

TOWN OF KITTERY
ZONING BOARD OF APPEALS

APPROVED

February 12, 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 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. **CONTINUATION:** 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. Jeff Edwards requesting a Miscellaneous Appeal to the terms of Table 16.12 (Page 2561) of the Kittery Land Use and Development Code Zoning Ordinance in order to remove or demolish existing 12'x60' mobile home & replace with newer 14'x60' mobile home. Located at 4 Dana Avenue, Site 18, Kittery, Map 21 Lot 3 Site 18, in the Commercial 2 (C-2)/Rural Residential (RR) Zones.

1. **CONTINUATION:** 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.

Chairman Gardner recognized Patrick Bedard, representing Robert Dean Harris, Jr. **Mr. Bedard** presented the plan and asked if he could give the Board documentation in order to address the appeal as a Variance.

Chairman Gardner addressed CEO **Ross** and asked if it was possible to give out these documents.

CEO Ross stated that it was not the procedure, only photos are usually distributed, but is at the discretion of the Board to allow it.

Chairman Gardner asked the Board members their opinion on this. Ms. **Brown** was against the idea due to the fact that this has never been permitted before and should not be done. After deliberation, it was decided that Mr. Bedard could read it into the record if he wished.

Mr. Bedard continued with his presentation giving an extensive history on the property.

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

Chairman Gardner recognized Anthony & Cathy Gallo, abutters, 1 Gee Road.

Mr. & Mrs. Gallo approached the podium and Mrs. Gallo said: we happen to live across from the construction site. I submitted a letter to try and follow the regulations as we were told we needed to follow. The letter pretty much itemizes our concerns. We would appreciate your taking the time to consider these issues that we have outlined.

Mr. Gallo commented: I would like to know what road would be used for the actual construction with the trucks coming down the road. Last year they came down Gee Road and when they left, the road was in very poor condition. What we used to look at basically turned into a pile of mud and was just left that way with no explanation. Gee Road is a private road. I thought everything would be accessed through Betty Welch Road, because the property is listed as Betty Welch Road. Are the trucks going to be allowed to come down Gee Road to do this?

Chairman Gardner responded; that is not something we are concerned with this evening. What we would like to do is discuss the merits of this particular application and get as much feedback *as possible*. We invite you to give us as much information as you have available. **Mr. Gallo** said; I have no problem with anyone moving back home. I would have been nice if it was done in a way that was more pleasant... if the road was left a little nicer. We maintain the road and it costs us some hard earned money to do so and I believe there were a couple of letters put out about contributing to this, but nothing resulted in that.

Chairman Gardner again asked if there was anyone who would like to speak on behalf of the application. The Chair recognized Robert Dean Harris, Jr.

Mr. Harris approached podium and said; I apologize if the road was in worse condition than it was when we hauled the fill in. It has been a dirt road and it was bumpy when we started with a few big potholes in it. As far as contributing to the maintenance of the road, I have never received any letters for that. I would gladly contribute to that. I am sorry that the lot looks the way it does, but I am waiting to get approval to continue this project.

Chairman Gardner asked if there was anyone else who would like to speak about the application in anyway. Hearing no response, the Chair requested the CEO's report.

CEO Ross reported: This is a conforming vacant lot within the Rural Residential Zone. According to assessing records, that was a primary means of doing research on the property, it showed that the lot was divided off in September 1989 and at that time a property record card list was created for Lot 1G. The property was assessed *as* unbuildable and noted in the property record card that it failed septic perk tests. The lot appears from the tax record to have been divided from that 65 Lot 1. There were no deed transfers at that time for the division of Lot 1G. The only transfer that I had researched on the property, and that went back to 1975, was 2006. Mr. Harris is proposing to construct a 28'x50' family dwelling and septic system. I did speak with the State Subsurface Wastewater disposal unit and the State does not have an issues with the distance of the septic system to the wetland unless it were a wetland of special significance or Shoreland Zoning of which it is neither. Table 16.12 requires a 100' setback from wetlands greater than 1 acre in size. The proposed house would be located approximately 45' from the edge of the wetland and the septic system approximately 36' from the edge of the wetland.

Board Discussion

Ms. Brown stated that she felt strongly that the Board cannot grant variances for wetland setbacks. Ms. Brown stressed that the Board and Town Council in the past have worked very hard on this issue.

Mr. Pinkham commented on the right-of-way. This is a grandfathered lot. There is not a wetland of special significance, if so you would have to have a 25' setback away from wetland. If it is not a wetland of special significance there is no setback required. It was determined in 1996 that lot was not buildable. **CEO Ross** confirmed that this was in fact not a special significance wetland.

Much deliberation continued among the Board regarding the wetland setback issue and the fact that the property was deemed unbuildable. Ms. Brown felt strongly that the Board could not grant the variance.

Secretary Brown read the application as follows: Move the application of 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. Construction shall be in accordance with the sketch submitted, dated and signed by Robert Dean Harris, Jr. and Vern Gardner, Chairman. A motion was made to approve and was seconded.

Chairman Gardner pointed out that there were four (4) points that have to be voted on for the variance.

VOTE was as follows:

16.04.050(B)(2)(b, i-iv) Variance Appeals

- i. Mr. Costa, No Ms. Brown, No Mr. Pinkham, No – Mr. Kaszynski, No – Mr. Emerson, Yes – Chairman Gardner, Yes.
- ii. 6/0 in favor
- iii. 6/0 in favor
- iv. Mr. Costa, No – Ms. Brown, No – Mr. Pinkham, No - Mr. Emerson, Yes Chairman Gardner, Yes

Motion failed, appeal denied.

VOTE: 3/3 The Appeal is denied; does not have the necessary four (4) votes

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.

FINDINGS OF FACT

Application #1– Robert Dean Harris, Jr.

- 1. *The applicant, Robert D. Harris, Jr., is seeking a Variance appeal in order to build a 28 'x50' home with a drive under garage located in the Rural Residential Zone.*
- 2. *A letter (1/7/08) from Joe Noel stated that the home was to be 45' from the wetlands boundary which contradicts the ordinance (16.12.130 – Table 16.12) which says new subsurface sewage disposal systems with design flows of less than 2,000 GPD must have 100' minimum setback.*

CONCLUSIONS

- 1. *It was determined that the proposal did not satisfy the requirements for a hardship Variance 16.04.050(B)(2)(b)(i-iv).*

2. *The appeal was denied 3/3.*

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

2. Jeff Edwards requesting a Miscellaneous Appeal to the terms of Table 16.12 (Page 2561) of the Kittery Land Use and Development Code Zoning Ordinance in order to remove or demolish existing 12'x60' mobile home & replace with newer 14'x60' mobile home. Located at 4 Dana Avenue, Site 18, Kittery, Map 21 Lot 3 Site 18, in the Commercial 2 (C-2)/Rural Residential (RR) Zones.

Chairman Gardner recognized Jeff Edwards.

Mr. Edwards stated he is requesting a bigger mobile home mostly because he could not find a 12'x60' mobile home. Problem is the setback from the creek which becomes a wetland issue.

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

Chairman Gardner recognized Mark Phillips, Mobile Home Park owner.

Mr. Phillips approached the podium and commented: Jeff Edwards is the onsite manager and I endorse wholeheartedly his efforts to raise the standards of homes in the park. Overtime we are trying to bring it up to today's standards because some of those homes go back to the 60's.

Chairman Gardner recognized Don Gagnon.

Mr. Gagnon said: I support this wholeheartedly and I don't see a big issue with the wetlands.

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

CEO Ross reported: This is a nonconforming lot with nonconforming structures located within the Rural Residential Zone. Mr. Edwards is proposing to demolish the existing mobile home and to replace it with a new mobile home. Table 16.12 requires a minimum setback of 50' from the wetlands 1,001' to one acre in size and from an intermittent stream, and a 100' setback is required for wetlands greater than one acre in size. We do not have a determination as to whether or not this is an intermittent stream. If it were intermittent, Mr. Edwards would not be before the Board, but because of that question, he is. The existing mobile home is 62' from the wetland. The proposed new mobile home would be no closer to the wetland than the existing mobile home. It is my understanding that there is an existing pad under the mobile home and that would be kept in place for the new mobile home. There are no lot line issues with this

~~February 12, 2008~~

particular mobile home. Typically with mobile homes it has been an issue in the past. This mobile home does not have any lot lines in it. I do have aerial photographs showing the stream in relationship to the property, if the Board members would like to take a look at that.

February 12, 2008

Board Discussion

Chairman Gardner asked Mr. Edwards if this was an intermittent stream, is it wet or dry?

Mr. Edwards responded: I don't know if I can answer that question or not. I have polled the neighbors that have lived there over the past couple of years and they say that the stream does not dry up. I know that that is not official.

Mr. Costa stated: We have been dealing with another mobile home park in the town and as long as it doesn't get any closer in length and because of the problem of older homes not being the same size as the newer homes, we have repeatedly decided that if the homes didn't go longer and had to go wider because of manufacturer design, that would not be a problem.

Ms. Brown said: I pretty much feel the same way if it is going on the same pad. The pad is not being extended and the length of the mobile home is the same. It is just a question of the 2' in width. Even though it is in relation to a wetland, it is reasonable.

Mr. Emerson commented that he lived on the other end and in the middle of the summer the creek is not full, low tide. There are no restrictions in the other direction, closer to the access.

Mr. Edwards replied: My understanding is that the 20' setback from the front road; there is a park road in front of it currently 24' from the road, so if I tried to go 14'x70' I still would be within.

Deliberation continued and the Board was satisfied with the plan.

Secretary Brown read the application as follows: Move the application of Jeff Edwards requesting a Miscellaneous Appeal to the terms of Table 16.12 (Page 256-1) of the Kittery Land Use and Development Code Zoning Ordinance in order to remove or demolish existing 12'x60' mobile home & replace with newer 14'x60' mobile home. Located at 4 Dana Avenue, Site 18, Kittery, Map 21 Lot 3 Site 18, in the Commercial 2 (C-2)/Rural Residential (RR) Zones. The new mobile home shall go no closer to the creek than the existing mobile home. Construction shall be in accordance with the sketch submitted, dated and signed by Jeff Edwards and Vern Gardner, Chairman. A motion was made to approve by Mr. Pinkham, seconded by Mr. Costa.

VOTE: Unanimously 6/0, with all in favor. Motion passes. Application was granted.

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 #2 — Jeff Edwards

1. *The applicant, Jeff Edwards, is looking to remove or demolish existing 12 'x60' mobile home & replace with newer 14 'x60' mobile home located in the Commercial 2/Rural Residential Zones.*
2. *The property was within 57' of creek where 100' is require.*

CONCLUSIONS

1. *The new mobile home shall be no closer to the creek than the existing mobile home.*
2. *The Board voted unanimously 6/0 with all in favor. Motion passes. Application granted.*

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

ADJOURNMENT

Meeting adjourned @ 9:00 p.m.