

1. Call to Order, Introductory, Roll Call

The chair called the meeting to order at 7:00 p.m.

Present: Barry Fitzpatrick, Craig Wilson, Charles Denault, III, Jeffrey Brake, Louis Leontakianakos, April Timko

Staff Present: Robert Marchi, Code Enforcement Officer

2. Pledge of Allegiance

3. Agenda Amendment and Adoption

The Board adopted the Agenda as given. The Board had no objection to Chair Wilson acting as secretary for the tonight's meeting.

4. Executive Session

There was no executive session.

5. Public Hearings

The secretary delineates the power of the Board.

For Item 1, the Chair stated this is an administrative appeal under 16.1.5.2(f)(2) and the Board has the power to hear administrative appeals under Title 13 - 13.2.3 Sewer Service Administrative Decision Appeals and Title 16 16.3.3 - Appeal of Code Enforcement Officer Decision.

For Item 2, this is a miscellaneous variation request under 16.1.5.2(f)(4). The Board has the power to hear this request in 16.6.4.3 - Miscellaneous Variation Request and Nonconformance as described in Article III of Chapter 16.7.

There are no violations on either property as determined by the Code Enforcement Officer and no Board members have a biased, conflict of interest.

Item 1 - Stephen Hynes, Trustee, settlement Loop, Map 66 Lot 24-25, Residential Urban/Mixed-Use zones, requesting Administrative Appeal to the terms of 13.1.6.6 & Appendix A - Fee Schedule 13 & 16 regarding determination of fees.

Testimony

Mr. Marchi described the information he included in the Board packet, which included a full copy of Title 13. he gave the definitions in Article IV of building drain/building sewer from Title 13.1.4.2.2 - the Authority to Make Assessments and following definitions that apply under

13.1.4.3.2: Benefited Parcel, Assessed Parcel, Unassessed Parcel, Dwelling Unit, Per-Dwelling Unit, which is also found in 16.2.2. Mr. Marchi also reviewed Article VI - New Sewer Service Connection Fees and read 13.1.6.3 - New Main Entrance Connection Fees and 13.1.6.6 - Special Sewer Entrance Connection Fee, which language includes "Appendix A is established on a per dwelling unit basis for residences and on a per unit of occupancy basis for nonresidential structures for each new sewer connection to the main".

Mr. Marchi reviewed the fees listed in Appendix A that are in contention. They are Building Sewers and Connections fee for residential or commercial at \$15, the New Sewer Service Connection fee for Special Sewer Entrance Connection in the amount of \$3,000 and the Plumbing Permit Fee, which are set by the State and the Manufactured Housing Board and the State Plumbing Board at DHHS. Mr. Marchi stated a portion of the fee goes to the State. Mr. Marchi also included a picture of for a new manufactured home showing the pipe from home to the sewer connection.

Brian Rayback, attorney at Pierce Atwood and representing the applicant, introduced Liz Cuomo, manager of the Yankee Commons Mobile Home Park. He explained the applicant is challenging three fees discovered when they applied for a building permit to develop Lot 2. Mr. Rayback explained the fee calculation being challenged is three of the six fees. The special sewer and plumbing fee is \$3,000 for each mobile home, which would cost the development over \$200,000. They are also appealing the building sewer permit fee at \$15 and the plumbing permit fee at \$65 per home. Mr. Rayback stated this impacts the economics of the project and will impact the cost for the homes that are supposed to be affordable.

Mr. Rayback first addressed the Special Entrance Connection Fee and gave his interpretation of the Ordinance. He read over 13.1.6.6(a) and believes the provision applies to each new sewer connection to a sewer main and do not focus on the per-unit-dwelling basis that applies to every new connection. He added there is one connection to the sewer main that is located outside of the park and, therefore, the applicant should only be charged \$3,000. All infrastructure costs will be maintained by the park. He added the park is not like a subdivision due to the infrastructure being conglomerated. He suggested the Board look at the plain language.

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Mr. Rayback next addressed the Building Sewer and Plumbing Permit Fees and contented that the Town has no authority to charge the fees since the State monitors all the building and plumbing activity and they can't be subject to the fees twice. He referred to 10 MRS §9006 of the Maine Manufactured Housing Act and 30-A §4355 regarding application fees and he believes the Town is charging a tax not a fee because there is no service provided.

In rebuttal, Mr. Marchi read the definition of the word "basis", basis-per-unit and basis of connection. He pointed out the Town has used per-unit-basis in the recent sewer assessment. He asked why would this be in the ordinance if it is a fee per connection? The Town uses a basis formula to arrive at the figure. Mr. Marchi also explained the Town has no jurisdiction inside the mobile home only outside the Town runs under the State perimeter. Mr. Marchi described the services involved for the building sewer permit fee, which include inspections of the infrastructure and the sewer pumps for every home by the Sewer Department. Inspections have already been done on the infrastructure by the Sewer Department.

Mr. Rayback responded to the issue of per-unit basis and Mr. Marchi's questioning of why would this be in the ordinance if it is just a fee per connection. The applicant believes it is both, the per-dwelling-unit fee and the connection to the sewer main - not one or the other. The applicant believes the connection fee should be standardized and the \$15 permit fee may have fallen into the category of "always having been done".

Chair Wilson opened public comment.

Rick Thayer, Martin Road, is in favor of the Code Enforcement Officer's position and commented if the Town does not charge the applicant the fees, they would be favoring the large developer over the residents. He believes the entrance connection fee should be charged for each dwelling unit and the mobile homes are separate units. He added it is not fair to those who have paid assessments based on multiple units and there are no differences from the mobile home park to a multi-family homeowner who have paid in the past.

Debbie Driscoll, resident, agreed with the Code Enforcement Officer and believes all new development should be treated fairly and the same and, if not, the Town will be further in debt.

Liz Cuomo, property manager of Yankee Mobile Home Park and resident of Kittery, is not in favor of the Code Enforcement Officer. She explained the costs of labor for the infrastructure of the park. She added the mobile home park maintains and services the internal infrastructure of the park. The \$3,000 connection fee is unfair to pay for all the mobile homes and the Town takes care of the sewer maintenance for standard homes. She believes there is a difference from a standard home on a street and a mobile home park on private property that needs to be maintained.

Ms. Driscoll replied she understands Ms. Cuomo's analogy of tying into the street but not all are homes are. She added all homeowners are responsibility for the sewer pipes on their property. The Town should treat all dwelling units similarly and fairly.

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

Board Discussion:

Chair Wilson commented the Board should be interpreting the law and not financial considerations. Mr. Denault asked of past practices for mobile parks. Mr. Marchi replied the same formula in assessments were done for a park on Dana Avenue and Shepherd's Cove and other properties.

Chair Wilson read a letter sent in by resident Kathryn Hawkes, 16 Stevenson Road, who is in support of the Code Enforcement Officer's decision.

Mr. Denault asked how the Town assesses the fees for the Shipyard which has one main line connecting to the Town. He added Shipyard staff takes care of all past the gate. Mr. Marchi responded the Shipyard is treated differently because building permits are not provided.

Mr. Fitzpatrick commented he did not see Mr. Hynes' signature on the application and commented on the wording on Page 2 in Exhibit A. He pointed out the cost of the units will be approximately \$2,000 and thought that was reasonable for the Town of Kittery. He added the Town recently went through a sewer process and there will be 71 homes with sewerage going into Kittery's sewer system. His opinion is the applicant should pay.

Mr. Rayback stated the applicant raised the money issues because they have the burden of proving they have standing to file the appeal. Discussion ensued of the language in the Code that was written by the Council.

Mr. Marchi recognized the Town Manger's presence. He explained why the Shipyard is different from the mobile home park. The assessment formula was the same one used for assessments of other developments. Mr. Marchi also explained the Special Assessment Entrance Fee is to gain money for non-assessed parcels and the parcel of land where the 71 mobiles homes are to be placed is unbedded. No money was paid towards the infrastructure at the time. Discussion of the Dana Avenue mobile home park ensued. Chair Wilson reminded the Board they cannot base their decision on precedence but on the law.

Mr. Denault disagreed with Chair Wilson's interpretation of direct and indirect entrance into the main connection and believes it is one connection to the main. Ms. Timko did not agree with the reading of connections from the Chair and she believes the Code Enforcement Officer's interpretation is correct and is on a per dwelling unit basis and number of connection does not matter. Mr. Fitzpatrick, Vice Chair Brake and Mr. Leontakianakos also disagreed with the Chair interpretation.

Mr. Rayback responded the relevancy is each connection to the main and there is only one connection. Ms. Cuomo commented she disagrees what the fees are for and tenants will be paying lot fees to maintain the sewer lines.

Ms. Timko commented the case was clearly presented and the language of the code is clear. There is a new sewer entrance connection to a system main, which is what triggers the assessment on a per-dwelling-unit basis and number of connections does not matter. She added she is not disregarding the clause; she disagrees with the representative's interpretation.

Mr. Denault asked about what constitutes a fee. Chair Wilson referred to the language in Exhibit A. Mr. Marchi's point out there is a service provided related to the fee. Discussion of the description of the services covered for the \$15 and \$60 fees ensued. Mr. Marchi added the fees are mandated by the State.

Ms. Timko moved that the Kittery Board of Appeals upholds the fee decisions for the appeal of Stephen Hynes, Trustee, Settlement Loop, Map 66 Lot 24-25, Residential Urban/Mixed-Use zones, requesting Administrative Appeal to the terms of 13.1.6 and Appendix A - Fee Schedule 13 and 16 regarding determination of fees.

Mr. Fitzpatrick seconded the motion.

Mr. Denault commented that the special sewer connection fee is like a tax and the fee is covered under the other two fees. He questioned what the \$3,000 fee goes for other than digging and connecting the line. Chair Wilson responded that Mr. Marchi explained when the sewer comes out of the mobile home itself, someone needs to go out to ensure it is done correctly.

The motion carried 5-0-1 (Mr. Denault against).

Findings of Fact

- The Board of Appeals had a public hearing for Stephen Hynes, Trustee, Settlement Loop, Map 66 Lot 24-25, Residential Urban/Mixed-Use zones, requesting Administrative Appeal to the terms of 13.1.6.6 & Appendix A - Fee Schedule 13 and 16 regarding determination of fees.
- The hearing was advertised in *The Portsmouth Herald* on December 28, 2017.
- There are no violations on the property.
- The Code Enforcement Officer's presentation included reading of definitions of building drain/building sewer from Title 13.1.4.2.2 - the Authority to Make Assessments and Title 13.1.4.3.2 - Definitions and read Benefited Parcel, Assessed Parcel, Unassessed Parcel and Dwelling Unit, Per-Dwelling-Unit and is the same as in Title 16.2.2. He also read Article VI - New Sewer Service Connection Fee - Title 13.1.6.3 - New Main Entrance Connection Fee and Title 13.1.6.6 - Per Dwelling Unit Basis.
- The applicant was represented by Brian Rayback from Pierce Attwood and Liz Cuomo, Manager of Yankee Green Mobile Home Park.
- The presentation by Mr. Rayback focused on the special sewer connection fee which was triggered by building permit request for Lot 2 and was given the impact fees and decided to contest them.
- The main point of Mr. Rayback's argument was that the Code Enforcement Officer had focused on per dwelling unit for the assessment of the entrance connection and Mr. Rayback contended each new entrance connection needed to be read into that and it had to be both. He commented there is only one connection to the main line.
- The second and lesser item were the building sewer permit fees. The Code Enforcement Officer made the point manufactured houses are subject to state codes for uniformity and done by licensed installers. The State monitors all the building and plumbing activity and the applicant believes it is redundant to have the Town do it and the fees need to roughly reflect the approximate Town cost and the applicant felt that was not the case. The fee needed to be for a service otherwise it is a tax. There didn't appear to be a service provided.

- In rebuttal, the Code Enforcement Officer provided a definition of basis per unit, basis of connection and sewer assessment and talked of the basis formula. He talked of the inside of the mobile home being exempt from Town inspection but not the outside.
- The fees being State fees are set by the State and the Manufactured Housing Board and the State Plumbing Board at DHHS.
- There were three residents who testified at the public hearing. Rick Thayer, who felt choosing large development over the individual homeowners if in voting in favor of the applicant and pointed out past practices. Debbie Driscoll argued for fairness also and 71 units needed to pay their fair share in terms of the cost of the sewers. Against the potential motion to uphold the Code Enforcement Officer's decision, Liz Cuomo, manager of Yankee Common Mobile Home Park and resident of Kittery, Idlewood Lane, argued that the cost of all internal infrastructure was borne by the developer and in addition of installation the developer would bear the cost of its maintenance. There was a letter read into the Minutes from Kathryn Hawks, 16 Stevenson Road, in defense of the CEO's decision.
- Board discussion items included questions of past practices and how the Shipyard was assessed.
- The consensus of the Board was that the language of Title 13.1.6.6. - Special Sewer Entrance Connection Fee - was clear, and the Board's interpretation would be that for per dwelling unit basis there should be 71 special sewer entrance fees assessed to the park.
- The Board also discussed the Building Sewer Permit Fee of \$15 and the Plumbing Permit Fee, which includes \$25 administration fee and a \$40 minimum fixture fee totaling \$65. The Board felt there was a service connected to those fees and not simply a tax and are costs borne to the Town for recouping of the Town's costs via the Sewer Department's inspections and the Code Enforcement Officer's inspections.
- There was not unanimity on the Board. Mr. Denault felt that the language of Title 13.1.6.6 was clear and favored the applicant's interpretation. Mr. Wilson made a counter argument that echoed Ms. Hawks reading in both direct and indirect entrance into the main and that interpretation was not supported by the majority of the Board.

The Board unanimously accepted the Findings of Fact.

Conclusions of Law

The Board felt that the Code Enforcement Officer's interpretation of 13.1.6.6 and Appendix A Fee Schedules 13 and 16 was correct and defensible and upheld his decision.

Chair Wilson moved to accept the Conclusion of Law.

The Board unanimously accepted the Conclusions of Law.

Item 2 - Oscar Boreth, Owner, Luis Velez Ortiz, Applicant, 181 State Road, Map 22 Lot 4, commercial 3 zone, requesting Miscellaneous Variation Request to required setbacks.

Testimony

Mr. Marchi stated the applicant is looking for a permit to enclose a small section of the building. He added it is a very small footprint and they want to close in a concrete padded area to make the waiting area larger. He added the State of Maine owns the property and is very close to the applicant's building. After renovation of the traffic circle this year, the applicant does not have enough of a set back to make the change. Code Enforcement has no issues if the Board approves the request.

Applicant Oscar Boreth, gave a history of the property. He added the parking area in the front had to be moved because the State added sidewalks to the traffic circle. The setback is 5-ft. from the front of the property line. Mr. Boreth explained he paved the new lot that was relocated to the back at his own expense. He is asking for the variation request in order so his tenant to be able to expand the customer waiting area. He will be upgrading the menu and people will need to wait. The previous business was a hot dog stand and this one is different. Mr. Ortiz, the tenant, commented the current area is too small and is difficult to keep clean especially in the winter. He wants to get customers out of the weather while they are waiting for their food.

The Chair opened the public hearing. There being no comment, the Chair closed the public comment.

Mr. Leontakianakos asked if the addition is to construct on an actual slab within the 5-ft. setback of the State's property. Mr. Marchi responded it is and the Town requirement is a 50-ft. setback for that area. Mr. Fitzpatrick stated he liked the idea of enclosing the step and believes it would be a plus for the property. He added they were told the circle project was not going to impact any of the businesses in the circle. Mr. Boreth stated if it wasn't for the property he owned in the rear of the building, he would have been out of business.

There being no further discussion, Mr. Fitzpatrick moved to approve the Miscellaneous Variation Request for -Oscar Boreth, Owner, Luis Velez Ortiz, Applicant, 181 State Road, Map 22 Lot 4, commercial 3 zone, requesting a variation from the 50-ft front yard setback to more than 5- ft. but less than 50-ft. in order to construct a 134sq. ft. addition that would be 17x7'4" with four windows and one door as per the plan submitted by Louis Hamell 9/20/2017 included in application packet.

The motion was seconded by Mr. Leontakianakos.

The motion carried 6-0-0.

Findings of Fact

- Oscar Boreth, Owner, Luis Velez Ortiz, Applicant, 181 State Road, Map 22 Lot 4, commercial 3 Zone, are requesting a Miscellaneous Variation Request to required setbacks
- The Code Enforcement Officer testified that this was to enclose a small portion of an existing concrete pad to add a waiting area to the building.
- The Town had no objection to proposal.
- Oscar Boreth, applicant, presented the facts it was the Former Dog House and gave some history.
- There is a 5-ft. current front yard setback to the property line. On other side is State land. A 50-ft. front yard setback is required.
- Mr. Boreth stated he lost all his parking area in the front due to the reconfiguration of the parking circle and had a quarter acre behind the building and was able to construct parking in the rear.
- The reason for enclosure is applicant's leasee is trying a different business model and wants to have people out of the weather and wants to keep it clean.
- The addition will be 134 sq. ft., 17' x 7'4" with four windows and an interior door.
- There was no public comment on the application.

Chair moved to accept the Findings of Fact.

The motion carried 6-0-0.

Conclusions of Law

The Board has the power to hear this under 16.7.3.3.2 - Nonconforming Structure Repair and Expansion. The Board found that the structure would be no closer than the existing nonconformance. The Board had the power to grant the application and having reviewed 16.6.6 - Basis of Decision - found the conditions and factors of consideration were met to grant relief.

The Chair moved to accept the Conclusions of Law.

The motion carried 6-0-0.

6. Unfinished Business - None

7. New Business Election of New Officers

The Board was in consensus to wait until the new member is elected and suspend the bylaws until the next regular scheduled meeting to elect officers.

8. Approval of Minutes - None

9. Board or CEO Issues or Comment

Mr. Marchi commented there is no meeting scheduled at this time. He added all the other boards have moved their meetings to 6:00 p.m. and asked the Board if they would consider moving this meeting as well to that time. After discussion, the Board agreed to move their meeting to 6:30 p.m. The bylaws will be revised to reflect this.

Chair Wilson will submit in writing the Board of Appeals meetings will be changed from 7:00 p.m. to 6:30 p.m. and the meeting change will begin at the next meeting.

Mr. Marchi suggested a workshop to review Title 16 definitions to understand the application forms and issues surrounding them. Mr. Marchi commented the language needs to be addressed regarding the process of administrative appeals.

Chair Wilson informed the Board that he sent the Maine Municipal Association training schedule to them. He added there is also a possibility to have 1 on 1 training with a representative.

**Vice Chair Brake moved to adjourn the meeting at 9:35 p.m.
Mr. Denault seconded the motion.**

The motion carried 6-0-0.

1. Call to Order, Introductory, Roll Call

The Chair called the meeting to order at 6:30 p.m.

Present: Craig Wilson, Charles Denault, III, Jeffrey Brake, April Timko, Judy Spiller

Absent: Louis Leontakianakos, Barry Fitzpatrick

Staff Present: Robert Marchi, Code Enforcement Officer

2. Pledge of Allegiance

3. Agenda Amendment and Adoption

The Board adopted the Agenda as presented.

4. Executive Session

There was no executive session.

5. Public Hearings

Chair Wilson gave the applicant the choice to postpone tonight's hearing because two members of the Board were absent, and they would need four like votes. The applicant stated she would like her item heard tonight.

Andy Chick, Owner, Pam Edwards, Applicant, 99 State Road, Map 8 Lot 31, Business - Local B-L Zone, requesting Special Exception request to convert commercial space to a single-family dwelling in a mixed-use building and, if approved, apply for a Major Home Occupation for Licensed Medical Marijuana Caregiver.

Testimony

The Board decided to hear the testimony for both applications at the same time. Mr. Marchi explained this is a Special Exception application for a residential unit in a mixed-use, commercial building. The building is an existing nonconforming building which has been around since the 1960's. He added, if the Board approves the use, the applicant will still need to meet certain code requirements for the building. The reason for this request is the applicant would like to have a home occupation use that is not allowed in the zone for a commercial building because the Town only allows a medical marijuana caregiver as a home occupation. By establishing a residence in the commercial building, the applicant hopes to be allowed for this use. Mr. Marchi commented conditions added by the Board would be in the record and enforced. Mr. Marchi also stated the Chair had asked him earlier of the availability of parking on the property and Mr. Marchi stated there are 17 required and 25 available parking spots.

Pam Edwards, applicant, stated she is a Kittery resident and business owner. She explained she is making the request of changing commercial space into a single-family unit. This would enable her to live closer to one of her stores, Kittery Discount Smoke Shop and allow her to have a home occupation providing medical marijuana as a caregiver. She added home occupation is allowed in the zone. Mr. Marchi reviewed Home Occupation in Code 16.8.2.21. Ms. Edwards explained why the site is a good location for the home occupation. The structure is ideal for cultivation; the building is a single-level entry with parking for handicapped patients, the location is off the regular pedestrian path, there will be no signage, and there are not many children, churches or playgrounds in the immediate area. She added she has a license from the State of Maine and the Department of Human Services considers the building as a simple remodel. Ms. Edwards explained the plans for security to the property. She also explained her history of helping people in the community and her concern for patients who need to drive to Biddeford to get what they need. She added she has letters of support for the Board to consider.

The residence will be on the first and second floor and Mr. Marchi pointed out commercial usually occupies the first floor and residential the second. Mr. Marchi's concerned is that the applicant is creating a storefront for a home occupation.

The Chair opened the public hearing.

Peter Macdonald, Lee, NH, explained he began the Veteran Resort Chapel, which helps homeless combat veterans, and the applicants have helped his organization. He commented the Board should look at the benefits of bringing the old building up to code and having someone on the property is added security.

Sherry Lehoullier stated she supports the applicant. She is a medical healthcare professional in Maine and New Hampshire and described the benefits this would be for patients in need.

Tammie Snow, Ms. Edward's attorney, clarified there will be no living room on the second floor. The existing smoke shop will be moved next door with a separate entrance.

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

The Board has the power and duty to hear the proposal of a special exception for residential in the B-L zone under 16.1.5.2 4d Special Exception Request. This proposal does not require Planning Board review because it is not in the shoreland zone.

The Board has the power and duty to hear the proposal for Major Home Occupation under Article XII, 16.8.22(2)(c) Major Home Occupation.

The Chair ruled the Board can hear both components.

Deliberation

Ms. Spiller expressed her concern of the layout of the residential property. Ms. Edwards explained there will be four bedrooms, a kitchen and bath on the second floor. The first floor

will have a living room and a small pantry. She added the store is not part of the residential property and will be located next door. Sales of medical marijuana will take place in the living room on the first floor because it is handicapped accessible. Ms. Timko asked of the total square footage of the residence proposed and the square footage for the area used for the business. The applicant explained two bedrooms will be used as a grow room and veg. room and 25% of the living room will be dedicated for the business. Chair Wilson pointed out home occupation needs to be an accessory to the residence. He added a building floor plan showing square footage of pre-proposal and post-proposal for all floors should be submitted, which should be a condition of approval.

Ms. Spiller expressed her concern with the smoke shop being next to the living room because it seems more like a dispensary than a home and asked about Number 7 on the application regarding retail sales of smoking accessories. Ms. Edwards explained they have changed their minds about Number 7 and it can be struck out. Chair Wilson asked about signage. The applicant explained the home occupation will be called "Your Green Thumb" and there will be a separate sign on the door.

Chair Wilson commented the Board needs to certify the testimony in the applications meets 16.6.6.1, .2 and .3. There is testimony there will be no outside venting and there will be inside charcoal filters for odor. The Board found this acceptable. The Code Enforcement Officer will need to make sure this is being upheld. The Chair listed the following three conditions: 1. plot plans and calculations; 2. signage on interior doors for smoke shop and major home occupation; and 3. certification at a date uncertain by the Code Enforcement Officer that odor control that is adequate.

Mr. Denault moved that the Kittery Board of Appeals grant approval for Andy Chick, Owner, Pam Edwards, Applicant for 99 State Road, Map 8 Lot 31, Business - Local B-L Zone, Special Exceptions to convert commercial space to a single-family dwelling in a mixed-use building and also special exception for a Major Home Occupation for Licensed Medical Marijuana Caregiver with the following conditions: 1. the applicant supplies plot plans to the Code Enforcement Officer's satisfaction for preproposal conditions including square footage of all the existing uses and a post proposal plot showing the reconfigured building and reconfigured square footage. The plot plans must show less than 50% square footage allocated to the home occupation; 2. signs on interior doors for smoke shop and major home occupation; and 3. date chosen by a by the Code Enforcement Officer that the odor control system is adequate.

Mr. Marchi asked the applicant how many patients they are legally allowed to service. Ms. Edwards responded she and her partner are licensed caregivers and they are allowed to service ten patients and they are also allowed to have one employee each who need to be registered with the State under them. Attorney Snow explained the State law of allowances and limitations for caregivers.

Mr. Marchi explained his concern of this creating a commercial venture and the residential aspect being on the first floor where generally commercial is allowed. Chair Wilson asked if this requirement for a mixed-use building is in the code. Mr. Marchi replied it is not. The Board also

discussed the procedure if State law changes and the applicant can expand the business because it would affect the accessory-use percentage. Mr. Marchi pointed out major home has an annual renewal and, if there were any issues, the Code Enforcement Officer would be aware.

Ms. Spiller spoke of her continuing concern of the residential area being on the first floor with the smoke shop being adjacent and both businesses having the same owners. She also expressed her concern with the smoke shop selling pipes and vaporizers making the business more of a dispensary. Attorney Snow explained the State law allows caregivers to sell accessories in their homes, but the applicants have chosen not to do so. The State law does not permit caregivers to have retail sales. She added the smoke shop is a separate entity with a separate entrance.

Ms. Timko seconded the motion.

Ms. Spiller referred to Code 16.6.6.1 and of her concern of mixed commercial and major occupation in the proximity to Memorial Field and Legion Pond which will be a town park.

Ms. Timko pointed out the Board needs to be consistent of accessory use and incidental use in fairness of other applicants. She added she is concerned that there is no square footage. After discussion, language will be added to condition 1 reading: "The plot plans must show less than 50% square footage allocated to the home occupation."

The motion carried 5-0-0.

Chair Wilson noted there is a one-year time limit and they will need to go to the Code Enforcement Officer for a building permit. He also noted 32 form letter petitions of support were submitted to the Board and will be placed in the record.

Findings of Fact

- We had appearing before us the applicant, Pam Edwards, representing Andy Chick, Owner, for two special exceptions at 99 State Road, Map 8 Lot 31, Business - Local B-L Zone, first Special Exception request to convert commercial space to a single-family dwelling in a mixed-use building and, second Special Exception for Major Home Occupation for Licensed Medical Marijuana Caregiver.
- 99 State Road is a nonconforming building as per setbacks.
- The parking for the building currently requires 17 spaces and 25 spaces are available.
- Pam Edwards spoke and there will be two caregivers.
- She spoke about being a single level for the home occupation, so parking and entry are handicapped accessible.
- Ms. Edwards talked about the security plans, cameras motion detectors and the like.
- She spoke about the location having no window shopping pedestrian traffic or people happening by.
- There will be no signage outside for the medical marijuana business.
- There are no schools or playgrounds are nearby.
- Talked about it being an organic product.

- The public speaking portion Peter Macdonald, veteran, spoke of the positives of upgrading the building and will be occupied providing better security.
- Sherry Lehoullier, health care professional, spoke of this being one of the anecdotes to the opioid problem and benefitting for pain relief.
- Attorney Tammie Snow appeared and clarified the smoke shop will become the living room and there was discussion about where in the living room the medical marijuana transfer would take place.
- There was testimony that there are two separate business entities - the smoke shop and the marijuana caregiving though the same people who are associated with the two business entities.

The Chair asked for a vote on the Findings of Fact as presented and all were in favor 5-0-0.

Basis of Law

For first Special Exception, the Board is granted the ability to grant special exception under 16.1.5.2 to grant a Special Exception 4(D) and the Board of Appeals reviewed the basis for decision and factors for consideration and found that Special Exception was appropriate and so voted. Under the Home Occupation, the Board of Appeals is given the power under 16.8.22.3(A1), (A2) (C) and they went through factors of consideration and found it was appropriate and so voted.

The Chair asked for a vote on the Basis of Law as presented and all were in favor 5-0-0.

6. Unfinished Business

Chair Wilson explained this is the second notice of the time change to the 6:30 start time. They changed the By-Laws and the first notice was on January 9, 2018.

Ms. Spiller moved to accept the second reading of the By-Laws to change the start time to 6:30.

Vice Chair Brake seconded the motion.

The motion carried 5-0-0.

7. New Business - Election of Officers

Since only five board members were in attendance, the Chair suggested postponing this item until the next meeting. Board members agreed. The Chair will act as Chair and Secretary at the next meeting. He added the powers and duties can be referenced in Chapter 16 and their By-Laws have the duties of the Chair and duties of the Secretary. Chair Wilson informed the Board a new Chair should be elected since his time on the Board will be over in November.

Mr. Marchi stated a public hearing will be held on March 13, 2018.

8. Acceptance of Minutes: None.

9. Board Member or CEO Issues or Comment

There will be a training session with an attorney and planning and development. A date will be determined later.

10. Adjournment

The meeting adjourned at 8:00 p.m.

1. Call to order: Introductory; Roll Call

Present: Craig Wilson, Charles Denault, III, April Timko, Judy Spiller, Louis Leontakianakos, Barry Fitzpatrick

Absent: Jeffrey Brake

Staff Present: Robert Marchi, Code Enforcement Officer

2. Pledge of Allegiance

3. Agenda Amendment and Adoption

Chair Wilson requested the February 28, 2018 Minutes to be reviewed by email due to the Board not having them tonight. No objections were made.

4. Executive Session

None.

5. Public Hearings

Item 1 Jeremy Reynolds, J & J Development, Inc., 12 Bridge Street, Map 3 Lot 72, Residential – Urban R-U, requesting Miscellaneous Variation Request to remove existing 4-unit structure and construct new 4-unit structure in new location.

Chair Wilson noted this item was to be heard at the March 13, 2018 meeting but was postponed due to the snowstorm.

As Secretary, Chair Wilson affirmed the Board has the power and duty to hear this item in Code 16.1.5.2(F)(4)(A) the Board is to hear Miscellaneous Variation Requests of Nonconformance as described in Article III, Chapter 16.7.

Testimony

Mr. Reynolds explained the plan is to remove the current 4-unit structure, which is currently nonconforming and does not meet current setbacks and rebuild in a new location on the lot. Mr. Reynolds also explained the proposed 4-unit structure is approximately 1,000 sq. ft. larger than the current building and will meet all setbacks and will be more appealing for the Town. He added the zone allows for up to 20% building coverage and his plan is less. Mr. Reynolds explained parking includes one garage with one additional space. The applicant will try to maintain as much greenspace as possible.

Mr. Marchi stated this is an existing nonconforming 4-unit building which is nonconforming because of the setbacks and use. Currently, the Town would not now allow this type of development. He added it is existing and the applicant could build without coming to the Board if the same footprint was used and rebuild it as in-kind. Mr. Marchi added, if this was done, it would not meet the setbacks. Mr. Marchi has no issues with the proposed plan because it is a better situation. He added there are no violations on the property and it is not in the Shoreland Zone

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

Ms. Spiller pointed out Note 6 of the plan stated Town of York. The applicant will change to Town of Kittery. She also asked the age of the current building and the applicant replied it was built in the late 1800's and is not salvageable. Mr. Marchi added the new building will be sprinkled making it a safer structure.

Mr. Fitzpatrick commented replacing the current building with a contemporary one will be a benefit to the neighborhood.

Mr. Reynolds reviewed the design of the units and reiterated the new footprint will be approximately 1,000 ft. larger and will meet the code other than being four units.

Chair Wilson asked the applicant about the right of way noted on the site plan. Mr. Reynolds replied Mr. MacDonald owns the land in the back of the lot and a right of way has been in use for many years. Mr. Marchi read over the owners' deeds regarding the right of way. There are no restrictions on the use of the right of way. Chair Wilson expressed his concern of headlights and building lights disturbing the two homes in the back of the property and suggested the lighting should be downcast with no horizontal leakage. Mr. Reynolds testified he is not changing the traffic configuration and added the proposed heating and cooling units will be interior and air conditioner condensers, if added, will be screened. Chair Wilson also requested a grading and stormwater plan. After reviewing Code 16.6.6.2(m) Factors for Consideration, the Board was in consensus to require the applicant provide a landscaping, erosion and stormwater plan, which is acceptable by code enforcement who will submit for review to the appropriate agencies.

Mr. Denault moved to grant to Jeremy Reynolds, doing business as J & J Development, Inc., for property located at 12 Bridge Street, Map 3 Lot 72, Residential – Urban R-U, a Miscellaneous Variation Request to remove an existing 4-unit structure and construct a new 4-unit structure in a new location as per Easterly Surveying Plan project No. 18603 with the following condition of a stormwater and erosion control management plan taking in account 100 year storm values be presented before construction begins and found acceptable to the CEO.

Mr. Leontakianakos seconded the motion.

The motion carried 6-0-0.

Findings of Fact

- Appearing before us was Mr. Jeremy Reynolds, representing J & J Development, Inc., for a development at 12 Bridge Street, Map 3 Lot 72 in Residential – Urban R-U.
- Mr. Reynolds is requesting a Miscellaneous Variation Request to remove an existing 4-unit structure and construct a new 4-unit structure in a different location on Lot 72.
- The existing structure is nonconforming in front and rear setbacks and in the number of units allowed.
- The Code Enforcement Officer reported there are no violations on the property.
- The property is not in the Shoreland Zone.
- Sprinklers will be required in the building.
- The existing building has Town sewer and water and the same will be applied to the new building.
- The proposed new building footprint is 27,112 sq. ft. which is 1,000 sq. ft. more than the existing building.
- There is a 20 ft. existing right of way and the lot has the rights of way and will use them.
- There was testimony that parking will be supplied on site and adequate to Code.
- There will be no disturbance of the Workman and Blanchette homes by lights from cars using the new building.
- There will be a submission of a stormwater, erosion control and landscaping and grading plan before construction begins.
- The Code requirement is 20% maximum coverage and the actual coverage will be slightly less.
- The building height will be slightly less than the maximum of 35 ft.
- There are 130.9 ft. of street frontage where 100 ft. is required.
- The new building will be an existing nonconforming use because it is a multi-family.

**Ms. Spiller moved to accept the Findings of Fact as presented.
Mr. Fitzpatrick seconded the motion.**

The motion carried 6-0-0.

Conclusions of Law

The code section governing the Board's decision is 16.7.3.3.1 - Nonconforming Structure Relocation - on Page 161. The property is not located in the Shoreland Zone and would go to the Planning Board if it were. The Board of Appeals determined the structure relocation meets the setbacks to the greatest extent practicable and meets them all. The Board considered the size of the lots, slope of land and potential of soil erosion and the location of other structures on the property and adjacent properties. There is no septic and it has sewer. The type and amount of vegetation to be removed to accomplish relocation found that the proposal satisfied all those conditions and, therefore, the Board voted to approve the application.

The Board had no objections and the Conclusions of Law were accepted 6-0-0.

6. Unfinished Business

Election of Officers

Chair Wilson explained Vice Chair Brake has volunteered to be Chair.

**Chair Wilson nominated Jeffrey Brake as Chair for the calendar year 2018.
Ms. Spiller seconded the motion.**

The motion carried 6-0-0.

**Chair Wilson nominated Judy Spiller for Vice Chair for the calendar year 2018.
Mr. Leontakianakos seconded the motion.**

The motion carried 6-0-0.

**Chair Wilson nominated April Timko as Secretary for the calendar year 2018
Mr. Leontakianakos seconded the motion.**

The motion carried 6-0-0.

Mr. Marchi will have the information changed on the Town's website.

7. New Business

On May 22, 2018, the Board will have a presentation with an attorney recommended by Southern Maine Planning and Development Corporation as requested by the Town Manager.

Mr. Fitzpatrick would like the person's qualifications and background before the meeting. Board members discussed the topics they would like to review, which Chair Wilson will list and distribute. He also suggested members look at the topics from the Maine Municipal Association.

8. Acceptance of Previous Minutes

Tabled.

9. Board Member or Code Enforcement Issues or Comments

Mr. Denault – none

Mr. Leontakianakos - none

Ms. Timko - none

Ms. Spiller - none

Mr. Fitzpatrick referred to a case he would like to discuss with the attorney on May 22nd which is the variance for the nonconforming lot on Route 1 for the gas station.

10. Adjournment

Mr. Denault moved to adjourn the meeting at 7:26 p.m.

Submitted by Mary Mancini, recording secretary.

1. Call to order: Introductory; Roll Call

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

Staff Present: Robert Marchi, Code Enforcement Officer

2. Pledge of Allegiance

3. Agenda Amendment and Adoption

None.

4. Executive Session

None.

5. Public Hearings

- a. Charles & Carol Berounsky, 66 Wilson Road, Map 54 Lot 17, Residential – Rural R-RL zone, requesting Miscellaneous Variation Request to construct a 12' x 24' addition, going no closer to the front property line than existing dwelling.

As Secretary, Ms. Timko affirmed the Board has the power and duty to hear this item based on Title 16.6.4.3 - Miscellaneous Variation Request.

Testimony

Mr. Marchi reported the property is a nonconforming lot due to frontage, front setback and lot size. The lot is approx. .4 acres with a frontage of 123 feet and 150 feet is the requirement. He added there are no violations on the property. The applicant has confirmed that they can meet the side setback and the addition will not be further than the existing structure.

Vice Chair Spiller questioned the black lines on the satellite map. Mr. Marchi explained the property lines shown on this map are inaccurate because of the GIS.

Mrs. Berounsky explained the reason of adding the structure is to increase living space and the addition will be no further from the existing structure and will be to the side of the property and going upward.

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

Mr. Wilson asked Mr. Marchi if there is an actual side setback. Mr. Marchi explained the side setback will need to have field verification and he pointed out the distance to the abutting property is 40 feet and to the abutting building it is 60 feet. He added the proposed side setback will be 28 feet where 20 feet is required. Mr. Wilson commented the maximum building coverage appears to be less than 15% and requested the Code Office to determine the percentage before a permit is granted.

Mr. Fitzpatrick moved to accept the proposal from Charles & Carol Berounsky, 66 Wilson Road, Map 54 Lot 17, for a Miscellaneous Variation Request to construct a 12' x 24' addition.

Mr. Leontakianakos seconded the motion.

The motion carried 7-0-0.

Chair Brake explained this approval is not the granting of a building/regulated activity permit, and any aggrieved party may appeal this decision to Superior Court within 45 days.

FINDINGS OF FACT

- Charles & Carol Berounsky are the owners of property at 66 Wilson Road, Map 54, Lot 17 in the Residential - Rural R-RL Zone.
- The applicants are requesting a Miscellaneous Variation Request to construct an addition to their home.
- The applicant has represented the addition will be no closer to the front property line than the existing dwelling.
- This is a nonconforming lot and as to frontage there is 123 feet where 150 feet is required, a front setback that is nonconforming to the building at 25 feet where 40 feet is required, and lot size is nonconforming where 40,000 sq. feet is the standard and the lot is .4 acres.
-

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

Vice Chair Spiller seconded the motion.

The motion carried 7-0-0.

CONCLUSIONS OF LAW

The application meets the requirements for a Miscellaneous Variance request as set forth in Code 16.6.4.3 subsection A - Nonconformance - as described in Article 3, Chapter 16.7

because the lot is Nonconforming as to the front setback. The Board has heard and granted the appeal based on Code 16.7.3.3.2.

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

The motion carried 7-0-0.

- b. Shelley Nicholson, 51 Old Post Road, Map 8 Lot 5, Commercial-3 C-3 zone, requesting Miscellaneous Variation Request to replace an existing shed with a 16' x 28' garage, going no closer to the property lines than existing structure.

As Secretary, Ms. Timko affirmed the Board has the power and duty to hear this item based on Title 16.6.4.3 - Miscellaneous Variation Requests.

Testimony

Mr. Marchi explained photographs of the property which shows a flexible covered carport. He added there are no permits on record for that structure, which is not uncommon. The last permit was given in 1988. Mr. Marchi explained the applicant would like to add a garage where the carport is now. He also explained it is hard to determine if the carport is illegal and the applicant will address this issue. He added the intention is that the new structure will not go closer than the existing structure. The residence is in a commercial zone and he recommended relying on Code 16.7.3.3.2.

Shelley Nicholson, the applicant, explained she has lived at the property since 1984 and there was a shed which was torn down and they added a carport in its place. She explained she would like to build a garage because to the neighbor's trees have damaged her automobiles and a carport does not provide enough protection.

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

Mr. Fitzpatrick expressed his concern that the application has a statement to replace an existing shed which is in the back of the house not in the driveway. The applicant explained the carport is sitting on gravel and not concrete.

Mr. Wilson agreed with Mr. Fitzpatrick that the Board is being asked to replace an unpermitted car shed which cannot be grandfathered. To be grandfathered, they need evidence from the

testimony that the shed was torn down in 1984 to prove its existence. Mr. Marchi provided documents from 1988 showing two sheds existing on the property.

Ms. Timko pointed out the proposed garage appears to be substantially larger than what was preexisting which would increase the nonconformance. Ms. Nicholson explained she added the largest dimensions that she could. Mr. Wilson pointed out the question is the relevance of an existing shed. He added the commercial zone allows for side and rear setbacks to be 30 feet. The Board reviewed the dimensions on the graph from 1988 to determine what the applicant is grandfathered for. Discussion of setback standards ensued, and Mr. Wilson referred to Page 82 of the Code.

Mr. Fitzpatrick commented that his understanding is the Board is supposed to act on proposals as listed on the application and this proposal states a shed. He suggested tabling this item, so the applicant can do the research and return to the Board. Board members agreed.

Mr. Wilson moved to continue the application of Shelley Nicholson, 51 Old Post Road, Map 8 Lot 5, Commercial-3 C-3 zone, requesting Miscellaneous Variation Request be continued to a date uncertain.

Mr. Fitzpatrick seconded the motion.

Ms. Nicholson commented she did go to the Code office and thought she had provided the information correctly. Mr. Fitzpatrick listed the requirements for the applicant.

The motion carried 7-0-0.

6. Unfinished Business – None.

7. New Business – None

8. Acceptance of Previous Minutes - None

9. Board Member or CEO Issues or Comment

Board members discussed the correct procedure for approving minutes from the information they received from a recent workshop. Because Board of Appeal meetings do not occur on a regular basis and there is a time limit for decisions, the Board has been approving minutes via email. Options of certifying the Minutes were discussed including using the meeting stream and the Board would like to know the longevity of recordings. The Board was in consensus to have one of the Board officers sign the decisions which contain the Findings of Fact and Conclusions of Law.

**Mr. Wilson moved to have the Findings of Fact and Conclusions of Law of public hearings and decisions signed by either the Chair, Vice Chair or Secretary.
Mr. Leontakianakos seconded the motion.**

The motion carried 7-0-0.

Mr. Wilson explained the main reason for the workshop was to provide clarification of variance appeals and members discussed what information helped them the most including beneficial uses permitted and the attorney's recommendations regarding precedence.

10. Adjournment

**Mr. Fitzpatrick move to adjourn the meeting at 7:40 pm.
Mr. Wilson seconded the motion.**

The motion carried 7-0-0.

Submitted by Mary Mancini, recording secretary.

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.

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.**

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, Judy Spiller, Charles Denault, Craig Wilson

Board Members Absent: April Timko, Louis Leontakianakos, Barry Fitzpatrick

Staff Present: Stephen Wilson, CEO

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

a. George Burke, Owner, Alan Shepard, Applicant, requesting Administrative Appeal to the terms of Title 16.10.3.B & 16.7.3.3.2 regarding the issuance of a building permit for property located at 286 U.S. Route #1, in the Commercial – 1 zone.

Stephen Wilson stated that the applicant has asked for a continuance on this matter. Mr. Wilson suggested it be heard at the next available meeting on December 12, 2018. Brad Connolly, an abutter, rose to comment on the matter.

Motion by Craig Wilson to continue the public hearing for this item to December 12, 2018 or the next available meeting. Second by Charles Denault. The motion passed unanimously 4-0 by voice vote.

6. UNFINISHED BUSINESS

7. NEW BUSINESS

8. ACCEPTANCE OF PREVIOUS MINUTES

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

Craig Wilson remarked about the Board of Appeals vacancies due to the recent election and his term ending.

10. ADJOURNMENT

Motion by Craig Wilson to adjourn. Second by Jeff Brake. Motion passed unanimously.

The Kittery Board of Appeals meeting of June 11, 2019 adjourned at 6:46 p.m.

Submitted by Adam Causey, Director of Planning & Development.

Disclaimer: The following 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; 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 6-0-1 by roll call vote. [Aye: Brake, Leontakianakos, Timko, Denault, Fitzpatrick, 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.

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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; Barry Fitzpatrick; Suzanne Dwyer-Jones (*arriving late at 6:34PM*)

Board Members Absent: Charles Denault

Staff Present: Adam Causey, Planning & Development Department Director

2. PLEDGE OF ALLEGIANCE

****BOARD MEMBER SUZANNE DWYER-JONES ARRIVED AT THE MEETING AT 6:32PM****

3. AGENDA AMENDMENT AND ADOPTION

Motion by April Timko to amend the agenda to move Item 9. “Board Member or CEO Issues or Comment” up the agenda to Item 4. Second by Louis Leontakianakos. Motion passed 6 to 0 by voice vote.

4. BOARD MEMBER OR CEO ISSUES OR COMMENT

April Timko reminded board members of the rules of order for meetings, including waiting to be recognized by the chair prior to speaking and to not interrupt other board members, applicants, or representatives of the Town when they are speaking.

5. EXECUTIVE SESSION

6. PUBLIC HEARINGS

- a. **Arilda Densch /Arilda Design, applicant, Sean & Cara Konecci, owners, 63 Pepperrell Road, Residential-Kittery Point Village, requesting a Miscellaneous Variation Request to the terms of 16.3.2.3.D, to construct an addition & two decks to the existing structure.**

The applicant presented their project, which consists of an addition with two decks to an existing dwelling. Mr. Causey reviewed the report and explained that the existing residence was a legal, non-conforming structure, and thus needed Board approval for the proposed expansion. Arilda Densch spoke on behalf of the applicant and property owner.

****BOARD MEMBER CHARLES DENAULT ARRIVED AT THE MEETING AT 6:35PM****

Motion by Barry Fitzpatrick to approve the Miscellaneous Variation Request for 63 Pepperell Road. Second by Suzanne Dwyer-Jones. Motion carried 7-0 by roll call vote. [Aye: Brake, Leontakianakos, Timko, Denault, Gardner, Fitzpatrick, Dwyer-Jones]

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

Motion by Barry Fitzpatrick to approve Findings of Fact and the Conclusions of Law. Second by Louis Leontakianakos. Motion carried 7-0 by voice vote.

- b. Deane Rykerson, applicant, Donald & Nicole Kerr, owners, 4 Colonial Road, Residential-Urban zone, requesting Special Exception in accordance with Article XXI, 16.8.21, for a temporary intra-family dwelling unit.**

The applicant presented their project, which consists of adding space to an existing home for use as a temporary intrafamily dwelling unit. Mr. Causey reviewed the report and explained that the land use code includes specific conditions that must be met during the time the unit is occupied. Deane Rykerson spoke on behalf of the applicant and property owner.

Motion Vern Gardner to approve the Temporary Intrafamily Dwelling Unit for 4 Colonial Road, with the conditions that (1) plans showing the required connection to the existing dwelling unit must be submitted and approved by the CEO and Town Planner and (2) the applicant meets the requirements of 16.8.21.2 and 16.8.21.3. Second by Charles Denault. Motion carried 7-0 by roll call vote. [Aye: Brake, Leontakianakos, Timko, Denault, Gardner, Fitzpatrick, Dwyer-Jones]

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

Motion by April Timko to approve the Findings of Fact and Conclusions of Law. Second by Louis Leontakianakos. Motion carried 7-0 by voice vote.

7. UNFINISHED BUSINESS – NONE

8. NEW BUSINESS

a. ELECT NEW OFFICERS

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

Motion by April Timko to elect Jeff Brake as Chair. Second by Suzanne Dwyer-Jones. Motion carried 6-1 by roll call vote. [Aye: Brake, Leontakianakos, Timko, Denault, Fitzpatrick, Dwyer-Jones; No: Gardner]

Motion by Vern Gardner to elect Louis Leontakianakos as Chair. Motion failed due to lack of a second.

Motion by Vern Gardner to elect Charles Denault as Vice Chair. Motion failed due to lack of a second.

Motion by April Timko to elect Louis Leontakianakos as Vice Chair. Second by Suzanne Dwyer-Jones. Motion carried 6-1 by roll call vote. [Aye: Brake, Leontakianakos, Timko, Denault, Fitzpatrick, Dwyer-Jones; No: Gardner]

Motion by Barry Fitzpatrick to elect April Timko as Secretary. Second by Charles Denault. Motion carries 6-0-1 by roll call vote. [Aye: Brake, Leontakianakos, Gardner, Denault, Fitzpatrick, Dwyer-Jones; Abstain: Timko].

9. ACCEPTANCE OF PREVIOUS MINUTES

April Timko requested that the minutes of October 15, 2018 be revised.

10. ADJOURNMENT

Motion to adjourn by Louis Leontakianakos. Second by April Timko. The motion carried 7-0 by voice vote.

The Kittery Board of Appeals meeting of June 11, 2019 adjourned at 7:38 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 6:30PM and asked that the roll be called.

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

Board Member Absent: Charles Denault

Staff Present: Adam Causey, Planning & Development Department Director

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

- a. **Thomas Battcock-Emerson, applicant for James & Anita Alden, owners, 11 Mill Pond Road, Residential-Urban & Shoreland overlay zones, requesting Miscellaneous Variation Request to the terms of 16.3.2.4.D.2.d, 16.6.4.C, 16.7.3.1.A.B & 16.7.3.3.B.3.A, to construct a 4' x 8' canopy over front stoop entry.**

Mr. Gardner contended that this application could not be heard by the Board of Appeals due to lack of jurisdiction. Mrs. Timko disagreed.

Motion by April Timko to hear the Miscellaneous Variation Request. Motion carried 5-0. [Aye: Jeff Brake, April Timko, Louis Leontakianakos, Suzanne Dwyer-Jones, Barry Fitzpatrick Nay: Vern Gardner]

Mr. Causey read from the prepared staff report regarding the application. The staff report recommended approval of the miscellaneous variation request.

Thomas Battcock-Emerson presented the request for the property owners.

Motion by Barry Fitzpatrick to approve the miscellaneous variation request with staff condition. Second by Suzanne Dwyer-Jones. April Timko read the Basis of Law and Findings of Fact into the record. Motion carried 5-0-1 via roll call vote. [Aye: Jeff Brake, April Timko, Barry Fitzpatrick, Suzanne Dwyer-Jones; Nay: Abstain: Vern Gardner]

- b. **Evan Appleton, 592 Haley Road, Residential-Kittery Point Village & Shoreland overlay zones, requesting Miscellaneous Variation Request to the terms of 16.3.2.3.D.2.d, to construct a 7' x 38' 6" covered porch & 4' x 10' deck.**

Mr. Gardner stated his view that the Board does not have jurisdiction. Mrs. Timko stated her view that the Board does have jurisdiction to hear the request, though the code may limit the actions the Board can take. Mr. Brake asked Mr. Causey to begin his presentation. Mr. Causey read the staff report into the record. Staff recommends approval of the request. Evan Appleton, the property owner, presented his project to the Board. The Board asked Mr. Appleton questions about his property and his proposed improvements.

Motion by April Timko to approve the miscellaneous variation request with staff conditions. Second by Louis Leontakianakos. Motion passed 5-0-1 via roll call vote. [Aye: Jeff Brake, April Timko, Barry Fitzpatrick, Suzanne Dwyer-Jones; Nay: Abstain: Vern Gardner]

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

Motion by April Timko to approve the findings of fact and conclusions of law as presented. Second by Suzanne Dwyer-Jones. Motion passed 5-0-1 via roll call vote. [Aye: Jeff Brake, April Timko, Barry Fitzpatrick, Suzanne Dwyer-Jones; Nay: Abstain: Vern Gardner]

6. UNFINISHED BUSINESS

7. NEW BUSINESS

8. ACCEPTANCE OF PREVIOUS MINUTES

Motion by April Timko to approve the minutes of September 25, 2018 as presented. Second by Barry Fitzpatrick. Motion carries 4-0-2. [Aye: Jeff Brake, April Timko, Louis Leontakianakos, Barry Fitzpatrick; Nay: ; Abstain: Gardner, Dwyer-Jones]

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

Mr. Gardner offered to share materials from a recent training he attended with the Maine Municipal Association.

10. ADJOURNMENT

Motion by April Timko to adjourn the meeting. Second by Suzanne Dwyer-Jones. The motion carried 7-0.

The Kittery Board of Appeals meeting of April 9, 2019 adjourned at 7:59PM.

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 6:30PM and asked that the roll be called.

Board Members Present: Jeff Brake, Vern Gardner, Barry Fitzpatrick, Charles Denault

Board Members Absent: April Timko, Louis Leontakianakos, Suzanne Dwyer-Jones

Staff Present: Adam Causey, Director of Planning & Development

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

7. NEW BUSINESS

a. Michael Alessi, owner, 70 Remicks Lane, Rural Residential (R-L) zone, requesting an Administrative Appeal to a building permit issued to 7-9 Stoneridge Way in accordance with Town of Kittery Code 16.6.3.

Chair Brake asked the applicant if he was okay with this item proceeding due to the presence of only four board members. Michael Alessi rose from the audience and addressed the Board from the podium. Mr. Alessi stated that postponing this item would be best. Mr. Fitzpatrick asked why this item was before the Board if it was a Planning Board item in two days. Mr. Causey responded that even though the pending Right-of-Way Plan item in front of the Planning Board concerned the same property, tonight's item is an administrative appeal of a CEO action. Mr. Alessi rose again to the podium and indicated he would like to have the item heard. Mr. Gardner advised Mr. Alessi against having the case heard. Mr. Denault stated that he would rather wait until the full Board was present.

Motion by Mr. Fitzpatrick to not hear this item. Second by Vern Gardner. The motion passed unanimously by voice vote.

8. ACCEPTANCE OF PREVIOUS MINUTES

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

Mr. Causey gave an update on staffing in the Code Enforcement Office.

Mr. Denault stated that he was uncomfortable with Mr. Gardner's comment to applicant earlier. Mr. Brake explained that the applicant first stated he did not want to present. Mr. Alessi rose again to state that he would present his case. Mr. Brake directed Mr. Alessi to the podium to present. Mr. Causey reminded the Board that they had voted to not hear the appeal. Mr. Brake asked Mr. Fitzpatrick if he would like to rescind his earlier motion, and Mr. Fitzpatrick initially declined.

Motion by Barry Fitzpatrick to rescind his previous motion to not hear the appeal for 7-9 Stoneridge Way. Second by Mr. Brake. Motion passes 3-1 [Aye: Fitzpatrick, Brake, Denault; Nay: Gardner].

Mr. Alessi, the applicant, presented his case that the CEO erred when issuing a building permit for 7-9 Stoneridge Way. Mr. Alessi contends that the permit issued to the duplex dwelling unit was one more unit than allowed on the private Stoneridge Way, per a previous Planning Board approved plan.

Mr. Causey presented the case stated that the appeal may have been filed past the deadline due to a glitch in the Town's permitting software that changed the date of building permit issuance, even though the permit was unchanged. Mr. Causey stated that the first date on the building permit should control and, since the appeal application was submitted after the 30-day appeal period, the Board should not render a decision on this case. Mr. Alessi disagreed and stated that the Town's software notified him of an updated permit date after notes were entered into the permitting software.

Motion by Charles Denault to approve the applicant's administrative appeal. Second by Barry Fitzpatrick. Motion failed 2-2. [Aye: Gardner, Fitzpatrick; Nay: Brake, Denault]

10. ADJOURNMENT

Motion by Jeff Brake to adjourn. Second by Charles Denault. Motion passed unanimously.

The Kittery Board of Appeals meeting of June 11, 2019 adjourned at 7:35 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 6:30PM and asked that the roll be called.

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

Board Members Absent:

Staff Present: Adam Causey, Director of Planning and Development

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

Motion by Vern Gardner to suspend the rules and amend the agenda. Motion died for lack of a second.

Motion by April Timko to amend the agenda to remove Item 5.a., since the applicant has submitted a letter of withdrawal. Second by Louis Leontakianakos. Motion passed 7 to 0 by roll call vote [Aye: Brake, Timko, Gardner, Denault, Fitzpatrick, Dwyer-Jones, Leontakianakos; Nay:].

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

- a. **John A Considine II, owner/applicant, 5 Cove Landing, requesting a Special Exception Use for a Major Home Occupation to operate as a medical marijuana primary caregiver in the Residential – Suburban (R-S) zone, per Section 16.3.2.2 and Section 16.8.22.3 of the Town Code.**

This item was not heard because the applicant withdrew the application.

6. UNFINISHED BUSINESS

- a. **Findings of Fact – Administrative Appeal, 7-9 Stoneridge Way**

Mr. Causey explained that this case was heard previously at the June 11, 2019 Board of Appeals meeting, however the Board did not review findings of fact at that time. Mr. Causey

reminded the Board that at the June 11 meeting, this administrative appeal was denied due to it not receiving four like votes to overturn the CEO.

Motion by Charles Denault approve the following Findings of Fact in the above matter: that the administrative appeal was not upheld due to it not receiving four like votes. Second by Jeff Brake. Motion passed 3-1-3 by roll call vote [Aye: Brake, Denault, Fitzpatrick; Nay: Gardner; Abstain: Timko, Dwyer-Jones, Leontakianakos].

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**

Mr. Causey apologized for not having the above minutes for review and said they would be available at a subsequent meeting.

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

Chair Jeff Brake reminded board members to direct all questions or comments regarding matters before the Board of Appeals to the chair.

Charles Denault requested a review of the rules concerning ex-parte communications and prejudicial comments from board members.

Mr. Gardner accused Mr. Brake and Mr. Causey of ex-parte communications. Mr. Brake allowed Mr. Causey to respond. Mr. Causey denied Mr. Gardner's accusation. Mr. Gardner made several motions in a row requesting opinions from the Town attorney. Each motion failed due to lack of a second.

10. ADJOURNMENT

Motion by Louis Leontakianakos to adjourn. Second by Barry Fitzpatrick. Motion passed unanimously.

The Kittery Board of Appeals meeting of June 25, 2019 adjourned at 7:14 p.m.

Submitted by Adam Causey, Director of Planning & Development.

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