

**Town of Amherst
Zoning Board of Adjustment
Tuesday, December 16, 2014**

ATTENDEES: D. Kirkwood; Chair, J. Taggart, J. Quinn, R. Rowe, J. Ramsay, W. Sullivan (Alt), R. Panasiti (Alt) A. Buchanan and C. Mailloux- Community Development Director

D. Kirkwood called the meeting to order at 7:06pm, introduced the board members and explained the ZBA process.

The first case was read by J. Ramsay.

1. Case #: PZ5626-111414 – Variance

Howling Hills, LLC, 336 Route 101, PIN# 008-051-004 – Request for a variance to allow retail sales of pet food and supplies in the Northern Transitional Zone.

Representing Howling Hills LLC, Raymond Shea from Sanford Surveying and Engineering, addressed the ZBA. The property is an existing facility on Camp Rd/ Rt 101. They offer kennelling, boarding and dog training services. There is currently 250 sq. ft. within the building used for sales of pet food and pet supplies. This is for the convenience of existing customers-no outside advertising is done. The building has been there for 12 years. The applicant is asking for the variance in conjunction with an application to the Planning Board for an addition to the building to add a 2nd floor.

This request is exactly the request they submitted a year ago except the site plan is slightly different.

Mr. Shea read from the application to address the tests as follows:

1) How will granting the variance be in the public interest?

The proposed retail use is accessory to the primary kennel use and is not promoted to the public nor will it cause visual clutter and will have no negative effect on the general public

2) How will granting the variance ensure the spirit of the ordinance will be observed?

The ordinance intends to keep large scale retail use out of this rural type-setting and this proposed use is small, unseen by the general public, unadvertised and aimed specifically at existing kennel customers

3) How will substantia/justice be done?

The applicant will be able to provide a convenient and valuable service to its existing customers in allowing them to purchase pet supplies while they are attending to their pet in the same building without having to make an additional trip to a separate retail outlet.

4) How will the value of the surrounding properties not be diminished?

The value of the surrounding properties will not be diminished because the proposed use will take place in an existing space in the building and be utilized by existing clients so the abutting properties will not be affected.

5) Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship because:

A) For the purpose of this subparagraph, unnecessary hardship means that owning to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance,

(i) No just and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

This specific proposed retail use is an accessory to the existing allowed use and will not be noticed by or be a nuisance to the general public and will primarily be used by existing customers.

(ii) The proposed use is reasonable because:

It will allow the existing business to better serve its customers and provide a necessary service without an adverse effect on the neighborhood

49 D. Kirkwood asked Mr. Shea how he thinks the business would be affected if the variance is denied.
50 He replied that the overall business would not be seriously affected, but the service is a convenience to
51 their customers who would have to make a stop elsewhere for these items.

52
53 R. Panasiti asked if the business has a website and if the sales service will be listed on the website. Yes,
54 they do and yes, he supposed it would be listed as a service. They do not advertise to attract a person
55 driving by to come in to purchase goods.

56
57 R. Rowe confirmed that Mr. Shea is a surveyor and asked to speak to the owner.
58 R. Rowe asked the applicant, Bob Proulx if he would have any objection to having conditions such as: no
59 exterior retail product signage, no advertising in newspapers etc., retail goods sold as a courtesy to
60 kennel customers only and that no more than 250 sq. ft. of space will be used.
61 Mr. Proulx asked if he could list the service on the website.
62 Discussion ensued to determine if it could be listed as a service without 'advertising product/ sales'.
63 It was determined that the previous aproval included conditions.

64
65 J. Ramsay asked for clarification on the differences between the past and present plan.
66 Mr. Shea answered that there was a smaller bump out before. This time they want to push the front
67 portion out. There's about 1000 sq. ft. of more space than the last site plan.
68 J. Ramsay asked if the 2nd floor will be a mezzanine within the structure? Yes, the ceiling is very high and
69 the roof will remain the same. The 2nd floor would be built within the existing structure.

70
71 D. Kirkwood asked if this plan is going before the Planning Board in January. Yes.

72
73 J. Ramsay moved to go into deliberations. J. Taggart seconded. Vote: All in favor

74
75 DELIBERATIONS:

76 **1. Case #: PZ5626-111414 – Variance**
77 **Howling Hills, LLC, 336 Route 101, PIN# 008-051-004 – Request for a variance to allow retail sales of**
78 **pet food and supplies in the Northern Transitional Zone.**

79
80 J. Ramsay moved no regional impact. J. Taggart seconded. Vote: All in favor
81 Discussion:

82 R. Rowe asked if the ZBA should discuss conditions now. Yes. The ZBA reviewed the conditions discussed
83 before.

84 J. Taggart thinks having it listed as a service on the website is reasonable. (Pet food and grooming
85 supplies) He doesn't want to see splashes of advertising, but listing it as a service seems reasonable.

86
87 J. Ramsay pointed out that it's 250 sq. ft. of ancillary product.

88 R. Panasiti asked if it should be listed as 'for customers only'. J. Ramsay stated it would be difficult to
89 enforce. The ZBA discussed the appropriate language and determined: 'pet food and pet supplies.'

90
91 D. Kirkwood was also concerned with what happens when this owner is no longer running the business.
92 J. Quinn said the approval for sales in 250 sq. ft. only will restrict it. D. Kirkwood agreed.

93
94 J. Taggart supports the spirit of the business. If the regular customers pick up supplies while picking up
95 their pet- that's no extra traffic. Or if five extra people know about it and stop in on their way home,

96 that's fine. However, if the current owners leave the property, and the next owner has a large space
97 with a limited retail area, it may create a hardship - though he's all for limiting it.

98

99 Tests:

100 **1. Case PZ5626-111414 – Variance**

101 1. The Variance will not be contrary to the public interest.

102 R. Rowe yes it is for ancillary use. Small area. Convenience for customers and not advertised.

103 J. Ramsay agrees with Bob. Ancillary is the operative word

104 J. Taggart true providing to some of the public without impact to the public

105 J. Quinn yes

106 D. Kirkwood true

107 5 True

108

109 2. The Variance is consistent with the spirit and intent of the Ordinance.

110 J. Quinn yes. All inside-nothing outside to notice a difference. No additional traffic

111 J. Taggart true agree

112 J. Ramsay true. Pet food convenience store to existing customers

113 R. Rowe true. Ancillary use. And reasonable. Any veterinary clinic probably has a small nook where they sell product

114 D. Kirkwood true

115 5 True

116

117 3. Substantial justice is done.

118 J. Ramsay yes reasonable request and no negative impact

119 J. Taggart true the gain to the applicant does not outweigh the harm to the general public. No harm to the general public.

120 J. Quinn true

121 R. Rowe true

122 D. Kirkwood true

123 5 True

124

125 4. The values of the surrounding properties will not be diminished.

126 R. Rowe true not noticeable- no impact to surrounding properties

127 J. Quinn true

128 D. Kirkwood true

129 J. Taggart true

130 J. Ramsay true

131 5 True

132

133 5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.

134 J. Quinn true

135 J. Taggart true general purpose of the Ordinance is to limit traffic etc. for retail use. Given the current operations on the site, this is moot because there is traffic to the site, but it will not increase.

136 R. Rowe true

137 D. Kirkwood with respect to goals of the master plan to maintain rural character this doesn't disturb any more than it does now. It's enclosed and addresses the spirit.

138 J. Ramsay true

139 5 True

144 D. Kirkwood stated that having passed all of the tests, the request for variance is granted with
145 conditions:
146 R. Rowe read the conditions that were placed on the property in the past. All board members agreed to
147 use that language.
148 "The applicant may sell related retail products to its kennel customers using approx. 250 square feet of
149 space. There shall be no outdoor product inventory, signs or advertising."
150
151 J. Ramsay moved to come out of deliberations. J. Taggart seconded. Vote: All in favor
152
153 **Other Business:**
154 **Request for a rehearing by the Amherst Board of Selectmen of Case #: PZ5490-101714- Appeal of an**
155 **Administrative Decision of the Planning Board- Terry & Kelly Connor, 1 Smith Lane, PIN# 003-027-000**
156
157 R. Rowe recused himself from this decision since he was not at the November meeting.
158 J. Ramsay read the case.
159 D. Kirkwood asked if everyone had a chance to read the documents and suggested recessing for 10
160 minutes. At 7:53pm the ZBA recessed their meeting for 10 minutes to individually review
161 documentation.
162 A. Buchanan joined the meeting at this time and R. Rowe left the meeting at this time.
163 At 8:05pm the meeting reconvened.
164
165 Sally Wilkins of 28 Green rd.
166 Ms. Wilkins is on the Planning Board and asked the ZBA if she could address some points that were in
167 Attorney Quinn's letter since she had just seen it.
168 A. Buchanan, for purpose of discussion, moved that the request for a rehearing be denied on the basis
169 that the applicant failed to provide just cause for a rehearing.
170 Discussion:
171 W. Sullivan commented that 1, it is mentally unjust for the applicant to have to show up here again and
172 2, he doesn't see any good reason to have a rehearing. The ZBA had town counsel's letter when they
173 made the decision. The Planning Board brought up in their letter that their basis for denial was counsel's
174 letter. I read that letter 10 times and I disagree with it. I don't think anything new is going to be
175 presented. It's a very narrow ordinance. It's a technical issue that I looked at very carefully and there's
176 nothing in these materials that would make me want to take a second look.
177 R. Panasiti agreed with W. Sullivan. At the last meeting we talked about this in depth. Being new on the
178 board, I listened to the reasoning and went through the material including Sally's letter and came to the
179 same conclusion as before.
180 D. Kirkwood stated it was presented that incomplete information was given to the ZBA at the last
181 meeting. One piece was based on Bill's letter, but I agree with Wil. We all read that letter very carefully
182 and in this particular case, we didn't agree with it.
183 J. Quinn agreed with Wil. Regarding the appeal period- no one has appealed before in the past two
184 years. It's a little late in the game since no one raised the issue prior to this.
185
186 D. Kirkwood asked if the board is willing to hear from Sally. Yes.
187 Sally stated that her letter emphasizes that the appeal was requested within the allotted time period.
188 The Planning Board didn't see the plan until months after the approval.
189 Regarding the special exception there are questions of how many acres per units are required. The
190 Planning Board understood from the applicants that the project would include up to 30 units and that
191 the unit amount might actually be lowered later in the process.

192 The interpretation of the Ordinance is what is in question. The ZBA and the Planning Board disagree with
193 the interpretation of the Ordinance. This interpretation has long-term ramifications, and not just for this
194 case. Her concern is to get on the same page with the interpretation moving forward.

195 ZBA members confirmed that they interpreted the language of the Ordinance as written.

196

197 Jonathan Boutin, Attorney for the case went on record stating that Ms. Wilkins' comments are
198 inappropriate to this case. The sole basis of the request for a rehearing is the ZBA's interpretation of the
199 density qualifications.

200

201 The ZBA discussed the voting procedures. J. Taggart was going to abstain from the vote because he
202 wasn't here, but not recuse himself. D. Kirkwood wanted the board members who were at the
203 November meeting to vote because of continuity. The Chair requested that J. Taggart recuse himself so
204 that the members that were at the November meeting and heard the case can vote.

205 Voting members will be as follows: J. Quinn, D. Kirkwood, J. Ramsay, W. Sullivan and A. Buchanan.
206 A. Buchanan will vote for R. Rowe. W. Sullivan will vote for J. Taggart.

207

208 Vote: All in favor. D. Kirkwood stated that the request for a rehearing is denied.

209

210 **Minutes: November 18, 2014**

211

212 J. Ramsay moved to accept the minutes of November 18th as submitted. W. Sullivan seconded.

213 Vote: 4 in favor- J. Taggart abstained

214

215 Next meeting is January 20.

216

217 A. Buchanan moved to adjourn at 8:23pm. W. Sullivan seconded. Vote: All in favor.

218

219 Respectfully submitted,
220 Jessica Marchant