

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 Ms. 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 Ms. 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.

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

Findings of Fact: (1) Darlene Hudson, owner of 17 Picott Road, requested a Special Exception Use per code section 16.3.2.1.C.(7) seeking approval for a Major Home Occupation to operate a wood cutting business. (2) The property is at Map 46 Lot 01 in the Residential Rural zone. (3) The property consists of .69 acres. (4) The owner/applicant proposed to operate a wood cutting business Monday through Sunday, 8 am to 3 pm. (5) The applicant provided no information about the potential for odors, noise emissions or any plans to reduce or screen for the noise emissions. (6) The applicant did not provide any information about space for off street parking or traffic and parking overflows. (7) The applicant did not provide any information about vegetation for the purpose of screening. (8) Two members of the public testified against the proposed use.

Conclusions of Law: (1) Section 16.6.4.D.1 allows the Board of Appeals to hear, decide and may grant applicant's special exception use request where authorized 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. (2) Since the property was not in the Shoreland Overlay or Resource Protection Overlay zones this Special Exception Use request was considered by the Board of Appeals. (3) The Board considered the factors set forth in 16.6.6, Basis for Decision. (4) In addition, the Board considered the standards set forth in 16.8.22.3, Major Home Occupation Standards. In particular, the Board considered the standards related to Subsection D: Business Hours, Subsection E: Nuisances, Subsection F: Parking, and Subsection J: Traffic. (5) The Board found that the proposed use did not meet the criteria for approval and the Special Exception Use request was denied.

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

- 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: --]

Ms. 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 Ms. 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>.