

TOWN OF KITTERY ZONING BOARD OF APPEALS

January 22, 2008

Council Chambers
APPROVED

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, Herb Kingsbury,
and Niles Pinkham

MEMBERS ABSENT:

Brett Costa and Bob Kaszynski

ALSO PRESENT:

CEO Heather Ross, Recorder Lisa Goms

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.

PUBLIC HEARINGS:

1. Robert Dean Harris, Jr. requesting a Variance Appeal to the terms of Table 16-12 (Page 256-1) of the Kittery Land Use and Development Code Zoning Ordinance in order to build a 28'x50' home with a drive under garage. Located at Betty Welch Road, Kittery, Map 65, Lot 1G in the Rural Residential Zone.
2. Jonathan Carter for the Town of Kittery requesting a Special Exception Appeal to the terms of Title 16, Section 12, Subsection 040(C)(2) (Page 237) of the Kittery Land Use and Development Code Zoning Ordinance in order to construct a 125' high tower with wind turbine for public utility for electrical generator into the CMP electrical grid. Located off MacKenzie Lane, Kittery, Map 29, Lot 17 in the Rural Residential Zone.
3. Michael Morrison requesting a Special Exception Appeal to the terms of Title 16, Section 12, Subsection 050(C)(6) (Page 238-1) of the Kittery Land Use and Development Code Zoning Ordinance in order to finish off the basement to add temporary living space to the existing house for an intra-family dwelling unit. Located at 21 Oak Terrace, Kittery, Map 2, Lot 2 in the Suburban Residential Zone.

Kittery Zoning Board of Appeals

January 22, 2008

APPROVED

1. Robert Dean Harris, Jr. requesting a Variance Appeal to the terms of Table 16-12 (Page 256-1) of the Kittery Land Use and Development Code Zoning Ordinance in order to build a 28'x50' home with a drive under garage. Located at Betty Welch Road, Kittery, Map 65, Lot 1G in the Rural Residential Zone.

The applicant postponed and has rescheduled for February 12, 2008.

2. Jonathan Carter for the Town of Kittery requesting a Special Exception Appeal to the terms of Title 16, Section 12, Subsection 040(C)(2) (Page 237) of the Kittery Land Use and Development Code Zoning Ordinance in order to construct a 125' high tower with wind turbine for public utility for electrical generator into the CMP electrical grid. Located off MacKenzie Lane, Kittery, Map 29, Lot 17 in the Rural Residential Zone.

Chairman Gardner recognized Richard (Rick) Rossiter – Commissioner, Public Works, presenting for Jonathan Carter, Town Manager.

Mr. Rossiter first explained that notification of this appeal was advertised and it was extended to various areas to about 100 people or so. Mr. Rossiter then explained in detail the plans for the wind turbine showing a site plan to give an idea of how things were situated. The unit that was in mind to put in place will cover about 90,000 kilo watt hours per year and figures out to be about a \$9,000-\$10,000 savings. Mr. Rossiter continued his presentation at length in great detail.

Chairman Gardner asked if there was any one present who would like to speak in favor of the application.

Chairman Gardner recognized Bob Shephard, Member of Energy Committee.

Mr. Shephard said; The Energy Committee has been looking for about a year on looking at opportunities here at the Municipal Complex and elsewhere on Town owned structures to save energy. Heating oil and electricity in general, is looking at conservation and efficiency projects. This project, which started a little over a year ago with the testing of wind out at the waste transfer stations, is the first tangible project that we have. Energy for Kittery's future is a project initiated by citizens. The goal of the project is to install a medium sized wind turbine at the Town of Kittery's solid waste transfer station off Rt. 236 to reduce the cost of electricity now and for the future. It is a fairly good size turbine. Mr. Shephard continued speaking in regards to the advantages and savings to the town and also spoke in regards to the noise from the turbine stating that it was no louder than a normal conversation.

Cameron Wake, member of Energy Committee was recognized.

Mr. Wake said, I would like to make two points here. This is really an investment in the future of Kittery. It is really about figuring out how it is we actually stabilize the amount of money that we spend on our energy. The wind turbine, under very conservative estimates, are continuing to pay 10 cents per kilowatt hour for electricity will pay for itself in 15 years. That is a very conservative estimate especially if you look at what energy prices are doing. I really think that

Kittery Zoning Board of Appeals

January 22, 2008

APPROVED

this is a good investment. Mr. Wake explained why this particular wind turbine was chosen. It fits the characteristic of the waste transfer station.

Mr. Rossiter commented that the financing for this project is that the Town received a grant from the Public Utilities Commission in the amount of \$50,000. And also the Town has an account line item that is used for matching these grants. So \$50,000 came out of the grant match account. The other \$100,000 will be coming out of the Kittery solid waste plant reserve equipment account.

Chairman Gardner asked if there was anyone else who would like to speak in favor of the application.

Glen Schwaery. Member of Energy Committee was recognized.

Mr. Schwaery said; I think the important thing is the citing...minimal visual and sound impact on any of the abutters and residents in the area. I think certainly if it is visible from the Shapleigh School, we see that as a plus because of the educational aspect of this project. The other good thing is the remote monitoring of the well being of the turbine.

Chairman Gardner asked if there was anyone else who would like to speak in favor of, or opposed to the application.

Beth Hallisey, abutter, 26 Fernald Rd was recognized.

Ms. Hallisey said; I am not totally opposed to the project. I overlook the entrance to the transfer station and my property will overlook turbine. There has not been any level of detail given to us as to the noise levels. I know there are calculations available to figure out the exact amount of decibel level that we will hear from our properties a certain distance away. The decibel level decreases by pre-calculated amounts. I was expecting to hear those amounts tonight. I have given my concerns about this to Mr. Carter and the Energy Committee so they are all aware. When they were presenting the map tonight, I had requested to see all of our properties outlined and the distances to those properties outlined. So I am still expecting to see those calculations. I will be able to hear this from my house and just dismissing it is as something I won't be able to hear is not acceptable. Fifty-five (55) decibels is pretty loud and when the traffic quiets down, I know it will be something I will be able to hear and all of my neighbors will be able to hear. The 125' rises well about the tree line. There will be a lot of people who will see this from their houses. I am afraid this is being dismissed rather lightly. I am very much for this alternative form of energy, but I just feel it is being rushed through and I would like to hear some thoughtful consideration to the actual impact on the residents. We will have to live with this day in and day out.

Mr. Rossiter replied; Basically, Ms. Hallisey is too far away....- there shouldn't be a sound problem resident is over 1,000' away. Rt. 236 and the interstate would give more noise than this would....they would probably drown out any noise from the wind turbine itself.

Chairman Gardner asked if there was anymore public comment. None being heard, the Chair asked for the CEO's report.

Kittery Zoning Board of Appeals

January 22, 2008

APPROVED

CEO Ross reported: This is a conforming lot with conforming structures located within the Rural Residential Zone. The Town of Kittery is proposing to construct a 125' tower with a wind turbine. 16.12.040(C)(2) requires a special exception approval for public utilities facilities including, substations, pumping stations and sewerage treatment facilities. The proposed 125' tower wind turbine would meet all property line setbacks. My opinion is that it would be best for the Board to read the considerations and go through the 16 factors of consideration.

Board Discussion:

Mr. Kingsbury stated that although it is a public utility, he had concerns about the impact of the sound level.

Mr. Shephard said that they were not prepared to supply the full range of the sound of the turbine. We also picked a turbine that has been on the market for a while and there is a lot of information regarding it.

(Unidentified Speaker) commented; one estimate that integrity did provide us was that at 400' away, it would be at 55 decibels, which is essentially slightly louder than the normal conversation. The State of Maine has basically recommended that people live more than 300' away from a wind turbine installation of any size. One of our goals in installing this at the waste transfer station was to keep it away from a lot of residents.

Chairman Gardner asked; do we know how close the closest house is? **(Unidentified Speaker)** responded, yes...it is 650' to the closest house. **Chairman Gardner** also asked if there was any consideration for a fall zone. **(Unidentified Speaker)** replied, yes. That is why the concrete slab would be 120' from the boundary line.

Chairman Gardner asked CEO Ross: Does our ordinance show fall zones for such...**CEO Ross** replied; that the ordinance does not address windmills in any fashion at this time, so we could not find a place that that would really fit. I advised Mr. Rossiter to at least give the height of the windmill.

There was lengthy deliberation regarding the sound levels of the wind turbine.

Beth Hallisey again stressed her concerns regarding the height, sound level and several safety issues for people passing by the wind turbine. She felt as though the issues should not be dismissed, and seriously need to be addressed.

Chairman Gardner proceeded to go through the 16 points of 16.24.060(B) and the Board discussed each item and voted as follows:

16.24.060(B) Factors for Consideration.

1. Vote: 4 in favor, 1 abstention (Mr. Kingsbury abstaining)
2. Vote : 5/0 in favor
3. Vote: 5/0 in favor
4. Vote: 5/0 in favor

Kittery Zoning Board of Appeals

January 22, 2008

APPROVED

- 5. Vote: 5/0 in favor
- 6. Vote: 3 in favor, 2 abstention (Mr. Emerson & Mr. Kingsbury abstaining)
- 7. Vote: 5/0 in favor
- 8. N/A
- 9. Vote: 5/0 in favor
- 10. Vote: 5/0 in favor
- 11. Vote: 5/0 in favor
- 12. Vote: 5/0 in favor
- 13. Vote: 5/0 in favor
- 14. Vote: 5/0 in favor
- 15. Vote: 5/0 in favor
- 16. Vote: 5/0 in favor

Chairman Gardner commented that there was not enough data on the project – no experts available.

Ms. Brown feels that there are experts that have worked on this project and does not agree and feels that there is a lot of information that was given on the project and that the existing structure makes same amount of noise.

Deliberations continued.

Sarah Brown, as secretary, read the application as follows: Move the application of Rick Rossiter for the Town of Kittery requesting a Special Exception Appeal to the terms of Title 16, Section 12, Subsection 040(C)(2) (Page 237) of the Kittery Land Use and Development Code Zoning Ordinance in order to construct a 125’ high tower with wind turbine for public utility for electrical generator into the CMP electrical grid. Located off MacKenzie Lane, Kittery, Map 29, Lot 17 in the Rural Residential Zone. Construction shall be in accordance with the sketch submitted, dated, and signed by Rick Rossitier and Vern Gardner, Chairman. A motion to approve was made by Ms. Brown, seconded by Mr. Pinkham, with all in favor.

VOTE: 4 in favor, 1 abstention (Mr. Kingsbury)

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 to ten 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 #2 – Jonathan Carter (Rick Rossiter) for the Town of Kittery

- 1. *The applicants, Jonathan Carter/Rick Rossiter, for the Town of Kittery, are*

looking to construct a 125' high tower with turbine for public utility for electrical generator into the CMP electric grid.

2. *A Special Exception for a wind turbine satisfied the 16 requirements of the Special Exception, 16.24.060 basis for decision, and also had 16.32.460 (page 306) noise ordinance.*

CONCLUSIONS

1. *The Special Exception was granted with the provision that there would be a 156' fall zone.*
2. *The Board voted 4 in favor, 1 abstention. Motion passed, application granted.*

A motion was made to approve the Findings of Fact and was seconded. All in favor.

3. Michael Morrison requesting a Special Exception Appeal to the terms of Title 16, Section 12, Subsection 050(C)(6) (Page 238-1) of the Kittery Land Use and Development Code Zoning Ordinance in order to finish off the basement to add temporary living space to the existing house for an intra-family dwelling unit. Located at 21 Oak Terrace, Kittery, Map 2, Lot 2 in the Suburban Residential Zone.

Chairman Gardner recognized Michael Morrison.

Mr. Morrison stated; I am applying for a Special Exception for an intra-family dwelling unit for my mother. My mother has been a Kittery resident for a many years, and she is now retired. I am in a position where I can take care of her now. I did get a building permit and the CEO pointed out that I needed this Special Exception and that is why I am here. I do have a letter from her doctor.

Chairman Gardner asked if there was anyone present who would like to speak in favor of, opposed to, or about the application in any way. Hearing no response, the Chair asked for the CEO's report.

CEO Ross reported: This is a nonconforming lot with nonconforming structure located within the Suburban Residential (**SR**) and Shoreland Zones. Mr. Morrison is proposing to construct an intra-family dwelling unit within his existing house for his mother. There is currently a building permit on the property to convert the basement area into living space for the house. Mr. Morrison would like to be able to add a kitchen area as space for his mother. 16.12.050(C) requires a Special Exception approval for an intra-family dwelling unit.

Board Discussion

Board members did not have any specific issues with this project. There were no questions from the Board.

Kittery Zoning Board of Appeals

January 22, 2008

APPROVED

Sarah Brown, as secretary, read the application as follows: Move the application of Michael Morrison requesting a Special Exception Appeal to the terms of Title 16, Section 12, Subsection 050(C)(6) (Page 238-1) of the Kittery Land Use and Development Code Zoning Ordinance in order to finish off the basement to add temporary living space to the existing house for an intra-family dwelling unit. Located at 21 Oak Terrace, Kittery, Map 2, Lot 2 in the Suburban Residential Zone. Construction shall be in accordance with the sketch submitted, dated, and signed by Michael Morrison and Vern Gardner, Chairman. A motion to approve was made by Mr. Kingsbury, seconded by Ms Brown.

VOTE: Unanimous 5/0. Motion passes, Application was approved.

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 to ten 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 #3 – Michael Morrison

1. *The applicant, Michael Morrison, is looking to finish off the basement to add a temporary living space to the existing house for an intra-family dwelling unit.*
2. *This is an intra-family application.*
3. *The applicant is aware that this is only a temporary intra-family dwelling situation and is not for rental purposes.*

CONCLUSIONS

1. *The application was granted unanimously, understanding the restorative nature of the intra-family use.*

A motion was made to approve the Findings of Fact, and was seconded, with all in favor.

APPROVAL OF MINUTES: The Zoning Board of Appeals Meeting Minutes for October 9, 2007 and October 23, 2007, were approved as amended with all in favor.

Next Meeting Tuesday, February 12, 2008

ADJOURNMENT:

Kittery Zoning Board of Appeals

January 22, 2008

APPROVED

Meeting adjourned at 9:00 pm.