

Tel. 236-0989

## TOWN OF ROCKPORT

[email:planning@rockportmaine.gov](mailto:planning@rockportmaine.gov)

101 Main Street, Rockport, ME 04856

### **ZONING BOARD OF APPEALS APPLICATION**

Name Applicant(s) /Appellant(s) – **A complete list of the Appellants with their contact information is attached as Exhibit A.**

Street Address(es)

Appellant Mailing Address

Appellant Email Address

Appellant Tel # -

Cell #

Fax #

Name of Appellants' Agent/Legal Rep.

Agent's Mailing Address

Agent's Tel. #

Fax #

Agent's Email Address

### **INFORMATION ON ACTION OR APPROVAL BEING APPEALED OR APPLIED FOR**

Name of Project - HFTF

Street Address - 6 Madelyn Lane

Map: 10

Lot: 75-1

Name of Owner - HFTF, LLC

Owner's Mailing Address - 721 Camden Road, Hope, ME 04847

Owner's Email Address -

### **TYPE OF APPEAL REQUIRING REVIEW**

(Please check off and complete appropriate attached sheet for specific type of appeal.)

Administrative appeals of the order or decision of the Planning Board or Code Enforcement Officer

Special Exceptions authorized by the Ordinance

Variances Authorized by the Ordinance

Shoreland Zoning Determination

### **IMPORTANT INFORMATION FOR APPELLANTS AND APPLICANTS**

**The ZBA's regular meeting date is the second Wednesday of every month.**

1. Please provide twelve (12) copies of a complete appeal application and supporting documentation.
2. Please enclose a check for Board of Appeals hearing fee (see Fee Schedule).

3. Complete application must be submitted to the Planning Office 15 days before a regularly scheduled meeting.
4. The Planning Office will confirm a meeting date only upon receipt of a complete application, supporting documentation and fee.
5. Applications that are not complete will be returned to the appellant by the Planning Office for additional information.

**To the best of my knowledge, all information submitted with the application is true and correct.**

Each of the Appellants' separate signature pages is attached as Exhibit B.

Signature of Appellant/Applicant 

Date received by Planning Office \_\_\_\_\_

**ADMINISTRATIVE APPEALS: To appeal any order, decision, approval or determination of the Code Enforcement Officer or Planning Board.**

Appeals from Planning Board decisions made under “Site Plan Review” may be filed by a person aggrieved by that decision. An appeal from the final decision of the Planning Board shall not be a *de novo* proceeding but shall be reviewed by the Zoning Board of Appeals based on the record created by the Planning Board. The Zoning Board of Appeals or ZBA shall base its decision on whether the Planning Board decision was within the scope of Planning Board authority and supported by substantial evidence in the record.

Note to Appellant: Please provide a detailed description, including supporting documentation and exhibits to support your position that the Code Enforcement Officer or Planning Board erred on the decision, approval, or determination in question. (Please use additional space and documentation to support your appeal.)

**I – ERROR BY THE PLANNING BOARD**

**A – INTRODUCTION**

Although the Planning Board (“Board”) was aware that it had before it a site plan review application materially different in kind from one seeking simply to change the use of the Madelyn Lane property from medical offices to multi-family housing and offices, the Board nevertheless chose to accept the Owner’s characterizations of the proposed use without accounting for those material differences.

In doing so, the Board acted without regard for clear record facts presented by the Owner itself which, taken together, left no doubt that the Owner intended a change of use by which it would establish “18 living units for individuals and

families in need of housing, and space for health, wellness, and services that provide them support.” See cover letter of the Owner’s agent, William B. Gartley, P.E., to Site Plan Review Application dated July 13, 2022 (“Owner’s Application”). Indeed, the Owner’s Application explicitly states that “Owners [sic] seek permission to convert two buildings into supportive housing to be used by Knox County Homeless Coalition. See Owner’s Application, “Owner & Applicant Information” (emphasis added).

**B – THE BOARD IMPROPERLY DEFERRED TO THE OWNER’S CHARACTERIZATIONS OF THE PROPOSED USE.**

In essence, the Board deferred to the Owner’s characterizations of the proposed use instead of making its own considered determinations on those central questions. The Board’s decision to defer to the Owner’s views was inconsistent with the Board’s responsibility under applicable law; it was incorrect as a matter of law; it was unsupported by the record; and it was highly prejudicial to the interests of those Rockport property owners who opposed the Owner’s Application based on the controlling law.

No system of land-use regulation can function effectively when it permits owner/applicants to finally characterize the proposed use without at least minimal regulatory scrutiny of the characterization. Given the opportunity to make that

characterization without such scrutiny, some number of owner/applicants will choose the characterization likely to offer the least resistance or expense, even though the selection is not in harmony with applicable comprehensive plans and/or land-use regulations. Indeed, given the opportunity to select a plausible but incorrect characterization of the proposed use, virtually no owner/developer will opt for a characterization that is either not permitted in the applicable district or requires regulatory accommodation before it can be permitted.

Here, the Owner chose just such a facially plausible mischaracterization of the proposed use. But in order to do so, the Owner was required to provide the Board with a description of the proposed use that, at best, substantially minimized and obscured those of its characteristics that distanced it from the multi-family housing and professional offices permitted in a Section 907 District. To accomplish this, the Owner offered no meaningful indication as to what was involved in the “supportive housing” for which it sought approval, except to say, with some circularity and no detail, that the support will involve “health, wellness, and services that provide [residents] support.” This was so even though more than 25% of the interior space involved in this project, including the entire lower level of Building 2, would be dedicated to these unspecified services.

Through its agent, the Owner assured the Board at the July 28 public hearing that these supportive services will only be available to the families residing in the facility, that no other individuals will be served, and that the facility will not serve as a “drop-in center” for persons with the same health conditions who are not residents of the facility.

In its decision of July 28, however, the Board seems to have approved the non-housing portion of the Plan as “professional offices” within the meaning of Chapter 300 of the Land Use Ordinance. But that characterization is plainly contrary to the Owner’s promise that the services will only be available to the residents of the facility, and it directly contradicts the Land Use Ordinance which defines “Professional Offices” as [a]ny structure that houses the business office of a person or persons who supply a service to the public. Land Use Ordinance, Chapter 300, Definitions (emphasis added).

Therefore, to the extent that the Board approved any portion of the facility based on the characterization that it would be used for professional offices, the decision is plainly wrong and contrary to the Owner’s own representations to the Board. As such, the Board’s decision cannot be affirmed.

C – THE PROPOSED USE IS IN FACT “CONGREGATE HOUSING.”

In the end, the Owner’s Application is a clear and concerted effort to avoid accurate characterization of the project because it is perfectly apparent that the proposed use is one not permitted in District 907. Land Use Ordinance, Section 907 (“Rockport Mixed Business/Residential District”). Of the several residential uses contemplated by the Land Use Ordinance, the use proposed here is most consistent with that of “Congregate Housing” which is defined by the Land Use Ordinance as follows:

A type of multi-family dwelling, including multiple individual rooms or dwelling units to be occupied as a residential shared living environment. Such construction will normally include small individual apartments, combined with shared community space, shared dining facilities, housekeeping services, personal care and assistance, transportation assistance, and specified shared services.

Land Use Ordinance, Section 302, Definitions. Certainly, the proposed use is “a type of multi-family dwelling” which includes “multiple individual rooms or dwelling units.” It is equally clear that this use is “a residential shared living environment” with common areas throughout the proposed facility and more than 25% of its

interior space—and entire floor—dedicated to the provision of supportive services solely for the individuals and families residing in the facility.

In addition, the proposed use appears to satisfy most of the non-mandatory characteristics (“[s]uch construction will normally include” (emphasis added)) of Congregate Housing in that this use will include, at least to some degree, “small individual apartments, combined with shared community space, shared dining facilities, housekeeping services, personal care and assistance, transportation assistance and specialized shared services.”

D – THE PROPOSED USE IS NOT A PERMITTED USE.

In short, this proposed use cannot be fairly characterized as simple multi-family housing and professional offices. It is neither, and notwithstanding the Owner’s effort to mischaracterize the use and withhold the nature and extent of the project’s supportive services, this is Congregate Housing within the meaning of Rockport’s Land Use Ordinance.

At the same time, a determination that this use is Congregate Housing is not essential to a decision that the project cannot be approved as presented. What is essential is a finding that this is not a permitted use in District 907 since the Board approved the project as such a use. That determination we submit, for all the



reasons set forth above, is unsustainable. Accordingly, it should be vacated and reversed.

## II – SAFETY AND SECURITY

Some of the concern about this proposed project is based on the Owner's failure to provide information relating to the safety and security provisions that should accompany the use. But as was the case with the details of the supportive services, the Site Plan Application is virtually silent on these concerns.

One does not need to be an expert in homelessness to know that it is a problem frequently associated with drug and alcohol dependency, crime, and, in some cases, violence, among other problems. Indeed, as has been indicated, the Site Plan Application implicitly acknowledges these associations with its non-specific indication that the proposed use will include supportive health, wellness, and other services.

As a consequence, the Owner's failure to provide detail and commitments about safety and security measures is surprising, while the concern that the project's neighbors have about this omission is not. While the Board may have been sympathetic to the neighbors' concerns on these issues any such concern is not

reflected in the Board's approval of the application, an approval incorrectly based, we believe, on the view that the proposed uses are permitted uses.

In the end, the neighbors' concerns in this area went entirely unaddressed.

### **SPECIAL EXCEPTIONS**

This appeal is not based on a claim of error relating to the grant or denial of a special exception. Accordingly, no documentation or argumentation is offered in support of any such claim of error.

### **VARIANCES**

This appeal is not based on a claim of error relating to the grant or denial of a variance. Accordingly, no documentation or argumentation is offered in support of any such claim of error.

EXHIBIT A: APPELLANT LIST

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14. Philip Streat	207-975-5801	<a href="mailto:philipstreat@earthlink.net">philipstreat@earthlink.net</a>

EXHIBIT B: APPELANTS' SIGNATURES

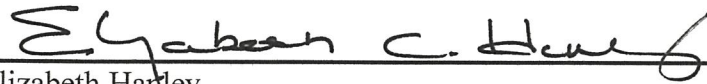
Virginia Carboy  
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Virginia G. Carboy

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Date:

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A handwritten signature in black ink that reads "Elizabeth C. Hanley". The signature is written in a cursive style with a large, stylized initial "E".

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Elizabeth Hanley

Date: 8/25/2022

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*Michael J. Hanley*

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Michael Hanley

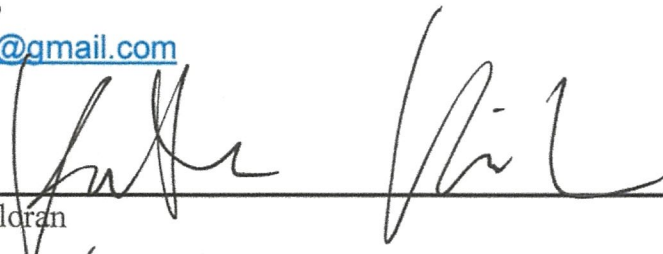
Date: 8.25.2022

580 Commercial LLC

Katherine Killoran

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A handwritten signature in black ink, appearing to read 'Katherine Killoran', written over a horizontal line.

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Katherine Killoran

Member

Date:

8/25/22



Patrick Killoran  
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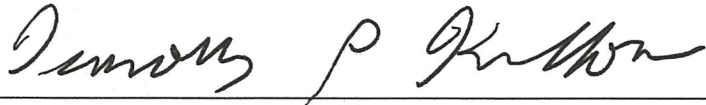


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Patrick Killoran  
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Date: 08/25/2022

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617-378-8534

A handwritten signature in black ink that reads "Timothy P. Killoran". The signature is written in a cursive style with a large, stylized 'T' and 'K'.

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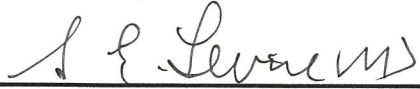
Timothy Killoran  
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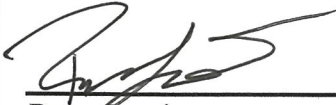
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Ryan Lewis

Date: 8/25/22

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*Marianne Linder*

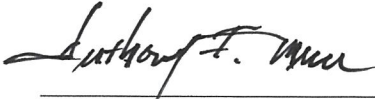
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Marianne Linder

Date:

*August 25, 2022*

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Janet H. Muri

Date: 8/26/22



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*Judith G. Rose MD*

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Date: 8/25/2022

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*Lorraine Streat*

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*Philip Streat*

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Philip Streat

Date: *8/25/22*