

**TOWN OF ELSMERE
BOARD OF ADJUSTMENT
MEETING MINUTES
September 24, 2019
6:30 P.M.**

PLEDGE OF ALLEGIANCE:

CALL TO ORDER:

ROLL CALL:

CHAIRMAN	JAMES PERSONTI	PRESENT
BOARD MEMBER	JOHN ACTON	ABSENT
BOARD MEMBER	PATRICIA BOYD	PRESENT
BOARD MEMBER	RON RUSSO	PRESENT
BOARD MEMBER	JOHN SMITH	PRESENT

Code Enforcement Officer, Scott Allen – Present

PUBLIC COMMENT: None

APPROVAL OF MINUTES:

Minutes from the August 27, 2019 Board of Adjustment Meeting

ACTION: Board Member Smith made a motion to approve the Minutes from the August 27, 2019 Board of Adjustment meeting with no corrections. The motion was seconded by Board Member Boyd.

VOTE: ALL in favor Motion carried

OLD BUSINESS: None

OPENING STATEMENT:

Administrative Assistant for the Code Department Denise Lardani read the opening statement.

NEW BUSINESS:

Review Petition 19-07 Tax Parcel # 19-00400-018

Code Enforcement Officer Scott Allen read the statement of facts for Petition 19-07 from the Site Analysis (Exhibit 19-07D).

Mr. Andrew Kunkle presented his request to construct a building 36' x 26' garage to store his lawn equipment, bicycles, and pursue an area for woodworking hobbies. He is already over his lot coverage and currently at 42% coverage.

Mr. Andrew Kunkle stated he personally measured his lot coverage and his measurements are 32.6% coverage. With the proposed addition of the garage and the driveway the total coverage would be 48.84%.

Mr. Andrew Kunkle stated his father whom is his neighbor and his other neighbor does not have any opposing concerns about the addition.

Chairman Personti asked if there were any questions from the Board.

Board Member Russo made comment of concern that although his father, and his neighbor does not oppose, the responsibility of the board is to ensure that the town stays conforming.

Board Member Russo also stated that his property is also in a flood zone area that will create more flooding.

Board Member Russo questioned Mr. Kunkle if we give you special allowance that will set a precedence to other residents and why does he get approved and not them.

Board Member Smith asked is this a Flag lot.

Town Manager Giles stated that yes this is a flag lot and that per partial should only have one personal property.

Mr. Andrew Kunkle stated that it was his understanding that the original house burned down, and the owner had the smaller house built in the back while the main house was being rebuilt.

Town Manager Giles stated that the flag lot definition preceded the code. Also, that's the Supreme Court sent back the decision to rethink the wording for a Flag lot. Town manager said that is something that the code department should work with the Comprehensive plan.

Code Enforcement Officer Allen stated that he received one phone call from a resident to show their support for Mr. Kunkle.

Town Manager Giles stated that the town is required to notify the attorney that represents the town and Code officer Allen did so.

Code Enforcement Officer Allen stated the Attorney said to follow the law. Do not make any exceptions to it that may establish any adverse precedence, that it is already legal non-conforming.

Town Manager Giles states that the law is the Code that states you cannot do this. That there was one hardship that has been giving from the committee. That it was an accessibility issue under ADA for a handicap resident.

Board Member Russo stated that he does not want another resident asking for allowance at the Code specifically states that you cannot increase coverage on a legal non-confirming property.

Board Member Russo asked can the shed be built on his father's property.

Mr. Andrew Kunkle stated he is not sure and that his dads back yard would not be accessible.

Board Member Boyd asked is there a possibility to remove some of the lot coverage. Maybe turn the house in the back into storage area.

Town Manager Giles stated that is the only way he could do any construction is the intent to bring the property back into compliance.

Council Woman Personti 5th district stated she received a call from one resident inquiring about the construction and he did not say whether he was for or against the construction on the property. The resident was Mr. Hackedorn.

Town Manager Giles asked to allow the email from the Attorney as exhibit 19-07 T.

Mr. Andrew Kunkle summarized that he would like to be able to build the garage. To please take into consideration but is aware that he is already legal non-conforming.

Town Manager Giles for the code department denied the appeal based on the Code.

Chairman Personti asked if there was any public comment regarding Petition 19-07 and received none.

ACTION: A motion was made by Board Member Smith to uphold the Code office to deny the Petition 19-07 based on the Code Chapter 225-31C that prohibits the further expansion of an existing legal non-forming use. The motion was seconded by Board Member Russo

VOTE: All in favor Motion carried

ITEMS SUBMITTED BY CHAIRMAN AND BOARD MEMBERS:

None

PUBLIC COMMENT:

None

ADJOURNMENT:

ACTION: A motion was made by Chairman Personti to adjourn. The motion was seconded by Board Member Boyd.

VOTE: All in favor Motion carried

These minutes summarize the agenda items and other issues discussed at the August 27, 2019 Board of Adjustment meeting. Votes are recorded accurately. The audio tape(s) of this meeting will be available at Town Hall for a period of two years from the date these minutes are approved. The audio tape(s) may be reviewed at Town Hall by appointment and in accordance with the Freedom of Information Act.

JAMES PERSONTI, CHAIRMAN

PATTY BOYD, SECRETARY