

Town of Newington, NH
ZONING BOARD OF ADJUSTMENT

Meeting Minutes, Thursday, January 21, 2021

Call to Order: Chair Matt Morton called the January 21, 2021 meeting at 6:30 PM.

Present: Vice-Chair Ralph Estes; John Frink; Edna Mosher; Alternate Board members, Will Gilbert and Kathy Latchaw; Town Planner John Krebs and Recording Secretary Jane Kendall

Absent: Meredith Hoyt

Public Guests: Attorney Chris Mulligan; Bill Marple; Amanda and Craig Fields; Denis Hebert

1) Request by 117 Gosling Road, LLC for a variance from Article III to permit overnight boarding of dogs at **Play-All-Day** located at **105-117 Gosling Road**.

The applicant's legal counsel, Attorney Christopher Mulligan with Bosen Associates appeared before the Board with property owner, Bill Marple, and tenants Amanda and Greg Fields, owners of Play all Day.

Attorney Mulligan stated that the applicant was granted a variance to allow the dog daycare use last spring, but it had come to their attention that overnight boarding was not specifically permitted. Attorney Mulligan said the request for overnight boarding was an oversight on his part at the time.

Attorney Mulligan noted that several uses by right such as clinics, treatment facilities, hospitals, and nursing homes permitted overnight uses, but this overnight use was not listed. Attorney Mulligan stated that they were asking to extend the hours of operation from last year's approval to accommodate overnight boarding of dogs.

Attorney Mulligan stated that previous approvals would apply, and there would be no additional changes to the building improvements.

Chair Morton asked the tenants if anyone would be present in the building at night. Ms. Fields replied that cameras were onsite to observe the dogs, but they did not intend to have overnight staff at this facility. Ms. Fields said that most dogs were tired from playing all day, and ready to sleep. Ms. Fields added that dogs that were spayed or neutered at the vets usually recovered alone in a crate overnight as well.

Town Planner, John Krebs asked what time they left the facility in the evening, and if the dogs had access to the outside runs overnight. Mr. Fields replied that staff left at 7:30 p.m., and the dogs were placed in individual kennels.

Chair Morton asked where the owners lived, and Mr. Fields said they lived in North Hampton, but they also had staff members that lived in Portsmouth.

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Alternate Board member, Kathy Latchaw asked if the dogs were monitored all night. Ms. Fields said there was a motion detector that would notify them if there was any activity.

Mr. Krebs asked if they listened to an audio, and Ms. Fields replied that they did not. Mr. Krebs commented that he had a dog that barked all night when left at a kennel. Ms. Fields responded that staff stayed with the dogs until they were all settled. Mr. Fields said they had several other facilities on the Seacoast that also monitored the dogs with cameras overnight, and they never had an issue in their other locations in residential areas, was not in a residential zone.

Chair Morton asked if overnight boarding had been discussed previously. Attorney Mulligan said he wasn't aware of the desire for overnight boarding when he went before the Zoning Board of Adjustment (ZBA), but they then had to go before the Planning Board to satisfy that the site improvements, and use would not cause any environmental impact to the wetlands, and that was when the Fields had talking about overnight board. Chair Morton noted that he never discussed overnight boarding at the ZBA meeting then. Mr. Krebs commented that the ZBA meeting had been held inside, and Attorney Mulligan was the only one in attendance at that meeting.

Vice-Chair Estes asked limit of how dogs could they board at night, and Ms. Fields said they built 50 cabins.

Board member, Edna Mosher stated that she took a site walk, and thought the facility looked good.

Ms. Mosher asked if any of the staff were vet techs that would recognize gastric dilation that could kill a dog in an hour. Ms. Fields responded that the dogs were monitored after feeding, and if there was any sign of bloat, the dog would be driven to the nearest emergency veterinarian center, and the owners would be called.

Ms. Mosher commented that someone stayed overnight at her veterinarian hospital when her dogs were neutered, and she thought it would be challenging for one person to monitor 50 dogs, so she would be more comfortable knowing the facility had overnight staffing. Ms. Fields responded that business was slower as a result of fewer people traveling during the COVID pandemic, and they used the cabins for daycare dogs to rest and eat, and for storage as well.

Ms. Mosher asked what vaccines would be required, and Ms. Fields responded that distemper and rabies were mandatory, but kennel cough was optional if the owner signed a waiver.

Mr. Krebs noted that a residence would not be allowed on site, but the Town had no prohibition for overnight staffing of someone that would sit at a desk. Ms. Fields said there were apartments for staff above some of their other facilities, but they never planned on having an apartment for this site.

Board member, John Frink asked if they were approved by the American Kennel Club (AKC). Ms. Fields replied that they were no AKC regulations for dog boarding, but she thought it would be good if there were.

Ms. Fields went on to say that the staff pays close attention to the dogs when they put them in for the night, and they could tell if there was a dog with a problem. Ms. Fields said the most troublesome issues with boarding dogs were anxiety, so they

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monitored those dogs carefully because they don't want any harm to come to them, and would let the owners know if they weren't a good fit for daycare or boarding. Ms. Fields said she had dogs of her own, and knew anything could happen unexpectedly to anyone's pet, but they had been in business since 2007, and they had never had any issues. Mr. Fields added that most people knew if their dog has health issues, and would care for them accordingly.

Mr. Frink asked what their hours of operation were, and Ms. Fields said they were open from 6 a.m. to 7:30 p.m. on Monday through Friday, and from 7 am. to 6 p.m. on Saturday and Sunday.

Mr. Frink asked how many of their other facilities boarded dogs overnight, and had staff present overnight. Ms. Fields replied that three out of five facilities boarded dogs overnight, and had staff present overnight except for their Hampton facility.

Mr. Frink asked if they also monitored all the kennels in all their facilities. Ms. Fields said she did during the day, and her husband did during the nights.

Mr. Fields said they had refined their facilities management over the last 12 years, and ran their center in the same way they would want their own dogs tended. Mr. Fields said their daily rates were the same or less than many other dog care centers that seemed to put less into the care of dogs.

Planning Board Chair, Denis Hebert said they had the right to ask for a variance, but he was certain that he had asked if all the dogs in daycare were picked up at night because the Planning Board always considers parking, and the timing of traffic in and out.

Mr. Hebert pointed out that National fire protection, and the State fire marshal issued requirements to the local fire chief for anyone sleeping over on site, and the Ordinance also had requirements that had to be met. Mr. Krebs noted that the Town couldn't prevent someone from operating overnight, but agreed that a residence would be a different issue.

Mr. Hebert commented that the facility had been built somewhat differently than what had been shown to the Planning Board, and he thought the fire chief wanted them to have both an egress as well as an ingress in case of fire.

Chair Morton asked if the building inspector had expressed any concerns. Mr. Krebs said he was there with the building inspector and fire chief, when egress issues were brought up. Mr. Fields responded that the inspectors told his contractor what they needed, and they added multiple exits.

Mr. Krebs asked if they had received their Certificate of Occupancy (CO), and if they were open for business. Mr. Fields replied that they had not received their CO. Property owner, Bill Marple stated that the fire safety engineer had inspected all the exits, and they were waiting for the final building inspections before obtaining their CO.

Ms. Mosher agreed that the floor plan that the applicant originally showed the Board was not the same as what she observed on her site walk. Attorney Mulligan responded that they had applied to the ZBA for a use variance, and had obtained their building permit with specific plans that complied to the building code.

Mr. Frink said he voted against the Change of Use request because the facility was against the wetlands buffer, but so long as the use had been granted, he thought

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that they should have an overnight employee on site due to the remote location. Ms. Mosher agreed, and said she would feel better if a vet tech was present overnight.

Ms. Fields stated that their staff members were required to take an animal first aid course, and the site was between two emergency vets if there were any issues. Ms. Mosher said she thought they should have a vet tech present to identify any issues that might arise. Attorney Mulligan responded that staffing with a vet tech was not a condition in the approval for the facility, during the day or night. Mr. Fields added that it would be up to a customer to decide whether they were comfortable leaving their pet at their facility overnight. Mr. Frink acknowledged that it was an animal rights issue, and not a zoning issue.

Mr. Fields commented that a neighbor watched a dozen dogs on their own property, and they were left in the yard to bark all the time. Mr. Fields said dogs barked naturally, and this location was nice because it wasn't near a residential area. Mr. Frink said that was a payoff, but no one was around to watch the dogs at night. Mr. Fields said it would be a consumer's decision whether they leave their dog at a kennel, but others might not.

Ms. Fields said they had already started construction on the building, and boarding was a huge part, but they would accept a contingency to have overnight staff.

Chair Morton asked how many dogs stayed at their Portsmouth facility before the COVID pandemic restrictions. Mr. Fields replied that they might have ten dogs on a busy weekend, and as many as 25-30 on a busy holiday.

Chair Morton asked how large their staff was in Portsmouth, and Ms. Fields replied that they had a staff of 14 in Portsmouth, and they employed 63 people altogether. Chair Morton asked what their ages were. Ms. Fields said her staff ages ranged from 23-51 years old, and some were vet techs, some had previous experience with boarding, and others not, but they all get the same training on how to handle large groups of dogs.

Mr. Hebert said he said he would like to see the new building plan that was different than what he saw initially as he was also concerned that dogs would be outside at night. Attorney Mulligan responded that dogs would be sleeping in their kennels at night. Attorney Mulligan said they presented plans to the Town planner, and building inspector, and while a couple of doors had changed, the exterior of the site was the same as what they had shown the Planning Board. Attorney Mulligan said they would still provide a baseline, and yearly sampling of the wetlands to show no changes were occurring as a result of the use, but they shouldn't have to go back to the Planning Board every time a door was changed.

Ralph Estes recommended that the Board floor their decision until they received input from the building inspector, and Edna Mosher agreed.

Mr. Krebs commented that he was getting more complaints about in person meetings, but Board members were against Zoom meetings, so he suggested that the Board could make a motion for approval subject to the building and fire inspectors' reviews showing that the building was code compliant.

Chair Morton agreed with Mr. Krebs' suggestion for a motion with conditions.

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Vice-Chair Estes asked what would happen if the inspection failed. Mr. Krebs stated that he was confident that all building code inspection issues from last summer had been resolved. Mr. Krebs added that there were no additional requirements if someone sat at a desk as they did for any other overnight operation that was allowed.

Mr. Hebert said he was concerned that overnight use would morph into overnight sleeping, and he was concerned with overnight sleeping near the Industrial Zone. Mr. Frink asked about night watchmen that were allowed in the Industrial Zone. Mr. Hebert replied that night watchmen were allowed in the Industrial Zone, but it required yearly certification. Attorney Mulligan responded that they could make the restriction a condition of approval, and if code violated could revoke variance.

Mr. Krebs said he agreed with the owners that people would not board their dogs overnight if they were not comfortable leaving them. Ms. Mosher disagreed, saying many animal lovers were not experts, and might think that they were leaving their dogs with expert professionals. Ms. Fields responded that she had started pre-vet studies before changing to chemical engineering, but she didn't suggest that she spent the night with the dogs.

Ms. Fields went on to say that the dogs at their kennels slept until someone arrived in the morning, and it would be disruptive to have someone going in and out to check the dogs all night. Ms. Mosher said she would want someone in the building with the dogs in case of a fire. Ms. Fields responded that as much as her dogs meant to her, she understood, but the fire chiefs wouldn't want staff to risk their lives, so they had smoke and fire detection, and sprinklers on site.

Mr. Hebert asked if all the issues in the building inspector's memo had been resolved. Mr. Krebs said the building inspector was going to be gone for several months, and said everything was ready, so he was confident that all code issues mentioned in the letter were resolved.

Mr. Hebert asked if there was any need for the applicant to go before the Planning Board again. Mr. Krebs replied that it wouldn't be necessary as he thought the overnight use would reduce traffic flow.

Ralph Estes withdrew his recommendation to table the hearing, and Edna Mosher seconded the withdrawal.

John Frink made a motion to grant the request by 117 Gosling Road, LLC for a variance from Article III as submitted to permit overnight boarding of dogs at Play-All-Day located at 105-117 Gosling Road subject to final building and fire inspection. Matt Morton seconded, and all in favor.

John Frink went through the five criteria for granting the variance, stating that it would not be contrary to the public because it was in the *public interest to support overnight pet boarding*.

Mr. Frink said the spirit of the Ordinance would be observed because they were in compliance with most regulations of the Zoning Ordinance, and substantial justice would be done considering that daytime only use was not the applicant's original intent.

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Mr. Frink stated that literal enforcement of the Ordinance would create a hardship that had been overcome by granting the previous variance request to allow an additional structure closer to wetlands.

The motion passed 4-1 with Matt Morton, Ralph Estes, John Frink, and Kathy Latchaw voting in favor, and Edna Mosher voting against.

Minutes: *Edna Mosher made a motion to approve the Minutes of November 19, 2020 meeting with correction as discussed. Ralph Estes seconded, and all were in favor.*

Adjournment: *Edna Mosher moved to adjourn the meeting. Kathy Latchaw seconded, and the meeting adjourned at 8:15 p.m.*

Next Meeting: To be determined

**Respectfully
Submitted by:** Jane K. Kendall, Recording Secretary