

TOWN OF AMHERST
Zoning Board of Adjustment

June 21, 2022

APPROVED

In attendance: Doug Kirkwood (Chair), Jamie Ramsay (Secretary), Danielle Pray (Vice Chair), Charlie Vars, and Tracy McInnis
Staff present: Nic Strong, Community Development Director, and Nicole Stevens, Town Planner

Doug Kirkwood called the meeting to order at 7:00pm. He explained that the Secretary will read the case. Each applicant will then be asked to present the case. Once completed, the Board will be allowed to ask questions and make comments. Then, the public will have a chance to comment. The input should be specific to what is presented this evening and not reflect the entire project. All questions/comments must be addressed through the Chair. Someone wishing to speak must be recognized by the Chair or are otherwise out of order. Everyone has a right to be heard and everyone should listen to one another. The applicant has a right to due process. He explained that each variance test must be addressed by each applicant. Voting on these tests will then be undertaken by the Board. He noted that an applicant has to pass all five tests outlined in the RSAs and if any test does not get the required number of votes, it fails. Doug Kirkwood asked if there were any questions about the process and, there being none, then introduced members of the Board.

PUBLIC HEARING (S)

1. CASE #: PZ15534-032122 –VARIANCE - TANA Properties Limited Partnership (Owner) & Flint Acquisitions LLC (Applicant); Hollis Road (Rear), PIN #: 002-012-002 – Request for relief from Article IV, Section 4.3, Paragraph A to construct a warehouse in the Residential/Rural District. Zoned Residential/Rural. Continued from May 17, 2022. – WITHDRAWN BY APPLICANT

2. CASE #: PZ15531-032122 –VARIANCE - TANA Properties Limited Partnership (Owner) & Flint Acquisitions LLC (Applicant); Hollis Road (Rear), PIN #: 002-012-002 – Request for relief from Article IV, Section 4.3, Paragraph D.4 to allow a new structure to be constructed with a floor area ratio of approximately 55% where no greater than 15% floor area is permitted. Zoned Residential/Rural. Continued from May 17, 2022. WITHDRAWN BY APPLICANT

3. CASE #: PZ15533-032122 –VARIANCE - TANA Properties Limited Partnership (Owner) & Flint Acquisitions LLC (Applicant); Hollis Road (Rear), PIN #: 002-012-002 – Request for relief from Article IV, Section 4.3, Paragraph D.4 to allow a new structure to be constructed to a height up to 55 feet where 40 feet is permitted. Zoned Residential/Rural. Continued from May 17, 2022. WITHDRAWN BY APPLICANT

Jamie Ramsay read each of the cases and noted that they have each been withdrawn by the applicant.

Doug Kirkwood stated that there will be no discussion regarding the withdrawn applications.

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**4. CASE #: PZ15830-052322 - APPEAL OF ADMINISTRATIVE DECISION
Lori Ashooh (Owner & Applicant); 4 Middle Street, PIN #: 017-063-000 - Appeal of
Administrative Decision - Historic District Commission Denial of use of aluminum-
clad replacement windows. Zoned Residential/Rural w/Historic District Overlay.**

Jamie Ramsay read and opened the case.

Jamie Ramsay recused himself as the Chair of the Historic District Commission.

Doug Kirkwood noted that, with only four voting members available for the Board, tied votes on any motion will be considered to fail. He noted that any applicant may request that their application be tabled to the next meeting if they do not wish to move forward in this way. He asked applicant, Lori Ashooh, if she would like to continue forward this evening with this information. Lori Ashooh asked if she requests this to be tabled, if there can be an assurance that there will be a full voting Board at the next meeting. Doug Kirkwood stated that he cannot assure that. Generally, the Board has full attendance and one alternate at its meetings.

Danielle Pray noted that the ZBA does not have an alternate member anymore. This person moved over to sit on the Planning Board as an alternate.

Rich Ashooh stated that he believes this will put he and his wife, as applicants, in an untenable situation, as the makeup of the Board does not seem to be changing any time soon. He asked if he could help to recruit someone as an alternate for the Board. Doug Kirkwood stated that he is welcome to.

Rich Ashooh stated that he is quite confident in their case. The Historic District Commission (HDC) vote to deny his application was voted on 3-2. He would like this appeal to be definitive.

Danielle Pray asked if the applicant can ask for a rehearing by the Board, depending on the outcome of this hearing. Nic Strong stated that is the case. Doug Kirkwood stated that a rehearing must include new information to be a sufficient case.

Lori Ashooh asked if another Board member would recuse him/herself, so that there could be three votes. Danielle Pray noted that then the applicant would need to get all three votes in the affirmative for the application to pass.

Rich Ashooh stated that they would like to move forward at this time. He asked if the Board would like to hear a summary of the case. Doug Kirkwood explained that there are five variance tests which need to be addressed. Danielle Pray stated that this is an administrative appeal, and thus the applicant does not need to address the five tests. Doug Kirkwood stated that the applicant then needs to show why the administrative decision is believed to be incorrect.

Rich Ashooh stated that his house is an early-1800's era house that is in need of some repair. The renovations are being made to earlier renovations. He is working to update windows in the house

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89 and thus submitted an application to do so to the HDC. This was discussed with the HDC at a
90 previous meeting, and the HDC denied the application, in a 3-2 vote. He believes this decision
91 was incorrect and not well-founded because the regulations do not prohibit the type of windows
92 he is proposing, Pella aluminum-clad windows. These windows are designed for historic
93 preservation, which is why they were chosen. The regulations do specify a structure, style, and
94 look which must be maintained, which he fully agrees with. The proposed windows will improve
95 the historic view of the house. Currently, storm windows and screens are allowed in the Village,
96 though they may not be very historic looking. This proposed window type is fairly new and
97 would restore the look of the house to the historic vintage because it would allow for removal of
98 the existing aluminum storm windows and screens on the house. He is unclear what the
99 Commission's rationale was, but it seems to involve an implied issue with aluminum-clad
100 windows. He pointed out that the HDC has approved aluminum-clad windows on other homes,
101 one two houses down from his, as recently as one year ago. In reviewing the minutes from that
102 approval, the rationale given by the HDC was that it would improve the overall historic view of
103 the house; this is what he is proposing to do for his house as well. There is nothing in the
104 regulations to disallow aluminum-clad windows. These windows were chosen because they were
105 endorsed by the NH Preservation Alliance. Rich Ashooh noted that the Currier Museum received
106 a grant two weeks ago to improve the Chandler House, another historic home, using the exact
107 windows he is proposing. The net improvement of the house is that the look will be more
108 historic, in removing the aluminum storms and screens, and there is precedence in that the HDC
109 recently approved aluminum-clad replacement windows for a house two doors down. Finally, the
110 regulations have not been updated since 2009, which was to allow for storms and screens, with
111 the understanding that houses need to be modernized with these types of window protections.
112 The proposed windows were not available when the last update occurred. Rich Ashooh stated
113 that the regulations likely need to be updated, but he also believes that the HDC has the ability at
114 this time to approve aluminum-clad windows, as they have in the past.

115
116 Tracy McInnis asked if the applicant has any brochures or examples of the proposed windows
117 and pictures of what the existing windows look like. Rich Ashooh stated that he did not bring
118 photographic evidence of the existing house to this meeting, though it was presented at the HDC
119 meeting. He stressed that the existing windows on the house are not original to the house. An
120 example of the proposed windows was brought to the HDC meeting. One HDC Commissioner,
121 Doug Chabinsky, went to a Pella dealer to look at the proposed windows and noted, per the
122 minutes, that one could not tell the difference between all-wood windows and the proposed
123 windows. This Commissioner also voted in favor of the application at the HDC meeting.

124
125 Charlie Vars stated that he has used this type of Pella window in the past and he has been an
126 advocate to the HDC to change their regulations. The regulations are antiquated and there are
127 better products currently on the market. He agreed with the applicant on that point. Aluminum-
128 clad windows cannot be discerned from all-wood windows at a distance. There are two small
129 lines where the aluminum comes together, which is the only discerning item between the two,
130 and this can only be seen from approximately 15-20' away. Charlie Vars stated that he has
131 brought numerous projects before the HDC, most recently to put 30 metal doors onto garages at
132 the Country Mansions. He was told this was not acceptable and that the doors must be all-wood.

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His retort was that there are 55 garages in the Historic District which already have metal doors because people do not go before the HDC prior to making these changes. He only brought this up to highlight how important it is to update the regulations. Charlie Vars stated that he has the highest regard for anyone who serves on the Town's board/commissions. However, he is personally, very in favor of what the applicant is suggesting. Decisions made by the ZBA and HDC are not precedent setting; however, when a house two doors down was allowed to install aluminum-clad windows, it seems unfair not to let the applicant do the same.

Lori Ashooh stated that the HDC's denial referenced the regulations, and that the application was for windows that are not all-wood. However, in reviewing that section of the regulations, nowhere does it state that windows must be all-wood. Rich Ashooh stated that the regulations do specifically ban certain materials for other items, such as fencing. The windows section is very clear that there is no prohibition against, or requirement for, all-wood. He also reinforced his respect for those who serve on Town boards/commissions. He agrees with the HDC's mission; he simply believes this was the wrong decision.

Danielle Pray stated that she read through all the minutes and information provided for this case. She believes the HDC decision reflected in the minutes is that the application was denied because the proposed windows are not all-wood. There were no design or size elements which this denial was based on.

Rich Ashooh agreed with this. He explained that there were three "nay" votes by the HDC. One Commissioner noted that he was very much in favor of all-wood windows, one gave no rationale, and the third expressed concern that all of the windows in the house were not being replaced at once. Rich Ashooh explained that he would be happy to amend the application to replace all of the windows at the same time if that was the reason for denial.

Danielle Pray stated that she has read through the regulations and agrees that there is nothing stating that windows must be all-wood. She believes the ZBA rules only on the regulations at hand. She is of the opinion that, strictly based on the all-wood condition this was denied by the HDC, this appeal seems to be appropriate. She asked that the ZBA's vote include that the design and size elements of the Historic District will still be met. Rich Ashooh stated that he does not believe there is any issue with these items.

Doug Kirkwood said that there did not appear to be anything presented from the Community Development side. Nic Strong stated that the Staff Report presents all of the information to the ZBA that the Community Development Office has on this case.

Charlie Vars noted that he read that, where replacement windows are essential, they should match the style of the original windows or be in character with the building as reasonably achievable. Also, the sash members and exterior muntins should be reproduced or closely approximated. He believes the aluminum-clad windows are well approximated to historic windows. The proposed windows also have a U26 insulating factor. He does not believe that reconstructing the existing glazed windows will meet the State standards for U35. This

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requirement has been eliminated for historic properties, but he doesn't understand why applicants would be required to exceed the standard with reconstructed windows, when the proposed windows meet the standards. Windows are sold with a U factor standard for insulation.

Doug Kirkwood asked for public comment. There was none at this time.

Charlie Vars stated that the Chair of the HDC asked him to read some of the regulations into the record. He noted that the HDC Commissioner who was supposed to attend to speak on behalf of the HDC was unable due to a sick family member. Danielle Pray asked if it is only the regulations or a statement by the HDC. Doug Kirkwood stated that a statement could be read into the record, but he does not believe the regulations need to be restated. It was determined that this was a statement prepared by the HDC.

Charlie Vars summarized the document. It included the associated sections of the regulations and the Commission's reason for denial. Also, it contained a statement that the Commission could have been stricter in asking the applicant to provide proper documentation or proof that the existing windows are not original to the building or in a state of disrepair, but it did not. The Commission agreed with the applicant's intent and desire to leverage high quality windows for the restoration project, however, regardless of any visual difference between aluminum-clad and all-wood windows, the regulations are very clear in the use of historic materials. In fact, the regulations also state that a multi-paned sash should have true panes, formed by true muntins, and should not utilize applied or embedded muntin grids. The Commission has been lenient on this specific part of the regulations in the past, as it believes a quality, all-wood, SDL (simulated divided light) window without a storm is a much more appealing option.

Charlie Vars added that he believes there is the same amount of aluminum in a wood-clad window as there is in an aluminum-combination window. In driving around the Village today, he noted two houses on Middle Street that have aluminum-combination windows that are not white, all the rest are white aluminum-combination windows.

Rich Ashooh stated that the energy efficiency of the proposed windows was secondary in this project. He sought out quality historic preservation windows and found them through the proposed Pella windows. Pella worked with the National Park Service to design these windows as such, and they are now being used everywhere. Further, more updated regulations exist in the towns of Exeter and Portsmouth. These regulations allow this type of proposed windows. Rich Ashooh stated that photographic evidence that the existing windows are not historic to the house was presented to the HDC. A photo from 1960 shows different windows on the house. By removing the aluminum storm windows and screens and replacing them with windows that have a hidden screen, the house will look more historically accurate to how Cyrus Eastman originally built it.

As there was no additional comment at this time, the Board moved onto its next case.

Jamie Ramsay retook his seat.

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5. CASE #: PZ15831-052322 – VARIANCE

Gregory & Gianna Deer (Owner & Applicant); 5 Joseph Prince Lane, PIN #: 008-015-001 - Request for relief from Article IV, Section 4.5, Paragraph E.2. to construct an addition consisting of a two-story structure and housing a two-bay garage with living space on the second floor. The structure will be situated within the side setbacks. Zoned Northern/Rural.

Jamie Ramsay read and opened the case.

Gregory Deer explained that he is looking to expand the house a bit. He asked how the Board would like for him to proceed. Doug Kirkwood noted that there may be abutters present who have not reviewed the materials, so the applicant may wish to review the application and why a variance is needed.

Gregory Deer stated that the proposal is for a two-story garage to be added to the house. The existing structure is approximately 34-35' from the neighbor's property. He is requesting a 30', 2-bay garage, attached to the existing house. This is to increase the square footage of the structure and parking area. This proposed garage will not go past the existing driveway. The neighbors can currently see the house as it is. He asked if this explanation satisfies the Board. Doug Kirkwood stated that this is up to the applicant.

Gregory Deer stated that the proposal will not have a negative impact on the value of surrounding properties. It may help the neighborhood look better overall. This is a private neighborhood, and this will not be a visual impediment.

Gianna Deer stated that the proposal will be within 30' of the left side of the property line, and the front will be within 50' of the property line which is within the regulations. The right and back side abutters will not be affected at all.

Doug Kirkwood asked why the applicant is asking for a variance. Gregory Deer stated that the proposal is less than 40' from the left side property line and he wanted to make sure this went through the proper procedures.

Charlie Vars stated that the two-story garage proposal is larger in square footage than the current house. The proposed garage is 1,800 s.f.; the existing house structure is 1,794 s.f. Gregory Deer explained that this will be a two-car garage with a living space above.

Charlie Vars stated that he believes this is the first time he's seen an addition within the setback, only 4' off the property line. There is a reason for the larger setbacks – to not encroach on others. He asked why the garage cannot be proposed further back on the property. Gregory Deer stated that the existing well is located behind the house.

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Charlie Vars stated that the garage could be moved back at least 10-15' without impacting the well. Also, if the garage was reduced to a normal size of 24' wide, it would be 12-15' from the property line instead. He noted that there were no proposed drawings submitted of the structure.

Gianna Deer stated that they are only in the preliminary design stages at this time. The structure is proposed at 30'x30' as a maximum size. It will likely not be that large.

Charlie Vars stated that the ZBA likes to see specifics, and that the fifth test looks for a hardship factor. He is not sure, with the existing statement, that the hardship carries enough weight. A specific design is needed, and he believes it should be smaller. A 34' wide structure would be right on the property line. Almost the entire proposed structure is within the side setback, and this is generally not approved by the Board.

Gianna Deer stated that the proposed garage will be attached to the existing structure, and she does not see an issue with the proposal. The side setback in the neighbor's yard is only the area for their sewer, leach field, and some woods; the abutting house does not exist in this space.

Doug Kirkwood stated that these are the existing conditions, but 20 years down the line, the next owners of this property could be put in a difficult position based on approval of this item. There is a reason for these setbacks. There is a need for regulations and development guidelines in the RSA, so that the Town can meet the growth standards it has expressed in the Town Master Plan. A variance, as requested, is not temporary. It will run with the property into the future. This also flies in the face of the purpose of the regulations. The rules and regulations help to guide people as to how to achieve the Town's goals. The applicants did not submit a plan that shows how this will impact the neighbors, the drainage, etc. Many questions are not addressed by the plan as submitted.

Gregory Deer stated that he does not believe drainage will be an issue. Doug Kirkwood asked for the proof of this statement. Gregory Deer stated that there is already an existing driveway in this location.

Danielle Pray stated that the Board makes its determination based on the five criteria. The hardest one for applicants to prove is generally the hardship test. She believes this may be an issue for this application, as submitted. The applicants usually need to show something unique about the property that could lead to a hardship if the variance is not granted. She believes the applicant may need to do more work on this item.

Jamie Ramsay stated that there is not specific enough information to move forward with this application. He would recommend tabling this application to the next meeting to allow the applicant to better assemble information to make a strong case. The Board does not have a personal feeling about the application but, in fairness to abutters and to support and defend the Zoning Ordinance, there is not enough information to base a decision on.

Gregory Deer agreed with tabling the application to the next meeting.

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Doug Kirkwood asked for public comment. There was none at this time.

Doug Kirkwood stated that there is no specific information on the proposed structure or where it will sit on the property. The RSA has certain criteria that need to be followed and five tests that need to be met. He sees no reason for the Board to vote on this item, without the necessary information.

Tracy McInnis asked if there is anything prohibiting the applicant from proposing to place this structure on the other side of the property, other than that a new driveway would need to be installed. This alternate location would allow the structure to be located outside of the setbacks, outside of the neighbor's property, no closer to wetlands, etc. Gregory Deer stated that this was considered but the septic and leaching system are on that side of the property. He noted that the proposal as it stands would not be within the neighbor's property. Tracy McInnis noted that this is correct; it would be very close, within 4' of the neighbor's property. Gregory Deer explained that the driveway and a garage are already established on site. He also does not want to change the way the road is currently structured.

6. CASE #: PZ15832-052322 – VARIANCE

Joseph Goodridge & Karen Ray (Owner & Applicant); 1 Walnut Hill Road, PIN #: 006-073-000 - Request for relief from Article IV, Section 4.3, Paragraph A. to construct a barn on the Applicants' property for the secondary use as a kennel. Zoned Residential Rural.

Jamie Ramsay read and opened the case.

Tom Quinn, attorney for the applicant, explained that the property consists of approximately 3 acres of land. It has frontage on Route 101 and Walnut Hill Road. The property was purchased by Karen Ray in October 2005 and conveyed by deed in 2010 to both herself and Joseph Goodridge. The property contains a 3-bedroom house along with other outbuildings and improvements. The property serves as the applicant's private residence. The applicants run a dog care business in Boston, Massachusetts, known as the DogFather. That business is exclusively in the Boston area, except to the extent that the overnight dog boarding services provided to these customers is accomplished at the Amherst residence. A wide range of services of dog care are offered at the Boston business. Dogs can also be groomed at the home boarding service. Dog owners do not bring the dogs to the property in Amherst. They are picked up and brought there by the applicants. The dog boarding and grooming services are not advertised locally, as they are not looking for more local business and these services are only in conjunction with the Boston-based business. Currently, the applicants board the dogs in the house. The applicants are now proposing a barn to board and groom the dogs. Floor plans of the proposed barn have been submitted to show this. This plan was presented to the Community Development Office to receive a building permit and the applicants were told that keeping more than 4 dogs that do not belong to the owner is considered a kennel, which is not a permitted use within the Residential Rural zone. Thus, a variance is needed.

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Tom Quinn stated that the barn is proposed to be 30'x48' with an attached garage on the southerly end, 24'x12.5'. In addition, an exterior flight of stairs, 4.5' wide, to the second floor is proposed. The structure is designed for boarding and grooming of dogs. He has included a Sandford Surveying & Engineering plan showing the proposed location of the barn and a fenced-in area for the dogs. This is proposed to be a solid, 8' high fence. The dogs will not be visible from the street, and passersby on the street will not be visible to the dogs, to quiet any barking noise.

Tom Quinn addressed the five variance criteria:

1. & 2. The variance will not be contrary to the public interest and will be consistent with the spirit of the ordinance.

The requirement that the variance not be contrary to the public interest is related to the requirement that it be consistent with the spirit of the ordinance and the two have for years been treated together by the State Supreme Court. *See Malachy Glen Associates, Inc. v. Town of Chichester, 155 NH 102 (2007)*. Because the provisions of the zoning ordinance represent a declaration of public interest, any variance would be contrary thereto to some degree. Consequently, the Supreme Court has instructed that to determine whether a requested variance is not contrary to the public interest and is consistent with the spirit of the ordinance, the ZBA must determine whether granting the variance “would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” The court has recognized two tests for determining whether a granting a variance would violate an ordinance’s basic zoning objectives. One is to determine whether the variance would “alter the essential character of the neighborhood;” the second is to determine whether granting the variance would “threaten the public health, safety or welfare.”

Granting the variance will not alter the essential character of the neighborhood. The applicant has been running this business from the property since 2005. The use is firmly embedded in the neighborhood. The property is located on the corner of Walnut Hill Road and New Hampshire Route 101. There are several other properties in the area to the south that are used for commercial purposes of different kinds. There are 13 lots in the Deer Hollow subdivision nearby, all protected by conservation easements. These lots do not have frontage on a public road, so they all have frontage along Route 101. The property is in close proximity to the Town's Transfer Station and additional commercial uses to the north. This property is within the neighborhood of other, more intensive, commercial uses, than what is being proposed.

The traffic count of Route 101 is approximately 20,000 cars a day. Deer Hollow Road itself is a feeder-road, with many subdivisions off it. The effect is that Walnut Hill Road is fairly well traveled. This proposal will not impact local traffic. Dogs are picked up

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from the site and delivered to their owners. Owners do not travel to the site for boarding, grooming, training, or purchasing of dogs.

The property will continue to be used for residential purposes. The kennel-related use will be conducted within the newly constructed barn and a fenced in area of approximately 45' x 20'. The property will continue to maintain its residential appearance and character. Conditioning the property to remain as a primary residential property is acceptable to the applicants.

Nor will granting the variance threaten the public health, safety, or welfare.

3. Granting the variance would do substantial justice.

Tom Quinn explained that this test means that any loss to the individual that is not outweighed by a gain to the public is an injustice. He stated that the historic use of this property has been for both a residence and the operation of a small kennel and dates back many years. It is a key component of their business but is not the headquarters of the business. This neighborhood is a mixed-use area with there being both residential and commercial uses in the area. The applicant's property is only a short distance from the Limited Commercial Zone. The residential use of this property will continue. The operation of the kennel will be ancillary and subordinate to the residential use.

Denial of the variance will have a substantial negative impact to the applicant and the applicants use of the land, without a corresponding substantial benefit to the public.

4. Granting the variance will not diminish the value of surrounding properties.

Tom Quinn stated that he had run the proposal by a real estate agent who lived in Amherst for decades, Jim Spellman. Mr. Spellman is familiar with the property and his conclusion was that he did not see any negative impact to surrounding values. Granting the variance will not diminish the value of surrounding properties. Route 101 and the related traffic is already there. Granting the variance will cause only the most insignificant, if any, change to existing traffic. The kennel operation is small and conducted mostly indoors. The use has existed for over 15 years without a detrimental effect on the neighborhood.

Letters have been submitted from a couple of abutters in support of the project.

5. Owing to the special conditions of the premises that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because (1) no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the premises, and (2) the proposed use is reasonable.

- i. The applicant's property is located on Route 101, one of the most heavily traveled roads in the town of Amherst. The property is in an area where many properties are used for commercial purposes and lies in very close proximity to the Limited

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- 435 Commercial Zone. The property has historically been used for mixed residential
436 and kennel purposes.
- 437 ii. There is no fair and substantial relationship between the general purpose of the
438 ordinance provisions and these specific application of those provisions to the
439 applicant's property. The general purpose of the Residential/Rural Zone is to
440 encourage the development of residential neighborhoods and to maintain a rural
441 setting. That purpose has been reflected and accomplished in most areas of the
442 zone. But with respect to that area of the zone in the area of Route 101, there are
443 many exceptions. The part of the zone in which the applicant's property is located
444 is a mixed-use neighborhood. There are not many residential properties heading
445 north on Route 101 from the property in question. Despite being in the
446 Residential/Rural zone, this property is not truly in a Residential/Rural setting.
447 Kennels cannot be approved by right anywhere in Town. Two other kennels in
448 Town are located in the Residential/Rural Zone. This is a reasonable use of the
449 property. The applicant's property itself has been used for both residential and
450 business purposes with little effect. The property will continue to be used for
451 residential purposes in addition to the kennel use.
- 452 iii. The proposed use is reasonable. The variance will allow the applicants to continue
453 a use of their property that has existed since 2005 without an adverse effect to the
454 neighborhood. The proposed use is less intense than the use of commercial and
455 municipal uses in the area and will have minimal impact on the traffic in the area.
- 456 Charlie Vars explained that the building of the barn is a by-right use of the property; the variance
457 is only for the kennel use within that structure. This property was previously before the Board for
458 a variance for a porch. This was approved and he sees it as a benefit to the property. He asked
459 that the right and left elevations be transposed on the plans, as they are currently backwards.
460
- 461 In response to a question from Danielle Pray, Tom Quinn stated that there are currently
462 approximately 20 dogs on average on the property. 30-40 dogs in peak seasons are proposed for
463 the new structure.
464
- 465 In response to a question from Danielle Pray, Tom Quinn stated that his statements about the
466 property's historic use pertain only to this current owner. Previous to that, he believes the
467 property was used as an ostrich farm.
468
- 469 In response to a question from Tracy McInnis regarding the purpose of the second floor, Tom
470 Quinn stated that there is no proposed use for that space currently. Originally, the applicant was
471 considering an accessory dwelling unit (ADU) use of the space, but this would require a
472 Conditional Use Permit (CUP) from the Planning Board. The applicant did not want to go
473 through that more expensive process at this time.
474
- 475 In response to a question from Tracy McInnis, Karen Ray stated that the number of dogs
476 currently at the business varies, but is usually around 20 dogs per day, or more during holidays.

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The dogs do not spend the majority of time in kennels. The business is not currently accepting new clients. Hopefully, the barn will eventually be able to be used simply as storage. The business currently caters to only high-end, private Boston clientele.

Tracy McInnis stated that she has a concern that 20-35 dogs essentially is a small daycare center for dogs on the property. Karen Ray stated that this is not her intention. The proposal is to make the space more functional for herself, her neighbors, and the current business. This is supposed to be a very private business. She stated that she has occasionally taken care of friends' dogs. Karen Ray went on to say that she provides a unique service that she has built up over 21 years in Boston and this proposal was to be able to get the dogs out of their private residence.

Tom Quinn reiterated that there would not be people dropping off dogs at 9 a.m. and picking them up at 4 p.m. He stated that this was not a transient business and that the dogs would remain for a weekend or a week or two. He also pointed out that the property owners were going all out with the application and soundproofing the barn to minimize any noise issues. Tom Quinn stated that the owners had a good relationship with their neighbors.

Tracy McInnis suggested angling the 8' tall fence or placing some sort of protective barrier on top, in order to better guard against the dogs possibly exiting the area and entering Route 101.

Diane Neumann, 21 Deer Hollow Drive, stated that she has known the applicants for approximately 1.5 years, and that they are wonderful, helpful neighbors. The applicants have kindly taken care of her dog in a previous emergency situation. She is confident that the proposal will fit in with the style of the neighborhood.

Cecilia Stuopis, 11 Deer Hollow Drive, voiced her support for the proposal, noting that she had known the applicants since 2005. She stated that the dogs in the rest of the neighborhood make more commotion than the dogs on the applicants' property. She has not experienced any impact from the business. Apparently, there is a property directly across the road from Walnut Hill Road, located on Route 101, which is being run as a B&B property. This speaks to the area not being as Residential/Rural as it is zoned.

Charlie Vars stated that Lot 6-70, located diagonally across from the abutter, is called the Charles A. Vars/Kings Pine subdivision. He has no interest left in those lots and thus there is no measure of conflict.

Charlie Vars noted that a variance runs with the property and asked if the applicants are willing to entertain some restrictions. This property could be sold as a kennel in the future and not run per the rules and regulations.

Tom Quinn requested that, if the Board is interested in conditions, these be discussed during the public hearing itself, in order to hear from the applicant. The kennel is a secondary use of the property. The property's primary use is as a residence. The applicants are willing to a condition that the kennel cannot be operated separately from the primary residence. The applicant is

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willing to make sure that the two uses are tied together. The concern with making the variance personal only to the applicants, is that the new barn will be a large expense and he would like the applicants to have the option to sell the property for both residential and a kennel use in the future. A restriction that the property will always be a residential/kennel use, is acceptable to the applicants. A condition that the use only be personal to the applicants, and that a future sale could not include the kennel use would not be preferred but would be accepted in order to achieve the variance.

Charlie Vars stated that the variance runs with the property, not the owner. Charlie Vars stated that he would like restrictions that this not be used as a doggy daycare and that there be no signage on the property regarding the business.

Doug Kirkwood stated that the Board would enter deliberations.

**Jamie Ramsay moved to enter into deliberations. Charlie Vars seconded.
Voting: 5-0-0; motion carried unanimously.**

CASE #: PZ15830-052322 –

Jamie Ramsay recused himself.

Charlie Vars asked if a positive vote by the Board affirms the HDC decision. Danielle Pray stated that this is a de novo decision, which means that it is not overturning the HDC's decision but creating a new ruling. A positive vote would allow for aluminum-clad windows.

Doug Kirkwood stated that the regulations are clearly written, and the Board needs to make sure it does not allow for a violation of the law.

Danielle Pray stated that there is no clear language in the regulations that states that windows need to be all-wood. This appears to be, per the minutes, the reason that the HDC denied the application. In the two sections of the regulations which speak to windows, there is no language stating that they must be all-wood.

In response to a question from Doug Kirkwood regarding updates on the regulations, Nic Strong stated that the HDC is currently in the early stages of making updates to their regulations.

Charlie Vars stated that the HDC seems to recognize that there are updates that need to be made to the regulations, which will take time. That is not what is being dealt with this evening.

Danielle Pray noted that there is nothing in the minutes from the HDC meeting regarding the design or style of the proposed windows and these being an issue. In the findings section, the HDC found that it was difficult to tell the difference between the proposed windows and all-wood windows. Tracy McInnis stated that this was reiterated by Charlie Vars.

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Danielle Pray stated that her concern is not with the material of the proposed windows, but that the design and style need to be in keeping with the Historic District. She could likely draft a motion that included similar language.

Doug Kirkwood stated that the HDC regulations cannot be changed by the Board.

**Danielle Pray moved to approve the aluminum-clad replacement windows for 4 Middle Street, CASE #: PZ15830-052322, with the condition that the applicants receive approval from the Historic District Commission for the design, style, and size of the windows. Charlie Vars seconded.
Voting: 4-0-0; motion carried unanimously.**

Jamie Ramsay retook his seat.

CASE #: PZ15831-052322

**Jamie Ramsay moved no regional impact. Charlie Vars seconded.
Voting: 5-0-0; motion carried unanimously.**

Charlie Vars stated that the second floor of the proposed structure will actually be the first floor of this garage structure, because there will be a garage under that floor. He stated that the Board should give the applicant specific criteria to consider before the next meeting. He expected that Nic Strong will have a conversation with the applicant to express what these criteria are.

Jamie Ramsay stated that the current application has no architectural design and is an incomplete application without enough information to deliberate on.

Charlie Vars noted that the proposal could be reduced to 24' wide and set back further on the lot in order to come closer to meeting the prior setback requirement, 15', of the subdivision. Jamie Ramsay stated that the onus of presenting this argument is on the applicant.

Doug Kirkwood stated that this application could be denied without prejudice for lack of information. This would allow the applicant to come back to the Board with a new application. Jamie Ramsay stated that this would require the applicant to pay a new set of fees. Charlie Vars stated that he would prefer to continue the hearing.

**Charlie Vars moved to continue this hearing to July 19, 2022, 7pm, at Town Hall.
Tracy McInnis seconded.
Voting: 4-1-0; motion carried [D. Kirkwood against].**

CASE #: PZ15832-052322

**Jamie Ramsay moved no regional impact. Charlie Vars seconded.
Voting: 5-0-0; motion carried unanimously.**

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Charlie Vars moved that the applicant be allowed to use the barn as a kennel with the following conditions.

Danielle Pray noted that the Board needs to first address the five variance tests.

Doug Kirkwood addressed the five variance tests.

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

- T. McInnis – true, the applicant will not have people dropping dogs off and increasing traffic to the area. The proposal will improve the neighborhood.
- C. Vars – true.
- D. Pray – true, it will not alter the essential character of the neighborhood. This will remain a primary residence and there are other commercial venues in the area. This does not threaten public health, safety, or welfare.
- J. Ramsay – true, the proposal will not be contrary to the public interest.
- D. Kirkwood – true.

5 True

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

- C. Vars – true, the location of the barn is ideal, and a kennel use in the barn will not affect the spirit and intent the ordinance.
- D. Pray – true, the residence is a primary use, and the kennel will be a secondary use. There will be limited traffic or noise and no signage.
- J. Ramsay – true, the proposal will not impact the health, safety, or welfare of the general public.
- T. McInnis – true.
- D. Kirkwood – true.

5 True

3. Substantial justice is done.

- J. Ramsay – true, the proposal will allow the applicants to enjoy their property and use it to a reasonable extent.
- T. McInnis – true, the proposal will allow the residents to have their home back in moving the kennels into the barn.
- D. Pray – true, the loss to the applicants, if denied, outweighs the benefit to the public. There was no evidence supplied regarding the benefit to the public of denial.
- C. Vars – true.
- D. Kirkwood – true.

5 True

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

- C. Vars – true, the property has been used in the past for a kennel purpose. This proposal will only increase the property value and not decrease value to any of the

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651 other surrounding homes. The proposed location is approximately 100' from Deer
652 Hollow Road.

- 653 • T. McInnis – true, the proposal will only enhance the property values in the
654 surrounding area.
- 655 • D. Pray – true, the applicant submitted a letter from a real estate expert that this
656 proposal will not diminish any values.
- 657 • J. Ramsay – true, the proposal will not diminish the values. Although it is located on
658 the corner of Route 101 and Walnut Hill Road; it is a fairly private lot.
- 659 • D. Kirkwood – true.

660 **5 True**

661

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

- 664 • D. Pray – true, there are special conditions of the property: it is located along Route
665 101, and there are nearby commercial businesses. The purpose of the ordinance is to
666 separate incompatible uses. The proposal does not change the primary residential use
667 of this property, with an ancillary kennel use. The design and style of the building
668 will fit with the property. This is a reasonable use as there is historic precedence of
669 use.
- 670 • C. Vars – true, a barn could be built on the property to hold 50 cows, and this would
671 create more noise. This is a reasonable request, and it would be a hardship to deny the
672 application.
- 673 • T. McInnis – true, the purpose of the Rural Residential Zone is to encourage
674 development and maintain a rural setting. This will keep with that purpose and is 100'
675 off the road.
- 676 • J. Ramsay – true, denying this would be unreasonable, as this is located within an
677 area of many commercial businesses while still being in the Residential Rural Zone. It
678 is a unique property.
- 679 • D. Kirkwood – true.

680 **5 True**

681

682 **The Chair stated that the application, as it passed all of the tests, is granted, as**
683 **submitted. It was noted that the following conditions are placed on this approval:**

684

- 685 • **There shall be no sign.**
- 686 • **There shall be no daycare, dog training or breeding.**
- 687 • **The use of the kennel is to be primarily in conjunction with the applicants'**
688 **Boston-based business.**
- 689 • **Grooming will be done in conjunction with boarding and not as a distinct**
690 **line of business.**
- 691 • **No retail sales of dog food, toys, equipment or other dog-related**
692 **merchandise.**
- 693 • **Except for minor services to friends, customers will not drop off or pick up**
694 **dogs.**

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695 • **The main building/current residence is to remain a residence.**

696 **Charlie Vars moved to exit deliberations. Jamie Ramsay seconded.**
697 **Voting: 5-0-0; motion carried unanimously.**

698
699 OTHER BUSINESS:

700
701 **1. Minutes: April 19, 2022, & May 17, 2022**

702 The Board agreed to table discussion on these until the next meeting.

703
704 **Charlie Vars moved to adjourn the meeting at 9:40pm. Danielle Pray seconded.**
705 **Voting: 5-0-0; motion carried unanimously.**

706
707
708 Respectfully submitted,
709 Kristan Patenaude

710
711 Minutes approved: August 16, 2022