



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 1.28.2020

Zoning Board of Appeals Meeting Minutes September 24, 2019

Members in attendance: Brad Blanchett, Chairman; Richard Rand, Mark Rutan, Paul Tagliaferri, Fran Bakstran, Leslie Harrison, Jeffrey Leland.

Others in attendance: Kathy Joubert, Town Planner; Robert Frederico, Inspector of Building/Zoning Enforcement Officer; Fred Litchfield, Town Engineer; David Parenti, Fire Chief; Rashid Shaikh, ZHS Trust; Kasey and Chris Oestreicher, Wiggles and Tails; Scott Morrison, EcoTec; Trevor Fletcher, Graz Engineering-Fitzwilliam; Frank Capria, 19 Overlook Drive; Kathy Shackelford, 159 Rice Avenue; Justin Leal, 154 Rice Avenue; Rick Keene, 159 Rice Avenue; Nick and Fiona Gibson, 14 Overlock Drive; Norine Elliot, 6 Overlock Drive; Marie Ryan, 242 West Main Street, 01581; Susan Lawrence, 147 Rice Avenue; Julya and Marjorie 63 Ruggles Street, 01581; Kelly Gardner, 115 Adams Street, 01581; Suzanne Gendel, 7 Ledge Hill, Southborough; Al Yellick, Allen Street; Brett Amato, 2 Coburn Street; Lauren Bailey-Jones, Elmwood Drive; Millie Milton, 50 Fay Lane; Amy Poretsky, 47 Indian Meadow Drive; Lucille Perry, 163 Rice Avenue; Diana Stone, 175 Rice Avenue; Job Lemieux, 10 Overlock Drive; Richard Weaver, 11 Donald Street; James Kihungi, 140 Rice Avenue; James Mory, Northborough; Frank Zimmerman, 22 Overlock Drive; Michael O'Connell, 169 Rice Avenue; Bruce Harmon, 165 Rice Avenue; Sarah Fillmore, 160 Rice Avenue; Jeff Hanson, 160 Rice Avenue; Lynn Muthee, 140 Rice Avenue; Larry Armanini, 184 Rice Avenue; David and Cathy Cairns, 105 Rice Avenue; Kevin and Sheila Mader, 109 Rice Avenue; Norman Lindsay, 151 Rice Avenue; Phyliz Muthee, 140 Rice Avenue; Kerri Martinek, 16 Hemlock Drive; Lisa Maselli, 13 Maple Lane; Henry Squillante, 72 Crestwood Drive; Richard and Cynthia Atwood, 4 Donald Street; Mark Downey, 5 Donald Street; Stephanie Read, 65 Water Street; Christopher Theriault, 136 Rice Avenue; Jason Perreault, 27 Treetop Circle; Christine and Kreg Hesemeyer, 56 Rice Avenue; and John and Dorothy Magoun, 63 Rice Avenue.

Chairman Brad Blanchett opened the meeting at 7:15pm.

Old/New Business

261 Main Street, Case No. 15-13

Request from Sam Lotuff, LLL3, LLC, property owner, for a one-year extension of the Special Permit with Site Plan Approval and the Special Permit per Groundwater Protection District

Ms. Joubert explained Mr. Lotuff was unexpectedly unable to come to the meeting. She explained Mr. Lotuff has requested a one-year extension of the Special Permit, Special Permit with Site Plan Approval, and the Special Permit, Groundwater Protection Overlay District. At the September 25, 2018 meeting of the Zoning Board of Appeals, the Board unanimously granted Mr. Lotuff's request.

Ms. Bakstran motioned to grant a one-year extension for the Special Permit, Special Permit with Site Plan Approval, and Special Permit, Groundwater Protection Overlay District for 261 Main Street, Case No. 15-13. Mr. Tagliaferri seconded the motion and the vote was unanimously in favor of the motion.

39-43 King Street, Case No. 18-04 – Request from Rashid M. Shaikh, ZHS Trust, for a two-year extension of the Special Permit with Site Plan Approval and the Sign Variance

Rashid Shaikh, ZHS Trust, was present. Mr. Shaikh explained that, during the approval process of the “39-43 King Street Assisted Living” project, the ZBA members and neighbors made a request to grant an access from Route 20 to King Street through 38 King Street, which was originally not part of the project. ZHS realized that granting such access to the public will make traffic flow better and safer, however that will adversely impact the best use of 38 King Street as per their original plans. He stated ZHS realized the need and request from the neighborhood and agreed to grant this access even though it jeopardized their ability to build the originally planned mixed-use building.

Mr. Shaikh stated the approval from the ZBA on the proposed 39-43 King Street Assisted Living project, ZHS, right away, applied to MassDOT for the driveway access from Route 20 to King Street. They received approval from the MassDOT after long discussions, (18 months) reviews and plan modifications, to make all entrances and access safe. It was suggested by the Town Engineer and the MassDOT to convert the southerly portion of King Street to a “One Way Street” from the main entrance of the assisted living to the Route 20 access point. MassDOT wrote in its decision that the “proposed changes along with the new access, make the entire area safer, enhancing site distances in both directions”. To satisfy all concerns, ZHS has agreed to all changed proposed by MassDOT and the Town departments. Mr. Shaikh stated they are now in the process of seeking approval from the Board of Selectmen for this street modification.

Mr. Shaikh explained they also applied and secured approval from the Conservation Commission and the Board of Health. He stated they applied for the demo permit and approached financial institutes and set up subs to break ground. He noted they can’t wait to break ground but unfortunately, it has taken far longer than all of their expectations. With the speed at which approvals are being granted, they truly need a two-year extension on the deadline of the decision. He stated that once they have approval from the Board of Selectmen, they will need a good amount of time (2 years) to develop construction plans, remove current structures, and break the ground. Mr. Shaikh noted they have fulfilled all requirements, paid all taxes, and absorbed all project costs. In conclusion, he requested of the Board to grant them two more years beyond the original deadline to comply with their decision as the delay is beyond their control and has increased their costs.

Ms. Joubert noted the Applicant has eight months left on the original decision, as it would expire in May of 2020. She also mentioned the Sign Variance, that is part of the project, has expired.

At the request of the Applicant, Mr. Litchfield confirmed that he and Mr. Shaikh have been working with MassDOT regarding the proposed driveway access from Route 20 to King Street;

and received approval after working 18 months to make sure all entrances and accesses will be safe. Mr. Litchfield noted there should be a meeting with MassDOT in October of 2020.

Ms. Bakstran motioned to grant a two-year extension for the Special Permit with Site Plan Approval for 39-43 King Street, Case No. 18-04. Mr. Rand seconded the motion and the board voted unanimously in favor of the motion.

Chairman Blanchett explained the ground rules for the public hearing, stating the Applicants will present their project first, board members will speak, and then the audience will speak. As there are many people in the audience who may want to speak, he requested that people do not repeat what another person has already said in order to keep it brief. He also stated that he expects civility and if there are outbursts from the audience, those people will have to leave the room.

To consider the petition of Chris Oestreicher & Kasey Oestreicher for a Variance/Special Permit/Special Permit with Site Plan Approval/ Special Permit per Groundwater Protection Overlay District, to allow the use of an off-leashed dog-walking area for professional dog walkers, primarily employed by the Applicant who is the owner of Wiggles & Tails Dog Service, LLC, on the property located at 125 Rice Avenue, in the Residential C District and Groundwater Protection Overlay District Area 3

Chairman Blanchette read the public hearing notice into the record.

Applicants Chris and Kasey Oestreicher were present and explained they are requesting Special Permits to use their property at 125 Rice Avenue, in the Residential C District, for the proposed use of an off-leash and leashed dog walking area for professional Dog Walkers primarily employed by them, as they are the owner of Wiggles & Tails Dog Services, LLC.

Ms. Oestreicher explained they moved to Northborough this year with their two-year old son and dog, Sidney. She stated they started a dog-walking business known as Wiggles and Tails, LLC in 2014. It is a small dog-walking business with an occasional client's dog staying overnight in their home. Their hours of operation will be 8:30am to 4:30pm, Monday through Friday. The property is 18 acres in size and wooded, with natural beauty. They are requesting to have a fenced-in area for off-leash hikes for the dogs. They have met with the Planning Board, Conservation Commission and the Groundwater Advisory Committee. Their request to allow the use of an off-leash dog-walking for professional dog walkers is similar to the ZBA Case No.18-18, 205 Brewer Street, for a Special Permit to allow the use of a professional office for training, walking and occasional boarding of dogs that was approved by the board. She invited the board members to come to their property if they like, and would meet with residents if they called.

In a narrative included in their Application, the Applicants explained the following:

Their request for a Special Permit to operate their unique personal services was deemed most appropriately categorized under Section 7-05-020 of the Zoning Bylaw by a consensus of representatives of the Town of Northborough's Building, Planning, Conservation and Engineering departments, who gathered to advise them where their business might operate under the bylaws.

Their business would fall under Section 7-05-020C, Residential Use, Accessory (6) Home Occupation, under the sub-section "Home Personal Services, Personal Services" of the Northborough Zoning Bylaw. Due to the nature of their business, they are seeking a Special Permit to employ more than the Home Personal Services bylaw permits. The conditions under the bylaw states that not more than one non-resident shall be employed on the premises except by Special Permit from the Zoning Bylaw; and they are seeking to employ between six and ten individuals.

It is important to note that the business, Wiggles & Tails Dog Services, LLC, is not a commercial kennel, nor are they dog daycare. In addition, it is also not a pet-sitting company, and potential professional walkers who would use their parking area, will not be kennels or dog daycares. They, too, are dog walkers by profession. It is also important to note this because a great deal of noise can be produced by those types of businesses, except for their business.

They would use the property to conduct on and off-leash hikes with canines in groups usually of five to ten dogs at a time, off-leash only in a fenced portion of the property. The fence would be approximately seven feet high, with coyote roll-bars and/or barbwire extended on top. The dogs will be leashed, or confined by leash or tether, from a forward parking area on their property, in heavily-wooded areas on fenced-in trails through the woods. The rear of their property is behind, or to the rear of, a small perennial stream that bi-sects their land and is outside the wetland buffer around that area.

Regarding parking on the site, they have a plan for their proposed parking area for 12 spaces, based on the field-work of Graz Engineering, who conducted a full physical survey and assessment of their property. In addition, they will be submitting a request for a Special Permit from the Groundwater Advisory Committee in order to work on the property in Groundwater Protection Overlay District 3, although it was determined that they would not require a Special Permit specifically for the parking area, as it will be less than 15% of the total property size. For parking, there will be two garage spaces to be used for their personal vehicles. The additional parking area requested will be used during the work week for work-day vans, and an employee who drives to work would have a designated place to park their personal vehicle. After an employee would arrive, the only vehicles entering and leaving the property would be the transport vehicles used for dog transport. They have been advised, by the Town representatives mentioned previously, that they would be required to have a paved driveway and parking area. They agreed with their assessment that 12 parking spaces would be appropriate; and that they use vehicles that are used to transport dogs from clients' homes to the new starting and finishing point of their hikes, which would be the parking area at 125 Rice Avenue.

Regarding the perennial stream, wetland area, and wet-land buffer zone, because they need to have a trail that leads from the front of their property to the rear off-leashed area, they will need to do some grading, tree cutting and bridge or culvert installation, and they therefore requested a Special Permit from the Groundwater Advisory Committee and due compliance with approval of the Conservation Commission. The trail will pass through a wetland area and over a perennial stream, so they will need either a culvert or a bridge to properly cross the wetland, causing as minimal a disturbance to the wetland as possible. They have acquired the services of Eco Tec Environmental Consulting of Worcester, specializing in Environmental field work, who has flagged the wetland area and buffer zones, and conducted a full analysis of the area. Eco Tec found an old car-path and the specialist advised there would be pretty minimal disturbance

of the crossing area where they have told is the best place to cross the stream. They are also using Graz Engineering for the civil engineering and bridge or crossing recommendation.

Their plan is to initially fence in approximately 4 – 8 acres of the 16 rear acres of heavily-wooded land. The approximation is rough because some of the terrain during construction will be prohibitive of fence construction due to slope or ground quality, or walking safety, due to terrain. The fence would consist of wood and wire, and/or chain-link parts grounded by concrete for stability. The proposed fence will be a maximum height of 7' above ground, and the off-leashed area will be gated.

They believe the 125 Rice Avenue property is perfect for their business. There is a 15' – 20' high natural noise buffer, the aqueduct, which is in between their property and the houses on Rice Avenue. The area of their property is heavily wooded, particularly where the off-leashed area would be and it is also wooded on every house that abuts the opposite side of the aqueduct in every home-owners backyard. Three of the other sides of their property, North, Northwest, and West, are Town Conservation areas; and to the South of their home, there is a very heavily wooded buffer area on their property, between their home and the street. With their business, dogs typically bark in the vans on the way to the trails; and rarely do they bark on the trails. Occasionally, the dogs will howl or bark in excitement on the trails, but in their experience, this is a rare occurrence with dog hiking. Noise issues are commonly associated with kennels or daycares with small enclosures. As homeowners, they respect their neighbors' desire for quiet, just as they would expect the same in turn.

Their business is not a kennel, however they frequently allow some of their customers to board their dogs at their home, but never more than one or two dogs at a time, just as most individual dog owners have their own one or two dogs. The dogs are not left out on lead at night, as may dog owners do, and they do not "put on lead" any of their customers' dogs. They believe that dogs on lead, are in a confined area and as mentioned before, often bark and make noise under those conditions. Because they are care-takers of dogs, they understand that they will need a commercial kennel license from the Town of Northborough before they can start operating on the premises, even though they are not a kennel.

Regarding Environmental Health and the transmission of disease, environmental impact of fecal material is always of major concern to a professional dog walker. When they meet with the Groundwater Advisory Committee, they will also provide plans for fecal clean-up and proper disposal. They will have 4 barrels on the property to dispose of animal waste with plastic bags. The bags will be changed twice per week and will have flip covers to prevent odors from emanating. All dogs on Wiggles & Tails hikes are already required to be licensed, have their vaccinations up to date, and are spayed and neutered if over the age of 6 months.

Regarding trail composition, it is mostly earth, perhaps some synthetic dog grass in some areas, and woodchips off the trail for decorative purposes. Earth or grass is the most environmentally friendly, so most will be earth because natural grass would be difficult to manage. They do not anticipate any grading to be required that would alter the slope of the trails other than filling in holes, which might cause tripping or a safety hazard, or moving a rock here or there so as not to trip. In addition, they plan to landscape some portions of the property for aesthetics.

Regarding the number of employees requested to work on the site, it would be up to ten employees. Not all employees use the area concurrently except in the case of a meeting; and it is likely that 3 or 4 employees would use the trails only their property in any given day.

Regarding office space, 100 square-feet will be used for a home-office. Their home is 2700 square-feet, so there will be less than 4% of the house that will be used for the office space.

Regarding hours of operation, the hours will be sunrise to sunset, primarily Monday through Friday.

Members Questions/Comments

Ms. Bakstran confirmed with the Applicants that they run their Wiggles and Tails business on the property from their home, but do not have a fenced-in area yet on their property. A Special Permit is needed to operate the business in order to allow the dogs to be walked off-leash on the property.

Mr. Tagliaferri asked Mr. Oestreicher what is included in a typical day and he responded that they are open from 8:30am to 4:30pm, Monday through Friday. They have two vans, each with an employee, on their property and each driver will take 3-5 dogs for an “off-leash adventure hike” for an hour to an hour and a half. Mr. Tagliaferri also asked about cleaning the dogs, and Mr. Oestreicher said they clean them in the vans. He also confirmed that there will be 12 parking spaces proposed and eventually they will have 6 to 8 vans. There will be ninety-six gallon trash barrels for dog waste on the property and 4 to 5 of the trash barrels will be located on the trails throughout the property.

Ms. Oestreicher stated they have projected to have 5 spaces for vans, 5 spaces for employees’ vehicles, and 2 spaces for potential part-time employees.

Mr. Tagliaferri asked if they will be letting other dog walkers use the site. Ms. Oestreicher said they could limit it to just his business, and originally they were thinking of up to 2 other dog walkers, but they could never total more than 5 vans. She noted 5-7 dogs are walked at a time.

Ms. Bakstran asked if they walk the dogs on Rice Avenue, and Mr. Oestreicher stated he doesn’t, and there is no reason to go on the street. He added that they will be building a bridge with the capacity to handle a 10,000 pound weight load for the dogs to walk over. The purpose of a bridge that size is in the event a vehicle has to get to the rear of the property.

Ms. Bakstran confirmed that the proposed fenced-in area is 8 acres in size and Ms. Oestreicher noted there will be 10 hikes per day maximum.

Ms. Harrison was fine with the idea of the bridge, but thought it was too large and should only be built for foot traffic.

Ms. Bakstran asked Mr. Oestreicher if she could look at the property, and he presented a set of photos of the property and the surrounding properties with sheets identifying Edmund Hill Woods, Assabet River, Edmund Hill Trails, and Procter Trail; a sheet showing 125 Rice Avenue; the Edmund Hill Conservation Area; and a Draft Key of the driveway and parking, fencing, trail, bridge, and private trails; 5 pages of various photos of 125 Rice Avenue and other photos of areas around the property.

Mr. Blanchette asked why there is nothing on the trail on the hill on photo #8, and Ms. Bakstran replied it is allowed for people to get to the trail.

Mr. Blanchette also asked Mr. Oestreicher what happens in the winter, and he explained that the dogs walk all days no matter what the weather is, except in a blizzard.

Mr. Rand asked how close the nearest house is from their property, and Mr. Oestreicher stated it is 245 feet from the parking area.

Mr. Tagliaferri asked the Applicant when the pictures he presented were taken, and Mr. Oestreicher replied they were taken four days ago.

Comments from Staff

Ms. Joubert explained that the members received a review letter from the Fire Chief and a memo from the Planning Board, both of which Ms. Joubert read aloud.

Ms. Joubert also stated that Staff verified with Town Counsel regarding the home occupation.

Mr. Litchfield stated the Applicants met with the Groundwater Advisory Committee last week and the Applicants requested to continue to the next meeting.

Comments from Residents

Michael O'Connell, 169 Rice Avenue, was concerned about aggressive dogs. Mr. Oestreicher stated some of those dogs get trained, but his clients come to him on a referral basis. Mr. O'Connell also stated he believes barking dogs will exceed the decibel level allowed. Mr. O'Connell asked Mr. Oestreicher about the easement and Mr. Oestreicher stated it belongs to the MWRA land.

Ms. Joubert noted the MWRA was notified, as it is an abutter.

Justin Teal, 154 Rice Avenue, asked if the parking area will be in the front yard; and confirmed there will be 4 trips in and out per van per day, and 5 vans total with 2 hikes per day and 5-7 dogs. He also mentioned the bend in Rice Avenue where the Applicant's driveway is very narrow.

Mr. Blanchette stated the site line is bad and he doesn't drive on it. Ms. Bakstran noted the Department of Public Works trims the trees.

Rick Keene, 159 Rice Avenue, asked how many dogs will be on the site per day and Mr. Oestreicher stated there will be approximately 20 dogs.

Diana Stone, 175 Rice Avenue, had concerns regarding wildlife in the area and stated she has seen the Applicant walking dogs on Rice Avenue.

Cathy Cairns, 105 Rice Avenue and Christopher Theriault, 136 Rice Avenue, were concerned about a possible increase in the business in the future. Ms. Oestreicher stated they will have a maximum of 8 employees due to restroom and septic system regulations, so they will not be able to increase their business.

Kevin and Sheila Mader, 109 Rice Avenue, were concerned with noise from barking dogs.

Bruce Harmon, 165 Rice Avenue, was concerned that other people may want to do something similar on their property that would create a slippery slope in the future.

Mr. Blanchette noted each application stands on its self.

Brett Amato, 2 Colburn Street, had questions regarding the proposed fence, and noted that the same situation is going on in Natick and they changed their zoning.

Frank Capria, 19 Overlock Drive, was concerned about noise and traffic, and he stated that the business will be of no benefit to the residents.

The resident at 15 Avalon Drive stated the business has benefits to the residents.

Lauren Bailey-Jones, 11 Elmwood Drive, stated she and her husband support their dog walkers at Wiggles and Tails. They support their use of their huge residentially-zoned property at 125 Rice Avenue to cut trails and fence-in areas to hike the groups of dogs, and they hope the board members will go forward with allowing the Rice Avenue property to be used to help families with dogs that need an outdoor hike with Wiggles and Tails.

Kathy Shackelford, 159 Rice Avenue, submitted photos from the resident at 136 Rice Avenue to the ZBA members.

Larry Armanini, 184 Rice Avenue, had questions regarding a possible increase in traffic from the business.

Frank Zimmerman, 22 Overlock Drive, asked if, in the future, another person could take over this business. Mr. Blanchette and Ms. Joubert agreed that the Special Permits for the proposed business would only stay with the Applicants.

Nick and Fiona Gibson, 14 Overlock Drive, asked where the trash cans will be located.

Lisa Maselli, 13 Maple Street, stated the business is a good thing, but not in areas like Rice Avenue.

Amy Poretzky, 47 Indian Meadow Drive, agreed with Ms. Maselli.

Jane Theriault, 136 Rice Avenue, was very concerned about noise from the dogs.

Ms. Bakstran motioned to continue the public hearing to October 22, 2019 at 7 pm. Mr. Rutan seconded the motion and the vote was unanimously in favor of the motion.

OLD/NEW BUSINESS_

Master Plan Update:

Ms. Bakstran stated they are done with the Master Plan, and the Steering Committee will hold a meeting at the library on October 24th and then will hand the Master Plan over to the Planning Board.

Approval of Minutes:

Ms. Bakstran motioned to approve the August 27, 2019 minutes; Mr. Rutan seconded the motion and the vote was unanimously in favor of the motion.

October 1st Joint Meeting:

Ms. Joubert told the members that she has tentatively scheduled a joint meeting of the Planning Board and the Zoning Board of Appeals to talk about zoning, the Master Plan and bylaws for 2020 Town Meeting.

Ms. Bakstran motioned to adjourn the meeting, Mr. Leland seconded the motion and the vote was unanimously in favor of the motion. The meeting adjourned at 9:30pm.

Respectfully Submitted by,

Debbie Grampietro
ZBA Administrative Assistant