

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, Barry Fitzpatrick, Louis Leontakianakos, Jeff Brake

Board Members Absent: Suzanne Dwyer-Jones

Staff Present: Craig Alfis, Code Enforcement Officer

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION

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**

- Mr. Gardner disclosed that he had previously worked with Mr. Pelech, representative for Mr. Powers and requested to recuse himself. Mr. Alfis presented the staff report. The Board had several questions for Mr. Alfis. Mr. Alfis also relayed correspondence from an abutter, Mr. Cititarese, who spoke in favor of the applicant's request. The applicant's representative was given the opportunity to state the details of their request. The Board had several questions for Mr. Pelech. The owner, Mr. Powers and the applicant, Mr. Blake spoke on behalf of the request. The public were invited to comment. One abutter spoke in favor of the variance request. The Board entered into discussion.

Motion by Ms. Timko to grant the variance request to build an addition in the rear setback to an existing structure in the Residential - Rural zone, as presented to the Board. Seconded by Mr. Denault. Discussion ensued. Motion failed 0-5-0 by roll call vote [Yes: --; No: Denault, Timko, Fitzpatrick, Leontakianakos; Brake; Abstain: --]

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

Findings of Fact: (1) 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. (2) An attorney presented the case for the applicant. (3) The applicant proposed to construct an 18x22 addition to the rear of the existing structure. (4) The new addition would encroach 7 feet into the rear setback of the property. (5) The rear setback would be reduced from 20 feet down to 13 feet. (6) The presentation included information about the proposed use of the addition, the lot size and configuration. (7) One abutter spoke in favor of the proposal.

Conclusions of Law: (1) The Board considered the requirements set out in Section 16.6.4.B(c). (2) The Board found that the request did not meet the requirement of an undue hardship, specifically that the land in question could not yield a reasonable return unless a variance is granted and that the hardship was not the result of action taken by the applicant or prior owner. (3) The request for a variance was denied by a vote of zero in the affirmative to five in the negative.

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

The applicant was notified of their legal standing to appeal.

- 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.**

Mr. Gardner rejoined the meeting at 7:02.

- There was much discussion from the Board on who presents their information first: the applicant or the CEO. Mr. Gardner contended that the applicant goes first. The Chair and majority of the Board contended that the CEO present the staff report first. Mr. Alfis presented the staff report. The applicant's representation, Ms. Sherman presented the details of the request. The Board had several questions for the applicant and tenant. Mr. Delaney was invited to answer the Boards questions. There was much discussion about potential parking issues.

Motion by Ms. Timko to approve the applicants Special Exception Use Request per Code Section 16.8.22.3 for a Major Home Occupation as a marijuana primary caregiver 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. If there is any 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.

Motion was seconded by Mr. Fitzpatrick. Motion passed 6-0-0 [Yes: Gardner, Denault, Timko, Fitzpatrick, Leontakianakos Brake; No: -- ; Abstain: --]

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

Findings of Fact: (1) Attorney Erin Sherman submitted an application on behalf of Mitchell Delaney for a Special Exception Use per Code Section 16.8.22.3 seeking approval for a Major Home Occupation as a medical marijuana primary caregiver to be located at 120 State Road. (2) The Board found they had authority to hear the Special Exception Use pursuant to Code 16.1.5.B.6(e). (3) The premise is located in the Business Local zone. (4) The property is a legal conforming lot containing one single family dwelling with attached garage with approximately 2,517 total square feet. The residential living space on the first floor consists of three bedrooms of 1,477 square feet. (5) Mr. Delaney will reside there full time. (6) The Major Home Occupation would be in the basement which consists of the garage and a small room and at 858 square feet would be approximately 1/3 of the total square footage. (7) Mr. Delaney is the sole employee but may employ others in the future. (8) Mr. Delaney is a registered primary caregiver in the State of Maine. (9) Business activities would be conducted indoors. (10) Marijuana would not be grown at this location. (11) A parking plan has been submitted. (12) The Board considered the standards for a Major Home Occupation set forth in 16.8.22.3, and (13) the general requirements for the Basis of Decision set forth in Code 16.6.6. (14) The Board found that the proposed use meets the requirements set out for a Major Home Occupation and approved the request (15) This request was noticed in the Portsmouth Herald on November 19, 2019.

Conclusions of Law: (1) The Board had authority to hear the request under Section 16.1.5.B.6(e) and 16.8.22.3. (2) The Board found that the applicant met the requirements and standards and (3) approved the request by a vote of six in the affirmative with one member absent.

Motion to accept the Findings of Fact and Conclusions of Law made by Mr. Leontakianakos. Seconded by Mr. Denault. Motion passed 6-0-0 by roll call vote [Yes: Denault, Gardner, Timko, Fitzpatrick, Leontakianakos, Brake; Nay: --; Abstain:--]

The Board was notified of their right to reconsider and the public was notified of their right to appeal.

6. UNFINISHED BUSINESS

7. NEW BUSINESS

- Mr. Leontakianakos noted that elections for Board officers were coming up. Chair Brake announced they would be held on the meeting of December 10, 2019.

8. ACCEPTANCE OF PREVIOUS MINUTES

- October 8, 2019
Motion made by Mr. Denault to accept the minutes of October 8, 2019 as submitted. Seconded by Mr. Fitzpatrick. Motion passed 6-0-0 by roll call vote [Yes: Denault, Gardner, Timko, Fitzpatrick, Leontakianakos, Brake; Nay: --; Abstain:--]
- October 22, 2019
Motion made by Mr. Leontakianakos to accept the minutes of October 22, 2019 as submitted. Seconded by Mr. Denault. Discussion ensued. Ms. Timko pointed out that the Findings of Fact and Conclusions of Law were missing from the minutes for Agenda Item 1. Ms. Timko proposed to amend the motion to postpone the acceptance until the minutes could be corrected. Amendment seconded by Mr. Denault. Motion failed 3-0-3 by roll call vote [Yes: Denault, Timko, Leontakianakos; Nay: --; Abstain: Gardner, Fitzpatrick, Brake]

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

- Mr. Denault stated that Mr. Gardner's behavior is absolutely unbecoming and inappropriate for this Board and will be making a recommendation to the Town Council as well as the Town Manager for his removal.
- Mr. Alfis informed the Board that the 2020 meeting calendar would be submitted for review at the next meeting.
 - It was also noted that the only meeting in December is on the 10th.
- Mr. Fitzpatrick voiced his agreement with Mr. Denault's statement about Mr. Gardner.
- Chair Brake stated that he will be speaking with both the Town Manager and Chair Spiller tomorrow concerning the issues at the meeting.

10. ADJOURNMENT

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

The Kittery Board of Appeals meeting of November 26, 2019 adjourned at 7:59 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>.