

**APPROVED**

Town of Kittery  
Zoning Board of Appeals  
October 14, 2008

Call to Order: 7: 05 pm

**Members present:** Vern Gardner, Chairman; Craig Wilson, Niles Pinkham, Thomas Battcock-Emerson, Brett Costa, Herb Kingsbury

**Members absent:** Bob Kaszynski

**Staff:** Heather Ross, CEO

Pledge to the Flag

**PUBLIC HEARING**

**ITEM 1** - Dr. J. Donatello for Kathleen B. Donatello requesting a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 110 (Page 256E) of the Kittery Land Use and Development Code Zoning Ordinance in order to change the existing entrance from Polynesian style to Conventional style without increasing the footprint. Located at 76 U.S. Route #1 By-Pass, Kittery, Map 8 Lot 13A, in the Commercial Zone.

**Ken Markley**, Easterly Survey, summarized the appeal for the property owners stating that the existing front entrance is within the 50' front setback required in the Commercial Zone.

**Chairman Gardner** asked if there was anyone wishing to speak in favor or against this item. There being none, the **CEO** provided the following information:

1. This is a non-conforming lot with a non-conforming structure located within the Commercial-3 zone.
2. Ms. Donatello is proposing to demolish an existing front entrance and to construct a new front entrance.
3. Title 16.12.110 requires a minimum of 50 feet front yard setback.
4. The existing front entry is approximately 47 feet from the front property line. The proposed new front entry would be no closer to the front property line.

Board members agreed that this is a classic “no closer than” situation that does not further impact the front property line.

**Brett Costa motioned** to grant a miscellaneous appeal to the terms of Title 16, Section 12, Subsection 110 (Page 256E) of the Kittery Land Use and Development Code Zoning Ordinance to facilitate a change at the existing entrance from Polynesian style to Conventional style without increasing the footprint. Property is located at 76 U.S. Route #1 By-Pass, Kittery, Map 8 Lot 13A, in the C-3 Zone.

**Thomas Battcock-Emerson** seconded

**Motion carries unanimously**

**Chairman Gardner** reminded the applicant to pursue all required permits with the CEO and appeals may be made to Superior Court within 45 days.

***Findings of Fact***

1. The request is for a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 110 (Page 256E) of the Kittery Land Use and Development Code Zoning Ordinance in order to change the existing entrance from a Polynesian style to Conventional style without increasing the footprint. The property is located at 76 U.S. Route #1 By-Pass, Kittery, Map 8 Lot 13A, in the Commercial-3 Zone.
2. The applicant was represented by Ken Markley.
3. This is a non-conforming lot with a non-conforming structure located within the Commercial-3 zone Title 16.12.110 that requires a minimum of 50 feet front yard setback.
4. Applicant proposes to demolish the existing entrance and replace with a new entry design within the same foundation.
5. The existing front entry is approximately 47 feet from the front property line. The proposed new front entry would be no closer to the front property line.
6. Testimony presented a 11% lot coverage on a 2,750 sf lot.

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

**Niles Pinkham** seconded

**Motion carries unanimously**

***Conclusion***

The new front entrance will be on the existing foundation; 2 feet further in (1' on each side); the new entrance will be 47' from the property line and is no closer than the existing foundation under 16.28.130A. The Board concurred that sections 16.24.060A, 1-4 and B 1-16 had been met.

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

**Thomas Battcock-Emerson** seconded

**Motion carries unanimously**

**ITEM 2** - Gregory R. and Wendy Jutras requesting a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 060 (Page 238-5) of the Kittery Land Use and Development Code Zoning Ordinance in order to enlarge the existing front porch to 7'x4'3" and enclose with a gable roof, walls, and a storm door making this a vestibule no closer than the existing structure to the property line. Located at 5 Keene Circle, Kittery, Map 10 Lot 66, in the Urban Residential Zone.

**Niles Pinkham** excused himself from his Board position as he has worked for Mr. Jutras.

**Tom Battcock-Emerson** noted that he coaches Mr. Jutras' son on the soccer team, but did not believe this would affect his review and decision in this matter.

**Gregory Jutras**, summarized the requested appeal, noting that the enlargement is no closer than the existing structure to the property line, though wider. Mr. Jutras noted that his neighbor, John Moulton, was not opposed to this appeal, but could not attend the meeting.

**Chairman Gardner** asked if there was anyone wishing to speak in favor or against this item. There being none, the **CEO** provided the following information:

1. This is a non-conforming lot with a non-conforming structure located within the Urban Residential zone.
2. Mr. Jutras is proposing to demolish an existing front porch and to construct a new front porch.
3. Title 16.12.060 requires a minimum 30' front yard setback.
4. The existing front entry is approximately 17'4" from the front property line. The proposed entry would be no closer to the front property line than currently exists.

**Herb Kingsbury** asked the difference between a porch and a structure.

The CEO explained that there is a definition for building and structure. A building is something that has a roof, whether or not it is enclosed. A structure is not roofed. This particular proposal has a porch that is roofed, and is included as part of the building. The proposed enlargement does not extend further to the property line.

**Brett Costa motioned** to grant a miscellaneous appeal to the terms of Title 16, Section 12, Subsection 060 of the Kittery Land Use and Development Code Zoning Ordinance in order to enlarge the existing front porch to 7'x4'3" and enclose with a gable roof, walls, and a storm door making this a vestibule no closer than the existing structure to the property line. Property is located at 5 Keene Circle, Kittery, Map 10 Lot 66, in the Urban Residential Zone

**Thomas Battcock-Emerson** seconded

**Motion carries unanimously**

**Chairman Gardner** reminded the applicant to pursue all required permits with the CEO and appeals to Superior Court may be made within 45 days.

### ***Findings of Fact***

1. Mr. Jutras requested a miscellaneous appeal to the terms of Title 16, Section 12, Subsection 060 (Page 238-5) of the Kittery Land Use and Development Code Zoning Ordinance in order to enlarge the existing front porch by 3 feet and will be no closer than the existing structure to the property line. Property is located at 5 Keene Circle, Kittery, Map 10 Lot 66, in the Urban Residential Zone
2. This is a non-conforming lot with a non-conforming structure located within the Urban Residential zone.
3. Proposal is to demolish the existing front porch and construct a new front porch.
4. Title 16.12.060 requires a 30' front yard setback.
5. The existing front entry is approximately 17'4" from the front property line and the proposed new entry would be no closer to the front property line than currently exists.

**Findings are accepted unanimously.**

### ***Conclusion***

The Board concurred that sections 16.24.060A, 1-4 and B 1-16 have been met. Under 16.28.130A, the Board has the authority to grant relief.

Member Niles Pinkham returned to his Board seat.

**ITEM 3** - Raphael and Blayne Matty requesting an Administrative Appeal to the decision of the Code Enforcement Officer to erect a 9'6"x12'6" greenhouse/glass shed within the approved setbacks for a shed. Located at 1 Charles Hill Road, Kittery Point, Map 56 Lot 10, in the Rural Residential Zone.

**Craig Wilson** explained that he is a neighbor of the applicant and excused himself from his Board position as he felt that he could not review the item without bias.

**Raphael Matty** presented digital photos of the greenhouse before it was disassembled and moved to his property. Though made out of glass, it is the same size as a shed and is a temporary structure. There will be no pesticides or herbicides, gas, oils etc. stored in the greenhouse, unlike a shed. The goal in erecting the greenhouse is to lengthen the growing season and provide the family with vegetables to grow and preserve, creating a sustainable lifestyle.

**Chairman Gardner** asked if there was anyone wishing to speak in favor or against this item. There being none, Chairman Gardner read a letter from the conservation commission dated October 14, 2008, where the Commission requested that the denial of a building permit be upheld as the greenhouse will be less than 100 feet from the wetland.

The **CEO** provided the following information:

1. This is a non-conforming lot with a non-conforming structure located within the Rural Residential zone.
2. The applicant is proposing to construct a 9'6" x 12'6" greenhouse (118.75 sf).
3. Table 16.12 requires a minimum setback of 100' for buildings or structures from a wetland greater than one acre in size.
4. Table 16.12 requires a minimum setback of 50' for detached residential storage sheds no larger than 120 sf from a wetland greater than one acre in size.
5. The proposed structure would be set back 50' from the wetland where a 100' setback is required.

The CEO illustrated the location of the 50' setback from a wetland on a plan prepared by the previous owner when placing a shed on the property. The application was denied because, as a greenhouse, it does not meet the definition of a storage shed and would be placed within 100' of a wetland.

**Mr. Matty** rebutted the Conservation Commission letter stating that the use of the greenhouse is to extend the growing season, not to grow in the greenhouse all year, and do not plan to install heat, water or electricity in the greenhouse. The original greenhouse had an electrical vent, but this is no longer operational and must be operated manually. Otherwise, applicant may wish to install solar panels in the future to operate the vent.

**Niles Pinkham** stated that the structure is less than 120 sf and a shed roof would shed as much water as the proposed greenhouse. What is the difference, whether it is made out of glass, wood or whatever? If a shed was placed in the same location with multiple windows, it could possibly grow plants.

**Thomas Battcock-Emerson** agreed and further noted that sheds typically use electricity, possibly a kerosene heater, and store hazardous materials close to a wetland. This applicant's intended use appears to have less of an impact.

**Brett Costa** concurred that there really is no difference in the structures in regard to size.

**Thomas Battcock-Emerson** stated that if the same structure had the glass removed and replaced with wood, the applicant would not be in front of the Board.

**Herb Kingsbury** noted that the difference is a shed is for storage and a greenhouse for plants. There are no definitions in the ordinance for shed or greenhouse. While it is close to a wetland, as a temporary structure it is allowed, but requested that it not be placed on a concrete foundation.

**Mr. Matty** stated it would not be on a permanent foundation.

**Chairman Gardner** stated that he felt the two (greenhouse and shed) are interchangeable.

**Thomas Battcock-Emerson** stated that the impact on the environment would be less as water running off a glass roof would be cleaner than water running off an asphalt shingle roof because of the particulates that would wash off a typical asphalt roof.

Members discussed whether they should overturn the decision of the CEO or to modify the decision of the CEO. Should they overturn the decision, the CEO may, in the future, grant all such similar requests independently of the Zoning Board of Appeals. Members concurred that they would rather treat this application as a specific request, and to modify the CEO's decision.

**Brett Costa** motioned to modify the decision of the Code Enforcement Officer and grant an Administrative Appeal to Raphael and Blayne Matty to erect a 9'6"x12'6" greenhouse/glass shed within the approved setbacks for a shed. Property is located at 1 Charles Hill Road, Kittery Point, Map 56 Lot 10, in the Rural Residential Zone.

**Thomas Battcock-Emerson** seconded

**Motion carries unanimously**

**Chairman Gardner** reminded the applicant to pursue all required permits with the CEO and appeals to Superior Court may be made within 45 days.

### ***Findings of Fact***

1. Raphael and Blayne Matty requested an Administrative Appeal to the decision of the Code Enforcement Officer to erect a 9'6"x12'6" greenhouse/glass shed within the approved setbacks for a shed. Located at 1 Charles Hill Road, Kittery Point, Map 56 Lot 10, in the Rural Residential Zone.
2. This is a non-conforming lot with a non-conforming structure located within the Rural Residential zone.
3. The applicant is proposing to construct a 9'6" x 12'6" greenhouse (118.75 sf). The use of the greenhouse will not have heating or plumbing and will be placed on a non-permanent, concrete block-type foundation.

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

**Herb Kingsbury** seconded

**Motion carries unanimously**

### ***Conclusion***

The Board found that the application was in compliance with 16.24.060A, 1-4 and B, 1-16 and exert their authority to modify the decision of the Code Enforcement Officer to grant an

Administrative Appeal to Raphael and Blayne Matty to erect a greenhouse shed within the approved setbacks for a shed.

**Brett Costa** motioned to accept the Conclusion as read  
**Herb Kingsbury** seconded  
**Motion carries unanimously**

Member Craig Wilson returned to his Board seat.

Minutes

**Craig Wilson** reviewed the outstanding minutes with action as follows:

April 22, 2008, accepted with changes  
June 8, 2008, accepted with changes  
July 22, 2008, accepted with changes  
August 26, 2008, accepted with changes  
September 9, 2008, accepted with changes

**Thomas Battcock-Emerson** motioned to accept the minutes with changes  
**Niles Pinkham** seconded  
**Motion carries unanimously**

The CEO asked the Board to review their calendars in reference to the upcoming holiday season. There is no meeting on November 11 (Veteran's Day) and the following scheduled meeting is the week of Thanksgiving. There will be no meeting on December 23, 2008. Members agreed there will be no ZBA meetings in November and one meeting (December 9) in December.

The Kittery ZBA meeting of October 14, 2008 concluded at 8:30 pm

Submitted by Jan Fisk, Recorder  
October 16, 2008