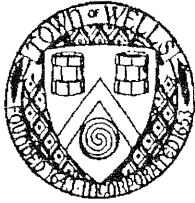


APPROVED



**TOWN OF WELLS, MAINE  
ZONING BOARD OF APPEALS  
FINDINGS OF FACT AND CONCLUSIONS**

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**BACKGROUND OF APPEAL:**

On October 26, 2015, the Zoning Board of Appeals (alternatively referred to as “the Board” or “the ZBA”) held a public hearing of the virtually identical administrative appeals of Robyn Reeves (“Reeves”) and William Perkins (“Perkins”), pursuant to its authority under § 145-67(A)(1)(a)(5) of the Code of the Town of Wells (the “Town Code”). Reeves and Perkins both appeal the Code Enforcement Officer’s September 8, 2015 issuance of a Class 3 Home Business use permit to their abutter, Christopher Chase (“Chase”).

The CEO asserts that because Chase met all of the criteria enumerated in § 145-51 of the Town Code governing Class 3 Home Businesses, the code office was duty bound to issue the permit.

Perkins and Reeves argue that the permit should not have been issued because Chase did not meet the criteria of § 145-51 and other requirements of the Town Code.<sup>1</sup> Specifically, they assert that Chase’s use is not a permitted “accessory” use to his residential use. Rather, Perkins and Reeves claim that Chase’s “Business Contractor” use has become the principal use of his residential property, and is therefore impermissible in the RA zone.

Additionally, Perkins and Reeves allege that the CEO failed to consider and/or enforce certain performance criteria set forth in § 145-51 of the Town Code (such as maximum number of employees, parking, screening, hours of operation, and other alleged nuisances), which they claim have resulted in unreasonable adverse impacts on their use and enjoyment of their properties.

Prior to the commencement of the hearing, the Chair asked if there were any conflicts of interest. Jason Heft stated that he and Chase are both members of the Patriot Riders. The issue was discussed by the Board, which found that no conflict of interest existed. Perkins and Reeves did not object.

At the outset of the hearing, the Chair asked counsel for Perkins and Reeves if the two appeals could be consolidated. Counsel agreed, acknowledging that they presented identical issues.

After closing the public hearing, the Board deliberated and unanimously denied the consolidated appeal. The Chair instructed the Town Attorney to prepare draft findings for the Board’s consideration at its November 9, 2015 meeting. After review and revision of said draft, the Board adopted them, as amended.

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<sup>1</sup> In their Statement of Appeal dated October 7, 2015, Perkins and Reeves cited incorrectly a number of provisions of the Town Code. The provisions that we cite herein are those that we believe to be correct and that were likely intended by Perkins and Reeves.

**BOARD MEMBERS (AND OTHERS) PRESENT:**

Board members Wilber Gosbee, Robert Lavoie, John Ardini, Jason Heft, and Dr. Louis Cohen were present at the October 26, 2015 public hearing. Town Attorney, Leah Rachin was also present.

Jodine Adams and James Genereux appeared on behalf of the Code Enforcement Office.

Mr. Perkins and Ms. Reeves were both represented by James Bartlett, Esq.

**FINDINGS OF FACT:**

1. Chase's property is located at 476 Littlefield Road, Wells, Maine (the "Property").
2. Reeves' property is located at 464 Littlefield Road, Wells, Maine and is more particularly described on the Town's tax maps as Map 34, Lot 4-1.
3. Perkins' property is located at 484 Littlefield Road, Wells, Maine and is more particularly described on the Town's tax maps as Map 34, Lot 5.
4. Reeves' and Perkins' properties both directly abut Chase's Property.
5. All of the properties owned by Chase, Reeves, and Perkins are located in the RA zone.
6. The Town Code defines the term "Business, Home" as: "[a]ny activity conducted for financial gain which is carried on in a dwelling unit or structure accessory to a dwelling unit." *See* § 145-10 of the Town Code.
7. The Town Code defines the term "Accessory use" as: "[a] use which is both incidental and subordinate to the principal use." *See* § 145-10 of the Town Code.
8. The Town Code defines the term "Business, Contractor" as: "[a] business engaged in the provision of a service off premises but which has an office and equipment/materials stored on the premises." *See* § 145-10 of the Town Code. "Business, Contractor" is one kind of permitted "Business, Home" under the Town Code. *See* § 145-51(B).
9. Section 145-21(A) of the Town Code describes the purposes of the RA zone as follows:

[t]o provide areas for medium-density residential development that are or can readily be served by the public water and sanitary sewer systems and to provide areas for concentrations of residential development within the rural portions of the Town along major transportation routes. Nonresidential uses should be limited to agricultural uses, forestry uses, low-intensity noncommercial recreational uses and public uses.

10. Section 145-21(D) of the Town Code describes allowable accessory uses in the RA zone as follows:

Accessory uses are permitted when they are clearly incidental to the permitted use; subordinate, individually and in the aggregate, to the permitted use; and located on the same lot as the permitted use being served. Home businesses as regulated in § 145-51 are accessory uses. (emphasis added)

11. Section 145-51 of the Town Code, governing Home Business provides, in relevant part, as follows:

A. There shall be three classes of home businesses, as follows:

(3) Class 3:

(a) May be located in the principal residential structure or an accessory structure.

(b) Shall occupy 1,600 square feet or less of floor space.

(c) Not more than three employees, other than the home's occupants, may work on site at any time, and one additional on-site parking space shall be provided per employee, if there are such employees, in addition to on-site parking required for the residence and customers.

(d) Outdoor activity or storage of materials shall be permitted in an area not to exceed 4,400 square feet, provided the area meets structure setbacks and the area is screened from roads and abutters.

(e) To the extent a home business involves off-site activity (landscaper, carpenter, etc.), up to five additional workers may gather, prepare briefly, load vehicles, unload vehicles associated with the home business, provided that at least 3/4 of the workday for these other workers is spent working off site. Adequate on-site parking for workers shall be provided.

(f) Minimum lot size: 100,000 square feet of net area.

12. Section 145-51(C) of the Town Code sets forth various "General Standards" that all Home Businesses must meet. Perkins and Reeves assert that Chase has not met the following standards, and therefore, should not have been granted a permit:

(1) Visual appearance. A home business shall be conducted in a manner that minimizes any adverse visual impact on the neighborhood...

(6) Screening. All home businesses shall be screened in accordance with § 145-38.

(7) Impact limits. Home businesses shall limit their generation of vibrations, smoke, dust, heat, glare or odor such that they do not create a nuisance or an unreasonable adverse impact perceptible beyond its lot lines...

13. Section 145-38(A) of the Town Code sets forth requirements for landscaping/buffers that must be met in order to provide a visual screen between residential and non-residential uses. In particular, business uses “shall be visually screened from residential lots. Said visual screening shall consist of a continuous border of shrubbery at least six feet in height and/or solid fencing six feet in height.”

## CONCLUSIONS

1. This Board has jurisdiction pursuant to § 145-67(A)(1)(a)(5) of the Town Code, which grants the ZBA authority to hear administrative appeals of a determination by the CEO to “issue or fail to issue a use permit...”
2. Perkins’ and Reeves’ appeals were timely filed pursuant to § 145-69(A) given that the permit was issued on September 8, 2015 and the instant appeals were filed on October 7, 2015.
3. As abutters to the Property, Perkins and Reeves both have standing to appeal the CEO’s issuance of the permit to Chase.
4. In support of their argument that Chase’s home business should not have been approved, Perkins and Reeves point to § 145-21(A), which describes the purpose of the RA district. They claim that because its purpose is clearly “residential,” and because the only permissible nonresidential uses in the RA are limited to agriculture, forestry, low-intensity noncommercial recreational uses and public uses, Chase’s permit should not have been issued. We reject this argument given that Home Businesses are expressly listed as a permitted accessory use in the RA District. *See* § 145-21(D).
5. Perkins and Reeves also argue that Chase’s use is not an “accessory use,” as defined in the Town Code. Rather, they assert that Chase’s home business use has superseded the residential use of the Property and is therefore impermissible under the Town Code. We disagree for the following reasons. First, § 145-21(D), expressly provides that “[h]ome businesses as regulated in § 145-51 are accessory uses.” (emphasis added) Because § 145-21(D) specifically categorizes home businesses as accessory uses, there is no need to analyze the Town Code’s definition of “accessory use.” Second, § 145-51 provides, “[a] home business is permitted as an accessory use to a dwelling unit if it complies with the following standards...” (emphasis added) The unambiguous language of these provisions make clear that home businesses are considered accessory uses as long as they comply with the standards prescribed in the Town Code. Based on the above cited language of §§ 145-21 and 145-51, it is not necessary to analyze the definition of “accessory use” in the Town Code as urged by Perkins and Reeves. Because we find that the applicable criteria under § 145-51 have been met, we conclude that Chase’s home business is a permitted accessory use in the RA zone.

6. For the reasons that follow, we disagree with Perkins' and Reeves' claim that the CEO erred in issuing the permit by "failing to enforce" various general standards set forth in § 145-51(C). First, we do not have jurisdiction over any alleged failure of the CEO to enforce the Town Code. Decisions regarding whether or not to bring land enforcement actions are within the bailiwick of the CEO and the Board of Selectmen. *See Herrle v. Town of Waterboro*, 2001 ME 1. Our jurisdiction is limited to determining whether the CEO erred in issuing a particular permit. *See* § 145-67(A)(1)(a)(5) of the Town Code and 30- M.R.S. § 2691(4). We find that at the time the CEO issued the permit, Chase met the relevant criteria. The permit was therefore properly issued. If Chase subsequently came out of compliance, that would become an enforcement issue over which the CEO and the Board of Selectmen (not the ZBA) have jurisdiction.
7. With respect to Perkins' and Reeves' claims that the CEO failed to consider the "visual impacts" and "impact limits" standards set forth in § 145-51(C), we find that the CEO did not err in this regard. On the basis of the information that the code office had at the time Chase's permit was issued, there was no record evidence to suggest that there were "unreasonable vibrations, smoke, dust, heat, glare or odor" (emphasis added) that would create a nuisance for neighbors or adverse visual impact.
8. We also find that the CEO was correct in determining that Chase's application met the Town Code's screening requirements set forth in §§ 145-38(A) and 145-51(C)(6). While the concrete blocks used by Chase may not have been the most attractive option, the Town Code neither defines the term "fence" nor does it specify what materials must be used for fencing. Moreover, the Town does not have any architectural or design standards. Accordingly, we must conclude that the Town Code's screening standards have been met because the concrete blocks provide a continuous, solid, six foot visual screen between Perkins' and Reeves' residential uses and Chase's business use.
9. We disagree with Perkins' and Reeves' claim that Chase failed to provide adequate parking. Section 145-51(A)(3)(c) of the Town Code requires that one additional parking space shall be provided per employee. The record evidence does not support a conclusion that Chase failed to provide parking consistent with this provision.
10. With respect to Perkins' and Reeves' suggestion that Chase has too many employees on the Property, we find that Chase is in compliance with the Town Code's requirements in this regard. Class 3 Home Businesses that conduct "off-site activities" are allowed to have up to 8 employees. *See* § 145-51(A)(3)(c) and (e) of the Town Code. Including himself, Chase has only 4 employees.
11. We also reject Perkins' and Reeves' assertion that Chase's application cannot meet the requirements of § 145-51(A)(3)(d), which provides that "[o]utdoor activity or storage of materials shall be permitted in an area not to exceed 4,400 square feet...." Perkins and Reeves argue that the CEO failed to include Chase's driveway in this calculation. They argue that had the CEO done so, this would have caused Chase to exceed the 4,400 square foot limitation. Although the Town Code does not define "outdoor activity" or "storage of materials," we do not believe that it would be reasonable to include the

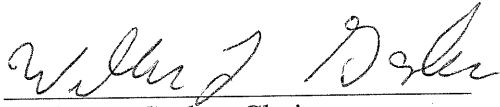
driveway in this calculation. The driveway is a means of ingress/egress to the Property, which allows Chase and his employees to access the locations on the Property where such outdoor activity and/or storage of materials occur. The storage and/or activity itself does not occur on the driveway.

12. With respect to Perkins' and Reeves' claim that Chase's use is too intense for a residential neighborhood, we note that prior to the enactment of the Town Code's current provisions regarding Home Businesses, the Town's Ordinance Review Committee considered this issue and determined that Home Businesses (including Contractors) were appropriate uses for the RA zone. Additionally, the town meeting voted to include such uses in the RA zone. We also note that a number of individuals in the neighborhood, including Reeves and Perkins (and/or their predecessors), have home businesses on their properties.

### **DECISION**

Based on the above Findings of Fact and Conclusions, the Wells Zoning Board of Appeals decided on October 26, 2015 by a vote of 5 to 0 to DENY the administrative appeal.

Sincerely,



Wilber L. Gosbee, Chairman