

1. Call to order: Introductory; Roll Call

Present: Jeffrey Brake, Craig Wilson, April Timko, Judy Spiller, Louis Leontakianakos, Barry Fitzpatrick

Absent: Charles Denault, III

Staff Present: Robert Marchi, Code Enforcement Officer

2. Pledge of Allegiance

3. Agenda Amendment and Adoption

None.

4. Executive Session

None.

5. Public Hearings

Chair Brake announced tonight's hearings were posted in the Portsmouth Herald on June 12, 2018.

- a. Aaron & Kari Economou, 18 Love Lane, Map 9 Lot 74, Residential-Urban R-U, requesting Miscellaneous Variation Request to the terms of 16.3.2.4.D., to construct a 23.3' x 9.6' side porch, 21.25' x 8' rear porch & 21.25' x 25' deck with pool, less than the required setbacks, going no closer to the property lines than existing structure.

b.

Testimony

Mr. Marchi handed out two pictures showing the location of the proposed deck and porch. He explained there is no way to achieve the 15 ft. setback requirement. He also included the building coverage calculations which are within the limits.

Mr. Economou explained his home is nonconforming and the closest point to the property line is four inches. He is not proposing to build any closer than 2.5 feet from the property line.

Chair Brake opened the public hearing.

Nancy Smith, 20 Love Lane, explained she abuts the side of the applicant's property that is nonconforming. She added the applicant's house is two feet on her property which was a porch built by a previous owner and is grandfathered. She is against the proposed location because there is not enough room. She expressed her concern of selling her home with two feet of the applicant's building being on her land and the new construction being so close to her property.

Suzanne Sayer, who lives adjacent to Love Lane, asked if there is a map of the area. Mr. Economou explained he has a survey map from when he purchased the home and showed it to Ms. Sayer.

There being no further comment, the Chair closed the public hearing.

Mr. Fitzpatrick expressed his concern of the accusation that the house is partially on someone else's property and would need to see documentation of property lines. Mr. Marchi handed out copies of the survey map. Mr. Leontakianakos asked for clarification on the diagram on the east side of the house being 10.5 feet from the property line. The applicant explained the proposed structure is on the west side of the house and explained there will be two screened porches with a connected deck along with a 6-ft. fence.

Mr. Fitzpatrick noted there is no survey stamp on the Board's copy. Ms. Smith informed the Board she has only a deed which includes boundary language. Mr. Wilson commented a stamped or a copy of stamped survey should be included because of the disputed facts. Mr. Wilson suggested an option to move forward based on the survey presented and have a condition of approval requiring a stamped survey.

After discussion, the Board decided to table this item until more information is available.

Mr. Fitzpatrick moved to table this item until a stamped survey is supplied by the applicant.

Vice Chair Spiller seconded the motion.

The motion carried 6-0-0.

- c. Deane Rykerson, applicant for Sally Hirshburg, owner, 43 Cutts Island Lane, Residential – Kittery Point Village R-KPV, requesting Miscellaneous Variation Request to the terms of 16.8.25.2 to construct an Accessory Dwelling Unit within reconstruction of an existing dwelling.

Ms. Timko verified the Board had the authority to hear this Miscellaneous Variation request pursuant to Title 16.6.4.3(D) - Accessory Dwelling Unit Standards.

Mr. Marchi commented code enforcement has been to the location and verified the conditions exist as presented and there are no violations on the property.

Dean Rykerson explained the applicant wants to remodel her barn into an accessory dwelling unit (ADU). After examining the barn, he determined it to be in poor condition and recommends it be demolished. He explained a new structure could be built and slightly moved to a different location with more conforming setbacks. He added the existing barn is nonconforming and the existing home is conforming. The applicant is requesting to have the five-year occupancy requirement waived.

Mr. Marchi explained there is an existing structure, but the structure is not salvageable and doesn't meet the setbacks and they are unable to put an ADU in a building that doesn't meet setbacks. The proposed structure would still be nonconforming but more conforming.

Mr. Rykerson explained the new structure will be a code compliant ADU. Mr. Rykerson believes the rear yard setback is approximately 16 ft. Ms. Timko questioned how the Board can approve the request because an ADU is not allowed in a detached building and it is encroaching on yard setbacks. Mr. Wilson referred to Title 16.8.25.5, which empowers the Board to decide on this request. Mr. Marchi reported the required setbacks for this zone are 40 ft. for the front yard and 15 ft. for rear and side yards. The property has two front yard setbacks.

Mr. Leontakianakos asked if the limit for ADU's has been met. Mr. Marchi replied the number of new ADU's has not reached the Town's limit.

Chair Brake opened the public hearing. There being none, Chair Brake closed the public hearing.

Mr. Wilson pointed out the Board has not gotten answers regarding standards and he suggested the issues be addressed by the Code Enforcement Officer. He also suggested the rear yard setback be verified by the Code Enforcement Officer as well. The Board agreed.

**Mr. Fitzpatrick moved to accept the proposal as is.
Vice Spiller seconded the motion.**

Mr. Wilson noted the Board should also look at nonconforming expansion and basis of decision in Title 16.6.6 1 and 2 and questioned if parking should be designated. Mr. Rykerson replied there will be a roofed carport structure and pointed out the location on the plan.

Mr. Fitzpatrick amended his motion to read:

**Mr. Fitzpatrick moved to accept the proposal as is and have Mr. Marchi supply the requested information.
Vice Chair Spiller agreed with the amended motion.**

The motion carried 6-0-0.

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FINDINGS OF FACT

- Sally Hirshburg is the owner of 43 Cutts Island Lane located in Residential – Kittery Point Village R-KPV.
- She is requesting a Miscellaneous Variation to the terms of 16.8.25.2 to construct an Accessory Dwelling Unit.
- The Board considered the factors under the basis for decision in 16.6.6.2 and determined the lot size and coverage amount requirements were met.
- The questions of parking were addressed.
- The existing structure does not meet the setback requirements as is located between 9 to 10 feet from the second front property line.
- The proposed new structure would also not meet the setbacks because it will be located approximately 16 ft from the second front property line.

- The Board approved the Miscellaneous Variation request to approve a variation in the Accessory Dwelling Unit Standards in Article 25 of Chapter 16.8.
- The existing barn will be demolished before an occupancy permit is granted for the accessory dwelling unit.

Mr. Wilson moved to accept the Findings of Fact as stated.

Mr. Leontakianakos seconded the motion.

The motion carried 6-0-0.

CONCLUSIONS OF LAW

The Board had the authority to hear this Miscellaneous Variation request pursuant to 16.6.4.3 (D) Accessory Dwelling Unit Standards. The Board has the Authority to grant this Miscellaneous Variation request under 16.6.4.3 Accessory Dwelling Unit Standards contained in Article 25, Chapters 16.8 and 16.8.25.5 Development Standards.

The Board had no objections to the Conclusions of Law.

- d. Elizabeth Ewing, 109 Pepperrell Road, Map 27 Lot 14, Residential- Kittery Point Village, RKPV, requesting Miscellaneous Variation Request to the terms of 16.3.2.3(D) to extend the existing deck 2', going no closer to property lines than existing.

The Board has the power to hear this under Title 16.6.4.3(A) Miscellaneous Variation Request - Nonconformance.

Because the applicant was not present, the Board listened to the Code Enforcement Officer's comments before deciding to proceed or tabling this item.

Mr. Marchi explained the applicant applied and received a permit previously for an in-kind replacement of decks. He pointed out the decks that have been completed on the map and added the applicant wants to add a 2 ft. extension to a rear deck for stairs.

The Board was in consensus to move forward with this item.

Testimony

Mr. Marchi reported there are no violations on the property and the Code Department does not have any issues.

Mr. Fitzpatrick moved to accept the Miscellaneous Variation Request to the terms of 16.3.2.3(D) to extend the existing deck 2', going no closer to property lines than existing.

Mr. Leontakianakos seconded the motion.

Vice Chair Spiller asked for clarification of the stairway because the sketch showed more than one. Mr. Marchi explained the stairs on the left are intact and the stairs on the right and in the back were added.

Mr. Wilson pointed out that the building coverage is at 19.97% where 20% is the max . Mr. Marchi explained stairs are not included in the coverage, so the coverage will not be affected.

The motion carried 6-0-0.

FINDINGS OF FACT

- Elizabeth Ewing, owner of property 109 Pepperrell Road, Map 27 Lot 14, Residential- Kittery Point Village, RKPV, requests a Miscellaneous Variation Request to the terms of Title 16.3.2.3(D).
- The Board reviewed the request pursuant Title 16.6.4.3(A) Nonconformance.
- The Board determined that they could grant the request based on Title 16.7.3.3.2 Nonconforming Structure Repair and expansion and the Board made its decision based on Title 16.6.6.2.
- The Board found the applicant has a building permit currently in effect to replace two existing decks the currently bldg. permit ref the replacement to be the same size and same location.
- The Board granted the request to extend one deck an additional 2 ft. and add a stairway.
- The applicant did not appear before the Board.
- The lot size and coverage requirements are met.
- There are no existing code violations on the property.
- The property is not in the Shoreland Protection Zone and not in a flood plan.

**Mr. Wilson moved to accept the Findings of Fact as stated.
Mr. Leontakianakos seconded the motion.**

The motion carried 6-0-0.

CONCLUSIONS OF LAW

- The Board heard a Miscellaneous Variation Request pursuant to Title 16.6.4.3(A) Nonconformance as described in, Article 3, Chapter 16.7. The Board made its determination in accordance with Title 16.7.3.3.2(A) Nonconforming Structure Repair and expansion.

**Mr. Wilson moved to accept the Conclusions of Law as stated.
Vice Chair Spiller seconded the motion.**

The motion carried 6-0-0.

- e. Lot 16, Business Local – 1, B-L1, requesting Miscellaneous Variation Request to the terms of 16.8.9.4(J). for off street parking to accommodate a call center on the third floor.

Ms. Timko stated the Board has the authority to hear this item under Title 16.6.4.3(B) - Miscellaneous Variation Request - Parking, Loading and Traffic Standards.

Mr. Marchi explained the applicant is increasing the use of their facility which will require additional parking. He added there are no violations or issues.

Michael Sudack, Attar Engineering, explained York Hospital is developing an existing vacant third floor of their facility at the intersection of Walker and State Streets. He explained the applicant will need to have an additional 18 spaces for staff parking which are not available on site. They are proposing to provide 18 spaces located off site on one of their leased properties located at 75 U.S. Route One Bypass. The lease of the building gives York Hospital the use of 50 spaces and only 24 are being used. The two locations are a mile apart and both are in industrial and commercial zones. Mr. Sudack stated a shuttle will be used to transport staff back and forth from both sites.

The Chair opened the public hearing. There being none, the Chair closed the public hearing.

Mr. Wilson asked of the plan for handicapped parking. Roger Cross, Utility Director for York Hospital, explained the third floor will be employees only and if an ADA spot is needed, vans are available to shuttle to a provided ADA parking spot.

Mr. Wilson verified the no call center employees will be allowed to park on the current site. He pointed out the site at 75 U.S. Route One Bypass has four years left on the lease and the applicant explained they will be able to extend the lease. Mr. Wilson recommended to add a condition of approval that 18 parking spaces be provided offsite but not necessarily at the 75 U.S. Route One Bypass location. Discussion ensued of ensuring the parking arrangements are offsite. Mr. Cross explained they have staff who monitor the parking lots Monday through Friday, which are the days of operation for the call center.

Mr. Fitzpatrick moved to approve the application as stated.

Ms. Timko recommended including conditions that York Hospital notify the CEO if the parking arrangement is not renewed and that York Hospital be required to monitor employee parking to make sure they are using the shuttle.

Vice Chair Spiller seconded the motion.

After a suggestion from Mr. Wilson, Mr. Fitzpatrick amended his motion to read:

Mr. Fitzpatrick moved to approve the application as stated with conditions that 18 spaces of parking are provided offsite with shuttle service and York Hospital is to monitor employee parking to ensure their employees are not parking at or around 35 Walker Street.

Vice Chair Spiller seconded the motion.

The motion carried 6-0-0.

FINDINGS OF FACT

- York Hospital has applied for a Miscellaneous Variation Request under Title 16.6.4.3.B Parking, Loading and Traffic Standards.

- York Hospital is proposing to expand their current facility at 35 Walker Street to add a 3,960 sq. ft. call center in an existing vacant third floor area and additional 18 parking spaces.
- York Hospital has a lease for 50 parking spaces at 75 U.S. Route One Bypass of which 26 parking spaces are available.
- York Hospital will provide a shuttle service for employees from the 75 U.S. Route One Bypass location to their facility at 35 Walker Street.
- The Board found that only employees will be using the call center.
- York Hospital will be providing a shuttle and will address issues related ADA compliance and handicap transportation.
- Both the facilities require off street parking and the locations are in the business and commercial zones.
- The Board approved their Miscellaneous Variation Request with two conditions. One being at least 18 parking spaces be provided offsite with shuttle service and York Hospital will provide monitoring of employee parking to ensure they are not parking at or around 35 Walker Street.
- The two facilities are approximately one mile apart from each other.
- No members of the public commented.

The Board had no objections to the Findings of Fact.

CONCLUSIONS OF LAW

The Board heard this Miscellaneous Variation Request under Title 16.6.4.3.B Parking, Loading and Traffic Standards and decided the appeal based on Title 16.8.9.4.J.

The Board had no objections to the Conclusions of Law.

6. Unfinished Business – None.

7. New Business – None.

8. Acceptance of Previous Minutes: June 12, 2018.

Mr. Wilson moved to accept the June 12, 2018 minutes as presented.

Vice Chair Spiller seconded the motion.

The motion carried 6-0-0.

8. Board Member or CEO Issues or Comment

Discussion ensued of the correct procedure for approving Minutes. Mr. Marchi reminded the Board decisions will be available for signature at the Town Hall within seven days. Mr. Marchi will ensure a hard copy of the Minutes will be provided to the Board for approval at the next Board meeting.

The Board also requested to have reminders of meetings as soon as the Code Enforcement Officer is aware. Mr. Marchi agreed that his office will send out the notice along with the meeting materials.

10. Adjournment

Mr. Fitzpatrick moved to adjourn the meeting at 8:15 p.m.
Vice Chair Spiller seconded the motion.
The motion carried 6-0-0.