

Zoning Board of Adjustment
424 White Mountain Highway
Milton, NH 03851
December 16, 2015
Meeting Minutes

Members in Attendance: Larry Brown, Lue Synder, Michael Tabory, Bruce Woodruff, Stan Nadeau, Mike Beaulieu, Also in attendance Dana Smith, Land Use Clerk

Missing Members:

Public Attendance: Christa Capello, Mark Main, Roger Burkhart, Robin Pierce via phone conference

Chairman Tabory called the meeting to order at 5:02 pm

Public Comment: No Comment

Chairman Tabory stated that B. Woodruff will be a voting member of the board for remainder of this case.

Minutes: S. Nadeau motions to table the November 19, 2015 minutes, L. Synder seconds the motion. All in favor, November 19 minutes will be reviewed at the next meeting.

December 12, 2015 site walk minutes, remove Diane Canfield and add Ryan Burns Caldwell Banker and Terry Calder of Farms and Barns, S. Nadeau moves to approve the minutes with corrections, L. Brown seconds the motion. December 12, 2015 site walk minutes approved with corrections.

Continuation of Case#2015-7: Request for a Special Exception from Article III Section 3.5 (C), to utilize site for a Kennel. Site located at Map 18 Lot 6, 1262 White Mountain Highway, Milton, NH in the Low Density Residential Zone.

A site walk was held on December 12, 2015 at 9am, no decisions were made, the board was able to ask questions and see the site.

Chairman Tabory asked D. Smith to bring Robin Pierce into the meeting through conference call. For the benefit of the audience joining the meeting through teleconference the board introduced themselves and Chairman Tabory introduced the applicants and property owner. D. Smith read to board the voting results from the first three questions from the last meeting, held on November 9th.

Discussion of question four began at the last meeting, no decision was made and Chairman Tabory asked the applicant to re-address the question for further discussion.

4. That adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use and structure so that the use will not be contrary to the public health, safety or welfare.

C. Capello replied that all renovation and design to the barn will occur under the guidelines of the Town of Milton's Building Codes. Utilities currently exist to the barn structure. Local and state building codes will regulate all additions/expansion of utility service in use at the barn.

Public Comment: R. Pierce did not have a concern with the 4th question.

Board Discussion: L. Brown questioned the chair how would one define public welfare in terms of low density residential and the expectations people have living in that environment, does welfare include for example the possibility of 5 commercial signs each one for a specific commercial business, are the signs lit. Chairman Tabory replied to those points that it is all part of the zoning and sign ordinance. L. Brown disagreed that it is exactly so that the use is not contrary to the welfare of the community and neighborhood. Chairman Tabory believes that it would be addressed through site plan review and regulated by the sign ordinance otherwise they would need to come back for a variance from the sign ordinance, and commercial signs would be out by the road not signs that direct for parking. B. Woodruff inputted that low density residential in Milton makes up the bulk of the town area and that is made up of some sub divisions but mostly still rural/agricultural land, what are the expectations of the folks in that zone, and what does the zoning say for a definition in that zone. His advice is to see what the zoning

ordinance says that low density means in Milton. He thinks the board should ask themselves does a kennel use in a former dairy farm fit the zone. S. Nadeau stated he reads the question to go farther as public health, dog droppings, odors, safety, and a dog that gets out and goes to the neighbor's yard that could be aggressive. S. Nadeau continued that he does not see how dogs would be more offensive odor wise than cows, the applicant has previously answered how the dogs will be contained and how they will deal with the excretions. B. Woodruff added that public welfare could be noise that is not expected, dairy animals do not make the same noises at the same time as dogs do and that is an issue that needs to be answered at some point, if someone makes the motion to grant it there are conditions to be made to make sure noise is litigated to some extent, but when does it become a nuisance. L. Brown inputted that the public welfare is a cultural expectation in a zone, not that you can cross the road and not get hit by a truck, he is concerned for the culture of the neighborhood. L. Synder is concerned with the dogs, a dog's noise is a lot shriller than a horse or cow, she is concerned about sound deadening insulation, the barn is lovely but there are loose slats and there are people living there and next door.

C. Capello responded that she did her homework as best as she could based on what the board asked at the previous meeting. She proceeded saying when we're talking about sound and dogs, we're not talking about one noise that's going to be happening all the time, it is an intermittent noise that reaches certain decibels. She found in her research in response to a dogs bark it is 75 decibels and she brought a chart to show how it relates to industrial, residential and commercial sounds. A single dog barking is the same as a television or dishwasher. C. Capello explained that on the property presently there are four out of five tenants that have dogs and during the site walk no dogs were heard. She continued her case that a group of dogs barking at one time, called the kennel effect, could relate to 110 decibels which is relatable to the same noise level of a power saw or symphony orchestra. C. Capello further continued that when considering how sound travels and building structures, she went to a manufacturer to get a professional opinion on sound proofing. C. Capello brought samples of insulation to show the board the options they could use and explained how with each added insulation it would further dampen the noise that is heard outside. She explained that general walls without special material is litigated with STC which is a way to rate the decibels that will be subtracted or absorbed. 40 decibels is normal speaking, when you start adding products to further litigate sound with site specific materials it adds layers that the sound needs to get through. She proceeded to inform the board on the ways they found they could construct walls to make the kennel more sound proof, they plan to build the kennels in a room that is enveloped in the barn. C. Capello described the landscape of the property and the natural barriers that will be beneficial in sound dampening, she pointed out as talked about at the site walk the area that the dogs will be outside will have a fencing specially designed to dampen the sound.

L. Brown reciprocated that sound transmission class is what STC stands for and complimented the applicant on their research. He countered that it is the irregular and unnatural outdoor noise you cannot control for and he holds his concerns for. S. Nadeau feels that they have their heart and a substantial amount of money, they seem to be very invested into the project and questioned a rough estimate to how much they have already invested into the project. Chairman Tabory noted that while he understood S. Nadeau's comment he felt unsure that even giving a dollar figure allows the board to judge validly or if it is appropriate. L. Brown retorted that there is absolutely nothing in the land use regulation that speaks to the heart, soul and financial resources of every applicant, it is exactly the uses of the land. He continued that many people have come and gone with good plans, we have seen the rise and fall of the real estate market, once a variance is granted it runs with the land. Chairman Tabory just wants to note for accuracy that it is a special exception not a variance. B. Woodruff thinks the commitment would be showed if this board grants it, if the applicant goes to the planning board for a site plan review, he believes the proof of their commitment would be the site plan submitted to the planning board. S. Nadeau retracts his question. B. Woodruff questions if special exceptions run with the land or not, communities have the right to change their zoning to enact that if the use is ceases for some amount of time in some communities the special exception or variance goes away. Chairman Tabory read from the zoning ordinance that if after commencement, a variance is abandoned for a period of two years, or otherwise replaced by a conforming use, and then the variance shall be deemed to have expired and cannot be re-established without a new application process and affirmative decision of the ZBA.

C. Capello acknowledged she was under the impression that a special exception does run with the land, but now that it does not necessarily, one of the items they did some research on may or may not remain pertinent. She had researched the NH State statutes on commercial kennels and dog laws, there is a bit of a conflict. C. Capello continued that here in Milton they are applying for a special exception for a kennel because that is what their request fits under. Milton's zoning defines a kennel as any structure or premises, in which animals are kept, boarded, bred or trained for commercial gain. She attested that they are only interested and will only undertake boarding animals and training animals. For the State's regulation under Title XL of the Agriculture, Horticultural and Animal Husbandry chapter 437 sale of pets and disposition of unclaimed animals, there is licensing required if you plan on transferring animals which they have no plans to do and if the board wanted to make that a condition they would be agreeable to this.

B. Woodruff said the board has to focus on the zoning ordinance in Milton. L. Brown explained that part of the board's job is to function as a reasonable safety valve against the pressures of changing economic condition and changing cultural patterns.

C. Capello inputted that there was a question brought up previously by an abutter pertaining to State licensing and following State regulations and she wanted to make the board aware that they are not part of that.

Chairman Tabory agreed that the State regulations need to be monitored by the State.

C. Capello added in part of our preparation for purchasing the property they have had special inspections of the barn with historic barn specialists, who can assure it is sound and allows for the proposed use inside of it. M. Main included that they have been assured the beams and post of stable in the structure and well maintained.

L. Synder would like to see an addition of wording that they would really have to put sound deadening, really concerned about that with this many animals. The trees are sparse on the South side. B. Woodruff replied that for the outside run, it might be condition that the animals not be outside at night and more plants be planted to absorb more sound.

S. Nadeau motions to accept that adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use and structure so that the use will not be contrary to the public health, safety or welfare, L. Brown seconds the motion. All in favor. Board vote: **5-0**

5. That the proposed use or structure is consistent with the spirit of this ordinance and intent of the Master Plan:

C. Capello responded, the vision for Milton as stated in the Town of Milton Master Plan is to be "A quality residential community with a New England village style town center that preserves and maintains the Town's historic and rural character" The Luxury Pet Resort and Dog Daycare facility we propose fully embraces the rural and historic character of the property, as well as the town, in its design and implementation. A modern facility within the envelope of an 1840 structure provides for a unique and very special space. The historic area of Plummer's Ridge, with its rich and well-documented history only augments the special nature of an enterprise at 1262 White Mountain Highway. We hope to be an integrative and "good neighbor" to the current businesses located in the vicinity. It would be our hope to develop a business that draws clients, not only from the immediate Milton/Wakefield area, but becomes a facility utilized by Seacoast residents and tourists who visit New Hampshire's mountains and lakes. The dog business industry is one of the most robust and fastest growing sectors of the US economy. A recent Boston Globe article (October 7, 2015) noted that Americans own roughly 78 million dogs, and overall Americans would spend more than \$60 billion on our pets in 2015. We aspire to have a positive economic impact on the town of Milton as we grow a vibrant and long-standing business.

Public Comment: R. Pierce asked in regards to the Master Plan in one of the sections of it under the purposes and policies of the Master Plan she quoted that it states to protect the rural character of Milton, to respect the landscape and scenic views and in particular references Plummer's Ridge and states to protect the environmental quality by minimizing the impact from human activity and also to protect the welfare and safety of all users, her question is about human activity referencing the original first page of the special exception application that stated the applicants were requesting having professional training classes for dogs, dog parties, socials for community rescue groups and a retail section that plus the ambient lighting issue. She added a second question to the board to assure her that any decision is not an example of spot zoning. R. Pierce finished with wanting to know how a commercial enterprise like this is allowed to be in low density residential area.

Mike Beaulieu joined the meeting at 5:55pm.

Board Discussion: B. Woodruff replied that it is not spot zoning when you put in your table of allowed uses that a particular use is allowed in a particular zone by special exception, which means the board reviews the application to do that use and then if it meets those performance criteria then it becomes an allowed use. He continued with in Milton's zoning it allows a kennel through special exception at least in this zone, bottom line a kennel is a use that is allowed in Milton. B. Woodruff questioned where would it be appropriate to have a kennel, would it be appropriate in the industrial park, the village or any commercial zone or is it appropriate to have it in the rural zone. He said the fact that the board gets an application like this, speaks to that it is an economically viable and profitable business in this day of age. B. Woodruff continued while Plummer's Ridge had working farms, but it doesn't happen anymore, so you end up with buildings falling down the buildings will not be useful to anyone and the history will be lost. So if you have the opportunity to maintain the at least the outer shell of the historic property it seems like a win, but we need to be careful to make sure the concerns are litigated. Chairman Tabory replied that kennels are allowed through special exception in low density residential and commercial residential, but would need a variance in other zones. He continued it is not necessarily unreasonable to have a kennel in low density per the Zoning. L. Brown commented as for Plummer's Ridge, Index Packaging is directly across the street from a historic house and is an orange pumpkin at night. He continued that it is not spot zoning is a technical point, that it represents the particular change from historic uses he thinks is the stronger point. Chairman Tabory wanted to note that Index Packaging was here prior to zoning and therefore not spot zoning. S. Nadeau inputted consistently year after year at Board of Selectmen and Budget Committee meetings the statements are said we need more business in this town, here is an opportunity that would contribute to the town and possibly bring more people into the town. Chairman Tabory agrees with that statement, as far as master plan and purposes to protect rural character, the design the applicant is putting forward does that, for landscape and scenic views the property is part of that scenic view and the house is already a part of the landscape. Lighting is a big feature for everyone here.

C. Capello, feels that everyone is seeing their vision, she believes in stewardship, there are many other places she could develop a business, walking into Mr. Burkhardt's farm seeing the entire package, it developed before them that it is a unique opportunity. She explained her education and professional background is as an expert in 18th and 19th century American antiques and fine art. C. Capello continued her first job out of graduate school was with the Keno Brothers of Antique Roadshow she has seen some of the very best Americana in the last 16 years and built multi-million dollar collections and seeing Mr. Burkhardt's farm that is basically a time capsule of 1840 culture embedded in the farm and community. This site pairs with their life's dream, M. Main is the master plan behind the high end facility for dogs, and he is the dog whisperer. C. Capello expressed her excitement of the original moldings in the home that they can create a place to live, a home based business and community to become a part of and to hold the stewardship of such a property and work within the guidelines would be an honor to them.

S. Nadeau motions to accept that the proposed use or structure is consistent with the spirit of this ordinance and the intent of the Master Plan. L. Brown seconds the motion.

Board Vote: 5-0 (M. Beaulieu did not vote)

B. Woodruff motions to grant the request for special exception based on the information presented and discussed in the application materials to establish a dog kennel with the following conditions

1. That the applicant shall appear for the Planning Board for site plan review, to review parking, traffic flow, exterior lighting, outdoor run, and noise litigation techniques.
2. That the applicant shall utilize best management or state of the art techniques to keep noise to a minimum so as not to offend the neighbors.
3. Dogs staying overnight shall be kept indoors during night time hours.
4. There shall be a maximum of 35 dogs boarded at any time.

B. Woodruff explained further condition number 2 talking about how the applicant shall utilize best management or state of the art techniques to keep noise to a minimum so as not to offend the neighbors the control here are the

neighbors, if they do the right job and build it correctly there will not be any complaints. It is self-policing to keep anyone from complaining. He elaborated the idea of 35 dogs is the idea of not over doing it and it should be posed to the applicant if that is viable. Chairman Tabory asked B. Woodruff what he means by boarding, is it just dogs that stay overnight or does it include the dogs that are there for the daycare and get picked up in the evening. B. Woodruff replied overnight stays for the dogs.

C. Capello explained from the kennel design the capacity exceeds 50 dogs and that was based on their own estimate in result of input from a kennel designer.

Chairman Tabory explained that they are showing that they are using the second floor as and questioned if by limiting them on the number of dogs limits them economically.

C. Capello would like to do a self-policing component that does not restrict it, what they have there is over 55 by their own hand but someone else may say they could have more or less. They plan to keep it all within the envelope of the barn that exists.

B. Woodruff suggested a change to his condition in a way to alert the Planning Board that the Zoning Board would like their determination. L. Brown suggested would the phrase as further reviewed by the planning board work. B. Woodruff beginning to think 35 is low. S. Nadeau voiced a concern because 4 dogs could be louder than 10 dogs, not sure the board can say how loud a dog is going to be. Chairman Tabory would like to see the limit taken out. L. Brown inputted the issue is quantity, you are dealing with the intensity of traffic and intensity of use of the site. He continued the planning board regularly sets conditions for the intensity and use of the site if you run a gravel pit you are not limited by the number of truck loads you can take out, one is limited to by the level the pit can be reduced and technical qualities of the site by DES, the function of 50 dogs is a function of the traffic expected and differing and more intense use of the site and fully a review of this board.

C. Capello added that she understands about limitations about space versus use, but particular to their business plan it is not just the quantity of dogs coming in and out, there is a quality factor, they will establish and assessment factor. She continued in order to board or stay the dogs need to go through a temperament assessment and the dogs need to be up to date of the shots. C. Capello explained they have control of the type and quality of the dogs that they allow into their site, they will already have a plan for when these dogs walk through the door litigated by groups of like temperament.

B. Woodruff asked if there is a space regulation per dog. C. Capello replied that they plan a 4x6 24ft standard kennel.

Chairman Tabory added another thing to think about they may be full every weekend and night, but his guess is that it will vary. M. Main responded that from their research they will only plan for 30% of their allowance, to guarantee. If the board says 30, that would mean 10 dogs a night and they would not be able to stay open for that.

B. Woodruff wants to suggest 75 dogs boarded overnight.

S. Nadeau seconds the motion with the change that there be 75 dogs allowed to board overnight.

Chairman Tabory inputted that there was nothing noted in the motion about commercial signage, even though it is part of our zoning so is lighting. B. Woodruff said signs are responsibility of the Planning Board. L. Brown commented that if something is not specified for the health, safety and welfare or keeping with the community you have given the Planning Board nothing that's where the traffic of 75, that's where the feeling of lighting that looks like the State Prison at Goffstown. Chairman Tabory asked what L. Brown is asking for. B. Woodruff added that they have to meet the sign regulations, but how they meet it and what it looks like is a different story.

C. Capello commented they do not want a sign that looks like Dunkin Donuts, Cumberland Farms or even Index Packaging, they will have to have some illumination and are willing to work and discuss and keep with the nature of Plummer's Ridge and the historic house. What makes it charming to be there to them is that it is historic.

B. Woodruff suggests that the sign meet the Milton sign regulations, be made of natural materials and be externally lit with hooded lights.

L. Synder wants to make sure there is something strong about insulation inside for the sound. B. Woodruff replied if it is offensive to the neighbors and they complain then it goes against the special exception and it can be taken away. L. Brown expressed he feels it is a large number and questioned why 75 and not 50. Chairman Tabory we should be concerned to what they need to be economical viable for them. L. Brown replied that the success or failure of a business is not a land use concern. Chairman Tabory rebutted that's fine then we should take the limit out completely. L. Brown countered with the issues of transportation, of change or issues and if you have 75

individuals coming or 50 individuals coming that's a difference of 50 trips, 25 in and out. Chairman Tabory reciprocated that it is not necessarily daily some dogs may be there for a week and not even counting daily day care. L. Synder added that some owners may own multiple dogs.

S. Nadeau withdraws his second.

B. Woodruff motions to grant the request for special exception based on the information presented and discussed in the application to establish a dog kennel with the following five conditions:

1. The applicant shall appear before planning board for site plan review, to review parking, traffic flow, exterior lighting, outdoor run litigation and all other site plan regulation requirements.
2. The applicant shall utilize best management or state of the art techniques to keep noise to a minimum, as to not offend neighbors.
3. Dogs staying overnight shall be kept indoors during nighttime hours after 9pm to 6am.
4. There shall be a maximum of 75 of dogs boarded overnight at anyone given time.
5. External signs shall be of natural materials with external hooded light that meets lighting ordinance.

S. Nadeau seconds the motion.

L. Brown is in agreement, presumes a farm under agricultural practice remains a farm as long as when more than 35% of the stuff is being sold outside the farm. His presumption that the definition of kennel will cover it, but his concern is this will not become a Petco with a kennel on the back. Chairman Tabory clarified that he is meaning the commercial sales becoming bigger than the kennel aspect. B. Woodruff commented that they had testimony from the applicant that it would be small. L. Brown withdraws his paranoia.

Board Vote 5-0. (M. Beaulieu did not vote)

The request for a special exception for a kennel at the property located at 1262 White Mountain Highway, Milton NH. Property located on Map 18 Lot 6 in the Low Density Residential Zone has been **Granted**.

R. Pierce asked if she has the right to appeal as well. Chairman Tabory agreed that abutter's do that have right. R. Pierce stated that it will happen.

The board explained to the applicant the process that would happen in result to an appeal to a decision.

Other business:

Chairman Tabory requested that D. Smith contact the Code Enforcement Officer to check on the signs at Cumberland Farms to make sure they are abiding by the conditions set by the Zoning Board.

L. Brown moves to adjourn, S. Nadeau seconds the motion. All in favor. Meeting ended at 6:58 pm.

Respectfully Submitted,

Dana Smith

Recording Clerk