

Town of Kittery
Zoning Board of Appeals
May 26, 2009

Call to Order: 7:06 p.m.

Members present: Vern Gardner, Chairman, Thomas Battcock-Emerson, Craig Wilson, Herb Kingsbury, Niles Pinkham, Bob Kaszynski

Members absent: Brett Costa

Staff: Heather Ross, Code Enforcement Department

Pledge to the Flag

PUBLIC HEARING

ITEM 1 - Deane Rykerson and Wendy Pomeroy requesting a Special Exception Use Appeal to the terms of Title 16, Section 12.040C in order to allow a temporary intra-family dwelling unit. Located at 1 Salt Marsh Lane, Kittery Point, Map 69 Lot 14E, in the Rural Residential District Zone, Resource Protection Zone, and Shoreland Zone.

Dean Rykerson, 1 Salt Marsh Lane, summarized his request before the ZBA, noting that his proposal meets all requirements of an intra-family dwelling unit except an internal connection. His request is to provide a dwelling unit for his 81 year old mother-in-law.

There being no further testimony, the **CEO** provided:

1. This is a conforming lot with non-conforming structures within the Rural Residential, Shoreland and Resource Protection zones.
2. Mr. Rykerson currently has two dwelling units on the property where only one dwelling unit is allowed, and he proposes to convert one into an intra-family dwelling unit.

Herb Kingsbury noted that each dwelling unit requires of 80,000 square feet of lot area and the lot is less than 160,000 square feet. The **CEO** explained that the intra-family unit allows for reduced density as long as the use is for a family member and the conditions within the ordinance section are followed. Additionally, the ordinance provides that the ZBA may allow a separate intra-family unit even if a connection is not practicable [16.32.1140.F]. **Craig Wilson** stated that the applicant needs to understand that the ordinance's conditions [16.32.1150] need to be upheld by the applicant and the Board in their consideration. The **CEO** advised the Board that the new Accessory Dwelling Unit ordinance currently under development could replace the existing Intra-Family Dwelling Unit section, and that future requests would be made administratively to the Planning and Code Enforcement offices.

16.24.060.B. Factors for consideration. For each Factor, **Chairman Gardner** asked if members had read the Factor and were in concurrence. **Members unanimously concurred with each Factor (1-16), with no dissent** (the factors were not read aloud into the meeting record).

There was discussion regarding the fact that the proposed intra-family unit was not connected to the primary dwelling unit, and whether connection was practical.

Chairman Gardner read Section 16.24.060 - Basis for decision:

A. Conditions. In hearing appeals/requests under this section, the zoning board of appeals shall determine:

1. That the proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use districts; *Unanimous concurrence*
2. That the use will not prevent the orderly and reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use districts; *Unanimous concurrence*
3. That the safety, the health, and the welfare of the town will not be adversely affected by the proposed use and its location; and *Unanimous concurrence*
4. That the use will be in harmony with and promote the general purposes and intent of this title. *Unanimous concurrence*

Niles Pinkham motioned to grant a special exception use under the terms of 16.32.1130 to allow a temporary, intra-family dwelling unit located at 1 Salt Marsh Lane, Kittery Point, Map 69 Lot 14E, in the RR, RP and Shoreland zones, with the following condition:

As per the application, the kitchen in the studio (front) unit will be removed if the intra-family dwelling unit is no longer used.

Herb Kingsbury seconded

Motion carries unanimously

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. Dean Rykerson and Wendy Pomery requested a Special Exception Use Appeal to the terms of Title 16.32.1130 in order to allow a temporary intra-family dwelling unit.
2. The property is located at 1 Salt Marsh Lane, Kittery Point, Map 69 Lot 14E, in the Rural Residential District Zone, Resource Protection Zone, and Shoreland Zone.
3. This is a conforming lot with non-conforming structures.
4. The utilities for the proposed unit are shared with the primary dwelling unit;
5. There is no internal connection between units, but find that connection is not practicable.
6. The approval included a condition that the studio unit shall be removed if the use of the intra-family unit ends.

Thomas Battcock-Emerson motioned to accept the Findings as read

Bob Kaszynski seconded

Motion carries unanimously

Conclusion

The Board has the authority under Sections 16.32.1130, 16.32.1140 and 16.32.1150, and concurred that the special exception factors for consideration and basis for decision (Section 16.24.060.A. and B.) had been satisfied, and granted the special exception appeal.

Herb Kingsbury motioned to accept the Conclusion as read

Thomas Battcock-Emerson seconded

Motion carries unanimously

Minutes

The minutes of April 14, 2009 were accepted as corrected.

The CEO discussed a request from Jim and Tudor Austin that the Board extend the approval date for completion of their project at 10 Lawrence Lane, Kittery Point. The owners have appeared before the Board a number of times in the past to receive approvals and, while much of the exterior is completed, there is very little completed on the interior, and all permits have expired. Because of the economic climate, the owners have not been able to secure construction loans to complete the project within the permit period and their request is to extend the approval and permits to complete the exterior construction and landscaping by the end of this year. **Niles Pinkham** stated that if the site is kept clean, it would be beneficial to the community to let the construction continue and have the project completed. The **CEO** noted that the owner has received prior extensions and that, following approval for an ADA bathroom, a permit was never pulled. Discussion followed regarding the timing of the approval and permit renewals, some that go back to 2006, and whether a simple extension is warranted or whether public notices must be created. Members felt that the Board should be sympathetic in light of the economic conditions, but that there should be no changes to the original approvals and permits. Additionally, with the shoreland zone ordinance pending adoption, changes to approved projects could be impacted. Lengthening the approval period was also discussed. The CEO will advise the applicant as to the process.

There will be no meeting on June 9, 2009. The next ZBA meeting will be June 23, 2009.

Niles Pinkham advised the Board that Dean Harris contacted him regarding his septic system and, with time running out on the approval, installed the system for Mr. Harris. He advised the CEO and wanted the Board to be aware of his actions. Also, he questioned the use of bark mulch as a ground cover between the system and the wetland area. It was discussed that the Board's decision for ground cover materials was left to the soil scientist who designed the system, and the CEO did not feel that she had the authority to deny the use of the material. **Mr. Pinkham** felt that the use of mulch was not what the Board intended though they did not specify what material to use. **Chairman Gardner** stated that the CEO needed to advise the soil scientist that the material was not what the Board intended be used, as they had discussed vegetated buffering at length.

Chairman Gardner adjourned the ZBA meeting of May 26, 2009 at 8:14 p.m.
Submitted by Jan Fisk, Recorder – May 28, 2009