

Town of Kittery  
Zoning Board of Appeals  
March 24, 2009

Call to Order: 7:08 p.m.

**Members present:** Vern Gardner, Chairman; Thomas Battcock-Emerson, Bob Kaszynski, Craig Wilson, Secretary

**Members absent:** Herb Kingsbury, Niles Pinkham and Brett Costa

**Staff:** Heather Ross, Code Enforcement Department

Pledge to the Flag

**PUBLIC HEARING**

**Chairman Gardner** advised the applicant that because there were only four ZBA members present, this appeal would require a unanimous approval, and asked if he would prefer to schedule this item at another time when more members were present. **Mr. Edwards** stated that he would prefer to continue.

**ITEM 1** - Jeff Edwards requesting a Miscellaneous Appeal to the terms of Table 16.12 (Page 256.1) and Title 16, Section 32, Subsection 730D (Page 343) of the Kittery Land Use and Development Code Zoning Ordinance in order to remove or demolish the existing 12'x60' mobile home and replace with a newer 14'x60' mobile home. Located at 4 Dana Avenue, Kittery, Map 21 Lot 3 Site 13, in the Commercial 2 District Zone and the Suburban Residential District Zone.

**Jeff Edwards**, applicant, summarized the request to remove an old mobile home and replace with a new mobile home at the same location as part of ongoing efforts to improve the mobile home park.

**Chairman Gardner** asked if there were any persons wishing to speak for or against the item. There being none, the CEO provided:

1. This is a nonconforming lot with a nonconforming structure located within the Commercial 2 and Suburban Residential zones.
2. Mr. Edwards is proposing to remove an existing mobile home and to replace with a newer mobile home. This mobile home park typically does not have lot lines for the individual mobile home lots.
3. Table 16.2 requires a minimum 50 foot setback from a wetland 1,0001 square feet to one acre in size and intermittent streams, and a 100 foot setback from wetlands greater than one acre in size. The newer mobile home is proposed to be placed approximately 14 feet from the wetland.
4. Title 16.32.730D2, Mobile Home Park Regulations, states:
  - D. The following setback rules shall apply to all homes and accessory buildings:
    1. Front and side setbacks shall be 20 feet; rear setbacks shall be 10 feet. If these requirements conflict with the requirements of the MRSA, Title 38, Section 435-449, Shoreland Protection, or subsequent amendments or revisions thereto, the stricter standards shall apply. The proposed front and side setbacks are less than 20 feet.
    2. If a lot is on a public road, the setback shall conform with the residential setback requirements applicable to other residential dwelling units in the zone. Title 16 Section 12.050E requires a minimum 40 foot front yard setback for the Suburban

Residential zone. The proposed mobile home would be less than the required setbacks applicable to the Suburban Residential zone.

3. So as to avoid monotony and sameness, the CEO may allow the front setback on a private road within a mobile home park to be varied provided that no home may be closer than 10 feet from the right-of-way and the average distance is at least 20 feet for all units. The proposed mobile home would be less than 20 feet from the right-of-way, and the average of all units is less than 20 feet.

4. N/A

5. The CEO may allow side yard setbacks to be reduced to 5 feet provided a distance of 20 feet is maintained between units for the purpose of providing more usable yard space on one side of the home. The proposed mobile home would be less than 20 feet from the adjacent mobile home.

6. A minimum 20 foot separation shall be maintained between all manufactured houses in all directions. The proposed mobile home would be less than 20 feet from the adjacent mobile home.

**Bob Kaszynski** asked if the garage could be removed, would the placement of the new mobile home then be in compliance? **Mr. Edwards** stated that they do not own the garage and did not feel they could ask the tenant to remove the structure. **Vern Gardner** asked about the other sheds on the property, noting that the oil tank behind one is very close to the creek, and asked if the tank could be placed within one of the sheds. **Mr. Edwards** stated he is not opposed to moving the tank and placing it on a raised pad, to the inside of the park. The shed closest to Dana Avenue will be removed. **Board members** agreed that the applicant shall work with the CEO to determine the best location of the tank, as far away from the creek as possible.

**Thomas Battcock-Emerson moved** to grant a miscellaneous appeal to the terms of Title 16.1 and Title 16, Section 32, Subsection 730D to remove or demolish a 12x60 mobile home and replace with a newer 14x60 mobile home, located at 4 Dana Avenue, Map 21 Lot 3 Site 13, in the Commercial 3 District Zone and the Suburban Residential District Zone, with the following condition:

1. The fuel oil tank shall be moved and re-located as far away as practicable from Chickering Creek.

**Bob Kaszynski** seconded

**Motion carries unanimously by all members present**

**Chairman** Gardner advised that this approval does not provide a building permit and that any aggrieved parties have 45 days to appeal this decision to Superior Court.

#### Findings of Fact

1. The applicant, Jeff Edwards, requested a Miscellaneous Appeal to the terms of Table 16.12 and Title 16, Section 32, Subsection 730D of the Kittery Land Use and Development Code Zoning Ordinance in order to remove or demolish an existing 12'x60' mobile home and replace with a newer 14'x60' mobile home.
2. Subject property is located at 4 Dana Avenue, Map 21 Lot 3 Site 13, in the Commercial 3 District Zone and the Suburban Residential District Zone
3. The lot and structure are nonconforming. There are typically no lot lines in a mobile home park. The current mobile home is located approximately 14 feet from the wetland

edge. The placement of the new mobile home will sit no closer than 14 feet and probably further than 14 feet.

4. The white shed sitting closest to Dana Avenue shall be removed.
5. The fuel oil tank shall be re-located as far from Chickering Creek as practicable.
6. Front and side setbacks are less than 20 feet at present and the new front yard setback shall be no closer than present.
7. The old unit is 32 feet from the unit at site 14, but the garage/carport makes the setback less than 20 feet.

**Thomas Battcock-Emerson moved** to accept the Findings as read

**Bob Kaszynski** seconded

**Motion carries unanimously by all members present**

#### Conclusion

Under the provisions of 16.28.030A, Nonconforming Buildings, the Board has the authority to grant relief and did so.

**Thomas Battcock-Emerson moved** to accept the Conclusion as read.

**Bob Kaszynski** seconded

**Motion carries unanimously by all members present**

#### **Minutes**

The minutes of February 24, 2009 were accepted as corrected by a unanimous show of hands.

The next ZBA meeting is scheduled for April 14, 2009

**Chairman Gardner** adjourned the meeting at 7:35 p.m.

Submitted by Jan Fisk, Recorder – March 25, 2009