

Town of Kittery, Maine
Board of Appeals
April 13, 2010

Call to Order: 7: 04p.m.

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

Members absent: Herb Kingsbury

Staff: Heather Ross, Code Enforcement Department

Pledge to the Flag

Item 1 - Arthur B. Young requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 12.050, Section E2 in order to rebuild an 8'x26' pretreated deck attached to the front of the house with a 4'x4' landing and stairway access off the side towards the driveway. Located at 38 Old Dennett Road, Kittery, Map 7 Lot 12, in the Suburban Residential Zone.

Arthur Young, applicant, summarized the appeal request to replace the 36'x8' rotten deck, reducing the size by 10 feet and relocating the stairs. **Mr. Young** presented photographs of the site and condition of the deck and house caused by rot.

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

1. This is a conforming lot with non-conforming structures located within the Suburban Residential zone;
2. Mr. Young has proposed to construct an 8'x26' deck where there was previously an 8'x36' deck. Section 16.12.050.E.2 of the SR zone requires a minimum forty foot front property line setback;
3. The proposed deck would be closer than the required setback, however, is no closer than the previous deck.

Niles Pinkham motioned to grant a Miscellaneous Appeal to the terms of Title 16.12.050.E2 in order to reconstruct an 8'x26' deck on the same footprint as the previous deck. The stairway and landing will be in a different location, but neither the deck nor landing will be located closer to the front yard setback than the previous structure.

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.

Findings of Fact

1. Arthur B. Young presented testimony that the original deck was not constructed with pressure treated materials or with proper flashing, subsequently rotting and damaging the front wall of the house.
2. Proposal is to construct an 8'x26' deck, which will be 10 feet shorter than the original structure. The stairway will be relocated to the short side of the deck.
3. The structure is on a conforming lot in the SR zone.
4. There was no public comment.
5. The proposed deck will be located less than the 40' required setback, but no closer than the previous deck.

Bob Kaszynski motioned to accept the Findings as read
Thomas Battcock-Emerson seconded
Motion carries unanimously by all members present

Conclusion

The Kittery Board of Appeals has authority under Title 16.28.130.A., Non-Conforming Structures, Repair and Enlargement, to grant relief from the 40' frontyard setback.

Board members unanimously accepted the Conclusion as read [no motion was made].

Heather Ross, CEO, provided a letter to the Board from Terry Adams [attached as Exhibit], outlining his request to remove more structure than originally approved by the Board of Appeals. Ms. Ross asked the Board if they wished to have the applicant re-submit an application for review, or if the Board could simply approve his request under the prior approval, as there are no changes to the volume or footprint of the structure. Board members concurred the applicant's request is within the original approval parameters and would be allowed.

Minutes of March 9, 2010:

The minutes were accepted as amended by all members present [no motion was made].

Chairman Gardner introduced a recent issue in York regarding ex parte communication between a Board of Selectman and a Planning Board member. In a discussion with MMA, it was explained to him that BoA members may not communicate with the CEO, one another, the applicant or any other individual regarding an application before the Board. All information must be presented at the meeting. Following discussion, Board members requested that the Town's Attorney be contacted to further discuss this issue with them.

Thomas Battcock-Emerson motioned to adjourn
Niles Pinkham seconded
Motion carries unanimously by all members present

The next BoA meeting will be held April 27, 2010.

The Kittery BoA meeting of April 13, 2010 adjourned at 7:50 p.m.

Submitted by Jan Fisk, April 14, 2010

EXHIBIT

March 24, 2010

Raymond T Adams
PO Box 892
York Harbor, Maine 03911

Chairman
Vern J Gardner, Jr.
Board of Appeals
Town of Kittery, Maine 03904

Property Location: 17 Folcutt Road, Guesthouse, Map 25 Lot 23B-1
and Map 25 Lot 24 Kittery Point, Maine

Dear Chairman Gardner,

This letter is in reference to the Miscellaneous Appeal to the terms of Title 16, Chapter 32, Section 490K2, Page 310 in order to repair and renovate the existing Guest House structure at the above referenced property location. The appeal was presented to your board On February 9, 2010.

Subsequent to your board's unanimous approval of the appeal, a building permit was issued by the Town's Code Enforcement Officer, Heather Ross. This permit requires that all walls remain intact. However upon initial "gutting" of the structure, extremely significant levels of mold and rot has been discovered. While I had acknowledged to Ms. Ross, even prior to the board's hearing, that it was expected that we would find a certain level of rot, the extraordinary broad extent of both rot and particularly mold was entirely unexpected.

As you may recall during the February hearing I was asked by one of your board members if I intended to level the structure. My response was: I didn't know I had that option. No follow-up to my response was made. Perhaps you were anticipating what I have now discovered. While the level of rot is very significant, what concerns me most is the broad level of mold. Please see the attached photos.

At this point I would like to request permission to not leave the walls intact. This would allow for a full remediation of all mold and rot. The existing footprint will remain unchanged, as will all other terms of the building permit.

Should you have questions, I can be reached at (h)207 703 0609 or (c) 207 475 7929.

Thank you for your consideration of this request.

Sincerely,


Terry Adams