

**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, Charles Denault III, Jeff Brake, Barry Fitzpatrick, Suzanne Jones, April Timko

**Board Members Absent:** Louis Leontakianakos

**Staff Present:** Craig Alfis, Code Enforcement Officer

**2. PLEDGE OF ALLEGIANCE**

**3. AGENDA AMENDMENT AND ADOPTION**

**4. EXECUTIVE SESSION**

**5. PUBLIC HEARINGS**

- **Anita Loomis, owner, 121 Dennett Road, requesting a Special Exception Use request per Section 16.3.2.2.C(7) for a Major Home Occupation to operate a fine art gallery in the Residential Suburban (R-S) zone.**
- Chair Timko advised the applicant that one Board member is absent and four like votes are needed in order to have their appeal granted. The applicant decided to continue with the hearing. Ms. Jones confirmed the Board has the authority to hear the appeal. Mr. Alfis presented the staff report. Ms. Anita Loomis, presented the details of the appeal. No members of the public spoke. Chair Timko closed the public hearing at 6:39 PM. The Board entered discussion.

Motion by Mr. Gardner to approve the Special Exception Use request with the following conditions:

1. That the applicant complies with all Major Home Occupation requirements as set out in the Code.
2. If sales are of a type other than by appointment only that an appropriate parking plan be submitted to the Code Enforcement Officer.

Seconded by Mr. Brake. Motion passed 6-0-0 by roll call vote [Yes: Gardner, Denault, Fitzpatrick, Brake, Jones, Timko; No: --; Abstain: --]

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

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

Findings of Fact: (1) The Board heard testimony from the applicant, Anita Loomis, owner of 121 Dennett Road requesting a Special Exception Use request per Section 16.3.2.2.C(7) for a Major Home Occupation to operate a fine art gallery in the Residential Suburban (R-S) zone. (2) The Board also heard testimony from the Code Enforcement Officer that the current zoning is Residential Suburban (R-S) and is within the zones purpose. (3) The staff report recommended approval with conditions. (4) The subject property consists of approximately 65,300 square feet (1.5 acres) located along the Southern right-of-way of Dennett Road. The property is zoned Residential – Suburban (R-S) and is a legally non-conforming lot. The property is not located in the Shoreland Overlay Zone, though their neighbors to the South are. The lot contains one conforming single-family dwelling with approximately 1,496 square feet of living area and an ADU containing approximately 700 square feet of living area. (5) The single-family dwelling unit was constructed in approximately 1955. An in-law apartment was added in 1983 and converted into an ADU in 2020. The house is on private septic. (6) The owner/applicant wishes to operate fine art gallery out of her home which will also include private art lessons and retail sale of art created by both the owner and other professional artists. The proposed gallery would use roughly 440 square feet of the existing dwelling, or 29%. (7) The Board considered the Basis for Decision and Factors for Consideration set out in Section 16.6.6. (8) The applicant can meet the requirements for a Major Home Occupation.

Motion to accept the Findings of Fact made by Chair Timko. Seconded by Ms. Jones. Motion passed 6-0-0 by roll call vote [Yes: Gardner, Denault, Fitzpatrick, Brake, Jones, Timko; No: --; Abstain: --]

Conclusions of Law: (1) The Board determined they had the authority to hear the request under 16.6.4.D. (2) The Board considered the Basis for Decision and Factors for Consideration as set out in Section 16.6.6. (3) The applicant could meet the requirements for a Major Home Occupation set out in Section 16.8.22.3. (4) The appeal was granted with the conditions that the applicant complies with all Major Home Occupation requirements as set out in the Code and if sales are of a type other than by appointment only that an appropriate parking plan be submitted to the Code Enforcement Officer.

Motion to accept the Conclusions of Law made by Ms. Jones. Seconded by Mr. Denault. Motion passed 6-0-0 by roll call vote [Yes: Gardner, Denault, Fitzpatrick, Brake, Jones, Timko; No: --; Abstain: --]

## 6. UNFINISHED BUSINESS

## 7. NEW BUSINESS

## 8. ACCEPTANCE OF PREVIOUS MINUTES

- August 25, 2020
- September 8, 2020

Motion to accept the minutes made by Mr. Denault. Second by Ms. Jones. Motion passed 4-0-2 by voice vote [Aye: Gardner, Denault, Brake, Fitzpatrick, Timko; Nay: --; Abstain: Fitzpatrick, Jones]

## 9. BOARD MEMBER OR CEO ISSUES OR COMMENT

- Mr. Fitzpatrick brought forth an issue of an unpermitted deck on Chauncey Creek Road.
- Mr. Fitzpatrick brought forth an issue of a potentially unpermitted art gallery on Pepperrell Road.
- Mr. Gardner pointed out that motions are not necessarily required to be made in the affirmative. Ms. Timko and Mr. Denault offered that motions made in the negative can be confusing as if they fail, then no decision has been made. Ms. Timko recalled that at a workshop the attorneys had advised the Board to make motions in the affirmative to avoid that issue.
- Mr. Alfis offered that there are no appeals or requests for the next meeting. Ms. Timko determined that the next meeting would be cancelled and offered that there are other available formats for meeting such as Zoom and web meetings.

## 10. ADJOURNMENT

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

The Kittery Board of Appeals meeting of September 22, 2020 adjourned at 6:58 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>.*