

TOWN OF ST. GEORGE
ZONING BOARD OF APPEALS

**Findings of Fact and Conclusions of
Law/Notice of Decision**

Re: Administrative Appeal of Midcoast Marijuana Company ("MMC") from a Planning Board Decision issued November 9, 2020 (the "Decision") regarding Tax Map 222, Lot 026.

The Board of Appeals ("Board") has received and reviewed the above-cited administrative appeal (the "Appeal") and after hearing and deliberation on February 11 2021, decides as follows:

Background Facts

1. On or about December 21, 2020, MMC filed this Appeal of a decision of the Planning Board dated November 9, 2020, regarding the uses of Tax Map 222, Lot 026.
2. This matter came before the Town of St. George's Board of Appeals for hearing on February 11, 2021. The Board met at the Town Office and conducted the meeting via Zoom videoconference. Present live at the hearing were the Board and the Town of St. George Code Enforcement Officer, Terry Brackett ("CEO"). The Appellant, Kyle Murdock of MMC ("Murdock") appeared via Zoom videoconference and represented himself. The Board was represented by Attorney Brandon Mazer. Members who conducted the hearing and participated in deliberation and the decision were Chair Steve Miller, Richard Cohen, Frederic Carey, William Reinhard, and Mark Bartholomew. Also in attendance were Planning Board Chair Anne Cox and Planning Board member Michael Jordan
3. Mr. Murdock presented arguments and Planning Board Chair Cox and Planning Board Member Jordan both clarified the Planning Board's decision. The Board reviewed the minutes of

the Planning Board site visit dated October 5, 2020 and meeting minutes dated October 13, 2020 and October 27, 2020, the original application, and the appeal application.

4. Murdock is a tenant of the property located at 56 Mussel Farm Road, which is designated by the Town Assessor as Map 222, Lot 026 (hereinafter, the "Property").

5. The Property is located in the Commercial Fisheries/Maritime Activities District (CMFA) under the Town's Shoreland Zoning Ordinance (the "SZO").

6. On or about July 13, 2020, MMC filed an Application for Building or Use Permit with a project description as "To utilize an unused portion of the existing structure to operate an agricultural business cultivating medical marijuana" (the "Application"). The Application also stated the existing use is commercial fishing and processing with a proposed use as agriculture.

7. The Planning Board held a site visit on October 5, 2020 and a public hearing on October 13, 2020, continued to October 27, 2020.

8. At the October 27, 2020 Planning Board meeting, the following motion was made and seconded:

[T]o disapprove the Midcoast Marijuana Company application on the grounds that the Shoreland Zoning Ordinance provides for special protection of the Commercial Fisheries/Marine Activities business in the CFMA District, that the requirement of functional water-dependent use in the Commercial Activities lines of the Land Use Table is more consistent with the purpose and intent of the ordinance than the apparently unlimited zone of agriculture within the CFMA District in Line 13 of the Table, and it is more consistent of the ordinance and is more consistent with the Town of St. George Comprehensive Plan"

The motion passed 5-0.

9. On November 10, 2020, the CEO issued a written denial to Murdock stating:

"THE PLANNING BOARD FOUND: THE PROPOSED USE OF GROWING MEDICAL

MARIJUANA AT 56 MUSSEL FARM ROAD, MAP 222-LOT 26, WITHIN THE 75' BUFFER ZONE WITHIN THE SHORELAND ZONE IS NOT A 'FUNCTIONAL WATER DEPENDENT' USE IN THE CMFA ZONE. THEREFORE, THE APPLICATION DENIED."

10. On or about December 21, 2020, MMC filed an appeal of the Planning Board's decision and the written denial by the CEO. Specifically, the appeal asserted four points:

1. The written denial dated 11/10/20 states the reason for denial that the Planning Board found was the proposed use was not an allowed use within the 75' setback of the Shoreland Zone. No such setback limitation was discussed with The Company at any point.
2. The Planning Board reasoned that the proposed business activity constituted both an agricultural and a commercial use. The Company asserts that, by definition, only one Principal Use may exist and all other uses are "subordinate".
3. The Company further asserts that no part of its proposed business activity constitutes a Commercial Use as no part of the business will be open to the general public, i.e. a retail establishment. Therefore, The Company asserts that it will not be performing any Subordinate Use defined as Commercial by the Shoreland Zone Ordinance.
4. The Company asserts that its Principal Use, and only use, of the subject property will be Agriculture, which is clearly allowed at the subject property by Section 14.13 of the Shoreland Zone Ordinance.

Conclusions of Law

1. **Jurisdiction.** Under Section 16 (H) of the SZO of the Town of St. George, the Zoning Board has jurisdiction over appeals from decisions of the Planning Board thereunder:

The Board of Appeal shall have the following powers as they relate to [the SZO]...to hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in an order, requirement, decision, or determination made in writing by the Code Enforcement Officer or Planning Board in the administration or enforcement of [the SZO].

The Appeal is an administrative appeal that alleges an error in the Planning Board's decision regarding the interpretation set forth in the Planning Board's October 27, 2020 vote, and so the

Board determines that it has jurisdiction over this Appeal.

2. **Timeliness.** MMC filed an "Application for Variance or Appeal to the St. George Board of Appeals" on or about December 21, 2020. Maine courts have found that if an ordinance does not provide a time limit within which an appeal to the board of appeals must be filed, then a period of 60 days constitutes a reasonable appeal period.¹ The Application was filed within 60 days of the Planning Board decision and cites the decision appealed from, the identity of the property involved, and the specific grounds for the appeal. The Board of Appeals therefore determines that the Application, received by the CEO on or about December 21, 2020, is timely.

3. **Standing.** Under SZO Section 16 quoted above, administrative appeals must be filed by "an aggrieved party." The SZO defines an aggrieved party as "an owner of land whose property is directly or indirectly affected by the granting or denial of permit or variance under this Ordinance...or any other person or group of persons who have suffered particularized injury [a potential for injury greater than that potential to the general public] as a result of the granting or denial of such permit or variance." Therefore, the Board determines that MMC as a tenant on the Property has standing as "an aggrieved party" to bring this Appeal.

4. At the February 11, 2020 hearing, the Board members voted to make Frederic Carey a voting member.

5. The parties and the Board recognize that the CEO's written decision referencing the 75' buffer zone within the shoreland zone was beyond the scope of the Planning Board's decision

¹ See *Keating v. Zoning Board of Appeals of City of Saco*, 326 A.2d 521 (Me. 1974); *Gagne v. Cianbro Corp.*, 431 A.2d 1313 (Me. 1981); *Boisvert v. Reed*, 1997 ME 72, 692 A.2d 921 (Me. 1997).

and all proceeded with that understanding in their review of this Appeal.

6. The issue on appeal is whether the Planning Board correctly interpreted the SZO by concluding that the cultivation of medical marijuana at the Property was considered a “Commercial Activity” under the SZO and was required to be functionally water-dependent as opposed to “Agriculture.” Appellant argues that the principal use is agriculture and should be allowed as a matter of right under the SZO as opposed to “Commercial Use” requiring Planning Board review.

Ordinance Provisions

7. SZO Section 17, “Definitions,” defines “Agriculture” as follows:

[T]he production, keeping or maintenance for sale or lease of plants or animals, including, but not limited to: forages and sod crops, grains and seed crops, dairy animals and dairy products, poultry and poultry products, livestock, fruits and vegetables and ornamental green house products. Agriculture does not include forest management or timber harvesting activities.

8. SZO Section 17, “Definitions,” defines “Commercial Use” as follows:

[T]he use of lands, buildings, or structures, other than a “home occupation,” defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

9. The Board reviewed the testimony and record and determined that there were not enough facts in the record to determine why the Planning Board determined the use to be a “commercial use” rather than “agriculture.” Additionally, the Board also found the 75’ buffer zone was a relevant fact that was not discussed by the Planning Board in its deliberations.

Decision

Given the above, the Board remands the Administrative Appeal of the Appellant, MMC, for

further factual findings regarding the Planning Board's determination that the use in question, cultivation of Medical Marijuana, was a commercial use rather than an agricultural use and whether the 75' buffer applied to such use. If the Planning Board finds it necessary to conduct another public hearing to make such findings of fact, it may do so.

Motion and Order

On motion by **William Reinhardt**, seconded by **Richard Cohen**, by show of hands of 5 to 0 (all in favor), the Board of Appeals remands the Application back to the Planning Board for a definitive determination of agriculture or commercial use and the reasons therefor and what setback, if any, would apply.

Dated: February 18 2021

By the Town of St. George Board of Appeals

A handwritten signature in cursive script that reads "Steve A. Miller".

Steve Miller,
Chair