

TOWN OF KITTEERY
ZONING BOARD OF APPEALS

APPROVED

March 11, 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, Bob Kaszynski, Herb Kingsbury and Niles Pinkham - Brett Costa (arrived at 7:15pm)

ALSO PRESENT:

CEO Heather Ross, Recorder Lisa Gams

Chairman Gardner introduced the members of the Board, outlined the hearing procedure and led those present in the Pledge of Allegiance.

APPROVAL OF MINUTES: The minutes for 11/13/07 and 11/27/07 were approved as amended.

OLD BUSINESS:

Sketch Plans

Chairman Gardner said: Sometimes the plans that we are presented with have very little information on them. What I am proposing is that we put either a dollar amount on the plan in sensitive areas such as Shoreland. We left this open at the last meeting. It was recommended at that meeting that we consider those thoughts.

Mr. Kaszynski commented: I think if someone has a couple of thousand dollar deck, it does not have to have an elaborate set of plans. Yet I can see if we get into specifics such as Shoreland Zoning... that is a different story. I don't think we can break that down into a dollar amount or two or three categories.

Ms. Brown asked CEO Ross to explain the rules for plans as it stands now.

CEO Ross stated: Currently the applicant would have a plot plan that they are required to submit that should show all property lines, location of house, location of proposed expansions, location of septic, if there is one, location of a well, if there is one, distances from the new construction to all property lines and wetlands of the property.

The Chair then read the Notice of Hearings.

PUBLIC HEARINGS:

1. Bruce Clemons and Ann Langmaid requesting a Miscellaneous Appeal to the terms of Table 16, Section 12, Subsection 150(E) (Page 256-8) of the Kittery Land Use and development Code Zoning Ordinance in order to separate into 2 lots with each building having its own lot as per old Kittery Foreside Zoning. Located at 15 Otis Avenue, Kittery, Map 4, Lot 153 within the Kittery Foreside (KF) Zone.

Ms. **Brown** informed the Board that she was an abutter to this property and asked if she should step down. The applicant did not have an issue with Ms. Brown hearing the appeal.

Chairman Gardner recognized Ann Langmaid.

Ms. **Langmaid** approached the podium and read 16.28.170.

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

Chairman Gardner recognized Susan Seldon, Abutter.

Ms. **Seldon** approached the podium and stated: my concern is the congestion on that parcel of land is quite intense. I am not sure of how it is going to be divided. My understanding was that the small cottage and the original house that has apartments in it and the new barn/garage/apartments is going to be another. My question was if that is going to be separated into two parcels, how is that going to affect traffic, the congestion and parking on that road? Right now the parcel in question is very intensely used. There are always trucks there and double parking, etc. That is a concern for me as a homeowner. If dividing the property is going to create more congestion, I think that is not in keeping with my interpretation of where Kittery Foreside is headed under the new zoning laws.

Chairman Gardner asked for the CEO's report.

CEO Ross reported: This is a nonconforming lot with nonconforming structures located within the Kittery Foreside Zone. The applicants propose to divide the one nonconforming lot into two nonconforming lots. The lot is currently 15,660 square feet in size. The applicants are proposing to divide the lot into two lots, one 5,300 square feet, and one lot 10,360 square feet. Kittery Foreside Zoning currently requires 5,000 square feet per dwelling unit. The proposed 5,300 square foot lot would have one dwelling and would become conforming. The proposed remaining 10,360 square foot lot would have four (4) dwelling units and would stay nonconforming. As four (4) dwellings would require under the Kittery Foreside Zoning 20,000 square feet to become conforming. The previous Kittery Foreside Zoning required 2,500 square feet per dwelling unit and at the time the last dwelling unit was added to this property it was considered conforming. It was then made nonconforming by the change in zoning in August 2005.

Ms. **Langmaid** rebutted: To answer Ms. Seldon's questions, there won't be any more parking, because it is just me parking there now. As far as the congestion, it is parking for the tenants and it is my property and they all park on the property in parking areas. They do park back to back, but it is all within the property.

CEO Ross clarified: Originally there was one lot. That one lot was separated into two lots about 4 or 5 years ago. Now the applicant wishes to separate out the portion with the house that Ms. Langmaid is living in.

Board Discussion

Mr. Costa said: What we are looking at is the house that the applicant is living in is actually going to be a legal lot. It is whether or not we allow this front house to accept the lesser square footage and at the present time it is nonconforming. At the time that it was separated, it was 2,500 square feet per unit. At the time when this was done, it was done legally.... the change of laws made it ... is it becoming more nonconforming.

Chairman Gardner pointed out 16.28.090 (page 273).

Ms. **Brown** said: I am wondering why this is before us. I don't quite understand why it would not be allowed.

CEO Ross responded: It is the minimum lot size requirements that are not being met if you split them. It would leave the remaining structure with the four (4) dwelling units nonconforming as to size.

Much deliberation continued among the Board regarding the parking issue.

Secretary Brown read the application as follows: Move the application of Bruce Clemons and Ann Langmaid requesting a Miscellaneous Appeal to the terms of Table 16, Section 12, Subsection 150(E) (Page 256-8) of the Kittery Land Use and development Code Zoning Ordinance in order to separate into 2 lots with each building having its own lot as per old Kittery Foreside Zoning. Located at 15 Otis Avenue, Kittery, Map 4, Lot 153 within the Kittery Foreside (KF) Zone. With the conditions that the smaller lot be no less than 5,000 square feet and no larger than 5,300 square feet and that there be a minimum 10 foot wide strip of land that connects Otis Avenue to the newly created conforming lot be along the southerly property line. Construction shall be in accordance with the sketch submitted, dated and signed by Ann Langmaid and Vern Gardner, Chairman.

A motion to approve was made by **Mr. Costa**, and was seconded by **Mr. Pinkham**.

VOTE: 7/0 Unanimously approved. Motion passes. Application 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 # I- Bruce Clemons and Ann Latafmaid

1. *The applicants, Bruce Clemons & Ann Langmaid requesting a Miscellaneous Appeal in order to separate into 2 lots with each building having its own lot as per old Kittery Foreside Zoning.*
2. *This is a nonconforming lot use and nonconforming by dimensional. The pre-existing nonconforming building by virtue of the number of units, lot size, use and side setbacks.*

CONCLUSIONS

1. *The Boards conclusions were based on 16.28. 100 Intent of article and 16.24.060(A)(1-4) Basis for Decision.*
2. *The Board voted unanimously 7/0 in favor of the application. Motion passes. Appeal granted.*

A motion was made by Mr. Pinkham to approve the Findings of Fact, and was seconded by Mr. Costa.

ADJOURNMENT

Meeting was adjourned at 8:10pm

All were in favor.