

**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 substantial/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 owing 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 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

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

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

R. Rowe confirmed that Mr. Shea is a surveyor and asked to speak to the owner.

R. Rowe asked the applicant, Bob Proulx if he would have any objection to having conditions such as: no exterior retail product signage, no advertising in newspapers etc., retail goods sold as a courtesy to kennel customers only and that no more than 250 sq. ft. of space will be used.

Mr. Proulx asked if he could list the service on the website.

Discussion ensued to determine if it could be listed as a service without 'advertising product/ sales'. It was determined that the previous approval included conditions.

J. Ramsay asked for clarification on the differences between the past and present plan.

Mr. Shea answered that there was a smaller bump out before. This time they want to push the front portion out. There's about 1000 sq. ft. of more space than the last site plan.

J. Ramsay asked if the 2nd floor will be a mezzanine within the structure? Yes, the ceiling is very high and the roof will remain the same. The 2nd floor would be built within the existing structure.

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

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

DELIBERATIONS:

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.

J. Ramsay moved no regional impact. J. Taggart seconded. Vote: All in favor

Discussion:

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

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

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

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

D. Kirkwood was also concerned with what happens when this owner is no longer running the business.

J. Quinn said the approval for sales in 250 sq. ft. only will restrict it. D. Kirkwood agreed.

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

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

Tests:

1. Case PZ5626-111414 – Variance

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

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

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

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

J. Quinn yes

D. Kirkwood true

5 True

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

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

J. Taggart true agree

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

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

D. Kirkwood true

5 True

3. Substantial justice is done.

J. Ramsay yes reasonable request and no negative impact

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

J. Quinn true

R. Rowe true

D. Kirkwood true

5 True

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

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

J. Quinn true

D. Kirkwood true

J. Taggart true

J. Ramsay true

5 True

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

J. Quinn true

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.

R. Rowe true

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.

J. Ramsay true

5 True

D. Kirkwood stated that having passed all of the tests, the request for variance is granted with conditions:

R. Rowe read the conditions that were placed on the property in the past. All board members agreed to use that language.

“The applicant may sell related retail products to its kennel customers using approx. 250 square feet of space. There shall be no outdoor product inventory, signs or advertising.”

J. Ramsay moved to come out of deliberations. J. Taggart seconded. Vote: All in favor

Other Business:

Request for a rehearing by the Amherst Board of Selectmen of Case #: PZ5490-101714- Appeal of an Administrative Decision of the Planning Board- Terry & Kelly Connor, 1 Smith Lane, PIN# 003-027-000

R. Rowe recused himself from this decision since he was not at the November meeting.

J. Ramsay read the case.

D. Kirkwood asked if everyone had a chance to read the documents and suggested recessing for 10 minutes. At 7:53pm the ZBA recessed their meeting for 10 minutes to individually review documentation.

A. Buchanan joined the meeting at this time and R. Rowe left the meeting at this time.

At 8:05pm the meeting reconvened.

Sally Wilkins of 28 Green rd.

Ms. Wilkins is on the Planning Board and asked the ZBA if she could address some points that were in Attorney Quinn’s letter since she had just seen it.

A. Buchanan, for purpose of discussion, moved that the request for a rehearing be denied on the basis that the applicant failed to provide just cause for a rehearing.

Discussion:

W. Sullivan commented that 1, it is mentally unjust for the applicant to have to show up here again and 2, he doesn’t see any good reason to have a rehearing. The ZBA had town counsel’s letter when they made the decision. The Planning Board brought up in their letter that their basis for denial was counsel’s letter. I read that letter 10 times and I disagree with it. I don’t think anything new is going to be presented. It’s a very narrow ordinance. It’s a technical issue that I looked at very carefully and there’s nothing in these materials that would make me want to take a second look.

R. Panasiti agreed with W. Sullivan. At the last meeting we talked about this in depth. Being new on the board, I listened to the reasoning and went through the material including Sally’s letter and came to the same conclusion as before.

D. Kirkwood stated it was presented that incomplete information was given to the ZBA at the last meeting. One piece was based on Bill’s letter, but I agree with Wil. We all read that letter very carefully and in this particular case, we didn’t agree with it.

J. Quinn agreed with Wil. Regarding the appeal period- no one has appealed before in the past two years. It’s a little late in the game since no one raised the issue prior to this.

D. Kirkwood asked if the board is willing to hear from Sally. Yes.

Sally stated that her letter emphasizes that the appeal was requested within the allotted time period.

The Planning Board didn’t see the plan until months after the approval.

Regarding the special exception there are questions of how many acres per units are required. The Planning Board understood from the applicants that the project would include up to 30 units and that 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