

Town of Kittery  
Zoning Board of Appeals  
June 23, 2009

Call to Order: 7:05 p.m.

**Members present:** Vern Gardner, Chairman, Craig Wilson, Herb Kingsbury, Thomas Battcock-Emerson, Bob Kaszynski, Brett Costa

**Members absent:** Niles Pinkham

**Staff:** Heather Ross, Code Enforcement Department  
Pledge to the Flag

**PUBLIC HEARING**

**ITEM 1** - Scott Fiorentino for James and Tudor Austin requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 32, Section 490N2A, Page 316, and Title 16, Chapter 32, Section 490K2, Page 310 in order to request to continue construction on renovation and addition to existing home previously approved by ZBA August 2006. Included in scope of work is a Bay window and pantry/bathroom addition for handicap accessibility also previously approved by ZBA. Located at 10 Lawrence Lane, Kittery Point, Map 18 Lot 33, in the Suburban Residential District Zone and Shoreland Zone.

**Scott Fiorentino**, agent, summarized the request for a permit extension and the work completed to date. The project is approximately 50% completed on the exterior and the applicant wishes to complete the exterior work and some landscaping so that the site is not deleterious to the neighborhood.

**Annie Borden, Kittery Conservation Commission** requested that the ZBA deny the request and referenced a letter submitted to the Board.

**Mr. Fiorentino** stated he had not seen the letter from the KCC and questioned why the Commission would find a problem with the project at this time. The proposed renovation's footprint is smaller than the original, and all information required by the Town has been submitted accurately. The **CEO** stated that it was her understanding that the KCC's main concern was that the request was for an approval to continue construction for an indefinite period of time.

**Mr. Fiorentino** explained that substantial working drawings were required once the ZBA approved the original request, and it took approximately 12 months to complete the drawings, necessitating permit extensions.



# Town of Kittery, Maine

## Conservation Commission

P.O. Box 808, Kittery, Maine 03904

DATE: June 19, 2009

TO: Vern Gardner, Chairman  
Kittery Zoning Board of Appeals

FROM: Earledean Wells, Chairman

RE: James and Tudor Austin, 10 Lawrence Lane, Map 18 Lot 33

The Conservation Commission has reviewed the packet submitted by Scott Fiorentino for James and Tudor Austin requesting a Miscellaneous Appeal to the terms of 16.32.490N2a and 16.32.490K2 in order to request to continue construction on renovation and addition to existing home previously approved by the ZBA in August 2006.

- The ZBA has already granted a tear down and reconstruction of a structure 35.6 feet from the high water mark within the Shoreland Zone on this property;
- The ZBA has permitted alterations to the development plans resulting in further coverage within the 100 foot setback of the Shoreland Zone on this property;
- Permits were issued in 2007 and the work was not substantially completed when the permits expired;

Mr. and Mrs. Austin are presently requesting that they be given an extended permit with an indefinite time limitation. According to their May 21, 2009 letter, they would proceed with construction "at a much slower pace, and complete the project as funds become available. It would be impossible to predict an exact date of completion." The terms of 16.20.020D (page 262) clearly set out the time limit of permits issued in Kittery and also clearly states that permits may be renewed upon application and payment of renewal fee.

KCC is not aware that permits with indefinite time limitations have ever been issued in Kittery and we cannot see why such a permit should be issued on the Austin project.

Further, the revised Maine State Shoreland Zoning requirements will be enacted in Kittery shortly. Granting this Miscellaneous Appeal would allow only Mr. and Mrs. Austin to circumvent the new terms of the Shoreland Ordinance, requiring Planning Board approval of all proposed projects within the Shoreland Zone, which all applicants will now be held to.

The Kittery Conservation Commission respectfully requests that the Zoning Board of Appeals deny this Miscellaneous Appeal request and allow the applicant to move through the permitting process as established by Kittery Ordinance.

There being no further testimony, the **CEO** provided:

1. This is a non-conforming lot with non-conforming structures within the Kittery Point Village and Shoreland zones.

2. Mr. Fiorentino has proposed to complete construction on the house as previously approved by the ZBA. The approvals for the previously approved additions/renovations have expired. The approvals were as follows:
  - a. August 22, 2006 approval was given for substantial renovation and addition to existing structure, including replacing existing roof reworking existing facades and lifting the structure with a 4,000 sf addition outside the 100 foot setback with the renovation being within the existing footprint.
  - b. January 8, 2008 approval was granted for replacement of French door, double hung window, stoop and canopy with curved bay to match dining room bay.
  - c. March 25 2008 approval was received to construct an 8'x14' addition to allow for wheelchair accessibility into the first floor bathroom.
3. Construction began on the August 22, 2006 and January 8, 2008 permits. Construction has not begun on the March 25 2008 permit.
4. Title 16.32.490.N.2.a. requires a minimum 100 foot setback from the normal high water mark. The construction does not meet this minimum setback.
5. Title 16.32.490.K.2. allows for a maximum 30% expansion of floor area or volume with ZBA approval. The proposed construction is less than the maximum 30%.

**Herb Kingsbury** asked for clarification as to what has been completed and what remains to be completed at the property. Discussion followed regarding landscaping and construction completion and remaining interior work. **Craig Wilson** asked about the setbacks of the existing and proposed structures. The closest measured distance to the shoreland zone was established to be 35'6" from the existing structure. The proposed structure sits outside of the 100' shoreland zone setback. **Bob Kaszynski** stated that the Commission's concern about timely completion of the project is a legitimate one and this cannot go on indefinitely. **Mr. Fiorentino** stated it would be difficult to give an exact period of time to complete the project, but it was his opinion that the building's exterior and the majority of the landscape work could be completed within 12 months, so that the neighbors would not have to view a construction site. **Thomas Battcock-Emerson** suggested that the exterior work is what the Commission would be most concerned about. This project is substantial and, in his opinion, could not have been completed within the timeframe allowed by the Town of Kittery. **Vern Gardner** asked the CEO what is considered "substantial completion". The CEO stated that, typically, substantial completion would allow for occupancy. There are no guidelines in the Kittery ordinance regarding this issue. **Bob Kaszynski** stated that, though the exterior completion may address the concerns of the Commission, does the Town wish to have shells of buildings lingering until completion? **Craig Wilson** stated that perhaps the time frame for completion is arbitrary, but that is what the Board and CEO have to work with. **Thomas Battcock-Emerson** furthered that the project has a very high degree of finish and skill required for finish and if this level of construction is to continue in Kittery, it is not going to happen within the time frames provided. Coupled with the current economic conditions, the Board should support extending the permit as needed, for 6 months or 1 year. The CEO noted that any further extensions would go to the Planning Board when the shoreland zone ordinance is adopted, as the permits will expire if the project is not substantially completed. **Vern Gardner** asked if the agent had any idea how long the project would take. **Mr. Fiorentino** stated that projects of this scale would normally take 30-36 months because of the fine detail. The project was under construction for just shy of 12 months when work was put on hold. To complete the project now, it is estimated that it will take another 1 ½ to 2 years to complete. The majority of

the remaining construction is on the structure outside of the shoreland zone. The small wing on the single story structure is why they are requesting the extension.

**Brett Costa motioned** to grant approval to James and Tudor Austin requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 32, Section 490.N.2.a., Page 316, and Title 16, Chapter 32, Section 490.K.2., Page 310. The property is located at 10 Lawrence Lane, Kittery Point, Map 18 Lot 33, in the Suburban Residential District Zone and Shoreland Zone

**Herb Kingsbury** seconded

Mr. Gardner asked if the Board was considering a longer extension than one year. Members concurred that the extension is per ordinance, and no more than one year.

**Motion carries unanimously**

#### Findings of Fact

1. Scott Fiorentino for James and Tudor Austin appeared before the Board requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 32, Section 490.N.2.a., Page 316, and Title 16, Chapter 32, Section 490.K.2., Page 310 for property located at 10 Lawrence Lane, Kittery Point, Map 18 Lot 33, in the Suburban Residential District Zone and Shoreland Zone.
2. This is a non-conforming lot with non-conforming structures within the Kittery Point Village and Shoreland zones.
3. Part of the existing structure, at its closest point, is 40 feet from elevation 6, less than the 100 foot setback required in the shoreland zone.
4. Previous approvals were granted by the Zoning Board of Appeals on August 22, 2006 for renovation to the existing structure, with the renovation being within the existing footprint, and on January 8, 2008 and March 25 2008, all of which have expired.
5. Title 16.32.490.K.2. allows for a maximum 30% expansion of floor area or volume with ZBA approval. The proposed construction is less than the maximum 30%.

**Bob Kaszynski motioned** to accept the findings as read

**Herb Kingsbury** seconded

**Motion carries unanimously**

#### Conclusion

The Board has the authority under Title 16.28.130.D.1.c. to allow enlargements that are no closer to the shoreland zone than existing structures, and to allow, under Title 16.32.490.K.2., expansion up to 30% in floor area or volume.

**Thomas Battcock-Emerson motioned** to accept the Conclusion as read

**Brett Costa** seconded

**Motion carries unanimously**

**ITEM 2** - Scott Fiorentino for Eugene Smith and Susan Thompson requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 32, Section 490N2, Page 316, Title 16, Chapter 28, Section 130Dc, Page 275, Title 16, Chapter 32, Section 490K2, Page 310, and Title 16, Chapter 28, Section 130A, Page 274 in order to construct a 530sq' addition to extend the kitchen, new

Bay window, stair tower sitting room, and a new 2<sup>nd</sup> floor Master suite and Master deck. Located at 96 Whipple Road, Kittery, Map 10 Lot 18, in the Urban Residential District Zone and Shoreland Zone.

**Mr. Fiorentino** summarized the request for the appeal.

There being no testimony for or against the proposal, the CEO provided:

1. This is a non-conforming lot with non-conforming structures located within the Urban Residential and Shoreland zones.
2. Mr. Fiorentino has proposed renovations and additions to an existing house.
3. Title 16.32.490.N.2.a. requires a minimum 100' setback from the normal high water mark. The construction proposed does not meet this minimum setback. The proposed construction would be set back 78' 2" where a 100' setback is required.
4. Title 16.32.490.K.2. allows for a maximum 30% expansion of floor area or volume with ZBA approval. The proposed construction is less than the maximum 30% floor area and volume.

Chairman Gardner read the KCC letter into the record as follows:



## Town of Kittery, Maine

### *Conservation Commission*

P.O. Box 808, Kittery, Maine 03904

DATE: June 24, 2009

TO: Vern Gardner, Chairman  
Kittery Zoning Board of Appeals

FROM: Donald F. Moore, Secretary

RE: Eugene Smith & Susan Thompson, 96 Whipple Road, Map 10 Lot 18

The Kittery Conservation Commission has reviewed the material submitted by Scott Fiorentino for Eugene Smith and Susan Thompson regarding a building permit application to construct a 530 square foot addition to the existing structure that is within the Shoreland Zone.

Title 16.32.490N2a states that the Shoreland Zone requires a 100 foot setback. The proposed addition does not meet the required 100 foot setback.

The Kittery Conservation Commission respectfully requests that the Zoning Board of Appeals uphold the Code Enforcement Officer's denial of this building permit application for the construction of this addition less than 100 feet from the high water line.

**Herb Kingsbury** read from Title 16.28.130.D.1.c. noting the area of construction within the 100 foot shoreland zone, noting the ordinance reference to building facades. **Mr. Fiorentino** stated that the existing deck has a foundation and a crawl space. The edge of the foundation remained after the structure was removed and the deck was placed over this foundation. The applicant is using this existing foundation to establish the furthest most point where the addition can be located. There was considerable discussion as to whether the pertinent area was a façade, and would qualify for expansion under ordinance guidelines. **Craig Wilson** reminded the members of prior Board decisions (Water Street) where an existing foundation, though not used for years, was considered part of the structure and expansion was allowed on that foundation. The proposed addition is 77'3" from the 75' setback as allowed in Title 16.28.130.D.1.c. **Mr. Fiorentino** provided the volume calculations of 4485 cf allowed and 4472.30 cf proposed.

**Bob Kaszynski motioned** to grant a miscellaneous appeal to Eugene Smith and Susan Thompson to the terms of Title 16, Chapter 32, Section 490.N.2, Page 316, Title 16, Chapter 28, Section 130.D.c, Page 275, Title 16, Chapter 32, Section 490.K.2, Page 310, and Title 16, Chapter 28, Section 130.A, Page 274 at property located at 96 Whipple Road, Kittery, Map 10 Lot 18, in the Urban Residential District Zone and Shoreland Zone.

**Brett Costa** seconded

**Motion carries with 4 in favor, 2 opposed, 0 abstentions**

#### Findings of Fact

1. Scott Fiorentino, representing Eugene Smith and Susan Thompson requested a miscellaneous appeal to the terms of Title 16, Chapter 32, Section 490.N.2, Page 316, Title 16, Chapter 28, Section 130.D.c, Page 275, Title 16, Chapter 32, Section 490.K.2, Page 310, and Title 16, Chapter 28, Section 130. to construct a addition to extend the kitchen, new bay window, stair tower sitting room, and a new 2<sup>nd</sup> floor Master suite and Master deck.
2. Property is located at 96 Whipple Road, Kittery, Map 10 Lot 18, in the Urban Residential District Zone and Shoreland Zone.
3. The existing structure is 77'3" from the high water mark and the proposed addition is 78'2" to high water mark.
4. The addition is 528.26 sf., less than the 30% expansion allowed.
5. The re-calculated the volume expansion is 4472.3 cf, which is less than the allowed 30% expansion in volume. Mr. Fiorentino will provide the revised volume figures to the CEO for the file.
6. This is a non-conforming lot with non-conforming structures
7. A letter was received from the Kittery Conservation Commission requesting the Board uphold the decision of the CEO

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

**Bob Kaszynski** seconded

**Motion carries unanimously**

Conclusion

The Board has the authority under Title 16.28.130.D.c, allowing expansions no closer than existing structures, and the Board found that this expansion is no closer than an existing structure. Under Title 16.32.490.K.2 the Board has the authority to grant up to a 30% expansion in volume or square footage, and the Board found the addition to be less than 30%.

**Herb Kingsbury** motioned to accept the Conclusion

**Thomas Battcock-Emerson** seconded

**Motion carries unanimously**

**Craig Wilson, Secretary**, following a suggestion by the recorder, presented the possibility of allowing the Secretary to review the Findings and Conclusions for clarification prior to submitting the Notice of Decision to the applicant and other parties, assuring members that no changes to decisions would be made. Because the Board does not review the minutes of a meeting for two weeks (or longer if there are no meetings), any corrections to the motion, findings or conclusions are made after the Notice is submitted (within seven days of the meeting). If changes are made in these areas, the minutes and Notices would differ. Following considerable discussion, members decided that any changes to the minutes would have to be made by the Board as a whole, at a meeting. **Chairman Gardner** will present this issue to the Town's attorney for further consideration.

The **CEO** provided a letter from Cole Brown Estates requesting an extension for a ZBA approved project located at 2 Keene Circle, that will expire in August, 2009. Board members discussed the request, but felt that they did not have enough information on the project's status to make an informed decision. Members requested that the applicant present an appeal for Board review and consideration.

The next ZBA meeting will be July 14, 2009.

**Minutes**

The minutes of May 26, 2009 were accepted as presented.

**Chairman Gardner** adjourned the ZBA meeting of June 23, 2009 at 8:45 p.m.

Submitted by Jan Fisk, Recorder – June 29, 2009