



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT

APPROVED MINUTES

WEDNESDAY, AUGUST 31, 2016

Members present: Patrick Dwyer, Tony Pellegrino, Richard Conescu, Fran L'Heureux, Lynn Christensen and Alternate Tom Mahon.

Members absent: Alternate Leonard Worster.

Staff present: Planning and Zoning Administrator Jillian Harris.

1. Call to Order

Fran L'Heureux called the meeting to order at 7:00 p.m.

2. Roll Call

Patrick Dwyer led the pledge of allegiance.

3. Annual Election of Officers and Review of By-Laws

Election of Officers

The Board elected Patrick Dwyer as Chair, by a vote of 4-0-1, on a motion made by Tony Pellegrino and seconded by Lynn Christensen. Patrick Dwyer abstained.

A motion made by Lynn Christensen and seconded by Patrick Dwyer to elect Rich Conescu as Vice Chair failed, by a vote of 1-2-2. Patrick Dwyer and Tony Pellegrino voted in the negative. Fran L'Heureux and Rich Conescu abstained.

The Board elected Fran L'Heureux as Vice Chair, by a vote of 2-1-2, on a motion made by Tony Pellegrino and seconded by Patrick Dwyer. Lynn Christensen voted in the negative. Fran L'Heureux and Rich Conescu abstained.

Review of By-Laws

Patrick Dwyer described a proposed addition to the By-Laws regarding members of the Board arriving late to meetings. He suggested that if a petition is already being heard and an alternate is already seated for the absent member they should wait to be seated until after the petition is heard out of respect for the petitioner.

Fran L'Heureux agreed that in this case an alternate has already been seated and should not be pulled out of the case being heard after it's started. It would not be fair to them or the petitioner at that point to have someone new walk in.

Rich Conescu felt that the member who may come in late should hold off on the petition being read and on the next one reevaluate to determine if they should then join the

Board. Fran L'Heureux agreed, adding that the member should sit in the audience until the next petition is heard and then come sit with the rest of the Board.

Lynn Christensen stated that if a petitioner is reading what they've presented to the Board, that information is something the Board has ahead of time. The member who may be coming in late should already be up to speed because they can read the information ahead of time. The petitioner is essentially reading what they've already written in the application. She feels it is up to the individual Board member to decide if they are in a position to make a decision or not in regards to the vote. She would most likely recuse herself if she came in at the tail end of a petition but not if it was only a minute or two late.

Patrick Dwyer restated his point that a member coming in late, no matter if it's a minute or two or more, should sit in the audience and wait to be seated until the next petition is heard. Lynn Christensen stated that it's a personal decision of the Board member as to whether they are capable of making a decision on the case.

Rich Conescu asked if he was correct in that the Board cannot ask a member to recuse themselves. He questioned whether the policy being proposed was enforceable? Tony Pellegrino felt it was the decision of the Board member and the alternate that was seated for them. He described an incidence where this happened and the member and alternate decided between themselves. Patrick Dwyer felt it should be a black and white policy that any amount of lateness, no matter how small should result in the member waiting to be seated until the next petition. Lynn Christensen restated it should be the decision of the Board member.

Fran L'Heureux feels this should be clarified and there shouldn't be a grey area on this issue. It's confusing to the petitioner to have the Board member change even if it's in the beginning. Tony Pellegrino asked how it should be worded. Patrick Dwyer suggested if you're not present when a petition begins you are to recuse yourself or something similar. Fran L'Heureux suggested as soon as the Chair starts reading the petition, if a full time member is not here, he/she shall sit in the audience until the next petition starts.

Rich Conescu suggested that this conversation should be deferred until conferring with legal counsel. There are statutory protections against forced recusal and the Board should not do something that may not be legal. He would like to see if an opinion from legal can be obtained before making a decision. Jillian Harris stated that could be done if the Board felt it was needed. Her feeling was that if the Chair has appointed an alternate to sit in someone's absence it should then be at the discretion of the Chair to ask the alternate to step down from the appointed voting position. There was disagreement on the Board on whether this could be considered forced recusal or not. Lynn Christensen agreed that the Board should get a legal opinion on whether it has the capability of adding the proposed change to the bylaws. Patrick Dwyer agreed. Tony Pellegrino agreed with Jillian Harris that it should be at the discretion of the Chair, but he does not see anything wrong with getting a legal opinion.

Tom Mahon described the section on alternates in the current bylaws, which does not address this topic. There are several places that deal with the absence of a member but not lateness and therefore if this is pursued all of those areas should be updated to

address it. He suggested the Board may want to talk about it being at the discretion of the member to decide whether they should sit in on a petition or not.

Lynn Christensen suggested staff do some research and get back to the Board at the next meeting on this topic. Jillian Harris agreed that staff can research and bring information back.

4. Discussion/possible action regarding other items of concern

Lynn Christensen described a flyer that came in the mail recently describing the three different polling places that are now in place for the September State Primary in town. Residents should be aware of this and make sure they know which they should go to.

Rich Conescu stated he would not be able to attend the next meeting for medical reasons.

Tom Mahon stated that he had been appointed to fill the vacancy on the Town Council and therefore he is resigning from the Zoning Board of Adjustment. He does not feel right holding a position on both. Board members thanked him for his service.

5. Approval of Minutes – July 27, 2016

The minutes of July 27, 2016, were approved as submitted, by a vote of 4-0-1, on a motion made by Lynn Christensen and seconded by Fran L'Heureux. Fran L'Heureux abstained.

6. Adjourn

The meeting was adjourned at 7:27 p.m., by a vote of 5-0-0, on a motion made by Lynn Christensen and seconded by Tony Pellegrino.