

Town of Kittery
Zoning Board of Appeals
August 11, 2009

Call to Order: 7:02 p.m.

Members present: Vern Gardner, Chairman, Craig Wilson, Herb Kingsbury, Niles Pinkham, Brett Costa

Members absent: Thomas Battcock-Emerson, Bob Kaszynski

Staff: Heather Ross, Code Enforcement Department

Pledge to the Flag

PUBLIC HEARING

ITEM 1 - Wendy Starkey, Esq. for William Pingree requesting a miscellaneous appeal to the terms of Title 16, Chapter 32, Section 490K2, page 310 in order to remove way, winch barrel covers, shed walk (approximately 306 s.f.), construct 4' x 40' stair with landing (approximately 160 s.f.) from road to north corner of house, reconstruct landing and steps on shed, waterside of house, reconstruct shed roof 4' higher with dormer (30% volume increase), construct sunroom roof rail. Located at 9 Bowen Road, Kittery, Map 17 Lot 3, in the Urban Residential and Shoreland Zones.

Wendy Starkey, attorney, summarized the proposed appeal, identifying items that will be removed, requesting that the owner receive credit for impervious areas removed when adding a proposed stair from the garage drive to the existing house. The request to increase the height of the shed does not impact the 30% volume increase allowed. The sunroom roof will be removed and replaced with a deck, not increasing the existing setback or impervious surface. **William Pingree**, owner, stated that the shed is heated, has a chimney and electricity, having been used as a workshop for many years.

Nick Clainos, 230 Whipple Road, spoke in opposition to the appeal, stating that the existing house is actually two dwelling units. The existing shed is visible from their property and they are concerned about the height increase blocking their view, and the appearance of the expanded shed from the water, citing section 16.32.490.A. The volume calculation appears incorrect given the interior dimensions of the shed; the intended use of the shed is questionable as water and sewer hook-ups are planned; if the shed is used as a dwelling, there would be impacts with additional cars and parking and Bowen Road is very narrow.

There being no further testimony for or against this item, the CEO provided:

1. This is a non-conforming lot with non-conforming structures within the Urban Residential and Shoreland zones.
2. Mr. Pingree proposes to: remove structures; construct a 4'x40' stair with landing; add a second floor deck; replace landings; replace and expand shed roof.
3. Title 16.28.130.B. requires that vertical enlargement of buildings within the shoreland zone receive zoning board approval. *The proposed structure does not meet the dimensional requirements and is within the shoreland zone.*
4. Title 16.32.490.K.2. requires that structures in the shoreland zone that are located less than the required setback from the normal high-water line of a water body or upland edge of a wetland shall not be expanded in floor area or volume by 30% or more, during the lifetime of the structure. *The proposed expansion of the boat house is less than 30% expansion in floor area or volume.*
5. Title 16.32.790.N.2.b. states that accessory patios or decks no larger than 500 square feet in area shall be set back at least 75 feet from the normal high-water line. *A portion of the proposed structure is less than the required setback.*
6. Title 16.32.490.N.2.f requires that the total area of all structures, parking lots and other non-

vegetated surfaces within the shoreland zone not exceed 20% of the lot, or a portion thereof. *The existing non-vegetated coverage exceeds the maximum lot coverage. However, the proposed changes will not make the structures more non-conforming.*

Herb Kingsbury asked if the shed is a two story shed and the owner replied that it is not. There was discussion regarding the volume calculation and how the figure was calculated. Members **Costa** and **Wilson** agreed that the lower level, or basement area, of the shed should be included in the volume calculations. **Craig Wilson** asked the applicant to explain how he reached his volume calculations. **Mr. Pingree** explained how he reached the volume calculations, and stated that the shed is currently used as a workshop by a friend living on the property, that he uses the workshop as well, and that he also stores and works on his boat in the shed. General discussion followed regarding the barrel covers, way, shed walls, and other impervious surfaces on the property. **Herb Kingsbury** asked if the shed could be used as a dwelling unit. The CEO stated that it is the State's opinion that it cannot, but having a bathroom and a small fridge would be acceptable, as long as there is no sleeping accommodations or full kitchen.

Herb Kingsbury motioned to grant William Pingree a miscellaneous appeal to the terms of Title 16, Chapter 32, Section 490K2, in order to construct a 40'x4' stair with landing; reconstruct stairs and landing on the workshop/shed; to increase the shed wall by 3 feet, 4 feet to the peak of the roof; remove impervious items as identified in the application; construct a deck with rail on a sunroom on the main residence, at property located at 9 Bowen Road, Map 17 Lot 3, in the UR and Shoreland Zones.

Niles Pinkham seconded

Motion carries unanimously

Chairman Gardner reminded the applicant that this approval is not the granting of a building permit, and that aggrieved persons have 45 days to appeal this decision to Superior Court.

Findings of Fact

1. Wendy Starkey, attorney, appeared for William Pingree, requesting a miscellaneous appeal to the terms of Title 16.32.490.K.2
2. Applicant request to remove impervious items as identified in the application and construct the following: increase the height of a shed wall by three feet, a four feet increase to the peak of the roof; a 40' x 4' stair and landing; a deck with rail on an existing sunroom on the main dwelling; shed deck and stair reconstruction.
3. The existing shed/workshop and the corner of the proposed sunroom deck are less than the required 75' setback from the high-water mark.
4. The existing non-vegetated coverage exceeds the 20% maximum allowed. The impervious items to be removed totals 306 square feet of non-vegetated surface. New construction totals 160 square feet of non-vegetated surface, not increasing the existing non-conformity.
5. Nick Clainos, Whipple Road, raised questions as to the accuracy of the volume calculations, change of use of the shed, and impact of the height increase on the views both toward and from the water.

Brett Costa motioned to accept the Findings as read.

Niles Pinkham seconded

Motion carries unanimously

Conclusion

The Board has the authority to grant an appeal to the terms of Title 16.32.490.K. 2, finding that the proposed expansion is less than 30% (allowable volume increase of 1262.3 cf; proposed volume increase, 1,255.6 cf) ; to the terms of Title 16.32.490.N.2.b, noting that new construction will be no closer than the existing structures to the setback; to the terms of Title 16.32.490.N.2.f, finding that non-vegetated surface

areas, while exceeding the 20% allowed, will be reduced (from 306 sf existing to 160 sf of new non-vegetated surface).

Herb Kingsbury motioned to accept the Conclusion as read

Brett Costa seconded

Motion carries unanimously

ITEM 2 - B&RH Associates, Inc. requesting a miscellaneous appeal to the terms of Title 16, Chapter 12, Section 060, page 238-5 in order to construct an 8' x 16' addition (128 s.f.) to the dwelling unit northwesterly on the property 8' from the rear line, but no closer than the existing dwelling. Located at 2 Keene Circle, Kittery, Map 10 Lot 67A, in the Urban Residential Zone.

Russell Sylvester, applicant, requested an extension to continue work previously approved by the Board on August 12, 2008. He noted that two sheds that they agreed to remove have been removed, and request an extension because the economy slowed their plans. **Greg Jutras**, 5 Keene Circle, stated that he supports the applicant's request for an extension.

There being no further testimony for or against this item, the CEO provided:

1. This is a non-conforming lot with non-conforming structures located within the UR zone;
2. Mr. Sylvester has proposed to construct an 8'x16' addition onto an existing building;
3. Title 16.12.060 requires a minimum rear yard setback of 15 feet. *The proposed addition is less than the required setback, but no closer to the rear yard setback than the current structure;*
4. The project received Zoning Board approval on August 12, 2008.
5. The request is before the Board because the foundation had not been built within six months, and the approval has expired.

Niles Pinkham motioned to grant approval to B&RH Associates for a miscellaneous appeal to construct an 8'x16' addition to an existing dwelling unit on property located at 2 Keene Circle, Map 10 Lot 67A in the UR zone.

Brett Costa seconded

Motion carries unanimously

Chairman Gardner reminded the applicant that this approval is not the granting of a building permit, and that aggrieved persons have 45 days to appeal this decision to Superior Court.

Findings of Fact

1. Russell Sylvester, representing B & RH Associates, Inc. requesting a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 060D of the Kittery Land Use and Development Code Zoning Ordinance in order to construct an 8'x16' addition (128 sq') to the dwelling unit northwesterly on the property. 8' from the rear property line, but no closer than the existing dwelling. Located at 2 Keene Circle, Kittery, Map 10 Lot 67A, in the Urban Residential Zone
2. This is a nonconforming lot with nonconforming structures, two dwelling units and two sheds, located within the Urban Residential Zone. Two of the sheds will be removed, one of which is 4' from the property line and the other 6' from the property line.
3. The proposed addition will be 8' from the property line where 15' is required, but no closer than the existing unit.
4. One abutter spoke in favor of the appeal.

Niles Pinkham motioned to accept the Findings as read

Herb Kingsbury seconded

Motion carries unanimously

Conclusion

The Board has authority under Title 16.28.130 as the addition is 8' from the property line, but no closer than the existing building. The Board found that no conditions of Title 16.24.060 would be violated. Under Title 16.24.050.K.1, the Board also grants extensions to the project as follows: from six months to one year to begin construction, and from one year to eighteen months to complete construction.

Herb Kingsbury motioned to accept the Conclusion as read

Brett Costa seconded

Motion carries unanimously

The CEO stated that at the last meeting the Board approved an 8'x10' addition to a home at 44 Woodlawn Avenue. The owner and CEO requests that the Board modify their approval from an approval for an 8'x10' addition to an 80 square foot addition. There are no other changes requested.

Craig Wilson motioned to modify the miscellaneous appeal approval granted to Kathryn Davis on July 28, 2009 in order to construct an 8'x10' addition. The approval will be modified to read "in order to construct an 80 square foot addition". There are no other changes or modifications.

Niles Pinkham seconded

Motion carries unanimously

The next ZBA meeting will be September 8, 2009.

Minutes

The minutes of July 28, 2009 were not available to review.

The meeting of August 11, 2009 was adjourned at 8:30 pm
Submitted by Jan Fisk, August 12, 2009.