

Town of Kittery, Maine  
Board of Appeals  
February 9, 2010

Call to Order: 6:07 p.m.

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

**Members absent:** Niles Pinkham

**Staff:** Heather Ross, Code Enforcement Department  
Pledge to the Flag

**Chairman Gardner** read each item on the agenda.

1. Attar Engineering, Inc. for Kittery School Department requesting a Miscellaneous Appeal to waive the provisions of Land Development Code Section 16.32.560D thereby enabling the Town School Department's off-street parking on approximately 0.4 acre on adjacent Town land, currently occupied by the Kittery Point Fire Department. The parking will be used for Mitchell School additional parking and student drop-off and pick-up subject to applicable Town Code land use and development requirements. Located at 7 School Lane, Kittery Point, Map 27 Lot 20, in the Residential - Kittery Point Village Zone.

**Thomas Battcock-Emerson** recused himself from review of this item as he is a member of the Mitchell & Shapleigh School Building Committee. **Craig Wilson** stated that this is a straightforward appeal request and he would not object to Mr. Battcock-Emerson's review as a Board member. Mr. Battcock-Emerson stated if someone felt aggrieved, he felt stepping down would be the best action. He also brought to the Board's attention a correction by the Fire Chief, that it is not the Kittery Point Fire Department, but the Kittery Fire Department, Kittery Point Station. **Gerry Mylroie, Town Planner**, provided a summary of the appeal request, referencing a 1/21/10 memo from him to the Board, included in the application packet.

There being no further testimony, the CEO provided:

1. Map 27 Lot 20 is a non-conforming (frontage) lot with conforming structures and conforming use located within the Kittery Point Village zone.
2. Map 36 Lot 5 is a conforming lot with a non-conforming structure and conforming use located within the Kittery Point Village and Local Business zones.
3. The Town of Kittery is proposing to construct a 5, 160 square foot addition to Mitchell School, which would result in a need for thirty three additional parking spaces.
4. Title 16.32.560D states: *Required off-street parking in all residential districts shall be located on the same lot as the principal building or use, except that where it cannot reasonably be provided on the same lot, the Board of Appeals may authorize residential off-street parking to be located on another lot within three hundred (300) feet of the residential uses served, as measured along lines of public access. Such parking areas shall be held under the same ownership or lease as the residential uses served, and evidence of such control or lease shall be required. Leases obtained for this purpose shall be reviewed by the town attorney at the developer's expense and shall include requirement for notice to the town upon termination of lease. Approval for uses dependent on such lease shall be terminated upon termination of the lease.*
5. The Town of Kittery is asking that they be allowed to locate off-street parking on another lot. The adjacent lot is owned by the Town of Kittery, and is within 300 feet.

**Craig Wilson** noted there does not appear to be any standards in the ordinance for the Board can apply when determining 'where it cannot reasonably be provided'. How is the distance of 300 feet determined?

The Town Planner measured from the front door, at 240 feet to the beginning of parking. For commercial use, it is the distance measured from the property line. There is plenty of space, but the code is unclear in this application. **Chairman Gardner** asked why a lot line revision was not pursued to allow for more parking on the school lot, which would not have required a miscellaneous appeal. **Lou Chamberlain, Attar Engineering**, explained the reason was timing, because a lot line adjustment on public property would require Council action and possibly a Town meeting, and a successful appeal would move the project forward. **Craig Wilson** reviewed Section 16.24.060.A., *Basis for Decision* and B. 1-16, *Factors for Consideration* and found the application to be in substantial compliance.

**Bob Kaszynski motioned** to grant a Miscellaneous Appeal to waive the provisions of Section 16.32.560.D enabling the Kittery School Department off-street parking on approximately 0.4 acre on adjacent Town land, currently occupied by the Kittery Fire Department, Kittery Point Station. The parking will be used for Mitchell School additional parking and student drop-off and pick-up subject to applicable Town Code land use and development requirements. The property is located at 7 School Lane, Kittery Point, Map 27 Lot 20, in the Residential - Kittery Point Village Zone. The project is depicted on a plan prepared by Attar Engineering, Job No: C068-10, dated January 20, 2010.

**Herb Kingsbury 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.

#### **Findings of Fact**

1. Town Planner Mylroie summarized a presentation for the Kittery School Department, requesting 33 parking spaces for the Mitchell School expansion. Spaces will be located on an adjacent Town parcel occupied by the Kittery Fire Department, Kittery Point Station.
2. The request references Section 16.32.560D whereby if parking on the lot of principal use is not practicable, parking may be authorized the Board of Appeals on an adjacent lot within 300 feet.
3. There is no practicable space available on the subject parcel. Any available space is taken up by athletic fields or playgrounds.
4. The Kittery Town Council has indicated they have no objection to the use as proposed.

**Herb Kingsbury motioned** to accept the Findings as read

**Brett Costa seconded**

**Motion carries unanimously by all members present**

#### **Conclusion**

Under 16.04.050.B.2.C.ii the Board of Appeals is authorized to permit variations in parking standards as specified in Article 11, and in 16.32.560.D authorizing the Board of Appeals to permit off-site parking within 300 feet of the primary parcel when on-site parking is not practicable.

**Bob Kaszynski motioned** to accept the Conclusion as read

**Brett Costa seconded**

**Motion carries unanimously by all members present**

#### **Mr. Battcock-Emerson returned to the Board**

2. Michael Morrison for Nineteen Oak, LLC requesting an Administrative Appeal to the terms of Title 16, Chapter 12, Section 050, Page 238, Title 16, Chapter 28, Section 140, Page 276, Title 16, Chapter 32, Section 490K2, Page 310, Title 16, Chapter 32, Section 490N2A, Page 316, Title 16, Chapter 32, Section 490N2B, Page 316, and Title 16, Chapter 32, Section 490N2F, Page 317 in order to raze the existing structure noted as Building #1 on plan and rebuild with the use of volume from buildings 1 & 2 shown on

plan; also bring ground floor elevation to exceed floodplain by 1.4', improve rear setback, and decrease non-vegetated coverage. Located at 19 Oak Terrace, Kittery, Map 2 Lot 1, in the Suburban Residential Zone.

**Walter Woods, Greystone Builders, Inc.**, explained to the Board that the applicant made adjustments to the building plan since denied their permit by the CEO. The plan provided in the appeal package represents a re-sized footprint from that originally submitted to the CEO. **This new plan should resolve the issues that were included in the denial letter of November 25, 2009.** Mr. Woods explained that the changes make the building more conforming and the land use less non-conforming.

**Craig Wilson** noted the Board is hearing an Administrative Appeal and testimony has been given that the material upon which the CEO made her decision is different from the information before the Board. The Board cannot determine the CEO was in error if the application material has been updated since her denial. It may be cleaner to hear the Miscellaneous Appeal first, since the plan has been amended, and the Board would be considering non-conformity rather than a CEO decision.

**Chairman Gardner** decided to proceed with the Administrative Appeal.

**Mr. Woods** explained he wished to combine the allowable volumetric expansion of the buildings on the site and apply to the primary residential dwelling unit. Mr. Woods confirmed the plans the Board received in their packets are different from the plans reviewed by the CEO when she made her decision to deny, and believes the issues for denial have been resolved.

**Chairman Gardner** asked if there was anyone present wishing to speak in favor or against this appeal request. There being none, the CEO provided:

1. This is a non-conforming lot with non-conforming structures located within the Suburban Residential and Shoreland zones.
2. Mr. Morrison has proposed to demolish an existing dwelling unit and to construct a new dwelling unit.
3. Title 16.12.050.E requires a minimum 40 foot front yard setback. The proposed single family unit is approximately three feet from the private road, less than the required 40 foot setback.
4. Title 16.28.140, Reconstruction of Nonconforming Buildings allows buildings that are destroyed by any cause other than the willful act of the owner to be rebuilt within a one year period. This is a proposed reconstruction is not due to an act of god.
5. Title 16.32.490.K.2 allows for a 30% volume or area expansion. The proposal is for a new dwelling, not an expansion.
6. Title 16.32.490.N.2 requires a 100 foot setback from the normal high water line for principal and accessory structures; the proposed construction is 29 feet from elevation six.
7. Title 16.32.490.N.2.B requires a 75 foot setback from the normal high water line for accessory patios or decks no larger than 500 square feet. The proposed deck appears to be 29 feet from elevation 6, and a new deck area not shown on floor plans could be closer than 29 feet.
8. The total area of all structures and non-vegetated surfaces shall not exceed 20% of the lot in a shoreland zone. The existing non-vegetated cover is 41.8%. The proposed non-vegetated cover is 41.4%.
9. Proposed parking is located less than the required 100 feet.

**Brett Costa** confirmed with the applicant that the plan before the Board is an update of the plan that the CEO reviewed to based her decision to deny. **The plan before the Board is dated December 18, 2009 and the CEO's denial letter was dated November 25, 2009.** Following additional discussion regarding a course of action on these appeals before the Board, the Chairman asked for a motion to table the item.

**Herb Kingsbury motioned** to table this request for an Administrative Appeal by Michael Morrison for Nineteen Oak, LLC to the terms of Title 16.12.050, Title 16.28.140, Title 16.32.490K.2, Title 16.32.490.N.2.A, Title 16.32.490.N.2.B, and Title 16.32.490.N.2.F, in order to raze the existing structure and rebuild with the use of volume from buildings 1 & 2 shown on plan; to bring the ground floor elevation to exceed floodplain by 1.4 feet; to improve the rear setback, and to decrease the non-vegetated coverage. Property is located at 19 Oak Terrace, Kittery, Map 2 Lot 1, in the Suburban Residential Zone.

**Bob Kaszynski seconded**

**Craig Wilson** suggested this presents an opportunity to provide the applicant direction for further appeal. **Thomas Battcock-Emerson** stated the role of the **Board** is not to provide direction, but to act on a denial by the CEO. **Brett Costa** suggested the Board could review the application as a miscellaneous appeal, regardless of the changes made to the plan after the CEO denied the application. **Herb Kingsbury** disagreed.

**Motion carries:** 4 in favor; 2 opposed (Wilson & Costa)

**Herb Kingsbury motioned** to table the Miscellaneous Appeal request by Michael Morrison for Nineteen Oak, LLC to the terms of Title 16.12.050, Title 16.28.140, Title 16.32.490K.2, Title 16.32.490.N.2.A, Title 16.32.490.N.2.B, and Title 16.32.490.N.2.F, in order to raze the existing structure and rebuild with the use of volume from buildings 1 & 2 shown on plan; to bring the ground floor elevation to exceed floodplain by 1.4 feet; to improve the rear setback, and to decrease the non-vegetated coverage. Property is located at 19 Oak Terrace, Kittery, Map 2 Lot 1, in the Suburban Residential Zone.

**Bob Kaszynski seconded**

**Motion is denied;** 3 in favor; 3 opposed (Battcock-Emerson; Wilson; Costa)

The Miscellaneous Appeal may be heard.

3. Michael Morrison for Nineteen Oak, LLC requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 12, Section 050, Page 238, Title 16, Chapter 28, Section 140, Page 276, Title 16, Chapter 32, Section 490K2, Page 310, Title 16, Chapter 32, Section 490N2A, Page 316, Title 16, Chapter 32, Section 490N2B, Page 316, and Title 16, Chapter 32, Section 490N2F, Page 317 in order to raze the existing structure noted as Building #1 on plan and rebuild with the volume use of buildings 1 & 2 as per floor plan dated 12/21/09; also bringing ground level floor to exceed flood elevation by 1.4 feet, improve rear setback to comply, and decrease non-vegetated coverage. Located at 19 Oak Terrace, Kittery, Map 2 Lot 1, in the Suburban Residential Zone.

**Walter Woods, Greystone Builders, Inc.**, summarized the proposal again and explained the proposed building would not exceed the existing footprints or setbacks already in existence and generally will not be more non-conforming. Further, the vegetative areas will be reduced. The existing structure has suffered from water damage and mold and would not meet code requirements as it is structurally unsound. The review process has taken longer because a LOMA was needed, requiring a seven month wait.

**Chairman Gardner** asked if there was anyone present wishing to speak in favor or against this appeal request. There being none, the CEO provided:

1. This is a non-conforming lot with non-conforming structures located within the Suburban Residential and Shoreland zones.
2. Mr. Morrison has proposed to demolish an existing dwelling unit and to construct a new dwelling unit.
3. Title 16.12.050.E requires a minimum 40 foot front yard setback. The proposed single family unit is approximately three feet from the private road, where a 40 foot setback is required.

4. Title 16.28.140, Reconstruction of Nonconforming Buildings allows buildings that are destroyed by any cause other than the willful act of the owner to be rebuilt within a one year period. This is a proposed reconstruction is not due to an act of god.
5. Title 16.32.490.K.2 allows for a 30% volume or area expansion. The proposal is for a new dwelling, not an expansion.
6. Title 16.32.490.N.2 requires a 100 foot setback from the normal high water line for principal and accessory structures; the proposed construction is 29 feet from elevation six.
7. Title 16.32.490.N.2.B requires a 75 foot setback from the normal high water line for accessory patios or decks no larger than 500 square feet. The proposed deck appears to be 29 feet from elevation 6, and a new deck area not shown on floor plans could be closer than 29 feet.
8. The total area of all structures and non-vegetated surfaces shall not exceed 20% of the lot in a shoreland zone. The existing non-vegetated cover is 41.8%. The proposed non-vegetated cover is 41.4%.
9. The parking area is located less than the required 100 foot setback.

**Thomas Battcock-Emerson** asked if the proposed construction will be on the same footprint. **Mr. Woods** stated it would actually be smaller, and the vegetated areas will increase. **Craig Wilson** and **Mr. Woods** discussed the number of buildings on the site, whether they were or are connected via a breezeway or deck, and whether they be considered as one building. **Mr. Woods** argued the 30% rule applied to the lot, not just one building. **Craig Wilson** noted the Board has, in the past, considered building in the same spot a reconstruction whether a foundation was removed or not, as opposed to new construction where a foundation is created where one did not exist. He thinks all members can agree that this is not a new construction. **Mr. Woods** explained the previously existing breezeway connecting the two structures was removed due to rot, and the supports for the breezeway were on the deck and no longer exist. **Herb Kingsbury** noted he could not recognize the two buildings on the site as a single building. **Craig Wilson** read the 30% rule (Section 16.28.130.D.1.a). **Brett Costa** stated he would be comfortable with recognizing the reconstruction of the nonconforming buildings that would not extend any closer than what currently exists. **Craig Wilson** concurred with Mr. Costa, but could not support the request to combine the allowable 30% expansion of two buildings into one building.

**Herb Kingsbury motioned** to grant a miscellaneous appeal for Nineteen Oak, LLC to the terms of Title 16, Chapter 12, Section 050, Title 16, Chapter 28, Section 140, Title 16, Chapter 32, Section 490K2, Title 16, Chapter 32, Section 490N2A, Title 16, Chapter 32, Section 490N2B, and Title 16, Chapter 32, Section 490N2F, in order to raze the existing structure noted as Building #1 and rebuild with the combined volume of buildings 1 & 2; bring the ground level floor to exceed the flood elevation by 1.4 feet; and decrease non-vegetated coverage. Property is located at 19 Oak Terrace, Kittery, Map 2 Lot 1, in the Suburban Residential Zone.

**Thomas Battcock-Emerson seconded**

**Motion is denied;** 0 in favor; 5 opposed; 1 abstention (Costa)

#### **Findings of Fact**

1. Walter Woods, Greystone Builders, representing Nineteen Oak, LLC, requested a Miscellaneous Appeal to the terms of Title 16.12.050, Title 16.28.140, Title 16.32.490.K.2, Title 16.32.490.N.2, Title 16.32.490.N.2.B, and Title 16.32.490.N.2.F in order to raze the existing structure noted as Building #1 and rebuild with the combined volume of buildings 1 & 2; bring the ground level floor to exceed flood elevation by 1.4 feet; improve rear setback to comply, and decrease non-vegetated coverage. Located at 19 Oak Terrace, Kittery, Map 2 Lot 1, in the Suburban Residential Zone.
2. Applicant stated building labeled #1 requires replacement due to water damage, rot and mold.
3. Applicant is requesting to combine the 30% volumetric allowances for both building 1 and 2 in

order to increase the volume of building #1.

4. There were no public comments.
5. This is a non-conforming lot with non-conforming structures located within the Suburban Residential and Shoreland zones.
6. Mr. Morrison has proposed to demolish an existing dwelling unit and to construct a new dwelling unit.
7. Title 16.12.050.E requires a minimum 40 foot front yard setback. The proposed single family unit is approximately three feet from the private road, where a 40 foot setback is required.
8. Title 16.32.490.N.2 requires a 100 foot setback from the normal high water line for principal and accessory structures; the proposed construction is 29 feet from elevation six.
9. Title 16.32.490.N.2.B requires a 75 foot setback from the normal high water line for accessory patios or decks no larger than 500 square feet. The proposed deck appears to be 29 feet from elevation 6, and a new deck area not shown on floor plans could be closer than 29 feet.
10. The total area of all structures and non-vegetated surfaces shall not exceed 20% of the lot in a shoreland zone. The existing non-vegetated cover is 41.8%. The proposed non-vegetated cover is 41.4%.
11. Parking is less than the required 100 foot setback.
12. Applicant views all structures (building 1, 2 and the deck area) as one structure to apply the 30% rule for building 1. The Board disagreed, viewing the site as two buildings with a deck, and the volumetric expansion cannot be transferred between buildings.

**Herb Kingsbury motioned** to accept the Findings as read

**Bob Kaszynski seconded**

**Motion carries unanimously by all members present**

#### **Conclusion**

Under Title 16.28.130.D.1.a, the Board found the proposal for building #1 exceeded the 30% volume increase permitted during the lifetime of a structure and denied the applicant's request.

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

**Bob Kaszynski seconded**

**Motion carries unanimously by all members present**

4. Stephen T. Swallow requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 32, Section 490K2, Page 310 and Title 16, Chapter 32, Section 490N2, Page 316 in order to join the west side entryway with the western projection of the south side first floor deck. Located at 17 Water Street, Kittery, Map 1 Lot 47, in the Kittery Foreside Zone and the Shoreland Zone.

**Herb Kingsbury** recused himself from review of item #4. **Chairman Gardner** advised the Board he has appraised this property in the past, but not for the applicant. Board members concurred this revelation would not be an issue in his review of this item.

**Stephen Swallow**, owner, summarized the appeal request. This revision to the original plan provides for better safety, by removing the stairs; provides better drainage; provides handicapped access; is more appealing. There is an approximate loss of 28 square feet of green space, but barely impacts the green space previously gained by removing the brick walkways.

**Chairman Gardner** asked if there was anyone present wishing to speak in favor or against this appeal request. There being none, the CEO provided:

1. This is a conforming lot with a nonconforming structure located in the Kittery Foreside and Shoreland Zones;
2. The proposed expansion is within the 30% allowed.

3. The proposed area does not conform to Title 16.32.490.N.2.B, but is no closer to the shoreland than the existing decks.

**Brett Costa** noted the proposal does not increase the impervious surface area. **Craig Wilson** asked for the previous non-vegetated expansion calculation. **Scott Warner**, Warner Construction for applicant, stated that percent expansion was 29.7%. **Thomas Battcock-Emerson** stated he thought the wrap-around deck had been previously approved. The **CEO** explained the deck was approved, but this 24 sf area was not part of prior approvals.

**Bob Kaszynski motioned** to grant a Miscellaneous Appeal to Stephen T. Swallow to the terms of Title 16.32.490.K.2, and Title 16.32.490.N.2, in order to join the west side entryway with the western projection of the south side first floor deck, per plans submitted with the appeal application. Property is located at 17 Water Street, Kittery, Map 1 Lot 47, in the Kittery Foreside Zone and the Shoreland Zone. **Thomas Battcock-Emerson 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.

#### **Findings of Fact**

1. Stephen T. Swallow requested a Miscellaneous Appeal to the terms of Title 16.32.490.K.2, and Title 16.32.490.N.2, in order to join the west side entryway with the western projection of the south side first floor deck, per plans submitted with the appeal application.
2. Property is located at 17 Water Street, Kittery, Map 1 Lot 47, in the Kittery Foreside Zone and the Shoreland Zone.
3. The addition as testified will provide better access, aesthetics, and safety.
4. Vegetated coverage will be reduced by 28 square feet, to approximately 30%. Testimony by Scott Warner indicated the existing non-vegetated coverage is 27.9%.
5. There were no public comments.
6. This is a conforming lot with a nonconforming structure located in the Kittery Foreside and Shoreland Zones;
7. The proposed expansion is within the 30% allowed.
8. The proposed area does not conform to Title 16.32.490.N.2.B, but is no closer to the shoreland than the existing decks.

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

**Thomas Battcock-Emerson seconded**

**Motion carries unanimously by all members present**

#### **Conclusion**

The Board of Appeals has the authority under Section 16.28.130.a and 16.28.130.D.1.a to grant this appeal.

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

**Bob Kaszynski seconded**

**Motion carries unanimously by all members present**

**Mr. Kingsbury returned to the meeting**

5. Raymond T. Adams requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 32, Section 490K2&B, Page 310 in order to repair and renovate the existing structure, add loft storage area resulting in volume increase of 29% to 30%, and demolish the existing 6'x12' deck and rebuild. Located at 17 Folcutt Road, Kittery Point, Map 25 Lot 23B-1 and Map 25 Lot 24, in the Kittery Point Village Zone and the Shoreland Zone.

**Terry Adams**, owner, summarized his appeal request to the Board and supplied enlarged photos of the property and proposed renovations.

**Joyce Brown**, abutter, wrote a letter of support, read by Mr. Adams into the minutes:

To: The Board of Appeals,

Subject: The appeal of Raymond T. Adams, February 9, 2010

As an abutter to the property at 17 Folcutt Road, Kittery Point, I wish to register my approval of Mr. Adams' appeal. Mr. Adams has already done considerable work on the property that I view with great satisfaction.

1. He has maintained the integrity of the original construction and the architect's design.
2. He has executed all work carefully and tastefully, with no expense spared to get the right outcome and proper effect.
3. He has enhanced the surrounding properties by improving the value of the property at 17 Folcutt, thereby improving the abutter's values as well.

I hope you will grant his requests, as I do, too.

Sincerely,

Joyce Brown

**Chairman Gardner** asked if there was anyone present wishing to speak in favor or against this appeal request. There being none, the CEO provided:

1. This is a conforming lot with a nonconforming structure within the Kittery Point Village and Shoreland zones.
2. Mr. Adams is proposing to create additional loft space that will increase the volume.
3. An existing 6' x 12' deck is proposed to be demolished and to reconstruct the deck in the same space, same size.
4. Section 16.32.490.K.2 allows a portion of a structure to be expanded no more than 30%.
5. Section 16.32.490.B states that accessory decks or patios less than 500 sf must be setback a minimum of 75' from the highwater mark. The existing and proposed replacement deck is not conforming at approximately 60'.

Board members reviewed enlarged renditions of the building and proposed deck, and concurred the proposed reconstruction would be no closer than the existing deck area.

**Brett Costa motioned** to grant a Miscellaneous Appeal to the terms of Title 16.32.490K2&B, in order to repair and renovate the existing structure, add loft storage area resulting in an increase of volume from 29% to 30%, and demolish the existing 6'x12' deck and rebuild in the same location. Property is located at 17 Folcutt Road, Kittery Point, Map 25 Lot 23B-1 and Map 25 Lot 24, in the Kittery Point Village Zone and the Shoreland Zone.

**Herb Kingsbury 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.

**Findings of Fact**

1. Raymond Terry Adams appeared before the Board and described that he has two parcels, one of which he is seeking an occupancy permit, and the other being the subject property.
2. Joyce Brown, abutter at 21 Folcutt Road, appeared before the Board and requested a letter of support be read in her behalf.
3. This is a conforming lot with a nonconforming structure within the Kittery Point Village and Shoreland zones.
4. Mr. Adams is proposing to create additional loft space that will increase the volume to between 29% and 30%. Section 16.32.490.K.2 allows a portion of a structure to be expanded no more than 30%.
5. Section 16.32.490.B states that accessory decks or patios less than 500 sf must be setback a minimum of 75' from the highwater mark. The existing 6' x 12' deck will be demolished and reconstructed in the same footprint, which is approximately 60 feet from the highwater mark.

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

**Herb Kingsbury seconded**

**Motion carries unanimously by all members present**

**Conclusion**

The Board of Appeals has the authority under Section 16.28.130.A, and Section 16.28.130.D.1.a to grant this appeal.

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

**Brett Costa seconded**

**Motion carries unanimously by all members present**

Minutes

**Thomas Battcock-Emerson motioned** to accept the minutes of January 12, 2010 as amended.

**Brett Costa seconded**

**Motion carries unanimously by all members present**

The next Board of Appeals meeting will be February 23, 2010

The meeting of February 9, 2010 adjourned at 9:05 p.m.

Submitted by Jan Fisk, February 12, 2010