

TOWN OF KITTERY
ZONING BOARD OF APPEALS

APPROVED

April 8, 2008

Council Chambers

CALL TO ORDER:

Chairman Gardner called the meeting to order at 7:00 p.m.

BOARD MEMBERS PRESENT:

Vern Gardner, Chairman, Sarah Brown, Brett Costa, Bob Kaszynski, Herb Kingsbury, and Niles Pinkham

MEMBERS ABSENT: Thomas Battcock-Emerson and Brett Costa

ALSO PRESENT:

CEO Heather Ross, Recorder Lisa Goms

Chairman Gardner introduced the members of the Board, outlined the hearing procedure and led those present in the Pledge of Allegiance.

APPROVAL OF MINUTES: The Zoning Board of Appeals meeting minutes for 2/12/08 were approved as amended.

The Chair then read the Notice of Hearings.

PUBLIC HEARINGS:

1. Brennan Pingree for Ginger Pingree requesting a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 055(E) (Page 238-4) of the Kittery Land Use and Development Code Zoning Ordinance in order to replace and enlarge existing addition. Located at 547 Haley Road, Kittery Point, Map 35, Lot 25 within the Kittery Point Village (KPV) Zone.

Chairman Gardner recognized Brennan Pingree.

Mr. Pingree approached the podium and stated: We purchased the residence about a year ago and was able to purchase it at a good price because it needed a lot of work and me being a

builder on the side, it was something that we could create a nice residence that we could live in. When we purchased the house, we had an architect come in and do a set of drawings to give us a guideline to go by and that way I could work at it. We were looking to put this addition on and was denied. We are hoping that you, the Zoning Board could help us out and review this and see if it is something that we can move forward with to help create a better home for us and the neighbors.

Chairman Gardner asked if there was anyone present who would like to speak in favor of, opposed, or about the application in anyway. Hearing no response, the Chair requested the CEO's report.

CEO Ross reported: This is a nonconforming lot with nonconforming structures located within the Kittery Point Village (KPV) zone. Mr. Pingree is proposing to demolish an existing 14'x16' addition and to construct a new 32'x16' addition. Title 16.12.055(E) (page 238-4) requires a minimum 40' front yard setback. The house fronts on Haley Road, but is adjacent to a Town approved right-of-way known as Powell Lane. The house meets the minimum setback from Haley Road, however, is setback 26' from the right-of-way where a 40' setback is required. The proposed addition would be constructed 26' from the edge of the right-of-way. The Town Planning Board is in the process of reviewing a corner lot ordinance upon what has been distributed already would have eliminated this type of proposal to come before you (*the Zoning Board*). The Town Planning Board has started to look at that; they are requesting more information. I don't know if it is likely to go through at this point, but it would be to prevent these types of things to come before the Board when it is a small right-of-way that came up through the property. This right-of-way was originally approved in 1999, and at that time I don't think that the Planning Board was looking at the effects of what the right-of-way may have on adjacent properties. That house was already constructed in that location; 26' from where they propose the right-of-way. The right-of-way going along side of it creates nonconformity for those structures. If something like this came before the Board today, and being reviewed by the Planner and myself, it would not be allowed to be in that same location what would be adjacent to that property line so that it would create a nonconformity for the Pingree house.

Board Discussion

Mr. Pinkham felt that this was a no closer than situation (16.28.130(D)).

Ms. Brown commented: The information that Heather gave us is really crucial. The fact that this property, by no doing of its own, was turned into this. There was a hardship that was created on this property. I do not see how we could deny this because that road was put in there. It was turned into a corner lot when the house was already there.

Chairman Gardner informed the applicants that there were five (5) members present and they have the right not to proceed, they could wait for a full board. It takes four (4) affirmative votes to grant you what you wish to do. The applicants were satisfied and wanted to continue.

Mr. Kaszynski said: In view of the article that is before the Planning Board, and there appears to be a question of front yard, side yard and that issue, I would follow up with Sarah saying that they would have a right where this is a questionable situation. I would go along with saying the structure was there before, it is no closer than, and plus the issue being raised as a potential lot in the future on the property.

Deliberations continued.

Secretary Brown read the application as follows: Move the application of Brennan Pingree for Ginger Pingree requesting a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 055(E) (Page 238-4) of the Kittery Land Use and Development Code Zoning Ordinance in order to replace and enlarge existing addition. Located at 547 Haley Road, Kittery Point, Map 35, Lot 25 within the Kittery Point Village (KPV) Zone. Construction shall be in accordance with the sketch submitted, dated and signed by Brennan Pingree and Vern Gardner, Chairman.

A motion to accept was made by **Mr. Pinkham**, and seconded by Mr. Kingsbury.

VOTE: Mr. Kingsbury, yes; Ms. Brown, yes; Mr. Pinkham, yes, Mr. Kazynski, yes; Chairman Gardner, yes. Motion unanimously passes 5/0. Application granted.

Chairman Gardner informed the applicant that any interested party of standing had 45 days to appeal the decision of this Board at the York County Superior Court and they would try to get Findings of Fact out within seven to ten days of tonight's hearing.

The Chair further informed the applicant that this approval was not the granting of a Building Permit as he would still need to see the CEO for that, it merely gave the CEO authority to issue such Permit.

FINDINGS OF FACT

1. *The applicants Brennan & Ginger Pingree are looking to replace and enlarge existing of an addition located at 547 Haley Road, Kittery Point, Map 35, Lot 25 within the Kittery Point Village (KPV Zone).*
2. *This is a conforming lot with a nonconforming building.*

CONCLUSIONS

The Board decided that the addition would be no closer than that which exists currently - citing 16.28.130(D)(1)

2. *The Right- of Way post dated the addition that currently exists.*
3. *The Board also cited 16.24.060 (a1-4).*
4. *The Board voted unanimously 5/0 to approve application.*

A motion to approve the Findings of Fact was made by **Mr. Pinkham** and was seconded by **Mr. Kazynski**.

ADJOURNMENT:

The Zoning Board of Appeals meeting adjourned at 7:40 p.m.

The next meeting is scheduled for April 22, 2008.