

**TOWN OF FARMINGTON
ZONING BOARD OF ADJUSTMENT MEETING
Thursday, April 3, 2014
356 Main Street, Farmington, NH**

- Members Present:** Elmer W. "Butch" Barron III, John David Aylard, Joe Pitre
- Members Absent:** Joanne Shomphe
- Town Staff Present:** Director of Planning and Community Development Kathy Menici, Code Enforcement Officer Dennis Roseberry, Department Secretary Bette Anne Gallagher
- Public Present:** Louise Ferrari, Caitlyn Davidson, Edward Ferrari, Steven Chasse

At 7:03 pm Chairman Barron called the meeting to order.

BUSINESS BEFORE THE BOARD:

- Election of Officers

Joe Pitre nominated Butch Barron to serve as Chairman; 2nd John David Aylard. Motion carried with 2 in favor and 1 abstaining.

Joe Pitre nominated John David Aylard to serve as Vice Chairman; 2nd Butch Barron. Motion carried with 2 in favor and 1 abstaining.

John David Aylard nominated Joanne Shomphe to serve as Secretary; 2nd Butch Barron. Motion carried all in favor.

- Review and approve Meeting Minutes of February 6, 2014.

Joe Pitre motioned to approve the minutes of February 6, 2014 as written; 2nd John David Aylard. Motion carried with all in favor.

- Any other business to come before the Board.

None

NEW CASES:

Application for Appeal from an Administrative Decision By: Louise Ferrari (Tax Map U01 Lot 007): Determination that an Animal Breeding for Retail Sales Business is not a permitted use as a Home Business in the Village Center (VC) Zoning District. Parcel is located at 68 Central Street.

Chairman Barron read from the application the proposed use or existing use affected: "Under Section 5 – Home Occupation and Home Business, Sugar Glider Education, licensed breeder and supplies. Pet sales and service. Under Uses accessory to any principal residential uses per Table of Permitted Uses."

Planner Menici said with regard to Section 5, Home Occupation and Home Business, the applicant is not addressing either specifically and directed the Board's attention to 5.01 under Home Occupation Subparagraph 8

the final bullet point that identifies uses as home occupations as "Any other profession or occupation which may be unobtrusively pursued in a Residential Dwelling as determined by the Code Enforcement Officer." She added that in 5.02 for Home Business the final bullet in subparagraph 3 has basically the same language.

The Planner explained that the applicants never contacted the Code Enforcement Officer prior to beginning the business to allow his interpretation of the ordinance. CEO Roseberry became aware of the business activity through an article in the newspaper and once aware he sent out a letter to the applicants advising them he had reviewed the business and that it was not a permitted use in that district. This is an after-the-fact application.

The Board reviewed the applicable areas of the Zoning Ordinance. Addressing CEO Roseberry, Chairman Barron said that apparently the Town was basing its position on the fact that this use is not in the Table or is it permitted with a special exception so it is a prohibited use.

CEO Roseberry said that this type of business is considered to be animal husbandry and by the Table of Permitted Uses in that district it is not permitted so the applicant's option would be to ask for a variance or do away with the business. The CEO said to reinforce his interpretation he contacted Town Counsel and her advice supported his analysis.

Chairman Barron said so the problem is the sale not the keeping of the animals. CEO Roseberry agreed that the sugar gliders can be kept as pets but once a business is created it is not permitted.

Louise Ferrari distributed folders to the Board but did not have one for the record so Chairman Barron will give his to the Planner at the end of the meeting.

The Board took time to review the very lengthy submission. Planner Menici asked for an opportunity for herself and the CEO to review the document when the Board was finished.

The Chairman gave Mrs. Ferrari an opportunity to speak. She said that her argument is more on the purpose of the Ordinance which in her opinion is not to restrict what people can do in their own homes within reason. She said the first letter said animal husbandry but that changed in the second letter to animal breeding. Because of this she looked at the definition of husbandry in the ordinance and in New Hampshire Statutes and also how home occupation is defined. She quoted the definition of a home occupation from the Zoning Ordinance and said that in her opinion her use is permitted by right without review by the Planning Board or the ZBA and that is her argument. She further stated that she is already permitted to have a store at her location so selling is not an issue and so it must be the animals. She insisted that husbandry is specific to livestock and has nothing to do with pets.

Chairman Barron said that the sale of the animals turns her enterprise into commercial breeding. He also stated that this does fall under animal husbandry. Mrs. Ferrari insisted that the definition does not include her particular animals. However, the Chairman said that no law can include everything and the breeding of these animals comes under the heading of animal husbandry. She said that her business is unobtrusive as her neighbor who is here tonight can attest to.

Planner Menici said that the applicant kept bringing up unobtrusively pursued but is ignoring that the portion that states "...as determined by the Code Enforcement Officer."

Chairman Barron said one requirement for a home occupation or business is that it cannot disturb the abutting properties. This is why some are listed as permitted and animal husbandry in the Village Center is not permitted. Mrs. Ferrari said she is a hobby breeder and that is permitted. The Chairman said she stepped over that line when she started selling the animals.

Mrs. Ferrari then said that this is not the principal activity of the residence but an accessory use and so it is permitted. Chairman Barron once more said it is not on the list of permitted uses and therefore the use is prohibited. Mrs. Ferrari responded that this would mean that everyone who sells a litter of kittens or extra

goldfish or a litter of puppies would not be allowed to because it would be animal husbandry. The Board pointed out that a one time occurrence is not a commercial enterprise.

Mrs. Ferrari said there is a farm on Center Street but Planner Menici said that property is a pre-existing, non-conforming use. Chairman Barron said the Board could not speak to every issue in Town; however, with regard to the farm there is nothing the Town can do until the owner discontinues the use.

Joe Pitre said that according to Town Counsel the use is not permitted in the Table and is therefore prohibited. Chairman Barron explained that the Zoning Ordinances are “permissive” meaning that if a use is not permitted it is prohibited. Mrs. Ferrari insisted that the interpretation is by case law and not pets. Chairman Barron said that was not correct. He added that by the applicant’s own definition that she handed the Board her animals are included and when she started selling she stepped across the threshold. He said no one is saying she cannot have the animals but that she cannot sell them in the Village Center District.

Mrs. Ferrari said she was not in the Village Center District but was in the Urban Residential District. Planner Menici said the tax card shows the property as Village Center. Both she and the Chairman checked the Zoning Map and determined that the property is Village Center in the front and Urban Residential in the rear and the use is still not permitted. CEO Roseberry also stated that the requirements are the same and the use is not permitted.

Mrs. Ferrari said the front of her property is Urban Residential and the back is Suburban Residential and none is in the Village Center District so her business is permitted with review. Chairman Barron said her business is still prohibited. Mrs. Ferrari continued to disagree and stated that people have farm animals that disturb neighbors. The Chairman said the difference is that they are breeding for their own use. Both the Chairman and Mr. Aylard said the applicant cannot take a piece from the regulations that fits and use it as justification but must comply with the whole.

Chairman Barron said the ordinance was intended to keep people from breeding commercially in the downtown area and as soon as the applicant started selling the animals they were no longer pets. Mrs. Ferrari insisted that they are not livestock but the Chairman said by the definition she gave the Board (which he read) they may be livestock:

“...RSA 21:34-a... The legislature went on to define farming or agriculture as including the raising and sale of livestock which shall include but may not be limited to... the raising, breeding or sale of domesticated strains of wild animals...”

Mrs. Ferrari reiterated her argument that anyone who sells a fish or a puppy is running a commercial enterprise. The Chairman said that no one would take exception with one litter. He said he liked animals but the Board’s function is to enforce the regulations and at the same time allow some latitude otherwise residents would have no recourse at all. However, the Board must follow the Zoning Ordinances and the Code Enforcement Officer is the sole person who interprets the Ordinances and the Board does not disagree with his opinion in this matter.

Joe Pitre motioned to deny the appeal from an administrative decision; 2nd John David Aylard. Motion carried with all in favor.

Application for Variance from Section 2 of the Table of Permitted Uses By: Louise Ferrari, Applicant and Property Owner (Tax Map U01 Lot 007): To allow animal husbandry in the Village Center (VC) Zoning District. Parcel is located at 68 Central Street.

Chairman Barron said the next item is an application for a variance from Section 2 of the Table of Permitted Uses by Louise Ferrari for the same property and the same reasons as the prior application: home occupation for sugar glider breeding and rescue as a secondary use in the home.

The Board considered the facts supporting this request.

1. The Variance will not be contrary to the public interest: “Does not harm public, no increased traffic, no health risks, regularly inspected.”

Joe Pitre asked what was the volume of sales. Mrs. Ferrari said sales are maybe once or twice a week. Mr. Ferrari said that almost all of the sales are shipped and that Mrs. Ferrari drives them to the airport for shipping across country.

Chairman Barron asked about health risks because food is sold out of the same location. Mrs. Ferrari said the candy kitchen is three floors down. The Chairman asked if the animals are allowed in that area to which Mrs. Ferrari responded that they are not.

2. The spirit of the ordinance is observed: “Nothing I do changes character of our neighborhood in any way. Building Inspector already allows candy store which is open and obvious to public, this business is much less visible.” Mrs. Ferrari added there is no sign for the sugar gliders.

3. Substantial justice is done: “It would allow me to do something which is important to me, which does no harm to anyone else and allows me to earn some income despite my handicaps.”

4. The value of surrounding properties are not diminished: “It is completely invisible, no smell, no noise, no increased traffic. House looks exactly same as it did before.”

Steven Chasse, neighbor, said he could testify to that. He has the park on one side and the Ferrari family on the other and they are great neighbors. He said there is no smell from the animals and there is more noise from the park.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship: “Would substantially reduce income and remove therapeutic work which greatly helps physical and psychological medical conditions. See enclosed argument for full unnecessary hardship argument.”

Chairman Barron said this is the tough one to meet. He asked CEO Roseberry what his issues are other than the fact that the use is not allowed under the Table. The CEO said that is his primary concern. However, he also has a concern about the comingling of the animals and the candy business in the same residential house and would like the Board to address how the animals will not have an adverse effect on the candy business.

Joe Pitre asked the CEO if as the Town’s health officer he had observed the separation of the businesses. CEO Roseberry said he had not been inside the house. He said in the State of New Hampshire if dealing with a home bakery there are no inspections.

Mrs. Ferrari said there were inspections from the State. The CEO said at the very least he would request that an inspection be done by the State and if they are satisfied that will be enough for him. Chairman Barron asked Mrs. Ferrari if the inspector was aware she was breeding animals. She said they were not but it was okay. She had a separate kitchen built on the first level and the sugar gliders are in the attic.

Chairman Barron commented that Mrs. Ferrari’s narrative refers to the 2001 Supreme Court definition of hardship. However, that has been modified with more recent Court decisions. The Chairman said the most difficult criteria to meet is hardship and unfortunately Mrs. Ferrari is misinterpreting what the Court said. Reasonable use means that in a residential district you can live in the house and as long as you can there is no hardship and by State law a Zoning Board is specifically not allowed to consider monetary hardships.

John David Aylard said the Board can consider a physical condition and that the applicant had made reference to medical conditions. Mrs. Ferrari said she had been disabled for ten years and had not worked outside of the home in all that time.

Joe Pitre said that the building was substantially larger than others in that area and had been a store at times.

Chairman Barron asked the Planner if someone could open a pet store downtown. Planner Menici referred to both the Table of Permitted Uses and the letter from Town Counsel and said that the non-commercial keeping of animals is permitted and this supports that commercial is prohibited. Even though the property is split between two zoning districts, the same requirements apply to both.

Chairman Barron said that these regulations are written by lay people and repaired on a sometimes yearly basis and the residents have voted in these regulations.

Joe Pitre said he would like to hear more both for and against the hardship. He said that it is a large building that has past history as a commercial building and the Town is looking for ways to improve business opportunities. The Chairman said establishing hardship is always difficult for the Board and it has already been discussed that financial considerations do not come under hardship.

Mr. Ferrari said the uniqueness of the building is the size and commercial history and that at one time it had been a grist mill. Mrs. Ferrari said these would be the special properties of the building. Mr. Chasse said if the variance is not granted the applicant would not be able to use the building to its potential.

Joe Pitre motioned to grant the variance;

Chairman Barron said he would like to see the hardship criteria addressed more clearly. Mr. Pitre said the hardship was because this has been a commercial building and is quite sizable and that makes the unnecessary hardship. Chairman Barron asked for a second.

2nd John David Aylard.

Discussion: Joe Pitre asked for there should be any restrictions. Chairman Barron asked CEO Roseberry what had to be done for inspections. The CEO said this still had to come before the Planning Board for Site Plan Review and at a bare minimum the applicant must supply the State inspection report and if there are any restrictions they must be noted and required.

Planner Menici said one other consideration for the Board is that the variance runs with the land and if the commercial keeping of animals is allowed on the property it will run with the land. Mr. Pitre said it should be limited to these animals and these people. The Planner said it can be limited under a hardship variance.

The Board agreed and discussed conditions for the approval.

1. Provide Code Enforcement Officer Roseberry with a copy of the current State inspection reports for the candy shop indicating if the state has any issues with the animals being raised in the same location.
2. If the State report lacks that information the applicants will request an inspection from the Health Division and obtain a letter acknowledging that animals are being raised on the property and that they are not prohibited because of the candy shop. A copy of that letter is to be provided to the Code Enforcement Officer.
3. The number of adult and juvenile sugar gliders is limited to 75.
4. The hardship variance will apply only as long as Louise Ferrari lives at this property and commercial breeding is limited to sugar gliders.
5. Application for Site Plan Review approval from the Planning Board to be submitted within 30 days of the granting of this variance.

Mr. Aylard asked if there should be a limitation place on hours. Mrs. Ferrari said she does Monday to Saturday from 2:00 pm to 6:00 pm with some flexibility. These are scheduled one-hour appointments for one buyer at a time. Mr. Ferrari said customers at the candy shop may overlap occasionally.

Planner Menici said hours can be addressed during Site Plan Review as well as parking and signage but the ZBA could put in general hours. The Chairman said they would leave those issues to the Planning Board.

Chairman Barron said the applicant must provide the acknowledgement from the State that they know the breeding is going on and they do not object because the granting of this variance is contingent upon it.

The motion now read:

Joe Pitre motioned to grant a variance under RSA 674:33 V to allow animal husbandry at the applicant's property located at 68 Central Street in the Village Center (VC) Zoning District with the following conditions:

- 1. Provide Code Enforcement Officer Roseberry with a copy of the current State inspection reports for the candy shop indicating if the state has any issues with the sugar gliders being raised in the same location;***
- 2. If the State reports lack that information the applicants will request an inspection from the State Health Division and obtain a letter acknowledging that the animals are being raised on the property and that they are not prohibited because of the candy shop. A copy of that letter is to be provided to the Code Enforcement Officer;***
- 3. The number of adult and juvenile sugar gliders is limited to 75;***
- 4. The hardship variance will apply only as long as Louise Ferrari lives at this property and the commercial breeding is limited to sugar gliders; and***
- 5. Application for Site Plan Review from the Planning Board to be submitted within 30 days of the granting of this variance and approval obtained.***

2nd John David Aylard. Motion carried with all in favor.

At 8:30 pm John David Aylard motioned to adjourn; 2nd Joe Pitre. Motion carried with all in favor.

Respectfully submitted,
Bette Anne Gallagher, Department Secretary

Elmer W. "Butch" Barron III, Chairman
Zoning Board of Adjustment

Date