



SURVEYING ENGINEERING LAND PLANNING

Northeast Civil Solutions

INCORPORATED

www.northeastcivilsolutions.com

40399.02

March 25, 2021

Workshop
Town of Cape Elizabeth
320 Ocean House Road
Cape Elizabeth, ME 04107

RE: ***Workshop: 287 Ocean House Road (The Lumbery)***

Dear Board Members:

On behalf of Michael Friedland (dba Yam Yams, LLC), we are pleased to submit the workshop application and plan for the property at 287 Ocean House Road. Located in the Town Center District, the approximate one-acre site is currently developed with an existing and previously approved building and parking area. The building has been remodeled but otherwise remained intact; no expansion and no new proposal of expansion is expected of the structure. The parking area has been reduced from its former approval to support additional storage area. The proposed will continue to utilize the same approved use of a retail establishment ("The Lumbery") that specializes in locally and regionally sourced lumber products. Other retail items would also be offered for sale, and some of these items would be displayed in front of the store. These items would typically be set out on the front sidewalk and would remain out front for customer's ease of loading and will remain outside overnight.

The building size and two points of access (from Ocean House Road and Scott Dyer Road) remain the same, the previously installed connecting sidewalk to Ocean House Road will feature a new bike rack to allow for safe bike parking, easy and safe access into the store. Landscaping has been installed per previous Planning Board request. Parking calculations are reflected in the Notes section of the Site and Layout plan.

Building Footprint

The project is a single-story re-development of an existing site and building. The existing building has a footprint of less than 5,000 sq. ft. and no expansion is proposed. The existing

building is currently oriented toward Ocean House Road and the design of the site and building enhances that orientation.

Scale

The existing building is a single-story structure that is compatible in relation to its surroundings and other structures in the district. The project will maintain the existing building scale and no expansion is proposed.

Pavement

The previous approval plans displayed the "Typ. Pavement Section (full depth construction)" cross section with a 1 ¼" bit. wearing course. The applicant would like to remove this wear course layer as this will not produce a negative effect in the integrity of the pavement. Please refer to the construction details for the amended cross section detail.

Storage

The previous approval utilized the entire pavement area as a parking lot for customers. Due to the abundance of extra parking the applicant has decided to use the north side of the building and previous parking area as an enclosed fenced area with a gate to allow for lumber storage. This area would allow for material to be stored but also browsed by client during regular business hours. During non-business hours the fenced in area would be closed. An additional stockade fence has been added to the rear of the structure (west side wall) to hide and discourage any unwanted after-hours browsers.

Additionally, the previous approval allowed for outside storage in the front sidewalk during business hours. The applicant would like to request this area be used for storage of the same types of materials but be left in place and not removed during non-business hours.

Food Trucks

The site would also like to incorporate a food truck service (restaurant/eating place) during the hours of 7 am to 9 pm Monday thru Sunday, with a second food truck on site when The Lumbery store is closed. The proposed site provides ample parking during regular business hours to accommodate one truck and ample parking for a second food truck during non-business hours. The food trucks would be located at the Southeast corner of the lot with two picnic tables on the large grassed area, ideal for eating and keeping costumers away from traveling cars in and out of the parking lot. Additionally, the bike rack has been relocated in the front of the structure next to the landscaped path to allow for safe parking of bicycles.

Telephone Pad

A 20' x 20' telephone pad/easement is proposed at the North side of the property. This pad is not to be used by the public and is located within the building setback. This telephone control

box will be located off of the parking area and will be located in such a way as to not disturb or block site distance from entering and exiting vehicles. This telephone control box is in place to support and expand communications and internet service to the entire town of Cape Elizabeth. This fiber optic switching station has nothing to do with "The Lumbery" project other than coincidentally being located on a portion of the same land. This site was selected by OTELCO (provider) as being the most conducive to serving the population of Cape Elizabeth. The applicant is requesting permission to allow the use of the pad to be located on the site within the setbacks.

Conclusion

Michael Friedland would like to establish The Lumbery as a retail store that supports a need for products and services to be offered to the people of Cape Elizabeth. The store and site would be used for both a quick eating establishment and also lumber to the surrounding community. We would like to meet with the Board at the next opportunity on April 6th for a workshop to discuss the site changes.

Sincerely,

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

Brandon Binette
Project Engineer
Northeast Civil Solutions, Inc.

TOWN OF CAPE ELIZABETH
Planning Board
Workshop Application

Applicant Name Yam Yam LLC

Email mike@willardsquarehomerepair.com Telephone 207-807-3691

Address 21 Brookside Ave., South Portland

Do you own the property? Yes x No

If not, do you have written permission from the owner? Yes (please provide) No

Project Contact Person (one only):

Name Brandon Binette Telephone 207-883-1000

Address 381 Payne Road, Scarborough, ME 04074

Email brandon.binette@northeastcivilsolutions.com

Location of Project 287 Ocean House Road Map/Lot. U22/76

Project description: Site plan amendment for Lumber store and food truck service



Signature of Owner

3/29/2021
Date

Please return to the town planner, ACP Office, Town Hall
maureen,omeara@capeelizabeth.org, 799-0115
Planning Board workshop requests must be submitted at least 7 days before the
workshop.



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January 14, 2020

Whom It May Concern:

I, Mike Friedland, principal of Yam Yams, LLC, authorize Northeast Civil Solutions, Inc. to sign any and all applications, permit requests, and other paperwork in conjunction with obtaining final municipal and/or state approvals, as applicable, for my project located at 287 Ocean House Road, Cape Elizabeth. This authorization is not a contract for any work to be performed; contracts or other correspondence are separate documents.

Signature

Date

WARRANTY DEED

DLN: 1001940081573

KNOW ALL BY THESE PRESENTS, that **287 ROUTE 77, LLC**, a Maine limited liability company with a place of business in the Town of Falmouth, County of Cumberland, and State of Maine, for consideration paid, grants to **YAM YAMS, LLC**, a Maine limited liability company with a place of business in the City of South Portland, County of Cumberland, and State of Maine, with a mailing address of 21 Brookside Avenue, South Portland, Maine 04106, with **WARRANTY COVENANTS**, the land, together with any improvements thereon, located in the Town of Cape Elizabeth, County of Cumberland and State of Maine, and more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"), together with any and all servitudes, easements, rights-of-way, licenses and other rights in real property appurtenant thereto, and all improvements located thereon.

TO HAVE AND TO HOLD the Property, together with all appurtenances thereunto belonging, to Grantee, its successors and assigns forever, subject however to (a) liens for property taxes that are not yet due and payable, (b) provisions of any ordinance, municipal regulation and public or private law, (c) all matters shown on the public records and (d) any state of facts which an accurate survey would disclose, (e) restrictions, acknowledgements and covenants set forth in Exhibit A-1 attached hereto and made a part hereof and (f) Declaration of Restrictive Covenants by and between Cumberland Farms, Inc. and 287 Route 77, LLC, dated February 29, 2016 and recorded in the Cumberland County Registry of Deeds in Book 32966, Page 52.

And Grantor for itself, its successors and assigns, hereby covenants with Grantee, its successors and assigns, that at and until delivery of this deed, Grantor owns the Property in fee simple absolutely free and clear of all encumbrances whatsoever, by, from, through and under Grantor except as stated above, and that Grantor, its successors and assigns, will forever warrant specially and defend the same, with the appurtenances thereunto belonging, unto Grantee, its successors and assigns, against the claims of all persons claiming by, from, through or under Grantor, but against no other claims.

[signature and acknowledgement on next page]

IN WITNESS WHEREOF, said 287 ROUTE 77, LLC has caused this instrument to be signed and sealed this 9th day of December, 2019.

WITNESS:

[Handwritten Signature]

287 ROUTE 77, LLC

By [Handwritten Signature]
Jin Hwang, Sole Manager

STATE OF MAINE
COUNTY OF Cumberland

December 9, 2019

Personally appeared the above-named Jin Hwang, in his said capacity, and acknowledged the foregoing to be his free act and deed and the free act and deed of said limited liability company, before me.

[Handwritten Signature]
Notary Public/Attorney at Law

STEPHEN Y. HODSDON
Printed Name
Maine Notary Public
Commission Expires
January 29, 2020

EXHIBIT A

A CERTAIN TRACT OR PARCEL OF LAND WITH THE BUILDINGS THEREON, SITUATED ON THE WESTERLY SIDE OF NEW ROUTE 77, CAPE ELIZABETH, IN THE COUNTY OF CUMBERLAND AND STATE OF MAINE, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIPE, SAID PIPE BEING THE SOUTHWESTERLY CORNER OF THE PARCEL HEREIN DESCRIBED AND THE SOUTHEASTERLY CORNER OF LAND NOW OR FORMERLY OF EDWARD AND JANET HILL; THENCE RUNNING NORTH 21 DEGREES 22' WEST BY SAID HILL LAND 385.68 FEET TO AN IRON PIPE IN THE WESTERLY SIDELINE OF NEW ROUTE 77; THENCE TURNING AND RUNNING SOUTH 48 DEGREES 30' EAST 253.06 FEET TO A GRANITE MONUMENT, NORTH 41 DEGREES 30' EAST 10.00 FEET TO AN IRON ROD, SOUTH 48 DEGREES 30' EAST 103.24 FEET TO AN IRON PIPE AND SOUTH 12 DEGREES 17' EAST 106.50 FEET, ALL BY THE SIDELINE OF NEW ROUTE 77 TO A SPIKE IN THE NORTHERLY SIDELINE OF OCEAN HOUSE ROAD; THENCE TURNING AND RUNNING SOUTH 80 DEGREES 20' WEST 157.86 FEET TO LAND OF HILL AND THE POINT OF BEGINNING.

Meaning and intending to convey and hereby conveying the same premises conveyed to 287 Route 77, LLC by Limited Warranty Deed from Cumberland Farms, Inc., dated February 29, 2016 and recorded in the Cumberland County Registry of Deeds in Book 32966, Page 47.

EXHIBIT A-1**(Form of Deed Restriction)**

GRANTEE SPECIFICALLY ACKNOWLEDGES THAT IT UNDERSTANDS THE PROPERTY HAS BEEN USED FOR COMMERCIAL PURPOSES INCLUDING THE STORAGE, DISTRIBUTION, AND MARKETING OF MOTOR FUELS, PETROLEUM, PETROLEUM-BASED PRODUCTS, AND OTHER CHEMICALS, AND THAT THE ENVIRONMENT, INCLUDING BUT NOT LIMITED TO, SOIL AND SUB-SOIL OF THE PROPERTY, AIR, LAND, GROUNDWATER, AND WATER ON, UNDER, NEAR, OR ADJACENT THERETO, AND DRAINS, SEWERS, PIPES, WATER COURSES, AND WATER TABLES AT, ON, UNDER, OR IN THE VICINITY OF THE PROPERTY MAY HAVE BEEN CONTAMINATED OR IMPACTED BY MOTOR FUELS, PETROLEUM, PETROLEUM-BASED PRODUCTS AND OTHER CHEMICALS OR OTHER CONTAMINATION.

The Grantee herein covenants and agrees that, if Grantee undertakes any redevelopment of the Property, Grantee shall, at its sole cost and expense, as part of the redevelopment at Purchaser's sole cost and expense: (i) install a vapor barrier and sealed sumps to prevent the migration of any hazardous materials, petroleum or other contamination into any buildings, underground utilities or storm water retention/detention ponds; and (ii) if required by any governmental agency pursuant to any Environmental Law (defined below), or health or safety law or any other law, regulation, or guidance, or pursuant to the recommendation of an environmental professional exercising due care, install, as part of the redevelopment additional vapor intrusion controls, such as a sub-slab depressurization system ((i) and (ii) collectively the "**Engineering Controls Obligation**").

The Grantee herein covenants and agrees that the following restrictions, acknowledgements, and covenants (collectively, the "**Environmental Restrictions**"): (i) shall run with the Property and each portion thereof; and (ii) shall bind and restrict the Property and each portion thereof, and (iii) shall bind and inure to the benefit of the parties hereto, including without limitation, Grantor, Grantee, and their respective heirs, devisees, representatives, successors and assigns.

Use Restriction. The Property shall be used solely for industrial or commercial uses and for no other use whatsoever. For the avoidance of doubt, in addition to all other non-industrial or non-commercial uses, the Property, in whole or in part, shall not be used or occupied (if used or occupied at all) for residential purposes; or for the operation of a child care or elder care facility, a nursing home facility or hospice, a school, a church or other place of worship; or as a park; or a hospital; or for agricultural uses. If applicable state or local laws and regulations define residential use, any use that is deemed to be a residential use by such laws and regulations will be deemed enumerated herein.

Groundwater Use Restriction. No water supply wells of any kind (including, without limitation, water wells used for drinking, bathing or other human consumption purposes and water wells used for livestock, fanning or irrigation) shall be installed or used on the Property (collectively, the

"Groundwater Use Restriction"); provided, however, that the Groundwater Use Restriction does not prohibit the installation or use of any groundwater monitoring, recovery, or extraction wells or similar devices used for or related to the performance of any remediation or monitoring on the Property now or in the future.

Duration. The Environmental Restrictions shall run with the Property and each portion thereof and shall be binding upon and inure to the benefit of Grantor and Grantee and shall remain in full force and effect and bind and restrict the Property, unless and until the Environmental Restrictions (or any portion thereof) are released in writing by Cumberland Farms, Inc.

Notice of Environmental Restrictions upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a recital acknowledging the Environmental Restrictions and providing the recording location of this Deed upon such conveyance substantially in the following form: "The real property described herein is subject to the Environmental Restrictions made by Cumberland Farms, Inc., as Grantor, for its benefit and for the benefit of other parties and persons as set forth therein, dated February 29, 2016 and recorded with the Cumberland County Registry of Deeds on March 9, 2016 in Book 32966, Page 47 as if the same were fully set forth herein." Notwithstanding the foregoing, any failure to include such notice shall not, in and of itself, create any right or claim that any of the Environmental Restrictions or this Deed are void, voidable or otherwise unenforceable in accordance with their terms.

Effectiveness. The terms, provisions, covenants, and restrictions set forth in this **Exhibit A-1** vest upon the execution and delivery of this Deed by Grantor. If any of the covenants or restrictions contained herein shall be unlawful, void, or voidable for violation of any other statutory or common law rule(s) or regulation(s) imposing time limits, then any such covenants and restrictions shall continue only for the longest period permitted under such statutory or common law rule(s) or regulation(s).

Future Grantees. The taking title to the Property (or otherwise succeeding, directly or indirectly, to any of Grantee's right, title or interest in or to the Property), by any succeeding grantee shall be conclusive evidence of such succeeding grantee's agreement to and acceptance of each and all of the terms, provisions, and conditions of this **Exhibit A-1**, and of such succeeding grantee's agreement to be bound thereby.

Invalidity or Any Term. If any term, provision, condition, covenant, or restriction in this **Exhibit A-1**, to any extent, shall be invalid or unenforceable, the remainder of this **Exhibit A-1** (or the application of such term, provision, condition, covenant, or restriction to persons or circumstances other than in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision, condition, covenant, and restriction set forth in this **Exhibit A-1** shall be valid and enforceable to the fullest extent permitted by law.

Remedies. Grantor shall have all rights and remedies available at law or in equity for any breach by Grantee or any successor or assign of Grantee of the above covenants and agreements. Grantee acknowledges that the breach of any of the covenants or restrictions contained in this **Exhibit A-1** on the part of Grantee will result in irreparable harm and continuing damages to Grantor and that Grantor's remedy at law for any such breach or threatened breach would be inadequate. Accordingly, in addition to such remedies as may be available to Grantor at law or in equity in the event of any

such breach, any court of competent jurisdiction may issue an injunction (both preliminary and permanent), without bond, enjoining and restricting the breach or threatened breach of any such covenant or restriction by Grantee. Without limiting the foregoing, Grantor specifically may enforce against Grantee and any subsequent owner, user, or occupier of the Property the obligations and agreements set forth above. In the event that Grantee or any subsequent owner, user, or occupier of the Property shall breach any of the covenants or restrictions set forth in this **Exhibit A-1** then Grantee or such subsequent owner, user, or occupier shall pay all of Grantor's costs and expenses (including reasonable attorneys' fees) incurred in enforcing such covenants and restrictions.