

**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

Prepared by CMA Engineers for Planning Department

BOA Meeting Date: April 12, 2022

Item #: MVR 2022-2

STAFF REPORT – 8 Coleman Avenue – MISCELLANEOUS VARIATION REQUEST

Project Name: 8 Coleman Avenue

Applicant: Kittery Art Association
Dean R. Gallant, President Board of Trustees

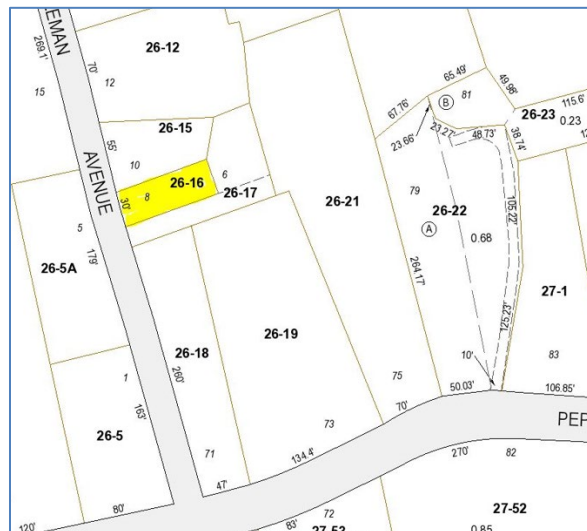
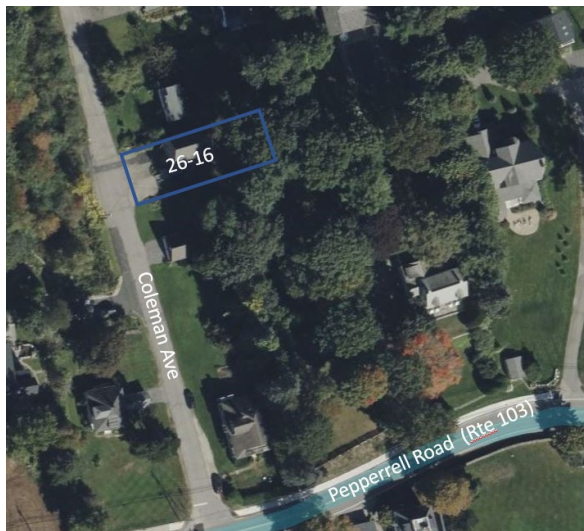
Owner: Kittery Art Association

Proposed Development: Convert existing structure to Single Family Residence

Requests: Miscellaneous Variation Request, per 16.2.12.D(3) to approve an existing non-conforming structure on a nonconforming lot in the Residential-Kittery Point Village zone as a single family residential use, with relaxation of dimensional requirements (not involving area or width) per 16.1.8.C(6).

Site Addresses: 8 Coleman Avenue

Map & Lot Numbers: Map 26 Lot 16



Current Zoning: Residential - Kittery Point Village

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.

The following uses are permitted in the Kittery Point Village (R-KPV):

- Accessory Dwelling Units
- Cluster Residential Development
- Dwelling, Attached Single-Family
- Dwelling, Multi-Family
- Dwelling, Single-Family
- Dwelling, Two-Family
- Accessory Buildings, Structures, and Uses
- Home Occupations, Minor
- Day Care Facility
- Nursery School
- Private Assembly
- Public Facility
- Public or Private School
- Religious Use
- Recreation, Public Open Space
- Agriculture
- Commercial School

Also, under Special exception uses, item (7) includes a use that specifically applies to the KAA use:

(7) The reuse of a designated historic building, in nonresidential use as of the effective date of this provision, as an art studio/gallery, museum, or business and professional office subject standards for a minor home occupation as set forth in § 16.5.12.

The current use of the structure (Kittery Art Association art gallery) conforms with the R-KPV uses. The proposed changed use as a single-family residence, is also an allowed use. Other allowable uses are possible, and most would require parking in addition to what is necessary for a single-family residence. The single-family residence use is the least impactful and most consistent permitted use.

District Standards:

Residential – Kittery Point Village Standards			
Minimum Road Frontage	150 feet	Front Yard Setback (min.)	40 feet
Lot Size with Frontage	40,000 sf	Rear Yard Setback (min.)	15 feet
Side Yard Setback (min.)	15 feet	Maximum building coverage	20%

The Miscellaneous Variation Request associated with this application is to approve a non-conforming structure in the Residential-Kittery Point Village zone to a residential use with relaxation of dimensional requirements (not involving area or width) per 16.1.8.C(6). The Kittery GIS indicates that the lot frontage and width is 30 feet. The building is approximately 20 feet wide, leaving less than 15 feet side yard setbacks, In this case the frontage, and yard setbacks are proposed to be relaxed as may be necessary based on existing conditions, as well as the percentage of building coverage. The proposed use is a change to Dwelling, Single Family.

Current Use: The current use of the structure is an art studio/gallery by the Kittery Art Association art gallery.

Surrounding Land Uses:

West: Residential – Kittery Point Village (R-KPV). Un-occupied, wooded
East: Residential – Kittery Point Village (R-KPV). Dwelling unit
North: Residential – Kittery Point Village (R-KPV). Dwelling unit
South: Residential – Kittery Point Village (R-KPV). Accessory building

Site Description:

The subject property consists of 5,660 square foot lot (0.13 acre) located on the eastern side of Coleman Avenue on Kittery Point. The property is a non-conforming lot of record as it does not meet the minimum land area or street frontage.

History of the Property:

The property reportedly was a structure that housed Kittery fire department vehicles, until it was acquired by the Kittery Art Association (KAA) in 1959. It has been owned by the KAA since that time and used as an art gallery. The existing building violates several of the dimensional standards of the R-KPV zone, including percent lot coverage by building, frontage, and yard setbacks.

Description of the Issue:

The applicant proposes to convert the structure to a single-family residence on the nonconforming lot.

Staff Recommendation: APPROVAL of miscellaneous variation request.

Applicant’s Miscellaneous Variation Request:

Section 16.2.12 requires the Board of Appeals to use the following process when hearing requests:

§ 16.2.12.F Basis for decision.

(1). Conditions.

(a) 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 16.2.12.D(3) allows the Board of Appeals to decide variations for nonconformities covered in Section 16.1.8. Further, Section 16.1.8.C(6) 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.”

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

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

Staff (CMA Engineers) believes the use will not prevent the orderly and reasonable use of adjacent properties since adjacent properties are also zoned Residential – Kittery Point Village and contain the same dwelling use as that proposed for the subject property.

(2) 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 (CMA Engineers) believes the use will not prevent the orderly and reasonable use of legally established uses in the zone since the use is proposed to be the same as adjoining properties and there are no use restrictions among adjacent dwelling units.

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

Staff (CMA Engineers) believes the use will not adversely affect the health and welfare of the Town.

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

Staff (CMA Engineers) 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:

(a) 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 is an allowed use in the zone.

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

The proposed use is an appropriate use of the land. The proposed expansion is consistent with surrounding uses and would not be detrimental to property values.

(c) *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 use will not result in additional vehicular traffic. Traffic might possibly be reduced from the existing use.

(d) *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 property contains an operating septic system. The proposed change should not significantly alter use of the system.

(e) *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.

(f) *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.

(g) *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.

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

The property has existing off-street parking. Parking demand will not increase.

(i) *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.

(j) *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.

(k) *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.

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

The project will not change the existing landscaping, which does provide for some buffering from neighboring lots.

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

The project does not propose any grading changes or other alterations of the site.

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

The proposed project will not change the site plan of the property.

(o) *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.

(p) *The satisfactory compliance with all applicable performance standard criteria contained in Chapters 16.6 and 16.7.*

Other than the miscellaneous variation request filed here, the proposed use and site plan appear to conform to Title 16.6 and 16.7.

Using the standards and criteria of the LUDC regarding miscellaneous variations, Staff (represented by CMA Engineers), recommends **APPROVAL** of the miscellaneous variation request to change the use of the structure to *Dwelling, Single-Family*, with required dimensional variations required by the existing nonconforming structure and lot.