

**1. Call to Order, Introductory, Roll Call**

The Chair called the meeting to order at 6:30 p.m.

Present: Craig Wilson, Charles Denault, III, Jeffrey Brake, April Timko, Judy Spiller

Absent: Louis Leontakianakos, Barry Fitzpatrick

**Staff Present:** Robert Marchi, Code Enforcement Officer

**2. Pledge of Allegiance**

**3. Agenda Amendment and Adoption**

The Board adopted the Agenda as presented.

**4. Executive Session**

There was no executive session.

**5. Public Hearings**

Chair Wilson gave the applicant the choice to postpone tonight's hearing because two members of the Board were absent, and they would need four like votes. The applicant stated she would like her item heard tonight.

Andy Chick, Owner, Pam Edwards, Applicant, 99 State Road, Map 8 Lot 31, Business - Local B-L Zone, requesting Special Exception request to convert commercial space to a single-family dwelling in a mixed-use building and, if approved, apply for a Major Home Occupation for Licensed Medical Marijuana Caregiver.

Testimony

The Board decided to hear the testimony for both applications at the same time. Mr. Marchi explained this is a Special Exception application for a residential unit in a mixed-use, commercial building. The building is an existing nonconforming building which has been around since the 1960's. He added, if the Board approves the use, the applicant will still need to meet certain code requirements for the building. The reason for this request is the applicant would like to have a home occupation use that is not allowed in the zone for a commercial building because the Town only allows a medical marijuana caregiver as a home occupation. By establishing a residence in the commercial building, the applicant hopes to be allowed for this use. Mr. Marchi commented conditions added by the Board would be in the record and enforced. Mr. Marchi also stated the Chair had asked him earlier of the availability of parking on the property and Mr. Marchi stated there are 17 required and 25 available parking spots.

Pam Edwards, applicant, stated she is a Kittery resident and business owner. She explained she is making the request of changing commercial space into a single-family unit. This would enable her to live closer to one of her stores, Kittery Discount Smoke Shop and allow her to have a home occupation providing medical marijuana as a caregiver. She added home occupation is allowed in the zone. Mr. Marchi reviewed Home Occupation in Code 16.8.2.21. Ms. Edwards explained why the site is a good location for the home occupation. The structure is ideal for cultivation; the building is a single-level entry with parking for handicapped patients, the location is off the regular pedestrian path, there will be no signage, and there are not many children, churches or playgrounds in the immediate area. She added she has a license from the State of Maine and the Department of Human Services considers the building as a simple remodel. Ms. Edwards explained the plans for security to the property. She also explained her history of helping people in the community and her concern for patients who need to drive to Biddeford to get what they need. She added she has letters of support for the Board to consider.

The residence will be on the first and second floor and Mr. Marchi pointed out commercial usually occupies the first floor and residential the second. Mr. Marchi's concerned is that the applicant is creating a storefront for a home occupation.

The Chair opened the public hearing.

Peter Macdonald, Lee, NH, explained he began the Veteran Resort Chapel, which helps homeless combat veterans, and the applicants have helped his organization. He commented the Board should look at the benefits of bringing the old building up to code and having someone on the property is added security.

Sherry Lehoullier stated she supports the applicant. She is a medical healthcare professional in Maine and New Hampshire and described the benefits this would be for patients in need.

Tammie Snow, Ms. Edward's attorney, clarified there will be no living room on the second floor. The existing smoke shop will be moved next door with a separate entrance.

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

The Board has the power and duty to hear the proposal of a special exception for residential in the B-L zone under 16.1.5.2 4d Special Exception Request. This proposal does not require Planning Board review because it is not in the shoreland zone.

The Board has the power and duty to hear the proposal for Major Home Occupation under Article XII, 16.8.22(2)(c) Major Home Occupation.

The Chair ruled the Board can hear both components.

### Deliberation

Ms. Spiller expressed her concern of the layout of the residential property. Ms. Edwards explained there will be four bedrooms, a kitchen and bath on the second floor. The first floor

will have a living room and a small pantry. She added the store is not part of the residential property and will be located next door. Sales of medical marijuana will take place in the living room on the first floor because it is handicapped accessible. Ms. Timko asked of the total square footage of the residence proposed and the square footage for the area used for the business. The applicant explained two bedrooms will be used as a grow room and veg. room and 25% of the living room will be dedicated for the business. Chair Wilson pointed out home occupation needs to be an accessory to the residence. He added a building floor plan showing square footage of pre-proposal and post-proposal for all floors should be submitted, which should be a condition of approval.

Ms. Spiller expressed her concern with the smoke shop being next to the living room because it seems more like a dispensary than a home and asked about Number 7 on the application regarding retail sales of smoking accessories. Ms. Edwards explained they have changed their minds about Number 7 and it can be struck out. Chair Wilson asked about signage. The applicant explained the home occupation will be called "Your Green Thumb" and there will be a separate sign on the door.

Chair Wilson commented the Board needs to certify the testimony in the applications meets 16.6.6.1, .2 and .3. There is testimony there will be no outside venting and there will be inside charcoal filters for odor. The Board found this acceptable. The Code Enforcement Officer will need to make sure this is being upheld. The Chair listed the following three conditions: 1. plot plans and calculations; 2. signage on interior doors for smoke shop and major home occupation; and 3. certification at a date uncertain by the Code Enforcement Officer that odor control that is adequate.

**Mr. Denault moved that the Kittery Board of Appeals grant approval for Andy Chick, Owner, Pam Edwards, Applicant for 99 State Road, Map 8 Lot 31, Business - Local B-L Zone, Special Exceptions to convert commercial space to a single-family dwelling in a mixed-use building and also special exception for a Major Home Occupation for Licensed Medical Marijuana Caregiver with the following conditions: 1. the applicant supplies plot plans to the Code Enforcement Officer's satisfaction for preproposal conditions including square footage of all the existing uses and a post proposal plot showing the reconfigured building and reconfigured square footage. The plot plans must show less than 50% square footage allocated to the home occupation; 2. signs on interior doors for smoke shop and major home occupation; and 3. date chosen by a by the Code Enforcement Officer that the odor control system is adequate.**

Mr. Marchi asked the applicant how many patients they are legally allowed to service. Ms. Edwards responded she and her partner are licensed caregivers and they are allowed to service ten patients and they are also allowed to have one employee each who need to be registered with the State under them. Attorney Snow explained the State law of allowances and limitations for caregivers.

Mr. Marchi explained his concern of this creating a commercial venture and the residential aspect being on the first floor where generally commercial is allowed. Chair Wilson asked if this requirement for a mixed-use building is in the code. Mr. Marchi replied it is not. The Board also

discussed the procedure if State law changes and the applicant can expand the business because it would affect the accessory-use percentage. Mr. Marchi pointed out major home has an annual renewal and, if there were any issues, the Code Enforcement Officer would be aware.

Ms. Spiller spoke of her continuing concern of the residential area being on the first floor with the smoke shop being adjacent and both businesses having the same owners. She also expressed her concern with the smoke shop selling pipes and vaporizers making the business more of a dispensary. Attorney Snow explained the State law allows caregivers to sell accessories in their homes, but the applicants have chosen not to do so. The State law does not permit caregivers to have retail sales. She added the smoke shop is a separate entity with a separate entrance.

**Ms. Timko seconded the motion.**

Ms. Spiller referred to Code 16.6.6.1 and of her concern of mixed commercial and major occupation in the proximity to Memorial Field and Legion Pond which will be a town park.

Ms. Timko pointed out the Board needs to be consistent of accessory use and incidental use in fairness of other applicants. She added she is concerned that there is no square footage. After discussion, language will be added to condition 1 reading: "The plot plans must show less than 50% square footage allocated to the home occupation."

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

Chair Wilson noted there is a one-year time limit and they will need to go to the Code Enforcement Officer for a building permit. He also noted 32 form letter petitions of support were submitted to the Board and will be placed in the record.

**Findings of Fact**

- We had appearing before us the applicant, Pam Edwards, representing Andy Chick, Owner, for two special exceptions at 99 State Road, Map 8 Lot 31, Business - Local B-L Zone, first Special Exception request to convert commercial space to a single-family dwelling in a mixed-use building and, second Special Exception for Major Home Occupation for Licensed Medical Marijuana Caregiver.
- 99 State Road is a nonconforming building as per setbacks.
- The parking for the building currently requires 17 spaces and 25 spaces are available.
- Pam Edwards spoke and there will be two caregivers.
- She spoke about being a single level for the home occupation, so parking and entry are handicapped accessible.
- Ms. Edwards talked about the security plans, cameras motion detectors and the like.
- She spoke about the location having no window shopping pedestrian traffic or people happening by.
- There will be no signage outside for the medical marijuana business.
- There are no schools or playgrounds are nearby.
- Talked about it being an organic product.

- The public speaking portion Peter Macdonald, veteran, spoke of the positives of upgrading the building and will be occupied providing better security.
- Sherry Lehoullier, health care professional, spoke of this being one of the anecdotes to the opioid problem and benefitting for pain relief.
- Attorney Tammie Snow appeared and clarified the smoke shop will become the living room and there was discussion about where in the living room the medical marijuana transfer would take place.
- There was testimony that there are two separate business entities - the smoke shop and the marijuana caregiving though the same people who are associated with the two business entities.

The Chair asked for a vote on the Findings of Fact as presented and all were in favor 5-0-0.

### **Basis of Law**

For first Special Exception, the Board is granted the ability to grant special exception under 16.1.5.2 to grant a Special Exception 4(D) and the Board of Appeals reviewed the basis for decision and factors for consideration and found that Special Exception was appropriate and so voted. Under the Home Occupation, the Board of Appeals is given the power under 16.8.22.3(A1), (A2) (C) and they went through factors of consideration and found it was appropriate and so voted.

The Chair asked for a vote on the Basis of Law as presented and all were in favor 5-0-0.

### **6. Unfinished Business**

Chair Wilson explained this is the second notice of the time change to the 6:30 start time. They changed the By-Laws and the first notice was on January 9, 2018.

**Ms. Spiller moved to accept the second reading of the By-Laws to change the start time to 6:30.**

**Vice Chair Brake seconded the motion.**

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

### **7. New Business - Election of Officers**

Since only five board members were in attendance, the Chair suggested postponing this item until the next meeting. Board members agreed. The Chair will act as Chair and Secretary at the next meeting. He added the powers and duties can be referenced in Chapter 16 and their By-Laws have the duties of the Chair and duties of the Secretary. Chair Wilson informed the Board a new Chair should be elected since his time on the Board will be over in November.

Mr. Marchi stated a public hearing will be held on March 13, 2018.

### **8. Acceptance of Minutes: None.**

**9. Board Member or CEO Issues or Comment**

There will be a training session with an attorney and planning and development. A date will be determined later.

**10. Adjournment**

The meeting adjourned at 8:00 p.m.