

MEETING MINUTES

1. CALL TO ORDER; INTRODUCTORY; ROLL CALL

Chair Timko called the meeting to order at 6:31 p.m. and asked that the roll be called.

Board Members Present: Vern Gardner, Charles Denault III, Jeff Brake, Barry Fitzpatrick, Louis Leontakianakos, April Timko

Board Members Absent: Suzanne Jones

Staff Present: Craig Alfis, Code Enforcement Officer

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

- **Pam Edwards, tenant, 99 State Road, seeking an Administrative Appeal per LUDC Section 16.6.3, Appeal of Code Enforcement Officer decision to deny a sign permit.**
- Vice Chair Leontakianakos confirmed the Board has the authority to hear the request. Mr. Seth Russell, representative for the applicant presented his appeal. Mr. Alfis presented the staff report. The Board had several questions for both Mr. Russell and Mr. Alfis. No members of the public spoke. Chair Timko closed the public hearing at 6:58 PM. The Board entered discussion.

Motion by Mr. Fitzpatrick to approve the Administrative Appeal per Section 16.6.3 overturning the decision of the Code Enforcement Officer to deny a sign permit. Seconded by Mr. Denault. Motion passed 6-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Fitzpatrick, Leontakianakos, Timko; No: --; Abstain: --]

Chair Timko notified the Board of their right to reconsider and the public of their right to appeal.

Chair Timko and Vice Chair Leontakianakos read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) Property owner Andrew Chick, tenant Pamela Edwards, attorney and representative Mr. Russell appeared for an Administrative Appeal per Code Section 16.6.3 due to a decision by the Code Enforcement Officer to deny a sign permit for a medical marijuana business at 99 State Road on June 22, 2020. (2) The reason for the denial was due to findings of fact on a previous meeting February 27, 2018. (3) The Board discussed other medical marijuana businesses in the area and their ability to have signage. (4) The Board discussed Special Exceptions, Major Home Occupations and number of signs on the building. (5) The Board unanimously agreed on a motion by Mr. Fitzpatrick, seconded by Mr. Denault 6-0 to approve the appeal. (6) The notice of the hearing was published in the Portsmouth Herald on Monday August 17, 2020.

Motion to accept the Findings of Fact made by Vice Chair Leontakianakos. Seconded by Mr. Gardner. Motion passed 6-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Fitzpatrick, Leontakianakos, Timko; No: --; Abstain: --]

Conclusions of Law: (1) The Board heard an Administrative Appeal per Land Use Development Code Section 16.6.3, Appeal of a Code Enforcement Officer Decision. (2) The decision was to deny a request for exterior signage because of a prior Board of Appeals decision that included a requirement that there not be exterior signage on the building. (3) All other elements related to the signage were met. (4) As far as is known the business is in compliance with all other standards for a major home occupation. (5) The Board considered the factors set forth in 16.6.6 Basis of Decision and Factors for Consideration. (6) The Board found that the proposed signage appears to adhere to the applicable standards in Section 16.8 and 16.9 and approved the Administrative Appeal. (7) Mr. Russell represented to the Board that he was the duly retained attorney for the applicant and will provide evidence to the Code Enforcement Officer upon request.

Motion to accept the Conclusions of Law made by Vice Chair Leontakianakos. Seconded by Mr. Fitzpatrick. Motion passed 6-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Fitzpatrick, Leontakianakos, Timko; No: --; Abstain: --]

- **Nicholas Mercier, owner, 134 Whipple Road, seeking a variance per Town Code Section 16.6.4.B to expand a non-conforming retaining wall in the Residential - Urban (R-U) and Shoreland Overlay (OZ-SL) zones for the purpose of controlling erosion.**
- Mr. Alfis presented the staff report. Mr. Nicholas Mercier, applicant, made a presentation on the proposed development. The Board had several questions for both Mr. Alfis and Mr. Mercier. No members of the public spoke. Chair Timko closed the public hearing at 7:33 PM. The Board entered discussion. Much discussion of the definition of “reasonable return” ensued.

Motion by Mr. Denault to grant the Variance Request to expand a retaining wall in the Residential Urban and Shoreland Overlay zones at 134 Whipple Road for Nicholas Mercier. Seconded by Mr. Brake. Motion passed 4-2-0 by roll call vote [Yes: Denault, Brake, Fitzpatrick, Leontakianakos; No: Gardner, Timko; Abstain: --]

Chair Timko notified the Board of their right to reconsider and the public of their right to appeal.

Chair Timko and Vice Chair Leontakianakos read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) Applicant Nicholas Mercier, 134 Whipple Road, came before the Board requesting a Variance to expand a non-conforming retaining wall in the Residential Urban and Shoreland Overlay zones for the purposes of controlling erosion. (2) The Board heard a presentation from the applicant, Mr. Mercier, which included a description of the proposed retaining wall and the submitted package from Piscataqua Landscaping (3) The Board heard from Code Enforcement that this property was conforming when it was built, before the Mandatory Shoreland Protection Act was in effect. (4) The property is currently a non-conforming lot of record with a small existing wooden retaining wall and wooden steps to the water. (5) The motion made by Mr. Denault, seconded by Mr. Brake passed with four in the affirmative and two in the negative. (6) The notice of the hearing was published in the Portsmouth Herald on Monday August 17, 2020.

Motion to accept the Findings of Fact made by Vice Chair Leontakianakos. Seconded by Mr. Brake. Motion passed 6-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Fitzpatrick, Leontakianakos, Timko; No: --; Abstain: --]

Conclusions of Law: (1) Nicholas Mercier, owner 134 Whipple Road seeking a Variance per Town Code 16.6.4.B to expand a non-conforming retaining wall. (2) The Board found that the lot does not have any violations. (3) Considering the requirements set forth in Section 16.6.4.B the Board debated each element of the variance. (4) The Board determined that the applicant met the requirements.

Motion to accept the Conclusions of Law made by Vice Chair Leontakianakos. Seconded by Ms. Brake. Motion passed 6-0-1 by roll call vote [Yes: Denault, Brake, Fitzpatrick, Leontakianakos, Timko; No: --; Abstain: Gardner]

- **George Nazzaro, owner, 79 Pepperrell Road, requesting a Miscellaneous Variation per Town Code Section 16.6.4.C and 16.7.3.5.D(b) to adjust the boundary line of a non-conforming lot of record.**

- Mr. Alfis presented the staff report. Mr. George Nazzaro, applicant, made a presentation on their proposed boundary line adjustment. The Board had several questions for both Mr. Alfis and Mr. Nazzaro. Ms. Debbie Driscoll, 9 Pepperrell Terrace requested clarification of the request of the applicant and Mr. Nick Jacques, 81 Pepperrell Road spoke in favor of approval. Chair Timko closed the public hearing at 8:24 PM. The Board entered discussion.

Motion by Mr. Gardner to grant the request for a Miscellaneous Variation to adjust the boundary line of a non-conforming lot. Seconded by Mr. Fitzpatrick. Motion passed 6-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Fitzpatrick, Leontakianakos, Timko; No: --; Abstain: --]

Chair Timko notified the Board of their right to reconsider and the public of their right to appeal.

Chair Timko and Vice Chair Leontakianakos read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) Applicant George Nazzaro, owner, 79 Pepperrell Road submitted an application for a Miscellaneous Variation Request to approve a non-conforming lot line adjustment per 16.6.4.C.1 and 16.7.3.5.D.1.(b). (2) The Board heard from the applicant and Code Enforcement. (3) After the lot line adjustment 79 Pepperrell Road becomes no more non-conforming and 81 Pepperrell Road becomes less non-conforming. (4) The Board heard from Nick Jacques of 81 Pepperrell Road and Debbie Driscoll of 9 Pepperrell Terrace, both in favor of approval but Ms. Driscoll having some reservations around her attorney having time to see the deed as described in regards to the right of way to her property. (5) The notice of the hearing was published in the Portsmouth Herald on Monday August 17, 2020.

Motion to accept the Findings of Fact made by Vice Chair Leontakianakos. Seconded by Chair Timko. Motion passed 6-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Fitzpatrick, Leontakianakos, Timko; No: --; Abstain: --]

Conclusions of Law: (1) The Board heard the Miscellaneous Variation Request to approve a non-conforming lot line adjustment per 16.6.4.C.1 and 16.7.3.5.D.1.(b). (2) Both Lots are non-conforming lots of record; one due to road frontage; the other due to size and road frontage. (3) The Board found that 79 Pepperrell Road would become no more non-conforming and 81 Pepperrell Road would become less non-conforming (4) The Board considered the Basis for Decision and Factors set forth in Code Section 16.6.6.

Motion to accept the Conclusions of Law made by Vice Chair Leontakianakos. Seconded by Mr. Denault. Motion passed 6-0-0 by roll call vote [Yes: Gardner, Denault, Brake, Fitzpatrick, Leontakianakos, Timko; No: --; Abstain: --]

6. UNFINISHED BUSINESS

7. NEW BUSINESS

8. ACCEPTANCE OF PREVIOUS MINUTES

- March 10, 2020
 - Mr. Gardner requested the word appellant be replaced with applicant
- July 28, 2020
 - No Changes

Motion to accept the meeting minutes of March 10 and July 28, 2020 with the requested change made by Mr. Gardner. Seconded by Vice Chair Leontakianakos. Motion passed 6-0-0 by voice vote [Yes: Gardner, Denault, Brake, Fitzpatrick, Leontakianakos, Timko; No: --; Abstain: --]

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

- Mr. Gardner requested confirmation that the motions are always made in the affirmative. Vice Chair Leontakianakos thought it was in Robert's Rules and will check.
- Mr. Gardner recalls that in both Administrative Appeals and Variances that the appellant presents their case first. Chair Timko will check to ensure that those requests are being administered properly.
- Mr. Alfis confirmed that there is one request on the agenda for the September 8th meeting.
- Mr. Denault voiced that he has an issue and concern but will wait until the next meeting to discuss.
- Chair Timko let the Board know that there is an option to meet via webinar or Zoom if the need arises, but the Board will continue to meet at the KCC for the time being unless there are any objections.

10. ADJOURNMENT

Motion by Mr. Gardner to adjourn. Second by Mr. Brake. Motion passed 6-0-0 by voice vote [Aye: Gardner, Denault, Brake, Fitzpatrick, Leontakianakos, Timko; Nay: --; Abstain: --]

The Kittery Board of Appeals meeting of August 25, 2020 adjourned at 8:43 p.m.

Submitted by Craig Alfis, Code Enforcement Officer

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