

MEETING MINUTES

1. CALL TO ORDER; INTRODUCTORY; ROLL CALL

Chair Jeff Brake called the meeting to order at 6:35PM and asked that the roll be called.

Board Members Present: Jeff Brake, April Timko, Vern Gardner, Louis Leontakianakos

Board Members Absent: Charles Denault, Barry Fitzpatrick, Suzanne Dwyer-Jones

Staff Present: Adam Causey, Director of Planning and Development, Craig Alfis, Code Enforcement Officer

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

Chair Brake noted that the Board has the minimum number of members present for a quorum, requiring any motions to pass unanimously. He extended an offer to the applicants present to postpone to a later meeting. Tim Phoenix approached the microphone to clarify the number of members normally present on Board. After conferring with his client, it was decided that both applicants would like their requests heard.

- a. Adam Butler, applicant, and Michael O’Keefe, owner of 43 Love Lane (Map 4 Lot 196), request a Miscellaneous Variation Request per LUDC Section 16.7.3.3.B(1), and seeking approval for the expansion of a non-conforming structure.**

Chair Brake asked April Timko, Secretary, if the Board has the authority to hear this application. Mrs. Timko replied in the affirmative and noted that the public notice was published on August 5, 2019. Chair Brake opened the public hearing. Mr. Alfis read from the staff report that this request was for a miscellaneous variation involving the expansion of a non-conforming structure and noted that the staff recommends approval. Mr. Gardner pointed out that Kittery is the only jurisdiction in the State of Maine with a miscellaneous variation and that without denial from either the Code Enforcement Office or the Planning

Board the applicant does not have standing for an appeal. Mr. Gardner recommended that the Chair convert this miscellaneous variation into an administrative appeal as was done at the last meeting. Mrs. Timko countered that there were different circumstances surrounding the conversion of the request from the last meeting. Chair Brake allowed the request to proceed as a miscellaneous variation. Discussion Mrs. Timko, Mr. Leontakianakos and Mr. Alfis confirmed that the existing structure was non-conforming to the front and one side setback and that the proposed structure would be no more non-conforming than the existing structure. Chris Kiper, the owner's representative, explained the thought process behind the location of the proposed structure, which was mainly to improve safety when pulling out of the driveway. It was confirmed that the area above the garage would not be expanded into a duplex without further appeal. Discussion ensued on the actual setbacks and it was determined that, as a condition of approval, the applicant would have the lot surveyed. Mr. Kalso of 42 Love Lane, spoke in favor of approval of the miscellaneous variation.

- Motion by Vern Gardner to grant the appeal of Michael O'Keefe, requesting a miscellaneous variation request for the addition for a non-conforming structure for 43 Love Lane. Motion was seconded by April Timko. Motion passed 4-0-0 by roll call vote [Aye: Gardner, Timko, Leontakianakos, Brake; Nay: --; Abstain: --].

Mrs. Timko read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact – (1) The Board found that the property at 43 Love Lane is located in the Residential Urban (R-U) zone, (2) the required front setback required by code is 30 feet, the proposed structure will be located 18 feet from the front property line, The hearing was properly noticed in the Portsmouth Herald on August 5, 2019, (3) the Board approved the applicant's Miscellaneous Variation Request.

Conclusions of Law – (1) The Board heard the Administrative Appeal under Town code section 16.6.4.C, which allows the Board to review miscellaneous variation requests (2) the Board considered the basis for decision the conditions set fourth in 16.6.6.A & also considered the factors for consideration in making its determination set forth in 16.6.6.B, inclusive (3) the Board granted the appeal.

Motion by Vern Gardner to approve the Findings of Fact and Conclusions of Law as read by April Timko. Second by Louis Leontakianakos. Motion passed 4-0-0 by voice vote [Aye: Gardner, Timko, Leontakianakos, Brake; Nay: -- ; Abstain: --].

- b. Timothy Phoenix, applicant and Christopher Miller, owner of 1 Coleman Avenue (Map 26 Lot 5), request a Miscellaneous Variation Request per**

LUDC Section 16.7.3.5.A.(1), and seeking approval for the expansion of a non-conforming structure.

Mr. Gardner disclosed that he has worked for and with the applicant in various capacities over the past 25 years and therefore has a conflict and should recuse. It was pointed out that if he did recuse there would not be a quorum. The applicant stated that they have no objection to Mr. Gardner voting if he feels that he could be fair and impartial. Discussion ensued and Mr. Gardner stated that he did, in fact, feel he should recuse himself. Mrs. Timko Mr. Phoenix requested that the application be continued to the September 10th meeting.

6. UNFINISHED BUSINESS

None

7. NEW BUSINESS

None

8. ACCEPTANCE OF PREVIOUS MINUTES

Motion by Louis Leontakianakos to approve the listed minutes except for the February 26, 2019 minutes. Second by April Timko. Motion failed 3-0-1 by roll call vote [Aye: Timko, Leontakianakos, Brake; Nay: ; Abstain: Gardner]

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

Mr. Causey announced that there will be a training/workshop on October 22 from 5:30 to 8:30 pm, with attorneys from Jensen, Baird, Gardner and Henry Law Firm. If there are any specific topics any members would like to discuss please submit them to Chair Brake.

10. ADJOURNMENT

Motion by Jeff Brake to adjourn. Second by Vern Gardner. Motion passed 4-0-0 by voice vote [Aye: Gardner, Timko, Leontakianakos, Brake; Nay: ; Abstain:].

The Kittery Board of Appeals meeting of August 13, 2019 adjourned at 7:21 p.m.

Submitted by Craig Alfis, Code Enforcement Officer

Disclaimer: The preceding minutes constitute the author's understanding of the meeting. While every effort has been made to ensure the accuracy of the information, the minutes are not intended to be a verbatim transcript of comments at the meeting but only a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>.