

**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

BOA Meeting Date: March 12, 2019

Item #: MVR2019-03

**STAFF REPORT – 63 PEPPERRELL ROAD – MISCELLANEOUS VARIATION
REQUEST**

Project Name: 63 Pepperrell Road

Applicant: Arilda Densch, Arilda Design

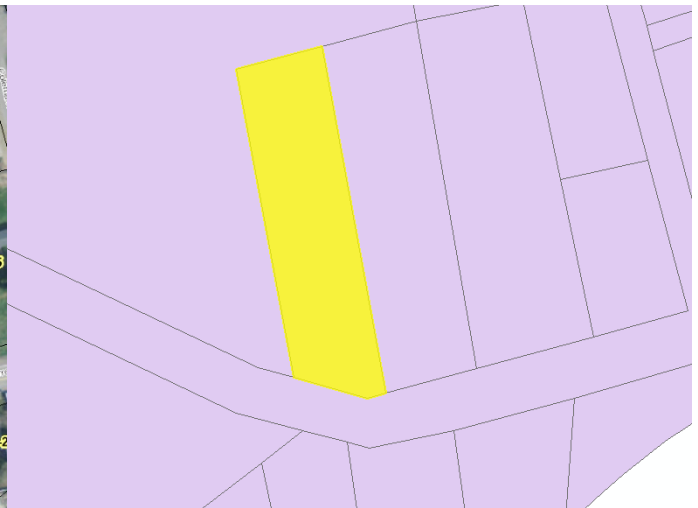
Owner: Sean & Cara Konecci

Proposed Development: Expansion of an existing single-family dwelling

Requests: Miscellaneous Variation Request per LUDC Section 16.7.3.3.B(1), seeking approval for the expansion of a non-conforming structure

Site Addresses: 63 Pepperrell Road

Map & Lot Numbers: M 26 L 02



Current Zoning:

Residential – Kittery Point Village (R-KPV) - The purpose of the Residential – Kittery Point Village Zone is 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 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.

Staff Recommendation: APPROVAL of miscellaneous variation request

District Standards:

Residential – Kittery Point Village (R-KPV) Zoning District Standards			
Land Area per Dwelling (min.)	40,000 sf	Front Yard Setback (min.)	40 feet
Impervious Surface (max.)	20%	Rear Yard Setback (min.)	15 feet
Lot Size (min.)	40,000 sf	Side Yard Setback (min.)	15 feet

Current Use: One single-family dwelling

Surrounding Land Uses:

West: Conservation (CON), state park

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

North: Conservation (CON), state park

South: Residential – Kittery Point Village (R-KPV), single-family dwelling

Future Land Use:

The subject property is located within a Neighborhood Conservation Area in the Future Land Use Map. A Neighborhood Conservation Area is defined in the Comprehensive Plan as an area “made up of relatively fully developed neighborhoods that in some cases contain all residential uses, or a mix of residential and commercial uses.” Compatible development in a Neighborhood Conservation Area are infill projects that fill out the existing neighborhood, and smaller scale development that is in keeping with character of specific context.

Site Description:

The subject property consists of approximately 28,314 square feet (.65 acres), located along the northern right-of-way of Pepperell Road. The property is zoned Residential – Kittery Point Village (R-KPV). The lot contains one single-family dwelling of approximately 1,565 square feet (including an existing deck). Fort McClary State Park (conservation land owned by the State of Maine) abuts the western and northern property lines.

History of the Property:

The property contains a single-family dwelling unit constructed in approximately 1730. Tax records show the dwelling consists of approximately 1,565 square feet of living space with a 93-square-foot wooden deck. The existing structure is located well within the 40-foot front yard setback required for R-KPV zoning district, making this a legal, non-conforming structure.

Description of the Issue:

The current owner wishes to construct an addition to the single-family dwelling consisting of 310

square feet of interior space and a 199-square-foot wooden deck. Because the house is a non-conforming structure, Kittery Land Use & Development Code requires Board of Appeals approval (16.7.3.3.B.(1)). The structure is not located within the Shoreland Protection Overlay zone.

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 nonconforming properties covered in Section 16.7.3. Further, Section 16.7.3.3.B.(1) state that “...repair and/or expansion of a nonconforming structure must be approved by 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 all adjacent properties are either zoned Residential – Kittery Point Village and contain the same single-family dwelling use as the subject property, or are vacant park uses.

- (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 uses involved are allowed in the zone by right.

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

Single-family dwelling is 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 use change nor increase in density of the existing single-family use so there is no effect on congestion.

- (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 property contains adequate septic systems, as long as additional bedrooms are not added.

- (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 land has suitable existing 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 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;*

Adequate existing vegetation exists.

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

No changes in the existing landscaping, grading, or drainage result from this use.

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

Existing pedestrian facilities existing along this road and are adequate.

- (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 single-family dwelling use.

- (16) *The satisfactory compliance with all applicable performance standard criteria*

contained in Chapters 16.8 and 16.9.

Other than the request of relief from side setbacks, the property conforms to Title 16.8 and 16.9 in its existing legal, non-conforming state.

Using the standards and criteria found in 16.6.6 of the LUDC, Staff recommends **APPROVAL** of the miscellaneous variation request to expand the existing non-conforming single-family dwelling as proposed.