

York Board of Appeals

Minutes

April 12, 2023

**Paul Salacain (Chair) called the meeting to order at 7:00 pm.**

**Attendance:** Paul Salacain, Robert Lascelles, Matt Lovo, Mary Daun and Michelle Marean. Harry Norton (Code Enf)

Paul Salacain stated that the Appeals Board is looking to fill 2 positions.

**1. Finding of Facts from January 25, 2023:**

a. Becky Linney Administrative Appeal:

- i. R. Lascelles made a motion to approve the draft of the FOF of a reconsideration for Becky Linney, 18 Logging Road, Cape Neddick ME , seconded by M. Daun.
- ii. All members in favor. Motion passes 5-0.

b. David Woods Minor Dim. Variance:

- i. R. Lascelles made a motion to approve the FOF as drafted for a Minor Dimensional Variance for the Wiggly Bridge Distillery, 441 US Route 1, York ME, seconded by M. Daun.
- ii. All members in favor. Motion passes 5-0.

**2. CONTINUATION: Mark Lawrence, 10 Lawrence Lane, Kennebunk, requests a Minor Dimensional Variance.** The property in question is 177 Clay Hill Road, Cape Neddick ME 03902. Map Lot 99-31-A.

- a. This matter was a continuance from the January 25, 2023 meeting. This was continued due to confusion about the lot boundary at the front of the lot where the front setback was measured from. There was clarification stating that that property was owned by the Town. H. Norton said the parcel of land was deeded back to the Town with the expansion of I-95. The other issue, which was realized after the meeting, was there was shoreland on this property. Mr. Lawrence stated that the lower portion of the lot did have some wetlands so to correct this situation he deeded that portion to his neighbor, 167 Clay Hill Road, this change was recorded today which will resolves the problem. The minor dimensional variance requested is to vary the front set back 3 feet from 50ft to 47 ft.

The Board voted on each Minor Dimensional Variance Standard §18.8.2.10:

i. *Practical Difficulty:*

Vote: M. Marean – yes, M Daun – yes, R. Lascelles – yes, M. Lovo – yes, Chair - yes  
Vote passes 5-0

ii. *Unique Circumstances:*

Vote: M. Marean – yes, M Daun – yes, R. Lascelles – yes, M. Lovo – yes, Chair - yes  
Vote passes 5-0

iii. *Neighborhood and Value:*

Vote: M. Marean – yes, M Daun – yes, R. Lascelles – yes, M. Lovo – yes, Chair - yes  
Vote passes 5-0

iv. *Result of Action:*

Vote: M. Marean – yes, M Daun – yes, R. Lascelles – yes, M. Lovo – yes, Chair - yes  
Vote passes 5-0

v. *Feasible:*

Vote: M. Marean – yes, M Daun – yes, R. Lascelles – yes, M. Lovo – yes, Chair - yes

Vote passes 5-0

vi. *Adverse Effect:*

Vote: M. Marean – yes, M Daun – yes, R. Lascelles – yes, M. Lovo – yes, Chair - yes

Vote passes 5-0

- b. *M. Daun made a motion to grant the Minor Variance from 50ft to 47ft for Mark Lawrence at the property of 177 Clay Hill Road, Cape Neddick, seconded by M. Lovo.*
  - i. All members are in favor.
  - ii. Motion passes with a 5-0 vote. Variance is approved.

3. **MATTER UNDER CONSIDERATION: Kirk Minnick**, 19 Roaring Rock Road, requests an Administrative Appeal, *failure to require a permit*. The property in question is located at 14 Roaring Rock Road York, ME 03909. Map Lot 46-24-A.

- a. H. Norton stated that the building aspects have to go through IRC 2015 per ordinance and conflicts with the York Zoning Ordinance do tend to happen ordinances that have been in place with no change since 1996.
- b. After much discussion on ordinances and the issuance on building permits Mr Minnick decided the purpose of this administrative appeal was mute and he withdrew the appeal in favor of his other appeal.
- c. R. Lascelles made a motion to approve withdrawal of the appeal and for Board to coordinate with Code Enforcement and the Planning department to involve the Planning Board in making changes to the ordinance, seconded by M. Lovo.
  - i. *Vote:*
    - 1. M. Marean - yes.
    - 2. M. Daun - yes.
    - 3. R. Lascelles - yes
    - 4. M. Lovo - yes
    - 5. Chair - yes
    - 6. Votes are 5-0. Motion passes.
- d. *Matter was withdrawn.*

4. **MATTER UNDER CONSIDERATION: Kirk Minnick**, 19 Roaring Rock Road, requests an Administrative Appeal, *failure to follow application process for building permit*. Property in question is 14 Roaring Rock Road, York ME 03909. Map Lot 46-24-A.

- a. K. Minnick said he is appealing the decision of the Code Enforcement Officer to issue a building permit on March 3, 2023 for the exterior demolition of the main roof, garage and the porch structure. Construction of foundations for additions to the structure. K. Minnick said the application was incomplete in many aspects; section 13 (proposed and existing number of stories, bedrooms, bathrooms etc.) was left blank, there were no required sign offs from the Water District or the Sewer District, Section 17 (provides property information related to the percentage of the lot covered and front and side setback. He believes §17.2.1.2 and §17.2 have not been met. With the application not meeting the standards in the ordinance, the Code Enforcement Officer could not make a valid determination regarding the enlargements to the existing structure. The enlargement at the right front corner will bring the structure forward to within 7 1/2 ft of the front property line and encroach into the front setback 774 sq ft. The garage will add another 35 sq ft of building into the front setback and more than 300 sq ft into the side setback. No variances have been granted for these setback encroachments. There are no plan

drawings available for the demolition of the main roof, so they have no way of knowing if the applicant intends to enlarge this non-conforming structure vertically. K. Minnick believes §18-A.2.A the York Zoning Ordinance Goal of Transparency has been violated.

- b. H. Norton said regarding transparency, he has sent K. Minnick all documents related to this project. The wrong article was cited for what's being done on this job, it is §17.2.4.3 – Construction. He does have a document stamped by the Registry of Deeds (not in the packet) that shows the current status of the lot and a plan of what's going to happen. When filling out an application, it is under his discretion that some areas don't need to be completed if they can be seen clearly on a site plan and drawing attached to the permit. When viewing this application, H. Norton saw no instances where a variance was required.
- c. P. Salacain asked what's approved to this point. H. Norton said to demolish the roof and start the foundations on the new part and to continue the interior demolition. The Historic Committee didn't rule this property as a significant building.
- d. M. Daun asked if since this is a non-conforming structure, it can't be enlarged. And H. Norton said yes it can be enlarged. §17.2.1.
- e. **Comments by Interested parties.**
  - i. Ann Brzys of 19 Roaring Rock Road asked if it was ok that there was no water or sewer sign off and H. Norton said that was covered in the first permit for the interior. A. Brzys then asked if what was signed by the Registry of Deeds is in the public file? H. Norton said it should be and if not he will make sure it gets completed. R. Lascelles said that after comparing the proposed plan and the structure how it is now, the proposed plan is an improvement in the setbacks. H. Norton said its preferred by builders to do partial permits to make sure the engineer specs are accurate, which is what this builder is doing.
  - ii. K. Minnick asked why they don't have elevations when the foundations are being done and why the builder would bump out the right front to make it more conforming. P. Salacain said that setbacks have not changed from the original structure to the new plan. H. Norton said under §17.2.4 you are allowed to reconstruct what was there and make it more conforming. Regarding height, it has to meet all of Section 17 in the ordinance or he will not allow it.
- f. P. Salacain asked members if they thought that the building application process was followed correctly and all members agreed.
  - i. *M. Daun made a motion in the matter of the Administrative Appeal filed by Kirk Minnick with regard to failure to follow the application process by Code Enforcement to deny the request for an Administrative Appeal based on discussions with Code Officer and can't find anything missing from the application, seconded by M. Lovo.*
  - ii. All members voted in favor.
  - iii. Motion passes with a 5-0 vote. Appeal is denied.

5. **MATTER UNDER CONSIDERATION: Robert Ellis of Seawood Enterprises, LLC, 5 Mill Lane, requests a General Variance to raise the height of a proposed new foundation.** This appeal is being filed on behalf of property owner Denise & Kathy Lauze. The property in question is 27 Tabernacle Road, York ME 03909. Map Lot 38-64-A.

After much discussion and presentation by interested parties Code Enforcement realized that the wrong section of the Zoning Ordinance was being applied to this application and that the correct one allowed of the new raised foundation within a standard building permit without the need for a variance.

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- a. H. Norton noted that the property was in the shoreland zone which means Code can approve the plans per §8.3.11.4.H.
- b. Robert Ellis withdrew his appeal.

6. **MATTER UNDER CONSIDERATION: Robert Harrington, 309 Long Beach Ave Unit 1, requests a Disability Variance, to occupy 309 Long Beach Ave Unit 1.** The property in question is 309 Long Beach Ave Unit 1, York ME 03909. Map Lot 36-6.

- a. Amber Harrison mentioned to him about putting in a general variance and after putting that in Paul Salacain contacted him by phone and suggested he put in for a disability variance.
- b. R. Harrington said both the top level (where they live) and the bottom level of his condo are ADA compliant and he only needs to be in the lower level, with easy access for 8 -10 weeks a year and being ADA compliant. What he needs is access and the ability to access that lower space. In the condo documents listed as living space that the Harrington's own. They started renting out the upper level in 2010 to help pay for some of their fees.
- c. Richard Gonsalves, 3 Dingle Road (an abutter and just finished a 3 year term as the condominium association treasurer) on August 3, 2022 filed a life safety complaint stating that the lower level has no proper exit in case of an emergency. He said there is a crawl space under their units and the space Mr Harrington is referring to is a utility room, it has a boiler, and tends to flood because it is lower than street level. Over the last few years, Mr. Harrington has been putting a bathroom and more windows to make it a living space.
- d. H. Norton said on October 3, 2022 he made a memo stating that the first floor is used for utilities for the 1st and 2nd unit, the furnace is in there and all of the Condo Association members have access to this 1st unit basement. This is not a dwelling unit; it is in fact a basement. The door is less than 36 inches which does not meet the ADA requirement. The walk down does not meet the height requirement.
- e. Robert Lascelles said this does not seem to fit under the Disability Variance §18.8.2.9.
- f. P. Salacain said records of these properties all stand alone. The Condo is a single family unit not 2 family, this has not been approved by the Planning Board and if another unit was added density would be too high.
- g. *R. Lascelles made a motion to deny Richard Harrington the Disability Variance for the property at 309 Long Beach Ave in that the Zoning Ordinance §18.8.2.9 does not grant the BOA authority to grant this variance, seconded by M. Daun.*
  - i. All members voted in favor
  - ii. Motion passes with a 5-0 vote. Variance is denied.

7. **Code Business:**

- a. There are 3 items on the next meeting's agenda which will be on April 26, 2023.
- b. Regarding fees for the Board of Appeals, Mary Costigan (Town Attorney) mentioned in Portland, they have applicants pay for their application fee and then later get mailed a bill for certified mail cost and suggests maybe doing that in the future. In other words they charge an application fee and abutter notification mailing costs separately.

8. **Adjourn:**

- a. M. Daun made a motion to adjourn, seconded by R. Lascelles.
- b. All members voted in favor.
- c. Meeting is adjourned at 10:30.

