

Town of Kittery, Maine  
Board of Appeals  
May 25, 2010

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

**Members absent:**

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

The meeting was called to order at 7:05 p.m.

Pledge to the Flag

**Item 1** - Inhabitants of the Town of Kittery – School Department request a Special Exception Use approval required per Title 16.12.055.C.2 as part of a site plan amendment to construct an approximately 9,800 square feet gross floor area addition to the existing **Mitchell Elementary School** building. The proposed expansion is located at 7 School Lane, Map 27 Lot 20, in the Kittery Point Village (KPV) Zone. Per the Town Code, Board of Appeals Special Exception Use approval is required for a building addition greater than 5,000 square feet. The owner’s agent is Lewis Chamberlain, PE, with Attar Engineering.

As a member of the Mitchell/Shapleigh School Building Committee, **Mr. Emerson** recused himself from review of this item.

**Mr. Chamberlain** summarized the project and the request for a special exception. He explained that the Planning Board had previously reviewed and granted approval of the project. Mr. Chamberlain referenced the four criteria, the sixteen factors for consideration and the six additional conditions the Board reviews in their deliberations, and the justifications for each. He also explained the number of students attending Mitchell School have been there since the closing of Frisbee School, thereby not increasing the impact on the neighborhood.

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

1. This is a conforming lot with a conforming structure located in the KPV zone.
2. Title 16.12.055.C.2 requires that any addition to a building greater than 5,000 square feet in floor area requires Board of Appeals approval. The proposed expansion is approximately 9,800 square feet.

**Mr. Pinkham** asked how much non-vegetated surface is allowed. The CEO stated there is no maximum non-vegetated coverage, but there is a 20% maximum building coverage. **Mr. Wilson** asked Town Planner Gerry Mylroie if the Planning Board had received a lighting plan, and had addressed noise, parking and traffic. **Mr. Mylroie** responded in the affirmative for each item. **Mr. Wilson** stated he would accept the Planning Board’s decision that these issues have been addressed and meet code requirements since the Planning Board received evidence from the applicant, abutters, and peer review engineers during their deliberations, and the Board of Appeals should accept the decision. **Chairman Gardner** asked Mr. Mylroie:

1. Had he reviewed the *Application for Special Exception, Horace Mitchell Primary School Addition*, as presented by Attar Engineering on May 11, 2010, Project No. C068-10?
2. Is it your testimony that the applicant meets the requirements of Title 16.24.060.C.1-16 (Factors for Consideration)?
3. Is it your testimony that the applicant meets the requirements of Title 16.24.060.C.1-6 (Additional Special Exception Conditions)?

**Mr. Mylroie** responded in the affirmative for each item.

**Mr. Costa motioned** to grant to the inhabitants of the Town of Kittery/School Department a special exception use approval to the terms of Title 16.12.055.C.2 as part of the site plan amendment to construct an addition of approximately 9,800 square feet to the Mitchell Primary School, Map 27 Lot 20, in the Kittery Point Village (KPV) Zone.

**Mr. Kaszynski seconded**

**Motion carries by all members present**

#### **Findings of Fact**

1. Lewis Chamberlain of Attar Engineering representing the Town of Kittery School Department, requested a special exception to the terms of Title 16.12.055.C.2 to construct an addition of approximately 9,800 square feet to the Mitchell School.
2. Planning Board approval had been previously granted.
3. The lot and structure are conforming.
4. Mr. Chamberlain noted the students were already attending the school, so there are no new impacts.
5. Testimony from the Town Planner established that the Planning Board had considered lighting, noise, traffic and parking issues met code requirements and were satisfactory.
6. The Town Planner also testified that the Factors for Consideration and Additional Special Exception Conditions as required by the Board of Appeals in their deliberations had been met.
7. There was no public comment.

**Mr. Kingsbury motioned** to accept the Findings as read

**Mr. Pinkham seconded**

**Motion carries by all members present**

#### **Conclusion**

Under Title 16.04.050.B.3 the Board of Appeals has the authority to grant special exceptions.

**Mr. Kingsbury motioned** to accept the Conclusion as read

**Mr. Kaszynski seconded**

**Motion carries by all members present**

**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.

**Item 2** - Inhabitants of the Town of Kittery – School Department request a Special Exception Use approval required per Title 16.12.050.C.8 as part of a site plan amendment to construct an approximately 10,200 square feet gross floor area addition to the existing **Shapleigh Middle School** building. The proposed expansion is located at 43 Stevenson Road/18 Manson Road, Map 37 Lot 3 and Map 29 Lot 24 in the Suburban Residential (SR) and Rural Residential (RR) Zones. Per the Town Code, Board of Appeals Special Exception Use approval is required for a building addition greater than 5,000 square feet. The owner's agent is Lewis Chamberlain, PE with Attar Engineering.

**Mr. Chamberlain** summarized the process to date and the request for a special exception. The application has been approved by the Planning Board and has received an event parking policy from the School Department, endorsed by the Council. He noted that on-site parking meets ordinance requirements, but off-site parking is being developed for special events and programs.

**Chairman Gardner** asked if there was anyone present wishing to speak in favor or against this item.

There being none, the CEO provided:

1. This is a conforming building on a conforming lot.

2. Proposed addition is approximately 10,200 square feet.
3. Title 16.12.050.C.8 requires Board of Appeals review and approval for buildings greater than 5,000 square feet.

**Chairman Gardner** asked if the addition will be constructed during class. **Mike Lassel** stated all interior work on the existing schools and exterior site work will be completed during the summer. The building additions will begin in the fall, and connection of the addition to the existing building will occur during the winter break in February, 2011.

**Chairman Gardner** asked Mr. Mylroie:

1. Had he reviewed the *Application for Special Exception, Shapleigh School Addition*, as presented by Attar Engineering on May 11, 2010, Project No. C050-10?
2. Is it your testimony that the applicant meets the requirements of Title 16.24.060.C.1-16 (Factors for Consideration)?
3. Is it your testimony that the applicant meets the requirements of Title 16.24.060.C.1-6 (Additional Special Exception Conditions)?

**Mr. Mylroie** responded in the affirmative for each item.

**Mr. Costa motioned** to grant to the Inhabitants of the Town of Kittery/School Department a special exception use approval to the terms of Title 16.12.050.C.8 as part of the site plan amendment to construct an addition of approximately 10,200 square feet to the Shapleigh School, Map 37 Lot 3 and Map 29 Lot 24 in the Suburban Residential (SR) and Rural Residential (RR) Zones

**Mr. Kingsbury seconded**

**Motion carries by all members present**

#### **Findings of Fact**

1. Lewis Chamberlain of Attar Engineering representing the Town of Kittery/School Department, requested a special exception to the terms of Title 16.12.050.C.8 to construct an addition of approximately 10,200 square feet to the Shapleigh School.
2. Planning Board approval had been previously granted.
3. An events parking policy has been approved by the School Department and Town council to address parking concerns.
4. On-site parking for school use meets code requirements. Off-site parking and sidewalks not code-mandated will improve existing conditions.
5. The lot and structure are conforming.
6. The Town Planner testified that he had reviewed the Factors for Consideration and Additional Special Exception Conditions submitted by Attar Engineering, and these items had been met by the applicant.
7. There was no public comment.

**Mr. Kingsbury motioned** to accept the Findings as read

**Mr. Pinkham seconded**

**Motion carries by all members present**

#### **Conclusion**

Under Title 16.04.050.B.3 the Board of Appeals has the authority to grant a special exception in this case.

**Mr. Kaszynski motioned** to accept the Conclusion as read

**Mr. Costa seconded**

**Motion carries by all members present**

**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.

**Mr. Emerson** returned to his seat with the Board

The next BoA meeting is scheduled for June 8, 2010

Minutes: BoA meeting of May 11, 2010

**Mr. Pinkham** stated he felt the definition of a structure stating a fence less than 3 feet high did not require a permit led him to determine that the railroad ties were not a structure, but a fence, to keep people from turning around on private property. He requested that this understanding be included in these minutes. **Mr. Kaszynski** noted that there were two definitions of structure presented to the Board at that meeting.

**Mr. Kaszynski motioned** to accept the minutes as corrected

**Mr. Pinkham seconded**

**Motion carries unanimously**

**Mr. Wilson** asked about the new code. The CEO stated the Town Council adopted the new Title 16 on May 24, 2010, but there is a 30 day period before the code is officially adopted. There were some changes that affected the duties of the Board of Appeals, including review of special exceptions and the majority of the shoreland ordinance, which will be conducted by the Planning Board under the new code.

**Mr. Pinkham motioned** to adjourn

**Mr. Kaszynski seconded**

**Motion carries unanimously**

The Kittery BOA meeting of May 25, 2010 adjourned at 8:00 p.m.

Submitted by Jan Fisk, May 26, 2010