

**MEETING MINUTES**

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

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

**Board Members Present:** Vern Gardner, Barry Fitzpatrick, April Timko, Louis Leontakianakos, Jeff Brake

**Board Members Absent:** Charles Denault III, Suzanne Dwyer-Jones

**Staff Present:** Craig Alfis, Code Enforcement Officer; David Evans, Assistant Code Enforcement Officer

**2. PLEDGE OF ALLEGIANCE**

**3. AGENDA AMENDMENT AND ADOPTION**

- Chair Timko made a motion to correct a typographical error in the agenda. Under Item A, the zone is listed as “Residential – Rural” and should be changed to “Residential – Kittery Point Village”. Seconded by Vice Chair Leontakianakos. Motion passed 5-0-0 by roll call vote [Yes: Gardner, Brake, Fitzpatrick, Leontakianakos, Timko; No: --; Abstain: --]

**4. EXECUTIVE SESSION**

**5. PUBLIC HEARINGS**

- a. **Lisa Ash, owner 22 Folcutt Road, requesting a Special Exception Use to operate a dog day care as a Major Home Occupation in the Residential – Kittery Point Village (R-KPV) zone per Section 16.3.2.3.C(7) and 16.8.22.3 of the Town Code.**
- The Board’s authority to hear the request was affirmed by Vice Chair Leontakianakos. Mr. Evans was invited to present the staff report. The Board had several questions for Mr. Evans. The applicant, Lisa Ash, was invited to the podium to state the details of their request. The Board had several questions for Ms. Ash. The public were invited to comment. Four members of the public spoke in favor of approval. One member of the public spoke against approval. Chair Timko read an email submitted to the Code Enforcement Officer, requesting the Board to deny the application. Ms. Ash was invited back to the podium to respond to the public’s comments. Mr. Alfis was invited to the

podium to provide clarification on Board and public comments. The Board closed the public hearing and entered discussion.

Motion by Mr. Gardner to approve the Special Exception Use request per Section 16.8.22.3 by Lisa Ash with the following conditions:

1. 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.
2. The erection of a fence as outlined by the applicant.

Seconded by Mr. Brake.

Amendment proposed by Vice Chair Leontakianakos to include the following conditions:

1. The owner must mitigate potential obnoxious odors from the accumulation of pet waste, and must mitigate against potential obnoxious noise.
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 942 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 dog day care with limited overnight care.
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.
11. The owner may not exceed more than seven canines in her care at any one time.

The proposed amendment was accepted by Mr. Gardner. Seconded by Chair Timko.

Motion passed 5-0-0 by roll call vote [Yes: Gardner, Brake, Fitzpatrick, Leontakianakos; Timko; No: --; Abstain: --]

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

Chair Timko and Vice Chair Leontakianakos read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) Lisa Ash, applicant, at 22 Folcutt Road requested a Special Exception Use per 16.8.22.3 for a Major Home Occupation for dog day care services (2) She is seeking approval with limited overnight care. (3) The Board heard from Code Enforcement, the applicant, five members of the public and one email from the public was read. (4) The Board found they had the authority to hear the request per Section 16.6.4.D.1. (5) The Board used the criteria set forth in the Basis for Decision Section 16.8.22.3. (6) A motion to approve the request was proposed, amended and passed with 5 votes in the affirmative. (7) The applicant indicated that the property would be fenced and take every effort to mitigate any excessive noise. (8) The residential type neighborhood includes numerous dogs and therefore noise from dogs would not be out of place in such a neighborhood.

Motion to accept the Findings of Fact made by Chair Timko. Seconded by Mr. Brake.

Motion passed 5-0-0 by roll call vote [Yes: Gardner, Brake, Fitzpatrick, Leontakianakos, Timko; Nay: --; Abstain: --]

Conclusions of Law: (1) The Board had the authority to hear the Special Exception Use Request pursuant to section 16.6.4. (2) The Board considered the requirements for a Special Exception use set forth in Section 16.8.22.3. (3) The Board also considered the Factors for Determination set forth in Section 16.6.6. (4) The Board determined that

the applicant met all the requirements for a Major Home Occupation and the Special Exception Use request. (5) The Board granted the request with enumerated conditions.

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

**b. Harrison E. Lemont Management Co, Inc, owner 447 US Route 1, requesting a Miscellaneous Variation Request to approve a non-conforming structure in the Mixed Use (MU) zone per Section 16.6.4.C(1) and 16.7.3.3.A of the Town Code.**

- Chair Timko stated the hearing was noticed in the Portsmouth Herald on January 4<sup>th</sup>, 2020. Mr. Brake recused himself from the decision. The applicant was notified that though the Board still had a quorum, the approval would require four like votes. The applicant's representative stated they would like to proceed. The Board's authority to hear the request was affirmed by Vice Chair Leontakianakos. Mr. Alfis was invited to present the staff report. The Board had several questions for Mr. Alfis. The applicant's representative, Evan Lemont, was invited to the podium to state the details of their request. Tom Emerson, architect for the applicant also stated details of the request. The Board had several more questions for Mr. Alfis. The Board invited members of the public to comment. The Board closed the public hearing and entered discussion.

Motion by Vice Chair Leontakianakos to approve the Miscellaneous Variation Request to per Code Section 16.6.4.C(1) and Section 16.7.3.3.A. Motion was seconded by Mr. Fitzpatrick. Motion failed 3-1-0 [Yes: Fitzpatrick, Leontakianakos, Timko; No: Gardner; Abstain: --]

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

Chair Timko and Vice Chair Leontakianakos read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) Applicant Harrison E. Lemont Management Co, Inc, owner of 447 US Route 1, requesting a Miscellaneous Variation Request to approve a non-conforming structure in the Mixed Use zone per Section 16.6.4.C(1) and Section 16.7.3.3.A. (2) The Board heard from Code Enforcement, the applicant's representative and the applicants architect. (3) The Board considered all factors set forth in LUDC 16.7.3.5.A(1). (4) The proposed structure is no more non-conforming than the previous structure. (5) The standard that the Board has used in the past is that if the structure is no more non-conforming, the Board would generally approve such a request. (6) The

Board had five members present, Mr. Brake recused himself and the applicant decided to proceed with only four voting members with four like votes required to pass. (7) It was an architectural error that resulted in the 1.7' setback encroachment. (8) The motion failed, three votes in the affirmative, one vote in the negative.

Motion to accept the Findings of Fact made by Mr. Gardner. Seconded by Chair Timko. Motion passed 4-0-0 by roll call vote [Yes: Gardner, Fitzpatrick, Leontakianakos, Timko; Nay: --; Abstain: --]

Conclusions of Law: (1) The Board had the authority to hear the Special Exception Use Request pursuant to section 16.6.4.C(1) and 16.7.3.3.A. (2) The Board found that the proper notice of this request had been issued. (3) The motion to approve the request failed.

Motion to accept the Conclusions of Law made by Vice Chair Leontakianakos. Seconded by Mr. Gardner. Motion passed 4-0-0 by roll call vote [Yes: Gardner, Fitzpatrick, Leontakianakos, Timko; Nay: --; Abstain: --]

Mr. Brake rejoined the Board at 7:53pm.

**c. Ryan Kanteres, on behalf of owner Town of Kittery, requesting a Miscellaneous Variation Request to expand a non-conforming structure at 8 Wentworth Street in the Mixed Use – Kittery Foreside (MU-KF) zone per Section 16.6.4.C(1) and 16.7.3.3.B of the Town Code**

- The applicant was notified that the Board only had five members present and approval would require four like votes. The applicant's representative chose to proceed. The Board's authority to hear the request was affirmed by Vice Chair Leontakianakos. Mr. Alfis was invited to present the staff report. The applicant's representative, Scott Simon, was invited to the podium to present the details of their request. The Board had several questions for Mr. Simon. Kendra Amaral, Town Manager, took the podium to answer several Board Member questions. The public were invited to comment. One member of the public took the podium to speak in favor of the design as it was presented. Ms. Amaral took the podium to respond to public questions and comments. The Board closed the public hearing and entered discussion. Both Mr. Alfis and Mr. Simon provided clarification on questions raised by Board members during discussion.

Motion by Mr. Fitzpatrick to approve the Miscellaneous Variation Request to expand a non-conforming structure at 8 Wentworth Street in the Mixed Use- Kittery Foreside zone to allow for both the expansion of the non-conforming structure and a flat roof on the South,

Southwest and Southeast portions of the building. Motion was seconded by Mr. Brake. Motion passed 5-0-0 [Yes: Gardner, Brake, Fitzpatrick, Leontakianakos, Timko; No: --; Abstain: --]

Chair Timko and Vice Chair Leontakianakos read the following Findings of Fact and Conclusions of Law into the record:

Findings of Fact: (1) The Board heard from Scott Simon, representing the applicant Ryan Kanteres to request a Miscellaneous Variation to expand a non-conforming structure at 8 Wentworth Street in the Mixed Use – Kittery Foreside zone per Section 16.6.4.C(1) and 16.7.3.3.B of the Town Code. (2) The Board heard from the Code Enforcement Officer and the Kittery Town Manager. (3) The Board used the Basis for Decision. (4) The existing building exceeds the allowable height in the Mixed Use – Kittery Foreside zone. (5) The height will remain unchanged as part of the project. (6) The existing structure will remain the highest point of the structure. (7) The proposed building increases the footprint by more than 30%. (8) The project meets the applicable requirements of the code with the exception of the specific provision of Section 16.3.2.15.D.4(e)[2]. (9) The Board considered the statements that the flat roof is required to preserve the historic nature of the building.

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

Conclusions of Law: (1) The Board found it had authority to hear this Miscellaneous Variation Request pursuant to Code Section 16.6.4.C(1). (2) The Board determined that meeting the requirements of Section 16.3.2.15.D.4(e)[2] would contradict the National Parks Service Technical Brief on recommendations to additions to historic structures. (3) The Board approved the Miscellaneous Variation Request.

Motion to accept the Conclusions of Law made by Vice Chair Leontakianakos. Seconded by Mr. Gardner. Motion passed 5-0-0 by roll call vote [Yes: Gardner, Brake, Fitzpatrick, Leontakianakos, Timko; 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**

## 8. ACCEPTANCE OF PREVIOUS MINUTES

- December 10, 2019

Motion made by Mr. Gardner to accept the minute of December 10, 2019 as presented.

Seconded by Mr. Brake. Motion passed 5-0-0 by roll call vote [Yes: Gardner, Brake, Fitzpatrick, Leontakianakos, Timko; Nay: --; Abstain: Gardner]

## 9. BOARD MEMBER OR CEO ISSUES OR COMMENT

- Mr. Gardner presented Chair Timko with a thumb drive containing information that he received at a seminar presented by Jensen Baird Gardner & Henry.

## 10. ADJOURNMENT

Motion by Mr. Gardner to adjourn. Second by Mr. Brake. Motion passed 5-0-0 by voice vote [Aye: Gardner, Brake, Fitzpatrick, Leontakianakos, Timko; Nay: --; Abstain: --]

The Kittery Board of Appeals meeting of January 14, 2020 adjourned at 8:29 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>.*