, and will have a proper application within a week.

Additionally, we also realize this is not a long term solution. October will come quickly, and we will no longer be able to practice our faith outside. We are working with the engineer on this challenge, but this could very likely end up where we only host 4 people at a time (totaling 6 people in the house at any given time) over the winter. Planning for the winter has yet to come into focus, but the understanding is that we would not be able to survive the winter rolling back our retreats that far. Our current expected course of action is to leave by the end of October. Most likely long before that. We have begun negotiations with the owner of a property elsewhere that will suit our needs far better than the home at 417 Shaker Rd. While we are not yet under contract, we expect to be under contract by the middle of next week. Our community has stepped up big time, and we have raised hundreds of thousands of dollars in an effort to procure a forever home for our community. If all goes as expected at this point, we should be moving at the end of July. That is our goal. It may be pushed back a month, but we hope not. The property should close rather quickly, once we place it under contract.

Lastly, I am asking for a stay of the fines just for a short time, until we are able to complete the application and show how serious we are about these matters. The fines being presented would undoubtedly crush our hopes to move, as it would eat up large portions of our down payment. This would be a very unfortunate fate for the money that our community has generously donated and shared in an effort to save our church. We want exactly what all of you want: to focus on and improve safety, as well as to move to a more suitable location. We are asking for your mercy while we continuously work very hard at compliance, only for a short time.

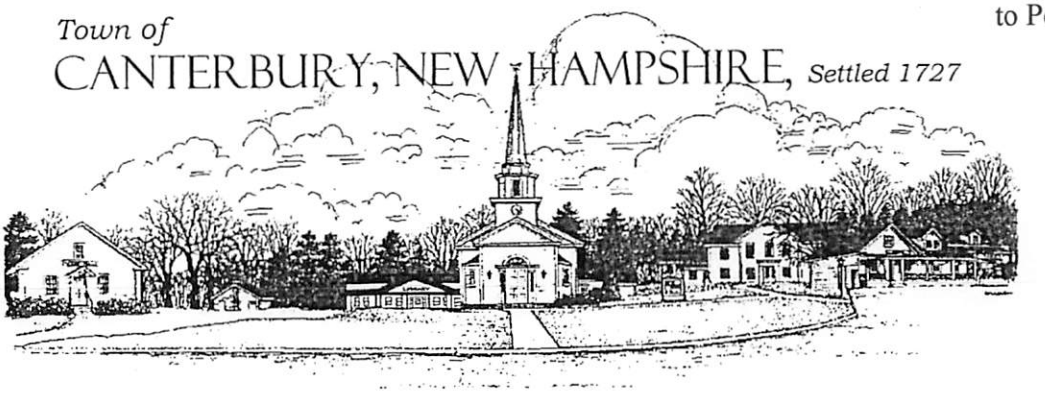
Respectfully,
Derek Januszewski

Derek Januszewski

RECEIVED JUN 09 2022

Exhibit 9
to Petition

Town of
CANTERBURY, NEW HAMPSHIRE, Settled 1727



Nancy Kress
P.O. Box 1606
Nederland, CO. 80466

Derek Januszewski
417 Shaker Rd.
Canterbury, NH 03224
Map # 212-Lot 14

May 5, 2022

Dear Ms. Kress and Mr. Januszewski,

The Board of Selectmen has reviewed the information you provided to the Zoning Board of Adjustment (ZBA) and on your site plan review application submitted to the Canterbury Planning Board. As the Code Enforcement authority, the Board of Selectmen is concerned about the potential risk to public safety presented by the ongoing retreat activities being conducted in a single-family residence not designed, equipped, permitted or inspected as a place of Public Assembly. Specifically, these are life-safety concerns related to the gathering and overnight lodging of twenty or more unrelated people and include but are not limited to adequate fire and smoke alarm systems, exit signage, clear egress paths, egress path lighting, code compliant windows, doors and door hardware along with adequate parking to allow emergency vehicle access. Additionally, there are questions related to adequate public water supply, sanitary sewage disposal and other environmental concerns.

The granting of a Special Exception by the Zoning Board of Adjustment is only the first step in the process for compliance with the Canterbury Zoning Ordinance. The next step is Site Plan Review and Approval by the Planning Board. You must complete the site plan review process, secure approval from the Planning Board, comply with all conditions required by the Planning Board and have the property inspected by the Code Enforcement Officer and the Fire Chief in order to legally conduct the activities authorized by the Special Exception at this location.

The Board of Selectmen chose not to enforce the "Cease and Desist" order previously issued to you until the ZBA had heard the case. However, given the life-safety concerns noted above, the Selectmen remind you that the original Cease and Disease order remains in effect and must remain so until the process is complete and the safety of the public can be assured. Any future violation of this order will cause the Board of Selectmen to file for Injunctive Relief through the Superior Court under NH RSA 676:17. Please note that if the Town is successful in enforcing its Zoning Ordinance, and other Town regulations, you will be subject to a civil penalty of $275 for the first offense, and $550 for subsequent offenses, for each day that such violation is found to continue. Each day that a violation continues shall be a separate offense pursuant to RSA 676:17, I. In addition, the Town will also be entitled to an award of its costs and reasonable attorney's fees pursuant to RSA 676:17, II, if it is forced to pursue court action."

Please feel free to contact the Canterbury Town Office with any questions.

Sincerely,

Canterbury Board of Selectmen,

Robert Steenson, Chair

Cheryl Gordon

Kent Ruesswick

cc-Joel French, Code Enforcement Officer
Michael Gamache, Fire Chief

Exhibit 10
to Petition



June 16, 2022

List of issues found at 417 Shaker Rd. during walkthrough with Jon Rokeh

- Approximately 10'X30' tent with wall and end curtains-No FD inspection. Tent had makeshift plywood floor with outdoor carpeting and propane fired patio heaters inside. There were no "Flame Proofing" tags on the tent. The Tent was only secured to the ground with small "tent stakes" no adequate to secure the tent in the event of strong winds.
- Handwash sink that drained directly onto the ground.
- Showers were "Solar" bags hung over changing tents directly on the ground.
- Conduit with "Romex" wire in it installed on a tree with a broken light fixture attached.
- 3-Plastic holding tanks used as makeshift toilets.
- 2-Commercial Port-Potties.

Joel French
Town of Canterbury
Building Inspector/Zoning Officer
603-783-9033

Ken Folsom

From: Building Inspector
Sent: Wednesday, June 15, 2022 5:44 PM
To: Ken Folsom
Subject: 417 Shaker Rd

Good afternoon Ken,
On 6/15/2022 at 1403 hrs I had met with Jon Rokeh a from Rokeh consulting a representative for Pachamama who is working on designing a site plan for them. There was another male on site that appeared to be a worker for the business that had contacted Derek by phone while we were there and he acknowledged that I was there with him and was ok with it. I started walking around and found quite a few discrepancies with building code violations, life safety violations and health violations. I did state to Jon multiple times that the cease and desist was still in effect due to the planning board had not approved the application.

Joel French
Town of Canterbury
Building inspector / Zoning Officer
603-783-9033