

**Town of Milford
Zoning Board of Adjustment Minutes
January 15, 2015
Case #2015-01
Mary Stillson
Variance**

Present: Zach Tripp, Chairman
Fletcher Seagroves, Vice Chair
Mike Thornton
Joan Dargie

Katherine Bauer – Board of Selectmen’s representative

Absent:
Laura Horning
Len Harten, Alternate

Secretary: Peg Ouellette

The applicant, Mary Stillson, the owner of Map 45, Lot 8-1, located at 6 Mile Slip Road, in the Residence R District, is requesting a Variance from Article V, Section 5.04.3, to allow a licensed non-profit quarantine facility for dogs.

Minutes Approved on February 12, 2015

Zach Tripp, 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 and introduced the Board. He read the notice of hearing into the record. The list of abutters was read and Abutters Robert and Diane Mikkleson, Matthew Stearns, Stephen Richard Toom was present. He then invited the applicant forward to present her case.

Z. Tripp informed Ms. Stillson that, there being only four Board members present and three affirmative votes being needed for approval; she could sign a waiver and proceed with a four-member board or she could elect to table the case until the next regularly scheduled meeting.

She opted to proceed this evening and signed a waiver.

Z. Tripp invited the applicant to present her case.

M. Stillson stated that the state of New Hampshire liked dogs coming from out of state to be quarantined for 48 hours, after which they go to foster homes and get adopted from

there. She wants to be a quarantine facility. Typically you would get dogs once every two months or sometimes every 6 weeks.

Z. Tripp asked if there was currently a facility located in Milford.

M. Stillson said they did have a facility at Good Mo Jo's but lost it because the owner needed space.

Z. Tripp asked for question from the Board.

F. Seagroves asked about receiving dogs and only keeping them for 48 hours.

M. Stillson said they typically come in from Puerto Rico; they ship them. They are picked up at the airport on a Friday night. They let them out when they get to the quarantine facility. For the next two days they have volunteers come three times a day to let the dogs out for exercise and to relieve themselves. They pet them and play with them. On Monday they are checked by a vet from Wilton Animal Hospital and then they go to foster homes or get adopted.

F. Seagroves asked if she only has them for 48 hours.

M. Stillson responded, approximately.

M. Thornton said for 16-18 days a year. 8 or 9 times a year she would have a group of dogs?

J. Dargie asked, not every week?

M. Stillson said no, it takes a lot of coordination and they all work.

J. Dargie asked how many dogs are on the property.

M. Stillson said three.

Z. Tripp asked, if she owns three and additional dogs come in?

M. Stillson said that Dept. of Agriculture requires they be separated. When dogs come in for quarantine they are separated. She was intending to do that.

J. Dargie asked whether they had looked into other places, like Mo Jo's.

M. Stillson said they did look around for kennels but none were willing. They can use vets but none of the vets around do it. In Manchester you can pay \$75 a dog and they do a vet check at the end. The way their rescue works they plan rescue for a week and they have contact in Minnesota who does all travel planning with AAA. The Wednesday before and try to get the dogs in cargo; it fills up quickly. They all volunteer and send most of the money back to Puerto Rico. They charge \$365 and keep \$65 and operating at a loss, but she loves to do it.

J. Dargie said there is another dog quarantine place in Milford on Jennison Rd. Did they contact them?

M. Stillson said that is no longer running.

F. Seagroves asked if any state license was needed.

M. Stillson said yes, they are licensed. They are going to do it in her basement which is a walk-out. They will fence part of it. They have to have Dept. of Agriculture come and inspect.

Z. Tripp asked if that was annually.

M. Stillson said whenever Dept. of Agriculture wants, it says annually or whenever they want.

Z. Tripp about a limit for how many dogs per square feet.

M. Stillson didn't know. They only get 6 or 8 at most. At Mo Jo's they had a much smaller space than this proposal. They had to feed dogs outside and that seemed to meet requirements. She will check into that.

Z. Tripp asked what happened if a dog didn't pass the exam.

M. Stillson said they will still go into foster. They had dogs that had giardia and could still go into foster but not adopted. They would give them antibiotics and get them re-checked.

Z. Tripp asked why the requirement for quarantine.

M. Stillson said in case they were sick. In the past, people would take dogs right off cargo.

F. Seagroves said it might be a federal law, with dogs coming from a different country. That Puerto Rico was a territory of the USA.

Z. Tripp asked if they were currently licensed with the State.

M. Stillson said yes, but not running now. She mentioned concerns re picking up waste; the Dept. of Agriculture requires to do so once a day.

F. Seagroves asked if dogs would be in a fenced area at all times.

M. Stillson said yes, for the most part they will be in the basement. They will be let out to go to the bathroom and exercise.

Z. Tripp asked if there were any comments or questions from the board.

J. Dargie said the question was brought up about information re the lot in the area and the deed on the lots did stipulate that there cannot be a dog kennel. She understands that is not something they are going to be enforcing as part of zoning but neighbors could get together and would have to go to Superior Court.

M. Stillson said this is not a commercial kennel.

J. Dargie said it would have to go to the definition of "kennel." She didn't know if a kennel states that it has to be for a period of time. A lot of kennels take dogs for someone on vacation for a day. That it is called a kennel. She's not sure, but is bringing it because it would be a shame to go through everything and have to fight it on another level. It might be worthwhile to get legal counsel.

Z. Tripp said he had asked Bill Parker how to handle covenants and restrictions. His reply is in the file.

Z. Tripp asked for further questions from the Board. There were none. He opened the public comment portion of the meeting.

S. Toom of 6 Stonewall Dr. came forward and his main concern is safety. He has children and there are a lot of children in the neighborhood. He is familiar with quarantines. He doesn't think her fence can hold dogs in and dogs can dig under a fence. He is a dog lover and has one. Safety is his concern for his children and animals and these animals coming from Puerto Rico - some of them are sick. Another concern is value of the homes and he believes this would devalue homes in the area.

Z. Tripp asked applicant to address this issue.

M. Stillson said there is a fence. They will be put in a freestanding kennel panels. They will have people outside at all times with the dogs, right there. As far as dogs being sick the dogs they get have a health certificate from Puerto Rico. They are fully vetted, spayed and neutered. If there are skin diseases or anything they don't let them come to the quarantine and must get a vet check before they leave. Generally it might be giardia or ear infections that would be treated with antibiotics.

Z. Tripp asked if there were any additional questions.

D. Mikkleson of 474 Mason Rd. came forward and expressed concern about public nuisance and barking. She hears the three dogs that are there now especially in the summer. With nine dogs in the yard will be detrimental to the neighborhood. Having a kennel on that property and the noise of the dogs will devalue property and prospective buyers would shy away. Nobody wants to live next to a lot of barking dogs.

M. Stillson responded that if there were problems with her dogs she would hope people would tell her. She has a dog door and they can go out when she is not home. As far as dogs barking, they have dealt with it at Mo Jo's. They redirect them by playing with them or giving them food or water.

Beth Tyson of 171 Nashua St. came forward and she is a volunteer for a rescue. All the people that work at the rescue are diligent about the process and procedures. Dogs are never outside the gate unless in a crate. They are taken out of the car and into the facility. There is a double door so they can't get out. They are never alone. Dogs never come up sick. Safety is a top priority. They have never had a lost dog, biting anyone or getting loose. She lives down the street and saw a woman running down the street with a leash and no dog. A dog can get out at any point but the way these people work with the dogs there is never an issue with them getting out. People don't need to be afraid. As far as barking, they are always there to stop it and they are never alone outside.

Matt Stearns of 488 Mason Rd. said the barking has never been enough for him to say something. He has rescue dogs who bark. With more dogs it might be an issue.

Hopefully, if this gets approved, it will not be an issue.

M. Stillson said she has one dog that is a barker. If it becomes a problem, even with her dogs, she hopes they will let her know. She wants to be a good neighbor. With rescue dogs that will not be a problem.

Chris Rings a volunteer with rescue said re the comment about barking, this is purely hearsay but the rescue dogs have spent the last 24 hours being transported. When they are in quarantine they are largely silent. He volunteers for quarantines specifically. They are timid and meek. They are not playing and rough-housing. They are largely silent.

S. Toom said the concern wasn't what their experience was, but what could happen, and the value of their home. They say the dogs will always be watched but there is still a problem with value. He asked a woman in the audience if she was trying to open quarantine too. The woman said she can't, she is renting.

S. Toom asked if there would be a sign.

M. Stillson said no.

R. Mikkeson of 474 Mason Rd. spoke to concern about the number of dogs. He had thought he was being a good neighbor by not addressing barking.

M. Stillson said she would much rather he did.

R. Mikkeson said it was a problem in summer and they are out all the time in summer. He assumes that there will be more supervision of the rescue dogs. Concerned that if this goes into place there is no way of undoing it. Being careful about it – he doesn't want to go so deep that if it is a problem doesn't have to be taken up in court.

J. Dargie said it sounded like six or eight weeks of the year there will be more people. Are they there 24 hours?

M. Stillson said three times a day.

J. Dargie asked if she had done this to see how her dogs would relate to the quarantine dogs.

M. Stillson said the Dept. of Agriculture requirement is they must be separated.

J. Dargie said but they will.

M. Stillson said she intended to keep the dog door closed but they bark at each other across the fence.

J. Dargie if there will be other people there, at least when the dogs are out.

M. Stillson said at least three volunteers, sometimes more.

J. Dargie asked if she will be around.

M. Stillson responded, generally.
J. Dargie was concerned about managing her dogs.
M. Stillson said she would close the dog door.
J. Dargie asked who monitors the kennel permitting; who manages that?
M. Stillson said she didn't know if she had to get a permit. She would need one for remodeling the basement.
J. Dargie asked about guidelines. What guidelines will she follow for the fence?
M. Stillson said it is a temporary fence; you stake it to the ground
M. Thornton said it is a panel that is put together.
J. Dargie asked if it would be permanent in the yard or only be up when the dogs are there.
M. Stillson said it would be permanent as long as the quarantine is there.
J. Dargie asked who makes sure it is put together correctly. This is addressing the concern that if this doesn't work, can it be undone. It could go along smoothly, but if there is a problem and the neighbors have issues, what is the recourse?
M. Stillson said the kennel can come down.
J. Dargie who would check in on this after.
Z. Tripp said there is an annual state inspection.
J. Dargie said so the state is the one to say what she needs. Although it is not likely she would, she could say she would put in a fence and not do it.
M. Stillson said she has been going back and forth with the state.
F. Seagroves asked if it was mandatory for this type of fence.
M. Stillson said it is mandatory to have a fence.
F. Seagroves said the Board could stipulate it.
M. Thornton asked the height.
M. Stillson said it was six feet tall.
Z. Tripp asked for further comments.
Matt Stearns said as a follow-up to comments she mentioned being a kennel without quarantine. Dogs dig. It might be better for a fence with a permanent mount so they can't take it out. His is from the humane society.
M. Stillson said that might be hard to do.
S. Toom said re liability, the Town should really think before approving something like this.
There were no other comments, so Z. Tripp closed the public comment portion.
M. Thornton asked applicant if she has checked about liability insurance.
M. Stillson asked, for the rescue, or her own?
M. Thornton said both.
M. Stillson said no.
M. Thornton said his insurance says there are certain breeds he cannot have on the property unless they have gone through rigorous training.
M. Stillson said they wouldn't generally bring up pit bulls – they are generally mixed breeds or small to medium. The person running the rescue in Puerto Rico likes pit bulls so she keeps them.
J. Dargie asked if the licensing board required both the rescue and her dogs to have insurance.
M. Stillson said she didn't think so.
J. Dargie asked if it had gotten that far.
M. Stillson said no, she would look into it.

M. Thornton asked how she could address neighbors' concerns if this was approved and two or three rescues go forward, meaning six to ten days of dogs on the property, and the neighbors say it is too much barking.

M. Stillson said they would look for a new yard. They don't want to be a problem to the neighborhood. In fact, one of the volunteers, who aren't there, is looking to sell her house and buy another house and have quarantine there eventually.

Z. Tripp asked for any other questions. There were none.

He read the letters received into the record. He paraphrased because of the length. Some are duplicates of comments heard. Letters were from Andrew LaBonte of 4 Stonewall Dr. and James Roccio, owner of M45 L8-10. Mr. Roccio attached a copy of covenants and restrictions. He believed a lot of their questions were addressed. He asked if there was a limit by the state on how many dogs at one time.

M. Stillson said she didn't think so.

Z. Tripp said, being devil's advocate, it would never happen, but 100 dogs?

M. Stillson said they never take more than they have fosters for.

M. Thornton asked how many fosters.

M. Stillson said they don't all foster at one time. She said eight to nine.

M. Thornton asked the maximum dogs at one time.

M. Stillson said probably eight.

Z. Tripp asked about disposal of waste.

M. Stillson said they pick it up right away and it goes into a steel-lined can and at the end of the day they bring it to the transfer station.

Z. Tripp, reading from the letter, asked if the non-profit status affects the way the Town assesses the property. Where do the dogs come from?-that was addressed. Is there a maximum time for them to be quarantined? Is there a certain time they run out of time for them to be quarantined and have to do something else with them?

M. Stillson said that never happened. It has always been 48 hours. One time it was an extra day because of a Monday holiday. They try not to do that because people work and it is hard to get people to do it.

Z. Tripp asked if she had done it on this property.

M. Stillson said no.

Z. Tripp said he reviewed the restrictions and covenants on the property and asked Bill Parker to handle it. Bill Parker said they are private agreements and cannot be less restrictive than the ordinance. He read and paraphrased some of the points outlined in Bill Parker's memo.

Z. Tripp asked for further questions from the Board.

M. Thornton said primarily the neighbors' concerns, how to address their concerns and fears that a dog being watched would not dig under a fence; or would she put concrete blocks or concrete structure under the kennel panels.

M. Stillson said this time of year they couldn't dig. She hasn't looked that far into it but could do something like that.

M. Thornton said re dogs barking, there is concern in several neighborhoods that the current dog population has been unneighborly at times.

F. Seagroves said the ordinance states that dogs cannot bark more than a half hour and certain hours of the day.

Z. Tripp said it is covered in the Milford ordinance.

F. Seagroves thought it was a half hour.

There were no other questions.

Z. Tripp asked the applicant to read her application.

1. Granting the variance would not be contrary to the public interest because:

A licensed quarantine facility for dogs for Safe Heart Rescue a non-profit 501c3. Dogs imported into NH must be quarantined at a licensed facility for 48 hours by state law (437). At the end of the 48 hours, they are checked by vet, given a health check.

2. The use is not contrary to the spirit of the ordinance because:

The proposed use will not alter the character of the Residential "R" neighborhood. The dogs are let out 3 times a day and are otherwise kept inside. If the dogs begin to bark, we divert their attention with a toy or with food.

3. Granting the variance would do substantial justice because:

There would be no public gain by denying this variance.

4. The proposed use would not diminish surrounding property values:

The dogs will be kept inside except for being let out 3 times a day and this will only happen every 6-8 weeks for 48 hours. The neighborhood has many dogs, cats, horses, chickens and elk. My house is not close to many of my neighbors.

5. Denial of the variance would result in unnecessary hardship.

A). "Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:

i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

Farming and other agriculture uses are allowed in Residential "R" zoning districts. The proposed use will be in keeping with these and other rural land uses. My property is pie shaped (more or less) front to back and because of wetlands in the area, the houses to my left are built to the back of their lot.

ii) and; The proposed use is a reasonable one because:

The character of the neighborhood will not be altered, my lot is large and neighbors are not that close to me. Three to four cars belonging to volunteers will be parked in my driveway at most during the quarantine weekend. There will be no signage.

B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:

N/A

F. Seagroves asked what she had to do to get a license from the state.

M. Stillson said it was before her time. Volunteer in the audience said the same and the state has to come in and check the facility.

M. Stillson asked if the question was license for the facility or for her.

F. Seagroves said what they have to do to get a state license.

M. Stillson said the facility has to get a license.

F. Seagroves said, if granted, she would have to go to the state.

M. Stillson said they would get a permit for renovating the basement. Before they can take dogs, the Dept of Agriculture comes and inspects. They have a whole set of requirements. As far as square feet, they have never gone over that. The space in the basement would not be big.

F. Seagroves said his concern was that they had to get a license and inspection.

M. Stillson said yes. They can come unannounced and check anything they want.

Z. Tripp moved on to discussion of the criteria.

1. Would granting the variance not be contrary to the public interest?

J. Dargie has concern with her neighbor's concerns. One thing that was mentioned by someone, coming before the Board was a bunch of abutters would go a long way in looking at questions from the neighbors and concerns. It would have benefited the owner to go to the neighbors and make them aware of what she intended to do. It would not be contrary to the public interest – she would say no. She didn't think enough information was available to the board re license, etc. No good grasp of what is required. While there is a good group of volunteers from Mo Jo's, maybe having them speak would have benefited.

M. Thornton – in quandary because he hears concerns about barking dogs. He allows his dog to do most of her barking inside to let him know somebody is coming by the driveway. If she barks outside she lets her inside. She is in a temporary kennel with gravel base with concrete box so she can't dig out. Something like that may be something to consider.

Maybe neighbors would be more included to go along with this if she discussed plans and their concerns with them. He was not inclined to say no right off, rather inclined to say yes. He hears fears but they are only being addressed for the first time. With his neighbors if a dog barks and it is a problem, they let the neighbor know. Ms. Stillson knows it is up to her to control the dogs within the stipulation of the ordinance. So, he would say yes.

F. Seagroves was still pondering. Almost has to say no. Thinking there might be harm.

Z. Tripp – the condition in the yard re health, safety might be better addressed under #2.

F. Seagroves – yes.

Z. Tripp asked if it was not in the public interest because?

F. Seagroves didn't know.

Z. Tripp read his answer. Some of the guiding principles of the handbook are whether this would alter the essential character of the neighborhood. He would have to look at the house and neighborhood to see whether granting would alter character. What is unique is they have covenants and restrictions on the lots when the subdivision was built. He read the paragraph: *the intent of these restrictions is to insure the use of the above lots in the Subdivision for attractive, private, residential purposes only, to prevent nuisances, to preserve the peaceful country atmosphere of the Subdivision, and to maintain the desired tone of the community, including the investment and resale value of the property.* Reading through the paragraph it tells him when the neighborhood was developed and about the essential character of the neighborhood.

M. Thornton – on 18 days a year. The neighbors don't want 18 days a year. It is incumbent on all neighbors and there is a specific section in the CC& R that says this can't take place then the issue is closed.

Z. Tripp said where B. Parker discussed they are not required or obligated to enforce them but he looked at what was in place when the subdivision was built to glean what the essential character of the neighborhood is.

F. Seagroves said it depends how you define veterinary.

Z. Tripp said there is a line that calls out.

F. Seagroves said no veterinary or kennels.

Z. Tripp granted this is not a veterinary or kennel but it highlights the essential character of the neighborhood. In his opinion it would violate the essential character.

J. Dargie said one of the things she struggled with, this was information given to them. They can't ignore it.

Z. Tripp read a paragraph in the ordinance re public interest. He said that was his guideline that it would alter the essential character and the covenants describe to him what that is.

F. Seagroves said, going to the zoning, you can put in veterinary.

Z. Tripp said by the covenants they can't. They could not put it in technically. It can't be more lax than the zoning but it can be stricter. Those are stricter.

F. Seagroves said they can okay it.

J. Dargie said when you are presented with obvious evidence.

F. Seagroves said he didn't think they should enforce the covenants.

Z. Tripp said he was not enforcing them but looking at them as to essential character.

F. Seagroves agreed that it was changing the character of neighborhood.

2. Could the variance be granted without violating the spirit of the ordinance?

M. Thornton – no. In this case where he defended in question 1, he has to see if question 2 is the right place to address this. This tone from the neighbors is that there is no trust that there would not be violations and impact. Therefore he was going to say no.

J. Dargie said in the case, no. Otherwise spirit of the ordinance allows you to make Special Exception to the rule but they have to consider the specific application.

F. Seagroves - no, on this one because of health, safety and general welfare of the community. Health is probably not a problem. Re safety he sees possibility of a problem. He believes that dogs coming in, as stated, are timid because they are scared, but as brought up by one of the abutters there is always a chance of one doing something. He likes dogs. One of his daughters has a rescue dog that is a pit bull and the nicest dog, but can be mean if he wants to be. He thinks it is a safety problem. Re general welfare of the community, he felt there was a possibility of a safety issue.

Z. Tripp thinking of voting yes on this one. For Residential R the intent is to provide for low density residential and agricultural land uses, and other compatible land uses that are sensitive to the rural character and environment in this district. Having limited commercial operation – he understands it is not really commercial – but a commercial-like operation of boarding animals is inconsistent with Residence R being more rural. As F. Seagroves stated, generally all of ordinance re health, and general welfare. Facility will be inspected by Dept. of Agriculture. He believes the facility will be up to par. They have good intentions. Volunteers are doing it because they like doing it and will have the best interest of the operation in mind. He would have considered conditions for this one to address safety issue. At this point, he will answer the rest of the questions.

3. Would granting the variance do substantial justice?

F. Seagroves – talking about loss to the individual outweighed by gain to the public is injustice. If he is going to stick to everything, he has to say no. Safety outweighs the gain. If they had a plan in front of them to insure the dogs could be fenced in and not get out he would go for it, but he had to say no.

M. Thornton - whole issue would have been better addressed at a later date when neighbors were brought aboard. Granting now that the neighbors concerns are raised would not do substantial justice. He has to vote no on this.

J. Dargie – no on that. Loss to the individual, the potential problems in the neighborhood outweighs the loss of not being able to house it. The nonprofit could find another location.

Z. Tripp agreed with the Board. Per the guidance in the handbook, “perhaps the guiding rule is any loss to the individual not outweighed by gain to the public is an injustice.” Re #1, contrary to the public interest, granting this would be a loss to the subdivision but he asked himself if loss to the applicant would be greater than that. The real loss, unfortunately, is to the dogs. He doesn't think the loss to the applicant is greater than to the public.

4. Could the variance be granted without diminishing the value of abutting property?

M. Thornton - certainly, but the fears of the neighbors and owners will have to be addressed. With the number of people concerned about the abutting properties he had to say no. He has rescue dogs from Alabama.

J. Dargie –no. With the concern with what it will look like it may not be able to be granted without diminishing property values.

F. Seagroves – no. If they are trying to sell their house when the dogs are out on a weekend when the dogs are there and they are really barkers that could cost them the sale of the house.

M. Thornton said that was a lot of ifs.

F. Seagroves said yes but they have to look at those things.

Z. Tripp said this one is tricky. He would vote yes. There is no signage. Applicant testified no signage outside. Dogs come on a weekend every 6-8 weeks. You could get barking dogs in any neighborhood any time of the year. It feels a little stretched that property values would go down because every 6-8 weeks a bunch of dogs bark.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;
ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

F. Seagroves - no. Talking about strict conformance to the ordinance. Not allowed. Variance is not allowed. It goes back to the safety issue. Proposed use is a reasonable one- it is in some cases, but not in this. They are not assured the animals can't get off the property . If so, he would probably say yes.

M. Thornton, answering all three. There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. The proposed use is a reasonable one.

Z. Tripp said if Mike answered yes on A i and ii, he didn't need to answer B. He said hardship is always tricky. He decided to look at whether there was anything unique about the property from others in the area. The lots are very small. This lot isn't extra wide or long or deep. He doesn't see anything about it that makes it different from other properties in the area. There are some in Residence R that are quite large and way back from the street but he doesn't see that with this property. Re fair and substantial relationship, he has already established he thinks it would be contrary to the public interest and doesn't believe it would be substantial justice. To approve would not advance the purpose of the ordinance in a fair and substantial way. No.

Re A ii, reasonable use, it is reasonable use for how in Residence R District that always has dogs, already has a fence out back, to want to do this. Re B, there is no condition that distinguishes it from others in the area. Applicant can still use it in strict conformance. There is a whole list of Special Exceptions, including a veterinary clinic. Sec. 5.04.2:A.2 says veterinary clinics are allowed by Special Exception. He read the acceptable uses listed in Sec. 5.04.1 He said denying still allows the owner to use the property in a reasonable way.

J. Dargie agreed with Z. Tripp. The property could still be used as outlined and can have domestic animals and pets, etc. She would say no.

Z. Tripp asked for a vote on the criteria.

1. Would granting the variance not be contrary to the public interest?

F. Seagroves – no. M. Thornton – yes J. Dargie - no Z. Tripp – no

2. Could the variance be granted without violating the spirit of the ordinance?

M. Thornton – no. J. Dargie – no F. Seagroves – no Z. Tripp - yes

3. Would granting the variance do substantial justice?

J. Dargie – no F. Seagroves – no M. Thornton – no Z. Tripp - no

4. Could the variance be granted without diminishing the value of abutting property?

F. Seagroves – no M. Thornton – no J. Dargie – no Z. Tripp - yes

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

M. Thornton – yes J. Dargie – no F. Seagroves – no Z. Tripp - no

Z. Tripp asked for a motion to deny case #2015-01 a request for a variance.

J. Dargie made the motion to deny Case #2015-01

M. Thornton seconded the motion.

Final Vote

J. Dargie – no M. Thornton – no F. Seagroves – no Z. Tripp - no

Case #2015-01 was denied by a 4-0 vote.

Z. Tripp informed the applicant of the denial and reminded the applicant of the thirty (30) day appeal period.