

APPROVED

Town of Kittery
Zoning Board of Appeals
November 25, 2008

Call to Order: 7: 04 pm

Members present: Vern Gardner, Chairman; Craig Wilson, Niles Pinkham, Thomas Battcock-Emerson, Bob Kaszynski, Brett Costa

Members absent: Herb Kingsbury

Staff: Heather Ross, CEO

Pledge to the Flag

PUBLIC HEARING

Chairman Gardner asked if the Board would care to review an application for a building permit extension that was not part of the agenda. **Niles Pinkham** stated he had previously done work for the applicant, **Steven Penna**. The Board felt that Mr. Pinkham could fairly review this application and agreed to review the request. The applicant felt that construction had significantly progressed. There were no persons present wishing to speak for or against the request. The **CEO** stated that construction is progressing and should be completed within the next three to four months.

Niles Pinkham moved that the Board grant a 6 month extension for building permit #08-020 from November 27, 2008 to May 27, 2009, to Steven Penna for property located at 22 Crockett Neck Road.

Brett Costa seconded

Motion carries unanimously

ITEM 1 - CONTINUATION FOR 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.

Craig Wilson motioned to have this item, previously tabled, removed from the table

Thomas Battcock-Emerson seconded

Motion carries unanimously

Robert Harris, applicant, stated that the previous violation had been corrected.

Shawn Harris, brother of the applicant, spoke in favor of the applicant, stating that the fill triggering the violation had been in place for over two years and the silt fence had also been in place for some time, and these violations could have been corrected prior to the October 28, 2008 meeting which would have prevented a month's delay in the review of the application.

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

1. This application is a continuation from the October 28, 2008 ZBA meeting, due to a violation of the August 12, 2008 ZBA decision. The violation was cleared on November 3, 2008.

2. Per the ZBA decision dated August 12, 2008, this is a non-conforming lot of record with a non-conforming structure located within the RR zone. A building permit for a 28 x 50 structure was issued on August 28, 2008 per the August 12, 2008 decision.
3. Mr. Harris is proposing to construct a septic system. Table 16.12 requires a minimum 100 foot 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 is less than the required setback of a wetland greater than one acre in size.
5. The application does not have any State variances because the State does not impose the setbacks from a wetland, but the Town’s ordinance does. The State reviewed the application and found the application sufficient as long as those lands were filled prior to 1974.

Chairman Gardner reminded the Board of a letter regarding this item from the Conservation Commission, and responded to some points mentioned in the letter:

1. In reference to 16.24.050L regarding review of an item within one year, **Thomas Battcock-Emerson** stated that there was considerable discussion regarding this issue and determined that, as a quasi-judicial board, the ZBA exercised due consideration in making their decision.
2. In reference to 16.28.090 regarding two non-conforming lots, the Board’s review and decision was that these were not two non-conforming lots.
3. In reference to 16.28.014 regarding the legal standing of a building destroyed more than 20 years prior, Board members determined that the issue was not the building but a non-conforming lot, identified as the Carter Homestead.
4. In reference to 16.28.390 requesting a certified Maine soil/wetland scientist, **Niles Pinkham** noted that there were sufficient flags marking the location of the wetlands.

Craig Wilson asked the applicant if there were any other potential septic sites on the property for a septic location. **Mr. Harris** stated that the soil scientist walked the acreage and could only locate the area as proposed, located on the hill. There were no off-site locations proposed or investigated. The **CEO** clarified that the soil scientist may have viewed the property, test pits were conducted only at the location where the septic system is proposed. Additionally, there are discrepancies regarding the location of the system on subsurface wastewater disposal plan and the site plan, and the applicant appears to be requesting that the location be up to 36 feet from the edge of the wetland. **Craig Wilson** commented that this has been a difficult process for the applicant, but that the Town has standards. He is not in favor of the system location without a re-design in favor of a system that provides enhanced treatment, and any distance between the wetland and edge of field remain undisturbed to the fill extension slope.

Thomas Battcock-Emerson motioned to grant approval of 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 with the following stipulations:

1. The wastewater disposal system, as designed and presented, be modified to a Septictech/Oxypro type system to provide a better quality water discharge;

2. Said system would require a smaller field and bed and could, therefore, be located further away from the wetland area, but in no case shall be located less than 36 feet from the wetland area;
3. Any ground between the fill extension slope and the wetland shall be designed and/or approved by a soil scientist to provide the maximum absorption of the wastewater before reaching the wetland.

Brett Costa seconded

Craig Wilson asked if the applicant would respond to the motion's additional requirements.

Mr. Harris stated he will have Ken Gardner, soil scientist, work within the requirements.

Motion carries unanimously

Chairman Gardner noted that any persons aggrieved by this decision has 45 days to appeal to Superior Court.

Findings of Fact:

1. The applicant, Robert Harris requested 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 at property located at Gee Road, Kittery, Map 65 Lot 1G, in the Rural Residential Zone.
2. Proposed system is 36 feet from the wetland, where 100 feet is required.
3. This is a non-conforming lot of record as determined at the August 12, 2008 Kittery ZBA meeting.
4. There exists a non-conforming structure of 28'x50'.
5. The location of the proposed wastewater disposal system is in compliance with State standards.
6. The ZBA received a letter dated October 20, 2008 from the Kittery Conservation Commission raising issues of concern that the ZBA addressed.
7. The November 25, 2008 ZBA approval included conditions requiring modification of the system and specific treatment of the ground between the system and the wetland.

The Findings were accepted unanimously.

Conclusion

At the August 12, 2008 meeting of the Kittery ZBA, it was determined that the parcel Map 65 Lot 1G was a lot of record and under section 16.28.070 relaxation of yard or other requirements is allowed for single non-contiguous lots. The Board viewed Table 12 A as an "other requirement", and relaxation is granted under miscellaneous appeal and based on the modifications included in the approval. Under 16.24.060 A&B, the Board determined the application has met all requirements for approval.

Niles Pinkham motioned to accept the Conclusion.

Bob Kaszynski seconded

Motion carries unanimously

ITEM 2 - Maureen Bilodeau 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 construct an addition to the house no closer to wetland and meets all other setbacks. The existing structure is 15' at closest point and addition is 32' at closest point. Located at 5 High Pasture Road, Kittery Point, Map 56 Lot 3-2, in the Rural Residential Zone.

Maureen Bilodeau, applicant, presented a summary of the appeal request.

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 conforming lot with a non-conforming structure located within the RR zone.
2. Applicant is proposing to construct an addition to the existing house that would be 32.35 feet from the wetland where a minimum 100 feet is required.
3. The proposed addition is no closer than the existing structure.

Craig Wilson asked if the wetlands were not accounted for at the time the house was built. The CEO stated that may have been true or that the wetlands have encroached further onto the property since the house was built. In addressing a letter from the Conservation Commission, **Thomas Battcock-Emerson** noted that the addition cannot be placed anywhere on the property without violating a setback. **Niles Pinkham** noted that this proposed addition is no closer to the wetlands than the existing structure.

Thomas Battcock-Emerson motioned to grant Maureen Bilodeau 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 construct an addition to the house that is no closer to the wetland and meets all other setbacks.

Brett Costa seconded

Motion carries unanimously

Findings of Fact

1. Maureen Bilodeau requested 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 construct an addition to a house that is no closer to the wetland and meets all other setbacks.
2. The property is located at 5 High Pasture Road, Kittery Point, Map 56 Lot 3-2, in the Rural Residential Zone.
3. The lot is conforming, the structure is non-conforming, constructed circa 1985.
4. The house is located approximately 15 feet from the wetlands and the proposed addition would be 32.35 feet at its closest point where 100 feet is required.

Brett Costa motioned to accept the Findings

Thomas Battcock-Emerson seconded

Motion carries unanimously

Conclusion

In accordance with section 16.24.060 A&B, the Board found that all requirements have been met and in accordance with 16.28.130, the Board grants a miscellaneous appeal.

Niles Pinkham motioned to accept the Conclusion

Brett Costa 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.

ITEM 3 - Ken Markley for David Hill requesting a Miscellaneous Appeal to the terms of Title 16, Section 32, Subsection 490K2 (Page 310), Title 16, Section 32, Subsection 490N2A (Page 316), and Title 16, Section 32, Subsection 490N2B (Page 316), of the Kittery Land Use and Development Code Zoning Ordinance in order to add an 8'x10' breezeway, 24'x24' garage, and 2 small decks. All construction would be farther from the wetlands and road than the existing house. Located at 9 Tower Road, Kittery Point, Map 58 Lot 22, in the Resource Conservation Zone.

Ken Markley, representing the applicant, summarized the proposed addition and request for a miscellaneous appeal. In 1989, shoreland zoning allowed for expansions of 30 percent if the home was built prior to 1/1/89. The proposed additions and expansions increase the coverage by 24.5%, below the allowed 30%. The additions are no closer to the shoreland zone than the existing structure.

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 Resource Conservation and Shoreland Zones.
2. Applicant is proposing to construct an 8'x10' breezeway, a 24'x24' garage, a 8'x10' deck and a 8'14' deck.
3. Title 16.32.490K allows for a maximum 30% expansion of floor area and volume for the lifetime of the structure. This section further refers to Title 16.28 (page 275) regarding non-conforming situations. The proposed expansions are within the 30% allowed.
4. Title 16.32.490N2a requires a 100' setback from the normal high water line and 16.32.490N2b requires a 75' setback from the normal high water line for accessory patios or decks no larger than five hundred square feet.
5. The proposed structure is 81.3 feet from the high water line.
6. The construction of the house was approved by the ZBA on November 11, 1987, and a garage and breezeway addition application was denied on June 20, 1990.

Craig Wilson asked why the garage is not set back 100 feet since it is on a peninsula. **Mr. Markley** stated that this property does not sit on a peninsula or island and that part of the ordinance would not apply in this case. Discussion followed regarding façade's, structures and accessory setbacks from the shoreland zone and whether the proposed additions follow the no closer than argument.

Thomas Battcock-Emerson motioned to grant a miscellaneous appeal to David Hill to the terms of Title 16, Section 32, Subsection 490K2 (Page 310), Title 16, Section 32, Subsection 490N2A (Page 316), and Title 16, Section 32, Subsection 490N2B (Page 316), and Title 16.12.080D of the Kittery Land Use and Development Code Zoning Ordinance in order to add an 8'x10' breezeway, 24'x24' garage, and 2 decks, one at 8'x10' and one at 8'x14'. All construction

would be farther from the wetlands and road than the existing house. Property is located at 9 Tower Road, Kittery Point, Map 58 Lot 22, in the Resource Conservation and Shoreland Zones.

Niles Pinkham seconded

Motion carries 4 in favor and 2 against (Craig Wilson & Vern Gardner)

Findings of Fact

1. Ken Markley presented on behalf of David Hill an application for a miscellaneous appeal to the terms of Title 16, Section 32, Subsection 490K2 (Page 310), Title 16, Section 32, Subsection 490N2A (Page 316), and Title 16, Section 32, Subsection 490N2B (Page 316), and Title 16.12.080D of the Kittery Land Use and Development Code Zoning Ordinance in order to add an 8'x10' breezeway, 24'x24' garage, and 2 decks, one at 8'x10' and one at 8'x14'.
2. Property is located at 9 Tower Road, Kittery Point, Map 58 Lot 22, in the Resource Conservation and Shoreland Zones.
3. This is a non-conforming lot with a non-conforming structure, built in 1988 following ZBA approval in 1987, and purchased by the applicant in 1990.
4. Property was subject to a ZBA hearing in 1990.
5. The present structure is located 63.5 feet from the wetland at its closest point and 33 feet from the front yard setback.
6. The proposed additions are 81.3 feet from the wetland at its closest point and 33'1" from the front yard setback.
7. The applicant provided volume and area calculations for the plan and both fell below the maximum 30% expansion requirement.

Brett Costa motion to accept the Findings

Thomas Battcock-Emerson seconded

Motion carries unanimously

Conclusion

Following review of 16.24.060A&B, Basis for Decision, and 16.28.130D, where the Board finds the structures are no closer than and less than 30% maximum expansion, the proposal as presented is in compliance.

Thomas Battcock-Emerson motioned to accept the Conclusion

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.

ITEM 4 - Bonnie Foss for Stephanie Howard requesting a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 150E (Page 256-8) of the Kittery Land Use and Development Code Zoning Ordinance in order to construct a 10'x15' attached or unattached deck to cover rock ledge, no railing, platform under 30". Located at 57 Government Street, Kittery, Map 4 Lot 40, in the Kittery Foreside Zone.

Bonnie Foss represented her daughter and summarized the proposal for the Board, providing photographs of the area under consideration. The previous owner had removed an existing deck due to rot, and the request is to replace the deck with a like structure.

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 Kittery Foreside zone.
2. Proposal is to construct a 15' x 10' deck that would be 42" from the side property line, but no closer than the existing house.
3. Title 16.12.150E requires a minimum 10' side yard setback.

Board members discussed whether there was a prior structure in the same location based on the photos presented.

Brett Costa motioned to grant a miscellaneous appeal to Stephanie Howard to the terms of Title 16, Section 12, Subsection 150E (Page 256-8) of the Kittery Land Use and Development Code Zoning Ordinance in order to construct a 10'x15' attached deck, at 57 Government Street, Kittery, Map 4 Lot 40, in the Kittery Foreside 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. Bonnie Foss appeared for Stephanie Howard requesting a miscellaneous appeal to the terms of Title 16, Section 12, Subsection 150E (Page 256-8) of the Kittery Land Use and Development Code Zoning Ordinance in order to construct a 10'x15' attached deck, at 57 Government Street, Kittery, Map 4 Lot 40, in the Kittery Foreside Zone.
2. This is a non-conforming lot with a non-conforming structure.
3. Proposal is to construct a 15' x 10' deck that would be 42" from the side property line where 10' is required, but is no closer than the existing house.

Niles Pinkham motioned to accept the Findings

Thomas Battcock-Emerson seconded

Motion carries unanimously

Conclusion

The Board found that in accordance with 16.24.060A&B, Basis for Decisions, the application is in substantial compliance and per 16.28.130, the Board has the authority to grant this appeal.

Niles Pinkham motioned to accept the Conclusion

Thomas Battcock-Emerson seconded

Motion carries unanimously

Minutes: October 28, 2008 ZBA meeting

Minutes were approved unanimously as corrected

Chairman Gardner reminded the Board that election of officers is required and asked if the Board would like to take care of this now.

Thomas Battcock-Emerson motioned to continue the term of the current ZBA officers for another year as follows:

Vernon Gardner, Chairman

Brett Costa, Vice-Chairman

Craig Wilson, Secretary

Bob Kaszynski seconded

Motion carries unanimously

Chairman Gardner adjourned the meeting at 9:10 p.m.

Submitted by Jan Fisk, Recorder – November 30, 2008