

Town of Kittery
200 Rogers Road, Kittery, ME 03904
Board of Appeals Meeting Agenda
Virtual Meeting
Tuesday, April 13, 2021
Regular Meeting – 6:30 P.M.

The public may submit public comments for PUBLIC HEARING agenda items via email, US Mail, or by dropping written comments in the drop box outside the Town Hall entrance. Emailed comments should be sent to ceo@kitteryme.org.

The public may also participate in the meeting via Zoom webinar. Register in advance for the webinar at https://us02web.zoom.us/webinar/register/WN_tJLZxC2WRdWKtTs8MFivXw.

After registering, you will receive a confirmation email containing information about joining the webinar. Webinar participants will be able to submit questions and comments during a public hearing.

Comments received by noon on the day of the meeting will become part of the public record and may be read in whole or in summary by the Board Chair.

- 1. Call to Order; Introductory; Roll Call**
- 2. Pledge of Allegiance**
- 3. Agenda Amendment and Adoption**
- 4. Executive session (if required)**
- 5. Public Hearings**
- 6. Unfinished Business**
- 7. New Business**
- 8. Acceptance of Previous Minutes**
 - November 24, 2020
 - December 8, 2020
- 9. Board Member or CEO Issues or Comment**
 - Mr. Alfis to discuss potential changes to staff report to simplify Findings of Fact & Conclusions of Law.
 - Mr. Alfis to discuss potential changes to the Medical Marijuana Licensed Caregiver approval process.
 - Discussion on topics the Board would like clarification or training on.
- 10. Adjournment**

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 (could not participate due to technical issues), Charles Denault III, Jeff Brake, Cameron Hamm, Suzanne Jones, Rick Nohmer, April Timko

Board Members Absent:

Staff Present: Craig Alfis, Code Enforcement Officer

2. PLEDGE OF ALLEGIANCE

- Chair Timko welcomed Mr. Cameron Hamm to the Board.

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

- **Derek Durbin on behalf of 74 State Road Redevelopment LLC, owner 74 State Road, requesting a Special Exception to convert the existing commercial building into apartments in the B-L Zone per Code Section 16.3.2.8.C(6).**
- Ms. Jones confirmed the Board has the authority to hear the appeal. Mr. Alfis presented the staff report. Mr. Derek Durbin presented the details of the appeal. The Board had several questions for Mr. Durbin and Mr. Alfis. Mr. Jay Prewitt, owner 74 State Road also answered some questions from the Board. No members of the public spoke. The Board entered discussion.

Motion to continue the public hearing and vote until next meeting made by Ms. Jones. Seconded by Mr. Denault. Motion passed 6-0-1 by roll call vote [Yes: Denault, Hamm, Brake, Nohmer, Jones, Timko; No: --; Abstain: Gardner]

6. UNFINISHED BUSINESS

7. NEW BUSINESS

8. ACCEPTANCE OF PREVIOUS MINUTES

- November 10, 2020

Motion to accept the meeting minutes made by Ms. Jones. Seconded by Mr. Denault.
Motion passed 5-0-2 by roll call vote [Yes: Denault, Brake, Nohmer, Jones, Timko; No: --;
Abstain: Gardner, Hamm]

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

- Chair Timko asked the Board to email her or Mr. Alfis if they had any suggestions or comments to help the meeting flow smoother in the future.
- Mr. Alfis presented the 2021 calendar.
- Mr. Brake offered up that since the Board will be meeting in December, that Board Officer elections can be held and should be on the agenda.
- Mr. Hamm let the Board know that he will be out of the State for the meetings in January, but will be able to participate in the meeting via Zoom.

10. ADJOURNMENT

Motion by Mr. Brake to adjourn. Second by Ms. Jones. Motion passed 5-1-1 by roll call vote [Yes: Brake, Hamm, Nohmer, Jones, Timko; No: Denault; Abstain: Gardner]

The Kittery Board of Appeals meeting of November 24, 2020 adjourned at 7:15 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>.

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 (could not participate initially due to technical issues, was able to join at 6:38pm), Charles Denault III, Jeff Brake, Cameron Hamm, Suzanne Jones, Rick Nohmer, April Timko

Board Members Absent:

Staff Present: Craig Alfis, Code Enforcement Officer

2. PLEDGE OF ALLEGIANCE

3. AGENDA AMENDMENT AND ADOPTION

4. EXECUTIVE SESSION

5. PUBLIC HEARINGS

- **Derek Durbin on behalf of 74 State Road Redevelopment LLC, owner 74 State Road, requesting a Special Exception to convert the existing commercial building into apartments in the B-L Zone per Code Section 16.3.2.8.C(6). [continued from previous meeting]**
- No comments were received from the public. Chair Timko closed the public hearing. Mr. Alfis gave a brief overview of the project. The Board had several questions for Mr. Alfis.

Motion to approve the applicants Special Exception Use request with the conditions noted in the staff report made by Mr. Gardner. Seconded by Ms. Jones. Motion passed 7-0-0 by roll call vote [Yes: Gardner, Denault, Hamm, Brake, Nohmer, Jones, Timko; No: --; Abstain: --]

Chair Timko notified the Board of their right to reconsider and the public of their right to appeal.

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

Findings of Fact: (1) Derek Durbin on behalf of 74 State Road Redevelopment LLC, requested a Special Exception Use Request to convert an existing commercial building at 74 State Road into apartments. (2) The property is located in the B-L zone. (3) The Board has the authority to hear this request pursuant to Section 16.3.2.8.G.6. (4) The Board heard testimony from the Code Enforcement Officer. (5) The building currently contains 15 commercial units most of which are unoccupied and 50 parking spaces. (6) Under current zoning, the applicant would be allowed to build 12 residential units. (7) The property has frontage on both State Road and Village Green Drive. (8) Staff recommended approval with conditions as noted in the staff report. (9) The Board voted unanimously to approve. (10) The Board considered the Factors for Consideration as set forth in Section 16.6.6 in making their decision. (11) Notice of the hearing appeared in the Portsmouth Herald on November 17th and notice was mailed to abutters on November 18th.

Motion to accept the Findings of Fact made by Mr. Gardner. Seconded by Ms. Jones. Motion passed 7-0-0 by roll call vote [Yes: Gardner, Denault, Hamm, Brake, Nohmer, Jones, Timko; No: --; Abstain: --]

Conclusions of Law: (1) The Board has the authority to hear a Special Exception Use Request per Section 16.6.4.D. (2) Section 16.3.2.8.C(6) permits an apartment building by Special Exception. (3) The Board considered the Basis for Decision and Factors of Consideration set forth in Section 16.6.6.

Motion to accept the Conclusions of Law made by Mr. Gardner. Seconded by Mr. Denault. Motion passed 7-0-0 by roll call vote [Yes: Gardner, Denault, Hamm, Brake, Nohmer, Jones, Timko; No: --; Abstain: --]

6. UNFINISHED BUSINESS

7. NEW BUSINESS

- Election of Board Officers
 - Chair
 - Mr. Gardner nominates Ms. Timko, Seconded by Ms. Jones. Motion passed 6-0-1 by roll call vote [Yes: Gardner, Denault, Hamm, Brake, Nohmer, Jones; No: --; Abstain: Timko]
 - Vice Chair
 - Ms. Jones nominates Mr. Brake, Mr. Gardner nominates Mr. Hamm,
 - Motion made by Ms. Jones to approve Mr. Brake as Vice Chair, Seconded by Mr. Nohmer. Motion fails 3-3-1 by roll call vote [Yes:

- Jones, Nohmer, Timko; No: Gardner, Denault, Hamm; Abstain: Brake]
- Motion made by Mr. Gardner to approve Mr. Hamm as Vice Chair, Seconded by Ms. Jones. Motion fails 2-4-1 by roll call vote [Yes: Gardner, Denault, Timko; No: Brake, Nohmer, Jones, Timko; Abstain: Hamm]
 - Mr. Denault nominated by Ms. Timko, Seconded by Ms. Jones. Mr. Denault declined the nomination.
 - Motion made by Mr. Denault to approve Mr. Brake as Vice Chair, Seconded by Ms. Jones. Motion Passes 4-2-1 by roll call vote [Yes: Denault, Nohmer, Jones, Timko; No: Gardner, Hamm; Abstain: Brake]
- Secretary
 - Mr. Gardner nominates Ms. Jones, Seconded by Mr. Nohmer. Motion passed 6-0-1 by roll call vote [Yes: Gardner, Denault, Hamm, Brake, Nohmer, Timko; No: --; Abstain: Jones]

8. ACCEPTANCE OF PREVIOUS MINUTES

- Mr. Alfis explained that the minutes from both the November 24 and December 8th would be circulated together as they were for the same request.

9. BOARD MEMBER OR CEO ISSUES OR COMMENT

- Chair Timko let the Board know that the Kittery Land Issues Committee is looking for a member of the Board of Appeals to serve on the committee. Ms. Jones volunteered

10. ADJOURNMENT

Motion by Mr. Gardner to adjourn. Second by Mr. Brake. Motion passed 7-0-0 by voice vote [Yes: Brake, Hamm, Nohmer, Jones, Timko; No: Denault; Abstain: Gardner]

The Kittery Board of Appeals meeting of December 8, 2020 adjourned at 7:12 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

**TOWN OF KITTERY, MAINE
BOARD OF APPEALS
Virtual Meeting – 6:30PM**

**UNAPPROVED
December 8, 2020**

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>.