



TOWN OF KITTERY
CODE ENFORCEMENT OFFICE
200 ROGERS ROAD, KITTERY, MAINE 03904
PHONE: (207) 475-1305
FAX: (207) 439-6806

Application to the
BOARD OF APPEALS

DATE SUBMITTED	7-23-19
MAP & LOT	16/145A
ASA FEE	
DATE PAID	
DATE COMPLETE	
HEARING DATE	9/24/19

SPECIAL EXCEPTION USE REQUEST

I have reviewed Town Code Title 16, Board of Appeals By-Laws, and the Ordinance(s) pertinent to this application. My request is based on the following:

TITLE	16	CHAPTER	3	SECTION	2.5.C					PAGE	
TITLE		CHAPTER		SECTION						PAGE	

Special exception means a use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning districts as special exceptions, if specific provision for such special exceptions is made in Chapter 16.3.

**IN ORDER FOR AN APPLICATION TO BE DETERMINED COMPLETE AND SCHEDULED FOR A PUBLIC HEARING:
APPLICATIONS FORMS MUST BE COMPLETE; 10 SETS OF DOCUMENTATION PROVIDED; & ALL FEE(S) PAID**

PROPERTY INFORMATION

ADDRESS	50 A Wyman Avenue				
MAP	16	LOT #	145A	LOT SIZE	.42 acres
BASE ZONE(S):	R-U		OVERLAY ZONE(S):		
The subject property: [is / is not] in a Shoreland overlay or Resource Protection zone; [is / is not] in a floodplain; AND [does / does not] have outstanding code violations; and, if so, granting this appeal provides resolution .					
PROPERTY OWNER: I have right, title or interest in the affected property, or issue, as shown by:					
NAME(S)	Mitchell Delaney				
MAILING ADDRESS	50 A Wyman Avenue				
CITY	Kittery	STATE	Maine	ZIP CODE	03904
PHONE No.			e-MAIL:		

NOTE: You may have an attorney represent you, but such representation is not necessary. You may also be represented by a designated agent (e.g. family member, neighbor, engineer, contractor) as you so desire.

APPLICANT (if different) I am an agent of the applicant with standing, as shown by:

Lawyer for Mitchell Delaney					
NAME(S)	Tammie Snow, Esq.				
MAILING ADDRESS	136 Commercial Street, Mezzanine				
CITY	Portland	STATE	Maine	ZIP CODE	04101
PHONE No.	207-558-4300		e-MAIL: tammie@tsnowlegal.com		

To the best of my knowledge, all information submitted on and with this application is true and correct.

Date: August 26, 2019

By:

(Signature)
Tammie Snow
(Print Name)

AFFIRMATIONS*(Please read and check all the boxes to confirm)***I understand that the:**☒ Use requested must:

- ☒ 1. Not have an unreasonably adverse effect on the health, safety or general welfare of the residents of the area or the general public.
- ☒ 2. Not significantly devalue abutting property or property across a public or private way.
- ☒ 3. Not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones.
- ☒ 4. Not have an adverse impact on spawning grounds, fish, aquatic life, or bird or other wildlife habitats.
- ☒ 5. Be in harmony with and promote the general purposes and intent of this Code.
- ☒ 6. Adequately provide for the disposal of all wastewater.
- ☒ 7. Conserve shore cover and visual, as well as actual, points of access to inland waters.
- ☒ 8. Protect archaeological and historic resources as designated in the Comprehensive Plan.
- ☒ 9. Avoid problems associated with floodplain development and use.

☒ Board may establish additional conditions, including, but not limited to, the following:

- ☒ 1. Front, side or rear yards in excess of minimum requirements;
- ☒ 2. Modifications of the exterior features of buildings or other structures;
- ☒ 3. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements;
- ☒ 4. Regulation of design of access drives, sidewalks and other traffic features;
- ☒ 5. Off-street parking and loading spaces in excess of the minimum requirements; or
- ☒ 6. Restrictions on hours of operation.

☒ Proposed use may:

- ☒ 1. Not have an adverse effect. In making this determination, the Board shall take into consideration the potential effect of the development on the environment from air, water or soil pollution; noise; traffic congestion; soil erosion; the burden on sewage disposal or water supply systems or other municipal facilities, services or public ways; and any other relevant factors.
- ☒ 2. Not significantly devalue abutting properties. In making its determination, the Board shall take into consideration the type of structure proposed; the topography of the area; the market value of the surrounding real estate; the availability of utilities and transportation; the availability of schools and hospitals; traffic conditions; and any other relevant factors.
- ☒ 3. Not give rise to any grave concern regarding the expectations as listed above.
- ☒ 4. Be subject to such additional conditions as the Board deems necessary.

I also understand that the Board of Appeals:

- ☒ May hear and decide a special exception use request within the limitations set forth in Title 16 Section(s) identified on Page 1.
- ☒ Appears to have jurisdiction to hear this request; hearing must be held within 30 days of this request filing; application must be complete; and, public and abutter notice must be made no less than seven days prior to the scheduled hearing.
- ☒ Will conduct this hearing De Novo (meaning the Board acts if it were considering the question for the first time, affording no deference to the preceding agency decisions; may receive new evidence and testimony consistent with this Town Code Title 16 and the Board rules; and, conduct additional hearings and receive additional evidence and testimony).
- ☒ Will determine my Burden of Proof:
 - 1) What does the ordinance/statute require the applicant to prove?
 - 2) Does the ordinance/statute prohibit or limit the type of use being proposed?
 - 3) What factors must be considered under ordinance/statutes to decide whether to grant the request?
 - 4) Is the evidence presented substantial? Is it credible? Is it outweighed by conflicting evidence?
- ☒ Requires substantial evidence as the Standard of Review for this request, meaning:

"More than a mere scintilla". It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The preponderance of evidence standard is met if the proposition is more likely to be true than not true. The standard is satisfied if there is greater than fifty percent chance that the proposition is true.
- ☒ May hear, decide, and approve variations in accordance with the criteria listed in Town Code Title 16, Sections 6.6.1, Factors, and 6.6.2, Considerations; and may consider other Title 16 standards.

- ☒ Approval may not be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any state law which the municipality is responsible for enforcing.
- ☒ Is only legally authorized to deal with issues arising from the list above, and do not include such matters as constitutionality, civil rights, criminal acts, property disputes, surliness, etc.
- ☒ Will not even hear my appeal unless I can show that I have "standing" to have my complaint heard;
- ☒ Purpose of establishing my case for "standing" is to limit appeals on an issue to those who are directly involved and/or affected.
- ☒ Will try to decide my case based only on the factual information presented and what is written in the pertinent Town ordinance/regulation, State statute(s)/regulation(s) and the rulings of the State Supreme Judicial Court.
- ☒ Tries to make decisions it believes would be upheld if appealed to Superior Court.

STATEMENTS:

Describe the general nature of the request:

The home occupation will consist of cultivating and selling medical marijuana as allowed under the Maine Medical Use of Marijuana Act. Applicant holds a valid and current medical medical caregiver license. See Exhibit 1.

The cultivation will take place in the basement. The basement is 804 square feet, which is 31% of the residence's total square footage of 2,583.

Sales will take place in a 12' x 18' foot shed that will be retrofitted into an office. Including the shed, the home occupation use will amount to 39% of the residence's total square footage. See Exhibit 2 for location of the shed.

No product will be stored or kept in the shed.

Odor abatement in the basement cultivation area includes three Q Max 8" Pro Series fans with attached charcoal filters. The fans run 24 hours a day, pulling the air through the filters, where the air is scrubbed of all odor. No odor will be detectable outside the basement.

Off-street parking is available for up to 8 vehicles.

The business will not store any equipment, vehicles, or other items outdoors.

The home occupation is expected to generate no more than five visitors per day. Most sales will take place through delivery.

The home occupation will employ a maximum of five people, including the resident.

Business hours will be 9:00 a.m. to 5:00 p.m.

Exhibit 2 is an aerial photo of the property with the property dimensions, location of the residence, location of the shed to be built, and distances to nearest structures. There are no encumbrances on the property.

Exhibit 3 is diagrams of the residence with square footages.

Although the property is deeded as a condominium, it is a single family structure with no walls or other attachments to other dwelling units.

Additional Information

1. Please complete this application in its entirety. You may add other information as may be needed to adequately describe the purpose of seeking relief from the Board of Appeals.
2. A detailed plot plan or diagram must be provided showing dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings or alterations, and any natural or topographic features (wetlands, streams, etc) of the lot in question. This plot plan should also include the distances to the nearest structures on abutting properties and show the detail of any rights-of-way, easements, or other encumbrances.
3. Blueprints, surveys, photos and other documents may be helpful in explaining your request and should be included.

Exhibit 1

Maine Medical Marijuana Caregiver License

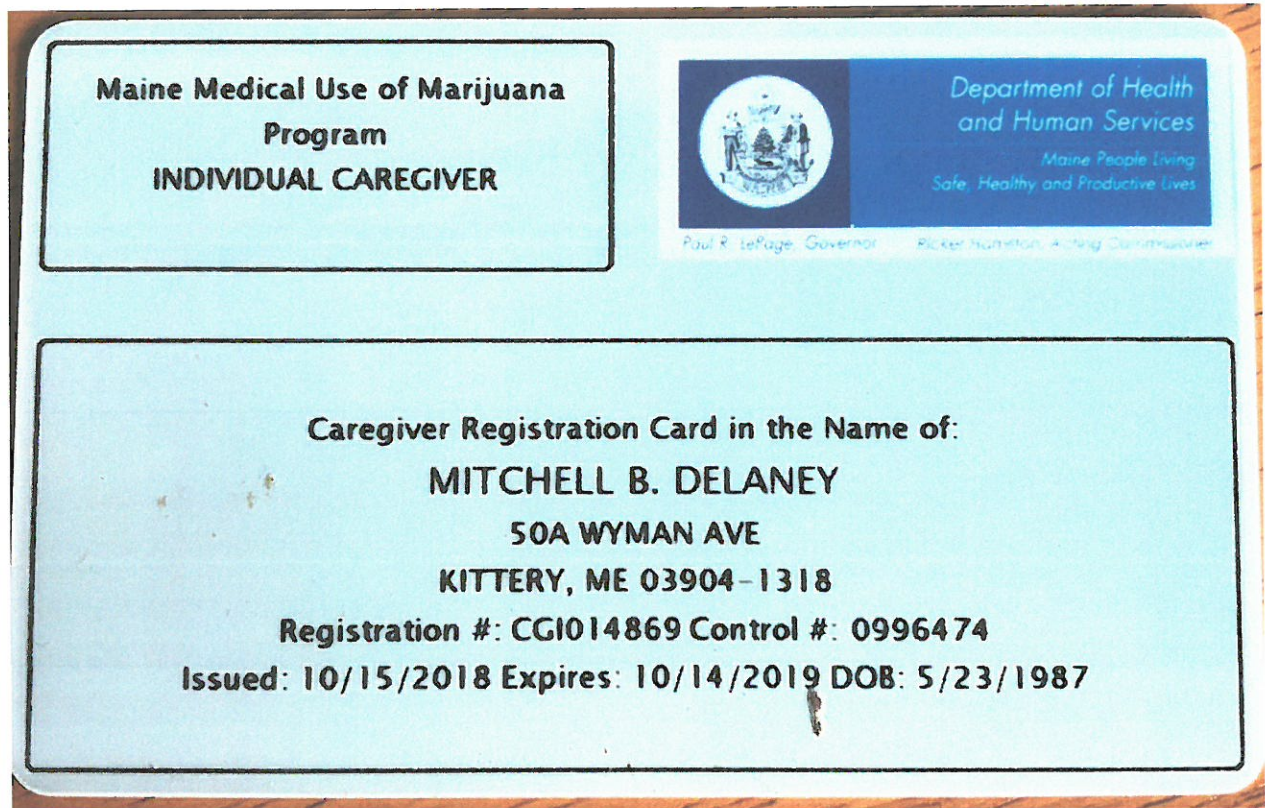


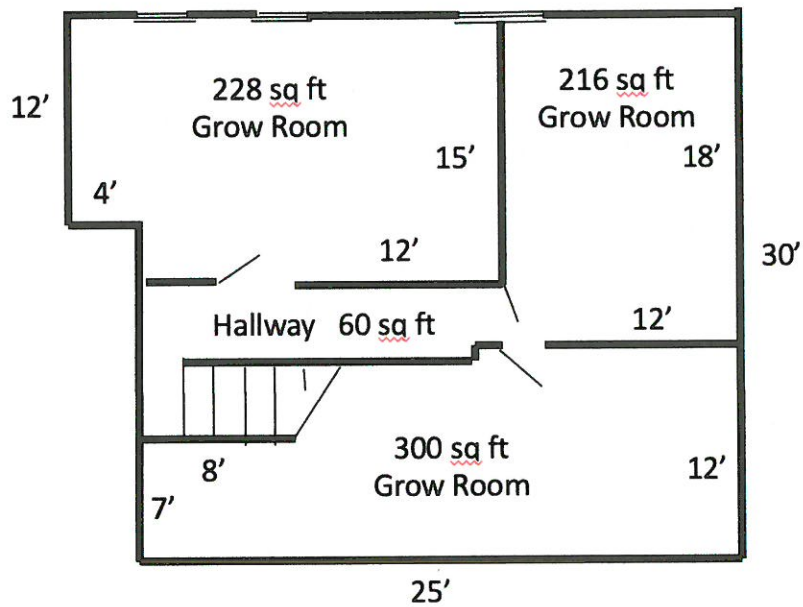
Exhibit 2

Aerial photo of the property with the property dimensions, location of the residence, location of the shed to be built, and distances to nearest structures

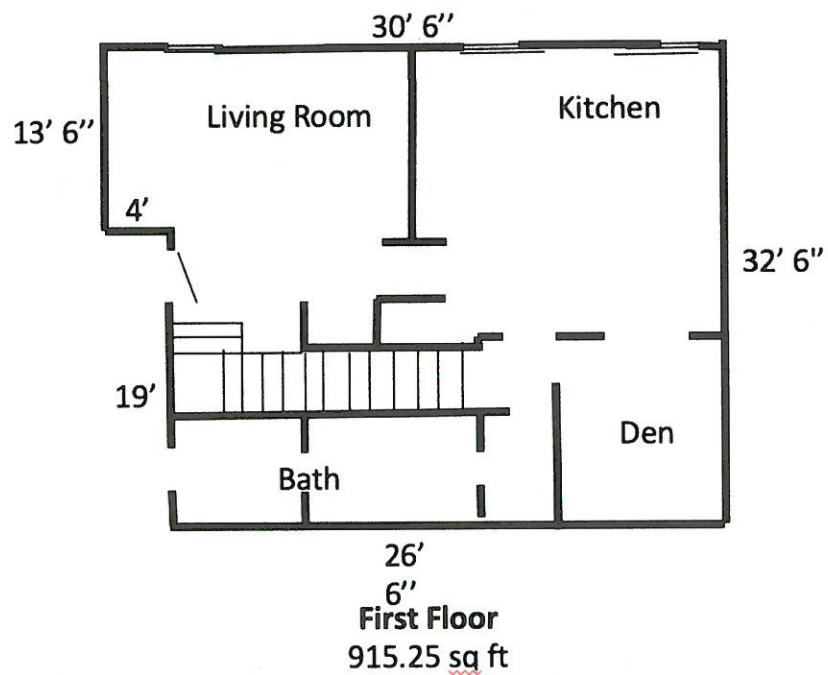


Exhibit 3

Residence diagrams



Basement
804 sq ft



First Floor
915.25 sq ft

