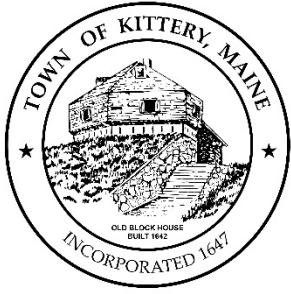


Town of Kittery
200 Rogers Road, Kittery, ME 03904

Board of Appeals
Meeting Agenda, Council Chambers
Tuesday, April 9, 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. Thomas Battcock-Emerson, applicant for James & Anita Alden, owners, 11 Mill Pond Road, Residential-Urban & Shoreland overlay zones, requesting Miscellaneous Variation Request to the terms of 16.3.2.4.D.2.d, 16.6.4.C, 16.7.3.1.A.B & 16.7.3.3.B.3.A, to construct a 4' x 8' canopy over front stoop entry.
 - b. Evan Appleton, 592 Haley Road, Residential-Kittery Point Village & Shoreland overlay zones, requesting Miscellaneous Variation Request to the terms of 16.3.2.3.D.2.d, to construct a 7' x 38' 6" covered porch & 4' x 10' deck.
6. Unfinished Business
7. New Business
8. Acceptance of Previous Minutes
9. Board Member or CEO Issues or Comment
10. Adjournment



**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

BOA Meeting Date: April 9, 2019

Item #: MVR2019-04

**STAFF REPORT – 11 MILL POND ROAD – MISCELLANEOUS VARIATION
REQUEST**

Project Name: 11 Mill Pond Road

Applicant: Thomas Battcock-Emerson

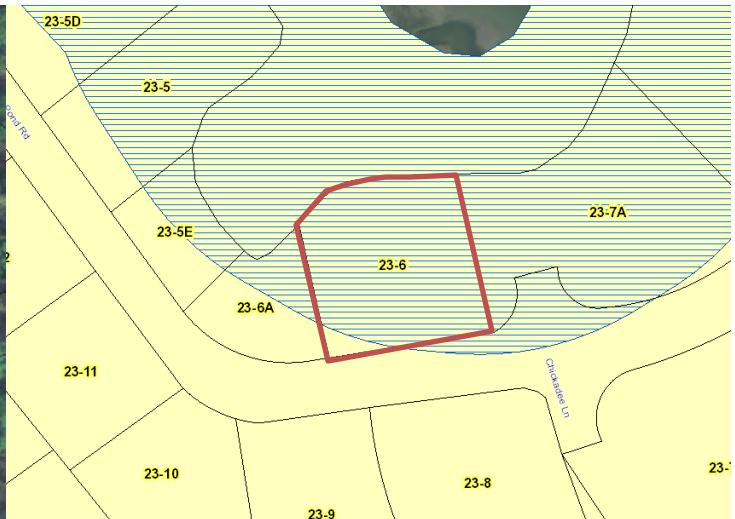
Owner: James & Anita Alden

Proposed Development: Construct canopy over front stoop

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: 11 Mill Pond Road

Map & Lot Numbers: M 23 L 6



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 R-U Residential – Urban Zone: (1) Dwellings and manufactured housing. The existing and planned use is permitted by right. The site is also located within the Shoreland Overlay Zone (OZ-SL) due to the property’s proximity to Spruce Creek.

Staff Recommendation: APPROVAL of miscellaneous variation request with conditions.

District Standards:

Residential – Urban R-U Zoning District Standards			
Land Area per Dwelling (min.)	20,000 sf	Front Yard Setback (min.)	30 feet
Impervious Surface (max.)	20%	Rear Yard Setback (min.)	15 feet
Lot Size (min.)	20,000 sf	Side Yard Setback (min.)	15 feet

Current Use: One single-family dwelling

Surrounding Land Uses:

- West: Residential – Urban (R-U), single-family dwelling
- East: Residential – Urban (R-U), single-family dwelling
- North: Residential – Spruce Creek
- South: Residential – Urban (R-U), single-family 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:

The subject property consists of approximately 19,602 square feet (.45 acres), located along the northern right-of-way of Mill Pond Road. The property is a nonconforming lot of record. The property is zoned Residential – Urban (R-U) and is in the Shoreland Overlay zone (OZ-SL). The property is bounded by Spruce Creek to the north and by other dwelling units in the same zoning district on all other sides. The lot contains one single-family dwelling of approximately 1,099 square feet in size. The structure is legally nonconforming due to it being located within 75 feet of the high annual tide (HAT) where 100 feet is now required.

History of the Property:

The property contains a single-family dwelling unit constructed in 1988. Tax records show the dwelling consists of approximately 1,099 square feet of living space. The existing structure is located within the 30-foot front yard setback required for R-U zoning district but its current 21-foot front setback is in line with the average setbacks for other dwellings along the road.

Description of the Issue:

The current owner wishes to construct a 4’ x 8’ canopy over a 4’ x 10’ front stoop. Because the

house is a non-conforming structure, Kittery Land Use & Development Code requires Board of Appeals approval (16.7.3.3.B.(1)). Because the property is located within the Shoreland Protection Overlay zone, this will also require Planning Board approval via the above code section. The proposed expansion is not increasing the footprint of the structure, as the proposed canopy is smaller than the reconstructed front stoop. Since the front stoop was removed and is being reconstructed, it must conform to 16.7.3.3C.(1), which allows such replacement within 18 months of its removal and “in compliance with the water body, tributary stream or coastal or freshwater wetland setback requirement to the greatest practical extent as determined by the Planning Board.”

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) states 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 – 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 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 is connected to adequate public sewer facilities.

- (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 miscellaneous variation request filed here, 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 dwelling as proposed, with the following condition:

- 1. An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the York County Registry of Deeds within 90 days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the Shoreland Overlay zone and/or the Resource Protection Overlay zone boundary and evidence of approval by the municipal review authority.**



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

DATE SUBMITTED	3/19/19
MAP & LOT	23-6
ASA FEE	Invoice # 500027
DATE PAID	App Fee 3/19/19
DATE COMPLETE	3/19/19
HEARING DATE	4/9/19

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	11 MILL POND ROAD				
MAP	23	LOT #	6	LOT SIZE	19,602.
BASE ZONE(S):	RD		OVERLAY ZONE(S):	SHORELAND	

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)	JAMES & ANITA ALDEN				
MAILING ADDRESS	11 MILL POND ROAD				
CITY	KITTEERY	STATE	ME	ZIP CODE	03904
PHONE No.	617.755.8806		e-MAIL:	ALDEN.ANITAM@GMAIL.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)	THOMAS BATTLOCK-EMERSON				
MAILING ADDRESS	10 OX POINT DRIVE				
CITY	KITTEERY	STATE	ME	ZIP CODE	03904
PHONE No.	207.752.1371		e-MAIL:	STUDIO B-E@COMCAST.NET	

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

Date: 3.18.2019

By: *Thomas Battlock*
 (Signature)
THOMAS BATTLOCK-EMERSON
 (Print Name)

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

Identify relevant Town code sections:

TITLE	16	CHAPTER	6	SECTION	4	1	2			PAGE	
TITLE	16	CHAPTER	7	SECTION	3	1	A	B		PAGE	
TITLE	16	CHAPTER	7	SECTION	3	3	B	3	A	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:

Describe the general nature of the request:

11 MILL POND ROAD IS A LEGALLY NONCONFORMING LOT IN THE R1 ZONE (19,002 SF WHERE 20K IS REQUIRED), WITH A LEGALLY NON-CONFORMING STRUCTURE (HOUSE IS 21' FROM THE PROPERTY LINE WHERE 30' IS REQUIRED). THE LOT & STRUCTURE WERE CONFORMING AT THE TIME OF CONSTRUCTION (1988). THE HOUSE IS ALSO IN THE SHORE-LAND OVERLAY ZONE WHERE IT IS LEGALLY NONCONFORMING BECAUSE IT IS LOCATED 75' FROM THE H.A.T. WHERE 100' IS NOW REQUIRED. 75' WAS THE STANDARD IN 1988.

THE ALDENS ARE REQUESTING A MISCELLANEOUS VARIATION TO BUILD A 4' X 8' CANOPY OVER THEIR 4' X 10' FRONT STOOP. THE INSTALLATION OF THE CANOPY OVER THE EXISTING STOOP WILL NOT INCREASE THE IMPERVIOUS SURFACE OF THE LOT.

THIS REQUEST MEETS 16.6.6.A.2 IN THAT ORDERLY & REASONABLE USE OF THIS OR ADJACENT PROPERTIES, WILL PROTECT THE HEALTH, SAFETY & WELFARE OF THE TOWN AND WILL BE IN HARMONY WITH THE GENERAL PURPOSES & INTENT OF THE CODE.

Map 83676
 BP 87-91
 SW 1/4 P16g
 CM Source



Notes:
 1. FOR THE 1/2" SPP FOR THE 1/4" SCALE PLAN, THE 1/4" SCALE PLAN SHALL BE USED FOR ALL DIMENSIONS UNLESS OTHERWISE NOTED.
 2. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.
 3. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.
 4. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.

NOTICE: THE SITE PLAN HAS BEEN PREPARED BY AN ARCHITECT AND DOES NOT CONSTITUTE A PROFESSIONAL ENGINEERING DESIGN. THE ARCHITECT ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS IN THIS PLAN.

NOTIFICATION OWNER OR OWNER'S REPRESENTATIVE:

THE CONTRACTOR OF THE SUBMITTALS TO BE REVIEWED BY THE OWNER OR OWNER'S REPRESENTATIVE IMMEDIATELY UPON RECEIPT OF THE SAME. IF ANY DISCREPANCIES OR CONFLICTS ARE FOUND IN THE SUBMITTALS OR ANY INFORMATION IS REQUIRED TO PROCEED WITH CONSTRUCTION, THE CONTRACTOR SHALL NOTIFY THE ARCHITECT IMMEDIATELY UPON RECEIPT OF THE SAME. THE ARCHITECT SHALL BE RESPONSIBLE FOR ALL CORRECTIONS TO THE SUBMITTALS WHICH MUST BE RECEIVED PRIOR TO THE COMPLETION OF THE CONTRACT.

NOTE - CONSTRUCTION MUST MEET ALL APPLICABLE FEDERAL, STATE AND LOCAL BUILDING CODES.

LIST OF DRAWINGS	
10	PROPOSAL
11	PRELIMINARY
12	FOUNDATION PLAN
13	FIRST FLOOR PLAN
14	SECOND FLOOR PLAN
15	ROOF PLAN
16	ELEVATIONS/SECTION
17	MECHANICAL/ELECTRICAL
18	MECHANICAL/ELECTRICAL
19	MECHANICAL/ELECTRICAL
20	MECHANICAL/ELECTRICAL

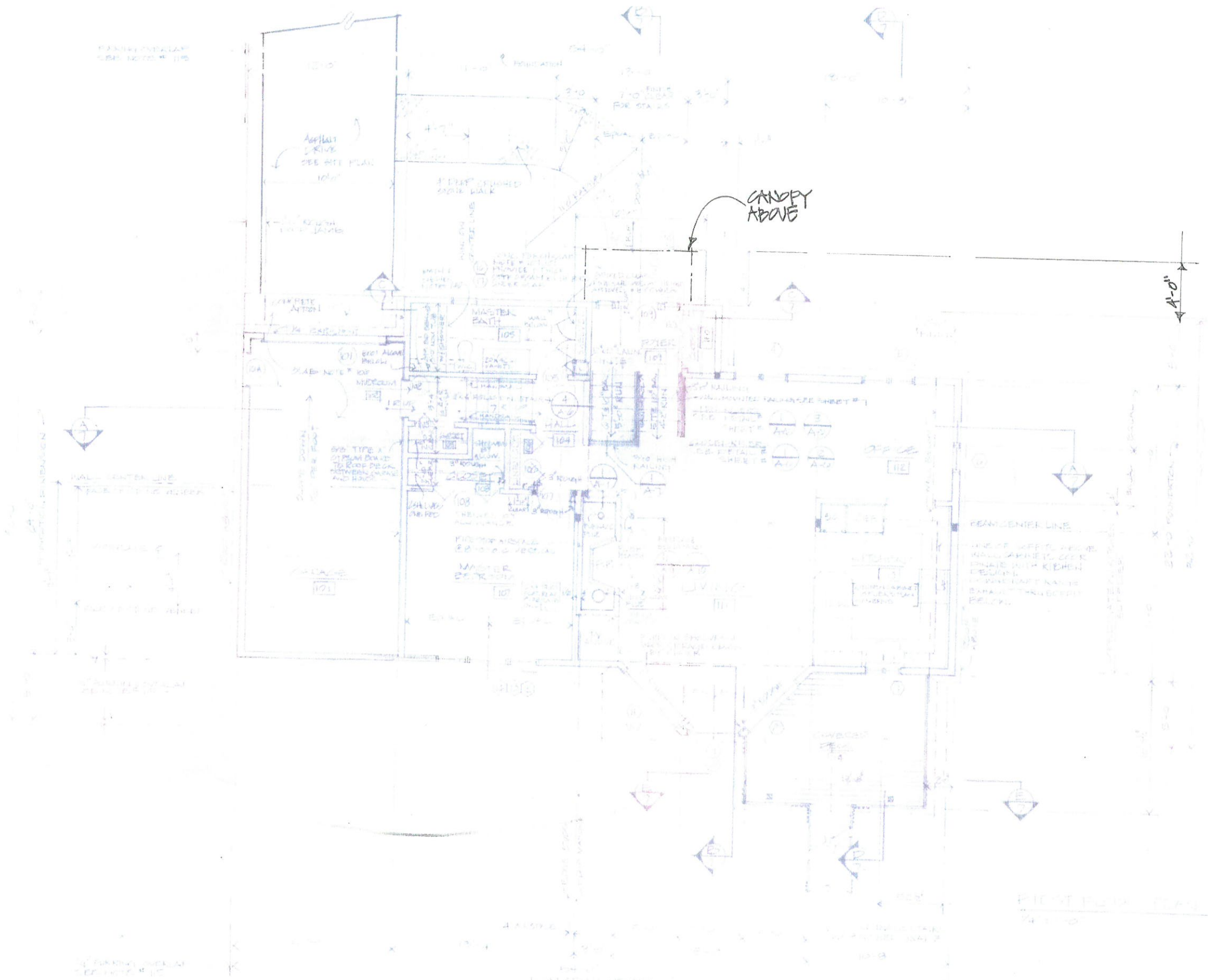
ESTATE RESIDENCE
 LOT 10 OF HILL ROAD RES
 HITTORY, MAINE 05044

Roger Johanson
 architect

5

Over 2/3/20
 5/6/20

PLANING OVERLAY
SEE NOTE # 115



- PLUMBING NOTES
- #101 BATH FIXTURES: PROVIDE UNIVERSAL FINISH, DEMONSTRATE MODEL # AND COLOR BY OWNER.
 - #102 GARBAGE DISPOSER: PROVIDE UNIVERSAL FINISH, DEMONSTRATE MODEL # AND COLOR BY OWNER.
 - #103 PROVIDE UNDERGROUND 3/4" WATERLINE FROM STREET MAIN TO HOUSE. PROVIDE TRENCH MARK ALL CONNECTIONS.
 - #104 PROVIDE 2" INTEGRATED WATER LINES. INDICATE ALL HOT & COLD WATER LINES BELOW THE MAIN FLOOR LEVEL WITH PIPE INSULATION. ALL HOT & COLD WATER LINES SHALL BE COPPER.
 - #105 PROVIDE SHUT-OFFS AT ALL PLUMBING FIXTURES AND PLUMBED APPLIANCES.
 - #106 INSTALL THE PLUMBING ON ALL FIXTURES AND APPLIANCES SUPPLIED. APPLIANCES, FIXTURES, AND EQUIPMENT.
 - #107 REMOVE AND INSTALL HOT WATER HEATERS. NON-FIXED HERE BY AS INDICATED ON FLOOR PLAN. AND PLUMBING FIXTURES UNTIL ACCESSORIES AND ALL INCIDENTALS FOR A COMPLETE JOB.
 - #108 ALL VENTS THRU ROOF SHALL OCCUR ON THE REAR SIDE OF ROOF RIDGES. THE COLOR OF VENTS ABOVE THE ROOF SHALL MATCH ROOF COLOR.
 - #109 PACE END SHALL INCLUDE ALL PLUMBING LABOR FOR A COMPLETED JOB INCLUDING INSTALLATION OF ALL FIXTURES PROVIDED BY OWNER. 1" BY ALLOWANCE.
- NOTE: USE TYPE K COPPER FOR UNDERGROUND SERVICE. USE TYPE K, L, M FOR INTERIOR SERVICE.

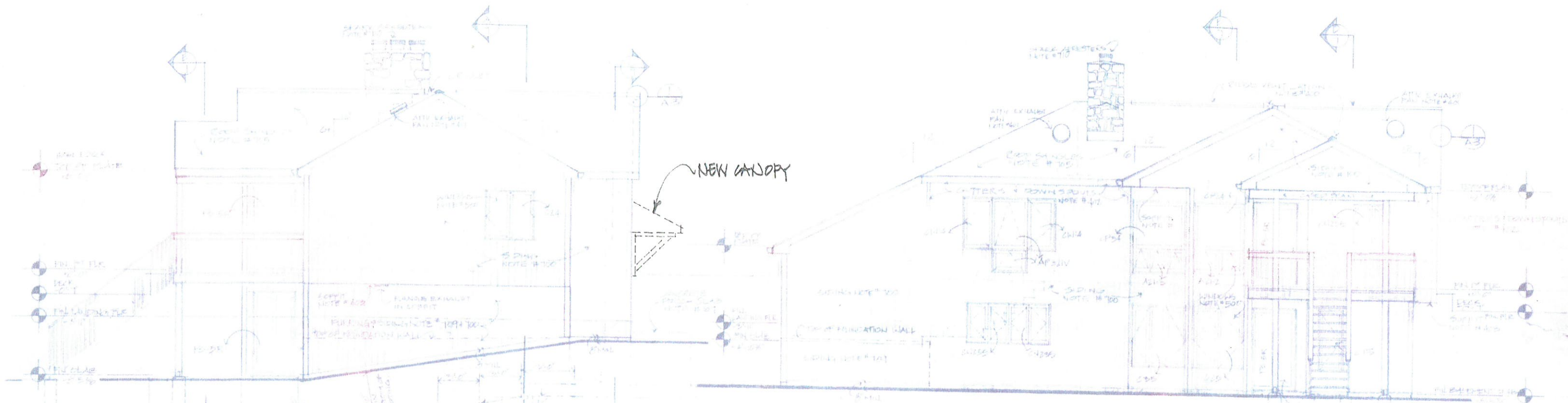
PIEST PLAN 10/10

ERSON RESIDENCE
LOT 4 HILL ROAD
KITNEY, MAINE

Roger Johanson
architect

2-8

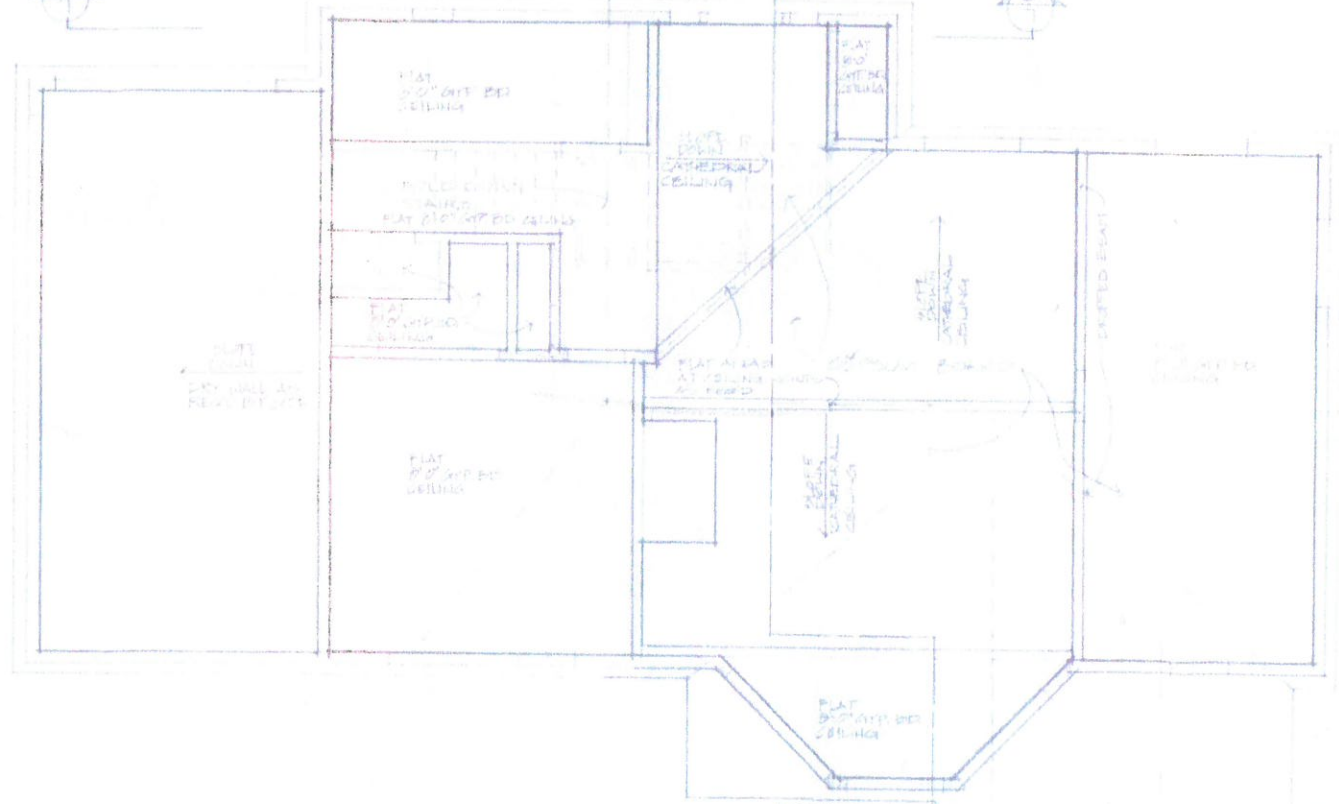
June 7, 1978



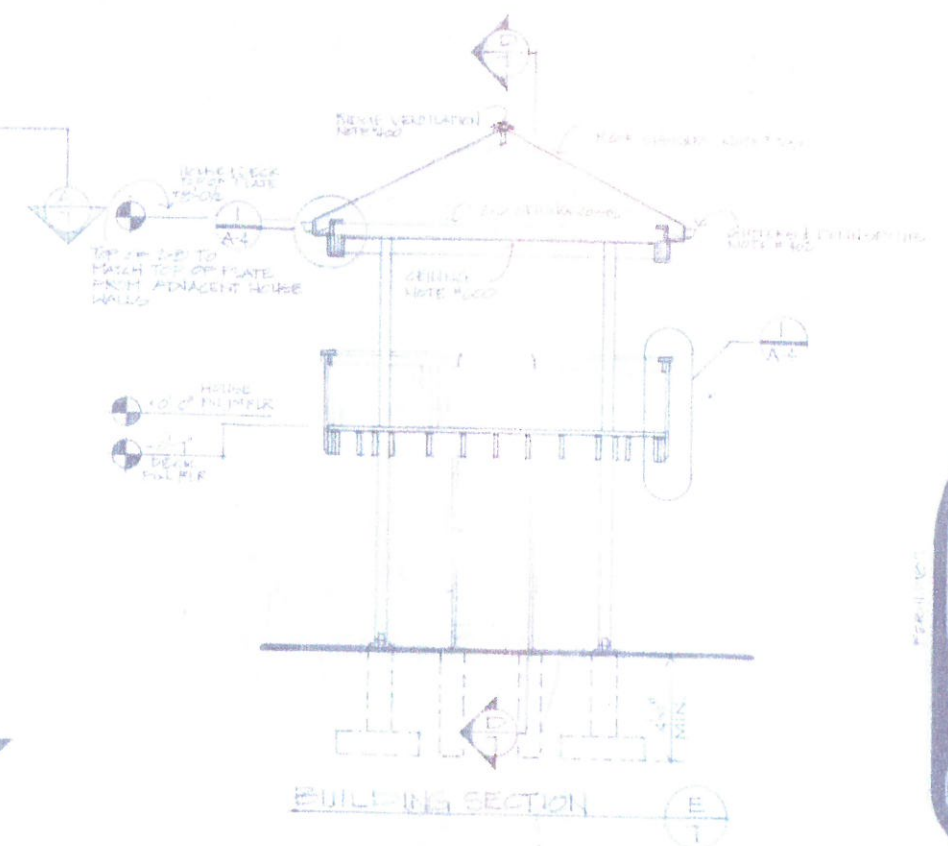
LEFT SIDE ELEVATION
1/4" = 1'-0"

REAR ELEVATION
1/4" = 1'-0"

NOTES:
 2" X 4" CEILING: PROVIDE 1/2" THICK 2" X 4" JOIST AND GROOVE CLEAR FIRE BOARD BOARD SERIES 1/4" X 1/2" CLEAR FIRE PERIMETER FROM

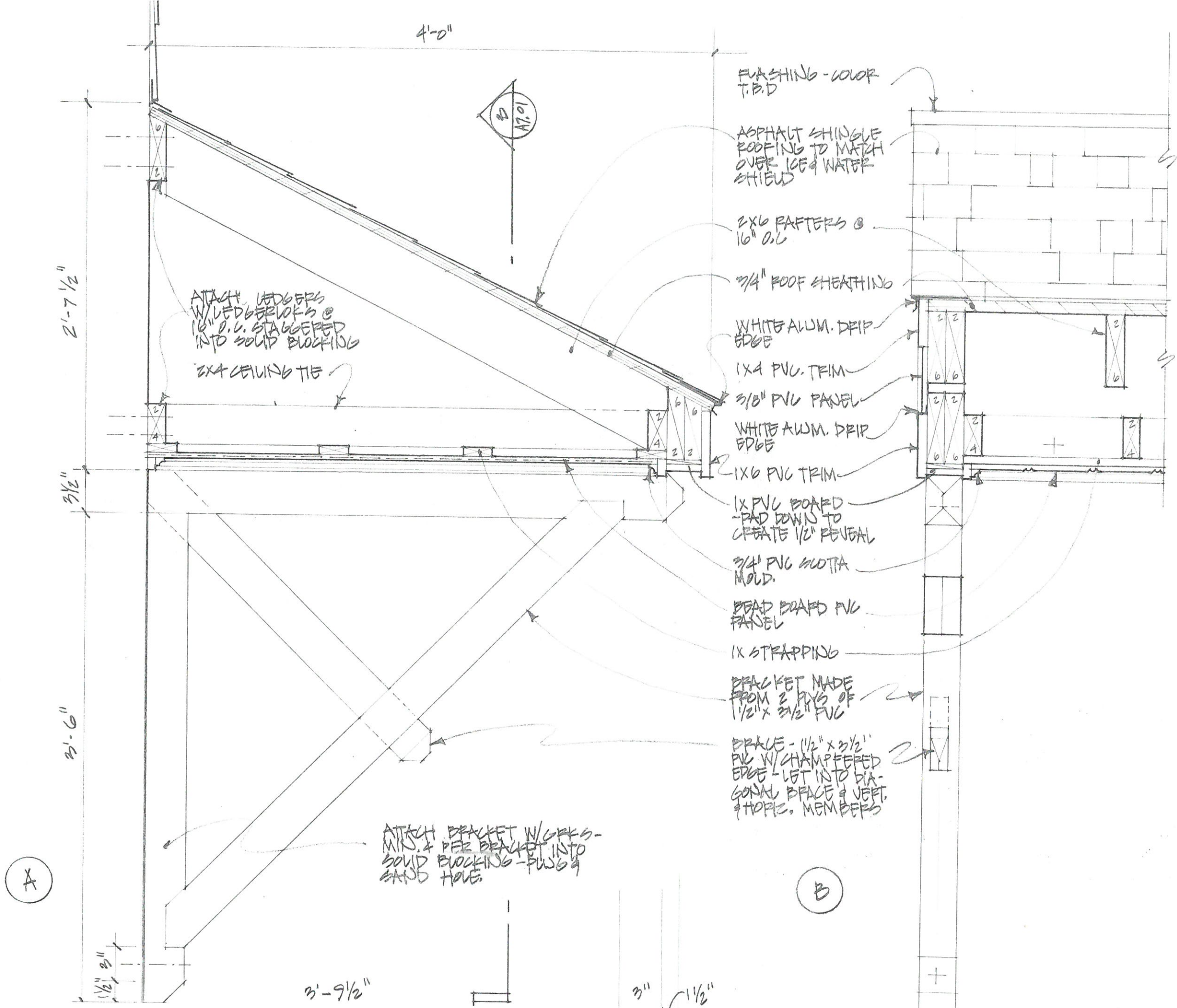


REFLECTED CEILING PLAN
1/4" = 1'-0"



BUILDING SECTION
1/4" = 1'-0"

BRETON RESIDENCE
 1725 MILL POND ROAD
 KITTERY HAVEN
 Roger Johanson
 architect
 6-8
 Bruce J. Carter
 5/1/12



FLASHING - COLOR T.B.D

ASPHALT SHINGLE ROOFING TO MATCH OVER ICE & WATER SHIELD

2x6 RAFTERS @ 16" O.C.

3/4" ROOF SHEATHING

WHITE ALUM. DRIP EDGE

1x4 PVC TRIM

3/8" PVC PANEL

WHITE ALUM. DRIP EDGE

1x6 PVC TRIM

1x PVC BOARD - PAD DOWN TO CREATE 1/2" REVEAL

3/4" PVC GUTTA MOLD.

BEAD BOARD PVC PANEL

1x STRAPPING

BRACKET MADE FROM 2 PLYS OF 1/2" x 3 1/2" PVC

BRACE - 1 1/2" x 3 1/2" PVC W/ CHAMFERED EDGE - LET INTO DIAGONAL BRACE & VERT. & HORIZ. MEMBERS

ATTACH LEDGERS W/ LED BRACKETS @ 16" O.C. STAGGERED INTO SOLID BLOCKING
3x4 CEILING TIE

ATTACH BRACKET W/ GRKS - MIN. 4 PER BRACKET INTO SOLID BLOCKING - PWS & SAND HOLE.



studioB-E ARCHITECTURE

10 Ox Point Drive
Kittery, ME 03904
207.752.1371
studioB-E@Comcast.net

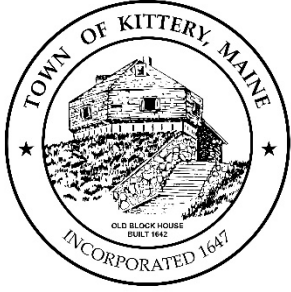
Cooley Construction
Established 1978



Alden Residence
11 Mill Pond Road
Kittery, ME

CANOPY
DETAILS

A7.01



**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

BOA Meeting Date: April 9, 2019

Item #: MVR2019-05

STAFF REPORT – 592 HALEY ROAD – MISCELLANEOUS VARIATION REQUEST

Project Name: 592 Haley Road

Applicant: Evan Appleton

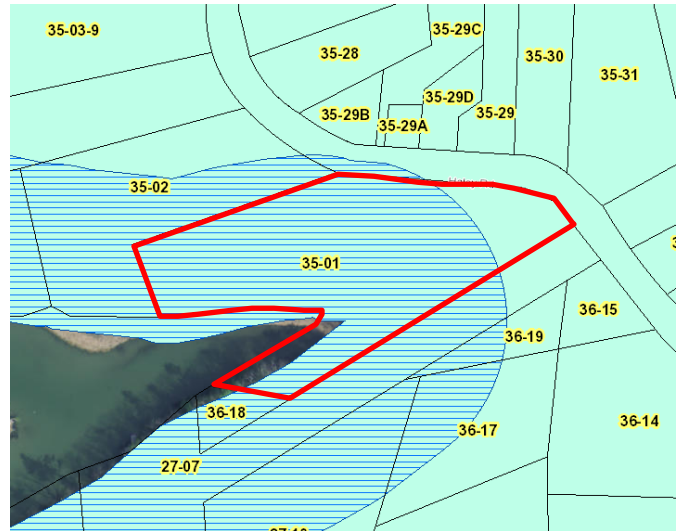
Owner: Evan Appleton

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: 592 Haley Road

Map & Lot Numbers: M 35 L 01



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. The existing and planned dwelling use is permitted.

Staff Recommendation: APPROVAL of miscellaneous variation request with conditions.

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 with detached accessory garage.

Surrounding Land Uses:

West: Barters Creek; Residential – Kittery Point Village (R-KPV), single-family dwelling

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

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

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 the character of its specific context.

Site Description:

The subject property consists of approximately 115,434 square feet (2.65 acres), located along the northern right-of-way of Pepperell Road. The property is a conforming lot. The property is zoned Residential – Kittery Point Village (R-KPV) and is also located in the Shoreland Overlay Zone (OZ-SL) due to its proximity to Barters Creek. The lot contains one single-family dwelling of approximately 2,117 square feet. The existing home features a detached garage as an accessory structure. Both the primary and accessory structure violate the 40-foot front setbacks established in the R-KPV zone, rendering both legal, nonconforming structures. The accessory structure is located closer to Haley Road than the primary structure.

History of the Property:

The property contains a single-family dwelling unit constructed in approximately 1933. Tax records show the dwelling consists of approximately 2,117 square feet of living space with a 960-square-foot detached garage. The existing primary and accessory structures are located within the 40-foot front yard setback required for R-KPV zoning district, making these legal, non-conforming

structures. However, many primary and accessory structures along Haley Road in the R-KPV zoning district share this same setback violation and this property appears in line with similar properties.

Description of the Issue:

The current owner wishes to construct an addition to the single-family dwelling consisting of a new, covered front porch that would extend most of the length of the front façade of the existing dwelling. The owners have also proposed to add shed dormer windows to the second floor along the same building façade. 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 property is located within the Shoreland Protection Overlay zone, which also requires Planning Board approval.

The existing primary structure (dwelling) and accessory structure (garage) are within the 40-foot front setback required by the R-KPV zone. However, as mentioned earlier, average setbacks for Haley Road within this zone are far lower than 40 feet, and there are several structures within feet of the roadway. The existing garage actually extends further into the setback than the dwelling, so any expansion of the dwelling would not increase the existing nonconformity.

It is unclear exactly where the primary structure is located relative to the Shoreland Overlay Zone or Resource Protection Zone setbacks, or relative to 250 feet of the highest annual tide (HAT) line. This is relevant since recent changes to Section 16.7.3.3.B[5](a) & (b) contain restrictions on the allowed expansion of structures with these overlay zones. The strictest application of this restriction would likely be greater than the owner's proposed front porch expansion. For example, the code allows for expansion up to 1,500 square feet or 30% larger than the structures' footprint as of January 1, 1989, whichever is greater. For this property, the allowed expansion would be approximately 792 square feet (based on 30% of the 2,642 square foot area of the existing structures). The applicant's expansion plans do not appear to be that large. However, the applicant must show these calculations along with the amount of vegetated ground cover to be removed, limited to 20% of the lot located within the Shoreland Overlay Zone. Again, the proposed porch expansion likely means the de-vegetated area meets code requirements, but the applicant should show this prior to final plan 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 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.

- (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 use involved is legally permitted in the zone.

- (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, and no additions of bedrooms is being proposed.

- (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, 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;*

Some existing vegetation in the front yard will need to be removed for the proposed expansion. It is unclear if the proposed front porch is within 250 feet of the highest annual tide (HAT) line or where the primary structure is located relative to the Shoreland Overlay Zone. The applicant must show the amount of vegetated ground cover to be removed for the proposed front porch, and that the total de-vegetated area of the lot located within the Shoreland Overlay Zone does not exceed 20%. No changes in grade nor drainage result from the proposed expansion.

- (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 applied by the applicant here, the property conforms to Title 16.8 and 16.9 in its existing legal, nonconforming state.

Using the standards and criteria found in 16.6.6 of the LUDC, Staff recommends **APPROVAL** of the miscellaneous variation request to expand an existing non-conforming single-family dwelling in the R-KPV and OZ-SL zones, with the following conditions:

- 1. Prior to review by the Planning Board, the applicant provides a site plan or survey showing (1) the location of the limits of the Shoreland Overlay (OZ-SL) and/or Resource Protection Overlay (OZ-RP) zones on the property, and (2) the calculation**

of the total existing de-vegetated area and the proposed de-vegetated area per Section 16.3.2.17D(1)(d). The total footprint of de-vegetated area must not exceed 20% of the lot area located within the Shoreland Overlay Zone.

- 2. That the proposed addition of the porch be restricted to no more than 350 square feet in area.**
- 3. That the final approved plan be recorded by the applicant with the York County Registry of Deeds within 90 days of final approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the Shoreland Overlay zone and/or the Resource Protection Overlay zone boundary and evidence of approval by the municipal review authority.**



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

Application to the
BOARD OF APPEALS

DATE SUBMITTED	3/19/19
MAP & LOT	35-1
ASA FEE	Invoice receipt # 510005
DATE PAID	App Fee 3/19/19
DATE COMPLETE	3/19/19
HEARING DATE	4/9/19

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	592 Haley rd. Kittery Point, ME 03905				
MAP	35	LOT #	1	LOT SIZE	2.65 acres
BASE ZONE(S):	R-KPV		OVERLAY ZONE(S):	OZ-SL-250'	

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)	Evan Appleton				
MAILING ADDRESS	592 Haley rd				
CITY	Kittery	STATE	Maine	ZIP CODE	03905
PHONE No.	603-502-4128		e-MAIL:	appleton@Yahoo.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.

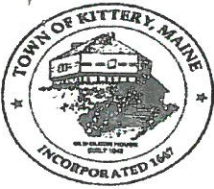
APPLICANT (if different) I am an agent of the applicant with standing, as shown by:

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: 03-19-2019

By:
 (Signature)
Evan Appleton
 (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	

MISCELLANEOUS VARIATION REQUEST

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MAP	35	LOT #	1	LOT SIZE	2.65 acres
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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)	Evan Appleton				
MAILING ADDRESS	592 Haley rd				
CITY	Kittery	STATE	Maine	ZIP CODE	03905
PHONE No.	603-502-4128		e-MAIL:	appleton e Yahoo.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: 03-19-2019

By: 
(Signature)
Evan Appleton
(Print Name)

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

Identify relevant Town code sections:											
TITLE	16	CHAPTER	3	SECTION	2.3					PAGE	52-53
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:

To update our newly purchased home, located at 592 Haley Road, Kittery Point, we enlisted the help of a local architectural designer. We had several key interests for our project, at the top of the list was to create a design that kept with the period and design of the Cape style. As we renovate we will maintain many of the 1930's features, including the original wood flooring upstairs and down, the stairwell banister, and the coffered ceilings. Also important was to improve the existing curb appeal, reduce the noise from the busy road, and create some privacy as the unique landscape lends to multiple neighbors (across Haley Road) with views looking down on and into the front of our home.

In response to those requests we came up with the solution of a front porch, which would solve for a number of these requests. As can be seen in the drawings the front porch is an integral part of the overall design which adds a full shed dormer to the front of the home.

Our request is for the Board to approve a variance which would allow for us to include the front porch in our renovation, improving the overall esthetic of the home, while helping to create more privacy within the front rooms of the home.

A shed dormer is generally located on the side or back of a Cape home, and in this case will be located on the front of the home to increase usable space and ceiling height, a front porch will need to be included to ensure esthetics and a reasonable return on this property.

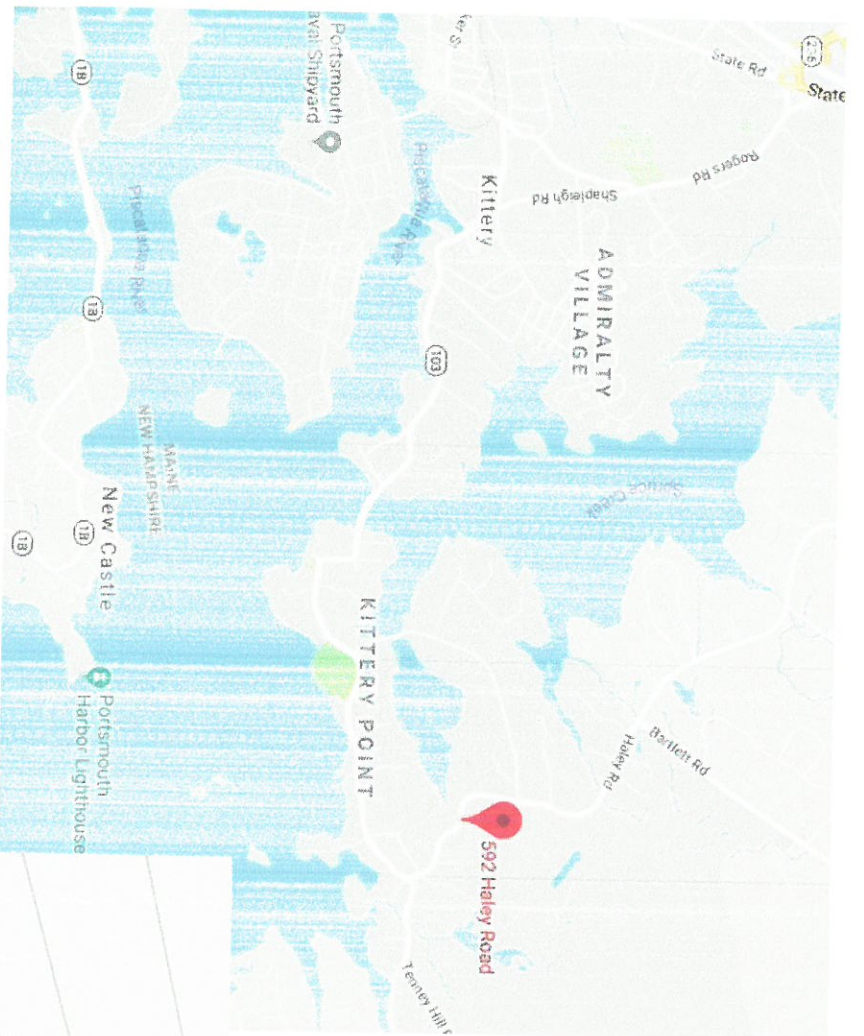
The current requirement of 40 feet of front yard is a concern and there was no reason to believe when the existing home was built (facing the train tracks) there would be such a requirement. Many of the neighboring homes in fact have no front yard and sit within feet of Haley Road. The existing garage of our property extends 18 feet beyond the front of the home, while the new front porch would only extend 7 feet. Given the location of the existing garage, this will not alter the essential character of the locality.

We have already made some significant improvements to this property, including installing a new functioning septic system, and have cleaned out a significant amount of garbage left on the property. We would like to continue our work and improve the appeal of the home for us and our new neighborhood.

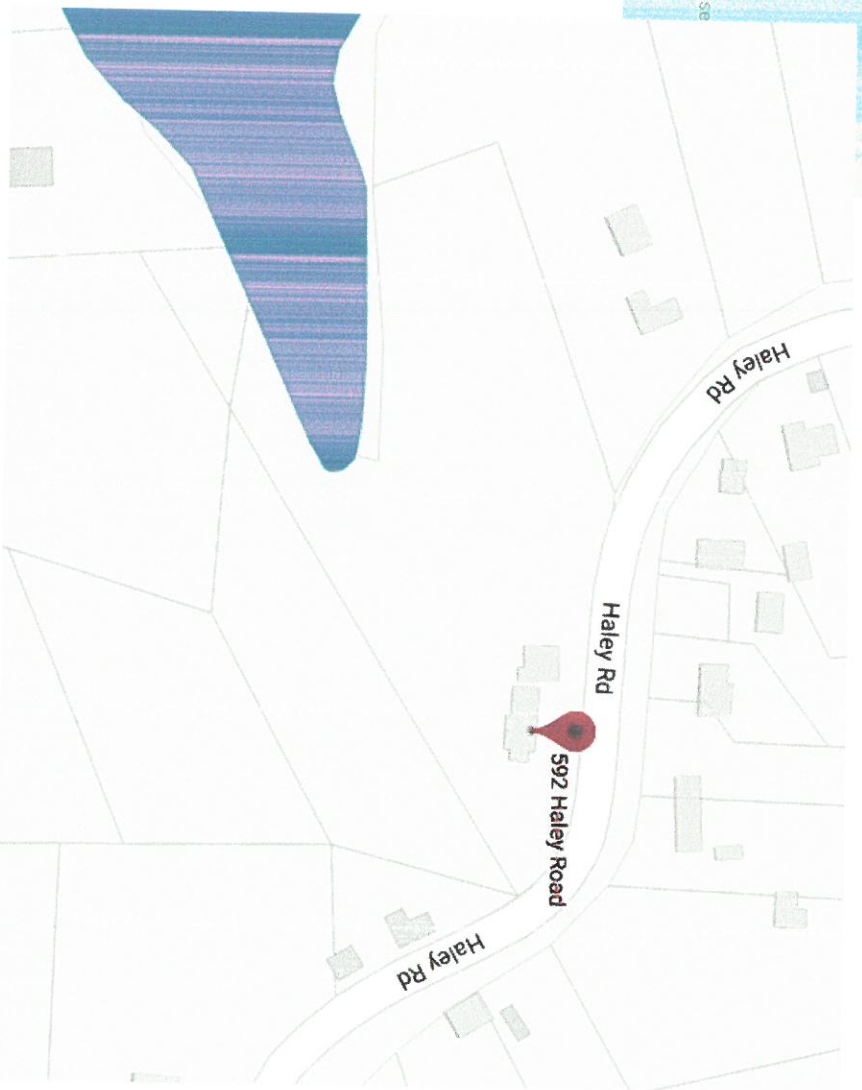
We appreciate your careful consideration.

Sincerely,

Evan Appleton and Jennifer Ramstrom



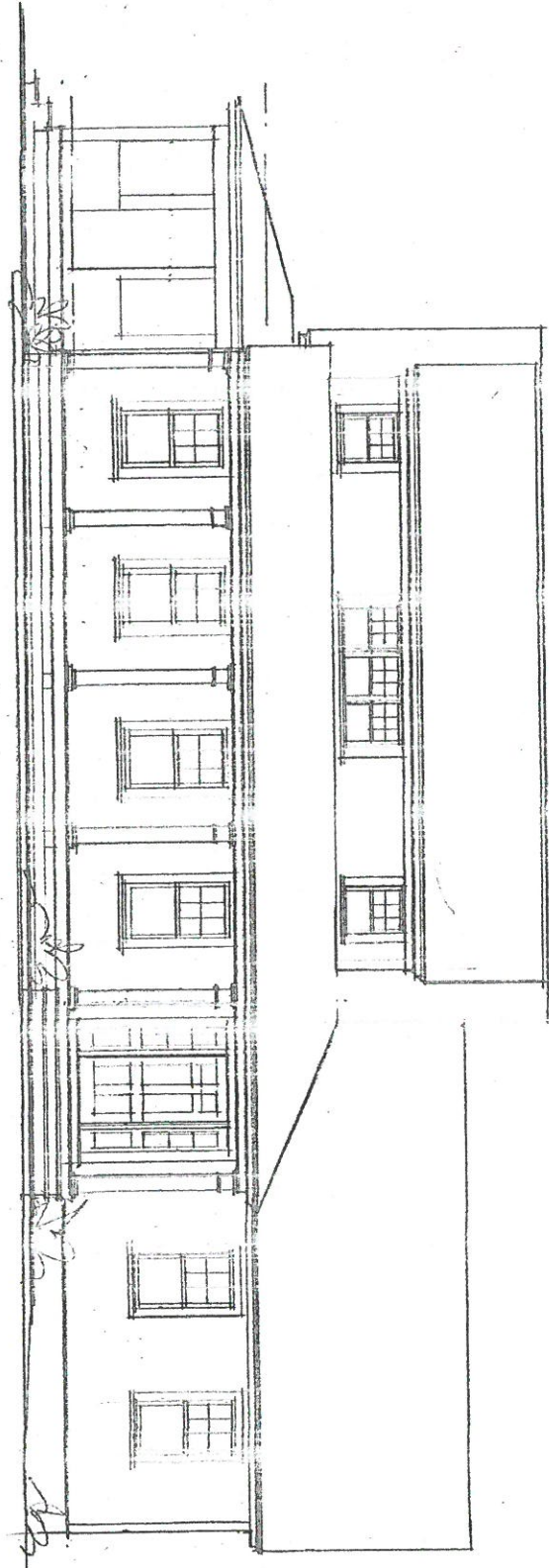
592 Haley rd. Kittery Point, Maine
Request for Variance to
Construction a Front Porch



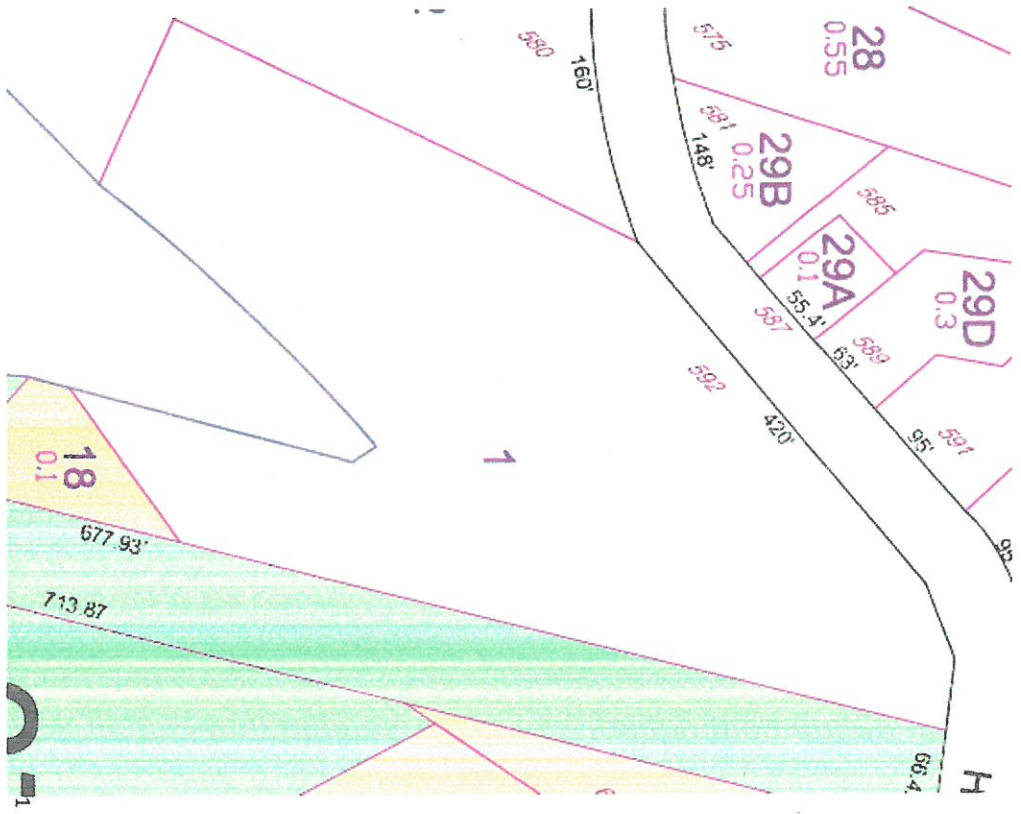




FRONT ELEVATION - OPTION
1/2" = 1'-0"



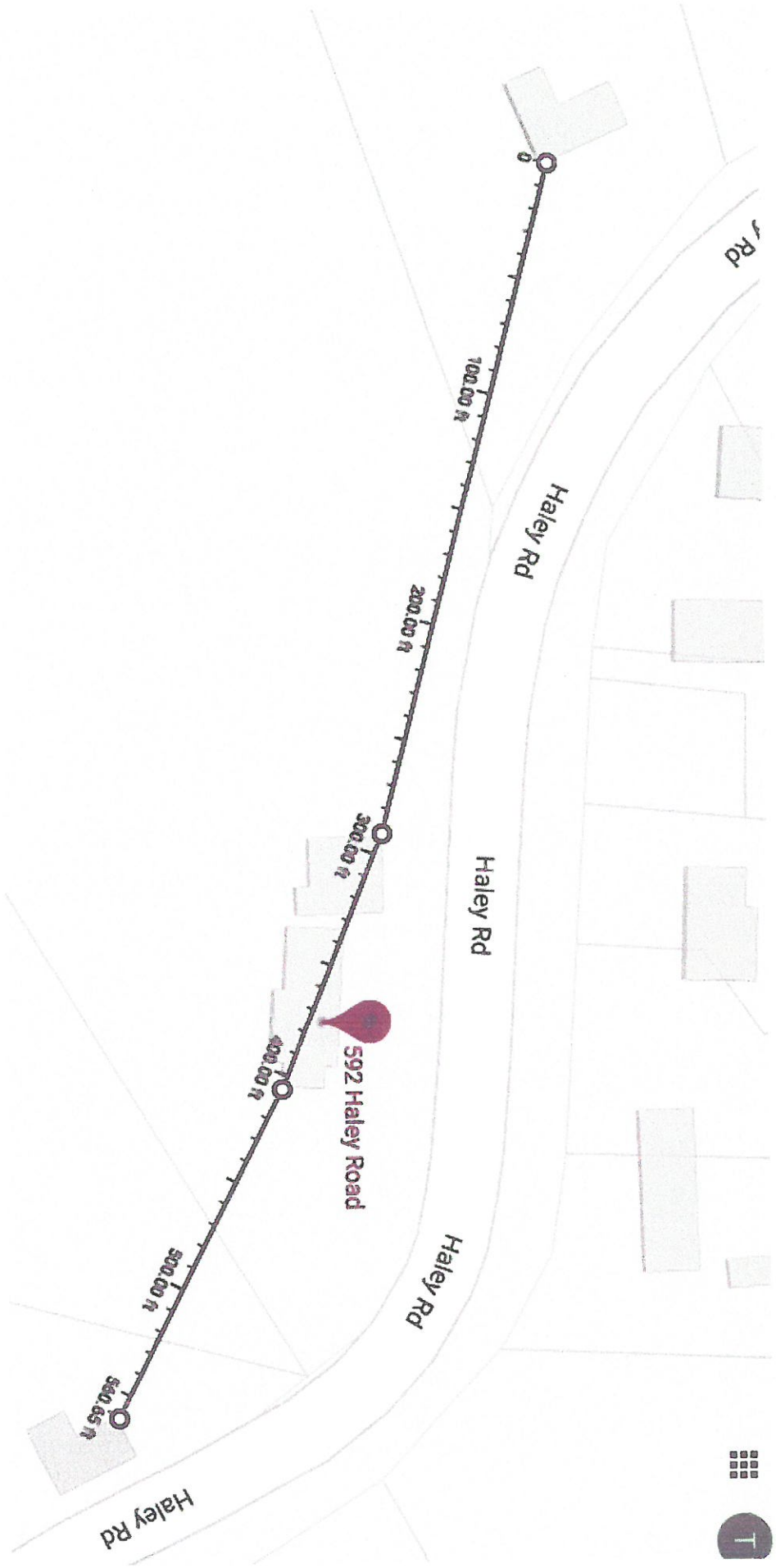




1 Map 35 Lot 1



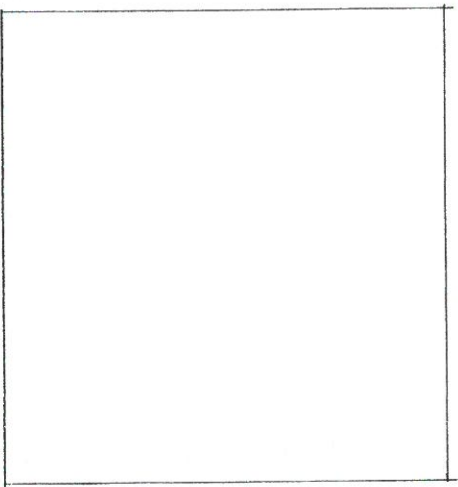
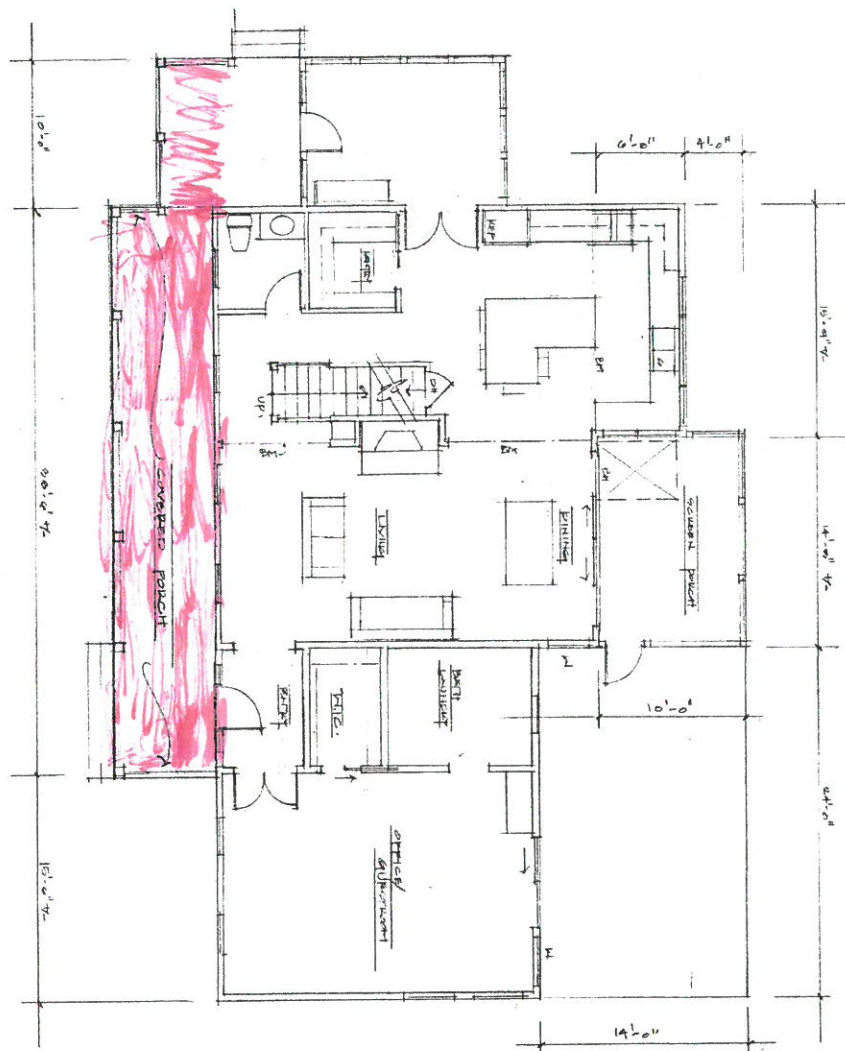
2 Map 35 Lot 1 with OZ-SL-250'



Haley Rd

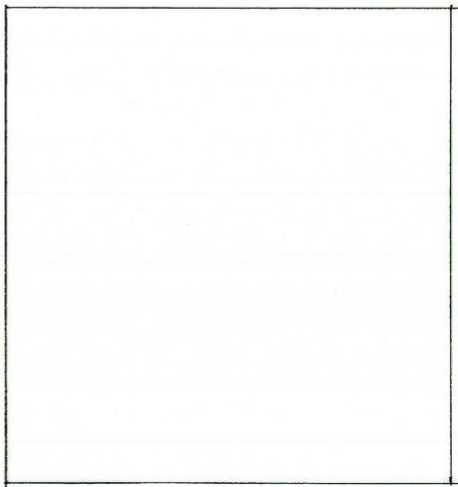
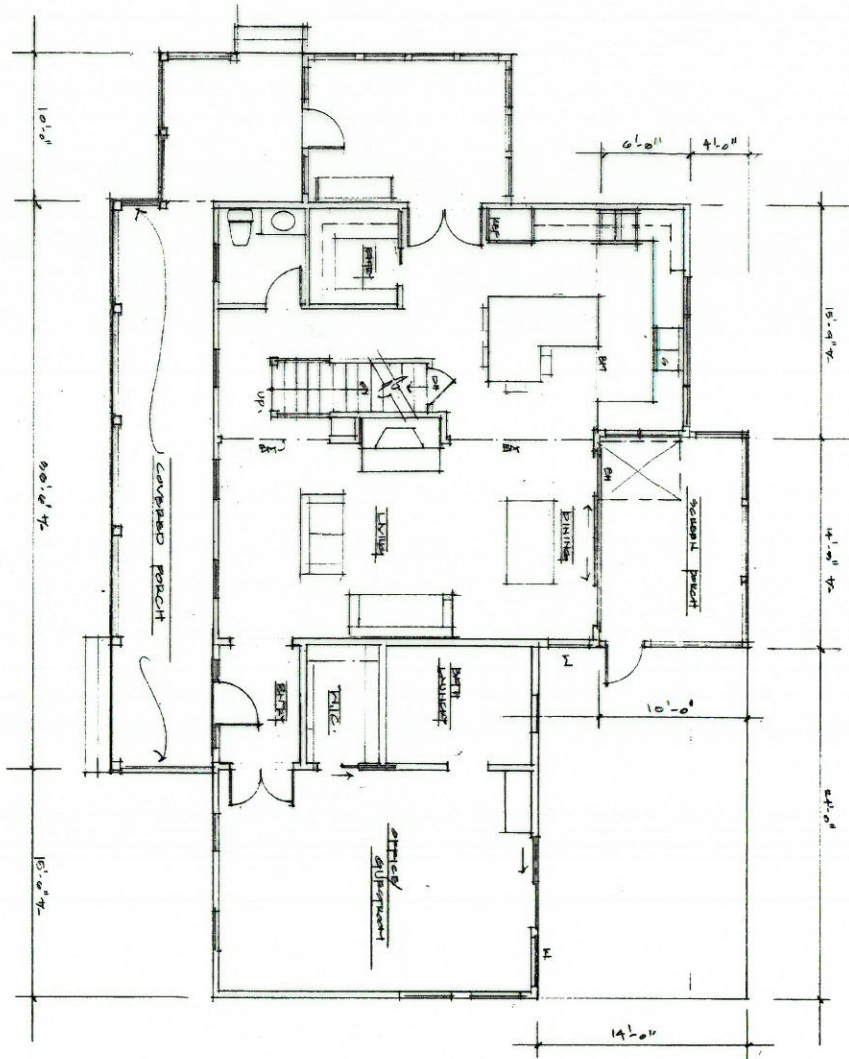


FIRST FLOOR - OPTION A



General ideas and guidelines provided by the Architectural Board of the City of Atlanta. It is recommended that all drawings be reviewed by a Structural Engineer.

FIRST FLOOR - OPTION A



Structural details and annotations to notations shall be provided by the contractor. The contractor shall be responsible for obtaining all necessary permits for a Structural Engineer.

1361

EMORY /

RESIDENCE

892 HALEY ROAD

01-72-10



