

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

**TOWN OF KITTERY, MAINE
BOARD OF APPEALS
Council Chambers – 6:30PM**

APPROVED
October 08, 2019

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>.