



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

**Board of Appeals
Meeting Agenda, Council Chambers
Tuesday, March 10, 2020
Regular Meeting – 6:30 P.M.**

- 1. Call to Order; Introductory; Roll Call**
- 2. Pledge of Allegiance**
- 3. Agenda Amendment and Adoption**
- 4. Executive session (if required)**
- 5. Public Hearings**
- 6. Unfinished Business**
 - David Arnold, Owner, 95 Old Dennett Road in the Residential Suburban (R-S) zone, requesting an Administrative Appeal to a denied building permit in accordance with Town of Kittery Code 16.6.3.
- 7. New Business**
- 8. Acceptance of Previous Minutes**
 - a. January 14, 2020
 - b. January 28, 2020
- 9. Board Member or CEO Issues or Comment**
- 10. Adjournment**



**TOWN OF KITTERY
BOARD OF APPEALS
APPLICATION CHECKLIST**

RECEIVED
FEB 18 2020

BY: C. Bacon

APPLICANT:

David W. Arnold

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

APPLICATION FORM FILLED OUT COMPLETELY & SIGNED

YES	NO	N/A
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Supporting Documents provided:

- Citations of pertinent ordinance(s)
- Deed(s)
- Map(s)
- Blueprint(s)
- Survey(s)
- Photo(s)
- Other: _____

YES	NO	N/A
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Detailed plot plan or diagram showing:

- Dimensions and shape of the lot
- Size and locations of existing buildings
- Locations and dimensions of proposed buildings or alterations
- Natural or topographic features (wetlands, streams, etc) of the lot
- Distances to the nearest structures on abutting properties
- Detail of any rights-of-way, easements, or other encumbrances.

YES	NO	N/A
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Administrative Appeal information:

- Detailed description of decision appealed
- Date on which the decision was made and by whom
- Facts surrounding the appeal
- Statement of what is wrong about the decision appealed
- Relief action requested to be taken in the matter
- Statement of how the decision will affect applicant/property

YES	NO	N/A
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date:

2/18/2020

By:

David W. Arnold

(Signature)

David W. Arnold

(Print Name)



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

Application to the
BOARD OF APPEALS

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

ADMINISTRATIVE APPEAL

I hereby request the Board consider a Administrative Appeal as I contest the interpretation or application of ordinance / regulation, and seek relief from the decision of the Code Enforcement Officer.

I have reviewed Town Code Title 13 & Title 16, Board of Appeals By-Laws, and the Ordinance(s) pertinent to this application. My appeal is based on the following:

TITLE	16	CHAPTER	3	SECTION	2	2	D	2	d, f	PAGE	
TITLE	16	CHAPTER	6	SECTION	4	B	1	a, b, c	1, 2, 3, 4	PAGE	

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	95 Old Dennett Rd				
MAP	6	LOT #	8	LOT SIZE	3.75 Acres
BASE ZONE(S):	OVERLAY ZONE(S):				

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

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

NAME(S)	David W. Arnold and Karlene A. Arnold				
MAILING ADDRESS	95 Old Dennett Rd				
CITY	Kittery	STATE	ME	ZIP CODE	03904
PHONE No.	207-439-2764	e-MAIL:			karlene.arnold@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, OR, I am an aggrieved party in the subject property, or issue, 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: 2/18/2020

By: David W. Arnold
 (Signature)
David W. Arnold
 (Print Name)

AFFIRMATIONS*(Please read and check all the boxes to confirm)***I understand that the Board of Appeals:**

- May hear and decide on an Administrative Appeal within the limitations set forth in Title 16, Section 6.4.1, Administrative Decision Appeal.
- Appears to have jurisdiction to hear this request; hearing must be held within 30 days of this Appeal filing; application must be complete; and, public and abutter notice must be made no less than seven days prior to the scheduled hearing.
- Role for administrative appeals is to examine and resolve problems between the Town and those affected by its ordinances, decisions or lack of action by the Town.
- 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.
- Local appeals process must be exercised and exhausted before the Superior Court will hear these cases.
- 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 the Standard of Review for this appeal:

For questions of mixed law and fact, a review for "arbitrary and capricious" factors:

- 1) Was the decision/lack of action a "plain error" which led to a "brazen miscarriage of justice?"
- 2) Was the decision/lack of action made on "unreasonable grounds", or "without any proper consideration of circumstances"?
- 3) Does any State or Federal law apply to my circumstances?
- 4) Is there any conflict between ordinances and/or statutes related to the issues?
- 5) Can the Board determine with a "definite and firm conviction" that a mistake was committed by the Town?

When questions of statutory interpretation decided in a manner that has the force of law, a "Chevron review":

- 1) First, always, is the question whether the legislative enacting body has directly spoken to the precise question at issue.
- 2) If the intent is clear, that is the end of the matter; for the Board, as well as the Town, must give effect to the unambiguously expressed intent of the legislation.
- 3) If, however, the Board determines the enacting body has not directly addressed the precise question at issue, the Board does not simply impose its own construction on the statute. If the statute or ordinance is silent or ambiguous with respect to the specific issue, the question for the Board is whether the Town's answer is based on a permissible construction of the statute.

For questions of statutory interpretation decided in a manner that does not have the force of law, to determine the deference to be given to the Town decision based on a four-part test:

- 1) the thoroughness of the Town's investigation;
- 2) the validity of its reasoning;
- 3) the consistency of its interpretation over time; and
- 4) other persuasive powers of the Town.

- Will determine my Burden of Proof:

- 1) What does the ordinance/statute require me 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 appeal?
- 4) Is the evidence presented substantial? Is it credible? Is it outweighed by conflicting evidence?

STATEMENTS:

I wish to appeal to the Board of Appeals because I have a problem in regard to a matter of Town Code Title 13, Public Services or Title 16, Land Use and Development: (Section, Title, Page No.)

The decision/lack of action I object to is [Include formal documents related to the matter]:

What relief is requested and why should the appeal be granted?

Unlike others in the community, I will suffer a particularized injury in this matter if not resolved in my favor. I am adversely and directly affected by:

I object to the decision / lack of action for the following reason(s):

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.

[Support with citations(s), of pertinent ordinance(s), deeds, maps, documents, etc. Describe in detail what decision you are appealing; the date on which the decision was made; and, by whom, the facts surrounding this appeal, what you think is wrong about the decision which you are appealing, and what action you want the Board of Appeals to take in this matter. Also, please indicate how that Board's decision will affect you and/or your property. Use extra sheets if necessary and attach them to this application.]

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.

This is Page 3 of 3 of the Administrative Appeal (Application)

STATEMENTS:

I wish to appeal to the Board of Appeals because I have a problem in regard to a matter of Town Code Title 13, Public Services or Title 16, Land Use and Development: (Section, Title, Page No.)

The decision/lack of action I object to is (Include formal documents related to the matter):

The denial of the Building Permit

What relief is requested and why should the appeal be granted?

Allow us to build the garage based on set backs and size determined if we were not considered a corner lot.

Unlike others in the community, I will suffer a particularized injury in this matter if not resolved in my favor. I am adversely and directly affected by:

The extended Right of Way (ROW) that was granted to our neighbor in 1989, to allow him to subdivide his property and add the value of two house lots has with the current Zoning Ordinance resulted in our lot being a corner lot.

The particular ROW is not on our property and we have no benefit from it, yet the zoning ordinance penalizes us as an abutter to the ROW by changing our side setback to a front setback. This results in our inability to build within 40' of the ROW and has significantly curtailed our ability to use our property.

I object to the decision/lack of action for the following reason(s):

This decision, made by the Code Department, was based on the fact that the ROW falls under the private street classification of a private way. This resulted in a front setback to the ROW rather than a side setback. Now we are unable to build anything on that side of our property.

Code Department Review

Building Permit
BP-20-28

Stopped. This step was stopped on Feb 6, 2020 at 5:20pm.

Review & determine other departments needing to review, as well as application completeness.

Feb 6th 2020, 5:20pm

Dave

Karlene,

Thanks for the submission of the plans. Unfortunately we are unable to permit this garage due to the existence of the ROW along your property line. The ROW does not fit into the definition of a driveway given that it services three properties and appears to be over 500 feet in length. The ROW would fall under the private street classification of a private way. This means that your property has road frontage along both Old Dennett and the private way. The set back from the garage to the ROW would be 40 feet per the standards for the Residential-Suburban Zone.

Chapter 16.3. Land Use Zone Regulations
Article II. Zone Definitions, Uses and Standards
§ 16.3.2.2. Residential – Suburban R-S.

D.

Standards. The following standards must be met unless modified per Chapter 16.8, Article XI, Cluster Residential and Cluster Mixed-Use Development:

[Amended 9-24-2012 by Ord. No. 12-10]

(1)

Design and performance standards. The design and performance standards of Chapters 16.8 and 16.9 must be met. The Design Handbook provides examples of appropriate design for nonresidential and multiunit residential projects.

(2)

Dimensional standards.

(a)

Minimum land area per dwelling unit:*

[1]

Without public sewage disposal: 40,000 square feet.

[2]

With public sewage disposal: 30,000 square feet unless reduced in accordance with Note A.

(b)

Minimum lot size:

[1]

Without public sewage disposal: 40,000 square feet.

[2]

With public sewage disposal: 30,000 square feet unless reduced in accordance with Note A.

(c)

Minimum street frontage: 150 feet unless reduced in accordance with Note A.

(d)

Minimum front yard: 40 feet.

(e)

Maximum building coverage: 20%.

(f)

Minimum rear and side yards: 15 feet. (NOTE: Buildings higher than 40 actual feet must have side and rear yards not less than 50% of the building height.)

§ 16.6.4 Appeals/requests to Board of Appeals.

For the purposes of this chapter, an appeal or request means any of the following:

A.

Administrative decision appeal. When the Board of Appeals reviews an administrative decision appeal of a decision made by the Code Enforcement Officer, the Board of Appeals may receive new evidence and testimony consistent with this title and the rules of the Board of Appeals. At the conclusion of the hearing and deliberation, the Board of Appeals may uphold, modify or reverse the decision of the Code Enforcement Officer.

B.

Variance request.

(1)

A variance may be granted only by the Board of Appeals under the following conditions:

(a)

For a reduction in dimensional requirements related to height, area and size of structure or size of yards and open spaces;

(b)

The use is not prohibited by this title; and

(c)

Only if the strict application of the terms of this title would result in undue hardship. The term "undue hardship" means the applicant must demonstrate all of the following:

[1]

The land in question cannot yield a reasonable return unless a variance is granted.

[2]

The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

[3]

The granting of a variance will not alter the essential character of the locality.

[4]

The hardship is not the result of action taken by the applicant or a prior owner.

Albert Bergeron → Anne

95

BOOK 2802

PAGE 98

11508

KNOW ALL MEN BY THESE PRESENTS, that I, Albert R. Bergeron, of 6 Park Avenue, of Kittery, York County, State of Maine, (being unmarried) for consideration paid, grant to David W. Arnold and Karlene A. Arnold,

of 35 Rogers Road, Kittery, York County, State of Maine, with warranty covenants, as joint tenants, the land in Kittery, County of York and State of Maine, together with the buildings and other improvements thereon situate on the Westerly side of Dennett Road in said Kittery and bounded and described as follows:

Beginning at an iron pipe in the ground in the Northeasterly corner of land now or formerly of Marshall Parker and running S 76° W 675.6 feet by said Parker land to an iron pipe in the ground; thence S 77° 28' W 448.7 feet by said Parker land to an iron pipe in the ground at Spinney's Creek; thence turning and running Northwesterly by said Spinney's Creek 191.3 feet to an old post at the end of a fence at and now or formerly of Joseph H. Boissonneault; thence turning and running Northeasterly by said Boissonneault Land 1,192.5 feet to an iron pipe in the ground at the Westerly side of Dennett Road; thence turning and running Southeasterly by said Dennett Road 101.5 feet to the point of beginning.

Together with all my rights in said Spinney's Creek and in the land flowed by the tide between the first (second) and third (fourth) boundaries extended into Spinney's Creek.

Being the same premises conveyed to Albert R. Bergeron by deed of Frances Bergeron dated October 25, 1979, recorded at York County Registry of Deeds, Book 2588, Page 143.

Included in this conveyance is one TV antenna and one attic fan.

Alice R. Bergeron, wife of said grantor, joins as grantor and releases all rights by descent and all other rights.

Witness our hands and seals this 10th day of June 19 81. Albert R. Bergeron, Alice R. Bergeron

NEW HAMPSHIRE The State of Maine ss. Rockingham June 10, 1981

Then personally appeared the above named Albert R. Bergeron and Alice R. Bergeron

and acknowledged the foregoing instrument to be their free act and deed. Before me, Notary Public

YORK MA Received JUN 12 1981 at 2:52 PM and recorded from the original

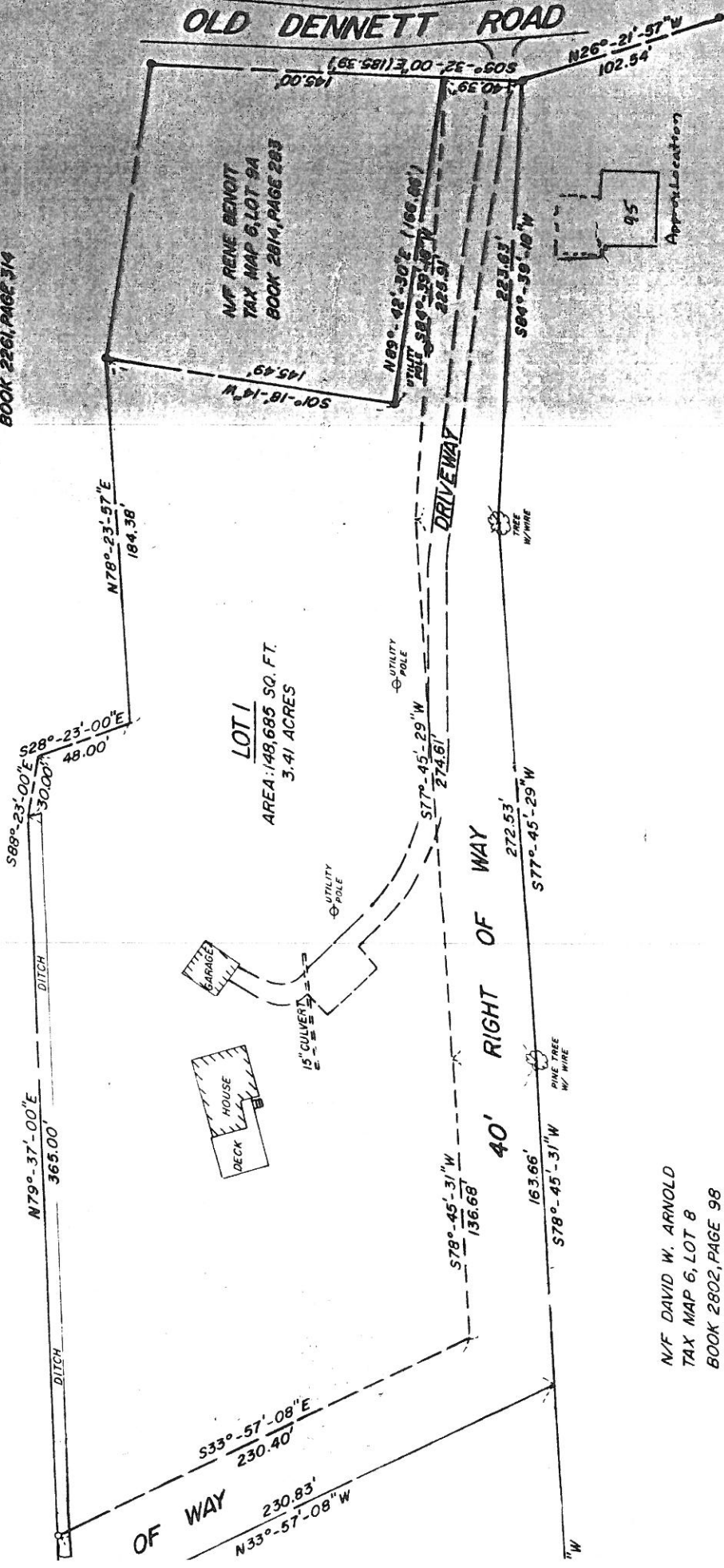
OLD DENNETT ROAD

N/F JONATHAN C. WRIGHT
TAX MAP 6, LOT 10
BOOK 2261, PAGE 314

N/F RENE BENOIT
TAX MAP 6, LOT 9A
BOOK 2814, PAGE 283

LOT 1
AREA: 148,685 SQ. FT.
3.41 ACRES

N/F DAVID W. ARNOLD
TAX MAP 6, LOT 8
BOOK 2802, PAGE 98



PROPERTY MAP
KITTERY
 MAINE



LEGEND

ABUTTING MAP NO. R11	LOT DIMENSIONS
PARCEL NUMBER 74	PROPERTY BOUNDS
SUBDIVISION LOT NO. 24	RIGHT OF WAY
STREET ADDRESS NO.	EASEMENT



John E. O'Donnell & Associates
 632 Bald Hill Road
 New Gloucester, Maine 04260
 (207) 926-1044
 www.jeodonnell.com

6

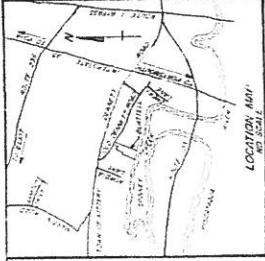


12

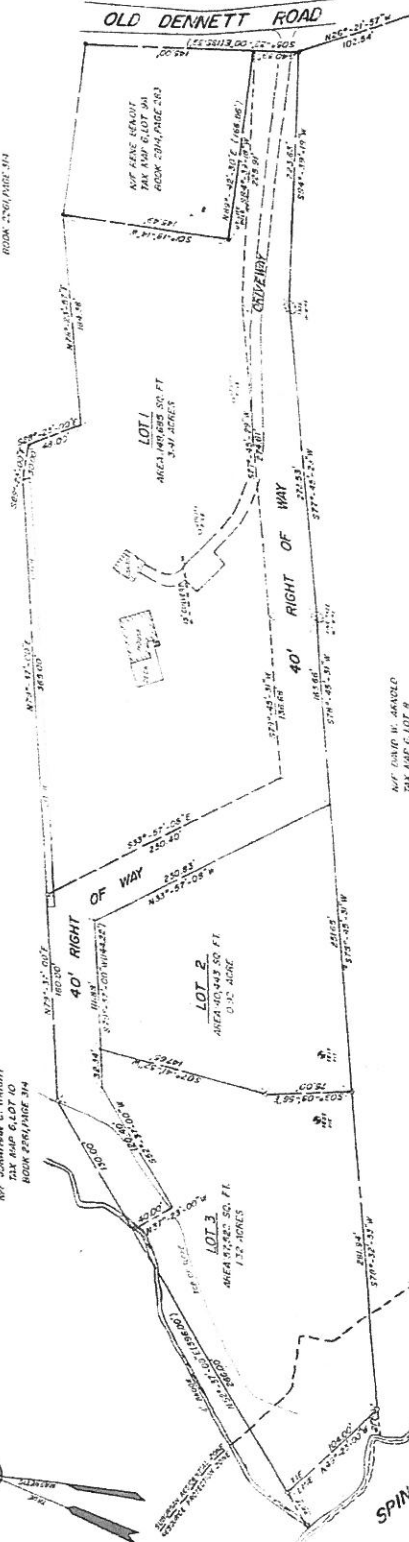
5

KITTERY PLANNING BOARD

Marvin J. Blatt
Carol L. Blatt
John D. McNeil
Robert G. Goble
David L. Blundy
Paul R. White



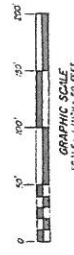
NPJ JOHNTAW C. WRIGHT
 TAX MAP 6, LOT 10
 FROM 2296/PIECE 314



CERTIFICATION:
 THIS MAP WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT COMPLIES WITH ALL REQUIREMENTS OF THE MAINE BOARD OF REGISTRATION FOR LAND SURVEYING STANDARDS AND PRACTICES, CHAPTER 13, SECTION 111, BOUNDARY SURVEY.

IRREG

THIS MAP WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT COMPLIES WITH ALL REQUIREMENTS OF THE MAINE BOARD OF REGISTRATION FOR LAND SURVEYING STANDARDS AND PRACTICES, CHAPTER 13, SECTION 111, BOUNDARY SURVEY.



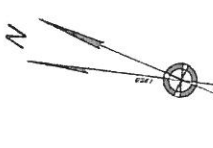
LEGEND
 - PLOT ACN FILE
 - FENCE POST
 - SET NON FILE

OWNER OF RECORD
 MARVIN J. & CAROL L. BLATT
 TAX MAP 6, LOT 9
 FROM 2296/PIECE 314
 TOTAL ACRES 2.654

ZONING
 RESIDENTIAL SUBSTANTIAL
 RP - RESIDENCE PROTECTION

PLAN OF LAND FOR MARVIN J. J. & CAROL L. BLATT KITTERY, MAINE

FRANK EMMETT
 PROFESSIONAL SURVEYOR
 SCALE: 1" = 50' FT
 DRAWN BY JAS
 PLOTTED BY GUYEN
 FEB. 16, 82



Map Title



Legend

- Roads
- World Imagery
- Low Resolution 15m Imagery
- High Resolution 60cm Imagery
- High Resolution 30cm Imagery
- Citations

Map Title



Legend

- Roads
- World Imagery
- Low Resolution 15m Imagery
- High Resolution 60cm Imagery
- High Resolution 30cm Imagery
- Citations



Showing existing house at 95 Old Dennett Rd. Garage placement continues to the right of the van.



Looking down the ROW from Old Dennett Rd



View from 95 Old Dennett Road looking over ROW to the house at 99 Old Dennett Road

Detailed plot plan:

Dimensions and shape of the lot:

102 feet on Old Dennett Rd.
1000 feet abutting 93 Old Dennett Rd.
192 feet on Spinney Creek
1193 feet abutting 97 Old Dennett Rd.

Shape is on Tax Map 6 Lot 8

Size and locations of existing buildings:

30' x 32' (plus 4x4 entryway)

Locations and dimensions of proposed building or alterations:

Location: Garage will be separate building, but connected to the house by a covered porch (approx. 4'w by 5'd)

Dimensions: 24' x24' one-story garage

Natural or topographical features (wetlands, streams, etc.) of the lot:

Any existing Wetlands are over 500' from building location near/on Spinney Creek

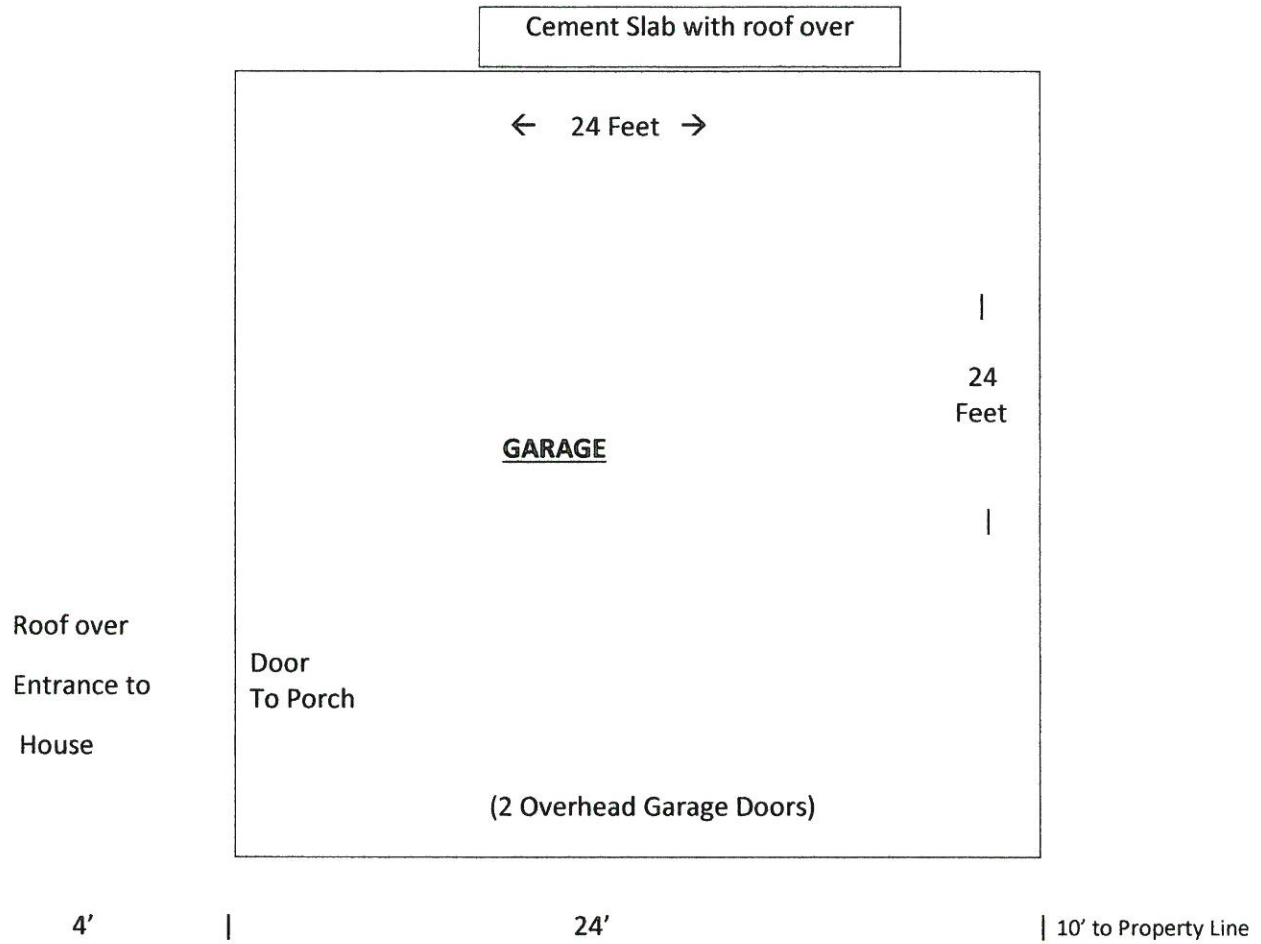
Distances to the nearest structures of abutting properties:

97 Old Dennett Rd (Lot 9 on tax map) is approximately 500' down the ROW from our home.

99 Old Dennett Rd (Lot 9A on tax map) is approximately 130' away (not abutting our property, but across the ROW) .

Details of any right-of way, easements, or other encumbrances:

The existing ROW (Private Drive) is not on our property. This abuts our property line.

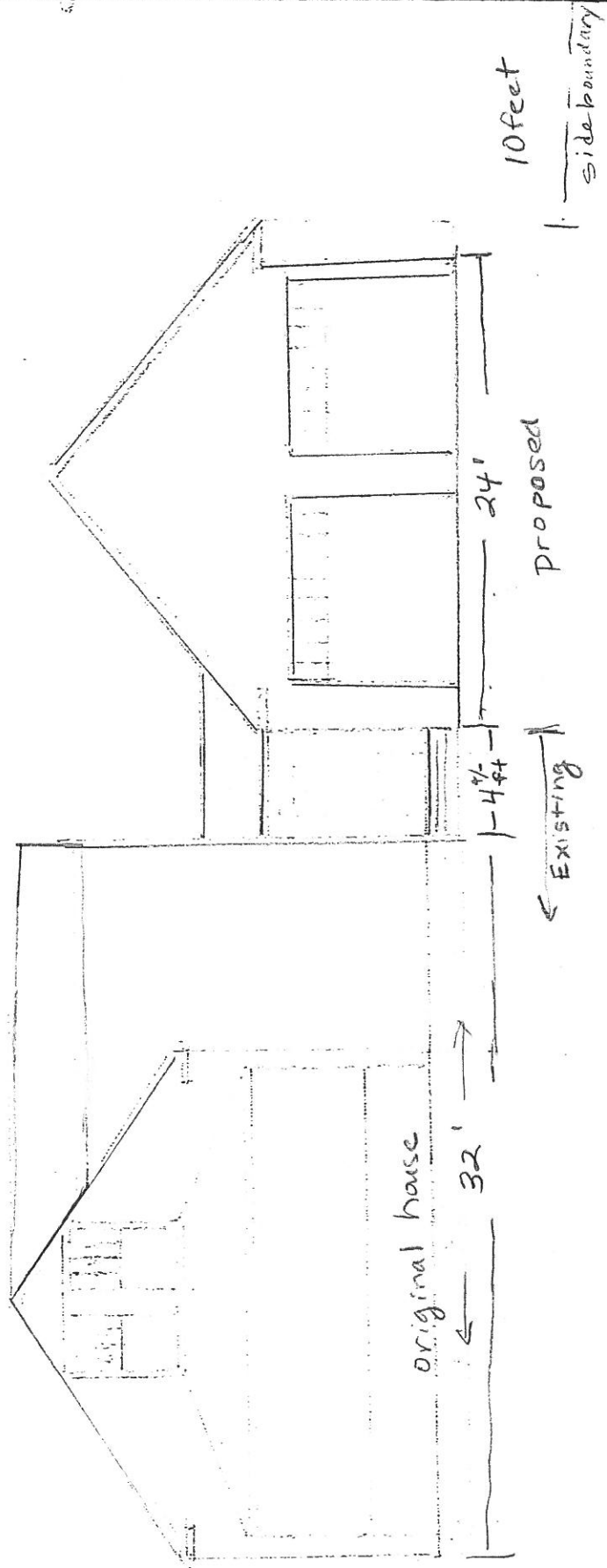


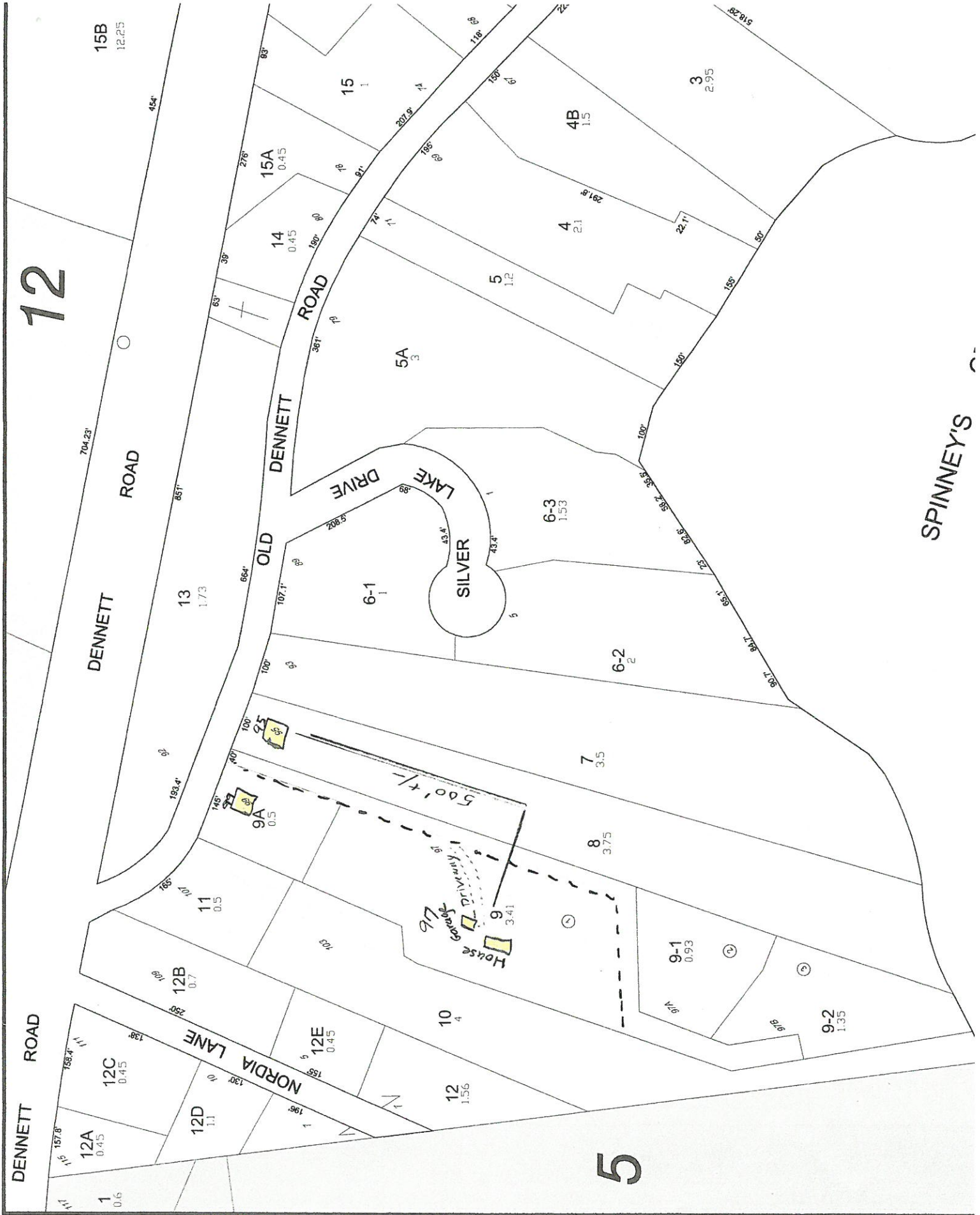
Arnold
95 Old Dennett Rd

60 feet is distance from Old Dennett Rd to front of proposed garage

Detailed plot plan:

Locations and dimensions of proposed buildings or alterations





Detailed plot plan:

Distances to the nearest structures on abutting properties

Administrative Appeal information:

Detailed description of decision appealed: (Building Permit #: BP-20-28)

We are respectfully asking to be allowed to put in a 2-car residential one-story garage (24' x 24') on our property at 95 Old Dennett Road. The right-of-way next to our property line has created unintended consequences.

Date on which the decision was made and by whom:

2/6/2020 by Code Enforcement Office – denied permit

Facts surrounding the appeal:

The permit was denied: *“we are unable to permit this garage due to the existence of the ROW along your property line. The ROW does not fit into the definition of a driveway given that it services three properties and appears to be over 500 feet in length. The ROW would fall under the private street classification of a private way. This means that your property has road frontage along both Old Dennett and the private way. The set back from the garage to the ROW would be 40 feet per the standards for the Residential-Suburban Zone.”*

Statement about what is wrong about the decision appealed:

We are being unjustly punished because of the extension of the right of way that has no benefit to us and places greater restrictions on our property.

Relief action requested to be taken in the matter:

We request that we be allowed to build within 10' of the right-of-way as if we were not a corner lot.

Statement of how the decision will affect applicant/property:

This decision would allow us to exercise our rights prior to the hardship imposed on our property due to the ROW approved by the planning board. We were considering in the original construction plan in 1999 an attached garage. Assuming we would be able to put a garage on later, we put it on hold. We now are realizing that the time for a garage has come due to the snow, cold weather and our age.



**TOWN OF KITTERY
PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

BOA Meeting Date: June 11, 2019

Item #: AA2019-01

STAFF REPORT – 95 OLD DENNETT ROAD – ADMINISTRATIVE APPEAL

Project Name: 95 Old Dennett Road

Owner: David & Karlene Arnold

Appellant: David & Karlene Arnold

Proposed Development: Garage

Requests: Administrative Appeal per Kittery Land Use & Development Code (LUDC) Section 16.6.3., Appeal of Code Enforcement Officer decision.

Site Addresses: 95 Old Dennett Road

Map & Lot Numbers: M 6 L 08



Current Zoning:

Residential – Suburban (R-S) - The purpose of the Residential – Suburban (R-S) Zone is to provide areas adjacent to the developed urban areas for future residential growth consistent with the availability of public utilities.

The following use is permitted in the R-S Zone: (1) Dwellings or modular homes, exclusive of mobile homes. The proposed dwelling use is permitted.

District Standards:

Residential – Rural (R-S) Zoning District Standards			
Land Area per Dwelling (min.)	40,000 sf	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: Residential.

Surrounding Land Uses:

- West: Residential – Suburban (R-S), dwelling
- East: Residential – Suburban (R-S), vacant land
- North: Residential – Suburban (R-S), dwelling
- South: Residential – Suburban (R-S), dwelling

Future Land Use:

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

Site Description: 3.75 ± acres accessed via Old Dennett Road

History of the Property:

The subject property consists of a conforming single-family dwelling unit built on a non-conforming lot of record. The non-conformance is due to the lot having approximately 100 feet of road frontage where 150 feet is required. The Arnolds purchased the property on June 10, 1981. On May 11, 1989 the Planning Board approved a Right-of Way Plan for Mr. Marvin Blattel, who at the time was the owner of 97 Old Dennett Road. This approval was granted so that Mr. Blattel could create two new parcels of land (97A & 97B Old Dennett Road) to give to his children. Due to a number of factors, this did not trigger subdivision law and therefore was not reviewed or publicly noticed by the Planning Board.

Description of the Issue:

Mr. and Mrs Arnold submitted a building permit to build an attached garage on the Northern side of their house. Their site plan showed that the garage would meet the side yard setback of 15 feet, but based on Town Code and the subsequent review by the Code Enforcement Staff the following facts were found:

- A ROW located on the adjacent property to the North and abutting the property lines meets the standards of a private road as
 - The road services more than two properties and is longer than 500 feet and therefore does not meet the definition of a driveway.
 - It is a 40 foot wide ROW and meets the criteria for a private way set forth in Chapter 16.8.4.3.I.
 - There is no state guidance on how to handle a situation where a created ROW has a negative impact on abutters.

Given that the ROW is a private road and that the property line of 95 Dennett follows that ROW, the property becomes a corner lot and the require set-back would be 40 feet according to 16.3.2.2.D.2d. As there is not enough room for the proposed garage given the 40 foot setback, the building permit was denied. The proposed garage would fit on the site if the side setbacks were accessed with the reduction allowed in 16.7.3.3.B(3)(b).

Administrative Appeal:

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

§ 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 16.6.3 states that “a Code Enforcement Officer decision may be appealed to the Board of Appeals as provided in § 16.6.4A.”

- (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;*

The use will not prevent the orderly and reasonable use of adjacent properties since all adjacent properties are zoned Residential – Suburban 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;*

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 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*

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.*

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 use involved is legally permitted in the zone.

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

Garages as part of a dwelling unit are an appropriate and compatible use of the land.

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

There is no proposed increase in density.

- (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 dwelling unit contains adequate septic systems as reviewed by the Code Enforcement Officer.

- (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 property contains suitable space for paved off-street parking.

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

No hazards should result from this use.

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

No overcrowding should result from this use.

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

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

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

Adequate existing vegetation exists.

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

The project includes adequate landscaping and drainage.

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

The proposal is for a garage attached to an existing dwelling unit. No existing pedestrian infrastructure connects to the area.

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

No new nuisances are expected from the dwelling use.

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

The proposed garage conforms to the applicable standards in Title 16.8 and 16.9.

TOWN OF KITTERY
Planning & Development Dept
200 Rogers Road
Kittery, ME 03904



FLEMMING, JANICE
99 OLD DENNETT ROAD
KITTERY, ME 03904-1058

TOWN OF KITTERY
Planning & Development Dept
200 Rogers Road
Kittery, ME 03904



LAVOPA, VITO
6 ANNABELLE LANE
NEW CITY, NY 10956

TOWN OF KITTERY
Planning & Development Dept
200 Rogers Road
Kittery, ME 03904



GONSALVES, JUSTIN H
97B OLD DENNETT ROAD
KITTERY, ME 03904

TOWN OF KITTERY
Planning & Development Dept
200 Rogers Road
Kittery, ME 03904



WRIGHT, JONATHAN & GLENNIS
103 OLD DENNETT ROAD
KITTERY, ME 03904

TOWN OF KITTERY
Planning & Development Dept
200 Rogers Road
Kittery, ME 03904



MERCIER TRUSTEE, GAIL
5 ROY AVE
NEWBURY, MA 01951

TOWN OF KITTERY
Planning & Development Dept
200 Rogers Road
Kittery, ME 03904



CURTI, MICHAEL R
89 OLD DENNETT ROAD
KITTERY, ME 03904-1058

TOWN OF KITTERY
Planning & Development Dept
200 Rogers Road
Kittery, ME 03904



DENNETT, SARAH
100 DENNETT ROAD
KITTERY, ME 03904-1505

TOWN OF KITTERY
Planning & Development Dept
200 Rogers Road
Kittery, ME 03904



EDWARDS, ELIZABETH
97 OLD DENNETT ROAD
KITTERY, ME 03904-1058

TOWN OF KITTERY
Planning & Development Dept
200 Rogers Road
Kittery, ME 03904



ARNOLD, DAVID W
95 OLD DENNETT ROAD
KITTERY, ME 03904-1058

TOWN OF KITTERY
Planning & Development Dept
200 Rogers Road
Kittery, ME 03904



JOHNSON, SHARI R
5 SILVER LAKE DRIVE
KITTERY, ME 03904-1049

TOWN OF KITTERY
Planning & Development Dept
200 Rogers Road
Kittery, ME 03904



PARKER, JUNE M
93 OLD DENNETT ROAD
KITTERY, ME 03904-1058



Town of Kittery Board of Appeals
NOTICE OF PUBLIC HEARING
Tuesday, March 10, 2020 -- 6:30PM
Council Chambers, Town Hall, 200 Rogers Road

David Arnold, Owner, 95 Old Dennett Road in the Residential Suburban (R-S) zone, requesting an Administrative Appeal to a denied building permit in accordance with Town of Kittery Code 16.6.3.

Application information is available for public inspection between 9:00 am to 6:00 pm Mondays thru Thursdays at the Planning and Development Department located in Town Hall. To request a reasonable accommodation for this meeting please contact staff at (207) 475-1323.

OBITUARIES NEWS

seat in the arena - which was an additional 4 to 5 million dollars - so the people could see over the boards from them. We decided not to do that."

If school officials required evidence the venue was in need of a serious upgrade it came in early December when a game against Merrimack had to be postponed because of a compressor malfunction and the ice began to melt.

"The ice surface is precarious and we do have a proposal, and it needs to be approved by the trustees, the rebuild," UNH director of athletics Marty Scarano said at the time. "This is the whole thing about re-sizing the arena. There's a change."

have interest in changing the dimensions of the new ice surface, and this is the natural time to explore that option."

The men have four games left in the regular season, beginning with a home- and-home series against UMass Lowell this weekend, while the women are in Providence for a quarterfinal playoff series.

"Our program has been interested in changing the size of the ice surface to the dimensions that are more aligned with our competitors in college hockey," men's coach Mike Souza said in an email. "With the ice needing to be replaced this spring, the timing was right to make the change."

after no candidate amasses

major delegate advantage

ON THE EVE OF SOUTH

he's going to be able to go the distance."

Judge: Military funds for Washington state can't go to wall

Supreme Court, others have ruled for Trump administration

By Gene Johnson
The Associated Press

SEATTLE - President Donald Trump may not divert \$89 million intended for a military construction project in Washington state to build his border wall, a U.S. judge in Seattle ruled Thursday.

The U.S. Supreme Court and some other courts have said the administration can begin diverting billions of dollars in military spending to the wall, and work has been done on some sections.

But U.S. District Judge Barbara Rothstein ruled Thursday that a case brought by Washington Attorney General Bob Ferguson contains different issues that are not covered by those decisions.

Rothstein found that diverting the money is unlawful because Congress - which has the power of the purse under the Constitution - specifically barred Trump from spending additional money on the wall. The decision was also unlawful because it would take money that Congress appropriated for military construction and use it for domestic law enforcement, she said.

Congress repeatedly and deliberately declined to appropriate the full funds the President requested for a border wall along the southern border of the United States," Rothstein wrote.

While Trump long insisted that Mexico would pay for the wall, that hasn't been the case. Congress in late 2018 and early 2019 refused to give Trump all of the money he wanted for a border wall, leading to a 35-day partial government shutdown. Lawmakers eventually gave him \$1.4 billion.

In reaction, Trump declared a national emergency. The administration claimed that allowed him to shift almost three times that much money - \$3.6 billion - from military accounts to build a combined 175 miles of fencing in California, Arizona, Texas and New Mexico.

The U.S. Supreme Court last summer lifted a court order that prevented the government from spending \$2.5 billion from the Defense Department's money for military pensions

and anti-drug efforts. But legal challenges continue with regard to that money as well as the \$3.6 billion the Pentagon is diverting from military construction projects.

The \$89 million was intended for a pier at Naval Base Kitsap, the base west of Seattle where the Pacific fleet of nuclear submarines is based.

The Washington attorney general said losing that construction money would cost the state \$2.6 million in tax revenue over the next two years, and that was enough to give Washington standing to challenge the administration's plans in court. The judge agreed.

"This judgment is an important victory for the rule of law, and the system of checks and balances our founders enshrined in our Constitution," Ferguson said in a written statement.

"We're looking forward to this \$89 million being used the way Congress intended - to support a military construction project in Washington state."

Legal Notice

NOTICE OF PUBLIC HEARING

TOWN OF KITTERY - BOARD OF APPEALS

200 Rogers Road, Kittery, Maine 03904
Tuesday, March 10, 2020 - 6:30 p.m.

David Arnold, Owner, 95 Old Dennett Road in the Residential Suburban (R-S) zone, requesting an Administrative Appeal to a denied building permit in accordance with Town of Kittery Code 16.6.3.

Application information is available for public inspection between 8:00 am to 6:00 pm, Monday through Thursday, at the Development Department located in Kittery Town Hall.

To request a reasonable accommodation for this meeting please contact staff.

PH0047906

Legal Notice

TOWN OF NORTH HAMPTON

NOTICE OF PUBLIC HEARING ON

PROPOSED AMENDMENT AND PROPOSED SIDE AGREEMENT ON

COURTESY CABLE TV SERVICES.

March 23, 2020 at 7:00pm

Town Hall, 233 Atlantic Avenue, North Hampton, New Hampshire

The North Hampton Select Board will hold a public hearing pursuant to the provisions of RSA 53-C:3-a to consider a proposal for an amendment to the current television franchise agreement with Comcast of Maine/New Hampshire, Inc., and a separate Agreement on courtesy cable TV services provided to the Town and School by Comcast. Copies of the current cable television franchise agreement, the proposed Amendment and the separate agreement are available at the Town office and on the Town's website https://www.northhampton-nh.gov/.

Any interested person may attend this public hearing and present information and/or opinions related thereto.

MEETING MINUTES

1. CALL TO ORDER; INTRODUCTORY; ROLL CALL

Chair Timko called the meeting to order at 6:30 p.m. and asked that the roll be called.

Board Members Present: Vern Gardner, Barry Fitzpatrick, April Timko, Louis Leontakianakos, Jeff Brake

Board Members Absent: Charles Denault III, Suzanne Dwyer-Jones

Staff Present: Craig Alfis, Code Enforcement Officer; David Evans, Assistant Code Enforcement Officer

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

- Chair Timko made a motion to correct a typographical error in the agenda. Under Item A, the zone is listed as “Residential – Rural” and should be changed to “Residential – Kittery Point Village”. Seconded by Vice Chair Leontakianakos. Motion passed 5-0-0 by roll call vote [Yes: Gardner, Brake, Fitzpatrick, Leontakianakos, Timko; No: --; Abstain: --]

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

- a. Lisa Ash, owner 22 Folcutt Road, requesting a Special Exception Use to operate a dog day care as a Major Home Occupation in the Residential – Kittery Point Village (R-KPV) zone per Section 16.3.2.3.C(7) and 16.8.22.3 of the Town Code.**
- The Board’s authority to hear the request was affirmed by Vice Chair Leontakianakos. Mr. Evans was invited to present the staff report. The Board had several questions for Mr. Evans. The applicant, Lisa Ash, was invited to the podium to state the details of their request. The Board had several questions for Ms. Ash. The public were invited to comment. Four members of the public spoke in favor of approval. One member of the public spoke against approval. Chair Timko read an email submitted to the Code Enforcement Officer, requesting the Board to deny the application. Ms. Ash was invited back to the podium to respond to the public’s comments. Mr. Alfis was invited to the

podium to provide clarification on Board and public comments. The Board closed the public hearing and entered discussion.

Motion by Mr. Gardner to approve the Special Exception Use request per Section 16.8.22.3 by Lisa Ash with the following conditions:

1. Business activities involving clients or customers on the premises or vehicular traffic to and from the premises must not be conducted between the hours of 7:00 p.m. and 7:00 a.m. The applicant must submit a plan that provides safe and sufficient off-street parking to meet the needs of the business and prevent parking from overflowing off the site.
2. The erection of a fence as outlined by the applicant.

Seconded by Mr. Brake.

Amendment proposed by Vice Chair Leontakianakos to include the following conditions:

1. The owner must mitigate potential obnoxious odors from the accumulation of pet waste, and must mitigate against potential obnoxious noise.
2. The applicant must be a resident of the dwelling on the premises where the home occupation will occur. An applicant who is not the owner of the property, but is residing on the premises, must submit written permission of the property owner for the proposed home occupation.
3. The maximum total amount of square footage attributed to the home occupation use must not exceed 942 square feet.
4. There must be no more than five adults, inclusive of residents of the premises, working in the home occupation at the site at any one time.
5. No other major home occupations may be conducted on the premises while operating as a dog day care with limited overnight care.
6. Business activities involving clients or customers on the premises or vehicular traffic to and from the premises must not be conducted between the hours of 7:00 p.m. and 7:00 a.m. The applicant must submit a plan that provides safe and sufficient off-street parking to meet the needs of the business and prevent parking from overflowing off the site.
7. All outdoor storage of equipment, vehicles or items associated with the home occupation must be screened from view of abutting properties and from all streets except for one (1) vehicle used in conjunction with the home occupation and vehicles owned by residents of the premises with valid license plates.
8. All business activities on the site must take place within an enclosed building.

9. All refuse and recyclables must be stored in containers that are screened from view of abutting properties and from streets.
10. Upon approval of a major home occupation by the Board of Appeals and compliance with the above conditions, the Code Enforcement Officer is authorized to issue a certificate of occupancy permit for not more than a one-year time period. Such permit may be renewed annually upon application to the Code Enforcement Officer. The annual permit may be renewed only if the Code Enforcement Officer finds the major home occupation complies with all applicable standards of this Code and any conditions required by the Board of Appeals in the original approval.
11. The owner may not exceed more than seven canines in her care at any one time.

The proposed amendment was accepted by Mr. Gardner. Seconded by Chair Timko.

Motion passed 5-0-0 by roll call vote [Yes: Gardner, Brake, Fitzpatrick, Leontakianakos; Timko; No: --; Abstain: --]

The Board was notified of their right to reconsider and the public was notified of their right to appeal.

Chair Timko and Vice Chair Leontakianakos read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) Lisa Ash, applicant, at 22 Folcutt Road requested a Special Exception Use per 16.8.22.3 for a Major Home Occupation for dog day care services (2) She is seeking approval with limited overnight care. (3) The Board heard from Code Enforcement, the applicant, five members of the public and one email from the public was read. (4) The Board found they had the authority to hear the request per Section 16.6.4.D.1. (5) The Board used the criteria set forth in the Basis for Decision Section 16.8.22.3. (6) A motion to approve the request was proposed, amended and passed with 5 votes in the affirmative. (7) The applicant indicated that the property would be fenced and take every effort to mitigate any excessive noise. (8) The residential type neighborhood includes numerous dogs and therefore noise from dogs would not be out of place in such a neighborhood.

Motion to accept the Findings of Fact made by Chair Timko. Seconded by Mr. Brake.

Motion passed 5-0-0 by roll call vote [Yes: Gardner, Brake, Fitzpatrick, Leontakianakos, Timko; Nay: --; Abstain: --]

Conclusions of Law: (1) The Board had the authority to hear the Special Exception Use Request pursuant to section 16.6.4. (2) The Board considered the requirements for a Special Exception use set forth in Section 16.8.22.3. (3) The Board also considered the Factors for Determination set forth in Section 16.6.6. (4) The Board determined that

the applicant met all the requirements for a Major Home Occupation and the Special Exception Use request. (5) The Board granted the request with enumerated conditions.

Motion to accept the Conclusions of Law made by Vice Chair Leontakianakos. Seconded by Mr. Brake. Motion passed 5-0-0 by roll call vote [Yes: Gardner, Brake, Fitzpatrick, Leontakianakos, Timko; Nay: --; Abstain: --]

b. Harrison E. Lemont Management Co, Inc, owner 447 US Route 1, requesting a Miscellaneous Variation Request to approve a non-conforming structure in the Mixed Use (MU) zone per Section 16.6.4.C(1) and 16.7.3.3.A of the Town Code.

- Chair Timko stated the hearing was noticed in the Portsmouth Herald on January 4th, 2020. Mr. Brake recused himself from the decision. The applicant was notified that though the Board still had a quorum, the approval would require four like votes. The applicant's representative stated they would like to proceed. The Board's authority to hear the request was affirmed by Vice Chair Leontakianakos. Mr. Alfis was invited to present the staff report. The Board had several questions for Mr. Alfis. The applicant's representative, Evan Lemont, was invited to the podium to state the details of their request. Tom Emerson, architect for the applicant also stated details of the request. The Board had several more questions for Mr. Alfis. The Board invited members of the public to comment. The Board closed the public hearing and entered discussion.

Motion by Vice Chair Leontakianakos to approve the Miscellaneous Variation Request to per Code Section 16.6.C(1) and Section 16.7.3.3.A. Motion was seconded by Mr. Fitzpatrick. Motion failed 3-1-0 [Yes: Fitzpatrick, Leontakianakos, Timko; No: Gardner; Abstain: --]

The Board was notified of their right to reconsider and the public was notified of their right to appeal.

Chair Timko and Vice Chair Leontakianakos read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) Applicant Harrison E. Lemont Management Co, Inc, owner of 447 US Route 1, requesting a Miscellaneous Variation Request to approve a non-conforming structure in the Mixed Use zone per Section 16.6.4.C(1) and Section 16.7.3.3.A. (2) The Board heard from Code Enforcement, the applicant's representative and the applicants architect. (3) The Board considered all factors set forth in LUDC 16.7.3.5.A(1). (4) The proposed structure is no more non-conforming than the previous structure. (5) The standard that the Board has used in the past is that if the structure is no more non-conforming, the Board would generally approve such a request. (6) The

Board had five members present, Mr. Brake recused himself and the applicant decided to proceed with only four voting members with four like votes required to pass. (7) It was an architectural error that resulted in the 1.7' setback encroachment. (8) The motion failed, three votes in the affirmative, one vote in the negative.

Motion to accept the Findings of Fact made by Mr. Gardner. Seconded by Chair Timko. Motion passed 4-0-0 by roll call vote [Yes: Gardner, Fitzpatrick, Leontakianakos, Timko; Nay: --; Abstain: --]

Conclusions of Law: (1) The Board had the authority to hear the Special Exception Use Request pursuant to section 16.6.4.C(1) and 16.7.3.3.A. (2) The Board found that the proper notice of this request had been issued. (3) The motion to approve the request failed.

Motion to accept the Conclusions of Law made by Vice Chair Leontakianakos. Seconded by Mr. Gardner. Motion passed 4-0-0 by roll call vote [Yes: Gardner, Fitzpatrick, Leontakianakos, Timko; Nay: --; Abstain: --]

Mr. Brake rejoined the Board at 7:53pm.

- c. Ryan Kanteres, on behalf of owner Town of Kittery, requesting a Miscellaneous Variation Request to expand a non-conforming structure at 8 Wentworth Street in the Mixed Use – Kittery Foreside (MU-KF) zone per Section 16.6.4.C(1) and 16.7.3.3.B of the Town Code**
- The applicant was notified that the Board only had five members present and approval would require four like votes. The applicant's representative chose to proceed. The Board's authority to hear the request was affirmed by Vice Chair Leontakianakos. Mr. Alfis was invited to present the staff report. The applicant's representative, Scott Simon, was invited to the podium to present the details of their request. The Board had several questions for Mr. Simon. Kendra Amaral, Town Manager, took the podium to answer several Board Member questions. The public were invited to comment. One member of the public took the podium to speak in favor of the design as it was presented. Ms. Amaral took the podium to respond to public questions and comments. The Board closed the public hearing and entered discussion. Both Mr. Alfis and Mr. Simon provided clarification on questions raised by Board members during discussion.

Motion by Mr. Fitzpatrick to approve the Miscellaneous Variation Request to expand a non-conforming structure at 8 Wentworth Street in the Mixed Use- Kittery Foreside zone to allow for both the expansion of the non-conforming structure and a flat roof on the South,

Southwest and Southeast portions of the building. Motion was seconded by Mr. Brake. Motion passed 5-0-0 [Yes: Gardner, Brake, Fitzpatrick, Leontakianakos, Timko; No: --; Abstain: --]

Chair Timko and Vice Chair Leontakianakos read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) The Board heard from Scott Simon, representing the applicant Ryan Kanteres to request a Miscellaneous Variation to expand a non-conforming structure at 8 Wentworth Street in the Mixed Use – Kittery Foreside zone per Section 16.6.4.C(1) and 16.7.3.3.B of the Town Code. (2) The Board heard from the Code Enforcement Officer and the Kittery Town Manager. (3) The Board used the Basis for Decision. (4) The existing building exceeds the allowable height in the Mixed Use – Kittery Foreside zone. (5) The height will remain unchanged as part of the project. (6) The existing structure will remain the highest point of the structure. (7) The proposed building increases the footprint by more than 30%. (8) The project meets the applicable requirements of the code with the exception of the specific provision of Section 16.3.2.15.D.4(e)[2]. (9) The Board considered the statements that the flat roof is required to preserve the historic nature of the building.

Motion to accept the Findings of Fact made by Vice Chair Leontakianakos. Seconded by Mr. Fitzpatrick. Motion passed 5-0-0 by roll call vote [Yes: Gardner, Brake, Fitzpatrick, Leontakianakos, Timko; Nay: --; Abstain:--]

Conclusions of Law: (1) The Board found it had authority to hear this Miscellaneous Variation Request pursuant to Code Section 16.6.4.C(1). (2) The Board determined that meeting the requirements of Section 16.3.2.15.D.4(e)[2] would contradict the National Parks Service Technical Brief on recommendations to additions to historic structures. (3) The Board approved the Miscellaneous Variation Request.

Motion to accept the Conclusions of Law made by Vice Chair Leontakianakos. Seconded by Mr. Gardner. Motion passed 5-0-0 by roll call vote [Yes: Gardner, Brake, Fitzpatrick, Leontakianakos, Timko; Nay: --; Abstain: --]

The Board was notified of their right to reconsider and the public was notified of their right to appeal.

6. UNFINISHED BUSINESS

7. NEW BUSINESS

8. ACCEPTANCE OF PREVIOUS MINUTES

- December 10, 2019

Motion made by Mr. Gardner to accept the minute of December 10, 2019 as presented.
Seconded by Mr. Brake. Motion passed 5-0-0 by roll call vote [Yes: Gardner, Brake, Fitzpatrick,
Leontakianakos, Timko; Nay: --; Abstain: Gardner]

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

- Mr. Gardner presented Chair Timko with a thumb drive containing information that he received at a seminar presented by Jensen Baird Gardner & Henry.

10. ADJOURNMENT

Motion by Mr. Gardner to adjourn. Second by Mr. Brake. Motion passed 5-0-0 by voice vote
[Aye: Gardner, Brake, Fitzpatrick, Leontakianakos, Timko; Nay: --; Abstain: --]

The Kittery Board of Appeals meeting of January 14, 2020 adjourned at 8:29 p.m.

Submitted by Craig Alfis, Code Enforcement Officer

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 Timko called the meeting to order at 6:30 p.m. and asked that the roll be called.

Board Members Present: Vern Gardner, Charles Denault III, Jeff Brake, Barry Fitzpatrick, Suzanne Jones, Louis Leontakianakos, April Timko

Board Members Absent: None

Staff Present: Craig Alfis, Code Enforcement Officer

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

6. UNFINISHED BUSINESS

- a. Per email dated 1/15/2020 Mr. Vern Gardner requests reconsideration of the vote of the Miscellaneous Variation Request concerning Harrison E. Lemont Management Co. Inc. taken at the Kittery Board of Appeals on January 14th, 2020.**

Motion by Mr. Gardner to reconsider of the decision taken by the Kittery Board of Appeals on January 14th, 2020 regarding Harrison E. Lemont Management Co. Inc. Seconded by Vice Chair Leontakianakos. Motion passed 7-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Fitzpatrick, Jones, Leontakianakos, Timko; No: --; Abstain: --]

- Chair Timko advised the Board and the public that as this is a reconsideration of a previous vote that there must be five like votes to change or reverse the original decision. Mr. Alfis was invited to present the staff report. Mr. Brake explained that he did recuse himself at the January 14th meeting, but has since reviewed the requirements on recusal and found that he did not have any conflict or bias and would not be recusing himself tonight. The applicant's representative, Mr. Tom Emerson, was invited to present details of the request and noted that the error was due to an incorrect survey that was used to prepare the site plan. The Board had several questions for both Mr. Alfis and Mr. Emerson. The Board entered discussion.

Motion by Ms. Jones to approve the Miscellaneous Variation Request to approve a non-conforming structure in the Mixed Use zone per Code Section 16.6.4.C(1) and Section 16.7.3.3.A. Seconded by Vice Chair Leontakianakos. Motion passed 7-0-0 by roll call vote [Yes: Denault, Brake, Fitzpatrick, Jones, Leontakianakos, Timko, Gardner; No: --; Abstain: --]

Chair Timko and Vice Chair Leontakianakos read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) The applicant requested a Miscellaneous Variation Request to approve a non-conforming structure in the Mixed-Use zone per Section 16.6.4.C(1) and Section 16.7.3.3.A. (2) The Board allowed the Miscellaneous Variation Request. (3) The Board found that the structure would be less non-conforming. (4) The Board found that the issue was that the addition to the restaurant was permitted based on documents that were provided prior to the development and the restaurant was existing. (5) The Board found that there was already a plan in place to build another structure prior to the demolition of the previous building. (6) The previous dwelling unit was built one foot from the east property line and 28-feet from the north property line where a 30-foot setback is required for both. (7) The current survey reveals that the new building infringes on the rear setback resulting in a 28.3-foot setback where 30-feet is required so the new building is less non-conforming than the previous building. (8) The Board voted seven in the affirmative, zero in the negative and the motion passed.

Motion to accept the Findings of Fact made by Vice Chair Leontakianakos. Seconded by Mr. Denault. Motion passed 7-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Fitzpatrick, Jones, Leontakianakos, Timko; No: --; Abstain: --]

Conclusions of Law: (1) The Board had the authority to hear the Miscellaneous Variation Request pursuant to section 16.6.4.C(1) and section 16.7.3.3.A. (2) The Board allowed the Miscellaneous Variation Request. (3) The Board considered the factors set forth in section 16.6.6 in making its decision. (4) The Board found that all those factors were met. (5) The Board approved the Miscellaneous Variation Request.

Motion to accept the Conclusions of Law made by Vice Chair Leontakianakos. Seconded by Mr. Denault. Motion passed 7-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Fitzpatrick, Jones, Leontakianakos, Timko; No: --; Abstain: --]

7. NEW BUSINESS

8. ACCEPTANCE OF PREVIOUS MINUTES

- January 14, 2020
 - As not all members present had reviewed the minutes the acceptance was continued to the following meeting.

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

10. ADJOURNMENT

Motion by Vice Chair Leontakianakos to adjourn. Second by Mr. Denault. Motion passed 7-0-0 by voice vote [Aye: Gardner, Denault, Brake, Fitzpatrick, Jones, Leontakianakos, Timko; Nay: --; Abstain: --]

The Kittery Board of Appeals meeting of January 28, 2020 adjourned at 7:03 p.m.

Submitted by Craig Alfis, Code Enforcement Officer

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>.