

TOWN OF KITTERY, MAINE

BOARD OF APPEALS

Approved Minutes of March 8, 2016 - Recorded by Jennifer Scrafford

[A complete video record of this meeting is available online at kitteryme.org.](http://kitteryme.org)

Members present: Bean Regan, Jeffery Brake, Niles Pinkham, Charles Denault, Barry Fitzpatrick, Craig Wilson, Brian Boyle
Staff: Robert Marchi, Code Enforcement Officer

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

1. Call to Order, Introductory, Roll Call
2. Pledge of Allegiance
3. Agenda Amendment and Adoption
4. Executive Session - None
5. Public Hearings – William and Eileen McCarthy of 27A Adams Drive, Map 22, Lot 10, Commerical-1 C1 Zone requesting Miscellaneous Variation Request to lift two story dwelling unit and add a story to the building.

Applicant Case

Mr. McCarthy explained he wants to add a floor under the building for storage and a workshop. Mr. Marchi sent out note to Board with findings. He referred this case to the Board because this was an ADU that was approved by the Board because of setbacks and other issues. These are not habitable spaces. Vertical expansion is allowed under Code. Referred to Board because Mr. Marchi did not think it was proper to not have review by Board that granted it in the first place.

Testimony

Chairman Wilson invited anyone in the public to speak for or against. Mrs. McCarthy explained they had a flood and, because their house was on a slab, everything was ruined. They wanted to avoid that again by building a basement. No further public comment.

Deliberation

Secretary Boyle affirmed Board has the right to hear this application for miscellaneous variation. Code 16-1.5.4.4c (Powers and Duties) and 16-6.4.3d.

Basis of law 16-7.3.5.5b addresses nonconforming expansion for vertical expansion. 16-8.25.5 because building is nonconforming to setback requirements. Applicant may still be allowed if miscellaneous request is made to Board.

Chair asked about current habitable space of the ADU and requests an accurate figure be added to the record. Mr. Marchi stated it looks around 740 square feet of living area but that figure includes bathroom, hall and stairs so probably closer to 715 feet. Chair also recommends note for record and plan that first floor shall remain uninhabitable living space unless applicant comes back to Board. Secretary Boyle asked why it was not just permitted. Mr. Marchi said that with the ADU process, he had power to permit expansion of ADU but this property had been in front of the Board before and Mr. Marchi felt the Board should give the approval. Mr. Fitzpatrick said he drove by and adding a bottom floor would not make the building any taller than the front building. He supports the application. He noted a hotel nearby that will be under construction within a few years will be taller than the domicile.

The Chair moved to support William and Eileen McCarthy of 27A Adams Drive, Map 22, Lot 10, Commerical-1 C1 Zone request for Miscellaneous Variation Request to lift the two story dwelling unit and add a story to the building. Mr. Pinkham seconded. Motion carried unanimously.

The Chair noted this is not a building permit. The Public has 45 days to register any opposition and take decision to Superior Court. Anyone may be petition Board within next 10 days to reconsider the decision.

Findings of fact

1. William McCarthy wanted to raise the building to add another story under the building. Eileen McCarthy said there was a flood and new area was not for living space.
2. The CEO noted that they are not creating more habitable space. It is a vertical expansion and it is allowed under current law. ADU approved previously by Board of Appeals on other issues. It is for storage and a workshop.
3. Chairman Wilson asked that the area remain nonhabitable and also asked for a corrected calculation of space be added to the record.
4. Mr. Fitzpatrick noted he went to the site and noted new construction would make it no higher than building in front.

The Chair moved to accept these finding of fact. Mr. Pinkham seconded. Motion carried unanimously.

Conclusion of Law

Chair Wilson cited ADU 16-8.25.5. This is a nonconforming building but that was not a prohibition to grant the request.

The Chair moved to accept these conclusions of law. Mr. Brake seconded. Motion carried unanimously.

6. Unfinished Business – NONE

7. New Business – NONE

8. Acceptance of Previous Minutes - NONE

9. Board Member or CEO Issues or Comment – Currently no applications have been filed so no hearing is scheduled for next meeting. The Board will decide whether a workshop will occur.

10. Adjournment

The Chair moved to adjourn. Seconded by Mr. Break. Motion carried unanimously.

The Board of Appeals meeting of March 8, 2016 adjourned at 7:31 p.m.