



**Town of Kittery**  
**200 Rogers Road, Kittery, ME 03904**

**Board of Appeals**  
**Meeting Agenda, Council Chambers**  
**Tuesday, November 26, 2019**  
**Regular Meeting – 6:30 P.M.**

- 1. Call to Order; Introductory; Roll Call**
- 2. Pledge of Allegiance**
- 3. Agenda Amendment and Adoption**
- 4. Executive session (if required)**
- 5. Public Hearings**
  - a. Wade Blake, on behalf of owner James Powers, 5 Hutchins Cove Drive, requesting a Variance build an addition within the rear setback to an existing structure in the Residential – Rural (R-RL) zone, per Section 16.6.4.B of the Town Code.
  - b. Erin Sherman, on behalf of tenant Mitchell Delaney, 120 State Road, requesting a Special Exception use for a Major Home Occupation to operate as a medical marijuana primary caregiver in the Business – Local (B-L) zone, per Section 16.3.2.8 and Section 16.8.22.3 of the Town Code.
- 6. Unfinished Business**
- 7. New Business**
- 8. Acceptance of Previous Minutes**
  - a. October 8, 2019
  - b. October 22, 2019
- 9. Board Member or CEO Issues or Comment**
- 10. Adjournment**



**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 |  |
| MAP & LOT      |  |
| ASA FEE        |  |
| DATE PAID      |  |
| DATE COMPLETE  |  |
| HEARING DATE   |  |

**UNDUE HARDSHIP VARIANCE 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 Section 16.6.4.2A, for an Undue Hardship Variance (30-A MRS. §4353 (4-C)).

**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  | 5 HUTCHINS COVE DRIVE |       |                                |          |       |
| MAP  | 39                    | LOT # | 3-3                            | LOT SIZE | .93A  |
| BASE ZONE(S):  | R-RL                  |       | OVERLAY ZONE(S):               |          |       |
| <b>The subject property:</b><br>[ is / <del>is not</del> ] in a Shoreland overlay or Resource Protection zone; [ is / is not ] in a floodplain; AND<br>[ does / <del>does not</del> ] have outstanding code violations; and, if so, granting this appeal provides resolution . |                       |       |                                |          |       |
| <b>PROPERTY OWNER: I have right, title or interest in the affected property, or issue, as shown by:</b>  |                       |       |                                |          |       |
|  |                       |       |                                |          |       |
| NAME(S)  | JAMES W POWERS        |       |                                |          |       |
| MAILING ADDRESS  | PO BOX 12             |       |                                |          |       |
| CITY   | KITTERY PE            | STATE | ME                             | ZIP CODE | 03905 |
| PHONE No.  | 603-765-8888          |       | e-MAIL: jameco9194@comcast.net |          |       |

**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.

|  |                         |       |         |       |          |
|--|-------------------------|-------|---------|-------|----------|
| <b>APPLICANT (if different) I am an agent of the applicant with standing, as shown by:</b> |                         |       |         |       |          |
|  |                         |       |         |       |          |
| NAME(S)  | Wade Blake              |       |         |       |          |
| MAILING ADDRESS  | 115 Badgers Island West |       |         |       |          |
| CITY   | Kittery                 | STATE | Me      | 03904 | ZIP CODE |
| PHONE No.  | 207-1451-3048           |       | e-MAIL: |       |          |

Variance means:

1. a relaxation of the terms of Title 16 where such relaxation will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant or prior owner, a literal enforcement of the title will result in unnecessary or undue hardship.
2. As used in Title 16, a variance is authorized only for dimensional requirements related to height, area and size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited is not allowed by variance, nor may a variance be granted because of the presence of nonconforming uses in the particular zone or adjoining zone).

**Describe the general nature of the hardship variance request:**

THE EXISTING LOT WITH THE DWELLING UPON IT IS OF SUCH SIZE AND SHAPE THAT THE PROPOSED ADDITION TO THE EXISTING STRUCTURE REQUIRES A YARD VARIANCE, AS IT INTUDES INTO THE 20' SETBACK. THERE IS NO REASONABLE ALTERNATIVE AS THE EXISTING SEPTIC SYSTEM WOULD BE IMPACTED

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

Date: 11-5-2019

By:

*James W Powers*  
(Signature)  
James W Powers  
(Print Name)

**AFFIRMATIONS***(Please read and check all the boxes to confirm)***UNDUE HARDSHIP VARIANCE CRITERIA****16.6.4.2 Variance Request.**

A. A variance may be granted only by the Board of Appeals under the following conditions:

1. for a reduction in dimensional requirements related to height, area and size of structure, or size of yards and open spaces;
2. the use is not prohibited by this Code; and
3. only if the strict application of the terms of this Code would result in "undue hardship." The term "undue hardship" means the applicant must demonstrate all of the following:

a. The land in question cannot yield a reasonable return unless a variance is granted.

b. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

c. The granting of a variance will not alter the essential character of the locality. d. The hardship is not the result of action taken by the applicant or a prior owner.

B. Notwithstanding Section 16.6.4.2A, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in, or regularly uses, the dwelling. The Board of Appeals must restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to, or egress from, the dwelling by the person with the disability.

The Board of Appeals may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" includes railing, wall or roof systems necessary for the safety or effectiveness of the structure.

C. A copy of each variance request within the Shoreland Overlay Zone, including the application and all supporting information supplied by the applicant, must be forwarded by the Code Enforcement Officer to the Commissioner of the Maine Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals will be made part of the record to be taken into consideration by the Board of Appeals.

D. The Board of Appeals must limit any variance granted as strictly as possible to ensure conformance with the purposes and provisions of this Code to the greatest extent possible, and in doing so may impose such conditions of approval to a variance as it deems necessary. The party receiving the variance must comply with any conditions imposed.

**I UNDERSTAND THAT THE BOARD OF APPEALS:**

☐ May hear and decide on a variance request within the limitations set forth in Title 16, Section 6.4.2A, Variance Request, and 30-A MRS §4353(4).

☐ 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 Town 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 request 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.

In order for a variance to be granted, the applicant must demonstrate to the Board that the strict application of the terms of the ordinance would cause undue hardship. There are four criteria, each of which must be met before the Board can find that a hardship exists. Please explain how your situation meets each of these criteria listed below, either in the space provided or on a separate sheet:

A. The land in question cannot yield a "reasonable return" unless the variance is granted. (Applicant must demonstrate that all or substantially all of the value and use of the property would be lost without a variance).

THE COUNTRY REQUIRES ADDITIONAL SPACE AND CANNOT LOCATE THE PROPOSED ADDITION ELSEWHERE DUE TO THE LOCATION OF THE EXISTING SEPTIC SYSTEM. THE VALUE OF THE PROPERTY WOULD BE SUBSTANTIALLY LESSEMED WITHOUT THE SETBACK VARIANCE BEING GRANTED. THE PROPOSED SMALL ADDITION IS NECESSARY FOR THE REASONABLE USE OF THE PROPERTY

B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood. (Applicant must show that this property has unique characteristics different from surrounding properties and that these differences are the reason for the need for a variance.)

THE LOT IS OF SUCH SIZE (40,050<sup>sq</sup>) AND SHAPE THAT THE LOT IS UNIQUE, GIVEN THE LOCATION OF THE EXISTING HOME, AND SEPTIC SYSTEM. OTHER LOTS IN THE HUTCHINGS COVE DEVELOPMENT ARE LARGER.

C. That the granting of a variance will not alter the essential character of the locality, and

BECAUSE THE PROPOSED ADDITION IS TO THE REAR OF THE EXISTING HOME, AND BECAUSE THE ADDITION WILL ADJUT OPEN SPACE CONSERVATION LAND OF THE KATYK LAND TRUST IT WILL NOT ALTER THE CHARACTER OF THE LOCALITY OR CHANGE THE CHARACTERISTICS OF THE SINGLE FAMILY NEIGHBOURHOOD SUBDIVISION

D. The hardship is not the result of action taken by the owners or a prior owner. (Applicant must demonstrate that the need for a variance is due to the nature of the property, not the action of owners.)

THE NEED FOR THE VARIANCE ARISES OUT OF THE LOCATION OF THE EXISTING STRUCTURE, THE LOCATION OF THE EXISTING SEPTIC SYSTEM AND THE SIZE AND SHAPE OF THE LOT

**To the applicant:**

The goal is to provide building and use standards that apply to all properties equally within a given zone. Getting an exception or variance to standards is purposely difficult because granting variances to the standards would diminish the value of in protecting neighboring properties. It is important that you respond completely to the requests below:




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.





2012 Aer...

Property Information (1)

| Parcels   |      | GIS ID  | MBL  | PID                   | Address         | Owner | Co-Owner |
|---|------|---------|------|-----------------------|-----------------|-------|----------|
|    | 5507 | 39-03-3 | 2620 | 5 HUTCHINS COVE DRIVE | POWERS, JAMES W |       |          |

PROPERTY MAP  
**KITTERY**  
MAINE

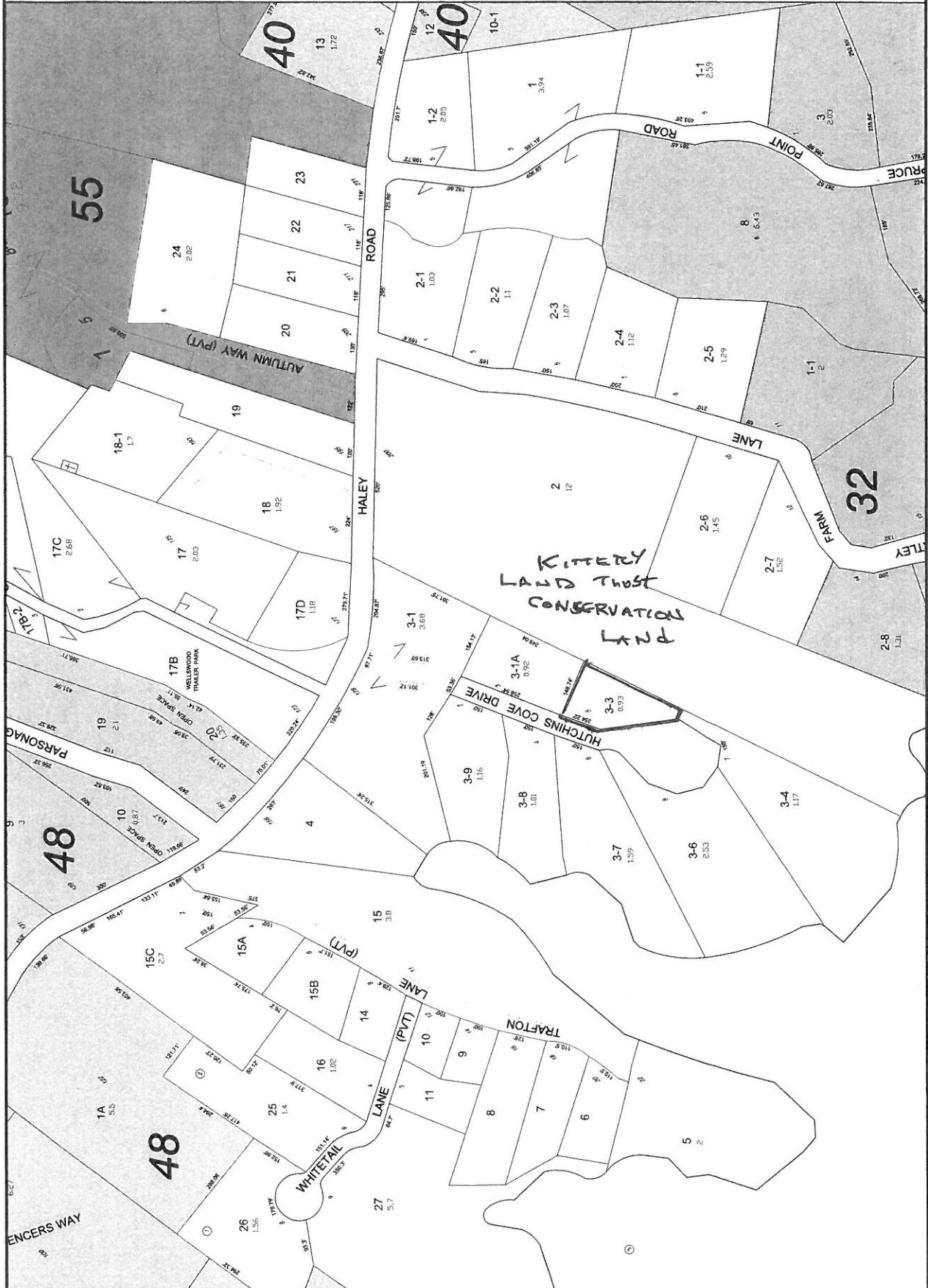


| LEGEND               |     |
|----------------------|-----|
| ADJUTING MAP NO.     | R11 |
| PARCEL NUMBER        | 74  |
| SUBDIVISION LIST NO. | 4   |
| STREET ADDRESS NO.   | 48  |
| LOT DIMENSIONS       |     |
| PROPERTY SPACES      |     |
| RIGHT OF WAY         |     |
| WATERMOUNT           |     |

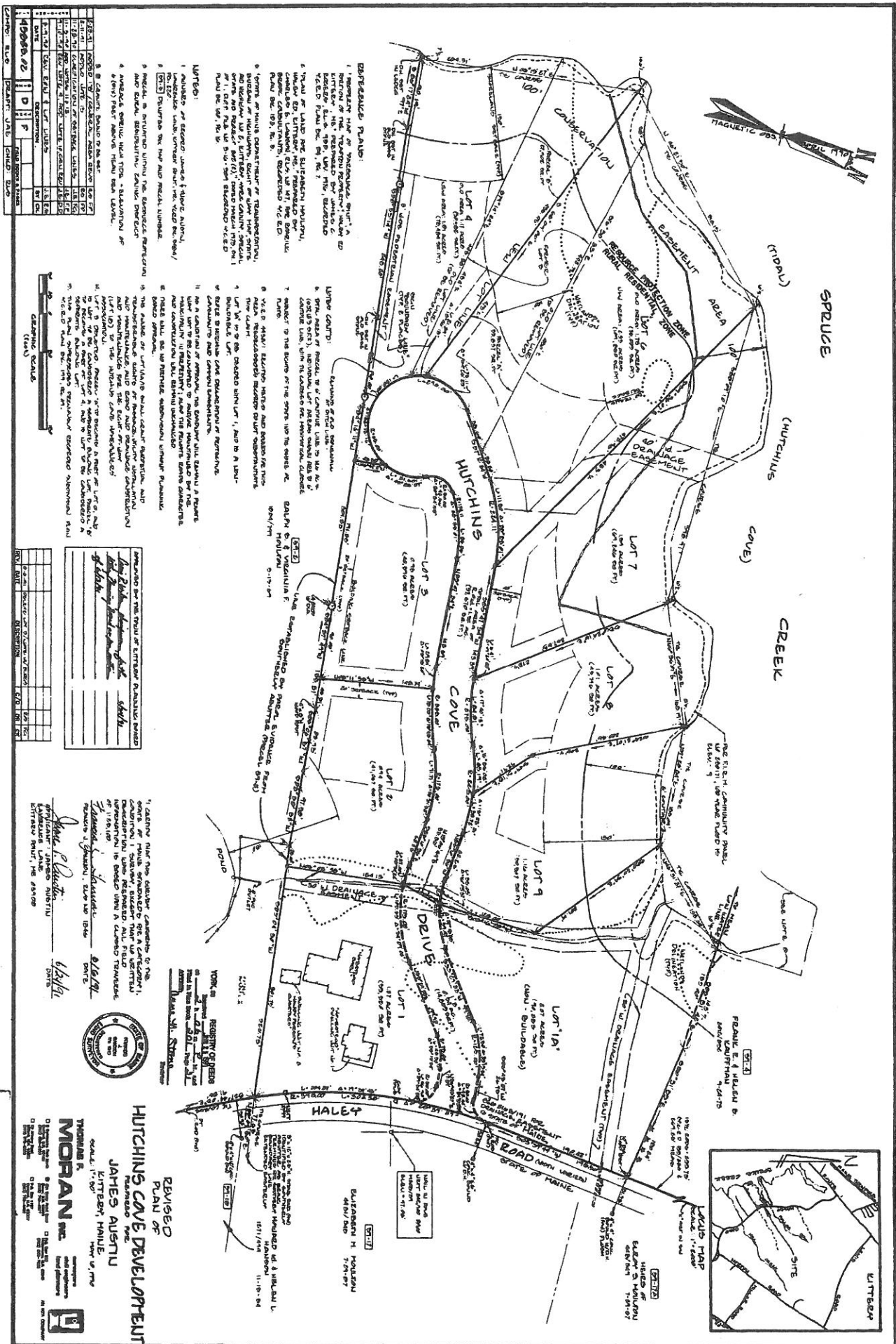
SCALE IN FEET  
0 100 200

John E. O'Donnell & Associates  
632 Bald Hill Road  
New Gloucester, Maine 04260  
(207) 926-4044  
www.jeodonnell.com

39







# 5 HUTCHINS COVE DRIVE

**Location** 5 HUTCHINS COVE DRIVE

**Mblu** 39/ 3/ 3/ /

**Acct#** 39/3-3

**Owner** POWERS, JAMES W

**Assessment** \$298,500

**Appraisal** \$298,500

**PID** 2620

**Building Count** 1

## Current Value

| Appraisal      |              |          |           |
|----------------|--------------|----------|-----------|
| Valuation Year | Improvements | Land     | Total     |
| 2018           | \$214,000    | \$84,500 | \$298,500 |
| Assessment     |              |          |           |
| Valuation Year | Improvements | Land     | Total     |
| 2018           | \$214,000    | \$84,500 | \$298,500 |

## Owner of Record

**Owner** POWERS, JAMES W

**Co-Owner**

**Address** PO BOX 12  
KITTERY POINT, ME 03905-0012

**Sale Price** \$304,900

**Certificate**

**Book & Page** 11806/134

**Sale Date** 07/17/2002

**Instrument** 00

## Ownership History

| Ownership History              |            |             |             |            |            |
|--------------------------------|------------|-------------|-------------|------------|------------|
| Owner                          | Sale Price | Certificate | Book & Page | Instrument | Sale Date  |
| POWERS, JAMES W                | \$304,900  |             | 11806/134   | 00         | 07/17/2002 |
| LIMERICK, JOHN R & MARY ANN    | \$38,500   |             | 7154/315    | 00         | 08/05/1994 |
| HUTCHINS COVE HOMEOWNERS ASSOC | \$0        |             | 5753/318    |            | 06/26/1991 |
| AUSTIN, JAMES P & TUDOR M      | \$0        |             | 5715/186    |            | 05/08/1991 |
| AUSTIN, JAMES P & TUDOR M      | \$0        |             | 5484/220    |            | 08/01/1990 |

## Building Information

### Building 1 : Section 1

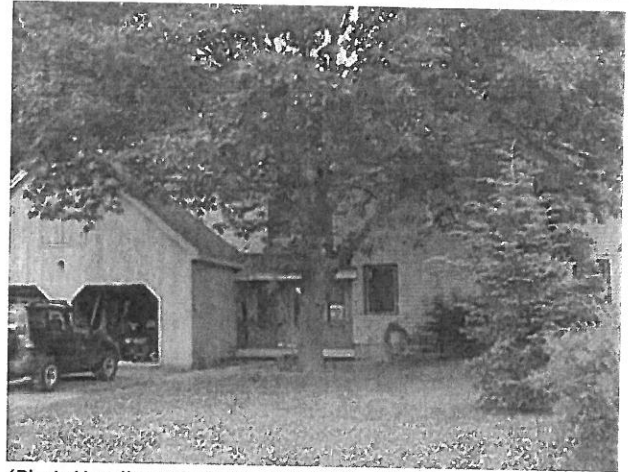
**Year Built:** 1994  
**Living Area:** 2,069  
**Replacement Cost:** \$236,526

Building Percent 90  
 Good:  
 Replacement Cost  
 Less Depreciation: \$212,900

#### Building Attributes

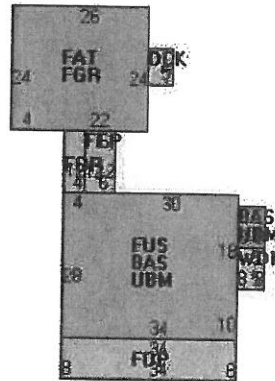
| Field              | Description    |
|--------------------|----------------|
| Style              | Colonial       |
| Model              | Residential    |
| Grade:             | Average +10    |
| Stories:           | 2 Stories      |
| Occupancy          | 1              |
| Exterior Wall 1    | Wood Shingle   |
| Exterior Wall 2    |                |
| Roof Structure:    | Gable/Hip      |
| Roof Cover         | Asph/F GlS/Cmp |
| Interior Wall 1    | Drywall/Sheet  |
| Interior Wall 2    |                |
| Interior Flr 1     | Hardwood       |
| Interior Flr 2     | Pine/Soft Wood |
| Heat Fuel          | Oil            |
| Heat Type:         | Hot Water      |
| AC Type:           | None           |
| Total Bedrooms:    | 2 Bedrooms     |
| Total Bthrms:      | 2              |
| Total Half Baths:  | 0              |
| Total Xtra Fixtrs: |                |
| Total Rooms:       | 5 Rooms        |
| Bath Style:        | Average        |
| Kitchen Style:     | Average        |
| MHP                |                |
| Usrflid 300        |                |
| Usrflid 301        |                |

#### Building Photo



(PhotoHandler.ashx?pid=2620&bid=2712)

#### Building Layout



(<http://images.vgsi.com/photos/KitteryMEPhotos//Sketches/2620>)

| Building Sub-Areas (sq ft) |                           |            | Legend      |
|----------------------------|---------------------------|------------|-------------|
| Code                       | Description               | Gross Area | Living Area |
| BAS                        | First Floor               | 992        | 992         |
| FUS                        | Upper Story, Finished     | 952        | 952         |
| FAT                        | Attic, Finished           | 624        | 125         |
| DCK                        | Deck                      | 35         | 0           |
| FEP                        | Porch, Enclosed, Finished | 72         | 0           |
| FGR                        | Garage, Framed            | 624        | 0           |
| FOP                        | Porch, Open, Finished     | 320        | 0           |
| UBM                        | Basement, Unfinished      | 992        | 0           |
| WDK                        | Deck, Wood                | 40         | 0           |
|                            |                           | 4,651      | 2,069       |

#### Extra Features

#### Extra Features

#### Legend



| Code | Description | Size       | Value   | Bldg # |
|------|-------------|------------|---------|--------|
| HRTN | HEARTH      | 1.00 UNITS | \$1,100 | 1      |

## Land

### Land Use

**Use Code** 1010  
**Description** SINGLE FAM MDL-01  
**Zone** R-RL  
**Neighborhood**  
**Alt Land Appr** No  
**Category**

### Land Line Valuation

**Size (Acres)** 0.94  
**Frontage** 0  
**Depth** 0  
**Assessed Value** \$84,500  
**Appraised Value** \$84,500

## Outbuildings

| Outbuildings             | Legend |
|--------------------------|--------|
| No Data for Outbuildings |        |

## Valuation History

| Appraisal      |              |          |           |
|----------------|--------------|----------|-----------|
| Valuation Year | Improvements | Land     | Total     |
| 2019           | \$214,000    | \$84,500 | \$298,500 |
| 2018           | \$214,000    | \$84,500 | \$298,500 |
| 2017           | \$214,000    | \$84,500 | \$298,500 |

| Assessment     |              |          |           |
|----------------|--------------|----------|-----------|
| Valuation Year | Improvements | Land     | Total     |
| 2019           | \$214,000    | \$84,500 | \$298,500 |
| 2018           | \$214,000    | \$84,500 | \$298,500 |
| 2017           | \$214,000    | \$84,500 | \$298,500 |

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## WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS, that **JOHN R. LIMERICK** and **MARY ANN LIMERICK**, of 5 Hutchins Cove, Kittery, County of York, State of Maine, for consideration paid, hereby **GRANT**, to **JAMES W. POWERS**, with a mailing address of P. O. Box 12, Kittery Point, Maine 03905, with **WARRANTY COVENANTS**, the land with buildings thereon, located in Kittery, County of York, State of Maine, more particularly described as follows:

A certain lot or parcel of land located on the westerly side of, but not adjacent to, Haley Road, so-called, in Kittery, in the County of York and State of Maine, and being Lot No. 3 as shown on a plan entitled "Revised Plan of Hutchins Cove Development prepared for James Austin, Kittery, Maine", by Thomas F. Moran, Inc. dated May 10, 1990 and recorded in the York County Registry of Deeds at Plan Book 201, Page 21, to which plan reference is made for a more particular description.

The above-described premises are conveyed subject to the easements, conditions and restrictions as shown on said plan.

The above-described premises are also conveyed together with an easement and right of way in common with others, for the purposes of passage, utility installation and maintenance, and road and drainage construction and maintenance over Hutchins Cove Drive, including "Lot 1'B" as shown on the above-referenced plan and also as shown on a plan entitled, "Plan of Hutchins Cove Development prepared for James Austin, Kittery, Maine," by Thomas F. Moran, Inc., dated May 10, 1990 and recorded at the York County Registry of Deeds at Plan Book 199, Page 49.

The above-described premises are conveyed together with the benefits of and subject to the Hutchins Cove Declaration of Protective Covenants and Common Easements dated May 8, 1991 and recorded in the York County Registry of Deeds at Book 5715, Page 186, all of which are incorporated herein by reference to said Protective Covenants and Easements with the same force and effect as if fully set forth herein. The Grantees hereby assume and agree to observe and perform the obligations imposed thereby and do accept the benefits thereof.

Meaning and intending to convey the same described premises on the Warranty Deed of James P. Austin and Tudor M. Austin to John R. Limerick and Mary Ann Limerick, dated August, 1994 and recorded in the York County Registry of Deeds at Book 7154, Page 315.

MAINE R.E. TRANSFER TAX PAID

WITNESS our hands this 17<sup>th</sup> day of July, 2002.

Matthew J. Clayton  
Witness

John R. Limerick  
John R. Limerick

Matthew J. Clayton  
Witness

MARY ANN LIMERICK  
Mary Ann Limerick

STATE OF MAINE  
YORK, SS.

July 17, 2002

Then personally appeared the above named John R. Limerick and/or Mary Ann Limerick and acknowledged this instrument to be his/her/their free act and deed.

Before me, [Signature]  
Notary Public/Attorney-at-Law

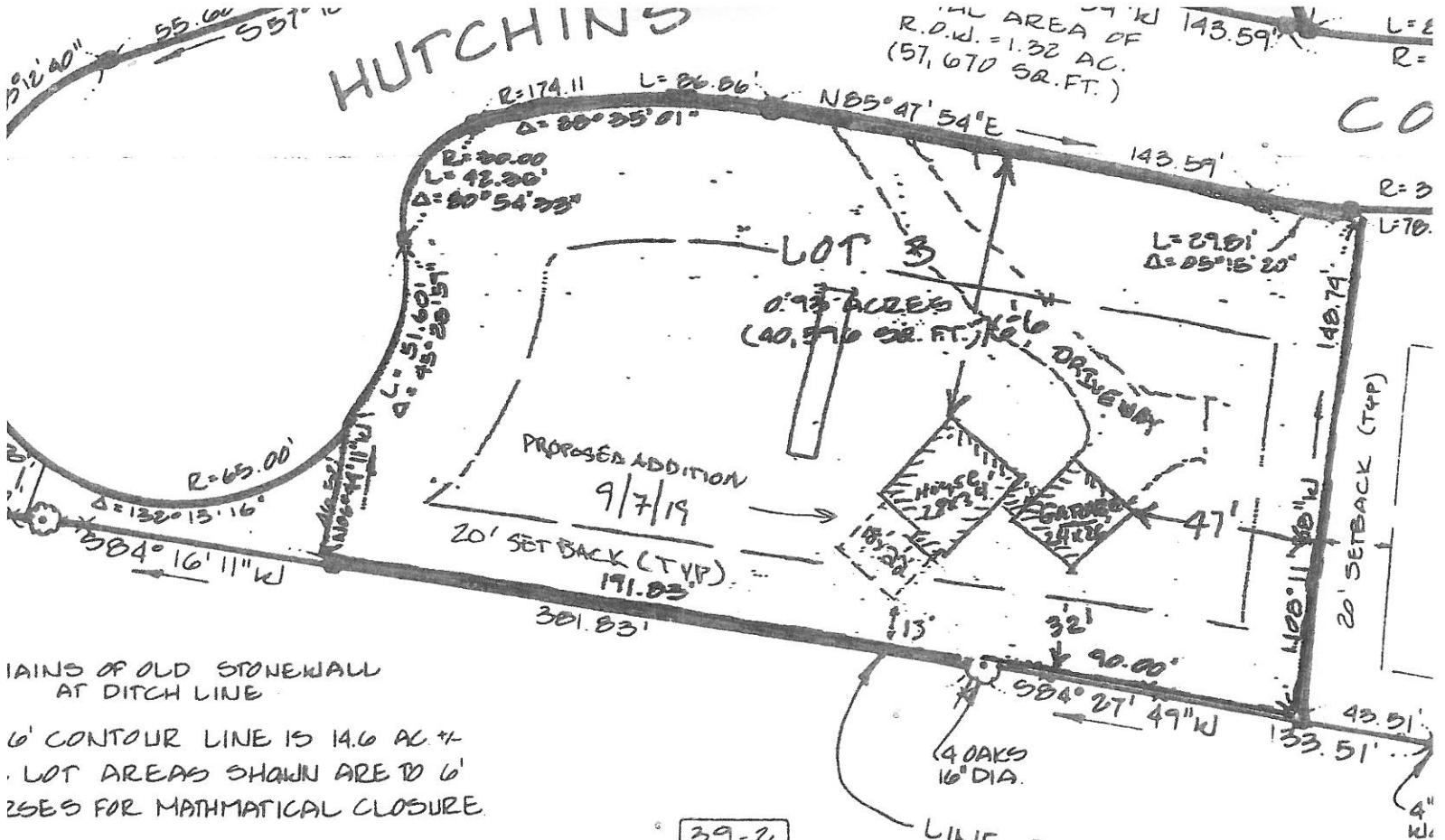
Settany J. Clark

C:\Documents and Settings\Claydon Local Settings\Temporary Internet Files\Content.IE5\MLRW9H1W\settle01mcr.spd

RECORD & RETURN TO:

James Powers  
P.O. Box 12  
Kittery Point, ME 03905

RECEIVED YORK S.S.  
2002 JUL 22 PM 1:23



MAINS OF OLD STONEWALL  
 AT DITCH LINE  
 6' CONTOUR LINE IS 14.6 AC. ±  
 LOT AREAS SHOWN ARE TO 6'  
 USES FOR MATHEMATICAL CLOSURE.

THE STATE INTO THE SHORE OR  
 METES AND BOUNDS FOR THIS  
 CORDS DO NOT SUBSTANTIATE

WITH LOT 1, AND IS A NON-

CLARATION OF PROTECTIVE  
 EASEMENTS.

L THE ROADWAY WILL REMAIN A PRIVATE  
 TO AND/OR MAINTAINED BY THE  
 ; ALSO THE PRIVATE ROADS CHARACTER  
 MAIN UNCHANGED.

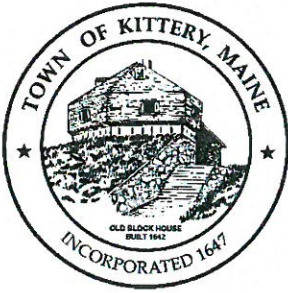
R SUBDIVISION WITHOUT PLANNING

S SHALL GRANT PERPETUAL AND  
 OF PASSAGE, UTILITY INSTALLATION  
 ROAD AND DRAINAGE CONSTRUCTION  
 THE RIGHT-OF-WAY  
 JS COVE HOMEOWNERS

39-2  
 RALPH S. & VIRGINIA F.  
 MOULTON  
 1034/799 3-13-69  
 LINE ESTABLISHED BY PAR  
 SOUTHERLY ABL

|  |     |
|--|-----|
| APPROVED BY THE TOWN OF KITTERY PLANNI |     |
| <i>Greg R. Wilson, Chairman</i>        | 3/4 |
| <i>for the Kittery Planning Board</i>  |     |
|  |     |
|  |     |
|  |     |
|  |     |

York, ss. REGISTRY OF DEEDS  
 Received APR - 8 1991  
 at 1 09 P M and  
 Filed in Plan 199 Page 99



**PLANNING & DEVELOPMENT DEPARTMENT  
STAFF REPORT**

BOA Meeting Date: November 26, 2019

Item #: VAR2019-01

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**STAFF REPORT – 5 HUTCHINS COVE –VARIANCE REQUEST**

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**Project Name:** 5 Hutchins Cove

**Applicant:** Wade Blake

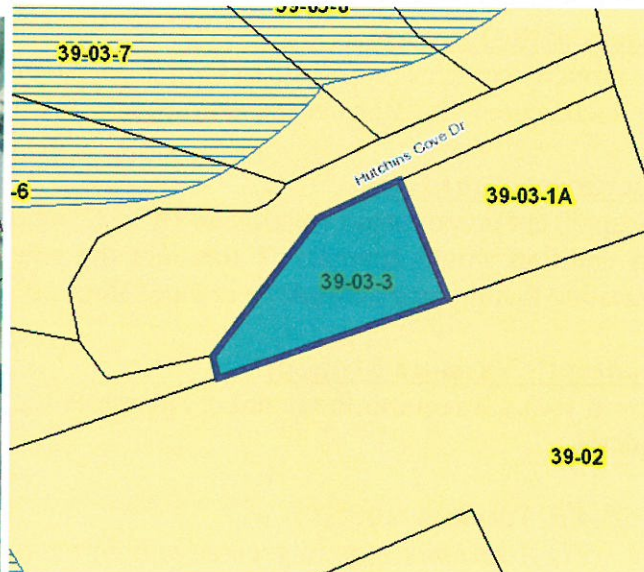
**Owner:** James Powers

**Proposed Development:** Addition to existing dwelling unit

**Requests:** Variance request to build an addition within the rear setback to an existing structure in the Residential – Rural (R-RL) zone, per Section 16.6.4.B

**Site Addresses:** 5 Hutchins Cove

**Map & Lot Numbers:** M39 L03-3



**Current Zoning:**

Residential – Rural (R-RL) - This zoning district is intended to protect the prevailing rural character of the Town and its natural rural quality from development sprawl by prescribing the most



appropriate uses and standards.

**Staff Recommendation:** **DENIAL** of variance request for failure to satisfy **ALL** of the criteria set forth in 16.6.4.B(1)(c).

**District Standards:**

| Residential – Rural Zoning District Standards |           |                           |         |
|---|-----------|---------------------------|---------|
| Land Area per Dwelling (min.)                 | 40,000 sf | Front Yard Setback (min.) | 40 feet |
| Maximum Building Coverage                     | 15%       | Rear Yard Setback (min.)  | 20 feet |
| Lot Size (min.)                               | 40,000 sf | Side Yard Setback (min.)  | 20 feet |

**Current Use:** Dwelling unit, occupied house

**Surrounding Land Uses:**

West: Residential – Rural (R-RL) & Shoreland Overlay (OZ-SL), dwelling unit

East: Residential – Rural (R-RL), dwelling unit

North: Residential – Rural (R-RL) & Shoreland Overlay (OZ-SL), dwelling unit

South: Residential – Rural (R-RL) & Shoreland Overlay (OZ-SL), dwelling unit

**Site Description:**

The subject property consists of an approximately 40,900 square foot lot (.94 acres), located along the Southern right-of-way of Hutchins Cove, off of Haley Road. The property is a conforming lot of record. The property is zoned Residential – Rural (R-RL). The house sits towards the back of the lot, very close to the rear setback line.

**History of the Property:**

The property contains one dwelling built in approximately 1994. There are no, nor have there been any documented violations of the town code at the property.

**Description of the Issue:**

The applicant proposes to construct an 18' x 22' addition to the rear of the existing structure. This new addition would encroach 7 feet into the rear setback of the property. The applicant is requesting that the rear setback be reduced from 20' to 13'.

**Applicant's Variance Request:**

Section 16.6.4.B requires the Board of Appeals to use the following process when hearing variance requests:

*§ 16.6.4.B. Variance request*

*(1) A variance may be granted only by the Board of Appeals under the following conditions:*

*(a) For a reduction in dimensional requirements related to height, area and size of structure or size of yards and open spaces;*

**The request is requesting the reduction of the rear setback from 20' to 13'.**

*(b) The use is not prohibited by this title; and*

**The expansion of a conforming structure is not prohibited by Title 16.**

*(c) Only is the strict application of the terms of this title would result in undue hardship. The term "undue hardship" means the applicant must demonstrate all of the following:*

*[1] The land in question cannot yield a reasonable return unless a variance is granted.*

**The land in question is already providing a reasonable return as there is already a single-family residence on the property.**

*[2] The need for a variance is due to the unique circumstance of the property and not to the general conditions in the neighborhood.*

**The need for a variance is due to the location of the existing structure and is therefore unique to the property.**

*[3] The granting of a variance will not alter the essential character of the locality.*

**The granting of a variance would not alter the essential character of the locality.**

*[4] The hardship is not the result of action taken by the applicant or a prior owner.*

**The hardship is the result of action taken by the applicant or prior owner. The house was purposely built towards the back of the property. This resulted in a 26' setback to the rear of the property and a 76' setback to the front, where only 40' is required. Had the original owner foreseen the need to build an addition off the rear of the structure, adequate space could have been created by building closer to the front setback.**

Using the standards and criteria found in 16.6.4.B of the LUDC, Staff recommends **DENIAL** of the variance request to reduce the setbacks as proposed for failure to satisfy **ALL** of the criteria set forth in 16.6.4.B(1)(c).



**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 |  |
| MAP & LOT      |  |
| ASA FEE        |  |
| DATE PAID      |  |
| DATE COMPLETE  |  |
| HEARING DATE   |  |

**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 | 2.8  |  |  |  |  | PAGE |  |
| TITLE | 16 | CHAPTER | 8 | SECTION | 22.3 |  |  |  |  | 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  | 120 State Rd, Kittery, ME 03904 |       |                  |          |            |
| MAP  | 8                               | LOT # | 37               | LOT SIZE | 0.23 acres |
| BASE ZONE(S):  | Business Local (B-L)            |       | OVERLAY ZONE(S): |          |            |
| <b>The subject property:</b><br>[ is / is not ] in a Shoreland overlay or Resource Protection zone; [ is / is not ] in a floodplain; AND<br>[ does / does not ] have outstanding code violations; and, if so, granting this appeal provides resolution . |                                 |       |                  |          |            |
| <b>PROPERTY OWNER: I have right, title or interest in the affected property, or issue, as shown by:</b><br>Property leased from Chong-Ye Arnold (owner)  |                                 |       |                  |          |            |
| NAME(S)  | Mitchell Delaney                |       |                  |          |            |
| MAILING ADDRESS  |                                 |       |                  |          |            |
| CITY   | Kittery                         | STATE | ME               | ZIP CODE |            |
| 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)                     | Erin Sherman    |       |  |          |       |
| MAILING ADDRESS             | 62 Portland Rd. |       |  |          |       |
| CITY                        | Kennebunk       | STATE | ME                                     | ZIP CODE | 04043 |
| PHONE No.                   | 207-985-7000    |       | e-MAIL: erin.elliott.sherman@gmail.com |          |       |

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

Date: 11/4/19

By: Erin Sherman  
(Signature)  
Erin Sherman  
(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, sureliness, 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 rulings of the State Supreme Judicial Court.
- ☐ Tries to make decisions it believes would be upheld if appealed to Superior Court.

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**STATEMENTS:**

**Describe the general nature of the request:**

*See attached letter with enclosures*

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**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.



Wayne T. Adams  
Christian L. Barner  
Milda A. Castner  
Susan Bernstein Driscoll  
Scott M. Edmunds  
William J. Gallitto, III  
Britton Ryan Garon  
Brin M. Moore  
Sarah B. Neault



Durward W. Parkinson  
Danielle M. Quinlan  
Leah B. Rachin  
Erin E. Sherman  
Laura H. White  
*Of Counsel*  
Barbara I. Belik  
Michael W. Macleod-Ball

November 4, 2019

Town of Kittery Board of Appeals  
Attn: Craig Alfis, Code Enforcement Officer  
200 Rogers Road  
Kittery, ME 03904

**RE:** *Mitchell Delaney Major Home Occupation Application for Primary Caregiver  
at 120 State Road (Business Local Zone)*

Dear Board of Appeals:

I am writing on behalf of my client, Mitchell Delaney, who seeks Board of Appeals approval to operate as a Primary Caregiver at 120 State Road in the Business Local Zone (B-L Zone). I have included a general summary of the business and enclosed the Major Home Occupation Standards with notes demonstrating how the proposed use complies.

#### **General Nature of the Request**

Mr. Delaney has leased the property at 120 State Rd to use as a residence and to conduct primary caregiver operations as an accessory use in the basement/garage. The main floor of the residence is 1,477 square feet and the basement/garage area for the home occupation is 858 square feet (34% total square footage).

The property is in the Business Local Zone (B-L) which permits major home occupations, retail and commercial services, among other similar uses. It is surrounded by other commercial and retail businesses, such as an apothecary (caregiver retail store), thrift store, Lion's Club, and hair salon. The business will not generate noise, traffic or other business activities that aren't consistent with the surrounding retail uses.

All business activities will be conducted in the enclosed basement/garage. Most business activities will be conducted via delivery service, generating no traffic from patients. The business will not be open to the public. Patients may be seen on the property by appointment only during regular business hours (7am-7pm).

There are four public parking spots allocated to the property, and two additional spots for the residents of the property. If necessary, there is room on the property to create more parking spots or to lease parking spots from neighboring retail properties.

Marijuana will not be grown on this property, so odor will not be a concern and should not be detectable from outside of the residence.

### **Major Home Occupation and Special Exception Standards**

Per your ordinances, Primary Caregivers must receive Board of Appeals approval for a Major Home Occupation. Mr. Delaney is leasing the property as a full-time residence and plans on operating the caregiver business as an accessory use in the property's basement/garage. I have enclosed the Major Home Occupation standards with more detailed notes demonstrating how Mr. Delaney's proposed use of the property complies.

It is my position that the special exception standards do not apply to this application because Major Home Occupations are expressly permitted uses rather than special exception uses in the B-L Zone. However, the proposed use also meets with standards set forth in § 16.6.6., Basis for Decision, should the Board decide to use them:

- (a) The proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones because the B-L Zone promotes business activity and expressly permits sales, services and business activities;
- (b) The use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located because it is a small-scale home business in an existing commercial area, will not intensify noise or traffic, and is surrounded by other existing commercial and retail properties such as an apothecary (caregiver retail store), thrift store, Lion's Club, hair salon, and parking lots which generate noise and traffic typical for commercial and retail locations;
- (c) The safety, the health and the welfare of the Town will not be adversely affected by the proposed use or its location because it is appropriately located on a major road with other compatible uses; and
- (d) The use will be in harmony with and promote the general purposes and intent of this title because it fits within the Comprehensive Plan and the permitted uses of the B-L Zone, which is to "provide local sales, services and business space within the Town."

I plan on attending your meeting on November 26, 2019 with Mr. Delaney and look forward to discussing his application and answering any questions at that time.

Sincerely,



---

Erin E. Sherman, Esq.

Enclosures

## **Relevant Definitions**

### **PRIMARY CAREGIVER**

A person or an employee of that person, a licensed hospice provider or licensed nursing facility that provides care for a qualifying patient and is registered under 22 M.R.S. § 2425 and receives Board of Appeals approval for a major home occupation.

### **HOME OCCUPATION, MAJOR**

A type of home occupation that fails to meet all of the standards for a "minor home occupation" established in § 16.8.22.2, but is found by the Board of Appeals to satisfy the standards established in § 16.8.22.3 to ensure that a business results in no more than a minor intrusion in the quality of life of residents in the surrounding neighborhood.



## Chapter 16.3. Land Use Zone Regulations

### Article II. Zone Definitions, Uses and Standards

#### § 16.3.2.8. Business – Local B-L.

A. Purpose. The purpose of the Business – Local B-L Zone is to provide local sales, services and business space within the Town.

B. *Permitted uses. The following uses are permitted in the B-L Zone:*

- (1) Dwellings or modular homes, exclusive of mobile homes;
- (2) Public open space recreational uses;
- (3) School or educational facility (including nursery schools), day-care facility, elder-care facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county or state building or use, church or any other institution of educational, religious, philanthropic, fraternal, political or social nature;
- (4) *Accessory uses and buildings including minor or major home occupations:*
- (5) Retail business and service establishments, but excluding those of which the principal activity entails outdoor sales and/or storage and excluding those specifically mentioned under Subsection C of this section;
- (6) Business and professional offices;
- (7) Mass transit station;
- (8) Commercial parking lot or parking garage;
- (9) Restaurant;
- (10) Art studio or gallery;
- (11) Convenience store, food store, grocery store;
- (12) Personal service;
- (13) Business service;
- (14) Building materials, but excluding those of which the principal activity entails outdoor sales and/or storage;
- (15) Garden supply;
- (16) Conference center;
- (17) Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;
- (18) Aquaculture;
- (19) Accessory dwelling units; and

- (20) Specialty food and/or beverage facility.

## Chapter 16.8. Design and Performance Standards for Built Environment

### Article XXII. Home Occupation

#### § 16.8.22.3. Major home occupation standards.

**A.** Compliance with the Definition of a "Home Occupation."

(1) An applicant must be a resident of a dwelling on the premises where the home occupation will occur. An applicant who is not the owner of the property, but is residing on the premises, must submit written permission of the property owner for the proposed home occupation.

*Mr. Delaney is a resident of the dwelling on the premises where the home occupation will occur. He has express permission from the property owner/landlord to operate as a Primary Caregiver on the property.*

(2) As an accessory use, the home occupation(s) must be subordinate to the principal use. Quantitative measures that may be considered in determining whether a proposed activity is an accessory use include, but are not limited to, percentage and/or total amount of square footage attributed to the home occupation(s) use in relation to the residential use. Qualitative factors include, but are not limited to, the projected activity level of the home occupation(s) on the premises in relation to the residential use and whether the proposed home occupation is a traditional accessory use in the community.

*The property is a single-family home with a total of 2,517 total square feet. The residential living space is on the first floor and consists of three bedrooms and 1,477 square feet. Mr. Delaney resides there full-time. The home business space would be in the basement, which consists of a garage and small room at 858 square feet (34% of the total square footage).*

**B.** Number of workers. There must be no more than five persons, inclusive of residents of the premises, working in the home occupation(s) at the site at any one time.

*Mr. Delaney is currently the sole employee but could possibly employ others in the future (up to 5 total).*

**C.** Prohibited uses. The following uses are categorically prohibited as major home occupations: motor vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor storage; junkyard; auto salvage yard; marijuana retail use; and marijuana medical use except the activities of a primary caregiver registered under 22 M.R.S. § 2425.

*Mr. Delaney is a primary caregiver registered under 22 M.R.S. § 2425. See attached caregiver license.*

**D.** Business hours. Business activities involving clients or customers on the premises or vehicular traffic to and from the premises must not be conducted between the hours of 7:00 p.m. and 7:00 a.m., except for a bed-and-breakfast, a day-care facility or a functionally water-dependent use. This limitation may be modified by the BOA provided the proposal satisfies the intent of this section.

*The home business would primarily operate as a delivery service but may involve patients on premises by appointment only between the hours of 7:00am and 7:00pm.*



E. Nuisances.

(1) Any excessive noise, dust, smoke, vibrations, glare, direct lighting, obnoxious fumes or odors, traffic, or electrical interference detected at the property boundary must not be greater in duration or intensity than that expected in the surrounding residential neighborhood.

*All business activities will be conducted indoors, in the garage/basement space, and will not generate any nuisance to surrounding properties. The surrounding neighborhood is not residential and instead consists of commercial and retail properties such as an apothecary (caregiver retail store), thrift store, Lion's Club, hair salon, and parking lots which generate noise and traffic typical for commercial and retail locations. Mr. Delaney's home occupation is unlikely to generate a noticeable change in traffic, noise, or commercial activity of the surrounding area.*

*Mr. Delaney will not be growing marijuana at this location, so odor will not be a concern and should not be detected from outside of the basement/garage. If odor becomes a concern, Mr. Delaney is familiar with and willing to install odor-mitigating devices.*

(2) When reviewing a functionally water-dependent use, the above standards allow customary noises and smells caused by the use if all practicable steps are taken to manage and minimize the adverse impact on abutting properties.

*Not applicable*

F. Parking. A plan must be submitted that provides safe and sufficient off-street parking to meet the needs of the business to prevent parking from overflowing off the site. Any recurring observed parking overflow is a violation of these standards. The creation of more than four off-street parking spaces must be located, designed, screened and landscaped to minimize adverse impact on abutting properties.

*Most business activities will be conducted via delivery service, generating no traffic from patients. However, the property has four designated parking spots to be used by patients or employees, if necessary. There are two additional parking spots for residents of the house.*

*Only one patient may be served at a time on the property. There is the opportunity to expand parking to the front of the property, if necessary, or to lease parking spots neighboring retail stores. Parking plan and photos of the existing parking lot are attached.*

G. Outdoor storage. All outdoor storage of equipment, vehicles or items associated with the home occupation must be screened from view of abutting properties and from all streets except for the following:

- (1) One vehicle used in conjunction with the home occupation;
- (2) Seasonal storage of items necessary for functionally water-dependent uses, such as lobster traps; and
- (3) Vehicles owned by residents of the premises with valid license plates.
- (4) All bait must be stored indoors and must be kept refrigerated or otherwise stored to prevent offensive odors.

*There will be no outside storage for the home business activities.*

H. Business conduct. All business activities on the site must take place within an enclosed building or be screened from view of abutting properties and from all publicly maintained streets, except for outdoor recreational uses, agriculturally oriented uses or functionally water-dependent uses. This standard may be modified by the BOA provided the proposal satisfies the intent of this section.

*All business activities will take place in the enclosed basement/garage.*

I. Refuse and recyclables. All refuse and recyclables must be stored in containers that are screened from view of abutting properties and from streets. No emptying of dumpsters is allowed before 8:00 a.m. or after 7:00 p.m.

*Mr. Delaney will not be growing marijuana on-site, so the home occupation is unlikely to generate much more refuse and recyclables than an average residential home.*

J. Traffic. The home occupation must not result in creating or significantly exacerbating a traffic hazard. Furthermore, the home occupation must not create an objectionable increase in vehicle traffic considering the type, time and amount of vehicle traffic generated and the design and capacity of the roads to the site and traffic normal for the neighborhood.

*The home occupation is unlikely to generate significant traffic due to Mr. Delaney's delivery service model. Any small increase in traffic due to the home business would not be objectionable based on what is normal for the neighborhood, which consists of commercial and retail businesses.*

K. Retail sales. Retail sales on the premises are limited to the following:

(1) Sales in which customers do not come to the premises, such as mail order or telephone sales;

*Retail sales will take place primarily by delivery service.*

(2) Sales of products grown, raised or produced on the premises;

(3) Sales of seafood harvested by the residents of the premises;

(4) Sales of items customarily incidental and subordinate to a nonretail home occupation, such as sales of shampoo and hair brushes at a beauty salon; and/or

(5) Sales by appointment only for which any signage identifying the business states a "by appointment only" policy.

*Some sales may take place in the basement/garage, but by appointment only, and any signage and advertising will clearly identify that policy.*

L. Health and safety. The proposed use must not create a health or safety hazard.

*There will be no marijuana grown on-site and the home business is unlikely to create a health or safety hazard.*

M. Neighborhood compatibility. The proposed use is determined to be compatible with the surrounding neighborhood. In reaching this determination, the following factors are to be considered:

(1) The nature of the property;

(2) The physical characteristics of the neighborhood, including the amount of nonresidential activity;

- (3) Hours of operation;
  - (4) Intensity of the activity;
  - (5) Potential to degrade the quality of life for residents of the surrounding neighborhood;
- and
- (6) The cumulative impact of existing home occupations and other accessory uses both on the premises and in the surrounding neighborhood.
  - (7) Medical marijuana use is restricted to single-family residences only.

*The property is located in the B-L Zone, where other retail and commercial activities are permitted and encouraged by the zoning ordinance and comprehensive plan. It is on a major road with established business and retail traffic and parking. The properties immediately surrounding the home occupation consist of retail businesses.*

N. Large lots. When a seventy-five-foot-deep buffer yard is provided between all business activities (including storage and parking, except a driveway) and contiguous properties, and the buffer yard is sufficiently vegetated, fenced or otherwise screened so as to obscure the home occupation activities from an abutting property, the BOA may relax the above standards, except those pertaining to nuisances and prohibited uses, if the use is considered to comply with the intent of this subsection.

*Not applicable*

O. Annual renewal.

(1) Upon approval of a major home occupation by the Board of Appeals, the Code Enforcement Officer is authorized to issue a certificate of occupancy permit for not more than a one-year time period. Such permit may be renewed annually upon application to the Code Enforcement Officer. Operation of a major home occupation with an expired certificate of occupancy is a violation of this Code.

(2) The annual permit may be renewed only if the Code Enforcement Officer finds the major home occupation complies with all applicable standards of this Code and any conditions required by the Board of Appeals in the original approval.





Maine Medical Use  
Of Marijuana

Date Issued: 10/15/2019

Expires: 10/14/2020

Individual Caregiver

**MITCHELL B. DELANEY**

**DOB: 05/23/1987**

No Retail Location Provided

Registration #: **CGR26238**

Control # : **429344**

Authorized for: 30 mature/60 immature and/or  
Harvested

EXHIBIT

A

tabbles®

120 State Road, Kittery, ME 03904  
Owner Statement Letter

I Chong-Ye Arnold am the owner of 120 State Road Kittery, ME 03904.

I have leased the property to Mitchell Delaney to reside and also give him permission to operate a medical marijuana caregiver business out of the property.

Regards,

Chong-Ye Arnold  
11/1/2019

*Chong-Ye Arnold* 11/1/2019

EXHIBIT

B

tabbles



Name(s)  
Date

Mitchell Delaney  
11/1/2019

## Apartment Lease Agreement

### 1. PREMISES

The undersigned Landlord leases to the undersigned Tenant the Premises at the address of 120 State Road.

Tenant shall use the premises as residence only and for no other purpose. The premises shall not be used to carry on any type of business or trade, unless Tenant has received the prior written consent of the Landlord. TENANTS WILL COMPLY WITH ALL LAWS, RULES, ORDINANCES, STATUTES AND ORDERS REGARDING USES OF PREMISES.

Tenant agrees that no more than 2 persons may reside on the premises unless Tenant has received the prior written consent from Landlord.

### 2. PRORATED RENT

CURRENT MONTH'S PRORATED RENT CALCULATIONS, if applicable:  
Move in date of 11/1/2019. Monthly rent is \$ 1600 multiplied by 12 months in a year equals \$ 19200 a year. Now is divided by 365 days and equals daily rent of \$ 52.60 multiplied by number of days to occupy for remainder of month \_\_\_\_\_ equals month's prorated rent \$ \_\_\_\_\_.

### 3. TERM AND RENT

TENANT-AT-WILL AGREEMENT (month to month lease agreement)  
beginning date Nov 1, 2019 for which the Tenant agrees to pay monthly \$ 1600. Said payments to be delivered or mailed to Landlord or manager as to reach him on or before the FIRST of every month beginning Nov 1, 2019.

Tenant-at-will agreement is a periodic month to month basis until the Landlord or Tenant declares to terminate to lease agreement. This notice shall be written and delivered to the either party 30 days prior to intended vacancy.

The rental may be payable in advance, without offset, deduction or demand, in full on or before the first day of each month during the extent of the Tenants residence of said premises. Rent shall be payable on-site or mailed to the Manager. Rent payments will be a single check, paid in full amount of rent, to be accepted for one apartment even though two persons may have signed the lease to occupy the apartment. Rent must be paid directly to the Landlord or manager

EXHIBIT

tabbies

C



before 7:00 PM on the 5<sup>th</sup> day of each month. Payment received after said time will be subjected to a rental late charge of \$75.00 in addition to and together with rent. Residents shall also pay to Landlord in addition to rent, \$25.00 for all handling fees for each check returned given for payment of rent or other charges hereunder.

A 30 day written notice will be required by either Landlord or Tenant to terminate this Tenant-at-will agreement. Failure to do say may result in loss of security deposit. Rent may also be subject to adjustment but not without proper 30 day written notice and an amendment to this lease agreement that shall be signed by both Landlord and Tenant acknowledging adjustments.

#### 4. SECURITY DEPOSIT

DAMAGE DEPOSIT, Landlord acknowledges the receipt of \$ 1600 as damage deposit. Deposit will be returned to Tenant within 30 days from date of premises are vacated and are subjected to the following.

Notice in writing must be received by Landlord from Tenant of Tenant's intention to vacate premises no less than 30 days prior to date premises will be vacated. Tenant will be liable for rent through the 30<sup>th</sup> day following receipt by Landlord of Tenant's notice to vacate. UNDER NO CIRCUMSTANCES WILL SECURITY DEPOSIT WILL BE APPLIED TO RENT.

Tenant leaves premises in same condition as they were moving in, normal wear and tear excepted. Deductions will be made from security deposit for cost of repairing or replacing damaged or missing property or for other lawful deductions contained in this agreement, after inspection and submission of an itemized listing of such deductions to tenant within 30 days of lease termination.

Both Landlord and Tenant has inspected the premises, the fixtures, grounds, building and improvements and acknowledges that the premises are in good and acceptable condition and are habitable. If, in Tenants opinion, the condition of the premises has changed at anytime during the lease term, Tenant shall promptly provided reasonable written notice to Landlord or Manager.

Interest will be paid on security deposits held for more than a year at the minimum legal rate.

#### 5. KEYS

Tenant will be given 2 Key(s) to the premises, entrance doors and 1 mailbox key(s). Tenant shall be charged \$75 if all keys are not returned to landlord following termination of this lease.

#### 6. DEFAULT

In the event that Tenant defaults in fulfilling any of the covenants of this Lease, Tenant shall be in default of this Lease. Then, in any one or more of such events, subject to any statute, ordinance or law to the contrary, and upon Landlord serving a written 7 day notice upon Tenant specifying the nature of said default and upon expiration of said 7 days, if Tenant does not cure a default of which he/she has been notified, or if the default is not to be completely cured or remedied in 7 days, Landlord may at Landlord's option: (i) cure such default and add the cost of such cure to Tenant's financial obligations under the Lease; or (ii) declare tenant in default and terminate the lease.

#### **7. REMEDIES OF DEFAULT**

**PHYSICAL REMEDIES:** If notice is provided for as mentioned in section 6, and the term shall expire as noted, or if Tenant shall make default in the payment of rent, then Landlord may without notice, as permitted by law, re-enter the premises either by force or otherwise, dispossess Tenant by summary of proceedings or otherwise, and retake possession of premises. Tenant hereby waves the service of notice of intention to re-enter or institute legal proceedings to that end.

**FINANCIAL REMEDIES:** In the event of any default, re-entry, expiration and/or dispossessions by summary proceedings or otherwise, (i) the rent shall become due thereupon and be paid up to the time of such re-entry, dispossessions or expiration, together with such expenses Landlord may incur for legal expenses, attorneys' fees, brokerage, and/or putting the premises in good order; (ii) Landlord may re-let the premises or any part or parts thereof; and/or (iii) Tenant shall also pay Landlord liquidated damages for Tenant's failure to observe and perform the covenants in this lease. Landlord may, at his sole options, hold Tenant liable for any difference between rent payable under this lease during the balance of lease term, and any rent paid by a successive Tenant if the premises are re-let. In the event that after default by Tenant Landlord is unable to re-let the premises during any remaining term of this lease, Landlord may at his option hold Tenant liable for the balance of unpaid rent under the lease for the remainder of lease term.

#### **8. QUIET ENJOYMENT**

Tenant agrees that upon Tenant paying rent, and observing and performing all of the terms, covenants and conditions on Tenant's part to be observed and performed under this lease, Tenant may peaceably and quietly enjoy the premises, subject nonetheless to terms and conditions of this lease. ALL TENANTS SHALL REVIEW ALL RULES AND REGULATIONS OF THE PREMISES SET FORTH BY THE LANDLORD AND SHALL BE SIGNED BY ALL TENANTS ACKNOWLEDGING THAT THE TENANTS HAVE REVIEWED AND UNDERSTAND ALL TERMS AND CONDITIONS.

#### **9. ASSIGNMENT AND SUBLETTING**

Tenant expressly covenants that it shall not assign or sublease any interest in this lease without prior written consent of the Landlord, which consent shall not be unreasonably withheld. Any assignment or sublease without Landlord's written prior consent shall, at Landlord's option, terminate this lease. No assignment, underletting, occupancy or collection shall be deemed a waiver of provisions of this lease, the acceptance of the assignee, undertenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant in this lease.

#### **10. PREMISES: POSSESSION & TREATMENT**

The Tenant shall be entitled to possessions of the premises on the first day of the lease term, and Tenant shall not be obliged to accept possessions of the premises prior to the first day of the lease term. At the expirations of the lease term, Tenant shall peaceably surrender the premises to Landlord in good condition, as it was in the commencement of the lease, subject to ordinary wear and tear.

**PETS:** Tenant is not permitted to keep any pets on premises without the prior written consent of Landlord

**DANGEROUS MATERIAL:** Tenant shall not keep or have on or around the premises any item of a dangerous, flammable or explosive nature that might unreasonably increase the risk of fire or explosion on or around the premises or that might be considered hazardous by any responsible insurance company.

**ALTERATIONS AND IMPROVEMENTS:** Tenant agrees not to make any improvements or alterations to the premises without the prior written consent of the Landlord. If any alterations, improvements or changes are made to or built on or around the premises, with the exception of fixtures and personal property that can be removed without damage to the premises, they shall become the property of the Landlord and shall remain at the expirations of the lease, unless otherwise agreed in writing.

**MAINTENANCE AND REPAIRS:** Tenant will, at Tenant's sole expense, keep and maintain the premises in good, clean and sanitary condition and repair during the term of this lease and any renewal thereof. Tenant shall be responsible to make all repairs to the premises and fixtures that may have been damaged by Tenant's misuse, waste or neglect, or that of the Tenant's family, agent or visitor. Tenant agrees that no painting will be done on or about the premises without the prior written consent of Landlord. Tenant shall promptly notify Landlord or manager of any damage, defect or destruction of the premises, or in the event of the failure of any of the appliances or equipment. Landlord will use his best efforts to repair or replace any such damaged or defective area, appliance or equipment.

**DAMAGE TO PREMISES:** In the event the premises are destroyed or rendered wholly uninhabitable by fire, storm, earthquake or other casualty not caused by



the negligence of the Tenant, this lease shall terminate from such time except for the purpose of enforcing rights that may have been accrued hereunder. The rent provided for herein shall then be accounted for by and between Landlord and Tenant up to the time of such injury or destruction of the premises, Tenant paying rent up to such date and Landlord refunding rent collected beyond such date. Should a portion of the premises thereby be rendered uninhabitable, the Landlord shall have the option of either repairing such injured or damaged portion or terminating this lease. In the event that the Landlord exercises its right to repair such uninhabitable portion, the rent shall abate in the proportion that the injured parts bears to the whole premises and such part so injured shall be restored by Landlord as speedily as practicable, after which the full rent shall recommence and the lease continue according to its terms.

#### **11. UTILITIES**

Tenants are responsible for making and maintaining account arrangements through **Central Maine Power (CMP)** for electric services and **Eastern Propane & Oil** for propane services.

The Tenant is required to maintain these utility services for the safety and well being of the Tenant as well as the premises throughout the occupancy term of the premises. The Tenant is also required to maintain adequate temperature in the apartment to prevent damage to the water pipes due to freezing. Tenant will be responsible for cost of damages caused by failure to maintain proper utilities and or maintaining inadequate temperature in the apartment. **FAILURE TO DO SO MAY RESULT IN DEFAULT OF LEASE TERMS ON BEHALF OF THE TENANT.**

#### **12. INSPECTIONS AND REPAIR OF PREMISES**

Landlord and Landlord's agents shall have the right at reasonable times during the term of this lease and any renewal thereof to enter the premises for the purpose of inspecting the premises and all buildings and improvements thereon, and for the purposes of making any repairs, additions or alterations as may be deemed appropriate by Landlord for the preservation of the premises or the building.

Tenant agrees to make the premises available to Landlord or Landlord's agents to inspect, to make repairs or improvements, to supply agreed services, to show the premises to prospective buyers or tenants, or to address an emergency. Except in an emergency situation, Landlord shall give Tenant reasonable notice of intent to enter. For these purposes, 24 hour notice shall be deemed reasonable.

**TENANT SHALL NOT, WITHOUT PRIOR WRITTEN CONSENT OF LANDLORD, ADD, ALTER OR RE-KEY AND LOCKS TO PREMISES.** At all times Landlord shall be provided with a key or keys capable of unlocking all such locks and permitting entry. Tenant further agrees to notify Landlord in writing if Tenant installs any burglar alarm system, including instructions on how to disarm such alarm in case of emergency entry.

### **13. ABANDONMENT**

If at any time during the term of this lease Tenant abandons the premises or any part thereof, Landlord may at his option obtain possession of the premises by any legal means without liability to Tenant and may, at Landlord's option, terminate the lease. Abandonment is defined as absence of the Tenant from the premises for at least 30 consecutive days without notice to Landlord. If in the event the Tenant abandons the premises while the rent outstanding for more than 15 days and there is no reasonable evidence, other than the presence of Tenant's personal property, that the tenant is occupying the unit, Landlord may at his option terminate this lease and regain possession of the premises in the manner prescribed by law. If Landlord's right of reentry is exercised following abandonment of the premises by Tenant, then Landlord shall consider any personal property belonging to Tenant left on the premises to also have been abandoned, in which case Landlord may dispose of such personal in any manner Landlord shall deem proper and Landlord is hereby relieved of all liability for doing so.

### **14. EXTENDED ABSENCES**

In the event Tenant will be away from the premises for more than 14 consecutive days, Tenant agrees to notify Landlord in writing of such absence. During such absence, Landlord may enter the premises at times reasonably necessary to maintain the property and inspect for damages and needed repairs.

### **15. SECURITY SYSTEM**

Tenant understands that the Landlord does not provide any security alarm system. In the event any alarm system is provided, Tenant understands that such alarm system is not warranted to be complete in all respects or to be sufficient to protect Tenant or premises. Tenant releases Landlord from any loss, damage, claim or injury resulting from the failure of any alarm system, security or from the lack of any alarm system or security.

### **16. INSURANCE**

Landlord and Tenant shall each be responsible for maintaining appropriate insurance for their respective interests in the premises and property located on the premises. Tenant understands that Landlord will not provide any insurance coverage for Tenant's property. Landlord will not be responsible for any loss of Tenant's property, whether by theft, fire, riots, strikes, acts of God or otherwise. LANDLORD ENCOURAGES TENANT TO OBTAIN RENTER'S INSURANCE OR OTHER SIMILAR COVERAGE TO PROTECT AGAINST RISK OF LOSS.

### **17. NO OTHER REPRESENTATIONS, CONSTRUCTION: GOVERNING LAW AND CONSENTS.**

NO OTHER REPRESENTATIONS: Tenant expressly acknowledges and agrees that Landlord has not made and is not making, and Tenant, in executing and

delivering this lease, is that they are expressly set forth in this lease. It is understood and agreed that all understandings and agreements heretofore had between the parties are merged into this lease, which alone fully and completely expresses their agreements.

**CONSTRUCTION AND SEVERABILITY:** If any of the provisions of this lease, or the application thereof to any person or circumstances, shall, to any extent, be held invalid or unenforceable for any reason, the remainder of this lease, or the other application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or enforceable shall not be affected thereby, and every provision of this lease shall be valid and enforceable to the fullest extent permitted by law. If any provision of this lease is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

This lease shall be governed in all respects by and construed in accordance, with the laws of the State of Maine.

#### **18. PARTIES BOUND**

**BINDING EFFECT:** The covenants and conditions contained in the lease shall apply to all and bind the parties and the heirs, legal representatives, successors and permitted assigns of the parties.

**EXCEPTION:** The obligations of the Landlord under this lease shall not be binding upon Landlord named herein with respect to any period subsequent to the transfer of his interest in the premises as owner or lessee thereof, and in event of such transfer said obligations shall thereafter be binding upon each transferee of interest of Landlord.

#### **19. DRY CLEANING STATEMENT**

The Tenant acknowledges and has been informed that the Landlord intends to operate a Dry Cleaning business on the first floor of the premises. The operation of a dry cleaning business necessarily includes the use of certain chemicals which may contain odor; some people are affected by such odors. The Landlord has made significant efforts to minimize the impact of such odors by increasing the dimensions of the floor joists between the floors beyond what would normally be required by the town building code and by installing a vapor barrier. The tenant agrees to accept the premises knowing these material facts and agrees to hold harmless the Landlord from any and all claims or damages resulting from or based upon the existence of the Dry Cleaning business on the premises.

#### **20. MISCELLANEOUS**

**ENTIRE AGREEMENT:** This lease contains all of the understandings relating to the leasing of the premises and the Landlord's obligations in connection therewith and neither the Landlord nor any agent or representative of the Landlord has



made or is making, and the Tenant is executing and delivering this lease is not relying upon, any warranties, representations, promises, or statements whatsoever, except to the extent expressly set forth in this lease. All understandings and agreements, if any, heretofore had between the parties are merged in this lease, which alone fully and completely express the agreement of the parties. This lease may be modified in writing and must be signed by both Landlord and Tenant acknowledging adjustments.

**NO WAIVER:** The failure of either party to insist in any instance upon the strict keeping, observance or performance of any provision of this lease or to exercise any election in this lease shall not be construed as a waiver or relinquishment for the future of such provision, but the same shall continue and remain in full force and effect. No waiver or modification by either part of any provision of this lease shall be deemed to have been made unless expressed in writing and signed by the party to be charged. The receipt and retention by the Landlord of rent with knowledge of the breach of any provision of this lease shall not be deemed a waiver of such breach.

**CUMULATIVE RIGHTS:** Landlord's and Tenant's rights under this lease are cumulative, and shall not be construed as exclusive of each other unless otherwise required by law.

**NOTICE:** Any notice required or otherwise given pursuant to this lease shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered by overnight delivery service, if to Tenant, at the premises and if to Landlord, at the address for payment of rent. Either party may change such addresses from time to time by providing notice as set forth above.

**HEADINGS:** The headings of the sections of this lease are for convenience only and not to be considered in constraining said sections.

**INDEMNIFICATION:** To the extent permitted by law, Tenant will indemnify and hold Landlord and Landlord's property, including premises, free and harmless from any and all liability for loss, claims, injury to or death of any person, including Tenant, or for damage to property arising from Tenants use and occupation of the premises, or from the acts or omissions of any person or persons, including Tenant, in or about the premises with tenant's express or implied consent, except Landlord's act or negligence.

**LEGAL FEES:** In the event any legal action by the parties arising out of this lease, the losing party shall pay the prevailing party's reasonable attorneys fees and cost in addition, to all other awarded relief.

**BUILDING RULES:** Landlord may publish building rules from time to time, which will become part of this lease and incorporated herein after 30 days written notice to Tenant. Landlord will not be liable to Tenant for any individual's

violation of these rules. Attached hereto this lease agreement is a copy of the Premises existing rules and regulations that all Tenants are to adhere to as occupants of premises. UPON SIGNATURE OF THIS LEASE AGREEMENT, THE TENANT STATES THE TENANT HAS REVIEWED AND ACKNOWLEDGES ALL EXISTING RULES AND REGULATIONS.

**21. ADDITIONAL PROVISIONS**

(Specify "none" if there are no additional provisions)

Allowed to conduct medical  
marijuana caregiver business  
out of the property.

IN WITNESS WHEREOF, the parties have caused this lease to be executed on the day and year above written.

**Landlord:**

Chongye Arnold 11/1/2019  
Signature Date

Chongye Arnold  
Print name

**Tenant:**

[Signature] 11/1/2019  
Signature Date

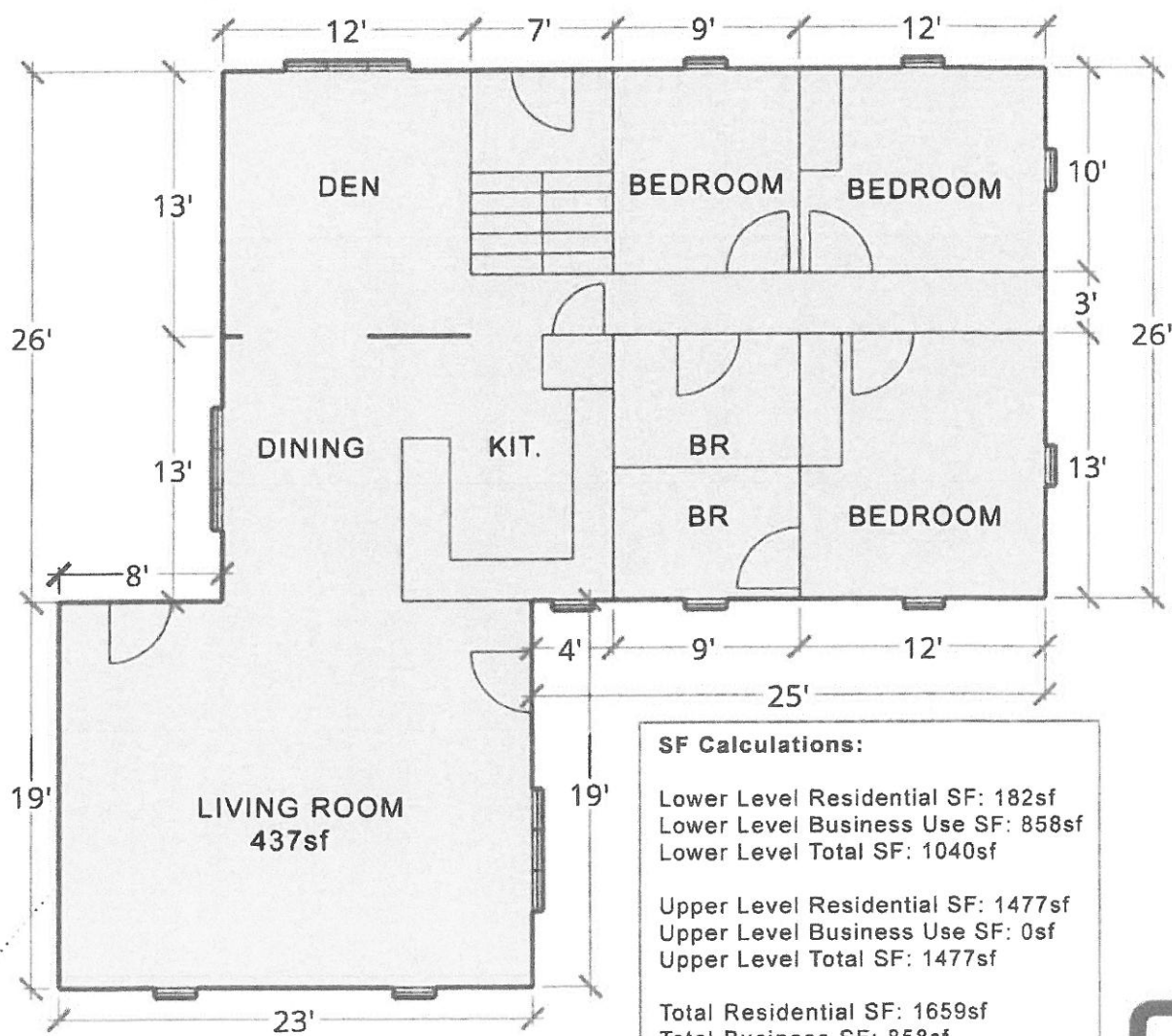
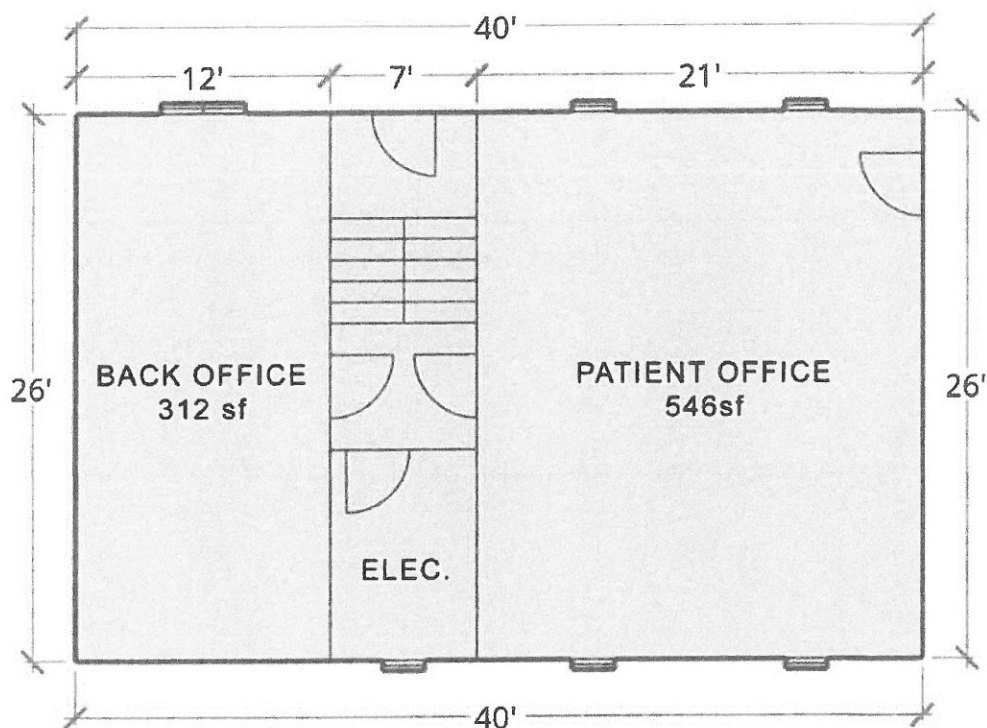
Mitchell Delaney  
Print name

**Tenant:**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print name

## LOWER LEVEL PLAN



## UPPER LEVEL PLAN

### SF Calculations:

Lower Level Residential SF: 182sf  
 Lower Level Business Use SF: 858sf  
 Lower Level Total SF: 1040sf

Upper Level Residential SF: 1477sf  
 Upper Level Business Use SF: 0sf  
 Upper Level Total SF: 1477sf

Total Residential SF: 1659sf  
 Total Business SF: 858sf  
 Total SF: 2517sf  
 Business Use: 34%

EXHIBIT

D

tabbles





RAILROAD SPIKE  
FOUND FLUSH

6' 1/2"

Existing  
Building

110'

RAILROAD SPIKE  
SET FLUSH

TAX MAP 8  
LOT 37

1" IRON PIPE  
FOUND 14" HIGH

5/8" IRON ROD  
FOUND 7" HIGH  
W/ CAP 1322

Existing  
Building

9'

110'

Side Walk  
State Road

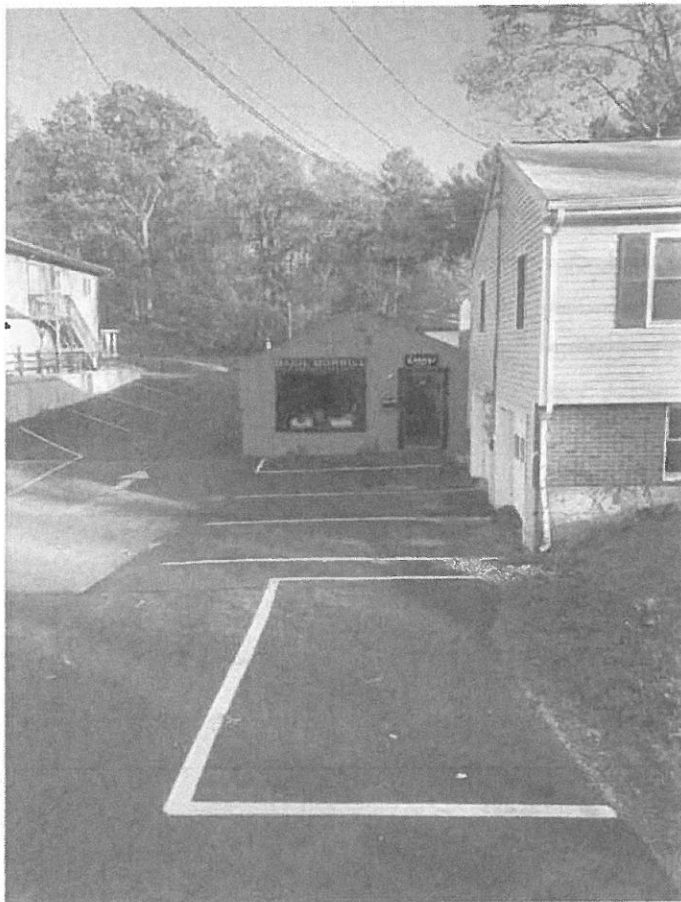
1.25" IRON PIPE  
FOUND 2" DOWN

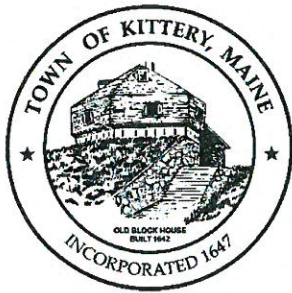
RAILROAD SPIKE  
FOUND 2" DOWN

EXHIBIT

E

tabbles





**PLANNING & DEVELOPMENT DEPARTMENT  
STAFF REPORT**

BOA Meeting Date: November 26, 2019

Item #: SE2019-06

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**STAFF REPORT – 120 STATE ROAD – SPECIAL EXCEPTION USE REQUEST /  
MAJOR HOME OCCUPATION**

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**Project Name:** 120 State Road

**Applicant:** Erin Sherman on behalf of Mitchel Delaney

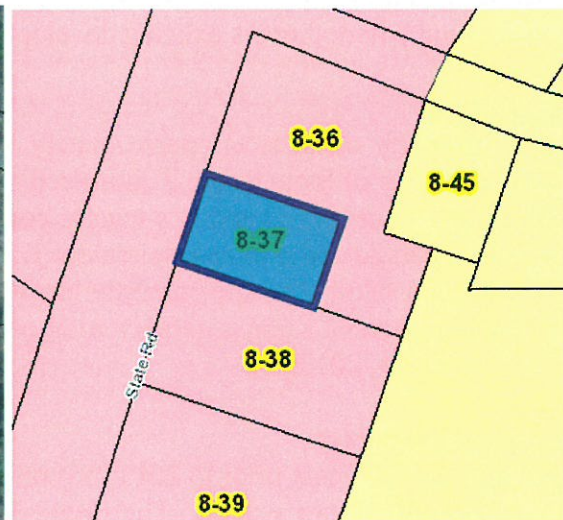
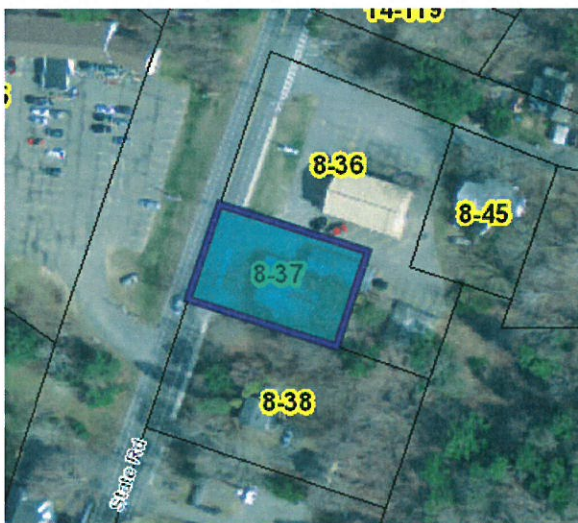
**Owner:** Chong – Ye Arnold

**Proposed Development:** Major home occupation: Medical marijuana primary caregiver

**Requests:** Special Exception Use per LUDC Section 16.8.22.3, seeking approval for a major home occupation as a medical marijuana primary caregiver

**Site Addresses:** 120 State Road

**Map & Lot Numbers:** 8-37



**Current Zoning:**

Business – Local (B-L) – The purpose of the Business – Local B-L Zone is to provide local sales, services and business space within the Town.



The existing dwelling use is permitted by right in the zone. The following use is permitted in the B-L Zone: (4) Major home occupations as an accessory use, but Major Home Occupations require Board of Appeals approval prior to permitting.

**Staff Recommendation:** **APPROVAL WITH CONDITIONS** of Special Exception Use request.

**District Standards:**

| Business – Local (B-L) Zoning District Standards |           |                           |         |
|--|-----------|---------------------------|---------|
| Land Area per DU                                 | 20,000 sf | Front Yard Setback (min.) | 15 feet |
| Building Coverage (max.)                         | None      | Rear Yard Setback (min.)  | 10 feet |
| Lot Size   | None      | Side Yard Setback (min.)  | 10 feet |

**Current Use:** Single dwelling unit.

**Surrounding Land Uses:**

West: Business – Local (B-L); Business

East: Business – Local (B-L); Business

North: Business – Local (B-L); Business

South: Business – Local (B-L); Dwelling Unit

**Future Land Use:**

The subject property is located within a Growth Area in the Future Land Use Map, defined in the Comprehensive Plan as “areas where the Town would like to encourage future development to occur.” Growth Area include parts of Town where 75% or more of future non-residential growth is expected, areas that are or can relatively easily be served by public facilities and services, are accessible by a variety of modes of transportation, promote more compact and denser pattern of development, and where there is existing development.

**Site Description:**

The subject property consists of approximately 10,020 square feet (.23 acres) located along the Eastern right-of-way of State Road, a numbered state road off of the traffic circle. The property is zoned Business - Local (B-L) and is a legally conforming lot. The lot contains one single-family dwelling with a garage under of approximately 1,565 square feet of living area and one commercial building housing a salon. The site currently has 9 parking spaces on site, including 2 spaces in the garage. The commercial salon requires a total of 5 parking spaces, per the Business Use Change letter dated August 1, 2017.

**History of the Property:**

For approximately 20 years prior to 2017 the commercial building on the lot housed a pawn shop. In 2017 it was refitted into a salon. The single-family dwelling on the property has always been used as such.

**Description of the Issue:**

The owner/applicant wishes to operate a licensed medical marijuana caregiver per Maine state law



(22 M.R.S. § 2425) out of his home. The owner is proposing to use 858 square feet of the existing lower level of the home for business use. The owner further states that he has been granted an Individual Caregiver License from the Maine Medical Marijuana Program and provides a copy of the license which expires on 10/14/2020.

Town Code provides certain standards for a major home occupation in Section 16.8.22.3 of the LUDC. The medical marijuana use is allowed with a registered primary caregiver in a dwelling unit. The Town has not opted in to any other provisions of state law to allow retail sales of marijuana.

**Applicant's Special Exception Use Request:**

Section 16.6.6 requires the Board of Appeals to use the following process when hearing requests:

*§ 16.6.6 Basis for decision.*

*A. Conditions.*

- (1) In hearing appeals/requests under this section, the Board of Appeals must first establish that it has a basis in law to conduct the hearing and decide the question.*

**LUDC Section 16.6.4.D.(1) allows the Board of Appeals to “hear, decide and may grant an applicant's special exception use request where authorized in Chapter 16.3 for any application excluded from Planning Board review as stated in § 16.10.3.2, if the proposed use meets the criteria set forth in § 16.6.6, Basis for decision.” Since this property is not in the Shoreland Overlay or Resource Protection Overlay Zones, the Major Home Occupation request falls to the Board of Appeals.**

**The requested activity is a major home occupation, defined in the code as “a type of home occupation that fails to meet all of the standards for a minor home occupation established in § 16.8.22.2, but is found by the Board of Appeals to satisfy the standards established in § 16.8.22.3 to ensure that a business results in no more than a minor intrusion in the quality of life of residents in the surrounding neighborhood.”**

- (2) In hearing appeals/requests under this section, the Board of Appeals must use the following criteria as the basis of a decision, that:*

- (a) The proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;*

**The use can be granted only as an accessory use by the Board of Appeals, and will not prevent the orderly and reasonable use of adjacent properties. All adjacent properties are zoned Business – Local and have the same opportunity to apply for home occupations per the code.**

- (b) The use will 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;*

**The use will not prevent the orderly and reasonable use of legally established uses in the zone since the use is similar to adjoining properties.**

- (c) *The safety, the health and the welfare of the Town will not be adversely affected by the proposed use or its location; and*

**The use will not adversely affect the health and welfare of the Town, as long as conditions are met to ensure safe and legal operations.**

- (d) *The use will be in harmony with and promote the general purposes and intent of this title.*

**The use is in harmony with Title 16 and promotes its general purposes.**

*Factors for consideration. In making such determination, the Board of Appeals must also give consideration, among other things, to:*

- (1) *The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;*

**The use involved is legally permitted in the zone, per review by Board of Appeals.**

- (2) *The conservation of property values and the encouragement of the most appropriate uses of land;*

**The proposed home occupation will occur within the existing dwelling unit, which is an appropriate and compatible use of the land.**

- (3) *The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;*

**There is no proposed change in the underlying use of the property nor increase in density of the existing dwelling unit. The applicant will accept clients arriving via cars. Client vehicular traffic should conform to the hours of operation restrictions in the code or imposed by the Board. Off-street parking for the home occupation shall be provided.**

- (4) *The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;*

**The property is connected to adequate sewer systems.**

- (5) *Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;*

**The applicant will not be growing any marijuana on the site, all marijuana will be grown off site at a location to be determined.**

- (6) *Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;*

**The use causes no disturbing emission of electrical discharges, dust, light, vibration or noise.**

- (7) *Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;*

**No undue interference should result from this use.**

- (8) *The necessity for paved off-street parking;*

**The property currently has 9 parking spaces, 5 of which are required for the salon. The remaining 4 parking spots satisfy the requirement for parking for the Major Home Occupation.**

- (9) *Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot;*

**There should be no hazard to life, limb or property created.**

- (10) *Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials;*

**No overcrowding should result from this use.**

- (11) *Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;*

**The existing lot is a legal, conforming lot of record.**

- (12) *Whether the proposed use will be adequately screened and buffered from contiguous properties;*

**The property to the North shares a parking lot with the subject property. The property to the South and East are adequately screened by trees.**

- (13) *The assurance of adequate landscaping, grading and provision for natural drainage;*

**No changes are proposed to the land, which already includes adequate drainage.**

- (14) *Whether the proposed use will provide for adequate pedestrian circulation;*

**There is a sidewalk in front of the property and adequate walkways from the parking areas.**

- (15) *Whether the proposed use anticipates and eliminates potential nuisances created by its location; and*

**The applicant must take care to avoid any public nuisances and abide by restrictions on hours of operation.**

- (16) *The satisfactory compliance with all applicable performance standard criteria contained in Chapters 16.8 and 16.9.*

**Other than the request applied by the applicant here, the property conforms to Title 16.8 and 16.9 in its existing state. The applicant must abide by specific conditions outlined in section 16.8.22.3 and any conditions placed on the use by the Board of Appeals.**

*16.6.6.C. Additional special exception conditions. Special exception approvals may be subject to additional conditions as determined by the BOA, including 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.*

**Using the standards and criteria found in the LUDC, Staff recommends APPROVAL WITH CONDITIONS of the Special Exception Use request for a major home occupation as a medical marijuana licensed primary caregiver in an existing dwelling unit located in the R-U zone, with the following conditions:**

- 1. The owner must abide by all provisions of Maine State Law on medical marijuana licensed caregivers, 22 M.R.S. § 2425.**



- 2. The applicant must be a resident of the dwelling on the premises where the home occupation will occur. An applicant who is not the owner of the property, but is residing on the premises, must submit written permission of the property owner for the proposed home occupation.**
- 3. The maximum total amount of square footage attributed to the home occupation use must not exceed 1,257 square feet.**
- 4. There must be no more than five adults, inclusive of residents of the premises, working in the home occupation at the site at any one time.**
- 5. No other major home occupations may be conducted on the premises while operating as a licensed medical marijuana caregiver.**
- 6. Business activities involving clients or customers on the premises or vehicular traffic to and from the premises must not be conducted between the hours of 7:00 p.m. and 7:00 a.m. The applicant must submit a plan that provides safe and sufficient off-street parking to meet the needs of the business and prevent parking from overflowing off the site.**
- 7. All outdoor storage of equipment, vehicles or items associated with the home occupation must be screened from view of abutting properties and from all streets except for one (1) vehicle used in conjunction with the home occupation and vehicles owned by residents of the premises with valid license plates.**
- 8. All business activities on the site must take place within an enclosed building.**
- 9. All refuse and recyclables must be stored in containers that are screened from view of abutting properties and from streets.**
- 10. Upon approval of a major home occupation by the Board of Appeals and compliance with the above conditions, the Code Enforcement Officer is authorized to issue a certificate of occupancy permit for not more than a one-year time period. Such permit may be renewed annually upon application to the Code Enforcement Officer. The annual permit may be renewed only if the Code Enforcement Officer finds the major home occupation complies with all applicable standards of this Code and any conditions required by the Board of Appeals in the original approval.**



## OBITUARIES & NEWS

### Lawrence William Kent

ELIOT, Maine — Lawrence William Kent passed away on Wednesday, November 13, 2019, at age 87. He was born April 7, 1932 in Portsmouth, N.H.

Norman and Mildred Kent of Sparhawk Street.

He was a 1951 graduate of Portsmouth High School. He worked for PSNH more than 30 years and was well-known as the g-time facilities manager of the historic Warner House in Portsmouth, and maker of Memorial Day kets (and general plant consultant) at Portsmouth dens.

He is reunited with his parents, his older brother Norman and Paul and his wives, Ann, Joyce and a daughter, Mel. He is survived by his wife of 65 years, Jessie; his daughter, Crystal; his son, Mike; his daughter-in-law, Mary; his granddaughter, Hannah; and her husband TJ; grandson, Tom and his wife, Meg Burns; his sister, Patricia Kent Earle and her husband, William; and seven nieces and nephews.



SERVICES: Visiting hours are Thursday, November 21, 2019 from 5-7 p.m. with Masonic service at 4:45 p.m., at the J. Verne Wood

Funeral Home — Buckminster Chapel, 84 Broad St., Portsmouth, N.H., and a celebration of life will be held at 11 a.m. on Friday, November 22, 2019 at St. John's Church in Portsmouth.

Family flowers only, please. Donations may be sent to the "Larry Kent Fund" at the Warner House, P.O. Box 895, Portsmouth, NH, 03802-0895; the St. John's Church Building Fund, 100 Chapel St., Portsmouth, NH 03801 or to support the "Kent Children's Room" at the William Fogg Library, P.O. Box 359, Eliot, ME 03903. For online condolences and to view the extended obituary, visit: www.jvwoodfuneralhome.com. Arrangements are under the direction and care of the J. Verne Wood Funeral Home — Buckminster Chapel.

### Man caught on video as stepfather sentenced

The Associated Press

CARIBOU, Maine — A Maine man captured on security video firing shots into his stepfather's home was sentenced to 60 years for murder on Monday. The defense vowed to appeal.

A judge imposed the sentence on James Peaslee, of Easton, who was furious over a probate decision involving the estate of his late mother, Janet Hilenski. His stepfather, 79-year-old Paul Hilenski Sr., died in his Bridgewater home from a gunshot wound to the chest

in January 2018.

Peaslee, who snapped at a witness to "stop lying!" during his trial, smirked after being sentenced and had a sarcastic retort for the judge before leaving the courtroom.

"Anything else you need, ol' boy, to make you sleep at night? I just wanna make sure you can sleep at night," Peaslee told Justice Harold Stewart, according to WAGM-TV.

A prosecutor said Peaslee was resentful over the handling of his mother's estate. She died without a will in November 2015 after a car

### Native American mascot's

The Associated Press

CONCORD, N.H. — A New Hampshire high school has brought back images of its former Native American mascot, as well as some controversy.

Merrimack Valley High School in Concord got rid of the Native American man in a headdress 15 years ago in response to concerns that the image was offensive. New Hampshire Public Radio reports the mascot has returned in the past two years on banners,

walls and the gym floor as the school marked its 50th anniversary.

Banners designed for a Hall of Fame induction ceremony include the image of a Native American man in headdress along with the current lion mascot.

Administrators and some board members said the mascot was included to honor alumni who identify with the original mascot and motto of "Indian Pride."

Carissa Corrow, an alumna, parent and former teacher at the school, said

### Deaths of father, 4-month-old daughter being investigated

ELLSBOROUGH, N.H. — New Hampshire law enforcement officials say they're investigating the suspicious deaths of a man and his 4-month-old daughter in Ellsworth.

Police said the bodies of 40-year-old Miles Deuse

and his daughter, Makenzie Deuse, were found at an apartment Sunday. Officials said the incident appeared to be self-inflicted and there does not appear to be any threat or danger to the public.

Autopsies were scheduled Monday.

See more at:  
www.seacoastonline.com

### LEGAL NOTICE TOWN OF HAMPTON, NEW HAMPSHIRE

Board will hold a Public Hearing on Wednesday December 4, 2019 at 7:30 pm, in the Meeting Room, 100 Wamsunnet Road to consider the proposals listed

### HEARING FOR ZONING ORDINANCE AMENDMENTS

Article I - General. Section 1.6 Definitions to modify the definition of "use" to clarify that use changes apply to proposed non-residential buildings that all changes of building occupancy involving any use of a building shall require Use Change Approval from the Planning Board if the health, welfare, convenience and safety of Hampton's citizens are affected, and to state that any use which, in the opinion of the Building Board or the Town Planner, requires Planning Board approval in order to be used in the Building.

Article II - Districts. Section 2.8 F to delete Note #3 regarding the use approval requirement for all non-residential changes of building use in the Town Center-North and Town Center-South Districts.

Article III - Districts. Section 2.4 Floodplain Management Ordinance to change language under 2.4.11.C Coastal High Hazard Areas (Zone VE), Flood Standards (subsection 2.c) requiring that breakaway walls have openings that meet the existing criteria for enclosed areas below the zone.

### BRIEFS

ORLANDO, FLA. — Hurricane season isn't over yet as tropical system appears

With 12 days remaining in the 2019 hurricane season, meteorologists are keeping their eyes on a new tropical system, according to the National Hurricane Center's 5 a.m. Monday update.

The system is 350 miles east-northeast of the northern Leeward Islands and is producing disorganized showers and thunderstorms with winds blowing up to 30 mph on its northeast side, said NHC hurricane specialist Andrew Latto.

The system was forecast with a 50% chance of becoming a tropical depression in the next two to five days as it

heads northwest, Latto said.

VENICE, ITALY — Venice's dwindling population faces mounting woes

One of only four boat makers for Venice's famed gondoliers, Paolo Brandolisio wades through his ground-floor workshop for the third time in a week of record-breaking floods, despairing of any help from national or local institutions.

"If these phenomena continue to repeat themselves, you have to think about how to defend yourself," he says. "Because the defenses that the politicians have made don't seem to be nearly enough."

"You have to think of yourself," he repeats.

Legal Notice  
NOTICE OF PUBLIC HEARING  
TOWN OF KITTERY - BOARD OF APPEALS  
200 Rogers Road, Kittery, Maine 03904  
Tuesday, November 26, 2019 - 6:30 p.m.  
Wade Blake, on behalf of owner James Powers, 5 Hutchins Cove Drive, requesting a Variance to build an addition within the rear setback to an existing structure in the Residential - Rural (R-RL) zone, per Section 16.6.4.B of the Town Code.  
Erin Sherman, on behalf of tenant Mitchell Delaney, 120 State Road, requesting a Special Exception use for a Major Home Occupation to operate as a medical marijuana primary caregiver in the Business - Local (B-L) zone, per Section 16.3.2.6 and Section 16.8.22.3 of the Town Code.  
Application information is available for public inspection between 8:00 am to 6:00 pm, Monday through Thursday, at the Development Department located in Kittery Town Hall.  
To request a reasonable accommodation for this meeting please contact staff.  
TOWN OF KITTERY



**MEETING MINUTES**

**1. CALL TO ORDER; INTRODUCTORY; ROLL CALL**

Chair Jeff Brake called the meeting to order at 6:30 p.m. and asked that the roll be called.

**Board Members Present:** Vern Gardner, Charles Denault III, April Timko, Suzanne Dwyer-Jones, Barry Fitzpatrick, Louis Leontakianakos, Jeff Brake

**Board Members Absent:** None

**Staff Present:** Craig Alfis, Code Enforcement Officer

**2. PLEDGE OF ALLEGIANCE**

**3. AGENDA AMENDMENT AND ADOPTION**

**4. EXECUTIVE SESSION**

**5. PUBLIC HEARINGS**

- a. **Mitchell Delaney, Owner, 50A Wyman Avenue, requesting a Special Exception Use for a Major Home Occupation to operate as a medical marijuana primary caregiver in the Residential – Urban (R-U) zone, per Section 16.3.2.4 and Section 16.8.22.3 of the Town Code.**

- Mr. Gardner stated that per 16.6.5.i the appellants case goes first. Discussion ensued and Chair Brake determined the Town would go first. Mr. Alfis presented the staff report. The Board had several questions for Mr. Alfis. The applicant was given the opportunity to state the details of his request. The Board had several questions for the applicant. The public were invited to comment. Nine members of the public spoke for and ten members against the Major Home Occupation request. The applicant was invited back to the podium for rebuttal. The Board entered into discussion.

Motion by Mr. Gardner to approve the applicants request for a Special Exception for a Major Home Occupation as a medical marijuana primary caregiver at an existing dwelling unit located in the Residential - Urban zone with the following conditions:

1. It would be approved as a deliver service only.
2. The owner must abide by all provisions of Maine State Law on medical marijuana licensed caregivers, 22 M.R.S. § 2425.

3. The applicant must be a resident of the dwelling on the premises where the home occupation will occur. An applicant who is not the owner of the property, but is residing on the premises, must submit written permission of the property owner for the proposed home occupation.
4. The maximum total amount of square footage attributed to the home occupation use must not exceed 1,480 square feet.
5. There must be no more than five adults, inclusive of residents of the premises, working in the home occupation at the site at any one time.
6. No other major home occupations may be conducted on the premises while operating as a licensed medical marijuana caregiver.
7. Business activities on the premises or vehicular traffic to and from the premises must not be conducted between the hours of 5:00 p.m. and 9:00 a.m. The applicant must submit a plan including landscaping and buffering that provides safe and sufficient off-street parking to meet the needs of the business and prevent parking from overflowing off the site.
8. All outdoor storage of equipment, vehicles or items associated with the home occupation must be screened from view of abutting properties and from all streets except for one (1) vehicle used in conjunction with the home occupation and vehicles owned by residents of the premises with valid license plates.
9. All business activities on the site must take place within an enclosed building.
10. All refuse and recyclables must be stored in containers that are screened from view of abutting properties and from streets.
11. Prior to the installation of any lighting systems for the home occupation, an electrical load test of the dwelling's electrical system must be performed by a licensed electrician. The results of the load test must be shared with the Code Enforcement Officer.
12. A suitable ventilation system must be installed to abate any odors, subject to the review and inspection by the Code Enforcement Officer.
13. The proposed home occupation will not be allowed to operate until all proposed interior improvements for the grow room and work area have been completed and inspected to the satisfaction of the Code Enforcement Officer, the Fire Chief, and the Police Chief.
14. Upon approval of a major home occupation by the Board of Appeals and compliance with the above conditions, the Code Enforcement Officer is authorized to issue a certificate of occupancy permit for not more than a one-year time period. Such permit may be renewed annually upon application to the Code Enforcement Officer. The annual permit may be renewed only if the Code Enforcement Officer finds the major home occupation complies with all applicable standards of this Code and any conditions required by the Board of Appeals in the original approval.
15. Any work done to construct a shed or to modify the home must be properly permitted and signed off on by the Code Enforcement Officer



Motion was seconded by Mrs. Timko. Motion failed 2-4-0 by roll call vote [Yes: Gardner, Denault; No: Timko, Fitzpatrick, Leontakianakos, Brake; Abstain: --]

Mrs. Timko read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) The public hearing was noticed in the Portsmouth Herald on Friday, September 29. (2) The applicant gave a presentation about his application including that he plans to run a delivery only service, differing from the information in the initial application. (3) A large number of people from the community, both for and against the proposal made statements. (4) The board reviewed the Basis for Decisions and Factors for Consideration set forth in 16.6.4D, the requirements for a major home occupation 16.8.22.3 and considered factors related to the use of the space including traffic, parking, ventilation, disturbance of the neighborhood, neighborhood compatibility and other factors. (5) A motion was made to approve with conditions and the motion did not pass by a vote of 2-4-0.

Conclusions of Law: The Board considered the factors set forth in 16.6.6, Basis for Decision and the factors set forth in 16.8.22.3, Major Home Occupation Standards, the Board determined that the applicant did not meet the requirements to have a Major Home Occupation in this location.

Motion by Mr. Leontakianakos to accept the Findings of Fact and Conclusions of Law. Seconded by Mr. Brake. Motion passed by voice vote 6-0-0 [Yes: Gardner, Denault, Timko, Dwyer-Jones, Fitzpatrick, Leontakianakos, Brake; No: --; Abstain: --]

The applicant was notified of their legal standing to appeal.

## **6. UNFINISHED BUSINESS**

## **7. NEW BUSINESS**

## **8. ACCEPTANCE OF PREVIOUS MINUTES**

## **9. BOARD MEMBER OR CEO ISSUES OR COMMENT**

- Mr. Alfis stated that the workshop with Jensen Baird Gardner Henry is on October 22, starting at 5:30pm, with the regular meeting to follow.

## **10. ADJOURNMENT**

Motion by Mr. Leontakianakos to adjourn. Second by Mr. Denault. Motion passed 6-0-0 by voice vote [Aye: Gardner, Denault, Timko, Dwyer-Jones, Fitzpatrick, Leontakianakos, Brake; Nay: --; Abstain: --]

The Kittery Board of Appeals meeting of October 8, 2019 adjourned at 9:09 p.m.

*Submitted by Craig Alfis, Code Enforcement Officer*

*Disclaimer: The preceding minutes constitute the author's understanding of the meeting. While every effort has been made to ensure the accuracy of the information, the minutes are not intended to be a verbatim transcript of comments at the meeting but only a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>.*

**MEETING MINUTES**

**1. CALL TO ORDER; INTRODUCTORY; ROLL CALL**

Vice Chair Louis Leontakianakos called the meeting to order at 6:31 p.m. and asked that the roll be called.

**Board Members Present:** Vern Gardner, Charles Denault III, April Timko, Suzanne Dwyer-Jones, Louis Leontakianakos

**Board Members Absent:** Jeff Brake, Barry Fitzpatrick

**Staff Present:** Craig Alfis, Code Enforcement Officer

**2. PLEDGE OF ALLEGIANCE**

**3. AGENDA AMENDMENT AND ADOPTION**

- Motion by Mrs. Timko to amend the agenda to remove ACCEPTANCE OF PREVIOUS MINUTES as the previous meeting minutes have not been provided. Seconded by Ms. Dwyer-Jones. Motion passed 5-0-0 by roll call vote [Aye: Gardner, Denault, Timko, Dwyer-Jones, Leontakianakos; Nay: --; Abstain: --;]

**4. EXECUTIVE SESSION**

**5. PUBLIC HEARINGS**

- a. **Darlene Hudson Owner, 17 Picott Road, requesting a Special Exception Use for a Major Home Occupation to operate a wood cutting business in the Residential – Rural (R-RL) zone, per Section 16.3.2.1C and Section 16.8.22.3 of the Town Code.**
- The applicant was invited to the podium and it was explained that the Board did not have all members present and that they would have the option to have their request continued to the next meeting should they choose. The applicant declined. Mr. Alfis presented the staff report. The applicant was given the opportunity to state the details of their request. The Board had several questions for the applicant. The public were invited to comment. One abutter and one resident spoke out against the proposed Major Home Occupation. The applicant was invited back to the podium for rebuttal. The Board entered into discussion.



Motion by Mrs. Timko to deny the Special Exception Use request for a Major Home Occupation to operate a wood cutting business in the Residential - Rural zone for failure to meet the requirements of a Major Home Occupation and the standards of review. Seconded by Ms. Dwyer-Jones. Discussion ensued. Motion passed 4-0-1 by roll call vote [Aye: Denault, Timko, Dwyer-Jones, Leontakianakos; Nay: ; Abstain: Gardner]

The applicant was notified of their legal standing to appeal.

- b. David and Cheri Richard, Owners, 3 Cranberry Lane, requesting a Miscellaneous Variation Request for the expansion of a nonconforming structure to add a Temporary, Intra-Family Dwelling Unit in the Residential – Rural (R-RL) zone, per Section 16.3.2.1C, Section 16.7.3.3B and Section 16.8.21.1 of the Town Code**
- Mr. Alfis presented the staff report. The applicant was given the opportunity to state the details of their request. The Board had several questions for the applicant. It was determined that an internal connection between the two dwelling units was not practicable.

Motion by Mr. Gardner to approve the applicants Miscellaneous Variation Request per Code Section 16.7.3 for the expansion of a nonconforming structure to add a Temporary, Intra-Family Dwelling Unit with the following conditions:

1. The applicant must annually submit a signed and dated certification by January 15 of each year to both the Code Enforcement Officer and the Board of Appeals that the temporary intrafamily dwelling unit is occupied by either a:
  - a. Person(s) related by blood or marriage within the sixth degree to an occupant of the property;
  - b. Personal care provider(s) to an occupant on the property;
  - c. Personal care receiver(s) from an occupant of the property; or
  - d. Person(s) with a demonstrably familial type relationship to an occupant of the property.
2. Upon a permanent vacancy of the temporary intrafamily dwelling unit or the applicant no longer residing on the premises, the use of the property must be converted to its original dwelling status or another conforming permanent use.
3. Reapplication to the BOA upon a change in ownership or the property.



4. Joint signature of submitted floor plans by the applicant and a representative of the BOA signifying the approved design of the temporary intrafamily dwelling unit, and the manner to convert the use of the property to its original dwelling status or another conforming permanent use.

Motion was seconded by Mr. Denault. Motion passed 5-0-0 [Yes: Gardner, Denault, Timko, Dwyer-Jones, Leontakianakos; No: -- ; Abstain: -- ]

Mrs. Timko read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) The applicant David & Cheri Richard requested a Miscellaneous Variation Request per code section 16.7.3 for the expansion of a nonconforming structure to add a Temporary, Intra-Family Dwelling Unit at Map 68 Lot 10-D in the Residential – Rural zone. (2) The property is located in the Shoreland Overlay zone. (3) The applicant proposes to construct a 576 square foot single story addition connected to the existing garage. (4) The proposed structure will be nonconforming to the wetland setbacks but no more nonconforming than the existing structure. (5) A letter from Michael Cuomo, soil scientist, was submitted. (6) The Board found that the internal connection between the two dwelling units was not practicable. (7) There would be no separate utility metering. (8) The Board considered the standards for Temporary, Intra-family Dwelling Units set forth in 16.8.21.2. (9) The Board approved the Miscellaneous Variation Request with the conditions set out in Code Section 16.8.21.3.

Conclusions of Law: (1) The Board considered the factors set forth in 16.6.6, Basis for Decision and the factors set forth in 16.8.21.3, Temporary, Intra-Family Dwelling Units and (2) the Board determined that the applicant met the requirements and the request was approved.

Motion to accept the Findings of Fact and Conclusions of Law made by Mr. Denault. Seconded by Mr. Gardner. Motion passed 5-0-0 by roll call vote [Yes: Denault, Gardner, Timko, Dwyer-Jones, Leontakianakos; Nay: --; Abstain:--]

## **6. UNFINISHED BUSINESS**

## **7. NEW BUSINESS**

## **8. ACCEPTANCE OF PREVIOUS MINUTES**

## 9. BOARD MEMBER OR CEO ISSUES OR COMMENT

- Mr. Gardner noted that workshops are required to be noticed.

## 10. ADJOURNMENT

Motion by Mrs. Timko to adjourn. Second by Ms. Dwyer-Jones. Motion passed 5-0-0 by voice vote [Aye: Denault, Gardner, Timko, Dwyer-Jones, Leontakianakos, Brake; Nay: --; Abstain: --]

The Kittery Board of Appeals meeting of October 22, 2019 adjourned at 7:39 p.m.

*Submitted by Craig Alfis, Code Enforcement Officer*

*Disclaimer: The preceding minutes constitute the author's understanding of the meeting. While every effort has been made to ensure the accuracy of the information, the minutes are not intended to be a verbatim transcript of comments at the meeting but only a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>.*