

APPROVED

Town of Kittery
Zoning Board of Appeals
December 9, 2008

Call to Order: 7:03 pm

Members present: Vern Gardner, Chairman; Niles Pinkham, Thomas Battcock-Emerson, Bob Kaszynski, Brett Costa, Herb Kingsbury

Members absent: Craig Wilson, Secretary

Staff: Heather Ross, CEO

Pledge to the Flag

In the absence of the Secretary, Chairman Gardner will act as Secretary.

PUBLIC HEARING

ITEM 1 - Robert Saunders requesting a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 060D (Page 238-5) of the Kittery Land Use and Development Code Zoning Ordinance in order to construct an 8'x18' open deck with steps to existing addition on rear of house. Located at 31 Tilton Avenue, Kittery, Map 10 Lot 111, in the Urban Residential Zone.

Robert Saunders summarized the proposed addition.

Chairman Gardner asked if there were any persons present who would like to speak for or against this item.

Maurice Patch, 33 Tilton Avenue, spoke in favor of the applicant's request.

The CEO provided:

1. This is a non-conforming lot with a non-conforming structure located within the Urban Residential zone.
2. Mr. Saunders is proposing to construct a deck 18' x 8' onto the existing house.
3. The UR zone requires a minimum 15 foot side yard setback. The existing house is 6'3" from the side property line. The proposed deck would be 6'6" from the side property line, no closer than the existing house.

Board members concurred that the proposed deck is no closer to the side setback, and is 3" less, than the existing structure.

Niles Pinkham motioned to grant the miscellaneous appeal for Robert Saunders for property located at 31 Tilton Avenue to construct an 8'x18' open deck.

Thomas Battcock-Emerson seconded

Motion carries unanimously

Chairman Gardner noted that a building permit must be obtained by the applicant, and any persons aggrieved by this decision has 45 days to appeal to Superior Court.

Findings of Fact

1. Robert Saunders wishes to construct an 8'x18' open deck, attached to an existing house;
2. This is a non-conforming lot with a non-conforming structure;
3. The side yard setback is 6'6" where a 15 foot setback is required;
4. The side yard abutter, Maurice Patch, spoke in favor of the applicant's request.

Bob Kaszynski motioned to accept the Findings
Brett Costa seconded
Motion carries unanimously

Conclusion

The Zoning Board of Appeals voted unanimously to permit the construction of the deck, citing authority under section 16.28.130 and 16.24.060.

Brett Costa motioned to accept the Conclusion
Thomas Battcock-Emerson seconded
Motion carries unanimously

ITEM 2 – Request for Reconsideration filed by the Kittery Conservation Commission in response to the Zoning Board of Appeal’s November 25, 2008 decision regarding the property located off Gee Road, Map 65 Lot 1G, owned by Robert D. Harris, Jr.

Mr. Kingsbury stepped down from the Board as he was not present at the November 25, 2008 meeting when the Board granted the miscellaneous appeal to Robert Harris.

Board members discussed the December 2, 2008 letter submitted by the Conservation Commission [Commission] and whether the points included contained new evidence not previously considered by the Board. It was agreed that the points in the letter were discussed in prior hearings, and there was no new evidence presented. **Thomas Battcock-Emerson** stated that the Commission letter included an opinion “that a 36 foot setback will not provide the same level of protection that 16.12 intended”, but that this opinion is not supported by technical data. **Chairman Gardner** recited by number the sections highlighted in the Commission’s letter, stating these sections had previously been reviewed and discussed by the Board, and members felt that further discussion at this time was not necessary.

There followed discussion regarding the process by which the Board may reconsider a decision. In accordance with the “Request for Reconsideration” process adopted by the ZBA on December 13, 2005, the Board must follow two standards in reconsidering a prior decision:

1. The new evidence or law that was not presented at the first hearing which could have altered the initial decision of the ZBA.
2. There **MUST** be an explanation of why this new evidence or law was not presented at the first hearing.

In accordance with the above process, a Board member must make a motion to reconsider the prior decision. If no member makes a motion to reconsider, then the Board’s prior decision stands. Chairman Gardner asked if there was a motion for reconsideration of the decision to grant the Miscellaneous Appeal to Robert D. Harris. There being no motion, the reconsideration was not heard.

The CEO noted that the next meeting will be January 13, 2009.

Minutes: November 25, 2008 ZBA meeting

The minutes of November 25, 2008 were not included in the Board's packets and will be reviewed at the January 13, 2009 meeting.

Chairman Gardner adjourned the meeting at 7:33 p.m.

Board members remained to discuss a question regarding meeting dates and absences.

Submitted by Jan Fisk, Recorder – December 10, 2008