

**ELIOT BOARD OF APPEALS
AUGUST 15, 2019
REGULAR MEETING – 7:00 PM
ELIOT TOWN HALL**

APPROVED MINUTES

Members present: Bill Hamilton, Chairman; Ellen Lemire; Charles Rankie; John Marshall; Cabot Trott; and Rosanne Adams and Jay Meyer, alternates

Others present: Shelly Bishop, Code Enforcement Officer

1. **7:00 PM: Roll Call:** Chairman Hamilton called the meeting to order. The members introduced themselves. He said they have a quorum and the voting members tonight will be the five regular members. He said they have a full board.

Mr. Rankie asked him to identify who the regular members are.

Chairman Hamilton responded Mr. Rankie, Ms. Lemire, Mr. Marshall, Mr. Trott and himself.

Chairman Hamilton said the primary purpose of this meeting is to elect officers and review the minutes of November, 2018. He was surprised that it has been nine months since the Board has met.

Mr. Rankie said they are conscientious citizens who want to make sure that the ordinance is being followed and the fact that they have not had any business amazed him. He isn't accusing anyone, but he wondered if the rules are not being imposed.

2. **Election of Officers:** Chairman Hamilton opened the floor for nominations for Chair.

Mr. Rankie moved to nominate Bill Hamilton as Chairman, seconded by Mr. Trott and voted: 4-0-1 with Bill Hamilton abstaining.

Mr. Rankie pointed out that there is a statement in the Charter that a member does not have to abstain, so Mr. Hamilton could vote for himself.

Amended vote: Approved unanimously by a show of hands, 5-0. Motion carries.

Chairman Hamilton said next is nominations for Vice-Chair and opened the floor.

Mr. Trott moved to nominate Charles Rankie as Vice-Chair, seconded by Chairman Hamilton and approved unanimously by a show of hands, 5-0. Motion carries.

Chairman Hamilton said that he would open the floor for nominations to Secretary.

Mr. Rankie moved to nominate Ellen Lemire, seconded by Mr. Marshall and approved unanimously by a show of hands, 5-0. Motion carries.

Chairman Hamilton said he forgot to include the public comment section on tonight's agenda but noted there was no one in the audience.

Mr. Rankie asked the Chair if he would introduce the new Code Enforcement Officer.

Chairman Hamilton introduced Shelly Bishop as the new Code Enforcement Officer. He said he had met with her previously to discuss the role of the Board of Appeals.

Mr. Rankie asked the Chair if it would be appropriate if he could ask Ms. Bishop why the Board of Appeals has not had any business.

Chairman Hamilton replied sure.

Ms. Bishop said she would look into that.

Chairman Hamilton said when he met with Mr. Mitchell, the former CEO, there had been building permits issued, but no appeals, waivers or any issues since May 17, 2018.

Mr. Rankie said if the building permits were posted, people could see what was being proposed because they have 30 days to file an appeal. He said he wasn't sure if they were being posted.

Ms. Bishop confirmed that they were online.

3. Review of previous meeting minutes of 11/15/18:

Chairman Hamilton stated that Ms. Boggiano, the Recording Secretary, was having difficulty with the recording device and it was not working because there seemed to be gaps in the minutes.

Chairman Hamilton reviewed the minutes page by page and asked Ms. Lemire to jot down the corrections so that Ms. Boggiano could make the necessary changes.

Mr. Rankie said so long as Ms. Lemire looks at them really closely.

Ms. Lemire said she would do that.

Mr. Meyer asked if they ever go back to the CEO to double-check the content?

Chairman Hamilton replied no, but that is a good idea.

Many corrections were cited.

Mr. Rankie said it is the Recording Secretary's responsibility, that is why we pay her and Ms. Lemire is the "checker."

Mr. Rankie moved to approve the minutes of November 15, 2018, as amended with the caveat that Ms. Lemire reviews the amended version very carefully, seconded by Ms. Lemire. Vote was taken by a show of hands and approved 3-0-2; three in the affirmative, none in the negative and two abstentions (Mr. Marshall and Ms. Lemire, who were not in attendance at the meeting).

Ms. Lemire said for the record she was not present at the last meeting because two of her grandchildren had surgery that day and she had to relieve the babysitter and was exhausted.

4. Other Business:

Mr. Rankie distributed his list of MMA talking points to the Board members and Ms. Bishop. He said, after reading the minutes, Mr. Trott said there is really a lot going on in the class and it could have taken longer, but there should be a second level as he had mentioned before.

Mr. Rankie said, what he got from this, is that your ear hears different things more than you know. He said he has kept notes on what he had heard and has highlighted points he felt were valuable to bring back and share.

Mr. Rankie said the first bullet is mainly for new members. He said that Chairman Hamilton, Mr. Marshall and himself talked about this – do not conduct individual site visits. He said if there is an appeal announced, and if it's from the Planning Board, Ms. Lemire is disqualified, everyone must have the same information.

Mr. Rankie said if he looks at a site that is under appeal, then he does not have the same information as everyone else.

Mr. Rankie said the second bullet is one-third part of the Board of Appeals' responsibility for appeals. He asked Chairman Hamilton to explain the two types of appeals.

Chairman Hamilton said that, in most cases, where there is a variance or a decision made by the CEO or the Planning Board, for an administrative appeal, it is an appellant review and the information is provided to the Board of Appeals by the Code Enforcement Officer/Planning Board Chair or the applicant. He said any new information after their decision cannot be considered, only if it is in the Shoreland Zone.

Chairman Hamilton said the ordinance allows the BOA to consider new information when hearing a waiver /variance because it is brand new and has not been decided by a previous board or individual.

Chairman Hamilton said the third is a de novo review.

Ms. Lemire said that is very rare.

Chairman Hamilton said another is a de novo review, where the Board can review new information.

Ms. Lemire said the Board is basically re-creating the case.

Mr. Marshall asked what initiates that happening?

Chairman Hamilton replied if it is in the Shoreland zone.

Discussion ensued.

Mr. Rankie said the Board can review that and any other responsibility that the town may put on them.

Chairman Hamilton said if the town wanted the Board of Appeals to hear the "Harbor Master" issue the town would have to vote on that.

Mr. Rankie said the 30-day period was emphasized. He said that some of the towns could not muster up a quorum. He said we are very fortunate in that our town is much more proactive.

Chairman Hamilton said he is sure that some of the smaller towns do not have a 30-day limitation because they need a quorum. He said they could have a continuance if there was no quorum or they would have to reschedule the meeting.

Mr. Rankie said the way it was presented, it was not clear, but it is worth bringing back here for discussion. He said most variances are for the life of the property but a disability variance does not go with the parcel, only with the applicant.

Mr. Rankie said recently they had a hearing and the next one applies to that. He said he was voting in the minority, and the applicant was given more than what was needed or asked for. He said if somebody needs seven feet and after they discuss it, the Board gives them 10 ft., they should get 7 feet.

Chairman Hamilton pointed out that it is in the Maine State Statutes as well. He said they could attach this note to tonight's meeting so we have it. (see attached e-mail from Breana Gersen, Esq., MMA)

Mr. Rankie said public comments should be limited to items relative to the ordinance.

Ms. Lemire added that the comments should have nothing to do with what is on the agenda.

Mr. Rankie said the subject of video-conferencing was brought up and noted that it should not be used for Planning Board and Board of Appeals meetings. As part of the presentation, he said she said that the Legislature tried to pass a bill to make it so it could not be used and they could not move it forward in this past session.

Mr. Rankie said the "appearance" was a big thing.

Chairman Hamilton thanked Mr. Rankie and said there are other Planning Board/Board of Appeals MMA workshops coming up: one is Thursday, Sept. 12th in Orono at the Black Bear Inn, and on December 5th, there are two, one at the Maine Municipal Association in Augusta and the other one is in Caribou.

Chairman Hamilton said Board members should contact the Town Hall if they would like to register for one of the workshops.

Chairman Hamilton asked if there was any other business the Board wished to discuss, and hearing none, said he would entertain a motion to adjourn.

5. Adjourn:

Mr. Marshall moved to adjourn the meeting at 7:49 p.m., seconded by Ms. Lemire and approved unanimously by a show of hands, 7-0. Motion carries.

Respectfully submitted,

Barbara Boggiano
Recording Secretary

Approved by:



Bill Hamilton, Chairman, BOA

Date approved: October 17, 2019

MMA Highlights list from Charles Rankie

- Do not conduct an individual site visit. Everyone must have the same information.
- The Board of Appeals responsibility is appeals, De Novo and Appellant and any other responsibility that the town may put on them.
- 30-day period was emphasized. Some towns with difficulty getting a quorum borrow from other towns.
- Most variances run with the land. However, Disability Variances run with the person.
- The BOA can only grant the minimum needed for the request.
- Public comments should be limited to items relative to an ordinance.
- Video-conferencing for the PB & BOA. Maine has failed twice to pass a bill.

Distributed by C. Rankie at the August 15, 2019 BOA Meeting

submitted/given 10-17-19 to attach to 1217 mins

8-1-2019

Dear C.L.,

It was very nice to meet you at the workshop. I hope you got home safe.

As promised, I'm following up with support for the statement that when granting a variance, only the minimum amount needed should be granted.

Courts have consistently held that the purpose of a variance is to prevent an unconstitutional taking of property resulting from ordinance requirements, which as applied to a particular property, would deprive the landowner of all beneficial use of their property. Reasonable return does not mean "maximum return." (*Perrin v. Town of Kittery*, 591 A.2d 861 (Me. 1991); *Toomey v. Town of Frye Island*, 2008 ME 44, 943 A.2d 563; *Twigg v. Town of Kennebunk*, 662 A2d 914 (Me. 1995)). Courts strictly construe the variance statute. Since only the minimum amount of a variance is required to produce a reasonable return and avoid an unconstitutional taking, granting more than what is required for a reasonable return could be a basis for overturning the board's decision. The American Law of Zoning specifically provides that "in determining the minimum variance necessary, the primary inquiry is whether the purpose of the proposed development and the alleviation of the property owner's hardship could reasonably be achieved through smaller development plans. The failure to consider the minimum variance necessary may be grounds for the reversal of a variance decision, even if the board relied on other relevant variance criteria in making its decision." 2 Am. Law. Zoning § 13.18 (5th ed.).

I hope this is helpful.

Best,

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