



Kittery, ME

04/05/2022

BOA-22-1

Board of Appeals Application

Status: Active

Date Created: Mar 10, 2022

Applicant

Melissa Harrington
sundaysupper.me@gmail.com
21 Litchfield Rd.
Kittery, Maine 03904
6037626064

Location

21 LITCHFIELD ROAD
KITTERY, ME 03904

Owner:

Chinburg Builders
3 Penstock Way Newmarket , NH 03857

Property Owner Information

Full Legal Name(s)

Eric Chinburg

Mailing Address

3 Penstock Way

State

NH

Phone Number

6038685995

City

Newmarket

Zip Code

03857

Email Address

echinburg@chinburg.com

Applicant if different from Property Owner

Full Legal Name (s)

Melissa Harrington

Mailing Address

21 litchfield Rd .

State

ME

City

Kittery

Zip Code

03904

Phone Number

6037626064

Email Address

sundaysupper.me@gmail.com

Property Information**Street Address**

21 Litchfield Rd

Lot size in acreage

3.8

Tax Map

46

Lot Number

6-1

Base Zone(s)

residential rural

Overlay Zone(s)

no

Is the Subject Property located within a Shoreland Overlay or Resource Protection Overlay?

No

Is the Subject Property located in a floodplain?

No

Does the Subject Property have any outstanding code violations?

No

If the Subject Property has an outstanding code violation, will approval for your request by the Board of Appeals provide resolution?

No

Application to Appear before the Board of Appeals

I wish to appear before the Board of Appeals to request:

A Special Exception Use Request**Special Exception Use Request****Title**

Special Exception Request

Chapter and Section

16.2.12

Special Exception Use Request Affirmations

Please check all boxes to confirm

Use request 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; and, 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.



Proposed use may: 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 surrounding real estate; the availability of utilities and transportation; the availability of schools and hospitals; traffic conditions; and any other relevant factors.



Proposed use may: 3. Not give rise to any grave concern regarding the expectations as listed above.



Proposed use may: 4. Be subject to such additional conditions as the Board deems necessary.



I understand that the Board of Appeals may hear and decide a special exception use request within the limitations set forth in Title 16.



I understand that the Board of Appeals 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.



I understand that the Board of Appeals 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, Section 2.12.D(4); 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, surliness, etc.



Will not even hear my appeal unless I can show that I have "standing" to have my complaint heard.



Purpose of establishing by 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 the Superior Court.



Special Exception Use Request Statements

Describe the general nature of the request:

I understand from speaking with Dave Evans at the code enforcers office that my request has been flagged for appeal because I wish to operate a catering buisness in my barn that will occassionally host small events of less than 25 people, all of which will be private events not open to the public and that hosting guests might not be allowed under the current zoning.

Certification of Application

Applicant's Signature

Melissa A Harrington
03/10/2022




Name of Applicant

Melissa Harrington

Date

03/10/2022

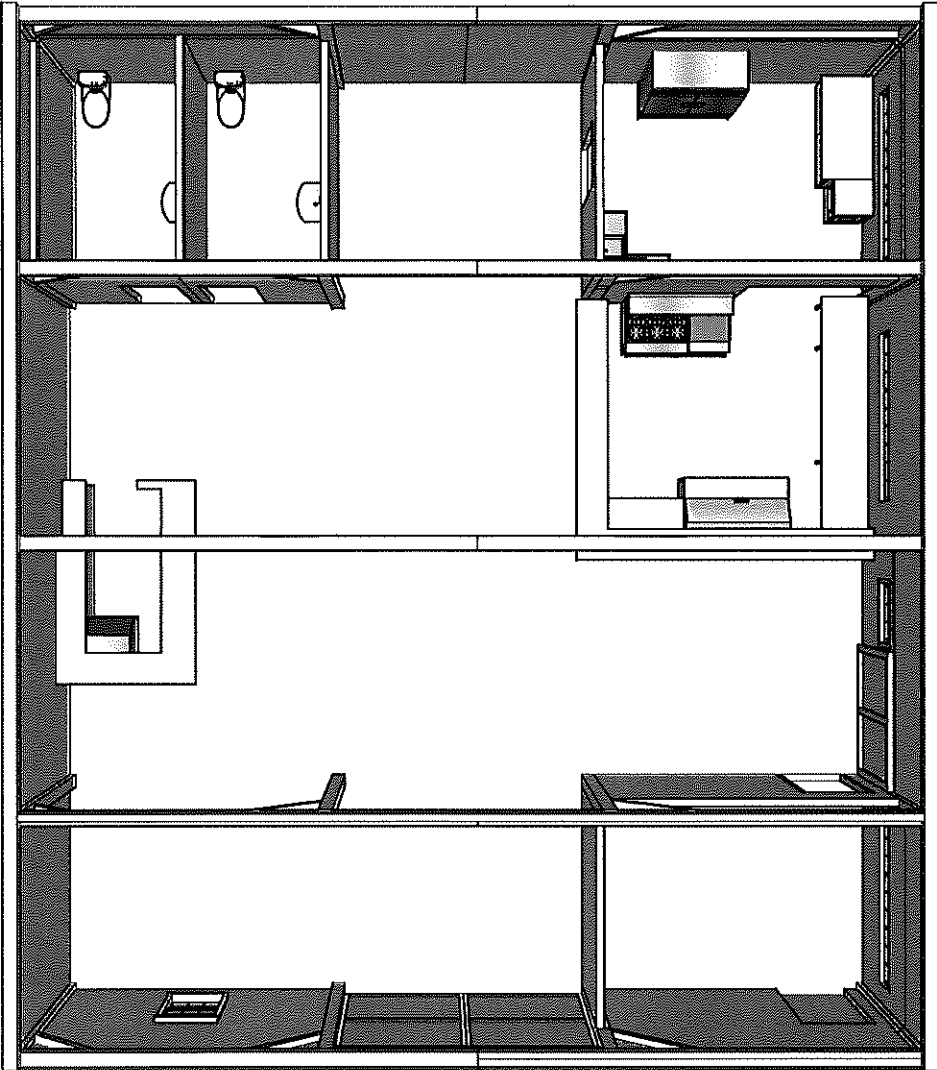
Attachments

-  Sunday Supper Concept Drawings (1).pdf
Uploaded by Melissa Harrington on Mar 10, 2022 at 3:01 pm
-  Sunday Supper Concept Drawings (1).pdf
Uploaded by Melissa Harrington on Mar 10, 2022 at 3:08 pm
-  Sunday Supper Concept Drawings (1).pdf
Uploaded by Melissa Harrington on Mar 10, 2022 at 3:01 pm

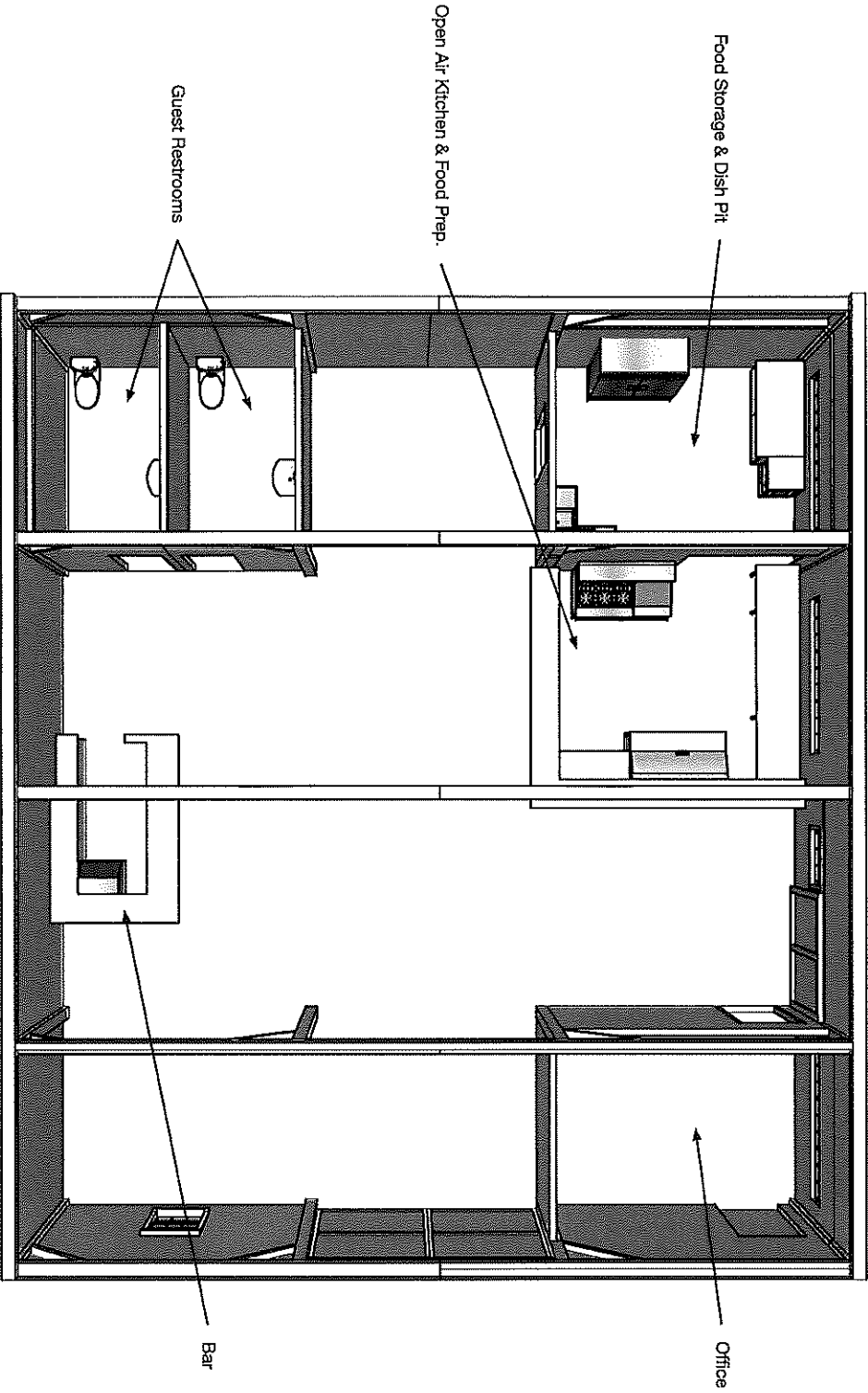
Sunday Supper || *Concept Drawings*

June 21st, 2021

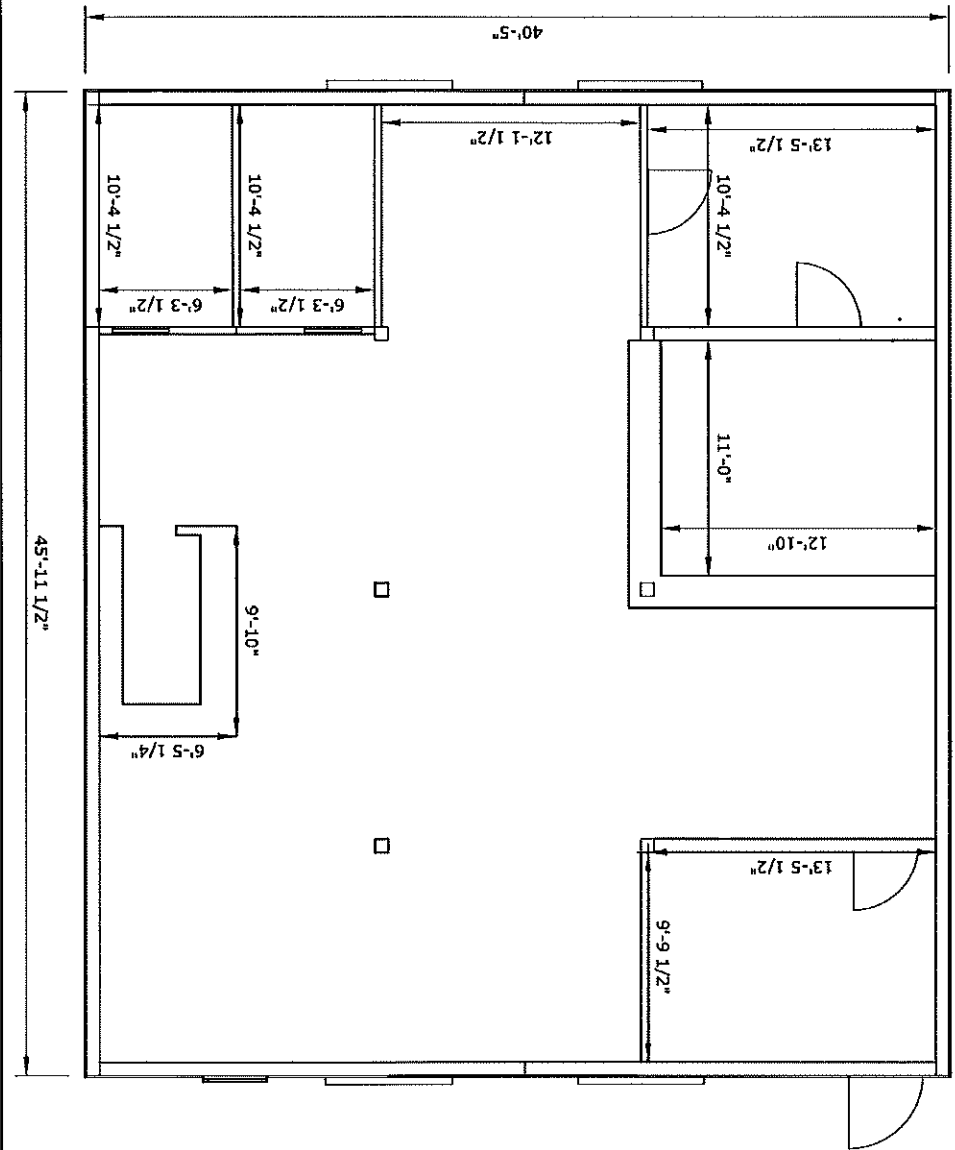
Floor Plan Overview



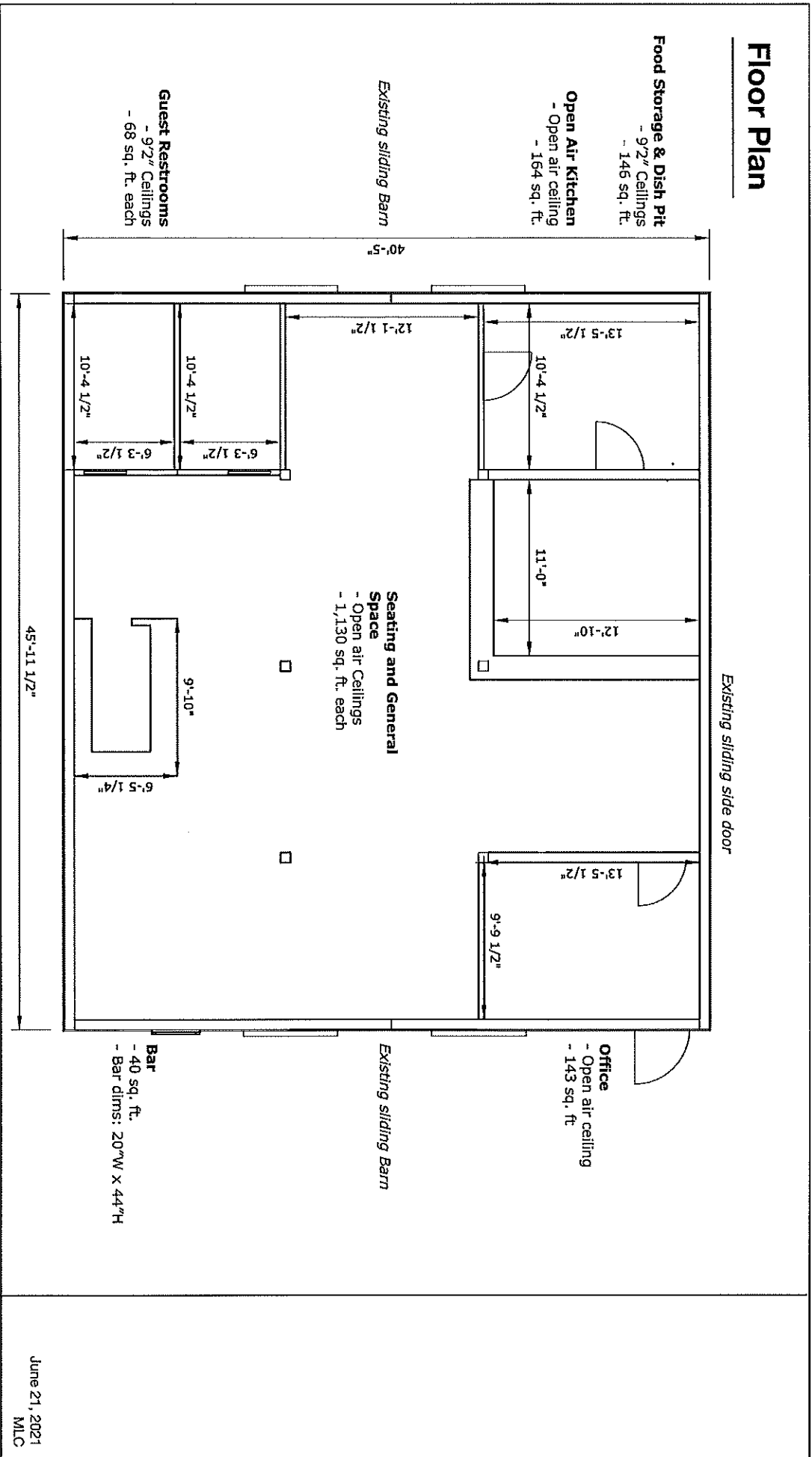
Floor Plan



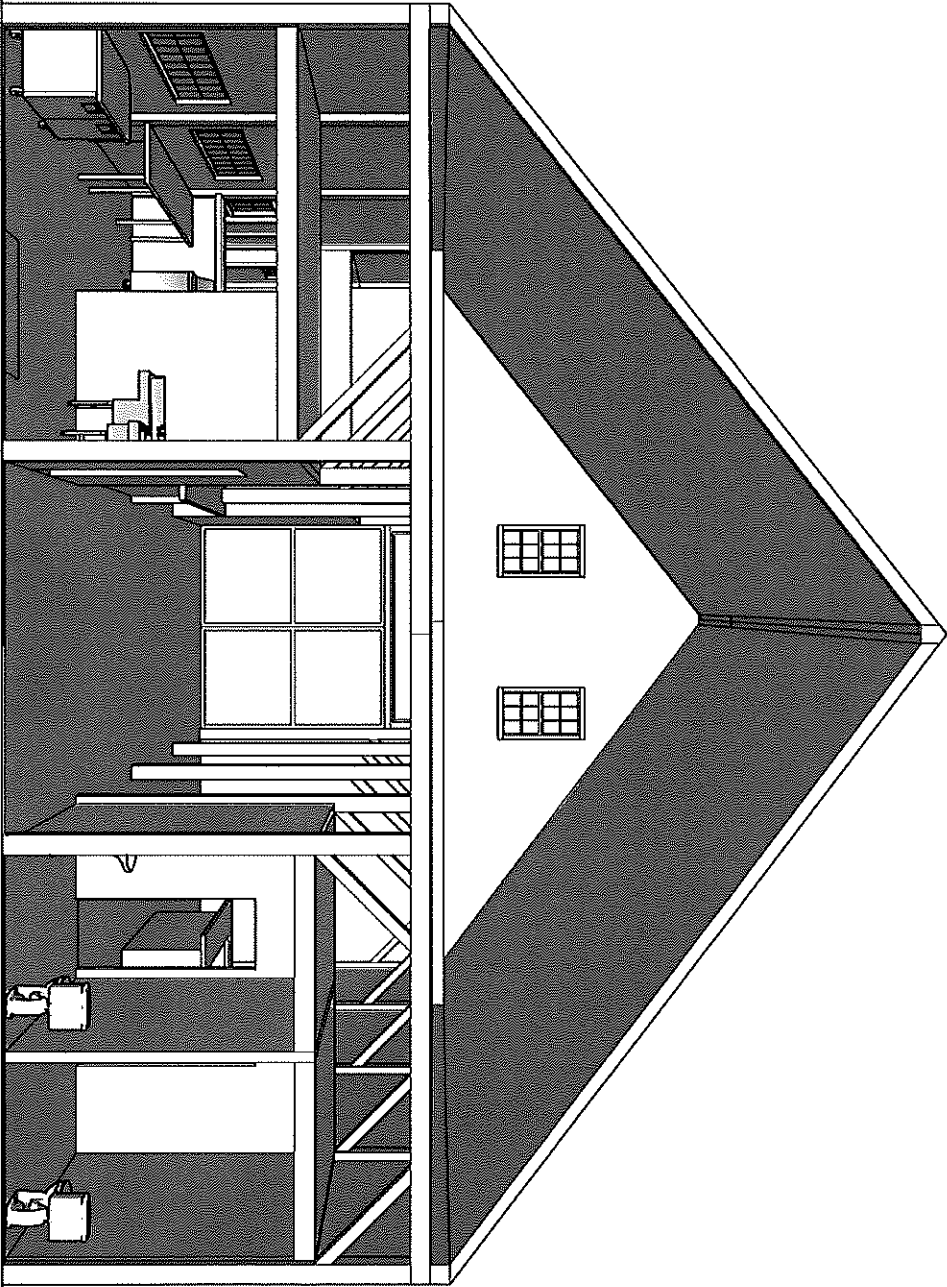
Floor Plan



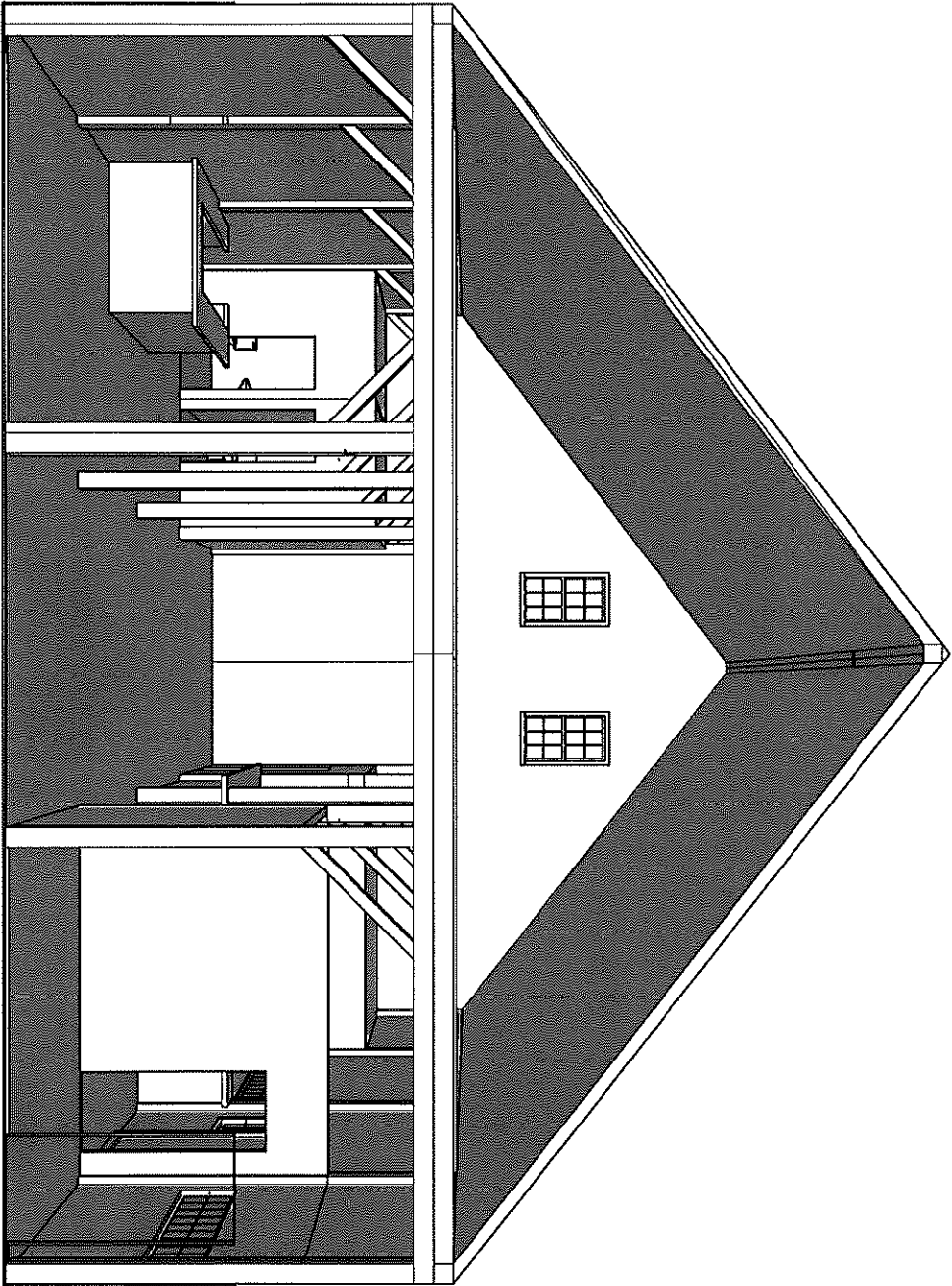
Floor Plan



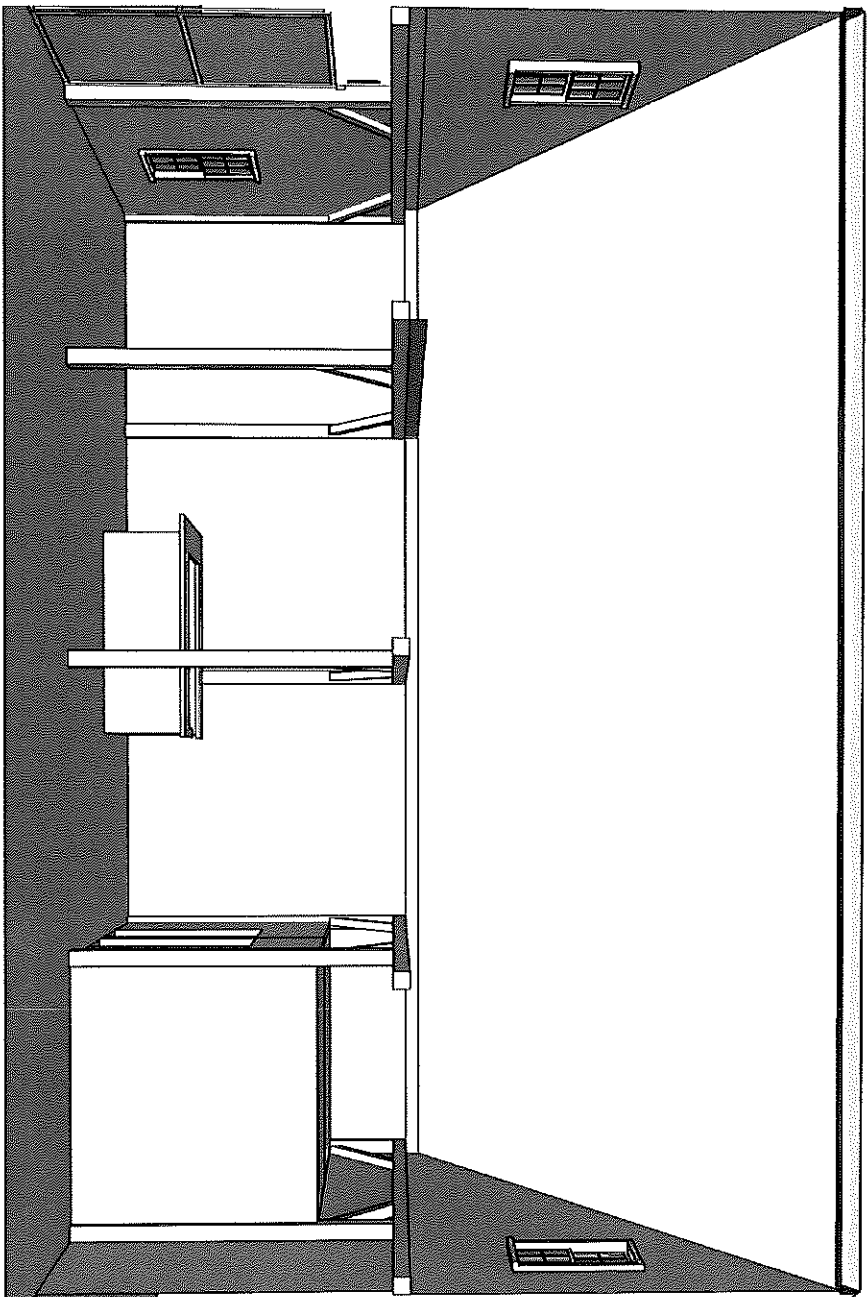
Front Cross Section



Rear Cross Section

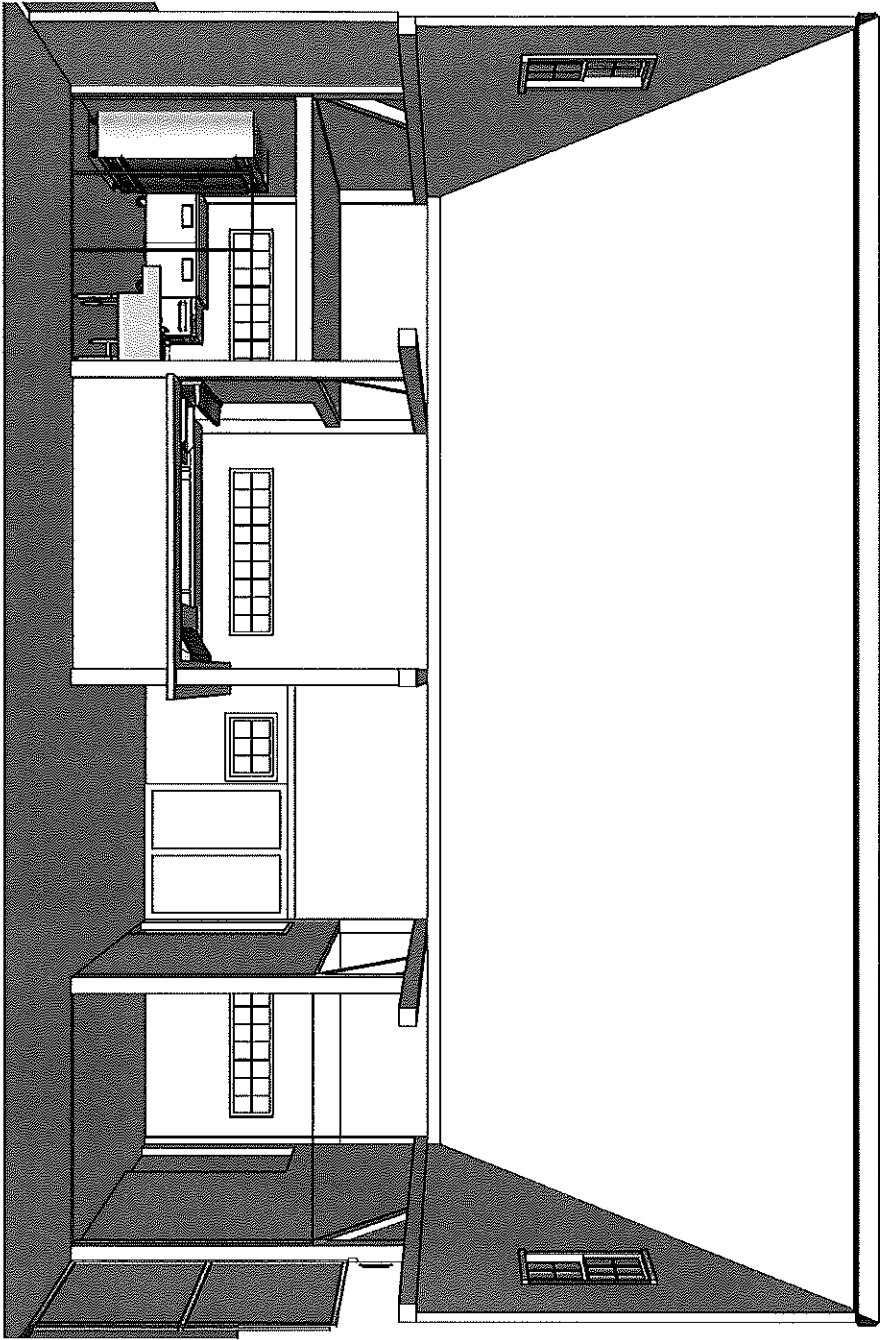


Bar Wall Cross Section



June 21, 2021
MLC

Kitchen Wall Cross Section





PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT

BOA Meeting Date: April 12, 2022

Item #: SE2022-01

STAFF REPORT – 21 LITCHFIELD ROAD – SPECIAL EXCEPTION USE REQUEST /
MAJOR HOME OCCUPATION

Project Name: 21 Litchfield Road

Applicant: Melissa Harrington

Owner: Chinburg Development LLC

Proposed Development: Major home occupation: catering/small event hosting

Requests: Special Exception Use request per Section 16.4.10.C(2) for a Major Home Occupation to operate a catering/small event hosting business in the Residential Rural (R-RL) zone.

Site Addresses: 21 Litchfield Road

Map & Lot Numbers: Map 46 Lot 6



Current Zoning:

Residential - Rural (R-RL) – The purpose of the R-RL zone is 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.

The existing dwelling use is permitted by right in the zone. The following uses are permitted as a Special Exception Use in the R-RL Zone: (2) Home Occupation, Major.

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

District Standards:

Residential – Suburban Zoning District Standards			
Land Area per DU (min)	40,000 sf	Front Yard Setback (min.)	40 feet
Building Coverage (max.)	20%	Rear Yard Setback (min.)	20 feet
Lot Size (min)	40,000 sf	Side Yard Setback (min.)	20 feet

Current Use: Dwelling unit with detached barn.

Surrounding Land Uses:

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

East: Transportation – Maine Turnpike, Interstate 95

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

South: Transportation – Maine Turnpike, Interstate 95

Future Land Use:

The subject property is located within a Limited Growth Area in the Future Land Use Map, which is defined as areas that could accommodate a minimal amount of growth.

Site Description:

The subject property consists of approximately 165,548 square feet (3.8 acres) located along the Eastern right-of-way of Litchfield Road. The property is zoned Residential – Rural (R-RL) and is a legally conforming lot. The property is not located in the Shoreland Overlay Zone, though their neighbors to the West are. The lot contains one conforming single-family dwelling with approximately 2,416 square feet of living area and a barn containing approximately 1,920 square feet of gross area, for a total of 4,336 square feet of residential area.

History of the Property:

The single-family dwelling unit and barn were constructed in approximately 1890 on approximately 16.73 acres. In 2021 the property was subdivided into 8 lots, with the original house and dwelling retaining 3.8 acres. The subdivision plan is attached to the staff report.

Description of the Issue:

The owner/applicant wishes to operate a catering business out of the barn, which would also occasionally include events of no more than 25 people. The proposed business would use the entire area of the barn or roughly 44% of the available area of the two residential structures. There

is room for roughly 20 cars to park in the on-site driveway and parking area.

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 special exception use 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.” Major home occupations as an accessory use are allowed only as a Special Exception Use in the Residential – Rural (R-RL) zone.

- (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 Residential – Rural containing the same single dwelling use as the subject property 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 the same as adjoining properties and there are no use restrictions between adjacent dwelling

units in the zone.

- (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 in an existing structure, 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. 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 in the driveway.

- (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 a private septic system. An upgraded septic system is currently being designed.

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

The proposed use should not produce any obnoxious gases, odors, smoke or soot.

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

The use should not cause any 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 has suitable existing space for roughly 20 off-street parking spaces.

- (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;*

No hazards will exist.

- (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 legally conforming lot of record.

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

The home occupation will be contained within an existing structure and will not need additional screening.

- (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;

No existing pedestrian facilities are present in this area.

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

The proposed use should not create any nuisances.

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

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.

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 catering business on an existing lot located in the R-RL zone, with the following conditions:

- 1. 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.**
- 2. 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.**
- 3. No other major home occupations may be conducted on the premises.**
- 4. One (1) sign no greater than eight (8) square feet is allowed for the home occupation.**
- 5. 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.**
- 6. 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.**

- 7. All refuse and recyclables must be stored in containers that are screened from view of abutting properties and from streets.**

- 8. 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.**

