

**TOWN OF KITTEERY
ZONING BOARD OF APPEALS**

APPROVED

February 26, 2008

Council Chambers

CALL TO ORDER:

Chairman Gardner called the meeting to order at 7:15 p.m.

BOARD MEMBERS PRESENT:

Vern Gardner, Chairman, Thomas Battcock-Emerson, Sarah Brown,
Bob Kaszynski, Herb Kingsbury

MEMBERS ABSENT:

Brett Costa and Niles Pinkham

ALSO PRESENT:

CEO Heather Ross, Recorder Lisa Goms

Chairman Gardner introduced the members of the Board and explained that because there were only five Board members present at this time, the applicants had the option of staying their appeal until there is a more populated Board if they choose. There has to be four (4) affirmative votes to have a successful appeal.

Chairman Gardner then led those present in the Pledge of Allegiance.

Chairman Gardner addressed the Board and said: There is one other issue that I would like to present for consideration and that is plans. When we get plans, they have almost no information on them or the information is incorrect. It is particularly important when we are discussing wetlands and things like that. What I thought was that if it reaches a certain dollar amount or involves wetlands or some critical issue, we might require plans and we have flexibility within our ordinance so that we can require plans every time. We simply allow minor jobs to come in with something rather loose.

Mr. Emerson said: I think that the engineering plans on the part of the commercial development is one thing, and the engineering plans on the part of maybe someone wanting to put a deck on the side of their house is something else.

The Board had much discussion regarding this issue and will have further discussion and try to come up with some conclusions at the next meeting.

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Chairman Gardner then read the Notice of Hearings.

PUBLIC HEARINGS:

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.

Jeff Edwards has requested to be reheard on a previously approved appeal by the Board due to an error in setback measurements.

Chairman Gardner said: We have been asked by Mr. Edwards, who was before us last week regarding his mobile home, to reopen his appeal so that he can explain to us the position of the mobile home with respect to the road. Does the Board feel comfortable in reopening that appeal so that he can present these issues? Ms. **Brown** did have an issue and thought that the applicants who are on the agenda should be heard first. Other Board members did not seem to have any problem with it. **Chairman Gardner** stated that it will be treated as "Old Business", and it could be heard first. The applicants had no problem with Mr. Edwards going first.

Mr. Edwards approached the podium and stated: I measured in error by 12'. I had the setback originally from the road as 24'. The prior approval was for 24' from edge of the right of way. After the last meeting I went through the park and measured all the trailers from the setback so that we could find out what we could do, and I measured this one...there was certainly no intent for deceit, it was merely a mistake. I am asking for a variance to allow me to setback the same distance that the existing mobile home is setback.

CEO Ross commented: The prior approval was for the setback from the wetlands, from the creek. The Board approved that. The plan that was before the Board showed the existing mobile home to be 24' from the edge of the right-of-way. The plan showed everything in perspective as it was. The mobile home was not 24' from the edge of the right-of-way in the mobile home park, but was 12' and Mr. Edwards wants to keep in the same front location so that he can keep the same setback from the creek. Mr. Edwards is looking for an amendment to the approved plan.

Board Discussion

Chairman Gardner asked Mr. Edwards several questions regarding the structure, length, width, etc., of the mobile home. Being satisfied with the amendments, a motion was made by Ms. **Brown** to approve the amendments, and was seconded by **Mr. Emerson**.

Secretary Brown read the application as follows: Move the application of Jeff Edwards to modify his original appeal so to allow the existing mobile home at Map 21, Lot 3, Site 18 within the Commercial 2 (C-2)/Rural Residential (RR) Zones to be no closer than 12' from the road as currently exists.

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VOTE: Unanimously 5/0 with all in favor. Motion passes. Application granted.

1. Thomas W. Harmon, P.E. for Stephen A. Hynes, Trustee requesting a Special Exception Appeal to the terms of Table 16, Section 12, Subsection 130(C)(6) (Page 256-H) of the Kittery Land Use and Development Code Zoning Ordinance in order to develop 80-units of elderly housing in the Mixed Use Zone as part of a Mixed Use development. Located at 511 U.S. Route #1, Kittery, Map 66, Lot 24 and Lot 25 in the Mixed Use and Commercial Zones.

Chairman Gardner recognized Thomas W. Harmon, Civil Consultants.

Mr. Harmon proposes to construct an 80-unit elderly housing development. Mr. Harmon presented to the Board the sketch plan explaining the layout of the project. Photographs and plans were shown to explain the project in detail.

Gary Beers pointed out that if you count them all, there are 8 uses related to the development of this parcel.

Chairman Gardner asked if there was anyone present who would like to speak in favor of, opposed to, or 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 Mixed Use Zone. The proposal is to construct elderly housing as part of a mixed use project. The mixed use project would consist of one (1) lot containing 80-units of elderly housing, a second commercial lot consisting of a 3-story commercial building containing: a maintenance facility, assembly hall, meeting rooms, administrative offices and guest quarters available to non-residents and residents and a 3¹⁴ commercial lot. The elderly housing project would meet all housing setbacks and wetland setbacks. The project would also require going to the Planning Board for approvals and the wetland crossings, so all of that will be looked at as part of the Planning Board review. In addition to the basis for decision that the Board typically looks at, the factors for consideration, there are additional special exception considerations for the mixed use zone for this type of use.

CEO Ross read: Conditions for Approving Special Exception Uses in the Mixed Use District - 16.12.130(E)(10)(a)(viii)(A&B) (Page 256-n) Housing for the Elderly:

(A) Location Suitability. The location of the site must allow it to be developed so that the residents of the project will be able to function as part of the community and have a pedestrian access to services and facilities within the area.

(B) Mixed. Use. If an elderly housing component is proposed as part of the project, it must be an essential element of the mixed use project and be designed to be an integrated part of the overall development.

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Board Discussion

There was much deliberation regarding the plan of the structure, its setbacks, the wetlands, buffers, etc.

Chairman Gardner stated that the Board would go through the 16-step criteria for Special Exceptions - Basis for Decision 16.24.060(B)(1-16) (Page 269) Factors for Consideration. The Board's vote was as follows:

VOTE

- | | | |
|-----|-----|---------------------------|
| 1. | 5/0 | Yes |
| 2. | 5/0 | Yes |
| 3. | 5/0 | Make a condition |
| 4. | 5/0 | Condition for PB approval |
| 5. | 5/0 | Yes |
| 6. | 5/0 | Yes |
| 7. | 5/0 | Yes |
| 8. | 5/0 | Condition of PB approval |
| 9. | 5/0 | Condition of Fire Dept. |
| 10. | 5/0 | Yes |
| 11. | 5/0 | Yes |
| 12. | 5/0 | Yes |
| 13. | 5/0 | Condition of PB approval |
| 14. | 5/0 | Yes |
| 15. | 5/0 | Yes |
| 16. | 5/0 | Yes |

Secretary Brown read the application as follows: Move the application of Thomas W. Harmon, P.E. for Stephen A. Hynes, Trustee requesting a Special Exception Appeal to the terms of Table 16, Section 12, Subsection 130(C)(6) (Page 256-H) of the Kittery Land Use and Development Code Zoning Ordinance in order to develop 80-units of elderly housing in the Mixed Use Zone as part of a Mixed Use development. Located at 511 U.S. Route #1, Kittery, Map 66, Lot 24 and Lot 25 in the Mixed Use and Commercial Zones. This approval is only for the use and not for the specific plan which will be looked at by the Planning Board for their approval of project. Construction shall be in accordance to the sketch submitted, dated and signed by Thomas W. Harmon and Vern Gardner, Chairman.

A motion was made to approve by **Mr. Emerson** and was seconded by **Mr. Kingsbury**.

VOTE: Unanimously 5/0 approved. Motion passes. Application

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.

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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 #1 — Thomas W. Harmon for Stephen A. Hynes

1. *The applicant, Thomas W Harmon for Stephen A. Hynes, is looking to develop 80 units of elderly housing in the Mixed Use Zone as part of a Mixed Use Development, located at 511 US. Route #1, Kittery.*
2. *This is a conforming site with conforming use.*
3. *Special Exception 16. 12. 130(C)(6) — Criteria was met.*
4. *This is indeed a Mixed Use by virtue of renting the space to the public and the presence of an Inn which constitutes 10% or more of the total building area.*

CONCLUSIONS

- 1 *The Board voted unanimously 5/0 to grant the appeal with conditions upon Planning Board approval.*
2. *The ZBA is granting the use and the specifications regarding the building itself and are the purview of the Planning Board; the wetland's crossing is DEP, and access to the highway is the condition subject to Maine Department of Transportation.*

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

ADJOURNMENT

Meeting was adjourned at 8:30 p.m.