

Town of Kittery
Zoning Board of Appeals
September 8, 2009

Call to Order: 7:00 p.m.

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

Members absent: Craig Wilson, Brett Costa

Staff: Heather Ross, Code Enforcement Department

Pledge to the Flag

PUBLIC HEARING

Chairman Gardner asked applicants in attendance if they wished to proceed with less than a full complement of Board members. There being no objections, the meeting resumed.

ITEM 1 - Ramona Dow requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 12, Section 060D, Page 238-5 in order to replace the existing deck on same footprint as previous. Located at 28 Island Avenue, Kittery, Map 1 Lot 9, in the Urban Residential District Zone and Shoreland Zone

Ramona Dow, Portsmouth, NH, summarized the request to replace the existing deck that is in disrepair and is unsafe, and presented a map plan to the Board that was not included in the appeal application.

There being no further testimony for or against this item, the CEO provided:

1. This is a non-conforming lot with non-conforming structures located within the UR and Shoreland zones;
2. Ms. Dow has proposed to demolish an existing 12'x30' deck, and to construct a new deck in the same footprint;
3. Title 16.12.060.D., requires a minimum 15' side yard setback. The current deck is 9' from the side yard line;
4. Title 16.32.490.N.2.b. requires a 75' setback from the normal high water line.
5. The proposed deck would be no closer to the side property line or the high water line than what currently exists.

Board members briefly discussed the appeal and concurred that the proposal is a simple one, replacing the existing deck with a structurally sound structure.

Herb Kingsbury motioned to grant a miscellaneous appeal to the terms of Title 16.12.060D in order to replace the existing deck on same footprint at property located at 28 Island Avenue, Kittery, Map 1 Lot 9, in the Urban Residential District Zone and Shoreland Zone

Niles Pinkham seconded

Motion carries unanimously by all members present

Chairman Gardner reminded the applicant that this approval is not the granting of a building permit, and that aggrieved persons have 45 days to appeal this decision to Superior Court.

Findings of Fact

1. The applicant's intent is to rebuild the existing deck using the same footprint and on the existing footings.

2. The property is a non-conforming lot with non-conforming structures located within the UR and Shoreland zones;
3. The proposed deck would be no closer to the side property line or the high water line than what currently exists.

Herb Kingsbury motioned to accept the Findings as read

Bob Kaszynski seconded

Motion carries unanimously by all members present

Conclusion

The Board has the authority under Title 16.28.130.D.1.c to grant this appeal, and noted that the applicant will utilize the same footprint and existing footings to replace the deck.

Thomas Battcock-Emerson motioned to accept the Conclusion as read

Niles Pinkham seconded

Motion carries unanimously by all members present

ITEM 2 - Deane Rykerson for Rory Robb requesting a Special Exception Appeal to the terms of Title 16, Chapter 32, Section 1130-1150, Subsection A-M in order to construct an intrafamily dwelling unit. Located at 23 Tenney Hill Road, Kittery Point, Map 44 Lot 7, in the KPV Zone.

Deane Rykerson summarized the owner's need to add an intra-family dwelling unit for an elderly, widowed parent. **Rory Robb** stated that this unit is for her mother and that it will remain a single-family dwelling unit when it is no longer used by her mother.

There being no further testimony for or against this item, the CEO provided:

1. This is a non-conforming lot with non-conforming structures within the KPV zone;
2. Mr. Rykerson has proposed to construct an intrafamily dwelling unit onto an existing single family dwelling unit;
3. The average building setback has been used, the front yard setback is allowed to be reduced per ordinance;
4. Title 16.12.055.C. requires Special Exception approval for a temporary intra family dwelling unit.

Chairman Gardner read from:

Section 16.32.1140 Standards:

- A. The temporary, intra-family dwelling unit must be an accessory use to a residential structure.

Unanimous agreement this standard is satisfied

- B. The owner of the property must reside on the premises unless the ZBA finds that other ownership or tenancy characteristics are consistent with the intent of this section.

Unanimous agreement this standard is satisfied

- C. No more than one temporary, intra-family dwelling unit per dwelling unit is allowed.

Unanimous agreement this standard is satisfied

- D. Additional off-street parking must be provided if the ZBA finds that the proposed use will generate more parking demand than is currently available. Such additional parking must not be located within the required front yard unless the ZBA finds that the proposed design and location of such a parking area would not detract from the character of the residential neighborhood. *Applicant stated that there is a one-car garage currently on site, and the proposal includes a two-car garage.*

Unanimous agreement this standard is satisfied

- E. Floor plans must be submitted showing:

1. The floor plan of the existing dwelling;
2. The proposed floor plan to create the temporary, intra-family dwelling unit; and

3. A plan to convert the use of the property to its original dwelling status or another conforming permanent use.

The above submission requirements may be waived or modified by the ZBA provided the intent of this section is satisfied. *Thomas Battcock-Emerson requested that a notation be made on plan sheet A-1 or within the Board approval noting that the kitchenette will be removed to satisfy this item.*

Unanimous agreement this standard is satisfied

F. To assure that a proposed temporary, intra-family dwelling unit does not become an apartment yielding a financial gain, at least one accessible connection between the two units must be shown in the floor plan for creation of the temporary intra-family dwelling unit unless the ZBA determines such a connection is not practicable. *The applicant noted that the separate entry is through the enclosed, heated and insulated sunporch, and noted that the plan can be amended to create a door into the proposed unit between the bedroom and laundry area. Board members agreed that the proposed entry off the porch is acceptable as a separate entry.*

Unanimous agreement this standard is satisfied

G. The architectural treatment of constructing the temporary, intra-family dwelling unit must be such as to portray and retain the character of the principal dwelling so as to preserve the land values in the neighborhood. Factors to consider include, but are not limited to, the number and location of entrances, exterior façade materials, pitch of the roof, and the number of driveways.

Unanimous agreement this standard is satisfied

H. The temporary, intra-family dwelling unit must share common utility metering with the dwelling for water and electric services unless preexisting separate metering legally exists.

Unanimous agreement this standard is satisfied

I. Buildings currently nonconforming as per lot coverage may be utilized for a temporary, intra-family dwelling unit as long as the proposed dwelling unit would not increase nonconformity with regard to lot coverage.

Unanimous agreement that standards are satisfied

J. The “minimum land area per dwelling unit” requirement of each zoning district does not apply to a temporary, intra family dwelling unit.

Unanimous agreement this standard is satisfied

K. The applicant must demonstrate that there is adequate wastewater disposal capacity for the temporary, intra-family dwelling unit. *The applicant stated that the septic is a three-bedroom rated system.*

Unanimous agreement this standard is satisfied

L. The temporary, intra-family dwelling unit must not be used for transient lodging nor shall the availability of such dwelling unit be advertised.

Unanimous agreement this standard is satisfied

M. The temporary, intra-family dwelling unit must not be used to yield a financial gain.

Unanimous agreement this standard is satisfied

AND

Section 16.32.1150. Conditions

- A. The applicant must annually submit a signed and dated certification by January 15th of each year to both the code enforcement officer and the zoning board of appeals that the temporary, intra-family dwelling unit is occupied by either a:
1. Person(s) related by blood or marriage within the sixth degree to an occupant of the property;
 2. Personal care provider(s) to an occupant of the property;
 3. Personal care receiver(s) from an occupant of the property; or
 4. Person(s) with a demonstrably familial type relationship to an occupant of the property.

Failure to submit such an annual certification shall constitute the expiration of any approval of the temporary, intra-family dwelling unit. Within forty-five (45) days of an expiration of the approval, the use of the property must be converted to its original status or another conforming permanent use.

- B. Upon a permanent vacancy of the temporary, intra-family dwelling unit or the applicant no longer residing on the premises, the use of the property must be converted to its original dwelling status or another conforming permanent use.
- C. Reapplication to the ZBA upon a change in ownership of the property.
- D. Joint signature of submitted floor plans by the applicant and a representative of the ZBA signifying the approved design of the temporary, intra-family dwelling unit, and the manner to convert the use of the property to its original dwelling status or another conforming permanent use.

Chairman Gardner asked if Board members had any objections to:

Section 16.24.060B, 1-16, *Factors for Consideration*

There were no objections

Section 16.24.060C, 1-6, *Additional Special Exception Conditions*

There were no objections

Section 16.24.060A, 1-4, *Basis for Decision*

There were no objections

Niles Pinkham motioned to grant a special exception appeal to the terms of Title 16.32.1130-1150, Subsection A-M, to Deane Rykerson for Rory Robb, for property located at 23 Tenney Hill Road, Map 44 Lot 7 in the KPV Zone.

Herb Kingsbury seconded

Motion carries unanimously by all members present

Chairman Gardner reminded the applicant that this approval is not the granting of a building permit, and that aggrieved persons have 45 days to appeal this decision to Superior Court.

Findings of Fact

1. Deane Rykerson for Rory Robb requested a Special Exception Appeal to the terms of Title 16.32.1130, A-M and 1150, A-D, to construct a temporary, intrafamily dwelling unit on property located at 23 Tenney Hill Road, Kittery Point, Map 44 Lot 7, in the KPV Zone;
2. This is a non-conforming lot with non-conforming structures within the KPV zone;
3. The average building setback has been used, the front yard setback is allowed to be reduced per ordinance;
4. The applicant has noted a modification that the kitchenette shall be removed at the end of the temporary use of the unit.

Niles Pinkham motioned to accept the Findings as read

Bob Kaszynski seconded

Motion carries unanimously by all members present

Conclusion

The Board granted the Special Exception Appeal, citing authority under 16.24.060A, 1-4, B, 1-16, and C, 1-6.

Thomas Battcock-Emerson motioned to accept the Conclusion as read

Herb Kingsbury seconded

Motion carries unanimously by all members present

ITEM 3 - James J. Comeau requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 12, Section 070E, Page 239-240 in order to replace a 23+ year old rotted front porch with a new porch in same design on same footprint. Located at 33 Halstead Street, Kittery, Map 16 Lot 39, in the Village Residential District Zone.

James Comeau summarized the request to replace a rotted porch with a new porch in the same footprint. **Mo Houde** spoke in favor of the project, as did **Lisa M. Comeau**.

There being no further testimony for or against this item, the CEO provided:

1. This is a conforming lot with a non-conforming structure in the VR zone;
2. Title 16.070E requires a minimum 15 foot front yard setback
3. The deck, partially constructed, is 10'4" from the front property line. The previously existing deck was also 10'4" from the property line

Chairman Gardner asked if the partially constructed deck is a violation. The CEO noted that the construction started without a building permit, she advised the owner what steps needed to be taken to rectify the situation, and provided him an opportunity to apply for the permit without a notice of violation.

Board members noted that the applicant is also including a roof over the door, and is not simply replacing the deck.

Bob Kaszynski motioned to grant a miscellaneous appeal to the terms of Title 16.12.070E to James Comeau in order to replace a rotted front porch with a new porch on the same footprint, and to include a partial 4'x12' roof over the door, at property located at 33 Halstead Street, Map 16 Lot 39 in the VR District.

Thomas Battcock-Emerson seconded

Motion carries unanimously by all members present

Chairman Gardner reminded the applicant that this approval is not the granting of a building permit, and that aggrieved persons have 45 days to appeal this decision to Superior Court.

Findings of Fact

1. James J. Comeau requested a Miscellaneous Appeal to the terms of Title 16.12.070E in order to replace a rotted front porch with a new porch in the same design on the same footprint, at property located at 33 Halstead Street, in the VR District.
2. This is a conforming lot with a non-conforming structure in the VR zone;
3. A minimum 15 foot front yard setback is required. The deck, partially constructed, is 10'4" from the front property line. The previously existing deck was also 10'4" from the property line
4. A 4' x12' roof will be constructed on a 4' x22' deck.

Thomas Battcock-Emerson motioned to accept the Findings as read

Bob Kaszynski seconded

Motion carries unanimously by all members present

Conclusion

The Board has the authority to grant this appeal under Title 16.12.070E.

Thomas Battcock-Emerson motioned to accept the Conclusion as read

Herb Kingsbury seconded

Motion carries unanimously by all members present

The next ZBA meeting will be September 22, 2009.

Chairman Gardner asked Board members if there were any items in the minutes to correct or amend. There being none, the Chair cast one ballot to accept the Minutes of July 28, 2009 and August 11, 2009 as submitted.

The meeting of September 8, 2009 was adjourned at 8:15 pm

Submitted by Jan Fisk, September 14, 2009