

Town of Kittery, Maine
Board of Appeals
April 27, 2010

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

Staff: Heather Ross, Code Enforcement Department

Councilor Beers presented a summary of Kittery's proposed Growth Management Program plans, targeting the end of 2011 for completion and State Planning Office approval. Mr. Beers summarized the history of the GMP and the outline of the proposed update, including capital investment programming, debt service and management, enterprise initiatives, smart growth, committee makeup and needs, and targeted tasks. He spoke of current issues such as possible bridge closures, creation of new sewer districts, and other impacts facing Kittery. He announced that Title 16 has been re-codified and a final first draft will be available for review. Board members discussed the time commitment and meeting dates for the GMP committee members.

The meeting was called to order at 7:12 p.m.
Pledge to the Flag

Item 1 - Robert Brodsky for Dellco Realty Trust requesting an Administrative Appeal to the terms of Title 16, Chapter 32, Section 615M, Page 338-2 in order to install a 112 sf perforated vinyl sign on the outside of the window to block the window so space inside can be made usable. Located at 384 U.S. Route 1, Kittery, Map 47 Lot 23A, in the Commercial Zone.

Mr. Brodsky summarized his request to retain the existing signage stating the signage in question is not a window sign as defined in the ordinance. The use of the window covering is to shield the products from the sun and to make the building more visually attractive. He read from Title 16.32.595.B.2.a, contending the amount of sign area at his business falls within the allowed square footage.

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

1. This is a non-conforming lot with a non-conforming structure located within the Commercial Zone.
2. Mr. Brodsky has filed an administrative appeal regarding the CEO's interpretation of window signage.
3. The definition of a sign is as follows: *any structure of part of the structure attached thereto or painted or represented thereon, which shall display or include any letter, word, model, banner, flag, pennant, insignia, trade name, trademark, logo, device or representation used as, or which is in the nature of any announcement of the purpose of a business, entity or person, direction or advertisement. The term sign does not include a flag.*
4. Title 16.32.615 Signs allowed without a permit (M) Window Signs: *Any sign that is placed inside a window and is visible from the exterior of the window provided such signage covers no more than fifty (50) percent of the area of any window.*
5. Mr. Brodsky has been told that to comply with the window signage regulations, that he can cover no more than fifty percent of the window.
6. The entire building's permitted sign area would be 105 square feet, including the existing signage on the awning.

Thomas Battcock-Emerson asked if the window signage exceeds the allowable signage for the business. The CEO stated it does. **Bob Kaszynski** noted the sign is on the exterior of the window, not the interior. **Craig Wilson** concurred that the sign is not a window sign by definition as it is not on the inside of the window, noting the Board's review is to determine if the CEO's decision that the exterior sign is a window sign was in error, not whether the applicant exceeds the allowable square footage of signage on his business. **Niles Pinkham, Brett Costa** and **Herb Kingsbury** concurred with Mr. Wilson's statements, that the sign does not violate Section M, Window Signs. **Bob Kaszynski** wondered if the appearance of the window covering was different, not representing a product within the business, would it be considered a sign? The CEO stated other businesses have installed murals that do not qualify as signage. **Mr. Brodsky** said since the window covering was installed without a permit, he would apply for a sign permit. Discussion followed as to the allowable square footage of sign area allowed at the business. Members concurred their deliberations were to determine if the CEO's decision was in error, not the amount of sign area allowed.

Thomas Battcock-Emerson motioned to grant an administrative appeal for Robert Brodsky and Dell-co Realty Trust, appealing a Notice of Decision dated March 22, 2010 to the standards of Title 16.32.615.M. **Bob Kaszynski seconded**
Motion carries unanimously

Findings of Fact

1. Robert Brodsky appeared before the Board to appeal a notice of decision of March 22, 2010 stating that signage on the exterior of the window covered more than 50% of the window area.
2. There was no public comment on this matter.
3. Said building is non-conforming, on a non-conforming lot in the C-1 zone.
4. The applicant referenced Title 16.32.595.b.2.a, indicated he believed there was 210 square feet available for building-mounted signage at this location. The applicant had used 150 square feet, total. The CEO stated only 105 square feet of building mounted signage was allowed.

Thomas Battcock-Emerson motioned to accept the Findings as read
Bob Kaszynski seconded
Motion carries unanimously

Conclusion

The Board of Appeals, under Title 16.32.615.M, determined the sign was on the outside of the window, not the inside as defined. Therefore, the Board felt it was a building mounted sign and did not uphold the decision of the Code Enforcement Officer.

Herb Kingsbury motioned to accept the Conclusion as read
Niles Pinkham seconded
Motion carries unanimously

Item 2 - Bill Cullen for Dianne Lilakos requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 12, Section 060D.2, Page 238-5 and Table 16.28 in order to demolish the existing dwelling unit and construct a new single family residence of approximately the same size with a new single car garage, new deck, and foundation. Located at 9 Sunset Drive, Kittery, Map 5 Lot 4A, in the Suburban Residential Zone.

Mr. Cullen summarized the proposal, noting the limiting factors on the site are the front setback and wetland areas. The proposed replacement structure would not increase any existing non-conformity.

Chairman Gardner asked if there was anyone present wishing to speak in favor or against this appeal. **Sylvia Fitch**, abutter, noted her concern about the side setbacks to her property and requested a stand of trees alongside the property be retained.

Belinda Collica, abutter, noted her concern about the drainage running into the wetland which they keep clear and free flowing, and that this drainage course continue to be kept clear. She also stated she believed a vehicle is buried under the existing structure and is concerned about its safe removal.

Mr. Cullen stated he would do whatever he could to retain the trees, acknowledged the drainage course to the wetland, and stated he was unaware of any buried material under the existing structure.

There being no further testimony, the CEO provided:

1. This is a non-conforming lot with non-conforming structure located in the Suburban Residential Zone.
2. Mr. Cullen has proposed to remove an existing mobile home and to construct a new dwelling unit.
3. Title 16.12.060.D.2 of the SR zone requires a thirty foot front property line setback.
4. The existing house is set back 22 feet from the front property line. The proposed house would be no closer to the front property line than what currently exists.
5. Table 16.12 requires a minimum setback 100 feet from wetlands greater than one acre.

Craig Wilson questioned the increase of stormwater runoff from the deck, suggesting a rain garden or no-mow areas be installed to help filter the runoff to the wetlands. **Thomas Battcock-Emerson** stated the roof overhang is closer to the wetland than the existing 55 feet, and increases the impervious surface.

Niles Pinkham stated he believed a deck provided for water runoff and was not impervious. **Brett Costa** concurred. The CEO stated a roof overhang that does not exceed 24" would not be included in wetland setback calculations. **Mr. Cullen** stated a portion of the overhang does exceed 24" and he would re-design it to maintain a 12" overhang around the structure. Members concurred a no-mow zone would be beneficial.

Brett Costa motioned to grant a miscellaneous appeal to Dianne Lilakos for property at 9 Sunset Drive, map 5 lot 4A, to demolish an existing dwelling unit and construct a new single family residence with the following conditions:

1. that a 10' no-mow zone be maintained along the wetland edge, any invasive species may be removed, and a visual height may be maintained;
2. the proposed roof overhang shall be maintained at no more than 24" around.

Bob Kaszynski seconded
Motion carries unanimously

Chairman Gardner advised the applicant that this decision is not the granting of a building permit and may be appealed to Superior Court within 45 days.

Findings of Fact

1. Bill Cullen, representing Diane Lilakos, appeared before the Board requesting a miscellaneous appeal to the standards of Table 16.12, wetland setback, and Table 16.12.D.2, front-yard setback.
2. The property is non-conforming regarding setbacks, located in the SR zone. There is currently a 22 foot front yard setback where 30 feet is required and a 59 foot wetland setback where 100 feet is required. The proposed addition of a deck will be 55 feet from the wetlands.
3. The proposed building will be no closer than 59 feet to the wetlands.
4. There was testimony the building could be expanded along the side property line by two feet. Including the garage, a 15 foot setback is required.
5. Two members of the public spoke regarding the project, requesting wetland protection, preservation of trees and noting a vehicle had been buried under the structure.

Herb Kingsbury motioned to accept the Findings as read
Niles Pinkham seconded
Motion carries unanimously

Conclusion

The Board of Appeals has authority under Title 16.28.130, *Nonconforming Structure*, to grant relief when the proposed structure is no closer to the wetlands and front yard setback than what currently exists.

Thomas Battcock-Emerson motioned to accept the Conclusion as read
Herb Kingsbury seconded
Motion carries unanimously

Minutes: BoA meeting of April 13, 2010

Thomas Battcock-Emerson motioned to accept the minutes as amended
Bob Kaszynski seconded
Motion carries unanimously

The next BoA meeting will be held on May 11, 2010

Bob Kaszynski motioned to adjourn
Thomas Battcock-Emerson seconded
Motion carries unanimously

The Kittery BOA meeting of April 27, 2010 adjourned at 8:30 p.m.

Submitted by Jan Fisk, April 28, 2010