



Meeting Minutes
North Hampton Planning Board
Tuesday, July 1, 2014 at 6:30pm
Town Hall, 231 Atlantic Avenue

These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription.

Members present: Shep Kroner, Chair; Tim Harned, Vice Chair, Joseph Arena, Barry Donohoe, and Jim Maggiore, Select Board Representative.

Members absent: Mike Hornsby (resigned June 18, 2014) and Dan Derby

Alternates present: Nancy Monaghan

Others present: Jennifer Rowden, RPC Circuit Rider, and Wendy Chase, Recording Secretary

Chair Kroner called the meeting to order at 6:35pm, and noted for the record that there was a quorum.

Chair Kroner seated Ms. Monaghan for Mr. Hornsby and announced that Mr. Hornsby has resigned from his position as a member of the Planning Board and that the Town is seeking those who are interested to serve in his stead until March 2015, to write a letter of interest to the Planning Board by July 11, 2014. The letter should include reasons on why you would like to be appointed and the Planning Board plans to appoint someone at their next Work Session on July 15, 2014.

I. Old Business

There was no Old Business before the Board.

II. New Business

1. **Case #14:06 – Lisa M. Urdanoff, 972 Ocean Blvd, Hampton, NH 03842.** The Applicant proposes a Change of Use from a restaurant to a Dog Day Care, Boarding and Grooming Facility. Property Owner: BERCROM Inc., 38B South Road, North Hampton, NH; Property Location: 219 Lafayette Road, North Hampton, NH; M/L: 021-002-000; Zoning District: I-B/R – Industrial Business Residential.

In attendance for this application:

Lisa Urdanoff, Applicant
Attorney Steven Ells, Applicant's Counsel
Paul Powell, General Contractor

Attorney Ells explained that his client, Ms. Urdanoff, proposes to a change of use from the long standing restaurant, Abercrombie and Finch, to a Dog Day Care and Boarding Facility. He explained the following:

- There is a current site plan (2011) on file with the Town. The parking on the site will be greatly reduced. They plan to have no more than five (5) staff members.
- Traffic will consist of dogs being dropped off and picked up.
- There will be minor renovations to the third floor loft for a staff lounge that will include a bathroom and small kitchenette, and minor changes to accommodate the animals.
- There will be a fenced-in area at the outside of the building on the south side, furthest away from the residential properties toward the north side of the building.
- There are other similar uses in this zone and this proposal is appropriate for a change of use rather than a full site plan because the changes are to the inside of the building, except for, the fenced –in area outside.
- The plumbing will be capped off in the basement per instructions from the Building Inspector.
- The neighbors will have adequate screening due to the size of the lot and the barrier of the building itself from the neighbors and the outside fenced-in area.

Ms. Urdanoff explained the nature of the fencing. It is a new material that has been government regulated used on highways and airports as a sound barrier. There are no known fences installed in New Hampshire, but there is one in Biddeford Maine and in Beverly Massachusetts. The product just became available for the public. It blocks out 98% of the sound. The material is made of polyethylene and is an antimicrobial plastic that repels microbes instead of attracting them.

Ms. Urdanoff answered questions from the Board:

- The fenced-in outdoor area will be on the south side of the building and will be a little less than 3,000 square feet.
- The pavement will be removed and replaced with 5 inches of drainage gravel and pet turf that is made of antimicrobial plastic.
- There will be a small area for senior dogs and there will be no gap between the post of the deck and the fence; dogs will not be able to get out.
- There will be a gate at the small senior area and one at the 6-foot high area. The outside gate will not be open if the dogs are in the yard.
- The existing double foyer will remain at the entrance and is required by the insurance company.

Ms. Rowden said that she is not concerned with the proposed use, but concerned about a zoning use. She said that the proposal is not listed under permitted uses in the I-B/R Zoning District. She said that it is not a prohibited use, and referred to prohibited uses under animal husbandry Section 405.3, but it is not a permitted use either and suggested the Board seek an opinion from legal counsel on whether or not a variance would be required.

Mr. Harned read the prohibited use section into the record: *Prohibited uses – commercial animal husbandry facilities, does not include the following: veterinary clinics, kennels, and other facilities for boarding domesticated animals...*

Mr. Kroner said that the Planning Board doesn't have the authority to allow uses not specifically "called out" as permitted.

Dr. Arena asked if Paul Marston was the principal owner of Bercrom Inc. Attorney Ells confirmed that he was.

Attorney Ells said that "retail" is a permitted use in the I-B/R district and didn't think it to be a stretch to include the proposed dog day care under the umbrella of retail uses. He said it's impossible to list everything under permitted uses. He said that each retail use along Route 1 is not numerated.

Ms. Urdanoff explained that the proposed use is a day care and boarding facility so some dogs will stay overnight in their own suite. They are not a breeding facility and will not breed or sell dogs at the proposed facility. Every dog will be fully vaccinated.

Dr. Arena asked what the plan is for the bar area. Ms. Urdanoff said that the bar is being removed and auctioned off; the area will be used for a play area for the dogs. Her projected amount of dogs is 50. She does not have prior experience in the dog boarding field but she has 20 years business experience and has hired three people with experience in the dog grooming and boarding field.

Dr. Arena asked about the septic system. Ms. Urdanoff said that the septic system is adequate. She said she will have bathing tubs and will install hair traps in the drains. She is also putting in a wet/dry central vacuum system that will dispense soap while washing the floors and walls and vacuum the dirty water at the same time.

There was a person from the audience that asked why the Board was not taking public comment.

Chair Kroner explained that the Board did not take jurisdiction of the plan, so they wouldn't be opening a Public Hearing at this meeting. He explained that the Board cannot move forward on the application without an opinion on whether or not it is a permitted use.

Ms. Rowden explained that the Board cannot make any decisions on this until they seek an opinion on whether or not town counsel finds it to be a permitted use or whether they need to seek a variance. She said that there will be plenty of time for public input at the next meeting.

Mr. Wilson spoke from the audience and suggested they direct the applicant to go to the ZBA for an interpretation on whether or not they need a variance or a special exception.

Dr. Arena moved that the Applicant seek a variance from the ZBA.

Chair Kroner explained Dr. Arena's motion to mean that the Board suggests the applicant seek a variance from the zoning ordinance is currently not listed under permitted uses; in other words the ZBA will interpret whether or not a dog day care facility fell under retail use and if not determine they need a variance.

Attorney Ells said if that is the case than the Planning Board is making the determination that the applicant does not qualify. He said that he has always understood that it is the Code Enforcement Officer of the town that is the interpreter of the Zoning Ordinances subject to an appeal to the Zoning Board of Adjustment. He said that the Planning Board would be sending the applicant to the Zoning Board for something they may not need.

Ms. Rowden said that Change of Use is determined by the Planning Board, she recommended that the Board seek a legal opinion from Town Counsel because it is a gray area not being listed under "permitted uses".

Chair Kroner said that he is concerned on how to deliver information from town counsel because technically it is privileged information.

Dr. Arena pointed out that the Planning Board is an independent Board and does not have to take the advice of anyone if they choose not to.

Mr. Harned said that the Board may want to look at this issue at the other end. Under prohibited uses – commercial animal husbandry, it does not include kennels and other facilities for boarding domesticated animals.

Ms. Rowden agreed, but said it is not specifically permitted.

Phil Wilson, 9 Runnymede Drive – said he was one of the Planning Board members that wrote the prohibited use paragraph. He said the purpose of the paragraph that dealt with animal husbandry was to make it known that the Town did not want large scale factories for producing animals. The reason why the kennels were deliberately excluded was because animal clinics are a permitted use in town. He said because "kennels" was excluded from the prohibition it was never intended to mean it was a permitted use. He also said that retail uses are differentiated in the zoning ordinance for different scientific requirements.

Chair Kroner said that he believes permitted uses are listed specifically.

Mr. Harned moved and Ms. Monaghan seconded the motion to Continue Case #14:06 to the August 5, 2014 meeting and request a legal opinion from Town Counsel regarding whether this application needs to go to the Zoning Board of Adjustment, and that the Board request the response from Town Counsel within 14 calendar days and the net opinion of Town Counsel be shared with the applicant on whether or not a variance is needed.

The vote passed in favor of the motion (5 in favor, 0 opposed and 1 abstention). Dr. Arena abstained.

Chair Kroner explained that the only thing the applicant will know from the Board's inquiry from Town Counsel is whether or not they need to seek a variance. He also stated that they will hold a public hearing for public for public input at the next meeting.

Chair Kroner called for a two minute recess at 7:20 p.m.

Chair Kroner reconvened the meeting at 7:22 p.m.

III. Other Business

- 182 **1. Subdivision Application submitted to the Town of Rye, NH.** The Applicant proposes to
183 subdivide one house lot, entirely in the Town of Rye, NH. The remainder of the land will be
184 roughly 56 acres; part of the remaining land is situated in the Town of North Hampton,
185 M/L 16-5, 16-6, 16-7 and 16-8. Property Owner: Patricia Brown, 81 West Road, Rye, NH 03870.
186 North Hampton property location: North Road (Rear), North Hampton, NH. Rye property
187 location: 81 West Road, Rye, NH 03870. Pursuant to NH RSA 674:53 notification of the proposed
188 subdivision has been received by the Town of North Hampton for Planning Board review and
189 approval.

190 In attendance for this application:

191 Steve Michaud, Doucet Survey

192
193 Chair Kroner explained that the proposed subdivision lies entirely in Rye. He said that a portion of the
194 land is in North Hampton.

195
196 Mr. Michaud was representing the Applicant, Ms. Brown and explained that they have received
197 conditional approval from the town to subdivide one lot out of the entire parcel. He said that one of the
198 conditions was to seek approval from the North Hampton Planning Board according to RSA 674:53, IV
199 and to have the Board sign the final Mylar.

200
201 Ms. Rowden recommended that the Board approve the application because it is a reasonable proposal
202 and there will be no development in North Hampton.

203
204 Mr. Michaud said that the land has a lot of wetlands on it and his client has no current plans for further
205 development in Rye or North Hampton. He stated for the record that they are not giving up any
206 property rights, and any future potential development would require Planning Board approval.

207
208 Ms. Rowden said a future subdivision would require a full application; the approval of this subdivision
209 does not carry any precedent for the future.

210
211 **Mr. Maggiore moved and Mr. Donohoe seconded the motion that the North Hampton Planning Board**
212 **acknowledges receipt of the subdivision plan for Patricia Brown, 81 West Road, Rye, NH, North**
213 **Hampton tax map and lots, 016-005, 006, 007 and 008, and has no objection to the proposed**
214 **subdivision as presented at the July 1, 2014 meeting.**

215 **The vote passed in favor of the motion (5 in favor, 0 opposed and 1 abstention). Ms. Monaghan**
216 **abstained.**

217
218 Mr. Michaud said that to fulfill his conditions from Rye, he would need a letter from the North Hampton
219 Planning Board to the Rye Planning Board with their findings that they do not object to the proposal and
220 to sign the final Mylar.

221
222 The Board authorized the Chair to sign the letter to the Rye Planning Board and they agreed to sign the
223 final Mylar.

224
225 Mr. Harned asked Mr. Michaud to list the changes he intended to make to the final Mylar.
226

Mr. Michaud stated the following changes:

1. Add the Town of Rye property setbacks graphically to the plan on the remaining property because there are existing buildings they want to make sure they meet Rye Zoning.
2. Add a note relative to where the new proposed driveway for the new lot needs to be located because of site distance issues.

2. Any other business to come before the Board:

Chair Kroner was approached by the Building Inspector to inquire to the Board whether they felt a Change of Use would be required for Seacoast Power Equipment if they wanted to move to the building complex next door.


Ms. Rowden said that if it is a dissimilar use to what is currently there then they would need a change of use; if it is not it would be up to the Board.

The Change would be a retail use to a retail use but they would have a big display space and outdoor storage.

The Board determined that a change of use would be required and the Board could consider whether an amended site plan would be necessary after reviewing the change of use application.

Chair Kroner said that he would pass that information onto Mr. Kelley.

Mr. Harned moved and Ms. Monaghan seconded the motion to adjourn the meeting at 8:00 p.m. The vote was unanimous in favor of the motion (6-0).

Respectfully submitted,

Wendy Chase
Recording Secretary

Approved July 15, 2014