

Town of Kittery, Maine  
Zoning Board of Appeals  
January 12, 2010

Call to Order: 7:02 p.m.

**Members present:** Thomas Battcock-Emerson, Niles Pinkham, Craig Wilson, Vern Gardner, Bob Kaszynski, Brett Costa

**Members absent:** Herb Kingsbury

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

Pledge to the Flag

**Chairman Gardner** read each item on the agenda. He also explained that there were only five Board members present, with a successful appeal requiring four affirmative votes. Applicants may postpone their appeals to another meeting

1. John Waldron requesting a Miscellaneous Appeal to the terms of Table 16.12 Minimum Setbacks from Wetlands and Waterbodies in order to tear down the existing structure, replace stone foundation with concrete, replace bathroom, and remaining area to be a living room. Located at 20 Foyes Lane, Kittery Point, Map 36 Lot 41A, in the Kittery Point Village Zone.

**Mr. Waldron** summarized his appeal for the Board, explaining that the foundation had failed and the structure could not be repaired. Chairman Gardner asked if there was anyone wishing to speak for or against the appeal.

Stephen Hall, Kittery Conservation Commission, stated the application did not indicate any wetland delineation; therefore, the KCC could not reach a conclusion of opinion. There being no further testimony, the CEO provided:

1. This is a non-conforming lot with non-conforming structures locate in the KPV zone.
2. Mr. Waldron is proposing to demolish an existing 28'x15' portion of an existing home and construct a new addition in the same footprint.
3. Table 16.12 requires a 100 foot setback from bodies of water greater than one acre in size.
4. The existing portion of the house is less than the required 100 foot setback. The proposed addition is no closer to the wetlands than the existing house, at approximately 87 feet.

**Brett Costa** stated this appears to be a "no closer than" application.

**Craig Wilson** stated the plan should illustrate the location of the wetlands. Board members determined it appears the wetlands are along the property lines.

**Chairman Gardner** asked the KCC representative if constructing on the existing foundation area would be acceptable. **Mr. Hall** stated that it would not, though approval has been granted in the past. Under the new ordinance, not yet adopted, this request would not be approved.

**Brett Costa motioned** to grant a miscellaneous appeal to John Waldron to the terms of Table 16.12, Minimum Setbacks from Wetlands and Waterbodies, to replace the existing stone foundation with concrete, and the existing 28'x15' portion shall be constructed in the exact location as it currently exists. Property is located at 20 Foyes Lane in the KPV zone

**Niles Pinkham seconded**

**Motion carries unanimously by all members present**

**Findings of Fact**

1. John Waldron appeared before the Board, outlining a history of the property, stated that the portion of the house could not be repaired, but would be replaced in the exact location of the existing foundation.

2. Stephen Hall of the Kittery Conservation Commission stated the Commission could not make an opinion of the application as there was not sufficient information provided on the applicant's map.
3. This is a non-conforming lot with non-conforming structures locate in the KPV zone.
4. The home is in two sections, with the 28'x15' portion to be demolished to construct a new addition in the same footprint.
5. Table 16.28 requires a 100 foot setback from bodies of water greater than one acre in size, with the existing structure located at approximately 87 feet from the wetland.

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

**Brett Costa seconded**

**Motion carries unanimously by all members present**

### **Conclusion**

The Board has the authority under Section 16.28.130 *Non-Conforming Building, A. Repair and Enlargement* to grant this appeal and, following review, motioned to do so.

**Brett Costa motioned** to accept the Conclusion as read

**Niles Pinkham seconded**

**Motion carries unanimously by all members present**

Chairman Gardner advised the applicant that this decision is not the granting of a building permit and may be appealed to Superior Court within 45 days.

**Thomas Battcock-Emerson motioned** to include the following language as part of the original motion to grant the appeal:

Should the applicant be unable to begin or complete the project within ZBA approval timeframes, he may return to the Board, prior to expiration of said timeframes, with a request for an extension of time.

**Brett Costa seconded**

**Motion carries unanimously by all members present**

2. Chris Sorrell for Chris Housley requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 12, Section 060D, Page 238.5 in order to widen the existing 4'x7' deck to 4'x9' and enclose to add 32 - 36 square feet of living space, and widen the existing front door opening to the 9' opening into deck area. Located at 152 State Road, Kittery, Map 14 Lot 75, in the Local Business Zone.

**Chris Housley** summarized the appeal request. **Chairman Gardner** asked if there was anyone wishing to speak for or against the appeal. There being none, the CEO provided:

1. This is a non-conforming lot with non-conforming structures locate in the LB zone.
2. Mr. Housley is proposing to demolish an existing 4'x7' deck at the front of the house, and construct a 4'x9' enclosed space.
3. Section 16.12.100 requires single family residential front property line setback be 30 feet (same as UR zone; section 16.12.060D).
4. The existing deck is 27 feet from the front property line, and the proposed enclosed space will not be any closer to the front property line than what currently exists.

Board members Costa, Pinkham, and Wilson concurred the proposed enlargement was no closer than the existing structure. **Chairman Gardner** noted he scaled the plan and looked at the property and it appeared to be 15 feet from the road, not 27 feet, as illustrated. He asked the CEO if there was any way to confirm the distance. The **CEO** stated not without a site visit. **Chairman Gardner** asked if the deck

could be considered to be stairs, not part of the structure. The **CEO** stated that because of the size of the deck, it could not be considered stairs for life-safety consideration. Other properties along the road appear to be set back further than this building, so the ordinance allowing averaging would not apply. The existing deck has no roof. The “no closer than” application seems to apply in this case.

**Brett Costa motioned** to grant a miscellaneous appeal to Chris Housley to the terms of 16.12.060D in order to widen the existing 4' x 7' deck to 4'x9' and enclose the new deck, adding an additional 32-36 square feet of living space. Property is located at 152 State Road, in the LB zone.

**Thomas Battcock-Emerson seconded**

**Motion carries unanimously by all members present**

#### **Findings of Fact**

1. This is a non-conforming lot with non-conforming structures locate in the LB zone.
2. Mr. Housley is proposing to demolish an existing 4'x7' deck at the front of the house, and construct a 4'x9' enclosed space.
3. Section 16.12.100 requires single family residential front property line setback be 30 feet (same as UR zone; section 16.12.060D).
4. The applicant stated the front setback is 27 feet from the front property line. The Chairman questioned the dimension, stating it appeared to be 15 feet.
5. The proposed enclosed space will not be any closer to the front property line than what currently exists.
6. The Chairman questioned whether the deck could be considered as stairs and not part of the existing structure, but the CEO stated it could not.
7. The Chairman also stated that the setbacks of the adjacent homes were larger and could not, therefore, be averaged.

**Brett Costa motioned** to accept the Findings as read

**Niles Pinkham seconded**

**Motion carries unanimously by all members present**

#### **Conclusion**

The Board has the authority under Section 16.28.130 *Non-Conforming Building, A. Repair and Enlargement* to grant relief from the front yard setback and, following review, motioned to do so.

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

**Brett Costa seconded**

**Motion carries unanimously by all members present**

Chairman Gardner advised the applicant that this decision is not the granting of a building permit and may be appealed to Superior Court within 45 days.

3. Stephen Tetreault for SGT Training & Development LLC requesting an Administrative Appeal to the terms of Title 16, Chapter 12, Section 040D, Page 237 and Title 16, Chapter 08, Section 020, Page 231 in order to split Lot 34 into 2 distinct buildable lots. Located at 36 Adams Road, Kittery, Map 60 Lot 34, in the Rural Residential Zone.

**Chairman Gardner** explained the applicant, in an Administrative Appeal, had to present an argument that the CEO had acted incorrectly in her decision to deny his appeal.

**Stephen Tetreault** summarized the denials issued by the CEO:

1. 150 feet of minimum street frontage per lot. Map 3 of the application package illustrates two lots with a minimum of 150 feet of frontage, each.
2. Ratio of lot length to width. Applicant believes the ratio is within ordinance guidelines and the lot is not “odd shaped”.

**Chairman Gardner** asked if there was anyone wishing to speak for or against the appeal.

**John P. O'Brien**, property abutter, supported the efforts of the applicant to split the property, noting that it would improve and increase the value of the property. There being no further testimony, the CEO provided:

1. This is a conforming, vacant lot located in the Rural Residential zone.
2. As part of the packet provided by the applicant, there are three sketch plan drawings provided. The first is existing conditions; the second proposes a division that does not meet the minimum frontage required and was denied; and the third includes a proposed split with 150 feet of continuous frontage.
3. Title 16.12.040.D. requires 150 feet minimum continuous street frontage.
4. Street frontage is defined as *a continuous portion of a boundary of a lot which abuts a street, ordinarily regarded as the front of the lot. When a lot is bounded by more than one street, any one of them, but only one, may be designated as the frontage street by the owner, provided that the lot meets the frontage requirement on that street, front, side and rear yard setbacks, and that the principal building is numbered on that street.*
5. The proposed lot split submitted (second map), does not provide 150 feet of continuous street frontage.
6. Title 16.32.940 states that *the ratio of lot length to width shall not be more than three to one. Flag lots and other odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.*
7. It is the determination of the CEO that the proposed division would create an odd-shaped lot.

**Mr. Tetreault** stated that when he originally submitted an application for a septic permit, no concerns were raised at that time. The amount of wetlands on the existing lot and subsequent split lots then became an issue, followed by the frontage. Had he been told in the beginning that there was insufficient frontage to split the lot, he would not have invested substantial funds into the property. It seemed that his request did not get the attention it deserved and that it took over 45 days to deny the lot split over an issue that should have been straight forward. The **CEO** stated the original septic design request was for a single lot.

**Craig Wilson** stated that he would agree with the CEO regarding the original denial that there was insufficient road frontage based upon the drawing (#2) submitted. However, he did not agree with the denial based on Title 16.32.940. While the lot may be "odd shaped", it is not an odd-shaped lot "in which narrow strips are joined to other parcels". This is an odd shaped lot that is created out of a vacant lot, and does not meet the strict interpretation of the ordinance. Mr. Wilson proposed that, based on the third drawing illustrating the required frontage on both lots, that the Board modify the Code Enforcement Officer's decision. Mr. Wilson asked if the CEO wished to rebut his interpretation of Title 16.32.940 as he does not feel that "narrow strips are joined...to meet minimum lot size requirements".

**Chairman Gardner** explained that an Administrative Appeal can be upheld, denied or modified. Board members discussed the circumstances and chronology of the application process. **Craig Wilson** noted that one decision for denial (frontage) is correct, but feels the other denial decision (odd shaped lot) is not. The applicant has since provided drawing #3 correcting the insufficient frontage. With this additional information, the Board can modify the decision of the CEO.

**Thomas Battcock-Emerson motioned** to modify the decision of the Kittery CEO in the Administrative Appeal of Stephan Tetreault to the terms of Title 16.12.040.D, and Title 16.08.020, in order to split Kittery tax map 60, lot 34 into 2 distinct lots. Said property is located at 36 Adams Road in the Rural Residential Zone.

**Brett Costa seconded**

**Motion carries unanimously by all members present**

### **Findings of Fact**

1. Stephan Tetreault appeared before the Board requesting an Administrative Appeal to the terms of Title 16.12.040D, and Title 16.08.020 in order to split Lot 34 into 2 distinct buildable lots. The property is located at 36 Adams Rd., Kittery, Map 60, Lot 34 in the RR Zone.
2. Lot 34 is currently conforming and is vacant, although the applicant has begun site work on one portion of the lot.
3. Mr. John O'Brian, who owns an abutting property, spoke in favor of the appeal, saying it would enhance the neighborhood.
4. At the time of the denial, the applicant submitted a plan showing a land division where one lot had a minimum of 150 feet of continuous road frontage, and the second lot contained a minimum of 150 feet of frontage, but not continuous. It was this plan upon which the CEO based her denial. Following this denial, the applicant submitted a third plan with the required, continuous, road frontage for both lots. Said plans were drawn by CLD Consulting Engineers, job #0802000.
5. The CEO's denial was also based on Title 16.32.940, Lot Shape. The CEO determined one of the two lots to be an "odd-shaped lot".
6. The applicant has requested relief in order to split lot 34 into two "buildable" lots. The Zoning Board of Appeals does not, in its actions, classify whether a lot is buildable or not, but only that it is conforming to the lot requirements for the applicable zone.

### **Conclusions**

1. The Zoning Board of Appeals concluded that the CEO acted correctly in denying the application based on the original plan that did not demonstrate both lots contained 150' of continuous road frontage, per Title 16.12.040D and Title 16.08.020. However, the applicant had, since that denial, provided a plan that illustrates both lots conform to the Code.
2. The Board concluded that the CEO was in error in her interpretation of Title 16.32.940, and reversed the denial based on that section.
3. The Board, therefore, exercised its authority under Title 16.04.050.B.2.a to modify the CEO's decision and granted the applicant's appeal.

Scheduled agenda items 4 and 5 were withdrawn.

The next ZBA meeting will be February 9, 2010

**Brett Costa** announced he had received information regarding TD Automotive on Route 236. He spoke to an inspector in Augusta who told him that a repair facility is required when selling cars. This illustrates that local and state requirements can differ, and the applicant needs to be aware of both.

The Minutes of December 3, 2009 were amended [no vote taken].

The meeting of January 12, 2010 adjourned at 9:35 p.m.

Submitted by Jan Fisk, January 19, 2010