



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

**Board of Appeals
Meeting Agenda, Council Chambers
Tuesday, August 13, 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

a. Adam Butler, applicant, and Michael O'Keefe, owner of 43 Love Lane (Map 4 Lot 196), request a Miscellaneous Variation Request per LUDC Section 16.7.3.3.B(1), and seeking approval for the expansion of a non-conforming structure.

b. 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.

6. Unfinished Business

7. New Business

8. Acceptance of Previous Minutes

a. February 26, 2019

b. July 23, 2019

9. Board Member or CEO Issues or Comment

a. Board training workshop date

10. Adjournment

OBITUARIES & NEWS

Adrienne L. Markham

YORK, Maine — Adrienne L. (Murphy) Markham, Sept. 14, 1936 to Aug. 1, 2019. Died Thursday, Aug. 1, 2019 peacefully in her home in York Beach, Maine.



Adrienne and Thomas loved the beach and ocean and enjoyed summers with family and friends at Rye Beach, N.H., Eliot, Maine and eventually retiring

to York Beach, Maine. They were also annual visitors to Edgartown, Mass. on Martha Vineyard where she had years of fond memories. In her early retirement years Adrienne also enjoyed world traveling with friends being able to visit Italy, Portugal, Spain, Istanbul and Egypt. Adrienne's traveling stopped when her two grandchildren, Nora Markham and Thomas Markham IV, were born and immediately occupied her heart, soul and every waking moment.

Born in Lawrence, Mass. the daughter of the late Dennis and Noela (Tremblay) Murphy, and the sister of the late Michael Murphy. Noela was a homemaker and mender in the Lawrence and Billerica mills and both Dennis and Michael were Lawrence Police Officers.

Adrienne attended Lawrence Public Schools and graduated high school from Saint Mary's where she was an A student and a formidable basketball and tennis player. Adrienne earned a Bachelors degree in Nursing from Saint Anselm College in 1959 and a Masters degree in Nursing from the University of Massachusetts, Salem in 1962. Later she matriculated at Lowell, Mass. in Nov. 1959 and together bought a home and began a family in Chelmsford, Mass. with son Thomas being born in 1965. Also a career educator, Thomas Markham Jr. was appointed Superintendent-Director of Northeast Regional Vocational School District in Wakefield, Mass. that brought the family to a new home in Wakefield. With a career in public education too, Thomas Markham III is today Business Administrator at EDCO Collaborative in Bedford, Mass. and serves on the Wakefield School Committee.

Adrienne is survived by her son, Thomas and his wife, Diane and grandchildren Nora and Thomas, all of Wakefield, Mass.; nieces and nephews Dennis Murphy of Florida, Maryellen (Murphy) 2019 at 10:30 a.m. at Most Blessed Sacrament Church, 11 Grove St., Wakefield, Mass., 01880. Burial services are private. Friends may call on Tuesday, Aug. 6, 2019 from 4 to 8 p.m. at the John Breen Memorial Funeral Home Inc. 122 Amesbury St., Lawrence, Mass., 01841. In lieu of flowers friends are asked to consider a donation to either The Key Foundation of Lowell, Mass. (<http://www.keyfoundation.org/>) or the Saint Jude Children's Hospital of Memphis, Tenn. (<https://www.stjude.org/>).

Mary Ann Watson

PORTSMOUTH, N.H. — Mary Ann (Noel) Watson, 84, of Portsmouth, N.H., passed away on Thursday, Aug. 1, 2019.



Mary Ann was the widow of the late Frederick W. Watson. She is survived by her children, son Rob and wife Patty Watson, daughters Cathy Clark and significant other Ken Aspen, DeeDee and husband Mike Doran, Sue and husband Al Gigliotti and sister Judy Tracey and husband Bernie. Mary Ann is also survived by her nine grandchildren and 10 great grandchildren.

She is predeceased by her parents Sherman and Edith (Sargent) Noel as well as brothers Sherman and Philip Noel.

Mary Ann was a homemaker and retired from the Portsmouth school

system after 22+ years, working a variety of departments, her favorites being the Music and Athletic departments. The family

would like to thank the kind and caring staff of Partridge House of Hampton who gave our mother compassionate and wonderful care.

Per Mary Ann's wishes, a private viewing and graveside service will be held.

In lieu of flowers, please donate to your favorite charity.

Arrangements are under the direction and care of the J. Verne Wood Funeral Home - Buckminster Chapel, 84 Broad Street in Portsmouth. To leave an online condolence, please visit www.jvwoodfuneralhome.com

BRIEFS

CLEVELAND
Bank robber's note
A newspaper review includes and CNN is scheduled to learn his punishment Monday.

Defense lawyers urge leniency, saying Cesar Sayoc, burdened as a child by severe learning disabilities, was living alone in a cramped van and working as a strip club DJ and a pizza deliveryman in West Palm Beach when he became "increasingly obsessive, paranoid and angry" and believed enemies of President Donald Trump were trying to hurt him and other Trump supporters.

TULLYTOWN, PA.
Man accused of threats against Temple University, police

A Pennsylvania man has been charged with making threats against Temple University and its police department as he was buying ammunition in a Walmart store, authorities say.

The Bucks County district attorney's office

says 29-year-old Patrick Buhler, who has addresses in Morrisville and Mount Pleasant felt by more than a few."

NEW SMYRNA BEACH, FLA.
2 people bitten by sharks minutes apart at Florida beach

Authorities say two people were bitten by sharks minutes apart at the same Florida beach.

Volusia County Beach safety officials told news outlets the two bites occurred Saturday afternoon at New Smyrna Beach.

Authorities say a 23-year-old woman was bitten on the left hand and wrist, which required her to receive stitches. A short time later, a 21-year-old man was bitten on his right foot and was treated at the scene.

Neither bite was life-threatening.

Their identities were not immediately available. The type of shark or sharks involved was not known.

The Associated Press

DEBT

From Page A1

made budget watchdogs grit their teeth as lawmakers continue to ignore a federal debt that is mounting rapidly. That increase was solely on discretionary spending — not entitlement programs including Medicare and Social Security, which accounted for 61 percent of federal spending in 2018.

Democrats are still irritated about a 2017 GOP tax cut that increased the debt, so they're loath to tackle the problem. Republicans know that the issue is "not a priority" for President Donald Trump, said Bixby, and are therefore unwilling to stick out their necks too far to make hard choices that could irritate constituents.

"Political forces are coming together to push fiscal responsibility to the cutting room floor," said Bixby.

Kentucky GOP Sen. Rand Paul, one of the rare dissenters to the budget deal struck by Trump and House Speaker Nancy Pelosi, said its approval "marks the death of the tea party movement in America."

But political rhetoric aside, how does an increasing national debt affect you?

Michael A. Peterson, pushed the landmark agreement which balanced the budget within a year and continued to do so through 2001 — the last time in U.S. history the federal government didn't spend more than it was taking in.

And it's also a different approach than in 2011, when the panic over the mounting federal debt spurred Congress to create a "super committee" tasked with negotiating \$1.2 trillion in deficit reduction measures over a decade or face the prospect of sweeping, across-the-board cuts to all discretionary programs.

Spoiler alert: The committee couldn't get it done. And Congress couldn't even abide by its own self-imposed punishment, opting instead to pass bills to undo those mandatory cuts.

Eight years later, the deficit is still huge: \$896 billion this year, according to the Congressional Budget Office, while the White House Office of Management and Budget puts it about \$1 trillion.

Add those up over the course of years, and you — the taxpayer, and your kids and grandkids — get to pay the bill. The CBO estimates the debt held by the public — which is money owed by the government to private and foreign investors who buy Treasury bills and government notes — is currently about \$16.6 trillion.

That report was issued in May — two months before the House and Senate approved the budget deal, which is expected to add \$1.7 trillion more to the debt over the next decade.

In all, under spending bills and other measures signed by Trump, the debt is expected to grow by an additional \$4.1 trillion through 2029, according to the nonpartisan Committee for a Responsible Federal Budget.

Why are so few concerned now about an issue that caused so much turmoil eight years ago? Thomas A. Schatz, president of the nonpartisan Citizens Against Government Waste, said he thinks it's the economy.

While unemployment now is low and the economy is performing relatively strongly, that wasn't the case in 2011, when the country was still recovering from a recession.

He said that as America recovered, the impetus to tackle fundamental spending was lost. Peterson, founder of the Center for Economic and Policy Research, said many of the fears expressed by budget watchdogs have not been realized. Threats of higher interest rates haven't materialized, and the economy has remained strong.

He said dramatic action to solve the problem — spending cuts and higher taxes — could result in higher unemployment and lower wage growth.

"Who really cares (about lower debt) when more people are out of work?" he said. "It's very hard to see how we would have a better story if we had a lower debt."

Others warn against dismissing the problem.

Unless Congress passes a tax increase or slashes spending, Kasich worries that the federal government will have to eliminate "programs that we treasure."

"Is this going to create a risk to the National Institutes of Health?" he said. "It absolutely could."

Legal Notice

Kittery Town Council

PUBLIC HEARING

Monday, August 12, 2019 — 6:00 P.M.

Council Chambers, Town Hall, 200 Rogers Road

Land Use and Development Code (Title 16) Amendments - ARTICLE X Signs
The Kittery Town Council will consider proposed amendments to Section 16.2 DEFINITIONS; Section 16.3.2.15 Mixed-Use - Kittery Foreside MU-KF and Section 16.8.10.9 Signs allowed without sign permit to allow temporary sandwich board signs under certain restrictions in all of the business, commercial and mixed use zones.

The proposed amendments are available for public inspection between 8:00 am and 6:00 pm Monday through Thursday at the Town Planning and Development Department located in Kittery Town Hall. To request a reasonable accommodation for this meeting please contact staff at (207) 475-1323.

Legal Notice

Town of Kittery Board of Appeals

PUBLIC HEARING

Tuesday, August 13, 2019 — 6:30PM

Council Chambers, Town Hall, 200 Rogers Road

43 Love Lane - Miscellaneous Variation Request

Adam Butler, applicant, and Michael O'Keefe, owner of 43 Love Lane (Map 4 Lot 196), request a Miscellaneous Variation Request per LUDC Section 16.7.3.3.B(1), and seeking approval for the expansion of a non-conforming structure.

Application information is available for public inspection between 8:00 am and 6:00 pm Monday through Thursday at the Town Planning and Development Department located in Kittery Town Hall. To request a reasonable accommodation for this meeting please contact staff at (207) 475-1323.

LEGAL NOTICE

Town of Kittery Board of Appeals

PUBLIC HEARING

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1 Coleman Avenue - Miscellaneous Variation Request

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Legal Notice

Kittery Town Council

PUBLIC HEARING

Monday, August 12, 2019 — 6:00 P.M.

Council Chambers, Town Hall, 200 Rogers Road

Land Use Zoning Map Amendment - Mixed Use - Neighborhood (MU-N)
The Kittery Town Council will consider a proposed Land Use Zoning Map amendment to change the Business - Park B-PK zone designation to Mixed Use - Neighborhood (MU-N).

The proposed map amendment is available for public inspection between 8:00 am and 6:00 pm Monday through Thursday at the Town Planning and Development Department located in Kittery Town Hall. To request a reasonable accommodation for this meeting please contact staff at (207) 475-1323.



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

DATE SUBMITTED	7-23-2019
MAP & LOT	M4 L196
ASA FEE	_____
DATE PAID	7-23-2019
DATE COMPLETE	7-23-2019
HEARING DATE	8-13-2019

JUL 23 2019

Application to the
BOARD OF APPEALS

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 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	43 LOVE LANE				
MAP	4	LOT #	196	LOT SIZE	.4 acres
BASE ZONE(S):	R-U		OVERLAY ZONE(S):		

The subject property:
 [is / s 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)	MICHAEL O'KEEFE				
MAILING ADDRESS	43 Love Lane				
CITY	Kittery	STATE	ME	ZIP CODE	03904
PHONE No.	603 765 6319		e-MAIL:	mokeefe58@hotmail.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)	ADAM BUTLER				
MAILING ADDRESS	PO BOX 988				
CITY	Portsmouth	STATE	NH	ZIP CODE	03802
PHONE No.	603 828 5275		e-MAIL:	adamkbutler@yahoo.com	

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

Date: 7/22/19

By:
 (Signature)
ADAM BUTLER
 (Print Name)

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

Identify relevant Town code sections:

TITLE	16	CHAPTER	7	SECTION	3	3	B	1	PAGE	16.7:5
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

Regarding 43 Love Lane;

The owners of the property, Michael and Karen O'Keefe would very much like to add a garage and connecting breezeway to the existing house. Their main reason is for additional storage for their personal vehicles, household items and yard tools.

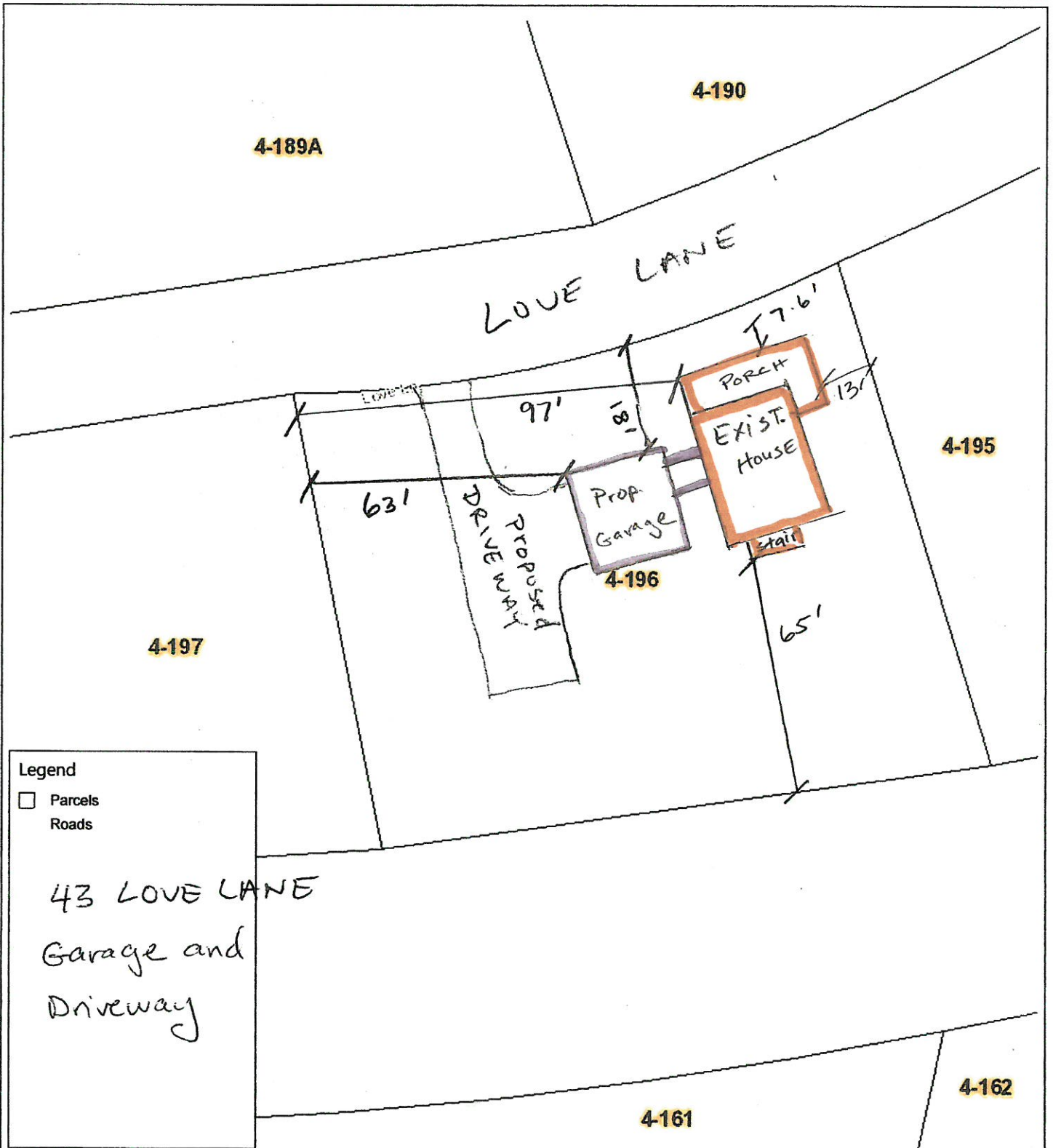
The proposed structure will be less than the required 30 foot setback from the road, and therefore would require a variance to be built. The proposed distance is 18 feet from the lot line, which is set substantially further back than the existing porch and house, which sits very close to Love Lane. We are asking for a variance in order to build the structure within the setback area for three reasons.

1. The proposed position would enable easy access to the existing house
2. The proposed position would look "correct" aesthetically in it's relationship to the existing house.
3. The proposed position would allow for a much improved driveway situation for the property. Moving the garage deeper on the property would make the driveway construction more complicated and costly as the rear of the yard slopes steeply.

The addition of the proposed garage and driveway would also solve a long -standing safety concern for this property. It would enable drivers to enter and exit from the property onto Love Lane much more easily, and safely. As it stands now, a driver must back out onto the road from a partially blind position, as the view is obstructed by the existing porch, and by the curve and slope of the road.

The new driveway servicing the proposed garage would allow a driver to pull out head-first, and from a much better location on the property, where visibility in both directions is excellent. Considering the increased traffic on Love Lane due to shipyard commuters, this improvement is more than warranted.

Map Title

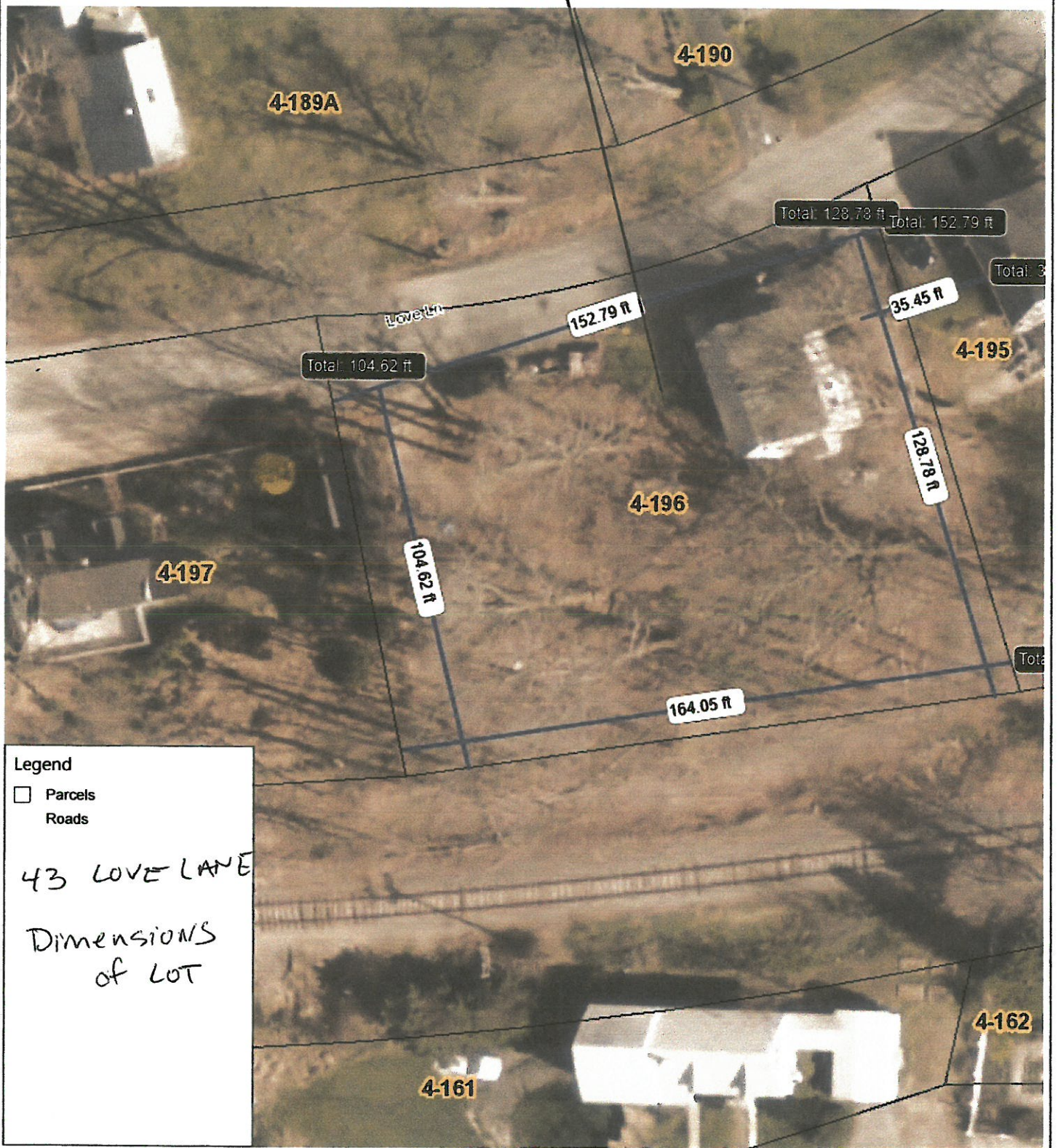


Legend

- Parcels
- Roads

43 LOVE LANE
Garage and
Driveway

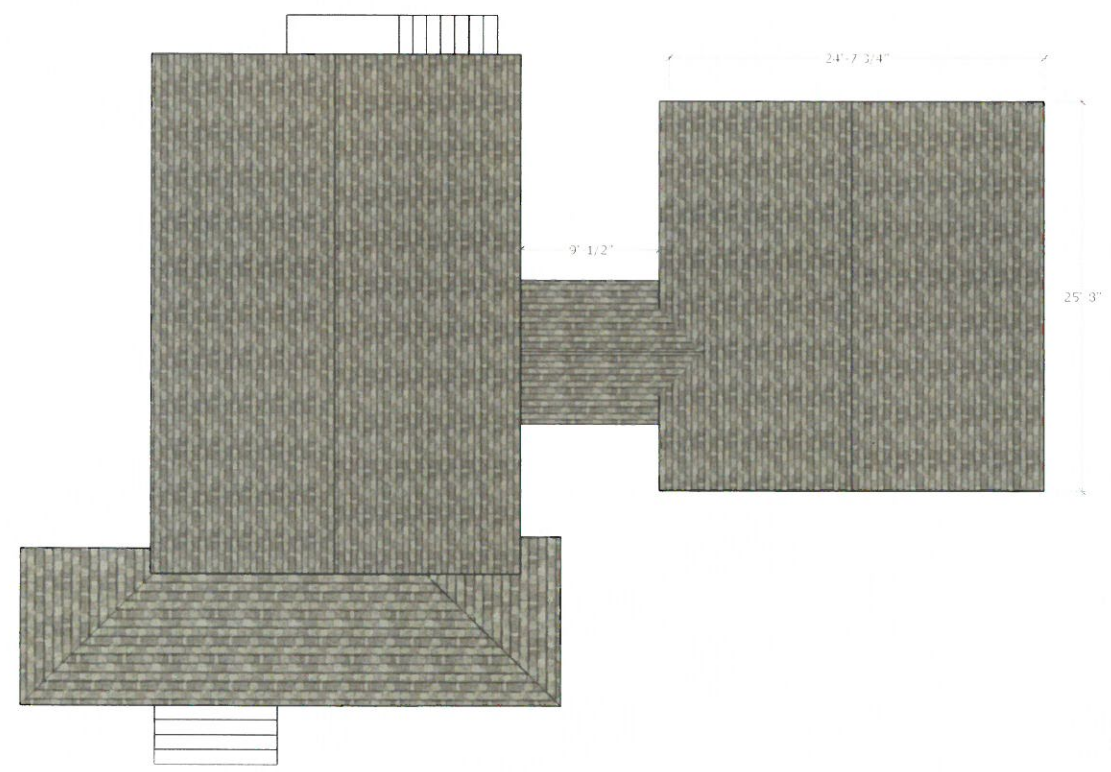
Map Title



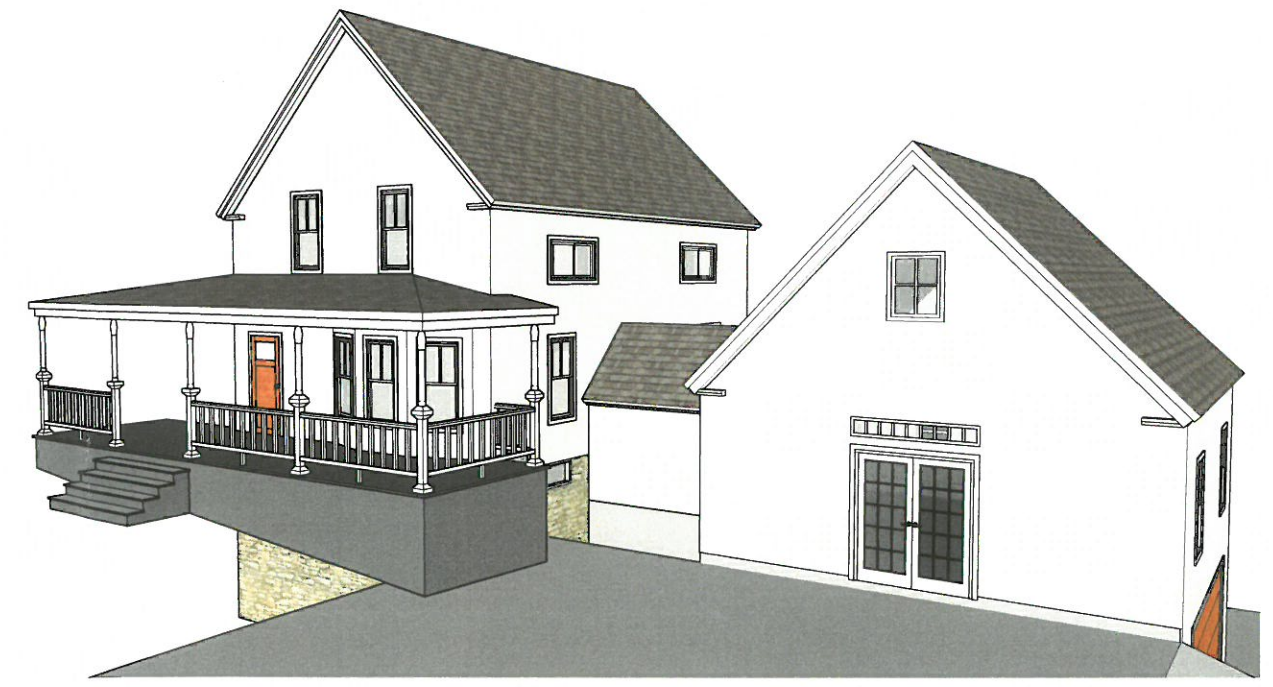
Town of Kittery

Printed on :
7/23/2019

This information has been compiled from various public and private sources. While every attempt has been made to provide accurate information, neither the municipality nor the service host guarantee the accuracy of information provided herein.



Roof Plan



43 Love Lane
 proposed Garage and Breezeway

chris@rkt.co
 802 999 1641



43 Love Lane
 Kittery, ME

O'Keefe Residence Garage

Perspective

By: Chris Kiper

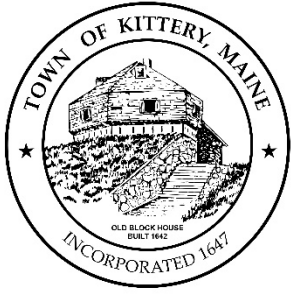
18 JUL 2019

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43



**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

BOA Meeting Date: August 13, 2019

Item #: MVR2019-08

STAFF REPORT – 43 LOVE LANE – MISCELLANEOUS VARIATION REQUEST

Project Name: 43 Love Lane

Applicant: Adam Butler

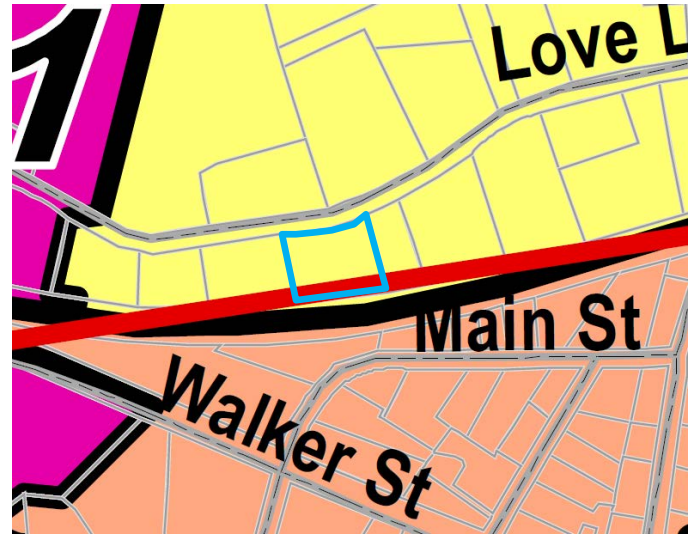
Owner: Michael O’Keefe

Proposed Development: Construction of new garage attached to primary structure

Requests: Miscellaneous Variation Request per LUDC Section 16.7.3 Nonconformance, seeking expansion of a non-conforming structure

Site Addresses: 43 Love Lane

Map & Lot Numbers: M 4 L 196



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 Residential – Urban (R-U) Zone: (1) Dwellings and manufactured housing. The proposed use is permitted by right.

Staff Recommendation: APPROVAL of miscellaneous variation request with conditions.

District Standards:

Residential – Urban Zoning District Standards			
Land Area per Dwelling (min.)	N/A	Front Yard Setback (min.)	30 feet
Maximum Building Coverage	20%	Rear Yard Setback (min.)	15 feet
Lot Size (min.)	20,000 sf	Side Yard Setback (min.)	15 feet

Current Use: Dwelling unit, occupied house

Surrounding Land Uses:

West: Residential – Urban (R-U) dwelling unit

East: Residential – Urban (R-U) dwelling unit

North: Residential – Urban (R-U) dwelling unit

South: Mixed-Use – Kittery Foreside (MU-KF), railroad right-of-way

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 17,424 square feet (.4 acres), located along the southern right-of-way of Love Lane about 600 feet east of its intersection with State Road. The property is a non-conforming lot of record. The property is zoned Residential – Urban (R-U). The property backs up to the Pan Am railroad right-of-way. The grade of the property falls away from Love Lane. There is a small parking area fronting the road, which is built up and has a retaining wall.

History of the Property:

The property contains an existing dwelling unit, approximately built in 1900. The existing house is located within the front setback, and its front porch is only about 8 feet from the property line along Love Lane. The existing structures make up 1,148 square feet of impervious surface, making the building coverage 6.5% of the .4-acre lot. A maximum of 20% is allowed in the zone.

Description of the Issue:

The applicant proposes to construct a garage addition connected to the existing house. The applicant submitted a rendering of the proposed garage but there is no plan showing the dimensions of the structure. The new structure appears to have two floors above grade and the garage located below grade, where the garage doors would face west and not towards the street. A new driveway would presumably be constructed to serve the garage. A breezeway would connect the garage to

the house, making it part of the primary structure. From the rendering, it appears the height of the new structure would be less than the height of the existing house. The owners have submitted an aerial photo showing the location of the new structure being 18 feet back from the property line along Love Lane.

Because the existing dwelling is non-conforming as to the front setback, the Land Use & Development Code 16.7.3.3.B.(1) requires Board of Appeals approval.

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 16.7.3.3.B.(1) states that, "Except where otherwise permitted in this title, repair and/or expansion of a nonconforming structure must be approved by the Board of Appeals. In cases where the structure is located in the Shoreland or Resource Protection Overlay Zone, the repair and/or expansion must be approved by the Planning Board."

- (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 – 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 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 existing property is on public sewer system.

- (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 owners propose to construct a two-car garage that will replace an existing parking pad located on the edge of the road. Depending on the length of the driveway serving the garage, the proposed expansion could result in an increase in 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 property includes adequate landscape screening and mature trees.

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

The lot currently slopes away from Love Lane and the proposed garage appears to fit into the grade of the property. 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;*

No pedestrian infrastructure exists along Love Lane.

(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 residential 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 Code Enforcement Officer 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 expand a non-conforming structure as proposed, with the following conditions: (1) that the existing parking pad be returned to a vegetated and landscaped state once the garage is constructed, and (2) the applicant/owner obtain an appropriate driveway permit from the Department of Public Works.



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

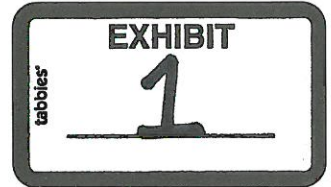
DATE SUBMITTED	
MAP & LOT	
ASA FEE	
DATE PAID	
DATE COMPLETE	
HEARING DATE	

Application to the
BOARD OF APPEALS

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@hpgrlaw.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: *G. Christopher Miller*
 (Signature)
G. Christopher Miller
 (Print Name)

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

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.

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

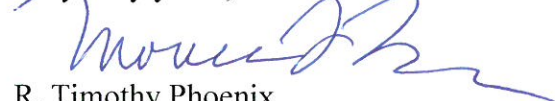
Dear Mr. Brake and Board of Appeals members,

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' (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.

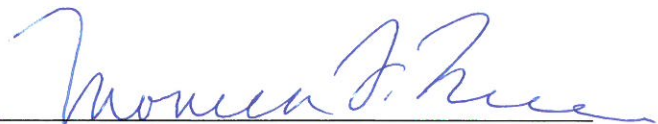
Response: The proposal includes a new state of the art Advanced On-Site Septic System that meets state requirements and the setback requirements of KZO Table 16.9. It also complies with the applicable wetland setbacks. The proposal is also subject to further review by the Planning Board.

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.

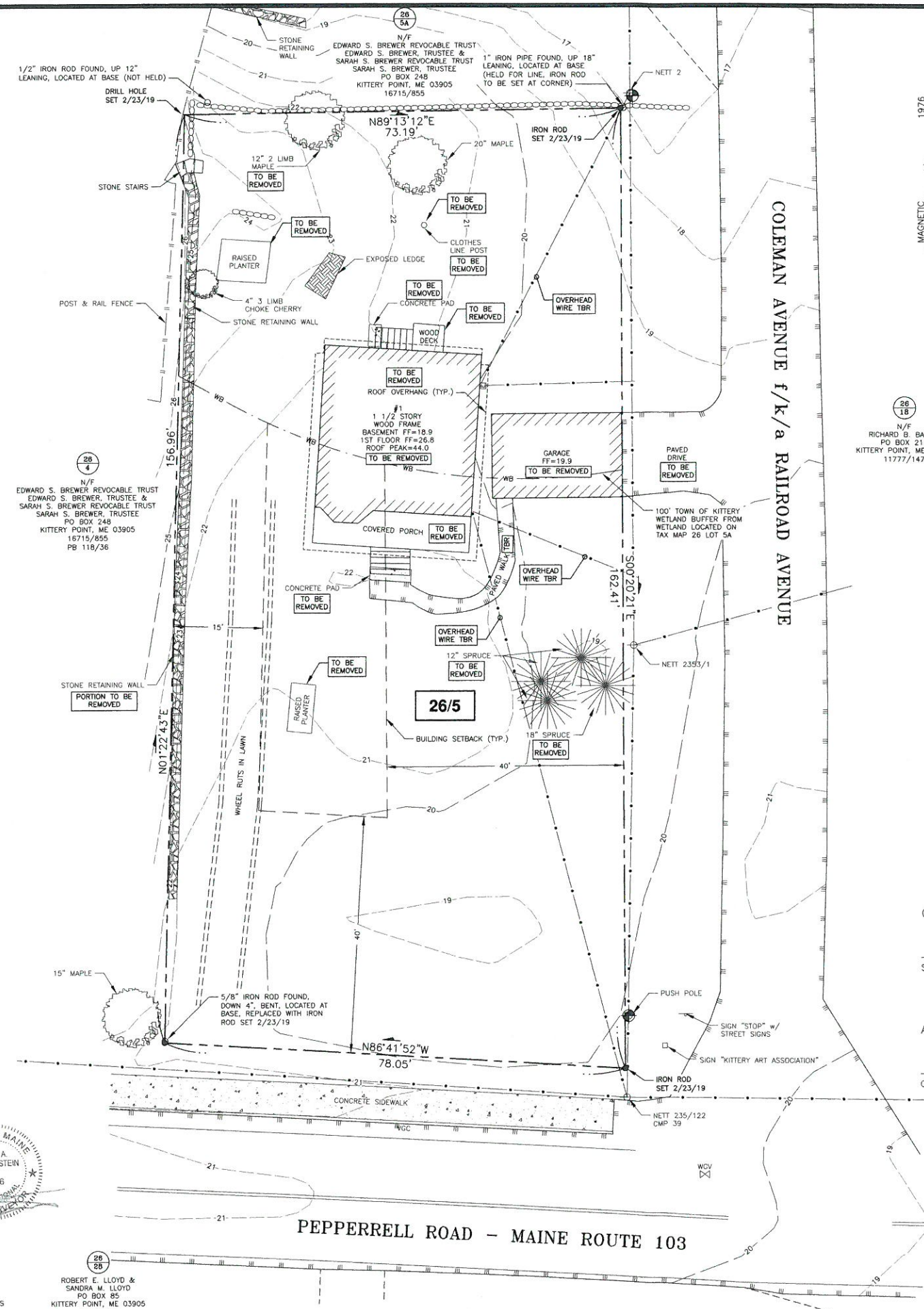
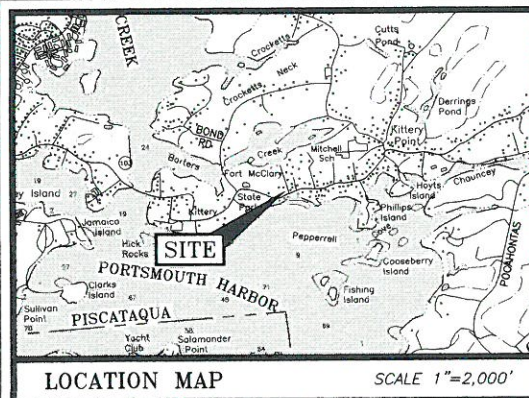
V. Conclusion

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



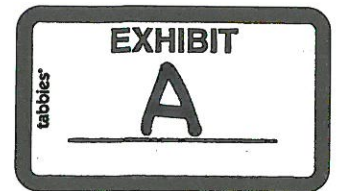
DEMOLITION NOTES

- A) SEDIMENT AND EROSION CONTROLS SHALL BE INSTALLED BY THE SITE/DEMOLITION CONTRACTOR PRIOR TO THE START OF DEMOLITION AND CLEARING/GRUBBING OPERATIONS.
- B) 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.
- C) ASBESTOS OR HAZARDOUS MATERIAL, IF FOUND ON SITE, SHALL BE REMOVED BY A LICENSED HAZARDOUS MATERIAL CONTRACTOR.
- D) 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.
- E) 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.
- F) 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.
- G) 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.
- H) 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.
- I) 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.
- J) THE CONTRACTOR SHALL NOT COMMENCE DEMOLITION OR UTILITY DISCONNECTIONS UNTIL AUTHORIZED TO DO SO BY THE OWNER.
- K) NO SALVAGE SHALL BE PERMITTED UNLESS PAID TO THE OWNER AS CREDIT.
- L) 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.
- M) THE CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE STATE, LOCAL AND FEDERAL CODES FOR EXCAVATION, TRENCHING AND TRENCH PROTECTION REQUIREMENTS.

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:

- 1) PARCEL IS SHOWN ON THE TOWN OF KITTERY ASSESSOR'S MAP 26 AS LOT 5.
- 2) OWNERS OF RECORD:
GEORGE CHRISTOPHER MILLER &
DIANNE KIMBERLY MILLER
19 JONES AVENUE
KITTERY, MAINE 03904
17904/546
PLAN BOOK 118 PAGE 36
- 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 2301710005D. EFFECTIVE DATE JULY 3, 1986.
- 4) EXISTING LOT AREA:
12,065 S.F.
0.2770 ACRES
- 5) PARCEL IS LOCATED IN THE RESIDENTIAL-KITTERY POINT VILLAGE (R-KPV) ZONING DISTRICT AND IS SUBJECT TO THE SHORELAND-WATER BODY / WETLAND PROTECTION AREA (OZ-SL-250') OVERLAY ZONE.
- 6) 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%
- 7) 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.
- 8) VERTICAL DATUM IS MEAN SEA LEVEL NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GPS OBSERVATIONS (±0.2').
- 9) 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.
- 10) 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

OWNER: _____ DATE _____
SIGNATURE _____
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

SCALE 1"=10' JULY 2019
EXISTING CONDITIONS & DEMOLITION PLAN **C1**

- 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
 - 100
 - 97x3
 - EL
 - EP
 - F.F.
 - TBM
 - TYP.
 - LSA
 - TBR
- NOW OR FORMERLY RECORD OF PROBATE**
- RR SPK SET
 - IR SET
 - IP SET
 - DH SET
 - BND w/DH
 - ST BND w/DH
- 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:
 - A) 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: NORTH-CENTRAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2012.
 - B) 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. NEWIPCC WETLANDS WORK GROUP (2017).
 - C) NATIONAL LIST OF PLANT SPECIES THAT OCCUR IN WETLANDS: NORTHEAST (REGION 1). USFWS (MAY 1988).
 - D) 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. DOBBERSTEIN, PLS #2526
DATE: 7/16/2019

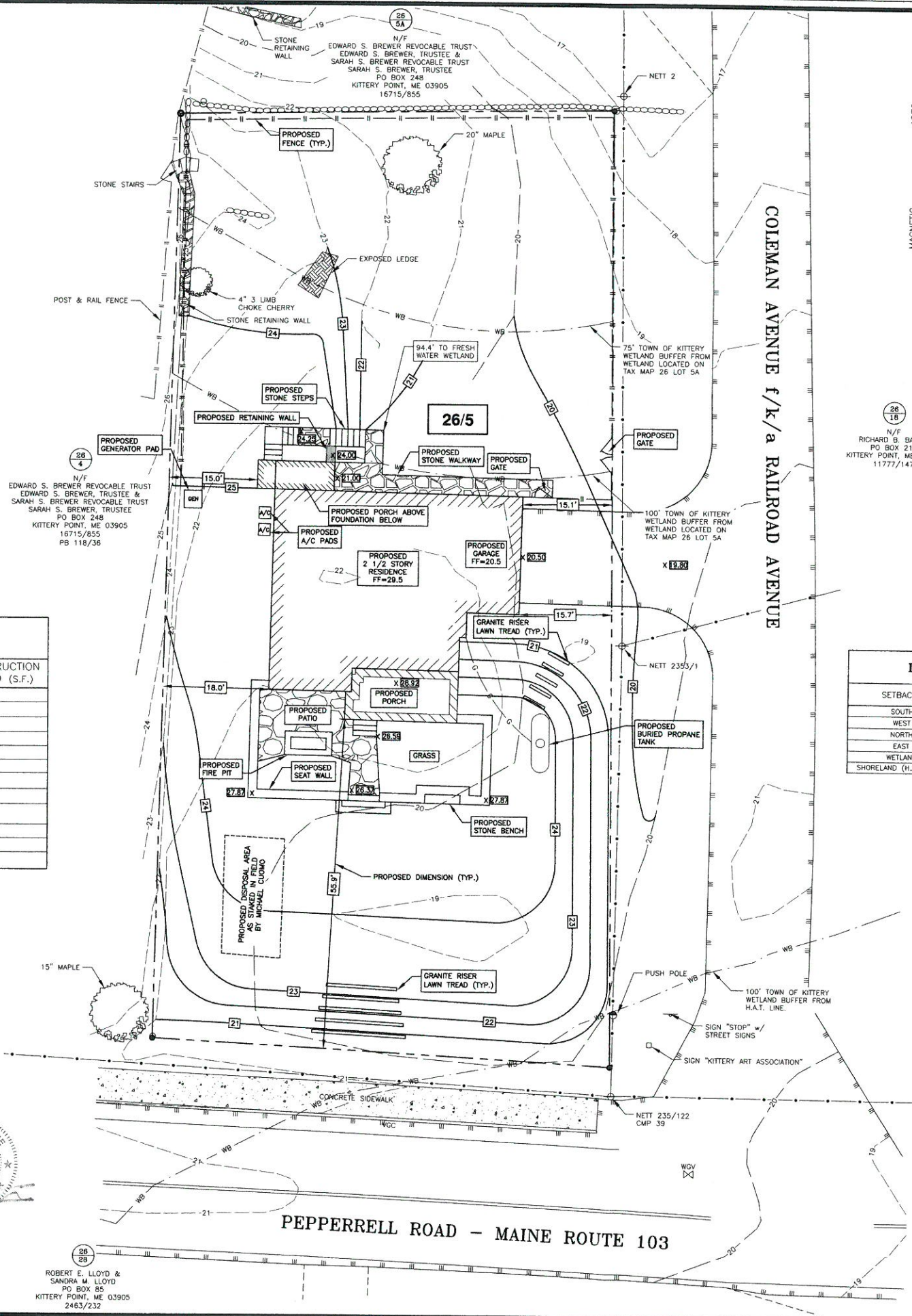
STATE OF MAINE
PAUL A. DOBBERSTEIN
2526
PROFESSIONAL LAND SURVEYOR

GRAPHIC SCALE
0 5 10 20 30 40 FEET METERS

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

LEGEND:

- EXISTING**
- N/F
 - RP
 - YCRD
 - (1/21)
 - 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
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%

DIMENSIONAL TABLE

SETBACKS	EXISTING	PROPOSED
SOUTH	85.5'	55.9'
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'

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 (OZ-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 PROPOSED CONSTRUCTION ON ASSESSOR'S MAP 26 LOT 5 IN THE TOWN OF KITTERY.
 - VERTICAL DATUM IS MEAN SEA LEVEL NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GPS OBSERVATIONS (±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.
 - 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

STATE OF MAINE
JOHN A. CHAGNON
No. 6930
LICENSED PROFESSIONAL ENGINEER

SCALE 1"=10' JULY 2019

PERMIT APPLICATION PLAN

C2

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

OWNER: _____

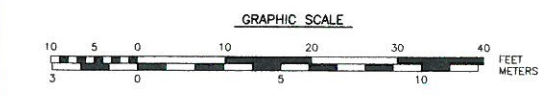
SIGNATURE _____ DATE _____

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. DOBBERSTEIN, PLS #2526
7/22/2019



ROBERT E. LLOYD &
SANDRA M. LLOYD
PO BOX 85
KITTERY POINT, ME 03905
2483/232

Reduced Size
Not to Scale

J:\JOB35\19 5000\19 5000\19 5001\19 5001.dwg, 02_SITE



PROPOSED SOUTH ELEVATION
(FACING PEPPERRELL ROAD)

ALLOWABLE BUILDING HEIGHT: 35'



PROPOSED EAST ELEVATION
(FACING COLEMAN AVE.)

23.63
AVG. GRADE
(PRE-CONSTRUCTION)

30'-0"
BUILDING HEIGHT
(MEASURED
MID-WAY BETWEEN
EAVE AND HIGHEST
POINT OF PITCH)



PROPOSED NORTH ELEVATION



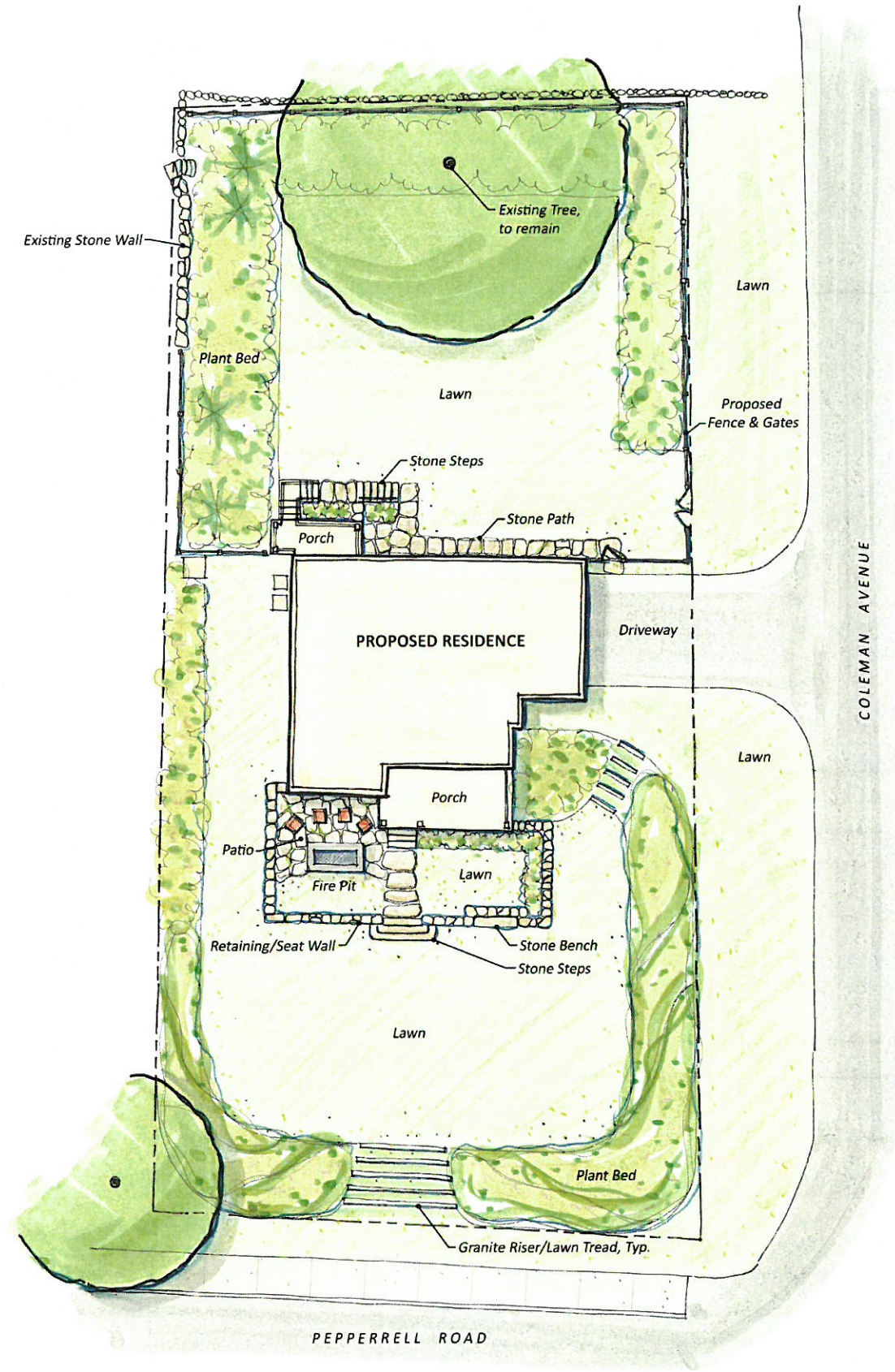
PROPOSED WEST ELEVATION

1 COLEMAN AVE, KITTERY MAINE

SOMMA Studios

$\frac{3}{32}'' = 1'-0''$

AUGUST 13, 2019



tabbles®
EXHIBIT
 C

woodburn & company
 LANDSCAPE ARCHITECTURE
 103 Kent Place New Hampshire Phone: 603.659.5949

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

0 2 5 10 20



L-1
 Sheet 1 of 1

PROPERTY MAP
KITTERY
MAINE



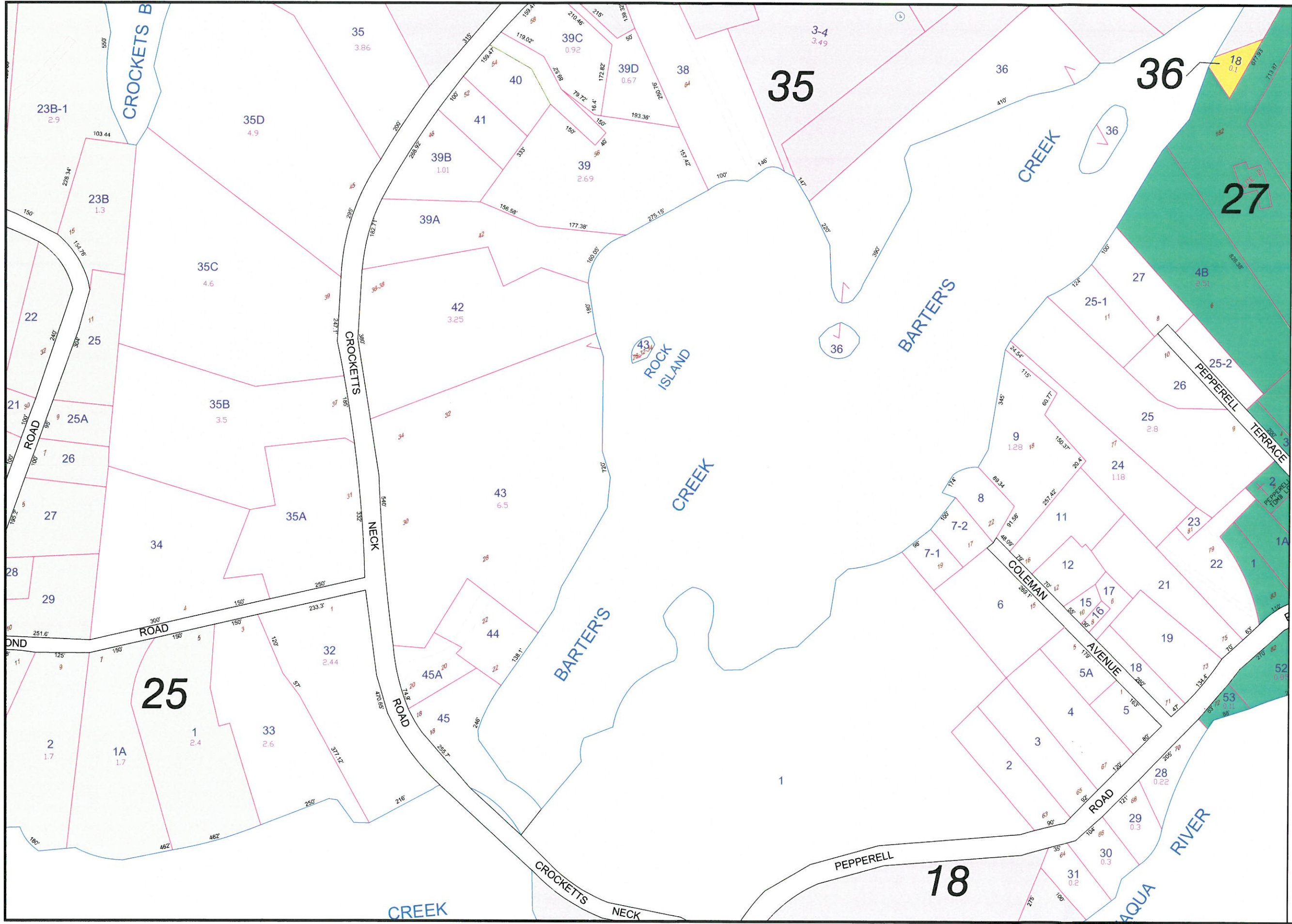
LEGEND

ADJUTING MAP NO.	R71	LOT DIMENSION	—
PAGE NUMBER	74	PROPERTY HOUS	—
SUBDIVISION LOT NO.	74	RIGHT OF WAY	—
STREET ADDRESS NO.	74	EASEMENT	—

REVISED TO APRIL 1, 2018
FOR ASSESSMENT PURPOSES ONLY
NOT FOR PROPERTY OWNERS' USE

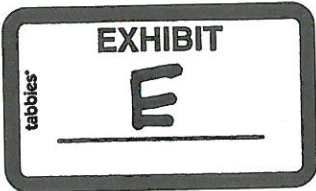


John E. O'Donnell & Associates
632 Bald Hill Road
New Gloucester, Maine 04260
(207) 926-4044
www.jeodonnell.com



2p →
E

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



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

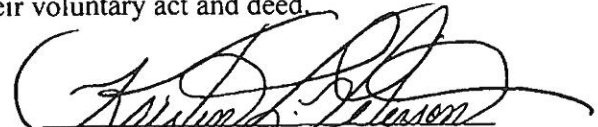
Executed this 1st day of March 2019.



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.

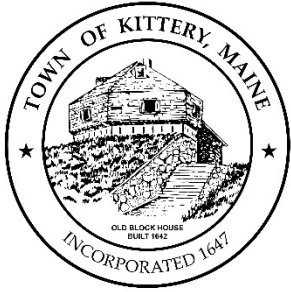


Notary Public/Justice of the Peace
Commission expiration:









**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

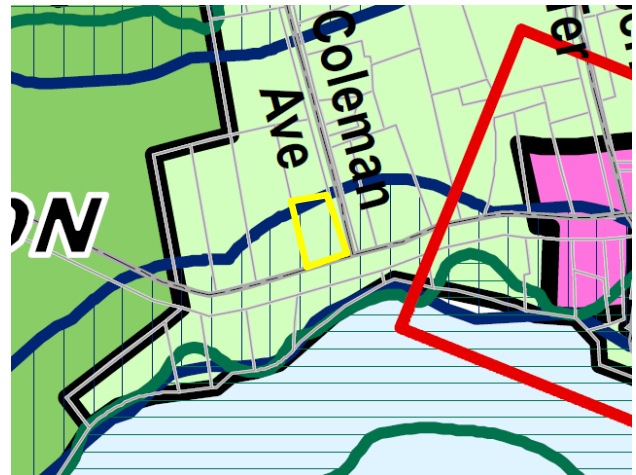
Owner: Chris & Kim Miller

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.

MEETING MINUTES

1. CALL TO ORDER; INTRODUCTORY; ROLL CALL

Chair Jeff Brake called the meeting to order at 6:30PM and asked that the roll be called.

Board Members Present: Jeff Brake; Charles Denault III; Louis Leontakianakos; April Timko; Vern Gardner; Suzanne Dwyer-Jones

Board Members Absent: Barry Fitzpatrick

Staff Present: Adam Causey, Planning & Development Department Director

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION – None held.

5. PUBLIC HEARINGS

- a. 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.**

Adam Causey presented for the Town, and read from the prepared staff report. Pamela Gray, the owner, presented her request. Karen Benoit, an abutter to the property, rose to ask questions of the Board.

Motion by Charles Denault to approve the Miscellaneous Variation Request for 35 Sterling Road. Second by Louis Leontakianakos. Motion carried 5-0-1 by roll call vote. [Aye: Brake, Leontakianakos, Timko, Denault, Dwyer-Jones; No: ; Abstain: Gardner]

April Timko read the Findings of Fact and the Conclusions of Law into the record.

6. UNFINISHED BUSINESS – None

7. NEW BUSINESS

- a. VOTE TO RECONSIDER – MISCELLANEOUS VARIATION REQUEST GRANTED JANUARY 8, 2019, 88 PEPPERRELL ROAD**

Since Chair Jeff Brake was not in attendance at the January 8 BOA meeting, he turned the gavel over to April Timko, who presided over that meeting.

Adam Causey, Director of Planning & Development, began by explaining that staff received a request via email from an abutter for the Board of Appeals to reconsider a previous decision concerning a Miscellaneous Variation Request granted on January 8, 2019, for the property at 87/88 Pepperrell Road. Mr. Causey said a reconsideration is a two-step process. First, the Board must 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 that voted in favor of granting the miscellaneous variation for landscaping standards. If the Board votes to reconsider at this meeting, 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. Board members discussed the process of reconsideration, what changes to the landscape plan are necessary, and whether reconsideration would involve members of the public who attended the January meeting. Mr. Causey stated that after the January meeting, the abutters and the developer met to discuss more specific landscape plantings that could satisfy neighbors' concerns. Staff is awaiting an updated landscape plan that would include the changes that the abutters are requesting.

Motion by Vern Gardner to annul or rescind the granting of all motions of January 8, 2019. Second by Charles Denault. Motion failed 1-4-1 by roll call vote. [Aye: Gardner; Nay: Leontakianakos, Timko, Denault, Dwyer-Jones Gardner; Abstain: Brake]

April Timko asked if any members of the public wanted to address the Board. Debbie Driscoll, 9 Pepperrell Terrace, and Clinton Reed, 4 Pepperrell Terrace, gave comments on the revised landscape plan. Debbie Driscoll asked that her request for a vote to reconsider be withdrawn. The Board took no further action.

b. ELECT NEW OFFICERS

Chair Jeff Brake opened the floor to nominations for Chair, Vice Chair, and Secretary.

Motion by Suzanne Dwyer-Jones to postpone this item to the next meeting. Second by Charles Denault. Motion carried 5-0-1 by voice vote. [Aye: Brake, Leontakianakos, Timko, Denault, Dwyer-Jones; Nay: ; Abstain: Gardner]

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

Motion by April Timko to approve the 1/9/18, 2/27/18, 3/27/18, 6/12/18, 6/26/18 meeting minutes. Second by Charles Denault. There was discussion about changes and additions to the minutes. Motion failed 0-6 by voice vote. [Aye: Brake, Leontakianakos, Timko, Denault, Dwyer-Jones; Nay: ; Abstain: Gardner]

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

Mr. Causey did not have any information yet for subsequent meetings. Mr. Causey reminded the Board of a Maine Municipal Association training opportunity for March 20.

Mr. Brake reminded the Board of a meeting regarding the Title 16 Recodification project at March 4 at 6pm at the Kittery Community Center.

10. ADJOURNMENT

Motion to adjourn by April Timko. Second by Louis Leontakianakos. The motion carried 6-0 by voice vote.

The Kittery Board of Appeals meeting of February 26, 2019 adjourned at 7:58 p.m.

Submitted by Adam Causey, Director of Planning & Development.

Disclaimer: The preceding minutes constitute the author's understanding of the meeting. While every effort has been made to ensure the accuracy of the information, the minutes are not intended to be a verbatim transcript of comments at the meeting but only a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>.

MEETING MINUTES

1. CALL TO ORDER; INTRODUCTORY; ROLL CALL

Chair Jeff Brake called the meeting to order at 6:30PM and asked that the roll be called.

Board Members Present: Jeff Brake, Barry Fitzpatrick, Suzanne Dwyer-Jones, April Timko, Vern Gardner, Louis Leontakianakos

Board Members Absent: Charles Denault

Staff Present: Adam Causey, Director of Planning and Development, Craig Alfis, Code Enforcement Officer

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

- a. Michael Dumond, Applicant, 53 Old Post Road (Map 8 Lot 6), Commercial Zone (C-3), requesting a Miscellaneous Variation Request per the terms of 16.7.3.3B(3)(c), and seeking relief from setback requirements for an accessory structure.**

Chair Brake asked April Timko, Secretary, if the Board has the authority to hear this application. Mrs. Timko replied in the affirmative and noted that the public notice was published on July 13, 2019. Chair Brake opened the public hearing. Mr. Causey read from the staff report that this request resulted from a pool being placed in the side setback of a non-conforming residential use located in the C-3 zone. Mr. Causey explained that the Interim Code Enforcement Officer asked the applicant to remove the pool. The applicant submitted for a miscellaneous variation to allow the pool to remain. Mr. Causey stated that staff feels there is no path in the code via a miscellaneous variation request. Mrs. Timko asked if the code defined “structure,” and Mr. Causey read the definition from the code. Mr. Gardner asked how an above ground pool would meet the definition of a structure or an accessory structure under the code. Mr. Causey responded that it was the decision of the Interim Code Enforcement Officer to define it as such. Mr. Gardner asked if this pool should be treated more like personal property than a structure. Chair Brake called for the applicant to present. Michael Dumond, the applicant, rose to speak for his

application. Mrs. Timko asked the applicant to explain his rationale for requesting a miscellaneous variation request. Mr. Dumond stated that he thought he was appealing a decision of the Code Enforcement Officer. Hector Mackenzie rose to speak in favor of the applicant. Mr. Fitzpatrick questioned why the Board was hearing this case. Mrs. Timko asked the applicant if they would change the application to an administrative appeal of the CEO. The applicant requested to withdraw his initial application and change to an administrative appeal. Chair Brake closed the public hearing.

Motion by Barry Fitzpatrick to approve an Administrative Appeal to the Code Enforcement Officer decision, as altered and accepted by the applicant, to allow the temporary pool to remain in its current location. Second by Vern Gardner. Motion passed 6-0-0 by roll call vote [Aye: Brake, Fitzpatrick, Gardner, Leontakianakos, Dwyer-Jones, Timko; Nay: -- ; Abstain: --].

Mrs. Timko read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact – (1) The Board found that the issue involved a temporary pool, which is not a structure, (2) the Board did not need to consider whether the rules for the expansion of a structure were met, (3) the Board approved the applicant’s Administrative Appeal to the CEO’s decision.

Conclusions of Law – (1) The Board heard the Administrative Appeal under Town code section 16.6.4.A, which allows the Board to review administrative decisions made by the code enforcement officer (2) the Board received evidence and testimony and entered into deliberation (3) the Board granted the appeal.

Motion by Vern Gardner to approve the Findings of Fact and Conclusions of Law as read by April Timko. Second by Suzanne Dwyer-Jones. Motion passed 6-0-0 by roll call vote [Aye: Brake, Fitzpatrick, Gardner, Leontakianakos, Dwyer-Jones, Timko; Nay: -- ; Abstain: --].

- b. Washburn Realty Group, Owner, 60 Route 236 (Map 29 Lot 14), Commercial Zone (C-2), requesting a Miscellaneous Variation Request to the terms of Article III of Town Code Chapter 16.7 (Nonconformance), seeking relief of front, side, and wetland setbacks for a commercial building.**

Chair Brake asked April Timko, Secretary, if the Board has the authority to hear this application. Mrs. Timko replied in the affirmative. Chair Brake opened the public hearing. Mr. Causey read from the staff report and stated that this application is for the construction of a new plumbing supply warehouse. Mr. Causey noted that the property was narrow and the application of setbacks per the code would leave no building envelope available and

render the parcel unbuildable. Mr. Causey also noted that the existing building and foundations would be removed. Mr. Causey noted that this application would require review and approval by the Planning Board under the site plan review process. Mrs. Timko asked if this was a relocation of the structures or a completely structures. Mr. Gardner asked how the project would be more conforming than the existing structures. Matt Williams, applicant, rose to speak in favor of the application and discussed how the extreme setback nonconformities would be cured by the project. Mr. Gardner asked the applicant if the setbacks for the new building would be in line with the average setbacks of other buildings along Route 236. The applicant stated that would be the case. John Chagnon, the applicant's engineer, rose to explain the new setbacks. Mr. Leontakianakos asked to see where the setbacks would be for the new building. Mr. Chagnon pointed out the setbacks on the plans displayed. Mr. Fitzpatrick stated that this property has been an eyesore for a while and asked if the vacant foundation would be demolished and if the applicant would need to raise the grade of the site to make the project work. Mr. Chagnon explained that there would be earthwork required to get the new driveway in and allow for safe truck movements in and out. Mr. Gardner asked why the building needed to be so close to the road and not simply be rebuilt on the existing foundation. Mr. Chagnon stated that moving the building would help protect the wetland to the east. Chair Brake closed the public hearing.

Motion by Vern Gardner to grant the miscellaneous variation request, provided that the applicant meet all the requirements and conditions imposed by the Planning Board, Code Enforcement Officer, or any other relevant Town authorities. Second by April Timko. Motion passed 6-0-0 by roll call vote [Aye: Brake, Fitzpatrick, Gardner, Leontakianakos, Dwyer-Jones, Timko; Nay: -- ; Abstain: --].

Mrs. Timko read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact – (1) The applicant appeared before the Board seeking a miscellaneous variation request for relief to front, side, and wetland setbacks for a commercial building per Town code 16.7.3, (2) the Board determined it had the authority to hear the application per 16.6.4.C.(1), (3) the hearing was duly advertised in the Portsmouth Herald on July 13, 2019, as required, (4) the applicant made a presentation and no other members of the public commented, (5) the subject property consists of approximately 64,469 square feet located on Route 236 north and is a conforming lot of record zoned C-2, (6) the property contains a vacant warehouse structure and old foundation with no structure and has not been in operation for several years, (7) the applicant proposes to construct a new two-story commercial building to serve as a plumbing supply warehouse and

showroom, (8) the proposed new structure would be less nonconforming than the prior use.

Conclusions of Law – (1) The Board has the authority to hear the Miscellaneous Variation Request Town code section 16.6.4.C.(1), (2) the Board considered the conditions contained in Town code section 16.7.3.3.A.(2), (3) the Board considered the basis of decisions contained in Town code section 16.6.6., (3) the Board voted to granted the miscellaneous variation request.

Motion by April Timko to approve the findings of fact and conclusions of law as read. Second by Vern Gardner. Motion passed 6-0-0 by roll call vote [Aye: Brake, Fitzpatrick, Gardner, Leontakianakos, Dwyer-Jones, Timko; Nay: -- ; Abstain:--].

6. UNFINISHED BUSINESS

7. NEW BUSINESS

8. ACCEPTANCE OF PREVIOUS MINUTES

- a. September 25, 2018**
- b. November 13, 2018**
- c. January 8, 2019**
- d. February 26, 2019**
- e. March 12, 2019**
- f. April 9, 2019**
- g. June 11, 2019**
- h. June 25, 2019**

Mr. Fitzpatrick stated that he was not at the February 26,2019 meeting and they should be amended.

Motion by Louis Leontakianakos to approve the listed minutes except for the February 26, 2019 minutes. Second by Suzanne Dwyer-Jones. Motion passed unanimously.

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

a. Introduction of new CEO Craig Alfis

Mr. Causey introduced the new CEO. The Board welcomed Mr. Alfis, who rose to introduce himself.

Mr. Gardner spoke to point out what he felt are inconsistencies in the code relative to the Board of Appeals and Planning Board and miscellaneous variation requests and variances. Mrs. Timko offered her interpretation. Mr. Leontakianakos asked that this be put on a list of potential changes. Mr. Causey stated that the language would be dealt with during the ongoing Title 16 recodification project.

10. ADJOURNMENT

Motion by Barry Fitzpatrick to adjourn. Second by Louis Leontakianakos. Motion passed 5-0-1 by roll call vote [Aye: Brake, Fitzpatrick, Leontakianakos, Dwyer-Jones, Timko; Nay: ; Abstain: Gardner].

The Kittery Board of Appeals meeting of July 23, 2019 adjourned at 7:54 p.m.

Submitted by Adam Causey, Director of Planning & Development.

Disclaimer: The preceding minutes constitute the author's understanding of the meeting. While every effort has been made to ensure the accuracy of the information, the minutes are not intended to be a verbatim transcript of comments at the meeting but only a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>.