

APPROVED

Town of Kittery
Zoning Board of Appeals
October 28, 2008

Call to Order: 7:00 pm

Members present: Vern Gardner, Chairman; Craig Wilson, Niles Pinkham, Thomas Battcock-Emerson, Herb Kingsbury, Bob Kaszynski, Brett Costa (arrived at 7:06 p.m.)

Members absent:

Staff: Heather Ross, CEO

Pledge to the Flag

PUBLIC HEARING

ITEM 1 - Nicole Insanally for 21 Rogers Road LLC 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 extend the front of the Farmer's porch to improve rainwater run-off and keep water from the foundation of the building. Located at 21 Rogers Road, Kittery, Map 9 Lot 108, in the Urban Residential Zone.

Thomas Battcock-Emerson advised the Board that he knows Ms. Insanally, but did not feel that his review and judgment on this item would be prejudiced. Board members concurred.

Nicole Insanally summarized the request to extend the porch to improve the drainage.

Chairman Gardner asked if there were any present who would like to speak for or against this item. There being none, the CEO provided:

1. This is a non-conforming lot with a non-conforming structure located within the Urban Residential Zone.
2. Ms. Insanally is proposing to construct a 21' x 6' addition to the existing front porch.
3. Title 16.12.060 requires a minimum 30' front yard setback.
4. The existing front porch is 16' from the front property line. The proposed expansion to the front porch would be no closer to the front property line.

Board members concurred that this is a "no closer than" situation that does not impact the front property line.

Bob Kaszynski asked if there was any other way to divert the water. Ms. Insanally stated there was not.

Niles Pinkham moved to grant 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 add a 21 x 6 addition to the existing farmer's porch to improve rainwater run-off and keep water from the foundation of the building. Located at 21 Rogers Road, Kittery, Map 9 Lot 108, in the Urban Residential Zone.

Bob Kaszynski seconded

Motion carries unanimously

Chairman Gardner noted that any persons aggrieved by this decision has 45 days to appeal to Superior Court. A building permit must be applied for and approved by the Code Enforcement Officer.

Findings of Fact

1. Nicole Insanally for 21 Rogers Road LLC 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 extend the front of the Farmer's porch to improve rainwater run-off and keep water from the foundation of the building. Located at 21 Rogers Road, Kittery, Map 9 Lot 108, in the Urban Residential Zone.
2. This is a non-conforming lot with a non-conforming structure located within the Urban Residential Zone.
3. Ms. Insanally is proposing to construct a 21' x 6' addition to the existing front porch.
4. Title 16.12.060 requires a minimum 30' front yard setback.
5. The existing front porch is 16' from the front property line. The proposed expansion to the front porch would be no closer to the front property line.
6. Mr. Emerson disclosed that he knows the applicant but did not feel that his review and judgment on this item would be prejudiced. Board members concurred.

Bob Kaszynski moved to accept the Findings as read

Herb Kingsbury seconded

Motion carries unanimously

Conclusion

The Board found that this miscellaneous appeal to the terms of Title 16, Section 12, Subsection 060 is in conformance with section 16.28.130 (non-conforming buildings) and sections 16.24.060 A 1-4 and B 1-16. The 21' x 6' addition will be no closer to the front property line than the existing porch.

Niles Pinkham moved to accept the conclusion as read

Bob Kaszynski seconded

Motion carries unanimously

ITEM 2 - Robert Harris requesting a Miscellaneous Appeal to the terms of Title 16, Table 12, (Page 256-1) of the Kittery Land Use and Development Code Zoning Ordinance in order to install an approved septic system to state regulations. Located at Gee Road, Kittery, Map 65 Lot 1G, in the Rural Residential Zone.

Niles Pinkham revealed that he declined to work on this project. **Craig Wilson** revealed that he and Mrs. Harris had worked together in the past. Both Board members felt that their review would be fair and impartial. Board members concurred.

Colleen Harris noted that the septic field is further away from the wetlands. While it does not meet the Town regulations, it does meet the state regulations.

Shawn Harris, brother, noted that he is in favor of the project.

Chairman Gardner asked if there were any present who would like to speak for or against this item. There being none, the CEO provided:

1. Per the ZBA decision of August 12, 2008, this is a non-conforming lot of record with a non-conforming structure located within the Urban Residential zone.
2. Mr. Harris is proposing to construct a septic system.
3. Table 16.12 (page 256-1) requires a minimum 100' setback for treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of less than 2,000 GPD from wetlands greater than one acre in size.

4. This application is for a subsurface wastewater disposal system less than the required setback of a wetland greater than one acre.
5. Upon a 10-28-08 site inspection, it was noted that the property is not in compliance with the ZBA decision dated August 12, 2008, specifically: *The first 25' of wetland area shall be left in a natural state or a mitigation plan shall be submitted by a certified landscape architect or soil scientist and approved by the CEO.*
6. In photographs provided to the Board, the fill area, at its closest point, is 18' from the flagged wetland, therefore, the property is in violation of the ZBA approval.
7. Per Title 16.16.050B: Applications for permits or approvals involving sites with a violation of this title. An application for a building/regulated activity permit, certificate of occupancy permit, sign permit, subdivision approval or development review approval must be denied for any property where such a violation exists until such violation has been corrected or resolved.

Herb Kingsbury noted that he was in receipt of a letter from Earledean Wells of the Kittery Conservation Commission regarding this item that raised issues of concern.

Craig Wilson questioned that if the property is in violation (16.16.050B) the Board cannot hear the item until the violation is corrected. General discussion followed as to whether the Board can hear the item as the CEO had not formally issued a notice of violation to the applicant. The CEO noted that the violation was only just found, but that the Board now has knowledge of the violation and must determine their action accordingly.

Herb Kingsbury moved to table the Miscellaneous Appeal to the terms of Title 16, Table 12, (Page 256-1) of the Kittery Land Use and Development Code Zoning Ordinance for the installation of a state approved septic system located at Gee Road, Kittery, Map 65 Lot 1G, in the Rural Residential Zone as there appears to be a violation of the ZBA decision of August 12, 2008 and, per section 16.16.050B, the Board cannot proceed to hear this appeal.

Thomas Battcock-Emerson seconded

There was further discussion regarding the issue of a violation notice and the action need to remedy the violation. The CEO noted that the State approval of the septic design was issued in 2006 and will expire on October 31, 2008. The applicant will be required to have an updated and state approved design in place prior to further review by the ZBA.

The Motion to table carried with four in favor, 3 abstentions (Niles Pinkham, Craig Wilson and Bob Kaszynski), and no objections

There are no Findings of Fact or Conclusion as the item is tabled until the applicant has corrected the violation. Further Board review will be held at a later date.

ITEM 3 - James B. Bartlett, Esq. for Keri J. Marshall requesting an Administrative Appeal to the decision of the Code Enforcement Officer to obtain an After the Fact Building Permit for reconstruction of a deck and replacement of a second deck with stairs. Located at 78 Chauncey Creek Road, Kittery Point, Map 45 Lot 65, in the Shoreland Overlay Kittery Point Village Zone.

James Bartlett summarized the appeal request and provided a history of the project.

Chairman Gardner asked if there were any present who would like to speak for or against this item.

Peter Mahar, explained that he removed the old deck because it was rotted and assumed he did not need a building permit because it was a replacement.

CEO notes:

1. This is a non-conforming lot with non-conforming structures located within the Kittery Point Village and Shoreland zones.
2. The applicant appeared before the ZBA on 7/22/08 and received a modification of the CEO's decision to remove the decks in order to submit a building permit application for the construction of the decks.

Herb Kingsbury asked if there were any penalties imposed. The **CEO** stated that the applicant was working within the guidelines of the ordinance to resolve the violations and that no penalties had been imposed during this process. There was general discussion about section 16.28.140 (Reconstruction of nonconforming buildings) and the interpretation of negligence, and whether the deck is a structure or a building. **James Bartlett** argued that the deck is attached to the home and should be viewed as a part of a building. Board members viewed photos of the decks prior to removal and existing constructed deck areas.

Brett Costa moved to grant an Administrative Appeal to the decision of the Code Enforcement Officer to obtain an After the Fact Building Permit for reconstruction of a deck and replacement of a second deck with stairs. Located at 78 Chauncey Creek Road, Kittery Point, Map 45 Lot 65, in the Shoreland Overlay Kittery Point Village Zone

Niles Pinkham seconded

Motion carries unanimously

Chairman Gardner noted that any persons aggrieved by this decision has 45 days to appeal to Superior Court. A building permit must be applied for and approved by the Code Enforcement Officer.

Findings of Fact:

1. The request is for an Administrative Appeal to the decision of the Code Enforcement Officer to obtain an After the Fact Building Permit for reconstruction of a deck and replacement of a second deck with stairs. The property is located at 78 Chauncey Creek Road, Kittery Point, Map 45 Lot 65, in the Shoreland Overlay Kittery Point Village Zone
2. A decision on this item was made by the ZBA on 7/22/08 which modified the decision of the CEO, requiring the applicant to submit a building permit for the decks within 30 days of the appeal decision.
3. A building permit was submitted on August 19, 2007; said permit was denied on September 4, 2008; an appeal to the denial was filed on October 3, 2008; supplemental materials were submitted on October 6 and October 14, 2008 to be reviewed at the October 28, 2008 ZBA meeting.
4. The Board concurred that section 16.28.140 (Reconstruction of nonconforming buildings) would apply.
5. The larger deck was replaced by a deck that is approximately 10 sf smaller than the original with the smaller deck replaced by a landing and stairs. The new construction does not extend beyond the previously existing and removed decks.
6. The previous deck was located 25' from the normal high water mark and the new deck is located 24'4" from the normal high water mark.

Herb Kingsbury moved to accept the Findings as read

Brett Costa seconded

Motion carries unanimously

Conclusion:

The Board has the authority to grant relief, and found the application was in compliance, under the following:

1. Sections 16.24.060 A 1-4 and B 1-16;
2. Section 16-28-130-D (Nonconforming structures within areas regulated by shoreland zoning), specifically that the structure is not closer than the previously existing decks;
3. Section 16.28.130A

Niles Pinkham motioned to accept the Conclusion as read.

Bob Kaszynski seconded

Motion carries unanimously

The CEO asked members if there will be a quorum for the scheduled November 25, 2008. Herb Kingsbury will not be present. Craig Wilson stated he will not be in attendance at the scheduled December 9, 2008 meeting.

Niles Pinkham left the meeting at 8:35 pm

Minutes: October 14, 2008 ZBA meeting

Herb Kingsbury moved to accept the minutes as corrected

Bob Kaszynski seconded

Motion carries unanimously

Bob Kaszynski moved to adjourn

Brett Costa seconded

Motion carried by all members present

The Kittery ZBA meeting of October 28, 2008 concluded at 8:45 pm
Submitted by Jan Fisk, Recorder – October 29, 2008