

MINUTES
SPECIAL PERMIT HEARING CONTINUED FROM 9/13/07
APPLICANT: BERKSHIRE FENCE

Thursday, September 27, 2007

The hearing was opened at 8:45 PM.

Members present were: Rene Wood, Anthony Gulotta, David Smith Sr., Margaret Martin and Christopher Tomich.

Attorney MacDonald reminded the Board that they had requested a list comparing 2 sets of documents, the list of those he had received through his public information request and those his client had submitted to the Building Inspector. Atty. MacDonald distributed the lists to the Board Members.

Todd Driscoll certified that the Building Inspector at the time, Brent Getchell, was in the residential area of his project, as it was being constructed, several times. According to Mr. Driscoll, Mr. Getchell was actively involved on site with layout and components of the residential unit, particularly involving fire separation. Mr. Driscoll remembered that these visits occurred between March 14, 2005 and the end of construction.

Atty. MacDonald informed the Board that he did not have a detailed development analysis for the Board because it had not been completed to date. Atty. MacDonald said it could be completed by the next Planning Board meeting on 10/11/07.

R. Wood asked if anyone wished to add anything or if the Board had any more questions. No one did.

A letter from the abutters of Berkshire Fence detailing concerns about the barking of dogs at Doggy Day Care and possible increase of number of dogs and addition of boarding.

Atty. MacDonald stated that Doggy Day Care has no plans to expand or to have dogs overnight. Berkshire Fence is not aware of these complaints because the neighbors have taken their complaints to Nora Hayes, the owner of the Doggy Day Care.

M. Martin asked if SK Design was under contract to provide a site plan.

Todd Driscoll stated that they had a site plan, but the uses weren't listed early on because they hadn't decided what the uses would be.

A. Gulotta asked if the Doggy Day Care has 1000 square feet and Todd Driscoll answered that they have a little more than 800 square feet and that they share a bathroom with Berkshire Fence.

R. Wood pointed out that on the second page of SK's design control document dated 12/14/2004 they certify that all applicable laws have been complied with. She realized that they are focused on the building code but wondered how they could not be aware of the Town Zoning Bylaws in doing their job.

Atty. MacDonald stated that in the chronology of events the building permit had been issued.

R. Wood noted that the construction control affidavit was dated 12/14/04 while the building permit application was submitted on 12/15/04.

C. Tomich contrasted and questioned a document, dated 12/14/04, which mentioned the tenant multi-use with the building permit application dated 12/15/04 which described a single use situation.

R. Wood asked Atty. MacDonald to describe Nora Hayes' business. Atty. MacDonald stated that the Doggy Day Care consisted of the training, day care and grooming of dogs. The applicant and his attorney responded that training and dog day care are the bulk of Ms. Hayes activities at Doggy Day Care as there is no sink in her space for traditional grooming. R. Wood stated that in Ms. Hayes' advertisements there's no mention of grooming, just day care and training. She asked Atty. MacDonald how he can help the Board with the fact that according to Sheffield bylaws the definition of kennel includes grooming and boarding, not day care or training.

Atty. MacDonald stated that our new bylaws on kennels includes grooming as one of the uses, therefore he believed that Doggy Day Care qualifies as a kennel.

R. Wood then discussed the applicant's request for signage and explained that there is a typographical error in the bylaws which limits the Planning Board's ability to issue a Special Permit for a sign. She explained that the Board is working to correct that at the December Town Meeting. She stated that the applicant is looking for a special permit for an extremely large sign. The main sign is over 41 square feet or over 200% of the allowed size. R. Wood wanted to know how the applicant reads "allowed use" in the signage bylaw.

Atty. MacDonald answered that his understanding is that a primary sign 20 square feet and a secondary sign 8 square feet would be allowed by right. By Special Permit, his understanding is that the Board could grant up to 50% larger.

R. Wood said that the maximum sign size would therefore be 30 square feet. She stated that when the measurement is done, the whole frame is included in the dimensions.

Todd Driscoll said the sign dimensions have to be corrected and that the drawings had to be in error.

R. Wood stated that there were a few places where signs were mentioned in the application. She asked if the applicant could give a summary of the size and number of signs.

R. Wood next addressed the accessory single family dwelling unit. She said a layout is usually provided with an application. She said the Board needs a little sketch of the layout. She asked what use the apartment is an accessory use to.

Atty. MacDonald stated that the apartment is accessory to the retail store.

R. Wood stated that she is struggling with how to allow a single family accessory dwelling if the principle use is for a major commercial development which is not allowed to have an a single family dwelling if the principal use is a use allowed by Special Permit

Atty. MacDonald stated that unlike a use Special Permit a major commercial development isn't a use per se. He thought that the Planning Board didn't need to get tripped up on that.

R. Wood stated her objection that a major commercial development is listed as a principal use in the zoning bylaws.

Atty. MacDonald sees the bylaw as a density control mechanism and referred to the way Pittsfield handles these matters. He distinguished between bylaws that control use and those that control size.

R. Wood stated that it is hard for her to do that because it is listed as a use throughout the bylaws.

Atty. MacDonald stated that the bylaw allows for a town to have input when a project gets to be a certain size.

A. Gulotta stated that he has always looked at the intent behind the bylaws.

R. Wood asked to spend a few minutes on the site plan, she said that it seems to have no engineering stamp. She asked what is behind the building. Mr. Driscoll answered that it is a staging area.

R. Wood asked about parking. Todd Driscoll that they will park as they currently park on gravel.

R. Wood stated that the engineer stamp and certification need to be addressed.

C. Tomich stated that he is concerned about aesthetic issues. He said that at night the lighting is too strong and offensive. He stated that there is no need to light up and out but rather down. That way he felt security would not be affected. Todd Driscoll said he could adjust the lighting. C. Tomich felt that the play equipment and sheds should have a low fence to define them as a space so that they don't bleed into Route 7. Todd Driscoll said he could make it more like a live play area. C. Tomich asked if the gate in the solid fence that hides the machinery could be made solid. Todd Driscoll explained that a solid gate exists, it just remains open. Mr. Driscoll stated that C. Tomich's recommendations would make the place look better.

R. Wood distributed copies of what the building inspector provided her when she requested all documents pertaining to Berkshire Fence as she was concerned about what had been provided to the applicant.

The applicant's attorney could not be present on 10/11/07 and the Board preferred not to schedule the meeting for 10/25/07.

The hearing was continued until November 8 at 8:00 PM with the agreement of the applicant Todd Driscoll and Atty. MacDonald.

Summary of Additional Information Applicant will bring to hearing on 11/8/07:

- Sign Dimensions
- Summary of the space of all signs
- Add "Grooming" to Nora's sign
- Layout of the single family residence
- Stamp on the site plan
- Incorporate C. Tomich's earlier comments regarding aesthetic display and lighting
- Detailed Development Analysis

R. Wood stated that she does not want the applicant to have to spend any more money, she is just looking for information that already exists.

R. Wood asked if anyone had any further questions or if anyone would like the applicant to bring any additional information to the hearing in November. No one had questions or requests.

At 9:44 PM, A. Gulotta made a motion to close the hearing. The motion was seconded and approved.

Respectfully submitted,
Nadia Milleron, Secretary to the Planning Board