

**Town of Milford
Zoning Board of Adjustment
April 6, 2017
Case #2017-06
Joseph Raczek, OD/380 Realty
Variance**

Present: Michael Thornton, Vice Chair
Joan Dargie
Jason Plourde
Steven Bonczar
Tracy Steel, Alternate
Robin Lunn, Zoning Administrator

Absent: Kevin Johnson, Chair
Rob Costantino, Alternate

Secretary: Peg Ouellette

Joseph Raczek, OD/380 Realty, for property located at 380 Nashua St., Milford, NH, Tax Map 30, Lot 36, in the Residence A district, is seeking a Variance of the Milford Zoning Ordinances Article V, Section 5.02.3, to allow a change of use from a salon to a not for profit training facility with an office and ancillary kennel in the multi-use building that is currently a doctor's office and two residential dwelling units.

Minutes Approved on May 4, 2017

Michael Thornton, Acting Chair, opened the meeting and introduced the Board members. He informed all of the procedures of the Board. Board members agreed to table Approval of Minutes to the next regularly scheduled meeting, since there were one old case and four new cases on the agenda. Probably not enough time to consider all of them, since rules allow adjournment by 10 p.m. Any cases not heard would be tabled, with no additional notification to applicants or abutters. He read the notice of hearing into the record.

Joseph Raczek, applicant, came forward and introduced May Balsama, his real estate agent, who was there to help answer any questions.

J. Raczek said Delta Dogs was the not-for-profit in question. Their representative was unable to attend because of the flu. She would have been answering a lot of specific questions about the operation, but he would do the best he could.

M. Thornton asked if he wanted to table until the next meeting.

J. Raczek declined. He said he owned 380 Nashua St. for about 13 years and ran an optometry practice. Had commercial space on first floor and second floor with 2 one-bedroom apartments. Second floor about 900 SF. Beauty salon was there about 10 years. His practice will stay. Salon leased as of 11/1. Looking for other tenants for other commercial space. May Balsama was listing agent. Delta Dog came along and seemed like a good group. Re some neighbors' concerns, he had high interest because his practice is in the

building. He had spoken with Robin Lunn more than a couple of times and still hadn't gotten a special exception to a nonconforming use. Tried to find out how this got changed to a mixed used commercial. Happened in 1981 and there has been commercial space and apartments there since.

M. Balsam said in application she provided several pages describing operation of Delta Dog. Currently housed in Massachusetts. Executive Director moved here and operation moving to NH. Legitimate operation with a distinguished Board. It is a training facility for veterans and for shelter dogs. Dogs not on site 24/7. Times when they stay overnight waiting for veterans to be prepared for instruction in how to handle a comfort dog.

M. Thornton asked for questions from the Bd

J. Dargie asked if someone would be staying with the dogs when they stay overnight and how someone would contact anyone if there was an issue with dogs barking.

M. Balsama said they would if there was a requirement put on; but they don't. Executive Director lived within 10 minutes. Response time would be about 15 minutes.

M. Thornton asked how someone would know how to contact him.

M. Balsama said tenants would be given that information.

J. Dargie asked if someone would be talking to the neighbors.

J. Raczek said he talked to as many as he could. He sent a letter explaining what the group does.

M. Thornton commented that the group's goals were laudable. If the dogs were able to help veterans, that would be good.

J. Dargie said packet mentioned a portable chain link fence, not a permanent structure?

J. Raczek said he had hoped to talk to Lauren at Delta on how important that was. They put it in because she initially said with dogs there they would like to have an enclosure outside so they could be outside.

J. Dargie would think they would want it anyway because of the busy street and even transporting dogs. You'd want to have them contained so they couldn't get loose.

J. Raczek said if they got loose there was a door into the space. There was no way to fence in the whole property.

J. Dargie said it sounded like the fence was attached to the building on two sides.

J. Raczek said it was a small area.

T. Steel asked if it was a chain link fence.

M. Thornton said a kennel area.

M. Balsama said training was done inside, not outside.

J. Raczek said 15 x 16 f. the group asked for.

J. Dargie asked how many dogs there at a time.

J. Raczek said they told him that half the time there would be none. Other times, maybe one or two at most. They intend to adopt out ten to twelve a year. As he understood it, they were rescue dogs selected for their temperament, matching them with veterans and training them, somewhat like a Seeing Eye dog, so veterans would be comfortable. May have veterans there during training and screening veterans.

J. Dargie thought the fence was attached to the building.

J. Raczek said it would be enclosed area.

S. Bonczar asked how many sq. ft. used for this use, and the percentage of the total SF.

J. Raczek said 900 SF. Building is 4000 SF. His office is about 1700 -1800 SF and 900 SF other first floor space – about 2600-2700 SF, so about one-third.

M. Thornton asked for any other questions from the Bd. There were none. He opened meeting for public comment.

Robert Amadio of 5 Spruce St., an abutter, spoke. Said this was a wonderful idea. That building was a one-family, then a two-family, then a two-family and 2 businesses. He expressed concerns that it would be a dog kennel, could have three or four dogs because Joe would have no control, the fence. Bottom line was effect on his property value. Never had problems with Joe, but did have an issue with this. Other neighbors who were older than he also, but they were not present.

J. Raczek said he had written to Lauren about this proposed lease and she had questions about the terms of the lease. He asked specific things, because of the dogs, including a nuisance clause in the lease such as dog poop not being cleaned up, etc. Agreed with Robert. Can't have dogs barking. He would have clause in the lease that two or three times written notice of nuisance, they would have to vacate; and he asked for proof of

liability insurance in case someone got bit. Dogs won't be housed outside. Thought they would be there about 2 or 3 hours in afternoon.

R. Amadio asked if anyone there would want this in their back yard.

J. Plourde asked what his concern was. Barking?

R. Amadio said yes. He said he was about to sell and move to a warmer climate. Concerned what this will do to his selling.

J. Dargie asked if he'd be more comfortable with one dog.

R. Amadio said he would be concerned with one. Couldn't guarantee there would only be one or two any more than the applicant in the previous could guarantee only having one or two guns.

J. Dargie said a restriction could be put in.

R. Amadio had no confidence that people follow those restrictions. He said people in town have built larger than they were supposed to.

J. Plourde said one gentleman had to tear down his deck because he built it larger.

R. Amadio asked if they lived where he did, would they want it in their back yard.

T. Steel said the group stated they would be willing to keep someone with the dogs overnight. Would that help? Or would the group be willing to foster the dogs and take them home at night.

J. Raczek said Lauren wasn't there to answer that.

J. Dargie suggested putting in a condition,.

S. Bonczar said they had to wait for public comment to end.

M. Thornton asked for any further public comment. None. He closed the public comment.

S. Bonczar said to remember that this was a variance that went with the land, not the owner. If the applicant sold the property a month after this, they were basically allowing a kennel in that facility. Conceivably could convert that whole building into a kennel. That would be an acceptable use. That was his concern.

M. Thornton said to have a kennel occupying so many sq. ft. and *** outside. That would be using all of the first floor.

S. Bonczar said if the property were sold, use could continue as a kennel. They could have ten or twenty dogs.

M. Thornton suggested putting a condition on it.

S. Bonczar unwilling to do that.

J. Dargie asked if they couldn't do that.

S. Bonczar said they can put a condition on, but would run into problems later. He also didn't see a hardship.

J. Plourde said that was his concern. One of the big criteria was hardship. Not opposed to the project. It was great for veterans. Had hard time seeing hardship. Not for veterans, but for this particular use.

M. Balsama started to speak but was told public comment was closed.

M. Thornton re-opened public comment.

M. Balsama said when J. Raczek contacted her, the first attempt was to lease to a salon. In Milford there are many salons already. That market was saturated. It was marketed to existing salons, beauty schools, people wanting to start their own salon, on the internet. No inquiries. It was a good location, facilities- and traffic-wise. But small and very limiting to office. Even an accountant office would be back for a special exception because it was not a permitted use – to be nonconforming. Hardship was that applicant having the space grandfathered as commercial and not being able to find a renter.

S. Bonczar said that was financial hardship and this Bd. didn't consider that.

J. Raczek said this was taxed commercial for 37 years. If not this, he was sure he'd be back with something. Felt this was as useful as anything else. A salon would be only thing where safety not a problem.

S. Bonczar mentioned an office, day care. There were 15 different acceptable uses by special exception.

M. Balsama said of those, only two or three possible in 900 SF on a busy street.

S. Bonczar said that was not the Bd.'s problem.

M. Thornton asked for an example of hardship.

S. Bonczar said it had to do with characteristics of the property. He read from the Handbook, which stated that unless there were special characteristics of the property that distinguished it from others in the area, no hardship existed. He said it was the characteristics of the property and what was allowed on that street, because of the characteristics restricted the use of that property. They were getting into some of the deliberation, but there were uses without or with exception that property had, in his opinion.

M. Thornton agreed. It was a marketing hardship, not on the property.

J. Raczek said he had discussed it with his attorney. Said he would have to come before Bd. to find out the rules.

M. Thornton asked for any other public comment. None. He closed public comment.

He then asked the Bd. for comments or discussion. None. He proceeded to deliberation of the criteria for a variance.

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

J. Plourde said they heard from a gentleman saying it would not be in the best interest of the property having this variance granted. He was torn on it. It was a great business and great use but he had to go by bylaws.

J. Dargie asked no, it was not contrary? M. Thornton said a yes meant it was not contrary.

J. Dargie said it sounded like it was not when discussing only one or two dogs a year, but re S. Bonczar's comments about variance going with the property, that was a problem. If condition that it ended when the property changed hands or tenants left. Not that they have done conditions before that were specific to the owners of the property. Condition that said things would be limited. S. Bonczar asked how you would enforce it. It could not be contrary; but then it could if it turned into a kennel. She almost wanted to make a motion to table it, have him come back with more information, talk with neighbors more and come back instead of ending it now. She could see a little hardship. It was kind of a unique commercial property with size that sort of made it unique.

S. Bonczar said in his opinion there was no need to table.

T. Steel was kind of with J. Dargie. But understood where S. Bonczar was coming from.

Brief discussion between J. Dargie and S. Bonczar as to tabling or putting on a condition. S. Bonczar didn't see reason to table, and said they couldn't place a condition as to it ending. J. Dargie thought they had done that previously.

S. Bonczar said, as far as being contrary to the public interest, he would say it wasn't. To be contrary to the public interest it must "unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance." He didn't think overall it was that in violation of the ordinance objectives. Part of it was an office space and was commercial. Didn't think it unduly and to a marked degree violated the objectives.

M. Thornton said granting would not be contrary to public interest. Didn't see anything in the proposal that would be contrary to the good of the community.

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

J. Dargie said if they granted it, the spirit would be observed.

S. Bonczar said it didn't violate spirit of the ordinance.

T. Steel agreed.

J. Plourde agreed.

M. Thornton agreed.

3. Would granting the variance do substantial justice?

S. Bonczar didn't think granting would be unjust to the general public. Any loss to the individual was not outweighed by gain to the public. Yes, it would do substantial justice.

J. Plourde – yes. Didn't see a gain to the public by denying.

J. Dargie agreed.

T. Steel agreed.

M. Thornton said a great deal of positive good. Yes.

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

J. Dargie said in its current state it would not, but as S. Bonczar pointed out you had potential for a full kennel. Tough one. On this she would say in the way it was presented where 50 percent of the time there would be animals there, she would say it would not diminish value. Yes, it would not diminish value.

J. Plourde – talking about 900 SF use. Didn't think it would diminish abutting property. However, talking about granting for the property, it could. Not saying it would, but it could impact values of surrounding houses. M. Thornton said if it went to full 2700 SF. J. Plourde agreed, because it goes with the property. They weren't talking about 900 SF, but about the property and saying that it could be granted without diminishing value of abutting property. No.

T. Steel agreed with J. Dargie. Yes, it would not diminish.

S. Bonczar didn't have any concrete facts. No information supplied in the application. It was unique use now and he thought the proposed use wouldn't substantially change that. Answer is yes. No impact on the surrounding property values.

M. Thornton agreed, no impact on surrounding property given it was one or two dogs a year – 30 to 40 in a full year.

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.

S. Bonczar – his view was no. There were substantial acceptable uses with or without a special exception that exist now in that property. No unique characteristics of the property that would require the variance to provide relief to the applicant. At this point applicant had substantial uses compared to some of the surrounding properties.

J. Plourde said property not showing hardship. There were other acceptable uses spelled out in the ordinance or through special exception. Not to say they were more apt to go in there, but there were other uses outlined. Didn't see uniqueness of this property as compared to others along the corridor. Go out and see if they could see other locations in town. Answer – no.

T. Steel – no

J. Dargie said if there were no other uses and nothing else you could put in there. If they could consider financial hardship – they can't do that. No.

M. Thornton said unfortunately the property itself showed no hardship, as much as he would like to see the dogs there, being a veteran himself. In this case, it was going to come down to a final vote.

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

J. Plourde – no; S. Bonczar – yes; J. Dargie – yes; T. Steel – yes; M. Thornton - yes

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

J. Plourde – yes; S. Bonczar – yes; J. Dargie – yes; T. Steel – yes; M. Thornton - yes

3. Would granting the variance do substantial justice?

J. Plourde – yes; S. Bonczar – yes; J. Dargie – yes; T. Steel – yes; M. Thornton - yes

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

T. Steel – yes; J. Dargie – yes; S. Bonczar – yes; J. Plourde – yes; M. Thornton - 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.

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conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

S. Bonczar – no; J. Dargie – no; T. Steel – no; J. Plourde – no; M. Thornton – no

M. Thornton asked for motion to deny.

J. Dargie made motion to **deny** Case #2017-96

Final Vote: Yes vote was to deny

J. Dargie – yes

S. Bonczar – yes

J. Plourde – yes

T. Steel – yes

M. Thornton – yes

Case # 2017-06 was unanimously denied.