

APPROVED

**TOWN OF KITTERY
BOARD OF APPEALS**

September 27, 2005

Council Chamber

CALL TO ORDER:

Chairman LaMarca called the meeting to order at 7:05 p.m.

BOARD MEMBERS PRESENT:

Sarah Brown, Brett Costa, Herb Kingsbury, Niles Pinkham, Janice Muir, Secretary and Michael LaMarca Chairman

ALSO PRESENT:

CEO Heather Ross, Recorder Chris Kudym, Robert Reed, Attorney David McConnell, Mr. and Mrs. Bischoff, Frank Crudy, Chris Wilbur, Joan Stalker, Kerry Chapman, Mr. Langardner, and others.

Chairman LaMarca led those present in the Pledge of Allegiance. Hearing procedure was outlined and the Notice of Hearings that listed one appeal, which was a continuation, was read.

PUBLIC HEARINGS:

1. Robert Reed for Bill Bischoff requesting a miscellaneous appeal to the terms of Title 16, Section 32, Subsection 490.N.2A of the Kittery Land Use and Development Code Zoning Ordinance to replace an existing structure with a new expanded structure at property located at 36 Folcutt Road, Map 25, Lot 23, Kittery Point, zoned Suburban Residence.

Chairman LaMarca told the applicant he could make a presentation or stand on what he had submitted. Mr. Robert Reed came to the podium and thanked the Board, saying that he was a designer and general contractor in the area. He wanted to thank the Board for allowing them to table their appeal and let the Board know that their desire to do so was in no way to suggest that the members that had been present were not capable, that they just wanted to have as many members present to hear it as possible.

Mr. Reed made reference to a letter from Attorney Jacobson that accompanied the application, which detailed their proposal. He explained that the desire to replace the existing house was due to the fact it had been built about 40 years ago as a seasonal dwelling with a foundation that was mostly crawl space made up of framed-over "sonatubes;" the crawl space was a dirt floor with no foundation. Mr. Reed asked if the Board had the opportunity to review the mold report and Ms. Brown said yes, they all had gotten it. Mr. Reed said, as indicated in that report, there was an on-going problem with mold, especially at the joists and where the "sonatubes" were. He said that the heating system is a forced hot air system that was located in that crawl space, which contained most of the duct work so, again, there was quite a bit of mold; the duct work was susceptible to the mold in that space. Mr. Reed then showed the Board a picture, which he said basically, showed the heating system in the crawl space and pointed out the joists in that area as well as the proximity of the "sonatubes" to the underside of the floor system. He went on to say that many of the sills and joists were rotted due to the moisture and that the majority of the framing members didn't meet current engineering standards.

Mr. Reed said that with regard to expansion and size, the existing house didn't meet current health and fire codes and, from an engineering standpoint, could not support a second floor; that it really should not be used as a framework. Mr. Reed reviewed their proposal, saying, they were looking to remove the existing one story residence to construct a one and a half story structure. He said that the proposed expansion was no closer to the wetlands than the existing house so, in addition to meeting requirements of the code, it reduced the square footage of the house and driveway as well as meeting all current electrical, fire and safety codes.

Mr. Reed said that the Bischoffs have been very sensitive to existing vegetation on the property and that their proposed plan would only be removing what was necessary for safe construction. The main condition of this project with us was that we do all things possible to protect the surroundings. Attorney Jacobson could not be here but Attorney McConnell is here from his office and both of us will be available for questions. Thank you. Mr. Reed then said he also had drawings of the house if the Board desired to see them and Chairman LaMarca said yes, they would like to see them.

Chairman LaMarca asked if there was anyone present who would like to speak in favor of the application and Mr. Frank Crudy of 16 Folcutt Road came forward. Mr. Crudy said he was not an abutter but was very close to the water and that from their property, they looked right down at the existing house. He said that the proposed house was a beautiful cape and his wife and he very much supported it.

Chairman LaMarca asked if there was anyone else and Mr. Chris Wilbur came forward to say that he was an abutter and also had prepared one the exhibits attached to the application. Mr. Wilbur said that proposals like this one were the reasons why the Town had these Boards to grant variances and he and his wife were in favor of it and hoped the Board would have the same view.

Chairman LaMarca asked if there was anyone present who opposed the application and Ms. Joan Stalker of 20 Folcutt Road came to the podium and said that she found it very hard to be a group of one, that it would be a lot easier to agree but she that could not. Ms. Stalker said that she and her husband Charlie considered themselves fortunate to live next to this beautiful lake that had trees and foliage that ran around its entire circumference and was undisturbed by views of houses. She said they had chosen the area to live because, although the area was developed and there were houses and cottages around, it had remained beautiful due to a nifty piece of zoning. Ms. Stalker said that other areas had allowed lots to be built on that we know today should never have been built on, however, they had been lucky that a few grandfathers had foreseen the need for stricter zoning. She said she could see no reason to grant the Bischoff's application because it really was not fair for them to expect a re-zoning and that approval would set a precedent. Ms. Stalker said her fear was that their country-like shore properties would be gone and they would eventually begin to look like Lake Winnepesaukee. She said she was sorry, but theirs the only property that could see the Bischoff's property. Ms. Stalker made some suggestions about what the Bischoffs might be able to do with their existing home that would not require an appeal; that she didn't think their home was in as much disrepair as it had been made to sound. Ms. Stalker said that with time and imagination, great things could happen. She said if they did this, they would never be in need of an appeal. Ms. Stalker said she pleaded with the Board not to grant this appeal and to stop this madness of teardown mentality. She said if the Board needed a little nudge, why not take a little ride around Lake Winnepesaukee. For 40 years,

she said, they had fixed up five houses and they had not been in good shape, and that in her own house now she had four dehumidifiers that needed draining and simply couldn't say that the Bischoff's house was a lost cause.

Chairman LaMarca asked if there was anyone else opposed and Ms. Kerry Chapman came forward on behalf of the Conservation Commission with a quick statement. The Commission received and reviewed a copy of the proposal and was respectfully requesting that the Board uphold a denial as a 100-foot setback had not been met.

Chairman LaMarca asked if there was anyone who wanted to speak about the application in any way. CEO Ross said that this was a conforming lot with a nonconforming house located in both the Suburban Residential and Shore Land Zones where 100 feet from the high water mark was required. The Bischoffs desired to replace the existing structure with a new, expanded structure.

Chairman LaMarca asked for questions and comments from the Board and said that his first question was, after looking at the pictures, was it a cottage? Was it a house? What actually was there now? Ms. Muir said she drove by and had known about this house for quite a while. She was a little bit surprised about Mr. Reed's comments; that she knew it was 40 years old and it was seasonal but was surprised about the comments about the mold and the condition of the house. It struck her as a home that looked like a ranch style and didn't look like it was falling down or anything of that nature. Ms. Muir said it was an absolutely beautiful piece of property and the home that sits there looks smaller than others in the area and it definitely needed some TLC, but that was her impression of the existing house.

Mr. Costa said well, I'm looking at what is supporting this thing and it's cinder blocks. Mr. Pinkham said he walked around the house and saw the roughness here and there and that he may be off, but he thought it was a bad precedent to start telling people they couldn't do what they wanted to with their own property if they meet the rules - there are enough people telling me I can't do what I want. CEO Ross said to the Chair that she saw no problem with the building or where they wanted to put it up, the problem came with the fact that they were completely tearing down the first building, which meant they were constructing an entire new building that would have to be more conforming. Chairman LaMarca said that he thought they had to meet all the rules and, if that was the case, he wanted to throw this out for discussion. If they completely tore down what was there, then they wouldn't even come close because of the shore land, but if it was deemed not really new construction, it looked like he was in; he was pretty close to where he was now.

Ms. Brown said the Chair was right, there were two different ways to look at it: They could look at it as no closer than within the footprint and, she said she wanted to be honest - that was the sort of way she was going, though she didn't usually go that way - she had mixed feelings. She said she saw a house that was in a beautiful spot and the house, by most people's standards, was very simple and a little run down and that it was a pretty normal desire of any of us - any of us who lived in that spot - that someday you would want to do something with it. Ms. Brown said she definitely thought they had made every effort to respect their environment and had played by the rules but - in the greater scheme of things? Ms. Brown said it was a pretty modest house, what they could see of it, and asked if it was really run down? Did it really have to be demolished? That question was really a priority for her. She said she could live till the end of her days in a house like that, but knew other people couldn't. Ms. Brown said she was pretty

conflicted where the Board had done this before and she was impressed by the fact they were actually reducing the footprint. Chairman LaMarca said that was a good question and asked the Board to look at the photo of the house to see if they could tell where the closest point to the water was. Discussion followed about what part of the building was closest to the water.

Mr. Costa said and that he thought whether or not to tear it down was not in their decision process. Ms. Brown said she disagreed, that it was part of their decision process. She addressed the Chair about how an addition to his house had been viewed under the no closer than clause. Ms. Brown said that there was the letter of the law and there was the intent of the law and she believed the intent of the law or ordinance of the Code was that if you were building a new addition, it could be no closer than, but if there was a full demolition, the intent was that house had to become more conforming. She said that was the clear intent in our ordinances so she thought they had to look at the full teardown of the rebuild. Mr. Costa said there was no one there qualified to know if a full demolition was needed and that the Bischoffs still had the mold issue. Mr. Kingsbury said they were asking to expand when actually what they really wanted to do was build a new house. Mr. Costa said, but by the code they're allowed to expand 30%. Mr. Kingsbury said, but he is building a new house. Chairman LaMarca said it was an expansion.

Attorney David McConnell spoke to the Board, saying, with respect, the ordinance didn't define expansion to exclude this circumstance; namely, taking an existing home on an existing footprint and replacing it. He said that, in fact, the nonconformity would be reduced in that it was not getting closer to the high water mark and was actually moving back from the water and reducing the overall footprint that was currently within the 100-foot setback. Mr. McConnell said that this Board in the past had permitted this 30% expansion, that they certainly were not bound to that, but thought it would be in keeping with what they had already done. Mr. Costa asked if the 30% expansion was measured from the existing size, by 30 feet of what was on there?

Ms. Brown said it would be different if the building were staying there. Mr. Costa said, but the building is derived from the building that is on there and they could go 30% more than what is already on the property. Chairman LaMarca said, but it's a new building and Mr. Costa said it didn't matter. Mr. Pinkham said he'd seen builders leave one wall, building around it.

Ms. Muir asked if Mr. and Mrs. Bischoff were there and they responded. Ms. Muir asked them when they purchased the property and they said in 2002. She then asked if they had been aware of these problems when they bought the house and Mrs. Bischoff said they had not been aware of the mold. Ms. Muir asked, but the fact that it needed a lot of care? Mrs. Bischoff said, well, we bought it after we checked into the ordinances to see if we could do this, knowing that we would want to do this project. Ms. Muir asked, so, when you bought it, you did not think there would be a problem? Mr. Bischoff said they tried to follow the rules. Ms. Muir said, well, that was very obvious. Mr. Bischoff said the mold wasn't due to neglect or bad housekeeping; that under the house got wet and the mold had just gotten way out of hand. He said that Mr. Reed told them if they did the renovation on what was there, it would probably crumble. Ms. Muir said, renovation and demolition – two words she was trying to define. Consulting the language of the ordinance, Ms. Muir asked the CEO, so, the idea of this home being completely demolished and built on an existing footprint – it must be conforming, is that correct? CEO Ross said that this was a demolition, as far as a renovation, they could be no closer to the wetland setback than the original structure. Ms. Ross said that more than 90% of the building was conforming, that the closest was the garage, which was 26%.

Mr. Kingsbury said he didn't know who to address his question to: since they were building a new structure, was there any way they could build a new building at a different

location on the property? Mr. Reed answered, saying that being on the peninsula, if they tried to build away from the water, they had the new leech area that pretty much prohibited going in that direction and there was really no where else to go. Chairman LaMarca asked why they hadn't placed the new leech field somewhere else? Mrs. Bischoff said because under the ordinance it read it would still have to be 100 feet back. Mr. Bischoff said it hadn't been anything they planned, the system failed and they had a discharge. Chairman LaMarca said to Mr. Bischoff that he thought Mr. Bischoff told them a few minutes ago that when they bought the house, it had been their plan to build a new house and last year, you put a leech field in. He said the problem was – could the house have been put on that lot and been conforming? Mrs. Bischoff said she didn't think so. Ms. Brown asked what was the layout of the land and Mr. Pinkham pointed out it didn't get that much wider. Mr. Reed addressed the Board, saying that he hadn't been part of the installation of the new septic system but it seemed like that was the only place the system could have gone, so that was probably why.

Chairman LaMarca said, if the footprint is going to be smaller but their expansion will be 30% - I will tell you, looking at this plan, and the house that's there, I can definitely see that this plan or what is planned - is better than what's there. Chairman LaMarca said he liked the fact there was a lot less driveway and that, while he understood the abutter's concern, that you really couldn't see the house. He said they were replacing one building with another, that it was taller, he'd say that, but as far as the view from the creek, you had one structure that was in disrepair going to what looked like a beautiful house. Especially, Chairman LaMarca said, since there was no foundation, that it was on cinder blocks, it felt to him that it should be a new construction. Mr. Costa said that the foundation had nothing to do with it. Chairman LaMarca said, not legally, he was just wondering: is it a no closer?

Ms. Brown said it was a full 100% demolition, that's what worried her. She said she'd be honest, in looking at the property, she kind of came in here thinking their request was reasonable but she was struggling with this very important point about the demolition. Ms. Brown said she knew that didn't help them because they wanted to get their project done, but the Board had to look beyond that and had to look at the precedence they set. Her experience on this Board, she said, was that when they did set a precedent, they often went back to it and batted it around as evidence. She said she wasn't saying no, she was definitely on the fence – she wasn't ignoring the 26% because that was there, but there was the 93% - it was only 7%. Ms. Brown said that if we were talking about redoing this and they were talking about 50% or 15%, she wouldn't even consider it, but the majority of this was 93%, which was pretty close to ideal.

Ms. Muir said to Ms. Brown that she thought most of our “no closer than” decisions had been for renovations, that they usually went with it, but demolitions – have there been others? Mr. Costa said absolutely, they had one in a similar situation - there was something funky about it - he wanted to expand the house away from the thing and we couldn't give it to him so he ended up staying within the footprint so it was a total demolition. Ms. Muir said she was looking at the new house and the new house would not be on the same footprint and the next thing was, it was going to be a demolition and she thought that threw them into an area where you must be conforming. Mr. Costa told Ms. Muir it was in the same footprint and that the closest point meant corner boundary. Ms. Muir said that was helpful but she was still having trouble with it being a demolition. Once the property is removed, the new has to be conforming. She then asked Heather, has this house ever been expanded before, for the lifetime of the structure? CEO Ross said that since 1989 there had been no extensions.

Chairman LaMarca said he found something under 16.28.130 called “Relocation,” which concerned relocating a nonconforming structure, taking into consideration the location of the

sewer system, and that the ZBA was directed to consider lot size, potential of soil erosion, adjacent property, etc. He said that he looked at that as saying that a nonconforming, if they were getting more nonconforming, then in that case - no way. That's doesn't seem to be the case here, he said and that he looked at this and thought this relocation was a good location, if that was really the best way to do it. Ms. Brown said she hated to bring it up but they were more. Chairman LaMarca said no, the closest point was 100 feet. Ms. Brown said they were going closer to the water. Chairman LaMarca said it's the line of the façade and that's exactly what they say. Ms. Brown said there was a whole length of the building that was going in toward the water. Chairman LaMarca pointed to the dashed line, and Ms. Brown said she understood, but she hadn't always agreed with that; she understood that was the closest point, but you had the entire portion, maybe 80%, on that side was getting closer to the water - let's call it 75% of the building - that was getting closer to the water. Certainly, she said, you can accept the closest point to the water but you're making up your own rule. This has always been the contention of no closer than and did they want to tell her that was not making more of the entire building closer to the water? Mr. Costa said that the ordinance read that no structure that was less than the required setback of the high water mark should be expanded any closer than the closest of the existing closest point. Ms. Brown said that the language the Chair read to them said they made the determination and she was just saying that there was a percentage of the house that came closer and if they went by the closest point rationale, this house could go 26% all around. Mr. Costa said no, because right here they're 93% here at the corner. Ms. Brown asked why not all around? Mr. Costa said it was contoured. Ms. Brown said but under this - if they really wanted to follow that thinking, they could put the entire house to 26%, they could say, why not do whatever we want. Chairman LaMarca said he hated to say it, but you could make an argument for that. Ms. Brown said she knew they were not doing that and that was great. Mr. Pinkham said, but they weren't doing that and they had done everything to make it palatable and to make it work. Mr. Kingsbury said he took exception to that because the footprint could be made smaller. Mr. Costa said they were making it smaller already. Mr. Kingsbury said they just that they hadn't done everything.

Ms. Brown said that from viewing the house and, again, she knew she was coming across that she was against it, but if you go down the road, the house itself was kind of funky and she knew this house, this house was long and they were trying to make the Board take a kind of leap here and she wondered why; it was going to be a pretty big house. Mr. Reed said that the house would be 3,500 square feet. Ms. Brown asked what it was now. Mr. Costa said the structure's footprint would be reduced 625 feet. Ms. Brown said, but certainly, there would be more living space. She said she was going on Mr. Kingsbury's statement wondering if it could be done another way, could it be done smaller? Chairman LaMarca said the total existing square footage of the house was 3,807 and they were allowed 30%, 1,142, meaning they could go to 4,949 and their plan called for 4,808. Ms. Brown said her point was, and again, we all have different standards as to how much is enough living space, but they were on really shaky ground here and to her, that was a really large house. Mr. Costa said they were not doing anything that set any precedent. Ms. Muir said she thought they were a Board that tried to stay conforming when they could and she appreciated what Ms. Brown was saying. Mr. Costa said there was no way they could be conforming. Ms. Brown said obviously, you couldn't get the 100% but they could have avoided the 26% and the reason she brought that up was because of the demolition.

Mr. Reed asked the Board to look at the area and said that the idea for us was to build within the existing footprint and the only place we could find a location was what was there. With regard to square footage, he said, this house is a big house, you may have thoughts as to

that, but under the law, the zoning ordinance, we are allowed a 30% expansion. Ms. Brown said she realized that. Mr. Reed said that as to the difference between renovation and demolition, there was nothing clear in the law but if the Board wanted them to save a corner of the wall, he could save a wall and stick it somewhere. There was nothing in the law so where do you draw the line? Mr. Pinkham said he thought it was far more important for that septic system to be no closer to the water than it was for the house. Mr. Reed said that was his understanding - that was why it was put where it was; it was an emergency situation.

Mr. Kingsbury said he couldn't look at it and only say it was either an expansion or relocation; it was a new construction and he couldn't look at it as otherwise. Ms. Brown asked him, why not a relocation? Mr. Kingsbury said because they were not taking the house and moving it. Mr. Costa said it was within the allowed 30% expansion. Mr. Kingsbury said but it was not an expansion of an existing structure. Mr. Costa said it didn't have to be, and that it was an expansion of an existing structure. There was discussion concerning a previous case the Board had ruled on and Ms. Brown said she recalled that in that case they hadn't met any of the setbacks and it had been decided they couldn't do it. She said the case was dissimilar because they had not asked permission. CEO Ross said that the Town came to an agreement with them and there had been a \$30,000.00 fine - they had expanded and had not met front, side or rear setbacks from the creeks. Ms. Brown said they were like this case in that they came before them wanting to build a new structure, but we told them they couldn't do it - they were supposed to keep some of the structure so they could do the expansion of a house that was really truly falling down. CEO Ross said she thought the Board found that had been due to neglect and the owner was responsible so it came under the section of the ordinance that didn't allow you to expand an unsafe structure and allowed you to rebuild but only if it was not due to the neglect of the owner.

Mr. Costa said the ordinance read "...or new structure does not come any closer." Mr. Kingsbury said he understood that it said expanding or relocating an existing structure. Ms. Brown said it wasn't saying it had to be an existing structure. Mr. Costa said, exactly, they were saying you took the building that was on the property and that was your benchmark, it was saying you didn't have to use that building - that was the amount you had to use to go to your expansion. Chairman LaMarca said he didn't read it that way.

Chairman LaMarca asked if there were any more questions and if the Board was ready to move something. He said there really was no clear black and white answer - it just depended on how you looked at this structure and asked for a reading of the motion.

Ms. Muir moved the application of Robert Reed for Bill Bischoff requesting a miscellaneous appeal to the terms of Title 16, Section 32, Subsection 490.N.2A of the Kittery Land Use and Development Code Zoning Ordinance be approved to replace an existing structure with a new expanded structure at property located at 36 Folcutt Road, Map 25, Lot 23, Kittery Point, zoned Suburban Residence. Construction shall be in accordance with a sketch submitted and signed and dated by Robert Reed and Michael LaMarca, Chairman. The Motion was seconded and Chairman LaMarca asked for a show of hands vote. The Motion passed as follows: 4/2, with Mr. Kingsbury and Ms. Muir opposed.

Chairman LaMarca congratulated the applicants and informed them that they would try to publish written notice confirming the Board's decision hopefully within seven days and that any interested party with standing had the right to appeal the decision of this Board within 45 days in York County Superior Court. Chairman LaMarca furthered informed the applicants that this

approval was not a granting of a building permit as they would still need to see the Code Enforcement Officer for that, it simply granted the CEO the authority to issue said permit.

Chairman LaMarca said that Mr. Langardner wanted to ask us something, even though it was not on the agenda. Mr. Langardner said he was asking for an extension of his permit, that the last approval was dated from March 8, 2005, which was the last time he had been in front of the Board. He said they had been delayed and he guessed the Board knew the reasons for the delay. Mr. Langardner said that apparently the rule was they had one year to be substantially complete and he didn't believe they would be. Chairman LaMarca asked if the court case was done. Mr. Langardner said there was one last step, that they had come to an agreement, which both parties had signed, but because it was in Supreme Court, a motion was needed in order to send it back to Superior Court and now they were waiting for the Superior Court judge to approve the agreement.

Chairman LaMarca said to CEO Ross, then the only question concerns a date. CEO Ross said they received original approval in December but a second approval was given on the eighth of March. Chairman LaMarca said, so you're saying we would be asked to give him another year from March 8 - so we extend from March 2006 to March 2007? CEO Ross referred to 16.24.050.K and discussion followed concerning the date(s) from which the one-year approved extension would commence. Ms. Brown asked if that agreement was the only thing he was waiting for. Mr. Langardner said I thought he should receive it by the end of the week, but he had been told that before.

Mr. Langardner said that before they went too far with this, there was another important element to the approval, which was that he had also been hired to do survey work as part of the storm water management plan by the Board and that it needed to be done by May, 2006, so, actually, you gave me an extra year. He didn't think he would use the year any way, he thought he would do the jobs concurrently now. Mr. Costa said he thought when they extended his permit for what you just talked about it had been specified in their decision to him, so that would calibrate. Chairman LaMarca said they should probably state all the dates. CEO Ross said, or you could say one year from the date of the final court document and 18 months for the other. Mr. Costa said he would just say that everything specified in the permit decision be extended by the year, which would cover that. Mr. Langardner asked, so that would be March 8, 2007 and May 2008 for the survey, is that right? Mr. Costa said that's the time we were going to give. Chairman LaMarca said no, if we extend it now, it wouldn't have until March, 2007, it would be September 27, 2006 and asked how could they legally state that they wanted all the dates and timetables to be extended? Mr. Langardner said the complicated thing was the previous survey was granted in December. Ms. Brown said she was happy to do it from the court date. Chairman LaMarca said he thought what they could say was that they were granting an extension of all applicable dates of the appeal to commence at the conclusion of the court's involvement, when the court documents were finalized.

Mr. Costa made a Motion to approve Mr. Langardner's request for an extension of his permit and that said extension would apply to all applicable dates of the appeal, commencing on the date the court document was signed and finalized, seconded by Mr. Pinkham. Mr. Langardner asked if they could be specific that it was a year and 18 months and Chairman LaMarca said yes, they could do that.

The motion was unanimously approved by a show of hands vote of all those present and voting. Mr. Langardner thanked the Board.

Chairman LaMarca continued with Findings of Fact and Conclusion.

FINDINGS OF FACT

Application of Robert Reed for Bill Bischoff

1. This was a conforming lot with a nonconforming house that did not meet the 100-foot setback.
2. Applicant was looking to demolish existing house and rebuild within the same footprint and expand by approximately 29% in volume.
3. Applicant's plans included reducing the size of the asphalt parking area.

CONCLUSION

1. The Board found, per 16.28.130, that the new structure would be no closer than the original structure and approved the appeal 4/2, with Mr. Kingsbury and Ms. Muir opposing.

Chairman LaMarca then handed each Board member a copy of the "Appeal Procedures List," and said this was the first step toward discussion. He said that according to the Town Manager, they could propose a "list of rules," if you will, anything like this - give it to him and he would pass it by the Town Attorney and we could adopt them - so, if they could just go over these. Chairman LaMarca explained that he had handed out the Appeal Procedures List and that 1 through 10 was hung in there by the CEO's office and there were so many questions about who could turn in evidence, he thought it would be great to add 11, 12 and 13.

Chairman LaMarca said he was proposing they include as No. 11 that abutters or any other resident may present information up to five days before the appeal hearing. He said they had always done that and he included that such information must be delivered to the CEO. CEO Ross said it was only because the abutters were notified only seven to ten days before the hearing. Chairman LaMarca asked, and those five days, that's in the Code, right? CEO Ross said she believed so. Ms. Muir said that the Planning Board got their stuff hand delivered or mailed. Ms. Brown said she would really like to do that, to have in-hand delivery, just after that five days, pop it in the mail. CEO Ross said the problem was she didn't know who would be picking up packets and who wouldn't. Chairman LaMarca asked if anyone had a problem with No. 11. It was suggested the phrase "residents of Kittery" be taken out so anyone could present information and perhaps change the term "authorized representative." Chairman LaMarca said, so, abutters or any other property owner in the Town of Kittery - okay with everybody? Do we allow anybody? Maybe we don't need that? Ms. Muir said if anybody can do that, then say anybody. Chairman LaMarca said, so, I'll put anybody can.

Chairman LaMarca said that No. 12 referred to information in the form of photographs might be presented to the Board anytime, including at the hearing, taking out that copies under no circumstances would be accepted.

Chairman LaMarca said No. 13 was correspondence from any other Town of Kittery Board, such as is relevant to an appeal may be presented to the Board at any time up to and including the hearing. CEO Ross asked if they could also say that copies should come to her since there usually was not one for the formal record. Mr. Costa said he wanted to notify the

Conservation Committee he didn't want emails from them but would rather receive information through regular channels like everybody else. CEO Ross said it might be good to write a letter to them. Ms. Brown said they were not like everybody else. Mr. Costa said he didn't want the emails. Mr. Kingsbury said, then, we should allow them to present anything in writing. CEO Ross said if they came to her office, she could make copies. Chairman LaMarca said, how about "a written copy of this correspondence must be presented to the CEO" and he would put it down so they would know a regular copy of this correspondence must be copied so, that way, it would get into the file.

CEO Ross said that it might be helpful on No. 6, where it said that ten copies of submissions are required, that the ordinance also required a copy of the site plan. Chairman LaMarca asked where they should put that. CEO Ross said they should also include plans drawn to scale, parking areas indicating traffic and other such material, as well as a plot plan under 16.24.050. Chairman LaMarca asked if they cared where this was and it was suggested to just put it under a new No. 14. Ms. Brown said, no, it should be up there in No. 6. Chairman LaMarca said how about right beneath 6, making a new 7? He said that what he would do, if they all agreed to this, would be to retype it and send it to the Manager and if he said they could, they would adopt these formally.

Ms. Muir asked about No. 1 and if people would know where their appeal fit here, or if they should tell people where to find out? Chairman LaMarca said they could say, "as described under Section 16.24.050, so they knew where to look. Ms. Muir said that would be fine, just to help these folks. Chairman LaMarca said that 16.04.050.B.2 was where it described the three appeals and Ms. Muir said thank you very much.

Chairman LaMarca said, you know what's not here, and he knew they were going to want this, a copy of the CEO's denial letter needed to be included in the packet because they were always asking for it. CEO Ross said that it was posted and they got what was submitted. Ms. Muir asked, so that would be under No. 2? CEO Ross said special exceptions didn't get denial letters. Chairman LaMarca said he would put "copy of the CEO's denial letter." CEO Ross said he could put "denial letter, if applicable."

Chairman LaMarca said, okay, next let's go to "Request for Reconsideration." Basically, this is almost exactly what Pat had drawn up but with a little less "legalese." We need to change the dates a little bit because of State Statutes. An applicant may request reconsideration – that has to be now within ten days in order for us to hear it. The request must be filed in the same manner as the original with the same forms as the original appeal and it's up to the Town if they charge all applicants. CEO Ross said that the Town Council set fees. A lengthy discussion followed concerning how and when to hear and/or set dates for reconsideration of appeals.

Chairman LaMarca continued to "Rehearing Appeals within 1 Year of Denial." Ms. Brown said that, by the way, she was very confused by the term "within one year." She thought it was that a year had to pass. Chairman LaMarca suggested they go through this and it would make sense. An appeal could be heard provided the following criteria were met - they wouldn't have to say anything, they just wanted us to reconsider our decision: "Okay, you said I couldn't do it because you said I'm not within 100 feet." CEO Ross said you might want to call it "Appeals of a Similar Nature." Mr. Kingsbury said why is this called A, when there is no B? Chairman LaMarca said it was just a subsection. "Appeals of a Similar Nature within 1 Year of Denial." Mr. Kingsbury suggested a change of wording to Appeal of a Project within 1 Year of a Prior ZBA Denial Provided the Project is Changed Subsequent Thereto" - I want to know when someone comes to Heather, that when we get something we have already denied, that the date of that denial is prominently written on the cover page. Chairman LaMarca said No. 4 was the

same as before. He said No. 5 was the same thing and No. 6 was the same; basically that was how they did it. Ms. Brown said “no such member” and Chairman LaMarca said, yes, okay.

Chairman LaMarca said the last one, “Postponing an Appeal.” This was what we talked about so don’t feel you’re treading on Pat’s toes. Ms. Brown said she thought people should be able to hang their hat on that - if it’s 5, not just 4, they’re at a disadvantage and she thought they should be able to use that reason. She said she would say if there were five or fewer. Chairman LaMarca said he just wanted something in writing and to have a postponement rule so people couldn’t say “well, I forgot that...” It must be completed with a vote or withdrawn outright. CEO Ross said she had seen the Board postpone though. Chairman LaMarca said there were rules for it but it shouldn’t include lack of a full Board, however, if there were five or fewer and the applicant could specifically explain why it was a disadvantage in their case, the members of the Board present would vote to see if a simple majority would rule. Ms. Brown said she didn’t think it was fair if there was a tie. Mr. Pinkham said in case of a tie, the postponement would be granted. Ms. Brown said she didn’t care what their reasoning was with four, it was designed to have seven and we should approve the fact they want it postponed. Chairman LaMarca said now, we just have something in writing - there will be only one appeal and in the case of a second, the applicant must withdraw and start over again. Mr. Pinkham said even though this was only his third meeting, he had seen some people all three times and he thought they shouldn’t be able to keep using the system. Ms. Brown said her only question was what about poor “Joe Blow” who comes in and is just not lucky? Ms. Muir said this is what we spoke about with Mike; we require all four in affirmative, that’s not what the Planning Board does. Mr. Costa said it wasn’t in the Code. Ms. Muir said every Board seemed to have a different way of voting, but if it was written down, okay, there’s no conversation. Mr. Costa said he knew he had brought it up with Pat on a number of occasions. Ms. Brown said she, for one, would not want to see it changed. Mr. Pinkham said it made sense to him they would not want the four but if they had less than six, he could see why they would want to postpone until they could get six. Chairman LaMarca said he just found it on Page 210, but it said three – no, the Planning Board said three. Ms. Brown said they had a different function. CEO Ross said in all records of the ZBA that was procedural, under 16.04.050.A.3 and Ms. Muir thanked her. Chairman LaMarca asked so, what do you think about only one? Ms. Brown said what happens though - since I have been on the Board - we very rarely have seven and many times just four. Chairman LaMarca asked: do we want to not go with this? That doesn’t mean they can’t withdraw and start all over. Mr. Pinkham asked, due to lack of Board? Chairman LaMarca said if they were sick and had to postpone. Ms. Brown said actually, she was going to completely change and say that they were allowing the postponement and it should be only one. The fact of the matter is the person who wants to continue postponing, they know they’re asking for something that’s really hard to get. We have to remember that everyone that comes before us is asking to do something they really should not do. In extreme cases, if someone got a postponement and then we found out the second time, they were deathly ill and couldn’t get out of bed, we’d be human about it. Chairman LaMarca said how about “extreme circumstances, only one,” then we can decide what’s extreme. Ms. Brown said let’s, at the end, just put in “unless extreme circumstances.”

Ms. Brown said one more – she was wondering what was an actual “authorized representative” and Chairman LaMarca said they could discuss that further, for now, he wanted to get something in writing. CEO Ross suggested “written authorization” and Chairman LaMarca said that they decided last time that a tenant was an authorized representative. Mr. Pinkham said it should be someone with written authority. Chairman LaMarca said he agreed with him but they didn’t do that. Mr. Kingsbury spoke about a disability act appeal.

CEO Ross asked, concerning postponing an appeal, were they specifying that they had to do that in person or would the Board accept it in writing? Chairman LaMarca said he would accept it in writing since they may be sick. Ms. Muir said she would appreciate a reason and related a case that the Board ended up hearing three different times and was finally dismissed because no one was willing to bring a motion forward so there could be a vote.

Chairman LaMarca said he would get these approved first and asked if they had a motion to adjourn.

ADJOURNMENT:

Mr. Costa moved to adjourn at 9:14 p.m., seconded by Ms. Brown. A vote was taken with all in favor.