

TOWN OF KITTERY
ZONING BOARD OF APPEALS

APPROVED

March 25, 2008

Council Chambers

CALL TO ORDER:

Chairman Gardner called the meeting to order at 7:00 p.m.

BOARD MEMBERS PRESENT:

Vern Gardner, Chairman, Thomas Battcock-Emerson, Sarah Brown, Brett Costa, Bob Kaszynski, and Niles Pinkham

MEMBERS ABSENT:

Herb Kingsbury

ALSO PRESENT:

CEO Heather Ross, Recorder Lisa Gams

Chairman Gardner introduced the members of the Board, outlined the hearing procedure and led those present in the Pledge of Allegiance. The Chair then read the Notice of Hearings.

APPROVAL OF MINUTES: The minutes of the Kittery Zoning Board of Appeals meetings for 12/11/07, 1/8/08, 1/22/08 were approved as amended.

VOTE: 6/0 Unanimous

PUBLIC HEARINGS

1. Scott D. Fiorentino for Kittery Point Partners, LLC requesting a Miscellaneous Appeal to the terms of Title 16, Section 32, Subsection 490(N)(2)(A) (Page 316) and Title 16, Section 32, Subsection 490(K)(2) (Page 310) of the Kittery Land Use and Development Code Zoning Ordinance in order to add an 8'x14' addition to allow for wheelchair accessibility into the first floor bathroom. Located at 10 Lawrence Lane, Kittery Point, Map 18, Lot 33 within the Suburban Residential (SR) Zone.

Chairman Gardner recognizes Scott D. Fiorentino, Kittery Point Partners, LLC

Mr. Fiorentino approached the podium, then handed out photographs to the Board members and said: In going over my calculations, I noticed that the volume calculations, I need to add 12

more inches, so instead of 9.5" it was multiplied by 10.5" and just to break the roof down, because there are a lot of triangles. It's not just as simple as adding the volume onto it so we broke the volume down a little. There is a discrepancy of about 168 cubic feet. Instead of there being a decrease or almost even, it was increased by about .3% more from the existing structure and is still under the 30% that we would be able to take advantage of based on the Code. It is .0039% or 1/2% of additional cubic volume but not square footage. Basically, I was hoping to do is illustrate the addition that we are proposing... an 18'x 14'. The owner had two hip replacements and required more bathroom accessibility. It is outside the footprint, but is not closer to the water. It is for functional purposes only.

Chairman Gardner stated whereas no one was present to speak in favor of, or opposed to, or about the application, the CEO will give her report.

CEO Ross reported: This is a nonconforming lot with nonconforming structures located within the Kittery Point Village (KPV) and Shoreland Zones. Mr. Fiorentino is proposing to construct an 18'x14' addition to previously approved house reconstruction. The approval of this project was originally given in August 2006. The applicant came before the Board and got approval to do an almost complete demolish and rebuild of the house though there were a couple of walls that had to remain standing. In January/February 2007, the applicant returned to the Board requesting an extension due to some of the time constraints they had on the project, and it was approved. In January 2008, it was amended to allow for the bay windows. 16.32.490(K)(2) (Page 310) states: "As of January 1, 1989, any portion of the structure that is less than the required setback from the normal high line of a water body may not be expanded by a volume or floor area by more than 30%." The structure, *as* approved with the additional expansions on January 8, 2008, were still a decrease from the original structure. A decrease of 18.23% square footage and 3.87% volume. The construction as it is proposed now is a decrease of 13.84% of the original square footage of the house and an addition of .0039% of the volume of the house. 16.32.490(N)(2)(a) (Page 316) requires a 100' setback for structures. The closest point of this proposed structure is 72.5' were the 100' is required.

Board Discussion

Mr. Costa commented that this was a no closer than situation.

Ms. Brown had some issues with the application. There have been too many changes to this plan. There are so many special exceptions that were given to this property. I feel like it is a little too much.

Mr. Pinkham said: I understand the full nature of building something... once it is practically built and someone looks at it... I understand where Sarah is coming from, but I also don't see how we could not say yes if it is a no closer than and it is also not going beyond 30%.

Mr. Kaszynski asked if the existing would still be 72.5'.

Mr. Fiorentino replied: That is at the corner...it actually slopes away from the water and the other corner is 75.5'. It is actually moving away from the water line.

CEO Ross asked: How close is the house at its closest point?

Mr. Fiorentino replied: I believe we are 26' from the house at the closest point of the structure. We moved that part of the structure away from the water. I wanted to illustrate that we are not trying to encroach on the water. We are just trying to square off the corner of the structure. The existing corner is 72.5' and the proposed corner is 75.5'.

Mr. Kaszynski commented: It is still adding to the structure...although not much. I can see Ms. Brown's point of view, we are continually adding to the structure, getting closer to the water and I have a issue with that too. How much more can we keep on adding.

Mr. Costa stated: It is still less than the house was originally in square footage.

Mr. Fiorentino responded: Yes, it is less than a square footage... it actually kicked it over from the existing structure, but in the Ordinance it says that the Board has a right to approve up to 30% and we are at 29%... we are only using less than a half percentage of that volume that is allowed in the Code.

Ms. **Brown** expressed that this project was essentially a tear-down and rebuild. I just feel like we (*the Board*) have been more than reasonable in allowing this whole project to go forward. It was essentially building an entire new house closer to the water than building a new house would ever be allowed in the Town of Kittery. Yes, we (*the Board*) do have a right to allow it, but that doesn't mean we (*the Board*) have to allow it.

Mr. Emerson said: I understand the concern, but to deny this would be to go against the precedent that we (*the Board*) have set previously that is if you maintain a portion of the existing building and you go no closer to the water and build within the 30%. It would not be fair to say, no you can't do it. When we allow it other times in other places, how do we make that distinction.

The Board had further deliberations.

Secretary Brown read the application as follows: Move the application of Scott D. Fiorentino for Kittery Point Partners, LLC requesting a Miscellaneous Appeal to the terms of Title 16, Section 32, Subsection 490(N)(2)(A) (Page 316) and Title 16, Section 32, Subsection 490(K)(2) (Page 310) of the Kittery Land Use and Development Code Zoning Ordinance in order to add an 8'x14' addition to allow for wheelchair accessibility into the first floor bathroom. Located at 10 Lawrence Lane, Kittery Point, Map 18, Lot 33 within the Suburban Residential Zone. Construction shall be in accordance with the sketch submitted, dated and signed by Scott D. Fiorentino and Vern Gardner, Chairman.

A motion to approve was made by **Mr. Costa** and was seconded by **Mr. Pinkham**,

VOTE: 5/1 approved. Motion passes, application granted. Ms. Brown was opposed.

Chairman Gardner informed the applicant that any interested party of standing had 45 days to appeal the decision of this Board at the York County Superior Court and they would try to get Findings of Fact out within seven days of tonight's hearing.

The Chair further informed the applicant that this approval was not the granting of a Building Permit as he would still need to see the CEO for that, it merely gave the CEO authority to issue such Permit.

FINDINGS OF FACT

Application # I- Scott D. Fiorentino for Kittery Point Partners, LLC

1. *The applicant, Scott D. Fiorentino was looking to add an 8 'x14 ' addition to allow for wheelchair accessibility into the first floor bathroom located at 10 Lawrence Lane, Kittery Point, Map 18, Lot 33 within the Suburban Residential Zone.*
2. *This is a nonconforming lot with nonconforming structure.*
3. *The Board made their decision to approve based on 16.32.490(N)(2)(a) & 16.32.490(K) (2)*

CONCLUSIONS

1. *The Board decided that this was a no closer than situation – 16.28.130(D)*
2. *The Board voted 6/1 in favor of the application. Motion passes. Application granted.*

A motion was made to approve the Findings of Fact and all were in favor.

ADJOURNMENT:

The motion to adjourn was made by Mr. Pinkham and seconded by Mr. Costa.
Meeting adjourned at 7:50 p.m.