

**Town of Norfolk
Zoning Board of Appeals
One Liberty Lane
Norfolk, MA 02056**

Meeting of January 20, 2016

Zoning Board Members	Others
Michael Kulesza –Chairman ----- present	Amy Brady ----- Administrative Assistant
Robert Luciano –Vice Chairman---present	
Christopher Wider – Clerk -----present	
Joseph Sebastiano –Full Member - present	
Jeffrey Chalmers – Associate Member- present	
Donald Hanssen – Full Member – present	

The duly posted meeting of the Zoning Board of Appeals convened at 7:09 p.m. in room 124 at the Norfolk Town Hall.

Mr. Kulesza announced that this meeting was being audio and videotaped.

Approve Minutes:

- a) *Mr. Wider made a motion to accept the minutes for October 8, 2015, as presented; Mr. Sebastiano seconded; the vote on the motion was unanimous.*
- b) *Mr. Wider made a motion to accept the minutes for November 23, 2015, as presented; Mr. Sebastiano seconded; the vote on the motion was unanimous.*
- c) *Mr. Wider noted that the meeting of December 16, 2015, was being audio and videotaped; in addition, at the bottom of the first page, Mr. Kulesza's name was misspelled. Mr. Wider made a motion to accept the minutes for December 16, 2015, as amended; Mr. Hanssen seconded; the vote on the motion was unanimous.*

APPLICATIONS:

NEW BUSINESS:

PUBLIC HEARING:

DELIBERATIONS:

117 Seekonk St -Special Permit & Variance to allow a commercial kennel (cont'd from 12/16/15
Mr. Kulesza reviewed and clarified that the applicant (Henry Kanter) is looking for Variance relief and Special Permit to run a commercial kennel in accordance with Town of Norfolk Bylaw D.2.d.5.b.

Special Permit Deliberations:

Mr. Hanssen confirmed that if the variance is not granted, then the special permit doesn't matter. Mr. Luciano asked what the difference is between a Special Permit and a Use Variance. Mr. Wider answered that a Special Permit is necessary under the Norfolk Bylaws to run a commercial kennel under any circumstances; then there is a Dimensional Variance request, because Mr. Kanter doesn't meet the requirements for a commercial kennel according to our bylaws (i.e., setbacks, etc.). It was clarified that the Town of Norfolk does not use "Use" Variances.

Discussion ensued regarding findings of fact. Mr. Hanssen asked for clarification of when Mr. Kanter moved to Norfolk and began operating his kennel, and when the bylaw went into effect. Mr. Wider responded that the Town always had a kennel bylaw, but in 2012, the State clarified it in 2012 to differentiate between personal and commercial kennels. Norfolk adopted a separate personal and commercial kennel bylaw in May of 2015. Mr. Kanter has been operating here since 2011. Mr. Kulesza stated that the property is 4.07 acres. There is a barn for indoor operations, heated in the winter. Operations are between 9:30 and 2:00. Maximum of 15 dogs, he picks up and drops off all of them, so no customers coming to the property. No evenings or weekends, no special lighting, no signage, no breeding; waste is trucked out weekly with household waste, areas are cleaned daily; owners of dogs must prove dogs are vaccinated and licensed, and are screened to ensure compatibility.

Mr. Kulesza noted that on site visit, it was observed that where dogs run around, the topography is lower, which is conducive to neighbors; Mr. Kanter erected \$17k (stated) of fencing all creating a unique setup in an R3 district. Mr. Hanssen noted that at the time of adoption of the new bylaw, Mr. Kanter's business did not qualify to be grandfathered as an existing commercial kennel, because he had been unaware that he needed to apply for a Special Permit when he moved here from Medfield. There was no abutter opposition at the Public Hearing, and Mr. Kanter provided letters of support from his neighbors. PSC report did not find anything detrimental. It was agreed that a statement should be made that the Special Permit is nontransferable to future owners.

Mr. Kulesza read into record the criteria for a Special Permit, and the applicant's ability to meet those criteria.

Conditions: Maximum of 15 dogs at any one time; hours of operation from 9:45 to 2:00; no weekends or nights; no drop-offs or pickups by dog owners; no lighting, other than on to the existing property; no breeding; no external signage; all dogs must be screened, licensed and vaccinated; Special Permit will stay with the owner (by name) and non-transferrable to future owners (see page 3 of Special Permit); waste must be hauled off weekly

Mr. Wider made a motion at 7:45 for a Special Permit in accord with Mass General Law, Chapter 40A, Section 9, and the Town of Norfolk Zoning Bylaw, Section D.2.d.5.b. for commercial kennel in the R-3 District, reference assessor's Map 23, Block 54, Lot 56. Mr. Sebastiano seconded.

Donald Hanssen - - - - yes to grant
Robert Luciano - - - - yes to grant
Michael Kulesza - - - - yes to grant
Christopher Wider - - - - yes to grant
Joseph Sebastiano - - - - - yes to grant

The vote on the motion to grant was unanimous with a vote of 5-0. The deliberations and vote closed at 7:45P.M.

Variance Deliberations:

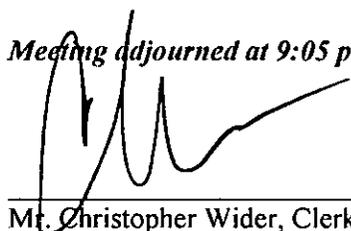
Discussion ensued with regard to criteria for a Variance. The land is only 4.07 acres, and does not meet setback requirements in any direction. Mr. Kanter acknowledges that his business does not meet the requirements for grandfathering, since no Special Permit had ever been obtained in the first place. Mr. Wider stated a dimensional size that does not meet the criteria does not warrant a Variance. None of the requirements that the town voted on are being met; the fact that Mr. Kanter never applied Special Permit does not meet the criteria of hardship, as it can be deemed self-created. Further discussion ensued with regard to whether or not this meets Variance criteria, including that its unique shape and topography make it perfectly suited for this purpose vs. the fact that the unique shape and topography do not make it impossible to not have this business.

The board members agreed that Mr. Kulesza and Mr. Wider would collaborate on a memorandum requesting the opinion of Town Counsel. The two main questions will be whether the business can be considered "existing" prior to the Bylaw change, even though it was operating without a Special Permit, and whether we can grant a Variance or not ~~(due to size not meeting bylaw criteria)~~, if it is not grandfathered. ** due to acreage restriction in the bylaw.*

Mr. Wider made a motion to extend deliberations on the Variance Request for 117 Seekonk Street for Henry Kanter at 9:05 PM on 1/20/16, until guidance is received from legal counsel with regard to whether or not this kennel is a grandfathered kennel per the Zoning bylaws of the town of Norfolk, and/or if it meets requirements of section D.2.d.5.b. of the Norfolk Schedule of Use Regulations, Zoning Bylaws, revised May, 2015. Mr. Sebastiano seconded; the vote on the motion was unanimous.

Mr. Sebastiano moved to adjourn; Mr. Hanssen seconded. the vote on the motion was unanimous.

Meeting adjourned at 9:05 pm



Mr. Christopher Wider, Clerk

In accordance with the requirements of G.L. 30 § 22, approval of these minutes by the Board constitutes its certification of the date, time and place of the meeting, the members present and absent, the matters discussed, and the action taken by the Board with regard to those matters (if any). Any other information contained in these minutes is included for context only. Notes memorializing deliberation or discussion of any matter are in the summary form and may include inaccuracies or omissions. Where proof of the content of a statement is required, a tape recording or transcript should be consulted, if available.