



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

PO Box 120, Windham, New Hampshire 03087

(603) 432-3806 / Fax (603) 432-7362

www.WindhamNewHampshire.com

Zoning Board of Adjustment Approved Minutes Community Development Department – 7:30 PM August 12, 2014

Board Members:

Mark Samsel, Chairman – Present

Mike Scholz, Vice-Chairman – Present

Heath Partington, Secretary – Present

Jay Yennaco, Member – Present

Jim Tierney, Member – Present

Mike Mazalewski, Alternate – Present

Kevin Hughes, Alternate – Excused

Staff:

Dick Gregory, Code Enforcement Administrator

Laura Accaputo, ZBA Minute Taker

The Chair called the meeting to order at 7:30pm, introduced the Board and Staff, and explained the meeting process.

Mr. Partington recused himself from Case #31-2014 and the Chair sat Mr. Mazalewski in his place.

Mr. Mazalewski read Case #31-2014 into the record along with the abutter list.

Lot 13-D-90, Case # 31-2014

Applicant – Belinda Sinclair/Woof Woof Doggie Daycare

Owner – 47 Rte 28 Realty Trust, MP Krippendorf Trustee

Location – 47 Rockingham Rd.

Zone – commercial A, Wetland and Watershed Protection District (WWPD)

Variances from the following sections of the Zoning Ordinance are requested to allow the operation of a commercial kennel:

720.6.1.1 to allow animal exercise yard to be within 2 ft. of the property line, where 100 ft. is required.

720.6.1.2 to allow animal exercise yard to be within 200 ft. of an occupied structure, except property occupied by the owner/operator of the kennel.

720.7.3 to allow kennel structures or exercise yard areas where dogs and other household pets are exercised located within the Wetland and Watershed Protection District and 10 ft. from any other wetland, stream, or natural surface feature where 100 ft. is required.

720.7.4 to allow animal waste to be stored 67 ft. from any property line or surface water where 100 ft. is required.

- Belinda Sinclair and Ralph Sinclair, 114 Lowell Road, addressed the Board. Ms. Sinclair stated the intent of the 100ft setback was to create a safe and secure environment for both the dogs and people and she believes the natural boundaries provide the safety the ordinance

was designed to create. She stated at their current location on 70 Range Road there are abutters closer than 300ft and they have never had any complaints. She explained the parking lot to the rear of the building where they are proposing to locate the play yard was designed to prevent the runoff from the lot from harming the wetlands. The existing curbing and 150ft water swale will remain intact and act as a safety barrier to the wetlands and open area. She also explained the current dumpster location is approximately 30ft from Flat Rock Brook and the proposed location will increase the distance from the brook. She noted they will continue to have their trash removed by Waste Management on a weekly basis and their practice of picking up waste immediately and double bagging it keeps their property clean and odor free.

Questions/Comments from the Board

- The Chair asked if they will provide overnight boarding and if so for how many dogs and Ms. Sinclair answered they will have approximately 60 dogs for day care and they will propose to board up to 20 overnight.
- The Chair asked the hours of the day care and Ms. Sinclair answered 6:30am to 6:30pm Monday through Friday, Saturday 8am-5pm, and on Sundays they provide training as needed. She noted pick up and drop off of any boarded dogs will be during these hours and they are predicting to have staff supervision for 18 hours with a 6 hour rest period overnight.
- The Chair asked why they were proposing the fencing of the play yard to be so close to the property line and Ms. Sinclair answered the property has already been mitigated to protect the wetlands and to keep that intact the fencing will have to be that close. She also noted they will put pea stone over the existing lot to make it more comfortable for the dogs.
- The Chair also asked if the dumpster would be fenced in and locked and Ms. Sinclair answered yes.
- Mr. Scholz clarified that Section 720.6.1.2 requires a setback of 300ft from an occupied structure and asked how close they were and Ms. Sinclair answered the structure is across the street and they are probably 200ft away from it.
- Ms. Sinclair then read the five criteria into the record.
- The Chair asked where the boarding will take place and Ms. Sinclair answered on the lower level and there is approximately 2000 square feet of indoor play area. The outside play area is used for 3 hours in the morning and 3 hours in the afternoon weather permitting.
- The Chair asked for an explanation of the clean up procedures and Ms. Sinclair stated they clean up after the dogs immediately and use double lined trash bins that are emptied twice per day into the dumpster. They also require dog owners to test samples twice per year. She also noted they consulted on these Kennel Ordinances for the Planning Board.
- Mr. Scholz asked if the lot is flat or pitches and Mr. Sinclair stated it does pitch toward the swale. Mr. Scholz asked if the dog's urine on the pea stone will sit stagnant and Mr. Sinclair stated evaporation and rainfall help and if they don't get any rain they hose the area down with water only. He also noted they have a separate potty area they take the dogs to.
- Mr. Yennaco asked if the play area will be used in the winter and Ms. Sinclair answered yes.

The Chair opened the hearing to the public at 8:00pm.

- Dan Gutman, 20 Heritage Hill Road, stated he has been a customer for two years and believes they are 2 tiers above other day cares or kennels when it comes to safety and

cleanliness. He stated there are more dogs at Griffin Park where waste is not being picked up and this is far cleaner.

- Lyndsey McRobbie, 2 Birchwood Road, stated she is a customer and former employee and they are very clean and she would recommend them to anyone.
- Richard Messina, owner of the Manor Motel, stated kennel structures is a generic request and asked what exactly is being proposed. Mr. Tierney stated the structure is the fencing and Mr. Scholz noted that if approved it would be per plan submitted and therefore will only allow what is on the plan.
- Mr. Messina stated the WWPD setback for Flat Rock Brook was changed to 150ft and since the notice says 100ft he asked that it be amended. Mr. Tierney stated the setback in Section 720.7.3 for kennels is only 100ft. Mr. Messina stated you cannot build within the WWPD and he was denied a request to build a passive storage unit in the past. He believes the notice was in error and should be addressed and corrected. Mr. Tierney stated the notice is for Section 720 not Section 6. Mr. Scholz read Section 604.1 into the record and asked Mr. Messina if this was brought up to Mr. Gregory and Mr. Messina answered yes. Mr. Messina also stated they are asking for relief from 4 different setbacks and pointed out there is a major aquifer here and the setbacks are in place to protect an asset. He is concerned for noise and water pollution since he has two buildings within 25ft of the property line. He is concerned about the animal's excretion relative to the water quality of his well since his well radius crosses the brook. Mr. Scholz asked Mr. Messina if the area floods and Mr. Messina stated the brook does flood however he can't say if it does on that side.
- Mr. Sinclair stated the landscaping is not flat in the parking lot and dogs will not typically go on the pavement. He stated the building is surrounded by dense woods on three sides and they will have fences with slats installed to help mitigate any noise issues. He also stated they are very concerned for the environment and have not had any complaints at their current location which is completely in the WWPD. They checked the flow of the water after storms and walked the entire swale before buying the property. He also clarified they are proposing a fence only, not a building.
- Mr. Mazalewski asked about the fencing used to separate play areas from potty areas and Ms. Sinclair explained it is temporary portable fencing.
- Mr. Messina stated they are proposing to expand a non-conforming use and he does not think it is logical to expand it so close to a valuable resource. The WWPD is specifically for this purpose and allowing something 2ft from a brook that floods is not logical. He asked they consider relocating it on the property since it doesn't meet criteria.
- Mr. Gutman stated he believes this is a significant benefit to the town since many of the customers are from town.
- Mr. Scholz asked the applicant if they considered alternate locations. Mr. Sinclair stated they did but the problem is the area is all wetlands with a steeper slope which they believe creates a bigger environmental concern due to the steep grade running down to the brook as opposed to the proposed area which has been mitigated. He also stated you could clear a large area on the property but it would be an expensive and difficult proposition and would only be an additional 20 feet away. He believes the main focus of the ordinance is the safety of the animals and the public and being closer to Route 28 is more dangerous.
- Mr. Scholz asked about Section 601.4.1 not being included and Mr. Tierney stated a fence does not constitute a structure that alters the terrain and therefore the Kennel Ordinance dictates the setback.

Mr. Scholz motioned to go into Deliberative Session, seconded by Mr. Tierney. Motion passed: 5-0.

- Mr. Tierney stated the request is dealing with the regulations of kennels and the issue with the WWPD under Section 601 should go through the Planning Board process as to whether it needs to come back to this Board. The property is all in the WWPD according to the plan and the parking area was reconfigured and specifically designed to protect the WWPD from the runoff and utilizing that is a benefit.
- Mr. Scholz stated he believes Section 601.4.1 talks about the boundaries for WWPD relative to Flat Rock Brook and this wouldn't require relief from that section as they are not disputing this is within the WWPD.
- Mr. Tierney stated the erection of a fence along the boundary line will not alter the terrain and the addition of pea stone or walking a dog within the WWPD is not an issue. He stated they have to make a decision on what is in front of them which is 720.7.3.
- The Chair asked if there were any comments from the Conservation Commission and Mr. Mazalewski stated the only thing in the packet was a letter from the Krippendorfs authorizing the Sinclairs to represent them in this case. He read that letter into the record. Mr. Gregory stated Conservation has not reviewed the request.
- Mr. Mazalewski asked where the rear property line was since it was not clear on the plan. Mr. Messina gave the Chair his plan to help locate the property line.

Mr. Scholz made a motion to go back into Public Session, seconded by Mr. Mazalewski. Motion passed: 5-0.

- The Chair asked Mr. Gregory to point out the property line on the plan.

Mr. Scholz motioned to go into Deliberative Session, seconded by Mr. Tierney. Motion passed: 5-0.

- Mr. Yennaco stated the play area with the pea stone over the pavement is a net gain as it is a better way to mitigate the water runoff and it is a decent amount of square footage that will not be salted in the winter time which makes it a positive for the water shed.
- Mr. Mazalewski stated his concern if a variance is granted that a different owner could run it less professionally.
- Mr. Scholz stated it is not contrary to public interest and the testimony heard respects the spirit and intent of the ordinance. He believes it will do substantial justice for the business and property owner and will not diminish the value of surrounding properties. He also believes it passes the prong that the property cannot be reasonably used in strict conformance with the ordinance as it will be subject to the protections of the wetland and watershed anywhere on the property.
- The Chair stated since this is a Commercial A property there could be a more evasive use. He noted in 2009 there was a redesign specific to parking lot improvements which will only be better with pea stone. He stated there is a positive history with these owners. He agrees with the Board the 100ft setback is what is in front of them and Section 6 can be dealt with at the Planning Board process or challenged and dealt with at that time. He asked if they should put a condition on the number of animals allowed and Mr. Scholz stated he is

comfortable with letting the Planning Board decide since he doesn't know the right number. Mr. Scholz also stated the treatment swale, less salting, and less pavement factored into his decision relative to spirit and intent.

Mr. Scholz motioned for Case #31-2014, Lot 13-D-90, in consideration of the 5 points, to grant relief from Section 720.6.1.1 to allow an animal exercise yard to be within 2 ft. of the property line where 100 ft. is required; Section 720.6.1.2 to allow an animal exercise yard to be within 200 ft. of an occupied structure, except property occupied by the owner/operator of the kennel; Section 720.7.3 to allow kennel structures or exercise yard areas where dogs and other household pets are exercised located within the Wetland and Watershed Protection District and 10 ft. from any other wetland, stream, or natural surface feature where 100 ft. is required; and Section 720.7.4 to allow animal waste to be stored 67 ft. from any property line or surface water where 100 ft. is required, per plan submitted, seconded by Mr. Tierney. Motion passed: 5-0.

The Chair advised of the 30 day appeal period.

The Chair sat Mr. Partington for Mr. Mazalewski.

The Chair sat Mr. Mazalewski for Mr. Yennaco.

Review and Approval of Draft Minutes – July 22, 2014

Mr. Partington motioned to approve the July 22, 2014 ZBA minutes as written, seconded by Mr. Scholz. Motion passed: 5-0.

The Chair informed the Board of the deadline to sign up for the law lecture series.

Mr. Partington motioned to adjourn the August 12, 2014 ZBA meeting 8:53pm, seconded by Mr. Scholz. Motion passed: 5-0.

These minutes are respectfully submitted by Laura Accaputo, ZBA Minute Taker.

Copies of all Zoning Board of Adjustment applications and materials are available for review at the Community Development Department; open Monday – Friday, 8 AM – 4 PM.