



**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 5, 2019  
**CC:** STEPHEN WILSON, CODE ENFORCEMENT OFFICER; SHELLY BISHOP, ASSISTANT CODE ENFORCEMENT OFFICER

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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.

Thank you,

Adam Causey, AICP  
Director, Planning & Development Department



# TOWN OF KITTEERY, MAINE

200 Rogers Road – Kittery, ME 03904

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

www.kitteryme.gov

## KITTEERY 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:

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Board of Appeals, Town of Kittery



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

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## NOTICE OF DECISION

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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

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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 review 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 1<sup>st</sup> 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:

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Jamie Steffen  
Town Planner

Stephen Wilson  
Code Enforcement Officer

Karen Kalmar  
Planning Board Vice Chair

**From:** [debi](#)  
**To:** [Stephen Wilson](#); [jeffbrake@comcast.net](mailto:jeffbrake@comcast.net); [apriltimko@gmail.com](mailto:apriltimko@gmail.com)  
**Cc:** [Adam Causey](#); [Shelly Bishop](#); [annhgrinnell@icloud.com](mailto:annhgrinnell@icloud.com); [karen@kalhill.com](mailto: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

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

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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

ACCESS TO THE TOMB IS PROVIDED AT THE NORTHERN END OF THE PARKING LOT

PERPENDICULAR LAYOUT 9' x 22' (TYPICAL)

40' SETBACK FROM TOMB

PROPERTY BOUNDARY

90° LAYOUT 9' x 19' (TYPICAL)

WHEEL STOP WITH PARKING SIGN (TYPICAL). SIGN TO BE MOUNTED ON FENCE. THIS SIDE OF LOT.

FIELDSTONE WALL

TREE LINE

STONE RETAINING WALL

ARBOR VITAE HEDGE

GRANITE SLAB RETAINING WALL

ARBOR VITAE HEDGE

24'

13'

SHERRAN RESIDENTIAL ZONE  
LAND-USE ZONE BOUNDARY  
LOCAL BUSINESS ZONE

66

PEPPERRELL TERRACE (PRIVATE)

EXISTING EDGE OF PAVEMENT

SPLIT RAIL FENCE

"ONE WAY" "DO NOT ENTER" SIGN

SIGHT DISTANCES

425'

RIGHT

PEPPERRELL ROAD (RT. 103) 25' MPH

PROPOSED CROSSWALK WITH TACTILE WARNING PADS (HANDICAPPED ACCESSIBLE WARNING DEVICES)

"NO THRU TRAFFIC" SIGN

ADJUST EXISTING EDGE OF PAVEMENT TO PROVIDE 90° PARKING ARRANGEMENT. REMOVE UNNEEDED PAVED AREAS. LOAM AND SEED TO MATCH NEARBY GRASS

PROPOSED E

115 SEAT BISTRO AND 2BR APARTMENT BUILDING

13









