

# TOWN OF KITTERY

## ZONING BOARD OF APPEALS

May 13, 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, Brett Costa, Bob Kaszynski, Herb Kingsbury, Niles Pinkham and Craig Wilson

### ALSO PRESENT:

CEO Heather Ross, Duncan McEachern, Town Attorney and Recorder Lisa Goms

**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 Zoning Board of Appeals reviewed and amended the minutes for 2/8/08, 2/26/08, 3/11/08, 3/25/08 and 4/8/08. Mr. Kaszynski motioned to approve the minutes as amended; Mr. seconded the motion. **VOTE:** 7/0 with all in favor. Minutes were approved as amended.

The Chair then read the Notice of Hearings.

### PUBLIC HEARINGS:

1. David Witham for Chris Eckel requesting a Miscellaneous Appeal to the term of Title 16, Section 16, Subsection 050(B) (Page 259) of the Kittery Land Use and Development Code Zoning Ordinance in order to construct an 11'x11' addition and a 9'x11' porch and to relocate chimney, renovate house, new windows and doors, new foundation to match existing, rebuild vestibule, new wiring and plumbing, new walls to replace original walls where required for structural soundness. Located at 3 Knight Avenue, Kittery, Map 4, Lot 70 in the Kittery Foreside Zone.
2. Mark G. Phillips for Dow Highway Properties, LLC requesting a Miscellaneous Appeal to the terms of Title 16, Section 32, Subsection 730(D) (Page 343) of the Kittery Land Use and Development Code Zoning Ordinance in order to remove or demolish existing 1972 12'x56' mobile home and replace with newer 24'x48' HUD Code Home. Located at 2 Dana Avenue, Site 32, Kittery, Map 21, Lot 3 in the Rural Residential Zone

**Chairman Gardner** explained that Item #1 on the agenda was a more involved appeal and asked if the applicants would mind switching. The applicants did not have a problem in changing places.

2. Mark G. Phillips for Dow Highway Properties, LLC requesting a Miscellaneous Appeal to the terms of Title 16, Section 32, Subsection 730(D) (Page 343) of the Kittery Land Use and Development Code Zoning Ordinance in order to remove or demolish existing 1972 12'x56' mobile home and replace with newer 24'x48' HUD Code Home. Located at 2 Dana Avenue, Site 32, Kittery, Map 21, Lot 3 in the Rural Residential Zone.

**Chairman Gardner** recognized Mark Phillips.

**Mr. Phillips** approached the podium and explained the condition of the existing mobile home and how it is totally out dated and was abandoned by its previous owner. It is a 1972, 12'x56' mobile home and in today's standards is totally substandard. The HUD Code went into effect in 1976...to sell something pre-1976 requires a cash buyer, no bank wants to deal with it, plus the construction itself is substandard by today's standards. I have been fortunate in securing a new HUD Code home that is 24'x48' and it is very difficult to find these shorter homes. I think this would be a good win, win situation on this particular lot. There are a total of 35 homes in the park. The new home is shorter than the existing home. It will be a big improvement to the park.

**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 then requested the CEO's report.

**CEO Ross** Reported: This is a nonconforming lot with nonconforming structures located within the Commercial-2 (C-2) Zone. Mr. Phillips is proposing to remove an existing mobile home and replace it with a new mobile home. Title 16.32.730(D) requires a 20' front lot line setback from a right-of-way within a mobile home park. The existing mobile home is setback 14' from the right-of-way. The new mobile home would be no closer to the right-of-way within the mobile home park than the existing mobile home.

#### Board Discussion

The Board members did not have any issues with this appeal. It was determined that this was a no closer than situation.

**Chairman Gardner** read a proposed motion to approve the appeal of Mark G. Phillips for Dow Highway Properties, LLC requesting a Miscellaneous Appeal to the terms of Title 16, Section 32, Subsection 730(D) (Page 343) of the Kittery Land Use and Development Code Zoning Ordinance in order to remove or demolish existing 1972 12'x56' mobile home and replace with newer 24'x48' HUD Code Home. Located at 2 Dana Avenue, Site 32, Kittery, Map 21, Lot 3 in the Rural Residential Zone. Construction shall be in accordance with the sketch submitted, dated and signed by Mark G. Phillips and Vern Gardner, Chairman.

**Mr. Pinkham** made the motion to approve. **Mr. Kingsbury** seconded the motion.

**VOTE:** Unanimous 7/0 Motion passes. Application approved.

**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 – Mark G. Phillips for Dow Highway Properties, LLC**

1. *The applicant, Mark Phillips, is looking to remove or demolish existing 1972 12'x56' mobile home and replace with newer 24'x48' HUD Code Home. Located at 2 Dana Avenue, Site 32, Kittery, Map 21, Lot 3 in the Rural Residential Zone.*
2. *This is a nonconforming lot with nonconforming structures. The property is within the setbacks specified for mobile home parks. It is set similar to others within the park. 16.32.720(D) requires a 20' setback; 14' exists and 14' is proposed.*

### **CONCLUSIONS**

1. *The Board concluded that this was a no closer than situation; similar to other setbacks within the park.*
2. *16.24.060(A)(1-4)(B(1-16) Basis for decision have been met.*
3. *The Board voted 7/0 unanimously in favor of application.*

A motion was made to approve Findings of Fact by Mr. Costa and was seconded by Mr. Kaszynski.

1. David Witham for Chris Eckel requesting a Miscellaneous Appeal to the term of Title 16, Section 16, Subsection 050(B) (Page 259) of the Kittery Land Use and Development Code Zoning Ordinance in order to construct an 11'x11' addition and a 9'x11' porch and to relocate chimney, renovate house, new windows and doors, new foundation to match existing, rebuild vestibule, new wiring and plumbing, new walls to replace original walls where required for structural soundness. Located at 3 Knight Avenue, Kittery, Map 4, Lot 70 in the Kittery Foreside Zone.

**Mr. Wilson** called a point of order and said: The application before us lists this as a Miscellaneous Appeal. On Page 211 16.04.050(D)(2)(C) permit variations in... we are not hearing the variation in the CEO has denied a building permit, so we are, in my opinion, we are hearing an administrative appeal...we are here to decide whether there is an alleged error in any order requiring a decision for the determination made by the CEO.

#### Board Discussion

Application is not a Miscellaneous Appeal, it has been misfiled.

**Mr. Kingsbury** motioned to hear the application as Miscellaneous Appeal. The motion was seconded by **Mr. Emerson**.

Several Board members were opposed to hearing this application as a Miscellaneous Appeal.

**Mr. Wilson** made the motion for the applicant to make change and be heard under an Administrative Appeal. The motion was seconded by **Mr. Emerson**.

**VOTE:** 5/1/1 **Mr. Gardner** opposed and **Mr. Costa** abstained

The property is in violation. It needs decision as to whether it is to be heard. Substantial deliberation continued regarding whether or not the application could be heard due to the violation.

**Mr. Costa** strongly believes that applicant should go to Town Manager.

Applicant withdrew appeal without prejudice to consult with Town Manager regarding violation.

#### **OTHER BUSINESS**

The motion was made by **Mr. Emerson** to elect **Craig Wilson** as Secretary of the Kittery Zoning Board of Appeals. The motion was seconded by **Mr. Kaszynski**.

**VOTE:** Unanimously 7/0, all were in favor of Craig Wilson as Secretary.

#### **ADJOURNMENT**

Meeting was adjourned at 8:50 p.m.  
Next meeting June 10<sup>th</sup>