

**Town of Milford
Zoning Board of Adjustment Minutes
October 3, 2013
Case #2013-17
Thomas W. and Toni M. Nelson
Special Exception**

Present: Fletcher Seagroves, Chairman
Laura Horning, Vice Chair
Zach Tripp
Kevin Taylor
Michael Thornton, Alternate

Absent: Bob Pichette
Len Harten, Alternate
Paul Butler, Alternate

Secretary: Peg Ouellette

The applicants, Thomas W. and Toni M. Nelson, owners of Map 52, Lot 35, 140 Comstock Dr., in the Residence "R" district, are requesting a special exception from Article V, Section 5.04.2:A.3 to allow a home occupation, in accordance with Article X, Section 10.02.3 for pet grooming.

Minutes approved on November 21, 2013

Fletcher Seagroves, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures of the Board; he then introduced the Board. He read the notice of hearing into the record. The list of abutters was read. Applicants Thomas W. and Toni Nelson, owners of Map 52, Lot 35, 140 Comstock Dr, were present. John Keller of 145 Comstock Dr., and Paul R. and Carol J. Connor, Trustees, of 133 Comstock Dr., abutters, were present.

Applicant's presentation: Toni Nelson said she would like to move her business, Happy Paws, from Granite Town Plaza to her home.

F. Seagroves asked for questions from the Board.

M. Thornton felt it was pretty straightforward.

Z. Tripp inquired how the applicant planned to control customers; will they come as they want?

T. Nelson said by appointment only, on a leash or in a crate as size dictates.

Z. Tripp asked about planned hours. In winter months it gets dark early.

T. Nelson stated as current, Tues-Fri 8 to 5, Sat. 8:30 to 3, give or take a few minutes. She can shorten hours in winter.

Z. Tripp said it appeared the driveway had additional space to the right; was that intended for parking?

T. Nelson said it would be. Their vehicles are parked there but will be shifting them so customers can pull straight in and straight out.

L. Horning asked about disposal of waste.

T. Nelson said she gathers it up and disposes of it out back.

L. Horning said there were some disposal management companies to manage and that applicant may want to look into that.

T. Nelson said she is anticipating no more than six animals per day.

K. Taylor asked if there is any on-street parking.

T. Nelson said customers would not be expected to park on the street; most customers drive in and drop off and come back, pick up and leave.

K. Taylor was concerned with children in the area.

T. Nelson said there aren't many; most of them have grown up.

F. Seagroves asked if she would probably have only one animal at a time?

T. Nelson said she liked to have everybody there within a short time. They are crated inside the building. Owners are called as soon as finished and go home before closing hours.

Z. Tripp asked the type of animals and services.

T. Nelson said cats and dogs – washing, cutting hair and nails.

Z. Tripp asked if each takes an hour.

T. Nelson said at least. Some large animals take three to four hours. When there, they are crated.

F. Seagroves asked if she is currently at Granite Town Plaza and basically moving.

M. Thornton asked when that would happen.

T. Nelson said after she gets permission. It will be a considerable downsize from the current location.

K. Taylor asked if she will store supplies for customers to buy.

T. Nelson said yes, she had some for her customers.

Z. Tripp asked if they planned on finishing off the garage, putting up walls.

T. Nelson said they had a contractor and were waiting for approval to do the work.

There were no further questions from the Board, so Chair opened the meeting for public comments.

Paul Connor of 133 Comstock Dr. came forward. He has lived there 34 years. He stated there was a serious dog problem there for about 10-15 years. He had spoken to neighbors who were unaware of this meeting and could not be present. They provided him with a letter to read. He read a letter from Roxanne Meldrum of 80 Comstock Dr, expressing concerns with allowing a pet grooming business on Comstock Dr., including increased traffic and safety of pedestrians, number of dogs in the residence in question, and barking dogs. He read another letter from Julie Adi-Zarabi of 128 Comstock Dr., two

homes away from the home in question, expressing concerns with number of dogs in the residence and extra traffic. He also stated there were other residents in the area on other streets who were unaware of the meeting and were upset. He lives across the street and there have been twelve dogs in the residence, and he stated they bark all day long. He read from Chapter 466 of the ordinance, Paragraph A,B, C and G. and cited instances when he felt these were violated, with regard to leashing or control of dogs, barking. He has called police about the noise, and he said a woman was bitten a few years ago.

T. Nelson responded she wished Mr. Connor had spoken to her and she hasn't heard from anyone else. She acknowledged having twelve German Shepherds and tries to keep them quiet. A woman was bitten while walking. Ms. Nelson paid a fine and that dog has died. When the police came, she was out and they spoke to her husband. They try to make sure the noisiest dogs are not out at the same time. They get excited when she gets home.

Judith Keller of 145 Comstock Dr. said she has lived across the street 18 years. She feels she lives in a different neighborhood than the previous speaker. The only time she hears the dogs is when Ms. Nelson comes home. Toni is an excellent dog trainer. She said when her cat walked by them, Toni said not to touch the cat and they sat and looked; one dog also helped find her lost cat. Even though there are a lot of dogs they are well-trained. She had no problem with her two-year old grandchild visiting with them. They bark if you walk by, but if Toni has her business at home the dogs will be quieter. Maybe where their house is located they don't hear what others do, but they don't have a problem. They don't have any problem with the business at home. She felt the applicants would never do anything to negatively affect property values.

Carol Connor of 133 Comstock Dr. said her concern is that this is a residential neighborhood and she believed a retail, or any type of business belongs in a commercial area, not in a residential area. She is concerned about value of their home. She stated if it starts out as a grooming business it could be turned into a kennel or boarding. She felt residents on the street are afraid to walk by.

Vaughn Seward of 108 Comstock Dr. said he has lived there 34 years because it is a residential neighborhood with not a lot of traffic. He was concerned once one business opens, there will be others. This should be in the business district. He didn't want a business in his neighborhood.

Jim Geary of 105 Comstock Dr, said he has been living there for 34 years. This is a residential area where families live and raise kids. A business would change the nature of the area and value of the properties. With added traffic come noise and safety concerns. There are walkers and bikers on the street and families with children moving in. The house in question is located on the downside of the hill on a sharp corner. Visibility is a problem. Accessibility of the driveway to turn around was mentioned; he doubts that, especially in winter. He hears the dogs from several houses up the street, but concern is impact of a business. Introducing other animals with aggressive dogs escaping the enclosure, which has happened, is a concern. This would set precedent for other businesses and as mentioned, has potential to turn into something other than intended.

P. Connor came forward again, stating that there would have been more people in attendance if they had known about the meeting. F. Seagroves informed him that by law, only abutters must be notified.

Kathy Bauer stated that meetings are posted and noticed in the newspaper. Those are the legal requirements, as well as sent to the abutters.

F. Seagroves closed the public portion of the meeting. He then read a letter received from abutters, Jeffrey and Leslie Rounsaville who live next door at 148 Comstock Dr., stating that based on information provided by the Nelsons, they had no objection to the nature of the proposed business, trusting the Nelsons to follow the plan as outlined to them; only concerns are potential noise and signage. They would prefer no signs but would hope any signage would be small.

The applicant read the application:

Description of proposed use:

A home occupation for a pet grooming business in accordance with Sec. 10.02.3. Business to occupy 288 sq. ft. or less than 25% of the lower level floor area.

1. The proposed use shall be similar to those permitted in the district:

Various small businesses are allowed in the Residence R District by special exception to home occupations including veterinary clinics and daycare facilities.

2. The specific site is an appropriate location for the proposed use because:

A portion of the lower level garage will be utilized for the pet grooming business. There is adequate parking and driveway access to provide safe drop-off and pickup of pets by customers.

3. The use as developed will not adversely affect the adjacent area because:

There will be no changes to the exterior of the existing home other than necessary to accommodate business access. Traffic generated will be limited as business will accommodate 3 or 4 customers per day. Business will be open during normal business hours. Signage will be limited to that allowed for home occupations (6 sq. ft.).

4. There will be no nuisance or serious hazard to vehicles or pedestrians:

There will be limited customer traffic and safe parking and access for pedestrians. Comstock Dr. is a residential street with only local traffic.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

The business will need to comply with necessary building code requirements prior to operation to insure there are adequate and appropriate facilities.

F. Seagroves asked if there were any additional questions. There were none. He stated that special exceptions are granted under special conditions, i.e. veterinary clinics, family day care, bed and breakfast, self-service storage, church, nursing homes, schools. He wanted to inform the audience these are items that can be granted by special exception in Residence R, and have been voted on by the voters.

K. Taylor asked to clarify whether she will be doing sales.

T. Nelson stated there will be dog food.

F. Seagroves asked whether dogs are leashed while being groomed.

T. Nelson said the doors are closed and no way they can get out.

F. Seagroves asked if they are leashed most of the time.

T. Nelson said yes.

F. Seagroves commented if your neighbors' animals are barking and bothering you, you should call them. He had gone to court because of complaints about his dog and the judge told him that dogs can bark a little for a half hour and up to 10 p.m.

T. Nelson said she didn't realize it was happening after 10 pm.

F. Seagroves asked for further questions from the Board. There were none.

The Board then discussed the criteria for a home occupation.

Z. Tripp said, regarding #s 1-4, it is pretty straightforward, the applicant has answered that she conforms to those. Regarding #5, the home occupation must not impair residential character or impair reasonable use or enjoyment. Putting aside applicant's particular situation and she did have pets would seem like a reasonable business to have in this area. It is by appointment. They will be inside most of the time. He would not imagine much impact. If they are generating noise that is common to residential area. The Special exception criteria. It is permitted in the district. Home occupations are allowed as long as they meet criteria of 10.02.02. Site for proposed use is appropriate use. It will not adversely affect the area similar to #5 of home occupation. Applicant testified it will be appointment only; so it should be fairly controlled. Applicant stated six a day which would be about one car or so an hour. And business will not be open at night, per application. No nuisance or serious hazard to vehicles or pedestrians. There is a peculiar driveway but it does appear to be room at the bottom. Applicant is a business person and he has faith they will make customers comfortable and it appears to be a feasible location to provide some kind of parking and turnaround. Re adequate facilities, they are going through permitting process that will address that; testimony there are outside lights.

L. Horning said re applicant's current situation with 12 dogs she takes exception to the dog waste issue. She expects to add six more. The issue in her opinion, is this allowed in the district. A veterinary clinic is different in that the State regulations for proper and adequate disposal of waste and management of animals in that environment. This is not outlined in the ordinance for a dog grooming business in this case. The proposed use is not similar to the surrounding area. In her opinion the specific site is not appropriate. There are already 12 dogs there. It will adversely affect the area with dog waste and waste water as it is a small residential lot. The Ordinance addresses health, safety and welfare general and abutting properties. She has serious concern about properly maintaining and regulating the dogs already there. Adding animals could be a bigger problem. Regarding adequate facilities, she couldn't answer that adequately because a veterinary clinic is regulated by the State, as is a child day care and some other home occupations in the ordinance. The applicant does meet the home occupation criteria; she resides there. There will be no evidence outside the dwelling except for permitted sign and off-street parking. There is no required off-street parking. It is illegal in NH to back out of a driveway. It would not be adequate in such a densely populated area. They are talking about the retrieval of animals to and from a vehicle and the containment of them. She meets the criteria of being confined to one floor of the building. She meets the access. The Ordinance takes abutters into consideration by requiring that the home occupation and conduct thereof shall not impair the residential character of the premises or use and enjoyment of other residential property in the neighborhood. This is not an issue addressed by the Ordinance, veterinary clinics have a moderate amount of regulation by the State and, in some cases, Federal regulations. She cannot allow this exception.

K. Taylor echoed some of Laura's concerns. Has concerns about 12 dogs on the property. Health and safety-wise the street is curved, so there is a hazard. She meets some requirements, but as Laura said, it is not accepted in the zoning portion of criteria. As it stands, he would not accept this.

M. Thornton said his concerns were specifically those of the abutters that have aggregated over many years, and they have accepted it. With more dogs being added, there is concern. He's not as concerned with waste disposal, because there are adequate remedies.

L. Horning said in this situation it is not regulated; in a veterinary clinic it would be.

M. Thornton agreed, saying applicant would have to mitigate it in order for him to look favorably on this request.

F. Seagroves asked if the applicant will have only herself and her husband there.

T. Nelson said she had one girl who helps, but she is not an employee and will not be. Customers' dogs are never mixed with hers. They are planning to block the facility end with five-foot fence and to reduce noise level.

F. Seagroves said regarding no evidence outside the dwelling except permitted signs and parking, he had problem with this. He knew when you get a group of dogs together they will make a lot of noise. Regarding "a home occupation shall be confined to one floor of the dwelling unit and no more than 25% of such floor shall be used" concerns were raised that if granted this would not turn into a kennel. It is a dog grooming business with goods to be provided for sale. This was not a problem. A home occupation shall not impair the residential character of the premises; he went back to the noise of the dogs. Regarding the proposed use shall be similar, he didn't know how many other dog grooming businesses there are around. Regarding "site is an appropriate location" and "no nuisance or serious hazard to vehicles or pedestrians" he didn't see there would be a problem.

The Board voted on questions:

The exception is allowed by the ordinance: (home occupation)

L. Horning-yes, Z. Tripp-yes, K. Taylor-yes, M. Thornton-yes, F. Seagroves-yes

Are the special conditions present under which the exception can be granted?

Z. Tripp-yes,

K. Taylor-no; safety and hazard are involved. Safety of the roadways and people coming in. Twelve dogs on the property will cause a hazard.

L. Horning said this is not an exception listed in the ordinance under home occupation. This particular home occupation is different than veterinary allowed in the district, which have some regulations or regulatory safety mechanism in place. She didn't believe the conditions were present with this application.

M. Thornton said he has bred, raised and trained dogs. The biggest problem with animals together is they love to communicate and do, stridently. Several neighbors stated they have put up with it for years. He didn't know what could be done to mitigate that outside. Inside, you could do things to the walls. He was concerned, as the neighbors were, for the number of dogs. The waste issue can be addressed. He was not sure with twelve resident dogs and applicant intending to have dogs dropped off in the morning, that would be another six dogs.

T. Nelson said they are not there all day long.

M. Thornton said just the twelve dogs, they are communicating.

T. Nelson said in the winter, the doors and windows would be closed.

M. Thornton said unfortunately we have other seasons. He didn't feel comfortable at present after hearing neighbors' concerns.

T. Nelson said she wished they had said something to her before this.

F. Seagroves also had problems with nuisance with eighteen dogs. There are too many dogs there now.

F. Seagroves called for a vote:

Is the exception allowed by the ordinance?

L. Horning – yes; Z. Tripp – yes; K. Taylor – yes; M. Thornton – yes; F. Seagroves – yes

Are specific conditions present under which the exception may be granted?

L. Horning – no; Z. Tripp – yes; K. Taylor – no; M. Thornton – no; F. Seagroves – no

F. Seagroves requested a motion to deny.

K. Taylor moved to deny the application.

L. Horning seconded.

Final vote: M. Thornton – yes; L. Horning – yes; Z. Tripp – yes; K. Taylor – yes; F. Seagroves – yes

Chair informed applicant the request had been denied and advised of the thirty day appeal period.