

MEETING MINUTES

1. CALL TO ORDER; INTRODUCTORY; ROLL CALL

Secretary April Timko called the meeting to order at 6:35 PM and asked that the roll be called.

Board Members Present: Charles Denault, Louis Leontakianakos, Vern Gardner, April Timko, Barry Fitzpatrick, Suzanne Dwyer-Jones

Board Member Absent: Jeff Brake, Chair

Staff Present: Stephen Wilson, Code Enforcement Officer

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

- a. Chatham Street, LLC, Owner, Ann Kendall, Applicant, 88 Pepperrell Road, Business – Local & Shoreland Overlay zones, requesting Special Exception Request regarding off street parking standards in Land Use Code sections 16.8.9.4.G and Article XVIII & 16.8.9.4.K.4 and Article XXIV.**

April Timko opened the public hearing. Vern Gardner stated an objection to this item being heard due to a lack of jurisdiction, citing Town of Kittery Land Use & Development Code Section 16.1.5B(6)(e). Mr. Gardner stated that the Planning Board has considered this project to include the parking requirements. Ms. Timko agreed that the Board of Appeals should determine if they have standing to hear the project, and she understood that the Planning Board did not address the details of the parking standards being heard tonight and asked to hear from the Code Enforcement Officer, Stephen Wilson. Mr. Wilson stated that the reason for the project's hearing at the meeting was to request waivers from certain parking regulations in Title 16 that can only be granted by the Board of Appeals. Ms. Timko asked the Board for input. Mr. Gardner stated that he believed the plans as considered by the Planning Board included the deviation in parking lot design standards. CEO Wilson pointed out that the applicant's parking plan submittal did change from the original plan approved by the Planning Board. Ms. Timko stated she did not see where the Planning Board could approve deviations from code related to parking design. CEO Wilson stated that those powers are held exclusively by the Board of Appeals, per 16.9.8.4.L. Mr. Gardner suggested that the Board of Appeals decide if they have jurisdiction on the matter.

Motion by Barry Fitzpatrick that the Board of Appeals has jurisdiction to hear this case, per Title 16.8.9.4.L. and 16.6.4.C.(2). Second by Charles Denault. Motion passes 5-1 by voice vote. [Aye: Timko, Fitzpatrick, Leontakianakos, Denault; Dwyer-Jones; Nay: Gardner; Abstain: none]

Ms. Timko invited CEO Wilson to begin his presentation. Mr. Wilson laid out the purpose of the hearing and noted a typo in the applicant's original application that was amended and submitted to the Board in the meeting materials. Mr. Wilson explained the site in question, its historical use, and the proposed uses and improvements. Ms. Timko invited the applicant to present the project. Ken Wood, of Attar Engineering, approached the podium to represent the applicant and the project. Ms. Timko asked what specific items the applicant wishes the Board of Appeal to consider waiving. The applicant further explained what items in the parking lot would require relief prior to Planning Board approval, but believed they met certain aspects of the code already. Board member Louis Leontakianakos asked if this project had approval from the Commissioner of Public Works. CEO Wilson explained that Public Works was working with the applicant to design appropriate sidewalks along Pepperrell Road. Mr. Wood asked a clarifying question whether the Board would deliberate on groups of standards or each item identified in the code as requiring waivers. Mr. Timko responded that the Board would deliberate on each item in the code and attempted to clarify what items the Board was considering in this hearing. The Board discussed the application and the addresses of the property to make it clear that the restaurant uses at 88 Pepperrell Road and the parking lot at 87 Pepperrell Road were tied together as one project for the purposes of this hearing.

Mr. Wood explained the project's request for miscellaneous variation requests for parking lot design standards 16.8.9.4.K.(2), (3), and (4), which includes standards for lighting, subgrade materials, surface drainage, and asphalt resurfacing. Mr. Gardner referenced Title 16.8.9.4.L and noted that the BOA can grant relief in specific cases of "hardship," and asked the applicant to describe the hardship. Mr. Wood stated that upgrading the parking lot per the code would detract from the values of adjacent lots. Mr. Wood also stated that applying the standards would reduce the number of parking spaces available and put more pressure for parking on the neighborhood. Mr. Gardner summarized that the imposition of code standards would reduce the number of parking spaces and thus impact the operations of the restaurant use. Mr. Wood agreed.

Ms. Timko invited members of the public to approach the podium to participate in the public hearing. Faith Harrington of Gerrish Island rose to provide comment. Keith Frisbee of Pepperrell Road rose to provide comment. Brian Rodonets of Pepperrell Road rose to provide comment. Durward Parkinson of Kennebunk, an attorney representing the Pepperrell Terrace abutter Driscoll Realty Inc., rose to provide comment. Wendy Turner of Haley Road, representing the abutter Elizabeth Segers of Pepperrell Road, rose to provide comment. Steve Graves of Kittery Point rose to provide comment. Barbara MacLeod of Kittery Point rose to provide comment and read a letter from Pepperrell Road resident Jan Lamont. Melissa Paley of Kittery rose to provide comment. Michael Humiston of Picott Road rose to provide comment. Sarah Brewer of Pepperrell Road rose to provide comment. Debbie Driscoll of Pepperrell Terrace rose to provide comment. Clint Reed of Pepperrell Terrace rose to provide comment. Peter Drummond of Moores Island Lane rose to provide comment. Craig Gossard of Pepperrell Road rose to provide comment. Donna Ryan, applicant, rose to provide comment. Eides Ares, applicant, rose to provide comment. Ms. Timko closed the public hearing so the Board could deliberate on the application.

Ms. Timko stated that the Board decided earlier in the meeting that they have jurisdiction to hear the application and reviewed the criteria for the Board under Section 16.6.6. Basis for Decision. Ms. Timko also listed out the factors for consideration outlined in 16.6.6.B.

Barry Fitzpatrick discussed the history of the project and asked the applicant, Ms. Kendall, about the relationship of the LLC listed on the application. Ann Kendall rose to clarify the name and relationship of the ownership entity. Mr. Fitzpatrick complimented the applicant on the revitalization of the property. Mr. Fitzpatrick stated he thought the parking lot was grandfathered and any required parking lot upgrades would detract from the aesthetic of the nearby Pepperrell Tomb.

Mr. Leontakianakos asked Ms. Timko how they would deliberate on the miscellaneous variation requests. Ms. Timko stated that they should take each request separately. Mr. Gardner stated that those that live closer to the project are more sensitive to it and there appears to be general acceptance from those in attendance, with appropriate conditions. Mr. Gardner proposed conditions that isolate the parking lot from Pepperrell Terrace, the Tomb, and other abutters, such as low-growing foliage for screening and something more permanent than concrete wheel stops. Mr. Gardner also suggested a full-time parking attendant located at a central spot to manage parking. Mr. Gardner stated that lower levels of lighting and the gravel parking lot could also be supported. Mr. Gardner stated his concern for a lack of evidence of a hardship for the applicant requests. Mr. Denault agreed with Mr. Gardner and also stated that not granting the requests would detract from neighborhood values and increase congestion on public streets. CEO Wilson clarified that

if the Board grants the waivers as requested, then Section 16.8.9.4.L. would not be applicable. Ms. Timko returned to the applicant's request for variation from 16.8.9.4.G. and asked the Board for input, highlighting some of the proposed conditions heard from the public. The Board discussed landscaping and buffering options for the parking lot.

Motion by Vern Gardner to condition a four feet high evergreen barrier along the north, east, and west sides of the property, to be maintained by the property owner. Second by Charles Denault. Motion failed on voice vote 1-5. [Aye: Gardner; Nay: Fitzpatrick, Leontakianakos, Denault; Dwyer-Jones, Timko]

Motion by Charles Denault to grant request from 16.8.9.4.G. with condition that arborvitae plantings no shorter than 4' in height are installed along the eastern and western property lines of the parking lot located at 87 Pepperell Road. Motion second by Suzanne Dwyer-Jones Motion passes on voice vote 5-1 [Aye: Denault, Timko, Leontakianakos, Dwyer-Jones; Gardner; No: Fitzpatrick]

Ms. Timko reminded the Board that the applicant stated they do not feel they need to request relief from Section 16.8.9.4.K(1) but that relief from subsections K(2), (3), and (4) were still being requested.

Motion by Charles Denault to grant the request for relief from 16.8.9.4.K.(2) with condition that the existing subgrade and compaction level are to be maintained. Motion second by Vern Gardner. Motion passes by voice vote 6-0 [Aye: Denault, Fitzpatrick, Timko, Leontakianakos, Dwyer-Jones, Gardner]

Mr. Gardner inquired about the surface drainage on the site. Mr. Fitzpatrick pointed out where water had historically drained. CEO Wilson identified the existing catch basin that connects to the public storm sewer system. Mr. Wood further clarified the location of catch basins and how the lot drains and testified that there are no downstream impacts from the lot.

Motion by Suzanne Dwyer-Jones to grant the request for relief from 16.8.9.4.K.(3). Motion second by Charles Denault. Motion passes by voice vote 6-0 [Aye: Denault, Fitzpatrick, Timko, Leontakianakos, Dwyer-Jones, Gardner]

Ms. Timko discussed the previous testimony from the applicant that they plan to provide screened or shaded lighting. Mr. Leontakianakos suggested further discussion since abutters frequently mentioned lighting. CEO Wilson clarified his understanding of the applicants' request is that it involves an existing light along with some landscaping lights,

but that the Planning Board would still need to review a lighting plan as part of the overall plan review. CEO Wilson said granting the request would give the Planning Board more flexibility in approving the proposed lighting plan.

Motion by Barry Fitzpatrick to grant the request for relief from 16.8.9.4.K.(4) with the condition that any lighting plan be approved by the Planning Board. Motion second by Charles Denault. Motion passes by voice vote 5-1 [Aye: Denault, Fitzpatrick, Timko, Leontakianakos, Dwyer-Jones; No: Gardner]

Motion by Suzanne Dwyer-Jones to grant the request for relief from 16.8.9.4.K.(5) with the condition that existing pavement is to remain as-is. Motion second by Barry Fitzpatrick. Motion passes by voice vote 6-0 [Aye: Denault, Fitzpatrick, Timko, Leontakianakos, Dwyer-Jones, Gardner]

Ms. Timko stated that the Board has 10 days to reconsider any of the above decisions and the public has 45 days to appeal. Ms. Timko read the following Findings of Fact:

- Chatham Street, LLC, Owner, Ann Kendall, applicant, for business located 88 Pepperrell Road. Property is located in the Business-Local & Shoreland Overlay zones.
- Requesting variation regarding off-street parking standards in Land Use Code Section 16.8.9.4 and through subsections G & K.
- The applicant gave a presentation about the reasons they were seeking relief including a description of a specific hardship that would be caused to the applicant by strict enforcement of the requirements.
- There were a number of members of the public speak, largely in favor of the overall proposal, however, raising some concerns and requesting certain conditions.
- There would be a negative impact to the environment by requiring paving of the parking lot and potentially could be negative impacts based on the decisions around lighting.
- There are no safety issues associated with granting these particular requests for relief.
- There are no current violations for this property.

The Board moved to accept the Findings of Fact. Motion passes by voice vote 6-0. [Aye: Denault, Fitzpatrick, Timko, Leontakianakos, Dwyer-Jones, Gardner]

Ms. Timko recited the following Conclusions of Law:

- The Board has the authority to hear this Miscellaneous Variation Request pursuant to Title 16.6.4.C.2.

- The Board considered the basis for decision the conditions set forth in 16.6.6.A & also considered the factors for consideration in making its determination set forth in 16.6.6.B, inclusive.
- The Board determined specifically that due to the size and layout of the existing lot, meeting the particular landscaping requirements set forth in 16.8.9.4.G would cause a loss of required parking, create additional issues with congestion in the area, and could impact the historic nature of the parking lot and the grave site to the north of the lot.
- The Board determined that waiving the particular requirements of landscaping was appropriate but did include requirements that evergreen plantings be placed on the east and west borders of the lot located at 87 Pepperrell Road.
- Related to sections 16.8.9.4.K, the applicant withdrew their request for relief relative to subsection 1. Relative to subsection 2., the Board found, considering the factors set forth in the basis for decision in 16.6.6.A & 16.6.6.B, that the requests to section K.2-5 were appropriately granted with the condition for section K.4. that the lighting plan be approved by the Planning Board.

Ms. Timko stated that a written record of the above would be made available to the applicant and the public within seven days.

6. UNFINISHED BUSINESS

7. NEW BUSINESS

a. ELECT NEW OFFICERS

Motion by April Timko to defer this item to the next regular meeting. Motion second by Louis Leontakianakos. Motion passes by voice vote 6-0. [Aye: Denault, Fitzpatrick, Timko, Leontakianakos, Dwyer-Jones, Gardner]

8. ACCEPTANCE OF PREVIOUS MINUTES - 1/9/18, 2/27/18, 3/27/18, 6/12/18, 6/26/18, 9/25/18, 10/15/18

Motion by April Timko to postpone the meeting minutes to the next regular meeting. Motion second by Charles Denault. Motion passes by voice vote 6-0. [Aye: Denault, Fitzpatrick, Timko, Leontakianakos, Dwyer-Jones, Gardner]

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

Mr. Wilson stated his appreciation for the work of the Board.

10. ADJOURNMENT

Motion by Louis Leontakianakos to adjourn the meeting. Second by Suzanne Dwyer-Jones. The motion carried 6-0 by voice vote. [Aye: Denault, Fitzpatrick, Timko, Leontakianakos, Dwyer-Jones, Gardner]

The Kittery Board of Appeals meeting of January 8, 2019 adjourned at 9:16 PM.

Submitted by Adam Causey, Director of Planning & Development.

Disclaimer: The above 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>.