



**Town of Kittery
200 Rogers Road, Kittery, ME 03904**

**Board of Appeals
Meeting Agenda, Council Chambers
Tuesday, September 10, 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

6. Unfinished Business

- a. Timothy Phoenix, applicant and Christopher Miller, owner of 1 Coleman Avenue (Map 26 Lot 5), request a Miscellaneous Variation Request per LUDC Section 16.7.3.5.A.(1), and seeking approval for the expansion of a non-conforming structure.

7. New Business

- a. Title 16 Recodification discussion

8. Acceptance of Previous Minutes

- a. February 26, 2019
- b. July 23, 2019
- c. August 13, 2019

9. Board Member or CEO Issues or Comment

10. Adjournment



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

Application to the
BOARD OF APPEALS

DATE SUBMITTED	
MAP & LOT	
ASA FEE	
DATE PAID	
DATE COMPLETE	
HEARING DATE	

MISCELLANEOUS VARIATION REQUEST

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 16.7.3.5.A(1)
☐ 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	1 Coleman Avenue Kittery, Maine 03904				
MAP	26	LOT #	5	LOT SIZE	12,065-s.f.
BASE ZONE(S): R-KPV			OVERLAY ZONE(S): OZ-SL-250 ¹		
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)	G. Christopher Miller & D. Kimberly Miller, 19 Jones Avenue Kittery, Maine 03904				
MAILING ADDRESS	c/o Counsel: R. Timothy Phoenix, Hoefle, Phoenix et al 127 Parrott Avenue				
CITY	Portsmouth	STATE	NH	ZIP CODE	03801
PHONE No. 603.436.0666			e-MAIL: tphoenix@hpgclaw.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: 7/22/2019

By:
(Signature)
G. Christopher Miller
(Print Name)

AFFIRMATIONS	<i>(Please read and check all the boxes to confirm)</i>
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Identify relevant Town code sections:											
TITLE	16	CHAPTER	7	SECTION	3	5	A	1		PAGE	206
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.

[illegible]

See attached Memorandum.

[illegible]

HOEFLE, PHOENIX, GORMLEY & ROBERTS, P.A.

ATTORNEYS AT LAW

127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

JUL 23 2019 PM 3:17

July 23, 2019

HAND DELIVERED

Jeffrey Brake, Chair
Kittery Board of Appeals
Town of Kittery
200 Rogers Road
Kittery, Maine 03904

RE: Zoning Relief
G. Christopher Miller & D. Kimberley Miller, Owners & Applicants
1 Coleman Avenue
R-KPV/OZ-SL-250

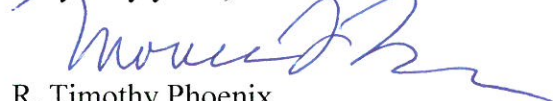
Dear Mr. Brake and Board of Appeals members,

On behalf of owner/applicant Christopher & Kimberly Miller ("Miller") we are pleased to submit an original and nine (9) copies of the following in support of the Millers' request for zoning relief:

1. 7/22/19 – Board of Adjustment Miscellaneous Variation Request Application Form.
2. 7/23/19 – Memorandum by R. Timothy Phoenix with attached exhibits.

Also enclosed is my firm's check in the amount of \$100.00 to cover the application fee. We look forward to presenting this to the Board of Appeals at the August 13, 2019 meeting.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Encl.

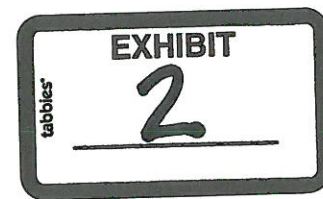
cc: Christopher & Kimberly Miller
John Chagnon, Ambit Engineering
Jennifer Ramsey, Somma Studios
Victoria Martel, Woodburn & Company
Ben Auger, Auger Building Company

DANIEL C. HOEFLE
R. TIMOTHY PHOENIX
LAWRENCE B. GORMLEY
STEPHEN H. ROBERTS

R. PETER TAYLOR
JOHN AHLGREN
KIMBERLY J.H. MEMMESHEIMER
MATTHEW G. STACHOWSKE

KEVIN M. BAUM
SAMUEL HARKINSON
MONICA F. KIESER
GREGORY D. ROBBINS

OF COUNSEL:
SAMUEL R. REID



MEMORANDUM

TO: Town of Kittery, Board of Appeals
FROM: R. Timothy Phoenix, Esquire
DATE: July 23, 2019
RE: G. Christopher Miller & D. Kimberley Miller, Owners & Applicants
1 Coleman Avenue
Residential-Kittery Point Village District
Shoreland & Wetland Body Protection Area-250

Dear Chair Brake and Board of Appeals Members:

On behalf of Christopher and Kimberley Miller ("Miller"), Applicants, we are pleased to submit this memorandum and attached exhibits in support of a Miscellaneous Variation Request to be considered by the Board of Appeals ("BOA") at its August 13, 2019 meeting.

I. Exhibits

- A. Plan Set by Ambit Engineering.
 - 7/16/2019 – Existing Conditions & Demolition Plan.
 - 7/22/2019 – Permit Application Plan
- B. Proposed Elevations.
- C. Landscape Plan.
- D. Kittery Tax Map 26.
- E. 3/1/2019 - Deed into Millers.

II. Property/Project

One Coleman Avenue is a 12,065-s.f. lot upon which is located a 1950s era two-bedroom cottage (the "Property") located in the Residential-Kittery Point Village District ("R-KPV"). Because the Property is within 250-ft. of the ocean, and within 100-ft. of a freshwater wetland on an abutting lot to the north, the Property is subject to the Shoreland Protection and Wetland Body Protection Overlay District. The Property is nonconforming in area and most of the existing home and garage is located within the 100-ft. wetland buffer and within the Coleman Avenue front yard setback. Applicants intend to remove the existing home and construct a tasteful new home (the "Project"). The resulting home will be more conforming to the R-KPV dimensional requirements set forth in the Kittery Zoning Ordinance ("KZO").

III. Relief Required

Because the existing lot is nonconforming, a relaxation of yard requirements for the front yard setback on Coleman must be approved by the BOA. KZO §16.7.3.5.A(1). (See relief chart

inset below). Separate approval from the Planning Board for development in the Shoreland Protection & Wetland Body Zone is also required pursuant to KZO §16.7.3.3.C(1).

<u>Requirement</u>	<u>Existing</u>	<u>Proposed</u>	<u>Comment</u>
<u>Minimum Front Yard (east) 40'</u> <u>(Coleman)</u>	0'	15.1'	More conforming

The lot itself is a prior nonconforming lot which may continue. Aside from the requested relief and Planning Board Approval, all other dimensional requirements met. The subject parcel, thus the project is significantly burdened by at least the following factors:

- a. A 40 ft. setback applies to Coleman Avenue and Pepperell Road frontages where a typical side setback is only 15-ft.
- b. Approximately one-third of the lot is a wetland buffer associated with a freshwater wetland located on an abutting lot.
- c. The lot is undersized under current zoning.

IV. Analysis pursuant to KZO 16.6.6.A and B:

A. Upon establishing that it has a basis in law to conduct the hearing and decide the question, The Board of Appeals may grant a miscellaneous variation request to relax yard requirements on a nonconforming lot after consideration of the following criteria:

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

Response: A permitted single family residence exists and is proposed, accordingly, the Project will not negatively affect surrounding properties in R-KPV or adjacent zones.

- (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;

Response: As indicated above, a permitted single-family residential use in a residential zone will not negatively affect surrounding uses in the same zone or adjacent zones.

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

Response: The proposal is for a new code compliant home with increased setbacks to freshwater wetland and to Coleman Avenue that complies with other

dimensional requirements, accordingly the Project will enhance the safety, health, and welfare of the Town.

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

Response: Considering the general purposes of the KZO and the purposes of front yard setbacks to provide sightlines for motorists and pedestrians and to ensure adequate air, light, and separation for stormwater treatment, the proposed code compliant, tasteful, and permitted residential home in a residential zone, with improved wetland setback and Coleman front yard setbacks, compliant side yard setbacks, and compliant building coverage and devegetated area, the proposal is in harmony with and promotes the general purposes of the Ordinance.

Accordingly, where a tasteful new code-compliant home will be constructed and will become more conforming with respect to the Coleman Avenue front yard setback and the freshwater wetland setback, all the above criteria are met.

B. In making such a determination, the BOA must also give consideration to the following factors:

- (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;

Response: Proposed is a residential use in a residential zone.

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

Response: A new tastefully constructed permitted single-family home will enhance property values.

- (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'

Response: A single family home exists and will remain, accordingly there is no change compared to existing conditions.

- (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;

Response: The lot is served by town water and supports a compliant septic system.

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

Response: Not applicable.

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

Response: Not applicable.

- (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;

Response: Not applicable.

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

Response: Reasonable off-street parking is provided for the new home.

- (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;

Response: A new code-compliant single-family home will be constructed. No hazards will result from the project.

- (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;

Response: No overcrowding will occur, building coverage will remain very low at 11.9% and devegetated area will be compliant at 19.8%.

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

Response: At 11.9%, the proposed project is well under the maximum building coverage requirement and complies with devegetated area requirements.

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

Response: Not applicable given the single-family homes is permitted in the R-KPV District.

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

Response: Building and devegetated coverage are compliant, and the landscaping plan is appropriate for the lot. (Exhibit C). Accordingly, adequate grading and natural drainage will be provided.

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

Response: Yes.

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

Response: Yes.

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

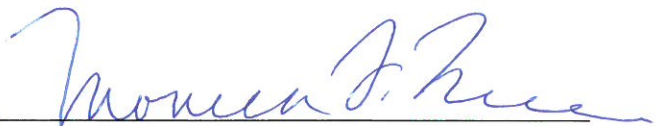
Response: The proposal includes a new state of the art Advanced On-Site Septic System that meets state requirements and the setback requirements of KZO Table 16.9. It also complies with the applicable wetland setbacks. The proposal is also subject to further review by the Planning Board.

Given that the proposed newly constructed, tasteful, and code compliant home will be more conforming with respect to the Coleman Avenue front yard setback and the freshwater wetland setback, and complies with all other setbacks, building coverage and devegetated area requirements, the applicable factors are satisfied.

V. Conclusion

For all the reasons stated herein, the Millers respectfully request that the BOA approve the miscellaneous variation request.

Respectfully submitted,
G. Christopher Miller & D. Kimberley Miller



By: R. Timothy Phoenix
Monica F. Kieser
Hoefle, Phoenix, Gormley & Roberts, P.A.
127 Parrott Avenue
Portsmouth, NH 03801
(603) 436-0666

2p →
ε

Return to:
George and Dianne Miller
1 Coleman Avenue
Kittery Point, ME 03905

NANCY E HAMMOND, REGISTER OF DEEDS



Bk 17904 PG 546

Instr # 2019007418

03/05/2019 10:57:26 AM

Pages 2 YORK CO

EXHIBIT

E

tabbies

WARRANTY DEED

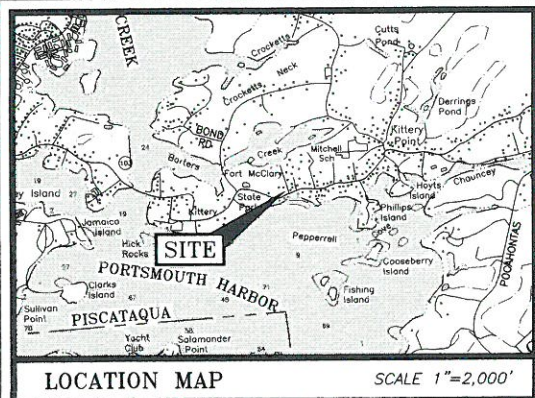
KNOW ALL PERSONS BY THESE PRESENTS: That **Timothy C. Coyne**, Single, of PO Box 235, Kittery Point, ME 03905, for consideration paid grants to **George Christopher Miller and Dianne Kimberley Miller**, of 19 Jones Avenue, Kittery, ME 03904, as joint tenants with rights of survivorship, with WARRANTY COVENANTS:

A certain lot or parcel of land, together with the buildings thereon, situate in Kittery Point, in the Town of Kittery, County of York and State of Maine, as depicted on plan entitled "Plan of Land Prepared for Daniel R. Mann, Kittery Point, Maine", prepared by Thomas F. Moran, dated June 15, 1982 and recorded in the York County Registry of Deeds, more particularly bounded and described as follows:

Beginning at an iron pin at the corner of Coleman Avenue and Pepperrell Road; thence running N 86° 41' 52" W along Pepperrell Road a distance of 78.05 feet to an iron pin; thence turning and running N 01° 22' 41" E along a stone wall a distance of 156.97 feet to an oak hub; thence turning and running N 89° 15' 45" E a distance of 73.19 feet to an iron pipe situate on the westerly side of Coleman Avenue; thence turning and running S 00° 20' 20" E along Coleman Avenue a distance of 162.36 feet to an iron pin and the point of beginning.

Meaning and intending to describe and convey the same premises conveyed to Timothy C. Coyne by deed of Leigh T. Whittemore, Personal Representative of the Estate of Margaret Tower Whittemore, dated March 26, 2017 and recorded in the York County Registry of Deeds at Book 17453, Page 532.

Maine R E Transfer Tax Paid



LEGEND:

- EXISTING**
- N/F
 - RP
 - YCRD
 - RR SPK FND
 - IR FND
 - IP FND
 - DH FND
 - NHFB FND
 - TB FND
 - BND w/DH
 - ST BND w/DH
 - RR SPK SET
 - IR SET
 - IP SET
 - DH SET
 - BND w/DH
 - ST BND w/DH
- NOW OR FORMERLY RECORD OF PROBATE**
- YORK COUNTY REGISTRY OF DEEDS
MAP 11 / LOT 21
- RAILROAD SPIKE FOUND/SET**
- IRON ROD FOUND/SET**
- DRILL HOLE FOUND/SET**
- NHFB FOUND**
- TOWN BOUND FOUND**
- BOUND w/ DRILL HOLE**
- STONE BOUND w/DRILL HOLE**
- OVERHEAD ELECTRIC WIRES**
- CONTOUR**
- SPOT ELEVATION**
- EDGE OF PAVEMENT (EP)**
- WOODS / TREE LINE**
- UTILITY POLE (w/ GUY)**
- GAS SHUT OFF**
- WATER SHUT OFF/CURB STOP**
- GATE VALVE**
- HYDRANT**
- METER (GAS, WATER, ELECTRIC)**
- CATCH BASIN**
- SEWER MANHOLE**
- DRAIN MANHOLE**
- SIGNS**
- ELEVATION**
- EDGE OF PAVEMENT**
- FINISHED FLOOR**
- TEMPORARY BENCHMARK**
- TYPICAL**
- LANDSCAPED AREA**
- TO BE REMOVED**

WETLAND NOTES:

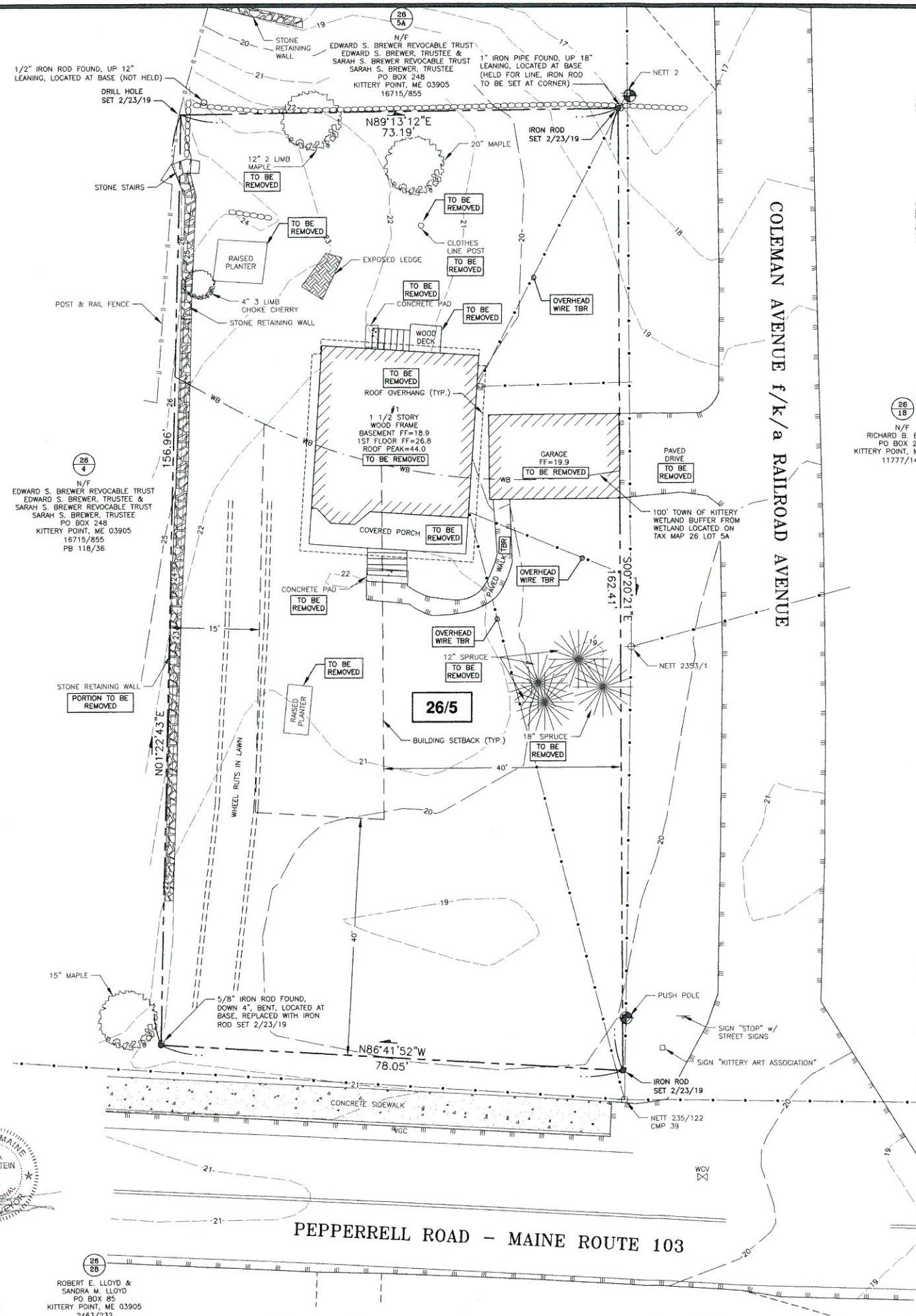
1) WETLAND LINE DELINEATED BY STEVEN D. RIKER, CWS ON 1/28/2019 IN ACCORDANCE WITH THE FOLLOWING STANDARDS:

- U.S. ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL, TECHNICAL REPORT Y-87-1 (JAN. 1987), AND REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHEASTERN AND NORTHEAST REGION, VERSION 2.0, JANUARY 2012.
- FIELD INDICATORS OF HYDRIC SOILS IN THE UNITED STATES, VERSION 8.1, USDA-NRCS, 2017 AND (FOR DISTURBED SITES) FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND, VERSION 4. NEWPPC WETLANDS WORK GROUP (2017).
- NATIONAL LIST OF PLANT SPECIES THAT OCCUR IN WETLANDS: NORTHEAST (REGION 1), USFWS (MAY 1988).
- CLASSIFICATION OF WETLANDS AND DEEPWATER HABITATS OF THE UNITED STATES. USFWS MANUAL FWS/OBS-79/31 (1997).

2) WETLAND DELINEATION WAS FIELD LOCATED BY AMBIT ENGINEERING, INC.

THIS SURVEY CONFORMS TO THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS CHAPTER 90 STANDARDS OF PRACTICE, EFFECTIVE DATE APRIL 1, 2001 EXCEPT AS NOTED ON THIS PLAN.

PAUL A. DOBERSTEIN, PLS #2526
DATE 7/16/2019



DEMOLITION NOTES

- SEDIMENT AND EROSION CONTROLS SHALL BE INSTALLED BY THE SITE/DEMOLITION CONTRACTOR PRIOR TO THE START OF DEMOLITION AND CLEARING/GRUBBING OPERATIONS.
- THE CONTRACTOR SHALL SECURE ALL PERMITS FOR DEMOLITION AND DISPOSAL MATERIALS TO BE REMOVED FROM THE SITE. THE CONTRACTOR SHALL POST BONDS AND PAY PERMIT FEES AS REQUIRED. BUILDING DEMOLITION CONTRACTOR SHALL BE RESPONSIBLE FOR PERMITS AND DISPOSAL OF ALL BUILDING DEMOLITION DEBRIS IN AN APPROVED OFF-SITE LANDFILL.
- ASBESTOS OR HAZARDOUS MATERIAL, IF FOUND ON SITE, SHALL BE REMOVED BY A LICENSED HAZARDOUS MATERIAL CONTRACTOR.
- THE CONTRACTOR SHALL ARRANGE FOR THE APPROPRIATE UTILITY COMPANY TO ABANDON ANY UTILITY AS REQUIRED, OR AS OTHERWISE NOTED. ALL SERVICES MAY NOT BE SHOWN ON THIS PLAN. ALL UTILITY WIRES SHALL BE REMOVED FROM ANY UTILITY POLE BEING REMOVED. THE CONTRACTOR SHALL INVESTIGATE THE SITE PRIOR TO BIDDING TO DETERMINE THE EXTENT OF SERVICE PIPING TO BE REMOVED, CUT, OR PLUGGED. THE CONTRACTOR SHALL PAY ALL UTILITY COMPANY FEES FOR ABANDONMENT AND REMOVAL.
- THE CONTRACTOR SHALL PROTECT ALL IRON PINS, MONUMENTS, AND PROPERTY CORNERS DURING DEMOLITION ACTIVITIES. ANY CONTRACTOR DISTURBED PINS, MONUMENTS, AND PROPERTY CORNERS, ETC. SHALL BE RESET BY A PROFESSIONAL LAND SURVEYOR AT THE EXPENSE OF THE CONTRACTOR.
- THE CONTRACTOR SHALL ADHERE TO ALL OSHA, FEDERAL, STATE AND LOCAL REGULATIONS WHEN OPERATING CRANES, BOOMS, HOISTS, ETC. IN PROXIMITY OF OVERHEAD ELECTRIC LINES. IF CONTRACTOR MUST OPERATE EQUIPMENT CLOSE TO ELECTRIC LINES, CONTACT POWER COMPANY TO MAKE ARRANGEMENTS FOR PROPER SAFEGUARDS, AND UTILITY COMPANY FEES SHALL BE PAID BY THE CONTRACTOR.
- INFORMATION ON EXISTING UTILITIES AS BEEN COMPILED FROM AVAILABLE INFORMATION INCLUDING UTILITY COMPANIES AND MUNICIPAL RECORD MAPS AND/OR FIELD SURVEY AND IS NOT GUARANTEED CORRECT OR COMPLETE. UTILITIES ARE SHOWN TO ALERT THE CONTRACTOR TO THEIR PRESENCE AND THE CONTRACTOR IS SOLELY RESPONSIBLE FOR DETERMINING ACTUAL LOCATIONS AND ELEVATIONS OF ALL UTILITIES INCLUDING SERVICES. PRIOR TO DEMOLITION OR CONSTRUCTION THE CONTRACTOR SHALL CONTACT "DIG SAFE" 72 HOURS BEFORE COMMENCEMENT OF WORK AT (888) 344-7233 AND VERIFY ALL UTILITY AND DRAINAGE LOCATIONS.
- THE CONTRACTOR IS RESPONSIBLE FOR SECURING A DEMOLITION PERMIT IF REQUIRED FROM THE TOWN OF KITTERY BUILDING DEPARTMENT AND MUST FURNISH THE REQUIRED APPLICATION MATERIAL AND PAY ALL FEES.
- THE CONTRACTOR SHALL ARRANGE FOR AND INSTALL TEMPORARY OR PERMANENT UTILITY CONNECTIONS WHERE INDICATED ON PLAN OR AS REQUIRED. MAINTAIN UTILITY SERVICES TO BUILDINGS THAT ARE TO REMAIN. CONTRACTOR TO COORDINATE WITH UTILITY COMPANIES FOR INSTALLATION AND PAY UTILITY COMPANY FEES.
- THE CONTRACTOR SHALL NOT COMMENCE DEMOLITION OR UTILITY DISCONNECTIONS UNTIL AUTHORIZED TO DO SO BY THE OWNER.
- NO SALVAGE SHALL BE PERMITTED UNLESS PAID TO THE OWNER AS CREDIT.
- THE ARCHITECT OR ENGINEER IS NOT RESPONSIBLE FOR SITE SAFETY MEASURES TO BE EMPLOYED DURING CONSTRUCTION. THE ARCHITECT OR ENGINEER HAS NO CONTRACTUAL DUTY TO CONTROL THE SAFEST METHODS OR MEANS OF THE WORK, JOBSITE RESPONSIBILITIES, SUPERVISION OR TO SUPERVISE SAFETY, AND DOES NOT VOLUNTARILY ASSUME ANY SUCH DUTY OR RESPONSIBILITY.
- THE CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE STATE, LOCAL AND FEDERAL CODES FOR EXCAVATION, TRENCHING AND TRENCH PROTECTION REQUIREMENTS.

OWNER:

SIGNATURE

DATE

APPROVED BY THE KITTERY PLANNING BOARD

CHAIRMAN

DATE

OWNER & APPLICANT:
GEORGE CHRISTOPHER MILLER
& DIANNE KIMBERLY MILLER
19 JONES AVENUE
KITTERY, MAINE 03904

PREPARED BY:
AMBIT ENGINEERING, INC.
200 GRIFFIN ROAD, UNIT 3
PORTSMOUTH, NH 03801

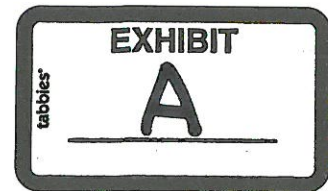


AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors

200 Griffin Road, Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

NOTES:

- PARCEL IS SHOWN ON THE TOWN OF KITTERY ASSESSOR'S MAP 26 AS LOT 5.
- OWNERS OF RECORD:
GEORGE CHRISTOPHER MILLER &
DIANNE KIMBERLY MILLER
19 JONES AVENUE
KITTERY, MAINE 03904
17904/546
PLAN BOOK 118 PAGE 36
- PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 2301710005D. EFFECTIVE DATE JULY 3, 1986.
- EXISTING LOT AREA:
12,065 S.F.
0.2770 ACRES
- PARCEL IS LOCATED IN THE RESIDENTIAL-KITTERY POINT VILLAGE (R-KPV) ZONING DISTRICT AND IS SUBJECT TO THE SHORELAND-WATER BODY / WETLAND PROTECTION AREA (0Z-SL-250') OVERLAY ZONE.
- DIMENSIONAL REQUIREMENTS:
MIN. LOT AREA: 40,000 S.F.
FRONTAGE: 150 FEET
SETBACKS: FRONT 40 FEET
SIDE 15 FEET
REAR 15 FEET
MAXIMUM STRUCTURE HEIGHT: 35 FEET
MAXIMUM BUILDING COVERAGE: 20%
- THE PURPOSE OF THIS PLAN IS TO SHOW THE RESULT OF A STANDARD BOUNDARY AND TOPOGRAPHIC SURVEY AND TO SHOW PROPOSED DEMOLITION FOR SITE RE-DEVELOPMENT ON ASSESSOR'S MAP 26 LOT 5 IN THE TOWN OF KITTERY.
- VERTICAL DATUM IS MEAN SEA LEVEL NAVD83. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GPS OBSERVATIONS ($\pm 0.2'$).
- WETLAND BUFFER TO THE HIGHEST ANNUAL TIDE LINE OF THE PISCATAQUA RIVER DOES NOT IMPACT THE PARCEL PER TOWN OF KITTERY LAND USE AND DEVELOPMENT CODE 16.9.4.1.
- WETLAND BUFFER SHOWN HEREON IS FROM AN OFFSITE WETLAND. THE OFFSITE WETLAND WAS ONLY PARTIALLY DELINEATED, AND IS PRESUMED TO BE OVER 1 ACRE IN SIZE BASED ON FIELD OBSERVATIONS AND AERIAL PHOTOGRAPHY OF THE AREA.



MILLER RESIDENCE
1 COLEMAN AVENUE
KITTERY, MAINE

NO.	DESCRIPTION	DATE
1	REVISE PER COMMENTS	7/16/19
0	ISSUED FOR COMMENT	7/12/19

Reduced Size
Not to Scale

SCALE 1"=10' JULY 2019

**EXISTING CONDITIONS &
DEMOLITION PLAN**

C1

LEGEND:

EXISTING

N/F
RP
YCRD

RR SPK FND
RR SPK SET
IR FND
IR SET
IP FND
IP SET
DH FND
DH SET
NHHB FND
TB FND
BND w/DH
ST BND w/DH

100
97x3

SPOT ELEVATION

EDGE OF PAVEMENT (EP)

WOODS / TREE LINE

UTILITY POLE (w/ GUY)

GAS SHUT OFF

WATER SHUT OFF/CURB STOP

GATE VALVE

HYDRANT

METER (GAS, WATER, ELECTRIC)

CATCH BASIN

SEWER MANHOLE

DRAIN MANHOLE

SIGNS

ELEVATION

EDGE OF PAVEMENT

FINISHED FLOOR

TEMPORARY BENCHMARK

TYPICAL

LANDSCAPED AREA

TO BE REMOVED

NOW OR FORMERLY
RECORD OF PROBATE
YORK COUNTY REGISTRY OF DEEDS
MAP 11 / LOT 21

RAILROAD SPIKE FOUND/SET

IRON ROD FOUND/SET

IRON PIPE FOUND/SET

DRILL HOLE FOUND/SET

NHDOT BOUND FOUND

TOWN BOUND FOUND

BOUND w/ DRILL HOLE

STONE BOUND w/DRILL HOLE

OVERHEAD ELECTRIC WIRES

CONTOUR

SPOT ELEVATION

EDGE OF PAVEMENT (EP)

WOODS / TREE LINE

UTILITY POLE (w/ GUY)

GAS SHUT OFF

WATER SHUT OFF/CURB STOP

GATE VALVE

HYDRANT

METER (GAS, WATER, ELECTRIC)

CATCH BASIN

SEWER MANHOLE

DRAIN MANHOLE

SIGNS

ELEVATION

EDGE OF PAVEMENT

FINISHED FLOOR

TEMPORARY BENCHMARK

TYPICAL

LANDSCAPED AREA

TO BE REMOVED

DEVEGETATED AREAS (TO PROPERTY LINES)

STRUCTURE	EXISTING DEVEGETATED (S.F.)	POST-CONSTRUCTION DEVEGETATED (S.F.)
MAIN STRUCTURE	743	1,269
GARAGE	312	0
PAVED AREAS	105	247
RETAINING WALLS	212	48
CONCRETE (PAD)	13	17
PORCHES, DECKS, & STAIRS	228	307
PATIO, FIRE PIT, & SEAT WALL	0	345
STONE WALKWAY	0	159
TOTAL	1,613	2,392
LOT SIZE	12,065	12,065
% DEVEGETATED AREA	13.4%	19.8%

OWNER:

SIGNATURE

DATE

APPROVED BY THE KITTERY PLANNING BOARD

CHAIRMAN

DATE

THIS SURVEY CONFORMS TO THE MAINE BOARD OF LICENSURE
FOR PROFESSIONAL LAND SURVEYORS CHAPTER 90 STANDARDS
OF PRACTICE, EFFECTIVE DATE APRIL 1, 2001 EXCEPT AS
NOTED ON THIS PLAN.

PAUL A. DOBERSTEIN, PLS #2526

7/22/2019

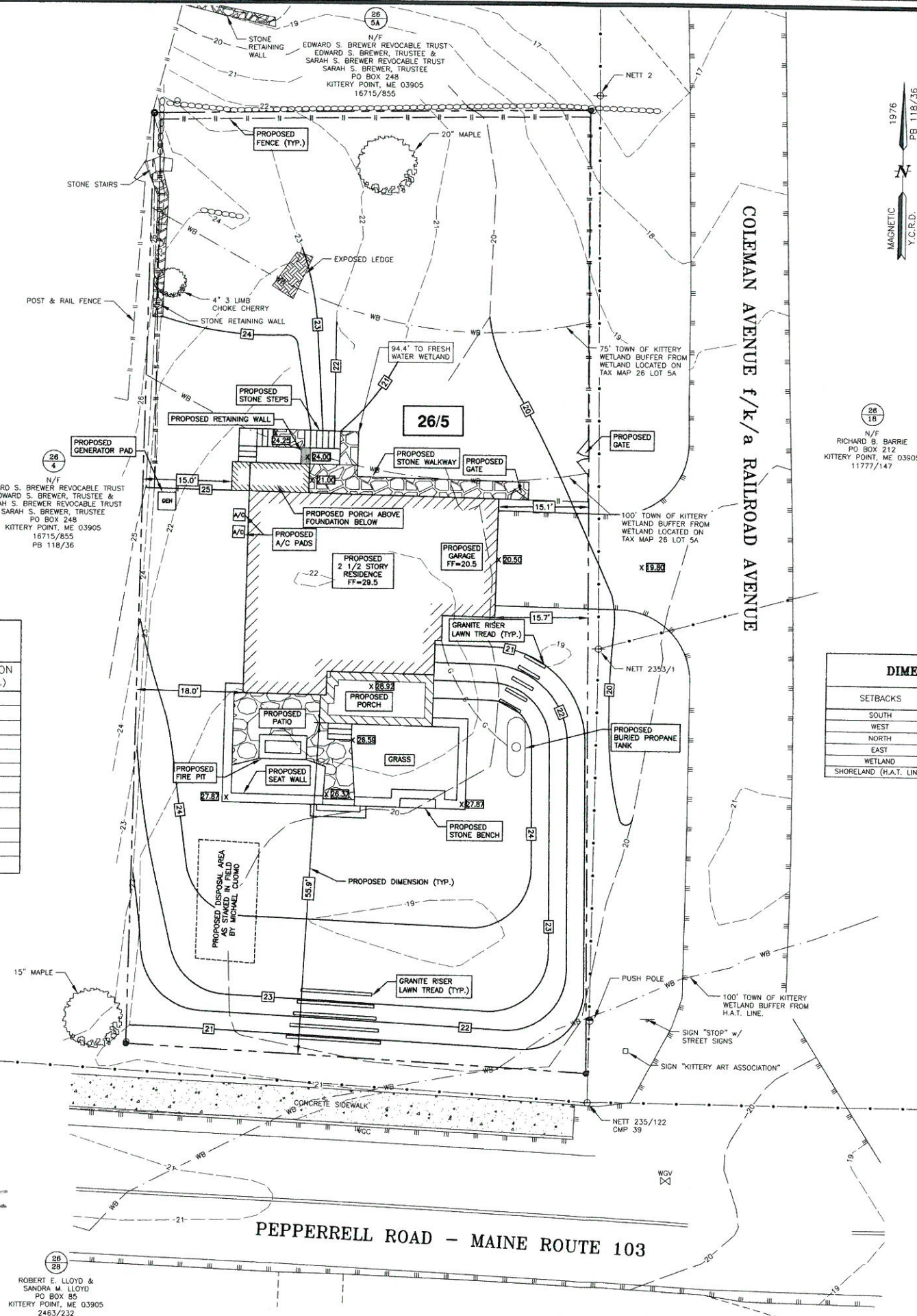
DATE



GRAPHIC SCALE



ROBERT E. LLOYD &
SANDRA M. LLOYD
PO BOX 85
KITTERY POINT, ME 03905
2463/232



1976
PB 118/36

MAGNETIC
Y.C.R.D.

26
18
N/F
RICHARD S. BARRIE
PO BOX 212
KITTERY POINT, ME 03905
11777/147

DIMENSIONAL TABLE

SETBACKS	EXISTING	PROPOSED
SOUTH	85.5'	55.3'
WEST	23.3'	15.0'
NORTH	35.9'	59.0'
EAST	0.0'	15.1'
WETLAND	75.2'	94.4'
SHORELAND (H.A.T. LINE)	182.4'	155.0'

Reduced Size
Not to Scale

OWNER & APPLICANT:
GEORGE CHRISTOPHER MILLER
& DIANNE KIMBERLY MILLER
19 JONES AVENUE
KITTERY, MAINE 03904

PREPARED BY:
AMBIT ENGINEERING, INC.
200 GRIFFIN ROAD, UNIT 3
PORTSMOUTH, NH 03801



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors

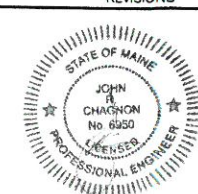
200 Griffin Road, Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

NOTES:

- PARCEL IS SHOWN ON THE TOWN OF KITTERY ASSESSOR'S MAP 26 AS LOT 5.
- OWNERS OF RECORD:
GEORGE CHRISTOPHER MILLER &
DIANNE KIMBERLY MILLER
19 JONES AVENUE
KITTERY, MAINE 03904
17904/546
PLAN BOOK 118 PAGE 36
- PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 2301710005D. EFFECTIVE DATE JULY 3, 1986.
- EXISTING LOT AREA:
12,065 S.F.
0.2770 ACRES
- PARCEL IS LOCATED IN THE RESIDENTIAL-KITTERY POINT VILLAGE (R-KPV) ZONING DISTRICT AND IS SUBJECT TO THE SHORELAND-WATER BODY / WETLAND PROTECTION AREA (02-SL-250') OVERLAY ZONE.
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SETBACKS: 40 FEET
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SIDE 15 FEET
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MAXIMUM BUILDING COVERAGE: 20%
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- WETLAND BUFFER SHOWN HEREON IS FROM AN OFFSITE WETLAND. THE OFFSITE WETLAND WAS ONLY PARTIALLY DELINEATED, AND IS PRESUMED TO BE OVER 1 ACRE IN SIZE BASED ON FIELD OBSERVATIONS AND AERIAL PHOTOGRAPHY OF THE AREA.
- PROPOSED BUILDING COVERAGE: 1,269 S.F. (MAIN STRUCTURE) + 162 S.F. (PORCH) = 1,431 S.F.
1,431 S.F./12,065 S.F. = 11.9%

MILLER RESIDENCE 1 COLEMAN AVENUE KITTERY, MAINE

NO.	DESCRIPTION	DATE
2	DIMENSION TABLE, SETBACK LINES	7/22/19
1	REVISE COVERAGE, ADD DIMENSIONS	7/16/19
0	ISSUED FOR COMMENT	7/12/19

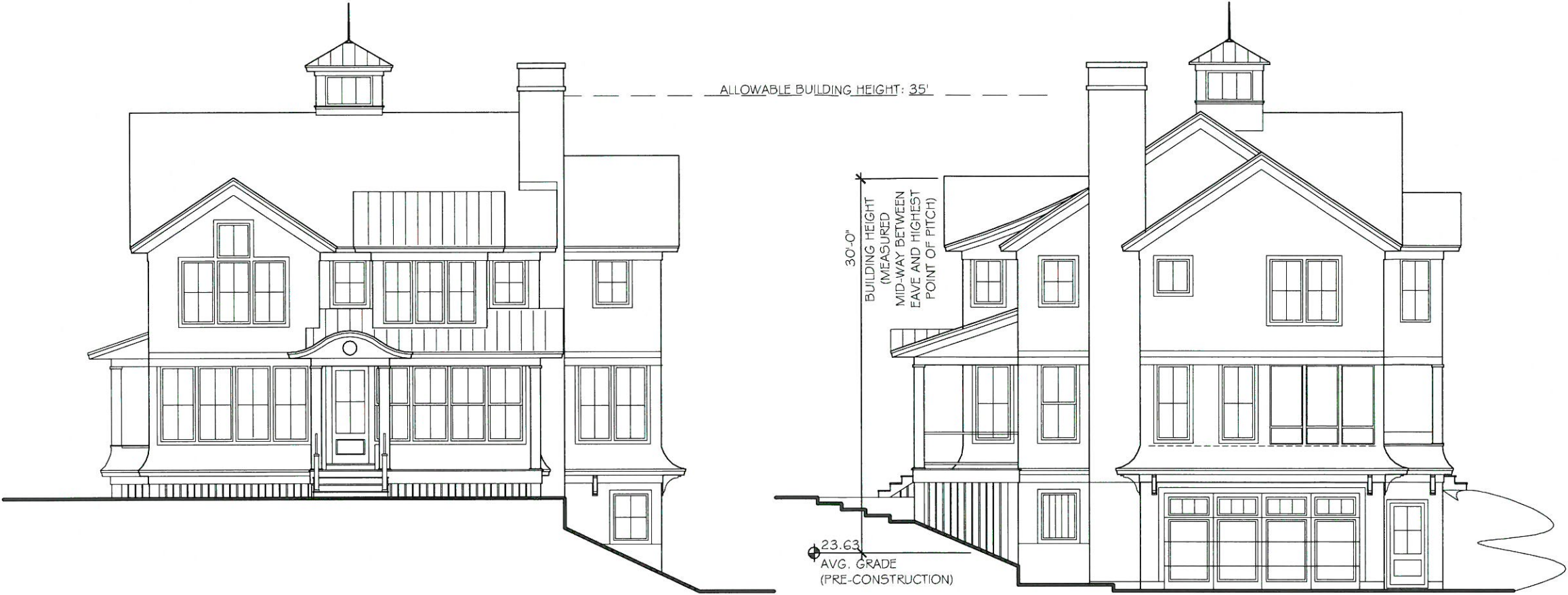


SCALE 1"=10'

JULY 2019

PERMIT
APPLICATION PLAN

C2



PROPOSED SOUTH ELEVATION
(FACING PEPPERRELL ROAD)

PROPOSED EAST ELEVATION
(FACING COLEMAN AVE.)



PROPOSED NORTH ELEVATION

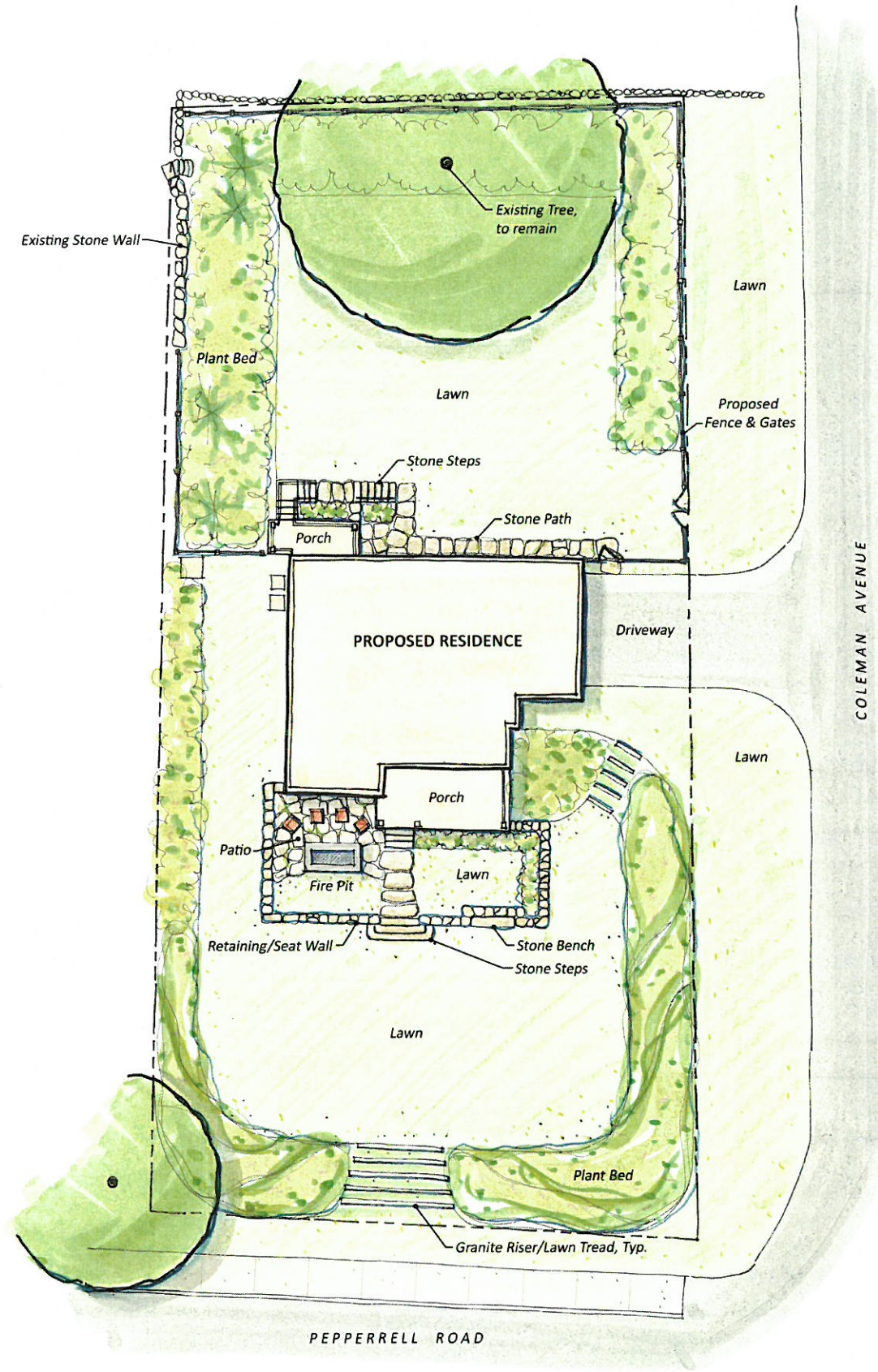


PROPOSED WEST ELEVATION

1 COLEMAN AVE, KITTERY MAINE

SOMMA Studios

$\frac{3}{32}'' = 1'-0''$
AUGUST 13, 2019



tabbles®
EXHIBIT
C

0 2 5 10 20



**woodburn
& company**
LANDSCAPE ARCHITECTURE
103 Kent Place Newmarket, New Hampshire Phone: 603.655.5549

Miller Residence
LANDSCAPE CONCEPT PLAN
1 Coleman Avenue Kittery, Maine

Drawn By: VM
Checked By: RW
Scale: 1" = 10' = 0"
Date: July 23, 2019
Revisions: ZBA Submission

L-1
Sheet 1 of 1

PROPERTY MAP
KITTERY
MAINE



LEGEND

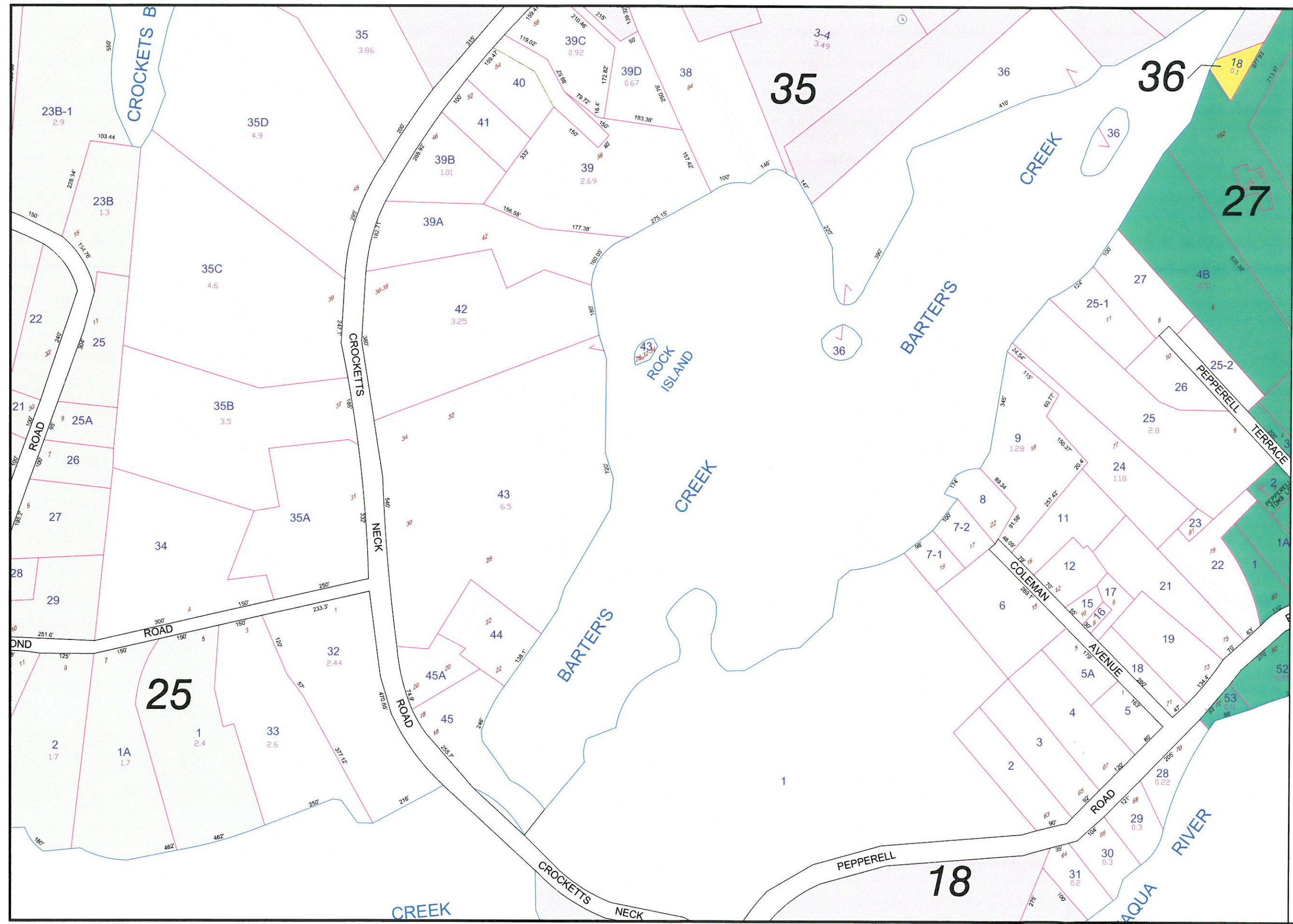
ABUTTING MAP NO.	LOT DIMENSION
R11	LOT DIMENSION
74	PROPERTY LINES
74	RIGHT OF WAY
74	EASEMENT

REVISION TO APRIL 1, 2018
FOR ASSIGNMENT PURPOSES ONLY
NOT FOR PROPERTY CONVEYANCE

SCALE IN FEET

0 100 200

John E. O'Donnell & Associates
632 Bald Hill Road
New Gloucester, Maine 04260
(207) 926-4044
www.jeodonnell.com



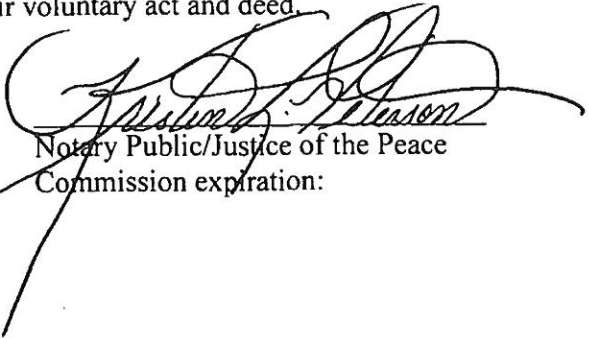
Executed this 1st day of March 2019.


Timothy C. Coyne

State of New Hampshire
County of Rockingham

Then personally appeared before me on this 1st day of March 2019, the said Timothy C. Coyne and acknowledged the foregoing to be his/her/their voluntary act and deed.




Notary Public/Justice of the Peace
Commission expiration:







PLANNING & DEVELOPMENT DEPARTMENT STAFF REPORT

BOA Meeting Date: August 13, 2019

Item #: MVR2019-09

STAFF REPORT – 1 COLEMAN AVE – MISCELLANEOUS VARIATION REQUEST

Project Name: 1 Coleman Avenue

Applicant: Chris & Kim Miller

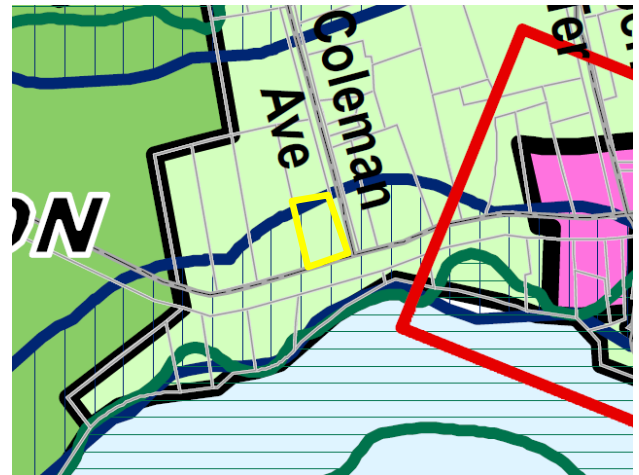
Owner: Chris & Kim Miller

Proposed Development: New dwelling unit

Requests: Miscellaneous Variation Request per LUDC Section 16.7.3.5.A.1 Nonconformance, seeking relief of setbacks for a residential structure on a non-conforming lot

Site Addresses: 1 Coleman Avenue

Map & Lot Numbers: M 26 L 05



Current Zoning:

Residential – Kittery Point Village (R-KPV) - This zoning district is intended to preserve the established character and development pattern of the Kittery Point neighborhood while assuring that any new development is consistent with this historical development pattern and is environmentally suitable. To this end, the following apply:

The following uses are permitted in the Residential – Kittery Point Village (R-KPV) Zone: (1) Dwellings, excluding mobile homes, in a single-family, duplex and multiunit residential configuration with not more than four units per building. The proposed use is permitted by right.

Staff Recommendation: APPROVAL of miscellaneous variation request.

District Standards:

Residential – Kittery Point Village Zoning District Standards			
Land Area per Dwelling (min.)	N/A	Front Yard Setback (min.)	40 feet
Maximum Building Coverage	20%	Rear Yard Setback (min.)	15 feet
Lot Size (min.)	40,000 sf	Side Yard Setback (min.)	15 feet

Current Use: Dwelling unit, occupied house

Surrounding Land Uses:

West: Residential – Kittery Point Village (R-KPV), dwelling unit

East: Residential – Kittery Point Village (R-KPV), dwelling unit

North: Residential – Kittery Point Village (R-KPV), vacant

South: Residential – Kittery Point Village (R-KPV) & Shoreland Overlay (OZ-SL), dwelling unit

Future Land Use:

The subject property is located within a Natural Resources Area of a Limited Growth Area on the Future Land Use Map. A Limited Growth Area is defined in the Comprehensive Plan as, “land where the town would like to discourage growth and development in order to protect natural resources and limit the expansion of public utilities, services, and infrastructure.” A Natural Resource Area is defined in the Comprehensive Plan as, “areas that represent locations in Kittery that are either protected open spaces or critical natural resource areas where development should be restricted and managed to protect the natural environment.”

Site Description:

The subject property consists of a 12,065 square foot lot (.277 acres), located along the northern right-of-way of Pepperrell Road at its intersection with Coleman Avenue. The property is a non-conforming lot of record. The property is zoned Residential – Kittery Point Village (R-KPV). The property is a corner lot and thus a 40-foot front setback is measured from both Pepperrell Road and Coleman Avenue.

History of the Property:

The property contains one dwelling built in approximately 1950, and a detached garage. The garage violates the setback from Coleman Avenue and appears to be situated on the eastern property boundary. The property is impacted by wetlands to the north on the adjacent property and its proximity to the Piscataqua River to the south, each with setback requirements from those respective water bodies.

Description of the Issue:

The applicant proposes to demolish the existing non-conforming structures and construct a new 2 & ½ story house with an attached garage. The owners propose to site the new house to be no more non-conforming than the existing structure. The proposed site plan (Exhibit A of the application) includes a table showing the existing setbacks and proposed setbacks. According to the plans provided, the proposed new house will conform to the 40-foot setback to Pepperrell Road. The new house will sit 15” from Coleman Avenue, where the existing house has no setback from the right-of-way. The new house would be located farther away from the wetlands to the north and still outside the 100-foot setback to the shoreland to the south. The proposed house otherwise conforms to the zoning code and would be no more non-conforming than the existing structure.

The owners request relief from the front yard setback on Coleman Avenue (15 feet versus required 40 feet) and from the wetland setbacks to the north (94 feet versus required 100 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 nonconformities covered in Section 16.7.3. Further, Section 16.7.3.5.A.(1) states, “Nonconforming lots. In any district, notwithstanding limitations imposed by other sections of this title, single noncontiguous lots legally created when recorded may be built upon consistent with the uses in the particular zone. These provisions apply even though such lots fail to meet the minimum requirements for area or width, or both, which are applicable in the zone, provided that yard dimensions and other requirements, not involving area or width, or both, of the lot conform to the regulation for the zone in which such lot is located. 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 adjacent properties are zoned Residential – Kittery Point Village and contain the same 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 dwelling units.

- (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 proposed use involved is allowed in the zone by right.

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

The proposed expansion is an appropriate use of the land. The proposed expansion would not be detrimental to property values.

- (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;*

There is no proposed increase in density that would result in additional vehicular traffic.

- (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 project proposes to construct adequate on-site septic facilities, subject to approval by permitting authorities.

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

The proposed 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 proposed 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 project proposes to construct adequate space for 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;*

The project proposes landscape buffering and vegetation per the code.

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

The project proposes grading of the lot. The owner will need to comply with all Town regulations and best management practices related to stormwater runoff and erosion control during and after construction. Any disturbed area would need to be stabilized with new landscaping.

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

Existing pedestrian facilities exist along Pepperrell Road.

- (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 dwelling use.

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


Other than the miscellaneous variation request filed here, the proposed use and site plan appear to conform to Title 16.8 and 16.9, subject to Planning Board review and approval.

Using the standards and criteria found in 16.6.6 of the LUDC, Staff recommends **APPROVAL** of the miscellaneous variation request to reduce the setbacks as proposed.

MEMORANDUM

TO: Adam Causey, AICP, Director of Planning & Development

CC: Jaimie Steffen, Town Planner
Kittery Land Issues Committee (KLIC)

From: Ben Smith, AICP, North Star Planning 

RE: Summary of changes in reorganized ordinance

Date: August 21, 2019

North Star Planning has completed the reorganization of the existing Title 16 ordinance elements. The next phase of work is to make select changes to existing ordinance language that will update, clarify, and in some cases add new definitions, standards, and processes. The newly reorganized ordinance framework should also make it easier to incorporate future changes into appropriate sections.

Ordinance Reorganization

The process of moving and reorganizing ordinance elements began in April 2019. The reorganization task was not to add new ordinance language or to delete existing ordinance language. All of the existing ordinance provisions have been carried over into this draft. The purpose of this approach is to show any areas of duplication, internal inconsistencies, and gaps in the existing ordinance language.

In some cases, ordinance elements were combined into single sections. For example, all elements dealing with how the ordinance is administered and enforced are now included in one section, Title 16.2. In others, ordinance elements are proposed to be separated out from each other. The existing "Title 16.10 - Development Plan and Application Review," is proposed to be broken out into its more specific elements to increase clarity and ease of use for staff, the Planning Board, and applicants. These new proposed stand alone sections are "Title 16.6 – Master Site Plan Review," "Title 16.7 – Site Plan Review," and "Title 16.8 – Subdivision Review."

Comparison of existing and proposed Title 16 sections

Existing Ordinance Sections	Proposed Reorganization of Sections
16.1 General Provisions	16.1 General Provisions
16.2 Definitions	16.2 Administration and Enforcement
16.3 Land Use Zone Regulations	16.3 Definitions
16.4 Administration and Enforcement	16.4 Land Use Regulations
16.5 Building/Regulated Activity Permits	16.5 General Performance Standards
16.6 Decision Appeal, Variance and Other Requests	16.6 Master Site Development Plan Review
16.7 General Development Requirements	16.7 Site Plan Review
16.8 Design and Performance Standards for Built Environment	16.8 Subdivision Review
16.9 Design and Performance Standards for Natural Environment	16.9 Shoreland and Marine-Related Development
16.10 Development Plan Application and Review	
16.11 Marine-Related Development	

Summary of major reorganizational moves

- 16.1 - General Provisions.
This section includes wording for the legal basis of the ordinance as well as guidance on interpretation issues. This section now includes not only the Purpose, Applicability, Severability and Amendment provisions, it also includes many of the General Development Requirements including Conformity, Land within street lines, Zone boundary setbacks, and the Nonconformance sections.
- 16.2 – Administration and Enforcement.
This section includes requirements and procedures for the Planning Board, the Zoning Board of Appeals, and the Port Authority, as well as outlining the roles and responsibilities of the Town Planner and the Code Enforcement Officer (CEO) in a single section. This section also contains most of the wording from the existing Building/Regulated

Activity Permits sections, so that all activities that require approval from the CEO are located together. Finally, all of the wording from the existing Decision Appeal, Variance, and Other Requests section has been incorporated here, so that the entire sequence of the approval process for both the CEO and the Board of Appeals are in one place.

- 16.3 – Definitions and 16.4 – Land Use Zone Regulations.
Permitted and Special Exception Uses in the Land Use Regulations into alphabetical order, and the standards C-1, C-2, C-3 sections have been split out as individual districts for clarity.
- 16.5 – General Development Standards.
This section contains all of the general standards for how activities (permitted uses) in Kittery take place, listed in alphabetical order. These regulations include requirements, conditions, and any other standards and restrictions such as hours of operation, buffering and setback requirements, or environmental considerations for each use. This section also includes some technical standards that go beyond Definitions, for items such as Lots and Net Residential Acreage. Most of the elements in this section come from the two existing Design and Performance Standards sections, for the Built and Natural Environment.
- 16.6 – Master Site Development Plan Review, 16.7 – Site Plan Review, and 16.8 – Subdivision Review.
These sections have been separated out from the existing 16.10 – Development Plan Application and Review. These three new sections contain the process, application requirements, approval standards and post-approval requirements for each class of application. The approval standards in the Site Plan Review and Subdivision Review sections have been brought over from the existing Design and Performance Standards sections. As opposed to general standards for uses, these standards are what the Planning Board would use to make determinations and findings on applications.
- 16.9 – Shoreland and Marine Related Development.
No change from the existing section 16.11, apart from the name change.

Next Steps

North Star Planning will be working to finalize a reorganized ordinance framework and fix internal references (highlighted yellow in draft text) and then working with town staff, KLIC, town boards, committees and other stakeholders, to make targeted changes in order to update and clarify definitions, standards, and processes.

Examples of suggested changes will include:

- General Provisions
 - Adding a Rules of Construction section to aid code interpretation decisions.
- Definitions
 - Eliminating definitions that do not show up later in the ordinance or have common dictionary meanings.
- Land Use Regulations
 - Creation of a Use Table that will communicate Permitted and Special Exception Uses by zone.
- General Performance Standards
 - Additional of new standards from definitions that include standards within the definition itself.
 - Further refinement of General Performance Standards that apply to uses anywhere in town, zoning standards that apply to uses within specific zoning districts, and approval standards in Site Plan and Subdivision Review standards used by the Board to review applications for development.
- Site Plan and Subdivision Review
 - Adding clear thresholds for applicability and new wording related to submission requirements and procedures in the placeholders added.
 - Refinement of standards that are applicable to site plan review only and subdivision review only.
 - Creation of Major and Minor Site Plan application categories that would allow for smaller, less impactful developments to proceed through a staff review process and allow the Planning Board to focus on larger projects with bigger impacts and implications for surrounding areas.