

Town of Kittery  
Zoning Board of Appeals  
July 28, 2009

Call to Order: 7:05 p.m.

**Members present:** Vern Gardner, Chairman, Craig Wilson, Herb Kingsbury, Bob Kaszynski, Brett Costa, Niles Pinkham

**Members absent:** Thomas Battcock-Emerson

**Staff:** Heather Ross, Code Enforcement Department

Pledge to the Flag

**PUBLIC HEARING**

**ITEM 1** - Dennis Marquis for Kathryn Davis requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 12, Section 060D, Page 238-5 in order to add space to the living room to accommodate a space saver gas fireplace. This would entail an addition built that would be level to the existing house extending to the side and back yardage by 10'. Located at 44 Woodlawn Avenue, Kittery, Map 16 Lot 160, in the Urban Residential District Zone.

**Dennis Marquis**, stated that the addition would be 8'x10', extending 8' off the house. The zoning for this portion of the property was previously VR and the entire property is now UR. The previously existing shed has been removed, so there is no additional square footage added to this property.

Chairman Gardner asked if there was anyone present wishing to speak for or against this project. There being none, the CEO provided:

1. This is a non-conforming lot with non-conforming structures within the Urban Residential (UR) Zone;
2. Mr. Marquis has proposed to construct an 8'x10' addition onto the existing house;
3. The plot plan before you shows that the property resides in both the Village Residential and UR zones. As of December 8, 2008, the property was changed to UR zone only. The owner stated that she was not aware of the zone change. The UR zone allows a 20% building coverage, and the VR zone allowed 40% coverage. Therefore, this property became nonconforming because of the zone change.
4. Title 16.12.060D, UR Zone requires a minimum 30' front property line setback. The addition is proposed to be setback 14 feet from the front property line, less than the required setback of 30';
5. The UR Zone has a maximum allowable building coverage of 20%. The property with the house and garage is currently at 22.5%. The house with the garage and proposed addition would be 24.3%, which is more than the allowable coverage.

**Chairman Gardner** asked about the front yard setback, as it appeared to be closer than 14 feet. Discussion followed about how the front yard setbacks are determined from the center of a road.

**Brett Costa motioned** to grant approval of a Miscellaneous Appeal to Kathryn Davis at 44 Woodlawn Avenue in order to construct an 8'x10' addition.

**Herb Kingsbury** seconded  
**Motion carries unanimously**

**Chairman Gardner** reminded the applicant that this approval is not the granting of a building permit, and that aggrieved persons have 45 days to appeal this decision to Superior Court.

**Findings of Fact:**

1. Appearing before the Board, Dennis Marquis for Kathryn Davis, requested a Miscellaneous Appeal to the terms of Title 16, Chapter 12, Section 060D, in order to add an 8'x10' addition to the side of the home located at 44 Woodlawn Avenue, Map 16 Lot 160, in the Urban Residential District Zone.
2. The lot is non-conforming with non-conforming structures
3. As of 12/8/2008, entire lot was placed in UR zone where it had formerly been divided into Village Residential and Urban Residential zones.
4. There was an existing 8'x10' shed showing on the tax card, but has been removed, resulting in no increase in lot coverage.

**Brett Costa** motioned to accept the Findings as read

**Niles Pinkham** seconded

**Motion carries unanimously**

**Conclusions**

Through Title 16.28.130.A of the Kittery Land Use Ordinance, the Board has the authority to modify dimensional requirements. The Board also finds that the proposed addition is no closer to the property line than the existing structure. Following the removal of the 8x10 shed, this approved addition does not further increase lot coverage.

**Bob Kaszynski** motioned to accept the Conclusions as read.

**Niles Pinkham** seconded

**Motion carries unanimously**

**Craig Wilson** addressed the Board regarding the Board's authority to grant a longer time period for completion of a project that has been granted an appeal. Currently, per Title 16.24.050.K.1, Board approvals expire if work is not begun within six months or substantially completed within one year of the date of approval. The ordinance does include, "...unless as otherwise provided for in the approval decision." Because of recent requests to extend the time allowed for completion of projects receiving Board approvals, the Board should consider including language for additional completion time when the decision is made. Discussion followed as to whether there is sufficient need for such language, and Mr. Wilson offered the following: *Should this project not begin within six months, or be substantially complete within one year of the approval date per Title 16.24.050.K.1, the applicant may return to the Board of Appeals to request an extension of time, provided such request is made before the approval expires.*

Board members agreed that this language could be used in motions as necessary.

**ITEM 2** - Steven A. Hynes for John and Frank Zazzera requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 32, Section 730D2, Page 343 in order to locate and relocate replacement mobile home at Site 84 using grandfathered yard definitions and existing setbacks

as shown in enclosed sketches. Improve setback already except that it still requires approval for front. Located at 6 Cutts Road Site 84, Kittery, Map 60 Lot 21-84, in the Mixed Use Zone.

**Gary Beers** informed the Board that the Council decided at their last meeting to establish an ordinance review committee. It will be a standing committee. The Council has received a 60-page Shoreland Zoning ordinance recommended by the Planning Board. Mr. Beers noted that approximately half of that document deals with the Zoning Board of Appeals and its makeup, authority and decision-making criteria. He is asking for a member of the Zoning Board to join him and other Councilors to participate in the ordinance review before it is presented to Council for enactment. He noted that in a neighboring community, a special exception use application before their Zoning Board of Appeals took four months, had four public hearings, and hours of testimony to reach a decision similar to one by the Kittery Zoning Board that took 30 minutes, approximately 1 ½ years ago. He commended the Kittery Board for their professional attention and expertise.

**Gary Beers** representing the owners, John and Frank Zazzera, noted that this will be his last presentation for Yankee Mobile Home Parks and introduced the new park manager, Jay Codgdon. Mr. Beers summarized the request to remove and replace a mobile home unit on site 84.

Chairman Gardner asked if there was anyone present wishing to speak for or against this project. There being none, the CEO provided:

1. This is a non-conforming lot with non-conforming structures located within the Mixed Use zone;
2. Mr. Zazara has proposed to replace an existing mobile home;
3. Title 16.32.730D2 requires a minimum 20' front setback from roads in a mobile home park. Because the mobile home is on a corner lot, two front yard setback dimensions are required.
4. The existing mobile home is set back 12 feet from the property line. The proposed mobile home would be set back 16 feet from the property line, no closer than the existing mobile home.

Considerable discussion followed regarding existing, proposed and revised plan presentations. Mr. Beers re-calculated the dimensions of the lot and the proposed size of the new mobile home. Existing dimensions are 38'3" separation plus 12 feet (mobile home) plus 28 feet (front setback) totals 78'3". Subtracting 25' for mobile home separation, 26'8" (new mobile home), leaves 26'7" for a front yard setback. Board members noted that the plan had to be corrected for the record, but concurred that the request is acceptable. Chairman Gardner asked about the survey dimensions provided by the applicant and noted that the proposed placement just barely fits within the property lines.

**Herb Kingsbury** motioned to grant a miscellaneous appeal for John and Frank Zazzera to relocate and replace a mobile home on site 84 within the Yankee Green Mobile Home Park at 6 Cutts Road, Kittery, Map 60 Lot 21-84, in the Mixed Use Zone.

**Bob Kaszynski** seconded

**Motion carries unanimously**

**Chairman Gardner** reminded the applicant that this approval is not the granting of a building permit, and that aggrieved persons have 45 days to appeal this decision to Superior Court.

**Findings of Fact**

1. Gary Beers appeared on behalf of John and Frank Zazzera requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 32, Section 730D2 in order to relocate and replace a mobile home at Site 84 in the Yankee Green Mobile Home Park, located at 6 Cutts Road Site 84, Kittery, Map 60 Lot 21-84, in the Mixed Use Zone.
2. This is a non-conforming lot with non-conforming structures;
3. The existing 1979 12'x56' mobile home will be replaced by a new 26'8" x 44' mobile home resulting in setbacks that will not create any new non-conforming setback dimensions.

**Brett Costa** motioned to accept the Findings as presented

**Herb Kingsbury** seconded

**Motion carries unanimously**

**Conclusion**

The Board has the authority under 16.28.130.A, Non-Conforming Buildings, Repair/Enlargement, in that the unit does not increase the nonconformity.

**Bob Kaszynski** motioned to accept the Conclusion as presented

**Niles Pinkham** seconded

**Motion carries unanimously**

**ITEM 3** - David Linscott requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 12, Section 050D, Page 238-2 in order to construct a 16'x16' addition. Located at 42 Stevenson Road, Kittery, Map 30 Lot 18, in the Suburban Residential District Zone.

**David Linscott** summarized the appeal request to add a 16'x16' addition to an existing 16'x16' structure for agriculture purposes, enclosing the entire structure with a new roof.

**Marie Waycovich**, 28 Manson Road, is concerned that Mr. Linscott has open building permits and that work has not been completed. There are also a number of buildings already existing on the property. **Mr. Linscott** responded that there is another piece of property belonging to him between the property under review and the 28 Manson Road property, that the two properties do not abut one another.

Chairman Gardner asked if there was anyone present wishing to speak for or against this project. There being none, the CEO provided:

1. This is a conforming lot with non-conforming structures located within the Suburban Residential zone;
2. Mr. Linscott has proposed a 16'x16' addition to an existing outbuilding;
3. Title 16.12.050D requires a minimum 40' setback from the right of way. The existing outbuilding is five feet from the right of way. The proposed addition to the outbuilding would be no closer to the right of way than the existing structure.

**Herb Kingsbury** asked if the right-of-way behind the proposed structure is used. **Mr. Linscott** stated that it is also used by the neighbor for agricultural purposes, and that the existing structure existed prior to the right-of-way.

**Craig Wilson** asked about the submitted plan. The CEO noted that the plan design in the packet (illustrating two 8' sections on each side of a 16' wide building) is not the plan that will be used. Rather, a 16' structure will be attached to the existing 16' wide structure. **Adam Gordon**, property owner of 18 Manson Road, asked if it is possible for the applicant to receive a third building permit before the other permits have been completed. The CEO noted that it is possible to have multiple permits for one property as the ordinance requires that work begin within 6 months of the granting of a permit and be substantially completed within one year. **Mr. Gardner** asked how the building will be used. **Mr. Linscott** stated it will be agricultural, for cows, goats, and chickens.

**Herb Kingsbury** motioned to grant to David Linscott a Miscellaneous Appeal to the terms of Title 16, Chapter 12, Section 050D to construct a 16'x16' addition to a building on property located at 42 Stevenson Road, Kittery, Map 30 Lot 18, in the Suburban Residential District Zone. Additionally, should this project not begin within six months, or be substantially complete within one year of the approval date, per Title 16.24.050.K.1, the applicant may return to the Board of Appeals to request an extension of time, provided such request is made before the approval expires.

**Brett Costa** seconded

**Motion carries 5 in favor, 1 opposed, 0 abstentions**

**Chairman Gardner** reminded the applicant that this approval is not the granting of a building permit, and that aggrieved persons have 45 days to appeal this decision to Superior Court.

#### **Findings of Fact**

1. David Linscott requested a Miscellaneous Appeal to the terms of Title 16, Chapter 12, Section 050D to construct a 16'x16' addition to a building on property located at 42 Stevenson Road, Kittery, Map 30 Lot 18, in the Suburban Residential District Zone.
2. The property has been found to be a conforming lot with non-conforming structures.
3. The existing structure is within five feet of the ROW, where 40' is required, and the added structure will be constructed along that same distance.

**Brett Costa** motioned to accept the Findings as read

**Herb Kingsbury** seconded

**Motion carries unanimously**

#### **Conclusions**

1. Under Title 16.28.130.A. the Board has the authority to grant an appeal, finding that the addition will be no closer to the ROW than the existing building.

**Niles Pinkham** motions to accept the Conclusions as read

**Bob Kaszynski** seconded

**Motion carries unanimously**

The next ZBA meeting will be August 11, 2009, with two items scheduled to date.

The CEO asked about a prior approval by the ZBA for a mobile home setback of 10'2" from a road in a mobile home park. The owners now want to add a deck and are asking if they can include a deck along that setback. The Board recommended that the applicant appear before the Board with this request.

**Minutes**

The minutes of June 23, 2009 were accepted as amended.

The Board discussed the Shoreland Zoning Ordinance prepared by the Planning Board and requested that copies of the proposed ordinance be mailed to them by the CEO.

**Chairman Gardner** adjourned the ZBA meeting of July 28, 2009 at 8:40 p.m.

Submitted by Jan Fisk, Recorder, August 2, 2009