



**CITY OF GARDINER
BOARD OF APPEALS**

SPECIAL MONTHLY MEETING

(Rescheduled from September 27, 2016 due to incomplete application process)

MINUTES

Tuesday, October 18, 2016

Members Present: John Burgess, Chair Charlene Kinnelly Kevin Sullivan
Charles J. Betit

Members Absent: Edward (Ted) Potter Harlan Brown

Also present: Barbara Skelton, Assistant Planner/Code Enforcement Officer (CEO)
Dorothy Morang, Secretary to the Board of Appeals
Robin Plourde, City Staff
Riley Pratt, Applicant

- 1.) **Call Meeting to order**
Chair Burgess called the meeting to order, welcomed everyone and declared a quorum at 6:02 PM.
He led the group in the Pledge of Allegiance.
- 2.) **Roll Call**
- 3.) **Consideration of the Minutes from the August 25, 2015 Meeting**
Charles Betit moved to accept the minutes. Charlene Kinnelly seconded the motion.
Vote: 4 in favor. 0 opposed. Motion passed.

NEW BUSINESS

Floodplain Variance – Public Hearing

- 4.) **Matt O'Malia, G.OLOGIC, Applicant is seeking a Flood Plain Variance for exemption from the flood-proofing requirements of the Flood Plain Management Ordinance due to the historic nature of the property. The property is a contributing structure to a recognized Historic District and therefore meets the historic criteria. The Property, located at 223 Water St, is within the Central Business/Historic District (CB/HIST) Zoning Districts, City Tax Map 037, Lot 129.**

Chair Burgess had CEO Skelton read the agenda item.

Chair Burgess asked if any of the Board Members feels that they cannot avoid the appearance of impropriety with respect to this appeal. All members present felt they could hear this.

Chair Burgess asked if the KJ ad had been placed and the abutter notices sent within the time requirements. Riley Pratt said yes. Chair Burgess noted that the Board is hearing this within the 45 days required by the Land Use Ordinance. Given the information provided, Chair Burgess determined that all requirements have been met and determined that this Application has standing and the Board can hear this case.

Chair Burgess had the Applicant introduce himself and give an overview of the variance request. Riley Pratt said he is presenting this request on behalf of the current owner. They want to improve the property at 223 Water St. He said that under FEMA regulations, if the renovations exceed the 50% threshold based on the assessed value of the building, the owner would have to flood proof the building. He said this would cause them undue hardship and would not be practical. He said FEMA allows two methods – the Dry Method and the Wet Method.

The Dry Method of flood-proofing would completely seal the area, not allowing any water in. He noted that the flood plain elevation is 5' on the front first floor. The building shares a party wall on both sides with the abutters and there is no requirement for the adjacent structures to also be flood-proofed.

The Wet Method would require installing openings to allow water to enter and to exit on both the front and back of the building. The owner's goal is to create an energy efficient building. The holes above the first level would take away from that – it is not desirable to put holes in the façade and would be costly.

Charlene asked what are the implications from FEMA insurance if they get the variance. CEO Skelton said that the owners would have to agree in writing that they are aware of and assume the risks and agrees to indemnify and defend the city against any claims filed against it that are related to the applicant's decision to use the land located in a floodplain and that the applicant individually releases the city from any claims the applicant may have against the city that are related to the use of land located in a floodplain. (Land Use Ordinance Section 2.4.5.6.7.3) Charlene asked if they grant the variance, should it be a condition. CEO Skelton said the indemnification must be done before the release of the variance.

Kevin asked if the Board needs to issue a separate permit for the variance specifying the reasons that caused the Applicant to reject the flood permit. CEO Skelton said the Applicant wanted to do more than the 50% and we could not issue a permit without them complying with the guidelines (Section 15.5.6.1) They originally thought they could get a waiver, which they could not. In section 2 a variance can be requested if it is in a historic district. Kevin asked if they still have to meet the utility requirements – heating, water & electric. CEO Skelton said she doesn't think the Applicant is planning to do upgrading with the utilities. They are looking at renovating the 1st to the 3rd floors.

Riley said the utilities in the basement have been previously elevated. He noted that the flood plain elevation is 5' up into the 1st floor. They would have to put them on the 2nd floor.

Kevin asked about the flood plain and what areas are included. CEO Skelton gave a general description of what areas are included. She noted that there are maps that show the flood plain and floodway, etc.

Riley said there is a way to get around this by getting multiple permits for work over a period of years – staying under the 50% threshold each year. It would be quite a burden to do it that way. He noted that the building is valued at about \$104,000. With the threshold of 50%, not a lot could be done each year.

Chair Burgess said the Board will consider the request and apply the standards of the Ordinance. Kevin said he had been in the building a few years ago. He said the basement was pretty empty. He also noted that the building is quite narrow. If you had to move the utilities up, it would take up a lot of room. He said he didn't know how you could waterproof the building or let the water go through it without affecting the adjacent buildings.

Charlene said if the indemnification language is strong, the city will be fine. She is more concerned about the effects on the neighbors if they flood proof it. Chair Burgess agreed.

He said if the Board grants the variance, the owners would have to agree to follow the indemnification requirement.

Chair Burgess opened the public hearing.

No comments from the audience. Dorothy noted that as per the Ordinance, emails were sent to the Planning Board and Historic Preservation Commission members informing them of the variance request and meeting date & time and had not received any comments from them.

Chair Burgess closed the public hearing.

Charlene Kinnelly moved the variance request be accepted contingent upon full compliance with Section 2.4.5.6.7.3 of the Land Use Ordinance and an indemnification agreement is signed by the applicant. Charles Betit seconded the motion.

Vote: 4 in favor. 0 opposed. Motion passed.

5.) Adjourn

Charles Betit moved to adjourn the meeting. Charlene Kinnelly seconded the motion.

Vote: 4 in favor. 0 opposed. Motion passed.

Meeting adjourned