

MEETING MINUTES

1. CALL TO ORDER; INTRODUCTORY; ROLL CALL

Chair Jeff Brake called the meeting to order at 6:30PM and asked that the roll be called.

Board Members Present: Jeff Brake; Charles Denault III; Louis Leontakianakos; April Timko; Vern Gardner; Suzanne Dwyer-Jones

Board Members Absent: Barry Fitzpatrick

Staff Present: Adam Causey, Planning & Development Department Director

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION – None held.

5. PUBLIC HEARINGS

- a. Pamela Gray, Owner, 35 Sterling Road, Urban Residential zone, requesting Miscellaneous Variation Request to the terms of 16.3.2.4.D., seeking relief on the side yard setback for a mobile home.**

Adam Causey presented for the Town, and read from the prepared staff report. Pamela Gray, the owner, presented her request. Karen Benoit, an abutter to the property, rose to ask questions of the Board.

Motion by Charles Denault to approve the Miscellaneous Variation Request for 35 Sterling Road. Second by Louis Leontakianakos. Motion carried 5-0-1 by roll call vote. [Aye: Brake, Leontakianakos, Timko, Denault, Dwyer-Jones; No: ; Abstain: Gardner]

April Timko read the Findings of Fact and the Conclusions of Law into the record.

6. UNFINISHED BUSINESS – None

7. NEW BUSINESS

- a. VOTE TO RECONSIDER – MISCELLANEOUS VARIATION REQUEST
GRANTED JANUARY 8, 2019, 88 PEPPERRELL ROAD**

Since Chair Jeff Brake was not in attendance at the January 8 BOA meeting, he turned the gavel over to April Timko, who presided over that meeting.

Adam Causey, Director of Planning & Development, began by explaining that staff received a request via email from an abutter for the Board of Appeals to reconsider a previous decision concerning a Miscellaneous Variation Request granted on January 8, 2019, for the property at 87/88 Pepperrell Road. Mr. Causey said a reconsideration is a two-step process. First, the Board must vote whether to reconsider the previous decision. Per the Board's by-laws, a motion for reconsideration must be moved by a member who voted on the prevailing side on the original motion, which would be a member present on January 8, 2019 that voted in favor of granting the miscellaneous variation for landscaping standards. If the Board votes to reconsider at this meeting, the second part of the process would be to schedule a public hearing for the reconsideration at a future Board of Appeals meeting, at which time staff will properly notice the public, abutters, and any who spoke at the January 8, 2019 meeting. Board members discussed the process of reconsideration, what changes to the landscape plan are necessary, and whether reconsideration would involve members of the public who attended the January meeting. Mr. Causey stated that after the January meeting, the abutters and the developer met to discuss more specific landscape plantings that could satisfy neighbors' concerns. Staff is awaiting an updated landscape plan that would include the changes that the abutters are requesting.

Motion by Vern Gardner to annul or rescind the granting of all motions of January 8, 2019. Second by Charles Denault. Motion failed 1-4-1 by roll call vote. [Aye: Gardner; Nay: Leontakianakos, Timko, Denault, Dwyer-Jones Gardner; Abstain: Brake]

April Timko asked if any members of the public wanted to address the Board. Debbie Driscoll, 9 Pepperrell Terrace, and Clinton Reed, 4 Pepperrell Terrace, gave comments on the revised landscape plan. Debbie Driscoll asked that her request for a vote to reconsider be withdrawn. The Board took no further action.

b. ELECT NEW OFFICERS

Chair Jeff Brake opened the floor to nominations for Chair, Vice Chair, and Secretary.

Motion by Suzanne Dwyer-Jones to postpone this item to the next meeting. Second by Charles Denault. Motion carried 5-0-1 by voice vote. [Aye: Brake, Leontakianakos, Timko, Denault, Dwyer-Jones; Nay: ; Abstain: 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 approve the 1/9/18, 2/27/18, 3/27/18, 6/12/18, 6/26/18 meeting minutes. Second by Charles Denault. There was discussion about changes and additions to the minutes. Motion failed 0-6 by voice vote. [Aye: Brake, Leontakianakos, Timko, Denault, Dwyer-Jones; Nay: ; Abstain: Gardner]

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

Mr. Causey did not have any information yet for subsequent meetings. Mr. Causey reminded the Board of a Maine Municipal Association training opportunity for March 20.

Mr. Brake reminded the Board of a meeting regarding the Title 16 Recodification project at March 4 at 6pm at the Kittery Community Center.

10. ADJOURNMENT

Motion to adjourn by April Timko. Second by Louis Leontakianakos. The motion carried 6-0 by voice vote.

The Kittery Board of Appeals meeting of February 26, 2019 adjourned at 7:58 p.m.

Submitted by Adam Causey, Director of Planning & Development.

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>.

MEETING MINUTES

1. CALL TO ORDER; INTRODUCTORY; ROLL CALL

Chair Jeff Brake called the meeting to order at 6:30PM and asked that the roll be called.

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

Board Members Absent: Charles Denault

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

- a. Michael Dumond, Applicant, 53 Old Post Road (Map 8 Lot 6), Commercial Zone (C-3), requesting a Miscellaneous Variation Request per the terms of 16.7.3.3B(3)(c), and seeking relief from setback requirements for an accessory 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 July 13, 2019. Chair Brake opened the public hearing. Mr. Causey read from the staff report that this request resulted from a pool being placed in the side setback of a non-conforming residential use located in the C-3 zone. Mr. Causey explained that the Interim Code Enforcement Officer asked the applicant to remove the pool. The applicant submitted for a miscellaneous variation to allow the pool to remain. Mr. Causey stated that staff feels there is no path in the code via a miscellaneous variation request. Mrs. Timko asked if the code defined “structure,” and Mr. Causey read the definition from the code. Mr. Gardner asked how an above ground pool would meet the definition of a structure or an accessory structure under the code. Mr. Causey responded that it was the decision of the Interim Code Enforcement Officer to define it as such. Mr. Gardner asked if this pool should be treated more like personal property than a structure. Chair Brake called for the applicant to present. Michael Dumond, the applicant, rose to speak for his

application. Mrs. Timko asked the applicant to explain his rationale for requesting a miscellaneous variation request. Mr. Dumond stated that he thought he was appealing a decision of the Code Enforcement Officer. Hector Mackenzie rose to speak in favor of the applicant. Mr. Fitzpatrick questioned why the Board was hearing this case. Mrs. Timko asked the applicant if they would change the application to an administrative appeal of the CEO. The applicant requested to withdraw his initial application and change to an administrative appeal. Chair Brake closed the public hearing.

Motion by Barry Fitzpatrick to approve an Administrative Appeal to the Code Enforcement Officer decision, as altered and accepted by the applicant, to allow the temporary pool to remain in its current location. Second by Vern Gardner. Motion passed 6-0-0 by roll call vote [Aye: Brake, Fitzpatrick, Gardner, Leontakianakos, Dwyer-Jones, Timko; 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 issue involved a temporary pool, which is not a structure, (2) the Board did not need to consider whether the rules for the expansion of a structure were met, (3) the Board approved the applicant's Administrative Appeal to the CEO's decision.

Conclusions of Law – (1) The Board heard the Administrative Appeal under Town code section 16.6.4.A, which allows the Board to review administrative decisions made by the code enforcement officer (2) the Board received evidence and testimony and entered into deliberation (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 Suzanne Dwyer-Jones. Motion passed 6-0-0 by roll call vote [Aye: Brake, Fitzpatrick, Gardner, Leontakianakos, Dwyer-Jones, Timko; Nay: -- ; Abstain: --].

- b. Washburn Realty Group, Owner, 60 Route 236 (Map 29 Lot 14), Commercial Zone (C-2), requesting a Miscellaneous Variation Request to the terms of Article III of Town Code Chapter 16.7 (Nonconformance), seeking relief of front, side, and wetland setbacks for a commercial building.**

Chair Brake asked April Timko, Secretary, if the Board has the authority to hear this application. Mrs. Timko replied in the affirmative. Chair Brake opened the public hearing. Mr. Causey read from the staff report and stated that this application is for the construction of a new plumbing supply warehouse. Mr. Causey noted that the property was narrow and the application of setbacks per the code would leave no building envelope available and

render the parcel unbuildable. Mr. Causey also noted that the existing building and foundations would be removed. Mr. Causey noted that this application would require review and approval by the Planning Board under the site plan review process. Mrs. Timko asked if this was a relocation of the structures or a completely structures. Mr. Gardner asked how the project would be more conforming than the existing structures. Matt Williams, applicant, rose to speak in favor of the application and discussed how the extreme setback nonconformities would be cured by the project. Mr. Gardner asked the applicant if the setbacks for the new building would be in line with the average setbacks of other buildings along Route 236. The applicant stated that would be the case. John Chagnon, the applicant's engineer, rose to explain the new setbacks. Mr. Leontakianakos asked to see where the setbacks would be for the new building. Mr. Chagnon pointed out the setbacks on the plans displayed. Mr. Fitzpatrick stated that this property has been an eyesore for a while and asked if the vacant foundation would be demolished and if the applicant would need to raise the grade of the site to make the project work. Mr. Chagnon explained that there would be earthwork required to get the new driveway in and allow for safe truck movements in and out. Mr. Gardner asked why the building needed to be so close to the road and not simply be rebuilt on the existing foundation. Mr. Chagnon stated that moving the building would help protect the wetland to the east. Chair Brake closed the public hearing.

Motion by Vern Gardner to grant the miscellaneous variation request, provided that the applicant meet all the requirements and conditions imposed by the Planning Board, Code Enforcement Officer, or any other relevant Town authorities. Second by April Timko. Motion passed 6-0-0 by roll call vote [Aye: Brake, Fitzpatrick, Gardner, Leontakianakos, Dwyer-Jones, Timko; Nay: -- ; Abstain: --].

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

Findings of Fact – (1) The applicant appeared before the Board seeking a miscellaneous variation request for relief to front, side, and wetland setbacks for a commercial building per Town code 16.7.3, (2) the Board determined it had the authority to hear the application per 16.6.4.C.(1), (3) the hearing was duly advertised in the Portsmouth Herald on July 13, 2019, as required, (4) the applicant made a presentation and no other members of the public commented, (5) the subject property consists of approximately 64,469 square feet located on Route 236 north and is a conforming lot of record zoned C-2, (6) the property contains a vacant warehouse structure and old foundation with no structure and has not been in operation for several years, (7) the applicant proposes to construct a new two-story commercial building to serve as a plumbing supply warehouse and

showroom, (8) the proposed new structure would be less nonconforming than the prior use.

Conclusions of Law – (1) The Board has the authority to hear the Miscellaneous Variation Request Town code section 16.6.4.C.(1), (2) the Board considered the conditions contained in Town code section 16.7.3.3.A.(2), (3) the Board considered the basis of decisions contained in Town code section 16.6.6., (3) the Board voted to granted the miscellaneous variation request.

Motion by April Timko to approve the findings of fact and conclusions of law as read. Second by Vern Gardner. Motion passed 6-0-0 by roll call vote [Aye: Brake, Fitzpatrick, Gardner, Leontakianakos, Dwyer-Jones, Timko; Nay: -- ; Abstain:--].

6. UNFINISHED BUSINESS

7. NEW BUSINESS

8. ACCEPTANCE OF PREVIOUS MINUTES

- a. September 25, 2018**
- b. November 13, 2018**
- c. January 8, 2019**
- d. February 26, 2019**
- e. March 12, 2019**
- f. April 9, 2019**
- g. June 11, 2019**
- h. June 25, 2019**

Mr. Fitzpatrick stated that he was not at the February 26,2019 meeting and they should be amended.

Motion by Louis Leontakianakos to approve the listed minutes except for the February 26, 2019 minutes. Second by Suzanne Dwyer-Jones. Motion passed unanimously.

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

a. Introduction of new CEO Craig Alfis

Mr. Causey introduced the new CEO. The Board welcomed Mr. Alfis, who rose to introduce himself.

Mr. Gardner spoke to point out what he felt are inconsistencies in the code relative to the Board of Appeals and Planning Board and miscellaneous variation requests and variances. Mrs. Timko offered her interpretation. Mr. Leontakianakos asked that this be put on a list of potential changes. Mr. Causey stated that the language would be dealt with during the ongoing Title 16 recodification project.

10. ADJOURNMENT

Motion by Barry Fitzpatrick to adjourn. Second by Louis Leontakianakos. Motion passed 5-0-1 by roll call vote [Aye: Brake, Fitzpatrick, Leontakianakos, Dwyer-Jones, Timko; Nay: ; Abstain: Gardner].

The Kittery Board of Appeals meeting of July 23, 2019 adjourned at 7:54 p.m.

Submitted by Adam Causey, Director of Planning & Development.

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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

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