

**City of Ellsworth
Board of Appeals Minutes
August 24, 2020**

The regular meeting of the Ellsworth Board of Appeals was attended by Members Jeffrey Toothaker, Steve Salsbury, Jarad Wilbur, Steve Shea and Mike Wight. Also in attendance were Dwight Tilton, Larry Gardner, Attorney Roger Huber, Dan MacIntyre and Attorney Ted Small

Call to Order
[6:32PM]

1. **ADOPTION OF MINUTES:** from the July 27, 2020 meeting. Mr. Salsbury motioned to approve the minutes as written. Mr. Wibur seconded the motion and the motion passed with all Members in favor.

Adoption of Minutes

2. **OLD BUSINESS:**

None

* **Item taken out of order** - Mr. Toothaker suggested this item on the agenda be heard before the assessment appeal, which may take longer for presentation and Board consideration.

4. **PUBLIC HEARING AND CONSIDERATION:** Request of Michael Johnson and Malorie Betz for a variance to conduct a home occupation as a marijuana caregiving operation at 1000 Bangor Road. Variance relief sought from the Unified Development Ordinance Chapter 56, Article 8 Sections 819.2. A & B, 819.7 – Performance Standards 1 thru 4, and 819.9. This property is located in the Drinking Water Zone.

Mr. Michal Johnson
& Malorie Betz for
a Home Occupation
Variance.

Mr. Toothaker asked if there was anyone there opposing the variance request. Then stated for the record that he received emails from Beatrice Romer and Laura Nason.

Mr. Johnson approached the podium stating that he and Ms. Betz act as marijuana caregivers and they help a wide variety of patients. With the changes in the law that do not allow patients designation cards to provide to a caregiver or dispensary they want to take the next step to provide quality and cheaper flower concentrates to patients, which they believe patients rightfully deserve. According to discussion with the Code Enforcement Officer's a storefront is limited to six customers/patients a day and seems to be very restrictive on the success of the medical marijuana caregiver program. In addition, they went from an essential business with the State of Maine, to avoid having to travel to obtain their medicine. They are seeking a variance to allow them to operate in a professional manner and set the standard in the industry by continuing to help people in the town of Ellsworth, rather than going to another town like Bangor.

Mr. Toothaker asked if the project was in the shoreland zone and Mr. Johnson said it was in the DW (Drinking Water), not in the shoreland zone. Mr. Toothaker asked Mr. Johnson to tell him why the land in question cannot yield a reasonable return unless the variance is granted. Mr. Johnson stated he is allowed to cultivate on the property and knows he could have an extraction processor, but the cost could be in the area of \$500,000.00. If he were to buy this property in question, and afford to make an honest living, he needs to have the variance granted so they could be able to help as many patients as they can. Mr. Toothaker questioned if he currently owns the property now and Mr. Johnson said he did not. Mr. Johnson does not want to spend the money to buy the property and not be able to use the property to its full potential.

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Mr. Toothaker asked Mr. Johnson why the variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood. Mr. Johnson stated he was not sure how to answer this properly, but it is not as if they are trying to build a dispensary in downtown Ellsworth, this is more of a rural location. He does not feel the presence of a cannabis store would affect the overall wellbeing of the town. Mr. Toothaker confirmed the location of the proposed business/residence on the Bangor Road, which has always been commercial/retail in the past. Mr. Johnson stated they have been looking for a piece of property they could cultivate in, live in and have a storefront. In order to build a facility like this it would set them back financially many years. Mr. Toothaker asked why the granting of the variance would not alter the essential character of the neighborhood. Mr. Johnson said since it is in a rural area, if the town does not want them to have a sign, they would comply. Essentially, nothing will change. They would consider options to make the grow room odor free. Mr. Toothaker ask Mr. Johnson to explain why the hardship is not the result of action taken by the applicant or prior owner. No answer given by Mr. Johnson. Mr. Toothaker asked Mr. Tilton what he knew about the zoning in this area. Mr. Tilton stated it was in DW zone and it is an allowed use as a Home Occupation. Mr. Tilton stated he wanted to clarify a couple of things, 1. The City of Ellsworth has not “opted-in” and Mr. Johnson cannot have a retail store to sell from and 2. He is not aware if you can have a commercial grow operation. Mr. Johnson stated he is not applying for a Tier 1, a commercial grow operation knowing there is a prohibition, and he will not grow over his legal limit. They can grow their legal amount of plants, or go by canopy size, which limits the amount of plants per square feet.

Mr. Toothaker asked if the Board granted the variance if he could do this project. Mr. Tilton said the City may look at this in the future but have held back because we did not know where the State was going. The City wants to make sure the guidelines for medical marijuana are followed and Mr. Johnson agreed. Mr. Tilton stated the City did not want someone having a big operation going and then having the State come in and shut them down half way through because the City did not “opt-in.” Mr. Toothaker asked when we would know what was going on with the program and Mr. Tilton indicated he did not know. Mr. Tilton indicated the problem is that the City put these regulations together quite quickly and with the limiting of the size to 25% of the home and with 500sf of canopy, you need a 2,000sf home. He knows there are problems with the ordinance, and now that we have a City Planner, they can be addressed. Mr. Toothaker asked if the Board could grant the variances to a man that is not the owner and Mr. Tilton pointed out he had a letter from John Phillips.

Mr. Salsbury asked Mr. Tilton if this use was allowed anywhere in town. Mr. Tilton explained it is allowed everywhere, if can meet the guidelines of Home Occupation. It was set up this way because the City did not want Main Street developing into a strip mall of medical marijuana stores. That’s why Mr. Johnson is looking at this lot with a 7,000sf building they can grow in, storefront where they can sell to patients and a home. Mr. Salsbury asked if the Board was rewriting the ordinance by granting this variance. Mr. Tilton said that it is for the Board to decide. Mr. Salsbury stated this is more of a political decision that the Council should decide.

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Mr. Toothaker asked how many plants they could grow. Mr. Johnson stated he could grow 30 mature plants for patients and six for himself. His fiancé can do the same and grow 30 mature plants and six for herself. With an unlimited amount of clones and seedlings within certain size limits. Mr. Shea commented to Mr. Tilton that he understands they are going to have a store outside of the house and wanted to know how that would work. Mr. Tilton said the proposal falls within the same area that you cannot have a home occupation area more than 25% of the size of the home.

Mr. Toothaker stated he did not want to see the appellants invest a lot of money if it is something the State is going to take it away. Mr. Tilton said he did not know what their timeframe is and if they could wait two months for the City to get something through. Mr. Toothaker asked Mr. Johnson if that were something, they would consider. Mr. Johnson stated he would not want to open something without the town’s approval and just wants to put his best foot forward to work with the town. Mr. Toothaker asked Mr. Johnson what his timeframe was to open, because Mr. Tilton seemed to hint that within the next two months the City would have more regulations to work with after the State’s develops guidelines.

Mr. Toothaker suggested allowing the town to develop regulations so the State’s recommendations can be met. This item can be tabled, rescheduled in a couple months and placed at the top of the agenda, in November. Mr. Johnson agreed to work with the town. Mr. Tilton suggested December because it the ordinance has not even been rewritten yet. Mr. Toothaker asked Mr. Johnson if that was too late. Mr. Johnson stated it was not as long as he can work with the town. Mr. Shea brought the idea of six customers per day did not feel the Board could grant a variance for the “use” aspect. The Board concurred and also mentioned the City Council needing to make this an allowed use.

Mr. Toothaker motioned to table the variance request. Mr. Sawyer seconded the motion. The motion passed with five Members in favor, one Associate Member.

Variance tabled

3. PUBLIC HEARING AND CONSIDERATION: Request of Union River Associates Realty Holdings, LLC to appeal assessment valuations on 265 High Street (Tax Map 128 lot 4), 225 High Street (Tax Map 128 Lot 7), 235 High Street (Tax Map 128 Lot 7-ON-0), 245 High Street (Tax Map 128 Lot 7-ON-1), 233 High Street (Tax Map 128 Lot 7-ON-2), and 253 High Street (Tax Map 128 Lot 7-ON-3), located in the Commercial Zone.

Request of Union River Associates Realty Holdings, LLC – Assessment Appeal

Mr. Jarad Wilbur recused himself due to employment with Union River Associates.

Mr. Toothaker requested written arguments from both sides, five pages or less, along with the analysis on the case. Meeting continued in a month on September 28, 2020.

Continued on 9-28-2020

5. ADJOURNMENT: [9:35PM] Mr. Toothaker motioned to adjourn. Mr. Salsbury seconded the motion. The motion passed with all five Members in favor.

Adjournment [9:35PM]

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Date

**Steve Salisbury, Secretary
Ellsworth Board of Appeals**

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