

### **Call to Order, Roll Call**

Chairman Wilson called the meeting to order at 7:00 p.m.

### **Pledge of Allegiance**

Members Present: Barry Fitzpatrick, April Timko, Brian Boyle, Chair Wilson, Vice Chair Brake, Niles Pinkham

Absent: Charles Denault, III

Staff Present: Robert Marchi, Code Enforcement Officer

### **Agenda Amendment and Adoption**

The Agenda was accepted as presented.

### **Executive Session – None**

### **Public Hearing**

1. Phillip Crawford, owner, Chris Condron, applicant, 65 U.S. Route #1 Bypass, Map 7 Lot 25 Commercial – 3 zone, requesting Special Exception for manufacturing.

Attorney Matt Howell was in attendance on behalf of the owner and applicant.

The Board has the authority to hear this appeal per Code 16.1.5.2F4C Special Exemption Use Request. Secretary Boyle stated this is a de-novo hearing. Codes 16.1.5.2F4D Basis of Law and 16.3.2.11.B-3 Commercial Use and 16.3.2.11.C-3 Commercial Use Special Exception.

The Board accepted the findings of the Secretary.

Mr. Marchi explained the owner's intention is to grow and produce food containing medical marijuana. Processing of the product is a problem with zoning and he considered what other cities and towns did. He further explained the applicant applied for a special exception for manufacturing and will ship the product off site to have it stripped for the ingredients and shipped back to them for selling. Mr. Marchi stated there is a violation on the property a deficiency in the firewall needs to be addressed.

Mr. Howell stated he has just discovered Daniel Ford of Blue Current Brewery is present to testify in opposition of the application. Mr. Ford is also a client of his and, therefore, he is unable to represent the applicant. Mr. Howell requested to continue to next meeting date or proceed with him being unable to speak on behalf of either party.

Chair Wilson opened the public hearing for those who wished to speak on the subject and stated the Board will convene at a date certain of January 24, 2017 at 7:00 p.m. to continue. He also explained those speaking this evening will have their comments reviewed at that time.

Resident Susan Tuveson, 64 Government Street, stated she is an owner of a licensed kitchen that produces foods for sales. She stated she has a client that makes cannabis edibles who is required

to have a licensed kitchen. She stated there was no indication of what the business would be doing on the application. She stated the room only has a sink, so she is questioning approval for a specialty food and beverage because nothing can be made there. Ms. Tuveson stated the business is agriculture which is not allowed in this zone.

Phyllis Ford, Bond Road and owner of Blue Current Brewery, stated she is also representing her husband. She explained their business is in two thirds of the building. The application does not appear to be complete because no abutters or interested people were listed. She stated the affirmations on the application were not filled in. She also stated the applicant had begun using the location and the smell permeated and ruined her product, thus affecting her business. Ms. Ford also stated the space has one unpermitted toilet with not adequate waste water disposal. Ms. Ford referred to a similar case in York and encouraged the Board to review.

Since there was no further comments, the Chair stated he will continue the public hearing for this item on January 24, 2017 and the applicant's testimony will go first.

2. Michael Alessi, Jr., 70 Remicks Lane, requesting Administrative Appeal to the issuance of a building permit for a single-family dwelling located on a Right of Way of Remicks Lane, Map 65 Lot 14-2-A, Rural Residential zone.

The Board has the authority to hear this appeal per Code 16.1.5.2F2 Administrative Decision Appeal. Secretary Boyle stated this is a de-novo hearing. Codes 16.1.5.2F4D Basis of Law is the Board's authority. The Board accepted the findings of the Secretary.

Mr. Marchi explained Mr. Alessi has a deed to a right of way and feels the building permit given encroaches on his property. Mr. Marchi further explained the subdivision was approved by the Planning Board on April 12, 2007 and referred to the Minutes that stated no one came forward during the public comment, therefore, he believes the permit was issued correctly and perhaps Mr. Alessi should take the homeowner to Civil Court.

### Testimony

Mr. Alessi stated he has no intention to have a civil suit with the landowner and he purchased land in 1993. He stated he pays taxes and owns the property, He believes his right as a property owner is being impacted by the permit. He has only issued one easement over the years. He explained the strip of land is approximately 540 ft. and feels it was recognized by the Town as private property. He said there is no easement over his property.

In reviewing the application, the Chair pointed out the applicant signed the appeal within the 30-day limit but the application fee was paid outside of the 30-day window.

Mr. Alessi responded that he tried to pay on a Friday but the Town Hall was closed. He stated Mr. Marchi told him it would be okay to pay later and he had difficulty because of the holiday when the office was closed. Chair Wilson stated the application was seven days late.

Mr. Marchi pointed out that the Town cashed Mr. Alessi's check.

**Chair Wilson moved that based on discussion of whether the application was received in a timely fashion or was received after the 30 days, to accept that the application has been filed in a timely fashion.**

**Mr. Pinkham seconded the motion.**

**The motion carried 5-1-0.**

#### Public Hearing

The Chair opened the Public Hearing.

Resident Rich Belano stated he reviewed the application posted on the Town's website and believes the private way is well established. He referred to street classification and read the ordinance regarding traffic requirements. He feels the traffic for this road it exceeds the traffic requirement.

There being no further comment, the Chair closed the public hearing

#### Board Deliberation

Mr. Marchi requested to provide further information. The Board had no objections. He stated that he issued this permit based on the 2007 subdivision approval. Ms. Timko asked if a building permit needs to reference right of way. Mr. Marchi replied it is not a requirement if it has frontage on a Town approved right of way, which this has. He also stated he does not issue notices other than the public record to abutters unless there are other issues.

Mr. Pinkham asked if the applicant owns the land, and there's no right of way, how can residents get to development? Mr. Marchi responded it is a legal issue to be decided in court and there is documentation stating right to pass.

Mr. Fitzpatrick stated he reviewed the paperwork from the approval of the subdivision and didn't find anything that said the Town approved right of way. The documents state proposed 50 ft. right of way.

Chair Wilson described the procedure of the Planning Board and the Minutes did not indicate Mr. Alessi was present. He did not make any comments at the public hearing. Mr. Alessi stated the Town does not recognize the area is his and he was not at the meeting and was not notified. Mr. Alessi stated he never gave an easement.

**Mr. Brake moved to uphold the building permit issued November 9, 2016 to Acacia Fanto for a single-family dwelling on a Right of Way of Remicks Lane, Map 65 Lot 14-2-A.**  
**Chair Wilson seconded the motion.**

**The motion carried 4-1-1.**

Chair Wilson stated the applicant has 45 days from today to appeal the decision in Superior Court.

Findings of Fact

Mr. Alessi came before the Board of Appeals questioning a building permit issued by the code enforcement officer for a building on the Right of Way of Remicks Lane, Map 65 Lot 14-2-A.

The property is in a Town-approved subdivision.

There are no outstanding violations.

The property meets all set back requirements.

The permit was issued on November 9, 2016.

Mr. Alessi came before the Board of Appeals and suggested the strip of land is a private right of way. He claimed he issued no easements over property. Contested by the CEO.

The Chair noted the date submitted by the applicant was late and there was discussion and the Board made a decision that the permit was timely.

Mr. Belano made a statement that private way is established by the maps. He also suggested the right of way traffic exceeded the ADT Code 16.8.3.4(i).

The CEO stated the approval of the subdivision took all the ADT conditions into consideration when approved originally.

The CEO testified he is within his right to issue a permit regardless the outstanding issue that Mr. Alessi addressed.

The Chairman suggested this is a trespass issue and not a permit issue.

Mr. Alessi said he did mention trespass.

**Chair Wilson moved to accept the Findings of Fact as presented.  
Mr. Pinkham seconded the motion.**

**The motion carried 6-0-0.**

Conclusion of Law

The Board feels that the permit issued on November 9, 2016 was legitimate and proper based on a Planning Board approved subdivision.

**Chair Wilson moved to accept the Conclusion of Law.**

**Vice Chair Brake seconded the motion.**

**The motion carried 6-0-0.**

Chair Wilson stated the applicant has 45 days to file a suit.

**Unfinished Business** - None

**New Business** - None

**Acceptance of December 13, 2016 Minutes**

Ms. Timko was not listed in attendance

Line 34 – change to “de-novo”

Line 62 – change “unbuildable” to” not being buildable”

Line 107 - change to “manufactured” not “mobile” home

Line 117 - change sentence to “a permit holder/approval must substantially start within six months and be finished within one year.

**Chair Wilson moved to accept the Minutes as amended.**

The next meeting will be held on January 24, 2017.

**Chair Wilson adjourned the meeting at 8:42 p.m.**