

Kennebunkport Zoning Board of Appeals
32 North Street, Village Fire Station
April 22, 2013 @ 7:00 P.M.

A meeting of the Kennebunkport Zoning Board of Appeals was held on Monday, April 22nd, 2013. The meeting convened at 7:00 p.m. in the North Street Fire Station.

Members Present: Mr. Mark Messer (Chair), Herb Cohen, Christopher Perry, Richard Smith, Paul Cadigan, Thomas Shore- Absent

Others Present: Greg Reid, Brian Shaw, John Rinaldi, Gordon Ayer, Steve Hodsdon

Approval of Minutes:

Mr. Perry made a motion to approve the minutes from the May 9, 2011 meeting. Mr. Smith seconded the motion and the vote was unanimous. Approval of the July 9, 2012 meeting minutes was deferred until the next ZBA meeting.

Mr. Messer gave a brief summary of the order of the meeting.

Items:

John Rinaldi / Greg Reid, Authorized Agent - The Applicant is seeking an Administrative Appeal of the Code Enforcement Officer's denial of his building permit on December 27, 2012, in which he requested permission to convert an existing raised deck into approximately 532 square feet of living space. The Administrative Appeal, as well as the building permit, are both available for review in the Code Enforcement Office at the Kennebunkport Town Hall. The property location is 8 North Street Rear, Tax Map 11, Block 002, Lot 15 in the Village Residential Zone.

Mr. Cadigan disclosed he has represented the Applicant Mr. John Rinaldi in the past and is still listed as a registered agent in an out-of-state partnership of Mr. Rinaldi's. Mr. Cadigan asked the Board members and others in attendance for their opinion if this disclosure meets the criteria of a conflict of interest. The applicant's Agent stated he had no objection to Mr. Cadigan's participation. Mr. Perry asked if the partnership mentioned involves the property that is the subject of this Application. Attorney Steve Hodsdon responded the title for that property is in John Rinaldi's name. The Applicant, his agents, and the Zoning Board members agreed there is no conflict of interest and confirmed Mr. Cadigan's participation in this meeting.

Mr. Steve Hodsdon representing John Rinaldi addressed the Board and introduced himself, Greg Reid, Contractor and Attorney Gordon Ayer. Mr. Hodsdon prefaced his presentation by saying he does not believe the application from 1980-1981 is relevant to this Appeal and should not factor into tonight's meeting.

Mr. Hodsdon gave a brief summary of the Appeal stating Mr. Rinaldi applied for a building permit to enclose an unenclosed portion of his property based on the 30% allowable expansion and was denied by the Code Enforcement Officer on December 27, 2012. The reasons cited on the denial, Mr. Hodsdon explained; refer to Article 1.5 and 8.3.b.1.e of the Land Use Ordinance, adding Mr. Shaw concluded the area to be enclosed is a patio.

Mr. Hodsdon submitted photographs of the property pointing out that the area in question is roughly 25 inches off the ground and thus meets the Land Use Ordinance definition of a porch or deck. Mr. Hodsdon admitted the area does not fit in with the traditional image of a wooden deck but pointed out that Land Use Ordinance "does not specify in any way what the materials are" for a deck.

Mr. Messer asked what the surface of the area in question is. Mr. Reid responded the raised surface is a “little bit of garden area, some stone, some earth.” Mr. Messer asked if they classified the area as a deck and that the surface of it is not the natural surface of the ground. Mr. Reid replied, “Yes, that is correct”. Mr. Hodsdon added before Mr. Shaw denied the permit; it was characterized as a deck.

Mr. Brian Shaw addressed the Board and supplied copies of a packet of information regarding the International Residential Building Code. Mr. Shaw stated the Town residents voted to adopt this code into the Land Use Ordinance which gives a very specific definition of what a deck is (meaning it is constructed of wood or composite wood) and how to build it.

Mr. Hodsdon responded arguing they are not asking for permission to construct a deck as it is already there but are asking to enclose it.

Mr. Shaw replied the building code was in effect when the Applicant made their request to cover it.

The Board members, Applicant, and Code Enforcement Officer had a lengthy discussion on the nature of a de novo review and its applicability to this appeal.

Mr. Ayer addressed the Board on behalf of the Applicant stating the most important document of historical significance to be reviewed is the original Certificate of Occupancy signed by Joseph Detullio. Mr. Ayer cited Article 11.8 of the Land Use Ordinance that gives the criteria for issuance of an Occupancy Permit. Mr. Messer asked to review a copy of the original Certificate of Occupancy. Neither the Applicant’s Agents nor the Code Enforcement Officer could produce a copy of the Certificate of Occupancy, although Mr. Ayer, Mr. Reid, and Mr. Shaw all stated they have personally viewed it in the Town Office.

Mr. Messer opened the Public Hearing portion of the meeting. There were no comments from the public. Mr. Messer closed the Public Hearing.

Mr. Cadigan asked Mr. Hodsdon if he agreed the portion of the structure is built out of the setback. Mr. Hodsdon replied the setback line has not been a static line for the last 32 years and the Certificate of Occupancy granted in 1981 confirms the building met the guidelines at that time.

Mr. Cadigan asked if it is the Applicant’s position that when the Certificate of Occupancy was issued it confirmed that it was built in conformance. Mr. Hodsdon replied “Absolutely”. Mr. Cadigan then asked if the Applicant considers the building to be legally non-conforming and this expansion allows for a 30% volume increase. Mr. Hodsdon agreed with Mr. Cadigan’s statement.

After some discussion, the Board agreed the building is legally non-conforming and to move forward to address the issue of the Appeal.

The Board members discussed at length the Land Use Ordinance’s definitions of deck, patio, porch and structure and their relevance to this Application.

Mr. Messer reminded the Board their task is to either uphold the Code Enforcement Officer’s decision to deny the permit or to reverse it.

Mr. Messer made a motion that the reasoning in the permit denial in regards to Article 1.5 and the International Building Code does not apply to the Zoning Board of Appeals’ decision. Mr. Cohen seconded the motion and the vote was unanimous.

Mr. Messer made a motion to accept the structure as defined as a deck. Mr. Cadigan added to the motion that the definition of a patio is that it “does not extend more than three (3) inches above the original ground level” and

because this structure in question far exceeds that requirement at 25 inches it cannot be construed as a patio. Mr. Cohen seconded the motion and its amendment. The Board voted 4 to 1 in favor of the motion to accept the structure in question as a deck. Mr. Perry voted against the motion. The permit denial is reversed.

Adjournment: A motion was made to adjourn, it was seconded and the vote was unanimous.

Submitted by: Patricia Saunders, Recording Secretary