

1 **MERRIMACK ZONING BOARD OF ADJUSTMENT**
2 **DRAFT MINUTES**
3 **WEDNESDAY, AUGUST 31, 2016**

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

6 Members absent: Alternate Leonard Worster.

7 Staff present: Planning and Zoning Administrator Jillian Harris.

8 **1. Call to Order**

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

10 **2. Roll Call**

11 Patrick Dwyer led the pledge of allegiance.

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

13 **Election of Officers**

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

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

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

22 **Review of By-Laws**

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

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

30 Rich Conescu felt that the member who may come in late should hold off on the petition
31 being read and on the next one reevaluate to determine if they should then join the
32 Board. Fran L'Heureux agreed, adding that the member should sit in the audience until
33 the next petition is heard and then come sit with the rest of the Board.

34 Lynn Christensen stated that if a petitioner is reading what they've presented to the
35 Board, that information is something the Board has ahead of time. The member who
36 may be coming in late should already be up to speed because they can read the

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37 information ahead of time. The petitioner is essentially reading what they've already
38 written in the application. She feels it is up to the individual Board member to decide if
39 they are in a position to make a decision or not in regards to the vote. She would most
40 likely recuse herself if she came in at the tail end of a petition but not if it was only a
41 minute or two late.

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

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

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

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

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

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

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

81 **4. Discussion/possible action regarding other items of concern**

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

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

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

90 **5. Approval of Minutes – July 27, 2016**

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

94 **6. Adjourn**

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