

Town of Kittery
Zoning Board of Appeals
September 22, 2009

Call to Order: 7:08 p.m.

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

Members absent: Vern Gardner, Brett Costa

Staff: Heather Ross, Code Enforcement Department

Pledge to the Flag

In the absence of the Chairman, Craig Wilson advised the applicants that there are only five Board members present, and if any applicant wishes to appear before the full Board, they may elect to postpone their appeal.

PUBLIC HEARING

ITEM 1 - Jeff Apsey requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 12, Section 055E, Page 238-4 in order to replace the existing 9'x14' front deck and stairs. Located at 5 Chauncey Creek Road, Kittery Point, Map 44 Lot 30, in the Kittery Point Village District Zone.

Jeff Apsey summarized the request to replace the existing deck, framing timber, skirting, etc. The deck will remain at the same location and remain the same size.

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 KPV and Shoreland zones;
2. Mr. Apsey has proposed to demolish the existing landing and stairs, and to construct a new deck and stairs.
3. Title 16.12.055.E.2 requires a minimum 40' front yard setback. The current landing is 9' from the property line. The proposed deck and stairs is proposed to be no closer to the front property line than the existing landing.
4. Title 16.32.490.n.2.b requires a minimum 75' setback from the normal high water line, if the property is located on a public street. The current landing and stairs are 73' from the high water line. The proposed deck and stairs would be no closer to the high water line than what currently exists.

Thomas Battcock-Emerson asked if the proposed deck is on the same footings. **Mr. Apsey** stated that he would have to replace the frame and footings, but that they would be re-located in the same place, utilizing concrete piers if necessary. **Bob Kaszynski** asked how long the stairs had been at that location on the house. **Mr. Apsey** stated that the house was built in 1909 and a picture of the property shows the location of the door, 6' off the ground, where the deck and stairs would be located.

Niles Pinkham motioned to grant a Miscellaneous Appeal to the terms of Title 16, Chapter 12, Section 055E in order to replace the existing 9'x14' front deck and stairs, at the same location, and no closer to the setback than the existing structure, at property located at 5 Chauncey Creek Road, Kittery Point, Map 44 Lot 30, in the Kittery Point Village District Zone.

Thomas Battcock-Emerson seconded

Motion carries unanimously by all members present

Mr. Wilson 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.

Chairman Gardner arrived at the meeting at 7:35 pm

Findings of Fact

1. Jeff Apsey applied for a miscellaneous appeal to the terms of Title 16, Chapter 12, Section 055E in order to replace the existing 9'x14' front deck and stairs, at the same location, and no closer to the setback than the existing structure, at property located at 5 Chauncey Creek Road, Kittery Point, Map 44 Lot 30, in the Kittery Point Village District Zone.
2. This is a non-conforming lot with non-conforming structures located within the KPV and Shoreland zones, and the applicant proposes to demolish the existing landing and stairs, and to construct a new deck and stairs.
3. Title 16.12.055.E.2 requires a minimum 40' front yard setback. The current landing is 9' from the property line. The proposed deck and stairs is proposed to be no closer to the front property line than the existing landing.
4. Title 16.32.490.n.2.b requires a minimum 75' setback from the normal high water line, if the property is located on a public street. The current landing and stairs are 73' from the high water line. The proposed deck and stairs would be no closer to the high water line than what currently exists.
5. There was no public comment for or against the appeal request.

There being no objections to the Findings of Fact, they were accepted unanimously as read.

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.

There being no objections to the Conclusion, it is accepted unanimously as read.

ITEM 2 - Ken Couperthwait for Kevin Routley requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 32, Section 490N2, Page 316, and Title 16, Chapter 12.070, Page 239 in order to build an egress deck for the exit door of the house. Located at 9 Bond Road, Kittery Point, Map 25 Lot 2, in the Kittery Point Village District and Shoreland Zone.

Ken Couperthwait, Mainely Renovations, was hired by the owner Kevin Routley to build the deck. The deck has been built, as he misunderstood about how he could proceed following discussions with the CEO. Applicant was advised by the CEO that the side setback requires 15 feet, but that a 3'x3' deck could be installed into the setback for life safety access and egress. The deck was built longer to clear and cover the access to the crawl space next to the deck, creating a deck that measures 3'7" x 7'6". Had the deck been constructed to the 3'x3' size, the crawl space would have been blocked. The plane of the setback has not been changed. Building code requires handrails and 3' clearance within the deck, resulting in an additional 7" in width on the deck.

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 and Shoreland zones.
2. Mr. Routley has submitted an application for a 3'7"x7'6" landing and stairs, already constructed.

3. Title 16.12.055.E.2 requires a minimum 15' side yard setback. The deck as constructed is 8 feet from the side property line.
4. Title 16.32.490.N.2 requires a minimum 75' setback for decks no larger than 500 square feet. The deck is shown to be 29' from the high water line.

Board members discussed the location of the deck from the high water mark and were in agreement that it has been rebuilt no closer to the highwater mark than the existing structure. However, the extension of the deck along the side of the home, beyond what is permitted for life safety structures, is in violation of the side setback.

Mr. Couperthwait requested that the Board consider that the extension beyond three feet does not impact the high water mark, and moving the crawl space would be very difficult as there is ledge around the house. The extension does not provide a useable deck for recreational purposes, but merely provides a cover over an unsightly access panel that faces the water.

Herb Kingsbury motioned to approve the miscellaneous appeal by Ken Couperthwait for Kevin Routley to the terms of Title 16.32.490N2 and Title 16.12.055.E.2, in order to build 3'7' x 7'6" egress deck at property located at 9 Bond Road, Kittery Point, Map 25 Lot 2, in the Kittery Point Village District and Shoreland Zone.

Thomas Battcock-Emerson seconded

Motion fails, 0 in favor, 5 against, 1 abstention (Pinkham)

Findings of Fact

1. Ken Couperthwait for Kevin Routley requested a miscellaneous appeal to the terms of Title 16.32.490N2 and Title 16.12.055.E.2, to build an egress deck for an exit door at property located at 9 Bond Road, Kittery Point, Map 25 Lot 2, in the KPV and Shoreland Zone.
2. This is a non-conforming lot with non-conforming structures within the KPV and Shoreland zones.
3. The applicant submitted an application for a 3'7"x7'6" landing and stairs which were already constructed.
4. Title 16.12.055.E.2 requires a minimum 15' side yard setback, and the deck as constructed is 8 feet from the side property line.
5. Title 16.32.490.N.2 requires a minimum 75' setback for decks no larger than 500 square feet. The deck is shown to be 29' from the high water line.
6. There was no previous existing landing or stairs. Life safety allows for landing and stairs that do not exceed 3'x3', and would not violate setback.
7. There was no public comment for or against the appeal request.

Thomas Battcock-Emerson motioned to accept the Findings as read

Herb Kingsbury seconded

Motion carries unanimously by all members present

Conclusion

Because the stairs and landing exceeds the 3'x3' allowed for life safety, the Board cannot approve the 7'6" portion of the deck as it violates the side setback.

Niles Pinkham motioned to accept the Conclusion as read

Hert Kingsbury seconded

Motion carries unanimously by all members present

Chairman Gardner reminded the applicant that aggrieved persons have 45 days to appeal this decision to Superior Court.

ITEM 3 - Ralph and Catherine Eager requesting a Variance Appeal to the terms of Title 16, Chapter 12, Section 140D, Page 256-3 in order to convert a commercial office condo to a residential condo. Located at 5 Badgers Island West Unit 1, Kittery, Map 1 Lot 20-5, in the Badgers Island District Zone.

Catherine Eager, summarized the request to modify the unit from a commercial to a residential use, noting that the prior business had closed, and they had been unable to continue to rent the space as a commercial use. By adding the necessary utilities to convert to a residential condo, they believed it would rent successfully.

Tony Marquis, abutter, spoke about the surrounding working waterfront, and questioned how the unit became an office condo in the first place, as deeds reference it as a tool shed. There does not appear to be adequate parking for the current use, the building is located less than 4 feet from his property, and he illustrated that there may be issues regarding rights of way.

[A letter of support from Capt. Eric Robinson of the Badgers Island West Condo Association was presented to Board members]

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 Badgers Island Urban and Shoreland zones.
2. Title 16.12.140.D. requires a minimum 3,000 sf per dwelling unit. The property is approximately 12, 632 sf with four existing dwelling units on this parcel. The required minimum lot size for five dwelling units would be 15,000 sf, or 2,368 sf less than what is required.

Herb Kingsbury read the definition of variance and **Craig Wilson** noted that a variance cannot be granted for use.

Niles Pinkham stated that prior appeals have not been supported because there was insufficient land area available, as is the case in this request. There was general discussion and presentation by **Mr. Marquis** regarding parking in the area, what was legally created, and areas that are not compliant for parking. **Ms. Eager** asked if there were any exceptions to the minimum square footage required for dwelling units. **Chairman Gardner** explained that granting variances is rare and that her request does not appear to fall within exceptions that a variance can grant. **Craig Wilson** stated that economic hardships cannot drive zoning decisions. **Bob Kaszynski** asked if a variance was required to change the use. **Herb Kingsbury** stated that a variance would be required to change the minimum square footage required in the zone for residential use. **Thomas Battcock-Emerson** asked if this could be considered an open space question. The CEO read the definition of open space: *...all dedicated portions of a parcel that has vegetated surfaces or is in an undisturbed natural state. "Open space" does not include areas occupied by a building or a parking area...*

Herb Kingsbury motioned to approve the variance appeal by Ralph and Catherine Eager to the terms of Title 16.12.140D, in order to convert a commercial office condo to a residential condo. Located at 5 Badgers Island West Unit 1, Kittery, Map 1 Lot 20-5, in the Badgers Island District Zone.

Thomas Battcock-Emerson seconded

Discussion continued regarding granting variances to zoning standards based on economic hardship.

Motion is denied, 0 in favor, 6 against, 0 abstentions

Chairman Gardner reminded the applicant that aggrieved persons have 45 days to appeal this decision to Superior Court.

Findings of Fact

1. Ralph and Catherine Eager requested a Variance Appeal to the terms of Title 16, Chapter 12, Section 140D, in order to convert a commercial office condo to a residential condo. Located at 5 Badgers Island West Unit 1, Kittery, Map 1 Lot 20-5, in the Badgers Island District Zone.
2. This is a non-conforming lot with non-conforming structures.
3. Title 16.12.140.D. requires a minimum 3,000 sf per dwelling unit. The property is approximately 12, 632 sf with four existing dwelling units on this parcel. The required minimum lot size for five dwelling units would be 15,000 sf, or 2,368 sf less than what is required.
4. Tony Marquis spoke in opposition of the variance request.

Herb Kingsbury motioned to accept the Findings as read

Bob Kaszynski seconded

Motion carries unanimously by all members present

Conclusion

The definition of variance was not met and the Board could not, therefore, grant a variance.

Thomas Battcock-Emerson motioned to accept the Findings as read

Niles Pinkham seconded

Motion carries unanimously by all members present

The next ZBA meeting will be held October 13, 2009.

Minutes

The minutes of September 8, 2009 were not available for review and will be reviewed at the October 13, 2009 meeting.

The meeting of September 22, 2009 was adjourned at 8:50 p.m.

Submitted by Jan Fisk, September 23, 2009