

TOWN OF KITTERY ZONING BOARD OF APPEALS

April 22, 2008

Council Chambers

CALL TO ORDER:

Chairman Gardner called the meeting to order at 7:20 p.m.

BOARD MEMBERS PRESENT:

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

MEMBERS ABSENT: Sarah Brown, Brett Costa and Niles Pinkham

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.

Chairman Gardner explained to the applicants that there were only 4 members present and it would take four (4) affirmative votes to grant the appeal. The Board will allow the applicants to withdraw their appeal until another time.

The applicants were satisfied with the Board as is and would like to go forward with their appeal.

APPROVAL OF MINUTES: No minutes were approved at this time.

The Chair then read the Notice of Hearings.

PUBLIC HEARINGS:

1. Michael Kilchenstein for Apreski, LLC requesting a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 055(E) (page 238-4), Title 16, Section 32, Subsection 490(N)(2)(A) (page 316), and Title 16, Section 32, Subsection 490(K)(2) (Page 310) of the Kittery Land Use and Development Code Zoning Ordinance in order to demolish the existing 3-bedroom dwelling and garage, and construct a new 3-bedroom dwelling in a less nonconforming location. Located at 55 Cutts Island Lane, Kittery Point, Map 45, Lot 30 within the Kittery Point Village (KPV) Zone.

2. Steven Abbott requesting a Special Exception Appeal to the terms of Title 16, Section 12, Subsection 040(C) (Page 237) of the Kittery Land Use and Development Code Zoning Ordinance in order to remodel 24'x30' garage and add a 12'x18' room off the garage for an intra-family dwelling. Located at 13 Remicks Lane, Kittery, Map 65, Lot 9A within the Rural Residential (**RR**) Zone.

1. Michael Kilchenstein for Apreski, LLC requesting a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 055(E) (page 238-4), Title 16, Section 32, Subsection 490(N)(2)(A) (page 316), and Title 16, Section 32, Subsection 490(K)(2) (Page 310) of the Kittery Land Use and Development Code Zoning Ordinance in order to demolish the existing 3-bedroom dwelling and garage, and construct a new 3-bedroom dwelling in a less nonconforming location. Located at 55 Cutts Island Lane, Kittery Point, Map 45, Lot 30 within the Kittery Point Village (**KPV**) Zone.

Chairman Gardner recognized Matt Tessier, Land Star Development Services

Mr. Tessier approached the podium and said: We are proposing to demolish and replace. The lot has several constraints on the site. The existing building is nonconforming on the front yard setback and to the mean high water to Chauncey Creek that is within the 100' setback. What we are proposing to do is increase the setbacks that we have currently. The existing structure is presently 3.1' from the front yard; and we are proposing that the new structure to be 17', increasing that by 14'. The side yard setback is currently met and will be met with the proposed location. The rear setback is also currently met and will be met. The mean high water to Chauncey Creek is currently 62' off of the existing garage...that is the closest structure to the Creek currently and the proposal will be 91' to the mean high water. We are hoping that the Board agrees that we are meeting the requirements under nonconforming buildings of the bylaw for relocation.

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

Chairman Gardner recognized Charles Underwood.

Mr. Underwood approached the podium and said: In listening to this gentleman review the plan, he said the structure new structure is about the same height of the old structure, and I wonder if it is possible to define what the height of that structure would be. I think it is really important.

Chairman Gardner recognized Justin Dexter, abutter, Lot 28C.

Mr. Dexter approached the podium and said: My concerns are not directly related necessarily to my views or how this would effect my property, but I do question with the proximity to Rachel Carson and the federal waters how much we would actually gain by moving this structure and whether or not it conforms more to the State's laws do we disturb more property and replace another 11' of frontage on the road and maybe 14' towards the water. Do we actually gain

anything by jacking a foundation that is already laid, moving it 14' to the north and then replacing already disturbed land with dirt...do we actually return that property to its natural state, or do we just make it somebody's front lawn. And does that turn back into forestry land. Other than that, I don't think I have too many concerns.

Chairman Gardner asked if there was anyone else present who would like to speak opposed to the application.

Chairman Gardner recognized Juliet Introcaso, abutter.

Ms. Introcaso approached the podium and commented that she would like to know what the timeframe of the project was going to be and also she had a concern about the blasting issue and how it works.

Chairman Gardner recognized Kelly Philbrook, for her mother Carol Philbrook, an abutter.

Ms. Philbrook approached the podium and explained the present drainage problems that occur in the driveway from the surrounding area. Ms. Philbrook pointed out the sewage system is not the greatest as well due to excessive ledge issues.

Chairman Gardner asked if there was anyone else who had any comments. Hearing none, asked Mr. Tessier if he had any rebuttal.

Mr. Tessier approached the podium and said: I have heard about the ledge problem quite a few times so I will start with that. If we get to the point on this project where it is 2' of ledge over the entire footprint of the house, we are not going to blast an entire basement. We will attempt to get the garage in without blasting, that is why we propose some filling in the front to pick the house up just enough so that hopefully we can get a garage here. At this point there is no plan to blow any ledge. As far as the building height, the architectural plans show atop of foundation, between 26' and 27' of height on the front elevation. The house would meet the maximum height for this zoning district. As far a timeframe goes, the last discussion I had with the applicant was that he had spoken with a couple of builders just to do some preliminary pricing and he did not indicate to me when he would start, but I assume that if he got approval, he would probably start within the next couple of months. That is just a guess on my part.

As far as the erosion control issue, we have kept all of the proposed grading uphill of the steep slope. We have proposed silk fence erosion control along that area if there are any issues during construction and will be maintained on a regular basis. If there is an issue with a pipe below the site crossing the existing right-of-way that maybe has been filled over time, I don't think the applicant would have any problem while he has a contractor out here with the right equipment to replace 15' of pipe under the gravel driveway. That would be something he would be willing to incorporate into this project. Hopefully that would help relieve some of the stress that driveway sees in a rain storm.

The other concern I had was the septic tank being placed in ledge. I don't see that being an issue. If the tank is damaged during construction, it would be repaired. It sits way over by the top of that slope where they did find enough depth and soil to set it, so I don't anticipate any problems.

Chairman Gardner commented that there was a question regarding landscaping.

Mr. Tessier responded: I do not have a detailed landscaping plan, typical shrubbery around the house is all I have spoken with the applicant about. He did not have any particular plants picked out. We are not opposed at all in supplying a plan or something of that nature for review.

CEO Ross reported: This is a nonconforming lot with nonconforming structures located within the Kittery Point Village Zone. Mr. Kelchenstein is proposing to demolish an existing nonconforming dwelling unit and garage and to construct a new dwelling unit. Title 16.12.055(D) (Page 238-4) requires a minimum 40 foot front yard setback. The house currently sits 3.1 feet from the property line where a 40 foot setback is required. Title 16.32.490(N)(2)(a) requires a 100 foot setback for structures from the normal high water line. The garage is currently 62 feet from the normal high water line. The house is currently 88 feet from the normal high water line where a 100 foot setback is required. If this were an expansion of the existing dwelling unit, Title 16.32.490(K)(2) would allow a maximum expansion of no more than 30% of the floor area or volume of the structure. Although this is not an expansion of an existing dwelling unit, there is a decrease of floor area within the 100 foot setback.

Board Discussion

Board members had several questions regarding the project for Mr. Tessier and discussions continued.

Mr. Emerson commented: I don't see how we can support... we have allowed building on the same footprint even if it means taking out most of the house, but I can't see how we can allow someone to continue being in the wetlands and closer to the road, especially starting from scratch.

Mr. Tessier responded that they would be further from the road.

Mr. Emerson said: I understand that you would be further from the road and less nonconforming, but we have had the less nonconforming issue come up before. That being said, you could be conforming, and block this gentleman's views of the creek. You can become conforming in one area and un-neighborly in another.

Deliberations continued.

Chairman Gardner suggested: the applicant could withdraw the application and reapply in another format, but I am opposed to that at the outset that because he has already made his presentation so I guess that there is only one avenue to pursue and that is to vote it up or vote it down based on its merits

Chairman Gardner read the application as follows: Michael Kilchenstein for Apreski, LLC requesting a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 055(E) (page 238-4), Title 16, Section 32, Subsection 490(N)(2)(A) (page 316), and Title 16, Section 32, Subsection 490(K)(2) (Page 310) of the Kittery Land Use and Development Code Zoning

Ordinance in order to demolish the existing 3-bedroom dwelling and garage, and construct a new 3-bedroom dwelling in a less nonconforming location. Located at 55 Cutts Island Lane, Kittery Point, Map 45, Lot 30 within the Kittery Point Village (**KPV**) Zone.

A motion to accept was made by **Mr. Emerson**, and seconded by **Mr. Kaszynski**.

VOTE: Unanimously 4/0 denied. Motion failed. Application denied.

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.

FINDINGS OF FACT

Application #1 – Michael Kilchenstein

1. *The applicant, Michael Kilchenstein, requesting a Miscellaneous Appeal in order to demolish the existing 3-bedroom dwelling and garage, and construct a new 3-bedroom dwelling in a less nonconforming location; located at 55 Cutts Island Lane, Kittery Point, Map 45, Lot 30 within the Kittery Point Village (**KPV**) Zone.*
2. *It was found that the property would be a demolition and a relocation, and was concluded that it was a prohibited use under 16.28.130(D)(2).*

CONCLUSIONS

1. *The Board voted unanimously 4/0. Motion failed. Application was denied.*

A motion to accept the Findings of Fact was made by **Mr. Emerson**, and was seconded by **Mr. Kaszynsk**, with all in favor.

2. Steven Abbott requesting a Special Exception Appeal to the terms of Title 16, Section 12, Subsection 040(C) (Page 237) of the Kittery Land Use and Development Code Zoning Ordinance in order to remodel 24'x30' garage and add a 12'x18' room off the garage for an intra-family dwelling. Located at 13 Remicks Lane, Kittery, Map 65, Lot 9A within the Rural Residential (**RR**) Zone.

Chairman Gardner recognized Steven Abbott.

Mr. Abbott approached the podium and stated: We built our house in 1995 on 1.4 acres. We have a 24'x30' garage and what we would like to do is on the second floor, we would like to finish off the area that would be approximately 18'x26' and add on a 12'x18' room off the second floor supported by columns. We meet all setbacks. I also understand we have to provide proof on a yearly basis that my in-laws are still alive and still living there...we have no problem with that. Mr. Abbott commented that this project would not affect the surrounding area at all. There is no disturbance to the neighbors.

Chairman Gardner asked if there was anyone present who would like to speak in favor, 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 conforming lot with conforming structures located within the Rural Residential (**RR**) Zone. Mr. Abbott is proposing to construct an addition to an existing garage in order to create an intra-family dwelling unit in order to care for a family member. I have made the applicant aware, although I haven't received any documentation, that an intra-family unit has to be for the purposes of taking care of a blood relative or the purposes of a blood relative taking care of you.

Board Discussion

Chairman Gardner read the 16 items for consideration for the Special Exception and the votes were as follows:

1. 4/0
2. 4/0
3. 4/0
4. 4/0
5. 4/0
6. 4/0
7. 4/0
8. 4/0
9. 4/0
10. 4/0
11. 4/0
12. 4/0
13. 4/0
14. 4/0
15. 4/0
16. 4/0

With the condition to submit an annual proof of need.

Mr. Kaszynski made the motion to approve. Motion was seconded by **Mr. Emerson**.

VOTE: Unanimously 4/0 granted. Motion granted.

Chairman Gardner read the application as follows: Move the application of Steven Abbott requesting a Special Exception Appeal to the terms of Title 16, Section 12, Subsection 040(C) (Page 237) of the Kittery Land Use and Development Code Zoning Ordinance in order to remodel 24'x30' garage and add a 12'x18' room off the garage for an intra-family dwelling. Located at 13 Remicks Lane, Kittery, Map 65, Lot 9A within the Rural Residential (**RR**) Zone. Construction shall be in accordance with the sketch submitted, dated and signed by Steven Abbott and Vern Gardner, Chairman.

Mr. Emerson made the motion to approve, **Mr. Kaszynski** seconded.

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.

Chairman Gardner 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 – Steven Abbott

1. *The applicant, Steven Abbott, is looking for a Special Exception Appeal in order to remodel 24'x30' garage and add a 12'x18' room off the garage for an intra-family dwelling; located at 13 Remicks Lane, Kittery, Map 65, Lot 9A within the Rural Residential (RR) Zone.*
2. *This is a conforming lot with conforming structures.*

CONCLUSIONS

1. *The Board concluded that it was of an acceptable use with conditions.*
2. *The Board voted unanimously 4/0 with all in favor. Motion passes. Application granted.*

ADJOURNMENT

Meeting adjourned at 8:35 p.m.

The next Zoning Board of Appeals meeting is scheduled for May 13, 2008