



Town of Kittery
200 Rogers Road, Kittery, ME 03904

Board of Appeals
Meeting Agenda, Council Chambers
Tuesday, February 26, 2019
Regular Meeting - 6:30 P.M.

1. Call to Order; Introductory; Roll Call
2. Pledge of Allegiance
3. Agenda Amendment and Adoption
4. Executive session (if required)
5. Public Hearings

Pamela Gray, Owner, 35 Sterling Road, Urban Residential zone, requesting Miscellaneous Variation Request to the terms of 16.3.2.4.D., seeking relief on the side yard setback for a mobile home.

6. Unfinished Business
7. New Business
 - a. Vote to Reconsider – Miscellaneous Variation Request granted January 8, 2019, 88 Pepperell Road
 - b. Elect new officers
8. Acceptance of Previous Minutes: 1/9/18, 2/27/18, 3/27/18, 6/12/18, 6/26/18, 9/25/18, 10/15/18
9. Board Member or CEO Issues or Comment
10. Adjournment



**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

BOA Meeting Date: February 26, 2019

Item #: MVR2019-01

STAFF REPORT – 35 STERLING ROAD – MISCELLANEOUS VARIATION REQUEST

Project Name: 35 Sterling Road

Applicant: Pamela J. Gray

Owner: Pamela J. Gray

Proposed Development: Existing single-family mobile home

Requests: Miscellaneous Variation Request from LUDC Section 16.3.2.4, seeking relief on the side yard setback of a mobile home

Site Addresses: 35 Sterling Road

Map & Lot Numbers: M 14 L 93



Current Zoning:

Residential – Urban (R-U) - This zoning district is intended to preserve the physical, aesthetic and social quality of Kittery's urban area and, consistent with this goal, to provide therein for the location of a variety of residential uses in accordance with the standards of this title.

The following uses are permitted in the R-U Zone: (1) Dwellings and manufactured housing; (2) Public open space recreational uses; (3) School (including day nursery), hospital, long-term nursing care facility, convalescent care facility, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature; (4) Accessory uses and buildings including minor home occupations; (5) Day-care facility; (6) Conference center; (7) Accessory dwelling units; and (8) Cluster residential development.

Staff Recommendation: **APPROVAL** of miscellaneous variation request

District Standards:

Residential – Urban R-U Zoning District Standards			
Land Area per Dwelling (min.)	20,000 sf	Front Yard Setback (min.)	30 feet
Impervious Surface (max.)	20%	Rear Yard Setback (min.)	15 feet
Lot Size (min.)	20,000 sf	Side Yard Setback (min.)	15 feet

Current Use: One single-family dwelling (manufactured housing)

Surrounding Land Uses:

West: Residential – Urban (R-U), single-family dwelling
 East: Residential – Urban (R-U), vacant, Town-owned property with sewer pump station
 North: Residential – Urban (R-U), single-family dwelling
 South: Residential – Urban (R-U), single-family dwelling

Future Land Use:

The subject property is located within a Growth Area in the Future Land Use Map. A Growth Area is defined in the Comprehensive Plan as, “areas where the Town would like to encourage future development to occur.”

Site Description:

The subject property consists of approximately 6,534 square feet (.15 acres), located east of State Road on Sterling Road, near its connection with Laurel Avenue. The lot has frontage along both Sterling and Laurel, as the two form a loop road. The property is zoned Residential – Urban (R-U). The lot contains one 14’ x 76’ manufactured home and one 320 square foot garage. Town property containing a sewer pump abuts the eastern property line. An easement was established to allow the Town to access across the subject property to service the sewer pump.

History of the Property:

The property contained a single 14-foot by 80-foot manufactured dwelling until 2018. The old dwelling was in disrepair for a number of years and was subject to an order of demolition by Town Council in 2012. The current owner took possession of the property in 2018, demolished the existing substandard manufactured dwelling, and replaced it with a new, 14-foot by 76-foot manufactured dwelling unit. All outstanding taxes and liens have been paid. The new property owner spoke with the former Code Enforcement Officer (CEO) in early 2018, who referred to Section 16.7.3.3.C(3), which allows an existing non-conforming structure to be “reconstructed in place.” The owner obtained a permit from the former CEO to construct the new dwelling unit.

A variance was granted to the property in 1986 approving “the present location of the mobile home regardless of where the boundary lines in dispute may be determined.” It appears that at some point, the Sterling Road right-of-way along the property’s western boundary was abandoned and divided between this property and the neighboring property. This changed the orientation of the lot, resulting in the old rear setback becoming a side setback. The existing variance from 1986 runs with the land, however the new manufactured dwelling appears to have been reconstructed closer to the eastern property line than the existing side setback requirements, which violates the provisions of the Town’s non-conformance chapter.

Description of the Issue:

There is a history of conflicting surveys on this property and a mortgage survey lists the property as violating Town zoning requirements. There is no current survey showing the new manufactured dwelling conforms with the Town’s setback requirements, the existing mortgagee (and any new mortgagee) will want proof that the new dwelling complies with the code prior to the property being conveyed. Due to the history of the property and the fact that Staff cannot certify the location of the old manufactured dwelling relative to a reliable survey and the existing conditions, the owner has requested a miscellaneous variation request to encroach on the R-U side setback of 15 feet.

Applicant’s Miscellaneous Variation Request:

Section 16.6.6 requires the Board of Appeals to use the following process when hearing requests:

§ 16.6.6 *Basis for decision.*

A. *Conditions.*

- (1) *In hearing appeals/requests under this section, the Board of Appeals must first establish that it has a basis in law to conduct the hearing and decide the question.*

LUDC Section 16.6.4.C.(1) allows the Board of Appeals to decide variations for nonconforming properties covered in Section 16.7.3. Further, Section 16.7.3.5.A.(1) allows for the “relaxation of yard and other requirements not involving area or width may be obtained only through miscellaneous variation request to the Board of Appeals.”

- (2) *In hearing appeals/requests under this section, the Board of Appeals must use the following criteria as the basis of a decision, that:*

- (a) *The proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;*

Staff believes the use will not prevent the orderly and reasonable use of adjacent properties since all adjacent properties are zoned Residential – Urban and contain the same single-family dwelling use as the subject property.

- (b) *The use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located or of permitted or legally established uses in adjacent use zones;*

Staff believes the use will not prevent the orderly and reasonable use of legally established uses in the zone since the use is the same as adjoining properties and there are no use restrictions among adjacent single-family dwellings.

- (c) *The safety, the health and the welfare of the Town will not be adversely affected by the proposed use or its location; and*

Staff believes the use will not adversely affect the health and welfare of the Town.

- (d) *The use will be in harmony with and promote the general purposes and intent of this title.*

Staff believes the use is in harmony with Title 16 and promotes its general purposes.

Factors for consideration. In making such determination, the Board of Appeals must also give consideration, among other things, to:

- (1) *The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;*

The uses involved are allowed in the zone by right.

- (2) *The conservation of property values and the encouragement of the most appropriate uses of land;*

Single-family dwelling is an appropriate and compatible use of the land.

- (3) *The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;*

The single-family use replaces an existing single-family dwelling so there is no effect on congestion.

- (4) *The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;*

The use is located on existing and adequate Town sewer infrastructure.

- (5) *Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;*

The use produces no obnoxious gases, odors, smoke or soot.

- (6) *Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;*

The use causes no disturbing emission of electrical discharges, dust, light, vibration or noise.

- (7) *Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;*

No undue interference should result from this use.

- (8) *The necessity for paved off-street parking;*

The land has suitable existing space for paved off-street parking.

- (9) *Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot;*

No hazards should result from this use.

- (10) *Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials;*

No overcrowded should result from this use.

- (11) *Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;*

The existing lot is a legal, non-conforming lot of record.

- (12) *Whether the proposed use will be adequately screened and buffered from contiguous properties;*

Adequate existing vegetation exists.

- (13) *The assurance of adequate landscaping, grading and provision for natural drainage;*

No changes in the existing landscaping, grading, or drainage result from this use.

(14) *Whether the proposed use will provide for adequate pedestrian circulation;*

No existing pedestrian facilities existing along this road and are not required to be provided by the use.

(15) *Whether the proposed use anticipates and eliminates potential nuisances created by its location; and*

No new nuisances are expected from the continuation of the single-family dwelling use.

(16) *The satisfactory compliance with all applicable performance standard criteria contained in Chapters 16.8 and 16.9.*

Other than the request of relief from side setbacks, the property conforms to Title 16.8 and 16.9 in its existing legal, non-conforming state.

Using the standards and criteria found in 16.6.6 of the LUDC, Staff recommends **APPROVAL** of the miscellaneous variation request to reduce the side setback from the required 15 feet to no less than 10 feet along the property's eastern boundary line.



TOWN OF KITTERY
CODE ENFORCEMENT OFFICE
 200 ROGERS ROAD, KITTERY, MAINE 03904
 PHONE: (207) 475-1305
 FAX: (207) 439-6806

DATE SUBMITTED	1/7/19
MAP & LOT	14-93
ASA FEE	INVOICE
DATE PAID	APPEAL 1/22/19
DATE COMPLETE	1/22/19
HEARING DATE	2/12/19

Application to the
BOARD OF APPEALS

MISCELLANEOUS VARIATION REQUEST Receipt # 550194

I have reviewed Town Code Title 16, Board of Appeals By-Laws, and the Ordinance(s) pertinent to this application. My request is based on Title 6.4.3, Miscellaneous Variation Request and:

- Nonconformity (Article III of Chapter 16.7);
- Nonconforming Residential Use in Commercial Zones Expansion (Section 7.3.5.3);
- Nonconforming Lots of Record (Section 7.3.5.9);
- Sign Violation and Appeal Standards (Section 8.10.3);
- Parking, Loading and Traffic Standards (Article IX of Chapter 16.8);
- Temporary, Intra-Family Dwelling Unit (Article XXI of Chapter 16.8); or
- Accessory Dwelling Units Standards (Article XXV of Chapter 16.8).

IN ORDER FOR AN APPLICATION TO BE DETERMINED COMPLETE AND SCHEDULED FOR A PUBLIC HEARING: APPLICATIONS FORMS MUST BE COMPLETE; 10 SETS OF DOCUMENTATION PROVIDED; & ALL FEE(S) PAID

PROPERTY INFORMATION

ADDRESS					
MAP	14	LOT #	93	LOT SIZE	.15
BASE ZONE(S):			OVERLAY ZONE(S):		

The subject property:
 [is / is not] in a Shoreland overlay or Resource Protection zone; [is / is not] in a floodplain; AND
 [does / does not] have outstanding code violations; and, if so, granting this appeal provides resolution .

PROPERTY OWNER: I have right, title or interest in the affected property, or issue, as shown by:

NAME(S)					Pamela J Gray				
MAILING ADDRESS					PO Box 654				
CITY	Kittery	STATE	ME	ZIP CODE	03904				
PHONE No.	207-252-0152			e-MAIL:	callpamgray@aol.com				

NOTE: You may have an attorney represent you, but such representation is not necessary. You may also be represented by a designated agent (e.g. family member, neighbor, engineer, contractor) as you so desire.

APPLICANT (if different) I am an agent of the applicant with standing, as shown by:

NAME(S)									
MAILING ADDRESS									
CITY		STATE		ZIP CODE					
PHONE No.				e-MAIL:					

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

Date: 1-7-19

By: *Pamela J Gray*
 (Signature)

(Print Name)

AFFIRMATIONS (Please read and check all the boxes to confirm)

Identify relevant Town code sections:

TITLE		CHAPTER	16.3	SECTION	16.3.2.4D					PAGE	
TITLE		CHAPTER		SECTION						PAGE	
TITLE		CHAPTER		SECTION						PAGE	

I understand that the Board of Appeals:

- May hear and decide on a miscellaneous variation request within the limitations set forth in the Title 16 Section identified in Item A-H on Page 1.
- Appears to have jurisdiction to hear this request; hearing must be held within 30 days of this request filing; application must be complete; and, public and abutter notice must be made no less than seven days prior to the scheduled hearing.
- Will conduct this hearing De Novo (meaning the Board acts if it were considering the question for the first time, affording no deference to the preceding agency decisions; may receive new evidence and testimony consistent with this Town Code Title 16 and the Board rules; and, conduct additional hearings and receive additional evidence and testimony).
- Will determine my Burden of Proof:
 - 1) What does the ordinance/statute require the applicant to prove?
 - 2) Does the ordinance/statute prohibit or limit the type of use being proposed?
 - 3) What factors must be considered under ordinance/statutes to decide whether to grant the request?
 - 4) Is the evidence presented substantial? Is it credible? Is it outweighed by conflicting evidence?
- Requires substantial evidence as the Standard of Review for this request, meaning:

"More than a mere scintilla". It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The preponderance of evidence standard is met if the proposition is more likely to be true than not true. The standard is satisfied if there is greater than fifty percent chance that the proposition is true.
- May hear, decide, and approve variations in accordance with the criteria listed in Town Code Title 16, Sections 6.6.1, Factors, and 6.6.2, Considerations; and may consider other Title 16 standards.
- Approval may not be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any state law which the municipality is responsible for enforcing.
- Is only legally authorized to deal with issues arising from the list above, and do not include such matters as constitutionality, civil rights, criminal acts, property disputes, surliness, etc.
- Will not even hear my appeal unless I can show that I have "standing" to have my complaint heard;
- Purpose of establishing my case for "standing" is to limit appeals on an issue to those who are directly involved and/or affected.
- Will try to decide my case based only on the factual information presented and what is written in the pertinent Town ordinance/regulation, State statute(s)/regulation(s) and the rulings of the State Supreme Judicial Court.
- Tries to make decisions it believes would be upheld if appealed to Superior Court.

Additional Information

1. Please complete this application in its entirety. You may add other information as may be needed to adequately describe the purpose of seeking relief from the Board of Appeals.
2. A detailed plot plan or diagram must be provided showing dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings or alterations, and any natural or topographic features (wetlands, streams, etc) of the lot in question. This plot plan should also include the distances to the nearest structures on abutting properties and show the detail of any rights-of-way, easements, or other encumbrances.
3. Blueprints, surveys, photos and other documents may be helpful in explaining your request and should be included.

STATEMENT:

Describe the general nature of the request:

On May 16, 2018 I purchased 35 Sterling Road that was a vacant lot with the exception of a free standing one car garage. There had previously been an older manufactured home that was 14 x 76, according to the town records.

I had been told by the CEO (Marchi) that as long as I followed the foot print of the previous home, a replacement would be allowed.

In December 2018 a new manufactured home was installed, the same 14 x 76 size and we followed the old footprint to the best of our knowledge.

I have a buyer lined up and in the course of him getting financed the mortgage company had a Class D survey done, which concluded that at one end the setback was 10', with 15' being the required setback amount. (see attached)

I am requesting relief from the 15' setbacks on the grounds that:

- (1) The previous home also did not meet the required setbacks.
or
- (2) The new home was unintentionally misplaced, although it was believed that the new home was placed in the same place as the old one.

THIS IS NOT A BOUNDARY SURVEY

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MORTGAGE INSPECTION OF: DEED BOOK 17745 PAGE 138 COUNTY York
 PLAN BOOK 207 PAGE 41 LOT ---

ADDRESS: 35 Sterling Road, Kittery, Maine

Job Number: 1014-34

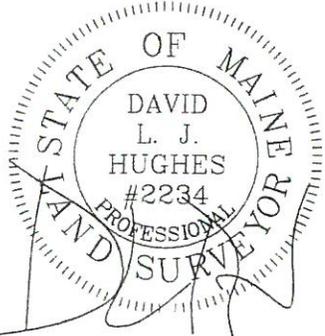
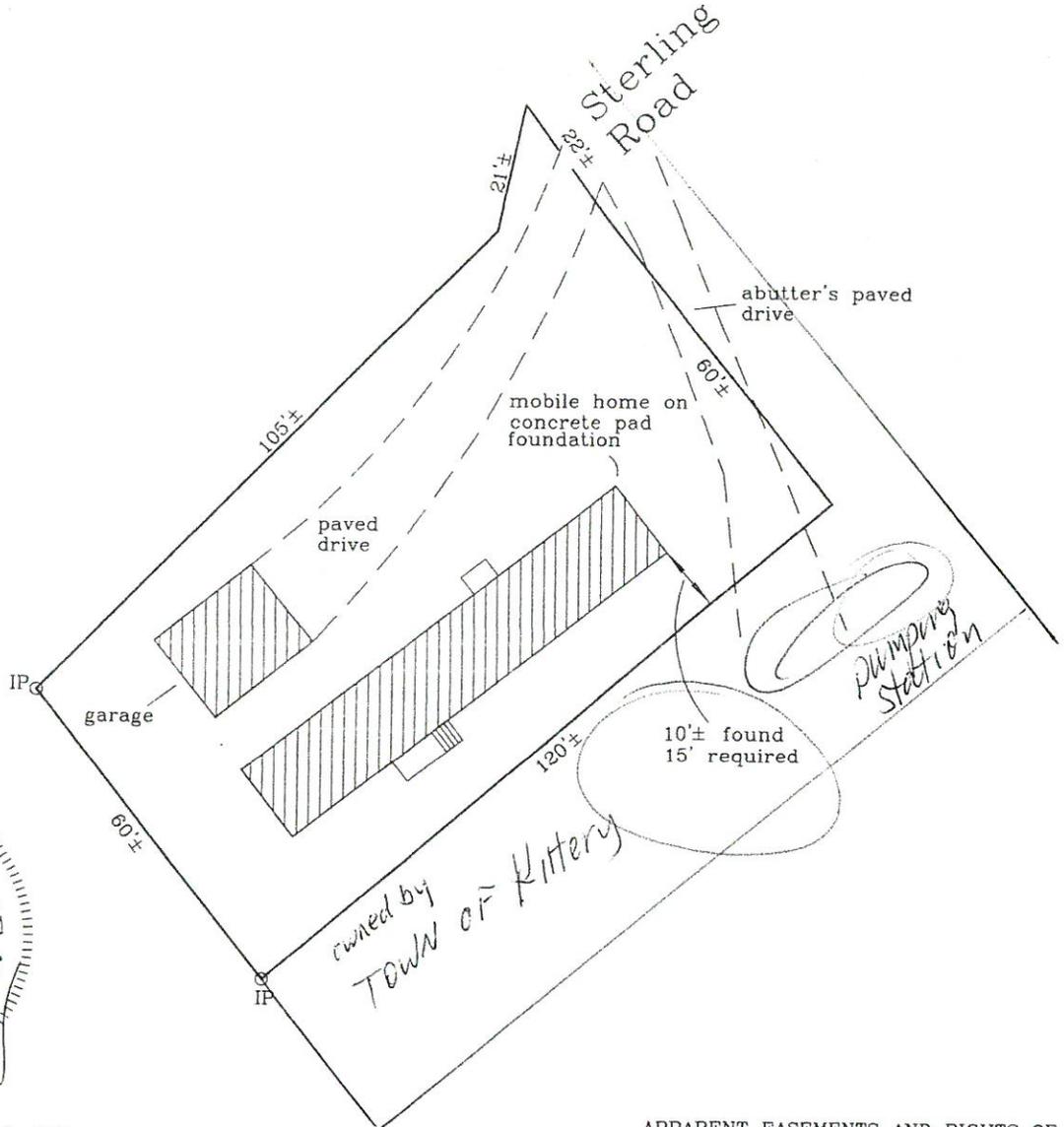
Inspection Date: 12-31-18

Buyer: Kevin M. McGovern

Scale: 1" = 30'

Client File #: 2018-19159

Seller: Pamela J. Gray



I HEREBY CERTIFY TO: Red Door Title, LLC, CrossCountry Mortgage Inc. and its title insurer.

- Monuments found did not conflict with the deed description.
- The dwelling setbacks do ~~not~~ violate town zoning requirements.
- As delineated on the Federal Emergency Management Agency Community Panel 230171-004C:
- The structure does not fall within the special flood hazard zone.
- The land does not fall within the special flood hazard zone.
- A wetlands study has not been performed.

APPARENT EASEMENTS AND RIGHTS OF WAY ARE SHOWN. OTHER ENCUMBRANCES, RECORDED OR NOT, MAY EXIST. THIS SKETCH WILL NOT REVEAL ABUTTING DEED CONFLICTS, IF ANY.

Livingston-Hughes
 Professional Land Surveyors
 88 Guinea Road
 Kennebunkport, Maine 04046
 207-967-9761 phone 207-967-4831 fax
 www.livingstonhughes.com

THIS SKETCH IS FOR MORTGAGE PURPOSES ONLY



←
Dumping
Station



same telephone pole

July 2015

55 SIDING ROAD

2015 07 20 10:00 AM



Start from here



Head
back
to
house



Town of Kittery, Maine

P.O. Box 808, Kittery, Maine 03904
439-1633 - 439-0452

BOARD OF APPEALS

November 24, 1986

Mr. and Mrs. Richard G. Poirier
124 Fox Point Road
Newington, New Hampshire 03801

Dear Mr. and Mrs. Poirier:

Your application requesting a variance to the terms of Chapter I, Section VIII, Subsection D, paragraph 2 of the Land Use and Development Code Zoning Ordinance to site a 14' x 80' mobile home on a lot with less than the proper front setback on one end of home at Sterling Road, Kittery, Map 14, Lot 93, zoned urban residence was heard at the Kittery Town Hall on Wednesday evening, November 19, 1986.

The Board voted to approve your request to site a 14' x 80' mobile home on a lot with less than the proper front setback on one end of home located above. The Board approves the present location of the mobile home regardless of where the boundary lines in dispute may be determined.

FINDINGS OF FACT

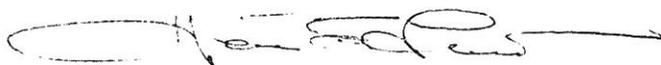
1. This is a dwelling, a mobile home, on a nonconforming lot in the urban residence zone with less than the proper setbacks.
2. Testimony was given by the Code Enforcement Officer that you had the foundation laid out with the proper setbacks according to boundary lines supplied by you.
3. Testimony was given that there were conflicting surveys.
4. Testimony was given by the real estate broker that the mobile home had not been occupied for over one year due to problems with the Kittery Town Sewer Department.
5. Testimony was given that the average setbacks of the contiguous properties was approximately 21 feet.
6. The Code Enforcement Officer at this point determined the mobile home to be 27' 2" from the property line.

Mr. and Mrs. Richard G. Poirier
November 24, 1986
Page Two

CONCLUSIONS

1. The Board felt the conditions for a variance had been met.

Sincerely,

A handwritten signature in black ink, appearing to read "Harrison Lemont", with a long horizontal flourish extending to the right.

Harrison Lemont
Secretary

CC:

Chairman, Town Council
Town Manager
Code Enforcement Officer
Chairman & Sec., Board of Appeals
Chairman, Planning Board
Chairman, Conservation Commission
Duncan McEachern, Esquire

Abutters:

Maurice E. and Mona M. Skidell, 16 Laurel Drive, Kittery
Inhabitants of Kittery, 200 Rogers Road, Kittery
Curtis F. and Betty J. Chapman, 13 Page Street, Kittery
Dorothy S. Langton, 19 Page Street, Kittery



Town of Kittery, Maine

P.O. Box 808, Kittery, Maine 03904
439-1633 - 439-0452

CODE ENFORCEMENT OFFICE

To Whom It May Concern;

Subject: Set Backs on Map 14, Lot 93

Date: November 24, 1986

From: Lucy E. Tillman, Code Enforcement Officer ^{LET}

According to property lines represented to me by the owners of Lots 94, 93, 92 and 91 on Tax Map 14, the Mobile Homes' set back on Lot 93 would be permitted on compliance with Chapter I, Section I, D7 (see attached page). The average pf the abutters is 21' 7".

83

3.25 AC. ±

STERLING POND

82

84

85

86

ROAD

110

109

108

107

106

LAUREL ROAD

102

103

104

105

FRONT SET BACKS

89

91

30' back
VACANT ONLY
30' Required

ROAD

99

98

97

96

95

94

93

92

117A

117

118

121

120

122

12B

124

STREET

126

127

both, of the lot shall conform to the regulation for the district in which such lot is located. Relaxation of yard and other requirements not involving area or width shall be obtained only through action of the Board of Appeals.

- 7) Building setback from the street line need not be greater than the average of the setback distances of the buildings on the lots next thereto on either side.
- 8) If two (2) or more contiguous lots, nonconforming as to size, are in the same ownership on the effective date of this ordinance, and a combination of such lots or a portion thereof, shall constitute a lot of conforming size, such combination shall be deemed to be a single conforming lot for the purposes of this ordinance and buildings and structures may be erected thereon, provided however, that they meet the requirements of the zone in which they are located, and only if the land and buildings are otherwise in full conformity with such provisions. If a combination of such lots results in a nonconforming lot, Par. D-6 shall apply. This subsection shall not apply to any Planning Board approved subdivision for which an approved plan was recorded in the York County Registry of Deeds on or before July 13, 1977.

E. CONFLICT WITH OTHER ORDINANCES

Wherever the requirements of this Code are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants, the most restrictive, or that imposing the higher standards shall govern.

F. SEPARABILITY

In the event that any section, subsection or any portion of this Code shall be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or other portion of this Code; to this end, the provisions of this Code are hereby declared to be severable.

G. AMENDMENTS

No amendments to this Zoning Ordinance shall be adopted until after the Planning Board and the Town Council of the Town of Kittery shall have held a public hearing thereon. Public notice of the hearing shall be published in a newspaper of general circulation in the town at least 7 days prior to the public hearing.

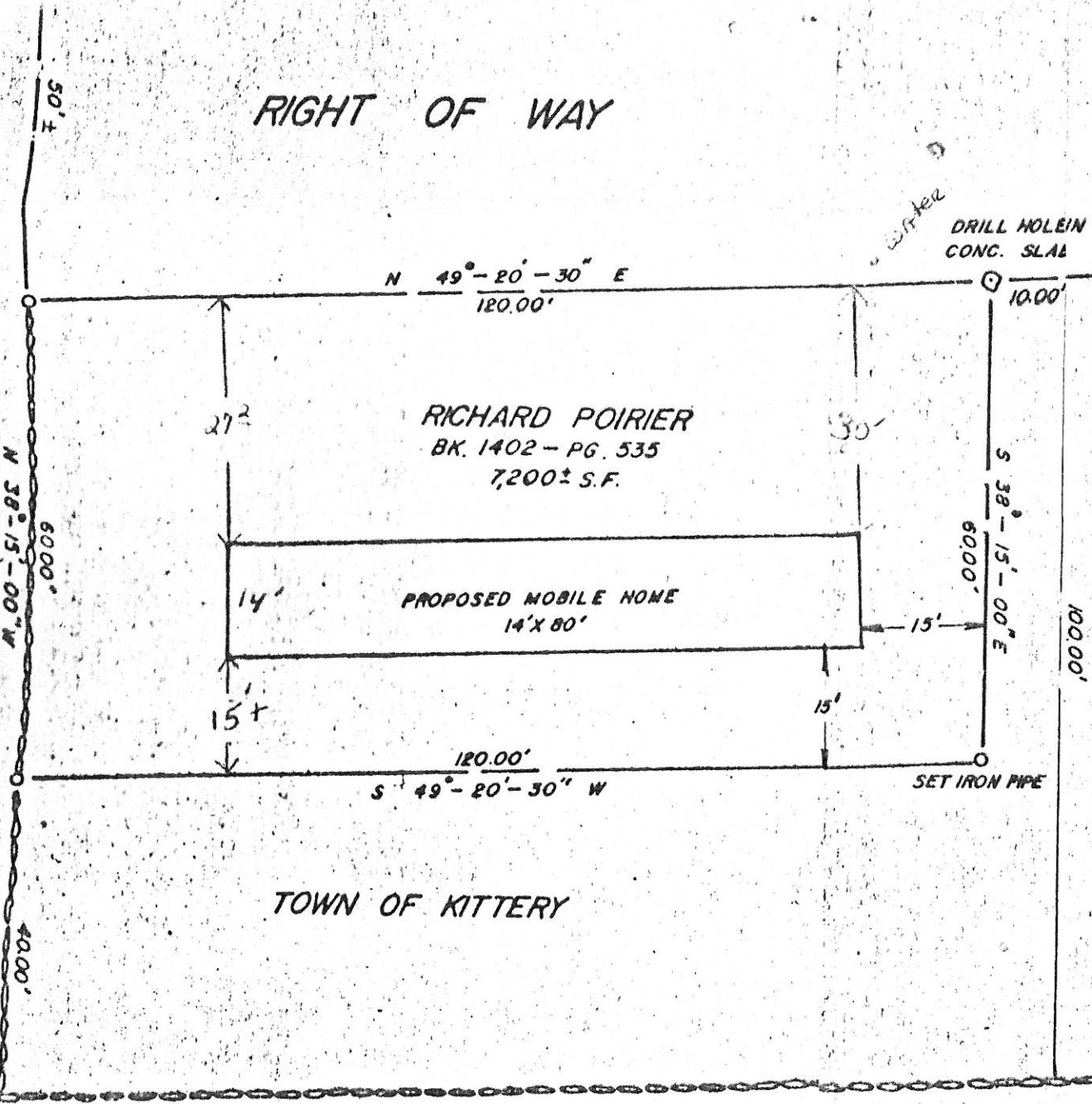
SECTION II NONCONFORMANCE

A. PURPOSE

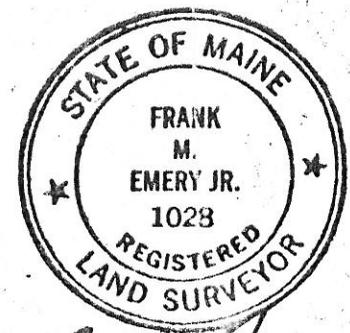
The intent of this section of the zoning ordinance is to regulate nonconforming lots, uses and structures. The ordinance intends that:

STERLING RD.

RIGHT OF WAY



PLAN REFERENCE
 SEE PLAN OF STERLING
 SUBDIVISION BY C.R.
 PLAN BOOK 16 PAGE
 DATE: 1940



Frank M. Emery Jr.

SITE
 FOR
RICHARD POIRIER
KITTERY, MAINE

FRANK EMERY ENGINEER
 DATE AUGUST 29, 1985
 DRAWN BY: J.L.



TOWN OF KITTELY
Planning and Development
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1307 Fax: 207-439-6806

TO: BOARD OF APPEALS
FROM: ADAM CAUSEY, DIRECTOR OF PLANNING & DEVELOPMENT
SUBJECT: VOTE TO RECONSIDER, 87/88 PEPPERELL ROAD
DATE: FEBRUARY 19, 2019 – (UPDATED FROM FEBRUARY 5, 2019)
CC: STEPHEN WILSON, CODE ENFORCEMENT OFFICER; SHELLY BISHOP, ASSISTANT CODE ENFORCEMENT OFFICER

On January 8, 2019, the Board of Appeals heard a miscellaneous variation request to reduce standards for parking lot landscaping (Section 16.8.9.4.G.) from the applicant at 87/88 Pepperell Road concerning their restaurant and its associated parking lot. The Board granted the applicant's request to vary from landscaping standards with the condition that "arborvitae plantings no shorter than 4 feet in height are installed along the eastern and western property lines of the parking lot." I have attached a copy of the Notice of Decision from that meeting. On January 10, 2019, the Planning Board approved the plan for this project with conditions. Also attached is a draft Notice of Decision from the Planning Board. Please note that none of the Planning Board decisions contradict any decisions made by the Board of Appeals on this project.

On January 17, 2019, staff received a request via email from an abutter for the Board of Appeals to reconsider the previous decision. That request is attached to this memo. Town code (Section 16.6.5.K.) states that a request to reconsider must be made within 10 days of the original vote. Staff considers the email a valid request to reconsider.

Upon review of Town code, Board of Appeals by-laws, and discussions with the Town attorney, a vote to reconsider is a two-step process. The first step is for the Board to vote whether to reconsider the previous decision. Per the Board's by-laws, a motion for reconsideration must be moved by a member who voted on the prevailing side on the original motion, which would be a member present on January 8, 2019, who voted in favor of granting the miscellaneous variation for landscaping standards.

If the Board votes to reconsider on February 12, 2019, the second part of the process would be to schedule a public hearing for the reconsideration at a future Board of Appeals meeting, at which time staff will properly notice the public, abutters, and any who spoke at the January 8, 2019 meeting.

Since the request for reconsideration was received, the applicant and abutters subsequently met to discuss desired landscaping. The applicant and abutters seem to have agreed on updated landscaping improvements, including desired locations and species. Attached to this memo is an email from the applicant's engineer, a draft plan showing the location for various plantings, and a picture of one area of the western property line to illustrate the compromise reached by the applicant and abutters. ~~It is unclear if the proposed update to the landscaping complies with the original Board of Appeals decision. I have asked the applicant's engineer to submit detailed plans showing the location and types of plantings~~

~~so staff can ensure compliance with all Board approvals and conditions.~~

UPDATE – February 19, 2019

Staff has received updated plans. These plans are attached at the end of this memo. The plans show updated landscaping along the eastern and western property lines and along the tomb property to the north. The plans show plantings of arborvitae, along with other evergreen plantings suggested by abutters. Staff believes these new plans conform to the conditions set forth by the BOA on January 8, 2019.

Thank you,

Adam Causey, AICP
Director, Planning & Development Department



TOWN OF KITTERY, MAINE

200 Rogers Road – Kittery, ME 03904

Phone: 207-439-1308 Fax: 207-439-6806

www.kitteryme.gov

KITTERY BOARD OF APPEALS

January 15, 2019

Chatham Street, LLC
5 Milano Drive
Saugus, MA 01906

Ann Kendall
P.O. Box 67
Kittery, ME 03904

Dear Chatham Street, LLC & Ann Kendall,

Your application requesting variations regarding off-street parking standards in Land Use Code Section 16.8.9.4. & through subsections G & K, located at 88 Pepperrell Road, in the Business-Local & Shoreland Overlay zones, was heard Tuesday evening, January 8, 2019.

Motions were made as follows:

- Motion to grant request from 16.8.9.4.G. with condition that arborvitae plantings no shorter than 4' in height are installed along the eastern and western property lines of the parking lot located at 87 Pepperrell Road.
Passed 6-0 (Aye: *Denault, Fitzpatrick, Timko, Leontakianakos, Dwyer-Jones; Gardner*)
- Motion to grant request from 16.8.9.4.K.(2) with condition that the existing subgrade and compaction level are to be maintained.
Passed 6-0 (Aye: *Denault, Fitzpatrick, Timko, Leontakianakos, Dwyer-Jones, Gardner*)
- Motion to grant request from 16.8.9.4.K.(3)
Passed 6-0 (Aye: *Denault, Fitzpatrick, Timko, Leontakianakos, Dwyer-Jones, Gardner*)
- Motion to grant request from 16.8.9.4.K.(4) with condition that any lighting plan be approved by the Planning Board.
Passed 5-1 (Aye: *Denault, Fitzpatrick, Timko, Leontakianakos, Dwyer-Jones; No: Gardner*)
- Motion to grant request from 16.8.9.4.K.(5) with condition that existing pavement is to remain as-is.
Passed 6-0 (Aye: *Denault, Fitzpatrick, Timko, Leontakianakos, Dwyer-Jones, Gardner*)

FINDINGS OF FACT

- Chatham Street, LLC, Owner, Ann Kendall, applicant, for business located 88 Pepperrell Road. Property is located in the Business-Local & Shoreland Overlay zones.
- Requesting variation regarding off-street parking standards in Land Use Code Section 16.8.9.4 and through subsections G & K.
- The applicant gave a presentation about the reasons they were seeking relief including a description of a specific hardship that would be caused to the applicant by strict enforcement of the requirements.
- There were a number of members of the public speak, largely in favor of the overall proposal, however, raising some concerns and requesting certain conditions.
- There would be a negative impact to the environment by requiring paving of the parking lot and potentially could be negative impacts based on the decisions around lighting.
- There are no safety issues associated with granting these particular requests for relief.
- There are no current violations for this property.

The Board moved to accept the Findings of Fact.

Motion passes 6-0 (*Aye: Denault, Fitzpatrick, Timko, Leontakianakos, Dwyer-Jones, Gardner*)

CONCLUSIONS OF LAW

The Board has the authority to hear this Miscellaneous Variation Request pursuant to Title 16.6.4.C.2. In addition, the Board considered the basis for decision the conditions set fourth in 16.6.6.A & also considered the factors for consideration in making its determination set forth in 16.6.6.B, inclusive. The Board determined specifically that due to the size and layout of the existing lot, meeting the particular landscaping requirements set forth in 16.8.9.4.G would cause a loss of required parking, create additional issues with congestion in the area, and could impact the historic nature of the parking lot and the grave site to the north of the lot. The Board determined that waiving the particular requirements of landscaping was appropriate but did include requirements that evergreen plantings be placed on the east and west borders of the lot located at 87 Pepperrell Road. Related to sections 16.8.9.4.K, the applicant withdrew their request for relief relative to subsection 1. Relative to subsection 2., the Board found, considering the factors set forth in the basis for decision in 16.6.6.A & 16.6.6.B, that the requests to section K.2-5 were appropriately granted with the condition for section K.4. that the lighting plan be approved by the Planning Board. This approval is not the granting of a building/regulated activity permit, and any aggrieved party may appeal this decision to Superior Court within 45 days.

Signed by:

Board of Appeals, Town of Kittery



TOWN OF KITTERY MAINE
Town Planning and Development Department
200 Rogers Rd. Kittery, Maine 03904
(207) 475-1323

NOTICE OF DECISION

PROPERTY OWNER: Chatham Street, LLC,
APPLICANT: Ann Kendall
MAILING ADDRESS: P.O. Box 67, 88 Pepperrell Road, Kittery,
ME 03905
PROPERTY LOCATION: 87 & 88 Pepperrell Road, Kittery ME 03905
MAP LOT: **MAP 27 LOTS 2A & 49**
APPLICATION: **Business Use Change**
ZONE(S): Business Local (B-L) & Residential –
DATE: Kittery Point Village (R-KPV)
January 10, 2019

Per Section 16.4.3.E of the Town of Kittery Land Use and Development Code, the Town Planner and Code Enforcement Officer are to review and approve, or refer to the Planning Board for action all Business Use Changes which occur that fall below Planning Board review thresholds as outlined in Sections 16.10.3.2 and 16.10.3.6. Approval must be based on compliance with all requirements of this Code.

The review of “The Bistro” was to consider if the proposed change from retail (Frisbee’s Market) to restaurant (the Bistro) is significantly different in intensity of use per Section 16.10.3.6.C. The application was referred by the Town Planner to the Planning Board for its consideration at the October 26, 2017 meeting. After considerable discussion regarding the business use change at that meeting, the Planning Board voted to return the applicant to the Town Planner and the Code Enforcement Officer as a business use change but not of such intensity that requires Planning Board perview with the condition that the applicant prior to opening the final project the Wharf come back with a detailed plan for parking for the entire project. Since that time, the applicant has changed the order of the opening of the new businesses with the Bistro now being the final project.

A detailed parking plan has been submitted which was considered by the Planning Board at the meetings of December 13, 2018 and January 13, 2019.

At the meeting of January 10, 2019 the Planning Board approved the parking plan dated 01/10/2019 as revised by and with the following conditions:

- 1) Curb stops must be installed for each parking space and securely anchored in place except in the parallel spaces in the paved portion of the lot.
- 2) Any parking signs placed in the interior of the parking lot must be affixed to a wooden post – no metal sign posts are allowed.
- 3) The applicant shall design and construct pedestrian improvements subject to Department of Public Works review and approval.

- 4) The applicant shall work with CMP to install adequate screening or shielding on any existing street pole mounted lights utilized by the businesses. Any new permanent lighting added will be CMP approved cut-off fixtures with adequate shielding to direct light down and away from adjacent properties.
- 5) Food and beverage service for The Wharf is restricted to the area designated in the approved license.
- 6) Restoration of the crushed sea shell area to its previous limit must be performed to the satisfaction of the Shoreland Resource Officer prior to the opening of The Wharf in the spring.
- 7) A parking management plan shall be developed in conjunction with staff which will be reviewed annually and certified as to compliance by April 1st of every year.

This Notice of Decision IS NOT a building permit or a sign permit.

Any proposed field changes, diversion or revisions to the plan and construction documents after approval shall be reported to the Code Enforcement Officer prior to proceeding with the proposed changes. Any site changes not approved in this Notice of Decision will be in violation of State law and Town Codes.

Sincerely:

Jamie Steffen
Town Planner

Stephen Wilson
Code Enforcement Officer

Karen Kalmar
Planning Board Vice Chair

From: [debi](#)
To: [Stephen Wilson](#); jeffbrake@comcast.net; apriltimko@gmail.com
Cc: [Adam Causey](#); [Shelly Bishop](#); annhgrinnell@icloud.com; karen@kalhill.com
Subject: Request for Reconsideration by Kittery Board of Appeals of January 8, 2019
Date: Thursday, January 17, 2019 4:40:01 PM

Dear Steve, C.E.O. and Kittery Board of Appeals,

I would like to formally request a motion for reconsideration of the landscaping around the parking lot for 87-88 Pepperrell Road project heard by the Board of Appeals on January 8, 2019.

We, myself and the other abutters listed below, would like to request the Board of Appeals reconsider their condition of approval for plantings around the parking lot at 87 Pepperrell Road to state the following, *that neighbor's parking lot planting requests be represented on the final plan.*

There were inconsistencies between the Board of Appeals findings and the Planning Boards findings on the landscaping issue, such as, type of plantings, how many and where they will be planted. We do not feel this represents what we were asking for.

Since these plantings will likely not be planted until Spring. We would ask that the applicant or their representative meet with the abutters and come up with an agreed upon list of plantings and where they will be planted.

It should also be noted that the abutters on Pepperrell Terrace do not feel the plantings need to go along the entire length of the east side of the parking lot, which is a benefit to the applicant. We would however like to see plantings along the east side of the "Pepperrell Tomb" lot, which the applicant is responsible for maintaining. The deed recorded in Book 1450 page 577 states in part, "This conveyance is made upon the express condition that said Grantee, his heirs and assigns will keep the Pepperrell Tomb, situated northerly of the within granted premises, in repair and see that the remaining land of said Tomb Lot is properly mowed and ornamented with suitable trees and shrubbery."

The fence that used to run along the east side of Pepperrell Terrace ran from a large hemlock tree where the tomb lot meets 9 Pepperrell Terrace down to the Pepperrell Terrace, Private Way sign.

The west side of the parking lot has a fair amount of vegetation already and I believe they were looking for a fence to keep parking lot debris and people from falling onto their property.

To make this more clear you may want to schedule a site walk or visit the site prior to the next meeting.

Please let us know if this request for reconsideration regarding plantings

will be considered and next steps.

The following abutters were present at the January 8, 2019 public hearing and are in support of this request:

Craig Gossard, 2 Pepperrell Terrace

Clint Reed, 4 Pepperrell Terrace

Kelly Philbook, 8 Pepperrell Terrace

Debbie Driscoll Davis, 9 Pepperrell Terrace

Durward Parkinson, representing Driscoll Realty, Inc., 10 Pepperrell Terrace

Nanci Lovett, 11 Pepperrell Terrace

Thank you for your consideration,

Debbie Driscoll Davis

9 Pepperrell Terrace

Kittery Point, Maine

(207)439-0449 h

(207)451-4021 c

From: debi
To: donna@pepperrellcove.com
Cc: gossardcraig@gmail.com; cjmreed@myfairpoint.net; Deb Driscoll; danscrossing@aol.com; Kelly Philbrook; Nancilovet@aol.com; Adam Causey
Subject: 87 Pepperrell Meeting
Date: Sunday, January 27, 2019 7:22:15 PM

Hello Donna,

Many thanks to you and your team for meeting with us!

Jackie Nooney recommends upright junipers: Juniper Chinesis Blue Point or Juniper Chinesis Hetzii Columnaris.

Based on photos we've seen we prefer the Blue Point (photo attached) as they appear more uniform. They grow to 4' - 5' wide and 6' -10' tall. They can be cut back and should be maintained annually and planted by a licensed landscaper, such as, JNL Landscaping, with a minimum 2 year warranty and replaced if necessary.

When reading more about junipers, it is suggested to plant a few extra junipers on site that could be transplanted if any of the original plantings do not survive, that way they would grow to a similar height and width as the rest of the hedge. Perhaps they could be planted on the west side of the tomb lot.

Jackie recommends 5 junipers on each side, or perhaps 4 on the east and 6 on the west, of the front of the Pepperrell Tomb lot, leaving space in the center for visibility and access to the tomb lot.

Junipers, a minimum of 4' - 5' high should be planted every 6' along Pepperrell Terrace, beginning at the northeast corner of the tomb lot, running along the tomb lot and parking lot to the KPV/BL zoning line.

If Attar can adjust the parking spots and fence, north of the KPB/BL line, slightly to the west, it would leave a little more room to plant junipers between the fence and Pepperrell Terrace. There appears to be brush in the upper west side of the parking lot (photo attached) that can be removed to allow for a minor shift in fence placement and the parking spaces.

The fence will run from where the parking lot meets the tomb lot to the last parking space along Pepperrell Terrace near Pepperrell Road, with solar lights on every other post.

We also looked at where might be a good place for the crosswalk and thought it should run close to where it is now. Running from the back end of the parking space closest to Pepperrell Road/Pepperrell Terrace to the back end of the handicapped space closest to Pepperrell Road/facing the Bistro, with Dave Rich's approval.

This would alleviate Wendy Turner/Beth Seager's concern of people crossing too close to the Frisbee House and Beth's house.

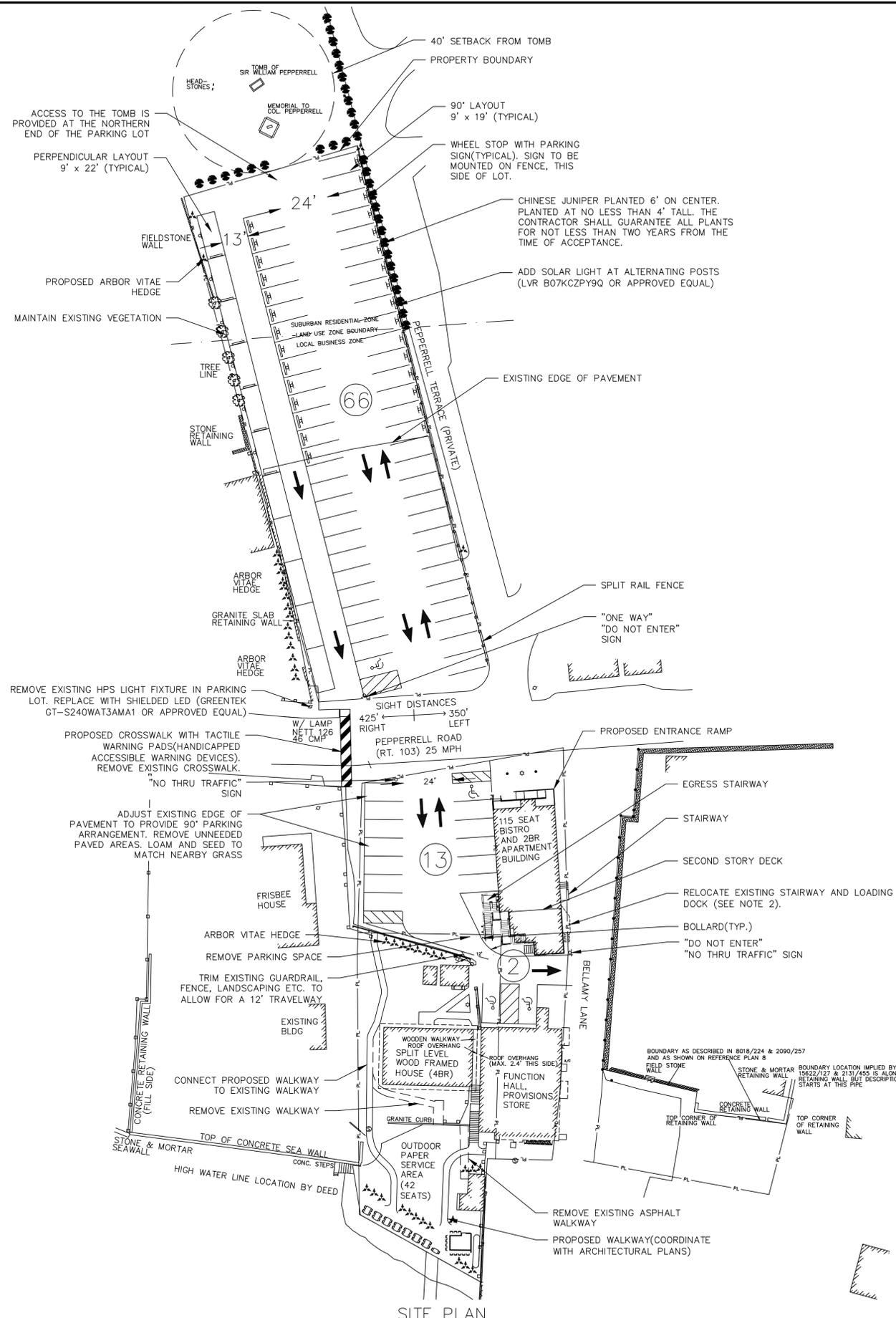
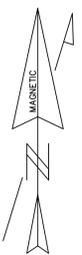
Attached you will find a map with green indicating where junipers would be planted, orange indicating where the northern portion of lot could be adjusted slightly to the west to allow more room between the fence and Pepperrell Terrace for plantings, red indicating fence, lime green suggested crosswalk location.

Thank you,
Craig Gossard, 2 Pepperrell Terrace
Clint Reed, 4 Pepperrell Terrace
Kelly Philbook, 8 Pepperrell Terrace
Debbie Driscoll Davis, 9 Pepperrell Terrace
Driscoll Realty, Inc. 10 Pepperrell Terrace
Nanci Lovett, 11 Pepperrell Terrace

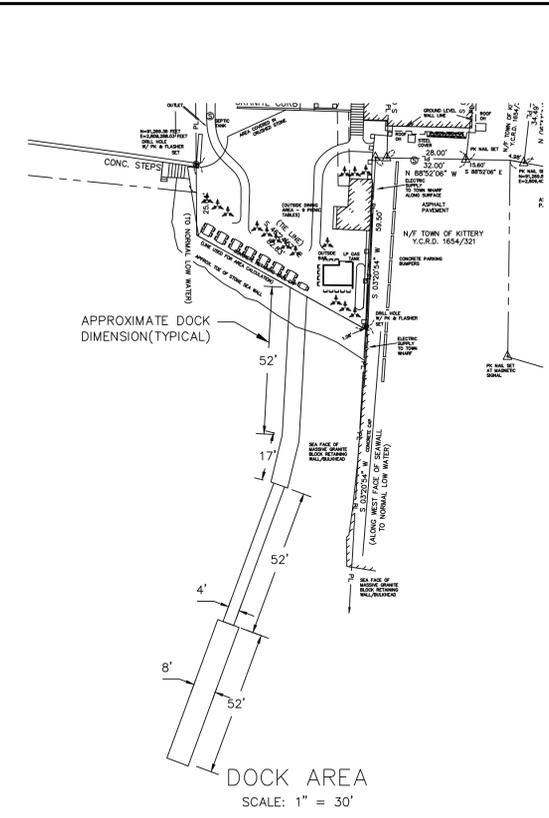
cc: senders and Adam Causey







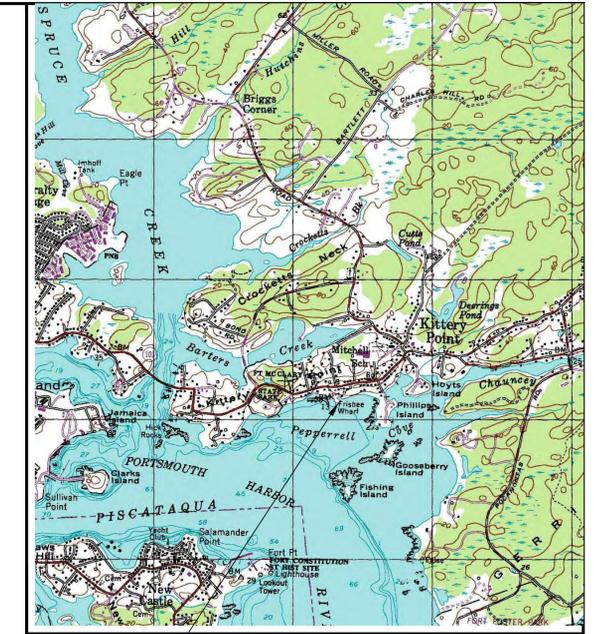
SITE PLAN
SCALE: 1" = 30'



LEGEND	
PROPERTY LINE	PL
EXT. BUILDING	[Hatched Box Symbol]

PLANT LIST				
SYMBOL	BOTANICAL NAME	COMMON NAME	QUANTITY	SIZE
●	JUNIPERUS CHINENSIS BLUE POINT	CHINESE JUNIPER	35	4-5' WIDE
▲	ARBORVITAE	ARBORVITAE	3	3-4' WIDE

TOWN OF KITTELY PLANNING BOARD	DATE



LOCATION MAP
APPROXIMATE SCALE: 1" = 2000'

GENERAL NOTES

- THIS PLAN PROVIDES A PARKING LAYOUT IN BOTH THE SUBURBAN RESIDENTIAL AND LOCAL BUSINESS ZONES AT 88 PEPPERRELL ROAD, KITTELY, MAINE. LOTS ARE LOCATED ON TAX MAP 27 LOTS 2A AND 49
- PARKING IS CALCULATED AS FOLLOWS:
- | UNIT TYPE | NO. OF UNITS./SF | SPACES/UNIT | SF/UNIT | REQUIRED |
|---|-------------------|-----------------|------------|-------------------|
| 115 SEAT BISTRO AND SKI CLUB BAR AND DECK | N/A | 1 SPACE/3 SEATS | N/A | 115/3 = 38.3 |
| DWELLINGS | 1 UNIT | 2 SPACES/ UNIT | N/A | 2 x 1 = 2 |
| FUTURE DWELLING | 1 UNIT | 2 SPACES | N/A | 2 x 1 = 2 |
| FUNCTION HALL | 1 SPACE/ 100 S.F. | N/A | 2,093 S.F. | 2,093/100 = 20.93 |
| PROVISIONS STORE AND ICE CREAM WINDOW | 1 SPACE/ 175 S.F. | N/A | N/A | 623/175 = 3.56 |
| WHARF 42 OUTDOOR SEATS | N/A | 1 SPACE/3 SEATS | N/A | 42/3 = 14 |
- TOTAL SPACES REQUIRED = 80.79(81) WITH 81 SPACES PROVIDED
- DELIVERIES SHALL PRIMARILY OCCUR DURING NON-WORKING HOURS. LOADING DOCK NOT REQUIRED IN THIS DISTRICT.
 - DUMPSTER REMOVAL SHALL PRIMARILY OCCUR DURING NON-WORKING HOURS.
 - IF SNOW STORED ON SITE SHOULD BLOCK ANY PARKING SPACES THE SNOW SHALL BE REMOVED FROM THE SITE.
 - PARKING ATTENDANT TO BE ON-SITE FROM MEMORIAL DAY TO LABOR DAY, THURSDAY THROUGH SUNDAY, 12 P.M. TO 7 P.M.
 - SEE REFERENCES 1-3 FOR MONUMENTATION.
 - SEE REFERENCE 4 FOR COVERAGE WITHIN THE SHORELAND ZONE.

REFERENCES

- "PLAN OF LAND OF FRISBEE'S HOLDINGS, LLC, SHOWING LOT MERGER OF TAX MAP 27, LOTS 49, 50 & 51A" PREPARED BY CIVIL CONSULTANTS DATED JULY 15, 2010, AND RECORDED AT YCRD BK 344 P 28.
- "PROPOSED LEASE AREA, FRISBEE HOLDINGS", PREPARED FOR: ALPHONSE DAMICO" PREPARED BY CIVIL CONSULTANTS DATED AUGUST 26TH, (YEAR UNKNOWN).
- "PLAN OF LAND OF FRISBEE'S HOLDINGS II, LLC & FRISBEE'S HOLDINGS, LLC" PREPARED BY CIVIL CONSULTANTS DATED MARCH 2010.
- "THE VIEW PARCEL 27-50" PREPARED BY ATTAR ENGINEERING DATED SEPTEMBER 19, 2017

PARKING PLAN

PARKING LAYOUT
88 PEPPERRELL ROAD (ROUTE 103)
KITTELY POINT, MAINE

FOR: 1828 PEPPERRELL COVE LLC
88 PEPPERRELL RD PO BOX 67
KITTELY POINT, ME 03905

ATTAR ENGINEERING, INC.
CIVIL • STRUCTURAL • MARINE
1284 STATE ROAD - ELIOT, MAINE 03903
PHONE: (207)439-6023 FAX: (207)439-2128

SCALE: 1" = 30'	APPROVED BY:	DRAWN BY: BRN
DATE: 6/28/2018		REVISION : DATE G:02/12/2019
JOB NO: C054-18	FILE: THE VIEW PARKING PLAN.DWG	SHEET 1 OF 1

OWNER: CHATHAM STREET LLC
5 MILANO DRIVE
SAUGUS, MA 01906

NO.	DESCRIPTION	DATE
G	STAFF REVIEW	02/12/2019
F	STAFF REVIEW	02/11/2019
E	PLANNING REVIEW	01/10/2019
D	SITE REVIEW	12/27/2018
C	BUILDING CHANGES	12/24/2018
B	PARKING CHANGES	11/27/2018
A	PARKING CHANGES	10/24/2018
NO.	DESCRIPTION	DATE